



## SOFTWARE SERVICES AGREEMENT

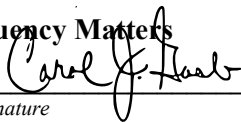
(CONSULTING SERVICES, SOFTWARE, AND DATA SHARING)

-----COVER AND SIGNATURE PAGE-----

<p><b>SERVICE PROVIDER:</b>  <b>TPRS Publishing (dba: Fluency Matters)</b>          3621 E. Coconino Pl.          Phoenix, AZ 8504</p> <p>Legal Notices to be sent to the attention of:  <b>Patrick Gaab, CFO</b></p>	<p><b>DISTRICT:</b>  <b>School District No. 1 in the City and County of Denver and State of Colorado</b> 1860 Lincoln St          Denver, CO 80203</p> <p>Legal Notices to be sent to the attention of:  <b>Mary Cooper, Director of Financial Operations</b></p>
<p><b>EFFECTIVE DATE:</b>          The date of the Parties' signature.          The later date if the Parties signed on different dates.</p>	<p><b>AGREEMENT INITIAL END DATE:</b>  <i>(check as applicable):</i></p> <p><input type="checkbox"/> June 30 of the current District fiscal year.</p> <p><input type="checkbox"/> 12 calendar months from the Effective Date.</p> <p><input type="checkbox"/> On and including the following date:</p>
<p><b>PERFORMANCE BEGIN DATE:</b>          Must be a date on or <b>after</b> the Effective Date. None if blank.</p> <p>_____</p>	<p><b>PERFORMANCE END DATE:</b>          Must be a date on or <b>before</b> the Initial End Date. None if blank.</p> <p>_____</p>
<p><b>CONTRACT AMOUNT:</b>          \$ _____</p> <p><input type="checkbox"/> <b>This is the contract maximum amount.</b></p>	<p><b>DESCRIPTION:</b></p>
<p><b>FEDERAL FUNDING:</b></p>	<p><i>Check if NO</i> <input type="checkbox"/></p> <p>If this Box is checked, the provisions of <b>Supplement 2 – Federal Funding</b> are either not attached or, if attached, do not apply.</p>

**Signatures**

The Parties agree to the terms and conditions set forth herein by signing below. Individuals signing on behalf of each Party represent and warrant that they are authorized to execute this Agreement on behalf of the Party for which they are signing.

<p><b>SERVICE PROVIDER:</b></p> <p><b>Fluency Matters</b>    Signature</p> <p>By: Carol Gaab, President  Type Name and Title of Person Signing for Service Provider</p> <p>April 13, 2020  Date of Service Provider Representative Signature</p>	<p><b>DISTRICT:</b></p> <p><b>School District No. 1</b>  Signature</p> <p>By: _____  Type Name and Title of Person Signing for District</p> <p>_____, 20____  Date of District Representative Signature</p>
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The **District** and the **Service Provider**, both identified on the above **Cover and Signature Page**, for sufficient and valuable consideration, are entering into this Agreement as of the Effective Date listed on the **Cover and Signature Page**. By having signed on the **Cover and Signature Page**, the District and the Service Provider agree to the terms and conditions of this Agreement.

**BACKGROUND**

The District solicited offers for the services described in this Agreement. The Service Provider responded, and the District selected the Service Provider’s offer in accordance with law and District policies.

**AGREEMENT TERMS AND CONDITIONS**

**1. Definitions.** Capitalized terms used throughout the Agreement and any Agreement Document, which are not otherwise capitalized because of English grammar rules, shall have the meaning given to them either when first defined or as set forth in the Agreement section titled **Definitions**.

**2. Purpose and Scope.** This Agreement covers the terms and conditions under which the District is purchasing and the Service Provider is providing, the following (*check all that apply*):

- 2.1.  Consulting Services
- 2.2.  Software License (District Hosted)
- 2.3.  Software as a Service (Hosted Elsewhere)
- 2.4.  Web Application
- 2.5.  Mobile Application
- 2.6.  Hardware
- 2.7.  Software or System Support
- 2.8.  Software or System Maintenance
- 2.9.  Other \_\_\_\_\_

**3. Solicitation and Procurement.** The District solicited and procured the Services in accordance with applicable law and District policies as set forth below.

- 3.1.  Request for Proposal (RFP) No. \_\_\_\_\_
- 3.2.  Request for Qualifications No. \_\_\_\_\_
- 3.3.  Request for Quote No. \_\_\_\_\_

- 3.4.  Sole Source
- 3.5.  Other under District Policy DJB or DJE

#### 4. Services and Statement of Work.

- 4.1. *Description of Services.* The Service Provider shall grant access to the applications and software, provide the maintenance and support, and provide the services as described in the **EXHIBIT A – Description of Services, Support, and Licenses** attached hereto and incorporated herein, all of which are referred to herein as “Services.” **EXHIBIT A – Description of Services, Support, and Licenses** may include Solicitation Documents as an attachment to further describe the items, services, and products the District is purchasing.
- 4.2. *Performance Start.* To authorize the start of performance, the District will issue and send to the Service Provider a PO. The Service Provider shall start performance only after it has received a PO. If **EXHIBIT A – Description of Services, Support, and Licenses** describes a process the District may use to authorize the start of performance that process shall govern regarding the respective Services.
- 4.3. *Standards.* The Service Provider shall perform all Services in accordance with the highest standards of care, skills and diligence in the Service Provider’s industry, trade or profession, and in the sequence and manner set forth in **EXHIBIT A-Description of Services, Support, and Licenses**.
- 4.4. *Reports.* In addition to the reports required in any Agreement Document, the Service Provider shall submit reports on progress made for each specified performance measure and standard in any Agreement Document. Unless the District instructs otherwise, the Service Provider shall report at least quarterly, on or before the 15<sup>th</sup> day after the end of each calendar quarter, beginning with the first calendar quarter to end after the Effective Date. The Service Provider shall report in accordance with procedures and reporting formats that the District may prescribe. This provision does not apply if (i) this Agreement has a term of less than 3 months or (ii)  this box is checked.
- 4.5. *ADA Web Accessibility.* To the extent the Services include web and mobile content, functionality, components and interfaces, the Service Provider and all Services performed under this Agreement shall comply, and at all times while this Agreement is in effect, remain in compliance, with all federal and state laws concerning equally effective and substantially equivalent ease of use for persons with disabilities, as required by the Americans with Disabilities Act of 1990 and its implementing regulations. To the extent required to allow minimum accessibility. The Service Provider shall design and implement necessary minimum enhancements surrounding ADA compliance. The District may evaluate minimum compliance and may do so by using W3C’s Web Content Accessibility Guidelines (WCAG) 2.0 Level AA and the Web Accessibility Initiative Accessible Rich Internet Applications Suite (WAI-ARIA) 1.0 for web content.
- 4.6. *Credentials and Licensing.* The Service Provider 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.
- 4.7. *Materials.* All Materials shall be part of and not in addition to the prices and fees agreed to herein. The Service Provider shall pay and be liable for any damage or destruction to any Materials.

- 4.8.  *Source Code*. If this box is checked, software source code related to the Services will be managed as described in an attachment to **EXHIBIT A -- Description of Services, Support, and Licenses**.

## 5. Contract Price and Payment.

- 5.1. *Contract Price*. The Service Provider shall perform the Services for the prices and rates, for the fee, or for such pricing and compensation as set forth in **EXHIBIT A – Description of Services, Support, and Licenses**. The actual amounts due and payable are as earned in accordance with the provisions of **EXHIBIT A**. If the box “This is a Contract Maximum Amount” on the **Cover and Signature Page** is checked, the total amount paid under the Agreement shall not exceed the amount of the Contract Price listed on the **Cover and Signature Page**.
- 5.2. *Invoicing*. The Service Provider shall initiate payment requests by invoice to the District in form and substance acceptable to the District, and at a minimum shall describe the amounts billed and the dates and nature of Services or portion of Services performed. Invoices are to be sent to [AccountsPayable@dpsk12.org](mailto:AccountsPayable@dpsk12.org). Only one invoice per email and PO number must be clearly noted on the invoice
- 5.3. *Payment*. The District will 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 will make payment to the order of the Service Provider and will send payment to the payment address that the Service Provider provides to the District provided during vendor registration.
- 5.4. *Unearned and Erroneous Payments*. If the District prepaid for any Services, and the Agreement ends for any reason before the District has used all the Services for which the District has paid, the Service Provider shall refund the amount of prepayment prorated for the length of time when Services will not be provided. The Service Provider shall return or refund any erroneous payments it may receive.
- 5.5. *Expense Reimbursement*. The District will reimburse the Service Provider for reasonable expenses, such as but not limited to, travel time and mileage, that the Service Provider incurs performing the Services and that are (i) specifically described as reimbursable in **EXHIBIT A – Description of Services, Support, and Licenses**; and (ii) approved by the District in accordance with approval procedures set forth in the **EXHIBIT A**. Notwithstanding anything to the contrary in any Agreement Document, the District will not reimburse expenses of the types and in amounts that are not reimbursable under the District’s travel reimbursement policies and procedures, including without limitation District Policy DK-R1, as in effect on the Effective Date and amended thereafter from time to time.

## 6. Term and Renewal.

- 6.1. *Term*. The Agreement shall be effective for an initial term from and including the Effective Date through the date specified as the Agreement Initial Term End Date on the **Cover and Signature Page**, unless terminated earlier in accordance with the terms of the Agreement.
- 6.2. *Renewal by Agreement*. The District and the Service Provider may renew the Agreement for up to 4 additional, successive renewal terms of up to 12 months each. The total term of the Agreement, including the initial term and any renewal terms, shall not exceed 5 calendar years. To enter into a

renewal term, the parties may execute an **Agreement to Renew** in the form substantially equivalent to **Exhibit B – Sample Agreement to Renew** attached hereto and incorporated herein. The first executed **Agreement to Renew** shall be labeled **Exhibit B.1**. Each subsequently executed **Agreement to Renew** shall be labeled **Exhibit B.2, B.3, and B.4**, and, when executed, shall become a part of and be governed by the Agreement.

- 6.3. *Renewal by District Option.*** The District, at its discretion and in lieu of Renewal by Agreement as set forth in the immediately preceding subparagraph, has the option to create a renewal term by providing written notice to the Service Provider in the form substantially equivalent to **EXHIBIT C – Sample Renewal Option Letter**. The first executed Renewal Option Letter shall be labeled **EXHIBIT C.1**. Each subsequently issued Renewal Option Letter shall be labeled **EXHIBIT C.2, C.3, and C.4**, and, when executed, shall become a part of and be governed by the Agreement. Performance during a renewal term created by Renewal Option Letter shall continue at the same prices and rates and under the same terms as set forth in the Agreement.

## **7. Insurance of Service Provider.**

### **General Provisions**

Contractor agrees to secure, at or before the time of execution of this Agreement, the following insurance covering all operations, goods or services provided pursuant to this Agreement.

Contractor shall provide a copy of this Agreement to its insurance agent or broker. Contractor may not commence services or work relating to the Agreement prior to placement of coverage.

Contractor shall keep the required insurance coverage in force at all times during the term of the Agreement, or any extension thereof.

Insurer Ratings: The required insurance shall be underwritten by an insurer licensed or authorized to do business in Colorado and rated by A.M. Best Company as “A-“ VIII or better.

Cancellation, Non-Renewal Notifications: Each policy shall contain a valid provision or endorsement requiring notification to the District in the event any of the required policies are to be cancelled or non-renewed before the expiration date thereof. Such written notice shall be sent to the parties identified in the Notices section of this Agreement. Said notice shall be sent thirty (30) days prior to such cancellation or non-renewal unless due to non-payment of premiums for which notice shall be sent ten (10) days prior. If such written notice is unavailable from the insurer, Contractor shall provide written notice of cancellation, non-renewal or reduction in limits to the parties identified in the Notices section by certified mail, return receipt requested within three (3) business days of such notice by its insurer(s).

Deductibles or Self-Insured Retentions: If any policy is in excess of a deductible or self-insured retention, the Contractor must notify the District. Contractor shall be responsible for the payment of any deductible or self-insured retention.

Minimum Requirements: The insurance coverages specified in this Agreement are the minimum requirements, and these requirements do not lessen or limit the liability of the Contractor. The Contractor shall maintain, at its own expense, any additional kinds or amounts of insurance that it may deem necessary to cover its obligations and liabilities under this Agreement.

Contractor shall advise the District in the event any general aggregate or other aggregate limits are reduced below the required per occurrence limits. At its own expense, and where such general aggregate or other aggregate limits have been reduced below the required per occurrence limits, the Contractor will procure such per occurrence limits and furnish a new certificate of insurance showing such coverage is in

force.

**Proof of Insurance:** Contractor certifies that any certificate of insurance, (preferably an ACORD certificate), provided as evidence of insurance coverage under this Agreement, complies with all insurance requirements in this Agreement. The District's acceptance of a certificate of insurance or other proof of insurance that does not comply with all insurance requirements set forth in this Agreement shall not act as a waiver of Contractor's breach of this Agreement or of any of the District's rights or remedies under this Agreement. The District's Risk Management Department may require additional proof of insurance including but not limited to policies and endorsements.

**Subcontractors and Subconsultants:** All Subcontractors and Subconsultants (including Independent Contractors, Suppliers or other entities providing goods or services required by this Agreement) shall be subject to all of the requirements herein and shall procure and maintain the same coverages required of the Contractor. Contractor shall include all such Subcontractors as Additional Insureds under its policies (with the exception of Workers' Compensation) or shall ensure that all such Subcontractors and Subconsultants maintain the required coverages.

### **Insurance Coverage and Limits**

**Workers' Compensation/Employer's Liability:** Contractor shall maintain the coverage as required by statute and shall maintain Employer's Liability insurance with limits of at least \$100,000 per occurrence for each bodily injury claim, \$100,000 per occurrence for each bodily injury caused by disease claim, and \$500,000 aggregate for all bodily injuries caused by disease claims.

Contractor expressly represents to the District, as a material representation upon which the District is relying on entering into this Agreement, that none of the Contractor's officers or employees who may be eligible under any statute or law to reject Workers' Compensation insurance shall affect such rejection during any part of the term of this Agreement, and that any such rejections previously effected, have been revoked as of the date Contractor executes this Agreement.

**Business Automobile Liability:** Contractor shall maintain Business Automobile Liability coverage with limits of at least \$1,000,000 each accident applicable to all owned, hired and non-owned vehicles used in performing services under this Agreement.

**Commercial General Liability:** Contractor shall maintain Commercial General Liability coverage with limits of at least \$1,000,000 for each occurrence, \$1,000,000 for each personal and advertising injury claim, \$2,000,000 products and completed operations aggregate, and \$2,000,000 policy aggregate.

**Excess/Umbrella Liability:** Contractor shall maintain Excess or Umbrella Liability coverage with limits of at least \$1,000,000 per occurrence and \$1,000,000 policy aggregate. Coverage must be written on a "follow form" or broader basis.

The following three types of required insurance coverages may be met with separate policies or a combination of these coverages under one policy. If in a combined policy, the combined policy form shall include minimum limits of at least \$3,000,000 each occurrence and in the aggregate.

**Technology Errors & Omissions:** Contractor shall maintain Technology Errors & Omissions Liability coverage with limits of at least \$1,000,000 per occurrence and \$1,000,000 policy aggregate. The policy shall include, but not be limited to Network Security, Privacy Liability and Product Failure.

Media Professional Liability: Contractor shall maintain Media Professional Liability coverage with limits of at least \$1,000,000 per claim and \$1,000,000 in the aggregate. The policy shall include, but not be limited to, coverage for libel, slander, infringement of copyright, invasion of the right of privacy, and unauthorized use of titles, formats, ideas, characters, plots or other material used in the publication or design.

Cyber/Network Security & Privacy Liability: Contractor shall maintain Cyber/Network Security & Privacy Liability coverage with limits of at least \$1,000,000 per occurrence and \$1,000,000 policy aggregate. The policy shall include, but not be limited to, coverage for claims involving privacy violations, information theft, damage to or destruction of electronic information, intentional and/or unintentional release of private information, alteration of electronic information, extortion and network security.

### **Other Insurance Provisions**

Additional Insured Status: For Commercial General Liability, Auto Liability, Excess or Umbrella Liability and Cyber/Network Security and Privacy Liability (if applicable), Contractor's insurer(s) shall name School District No. 1 in the City and County of Denver, d/b/a Denver Public Schools, and its elected officials, employees, representatives and agents as Additional Insureds.

Waiver of Subrogation: For coverages required under this Agreement, Contractor's insurer (s) shall waive subrogation rights against the District.

Primary Coverage: For claims related to this Agreement, Contractor's insurance coverage shall be primary and non-contributory with other coverage or self-insurance maintained by the District.

Claims Made Policies: For claims-made coverage, the retroactive date must be on or before the contract date or the first date when any goods or services were provided to the District, whichever is earlier.

## **8. Additional Provisions**

Defense costs must be outside the limits of liability. Policies must contain a severability of interests or separation of insureds provision. The Commercial General Liability coverage must include contractual liability coverage. Data Protection, Security and Privacy (DPA). The Service Provider expressly agrees to and shall comply with the provisions of **Supplement 1 – Data Protection Addendum (DPA)** attached hereto and incorporated herein.

## **9. Confidentiality and Non-Disclosure**

**9.1. *Use of District Information.*** The Service Provider shall use and maintain the District Information for the sole and exclusive benefit of the District, only as necessary to perform under the Agreement, and only in compliance with Laws. The Service Provider shall **NOT** do any of the following, unless specifically permitted by the Agreement or unless the District specifically permits so in a writing, other than Click-Wrap acceptance, before the occurrence of any of the following:

- Use District Information for its own benefit (other than the benefits of this Agreement);
- Publish, copy, or otherwise disclose District Information to any person not a Party;
- Use the District's name, logos, or reputation.
- Use District Data to conduct External Research, as that term is defined by the District's Research Request process - <https://assessments.dpsk12.org/research-requests/>

**9.2. *Third Party Information.*** In the course of performing the Services, the Service Provider may have access

to information that is confidential and not public and belongs to persons not a Party and is not public, such as specifications, software code, ideas, documents or other material. The Service Provider shall not disclose this third party information to any person except as necessary to perform the Services. The Service Provider shall not violate the intellectual property or confidentiality and privacy of information rights of third parties.

**9.3. *Subcontractors etc. to do the Same.*** The Service Provider shall require its employees, agents, and Subcontractors to maintain the confidentiality of District Information in accordance with this provision.

**10. Order of Precedence.** If there is a conflict or inconsistency between or among any of the Agreement Documents, it shall be resolved in the following order of priority.

- 10.1. Supplement 1 – Data Protection Addendum** (if applicable); then
- 10.2.** The District Specific Provisions in the main body of the Agreement; then
- 10.3.** The remainder of the main body of the Agreement; then
- 10.4. EXHIBIT A – Description of Services, Support, and Licenses**, together with any attachments and Solicitation Documents; then
- 10.5.** Executed **EXHIBITS B.1, B.2**, and so on, in reverse chronological order; then
- 10.6.** Executed **EXHIBITS C.1, C.2**, and so on, in reverse chronological order; then
- 10.7. EXHIBIT B – Sample Agreement to Renew**; then
- 10.8. EXHIBIT C – Sample Option Letter**; then
- 10.9.** Any other Agreement Document (as listed under “Agreement Documents” in the Definitions section).

**11. Service Provider's Representations and Warranties.**

The Service Provider represents and warrants that the Service Provider:

- 11.1.** Is competent and qualified to and capable of performing the Services.
- 11.2.** Maintains the licensing, certificates, and other credentials required by law and by the District to perform the Services.
- 11.3.** Has full authority under applicable law to execute and deliver the Agreement and has the authority to perform all of the obligations under the Agreement.
- 11.4.** Was truthful and correct, to the best of its knowledge as of the time when made, in making any statement, representation, or information, in connection with the Agreement and the Services, on which the District has relied in the award of the Agreement.

**12. Termination, Default, and Remedies.**

**12.1. *Termination – No Default.*** The District may terminate the Agreement at any time, if the District determines that termination is in its best interest. If the District elects to terminate under this provision, the District will send written notice to the Service Provider. The notice will state on what date termination will become effective. That date shall not be less than 10 calendar days after the Service Provider receives the notice. The District will pay the Service Provider the sums earned and not yet paid up to the date of termination. The District will not pay for loss of anticipated profits.

**12.2. *Events of Default by Service Provider.*** Each of the following is an event of default:

- 12.2.1.** The Service Provider does not perform the Services as agreed; or
- 12.2.2.** The Service Provider does not comply with any provision of the Agreement or any Agreement Document; or
- 12.2.3.** The Service Provider defaults under any other agreement with the District, and the default remains unresolved for 60 calendar days; or
- 12.2.4.** A representation or warranty in this Agreement is or was not true as of the date made; or



- 12.2.5. The Service Provider loses a license or other credential or qualification that is required to perform under this Agreement; or
- 12.2.6. The Service Provider 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
- 12.2.7. The Service Provider or any of its employees, agents, Subcontractors, or volunteers performing the Service Provider's duties under this Agreement are convicted of a crime that renders the Service Provider no longer able or permitted to perform Services; or
- 12.2.8. The District determines in its sole discretion that the Service Provider's actions or inaction, or the action or inaction of any of the Service Provider's employees, agents, or Subcontractors, is a threat or danger to the District or any of the District Constituents.

**12.3. *Notice of 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 Service Provider. The notice will state the nature of the event of default, what actions the Service Provider needs to take to cure the default, the dates when the Service Provider has to complete the cure, and the action the District intends to take if the Service Provider 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 Service Provider of any remedies the District has taken within 30 calendar days after the District has taken such action.

**12.4. *District Remedies.*** In the event of default, and after the District has given notice and opportunity to cure where required, and if the Service Provider 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:

- 12.4.1. **Terminate** the Agreement or any part thereof. To the extent terminated, the Service Provider shall stop all work. The Service Provider shall complete and deliver to the District all work not cancelled by the termination notice. The District will pay only for accepted Services performed before termination.
- 12.4.2. **Suspend** the Service Provider's performance pending corrective action as the District may specify. The Service Provider shall cease all performance as the District may direct and will not be entitled to an adjustment in price or performance schedule.
- 12.4.3. **Withhold payment** to the Service Provider pending cure by the Service Provider.
- 12.4.4. **Deny payment** for Services not performed, or for Services that due to the Service Provider's actions or inactions cannot be performed, or, if they were performed, are of no value to the District. Denial of payment will be equal to the value of the obligations or Services not performed.
- 12.4.5. **Removal.** Demand immediate removal, or cause, on the District's own initiative, immediate removal of the Service Provider or any of the Service Provider's employees, agents, Subcontractors, or Subcontractors' agents or employees, if the District determines that removal is necessary to (i) preserve the safety or security of the District or District Constituents, or (ii) to prevent, respond to, or defend against any threat, assault, negligent or careless act, or otherwise inappropriate or dangerous behavior on District property or premises.
- 12.4.6. **Purchase Cover.** Purchase goods and services to complete or continue the Services. The Service Provider shall pay to the District, upon demand, all costs that the District incurs as a result.
- 12.4.7. **Intellectual Property Preservation.** If, in the performance under the Agreement, the

Service Provider infringes on an Intellectual Property right, the Service Provider shall, as approved by the District, (a) secure that right to use such work for the District or the Service Provider; (b) replace the work with non-infringing work or modify the work so that it becomes non-infringing; or, (c) remove any infringing work and refund the amount paid for such work to the District.

12.4.8. Offset costs and damages against and withhold any amount that may be due the Service Provider as the District deems necessary to protect the District against loss.

12.4.9. Other Remedies. Pursue any other remedy available to the District by law.

**12.5. *Obligations at Termination***. When the Agreement terminates for any reason, and in addition to all other duties under the Agreement and any Agreement Document, the Service Provider shall do the following:

12.5.1. Take timely, reasonable, and necessary action to protect and preserve property in the possession of the Service Provider and in which the District has an interest; and

12.5.2. At the District's request, return Materials and tangible objects owned by the District in the Service Provider's possession at the time of any termination; and

12.5.3. Deliver to the District all completed Work Product and all Work Product that was in the process of completion; and

12.5.4. As directed by the District, deliver and return to the District all District Information, or securely destroy all District Information so as to make it permanently irretrievable and certify as to such secure destruction.

**12.6. *Prepayment Refund***. The Service Provider shall refund any sums that the District has prepaid, and that remain unearned at the time of termination, within 45 calendar days after termination, except as the Parties may otherwise agree in writing.

## **13. General Contract Terms.**

**13.1. *Assignment***. The Service Provider may assign or subcontract its rights and obligations hereunder only with the express prior written consent of the District

**13.2. *Binding Effect***. This Agreement binds the Parties and their respective successors and assigns.

**13.3. *Captions and References***. The captions and headings are for reference only and shall not define or limit its provisions.

**13.4. *Counterparts***. The Agreement, and any amendments, may be executed in one or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument. Photocopies, scans, and facsimiles of executing signatures are valid evidence of execution.

**13.5. *Entire Understanding***. The Agreement represents the complete integration of all understandings between the Parties related to the Services and the subject matter of this Agreement.

**13.6. *Independent Contractor***. The Service Provider is an independent contractor and NOT an employee of the District. Employees and Subcontractors of the Service Provider are NOT employees of the District. The Service Provider shall perform all Services using independent judgment and expertise as an independent contractor. The District does not require the Service Provider to work exclusively for the District. The Service Provider shall deliver the Services in accordance with the plans and specifications set forth herein, and the District does not oversee the Service Provider's

actual work or instruct the Service Provider as to how the Service Provider performs the Services. This Agreement may be terminated only in accordance with the terms of this Agreement. The District does not provide training (other than minimal), tools or benefits to the Service Provider, except that the District may supply materials and equipment as specified herein. Payment under the Agreement is in accordance with the contract rate or price set forth herein, and shall not be in the form of a salary or hourly wage. The District does not dictate the time of performance, except to the extent a completion schedule or work hours are established in this Agreement. The District will make payments to the Service Provider in its trade or business name. The District does not combine business operations in any way with the Service Provider's business but maintains District operations separate and distinct from the Service Provider's operations. Neither Party is, or shall be construed to be, a partner or in joint venture with the other Party. Neither the Service Provider nor any agent, employees, Subcontractor, or Subcontractor's agent or employee has any authority, express or implied, to bind the District to any agreement or incur any liability attributable to the District. **Service Provider acknowledges that it is not entitled to Unemployment Compensation or Workers' Compensation benefits (unless coverage is provided by the Service Provider or other entity) and that Service Provider is obligated to pay federal and state income tax on any moneys earned from the District pursuant to the Agreement.** The District is not obligated to and will not pay federal, state, or local payroll taxes or make any payroll tax withholdings from payments made to the Service Provider, if any. The District will comply with all applicable tax reporting laws.

- 13.7. *Modification.* The Agreement can only be modified in writing executed by both Parties or as otherwise provided in the Agreement.
- 13.8. *Notices.* All notices required under the Agreement shall be in writing and shall be effective (i) when sent by electronic mail. Notices shall be sent to the email address on file in the supplier portal.. Each Party may change their respective notice address and other information without amending this Agreement by sending a notice to the other Party, designating the new notice address and information.
- 13.9. *Notification of Legal Process.* In the event the Service Provider becomes subject to legal process (e.g. without limitation, subpoenas, interrogatories, or pleadings) that relates to the Agreement or the Service Provider's performance under the Agreement or compels or will compel the Service Provider to disclose District Information, the Service Provider shall, unless prohibited by law, notify the District in writing within 7 calendar days after it receives such legal process. The notice shall include sufficient information for the District to take timely legal action to prevent disclosure and protect District Information (such as motions to quash) the District may choose to take in its sole discretion. The provisions of this subsection survive the termination of the Agreement.
- 13.10. *No Third-Party Beneficiaries.* The Agreement does not give any rights or benefits to anyone other than the Parties.
- 13.11. *Records and Audits.* The Service Provider shall maintain complete and accurate records of all charges incurred by the District under the Agreement, in accordance with generally accepted accounting principles, and other records related to the Agreement and performance thereunder, for a period from the date of termination of the Agreement as required by law. The District may inspect the Service Provider's records upon reasonable notice, and may retain copies thereof.
- 13.12. *Rights in and Use of Work Product.* The Service Provider assigns to the District, and its

successors and assigns, the entire right, title and interest in the Work Product, if any.

- 13.13. *Severability.*** If a court of competent jurisdiction rules any Agreement provision to be invalid or illegal, such ruling shall have no effect upon the remaining provisions, which shall be considered legally binding and given full effect.
- 13.14. *Subcontracts.*** The Service Provider shall, upon the District's request, provide (i) a list of all Subcontractors and (ii) a copy of each contract related to the performance under the Agreement with each such Subcontractor. All subcontracts entered into by the Service Provider in connection with the Agreement shall comply with all applicable Laws, shall provide that they are governed by the laws of the State of Colorado, and shall be subject to all provisions of the Agreement.
- 13.15. *Survival of Certain Agreement Terms.*** Any provision of the Agreement that imposes an obligation on a Party after termination or expiration of the Agreement survives the termination or expiration of the Agreement and is enforceable by the other Party.
- 13.16. *Waiver.*** A Party's failure to assert any rights or remedies, or a Party's waiver of its rights or remedies by a course of dealing or otherwise, shall not be deemed to be a waiver of any other right or remedy under the Agreement.

## **14. District Specific Terms.**

- 14.1. *Availability of Funds and Constitutional Limitations on Debt.*** Financial obligations of the District payable after the current Fiscal Year are contingent upon funds for that purpose being appropriated, budgeted, and otherwise made available. The District may also be relying on state or federal funding to satisfy its payment obligations under the Agreement. The District's payment obligations under the Agreement are subject to and conditioned upon the continuing availability of all funding for the purposes set forth in the Agreement. In the event funds are not appropriated, budgeted or otherwise made available, the District may terminate the Agreement as of the last day of the period for which funds were appropriated or monies made available for such purposes. All payments of the District under this Agreement constitute currently budgeted expenditures and do not constitute or give rise to a general obligation, indebtedness, or multiple-fiscal year direct or indirect debt or other financial obligation within the meaning of any constitutional or statutory provision or limitation. No provision of this Agreement shall be construed to pledge or to create a lien on any class or source of the District's monies. No provision of this Agreement shall be construed to restrict the future issuance of any bonds or obligations of the District payable from any class or source of District moneys.
- 14.2. *Compliance with Laws and District Policies/Non-Discrimination.*** The Service Provider shall comply with all Laws that apply to performance under the Agreement, as amended from time to time. The Service Provider shall comply with Laws (1) prohibiting the use or possession of alcohol, tobacco or firearms on District property; (2) related to web access; and (3) prohibiting discrimination, intimidation, or harassment on the basis of ethnicity or race, color, religion, national origin, ancestry, sex, sexual orientation, gender identity, genetic information, age, veteran status, or disability.
- 14.3. *Conflict of Interest.*** The Service Provider hereby acknowledges that it (i) has no personal or financial interest in the Agreement (other than any payment or fee to be earned thereunder); (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 project requiring the Services under the Agreement.

- 14.4. *Criminal Record Certification.*** Where required by Laws, the Service Provider shall complete a criminal records check on itself, if an individual, and any Service Provider employee, agent, or Subcontractor providing the Services on District property under the Agreement. The Service Provider, if an individual, and Service Provider's employees, Subcontractors, or other agents of the Service Provider, who have been convicted of, pled nolo contendere to, or received a deferred sentence or deferred prosecution for a felony, or a misdemeanor crime involving unlawful sexual behavior or unlawful behavior involving children, shall not be allowed to work on District property. The Service Provider shall complete a certification or affidavit to that effect upon the District's request. The Service Provider shall be responsible for complying with applicable privacy and confidentiality laws relating to the certification.
- 14.5. *Governing Law, Jurisdiction and Venue.*** The Agreement is made in and shall be governed by the laws of the State of Colorado. A Party shall bring any action to enforce its rights hereunder in a court of competent jurisdiction in Denver County, Colorado. All references to Law refers to the Law as in effect on the Effective Date. Any changes to Law after the Effective Date is hereby incorporated into the Agreement.
- 14.6. *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., or the Federal Tort Claims Act, 28 U.S.C. Pt. VI, Ch. 171 and 28 U.S.C. 1346(b).
- 14.7. *Indemnification from Service Provider. [Not applicable where the Service Provider is a Colorado governmental entity subject to the Colorado Constitutional tax and public spending provisions commonly known as TABOR.]*** The Service Provider shall indemnify, defend, and hold the District, and its employees, agents, and members of the governing board ("Indemnified Persons") harmless against any and all third party claims, costs, expenses, claims, actions, damages, liabilities, court awards, and other amounts (including attorney's fees, court costs, and related costs) ("Claims") incurred by any of the Indemnified Persons in connection with (i) any act or omission by the Service Provider related to the Agreement; (ii) any act or omission by the Service Provider's employees, agents, Subcontractors, or assignees related to the Agreement; (iii) the Work Product; or (iv) performance under the Agreement. In the event any Work Product, Materials, or the performance of the Services are covered by or infringe upon any Intellectual Property, the Service Provider shall indemnify and defend the Indemnified Persons and hold the Indemnified Persons harmless against all Claims resulting from such Intellectual Property based on actual or alleged manufacture, sale or use of Work Product, Services or Materials in violation, infringement or the like of Intellectual Property rights of others. The provisions of this section shall survive the termination of the Agreement.
- 14.8. *Indemnification by District Void.*** Notwithstanding anything to the contrary in the Agreement, an Agreement Document, or a Vendor Agreement, the District shall not indemnify the Service Provider and any other provision in an Agreement Document or a Vendor Agreement attempting to require that the District indemnify the Service Provider or any other party is null and void *ab initio*.
- 14.9. *Limitation of Liability – No Effect on Insurance Coverage.*** Any provision in the Agreement, an Agreement Document or a Vendor Agreement limiting the Service Provider's liability (if any) shall not affect or decrease any insurance coverage or coverage limits otherwise available. Any provision

in a Vendor Agreement seeking to limit or disclaim the Service Provider's liability shall not apply to this Agreement. The provisions of this subsection survive the termination of the Agreement.

- 14.10. *Open Records Law/CORA.*** The Colorado Open Records Act, CRS § 24-72-100.1 *et seq.*, as amended from time to time, applies to the Agreement, the Service Provider's performance, and the records and reports generated thereunder, to the extent not prohibited by federal law.
- 14.11. *PERA Contributions.*** If the Service Provider is a Colorado Public Employees Retirement Association (PERA) retiree or employs Colorado PERA retirees in performance of the Agreement, they must inform the District of this status. The District will make any employer PERA contributions that are required by legislation. The Service Provider or the Service Provider's employee who is a Colorado PERA retiree will be responsible to pay any working retiree contributions to PERA that are required by legislation.
- 14.12. *Public Contracts for Services.*** ***[Not applicable to contracts relating to the offer, issuance, or sale of securities, investment advisory services or fund management services, sponsored projects, intergovernmental contracts, or information technology services or products and services.]*** This provision is required by C.R.S. §§8-17.5-101 *et seq.* Service Provider certifies that it shall comply with the provisions of C.R.S. §8-17.5-101 *et seq.* Service Provider shall not knowingly (i) employ or contract with an illegal alien to perform work under the Agreement, (ii) enter into a contract with a subcontractor that knowingly employs or contracts with an illegal alien to perform work under the Agreement, or (iii) enter into a contract with a subcontractor that fails to contain a certification to Service Provider that the subcontractor shall not knowingly employ or contract with an illegal alien to perform work under the Agreement, Service Provider also represents and warrants that Service Provider has confirmed and will confirm the employment eligibility of all employees who are newly hired for employment in the United States to perform work under this Agreement, through participation in the E-Verify Program established under Pub. L. 104-208 or the State verification program established pursuant to C.R.S. §8-17.5-102(5)(c). Service Provider shall not use E-Verify Program or State program procedures to undertake pre-employment screening of job applicants while this Agreement is being performed. When the Service Provider has actual knowledge that a subcontractor is employing or contracting with an illegal alien for work under this Agreement, the Service Provider shall (i) notify its subcontractor and the District within 3 days and (ii) terminate the subcontract with the subcontractor if the subcontractor does not stop employing or contracting with the illegal alien within 3 days of receiving the notice (unless the subcontractor during those 3 days provides information to establish that the subcontractor has not knowingly employed or contracted with an illegal alien). Service Provider shall comply with reasonable requests made in the course of an investigation, undertaken pursuant to C.R.S. §8-17.5-102(5), by the Colorado Department of Labor and Employment. The District may terminate the Agreement if the Service Provider does not comply with this provision or the requirements of C.R.S. §§8-17.5-101 *et seq.* C.R.S. §§8-17.5-101 *et seq.*, and the Service Provider shall be liable for actual and consequential damages to the District.
- 14.13. *Public Contracts with Natural Persons.*** This provision is required by C.R.S. §§24-76.5-101 *et seq.* If Service Provider is a natural person 18 years of age or older, Service Provider hereby swears and affirms under penalty of perjury that he or she (i) is a citizen or otherwise lawfully present in the United States pursuant to federal law; (ii) shall comply with the provisions of C.R.S. §§24-76.5-101 *et seq.*, and (iii) has produced one form of identification required by C.R.S. §24-76.5-103, before the Effective Date.

**14.14. *Taxes and Fees.*** The District is exempt from the payment of any state, and most municipal, sales and use taxes for materials, supplies, and equipment used in the performance under the Agreement, and may be exempt from federal and other taxes. The Service Provider shall not include any of these taxes in any charges or invoices to the District. The Service Provider shall pay, at its own expense, all applicable taxes and fees in the execution of the terms of the Agreement, including but not limited to excise tax, federal and state income taxes, payroll and withholding taxes, unemployment taxes, and worker's compensation payments for its employees, and shall indemnify and hold the District harmless for all claims arising under such taxes and fees.

**15. Definitions.** In addition to other capitalized terms defined elsewhere in the Agreement, the following terms shall have the following meanings:

**15.1. "Agreement"** means this IT Contract, together with all Agreement Documents

**15.2. "Agreement Documents"** means each and the combination of the following parts of the Agreement, all of which together form one agreement:

15.2.1. The main body of the Agreement.

15.2.2. **EXHIBIT A – Description of Services, Support, and Licenses**, including any attachments, such as, without limitation, those incorporating Solicitation Documents.

15.2.3. **EXHIBIT B – Sample Agreement to Renew.**

15.2.4. **EXHIBIT C – Sample Option Letter to Renew.**

15.2.5. **Supplement 1 – Data Protection Addendum (DPA).**

15.2.6. Each executed **EXHIBIT B.1, B.2** and so on.

15.2.7. Each executed **EXHIBIT C.1, C.2** and so on.

**15.3. "Click-Wrap"** means both the act of accepting on-line terms and conditions of a Vendor Agreement without ink or paper, by clicking on an on-line button or link for that purpose, and the resulting agreement.

**15.4. "District Constituents"** means the District and its employees, board members, officers, agents, students, parents of District students, school visitors, and school communities.

**15.5. "District Data"** means District Data as defined in the **DPA** section of the Agreement.

**15.6. "District Information"** means any and all information, data, record, specification, software code, ideas, documents, and District Data, or other material, in any form and on any media, including but not limited to, any such information that may belong to or affect third persons not a party to this Agreement, which the Service Provider receives from the District.

**15.7. "DPA"** means the provisions of **Supplement 1 – Data Protection Addendum (DPA)**, which is attached hereto and incorporated herein.

**15.8. "Effective Date"** means the date when the Parties execute this Agreement and is the later date if the Parties sign on different dates.

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

- 15.10. *“Intellectual Property”* means any and all intellectual property, including without limitation, patent, copyright, trademark, trade secret, trade dress, or application therefor, and all work and rights derived therefrom.
- 15.11. *“Laws”* means all state, federal, and local laws, statutes, regulations, rules, code provisions, and case law, and includes the policies of the District and the District board.
- 15.12. *“Materials”* means all labor, licenses, materials, supplies, equipment, and all other items necessary to complete, perform and deliver the Services.
- 15.13. *“Party”* means the District or the Service Provider, and the plural means both the District and the Service Provider.
- 15.14. *“PO”* 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.
- 15.15. *“Services”* means the services and work the Service provider is performing in accordance with the Agreement, and shall include all goods, delivery of goods, and Materials the Service Provider procures, acquires and uses to perform the Services.
- 15.16. *“Solicitation Documents”* means the District’s request for proposal, request for qualifications, request for quote, or other documentation of the method of solicitation the District used to select the Service Provider, and any response and proposal of the Service Provider thereto. Solicitation Documents may be referred to and incorporated herein as an attachment to the **EXHIBIT A – Description of Services, Support, and Licenses**.
- 15.17. *“Subcontractor”* means persons not a Party that the Service Provider engages to aid in the performance under the Agreement.
- 15.18. *“Vendor Agreement”* means any form of agreement or documentation provided by the Service Provider, including without limitation, an on-line agreement, proposal, or invoice, whether made a part of the Agreement or effective or purporting to be effective outside of the Agreement.
- 15.19. *“Work Product”* means work product that the Service Provider 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 Service Provider developed before the Effective Date and used, without modification, in the performance of the Agreement.



## **EXHIBIT A – Description of Services, Support, and Licenses**

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The pricing shall be as follows:

- If this box is checked, pricing will be as the Service Provider quotes to the District, and the District accepts, at the time of each order.
- If this box is checked, pricing will be as follows: *(insert price list)*

**Attachment 1 to EXHIBIT A: Solicitation Documents**

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*[DELETE IF NOT APPLICABLE]*

The Solicitation Documents include the documents listed below. The corresponding documents from the indicated solicitation number are business documents of the District and incorporated herein.

1. RFP Document # \_\_\_\_\_
2. Response to RFP of Service Provider, which includes pricing.
3. \_\_\_\_\_
4. \_\_\_\_\_

**Attachment 2 to EXHIBIT A: Service Level Agreement**

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*[DELETE IF NOT APPLICABLE]*

**EXHIBIT B – Sample Agreement to Renew**

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1st  2nd  3rd  4th

**Agreement**

The Parties to that certain INFORM \_\_\_\_\_ TECHNOLOGY CONSULTING  
AGREEMENT by and between \_\_\_\_\_, and **Denver Public  
Schools** District 1,  
effective \_\_\_\_\_

Sample

\_\_\_\_\_ agree to renew the Agreement for:

- One year, with a new term of \_\_\_\_\_.
- \_\_\_\_\_ months, with a new termination date of \_\_\_\_\_.

Changes to the Agreement: In addition, the Parties make the following changes to the Agreement:

All provisions of the Agreement not specifically amended herein shall remain in effect unchanged.

<p><b>SERVICE PROVIDER:</b></p> <p>_____</p> <p>_____ <i>SAMPLE</i> _____</p> <p><i>Signature</i></p> <p>By: _____</p> <p><i>Name and Title of Person Signing for Service Provider</i></p> <p>_____ <i>SAMPLE</i> _____, 20____</p> <p><i>Date of Service Provider Representative Signature</i></p>	<p><b>DISTRICT:</b></p> <p><b>Denver Public Schools District 1</b></p> <p>_____ <i>SAMPLE</i> _____</p> <p><i>Signature</i></p> <p>By: _____</p> <p><i>Name and Title of Person Signing for District</i></p> <p>_____ <i>SAMPLE</i> _____, 20____</p> <p><i>Date of District Representative Signature</i></p>
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## EXHIBIT C – Sample Renewal Option Letter

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1st  2nd  3rd  4th

**District's Option to Renew**

In accordance with the provisions of the

INFORMATION TECHNOLOGY

CONSULTING

AGREEMENT by

between

and

Sample

\_\_\_\_\_  
\_\_\_\_\_  
the Agreement for: **Public Schools District 1**, effective \_\_\_\_\_, the District hereby exercises its option to renew

One additional year, with a new termination date of \_\_\_\_\_.

\_\_\_\_\_ months, with a new termination date of \_\_\_\_\_.

All other terms and provisions of the Agreement remain in effect unchanged.

**DISTRICT:**

**Denver Public Schools District 1**

\_\_\_\_\_ *SAMPLE* \_\_\_\_\_

*Signature*

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

*Name and Title of Person Signing for District*

\_\_\_\_\_ *SAMPLE* \_\_\_\_\_, 20\_\_\_\_\_

*Date of District Representative Signature*

# SUPPLEMENT 1

## DATA PROTECTION ADDENDUM

This Data Protection Addendum (“Addendum”) is attached to and applies to all services provided by Contractor to District, whether by contract, memorandum of understanding or other form of agreement (the “Contract”) dated April 13, 2020, by and between School District No. 1 in the City and County of Denver and State of Colorado, d/b/a Denver Public Schools (“District”) and [TPRS Publishing, Inc. (dba: Fluency Matters)] (“Contractor”) (the Addendum and the Contract are collectively referred to hereinafter as “Agreement”). This Addendum supersedes the Contract by adding to, deleting from and modifying the Contract as set forth herein. To the extent any such addition, deletion or modification results in any conflict or inconsistency between the Contract and this Addendum, this Addendum shall govern and the terms of the Contract that conflict with this Addendum or are inconsistent with this Addendum shall be of no force or effect.

In consideration of the mutual covenants, promises, understandings, releases and payments described in the Contract and this Addendum, the parties agree to amend the Contract by adding the following language:

### 1. Definitions

1.1. “*Biometric Record*,” as used in the definition of “Personally Identifiable Information,” means a record of one or more measurable biological or behavioral characteristics that can be used for automated recognition of an individual. Examples include fingerprints; retina and iris patterns; voiceprints; DNA sequence; facial characteristics; and handwriting.

1.2. “*Designated Representative*” means District or Contractor employees as specified on Schedule 1 to whom all notices required in this Addendum will be sent.

1.3. “*District Data*” means any Personally Identifiable Information, Record, Education Records, as defined herein, and all Personally Identifiable Information included therein or derived therefrom that is not intentionally made generally available by the District on public websites or publications but is made available directly or indirectly by the District to Contractor or that is otherwise collected or generated by Contractor in connection with the performance of the Services, as defined herein.

1.4. “*De-identified Data*” means District Data from which all Personally Identifiable Information, as defined herein, and attributes about such data, have been permanently removed so that no individual identification can be made.

1.5. “*Education Records*” means records, files, documents and other materials that: (a) contain information directly related to a student; and (b) are maintained by the District, or by a party acting for the District such as Contractor.



1.6. “*End User*” means individuals authorized by the District to access and use the Services as defined herein.

1.7. “*Incident*” means a suspected, attempted, or imminent threat of unauthorized access, use, disclosure, breach, modification, disruption or destruction to or of District Data.

1.8. “*Mine District Data*” means the act of searching through, analyzing, accessing, or extracting District Data, metadata, or information not necessary to accomplish the Services or purpose(s) of this Agreement for the benefit of the District.

1.9. “*Personally Identifiable Information*” or “*PII*” means information and metadata that, alone or in combination, is linked or linkable to a specific student so as to allow a reasonable person in the school community, who does not have personal knowledge of the relevant circumstances, to identify the student with reasonable certainty. Personally Identifiable Information includes, but is not limited to: (a) the student’s name; (b) the name of the student’s parent or other family members; (c) the address or phone number of the student or student’s family; (d) personal identifiers such as the student’s state-assigned student identifier, social security number, student number or biometric record; (e) indirect identifiers such as the student’s date of birth, place of birth or mother’s maiden name; and (f) demographic attributes, such as race, socioeconomic information, and gender.

To the extent it is not already included in the definition hereinabove, PII also includes: (a) “personal information” as defined in the Colorado Open Records Act, C.R.S. 24-72-101 et seq. (“CORA”); (b) Personally Identifiable Information contained in student “education records” as that term is defined in the Family Educational Rights and Privacy Act, 20 U.S.C. 1232g; (c) “protected health information” as that term is defined in the Health Insurance Portability and Accountability Act, 45 C.F.R. Part 160.103; (d) “nonpublic personal information” as that term is defined in the Gramm-Leach-Bliley Financial Modernization Act of 1999, 15 U.S.C. 6809; (e) credit and debit card numbers and/or access codes and other cardholder data and sensitive authentication data as those terms are defined in the Payment Card Industry Data Security Standards; and (f) other financial account numbers, access codes, and state- or federal-identification numbers such as driver’s license, passport or visa numbers.

1.10. “*Record*” means any information recorded in any way, including, but not limited to, handwriting, print, computer media, video or audio tape, film, microfilm, and microfiche.

1.11. 1.10 “*Securely Destroy*” means to remove District Data from Contractor’s systems, paper files, records, databases, and any other media regardless of format, in accordance with the standard detailed in National Institute of Standards and Technology (“NIST”) SP 800-88 r1 (2014) or as amended Guidelines for Media Sanitization so that District Data is permanently irretrievable in Contractor’s and its Subcontractors’ normal course of business.

1.12. “*Security Breach*” means an event in which District Data is exposed to unauthorized disclosure, access, alteration or use or a system configuration that results in a documented unsecured disclosure, access, alteration or use, in a manner not permitted in this Addendum, which poses a significant risk of financial, reputational or other harm to the affected End User or the District.

1.13. “*Services*” means any goods or services acquired by the District from the Contractor, or under the contract, including but not limited to computer software, mobile applications (apps), and web-based tools accessed by End Users through the Internet, installed, or run on a computer or electronic device.

1.14. “*Subcontractor*” means Contractor’s employees, subcontractors or agents, identified on Schedule 2, as updated by Contractor from time to time in accordance with the requirements of this Addendum, who Contractor has engaged to enable Contractor to perform its obligations under the Contract.

1.15. “*Student Profile*” means a collection of PII data elements relating to a student of the District.

## **2. Rights and License in and to District Data**

District owns all rights, title, and interest in and to District Data and any and all now known or hereafter existing intellectual property rights associated therewith, and any derivative works thereof or modifications thereto, including without limitation, De-identified Data. The District hereby grants to Contractor a limited, nonexclusive license to use District Data solely for the purpose of performing its obligations specified in the Contract. This Agreement does not give Contractor any rights, title, or interest implied or otherwise, to District Data or De-identified Data, except as expressly stated in the Contract.

## **3. Data Privacy**

3.1 Use of District Data. Contractor shall use District Data only for the purpose of performing the Services and fulfilling its duties under the Contract.

3.2 Prohibited Uses of District Data. With the exception of De-identified Data that the District has agreed in writing to allow Contractor to use as specified in Section 3.5, Contractor shall not:

3.2.1 Use, sell, rent, transfer, distribute, alter, mine, or disclose District Data (including metadata) to any third party without the prior written consent of the District, except as required by law;

3.2.2 Use District Data for its own commercial benefit, including but not limited to, advertising or marketing of any kind directed toward children, parents, guardians, or District

employees, unless such use is specifically authorized by this Agreement or otherwise authorized in writing by the District;

3.2.3 Use District Data in a manner that is inconsistent with Contractor’s privacy policy;

3.2.4 Use District Data to create a Student Profile other than as authorized or required by the Contract to perform the Services; and

3.2.5 Store District Data outside the continental United States unless Contractor has given the District Designated Representative advance written notice of where and how the servers are housed, managed, and secured, and that the security standards required herein can be achieved.

3.3 Qualified FERPA Exception. If Contractor will have access to Education Records, Contractor acknowledges that, for the purposes of this Agreement, pursuant to the Family Educational Rights and Privacy Act, 20 U.S.C. § 1232g and its implementing regulations, 34 C.F.R. Part 99 (“FERPA”), it will be designated as a “school official” with “legitimate educational interests” in the District Education Records and PII disclosed pursuant to the Contract, and Contractor agrees to abide by the FERPA limitations and requirements imposed on school officials. Contractor will use the Education Records only for the purpose of fulfilling its duties under the Contract for District’s and its End Users’ benefit, and shall not share District Data with or disclose it to any third party except as provided for in the Agreement, as required by law, or if authorized in writing by the District. Contractor warrants and represents that during the five-year period preceding the Effective Date of this Agreement, it has not been found in violation of FERPA by the U.S. Department of Education’s Family Policy Compliance Office.

3.4 Subcontractor Use of District Data. To the extent necessary to perform its obligations specified in the Contract, Contractor may disclose District Data to Subcontractors pursuant to a written agreement, specifying the purpose of the disclosure and providing that: (a) Subcontractor shall not disclose District Data, in whole or in part, to any other party; (b) Subcontractor shall not use any District Data to advertise or market to students or their parents/guardians; (c) Subcontractor shall access, view, collect, generate and use District Data only to the extent necessary to assist Contractor in performing its obligations specified in the Contract; (d) at the conclusion of its/their work under its/their subcontract(s) Subcontractor shall, as directed by the District through Contractor, Securely Destroy all District Data in its/their possession, custody or control, or return such District Data to the District, at the election of the District; (e) Subcontractor shall indemnify the District in accordance with the terms set forth in Section 10 hereinbelow; and (f) Subcontractor shall utilize appropriate administrative, physical and technical safeguards in accordance with industry standards and best practices to secure District Data from unauthorized disclosure, access and use. Contractor shall ensure that its employees and Subcontractors who have potential access to District Data have undergone appropriate background screening, to the District’s satisfaction, and possess all needed qualifications to comply with the

terms of this Addendum. Contractor shall also ensure that its Subcontractors comply with the insurance requirements specified in Section 12 of this Addendum.

3.5 Use of De-identified Data. Contractor may use De-identified Data for purposes of research, the improvement of Contractor's products and services, and/or the development of new products and services. In no event shall Contractor or Subcontractors re-identify or attempt to re-identify any De-identified Data or use De-identified Data in combination with other data elements or De-identified Data in the possession of a third-party affiliate, thereby posing risks of re-identification.

3.6 Privacy Policy Changes. Prior to making a material change to Contractor's privacy policies, Contractor shall send District's Designated Representative written notice, which includes a clear explanation of the proposed changes.

#### **4. Data Security**

4.1 Security Safeguards. Contractor shall store and process District Data in accordance with commercial best practices, including implementing appropriate administrative, physical, and technical safeguards that are no less rigorous than those outlined in SANS Top 20 Security Controls, as amended, to secure such data from unauthorized access, disclosure, alteration, and use. Contractor shall ensure that all such safeguards, including the manner in which District Data is collected, accessed, used, stored, processed, disposed of and disclosed, comply with all applicable federal and state data protection and privacy laws, regulations and directives, including without limitation C.R.S. § 22-16-101 *et seq.*, as well as the terms and conditions of this Addendum. Without limiting the foregoing, and unless expressly agreed to the contrary in writing, Contractor warrants that all electronic District Data will be encrypted in transmission and at rest in accordance with NIST Special Publication 800-57, as amended.

4.2 Risk Assessments. Contractor shall conduct periodic risk assessments and remediate any identified security vulnerabilities in a timely manner.

4.3 Audit Trails. Contractor shall take reasonable measures, including audit trails, to protect District Data against deterioration or degradation of data quality and authenticity, and to ensure data is deidentified in accordance with this Addendum.

4.4 Verification of Safeguards. Upon District's written request, Contractor shall provide or make available to the District for review, one or more of the following, verifying Contractor's administrative, physical and technical safeguards are in compliance with industry standards and best practices: (1) a third-party network security audit report; (2) certification from Contractor indicating that an independent vulnerability or risk assessment of the Contractor's data security program has occurred; (3) district data has been deidentified by Contractor as set forth in the definition of Deidentified Data in section 1.3 of this Addendum.

4.5 Background Checks. The Contractor and every person, including any subcontractor or agent of the Contractor, who has unsupervised access to students, or access to student data, shall be required to have a criminal background check. The results of the background check shall comply with the provisions of 24-72-305.3, C.R.S. and other district requirements, and upon request, be available to the District. The criminal background check shall, at a minimum, meet the requirements of 22-32-109.7, C.R.S. The costs associated with the background check are solely the Contractor's responsibility. Before Services begin, each person required to provide a criminal background check shall disclose in writing and sign a notarized affidavit whether or not he or she has been convicted of any charge(s) such as a felony, misdemeanor, or municipal ordinance violation. Thereafter, during the term of the Contract all new personnel, subcontractor(s), third party support personnel and agents, whether paid or not, that are engaged, hired or added to perform the Services, shall be subject to these same requirements before performing services on Contractor's behalf.

Notwithstanding the criminal background check requirement as set forth above, Contractor hereby warrants that no employee, subcontractor or agent of the Contractor rendering the Services has been convicted of a criminal offense in Colorado or in any other State involving: (i) the abuse, abduction, sexual molestation, physical or sexual assault on, or rape of a minor; or (ii) any crime involving exploitation of minors, including but not limited to, child pornography offenses or any crime of violence; and (iii) Contractor shall notify the District immediately upon the discovery or receipt of any information that any person working for the Contractor has been detained or arrested by a law enforcement agency. Contractor understands that allowing any employee, subcontractor, volunteer or agent who is providing services on Contractor's behalf, access to students, District's records, including PII, or to enter onto the District's property, that has been arrested or convicted of the aforementioned crimes, constitutes a material breach of this Agreement and may result in the immediate termination of this Agreement.

## **5. Security Incident and Security Breach**

5.1 Security Incident Evaluation. In the event of an Incident, Contractor shall follow industry best practices to fully investigate and resolve the Incident, and take steps to prevent developments that may result in the Incident becoming a Security Breach at Contractor's expense in accordance with applicable privacy laws.

5.2 Response. Immediately upon becoming aware of a Security Breach, or a complaint of a Security Breach, Contractor shall notify the District Designated Representative in writing as set forth herein, fully investigate the Security Breach, cooperate fully with the District's investigation of and response to the Security Breach, and use best efforts to prevent any further Security Breach at Contractor's expense in accordance with applicable privacy laws. Except as otherwise required by law, Contractor shall not provide notice of the Security Breach directly to individuals whose Personally Identifiable Information was involved, to regulatory agencies, or to other entities, without first providing written notice to the District's Designated Representative.

5.3 Security Breach Report. If the District reasonably determines that Contractor has committed a Security Breach, then the District may request Contractor to submit, within seven (7) calendar days from discovery of such breach, a written report, and any supporting documentation, identifying (i) the nature of the Security Breach, (ii) the steps Contractor has executed to investigate the Security Breach, (iii) what District Data or PII was used or disclosed, (iv) who or what was the cause of the Security Breach, (v) what Contractor has done or shall do to remediate any deleterious effect of the Security Breach, and (vi) what corrective action Contractor has taken or shall take to prevent a future Incident or Security Breach. The District reserves the right to require Contractor to amend its remediation plans.

5.4 Effect of Security Breach. Upon the occurrence of a Security Breach, the District may terminate this Agreement in accordance with District policies. The District may require Contractor to suspend all Services, pending the investigation and successful resolution of any Security Breach, and Contractor may be required to reimburse District all amounts paid for any period during which Services were not rendered. Contractor acknowledges that, as a result of a Security Breach, the District may also elect to disqualify Contractor and any of its Subcontractors from future contracts with the District.

5.5 Liability for Security Breach. In addition to any other remedies available to the District under law or equity, Contractor shall reimburse the District in full for all costs, including but not limited to, payment of legal fees, audit costs, fines, and other fees imposed that were actually incurred by the District and caused in whole or in part by Contractor or Contractor's Subcontractors for any Security Breach. If Personally Identifiable Information is compromised, Contractor shall provide notification to the affected individuals on behalf of the District, pursuant to the Student Data Transparency and Security Act, C.R.S. 22-16-108 (4). Contractor shall provide one year's credit monitoring to the affected individuals if the Personally Identifiable Information exposed during any Security Breach could be used to commit financial identity theft.

## **6. Response to Legal Orders, Demands or Requests for Data**

6.1 Received by Contractor. Except as otherwise expressly prohibited by law, Contractor shall immediately notify the District of any subpoenas, warrants, or other legal orders, demands or requests received by Contractor seeking District Data; consult with the District regarding its response; cooperate with the District's reasonable requests in connection with efforts by the District to intervene and quash or modify the legal order, demand or request; and, upon the District's request, provide the District with a copy of its response.

6.2 Received by District. If the District receives a subpoena, warrant, or other legal order, demand or request seeking District Data maintained by Contractor, including but not limited to, a request pursuant to the CORA, the District will promptly notify Contractor and, within two (2) business days, excluding national holidays, Contractor shall supply the District with copies of the District Data for the District to respond.

6.3 Parent Request. If a parent, legal guardian or student contacts the District with a request to review or correct District Data or PII, pursuant to FERPA or the Student Data Transparency and Security Act, C.R.S. § 22-16-101 *et seq.* (the “Act”), the District will promptly notify Contractor’s Designated Representative and Contractor shall use reasonable and good faith efforts to assist the District in fulfilling such requests, as directed by the District, within ten calendar (10) days after receipt of District’s notice. Conversely, if a parent, legal guardian or student contacts the Contractor with a request to review or correct District Data or PII, within ten calendar (10) days after receipt of such notice, Contractor shall promptly notify the District and shall use reasonable and good faith efforts to assist the District in fulfilling such requests, as directed by the District.

6.4 Access to District Data. District shall have the right to access and retrieve any or all District Data stored by or in possession of Contractor upon written notice to Contractor’s Designated Representative. Contractor shall make the District Data available to the District within seven (7) calendar days from the date of request.

## **7. Compliance with Applicable Law**

7.1. Children’s Online Privacy and Protection Act. If Contractor collects personal information (as defined in the Children’s Online Privacy and Protection Act of 1998, 5 U.S.C. 6501 to 6505, and its implementing regulations (“COPPA”)) from children under thirteen (13) years of age in performing the Services, Contractor warrants, represents, and covenants that such collection is and shall be for the use and benefit of the District and for no other commercial purpose. Contractor has provided District with written notice of its collection, use, and disclosure practices.

7.2 Compliance with Laws. Contractor warrants that it will abide by all applicable laws, ordinances, rules, regulations, and orders of all governmental agencies or authorities having jurisdiction over the Services including but not limited to: (a) COPPA; (b) FERPA; (c) the Health Insurance Portability and Accountability Act, 45 C.F.R. Part 160.103; (d) the Health Information Technology for Economic and Clinical Health Act, (e) Gramm-Leach-Bliley Financial Modernization Act of 1999, 15 U.S.C. 6809; (f) Payment Card Industry Data Security Standards; (g) Protection of Pupil Rights Amendment, 20 U.S.C. 1232h, 34 C.F.R. Part 98; and (h) Americans with Disabilities Act, and Federal Export Administration Regulations.

7.3 Americans with Disabilities Act. To the extent the District is required to provide accommodations in compliance with the Americans with Disability Act (“ADA”), Contractor will make best efforts to assist the District in providing its services to end users pursuant to this Agreement, and will assistance the District in a manner that its system and services will, at a minimum, conform with all laws, regulations and guidance that apply to accessibility in accordance with the ADA, Section 504 of the Rehabilitation Act of 1973, and the Web Content Accessibility Guidelines (WCAG) 2.0 Level AA guidelines; provided, however, Contractor will have no obligations with respect to such compliance as it relates to any portion of the system and services provided or developed by the District including District content.

## **8. Term and Termination**

8.1 This Addendum takes effect immediately as of the Effective Date, and remains in full force and effect until the successful completion of the services, unless earlier terminated under Sections 8.2 or 12.3.

8.2 Subject to Sections 8.2 and 12.3, this Addendum will automatically terminate without any further action of the Parties upon the termination or expiration of the Contract between the Parties or successful completion of the Services. Alternatively, upon re-execution of the Contract by the authorized persons of District and Contractor, this Addendum shall also be revived and be of full force and effect.

### **8.2 Termination by the District.**

8.2.1 The District may immediately terminate the Contract in accordance with District policies if, at any time, the District determines in its sole discretion, that Contractor has breached any of the requirements of this Addendum.

8.2.2 The District may terminate the Contract if District receives information that Contractor has failed to comply with the same or substantially similar security obligations as set forth herein with another school district.

8.2.3 The District may terminate the Contract if the District receives information after execution of this Addendum, that any of Contractor's representations or warranties have substantially changed after execution of this Addendum, including but not limited to the terms of Contractor's privacy policy.

## **9. Data Transfer Upon Termination or Expiration**

9.1 Destruction or Return of District Data. With the exception of De-identified Data that District has specifically agreed in writing to allow Contractor to use after termination or expiration of this Agreement, or District Data for which Contractor has specifically obtained consent from the parent, legal guardian or student to keep, no later than (30) calendar days after termination or expiration of this Agreement, Contractor shall certify in writing that all District Data and PII that Contractor collected, generated or inferred pursuant to the Contract ("Contract Data"), is securely returned or Securely Destroyed, pursuant to Schedule 4 attached hereto.

9.2 Transfer and Destruction of District Data. If the District elects to have all District Data or Contract Data that is in Contractor's possession or in the possession of Contractor's Subcontractors transferred to a third party designated by the District, such transfer shall occur within a reasonable period of time but no later than thirty (30) calendar days after expiration or termination of this Agreement, and without significant interruption in service or access to such District Data. Contractor shall work closely with such third party transferee to ensure that such



transfer/migration uses facilities and methods compatible with the relevant systems of the District or its transferee, and to the extent technologically feasible, that the District will have reasonable access to District Data during the transition. District will pay all costs associated with such transfer, unless such transfer is as the result of termination of this Agreement following Contractor's breach of the terms of this Agreement. Upon successful transfer of District Data, as confirmed in writing by the District's Designated Representative, Contractor shall Securely Destroy all District Data in accordance with Section 9.1.

9.3 Response to Specific Data Destruction or Return Requests. After receiving a written request from the District, Contractor shall Securely Destroy or return any specific District Data or Contract Data that is in its possession or in the possession of its Subcontractors within five (5) business days, excluding national holidays, after receiving a written request from the District.

## **10. Indemnification**

10.1 If Contractor is a "public entity" then it will be responsible for the negligent acts and omissions of its officers, agents, employees and representatives with respect to its obligations under this Agreement. Any provision of this Agreement, whether or not incorporated herein by reference, shall be controlled, limited and otherwise modified so as to limit any liability of the Contractor under the Colorado Governmental Immunity Act, C.R.S. 24-10-101 et seq. It is specifically understood and agreed that nothing contained in this paragraph or elsewhere in this Agreement shall be construed as an express or implied waiver of its governmental immunity or as an express or implied acceptance of liabilities arising as a result of actions which lie in tort or could lie in tort in excess of the liabilities allowable under the Act, as a pledge of the full faith and credit of the Partner, or as the assumption by the Partner of a debt, contract or liability of the District or its affiliates in violation of Article XI, Section 1 of the Constitution of the State of Colorado.

10.2 If Contractor is not a "public entity" then Contractor shall indemnify, defend and hold District and its elected officials, employees, representatives, and agents harmless, without limitation, from and against any and all losses, damages, liabilities, deficiencies, actions, judgments, interest, awards, penalties, fines, costs or expenses, including attorneys' fees, the costs of enforcing any right to indemnification hereunder, and the cost of pursuing any insurance providers, arising out of or resulting from Contractor's, or Contractor's subcontractors, performance of services under this Addendum, any third-party claim against any Indemnified party to the extent arising out of or resulting from Contractor's, or Contractor's subcontractors, failure to comply with any of its obligations under Sections 3, 4, 5, and 9 of this Addendum, and any breach of Contractor's, or Contractor's subcontractors, obligations under this Addendum. These indemnification duties shall survive termination or expiration of this Agreement.

## **11. Insurance**

11.1 Coverage. As required by Schedule 5.

## **12. Miscellaneous**

12.1 No Contractor End User Agreements. Contractor shall not require End Users to sign or complete any end user license agreements (EULA) or acceptable use policy (AUP) agreements or understandings, whether electronic, verbal, or in writing. In the event that an EULA or AUP is completed by a District End User, this Addendum shall supersede the Contractor's agreement.

12.2 Public Inspection of Agreement. Contractor acknowledges and agrees that this Agreement and all documents Contractor provides District as required herein, are public records for purposes of the CORA and shall at all times be subject to public inspection. The parties understand that in the event of a request for disclosure of such information, the District will notify Contractor to give Contractor the opportunity to redact its proprietary or confidential material. In the event of the filing of a lawsuit to compel disclosure, the District will tender Contractor's material to the court for judicial determination of the issue of disclosure and Contractor agrees to intervene in such lawsuit to protect and assert its claims of privilege against disclosure or waive the same.

12.3 Survival. The Contractor's obligations under Sections 3, 4, 5, 6, 9, and 10, and any other obligations or restrictions that expressly or by their nature are to continue after termination, shall survive termination of this Agreement for any reason until all District Data has been returned or Securely Destroyed.

12.4 Choice of Law. Any claim, controversy or dispute arising under or related to this Addendum shall be construed pursuant to the substantive, not conflicts, laws of the State of Colorado. Each of the Parties submits to the exclusive jurisdiction of any state court sitting in or federal court with jurisdiction over Denver County, Colorado, in any action or proceeding arising out of or relating to this Agreement and agrees that all claims in respect of the action or proceeding may be heard and determined in any such court. Each Party also agrees not to bring any action or proceeding arising out of or relating to this Addendum in any other court. Each of the Parties waives any defense of inconvenient forum to the maintenance of any action or proceeding so brought and waives any bond, surety or other security that might be required of any other Party with respect to any such action or proceeding.

12.5 Immunities. The District retains all of its rights, privileges and immunities under the Colorado Governmental Immunity Act, C.R.S. § 24-10-101 *et seq.*

12.6 No Assignment. Contractor shall not assign or subcontract any of its rights or obligations hereunder without the express written consent of District. Any assignment in violation of this section shall be void.

12.7 No Third Party Beneficiaries. Nothing in this Agreement shall be construed to give any rights or benefits to anyone other than District.

12.8 Schedules. The following schedules are attached hereto, or shall be attached hereto, and are specifically made a part hereof by this reference:

Schedule 1 – Designated Representatives

Schedule 2 – Subcontractors

Schedule 3 – Written Consent to Maintain De-identified Data

Schedule 4 – Certification of Destruction\Return of District Data

Schedule 5 – Data Elements

Schedule 6 – Insurance

12.9 Counterparts. This Addendum may be executed in one or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument.

12.10 Effectiveness; Date. This Addendum will become effective when all parties have signed it. The date of this Addendum will be the date this Addendum is signed by the last party to sign it (as indicated by the date associated with the party's signature).

Each party is signing this agreement on the date stated opposite that party's signature.

SCHOOL DISTRICT NO. 1 IN THE CITY  
AND COUNTY OF DENVER, D/B/A  
DENVER PUBLIC SCHOOLS

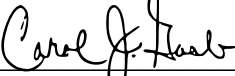
Date: \_\_\_\_\_

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

Bryan Westerman  
Student Data Privacy Officer

[NAME OF CONTRACTOR]

Date: April 13, 2020

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

Carol Gaab  
President

Date: \_\_\_\_\_

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

**SCHEDULE 1  
Designated Representatives**

NOTICE REQUIRED	DISTRICT REPRESENTATIVE	CONTRACTOR REPRESENTATIVE
Security Breach:	Bryan Westerman Student Data Privacy Officer By U.S. Mail: 1860 Lincoln St Denver, CO 80203 By E-mail: bryan_westerman@dpsk12.org	[TITLE] By U.S. Mail: _____ By E-mail: _____
FERPA Requests:	Bryan Westerman Student Data Privacy Officer By U.S. Mail: 1860 Lincoln St Denver, CO 80203 By E-mail: bryan_westerman@dpsk12.org	[TITLE] By U.S. Mail: _____ By E-mail: _____
CORA Requests:	Bryan Westerman Student Data Privacy Officer By U.S. Mail: 1860 Lincoln St Denver, CO 80203 By E-mail: bryan_westerman@dpsk12.org	[TITLE] By U.S. Mail: _____ By E-mail: _____
Updates to Privacy Policy / Transparency Requirements:	Bryan Westerman Student Data Privacy Officer By U.S. Mail: 1860 Lincoln St Denver, CO 80203 By E-mail: bryan_westerman@dpsk12.org	[TITLE] By U.S. Mail: _____ By E-mail: _____
Updates to Subcontractor Schedule:	Bryan Westerman Student Data Privacy Officer By U.S. Mail: 1860 Lincoln St Denver, CO 80203 By E-mail: bryan_westerman@dpsk12.org	[TITLE] By U.S. Mail: _____ By E-mail: _____
Data Retrieval:	Bryan Westerman Student Data Privacy Officer By U.S. Mail: 1860 Lincoln St Denver, CO 80203 By E-mail: bryan_westerman@dpsk12.org	[TITLE] By U.S. Mail: _____ By E-mail: _____
Destruction of Data:	Bryan Westerman Student Data Privacy Officer By U.S. Mail: 1860 Lincoln St Denver, CO 80203 By E-mail: bryan_westerman@dpsk12.org	[TITLE] By U.S. Mail: _____ By E-mail: _____

**SCHEDULE 1**  
**Designated Representatives**

**DISTRICT REPRESENTATIVE**

Mary Cooper  
Director of Financial Operations  
1860 Lincoln Street  
Denver, CO 80203  
mary\_cooper@dpsk12.org

Bryan Westerman  
Student Data Privacy Officer  
1860 Lincoln Street  
Denver, CO 80203  
Bryan\_Westerman@dpsk12.org

**SERVICE PROVIDER REPRESENTATIVE**

*(same as in Agreement if blank)*

**Name: Carol Gaab**

**Title: President**

**Address: 3621 E. Coconino Pl. Phoenix, AZ**

**Phone: 480-821-8608**

**E-mail: Carol@FluencyMatters.com**

**SCHEDULE 2  
Subcontractors**

*Contractor shall update this information as necessary to maintain accuracy and shall send revised attachments, exhibits or schedules to the District’s Authorized Representative.*

**What third party vendors does Contractor do business with that may have access to student personally identifiable data, and what is the purpose of these third party vendors (please fill complete the table below with this information)?**

<b>Name of Subcontractor</b>	<b>Primary Contact Person</b>	<b>Subcontractor’s Address</b>	<b>Subcontractor’s Phone/email</b>	<b>Purpose of re-disclosure to Subcontractor</b>
RBM, LLC	Steve Bennett	Real Big Marketing LLC 2855 Riegel Rd Parma, MI 49269-9593	steve@realbigmarketing.com	web and plug-in development and tech support
Carrie Toth	Carrie Toth	Carrie Toth 15909 Walnut Dr. Carlyle, IL 62231	<a href="mailto:Carrie@FluencyMatters.com">Carrie@FluencyMatters.com</a>	quiz/content development and troubleshooting quiz issues

**SCHEDULE 3**  
**Written Consent to Maintain De-identified Data**

The District hereby gives its consent for Contractor to retain and use for the stated purpose and period, De-identified Data elements as set forth below:

Description of De-identified Data Elements	Purpose for Retention and Use	Period of Use

I/We, Carol Gaab, as [title] President and the authorized representative(s) of the Contractor do hereby certify that no attempt will be made to re-identify De-identified Data.

Contractor Name: Fluency Matters

Contractor Representative Name: Carol Gaab

Title: President

Signature: \_\_\_\_\_ Date: April 13,  
2020





## **SCHEDULE 5**

### **Data Elements**

*(Mandatory to be completed if Service Provider is a School Service Contract Provider under CRS 22-16-101 et seq.)*

**1. Service Provider collects, generates or uses pursuant to the Agreement the following data elements of District Data or PII:**

Fluency Matters uses only the data that the teacher provides. Data may include any of the following: student name or initials or first 2-3 letters of first and/or last name or nickname or student ID number or any other identifying information that the TEACHER chooses to include on her student enrollment spreadsheet.

An email address for each student must also be provided. That email address may be a ‘fake’ email, and in that case, the teacher manages users, usernames and initial user passwords. If a valid email address is used, the student manages account set-up and password

**2. Service Provider collects and uses the District Data for the following educational purposes:**

Fluency Matters publishes comprehension-based readers for the purpose of facilitating language acquisition. These readers and accompanying audiobooks are made available on our e-learning platform in digital format. Learners can read and listen to the story and complete various pre-/post-reading activities that provide additional exposure to comprehensible input.

**3. Service Provider’s policies regarding retention and disposal of District Data are as follows:**

Student and teacher accounts are stored on a secure server until the district or teacher provides a list of all users to be removed from the system. Most users choose to keep users on the system for 4 years so that they do not need to re-create their accounts every year.

**4. Service Provider uses, shares or discloses the District Data in the following manner:**

A student account may be shared with web developers and quiz creators for troubleshooting purposes only. Generally a username, which could be initials, numbers, first few letters of first/last name, etc., and an email address are shared for the purpose of locating the student’s account.

Other data includes a spreadsheet of student labels (names, initials or characters used to identify students), grades and progress reports that is available for download to the group leader (TEACHER).

**5. Has Service Provider’s agreement has ever been terminated by another school district for failure to comply with the same or substantially similar security obligations as those set forth in this Agreement?**

Yes  No.

If yes, describe:

**SCHEDULE 6**  
**Insurance**

**Denver Public Schools**

ENTERPRISE RISK MANAGEMENT

Tel: 720-423-1300

<http://risk.dpsk12.org>

[RiskManagement@dpsk12.org](mailto:RiskManagement@dpsk12.org)



**General Provisions**

Contractor agrees to secure, at or before the time of execution of this Agreement, the following insurance covering all operations, goods or services provided pursuant to this Agreement.

Contractor shall provide a copy of this Agreement to its insurance agent or broker. Contractor may not commence services or work relating to the Agreement prior to placement of coverage.

Contractor shall keep the required insurance coverage in force at all times during the term of the Agreement, or any extension thereof.

**Insurer Ratings:** The required insurance shall be underwritten by an insurer licensed or authorized to do business in Colorado and rated by A.M. Best Company as "A-" VIII or better.

**Cancellation, Non-Renewal Notifications:** Each policy shall contain a valid provision or endorsement requiring notification to the District in the event any of the required policies are to be cancelled or non-renewed before the expiration date thereof. Such written notice shall be sent to the parties identified in the Notices section of this Agreement. Said notice shall be sent thirty (30) days prior to such cancellation or non-renewal unless due to non-payment of premiums for which notice shall be sent ten (10) days prior. If such written notice is unavailable from the insurer, Contractor shall provide written notice of cancellation, non-renewal or reduction in limits to the parties identified in the Notices section by certified mail, return receipt requested within three (3) business days of such notice by its insurer(s).

**Deductibles or Self-Insured Retentions:** If any policy is in excess of a deductible or self-insured retention, the Contractor must notify the District. Contractor shall be responsible for the payment of any deductible or self-insured retention.

**Minimum Requirements:** The insurance coverages specified in this Agreement are the minimum requirements, and these requirements do not lessen or limit the liability of the Contractor. The Contractor shall maintain, at its own expense, any additional kinds or amounts of insurance that it may deem necessary to cover its obligations and liabilities under this Agreement.

Contractor shall advise the District in the event any general aggregate or other aggregate limits are reduced below the required per occurrence limits. At its own expense, and where such general aggregate or other aggregate limits have been reduced below the required per occurrence limits, the Contractor will procure such per occurrence limits and furnish a new certificate of insurance showing such coverage is in force.

**Proof of Insurance:** Contractor certifies that any certificate of insurance, (preferably an ACORD certificate), provided as evidence of insurance coverage under this Agreement, complies with all insurance requirements in this Agreement. The District's acceptance of a certificate of insurance or other proof of insurance that does not comply with all insurance requirements set forth in this Agreement shall not act as a waiver of Contractor's breach of this Agreement or of any of the District's rights or remedies under this Agreement. The District's Risk Management Department may require additional proof of insurance including but not limited to policies and endorsements.

**Subcontractors and Subconsultants:** All Subcontractors and Subconsultants (including Independent Contractors, Suppliers or other entities providing goods or services required by this Agreement) shall be subject to all of the requirements herein and shall procure and maintain the same coverages required of the Contractor. Contractor shall include all such Subcontractors as Additional Insureds under its policies (with the exception of Workers' Compensation) or shall ensure that all such Subcontractors and Subconsultants maintain the required coverages.

### **Insurance Coverage and Limits**

**Workers' Compensation/Employer's Liability:** Contractor shall maintain the coverage as required by statute and shall maintain Employer's Liability insurance with limits of at least \$100,000 per occurrence for each bodily injury claim, \$100,000 per occurrence for each bodily injury caused by disease claim, and \$500,000 aggregate for all bodily injuries caused by disease claims.

Contractor expressly represents to the District, as a material representation upon which the District is relying on entering into this Agreement, that none of the Contractor's officers or employees who may be eligible under any statute or law to reject Workers' Compensation insurance shall affect such rejection during any part of the term of this Agreement, and that any such rejections previously effected, have been revoked as of the date Contractor executes this Agreement.

**Business Automobile Liability:** Contractor shall maintain Business Automobile Liability coverage with limits of at least \$1,000,000 combined single limit applicable to all owned, hired and non-owned vehicles used in performing services under this Agreement.

**Commercial General Liability:** Contractor shall maintain Commercial General Liability coverage with limits of at least \$1,000,000 for each occurrence, \$1,000,000 for each personal and advertising injury claim, \$2,000,000 products and completed operations aggregate, and \$2,000,000 policy aggregate.

**Excess/Umbrella Liability:** Contractor shall maintain Excess or Umbrella Liability coverage with limits of at least \$1,000,000 per occurrence and \$1,000,000 policy aggregate. Coverage must be written on a "follow form" or broader basis.

**The following three types of required insurance coverages may be met with separate policies or a combination of these coverages under one policy. If in a combined policy, the combined policy form shall include minimum limits of at least \$3,000,000 each occurrence and in the aggregate.**

**Technology Errors & Omissions:** Contractor shall maintain Technology Errors and Omissions Liability coverage including, but not limited, to Network Security, Privacy Liability and Product Failure coverage with limits of at least \$1,000,000 per occurrence and \$1,000,000 policy aggregate.

**Media Professional Liability:** Contractor shall maintain Media Professional Liability limits of at least \$1,000,000 per claim and \$1,000,000 in the aggregate. The policy shall include, but not be limited to, coverage for libel, slander, infringement of copyright, invasion of the right of privacy, and unauthorized use of titles, formats, ideas, characters, plots or other material used in the publication or design.

**Cyber/Network Security & Privacy Liability:** Contractor shall maintain Cyber/Network Security & Privacy Liability coverage with limits of at least \$1,000,000 per occurrence and \$1,000,000 policy aggregate including, but not limited to, coverage for claims involving privacy violations, information theft, damage to or destruction of electronic information, intentional and/or unintentional release of private information, alteration of electronic information, extortion and network security.

### **Other Insurance Provisions**

**Additional Insured Status:** For Commercial General Liability, Auto Liability, Excess/Umbrella Liability, Cyber/Network Security and Privacy Liability (if applicable), Contractor and Subcontractor's insurer(s) shall name School District No. 1 in the City and County of Denver, d/b/a Denver Public Schools, and its elected officials, employees, representatives and agents as Additional Insureds.

**Waiver of Subrogation:** For coverages required under this Agreement, Contractor's insurer shall waive subrogation rights against the District.

**Primary Coverage:** For claims related to this Agreement, Contractor's insurance coverage shall be primary and non-contributory with other coverage or self-insurance maintained by the District.

**Claims Made Policies:** For claims-made coverage, the retroactive date must be on or before the contract date or the first date when any goods or services were provided to the District, whichever is earlier.

**Additional Provisions:** Defense costs must be outside the limits of liability. Policies must contain a severability of interests or separation of insureds provision (no insured versus insured exclusion). The Commercial General Liability coverage must provide that this is an Insured Contract under the policy.

**Signature:**

**Email:**