

SERVICE AGREEMENT

Effective January 16, 2020, this document sets forth the agreement between Davis Joint Unified School District, a California government entity (“DJUSD”), and Teachers Test Prep, Inc., a California corporation (“TTP”), in connection with the provision of certain services by TTP to certain of DJUSD’s students and administrators (the “Agreement”).

I. Access to Free Diagnostics

DJUSD may set up an unlimited number of student accounts with TTP, which will allow these users to take any of the full-length Version 1 online practice tests currently made available by TTP to the general public.

To facilitate this access, DJUSD will provide a list of participating students to TTP (using a CSV template provided by TTP). This list will include each student’s first name, last name, and email address. TTP will import these users and automatically create accounts for them on the TTP website, then send each of them an email notifying them of their new account and the free practice tests and diagnostics that are available to them. This email will also include login instructions and an activation link. Each user can then configure his/her account and select a permanent password after logging in.

All multiple choice sections of these practice tests will be instantly auto-graded and the users will be able to view a diagnostic breakdown showing their strengths and weaknesses by exam domain as well as their overall likelihood of passing.

DJUSD administrators will also receive this same reporting on each student. This reporting will be emailed to administrators as described in Section 3 below. Using this reporting, DJUSD administrators can sort to see which students are doing well and who is at risk of failing, as well as the specific areas in which these students need help.

This diagnostics and reporting service will be provided completely free of charge. DJUSD may continue using these free diagnostics and reporting throughout the term of this Agreement, regardless of whether any paid prep programs are purchased.

DJUSD REPRESENTS THAT EACH STUDENT FOR WHOM AN ACCOUNT IS CREATED AS DESCRIBED ABOVE ACCEPTS TTP’S TERMS OF SERVICE AS POSTED ON ITS WEBSITE AND HAS GRANTED PERMISSION FOR DJUSD TO CREATE AN ACCOUNT ON THE TTP WEBSITE ON HIS/HER BEHALF AND FOR TTP TO SHARE HIS/HER PRACTICE TEST RESULTS, USAGE DATA, AND OTHER DATA WITH ADMINISTRATORS AT DJUSD.

II. Access to Core Plus On-Demand Online Prep

DJUSD will also have the option to purchase TTP's Core Plus On-Demand Online Prep ("Core Plus") for any of its students at a 50% discount off the publicly available pricing. This discount shall be calculated based on the publicly listed base price for each individual program, and may not be combined with any other discounts or coupons.

To assign this access, DJUSD will provide a list of students, and the specific prep programs it wishes to purchase for each of them, to TTP not more than once every two weeks.

These students will receive six months of access to all the same Core Plus online prep features as a public consumer, including TTP's Core Videos that teach the underlying content knowledge needed for each test/subtest, TTP's Smart-STEM Virtual Tutoring Videos that teach the strategy needed to apply that knowledge to the specific types of questions most likely to appear on the real exam, as well as TTP's additional practice test(s) with Advanced Diagnostics that help students focus their study time on the areas that will benefit them most.

DJUSD will also be eligible for TTP's same publicly-available Core Plus guarantee, which provides the choice of a full refund or extended support for each test/subtest that a qualified student does not pass after two attempts. The terms and conditions of this guarantee shall be governed by the same publicly available terms found in TTP's Terms of Service at <http://www.teacherstestprep.com/terms-of-service>, which may be amended from time to time.

III. Reporting

On a weekly basis, TTP will provide designated DJUSD administrators with automated CSV reports, which will be sent by email and will include the following data for each DJUSD user with access to free diagnostics:

- user's name
- date user's account was created
- date user last logged in
- date practice test was submitted
- percent correct on multiple choice questions on Version 1 Practice Test(s)
- likelihood of passing based on multiple choice performance
- breakdown of percent correct by domain
- *percent correct on written response(s), if applicable (but only if this live grading service is purchased separately)*

In addition to the above, TTP will also provide the following data for users with Core Plus access:

- date submitted, percent correct, likelihood of passing, and breakdown by domain for Version 2 Practice Test(s)
- percent viewed of Core Videos by test/subtest
- percent viewed of Smart-STEM Virtual Tutoring videos by test/subtest

IV. Pricing and Billing

Core Plus pricing shall be as described in Section 2 above. Should DJUSD wish to purchase any other services, such as live classes, one-on-one tutoring, other online prep programs, or written response grading, pricing and payment terms for these services will be as described in a separate Pricing Sheet which can be provided by TTP to DJUSD, and which may be amended from time to time.

Within 30 days of the end of each quarter, TTP will invoice DJUSD for all Core Plus programs that were assigned to students during that quarter, if any. DJUSD will provide full payment to TTP Net 30 from the date TTP sends this invoice.

As distinct and separate from purchases made by DJUSD, should students for whom DJUSD has created TTP accounts wish to purchase TTP prep services for themselves (instead of, or in addition to, TTP services purchased by DJUSD), such students shall utilize TTP's standard, publicly-available online purchase process, which requires full payment at the time of purchase, and they will receive a 15% discount on all TTP services. This 15% discount will be automatically applied at checkout, but it is required, at the time of purchase, that students be logged into the specific TTP account created for them by DJUSD in order to receive this discount.

V. Term and Termination

This Agreement shall commence on January 16, 2020 (the "Commencement Date") and terminate on the five (5) year anniversary of the Commencement Date, unless renewed by both parties; provided, however, that any party may terminate this Agreement: a) without cause upon thirty (30) business days written notice; and b) at any time on written notice due to failure of the other party to cure non-performance by such other party within 15 business days after notice or, if such breach cannot reasonably be cured within such 15 day period, then the breaching party's failure to cure within a reasonable period of time.

This Agreement may be renewed, should the parties wish to continue the relationship set forth herein, but such renewal will be subject to the written approval of both TTP and DJUSD.

VI. Limited License and No Transfer of Rights

As described herein, TTP will provide certain DJUSD students and administrators with access to certain of TTP's materials and/or services (the "Licensed Materials"). This access is a limited-use, non-exclusive license for authorized DJUSD students and administrators to access TTP's content and services through the TTP website for their own individual use. TTP retains all rights to, and ownership of, its intellectual property, and such property may not be shared, used, or distributed by DJUSD or its students in a manner inconsistent with this Agreement or applicable law.

DJUSD shall employ reasonable efforts to keep TTP's materials secure and prevent access to these materials by unauthorized users.

DJUSD shall not share Licensed Materials with others without TTP's written permission. DJUSD shall not, through DJUSD's use, acquire any rights with respect to the Licensed Materials, except for the License herein. TTP is the sole owner of the Licensed Materials and to all modifications, alterations, supplements and other changes thereto, and DJUSD does not gain any ownership interest in any of the Licensed Materials because of its use of the Licensed Materials. All rights to the Licensed Materials not specifically granted herein are reserved to TTP. DJUSD shall not modify or alter the Licensed Materials without TTP's prior written consent.

This License shall terminate 15 days after the delivery by either party of a notice of termination containing a description of a material breach by the other party of this License, provided such breach is not cured within 15 business days of notification of such breach, or, if such breach cannot reasonably be cured within such grace period, then provided the breaching party shall diligently pursue such cure, and in fact within a reasonable period of time effect such cure. The rights under this section may not be (i) transferred except to an entity acquiring all or substantially all of the business of DJUSD, or (ii) sublicensed, without the prior written consent of both parties.

VII. Indemnity and Limitation of Liability; Disclaimer of Warranties

(a) TTP shall indemnify DJUSD and its officers, directors, employees, and agents and hold them harmless against any and all losses, claims, damages, judgments, expenses (including, without limitation, attorneys' fees and disbursements, whether defending any third party claim or in enforcing this indemnification) and liabilities that DJUSD may incur in whole or in part arising out of, related to or in connection with: (i) any defects or malfunctions in or injuries or damages to a third party caused by the Licensed Materials or by the provision of any service by TTP, (ii) any Licensed Materials that do not comply with applicable law, (iii) any of the Licensed Materials' infringing the intellectual property rights of a third party, and (iv) any breach of representation, warranty or covenant by TTP herein.

(b) DJUSD shall indemnify TTP and its officers, directors, employees, and agents and hold them harmless against any and all losses, claims, damages, judgments, expenses (including, without limitation, attorneys' fees and disbursements, whether defending any third party claim or in enforcing this indemnification) and liabilities that TTP may incur in whole or in part arising out of, related to or in connection with: (i) any defects or malfunctions in or injuries or damages caused by any materials offered by DJUSD (exclusive of the Licensed Materials and any other of TTP's material and services contemplated herein or offered by TTP, either directly, or indirectly, in the future) or any services offered by DJUSD; and (ii) any breach of representation, warranty or covenant by DJUSD herein.

(c) Promptly upon receipt of notice of any third party claim, demand or assessment or the commencement of any suit, action or proceeding in respect of which indemnity may be sought on account of the indemnity contained in this section, DJUSD shall notify in writing, within sufficient time to respond to such claim or answer or otherwise plead in such action, TTP thereof; provided, however, that failure or delay to supply such notice shall not relieve TTP of its indemnification obligation hereunder except to the extent that TTP is actually prejudiced by such failure or delay.

(d) Under no circumstances shall either party hereto be liable to the other party hereto or, hereunder, any other person or entity, for any indirect, incidental, special or consequential damages, expenses, costs, profits, lost savings or earnings, lost or corrupted data, or other liability arising out of or related to any services provided or not provided by a party hereto. Each party hereto agrees that in the event the other party hereto is in breach of this Agreement, the remedy for such liability shall be limited to an obligation of the breaching party to rectify its error or mistake under the Agreement. Under no circumstances shall TTP's maximum liability exceed the total monetary amounts paid by DJUSD to TTP for services under the Agreement.

(e) EXCEPT AS EXPRESSLY PROVIDED HEREUNDER, EACH PARTY HERETO AND ITS DIRECTORS, OFFICERS, EMPLOYEES, AFFILIATES, AGENTS, VENDORS, AND THE LIKE MAKE NO PROMISES, REPRESENTATIONS OR WARRANTIES, EITHER EXPRESS, IMPLIED, STATUTORY, OR OTHERWISE UNDER THIS AGREEMENT, OR IN CONNECTION WITH THE LICENSED MATERIALS OR ANY SERVICES OR DELIVERABLES PROVIDED IN CONNECTION THEREWITH. EACH PARTY HERETO DISCLAIMS ALL OTHER EXPRESS OR IMPLIED WARRANTIES, INCLUDING WITHOUT LIMITATION THE WARRANTIES OF MERCHANTABILITY, AND FITNESS FOR A PARTICULAR PURPOSE. TTP MAKES NO WARRANTY WITH RESPECT TO USERS PASSING ANY EXAMINATIONS, EXCEPT WITH REGARD TO THE CORE PLUS GUARANTEE DESCRIBED IN SECTION 2.

VIII. Confidentiality

(a) In carrying out the relationship described in this Agreement, both parties acknowledge that they may be exposed to confidential information belonging to the

other party, such as intellectual property, business practices, or user data (the “Confidential Information”). Such Confidential Information is maintained by the other party as secret and confidential, of great value to the other, and that in order to protect the goodwill of the other, each party must agree, and accordingly each party does agree, that each party will not directly or indirectly for or on behalf of itself or any Person at any time divulge to any Person other than such party’s professional agents on a need-to-know basis (hereinafter referred to collectively as a “third party”), or use or cause to authorize any third parties to use, any Confidential Information, or any other information received from the other party regarded as confidential and valuable by the other party that such disclosing party knows or should know is regarded as confidential and valuable by the other party (whether or not any of the foregoing information is actually novel or unique or is actually known to others). Nothing contained herein shall preclude any party hereto from complying with a subpoena or other lawful process; and the party receiving the request shall immediately notify the other party and consult and cooperate with the seeking of a protective order or other remedy to avoid such disclosure.

(b) Each party hereto agrees that any breach or threatened breach by the other party hereto of any provision of this section will, because of the unique nature of the Confidential Information entrusted to the other as aforesaid, cause irreparable harm to the other and shall entitle the other, in addition to any other legal remedies available to it, to apply to any court of competent jurisdiction to enjoin such breach or threatened breach, without the need to show irreparable injury or to post any bond, which are hereby waived by each party hereto. The parties hereto understand and intend that each restriction agreed to in this Agreement shall be construed as separable and divisible from every other restriction, and the unenforceability, in whole or in part, of any such restriction, shall not affect the enforceability of the remaining restrictions and that one or more or all of such restrictions may be enforced in whole or in part as the circumstances warrant. The parties hereto further acknowledge that each party hereto is relying upon such covenants as an inducement to enter into this Agreement. Each party hereto shall use its best efforts to cause its employees, agents and independent contractors to adhere to the provisions of this agreement and shall otherwise restrain its employees, agents and independent contractors from making any disclosure that would violate this Agreement if made directly by it.

(c) As used herein, the term “Person” means any person, corporation, limited liability company, partnership or other entity.

IX. Use of Logos, Trademarks/Service Marks and Trade Names/Service Names

DJUSD and TTP grant each other the right to use each other’s logos, trademarks, service marks, trade names, and service names across all media, but only in connection with describing or facilitating the specific relationship set forth in this Agreement. For branding purposes, the specific logos, trademarks, service marks,

trade names, and service names used by either party will be subject to the approval of the party holding ownership.

DJUSD understands that the use of its logo is required, for example, to improve the user experience by posting notice for the benefit of TTP website visitors associated with DJUSD, who may find the TTP website on their own, that DJUSD has partnered with TTP to provide them special services and that they should contact their support staff at DJUSD in order to learn more about the TTP services to which they have access. Therefore, should DJUSD fail to provide TTP with an approved logo within 30 days of request by TTP, DJUSD hereby grants TTP permission to use its logo as it appears on DJUSD'S website, but only for the purposes described above.

X. Miscellaneous

(a) NO EMPLOYMENT RELATIONSHIP OR PARTNERSHIP UNDER THE LAW: This Agreement shall not create an employment relationship, nor shall it create a partnership under the law. Neither party is authorized to bind the other party in any manner not specified in this Agreement.

(b) NOTICES: All notices or other communications that are required or permitted hereunder shall be in writing and addressed as follows:

If to TTP:

Mr. Robert Duncan, Director and Chief Executive Officer
Teachers Test Prep, Inc.
169 Miller Ave., Suite A
Mill Valley, CA 94941
Email: robert.duncan@teacherstestprep.com
Fax: (800) 764-8712

If to DJUSD:

Jessica Nop, Administrative Assistant
Davis Joint Unified School District
526 B Street
Davis, CA 95616
Email: jnop@yscenter.org

(c) SURVIVAL: The covenants contained in Sections VII and VIII and any other financial obligations accrued during the Term shall survive the Term of this Agreement.

(d) GOVERNING LAW AND ATTORNEYS' FEES: If an action or suit is brought involving this Agreement, the exclusive venue for such an action or suit shall be as follows: (i) if TTP brings suit against DJUSD, the exclusive venue shall be Davis,

California (ii) if DJUSD brings suit against TTP, the exclusive venue shall be Los Angeles, California. This provision is intended to encourage the parties to mediate and resolve any potential disputes rather than resort to litigation. This Agreement shall be governed in all respects, whether as to validity, construction, capacity, and performance or otherwise by the laws of the State of California. In any suit involving this Agreement, the party hereto that is the predominantly prevailing party shall be entitled to collect from the other party hereto such prevailing party's reasonable attorneys' fees and disbursements incurred in such suit.

(e) ASSIGNABILITY: This Agreement shall not be assignable other than by operation of law by any party hereto without the prior written consent of the other party. Such consent shall not be unreasonably withheld.

(f) ENTIRE AGREEMENT; COUNTERPARTS: This Agreement constitutes the entire agreement between the parties hereto with respect to the subject matter hereof and may not be amended or modified except by a written instrument signed on behalf of each of the parties hereto. This Agreement may be executed in counterparts, all of which shall constitute one instrument.

By signing below, both parties agree to be bound by the terms of this Agreement.

Acknowledged & Agreed:

DAVIS JOINT UNIFIED SCHOOL DISTRICT

By: _____
Name: Bruce E. Colby
Title: Chief Business Offer
Date: _____

TEACHERS TEST PREP, INC.

By: _____
Name: Alex Fong
Title: Director of Operations
Date: _____

Exam	Regular Pricing	Partner Pricing	
	Core Plus	Core Plus Option 1 Partner Pays (50% Discount*)	Core Plus Option 2 User Pays (15% Discount)
CSET Science Subtest 1	\$195	\$97.50	\$165.75
CSET Social Science Subtest 1	\$145	\$72.50	\$123.25
CSET Social Science Subtest 2	\$145	\$72.50	\$123.25
CSET Social Science Subtest 3	\$145	\$72.50	\$123.25
CSET Writing Skills <i>(may be used as an alternate to the CBEST exam in specific cases)</i>	\$95	\$47.50	\$80.75
RICA	\$155	\$77.50	\$131.75
Praxis Exams:			
Praxis Core Mathematics	\$65	\$32.50	\$55.25
Praxis Core Reading	\$65	\$32.50	\$55.25
Praxis Core Writing	\$95	\$47.50	\$80.75
ParaPro Reading	\$45	\$22.50	\$38.25
ParaPro Math	\$45	\$22.50	\$38.25
ParaPro Writing	\$45	\$22.50	\$38.25
Praxis Educational Leadership: Administration and Supervision (ELAS) (5411)	\$195	\$97.50	\$165.75
<u>Praxis Elementary Education: Content Knowledge (5018)</u>			
Praxis Elem Ed C.K. Mathematics	\$65	\$32.50	\$55.25
Praxis Elem Ed C.K. Reading/Lang Arts	\$65	\$32.50	\$55.25
Praxis Elem Ed C.K. Science	\$65	\$32.50	\$55.25
Praxis Elem Ed C.K. Social Science	\$65	\$32.50	\$55.25
<u>Praxis Elementary Education: Multiple Subjects (5001-5005)</u>			
Praxis Elem Ed M.S. Mathematics	\$65	\$32.50	\$55.25
Praxis Elem Ed M.S. Reading/Lang Arts	\$65	\$32.50	\$55.25
Praxis Elem Ed M.S. Science	\$65	\$32.50	\$55.25
Praxis Elem Ed M.S. Social Studies	\$65	\$32.50	\$55.25

		Regular Pricing	Partner Pricing	
Exam		Core Plus	Core Plus Option 1 Partner Pays (50% Discount*)	Core Plus Option 2 User Pays (15% Discount)
Praxis General Science: Content Knowledge (5435)		\$195	\$97.50	\$165.75
Praxis Mathematics: Content Knowledge (5161)		\$195	\$97.50	\$165.75
Praxis Middle School: Mathematics (5169)		\$145	\$72.50	\$123.25
Praxis Social Studies: Content Knowledge (5081)		\$195	\$97.50	\$165.75
Praxis Special Education: Core Knowledge & Applications (5354)		\$145	\$72.50	\$123.25
Praxis Special Education: Core Knowledge & Mild to Moderate Applications (5543)		\$145	\$72.50	\$123.25
Praxis Principles of Learning & Teaching (PLT): Grades K-6 (5622)		\$145	\$72.50	\$123.25

** Please note that these partner discounts apply only to our standard pricing as listed here and cannot be applied with any special promotional coupons or other discounts.*