

CONTRACT  
*State of Delaware, Delaware Department of Education  
and Tilson & Diaz Solutions, Inc.*  
**RFP# DOE 2015-03**

This Agreement (“Agreement”) is effective only upon the execution of a State of Delaware Purchase Order and will end on February 29, 2016, by and between the State of Delaware, Department of Education, hereafter referred to as DDOE, and *Tilson & Diaz Solutions, Inc.*, hereafter referred to as

WHEREAS, DDOE desires to obtain certain services within the scope of work and the terms and conditions set forth below; and Tilson & Diaz Solutions, Inc. is willing to perform such services.

WHEREAS, TILSON & DIAZ SOLUTIONS, INC. desires to provide such services to DDOE on the terms set forth below;

WHEREAS, DDOE and TILSON & DIAZ SOLUTIONS, INC. 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 TILSON & DIAZ SOLUTIONS, INC. agree as follows:

**1. Services.**

1.1 TILSON & DIAZ SOLUTIONS, INC. shall perform for DDOE the services specified in the Appendices to this Agreement, attached hereto and made a part hereof.

1.2 Any conflict or inconsistency between the provisions of the following documents shall be resolved by giving precedence to such documents in the following order: (a) this Agreement (including any amendments or modifications thereto); (b) DDOE’s request for proposals, attached hereto as Appendix B; and (c) TILSON & DIAZ SOLUTIONS, INC.’s response to the request for proposals, attached hereto as Appendix C. The aforementioned documents are specifically incorporated into this Agreement and made a part hereof.

1.3 DDOE may, at any time, by written order, make changes in the scope of this Agreement and in the services or work to be performed. No services for which additional compensation may be charged by TILSON & DIAZ SOLUTIONS, INC. 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 TILSON & DIAZ SOLUTIONS, INC., 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 TILSON & DIAZ SOLUTIONS, INC. for any aspect of its performance under this Agreement. Pricing of changes shall be consistent with those established within this Agreement.

1.4 TILSON & DIAZ SOLUTIONS, INC. will not be required to make changes to its scope of work that result in TILSON & DIAZ SOLUTIONS, INC.'s costs exceeding the current unencumbered budgeted appropriations for the services. Any claim of either party for an adjustment under Section 1 of this Agreement shall be asserted in the manner specified in the writing that authorizes the adjustment.

## **2. Payment for Services and Expenses.**

2.1 The term of the initial contract shall be from the execution of this agreement and a State of Delaware Purchase Order through February 29, 2016.

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

2.3 DDOE's obligation to pay TILSON & DIAZ SOLUTIONS, INC. for the performance of services described in Appendix A, Statement of Work will not exceed the fixed fee amount of \$125,280.00. It is expressly understood that the work defined in the appendices to this Agreement must be completed by TILSON & DIAZ SOLUTIONS, INC. and it shall be TILSON & DIAZ SOLUTIONS, INC.'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 TILSON & DIAZ SOLUTIONS, INC.

2.4 TILSON & DIAZ SOLUTIONS, INC. 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 TILSON & DIAZ SOLUTIONS, INC. 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 TILSON & DIAZ SOLUTIONS, INC. 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 TILSON & DIAZ SOLUTIONS, INC. , 7533 Carroll Avenue; Takoma Park, MD 20912.

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

2.8 Invoices shall be submitted:

Dale Matusevich  
Exceptional Children Resources  
Delaware Department of Education  
401 Federal Street  
Suite 2  
Dover, DE 19904

**3. Responsibilities of TILSON & DIAZ SOLUTIONS, INC.**

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

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

3.4 TILSON & DIAZ SOLUTIONS, INC. 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 TILSON & DIAZ SOLUTIONS, INC.'s associates and employees under the personal supervision of the Project Manager. The positions anticipated include:

Project	Team	Title	% of Project Involvement
	Dr. George Tilson	Principal	100

3.5 Designation of persons for each position is subject to review and approval by DDOE. Should the staff need to be diverted off the project for what are now unforeseeable circumstances, TILSON & DIAZ SOLUTIONS, INC. 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 TILSON & DIAZ SOLUTIONS, INC. 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 TILSON & DIAZ SOLUTIONS, INC. is unsuitable to DDOE for good cause, TILSON & DIAZ SOLUTIONS, INC. shall remove such employee from the performance of services and substitute in his/her place a suitable employee.

3.6 TILSON & DIAZ SOLUTIONS, INC. shall furnish to DDOE's designated representative copies of all correspondence to regulatory agencies for review prior to mailing such correspondence.

3.7 TILSON & DIAZ SOLUTIONS, INC. 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 TILSON & DIAZ SOLUTIONS, INC. 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 TILSON & DIAZ SOLUTIONS, INC. will not use DDOE's, 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 TILSON & DIAZ SOLUTIONS, INC. fails to complete the project or any phase thereof within the time specified in the Contract, or with such additional time as may be granted in writing by DDOE, or fails to prosecute the work, or any separable part thereof, with such diligence as will insure its completion within the time specified in this Agreement or any extensions thereof, DDOE shall suspend the payments scheduled as set forth in Appendix A.

**5. State Responsibilities.**

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

5.3 The services performed by TILSON & DIAZ SOLUTIONS, INC. 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 TILSON & DIAZ SOLUTIONS, INC. 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 TILSON & DIAZ SOLUTIONS, INC. It is understood that DDOE's representatives' review comments do not relieve TILSON & DIAZ SOLUTIONS, INC. 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 TILSON & DIAZ SOLUTIONS, INC. 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.

TILSON & DIAZ SOLUTIONS, INC. shall return any original data provided by DDOE.

5.6 DDOE shall assist TILSON & DIAZ SOLUTIONS, INC. 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 TILSON & DIAZ SOLUTIONS, INC. 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 TILSON & DIAZ SOLUTIONS, INC.'s, either express or implied, in any of its advertising or sales materials. TILSON & DIAZ SOLUTIONS, INC. 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 TILSON & DIAZ SOLUTIONS, INC. 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. TILSON & DIAZ SOLUTIONS, INC. 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 TILSON & DIAZ SOLUTIONS, INC. 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 TILSON & DIAZ SOLUTIONS, INC. retains title, whether individually by TILSON & DIAZ SOLUTIONS, INC. 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 TILSON & DIAZ SOLUTIONS, INC. 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, TILSON & DIAZ SOLUTIONS, INC. 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 TILSON & DIAZ SOLUTIONS, INC. prior to the effective date of this Agreement (“Preexisting Information”) shall remain the exclusive property of TILSON & DIAZ SOLUTIONS, INC. 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 TILSON & DIAZ SOLUTIONS, INC. warrants that its services will be performed in a good and workmanlike manner. TILSON & DIAZ SOLUTIONS, INC. 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 TILSON & DIAZ SOLUTIONS, INC. for DDOE in connection with the provision of the Services, TILSON & DIAZ SOLUTIONS, INC. shall pass through or assign to DDOE the rights TILSON & DIAZ SOLUTIONS, INC. obtains from the manufacturers and/or Tilson & Diaz Solutions, Inc.’s of such products and services (including warranty and indemnification rights), all to the extent that such rights are assignable.

## **9. Indemnification; Limitation of Liability.**

9.1 TILSON & DIAZ SOLUTIONS, INC. 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 TILSON & DIAZ SOLUTIONS, INC., its agents or employees, or (B) TILSON & DIAZ SOLUTIONS, INC.'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) TILSON & DIAZ SOLUTIONS, INC. shall have been notified promptly in writing by DDOE of any notice of such claim; and (ii) TILSON & DIAZ SOLUTIONS, INC. 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 TILSON & DIAZ SOLUTIONS, INC. in writing of a third party claim against DDOE that any Deliverable infringes a copyright or a trade secret of any third party, TILSON & DIAZ SOLUTIONS, INC. will defend such claim at its expense and will pay any costs or damages that may be finally awarded against DDOE. TILSON & DIAZ SOLUTIONS, INC. 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 TILSON & DIAZ SOLUTIONS, INC.; (3) DDOE's use of the Deliverable in combination with any product or information not owned or developed by TILSON & DIAZ SOLUTIONS, INC.; (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 TILSON & DIAZ SOLUTIONS, INC.'s opinion is likely to be, held to be infringing, TILSON & DIAZ SOLUTIONS, INC. shall at its expense and option either (a) procure the right for DDOE to continue using it, (b) replace it with a non-infringing equivalent, (c) modify it to make it non-infringing. The foregoing remedies constitute DDOE's sole and exclusive remedies and TILSON & DIAZ SOLUTIONS, INC.'s entire liability with respect to infringement.

9.3 DDOE agrees that TILSON & DIAZ SOLUTIONS, INC.'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 TILSON & DIAZ SOLUTIONS, INC.'s negligence, errors, omissions, strict liability, breach of contract or breach of warranty shall not, in the aggregate, exceed fees paid to TILSON & DIAZ SOLUTIONS, INC.

In no event shall TILSON & DIAZ SOLUTIONS, INC. 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 TILSON & DIAZ SOLUTIONS, INC. has been advised of the likelihood of such damages.

**10. Employees.**

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

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

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

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 TILSON & DIAZ SOLUTIONS, INC. 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 TILSON & DIAZ SOLUTIONS, INC., without prior written approval of DDOE.

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

15.5 The compensation due shall not be affected by DDOE's approval of the TILSON & DIAZ SOLUTIONS, INC.'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.**

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

20.6 TILSON & DIAZ SOLUTIONS, INC. 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 TILSON & DIAZ SOLUTIONS, INC. 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 TILSON & DIAZ SOLUTIONS, INC. 's performance and records pertaining to this Agreement at the TILSON & DIAZ SOLUTIONS, INC. business office during normal business hours.

## **21. Insurance.**

21.1 TILSON & DIAZ SOLUTIONS, INC. 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. TILSON & DIAZ SOLUTIONS, INC. 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, TILSON & DIAZ SOLUTIONS, INC. 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. TILSON & DIAZ SOLUTIONS, INC. 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: (Contractor and Address)

DDOE: Karen Field Rogers  
Associate Secretary, Financial Reform & Resource  
Management  
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:~~

*Original on File* —

IN WITNESS THEREOF, the Parties hereto have caused this Agreement to be duly executed as of the date and year first above written.

Tilson & Diaz Solutions, Inc.  
**Original on File**

Dr. George Tilson  
Principal

2/27/15  
Date

**Original on File**

Dr. George Tilson  
Principal Investigator

2/27/15  
Date

Delaware Department of Education  
**Original on File**

Karen Field Rogers  
Associate Secretary, Financial Reform &  
Resource Management

2/25/15 **Original on File**  
Date Initial Finance Director

**Original on File** 2/18/15  
Branch Associate Secretary

2/4/15 **Original on File**  
Date Initial Work Group  
Director

# APPENDIX A

## Statement of Work

# Services

Tilson & Diaz Solutions, Inc. agrees to the following services and activities per this contract. Given that the deliverables are ongoing and may overlap, the completion date will be January 31, 2016 for all services and activities. Tilson & Diaz Solutions, Inc. will coordinate monthly assignments with DDOE. Per the Payment Schedule below, monthly invoices, including a report of activities will be submitted to DDOE detailing work accomplished on each objective and days on which that work was completed.

**Objective 1:** To districts and/or schools identified by the as DDOE as noncompliant with special education regulations: tools and strategies in transition services and planning. Dates: Ongoing through completion of contract.

**Deliver Professional Development and Technical Assistance by the following task/deliverables:**

- Determine each District and Charters' status of compliance vis a vis IDEA Indicators 1,2, 13& 14; specific areas of need;
- Identify compliance issues at District, School, and Staff levels;
- Review all transition-related training curricula, materials and delivery modes used by DDOE in the past 3 years; Revise to address specific needs;
- Create a District by District matrix to identify percentage of training delivery coverage (who has been trained?);
- Develop a customized training and TA plan for each targeted district (possibly grouping districts with similar needs);
- Deliver training and TA via multiple modes: face to face and webinars; meetings (face to face or conference call); stand-alone, or imbedded in standing meetings (such as faculty, Regional Transition Advisory meetings); Transition Cadres; and DE Annual Transition Conference;
- Provide "field coaching" for select groups of staff, as identified by DDOE and LEAs; and
- Assist DDOE in evaluating impact of the training on improved compliance.

**Objective 2:** To Districts and/or schools participating in the Delaware Transition Cadre: Strategic planning and support. Dates: Ongoing through completion of contract.

**Deliver Professional Development and Technical Assistance by the following task/deliverables:**

- Assist DDOE in creating monthly meeting agendas;
- Support/co-facilitate monthly meetings;
- Record real time notes of meeting discussions, key issues, themes, solutions/action steps;
- Analyze notes for critical planning and action points, for DDOE planning of cadre needs and activities;
- Identify effective and emerging practices used within District cadres that can be shared across Districts; assist Districts and DDOE in disseminating the information and strategies;
- Assist DDOE in finding ways to entice/recruit more Districts into the cadres; Assist DDOE in coordinating field support from Tilson & Diaz Solutions, Inc. with expertise from new National Transition TA Center (formerly NSTTAC) to maximize resources; and
- Establish and support joint meetings of charter schools around Transition issues.

**Objective 3:** For districts and/or participating school employment initiatives. Dates: Ongoing through completion of contract.

- Develop inventory of all career preparation efforts occurring in Districts and Schools (including career and transition assessment tools and strategies; classroom curricula/activities; employer partnerships; work-based learning experiences, and paid jobs) and assist DDOE in disseminating effective tools and strategies for career preparation;
  - Tie-in with Programs of Study
  - Post District/school best practices on DDOE website
- Recommend to DDOE opportunities for Adult Agencies providing job placement services to give their input as to level of students' readiness for work – and to

inform/ assist schools in how to better prepare these youth so that adult services can be maximized (i.e., agencies can “hit the ground running”);

- Pilot the TDS *Life and Career Assessment Matrix (LCAM)* and *Independent Living Skills Assessment (ILSA)* currently adopted by DE DDDS – within selected schools – to determine enhanced and effective cross-agency assessment of shared students, for better use of resources, time – and ultimate impact (employment);
- Plan, deliver and evaluate training to schools and agencies actively participating in Early Start to Supported Employment (ESSE);
- Assist DDOE in strategic planning and monitoring of ESSE, to encourage continuous improvement in existing sites and expand LEA and agency participation;
- Provide training and TA regarding Project SEARCH sites, as needs are determined by DDOE;
- Provide training and TA regarding any other employment initiatives implemented in Delaware, as needs are determined by DDOE;
- Assist DDOE in ensuring students with disabilities are fully participating in the Student Success Plans (SSP) and that SSP data are being used in the development of transition IEPs; and
- Introduce new instruments such as the *Life and Career Assessment Matrix (LCAM)*, *Independent Living Skills Assessment (ILSA)* and *Transition Skills Inventory*, developed by TDS, as supports to staff, students and parents as they develop their SSPs.

**Objective 4:** To district and partner agency personnel: Job Development and Career Placement. Dates: Ongoing through completion of contract.

- Continue to update and deliver the Job Development Boot Camp training course to practitioners from LEAs, Partner State Agencies (ex. DDDS, DVR) and Service Provider Agencies to ensure increased collaboration for establishing work-based learning experiences and paid employment for increasing number of DE students and graduates/exiters with disabilities; and
- Assist DDOE and Partner State Agencies to evaluate impact of the Job Development Boot Camp on work-based learning and career placement outcomes.

**Objective 5:** To DDOE and partner agency staff: planning & implementation of the Delaware Community of Practice on Transition Annual Conference. Dates: Ongoing through completion of contract.

- Assist DDOE, Partnering Agencies and key transition stakeholders to analyze past State conferences to determine most effective formats, topics, speakers – and to solicit broad input as to ideas for future conferences;
- Identify and recommend effective and high profile keynote speakers;
- Recommend new conference features and session topics; and
- Develop creative options for gathering timely and useful feedback from conference attendees; conduct further follow up studies to determine impact of conference on field practices, policy and outcomes for students.

**Objective 6:** To DDOE and LEA staff: -development and administration of a needs assessment concerning dissemination practices in secondary transition planning and services for children and youth with disabilities in Delaware public schools. Dates: Ongoing through completion of contract.

- Confer with DDOE leadership to develop a plan of approach/action for this objective; clarify intent, scope; define plan of action;
- Develop protocols for multiple data collection methods, to include a combination of focus groups, electronic surveys, and interviews;
- Conduct the needs assessment activities (gather the data);
- Analyze data;
- Develop report of findings, implications, recommendations, for dissemination to the field by DDOE; and
- Assist DDOE and partners in revising/updating content for related handbooks and guides.

**Objective 7:** For DDOE staff and all transition stakeholders: Design and execute a series of easy-to-access, concise, informative, and creative online presentations that explain the critical components of transition to diverse stakeholders. Dates: Ongoing through completion of contract.

- Identify all existing components of Transition training content (transition overview, assessment, planning vis a vis the transition IEP, and active student participation in the IEP process); and
- Convert these components into a series of 10 online modules that will be posted on the DDOE website transition pages (and other sites or platforms as determined appropriate by DDOE). This will entail enhanced design and graphics, including power points, video clips, and animation- with the express purpose of maximizing audience impact in an efficient, entertaining, and informative manner. The intent of these online modules will be to supplement, rather than replace, other modes of training and TA to diverse practitioners and stakeholders, related to transition.

**Payment Schedule:**

DDOE will pay Tilson & Diaz Solutions, Inc. a total of \$125,280.00. The payment shall be made in twelve (12) monthly consecutive payments. The first payment of (\$10,440.00) due at the end of the first month shall be issued upon submission of invoice and receipt of the deliverables as detailed within the invoice. The remaining eleven (11) payments will be in the amount of \$10,440.00 due on the last day of each month and shall be issued upon submission of invoice and receipt of the deliverables as detailed within the invoice.

The final invoice must be received at DDOE by February 26, 2016.