



Digital Services Contract

For Digital Licenses and Related Services

This is a Contract between **Jefferson County Public School District** and the Party named below as the Contractor for the period of time and the purposes specified herein.

District:

Jefferson County Public School District
1829 Denver West Dr., Bldg. 27
Golden, Colorado 80401

Legal Notice Recipient

Director of Strategic Sourcing at the District address.

Contractor:

Legal Notice Recipient

At the Contractor's address

The **Effective Date** is the later date of the Parties' signatures and the **End Date** is:
_____.

Contract Amount: The amount the District will pay under this Contract shall not exceed _____ (\$_____) for the initial Term, and any changes to the Term or the contract amount shall be through the Contract amendment process as provided herein.

Purpose: The Contractor shall provide the District with Strategic Communications Consulting services as described in the Statement of Work of this agreement.

Signatures:

The Parties agree to the terms and conditions of this Contract by signing below. Individuals signing on behalf of each Party represent and warrant that they are authorized to sign on behalf of and thus bind the Party.

CONTRACTOR

Signer Name: _____

Signer Title: _____

Signature: _____

Date: _____

CONTRACTOR

Signer Name: _____

Signer Title: _____

Signature: _____

Date: _____

DISTRICT (Procurement)

Signer Name: _____

Signer Title: _____

Signature: _____

Date: _____

DISTRICT (Cabinet)

Signer Name: _____

Signer Title: _____

Signature: _____

Date: _____

Statement of Work

Licenses and other Goods or Services. The Contractor shall _____ [and as more specifically described in **Attachment 1** to this Statement of Work].

Payment. The District will pay the Contractor _____ [and as more specifically described in **Attachment 1** to this Statement of Work].

Insurance. In addition to the insurance requirements listed elsewhere, the Contractor shall maintain the following types of insurance coverage at the listed minimum levels of coverage.

Policy	Occurrence / Aggregate
Automobile	\$2,000,000 / \$5,000,000
Professional Liability	\$2,000,000 / \$5,000,000
Cyber Liability	\$3,000,000 / \$5,000,000
Commercial Crime	\$1,000,000 / \$2,000,000
SAM	\$2,000,000 / \$5,000,000
Pollution Liability	\$2,000,000 / \$5,000,000

Person of Interest (POI). The Contractor shall complete the investigative process and maintain resulting records known as the "Person of Interest" or "POI" process as directed by the District's Chief of Human Resources and their designees for purposes of system and facility access. This process may require the Contractor and Contractor staff, contractors, and agents to complete a finger printing process. This process will be at the Contractor's expense.

Performance Dates. The Contractor shall begin performance on: _____ and end no later than: _____.

Deliverables.

Attachment 1 to Statement of Work

>>>Use for price lists, schedules, and other space-demanding additions.
Delete if not used.<<<

Statutorily Required Contract Provisions

Availability of Funds and Constitutional Limitations on Debt. Financial obligations of the District are contingent upon funds being appropriated, budgeted, or otherwise made available for the Contract purpose. The District does not irrevocably pledge present cash reserves for payments in future Fiscal Years. The Contract is not intended to create a multiple-fiscal year direct or indirect debt or financial obligation. In the event money is not being appropriated, budgeted, or otherwise made available for the Contract purpose, the District may modify its obligations under the Contract accordingly. Colo. Const. Art. XI, Section 3.

Accessibility. The Contractor shall comply with and the Services and the Work Product (if applicable) shall be in compliance with all applicable web content accessibility laws and industry best practices for digital inclusivity, expressly including provisions of C.R.S. §§24-85-101, *et seq.*, and the Accessibility Standards for Individuals with a Disability, as established by the Governor's Office Of Information Technology (OIT), pursuant to Section C.R.S. §24-85-103 (2.5). The Contractor shall also comply with all State of Colorado technology standards related to technology accessibility and with Level AA of the most current version of the Web Content Accessibility Guidelines (WCAG), incorporated in the State of Colorado technology standards. The District may require the Contractor's compliance to the State's Accessibility Standards to be determined by a third party selected by the District to attest to Contractor's Work Product, Services, and software are in compliance with C.R.S §§24-85-101, *et seq.*, and the Accessibility Standards for Individuals with a Disability as established by the Office of Information Technology pursuant to C.R.S. §24-85-103 (2.5)

Conflict of Interest. The Contractor represents that the Contractor (i) has no personal or financial interest in the Contract (other than the consideration to be earned); (ii) shall not acquire any such interest, direct or indirect, which would conflict with the performance under the Contract; and (iii) does not and will not employ or engage any person with a personal or financial interest in the Contract (other than the consideration to be earned). The Contractor shall not offer goods or services to District employees that District employees are prohibited from accepting under C.R.S. §24-18-109, or other law.

Criminal Record Certification. Where required by law and District policies, the Contractor shall complete criminal records check on itself, if an individual, and any Contractor employee, agent, or Subcontractor who is an individual and whose performance under the Contract involves direct services to Students and regular, not incidental, contact with Students. The Contractor, if an individual, and Contractor's employees, Subcontractors, or other agents of the Contractor, who are individuals and 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, are not allowed to work on District property. The Contractor shall conduct criminal background checks using the federal Equal Employment Opportunity Commission's guidance titled "Consideration of arrest and

Conviction Records in Employment Decisions under Title 7 of the Civil Rights Act of 1964," issued 4/25/2012 and as amended from time to time. The Contractor shall inform the District of background check results upon the District's reasonable request and as and to the extent permitted by law. C.R.S. §22-32-109.7, §22-32-122, §24-72-305.3.

Federal Funding. Federal grants or other federal money may pay for the Contract in whole or in part. The Federal Funding Provisions apply to the Contract. The Federal Funding Provisions appear on the District's Strategic Sourcing webpage.

Governing Law and Jurisdiction; References to Law. The laws of the State of Colorado govern this Contract. A Party will bring any action to enforce its rights in a court of competent jurisdiction in Jefferson County, Colorado or, if federal jurisdiction applies, in a federal court of competent jurisdiction in the District of Colorado. All references to law refer to the law as in effect on the Effective Date and as such law may be amended, enacted, or repealed while the Contract remains in effect. C.R.S. §22-1-135.

Governmental Immunity. The District does **not** waive any rights or other provision of and arising under the Colorado Governmental Immunity Act. C.R.S. §§24-10-101 et seq.

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

Open Records. CORA applies to the Contract, the Contractor's performance, and the records and reports generated thereunder, to the extent not prohibited by state or federal law. C.R.S. §§24-72-101 et seq.

PERA Contributions. If the Contractor is a Colorado Public Employees Retirement Association (PERA) retiree in an individual capacity or is an entity owned or operated by a PERA retiree, the Contractor shall inform the District of this status. To the extent that Colorado law applies, concerning retiree employment after PERA retirement and employer and employee contributions to PERA, the District will and the Contractor shall comply with their respective obligations under that statute. C.R.S. §24-51-1101.

Exceptions to Terms. Any provisions required by C.R.S. §22-1-135 are deemed to be included to the extent not included in the Contract. A term or condition in this Contract or any Contractor Document is *void ab initio* if the term or condition:

- Purports to limit the Contractor's liability contrary to Colorado or other applicable law.
- Removes ownership of District Data or De-identified Data or both from the District.
- Allows for use of District Data or De-Identified Data or both outside of, in addition to, or other than as expressly permitted under the Contract.

- Automatically renews any contractual obligation of the District.
- Places confidentiality requirements on the District that conflict with the District's legal obligations, such as and without limitation, those regarding open records and government transparency.
- Constitutes a waiver of jury trial or other District rights.
- Shortens the time period before a limitation of action goes into effect.
- Is prohibited or void under C.R.S. §22-1-135. This includes, without limitation, provisions (i) requiring the District to indemnify others; (ii) requiring binding arbitration or other extra-judicial dispute resolution; (iii) waiving the Colorado Governmental Immunity Act; or (iv) conflicting with Colorado law. In the event of a conflict between this summary and C.R.S. §22-1-135, the latter governs.

Contract Terms and Conditions

Purchases and Ordering.

Orders. To initiate and complete Purchases under the Contract, the District may issue P.O.s or initiate another payment mechanism. In addition, if this is a Master Contract or the Contract Purpose otherwise so provides, the District may place Orders for Purchases that are either concurrent with the Effective date or thereafter while the Contract is in effect. This Contract governs all Purchases the District makes under the Contract, including, without limitation, any Purchases made with the use of P.O.s or other forms of Orders that may be specified herein.

Master Contract. On the first page under "Contract Amount," there may be a statement indicating that this is a Master Contract. If so, this is a Master Contract as defined herein. Schools and Departments may place Orders from time to time for Purchases in accordance with the Contract Purpose and at such prices and rates as described in the Statement of Work. If there is no maximum "Contract Amount," then the amount of each Order is the maximum amount for that Purchase. The District does not guarantee any minimum amount of Orders or any Orders at all except as may be specified in the **Statement of Work**.

Contract Prices and Rates. The District will pay such contract amounts and at such prices, rates, fees, or other payment as is specified in Orders, in the Contract section labeled "Statement of Work," or both.

Invoices. The Contractor shall submit to the District, attention Accounts Payable, invoices for Purchases, which shall, at a minimum, contain the following information: (1) P.O. Number; (2) contract number, if available; and (3) a description of the invoiced goods and services that is acceptable to the District. The invoice shall not list names or other personally identifiable information of Students.

Insurance By Contractor.

Requirement to Carry and Maintain Insurance. The Contractor shall maintain policies of insurance sufficient to respond to liabilities of the Contractor and exposures, risks and liabilities to the District arising under the Contract in addition to specific coverage set forth below, in the Statement of Performance and Payment, or elsewhere in the Contract. If the Contractor is a public entity within the meaning of the Colorado Governmental Immunity Act, §§24-10-101 *et seq.*, C.R.S., the Contractor shall maintain while the Contract is in effect, including during any warranty period, such liability insurance, by commercial policy or self-insurance, sufficient to respond to liabilities of the Contractor and exposures, risks and liabilities to the District arising under the Contract.



Specific Coverage. The Contractor shall, at a minimum, maintain the types of insurance coverage at the listed minimum levels of coverage as set forth in the table below. Policy names denote common insurance industry standards of coverage. The Contractor shall assume all financial responsibility for deductibles and self-insured retentions. For General Liability coverage, the Contractor shall cause the District to be added as an Additional Insured.

Policy	Occurrence / Aggregate
General Liability	\$2,000,000 / \$5,000,000
Worker's Compensation	As required by law.
Cyber Liability	\$3,000,000/\$5,000,000

Minimum Rating Standard. All insurance carriers providing coverage to the Contractor hereunder shall have an AM Best rating of A-VIII or better.

Subcontractor Insurance Requirement. The Contractor shall require Subcontractors to maintain insurance policy coverages equivalent to and with coverage limits that are no less than those required of the Contractor in this Contract and shall in any event be sufficient to cover the Subcontractors' liability that may arise from their performance as Subcontractors.

Certificates of Insurance. The Contractor shall provide evidence of insurance coverage required by the Contract upon the District's request. Certificates of insurance shall be in such form and substance sufficient to evidence that the insurance required under the Contract is in effect and shall provide information as to when insurance coverage expires.

Claims Made Basis. If a policy is written on a claims-made basis, then the Contractor shall maintain or purchase retroactive dates and extended reporting periods to maintain continuous coverage during any period when claims may be made in connection with the Contractor's performance under the Contract, and in no event less than 24 months after the insurable work or event is completed.

Not a Cap. The requirements of this section titled "Insurance" shall not be construed as a cap on the Contractor's liability.

Indemnification from Contractor.

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

indemnifies, holds harmless, and assumes the duty to defend the District against any and all Claims that result from, arise in connection with, or are related to Work Product or infringement on the Intellectual Property rights of a Party or any person not a Party. For purposes of this provision, "Claim" means, both in its singular and plural form, actions, suits, causes of action, demands, liability, costs, expenses, court awards (including without limitation attorneys' fees and court costs) and all other incidents of liability alleged or brought against the District by persons not a Party. For any indemnification event, the District may retain counsel of their choice.

No Effect of Other Limitations Provisions. The Contractor's agreement to indemnify takes precedence over any conflicting or inconsistent Contract provisions.

Survival. The Contractor's agreement to indemnify survives the termination, expiration, or other ending of the Contract until such time when all possible and applicable limitation of action periods have expired.

District Data and Information.

Ownership of District Information. The District owns all District Information, all now known or hereafter existing Intellectual Property Rights associated with District Information, and any derivative works thereof and modifications thereto. The District continues to own all District Information that the District may share with or disclose to the Contractor for any reason, except to the extent the District may otherwise agree to in separate writing executed by an authorized representative of the District. The Contractor shall allow the District access to District Information in the Contractor's possession at all times upon the District's reasonable request.

License to Use. The District grants to the Contractor a limited, non-exclusive, revocable license to use District Information solely for the purpose of performing its obligations under the Contract. All use of District Information shall be for the benefit of the District.

Disposal. When the Contract ends for any reason, the Contractor shall dispose of District Data in accordance with the DPA.

Prohibited Activities. Except as may be required by law or as the District may expressly permit in writing after a Contractor's written request directed to the District's Legal Notice recipient, the Contractor **shall not** use or sell the District's or any School's or Department's name, logos, or reputation or use District Data:

- To disclose it to any person not a Party outside of what may be required to perform under the Contract.
- To conduct external research as governed by District policies.
- To advertise or market to or conduct surveys or other research on Students, families, District employees, or other District constituents.

- In a manner that is inconsistent with the Contractor's privacy policies then in effect, if any.

Contract Duration and Termination.

Duration. The Contract is in effect from the Effective Date until the Contract End Date or the end of any Contract Term that is created thereafter, whichever is later, unless the Contract is terminated earlier in accordance with the terms of the Contract.

Renewal. The Parties may renew the duration of the Contract by written agreement made an amendment to the Contract. The District will prepare Renewal and amendment documents that, to become effective, shall be signed by both Parties.

Duration of Orders. If the duration of a P.O., license, subscription, or other Order issued under the Contract exceeds the duration of the Contract, then the terms of the Contract are automatically incorporated into the terms of the P.O., license, or other Order on the date when the Contract expires or otherwise terminates.

Termination by District in the Public Interest. The District is entering into this Contract to serve the public interest of the District, the Students and families it serves, its taxpayers, voters, residents, and other constituents, as determined by the District's Board of Education, Superintendent, and other leaders. If this Contract ceases to further the public interest of the District, the District, in its discretion, may terminate this Contract in whole or in part. A determination that this Contract should be terminated in the public interest is not equivalent to a District right to terminate for convenience. To terminate under this provision, the District shall provide at least 20 calendar days prior Legal Notice to the Contractor. The District will pay the Contractor sums earned and not yet paid up to the date of termination. The District will not pay for the loss of anticipated profits.

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

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

- Return to the District all tangible and intangible District property that may be in the Contractor's possession.
- Comply with all District Data destruction requirements listed in the Contract, including, without limitation, those required by the DPA, if applicable.

- If Work Product is part of the Services, deliver to the District all completed Work Product and all Work Product that was in the process of completion.
- Refund to the District any sums that the District has prepaid and that remain unearned at the time of termination, no later than 45 calendar days after the last day the Contract was in effect.
- Take or omit any additional action as may be specified elsewhere in the Contract.

Default and Remedies.

Default by the District, Legal Notice, and Remedies. The District is in Default when the District fails to pay when due amounts payable under the Contract. If the Contractor believes the District is in Default and wishes to avail itself of its remedies, the Contractor shall send Legal Notice to the District that informs the District of the nature of the Default. The District may dispute amounts in good faith by sending Legal Notice informing the Contractor of the amounts in dispute and the basis for the dispute. The District will pay all amounts not in dispute and those amounts that were in dispute once the dispute is resolved. The Contractor may partially or fully stop performance under the Contract, terminate the Contract, or both if the District Default continues or remains otherwise unresolved for 30 consecutive calendar days after the District has received the Contractor's Legal Notice of the District Default. If the District agrees to any other duties or obligations in the "Statement of Performance and Payment" or elsewhere in the Contract, and the District fails to perform any such other duties or fails to fulfill such other obligations, the District is not in Default.

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

Fails to materially perform its duties under the Contract in whole, in part, in a timely, or in a satisfactory manner; or

Fails to comply with any other condition, requirement, or obligation required of the Contractor under the Contract; or

Loses a license, certification, governmental permit or permission, or any other credential or qualification that is required by the Contract or otherwise necessary to perform under the Contract legally and competently; or

Fails to complete a condition precedent or condition subsequent that the Contract specifically requires; or

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 undismissed for more than 60 calendar days; or

Defaults under any other agreement with the District, and the default remains unresolved for more than 60 calendar days after the District has given written notice to the Contractor of such default in accordance with the provisions of that agreement; or

The Contractor or any of its employees, agents, or Subcontractors, while performing under the Contract, act or fail to act in a manner that, in the District's determination, is or becomes a threat or danger to the District, its employees, agents, officers, members of the board of education, Students, families, or other constituents;

The Contractor or any of its employees, agents, or Subcontractors is convicted of a crime if that conviction then renders the Contractor to no longer be able or legally permitted to perform their duties under the Contract.

Legal Notice of Contractor Default. When the Contractor is in Default, and the District wishes to exercise its remedies under law and the Contract, the District shall send Legal Notice to the Contractor. The Legal Notice shall state, at a minimum:

- The nature of the Default; and
- Whether a correction of the Default is possible; and
- If correction is possible, the actions that the Contractor must take to correct the Default; and
- If correction is possible, the date by which the Contractor must have taken the described actions; and
- The actions that the District intends to take if the Contractor does not correct the Default or if a correction is not possible.

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

District Remedies if Default by the Contractor. If a Contractor Default occurs, and the District has given Legal Notice, and the Contractor has not corrected the Default as required by the Legal Notice or correction of the Default is not possible, the following remedies are available to the District in addition to all other remedies provided by law and equity or stated elsewhere in the Contract. The District may exercise any or all, or any combination of, the remedies available to it, in its discretion, concurrently or consecutively, or not at all.

Terminate the Contract or any part thereof.

Sue for damages.

Purchase goods or services to complete or substitute for the Services not performed, or Goods not delivered, or licenses for Digital Services not granted. The Contractor shall pay to the District all costs and expenses that the District incurs as a result, minus any sums that the District is not paying to the Contractor as the result of the Contractor Default.

Offset costs and damages to the District that result from the Contractor Default against any sums that the District owes to the Contractor.

If the Default involves the infringement on Intellectual Property rights of a Party or of persons not a Party, the Contractor shall, as directed by the District in the District's discretion, (i) secure that right to use such work for the District or the Contractor; or (ii) replace the work with non-infringing work; or (iii) modify the work so that it becomes non-infringing; or (vi) remove any infringing work and refund the amount paid for such work to the District.

General.

Assignment. The Contractor may assign its rights and delegate its obligations under the Contract only with the prior written consent of the District, except as prohibited by law and except as a result of the merger or acquisition of the Contractor.

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

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

Colorado UCC Applies. The Uniform Commercial Code as adopted in Colorado governs. The United Nations Convention on Contracts for the International Sale of Goods do **not** apply to this Contract.

Compliance with Laws. The Contractor shall comply with all applicable federal, state, and local laws, rules, and regulations in effect as of the Effective Date.

Cooperation During Transition. If the District engages another person or company to take on all or a part of the Contractor duties of this Contract at its termination, the Contractor shall cooperate with the District in any transition work that the District may reasonably require and for which the District will pay in accordance with an Order or amendment to the Contract signed by both Parties.

Cooperative Participation. The Parties may have agreed, in the Solicitation Documents or otherwise outside of the Contract, to allow other public entities to access the Purchases at the same prices, rates, and other terms and conditions as provided for in the Solicitation Documents, the Contract, or both. If the

Contractor enters into agreements as the result of such cooperative participation arrangements to which the District is not a party, the District has no obligations to the Contractor or to any other entity under any such cooperative participation agreements.

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

Delivery. The Contractor shall deliver Goods and materials with FOB Destination, inside delivery terms, unless stated otherwise in the "Statement of Performance and Payment."

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

Entity Status. The Contractor's business entity shall be registered with the Colorado Secretary of State's office, either as a Colorado or as a foreign corporation, unless the Contractor shows to the District's satisfaction that the Contractor cannot or should not be registered in Colorado.

Method of Giving Legal Notice. A Party accomplishes Legal Notice by sending or delivering Legal Notice to the other Party's Legal Notice Recipient at the address listed on first page for that Party's Legal Notice Recipient either by (i) personal service, in which case Legal Notice is effective on the date personally served; or; or (ii) trackable delivery service (for example and without limitation: USPS priority or express mail; UPS; DHL; or FedEx), in which case Legal Notice is effective on the date sent as evidenced by the tracking receipt. In addition, if the Contractor's Legal Notice Recipient address is or includes an email address, then the District also accomplishes Legal Notice by sending an email to that email address, with Legal Notice being effective on the date the email is sent. There is **no** Legal Notice by email to the District).

Modifications. The Parties can change the Contract only in a writing that is executed by the Parties.

Notification of Legal Process. If the Contractor becomes subject to legal process relating to the Contract, or to legal process that the Contractor reasonably believes compels the Contractor to disclose District Data, the Contractor shall provide Legal Notice to the District no later than 7 calendar days after the Contractor receives such legal process. The Legal Notice shall include sufficient information for the District to take action to protect District Data and the District's legal interests if the

District so chooses. This provision survives the termination of the Contract for as long as the Contractor has or controls District Data that may become subject to legal process.

Order of Precedence. In the event of a conflict or inconsistency between or among any of the components of the Contract, the following order of precedence governs:

- The Contract section titled "Statutorily Required Contract Provisions," then
- The DPA, if it is a part of the Contract, then
- The Contract section titled "Contract Terms and Conditions" then
- The Contract section titled "Statement of Work," then
- Amendments to the Contract in reverse chronological order, then
- The Solicitation Documents (unless expressly excluded elsewhere in the Contract), then
- Any Contractor Documents.

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

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

Subcontracts. The Contractor shall, upon the District's reasonable request, provide a list of Subcontractors. All contracts that the Contractor enters with Subcontractors in connection with the Contract and performance thereunder shall comply with all applicable laws. The Contractor is responsible for the actions and omissions of its Subcontractors in connection with the Contract.

Survival of Certain Contract Terms. The following provisions of the Contract survive expiration or other termination of the Contract and are enforceable by the other Party: (i) provisions that by their own terms state a survival period; and (ii) other provisions of the Contract that impose an obligation on a Party that begins at or continues after the end of the Contract until such obligation is discharged by the obligated Party.

Tax Exemption. The District claims tax exemption from sales and use taxes and will provide evidence of tax exemption upon the Contractor's request. The Contractor shall exclude charges for sales and use taxes from its invoices.

Time is of the Essence. If the Contract includes delivery of Goods, then time is of the essence. If the Contractor delivers any shipment of Goods late, the District may, in its discretion, accept or reject the Goods. If the District accepts the Goods, delivery continues to be governed by the Contract. If the District rejects the Goods, the Contractor shall arrange for the return of the Goods at its expense, and the District has no liability for the Goods.

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

Work Product. The Contractor assigns to the District the entire right, title, and interest in the Work Product that are included in the Purchases, except as may be otherwise provided for elsewhere the Contract.

Definitions. Terms used throughout the Contract have the following meaning.

"Click-Through" as defined in the DPA.

"Contract" means the Contract together with all its components that appear in the form of a free-standing contract document, attachment, exhibit, supplement, addendum, or a webpage accessible by link.

"Contract End Date" is the date stated on the first page next to "Contract End Date" and is the date when the Contract expires if it has not been terminated or extended in accordance with the Contract.

"Contract Maximum Amount" or ***"Maximum Amount"*** is the amount of spending for Purchases made during the specified Contract Term or other specified period of duration that the District will not exceed.

"Contract Purpose" is the scope and purpose of the Contract and the Purchases, as specified in and by the section titled "Statement of Work" and as also summarized on the first page of the Contract.

"Contractor" means the entity whose name is listed next to "Contractor" on the first page.

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

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

“Default” means any event that results in rights to remedies accruing to a Party, including any one of the events listed in the “Contract Terms and Conditions” under the section labeled “Default and Remedies.”

“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 and so that no re-identification of the data can occur.

“Department” means any District central department.

“Digital Services” means the grants of licensing for and provision of digital services in the form of software, software-as-a-service, online access to portals or platforms, remote hosting, and other digital licenses, and incidental related services that are part of the Purchases.

“District” means Jefferson County School District R-1.

“District Data” as defined in the DPA.

“District Information” means District Data plus all other records, reports, material, and information, in any form and on any media, that the District provides to the Contractor in connection with the Contract.

“DPA” means Data Protection Addendum and denotes the provisions specific to the collection, use, and destruction of District Data and other information that may be attached to and incorporated into the Contract and titled as such.

“Education Record” has the same definition as given by FERPA. For illustration purposes and not superseding the FERPA definition, Education Record means records, files, documents and other materials that: (i) contain information directly related to a Student; and (ii) the District or any other entity acting for the District maintains.

“Effective Date” means the date when the Parties execute this Contract and is the later date if the Parties sign on different dates.

“End User” or **“User”** means individuals authorized by the District to access and use the Digital Services.

“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.

“Goods” means tangible goods, products, and materials that are part of the Purchases.

“Indemnified Person” means, both in its singular and plural form, the District, its employees, agents, officers, and current and past members of the governing Board of Education.

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

“Legal Notice” means written notice that this Contract or any law requires any one Party to give to the other Party to execute, enforce, or preserve its rights under the Contract or that affect the existence, termination, or remedies under the Contract and which may then also start the tolling of response or other periods that may affect the rights of either Party or both Parties. Correspondence and communication between and among the Parties and their staff, agents, and Subcontractors to perform under or otherwise implement the Contract Purpose are **not** Legal Notice.

“Order” means a written agreement that the Parties execute or the District issues at different times after the Effective Date in order to add, from time to time, additional or specified performance to be governed by the provisions of the Contract. An Order may be in the form of a P.O. or other form that the District or the Contractor may agree to elsewhere in the Contract.

“Party” means the District or the Contractor, and the plural means both the District and the Contractor.

“Service” means, in its singular and plural form, the services and work that the Contractor is performing under the Contract and in accordance with the Contract Purpose, and includes the goods and materials that are incidental to the performance of services.

“PII” or **“Personally Identifiable Information”** as defined in the DPA.

“P.O.” means a purchase order document in form and substance as the District uses in the ordinary course of its business to order goods and services and encumber funds to pay for them.

“Purchase” means, in its singular and plural form, the transactions that result in the District receiving Goods, Services, and Digital Services and their licenses, as specified in the Contract, and the District’s payment therefor.

“Record” as defined in the DPA.

“Renewal” means a Contract amendment that extends the duration of the Contract by adding a Contract Term.

“School” means any pre-school, elementary, middle, high, option, special needs, and charter school that is governed and served by the District.

“Securely Destroy” as defined in the DPA.

“Service Level Agreement” means the standards and levels of service, which may be incorporated into the Contract, that the Contractor agrees to maintain and the remedies available to the District if the Contractor does not maintain those standards.

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

“Student” means any individual who is enrolled in or otherwise attending a School at the time this Contract is in effect, has at any time been enrolled in or attended a School, or will at any time in the future be enrolled in or attending a School.

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

“Term” or **“Contract Term”** means any time period with a stated begin date and an end date during which the Parties have agreed for the Contract to be in effect.

“Work Product” means work product that the Contractor generates, produces, or creates specifically and exclusively for the District in performing the Services, and all work based on, derived from, or incorporating the Work Product, together with the tangible and intangible results of the Services, whether finished or unfinished, including drafts, and **does not** include material that the Contractor developed before the Effective Date and used without modification in the performance of the Contract.

DATA PROTECTION CONTRACT SUPPLEMENT

This contract supplement is an addition to and incorporated into the Contract to which it is attached or otherwise incorporated or added.

The Contract requires the District to release District Data to the Contractor in order for the Contractor to perform its duties under the Contract.

This DPA:

- Governs the privacy, protection, integrity, and security of District Data that comes into Contractor's possession or is otherwise made accessible to the Contractor through the District's use of Digital Services.

- Controls the Contractor's handling of District Data.

- Provides for the Parties' response in case of a data breach or other incidents.

- Ensures compliance with applicable state and federal laws and industry best practices.

Defined Terms. Capitalized words that are used throughout the DPA and that are capitalized outside of English grammar rules have the meaning ascribed to them:

- In the DPA section titled “*Definitions*” and
- When first used and then defined in parentheses and quotation marks anywhere in the DPA and the Contract, and
- As otherwise defined the Contract.
- In the event of a conflict or inconsistency between and among these definition sources, the DPA definitions prevail for purposes of interpretation of the DPA.

Duration of the DPA. The Contractor’s duties under the DPA begin at the earlier of the Contract Effective Date, or when the Contractor receives District Data. The DPA remains in effect for as long as the District provides District Data to the Contractor or the Contractor possesses or otherwise controls District Data, whichever is later.

Designated Representative. Each Party designates an individual, office holder, or title holder to act as the Designated Representative for Legal Notices required by this DPA. The Designated Representatives are those listed as data breach notice recipients on the first page of the Contract or elsewhere in the Contract.

Data Ownership.

District Data is District property and continues to be District property when disclosed to the Contractor. In connection with District Data, the District also owns:

- All now and hereafter existing intellectual property rights associated with District Data, and
- De-identified Data, and
- Any derivative works thereof or modifications thereto.

In addition, Students may claim and continue to claim ownership rights in their respective Student-Generated Content, and this DPA does not affect or modify the rights of Students in their Student-Generated Content.

License Grant. The District grants to the Contractor a limited, non-exclusive, revocable license to use District Data solely for performing its obligations under or otherwise fulfilling the purposes of the Contract, the Release Purpose, or both, and in accordance with the terms of this DPA and applicable law.

Data Collection and Use.

Collection and Use. The Contractor shall collect only such District Data and other data and information that the Contractor needs to fulfill the Release Purpose and use it only to perform the services, deliver the goods, grant the licenses, or engage in such other activities as contemplated by the Contract, the Data Release Purpose, or both.

No Re-Disclosure. The Contractor shall not disclose, transfer, release, share, or otherwise provide District Data to Persons except as expressly permitted by the DPA or the Contract.

Expressly Prohibited. In using the District Data, the Contractor shall **not**:

- Use, sell, rent, transfer, distribute, alter, Mine, or disclose District Data to any Person without the prior written consent of the District, except as (1) required by law or (2) permitted by the Colorado Student Data Law or (3) in connection with an entity merger or acquisition as permitted by C.R.S. §22-16-109(2)(a).
- Use District Data for its own commercial benefit outside of the consideration provided by the Contract.
- Engage in Targeted Advertising or any advertising, marketing, or surveying of any kind directed toward Students, parents, guardians, families or District employees and agents.
- Create a Student Profile.
- Use District Data in a manner that is inconsistent with its own Privacy Policy.
- Use or allow use of District Data to train large language models or any other form of artificial intelligence.

Security.

Storage Location. When the District so requests, the Contractor shall provide to the District a complete and accurate list of the location of data centers and other places where the Contractor stores District Data upon the District's request.

Security Safeguards. The Contractor shall store and process District Data in accordance with prevailing industry and commercial standards and practices. Storage shall secure data from unauthorized access, disclosure, alteration, and use. All safeguards, including without limitation the manner in which District Data is collected, accessed, used, stored, processed, disposed of, and disclosed, shall comply with all applicable federal and state data protection and privacy laws, regulations, and directives and the terms and conditions of this DPA.

Security Procedures. The Contractor shall implement and maintain reasonable security procedures and practices that are designed to help protect PII from Unauthorized Activity.

Encryption. The Contractor shall cause electronic District Data to always be encrypted in transmission and at rest in accordance with either (1) the latest NIST Special Publication, or (2) such other standard as the Parties may agree to in writing.

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

Audit Trails. The Contractor shall conduct audit trails and take such other reasonable measures to protect District Data against deterioration or degradation of data quality and authenticity.

Verification of Safeguards. When the District so requests, the Contractor shall verify that the Contractor's administrative, physical, and technical safeguards comply with industry standards by making the following available to the District for review:

- (i) a third-party network security audit report, or
- (ii) Certification from the Contractor indicating that an independent vulnerability or risk assessment of the Contractor's data security program has occurred.

No Re-identification of De-identified Data. The Contractor shall not re-identify or attempt to re-identify and shall prohibit its Subcontractors from re-identifying or attempting to re-identify De-identified Data. The Contractor shall not use De-identified Data in combination with other data elements or De-identified Data in the possession of a Subcontractor so as to allow for re-identification.

Subcontractor Click-Through. If the Contractor is providing its Service using Subcontractors, and Click-Through will be required for the District to avail itself of the Services contemplated by the Contract, then the Contractor shall cause the Subcontractor providing such software or on-line access to consent to and honor the terms of this DPA with respect to District Data and the District's use of the services provided through the Subcontractor.

Compliance with Data-Specific Laws.

FERPA and Qualified FERPA Exception. If the Contractor will have access to Education Records, the Contractor is designated as a "school official" with "legitimate educational interests," (as these terms are defined by FERPA). The Contractor shall comply with the FERPA limitations and

requirements imposed on school officials. The Contractor will use the Education Records only for the purpose of fulfilling its duties under the Contract, the DPA, and the Data Release Purpose for the District's and its End Users' benefit. The Contractor shall not share District Data with or disclose it to any Person except as provided for in the Contract or the DPA, as required by law, or if authorized in writing by the District. The Contractor warrants and represents that during the five-year period preceding the Effective Date of the Contract, the Contractor has not been found in violation of FERPA by the Family Policy Compliance Office.

Colorado Student Data Law, the Contractor shall comply with its obligations under the Colorado Student Data Law if and to the extent the Contractor provides a "school service" or is a "school service contract provider," as these terms are used and defined by the Colorado Student Data Law, or to the extent the Contractor is otherwise subject to the Colorado Student Data Law. Obligations include, without limitation, those listed as follows, and in the event of a conflict between this list and the actual language of the Colorado Student Data Law, the latter prevails:

- Provide clear information explaining the Student PII elements collected, the learning purpose for which Student PII is collected, and how the Contractor uses and shares the collected Student PII, all of which is as stated in **Attachment 1 to the DPA (Data Elements)**, if completed, or as the Contractor has otherwise disclosed in separate writing to the District in connection with the District's data security review processes. C.R.S. §22-16-108(1).
- Send to the District updates concerning the information about data element collection, use, and sharing so as to maintain accuracy. C.R.S. §22-16-108(1).
- Provide clear notice to the District **before** making material changes to its Privacy Policy. C.R.S. §22-16-108(2).
- Facilitate access to and correction of any factually inaccurate Student PII. C.R.S. §22-16-108(3).
- Notify the District of misuse or unauthorized release of Student PII held by the Contractor or any Subcontractor as soon as possible after discovery. C.R.S. §22-16-108(4).
- Obtain the consent of the Student or Student's authorized parent before using Student PII in a manner that is materially inconsistent with its Privacy Policy, the Contract, or the DPA. C.R.S. §22-16-109(1)(b).
- Implement and maintain reasonable security procedures and practices that are appropriate to the nature of the personal identifying information disclosed to the Contractor and reasonably designed to help protect PII from unauthorized access, use, modification, disclosure, or destruction. C.R.S. §22-16-110(1).

Colorado Privacy Act. The Contractor shall comply with its duties under the Colorado Data Privacy Act as they apply to this Contract, including, without limitation, the following duties listed for illustration purposes. In the event of a conflict between this list and the provisions of the Privacy Act, the latter controls.

- Follow the District's processing instructions listed in **Appendix 1** to the DPA.
- Ensure that each person processing District Data and any other personal data, as defined by the Privacy Act, is subject to a duty of confidentiality with respect to the data.
- Engage a subcontractor, as that term is defined in the Privacy Act, only after providing the District with an opportunity to object and pursuant to a written contract that requires the subcontractor to meet the obligations of the Contractor with respect to the District Data and other personal data.
- Cooperate with the District in implementing appropriate technical and organizational measures to ensure a level of security appropriate to the risk and to establish a clear allocation of responsibilities regarding implementation of the measures.
- Delete or return all District Data and other personal data as defined by the Privacy Act at the District's choice, unless retention is required by law.
- Make available to the District all information necessary to demonstrate compliance with the Privacy Act obligations.
- Allow for and contribute to, reasonable audits and inspections by the District or the District's designated auditor. Alternatively, the Contractor may, with the District's consent, arrange for a qualified and independent auditor to conduct, at least annually and at the Contractor's expense, an audit of the Contractor's policies and technical and organizational measures in support of the obligations under the Privacy Act.
- Provide a report of the audit to the controller upon request.

Contractor's Privacy Policy. The Contractor shall comply with its Privacy Policy. Any changes to the Privacy Policy while the Agreement is in effect shall not result in less protection to the District than provided for in the Privacy Policy in effect on the Effective Date. To the extent the Colorado Student Data Law applies, the Contractor shall comply with its prior notice requirements regarding changes to the Privacy Policy.

Subcontractor and Employee Compliance. The Contractor is responsible for its employees' and Subcontractors' collection and use of and access to District Data and shall ensure their compliance with the terms of the DPA. The Contractor shall also ensure that its Subcontractors carry insurance coverage against cybersecurity and data breach risks as needed to cover

their potential liability when performing under the Contract or to at least the same extent as the Contractor does and is required to under the Contract, whichever is greater. To the extent necessary to perform its obligations specified in the Contract, the Contractor may disclose District Data to Subcontractors pursuant to a written agreement, specifying the purpose of the disclosure and holding Subcontractors accountable in such a manner that the District Data remains protected to the same or greater extent as if the Subcontractor and the Contractor were the same entity. If the Contractor is a school service contract provider, as defined by the Colorado Student Data Law, the Contractor shall disclose District Data to Subcontractors only in accordance with the requirements of the Colorado Student Data Law, including, without limitation, C.R.S. §22-16-109(3)(b).

Compliance with Laws. In addition to the laws cited elsewhere in the DPA and the Contract, the Contractor shall comply with all laws that apply and to the extent they apply, and with all orders of governmental entities having jurisdiction over District Data including, most relevantly and without limitation, as applicable:

- COPPA: The federal Children's Online Privacy Protection Act.
- PPRA: the federal Protection of Pupil Rights Amendment.
- The Colorado Website Accessibility law known as HB 21-1110 and regulations promulgated thereunder.
- HIPAA: the federal Health Insurance Portability and Accountability Act.
- The federal Health Information Technology for Economic and Clinical Health Act.
- The federal Gramm-Leach-Bliley Financial Modernization Act of 1999.
- The federal Americans with Disabilities Act.
- Federal Export Administration Regulations.
- The Colorado Privacy Act.

Data Transfer: Return, Destruction, Migration.

While the Contract is in effect. At any time while the Contractor or their Subcontractors are in possession of District Data, the Contractor shall, upon the District's request and following the District's reasonable instructions take all, any one, or a combination of these actions:

- Provide access to the District Data;
- Securely Destroy, return, or migrate District Data, using such methods and formats as the District requires;
- Transfer, at the District's expense (unless the transfer is the result of default by the Contractor under the Contract or a Security Breach), District Data to any Person without significant interruption in service and in collaboration with transferees to ensure that the transfer or migration facilities and methods are compatible with

- the relevant systems of the District or its transferee, and to the extent technologically feasible, that the District continues to have reasonable access to District Data during the transition; or
- Provide a mechanism for the District to transfer Student-Generated Content to a separate account created or otherwise controlled by each Student who generated the content.

At Contract End.

The District to Direct Disposal. When the Contract or other Data Release Purpose expires or otherwise terminates for any reason, the Contractor shall follow the District's direction concerning return or other disposal of District Data in the Contractor's or their Subcontractors' possession.

Return. If the District directs the Contractor to return the District Data, then the Contractor shall transmit the District Data completely, accurately, in a secure manner, and in the format as the District directs and at a minimum in a format that allows the District to reasonably access the District Data. The Contractor shall then Securely Destroy all copies and back-ups of the District Data, except that the Contractor may retain copies and back-ups if and then only to the extent and for as long as required by law.

Destruction. If the District directs the Contractor to destroy District Data, the Contractor shall Securely Destroy all copies and back-ups of the District Data, except that the Contractor may retain copies and back-ups if and then only to the extent and for as long as required by law.

If No Direction. If the District does not provide direction regarding the disposal of District Data, then the Contractor shall Securely Destroy the District within a reasonable amount after the end of the Contract or Data Release Purpose, whichever occurs later, except that the Contractor may retain copies and back-ups if and then only to the extent and for as long as required by law. The Contractor shall send written notice to the District at least 30 calendar days before the planned destruction date.

Subcontractors. The Contractor shall cause its Subcontractors to Securely Destroy District Data within a reasonable amount of time after the end of the Contract or Data release purpose, except that Subcontractors may retain copies and back-ups if and then only to the extent and for as long as required by law.

Certificate of Destruction. The Contractor shall provide to the District Designated Representative written certifications concerning the Securely Destroying of District Data, consistent with fact, and as and in such format as the District may request. If the Contractor is a School Service Contract Provider, then the Contractor shall notify the District in writing as of the date when all Student PII has been Securely Destroyed. C.R.S. §22-16-110 (3).

Survival. The provisions of this section titled “*Data Transfer: Return, Destruction, Migration*” survive the termination of the Contract and Data Release Purpose for as long as necessary to fully complete the obligations set forth herein.

Security Incidents and Response.

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

The Contractor shall notify the District Designated Representative in writing promptly after learning of a Security Breach, shall fully investigate the Security Breach, shall 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 the Contractor’s expense and in accordance with applicable laws. Except as may be otherwise required by law, the Contractor shall notify the District Designated Representative and obtain the District’s approval in writing **before** the Contractor sends notice of the Security Breach directly to individuals whose PII was involved, to regulatory agencies, or to other entities.

If the District reasonably determines that the Contractor is fully or partly responsible for a Security Breach or is otherwise subject to or involved with a Security Breach, then the Contractor shall submit to the District, within 7 calendar days after the District so requests, a written report with supporting documentation that identifies, at a minimum:

- The nature of the Security Breach.
- The steps the Contractor has executed to investigate the Security Breach.
- What District Data or PII was accessed, taken, or disclosed.
- Who is responsible for the Security Breach and what factors caused or contributed to it.
- What the Contractor has done or is doing to remediate adverse effects of the Security Breach.
- What action or actions the Contractor has taken or is taking to prevent future Security Incidents and Security Breaches.

After a Security Breach has occurred, the District may take any one, all, or a combination of these actions:

- Terminate the Contract.
- Suspend performance under the Contract.
- Stop the release of further District Data to the Contractor.

- Disqualify the Contractor, its Subcontractors, or both, from future contracts with the District.
- Take actions required or permitted by the Colorado Student Data Act, if applicable, and any other applicable law.
- Avail itself of any other remedy available under the Contract and the law.

Liability for Security Breach. In addition to any other remedies available to the District under contract, law, or equity, the Contractor shall reimburse the District for all costs incurred by the District in the investigation and remediation of any Security Breach caused in whole or in part by the Contractor or the Contractor's Subcontractors, including but not limited to providing notification and credit monitoring services to affected individuals as required by law, the District, or both; and the payment of legal fees, audit costs, fines, and other fees and costs imposed against the District as a result of the Security Breach.

Indemnification. The Contractor indemnifies the District, holds the District harmless against, and shall defend the District against all claims, demands, suits, actions, and claims of any kind made by third parties against the District as the result of a Security incident, Security Breach, or other events arising out of or in any manner related to the DPA. For any indemnification event, the District may retain counsel of their choice.

Legal Orders and Discovery.

Directed to the Contractor. When the Contractor receives a Discovery Request, the Contractor shall:

- Promptly notify the District, except to the extent such notification is prohibited by law; and
- Consult with the District regarding its response to the Discovery Request; and
- Cooperate with the District's reasonable requests in connection with efforts by the District to respond to and deal with the Discovery Requests; and
- Provide the District with a copy of the Contractor's response to the Discovery Request.

Directed to the District. When the District receives a Discovery Request seeking the District Data maintained by the Contractor, including but not limited to a request under the Colorado Open Records Act, and the District notifies the Contractor of the Discovery Request, the Contractor shall provide the requested District Data to the District within the time frame the District requires in the notification.

Parent Requests.

If a Student or their parent or legal guardian contacts the District with a request to review or correct the District Data or PII, pursuant to FERPA or the Colorado Student Data Law or other laws, the District may notify the Contractor's Designated Representative. The Contractor shall then use reasonable and good faith efforts to assist the District in fulfilling such requests, as directed by the District, within 10 calendar days after receipt of the District's notice. If a Student or their parent or legal guardian contacts the Contractor with a request to review or correct the District Data or PII, the Contractor shall promptly notify the District within 10 calendar days after the Contractor receives such contact and shall use reasonable and good faith efforts to assist the District in fulfilling such requests, as directed by the District.

Click-Through Terms of Use.

Terms of Use. The Contractor's online-ordering process for Digital Services may require that the District, through its Schools, Departments, or End Users, agree to Terms of Use by Click-Through. If the District or an End User Clicks-Through the Terms of Use, and in addition to other provisions listed as *void ab initio* or deemed included elsewhere in the Contract, the following exceptions and conditions apply.

If the duration of a License exceeds the duration of the Contract, then the terms of the Contract are automatically incorporated into the terms of License on the date when the Contract expires or otherwise terminates.

Any provisions required by C.R.S. §22-1-135 are deemed to be included.

The District **does not** consent to provisions that:

- Purport to limit the Contractor's liability.
- Remove ownership of District Data or De-identified Data or both from the District.
- Allow for use of District Data or De-identified Data outside of, in addition to, or in conflict with the Contract Purpose.
- Provide for automatic renewal of any contractual obligation of the District.
- Impose confidentiality requirements on the District that conflict with the District's legal obligations, such as and without limitation, those regarding open records and government transparency.
- Waive District rights, including without limitation a waiver of jury trial or the shortening of the time period before limitations of action become effective.
- Are prohibited or void under C.R.S. §22-1-135. This includes, without limitation, provisions (i) requiring the District to indemnify others; (ii) requiring binding arbitration or other extra-judicial dispute resolution;

(iii) waiving the Colorado Governmental Immunity Act; or (iv) conflicts with Colorado law. In the event of a conflict between this summary and C.R.S. §22-1-135, the statute governs.

DPA Prevails. The terms of this DPA shall control in the event of an inconsistency or conflict between the DPA and the Terms of Use.

Definitions. As used in this DPA, and in addition to the terms defined elsewhere in the Contract, the following terms have the following meaning.

“Click-Through” means both (1) the act, by clicking or tapping on an electronic on-line or app button or link for that purpose, of accepting on-line terms and conditions, and (2) the resulting agreement between the Parties.

“Colorado Student Data Law” means the Colorado Student Data Transparency and Security Act, C.R.S. § 22-16-101 et seq., as amended from time to time.

“Colorado Privacy Act” means the Colorado Privacy Act, C.R.S. §6-1-1301 et seq.

“Data Release Purpose” means the purpose or purposes for which the District provides District Data to the Contractor.

“De-identified Data” means District Data from which all PII, and attributes about District Data and PII, have been permanently and irrevocably removed so that no individual identification can be made.

“Designated Representative” means the employee or other agent designated by each Party for their respective roles under the DPA to give and receive (i) Legal Notices, (ii) notices of Security Incidents and Security Breaches, (iii) reports and other notices required by the DPA, and (iv) other information, and who may function as the coordinators to implement other aspects of the DPA as needed.

“Discovery Request” means any subpoena, warrant, legal process order, summons and complaint, interrogation, or other apparently or seemingly enforceable requirement from any jurisdiction seeking District Data.

“District Data” means:

- PII, Records, and Education Records; and
- Student PII as that term is defined by the Colorado Student Data Law; and
- Data included therein or derived therefrom; and

- Health, medical, financial, credit card, contract, and employment information about Students and their respective families, District employees and their respective families, and District suppliers, vendors, and contractors, that is protected by various State and federal laws applicable to the Contract; and
- All data and metadata about District Data that the Contractor collects, generates, or infers; and
- Data and information that the District makes available directly or indirectly to the Contractor; and
- Data and information that the District **does not** also intentionally make or **has not** intentionally made generally available on public websites or publications; and
- Materials or content that Students and other District constituents create through use of Digital Services and that is delivered in connection with the Contract and includes, without limitation, essays, research reports, portfolios, music, audio files, photographs, videos, and account information.

With respect to Students only, data, 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, including without limitation:

- The Student's name;
- The name of the Student's parent or other family members;
- The address or phone number of the Student or Student's family;
- Personal identifiers such as the Student's state-assigned Student identifier, social security number, Student number or biometric record;
- Indirect identifiers such as the Student's date of birth, place of birth, or mother's maiden name; and
- Demographic attributes, such as race, socioeconomic information, and gender.

With respect to Students and all other individuals, and to the extent not already included in the above definition:

- "Personal information" as defined in CORA; and
- "Personally identifiable information" contained in Education Records;
- "Protected health information" as that term is defined in the Health Insurance Portability and Accountability Act, 45 C.F.R. Part 160.103;

- “Nonpublic personal information” as that term is defined in the Gramm-Leach-Bliley Financial Modernization Act of 1999, 15 U.S.C. 6809;
- Credit and debit card numbers, PINs and other access codes, authentication data, and other cardholder data as those terms are defined in the Payment Card Industry Data Security Standards; and
- Other financial account numbers, access codes, and state- or federal-identification numbers such as driver’s license, passport or visa numbers.

“Education Record” means Records, files, documents and other materials that: (1) contain information directly related to a Student; and (2) are maintained by the District or by a Person acting for the District such as the Contractor.

“End User” means individuals authorized by the District to access and use the Digital Services.

“FERPA” means the federal Family Educational Rights and Privacy Act, 20 U.S.C. § 1232g and its implementing regulations, 34 C.F.R. Part 99.

“Mine District Data” and all the conjugations of the verb “mine” means the act of searching through, analyzing, accessing, or extracting District Data, metadata, or information that is NOT necessary to accomplish, for the benefit of the District, the Data Release Purpose, the services contemplated under the Contract (if any), or other purpose or purposes of this DPA.

“Person” means any individual, entity, including without limitation, any commercial, non-profit, governmental, or tribal organization, or other person of any kind that is not a Party.

“Personally Identifiable Information” or **“PII”** means any information that, alone or in combination, is linked or linkable to an individual so as to allow identification of this individual.

“Privacy Policy” means the document that the Contractor designates as its “Privacy Policy” and that sets forth the Contractor’s practices and policies relating to data collection, use, protection, security, and disclosure.

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

“School Service Contract Provider” means the same as defined in the Colorado Student Data Law.

“Securely Destroy” means to remove District Data from the Contractor’s systems, paper files, Records, databases, and any other media regardless of format, in accordance with prevailing industry standards such as detailed in National Institute of Standards and Technology (“NIST”) Guidelines for Media Sanitization, or such other standard to which the District may agree in writing, so that District Data is permanently irretrievable in the Contractor’s and its Subcontractors’ normal course of business.

“Security Breach” means an event where Unauthorized Activity has occurred.

“Security Incident” means a suspected, attempted, or imminent threat of Unauthorized Activity.

“Student-Generated Content” means materials or content that a Student creates through use of Digital Services and includes, without limitation, essays, research reports, portfolios, music, audio files, photographs, videos, and account information.

“Student PII” means the same as defined in the Colorado Student Data Law.

“Student Profile” means a collection of PII data elements relating to a Student.

“Subcontractor” means the same as defined in the Contract and for purposes of the DPA also includes any Person who assists the Contractor with performance under the Contract or with the Data Release purpose, or both, pursuant to contractual arrangements between the Contractor and that Person, and with whom the District has no direct contractual relationship.

“Targeted Advertising” means the same as defined in the Colorado Student Data Law.

“Terms of Use” means the Contractor’s or a Subcontractor’s contractual terms and conditions for the access and use of Digital Services, such as, without limitations, the license terms, end user license agreement, and other terms of service, the consent to which is a condition of the Digital Service.

“Unauthorized Activity” means the illegal or otherwise unauthorized disclosure, release, acquisition, access to, alteration, use, disruption, or destruction of District Data, or a system configuration that results in a documented unsecured disclosure, access, alteration, or use that

threatens, risks, or poses financial, reputational or other harm to the affected End User or the District.

Appendix 1 to **DPA** (Processing Instructions and Data Elements)

- I. Processing Instructions (required by C.R.S. §6-1-1305(5)).
- I.1. The nature of the processing under this Contract is as follows:
 - I.2. The purpose of the processing is as follows:
 - I.3. Additional processing instructions:
 - I.4. Personal data subject to processing:
 - I.5. Duration of time when the data is subject to processing:

To be completed if the Data Recipient is a School Service Contract Provider:

- II. Data Element Collection Information (required by C.R.S. §22-16-108).

The Contractor collects, generates or uses the following data elements of Student PII and other District Data:

Data fields collected initially for account creation:

Data fields collected during application usage:

The Contractor uses District Data for the following learning or educational purposes:

To provide the educational tools and curriculum per the Contract.

The Contractor uses and shares the Student PII and other District Data as follows:

As governed by applicable law, only in accordance with the terms of the Contract, and only as necessary to perform the Contractor's duties under the Contract, as necessary for the Data Release Purpose, or both.