

CONTRACTUAL AGREEMENT
EVALUATION: ALTERNATIVE ROUTES TO TEACHER CERTIFICATION
RFP #2014-15

This Agreement ("Agreement") is effective *only upon* the execution of a State of Delaware Purchase Order and will end on February 28 2015, by and between the State of Delaware, Department of Education, hereafter referred to as DDOE, and Tembo, Inc hereafter referred to as TEMBO.

WHEREAS, DDOE desires to obtain certain services to evaluate and compare the achievement of students being taught by Alternative Route to Teacher Certification program participants while simultaneously considering other important elements of teacher preparation such as principal satisfaction and teacher retention; and

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

WHEREAS, DDOE and TEMBO 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 TEMBO agree as follows:

1. Services.

1.1 TEMBO 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 C; and (c) TEMBO's response to the request for proposals, attached hereto as Appendix D. 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 TEMBO 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 TEMBO, 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 TEMBO for any aspect of its performance under this Agreement. Pricing of changes shall be consistent with those established within this Agreement.

1.4 TEMBO will not be required to make changes to its scope of work that result in TEMBO'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 February 28, 2015.

2.2 DDOE will pay TEMBO 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 B. All dates will be adjusted based upon the execution date of this agreement.

2.3 DDOE's obligation to pay TEMBO for the performance of services described in Appendices A&B will not exceed the fixed fee amount of \$250,000. It is expressly understood that the work defined in the appendices to this Agreement must be completed by TEMBO and it shall be TEMBO'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 TEMBO.

2.4 TEMBO 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 TEMBO 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 TEMBO 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 TEMBO:

1639 N Hancock Street
Studio 203
Philadelphia, PA 19122

2.5 Unless provided otherwise in an Appendix, all expenses incurred in the performance of the services are to be paid by TEMBO. If an Appendix specifically provides for expense reimbursement, TEMBO shall be reimbursed only for reasonable expenses incurred by TEMBO 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 TEMBO all damages, costs and expenses caused by TEMBO's negligence, resulting from or arising out of errors or omissions in TEMBO's work products, which have not been previously paid to TEMBO.

2.8 Invoices shall be submitted to:

Shana Young
Chief-of-Staff
Teacher and Leader Effectiveness Unit
Delaware Department of Education
401 Federal Street
Dover, DE 19901-3639
302.735.4198 (T)

3. Responsibilities of TEMBO.

3.1 TEMBO shall be responsible for the professional quality, technical accuracy, timely completion, and coordination of all services furnished by TEMBO, its subcontractors and its and their principals, officers, employees and agents under this Agreement. In performing the specified services, TEMBO shall follow practices consistent with generally accepted professional and technical standards. TEMBO 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, TEMBO shall, at its expense and option either (1) replace it with a conforming

equivalent or (2) modify it to conform with DTI standards. TEMBO shall be and remain liable in accordance with the terms of this Agreement and applicable law for all damages to DDOE caused by TEMBO's failure to ensure compliance with DTI standards.

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

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

Project	Team	Title	% of Project Involvement
	Steven Cartwright	Project Director	25%

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

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

3.7 TEMBO 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 TEMBO 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 TEMBO 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 TEMBO 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 B.

5. State Responsibilities.

5.1 In connection with TEMBO'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 TEMBO in the performance of services under this Agreement and will be available for

consultation with TEMBO at such reasonable times with advance notice as to not conflict with their other responsibilities.

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

TEMBO shall return any original data provided by DDOE.

5.6 DDOE shall assist TEMBO 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 TEMBO 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 TEMBO's name, either express or implied, in any of its advertising or sales materials. TEMBO 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 TEMBO 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. TEMBO 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 TEMBO 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 TEMBO retains title, whether individually by TEMBO 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 TEMBO 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, TEMBO 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 TEMBO prior to the effective date of this Agreement ("Preexisting Information") shall remain the exclusive property of TEMBO 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 TEMBO warrants that its services will be performed in a good and workmanlike manner. TEMBO 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 TEMBO for DDOE in connection with the provision of the Services, TEMBO shall pass through or assign to DDOE the rights TEMBO 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 TEMBO 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 TEMBO, its agents or employees, or (B) TEMBO'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) TEMBO shall have been notified promptly in writing by DDOE of any notice of such claim; and (ii) TEMBO 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 TEMBO in writing of a third party claim against DDOE that any Deliverable infringes a copyright or a trade secret of any third party, TEMBO will defend such claim at its expense and will pay any costs or damages that may be finally awarded against DDOE. TEMBO 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 TEMBO; (3) DDOE's use of the Deliverable in

combination with any product or information not owned or developed by TEMBO; (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 TEMBO's opinion is likely to be, held to be infringing, TEMBO 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 TEMBO's entire liability with respect to infringement.

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

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

10. Employees.

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

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

performance of the Agreement, notwithstanding the provisions of Section 10.2.

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

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.

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15. Assignment; Subcontracts.

15.1 Any attempt by TEMBO 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 TEMBO, without prior written approval of DDOE.

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

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

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16. Force Majeure.

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

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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.

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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.

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

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

21. Insurance.

21.1 TEMBO 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. TEMBO 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, TEMBO 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. TEMBO 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: Tembo, Inc
 1639 N Hancock Street
 Studio 203
 Philadelphia, PA 19122

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

Shana Young
Chief-of-Staff
Teacher and Leader Effectiveness Unit
Delaware Department of Education
401 Federal Street
Dover, DE 19901-3639
Phone No. (302) 735.4198

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.

Tembo
[Signature]
Original on File

David Stewart
President

7/15/2014
Date
Original on File

Steven Cartwright
Project Manager

7-15-2014
Date

Delaware Department of Education
[Signature]
Original on File

Karen Field Rogers
Associate Secretary, Financial Reform &
Resource Management

7/7/14 *[Signature]* *at*
Date Initial Finance Director
Original on File

[Signature]
Christopher Ruskowski
Chief Officer, Teacher and Leader
Effectiveness Unit (TLEU)
6/30/2014 **Original on File**
Date Initial Project Director



Appendix A Scope of Work

Department	Delaware Department of Education
Vendor	Tembo, Inc.
Project	Alternative Routes to Teacher Certification Evaluation
Timeline	July 2014 – February 2015

Scope of Work

Tembo's approach to this project will focus on the strategic deployment of teacher human capital in Delaware. Specifically, we seek to answer an overarching question: How can Delaware coordinate its licensing and deployment of novice teachers across certification pathways to increase students' access to highly effective teachers and improve overall achievement?

Tembo will use a variety of descriptive and inferential statistical techniques to 1) estimate the relative effects on student performance of each pathway to teacher entry in Delaware, and 2) consider how the supply and demand for highly effective teachers can be strategically coordinated across pathways to ensure students have access to the state's most effective educators. Our analysis will rely heavily on the data organized by the Strategic Data Project for the DDOE.

All analytic results for this project will be summarized in a detailed project deck (in either PPT or PDF format) and a research report. The team will also plan to present results to the Delaware legislature in January 2015 as a requirement of SB-51.

Phase 1 | Discovery & Stakeholder Engagement

- In coordination with the Teacher and Leader Effectiveness Unit (TLEU), Tembo will convene a working group and conduct discovery interviews to identify the full range of research questions to be addressed by this project and further specify each of the questions provided in this proposal. Target participants and interviewees include TLEU staff, TLEU-identified teacher preparation program representatives, as well as any TLEU-identified LEA representatives.
- Throughout the discovery process, Tembo will review any existing analytics work related to teachers' deployment, effectiveness and mobility by pathway, including internal and external research and strategy documents. In particular, Tembo will identify opportunities to extend the work previously completed by the Strategic Data Project for the DDOE, as well as DDOE's own Data Briefs. This will allow the project team to understand how various agencies and LEAs are currently defining problems and solutions related to the strategic deployment of teacher human capital.
- Tembo will develop a detailed project charter that organizes each phase of the engagement and catalogues key questions and insights from both the one-on-one structured interviews and larger working group discussions. Tembo will summarize all data sources and elements to be included in analysis in a comprehensive data dictionary. This document will be used to identify business rules for various analyses and hone the project's overall analytic plan. On an ongoing basis, Tembo will plan and facilitate biweekly project management meetings using

- these documents to identify and mitigate any project risks and escalate items for update, feedback, action or decision-making.

Phase 2 | Data Collection & Integration

Using the data dictionary created during the discovery process, Tembo will coordinate a data collection effort to combine key information from DDOE and other sources identified in phase 1. Tembo will set up a secure file transfer protocol (SFTP) location for receiving data extracts from various applications (DEEDS, PHRST, ERS, others). Tembo will work with agency data stewards to design file layouts for all source data.

Phase 3 | Analysis: Situation Assessment By Pathway

Tembo will use a variety of descriptive and inferential statistical techniques to address the core questions of this project in three analyses.

1. Teacher Supply by Pathway

- Semi-structured interviews with TELU personnel and document review will enable the project team to characterize each pathway qualitatively prior to analysis. Then, differences in teachers' background characteristics (such as competitiveness of undergraduate institution, major, college performance, race/ethnicity, age at pathway entry, etc.) across pathways will be outlined descriptively through the computation of summary statistics (frequency counts for categorical variables, and for continuous variables, means, standard deviations, ranges, etc.).
- Analysis of variance (ANOVA), two-group t-tests, and chi-square tests will be used as appropriate to identify statistically meaningful differences in these variables across groups.

2. Teacher Effectiveness by Pathway:

- Assuming DDOE has comprehensive rostering data linking individual students to teachers, Tembo will examine the effectiveness of various teacher pathways in two ways. First, we will compute the expected marginal impact of teacher preparation pathways on student achievement using a multilevel mixed model, also known as hierarchical linear model (HLM). This approach will examine the relationship between teacher pathway and student outcomes, adjusting for prior student achievement, school and classroom 'peer effects' and fixed student characteristics, such as race, ethnicity, Special Education status, etc.
- These models can be fit separately by tested subject and grade or fixed effects can be included for each subject-grade combination of assessments used. Tembo can also limit the estimates to study within-school variability by including school fixed effects. Student assessment scores are standardized within grade and year to ensure comparability of results. Students are only included in these analyses if they have two consecutive years of test data. Peer effects can be incorporated as mean classroom and school performance in standardized math and reading scores.
- Tembo will also compute value-added measures of specific teachers' effectiveness using the multilevel mixed model defined above. This approach will allow teacher effect estimates to be directly compared to other variables using much simpler analyses (e.g., comparing group mean VAM scores).
- Tembo will compute 'shrunk' empirical Bayes estimates of the teacher random effects

that adjust for differences in the reliability of these effects. These teacher effects can be compared to other variables directly to answer questions like whether or not the most effective teachers are teaching the highest-need students.

- For teachers without consecutive years of student assessment data, Tembo will compute an effectiveness measure commensurate with the DDOE's teacher observation data. This will require first correlating observational measures of teacher performance with value-added results for teachers that are in tested grades and subjects. After reviewing the correlation between these measures and the distribution of teacher observation scores, Tembo will work with TLEU staff to determine an effectiveness metric based on observational scores alone. If additional student outcome data are available for non-tested grades and subjects (such as on-time promotion or another metric of student success), Tembo will relate these data to teacher observation data to identify an effectiveness threshold appropriate to that grade and subject.
3. Teacher Selection, Retention & Attrition by Pathway
- Tembo will compare the persistence and mobility rates of teachers by pathway using descriptive statistics (e.g., total years teaching after certification, average years teaching at the same school), and also fitting a teacher-level model estimating the relationship between pathway and likelihood of exit.

Participating Parties

This scope of work is an agreement between the DDOE and Tembo, Inc. exclusively. Dr. Ingersoll and Dr. May are participating on this project as contractors to Tembo.

Logistics

- The majority of project coordination will take place by conference calls. Meetings will be held between DDOE offices and other locations as necessary.

Project Charter

Dates are deliberative // assumes 5:26 project start

Strand / Related Deliverable	Task	Owner	Est. Date	Status	Notes
Project management	Create Google doc for project materials	Steve	July	On track	
Project management	Negotiations w/ internal project team	TLEU PM	July	On track	
Discovery	Send invitations & interview questions to stakeholders	Steve	July	On track	
Data analysis	Update methods for new research questions	Henry	(ongoing)	On track	
Data collection	Execute any MOAs w/ DDOE or pathway providers needed	Steve	7/15/14	On track	
Data collection	Finalize data requests and submission layouts for TLEU	Eric	7/22/14	On track	
Data collection	Setup SFTP locations for data files, send to data stewards	Sam	7/22/14	On track	
Project management	Finalize project schedule & plan with TLEU	Steve	Pending	On track	***DELIVERABLE
Project management	Update analytic plan to include fine-tuned research questions	Steve	Pending	On track	***DELIVERABLE
Discovery	Complete in person or phone interviews	Steve	7/28/14	On track	
Data collection	Obtain administrative student data from ERS, SDP files	Eric	7/29/14	On track	
Data collection	Obtain administrative teacher data from DEEDS, PHRST Personnel	Eric	7/31/14	On track	
Data collection	Obtain administrative data from teacher pathway providers (if applicable)	Eric	7/31/14	On track	
Project management	Meet w/ project team to review analytic plan, status of data acquisition	Steve	7/31/14	On track	Research questions
Discovery	Complete follow-ups for stakeholders' existing analyses	Steve	7/31/14	On track	
Data dictionary	Complete first draft of analysis file data layouts	Steve	8/8/14	On track	
Data analysis	Create longitudinal student test history file	Steve	8/8/14	On track	
Data analysis	Create longitudinal student cohort & demographics file	Steve	8/15/14	On track	
Data analysis	Complete code for first round of analyses	Steve	8/15/14	On track	Focus: supply
Data analysis	Create longitudinal student-teacher rostering file	Steve	8/15/14	On track	
Data analysis	Create appended teacher characteristics, pathway & observation file	Steve	8/15/14	On track	
Data analysis	Create longitudinal 'other student outcomes' file (attendance, behavior, credits)	Steve	8/15/14	On track	
Data analysis	Create raw Excel output file for round 1 analyses	Steve	8/30/14	On track	Focus: supply
Data analysis	Populate PPT knowledge-base w/ round 1 analyses	Steve	9/1/14	On track	Focus: supply
Reporting	Interim progress report & initial results to TLEU	Steve	Quarterly	On track	***DELIVERABLE
Data analysis	Complete code for second round of analyses	Steve	9/25/14	On track	Focus: effectiveness
Data analysis	Create raw Excel output file for round 2 analyses	Steve	9/30/14	On track	Focus: effectiveness
Data analysis	Populate PPT knowledge-base w/ round 2 analyses	Steve	10/13/14	On track	Focus: effectiveness
Project management	Meet w/ project team to review results	Steve	10/17/14	On track	Focus: effectiveness

¹ Note this deadline may need to be renegotiated unless discovery takes less time.

² The Reporting strand refers to both a PowerPoint slide deck for use in legislative reporting and a final published research report.

Project Charter, continued

Reporting	Additional preliminary results & draft report	On track	DELIVERABLE
Data analysis	Send TLEU initial business rules doc	On track	
Data analysis	Complete code for second round of analyses	On track	
Data analysis	Create raw Excel output file for round 2 analyses	On track	Focus: retention
Data analysis	Populate PPT knowledge-base w/ round 2 analyses	On track	Focus: retention
Project management	Meet w/ project team to review results	On track	Focus: retention
Reporting	Final round of results included & deck for presentation finished	On track	DELIVERABLE
Data analysis	Compile all raw Excel output files and send to TLEU	On track	
Reporting (all)	Present knowledge-base (PDF and XLSX) to stakeholders	On track	
Reporting	Published report	On track	DELIVERABLE



Appendix B Payment Schedule

Department	Delaware Department of Education
Vendor	Tembo, Inc.
Project	Alternative Routes to Teacher Certification Evaluation
Timeline	July 2014 – February 2015

Deliverables

As outlined in the scope of work, the expected deliverables from this engagement are as follows:

No.	Deliverable	Strand	Est. Date	Notes
1.	Project charter	Management	7/15/14	Created with TLEU
2.	Analytic plan	Management	7/15/14	Includes research questions
3.	Interim progress report	Reporting	8/4/14	Includes initial results
4.	Draft report	Reporting	11/18/14	Additional preliminary results
5.	Presentation deck	Reporting	12/12/14	Includes final round results
6.	Published report	Reporting	2/27/15	Final publication

Invoice Schedule

The contract total of \$250,000 will be invoiced monthly in equal parts (the exception being the final month of billing) as agreed upon with the DDOE. A brief report on the progress towards deliverables and/or deliverables met will be enclosed with each invoice.

No.	Date	Amount	To enclose
1.	31 July 2014	\$25,000	Deliverables report
2.	31 August 2014	\$25,000	Deliverables report
3.	30 September 2014	\$25,000	Deliverables report
4.	31 October 2014	\$50,000	Deliverables report
5.	30 November 2014	\$25,000	Deliverables report
6.	31 December 2014	\$25,000	Deliverables report
7.	31 January 2015	\$25,000	Deliverables report
8.	28 February 2015	\$50,000	Deliverables report