### School District No. 1
**In the City and County of Denver**
**Denver, Colorado**

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**Finance and Audit Communication**

<table>
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<tr>
<th><strong>Meeting Date:</strong></th>
<th>March 5th F&amp;A, March 15 BOE</th>
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</thead>
<tbody>
<tr>
<td><strong>Subject:</strong></td>
<td>Approval of School Performance Framework (SPF) Contract with RevGen Partners</td>
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<tr>
<td><strong>Sponsor/Department:</strong></td>
<td>Connie Casson; Accountability, Research, and Evaluation (ARE)</td>
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<tr>
<td><strong>Action Sought:</strong></td>
<td>We are seeking approval to award a 5-year contract to RevGen Partners for the delivery of the SPF, including all yearly changes, resulting reports, and user support for consecutive years starting 2012 and ending 2016.</td>
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<tr>
<td><strong>Contact:</strong></td>
<td>Connie Casson (ARE)</td>
</tr>
<tr>
<td><strong>Phone:</strong></td>
<td>(720) 423-3706</td>
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<tr>
<td><strong>Approved by:</strong></td>
<td>Connie Casson</td>
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<tr>
<td><strong>Legal Review:</strong></td>
<td>Michael Hickman</td>
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</table>

### Key Considerations:

The School Performance Framework is a strategic reporting mechanism designed to inform teachers, principals, staff, District leadership, and the public with student and school performance information (both growth and status) in order to make intervention and incentive decisions, and to comply with state and federal regulations.

After careful comparison (cost, quality, staff impact/capacity) between two options - 1) bring the solution in-house and execute with DPS staff only, or 2) continue to contract with an external vendor, it was determined that the most reasonable, cost effective, and least risk adverse option was to continue to outsource the delivery of the SPF.

### Budget/Staff Impact:

The total cost for the 5-year contract is $2,838,580, or an average of $567,716/year and will come from the General Funds. This includes annual metric and reporting changes, delivery of all related reports, and support to public and schools.

RevGen will deliver the solution in its entirety with minimal and agreed upon support from ARE and DoTS.

### Recommendations:

It is the recommendation of ARE to contract RevGen Partners for the next 5 years (with option to terminate).
To: Board of Education

From: Michael Thomas, Director of Purchasing

Date: March 15, 2012

Subject: Final Approval of RevGen Scope of Work for School Performance Framework

**Scope of Procurement:**
This procurement is for a multi-year award which will allow RevGen Partners to collaborate with the District to develop requirements and build the School Performance Framework (SPF) annually for a five (5) year period. This will start with SPFv2012 as of January 1, 2012 and end with SPFv2016 as of December 31, 2016, thus leveraging the framework of the prior year. Additionally, RevGen Partners shall provide year-round support to the District by answering questions regarding SPF platform, data, calculation logic, or deliverables.

**Rationale for Procurement:**
A detailed analysis was conducted to examine costs, risks, and benefits of in-house, outsourced, and cooperative solutions. A long term negotiated contract solution with RevGen Partners has been deemed most feasible and cost effective, with no potential cost savings from conducting the SPF internally. Additionally, DPS has negotiated fees with the vendor for stabilized most favored nation pricing over the next 5 years that aligns with fees paid for prior years’ services.

Due to the scope of this initiative and the dollars required to achieve our goals for SPF, a Scope of Work (SOW) was necessary in order to capture all of the requirements and deliverables by both the District and RevGen Partners. The cost, which is $2,838,580 for the term of this agreement, requires the Board of Education review and final approval. This pricing is considered fair and reasonable.

After review and evaluation by a cross-functional team of departments from Accountability, Research and Evaluation, Project Management Office, DoTS, Legal and Purchasing, the team agreed to the terms set forth in the SOW. To further solidify the relationship between the District and RevGen Partners, a Master Agreement was also negotiated and will provide the governing terms and conditions to be followed by both parties.

**Source of Funding:**
The funding for this contract is provided by the Accountability, Research and Evaluation Department and will come out of the General Funds.

**Recommended Award:**
In addition to approving the cost of the project summarized in this memo, we are requesting that the Board review the SPF Scope of Work and the Master Agreement that will govern the performance of SPF services by RevGen.

The total cost for the 5 year contract is $2,838,580 or an average of $567,716/year and will come from the General Funds.

This award recommendation will be reviewed by the Finance and Audit Committee on March 5, 2012.
DENVER PUBLIC SCHOOLS MASTER SERVICE AGREEMENT

This Master Services Agreement ("Agreement") dated [month]_______[day], 20__, and will be effective on the day of execution ("Effective Date"), and is between School District No. 1, in the City and County of Denver, a body corporate, with its principal place of business at 900 Grant Street, Denver, Colorado 80203 (the "District"), and RevGen Partners, Inc. and RevGen Support Services, LLC both with offices at 6300 South Syracuse Way, Suite 220, Centennial, CO 80111, (referred to collectively as "Contractor"). The terms of this Agreement shall apply to all products and services provided by Contractor under this Agreement.

WHEREAS, as the parties wish to enter into agreements for the provision of Services through its employees, contractors, and consultants related to application development, support services for information technology, and consultation services as may be needed from time to time; and

WHEREAS, the District and the Contractor now desire to enter into a Master Services Agreement, with a commitment in principle for a business relationship commencing on ______ ("Effective Date"), and continuing through ____________, ending five (5) years ("Term") after the Effective Date.

NOW THEREFORE, in consideration of the foregoing premises, and the mutual covenants and agreements set forth herein, the parties hereto agree as follows:

SECTION 1  DEFINITIONS

1.1 The following terms are defined to avoid any ambiguity, clarify meanings and to give designations for terms that will be used frequently throughout the agreement. Alternatively, definitions may be supplied at the first occurrence of the term in the Agreement.

1.2 Acceptance. The criteria for Acceptance of Services and Products shall be set forth in each Statement of Work ("SOW"), or in such other document that the parties mutually agree in writing, which shall be incorporated into the SOW by this reference. The Acceptance of the Services or Product requires receipt of written confirmation from the District. If Contractor has not received the District’s written confirmation within 14 business days following completion of the Services or delivery of the Products, the applicable Services or Work Products will be deemed accepted by the District. Furthermore, for work performed by the Contractor, which acceptance criteria is not specified in the SOW, the applicable Services or Work Products will be deemed accepted by the District 30 days after the date of delivery unless Contractor receives a written notice of rejection from the District specifying the reason for the rejection of the Service or the Product.

1.3 Change Order. See the attached Exhibit C.

1.4 Confidential Information means all documents, computer programs and documentation, reports, financial or other data, records, forms, tools, products, services, methodologies, present and future research, technical knowledge, marketing plans, trade secrets, and other materials obtained by Contractor and the District from each other in the course of performing any Services, whether tangible or intangible and whether or not stored, compiled, or memorialized physically, electronically, graphically, in writing, or by any means now known or later invented. Confidential Information includes without limitation records, information, Deliverables, the District’s Information and Contractor’s Information (i) that have been marked as proprietary or confidential; (ii) whose confidential nature have
been made known by the District or Contractor; or (iii) that due to its character and nature, a reasonable person under like circumstances would treat as confidential. Notwithstanding the foregoing, Confidential Information does not include information which: (i) is already known to the recipient at the time of disclosure; (ii) is or becomes publicly known through no wrongful act or failure of recipient; (iii) is independently developed by recipient without benefit of the other party’s Confidential Information; or (iv) is received from a third party which is not under and does not thereby breach an obligation of confidentiality.

1.5 **Deliverable** is a tangible, verifiable work output such as a specification, programming, code, or other output developed under a Statement of Work.

1.6 **Documentation** is any document prepared, written and provided by Contractor for the District and its other clients, and includes without limitation, any user manual, release, notes, and other documentation otherwise relied upon by the District to execute this Agreement.

1.7 **Enhancement** means any and all updates, releases, subsequent versions, error corrections, enhancement and bug fixes and new releases by Contractor from time to time to other customers.

1.8 **Effective Date** is the date that the Client signs this Master Agreement, SOW, Change Order or the amendment unless otherwise specified in writing in the SOW Change Order or an amendment of this Agreement.

1.9 **Foundation Tools** are the Contractor’s (i) know-how, concepts, techniques, methodologies, ideas, templates, routines, sequences, software, firmware, designs, scripts, interfaces, programming code, applets, executables, objects, files, utilities and tools that existed prior to the performance of Services and (ii) ideas, concepts, techniques and know-how discovered, created or developed by Contractor that are of general application and not based on or derived from the District’s Confidential Information.

1.10 **Intellectual Property** is any present or future development work, copyright, patent, trade-mark, trade name, service mark, design, program, procedure and method of computation, trade secret, data model, invention, drawing, plan, specification, process or similar property.

1.11 **Product(s)** means the object code version of any identified proprietary software, module, products and any associated documentation and updates to software and programs whether incorporated as embedded software or bundled component that adds and provides primary and significant functionality.

1.12 **Residuals** means that information which may be retained in intangible form in the minds of those personnel of the receiving party, without intentionally reducing such information to memory, who have had access to Confidential Information in tangible form of the disclosing party during the term of this Agreement.

1.13 **Residual Rights.** Either party shall be free to use Residuals (as defined herein above) from any Confidential Information provided by the disclosing party for any purpose, including, without limitation, providing services or creating programming or materials for customers, subject to the obligation not to disclose, publish or disseminate such Confidential Information and subject to the patent rights and statutory copyrights of the other party.
1.14 **Statement of Work** is a document created pursuant to this Master Services Agreement that specifies the roles and responsibilities of the Parties with respect to a particular engagement.

1.15 **Support** is support services provided pursuant to a support schedule, as more fully described in the support schedule or as referenced in applicable SOW.

1.16 **Upgrades** are modifications, templates and newer versions of Software and Applications provided by the Contractor that are made available generally to clients. Upgrades do not include new independently-priced Services and product(s).

**SECTION 2**

**TERM**

2.1 **Term.** The term of this Agreement shall begin on the Effective Date and shall continue for a period of five (5) years. After the Term is reached, this Agreement may be automatically renewed for consecutive one (1) year terms. If either party does not desire to automatically renew this Agreement that party must provide written notice of its intent not to renew ninety (90) days prior to the Term. Either party may terminate this Agreement pursuant to Section 8 hereof.

**SECTION 3**

**CONTRACTOR SERVICES**

3.1 **Services.** Contractor will provide development, support services for information technology, and consulting services for the District as the parties may agree from time to time (“Services”) pursuant to each SOW issued hereunder.

3.2 **Statement of Work** shall describe the time interval and nature of the Services, the requested compensation the Contractor proposes to be paid for such Services and such other matters as the parties consider appropriate. The parties acknowledge that Services are variable and that there is no guarantee that the Contractor will be continuously engaged during the term of the Agreement. A valid SOW must be acknowledged in writing and signed by an authorized representative of each party.

3.3 **Testing.** When Contractor has completed the Services under a SOW, including all required Deliverables, the District, with Contractor’s cooperation and assistance, may conduct acceptance tests to verify whether the Deliverables substantially conform to the applicable Specifications. The District shall have thirty (30) days after completion of the applicable Services, or such other period as may be mutually agreed upon as set forth in the applicable Statement of Work (the “Acceptance Period”), to test the Deliverables. If the District notifies Contractor of any material non-conformity with the Specifications in any of the Deliverables (collectively "Non-conformities") in writing within the applicable Acceptance Period, Contractor shall promptly use reasonable efforts to correct such Non-conformities at its own expense and notify the District when the corrections are complete. The District then shall have the right to test the corrected Deliverables, together with any other Deliverables, as upon the initial completion of the applicable Services. If the District does not notify Contractor of any material Non-conformities within the Acceptance Period, the District shall be deemed to have accepted the Deliverables.

3.4 **Additional or Modification of Services** If the District desires to change, supplement or add to the Services to be performed under a particular SOW, or if Contractor believes a SOW needs to be changed or supplemented, before performing the Services, follow the Change Order procedures described in Exhibit C to this Agreement.
3.5 **Location of Services** To the extent it is available, the District will use its best efforts to provide the appropriate work space, and other support at the mutually agreed locations and times consistent with the requirements of the Services performed under the Statement of Work by the Contractor.

3.6 **Change Order.** A requesting party may request to change, supplement or add services if it is determined that SOW requirements will not be met, satisfied or delivered because one or more parameters or assumptions have changed affecting the performance of the work described in an approved SOW, and after factoring in the impact on the quality, schedule, costs, increased risk, or the significance of the compromise may have on Services, the Deliverable or satisfactorily completing the work, a party may initiate a Change Order Request by following the Change Order procedures and using the form attached as Exhibit D to this Agreement.

**SECTION 4**

**COMPENSATION**

4.1 **Remuneration.** During the term of this Agreement, Contractor shall be compensated as provided in the applicable Statement of Work.

4.2 **Payment.** The District shall pay undisputed invoices within thirty (30) days of receipt. If the District disputes any invoice, the District shall timely pay the undisputed portion and notify Contractor in writing of the nature of the dispute. Both parties will use their best efforts to resolve the dispute expeditiously.

4.3 **Expenses.** Unless expressly agreed by the parties, Contractor agrees that out-of-pocket expenses such as long distance telephone charges, postage, shipping, and reasonable travel and living expenses are included in the Fees. All expenses, costs and charges for additional services or Change Orders, must have advance written approval before such expenses, costs and charges will be paid by the District. Unless there is written approval in advance by District in the applicable SOW, there are no reimbursable expenses allowed under this Agreement, any SOW or Change Order.

4.4 **Invoicing.** The Contractor shall furnish the following information with each invoice submitted for payment to the District: (i) Dates Services were performed; (ii) Detailed description of the Services or Activities performed for time and materials SOWs provided however if it is a not to exceed or fixed fee amount no such detail shall be required; (iii) Names of Contractor’s employees, personnel or agents performing the Services or Activities; and (iv) The Hours worked and rate charged for each of the Contractor’s employees, personnel or agents, unless a fixed fee arrangement.

4.5 **Price Adjustments.** The Changes that may increase the amount of compensation the District must pay to Contractor shall be in accordance with the Change Order procedures pursuant to Exhibit C of this Agreement. Without the written authorization from the District, any work performed by the Contractor not specifically described in the then current SOW is performed at risk of receiving no additional compensation from the District. Contractor must provide written documentation justifying any price adjustment and submit that information in advance of approval of any price increase. Any adjustment to prices in a SOW is allowed provided the parties mutually comply with Change Order procedures pursuant to Section 3.4.

4.6 **Rate Stabilization.** Contractor agrees that any budget, hourly rate or fee specified in any initial Quote or SOW shall be guaranteed for the entire term of the SOW, unless the parties otherwise agree in writing to change or modify one or more of them in accordance with the Change Order procedures pursuant to Exhibit C.
4.7 **Taxes.** The Contractor shall promptly pay when due, all taxes, bills, debts and obligations it incurs performing the services under the Contract since the District is not liable for the payment of taxes, including any sales, use, excise, value added, Cross-Border Tax Obligations or other applicable taxes, tariffs or duties, late charges or penalties of any nature, except for taxes the law specifically requires the District to pay.

SECTION 5  INTELLECTUAL PROPERTY

5.1 **Consideration.** The District’s contribution of resources, including without limitation, materials, technical assistance, and Contractor’s fees to develop, create and use the materials identified under any SOW is good and valuable consideration for current and future use of the Contractor’s Information.

5.2 **Warranty.** The parties warrant that each has full power and authority to make this Agreement and to best of it knowledge has made a good faith effort to follow the laws concerning copyrights, patents and intellectual property rights, the District’s Copyright Policy and any work performed by the parties does not infringe any copyright, violate any property rights or is unlawful.

5.3 **District Liability.** In the event that an act of the Contractor results in a claim of copyright infringement because it was authorized at the directive of the District’s authorized representative, to the extent authorized by the Constitution and laws of the State of Colorado, the District will release and hold harmless the Contractor against all claims, suits, costs, damages and expenses that the Contractor may sustain by reason of such infringement or violation of any copyright or intellectual property interest.

5.4 **Use and Protection of Intellectual Property, Information and Materials.** At all times while this Agreement is in effect, neither party will use, in any adverse way or for its own benefit or for the benefit of any third party, the Information and Materials or intellectual property belonging to the other party without the express written consent of that party. However, without breaching the confidentiality this Agreement requires or violating any party’s intellectual property rights, Information and Materials that is generally available after having been disclosed previously with the owner’s consent or is in the public domain is excluded from this obligation.

5.5 **District Materials and Information.** Unless otherwise mutually agreed upon, as set forth in the applicable SOW, the parties agree, subject to the obligations of this Agreement, that upon full and final payment and subject to the provisions contained herein, all documents, designs, residuals, computer programs, software tools, process, techniques, computer systems, source code, data, computer documentation, test programs, maintenance and support tools, and other tangible materials developed or created by Contractor for the District pursuant to any SOW (“Deliverables”) shall become the sole and exclusive property of the District (“Works Made For Hire”). In the event any Deliverable does not fall specifically within the enumerated category of Works Made For Hire pursuant to the United States copyright laws, the Contractor, upon full and final payment by the District for the Services performed and required by a SOW, hereby assigns all rights granted under such laws to the District with respect to that Deliverable. Contractor agrees to render, at the District’s sole cost and expense, all reasonably required assistance to the District to protect the rights described in this Subsection 5.6. The District’s information, materials and software shall remain the sole and exclusive property of the District.
5.6 **Contractor’s Materials and Information.** Notwithstanding anything to the contrary herein, Contractor retains exclusive ownership of all of its Foundation Tools, which includes, without limitation, Contractor’s computer programs, residuals, methodologies, templates, flowcharts, architecture designs, tools, specifications, drawings, sketches, models, samples, records and documentation, as well as copyrights, trademarks, service marks, ideas, concepts, know-how, techniques, knowledge or data, and any derivatives thereof, which have been originated, developed or purchased by Contractor, a parent or affiliate of the Contractor (all of the foregoing, collectively, “Contractor’s Information”), are the Contractor’s, who may utilize its proprietary works of authorship, pre-existing or otherwise, that have not been created specifically for the District. Contractor’s Information, even if it is a Deliverable, shall remain the sole and exclusive property of Contractor.

5.7 **District License.** To the extent the Deliverables incorporate the Foundation Tools, Contractor hereby grants the District a non-exclusive, non-transferable, perpetual, royalty-free, worldwide license to use the Foundation Tools in connection with such Deliverables. The District will not sublicense or otherwise grant any other party any rights to use, copy or otherwise exploit or create derivative works from The Foundation Tools separate from the Deliverables, provided that third parties that District retains to provide services, including but not limited to, maintenance, development, disaster recovery or outsourcing services, shall have the right to use the Foundation Tools solely for the purpose of providing such services to the District. To the extent that Contractor incorporates any of Contractor’s Information into the Deliverables, and effective upon full and final payment by the District for the Deliverables required by the corresponding SOW, Contractor hereby grants to the District a royalty-free, non-exclusive, perpetual, nontransferable, object code license (“Product”) to use such Contractor’s Information solely in connection with the District’s Deliverables.

5.8 **Contractor License.** To the extent the Contractor uses any of the District’s Deliverables in its application development, support services for information technology, and consulting services for any third party, the District hereby grants Contractor a non-exclusive, non-transferable perpetual, worldwide right to use the Deliverables produced as a result of the Services provided by this Agreement or any subsequent SOW and shall have the right to retain a copy of each of the Deliverables for its records. Contractor shall be able to retain its working papers resulting from the provision of Services.

5.9 **Trademarks, Copyrights.** Each party to this Agreement acknowledges the validity of the other party’s service marks, trademarks, tradenames, patents, or copyrights, if any, and will not in any way infringe upon or otherwise harm the other party’s rights or interests in such property.

**SECTION 6 CONTRACTOR WARRANTIES**

6.1 **Services.** Contractor represents and warrants that it is competent to provide Services in a professional and workmanlike manner, and that Services will be diligently and promptly performed with the highest professional and workmanlike manner so as not to disrupt, or adversely affect the District’s business operations and as of the date of delivery, Contractor’s performance of the Services called for by this Agreement, to its knowledge, does not and shall not violate any applicable law, rule, or regulation.

6.2 **Ownership.** Contractor warrants to the District that, as of the date of delivery, Contractor has full authority and sufficient rights, except for rights respecting programs, data and materials provided by the District or furnished to the District by third-party Contractors, to grant and convey the rights granted to the District in Section 5 under this Agreement.
6.3 **Operation and Functionality.** Contractor warrants for one year that upon (i) the District’s Acceptance of a Deliverable or (ii) the conclusion of the applicable SOW (the "Warranty Period"), any computer program (and associated documentation) developed by Contractor for the District hereunder shall conform to the Specifications in the applicable SOW thereto in all material respects.

SECTION 7 **DISTRICT REMEDIES**

7.1 In the event the District notifies Contractor in writing of a breach of any foregoing warranty during the Warranty Period, Contractor shall promptly use reasonable efforts to remedy such breach at no additional expense to the District. During the period of time Contractor is attempting to cure the breach, the District will have no obligation to make any payment for the affected Deliverable, Service or Product, provided, however, any unpaid payments will be promptly paid upon correcting the breach. In the event that Contractor corrects the breached warranty, the warranty shall be extended one year from the date of correction. After using reasonable efforts, if Contractor is unable to correct the breach, Contractor will refund the amount paid by the District for the related Services, Deliverable and/or Product charged by the Contractor; if the severity of breach is such that the related Services, Deliverable and/or Product fails to operate or produces substantially incorrect results, the District may, in addition to any other available remedy, at law or in equity, terminate this Agreement. To extent it is feasible, the District reserves the right to exercise, individually or cumulatively, the remedies available under this Subsection 7.1.

7.2 Notwithstanding the foregoing, Contractor shall have no obligation or liability to the District under this warranty to the extent that a nonconformity results from: (i) the District’s use of the Deliverable and/or Product in a manner inconsistent with the Documentation; (ii) alterations or modifications made to the Deliverable and/or Product by the District is without the written approval of Contractor; (iii) defects in any unauthorized third party product, including the failure of any such product to operate in strict accordance with its specifications; (iv) malfunctions of the District’s hardware or system environment through no fault of Contractor; (v) storage, operation, use or maintenance of the Deliverable and/or Product in a manner or an environment inconsistent with the Specifications and Documentation of the Contractor at the time it is delivered to the District; (vi) the District’s failure to use Updates and/or Enhancements made available by the Contractor; (vii) the District’s use of the Deliverables in combination with any product, service or material not approved by the Contractor; or (viii) information, materials or specifications provided by the District that were not in the applicable SOW.

7.3 **Disclaimer.** EXCEPT FOR THE WARRANTIES EXPRESSLY MADE IN THIS AGREEMENT, THIS SECTION REPRESENTS ALL OF THE CONTRACTOR’S WARRANTIES CONCERNING THE SERVICES AND ANY DELIVERABLES, AND IS MADE EXPRESSLY IN LIEU OF ALL OTHER WARRANTIES AND REPRESENTATIONS, EXPRESS OR IMPLIED, INCLUDING ANY IMPLIED WARRANTIES OF MERCHANTABILITY, OR FITNESS FOR A PARTICULAR PURPOSE, OR OTHERWISE.

SECTION 8 **TERMINATION, SUSPENSION OF SERVICES**

8.1 **Suspension of Services.** Upon written approval by the District’s authorized representative, the District may, by written notice to Contractor, at any time and without advance warning or prior notice, require Contractor to stop all or any part of the Services, SOW or Change Order approved under this Agreement ("Stop Work Order"). The Stop Work Order may be for any specified period and shall be identified specifically as a Stop Work Order issued under this Subsection 8.1. Upon receipt of the Stop Work
Order, Contractor shall forthwith comply with its terms and take all reasonable steps to minimize the incurring of costs allocable to the Services and Deliverables covered by the Stop Work Order during the period of work stoppage. Before the Stop Work Order expires, the District, at its sole and absolute discretion, may: (i) cancel the Stop Work Order; (ii) terminate any part or all of the work specified by the Stop Work Order; or (iii) terminate this Agreement pursuant to the provisions of Section 8 without incurring any further contractual obligations or financial liability to the Contractor.

8.2 Termination for Material Breach. Either party may terminate, this Agreement, all or part of any SOW and/or Change Order by giving written notice specifying in detail the nature of breach to the other party. If the party in material breach of this Agreement fails to correct the breach within thirty (30) days or is not making suitable progress following receipt of written notice, then the party not in breach may terminate this Agreement, all or part of any SOW and/or Change Order. Termination of this Agreement shall not result in the termination of the District’s License and its attendant rights or Services supporting the License. Notwithstanding the foregoing, should the District be in material breach of its obligations under this Agreement, any applicable SOW or Change Order, the Contractor may terminate this Agreement, any applicable SOW or Change Order. The Contractor expressly waives any right or remedy to disable, de-install, or repossess any Deliverable and/or Product without due process of law. In the event the Contractor’s Services are terminated, unless otherwise specified in the applicable SOW the District is liable only for the payment of those Services satisfactorily performed through the termination date and the District shall receive from the Contractor a pro-rata refund of any unused prepaid fees.

8.3 Other Grounds for Termination. The District may terminate this Agreement immediately without prior notice if the Contractor commits an act of fraud, dishonesty, or any other act of negligent, reckless or willful misconduct in providing services to the District ("Misconduct"); or an Agreement by the District with any third party on which this Agreement substantially depends is terminated; or any circumstance beyond the District’s control, including but not limited to financial constraints ("Non-appropriations") imposed by action of the legislature or Governor of the State of Colorado ("Public Policy"), prevents the District from providing services or otherwise hinders, delays, or prevents the District from receiving revenue or income or increases its overhead to an extent the District reasonably decides to reduce or modify its operations ("Financial Constraint").

8.4 Termination of Services without Cause. At any time, either party may terminate this Agreement or any outstanding SOWs and/or Change Orders for any or no reason upon thirty (30) days advance written notice to the other.

8.5 Effect of Termination. Termination of this Agreement, any SOW or Change Order shall not limit either party from pursuing other remedies available to it, including injunctive relief. Upon any such termination, and in full satisfaction and discharge of all obligations owned to Contractor for Services completed, unless otherwise specified in the applicable SOW the District shall pay the Contractor’s fees, which have been earned in connection with the completion of the Services through the date of termination. If terminated without cause or for reasons related to Misconduct, Non-Appropriation, Public Policy or Financial Constraint, neither party shall have any liability for damages, including without limitation, breach, lost profits or business opportunity, special, indirect or consequential damages.

8.6 Handling of Materials and Information upon Termination. If any License granted under this Agreement or any SOW terminates, the terminated party shall (i) cease using the applicable Materials, Documentation, and related Information, and (ii) upon request certify within thirty (30) days after termination the party has destroyed or has returned the relevant Materials, Documentation and related
Information, whether or not modified or merged into other Materials (excluding any License that survives termination) of the other party and all copies thereof. If a party has used commercially reasonable efforts to destroy or return the Materials as required in this Subsection 8.6 and has no intent to retain such Materials, if it is subsequently discovered a party inadvertently retained Materials it shall not be considered a breach of this Section provided that the party destroys or returns such materials immediately after making such a discovery.

SECTION 9 ALTERNATIVE DISPUTE RESOLUTION

9.1 Subject to each party’s right to seek injunctive or equitable relief in a court of competent jurisdiction, each party agrees to resolve all disputes under this Agreement in accordance with these dispute resolution procedures.

9.2 Alternative Dispute Resolution. Each party will promptly notify the other in writing of any dispute. The parties’ designated representatives will meet within 10 days following the receipt of such written notice and will attempt to resolve the dispute within 5 days of the initial meeting. The parties agree that they shall first attempt in good faith to settle any dispute arising out of, or relating to this Agreement or its breach by a mutually agreed-upon alternative dispute process including, negotiation, mediation, or non-binding arbitration, and shall be administered by someone chosen and acceptable to both parties. All matters, controversies and claims arising under or relating to this Agreement will be interpreted in accordance with the laws of the State of Colorado, without regard to its choice of laws principles. The prevailing party in any dispute shall be entitled to payment of its reasonable attorneys’ fees and costs.

Section 10 GENERAL TERMS AND CONDITIONS

10.1 Conflict of Interest. No employee of the District shall have any personal or beneficial interest in the services or property described in the Agreement; and the Contractor shall not hire, or contract for services with, any employee or officer of the District in violation of the District’s Code of Ethics or Board Policy. The Contractor shall not engage in any transaction, activity or conduct that would result in a conflict of interest under the Agreement. The Contractor represents that it has disclosed any and all current or potential conflicts of interest which shall include transactions, activities or conduct that would affect the judgment, actions or work of the Contractor by placing the Contractor’s own interests, or the interests of any party with whom the Contractor has a contractual arrangement, in conflict with those of the District. The District, in its sole discretion, will determine the existence of a conflict of interest and may terminate the Agreement in the event it determines a conflict exists, after it has given the Contractor written notice describing the conflict. The Contractor will have thirty (30) days after the notice is received to eliminate or cure the conflict of interest in a manner which is acceptable to the District.

10.2 Federal Debarment, Suspension Certification. The Contractor certifies that neither it nor its principals are presently debarred, suspended, proposal for debarment, declared ineligible or voluntarily excluded from participation in this transaction by any Federal department or agency. The Contractor shall comply with the regulations found within 45 CFR Part 620, “Government Debarment and Suspension (Non-procurement).

10.3 Export Controls. Neither party will knowingly export or re-export or cause to be exported or re-exported any Product to any country for which the U.S. government requires an export license or other government approval without first obtaining the required license or approval.
10.4 **Compliance with Federal and State Laws, District Policies.** The Contractor will comply with all laws, regulations, municipal codes and ordinances and other workplace requirements and standards applicable to the provision of services/work performed including, without limitation, federal and state laws governing wages and overtime, civil rights/employment discrimination, equal employment, safety and health, verifiable security background checks, employees’ citizenship, withholdings, pensions, reports, record keeping, and campaign contributions and political finance.

The Contractor certifies that it shall comply with the provisions of C.R.S. 8-17.5-101, et seq. In accordance with that law, the Contractor shall not knowingly employ or contract with an illegal alien to perform work under this Agreement or enter into a contract with a subcontractor that fails to certify to the Contractor that the subcontractor shall not knowingly employ or contract with an illegal alien to perform work under this Agreement. The Contractor represents, warrants, and agrees that it: (i) has verified that it does not employ any illegal aliens, through participation in the E-Verify Program; and (ii) otherwise will comply with the requirements of C.R.S. 8-17.5-102(2)(b). The Contractor shall comply with all reasonable requests made in the course of an investigation under C.R.S. 8-17.5-102 by the Colorado Department of Labor and Employment. If the Contractor fails to comply with any requirement of this provision or C.R.S. 8-17.5-101, et seq., the District may terminate this Agreement for breach and the Contractor shall be liable for actual and consequential damages to the District.

The Contractor, if a natural person eighteen (18) years of age or older, hereby swears or affirms under penalty of perjury that he or she (i) is a citizen of the United States or otherwise lawfully present in the United States pursuant to federal law, (ii) shall comply with the provisions of C.R.S. 24-76.5-101, et seq., and (iii) shall produce one of the forms of identification required by C.R.S. 24-76.5-103 prior to the effective date of this Agreement.

10.5 **Allocation of Risk.** Except with respect to any warranty, or obligation set forth in this Agreement, the parties total liability related to this Agreement shall not exceed the fees paid to the Contractor under any SOW and/or Change Order or portion of any SOW and/or Change Order giving rise to liability, or include any special, consequential, incidental or exemplary damages or loss (not any lost profits, savings or business opportunity).

Contractor will indemnify the District against any damage, cost or expense (including reasonable attorney’s fees) relating to bodily injury or death of any person or damages to real and/or tangible personal property incurred as a result of Contractor’s negligence in performing the Services under this Agreement; and against any claim that is a result of a Deliverable furnished by Contractor infringing a third party’s copyright, trade secret, trademark patent or intellectual property rights.

10.6 **Confidential Information.** Each party agrees to protect the other’s Confidential Information at all times and in the same manner as each protects the confidentiality of its own proprietary and confidential materials, but in no event with less than a reasonable standard of care. Neither party shall, except with respect to those of its employees with a need to know under this Agreement, use or disclose to any person, firm or entity any Confidential Information of the other party without such other party’s express, prior written permission; provided, however, that notwithstanding the foregoing, the parties may disclose Confidential Information to the extent that it is required law or valid court order. The disclosure of Confidential Information shall not change, affect or diminish the confidential and proprietary status of the Confidential Information. The confidentiality restrictions and obligations imposed by this Section shall survive the termination of this Agreement.
10.7 **Independent Contractor.** Contractor is performing the Services as an independent contractor and not as an employee of the District and none of Contractor’s personnel shall be entitled to receive any compensation, benefits or other incidents of employment from the District. Contractor shall be responsible for all taxes and other expenses arising from the employment or independent contractor relationship between Contractor and its personnel and the provision of Services hereunder by such personnel to the District. Nothing in this Agreement shall be deemed to constitute a partnership, joint venture, or fiduciary relationship between District and Contractor, nor shall anything in this Agreement be deemed to create an agency relationship between Contractor and District. Neither Contractor nor the District shall be or become liable or bound by any representation, act or omission whatsoever of the other.

10.8 **Non-Solicitation of Employees.** Neither party shall, during the term of this Agreement and for one (1) year after its termination, solicit directly or indirectly for hire as an employee, Contractor or otherwise any of the other party's personnel who have had direct involvement with the Services, without such other party's express written consent.

10.9 **Non-assignability.** Neither party shall assign or transfer this Agreement or any of its obligations hereunder without the other party's written consent. Notwithstanding the foregoing, Contractor shall have the right to (i) assign and/or subcontract all or a portion of this Agreement to an affiliate or subsidiary without prior consent or approval of the District or (ii) assign this Agreement without prior consent or approval of the District to a successor to substantially all of the assets and business of Contractor. However, in such instance, the District reserves the right to terminate this Agreement with a respective successor or assign if in the District’s reasonable commercial discretion, continuing this Agreement with that successor or assign would be contrary to the best interests of the District.

10.10 **Full Disclosure Required of Additional Terms, Conditions.** The District cannot nor will it enter into this Agreement that includes language binding the District now or in the future to unknown policies, terms or conditions that have not been fully disclosed, requires incorporation through a hyperlink or referral to a website containing the non-disclosed terms and conditions.

10.11 **Notices.** All notices required to be sent hereunder shall be in writing and shall be deemed to have been given upon (i) the date sent by confirmed facsimile, (ii) on the date it was delivered by courier, or (iii) if by certified mail return receipt requested, on the date received, to the addresses set forth above and to the attention of the authorized representative designated by this Agreement or to such other address or individual as the parties may specify from time to time by written notice to the other party. Notices to the District shall be sent to:

ATTN: Purchasing Department
Denver Public Schools
900 Grant Street
Denver, Colorado 80203
In case of dispute, include a copy to: DPS General Counsel

Notices to Contractor shall be sent to:

RevGen Partners, Inc.
Attn: Kirk Mielzen
6300 South Syracuse Way, Suite 220,
Centennial, CO 80111
Injunctive Relief. Each party acknowledges and agrees that in the event of a material breach of this Agreement the non-breaching party shall be entitled to seek immediate injunctive relief without posting a bond, in addition to whatever remedies it might have either at law or in equity pursuant to this Agreement.

Force Majeure. Each party will be excused from performance for any period during which, and to the extent that, it or its subcontractor(s) is prevented from performing any obligation or service, in whole or in part, as a result of acts of God, riots, acts of war, epidemics, communication line failures, and power failures.

Successors and Assigns. All provisions of the Agreement shall be binding upon, inure to the benefit of and be enforceable by and against the respective successors and permitted assigns of Contractor and District.

Privacy. The parties enter into this Agreement on the understanding that each party is familiar with and agrees to be responsible for its compliance with the Family Educational Rights and Privacy Act and the U.S. Department of Education’s implementing regulations at 34CFR Part 99 (“FERPA”); and Colorado Open Records Act” 24-72-201. et seq. ("CORA") and all other applicable laws, rules or regulations, as amended (collectively, the “Confidentiality Laws”) concerning the collection, use and disclosure of “its personnel information,” which means and includes (i) home addresses, telephone numbers, financial information, and other information maintained because of the employer-employee relationship and (ii) “directory information,” “education records,” and “personally identifiable information,” of the District’s “students” and “parents,” as those quoted terms are defined in FERPA and (iii) all information concerning the District’s, students’ names, performance information, test results, test results analyses and all other student or school identifying information and personal data and all rights thereto (collectively, the District’s “Information”). In the event of a conflict between this Agreement and the Confidentiality Laws, the Confidentiality Laws shall control.

Open Records. The parties understand that all material provided or produced under this Agreement may be subject to the Colorado Open Records Act, § 24-72-201, et seq., C.R.S. (2011), and that in the event of a request to the District for disclosure of such information, the District will advise the Contractor of such request in order to give the Contractor the opportunity to challenge the disclosure of any of its proprietary or confidential material. In the event of the filing of a lawsuit to compel such disclosure, the District may tender all such material to the court for judicial determination of the issue of disclosure and the Contractor agrees to intervene in such lawsuit to protect and assert its claims of privilege and against disclosure of such material or waive the same.

Availability of Funds and Annual Appropriations. The District’s obligation for payment of any amount herein shall extend only to annual appropriations by its Board of Education as provided in the District Budget Law of 1964, C.R.S. § 22-44 Part 1 and C.R.S. § 22-32-127, as now or hereafter amended. In the event funds are not so appropriated, the District shall have no obligation to make such payment.

Governmental Immunity. No term or condition of this Agreement shall be construed or interpreted as a waiver by the District of any provision of the Colorado Governmental Immunity Act, §§ 24-10-101 et seq., C.R.S., as now or hereafter amended. Contractor understands and agrees that liability for claims for injuries to persons or property arising out of the negligence of the District, its departments, institutions, agencies, boards, officials and employees is controlled and limited by the provisions of §§ 24-10-101, et seq., C.R.S., as now or hereafter amended. Any provision of this Agreement, whether or
not incorporated herein by reference, shall be controlled, limited and otherwise modified so as to limit any liability of the District in accordance with such governmental immunity.

10.19 **Personnel.** Prior to Contractor making any changes to their appointed onsite project manager (other than due to resignation, termination for cause, or some other cause beyond a party’s reasonable control), Contractor shall provide a ten-day written, notice to the District requesting approval to reassign or change its project manager, which consent shall not be unreasonably withheld by the District. All Contractor personnel shall follow the applicable policies while in the District facilities and buildings or on property, and Contractor’s employees, licensors, agents or subcontractors having student contact and/or access to student and employee records shall undergo a background check in accordance with Exhibit B (“CONTRACTOR\CONTRACTOR BACKGROUND CERTIFICATION”).

10.20 **Insurance.** Contractor shall, at its expense, procure and maintain during the term of the performance of the Services hereunder, the following insurance: (i) Worker's compensation as required by applicable worker's compensation laws; (ii) Employer’s liability insurance with a limit of not less than $100,000 for each accident and $100,000 per employee for bodily injury by disease, with an aggregate limit of $500,000 per disease; (iii) Commercial general liability insurance that covers all of the operations of Contractor. Coverage shall include automobile liability (owned, hired and non-owned) operations, property damage, and personal injury with a single limit of not less than $1,000,000 per occurrence/ $2,000,000 general aggregate; and (iv) Additional excess liability insurance of not less than $2,000,000 general/aggregate; and (v) the District and any other parties reasonably requested by the District shall be listed as additional Insured under the commercial general liability policy, and Contractor shall cause its insurance carrier to waive all rights of subrogation against the District on Contractor's workers' compensation policy listed above and (vi) the Contractor shall verify that all authorized subs are covered by insurance coverage similar to that described above and (vii) the Contractor shall provide certificates evidencing such insurance prior to the initiation of Services and such certificates shall require a thirty (30) day advance written notice of cancellation to the District.

10.21 **Public Relations.** This Agreement shall not be construed as granting to Contractor any right to use any of the District or its Affiliates' trademarks, service marks or trade names or, otherwise refer to the District in any marketing, promotional or advertising materials or activities provided, however, Contractor's use of the District or its Affiliates' trademarks, service marks or trade names is consistent with the mission of the District, and its use meets the standards of good taste as well as the criteria of propriety described in the policies promulgated by the District's governing board. Without limiting the generality of the forgoing, Contractor shall not disclose (i) the terms and conditions of this Agreement or any Statement of Work, or (ii) the existence of any contractual relationship between the District and Contractor, or (iii) issue any publication or press release relating directly or indirectly to (i) or (ii) above; without the District's prior written consent.

10.22 **Entire Agreement.** This Agreement, together with the attached exhibits, which are incorporated by reference, constitutes the complete agreement between the parties and supersedes all prior or contemporaneous agreements or representations, written or oral, concerning the subject matter of this Agreement and such exhibits. This Agreement may not be modified or amended except in writing signed by a duly authorized representative of each party. No other act, document, usage or custom shall be deemed to amend or modify this Agreement.

10.23 **Conflict of Terms.** In the event of a conflict between the terms of this Agreement and any attachments or other documents incorporated herein, the conflict shall be resolved in the following order of
precedence: (i) between the terms of this Agreement and the SOW, the Agreement first and then the SOW shall control (ii) between the Agreement, any SOW, and any subsequent verbal or written communication, including email correspondence purporting to modify or change the aforementioned documents, the Agreement controls, then any SOW, followed by the verbal or written correspondence.

10.24 **Time is of the Essence.** The parties agree that in the performance of the terms, conditions, and requirements of this Agreement, time is of the essence.

10.25 **No Third Party Beneficiary.** Enforcement of the terms of the Agreement and all rights of action relating to enforcement are strictly reserved to the parties. Nothing contained in the Agreement gives or allows any claim or right of action to any third person or entity. Any person or entity other than the District or the Contractor receiving the Services or benefits pursuant to the Agreement is an incidental beneficiary only.

10.26 **Inurement.** The rights and obligations of the parties to the Agreement inure to the benefit of and shall be binding upon the parties and their respective successors and assigns, provided assignments are consented to in accordance with the terms of the Agreement.

10.27 **No Construction against Drafting Party.** The parties and their respective counsel have had the opportunity to review the Agreement, and the Agreement will not be construed against any party merely because the Agreement or any provisions thereof were prepared by a particular party.

10.28 **Tax Liability.** The District certifies that it is not liable for the payment of any taxes, whether local, state or federal sales, use, withholding, excise, personal property, value-added or similar taxes, assessments or duties or any related late charges or penalties of any nature, except for any additional amounts that the District may be required to pay by applicable local, state or federal laws, hereafter enacted or amended. The fees specified in this Agreement do not include taxes or duties; if Contractor is required to pay sales, use, property, value-added, withholding or other taxes based on the Deliverable and/or Product, Licenses granted or Services provided under this Agreement (excluding taxes based upon Contractor’s income or payroll) or on the District’s use of Deliverable and/or Product or Services, then the Contractor shall promptly pay when due, all taxes, bills, debts and obligations it incurs providing the Services, Deliverable and/or Product under this Agreement and shall not allow any tax lien, money judgment or liability to be filed against the District under this Agreement.

10.29 **Severability.** If any provision, or any portion of any provision, contained in this Agreement is determined to be invalid under any statute or rule of law, then it shall, to that extent alone, be deemed omitted, and the remainder of this Agreement shall remain in full force and effect.

10.30 **No Waiver of Breach.** No failure on the part of either party hereto to exercise, and no delay in exercising, any right, remedy, or power under this Agreement shall operate as a waiver thereof. Nor shall any single or partial exercise of any such right; remedy or power precludes any other or further exercise of any other right, remedy, or power. No waiver shall be valid unless it is in writing and signed by the party to be bound thereby.

10.31 **Choice of Law; Forum.** This Agreement is governed by the laws of the State of Colorado, without regard to principles of conflict of laws. This Agreement shall be deemed to be made and executed in the State of Colorado. The mutually agreed upon venue for any litigation that may result from this Agreement shall be in the District Court of the City and County of Denver, Colorado.
10.32 **Survival.** The rights and obligations of a party which, by their nature must survive termination of this Agreement in order to achieve its fundamental purposes, shall survive any termination of this Agreement.

10.33 **Headings; Construction; Incorporation of Recitals.** The headings of the paragraphs of this Agreement are inserted for convenience only and are not intended to affect its meaning or interpretation. Throughout this Agreement, the singular shall apply to the plural and the plural to the singular, unless the context clearly indicates otherwise. The recitals set forth in the beginning of this Agreement are hereby incorporated and made a material part hereof.

10.34 **PERA Contribution.** This certification is required for District verification of Public Employee Retirement Association (“PERA”) retirement status and contributions, with respect to making a PERA Contribution, as an independent contractor:

- **N/A** I do not qualify as former District employee nor am I or anyone else an Affiliated Party, therefore, a PERA Contribution is not required under this Agreement.
- **N/A** I am a former District employee or I am an Affiliated Party, because i) I am a PERA Retiree providing services; ii) PERA Retiree or an Affiliated Party owns or operates the company; ii) the PERA retiree or an Affiliated Party is performing services under this Agreement, and a PERA Contribution is required.
- **N/A** As a PERA Retiree or Affiliated Party, along with this contract, one of the following required form(s), has been submitted: (i) PERA Retiree Returning To Work; or (ii) Report Of Work During the Effective Month of Retirement; or (iii) Post-Retirement Work Report.

By its signature below, the Contractor assures and certifies that it has complied with all applicable State laws, regulations, rules and District policies, whether or not specifically referenced herein and as may be amended from time to time, related to PERA Contribution. The Contractor shall not be relieved of liability for damages sustained by the District by virtue of any breach or failure to report and disclose the Contractor’s status as a PERA Retiree or Affiliated Party. The District is entitled to withhold from the Contractor any reimbursement to recover or to set-off the exact amount of damages incurred.
IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed by their duly authorized representatives as of the Effective Date.

REVGEN PARTNERS, INC.

By: ______________________________
Name: ______________________________
Title: ______________________________
Date: ______________________________

DENVER PUBLIC SCHOOLS

By: ______________________________
Name: ______________________________
Title: ______________________________
Date: ______________________________

REVGEN SUPPORT SERVICES, LLC.

By: ______________________________
Name: ______________________________
Title: ______________________________
Date: ______________________________

Approved as to form:

DPS General Counsel Office
EXHIBIT A
KNOWLEDGE TRANSFER

1. Unless otherwise specified in the applicable SOW, Contractor shall facilitate transfer of knowledge, whichever manner of media it consists of, including written or electronic information, documentation, executables, tools and other materials regarding or relating to the following (“Knowledge Transfer”):

   (a) All available file and data definitions and relationships, regression test cases, data models, published APIs, screen displays and report layouts, reference manuals, user and operating guides and manuals, functional specifications, relating to the Products and custom programming, in both paper and electronic form;
   (b) All available utilities, diagnostic programs and related documentation utilized by Contractor in the support and maintenance of the Products;
   (c) All security requirements, methodologies and tools to prevent or detect unauthorized access to the Products;
   (d) All installation and maintenance of security tools;
   (e) Definition and documentation of Product performance metrics and alarms;
   (f) Product management and troubleshooting, including how to install and utilize management and remote troubleshooting tools, alarms, operational measurements;
   (g) Maximizing the use of the Products to perform key operational functions including, without limitation, data backups, program downloads and security checks and how to automate such functions to minimize manual intervention (including protocols/published APIs to interface with such functions as provisioning, configuration management, billing record generation, accounting, record generation) and custom APIs;
   (h) All available Documentation of published APIs;
   (i) The implementation of: (i) the Products; and (ii) Enhancements; and (iii) all interfaces between and among the Products and Enhancements;
   (j) Generally available Enhancements to the Products;
   (k) How user set parameters (and combinations of parameters) impact performance and operations of (i) traffic management, (ii) workload balancing, (iii) capacity planning, and (iv) overall system performance analysis mechanisms supplied in the system;

2. Any and all updated, changed or revised policies, practices, procedures, processes and/or techniques with respect to the knowledge transferred to the District hereunder.

3. Install Documentation for Products, including preparations, install process steps, error situations and resolution, validation of correct installation. Process for backing out installed Products and reversion to previous version, including preparation steps, execution and troubleshooting, validation of integrity of re-installed product/environment;

Failover documentation, including (a) conditions that trigger failover; (b) data/integrity considerations and remedial actions to detect and correct them; (c) methods to induce failover scenarios; and (d) failure modes document; and Documentation of supporting data introduction to operate the system, including functions of provisioning, configuration management, control, billing and accounting interfaces, operational measurements, alarms, metrics, or other operational processes.
EXHIBIT B

CONTRACTOR/CONTRACTOR BACKGROUND CERTIFICATION

1. Contractor hereby certifies that with respect to any employee, agent, representative or subcontractor ("Contractor-Employee") requiring unescorted access to a District facility or access to the District network, Contractor shall have conducted a background investigation that meets the specified requirements. Contractor must conduct a background investigation for each Contractor-Employee requiring unescorted access to a District facility or access to the District network sufficient to demonstrate compliance with the following requirements, as applicable:

   A. Social Security Verification (SSN Validation tells whether the applicant is using a valid social security number.)
   B. Must provide the last seven year employment history of the Contractor’s employee over or back to the age of 18 years-old.
   C. Must provide name and address trace report to determine whether additional state or county criminal history searches are required, using information acquired through credit bureaus, phone records, historical credit records and property records.
   D. Comprehensive Criminal History Check Based on Last Seven Years of Residency.

2. The Criminal Background Check must include federal, state, and local records.

3. A seven-year criminal history search of current and previous addresses of residence, work locations and/or places of education linked to the employee’s name he or she may have used in the past seven years.

4. If Contractor’s employee has a felony conviction that disqualifying the Contractor’s employee that person will be denied unescorted entry to all District facilities and access to the District’s network.

5. Work Status. The Contractor’s employee must be lawfully authorized to work in the United States.

6. Verification of Military Discharge. If Contractor’s employee has a dishonorable discharge or equivalent to a felony conviction that person will be denied unescorted entry to all District facilities and access to the District’s network.

7. Sex Offender Registry Check. The Contractor must provide information regarding felony and misdemeanour convictions of any sexual assault, aggravated sexual assault, aggravated criminal sexual contact, and/or kidnapping under Megan’s Law.

8. The Contractor’s employee must possess the education and/or applicable professional license and related professional certificates commensurate with the position. Upon request, the Contractor shall demonstrate compliance with this requirement as applicable to the nature of the services to be offered by Contractor’s employee. Under special circumstances, the District may also request Contractor's certification that Contractor-Employee has undergone a chemical/drug screening, with negative results, prior to granting unescorted access authorization.

9. In the event that Contractor’s employee does not meet the requirements of the background investigation, but Contractor has a reasonable belief that extenuating circumstances exist which require or demonstrate that the person should be granted Unescorted Access Authorization, Contractor shall
obtain a written release executed by Contractor’s employee and deliver a copy of the same to the District prior to discussing such circumstances with the District’s designated authority. The District shall, in its sole discretion, determine whether the circumstances justify an exception to the requirements to allow Contractor’s employee unescorted access to District’s Facilities and use of District’s network.

10. Upon request, Contractor shall provide the District with adequate proof of its compliance with the above standards.

11. Notwithstanding anything in the Agreement to the contrary, Contractor shall indemnify the District for any Claims arising in connection with this Certification and any act or omission hereunder.

IN WITNESS WHEREOF, Contractor has executed this Certification by its proper officer or other authorized representative.

Executed by: District

Signature: ______________________
Date: ______________________

Executed by Contractor

Signature: ______________________
Date: ______________________
EXHIBIT C

CHANGE ORDER PROCEDURES

During the course of the project, it may become evident that certain business requirements will not be met based on the defined parameters of the project, or that certain assumptions have changed affecting the defined scope. Additionally, factors may arise that significantly may impact deliverable quality, schedule, project costs, increase project risk, or compromise customer satisfaction.

1. All changes will be documented in the change/decision/future enhancement log.
   a. Change Request Number – a unique identifier for the change request
   b. Status – current status of the change request
   c. Description – a summary description of the change; detailed description should exist in the change request form
   d. Priority – high, medium, or low relative to the project as determined by the person that submitted the change request
   e. Submitter – project team member responsible for submitting the requested change
   f. Date Approved/Denied – date on which the change request was approved or denied

2. Project changes identified during Project Planning do not require approval from the Steering Committee or the DRB.

3. Once in Project Execution and a change arises, PMs, working with the Executive Sponsor, should determine the appropriate approval path dependent type and magnitude of the change.

4. A change request must be completed and submitted to the appropriate approval body for review. The PMO can facilitate changes needing DRB review.

5. Once the Steering Committee and/or DRB decide to approve or deny a change request, the project manager will update the status in the change log, along with appropriate project planning documents (e.g., project schedule, budget, requirements log).

6. Where an approved change request affects the legal contract between DPS and a vendor, the PM should work with Purchasing and Legal as appropriate to obtain a signed an amendment to the contract via change order.
### EXHIBIT D

**CHANGE REQUEST**

**Project Name –**

**See process guidelines outlined in the Change Control Procedures of the agreed upon Project Management Plan**

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<th>Change Request Identification</th>
<th>Scope:</th>
<th>Schedule:</th>
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<td><strong>Is this change a result of a known risk? (Y/N)</strong></td>
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<td><strong>List related risk.</strong></td>
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<td><strong>Is this a change to an existing requirement? (Y/N)</strong></td>
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<td><strong>Describe the proposed change.</strong></td>
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<td><strong>Describe the business justification for making the change.</strong></td>
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<td><strong>Describe the risks associated with making the change.</strong></td>
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<td><strong>Describe the risks associated with not making the change.</strong></td>
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<td><strong>Supporting documentation provided? (Y/N)</strong></td>
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### Impact Analysis

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<td><strong>Alternatives to proposed change:</strong></td>
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### Request Decision (Steering Committee and/or DRB Review)

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For the School Performance Framework (“SPF”), Contractor shall collaborate with the District to develop requirements and build the SPF annually for a five (5) year period starting with SPFv2012 (as of January 1, 2012) and ending with SPFv2016 (as of December 31, 2016), leveraging the framework of the prior year. Additionally, Contractor shall provide year-round support to the District by answering questions regarding SPF platform, data, calculation logic, or deliverables. The annual cycle will be comprised of the following:

1. **Annual Contractor Services broken down by monthly activities.**

   1.1. **January to April**: Each year the Contractor shall perform Pre-SPF Investigation and Analysis:
      1.1.1. Identify future measure improvements, additions, and deletions
      1.1.2. Participate in pre-SPF focus group meetings and required investigation and analysis activities
      1.1.3. Compile analysis, description, and business rules for changes
      1.1.4. Prioritize list of changes and recommendations
      1.1.5. Support the onboarding of SPF project staff with training
      1.1.6. Manage approval cycle of changes to be included in the following year’s SPF

   1.2. **May**: Each year the Contractor shall perform the following Activities:
      1.2.1. Requirements
         1.2.1.1. Identify key stakeholders / responsible parties
         1.2.1.2. Define and gather business/IT requirements across data sourcing, ETL, OLAP, and reporting for new SPF measures and existing measure modifications
         1.2.1.3. Define data paths and rules for new and merged / restructured schools
         1.2.1.4. Review and confirm hard coded changes required for current and prior years
         1.2.1.5. Review and confirm rules and calculations needed to modify existing measures and to add or remove measures
         1.2.1.6. Confirm requirements for static reports including changes necessary for modified, added or removed measures, and the delivery mechanism for delivery of reports
         1.2.1.7. Assist in developing ETL requirements for SPF data into the ODS, as appropriate
         1.2.1.8. Review and approve requirements with business owners
         1.2.1.9. Recalibrate project upon completion and acceptance of requirements

      1.2.2. Environment and Reporting Preparation:
         1.2.2.1. Review and confirm cube pre-processing data sources and calendar
         1.2.2.2. Assess and prepare the SPF framework, including version and environment reconfiguration
         1.2.2.3. Assess current SPF ETL/OLAP/Reporting environments
         1.2.2.4. Assist in preparing and/or reconfiguring environment(s) for development

   1.3. **June to August**: Each year the Contractor shall perform the following Activities:
      1.3.1. Develop or modify ETL packages from ODS into the SPF solution
      1.3.2. Modify the relevant data cube(s) for the modified and new measures
      1.3.3. Develop or modify existing reports for the modified, new, and removed measures
      1.3.4. Perform unit testing on all modifications
      1.3.5. Manage data sourcing schedule for all data feeding the SPF Cube

   1.4. **August to September**: Each year the Contractor shall perform Integration, Testing, and Deployment:
      1.4.1. Unless otherwise requested by the District, RevGen will adhere to all development and deployment guidelines as spelled out in the District’s System Development Life Cycle (SDLC). This will include:
         1.4.1.1. Deployment and testing across a three-tiered environment (Development, Quality Assurance, and Production)
1.4.1.2. Check-in / check-out of solutions within Team Foundation Server (TFS)
1.4.1.3. Periodic snapshots of the solution (presumably via TFS) to confirm that there are adequate restore points, as well as a baseline dataset

1.4.2. Perform unit testing on measures that have been modified, added, or developed
1.4.3. Define approach for integration testing of SPF additions and modifications
1.4.4. Perform comprehensive integration testing of annual data for SPF, and repeat as necessary during scoring review period

1.4.5. Process SPF results and provide output for scoring review sessions and conduct necessary investigation as needed
1.4.6. Define approach for deployment of SPF results
1.4.7. Support the District’s DoTS staff with creation of software promotion packages
1.4.8. Collaborate in deployment of SPF results

1.5. **October:** Each year the Contractor shall perform the following Activities:

1.5.1. Documentation
   1.5.1.1. Document the modifications as developed in SPF
   1.5.1.2. Update system, user, and training documentation of the data, processes, rules, and calculations during the extract, transform, and load (ETL) processes and the cube (OLAP) processing
   1.5.1.3. Support ARE (Accountability, Research, Evaluation) SPF resources with enhancement of external documentation

1.6. **November to December:** Each year the Contractor will perform Project Review and Pre-Planning:

1.6.1. Perform technical review of SPF platform
1.6.2. Collect, document, and present read-out of Lessons Learned, as it relates to the delivery of the SPF solution
1.6.3. Review prior-year Lessons Learned for future planning and improvements

1.7. **Year-Round:** The Contractor shall perform Project Management as it relates to the delivery of the SPF solution:

1.7.1. Set up, populate, and maintain all necessary project management tools and processes
1.7.2. SPF Support
   1.7.2.1. Provide support to ARE, Principals, and other District Resources with platform, data, and calculation with responses to questions related to SPF results
   1.7.2.2. Provide support for logging requests, responses, and status appropriately
   1.7.2.3. Provide support with SPF operations and alignment with other related DPS BI systems

2. **Summary Timeline**

<table>
<thead>
<tr>
<th>Jan</th>
<th>Feb</th>
<th>Mar</th>
<th>Apr</th>
<th>May</th>
<th>Jun</th>
<th>Jul</th>
<th>Aug</th>
<th>Sep</th>
<th>Oct</th>
<th>Nov</th>
<th>Dec</th>
</tr>
</thead>
</table>
3. **Annual Deliverables**

3.1. **January to April** deliver Pre-SPF Investigation and Analysis:
   3.1.1. Documented description and business rules for each proposed change by April 30th
   3.1.2. List of prioritized and approved changes by April 30th

3.2. **May** deliver Requirements:
   3.2.1. Requirements documented, thoroughly reviewed with the business owner to confirm inclusion of all expected outcomes, and agreement on test data to be provided for validation and approval, for modified, removed, and new SPF measures by May 31st

3.3. **May** deliver Environment and Reporting Preparation:
   3.3.1. Stabilized framework for SPF development of measures and reporting by May 31st

3.4. **June to August** deliver Development:
   3.4.1. Changes required to accommodate modified, removed, and new measures within the following components of the SPF platform:
      3.4.1.1. Data load modifications (SSIS ETL) to provide data for modified and new measures
      3.4.1.2. Data cube modifications (SSAS OLAP) to enable final calculation of modified and new measures
      3.4.1.3. Changes required to accommodate modified, removed, and new measures within the reporting framework (SSRS)

3.5. **August to September** deliver Integration, Testing, and Deployment:
   3.5.1. Detailed calculation test results of modified and added measures for technical validation as per the identified test data defined in 3.2.1. by August 30th
   3.5.2. Preliminary SPF results for Scoring Review by mid-August
   3.5.3. Final SPF results for Publication by September 30th or when approved by the District.

3.6. **October** deliver Documentation:
   3.6.1. Updated user documentation for modified, removed, and new SPF measures by October 31st

3.7. **November to December** deliver Project Review and Pre-Planning:
   3.7.1. Lessons Learned documentation by December 15th

3.8. **Year-round** deliver Project Management:
   3.8.1. Project management deliverables (e.g., oversight committee status report, etc., produced as, and when required per District request)

3.9. **Year-round** deliver SPF Support:
   3.9.1. SPF Support Log (available year-round on request)

4. **District Responsibilities**:
   4.1. Performing technical validation of detailed calculation test results for modified and added measures
   4.2. Performing business logic validation of summarized calculation test results for modified and added measures
   4.3. Informing Contractor of all required project management requirements
   4.4. In addition to a RevGen representative, as part of the Oversight Committee, assuring the inclusion of one representative from each of the Districts’ ARE and DoTS departments with decision-making authority
   4.5. Confirming the accuracy of information and data provided by DPS, including validation of the accuracy of source data
4.6. Validating scope and timelines
4.7. Providing access to systems and data for the SPF environment and all agreed upon Deliverables
4.8. Providing stable Development, Quality Assurance and Production environments
4.9. Creating the SPF development environment by May 31st
4.10. Providing the scope of anticipated modified, removed, and new measures by April 30th
4.11. Providing the parameters, requirements, calculations, and data sources necessary to complete the SPF modified, removed, and new measures by May 31st
4.12. Defining reporting requirements by May 31st, including:
   4.12.1. Reporting delivery mechanism strategy
   4.12.2. Report content, format, and structure
4.13. Formally approving changes (scope, fees, timeline), if any, to SPF after requirements are approved by May 31st
4.14. Working with the Contractor to validate data sources/availability, providing access, and providing requirements for changes to the SQL data mart, including requirements for ETL changes
4.15. Providing details of all changes made outside the SPF framework and assisting in developing and executing a strategy to address these changes during development of SPF
4.16. Providing DPS resource support no less than as follows:
   4.16.1. .50 FTE ARE SPF SME during Requirements and the Scoring Review periods
   4.16.2. .25 FTE ARE SPF SME during Pre-SPF Investigation and the Development period
   4.16.3. .10 FTE ARE SPF Technical Resource during publication activities
   4.16.4. DoTS Production resource as needed during promotion to production activities
   4.16.5. ETL resource for ODS support as determined by DPS
   4.16.6. BI resource for support as determined by DPS
   4.16.7. QA support as determined by DPS
   4.16.8. Minimal time from members of the Oversight Committee to participate in Oversight meetings (bi-weekly, weekly, or as necessary) to ensure timely decision making
4.17. Completing any necessary ETL work to make SPF data available in the ODS
4.18. Approving and performing the migration of all software component changes to Test, QA, and Production environments
4.19. Participating with Contractor in completing unit testing, integration testing, and deployment
4.20. Providing access to current and prior year data required for SPF
4.21. With the District’s approval, allowing the SPF solution to be developed or supported, in part or in its entirety, from the Colorado location of the Contractor’s office(s).
4.22. Defining systems management needs
4.23. Provide adequate working space and connectivity for Contractor personnel during the term of the SOW
4.24. Defining and implementing any security needs for SPF
4.25. Determining the technology specifications for:
   4.25.1. Hardware
   4.25.2. Software
   4.25.3. Scalability
   4.25.4. Performance
   4.25.5. Availability

5. Assumptions:
5.1. Upon completion of the Requirements phase, the approved net new, modified, and removed measures will be scoped, and the associated development units will be determined, based upon the scale below by RevGen Partners and the District. The Oversight Committee will review and approve the total number of development units prior to Contractor beginning the Development phase.
5.2. The following scale criteria will guide the determination of the level of development effort:

<table>
<thead>
<tr>
<th>Scale</th>
<th>Data Extract, Transform and Load</th>
<th>Online Analytical Processing – Measure Calculations</th>
<th>Report Development</th>
<th>Data Integration and Measure Calculation Testing</th>
</tr>
</thead>
<tbody>
<tr>
<td>High</td>
<td>Sourcing of new data into ODS and/or SPF Datamart; high level of transformations, data joins, and business rules to be applied</td>
<td>Addition or modification of a complex calculation; implement a new data source or data structure</td>
<td>Addition of new report(s); extensive addition or modification of data in existing report(s)</td>
<td>Requires full testing and validation from source to result; requires complete regression testing</td>
</tr>
<tr>
<td>Medium</td>
<td>Data exists or is changed in ODS and can be directly sourced; moderate level of transformations, data joins, and business rules to be applied</td>
<td>Moderate modification of an existing calculation; implementation of a calculation similar to an existing calculation</td>
<td>Moderate rework of data or layout in existing report(s)</td>
<td>Some regression testing; modifications similar to an existing implementation</td>
</tr>
<tr>
<td>Low</td>
<td>Data already exists in SPF data mart; minimal level of transformations, data joins, and business rules to be applied</td>
<td>Cuts and points changes; implementation of additional filters; minor modification of calculation criteria</td>
<td>Minimal rework of layout in existing report(s)</td>
<td>Testing of value changes to expected results</td>
</tr>
</tbody>
</table>

5.3. Development Units for 2012: The new, modified, and removed measures scoped under this SOW for SPFv2012 are projected at five hundred (500) development units. Should the scope exceed 500 development units by more than 10% (exceeding 550 development units), a change control process will be followed in order to fund the excess development activities, including allowance for additional requirements definition, scoring review, and validation (requirements definition, scoring review, and validation functions add 50% overhead to a development unit).

Should the variance be more than 10% below the baseline (less than 450 development units), then up to the next 15% (up to 75 development units between 375 and 449) can be either carried forward to the next year’s SPF to offset any excess development units for that year only or the value of the development units as listed in section 7.3 credited to the District on future SPF invoices. The Change Control Process will be utilized for the carry forward or credit process.
### Explanation of 2012 Development Units Excess and Carry Over:

<table>
<thead>
<tr>
<th>Units</th>
<th>Action</th>
</tr>
</thead>
<tbody>
<tr>
<td>Excess to be Funded</td>
<td>&gt;550</td>
</tr>
<tr>
<td></td>
<td>Utilize Change Control Process</td>
</tr>
<tr>
<td>Up To 10% Over Annual Baseline</td>
<td>501-550</td>
</tr>
<tr>
<td></td>
<td>No Action Required</td>
</tr>
<tr>
<td>Baseline</td>
<td>500</td>
</tr>
<tr>
<td></td>
<td>No Action Required</td>
</tr>
<tr>
<td>10% Under Annual Baseline</td>
<td>450-499</td>
</tr>
<tr>
<td></td>
<td>No Action Required</td>
</tr>
<tr>
<td>15% to Carry Forward or Credit</td>
<td>375-449</td>
</tr>
<tr>
<td></td>
<td>Utilize difference to fund excess in following year only - maximum of 75 units or credit the value of the development on future SPF invoices</td>
</tr>
</tbody>
</table>

#### 5.4. Development Units for 2013 to 2016:

The new, modified, and removed measures scoped under this SOW for SPFv2013 through SPFv2016 are projected at three hundred seventy five (375) development units. Should the scope exceed 375 development units by more than 10% (exceeding 413 development units), a change control process will be followed in order to fund the excess development activities, including allowance for additional requirements definition, scoring review, and validation (requirements definition, scoring review, and validation functions add 50% overhead to a development unit).

Should the variance be more than 10% below the baseline (less than 360 development units), then up to the next 15% (up to 60 development units between 300 and 359) can be either carried forward to the next year’s SPF to offset any excess development units for that year only or the value of the development units as listed in section 7.3 credited to the District on future SPF invoices. The Change Control Process will be utilized for the carry forward or credit process.

### Explanation of 2013-2016 Development Units Excess and Carry Over:

<table>
<thead>
<tr>
<th>Units</th>
<th>Action</th>
</tr>
</thead>
<tbody>
<tr>
<td>Excess to be Funded</td>
<td>&gt;413</td>
</tr>
<tr>
<td></td>
<td>Utilize Change Control Process</td>
</tr>
<tr>
<td>Up To 10% Over Annual Baseline</td>
<td>376-413</td>
</tr>
<tr>
<td></td>
<td>No Action Required</td>
</tr>
<tr>
<td>Baseline</td>
<td>375</td>
</tr>
<tr>
<td></td>
<td>No Action Required</td>
</tr>
<tr>
<td>10% Under Annual Baseline</td>
<td>338-374</td>
</tr>
<tr>
<td></td>
<td>No Action Required</td>
</tr>
<tr>
<td>15% to Carry Forward or Credit</td>
<td>281-373</td>
</tr>
<tr>
<td></td>
<td>Utilize difference to fund excess in following year only - maximum of 60 units or credit the value of the development on future SPF invoices</td>
</tr>
</tbody>
</table>

#### 5.5. The scoring review and validation effort will be restricted to the as-developed new, modified, and removed measures. Should any additional requirements need further development, then a change control process will be followed in order to fund the difference.

#### 5.6. The production and publication effort will be restricted to one (1) production cycle to produce the final results. Should any additional production cycles be required, then a change control process will be followed in order to fund the difference.

#### 5.7. The Change Order\Control process will be comprised of the submission of a formal change form, containing the requested scope change and associated impacts to the Oversight Committee for review and approval fourteen (14) days, unless requested by Contractor in less time due to potential project impacts, after the date of submission.

#### 5.8. All decisions made and actions taken as a result of the recommendations or deliverables from this effort are the responsibility of DPS

### 6. Contractor Materials and Information

6.1. All documents, designs, residuals, computer programs, software tools, processes, techniques, computer systems, source code, computer documentation, test programs, maintenance and support tools, and
other tangible materials developed or created by Contractor for the District under all SPF related ICAs or SOW is the sole and exclusive property of Contractor ("Contractor Materials").

6.2. For good and valuable consideration in exchange for Contractor’s sole and exclusive ownership of Contractor Materials as outlined above, the District will receive:

6.2.1. The broad license to use the SPF as described in the Licensing Agreement dated __________, incorporated herein by reference

6.2.2. The discounted pricing provided herein

6.2.3. Most Favorited Nation Pricing described herein

6.2.4. At no charge from Contractor, any and all future modifications, changes, enhancements and improvements made to the SPF by contractor, outside of those requested by the District during the Term of this SOW and related to the subject matter of this SOW. Notwithstanding any term to the contrary, the District shall not be entitled to receive from Contractor any future developed products or services created by Contractor that incorporate the intellectual property or Confidential Information of third parties.

7. Payment Schedule

7.1. In the event of a price decline, or should Contractor at any time, during the life of this SOW, sell the same materials or service, under similar quantity and delivery conditions, at prices below those stated herein, Contractor will immediately extend such lower prices to the District (i.e., “Most Favorited Nation Pricing”).

7.2. In exchange for the consideration referenced in Section 6.2 above, the District shall receive the discounted pricing as follows:

7.2.1. 2012: For 500 Development Units, $569,500, less the greater of $25,628, or four and one half (4.5%) percent, for a total of $543,873. The District shall make four quarterly payments of $135,968.

7.2.2. 2013: For 375 Development Units, $546,656. The District shall make four quarterly payments of $136,664.

7.2.3. 2014: For 375 Development Units, $573,989. The District shall make four quarterly payments of $143,497.

7.2.4. 2015: For 375 Development Units, $602,689, less four (4%) percent, for a total of $578,581. The District shall make four quarterly payments of $144,645.

7.2.5. 2016: For 375 Development Units, $632,823, less six (6%) percent, for a total of $594,854. The District shall make four quarterly payments of $148,713.

7.3. Development Unit annual value

7.3.1. 2012: $374.00

7.3.2. 2013: $388.00

7.3.3. 2014: $407.00

7.3.4. 2015: $428.00

7.3.5. 2016: $449.00

7.4. Hourly Rates upon receipt of District approval through the Change Order procedures.

7.4.1. Beginning on the Effective Date of this Agreement and throughout calendar year 2012, the hourly Rate for the following positions is $115. This hourly rate will increase by 5% each year thereafter:

7.4.1.1. Project Manager

7.4.1.2. Business Analyst

7.4.1.3. ETL Developer

7.4.1.4. MDX Developer
7.4.1.5. Report Developer
7.4.1.6. Integration Tester

7.4.2. Beginning on the Effective Date of this Agreement and throughout calendar year 2012, the hourly Rate for the following position is $145. This hourly rate will increase by 5% each year thereafter:

7.4.2.1. Architect

7.5. District may cancel the contract upon 30 days written notice provided DPS pays the early termination fees according to the following schedule:

7.5.1. Within year 1 – 15% of all fees billed under this agreement from the start of year 1 (January 1, 2012) until the termination date

7.5.2. Within year 2 – 10% of all fees billed under this agreement for the 12 months prior to the termination date

7.5.3. Within year 3 – 5% of all fees billed under this agreement for the 12 months prior to the termination date

7.5.4. Within years 4 or 5 – no early termination fee
DENVER PUBLIC SCHOOLS  
OFFICE OF LEGAL SERVICES  
Contract Routing and Approval form

Requesting Department/School: Accountability, Research, and Evaluation (ARE)

Administrator Sponsoring Contract (“Sponsoring Administrator”): Connie Casson

Telephone (720)423-3706  Email: constance_casson@dpsk12.org

Funding Source: General Funds  Name of Grant: N/A
(Bond, Federal, General Fund, Mill Levy and/or Private Grant)

Total Contract Cost/Value: $2,838,580  10 949 22 2214 0127 00339  Account Number: B9W

NOTE: Sponsoring Administrator must complete all sections of this form BEFORE routing the contract. Contracts with a cost/value of more than $1,000,000 or capital construction costs of over $1,000,000 require Board of Education approval. Prior to the Board approving the contract, the Sponsoring Administrator must attend the Board Finance & Audit Committee meeting and the Board Work Session meeting to respond to any questions regarding the contract. **Failure to attend those meetings will result in the contract not being approved.**

The Sponsoring Administrator must route the contract in the following sequence:

1. Purchasing Department (for expenditure of DPS monies) or Grants Office (for DPS' receipt of grant monies)
   □ Approval  Signature:  Date: 2/23/12

2. Legal Services Department
   □ Approval  Signature:  Date: 2/23/12

ADDITIONAL APPROVAL LEVELS FOR PROCUREMENT

3. Authorized Signatory Under Board of Education Policy DJA, Based On Total Contract Value, As Required:
   - Superintendent or Designee, Chief Operating Officer, Chief Academic Officer ($500,000-1,000,000)
     □ Approval  Signature:  Date: 
   - Chief Financial Officer ($250,000-500,000)
     □ Approval  Signature:  Date: 
   - Executive Director of Finance ($1.00-$250,000) (Budget review)
     □ Approval  Signature:  Date: 2/23/12
   - Director of Purchasing ($1.00-$250,000)
     □ Approval  Signature:  Date: 
   - Director of Federal Programs (Funded by Federal Dollars)
     □ Approval  Signature:  Date: 
   - Department of Technology Services (If systems or applications are involved)
     □ Approval  Signature:  Date: 
   - Manager of Purchasing ($1.00-$100,000)
     □ Approval  Signature:  Date: 2/23/12
   - DPS Department Head ($100,000 or less)
     □ Approval  Signature:  Date: 2/22/12  (** Requires prior involvement by Purchasing and Legal)

Rev 9/11
Facilities and Capital Construction

Superintendent or Chief Operating Officer (Capital Construction Cost $500,000-1,000,000)

☐ Approval Signature: ___________________________ Date: ______________

Executive Director of Facility Management (Only for Capital Construction Value $500,000 or Less)

☐ Approval Signature: ___________________________ Date: ______________

Associate Executive Director of Facilities (Only for Capital Construction value $250,000 or less)

☐ Approval Signature: ___________________________ Date: ______________

Executive Director of Finance ($1.00-$250,000) (Budget review)

☐ Approval Signature: ___________________________ Date: ______________

Director of Purchasing ($1.00-$250,000)

☐ Approval Signature: ___________________________ Date: ______________

Director of Federal Programs (Funded by Federal Dollars)

☐ Approval Signature: ___________________________ Date: ______________

Manager of Purchasing ($1.00-$100,000)

☐ Approval Signature: ___________________________ Date: ______________

DPS Department Head ($100,000 or less)

☐ Approval Signature: ___________________________ Date: ______________

(*** Requires prior involvement by Purchasing and Legal)

DPS Board Of Education (Total Value of Over $1,000,000 or Capital Construction Value Over $1,000,000)

NOTE: If Board approval is required, follow sequence A-D below:

A. Finance & Audit Committee

☐ Approval Signature: ___________________________ Date: ______________

B. Board of Education Office

☐ Approval Signature: ___________________________ Date: ______________

(The Board Secretary will cause the contract to be placed on the agendas for the Finance & Audit Committee and Board Of Education meetings; promptly notify the Sponsoring Administrator of the dates/times/locations of those meetings; and ensure that contract copies are immediately delivered to the Chief Financial Officer and all Board Members in the appropriate manner.)

C. Board of Education Office ☐ Approval Signature: ___________________________ Date: ______________

(The Board Secretary will ensure that the contract is formally acted on by the Board at its Regular Meeting BEFORE presenting the contract to the Board President for signature.)

D. President, Board of Education ☐ Approval Signature: ___________________________ Date: ______________

4. Following contract signature by the authorized DPS Officer, please route contract to the Sponsoring Administrator.
GENERAL INFORMATION

SUMMARY OF PROPOSED CONTRACT TERMS
(Must be completed by Sponsoring Administrator)

Contract with: RevGen Partners

Description of goods and/or services to be provided or grant monies to be received: For the School Performance Framework (SPF), RevGen Partners shall collaborate with the District to develop requirements and build the SPF annually for a five (5) year period starting with SPFv2012 (as of January 1, 2012) and ending with SPFv2016 (as of December 31, 2016), leveraging the framework of the prior year. Additionally, Contractor shall provide year-round support to the District by answering questions regarding SPF platform, data, calculation logic, or deliverables.

Describe in Detail the total cost/value to the District: The 5 year contract total value is $2,838,580 or an average of $567,716 per year. This amount was determined to be equal or lesser than the cost to bring the solution in house and run solely with DPS resources and is considered fair and reasonable.

Explain how the District’s proposed expenditure of monies for these goods/services or receipt of grant funds will support The Denver Plan: Production of the SPF reports supports the Culture of High Expectations by defining a high performing school and evaluating student growth and status, among other factors, in support of this definition. The resulting scorecard supports incentive and intervention options for schools performing well or under-performing, accordingly. By sharing this information with parents, increased transparency and information for making school choices Deepens Engagement with Families and Communities. Additionally, school performance information provides data to guide future programming, facility, and staffing decisions to more Strategically Manage the Districts Financial Resources. Finally, outsourcing the SPF delivery allows District resources to remain available for executing other strategically aligned District initiatives.

What steps did the Sponsoring Administrator take to ensure that DPS receives the most favorable price and terms for any goods/services? A detailed analysis was conducted to examine costs, risks, and benefits of in-house, outsourced, and CDE cooperative solutions. A long term negotiated contract solution has been deemed most feasible and cost effective, with no potential cost savings from conducting the SPF internally. Additionally, DPS has negotiated fees with the vendor for stabilized most favored pricing nation over the next 5 years that aligns with fees paid for prior years’ services.
<table>
<thead>
<tr>
<th>REQUIREMENT</th>
<th>DESCRIPTION</th>
<th>SPONSORING ADMINISTRATOR'S INITIALS CERTIFYING COMPLETION</th>
</tr>
</thead>
<tbody>
<tr>
<td>Contract, Exhibits and Appendices</td>
<td>1) The contract and all documents incorporated by reference in the contract, including exhibits, master agreements, and appendices, are attached; and 2) All such documents have been read and agreed to in their entirety by the Sponsoring Administrator and any DPS staff members who have obligations under this contract.</td>
<td>Michael Hildman (MH), Connie Casson (CC)</td>
</tr>
<tr>
<td>Understanding</td>
<td>All terms and conditions conform with the final negotiations/agreement of the parties.</td>
<td>MH &amp; CC</td>
</tr>
<tr>
<td>Competition/Conflicts with Existing Contracts/Compliance</td>
<td>This contract does not conflict with any other contracts, promises or obligations of DPS. The Sponsoring Administrator verifies that DPS can comply with all terms and conditions.</td>
<td>MH &amp; CC</td>
</tr>
<tr>
<td>Termination</td>
<td>The contract contains termination provisions which allow DPS to expeditiously terminate the contract upon reasonable cause, including DPS' loss of state or federal project funding, and without further obligation.</td>
<td>MH &amp; CC</td>
</tr>
<tr>
<td>Indemnification</td>
<td>DPS cannot indemnify hold harmless, be liable to, or reimburse any other party to the contract for claims, lawsuits, legal fees, damages, or losses incurred by that party in connection with the contract. The contract contains no such provisions.</td>
<td>MH &amp; CC</td>
</tr>
<tr>
<td>Warranties/Guarantees</td>
<td>Written warranties or guarantees give satisfactory protection to DPS and its investment under the contract.</td>
<td>MH &amp; CC</td>
</tr>
<tr>
<td>Insurance</td>
<td>The DPS Risk Management Department has approved any contract provisions requiring DPS or the contractor to maintain insurance coverage.</td>
<td>MH &amp; CC</td>
</tr>
<tr>
<td>Governing Law</td>
<td>The contract is governed under the laws of the State of Colorado.</td>
<td>MH &amp; CC</td>
</tr>
<tr>
<td>Confidentiality Provisions</td>
<td>All DPS confidential information including student and personnel records are protected from unlawful disclosure under the contract. All nondisclosure clauses include exceptions regarding disclosure as required by law or by a court of law. If not applicable indicate &quot;n/a&quot;.</td>
<td>MH &amp; CC</td>
</tr>
<tr>
<td>Ethics</td>
<td>I have read Board of Education Policy GB 17A (Staff Ethics) and I certify that approval of this contract will not result in a violation of that policy.</td>
<td>MH &amp; CC</td>
</tr>
<tr>
<td>Immigration</td>
<td>If contract is with any entity other than a Colorado or federal agency and it involves in any respect DPS paying for services (as opposed to goods), the mandatory immigration clause is included in the contract or as an addendum. (An addendum can be copied and downloaded from <a href="http://www.purchasing.dpsk12.org/">www.purchasing.dpsk12.org/</a>).</td>
<td>MH &amp; CC</td>
</tr>
<tr>
<td>Total Cash Value/Authorized Expenditure</td>
<td>The contract has a total cash value of $2,838,569 (include ALL installment payments and fixed charges). NOTE: any contract renewals/extensions which require additional expenditures must be separately submitted by the Sponsoring Administrator for DPS approval. Any DPS expenditures under this contract have been budgeted or otherwise approved by the Chief Financial Officer or her designee, and do not otherwise violate any applicable DPS spending freeze.</td>
<td>MH &amp; CC</td>
</tr>
</tbody>
</table>

**CERTIFICATION OF SPONSORING ADMINISTRATOR**

I have read this contract entirely. I am satisfied with all contract terms including the description of the goods and services or grant to be provided to DPS (including, for example, warranties, deliver terms, acceptance period, and maintenance terms) and DPS' obligations under the contract (including, for example scope of work, payment due dates, late charges, tax charges, insurance, and confidentiality requirements). I understand and agree that I will be responsible for ensuring that the contract is properly administered until its termination.

[Signature]

Date 2.22.12

Name of Sponsoring Administrator

Title
LICENSING AGREEMENT

This Licensing Agreement (the “Agreement”) is made between School District No 1, in the City and County of Denver, with its principal place of business at 900 Grant Street, Denver, Colorado 80203 (“District”) and RevGen Partners, Inc. (“RevGen”) with offices at 6300 South Syracuse Way, Suite 220, Centennial, Colorado, 80111, hereafter, each may be referred to, individually, as the “Party” and collectively, the “Parties.”

RECITALS

WHEREAS, RevGen and the District entered into one or more Independent Contract Agreements (“ICA”) and / or Statements of Work (“SOW”), whereby RevGen, in the course of performing those services for the District, created the School Performance Framework (“SPF”) solution;

WHEREAS, the District will transfer all of its rights of ownership in the SPF solution to RevGen, in exchange, RevGen will grant to the District a license to the SPF solution as described below and discount its current and future services performed for the District on the SPF solution.

NOW, THEREFORE, in consideration of the mutual covenants and promises herein contained, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties agree to the terms and conditions set forth in this License Agreement, which are as follows:

1. DEFINITIONS

1.1. District means without limitation, any DPS school, program, agent, contractor, assign, student, and employee sanctioned and associated with the School District.

1.2. Authorized User means without limitation the District’s affiliates, consultants and authorized agents of Affiliates and third party consultants and other independent contractors performing services for the District or Authorized User.

1.3. RevGen means any business entity owned by RevGen, and which may own RevGen, and any currently or future business entity which merges, acquires or purchases all or substantially all of RevGen assets, including the SPF Materials, and that exists after a change in control or an assignment by RevGen, and, for purposes of this definition, “change of control” is deemed an assignment of rights, the acquisition or purchase of interest in RevGen, and “merges” refers to any merger in which RevGen participates, regardless of whether it is the surviving or disappearing business, in any event, all provisions of this Licensing Agreement shall be binding upon, inure to the benefit of and be enforceable by and against any successor or assigns of RevGen.

1.4. SPF Materials are all materials, inventions, documents, information, designs, residuals, computer programs, software tools, processes, techniques, computer systems, source code, computer and written documentation, test programs, maintenance and support tools, ideas, discoveries, know-how, including preexisting and subsequently developed or created, whether later patented, copyrighted or trademarked, deemed to be trade secrets, proprietary, and that is both tangible and intangible, expressly made for the District by RevGen while performing the work under any Independent Contract Agreement or Statement of Work related to the School Performance Framework solution.

2. OWNERSHIP OF SPF MATERIALS.

2.1. The transfer and ownership of the SPF Materials to RevGen shall commence on the Effective Date specified by this Licensing Agreement and will be permanent unless otherwise terminated pursuant to the terms.

2.2. As of the Effective Date, RevGen shall own all rights in and to the SPF Materials, now or hereinafter existing, including any corrections, fixes, enhancements, updates or other modifications (“Improvements”) whether made by the District or any third party. All such Improvements created by the District shall be automatically assigned to, and owned by RevGen.

2.3. Except as set forth herein, the District shall have no right, title or interest in or to the SPF Materials, and nothing in this Agreement constitutes, or shall be construed to constitute, any transfer of title or ownership in the SPF Materials.
2.4. The District shall not do anything to infringe upon, harm or take any action contrary to, or that would diminish or contest the validity of, any ownership rights in the SPF Materials provided there is no material breach of this Agreement between the District and RevGen.

3. LICENSING, USE OF SPF MATERIALS.
   3.1. **In consideration for the transfer of ownership of the SPF Materials, RevGen hereby grants the District and its authorized users** a non-exclusive, non-transferable, perpetual, royalty-free, worldwide license to the SPF Materials **to use and conduct its normal and ordinary course of business subject to the terms and conditions of this Agreement.**
   
   3.2. The District may install, operate, integrate, archive SPF Materials into preexisting and new works; and create, develop, reproduce, display, execute, perform, distribute (internally) copies of SPF Materials, and prepare derivative works based upon, such pre-existing materials and derivative works thereof, in accordance with the terms of this Agreement. The District may distribute externally copies of SPF Materials, other than the SPF’s computer programs, source code, software tools and computer systems created by RevGen.
   
   3.3. The District may authorize third parties to do any, some or all of the foregoing uses described in Subsection 3.1 in accordance with the terms of this Agreement.
   
   3.4. The District may copy the SPF Materials as reasonably necessary to support users and to make additional copies of the SPF Materials solely required for archival, emergency back-up, testing, or disaster recovery purposes in accordance with the terms of this Agreement.
   
   3.5. The District shall ensure that SPF Materials contains all titles, trademarks, and copyright and restricted rights notices, if any exist, in accordance with the terms and conditions of this Agreement.

4. ADDITIONAL DISTRICT CONSIDERATION.
   4.1. In addition to the SPF Materials License, RevGen will discount current and future services performed for the District to the SPF Materials.
   
   4.2. At no additional cost to the District, during the Term of the SPF SOW RevGen shall, provide, updates, enhancements improvements and information necessary for the District to maintain and operate the SPF Materials.

5. SPF MATERIAL LICENSE RESTRICTIONS
   5.1. The District’s SPF License rights are subject to the following restrictions:
      
      5.1.1. The District may not commercially sell, transfer, market or develop any product using the SPF Materials.
      
      5.1.2. The District will not allow any third party that is a direct competitor of RevGen (i) to reverse engineer, disassemble, decompile, or otherwise attempt to create new or derivative works using the SPF Materials or to lease, assign, or otherwise transfer, in whole or in part, the SPF Materials without the express written consent of RevGen.
      
      5.1.3. RevGen retains and reserves all rights not expressly granted to the District under this Agreement.

6. TERM, EFFECTIVE DATE
   6.1. This Agreement is effective ________________ (“Effective Date”).
   
   6.2. The District’s SPF Materials License commences on the Effective Date and continues until terminated pursuant to the terms of the Agreement.

7. CONFIDENTIAL INFORMATION.
   7.1. The parties recognize and acknowledge that this Agreement creates a confidential relationship between RevGen and the District and that the terms of this Agreement and information concerning each party’s business affairs, products, research and development, inventions, processes, techniques, methodologies, designs, marketing and technical information, finances, properties, methods of operation, computer programs, and documentation (including training material), and other such information, whether written, oral, or otherwise (collectively, “Confidential Information”), is confidential and proprietary.
7.2. During the Term and after the Effective Date, the parties agree to take, all commercially reasonable steps and measures (now or hereafter in existence) to protect each other’s Confidential Information, and to safeguard and maintain each other’s Confidential Information in trust and confidence.

7.3. Unless expressly authorized in writing by the parties, Confidential Information shall be used only to perform the Services as intended by this Agreement, any ICA or SOW.

7.4. At no time shall the parties disclose or release Confidential Information to any other person, company or entity. Notwithstanding the foregoing sentence, the District recognizes and acknowledges that the SPF Materials (including but not limited to functionality, specifications, research and development, inventions, techniques, designs and user manuals) is “Confidential Information” and will maintain it as such in perpetuity. Likewise, upon the receipt of the District’s request, with or without further notice, RevGen recognizes and acknowledges that School District information is “Confidential Information” and will maintain it as such in perpetuity.

7.5. The parties further agree that it is a material breach of this Agreement to release Confidential Information, which could result in irreparable injury or unforeseeable harm and it would be difficult to determine the damages caused by such a breach. Therefore, it is mutually agreed that, the party so injured or harmed is entitled to seek an order from a court of competent jurisdiction for specific performance or injunctive relief to take action or refrain from such action necessary to preserve the secrecy of the injured or harmed party’s Confidential Information to protect it from incurring additional damages.

8. GENERAL TERMS AND CONDITIONS

8.1. **Entire Agreement.** This Agreement constitutes the entire and only agreement between the Parties for Intellectual Property Rights specific to SPF, and all other prior negotiations, representations, agreements, and understandings are superseded hereby. No agreements altering or supplementing the terms hereof may be made except by a written document signed by both Parties.

8.2. **Severability.** If any provision, or any portion of any provision, contained in this Agreement is determined to be invalid under any statute or rule of law, then it shall, to that extent alone, be deemed omitted, and the remainder of this Agreement shall remain in full force and effect.

8.3. **No Waiver or Breach.** No failure on the part of either party hereto to exercise, and no delay in exercising, any right, remedy, or power under this Agreement shall operate as a waiver thereof. Nor shall any single or partial exercise of any such right; remedy or power precludes any other or further exercise of any other right, remedy, or power. No waiver shall be valid unless it is in writing and signed by the party to be bound thereby.

8.4. **Conflict of Terms.** In the event of a conflict between the terms regarding Intellectual Property between this agreement, the MSA, SPF SOW(s), or SPF ICA(s), the conflict shall be resolved in the following order of precedence: (i) this Licensing Agreement (ii), SPF SOW(s), (iii) the MSA, and (iv) ICAs.

8.5. **Survival.** The rights and obligations of a party which, by their nature must survive termination of this Agreement in order to achieve its fundamental purposes, shall survive any termination of this Agreement.

**IN WITNESS WHEREOF,** Parties hereto have caused their duly authorized representatives to execute this Agreement.

By______________________________  By______________________________
Name:____________________________  Name:____________________________
Title:_____________________________  Title:_____________________________
Date______________________________  Date______________________________