

**A Better Way Athletics, LLC**  
**ORDER FORM**

10710 Midlothian Turnpike, Suite 300  
 Richmond, VA 23235  
 804-718-0543 | www.abetterwayathletics.com



**CONTRACT INFORMATION**

Client information		A Better Way Athletics Sales Representative:	
Client Name:	Poudre School District Colorado ("Client" or "you")	Salesperson:	Chris Scheich, AD System Specialist
Contact Name:	Brandon Carlucci	Telephone:	804-718-0543
Telephone:	(970) 490-3106	Email:	sales@abetterwayathletics.com
Email:	<a href="mailto:bcarlucci@psdschools.org">bcarlucci@psdschools.org</a>		
Order Form Information		Additional Terms	
Order Form Reference #	C100181	Payment Terms:	Net 30
Order Form Effective Date:	07/01/2024		
Order Form Expiration Date:	06/30/2028		

**PURCHASE SUMMARY**

Subscription Services				
Item #	Product	Term Start Date	Term End Date	Fee
1	Annual A Better Way Athletics ("ABW") Subscription for Client. Annual Subscription includes unlimited access to the ABW Curriculum – Year 1	07/01/2024	06/30/2025	\$30,00.00
2	ABW Initial Setup Fee (One Time Fee at Contract Inception)	N/A	N/A	\$6,000.00
3	Annual Subscription - Year 2	07/01/2025	06/30/2026	\$60,000.00
4	Annual Subscription - Year 3	07/01/2026	06/30/2027	\$60,000.00
5	Annual Subscription - Year 4	07/01/2027	06/30/2028	\$60,000.00
		<b>Total Year 1</b>		<b>\$36,000.00</b>
		<b>Total Year 2</b>		<b>\$60,000.00</b>
		<b>Total Year 3</b>		<b>\$60,000.00</b>
		<b>Total Year 4</b>		<b>\$60,000.00</b>

- A Better Way Athletics will invoice Client for Year #1 Subscription Fee and Initial Setup Fee upon contract inception. A Better Way Athletics will invoice each subsequent year individually for payment at the Term Start Date of each year, i.e 07/01/2025, 07/01/2026 and 07/01/2027.
- Client has the right to Terminate this Order Form for Convenience, only upon 30 days written notice before the start of Annual Subscription Year 2. No other Termination for Convenience provisions are allowed and all other Terminations are governed by Section 5.1 of the Terms & Conditions detailed below. In the case that such Termination for Convenience is executed by Client, ABW will not provide any refunds for any prior payments made.

To purchase, please complete the electronic signature process from which this contract was sent or sign below and send a scanned pdf file of this Order Form by e-mail to [contracts@abetterwayathletics.com](mailto:contracts@abetterwayathletics.com).

Each party has executed this Order Form by its duly authorized representative.

**Client**

**A Better Way Athletics, LLC**

Signature

Signature

Printed Name

Printed Name

Title

Title

Date

Date

## TERMS AND CONDITIONS

### 1. Scope of Agreement

- 1.1. **Purchased Services.** "Purchased Services" means Services that Client or Client's Affiliates purchase under an Order Form, as distinguished from those provided pursuant to a free trial. A Better Way Athletics ("ABW") shall make the Purchased Services available to Client pursuant to this Agreement and the relevant Order Forms during a subscription term. Client agrees that Client's purchases hereunder are neither contingent on the delivery of any future products or services nor dependent on any oral or written public comments made by ABW regarding future products or services.
- 1.2. **Affiliates.** ABW and Client agree that Affiliates of Client may acquire Purchased Services from ABW by entering into an Order Form with ABW that incorporates the terms and conditions of this Agreement. The parties acknowledge that adjustments to the terms of this Agreement may be made in a particular Order Form. "**Affiliate**" means an entity that owns or controls, is owned or controlled by, or is under common control or ownership with a party, where "**control**" is the possession, direct or indirect, of the power to direct or cause the direction of the management and policies of an entity, whether through ownership of voting securities, by contract or otherwise.

### 2. Obligations of the Parties

- 2.1. **ABW Responsibilities.** ABW shall: (i) provide ABW's basic support for the Purchased Services to Client at no additional charge, (ii) use commercially reasonable efforts to make the Purchased Services available 24 hours a day, 7 days a week, except for: (a) planned downtime (of which ABW shall give at least 8 hours notice via the Purchased Services, or (b) any unavailability caused by circumstances beyond ABW's reasonable control, including without limitation, acts of God, acts of government, floods, fires, earthquakes, civil unrest, acts of terror, strikes or other labor problems (other than those involving ABW employees), Internet service provider failures or delays, or denial of service attacks, and (iii) provide the Purchased Services only in accordance with applicable laws and government regulations.
- 2.2. **Users.** "Users" means individuals who are authorized by Client to use the Purchased Services, for whom subscriptions to a Purchased Service have been ordered, and who have been supplied user identifications and passwords by Client (or by ABW at Client's request). Users may include but are not limited to Client employees, consultants, contractors and agents, and third parties such as Client's athletes and their families.
- 2.3. **Client Responsibilities.** Client shall (i) be responsible for Users' compliance with this Agreement, (ii) be responsible for the accuracy, quality and legality of Client Data and of the means by which Client acquired Client Data, (iii) use commercially reasonable efforts to prevent unauthorized access to or use of the Services, and notify ABW promptly of any such unauthorized access or use, and (iv) use the Services only in accordance with this Agreement and applicable laws and government regulations. Client shall not (a) make the Services available to anyone other than Users, (b) sell, resell, rent or lease the Services, (c) use the Services to store or transmit infringing, libelous, or otherwise unlawful or tortious material, or to store or transmit material in violation of third-party privacy rights, (d) use the Services to store or transmit Malicious Code, (e) interfere with or disrupt the integrity or performance of the Services or third-party data contained therein, or (f) attempt to gain unauthorized access to the Services or their related systems or networks.
- 2.4. **On-Site Obligations.** Though it is not anticipated that ABW personnel will be working on Client's premises, if ABW personnel are working on Client's premises (a) Client will provide a safe and secure working environment for ABW personnel, and (b) ABW will comply with all reasonable workplace safety and security standards and policies, applicable to Client's employees, of which ABW is notified in writing by Client in advance.

### 3. Payment

- 3.1. **Fees and Expenses.** Client shall pay all fees specified in all Order Forms hereunder. Except as otherwise specified herein or in an Order Form, (i) fees are based on services purchased and not actual usage, (ii) payment obligations are non-cancelable and fees paid are non-refundable, and (iii) the number of subscriptions purchased cannot be decreased during the relevant subscription term stated on the Order Form. Fees are stated in United States Dollars, must be paid in United States Dollars, and, unless otherwise specified in writing, do not include out-of-pocket expenses or shipping costs. **Overdue Charges.** If any charges are not received from Client by the due date, then at ABW's discretion, (a) such charges may accrue late interest at the rate of 1.5% of the outstanding balance per month, or the maximum rate permitted by law, whichever is lower, from the date such payment was due until the date paid, and/or (b) ABW may condition future subscription renewals and Order Forms on payment terms shorter than those specified in Section 3.5 (Invoices).
- 3.2. **Suspension of Service and Acceleration.** If any amount owing by Client under this or any other agreement for ABW services is 30 or more days, ABW may, without limiting ABW's other rights and remedies, accelerate Client's unpaid fee obligations under such agreements so that all such obligations become immediately due and payable, and suspend ABW's services to Client until such amounts are paid in full. ABW will give Client at least 7 days' prior notice that Client's account is overdue, in accordance with Section 11.1 (Notices), before suspending services to Client.
- 3.3. **Payment Disputes.** ABW shall not exercise ABW's rights under Section 3.1 (Overdue Charges) or 3.2 (Suspension of Service and Acceleration) if Client is disputing the applicable charges reasonably and in good faith and are cooperating diligently to resolve the dispute.
- 3.4. **Travel Expenses.** Client shall pay necessary travel expenses for ABW personnel to travel to client's facilities for training or other support requested by Client. ABW will invoice travel expenses per Client's travel policies and procedures available at the time of travel.
- 3.5. **Invoices.** If Client desires credit terms with respect to the payment of Fees, Client will reasonably cooperate with ABW in establishing and periodically re-confirming Client's credit-worthiness. If credit terms are provided to Client, ABW will invoice Client

for the Fees upon ABW's acceptance of the applicable Order Form and upon acceptance of any future order. Unless otherwise specified in an Order Form and subject to ABW's approval of credit terms, Client will pay Fees and expenses, if any, no later than thirty (30) days from the date of each invoice; provided, however, that Fees for professional services, training, training credits and other service credits are due prior to delivery. Except as otherwise provided in this Agreement, any and all payments made by Client pursuant to this Agreement are non-refundable. ABW reserves the right to suspend or cancel performance of all or part of the Services and/or change its credit terms if actual payment has not been received within thirty (30) days of the invoice date.

**3.6 Taxes.** All Fees are exclusive of Taxes. Client will pay ABW an amount equal to any Taxes arising from or relating to this Agreement or an applicable Order Form which are paid by or are payable by ABW. "**Taxes**" means any form of sales, use, value added or other form of taxation and any fines, penalties, surcharges or interest, but excluding any taxes based solely on the net income of ABW. If Client is required to withhold or deduct any portion of the payments due to ABW, Client will increase the sum payable to ABW by the amount necessary so that ABW receives an amount equal to the sum it would have received had Client made no withholdings or deductions.

#### **4. Proprietary Rights**

**4.1. Marks.** Unless expressly stated in an Order Form, no right or license, express or implied, is granted in this Agreement for the use of any ABW, ABW Affiliate, Client or third party trade names, service marks or trademarks, including, without limitation, the distribution of the Purchased Services utilizing any ABW or ABW Affiliate trademarks.

**4.2. Client Data.** "Client Data" means all electronic data or information submitted by Client, or on behalf of Client by ABW, to the Purchased Services. Subject to the limited rights granted by Client hereunder, ABW acquires no right, title or interest from Client or Client's licensors under this Agreement in or to Client's Data, including any intellectual property rights therein.

**4.3. Suggestions.** ABW shall have a royalty-free, worldwide, irrevocable, perpetual license to use and incorporate into the Services any suggestions, enhancement requests, recommendations or other feedback provided by Client, including Users, relating to the operation of the Services.

#### **5. Term and Termination**

**5.1. Term and Termination of Order Form.** If Client or ABW materially breaches the terms of an Order Form, and such breach is not cured within thirty (30) days after written notice of the breach is given to the breaching party, then the other party may, by giving written notice of termination to the breaching party, terminate the applicable Order Form and/or this Agreement; provided, however, that no cure period will be required for a breach of Section 6 of this Agreement. The termination of an individual Order Form will not terminate any other Order Form or this Agreement unless otherwise specified in the written notice of termination. Without prejudice to any other right or remedy of ABW, in the event either party terminates an Order Form, Client will pay ABW for all Purchased Services provided up to the effective date of termination.

**5.2. Survival.** If this Agreement or an Order Form is terminated for any reason, Sections 3, 4, 5.2, 6, 7, 8, 9.2, 10, 11.1, 11.5-11.11, and 12 will survive any Termination of this Order Form.

**6. Continuing Business.** Nothing in this Agreement will preclude or limit ABW from providing Purchased Services, materials, or other services for itself or other clients, irrespective of the possible similarity of such Purchased Services, software, materials or services to those that might be delivered to Client. The terms of confidentiality in Section 8 will not prohibit or restrict either party's right to develop, use or market products or services similar to or competitive with the other party; provided, however, that neither party is relieved of its obligations under this Agreement.

#### **7. Limitation of Liability and Disclaimer of Damages**

**7.1. Limitation of Liability.** FOR ALL EVENTS AND CIRCUMSTANCES, ABW AND ITS AFFILIATES' AGGREGATE AND CUMULATIVE LIABILITY ARISING OUT OF OR RELATING TO THIS AGREEMENT AND ALL ORDER FORMS, INCLUDING WITHOUT LIMITATION ON ACCOUNT OF PERFORMANCE OR NON-PERFORMANCE OF OBLIGATIONS, REGARDLESS OF THE FORM OF THE CAUSE OF ACTION, WHETHER IN CONTRACT, TORT (INCLUDING, WITHOUT LIMITATION, NEGLIGENCE), STATUTE OR OTHERWISE WILL BE LIMITED TO DIRECT DAMAGES AND WILL NOT EXCEED THE AMOUNTS RECEIVED BY ABW DURING TWELVE (12) MONTHS IMMEDIATELY PRECEDING THE FIRST EVENT GIVING RISE TO LIABILITY, WITH RESPECT TO THE PARTICULAR ITEMS (WHETHER PURCHASED SERVICES, SOFTWARE, OTHER SERVICES OR OTHERWISE) GIVING RISE TO LIABILITY UNDER THE MOST APPLICABLE ORDERING DOCUMENT.

**7.2. Disclaimer of Damages.** NOTWITHSTANDING ANYTHING TO THE CONTRARY CONTAINED IN THIS AGREEMENT OR AN ORDER FORM, IN NO EVENT WILL ABW OR ITS AFFILIATES BE LIABLE TO CLIENT OR ITS AFFILIATES FOR DAMAGES OTHER THAN DIRECT DAMAGES, INCLUDING, WITHOUT LIMITATION: ANY INCIDENTAL, CONSEQUENTIAL, SPECIAL, INDIRECT, EXEMPLARY OR PUNITIVE DAMAGES, WHETHER ARISING IN TORT, CONTRACT, OR OTHERWISE; OR ANY DAMAGES ARISING OUT OF OR IN CONNECTION WITH ANY MALFUNCTIONS, REGULATORY NON-COMPLIANCE, DELAYS, LOSS OF DATA, LOST PROFITS, LOST SAVINGS, INTERRUPTION OF SERVICE, LOSS OF BUSINESS OR ANTICIPATORY PROFITS, EVEN IF ABW OR ITS AFFILIATES HAVE BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. LIABILITY FOR THESE DAMAGES WILL BE LIMITED AND EXCLUDED EVEN IF ANY EXCLUSIVE REMEDY PROVIDED FOR IN THIS AGREEMENT FAILS OF ITS ESSENTIAL PURPOSE.

#### **8. Confidentiality**

**8.1. Obligations.** During the term of this Agreement, both parties agree that (i) Confidential Information will be used only in accordance with the terms and conditions of this Agreement; (ii) each will use the same degree of care it utilizes to protect its own confidential information, but in no event less than reasonable care; and (iii) the Confidential Information may be disclosed only to

employees, agents and contractors with a need to know, and to its auditors and legal counsel, in each case, who are under a written obligation to keep such information confidential using standards of confidentiality not less restrictive than those required by this Agreement. Both parties agree that obligations of confidentiality will exist for a period of two (2) years following initial disclosure of the particular Confidential Information. "**Confidential Information**" means all information disclosed by either ABW or Client ("**Disclosing Party**") to the other party ("**Recipient**") during the term of this Agreement that is either (i) marked confidential or (ii) disclosed orally and described as confidential at the time of disclosure and subsequently set forth in writing, marked confidential, and sent to the Recipient within thirty (30) days following the oral disclosure.

**8.2. Exclusions.** Confidential Information will not include information which: (i) is or later becomes publicly available without breach of this Agreement, or is disclosed by the Disclosing Party without obligation of confidentiality; (ii) is known to the Recipient at the time of disclosure by the Disclosing Party; (iii) is independently developed by the Recipient without use of the Confidential Information; (iv) becomes lawfully known or available to the Recipient without restriction from a source having the lawful right to disclose the information; (v) is generally known or easily ascertainable by parties of ordinary skill in the business of the Recipient; or (vi) is software code in either object code or source code form that is licensed under an open source license. The Recipient will not be prohibited from complying with disclosure mandated by applicable law if, where reasonably practicable and without breaching any legal or regulatory requirement, it gives the Disclosing Party advance notice of the disclosure requirement.

## 9. Representations and Warranties

**9.1. General Representations and Warranties.** ABW represents and warrants that: (a) the Purchased Services will be delivered in a professional and workmanlike manner by qualified personnel; (b) it has the authority to enter into this Agreement with Client.

**9.2. Disclaimer of Warranty.** EXCEPT AS EXPRESSLY PROVIDED IN SECTION 9.1 OR BY A THIRD PARTY VENDOR DIRECTLY TO CLIENT UNDER A SEPARATE AGREEMENT, THE PURCHASED SERVICES ARE PROVIDED BY ABW "AS IS" AND WITHOUT WARRANTIES OR CONDITIONS OF ANY KIND, INCLUDING THE IMPLIED WARRANTIES OF MERCHANTABILITY, NON-INFRINGEMENT, AND FITNESS FOR A PARTICULAR PURPOSE. ABW DOES NOT GUARANTEE OR WARRANT THAT THE USE OF THE PURCHASED SERVICES WILL BE UNINTERRUPTED, COMPLY WITH REGULATORY REQUIREMENTS, BE ERROR FREE OR THAT ABW WILL CORRECT ALL ERRORS. FOR THE BREACH OF THE WARRANTIES SET FORTH IN SECTION 9.1, CLIENT'S EXCLUSIVE REMEDY, AND ABW'S ENTIRE LIABILITY, WILL BE THE REPERFORMANCE OF DEFICIENT SERVICES, OR IF ABW CANNOT SUBSTANTIALLY CORRECT A BREACH IN A COMMERCIALY REASONABLE MANNER, CLIENT MAY TERMINATE THE RELEVANT PURCHASED SERVICES. Client agrees that it is solely responsible for the results obtained from the use of the Purchased Services.

**10. Governing Law/Consent to Jurisdiction.** The validity, interpretation and enforcement of this Agreement will be governed by and construed in accordance with the laws of the United States and of the Commonwealth of Virginia without giving effect to the conflicts of law provisions or principles thereof to the contrary. All disputes arising out of or relating to this Agreement will be submitted to the exclusive jurisdiction of the courts of Richmond, Virginia and the United States District Court for the Eastern District of Virginia, Richmond Division and each party irrevocably consents to such personal jurisdiction and waives all objections to this venue. In the event the Uniform Computer Information Transactions Act (UCITA) or any similar federal or state laws or regulations are enacted, it will not apply to this Agreement, and the governing law will remain as if such law or regulation had not been enacted.

## 11. Miscellaneous

**11.1. Notices.** Notices must be in English, in writing, and will be deemed given when delivered by hand or five (5) days after being sent using a method that provides for positive confirmation of delivery to the respective addresses or facsimile numbers indicated in an Order Form; provided that any notice from Client to ABW includes a copy sent to: A Better Way Athletics, LLC., Attention: Managing Partner, 10710 Midlothian Turnpike, Suite 300, Richmond, VA 23235.

**11.2. Assignment.** This Agreement is binding on the parties to this Agreement and nothing in this Agreement or in any Order Form grants any other person or entity any right, benefit or remedy of any nature whatsoever, except for the parties' Affiliates as expressly provided in this Agreement. This Agreement is assignable by either party only with the other party's prior written consent, which will not be unreasonably withheld, conditioned or delayed; provided, however, either party may, upon written notice and without the prior approval of the other party, (a) assign this Agreement to an Affiliate as long as the Affiliate has sufficient credit to satisfy its obligations under this Agreement and the scope of Service is not affected; and (b) assign this Agreement pursuant to a merger or a sale of all or substantially all of such party's assets or stock.

**11.3. Independent Contractor.** ABW is an independent contractor and nothing in this Agreement or related to ABW's performance of any Order Form will be construed to create an employment or agency relationship between Client (or any Client personnel) and ABW (or any ABW personnel). Each party will be solely responsible for supervision, direction, control and payment of its personnel, including applicable taxes, deductions, other payments and benefits. ABW may subcontract Services under an Order Form to third parties or Affiliates without the approval of Client; provided, however, that (a) subcontractors agree to protect Client Confidential Information, and (b) ABW remains responsible to Client for performance of its obligations hereunder.

**11.4. Force Majeure.** Neither party will be liable for nonperformance or delays caused by acts of God, wars, riots, strikes, fires, floods, hurricanes, earthquakes, government restrictions, terrorist acts or other causes beyond its reasonable control.

**11.5. Dispute Resolution.** Each party agrees to give the other a written description of any problem(s) that may arise and to make a good faith effort to amicably resolve any such problem before commencing any proceeding. Notwithstanding the foregoing, either party may take any action reasonably required to protect such party's rights. No claim or action, regardless of form, arising out of this Agreement or an Order Form may be brought by either party more than one (1) year after the cause of action has accrued.

**11.6. Headings.** All headings contained in this Agreement are inserted for identification and convenience and will not be deemed part of this Agreement for purposes of interpretation.

- 11.7. Severability.** If any provision of this Agreement is held invalid or unenforceable for any reason but would be valid and enforceable if appropriately modified, then such provision will apply with the modification necessary to make it valid and enforceable. If such provision cannot be so modified, the parties agree that such invalidity will not affect the validity of the remaining provisions of the Agreement.
- 11.8. Waiver.** The delay or failure of either party to exercise any rights under this Agreement will not constitute or be deemed a waiver or forfeiture of such rights. No waiver will be valid unless in writing and signed by an authorized representative of the party against whom such waiver is sought to be enforced.
- 11.9. Complete Agreement.** Each Order Form (a) is a separate agreement and is deemed to incorporate this Agreement, unless otherwise expressly provided in that Order Form; (b) constitutes the exclusive terms and conditions with respect to the subject matter of that Order Form, notwithstanding any different or additional terms that may be contained in the form of purchase order or other document used by Client to place orders or otherwise effect transactions under this Agreement; and (c) represents the final, complete and exclusive statement of the agreement between the parties with respect thereto, notwithstanding any prior written agreements or prior and contemporaneous oral agreements with respect to the subject matter of the Order Form. In the event of any conflict between this Agreement, any Order Form and any end user license agreement for Purchased Services, this Agreement will take precedence unless otherwise expressly provided in the Order Form. Notwithstanding any provision to the contrary in this Agreement, any applicable end user license agreement will be governed by the laws of the Commonwealth of Virginia and of the United States, without regard to any conflict of law provisions. Any claim relating to the provision of the Services by ABW, its Affiliates or their respective personnel will be made against ABW alone.
- 11.10. Amendment.** Neither this Agreement nor any Order Form may be amended or modified except in a writing signed by the parties, which writing makes specific reference to this Agreement or the applicable Order Form.
- 11.11. Counterparts and Facsimile Signature.** In the event this Agreement is executed with signatures, this Agreement may be executed in counterparts, each of which will be deemed an original and all of which will constitute one and the same document. The parties may exchange signature pages by facsimile, electronic delivery of scanned document, or electronic signature and such signatures will be effective to bind the parties to all the terms contained in this Agreement.
- 12. Waiver of Jury Trial .** TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, EACH PARTY WAIVES THE RIGHT TO TRIAL BY JURY IN ANY LEGAL PROCEEDING ARISING OUT OF OR RELATING TO THIS AGREEMENT OR THE TRANSACTIONS CONTEMPLATED UNDER THIS AGREEMENT.