

CURRICULUM SERVICES AGREEMENT

This Curriculum Services Agreement ("Agreement") is entered into this 20 day of April, 2017, by and between Poudre School District R-1 ("District") and QuaverMusic.com, LLC. ("Contractor"). The District and the Contractor are collectively referenced herein as the "parties."

1. Term of Agreement.

1.1. This Agreement shall commence on the date first set forth above and continue through and including June 30, 2027 unless earlier terminated as provided herein.

1.2. 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.

1.3. The District, at its sole discretion upon written notice to Contractor, may unilaterally extend the term of this Agreement for a period not to exceed two months if the Parties are negotiating a replacement Agreement, and not merely seeking a term extension, at or near the end of any initial term or renewal term. The provisions of their Agreement in effect when such notice is given, including, but not limited to prices, rates and delivery requirements, shall remain in effect during the two-month extension. The two-month extension shall immediately terminate when and if a replacement Agreement is approved and signed by an authorized representative of the District.

2. Deliverables and Purchase Price.

2.1. The Contractor's responsibility under this Agreement is to provide its Quaver's Colorado K-5 Curriculum, a cloud-based, online, comprehensive, customizable, and fully-digital K-5 Music Curriculum. Except as provided below, the parties agree to the following, as specified in:

- a. Quaver's Product Description, which is part of this agreement and attached hereto as Exhibit A.
- b. RFP 17-630-007, which is part of this agreement and attached hereto as Exhibit B.
- c. Quaver's Response to RFP 17-630-007 ("RFP Response"), which is part of this agreement and attached hereto as Exhibit C.
- d. Opportunity for Best and Final Offer (BAFO) to RFP 17-630-007, which is part of this agreement and attached hereto as Exhibit D.
- e. Quaver's Response to BAFO to RFP 17-630-007, which is part of this agreement and attached hereto as Exhibit E.

All documents which are made a part of this Agreement (hereinafter the "Services"), and incorporated herein by reference.

2.2. In RFP Response Section 2.1.1.2, Song-Based Lessons, delete the following language that has a strikethrough.

~~Coming fall 2016.~~

2.3. In RFP Response Section 2.1.1.2, Quaver Unplugged Kit, add the following language that is underlined.

“As part of an active license to use Quaver’s teaching resources; music teachers are permitted to receive a temporary download of any song in the Contractor’s catalog as an MP3 file. The District teacher will acknowledge an agreement via email not to use the songs downloaded for any purpose other than the musical performance or musical event and to delete the MP3 files after the district license expires, if not renewed at the end of the license term. District agrees to use the download for the sole purpose of a live music performance or similar musical event where access to internet is unreliable. The MP3 files remain the property of QuaverMusic.com and may not be transferred to any other person. Downloading of an MP3 is unavailable for the following songs, where the Contractor only has streaming rights:

Africa
Lean on Me
What a Wonderful World
The Syncopated Clock
Carnival of the Animals
Peter and the Wolf

Frosty the Snowman
Winter Wonderland
Jambo Bwana
Georgia on My Mind
Rocky Top”

2.4. In RFP Response Section 2.1.1.3, create Section 2.1.1.3.a and add the following language that is underlined.

“Within the Service’s Curriculum Feature and Best Practices sections, the Contractor will make available to the District, downloadable PDFs of Contractor’s Best Practices Guides and the Colorado State Standards. The Colorado standards met are additionally listed on each of the Contractor’s Curriculum Lesson Plans.”

2.5. In RFP Response Section 2.1.3.2 Quaver Online Site License, add the following language that is underlined.

“Any feature with educational value on the student site is provided to the student automatically and at no charge. Quaver Notes will only be required on the student site for additional accessories for the student’s avatar, furniture and decor for the music room, etc.”

2.6. In RFP Response Section 2.1.3.4, add the following language that is underlined.

“Contractor will train lead teacher replacements remotely, unless an on-site training visit has not occurred within that year.”

2.7. In RFP Response Attachment 3.1 Project Management Team and Work Plan, Section 3.1.3, delete the following language that has a strikethrough and add the following language that is underlined.

~~Our team is ready and able to execute this plan for June 15th delivery.~~ “Implementation will occur at a mutually agreed upon timeline.”

2.8. In RFP Response Attachment 3.2 Proposed Contract, strike pages 51-59.

2.9. In Quaver’s Response to BAFO, strike all language related to Option 2.

2.10. In Quaver’s Response to BAFO, strike all language related to Option 3.

2.11. In Quaver’s Response to BAFO page 1, add the following language that is underlined to the second paragraph.

“Our policy is to license the lesser of the number of schools in the district or the number of music teachers in the district. In the case of a single music teacher that must travel to teach at more than one school, only one license is required for that music teacher. In the case of a single school that has more than one music teacher, we require only one license for the school. The cost proposal provided is based on your district having 29 schools with dedicated music teachers, with the understanding that one of those teachers’ services additional schools that do not have a full-time dedicated music teacher. If that remains the same then there will be no extra charge. If you have more than 29 schools with dedicated music teachers and more than 29 music teachers, then additional licenses will be required using the same policy cited above.”

2.12. The total cost for the Services as set forth on the attached Exhibit E is Three Hundred and Seventy-Seven Thousand Dollars (\$377,000.00), due and payable by the District thirty (30) days after approval by the District’s Board of Education.

2.13. Contractor agrees to provide licenses for twenty-nine (29) teachers at the District’s thirty-two (32) schools. Additional licenses may be purchased at the pro-rated unit cost listed in Exhibit E for a ten (10) year period.

2.14. Contractor agrees at the end of the ten (10) year license, the District is permitted to keep materials from Contractor’s Unplugged Kit.

2.15. The District understands and agrees that its students’ access to and use of the Contractor’s web-based system under this Agreement requires that it disclose confidential student records and information, as that term is defined below, to the Contractor. The Contractor understands and agrees that if it fails to comply with any of the requirements under sections 4, 5, 6 or 7 below at any time during or after the term of this Agreement the District may, as applicable, terminate the Agreement and/or disqualify the Contractor from future agreements with the District.

3. Definitions.

3.1. As used in this Agreement, “personally identifiable information” is defined as information (including metadata) that, alone or in combination, is linked or linkable to a specific student so as to allow a reasonable person in the school community, who does not have personal knowledge of the relevant circumstances, to identify the student with reasonable certainty. Personally identifiable information includes but is not limited to: (a) the student’s name; (b) the name of the student’s parent or other family members; (c) the address or phone number of the student or student’s family; (d) personal identifiers such as the student’s social security number, student number or biometric record; and (e) indirect identifiers such as the student’s date of birth, place of birth or mother’s maiden name.

3.2. As used in this Agreement, “education records” is defined as records, files, documents and other materials that: (a) contain information directly related to a student; and (b) are maintained by the District, or by a party acting for the District such as the Contractor.

3.3. As used in this Agreement, “confidential student records and information” is defined as education records and personally identifiable information concerning District students, including but not limited to confidential student records and information disclosed to, collected by and/or generated by the Contractor. Confidential student records and information does not include “de-identified confidential student records and information,” as defined in section 3.5 below.

3.4. As used in this Agreement, “collect” is defined as the gathering of data and other information by any means, including but not limited to the use of logs, cookies, tracking pixels, etc.

3.5. As used in this Agreement, “de-identified confidential student records and information” is defined as confidential student records and information from which all personally identifiable information, and the ability to determine any personally identifiable information, is removed.

3.6. As used in this Agreement, “securely destroy” is defined as removing confidential student records and information from the Contractor’s systems, paper files, hard-copy and electronic records, databases and any other media regardless of format, in accordance with the standard detailed in the National Institute of Standards and Technology (“NIST”) SP 800-88 Guidelines for Media Sanitization, so that the confidential student records and information are permanently irretrievable in the Contractor’s normal course of business.

3.7. As used in this Agreement, “eligible student” is defined as a student who is at least 18 years of age or who is legally emancipated.

4. **Ownership of Confidential Student Records and Information.** All confidential student records and information shall remain the exclusive property of the District and all rights, title and interest in the confidential student records and information, including but not limited to intellectual property rights in the confidential student records and information, belong to and are retained solely by the District. The District hereby grants to the Contractor a limited, nonexclusive license to access, view, collect, generate and use confidential student records and information solely for the purpose of performing its obligations under this Agreement.

5. Security of Confidential Student Records and Information.

5.1. The Contractor shall store and process confidential student records and information in accordance with commercial best practices, including implementing appropriate administrative, physical and technical safeguards that are no less rigorous than those outlined in SANS Top 20 Security Controls, as amended, to secure such confidential student records and information from unauthorized access, disclosure, alteration and use. The Contractor shall ensure that all such safeguards, including the manner in which confidential student records and information is collected, accessed, used, stored, processed, disposed of and disclosed, comply with all applicable federal and state data protection and privacy laws, regulations and directives, including but not limited to Colorado's Student Data Transparency and Security Act, C.R.S. §§ 22-16-101 to -112. Without limiting the foregoing, and unless expressly agreed to the contrary in writing, the Contractor warrants that all electronic confidential student records and information will be encrypted in transmission and at rest in accordance with NIST Special Publication 800-57, as amended.

5.2. The Contractor shall conduct periodic risk assessments and remediate any identified security vulnerabilities in a timely manner. The Contractor shall promptly notify the District in the event of: (a) any security or privacy breach concerning confidential student records and information; and/or (b) any use or disclosure of student personally identifiable information not authorized under this Agreement.

6. Use of Confidential Student Records and Information.

6.1. Under the Agreement, Contractor may access, view, collect, generate and/or use confidential student records and information only under the following terms and conditions: (a) except as provided in section 6.2 below, Contractor shall not disclose confidential student records and information, in whole or in part, to any other party; (b) Contractor shall not use any confidential student records or information to advertise or market to students or their parents/guardians; (c) Contractor shall access, view, collect, generate and use confidential student records and information only to the extent necessary to perform its obligations under the Agreement; and (d) at the conclusion of the term of the Agreement the Contractor shall, as directed by the District, either securely destroy all confidential student records and information in its possession, custody or control, or return such confidential student records and information to the District.

6.2. Contractor may to the extent necessary to perform its obligations under the Agreement disclose confidential student records and information to Rackspace pursuant to written subcontract(s) specifying the purpose of the disclosure and providing that: (a) Rackspace shall not disclose confidential student records and information, in whole or in part, to any other party; (b) Rackspace shall not use any confidential student records or information to advertise or market to students or their parents/guardians; (c) Rackspace shall access, view, collect, generate and use confidential student records and information only to the extent necessary to assist Contractor in performing its obligations under the Agreement; and (d) at the conclusion of its/their work under its/their subcontract(s) Rackspace shall, as directed by the District through the Contractor, either securely destroy all confidential student records and information in its/their

possession, custody or control, or return such confidential student records and information to the District.

6.3. Contractor and Rackspace may use de-identified confidential student records and information for purposes of research, the improvement of their products and services, and/or the development of new products and services. In no event, shall the Contractor or Rackspace re-identify or attempt to re-identify any de-identified confidential student records and information.

6.4. Contractor and Rackspace shall promptly furnish to the District upon request all confidential student records and information they have collected and/or generated and not in the District's possession. Such requests may include but shall not be limited to those made in order to respond to parent/guardian and eligible student requests to inspect and review education records as authorized under the Family Educational Rights and Privacy Act, 20 U.S.C. § 1232g ("FERPA") and/or under the Colorado Open Records Act, C.R.S. §§ 24-72-200.1 to - 206 ("CORA"). The District, not the Contractor or Rackspace, shall respond to all parent/guardian and eligible student requests to inspect and review records, data and other information.

7. **School Service Contract Provider.** If Contractor is a "school service contract provider" under the Colorado Student Data Transparency and Security Act (the "Act"), the Agreement is amended to add the language in this section 7. Under the Act, a "school service contract provider" is defined as an entity (other than the Colorado Department of Education, a K-12 public education entity or an institution of higher education) that enters into a formal, negotiated contract with the District to provide a "school service." Under the Act, a "school service" is defined as an Internet website, online service, online application or mobile application that: (a) is designed and marketed primarily for use in a preschool, elementary school or secondary school; (b) is used at the direction of District teachers or other District employees; and (c) collects, maintains or uses confidential student records and information.

7.1. As a school service contract provider under the Act, the Contractor has provided the following information the attached Exhibit F: (a) the data elements of confidential student records and information that Contractor collects under the Agreement, regardless of whether the data elements are initially collected or ultimately held individually or in the aggregate using protocols that are effective for preserving the anonymity of each student included in the data; (b) the learning purpose for which Contractor collects the confidential student records and information; and (c) how the Contractor uses and shares the confidential student records and information. Contractor shall update this information as necessary to maintain accuracy.

7.2. Contractor shall facilitate the District's access to and correction of any factually inaccurate confidential student records and information as required in response to correction requests from parents/guardians and eligible students.

8. **Remedies.** If Contractor or Rackspace fail to comply with any of the foregoing requirements at any time during or after the term of the Agreement the District may, as applicable, terminate the Agreement and/or disqualify Contractor and any one or more of Rackspace from future contracts and subcontracts with the District.

9. **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

QuaverMusic.com, LLC.
Attn: Tim Maus
1706 Grand Avenue
Nashville, TN 37212
Email: Tim@quavermusic.com

10. **General Provisions.**

10.1. **No Assignment.** The Contractor shall not assign this Agreement or any of its rights, interests or obligations under this Agreement without the prior written consent of the District, which consent may be withheld for any reason or no reason as determined by the District in its sole discretion.

10.2. **No Waiver.** 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.

10.3. **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 in the same manner and with the same formality as was done for this Agreement.

10.4. **Governing Law.** This Agreement shall be governed by and construed in accordance with the laws of the State of Colorado.

10.5. **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 coverage 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 Risk Manager. 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. Contractor shall furnish the District's Risk Manager with certificates of the required insurance prior to the District's approval and signing of this Agreement, and with renewal certificates prior to the expiration of any required insurance that expires during the term of this Agreement. Any insurance and/or self-insurance carried by the District is excess of the coverage extended to the District by Contractor. Contractor shall provide at least thirty (30) days' advance written notice to the District prior to cancellation or change of coverage. The insurance requirements specified in this section 10.5 shall not reduce the indemnification liability that Contractor has assumed in section 10.6 below.

Commercial General Liability

- a. Each Occurrence Bodily Injury &

- | | | |
|----|--|-------------|
| | Property Damage | \$1,000,000 |
| b. | Each Event Personal Injury | \$1,000,000 |
| c. | General Aggregate | \$2,000,000 |
| d. | Coverage must be written on an "occurrence" basis | |
| e. | Poudre School District and its elected officials and employees shall be named as additional insureds; copy of policy endorsement must be attached to the Certificate of Insurance. | |

Workers' Compensation

- | | | |
|----|--|-----------------------------------|
| a. | State of Colorado | Statutory |
| b. | Employer's Liability | \$500,000 Each Accident |
| | | \$500,000 Disease – Policy Limit |
| | | \$500,000 Disease – Each Employee |
| c. | Waiver of subrogation in favor of Poudre School District R-1; copy of policy endorsement must be attached to the Certificate of Insurance. | |

10.6. **Indemnification.** The Contractor shall indemnify and hold harmless the District and the District's Board members, employees, representatives and agents from and against any and all liability arising from any suit, action, grievance, charge or proceeding brought in connection with or related to: (a) the Contractor's operations; (b) the Contractor's provision of the Services; (c) the Contractor's actual or alleged infringement of any third party's patent or copyright; and/or (d) the conduct of any of the Contractor's employees, volunteers, agents or representatives. The indemnification and hold harmless obligation hereunder shall include all attorney fees, costs and expenses incurred by the District and/or the District's Board members, employees, representatives and/or agents in defense of said suits, actions, grievances, charges and/or proceedings. Nothing in this section 10.6 or otherwise in this Agreement shall be construed in any way or applied in any manner as a compromise or waiver of the District's rights and protections under the Colorado Constitution or the Colorado Governmental Immunity Act.

10.7. **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.

10.8. **Attorney Fees and Costs.** In the event it becomes necessary for either party to institute litigation or mutually agreed-upon arbitration proceedings to enforce any provision of this Agreement, the substantially prevailing party in such litigation or arbitration shall receive, as part of any judgment or award entered, its reasonable attorney fees and costs, including expert witness fees.

10.9. **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.

10.10. **Headings.** The headings used in this Agreement are for convenience only and shall have no effect upon the construction or interpretation of this Agreement.

10.11. **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.

10.12. **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.

10.13. **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.

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

QUAVERMUSIC.COM, LLC.

By: 

David Mastran
President

POUDRE SCHOOL DISTRICT R-1

By: 

Sandra Smyser, Ph.D.
Superintendent

By: 

Robert Beauchamp
Director of Curriculum, Instruction and
Assessment

Exhibit A

Poudre School District is purchasing 29 ten-year licenses for Quaver's Colorado K-5 Curriculum, a cloud-based, online, comprehensive, customizable, and fully-digital K-5 Music Curriculum to include:

- 216 fully-developed lessons for a 36-week school year, plus additional Song-based lessons
- Editable and printable Lesson Plans for every lesson with all applicable Colorado Academic Standards identified
- 1,100+ Songs with levels of activity, movement, games, and more!
- Assessments, Worksheets, Scores (all printable on an unlimited basis)
- Automated Quizzes that are digitally collected from students, automatically graded, and entered into the Teacher Gradebook
- Class-Play™, the song resource library with activities in the Song Hub and Interactive Full Score pages
- Essentials topic-based Quaver classrooms with teaching resources
- Resource Manager and Library, Lesson Plan Presenter
- Four fully-developed musicals for students in Kindergarten through third grade, with downloadable songs
- Student Website with free student accounts; Student Interactives
- World Music, Bach's Brain video vignettes, QuaverBooks
- Teacher Toolbox of interactive elements compatible with SMART Board, Promethean, and other interactive whiteboards
- Automatic updates to program functionality and content, four times a year
- Professional Development and Training: two full days (may be one per semester) of on-site training in the first year, including lead teacher training; also one full day of on-site training and one full day of digital training for each remaining year of the license; and online PD Courses, Webinars, and QTutorials.
- Quaver Unplugged Kit: backup product package with offline elements for use in internet-down situations which includes DVDs with all 30 Quaver episodes, and a USB drive with the lesson plan, worksheets and other teaching elements from every lesson and an MP3 song from each module
- Teacher Administration Tools to organize and track student activity, distribute and collect customized assignments electronically, and see auto-graded assessment scores appear instantly in teacher's Gradebook
- Quaver Support Hub, home to interactive professional development modules, tech help, and 24/7 online support
- Creative Credit allowing PSD to request development of tracks, score, activities, and other layers for up to five original or public domain songs.
- Standard Integrations/Services/Data Services: Implementation of supported SSO technologies, Common Cartridge Data, student/teacher rostering via the OneRoster data format, or Gradebook data export via .csv. Normal updating of data is included.
- Ability to receive a temporary download of any song in the Quaver catalog as an MP3 file for use in live music performance or a similar musical event where access to internet is not reliable, contingent on the teacher's agreement not to use the downloaded songs for any other purpose and to delete the files if the Quaver license expires and is not renewed, and with exceptions to this mp3 access for the provided list of songs licensed from other parties, which are available for streaming only.

Exhibit B



POUDRE SCHOOL DISTRICT R-1

Department of Curriculum, Instruction & Assessment

**REQUEST FOR PROPOSALS
REGARDING
Music Curriculum for Grades K-5
with Instructional Materials and Services**

RFP # 17-630-007

RFP SCHEDULE OVERVIEW

| | |
|--|--|
| Deadline for Submission of RFP Responses | September 12, 2016 |
| Proposal Consideration Period | September 13, 2016 - March 31, 2017 |
| Vendor Selection and Contract Signing | After March 31, 2017 |
| Delivery Deadline for Contracted Instructional Materials and Services | June 15, 2017 |

1.0 REQUESTED CURRICULUM, INSTRUCTIONAL MATERIALS AND SERVICES

Poudre School District R-1 (the "District") is issuing this request for proposals ("RFP") from vendors for a curriculum with instructional materials and services to be used by students in Music classes for grades K-5, and for related professional development and technology supports for the District's teachers. The District wishes to begin using the curriculum, materials and services in the fall semester of 2017 for a 10-year period, in accordance with its current curriculum adoption cycle.

- 1.1 The curriculum, instructional materials and services must be aligned to the Colorado Academic Standards.**
- 1.2 The curriculum, instructional materials and services must produce evidence of usability and efficacy with a full range of students (i.e., advanced learners, English language learners and students with disabilities).**
- 1.3 The curriculum, instructional materials and services must provide all students with rich learning experiences that build critical knowledge and skills fostering readiness for college.**
- 1.4 The instructional materials and services may include technology and online resources calculated to enhance student learning.**
- 1.5 Training and information must be furnished that enable the District to provide job-embedded supports (i.e., observation and feedback, coaching, technical expertise, etc.) to assist its teachers in using the instructional materials and accessing the instructional services in a manner that meets the diverse needs of the students they teach.**
- 1.6 Professional learning opportunities and resources must be provided to support teachers at all levels of knowledge and experience in successfully implementing the curriculum and continuously improving their methods to drive student achievement throughout the 10-year period the District plans to use the curriculum, instructional materials and services.**
- 1.7 The vendor with whom the District contracts must ensure that the instructional materials are delivered to the District on or before June 15, 2017, and that the District is able to acquire additional instructional materials to accommodate increases in student enrollment over the 10-year period it plans to use the materials. The vendor with whom the District contracts must also ensure that the instructional services are accessible by the District on or before June 15, 2017 and continuing throughout the 10-year period the District plans to use the services, with allowances for increases in student enrollment.**

2.0 REQUIRED INFORMATION, TRIAL PERIOD SAMPLES AND ELECTRONIC ACCESS, AND FORM OF RESPONSE

As set forth in more detail below, the District is requesting from each vendor in response to this RFP: (a) a written proposal for a Music curriculum for grades K-5, with instructional materials and services; (b) written vendor profile and references; and (c) sample materials and access to online services associated with vendor's curriculum, which will be reviewed by District staff during the proposal consideration period.

2.1 Vendor proposals shall include the following:

- 2.1.1** A description of the Music instructional materials for use by students and teachers at each grade level K-5, including student editions and teacher editions.
- 2.1.2** ISBN numbers (where applicable).
- 2.1.3** Price for the District's initial purchase of Music instructional materials for 2,060 students in each of the six grades K-5 (12,360 total students) and for 32 teachers each teaching grades K-5 (192 total sets of materials).
- 2.1.4** Price for subsequent purchases of Music instructional materials to accommodate increases in student enrollment during the 10-year period the District plans to use the materials.
- 2.1.5** A description of the Music technology and online resources for use by students and teachers.
- 2.1.6** Price for District's initial purchase of Music technology and online resources for use by 2,060 students in each of the six grades K-5 (12,360 total students) and for 32 teachers each teaching grades K-5.
- 2.1.7** Price for subsequent purchases of Music technology and online resources for use by students and teachers to accommodate increases in student enrollment throughout the 10-year period the District plans to use the services.
- 2.1.8** A description of all training, resources and professional learning opportunities available to the District and its teachers to support the Music curriculum implementation and use of related instructional materials, technology and online resources during the 10-year period the District plans to use them.

2.1.9 Price for training, resources and professional learning opportunities referenced in section 2.1.8 of this RFP.

2.1.10 Statement as to whether vendor intends to use one or more subcontractors or third parties in connection with its provision of materials and/or services included in its response to this RFP. For each such subcontractor and third party, vendor shall: (a) provide its name, address, telephone number and e-mail address; and (b) describe the work it will perform.

2.1.11 A copy of the contract vendor proposes to use if selected by the District, which must reflect the requirements specified in section 4.0 of this RFP.

2.2 Vendor's profile shall include the following information:

2.2.1 Full legal name of business as it appears on IRS Form W-9, as well as any other names under which vendor does business.

2.2.2 A description of vendor's business and organization, including: (a) products and services offered; (b) address of headquarters and location of branch offices; (c) number of employees; and (d) number of years vendor has been in business.

2.2.3 Vendor's website address/Internet URL.

2.2.4 First and last name, telephone number and e-mail address of the employee within vendor's organization designated as the District's primary contact with respect to this RFP and vendor's response thereto.

2.3 Vendor shall provide as references three (3) of its current customers who are using the Music instructional materials and services vendor is submitting in response to this RFP, preferably Colorado public school districts. For each reference, vendor shall provide the following information:

2.3.1 Customer's full name.

2.3.2 Address of customer's principal office or administration building.

2.3.3 Name, telephone number and e-mail address of administrator employed by customer who is responsible for dealing with vendor, who has firsthand knowledge of vendor's Music instructional materials and services, and whom the District may contact for information on customer's dealings with vendor.

2.4 Vendor shall provide the following for review by District staff during the proposal consideration period:

2.4.1 One English language student edition set of Music instructional materials and one English language teacher edition set of Music instructional materials for each grade level K-5.

2.4.2 Access to online resources and/or software for use by students and teachers in connection with the Music instructional materials for each grade level K-5.

2.4.3 Access to the training, resource and professional learning materials and services that support the Music curriculum implementation and use of vendor's related instructional materials, online resources and software.

3.0 RFP PROCEDURES AND DEADLINES

The procedures and deadlines associated with this RFP are as follows:

3.1 The District shall provide copies of this RFP to select vendors, who are requested to provide the first and last name, telephone number and e-mail address of the employee within vendor's organization designated as the District's primary contact with respect to this RFP and vendor's response thereto. The District may provide copies of this RFP to other vendors upon request, who are also requested to provide the first and last name, telephone number and e-mail address of the employee within their organization designated as the District's primary contact with respect to this RFP and their response thereto.

3.2 Questions regarding this RFP must be in writing and may be directed to the District via e-mail any time after the issuance of this RFP through and including 2:00 p.m. MDT on August 22, 2016, addressed as follows:

Kari Burge, Senior Buyer
E-mail: kburge@psdschools.org

Each question submitted, as well as the District's response thereto, shall be copied via e-mail to all vendors through the employees they have designated as their primary contacts pursuant to section 3.1 of this RFP.

3.3 Written vendor proposals, profiles, references, sample instructional materials, and access to online resources, software, training, and professional learning materials and services, all as provided in section 2.0

of this RFP, must be received by the District on or before 2:00 p.m. MDT on September 12, 2016, addressed as follows:

Poudre School District R-1
Attn: Kari Burge, Senior Buyer
RFP # 17-630-007
1502 South Timberline Road
Fort Collins, CO 80524
E-mail: kburge@psdschools.org

- 3.4** District staff shall review the written vendor proposals, profiles, references, sample instructional materials, online resources, software, training, and professional learning materials and services submitted in response to this RFP during the proposal consideration period commencing on September 13, 2016 and continuing through and including March 31, 2017. During the proposal consideration period, questions may be asked of and additional information may be requested from individual vendors by the District's Director of Curriculum, Instruction and Assessment, and select vendors may be asked to give presentations to District staff regarding their RFP responses.
- 3.5** Samples will be returned to vendor after the conclusion of the proposal consideration period, at vendor's request, upon vendor's arrangements acceptable to the District for payment of shipping and all other return fees and costs, with no expense to the District.
- 3.6** After March 31, 2017, the District may select the vendor with which it wishes to contract for the Music curriculum for grades K-5, with instructional materials and services. The selected vendor's provision of such curriculum, instructional materials and services is subject to and conditioned on: (a) agreement by the District and vendor regarding the terms of a written contract between the parties, including but not limited to the terms specified in section 4.0 of this RFP; and (b) execution of the written contract by authorized representatives of the District and vendor.
- 3.7** This RFP does not commit the District to select or contract with any vendor that provides a response, or to pay any costs incurred by vendors in responding to the RFP or negotiating a contract. The District reserves the right to reject any and all responses to this RFP at any point in the process, to waive any irregularities and/or informalities with respect to the RFP procedures and deadlines, and to select the vendor whose response it deems in its sole discretion to be in the best interest of the District.
- 3.8** Information and materials submitted in response to this RFP may be considered public records subject to disclosure under the Colorado Open Records Act ("CORA"), C.R.S. §§ 24-72-200.1 to -206. Information and

materials that vendor believes are confidential and not subject to disclosure under CORA must be submitted separately with a citation to the section of CORA and any other relevant law under which vendor believes they are confidential. The District, not vendor, shall determine whether information and materials so identified will be withheld as confidential, but will inform vendor 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.

4.0 CONTRACT TERMS

4.1 Any contract entered into between the District and a vendor selected by the District must cover vendor's provision of the Music curriculum for grades K-5, with instructional materials and services, for a 10-year term and include provisions in substantially the form as those set forth below:

4.1.1 The District is a public school district exempt from the payment of sales and use taxes under Colorado Tax Exempt No. 98-03335. A copy of the District's Certificate of Exemption issued by the Colorado Department of Revenue is available upon request.

4.1.2 All issues regarding the formation, performance and/or enforcement of the Contract shall be governed by and construed in accordance with the laws of the State of Colorado. Any action arising out of or related to the Contract shall be brought in the state district court of Larimer County, Colorado, or in the federal district court for the District of Colorado.

4.1.3 [VENDOR] represents and warrants that the instructional materials and services it provides under the Contract will not infringe on any valid patent, trademark, trade name or copyright, and that it will indemnify, defend and hold harmless the District, members of its Board of Education, and/or its employees and agents from and against any and all claims, losses, liabilities or causes of action, including attorney fees and costs, involving allegations of such infringement on the part of the District, members of its Board of Education, and/or its employees or agents.

4.1.4 [VENDOR] shall not assign the Contract or any of its rights, interests or obligations under the Contract without the prior written consent of the District, which consent may be withheld for any reason or no reason as determined by the District in its sole discretion.

4.1.5 The Contract constitutes the entire agreement of the parties regarding the subject matter addressed therein and supersedes all prior agreements, whether oral or written, pertaining to said subject matter.

4.1.6 No amendment or modification of the Contract shall be valid unless set forth in writing and executed by the parties in the same manner and with the same formality as was done for the Contract.

4.1.7 In the event it becomes necessary for either party to institute litigation or mutually agreed-upon arbitration proceedings to enforce any provision of the Contract, the substantially prevailing party in such litigation or arbitration shall receive, as part of any judgment or award entered, its reasonable attorney fees and costs, including expert witness fees.

4.2 If the vendor selected by the District will access, view, collect, generate or use "confidential student records and information" as defined in Exhibit A and Exhibit B attached to this RFP, it must sign a Confidentiality Addendum in substantially the form attached to this RFP as Exhibit A or Exhibit B, as follows:

4.2.1 If the vendor does not need to redisclose confidential student records and information to a subcontractor or other third party in order to provide the materials and services included in its response to this RFP, it must sign a Confidentiality Addendum prohibiting redisclosure of confidential student records and information in substantially the form attached hereto as Exhibit A.

4.2.2 If the vendor needs to redisclose confidential student records and information concerning any District students to one or more subcontractors or other third parties in order to provide the materials and services included in its response to this RFP, it must sign a Confidentiality Addendum authorizing redisclosure of confidential student records and information in substantially the form attached hereto as Exhibit B.

-- End --

Exhibit A

CONFIDENTIALITY ADDENDUM
(Prohibiting Redisclosure of Confidential Student Records and Information)

This Confidentiality Addendum ("Addendum") is made and entered into by and between [VENDOR] and Poudre School District R-1 (the "District"). [VENDOR] and the District are collectively referenced herein as the "parties." This Addendum supersedes the [CONTRACT] dated _____, 20__ between [VENDOR] and the District (the "Contract") by adding to, deleting from and modifying the Contract as set forth herein. To the extent any addition to, deletion from or modification of the Contract results in any conflict or inconsistency between the Contract and this Addendum, this Addendum shall govern and the terms of the Contract that conflict with this Addendum or are inconsistent with this Addendum shall be of no force or effect. In consideration of the mutual covenants, promises, understandings, releases and payments described in the Contract and this Addendum, the parties agree to amend the Contract by adding the following language:

1. Definitions.

1.1 As used in this Addendum, "personally identifiable information" is defined as information (including metadata) that, alone or in combination, is linked or linkable to a specific student so as to allow a reasonable person in the school community, who does not have personal knowledge of the relevant circumstances, to identify the student with reasonable certainty. Personally identifiable information includes but is not limited to: (a) the student's name; (b) the name of the student's parent or other family members; (c) the address or phone number of the student or student's family; (d) personal identifiers such as the student's social security number, student number or biometric record; and (e) indirect identifiers such as the student's date of birth, place of birth or mother's maiden name.

1.2 As used in this Addendum, "education records" is defined as records, files, documents and other materials that: (a) contain information directly related to a student; and (b) are maintained by the District, or by a party acting for the District such as [VENDOR].

1.3 As used in this Addendum, "confidential student records and information" is defined as education records and personally identifiable information concerning District students, including but not limited to confidential student records and information disclosed to, collected by and/or generated by [VENDOR]. Confidential student records and information does not include "de-identified confidential student records and information," as defined in section 1.5 below.

1.4 As used in this Addendum, "collect" is defined as the gathering of data and other information by any means, including but not limited to the use of logs, cookies, tracking pixels, etc.

1.5 As used in this Addendum, "de-identified confidential student records and information" is defined as confidential student records and information from which all personally identifiable information, and the ability to determine any personally identifiable information, is removed.

1.6 As used in this Addendum, "eligible student" is defined as a student who is at least 18 years of age or who is legally emancipated.

2. Ownership of Confidential Student Records and Information. All confidential student records and information shall remain the exclusive property of the District and all rights, title and interest in the confidential student records and information, including but not limited to intellectual property rights, belong to and are retained solely by the District. The District hereby grants to [VENDOR] a limited, nonexclusive license to access, view, collect, generate and use confidential student records and information solely for the purpose of performing its obligations specified in the Contract.

3. **Security of Confidential Student Records and Information.** [VENDOR] shall utilize appropriate administrative, physical and technical safeguards in accordance with industry standards and best practices to secure confidential student records and information from unauthorized disclosure, access and use. [VENDOR] shall conduct periodic risk assessments and remediate any identified security vulnerabilities in a timely manner. [VENDOR] shall promptly notify the District in the event of: (a) any security or privacy breach concerning confidential student records and information; and/or (b) any use or disclosure of student personally identifiable information not authorized under the Contract or this Addendum.

4. **Use of Confidential Student Records and Information.**

4.1 Under the Contract, [VENDOR] may access, view, collect, generate and/or use confidential student records and information only under the following terms and conditions: (a) [VENDOR] shall not disclose confidential student records and information, in whole or in part, to any other party; (b) [VENDOR] shall not use any confidential student records or information to advertise or market to students or their parents/guardians; (c) [VENDOR] shall access, view, collect, generate and use confidential student records and information only to the extent necessary to perform its obligations specified in the Contract; and (d) at the conclusion of the term of the Contract [VENDOR] shall, as directed by the District, permanently delete or destroy all confidential student records and information in its possession, custody or control, or return such confidential student records and information to the District.

4.2 [VENDOR] may use de-identified confidential student records and information for purposes of research, the improvement of its products and services, and/or the development of new products and services. In no event shall [VENDOR] re-identify or attempt to re-identify any de-identified confidential student records and information.

4.3 [VENDOR] shall promptly furnish to the District upon request all confidential student records and information collected and/or generated by [VENDOR] and not in the District's possession. Such requests may include but shall not be limited to those made in order to respond to parent/guardian and eligible student requests to inspect and review education records as authorized under the Family Educational Rights and Privacy Act, 20 U.S.C. § 1232g ("FERPA") and/or under the Colorado Open Records Act, C.R.S. §§ 24-72-200.1 to -206 ("CORA"). The District, not [VENDOR], shall respond to all parent/guardian and eligible student requests to inspect and review records, data and other information.

5. **School Service Contract Provider.** If [VENDOR] is a "school service contract provider" under the Colorado Student Data Transparency and Security Act (the "Act"), the Contract is amended to add the language in this section 5. Under the Act, a "school service contract provider" is defined as an entity (other than the Colorado Department of Education, a K-12 public education entity or an institution of higher education) that enters into a formal, negotiated contract with the District to provide a "school service." Under the Act, a "school service" is defined as an Internet website, online service, online application or mobile application that: (a) is designed and marketed primarily for use in a preschool, elementary school or secondary school; (b) is used at the direction of District teachers or other District employees; and (c) collects, maintains or uses confidential student records and information.

5.1 [VENDOR] shall provide to the District, in a format acceptable to the District that is easily accessible through a website: (a) the data elements of confidential student records and information that [VENDOR] collects under the Contract, regardless of whether the data elements are initially collected or ultimately held individually or in the aggregate using protocols that are effective for

preserving the anonymity of each student included in the data; (b) the learning purpose for which [VENDOR] collects the confidential student records and information; and (c) how [VENDOR] uses and shares the confidential student records and information. [VENDOR] shall update this information as necessary to maintain accuracy.

5.2 [VENDOR] shall facilitate the District's access to and correction of any factually inaccurate confidential student records and information as required in response to correction requests from parents/guardians and eligible students.

6. Remedies. If [VENDOR] fails to comply with any of the foregoing requirements at any time during or after the term of the Contract the District may, as applicable, terminate the Contract and/or disqualify [VENDOR] from future contracts with the District.

IN WITNESS WHEREOF, [VENDOR] and the District have signed this Addendum as of the dates set forth below.

[VENDOR]

By: 
[Name and Title]

Date: 4/21/17

POUDRE SCHOOL DISTRICT R-1

By: _____
[Name and Title]

Date: _____

Exhibit B

CONFIDENTIALITY ADDENDUM
(Authorizing Redisclosure of Confidential Student Records and Information)

This Confidentiality Addendum ("Addendum") is made and entered into by and between [VENDOR] and Poudre School District R-1 (the "District"). [VENDOR] and the District are collectively referenced herein as the "parties." This Addendum supersedes the [CONTRACT] dated _____, 20__ between [VENDOR] and the District (the "Contract") by adding to, deleting from and modifying the Contract as set forth herein. To the extent any addition to, deletion from or modification of the Contract results in any conflict or inconsistency between the Contract and this Addendum, this Addendum shall govern and the terms of the Contract that conflict with this Addendum or are inconsistent with this Addendum shall be of no force or effect. In consideration of the mutual covenants, promises, understandings, releases and payments described in the Contract and this Addendum, the parties agree to amend the Contract by adding the following language:

1. Definitions.

1.1 As used in this Addendum, "personally identifiable information" is defined as information (including metadata) that, alone or in combination, is linked or linkable to a specific student so as to allow a reasonable person in the school community, who does not have personal knowledge of the relevant circumstances, to identify the student with reasonable certainty. Personally identifiable information includes but is not limited to: (a) the student's name; (b) the name of the student's parent or other family members; (c) the address or phone number of the student or student's family; (d) personal identifiers such as the student's social security number, student number or biometric record; and (e) indirect identifiers such as the student's date of birth, place of birth or mother's maiden name.

1.2 As used in this Addendum, "education records" is defined as records, files, documents and other materials that: (a) contain information directly related to a student; and (b) are maintained by the District, or by a party acting for the District such as [VENDOR].

1.3 As used in this Addendum, "confidential student records and information" is defined as education records and personally identifiable information concerning District students, including but not limited to confidential student records and information disclosed to, collected by and/or generated by [VENDOR]. Confidential student records and information does not include "de-identified confidential student records and information," as defined in section 1.5 below.

1.4 As used in this Addendum, "collect" is defined as the gathering of data and other information by any means, including but not limited to the use of logs, cookies, tracking pixels, etc.

1.5 As used in this Addendum, "de-identified confidential student records and information" is defined as confidential student records and information from which all personally identifiable information, and the ability to determine any personally identifiable information, is removed.

1.6 As used in this Addendum, "eligible student" is defined as a student who is at least 18 years of age or who is legally emancipated.

2. Ownership of Confidential Student Records and Information. All confidential student records and information shall remain the exclusive property of the District and all rights, title and interest in the confidential student records and information, including but not limited to intellectual property rights, belong to and are retained solely by the District. The District hereby grants to

[VENDOR] a limited, nonexclusive license to access, view, collect, generate and use confidential student records and information solely for the purpose of performing its obligations specified in the Contract.

3. **Security of Confidential Student Records and Information.** [VENDOR] shall utilize appropriate administrative, physical and technical safeguards in accordance with industry standards and best practices to secure confidential student records and information from unauthorized disclosure, access and use. [VENDOR] shall conduct periodic risk assessments and remediate any identified security vulnerabilities in a timely manner. [VENDOR] shall promptly notify the District in the event of: (a) any security or privacy breach concerning confidential student records and information; and/or (b) any use or disclosure of student personally identifiable information not authorized under the Contract or this Addendum.

4. **Use of Confidential Student Records and Information.**

4.1 Under the Contract, [VENDOR] may access, view, collect, generate and/or use confidential student records and information only under the following terms and conditions: (a) except as provided in section 4.2 below, [VENDOR] shall not disclose confidential student records and information, in whole or in part, to any other party; (b) [VENDOR] shall not use any confidential student records or information to advertise or market to students or their parents/guardians; (c) [VENDOR] shall access, view, collect, generate and use confidential student records and information only to the extent necessary to perform its obligations specified in the Contract; and (d) at the conclusion of the term of the Contract [VENDOR] shall, as directed by the District, permanently delete or destroy all confidential student records and information in its possession, custody or control, or return such confidential student records and information to the District.

4.2 [VENDOR] may to the extent necessary to perform its obligations specified in the Contract disclose confidential student records and information to [SUBCONTRACTOR(S)] pursuant to written subcontract(s) specifying the purpose of the disclosure and providing that: (a) [SUBCONTRACTOR(S)] shall not disclose confidential student records and information, in whole or in part, to any other party; (b) [SUBCONTRACTOR(S)] shall not use any confidential student records or information to advertise or market to students or their parents/guardians; (c) [SUBCONTRACTOR(S)] shall access, view, collect, generate and use confidential student records and information only to the extent necessary to assist [VENDOR] in performing its obligations specified in the Contract; and (d) at the conclusion of its/their work under its/their subcontract(s) [SUBCONTRACTOR(S)] shall, as directed by the District through [VENDOR], permanently delete or destroy all confidential student records and information in its/their possession, custody or control, or return such confidential student records and information to the District.

4.3 [VENDOR] and [SUBCONTRACTOR(S)] may use de-identified confidential student records and information for purposes of research, the improvement of their products and services, and/or the development of new products and services. In no event shall [VENDOR] or [SUBCONTRACTOR(S)] re-identify or attempt to re-identify any de-identified confidential student records and information.

4.4 [VENDOR] and [SUBCONTRACTOR(S)] shall promptly furnish to the District upon request all confidential student records and information they have collected and/or generated and not in the District's possession. Such requests may include but shall not be limited to those made in order to respond to parent/guardian and eligible student requests to inspect and review education records as authorized under the Family Educational Rights and Privacy Act, 20 U.S.C. § 1232g ("FERPA") and/or under the Colorado Open Records Act, C.R.S. §§ 24-72-200.1 to -206 ("CORA"). The District, not

[VENDOR] or [SUBCONTRACTOR(S)], shall respond to all parent/guardian and eligible student requests to inspect and review records, data and other information.

5. **School Service Contract Provider.** If [VENDOR] is a "school service contract provider" under the Colorado Student Data Transparency and Security Act (the "Act"), the Contract is amended to add the language in this section 5. Under the Act, a "school service contract provider" is defined as an entity (other than the Colorado Department of Education, a K-12 public education entity or an institution of higher education) that enters into a formal, negotiated contract with the District to provide a "school service." Under the Act, a "school service" is defined as an Internet website, online service, online application or mobile application that: (a) is designed and marketed primarily for use in a preschool, elementary school or secondary school; (b) is used at the direction of District teachers or other District employees; and (c) collects, maintains or uses confidential student records and information.

5.1 [VENDOR] shall provide to the District, in a format acceptable to the District that is easily accessible through a website: (a) the data elements of confidential student records and information that [VENDOR] collects under the Contract, regardless of whether the data elements are initially collected or ultimately held individually or in the aggregate using protocols that are effective for preserving the anonymity of each student included in the data; (b) the learning purpose for which [VENDOR] collects the confidential student records and information; and (c) how [VENDOR] uses and shares the confidential student records and information. [VENDOR] shall update this information as necessary to maintain accuracy.

5.2 [VENDOR] shall facilitate the District's access to and correction of any factually inaccurate confidential student records and information as required in response to correction requests from parents/guardians and eligible students.

6. **Remedies.** If [VENDOR] or [SUBCONTRACTOR(S)] fail to comply with any of the foregoing requirements at any time during or after the term of the Contract the District may, as applicable, terminate the Contract and/or disqualify [VENDOR] and any one or more of [SUBCONTRACTOR(S)] from future contracts and subcontracts with the District.

IN WITNESS WHEREOF, [VENDOR] and the District have signed this Addendum as of the dates set forth below.

[VENDOR]

By:


[Name and Title]

Date:

4/21/17

POUDRE SCHOOL DISTRICT R-1

By:

[Name and Title]

Date:
