

CONTRACT
Educator Supports to the State's Professional Learning Communities (PLCs)
RFP# DOE 2014-18

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 Amplify Education, Inc., hereafter referred to as Amplify.

WHEREAS, DDOE desires to obtain certain services to support the state's professional learning communities (PLCs); and

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

WHEREAS, DDOE and Amplify 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 Amplify agree as follows:

1. Services.

1.1 Amplify 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 D; and (c) Amplify'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 Amplify 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 Amplify, 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

Amplify for any aspect of its performance under this Agreement. Pricing of changes shall be consistent with those established within this Agreement.

1.4 Amplify will not be required to make changes to its scope of work that result in Amplify'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 Amplify 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.

2.3 DDOE's obligation to pay Amplify for the performance of services described in Appendix A, Statement of Work will not exceed the fixed fee amount of \$725,980. It is expressly understood that the work defined in the appendices to this Agreement must be completed by Amplify and it shall be Amplify'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 Amplify.

2.4 Amplify 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 Amplify 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 Amplify 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 Amplify Education, Inc., P.O. Box 9178, Uniondale, NY 11555-9178.

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

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

2.8 Invoices shall be submitted to the DDOE program manager for the project, currently Jonathan Neubauer.

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

3. Responsibilities of Amplify.

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

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

3.4 Amplify 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 Amplify's associates and employees under the personal supervision of the Project Manager. The positions anticipated are described in Appendix A.

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

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

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

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

Amplify shall return any original data provided by DDOE.

5.6 DDOE shall assist Amplify 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 Amplify 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 Amplify's name, either express or implied, in any of its advertising or sales materials. Amplify 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 custom materials, information, documents, and reports, whether finished, unfinished, or draft, developed, prepared, completed, or acquired by Amplify expressly 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. Amplify 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 Amplify 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 Amplify retains title, whether individually by Amplify 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 Amplify 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, Amplify 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 Amplify prior to the effective date of this Agreement ("Preexisting Information") shall remain the exclusive property of Amplify 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; Student Data.

7.1 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.

7.2 DDOE acknowledges that, in connection with this Agreement, Amplify has provided and/or will provide to DDOE and its authorized users certain sensitive and/or proprietary information, including software, source code, assessment instruments, research, designs, methods, processes, customer lists, training materials, product documentation, know-how and trade secrets, in whatever

form ("Confidential Information"). DDOE agrees except as required by 29 Del. C. Chapter 100_(a) not to use Confidential Information for any purpose other than use of the services in accordance with this Agreement and (b) to take all steps reasonably necessary to maintain and protect the Confidential Information of Amplify in the strictest confidence. Confidential Information shall not include any information that disclosure is required under 29 Del. C. 100 or information that, as evidenced by DDOE's contemporaneous written records: (i) is as of the time of its disclosure or thereafter becomes publicly available through no fault of DDOE; (ii) is rightfully known to DDOE prior to the time of its disclosure; (iii) has been independently developed by DDOE without any use of the Confidential Information; or (iv) is subsequently learned from a third party not under any confidentiality obligation.

7.3 Amplify understands and agrees that DDOE is subject to federal and local rules relating to the protection of personally identifiable information ("PII") of students and parents, including the Family Educational Rights and Privacy Act ("FERPA"). Subject to the terms and conditions of this Agreement, Amplify will not take any action to cause DDOE to be out of compliance with FERPA or any other applicable laws relating to PII. For research and development purposes, Amplify may use internally or share with researchers non-PII data collected hereunder, including data that has been de-identified in accordance with FERPA. In addition, DDOE and Amplify will cooperate from time to time to obtain appropriate permissions to use de-identified student work as samples for training materials and other legitimate purposes.

7.4 DDOE affirms that it has all necessary rights, including consents and intellectual property rights, in connection with any data, information, content and other materials provided to or collected by Amplify on behalf of DDOE in connection with this Agreement ("DDOE Materials"), and that Amplify has the right to use such DDOE Materials as contemplated hereunder. DDOE is solely responsible for the accuracy, integrity, completeness, quality, legality and safety of such DDOE Materials.

8. Warranty.

8.1 Amplify warrants that its services will be performed in a good and workmanlike manner. Amplify 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, if any. With respect to all third-party products and services purchased by Amplify for DDOE in connection with the provision of the Services, Amplify shall pass through or assign to DDOE the rights Amplify 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 Amplify 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 Amplify, its agents or employees, or (B) Amplify'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) Amplify shall have been notified promptly in writing by DDOE of any notice of such claim; and (ii) Amplify 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 Amplify in writing of a third party claim against DDOE that any Deliverable infringes a copyright or a trade secret of any third party, Amplify will defend such claim at its expense and will pay any costs or damages that may be finally awarded against DDOE. Amplify 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 Amplify; (3) DDOE's use of the Deliverable in combination with any product or information not owned or developed by Amplify; (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 Amplify's opinion is likely to be, held to be infringing, Amplify 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 Amplify's entire liability with respect to infringement.

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

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

10. Employees.

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

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

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

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 Amplify 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 Amplify, without prior written approval of DDOE.

15.3 Approval by DDOE of Amplify's request to subcontract or acceptance of or payment for subcontracted work by DDOE shall not in any way relieve Amplify 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 Amplify shall be and remain liable for all damages to DDOE caused by

negligent performance or non-performance of work under this Agreement by Amplify, its subcontractor or its sub-subcontractor.

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

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

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

21. Insurance.

21.1 Amplify 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. Amplify 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, Amplify 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. Amplify 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: Leslie Kerner
Amplify Education, Inc.
55 Washington Street, Suite 900
Brooklyn, NY 11201

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:
Jonathan D. Neubauer

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.

Amplify Education, Inc.
Original on File

Leslie Kerner
Senior Vice President and General
Manager, Professional Services,
Amplify Insight

9/2/14
Date

Delaware Department of Education
Original on File

Karen Field Rogers
Associate Secretary, Financial Reform &
Resource Management

9/2/14 *Original on File*
Date Initial Finance Director

Original on File

Christopher N. Ruskowski
Chief Office, Teacher and Leader
Effectiveness Unit

8/28/2014 *Original on File*
Date Initial Work Group
Director

Appendix A - Statement of Work (Amplify Education, Inc.)

A. Coaching Personnel

1. Amplify will provide three (3) full time coaches through June 30, 2015.
 - a. Additional coaches may be added at any time by mutual agreement of the DDOE and Amplify.
2. Sourcing
 - a. The initial group of coaches will come from the pool of Amplify coaches who have previously provided coaching services to the DDOE.
 - b. Both Amplify and the DDOE will approve all personnel prior to their first day of service.
3. Supervision of Coaches
 - a. The Lead Coach will review each coach's monthly progress monitoring report and will provide feedback to the coach.
 - b. The Lead Coach or the Senior Project Manager will observe each coach twice per year. Feedback will be provided to the coach after each observation.
 - c. DDOE representatives may observe any session facilitated by a coach.
4. Replacement of Personnel
 - a. If The DDOE finds that the coach's performance or behavior is not meeting expectations, The DDOE will provide specific feedback, concerns, and evidence to the Senior Project Manager and Lead Coach. Amplify and the DDOE will agree upon a remediation action plan and timeline.
 - b. If the coach's performance does not improve on the timeline agreed to in the remediation plan, the coach may be removed.
 - c. If a coach is removed, Amplify will have 30 days to provide a replacement. Until that time, Amplify will make a good-faith effort to provide services to the schools affected by the termination.
 - d. If a Delaware educational organization or other State of Delaware contractor hires a coach before the end of the project, Amplify will have 60 days to provide a replacement. Until that time, Amplify will make a good-faith effort to provide services to the schools affected by the termination.

B. Project Management

1. Amplify and the DDOE will designate a Lead Coach who will provide support, mentoring and supervision for the other three coaches. A portion of the Lead Coach's service delivery hours will be allocated to these responsibilities.
2. Amplify will provide a Senior Project Manager who will guide the project as needed.
 - a. The Senior Project Manager will directly supervise the Lead Coach and will serve as an escalation point for project related issues. The Senior Project Manager will be available as needed to collaborate with the DDOE and Lead Coach on project-related issues and will serve as the Amplify business owner.
3. The DDOE will identify a DDOE Project Manager who will serve as the primary point of contact for the Amplify Lead Coach and Senior Project Manager.

C. Service Delivery

1. Coaches will provide support to school leaders, teacher leaders, and LEAs on:
 - a. Formative assessment
 - b. Common Core State Standards and other content standards
 - c. Data analysis
 - d. PLC structures, processes, and protocols
2. Coaches will provide each participating school or district with twelve (12) hours of coaching services per month. Up to nine (9) hours will take place onsite, and the remaining hours will be remote.
 - a. Coaching service hours include, but are not limited to:
 - i. All direct work with educators,
 - ii. Preparation for meetings, coaching sessions, and professional development,
 - iii. Assessment development, and
 - iv. Data analysis.
3. The team of coaches will support up to a total of twenty eight (28) schools and districts. Amplify and the DDOE will agree upon the specific duties of each coach and the Team Lead.

D. Coach Training

1. Amplify will provide 8 days of training to coaches.
 - a. Amplify may invite additional personnel who are not part of the project to attend the coach training programs.
2. Coaches will participate in a minimum of five hours per month of collaborative learning activities with other Amplify coaches.
 - a. These collaborative learning activities will not be scheduled in a way that will require a cancelation of a pre-scheduled meeting with schools or districts.
 - b. Every other month, these five hours will be in-person with the Senior Manager.
3. The DDOE and LEAs will provide training for any new data sources and DDOE or LEA initiatives.

E. Blended Learning Opportunities

1. In addition to the on-site support provided by Amplify coaches, an additional 8 professional development modules will be delivered to DDOE over the course of the contract year and will be made available to all participating LEAs through Delaware's Professional Development Management System (PDMS).
 - a. These learning modules will range in length between 20 and 30 minutes and will include brief assessments, as agreed upon by DDOE and Amplify, which will allow participants to gauge their understanding of the content delivered. Modules will be similar to narrated PowerPoint presentations and each will include at least one 2-3 minute video.
 - b. Modules will be developed based on the following topics:
 - i. Accelerating the work of Professional Learning Communities to create a culture of data collection and analysis that promotes meaningful and collaborative efforts within schools and/or districts.

- ii. Strategically leveraging Professional Learning Communities to implement the Common Core State Standards (CCSS), other newly adopted content standards, and assessments.
- iii. Strengthening the ability of staff members to effectively use data to drive instructional decisions within the school and/or classroom.
- c. An average of two (2) to three (3) modules will be developed per quarter. Amplify and the DDOE will agree upon the schedule of delivery.

F. Professional Learning Maps

- 1. Amplify will provide each participating school with licenses to the Professional Learning Map platform.
 - a. Each school will provide the names, emails, and roles of all educators who will register to take the survey.
 - b. Amplify will provide a specific format (e.g. an excel spreadsheet) for schools to provide this information.
 - c. Amplify and the DDOE will agree upon a deadline by which schools will provide the information and determine a date on which Amplify will provide logins for all schools at once.
 - d. If any school provides registration information late, Amplify will provide logins within 30 days of receipt of the registration information.
- 2. Coaches will encourage school leaders to use the PLM system as a needs assessment for data skills at the beginning of the program.
 - a. If schools choose to use the PLM system, then school leaders will be responsible for encouraging teachers to take the survey.
 - b. Coaches will support teachers and school leaders in interpreting the reports.

G. Interim Assessments

- 1. Amplify will develop forty (40) interim assessments.
 - a. Two (2) assessments will be developed for *each* ELA and Math in grades 3-12.
 - i. The participating LEAs will administer the assessments during two test administration windows during the 2014-2015 school year.
- 2. Amplify will lead the "Blueprinting" team throughout the interim assessment development process. The "blueprinting" team will be comprised of one representative from each participating LEA as identified and agreed upon by DDOE, Amplify, and the LEAs. This work will include regularly scheduled remote and/or on-site meetings, as necessary, to create the set of 40 common interim assessments outlined in Section G.1. above.
- 3. Assessments will be provided for paper-based administration.
- 4. Amplify will not be responsible for scoring assessments nor uploading results into a data system.
- 5. The detailed scope of work for assessment creation is attached in Appendix C.

H. Assessment Studio Item Bank

- 1. The item bank will become available to teachers after the Fall interim assessments described in section G are accepted by DDOE.

I. Status Reports and Monitoring

1. The following performance metric criteria will be used to evaluate the success of the program:

- a. Value - program participants see both personal and professional value in the program.
 - i. 75% of participating educators express satisfaction with the services they receive through the Professional Learning Communities Support System, as reported through an end of year satisfaction survey.
- b. Learning - program participation has led to enhanced personal and/or professional attitudes, perceptions or knowledge.
 - i. 80% of participating educators express an increase in learning from the beginning of the year to the end of the year related to the targeted skills associated with the Professional Learning Communities Support System program, as monitored through the implementation of a "Success Rubric" developed collaboratively between DDOE and Amplify.
- c. Change in Skills - program participants have applied what is learned to enhance their professional behaviors around data collection, interpretation, and the implementation of the Common Core State Standards.
 - i. 80% of participating educators indicate that the program has led to demonstrable changes in their professional behaviors, as monitored through the implementation of a "Success Rubric", feedback from the Professional Learning Communities Support System coaches, and data captured during site visits.
- d. Effectiveness - program participants demonstrate an improved performance level as a result of their enhanced professional behaviors.
 - i. Amplify and the DDOE will determine the measure to be used to evaluate effectiveness by September 30, 2014.

2. Amplify will submit monthly status reports to the DDOE's Project Manager.

a. At a minimum, the monthly status reports will contain the following information:

- i. Monthly service delivery summary
- ii. Highlights and challenges from the previous month's service delivery
- iii. Progress monitoring update
- iv. Look-ahead for the upcoming month
- v. Service delivery log

3. Amplify will deliver a year-end report by June 15, 2015.

- a. At a minimum, the year-end status report will contain an analysis of data captured through the administration of the Interim Assessments described in Section G above. The analysis shall include information LEA by LEA as well as a summary of statewide trends.

J. Deliverables Acceptance Process

1. The Acceptance Processes and Criteria for Coaching Services are as follows:

- a. Amplify will submit monthly status reports to DDOE within ten (10) business days after the month's close.
- b. DDOE will make any requested changes in writing within three (3) business days after submission by Amplify.
- c. Amplify will revise the deliverable and submit on the agreed-upon due date.
- d. DDOE will accept or reject the deliverable within five (5) business days after due date. If DDOE rejects the deliverable, DDOE will provide a detailed written critique of the deliverable, the rationale for rejecting, and detailed changes that DDOE must make to ensure acceptance.
- e. DDOE will accept deliverable upon submission of deliverable with requested changes.

K. Use of Independent Contractors

- 1. In performing services hereunder, Amplify may use employees or individual independent contractors engaged by Amplify in the ordinary course of business, and such individual independent contractors would not be considered subcontractors under this contract.

Appendix B - Payment Schedule and Deliverables

Payment Schedule. Payments will occur under four (4) separate sets of deliverables and Amplify Education, INC. shall invoice the DDOE according to the following payment schedule:

A. Payments and Deliverables:

1. Payment for the Professional Learning Communities Support System will not exceed \$725,980 for the duration of the program. The DDOE will pay Amplify under five separate threads of deliverables

a. Project Planning Services – \$29,700 – September 30, 2014

- i. This payment encompasses the initial planning of the project as well as the initial training of coaches.

b. PLC Coaching Services – \$54,700 monthly – September 30, 2014 through June 30, 2015 (\$547,000 total)

- i. These payments for monthly deliverables encompass the receipt of all status and monitoring reports as outlined in Sections C & I of Appendix A.
- ii. This payment encompasses site licenses for access to Amplify's Professional Learning Maps for all participating educators.

c. Assessment Studio Licenses – Up to \$50,880 – September 30, 2014

- i. This payment encompasses receipt of site licenses for access to Amplify's Assessment Studio for up to 16,960 students.
- ii. Amplify will invoice \$3 per student in grades 2-12 in schools participating in the interim assessment program described in Section G, based upon the school rosters as of August 31, 2014.

d. Interim Assessment Development- \$24,000 per set of 20 assessments – September 30, 2014 and January 31, 2015 (\$48,000 total)

- i. This payment encompasses receipt of 40 interim assessments aligned to the Common Core State Standards (CCSS); 2 each for ELA and Math in grades 3-12.
- ii. 20 assessments will be delivered in September 2014 and 20 will be delivered in January 2015.

e. Online Professional Development Modules- \$6,300 per module, invoiced quarterly (\$50,400 total)

- i. This payment encompasses the development and delivery of 8 online professional development modules as outlined in Section E of Appendix A.
- ii. At the end of each quarter (September 30, December 31, March 31, and June 30), Amplify will invoice for all the modules accepted during that quarter.
- iii. DDOE and Amplify may agree at any time to add additional modules for \$6,300 per module.

B. The Acceptance Process and Criteria for deliverables are as follows:

- a. Amplify will submit a deliverable to DDOE at least five (5) business days before the due date in section A.1.
- b. DDOE will make any requested changes in writing within three (3) business days after submission by Amplify.
- c. Amplify will revise the deliverable and submit on the agreed-upon due date in section A.1.
- d. DDOE will accept or reject the deliverable within five (5) business days after due date. If DDOE rejects the deliverable, DDOE will provide a detailed written critique of the deliverable, the rationale for rejecting, and detailed changes that DDOE must make to ensure acceptance. If DDOE fails to accept or reject such deliverables within five (5) business days, such deliverable will be deemed accepted.
- e. DDOE will accept deliverable upon submission of deliverable with requested changes

Appendix C - Statement of Work for Assessment Creation

Overview

The Assessment Creation Service includes the following components:

1. Based on the Blueprints (see below) created by the Customer, Amplify will choose the most appropriate item set from within the Item Bank.
2. Where there are gaps between what is on the Blueprints and what is available in the Item Bank, Amplify will create new items. Such items will follow similar formats to those in the Item Bank unless other models are included in the Scope of Work.
3. Amplify will prepare finished documents to reflect The Customer options, to minimize page count, and to ensure appearance of documents does not impact the validity of the assessment.
4. Amplify will provide project management services to ensure all work is progressing on schedule.

Blueprints

The Customer will provide Amplify with a specification for each set of assessments for each course that indicates the number of items required for each standard, as well as the specific skills and requirements for the skills being assessed (the “Blueprint”). These Blueprints will be provided through Amplify’s on-line tools for entry and management of Blueprints (the “Blueprint Tool”). Amplify will work with the Customer to ensure the full requirements of the assessment program are captured at the time of implementation.

Blueprint Limitations

Blueprints must conform to the following limitations:

- Each Blueprint may include up to 6 assessments, and each assessment within that Blueprint will contain unique items and passages.
- Each Blueprint may include up to 20 items for any given standard throughout all the assessments on the given Blueprint.
- Each assessment within a Blueprint may contain up to 50 items.
- If the Blueprints for two or more courses overlap (e.g., Algebra and Algebra Readiness), then the items and passages may be used once on each Blueprint.

Deliverables

Amplify shall generate both a student document and a rationale document for each assessment to be created. Documents will be provided in .pdf format or other electronic format of Amplify’s choice for each Assessment Amplify creates for the Customer. Assessments, once created, will be maintained and accessed via Amplify’s website. The Customer will have the right to use these assessments subject to the terms of and for the duration of this Agreement.

The Customer Review of Assessments

To develop assessments that meet the needs of the Customer, careful review and input are required of the Customer. The Assessment Creation Service allows The Customer the following types of input:

1. Directing Amplify in the selection of alternate items from Amplify’s item bank.
2. Responding to Amplify input and recommendations regarding appropriate item choices.
3. Directing the Amplify in the development or modification of items.

Amplify understands that the Customer must control costs, and to keep costs of this service as low as possible, all Customer reviews must be completed in the form prescribed by Amplify (the “Online Review System” or “ORS”). The ORS is continually evolving and developing, however it includes the following core elements:

1. All reviews will be documented electronically through an online system.
2. Amplify provides access to PDF documents of all drafts to be downloaded from a password protected Web site.
3. All assessment review must be synthesized by an individual to serve as a single point of contact for the Customer to ensure Amplify has consistent and uniform feedback on which to act. This single point of contact will also assist Amplify in answering questions, clarifying feedback, and resolving any issues.

If the Customer requires Amplify staff to conduct reviews with the Customer on-site, this can be purchased for an additional fee.

Project Management

In order to ensure proper management of the many details and reviews required to complete dozens of assessments, Amplify employs a project management approach that establishes a schedule, a project manager, and specific individual owners from Amplify and the Customer to be accountable for steps required for the completion of all assessments. The process employs the concept of “Gates,” in which the Customer approves the certain decisions before Amplify will begin the next stage of work. For example, Amplify will not begin formatting assessment documents until the Customer has approved all content on the assessment. **Once an approval is provided for a given set of decisions, any request to revise such approved decisions will result in a change in schedule. Further, for each assessment that requires modification, a fee equivalent to the price of one (1) assessment to be created through the Assessment Creation Service will be due.**

Amplify’s project manager will serve as the coordinator for all activities and will provide The Customer with status information as needed.

The Customer will establish a single point of contact for assessment reviews. The Customer may, however, assign different points of contact for different assessments, provided Amplify is informed of and in direct contact with exactly one individual decision maker for each assessment.