

## Contract Terms and Conditions

This SOFTWARE SERVICES AGREEMENT ("Agreement") is dated \_\_\_\_\_ (the "Effective Date"), and is between School District No. 1 in the City and County of Denver and State of Colorado (the "District"), a publicly governed and funded political subdivision of the State of Colorado, and \_\_\_\_\_, ("Contractor") (each a "Party" and collectively "Parties").

The Parties agree as follows:

### I SERVICES AND PURCHASE PRICE

#### A

**Description of Services.** Contractor shall grant licensing for and provision of Services as described in **SCHEDULE A - Scope of Services and Contract Sum** attached hereto and incorporated herein, all of which are referred to herein as "Services". **SCHEDULE A** may include Solicitation Documents as an attachment to further describe the Services the District is purchasing.

#### B

**Performance Start.** To authorize the start of performance, the District will issue and send to the Contractor a P.O. The Contractor shall start performance only after it has received a P.O. If **SCHEDULE A** describes a process the District may use to authorize the start of performance that process shall govern regarding the respective Services.

#### C

**Time is of the Essence.** The District is relying on the promised delivery date, installation, or other performance as material and basic to the District's acceptance. Time is of the essence. If the Contractor delivers Services late or any shipment of Services late, the District may, in its discretion, accept or reject the Services. If the District accepts the Services, delivery continues to be governed by this Agreement. If the District rejects the Services, the Contractor shall arrange for the return of the Services at its expense, and the District has no liability for the Services.

#### D

**Standards, Credentials and Licensing.** The Contractor shall perform all Services in accordance with the highest standards of care, skills and diligence in the Contractor's industry, trade or profession, and in the sequence and manner set forth in **SCHEDULE A**. The Contractor shall have and, while the Agreement is in effect, maintain all professional and other licenses, certifications, permits required for performance and shall comply with all legal and regulatory requirements applicable to the Agreement.

#### E

**Orders.** This Agreement governs all Purchases the District makes under this Agreement, including without limitation, any Purchases made with the use of P.O.s or other Orders.

#### F

**Contract Maximum Amount and Rates.** The actual amount spent under the Agreement may be less than but shall not exceed the Contract Maximum Amount. Prices, rates, fees, costs, and methods of payment are specified in **SCHEDULE A**.

## **G**

**Invoicing.** The Contractor shall submit to the District invoices for Purchases made under this Agreement, and at a minimum shall describe the amounts billed and the dates and nature of Services or portion of Services performed. Invoices must follow the District's guidelines available [here](#).

## **H**

**Payment.** The District shall pay amounts properly due and payable on accepted invoices, so long as the District has previously accepted the Services covered by the invoice as performed in accordance with the requirements of the Agreement. The District may not be able to pay invoices submitted outside of the Fiscal Year in which Services are performed, or any grace period thereafter that the District may provide. The District shall make payment to the order of the Contractor and shall send payment to the payment address that the Contractor provides to the District provided during vendor registration. The District does not pay any late fees. Any and all contractual financial obligations of the District that are payable after the current fiscal year are contingent on money to pay the obligations being appropriated, budgeted and otherwise made available.

## **I**

**Tax Exempt Status.** The District is exempt from the payment of state and most municipal, sales and use taxes for materials, supplies, and equipment used in the performance under this Agreement, and may be exempt from federal and other taxes. The Contractor shall not include any of these taxes in any charges or invoices to the District. The District will provide evidence of tax exemption upon the Contractor's request.

## **II COMPLIANCE WITH LAW AND DISTRICT POLICY**

### **A**

**Compliance With Laws.** The Contractor shall comply with all applicable federal, state, and local laws, rules, and regulations in effect as of the date of this Agreement and thereafter enacted, including, without limitation, all laws, regulations and rules cited in CRS § 22-1-135; all laws, rules, and regulations (i) applicable to discrimination and unfair employment practices; and (ii) that require the protection of personal identifying information, including "student personally identifiable information" as defined by CRS §22-16-103(13).

### **B Accessibility (SSA)**

**Accessibility.** Contractor shall comply with and all Services provided under this Agreement shall be in compliance with all applicable provisions of §§24-85-101, et seq., C.R.S., and the Accessibility Standards for Individuals with a Disability, as established by the State of Colorado Governor's Office of Information Technology (OIT) pursuant to Section §24-85-103 (2.5), C.R.S. Contractor shall also comply with all State of Colorado technology standards related to technology accessibility and with Level AA of the most current version of the Web Content Accessibility Guidelines (WCAG), incorporated in the State of Colorado technology standards. Contractor shall indemnify, save, and hold

harmless the District against any and all costs, expenses, claims, damages, liabilities, court awards and other amounts (including attorneys' fees and related costs) incurred by the District in relation to Contractor's failure to comply with §§24-85-101, et seq., C.R.S., or the Accessibility Standards for Individuals with a Disability as established by OIT pursuant to Section §24-85-103 (2.5), C.R.S.

## C

**Open Records.** CORA applies to this Agreement, the Contractor's performance, and the records and reports generated thereunder, to the extent not prohibited by state or federal law. Any provision elsewhere in this Agreement or any Vendor Document that purports to establish confidentiality in contravention of CORA is void ab initio.

# III INSURANCE AND INDEMNIFICATION

## A

**Insurance.** The Contractor shall maintain policies of insurance to cover its liability under the Agreement and covering such risks and carrying such minimum policy limits as is specified [here](#). Policy names denote common insurance industry standards of coverage. The Contractor shall assume all financial responsibility for deductibles and self-insured retentions.

## B

**Agreement to Indemnify.** The Contractor indemnifies and holds the District harmless against all Claims that result from, arise in connection with, or are related to the Contractor, any Subcontractor or Subcontractors, or the Contractor's employees, agents', officers', directors, or assignees' actions or omissions in performance under this Agreement and that are not attributable to the District's action or inaction. If performance under this Agreement includes use of Intellectual Property, delivery of Work Product, or both, then the Contractor also indemnifies, holds harmless, and assumes the duty to defend the District against any and all Claims that result from, arise in connection with, or are related to Work Product or infringement on the Intellectual Property rights of a Party or any person not a Party.

1. The Contractor's agreement to indemnify takes precedence over any conflicting or inconsistent provisions under this Agreement.
2. The Contractor's agreement to indemnify survives the termination, expiration, or other ending of the Agreement.

# IV TERM AND TERMINATION

## A

**Term.** This Agreement shall commence as of the date of this Agreement and shall terminate on \_\_\_\_\_ (the "Term"), unless earlier terminated as provided herein. This Agreement, at the option of the District, may be extended for up to four (4) additional one-year terms, upon a written mutually agreed upon amendment for each one year term. Contractor agrees and acknowledges that the District has no obligation to extend this Term, or contract for the provision of any future services, and makes no warranties or representations otherwise.

## B

**Renewal.** The Parties may renew the duration of the Agreement by written agreement, which will be an amendment to the Agreement. All amendments shall be prepared by the District and, to become effective, signed by both Parties.

## C

**Termination by District – No Default.** The District may terminate the Agreement at any time, if the District determines that termination is in its best interest. To terminate under this provision, the District shall provide at least 20 calendar days prior written notice to the Contractor. The District shall pay the Contractor the sums earned and not yet paid up to the date of termination. The District shall not pay for loss of anticipated profits.

## D

**Termination as the Result of Party Default.** If a Party defaults under the Agreement, the other Party may terminate the Agreement in accordance with the provisions of the section labeled **Default and Remedies**.

## E

**Obligations at Termination.** This paragraph and all Remedies survive termination of the Agreement until the Contractor has discharged all duties described in this paragraph. When the Agreement terminates for any reason, and in addition to all other duties under the Agreement, the Contractor shall do the following, as applicable:

1. Return to the District all tangible and intangible District property that may be in the Contractor's possession.
2. Comply with all data destruction requirements listed in the DPA if applicable.
3. If Work Product is part of the Services, deliver to the District all completed Work Product and all Work Product that was in the process of completion.
4. Refund to the District any sums that the District has prepaid and that remain unearned at the time of termination, no later than 45 calendar days after the last day the Agreement was in effect.
5. Take or omit any additional action as may be specified elsewhere in the Agreement.

## V DEFAULT AND REMEDIES

### A

#### **Default by the District, Legal Notice, and Remedies.**

1. The District is in Default when the District fails to pay when due amounts payable under the Agreement. If the Contractor believes the District is in Default and wishes to avail itself of its remedies, the Contractor shall send Legal Notice to the District that informs the District of the Default. The District may dispute amounts in good faith by sending Legal Notice informing the Contractor of the amounts in dispute and the reason for such dispute. The District shall pay all amounts not in dispute and those amounts that were in dispute once the dispute is resolved. The Contractor may partially or fully stop performance under the Agreement, terminate the Agreement, or both if the District Default continues for 30 consecutive calendar days after the District has received the Contractor's Legal Notice of the District Default.
2. If the District agrees to any other duties in **SCHEDULE A** or elsewhere in the Agreement, and the District fails to perform any such other duty, the District is not in Default.

## B

**Default by the Contractor.** The Contractor is in Default when the Contractor:

1. Fails to materially perform its duties under the Agreement in whole, in part, in a timely, or in a satisfactory manner; or
2. Fails to comply with any other condition, requirement, or obligation required of the Contractor under the Agreement;
3. Loses a license, certification, governmental permit or permission, or any other credential or qualification that is required by the Agreement or required to legally and competently perform under the Agreement; or
4. Fails to complete a condition precedent or condition subsequent that the Agreement specifically requires; or
5. Becomes a debtor in any proceeding in bankruptcy, whether voluntary or involuntary, or is the subject of any other insolvency proceeding or appointment for the benefit of creditors, and any such proceeding remains un-dismissed for more than 60 calendar days; or
6. Defaults under any other agreement with the District, and the default remains unresolved for more than 60 calendar days after the District has given written notice to the Contractor of such default; or
7. The Contractor or any of its employees, agents, or Subcontractors, while performing under the Agreement, act or fail to act in a manner that, in the District's determination, is or becomes a threat or danger to the District, its employees, agents, officers, members of the board of education, students, families, or other constituents;
8. The Contractor or any of its employees, agents, or Subcontractor is convicted of a crime and that conviction then renders the Contractor to no longer be able or permitted to perform their duties under the Agreement.

## C

**Legal Notice of Contractor Default.** When there is an event of default and the District chooses to exercise its remedies and rights, the District will give written notice to the Contractor. The notice will state the nature of the event of default, what actions the Contractor needs to take to cure the default, the dates when the Contractor has to complete the cure, and the action the District intends to take if the Contractor does not cure. The District need not give prior notice of default if the District determines in its sole discretion that the nature of the default is an immediate threat or danger to the District or District Constituents. In that case, the District will inform the Contractor of any remedies the District has taken within 30 calendar days after the District has taken such action.

## D Method of Giving Legal Notice

**Method of Giving Legal Notice.** All notices that the Contract or law requires shall be in writing and are referred to as Legal Notice. Legal Notice is accomplished by delivery of the written notice to the Legal Notice Recipient at the address listed for the Legal Notice Recipient as follows:

1. Personal service; or
2. Trackable delivery service (for example and without limitation: USPS priority or express mail; UPS; DHL; or FedEx).

The address for each Legal Notice Recipient is as follows or at such other address as a Party may later give notice to the other Party:

|                       |             |
|-----------------------|-------------|
| Denver Public Schools | Contractor: |
| Attn:                 | Attn:       |

|                                                                                                                                                                                                                                                                    |      |
|--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|------|
| Purchasing Department<br><br>780 Grant Street<br><br>Denver, CO 80203                                                                                                                                                                                              |      |
| Tel: 720-423-1310                                                                                                                                                                                                                                                  | Tel: |
| Email: purchasing@dpsk12.org<br><br><br>With a copy to:<br><br><br>Denver Public Schools<br><br>Office of General Counsel<br><br>1860 Lincoln St<br><br>Suite 1230<br><br>Denver, Colorado 80203<br><br>Tel: 720-423-3393<br><br>Email: legal_contracts@dpsk12.org |      |

Tel:

Email:

## E

**When Legal Notice of Contractor Default not Required.** If the District determines in its discretion that the Default is an immediate threat or danger to the District, its employees, agents, officers, members of the board of education, students, families, or other constituents, then the District need not give Legal Notice of Default to the Contractor.

## F

**District Remedies if Default by Contractor.** In the event of Default, and after the District has given notice and opportunity to cure where required, and if the Contractor does not cure the Default as required by the District, the District may avail itself of any remedies available to it by law and take, or elect not to take, any of the following actions, concurrently or consecutively, as the District in its sole discretion may decide:

1. Termination of the Agreement or any part thereof.
2. Purchase goods or services to complete or substitute for the Services not performed, or licenses for Services not granted, or all together or a combination of it. The Contractor shall pay to the District all costs and expenses that the District incurs as a result, minus any sums that the District is not paying to the Contractor as the result of the Contractor Event of Default.
3. Offset costs and damages to the District that result from the Contractor Default against any sums that the District owes and that are payable to the Contractor.
4. If the Default involves the infringement on Intellectual Property rights of a Party or of persons not a Party, the Contractor shall, as directed by the District in the District's discretion, (i) secure that right to use such work for the District or the Contractor; or (ii) replace the work with non-infringing work; or (iii) modify the

- work so that it becomes noninfringing; or (vi) remove any infringing work and refund the amount paid for such work to the District.
5. Pursue any other remedy available to the District by law.

## VI CONFIDENTIAL INFORMATION AND DATA PROTECTION ADDENDUM

### A

**Confidential Information Belongs Solely To The Disclosing Party.** All Confidential Information is the exclusive property of the Party disclosing such Confidential Information (the "Disclosing Party"). The Party receiving such Confidential Information (the "Receiving Party") therefore agrees that:

1. At all times while this Agreement is in effect, Receiving Party shall keep secret and will not disclose to any third party, take or misuse any Confidential Information, or any other confidential and/or proprietary information Receiving Party acquires or has access to.
2. At all times while this Agreement is in effect, Receiving Party shall not use or seek to use any Confidential Information for Receiving Party's own benefit or for the benefit of any other person or business or in any way adverse to the Disclosing Party's interests.
3. After termination of this Agreement, Receiving Party shall preserve the secrecy of and will not disclose directly or indirectly to any other person or business any Confidential Information.

Receiving Party shall promptly advise the Disclosing Party of any unauthorized disclosure or use of Confidential Information by any person or entity.

### B

**Data Protection Addendum.** The District owns all District Information. The District shall only allow the Contractor access to District Information if the Contractor executes the DPA.

## VII GENERAL CONTRACT TERMS

### A

**Assignment.** The Contractor may assign its rights and delegate its obligations under this Agreement only with the prior written consent of the District, except as prohibited by law.

### B

**Binding Effect and No Third-Party Beneficiary.** The Agreement binds the Parties and their respective successors and assigns, and the Agreement gives no rights or benefits to any persons not a Party.

### C

**Captions and References.** The captions and headings are for reference only and do not define or limit the provisions they are titled.

### D

**Conflict of Interest.** The Contractor represents that the Contractor (i) has no personal or financial interest in the Agreement (other than the consideration to be earned); (ii)

shall not acquire any such interest, direct or indirect, which would conflict in any manner with the performance under the Agreement; and (iii) does not and will not employ or engage any person with a personal or financial interest in the Agreement (other than the consideration to be earned).

## E

**Counterparts.** The Parties may execute the Agreement and subsequent amendments in counterparts, each of which is deemed an original, and all of which together shall constitute one and the same instrument. Photocopies, scans, electronic signatures, and facsimiles of executing signatures are valid evidence of execution.

## F

**Entire Understanding.** The Agreement represents the complete integration of all understandings between the Parties related to the purposes and subject matter of this Agreement. The Agreement supersedes and replaces any previous agreements of like nature between the Contractor and the District.

## G

**Governing Law; References to Law.** The laws of the State of Colorado govern this Agreement. A Party will bring any action to enforce its rights in a court of competent jurisdiction in the City and County of Denver, Colorado or, if federal jurisdiction applies, in a federal court of competent jurisdiction in the District of Colorado. All references to law refer to the law as in effect on the Effective Date and as such law may be amended, enacted, or repealed while the Agreement remains in effect.

## H

**Governmental Immunity.** No term or condition of the Agreement shall be construed or interpreted as a waiver, express or implied, of any of the immunities, rights, benefits, protections, or other provisions, of the Colorado Governmental Immunity Act, §24-10-101 et seq. C.R.S.

## I

**Independent Contractor.** The Contractor and its employees, subcontractors, and subcontractor employees are independent contractor(s) and NOT employees of the District. The Contractor shall perform its duties as an independent contractor, pay when due all applicable employment taxes and income taxes for its employees incurred in the performance of the Agreement, and provide and keep in force workers' compensation and unemployment insurance as and in the amounts required by law.

## J

**Modifications.** The Parties can change the Agreement only in writing that is executed by the Parties. The District shall provide all changes in writing for execution by the parties.

## K

**Order of Precedence.** In the event of a conflict or inconsistency between or among any of the components of the Agreement, the provisions govern in the following order of precedence:

1. The DPA, if it is a part of the Agreement.
2. The Agreement.

3. Any amendments to the Agreement in reverse chronological order.
4. The Solicitation Documents.
5. District Purchase Order.
6. Vendor Document.

## L

**Records and Audits.** The Contractor shall maintain complete and accurate records of all charges the District incurs under the Agreement and other records related to the Agreement and performance thereunder, while the Agreement is in effect and for a period after the date of termination of the Agreement that is at a minimum as long as required by law. The Contractor shall keep such records in accordance with generally accepted accounting principles. The District may inspect and copy those records upon reasonable notice. This is in addition to other record keeping, reporting, and audit obligations that may be specified elsewhere in the Agreement components.

## M

**Rights in and Use of Work Product.** The Contractor assigns to the District, and its successors and assigns, the entire right, title and interest in the Work Product, if any.

## N

**Severability.** If a court of competent jurisdiction rules any Agreement provision to be illegal or otherwise invalid, then only the provision so found to be illegal or invalid shall be deemed removed, and all other provisions remain in effect.

## O

**Signature Authority.** The individuals signing below represent and warrant that they have the authority to execute this Agreement on behalf of their respective organizations and bind their respective organizations to the terms of this Agreement. The District's signature authority for this Agreement is governed by the District's Board of Education Regulation DJA-R. If this Agreement is made contrary to the District's Board of Education Policies, including, but not limited to, Policies DJ, DJA, DJE, DJG and DJGA, this Agreement shall be void and wholly without effect and shall not be binding upon the District in any manner.

## P

**Waiver.** A Party's failure to assert a right or Remedy, or a Party's waiver of its rights or Remedies by course of dealing or otherwise, is not a waiver of any other right or Remedy under the Agreement or by law.

## VIII DEFINITIONS

### A

"*Agreement*" means this Agreement together with all of its components that appear in the form of a free-standing contract document, attachment, schedule, supplement, addendum, or a webpage accessible by link, and may include all, any one, or a combination of the following: (1) a component labeled "Data Protection Addendum"; (2) any other component that is expressly incorporated in or otherwise included with the Agreement document.

"*Claim*" means, both in its singular and plural form, actions, suits, causes of action, demands, liability, costs, expenses, court awards (including without limitations attorneys' fees and court costs) and all other incidents of liability alleged or brought again the District by persons not a Party.

"*Click-Through*" means both (1) the act, by clicking or tapping on an electronic on-line or app button or link for that purpose, of accepting on-line terms and conditions without ink on paper, and (2) the resulting agreement between the Parties.

"*Confidential Information*" means information and materials in oral, written, graphic or electronic form that is non-public, confidential and/or proprietary relating to the Party, including without limitation, student records, records, notes, data, reports, data sources, reference materials, sketches, drawings, memoranda, disks, documentation, research, development, processes, procedures, marketing techniques and materials, marketing and development plans, purchasing information, price lists, cost and pricing policies, financial information, intellectual property, and all other information of a secret or confidential nature.

"*Contract Maximum Amount*" is the amount of spending for the specified duration of the Agreement that the District will not exceed.

"*CORA*" means the Colorado Open Records Act, C.R.S. §24-72-101 et seq., as amended from time to time.

"*Default*" means any event that results in rights to remedies accruing to a Party, including any one of the events listed under the section labeled Default and Remedies.

"*District Information*" means District Data (as defined in the DPA) plus all other records, reports, material, and information, in any form and on any media, including but not limited to, any such information that may belong to or affect persons not a Party, which the District provides to the Contractor.

"*DPA*" means Data Protection Addendum and denotes the provisions specific to the collection, use, and destruction to District Data (as defined in the DPA) and other information that may be attached to and incorporated into the Agreement.

"*Fiscal Year*" means the 12 months' period that starts July 1 of each calendar year and ends on June 30 of the following calendar year.

"*Intellectual Property*" means intangible property rights that are governed by federal, state, and international law governing without limitation patents; copyrights; trade -, service-, and registered marks; trade dress; any applications therefore; and all work and rights derived therefrom.

"*Legal Notice*" means written notice that this Agreement or any law requires any one Party to give to the other Party to execute, enforce, or preserve its rights or cause other actions to take place as provided by the Agreement or law, and which may then also start the tolling of response or other periods that may affect the rights of either Party or both Parties.

"*Materials*" means all labor, licenses, materials, supplies, equipment, and all other items necessary to complete, perform and deliver the Services.

"*Order*" means a written agreement that the Parties execute at different times after the date of this Agreement in order to add, from time to time, additional or specified performance to be governed by the provisions of the Agreement. An Order may be in the form of a P.O. or other form that the District or the Contractor may prepare.

"*P.O.*" means a purchase order document in form and substance as the District uses in

the ordinary course of its business to order goods and services and encumber funds to pay for them.

"Services" means the grants of licensing for and provision of digital services of software, software-as-a-service, online access, and other digital licenses, and incidental related services, that the Contractor is delivering in accordance with the scope and purpose of the Agreement, such as, for illustration and without limitation, apps, software-as-a-service, cloud tools, platform hosting, web services, and remote application hosting.

"Solicitation Documents" means all of the following: (i) the District's request for proposal, request for qualifications, request for quote, and other documentation of the method that the District uses or has used to solicit proposals for the Agreement and then select the Contractor; (ii) the Contractor's written responses, proposals, and quotes thereto; and (iii) other written documents related thereto.

"Subcontractor" means any individual, company, or other entity whom the Contractor engages to aid the Contractor in performing under the Agreement. A Subcontractor is a sub-contractor as to the District and may be a direct contractor or any level of sub-contractor to the Contractor.

"Vendor Document" means any form of agreement documentation that the Contractor prepares and provides and that relates to the Agreement, and includes, without limitation, an on-line Click-Through contract, any form of proposal, or any form of invoice, that is or is purported to be made a part of the Agreement or is effective or purported to be effective outside of or in addition to the Agreement.

"Work Product" means work product that the Contractor produced or created specifically and exclusively for the District in performing the Services, and all work based on, derived from, or incorporating the work product, together with the tangible and intangible results of the Services, whether finished or unfinished, including drafts, and DOES NOT include material that the Contractor developed before the Effective Date and used, without modification, in the performance of the Agreement.

The Parties are signing this Agreement on the date stated in the introductory clause.

|                     |
|---------------------|
| By: _____           |
| Printed Name: _____ |
| Title: _____        |

**RECOMMENDED:**

By: \_\_\_\_\_  
Department/School Manager

**"SCHOOL DISTRICT NO. 1"**

**APPROVED:**

By: \_\_\_\_\_

Purchasing Department Manager

By: \_\_\_\_\_

Director, Financial Operations

By: \_\_\_\_\_

Executive Director of Finance

By: \_\_\_\_\_

Chief Financial Officer

By: \_\_\_\_\_

Board of Education, President

Sample

**SCHEDULE A- Scope of Services and Contract Sum**

**See Exhibit A**

Sample