

**CONTRACT NAME: AGREEMENT BETWEEN LEARNING
UPGRADE AND DAVIS JOINT UNIFIED SCHOOL DISTRICT**

BRIEF DESCRIPTION OF CONTRACT: This agreement is between Learning Upgrade and Davis Joint Unified School District to provide annual software licenses for student and teacher courses. The software provides supplemental math and language arts activities that benefit the students at Harper Junior High School.

FISCAL IMPACT: The cost of this software is allocated in the site budget for 2017-2018.



**Learning
Upgrade®**

School Codes

Harper Junior High School CA
PO# 180473, August 14, 2017
Elizabeth Merrill
License Expires 07/31/2018

Annual License Reusable Course Codes

Course Code	Use to add:	Expires:	Limits:
7498115	Student Courses	07/31/2018	35 Students
7331358	Teacher Whiteboard Courses	07/31/2018	

This license enables teachers working at this school to enroll students into the Learning Upgrade student courses. In addition, teachers can enroll themselves into the Learning Upgrade teacher whiteboard courses. All courses will expire on the expiration date listed above.

Please do not distribute these codes outside of this school.

Getting Started:

1. Visit **www.learningupgrade.com**
2. Click **New User** at the top to create your teacher account, using either code above
3. Click **Log In** and type in your selected username and password
4. Click on **Add New** to begin adding your students
5. Add student names on the left side, select grade level and courses, enter the student license code, and click **Enroll**
6. Select **Teacher Menu** at top, and click **Print Passwords** to print your students' login information
7. Give your students their usernames and passwords. Students log in and click Start next to each course
8. To add a whole-class teacher course for projector or Smartboard, select the **Courses Tab** and click **Add Teacher Course**
9. Use the **Student Monitor** to track student progress and print certificates

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Privacy Policy and Terms of Use

PRIVACY POLICY

August 2017

Learning Upgrade LLC works to protect the privacy of our users, including children, parents, and teachers. We will not share your personal information with third parties without your consent. We will use your personal information only to serve the function of providing our learning programs to you and your students.

WHO WE ARE AND HOW TO CONTACT US

Learning Upgrade LLC is a California based company. Visit [About](#) to learn more about our company. Our company mailing address and email are:

10531 4S COMMONS DR STE 446
SAN DIEGO CA 92127
info@learningupgrade.com

WHAT INFORMATION WE COLLECT

Learning Upgrade collects personally identifiable information from visitors and subscribers of our app and/or website on a voluntary basis only. The personal information collected on a voluntary basis includes:

- Parents or Adult Learners signing up for free trials: adult name, student name, adult email address
- Parents or Adult Learners purchasing a course: free trial information and credit card information, billing address, and phone number. Note that we do not store credit card information, it is only used for one transaction and no longer stored.
- Teachers and School Staff: school information, teacher name, email address, phone, student names, grade level
- Children: we do not directly collect information from students. Our courses assess each student's ability on each lesson and store student progress for each lesson, which is reported to parents and teachers.

- If we make changes to the personally identifiable information we collect we will inform you with a notification on our site. The information that we receive from visitors and/or subscribers will be used for internal purposes only and will not be sold or shared with outside parties.

HOW WE USE THE INFORMATION WE KNOW ABOUT YOU

- Learning Upgrade only shares personal information we collect and student progress directly with the person or school who created the account and/or purchased the program.
- We share student progress reports with parents or adults who create a home account.
- We share student progress reports with the school and district staff who create a school account and then enroll and manage student courses, and with each student and her parents through an individual student log-in.
- We do not share the information with third parties unless you authorize us to do so.

To correct any mistakes in the personal information given, use [Contact](#) to contact us by email or phone.

PRIVACY POLICY FOR CHILDREN UNDER 13 YEARS OF AGE

The web pages on our site that require entering information about a child are designed for adults and parents to use. We do not ask for and children should not enter personal information about themselves on our web site. Once parents or teachers enroll students in our courses, the student portion of the courses do not ask students for or collect any personal information.

We understand that our student users who are under 13 years of age need special safeguards and privacy protection and it is our intent to fully comply with the Children's Online Privacy Protection Act (or "COPPA").

- We collect children's usernames and course pre-test information. We also collect cookies, IP Address, device type, and course progress, and state geolocation.
- Prior to enrolling in and/or using a Learning Upgrade online course, student account information is entered by a parent, teacher, or guardian. Only the parent, teacher, or guardian will provide personal information for the child using Learning Upgrade's online courses. After the initial registration process, Learning Upgrade does not collect personal information from the children.
- These are third parties that collect information through the Learning Upgrade app and/or website: [Google Analytics](#)
- Teachers can change, edit, and remove a child's personal information using the Teacher Menu. A parent or guardian can remove a child's personal information by contacting info@learningupgrade.com

- If we make any changes to our privacy policy, we will contact teachers, parents, or legal guardians using the email provided or through a notification within the program.

WHEN WE MAY BE FORCED TO DISCLOSE

Learning Upgrade may be forced to disclose information under special circumstances such as by government order, where required by law, or if necessary to protect a person from harm or a person from harming our company.

USE OF COOKIES

Learning Upgrade uses cookies to help personalize your online experience. A cookie is a small piece of data sent from our website and stored on your computer via your web browser. This enables our system to recognize your browser and return your account to specific pages. You can decline the use of cookies through the settings on your web browser. This may deactivate certain features within Learning Upgrade.

OPTING-OUT

If you do not want Learning Upgrade to collect your information, you can opt-out by contacting us to close your account and optionally to remove your personal information from our records.

LINKS TO OTHER SITES

When you use a link from our web site to other web sites, the privacy policy of the other web site applies.

SECURITY

We take every precaution to protect our users' information. To protect your online credit card order data, we use Secure Sockets Layer (SSL) technology. This technology is the industry standard for providing secure online transactions. When you enter your credit card information into an order form, SSL encrypts the data so that it cannot be decoded as it travels over the Internet.

To help protect your account, please keep your password secure. We suggest that you pick a non-obvious password that mixes numbers and letters. In addition, we recommend that you do not divulge your password to anyone. We will never ask you for your password in an unsolicited phone call or email. Ultimately, you are responsible for maintaining the secrecy of your passwords and any account information.

YOUR AGREEMENT AND ACCEPTANCE OF THESE TERMS

By using this site, you signify your assent to our Privacy Policy. If you do not agree with these policies and terms, please refrain from using our site. Your use of this site indicates acceptance of this privacy policy.

Learning Upgrade reserves the right to make updates and changes to our privacy policy and terms of use. We will notify users of changes made to the privacy policy and terms of use via our site. Users should periodically review this page to be aware of the information that Learning Upgrade is collecting.

QUESTIONS?

Contact us at info@learningupgrade.com

TERMS OF USE

SERVICES

This website consists of multiple sites with a shared interface, software, mobile products and services and links which are all owned and operated by Learning Upgrade LLC. This terms of use will refer to all websites, apps, and services as “Learning Upgrade”. Visiting, using, and/or subscribing to Learning Upgrade constitutes acceptance and agreement to these terms of use. If you do not consent to these terms of use, you may not visit or access any Learning Upgrade websites, apps, or services.

ACCOUNTS

For individuals under the age of 18, Learning Upgrade accounts must be authorized and supervised by a parent, educator, or legal guardian. Educators using Learning Upgrade must obtain the permission of a minor’s parent or legal guardian. By downloading and/or accessing Learning Upgrade you are confirming that you are an adult above the age of 18, the parent or legal guardian of an individual under the age of 18, or a person authorized by the parent or legal guardian of an individual under the age of 18. If you are under the age of 18, you must obtain the permission of a parent, legal guardian, or an authorized adult.

Learning Upgrade requires a user created account to access our courses and services. You must agree to provide accurate and current information when creating this account. You must accept responsibility for all activity logged using your created username and password. You must contact Learning Upgrade immediately if any unauthorized usage of your account occurs.

Learning Upgrade reserves the right to remove, delete, edit, or suspend content offered without notice, and without liability. Learning Upgrade reserves the right to charge users for course content and account functionality which were previously available at no cost.

LICENSE USAGE

Learning Upgrade produces reading and math online courses featuring songs, video, and games for the web and through our mobile app. Students can access our courses using a computer or mobile device. Teachers and parents can access reports and student account information using a computer. A Learning Upgrade license grants an individual or an institution a personal license to access our courses and services. With this license, you agree not to copy, alter, reverse engineer, license, or transfer any part of your Learning Upgrade license access. All names, logos, songs, videos, games, graphics, sounds, and computer code contained on Learning Upgrade are owned by Learning Upgrade LLC, and are protected by trademark, patent, copyright, and other intellectual property rights. Absolutely no part or component of our website may be used, copied, rebroadcasted, relicensed, or redistributed without Learning Upgrade's expressed written consent.

PURCHASING AND CANCELLATION

You may access and use the free and trial versions of Learning Upgrade's course offerings at no cost. You will have the opportunity to purchase additional course access once your free trial expires or is exhausted. Monthly and annual license subscriptions for the Learning Upgrade app will automatically renew at the end of each subscription period. By registering and creating an account with Learning Upgrade you agree that we are authorized to charge you for any courses or services purchased by you according to our payment terms. You may cancel your Learning Upgrade subscription at any time. This cancellation is not retroactive. Your subscription will end at the end of your current paid period. Under no conditions will Learning Upgrade be obligated to provide refunds for purchases made.

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DAVIS JOINT UNIFIED SCHOOL DISTRICT

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

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

THIS AMENDMENT ("Amendment") to the **Learning Upgrade** Agreement by and between the Davis Joint Unified School District, a public school district of the state of California and **Learning Upgrade**, dated August 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 August 23, 2017 as follows:

WHEREAS, Vendor provides an application with tools to individualize and support student learning in a differentiated way with formative assessments.

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 18 Day of October, 2017.

Davis Joint Unified School District

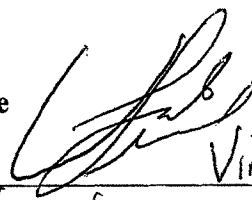
By: _____

Its: _____

Learning Upgrade

By: _____

Its: _____


Vinod Lobo
10/20/2017