

**FIFTH AMENDMENT TO SOFTWARE SERVICES AGREEMENT
BETWEEN LANGUAGE TESTING INTERNATIONAL
AND POUDRE SCHOOL DISTRICT R-1**

This Fifth Amendment (“Fifth Amendment”) dated the 4th day of August 2022 (“Effective Date”), is attached to and forms part of the Agreement between Poudre School District R-1 (the “District”) and Language Testing International (the “Contractor”), executed May 25, 2017, the First Amendment to the contract executed October 3, 2018, the Second Amendment to the contract executed April 8, 2019 and the Third Amendment to the contract executed June 4, 2020, and the Fourth Amendment to the contract executed March 29, 2021, each of which are attached and made part of this Amendment. To the extent that any of the terms or conditions contained in this Amendment may contradict with any of the terms or conditions of the attached Software Services Agreement, the First Amendment, the Second Amendment, the Third Amendment or the Fourth Amendment (“Agreement”), it is expressly understood and agreed that the terms of this Fifth Amendment shall take precedence and supersede the attached Agreement. The parties agree to amend the Contract by adding the following language:

1. **Purpose of Amendment.** This amendment shall constitute the Fifth Amendment to the Agreement between the District and the Contractor. The purpose of this Fifth Amendment is to amend the terms and deliverables between the District and Contractor.

2. **Term of Agreement.**

- 2.1. Within section 1.1, delete the following language which has a strikethrough and add the language which is underlined:

This Agreement shall commence on the date first set above and continue through and including June 30, 2018, unless earlier terminated as provided herein. The Agreement, at the option of the District, may be extended for up to ~~four (4)~~ five (5) additional one-year terms upon separate written addendum to the Contractor for each one-year term.

- 2.2. At the conclusion of the term dated July 1, 2022, as outlined in section 1.1 of the Agreement, the District and Contractor elect to extend the term of the Agreement beginning on July 1, 2022 through June 30, 2023.

3. **Amended Responsibilities.**

- 3.1. Amend Exhibit A with Contractor’s K12 Academic Price List 2021, hereby attached as Exhibit A-1 to this Fifth Amendment and made part of the Agreement.
 - 3.2. Within section 10.6, delete the language which has a strikethrough and replace with the following language which is underlined:

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 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. Contractor shall furnish the District's Director of Records and Risk Management with certificates of the required insurance prior to the District's approval and signing of this Agreement, and with renewal certificates as soon as reasonably practical following 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 10.6, shall not reduce the indemnification liability that Contractor has assumed in section 10.7 below.~~

Commercial General Liability

- a. ~~Each Occurrence Bodily Injury & Property Damage~~ _____ \$1,000,000
- b. ~~Each Event Personal Injury~~ _____ \$1,000,000
- c. ~~Products/Completed Operations Aggregate~~ _____ \$1,000,000
- d. ~~General Aggregate~~ _____ \$2,000,000
- e. ~~Coverage must be written on an "occurrence" basis~~
- f. ~~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.~~

Technology Errors & Omissions Liability including Network Security and Privacy Liability

- a. ~~Per Loss~~ _____ \$3,000,000
- b. ~~Aggregate Limit~~ _____ \$3,000,000
- c. ~~If policy is written on a claims-made basis, Contractor warrants that any retroactive date under the policy shall preceede the effective date of this Agreement and that either continuous coverage will be maintained, or an extended discovery period will be exercised for a period of two (2) years beginning at the time work under this Agreement is complete. Contractor shall also maintain such insurance for an additional period of three (3) years following termination of the Agreement.~~

Insurance.~~If policy is written on an occurrence form basis, Contractor shall maintain such insurance for an additional period of one (1) year following termination of the Agreement. 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. The District's receipt of a Certificate of Insurance from the Contractor with limits and or coverages that do not meet the requirements does not waive the requirements and the Contractor shall still be responsible for the limits and coverages stated in this Agreement. Specified coverages and amounts may be provided by a combination of a primary policy plus an umbrella or following form excess policy. 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 Director of Records and Risk Management 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. Memorandums of Insurance will not be accepted. Certificates of Insurance and all communication regarding insurance shall be addressed to:

Poudre School District
Attention: Risk Management
2407 Laporte Ave
Ft. Collins, CO 80521
Email Certificate to: COI@psdschools.org

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, change of coverage, or non-renewal. The insurance requirements specified in this section 10.6 shall not reduce the indemnification liability that Contractor has assumed in section 10.7.

Commercial General Liability

Minimum Limits

- | | |
|---|--------------------|
| a. <u>Each Occurrence Bodily Injury & Property Damage</u> | <u>\$2,000,000</u> |
| b. <u>General Aggregate</u> | <u>\$3,000,000</u> |
| c. <u>Products/Completed Operations Aggregate</u> | <u>\$2,000,000</u> |
| d. <u>Personal/Advertising Injury</u> | <u>\$2,000,000</u> |
| e. <u>Coverage must be written on an "occurrence" basis.</u> | |
| f. <u>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 Contractor even if those limits of liability are in excess of those required by this Agreement.</u> | |

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. Liability extends for a period of three (3) years beginning at the time work under this Agreement is completed. Contractor shall maintain continuous coverage, as required by the Agreement, for this period.
- d. The insurance shall provide coverage for:
- e. 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.
- f. 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.
- g. 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.

4. **Special Provisions.**

- 4.1. **Terms and Conditions.** With the exception of items explicitly delineated in this Amendment, all terms and conditions of the original Agreement between the District and Contractor shall remain unchanged and in full force and effect.

5. **General Provisions.**


- 5.1. **Entire Agreement.** The Agreement and this Fifth Amendment constitute 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.
- 5.2. **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.

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IN WITNESS WHEREOF, the District and the Contractor have signed this Fifth Amendment as of the Effective Date.

LANGUAGE TESTING
INTERNATIONAL

POUDRE SCHOOL DISTRICT R-1

By: _____

Jay Rhyu
Chief Financial Officer

By: _____

R. David Montoya
Executive Director of Finance

By: _____
Mary Beth Johnson (Aug 12, 2022 14:16 MDT)

Mary Johnson
Teacher Secondary, Curriculum Facilitator

Exhibit A

K12 Academic Price List 2021

Effective date: 01/04/21

Test Type	Name	Description	Price	Remote Proctoring Option
SPEAKING	OPI® Oral Proficiency Interview	The ACTFL Oral Proficiency Interview (OPI) is a valid and reliable means of assessing how well a person speaks a language. It is a 20-30 minute one-on-one interview between a certified ACTFL tester and an examinee. The interview is interactive and continuously adapts to the interests and abilities of the speaker.	*Certified: \$145.00	+\$20.00
SPEAKING	OPIc® Oral Proficiency Interview by Computer	The ACTFL OPIc is an internet delivered test which provides valid and reliable oral proficiency testing on a large scale. The computer delivered assessment emulates the 'live' OPI, but delivery of questions is through a carefully designed computer program, and via a virtual avatar. Thus the test can be taken on demand, and at a time convenient to the candidate and proctor. The average time to administer the test is between 20 and 40 minutes to complete.	*Certified: \$73.00	+\$35.00
LISTENING	LPT Listening Proficiency Test	The ACTFL Listening Proficiency Test (LPT) is a proctored, online, proficiency-based test for the global assessment of listening ability in a language. LPTs measure how well a person understands spoken language. The LPT is an assessment of how well you can understand the spoken language. The test presents between 10 to 25 listening passages spoken in the target language being assessed. Listening passages vary in genre, content, length, and complexity depending on the level being targeted. Each passage is followed by three multiple choice questions, written in the target language. The average administration time for two-level forms is 50 minutes.	\$31.00	+\$20.00
READING	RPT Reading Proficiency Test	The Reading Proficiency Test (RPT) is a proctored, online, proficiency-based test for the global assessment of reading ability in a language. It is an assessment of the interpretive communication. RPTs measure how well a person spontaneously understands written language. Rather than assessing what you "know" about the language, the RPT is an assessment of how well you can understand the written language. It presents between 10 to 25 reading texts written in the target language being assessed. Reading texts vary in genre, content, length, and complexity depending on the level being targeted. Each text is followed by three multiple choice questions, written in the target language. The average administration time is between 40 - 80 minutes.	\$31.00	+\$20.00
WRITING	WPT Writing Proficiency Test	The ACTFL Writing Proficiency Test (WPT) is a web-based, proctored, standardized test of the global assessment of functional writing ability in a language. The WPT measures how well a person spontaneously writes in a language (without access to revisions and/or editing tools). ACTFL writing tests assess writing proficiency in terms of the ability to write effectively and appropriately for real-life writing purposes. The average administration time is between 40 - 80 minutes.	*Certified: \$73.00	+\$35.00
LISTENING & READING	L&Rcat Listening & Reading Computer Adaptive Test	<p>The ACTFL Listening Proficiency and Reading computer adaptive test (L&Rcat) addresses the interpretive mode of communication, measuring how well the test taker can listen to and read English. The listening section measures how well the test taker can spontaneously understand spoken language, without the ability to re-listen or ask for clarification; the reading section measures how well the test taker can spontaneously read a language when presented with written texts without access to dictionaries or grammar references.</p> <p>As a computer adaptive test the L&Rcat adapts to the test taker's listening and reading abilities; the computer algorithm successively selects questions based on the test taker's performance on previous questions for the purpose of maximizing the precision of the exam. This test is administered online with a remote proctor. Test administration ranges from 50 to 105 minutes.</p>	\$41.00	+\$20.00
K-12 Test of 4 skills	AAPPL Assessment of Performance toward Proficiency in Languages	<p>The ACTFL Assessment of Performance toward Proficiency in Languages (AAPPL) is a web-based proficiency and performance assessment of K-12 standards-based language learning. It assesses tasks across the three modes of communication as defined by the World-Readiness Standards for Learning Languages. AAPPL often situates tasks within the context of today's communication media. For example, test takers perform tasks such as participating in a virtual video chat, creating wikis, and e-mailing to demonstrate language ability.</p> <p>AAPPL places the value of communication front and center, assessing language performance and proficiency via the three modes of communication. The AAPPL assesses, Interpersonal Listening/Speaking, Presentational Writing, Interpretive Reading and Listening. Test administration is approximately 30 minutes per component.</p>	All 4 skills: \$20.00 Individually, ILS: \$10.00 PW: \$5.00 IR & IL: \$5.00 (IR & IL only offered together)	\$4 per student (not per mode or component)

K12 Academic Price List 2021

Effective date: 01/06/21

K-12 READING	ALIRA Latin Interpretative Reading Assessment	<p>ALIRA was created through a collaborative effort between The American Classical League (ACL) and ACTFL. It is a first-of-its kind assessment that is based on both the World-Readiness Standards for Learning Languages and the Standards for Classical Language Learning. It is a four-option, multiple choice, computer-adaptive assessment that can be delivered in a single class period.</p> <p>ALIRA assesses Interpretive Reading in Latin. ALIRA uses a wide variety of texts including shorter and longer texts from ancient Rome, authentic historical documents, and modern texts from today's classical studies classrooms.</p> <p>Test administration ranges from 20 to 30 minutes.</p>	\$10.00	\$4 per student (not per mode or component)
K-12	Out of School Testing & Remote Proctoring	<p>Out of School Testing options were designed as temporary measures in rapid response to the COVID-19 pandemic. Whether you plan to use ACTFL assessments as a class activity, to benchmark students' language progress, or to recognize students with the Seal of Biliteracy, we've provided you the tools and resources you need.</p> <p>To learn more about K12 Out of School Testing click here. https://www.languagetesting.com/k-12-covid-response </p>	—	—
OPI Rescheduling & Cancellation Fees			Less than 24 hours \$60.00 Less than 72 hours \$40.00	
OPIc, RPT, WPT, LPT, L&Rcat Rescheduling & Cancellation Fees			Less than 24 hours \$25.00 Less than 72 hours \$17.50	

* Certified tests are rated by two raters, and are issued an official certificate (digital certificate).

**FOURTH AMENDMENT TO SOFTWARE SERVICES AGREEMENT
BETWEEN LANGUAGE TESTING INTERNATIONAL
AND POUDRE SCHOOL DISTRICT R-1**

This Fourth Amendment (“Fourth Amendment”) dated the 29th day of March 2021 (“Effective Date”), is attached to and forms part of the Agreement between Poudre School District R-1 (the “District”) and Language Testing International (the “Contractor”), executed December 14, 2017, the First Amendment to the contract executed October 3, 2018, the Second Amendment to the contract executed April 8, 2019 and the Third Amendment to the contract executed June 4, 2020, each of which are attached and made part of this Amendment. To the extent that any of the terms or conditions contained in this Amendment may contradict with any of the terms or conditions of the attached Software Services Agreement, the First Amendment, the Second Amendment or the Third Amendment (“Agreement”), it is expressly understood and agreed that the terms of this Amendment shall take precedence and supersede the attached Agreement. The parties agree to amend the Contract by adding the following language:


1. **Purpose of Amendment.** This amendment shall constitute the Fourth Amendment to the Agreement between the District and the Contractor. The purpose of this Amendment is to amend the terms and deliverables between the District and Contractor.
2. **Term of Agreement.** At the conclusion of the term dated June 30, 2021, as outlined in section 1.1 of the Agreement, the District and Contractor elect to extend the term of the Agreement beginning on July 1, 2021 through June 30, 2022.
3. **Special Provisions.**
 - 3.1. **Terms and Conditions.** With the exception of items explicitly delineated in this Amendment, all terms and conditions of the original Agreement between the District and Contractor shall remain unchanged and in full force and effect.
4. **General Provisions.**
 - 4.1. **Entire Agreement.** The Agreement and this Fourth Amendment constitute 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.
 - 4.2. **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.

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IN WITNESS WHEREOF, the District and the Contractor have signed this Fourth Amendment as of the Effective Date.

LANGUAGE TESTING
INTERNATIONAL


POUDRE SCHOOL DISTRICT R-1

By:  _____

Jin Kim
Chief Financial Officer

By:  _____

R. David Montoya
Executive Director of Finance

By:  _____
Robert Beauchamp
Director of Curriculum, Instruction
and Assessment

**THIRD AMENDMENT TO SOFTWARE SERVICES AGREEMENT
BETWEEN LANGUAGE TESTING INTERNATIONAL
AND POUDRE SCHOOL DISTRICT R-1**

This Third Amendment (“Third Amendment”) dated the 4th day of June 2020 (“Effective Date”), is attached to and forms part of the Software Services Agreement between Poudre School District R-1 (the “District”) and Language Testing International (the “Contractor”), executed December 14, 2017, the First Amendment to the contract executed October 3, 2018 and the Second Amendment to the contract executed April 8, 2019, each of which are attached and made part of this Third Amendment. To the extent that any of the terms or conditions contained in this Third Amendment may contradict with any of the terms or conditions of the attached Software Services Agreement, the First Amendment or the Second Amendment (“Agreement”), it is expressly understood and agreed that the terms of this Amendment shall take precedence and supersede the attached Agreement. The parties agree to amend the Contract by adding the following language:

1. **Purpose of Amendment.** This amendment shall constitute the Third Amendment to the Agreement between the District and the Contractor. The purpose of this Amendment is to amend the terms and deliverables between the District and Contractor.
2. **Term of Agreement.** At the conclusion of the term dated June 30, 2020, as outlined in section 1.1 of the Agreement, the District and Contractor elect to extend the term of the Agreement beginning on July 1, 2020 through June 30, 2021.
3. **General Provisions.**
 - 3.1. **Entire Agreement.** The Agreement and this Third Amendment constitute 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.
 - 3.2. **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.


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**THIRD AMENDMENT TO SOFTWARE SERVICES AGREEMENT
BETWEEN LANGUAGE TESTING INTERNATIONAL
AND POUDRE SCHOOL DISTRICT R-1**


IN WITNESS WHEREOF, the District and the Contractor have signed this Third Amendment as of the Effective Date.

LANGUAGE TESTING
INTERNATIONAL


POUDRE SCHOOL DISTRICT R-1

By: 

Jin Kim
Chief Financial Officer

By: 

R. David Montoya
Executive Director of Finance

By: 

Robert Beauchamp
Director of Curriculum, Instruction and
Assessment

**SECOND AMENDMENT TO SOFTWARE SERVICES AGREEMENT
BETWEEN LANGUAGE TESTING INTERNATIONAL
AND POUDRE SCHOOL DISTRICT R-1**

This Second Amendment ("Amendment") dated the 8th day of April 2019, is attached to and forms part of the Agreement between Poudre School District R-1 (the "District") and Language Testing International (the "Contractor") executed December 14, 2017 and the First Amendment to the contract executed October 3, 2018, both of which are attached and made part of this Amendment. To the extent that any of the terms or conditions contained in this Amendment may contradict with any of the terms or conditions of the attached Software as Services Agreement and the First Amendment ("Agreement"), it is expressly understood and agreed that the terms of this Amendment shall take precedence and supersede the attached Agreement. In consideration of the mutual covenants and promises contained in this Agreement, the sufficiency of which is hereby acknowledged, the parties agree as follows:

1. **Purpose of Amendment.** This Amendment shall constitute the First Amendment to the Agreement between the District and the Contractor. The purpose of this Amendment is to amend the terms and deliverables between the District and Contractor.
2. **Term of Agreement.**
 - 2.1. At the conclusion of the term dated June 30, 2018, as outlined in section 1.1 of the Agreement, the District and Contractor elect to extend the term of the Agreement beginning on July 1, 2019 through June 30, 2020.
3. **Special Provisions.**
 - 3.1. **Terms and Conditions.** With the exception of items explicitly delineated in this Amendment, all terms and conditions of the original Agreement between the District and Contractor shall remain unchanged and in full force and effect.
4. **General Provisions.**
 - 4.1. **Entire Agreement.** The original Agreement and Amendment, 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.
 - 4.2. **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.


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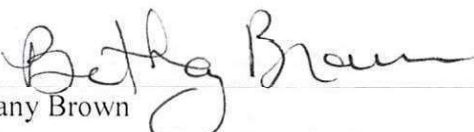
IN WITNESS WHEREOF, the District and the Contractor have signed this Agreement as of the date first set forth above.

LANGUAGE TESTING INTERNATIONAL

POUDRE SCHOOL DISTRICT R-1

By: 
Jin Kim
Chief Financial Officer

By: 
Dave Montoya
Executive Director of Finance

By: 
Bethany Brown
World Language Curriculum Facilitator

**FIRST AMENDMENT TO SOFTWARE SERVICES AGREEMENT
BETWEEN LANGUAGE TESTING INTERNATIONAL
AND POUDRE SCHOOL DISTRICT R-1**

This First Amendment (the "Amendment") dated the 3rd day of October 2018, is attached to and forms part of the Agreement between Poudre School District R-1 (the "District") and Language Testing International (the "Contractor") executed December 14, 2017, which is attached and made part of this Amendment. To the extent that any of the terms or conditions contained in this Amendment may contradict with any of the terms or conditions of the attached Software Services Agreement (the "Agreement"), it is expressly understood and agreed that the terms of this Amendment shall take precedence and supersede the attached Agreement.

1. **Purpose of Amendment.** This Amendment shall constitute the First Amendment to the Agreement between the District and the Contractor. The purpose of this Amendment is to amend the terms and deliverables between the District and Contractor.
2. **Term of Agreement.**
 - 2.1. At the conclusion of the term dated June 30, 2018, as outlined in section 1.1 of the Agreement, the District and Contractor elect to extend the term of the Agreement beginning on July 1, 2018 through June 30, 2019.
3. **Amended Responsibilities.**
 - 3.1. Within section 10.6, delete the following language which has a strikethrough:

~~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 as soon as reasonably practical following 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. Personal Injury | \$1,000,000 |

- e. ~~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 included as additional insureds; copy of policy endorsement must be attached to the Certificate of Insurance.~~

3.2. Within section 10.6, add the following language which is underlined:

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 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. Contractor shall furnish the District's Director of Records and Risk Management with certificates of the required insurance prior to the District's approval and signing of this Agreement, and with renewal certificates as soon as reasonably practical following 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 10.6, shall not reduce the indemnification liability that Contractor has assumed in section 10.7 below.

Commercial General Liability

- a. Each Occurrence Bodily Injury & Property Damage \$1,000,000
- b. Each Event Personal Injury \$1,000,000
- c. Products/Completed Operations Aggregate \$1,000,000
- d. General Aggregate \$2,000,000
- e. Coverage must be written on an "occurrence" basis
- f. 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.

Technology Errors & Omissions Liability including Network Security and Privacy Liability

- a. Per Loss \$3,000,000
- b. Aggregate Limit \$3,000,000
- c. If policy is written on a claims-made basis, Contractor warrants that any retroactive date under the policy shall precede the effective date of this Agreement and that either continuous coverage will be maintained, or an extended

discovery period will be exercised for a period of two (2) years beginning at the time work under this Agreement is complete. Contractor shall also maintain such insurance for an additional period of three (3) years following termination of the Agreement.

- d. If policy is written on an occurrence form basis. Contractor shall maintain such insurance for an additional period of one (1) year following termination of the Agreement.

4. **Special Provisions.**

- 4.1. **Terms and Conditions.** With the exception of items explicitly delineated in this Amendment, all terms and conditions of the original Agreement between the District and Contractor shall remain unchanged and in full force and effect.

5. **General Provisions.**

- 5.1. **Entire Agreement.** The original Agreement and Amendment, 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.

- 5.2. **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.

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

LANGUAGE TESTING INTERNATIONAL

POUDRE SCHOOL DISTRICT R-1

By: _____
Jin Kim

Chief Financial Officer

By: _____

Dave Montoya

Executive Director of Finance

By: _____

Bethany Brown

World Language Curriculum Facilitator

SOFTWARE SERVICES AGREEMENT

This Software Services Agreement ("Agreement") is effective as of the 14th day of December 2017, by and between Poudre School District R-1 ("District") and Language Testing International ("Contractor"). The District and the Contractor are collectively referenced herein as the "parties." In consideration of the mutual covenants and promises contained in this Agreement, the sufficiency of which is hereby acknowledged, the parties agree as follows:

1. Term of Agreement.

1.1. This Agreement shall commence on the date first set above and continue through and including June 30, 2018, unless earlier terminated as provided herein. The Agreement, at the option of the District, may be extended for up to four (4) additional one-year terms upon separate written addendum to the Contractor for each one-year term.

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. Notwithstanding the planned term of an Agreement and/or any extensions thereof as provided in section 1.1 and 1.2 above, the District may terminate an Agreement at any time in its sole discretion for any reason, with or without cause, upon written notice served on the service provider no less than thirty (30) days prior to the date of termination. In the event of such early termination by the District, the service provider shall be paid up to the date of termination for services performed under and in accordance with this Agreement.

1.4. 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 authorized representatives of the parties.

2. Deliverables and Purchase Price.

2.1. The Contractor shall make its American Council for the Teaching of Foreign Languages Assessment of Performance toward Proficiency of Languages assessment for use in the District's schools, in accordance with the scope of work set forth in the attached Exhibit A (hereinafter the "Services").

2.2. The total cost for Services, per individual student, shall not exceed prices as set forth on the attached Exhibit A.

2.2.1. District shall pay invoices within thirty (30) days of receipt.

2.3. The Contractor grants the District a non-exclusive, non-transferable, non-sublicenseable license to access and use, and permit authorized users to access and use the Services solely in the United States during the term of the Agreement.

2.4. The District shall access and use the Services solely for non-commercial instructional and administrative purposes within the District. Further, the District shall not, except as expressly authorized or directed by the Contractor: (a) copy, modify, translate, distribute, disclose or create derivative works based on the contents of, or sell, the Services, or any part thereof; (b) decompile, disassemble or otherwise reverse engineer Services or otherwise use the Services to develop functionally similar products or services; (c) modify, alter or delete any of the copyright, trademark, or other proprietary notices in or on the Services; (d) rent, lease or lend the Services or use the Services for the benefit of any third party; (e) avoid, circumvent or disable any security or digital rights management device, procedure, protocol or mechanism in the Services; or (f) permit any authorized user or third party to do any of the foregoing. The District also agrees that any works created in violation of this section 2.5 are derivative works, and, as such, the District agrees to assign, and hereby assigns, all right, title and interest therein to the Contractor.

2.5. The District agrees, subject to the limited rights expressly granted hereunder, that all rights, title and interest in and to all Services, including all related IP Rights, are and shall remain the sole and exclusive property of Contractor or its third-party licensors. "IP Rights" means, collectively, rights under patent, trademark, copyright and trade secret laws, and any other intellectual property or proprietary rights recognized in any country or jurisdiction worldwide. The District shall notify Contractor of any violation of Contractor's IP Rights in the Services, and shall reasonably assist Contractor as necessary to remedy any such violation. Contractor Services are protected by patents.

2.6. 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 *et seq.* 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 in writing by the District, initiate the process to 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 subcontractors as identified in Exhibit A ("Subcontractors") pursuant to written subcontracts specifying the purpose of the disclosure and providing that: (a) Subcontractors shall not disclose confidential student records and information, in whole or in part, to any other party; (b) Subcontractors shall not use any confidential student records or information to advertise or market to students or their parents/guardians; (c) Subcontractors 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 their work under their subcontracts Subcontractors shall, as directed by the District through the Contractor, either securely destroy all confidential student records and information in their possession, custody or control, or return such confidential student records and information to the District.

6.3. Contractor and Subcontractors 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 the Contractor or Subcontractors re-identify or attempt to re-identify any de-identified confidential student records and information.

6.4. Contractor and Subcontractors 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 *et seq.* ("CORA"). The District, not the Contractor or Subcontractors, shall respond to all parent/guardian and eligible student requests to inspect and review records, data and other information.

7. **School Service Contract Provider.** Contractor is a "school service contract provider" under the Colorado Student Data Transparency and Security Act (the "Act"). 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 attached Exhibit A: (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 Subcontractors fail to comply with any of the foregoing requirements in sections 4, 5, 6 or 7 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 Subcontractors from future contracts and subcontracts with the District. Excluding any data breach, the District may allow an opportunity to cure a breach within thirty (30) days of written notice.

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: tsbitz@psdschools.org

Language Testing International
Attn: Jin Kim
445 Hamilton Ave, Suite 1104
White Plains, NY 10601
Email: nkim@languagetesting.com

10. **General Provisions.**

10.1. **No Assignment.** Except with respect to its affiliates or a successor entity that may result from corporate merger, 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. **Conflict of Terms.** In the event of any conflict of terms found between this Agreement or any other terms and conditions, end user license agreements or privacy policies, the terms of this Agreement shall prevail.

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

10.6. **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 as soon as reasonably practical following 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 10.6 shall not reduce the indemnification liability that Contractor has assumed in section 10.7 below.

Commercial General Liability

- a. Each Occurrence Bodily Injury & Property Damage \$1,000,000
- b. 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 included 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

10.7. **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 10.7 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.

10.8. **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.

10.9. **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.

10.10. **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.

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

10.12. 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.

10.13. 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.

10.14. 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.

LANGUAGE TESTING INTERNATIONAL

POUDRE SCHOOL DISTRICT R-1

By: 

Jin Kim
Chief Financial Officer

By: 

David Montoya
Executive Director of Finance

By: 

Bethany Brown
World Language Curriculum Facilitator

EXHIBIT A

**Language Testing International
445 Hamilton Ave, Suite 1104 White Plains, NY 10602**

Response For Information to Poudre School District, Fort Collins, CO

AAPPL Individual Pricing:

\$10 ILS – Interpersonal Listening & Speaking

\$5 PW – Presentational Writing

\$5 IR & IL (offered together only) – Interpretive Reading and Interpretive Listening

AAPPL 4 Skills Pricing

\$20 4 Skills (ILS, PW, IR & IL)

AAPPL Description:

AAPPL stands for the ACTFL Assessment of Performance toward Proficiency of Languages.

ACTFL is the American Council for the Teaching of Foreign Languages.

The AAPPL Measure is a performance-based assessment of standards-based language learning across the three modes of communication (interpersonal, interpretive, and presentation) as defined by the World Readiness Standards for language learning. The test provides students the opportunity to engage on topics of personal, social, and academic relevance, creating an enjoyable experience for the student. Each task, such as writing an email or video-chatting in the target language, takes place in the context of the classroom.

AAPPL is delivered over the internet, under proctored conditions, and requires headphones with a microphone. There are two forms of AAPPL Measure that assess different ranges of language ability. Form A is generally for students in the Novice to Intermediate ranges. Form B is appropriate for students in the Intermediate to Advanced ranges. The test length is approximately 30 minutes to complete each of the four components of the test.

AAPPL is currently offered in Arabic, Chinese (Mandarin), ESL, French, German, Portuguese, Russian and Spanish. In January 2018, 4 new languages will release: Hindi, Italian, Japanese, and Thai

Student Data Collected through LTI's Testing Systems

LTI collects the following student data:

Student's First Name

Student's Last Name

Student ID (that uniquely identifies a student. It is stored in an encrypted format)

Student's Gender

Student Grade: Optional data

Course Level / Years of Study: Optional data

LTI collects student data for the following reasons:

1. In order to support a student for help required during testing
2. To uniquely identify a student, the student ID is required. It is stored in an encrypted format. A client (aka school) can use a dummy student ID since it does not have any business rule that surrounds it
3. Student name is reflected on the score card
4. Gender forms an important part in Arabic AAPPL language. It is not required for any other products

**Language Testing International
445 Hamilton Ave, Suite 1104 White Plains, NY 10602**

Third-Party Vendor Partnerships

LTI's third-party vendor partners include:

- 1. AWS**
- 2. Hostway**

LTI servers hosted at Data Center and AWS are protected behind firewalls and only LTI system administrators have access to them through the LTI network.

The purpose of LTI's partnership with the above named third-party vendors is for:

- 1. Hosting of web applications that are used by clients and accessible through the internet**
- 2. Storing the data in databases**

Additional Required Provisions

LTI W9 Statement

See Attached

Notice and email for contract notices

Jin Kim, Chief Financial Officer jkim@languagetesting.com 914-963-7110

Name and title of person who will sign the contract

Same as above