

CONTRACT NAME: AGREEMENT BETWEEN DREAMBOX LEARNING, INC. AND DAVIS JOINT UNIFIED SCHOOL DISTRICT

BRIEF DESCRIPTION OF CONTRACT: This is an agreement between DreamBox Learning, Inc. and DJUSD. DreamBox Learning is an adaptive learning platform that serves as a supplemental math intervention to close learning gaps in math. It integrates assessment, aligns to state standards and adapts to the individual learner.

The total cost of this service will be \$1,250 and will be paid by Montgomery Elementary School's site discretionary funds.

DAVIS JOINT UNIFIED SCHOOL DISTRICT

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

**EDUCATION CODE SECTION 49073.1 AMENDMENT TO THE DREAMBOX
LEARNING AGREEMENT BETWEEN THE DAVIS JOINT UNIFIED SCHOOL DISTRICT
AND DREAMBOX, INC.**

THIS AMENDMENT ("Amendment") to the **Dreambox** Agreement by and between the Davis Joint Unified School District, a public school district of the state of California and Dreambox Learning Inc., 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 a supplementary online math program for all students, all ages. Dreambox platform adapts to individual learners and personalized math instruction from intervention through enrichment.

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's Greg Gardner 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: _____

Dreambox Learning [Vendor]

By: Todd Haysen

Its: [Signature]



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QUOTE

Date:	December 27, 2016
Quote #	DB121634029
Quote Type:	New
Promo Code:	
Valid Until:	2/25/2017 12:00:00 AM

Customer		Prepared By
Dave Plaut Math Coach dplaut@djusd.net (530) 759-2100	DAVIS JOINT UNIF SCHOOL DIST MARGUERITE MONTGOMERY ELEMENTARY, CA 1441 DANBURY DR. DAVIS, CA 95616	Wendy DeWeirdt Senior Regional Sales Manager wendy@dreambox.com

Qty	Description	Price	Sub-Total
50	Elementary Student Subscription 1-Year	\$25.00	\$1,250.00
	Sales Tax	\$0.00	\$0.00
	Outside of the states of Washington South Carolina, Arizona and Hawaii, customers are responsible for remitting any taxes imposed by their states.	Total Amount:	\$1,250.00

Purchase Options:

- To pay by purchase order, please fax your purchase order to 425-484-6476.
- To pay by credit card please click
<https://dreambox.secure.force.com/pmtx/SiteQuoteApproval?id=00680000013cdQQ>

This Quote is specifically conditioned upon the acceptance of the below terms and conditions. Issuance of a purchase order and/or payment for any of the products listed in this Quote by Customer shall be deemed acceptance of the below terms and conditions.

Terms and Conditions:

This quotation is valid for 30 days from delivery unless otherwise indicated or earlier terminated by DreamBox Learning. Customer must issue a purchase order referencing the Quote number above to complete the sale of the products listed in this Quote. DreamBox Learning objects to any different or additional terms in Customer's purchase/sales order documentation, except as expressly agreed to in writing. Applicable activation codes for the subscriptions purchased will be issued following receipt of the authorized purchase order. Annual subscriptions begin on date of receipt of the applicable purchase order by DreamBox or upon the annual renewal date, as applicable. Billing terms are net 30 days from receipt by DreamBox Learning of the purchase order. All taxes, fees, levies are subject to change at the time of the order. Payments outstanding more than 30 days may result in cancellation of the subscriptions. All fees and payments are non-refundable. No failure or delay by DreamBox Learning in exercising any right shall constitute a waiver of that right. The subscriptions referenced in this Quote are subject to the acceptance of all terms set forth in the current version of the Terms of Use at <http://www.dreambox.com>. DreamBox Learning does not warrant its products or services except as specifically agreed to in writing. Any dispute regarding this Quote shall be governed by the laws of the State of Washington, and the parties agree to accept the exclusive jurisdiction of the state and federal courts located in King County, Washington, regardless of conflicts of laws. Initial Term of this Agreement shall be 12 calendar months from the Billing Start Date as set forth in the preceding Services Agreement. At the end of the initial term, this Agreement shall be able to be renewed automatically for consecutive renewal terms of 12 calendar months.

Termination for cause can be effected by either party's written notice, effective upon receipt, if the other party has failed to cure a material breach for 30 consecutive days after receiving a detailed written request to cure. Such termination shall be customer's sole and exclusive remedy in case of non- or mal-performance by DreamBox Learning including but not limited to DreamBox Education services less effective than agreed. No warranties are extended. All services are provided "as is." DreamBox Learning disclaims all express and implied warranties.