

SOFTWARE SERVICES AGREEMENT BETWEEN DILIGENT CORPORATION AND POUDRE SCHOOL DISTRICT R-1

This Software Services Agreement (the “Agreement”) is entered into as of the date of last signature by and between Poudre School District R-1, a school district organized and existing under the laws of the state of Colorado (the “District” or “Client”), and Diligent Corporation (the “Contractor” or “Diligent”), each a “Party” and collectively referenced herein as the “Parties,” as of the date the District purchases, or otherwise accesses or uses, any Contractor products or services.

1. **Term of Agreement.** The term of this Agreement begins on the effective date of this Agreement and continues in full force and effect until (i) terminated pursuant to the terms hereof or (ii) the one (1) year anniversary of the expiration of the last active Order Form under the Agreement. The Term of any applicable Order Form begins on the applicable Effective Date of such Order Form and will continue for the period identified in the Order Form (“Initial Term”). If no specific Initial Term period is stated in the Order Form, the Initial Term shall be one year. After the Initial Term, the term of the Agreement will automatically renew for additional one (1) year terms (“Renewal Term”) unless either Party provides the other written notice of non-renewal no later than thirty (30) days prior the expiration of the Initial Term or any Renewal Term. Contractor may implement revised pricing for any Renewal Term by giving written notice of the new pricing to the District at least sixty (60) days prior to the commencement of a Renewal Term and the pricing will apply to the Renewal Term unless the District provides written notice of non-renewal in accordance with this Section. Collectively each Initial Term and each Renewal Term (if any) constitute a “Term” in respect of the applicable Order Form.
 - 1.1. Notwithstanding any other term or provision of this Agreement, the District’s obligations hereunder are expressly subject to its budgeting and appropriation of sufficient funds for each fiscal year (July 1 - June 30) an Agreement is in effect. In no event, shall the District’s obligations in an Agreement constitute a multiple-fiscal year direct or indirect debt or other financial obligation under Article X, Section 20(4)(b) of the Colorado Constitution. In the event funds are not appropriated or otherwise available for this service for any Renewal Term, the District shall provide notice to the Contractor thirty (30) days prior to the commencement of such Renewal Term. In the event of non-appropriation for Renewal Terms funds already paid pursuant to the Agreement shall not be refunded.
 - 1.2. **Termination For Cause.** Notwithstanding the provisions of section 1.1 or this section 1.2, if either Party is in breach of an obligation or covenant under this Agreement the non-breaching Party may give written notice to the breaching Party describing the breach and demanding that it be cured. If the breach is not cured within thirty (30) days after the breaching Party’s receipt of said notice, the non-breaching Party may immediately terminate the Agreement and avail itself of any and all remedies available at law or in equity. Notwithstanding the foregoing, either Party may terminate the Agreement immediately upon providing written notice if the other Party breaches Section 10 (Confidential Information) or the District breaches Section 4.5. Either Party may terminate

the Agreement immediately (i) upon the institution by or against the other Party of insolvency, receivership or bankruptcy proceedings or any other proceedings for the settlement of such Party's debts; (ii) upon the other Party making an assignment for the benefit of creditors; or (iii) upon the other Party's dissolution or ceasing to do business.

- 1.3. **Termination Without Cause.** Notwithstanding the provisions of sections 1.1, 1.2 or 1.3 above, the District may terminate this Agreement at any time in its sole discretion for any reason, with or without cause, by giving the other Party thirty (30) days' advance written notice of the termination, provided in the event of such termination the District will not be entitled to a refund for any prepaid fees in connection with the Agreement and all fees owed or payable will immediately become due at the time of termination.
- 1.4. **Effect of Termination.** Upon termination of the Agreement, all rights granted to the District pursuant to the Agreement (as the case may be) will terminate, the District will immediately cease all access and use of the applicable Service(s), and pay all unpaid fees.

2. **Deliverables and Purchase Price.**

- 2.1. The Contractor shall make its software-as-a-service set forth in the applicable Order Form available for use within the District (hereinafter the "Services"), subject to any restrictions outlined herein.
- 2.2. In consideration for the provision of the applicable Services, District will pay the amounts set forth in the Order Form in accordance with the terms set forth in this Section. All subscription fees shall be paid in advance. Except as specifically provided to the contrary in the Agreement, in the event of the cancellation, completion, expiration or termination of the Agreement, all monies paid or due or owing to Contractor by District shall be deemed non-refundable. Any reduction in the quantity of any purchase made in an Order Form must be agreed in writing by the Parties at least thirty (30) days in advance of the commencement of the next Renewal Term, and any such reduction shall take effect as of the commencement of the next Renewal Term. If there is no written agreement to reduce the quantity of any purchase in an Order Form by such time, the Agreement will automatically renew for the same quantity for the preceding Initial or Renewal Terms, as applicable.
 - 2.2.1. For each year of the Term, pricing shall increase by 3.00% on each anniversary of the Effective Date.
 - 2.2.2. Fees shall be payable by the District thirty (30) days after receipt of Contractor's invoice. If any fees owing by District are thirty (30) days or more overdue, Contractor may, without limiting its other rights and remedies, suspend access to the Services until such amounts are paid in full, provided Contractor has given the District at least ten (10) days' prior notice that its account is overdue. The District will be responsible for all reasonable, pre-approved travel, accommodation and meal expenses incurred in connection with any on-site training, services or instruction, not to exceed current United States General Service Administration (GSA) rates. Such expenses will be invoiced at actual cost. If the District reschedules or cancels any onsite training, instruction or Services for which

Contractor has incurred non-refundable out-of-pocket expenses, the District will reimburse Contractor for such non-refundable expenses.

3. **Professional Services.**

- 3.1. **Scope.** The provisions of this Section shall apply solely to specific consulting services (if any) agreed to in an Order Form to be delivered by Contractor in connection with a Service (including any services identified as professional services, consulting services, managed services, or implementation services in an Order Form), but excluding support services (“Professional Services”).
- 3.2. **Professional Services.** Subject to Section 3.5, Contractor shall use commercially reasonable efforts to perform the Professional Services in accordance with the applicable Order Form or statement of work (“SOW”), and Contractor represents and warrants that all Professional Services shall be provided in a professional and workmanlike manner.
- 3.3. **Remedy.** If notified in writing of any claim for Contractor’s breach of Section 3.2, Contractor will, at its option, (i) reperform the Professional Services so that they comply with Section 3.2; or (ii) terminate the portion of the affected Order Form attributable to such Professional Services and refund the fees attributable for such Professional Services.
- 3.4. **Suitability.** Contractor shall assign employees and subcontractors with qualifications suitable for the Professional Services described in the relevant Order Form. Contractor may replace or change employees and subcontractors in its sole discretion with other suitably qualified employees or subcontractors.
- 3.5. **District Responsibilities.** District shall make available in a timely manner at no charge to Contractor all technical data, District Data, computer facilities, programs, files, documentation, test data, sample output, or other information and resources of District required by Contractor in each case for the performance of the Professional Services, as well as anything specified in the applicable Order Form. District shall be responsible for, and assumes the risk of, any problems resulting from, the content, accuracy, completeness and consistency of all such data, materials and information supplied by District. District shall provide, at no charge to Contractor, reasonable cooperation as Contractor requires to perform the Professional Services.
- 3.6. **Ownership.** Ownership of all work product, developments, inventions, technology or materials related to any Professional Services (the “Deliverables”) shall be solely owned by Contractor (except with respect to District Data, which shall remain District’s sole property). Solely during the applicable Term and conditioned upon District’s compliance with all the terms of the Agreement, Contractor grants to District a limited, non-exclusive, non-transferable, and non-sublicensable right to make use of the Deliverables.
- 3.7. **Modifications and Change Orders.** For the avoidance of doubt, modifications to the scope of any Professional Services shall become effective only when a document incorporating the relevant written change request is executed by authorized representatives of both Parties.

4. **Access Rights; Restrictions.** As part of section 4, the following sections apply, unless prohibited by law.

- 4.1. **Access Rights.** During the Term and conditioned upon District's compliance with all the terms of the Agreement, Contractor grants to District, a limited, non-exclusive, non-transferable, and non-sublicensable right to allow Users to, in accordance with the Agreement, access and use the applicable Services set out in the relevant Order Form solely for the District's business purposes. As part of the implementation of certain Services, District may be required to identify in writing the Users, who will be assigned User IDs. For the avoidance of doubt, if applicable pursuant to the relevant Order Form, any Content Services described thereunder shall be Services and subject to the restrictions set forth herein. Certain Services and Software may be accessed and delivered electronically through a secure area of the applicable Contractor website and are deemed delivered when they are made available for access or download by District, as applicable.
- 4.2. **Software.** During the Term and conditioned upon District's compliance with all the terms of the Agreement, Contractor grants District a limited, non-exclusive, non-transferable, and non-sublicensable right to install and use the applicable Software in accordance with the Documentation for such Software.
- 4.3. **Reservation of Rights.** Except for the limited rights set forth in Section 4.1 and 4.2 above, District does not acquire any intellectual property or other rights, express or implied, in or relating to any Contractor Software or Services. Contractor reserves title, ownership, and all other rights to all Software and Services. District and Users will not remove, obscure, or alter Contractor's copyright notices, trademarks, other proprietary rights notices, or any other content of any kind appearing in the Services, Software, or Documentation. For the avoidance of doubt, ownership of all Content Services (including any products or components contained therein) belongs to Contractor or its Third-Party Providers and nothing in this Agreement shall transfer or assign any right, title or interest in the applicable product or components of the Content Services to the District.
- 4.4. **Restrictions.** District must not, and represents and warrants it will not, use the Services in any manner that is not described in the Documentation or in any manner that is prohibited by the Agreement. Client is responsible for all access and use of the Services and Software by its Users and any person that gains access through District or any of its Users or User IDs.
- 4.5. **Restrictions on Use.** District must not and must ensure that Users do not, directly or indirectly, (i) reverse engineer, disassemble, decipher, translate, decompile, prepare derivative works of the Services or Software or otherwise attempt to access, imitate, derive or discover the source code thereof; (ii) upload any District Data or any content, data or information that is unlawful, harmful, threatening, abusive, harassing, tortious, defamatory, vulgar, obscene, libelous, invasive of another's privacy or right of publicity, hateful, or racially, ethnically or otherwise objectionable, subject to the requirements of the First Amendment of the US Constitution; (iii) infringe the intellectual property or

privacy rights of any third party in connection with use of the Services, Software or Documentation (including by uploading District Data to the Services); (iv) interfere with or disrupt Contractor's software or systems used to host the Services, other equipment or networks connected to the Services, or disobey any requirements, procedures, policies or regulations of networks connected to the Services made known to District; (v) license, sell, rent, lease, lend, transfer, outsource, sublicense or otherwise provide access to the Services or Software or utilize the Services for the benefit of a third party, including through a service bureau, commercial time-sharing arrangement, or application service provider (ASP) arrangement; (vi) provide publicly, or make publicly available, any links, hypertext (Universal Resource Locator (URL) address) or otherwise (other than a "bookmark" from a Web browser) to the Services, or any part thereof; (vii) circumvent the User authentication or security of the Services or any host, network, or account related thereto; (viii) perform any penetration testing on or with respect to the Services, including use of any tools, code or instruction intended to fuzz, damage, destroy, alter, reveal any portion or expose vulnerability of the Services (unless specifically authorized by Diligent in writing); (ix) mirror the Services on any server; (x) make any use of the Services that Diligent reasonably believes is abusive or that violates any applicable local, state, national, international or foreign law; (xi) fail to use commercially reasonable efforts to prevent the unauthorized license, sale, transfer, lease, transmission, distribution or other disclosure of the Services; (xii) allow any non-Users to use any User IDs, code(s), password(s), or other mechanisms issued to, or selected by, District or Users for access to the Services; (xiii) use the Service, in whole or in part, in any manner that competes with Diligent or its affiliates, including, but not limited to, any distribution of a Service, related data or derivative works based thereon; (xiv) create a database in any form whatsoever from the Service; (xv) associate the Service or its content to another website by employing any technology, including, but not limited to, hyper linking and framing; (xvi) use automated systems, software or processes to extract or compile data from the Service ("data scraping"); or (xvii) use the Service as part of District's intranet or other internal network.

- 4.6. User IDs. Rights of any User to utilize any Services cannot be shared or used by more than one individual. District must not and will ensure that Users do not permit any other individual or entity to access (through User ID and password sharing or otherwise) the Service or Software. District is restricted to the number of Users for which it has purchased subscriptions. Virtualization technology may not be used to circumvent the restrictions in this Agreement. District may on a permanent basis transfer a User's access right purchased by District to another User without incurring additional Subscription Fee charges (but subject to payment of an installation fee, if applicable), as long as the number of Users does not exceed the number of Users purchased, and the original User is no longer a User and is not permitted access to the Service. If District exceeds, or wishes to increase, the number of Users, additional fees will apply.
- 4.7. Feedback. District is not required to provide Contractor any feedback, comments or suggestions about the Service or any of Contractor's technologies, products, or services ("Feedback"). However, if District provides Feedback, District agrees that even if it is designated confidential, the Feedback is not confidential and Contractor is free to use, disclose, reproduce, license or otherwise distribute the Feedback without any obligations

or restrictions of any kind, including intellectual property rights.

5. **District Data and District Materials.**

- 5.1. District reserves all title and ownership of the information successfully uploaded, entered, created and stored by District within any Service ("District Data"). Contractor will take reasonable security measures with respect to the storage and transmission of District Data. Upon District's reasonable request, Contractor will provide District with Contractor's then-current security Documentation made generally available to customers of the relevant Service. Contractor shall promptly and without undue delay notify District after confirming any actual or reasonably suspected information security breaches affecting the security of the District Data.
- 5.2. District hereby grants Contractor the right to use the District Data for the purposes of providing the Services pursuant to the Agreement. If District furnishes to Contractor any content, materials or other intellectual property (including graphics, logos, trademarks, etc.) other than District Data (collectively "District Materials") Contractor may use the District Materials in connection with the provision of the Services and Professional Services under the Agreement. In addition to the foregoing, Contractor may (i) collect anonymized, de-identified information relating to use of the Services (including usage data) in order to improve Contractor's products and services and for other reasonable internal uses and (ii) aggregate such anonymized, de-identified information with anonymous, de-identified information of its other clients for purposes of creating and distributing case studies or industry reports as part of its products and services, provided that, in each case: (x) the information does not, and could not reasonably be used to, relate back to or identify District; and (y) Contractor does not sell, resell or make other commercial use of such information (other than on an aggregated basis under the foregoing (ii)). Contractor may also collect data related to District and its Users for the purpose of notifying District and its Users of product upgrades or other necessary notifications.
- 5.3. District determines what District Data it uses in connection with the applicable Service and retains full control over the access to and use of its District Data. Contractor will not access District Data, except as instructed or authorized by District, where necessary to prevent or address service or technical problems affecting District, or as required by applicable law, regulation or court order.
- 5.4. District is responsible for providing sufficient bandwidth and network connectivity to ensure all Users can access and use the Service. The technical requirements set forth in the Documentation are subject to change upon notice. District is responsible for ensuring its firewalls permit access to the Contractor-owned URLS/IP Addresses. To ensure District receives optimal performance, District should use the Service on a hardware and software system that matches or exceeds the highest specifications recommended by Contractor in the Documentation. Suitable configuration of software and hardware will depend on individual circumstances. System performance may be adversely affected by unsuitable software or hardware. District is responsible for taking reasonable security precautions, including, without limitation, determining the security configurations of its

systems (e.g. password construction rules and expiration intervals). District is responsible for setting up and ensuring the confidentiality of User accounts and passwords assigned to them for use with the Service. District is responsible for promptly notifying Contractor after confirming any actual or reasonably suspected information security breaches affecting the security of the Service or software, of which it becomes aware, including without limitation compromised User accounts. District is responsible for periodically reviewing its security configurations and access rights to determine if they are appropriate for its needs. District is responsible for defining its authorized approvers, documentation and validation requirements for changes to its use and access to the Service.

5.5. Each Party will comply, to the extent applicable, with data protection and data privacy laws in performing their obligations under this Agreement. Contractor's Data Protection Addendum is also available at <https://diligent.com/data-processing-addendum>, and the terms of such Data Protection Addendum as of the Effective Date are hereby incorporated into this Agreement by reference. District may separately elect to execute such Data Protection Addendum provided that District returns a copy of such executed Data Protection Addendum to Diligent at privacy@diligent.com.

6. **Reserved.**

7. **Reserved.**

8. **Invoices.** Contractor will provide invoices for the Services at the rate specified in the Order Form. Contractor will issue an invoice to the District for the Initial Term's fees for the first year on or about the date the Order Form is executed. For each year of the term thereafter, Contractor will invoice the District for fees approximately thirty (30) days prior to the anniversary of the applicable Effective Date of the Order Form.

8.1. Invoices shall be sent to ap@psdschools.org.

8.2. **Tax Exemption.** The District is exempt from federal and state taxes under Colorado Tax Exempt Number 98-03335. The District must provide Contractor with a certificate of tax exemption evidencing such exempt status promptly upon Contractor's request. To the extent the District is not tax exempt or loses tax exempt status during the then-current term, then to the extent permitted by law, the District will be responsible for payment of all applicable value added, sales, use, license or other transaction based taxes (other than taxes based on Contractor's net income) which are levied or imposed by reason of the transactions contemplated under this Contract.

9. **Warranties.**

9.1. **Software and Services.** Notwithstanding prior acceptance of Services by the District, the Contractor shall expressly warrant that during the Term all Services or deliverables provided under this Agreement, will be of good quality and properly functioning at the start of operations and conform to any specifications, training materials, and technical information regarding any Service and Software provided by Contractor to District and

its Users, and all other information and User instructions regarding the capabilities, operation, installation and access to the Software and Service, as may be updated by Contractor from time to time ("Documentation"). The warranty will not apply: (i) if the applicable Service or Software is not used in accordance with this Documentation; or (ii) if the defect is caused by District Data, District Materials or any third party services, content, products or modification or customization to such Service or Software.

- 9.2. Remedy for Breach of Warranty. During the Term, if notified in writing of valid warranty claim under by the District, under Section 9.1, Contractor will, at its option, (i) correct the non-conforming Service or Software associated with this contract so that it materially complies with the Documentation; (ii) provide a replacement with substantially equivalent functionality; (iii) terminate the Agreement and refund a pro-rata portion of the prepaid subscription fees based on the number of months remaining in the Initial Term or Renewal Term as of the date that District provided written notice of the warranty claim under Section 9.1. To the extent permitted by law, this Section states Contractor's entire liability and District's sole and exclusive remedy for breach of warranty under Section 9.1
- 9.3. Viruses. Contractor will take reasonable precautions to protect against any person acting by, under or through Contractor from introducing any software virus, worm, "back door," "Trojan Horse" or similar harmful code into the Service or Software provided hereunder.
- 9.4. Disclaimer. (A) EXCEPT AS SPECIFICALLY PROVIDED IN THE AGREEMENT AND TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW, CONTRACTOR DISCLAIMS ALL WARRANTIES, REPRESENTATIONS, CONDITIONS AND ALL OTHER TERMS WHETHER EXPRESS, IMPLIED OR STATUTORY. (B) THE WARRANTIES, REPRESENTATIONS, CONDITIONS AND ALL OTHER TERMS DISCLAIMED IN SECTION 9.4(A) SHALL INCLUDE (WITHOUT LIMITATION) ANY WARRANTIES, REPRESENTATIONS, CONDITIONS AND OTHER TERMS OF QUALITY, MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE AND NON-INFRINGEMENT. (C) CONTRACTOR MAKES NO WARRANTY, UNDERTAKING, REPRESENTATION, CONDITION OR OTHER AGREEMENT THAT THE SERVICE, SOFTWARE, OR ANY INFORMATION OR DATA ACCESSED OR STORED THEREIN WILL MEET DISTRICT'S REQUIREMENTS OR BE ACCURATE, COMPLETE, ERROR-FREE, RELIABLE, OR AVAILABLE.

10. Confidential Information.

- 10.1. Non-Disclosure of Confidential Information. District will retain in confidence all non-public information, technology, and materials (including the Service and Software) provided by or on behalf of Contractor during the Term, except as permitted or otherwise required by the Colorado Open Records Act, as identified in 10.3,. Contractor understands that while performing Services under this Agreement, District data may include student records or personally identifiable information protected from disclosure to third parties and subject to the Individuals with Disabilities Education Act (20 U.S.C. §§ 1400 et seq.), the Family Educational Rights and Privacy Act (20 U.S.C. § 1232g) ("FERPA") and the Colorado Open Records Act (C.R.S. §§ 24-72-201 et seq.). Such

records and information are considered confidential information of the District. Accordingly, each Party hereby agrees that it shall keep confidential and shall not disclose or use any confidential information of the other Party, including but not limited to information regarding any District student, student family, student health/medical condition, student disability, student IEP and/or student accommodation, to which it gains access in connection with its provision of the Services, except to perform such Party's obligations under the Agreement. Each Party will take reasonable steps, and in no event will those steps be any less secure than the steps it uses to protect its own similar information, to ensure that the other's confidential information is protected. Contractor agrees that it or its employees, volunteers and subcontractors shall not use or access education records, student data, or personally identifiable student information provided by the District for Contractor to perform its obligations under this Agreement for any purpose other than in performance of this Agreement. The restrictions set forth in this Section will not apply to any information that: (a) was known by the receiving Party without obligation of confidentiality prior to disclosure by the disclosing Party; (b) was in or entered the public domain through no fault of the receiving Party; (c) is disclosed to the receiving Party by a third Party legally entitled to make the disclosure without violation of any obligation of confidentiality; or (d) is independently developed by the receiving Party without reference to any confidential information.

If requested by the District after e termination of this Agreement, Contractor shall make District Data available for the District to export or download, as provided in the Documentation, for a period not to exceed thirty (30) days from the date of termination, which period may be extended by an additional thirty (30) days upon District's further written request within such period. After such period (or if District does not make such a request within ten (10) days of the date of termination), Contractor will be under no obligation to hold the District Data and will delete all District Data (including backups of District Data) no later than one hundred twenty (120) days from the termination date unless Contractor has specifically agreed otherwise in writing. After deletion is complete, Contractor will provide a certificate of confirmation regarding the deletion of the District Data if so requested by District.

10.2. **Obligations and Return of Confidential Information.** The receiving Parties' obligations hereunder shall survive for a period of five (5) years following termination of this Agreement. All confidential information shall remain the sole property of the disclosing Party, and all materials containing any such confidential information, including all copies made by the receiving Party, shall be returned to the disclosing Party or destroyed immediately upon termination or expiration of this Agreement, or upon the receiving Party's determination that it no longer has a need for such confidential information, except that District Data shall be destroyed in accordance with Section 10.1.1 following termination or expiration of this Agreement. Upon the request of the disclosing Party, the receiving Party shall certify in writing that all materials containing such confidential information, including all copies thereof, have been returned to the disclosing Party or have been destroyed.

10.3. **Colorado Open Records Act.** Information and materials submitted under this Agreement may be considered public records subject to disclosure under the Colorado

Open Records Act, (C.R.S. §§ 24-72-200.1 to -205.5) ("CORA"). District, not the Contractor, shall determine whether information and materials so identified will be withheld as confidential, but will inform the Contractor in advance of disclosure to give it an opportunity to take legal action to protect its interests vis-à-vis the party making the CORA request.

11. **Use of Logos.** The District grants the Contractor a limited, revocable, non-exclusive right to use the District and/or its school logos specifically provided to Contractor to display on Contractor's products developed for District and/or its schools. Such use shall be subject to the terms of this Agreement and to any limitations communicated by the District at any time and may be suspended, revoked or terminated by the District at any time for any reason. Any District and/or its school logos used by the Contractor shall be and remain at all times the sole and exclusive property of District. District and/or its school logos may not be revised or altered in any way and must be displayed in the same form as produced and provided by the District, including the use of applicable trademark and/or copyright notices. District and/or its school logos must be used in a professional and lawful manner and may not be used in any manner that (1) discredits the District and/or its schools, the District's Board members, employees, representatives and/or agents or tarnishes any of their reputations or goodwill, (2) is false or misleading, including any mischaracterization of the relationship between the District and Contractor, (3) violates the rights of others, District policies and/or federal and state laws, or (4) is inconsistent with the District's educational values.
12. **Independent Contractor.** Contractor shall provide the Services under this Agreement as an independent contractor of the District. As such, Contractor shall have the right to determine how and by whom the Services will be provided and the right to provide the Services free from the direction and control of the District, subject to and consistent with the terms and conditions of this Agreement.
 - 12.1. Contractor shall be exclusively responsible for: (a) all compensation, employment tax withholdings and payments, and all fringe benefits for its employees (if any) in full compliance with all applicable federal, state and local laws; (b) all insurance coverages and benefits for its employees (if any) in full compliance with all applicable federal, state and local laws, including but not limited to pension or retirement benefits, workers' compensation, unemployment compensation, and Social Security benefits; and (c) all payments to its contractors and subcontractors for goods and/or services directly or indirectly related to this Agreement.
 - 12.2. Nothing in this Agreement shall be construed as creating a single enterprise, partnership, joint venture or employer-employee relationship between Contractor and the District. Contractor is not a partner, agent or representative of the District and shall not represent itself to be a partner, agent or representative of the District. The District is not a partner, agent or representative of Contractor and shall not represent itself to be a partner, agent or representative of Contractor.
 - 12.3. Contractor shall not attempt or purport to extend the faith and credit of the District to any third party, person or entity. Contractor acknowledges and agrees that it has no authority to enter into any contract with a third party that would bind or in any way obligate the

District. The District shall not attempt or purport to extend the faith and credit of Contractor to any third party, person or entity. The District acknowledges and agrees that it has no authority to enter into any contract with a third party that would bind or in any way obligate Contractor.

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

Poudre School District
Attn: Risk Management
2407 LaPorte Avenue Fort Collins, CO 80521
Email: coi@psdschools.org

Any insurance and/or self-insurance carried by the District is excess of the coverage extended to the District by Service Provider. The insurance requirements specified in this section 12 shall not reduce the indemnification liability that Contractor has assumed in section 13 below.

Commercial General Liability

Minimum Limits

- | | |
|--|----------------------------|
| a. Commercial General Liability | \$1,000,000 per occurrence |
| b. General Aggregate | \$2,000,000 |
| c. Products/Completed Operations Aggregate | \$2,000,000 |
| d. Personal/Advertising Injury | \$1,000,000 |
| e. Coverage must be written on an "occurrence" basis. | |
| f. Solely with respect to the Contractor's General Liability policy, Poudre School District R-1 and its elected officials, employees, agents, and volunteers shall be named as an additional insured or covered as an additional insured by way of a blanket endorsement and shall be insured to the full limits of liability purchased by the Provider even if those limits of liability are in excess of those required by this Agreement. | |

Technology Errors and Omissions Liability (Professional Liability, including Network Security and Privacy Liability)

Minimum Limits

- | | |
|---|-------------|
| a. Per Loss | \$1,000,000 |
| b. Aggregate | \$3,000,000 |
| c. With respect to claims made policies: such policies shall extend for a period of three (3) years beginning at the time work under this Agreement is completed. Provider shall maintain continuous coverage, as required by the Agreement, for this period. | |

Such insurance shall provide coverage for:

- a. Liability arising from theft, dissemination and/or use of confidential information (defined term including but not limited to bank account, credit card account, personal information such as name, address, social security numbers, etc. information) stored or transmitted in electronic form.
- b. Network Security Liability arising from the unauthorized access to, use of or tampering with computer systems including hacker attacks, inability of an authorized third Party to gain access to Contractor's services including denial of service, unless caused by a mechanical or electrical failure.
- c. Liability arising from the introduction of a computer virus into, or otherwise causing damage to, a District or third person's computer, computer system, network, or similar computer related property and the data, software, and programs thereon.

Crime Coverage (for agreements allowing privileged access to network systems, valuable property or sensitive data)

Minimum Limit

- | | |
|-------------|-------------|
| a. Per Loss | \$1,000,000 |
|-------------|-------------|

The policy shall include:

- a. Coverage for all directors, officers, agents, and employees of the Provider.
- b. Employee dishonesty, forgery and alteration, monies and securities, and computer (cyber) crime.
- c. Extended theft and mysterious disappearance.

The policy shall not contain a condition requiring an arrest and conviction.

Policy must be endorsed to cover Third Party Fidelity and include Poudre School District R-1 as a Loss Payee.

14. **Indemnification.** The Contractor shall indemnify and hold harmless the District and the District's Board members, employees, representatives and agents from and against any claims that the grant of a right to, or the access and use by, District and its Users of the Software or any Service (or any Deliverables if applicable) in accordance with the Agreement infringes a validly existing United States trademark, copyright, patent, or other proprietary right, and pay any final judgment awarded or Contractor-negotiated settlement. Contractor's obligations under this Section are conditioned upon District providing Contractor (i) prompt written notice of any claim; ; and (ii) such cooperation as Contractor may reasonably request with respect to the defense or settlement of such claim at Contractor's expense. District will not admit liability, take any position adverse or contrary to Contractor, or otherwise attempt to settle any claim or action for which it is seeking indemnification without the express written consent of Contractor. If, in Contractor's sole opinion, an infringement claim may have validity, then Contractor may modify the Software or Service to make it non-infringing, procure any necessary license, or replace the affected item with one that is reasonably equivalent in function and performance. If Contractor determines in its sole opinion that none of these alternatives are reasonably available, then Contractor may terminate the Agreement, District will

discontinue using the allegedly infringing Software or Service and Contractor will issue District a pro-rata refund of any prepaid Subscription Fee for such Software or Service based on the number of months remaining in the then-current Initial Term or Renewal Term. Contractor has no obligation under this Section for any third-Party claim arising from: (i) District Data or Contractor's compliance with District's or its representatives' designs, specifications, instructions, or technical information; (ii) modifications to the Software, deliverables or Service not made by Contractor; (iii) District's use of the Software or Service that is non-compliant with the Documentation; (iv) use of the Software or Service in any manner that is not authorized or is not permitted by the Agreement; or (v) District's use or combination of the Software or Service with any other Software, hardware, or services that are not provided by Contractor, provided such claim is solely caused by such combination. This Section states Contractor's entire liability and District's sole and exclusive remedy for claims of infringement.

15. **Disclaimer of Certain Damages.** The Parties acknowledge the District is a Government Entity, and therefore the following terms create obligation to the District only as permitted by law.

15.1. SUBJECT TO SECTION 15.4: IN NO EVENT WILL EITHER PARTY OR ITS AFFILIATES BE LIABLE OR RESPONSIBLE TO THE OTHER PARTY FOR: (I) ANY SPECIAL, INCIDENTAL, PUNITIVE, INDIRECT OR CONSEQUENTIAL DAMAGES; OR (II) LOSS OF PROFITS, BUSINESS, GOODWILL, ANTICIPATED SAVINGS, OR USE; PROPERTY DAMAGE; OR BUSINESS INTERRUPTION, IN EACH CASE ARISING OUT OF OR IN ANY WAY RELATED TO THE AGREEMENT, ANY DILIGENT SERVICE, PROFESSIONAL SERVICES, OR SOFTWARE (WHETHER CAUSED BY BREACH OF CONTRACT OR TORT (INCLUDING NEGLIGENCE) OR BREACH OF STATUTORY DUTY OR ARISING IN ANY OTHER WAY).

15.2. SUBJECT TO SECTION 15.4, THE FOREGOING DISCLAIMERS WILL APPLY EVEN IF: (I) A PARTY HAS BEEN ADVISED OF THE POSSIBILITY OF THE DAMAGES; (II) THE LIMITED REMEDIES SET FORTH HEREIN FAIL OF THEIR ESSENTIAL PURPOSE, AND (III) REGARDLESS OF IF THE LIABILITY IS BASED ON CONTRACT, TORT, NEGLIGENCE, STRICT LIABILITY, PRODUCT LIABILITY OR OTHERWISE.

16. **Limitations on Liability.** The Parties acknowledge the District is a Government Entity, and therefore the following terms create obligation to the District only as permitted by law.

16.1. SUBJECT TO SECTION 15.4, IN NO EVENT WILL THE AGGREGATE LIABILITY OF EITHER PARTY OR ITS AFFILIATES (TO THE EXTENT NOT DISCLAIMED UNDER SECTION 14) ARISING OUT OF OR IN CONNECTION WITH THE AGREEMENT (WHETHER CAUSED BY BREACH OF CONTRACT OR TORT (INCLUDING NEGLIGENCE OR BREACH OF STATUTORY DUTY OR ARISING IN ANY OTHER WAY)) EXCEED THE TOTAL FEES PAID OR PAYABLE TO CONTRACTOR FROM CLIENT UNDER THE AGREEMENT DURING THE TWELVE (12) MONTH PERIOD PRIOR TO THE TIME AT WHICH THE LOSS,

COST, CLAIM OR DAMAGES AROSE.

- 16.2. SUBJECT TO SECTION 10.4, THE EXISTENCE OF MULTIPLE CLAIMS UNDER OR RELATED TO THE AGREEMENT OR ANY ORDER FORMS, SERVICE OR SOFTWARE WILL NOT ENLARGE OR EXTEND THE LIMITATION ON MONEY DAMAGES.
- 16.3. WITHOUT LIMITING SECTIONS 15.1 AND 15.2 (BUT SUBJECT TO SECTION 15.4), IN NO EVENT WILL CONTRACTOR BE LIABLE FOR LOSS, CORRUPTION OR COMPROMISE OF THE CONFIDENTIALITY OF DISTRICT DATA, UNLESS THE LOSS, CORRUPTION OR COMPROMISE IS DUE SOLELY TO CONTRACTOR'S BREACH OF THIS AGREEMENT, CONTRACTOR'S NEGLIGENCE OR CONTRACTOR'S INTENTIONAL MISCONDUCT.
- 16.4. Nothing in the Agreement excludes the liability of either Party: (a) for death or personal injury caused by that Party's negligence; (b) for fraud or fraudulent misrepresentation; (c) for fees due under the Agreement; (d) for misappropriation or infringement of the other Party's intellectual property rights; (e) for a Party's express indemnification obligations under the Agreement; or (f) for any other liabilities that cannot be excluded by law.

17. Content Services.

- 17.1. Scope of Applicability. The provisions of this Section shall apply solely to that portion of any Service which provides, distributes, performs, broadcasts, or otherwise makes available any data, data structure, metadata, metrics, charts, graphs, literature, or other content in any form and/or any derivatives thereof, including, where applicable, all updates delivered thereto (but at all times excluding District Data) (referred to herein as "Content Services").
- 17.2. Enhancements or Revisions to Content. Contractor reserves the right to alter or modify the Content Services and any portions or configurations thereof from time to time. Such alterations and/or modifications may include, without limitation, addition or withdrawal of features and/or data or changes in instructions and/or documentation.
- 17.3. Specific Restrictions. Without limiting anything else in the Agreement, District shall not (and shall ensure that each User shall not) perform any of the following acts, except as otherwise expressly permitted by the Agreement or with the express written permission of Contractor:
- 17.3.1. access the Content Service except in conjunction with the Service or remove or alter any copyright, trademark or other proprietary notice appearing on or within the Content Services;
- 17.3.2. license, sublicense, transfer, sell, resell, publish, reproduce, and/or otherwise redistribute any data within the Content Service or any components thereof in any manner, including, but not limited to, via or as part of any internet site;

17.3.3. (provide access to the Content Service or any portion thereof to any person, firm or entity other than a User, including, but not limited to, any Affiliate not expressly identified in the Agreement;

17.3.4. use and access the Content Services other than as permitted under this Agreement; or

17.3.5. copy, reproduce, modify, distribute, create derivative works of, publicly display, publicly perform, reverse engineer, decompile, or disassemble the Content Services or any portions thereof.

17.4. **Disclaimer.** CONTRACTOR AND ANY THIRD-PARTY PROVIDERS MAKE NO REPRESENTATIONS, CONDITIONS OR WARRANTIES REGARDING THE COMPLETENESS, VERACITY, FITNESS FOR A PARTICULAR PURPOSE, MERCHANTABILITY OR ACCURACY OF THE CONTENT SERVICES OR ANY COMPONENT THEREOF, OR FOR ANY DELAYS, INTERRUPTIONS OR OMISSIONS. THE CONTENT SERVICES ARE FOR EDUCATIONAL AND INFORMATIONAL PURPOSES AND DO NOT CONSTITUTE LEGAL, ACCOUNTING OR OTHER PROFESSIONAL ADVICE. CONTENT SERVICES SHOULD NOT BE DEEMED TO SET FORTH ALL APPROPRIATE PROCEDURES, TESTS OR CONTROLS OR TO SUGGEST THAT OTHER PROCEDURES, TESTS OR CONTROLS THAT ARE NOT INCLUDED MAY NOT BE APPROPRIATE. CLIENT AND ITS USERS ARE RESPONSIBLE FOR APPLYING PROFESSIONAL JUDGEMENT AND APPROPRIATE PROCEDURES, TESTS OR CONTROLS. THE CONTENT SERVICES AND ANY COMPONENTS THEREOF ARE PROVIDED ON AN “AS IS” AND “AS AVAILABLE” BASIS, AND DISTRICT’S USE OF THE CONTENT SERVICES IS AT DISTRICT’S OWN RISK. CONTRACTOR AND ANY THIRD-PARTY PROVIDERS ARE NOT LIABLE FOR THE DATA, DATA STRUCTURE, METADATA, METRICS, CHARTS, GRAPHS, LITERATURE, OR OTHER CONTENT IN ANY FORM AND ANY DERIVATIVES THEREOF, (INCLUDING, WHERE APPLICABLE, ALL UPDATES TO THE FOREGOING) IN EACH CASE INCLUDED IN THE CONTENT SERVICES OR ANY DECISION OR CONSEQUENCE BASED ON USE OF THE FOREGOING.

18. **Freemium Services.** To the extent permitted by law, from time to time, Contractor may make available certain product, service or functionality to District at no charge (“Freemium Services”). District may choose to try such Freemium Services in District’s sole discretion. Unless otherwise determined by Contractor, no Order Form is specifically required to enable District’s use of Freemium Services. Certain Freemium Services are intended for evaluation purposes and not for production use. Freemium Services are not supported and may be subject to supplemental terms in addition to those set out in this Agreement, which will be presented to District. Freemium Services are not considered part of the Service, Software or similar terms under this Agreement; however, all restrictions and District commitments under this Agreement shall apply to District’s use of Freemium Services (including for the avoidance of doubt Section 4 (Access Right; Restrictions)). Unless otherwise stated, Freemium Services are available for District’s use during the Term, except that any Freemium Services that are made

available on a trial basis will expire upon the earlier of one year from the trial start date or the date that a version of the Freemium Services becomes generally available without the applicable Freemium Services designation. Contractor may discontinue Freemium Services at any time in Contractor's sole discretion and may never make Freemium Services generally available. Contractor will have no liability for any harm or damage arising out of or in connection with a Freemium Service. FREEMIUM SERVICES ARE PROVIDED "AS IS" AND AS AVAILABLE, EXCLUSIVE OF ANY WARRANTY, REPRESENTATION, GUARANTEE, CONDITION OR TERM OF ANY KIND, WHETHER EXPRESS, IMPLIED OR IMPOSED BY LAW. CONTRACTOR SHALL HAVE NO INDEMNIFICATION OBLIGATIONS NOR LIABILITY OF ANY TYPE WITH RESPECT TO THE FREEMIUM SERVICES. IN THE EVENT SUCH EXCLUSION OF LIABILITY IS NOT ENFORCEABLE UNDER APPLICABLE LAW, CONTRACTOR'S LIABILITY WITH RESPECT TO FREEMIUM SERVICES SHALL NOT EXCEED THE GREATER OF (A) \$500.00 OR (B) THE MINIMUM ENFORCEABLE UNDER APPLICABLE LAW.

19. **Governmental Immunity.** It is specifically understood and agreed that nothing contained in this Agreement shall be construed as an express or implied waiver by the District of any of the immunities, rights, benefits, protections, or other provisions of the Colorado Constitution or Governmental Immunity Act, C.R.S. §§ 24-10-101 *et seq.*, as now or hereafter amended.
20. **Remedies.** INTENTIONALLY OMITTED.
21. **Notices and Communications.** All notices and communications required or permitted under this Agreement shall be in writing and shall be: (a) sent via certified mail, return receipt requested and postage prepaid, to the address of the other Party set forth below; or (b) sent via e-mail to the other Party via the e-mail address set forth below.

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

Diligent Corporation
Attn: Legal
111 West 33rd Street, 16th
Floor,
New York, NY 10120
E-mail: Legal@diligent.com

22. **General Provisions**

- 22.1. **No Assignment.** Neither Party shall this Agreement or any of its rights, interests or obligations under this Agreement without the prior written consent of the other Party, which consent shall not be unreasonably withheld, except to an affiliate or in connection with a merger, acquisition, corporate reorganization or sale of all or substantially all of its assets with notice to the other Party. Notwithstanding the foregoing, Contractor may freely subcontract its rights or obligations under this Agreement.
- 22.2. **No Waiver.** All waivers under the Agreement must be in writing to be effective. The Parties agree that no assent or waiver, express or implied, to any breach of any one or more of the covenants of this Agreement shall be construed as or deemed to be an assent

to or a waiver of any subsequent breach.

- 22.3. **Press Contacts/News Releases.** The Contractor shall not initiate any press, media, or social media, contact nor respond to press, media or social media requests regarding this Agreement and/or any related matters concerning the District without the prior written approval of the District.
- 22.4. **Amendment or Modification.** No amendment or modification of this Agreement shall be valid unless set forth in writing and executed by the District and the Contractor through written amendments to the Agreement, in the same manner and with the same formality as was done for this Agreement.
- 22.5. **Conflict of Terms.** In the event of any conflict of terms found between this Agreement, any Order form, incorporated exhibits, any other terms and conditions, end user license agreements or privacy policies, the terms of the Agreement shall prevail, then the terms of the Order Form.
- 22.6. **Survival of Certain Contract Terms.** Notwithstanding anything herein to the contrary, the Parties understand and agree that all terms and conditions of this Contract and the exhibits and/or attachments hereto which may require continued performance, compliance, or effect beyond the termination date of the Contract shall survive such termination date and shall be enforceable by a Party in the event of failure to perform or to comply by the other Party.
- 22.7. **Governing Law and Venue.** All issues regarding the formation, performance and/or legal enforcement of the Contract shall be governed by and construed in accordance with the laws of the State of Colorado. Venue for the resolution of any disputes arising out of or relating to the Contract shall be in Larimer County, Colorado.
- 22.8. **Severance.** If any provision (or part of a provision) of the Agreement is found to be invalid or unenforceable by any court of competent jurisdiction, the provision will be enforced to the fullest extent permissible to effect the Parties' intent, and the invalidity or unenforceability will not operate to invalidate the remaining provisions of the Agreement. If any invalid, unenforceable or illegal provision would be valid, enforceable or legal if some part of it were deleted, the provision shall apply with whatever modification is necessary to give effect to the commercial intention of the Parties.
- 22.9. **No Third-Party Beneficiary.** Enforcement of the terms and conditions of this Agreement, and all rights of action relating to such enforcement, shall be strictly reserved to the District and the Contractor. Nothing contained in this Agreement shall give or allow any claim or right of action whatsoever by any third person other than the District or the Contractor. It is the express intent of the Parties that any third person receiving services or benefits pursuant to this Agreement shall be deemed an incidental beneficiary only.
- 22.10. **Binding Arbitration Prohibited.** The District does not agree to binding arbitration by any extra-judicial body or person. Any provision to the contrary is null and void.

- 22.11. **Attorney Fees and Costs.** INTENTIONALLY OMITTED.
- 22.12. **Binding Effect.** This Agreement shall be binding upon and inure to the benefit of the Parties and their respective heirs, legal representatives, successors and permitted assigns.
- 22.13. **Headings.** The headings used in this Agreement are for convenience only and shall have no effect upon the construction or interpretation of this Agreement.
- 22.14. **Entire Agreement.** This Agreement constitutes the entire Agreement of the Parties regarding the subject matter addressed herein and supersedes all prior Agreements, whether oral or written, pertaining to said subject matter. The Agreement supersedes any conflicting terms in the District's purchase order or other ordering document. Any terms of trade stated or referenced in District's purchase order, or any other terms to which Contractor has not specifically agreed in a writing signed by an authorized representative of Contractor, are not binding on Contractor.
- 22.15. **Signatures.** This Agreement may be executed and delivered via portable document format (pdf), and the pdf signature of any Party shall be considered valid, binding, effective and an original for all purposes. This Agreement may be signed in counterparts, and each counterpart shall be deemed an original, and all the counterparts taken as a whole shall constitute one and the same instrument.
- 22.16. **Warranty of Authority.** The individuals signing below represent and warrant that they have the authority to execute this Agreement on behalf of their respective organizations and bind their respective organizations to the terms of this Agreement.
- 22.17. **Links to Third-Party Sites.** Services and/or Software may contain links to, or allow District or its Users to connect and use, certain third-party products, services, or software ("Third-Party Services", and each, a "Third-Party Service") in conjunction with District's use of the Service. To take advantage of these features, Users may be required to sign up or log into such Third-Party Service or their respective websites or applications. District acknowledges that any use of such Third-Party Service is governed solely by the terms and conditions and privacy policy of such Third-Party Service, and that Contractor does not endorse, is not liable for, and makes no representations as to any Third-Party Service, its content, or the manner in which such Third-Party Service uses, stores or processes any data. Certain features of certain Services and/or Software may depend on the availability of these Third-Party Services and the features and functionality they make available. Contractor does not control Third-Party Service features and functionality, which may change without notice to Contractor or District. If any Third-Party Service stops providing access to some or all of the features or functionality currently or historically available to Contractor, or stops providing access to such features and functionality on reasonable terms, as determined by Contractor in its sole discretion, Contractor may stop providing access to certain features and functionality of the Services and/or Software. Contractor will not be liable to District for any refunds or any damage or loss arising from or in connection with any such change made by a Third-Party Service or any resulting change to the Service

and/or Software. District and its User irrevocably waive any claims against Contractor with respect to any Third-Party Services.

- 22.18. **Force Majeure**. Neither Party will be responsible for failure of performance, other than for an obligation to pay money, due to causes beyond its control, including: acts of God or nature; labor disputes; sovereign acts of any federal, state or foreign governments; network and/or computer failure or shortage of supplied materials (“Force Majeure Event”); provided that the affected Party makes a reasonable attempt to remove the impact of the Force Majeure Event as soon as reasonably possible. Either Party will have the right to terminate the Agreement upon written notice if a Force Majeure Event continues to impact performance of the other Party for more than thirty (30) consecutive days.
- 22.19. **Export**. Neither Party shall export, directly or indirectly, any technical data acquired from the other Party under this Agreement (or any products, including software, incorporating any such data) to any country or person in breach of any applicable laws or regulations regulating export (“Export Control Laws”). The District shall ensure that its Users do not access any Service (or use the Software or any Deliverables) in breach of Export Control Laws.
- 22.20. **Third-Party Beneficiaries**. Contractor’s Third-Party Providers are third-party beneficiaries under this Agreement and may enforce the terms and conditions of this Agreement against District as it relates to such Third-Party Provider, but such Third-Party Providers will not be liable to District for any direct or indirect damages with respect to the Content Services or any matters arising under this Agreement with respect to the Content Services. Other than as expressly set out in this Section 21.20, this Agreement does not and is not intended to confer rights on anyone other than the two Parties to the Agreement.

23. **Definitions**

- 23.1. **“Content Service”** means that portion of any Service which provides, distributes, performs, broadcasts, or otherwise makes available any data, data structure, metadata, metrics, charts, graphs, literature, or other content in any form and/or any derivatives thereof, including, where applicable, all Updates delivered thereto (but at all times excluding District Data).
- 23.2. **“District Data”** means the information successfully uploaded, entered, created and stored by District within any Service.
- 23.3. **“Documentation”** means the training materials, specifications, and technical information regarding any Service and Software provided by Contractor to District and its Users, and all other information and User instructions regarding the capabilities, operation, installation and access to the Software and Service, as may be updated by Diligent from time to time. For the avoidance of doubt, Documentation may be made available by electronic means.

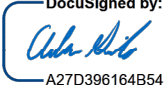
- 23.4. "**Effective Date**" has the meaning set out in the Order Form or, if no Effective Date is specified, the date the District purchases access to, or otherwise accesses or uses, any Contractor products or services.
- 23.5. "**Freemium Service**" means a product, service or functionality provided by Contractor that may be made available to District to use, at District's option and at no additional charge, which is designated as beta, limited release, early access, "freemium," free access, or by a similar description.
- 23.6. "**Order**" or "**Order Form**" means the ordering document or invoice issued by Contractor, its Affiliates or one of their authorized resellers for the purchase by District of access to any Services, Software, and/or Professional Services, which identifies the applicability of the Agreement to such access. "Order" or "Order Form" includes any Statement of Work agreed by both Parties. An Order Form may for the avoidance of doubt be issued electronically.
- 23.7. "**Product Terms**" means any specific terms and conditions applicable to specific Service(s), Software, and/or Professional Services ordered by the District.
- 23.8. "**Professional Services**" means those specific consulting services (if any) agreed to in an Order Form to be delivered by Contractor in connection with a Service (including any services identified as professional services, consulting services, managed services, or implementation services in an Order Form), but excluding support services.
- 23.9. "**Service**" means each proprietary software-as-a-service developed by Contractor, as described in more detail in the applicable Documentation. For clarity, Service includes Content Services.
- 23.10. "**Software**" means any proprietary downloadable software applications and products developed by Contractor and provided to District (and its Users) for installation and use by District (and its Users) on a personal computer, tablet or other device, including any Updates thereto provided by Contractor during the Term.
- 23.11. "**Statement of Work**" or "**SOW**" means an Order Form solely for Professional Services to be provided in connection with a Service or Software (such Service purchased under a separate Order Form).
- 23.12. "**Third-Party Provider**" means a supplier of data, information, software, services or other items that are part of or otherwise used in connection with the Content Services.
- 23.13. "**Updates**" means corrections, bug fixes, patches, modifications, updates and enhancements that Contractor, in its sole discretion, makes generally available to its customer base.
- 23.14. "**User**" means an individual identified by District as authorized to access a Service in accordance with the applicable Order Form.

23.15. “**User ID**” means a unique alphanumeric identifier assigned to a User so that the User can access the Service, Software and use the corresponding authorized features of a Service.

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

DILIGENT CORPORATION

By: 
A27D396164B5406...

Name: Adam Ginsberg

Title: Chief Accounting Officer

POUDRE SCHOOL DISTRICT R-1

By:

R. David Montoya

Name: R. David Montoya

Title: Executive Director of Finance

Community Additional Terms

The following additional product terms apply when the District purchases access to the Services identified as “Community”, “Community Essential,” or “Community by Diligent” (and any references to “Service” on this page shall be understood to refer only to such Diligent Service):

1. The definition of “Users”, for purposes of the Service order under this Order Form, shall extend to any end users for whom the District elects to provide access to the Service, which may include members of the public to whom the District may make available the District Data (“Public Users”). There is no limit to the number of Users District may have under this Order Form. For the avoidance of doubt, Public Users may or may not receive User IDs. District is responsible and liable for use of the Service by its Users and all consequences of such use (including any and all consequences and liabilities resulting from Users making District Data publicly accessible through the Service). For the avoidance of doubt, Contractor does not have obligations of confidentiality with respect to District Data that has been made publicly available.
2. District shall be solely responsible for: (a) internal management of its instance of the Service; (b) responding to third Party requests for records relating to District Data or any User’s use of the Service; and (c) notifying Contractor if it becomes aware of any unauthorized use of the Service.
3. To the extent permitted by law and approved by the Parties, the terms of this Agreement may be extended for use by other similarly situated state and/or governmental entities (“Related Entities”) upon execution by Contractor and the Related Entity of an addendum or Order Form document referencing this Agreement and setting forth all terms and conditions for such use. Applicable fees for any such Related Entity will be quoted by Contractor to the District and/or any Related Entity upon written request, and shall be incorporated into the addendum or Order Form document.
4. District will obtain from Users, and any data subjects of District Data, any consents necessary to allow Administrators to engage in the activities described in this Agreement and to allow Contractor to provide the Service.
5. District may specify Users as “Administrators.” Administrators have the ability to monitor, restrict, or terminate access to the Service. Customer is responsible for: (i) maintaining the confidentiality of passwords and Administrator accounts; (ii) managing access to Administrator accounts; and (iii) ensuring that Administrators’ use of the Service complies with this Agreement.
6. If any billing agent other than Diligent Corporation is identified in the Order Form, District agrees to pay the designated billing agent for all charges or fees set out in this Order Form.
7. Unless otherwise expressly set out in an applicable Order Form, unlimited meeting related content and up to 10 GB of storage for non-meeting related content is included in the fees set out in an applicable Order Form. Additional storage can be purchased as required at Contractor’s then-current rates.

ORDER FORM

This Order Form is made by and between Poudre School District R-1 (“**Client**”) whose principal place of business is 2407 Laporte Avenue, Fort Collins, Colorado, 80521-2297, United States and Diligent Corporation (hereinafter “**Diligent**”), whose principal place of business is located at 1111 19th St NW, 9th Floor, Washington DC 20036. The Order Form is effective as of the **Effective Date**, as defined below. Each of Client and Diligent are a “**Party**” and are together the “**Parties**.” All amounts are in USD currency.

A. Terms

This Order Form, together with the Software Services Agreement Between Diligent Corporation And Poudre School District R-1 (“General Terms and Conditions”) attached hereto and the applicable Product Terms as identified at <https://diligent.com/product-terms>, form the entire agreement between the Parties in respect of the products and services set forth in this Order Form (the “Agreement”). For purposes of this Agreement, in the event of any conflict between the Order Form and the General Terms and Conditions, the Order Form shall control. Notwithstanding anything to the contrary in any purchase order or other document provided by Client, any product or service provided by Diligent to Client in connection with a purchase order related to this Order Form is conditioned upon Client’s acceptance of the Agreement. Any additional, conflicting or different terms proffered by Client in a purchase order or otherwise shall be deemed null and void.

B. Diligent Services

Subscriptions

Description	Quantity	Annual Price Per	Total Annual Price
Diligent Community Subscription	1	\$15,000.00	\$15,000.00
Committee Manager w/ 5 Committees	1	\$5,000.00	\$5,000.00

Total Annual Subscription Fee: \$20,000.00

One-Time Installation Fee: \$0.00

One-Time Additional Services

Description	Quantity	Price Per	Total Price
Community Flexible Implementation	1	\$1,000.00	\$1,000.00

One-Time Services Fee: \$1,000.00

Upon execution of this Agreement, Diligent will issue an invoice for the amount of \$21,000.00, plus applicable taxes.

Pricing is valid until February 28, 2023. If the Agreement received is executed by Client after this date, Diligent may accept or reject the Agreement in its sole discretion.

Any notices of non-renewal issued by Client to Diligent must be provided to billing@diligent.com. All Subscription Fees shall be payable on an annual basis in advance. All payments are due Net 30 days from the date of invoice.

C. Notices And Client Information

Invoicing		Notices
Client Contact Name:	Poudre School District R-1	Poudre School District R-1
Address:	2407 LaPorte Avenue, Fort Collins, CO 80521	2407 LaPorte Avenue, Fort Collins, CO 80521
Billing Contact:	Accounts Payable	Tracy Stibitz

Phone:		970-490-3564
E-mail:	ap@psdschools.org	tstibitz@psdschools.org
Additional Email:		
VAT/Tax ID:		
Purchase Order:		

IF APPLICABLE: ☒ Tax-exempt Entity: Please attach a copy of your tax-exemption certificate to this order form.

Notices to Diligent:

Except as otherwise identified, all notices to Diligent shall be sent to:

Diligent Corporation
111 West 33rd Street, 16th Floor, New York, NY 10120

Legal@diligent.com

IN WITNESS WHEREOF, the Parties hereto have executed the Agreement as of the Effective Date.

Poudre School District R-1
("Client")

By: *D. David Montoya*

Name: Dave Montoya

Job Title: CFO

Date: Feb 7, 2023

Diligent Corporation
("Diligent")

By: A27D396164B5406...

Name: Adam Ginsberg

Job Title: Chief Accounting Officer

Date: February 7, 2023 | 9:48 PM EST