



DISTRICT CONTRACT TERMS AND CONDITIONS

These District Contract Terms and Conditions govern all purchases and agreements creating binding obligations of **Jefferson County School District R-1**.

1. GENERAL CONTRACT TERMS.

- 1.1. *Assignment*. The Contractor may assign or subcontract its rights and obligations under the Contract only with the express prior written consent of the District.
- 1.2. *Binding Effect*. The Contract binds the Parties and their respective successors and assigns.
- 1.3. *Captions and References*. The captions and headings in the Contract are for reference only and do not define or limit its provisions.
- 1.4. *Counterparts and Facsimile Signatures*. The Contract, and any amendments, may be executed in one or more counterparts, each of which is 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 Contract execution.
- 1.5. *Entire Understanding*. The Contract represents the complete integration of all understandings between the Parties related to the subject matter of the Contract.
- 1.6. *Independent Contractor*. The Contractor is an independent contractor and NOT an employee of the District. Employees and Subcontractors of the Contractor are NOT employees of the District. The Contractor shall perform all Services using independent judgment and expertise as an independent contractor. The District does not require the Contractor to work exclusively for the District. The Contractor shall deliver the Services in accordance with the plans and specifications set forth herein, and the District does not oversee the Contractor's actual work or instruct the Contractor as to how the Contractor performs the Services. The Contract may be terminated only in accordance with the terms of the Contract. The District does not provide training (other than minimal), tools or benefits to the Contractor, except that the District may supply materials and equipment as specified. Payment under the Contract is in accordance with the Contract rate or price, and shall not be in the form of an employee salary or hourly employee wage. The District does not dictate the time of performance, except to the extent the Contract establishes a completion schedule or work hours. The District will make payments to the Contractor in its trade or business name. The District does not combine business operations with the Contractor's business but maintains District operations separate and distinct from the Contractor's operations. Neither Party is or shall be construed to be, a partner or in joint venture with the other Party. Neither the Contractor 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. **The Contractor acknowledges that it is not entitled to Unemployment Compensation or Workers' Compensation benefits (unless coverage is provided by the Contractor or other entity) and that the Contractor 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 Contractor. The District will comply with all applicable tax reporting laws.
- 1.7. *Limitation of Liability – No Effect on Insurance Coverage*. Any provision in the Contract or a Vendor Document limiting the Contractor's liability (if any) shall not affect or decrease any insurance coverage or

coverage limits otherwise available. The provisions of this subsection survive the termination of the Contract.

- 1.8. *Modification.* The Contract can only be modified in writing executed by both Parties or as otherwise provided in the Contract.
- 1.9. *Notices, Legal.* All notices required under the Contract 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 USPS Priority or ESPS 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 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. Each Party may change their respective legal notice address and other contact information without amending the Contract by sending a notice to the other Party, designating the new legal notice address and information.
- 1.10. *Notification of Legal Process.* In the event the Contractor becomes subject to legal process (e.g. without limitation, subpoenas, interrogatories, or pleadings) that relates to the Contract or the Contractor's performance, or compels or will compel the Contractor to disclose District Information, the Contractor 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 protect and prevent disclosure of 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 Contract.
- 1.11. *No Third-Party Beneficiaries.* The Contract benefits the Parties and gives no rights or benefits to anyone not a Party.
- 1.12. *Records and Audits.* The Contractor shall maintain complete and accurate records of all charges incurred by the District under the Contract, in accordance with generally accepted accounting principles, and other records related to the Contract and performance thereunder, for a period of at least a minimum of 5 years from the date of termination of the Contract, or longer as required by law. The Contractor shall permit the District to audit and inspect the Contractor's records relating to the Contract upon reasonable notice, and to retain copies thereof.
- 1.13. *Rights in and Use of Work Product.* If the Contract performance includes the Contractor creating Work Product for the District, the Contractor assigns to the District, and its successors and assigns, the entire right, title and interest in the Work Product.
- 1.14. *Severability.* If a court of competent jurisdiction rules any Contract provision to be invalid or illegal, such ruling shall have no effect upon the remaining provisions, which shall be considered legally binding and given full effect.
- 1.15. *Subcontracts.* The Contractor 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 Contract with each such Subcontractor. All subcontracts entered into by the Contractor in connection with the Contract shall comply with all applicable Laws, shall provide that they are governed by the laws of the State of Colorado, and shall be subject to all provisions of the Contract.
- 1.16. *Survival of Certain Contract Terms.* Contract provisions that impose an obligation on a Party after termination or expiration of the Contract shall survive the termination or expiration of the Contract and remains enforceable by the other Party.
- 1.17. *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, is not a waiver of any other right or remedy under the Contract, unless such waiver of such right or remedy is contained in a writing signed by the Party alleged to have waived their other rights or remedies.

2. DISTRICT SPECIFIC TERMS.

- 2.1. *Availability of Funds and Constitutional Limitations on Debt.* Financial obligations of the District payable after the current Fiscal Year are contingent upon funds for that purpose being appropriated, budgeted, and

otherwise made available. The District may also be relying on state or federal funding to satisfy its payment obligations under the Contract. The District's payment obligations under the Contract and under any other contractual obligation the District incurs are subject to and conditioned upon the continuing availability of all funding for that purpose. All payments of the District under the Contract constitute currently budgeted expenditures and do not constitute or give rise to a general obligation, indebtedness, or multiple-Fiscal Year direct or indirect debt or other financial obligation within the meaning of any constitutional or statutory provision or limitation. No provision of the Contract shall be construed to pledge or to create a lien on any class or source of the District's monies. No provision of the Contract shall be construed to restrict the future issuance of any bonds or obligations of the District payable from any class or source of District moneys.

- 2.2. *Conflict of Interest.* The Contractor acknowledges that the Contractor has (i) has no personal or financial interest in the Contract other than any payment or fee to be earned under the Contract; (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 project requiring the Services under the Contract.
- 2.3. *Compliance with Laws and District Policies/Non-Discrimination.* The Contractor shall comply with all Laws that apply to performance under the Contract, as those Laws may be amended from time to time. Specifically, but without limitation, the Contractor shall comply with Laws (1) prohibiting the use or possession of alcohol, tobacco or firearms on District property; (2) related to web access; and (3) prohibiting discrimination, intimidation, or harassment on the basis of ethnicity or race, color, religion, national origin, ancestry, sex, sexual orientation, gender identity, genetic information, age, veteran status, or disability.
- 2.4. *Criminal Record Certification.* Where required by Laws, the Contractor shall complete a criminal records check on itself, if an individual, and any Contractor employee, agent, or Subcontractor providing services on District property. The Contractor, if an individual, and Contractor's employees, Subcontractors, or other agents of the Contractor, who have been convicted of, pled nolo contendere to, or received a deferred sentence or deferred prosecution for a felony, or a misdemeanor crime involving unlawful sexual behavior or unlawful behavior involving children, shall not be allowed to work on District property. The Contractor shall complete a certification or affidavit to that effect upon the District's request. The Contractor shall be responsible for complying with applicable privacy and confidentiality laws relating to the certification.
- 2.5. *District Data.* In the course of performing under the Contract, the Contractor may gain access to District Data. In this case, the Contractor 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 Contractor shall comply with the **Colorado Student Data Transparency and Security Act**, C.R.S. §§ 22-16-101 *et seq.*, as applicable. The Contractor acknowledges that under applicable law, regulation and policy, 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 providing Services under the Contract; that the Contractor is prohibited from re-disclosing such information to third parties and shall use reasonable methods to ensure to the greatest extent practicable that such records and data are protected from further disclosure; and that Contractor shall destroy any such information when the Contract is terminated or when the information is no longer needed to provide the Services.
- 2.6. *Governing Law, Jurisdiction, and Venue.* The Contract is made in and shall be governed by the laws of the State of Colorado. A Party shall bring any action to enforce its rights hereunder in a court of competent jurisdiction in Jefferson County, Colorado.
- 2.7. *Governmental Immunity.* No term or condition of the Contract 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).
- 2.8. *Indemnification by Contractor.* **This provision SHALL NOT apply where the Contractor is a Colorado governmental entity.** The Contractor shall indemnify, defend, and hold the District, and its employees, agents,

and members of the governing board (“Indemnified Persons”) harmless against any and all costs, expenses, claims, actions, damages, liabilities, court awards, and other amounts (including attorney’s fees, court costs, and related costs) (“Claims”) incurred by any of the Indemnified Persons in connection with (i) any act or omission by the Contractor related to the Contract; (ii) any act or omission by the Contractor’s employees, agents, Subcontractors, or assignees related to the Contract; (iii) the Work Product, if any; or (iv) performance under the Contract. In the event any Work Product or performance under the Contract infringes upon any Intellectual Property, the Contractor shall indemnify and defend the Indemnified Persons and hold the Indemnified Persons harmless against all Claims resulting from such Intellectual Property based on actual or alleged manufacture, sale or use of Work Product or services in violation, infringement or the like of Intellectual Property rights of others. The provisions of this section shall survive the termination of the Contract.

- 2.9. *Open Records Law/CORA*. The Colorado Open Records Act, CRS § 24-72-10 *et seq.*, as amended from time to time, applies to the Contract, the Contractor’s performance, and the records and reports generated thereunder, to the extent not prohibited by federal law.
- 2.10. *Public Contracts for Services*. This provision is required by C.R.S. §§8-17.5-101 *et seq.* Contractor certifies that it shall comply with the provisions of C.R.S. §8-17.5-101 *et seq.* Contractor shall not knowingly (i) employ or contract with an illegal alien to perform work under the Contract, (ii) enter into a contract with a subcontractor that knowingly employs or contracts with an illegal alien to perform work under the Contract, or (iii) enter into a contract with a subcontractor that fails to contain a certification to Contractor that the subcontractor shall not knowingly employ or contract with an illegal alien to perform work under the Contract, Contractor also represents and warrants that Contractor 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). Contractor 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 Contractor has actual knowledge that a subcontractor is employing or contracting with an illegal alien for work under this Contract, the Contractor shall (i) notify its subcontractor and the District within 3 days and (ii) terminate the subcontract with the subcontractor if the subcontractor does not stop employing or contracting with the illegal alien within 3 days of receiving the notice (unless the subcontractor during those 3 days provides information to establish that the subcontractor has not knowingly employed or contracted with an illegal alien). Contractor 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 Contractor 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 Contractor shall be liable for actual and consequential damages to the District.
- 2.11. *Public Contracts with Natural Persons*. This provision is required by C.R.S. §24-76.5-101 *et seq.* If Contractor is a natural person 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 C.R.S. §24-76.5-101 *et seq.*, and (iii) has produced one form of identification required by C.R.S. §24-76.5-103, before the Effective Date.
- 2.12. *PERA Contributions*. If the Contractor is a Colorado Public Employees Retirement Association (PERA) retiree or employs Colorado PERA retirees in performance of the Contract, they must inform the District of this status. The District will make any employer PERA contributions that are required by legislation. The Contractor or the Contractor’s employee who is a Colorado PERA retiree will be responsible to pay any working retiree contributions to PERA that are required by legislation.
- 2.13. *Taxes and Fees*. The District is exempt from the payment of any state, and most municipal, sales and use taxes for materials, supplies, and equipment used in the performance under the Contract, and may be exempt from federal and other taxes. The Contractor shall not include any of these taxes in any charges or invoices to the District. The Contractor shall pay, at its own expense, all applicable taxes and fees in the execution of the terms of the Contract, including but not limited to excise tax, federal and state income taxes, payroll and withholding taxes, unemployment taxes, and worker’s compensation payments for its employees, and shall indemnify and hold the District harmless for all claims arising under such taxes and fees.

3. CLICK-WRAPPS AND BROWSE-WRAPPS; COLORADO STUDENT DATA TRANSPARENCY AND SECURITY ACT.

- 3.1. The District may, in connection with the purchase of the Goods, accept terms and conditions by clicking through on-line agreements or otherwise passively accepting the Supplier's terms or conditions of use. Any terms or conditions to which the District may consent in this manner are void *ab initio* to the extent such terms or conditions: (i) require the District to indemnify or hold harmless another person, except as otherwise authorized by law, or (ii) by which the District agrees to binding arbitration or any other District, or (iii) by which the District agrees to limit liability of another person for bodily injury, death or damage to tangible property of the District caused by such person or such person's employees or agents.
- 3.2. If any such on-line consent or agreement is for school services, as that term is defined in C.R.S. §22-16-103(7)(a), or the Supplier is or becomes a school service contract provider, as that term is defined in C.R.S. §22-16-103(8), or both, then the Supplier shall comply with the requirements of C.R.S §22-16-101 *et seq.*

4. DEFINITIONS.

For purposes of these District Terms and Conditions, the following terms have the following meaning:

- 4.1. "*Contract*" means (i) a formal written agreement documented on a District form and executed by the Parties; or (ii) any other binding obligation of the District for the purchase of goods and services; or (iii) a PO.
- 4.2. "*Contractor*" means the contractor, supplier, vendor, service organization, governmental organization, or other entity with whom the District is entering or has entered into an agreement to be governed by the District Terms and Conditions.
- 4.3. "*District*" means Jefferson County School District R-1.
- 4.4. "*District Data*" means what the same term is defined as in the DPA, if the Contract contains a DA or the Contractor signed a DPA, and, if not, then this term means Personally Identifiable Information ("PII"), Record, Education Record 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 the Contractor or that is otherwise collected or generated by the Contractor in connection with the performance of the Services. "**PII**" means information and metadata that, alone or in combination, is linked or linkable to a specific student so as to allow a reasonable person in the school community, who does not have personal knowledge of the relevant circumstances, to identify the student with reasonable certainty. Personally identifiable information includes but is not limited to: (a) the student's name; (b) the name of the student's parent or other family members; (c) the address or phone number of the student or student's family; (d) personal identifiers such as the student's state-assigned student identifier, social security number, student number or biometric record; (e) indirect identifiers such as the student's date of birth, place of birth or mother's maiden name; and (f) demographic attributes, such as race, socioeconomic information, and gender. To the extent it is not already included in the definition hereinabove, PII also includes "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 the Contractor.
- 4.5. "*District Information*" means any and all information, data, Record, specification, software code, ideas,

documents, District Data (if any), or other material, in any form and on any media, including but not limited, to any such information that may belong to or affect third persons not a Party, which the Contractor receives from the District.

- 4.6. “*District Terms and Conditions*” means these District Contract Terms and Conditions
- 4.7. “*Effective Date*” means the date when the Parties execute the Contract and is the later date if the Parties sign on different dates.
- 4.8. “*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.
- 4.9. “*Intellectual Property*” means all intellectual property including, without limitation, patent, copyright, trademark, trade secret, trade dress, or application therefore, and all work and rights derived therefrom.
- 4.10. “*Laws*” means all state, federal, and local laws, statutes, regulations, rules, code provisions, and case law, and include the policies of the District and the District board. All references to Law refers to the Law as in effect on the Effective Date. Any changes to Law after the Effective Date is hereby incorporated into the Contract.
- 4.11. “*Party*” means the District or the Contractor, and the plural means both the District and the Contractor.
- 4.12. “*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.
- 4.13. “*Services*” means the services and work the Contractor is performing under the Contract, and shall include all goods and Materials the Contractor acquires and uses to perform the Services.
- 4.14. “*Subcontractor*” means persons not a Party that the Contractor engages to aid in the performance under the Contract and the SOW.
- 4.15. “*Vendor Document*” means any form of Contract or documentation prepared and provided by the Contractor and relating to the Contract or the Services, and may include, without limitation, an on-line Contract, 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.
- 4.16. “*Work Product*” means work product produced or created by the Contractor specifically and exclusively for the District in performing the Services and all work based on, derived from, or incorporating the Work Product, together with the tangible and intangible results of the Services, whether finished or unfinished, including drafts. “Work Product” includes, but is not limited to, documents, text, software (including source code), research, reports, proposals, specifications, plans, notes, studies, data, images, photographs, negatives, pictures, drawings, designs, models, surveys, maps, materials, ideas, concepts, know-how, information, and any other results of the work. “Work Product” DOES NOT include any material that was developed prior to the Effective Date that is used, without modification, in the performance of the work.