



**DENVER PUBLIC SCHOOLS INDEPENDENT CONTRACTOR
Standard Terms and Conditions**

WHEREAS, School District No. 1 in the City and County of Denver and State of Colorado (hereinafter referred to as the “District”) has the statutory authority to contract with persons, firms, consultants and/or entities for the provision of services to the District; and

WHEREAS, the District has determined that a need exists to retain a Contractor to provide the services hereinafter specified; and

WHEREAS, the contractor’s/business name _____, as reported to the IRS and indicated on your W9 (hereinafter referred to as the “Contractor”) is qualified to provide the services required by the District; and

WHEREAS, the District keeps and maintains information, including trade secrets, student records, and other similar information, that may not be disclosed (“Confidential Information”) pursuant to applicable state, and federal laws.

NOW, THEREFORE, the undersigned parties desire to enter into this Agreement subject to the following terms and conditions:

1. ***Scope Of Services** The Contractor shall perform the Services _____

2. ***Schedule**. The District and the Contractor agree that the services shall be provided at the following mutual **agreed locations** and **times** as agree to in writing by the parties after the approval of this Agreement.

3. ***Term**. The provision of services under this Agreement shall commence on ___ / ___ / ___ and will terminate on ___ / ___ / ___; however, under no circumstances will the Term exceed the end of the current DPS Fiscal year (July – June). The Contractor understands and agrees that the District has no obligation to extend this Agreement’s term, or contract for the provision of any future services, and makes no warranties or representations otherwise.

4. ***Remuneration and Invoicing**.

- a. The Contractor’s fee the District is obligated to pay for the services rendered under this Agreement is as follows (Enter Amount): _____ -- and under no circumstances whatsoever shall the fee exceed the “(Maximum Amount)” _____.
- b. The District payment terms are net 30 from the invoice date (invoice date must be after services have been completed). The District does not pre pay or make deposit for any services. All payments are issued after services have been rendered. All invoices must be submitted directly to

the Accounts Payable Department. The email address is accountspayable@dpsk12.org or invoice through the supplier portal.

- c. The Contractor shall furnish the following information within invoices that are submitted for request of payment once services have been completed for the District.
 - i. Remit to: Provider's name, address, phone number, and email
 - ii. Bill to: Denver Public Schools, Accounts Payable, 780 Grant, Denver, CO 80203
 - iii. Ship to: the school or department where services were performed, along with contact name and phone number of person requesting service
 - iv. Invoice number (if an invoice number is re-used by vendor, the invoice will be returned to the vendor asking them to submit a corrected invoice with a different invoice number)
 - v. Invoice date (must be after services have been completed. Invoices can be submitted weekly or monthly)
 - vi. Applicable service agreement number
 - vii. Required information of services or activities performed
 1. Dates the services or activities were rendered
 2. Total hours service or activities performed on that date
 3. The hourly rate or compensation rate for the services rendered
 4. The name of all service providers who performed services on that date
 5. Detailed description of the services or activities performed in accordance with the scope of work approved by the District
 6. For travel related expenses, a copy of all itemized receipts are required before reimbursements will be issued.

5. **Travel Expenses/ Other Direct Expenditures.** The total amount of the Contractor's Fee must be approved in advance and include all of the Contractor's actual expenses and costs for food, lodging and travel ("Travel Expenses") incurred in connection with the provisioning of services. The daily amount for food and lodging is not to exceed the Federal Per Diem rates for Denver Metropolitan Area.

Daily Per Diem: \$69.00 x Days ____

Daily Lodging: \$178.00 x Days ____

Car Rental: x Days ____

Other Ground Transportation Costs: Actual value of receipts

Air Travel Costs: Actual ticket value _____

Total:

Under no circumstances whatsoever shall Travel Expenses exceed Fee without advanced written approval of the District; and should actual expenses and costs be less than the total amount allocated to the Contractor for Travel Expenses, the District will retain the remaining amount of the Travel Expenses allocated to the Contractor.

The Contractor shall submit all itemized receipts and supporting documentation to receive payment for its Travel Expenses. The District may reject Contractor's Travel Expenses not supported by itemized receipts and documentation. (The District uses the prescribed Federal guidelines for travel and reimbursement. No type of alcohol will be reimbursed and food reimbursements are only for that individual. Lodging reimbursements are only for the room – no room service, phone charges or movies will be reimbursed. Travel reimbursements are only economy seating and baggage fees – no extra leg room, business or first class will be reimbursed. No other types of expenditures are reimbursable, they should all be included in your service amount.

6. **Independent Contractor.** The Contractor is retained solely for the purposes set forth in this Agreement and shall at all times have the status of an Independent Contractor. The parties agree that the District will:

- a) Not require the Contractor to work exclusively for the District; and
- b) Not establish a quality standard for the Contractor, or oversee the actual work or instruct the Contractor as to how the work is to be performed, except the Parties agree as stated in the statement of work that the Contractor's services will be consistent with generally accepted industry standards for the Contractor's customary services and products; and

- c) Pay the Contractor only the compensation stated in Paragraphs 4 and 5; and
- d) Not terminate the Contractor's current services for particular work the Contractor accepts from the District unless the Contractor violates the terms of this Agreement or fails to produce a result that meets the specifications of this Agreement; and
- e) Not provide more than minimal training for the Contractor; and
- f) Not provide tools or benefits to the Contractor; and
- g) Not dictate the time of performance, except that a completion schedule and a range of mutually agreeable work hours may be established through a written agreement mutually acceptable to both Parties for particular work the Contractor accepts from the District; and
- h) Not pay the Contractor individually if the Contractor is an individual; instead, the District will make all compensation checks payable to the trade or business name under which the Contractor does business; or
- i) Not combine its business operations in any way with the Contractor's business, but instead both Parties will maintain their own operations as separate and distinct.

7. **No Employment Benefits.** To the extent the law permits, the Contractor waives all claims against the District for any Employee benefits including worker's compensation and general liability insurance coverage of its employees. **The Contractor expressly agrees that, as an independent contractor, neither the Contractor nor any of its employees, subcontractors or agents is entitled to any employee benefits from the District, including, but not limited to, any employer withholdings or liability for: taxes, FICA, Medicare or Medicaid; medical or disability insurance; vacation or leave; pension; unemployment insurance or worker's compensation insurance (collectively, "Employee Benefits") unless provided by the Contractor or some other entity. The Contractor is obligated to pay federal and state income tax on any moneys paid by the District under this Agreement.**

8. **Relief The District May Seek.** The Contractor further agrees that, if the Contractor violates any representation, warranty or certification of this Agreement, it would be difficult to determine the damages the District would suffer including, but not limited to, losses attributable to lost confidential information. Accordingly, the Contractor agrees that if the Contractor violates any representation, warranty or certification of this Agreement, the District will be entitled to an Order for injunctive relief and/or for specific performance, or their equivalent, from a court, including requirements that the Contractor take action or refrain from action to preserve the secrecy of the District's Confidential Information and to protect the District from additional damages, and the Contractor agrees the District does not need to post a bond to obtain an injunction and waives the Contractor's right to require such a bond.

9. **Confidential Information Belongs Solely To The District.** The District's Confidential Information and all other confidential information and data relating to the District's business are the District's exclusive property, and the Contractor therefore agrees that:

- a) All notes, data, reference materials, sketches, drawings, memoranda, disks, documentation and records in any way incorporating or reflecting any of the Confidential Information and all proprietary rights in the Confidential Information, including copyrights, trade secrets and patents shall belong exclusively to the District;
- b) At all times while this Agreement is in effect, the Contractor will keep secret and will not disclose to any third party, take or misuse any of the District's Confidential Information, or any other confidential information the Contractor acquires or has access to because of its provision of services;
- c) At all times while this Agreement is in effect, the Contractor will not use or seek to use any of the District's Confidential Information for the Contractor's own benefit or for the benefit of any other person or business or in any way adverse to the District's interests;
- d) If the Contractor has received any of the School District's Confidential Information during the Term of this Agreement, Contractor may use de-identified records and information (collectively, "De-identified Information") derived from the District Information for research and other legitimate uses provided that the Contractor removes all "personally identifiable information". In the event Contractor uses De-identified Information, Contractor hereby agrees, represents, and warrants to District that Contractor has made a reasonable determination that no "student's" identity is personally identifiable, upon use or disclosure of any De-identified Information. The Contractor will indemnify, defend and hold harmless District and District's affiliates, officers, directors, and employees from and against any third party claims, demands, causes of action, judgments, damages, liabilities, costs and expenses (including reasonable attorney's fees) arising from

or relating to the Contractor's or any of the Contractor's employees, agents, contractors, or representatives unauthorized use, misuse, or illegal use of De-identified Information.

- e) On the District's request or on termination of this Agreement, the Contractor will promptly return to the District all its property, specifically including all documents, disks or other computer media or other materials in the Contractor's possession or control that contain any of the District's Confidential Information;
- f) After termination of this Agreement, the Contractor will preserve the secrecy of and will not disclose directly or indirectly to any other person or business any of the District's Confidential Information; and
- g) The Contractor will promptly advise the District of any unauthorized disclosure or use of the District's Confidential Information by any person or entity.

The Parties agree this provision is intended to express the District's rights and the Contractors' duties to the District under the Colorado Uniform Trade Secrets Act, C.R.S. 7-74-101, et seq., and other applicable law. Additionally, the Contractor's obligation regarding the preservation and return of the District's Confidential Information will continue indefinitely, both during and after the time during which the Contractor may provide services and products to the District.

10. **Confidentiality Agreements With The Contractor's Employees.** The Contractor will cause each of its Employees who may gain access to any of the District's Confidential Information, to execute a confidentiality agreement reasonably acceptable to the District before disclosing any Confidential Information to that Employee or permitting that Employee to have access to any Confidential Information.

11. **Open Records** The parties understand that all material provided or produced under this Agreement may be subject to the Colorado Open Records Act, § 24-72-201, et seq., C.R.S. (2011), and that in the event of a request to School District for disclosure of such information, School District will advise the Contractor of such request in order to give the Contractor the opportunity to object to the disclosure of any of its proprietary or confidential material. In the event of the filing of a lawsuit to compel such disclosure, School District will tender all such material to the court for judicial determination of the issue of disclosure and the Contractor agrees to intervene in such lawsuit to protect and assert its claims of privilege and against disclosure of such material or waive the same.

12. **Intellectual Property** Neither party shall acquire any rights, either express or implied, to the intellectual property of the other unless expressly acknowledged in writing as a "Work For Hire" in this Agreement or another written Agreement between the parties.

- a) **Ownership of Intellectual Property.** Each party shall retain ownership of its respective pre-existing intellectual property, which is all intellectual property rights owned or controlled by a party prior to the effective date of this Agreement and neither party shall acquire any rights, either express or implied, to the other party's pre-existing intellectual property without an express written agreement.
- b) **Trademarks/Copyrights.** Each party to this Agreement acknowledges the validity of the other party's service marks, trademarks, trade names, patents, or copyrights, if any, and will not in any way infringe upon or otherwise harm the other party's rights or interests in such property.
- c) **Use and Protection of Intellectual Property.** At all times while this Agreement is in effect, neither party will use, in any adverse way or for its own benefit or for the benefit of any third party, the intellectual property belonging to the other party without the express written consent of that party. All intellectual property, whether or not designated as propriety or confidential, received by any party shall be accordingly treated as this Agreement requires, and the failure by a party to identify information as a party's intellectual property is neither a waiver that the intellectual property is not confidential or propriety nor shall it operate as a loss of any party's rights with respect to that intellectual property. Upon receipt of written notification that the information identified as intellectual property is owned by a party, the other party shall keep it confidential and the respective parties' obligations hereunder shall apply to any subsequently identified intellectual property. However, without breaching the confidentiality this Agreement requires or violating any party's intellectual property rights, any information or materials that is generally available and has been previously disclosed or is in the public domain is excluded from any obligation under this Agreement.
- d) Contractor acknowledges that all deliverables, reports and written documents ("Materials") expressly prepared for, or submitted to the School District by the Contractor while performing the scope of work under this Agreement, belongs exclusively to the District; and if the Materials are deemed copyrightable, patentable and may be subject to trade, or service marks protection, shall be considered created and developed as "Works For Hire" and to the extent that this Agreement expressly or impliedly requires the

Contractor to produce Materials which may be subject to patent, copyright, trade secret, or proprietary rights of any kind. No license or right is granted to the Contractor either expressly or by implication, estoppel or otherwise to publish, reproduce, prepare derivative works based upon, distribute copies of, publicly display, or perform, any of such items, except pre-existing materials of the Contractor, either during or after the term of this Agreement without a written agreement signed by an authorized representative of the School District.

- e) **Third Party Intellectual Property.** The Contractor agrees to secure permission in writing from any third parties whose intellectual property are utilized in whole or in part by Contractor in the preparation of the Materials, and notify the District as to what degree the third party's Materials were used as well as any limitations placed on the use of those Materials.
- f) **License.** To the extent that any pre-existing materials are contained in the Materials, the Contractor grants to District an irrevocable, non-exclusive, worldwide, royalty-free license to (i) use, execute, reproduce, display, perform, distribute (internally or externally) copies of, and prepare derivative works based upon, such pre-existing materials and derivative works thereof, and, (ii) authorize others to do any, some or all of the foregoing.
- g) **Assignment of Intellectual Property.** To the extent that any Materials may not, by operation of law, be works made for hire, the Contractor hereby assigns to the School District the ownership of copyright in the deliverable items and the District shall have the right to obtain and hold in its own name copyrights, registrations and similar protection which may be available in the deliverable items. The Contractor agrees to give the District or its designees all assistance reasonably required to perfect such rights.

13. **Compliance With Law/District Policies.** The Contractor will comply with all laws, regulations, municipal codes and ordinances and other workplace requirements and standards applicable to the provision of services/work performed including, without limitation, federal and state laws governing wages and overtime, civil rights/employment discrimination, equal employment, safety and health, verifiable security background checks, employees' citizenship, withholdings, pensions, reports, record keeping, and campaign contributions and political finance.

14. **Immigration.** Contractor does not knowingly employ an undocumented person who shall perform work under this Agreement and shall confirm the employment eligibility of all employees who are newly hired for employment in the United States to perform work under this Agreement, through participation in the E-Verify Program or the District program established pursuant to CRS §8-17.5-102(5)(c). Contractor does not knowingly employ an undocumented person to neither perform work nor enter into an agreement with a subcontractor that fails to certify to contractor that the subcontractor does not knowingly employ or contract an undocumented person to perform work under this Agreement. Contractor : (a) does not use E-Verify Program or the state program procedures to undertake pre-employment screening of job applicants while this agreement is being performed; (b) shall notify the subcontractor within three days if Contractor has actual knowledge that a subcontractor is employing or using an undocumented person to work under this Agreement and will terminate the agreement if a subcontractor does not stop employing or using the undocumented person within three days of receiving the notice; and (d) shall comply with reasonable requests made in the course of an investigation, undertaken pursuant to CRS §8-17.5-102(5) by the Colorado Department of Labor and Employment. If Contractor fails to comply with any requirement of this provision or CRS §8-17.5-101 et seq., the School District may terminate this Agreement and, if so terminated, Contractor shall be liable for damages.

In the event Contractor is a natural person eighteen (18) years of age or older, Contractor hereby swears and affirms under penalty of perjury that he or she (i) is a citizen or otherwise lawfully present in the United States pursuant to federal law, (ii) shall comply with the provisions of CRS §24-76.5-101 et seq., and (iii) has produced one form of identification required by CRS §24-76.5-103 prior to the effective date of this Agreement.

15. **Contractors Debarred, Suspended, or Proposed for Debarment.** The Contractor, to the best of its knowledge and belief, represents that the Contractor and/or any of its principals, officers, directors, owners, partners, or a person's having primary management or supervisory responsibilities within a business entity, are not presently debarred, suspended, proposed for debarment, or declared ineligible for the award of contracts by any agency of the Federal, State or local government; (b) has not within a three-year period preceding this agreement, been convicted of or had a civil judgment rendered against them for commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public (Federal, state, or local) contract or subcontract or for violation of Federal or state antitrust statutes relating to the submission of offers; or commission of embezzlement,

theft, forgery, bribery, falsification or destruction of records, making false statements, tax evasion, violating Federal criminal tax laws, or receiving stolen property; and (c) is not presently indicted for, or otherwise criminally or civilly charged by a governmental entity with, commission of any of the aforementioned offenses enumerated in this paragraph; and (d) has not within a three-year period preceding this offer, been notified of any delinquent Federal taxes in an amount that exceeds \$3,000 for which the liability remains unsatisfied; and (e) has not within a three-year period preceding this offer, had one or more contracts terminated for default by any agency of the Federal, State or local government.

Background Checks.

- a) Contractor and every person, including any subcontractor or agent of the Contractor, providing services hereunder, including but not limited to transportation, instruction, or food services, that has direct student contact at least once a month, shall be required to have a criminal background check. The results of the background check shall comply with the provisions of 24-72-305.3, C.R.S. and other applicable requirements of the District, and upon request, be available to the District to the extent legally permitted. The criminal background check shall, at a minimum, meet the requirements of 22-32-109.7, C.R.S.
- b) Notwithstanding that every person having direct student contact complies with the criminal background check requirements as set forth above in this paragraph, Contractor hereby acknowledges and certifies that, to the best of its knowledge, no employee, subcontractor or agent of Contractor rendering services under this Agreement has been convicted in Colorado or in any other State of a criminal offense involving the following which shall apply by way of illustration but not limitation:

The abuse, abduction, sexual molestation, physical or sexual assault on, or rape of a minor, or any crime involving exploitation of minors, including but not limited to child pornography offenses; or any crime of violence. "Convicted" includes the forfeiture of any bail, bond, or other security deposited to secure appearance by a person charged with a felony, misdemeanor, municipal ordinance, the payment of a fine, a plea of nolo contendere, and the imposition of a deferred or suspended sentence imposition of suspended or deferred sentences or judgments, entry of "nolo contendere" pleas and a listed or unlisted registered sex offender.

- c) Contractor further acknowledges and certifies that it understands that knowingly allowing any employee, subcontractor or agent providing services, entering onto the District's property or accessing District Confidential Information that if such person has been convicted of an offense considered a crime as defined in section (a) above constitutes a material breach that may result in the immediate termination of this Agreement and/or referral for additional criminal or civil sanctions pursuant to Colorado law. Contractor shall, upon the District's request, provide documentation of every person, including any subcontractor or agent of Contractor, providing services to substantiate the basis for this certification.
- d) The costs associated with conducting the above-required criminal background screenings are solely the responsibility of Contractor. Before services begin, each person required to provide a criminal background check shall disclose in writing and sign a notarized affidavit attached hereto as an exhibit, if he or she has or has not been charged or convicted of a felony, misdemeanor, municipal ordinance or similar violation. Thereafter, any new personnel, subcontractor volunteer or agent hired or added for the provisioning of services during the term of this Agreement shall satisfy the requirements set forth in paragraph 17 before performing services on behalf of Contractor.

16. **Termination/Revocation.** The parties may terminate this Agreement, or any portion or portions thereof, upon sending a thirty (30) day written notification containing the reasons for the termination, the effective date, and, in the case of partial termination, the portion to be terminated, to the other party. In the case of partial termination, if the School District determines that a partial termination will significantly reduce the value, the need or the efficacy of the remaining portion of the work or will not accomplish the intended purpose of the work, for which the Agreement was made, the School District may subsequently terminate the Contractor's performance of the remaining services or work. Written notification shall be sent to the other party by certified mail, return receipt requested, and shall be deemed effectively given ten (10) days after the date of mailing. In the event of termination,

the District shall be obligated to pay the Contractor only for services rendered up to the effective date of termination. In addition, the District may terminate this Agreement immediately without prior notice if any of the following occurs:

- a) If the Contractor commits an act of fraud, dishonesty, or any other act of negligent, reckless or willful misconduct in providing services to the District;
- b) If any contract by the District with any third party on which this Agreement substantially depends is terminated or the District is unable for any other reason to provide services for to the party/parties to that contract; or
- c) If any circumstance beyond the District's control, including but not limited to financial constraints imposed by action of the legislature or Governor of the State of Colorado, prevents it from providing services or otherwise hinders, delays, or prevents the District from receiving revenue or income or increases its overhead to an extent the District reasonably decides to reduce or modify its operations.
- d) In case of a partial termination or suspension, because the Contractor failed to correct work within the specified timeframe based on the reason(s) stated in the written notification of termination, the School District may take any or all of the following actions:
 - i. Temporarily withhold payments pending the correction of the work or services by the Contractor identified as nonconforming by the School District.
 - ii. Reduce the payment of the funds by any percentage or amount that is less than the total amount of compensation provided in this Agreement if any work or activity the Contractor has performed does not conform to the work or services this Agreement requires.
 - iii. Stop the performance of any further work the Contractor would have performed under this Agreement.
- e) Upon termination of the Agreement by School District pursuant to this Section 18, the Contractor will not have any claim against School District by reason of, or arising out of, incidental or relating to termination, except for compensation for work satisfactorily performed as described in the Agreement. In the event that this Agreement is terminated prior to the expiration date, Contractor will submit any and all outstanding reports and information requested by the School District within ninety (90) days from the date of early termination.

17. **Stop Work Order.** The School District may, by written order to the Contractor, at any time, require the Contractor to stop all or any part of the work called for by this Agreement. This order shall be for timeframe specified in the order delivered to the Contractor. Any such order shall be identified specifically as a stop work order issued pursuant to this paragraph. Upon receipt of such an order, the Contractor shall forthwith comply with its terms and take all reasonable steps to minimize the incurring of costs allocable to the work covered by the order during the timeframe of the work stoppage. Before the stop work order expires, the School District shall either cancel the stop work order or terminate the work covered by such order or in accordance with Section 18 of this Agreement.

18. **Indemnification and Insurance Exceptions.** If the Contractor is a "public entity" within the meaning of the Colorado Governmental Immunity Act, §24-10-101, et seq., C.R.S., as amended ("Act"), the following shall apply:

- a) **Insurance.** Contractor shall maintain insurance, by commercial policy or self-insurance, as is necessary to meet the Contractor's liabilities under the Act. Proof of such insurance shall be provided upon request by the School District.
- b) **Liability.** Each party to this Agreement shall be liable for the actions and omissions of its respective officers, agents, employees and subcontractors, to the extent provided by the Colorado Governmental Immunity Act. This obligation shall survive termination of this Agreement.

If the Contractor is not a "public entity" then the terms and conditions contained in Sections 20 and 21 below shall apply:

19. **Indemnification.** The Contractor agrees to indemnify, defend and hold the District harmless from and against any claim, cause of action, judgment, loss, demand, suit, or legal proceeding brought against the District or its employees, representatives, or agents, which arises directly or indirectly from any act or omission of the

Contractor, including but not limited to any misconduct or neglect by the Contractor and/or its employees, subcontractors, or agents. Furthermore, to the maximum extent permitted by law, the Contractor will defend the District from any claim and will indemnify the District against any liability for any Employee Benefits for the Contractor and/or any of its employees, subcontractors, or agents, imposed on the District; and the Contractor will reimburse the District for any award, judgment or fine against the District based on the position the Contractor and/or any of its employees, subcontractors or agents, who provides any services to the District related to this Agreement was ever the District's employee, and all attorneys' fees and costs the District reasonably incurs defending itself against any such liability.

20. **Dispute Resolution** Except for receipt of written notification to terminate, suspend or stop work pursuant to this Agreement, if the Contractor believes in good faith that the other party has failed to meet any other substantial obligation, timely complete performance or provide the services and materials required as set forth by this Agreement or has otherwise not substantially complied with this Agreement ("Breach"), then within thirty (30) days from the date the breach occurred, the Contractor shall send written notification to the School District identifying the allegations and/or reasons the Contractor believes the School District has breached this Agreement. Upon receipt of written notice, the School District shall have twenty (20) business days to correct or cure the alleged breach or to notify the Contractor that the alleged breach of this Agreement has not occurred. Upon finding the School District has failed to correct or respond in writing within the agreed upon timeframe before the Contractor may pursue any available remedy at law or in equity.

21. **Notices, Process.** Any notice this Agreement requires must be in writing and will be effective only if hand-delivered or sent by certified U.S. mail, return receipt requested, to the party entitled to receive the notice at the Contractor's address provided in this Agreement, while the District's Notice address is as follows: Denver Public Schools, Director of Purchasing, 780 Grant Street, Denver, Colorado 80203; or at such other address that either party may provide later to the other party. Each party agrees to waive service of process in any action brought to enforce or to interpret this Agreement and the parties further agree that service of the complaint and any other pleading, discovery, order or document in any such action that would otherwise have to be served by personal service will be deemed served three (3) days after being sent to the other party and that party's attorney as provided above.

22. **Modification/Entire Agreement/No Prior Agreement.** This Agreement constitutes the entire understanding between the parties hereto and may not be modified and/or amended unless any such modification or amendment is reduced to writing and signed by both parties. The Contractor further understands and agrees that this Agreement supersedes any prior written or verbal agreement, promise, representation, understanding, or course of conduct between the parties.

23. **No Agency Created.** The Contractor agrees and understands that no authority exists through this Agreement permitting the Contractor to enter into any third party contract, assume any obligation, or makes any representation to third parties on behalf of, or which may bind the District.

24. **Conflict of Interest.** The Contractor cannot be related to any school district employee if such a relationship would create a material financial interest or result in the violation of DPS Board Policy GBEA by either the Contractor or the school district employee.

25. **Non-Solicitation.** The either party shall not solicit directly or indirectly any of the District's employees or contractors for a period of two years following the termination of this Agreement without prior written consent of the other party.

26. **No Unauthorized Use Of Names.** Neither party will use the other's name in any advertisement, promotion, business card, etc. without the other party's prior written consent.

27. **Assignment Prohibited.** The Contractor cannot assign any of the services that require performance under the Agreement. In this regard, the Contractor understands that the performance of the scope of work is considered personal services under this Agreement.

28. **No Construction Against Drafting Party.** The parties and their respective counsel have had the opportunity to review the Agreement, and the Agreement will not be construed against any party merely because the Agreement or any provisions thereof were prepared by a particular party.

29. **No Third Party Beneficiary** Enforcement of the terms of the Agreement and all rights of action relating to enforcement are strictly reserved to the parties. Nothing contained in the Agreement gives or allows any claim or right of action to any third person or entity. Any person or entity other than School District or the Contractor receiving services or benefits pursuant to the Agreement is an incidental beneficiary only.

30. **Financial Interest.** The signatories aver that to their knowledge, no employee of the school district has any personal or beneficial interest whatsoever in the service or property described in this Agreement. The Contractor has no interest and shall not acquire any interest, direct or indirect, that would conflict in any manner or degree with the performance of Contractor's services and Contractor shall not employ any person having such known interests. CRS §§24-18-201 and 24-50-507.

31. **Governing Law.** This Agreement has been executed in Colorado and shall be governed in accordance with the laws of the State of Colorado in every respect.

32. **Severability.** If it is found by a court of competent jurisdiction or by operation of law that a term or provision of this Agreement is invalid or unenforceable, the remainder of the Agreement shall be unimpaired and continue in force and effect, and the invalid or unenforceable term or provision shall be replaced by such valid term or provision as comes closest to the intention underlying the invalid or unenforceable term or provision.

33. **No Waiver.** No assent, expressed or implied, by the District to any breach of any obligation or covenant by the Contractor shall be construed as a waiver of any subsequent or other breach by the Contractor. Notwithstanding any other provision of this Agreement to the contrary, no term or condition of this Agreement shall be construed or interpreted as a waiver, express or implied, unless it is in a written document executed by the party against whom the waiver is sought to be enforced.

34. **Paragraph Headings.** The captions and headings set forth herein are for convenience of reference only, and shall not be construed to limit or define the terms and provisions hereof.

35. **Conflict.** In the event of a conflict between the terms of the Agreement and any exhibits attached to this Agreement, the terms of this Agreement shall prevail.

36. **Counterparts Of This Agreement.** This Agreement may be executed in two (2) counterparts, each of which shall be deemed to be an original of this Agreement.

37. ***PERA Contribution.** The District is required to verify the Public Employee Retirement Association ("PERA") retirement status and contributions, with respect to making a PERA Contribution.

- a. Please note anyone affiliated with PERA to which funds have been disbursed will be reported to PERA.
- b. Please ensure that you have answered the PERA questions within the Supplier Portal.
- c. The Contractor represents that: The Supplier Portal questions have been answered appropriately.

38. **INSURANCE:**

General Conditions: Contractor agrees to secure, at or before the time of execution of this Agreement, the following insurance covering all operations, goods or services provided pursuant to this Agreement. Contractor shall keep the required insurance coverage in force at all times during the term of the Agreement, or any extension thereof. The required insurance shall be underwritten by an insurer licensed or authorized to do business in Colorado and rated by A.M. Best Company as "A-" VIII or better.

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

If any policy is in excess of a deductible or self-insured retention, the Contractor must notify the District. Contractor shall be responsible for the payment of any deductible or self-insured retention. The insurance coverages specified in this Agreement are the minimum requirements, and these requirements do not lessen or limit the liability of the Contractor. The Contractor shall maintain, at its own expense, any additional kinds or amounts of insurance that it may deem necessary to cover its obligations and liabilities under this Agreement.

Additional Insureds: For Commercial General Liability and Auto Liability, Contractor and Subcontractor's insurer(s) shall name School District No. 1 in the City and County of Denver, d/b/a Denver Public Schools, and its elected officials, employees, representatives, and agents, as additional insureds with respect to liability arising out of the activities performed by, or on behalf of the Contractor.

Waiver of Subrogation: For Commercial General Liability, Auto Liability and Workers' Compensation, Contractor's insurer shall waive subrogation rights against the District.

Proof of Insurance: Contractor shall provide a copy of this Agreement to its insurance agent or broker. Contractor may not commence services or work relating to the Agreement prior to placement of coverage. Contractor certifies that the certificate of insurance, preferably an ACORD certificate, complies with all insurance requirements of this Agreement. The District's acceptance of a certificate of insurance or other proof of insurance that does not comply with all insurance requirements set forth in this Agreement shall not act as a waiver of Contractor's breach of this Agreement or of any of the District's rights or remedies under this Agreement. The District's Risk Management department may require additional proof of insurance including but not limited to policies and endorsements.

No later than seven days after execution of this Agreement, Contractor shall provide the District with certificates of insurance evidencing each of the types and amounts specified below:

- 1) **Workers' Compensation/Employer's Liability Insurance:** Contractor shall maintain the coverage as required by statute and shall maintain the Employer's Liability insurance with limits of at least \$100,000 per occurrence for each bodily injury claim, \$100,000 per occurrence for each bodily injury claim caused by disease claim, and \$500,000 aggregate for all bodily injuries caused by disease claims. Contractor expressly represents to the District, as a material representation upon which the District is relying on entering into this Agreement, that none of the Contractor's officers or employees who may be eligible under any statute or law to reject Workers' Compensation insurance shall effect such rejection during any part of the term of this Agreement, and that any such rejections previously effected, have been revoked as of the date Contractor executes this Agreement.
- 2) **Business Automobile Liability:** Contractor shall maintain Business Automobile Liability with limits of at least \$1,000,000 combined single limit applicable to all owned, hired and non-owned vehicles used in performing services under this Agreement.
- 3) **Commercial General Liability:** Contractor shall maintain a Commercial General Liability insurance policy with limits of at least \$1,000,000 for each occurrence, \$1,000,000 for each personal and advertising injury claim, \$2,000,000 products and completed operations aggregate, and \$2,000,000 policy aggregate.

Additional Provisions for Commercial General Liability:

- (a) The policy must provide the following:
 - (i) That this Agreement is an Insured Contract under the policy;
 - (ii) Defense costs are outside the Limits of Liability;
 - (iii) A severability of interests or separation of insureds provision (no insured versus insured exclusion);
 - (iv) A provision that coverage is primary and non-contributory with other coverage or self-insurance maintained by the District; and
 - (b) For claims-made coverage:
 - (i) The retroactive date must be on or before the contract date or the first date when any goods or services were provided to the District,
 - (c) Contractor shall advise the District in the event any general aggregate or other aggregate limits are reduced below the required per occurrence limits. At their own expense, and where such general aggregate or other aggregate limits have been reduced below the required per occurrence limit, the Contractor will procure such per occurrence limits and furnish a new certificate of insurance showing such coverage in force.
- 4) **Professional Liability (Errors & Omissions):** Contractor shall maintain limits of at least \$1,000,000 per claim and \$1,000,000 policy aggregate limit.
- 5) **Sexual Abuse, Molestation or Misconduct:** Contractor shall maintain Sexual Abuse, Molestation or Misconduct coverage with a minimum limit of \$100,000.
- 6) **Subcontractors and Subconsultants:** All Subcontractors and Subconsultants (including Independent Contractors, Suppliers or other entities providing goods or services required by this Agreement) shall be subject to all of the requirements herein and shall procure and maintain the same coverages required of the Contractor. Contractor shall include all such Subcontractors as Additional Insured under its policies (with the exception of Workers' Compensation) or shall ensure that all such Subcontractors and Subconsultants maintain the required coverages. If Subcontractors and Subconsultants cannot meet any of the insurance coverage requirements, Contractor shall confer with the District's Risk Management department to determine whether the insurance coverages herein may be modified or waived.

IN WITNESS OF THE PARTIES AGREEMENTS, the District and the Contractor have executed this Agreement on the date(s) indicated on the signature page hereafter.

Notary of Acknowledgement

*Subscribed and sworn to me by _____
in the county of _____, State of _____,
this _____ day of _____, 20____

***CONTRACTOR** _____
Signature _____

Witness My Hand And Official Seal
My Commission Expires: _____
By: _____
Notary Public

Address: _____
City, State, Zip: _____
Tax ID: _____
Date: _____
Email: _____ Phone Number: _____

* * * * *

I hereby certify that the individuals requested in this agreement are not school district employees, and are not family members of mine. Any finding to the may require repayment and/or further disciplinary action up to and including termination.

SCHOOL DISTRICT NO.1

***RECOMMENDED BY: (School or Department)**

Site Administrators Signature

Print Name and Title

School or Department

District Account Code

Date

* * * * *

APPROVED BY: (Strategic Sourcing)

By: _____
Authorized Designee of the Board of Education per
Board Policy DJA (signature)

Print Name and Title

Date

Exhibit 1 - Criminal Background Check Certification

PLEASE READ CAREFULLY: It is required that every person, including any subcontractor or agent of the Contractor, providing services, including but not limited to transportation, instruction, or food services, who regularly has direct, student contact or access to DPS facilities shall (i) complete and notarize this form certifying their disclosed criminal history and information, if any, is true and accurate; and (ii) upon request, be able to provide a criminal background report from a state and/or federal law enforcement agency; and (iii) as a result of the information disclosed or contained in your criminal background report and this certification, agree to provide additional information, if needed.

NOTE: A CRIMINAL CONVICTION IS NOT AN AUTOMATIC DISQUALIFICATION, HOWEVER, ANY PERSON'S SUBMISSION OF FALSE OR MISLEADING INFORMATION OR FAILURE TO DISCLOSE REQUESTED INFORMATION OR IF THE RESULTS ARE INCONSISTENT WITH THE INFORMATION PROVIDED, MAY DISQUALIFY THE PERSON FROM PERFORMING THE SERVICES OR WORK SPECIFIED UNDER ANY AGREEMENT OR RESULT IN THE TERMINATION OF THE AGREEMENT BETWEEN THE DISTRICT AND CONTRACTOR IF SUBSEQUENTLY DISCOVERED AT A LATER DATE.

For purposes of the certification below, a person is deemed to be convicted of committing a felony or misdemeanor if such person has been convicted under the laws of any other state, the United States, or any territory subject to the jurisdiction of the United States of an unlawful act which, if committed within this state, would be a felony or misdemeanor. For purposes of this section "Convicted" means a conviction by a jury or by a court and shall also include the forfeiture of any bail, bond, or other security deposited to secure appearance by a person charged with a felony or misdemeanor, the payment of a fine, a plea of nolo contendere, and the imposition of a deferred or suspended sentence by the court.

Please answer the following questions affirming that you **HAVE NOT** or **HAVE** been convicted of any charge(s) such as a felony, misdemeanor, or municipal ordinance violation.

- (a) I **HAVE NOT** been convicted of committing any felony misdemeanor or municipal ordinance violation; but not including any misdemeanor traffic offense or traffic infraction, **TRUE OR** **FALSE?**
- (b) I **HAVE** been convicted of committing any felony or misdemeanor; but not including any misdemeanor traffic offense or traffic infraction, **YES OR** **NO?**
- (c) Is there any felony, misdemeanor, or municipal ordinance violation charge(s) currently pending against you, **YES OR** **NO?**
- (d) Have you ever been convicted of or been terminated or resigned because of inappropriate or illegal behavior involving a child or children, **YES OR** **NO?**

If your answer to (a) is FALSE or to either (b) (c) and (d) is YES, provide a detailed explanation of the circumstances concerning your resignation or termination and the relevant facts and disposition of your felony, misdemeanor or municipal ordinance violation for which you were convicted of, or is currently pending, include the date of your conviction or when you were charged and the court entering the judgment of conviction or where any charges are currently pending in the space provided below.

I, (person's name) _____, certify, under penalty of perjury that by the submission of this certification the answers given to the questions above are true and complete. I authorize investigation of all statements contained in this certification as may be deemed necessary in arriving at a decision regarding my participation. I understand that false or misleading information given in this certification, or employment records, or interview(s) with my organization shall result in immediate termination to perform services for, or on behalf the school district. I also understand that I am required to abide by all of the school district's applicable policies, rules and regulations. I authorize the investigation of my personal and/or employment history and authorize any former employer, person, firm, corporation, school, college, governmental or law enforcement agency to disclose pertinent information they may have regarding me. This authorization shall remain in effect during the course of my providing services as an agent, employee or volunteer with the school district for the purpose of verifying any information contained in this certification. In consideration of the review of this certification, I release the school district and all providers of information from any liability as a result of furnishing and receiving this information. I understand that my ability to serve as an agent, employee or volunteer may be predicated upon the truthfulness of my answers in this certification and the results of any criminal background check concerning felony or misdemeanor convictions. My acceptance and or agreement below constitutes a waiver of any rights I may have to inspect and review confidential references and all other materials requested and/or submitted on a confidential basis regarding this certification.

If you need assistance in obtaining a background check, you may use the Denver Public Schools provider. You can e-mail Accurate Background directly at DPS@accuratebackground.com with your full name and email address. They will reply and send an invitation to you directly to administer the background check.

Signature

Date

Notary of Acknowledgement

*Subscribed and sworn to me in the county of _____, State of _____, this _____ day of _____, 20____, by _____

Witness My Hand And Official Seal

My Commission Expires: _____

By: _____
Notary Public