

# (ATTACHMENT 8) ACTION ON THE AWARD OF PROFESSIONAL SERVICES CONTRACTS

DocuSign Envelope ID: 6BC78047-4424-4FD4-9678-F98FDFD27A02

Contract Requisition Number CR052746

Contract Number C030038

Vendor Number V0840246

## MILWAUKEE BOARD OF SCHOOL DIRECTORS PROFESSIONAL SERVICES CONTRACT

This Contract is being entered into this 1st day of August 2021, by and between **Curriculum Associates, LLC** (“Contractor”) and Milwaukee Board of School Directors (“MPS”). This Contract is the result of an open competitive procurement, specifically Request for Proposal (RFP) 1044.

### 1. SCOPE OF SERVICES

Contractor shall specifically perform the following tasks.

As requested by MPS and in accordance with the Scope of Services of RFP 1044, which is hereby incorporated by reference, Contractor shall

Contractor shall provide a comprehensive and holistic developmental screening tool to administer to all students in grades K3, K4, and K5 for the purpose of assessing child developmental, behavioral, motor, language, social, cognitive, and emotional skills, as well as identifying students in need of targeted support in learning, early literacy skills, and general development. Respondent is expected to provide a product and professional development to be implemented with all teachers during the 2021-2022 school year. The product will be used with approximately 11,000 students in 113 schools and administered by 500-600 teaching staff.

The Universal Screener shall provide the following:

1. Implementation on August 1, 2021.
2. Ability to evaluate whether a child possesses phonemic awareness and letter sound knowledge in accordance with Wis Stats 118.016 (Assessment of Reading Readiness)
3. Available in English and Spanish.
4. Can be administered multiple times within a school year as a benchmark and for monitoring growth
5. Rostering of classrooms and students integrated with / connected to our Student Information System (Infinite Campus).
6. The following types of scores must be provided:
  - a. Scale scores or raw scores
  - b. Percentile rank
  - c. Criterion for developmental benchmarks or milestones.
  - d. Grade and age level benchmarks.
7. Results are demonstrated to be both valid and reliable for its intended purpose through appropriate technical documentation.
8. Reporting capabilities at the district, school, classroom, parent, and student levels as demonstrated with example reports or reporting manual (pdf preferred)
9. Reports must be available in English and Spanish
10. Reports must be available to teachers within 24 hours of administration of the screener
11. Reports must provide information about performance aligned to the following WMEELS domains: Health and Physical Development, Social and Emotional Development, Language Development and Communication, Approaches to Learning, and Cognition and General Knowledge, as well as information regarding phonemic awareness and letter sound knowledge per Wis Stats 118.016 (Assessment of Reading Readiness)
12. Reports must include information related to potential developmental or academic delays with specific suggestions for targeted instruction based on results
13. Parent resources must be available in English and Spanish including an explanation of the screener and the screener's intended purpose, form letters or templates for communication between school and home, support documents used to assist families in understanding student results, and recommended at-home extension activities connected to student results
14. Centralized data collection systems for district level analysis and the ability to access district data for integration into our Student Information System and district Data Dashboard is required. Provide documentation on how the tool collects data and examples of data extracts.
15. Online solution must be compatible with MPS' Technology Standards as provided in the Milwaukee Public Schools Technology Standards provided as Exhibit 2 and have an existing Clever integration, or be willing to develop Clever integration, for automated rostering and single sign-on Solution
16. Universally designed format to facilitate accessibility for children with disabilities and English learners
17. Provide training materials and guidelines to support teachers' implementation (e.g., videos, manuals) of the screener with students

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- 18 A consistent project manager assigned to this project-Tiered access to the product from multiple perspectives (e.g. student, classroom teacher, school level, district level).

Contractor shall:

- 1 Provide recorded sessions of all trainings and professional development (in person/virtual).
- 2 Create a check for understanding with MPS support that will assist measuring teachers learning and understanding of the content.

RFP 1044 (including all exhibits and addenda) and Contractor’s Response to RFP 1044, are incorporated herein by reference. All minimum respondent qualifications of the RFP are material terms of this Contract with which Contractor must comply.

Contractor shall provide, at its own expense, all personnel required to perform the services under this Contract.

**2. TERM**

This Contract shall be in effect from August 1, 2021 through July 31, 2022 (the “Initial Term”), with the option to extend for up to two additional one-year terms to run from August 1, 2022 through July 31, 2023 and August 1, 2023 through July 31, 2024 upon mutual consent of the parties and Board approval. MPS will base its renewal decision on the following performance metrics to be rated by MPS personnel, as well as the current price at the time of extension, as the Contractor is not guaranteeing the current rate for future extensions. Contractor must attain a minimum score of 90 points to be eligible for contract renewal; however, 90 points does not guarantee renewal.

<b>Performance Metrics</b>	<b>Points</b>
Terms of the contract are successfully met, including successful implementation of the product with students in all schools and rollout of professional development with staff	60
Troubleshooting with minimal technical issues and/or timely resolution of issues	20
Response to questions or requests for support occurs within 24 hours	10
Appropriate and timely support provided to school staff who will be implementing the product	10
<b>Total</b>	<b>100</b>

No work shall commence before a Contractor receives a fully executed Contract and has been given approval to proceed. Any work performed by the Contractor prior to obtaining a fully-executed Contract with approval to proceed shall not be compensated pursuant to this Contract. Any continuation of the Contract beyond this term must be set forth in writing and signed by the original signatories to the Contract.

**3. COMPENSATION**

Total compensation under this Contract shall not exceed \$408,417.62 in the Initial Term. Contractor will be compensated at a rate of \$37.13 per student. The cost for the initial term and subsequent years is as follows.

	<b>Initial Term</b>	<b>Subsequent Years (if applicable)</b>
Screening Tool (Bigance)	\$359,177.00 (\$38,500 online system, \$317,000 for printed product; and \$3,277 for Spanish directions)	\$89,885.00
Professional Development	\$30,000.00	-
Shipping directly to school locations	\$19,240.62	\$4,110.80
<b>Total</b>	<b>\$408,417.62</b>	<b>\$93,995.80</b>

MPS reserves the right to determine in its sole discretion whether services have been adequately and fully delivered, to withhold payment until services are fully and adequately delivered; or to disallow a pro rata share of payments for services not fully and adequately delivered.

Milwaukee Public Schools generally does not pay in advance for services, except in this specific Contract, in which an exception is being made that Contractor will invoice MPS 30 days after service has begun for half (1/2) the compensated value of the subscription-based products only and invoice on January 31, 2022 for the remaining half (1/2). Subscription-based products shall be noted on the invoice as such. Any other services, outlined in the compensation section above that are not subscription-based, shall be invoiced monthly for services completed only. No payment shall be made until a properly submitted invoice is approved.

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A properly submitted invoice must include a detailed description of the dates and times worked, and the tasks performed. As a matter of practice, MPS attempts to pay all invoices in 30 days. It is mutually agreed that State Prompt pay law does not apply to this Contract.

Invoices shall be submitted to:

Milwaukee Public Schools  
Department of Research, Assessment & Data  
ATTN: Melanie Stewart, Director  
5225 W. Vliet Street  
Milwaukee, WI 53208

Unless otherwise specified, MPS shall not pay invoices submitted more than 60 days after actual work. In the case of grant funding, no payments shall be made after grant close out. Final invoices must be marked as such.

#### 4. NON APPROPRIATION OF FUNDS

This Contract is contingent upon the appropriation of sufficient funds by appropriate MPS officials. If funds are not appropriated, Contractor agrees to take back any commodities furnished under the Contract, terminate any services supplied to MPS under the Contract, and relieve MPS of any further obligations under the Contract.

#### 5. NON-DISCRIMINATION

In the performance of work under this Contract, Contractor shall not discriminate in any way against any employee or applicant for employment on the basis of a person's sex, race, age, religion, national origin, ancestry, creed, pregnancy, marital or parental status, sexual orientation, disability, or socio-economic status. This prohibition includes but is not limited to employment; promotions, demotions and transfers, recruitment, advertising; layoff or termination, rates of pay or other forms of compensation; and selection for training, including apprenticeships. Contractor is required to include a similar provision in all subcontracts to this Contract.

If MPS determines Contractor has violated this non-discrimination policy, MPS may terminate this Contract without liability for undelivered services or materials. MPS may also deem the Contractor ineligible to participate in future contracts with MPS.

#### 6. INDEMNITY

Notwithstanding any references to the contrary, Contractor assumes full liability for all of its acts or omissions in the performance of this Contract, as well as the acts or omissions of its subcontractors. Contractor shall defend, indemnify and hold harmless MPS, its agents, officers and employees against all liabilities, losses, judgments, decrees, costs, and expenses that may be claimed by a third party against MPS as a result of granting of this Contract to said Contractor, or that may result from the carelessness or neglect of said Contractor, its agents, or employees. If judgment is recovered against MPS in suits of law or equity for any reason, including by reason of the carelessness, negligence, or acts or omissions of the Contractor, against such persons, firms or corporations carrying out the provisions of the Contract for the Contractor, the Contractor assumes full liability for such judgment, not only as to any monetary award, but also as to the costs, attorneys' fees or other expenses resulting therefrom.

In accordance with applicable laws, MPS shall be responsible for defending and paying judgments on behalf of its officers, employees and agents while acting within the scope of their employment or agency for any claims that may arise out of MPS's negligence for acts, policies, or directives that affect the activities covered by this Contract.

#### 7. BACKGROUND CHECKS

Contractor will conduct, at Contractor's expense, a criminal information records background check, (hereinafter referred to as "background check"), through the Wisconsin Department of Justice and other appropriate states' agencies, on all current and potential administrators, board members, officers, and employees who have, or who are anticipated to have, "direct, unsupervised contact" with MPS students in the performance of this Contract.

An out of state background check should be completed in the state(s) in which the individual resided for at least six months within the last two years and was eighteen years or older at the time.

Contractor will submit to MPS's Department of Employment Relations (DER), (via mail to Milwaukee Public Schools Background Checks, Attn: Department of Employment Relations, Room 116, 5225 West Vliet Street, Milwaukee, WI 53208, or via email at [564@milwaukee.k12.wi.us](mailto:564@milwaukee.k12.wi.us)), all completed background checks. Such records will be reviewed and MPS will notify Contractor of any individual(s) who, based on MPS standards, are unfit and should not have contact with MPS students. All determinations made by MPS with regards to whether an individual is fit to provide services pursuant to this Contract are made in MPS's sole discretion.

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The following will each be a material failure to comply with the terms of this Contract and cause for immediate termination of this Contract by MPS: failure to perform background checks as outlined in this Section 7; failure to submit background checks to MPS as outlined in this Section 7; allowing services to be provided by an individual who has not been subjected to a background check, and allowing services to be performed by an individual who has been determined to be unfit by MPS as outlined in this Section 7.

## 8. INSURANCE AND PROOF OF FINANCIAL RESPONSIBILITY

Contractor understands and agrees that financial responsibility for claims or damages to any person, or to Contractor's employees and agents, shall rest with the Contractor. Contractor and its subcontractors shall effect and maintain any insurance coverage, including, but not limited to, Workers' Compensation, Employers' Liability, General Liability, Contractual Liability, Automobile Liability and Umbrella Liability to support such financial obligations. The indemnification obligation, however, shall not be reduced in any way by existence or non-existence, limitation, amount or type of damages, compensation, or benefits payable under Workers' Compensation laws or other insurance provisions.

The minimum limits of insurance required of the Contractor by MPS shall be:

Workers' Compensation	Statutory Limits
Employers' Liability	\$100,000 per occurrence
General Liability	\$1,000,000 per occurrence/\$2,000,000 aggregate
Auto Liability	\$1,000,000 per occurrence
Umbrella (excess) Liability	\$1,000,000 per occurrence

The Milwaukee Board of School Directors shall be named as an additional insured under Contractor's and subcontractors' general liability insurance and umbrella liability insurance. Evidence of all required insurances of Contractor shall be submitted electronically to MPS via its third-party vendor, EXIGIS Risk Management Services. Waivers and exceptions to the above limits will be in the sole discretion of MPS and shall be recorded in the EXIGIS system, which records are incorporated into this Contract by reference. The certificate of insurance or policies of insurance evidencing all coverages shall include a statement that MPS shall be afforded a thirty (30) day written notice of cancellation, non-renewal or material change by any of Contractor's insurers providing the coverages required by MPS for the duration of this Contract.

## 9. SHIPPING /TAXES

If goods are provided pursuant to this Contract, please note that MPS is exempt from Federal Excise and Wisconsin Sales Taxes. Any shipped material shall be FOB Contractor's destination to each MPS location receiving the goods. MPS will provide Contractor with a list of locations, specifying address and attention details within 5 business days of the execution of this Contract. All invoices for shipped material shall be compliant with the terms outlined in Section 3 above. Contractor's compensation for shipping shall not exceed the maximum amount outlined in Section 3 for Shipping.

All textbook purchases shall be governed by the terms and conditions in the Milwaukee Board of School Directors' Textbook Contract, which provides that textbooks shipped to MPS or its schools must be done at no additional charge to MPS or its schools.

MPS reserves the right to reject any items that do not conform to the bid, quote or Purchase Order. All return freight charges associated with the rejected materials shall be borne by the vendor.

## 10. IRREPARABLE HARM

It is mutually agreed the breach of this Contract on Contractor's part shall result in irreparable and continuing damage to MPS for which money damages may not provide adequate relief. Therefore, the breach of this Contract on Contractor's part shall entitle MPS to both preliminary and permanent injunctive relief and money damages insofar as they can be determined under the circumstances.

## 11. TERMINATION BY CONTRACTOR

Contractor may, at its option, terminate this Contract upon the failure of MPS to pay any amount, which may become due hereunder for a period of sixty (60) days following submission of appropriate billing and supporting documentation. Upon said termination, Contractor shall be paid the compensation due for all services rendered through the date of termination including any retainage.

## 12. TERMINATION BY MPS - BREACH BY CONTRACTOR

If Contractor fails to fulfill its obligations under this Contract in a timely or proper manner, or violates any of its provisions, MPS shall thereupon have the right to terminate it by giving five (5) days written notice before the effective date of termination of the

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Contract, specifying the alleged violations, and effective date of termination. The Contract shall not be terminated if, upon receipt of the notice, Contractor promptly cures the alleged violation with five (5) days. In the event of termination, MPS will only be liable for services rendered through the date of termination and not for the uncompleted portion, or for any materials or services purchased or paid for by Contractor for use in completing the Contract.

### 13. TERMINATION BY MPS

MPS further reserves the right to terminate this Contract at any time for any reason by giving Contractor written notice by Registered or Certified Mail of such termination. MPS will attempt to give Contractor 20 days' notice, but reserves the right to give immediate notice. In the event of said termination, Contractor shall reduce its activities hereunder, as mutually agreed to, upon receipt of said notice. Upon said termination, Contractor shall be paid for all services rendered through the date of termination, including any retamage. This section also applies should the Milwaukee Board of School Directors fail to appropriate additional monies required for the completion of the Contract.

### 14. INDEPENDENT CONTRACTOR

Contractor agrees and stipulates that in performing this Contract, it is acting as an Independent Contractor, and that no relationship of employer and employee, partnership or joint venture is created by this Contract. Contractor has exclusive control over work hours, location, and other details of such services, and MPS's sole interest is to ensure that said service shall be performed and rendered in a competent, safe, efficient, timely and satisfactory manner in accordance with the terms of this Contract.

Contractor has the sole obligation to provide for and pay any contribution or taxes required by federal, state or local authorities imposed on or measured by income. Contractor specifically covenants not to file any complaint, charge, or claim with any local, state or federal agency or court in which Contractor claims to be or to have been an employee of MPS during the period of time covered by this Contract and that if any such agency or court assumes jurisdiction of any complaint, charge or claim against MPS on Contractor's behalf, Contractor will request such agency or court to dismiss such matter. MPS shall not be charged any obligation or responsibility whatsoever of extending any fringe benefits which may be extended to MPS employees, including any insurance, or pension plans.

Contractor further agrees that MPS is not to be charged with the obligation or responsibility of extending any fringe benefits such as hospital, medical and life insurance, or pension plans which may be extended to employees of MPS from time-to-time and further agree to indemnify and hold harmless MPS and all its employees, officers and agents from any liability for personal injuries, including death, or for damage to or loss of personal property, which might occur as a result of the performance of the services provided for under this Contract.

### 15. ASSIGNMENT LIMITATION

This Contract shall be binding upon and inure to the benefit of the parties and their successors and assigns, provided, however, that neither party shall assign its obligations hereunder without the prior written consent of the other.

### 16. PROHIBITED PRACTICES

- A. Contractor during the period of this Contract shall not hire, retain or use for compensation any member, officer, or employee of MPS to perform services under this Contract, or any other person who, to the knowledge of Contractor, has a conflict of interest.
- B. Contractor hereby attests it is familiar with MPS's Code of Ethics, providing in pertinent part, "[a]n employee of Milwaukee Public Schools may not accept any gift or gratuity in excess of \$25.00 annually from any person, persons, group or any firm which does business with or is attempting to do business with MPS."
- C. No person may enter into this Contract for services that the MPS employee would otherwise perform as an employee.
- D. No current or former MPS employee may perform services on a professional services contract without the prior written consent of the MPS Chief Human Capital Officer or his/her designee.
- E. If the Contract is for apparel for \$5,000.00 or more, the Contractor agrees to provide only items manufactured by responsible manufacturers. Contractor is required to include a similar provision in all subcontracts to this Contract.

### 17. LIVING WAGE REQUIREMENT

Contractor shall comply with, and ensure its subcontractors performing work under this Contract comply with, Milwaukee Board of School Directors' Administrative Policy 3.09(17), which requires that employees be paid a "living wage."

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## 18. NOTICES

Notices to either party provided for in this Contract shall be sufficient if sent by Certified or Registered mail, postage prepaid, addressed to the signatories on this Contract, or to their designees.

## 19. WAIVER

The waiver or failure of either Party to exercise in any respect any rights provided for in this Contract shall not be deemed a waiver of any further right under this Contract.

## 20. INTEGRATION / SEVERABILITY

This Contract and its exhibits and addenda, if any, RFP 1044 and Contractor's Response to RFP 1044, including the BRIGANCE® Terms and Conditions of Use, constitute the entire Contract among the Parties with respect to the subject matter hereof and supersede all prior proposals, negotiations, conversations, discussions and Contracts among the Parties concerning the subject matter hereof. No amendment or modification of any provision of this Contract shall be effective unless the same shall be in writing and signed by both Parties.

The District shall not be bound by any terms and conditions included in or Contractor's packaging, service catalog, brochure, technical data sheet or other document which attempts to impose any conditions at variance with or in addition to the terms and conditions contained herein.

If any term or provision of this Contract should be declared invalid by a court of competent jurisdiction or by operation of law, the remaining terms and provisions of this Contract shall be interpreted as if such invalid Contracts or covenants were not contained herein.

## 21. CHOICE OF LAW & FORUM

The state courts of Wisconsin shall be the sole forum for all disputes arising of this Contract. The validity, construction, enforcement and effect of this Contract shall be governed solely by the laws of the State of Wisconsin.

## 22. TIMING

Time is of the essence in this Contract.

## 23. CERTIFICATION REGARDING DEBARMENT OR SUSPENSION

Contractor certifies that neither Contractor or its principals; its subcontractors or their principals; the sub-recipients (if applicable) or their principals are suspended, debarred, proposed for debarment, voluntarily excluded from covered transactions, or otherwise disqualified by any federal department or agency from doing business with the Federal Government pursuant to Executive Orders 12549 and 12689. Contractor specifically covenants that neither the Contractor or its principals, its sub-contractors or their principals, or the sub-recipients (if applicable) or their principals are included on the Excluded Parties List System ("EPLS") maintained by the General Services Administration ("GSA").

## 24. FORCE MAJEURE

MPS will not be liable to pay Contractor for any work that the Contractor is unable to perform due to act of God, riot, war, civil unrest, flood, earthquake, outbreak of contagious disease or other cause beyond MPS's reasonable control (including any mechanical, electronic, or communications failure, but excluding failure caused by a party's financial condition or negligence).

## 25. STUDENT DATA

Contractor acknowledges that student data is protected by both federal and state law. See Wis. Stat. § 118.125, 20 U.S.C. § 1232g(b); 34 C.F.R. § 99.1 *et seq.* If MPS determines that Contractor has disclosed any student record information in violation of either federal or state law, without prejudice to any other rights or remedies the MPS may have, MPS shall be entitled to immediately terminate this and every other existing Contract without further liability. Moreover, MPS may bar Contractor from future MPS contracts for varying periods up to and including permanent debarment.

## 26. NON-DISCLOSURE

Absent prior written consent of the person listed in Section 3 or his/her designee, Contractor shall not: (1) disclose, publish, or disseminate any information, not a matter of public record, that is received by reason of this Contract, regardless of whether the Contractor is or is not under contract at the time of the disclosure; or (2) disclose, publish, or disseminate any information developed for MPS under this Contract. Contractor agrees to take all reasonable precautions to prevent any unauthorized use, disclosure, publication, or dissemination of the same information. For purposes of this Agreement and for the avoidance of doubt, MPS takes notice and approves that Contractor uses de-identified data for product functionality, product development, and research purposes as permitted under FERPA. "De-identified student data" refers to data from which all personally identifiable information has been removed so that it does not identify individual students and there is no reasonable basis to believe that the

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information can be re-identified or otherwise used to identify individual students

All information and any derivatives thereof, whether created by MPS or Contractor under this Contract remains the property of MPS and no license or other rights to such information is granted or implied hereby. For purposes of this Contract, "derivatives" shall mean: (i) for copyrightable or copyrighted material, any translation, abridgment, revision, or other form in which an existing work may be recast, transformed, or adapted, and (ii) for patentable or patented material, any improvement thereon. For purposes of this Agreement and for the avoidance of doubt, MPS acknowledges and agrees that Contractor's proprietary BRIGANCE® platform, related digital products, and all intellectual property rights therein are owned solely and exclusively by Curriculum Associates and, except for the licenses granted explicitly herein, nothing shall grant MPS any, title, and interest in or to the BRIGANCE® platform or related services

Within ten business days of the earlier of receipt of MPS' written or oral request, or final payment, Contractor will return all documents, records, and copies thereof it obtained during the development of the work product covered by this Contract

27. MPS LOGO/PUBLICITY

No Contractor shall use the MPS Logo in its literature or issue a press release about the subject of this Contract without prior written notice to and written approval of MPS's Executive Director of Communications & Outreach

28. ORDER OF PRIORITY

In the event of a conflict among the documents constituting this Contract, the order of priority to resolve the conflict shall be 1) this Contract, 2) RFP 1044 (including all exhibits and addenda); and 3) Contractor's Response to RFP 1044

29. PUBLIC RECORDS

Both parties understand that the Board is bound by the Wisconsin Public Records Law, and as such, all of the terms of this Contract are subject to and conditioned on the provisions of Wis. Stat. § 19.21, et seq. Contractor acknowledges that it is obligated to assist the Board in retaining and producing records that are subject to Wisconsin Public Records Law, and that the failure to do so shall constitute a material breach of this Contract, and that the Contractor must defend and hold the Board harmless from liability under the law. Except as otherwise authorized, those records shall be maintained for a period of seven years after receipt of final payment under this Contract

30. CONTRACT COMPLIANCE REQUIREMENT

Contractor commits to spending 5% with HUB suppliers in an indirect capacity. Contractor will report the spend via its contract record within CCRS. Failure to achieve these requirements may result in the application of some or all of the sanctions set forth in Administrative Policy 3.10, which is hereby incorporated by reference

IN WITNESS WHEREOF, the parties here to have executed this Contract on the day, month and year first above written

CONTRACTOR (Vendor #. )

MILWAUKEE BOARD OF SCHOOL DIRECTORS

By: Q. H. 2 Will  
Authorized Representative

By: Martha Kritzman  
Martha Kritzman  
Chief Financial Officer

Date: August 6, 2021

Date: 8-10-2021

Curriculum Associates, LLC  
153 Rangeway Road, N.  
North Billerica, MA 01862  
(800) 225-0248

By: Keith P. Posley, Ed D.  
Keith P. Posley, Ed D.,  
Superintendent of Schools

Date: 8/20/21

SSN / FEIN: XXXXXXXXXX

Budget Code. SYS-0-0-AM-TRH-ECTS  
SDV-0-S-TV2-ZC-EWPT

By: Robert E. Peterson 8/26/21  
Robert E. Peterson, President  
Milwaukee Board of School Directors

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Reviewed by Risk Management

By *J. Manla*

Date 9/7/21

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### BRIGANCE® Terms and Conditions of Use

Please carefully read these terms and conditions of use (the "TOU") of Curriculum Associates LLC's ("CA") proprietary BRIGANCE® Online Management System (the "OMS"). By using your login to access the system, you agree, on behalf of your organization, to abide by these TOU. All references to "You" or "you" in these TOU refer to your organization, which has licensed access to the OMS from CA. All authorized users within your organization are expected to comply with these TOU.

#### Copyright and Proprietary Rights

The OMS and the content contained therein are the sole property of CA and its licensors and are protected by United States and International Copyright laws. All copyright, trademark, and other proprietary rights in the OMS and in the software, text, graphics, design elements, audio, music and all other materials contained in the OMS are reserved by CA and its licensors. You may not use the OMS in any manner that infringes the proprietary rights of any person or entity.

#### Data Collection, Ownership and Security

In connection with your use of the OMS, you will be asked to provide CA with data about your students. You represent and warrant that you have the right to provide CA with all of the data you input into the OMS or will retrieve permission from the student or legal guardian if in violation of FERPA or any other privacy protected information. As you use the OMS, data will be generated about your students' performance and progress. Both the information you input and the data generated by your usage will be referred to in these TOU as "Customer Data." You shall own all right, title and interest in and to the Customer Data. However, you hereby grant CA a perpetual, worldwide, royalty-free license to use the Customer Data: (a) to host and make access to the OMS available to you; and (b) for internal research and analytic purposes, provided, however that CA will only use Customer Data for the purpose outlined in (b) above in aggregated, non-personally identifiable form.

CA takes the protection of Customer Data, particularly personally-identifiable data, very seriously. CA will not reveal the names, identifiers, or individual assessment results to any third parties.

#### Access to the OMS

Your authorized users will need valid usernames and passwords to access the OMS. You are responsible for the integrity and security of your usernames and passwords. Please advise CA immediately if any of your usernames and/or passwords have been compromised.

CA will use commercially reasonable efforts to make the OMS available to you 24 hours a day, except for: (a) planned downtime, of which CA will give you reasonable notice where possible, and which CA shall use reasonable efforts to schedule during the hours from 5:00 p.m. Eastern time to 7:00 a.m. Eastern time, or (b) any unavailability caused by circumstances beyond CA's reasonable control, including without limitation, acts of God, acts of government, flood, fire, earthquakes, civil unrest, acts of terror, strikes or other labor problems, or Internet service provider failures or delays.

#### Limitations on Use

You shall not, nor permit any of your authorized users to: (a) reverse engineer, decompile, disassemble or otherwise attempt to discover the source code or algorithms underlying the OMS, (b) modify, copy, translate, or create derivative works based on the OMS or any of the content contained therein; (c) rent, lease, distribute, sell, resell, assign, or otherwise transfer rights to the OMS; (d) use the OMS for timesharing or services bureau.

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purposes or otherwise for the benefit of a third party other than students or staff within your organization; or  
(e) remove any proprietary notices from the OMS

You may not reproduce, upload, post, transmit, download or distribute any part of the OMS content or information, or information accessed at other sites through links made from the OMS, other than printing out or downloading portions of the text and images for use in connection with the work of your organization. If you leave the OMS via a link to a third party site, CA is in no way responsible for that third party site, and your use of that third party site will be governed by that site's terms of use, not these TOU.

You must use the OMS in compliance with all applicable laws, rules and regulations, including, without limitation, laws and regulations that govern the export of technical data outside of the United States.

### Limitation of Warranties and Liability, Indemnity

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