

CONTRACT
Common Ground for the Common Core 2.0
RFP#2014-17

This Agreement ("Agreement") is effective only upon the execution of a State of Delaware Purchase Order and will end on June 30, 2015, by and between the State of Delaware, Department of Education, hereafter referred to as DDOE, and ***Solution Tree***, hereafter referred to as Solution Tree.

WHEREAS, DDOE desires to obtain certain services to support Common Ground for the Common 2.0 per RFP#2014-17; and

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

WHEREAS, DDOE and SOLUTION TREE 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 SOLUTION TREE agree as follows:

1. Services.

1.1 Solution Tree 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) Solution Tree'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 Solution Tree 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 Solution Tree, 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 Solution Tree for any aspect of its performance under this

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

1.4 Solution Tree will not be required to make changes to its scope of work that result in Solution Tree'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 June 30, 2015.

2.2 DDOE will pay Solution Tree 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 Solution Tree for the performance of services described in Appendix A, Statement of Work will not exceed the fixed fee amount of \$ 288,886.00. It is expressly understood that the work defined in the appendices to this Agreement must be completed by Solution Tree and it shall be Solution Tree'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 Solution Tree.

2.4 Solution Tree 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 Solution Tree 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 Solution Tree 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 Solution Tree, 555 North Morton Street, Bloomington, IN 47401; Attn: Jim Watson, Chief Financial Officer.

2.5 Unless provided otherwise in an Appendix, all expenses incurred in the performance of the services are to be paid by Solution Tree. If an Appendix specifically provides for expense reimbursement, Solution Tree shall be

reimbursed only for reasonable expenses incurred by Solution Tree 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 Solution Tree all damages, costs and expenses caused by Solution Tree's negligence, resulting from or arising out of errors or omissions in Solution Tree's work products, which have not been previously paid to Solution Tree.

2.8 Invoices shall be submitted to: Theresa Bennett, Delaware Department of Education, 401 Federal Street, Suite 2, Dover, DE 19901.

3. Responsibilities of Solution Tree.

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

3.2 It shall be the duty of the Solution Tree 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. Solution Tree will not produce a work product that violates or infringes on any copyright or patent rights. Solution Tree 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 Solution Tree shall not in any way relieve Solution Tree of responsibility for the professional and technical accuracy and adequacy of its work. DDOE's review, approval, acceptance, or payment for any of Solution Tree'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 Solution Tree shall be and remain liable in accordance with the terms of this Agreement and applicable law for all damages to DDOE caused by Solution Tree's performance or failure to perform under this Agreement.

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

Project	Team	Title	% of Project Involvement
PD Services	Mark Schneider	Director of Educational Partnerships	100%

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

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

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

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

Solution Tree shall return any original data provided by DDOE.

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

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

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

10. Employees.

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

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

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

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 Solution Tree 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 Solution Tree, without prior written approval of DDOE.

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

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

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

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

21. Insurance.

21.1 Solution Tree 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. Solution Tree 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, Solution Tree 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. Solution Tree 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: Jim Watson
Chief Financial Officer
Solution Tree
555 North Morton Street,
Bloomington, IN 47401

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

DOE Certificated Staff coordinating activity: Theresa
Bennett, Education Associate

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.

Solution Tree
Original on File

(Official of Contractor) *Shannon R. Ritz*
Project Manager
Director of Professional Development

7/8/14
Date

(Official of Contractor)
Principal Investigator

Date

Delaware Department of Education
Original on File

Karen Field Rogers
Associate Secretary, Financial Reform &
Resource Management

7/2/14
Date
Original on File
Initial Finance Director

Original on File
Michael Watson, Chief Academic Officer,
Teaching & Learning Branch

6/24/14
Date
Original on File
(Initial)
Shelley Rouser, Director
of K-12 Initiatives and
Educator Engagement

APPENDIX: A



Solution Tree Purchasing Agreement

Effective June 25, 2014, Solution Tree, Inc. ("Solution Tree") located at 555 N. Morton St., Bloomington IN 47404 and Delaware Department of Education ("Customer") located at 401 Federal Street, Dover, DE 19901 agree as follows:

- Products:** Customer shall purchase the following Professional Development Services ("Products"). Additional terms for specific Products are described in Exhibit A attached hereto. Any additional Products may be added to this Agreement by a written Addendum signed by both parties.

Exhibit A: Professional Development Services			
Quantity	Item	Amount	Total
7	Onsite Professional Development - Jeanne Spiller	\$6,500.00	\$45,500.00
6	Onsite Professional Development - Jim Cunningham	\$6,600.00	\$39,600.00
6	Onsite Professional Development - Bill Kist	\$5,400.00	\$32,400.00
2	Onsite Professional Development - Beth Kobett	\$4,600.00	\$9,200.00
4	Onsite Professional Development - Nanci Smith	\$4,600.00	\$18,400.00
6	Onsite Professional Development - Bill Barnes	\$4,100.00	\$24,600.00
6	IWC Webinars - Jeanne Spiller	\$1,500.00	\$9,000.00
3	IWC Webinars - Jim Cunningham	\$1,500.00	\$4,500.00
3	IWC Webinars - Bill Kist	\$1,500.00	\$4,500.00
3	IWC Webinars - Nanci Smith	\$1,500.00	\$4,500.00
3	IWC Webinars - Bill Barnes	\$1,500.00	\$4,500.00
Professional Development Total			\$196,700.00

Exhibit B: Resources			
Quantity	Item	Amount	Total
300	Collaborating for Success with the Common Core	\$29.95	\$8,985.00
300	Common Core English Language Arts in a PLC Leaders Guide	\$24.95	\$7,485.00
	PD discount	(40%)	(\$6,588.00)
	Shipping and Handling		\$704.00
Resource Total			\$10,586.00



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Exhibit C: Digital Rights for Exhibit A		Amount	Total
Quantity	Item		
3	Digital Rights Professional Development Jeanne Spiller	\$6,500.00	\$ 19,500.00
3	Digital Rights Professional Development Jim Cunningham	\$6,600.00	\$ 19,800.00
3	Onsite Professional Development Bill Kist	\$5,400.00	\$ 16,200.00
1	Onsite Professional Development Beth Kobett	\$4,600.00	\$ 4,600.00
2	Onsite Professional Development Nanci Smith	\$4,600.00	\$ 9,200.00
3	Onsite Professional Development Bill Barnes	\$4,100.00	\$ 12,300.00
Digital Rights Total			\$ 81,600.00

Contract Total

\$288,886.00

2. **Invoicing and Purchase Orders:** Customer will provide Solution Tree with a purchase order upon execution of contract for the full amount due under this Agreement. Solution Tree will invoice Customer based on the following schedule:

Description	Payments	Expected Invoice Date
20% Deposit (non-refundable)	\$57,777.20	Upon execution of contract
September Sessions, Resources, & Digital Rights	\$112,068.80	September 23, 2014
October Sessions	\$7,200.00	October 14, 2014
November Sessions	\$10,400.00	November 12, 2014
December Sessions	\$38,320.00	December 9, 2014
January Sessions	\$7,200.00	January 5, 2015
February Sessions	\$10,400.00	February 10, 2015
March Sessions	\$45,520.00	March 10, 2015

All payment terms are net 30 days from the actual date of invoice. ~~All late payments are subject to a Finance Charge of 1.5% monthly.~~ Please make purchase order(s) out to: Solution Tree, 555 North Morton Street, Bloomington IN 47404.



Who will receive and pay the invoices?

Contact: Shelley Rouser
Title: Director of K-12 Initiatives and Educator Engagement
Address: 401 Federal Street
City, State: Dover, DE 19901
Phone: 302-735-4180
E-mail: shelley.rouser@DOE.K12.DE.US
Fax: 302-739-3744

3. **Intellectual Property:** Customer acknowledges that Solution Tree or Solution Tree's subcontractors own the copyrights to all tangible or electronic presentation materials, handouts, and/or program books used in conjunction with the services performed under this Agreement, and that no materials will be developed specifically for Customer. Solution Tree shall retain all copyrights owned prior to entering this Agreement, and Customer may not reproduce any materials not designated reproducible without the express written permission of Solution Tree.
4. **Entire Agreement:** This Agreement contains the entire understanding and supersedes all prior understandings between the parties relating to the subject matter herein.
5. **Offer Valid:** The offer set forth in this Agreement shall be open through July 30, 2014. SR



Solution Tree

This Agreement is acknowledged and accepted by Customer and Solution Tree:

Original on File

Shelley Rouser

Director of K-12 Initiatives and
Educator Engagement
Delaware Department of Education

6/25/14
Date

Original on File

Shannon Ritz

Director of Professional Development
Solution Tree, Inc.

7/8/14
Date

Original on File

Karen Field Rogers

Associate Secretary
Financial Reform and Resource
Managment

7/2/14
Date

Original on File

Michael Watson

Chief Academic Officer
Teaching and Learning Branch

6/25/14
Date

Please fax or email this agreement to:

Mark Schneider: mark.schneider@solution-tree.com
Fax: 812-961-4696
Email: salesupport@solution-tree.com



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EXHIBIT A: PROFESSIONAL DEVELOPMENT SERVICES

SERVICE 1: Common Core State Standards Mathematics Convenings (12 days, onsite)

Dates: September 23 and 24, 2014; December 9 and 10, 2014; March 10 and 11, 2015

Associates: Beth Kobett (September only), Nanci Smith (December and March only), Bill Barnes

Estimated Number of Participants: 150-200 per speaker

Participant Demographics: PK-12th grade staff, split into elementary and secondary groups

Proposed Start Time: 8:00am

Proposed End Time: 3:00pm

Workshop Location: Day 1: Dover, DE; Day 2: Wilmington, DE

Cost of Service: \$52,200.00, inclusive of travel and expenses (\$4,600.00 per day for Nanci Smith for 4 days, \$4,600.00 per day for Beth Kobett for 2 days, \$4,100.00 per day for Bill Barnes for 6 days)

Description of Service:

The three Regional Convenings will provide participating Guiding Teams with the skills, knowledge, and tools they need to successfully meet the intended outcome of the Delaware Department of Education for Mathematics CCSS. There will be three sessions at two different locations, one in the South and one in the North, and we will separate the audience into two strands (Elementary and Middle/High). Beth Kobett and Nanci Smith will be working with the Elementary Cohorts and Bill Barnes will be working with the secondary Cohorts.

SERVICE 2: Common Core State Standards ELA Convenings (12 days, onsite)

Dates: September 23 and 24, 2014; December 9 and 10, 2014; March 10 and 11, 2015

Associates: James Cunningham and Bill Kist

Estimated Number of Participants: 150-200 per speaker

Participant Demographics: PK-12th grade staff, split into elementary and secondary groups

Proposed Start Time: 8:00am

Proposed End Time: 3:00pm

Workshop Location: Day 1: Dover, DE; Day 2: Wilmington, DE

Cost of Service: \$72,000.00, inclusive of travel and expenses (\$6,600 per day for Jim Cunningham for 6 days, \$5,400.00 per day for Bill Kist for 6 days)

Description of Service:

The three Regional Convenings will provide participating Guiding Teams with the skills, knowledge, and tools they need to successfully meet the intended outcome of the Delaware Department of Education for ELA CCSS. There will be three sessions at two different locations, one in the South and one in the North, and we will separate the audience into two strands (Elementary and Middle/High). James Cunningham will be working with the Elementary Cohorts and Bill Kist will be working with the secondary Cohorts.



SERVICE 3: Common Core State Standards Content Coverings (3 days, onsite)

Dates: September 25, 2014; December 11, 2014; March 12, 2015

Associates: Jeanne Spiller

Estimated Number of Participants: 150-200

Participant Demographics: PK-12th grade staff

Proposed Start Time: 8:00am

Proposed End Time: 3:00pm

Workshop Location: Dover, DE

Cost of Service: \$19,500.00, inclusive of travel and expenses
(\$6,500 per day for 3 days)

Description of Service:

The three Regional Convenings will provide participating Guiding Teams with the skills, knowledge, and tools they need to successfully meet the intended outcome of the Delaware Department of Education for CCSS.

SERVICE 4: Common Core State Standards Feedback and Feed-Forward (4 days, onsite)

Dates: November 12 and 13, 2014; February 10 and 11, 2015

Associates: Jeanne Spiller

Estimated Number of Participants: 150-200 per day

Participant Demographics: PK-12th grade staff, split into elementary and secondary groups

Proposed Start Time: 4:30 PM

Proposed End Time: 7:30 PM

Workshop Location: Day 1: Dover, DE; Day 2: Wilmington, DE

Cost of Service: \$26,000.00, inclusive of travel and expenses
(\$6,500 per day for 4 days)

Description of Service:

The Feed-Forward/Feedback Sessions will occur during two evening sessions in two regions of the state. The sessions will serve as a vehicle for status reporting, sharing artifacts/evidence of implementation, and new information on CCSS tools and resources.

SERVICE 5: Common Core State Standards Mathematics, ELA, and Content Webinars (18, 75-minute sessions)

Dates, Times, and Associates:

Nanci Smith (Elementary Mathematics):
October 15, 2014; 2:00-3:15 PM EST
January 9, 2015; 10:00-11:15 AM EST
March 25, 2015; 10:00-11:15 AM EST

Bill Barnes (Secondary Mathematics):
October 13, 2014; 2:00-3:15 PM EST
January 7, 2015; 2:00-3:15 PM EST
March 25, 2015; 2:00-3:15 PM EST

James Cunningham (Elementary ELA):
October 14, 2014; 10:00-11:15 AM EST
January 6, 2015; 10:00-11:15 AM EST
March 24, 2015; 10:00-11:15 AM EST

Bill Kist (Secondary ELA):
October 14, 2014; 2:00-3:15 PM EST
January 6, 2015; 2:00-3:15 PM EST
March 24, 2015; 2:00-3:15 PM EST



Jeanne Spiller (Content and Administrators):

October 16, 2014 (2 sessions); 10:00-11:15 AM EST and 2:00-3:15 PM EST

January 8, 2015 (1 session); 2:00-3:15 PM EST

January 9, 2015 (1 session); 2:00-3:15 PM EST

March 27, 2015 (2 sessions); 10:00-11:15 AM EST and 2:00-3:15 PM EST

Estimated Number of Participants: 150-200 per session

Participant Demographics: PK-12th grade staff, split into elementary and secondary groups

Cost of Service: \$27,000.00 (\$1,500 per session for 18 sessions)

Description of Service:

The webinars will serve as an effective follow-up with the consultants within two weeks of the Convenings. These will be interactive sessions and will reflect on the application of implementation strategies. Solution Tree Associates will respond to challenges and supply additional resources.

Additional Terms

- Travel Arrangements and Expenses:** The total Agreement amount includes all travel, lodging, and other incidental expenses incurred by Associate.
- Reproducibles:** Customer is responsible for the reproduction of all handouts and other print materials related to the services, and Customer will notify the Associate directly of any deadlines for reproduction.
- Audio/Video Equipment:** Customer will provide a venue, audio/video equipment and technical support for the sessions. All sessions will be conducted over WebEx. To access the services, Customer must use a hardwired or Ethernet internet connection and a computer with a video/web camera, a sound card, microphone, and speakers. For audio connections, Customer may alternatively use a telephone with conference call capabilities located in the same room as the IWC. Customer shall provide Tech Support contact available by phone and email for testing equipment before session and troubleshooting at time of IWC. There is a limit of 20 unique logins per IWC session

Technical Requirements for an Interactive Web Conference		
	PC/Windows	Macintosh
System Requirements	<ul style="list-style-type: none"> Windows 2000 or above Internet Explorer 6 or above; OR Firefox 2 or above; OR Google Chrome 4 In Internet options, make sure JavaScript, cookies, and ActiveX are enabled Intel or AMD processor (1 GHz or faster) At least 512 MB RAM (at least 2 GB RAM for Vista) 	<ul style="list-style-type: none"> Mac OS X 10.4 or above Safari 3 or above; OR Firefox 2 or above JavaScript and cookies enabled Requires Apple Java 5 or higher Power PC G4/G5 or Intel processor At least 513 MB RAM
Video / Audio Requirements	<ul style="list-style-type: none"> Video/web camera connected to your PC or MAC A sound card installed in your computer Microphone and speakers connected to your computer or a telephone in the same room as the IWC with conference call capabilities 	
Site Requirements	<ul style="list-style-type: none"> Tech Contact in attendance and available for troubleshooting at time of IWC Training of moderator(s) via WebEx and Solution Tree PD Tech Representative prior to session 	



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• Limit of 20 unique log-ins to WebEx during the session

4. **Recording of Presentation:** Customer may make an audio/visual recording of the above Onsite Professional Development and Interactive Web Conferences (the "Recording"). Solution Tree shall be the sole and exclusive owner of all rights to the Recording subject to the terms and conditions of this Exhibit A. Solution Tree grants Customer a license to access the Recording according to the following guidelines:

- a. The Recording may be used only by educators in the list of 145 schools found in Attachment A attached hereto.
- b. The Recording may be used only until May 31, 2016, after which Customer must return to Solution Tree any copies of the Recording provided on a tangible medium and delete any digital copies of the Recording.
- c. The Recording may be neither duplicated nor distributed to any school or other entity outside the list of schools found in Attachment A.
- d. The Recording may not be distributed or downloaded beyond Customer's employees by any means, including email, Internet, closed network, or any other electronic medium.
- e. The Recording must be password protected and accessed through a secure website.
- f. A master copy of the Recording will be delivered to Solution Tree within 30 days of recording at Customer's expense.
- g. The following information must be included with any printed material or digital text that appears on or with the Recording:

Copyright © 2013 Solution Tree, Inc., 555 North Morton Street, Bloomington, IN 47404, 800-733-6786, solution-tree.com

5. **Termination:** If Customer terminates this Agreement within 90 days of the workshop for any reason but Force Majeure, Customer shall reimburse Solution Tree for any reasonable business expenses incurred in anticipation of performance of this Agreement that exceed the amount of the deposit. Solution Tree may terminate this Agreement if Solution Tree has not received a purchase order within 30 days of the effective date of this Agreement. Solution Tree may terminate this Agreement if Customer's equipment is not up to the required standard by 30 days prior to the IWC. If Customer's equipment fails during the IWC, Customer will still be liable for the full amount.
6. **Force Majeure:** If events beyond the parties' control, such as acts of God, disaster, war, curtailment or interruption of transportation facilities, acts of terrorism, State Department or other governmental or international agency travel advisory, civil disturbance, interruption or cessation of electrical power, strikes, disease, epidemic, or any other cause beyond the parties' control which makes it impossible for to perform under this Agreement, then Solution Tree agrees to offer services at a later date, provided such can be rescheduled with Customer. Solution Tree shall have an affirmative duty to notify Customer immediately of any circumstance or event that will prevent Solution Tree from performing under this Agreement.

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EXHIBIT B: RESOURCES

1. **Shipping:** Solution Tree will ship all resources after an invoice has been generated.
2. **Returns and Refunds:** If Customer is not completely satisfied with any Solution Tree resource excluding online courses, Customer may return it (in undamaged and saleable condition) within 30 days of the invoice date for a full refund or credit, less shipping and handling. Solution Tree will not accept return after 30 days.

Customer must request all refunds in writing. Customer must obtain a return authorization number from Solution Tree prior to any return. Solution Tree will deny returns without an authorization number and will return them at the Customer's expense. Solution Tree will issue a refund for the resource only, based upon the condition of the resource when received. Customer will not be issued a refund if they have an unpaid balance. Solution Tree reserves the right to refuse any shipment. Solution Tree will not be responsible for resources lost or damaged in transit. Solution Tree is not responsible for and will not refund international customs fees.

Shipping Information for Resource Delivery

Shipping Contact:	<u>Theresa Bennett</u>
Shipping Address:	<u>401 Federal Street</u>
City, State, Zip:	<u>Dover, DE, 19901</u>
Phone:	<u>302-735-4180</u>
Delivery Date:	<u></u>
Delivery Times:	<u></u>

Choose one:

- ☐ Do you have a Delivery Dock?
- ☐ Do you have double doors (for pallet)?
- ☐ Do you require inside delivery?

Professional Development Services Contact Information

Who will be the contact person for the work?

Contact:	<u>Theresa Bennett</u>
Title:	<u>Education Associate, ELA</u>
Phone:	<u>302.735.4180</u>
Mobile:	<u>302-670-3293</u>
E-mail:	<u>theresa.bennett@doe.k12.de.us</u>
Fax:	<u>302.739.3744</u>