

CONTRACT NAME: AGREEMENT BETWEEN EDGENUITY INC. AND DAVIS JOINT UNIFIED SCHOOL DISTRICT

BRIEF DESCRIPTION OF CONTRACT: Edgenuity, Inc. is a digital curriculum program that was piloted last year by King High School and DSIS and allows students to have highly engaging, individualized instruction in over 30 courses. It provides entry level courses for English and Math to be used in intervention courses, as well as higher level courses in Math, Social Sciences and Science. Teachers are able to provide immediate feedback and to view the proficiency and time spent by each student.

The curriculum includes GED test preparation and career courses imperative to students moving directly into the work force. Each lesson has a direct instruction video component that meets the WASC recommendation for both DSIS and King High School.

The cost for the service is \$24,745. It is allocated in the 2016-2017 Curriculum and Instruction discretionary budget.

Davis Joint Unified School District

**EDUCATION CODE SECTION 49073.1 AMENDMENT TO
SUBSCRIPTION AGREEMENT BETWEEN
THE DAVIS JOINT UNIFIED SCHOOL DISTRICT AND EDGENUITY INC.**

THIS AMENDMENT (“Amendment”) to the Subscription Agreement by and between the Davis Joint Unified School District, a public school district of the state of California and Edgenuity Inc., a Nevada corporation (“Vendor”), dated July 1, 2016 (“Agreement”) (a true and correct copy of which is attached hereto as Exhibit “A” and is hereby made and entered into as of the date of last signature (“Effective Date”) as follows:

WHEREAS, Vendor provides a subscription to the Edgenuity Virtual Classroom and Web Administrator and related software and professional services;

WHEREAS, as a California public school district, the District is subject to the California Education Code;

WHEREAS, Vendor is a “third party” under Education Codes section 49073.1, which defines “third party” as a provider of digital educational software or services, including cloud-based services, for the digital storage, management, and retrieval of pupil records;

WHEREAS, Education Code section 49073.1 request that any contract for the provision of services entered into between District and Vendor contain certain provisions specified in sections (b)(1) through (b)(9) of Education Code section 49073.1; and

WHEREAS, The District and Vendor desire to amend the terms in their Agreement that will satisfy the requirements of Education Code section 49073.1.

NOW, THEREFORE, DISTRICT AND VENDOR AGREE TO THE FOLLOWING TERMS IN COMPLIANCE WITH EDUCATION CODE SECTION 49073.1.

1. **Ownership and Control of Pupil Records.** Pupil Records shall continue to be the property of and under the control of the District in accordance with California Education Code section 49073.1. For purposes of this contract, “Pupil Records” means both any information directly related to a pupil that is maintained by the District and information acquired directly from the pupil through the use of instructional software or applications assigned to the pupil by a teacher or other District employee. For purposes of this Agreement, “Deidentified Information” means information that cannot be used to identify an individual pupil. For purposes of this Agreement, “Pupil Records” does not include Deidentified Information, including aggregated Deidentified Information, used by Vendor to improve educational products for adaptive learning purposes and for customizing pupil learning; to demonstrate the effectiveness of Vendor's products in the marketing of those products; or for the development and improvement of educational sites, services, or applications.

2. **Ownership and Control of Pupil-Generated Content.** Pupils may retain possession and control of their own Pupil-Generated Content, as defined herein, or may transfer Pupil-Generated Content to a personal account by notifying the District's Director of Information Technology in writing of such request. The District will provide a written request to Vendor's Director of Legal Affairs, and Vendor shall return the Pupil-Generated Content in a format acceptable to the District within five (5) days of receiving the District's request. For purposes of this contract, "Pupil Generated Content" includes essays, research reports, portfolios, creative writing, music or other audio files, photographs, but does not include pupil responses to a standardized assessment where pupil possession and control would jeopardize the validity and reliability of that assessment.

3. **Use of Pupil Records.** Vendor shall not use any information in the Pupil Records for any purpose other than those required or specifically permitted by this Agreement.

4. **Review of Pupil Records.** A parent, legal guardian, or pupil who has reached the age of eighteen (18) may review personally identifiable information in the pupil's records and correct erroneous information by notifying the District's Director of Information Technology in writing of such request. The District will meet with parent, legal guardian, or pupil who has reached the age of eighteen (18) to review and correct any information in the Pupil's Records. The District will notify Vendor of the need to review Pupil Records and/or make corrections to any Pupil Records in writing. Vendor shall provide such Pupil Records and/or correct such errors within five (5) days of receipt of written notice. Vendor shall cooperate with the District in complying with this mandate.

5. **Security and Confidentiality of Pupil Records.** Vendor agrees to hold Pupil Records in strict confidence. Vendor shall not use or disclose Pupil Records received from or on behalf of District except as permitted or required by this Agreement, as required by law, or as otherwise authorized in writing by District. Vendor agrees that it will protect the Pupil Records it receives from or on behalf of District according to commercially acceptable standards and no less rigorously than it protects its own confidential information. Vendor will designate and train responsible individuals, to ensure the security and confidentiality of Pupil Records. Vendor shall develop, implement, maintain and use appropriate administrative, technical and physical security measures to preserve the confidentiality, integrity and availability of all electronically maintained or transmitted Pupil Records received from or on behalf of District, as set forth in Section 10 of this contract. These measures shall be extended by contract to all subcontractors used by Vendor. If District reasonably determines in good faith that Vendor has materially breached any of its obligations under this Section, District may, in its sole discretion, terminate the Agreement immediately if cure is not possible. District shall provide written notice to Vendor describing the violation, the action it intends to take and the timeframe for such action.

6. **Breach Notification Process.** Vendor, within one (1) business day of discovery, shall report to District any use or disclosure of Pupil Records not authorized by the contract or in writing by the District. Vendor's report shall identify: (i) the nature of the unauthorized use or disclosure; (ii) the Pupil Records used or disclosed, (iii) who made the unauthorized use or received the unauthorized disclosure, (iv) what Vendor has done or shall do to mitigate any effect of the unauthorized use or disclosure, and (v) what corrective action Vendor has taken or shall take to prevent future similar unauthorized use or disclosure. Vendor shall provide such other

information, including a written report, requested by District. In the event of an unauthorized disclosure of a Pupil's Records, affected parents, legal guardians, or pupils who have reached the age of eighteen (18) will be notified in writing and provided with details and next steps to address the specific breach. Compliance with these requirements shall not, in itself, absolve Vendor of liability in the event of an unauthorized disclosure of Pupil Records.

7. **Retention and Destruction of Pupil Records.** Vendor certifies that a pupil's records shall not be retained or available to Vendor upon completion of the term of the contract. At the termination of the contract, Pupil Records in the possession of Vendor shall be returned and/or destroyed. Upon termination, cancellation, expiration or other conclusion of the contract, Vendor shall return all Pupil Records to District in a format acceptable to District, or if return is not feasible as determined by District in written notice to Vendor, destroy any and all Pupil Records. Vendor shall not destroy any Pupil Records without express written permission of District. Vendor shall comply with any litigation hold or order to preserve Pupil Records.

8. **Compliance with Applicable Laws.** The District and Vendor will jointly ensure compliance with the federal Family Educational Rights and Privacy Act ("FERPA") (20 U.S.C. Sec. 1232g) through following the confidentiality provisions as set forth in this contract, as well as applicable District Board policies. The parties acknowledge and agree that the District is subject to federal and local laws relating to the protection of personally identifiable information ("PII") of students, including FERPA, and that Vendor is obtaining such PII as a "school official" under section 99.31 of FERPA for the purpose of providing the services hereunder. In addition to FERPA, Vendor shall comply with all federal, state and local laws, rules, regulations and ordinances that are now or may in the future become applicable to Vendor; the services being provided by Vendor; Vendor's business, equipment and personnel engaged in operations covered by this contract; and the protection of Pupil Records and PII, including but not limited to Education Code section 49060 *et seq.*, the Children's Online Privacy Protection Act (COPPA) and the Student Online Personal Information Protection Act (SOPIPA). Vendor certifies that it is familiar with these laws, as well as any other applicable requirements for the storage and transmission of Pupil Records and Vendor will comply with all such requirements.

9. **Prohibition on Targeted Advertising.** Vendor shall not use PII in Pupil Records to engage in targeted advertising.

10. **Termination.** If District reasonably determines in good faith that Vendor has materially breached any of its obligations under this Amendment or the Agreement, District, in its sole discretion, shall have the right to provide Vendor with written notice of a fifteen (15) day period to cure the breach. If Vendor fails to cure a breach within that period of time, District may terminate the Agreement immediately. If, in its sole discretion, District determines that a cure is not possible, District may provide written notice of immediate termination of the Agreement.

11. **Governing Law and Venue.** The Agreement and this Amendment shall be governed by and construed in accordance with the laws of the State of California. Any dispute, claims, demands or actions arising out of or in relation to the Agreement and this Amendment shall be brought in and resolved by the Superior Court of the County of Yolo.

12. **Effect of Amendment.** If any provisions of this Amendment to the Agreement conflict or are otherwise contrary to the original terms of the Agreement, the terms of this Amendment prevail.

Except as specifically modified herein, all other terms and conditions contained in the Agreement between the District and Vendor shall remain unchanged and in full force and effect.

Davis Joint Unified School District

By: _____

Name: _____

Its: _____

Date: _____

Edgenuity Inc.

By: _____ *[Signature]*

Name: KELLY STANIEC

Its: CONTROLLER

Date: 8/17/16



STANDARD TERMS AND CONDITIONS

These terms and conditions (**Standard Terms**) apply to the subscription for the Edgenuity Learning Management Software Service (**Service**). The Agreement for the Service consists of these Standard Terms and the applicable Quote (which references the purchased services, term, pricing, and other terms of the order).

1. **LEARNING MANAGEMENT SOFTWARE SERVICE.** This Agreement provides Customer access to and usage of Edgenuity's internet-based learning management software service solely for internal education-related and training-related purposes of the Customer.
2. **USE OF SERVICE.**
 - a. **Customer Owned Data.** All data and materials uploaded or entered within the Service by Customer remains the property of Customer, as between Edgenuity and Customer (**Customer Data**). Customer grants Edgenuity the right to use the Customer Data solely for purposes of performing under this Agreement. During the term of this Agreement, Customer may export its Customer Data to the extent allowed by functionality within the Service. Customer warrants and represents that Customer has appropriate rights to any Customer Data added to the Service.
 - b. **Customer Responsibilities.** Customer (i) must keep its passwords secure and confidential; (ii) is solely responsible for Customer Data and all activity in its account in the Service; (iii) must use commercially reasonable efforts to prevent unauthorized access to its account and notify Edgenuity promptly of any such unauthorized access; and (iv) may use the Service only under the Service's written technical guides and applicable law. Customer authorizes its integrators or other third party vendors and Edgenuity to conduct initial setup and continued access of the Service in compliance with the terms of this Agreement, so long as the access is for the sole benefit of Customer. Further, Customer will provide Edgenuity the name and contact information for all third parties authorized by Customer necessary for Customer to receive the Services during the Term of this Agreement. Customer is solely responsible for compliance under all federal, state and local privacy laws and regulations for all such Customer authorized integrators or other third party vendor(s) that Customer mandates Edgenuity access the Service for its benefit under this Agreement.
 - c. **Licensed Material.** All audio, video and other content, curriculum, documentation and software (including without limitation applets and animations) provided by Edgenuity as part of the Service (Licensed Material) are licensed to Customer as follows: Edgenuity grants Customer a non-exclusive, non-transferable license during the term of each Quote to access and use such Licensed Material for internal educational and training purposes solely in connection with the Service. Notwithstanding anything in this Agreement, all Edgenuity third party web services are governed by Attachment A. These Standard Terms are updated from time-to-time by Edgenuity and the current version can be found at <http://www.edgenuity.com/edgenuity-standard-terms-and-conditions-of-sale.pdf>
 - d. **Professional Development.** All implementation planning, program design, administrative and instructional training, consulting and coaching for education professionals will be provided by Edgenuity as described in the applicable Quote. Any professional development purchased will expire at the end of the term in the applicable Quote.
 - e. **Edgenuity Technical and Customer Support.** Edgenuity will provide technical and customer support for the Service under the terms of Edgenuity's support policies found at www.edgenuity.com/support including all updates, bug fixes, and enhancements when generally made available.
3. **WARRANTIES and DISCLAIMERS.**
 - a. **Compliance Warranty.** Each party will comply with, and will cause each of its employees, agents, and contractors to comply with, all laws applicable to its performance under this Agreement, including without limitation the Family Educational Rights and Privacy Act (**FERPA**) and Children's Online Privacy Protection Act (**COPPA**).
 - b. **Professional Development and Instructional Services Warranty.** Edgenuity warrants that it will provide Professional Development and Instructional Services in a professional, workmanlike manner consistent with the terms of this Agreement and under generally accepted industry standards.
 - c. **Edgenuity Service Warranty.** Edgenuity warrants that commercially reasonable efforts will be made to maintain the online availability of the Service. CUSTOMER'S EXCLUSIVE REMEDY AND EDGENUITY'S ENTIRE LIABILITY UNDER THIS WARRANTY WILL BE FOR EDGENUITY TO REPAIR THE NON-CONFORMING SERVICE, OR IF EDGENUITY CANNOT MAKE SUCH REPAIR WITHIN A REASONABLE PERIOD OF TIME, THEN EDGENUITY MAY TERMINATE ACCESS TO THE SERVICE AND REFUND THE PORTION OF THE FEE ATTRIBUTABLE TO SUCH NON-CONFORMING SERVICE.
 - d. **DISCLAIMERS.** ALL LICENSED MATERIAL IS PROVIDED "AS IS" AND WITH ALL FAULTS. EXCEPT FOR THE ABOVE WARRANTIES, THE SERVICES INCLUDING PROFESSIONAL DEVELOPMENT AND INSTRUCTIONAL SERVICES ARE PROVIDED ON AN "AS-IS" AND "WHEN AVAILABLE" BASIS. ALL OTHER REPRESENTATIONS AND WARRANTIES CONCERNING THE LICENSED MATERIAL AND SERVICES ARE HEREBY EXPRESSLY DISCLAIMED TO THE EXTENT ALLOWED BY LAW, INCLUDING ANY WARRANTY OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE. THERE IS NO WARRANTY THAT THE OPERATION OR CONNECTIVITY OF THE SERVICE WILL BE UNINTERRUPTED OR ERROR-FREE, OR THAT THE SERVICE WILL BE FREE OF ALL POSSIBLE METHODS OF UNAUTHORIZED ACCESS,

ATTACK, OR INTRUSION.

4. PAYMENT, INVOICING AND TAXES.

Unless otherwise provided in the Quote, Customer agrees to pay the amount of each invoice net 30 days after the invoice date. Except to the extent that Customer provides Edgenuity with a valid tax exemption certificate authorized by the appropriate taxing authority, Customer must pay any taxes, impositions, or other charges imposed or levied by any governmental authority, including any sales, use, value-added, or withholding taxes, in connection with the Quote, excluding Edgenuity income and payroll taxes.

5. MUTUAL CONFIDENTIALITY.

- a. **Definition of Confidential Information.** Confidential Information means all non-public information including Personally Identifiable Information (PII) as defined by applicable law, disclosed by a party (Discloser) to the other party (Recipient), whether orally or in writing, that is designated as confidential or that reasonably should be understood to be confidential given the nature of the information and the circumstances of disclosure (Confidential Information). Edgenuity's Confidential Information includes without limitation the Service, its user interface design and layout, pricing information, and the Licensed Material.
- b. **Protection of Confidential Information.** The Recipient must use the same degree of care that it uses to protect the confidentiality of its own confidential information (but in no event less than reasonable care) not to disclose or use any Confidential Information of the Discloser for any purpose outside the scope of this Agreement. The Recipient must make commercially reasonable efforts to limit access to Confidential Information of Discloser to those of its employees and contractors who need such access for purposes consistent with this Agreement and who have signed confidentiality agreements with Recipient no less restrictive than the confidentiality terms of this Agreement.
- c. **Exclusions.** Confidential Information excludes information that: (i) is or becomes generally known to the public without breach of any obligation owed to Discloser; (ii) was known to the Recipient before its disclosure by the Discloser without breach of any obligation owed to the Discloser; (iii) is received from a third party without breach of any obligation owed to Discloser; or (iv) was independently developed by the Recipient without use or access to the Confidential Information. The Recipient may disclose Confidential Information to the extent required by law or court order, but will provide Discloser with advance written notice to seek a protective order.

6. EDGENUITY PROPERTY.

- a. **Reservation of Rights.** The content, documentation, software, workflow processes, user interface, designs, know-how, Licensed Material, and other items provided by Edgenuity as part of the Service are the proprietary property of Edgenuity and its licensors, and all right, title and interest in and to such items, including all associated intellectual property rights, remain only with Edgenuity. Customer may not remove or modify any proprietary marking or restrictive legends in the Service or Licensed Material. Edgenuity reserves all rights unless expressly granted in this Agreement.
- b. **Restrictions.** Customer may not (i) sell, resell, rent or lease the Service or Licensed Material or use it in a service provider capacity; (ii) use the Service to store or transmit infringing, unsolicited marketing emails, libelous, or otherwise objectionable, unlawful or tortious material, or to store or transmit material in violation of third-party rights; (iii) interfere with or disrupt the integrity or performance of the Service or attempt to gain unauthorized access to the Service or their related systems or networks; (iv) use the Service or Licensed Material for other than internal Customer educational purposes; (v) reproduce, frame, mirror, modify, translate, enhance, decompile, disassemble, copy, download or reverse engineer the Service or the Licensed Material or modify, create derivative works based on the Service or any Licensed Material; or (vi) access the Service or use the Licensed Material to build a competitive service or product, or copy any feature, function or graphic for competitive purposes.

7. TERM AND TERMINATION.

- a. **Term.** This Agreement continues until all Quotes have expired, unless terminated by Edgenuity for material breach.
- b. **Funding-Out Clause.** Customer's payment obligation is conditioned upon the availability of funds that are appropriated or allocated by the applicable government agency. If funds are not allocated, Customer may terminate this Agreement at the end of the period for which funds are available. Customer must notify Edgenuity in writing within thirty (30) calendar days before termination. Upon termination, Edgenuity will be entitled to a pro-rata portion of the fees for Service performed up to the date of termination.
- c. **Non-payment of Fees.** Edgenuity may terminate the Agreement and access to the Service and the Licensed Material in a Quote within ten (10) days after Customer receipt of a notice of non-payment of amounts owed under that Quote.
- d. **Mutual Termination for Material Breach.** Except for 7(c), if either party is in material breach of this Agreement, the non-breaching party may terminate this Agreement at the end of a written thirty (30) calendar day notice and cure period, if the breach has not been cured.
- e. **Return of Customer Data.** Within sixty (60) days after termination, upon request, Edgenuity will make the Service available for Customer to export such data as provided in Section 2(a).
- f. **Suspension for Violations of Law.** Edgenuity may temporarily suspend the Service or remove the applicable Customer Data, or both, if it in good faith believes that, as part of using the Service, Customer has violated a law. Edgenuity will attempt to contact Customer in advance.
- g. **Return or Destroy Edgenuity Property Upon Termination.** Upon expiration or termination of this Agreement for any reason, Customer

must pay Edgenuity for any amounts owed, and destroy or return all property of Edgenuity. Customer will confirm its compliance with this destruction or return requirement in writing upon request of Edgenuity.

8. LIABILITY LIMIT.

- a. **EXCLUSION OF INDIRECT DAMAGES.** EDGENUITY IS NOT LIABLE FOR ANY INDIRECT, SPECIAL, INCIDENTAL OR CONSEQUENTIAL DAMAGES ARISING OUT OF OR RELATED TO THIS AGREEMENT (INCLUDING, WITHOUT LIMITATION, COSTS OF DELAY; LOSS OF DATA, RECORDS OR INFORMATION; AND LOST PROFITS), EVEN IF IT KNOWS OF THE POSSIBILITY OF SUCH DAMAGE OR LOSS.
- b. **TOTAL LIMIT ON LIABILITY.** EDGENUITY'S TOTAL LIABILITY ARISING OUT OF OR RELATED TO THIS AGREEMENT (WHETHER IN CONTRACT, TORT OR OTHERWISE) DOES NOT EXCEED THE AMOUNT PAID BY CUSTOMER WITHIN THE 12-MONTH PERIOD BEFORE THE EVENT THAT GAVE RISE TO THE LIABILITY.

9. INDEMNITY.

- a. Edgenuity will defend or settle any third party claim against Customer to the extent that such claim alleges that Edgenuity technology used to provide the Service violates a copyright, patent, trademark or other intellectual property right, if Customer, promptly notifies Edgenuity of the claim in writing, cooperates with Edgenuity in the defense, and allows Edgenuity to solely control the defense or settlement of the claim. Edgenuity will pay infringement claim defense costs, Edgenuity-negotiated settlement amounts, and court-awarded damages incurred as part of its obligations under this Agreement. If such a claim appears likely, then Edgenuity may modify the Service, procure the necessary rights, or replace the infringing part of the Service with a functional equivalent. If Edgenuity determines that none of these are reasonably available, then Edgenuity may terminate the Service and refund any prepaid and unused fees. Edgenuity has no obligation for any claim, in whole or in part, arising from information, items or technology not provided by Edgenuity or for any third party web services not owned by Edgenuity. THIS SECTION CONTAINS CUSTOMER'S EXCLUSIVE REMEDIES AND EDGENUITY'S SOLE LIABILITY FOR INTELLECTUAL PROPERTY INFRINGEMENT CLAIMS.
- b. To the extent permitted under applicable law, Customer will defend, indemnify and hold harmless Edgenuity from and against any third party claims, losses, damages, settlements, penalties, fines, costs, or expenses (including reasonable attorneys' fees) that arise from or relate to (i) Customer's negligence, misconduct or breach of this Agreement; (ii) any Customer Data or third party content, products, services or systems, including their integration or their required third party integration with the Service; and (iii) any Customer violation of applicable law which results in third party claim against Edgenuity.

10. OTHER TERMS.

- a. **Governing Law.** This Agreement is governed by the laws of the state where the Customer resides, excluding any conflict of law principles. Nothing in this Agreement prevents either party from seeking injunctive relief in any court of competent jurisdiction.
- b. **Entire Agreement and Changes.** This Agreement, Attachments "A", "B" and the Quote constitute the entire agreement between the parties and supersede any prior or contemporaneous negotiations or agreements, whether oral or written, related to this subject matter. Customer is not relying on any representation concerning this subject matter, oral or written, not included in this Agreement. No representation, promise or inducement not included in this Agreement is binding. No modification of this Agreement is effective unless signed by both parties, and no waiver is effective unless the party waiving the right signs a waiver in writing.
- c. **No Assignment.** Neither party may assign or transfer this Agreement or a Quote to a third party, except that this Agreement with all Quotes may be assigned, without the consent of the other party, as part of a merger, or sale of substantially all the assets, of a party.
- d. **Independent Contractors.** The parties are independent contractors with respect to each other.
- e. **Feedback.** By submitting ideas, suggestions or feedback to Edgenuity regarding the Service, Customer agrees that such items submitted do not contain confidential or proprietary information; and Customer grants Edgenuity an irrevocable, unlimited, royalty-free and fully-paid perpetual license to use such items for any business purpose.
- f. **Enforceability and Force Majeure.** If any term of this Agreement is invalid or unenforceable, the other terms remain in effect. Except for the payment of monies, neither party is liable for events beyond its reasonable control, including, without limitation force majeure events, failure of Internet services, any third party service and telecommunications services.
- g. **Money Damages Insufficient.** Any breach by a party of this Agreement or violation of the other party's intellectual property rights could cause irreparable injury or harm to the other party. The other party may seek a court order to stop any breach or avoid any future breach.
- h. **No Additional Terms and Order of Precedence.** Edgenuity rejects additional or conflicting terms of any Customer form-purchasing document. If there is an inconsistency between this Agreement and any Quote, the Quote will prevail only with respect to pricing, duration and service specific terms.
- i. **Survival of Terms.** Any terms that by their nature survive termination of this Agreement for a party to assert its rights and receive the protections of this Agreement, will survive.

Attachment A
Third Party Terms

1. **DEFINITIONS.**

Third Party Service means a web based software service procured by Edgenuity from a third party for use by Edgenuity in connection with the Service or Hardware.

Hardware means any hardware marketed or supplied by Edgenuity and identified on a Quote.

2. **GENERAL.**

- a. **Third Party Web Services.** Edgenuity is not the vendor of such Third Party Service however such Third Party Services are provided under the terms of the Agreement and any additional terms included within this Attachment A, except for the Middlebury Interactive Services, which is governed by their terms, as further detailed below.
- b. **Hardware.** Edgenuity is not the manufacturer of Hardware and such Hardware is provided subject to the separate sale terms provided by the manufacturer (including without limitation, return and exchange terms), all of which Customer agrees to abide by. Edgenuity makes no warranties with respect to the Hardware and any pre-installed associated software. Customer hereby grants Edgenuity permission to provide remote technical support for setup and diagnostic purposes for new Hardware if required. Customer owns the Hardware and has a license to any pre-installed software, subject to the applicable license agreement. During the term of the Agreement, if Customer modifies Hardware in any way, it may void the manufacturer's warranty. Upon termination of the Agreement, Edgenuity will remotely remove any and all Edgenuity content and software from the Hardware.

3. **THIRD PARTY SERVICES.** Some but not all of Edgenuity's Third Party Services are listed below.

- a. **ExploreLearning.** Without limiting any of the provisions of Section 2 above, access to and use of any ExploreLearning *Gizmos* (Gizmos) provided by Edgenuity are governed by the following additional terms:
- i. Neither Customer nor any of its users are authorized to access or use any Gizmos, except: (i) users who are students and who are authorized by Customer to access and use the Service that includes or incorporates the Gizmos; and (ii) users who are teachers of those same students, provided that such teachers may use the Gizmos only for the purposes of assigning and managing assignments for those students;
 - ii. A Gizmo may only be used in connection with the Service with which that particular Gizmo has been provided, and may not be used in connection with any other class, program, application, or software.
 - iii. Customer understands and agrees that any access to or use of any Gizmo provided by Edgenuity by Customer or any of its users in contravention of the foregoing terms constitutes a material breach of the Agreement, and that if Customer desires to use a Gizmo in a manner that is not authorized by the Agreement, it is solely the responsibility of Customer (and not of Edgenuity) to obtain authorization for such use from the appropriate third party.
- b. **Middlebury Interactive Services (MIL).** Without limiting any of the provisions of Section 2 above, if the Agreement includes any Middlebury Interactive Services products, including but not limited to *Powerspeak*, Customer acknowledges that with the use of MIL's products, the Customer is subject to MIL's terms. For further information, please refer to MIL's terms which can be found online at: <http://middleburyinteractive.com/terms-use>. Customer understands and agrees that any access to or use of MIL products provided by Edgenuity to Customer or any of its users in contravention of the foregoing terms constitutes a material breach, and that if Customer desires to use a MIL Products in a manner that is not authorized, it is solely the responsibility of Customer (and not of Edgenuity) to obtain authorization for such use from the appropriate third party.
- c. **Education Testing Services (ETS) e-rater® Scoring Service.**
- i. The score and/or feedback received from the e-rater® technology should be considered as one piece of evidence about a student's writing ability. When a score from the e-rater® engine is being used for an important decision about a student's performance, instructors should review and evaluate the score and/or feedback to ensure that the appropriate decision about placement or performance has been made.
 - ii. The user understands and agrees that the Scoring Service may not be used for any other purpose, or provided to any other party, than as described herein. As permitted under state or federal law, user shall indemnify and hold Edgenuity and/or Educational Testing Service (ETS) harmless from any and all claims arising out of the use of the Scoring Service or use of the scores and/or feedback to determine placement of, or grades for students, or any other purpose.
 - iii. THE E-RATER® SCORING SERVICE (SCORE AND GRAMMAR CHECKING FEATURE) PROVIDED BY ETS IS PROVIDED "AS-IS", WITHOUT WARRANTIES OF ANY KIND AND ETS DISCLAIMS ALL WARRANTIES WITH RESPECT TO THE E-RATER® SCORING SERVICE, INCLUDING, BUT NOT LIMITED TO, THE IMPLIED WARRANTIES OF NON-INFRINGEMENT, TITLE, MERCHANTABILITY, AND FITNESS FOR A PARTICULAR PURPOSE. IN NO EVENT WILL ETS BE LIABLE TO CLIENT OR ANY THIRD PARTY FOR ANY DIRECT, INDIRECT, PUNITIVE, EXEMPLARY, INCIDENTAL, SPECIAL OR CONSEQUENTIAL DAMAGES ARISING OUT OF THE THIRD

PARTY PRODUCTS, EVEN IF THEY HAVE BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES OR LOSSES.

- iv. With regard to essays submitted to the site, you (Customer) hereby grant to ETS a non-exclusive, royalty-free, world-wide, irrevocable license to reproduce, transmit, display, disclose, archive and otherwise use any such files you submit to the site for the purposes of scoring and providing feedback. ETS will not retain any personally-identifiable information that may be associated with the essays. This license shall survive the termination of any license granted herein to ETS but in no event longer than 18 months. Any cessation of use of the site shall not result in the termination of any license you grant herein to ETS. Nothing herein shall preclude ETS from using information independently created by ETS.

- d. **Sophia® Learning Inc.** If this Agreement includes any Sophia Learning Inc. courses for use, the following language applies to any such purchase or use: "Customer agrees that the use of any Sophia course is prohibited for all students under the age of 13 years."

4. THIRD PARTY HARDWARE AND SERVICES WARRANTIES.

- a. **Hardware and Third Party Services Warranties.** ALL HARDWARE AND THIRD PARTY SERVICES ARE PROVIDED BY EDGENUITY "AS IS." EDGENUITY MAKES NO REPRESENTATION OR WARRANTY OF ANY KIND, EXPRESS OR IMPLIED.

- i. Edgenuity transfers to Customer, to the extent transferable, transferrable warranties and indemnities Edgenuity receives from the manufacturer of the Hardware or Third Party Service. Edgenuity's sole obligation with respect to Hardware and Third Party Service will be to use reasonable commercial efforts to facilitate warranty and indemnification claims that Customer makes against the manufacturer of the Hardware or Third Party Service.
- ii. Customer, recognizing that Edgenuity is not the manufacturer of Hardware or Third Party Service, expressly waives any claim that Customer may have against Edgenuity for product liability or infringement of any intellectual property right with respect to any Hardware or Third Party Service, as well as any right to indemnification from Edgenuity on account of any such claim made against Customer by a third party.

Attachment B
Instructional Services

1. **DEFINITIONS.**

Instructional Services means services provided by Edgenuity including student access to teachers and coaches, the development and implementation of policies and procedures for purposes of student outcomes, and other services stated in a Quote.

Virtual Program means a program of instruction created through technology and provided by Edgenuity, in which the student and teacher are separated by time, space, or both.

2. **INSTRUCTIONAL SERVICES.**

- a. **Edgenuity Teachers.** If specified in the Quote, Edgenuity will provide students with virtual access to teachers or coaches (or both) who are hired, trained, supervised and paid by Edgenuity.
 - i. Edgenuity teachers will be available during reasonable business hours.
 - ii. Edgenuity teachers will assist in the virtual delivery of the Licensed Material to students.
 - iii. Customer may make recommendations regarding the hiring, dismissal, discipline, and supervision of Edgenuity teachers, which recommendations Edgenuity may accept or reject in its sole discretion. No such recommendations are binding on Edgenuity, and as between Customer and Edgenuity. Edgenuity will have sole authority regarding such individuals.
- b. **Policies and Procedures.** Edgenuity may implement instructional policies and procedures for purposes of student outcomes that are in addition to or differ from existing Customer policies and procedures.
 - i. Where conflicts exist between policies, Edgenuity policies and procedures will take precedence unless otherwise agreed to by both parties in writing.
 - ii. Edgenuity will interpret and follow applicable Customer instructional policies according to the actual policy language and under applicable law.
 - iii. If Customer is utilizing Edgenuity's NCAA compliant Instructional Services, Customer must abide by all policies and procedures specific to NCAA guidelines.
- c. **Virtual Program Liaison.** Customer must designate an individual to serve as its primary liaison to Edgenuity for all communications related to the provision of Instructional Services and the Virtual Programs throughout the Term (**Primary Liaison**).
 - i. Customer may change the identity of the Primary Liaison from time to time upon reasonable written notice to Edgenuity.
 - ii. The Primary Liaison will serve as the primary point of contact for all communications with Edgenuity related to the Virtual Programs and for coordinating efforts necessary for the fulfillment of Customer's obligations as specified in this Agreement with respect to the Virtual Programs.
- d. **Administrative Services.** Customer shall be responsible for all day-to-day management of the Virtual Programs, subject in all cases to compliance with applicable law and Customer policies.
- e. **Exceptional Student Services.** If Customer is a public entity receiving federal funds, Customer is considered the "Local Educational Agency," and is responsible for the provision of special education.
 - i. The following are not services provided by Edgenuity: providing special education, creating, implementing or providing Individualized Education Programs (IEP), providing reasonable accommodations or any services of any nature under the Individuals with Disabilities Education Act, the Americans with Disabilities Act, section 504 of the Rehabilitation Act, or any similar law, whether federal, state or local.
 - ii. Notwithstanding the foregoing, Edgenuity will discuss, formulate and make adjustments and accommodations in furtherance of student IEPs or reasonable accommodations established by Customer, but solely to the extent that Edgenuity may do so without incurring direct or indirect costs.
- f. **State Testing.** Customer is responsible for providing appropriate accommodations for the administration of any state-mandated standardized testing. Customer is also responsible for receiving, distributing, administering, proctoring and returning any and all state-mandated standardized tests under applicable and documented state law, policies and procedures.

3. **TERM AND TERMINATION.**

- a. **Term.** This Attachment B will continue for the duration specified in the Quote, unless earlier terminated under the terms of the Agreement (**Term**).
- b. **Non-Solicitation.** During the Term, and for a period of one (1) year thereafter, Customer may not, directly or indirectly, solicit or make offers of employment to hire, in any capacity, or accept any services or work, from any employees, or contractors of Edgenuity who are associated (either directly or indirectly) with the performance of Instructional Services.



Price Quote for Services

DAVIS JOINT UNIFIED SCHOOL DISTRICT

Edgenuity Inc.
 8860 E. Chaparral Road
 Suite 100
 Scottsdale AZ 85250
 480-423-0118

Date 5/18/2016
 Quote # 22421
 Vendor #

Payment Schedule	Pricing Expires	Contract Start Date
	8/16/2016	7/1/2016
Contract End Date		
6/30/2017		

Header	Quantity	Description	Per Unit	Amount
	20	Concurrent User Licenses Virtual Classroom and Web Administrator with access up to 30 courses of choice. **NOTE: Does not include Sophia or MyPath Courses. The district has the option to purchase either one at an additional cost.	550.00	11,000.00
	1	Professional Development Introductory Package		7,500.00
	1	MyPath Math and Reading Site License for small schools (King High School)	2,995.00	2,995.00
	10	IS Teaching Services per semester course	325.00	3,250.00
Total				\$24,745.00

This quote is subject to Edgenuity Inc. Standard Terms and Conditions ("Terms and Conditions"). These Terms and Conditions are available at <http://www.edgenuity.com/edgenuity-standard-terms-and-conditions-of-sale.pdf>, may change without notice and are incorporated by this reference. By signing this quote or by submitting a purchase order or form purchasing document, Customer explicitly agrees to these Terms and Conditions resulting in a legally binding agreement.

If this Quote includes any Sophia® Learning Inc. courses for purchase, the following language applies to any such purchase (and this language is also found in the above linked Terms and Conditions): "Use of any Sophia course is prohibited for all students under the age of 13 years."

Customer

 Signature

 Print Name

 Title

 Date

Edgenuity Inc. Representative
 Jesse Tafolla
 jesse.tafolla@edgenuity.com
 530.760.7043

Not valid unless accompanied by a purchase order.
 Please specify a shipping address if applicable.

Please e-mail this quote, the purchase order and order documentation to AR@edgenuity.com or fax to 480-423-0213.