



NewTech Network

March 19, 2020

Da Vinci Charter Academy
1400 E. 8th Street
Davis, CA 95616

Dear Tyler,

We look forward to continuing to support your school community. Continuation is an annual commitment that extends your connection to the Network and provides your school with products and services customized to support your focus area for growth. This letter addresses **Da Vinci Charter Academy's** ("New Tech School") continued membership in the New Tech Network (NTN) during the 2020-22 school years.

This 2-year continuation agreement is designed to create a Community structure that allows for regular interactions between your team, the broader network of NTN schools, and the expertise of NTN national staff. The services, as identified through submission of the Continuation worksheet, are designed to keep your school plugged into our Network's innovations and most current thinking around leadership and PBL design.

The continuation services will be provided by New Tech Network Inc., a California nonprofit corporation ("New Tech Network"). The services provided by NTN are set out in the Continuation Schedule of Services. The duration of this continuation agreement extends from July 1, 2020 through June 30, 2022.

New Tech Network is continually seeking to improve our network of innovative schools. As a result of this and other improvements, from time to time, NTN will update and revise the policies that apply to participation in the New Tech Network. NTN's most recently updated policies have been incorporated as part of this letter are set out in the Continuation Terms and Conditions.

If you agree with the terms of this Letter, the Continuation Services schedule, the Fee schedule, and the Terms and Conditions are acceptable, please sign a copy (Exhibit B) and return it to our central office address on or before May 29, 2020.

Sincerely,

Tim Presiado
Chief Operating Officer

Continuation Services

Exhibit A

Echo Student Licenses

Echo™, NTN's Learning Management System, is an innovative online learning platform that enables School staff, students and parents to effectively manage the Project-Based Learning (PBL) environment.

Components of NTN Echo include unique instruction and assessment tools designed specifically for the PBL environment; course agendas and calendars, group interaction tools; resource sharing and other "education friendly" social functionality; and reporting tools. NTN Echo integrates with Google Apps at the discretion of the School at no additional cost. Echo can be configured for beginner or advanced users and can be used as a common gateway to external content vendors to reduce cost.

SY2020-21

SY2021-22

610 students

610 students

District may purchase additional student Echo licenses for a fee determined by New Tech Network.

Echo Staff Licenses w/Content and Community Access

Through Echo™, teachers can get access to the content and community of New Tech Network.

- **Content** - Access to 100s of vetted PBL unit exemplars, PBL course starter sets, and 1000s of informally shared units developed by teachers that can easily be downloaded to courses. The New Tech Network curriculum library holds complete units with entry events, scaffolding activities, benchmark tasks, final products and assessment rubrics included.
- **Personalized Professional Development** - Access to self-paced professional development courses, facilitated virtual personalized professional development opportunities, teacher badging, and the NTN Help & Learning Center containing exemplar rubrics, sample school schedules, student orientation activities and more.
- **Community** - Access to a network of 1000s of teachers and school staff that are implementing PBL and deeper learning across all grade levels and subject areas. Ability to participate in New Tech Network's structured and unstructured groups for collaboration, innovation and addressing shared challenges.

SY2020-21

SY2021-22

60 teachers

60 teachers

District may purchase additional teacher Echo access for a fee determined by New Tech Network.

NTN Events

- Each of the following events describes the number of staff designated to participate. Event costs covered by New Tech Network are detailed in the Continuation Fee Schedule.
- Travel and lodging costs to and from tours, trainings, events and conferences are always the responsibility of the district. Selected meals will be provided for designated number of participants in all tours, trainings, events, and conferences.
- District is responsible for filling all allotted participant slots at events. Refunds or credits will not be provided for unused participant slots. Participant slots at NTN events are non-transferrable between event types or contract years.
- Based on availability, additional participants may attend an event for an additional cost to be determined by New Tech Network.



Continuation Services Exhibit A

SY2020-22 Events	# of Participants
New Tech Annual Conference (NTAC) The Network's marquee professional learning event includes a range of innovative sessions and provides principals, teachers, and staff an opportunity to continually sharpen skills, share best practices, and network with like-minded professionals from around the country. Provides registration, select meals, all general conference sessions, access to specialized tracks, and access to all materials and resources.	SY2020-21: Network Member Rate SY2021-22: Network Member Rate
Leadership Summit This event convenes school and district leaders from across our network for a summit to engage in new learning together. The event focus is informed by the needs of our leaders and offers a variety of breakout sessions including: Echo basic and advanced practices, community and school-based excursions, critical friendship feedback circles around authentic problems of practice, and interactive roundtables featuring best practices from around the network. Provides registration, select meals, and access to all materials and resources.	SY2020-21: Network Member Rate SY2021-22: Network Member Rate

NTN Data Services

NTN data services to School and District includes:

- New Tech Network provides optional surveys for students and educators about their perception of school culture and/or climate. The survey suite includes up to 5 different survey options and serves as a formative assessment measure for our Network schools.
- New Tech Network provides access to information on college enrollment and persistence through the National Student Clearinghouse, or similar, for high schools who have graduated a New Tech Network freshman class. This enables schools and districts to examine postsecondary outcomes for their students and compare to national averages.
- New Tech Network will communicate other opportunities to schools that arise and are deemed an appropriate fit including case studies, external research activities, pilot programs, and external assessments.
- New Tech Network will provide information on the size, demographics, and health of the network.

District agrees to cause School to:

- Provide high school graduation rate, student enrollment counts, teacher counts, and school level demographic data percentages when requested by NTN.
- Share results with NTN if the school participates in third party research activities.
- Participate in efforts to track students' college enrollment, persistence and graduation through National Student Clearinghouse, or similar, by submitting a roster to National Student Clearinghouse.

NTN Certifications

Developmental Pathways for Teachers and Schools:

- Opportunity for staff members to be designated as New Tech Network Certified Trainers. NTN will develop teacher leaders to build onsite PBL training capacity and ensure long-term school and network health, sustainability, and adaptability.
- Opportunity for School to be certified as a New Tech Network Spotlight Schools. NTN Spotlight Schools are held to high standards for school success and provide schools national recognition for the quality of their New Tech implementation. Criteria will be made available at the time of application.

New Tech Network reserves the right to amend the process, scope, duration, and availability of NTN Certification Professional opportunities on a yearly basis.



Continuation Fees

Exhibit B

Service Phase	Fee Amount	NTN Invoice Date
SY2020-21 Continuation	\$15,412	July 1, 2020
SY2021-22 Continuation	\$15,412	July 1, 2021
Total NTN Fees *	\$30,824	

*Supplemental attendees at professional development events, additional coaching or other services or as set forth herein, the fees set forth in the payment schedule above represent the maximum fees payable to New Tech Network for each year in the Continuation Letter. At New Tech Network's option, certain of the fees set forth above may be reduced if New Tech Network determines, in its sole discretion, that the School exceeds benchmarks established by New Tech Network.

District is responsible for all costs not covered by New Tech Network, including, without limit, staff travel to/from New Tech Network trainings, events and conferences, hotel cost, personal expenses, and meals not covered by New Tech Network.

Biannual or quarterly invoices are available; to request contact accounting@newtechnetwork.org.

Understood and Accepted:

Davis Joint Unified School District, a California Public School District ("District")

By: _____
Dr. John Bowes, Superintendent

Date: _____

By: _____
Tyler Millsap, New Tech Director

Date: _____



Continuation Terms and Conditions

A. New Tech Network offers a school education program (the “New Tech Model”) for the legitimate educational interest of: (i) preparing students to excel in an information-based, technologically advanced society; (ii) raising graduation rates and achievement test scores; and (iii) increasing college enrollment and the completion of college.

B. District desires New Tech School to continue as a member of the network of schools throughout the country and abroad that use and follow the New Tech Model (the “New Tech Network”).

C. The terms of the letter dated March 19, 2020, between the District and NTN to which these Terms and Conditions are attached (“Letter”), the Support Schedule to the Letter, and these Terms and Conditions together constitute the “Agreement” for purposes of these Terms and Conditions.

1. License and Services.

(a) *License.* New Tech Network hereby grants the District a limited, non-exclusive, non-transferable, non-sublicensable, and revocable right and license, during the term of this Agreement as provided for in Section 6 (the “Term”), to access and use (i) the New Tech Model as described in these Terms and Conditions, (ii) the website(s) and software related to the New Tech Model which is described in part in the Support Schedule (the “NTN Technology” or, for purposes of the Support Schedule, also referred to as “NTN Echo”), (iii) the resources, learning modules, webinars and other content made available to District through the NTN Technology, including but not limited to all resource libraries and project libraries owned or licensed by New Tech Network (collectively, “New Tech Learning Platform”); and (iv) the New Tech Network trade and service marks (“Marks”) in accordance with the Trademark Usage Policy provided by New Tech Network to District, all for the sole purpose of continuing to operate the New Tech School in District’s school district and subject to all terms and conditions provided for herein (collectively, the “License”). The New Tech Model, NTN Technology and New Tech Learning Platform are collectively referred to in these Terms and Conditions as the “New Tech Platform.” New Tech Network may update the functionality, user interface, or other aspects of the New Tech Platform from time to time in its sole discretion – the terms of this Agreement will apply to each such update.

(b) *Services.* District understands and agrees that neither the New Tech Platform nor any of the services provided pursuant to the Support Schedule (“Services”) are provided on an exclusive basis to District; New Tech Network may be engaged to provide identical, similar or other services to other school districts and entities during the term of this Agreement, including, without limit, granting some or all of the licenses set forth in Section 1(a). District further understands that the Services do not involve the management of or day-to-day operation of the New Tech School. District also understands that transmission of its data over the Internet is fundamentally necessary to the use of the New Tech Platform. New Tech Network uses commercially reasonable safeguards, commonly used by organizations similar in size and product line to New Tech Network, when transmitting and receiving data to and from the District. Even so, District acknowledges that New Tech Network cannot and does not guarantee the security of data transmitted over the Internet or through District’s local network.



Continuation Terms and Conditions

(c) *Not Official Repository.* District agrees that: (i) the New Tech Platform is not the official repository for the District's and/or the New Tech School's educational, employee, student or other records; (ii) the District will maintain all such records it should or must maintain; and (iii) New Tech Network will not, under any circumstances, be responsible for a failure to maintain records within the New Tech Platform or elsewhere that the District should or must maintain as official records.

(d) *Third-Party Services Engaged by District.* New Tech Network (through the New Tech Platform or its literature) may reference, promote, make available, utilize and/or offer applications, hyperlinks to websites/platforms, products or services provided by entities other than New Tech Network, including, without limitation, training, implementation and other consulting services related to District's or New Tech School's implementation of the New Tech Model (collectively, "Third Party Services"). For avoidance of doubt, Third Party Services include, among other things, any applications, widgets, software, materials, products and/or services made available to District or a New Tech School under a separate agreement between the District/New Tech School and the provider of a Third Party Service. With respect to Third Party Services:

(1) New Tech Network makes no representations or warranties, whether or not such Third Party Services are approved, utilized, recommended or otherwise promoted by New Tech Network. New Tech Network is not responsible for the availability or the quality, accuracy, integrity, fitness, safety, security, reliability, legality, or any other aspect of any Third Party Service.

(2) To the extent applicable, any purchase by District of any Third Party Service is solely between District and the provider of the Third Party Service.

(3) Simultaneous with District's installation, use or enablement of a Third Party Service with New Tech Platform, District grants New Tech Network a right and license to provide, or permit the provider of such Third Party Service to access and use, any data or records (including, without limit, confidential student data) as may be requested or needed by the provider of such Third Party Service for the interoperation of the Third Party Service with the New Tech Platform. Any exchange of data or other interaction between District (or New Tech School) and the provider of a Third Party Service is solely between District and that provider. New Tech Network shall not be responsible for any disclosure, modification or deletion of any records or data resulting from any such access by the Third Party Service or its provider.

(e) *Suspension of Access.* District agrees that New Tech Network may with reasonably contemporaneous notice (including by telephone or email) to District suspend access to the New Tech Platform (or any part thereof) if New Tech Network reasonably concludes that the New Tech Platform is being used to engage in denial of service attacks, spamming, or illegal activity, or is causing immediate, material and ongoing harm to New Tech Network or others (each, a "Suspension"). In the event of a Suspension, New Tech Network will use commercially reasonable efforts to limit the Suspension to the offending portion of the New Tech Platform and to resolve the issue(s) causing the Suspension. District agrees that New Tech Network shall not be liable to District, the New Tech School nor to any third party for any Suspension.



Continuation Terms and Conditions

2. **District Obligations, Contributions and School Users.**

(a) *Data Collection.* District will permit New Tech Network to gather school-wide data from the New Tech School for use in evaluating the on-going effectiveness of the New Tech School and the New Tech Model and for improving or modifying the same, for the purpose of creating statistics and reports to support grant applications and other financial support and funding in furtherance of District's educational interests, and for the purpose of publication in the education field.

(b) *District Input.* District will promptly notify New Tech Network should District identify any problems or issues with the New Tech Model as it applies to the New Tech School, including any issues, errors or malfunctions in the NTN Technology, the New Tech Learning Platform and/or in the Materials (as later defined herein).

(c) *District Contributions to the New Tech Learning Platform.* New Tech Network has created electronic resource libraries, electronic project libraries and other venues whereby content and materials may be contributed by and used by District and other parties. As between New Tech Network and the District, all right and title in and to Protected Student Data (as defined in Section 5(a)) is owned exclusively by the District. If District contributes any content or other material, excluding Protected Student Data, to the New Tech Platform (including, without limitation, to the New Tech Learning Platform) ("District Contributions"), it automatically grants New Tech Network and all users of the New Tech Platform, simultaneous with any such contribution, a perpetual, irrevocable, worldwide, transferable, and royalty-free license to use, reproduce, modify, create derivative works and otherwise make use of such District Contributions in any manner and through any media for the benefit of New Tech Network, existing and future users or contributors to the New Tech Platform, and any other New Tech Network authorized entity. The District hereby represents warrants and covenants that maintenance, access and/or use of the District Contributions, to the fullest extent permitted in this Agreement, will not violate or infringe upon any right of publicity or privacy, intellectual property right (e.g., copyright, patent, trademark, etc.), literary right, or any other right of any person or entity.

(d) *School Users.* The District is responsible for authorizing and regulating the use of the New Tech Platform by the District's employees and agents, as well as the New Tech School's employees, administrators, teachers, agents, students and the student's parents or guardians ("Users"). The District is further responsible for providing each such User a unique user name and passcode ("IDs") to permit the User to access the New Tech Platform. The District will inform Users that the ID's are not to be shared and are to be kept secure. The District agrees that the District is responsible for all of the activities of its Users, including those conducted under any IDs it issues (whether directly or through a New Tech School), and any User's compliance with any and all terms and conditions (Terms of Service, etc.) associated with the New Tech Platform.

3. **Fees.** District will pay New Tech Network's fee within thirty (30) days of the date of any and all invoices.

(a) *Payment.* District will pay New Tech Network in accordance with the schedule set forth in the Continuation Payment Schedule within thirty (30) days of the date of any and all invoices. If scheduled payments or invoice amounts are not paid in full within thirty (30) days of their due date, New Tech Network



Continuation Terms and Conditions

reserves the right to add a late charge of 1% per month of the amount due, but not greater than permitted by law.

4. **Work Product; Ownership of Intellectual Property.**

(a) *Ownership of NT Materials and New Materials.* New Tech Network owns and holds all right, title and interest (including, without limit, copyrights, patent, invention, trade secret, and trade and service mark rights) in and to any information, software, trade or service marks, websites, content, resources, learning modules, webinars, processes, procedures, libraries or repositories or other materials provided by New Tech Network or made accessible to District in connection with the License and/or the Services, including, but not limited, to the New Tech Platform and all components thereof (collectively, the “NT Materials”). Further, District acknowledges and agrees that any and all improvements in, additions to, revisions or translations of, changes or any other modifications of or developments relating to the NT Materials (“New Materials”) belong to New Tech Network simultaneous with the creation of the same. Notwithstanding the foregoing and for avoidance of doubt, neither NT Materials nor New Materials includes District Contributions or Third Party Services. Except for the limited use rights granted under this Agreement, neither the District nor any User shall acquire any right, title or interest in any NT Materials or New Materials. Any rights to the NT Materials or New Materials not expressly granted in this Agreement are reserved to and for the sole benefit of New Tech Network.

(b) *Assignment of Rights in New Materials.* To the extent District or any of its employees or agents creates or contributes to any New Materials, then District agrees that in consideration for the Services and License, the District will assign, and will cause its employees and agents to assign, to New Tech Network upon the request of New Tech Network, all right, title and interest of District and/or its employees or agents in any such New Materials. District will cooperate with, and to the best of its ability, assist New Tech Network (at New Tech Network’s expense) in New Tech Network’s efforts to secure, vest, protect, record, further document or register such assignment and New Tech Network’s rights in any New Materials, including but not limited to executing all papers reasonably desirable or necessary to further document this assignment and vesting of rights in New Tech Network.

(c) *Permitted Uses of NT Materials and New Materials under License.* Except with respect to the NTN Technology, the License includes a limited, revocable, non-exclusive, non-sublicensable and non-transferable license to District to the NT Materials and the New Materials (collectively, the “Materials”) during the Term to engage in the following solely for the purpose of continuing to operate the New Tech School and for distribution to teachers, administrators, students, and parents or guardians of students as necessary to carry out the express purposes of this Agreement: (i) reproduce such Materials in copies, (ii) prepare derivative works based upon such Materials, (iii) distribute copies of such Materials, including by way of a restricted access internet site, by electronic mail or as required by law, (iv) publicly perform such Materials to groups of teachers, administrators, students, and parents or guardians of students associated with the New Tech School, (v) publicly display such Materials by way of a restricted access internet site, by electronic mail or as required by law, and (vi) perform such Materials publicly by electronic means through a restricted access internet site. The above activities for which the License hereunder is granted herein will be limited to purposes of District's continuing operation of the New Tech School. District may not make any other uses of the Materials. The License granted herein is granted solely to District, and not, by implication or otherwise, to any parent, subsidiary or affiliate of such party or entity.



Continuation Terms and Conditions

District will ensure that all copyright and other notices and designations of New Tech Network are maintained, and are not removed, on all copies and other reproductions and uses that are made of Materials.

(d) *Prohibited Uses.* District may not copy, distribute, reproduce, use or allow access to the Materials except as explicitly permitted under this Agreement, and District will not decompile, reverse engineer, disassemble or otherwise attempt to derive source code from the NTN Technology. No right is granted hereunder to rent the Materials, to use the Materials for commercial purposes, or to use the Materials to perform services for third parties (so-called “service bureau” uses).

5. **Confidentiality.**

(a) *FERPA Compliance.* District affirms that it has satisfied the requirements set forth in the Family Educational Rights and Privacy Act (20 U.S.C. 1232g et seq) and applicable regulations (“FERPA”) to permit it to disclose to New Tech Network personally identifiable information from education records maintained by the District for students at the New Tech School (“Protected Student Data”). For purposes of clarity, Protected Student Data does not include those education records shared with New Tech Network from which all personally identifiable information has been removed. Each party will comply with privacy laws (including, without limit, FERPA) applicable to it as to Protected Student Data the District provides to New Tech Network. Notwithstanding the foregoing, the District will be solely responsible for: (i) obtaining any necessary consents required under FERPA for a student’s use of the NTN Technology or the New Tech Learning Platform; and (ii) to the extent required by the Children’s Online Privacy Protection Act or other law, disclosing (via acceptable use policies or otherwise) and obtaining any required consents for the collection of data or information from users of the NTN Technology or the New Tech Learning Platform, including the use of such data or information by the District or New Tech Network. The District will make evidence of compliance with this Section 5(a), including any required consents, available to New Tech Network upon request.

(b) *Non-Use and Non-Disclosure; Duty of Care.*

(1) The District hereby covenants and agrees that, except as expressly contemplated by this Agreement or any other agreement between the District and New Tech Network, it will not at any time: (i) use Confidential Information (as defined below) of New Tech Network except as reasonably required to comply with the terms of this Agreement; or (ii) except as required or permitted by law, disclose Confidential Information of the other party to any third party, without the prior written authorization of New Tech Network. Furthermore, the District will at all times protect New Tech Network’s Confidential Information with the same degree of care, but no less than a reasonable degree of care, as it treats or protects its own confidential information of a like nature. The term “Confidential Information” will include all technical data, know-how and information not generally known to the public, and not readily ascertainable by proper means by outsiders, constituting or comprising or other information generally deemed to be of a private or personal nature in which the general public has no right of access under applicable state law. Unless specifically identified for use and distribution outside of the New Tech School constituency, all Materials are deemed to be the Confidential Information of New Tech Network.



Continuation Terms and Conditions

(2) New Tech Network hereby covenants and agrees that, except as expressly contemplated by this Agreement, it will not at any time: (i) use District's Protected Student Data except as reasonably required to comply with the terms of this Agreement or provide the services described herein, including the use of the Database Host (as defined below); or (ii) except as required by law, disclose Protected Student Data to any third party, without the prior written authorization of District. Furthermore, New Tech Network will at all times safeguard the Protected Student Data with the same degree of care, but no less than a reasonable degree of care, as it treats or protects its own confidential information of a like nature. Upon request by District, New Tech Network will use commercially reasonable means or methods to allow District to access, modify, or terminate any Protected Student Data in the possession or under the control of New Tech Network.

(3) The New Tech Platform is used to upload academic and non-academic data to, and retrieve that data from, a database (the "Database"). District acknowledges that the Database will be hosted on equipment under the physical control of New Tech Network or of a reputable third party service provider ("Database Host") as selected by New Tech Network from time to time. New Tech Network represents that it has investigated the data privacy and data security practices of such Database Host and determined that it utilizes such safeguards as are common in the industry to protect the confidentiality of Protected Student Data, including without limitation, firewalls, patch management procedures, security monitoring and response methods, and other relevant data security measures. District may obtain specific information as to the Database Host utilized by New Tech Network by contacting New Tech Network pursuant to Section 11.

(c) *Required Disclosure by District.* If the District becomes legally required to disclose Confidential Information, or any part thereof, then the District will, to the extent permitted by law, give New Tech Network prompt notice of such requirement, cooperate with New Tech Network (at New Tech Network's cost) to the extent reasonable in taking legally available steps to narrow such required disclosure and disclose only that portion of the Confidential Information necessary to ensure compliance with such legal requirement. In the event of any breach or threatened breach of this provision, New Tech Network will be entitled to an injunction restraining the District from using or disclosing such Confidential Information in addition to any other remedy, at law or equity, which may be available to New Tech Network.

(d) *Required Disclosure by New Tech Network.* If New Tech Network becomes legally required to disclose Protected Student Data, then New Tech Network will, to the extent permitted by law, give the District prompt notice of such requirement, cooperate with the District (at the District's cost) to the extent reasonable in taking legally available steps to narrow such required disclosure and disclose only that portion of the Protected Student Data necessary to ensure compliance with such legal requirement. In the event of any breach or threatened breach of this provision, the District will be entitled to an injunction restraining the New Tech Network from using or disclosing Protected Student Data in addition to any other remedy, at law or equity, which may be available to the District.

6. Term; Termination.

(a) *Term.* The term of this Agreement will begin on the effective date set forth in the Letter and, unless terminated in accordance with Section 6(b) below, will continue through the expiration date set forth in the Letter. The term of this Agreement may be extended upon the written agreement of the parties.



Continuation Terms and Conditions

(b) *Termination.* This Agreement will terminate prior to the expiration of its term as follows:

(1) At the non-breaching party's option, effective immediately, if a party materially breaches, violates or otherwise fails to comply with any of the terms contained in this Agreement and fails to cure such breach within thirty (30) days of receiving written notice of such breach from the non-breaching party;

(2) Automatically and effective immediately, if either party makes an assignment of this Agreement for the benefit of its creditors, becomes insolvent or seeks protection under any bankruptcy, receivership, trust deed, creditor's arrangement or composition, or if any comparable involuntary proceeding is instituted against such party and is not dismissed within ninety (90) days of such institution;

(3) At New Tech Network's option, effective immediately, if District fails to pay any amount due under this Agreement within thirty (30) days of its due date; or

(4) At either party's option, for its convenience and without cause, upon at least sixty (60) days' written notice ("Notice") to the other party. Upon receipt of a Notice from District of such termination, New Tech Network will cease operations as directed by the District in the Notice, take actions necessary or as the District may reasonably direct for the preservation of students' work and records, if any, in New Tech Network's possession. New Tech Network will be entitled to payment for: (i) services rendered prior to the effective date of the termination stated in the Notice; (ii) any expenses (within the limitations imposed by this Agreement) incurred prior to the effective date of the termination stated in the Notice; and (iii) any other costs and expenses (without regard to the limitations imposed by this Agreement) resulting from any action requested by the District in the Notice.

(c) *Effect of Termination.*

(1) If this Agreement is terminated due to the expiration of the Term and not due to any breach of District and during the Term District was in full compliance with this Agreement, then District will be permitted to continue to use under the License the Materials, so long as District will have executed a separate agreement with New Tech Network in which District agrees to make appropriate use of such licensed Materials, to protect the confidentiality of the Materials and to pay such ongoing fees as are negotiated in connection with the use of and support for the Materials.

(2) If this Agreement is terminated for any reason, including, without limit, due to the expiration of the Term, and if the District and New Tech Network have not extended this Agreement or entered into another agreement concerning the operation of the New Tech School pursuant to the New Tech Model: (i) the District will (a) promptly cease to use the Materials, (b) promptly cease to use any of the Marks, and (c) no longer represent that it is a member of the New Tech Network; and (ii) New Tech Network may immediately deactivate District's account and, following a period of not more than 30 days, New Tech Network will be entitled to delete District's data from the Database, provided that New Tech Network will, during such period, grant District limited access for the sole purposes of permitting District to retrieve Protected Student Data and District Contributions.



Continuation Terms and Conditions

(d) *Survival of Obligations.* Upon termination of this Agreement for any reason, District will promptly pay to New Tech Network all outstanding amounts due under this Agreement. The parties further agree to refrain from making public statements or otherwise announcing or publishing in a public forum statements or comments that disparage the other party. Such obligation to pay will survive termination of this Agreement along with all of the following provisions of this Agreement: 3 through 20.

7. **Limitations.**

(a) *Limitation of Liability.* In no event will New Tech Network's liability to District arising out of or related to this Agreement or the License or the Services provided hereunder, whether based on an action or claim in contract or tort, including negligence, strict liability, or warranty, exceed the compensation New Tech Network receives for the License or the Services provided under this Agreement.

(b) *Other Damages.* In no event will New Tech Network be liable to District for any punitive, indirect, incidental, special or consequential damages (including, without limitation, any damages arising from loss of use or lost business, revenue, profits, data or goodwill) arising out of or related to this Agreement or the License or the Services provided hereunder, whether in an action in contract, tort, strict liability or negligence, or other actions, even if advised of the possibility of such damages.

(c) *Limited Warranty.* NEW TECH NETWORK REPRESENTS AND WARRANTS THAT THE NTN TECHNOLOGY WILL CONTAIN FUNCTIONALITY SUBSTANTIALLY CONSISTENT WITH THAT DESCRIBED IN SUPPORT SCHEDULE TO THIS AGREEMENT AND THAT THE SERVICES WILL BE PERFORMED IN A WORKMANLIKE MANNER. EXCEPT AS EXPRESSLY PROVIDED FOR IN THIS SECTION 7(C): (I) NEW TECH NETWORK DOES NOT MAKE ANY WARRANTY, EXPRESSED OR IMPLIED, WITH RESPECT TO THE LICENSE OR THE SERVICES, NEW TECH PLATFORM OR ANY PRODUCTS/GOODS PROVIDED UNDER THIS AGREEMENT, INCLUDING, WITHOUT LIMITATION, ANY IMPLIED WARRANTY OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, TITLE OR NON-INFRINGEMENT; (II) THE DISTRICT EXPRESSLY AGREES THAT USE OF THE NEW TECH PLATFORM IS ON AN "AS IS" AND "AS AVAILABLE" BASIS. WITHOUT LIMITING THE FOREGOING AND TO THE FULLEST EXTENT PERMITTED BY LAW, NEW TECH NETWORK DISCLAIMS ANY AND ALL: (1) WARRANTIES CONCERNING THE AVAILABILITY, ACCURACY, SECURITY, USEFULNESS, TIMELINESS, OR INFORMATIONAL CONTENT OF THE NEW TECH PLATFORM; (2) WARRANTIES RELATED TO THIRD PARTY SERVICES AND/OR DISTRICT CONTRIBUTIONS; AND (3) WARRANTIES THAT ERRORS IN ANY SOFTWARE WILL BE CORRECTED.

(d) *Claims.* Any claims by District arising out of or related to this Agreement or the License or the Services provided hereunder, whether in an action in contract, tort, strict liability or negligence, or other actions, must be brought within one year of the termination of this Agreement or such claims will be forever barred.

8. **Notification of Claims.** In the event of a claim by a third party arising as a result of the License or the Services provided hereunder, each party or its legal representative will promptly notify the other party in writing of any such claim or lawsuit and forward all related documents to the other party.

9. **Governing Law; Jurisdiction and Venue.** This Agreement will be governed by and construed in accordance with the laws of the State of California, without application of conflicts of laws principles and as if this Agreement were negotiated, executed, delivered and fully performed entirely within the State of California.



Continuation Terms and Conditions

Any action or proceeding seeking to enforce any provision of, or based on any right arising out of, this Agreement must be brought in the courts of the State of California in Sacramento County, or, if it has or can acquire jurisdiction, in the United States District Court in Sacramento County, and each of the parties consents to the jurisdiction of such courts in any such action or proceeding and waives any objection to venue laid therein.

10. Independent Contractor. The parties understand and acknowledge that New Tech Network is an independent contractor, and will not be deemed an employee, partner, or joint venturer of District with respect to the services performed hereunder for any purposes whatsoever. New Tech Network also understands that it is responsible, according to law, to pay its own federal, state and local income taxes and employment taxes with respect to all compensation received from District hereunder.

11. Notices.

(a) *Notices.* All notices of a legal or formal nature must be in writing and sent (a) in person, (b) by certified or registered mail, (c) by overnight delivery carrier for next day delivery, (d) by facsimile, or (e) email, in each case to the address listed below (or if notice of a new address is given in accordance with this Agreement, the new address):

If to New Tech Network: New Tech Network, Inc.
Attn: President
1250 Main Street, Suite 100
Napa, CA 94559

If to the District: Davis Joint Unified School District
Attn: Superintendent
526 B Street
Davis, CA 95616

12. Binding Effect. This Agreement will be binding upon and inure to the benefit of both District and New Tech Network and their permitted successors and permitted assigns.

13. Severability of Provisions. If any part, term or provision of this Agreement is held by any court to be unenforceable or prohibited by any law applicable to this Agreement, the rights and obligations of the parties will be construed and enforced with that part, term or provision limited so as to make it enforceable to the greatest extent allowed by law, or, if it is totally unenforceable, as if this Agreement did not contain that particular part, term or provision.

14. Waiver. Any of the terms, conditions or provisions of this Agreement may be waived at any time and from time to time in writing by the party entitled to the benefit thereof without affecting any other term, condition or provision of this Agreement. No waiver will be effective unless it is in writing. The waiver by any party hereto of any breach of any term, condition or provision of this Agreement will not operate or be construed as a waiver of any other term, condition or provision or of any subsequent breach of the same term, condition or provision. A party's failure to enforce its rights resulting from any breach of any term, condition or provision of this Agreement will not operate or be construed as a waiver of breach.



Continuation Terms and Conditions

15. Entire Agreement. This Agreement, the Trademark Use Policy, the website user agreement and the privacy policy for the NTN Technology constitutes the entire agreement and understanding between the parties and supersedes all prior agreements and discussions with respect to the subject matter hereof. The parties expressly agree that to the extent that form purchase orders, confirmations, acceptances and invoices, or similar documents, are used to facilitate specific services any conflicting, additional or different terms provided by District will be of no force and effect and the terms of this Agreement will control such interpretations unless a separate signed writing/amendment authorizes such terms.

16. Assignment. This Agreement (including any rights or licenses herein) may not be assigned by District without the written consent of New Tech Network. New Tech Network may assign this Agreement to an organization affiliated with New Tech Network.

17. Amendment. This Agreement may be amended or modified only in a writing signed by both New Tech Network and District; provided, however, that New Tech Network may, from time to time, without the written consent of District, amend the terms of the Trademark Usage Policy, the website user agreements and privacy policy. New Tech Network will notify the District of any such amendments. If District does not object in writing to the amendments within 30 days from the date of the notification, the District will be deemed to have accepted the amendments. If the District timely objects to one or more amendments and such objections are not resolved to District's satisfaction, the District may terminate this Agreement pursuant to Section 6.

18. Recitals. The recitals to this Agreement are hereby incorporated into and considered a part of the terms and conditions of this Agreement.

19. Negotiated Agreement. As this Agreement has been negotiated by the parties, any ambiguities in this Agreement will not be construed against either party.

20. Force Majeure. New Tech Network will not be responsible or liable for any delay in the performance of its obligations under this Agreement arising out of or caused by acts of God; earthquakes, fire, flood, wars, acts of terrorism, civil or military disturbances, epidemics, riots, interruptions, loss of utilities or communications, Internet service provider failures, accidents, labor disputes (other than involving New Tech Network employees), acts or civil or military authority or governmental action or any other circumstances beyond the reasonable control of the party; it being understood that New Tech Network will use reasonable efforts to resume performance as soon as reasonably practicable under the circumstances.