

Delaware Department of Education Contract

DOE RFP#2017-02

This Agreement ("Agreement") is effective only upon the execution of a State of Delaware Purchase Order and will end on December 31, 2017, by and between the State of Delaware, Department of Education, hereafter referred to as DDOE, and WestEd, hereafter referred to as VENDOR.

WHEREAS, DDOE desires to obtain certain services to design, develop, and pilot innovative science assessment tasks; and

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

WHEREAS, DDOE and WestEd 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 WestEd agree as follows:

1. Services.

1.1 WestEd 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) WestEd'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 WestEd 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 WestEd, 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 WestEd for any aspect of its performance under this Agreement. Pricing of changes shall be consistent with those established within this Agreement.

1.4 WestEd will not be required to make changes to its scope of work that result

in WestEd'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 December 31, 2017.

2.2 DDOE will pay WestEd 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 WestEd for the performance of services described in Appendix A, Statement of Work will not exceed the fixed fee amount of \$673,658. It is expressly understood that the work defined in the appendices to this Agreement must be completed by WestEd and it shall be WestEd'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 \$673,658.

2.4 WestEd 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 WestEd 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 WestEd 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 WestEd, attn: Kevin King.

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

2.8 Invoices shall be submitted to: April McCrae
Delaware Department of Education
401 Federal Street, Suite #2
Dover, DE 19901

3. Responsibilities of WestEd.

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

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

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

| Project | Team | Title | % of Project Involvement |
|---------|------|-------|--------------------------|
|---------|------|-------|--------------------------|

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

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

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

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

WestEd shall return any original data provided by DDOE.

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

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

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

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

10. Employees.

10.1 WestEd has and shall retain the right to exercise full control over the employment, direction, compensation and discharge of all persons employed by WestEd 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. An individual applying for a publically available solicitation shall not constitute a violation of this section.

10.3 Possession of a Security Clearance, as issued by the Delaware Department of Public Safety, may be required of any employee of WestEd 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, WestEd 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. WestEd 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 WestEd acknowledges that WestEd and any subcontractors, agents or employees employed by WestEd 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 WestEd shall be responsible for providing liability insurance for its personnel.

11.4 As an independent contractor, WestEd 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 WestEd under this Agreement for such period of time as DDOE, at its sole discretion, may prescribe by providing written notice to WestEd at least 30 working days prior to the date on which DDOE wishes to suspend. Upon such suspension, DDOE shall pay WestEd its compensation, based on the percentage of the project completed and earned until the effective date of suspension, less all previous payments. WestEd shall not perform further work under this Agreement after the effective date of suspension. WestEd 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 WestEd for any cause other than the error or omission of the WestEd, for an aggregate period in excess of 30 days, WestEd shall be entitled to an equitable adjustment of the compensation payable to WestEd under this Agreement to reimburse WestEd 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 WestEd 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 WestEd that portion of the compensation which has been earned, or any obligations that have been incurred and cannot be cancelled 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 WestEd at the time of termination may be adjusted to the extent of any additional costs occasioned to DDOE by reason of WestEd'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 WestEd shall cease conducting business (the entity no longer exists), DDOE shall have the right to make an unsolicited offer of employment to any employees of WestEd assigned to the performance of the Agreement, notwithstanding the provisions of Section 10.2.

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

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 WestEd 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 WestEd, without prior written approval of DDOE.

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

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

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

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

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

21. Insurance.

21.1 WestEd 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 WestEd 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, WestEd 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. Surviving Clauses

The following clauses survive the termination of this Contract: Section 9.

24. 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. WestEd consents to jurisdiction venue in the State of Delaware.

25. 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: WestEd, Contracts Management Department
contracts@wested.org
cc: Kevin King
kking@wested.org

DDOE: David Blowman
Associate Secretary, Financial Management and Operations
Delaware Department of Education
John G. Townsend Building
401 Federal Street, Suite 2
Dover, DE 19901

DOE Certificated Staff coordinating activity:
April McCrae

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.

WestEd

~~Delaware~~ Department of Education

Kevin King,
Project Manager

David Blowman, (or Designee) Date
Associate Secretary,
Financial Management and Operations

10/27/16

11/3/16
Date

Initial Finance Director

Mike Neuenfeldt,
Director of Finance and Contracts

Chief Academic Officer

10/26/16

Date

Nov 4, 2016
Date

10/21/16
Date

Initial Work Group
Director

Next Generation Science Assessment System for Delaware Learners

Scope of Work

I. Scope of Services

Introduction:

DDOE recognizes the challenges of developing assessments that address the richness of the NGSS, as well as the innovation required to create their envisioned comprehensive assessment system. As such, DDOE plans to develop the state portions of the science assessment system in two phases.

- *The first phase*—procured through the work of this contract—is to develop and evaluate tasks and task templates¹, identify and solve challenges, and help prepare the field. The main outcomes of the first phase include (a) tasks and task templates, with scoring rubrics and pilot task analysis and scoring rules and (b) recommendations for the design of the operational assessments, based on lessons learned during the task development process. To prioritize task development, a supplemental outcome will be a set of preliminary test claims and specifications.
- *The second phase*—associated with a second, subsequent RFP—will be to use the information gathered from the first phase of development to fine-tune the assessment system design, clarify the scoring and aggregation rules, establish achievement levels, and develop all other aspects of an assessment system associated with administering an operational state science assessment as a census field test in 2017-2018, with results from the 2018-19 school year reported for state and federal requirements.

The work of this contract is not envisioned to directly produce assessments for operational use. Instead, acknowledging the complexity of the NGSS as well as Delaware’s vision for science assessment, the work is meant to produce information that will facilitate the development of an operational assessment system. The primary focus of the work is on tasks and task templates that capture the depth and breadth of Delaware’s implementation of the NGSS, as well as the processes and products that support their development. As such, DDOE expects that the development process will include the development of novel or innovative types of tasks, including, but not limited to, science simulations, limited portfolios, performance tasks, or open-ended constructed response.

Deliverables under this contract will include:

- D.1: A detailed project plan.
- D.2: Preliminary test specifications that support the development of the tasks and task templates, inclusive of
 - A. Draft claims to be made based on the results of each assessment that support the intended uses,

¹ The term “task” is used to indicate a set of one or more items tied to a common stimulus, such as a simulation in which students provide multiple scorable responses. The term “task template” indicates the DDOE’s interest in developing products that define the key features of task, which can be used to generate and refine multiple versions of an item or task (e.g., task templates as implemented under an Evidence Centered Design approach).

- B. Draft blueprints, and
- D.3: Task templates, and corresponding tasks, for multiple *types* of tasks, where the task types are numerous and varied enough to support inferences about student learning on the NGSS. Complete tasks should include:
- A. Task specifications and scoring rubrics:
 - i. Fall development: 9 tasks developed—based on 6 preliminary task types—across grades 5, 8 and Biology,
 - ii. Spring development: 6 tasks developed—based on 4 refined task types—across grades 5, 8 and Biology,
 - iii. Task types to be explored are; science simulations, performance-based task, portfolio, rules-based diagnostic, SAIC item cluster, and a set of independent 2-dimensional multiple choice and technology enhanced items assessing a range of SEPs and CCCs. Of the 15 total tasks to be developed, no more than two tasks will be of the science simulation task type modality.
 - B. Administration plan,
 - C. Cognitive Laboratories: 120 total student interviews maximum—8 students x 9 tasks in the fall, 8 students x 6 tasks in the spring,
 - i. The most appropriate format of task administration will be used for each task. Some tasks may be administered in a paper-and-pencil format or semi-functional format.
 - D. Task Review Processes: One panel of DE teachers and DDOE staff will review the fall tasks via one combined in-person review session. Spring tasks will be reviewed with the same panel, through a remote review process,
 - E. Data from student cognitive laboratories (e.g., student responses to tasks and, as appropriate, statistics on task functioning).
- D.4: A summary of the implemented development process, as well as recommendations for the second phase of development regarding:
- A. Additional task development and revision processes,
 - B. Approaches to scoring tasks,
 - C. Claims for each assessment and blueprints that support those claims,
 - D. Administration Procedures, and
 - E. How technical requirements, such as reliability, alignment or specific types of validity evidence, can be met using a design that builds on the phase one development.

The processes and outcomes for generating these deliverables should be documented in one or more technical reports that provide structure and narrative.

The contractor (WestEd) will complete the following as described in the company’s RFP proposal:

- Complete all steps to develop the required and requested deliverables [outlined above] (p. 4, para 2).
- Seek input from DDOE and other stakeholders during each phase of work (p. 4, para 3)
- Submit thoughtful, professionally reviewed drafts for DDOE’s consideration, incorporate feedback in a responsive and timely manner, and prepare final deliverables [in a timely manner] (p. 4, para 3)

- Utilize a detailed project timeline to monitor progress, and meet with DDOE weekly (virtually or in person) to determine progress and adjust appropriately in coordination with involved stakeholders (ref. p. 4, para 3)
- Elicit Delaware educator feedback on item/task/prototype development and appropriateness but **WILL NOT** depend upon Delaware educators to be item writers or development programmers for this project (ref. p. 11, para 3)(ref. p 27, para. 4)
- Identify and produce draft claims and test specifications for End-of-Unit Assessments and Integrative Transfer Tasks using an evidence-based approach (ref. page 13, para 3)
- Produce draft task specifications (including item/PE specifications) to guide the structure and development of assessments that will comprise DDOE's assessment system (ref. p 14, para 2)
- Ensure consistency across the draft claims, task types, and test blueprints, and will establish specific checkpoints to monitor these parallel processes (p. 14, para 3).
- Work with DDOE to determine the most appropriate reporting model(s) for End-of-Unit as well as Integrative Transfer Tasks.
- Apply the principles of Universal Design for Assessment (UDA) during all phases of work, including design, development, administration, scoring, and reporting (p. 18, para 1)
- Identify key sources of information (e.g., documents, reports, policy statements, performance data, actual student responses, findings from interviews, surveys) that support or refute DDOE assessment claims. Individual pieces of evidence will be accumulated, each linked to one or more claims (p. 18, para. 3)
- Explicitly link each item type to one or more learning goals, dimensions, and/or PEs and ensure fit to the intended measurement model (p. 24, para 2)
- Work with DDOE to determine appropriate administration windows for the new assessments and provide an administration plan for the complete set of assessments, which will accommodate the windows defined by each End-of-Unit Assessment (leveraging an "on-demand" design) and at the end of the school year (for the Integrative Transfer Assessments).
- Develop a comprehensive plan for conducting cognitive laboratories with Delaware students, sampling across task types and assessment targets.
- Provide pre-vetting training for the review panel, regarding NGSS-based tasks (p 28, para 1)
- Schedule and facilitate task reviews (including appropriate training) with the review panel (p. 28 para 2)
- Record, code, and summarize cognitive labs and evaluate each task type for its utility in eliciting evidence of students' knowledge and skills in collaboration with DDOE (p. 28, para 3)
- Support DDOE in the design of a system in which all components work synergistically to: assess students' performance of science and engineering practices in the context of CCCs and DCIs; track students' progress along sequences of progressively more complex understandings of DCIs and successively more sophisticated applications of SEPs and CCCs; provide multiple and varied opportunities for students to demonstrate what they know and can do in different ways; and produce results from which valid inferences about students' science performance and understanding can be drawn (p. 29, para 2).
- Communicate detailed descriptions of the work carried out and recommendations emerging from the work (p. 29, para. 3)

Timetable/Project Plan for Key Deliverables:

| Activity/Task | Process | Start Date | Finish Date |
|---|---|---------------------------------------|---------------------------------------|
| Hold in-person kickoff meeting: | In-person meeting: <ul style="list-style-type: none"> Review scope of work Finalize dates of key activities DDOE provides an overview of Comprehensive Assessment System Finalize task types of focus Draft outline of final reports | Week of October 31, 2016 | Week of October 31, 2016 |
| Develop and finalize fall cognitive laboratory plan | <ul style="list-style-type: none"> Selection of task types per grade Identification of task content focus | November 7, 2016 | November 11, 2016 |
| Evaluate and refine existing claims | WestEd works with DDOE | November 7, 2016 | November 11, 2016 |
| Recruit teacher/school participation | DDOE identifies teachers willing to participate in cognitive laboratories | November 14, 2016 | November 25, 2016 |
| Develop/refine tasks for cognitive laboratories | WestEd works with DDOE to rapid prototype tasks representing six task types | November 14, 2016 | December 5, 2016 |
| Complete fall cognitive laboratories | WestEd staff complete cognitive laboratories in selected DDOE schools | December 7, 2016 | December 16, 2016 |
| Develop test specifications with DDOE input | WestEd to complete | November 28, 2016 | December 16, 2016 |
| Produce report on fall cognitive laboratory outcomes | Report will provide recommendations for spring cognitive laboratories | December 19, 2016 January 13, 2017 | December 19, 2016 January 13, 2017 |
| Review draft test specifications with DDOE | WebEx conference | Week of January 9, 2017 | Week of January 9, 2017 |
| In-person meeting to review fall cognitive lab outcomes | WestEd to present report to DDOE and Coalition representatives | | By January 27, 2017 |
| Update draft test specifications | WestEd to complete | January 16, 2017 | January 27, 2017 |
| Review draft test specifications with Coalition representatives | WestEd to complete in conjunction with DDOE | January 30, 2017 | February 3, 2017 |
| Address required issues from DDOE, thought leaders, and content experts | Use questionnaires and individual and group interviews to address guiding questions and provide additional input | January 30, 2017 | February 3, 2017 |
| Develop and finalize spring cognitive laboratory plan | <ul style="list-style-type: none"> Selection of task types Identification of task content focus | February 6, 2017 | February 17, 2017 |
| Recruit teacher/school participation | DDOE identifies teachers willing to participate in cognitive laboratories | February 20, 2017 | March 17, 2017 |
| Outline and draft technical report and recommendations | WestEd to complete | February 6, 2017 | February 24, 2017 |
| Develop/refine tasks for cognitive laboratories | WestEd works with DDOE to rapid prototype focal task types | February 20, 2017 | March 17, 2017 |

Appendix A

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|--------------------------|--|-------------------|---------------|
| Technical report meeting | In-person meeting to review overview of technical report | February 27, 2017 | March 3, 2017 |
|--------------------------|--|-------------------|---------------|

Appendix A

| Activity/Task | Process | Start Date | Finish Date |
|--|---|-------------------|--------------------|
| Finalize draft test specifications | WestEd to complete | March 6, 2017 | March 17, 2017 |
| Update draft technical report | WestEd to complete | March 6, 2017 | March 17, 2017 |
| Collect feedback on technical report draft | WestEd will distribute the comprehensive draft technical report to identified DDOE staff, thought leaders, content experts, and identified Coalition leaders for review and feedback. Feedback will be gathered in two ways: <ul style="list-style-type: none"> • Direct written feedback through comments in the actual document • Group webinar moderated feedback sessions | March 20, 2017 | April 7, 2017 |
| Complete spring cognitive laboratories | WestEd staff complete cognitive laboratories in selected DDOE schools | March 20, 2017 | April 7, 2017 |
| Produce report on spring cognitive laboratory outcomes | WestEd to complete | April 10, 2017 | April 14, 2017 |
| Finalize technical report | WestEd, in consultation with DDOE | April 10, 2017 | May 26, 2017 |
| Present report on spring cognitive laboratory outcomes | WestEd to present report to DDOE and Coalition representatives with recommendations for system design | | By April 21, 2017 |
| Final meeting to present final work product to DDOE | In-person meeting | June 2017 | June 2017 |
| All final documents delivered | WestEd delivers products to DDOE* | June 30, 2017* | June 30, 2017* |

Cost Proposal Final (10/18/16)

| Category | Amount |
|---|---------------------|
| <p>Assessment Documentation Development and Program Management</p> <ul style="list-style-type: none"> • Program Management • Brett Moulding—content advisor • Travel to Delaware for meetings: <ul style="list-style-type: none"> ○ Kickoff meeting ○ Fall cognitive lab outcome review meeting ○ Technical report review meeting ○ Final report meeting • Design and development of Preliminary Test Specifications <ul style="list-style-type: none"> ○ Refinement of draft claims ○ Design and development of draft blueprints • Development of summary technical report | \$199,435.00 |
| <p>Prototype Task Development—fall</p> <ul style="list-style-type: none"> • 6 task types for 3 grade levels – 9 tasks total (inclusive of functional task templates, 3-D NGSS-aligned content, multimedia, and rubrics/scoring) | \$160,617.00 |

| | |
|--|---------------------|
| Educator Task Reviews and Vetting | \$61,187.00 |
| Cognitive Laboratories—fall and spring <ul style="list-style-type: none"> • fall: 8 student interviews per task (9 tasks) • spring: 8 student interviews per task (6 tasks) | \$124,594.00 |
| Psychometric Analyses <ul style="list-style-type: none"> • Cognitive lab analyses and reports • Karla Egan—psychometric advisor | \$46,995.00 |
| Prototype Task Development/Refinement—spring <ul style="list-style-type: none"> • 4 task types x 3 grade levels – 6 tasks total (inclusive of functional task templates, 3-D NGSS-aligned content, multimedia, and rubrics/scoring) | \$80,830.00 |
| Total Cost | \$673,658.00 |