

**JEFFERSON COUNTY PUBLIC SCHOOLS  
CONTRACT FOR THE PROCUREMENT OF PROFESSIONAL SERVICES**

THIS CONTRACT FOR PROCUREMENT OF PROFESSIONAL SERVICES (hereinafter "Contract") is entered into between the JEFFERSON COUNTY BOARD OF EDUCATION (hereinafter "Board"), a political subdivision of the Commonwealth of Kentucky, with its principal place of business at 3332 Newburg Road, Louisville, Kentucky 40218 and Predictive Index LLC (hereinafter "Contractor"), with its principal place of business at 101 Station Drive, Westwood, MA 02090.

**WITNESSETH:**

WHEREAS, the Board desires to procure the particular services of Contractor, which are more fully defined below; and

WHEREAS, Contractor has held itself out to be competent and capable of performing the services contracted for herein;

NOW, THEREFORE, in consideration of the mutual promises and agreements hereinafter set forth, the Board and Contractor (hereinafter "Parties") agree as follows:

**ARTICLE I**

**Entire Agreement; Amendments**

This Contract is the entire agreement between the Parties and supersedes any and all agreements, representations and negotiations, either oral or written, between the Parties before the effective date of this Contract. This Contract may not be amended or modified except in writing as provided in Article VIII. This Contract is supplemented by the Board's Procurement Regulations currently in effect (hereinafter "Regulations") that are incorporated by reference into and made a part of this Contract. In the event of a conflict between any provision of this Contract and any provisions of the Regulations, the Regulations shall prevail.

**ARTICLE II**

**Services**

Contractor agrees to perform the following services (hereinafter "Services") of a quality and in a manner that is within the highest standards of Contractor's profession or business. The Services are as follows:

The Predictive Index Software Agreement and Order Form are attached hereto and incorporated herein. In the event of a conflict between the terms of this Contract and the terms of the Predictive Index Agreement or Order Form, the terms of this Contract shall prevail.

### ARTICLE III Compensation

The Board shall pay Contractor the total amount stated below (hereinafter "Contract Amount"). The Contract Amount shall be paid in a lump sum upon completion of the Services, unless a schedule of progress payments is stated below. The Contract Amount shall be for total performance of this Contract and includes all fees, costs and expenses incurred by Contractor including but not limited to labor, materials, taxes, profit, overhead, travel, insurance, subcontractor costs and other costs, unless otherwise stated below. To receive payment, Contractor must submit an itemized invoice or invoices. If progress payments are authorized, each invoice must specify the actual work performed. If payment of costs or expenses is authorized, receipts must be attached to the invoice.

Contract Amount:	\$39,880.20
Progress Payments (if not applicable, insert N/A):	N/A
Costs/Expenses (if not applicable insert N/A):	N/A
Fund Source:	HU11099-0349-900XU

### ARTICLE IV Term of Contract

Contractor shall begin performance of the Services on June 1, 2023 and shall complete the Services no later than May 30, 2024, unless this Contract is modified as provided in Article VIII.

### ARTICLE V Performance of Services by Contractor

The Services shall be performed by Contractor, and in no event shall Contractor subcontract with any other person to aid in the completion of the Services without the prior written approval of the Contract Administrator defined below.

Contractor shall appoint one person who shall be responsible for reporting to the Board on all Services performed under the terms of this Contract and who shall be available for consultation with the Contract Administrator.

Contractor is an independent contractor, not an employee. Contractor is responsible for the payment of all federal, state and local payroll taxes and providing unemployment insurance and workers compensation coverage to Contractor's employees. Contractor shall provide all equipment, materials and supplies necessary for the performance of the Services.

Contractor shall at all times during the term of this Contract comply with all applicable laws, regulations, rules and policies. Contractor shall obtain and keep in force all licenses, permits and certificates necessary for the performance of the Services.

Contractor agrees to hold harmless, indemnify, and defend the Board and its members, agents, and employees from any and all claims or losses accruing or resulting from injury, damage, or death of any person, firm, or corporation, including the Contractor himself, in connection with the performance of this

Contract. Contractor also agrees to hold harmless, indemnify, and defend the Board and its members, agents, and employees from any and all claims or losses incurred by any supplier, contractor, or subcontractor furnishing work, services, or materials to Contractor in connection with the performance of this Contract. This provision survives termination of this Contract.

Unless waived in writing by the Contract Administrator, Contractor shall maintain during the term of this Contract policies of primary insurance covering the following risks and in at least the following amounts: commercial general liability, including bodily injury, property damage, personal injury, products and completed operations, and contractual, \$1,000,000; and automobile liability, \$1,000,000. Contractor shall furnish to the Contract Administrator certificates of insurance evidencing this coverage and naming the Board as an additional insured. Additionally, Contractor shall maintain workers compensation coverage with limits required by law; and professional errors and omissions coverage with minimum limits of \$1,000,000. Contractor shall furnish certificates of insurance evidencing this coverage to the Contract Administrator.

#### ARTICLE VI Equal Opportunity

During the performance of this Contract, Contractor agrees that Contractor shall not discriminate against any employee, applicant or subcontractor because of race, color, national origin, age, religion, marital or parental status, political affiliations or beliefs, sex, sexual orientation, gender identity, gender expression, veteran status, genetic information, disability, or limitations related to pregnancy, childbirth, or related medical conditions. If the Contract Amount is paid from federal funds, this Contract is subject to Executive Order 11246 of September 24, 1965 and in such event the Equal Opportunity Clause set forth in 41 Code of Federal Regulations 60-1.4 is hereby incorporated by reference into this Contract as if set forth in full herein.

#### ARTICLE VII Prohibition of Conflicts of Interest

It shall be a breach of this Contract for Contractor to commit any act which is a violation of the provisions of Article XI of the Regulations entitled "Ethics and Standards of Conduct," or to assist or participate in or knowingly benefit from any act by any employee of the Board which is a violation of such provisions.

#### ARTICLE VIII Changes

The Board and Contractor may at any time, by mutual agreement set forth in a written addendum, make changes in the definition of the Services; the scope of the Services; and the Contract Amount. The Contract Administrator and Contractor may, at any time, by mutual agreement set forth in a written addendum, make changes in the time within which the Services are to be performed; the schedule of Progress Payments; and mutual Termination of the Contract.

#### ARTICLE IX Termination for Convenience of the Board

The Board may terminate this Contract in whole or in part at any time by giving written notice to Contractor of such termination and specifying the effective date thereof, at least thirty (30) days before the specified effective date; provided, however that there shall be no refund of any prepaid unused

~~subscription fees. The Board shall compensate Contractor for Services satisfactorily performed through the effective date of termination.~~

## ARTICLE X Termination for Default

The Board may, by written notice of default to Contractor, terminate the whole or any part of this Contract, if Contractor breaches any provision of this Contract, or so fails to make progress as to endanger performance of this Contract, and in either of these circumstances, does not cure the breach or failure within a period of five (5) days after receipt of notice specifying the breach or failure. In the event of termination for default, the Board may secure the required services from another contractor. If the cost to the Board exceeds the cost of obtaining the Services under this Contract, Contractor shall pay the additional cost. The rights and remedies of the Board provided in this Article shall not be exclusive and are in addition to any other rights and remedies provided by law or under this Contract.

## ARTICLE XI Disputes

Any differences or disagreements arising between the Parties concerning the rights or liabilities under this Contract, or any modifying instrument entered into under Article VIII of this Contract, shall be resolved through the procedures set out in the Regulations.

## ARTICLE XII Contractor's Work Product

~~Unless waived in writing by the Contract Administrator, the Board shall retain ownership in and the rights to any reports, research data, creative works, designs, recordings, graphical representations or other works of a similar nature (hereinafter "Works") produced or delivered by Contractor under this Contract. Contractor agrees that the Works are "works for hire" and Contractor assigns all right, title and interest in the Works to the Board.~~

Any reports, information, data, etc. given to or prepared or assembled by Contractor under this Contract shall not be made available to any individual or organization by Contractor without the prior written approval of the Board. Provided, nothing in this Article may be used to violate the provisions of any Kentucky or Federal statute or regulation which requires reporting of information.

## ARTICLE XIII Contract Administrator

The Board shall appoint a Contract Administrator for the purposes of daily administrative decision-making pertaining to the Contract. If Contractor and the Contract Administrator disagree on any circumstance or set of facts pertaining to the administration or execution of this Contract, the Board shall resolve the matter after notification by either the Contract Administrator or the Contractor in the manner prescribed by the Regulations. If the Board fails to give notice to Contractor of the appointment of a Contract Administrator, the Contract Administrator shall be the Board's Chief Financial Officer.

## ARTICLE XIV Right to Audit

The Board shall have the right to inspect and audit all accounting reports, books or records which concern the performance of the Services. Inspection shall take place during normal business hours at

Contractor's place of business. Contractor shall retain all records relating to the performance of this Contract for five (5) years after the end of the term of this Contract.

ARTICLE XV  
Miscellaneous

- A. All Articles shall be construed as read, and no limitation shall be placed on any Article by virtue of its descriptive heading.
- B. Any notices or reports by one Party to the other Party under this Contract shall be made in writing, to the address shown in the first paragraph of this Contract, or to such other address as may be designated in writing by one Party to the other. Notices shall be effective when received if personally delivered, or three days after mailing if mailed.
- C. If any part of this Contract is held to be void, against public policy or illegal, the balance of this Contract shall continue to be valid and binding.
- D. This Contract shall be governed and construed in accordance with the laws of the Commonwealth of Kentucky.
- E. No delay or omission by either Party in exercising any right under this Contract shall operate as a waiver of that or any other right or prevent a similar subsequent act from constituting a violation of this Contract.
- F. At all times during the term of this Contract, Contractor shall comply with the Family Educational Rights and Privacy Act of 1974. If Contractor has access to student records, Contractor shall limit its employees' access to those records to persons for whom access is essential to perform this Contract.
- G. If this Contract requires Contractor and/or any employees of Contractor access to school grounds on a regularly scheduled and continuing basis for the purpose of providing services directly to a student or students, all individuals performing such services under this Contract are required to submit per KRS 160.380 to a national and state criminal history background check by the Department of Kentucky State Police and the Federal Bureau of Investigation and have a letter, provided by the individual, from the Cabinet for Health and Family Services stating no administrative findings of child abuse or neglect found through a background check of child abuse and neglect records maintained by the Cabinet for Health and Family Services.
- H. Contractor shall be in continuous compliance with the provisions of KRS Chapters 136, 139, 141, 337, 338, 341 and 342 that apply to the Contractor or subcontractor for the duration of this Contract and shall reveal any final determination of a violation by the Contractor or subcontractor of the preceding KRS Chapters.

IN WITNESS WHEREOF, the Parties hereto have executed this Contract to be effective as of September 27, 2023 to be effective as of June 1, 2023.

Contractor's Social Security Number or Federal Tax ID Number:

JEFFERSON COUNTY BOARD OF  
EDUCATION

By: \_\_\_\_\_

Title: Martin A. Pollio, Ed.D.  
Superintendent

Predictive Index, LLC  
CONTRACTOR

By: \_\_\_\_\_

Title: John McGuinness  
CFO

DocuSigned by:

John McGuinness

40AD1454FD72402...

Cabinet Member: Aimee Green-Webb

agw  
(Initials)

Jefferson County Public Schools  
**NONCOMPETITIVE NEGOTIATION  
DETERMINATION AND FINDING**

1. An emergency exists which will cause public harm as a result of the delay in competitive procedures (Only the Superintendent shall declare an emergency.) —

State the date the emergency was declared by the superintendent: \_\_\_\_\_

2. There is a single source for the items within a reasonable geographic area —

Explain why the vendor is a single source: \_\_\_\_\_

3. The contract is for the services of a licensed professional, education specialist, technician, or an artist —

State the type of service: Educational consultant

4. The contract is for the purchase of perishable items purchased on a weekly or more frequent basis —

State the item(s): \_\_\_\_\_

5. The contract is for proprietary item(s) for resale: This can include the buying or selling of item(s) by students when it is part of the educational experience —

State the type(s) of item(s): \_\_\_\_\_

6. The contract is for replacement parts when the need cannot be reasonably anticipated and stockpiling is not feasible —

State the item(s): \_\_\_\_\_

7. The contract or purchase is for expenditures made on authorized trips outside the boundaries of Jefferson County Public Schools —

State the location: \_\_\_\_\_

8. The contract is for a sale of supplies at reduced prices that will afford Jefferson County Public Schools a savings (Purchase must be approved by Director of Purchasing) —

Explain the logic: \_\_\_\_\_

9. The contract is for the purchase of supplies which are sold at public auction or by receiving sealed bids —

State the items: \_\_\_\_\_

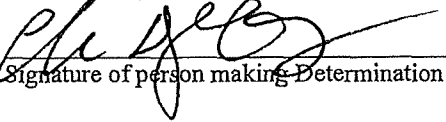
I have determined that, pursuant to K.R.S. 45A. 380, the above item(s) should be obtained by the Noncompetitive Negotiation Methods since competition is not feasible.

Dylan Owens

Print name of person making Determination

Human Resources

School or Department

  
Signature of person making Determination

9/7/23  
Date

Predictive Index LLC

Name of Contractor (Contractor Signature Not Required)

\_\_\_\_\_  
Requisition Number

Explanation of Noncompetitive Negotiation Methods can be found under K.R.S. 45A.380 and on page 15 in the Procurement Regulations

F-471-1

Revised 05/2011

# Client Software Agreement

## Who We Are

The Predictive Index, LLC ("PI," "we," "our," or "us") is a cloud-based SaaS platform that provides our Clients with Talent Optimization software and other products (collectively, the "Software").

## Who is a Client?

"Clients" (or "you") are any users that have submitted an Order (as defined below) or are otherwise permitted by PI to use our Software including as a Client or prospective client (e.g. free Behavioral Assessment), whether you have discovered PI by:

1. Signing up via our website (e.g. freemium or other Software); or
2. working with either: (a) our PI direct sales team; or (b) a Partner, who is reselling our Software.

## How did you come to PI?

Most of our Clients are companies using our Software, in which case the Client determines the purposes and means of collecting the Personal Information, and PI only acts on the authority of the Client. In other situations, Clients are individual users, in which case PI determines the purposes and means of collecting the Personal Information.

You can read more about this below, in our privacy section, and in our privacy policy.

To be clear, unless you are a Client, you are not authorized to use our Software.

"Partners" are independent entities that are separate from PI and have been granted limited rights to resell and teach our Software to Clients. Partners often provide Clients with hands-on expertise on how to use the Software, so Partners may separately sell you (i) services to supplement or assist you with your use of the Software (and are not included in your Software), and/or (ii) other services that may not be relevant to PI or our Software ("Non-SaaS Services"). Therefore, you should think of Partners as separate vendors apart from PI. Partners are not Affiliates of PI, so they cannot make any representations about PI, nor bind PI to any obligations on our behalf. If you are not working with a Partner, don't worry about references to Partners below.

Whether you use PI on behalf of your company or as an individual, rest assured, we will never sell your Personal Information to any third party.

## Our Agreement



No matter how you discovered PI, when you submit an Order for our Software, you agree to be bound by this Client Software Agreement between you and PI (the "Agreement") and to our Privacy Policy.

This Agreement contains the terms and conditions for using our Software, so if this Agreement doesn't work for you, we're sorry but you cannot use our Software. If you agree to this Agreement, we are excited to have you as a Client. By the way, definitions for any capitalized terms can be found in Appendix A below.

## General Overview

### 1. Modules

#### 1. Modules; Module Tiers;

1. "**Modules**" are PI's specific Software products (e.g. Hire, Inspire, Design or Diagnose).
2. "**Module Tiers**" are tiers or levels of Modules that are defined and limited by quantity, quality and/or pricing (this includes but is not limited to any freemium Software).

#### 2. Your Module and Module Tier; Limits

Modules and Module Tiers are selected by you and indicated on your Order.

You agree that you will not exceed the limits set forth in your applicable Module Tier(s) ("Module Tier Limit"). You may upgrade your Module Tier at any time by contacting PI or your Partner or by submitting an Order online. Use of the Module in excess of the Module Tier Limit is otherwise prohibited and PI reserves the right to suspend or terminate a Client's subscription accordingly.

### 2. Your Order

1. You may order Software by: (i) subscribing via a signed Order Form; (ii) subscribing via our online checkout/portal on PI's website; or (iii) by any other means PI deems to be acceptable, including using the Software as a prospective client ("Order").
2. By submitting an Order, the Client agrees to be bound by the terms of this Agreement and PI will grant Client a non-exclusive, non-transferable and revocable subscription to use our Software.
3. Your Order will specify Module/Module Tiers and applicable pricing. As mentioned above, for freemium Software the Module Tier will be a free but limited-use Module Tier.
4. For the purposes of this Agreement, the Start Date will be the date on which your Order has been submitted to PI.

## **Fees and Payments**

### **3. Fees**

You must pay all fees specified in your Order. Except as otherwise specified, (i) your subscription fees are based on the Modules and/or Module Tier(s) purchased, (ii) payment obligations cannot be cancelled and fees paid cannot be refunded, and (iii) your Modules and/or Module Tier(s) cannot be decreased during the relevant subscription term.

For freemium Software, you are not required to pay any subscription fees and we will make the applicable Software available to you free of charge until terminated in accordance with this Agreement. However, your use of the Software is subject to this Agreement and you will continue to be subject to this Agreement for as long as you have access to the Software.

### **4. Payment**

Subscription fees are assessed on an annual basis and are due on or before the Start Date (as indicated on your Order) and annually thereafter. If you purchase additional Modules or you upgrade your Module Tier, you will need to submit a new Order, which will include the fees for the additional Modules and/or Module Tiers prorated from the activation date for the remainder of the Term. Payments that are more than thirty (30) days late may incur a penalty interest rate of two percent (2%) per month, or the maximum rate permitted by law, whichever is less.

### **5. Taxes**

Our fees do not include any taxes, levies, duties, or similar governmental assessments of any nature, including, for example, value added, sales, use or withholding taxes, assessable by any jurisdiction whatsoever (collectively "Taxes"). You are responsible for paying all applicable Taxes from your purchase. If we have the legal obligation to pay or collect Taxes for which you are responsible under this Section, you will receive an invoice that you must pay unless you can show a valid tax exemption certificate authorized by the appropriate taxing authority.

## **Term and Termination**

### **6. Term of Agreement**

This Agreement begins on the date you submit your Order and continues until all applicable subscriptions have terminated or expired.

### **7. Term of Subscription**

The term of each Module subscription is specified in your Order ("Term").

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Subscriptions will automatically renew for additional periods equal to the expiring subscription or one year (whichever is shorter), unless either party gives the other notice of non-renewal at least thirty (30) days before the end of the relevant subscription Term. The pricing during any renewal term will be at the list pricing in effect at the time of renewal. Modules or Module Tiers (i.e. upgrades) added during the Term will renew along with your original subscription, unless otherwise specified. The Term for freemium Software will be for one year after your freemium Software Order Date and will automatically renew for additional one-year periods, until either party chooses to terminate use or access in accordance with this Agreement.

#### 8. Termination

Either party may terminate this Agreement for cause: (i) upon written notice to the other party of a material breach if such breach remains uncured after thirty (30) days; provided that such breach is capable of being cured as determined by PI; or (ii) immediately if the other party becomes the subject of a petition in bankruptcy or any other proceeding relating to insolvency, receivership, liquidation or an assignment for the benefit of creditors.

#### 9. Suspension / Deprecation of Software

We may suspend the Software at any time, with or without cause (e.g. technical upgrades/fixes, etc.). If, in our reasonable discretion, we believe that your use of the Software is in breach of this Agreement, or your use otherwise threatens the security, integrity or availability of the Software, we may immediately suspend your subscription indefinitely (i.e. terminate your subscription) without refund. In the event we discontinue any portion of the Software or otherwise terminate your use through no fault of your own, we will provide you with a prorated refund of any pre-paid but unused subscription fees.

For freemium Software Clients, we will terminate your access to the freemium Software due to your inactivity, as described below. Should your access be so terminated, your Client Data will be handled in accordance with this Agreement.

#### 10. Freemium Users

If you are a freemium Software user, you are not required to pay any subscription fees and we will make the Software available to you free of charge until the earlier of: (i) the deactivation of your account; or (ii) you upgrade your account to become a paying subscription Client.

We may suspend, limit or terminate your access to the freemium Software for any reason, at any time without notice. If your account has been inactive for a period of one year, we will terminate your access. We may also elect to discontinue any portion of the Software at any time without notice to you. In the event of any such termination, your Client Data will be handled in accordance

with this Agreement.

If you are a Freemium Software Client and also an individual user, please refer to the privacy section below for information on privacy law implications.

Freemium Software Clients shall have unlimited access to our online support resources. PI is not obligated to provide freemium Software Clients with phone and/or email support.

## **Client Account Responsibilities And Support**

### **11. Account Administration**

Your Order must specify one (1) employee as your "Key Contact" who has the authority to represent you, to access Client Data, and act as your designated point of contact for all account administration. The Key Contact will have full administration rights and can designate users and their permissions, including allowing other account users to access Client Data.

At your discretion, you may wish to designate an employee (e.g. data protection officer) to separately handle data security, privacy and protection authorizations. It is your responsibility to notify PI of such designation; otherwise, PI will reach out to the Key Contact for all security and privacy related matters.

PI relies on Client's proper administration and access to the Software and Client Data given to its employees and other parties, including any and all actions taken and instructions given by the Key Contact and any other people using your accounts. You may provide access and use of the Software to your employees; provided that, all such access and use of the Software by your employees is subject to and in compliance with the Agreement. You will at all times remain liable for your employees' compliance with the Agreement.

### **12. Systems Responsibilities**

You are solely responsible for the set-up, maintenance and security of the computer and/or network connection(s) used for accessing the Software. We cannot guarantee that the Software will function properly or that you will have access to all features if you do not regularly update your internet browsers and/or other systems.

### **13. Client Support**

Phone and email support is included at no charge to paying subscription Clients. For paying subscription clients, phone support is available from 8:30am to 5:30pm EST (Eastern Standard Time) Monday through Friday, with reduced hours during U.S. holidays. While we accept email support questions 24 hours

per day x 7 days per week, responses to emails are provided only during phone support hours. We will attempt to respond to email support questions within one (1) business day, but do not guarantee any specific response time.

As stated above, Freemium Software Clients shall have unlimited access to our online support resources. PI is not obligated to provide freemium Software Clients with phone and/or email support.

#### **Client's Authorized Use and Restrictions**

You make the following representations and warranties regarding your use of the Software:

14. You will comply with all applicable Laws, including but not limited to all applicable privacy laws, while using the Software, and you acknowledge that PI is not responsible for advising you on compliance with any applicable Laws.
15. You have obtained all necessary consents, or otherwise have a lawful basis, to enter, or cause to be entered, all Client Data entered into the Software, whether you are a subscription Client or a freemium Software Client. You have the right to disclose the Client Data, and/or to store such Client Data on our platform.
16. You will properly administer and provide the appropriate access to and use of the Software to your users.
17. You will use our Software for internal, legitimate business use only, and therefore, you will not sell, resell, license, sublicense, distribute, make available, or grant rights in the Software, or any portion thereof, or otherwise use the Software for the benefit of anyone other than you.
18. You will not use the Software to store or transmit malicious code or infringing, libelous or otherwise unlawful material, or to store or transmit material in violation of any third-party privacy rights. By entering into this Agreement, you agree to also abide by our Website Terms of Use.
19. You will not use our Software to engage in any behavior or practices that PI determines to be illegal, unethical, harassing, abusive or discriminatory against any protected status under federal or applicable state law.
20. You will not attempt to gain unauthorized access to the Software or related systems or networks or disrupt the integrity or performance of the Software or third party data contained therein.
21. You will not allow access to or use the Software in a way that circumvents a contractual usage limit.
22. You will not use, modify, copy, or create derivative works based on the Software or other Intellectual Property, or any part, feature, function, or user interface thereof, except as expressly permitted herein. PI shall own all derivative works. You will not allow access to or use our Intellectual Property, except as expressly permitted herein.
23. You will not disassemble, reverse engineer, or decompile the Software, or any part thereof, or otherwise access our Software to copy the ideas, functions,

- graphics, or other features or to build a competitive or "preparatory" product or service.
24. You will not remove our logo and/or trademark from the Software or any portion thereof.
25. You will not access the Software if you are a competitor or to monitor the availability, performance, or functionality or for any other benchmarking or competitive purposes.
26. You acknowledge that our Software is not designed to comply with industry-specific regulations such as HIPAA, GLBA, or FISMA. Therefore, you will not store or transmit any communications subject to these laws in or through the Software.
27. You agree not to export or re-export the Software except in full compliance with all United States laws, rules, decrees, regulations, and executive orders, including without limitation the Export Administration Regulation of the U.S. Department of Commerce and the sanctions programs administered by the Office of Foreign Assets Control (OFAC) of the U.S. Department of the Treasury. Without limiting the foregoing no Software may be exported or re-exported into (or to a legal permanent resident of) any country to which the United States embargoes goods or to anyone on the United States Treasury Department's list of Specially Designated Nationals and Blocked Persons or the U.S. Commerce Department's Denied Persons List.

#### **Software Demonstrations and Other Uses of Behavioral Assessment(s)**

##### **28. Software Demonstrations and Free Behavioral Assessments**

If you register on our website to take a free Behavioral Assessment ("BA") or request a demonstration of any of our Software, additional terms and conditions may apply and are hereby incorporated into this Agreement by reference.

##### **29. Data Use**

Any data you enter into the Software during your demonstration or when taking the free BA may be permanently lost unless you become a Client or export such data during the demonstration or upon taking the free BA. The free BA and the Software used during the demonstration are provided "as-is" without any warranty and PI will not have any indemnification obligations with respect to the Software used. Without limiting the foregoing, PI does not represent or warrant to you that: (a) taking the free BA or observing a demonstration will meet your requirements; and (b) taking the free BA or the demonstration of the Software will be uninterrupted, timely, secure, or free from error. Notwithstanding anything to the contrary herein, you shall be fully liable to PI for any damages arising out of your use of the Software while taking the free BA or during a demonstration, for any breach by you of this Agreement and for any of your indemnification obligations hereunder. In no event should you enter, or cause to be entered, any data of any individual who is not directly involved in the Software demonstration

or who is not personally taking the free BA. You represent and warrant that you have obtained all necessary consents, or otherwise have a lawful basis, to enter, or cause to be entered, all data entered during the free BA or during the Software demonstration.

## **Client Data and Privacy**

### **30. Ownership and Representations**

As between the parties, you own and retain all rights to the Client Data and this Agreement does not grant us any ownership rights therein. You represent and warrant that you have obtained all necessary consents or otherwise have the right to disclose the Client Data, or store the Client Data on our platform so that our processing of Client Data in the performance of this Agreement does not violate any third party rights.

### **31. Our Use of Client Data**

You grant us the right to access and use the Client Data as necessary to provide you with the Software and for any other permitted use under this Agreement. If you use the Software on behalf of another party, then you represent and warrant that you have all necessary permissions to do so. Additionally, we may share Client Data with Partners who are authorized processors of yours, and, in accordance with existing contractual relationships, with authorized subprocessors of ours who develop and manage our software and infrastructure.

You grant us the right to access and use the Client Data for management and administration and to provide assistance in using the Software. This may include monitoring your access to and usage of the Software. Such usage information may be utilized by us (and our Partners, if applicable) in order to ensure you are receiving the optimal Software for your business, and to assist in offering you further PI Software to meet your legitimate business needs. We may also collect (via the Software, Non-SaaS Services, or in any other permitted manner), store, and use the anonymized Client Data and information for scientific research, benchmarking, and to continue to improve our business operations and the Software. Use of Client Data in this manner is standard in the assessment industry and helps us continually develop our Software based on updated trends and research. All Client Data will be anonymized 120 days after termination or expiration, or upon your earlier written request. After anonymization, we will not be able to trace the Client Data back to you and such data is no longer classified as Personally Identifiable Information. We do not sell, rent or otherwise disclose Client Data to third parties. The rights granted hereunder will continue after termination or expiration of this Agreement.

### **32. Employee Request for Behavioral Assessment Report**

At our discretion and upon the verified request of a current employee of yours, ( a

"Qualified User"), we may provide the Qualified User a copy of their PI Behavioral Assessment. If we receive such a request, we will first: (i) verify that they are, in fact, a Qualified User, and (ii) require the Qualified User to sign a document releasing you of any liability in connection with the BA. Upon signing the release, the Qualified User will release you from any liability arising from the provision of the BA, and they shall receive their BA.

33. Sensitive Information

YOU AGREE NOT TO USE THE SOFTWARE TO COLLECT, MANAGE, OR PROCESS SENSITIVE INFORMATION. WE WILL NOT HAVE ANY LIABILITY THAT MAY RESULT FROM YOUR USE OF THE SOFTWARE TO COLLECT, STORE OR MANAGE SENSITIVE INFORMATION.

34. Client Data Access after Termination

Although you do not have any ownership rights in the assessment reports generated during the Term, you can continue to use them after this Agreement has terminated or expired. You can make a written request within ninety (90) days after termination or expiration of the Agreement to obtain copies of all Client Data that is then in our possession or control. If we receive a request more than ninety (90) days after termination or expiration of the Agreement, we will have no obligation to maintain or provide you with the Client Data and the Client Data will thereafter be anonymized and untraceable.

35. Privacy Laws; EU/EEA Processing

The parties acknowledge that for the purposes of privacy laws, Client (excluding individual users) is the data controller, "business" or equivalent and PI is the data processor, "service provider," or equivalent.

For the purposes of Article 26(2) of Directive 95/46/EC, Clients that are located in the European Union or the European Economic Area must enter into a Data Processing Agreement that includes the Standard Contractual Clauses adopted by the European Commission in order to further provide adequate safeguards with respect to the data processed under this Agreement. Although PI no longer relies on the EU-U.S. Privacy Shield or Swiss-U.S. Privacy Shield Frameworks as a legal basis for data transfers, PI will process Client Data from the European Union in compliance with the Privacy Shield Principles for as long as PI is Privacy Shield certified. Regardless of your location, you acknowledge that in every case except for individual users, that PI acts as the processor of Client Data and you remain the controller of Client Data for applicable data protection regulations. If you are located in the European Union, you understand that if you give an integration provider access to your PI portal, you serve as the controller of such information and the integration provider serves as the processor for the purposes of those data laws and regulations that apply to you. In no case are such integration providers our sub-processors.



If you are an individual user, for the purposes of privacy laws, PI is the data controller, "business" or equivalent. As such, PI determines the purposes for which and the means by which the data is collected. If you are an individual user located in the European Union or the European Economic Area, our legal basis for collecting and using your Personal Information will likely be either (i) out of contractual necessity, in that we need to provide the requested Software to you and ensure the proper functioning of our Software or (ii) your consent. For more information on how we use your Personal Information if you are an individual user, please see our Privacy Policy [\[link\]](#).

## **PI Representations, Warranties & Disclaimers**

### **36. Our Warranties**

We warrant that during an applicable subscription Term we will not materially decrease the overall security or functionality of the Software. For breach of a warranty above, your exclusive remedies are those contained herein.

### **37. General Disclaimers**

We do not warrant that the Software will perform in accordance with any specifications, documentation, or other standards, nor do we make any warranties as to the results obtained from the use of the Software. We do not warrant the Software will perform in an uninterrupted capacity, be error-free or bug-free, or provide complete or accurate data. Use of the Software and reliance thereon is at your sole risk. We shall not be liable to you or any other entity or person for the inability to use the Software, or for any inaccuracies, errors, omissions, delays, computer viruses or other infirmity or corruption, damages, claims, liabilities, or losses, regardless of cause, in or arising from the use of our Software.

### **38. "As-Is"**

Although we will provide you with some assistance in your use of the Software, the Software is provided on an "as-is" basis and without warranty. No warranties, either express or implied, including but not limited to any implied warranty of merchantability, fitness for a particular purpose, title, non-infringement, or any other type is provided.

### **39. Non-SaaS Services Disclaimers**

We do not make any representations or warranties regarding the Non-SaaS Services. In no event shall PI have any responsibility or liability for the administration or performance of Non-SaaS Services or for any documentation or information not developed by PI that is distributed or used during the Non-SaaS Services. Any Non-SaaS Services must be arranged between you and your Partner separately.

## **Indemnification, Liability And Confidentiality**

### **40. Indemnification by Us**

We will indemnify, defend and hold you harmless, at our expense, against any third-party claim, suit, action, or proceeding (each, an "Action") brought against you (and your officers, directors, employees, and agents) to the extent that such Action is based upon or arises out of infringement or misappropriation of any patent, copyright, trade secret, proprietary information or intellectual property right by reason of your authorized use of the Software and to defend you in any suits at law or in equity arising therefrom to which you may be made a party. The foregoing indemnity shall not apply to the extent that the Action is caused by or results from: (a) your combination or use of the Software with software, services, products or information developed by you or any third party, if the Action would not have existed but for such combination or use; (b) unauthorized modification of the Software by anyone other than you or us (or our respective designees), if the Action would have been avoided by use of the unmodified Software; (c) your continued allegedly infringing activity after receiving notice thereof or after being provided modifications, or a new Software version or release, that would have avoided the alleged infringement; (d) your use of the Software in breach of this Agreement or any other documentation provided to you by us; or (e) any Action related to or arising from the Non-SaaS Services. You will: (x) notify us in writing within thirty (30) days of your becoming aware of any such claim; (y) give us sole control of the defense or settlement of such a claim; and (z) provide us (at our expense) with any and all information and assistance reasonably requested by us to handle the defense or settlement of the claim. We shall not accept any settlement that (i) imposes an obligation on you; (ii) requires you to make an admission; or (iii) imposes liability not covered by these indemnifications or places restrictions on you without your prior written consent.

### **41. Indemnification by You**

To the extent permitted by law, You will indemnify, defend and hold us harmless, at your expense, against any third-party Action brought against us (and our officers, directors, employees, agents, service providers and licensors) to the extent that such Action is based upon or arises out of (a) your unauthorized or illegal use of the Software, (b) your noncompliance with or breach of this Agreement, (c) your use of third-party products, or (d) the unauthorized use of the Software by any other person using your account. We will: (x) notify you in writing within thirty (30) days of our becoming aware of any such claim; (y) give you sole control of the defense or settlement of such a claim; and (z) provide you (at your expense) with any and all information and assistance reasonably requested by you to handle the defense or settlement of the claim. You shall not accept any settlement that (i) imposes an obligation on us; (ii) requires us to make an admission; or (iii) imposes liability not covered by these indemnifications or places restrictions on us without our prior written consent.

#### 42. Liability

Notwithstanding anything to the contrary in this Agreement, PI's maximum aggregate liability to you related in any way to or in connection with this Agreement, including your use of the Software, shall be limited to the amount of fees actually paid pursuant to this Agreement over the twelve (12) month period immediately preceding the circumstance giving rise to your claim for indemnification. TO THE EXTENT PERMITTED BY LAW, IN NO EVENT SHALL EITHER PARTY BE LIABLE FOR ANY CONSEQUENTIAL, INDIRECT, INCIDENTAL, SPECIAL, EXEMPLARY, PUNITIVE OR ENHANCED DAMAGES, LOST PROFITS, REVENUES, OR DIMINUTION IN VALUE, ARISING OUT OF, RELATING TO, OR IN CONNECTION WITH ANY BREACH OF THIS AGREEMENT, REGARDLESS OF (A) WHETHER SUCH DAMAGES WERE FORESEEABLE, (B) WHETHER OR NOT ANY PARTY WAS ADVISED OF THE POSSIBILITY OF SUCH DAMAGES AND (C) THE LEGAL OR EQUITABLE THEORY (CONTRACT, TORT OR OTHERWISE) UPON WHICH THE CLAIM IS BASED.

#### 43. Confidentiality

"Confidential Information" means all information provided by either party ("Disclosing Party") to the other ("Receiving Party"), whether orally or in writing that is designated as confidential or is, by its nature, deemed to be confidential. Confidential Information will include Client Data, PI's assessments and reports, the features and functionalities of the Software, information about the Disclosing Party's business plans, technical data, and the terms of your Order and this Agreement. Confidential Information does not include any information that (i) is or becomes generally known to the public without breach of any obligation owed to the Disclosing Party or (ii) was known to the Receiving Party before receipt from the Disclosing Party. The Receiving Party will: (i) protect the confidentiality of the Confidential Information using the same degree of care that it uses with its own confidential information of similar nature, but with no less than commercially reasonable care, (ii) not use any Confidential Information for any purpose outside the scope of this Agreement, (iii) not disclose Confidential Information to any third party (except our third party service providers), and (iv) limit access to Confidential Information to its employees, contractors, advisors and agents. Upon notice to the Disclosing Party, the Receiving Party may disclose Confidential Information if required to do so under any federal, state, or local law, statute, rule or regulation, subpoena or legal process.

#### Other Important Stuff

##### 44. Reservation Of Rights

Subject to the limited rights expressly granted hereunder, we reserve all right, title and interest in and to the Software, including all related Intellectual Property rights, and you shall not make a claim to the contrary. For the avoidance of

doubt, this reservation of rights specifically includes, without limitation, the assessments and any reports generated via the Software distributed to you during the Non-SaaS Services. You acknowledge that you have not been granted any rights, except as expressly provided herein, and that misappropriation or unauthorized disclosure or use of the Software or Intellectual Property by you or others would cause irreparable harm in a manner for which damages would not be an adequate remedy, and therefore, we are entitled to obtain injunctive or equitable relief to restrain any actual or threatened breach of the Agreement and we are further entitled to immediately suspend access to your account(s).

#### 45. Changes

For any material changes to this Agreement, we may make changes at any time by providing you with notice (which may be by email notice to your Key Contact or by posting a notice on our website or through the Software). If you do not agree to these changes, you have thirty (30) days from the date of notice to notify us that you opt out of the modified terms, in which case the previous terms will apply to your use of the Software for the remainder of the then-current Term, after which your right to use the Software shall terminate. Your continued use of the Software following the 30 day opt-out notice period will mean that you agree to and accept the changes. However, if we can no longer reasonably provide the Software to you under the terms prior to the changes (e.g. changes required by law), then the Agreement will terminate upon our notice to you, and we will promptly refund any prepaid but unused subscription fees. For any non-material changes to this Agreement, we reserve the right to make such changes at any time without notice (e.g. typos or non-material clarifications).

#### 46. Governing Law

The State of Delaware's laws, except for conflict of laws rules, will apply to any dispute related to this Agreement. The State of Delaware will serve as the venue and have exclusive jurisdiction for any action or purpose relating to this Agreement. If any action is brought to enforce or interpret this Agreement, the prevailing party will be entitled to recover its attorney's fees and costs or any other appropriate relief, whether in the same or a separate action.

This Section 44 applies to Client only if Client is not a state or local government, and only to the extent the Software is being used in a Client's official capacity as a state or local government body. The section herein entitled "Governing Law" will not apply to Client only to the extent Client's jurisdiction's laws prohibit Client from accepting the requirements in those sections.

#### 47. Entire Agreement

This Agreement, which includes your Order and Privacy Policy and any other document incorporated herein by reference, is the entire agreement between the parties, and supersedes all other representations, warranties, and agreements.

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#### 48. Assignment

Neither party may assign any of its rights or obligations under this Agreement to anyone else, without the other party's prior written consent. The parties may assign this Agreement without the other party's consent only in connection with a merger, acquisition, or by a sale of substantially all of its assets. This limited right of assignment does not apply if the assigning party is acquired by, sells substantially all of its assets to, or has a change of control in favor of a direct competitor of the other party, in which case this Agreement can be terminated without fault upon written notice.

#### 49. Relationship of the Parties

The parties are independent contractors. This Agreement does not create a partnership, franchise, joint, venture, agency, fiduciary or employment relationship between the parties.

#### 50. Third-Party Beneficiaries

There are no third-party beneficiaries under this Agreement.

#### 51. Force Majeure

We will not be held liable for delays or for any failures in the performance of the Software caused by any acts beyond our control, which includes, without limitation, acts of God, acts of war, pandemics, hostility, terrorism or sabotage, natural disasters, or electrical, internet or telecommunication outages not caused by us, governmental restrictions, or other events outside of our control. We will use reasonable efforts to mitigate the effects of any force majeure event.

#### 52. Waiver

Our failure to enforce our rights under this Agreement will not be construed as a waiver of those rights.

#### 53. Severability

If any provision of this Agreement is held by a court of competent jurisdiction to be contrary to law, the provision will be deemed null and void without any effect to the remaining provisions.

### Appendix A

#### Definitions

"Action" has the meaning set forth in Section 40.

"Affiliates" means any entity that PI or Client directly or indirectly controls, or is controlled by, or is otherwise under common control with respectively.

"Agreement" has the meaning set forth in the Preamble.

"Client" has the meaning set forth in the Preamble.

"Client Data" means all information that you submit or that is collected via the Software or Non-SaaS Services.

"Confidential Information" has the meaning set forth in Section 43.

"Disclosing Party" has the meaning set forth in Section 43.

"Intellectual Property" means all text, documentation, artwork, computer code, functionality, graphics, photographs, videos, sounds, music, user and visual interfaces (and the design, structure, expression, layout, color scheme, and overall appearance thereof), trademarks and logos, and specifically including but not limited to, the Behavioral Assessment and its associated reports/descriptions, the Cognitive Assessment, and the Software, that are owned, controlled, or licensed by PI and is protected by trade dress, trademark and copyright laws, including various other intellectual property rights and unfair competition laws.

"Key Contact" has the meaning set forth in Section 10.

"Laws" means all applicable federal, state and local laws, rules, decrees, regulations and ordinances.

"Module" has the meaning set forth in Section 1(a)(i).

"Module Tier" has the meaning set forth in Section 1(a)(ii).

"Module Tier Limit" has the meaning set forth in Section 1(b).

"Non-SaaS Services" means any workshops, training, technical assistance or consulting performed by a Partner, which includes any consulting services that are developed solely by the Partner as part of their regular business activities unrelated to PI.

"Order" has the meaning set forth in Section 2(a).

"Order Form" means the order form issued to you by PI and does not include any order form or invoice issued to you by a Partner or other third party.

"Partner" has the meaning set forth in the Preamble.

"Personal Information" means any information that can identify you personally, including contact information, such as your name, email address, company name and other information about yourself or your business.

"Predictive Index" or "PI" has the meaning set forth in the Preamble.

"Privacy Policy" can be found here: <https://www.predictiveindex.com/privacy/>

"Qualified User" is a verified current employee of yours, as set forth in Section 32.

"Receiving Party" has the meaning set forth in Section 43.

"Sensitive Information" means (a) credit or debit card numbers; personal financial account information; Social Security numbers or local equivalents; passport numbers; driver's license numbers or similar identifiers; racial or ethnic origin; physical or mental health condition or information; or other employment, financial or health information, including any information subject to the Health Insurance Portability and Accountability Act, the Payment Card Industry Data Security Standards, and other regulations, laws or industry standards designed to protect similar information; and (b) any information defined under EU data protection laws as 'Special Categories of Personal Data.'

"Software" has the meaning set forth in the Preamble.

"Taxes" has the meaning set forth in Section 5.

"Term" has the meaning set forth in Section 7.

"Website Terms of Use" can be found here: <https://www.predictiveindex.com/terms/website-terms/>

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# PECB MS

BEYOND  
RECOGNITION

## CERTIFICATE

*PECB MS hereby certifies that the management system of*

### The Predictive Index

*101 Station Dr, Westwood, MA, 02090, USA*

*Has been assessed and found to be in accordance  
with the management system requirements in*

### ISO/IEC 27001:2013

*Certification Scope:*

The Predictive Index Information Security Management System (ISMS) protects secure development, operation, provision, and support of the Predictive Index Talent Optimization platform. The systems, people, and processes associated with the Predictive Index product are governed by this ISMS, in accordance with the Statement of Applicability (SoA) version 1.0.



**Nick Hundozi**  
Senior Business &  
Operations Director

Certificate No.	C1368-ISMS511-01-22
Certified since	2022-01-31
Valid from	2022-01-31
until	2025-01-30

*\*Subject to annual surveillance audits*

This certificate can be validated by email request at: [ms@pcb-ms.com](mailto:ms@pcb-ms.com)

[www.pcb-ms.com](http://www.pcb-ms.com)



PECB MS  
1555 boul de l'Avenir, Bureau 306  
Laval, QC H7S 2N5, Canada  
+1-844-426-7322





# The Predictive Index | Order Form

101 Station Drive, Westwood, MA 02090

Order number : Q-444063

## Client Information

**Client Name:** JEFFERSON COUNTY PUBLIC SCHOOLS  
**Client Address:** 3332 Newburg Road  
 Louisville, Kentucky 40218  
 United States  
**PI Certified Partner:** Wipfli LLP  
**Client Group:**

**Contact Name:** Dylan Owens  
**Phone:** 502-485-3658  
**Email:** dylan.owens@jefferson.kyschools.us  
**Partner Consultant:** David Goodridge  
**Key Contact:** Dylan Owens

*The Key Contact will have full administrative rights to the Client account, and will be the individual designated to make account changes.*

## Order Details

**Start Date:** June 1, 2023  
**Billing Frequency:** Annually  
**Term:** 12 months

**Payment Terms:** Net 30  
**Employee Headcount:** 700

Module	Module Description	Module Tiers	Annual Price	Total Price	Billing Frequency
Hire Subscription Plan	Access to PI Hire software. Hire the best fit candidate faster than ever. (Up to 700 Employees).	700 Employees	USD 17,195.00	USD 17,195.00	annual subscription
Inspire Subscription Plan	Access to PI Inspire software and unlimited assessments. Unleash the potential of your people through better management. (Up to 700 Employees).	700 Employees	USD 13,045.00	USD 13,045.00	annual subscription
PI Design EE Subscription Plan	Access to PI Design software. Build high-performing teams that deliver results for your business. (Up to 700 Employees).	700 Employees	USD 9,640.20	USD 9,640.20	annual subscription

### Totals

Total Subscription Price USD 39,880.20

Total Order Value USD 39,880.20

## **PREDICTIVE INDEX, LLC**

### **Addendum to The Predictive Index Data Processing Agreement Subcontractors and Service Subprocessors as of May 2, 2023**

Client Name: Jefferson County Public Schools  
Date: May 2, 2023

The below "Service Subprocessors" are independent third-party members of the PI Certified Partner network (and their subcontractors) that help us provide PI products and services to you and provide other PI-related client servicing:

<b>Service Subprocessor</b>	<b>Location of Subprocessor</b>
Wipfli LLP	Minneapolis, United States

The Predictive Index Data Processing Agreement may be found here:  
<https://www.predictiveindex.com/gdpr>.