

# Delaware Department of Education Contract

DOE RFP#2016-04

This Agreement ("Agreement") is effective only upon the execution of a State of Delaware Purchase Order and will end on December 31, 2018, by and between the State of Delaware, Department of Education, hereafter referred to as DDOE, and Carolina Biological Supply, hereafter referred to as VENDOR.

WHEREAS, DDOE desires to obtain certain services to provide Science Kit and refurbishment materials and services; and

WHEREAS, Carolina Biological Supply desires to provide such services to DDOE on the terms set forth below;

WHEREAS, DDOE and Carolina Biological Supply 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 Carolina Biological Supply agree as follows:

## 1. Services.

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

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

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

2.1 The term of the initial contract shall be from the execution of this agreement and a State of Delaware Purchase Order through December 31, 2018.

2.2 DDOE will pay Carolina Biological Supply for the performance of services as requested, upon completion and acceptance.

2.3 DDOE's obligation to pay Carolina Biological Supply for the performance of services will not exceed the amount as quoted in the proposal attached as Appendix B. It is expressly understood that any work requested must be completed by Carolina Biological Supply and it shall be Carolina Biological Supply'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).

2.4 Carolina Biological Supply 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 Carolina Biological Supply 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 Carolina Biological Supply 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 Carolina Biological Supply, 2700 York Road, Burlington, NC 27215-3387.

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

2.8 Invoices shall be submitted to: John Moyer, Education Associate

### **3. Responsibilities of Carolina Biological Supply.**

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

3.2 It shall be the duty of the Carolina Biological Supply 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. Carolina Biological Supply will not produce a work product that violates or infringes on any copyright or patent rights. Carolina Biological Supply 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 Carolina Biological Supply shall not in any way relieve Carolina Biological Supply of responsibility for the professional and technical accuracy and adequacy of its work. DDOE's review, approval, acceptance, or payment for any

of Carolina Biological Supply'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 Carolina Biological Supply shall be and remain liable in accordance with the terms of this Agreement and applicable law for all damages to DDOE caused by Carolina Biological Supply's performance or failure to perform under this Agreement.

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

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

3.7 Carolina Biological Supply 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 Carolina Biological Supply 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 Carolina Biological Supply 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 Any delay of services or change in sequence of tasks must be approved in writing by DDOE.

4.2 In the event that Carolina Biological Supply 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 payments.

**5. State Responsibilities.**

5.1 In connection with Carolina Biological Supply'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 Carolina Biological Supply in the performance of services under this Agreement and will be available for consultation with Carolina Biological Supply at such reasonable times with advance notice as to not conflict with their other responsibilities.

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

Carolina Biological Supply shall return any original data provided by DDOE.

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

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

In no event shall Carolina Biological Supply 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 Carolina Biological Supply has been advised of the likelihood of such damages.

## **10. Employees.**

10.1 Carolina Biological Supply has and shall retain the right to exercise full

control over the employment, direction, compensation and discharge of all persons employed by Carolina Biological Supply 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 Carolina Biological Supply 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, Carolina Biological Supply 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. Carolina Biological Supply 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 Carolina Biological Supply acknowledges that Carolina Biological Supply and any subcontractors, agents or employees employed by Carolina Biological Supply 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 Carolina Biological Supply shall be responsible for providing liability insurance for its personnel.

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

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

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 Carolina Biological Supply 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 Carolina Biological Supply, without prior written approval of DDOE.

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

15.5 The compensation due shall not be affected by DDOE's approval of Carolina Biological Supply'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.**

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

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

**21. Insurance.**

21.1 Carolina Biological Supply 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. Carolina Biological Supply 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, Carolina Biological Supply 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. Carolina Biological Supply 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: Carolina Biological Supply, 2700 York Road  
Burlington, NC 27215-3387

DDOE: David Blowman  
Deputy Secretary  
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:

John Moyer

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.

**Carolina Biological Supply**

Signature on File

(Official of Vendor)

Project Manager, *Vice President,*  
*Director of marketing*

*12/28/15*

Date

Signature on File

(Official of Vendor)

Principal Investigator, *President & CEO*

*12/28/15*

Date

**Delaware Department of Education**

Signature on File

David Blowman

Deputy Secretary

Signature on File

*12/18/15*

Date

Signature on File

*[Signature]*  
Initial Finance Director

*12/14/15*  
Branch Associate Secretary

*12/3/15*

Date

Signature  
on File

Initial Work Group  
Director

# Delaware Department of Education Contract

DOE RFP#2016-04

This Agreement ("Agreement") is effective only upon the execution of a State of Delaware Purchase Order and will end on December 31, 2018, by and between the State of Delaware, Department of Education, hereafter referred to as DDOE, and Delta Education, hereafter referred to as VENDOR.

WHEREAS, DDOE desires to obtain certain services to provide Science Kit and refurbishment materials and services; and

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

WHEREAS, DDOE and Delta Education 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 Delta Education agree as follows:

## 1. Services.

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

1.4 Delta Education will not be required to make changes to its scope of work that

result in Delta Education's costs exceeding the current unencumbered budgeted appropriations for the services. Any claim of either party for an adjustment under Section 1 of this Agreement shall be asserted in the manner specified in the writing that authorizes the adjustment.

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

2.1 The term of the initial contract shall be from the execution of this agreement and a State of Delaware Purchase Order through December 31, 2018.

2.2 DDOE will pay Delta Education for the performance of services as requested, upon completion and acceptance.

2.3 DDOE's obligation to pay Delta Education for the performance of services will not exceed the amount as quoted in the proposal attached as Appendix B. It is expressly understood that any work requested must be completed by Delta Education and it shall be Delta Education'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).

2.4 Delta Education 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 Delta Education 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 Delta Education 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 Delta Education, 80 Northwest Blvd, Nashua, NH 03063.

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

2.8 Invoices shall be submitted to: John Moyer, Education Associate

**3. Responsibilities of Delta Education.**

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

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

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

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

3.7 Delta Education 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 Delta Education 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 Delta Education 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 Any delay of services or change in sequence of tasks must be approved in writing by DDOE.

4.2 In the event that Delta Education 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 payments.

**5. State Responsibilities.**

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

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

Delta Education shall return any original data provided by DDOE.

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

costs or damages that may be finally awarded against DDOE. Delta Education 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 Delta Education; (3) DDOE's use of the Deliverable in combination with any product or information not owned or developed by Delta Education; (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 Delta Education's opinion is likely to be, held to be infringing, Delta Education 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 Delta Education's entire liability with respect to infringement.

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

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

## **10. Employees.**

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

11.4 As an independent contractor, Delta Education 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 Delta Education under this Agreement for such period of time as DDOE, at its sole discretion, may prescribe by providing written notice to Delta Education at least 30 working days prior to the date on which DDOE wishes to suspend. Upon such suspension, DDOE shall pay Delta Education its compensation, based on the percentage of the project completed and earned until the effective date of suspension, less all previous payments. Delta Education shall not perform further work under this Agreement after the effective date of suspension. Delta Education 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 Delta Education for any cause

other than the error or omission of the Delta Education, for an aggregate period in excess of 30 days, Delta Education shall be entitled to an equitable adjustment of the compensation payable to Delta Education under this Agreement to reimburse Delta Education 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 Delta Education 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 Delta Education 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 Delta Education at the time of termination may be adjusted to the extent of any additional costs occasioned to DDOE by reason of Delta Education'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 Delta Education shall cease conducting business, DDOE shall have the right to make an unsolicited offer of employment to any employees of Delta Education assigned to the performance of the Agreement, notwithstanding the provisions of Section 10.2.

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

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 Delta Education 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 Delta Education, without prior written approval of DDOE.

15.3 Approval by DDOE of Delta Education's request to subcontract or

acceptance of or payment for subcontracted work by DDOE shall not in any way relieve Delta Education 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 Delta Education shall be and remain liable for all damages to DDOE caused by negligent performance or non-performance of work under this Agreement by Delta Education, its subcontractor or its sub-subcontractor.

15.5 The compensation due shall not be affected by DDOE's approval of Delta Education'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.**

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

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

## **21. Insurance.**

21.1 Delta Education 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. Delta Education 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, Delta Education 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. Delta Education 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: Delta Education, 80 Northwest Blvd  
Nashua, NH 03063  
DDOE: David Blowman  
Deputy Secretary  
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:

John Moyer

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.

**Delta Education**  
Signature on File

(Official of Vendor) Stephen M Herrew  
Project Manager

1/12/16  
Date

Signature on File

(Official of Vendor)  
Principal Investigator

1/12/16  
Date

**Delaware Department of Education**  
Signature on File

David Blowman  
Deputy Secretary

12/18/15  
Date

Signature on File

  
Initial Finance Director

Signature  
on File

Branch Associate Secretary

12/3/15  
Date

Signature on  
File

2/14/15  
Initial Work Group  
Director

# Delaware Department of Education Contract

DOE RFP#2016-04

This Agreement ("Agreement") is effective only upon the execution of a State of Delaware Purchase Order and will end on December 31, 2018, by and between the State of Delaware, Department of Education, hereafter referred to as DDOE, and ETA Hand 2 Mind, hereafter referred to as VENDOR.

WHEREAS, DDOE desires to obtain certain services to provide Science Kit and refurbishment materials and services; and

WHEREAS, ETA Hand 2 Mind desires to provide such services to DDOE on the terms set forth below;

WHEREAS, DDOE and ETA Hand 2 Mind 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 ETA Hand 2 Mind agree as follows:

## **1. Services.**

1.1 ETA Hand 2 Mind 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 A; and (c) ETA Hand 2 Mind's response to the request for proposals, attached hereto as Appendix B. 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 ETA Hand 2 Mind 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 ETA Hand 2 Mind, 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 ETA Hand 2 Mind for any aspect of its performance under this Agreement. Pricing of changes shall be consistent with those established within this Agreement.

1.4 ETA Hand 2 Mind will not be required to make changes to its scope of work

that result in ETA Hand 2 Mind's costs exceeding the current unencumbered budgeted appropriations for the services. Any claim of either party for an adjustment under Section 1 of this Agreement shall be asserted in the manner specified in the writing that authorizes the adjustment.

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

2.1 The term of the initial contract shall be from the execution of this agreement and a State of Delaware Purchase Order through December 31, 2018.

2.2 DDOE will pay ETA Hand 2 Mind for the performance of services as requested, upon completion and acceptance.

2.3 DDOE's obligation to pay ETA Hand 2 Mind for the performance of services will not exceed the amount as quoted in the proposal attached as Appendix B. It is expressly understood that any work requested must be completed by ETA Hand 2 Mind and it shall be ETA Hand 2 Mind'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).

2.4 ETA Hand 2 Mind 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 ETA Hand 2 Mind 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 ETA Hand 2 Mind 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 ETA Hand 2 Mind, 500 Greenview Ct, Vernon Hills, IL 60061-1862.

2.5 Unless provided otherwise in an Appendix, all expenses incurred in the performance of the services are to be paid by ETA Hand 2 Mind. If an Appendix specifically provides for expense reimbursement, ETA Hand 2 Mind shall be reimbursed only for reasonable expenses incurred by ETA Hand 2 Mind 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 ETA Hand 2 Mind all damages, costs and expenses caused by ETA Hand 2 Mind's negligence, resulting from or arising out of errors or omissions in ETA Hand 2 Mind's work products, which have not been previously paid to ETA Hand 2 Mind.

2.8 Invoices shall be submitted to: John Moyer, Education Associate

**3. Responsibilities of ETA Hand 2 Mind.**

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

3.2 It shall be the duty of the ETA Hand 2 Mind 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. ETA Hand 2 Mind will not produce a work product that violates or infringes on any copyright or patent rights. ETA Hand 2 Mind 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 ETA Hand 2 Mind shall not in any way relieve ETA Hand 2 Mind of responsibility for the professional and technical accuracy and adequacy of its work. DDOE's review, approval, acceptance, or payment for any of ETA Hand 2 Mind'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 ETA Hand 2 Mind shall be and remain liable in accordance with the terms of this Agreement and applicable law for all damages to DDOE caused by ETA Hand 2 Mind's performance or failure to perform under this Agreement.

3.4 ETA Hand 2 Mind 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 ETA Hand 2 Mind'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, ETA Hand 2 Mind 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 ETA Hand 2 Mind 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 ETA Hand 2 Mind is unsuitable to DDOE for good cause, ETA Hand 2 Mind shall remove such employee from the performance of services and substitute in his/her place a suitable employee.

3.6 ETA Hand 2 Mind shall furnish to DDOE's designated representative copies of all correspondence to regulatory agencies for review prior to mailing such correspondence.

3.7 ETA Hand 2 Mind 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 ETA Hand 2 Mind 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 ETA Hand 2 Mind 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 Any delay of services or change in sequence of tasks must be approved in writing by DDOE.

4.2 In the event that ETA Hand 2 Mind 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 payments.

**5. State Responsibilities.**

5.1 In connection with ETA Hand 2 Mind'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 ETA Hand 2 Mind in the performance of services under this Agreement and will be available for consultation with ETA Hand 2 Mind at such reasonable times with advance notice as to not conflict with their other responsibilities.

5.3 The services performed by ETA Hand 2 Mind 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 ETA Hand 2 Mind 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 ETA Hand 2 Mind. It is understood that DDOE's representatives' review comments do not relieve ETA Hand 2 Mind 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 ETA Hand 2 Mind 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.

ETA Hand 2 Mind shall return any original data provided by DDOE.

5.6 DDOE shall assist ETA Hand 2 Mind 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 ETA Hand 2 Mind 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 ETA Hand 2 Mind's name, either express or implied, in any of its advertising or sales materials. ETA Hand 2 Mind 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 ETA Hand 2 Mind 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. ETA Hand 2 Mind 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 ETA Hand 2 Mind 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 ETA Hand 2 Mind retains title, whether individually by ETA Hand 2 Mind 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 ETA Hand 2 Mind 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, ETA Hand 2 Mind 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 ETA Hand 2 Mind prior to the effective date of this Agreement ("Preexisting Information") shall remain the exclusive property of ETA Hand 2 Mind 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 ETA Hand 2 Mind warrants that its services will be performed in a good and workmanlike manner. ETA Hand 2 Mind 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 ETA Hand 2 Mind for DDOE in connection with the provision of the Services, ETA Hand 2 Mind shall pass through or assign to DDOE the rights ETA Hand 2 Mind 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 ETA Hand 2 Mind 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 ETA Hand 2 Mind, its agents or employees, or (B) ETA Hand 2 Mind'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) ETA Hand 2 Mind shall have been notified promptly in writing by DDOE of any notice of such claim; and (ii) ETA Hand 2 Mind 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 ETA Hand 2 Mind in writing of a third party claim against DDOE that any Deliverable infringes a copyright or a trade secret of any third party, ETA Hand 2 Mind will defend such claim at its expense and will pay any costs or damages that may be finally awarded against DDOE. ETA Hand 2

Mind 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 ETA Hand 2 Mind; (3) DDOE's use of the Deliverable in combination with any product or information not owned or developed by ETA Hand 2 Mind; (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 ETA Hand 2 Mind's opinion is likely to be, held to be infringing, ETA Hand 2 Mind 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 ETA Hand 2 Mind's entire liability with respect to infringement.

9.3 DDOE agrees that ETA Hand 2 Mind'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 ETA Hand 2 Mind negligence, errors, omissions, strict liability, breach of contract or breach of warranty shall not, in the aggregate, exceed fees paid to ETA Hand 2 Mind.

In no event shall ETA Hand 2 Mind 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 ETA Hand 2 Mind has been advised of the likelihood of such damages.

## **10. Employees.**

10.1 ETA Hand 2 Mind has and shall retain the right to exercise full control over the employment, direction, compensation and discharge of all persons employed by ETA Hand 2 Mind 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 ETA Hand 2 Mind 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, ETA Hand 2 Mind 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. ETA Hand 2 Mind 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 ETA Hand 2 Mind acknowledges that ETA Hand 2 Mind and any subcontractors, agents or employees employed by ETA Hand 2 Mind 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 ETA Hand 2 Mind shall be responsible for providing liability insurance for its personnel.

11.4 As an independent contractor, ETA Hand 2 Mind 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 ETA Hand 2 Mind under this Agreement for such period of time as DDOE, at its sole discretion, may prescribe by providing written notice to ETA Hand 2 Mind at least 30 working days prior to the date on which DDOE wishes to suspend. Upon such suspension, DDOE shall pay ETA Hand 2 Mind its compensation, based on the percentage of the project completed and earned until the effective date of suspension, less all previous payments. ETA Hand 2 Mind shall not perform further work under this Agreement after the effective date of suspension. ETA Hand 2 Mind 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 ETA Hand 2 Mind for any

cause other than the error or omission of the ETA Hand 2 Mind, for an aggregate period in excess of 30 days, ETA Hand 2 Mind shall be entitled to an equitable adjustment of the compensation payable to ETA Hand 2 Mind under this Agreement to reimburse ETA Hand 2 Mind 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 ETA Hand 2 Mind 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 ETA Hand 2 Mind 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 ETA Hand 2 Mind at the time of termination may be adjusted to the extent of any additional costs occasioned to DDOE by reason of ETA Hand 2 Mind'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 ETA Hand 2 Mind shall cease conducting business, DDOE shall have the right to make an unsolicited offer of employment to any employees of ETA Hand 2 Mind assigned to the performance of the Agreement, notwithstanding the provisions of Section 10.2.

13.4 If after termination for failure of ETA Hand 2 Mind to fulfill contractual obligations it is determined that ETA Hand 2 Mind 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 ETA Hand 2 Mind 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 ETA Hand 2 Mind, 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 ETA Hand 2 Mind or any agent or representative of ETA Hand 2 Mind 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 ETA Hand 2 Mind it could pursue in the event of a breach of this Agreement by ETA Hand 2 Mind.

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 ETA Hand 2 Mind 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 ETA Hand 2 Mind, without prior written approval of DDOE.

15.3 Approval by DDOE of ETA Hand 2 Mind's request to subcontract or acceptance of or payment for subcontracted work by DDOE shall not in any way relieve ETA Hand 2 Mind 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 ETA Hand 2 Mind shall be and remain liable for all damages to DDOE caused by negligent performance or non-performance of work under this Agreement by ETA Hand 2 Mind, its subcontractor or its sub-subcontractor.

15.5 The compensation due shall not be affected by DDOE's approval of ETA Hand 2 Mind'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.**

ETA Hand 2 Mind 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 ETA Hand 2 Mind 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 ETA Hand 2 Mind 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, ETA Hand 2 Mind shall comply with all applicable federal, state and local laws, ordinances, codes and regulations. ETA Hand 2 Mind 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 ETA Hand 2 Mind 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. ETA Hand 2 Mind 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 ETA Hand 2 Mind acknowledges that DDOE has an obligation to ensure that public funds are not used to subsidize private discrimination. ETA Hand 2

Mind 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 ETA Hand 2 Mind in breach of the Agreement, terminate the Agreement, and designate ETA Hand 2 Mind as non-responsible.

20.6 ETA Hand 2 Mind 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 ETA Hand 2 Mind 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 ETA Hand 2 Mind's performance and records pertaining to this Agreement at the ETA Hand 2 Mind business office during normal business hours.

## **21. Insurance.**

21.1 ETA Hand 2 Mind 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. ETA Hand 2 Mind 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, ETA Hand 2 Mind 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. ETA Hand 2 Mind 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:           ETA Hand 2 Mind, 500 Greenview Ct.  
                                  Vernon Hills, IL 60061-1862  
DDOE:                    David Blowman  
                                  Deputy Secretary  
                                  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:

John Moyer

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.

ETA Hand 2 Mind  
Signature on File

Delaware Department of Education  
Signature on File

(Official of Vendor)  
Project Manager

David Blowman  
Deputy Secretary

Signature on  
File

1/11/16  
Date  
Signature on File

12/18/15  
Date  
Signature on File

[Signature]  
Initial Finance Director

(Official of Vendor)  
Principal Investigator

Branch Associate Secretary

12/14/15

1/11/16  
Date

12/3/15  
Date  
Signature on  
File  
Initial Work Group  
Director

# Delaware Department of Education Contract

DOE RFP#2016-04

This Agreement ("Agreement") is effective only upon the execution of a State of Delaware Purchase Order and will end on December 31, 2018, by and between the State of Delaware, Department of Education, hereafter referred to as DDOE, and Lab-Aids, hereafter referred to as VENDOR.

WHEREAS, DDOE desires to obtain certain services to provide Science Kit and refurbishment materials and services; and

WHEREAS, Lab-Aids desires to provide such services to DDOE on the terms set forth below;

WHEREAS, DDOE and Lab-Aids 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 Lab-Aids agree as follows:

## 1. Services.

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

1.4 Lab-Aids will not be required to make changes to its scope of work that result

in Lab-Aids's costs exceeding the current unencumbered budgeted appropriations for the services. Any claim of either party for an adjustment under Section 1 of this Agreement shall be asserted in the manner specified in the writing that authorizes the adjustment.

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

2.1 The term of the initial contract shall be from the execution of this agreement and a State of Delaware Purchase Order through December 31, 2018.

2.2 DDOE will pay Lab-Aids for the performance of services as requested, upon completion and acceptance.

2.3 DDOE's obligation to pay Lab-Aids for the performance of services will not exceed the amount as quoted in the proposal attached as Appendix B. It is expressly understood that any work requested must be completed by Lab-Aids and it shall be Lab-Aids'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).

2.4 Lab-Aids 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 Lab-Aids 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 Lab-Aids 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 Lab-Aids, 17 Colt Court, Ronkonkoma, NY 11779.

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

2.8 Invoices shall be submitted to: John Moyer, Education Associate

### **3. Responsibilities of Lab-Aids.**

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

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

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

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

3.7 Lab-Aids 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 Lab-Aids 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 Lab-Aids 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 Any delay of services or change in sequence of tasks must be approved in writing by DDOE.

4.2 In the event that Lab-Aids 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 payments.

## **5. State Responsibilities.**

5.1 In connection with Lab-Aids'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 Lab-Aids in the performance of services under this Agreement and will be available for consultation with Lab-Aids at such reasonable times with advance notice as to not conflict with their other responsibilities.

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

Lab-Aids shall return any original data provided by DDOE.

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

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

In no event shall Lab-Aids 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 Lab-Aids has been advised of the likelihood of such damages.

## **10. Employees.**

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

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

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

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 Lab-Aids 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 Lab-Aids, without prior written approval of DDOE.

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

15.5 The compensation due shall not be affected by DDOE's approval of Lab-Aids'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.**

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

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

## 21. Insurance.

21.1 Lab-Aids 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. Lab-Aids 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, Lab-Aids 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. Lab-Aids 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:           Lab-Aids, 17 Colt Court  
                                  Ronkonkoma, NY 11779

DDOE:                     David Blowman  
                                  Deputy Secretary  
                                  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:

John Moyer

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.

Lab-Aids  
Signature on File

(Official of Vendor)  
Project Manager

12/21/15  
Date  
Signature on File

(Official of Vendor)  
Principal Investigator

12/21/15  
Date

Delaware Department of Education  
Signature on File

David Blowman  
Deputy Secretary

12/18/15  
Date  
Initial Finance Director

Branch Associate Secretary

12/3/15  
Date  
Initial Work Group Director

Signature on File

Signature on File

# Delaware Department of Education Contract

DOE RFP#2016-04

This Agreement ("Agreement") is effective only upon the execution of a State of Delaware Purchase Order and will end on December 31, 2018, by and between the State of Delaware, Department of Education, hereafter referred to as DDOE, and Fisher Science Education, hereafter referred to as VENDOR.

WHEREAS, DDOE desires to obtain certain services to provide Science Kit and refurbishment materials and services; and

WHEREAS, Fisher Science Education desires to provide such services to DDOE on the terms set forth below;

WHEREAS, DDOE and Fisher Science Education 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 Fisher Science Education agree as follows:

## 1. **Services.**

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

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

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

2.1 The term of the initial contract shall be from the execution of this agreement and a State of Delaware Purchase Order through December 31, 2018.

2.2 DDOE will pay Fisher Science Education for the performance of services as requested, upon completion and acceptance.

2.3 DDOE's obligation to pay Fisher Science Education for the performance of services will not exceed the amount as quoted in the proposal attached as Appendix B. It is expressly understood that any work requested must be completed by Fisher Science Education and it shall be Fisher Science Education'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).

2.4 Fisher Science Education 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 Fisher Science Education 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 Fisher Science Education 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 Fisher Science Education, 4500 Turnberry Drive, Hanover Park, IL 60133.

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

2.8 Invoices shall be submitted to: John Moyer, Education Associate

### **3. Responsibilities of Fisher Science Education.**

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

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

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

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

3.7 Fisher Science Education 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 Fisher Science Education 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 Fisher Science Education 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 Any delay of services or change in sequence of tasks must be approved in writing by DDOE.

4.2 In the event that Fisher Science Education 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 payments.

**5. State Responsibilities.**

5.1 In connection with Fisher Science Education'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 Fisher Science Education in the performance of services under this Agreement and will be available for consultation with Fisher Science Education at such reasonable times with advance notice as to not conflict with their other responsibilities.

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

Fisher Science Education shall return any original data provided by DDOE.

5.6 DDOE shall assist Fisher Science Education 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 Fisher Science Education 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 Fisher Science Education's name, either express or implied, in any of its advertising or sales materials. Fisher Science Education 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 Fisher Science Education 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. Fisher Science Education 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 Fisher Science Education 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 Fisher Science Education retains title, whether individually by Fisher Science Education 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 Fisher Science Education 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, Fisher Science

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

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

In no event shall Fisher Science Education 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 Fisher Science Education has been advised of the likelihood of such damages.

## **10. Employees.**

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

11.4 As an independent contractor, Fisher Science Education 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 Fisher Science Education under this

Agreement for such period of time as DDOE, at its sole discretion, may prescribe by providing written notice to Fisher Science Education at least 30 working days prior to the date on which DDOE wishes to suspend. Upon such suspension, DDOE shall pay Fisher Science Education its compensation, based on the percentage of the project completed and earned until the effective date of suspension, less all previous payments. Fisher Science Education shall not perform further work under this Agreement after the effective date of suspension. Fisher Science Education 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 Fisher Science Education for any cause other than the error or omission of the Fisher Science Education, for an aggregate period in excess of 30 days, Fisher Science Education shall be entitled to an equitable adjustment of the compensation payable to Fisher Science Education under this Agreement to reimburse Fisher Science Education 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 Fisher Science Education 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 Fisher Science Education 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 Fisher Science Education at the time of termination may be adjusted to the extent of any additional costs

occasioned to DDOE by reason of Fisher Science Education'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 Fisher Science Education shall cease conducting business, DDOE shall have the right to make an unsolicited offer of employment to any employees of Fisher Science Education assigned to the performance of the Agreement, notwithstanding the provisions of Section 10.2.

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

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 Fisher Science Education 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 Fisher Science Education, without prior written approval of DDOE.

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

15.5 The compensation due shall not be affected by DDOE's approval of Fisher Science Education'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.**

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

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

## **21. Insurance.**

21.1 Fisher Science Education 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. Fisher Science Education 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, Fisher Science Education 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. Fisher Science Education 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: Fisher Science Education, 4500 Turnberry Drive  
Hanover Park, IL 60133

DDOE: David Blowman  
Deputy Secretary  
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:

John Moyer

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.

**Fisher Science Education**  
Signature on File

**Delaware Department of Education**  
Signature on File

\_\_\_\_\_  
(Official of Vendor)  
Project Manager

\_\_\_\_\_  
David Blöwman  
Deputy Secretary

Signature on File

12/22/15  
Date  
Signature on File

12/18/15  
Date  
Signature on File

(D)  
Initial Finance Director

\_\_\_\_\_  
(Official of Vendor)  
Principal Investigator

\_\_\_\_\_  
Branch Associate Secretary

12/22/15  
Date

12/3/15  
Date  
Signature on File  
Initial Work Group Director

12/10/15