



MASTER SERVICES AGREEMENT



PLACEMENTS OUT OF DISTRICT

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

<p>PROVIDER: Seven Dimensions Behavioral Health, LLC 1035 El Rancho Evergreen, CO 80439</p> <p>Legal Notices to be sent to the attention of: Legal Counsel</p>	<p>DISTRICT: JEFFERSON COUNTY SCHOOL DISTRICT R-1 1829 Denver West Dr., Bldg. 27 Golden, CO 80401</p> <p>Legal Notices to be sent to the attention of: Director of Purchasing</p>
<p>AGREEMENT BEGIN DATE: The Agreement begins on the Effective Date. The Effective Date is the date of signature of the last Party to sign.</p>	<p>INITIAL AGREEMENT END DATE: <i>(check as applicable):</i> <input checked="" type="checkbox"/> June 30 of the Fiscal Year ending: 2023. <input type="checkbox"/> On this date: _____.</p>
<p>CONTRACT AMOUNT: The total amount of all Orders, not to exceed \$250,000 for all Orders in any Contract Term.</p>	<p>PURPOSE AND SCOPE OF SERVICES: Special educational and related services in Out-Of-District placement.</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>PROVIDER:</p> <p></p> <p>_____ <i>Signature</i></p> <p>By: Executive Director _____ <i>Type Name and Title of Person Signing for Provider</i></p> <p>August 11, 2022</p> <p>_____ <i>Date of Provider Representative Signature</i></p>	<p>DISTRICT:</p> <p></p> <p>_____ <i>Signature</i></p> <p>By: Director of Purchasing</p> <p>August 12, 2022</p> <p>_____ <i>Date of District Representative Signature</i></p>
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The **District** and the **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. By having signed on the **Cover and Signature Page**, the District and the Provider agree to the terms and conditions of this Agreement.

BACKGROUND

As part of the District's educational mission, the District is providing special education and related services to eligible District students. To that aim, the District is selecting non-District providers to deliver services that best meet District students' needs. This Agreement describes the terms and conditions under which the Provider is providing special education and related services.

AGREEMENT TERMS AND CONDITIONS

- 1. Definitions.** Capitalized terms used throughout the Agreement and any Agreement Document that are not otherwise capitalized because of English grammar rules, have the meaning given to them either when first defined or in the Agreement section titled **Definitions**.
- 2. Purpose and Scope.** The purpose and scope of the Agreement are as described on the **Cover and Signature Page** and as further detailed in **EXHIBIT A – Scope of Services** attached hereto and incorporated herein. The Services shall be within the scope described therein.
- 3. Services and Orders.**
 - 3.1. Orders.** The Provider shall perform the Services within the scope described in **EXHIBIT A – Scope of Services** and as described on any Order or Orders. An Order may be in the form of a PO that the District may issue, or it may be on a form that the District prepares and that the Parties may execute from time to time while the Agreement is in effect, or both. Each Order, when executed, amends the Agreement, is labeled **Order 1, Order 2, Order 3**, and so on, and shall become a part of and be governed by the terms of the Agreement. The District is not required to request any minimum numbers of Orders or any Orders at all.
 - 3.2. Standards.** The Provider shall perform all Services as specified and in accordance with the highest standards of care and skills in the Provider's industry, trade, or profession.
 - 3.3. Licensing.** The Provider shall have and, while the Agreement is in effect, maintain all professional and other licenses, certifications, and permits required for and shall comply with all legal and regulatory requirements for performance under the Agreement.
- 4. Contract Price and Payment.**
 - 4.1. Contract Amount.** The 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 – Scope of Services** and in each Order. The actual amounts due and payable are as earned in accordance with the provisions of **EXHIBIT A – Scope of Services** and each Order. If the **Cover and Signature Page** describes a maximum Contract Amount, then Provider shall not perform Services in excess of that amount, and the District will not pay any amounts that exceed the maximum Contract Amount.
 - 4.2. Invoicing.** The Provider shall send invoices to the District to obtain payment. Invoices shall be in form and substance as acceptable to the District. Invoices shall NOT contain student names or other information that identifies individuals.
 - 4.3. Payment.** The District will pay, in arrears, amounts properly due and payable on accepted invoices, if the District has accepted the Services covered by the invoice as performed in accordance with this Agreement. Orders may set forth additional payment terms. The District is not obligated to pay properly due, payable and accepted invoices earlier than 45 calendar days after the District receives an invoice. 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.
 - 4.4. Unearned and Erroneous Payments.** If the District has 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 Provider shall refund all unearned amounts. The Provider shall return or refund any

erroneous payments it may receive.

- 4.5. Expense Reimbursement. The District will reimburse the Provider for reasonable expenses (i.e. travel or out-of-pocket costs) SO LONG AS the expenses are (i) specifically described as reimbursable in **EXHIBIT A – Scope of Services** or any Order; and (ii) approved by the District in accordance with approval procedures set forth in **EXHIBIT A – Scope of Services** or any Order. 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.
- 4.6. Federal Funding. If the Services under this Agreement will be funded with federal funds at any time now or in the future, or both, then the Federal Provision located on the District website apply: https://www.jeffcopublicschools.org/about/finance/purchasing/information_for_vendors

5. Term and Renewal.

- 5.1. Initial Contract Term. The Agreement is in effect for an initial Contract Term from the Effective Date through the date specified as the Initial Contract Term End Date on the **Cover and Signature Page**. The Parties may renew or terminate the Agreement in accordance with its provisions.
- 5.2. Order Term. Each Order shall begin and end on the dates specified in each such Order. An Order may specifically and expressly state that the Order continues in effect through an end date that occurs after the termination of the Agreement. In that event, the terms of the Agreement are then incorporated into the Order so as to govern that Order until its termination. Any Order that does not specifically and expressly state that the Order shall extend after the termination of the Agreement shall terminate on the date of termination stated in each Order or when the Agreement terminates, whichever is earlier.
- 5.3. Renewal by Agreement. The District and the Provider may renew the Agreement for up to 4 additional, successive Contract Terms of up to 12 months each. The total length of the Agreement, including the initial Contract Term and any renewal Contract Terms, shall not exceed 5 years. To enter into a renewal Contract Term, the parties may execute an **Agreement to Renew** in a form that the District prepares. The first executed **Agreement to Renew** will be labeled **Renewal Agreement 1**. Each subsequently executed **Agreement to Renew** will be labeled **Renewal Agreement 2, 3**, and so on, and, when executed, shall become a part of and be governed by the Agreement.

6. Insurance of Provider.

- 6.1. Requirement to Maintain Insurance. The Provider shall maintain at all times, while the Agreement is in effect, including during any warranty period where applicable, policies of insurance to cover its liability under the Agreement with the applicable minimum coverages described below.
- 6.2. Subrogation Waiver and Additional Insured. Where available, policies shall contain waivers of subrogation in favor of the District, and shall list the District, its officers, board members, and employees as additional insured.
- 6.3. Carrier Requirements. All insurance carriers shall have an AM Best rating of A-VIII or better.
- 6.4. Certificates of Insurance. The Provider shall provide certificates of insurance, evidencing that the insurance required under the Agreement is in effect, to the District no later than 10 calendar days after the Effective Date and thereafter within 10 calendar days after each policy renewal. The District’s receipt, review, or acceptance of certificates or policies of insurance is not a waiver of and does not relieve the Provider from its obligation to meet the insurance requirements.
- 6.5. Subcontractor Insurance Requirements. The Provider shall require all of its agents and Subcontractors to maintain insurance policy coverages equivalent to and with coverage limits that are no less than those required of the Provider in this Agreement, or to have adequate and sufficient insurance coverage for any liabilities arising from their performance under the Agreement.
- 6.6. Deductibles. The Provider assumes all financial responsibility for deductibles and self-insured retentions that may be contained in any insurance policy.
- 6.7. Required Coverage. The Provider shall maintain insurance coverage with coverage limits no less than as follows:
- 7.8.1 Commercial General Liability insurance, including coverage for product liability and

completed operations, with limits of **\$1,000,000 USD** per occurrence/**3,000,000** aggregate. The policy shall be primary insurance and non-contributory in relation to any insurance the District, its officers, board members, or employees may carry. The policy shall list the District, its officers, board members, and employees as additional insured. The policy shall contain a subrogation waiver in favor of the District.

- 7.8.2 Statutory Workers' Compensation coverage as required by Law and Employer's Liability insurance with limits of not less than **\$100,000 USD** per accident, **\$100,000 USD** disease each employee, and **\$500,000 USD** accident/disease policy limit, including occupational disease provisions for all Provider employees per statutory requirements. The Provider shall also require each Subcontractors to furnish workers' compensation insurance, including occupational disease provisions for all of the Subcontractors' employees, and to the extent not furnished, the Provider accepts full liability and responsibility for Subcontractors' employee Workers' Compensation coverage and benefits.
- 6.7.1. Commercial Auto Liability insurance, INTENTIONALLY OMITTED.
- 6.7.2. Professional Liability insurance with limits of **\$1,000,000 USD** per claim. In case of any "Claims Made" policy, the Provider shall maintain or purchase the necessary retroactive dates and extended reporting periods to maintain such continuous coverage. The Provider shall carry extended reporting period durations for such "Claims Made" coverage for a period of no less than 2 years after the termination or expiration of the Agreement, or as the District's Director of Risk Management may specify in writing.
- 6.7.3. Cybersecurity Technology Errors and Omissions/Professional Liability insurance, including Network Security and Privacy Liability Insurance acceptable to the District, with limits of **\$1,000,000 USD**, providing coverage against technological failure, cyber theft, data breach and theft, hacking, ransomware and other attacks, network liability, liability arising from computer virus, and related risks and damage. If **Supplement 1 – Data Protection Addendum** is made effective under this Agreement, the insurance requirements listed in there, if any, also apply.
- 6.7.4. SAM insurance for sexual molestation and physical abuse coverage with a limit of liability of at least **\$1,000,000**. Coverage may be provided as a part of general liability via endorsement, or removal of any SAM exclusion.

7. Data and Information.

- 7.1. Ownership of District Information. The District owns all District Information, all now known or hereafter existing intellectual property rights associated with the District Information, any derivative works thereof or modification thereto. The District continues to own all District Information that the District may share with or disclose to the Provider for any reason.
- 7.2. Use of District Information. The Provider shall collect, use, and maintain District Information for the sole and exclusive benefit of the District, only as necessary to perform under the Agreement, and only in compliance with all applicable Laws. The District hereby grants to the Provider a limited, nonexclusive license to use District Information solely for the purpose of performing its obligations specified in the Agreement. The Agreement does not give the Provider any rights, title, or interest to or in District Information (including, without limitation, De-identified Data), except as expressly stated in the Agreement.
- 7.3. Prohibited Uses of District Information. The Provider shall **NOT** do any of the following, **UNLESS** (i) specifically permitted in any Agreement Document, or (ii) permitted in advance and in writing signed by the District representative for legal notice purposes named on the **Cover and Signature Page**, or (iii) as required by Law:
- 7.3.1. Use, sell, rent, alter, or mine District Information for its own gain and benefit outside of the payments and benefits that create the consideration for this Agreement.
- 7.3.2. Publish, copy, or otherwise disclose District Information to any person not a Party.
- 7.3.3. Use the District's name, logos, or reputation.
- 7.3.4. Use District Data to conduct External Research, as that term is defined by District Policy

IGB and IGB-R.

- 7.3.5. Use District Data for advertising or marketing of any kind.
- 7.3.6. Use District Data in a manner that is inconsistent with Provider’s privacy policy.
- 7.3.7. Use District Data to create a student profile other than as authorized or required by the Agreement to perform the Services.
- 7.3.8. Store District Data outside the continental United States.
- 7.4. ***Subcontractors Likewise Obligated.*** The Provider shall cause those of its employees, agents, and Subcontractors who perform some or all of the Services or are otherwise engaged in connection with the Agreement, to comply with the provisions of this Section labeled **Data and Information**, and to execute such confidentiality, non-disclosure, or data sharing agreements as the District may require.
- 7.5. ***Third Party Information.*** In the course of performing the Services, the Provider may have access to information that is confidential and belongs to persons not a Party, such as specifications, software code, ideas, documents or other material. The Provider shall not disclose this third party information to any person except as necessary to perform the Services. The Provider shall not violate the intellectual property or confidentiality and privacy of information rights of persons not a Party. The Provider shall require its employees, agents, and Subcontractors to comply with this paragraph.
- 7.6. ***Data Destruction.*** The Provider shall securely destroy all District Data in its possession, and cause the secure destruction of all District Data in the possession of its Subcontractors within 10 calendar days after receiving a written request from the District and as more specifically described in the Agreement section titled Termination, Default, and Remedies/Obligations at Termination. “Securely destroy” means to remove District Data from the Provider’s systems, paper files, records, databases, and any other media regardless of format, so that District Data is permanently irretrievable in the Provider’s and its Subcontractors’ normal course of business.
- 7.7. ***Software-Specific Data Security and Protection.*** If the box after Data Security and Protection is checked on the **Cover and Signature Page**, then the Provider shall also comply with all applicable provisions of **Supplement 1 – Data Protection Addendum** attached hereto and incorporated herein.

8. 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:

- 8.1. **Supplement 2 – Federal Funding Provisions** (if applicable);
- 8.2. **Supplement 1 -- Data Protection Addendum** (if applicable); then
- 8.3. District Specific Provisions in the main body of the Agreement; then
- 8.4. The remainder of the main body of the Agreement; then
- 8.5. **EXHIBIT A – Scope of Services**, together with any attachments; then
- 8.6. Executed **Orders 1, 2, 3** and so on, when executed, in reverse chronological order, together with any attachments; then
- 8.7. Executed **Renewal Agreements 1, 2, 3** and so on, when executed, in reverse chronological order.

9. Provider's Representations. The Provider represents to the District that the Provider:

- 9.1. Is competent and qualified to and capable of performing the Services.
- 9.2. Maintains the licensing, certificates, and other credentials required by Law and by the District to perform the Services.
- 9.3. 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.
- 9.4. 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.

10. Termination, Default, and Remedies.

- 10.1. ***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 Provider. The notice will state on what date termination will become effective. That date shall be at least 10 calendar days after the Provider receives the notice. The District will pay the Provider the sums earned and not yet paid up to the date of termination. The District will not pay for loss of anticipated profits.

10.2. Events of Default by Provider. Each of the following is an event of default:

- 10.2.1. The Provider does not perform the Services as agreed; or
- 10.2.2. The Provider does not comply with any provision of the Agreement or any Agreement Document; or
- 10.2.3. The Provider defaults under any other agreement with the District, and the default remains unresolved for 60 calendar days; or
- 10.2.4. A representation or warranty in this Agreement is or was not true as of the date made; or
- 10.2.5. The Provider loses a license, qualification, or other credential that is required to perform under this Agreement; or
- 10.2.6. The 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
- 10.2.7. The Provider or any of its employees, agents, Subcontractors, or volunteers performing the Provider's duties under this Agreement are convicted of a crime that results in the Provider's being no longer permitted or able to perform the Services; or
- 10.2.8. The District determines in its sole discretion that the Provider's actions or inaction, or the actions or inaction of any of the Provider's employees, agents, volunteers, or Subcontractors, are a threat or danger to the District or any of the District Constituents.

10.3. 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 Provider. The notice will state the nature of the event of default, what actions the Provider needs to take to correct the default if a correction is possible, the dates when the Provider has to complete the correction, and the action the District intends to take if the Provider does not correct the default or if no correction is possible. 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 Provider of any remedies the District has taken within 30 calendar days after the District has taken such action.

10.4. District Remedies. In the event of default, and after the District has given notice and opportunity to correct where required, and if the Provider does not correct 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:

- 10.4.1. Terminate the Agreement or any part thereof. To the extent terminated, the Provider shall stop all work. The 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.
- 10.4.2. Suspend the Provider's performance pending corrective action as the District may specify. The Provider shall cease all performance as the District may direct and will not be entitled to an adjustment in price or performance schedule.
- 10.4.3. Withhold payment to the Provider until the default is corrected.
- 10.4.4. Deny payment for Services not performed, or for Services that due to the 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 as the result of the default.
- 10.4.5. Removal. Demand immediate removal, or cause, on the District's own initiative, immediate removal of the Provider or any of the Provider's employees, agents, volunteers,

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.

- 10.4.6. Purchase Cover. Purchase goods and services to complete or continue the Services. The Provider shall pay to the District, upon demand, all costs exceeding the amount the District would have paid under the Agreement without the default that the District incurs as a result.
- 10.4.7. Intellectual Property Preservation. If, in the performance under the Agreement, the Provider infringes on an Intellectual Property right, the Provider shall, as approved by the District, (a) secure that right to use such work for the District or the 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.
- 10.4.8. Offset costs and damages against and withhold any amount that may be due the Provider as the District deems necessary to protect the District against loss.
- 10.4.9. Other Remedies. Pursue any other remedy available to the District by Law or agreement.

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

- 10.5.1. While the Agreement is still in effect and the District has notified the Provider that it will transition the Services to others, cooperate and assist in such transfer and transition.
- 10.5.2. Take timely, reasonable, and necessary action to protect and preserve property in the possession of the Provider and in which the District has an interest; and
- 10.5.3. At the District's request, return Materials and tangible objects owned by the District in the Provider's possession at the time of any termination; and
- 10.5.4. Deliver to the District all completed Work Product and all Work Product that was in the process of completion; and
- 10.5.5. As directed by the District, deliver and return to the District all District Data, or securely destroy all District Data so as to make it permanently irretrievable and certify as to such secure destruction. The Provider shall not retain any copies or duplicates of District Data.

10.6. Prepayment Refund. The 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.

11. General Contract Terms.

- 11.1. Assignment**. The Provider may assign its rights and obligations hereunder only with the express prior written consent of the District
- 11.2. Binding Effect**. This Agreement binds the Parties and their respective successors and assigns.
- 11.3. Captions and References**. The captions and headings are for reference only and do not define or limit its provisions.
- 11.4. 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.
- 11.5. 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.
- 11.6. Independent Provider**. The Provider is an independent Provider and NOT an employee of the District. Employees and Subcontractors of the Provider are NOT employees of the District. The Provider shall perform all Services using independent judgment and expertise as an independent Provider. The District does not require the Provider to work exclusively for the District. The Provider shall deliver the Services in accordance with the plans and specifications set forth herein, and the District does not oversee the Provider's actual work or instruct the Provider as to how the 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 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 Provider in its trade or business name. The District does not combine business operations in any way with the Provider's business but maintains District operations separate and distinct from the Provider's operations. Neither Party is, or shall be construed to be, a partner or in joint venture with the other Party. Neither the 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. **Provider acknowledges that it is not entitled to Unemployment Compensation or Workers' Compensation benefits (unless coverage is provided by the Provider or other entity) and that 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 Provider, if any. The District will comply with all applicable tax reporting laws.

- 11.7. Modification.** The Agreement can only be modified in writing executed by both Parties or as otherwise provided in the Agreement.
- 11.8. Notices, Legal.** All notices required under the Agreement shall be in writing and shall be effective (i) upon personal delivery, or (ii) 3 calendar days after mailing when deposited in the United States first-class mail, postage prepaid, or (iii) when delivered, as such delivery is evidenced by a mailing tracking number, if mailed with an overnight or other tracked service (such as, for example, USPS Priority or Express, FedEx, or UPS), or (iv) when sent by electronic mail, or (v) when transmission is confirmed by facsimile. Notices shall be sent to the Parties' respective addresses and representatives listed on the **Cover and Signature Page**. Notice by paper letter mail or personal delivery shall be effective at all times. Notice by email or facsimile shall be effective only if the Parties agree and designate in writing email addresses or facsimile numbers for that purpose on the **Cover and Signature Page**. 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.
- 11.9. Notification of Legal Process.** In the event the Provider becomes subject to legal process (such as, for example, subpoenas, interrogatories, or summons and complaint) that relates to the Agreement or the Provider's performance under the Agreement or compels or will compel the Provider to disclose District Information, the Provider shall 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.
- 11.10. No Third-Party Beneficiaries.** The Agreement does not give any rights or benefits to anyone other the Parties.
- 11.11. Records and Audits.** The 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, while the Agreement is in effect and for a period after the date of termination of the Agreement that is at a minimum as long as required by law. The District may inspect the Provider's records upon reasonable notice, and may retain copies thereof. This provision is in addition to any other requirements concerning records, reports, and audits that may be included in the Agreement's Scope of Services, statement or work, or any Orders.
- 11.12. Rights in and Use of Work Product.** The Provider assigns to the District, and its successors and assigns, the entire right, title and interest in the Work Product, if any.
- 11.13. 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.
- 11.14. Subcontracts.** The 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.
- 11.15. Survival of Certain Agreement Terms.** Any provision of the Agreement that imposes an obligation on a Party that begins or continues after termination or expiration of the Agreement survives the termination or expiration of the Agreement and is enforceable by the other Party until such obligation has been discharged or is no longer in effect.
- 11.16. 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.

12. District Specific Terms.

- 12.1. 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, or otherwise made available.
- 12.2. Compliance with Laws and District Policies.** The Provider shall comply with all laws that apply to performance under the Contract, as amended from time to time. The Provider shall comply with those District Policies that apply to the Contract.
- 12.3. Conflict of Interest.** The Provider represents that the Provider (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 in any manner 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).

- 12.4. Criminal Record Certification.** Where required by law and District policies, the Provider shall complete a criminal records check on itself, if an individual, and any Provider employee, agent, or Subcontractor who is an individual and whose performance under the Contract involves direct services to District students and regular, not incidental, contact with students. The Provider, if an individual, and Provider's employees, Subcontractors, or other agents of the Provider, 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 Provider 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.
- 12.5. District Data relating to Students.** In the course of performing the Services, the Provider may gain access to District Data consisting of personally identifiable information and other protected information of students, even though performance under the Contract may not require it. In this case, the Provider shall comply with the requirements in the Family Educational Rights and Privacy Act, 20 U.S.C. § 1232g and 34 CFR Part 99, concerning the confidentiality and release of student records and data, as reflected in District Policy JRA/JRC; and with the provisions of 20 U.S.C. § 1232h, as reflected in District Policy JLDAC, concerning the need to obtain written consent of the parent prior to subjecting a student to a certain manner of survey, analysis, or evaluation, and concerning the provision of psychological services. The Provider shall comply with the Colorado Student Data Transparency and Security Act, C.R.S. §§ 22-16-101 *et seq.*, and the Children Online Privacy and Protections Act (COPPA), as applicable. The Provider acknowledges that under applicable law, officers, employees, and agents who access the education records and personally identifiable information of District students may use such information only for the purposes of performing under the Contract; that the Provider is prohibited from re-disclosing such information to persons not a Party, and shall use reasonable methods to ensure to the greatest extent practicable that such records and data are protected from further disclosure; and that Provider shall destroy any such information when the Contract is terminated or when the information is no longer needed to perform under the Contract or receive payment.
- 12.6. Governing Law, Jurisdiction and Venue.** The laws of the State of Colorado govern this Contract. A Party shall 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 subsequently be amended. The District does not agree to binding arbitration or any other binding extra-judicial dispute resolution.
- 12.7. Governmental Immunity.** No provision of the Contract is or 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).
- 12.8. Indemnification from Provider. Not applicable where the Provider is a Colorado governmental entity subject to the Colorado Constitutional tax and public spending provisions commonly known as TABOR.**
- 12.8.1. **Definitions.** For purposes of this provision titled "Indemnification from Provider", the term "**Indemnified Persons**" means the District, its employees, agents, officers, and members of the governing Board of Education. The term "**Claims**" means liability, costs, expenses, claims, actions, causes of action, suits, demands, damages, court awards (including attorneys' fees and court costs) and all other incidents of liability alleged or brought by persons not a Party against the District.
- 12.8.2. **General Indemnification.** The Provider 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 the Provider and their employees', agents', Subcontractors', officers', or assignees' actions or omissions in performance under the Contract.
- 12.8.3. **Intellectual Property.** If performance under the Contract includes use of intellectual property, delivery of Work Product, or both, then the Provider 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 performance under the Contract infringing upon or otherwise violating any patent, copyright, trademark, trade secret, or other intellectual property rights of persons not a Party.
- 12.8.4. **No effect of other Limitations Provisions.** In the event the District agrees elsewhere in the Contract, in any Vendor Contract, or otherwise to any limitations of liability by the Provider related to performance under the Contract, this provision titled "Indemnification from Provider" takes precedence, is excluded from, and is not affected by any such other limitations of liability.
- 12.8.5. **Survival.** This provision titled "Indemnification from Provider" survives the termination, expiration, or other end of the Contract.
- 12.9. Indemnification by District Void.** Notwithstanding anything to the contrary in the Contract, any Contract Component, or a Vendor Document, the District shall not and will not indemnify the Provider or any person not a Party. Any provision in the Contract, a Vendor Document, or any other document relating to the contract relationship between the District and the Provider attempting or purporting to require that the District indemnify the Provider or any other person is null and void *ab initio*.
- 12.10. Parameters of LoL.** If the District agrees to any limits on liability by the Provider in the Contract, any Contract Component, or a Vendor Document, the following are excluded from any such Provider liability limits: (i) claims for

bodily injury, death, or damage to property, and (ii) the Provider's indemnity obligations. In addition, limitations of liability shall be calculated only by taking into account claims against and proceeds from insurance coverage available.

- 12.11.** 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 Contract, the Provider's performance, and the records and reports generated thereunder, to the extent not prohibited by federal law.
- 12.12.** PERA Contributions. Pursuant to CRS § 24-51-1101(2), if the Provider 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 Provider shall inform the District of this status. The District will make any employer PERA contributions and contribution-related disclosures that are required by law. The Provider or the Provider's employee who is a Colorado PERA retiree will be responsible to pay any working retiree contributions to PERA that are required by Law.
- 12.13.** 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 becomes void when the 2021 amendment to the underlying law, §§8-17.5.101 et seq., goes into effect 7/1/2022.** Provider certifies that it shall comply with the provisions of C.R.S. §8-17.5-101 *et seq.* Provider shall not knowingly (i) employ or contract with a worker without authorization to perform work under the Contract, (ii) enter into a contract with a Subcontractor that knowingly employs or contracts with a worker without authorization to perform work under the Contract, or (iii) enter into a contract with a Subcontractor that fails to contain a certification to Provider that the Subcontractor shall not knowingly employ or contract with a worker without authorization to perform work under the Contract, Provider also represents and warrants that 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 Contract, 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). Provider shall not use E-Verify Program or State program procedures to undertake pre-employment screening of job applicants while this Contract is being performed. When the Provider has actual knowledge that a Subcontractor is employing or contracting with a worker without authorization for work under this Contract, the 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 worker without authorization 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 a worker without authorization). 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 Contract if the 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 Provider shall be liable for actual and consequential damages to the District.
- 12.14.** Public Contracts with Natural Persons. **This Provision becomes void when the 2021 amendment to the underlying law, §§24-76.5-101 et seq., goes into effect 7/1/2022.** This provision is required by C.R.S. §§24-76.5-101 *et seq.* If the Provider is a natural person 18 years of age or older, the Provider hereby swears and affirms under penalty of perjury that they (i) are 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) have produced one form of identification required by C.R.S. §24-76.5-103, before the Effective Date.
- 12.15.** Tax Exemption. The District is exempt from the payment of state and most municipal, sales and use taxes for materials, supplies, and equipment used in the performance under the Contract, and may be exempt from federal and other taxes. The Provider shall not include any of these taxes in any charges or invoices to the District.
- 12.16.** Independent Provider. The Provider is an independent Provider and NOT an employee of the District. Employees and Subcontractors of the Provider are NOT employees of the District. The Provider shall perform all Services using independent judgment and expertise as an independent Provider. The District does not require the Provider to work exclusively for the District. The Provider shall deliver performance under the Contract in accordance with the plans and specifications set forth herein, and the District does not oversee the Provider's actual work or instruct the Provider as to how the Provider performs. The Contract may be terminated only in accordance with its terms. The District does not provide training (other than minimal), tools or benefits to the Provider, except that the District may supply materials and equipment as specified herein. Payment under the Contract is in accordance with the contract rate or price set forth herein, and not 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 Contract. The District will make payments to the Provider in its trade or business name. The District does not combine business operations with the Provider's business but maintains District operations separate and distinct from the Provider's operations. Neither Party is, or shall be construed to be, a partner or in joint venture with the other Party. Neither the Provider nor any agent, employees, Subcontractor, or Subcontractor's agent or employee has any authority, express or implied, to bind the District to any Contract or incur any liability attributable to the District. **Provider acknowledges that it is not entitled to Unemployment Compensation or Workers' Compensation benefits (unless coverage is provided by the Provider or other entity) and that Provider is obligated to pay federal and state income tax on any moneys earned from the District pursuant to the Contract.** 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 Provider, if any. The District will comply with all applicable tax reporting laws.

- 13. Definitions.** In addition to other capitalized terms defined elsewhere in the Agreement or Agreement Documents, the following terms shall have the following meanings:
- 13.1.** “*Agreement*” means this Master Services Agreement, together with all Agreement Documents.
- 13.2.** “*Agreement Documents*” means each and the combination of the following parts of the Agreement, as they may be attached, all of which together forming one agreement:
- 13.2.1. The main body of the Agreement.
 - 13.2.2. **EXHIBIT A – Scope of Services**, together with any attachments.
 - 13.2.3. **Supplement 1 – Data Protection Addendum** (if applicable).
 - 13.2.4. **Supplement 2 – Federal Funding Provisions** (if applicable).
 - 13.2.5. Each executed **Order 1, 2, 3**, and so on, if and when executed.
 - 13.2.6. Each executed **RENEWAL AGREEMENT 1, 2, 3**, and so on, when executed.
- 13.3.** “*Contract Term*” means any period of time with a stated begin date and an end date during which the Parties have agreed for the Agreement to be in effect, and includes the initial Contract term and any renewal terms. The Agreement, during the entire time when it is in effect, may have more than one Contract Term.
- 13.4.** “*De-identified Data*” means what the term is defined as in **Supplement 1 – Data Protection Addendum**, if attached hereto. If **Supplement 1** is not attached, then this term means District Data from which all personally identifiable information and attributes about such data have been permanently removed so that no individual identification can be made.
- 13.5.** “*District Constituents*” means the District’s employees, board members, officers, agents, students, parents and guardians of District students, and school visitors.
- 13.6.** “*District Data*” means what the same term is defined as in **Supplement 1 – Data Protection Addendum**, if attached hereto. If **Supplement 1** is not attached, then this term means Personally Identifiable Information (“PII”), Student PII, Record, Education Record, health, financial, and employment data, and all PII 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 Provider or that is otherwise collected or generated by Provider in connection with the performance of the Services.” **PII** means information and metadata, including without limitation, health, financial, employment, and academic information that, means personally identifiable information including, without limitation, any information about an individual that can be used to distinguish or trace an individual’s identity, such as name, social security number, date and place of birth, mother’s maiden name, or biometric records. “**Student 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. Student PII 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 “personal information” as defined in the Colorado Open Records Act, C.R.S. 24-72-101 *et seq.*; 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; “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 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; other financial account numbers, access codes, and state- or federal-identification numbers such as driver’s license, passport or visa numbers. “**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. “**Education Record**” 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 Provider.
- 13.7.** “*District Information*” means all information, including without limitation, District Data (if any), and all other records, reports, material, and information, in any form and on any media, including but not limited to, any such information that may belong to or affect persons not a Party, which the District provides to and the Provider receives from the District.
- 13.8.** “*Effective Date*” means the date when the Parties execute this Agreement and is the later date if the Parties sign on different dates.
- 14.9** “*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.
- 13.9.** “*Intellectual Property*” means all intellectual property, including without limitation, patent, copyright, trademark, trade secret, trade dress, or application therefor, and all work and rights derived therefrom.
- 13.10.** “*Law*” or “*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’s governing board.
- 13.11.** “*Materials*” means all labor, licenses, materials, supplies, equipment, and all other items necessary to complete, perform

and deliver the Services.

- 13.12.** *“Order”* means a modification to the Agreement that is either a P.O. or in form and substance as the sample Order shown in **Attachment 1 to EXHIBIT A (Orders)**, which allows the Parties to add Services after the Effective Date to be governed by the Agreement, and includes each executed **Order**.
- 13.13.** *“Party”* means the District or the Provider, and the plural means both the District and the Provider.
- 13.14.** *“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.
- 13.15.** *“School”* means a District department or a District school, such as an elementary, middle, high, or option school.
- 13.16.** *“Services”* means the services and work the Provider is performing in accordance with the Agreement and under each Order, and includes all goods and Materials the Provider acquires and uses to perform the Services.
- 13.17.** *“Subcontractor”* means persons not a Party that the Provider engages to aid in the performance under the Agreement and any Order.
- 13.18.** *“Vendor Agreement”* means any form of agreement or documentation prepared and provided by the Provider and relating to the Agreement or the Services, and may include, 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 or in addition to the Agreement.
- 13.19.** *“Work Product”* means work product that the Provider produced or created specifically 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 Provider developed before the Effective Date and used, without modification, in the performance of the Agreement.

EXHIBIT A – Scope of Services

The Provider shall provide Services and take such other actions within the scope of this **EXHIBIT A**.

1. Definitions

In addition to:

1. The terms defined in the main body of the Agreement; and
2. The definitions used in the Regulation, which shall apply in this Agreement and take precedence;

the following terms have the following meaning:

- 2.1 CDE means the Colorado Department of Education.
- 2.2 CDE-Approved Services means the range of services, together with equipment and/or supplementary aids, that Facility Schools commonly provide in accordance with IEPs, and includes extended school year services if and to the extent required by the Student’s Plan.
- 2.3 Coordinator is the individual office or title holder whom each Party designates to function as their contact for implementation of the purposes of the Agreement and each Order.
- 2.4 ESY means the extended school year for which Services may be provided in accordance with the Regulation.
- 2.5 Facility School means an entity that the CDE has approved as a facility school, as published on the CDE website from time to time, and that maintains Facility School status while the Agreement remains in effect.
- 2.6 Family means a Student’s parents, guardians, or other family members who are responsible for the Student’s care and education as reflected on the District’s records.
- 2.7 FERPA means the Federal Educational Records Protection Act.
- 2.8 IDEA means the federal Individual With Disabilities Act.
- 2.9 IEP means Individual Educational Plan and has the meaning attributed to it by federal law governing IEPs.
- 2.10 Records means a Students’ IEPs, educational records and plans, grade reports, transcripts, progress reports, and any other educational records created or maintained by the Provider.
- 2.11 Regulation means CDE regulation 1CCR 301-8.
- 2.12 School Year means a regular school year with the number of school days as approved by the CDE.
- 2.13 Student means any individual whom the District places with the Provider in accordance with the Agreement.

2. Provider Facility School Status

The Provider is (*check as applicable*):

- A Colorado public school district.
- A Facility School.
- A privately owned and operated entity.

3. Placement

From time to time, the District will place Students with the Provider for individualized educational and related services.

To place a Student, the District issues a PO. In addition, the Parties may execute for each Student an Order in such form as the District prepares. Each Order will specify the types and frequency of Services, prices and rates, and other aspects of out-of-district placement specific to the Student placed with that Order.

4. Services

Services include all or a combination of the following, and may include other Services that are specified on individual Orders:

- CDE-Approved Services.
- Additional services to CDE-Approved Services.
- ESY, either as included in IEPs or as specified in Student Orders.
- Educational, including special education.
- Therapy, including without limitation, speech and language, occupational, and other.
- Residential housing.
- Related Services.

5. Provider's Duties

The Provider shall provide the Services listed in each Student Order, in accordance with the Student's IEP and within the scope of Services stated in the Agreement.

In addition, the Provider shall:

- 2.1 Furnish the equipment, facilities, and/or supplementary aids and services.
- 2.2 Monitor and maintain records reflecting each Student's progress in the general education curriculum and toward the goals included in the Student's IEP.
- 2.3 Schedule, provide notice of, and conduct annual, triennial, and other IEP meetings, as necessary, for the purpose of reviewing and updating Student IEPs. The Provider will ensure that all meetings are conducted in accordance with IDEA and that the Special Education Director or designee of the District receives timely notice of such meetings and is invited to participate. The Provider also will ensure that the Students' parents or legal guardians receive timely notice and have an opportunity to participate in any IEP meetings convened during the term of a Student's Order.
- 2.4 Advise the District of any perceived need for assessment or reevaluation and any educational or related concerns regarding the Students that come to its attention. To the extent any assessment or reevaluation is required, the Provider will conduct such assessment or reevaluation upon receipt of written parental consent and then convene a meeting as described in the above paragraph.
- 2.5 In response to reasonable requests from the District, provide, in a secure and FERPA-compliant manner, copies of Students' IEPs, educational records and plans, grade reports, transcripts, progress reports, and any other educational records created or maintained by the Provider during the term of this Agreement.
- 2.6 Comply with all federal and state laws applicable to its obligations under the terms of this Agreement, and provide state and federal reporting information to the District upon request and with appropriate advance written notice.

6. District's Actions

The District will:

- 6.1 Perform the duties of an administrative unit or other role as the District has concerning any individual Student, as required by the Regulation, IDEA, and applicable federal and Colorado Law.
- 6.2 Pay for the Services in accordance with and as governed by the Regulations, and where not governed by the Regulation, as set forth in the Agreement and each Order.
- 6.3 Monitor Student progress and coordinate with the Provider concerning educational meetings.
- 6.4 Deliver to the Provider all Student Records reasonably necessary for Provider's provision of Education Services and related Student progress reports, in compliance with FERPA requirements.
- 6.5 Provide transportation services, including payment, scheduling and providing proper supervision during the transportation of any Student, except as otherwise stated in an Order.
- 6.6 Upon receipt of notice from the Provider of a change in educational placement of a Student into any alternative school setting, contact the receiving district and coordinate transfer and related payment obligations.

7. Prices and Rates

The District will pay in arrears for Services actually provided at the following prices and rates:

- 7.1 For CDE-Approved Services, the CDE rates as in effect at the time Services are rendered.
- 7.2 For additional and all other Services, the prices and rates that are listed in each Student Order.

To the extent the CDE price list governs the Services and payment for them, the District will not pay amounts that exceed amounts the District is required to pay under the formulae set forth thereunder.

8. October and December Counts

Accounting for Students resulting from October and December counts will be in accordance with Colorado law and as stated in a Student Order.

9. Invoicing and Payment Terms

The Provider shall send separate invoices corresponding to each Order. Invoices shall bill in arrears for Services rendered. The Provider may invoice on a periodic basis, such as monthly or quarterly.

The District's invoices, purchasing agreements, and other financial records and documents are normally subject to disclosure under Colorado Open Records laws. For this reason, invoices and other exchange of information made under or in connection with the Agreement shall **NOT** list Student names, Family member names, or any other identifiers that would allow the reader of an invoice or other communication to learn of the personal identity of a Student or their Family. This requirement **DOES NOT** apply to instruction-specific communication between educational staff concerning Educational Records, Records, individual education plans, and other instruction-specific records created in connection with the delivery of direct Services to each Student.

Invoices shall refer to this Agreement and the PO or Order under which the invoice is issued in a manner that reasonably identifies the Agreement, so that the District can match Orders and invoices for Orders to the Agreement.

10. Early Termination of Orders

The District may terminate an Order or other Student placement at any time if the District determines that termination is in its best interest or the best interest of a Student, or both. If the District terminates an Order before its expiration date, and no event of default has occurred as provided for in the Agreement, the District will pay all amounts earned up to the termination date.

The Provider may terminate an Order at any time. If the Provider terminates an Order before its expiration date, the Provider shall provide notice to the affected Student's Family Members and the District at least 31 calendar days before the effective date of termination.

11. Coordinators

The Parties may designate specific individuals, offices, or titles as their respective Coordinator. A Party may change their respective Coordinator without amendment to the Agreement by written notice of such change to the other Party.

--- SUPPLEMENT 1 ---
DATA PROTECTION ADDENDUM (DPA)

DISTRICT:	JEFFERSON COUNTY SCHOOL DISTRICT R-1
DATA RECIPIENT:	THIS SUPPLEMENT 1 IS ATTACHED TO AND INCORPORATED INTO A CONTRACT. THE DATA RECIPIENT IS THE SAME AS THE PROVIDER, SERVICE PROVIDER, OR LICENSE PROVIDER CONTRACTING WITH THE DISTRICT.
DATA RELEASE PURPOSE:	AS DESCRIBED IN THE CONTRACT TO WHICH THIS SUPPLEMENT 1 IS ATTACHED AND INTO WHICH IT IS INCORPORATED.
EFFECTIVE TERM:	The DPA remains in effect for as long as the District provides District Data to the Data Recipient and the Recipient possesses or otherwise controls District Data.
DISTRICT’S DESIGNATED REPRESENTATIVE: <i>(FOR LEGAL AND DPA-REQUIRED NOTICES):</i>	Executive Director, Data Privacy and Security And Director of Purchasing 1829 Denver West Drive, Bldg. 27, Golden Colorado 80401

THIS DATA PROTECTION ADDENDUM FUNCTIONS AS AN ADDITION TO ANY OTHER AGREEMENT, CONTRACT, PURCHASE ORDER, MEMORANDUM OF UNDERSTANDING, OR OTHER RELATIONSHIP OF ANY KIND (“CONTRACT”) THAT MAY NOW OR IN THE FUTURE EXIST BETWEEN THE DISTRICT AND THE DATA RECIPIENT.

THE DISTRICT HAS GIVEN IN THE PAST, OR IS ABOUT TO GIVE, OR WILL IN THE FUTURE GIVE DISTRICT DATA TO THE DATA RECIPIENT IN CONNECTION WITH ONE OR MORE CONTRACTS.

WHEN THE DATA RECIPIENT RECEIVES DISTRICT DATA, THE DATA RECIPIENT AGREES TO THE TERMS OF THIS DPA. THIS DPA:

- **GOVERNS THE PRIVACY, PROTECTION, AND INTEGRITY OF DISTRICT DATA AFTER THE DISTRICT GIVES DISTRICT DATA TO THE DATA RECIPIENT;**
- **CONTROLS THE DATA RECIPIENT’S COLLECTION, USE, STORAGE, TRANSFER, SECURITY MEASURES, AND RETURN, DESTRUCTION, AND OTHER DISPOSAL OF DISTRICT DATA;**
- **PROVIDES A FRAMEWORK FOR THE PARTIES’ HANDLING OF DATA THEFT, BREACH, AND SYSTEM SECURITY INCIDENTS; AND**
- **ENSURES COMPLIANCE WITH VARIOUS STATE AND FEDERAL LAWS AND BEST PRACTICES CONCERNING PERSONALLY IDENTIFIABLE AND OTHER PROTECTED INFORMATION.**

1. Defined Terms.

Capitalized words that are used throughout the DPA and that are not capitalized because of English grammar rules have the meaning ascribed to them: (1) in the table heading the first page of the DPA; or (2) when first used and then defined in parentheses and quotation marks; or (3) as defined in the Section titled “Definitions.”

2. Data Ownership.

- 2.1.** District Data is District property and continues to be District property when shared with or disclosed to the Data Recipient. In addition, the District also owns
 - 2.1.1. All now known or hereafter existing intellectual property rights associated with District Data, and
 - 2.1.2. Any derivative works thereof or modifications thereto.
- 2.2.** 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.

3. License Grant.

The District grants to the Data Recipient a limited, non-exclusive license to use District Data solely for performing its obligations under or otherwise fulfilling the purposes of the Contract and in accordance with the terms of this DPA.

4. Data Collection, Use, Security, and Compliance with Laws.

4.1. Collection.

- 4.1.1. The Data Recipient shall collect only such data and information that the Data Recipient needs to perform the services, deliver the goods, or engage in such other activities as contemplated by the Contract, the Data Release Purpose, or both.
- 4.1.2. If the Data Recipient collects personal information as defined by COPPA from children under 13 years of age, the Data Recipient warrants, represents, and agrees that: (i) such collection occurs in compliance with COPPA; and (ii) the collection and use is for the benefit of the District and for no other commercial purpose; and (iii) the Data Recipient has provided the District with full notice of its collection, use, and disclosure practices.

4.2. Use.

- 4.2.1. Purpose of Use. The Data Recipient shall use District Data only and solely for the purpose of performing the obligations under or otherwise fulfilling the purposes of the Contract, the Data Release Purpose, or both. If the Data Recipient is a School Service Contract Provider, the Data Recipient shall use the District Data also only in accordance with the CoSDTASA.
- 4.2.2. No Re-Disclosure. The Data Recipient shall not disclose, transfer, release, share, or otherwise provide District Data to Persons except as expressly permitted by the DPA or the Contract.
- 4.2.3. Expressly Prohibited. In using the District Data, the Data Recipient shall NOT (except if and as specifically permitted in the Contract):

- 4.2.3.1. 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 CoSDTASA or (3) in connection with an entity merger or acquisition as permitted by C.R.S. §22-16-109(2)(a).
- 4.2.3.2. Use District Data for its own commercial benefit outside of the consideration provided by the Contract.
- 4.2.3.3. Engage in Targeted Advertising or any advertising, marketing, or surveying of any kind directed toward Students, parents, guardians, or District employees and agents.
- 4.2.3.4. Create a Student Profile.
- 4.2.3.5. Use District Data in a manner that is inconsistent with the Privacy Policy.
- 4.2.4. De-identified Data. The Data Recipient may use De-identified Data as follows:
 - 4.2.4.1. As permitted for District Data; and
 - 4.2.4.2. To maintain, develop, support, improve, or diagnose its website, online service, online application, or mobile application.

4.3. Security.

- 4.3.1. Storage Location. Data Recipient shall store District Data only within the continental United States and shall provide to the District a complete and accurate list of the actual location of data centers and other places where the Data Recipient stores District Data.
- 4.3.2. Security Safeguards. Data Recipient shall store and process District Data in accordance with prevailing industry and commercial standards and practices, including, without limitation, 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. Data Recipient 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 and the terms and conditions of this DPA.
- 4.3.3. Encryption. Data Recipient shall ensure that all electronic District Data are at all times and will at all times be encrypted in transmission and at rest in accordance with either (1) NIST Special Publication 800-57, as amended, or (2) such other standard as the Parties may agree to in the Contract.
- 4.3.4. Risk Assessments. Data Recipient shall conduct periodic risk assessments and remediate any identified security vulnerabilities in a timely manner.
- 4.3.5. Audit Trails. Data Recipient shall conduct audit trails and take such other reasonable measures to protect District Data against deterioration or degradation of data quality and authenticity.
- 4.3.6. Verification of Safeguards. Upon District's written request, Data Recipient shall provide or make available to the District for review, the following, verifying Data Recipient's administrative, physical and technical safeguards are in compliance with industry standards and best practices:

- 4.3.6.1. A third-party network security audit report, or
- 4.3.6.2. Certification from Data Recipient indicating that an independent vulnerability or risk assessment of the Data Recipient’s data security program has occurred.
- 4.3.7. No Re-identification of De-identified Data. The Data Recipient 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 Data Recipient shall not use De-identified Data in combination with other data elements or De-identified Data in the possession of a Subcontractor others so as to allow for re-identification.
- 4.3.8. Subcontractor Click-Through. If the Data Recipient is providing software or on-line services through Subcontractors, and Click-Through will be required for the District to avail itself of the services contemplated by the Contract, then the Data Recipient shall cause the Subcontractor providing such software or on-line access to consent to and honor the terms of this DPA with respect to the District Data and the District’s use of the services provided through the Subcontractor

4.4. Compliance.

- 4.4.1. FERPA and Qualified FERPA Exception. If Data Recipient will have access to Education Records, Data Recipient acknowledges that, for the purposes of the Contract, the DPA, and the Data Release Purpose pursuant to FERPA, the Data Recipient will be designated as a “school official” with “legitimate educational interests” in the District Education Records and PII disclosed pursuant to the Contract, the DPA, and the Data Release Purpose, and Data Recipient agrees to comply with the FERPA limitations and requirements imposed on school officials. Data Recipient will use the Education Records only for the purpose of fulfilling its duties under the Contract, the DPA, and the Data Release Purpose for District’s and its End Users’ benefit, and 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. Data Recipient warrants and represents that during the five-year period preceding the Effective Date of the Contract, Data Recipient has not been found in violation of FERPA by the Family Policy Compliance Office.
- 4.4.2. CoSDTASA. The Data Recipient shall comply with its obligations under the CoSDTASA if and to the extent the Data Recipient provides a “school service” or is a “school service contract provider,” as these terms are used and defined by the CoSDTASA, or is otherwise subject to the CoSDTASA. Obligations include, without limitation, those listed as follows, and in the event of a conflict between this list and the actual language of the CoSDTASA, the latter prevails:
 - 4.4.2.1. To provide clear information explaining the Student PII elements collected, the learning purpose for which Student PII is collected, and how the Data Recipient 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 Data Recipient 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).

- 4.4.2.2. To 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).
- 4.4.2.3. To provide clear notice to the District BEFORE making changes to its Privacy Policy. C.R.S. §22-16-108(2).
- 4.4.2.4. Facilitate access to and correction of any factually inaccurate Student PII. C.R.S. §22-16-108(3).
- 4.4.2.5. Notify the District of misuse or unauthorized release of Student PII held by the Data Recipient or any Subcontractor as soon as possible after discovery. C.R.S. §22-16-108(4).
- 4.4.2.6. 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).
- 4.4.3. Privacy Policy. The Data Recipient 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.
- 4.4.4. Subcontractor and Employee Use of District Data. Data Recipient 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. Data Recipient shall also ensure that its Subcontractors carry insurance coverage against cybersecurity and data breach risks to at least the same extent as the Data Recipient does and is required to under the Contract. To the extent necessary to perform its obligations specified in the Agreement, Data Recipient 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 Data Recipient were the same entity. If the Data Recipient is a School Service Contract Provider, the Data Recipient shall disclose District Data only in accordance with the requirements of the CoSDTASA, including, without limitation, C.R.S. §22-16-109(3)(b).
- 4.4.5. Compliance with Laws. The Data Recipient shall comply with all laws that apply and to the extent they apply, and with all orders of governmental entities having jurisdiction over the Data Recipient, including, most relevantly and without limitation: COPPA; FERPA; the CoSDTASA; the Health Insurance Portability and Accountability Act; the Health Information Technology for Economic and Clinical Health Act; Gramm-Leach-Bliley Financial Modernization Act of 1999; Payment Card Industry Data Security Standards; Protection of Pupil Rights Amendment, 20 U.S.C. 1232h, 34 C.F.R. Part 98; Americans with Disabilities Act; and Federal Export Administration Regulations.
- 4.4.6. End Users. In the event that the Data Recipient enters into terms of use agreements, Vendor Agreements, or other agreements or understandings, whether electronic, Click-Through, verbal or in writing, with End Users or with the District, the Parties agree that terms of this DPA shall control.

5. Data Transfer: Return, Destruction, Migration.

5.1. While Contract is in Effect.

- 5.1.1. Specific Requests. The District may, at any time while the Data Recipient or their Subcontractors are in possession of District Data, require access to District Data or that the Data Recipient Securely Destroy, return, or migrate District Data, using such methods and formats and following such directions as the District may provide. The Data Recipient shall follow all District direction in that regard.
- 5.1.2. Transfer and Migration of District Data to Third Parties. The District may, at any time while the Data Recipient or their Subcontractors are in possession of District Data, require that the Data Recipient transfer District Data to any Person. If the District so requests, the Data Recipient shall make or cause the transfer of District Data to such Persons, using such transmission methods and such formats as the District directs, and do so without significant interruption in service or access to District Data. The Data Recipient shall work closely 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 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 the Contract following Data Recipient's breach of the Contract or DPA terms.
- 5.1.3. Student-Generated Content. When the District so requests, the Data Recipient shall provide a mechanism for the District to transfer Student-Generated Content to a separate account created or otherwise controlled by each Student who generated content.

5.2. Disposal of District Data at Contract End.

- 5.2.1. District to Direct Disposal. When the Contract or other Data Release Purpose expires or otherwise terminates for any reason, the Data Recipient shall follow the District's direction concerning return or other disposal of District Data in the Data Recipient's or their Subcontractors' possession at that time. To obtain the direction, the Data Recipient shall contact the District's Designated Representative. The Data Recipient shall make this contact no less than 60 calendar days before the expiration or other anticipated end date of the Contract, or no later than 30 calendar days after the termination of the Contract, if the Contract terminated in a manner that did not allow for an anticipated end date, except that the Data Recipient need not contact the District if the District has contacted the Data Recipient's Designated Data Representative before those dates.
- 5.2.2. Return. If the District directs the Data Recipient to return the District Data, then the Data Recipient shall transmit, in a secure manner and as the District directs, to the District all District Data, complete and accurate as the Data Recipient has in its possession at that time, and in the format that the District directs, and at a minimum in a format that allows the District to reasonably access the District Data. The Data Recipient shall then Securely Destroy all copies and back-ups of the District Data, except that the Data Recipient may retain copies and back-ups if and then only to the extent and as long as required by law.

- 5.2.3. **Destruction**. If the District directs the Data Recipient to destroy the District Data, then the Data Recipient shall Securely Destroy all District Data, copies, and back-ups then in the Data Recipient’s possession, except that the Data Recipient may retain copies and back-ups if and then only to the extent and as long as required by law.
- 5.2.4. **If No Direction**. If the District does not provide direction regarding the disposal of District Data, then the Data Recipient shall Securely Destroy the District Data, except that the Data Recipient may retain copies and back-ups if and then only to the extent and as long as required by law.
- 5.2.5. **Subcontractors**. The Data Recipient shall cause its Subcontractors to Securely Destroy the District Data, so that destruction is complete no later than 90 calendar days after the termination of the Contract.
- 5.2.6. **Certificate of Destruction**. The Data Recipient shall provide such 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 Data Recipient is a School Service Contract Provider, then the Data Recipient shall notify the District, in writing to the District Designated Representative, of the date when all Student PII has been Securely Destroyed. C.R.S. §22-16-110 (3).

5.3. Survival.

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

6. Security Incident and Response.

6.1. Security Incident.

In the event of a Security Incident, Data Recipient 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 Data Recipient’s expense in accordance with applicable laws.

6.2. Response.

Data Recipient 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 Data Recipient’s expense in accordance with applicable laws. Except as otherwise required by law, Data Recipient shall notify the District in writing BEFORE the Data Recipient sends notice of the Security Breach directly to individuals whose PII was involved, to regulatory agencies, or to other entities.

6.3. Security Breach Report.

If the District reasonably determines that Data Recipient has committed or is otherwise subject to or involved with a Security Breach, then the Data Recipient shall submit to the District, within 7 calendar days after the District so requests, a written report, and any supporting documentation, identifying:

- 6.3.1. The nature of the Security Breach.
- 6.3.2. The steps Data Recipient has executed to investigate the Security Breach.

- 6.3.3. What District Data or PII was used or disclosed.
- 6.3.4. Who or what was the cause of the Security Breach.
- 6.3.5. What Data Recipient has done or is doing to remediate adverse effects of the Security Breach on the District, PII, and the owners of the PII.
- 6.3.6. What corrective action Data Recipient has taken or is taking to prevent a future Security Incident and Security Breach.

6.4. Effect of Security Breach.

When a Security Breach occurs, the District may terminate or suspend performance under the Contract in accordance with the provisions of the Contract, with law, and with District policies. The District may stop the release of further District Data to the Data Recipient. Data Recipient acknowledges that, because of a Security Breach, the District may also elect to disqualify Data Recipient and any of its Subcontractors from future contracts with the District.

6.5. Liability for Security Breach.

In addition to any other remedies available to the District under contract, law, or equity, Data Recipient shall reimburse the District in full for all costs incurred by the District in investigation and remediation of any Security Breach caused in whole or in part by Data Recipient or Data Recipient's Subcontractors, including but not limited to providing notification to individuals whose Personally Identifiable Information was compromised and to regulatory agencies or other entities as required by law or contract; providing one year's credit monitoring to the affected individuals if the Personally Identifiable Information exposed during the breach could be used to commit financial identity theft if the District so elects; and the payment of legal fees, audit costs, fines, and other fees imposed against the District as a result of the Security Breach.

7. Response to Legal Orders and Requests for District Data.

7.1. Discovery Requests Received by the Data Recipient.

The Data Recipient shall immediately notify the District of any Discovery Requests that the Data Recipient may receive, except to the extent such notification is prohibited by law; consult with the District regarding its response; cooperate with the District's reasonable requests in connection with efforts by the District to intervene, quash, or modify the Discovery Requests; and, upon the District's request, provide the District with a copy of the Data Recipient's response.

7.2. Discovery Requests Received by the District.

If the District receives a Discovery Request seeking District Data maintained by the Data Recipient, including but not limited to a request pursuant to the Colorado Open Records Act, C.R.S. § 24-72-100.1 *et seq.*, the District may notify the Data Recipient for the purpose of obtaining the information. The Data Recipient shall supply the District with copies of the District Data for the District to respond and shall do so within 2 calendar days after receiving the notification.

7.3. Parent Requests.

If a Student or their parent or legal guardian contacts the District with a request to review or correct District Data or PII, pursuant to FERPA or the CoSDTASA or other laws, the District may notify the Data Recipient's Designated Representative. The Data Recipient 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 District's notice. Conversely, if a Student or their parent or legal guardian contacts the Data Recipient with a request to review or correct District Data or PII, within 10 calendar days after receipt of such notice, the Data Recipient 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.

8. Definitions.

The following definitions apply specifically to this DPA. These definitions are in addition to all other terms defined in the Agreement, which have the same meaning in the DPA.

- 8.1. "Click-Through"** means both (1) the act, by clicking or tapping on an electronic on-line or app button or link for that purpose, of accepting on-line terms and conditions without ink on paper, and (2) the resulting agreement between the Parties.
- 8.2. "COPPA"** means the Children's Online Privacy Protection Act of 1998, as subsequently amended, together with the Federal Trade Commission's rules and regulations promulgated thereunder.
- 8.3. "CoSDTASA"** means the Colorado Student Data Transparency and Security Act, C.R.S. § 22-16-101 *et seq.*, as amended from time to time.
- 8.4. "Data Recipient"** means the individual or entity whose name is listed in the table on Page 1 of the DPA next to the field labeled "Data Recipient."
- 8.5. "Data Release Purpose"** means the purposes for which the District provides District Data to the Data Recipient, which may be specified in the Contract and which is described in the table on Page 1 of the DPA next to the field labeled "Data Release Purpose."
- 8.6. "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.
- 8.7. "Designated Representative"** means a District or a Data Recipient employee or other agent, as specified in the table on the first page of the DPA, to whom all notices required in this DPA will be sent.
- 8.8. "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.
- 8.9. "District"** means the Jefferson County School District R-1.
- 8.10. "District Data"** means:
 - 8.10.1. Any and all PII, Record, and Education Record; and
 - 8.10.2. Any and all PII included therein or derived therefrom; and
 - 8.10.3. Health, medical, financial, contract, and employment information about Students, District employees, and District Providers, and their respective families that is protected by various State and federal laws applicable to the Contract or the DPA or both;
 - 8.10.4. All data and metadata about District Data and PII that the Data Recipient collected, generated, or inferred; and
 - 8.10.5. Data and information that the District makes available directly or indirectly to the Data Recipient; and

8.10.6. Data and information that the District DOES NOT also intentionally make or HAS NOT intentionally made generally available on public websites or publications.

8.10.7. Student-Generated Content.

8.11. “*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, entity, or individual acting for the District such as the Data Recipient.

8.12. “*End User*” means individuals authorized by the District to access and use the services or digital tools that the Data Recipient provides in accordance with the Contract (if any).

8.13. “*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.

8.14. “*Mine District Data*” 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.

8.15. “*Party*” means either the District or the Data Recipient, and “*Parties*” means both the District and the Data Recipient.

8.16. “*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.

8.17. “*Personally Identifiable Information*” or “*PII*” means:

8.17.1. With respect to Students, 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. Student PII includes but is not limited to:

8.17.1.1. The Student’s name;

8.17.1.2. The name of the Student’s parent or other family members;

8.17.1.3. The address or phone number of the Student or Student’s family;

8.17.1.4. Personal identifiers such as the Student’s state-assigned Student identifier, social security number, Student number or biometric record;

8.17.1.5. Indirect identifiers such as the Student’s date of birth, place of birth, or mother’s maiden name; and

8.17.1.6. Demographic attributes, such as race, socioeconomic information, and gender.

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

8.17.2.1. “Personal information” as defined in the Colorado Open Records Act, C.R.S. 24-72-101 *et seq.*;

8.17.2.2. “Personally identifiable information” contained in Education Records;

8.17.2.3. “Protected health information” as that term is defined in the Health Insurance Portability and Accountability Act, 45 C.F.R. Part 160.103;

- 8.17.2.4. “Nonpublic personal information” as that term is defined in the Gramm-Leach-Bliley Financial Modernization Act of 1999, 15 U.S.C. 6809;
- 8.17.2.5. 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
- 8.17.2.6. Other financial account numbers, access codes, and state- or federal-identification numbers such as driver’s license, passport or visa numbers.
- 8.18. “Privacy Policy”** means the document that the Data Recipient designates as its “Privacy Policy” and that sets forth the Data Recipient’s practices and policies relating to data collection, use, protection, security, and disclosure.
- 8.19. “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.
- 8.20. “School”** means any District school and department, including, without limitation, all neighborhood and articulation area elementary, middle, high, option, charter, and on-line schools under the jurisdiction of and organized under the authority of the District and its governing board of education.
- 8.21. “School Service Contract Provider”** means the same as that term is defined in the CoSDTASA.
- 8.22. “Securely Destroy”** means to remove District Data from Data Recipient’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 Guidelines for Media Sanitization, or such other standard to which the District’s Director of IT Security or their designee may agree in writing, so that District Data is permanently irretrievable in Data Recipient’s and its Subcontractors’ normal course of business.
- 8.23. “Security Breach”** means an event where Unauthorized Activity has occurred.
- 8.24. “Security Incident”** means a suspected, attempted, or imminent threat of Unauthorized Activity.
- 8.25. “Student”** means any individual that is enrolled in a School at the time this DPA is in effect, has at any time been enrolled in a School, or will at any time in the future be enrolled in a School.
- 8.26. “Student-Generated Content”** means materials or content that a Student creates through use of services provided in connection with the Contract, and includes, without limitation, essays, research reports, portfolios, music, audio files, photographs, videos, and account information.
- 8.27. “Student Profile”** means a collection of PII data elements relating to a Student.
- 8.28. “Subcontractor”** means any Person who assists Data Recipient with performance under the Contract or with the Data Release purpose, or both, pursuant to contractual arrangements between the Data Recipient and that Person, and with whom and which the District has no privity of contract.
- 8.29. “Targeted Advertising”** means selecting and sending advertisements to individuals based on information obtained or inferred over time from the individual’s online behavior, use of applications, or PII; but if the Data Recipient is also a School Service Contract

Provider or otherwise subject to compliance with the CoSDTASA , then the CoSDTASA definition of that term, if different from this definition, governs.

8.30. “Unauthorized Activity” means the illegal or otherwise unauthorized disclosure, release, acquisition, access, alteration, use, disruption, or destruction to or of District Data, or a system configuration that results in a documented unsecured disclosure, access, alteration, or use that poses a significant risk of financial, reputational or other harm to the affected End User or the District.

8.31. “Vendor Agreement” means any form of agreement or documentation prepared or provided by the Data Recipient or any of their Subcontractors relating to the Contract or the DPA, and may include, without limitation, a Click-Through document, an on-line agreement, proposal, or invoice, whether made a part of the Contract or effective or purporting to be effective outside of or in addition to the Contract.