

CONTRACT NAME: AGREEMENT BETWEEN BALLARD & TIGHE PUBLISHERS AND DAVIS JOINT UNIFIED SCHOOL DISTRICT

BRIEF DESCRIPTION OF CONTRACT: This agreement is between Ballard & Tighe Publishers and Davis Joint Unified School District. Ballard and Tighe offers a web-based online testing platform that provides data-driven diagnostics to improve English Learner instruction.

The tests allow DJUSD to administer required language proficiency assessments for English Learners and also allows teachers to monitor student progress and track student achievement.

The cost for this service is \$124 and is allocated in the District budget for Curriculum and Instruction.

DAVIS JOINT UNIFIED SCHOOL DISTRICT

**AMENDMENT TO CLOUD- BASED SOFTWARE AGREEMENT INVOLVING
PUPIL RECORDS**

**EDUCATION CODE SECTION 49073.1 AMENDMENT TO THE BALLARD & TIGHE
AGREEMENT BETWEEN THE DAVIS JOINT UNIFIED SCHOOL DISTRICT AND
BALLARD & TIGHE, INC.**

THIS AMENDMENT (“Amendment”) to the **Ballard & Tighe** Agreement by and between the Davis Joint Unified School District, a public school district of the state of California and Ballard and Tighe, a corporation, dated January 23, 2017 (“Agreement”) (a true and correct copy of which is attached hereto as Exhibit “A” and is hereby made and entered into as of January 23, 2017 as follows:

WHEREAS, Vendor provides an online Spanish assessment to measure student’s proficiency in Spanish, **WHEREAS**, as a California public school district, the District is subject to the California Education Code;

WHEREAS, Vendor is a “third party” under Education Code 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 requests 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 Technology in writing of such request. The District will provide a written request to Vendor 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 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 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 Agreement or otherwise authorized 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. **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.

11. **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.

Dated this 23 Day of January, 2017.

Davis Joint Unified School District

By: 

Its: Chief Business Officer

Ballard & Tighe

By: 

Its: VP, Information Technology



Privacy and Policy

Ballard & Tighe, Publishers is committed to protecting the privacy and security of its online visitors. This policy statement provides an overview of the measures we have taken to provide a safe environment for everyone.

1. Terms of Use.

THE INFORMATION ABOUT YOU COLLECTED ON THIS WEB SITE IS SUBJECT TO THIS PRIVACY POLICY. BY DISCLOSING THE INFORMATION TO US, YOU AGREE TO THE TERMS OF THE POLICY.

PLEASE CAREFULLY READ THESE TERMS AND CONDITIONS BEFORE USING THESE BALLARD & TIGHE, PUBLISHERS WORLD WIDE WEB PAGES. BY USING THE BALLARD-TIGHE.COM SITE YOU INDICATE AGREEMENT TO THESE TERMS AND CONDITIONS. IF YOU DO NOT ACCEPT THESE TERMS AND CONDITIONS, PLEASE DO NOT USE THE BALLARD-TIGHE.COM SITE.

2. Use of Information.

We recognize the importance of protecting the privacy of our customers and visitors to our web site while permitting us to conduct legitimate business by providing services and information of interest to our customers and visitors. The information that we collect through the registration process is used to provide the service or product requested; to enable billing and shipping; to provide you with information about related products and services; to improve our web site, for development of new products and services; and for systems administration, troubleshooting and internal business purposes only. *We will not share your email address with parties outside Ballard & Tighe.*

3. Cookies.

We may use "cookies" to recognize you and your access privileges on our site, as well as to trace site usage. A cookie is a piece of information that is sent to your web browser from a web site and stored on your computer's hard drive. Each time you return to our site, we are able to identify you as a previous or registered customer. Cookies also enable us to measure our site traffic, including the number of repeat versus new visitors, the time users spend online, and their navigation behavior. Collecting this information allows us to make changes that improve our site.

4. Collection and Storage of Information.

We will collect certain personal information when you join our community for our services or product information. During this process we will ask you to set up a user name and password to establish secure access to your personal information. We also will ask you for your name, address, phone number, and email address. This contact information that you provide at registration allows you to access online the order form, feedback forms, discussion forums, and product information requests without having to re-enter your personal information every time you access these areas. When you access the online order form, we ask you for your name, billing address, shipping address (if different from billing address), phone number, email address, and payment information. The payment and contact information is used to complete and verify the transaction, and your email address allows us to contact you regarding the receipt, completion, and shipping of your transaction and product. We maintain this information in our secure customer database.

5. Children.

Collection and use of information from children under the age of 13 will be made in compliance with the Children's Online Privacy Act of 1998. Specifically, Ballard & Tighe, Publishers will:

Provide parents or guardians with notice of our information practices; obtain prior verifiable parental or guardian consent for the collection, use, and/or disclosure of personally identifiable information from children; provide a parent or guardian, upon request, with the means to review the personally identifiable information collected from his or her child; provide a parent or guardian with the opportunity to prevent the further use of personally identifiable information that already has been collected, or the future collection of personally identifiable information such as name, school name, grade, and state, from that child; limit collection of personally identifiable information for a child's online participation in a game, prize offer or other activities to personally identifiable information that is reasonably necessary to participate in the activity; perform demographic analysis, and establish procedures to protect the confidentiality, security, and integrity of the personally identifiable information collected from children.

6. Responsibility for Content.

Ballard & Tighe does not screen, edit, or review material submitted by users. Therefore, Ballard & Tighe accepts no responsibility or liability for any material that may reside in or is accessed by the Ballard & Tighe web site other than Ballard & Tighe information. Ballard & Tighe has no responsibility with respect to other sites.

You may not link, upload, post, or transmit any illegal, obscene, offensive, or otherwise inappropriate material to the Ballard & Tighe web site. You agree to indemnify Ballard & Tighe from any damage, loss, cost, or expense that may be incurred by Ballard & Tighe as a result of the material you link, upload, post, or transmit to the Ballard & Tighe web site. Ballard & Tighe has no duty to review or edit materials submitted by users. Ballard & Tighe may remove any such materials at any time for any reason.

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Domain names and trademarks of other sites, or contained in information accessed at other sites, are the sole property of their respective owners. No affiliation with, endorsement of, or sponsorship by Ballard & Tighe should be inferred.

8. Exclusions of Warranties.

While Ballard & Tighe has made every effort to maintain accurate information on this web site, the information contained herein may contain errors or omissions.

BALLARD & TIGHE DOES NOT WARRANT THAT THE BALLARD & TIGHE SITE WILL MEET YOUR REQUIREMENTS, WILL BE ACCURATE, OR WILL BE UNINTERRUPTED OR ERROR FREE. WE EXPRESSLY EXCLUDE AND DISCLAIM ALL EXPRESS AND IMPLIED WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE. WE SHALL NOT BE RESPONSIBLE FOR ANY DAMAGE OR LOSS OF ANY KIND ARISING OUT OF OR RELATED TO YOUR USE OF THE BALLARD & TIGHE SITE, INCLUDING WITHOUT LIMITATION DATA LOSS OR CORRUPTION, REGARDLESS OF WHETHER SUCH LIABILITY IS BASED IN TORT, CONTRACT, OR OTHERWISE.

Visitors will find links from ballard-tighe.com to independently owned, controlled, and/or managed World Wide Web or Internet sites whose content we have found of possible interest to our visitors. In many cases, but not always, the links represent cooperative projects or mutual links established with the organizations connected with these sites. While we initially visit these sites to which we directly link, please note that we do not monitor or control the content that appears on these sites and such content may be constantly changing. We recommend that children check with their parents or teachers before clicking on to any new sites, and we encourage all end users of ballard-tighe.com to read the privacy policies of all linked sites before navigating through them.

9. Submissions.

All concepts, ideas, comments, manuscripts, illustrations, and all other materials disclosed or offered to Ballard & Tighe on or in connection with this web site are submitted without any restrictions or expectation of confidentiality. Ballard & Tighe shall have no financial or other obligations to you when you submit such information, nor shall you assert any proprietary or moral right of any kind with respect to such submissions. Ballard & Tighe shall have the right to use, publish, reproduce, transmit, download, upload, post, display, or otherwise distribute your submissions in any manner without notice or compensation to you.

10. Limitation of Liability.

IN NO EVENT SHALL BALLARD & TIGHE OR ITS EMPLOYEES, AGENTS, LICENSORS OR CONTRACTORS BE LIABLE FOR ANY INCIDENTAL, CONSEQUENTIAL, PUNITIVE, OR MULTIPLE DAMAGES OF ANY KIND.

Please note that we may revise our above policy as the content on our web site continues to change. We hope that you enjoy exploring our web site.