



DENVER PUBLIC SCHOOLS PARTNERSHIP AGREEMENT

This Partnership Agreement (Agreement) is entered into this _____ day of _____, 2016 by and between School District No. 1 for the City and County of Denver (District or DPS) and _____ (“Partner”) which is an organization authorized to do business in the State of Colorado.

WHEREAS, School District No.1 in the City and County of Denver, (“District”) has the statutory authority to contract with persons, firms, consultants, and entities for the provision of services relating to Denver Public Schools; and

WHEREAS, the District has determined that to support the educational goals of the District a need exists to enter into a partnership for the provision of services by the Partner; and

WHEREAS, the Partner is qualified to provide certain services the District desires and has agreed to do so without any expectation of compensation.

NOW, THEREFORE, for good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, and in consideration of the mutual covenants and agreements set forth below, the undersigned parties desire to enter into the following Agreement, subject to the following terms and conditions which are to be governed by the general concepts of cooperative action set forth hereinafter.

TERMS AND CONDITIONS

- 1. Term.** The effective date begins on the next business day that follows after an authorized representative of the Partner and the District execute this Agreement and it shall expire at the time the Partner no longer provides its services or terminated in accordance with this Agreement; a lapse or stoppage of services by the Partner as a result of the District’s school year ending that timely resumes with the commencement of the next District school year, shall not be construed or interpreted as the termination of this Agreement. Furthermore, at the beginning of each school year, upon re-execution by each authorized representative of the District and Partner, the parties mutually agree this Agreement is revived according to the same, or any amended terms and conditions contained herein.
- 2. Services.** The Partner will provide the services consistent with generally accepted industry standards for the Partner’s customary services and operate its program in accordance with the Scope of Work attached as Exhibit A to this Agreement.
- 3. Compensation.** The District has no obligation to pay a fee for the services provided by the Partner, unless the parties execute in advance a written agreement that the District will pay for the services described in the written agreement. Before the District pays the agreed to fee, the Partner shall submit a detailed invoice with dates of service, the rate charged for the services and a description of the provided service to the site administrator who will forward the Request for Payment form and the W-9 form to Accounts Payable, which shall be processed for payment within thirty (30) days from the date of receipt of an invoice by the Accounts Payable office
- 4. Schedule.** The District and the Partner agree that the services shall be provided at the locations and times attached as **Exhibit A** to this Agreement.

OBLIGATIONS AND RESPONSIBILITIES

5. **District Responsibilities.** The District will undertake the following responsibilities pursuant to this Agreement.

- a. The District shall use its best efforts to provide such information as may be necessary to assist the Partner to perform and evaluate the services provided under this Agreement.
- b. The District hereby designates _____ to act as a District Liaison with the Partner.
- c. The Partner with the District's approval, may use District Facilities, provided the Partner agrees to follow the policies, rules and regulations as well as pay the operating costs, if any, related to such use.

6. **Partner Responsibilities.** In addition to any and all obligations required by law or stated elsewhere in this Partnership Agreement, the Partner will undertake the following responsibilities pursuant to this Agreement.

- a. The Partner will be fully qualified and will have all licenses, permits, certificates, registrations, and approvals needed to perform its obligations under this Agreement.
- b. The Partner will not charge any student a fee or tuition for participating in the program or the receipt of services without advance written approval of the District or the designated District Liaison.
- c. The Partner shall immediately notify the District Liaison of any changes that may affect the performance of the services provided under this Agreement.
- d. The Partner shall attach to this Agreement the list of names and personal contact information of each individual staff/volunteer performing any service; and immediately notify the District when a staff/volunteer is added or removed from the list provided to the District; and from time to time or upon request, provide updated information or changes made of the Partner's staff/volunteer list.
See the attached Exhibit B

7. MISCELLANEOUS

- a. **Confidentiality.** The Partner is entering into this Agreement with the understanding that any and all District provided information belongs to the District. The Partner agrees to be responsible for its compliance with the Children's Online Privacy Protection Act of 1998 and its implementing regulations at 16 CFR Part 312 ("COPPA"), the Family Educational Rights and Privacy Act and its implementing regulations at 34 CFR Part 99 ("FERPA"), and all other applicable laws, rules or regulations, as amended (collectively, the "Confidentiality Laws"), concerning the collection, use and disclosure of "directory information," "education records," and "personally identifiable information," of the District's "students" and "parents," as those quoted terms are defined in FERPA, and all information concerning District's, students' names, performance information, disciplinary information, test results, test results analyses and all other student or school identifying information and personal data and all rights thereto (collectively, the "District Information"). In the event of a conflict between this Agreement and the Confidentiality Laws, the Confidentiality Laws shall control. In the event of a conflict between FERPA and all other Confidentiality Laws, FERPA will control absent clear statutory authority on controlling law. In the event of conflict or uncertainty interpreting controlling law regarding the collection, access, use, or disclosure of District Information, the Partner will resolve the uncertainty or conflict in favor of prohibiting the collection, access, use, or disclosure of District Information. The parties acknowledge and agree that District Information shall be deemed to have been collected, accessed, used, or disclosed so the Partner may assist District in: (a) developing, validating, or

administering predictive tests; (b) improving instruction; or (c) otherwise carrying out District's educational responsibilities under the law. Therefore, before any District information may be released, accessed, used or disclosed, the Partner and its staff/volunteers agree to manage the District's information in compliance with all applicable Confidentiality Laws and the current written data sharing agreement.

See the attached Exhibit E

- b. **Confidentiality Agreements with Partner's Employees.** The Partner will cause each of its employees who may gain access to any of the District's 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 District Information. **See the attached Exhibit C**
- c. **If the Partner 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 will apply:**
- i. **Insurance.** Partner shall maintain insurance, by commercial policy or self-insurance, as is necessary to meet the Partner's liabilities under the Act. Proof of such insurance shall be provided upon request by the School District.
 - ii. **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 Partner is not a "public entity" then the terms of paragraphs d and e will apply.

- d. **Insurance.** To the extent permitted by Colorado law and in accordance with Board of Education Policy *IJOC- School Partners*, each individual staff/volunteer is insured against liability. Notwithstanding the foregoing sentence to the contrary, from the effective date of this Agreement, the Partner, as an organization, shall, as required, have and maintain for its individual staff/volunteers, life, collision, comprehensive, health, medical, workers' compensation or unemployment compensation insurance and will maintain general liability insurance coverage for its employees, volunteers and agents for personal injury, including death, and property damage that may occur or arise in the provision of services to the District and will add the District, as an insured to its policy for the term of this Agreement.
- e. **Indemnification.** The Partner shall be liable for the actions and omissions of its respective officer's employees/agents while performing its obligations and responsibilities under this Agreement. The Partner agrees to indemnify, defend and hold the District, its employees, subcontractors and agents harmless from and against any (i) claim, cause of action, judgment, loss, demand, suit, or legal proceeding (collectively, "Suits") brought against the District or its employees, representatives, or agents, which arises directly or indirectly from any act or omission of the Partner, including but not limited to any (ii) losses (including judgments, awards, damages and fines), which arise directly from any (A) gross negligence or willful misconduct in connection with this Agreement or the transactions contemplated by this Agreement or (B) breach by the Partner of this Agreement.
- f. **Liability.** 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, by the District of any of the immunities, rights, benefits, protection, or other provisions of the Colorado Governmental Immunity Act, C.R.S. 24-10-101, et seq. ("CGIA"), as now or hereafter amended. The parties acknowledge and agree that liability for claims for injury to persons or property arising out of the negligence of the District, including its employees, is controlled and limited by the CGIA.

- g. **Dispute Resolution.** If School District or the Partner believes in good faith that the other party has failed to timely complete performance or provide materials, failed to meet the objectives as set forth by this Agreement or has otherwise not fulfilled commitments or made (“Breach”) under this Agreement, then within thirty (30) days from the date the breach occurred, the aggrieved party shall send written notification to the party who has allegedly breached its obligations identifying the allegations and/or reasons the aggrieved party believes the non-performing party has breached this Agreement. Upon receipt of written notice, the non-performing party shall have ten (10) business days, or such additional time as may be agreed to in writing between the parties, to correct or cure the alleged breach or to notify the aggrieved party that the alleged breach of this Agreement has not occurred. Upon finding the breaching party failed to cure or respond in writing within the agreed upon timeframe shall result in the non-breaching, aggrieved party being entitled to pursue any and all remedies available at law or in equity.
- h. **Open Records** The Partner understands 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 Partner of such request in order to give the Partner 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 Partner agrees to intervene in such lawsuit to protect and assert its claims of privilege and against disclosure of such material or waive the same.
- i. **Waiver.** No assent, expressed or implied, by the District to any breach of any obligation or covenant by the Partner shall be construed as a waiver of any subsequent or other breach by the Partner.
- j. **Background Checks.** If applicable, the Partner and every person, including any subcontractor or agent of the Partner, providing services, 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 district requirements, and upon request, be available to the district. The criminal background check shall, at a minimum, meet the requirements of 22-32-109.7, C.R.S. The costs associated with the background check are solely the Partner’s responsibility. Before services begin, each person required to provide a criminal background check shall disclose in writing and sign a notarized affidavit whether he or she has been convicted of any charge(s) such as a felony, misdemeanor, or municipal ordinance violation or not. Thereafter, during the term of the contract all new personnel, subcontractor(s) and agents, whether paid or not, that are hired or added to perform the work or services pursuant to the contract, shall be subject to these same requirement before performing services on behalf of the Partner. **See the Attached Exhibit D**
- k. **Assignment.** Partner shall not assign the work that is to be performed under this Agreement without the prior written consent of the District.
- l. **Compliance with Law and District Policies.** The Partner will comply with all laws, regulations, municipal codes and ordinances, District policies and procedures and other workplace requirements and standards applicable to the provision of services and work performed.
- m. **Agency.** The Partner agrees and understands that no authority exists pursuant to this Agreement for the Partner to enter into any contract, assume any obligation, or make any representation to third parties on behalf of, or which may bind the District.
- n. **Independent Contractor.** The Partner is retained only for the express and limited purposes as set forth in this Agreement and shall at all times have the status of an Independent Contractor.

To the extent permitted by Colorado law, each individual staff/volunteer providing services on behalf of the Partner, know and understands, after having the opportunity to consult an attorney, agrees to waive any and all claims for any Employee benefits, including worker's compensation and general liability insurance coverage, against the District.

- o. **Permitted Use of Name.** Neither party will use the other's name in any advertisement, promotion, business card, etc. without the other party's prior written consent.
- p. **Termination** Either party may terminate this Agreement without cause by notifying the other party in writing of their intention to take such action. Any such writing shall be sent to the other party by certified mail, return receipt requested, and shall be effective thirty (30) days after the date of mailing. The District may terminate this Agreement without further notice immediately if the Partner commits an act of fraud, dishonesty, or any other act of negligent, reckless or willful misconduct in providing services to the District.
- q. **Notices.** 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 Partner's address first stated below or at the District's address, which is as follows:

Denver Public Schools	Partner:
Attn:	Attn:
Denver, Colorado	Denver, CO
Tel:	Tel:
Email:	Email:

Or, at such other address as a party may later give notice to the other party.

- r. **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.
- s. **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.
- t. **Entire Agreement.** This Agreement constitutes the entire agreement between the parties with respect to the subject matter of this Agreement and all previous agreements or discussions between the parties relating to the subject matter of this Agreement are hereby terminated and/or superseded by this Agreement. This Agreement may be amended or modified only by a written instrument signed by both parties. If any provision of this Agreement is held invalid, the validity of the remainder of this Agreement shall not be affected. This Agreement may be signed in counterpart copies. A set of counterpart copies which collectively contain the signature and acknowledgment of all parties shall be deemed to constitute an original. Facsimile copies of signatures Executed counterparts transmitted by facsimile or other electronic means shall be treated as original signatures counterparts.

[Remainder of the page intentionally left blank]

IN WITNESS OF THE PARTIES AGREEMENTS, the District and the Partner have executed this Agreement on the date(s) indicated below:

Sworn And Subscribed To Before Me
by

this _____ day of _____,
20____.

Witness My Hand And Official Seal

My Commission Expires:

By:

Notary Public

PARTNER: _____

By:

(signature)

Title:

Address:

City, State, Zip:

Tax ID:

Date:

* * * * *

**SCHOOL DISTRICT NO. 1
IN THE CITY AND COUNTY OF DENVER
AND STATE OF COLORADO**

RECOMMENDED BY:

Site Administrator's Signature

Print Name and Title

School or Department

Date

* * * * *

THIS AGREEMENT MUST BE COMPLETED IN FULL, SUBMITTED, APPROVED AND EXECUTED BY THE DISTRICT'S DULY AUTHORIZED REPRESENTATIVE BEFORE THE COMMENCEMENT OF SERVICES BY THE PARTNER.



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Exhibit A Organization's Proposed Schools & Facility Locations

School\Facility Location	Program	Service Dates & Times	Requested Space and/or Classrooms	Other facilities needed



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Exhibit B
 Individuals/Volunteers Performing Services

Name	Phone	Address	Email



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Exhibit C

Confidentiality Agreement

I, the undersigned, understand that during the course of my work, I may be given access to confidential, privileged, or proprietary student information by the District in order to perform my responsibilities in a manner that meets the District's needs and enhances the delivery of service. By signing this document, I am agreeing to comply with all regulations and laws established to protect confidential information. I understand that accessing or releasing confidential information and/or records or causing this to occur outside the course of my assigned duties would constitute a violation of this agreement. I understand that proven violation of this agreement can result in termination of my access to information and may result in personal action being taken against me. "Confidential Information" means any and all information of either party disclosed or otherwise made available to or learned by the parties under this Agreement or performing the Services this Agreement requires, which is designated as "confidential" or "proprietary" or which, under all of the circumstances, ought reasonably to be treated as confidential, and includes, but is not limited to, Student Data and all District student records and personnel records.

I agree to:

- Maintain confidential information and not reveal it to clients, colleagues, or others with whom I interact without procuring the necessary releases or authorizations.
- Utilize information disclosed to me solely for the purpose of completing the scope of work set forth in the Data Sharing and Confidentiality Agreement or the Services Agreement.

Partner's Employee\Agent:

Print Name: _____ Date: _____

Title: _____

Organization/Agency: _____

Signature: _____



Exhibit D Criminal Background Check Certification

PLEASE READ CAREFULLY: It is required that every person, including any subcontractor or agent of the Partner, providing services, including but not limited to transportation, instruction, or food services, who regularly has direct, student contact shall (i) complete and notarize this form certifying the 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 PARTNER 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.

Signature Date

Sworn and subscribed to before me
by _____ this ____ day of _____, 20____.

Witness My Hand And Official Seal

My Commission Expires: _____
By: _____



Exhibit E
DATA EXCHANGE AND DISCLOSURE AGREEMENT
BETWEEN
THE DISTRICT
AND
THE PARTNER

THE DATA EXCHANGE AND DISCLOSURE AGREEMENT (“Agreement”) is entered into between Denver Public Schools (“the District”) and each named partner listed on **Attachment 1 to Exhibit E** (hereafter the listed partners shall, collectively, be referred to in the singular as, “the Partner” which is incorporated herein by reference, for the contemplated purpose of memorializing the terms and conditions upon which the District has agreed to provide the Partner with certain requested data from the District.

WHEREAS, the Partner acknowledges and understands that the District is required to safeguard the privacy of its students’ educational records in a manner consistent with the mandates of the Family Educational Rights and Privacy Act (“FERPA”), 20 U.S.C. § 1232g and the applicable regulations promulgated thereunder.

WHEREAS, the Family Educational Rights and Privacy Act (“FERPA”) (20 U.S.C. § 1232g; 34 CFR Part 99) (as amended and in effect from time to time, and including any successor statute, “FERPA”) establishes a right of privacy for student data based on a rule of non-release of individually-identifiable data to anyone outside the student’s institution or to persons inside the institution who have no legitimate need for the information without the express written permission of the student or the student’s representative.

WHEREAS, FERPA has regulatory exceptions to the general rule of confidentiality and non-release of individually-identifiable data and information, allowing its disclosure and use by organizations when acting as school officials with a legitimate educational interest for an expressly, specified purpose such as providing certain professional services, or acting on behalf of the District. 20 U.S.C. § 1232g(b)(1)(F) and 34 C.F.R. § 99.31(a)(1)(i)(B)(1).

WHEREAS, should the Partner meet and be designated under one or more of the categorically recognized exceptions in accordance with the Family Educational Rights and Privacy Act’s regulations, the District, may disclose the requested data to the Partner, provided the purpose, scope and duration are clearly set forth in this written agreement.

WHEREAS, there is an existing Partnership Agreement dated the _____ day of _____, 2016 (“Community Partner Agreement”), whereby the Partner is acting for the District and designated as a school official to provide specified services the District would otherwise use employees or acting on behalf of the District; and

WHEREAS, the Partner represents it has the knowledge, skill and resources necessary to provide and maintain a web-based data management system that is sufficiently secure and encrypted to protect, maintain and the provided data and information, confidential.

NOW, THEREFORE, in order to comply with FERPA, the District has conditioned the release and disclosure of data and information upon the Partner’s compliance with all applicable provisions of FERPA generally, and the specific terms and conditions set forth in the Agreement herein, as well as the Colorado Open Records Act (“Act”), C.R.S. 24-72-101 *et. seq.* (collectively, referred to as “Confidentiality Laws”), which by entering into this Agreement operates as an acknowledgement that the Organization has duty and obligation of compliance with the Confidentiality Laws.

SECTION I
DEFINITIONS

A. "Authorized representative" means any entity or individual designated by a school district official to conduct – with respect to Federal- or State-supported education programs – any audit or evaluation, or any compliance or enforcement activity in connection with Federal legal requirements that relate to these programs.

B. "Biometric record," as used in the definition of "personally identifiable information," means a record of one or more measurable biological or behavioral characteristics that can be used for automated recognition of an individual. Examples include fingerprints; retina and iris patterns; voiceprints; DNA sequence; facial characteristics; and handwriting.

C. "Confidential Information" is all data, however documented, containing or based, in whole or in part, on reference materials, sketches, drawings, memoranda, disks, documentation and records belonging to either party (and any derivative works thereof or modifications thereto) is and will remain the exclusive property of that party. Neither party shall possess or assert any lien or other right against or to Confidential Information of the other party. No Confidential Information of either party, or any part thereof, may be sold, assigned, leased, or otherwise disposed of to third parties by the other party or commercially exploited by or on behalf of the other party, or its employees or agents.

D. "De-identified Information" means applying principles and methods such as perturbation, masking, blurring and anonymization of data in a manner that the risk is very small that personally identifiable information could be used, alone or in combination with other reasonably available information by an anticipated recipient to identify an individual who is a subject of the information or can be linked back to an original student record system.

E. "Disclosure" means to permit access to or the release, transfer, or other communication of personally identifiable information contained in education records by any means, including oral, written, or electronic means, to any party except the party identified as the party that provided or created the record.

F. "District Information" means any record and all information, in any form, recorded in any way, including, but not limited to, hand writing, print, computer media, video or audio tape, film, microfilm, and microfiche and includes paper and electronic student education record information ("CDI") furnished or made available directly or indirectly to the Partner by the District or otherwise obtained by Partner from the District in connection with the Memorandum and this Agreement, including all information of the District or any District affiliate to which Partner has had or will have access, whether in oral, written, graphic or machine-readable form.

G. "Early childhood education program" means (a) a Head Start program or an Early Head Start program carried out under the Head Start Act (42 U.S.C. 9831 et seq.) including a migrant or seasonal Head Start program, an Indian Head Start program, or a Head Start program or an Early Head Start program that also receives State funding; (b) a State licensed or regulated child care program; or (c) a program that serves children from birth through age six that addresses the children's cognitive (including language, early literacy, and early mathematics), social, emotional, and physical development and is a (i) State prekindergarten program; (ii) a program authorized under section 619 or part C of the Individuals with Disabilities Education Act; or (iii) A program operated by a local educational agency.

H. "Educational agency or institution" means any public or private agency or institution to which funds have been made available by grant, cooperative agreement, contract, sub-grant, or subcontract or are provided to, and may be paid by those students for educational purposes, and any program if it provides educational services or instruction, or both, to students, or is authorized to direct and control public elementary or secondary, or postsecondary educational institutions.

I. "Education program" means any program that is principally engaged in the provision of education, including, but not limited to, early childhood education, elementary and secondary education, postsecondary education, special education, job training, career and technical education, and adult education, and any program that is administered by an educational agency or institution.

J. "Education Records" as that term is defined in the Family Educational Rights and Privacy Act and FERPA's implementing regulations at 34 CFR Part 99. .

K. "FERPA" means the Family Educational Rights and Privacy Act of 1974, as amended, enacted as section 444 of the General Education Provisions Act.

L. "Parent" means a parent of a student and includes a natural parent, a guardian, or an individual acting as a parent in the absence of a parent or a guardian.

M. "Personally Identifiable Information" includes but is not limited to (a) student's name; (b) name of the student's parent or other family members; (c) address of the student or student's family; (d) a personal identifier, such as the student's social security number, student number, or biometric record; and (e) other indirect identifiers, such as the student's date of birth, place of birth, and mother's maiden name; (f) Other information that, alone or in combination, is linked or linkable to a specific student that would 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; or (g) information requested by a person who the educational agency or institution reasonably believes knows the identity of the student to whom the education record relates. (Authority: 20 U.S.C. 1232g)

N. "Record" means any information recorded in any way, including, but not limited to, hand writing, print, computer media, video or audio tape, film, microfilm, and microfiche.

O. "Student," except as otherwise specifically provided in this part, means any individual who is or has been in attendance at an educational agency or institution and regarding whom the agency or institution maintains education records.

SECTION II

STUDENT DATA, INFORMATION & RECORDS

A. **Purpose.** The Partner by providing certain institutional services and functions on behalf of the District may require access to student educational records to effectively deliver its audit and evaluation services. The Partner further agrees to be under the direct control of the District with respect to the maintenance of student educational records relating to the governance, use and re-disclosure of personally identifiable information, which will be in accordance with, and contingent upon compliance with the Family Educational Rights and Privacy Act ("FERPA") and its implementing regulations. (34 C.F.R. § 99.30, et seq.). For the purposes of this paragraph, "Organization" includes, but is not limited to, Federal, State, and local agencies, and independent organizations.

B. **Requested Data.** The Partner is requesting the District to provide the following information for the purpose of ongoing program evaluation and improvements in an effort to provide well-rounded services and supports to DPS students.(Please check all that apply):

- | | |
|--|--|
| 1. State Assigned Student ID Number <input type="checkbox"/> | 11. YTD Absenteeism Category <input type="checkbox"/> |
| 2. Zip Code <input type="checkbox"/> | 12. YTD Tardy Rate <input type="checkbox"/> |
| 3. Currently enrolled (flag) <input type="checkbox"/> | 13. YTD In School Suspensions <input type="checkbox"/> |
| 4. School enrollment location <input type="checkbox"/> | 14. YTD Out of School Suspensions <input type="checkbox"/> |
| 5. Current Grade Level <input type="checkbox"/> | 15. Current Progress Eligibility Grades <input type="checkbox"/> |
| 6. Ethnicity <input type="checkbox"/> | 16. Most Recent Semester Grades <input type="checkbox"/> |
| 7. Gender <input type="checkbox"/> | 17. Total Credits Attempted <input type="checkbox"/> |
| 8. SPED Status <input type="checkbox"/> | 18. Total Credits Earned <input type="checkbox"/> |
| 9. ELA Status <input type="checkbox"/> | 19. Total Credits Needed <input type="checkbox"/> |
| 10. YTD Average Attendance <input type="checkbox"/> | |

- 20. Most Recent CMAS and PARCC Scores / Proficiency Levels
- 21. Most Recent CMAS and PARCC Growth
- 22. Most Recent MAPS Scores / Proficiency Levels

- 23. Most Recent STAR Scores / Proficiency Levels
- 24. Most Recent DRA/EDL Scores / Proficiency Levels
- 25. Other _____

C. **Term.** The effective date begins on the next business day that follows after each authorized representative of the Partner and the District executes this Agreement and it shall expires at the time the Partner no longer provides its services or terminated in accordance with this Agreement; provided, however, a lapse or stoppage of services by the Partner as a result of the District's school year ending that timely resumes with the commencement of the next District school year, shall not be construed or interpreted as the termination of this Agreement; furthermore, at the beginning of each school year, upon re-execution by each authorized representative of the District and Partner, the parties mutually agreed this Agreement is revived according to the same, or any amended terms and conditions contained herein.

D. **Qualified FERPA Exception.** The Partner understands and agrees that the purpose and contemplated use of the data and information disclosed by the District is solely to conduct studies for, or on behalf of the District to (1) develop, validate, or administer predictive tests; (2) administer student aid programs; and (3) improve instruction.

E. **Ownership of Data and Information.** The disclosure of personally identifiable information from education records to the Partner is not an assignment of ownership of the personally identifiable information or records to the Partner. The District retains ownership of all such records. Personally identifiable information from education records may only be re-disclosed in compliance with FERPA and its regulations.

F. **Coordination with Organization's Authorized Representative(s).** During the term of this Agreement, the Partner will fully coordinate all of its services provided hereunder with the District through its designated authorized representative.

1. The authorized representative has authority to bind the Partner to the terms and conditions of this Agreement.
2. The authorized representative shall also be responsible for requiring individuals of the Partner accessing information from education records to execute affidavits of nondisclosure or other documentation indicating that each person will be held accountable for the proper management, use and protection of all personally identifiable information from education records provided to him or her.

G. **Limited Disclosure, Access and Use.** The Partner will abide by the limitations on the disclosure of personally identifiable information derived from the educational records provided by the District and agrees to grant access only in accordance with the applicable FERPA regulations.

1. The Partner and its officers, employees, and agents receiving education record information from the District agrees to hold information in strict confidence and use the information only for the limited purpose for which the disclosure was made.
2. The Partner affirms that its services will be conducted in a manner that does not disclose the personal identification information of the District's students or their parents to anyone who is not an authorized representative of Organization.
3. The Partner agrees not to use the information for any purpose other than the purposes for which the disclosure was sought from the District and made to Organization.
4. The approval to use the information from education records for one purpose does not confer approval to use the data for another or different purpose.

5. Sell student PII, except that this prohibition does not apply to the purchase, merger, or other type of acquisition of Partner Organization, or any assets of Partner Organization, by another entity, so long as the successor entity continues to be subject to this provision with respect to student PII.

6. Use or share student PII for purposes of targeted advertising to students.

7. Use student PII to create a personal profile of a student other than for supporting purposes authorized by the District or with the consent of the student or the student's parent.

8. Upon termination, cancellation, expiration or other conclusion of this Agreement, the Partner shall return all information to the District or, if return is not feasible, destroy any and all information. If Partner destroys the information, when it is no longer needed for purposes for which it was disclosed but under no circumstances no later than 30 days after the termination of this Agreement. The Partner shall confirm the date the information and data was returned or destroyed by delivering to the District the certificate attached hereto as **Attachment 2 to Exhibit E**.

H. Reporting of Unauthorized Disclosures of Data and Information.

1. The Partner shall, within one business day of discovery, report to the District any use or disclosure of information not authorized by this Agreement or in writing by the District (a "Breach"). The Partner's written report shall identify (i) the nature of the breach, (ii) what information was used or disclosed, (iii) who or what was the cause of the breach, (iv) what Partner has done or shall do to mitigate any deleterious effect of the breach, and (v) what corrective action Partner has taken or shall take to prevent future similar unauthorized use or disclosure. The Partner shall provide such other information, including a written report, as reasonably requested by the District.

2. If the District reasonably determines that the Partner has breached a material condition of this Agreement, the District may request the Partner to submit within one business (1) day from the discovery a written report shall identify (i) the nature of the breach, (ii) what information was used or disclosed, (iii) who or what was the cause of the breach, (iv) what Partner has done or shall do to mitigate any deleterious effect of the breach, and (v) what corrective action Organization has taken or shall take to prevent future similar unauthorized use or disclosure. The Partner shall provide such other information, including a written report, as reasonably requested by the District.

3. Alternatively, the District may immediately terminate this Agreement with the Partner, if, in its sole discretion, determines it is not possible to repair or correct the discovered breach. Under either option described in paragraphs 1 or 2, above, the District agrees to provide written notice the Partner, provided, however, in the event of an emergency, the parties agree written notice may be given after termination.

I. Remedies, Penalties. The failure to comply with the requirements of FERPA will subject the Partner and any third party to all allowable penalties under state and federal law. The Partner acknowledges and agrees that due to the unique nature of the Information, there may be no adequate remedy at law for any breach of its obligations hereunder, that any such breach will result in irreparable harm to the District, and therefore, that upon any such breach or threatened breach, the District shall be entitled to seek appropriate equitable relief including specific performance and any additional remedies the law may allow, including injunctive relief. The Partner expressly agrees that should information belonging to the District be impermissibly disclosed or causes a material breach of this Agreement, it will be responsible for the legal defense and pay the actual legal costs, including reasonable attorney's fees, if any, that may result provided that the District cooperates and complies with the reasonable requests of the Partner. The receipt or providing such assistance is not a waiver of any breach nor does receiving or the acceptance of such assistance constitute a waiver of any such breach by the District. In the event the Family Policy Compliance Office of the U.S. Department of Education determines that the Partner improperly disclosed personally identifiable information obtained from the District's education records, the District may not allow the Partner access to the District's education records for at least five years.

J. Organization's Research, Assessment and Evaluative Reports. The Partner shall provide drafts of any publications to the authorized representative of the District before submission for publication, presentation or public release. The Partner shall submit all final drafts and reports to the District describing in sufficient detail the results of any study, assessment or report, including any accomplishments and significant research findings derived from the performance of its work, delivery of service or any evaluation or assessment conducted under this Agreement within 30 days after the completion date of the final draft.

K. Surveys. If the Partner wants to conduct a survey of students, it acknowledges that all student surveys will be in compliance with the requirements of the Protection of Pupil Rights Amendment (PPRA). In the event that any Department of Education funding is used for this program, prior written parental consent will be obtained before surveying a student on any of the following topics: (i) Political affiliations; (ii) Mental and psychological problems potentially embarrassing to the student and his/her family; (iii) Sex behavior and attitudes; (iv) Illegal, anti-social, self-incriminating and demeaning behavior; (v) Critical appraisals of other individuals with whom respondents have close family relationships; (vi) Legally recognized privileged or analogous relationships, such as those of lawyers, physicians, and ministers; or (vii) Religious practices, affiliations, or beliefs of the student or parents; or (viii) Income (other than that required by law to determine eligibility for participation in a program or for receiving financial assistance under such program). The protected categories may also be expanded by future amendments to the Protection of Pupil Rights Amendment ("PPRA") (20 U.S.C. § 1232h; 34 CFR Part 98). Parents will have the opportunity to inspect the survey created by a third party before the survey is administered or distributed to the student regardless of the funding source.

L. Human Research. Anytime human subjects may be used, the Partner shall comply with Department of Health and Human Services (DI-IHS) policies and regulations on the protection of human subjects (45 CFR 46, as amended) and with any terms of approval imposed by the District's Internal Review Board ("IRB") on the Use of Humans as Experimental Subjects. In all cases, the Partner agrees to adhere to the study protocol approved by the IRB, to assure that any legal or IRB requirements for the informed consent process are met and are appropriately documented, and to report to the District's authorized representative (a) any adverse events or unexpected problems, and (b) any proposed changes to the study protocol or informed consent process. If the Partner has its own approved Institutional Review Board, then the project shall also be submitted to that board for approval and the Partner shall provide verification that the approval has been granted. If applicable, the verification shall state the date when the project must be resubmitted for continuing review.

M. Maintenance of the Security of Electronic Information. The Partner shall develop, implement, maintain and use appropriate administrative, technical and physical security measures to preserve the confidentiality, integrity and availability of all electronically maintained or transmitted information received from, or on behalf of, the District or its students. At a minimum, all data and information shall be securely stored under lock and key at the Partner's location and any site where it may be accessed and stored. Additionally, if the Partner uses a data management system that is an electronic database for storing information and data, then it must be secured and protected in a manner that would be considered consistent with industry standards. All persons and individuals with access to such information and data must meet the FERPA requirements of persons given access to such data must be identified and sign the confidentiality agreement. These measures will be extended by contract to all subcontractors used by the Partner.

SECTION III

GENERAL TERMS AND CONDITIONS

A. Examination of Records.

a. The Partner will keep true and complete records of any all data received, exchanged and shared between and amongst its employees, agents, subcontractors and volunteers pursuant to this Agreement.

b. The Partner will establish and maintain a system of record keeping satisfactory to the District and the District's authorized representative and provide access to such records either during regular business, at any reasonable time or at a mutually agreed upon time. Any duly authorized representative of the District shall be given access to and the right to examine any computer, server, hard drive, documents, papers and records containing information provided by District under this Agreement.

c. The Partner agrees that it will keep and preserve all records and reports for at least three (3) years from the date of receipt under this Agreement.

B. Dispute Resolution. If either District or the Partner believes in good faith that the other party has failed to perform, provide requested information, or has failed to satisfactorily meet any objective set forth by this Agreement or has otherwise not fulfilled commitments made under this Agreement ("Breach"), then within thirty (30) days from the date the breach occurred, the aggrieved party shall send written notification to the party who has allegedly breached its obligations identifying the allegations and/or reasons the aggrieved party believes the non-performing party has breached this Agreement. Upon receipt of written notice, the non-performing party shall have ten (10) business days, or such additional time as may be agreed to in writing between the parties, to correct or cure the alleged breach or to notify the aggrieved party that the alleged breach of this Agreement has not occurred. Upon finding the breaching party failed to cure or respond in writing within the agreed upon timeframe shall result in the termination of this Agreement.

C. Modification. This Agreement shall only be modified in writing signed by duly authorized representatives of both the Partner and the District. All requests for modifications should be directed to the authorized representative of the District and the Partner.

D. Notice. 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, an authorized representative at the Partner's address provided in this Agreement, which is as follows:

Denver Public Schools

Attn:

Denver, Colorado

Tel:

Email:

Partner:

Attn:

Denver, CO

Tel:

Email:

Each party agrees to waive service of process in any action brought related to this Agreement and any required service will be deemed served three (3) days after being sent to the other party to the address provided above.

E. Termination. A party may terminate this Agreement upon sending a thirty (30) day written notification with brief description of the reason for the termination to the other party. Termination shall be effective upon the date it is received. Notwithstanding the foregoing, the District reserves the right to terminate this Agreement at any time and for any reason at its sole and absolute discretion without penalty and the Partner waives its right to any relief or seek any recovery against the District.

F. Compliance with Federal and State Confidentiality, and Privacy Laws. The Partner and the District agree and understand this Agreement must be in compliance with, which for the purposes of illustration, includes but is not limited to: the Colorado Open Records Act ("Act"), C.R.S. 24-72-101 *et. seq.* and all applicable federal privacy and confidentiality laws, the Health Insurance Portability and Accountability Act of 1996 (HIPAA) Privacy and Security Rules ("HIPAA"); the Family Educational Rights and Privacy Act (FERPA) (20 U.S.C. § 1232g; 34 CFR Part 99) (as amended and in effect from time to

time, and including any successor statute and its implementing regulations and rules; Protection of Pupil Rights Amendment (“PPRA”) (20 U.S.C. § 1232h; 34 CFR Part 98).

G. Compliance with DPS Policies. The Partner agrees to comply with the applicable District Board of Education polices, which hereafter by this reference are incorporated into and enforceable under this Agreement.

H. Americans with Disabilities Act. To the extent the District is required to provide accommodations in compliance with the Americans with Disability Act (“ADA”), Partner Organization will make best efforts to assist the District in providing its services to end users pursuant to this Agreement, and will assistance the District in a manner that its system and services will, at a minimum, conform with all laws, regulations and guidance that apply to accessibility in accordance with the ADA, Section 504 of the Rehabilitation Act of 1973, and the Web Content Accessibility Guidelines (WCAG) 2.0 Level AA guidelines; provided, however, Partner Organization will have no obligations with respect to such compliance as it relates to any portion of the system and services provided or developed by the District including District content.

I. Liability.

a. If the Partner is a “public entity” then it will be responsible for the negligent acts and omissions of its officers, agents, employees and representatives with respect to its obligations under this Agreement. Any provision of this Agreement, whether or not incorporated herein by reference, shall be controlled, limited and otherwise modified so as to limit any liability of the Partner under the Colorado Governmental Immunity Act, C.R.S. 24-10-101 *et seq* (“Act”). It is specifically understood and agreed that nothing contained in this paragraph or elsewhere in this Agreement shall be construed as an express or implied waiver of its governmental immunity or as an express or implied acceptance of liabilities arising as a result of actions which lie in tort or could lie in tort in excess of the liabilities allowable under the Act, as a pledge of the full faith and credit of the Partner, or as the assumption by the Partner of a debt, contract or liability of the District or its affiliates in violation of Article XI, Section 1 of the Constitution of the State of Colorado.

b. If the Partner is a not “public entity” then the terms and conditions contained in paragraph I and J below shall apply:

J. Indemnity. The Partner shall defend and hold the District harmless from all claims, liabilities, damages, or judgments involving a third party, including the District’s costs and attorney fees, which arise as a result of Partner’s failure to meet any of its obligations under this agreement.

K. Background Checks. The Partner and every person, including any subcontractor or agent of the Partner, providing services, 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 district requirements, and upon request, be available to the district. The criminal background check shall, at a minimum, meet the requirements of 22-32-109.7, C.R.S. The costs associated with the background check are solely the Partner’s responsibility. Before services begin, each person required to provide a criminal background check shall disclose in writing and sign a notarized affidavit whether he or she has been convicted of any charge(s) such as a felony, misdemeanor, or municipal ordinance violation or not. Thereafter, during the term of the contract all new personnel, subcontractor(s) and agents, whether paid or not, that are hired or added to perform the work or services pursuant to the contract, shall be subject to these same requirement before performing services on behalf of the Partner.

L. Survival of Certain Provisions. The terms and conditions of this Agreement and any exhibits and attachments that by reasonable implication contemplate continued performance, rights, or compliance beyond expiration or termination of the Agreement survive the Agreement and will continue to be enforceable.

M. **No Agency Created.** The Partner agrees and understands that no authority exists through this Agreement permitting the Partner 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.

N. **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.

O. **Authorized Representative.** The Partner certifies that the individual signing below on its behalf is fully authorized to do so, is fully authorized to bind and commit the Partner to the obligations set forth herein, and that no other consents or authorizations are needed to bind Partner to the terms of this Agreement.

P. **Contract Documents.** This Agreement consists of the following attachments which are incorporated herein and made a part hereof by reference which are found after the signature page.

The Partner hereby signifies its acceptance of the terms and conditions of this Agreement.

Signed:

[District Signatory]

[Title of District Signatory]

Date

Signed:

[Partner Signatory]

[Title of Partner Signatory]

Date



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Attachment 1 to Exhibit E
Organization Personnel Authorized to Access Student Data

Personnel Name	Title	Purpose for Accessing Data



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Attachment 2 to Exhibit E

Certification of Destruction\Return of District Information

I\We, _____, as the authorized representative(s) of the Organization [name] do hereby acknowledge and certify under penalty of perjury that [check one]:

_____ (a) the private and confidential student information provided by the District as part of the Data Sharing and Confidentiality Agreement in accordance with federal and state law was destroyed

_____ (b) the private and confidential student information provided by the District as part of the Data Sharing and Confidentiality Agreement in accordance with federal and state law has been returned.

Print Name: _____ Date: _____

Title: _____

Organization/Agency: _____

Signature: _____