

**CURRICULUM SERVICES AGREEMENT
BETWEEN {CONTRACTOR}
AND POUDBRE SCHOOL DISTRICT R-1**

This Curriculum Services Agreement (“Agreement”) is entered into this ____ day of {DATE}, by and between Poudre School District R-1 (“District”) and {CONTRACTOR NAME} (“Contractor”). The District and the Contractor are collectively referenced herein as the “parties.” In consideration of the mutual covenants and promises contained in this Agreement, the sufficiency of which is hereby acknowledged, the parties agree as follows:

1. Term of Agreement.

1.1. This Agreement shall commence on the date first set forth above and continue through and including {DATE}, unless earlier terminated as provided herein.

1.2. Notwithstanding any other term or provision of this Agreement, the District’s obligations hereunder are expressly subject to its budgeting and appropriation of sufficient funds for each fiscal year (July 1 - June 30) an Agreement is in effect. In no event, shall the District’s obligations in an Agreement constitute a multiple-fiscal year direct or indirect debt or other financial obligation under Article X, Section 20(4)(b) of the Colorado Constitution.

1.3. **Termination For Cause.** Notwithstanding the provisions of section 1.2 above, if either party is in breach of an obligation or covenant under this Agreement the non-breaching party may give written notice to the breaching party describing the breach and demanding that it be cured. If the breach is not cured within seven (7) days after the breaching party’s receipt of said notice, the non-breaching party may immediately terminate the Agreement and avail itself of any and all remedies available at law or in equity.

1.4. **Termination Without Cause.** Notwithstanding the provisions of sections 1.2 and 1.3 above, the District or the Contractor may terminate this Agreement at any time in its sole discretion for any reason, with or without cause, by giving the other party thirty (30) days’ advance written notice of the termination.

2. Deliverables and Purchase Price.

- 2.1. {DELIVERABLES AND SERVICES}
- 2.2. {TOTAL COST}
- 2.3. Access to Services shall be available for a ten (10) year subscription.
- 2.4. Additional Services may be purchased at the prices listed in Exhibit {XX} for the full length of the contract.
- 2.5. Contractor shall ensure teacher Materials are shipped to be received no later than {DATE}.

2.5.1. Contractor shall separate and bundle Materials by District School for shipment.

2.6. Contractor shall ensure grade-level classroom Materials are shipped to be received no later than {DATE}.

2.6.1. Contractor shall separate and bundle Materials by District School for shipment.

2.7. Contractor shall provide support for implementation of Services during the first year, at no cost for the following:

2.7.1. {PROFESSIONAL DEVELOPMENT SERVICES}

2.8. The Contractor grants the District a non-exclusive, non-transferable, non-sublicenseable license to access and use, and permit authorized users to access and use the Services solely in the United States during the term of the Agreement.

2.9. The District shall access and use the Services solely for non-commercial instructional and administrative purposes within the District. Further, the District shall not, except as expressly authorized or directed by the Contractor: (a) copy, modify, translate, distribute, disclose or create derivative works based on the contents of, or sell, the Services, or any part thereof; (b) decompile, disassemble or otherwise reverse engineer Services or otherwise use the Services to develop functionally similar products or services; (c) modify, alter or delete any of the copyright, trademark, or other proprietary notices in or on the Services; (d) rent, lease or lend the Services or use the Services for the benefit of any third party; (e) avoid, circumvent or disable any security or digital rights management device, procedure, protocol or mechanism in the Services; or (f) permit any authorized user or third party to do any of the foregoing. The District also agrees that any works created in violation of this section 2.10 are derivative works, and, as such, the District agrees to assign, and hereby assigns, all right, title and interest therein to the Contractor.

2.10. The District agrees, subject to the limited rights expressly granted hereunder, that all rights, title and interest in and to all Services, including all related IP Rights, are and shall remain the sole and exclusive property of Contractor or its third-party licensors. "IP Rights" means, collectively, rights under patent, trademark, copyright and trade secret laws, and any other intellectual property or proprietary rights recognized in any country or jurisdiction worldwide. The District shall notify Contractor of any violation of Contractor's IP Rights in the Services, and shall reasonably assist Contractor as necessary to remedy any such violation. Contractor Services are protected by patents.

2.11. The District understands and agrees that its students' access to and use of the Services under this Agreement requires that it disclose confidential student records and information, as that term is defined below, to the Contractor. The Contractor understands and agrees that if it fails to comply with any of the requirements under sections 4, 5, 6 or 7 below at any time during or after the term of this Agreement the District may, as applicable, terminate the Agreement and/or disqualify the Contractor from future agreements with the District.

3. **Definitions.**

3.1. As used in this Agreement, “personally identifiable information” is defined as information (including metadata) that, alone or in combination, is linked or linkable to a specific student so as to allow a reasonable person in the school community, who does not have personal knowledge of the relevant circumstances, to identify the student with reasonable certainty. Personally identifiable information includes but is not limited to: (a) the student’s name; (b) the name of the student’s parent or other family members; (c) the address or phone number of the student or student’s family; (d) personal identifiers such as the student’s social security number, student number or biometric record; and (e) indirect identifiers such as the student’s date of birth, place of birth or mother’s maiden name.

3.2. As used in this Agreement, “education records” is defined as 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 the Contractor.

3.3. As used in this Agreement, “confidential student records and information” is defined as education records and personally identifiable information concerning District students, including but not limited to confidential student records and information disclosed to, collected by and/or generated by the Contractor. Confidential student records and information does not include “de-identified confidential student records and information,” as defined in section 3.5 below.

3.4. As used in this Agreement, “collect” is defined as the gathering of data and other information by any means, including but not limited to the use of logs, cookies, tracking pixels, etc.

3.5. As used in this Agreement, “de-identified confidential student records and information” is defined as confidential student records and information from which all personally identifiable information, and the ability to determine any personally identifiable information, is removed.

3.6. As used in this Agreement, “securely destroy” is defined as removing confidential student records and information from the Contractor’s systems, paper files, hard-copy and electronic records, databases and any other media regardless of format, in accordance with the standard detailed in the National Institute of Standards and Technology (“NIST”) SP 800-88 Guidelines for Media Sanitization, so that the confidential student records and information are permanently irretrievable in the Contractor’s normal course of business.

3.7. As used in this Agreement, “eligible student” is defined as a student who is at least 18 years of age or who is legally emancipated.

4. **Ownership of Confidential Student Records and Information.** All confidential student records and information shall remain the exclusive property of the District and all rights, title and interest in the confidential student records and information, including but not limited to intellectual property rights in the confidential student records and information, belong to and are retained solely by the District. The District hereby grants to the Contractor a limited, nonexclusive license to access, view, collect, generate and use confidential student

records and information solely for the purpose of performing its obligations under this Agreement.

5. **Security of Confidential Student Records and Information.**

5.1. The Contractor shall store and process confidential student records and information in accordance with commercial best practices, including implementing appropriate administrative, physical and technical safeguards that are no less rigorous than those outlined in SANS Top 20 Security Controls, as amended, to secure such confidential student records and information from unauthorized access, disclosure, alteration and use. The Contractor shall ensure that all such safeguards, including the manner in which confidential student records and information is collected, accessed, used, stored, processed, disposed of and disclosed, comply with all applicable federal and state data protection and privacy laws, regulations and directives, including but not limited to Colorado's Student Data Transparency and Security Act, C.R.S. §§ 22-16-101 *et seq.* Without limiting the foregoing, and unless expressly agreed to the contrary in writing, the Contractor warrants that all electronic confidential student records and information will be encrypted in transmission and at rest in accordance with NIST Special Publication 800-57, as amended.

5.2. The Contractor shall conduct periodic risk assessments and remediate any identified security vulnerabilities in a timely manner. The Contractor shall promptly notify the District in the event of: (a) any security or privacy breach concerning confidential student records and information; and/or (b) any use or disclosure of student personally identifiable information not authorized under this Agreement.

6. **Use of Confidential Student Records and Information.**

6.1. Under the Agreement, Contractor may access, view, collect, generate and/or use confidential student records and information only under the following terms and conditions: (a) except as provided in section 6.2 below, Contractor shall not disclose confidential student records and information, in whole or in part, to any other party; (b) Contractor shall not use any confidential student records or information to advertise or market to students or their parents/guardians; (c) Contractor shall access, view, collect, generate and use confidential student records and information only to the extent necessary to perform its obligations under the Agreement; and (d) at the conclusion of the term of the Agreement the Contractor shall, as directed in writing by the District, initiate the process to either securely destroy all confidential student records and information in its possession, custody or control, or return such confidential student records and information to the District.

6.2. Contractor may to the extent necessary to perform its obligations under the Agreement disclose confidential student records and information to subcontractors as identified in Exhibit {XX} ("Subcontractors"), hereinafter attached and made part of this Agreement, pursuant to written subcontracts specifying the purpose of the disclosure and providing that: (a) Subcontractors shall not disclose confidential student records and information, in whole or in part, to any other party; (b) Subcontractors shall not use any confidential student records or information to advertise or market to students or their parents/guardians; (c) Subcontractors shall access, view, collect, generate and use confidential student records and information only to the extent necessary to assist Contractor in performing its obligations under the Agreement; and (d)

at the conclusion of their work under their subcontracts Subcontractors shall, as directed by the District through the Contractor, either securely destroy all confidential student records and information in their possession, custody or control, or return such confidential student records and information to the District.

6.3. Contractor and Subcontractors may use de-identified confidential student records and information for purposes of research, the improvement of its products and Services, and/or the development of new products and Services. In no event shall the Contractor or Subcontractors re-identify or attempt to re-identify any de- identified confidential student records and information.

6.4. Contractor and Subcontractors shall promptly furnish to the District upon request all confidential student records and information they have collected and/or generated and not in the District's possession. Such requests may include but shall not be limited to those made in order to respond to parent/guardian and eligible student requests to inspect and review education records as authorized under the Family Educational Rights and Privacy Act, 20 U.S.C. § 1232g ("FERPA") and/or under the Colorado Open Records Act, C.R.S. §§ 24-72-200.1 *et seq.* ("CORA"). The District, not the Contractor or Subcontractors, shall respond to all parent/guardian and eligible student requests to inspect and review records, data and other information.

7. **School Service Contract Provider.** Contractor is a "school service contract provider" under the Colorado Student Data Transparency and Security Act (the "Act"). Under the Act, a "school service contract provider" is defined as an entity (other than the Colorado Department of Education, a K-12 public education entity or an institution of higher education) that enters into a formal, negotiated contract with the District to provide a "school service." Under the Act, a "school service" is defined as an Internet website, online service, online application or mobile application that: (a) is designed and marketed primarily for use in a preschool, elementary school or secondary school; (b) is used at the direction of District teachers or other District employees; and (c) collects, maintains or uses confidential student records and information.

7.1. As a school service contract provider under the Act, the Contractor has provided the following information attached Exhibit {XX} (a) the data elements of confidential student records and information that Contractor collects under the Agreement, regardless of whether the data elements are initially collected or ultimately held individually or in the aggregate using protocols that are effective for preserving the anonymity of each student included in the data; (b) the learning purpose for which Contractor collects the confidential student records and information; and (c) how the Contractor uses and shares the confidential student records and information. Contractor shall update this information as necessary to maintain accuracy.

7.2. Contractor shall facilitate the District's access to and correction of any factually inaccurate confidential student records and information as required in response to correction requests from parents/guardians and eligible students.

8. **Remedies.** If Contractor or Subcontractors fail to comply with any of the foregoing requirements in sections 4, 5, 6 or 7 at any time during or after the term of the

Agreement the District may, as applicable, terminate the Agreement and/or disqualify Contractor and any one or more of Subcontractors from future contracts and subcontracts with the District.

9. **Notices and Communications.** All notices and communications required or permitted under this Agreement shall be in writing and shall be: (a) sent via certified mail, return receipt requested and postage prepaid, to the address of the other party set forth below; or (b) sent via e-mail to the other party via the e-mail address set forth below.

Poudre School District R-1
Attn: Tracy Stibitz
2407 LaPorte Avenue
Fort Collins, CO 80521
E-mail: tstibitz@psdschools.org

{VENDOR INFORMATION}

10. **General Provisions.**

10.1. **No Assignment.** The Contractor shall not assign this Agreement or any of its rights, interests or obligations under this Agreement without the prior written consent of the District, which consent may be withheld for any reason or no reason as determined by the District in its sole discretion.

10.2. **No Waiver.** The parties agree that no assent or waiver, express or implied, to any breach of any one or more of the covenants of this Agreement shall be construed as or deemed to be an assent to or a waiver of any subsequent breach.

10.3. **Conflict of Terms.** In the event of any conflict of terms found between this Agreement or any other terms and conditions, end user license agreements or privacy policies, the terms of this Agreement shall prevail.

10.4. **Amendment or Modification.** No amendment or modification of this Agreement shall be valid unless set forth in writing and executed by the District and the Contractor in the same manner and with the same formality as was done for this Agreement.

10.5. **Governing Law.** This Agreement shall be governed by and construed in accordance with the laws of the State of Colorado.

10.6. **Insurance.** Contractor shall procure and maintain the required insurance specified below for the duration of this Agreement, which insurance shall be written for not less than the amounts specified or greater if required by law. Specified coverage and amounts may be provided by a combination of a primary policy plus an umbrella or following form excess policy. If not otherwise required by law, lower amounts may be acceptable upon review and written approval by the District's Director of Records and Risk Management. All insurance shall be with a carrier licensed in the state of Colorado and shall have a minimum A.M. Best rating of A- VII. Contractor shall furnish the District's Director of Records and Risk Management with certificates of the required insurance prior to the District's approval and signing of this

Agreement, and with renewal certificates as soon as reasonably practical following the expiration of any required insurance that expires during the term of this Agreement. Any insurance and/or self-insurance carried by the District is excess of the coverage extended to the District by Contractor. Contractor shall provide at least thirty (30) days' advance written notice to the District prior to cancellation or change of coverage. The insurance requirements specified in this section 10.6, shall not reduce the indemnification liability that Contractor has assumed in section 10.7 below.

Commercial General Liability

- a. Each Occurrence Bodily Injury & Property Damage \$1,000,000
- b. Personal Injury \$1,000,000
- c. Products/Completed Operations Aggregate \$1,000,000
- d. General Aggregate \$2,000,000
- e. Coverage must be written on an "occurrence" basis.
- f. Poudre School District and its elected officials and employees shall be included as additional insureds; copy of policy endorsement must be attached to the Certificate of Insurance.

Technology Errors & Omissions Liability including Network Security and Privacy Liability

- a. Per Loss \$3,000,000
- b. Aggregate Limit \$3,000,000
- c. If policy is written on a claims-made basis, Contractor warrants that any retroactive date under the policy shall precede the effective date of this Agreement and that either continuous coverage will be maintained, or an extended discovery period will be exercised for a period of two (2) years beginning at the time work under this Agreement is complete. Contractor shall also maintain such insurance for an additional period of three (3) years following termination of the Agreement.
- d. If policy is written on an occurrence form basis, Contractor shall maintain such insurance for an additional period of one (1) year following termination of the Agreement.

Workers' Compensation and Employers' Liability*

- a. State of Colorado Statutory
- b. Employer's Liability \$500,000 Each Accident
\$500,000 Disease – Policy Limit
\$500,000 Disease – Each Employee
- c. Waiver of subrogation in favor of Poudre School District R-1; copy of policy endorsement must be attached to the Certificate of Insurance.
- d. This requirement shall not apply if Contractor is exempt under the Colorado Workers' Compensation Act and if Contractor has a current Workers' Compensation Coverage

Rejection on file with the Colorado Department of Labor and Employment, Division of Worker's Compensation.

10.7. **Indemnification.** The Contractor shall indemnify and hold harmless the District and the District's Board members, employees, representatives and agents from and against any and all liability arising from any suit, action, grievance, charge or proceeding brought in connection with or related to: (a) the Contractor's operations; (b) the Contractor's provision of the Services; (c) the Contractor's actual or alleged infringement of any third party's patent or copyright; and/or (d) the conduct of any of the Contractor's employees, volunteers, agents or representatives. The indemnification and hold harmless obligation hereunder shall include all attorney fees, costs and expenses incurred by the District and/or the District's Board members, employees, representatives and/or agents in defense of said suits, actions, grievances, charges and/or proceedings. Nothing in this section 10.7 or otherwise in this Agreement shall be construed in any way or applied in any manner as a compromise or waiver of the District's rights and protections under the Colorado Constitution or the Colorado Governmental Immunity Act.

10.8. **No Third-Party Beneficiary.** Enforcement of the terms and conditions of this Agreement, and all rights of action relating to such enforcement, shall be strictly reserved to the District and the Contractor. Nothing contained in this Agreement shall give or allow any claim or right of action whatsoever by any third person other than the District or the Contractor. It is the express intent of the parties that any third person receiving services or benefits pursuant to this Agreement shall be deemed an incidental beneficiary only.

10.9. **Attorney Fees and Costs.** In the event it becomes necessary for either party to institute litigation or mutually agreed upon arbitration proceedings to enforce any provision of this Agreement, the substantially prevailing party in such litigation or arbitration shall receive, as part of any judgment or award entered, its reasonable attorney fees and costs, including expert witness fees.

10.10. **Binding Effect.** This Agreement shall be binding upon and inure to the benefit of the parties and their respective heirs, legal representatives, successors and permitted assigns.

10.11. **Headings.** The headings used in this Agreement are for convenience only and shall have no effect upon the construction or interpretation of this Agreement.

10.12. **Entire Agreement.** This Agreement constitutes the entire agreement of the parties regarding the subject matter addressed herein and supersedes all prior agreements, whether oral or written, pertaining to said subject matter.

10.13. **Signatures.** This Agreement may be executed and delivered via portable document format (pdf), and the pdf signature of any party shall be considered valid, binding, effective and an original for all purposes.

10.14. **Warranty of Authority.** The individuals signing below represent and warrant that they have the authority to execute this Agreement on behalf of their respective organizations and bind their respective organizations to the terms of this Agreement.

THE REMAINDER OF THIS PAGE WAS INTENTIONALLY LEFT BLANK.

IN WITNESS WHEREOF, the District and the Contractor have signed this Agreement as of the date first set forth above.

{VENDOR }

POUDRE SCHOOL DISTRICT R-1

By: _____

By: _____

{NAME}
{TITLE}

Sandra Smyser, Ph.D.
Superintendent

By: _____

Robert Beauchamp
Director of Curriculum, Instruction and
Assessment

SAMPLE ONLY: MODIFICATIONS TO THIS DOCUMENT ARE NOT PERMITTED