

Delaware Department of Education Contract

DOE RFP#2016-02

This Agreement ("Agreement") is effective only upon the execution of a State of Delaware Purchase Order and will end on June 30, 2017, by and between the State of Delaware, Department of Education, hereafter referred to as DDOE, and Middlebury Interactive Languages, hereafter referred to as VENDOR.

WHEREAS, DDOE desires to obtain certain services to provide cost effective, proficiency focused world language blended online learning experiences for middle school students ; and

WHEREAS, Middlebury Interactive Languages desires to provide such services to DDOE on the terms set forth below;

WHEREAS, DDOE and Middlebury Interactive Languages 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 Middlebury Interactive Languages agree as follows:

1. Services.

1.1 Middlebury Interactive Languages 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) Middlebury Interactive Languages'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 Middlebury Interactive Languages 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 Middlebury Interactive Languages, 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 Middlebury Interactive Languages for any

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

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

2. Payment for Services and Expenses.

2.1 The term of the initial contract shall be from the execution of this agreement and a State of Delaware Purchase Order through June 30, 2017.

2.2 DDOE will pay Middlebury Interactive Languages 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 Middlebury Interactive Languages for the performance of services described in Appendix A, Statement of Work will not exceed the amount of \$500,000. It is expressly understood that the work defined in the appendices to this Agreement must be completed by Middlebury Interactive Languages and it shall be Middlebury Interactive Languages's responsibility to ensure that hours and tasks are properly budgeted so that all services are completed for the agreed upon 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 \$500,000.

2.4 Middlebury Interactive Languages 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 Middlebury Interactive Languages 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 Middlebury Interactive Languages 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 Middlebury Interactive Languages, 23 Pond Lane, Middlebury, VT 05753.

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

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

2.8 Invoices shall be submitted to: Middlebury Interactive Languages
23 Pond Lane
Middlebury, VT 05753
Attn: Chad Schaedler

3. Responsibilities of Middlebury Interactive Languages.

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

3.2 It shall be the duty of the Middlebury Interactive Languages 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. Middlebury Interactive Languages will not produce a work product

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

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

Project	Team	Title	% of Project Involvement
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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, Middlebury Interactive Languages 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 Middlebury Interactive Languages 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 Middlebury Interactive Languages is unsuitable to DDOE for good cause, Middlebury Interactive Languages shall remove such employee from the performance of services and substitute in his/her place a suitable employee.

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

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

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

Middlebury Interactive Languages shall return any original data provided by DDOE.

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

9.3 DDOE agrees that Middlebury Interactive Languages'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

Middlebury Interactive Languages negligence, errors, omissions, strict liability, breach of contract or breach of warranty shall not, in the aggregate, exceed fees paid to Middlebury Interactive Languages.

In no event shall Middlebury Interactive Languages 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 Middlebury Interactive Languages has been advised of the likelihood of such damages.

10. Employees.

10.1 Middlebury Interactive Languages has and shall retain the right to exercise full control over the employment, direction, compensation and discharge of all persons employed by Middlebury Interactive Languages 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 Middlebury Interactive Languages 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, Middlebury Interactive Languages 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. Middlebury Interactive Languages 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 Middlebury Interactive Languages acknowledges that Middlebury Interactive Languages and any subcontractors, agents or employees employed by

Middlebury Interactive Languages 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 Middlebury Interactive Languages shall be responsible for providing liability insurance for its personnel.

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

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

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 Middlebury Interactive Languages 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 Middlebury Interactive Languages, without prior written approval of DDOE.

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

sub-subcontractor.

15.5 The compensation due shall not be affected by DDOE's approval of Middlebury Interactive Languages'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.

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

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

21. Insurance.

21.1 Middlebury Interactive Languages 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 Middlebury Interactive Languages 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, Middlebury Interactive Languages 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. Middlebury Interactive Languages 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: Middlebury Interactive Languages,
23 Pond Lane
Middlebury, VT 05753

DDOE: David Blowman
Deputy Secretary
Delaware Department of Education
John G. Townsend Building
401 Federal Street, Suite 2
Dover, DE 19901
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DOE Certificated Staff coordinating activity:

Gregory Fulkerson

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.

Middlebury Interactive Languages

Delaware Department of Education

Reuben Oswald (Dec 30, 2015)

(Official of Vendor)
Project Manager

David Blowman
Deputy Secretary

Dec 30, 2015
Date

Date Initial Finance Director *dw*

(Official of Vendor)
Principal Investigator

Chief Academic Officer

Date

12/15/15
Date Initial Work Group Director

APPENDIX A SCOPE OF WORK

All of the following tasks apply for the 2016-2017 school year, with Tasks #5-11 repeated for each year of contract award:

1. Develop strategic plan, implementation plan and implementation timeline for approval by DOE within 30 days of award
2. Develop a curriculum map for each language and level to demonstrate alignment to the standards outlined in the Delaware Recommended Curriculum for World Languages and to the novice-high proficiency target for the completion of the 8th grade
3. Develop a *Best Practices for High-Fidelity Implementation Guide* of the online program for the onboarding of schools and districts
4. Ensure that the in-person classroom teachers or language coaches understand the fundamentals of proficiency and have the strategies necessary to help students maximize their language proficiency by documenting their completion of ACTFL's OPI familiarization or two-day MOPI training and submitting evidence to the DOE prior to the beginning of the coaching sessions.
5. Collaborate with participating middle schools to develop an individualized district implementation plan for their blended language learning program. District reports must be submitted to DOE by end of September of the year of implementation.
6. Establish feedback loops between the in-person classroom teachers (language coaches) and district coordinators and school principals to enhance communication between the in-person teacher (language coaches) and administration. A bi-weekly email protocol and a semester face-to-face check-in structure must be created.
7. Assist participating middle schools with implementing the blending learning language programs according to their implementation plans
8. Provide two reports on the fidelity of implementation in schools—one by the end of the first nine weeks of instruction and the second at the end of the school year
9. Provide ongoing supervision and support of the implemented blended language programs.
10. Provide evidence of student growth in proficiency in both formative and summative assessments. This data must be available to the teacher, school and district administration and to the DDOE. Summative student proficiency growth

measures may be either the STAMP or the AAPPL assessments. All enrolled 8th graders must be registered for the assessment. At least 95% of all 8th graders must complete the proficiency measure to provide a reliable indicator of the student proficiency attainment.

11. Deliver professional development to all school staff who will be in charge of supervising the implementation of the blended language programs

12. Provide on-going technology support to students and school staff as needed throughout the use of the of the blended language programs

13. Submit an end-of-year performance review of student proficiency attainment and program effectiveness. The report shall also include stakeholder satisfaction data and district participation in professional development data. This data should be available to the teacher, school and district administration and to the DDOE.

The MIL Service Level Agreement is included in this Scope of Work as Attachment 1 and will be executed by all parties.

Appendix B

Payment Schedule/Terms

Contract Payment Schedule:

- 50% of the contract amount will be paid upon receipt of invoice after completion of the first semester/block.
- Balance due will be paid upon receipt of invoice after completion of the 2nd semester/block and results of the AAPPL assessment have been received.

Bonus/Penalty Provision:

It is the Department's goal to ensure that the students enrolled in this program are receiving a quality education and that the instruction is creating enhanced language proficiency. As such, DOE's target proficiency is 75% (or higher) at N4 speaking proficiency on the AAPPL. In order to drive success, the Department is implementing a Bonus/Penalty Provision to reward success and avoid failure.

- Bonus - As an incentive, the Department of Education will pay a bonus of up to 5% of the face to face instructional and course content contract amounts if the speaking proficiency scores on the AAPPL assessment exceeds 75% at N4. The bonus schedule is as follows:
 - 77% = 1% bonus
 - 79% = 2% bonus
 - 81% = 3% bonus
 - 83% = 4% bonus
 - 85% = 5% bonus
- Penalty – If the speaking proficiency scores on the AAPPL assessment fall below 65% at N4, a 5% penalty will apply, with the amount (5% of face to face instructional and course content contract amounts) being deducted from the final payment.

Program Costs:

- Enrollment License - \$79/student/semester
- Instructional Support - \$192/student/semester
- Program Management Training:
 - Onsite \$8,500
 - Web-based \$500
 - Final Review \$250
- AAPPL Test \$20/test
- Avant Assessments:
 - STAMP 4S \$25/test

- STAMP 4Se \$25/test
- PLACEMENT \$20/test
- USB headset w/mic \$24.99/unit
- Parent Access \$49/license
- OPI Cost \$5,319
- MOPI Cost \$6,124