**DIGITAL RESOURCE/SOFTWARE CONTRACT**

between

SCHOOL DISTRICT NO. 1J, MULTNOMAH COUNTY, OREGON

(PORTLAND PUBLIC SCHOOLS)

and

**CONTRACTOR NAME**

**Contract No. DR**

This Contract Shall be binding on the District only if it is

signed by THE DEPUTY CLERK OR AUTHORIZEDDESIGNEE

This Digital Resource Contract ("Contract") is made by and between School District No. 1J, Multnomah County, Oregon ("Portland Public Schools" or "District") and CONTRACTOR NAME ("Contractor"). The parties agree as follows:

CONTRACTOR DATA

**Contractor Name:**

**Contact Name:**

**Address:**

**City, State, ZIP:**

**Telephone:**

**Email:**

**Contractor must submit a completed “Request for Taxpayer Identification Number and Certification” (Form W-9) with this signed contract.**  Payment information will be reported to the Internal Revenue Service under the name and TIN or SSN, whichever is applicable, provided by Contractor.

**Contractor certifies under penalty of perjury that Contractor is a**

Sole Proprietor Corporation  Limited Liability Company

Partnership  Nonprofit Corporation  Other [describe:      ]

Contractor represents and warrants that Contractor has complied with the tax laws of this state or a political subdivision of this state, including but not limited to ORS 305.620 and ORS chapters 316, 317 and 318. Contractor covenants that Contractor will continue to comply with the tax laws of this state or a political subdivision of this state during the term of this Contract. Failure by the Contractor to comply with the tax laws of this state or a political subdivision of this state before the execution of this Contract or during the term of this Contract is a default for which the District may terminate this Contract and seek damages and other relief available under the terms of this Contract or under applicable law.

**District Point of Contact:**  Name of Dept./School Contract Manager (*Email prefix@pps.net*), Name of Dept./School, Portland Public Schools, P.O. Box 3107, Portland, Oregon 97208-3107

**\*All information in this Contract is subject to public records law. Please contact the District Point of Contact listed above if you have questions.**

TERMS AND CONDITIONS

1. **Term and Termination.** This Contract becomes effective on       or the date on which the Contract is fully executed by both parties, ***whichever is later***. ***No party shall perform work under this Contract before the effective date***.  An email notification with a copy of the fully executed contract will be sent to the Contractor email listed above upon execution. At that time, work under the contract may begin.

Unless earlier terminated as provided below, this Contract shall continue through      .

Check if applicable:

  As provided for in (enter RFP/ITB/Quotes solicitation number, e.g., RFP #2016-1922), this Contract may be renewed for up to ( e.g. four additional one-year terms) by amendment signed by both parties.

1. **Detailed Description of Goods and Services / Statement of Work.** (Select all that apply)

Software or digital resource purchased: Describe the software/license/subscription/app/digital resource purchased, listing name and key functions/purpose

Professional development/training: Describe any professional development or training services or refer to applicable Exhibit

Professional services: Describe any setup, configuration, implementation, or installation services or refer to applicable Exhibit

Maintenance: Describe any service level agreement or software maintenance terms refer to applicable Exhibit

1. **Maximum Total Payment; Payment Calculation; Reimbursable Expenses.** District will make no payments until this Contract is fully executed by the authorized representatives of both parties.
   1. Maximum Total Payment: The maximum total payment under this Contract, ***including the reimbursable expenses shown below (if any)***, is **$**for products and services provided by Contractor; this is a not-to-exceed amount, and the District will not pay more than this amount unless specifically agreed to in an amendment executed by the parties.
   2. Payment Calculation:

District shall pay Contractor at a rate of $      per      .

District shall pay Contractor as follows:

* 1. Reimbursable Expenses: District shall reimburse Contractor for the following Contractor expenses:

$0; no other expenses will be reimbursed under this Contract

District will reimburse pre-approved travel expenses, including airfare, meals, ground transportation, and lodging. Travel must be incurred in performance of this Contract. Costs must be in keeping with District travel policies for District employees. If applicable, auto mileage will be reimbursed at the current federal rate. Contractor shall provide original invoices to District within 30 days of cost occurrence to be reimbursed.

Other (explain): Explain reimbursable expenses or refer to applicable Exhibit

1. **Invoicing.** Contractor shall invoice District . Upon work completion and acceptance, invoice approval, and according to this Contract’s Terms and Conditions, District shall pay invoices net 30 days. District reserves the right to withhold payments to Contractor for amounts reasonable and sufficient to cover District’s costs in processing invoices more than 60 days late.
2. **Contract Documents.** This Contract consists of these Terms and Conditions and the documents ("Exhibits") listed below in descending order of precedence. A conflict in these documents shall be resolved in the priority listed below with these Terms and Conditions taking precedence over all other documents.

The Exhibits to this Contract include the following documents: [Select **Digital Resources** for commercially available software or services, including web-based applications, which are locally installed, downloaded, or accessed and do not require customization or software maintenance or support agreements. If the product requires customization, integration and/or configuration in order to interface with existing District systems, and/or requires software maintenance and support agreements, then a **Software Contract** should be selected.]

**CHOOSE ONE AND USE DROP-DOWN MENUS TO LIST ALL APPLICABLE EXHIBITS:**

Software Contract **OR**  Digital Resource

Exhibit A Software Contract Additional Terms [mandatory] Exhibit A Price Quote [mandatory]

1. **Payment Issues.**

a. Method of Payment: Unless otherwise specified in Section 3, "Maximum Total Payment; Payment Method," District shall pay Contractor net 30 days upon invoice approval and work acceptance.

b. Payment on Early Termination: Upon termination pursuant to Section 11, "Early Termination," District shall pay Contractor as follows:

1. If District terminates this Contract for its convenience under Section 11(a) or 11(b), then District must pay Contractor for work performed before the termination date if and only if Contractor performed in accordance with this Contract. District shall not be liable for any direct, indirect, or consequential damages. Termination by District shall not constitute a waiver of any other claim District may have against Contractor.
2. If Contractor terminates this Contract under Section 11(c) due to District's breach, then District shall pay Contractor for work performed before the termination date if and only if Contractor performed in accordance with this Contract.
3. If District terminates this Contract under Sections 11(c) or 11(d) due to Contractor's breach, then District must pay Contractor for work performed before the termination date less any setoff to which District is entitled and if and only if Contractor performed such work in accordance with this Contract.

c. Payment of Laborers: This provision is required by statute. In addition to applicable federal and local laws, ORS 279B.220 requires that Contractor

1. Make payment promptly, as due, to all persons supplying to such Contractor labor or material for the prosecution of the work provided for this Contract.
2. Pay all contributions or amounts due the Industrial Accident Fund by the Contractor or subcontractors, if permitted, incurred in the performance of this Contract.
3. Not permit any lien or claim to be filed or prosecuted against the state or a county, school district (including District), municipality, municipal corporation or subdivision thereof, on account of any labor or material furnished [by Contractor].
4. Pay to the Department of Revenue all sums withheld from employees pursuant to ORS 316.167.
5. If Contractor neglects or refuses to make prompt payment of any claim for labor or services furnished to it by any party in connection with this Contract as such claim becomes due, District may pay such claim to the party furnishing the goods or services and subtract the payment amount from funds due or to become due the Contractor. District's payment of such a claim shall not relieve Contractor or Contractor's surety, if any, from its obligation to any unpaid claims.

d. Payment for Medical Care: This provision is required by statute. As required by ORS 279B.230 and to the extent any of Contractor's employees are covered by Oregon employment laws, Contractor shall promptly, as due, make payment to any person, co-partnership, association, or corporation, furnishing medical, surgical and hospital care or other needed care and attention, incident to sickness or injury, to the employees of Contractor, of all sums that Contractor agrees to pay for such services and all moneys and sums that Contractor collected or deducted from the wages of employees under any law, contract, or agreement for the purpose of providing or paying for such service.

1. **Independent Contractor Status.** By its signature on this Contract, Contractor certifies that the service or services to be performed under this Contract are those of an independent contractor as defined in ORS 670.600, and that Contractor is solely responsible for the work performed under this Contract. Contractor represents and warrants that Contractor, its subcontractors, employees, and agents are not "officers, agents, or employees" of the District within the meaning of the Oregon Tort Claims Act (ORS 30.260 through 30.300).  Contractor shall be responsible for all federal, state, and local taxes and any and all fees applicable to payments for services under this Agreement.
2. **Subcontracts; Assignment.** Contractor may not subcontract, assign, or transfer any of its interests or duties under this Contract without the prior written consent of District. District may withhold such consent for any or no reason. If District consents to a subcontract, then in addition to any other provisions of this Contract, Contractor shall require any permitted subcontractor to agree in writing to be bound by all the terms and conditions of this Contract that would otherwise bind Contractor. The parties agree that any such subcontracts shall be construed as matters solely between the Contractor and its subcontractor and shall have no binding effect on District.
3. **Successors in Interest.** This Contract shall bind, and inure to the benefit of, the parties, their successors, and approved assigns, if any.
4. **No Third Party Beneficiaries.** District and Contractor are the only parties to this Contract and are the only parties entitled to enforce its terms. Nothing in this Contract provides any benefit or right, directly or indirectly, to third persons unless they are individually identified by name in this Contract and expressly described as intended beneficiaries of this Contract.
5. **Early Termination.** This Contract may be terminated as follows unless otherwise specified herein:

a. Mutual: District and Contractor may terminate this Contract at any time by written agreement.

b. District's Sole Discretion: District in its sole discretion may terminate this Contract for any reason on 30 days' written notice to Contractor.

c. Breach: Either party may terminate this Contract in the event of a breach by the other party. To be effective, the party seeking termination must give to the other party written notice of the breach and its intent to terminate. If the breaching party does not entirely cure the breach within 15 days of the date of the notice, then the non-breaching party may terminate this Contract at any time thereafter by giving a written notice of termination.

d. Contractor Licensing, etc.: Notwithstanding Section 11(c), District may terminate this Contract immediately by written notice to Contractor upon denial, suspension, revocation, or non-renewal of any license, permit, or certificate that Contractor must hold to provide services under this Contract.

e. Furlough: District reserves the right to terminate or otherwise suspend this Contract if District's School Board determines that funding is insufficient to remain fully open and calls for a District-wide furlough or similar temporary District reduction in operations. Any temporary closure shall not affect amounts due Contractor under this Contract, subject to a pro-rated adjustment for reduction in services or need for goods during the furlough.

1. **Third Party Links or Advertisements; Removal and Termination.** District may request in writing the removal of any advertisements or third party links that District deems in violation of District’s internet safety policy, in violation of the Children’s Internet Privacy Act, or otherwise unacceptable. Contractor’s failure to remove such links or advertisements may constitute grounds for immediate termination of this Contract at District’s sole discretion.
2. **Remedies.** In case of Contractor breach and in addition to the remedies provided in this Contract, District shall be entitled to any other available legal and equitable remedies. In case of District breach, Contractor's remedy shall be limited to termination of the Contract and receipt of Contract payments to which Contractor is entitled.
3. **Limitation of Liability and Exclusion of Certain Damages**

a. Exclusion of Certain Damages. Except with respect to the indemnification obligations set forth below, neither party will be liable to the other party for any indirect, incidental, consequential, special, or punitive damages arising out of or in connection with this Contract, regardless of the form or cause of action or the alleged basis of the claim, even if a party has been advised of the possibility of such damages.

b. Limitation on Liability. Except with respect to the indemnification obligations set forth below, in no event will either party’s total aggregate liability for any claims arising out of or in connection with this Contract exceed the total fees payable to Contractor under this Contract. The foregoing limitation of liability will apply regardless of the form or cause of action or the alleged basis of the claim.

1. **Hours of Labor.** This provision is required by statute. As required by ORS 279B.020(5), 279B.235(3), for Contractor's employees subject to Oregon employment laws:

a. Maximum Hours: Employees shall be paid at least time and a half for all overtime worked in excess of 40 hours in any one week and for work performed on New Year's Day (Jan. 1), Memorial Day (last Monday in May), Independence Day (July 4), Labor Day (first Monday in September), Thanksgiving Day (fourth Thursday in November), and Christmas Day (December 25).

b. Exemption: The requirements of Section 15(a) do not apply to individuals who are excluded under ORS 653.010 to 653.261 or under 29 U.S.C. 201 to 209 from receiving overtime.

c. Notice to Employees: Contractor must give notice in writing to its employees who perform work on this Contract, either at the time of hire or before commencement of work on this Contract, or by posting a notice in a location frequented by employees, of the number of hours per day and days per week that the employees may be required to work.

1. **Access to Records.** Contractor agrees that District and its authorized representatives are entitled to review all Contractor books, documents, papers, plans, and records, electronic or otherwise ("Records"), directly pertinent to this Contract for the purpose of making audit, examination, excerpts, and transcripts.
2. **Use of District Logo or Name.** Contractor shall not use District’s name or logo in marketing or publicity materials or for marketing or publicity purposes without prior written authorization from the District.
3. **Work Performed on District Property.** Contractor shall comply with the following:

a. Identification: When performing work on District property, Contractor shall be in full uniform at all times. Uniforms must include shirt with attached Contractor company identification. All such persons must also carry photo identification and must present it to any District personnel upon request. If Contractor cannot produce such identification or if the identification is unacceptable to District, District may provide at its sole discretion, District-produced identification tags to Contractor, costs to be borne by Contractor. If Contractor does not have a specific uniform for its employees, then Contractor shall provide identification tags as described above and/or any other mechanism the District in its sole discretion determines is required to easily and appropriately identify Contractors.

b. Sign-in Required: As required by schools and other District locations, each day Contractor's employees are present on District property, those employees must sign into the location's main office to receive an in-school identification/visitors tag. Contractor's employees must display this tag on their person at all times while on District property.

c. No Smoking: All District properties are tobacco-free zones; Contractor is prohibited from using any tobacco product on District property.

d No Drugs: All District properties are drug-free zones as enforced by the Portland Police Bureau.

1. No Weapons or Firearms: Except as provided by statute and District policy, all District properties are weapons- and firearms-free zones; Contractor is prohibited from possessing on its persons or in its vehicles any weapons or firearms while on District property.
2. **Unsupervised Contact with Students; Criminal Background Checks.** This provision is required by statute. “Unsupervised contact” with students means contact that provides the person opportunity and probability for personal communication or touch with students when not under direct supervision by District personnel. ORS 326.603; OAR 581-021-0500.

**CHOOSE ONE:**

* 1. Contractor will have no direct, unsupervised contact with students in the performance of this Contract.
* Contractor shall ensure that Contractor, any subcontractors, and their officers, employees, and agents will have no direct, unsupervised contact with students.
* Contractor will discuss any questions or concerns about these requirements with District Point of Contact (named on the first page of this Contract) before beginning work.
* Contractor, any subcontractors, and their officers, employees and agents must immediately remove themselves from any situation involving direct, unsupervised contact with students.
* If Contractor is unable to ensure through a security plan that none of its officers, employees, or agents or those of its subcontractors will have direct, unsupervised contact with students in a particular circumstance or circumstances, then Contractor shall notify District Point of Contact and undergo a criminal background check before beginning any work that could result is such contact.
* Contractor must check in at the school office and wear a visitor badge while on District property or in the presence of District students.
* A violation of these provisions is grounds for immediate termination of this Contract by the District.

**OR**

* 1. Performance under this Contract may require or cause Contractor to have direct, unsupervised contact with students. As required by ORS 326.603, **Contractor must undergo a finger-print based criminal background check before beginning work under this Contract**.
* Contractor authorizes District to obtain information about Contractor and its history and to conduct a criminal background check, including fingerprinting, of any Contractor officers, employees, or agents who will have unsupervised contact with students. Contractor shall cause its employees and/or subcontractors, if any, to authorize District to conduct these background checks.
* Contractor shall pay all fees assessed by Oregon Department of Education for processing the background check. District may deduct the cost of such fees from a progress or final payment to Contractor under this Contract, unless Contractor elects to pay such fees directly.
* After completion of the criminal background check, Contractor will be provided with a District badge.
* Contractor must the wear the badge provided by the District while on District property or in the presence of District students.

1. **Confidentiality.**
   * 1. If District discloses any confidential data to Contractor, Contractor shall return or destroy (without retaining copies thereof) all such data to District either upon District request at any time, or within 15 days of the termination of this Contract.
     2. Contractor shall have no title or ownership in the District's, data (including but not limited to Students’, employees’, and agents’ data) used within the Product or Work Product. Contractor shall not disclose or sell such data in any form without written authorization from District.
     3. Contractor shall not engage in targeted advertising within the Product. Contractor shall not use any information obtained from the Product or Work Product to (1) engage in targeted advertising or enable any third party to engage in targeted advertising; (2) create a profile about a District student or students other than as required to perform its obligations under this Contract; and (3) use any information obtained about a District student or students other than as required to perform its obligations under this Contract.
     4. Upon District request, Contractor shall provide any District data used in the Product or Work Product in a flat-file format (format to be specified by District) free of charge, except for the costs of media, shipping, and related costs.
     5. If Contractor ceases operations, dissolves (whether or not under bankruptcy or court order), is acquired, assigns this Contract in whole or in part, or otherwise ceases to be the responsible party for executing its obligations under this Contract, then Contractor shall immediately notify District of the change in writing, in addition to fulfilling its other obligations stated elsewhere in this Contract.
     6. Unless District provides written authorization to transfer custody of District's data to another party or otherwise dispose of District's data, Contractor shall provide to District the data used within the Product or Work Product in a flat-file format and immediately and permanently delete such data from its servers, databases, or storage devices.
     7. Contractor shall implement and maintain reasonable security procedures and practices to protect the confidential data from unauthorized access, destruction, use, modification, or disclosure. Should an unauthorized party access, use, or otherwise process confidential data, Contractor shall inform District within ten (10) days of discovery and provide District with sufficient information to allow District to meet any obligations under applicable law. When notification to individuals or regulators is required under applicable law, Contractor shall provide such notification at its cost or reimburse District for its reasonable costs. Prior to providing any such notification at its cost, Contractor shall obtain District’s written approval for the content of the communication to District’s students, employees, or agents.
2. **FERPA Re-disclosure.** **Family Education Rights and Privacy Act (“FERPA”) prohibits the re-disclosure of confidential student information.** Contractor agrees to protect the confidentiality of student education records, including personally identifiable information found in education records, in compliance with the Family Educational Rights and Privacy Act of 1974 (20 U.S.C. Sec. 1232g) and its implementing regulations (34 C.F.R. Part 99), collectively “FERPA.”  Contractor acknowledges that information disclosed to Contractor by District may include records that are subject to FERPA, and that to the extent this is the case, Contractor will be considered a “school official” as that term is used in FERPA. As such, Contractor agrees that it will hold all information disclosed to it in strict confidence and will not use such information except as required to perform its obligations under this Contract. Contractor further agrees that will it not disclose or re-disclose any such information except (a) with the express written authorization of District, or (b) as required by law but only to the extent permitted by law and only in the manner prescribed by law.  If Contractor receives a court order or subpoena seeking education records or information contained in education records, it shall immediately notify District in writing. If Contractor re-discloses personally identifiable information from education records on behalf of District in response to an order or subpoena under 34 C.F.R. § 99.31(a)(9), Contractor must provide the notification required under 34 C.F.R. § 99.31(a)(9)(ii). District will assist Contractor with complying with this notification requirement.
3. **Use of Student Information.** Contractor shall fully comply with, and shall require all subcontractors to fully comply with, all applicable provisions of the Oregon Student Information Protection Act, ORS 336.184.
4. **Impact of District Internet Safety Protections.** District’s internet safety policy and legal obligations under the Children’s Internet Protection Act (CIPA) and/or Children’s Online Privacy and Protection Act (COPPA) may impact functionality of the digital resource that is the subject of this Contract. Any such impact not previously agreed to in writing by District may constitute grounds for immediate contract termination at District’s sole discretion.
5. **Reporting of Child Abuse Act.** Contractor agrees to comply with the Reporting of Child Abuse law (ORS 419B.005 through 419B.050) as if Contractor were a mandatory abuse reporter. In so agreeing, Contractor shall immediately report to the proper state or law enforcement agency circumstances supporting reasonable cause to believe that any child has been abused. Contractor shall report to the school principal or designated school authority the circumstances supporting reasonable cause to believe that any child has been abused.
6. **Security.** Any disclosure or removal of any District matter or property by Contractor shall be cause for immediate termination of this Contract. Contractor shall bear sole responsibility for any liability including, but not limited to attorneys' fees, resulting from any action or suit brought against District as a result of Contractor's willful or negligent release of information, documents, or property contained in or on District property. District hereby deems all information, documents, and property contained in or on District property privileged and confidential.
7. **Notification of Unauthorized Access or Disclosure.** In the event of an unauthorized disclosure of District data and/or unauthorized access to Contractor software or systems including but not limited to third-party hosting platforms, Contractor shall notify District contact within a reasonable timeframe. In the event of an unauthorized access to Contractor software as the result of security breach of District owned systems or resources, District shall notify Contractor within a reasonable timeframe.
8. **Employee Removal.** At District's request, Contractor will immediately remove any Contractor employee from all District properties in cases where the District determines, in its sole discretion that removal of that employee is in the District's best interests.
9. **Compliance with Federal Accessibility Requirements.** Contractor acknowledges and warrants that Contractor is responsible for compliance, and during the Term of this Contract shall use commercially reasonable efforts to remain in compliance, with all applicable Federal disabilities laws and regulations, including without limitation the accessibility requirements pertaining to digital resources, software, and other information technology as set forth in Section 508 of the Rehabilitation Act of 1973, as amended (29 U.S.C. 794d), and its implementing regulations set forth at Title 36, Code of Federal Regulations, Part 1194.  Contractor agrees to promptly respond to, resolve, and remediate any complaint regarding accessibility of its products or services in a timely manner and provide an updated version to District at no cost.
10. **Compliance with Applicable Law.** Contractor shall comply with all federal, state, and local laws applicable to public contracts, to the work done under this Contract, and with all regulations and administrative rules established pursuant to those laws.
11. **Indemnification.**

a. Contractor shall defend and indemnify District, its officers, directors, employees, and agents from and against all liabilities, losses, expenses, claims, actions, or judgments (including attorney fees) recovered or made against District for any damage, injury, or death to persons or damage to property caused by the negligent or intentional acts or omissions of Contractor, its officers, employees, agents, or subcontractors related to Contractor's performance under this Contract. Contractor's indemnification extends to conditions created by this Contract or based upon violation of any statute, ordinance, or regulation. This provision is in addition to any common law or statutory liability and indemnification rights available to District. Contractor's Indemnification of District shall not apply to damage, injury, or death caused by the negligent actions of District, its officers, directors, employees, or agents. District must promptly notify Contractor in writing of any such claim or demand to indemnify and shall cooperate with Contractor in a reasonable manner to defend such claim. Contractor will retain sole control of the investigation, defense, or settlement of the claim or demand as long as such settlement does not include a financial obligation or admission of liability by District.

b. Contractor shall defend and indemnify District, its officers, directors, agents, and employees from and against all claims, liabilities, losses, expenses, actions, or judgments (including attorney fees) that the Products or Work Product or that the District's use of the Products or Work Product infringe or misappropriate the intellectual property rights of any third party. For avoidance of doubt,this provision requires among other things that Contractor defend the District in any such action. Contractor will retain sole control of the investigation, defense, or settlement of the claim or demand as long as such settlement does not include a financial obligation or admission of liability by District.

c. Subject to the limitations of the Oregon Constitution (Article XI, Section 7) and the Oregon Tort Claims Act (ORS 30.260 through 30.300), District shall indemnify Contractor its officers, directors, employees, and agents from and against all liabilities, losses, expenses, claims, actions, or judgments (including attorney fees) recovered or made against Contractor for any damage, injury, or death to persons or damage to property caused by the negligent or intentional acts or omissions of District, its officers, employees, agents, or subcontractors related to District's performance under this Contract. This provision is in addition to any common law or statutory liability and indemnification rights available to Contractor. District's Indemnification of Contractor shall not apply to damage, injury, or death caused by the negligent actions of Contractor, its officers, directors, employees, or agents. Contractor must promptly notify District in writing of any such claim or demand to indemnify and shall cooperate with District in a reasonable manner to defend such claim. District will retain sole control of the investigation, defense, or settlement of the claim or demand as long as such settlement does not include a financial obligation or admission of liability by Contractor.

**31. Force Majeure.** A party to this Contract shall not be held responsible for delay or default due to Force Majeure acts, events or occurrences unless they could have been avoided by the exercise of reasonable care, prudence, foresight, and diligence by that party.  In the event of a Force Majeure act, event, or occurrence, District may terminate this Contract upon written notice after determining that delay or default caused by Force Majeure acts, events or occurrences will reasonably prevent successful performance of the Contract.

1. **Contractor Representations and Warranties.** Contractor expressly warrants that Contractor and any approved subcontractors have all of the rights, licenses, permits, qualifications, and consents necessary to Perform Contractor's obligations hereunder, license the Product to the District as provided under this Contract, and assign the Product or Work Product. Contractor expressly warrants that the Products and Work Product do not infringe or misappropriate the intellectual property rights of any third party.
2. **Insurance.** At all times while providing services under this Contract, Contractor shall maintain in force at Contractor's expense insurance coverage at least equal to the value of this Contract and the following insurance coverage(s), as applicable:

a. Workers' Compensation. As required by ORS 656.017, subject employers shall provide workers' compensation coverage in accordance with ORS Chapter 656 for all subject workers. Contractor and all subcontractors of Contractor with one or more employees shall have this insurance unless exempt under ORS 656.027. Contractors that are statutory subject employers shall submit a certificate of insurance to District showing proof of coverage.

b. General Liability. Contractor shall maintain general liability insurance coverage of at least $1,000,000 for each claim, incident, or occurrence, and at least $2,000,000 annual aggregate coverage.

c. Motor Vehicle Liability. If Contractor is providing services that require Contractor to transport District personnel, students, or property, then in addition to any legally required insurance coverage, Contractor shall maintain motor vehicle liability insurance of at least $1,000,000 for each claim, incident, or occurrence.

e. Additional Requirements.All insurance coverage shall be provided by an insurance company having an A.M. Best rating of at least A- and/or licensed to do business in Oregon. Contractor alone is responsible for paying all deductibles and retentions. A cross-liability clause or separation of insureds condition shall be included in all general liability policies required by this Contract. Contractor's coverage shall be primary in the event of loss.

f. Certificate of Insurance. Upon District request, Contractor shall furnish to District a current certificate of insurance for each of the above coverages within 48 hours of District request. Each certificate must provide that there shall be no cancellation, termination, material change, or reduction of limits of the insurance coverage without 30 days prior written notice from Contractor or its insurer to District. Each certificate shall also state the relevant deductible or retention level. For general liability coverage, the certificate shall also provide that District, its agents, officers, and employees are additional insureds with respect to Contractor's services provided under this Contract.

1. **Waiver; Severability.** Waiver of any default or breach under this Contract by District does not constitute a waiver of any subsequent default or a modification of any other provisions of this Contract. If any term or provision of this Contract is declared by a court of competent jurisdiction to be illegal or in conflict with any law, the validity of the remaining terms and provisions shall not be affected, and the rights and obligations of the parties shall be construed and enforced as if the Contract did not contain the particular term or provision held invalid.
2. **Non-discrimination Clause.** Both parties agree that no person shall be subject to unlawful discrimination based on race; national or ethnic origin; color; sex; religion; age; sexual orientation; gender expression or identity; pregnancy; marital status; familial status; economic status or source of income; mental or physical disability or perceived disability; or military service in programs, activities, services, benefits, or employment in connection with this Contract. The parties further agree not to discriminate in their employment or personnel policies.
3. **Controlling Law; Venue.** Any dispute under this Contract or related to this Contract shall be governed by Oregon law, and any litigation arising out of the Contract shall be conducted in courts located in Multnomah County, Oregon.
4. **Amendments; Renewal.** Any amendments, consents to or waivers of the terms of this Contract shall be in writing and signed by both parties. The parties may renew this Contract by their signed, written instrument.
5. **Counterparts.** The parties may execute this Contract in counterparts, each of which constitutes an original and all of which comprise one and the same Contract. Counterparts may be delivered by electronic means.
6. **Entire Agreement.** When signed by both parties, this Contract (and the attached exhibits) is their final and entire agreement. As their final and entire expression, this Contract supersedes all prior and contemporaneous oral or written communications between the parties, their agents, and representatives. There are no representations, promises, terms, conditions, or obligations other than those contained herein.
7. **Notices.** All notices or demands of any kind required or desired to be given by District or Contractor must be in writing and shall be deemed delivered upon depositing the notice or demand in the United States mail, certified or registered, postage prepaid, addressed to the respective party at the addresses herein.

**I have read this Contract, including all exhibits. I certify that I have the authority to sign and enter into this Contract on behalf of the party I represent and agree to be bound by its terms.**

**CONTRACTOR DISTRICT**

Signature Emily Courtnage

Director, Purchasing & Contracting

Contractor Printed Name and Title Date

Date

**Exhibit A [fOR SOFTWARE CONTRACTS ONLY]**

**Software contract additional terms**

1. **Ownership of Product or Work Products.** 
   1. Definitions:

*Product*: A software tool purchased, licensed, or subscribed to and that has been developed by a third party and sold to the marketplace.

*Work Product*: Work completed by a third party that the District has ownership of, including software developed for the District as described in Article 20a(i) of Appendix T of the Patent Cooperation Treaty “Communication to Designated Offices;” a configuration for District use; District documentation in support of the Product; reports and analysis developed by the third party for the District; an any other result from the third party’s work expected to be owned by the District.

* 1. Choose (i,) (ii) OR (iii.)

(i) Not Applicable

(ii) District shall be the exclusive owner of all right, title, and interest, including without limitation all copyrights, trademarks, patents, trade secret, and all other intellectual property or proprietary rights, in and to anything that is created, produced, conceived, or developed by Contractor in the course of performing services for District under this Contract. This exclusive ownership includes, without limitation, any and all reports, analyses, studies, documentation, notes, drawings, computer programs (source code, object code, and listings), related documentation, inventions, creations, and any other material, work product, or work of authorship (collectively, "Work Product"). District and Contractor agree that all Work Product shall be deemed a "work made for hire" as that term is defined in Section 101 of the United States Copyright Act. As such, all copyrights in and to Work Product shall be the sole and exclusive property of District from the inception of their creation in tangible form. To avoid any dispute regarding ownership of Work Product, Contractor hereby irrevocably assigns to the District all right, title, and interest, including all copyrights, trademarks, patents, trade secrets, and other intellectual property or proprietary rights, in and to the Work Product. Contractor shall take all action requested by District to vest ownership of Work Product in District and to permit District to obtain copyright, trademark, patent, or similar protection in District's name. Contractor appoints District as its agent and attorney-in-fact for the following limited purposes: (a) to take any action to obtain patents, copyrights, or other kinds of legal protection in the Work Product; (b) to assign those rights to District; and (c) to protect those rights from infringement. This appointment and power of attorney are irrevocable. Any action taken by District under this power of attorney will have the same legal effect as if Contractor did it itself. If Contractor has property rights that are incorporated in or necessary to the use of any Work Product, Contractor grants District and its agents and contractors a royalty-free, irrevocable, worldwide, non-exclusive license to use, disclose, reproduce, modify, license, and distribute such Work Product. Upon termination of this Contract or upon any earlier request by District, Contractor shall provide the Work Product and all copies thereof to District.

All right, title, and interest in and to any programs, systems, data, and materials furnished to Contractor by District are and shall remain the property of District except those programs, systems, data, or materials originally furnished by Contractor to District under separate license agreements.

(iii) Contractor licenses any and all goods or services provided to or developed for District ("Product”) according to the terms of Exhibit D (License Grant). District shall have no right in any pre-existing work product of Contractor provided to District by Contractor in the performance of this Contract, except to copy, use, or re-use any such work product for District use only.

* 1. Necessary New Work: Notwithstanding the License for the Product or Work Product set forth in this Contract, if in the course of completing the project implementation and management work set forth in Exhibit B (Statement of Work), Contractor designs and develops a new work product to facilitate the integration of the Product or Work Product with District's systems, Contractor hereby grants District a perpetual, royalty-free, fully-paid, non-exclusive, and irrevocable license to use or re-use, in whole or in part, such work products.
  2. Prohibition: So long as Contractor provides support and maintenance for the Product or Work Product, District shall not alter, modify, adapt, translate, reverse engineer, decompile, disassemble, or create derivative works from the Products or Work Product, nor take any other steps to produce a source language statement of the Products or Work Product or any part thereof without Contractor's express prior written consent.

1. **Other Contractors.** District reserves the right to enter into other agreements for work additional or related to the subject matter of this Contract, and Contractor agrees to cooperate fully with these other contractors and with the District. When requested by District, Contractor shall coordinate its performance under this Contract with such additional or related work. Contractor must not interfere with the work performance of any other contractor or District employees.
2. **Nonperformance.** As used in this Contract, "failure to perform" means failure, for whatever reason, to deliver goods and/or perform work as specified and scheduled in this Contract. If Contractor fails to perform under this Contract, then District, after giving seven days' written notice and opportunity to cure to Contractor, has the right to complete the work itself, secure the contracted goods and/or services from other contractors, or a combination thereof, as necessary to complete the work. Both parties agree that Contractor shall bear any reasonable cost difference, as measured against any unpaid balance due Contractor, for these substitute goods or services.
3. **Maintenance.** Contractor offers support and maintenance of its Products. Such support and maintenance includes Updates and Upgrades. "Update" means a release of the Product (software) that includes a feature change, minor increased functionality, or minor improvements (including defect (bug) fixes). "Upgrade" means a release of the Product that includes an additional feature or significant improvement being added to the Product. Typical Upgrades will be those designated by Contractor as a change in the version number, being the number to the left of the decimal point in the Product version number. Terms for such Maintenance are described in Exhibit E (Maintenance) and shall describe service level obligations and contact information. Maintenance may be optional to District. Contractor may also provide maintenance for developed Work Products as described in Exhibit E, either on an as-needed basis or a regular schedule.
4. **Escrow.**

CHOOSE ONE:

  Not Required

  Required. To mitigate the parties’ risk,Contractor agrees to keep a current copy of the source code for Products in escrow under an agreement substantially in the form of Exhibit F (Escrow Agreement). Contractor agrees to keep such escrowed source code updated when an Upgrade (defined in Paragraph 43, “Maintenance”) is issued by Contractor. Escrow may be optional to District. The Escrow Agreement will include the following items:

* 1. Release of Source Code. The source code will be released to the District in accordance with the Escrow Agreement upon the occurrence of one or more of the following conditions:

(i) Contractor's failure to carry out obligations imposed on it by the Contract or any agreement between the District and Contractor relating to the use of the Products;

(ii) Contractor's announcement or acknowledgement that it will no longer support the version of the Products then being used by the District;

(iii) Contractor's failure to continue to do business in the ordinary course; and

(iv) Contractor is subject to voluntary or involuntary bankruptcy.

* 1. Definition of deposit materials. Materials to be deposited with each deposit are:

(i) Source code, including any customizations for District;

(ii) All related technical documentation;

(iii) A list of names and contact information for personnel who have been supporting the source code;

(iv) A list of third party code, including open source, needed to run the software and available from other sources; and

(v) Compilers.

* 1. License to use escrowed materials. If source code is delivered to District, then District shall have a perpetual license to use and modify source code, as needed by District, for the sole purpose of maintaining its use of the Products.