



## INDEPENDENT CONTRACTOR AGREEMENT FOR SERVICES OF LESS THAN \$5,000

WHEREAS, Adams 12 Five Star Schools in the County of Adams and State of Colorado (the "District") has the statutory authority to contract with persons, firms, consultants, and/or entities for the provision of services to the District; and WHEREAS, the District has determined that a need exists to retain a Contractor to provide the service hereinafter specified; and

WHEREAS, Edgenuity, Inc. (the "Contractor") is qualified to provide the services required by the District; and

WHEREAS, the District maintains certain confidential information including without limitation trade secrets, student records, employee records, scientific or technical information, designs, processes, procedures, improvements, confidential business or financial information, and other information relating to any of the District's business bids, techniques, operations, services, contracts, forms, and all other trade secret information not clearly known to the public ("Confidential Information"). Confidential Information also includes, without limitation, Edgenuity's service, its user interface design and layout, pricing information, and its licensed material.

NOW, THEREFORE, the parties desire to enter into this Agreement subject to the following terms and conditions:

- 1. Scope of Services.** The Contractor shall perform the Services as follows: Concurrent Users Licenses Virtual Classroom and Web Administrator (60) Courses to choose - Vantage Point HS. Subject to the District's Data Privacy Addendum attached as Exhibit B. This Agreement is the entire agreement between the District (including District employees and other End Users). In the event that the Vendor enters into terms or use agreements or other agreements or understandings, whether electronic, click-through, verbal or in writing, with District employees or End Users, such agreement shall be null, void and without effect, and the terms of this Agreement shall apply. The Contractor will provide the services consistent with generally accepted industry standards for the Contractor's customary services. On the effective date of this Agreement, and during the term of this Agreement, the Contractor will be fully qualified and will have all licenses, permits, certificates, registrations, and approvals needed to perform its obligations under this Agreement. Include the individual names of all service providers that will perform any of the services under this agreement (add additional pages as needed):
- 2. Schedule.** The District and the Contractor agree that the services shall be provided at the following mutually agreed locations and times, or as agreed to in writing by the parties after the approval of this Agreement: Online - Vantage Point
- 3. Term.** The provision of services under this Agreement shall commence on November 10, 2016, and will terminate on November 9, 2017; however, under no circumstances will the Term exceed one fiscal year from the commencement date. The Contractor understands and agrees that the District has no obligation to extend this Agreement's term, or contract for the provision of any future services, and makes no warranties or representations otherwise.
- 4. Remuneration.** The Contractor's fee the District is obligated to pay for the services rendered under this Agreement is as follows: \$600.00 and under no circumstances whatsoever shall the fee exceed \$600.00. The District shall process the Contractor's payment within thirty (30) days from the receipt of a valid invoice to the District's Accounts Payable office.
- 5. Invoicing Requirements.** The Contractor shall furnish the following information, as applicable, within invoices that are submitted for request for payment to the District:

  - a. Dates of which services were rendered
  - b. Detailed description of the services or activities performed
  - c. If services were on a "fixed price" basis, a summary of provided milestones as per the scope of work
  - d. Names of the individuals providing services
  - e. Hours worked

- f. Bill rate or compensation for the services rendered
- g. All 'Other Direct Expenditures' shall include vendor name, expense type, expense description, and date of expense. (The District uses the prescribed Federal guidelines for travel reimbursement. For further information, please go to the District website and see Superintendent Policy 4150 for guidelines on accepted daily rates.)

**6. Independent Contractor.** Contractor shall perform its duties hereunder as an independent contractor and not as an employee. Neither Contractor nor any agent or employee of contractor shall be deemed to be an agent or employee of the District. Contractor and its employees and agents are not entitled to unemployment insurance or workers compensation benefits through the District and the District shall not pay for or otherwise provide such coverage for Contractor or any of its agents or employees. Unemployment insurance benefits shall be available to Contractor and its employees and agents only if such coverage is made available by Contractor or a third party. Contractor shall pay when due all applicable employment taxes and income taxes and local head taxes incurred pursuant to this agreement. Contractor shall not have authorization, express or implied, to bind the District to any contract, liability or understanding, except as expressly set forth herein. Contractor shall (a) provide and keep in force workers' compensation and unemployment compensation insurance in the amounts required by law, (b) provide proof thereof when requested by the District, and (c) be solely responsible for its acts and those of its employees and agents.

**7. Conflict of Interest.** The signatories aver that to their knowledge, no employee of the District has any personal or beneficial interest whatsoever in the service or property described in this agreement. Contractor has no interest and shall not acquire any interest, direct or indirect, that would conflict in any manner or degree with the performance of Contractor's services and Contractor shall not employ any person having such known interests.

**8. No Unauthorized Use of Names.** Neither party will use the other's name in any advertisement, promotion, business card, or similar circumstance, without the other party's prior written consent.

**9. Assignment Prohibited.** The Contractor shall not assign any of the services that require performance under the Agreement. In this regard, the Contractor understands that the performance of the scope of work is considered personal services under this Agreement.

**10. Compliance with Law and District Policies.** Contractor shall strictly comply with all applicable federal and state laws, rules, and regulations in effect or hereafter established, including, without limitation, laws applicable to discrimination and unfair employment practices. Contractor shall also comply with all applicable District policies. Contractor shall complete a criminal background check on all employees who work under this Agreement and maintain records of such during the term of the Agreement. Those employees who have been convicted of, pled no contest to, or received a deferred sentence or deferred prosecution for any crime involving a child will not be allowed to work on District property, with District staff or students, or have access to District information. Contractor shall provide proof of background checks upon request by the District. Contractor will be responsible for following all federal, state, and local privacy and confidentiality requirements in performing background checks.

**11. Modification/Entire Agreement/No Prior Agreement.** This Agreement constitutes the entire understanding between the parties hereto and may not be modified and/or amended unless any such modification or amendment is reduced to writing and signed by both parties. The Contractor further understands and agrees that this Agreement supersedes any prior written or verbal agreement, promise, representation, understanding, or course of conduct between the parties.

**12. Termination/Revocation.** Either party may revoke or otherwise terminate this Agreement, with or without cause, by notifying the other party in writing of its intention to take such action. Any such writing shall be sent to the other party by certified mail, return receipt requested, and shall be effective thirty (30) days after the date of mailing. In the event of termination, the District shall be obligated to pay the Contractor only for services rendered up to the effective date of termination. The District's obligations under this Agreement shall automatically terminate in the event of the insolvency, receivership, bankruptcy filing, or dissolution of Contractor. In addition, the District may terminate this Agreement immediately without prior notice if the Contractor commits an act negligent, reckless or willful misconduct in providing services to the District, or if any contract by the

District with any third party on which this Agreement substantially depends is terminated or the District is unable for any other reason to provide services for to the party/parties to that contract.

**13. Fund Availability.** Financial obligations of the District payable after the current fiscal year are contingent upon funds for that purpose being appropriated, budgeted, and otherwise made available.

**14. Indemnification.** The Contractor agrees to indemnify, defend and hold the District harmless from and against any third party claim, cause of action, judgment, loss, demand, suit, or legal proceeding brought against the District or its employees, representatives, or agents, which arises directly from any act or omission of the Contractor, including but not limited to any misconduct or neglect by the Contractor and/or its employees, subcontractors, or agents. Furthermore, to the maximum extent permitted by law, the Contractor will defend the District from any third party claim and will indemnify the District against any liability for any Employee Benefits for the Contractor and/or any of its employees, subcontractors, or agents, imposed on the District; and the Contractor will reimburse the District for any award, judgment or fine against the District based on the position the Contractor and/or any of its employees, subcontractors or agents, who provides any services to the District related to this Agreement was ever the District's employee, and all attorneys' fees and costs the District reasonably incurs defending itself against any such liability.

**15. Governing Law.** Colorado law, and rules and regulations issued pursuant thereto, shall be applied in the interpretation, execution, and enforcement of this agreement. Any provision included or incorporated herein by reference which conflicts with said laws, rules, and regulations or which purports to negate this or any other provision of this Agreement in whole or in part shall be null and void.

**16. Severability.** If it is found by a court of competent jurisdiction or by operation of law that a term or provision of this Agreement is invalid or unenforceable, the remainder of the Agreement shall be unimpaired and continue in force and effect, and the invalid or unenforceable term or provision shall be replaced by such valid term or provision as comes closest to the intention underlying the invalid or unenforceable term or provision.

**17. Governmental Immunity.** No term or condition of this agreement shall be construed or interpreted as a waiver, express or implied, of any of the immunities, rights, benefits, protections, or other provisions, of the Colorado Governmental Immunity Act, CRS §24-10-101 et seq., or the Federal Tort Claims Act, 28 U.S.C. §§1346(b) and 2671 et seq., as applicable now or hereafter amended.

**18. Binding Arbitration Prohibited.** The District does not agree to binding arbitration by any extra-judicial body or person. Any provision to the contrary in this contract or incorporated herein by reference shall be null and void.

**19. Insurance.** The District will not include the Contractor as an insured under any policy the District has for itself, including, without limitation, any liability, life, collision, comprehensive, health, medical, workers' compensation or unemployment compensation insurance policy. The Contractor shall provide the insurance as the service requires. Insurance provisions for small provider status apply to the person or party who provides a limited service one time or for a specified period at a single site.

**20. No Waiver.** No assent, expressed or implied, by the District to any breach of any obligation or covenant by the Contractor shall be construed as a waiver of any subsequent or other breach by the Contractor. Notwithstanding any other provision of this Agreement to the contrary, no term or condition of this Agreement shall be construed or interpreted as a waiver, expressed or implied, unless it is in a written document executed by the party against whom the waiver is sought to be enforced.

**21. Public Contracts for Services.** Contractor certifies, warrants, and agrees that it does not knowingly employ or contract with an illegal alien who shall perform work under this agreement and shall confirm the employment eligibility of all employees who are newly hired for employment in the United States to perform work under this agreement, through participation in the E-Verify Program or the State program established pursuant to CRS §8-17.5-102(5)(c), Contractor shall not knowingly employ or contract with an illegal alien to perform work under this agreement or enter into a contract with a subcontractor that fails to certify to Contractor that the subcontractor shall not knowingly employ or contract with an illegal alien to perform work under this agreement. Contractor (a) shall not

use E-Verify Program or State program procedures to undertake pre-employment screening of job applicants while this agreement is being performed, (b) shall notify the subcontractor and the District within three days if Contractor has actual knowledge that a subcontractor is employing or contracting with an illegal alien for work under this agreement, (c) shall terminate the subcontract if a subcontractor does not stop employing or contracting with the illegal alien within three days of receiving the notice, and (d) shall comply with reasonable requests made in the course of an investigation, undertaken pursuant to CRS §8-17.5-102(5), by the Colorado Department of Labor and Employment. If Contractor participates in the State program, Contractor shall deliver to the District a written, notarized affirmation, affirming that Contractor has examined the legal work status of such employee, and shall comply with all of the other requirements of the State program. If Contractor fails to comply with any requirement of this provision or CRS §8-17.5-101 et seq., the District may terminate this agreement for breach and, if so terminated, Contractor shall be liable for damages.

**22. Public Contracts with Natural Persons.** Contractor, if a natural person eighteen (18) years of age or older, hereby swears and affirms under penalty of perjury that he or she (a) is a citizen or otherwise lawfully present in the United States pursuant to federal law, (b) shall comply with the provisions of CRS §24-76.5-101 et seq., and (c) has produced one form of identification required by CRS §24-76.5-103 prior to the effective date of this agreement

**23. Paragraph Headings.** The captions and headings set forth herein are for convenience of reference only, and shall not be construed to limit or define the terms and provisions hereof.

**24. Conflict.** In the event of a conflict between the terms of the Agreement and any exhibits attached to this Agreement, the terms of this Agreement shall prevail.

**25. Relief the District May Seek.** The Contractor further agrees that, if the Contractor violates Paragraph 26 of this Agreement, it would be difficult to determine the damages the District would suffer including, but not limited to, losses attributable to lost confidential information. Accordingly, the Contractor agrees that if the Contractor violates Paragraph 26 of this Agreement, the District will be entitled to seek an Order for injunction relief and/or for specific performance, or their equivalent, from a court, including requirements that the Contractor take action or refrain from action to preserve the secrecy of the District's Confidential Information and to protect the District from additional damages, and the Contractor agrees the District does not need to post a bond to obtain an injunction and waives the Contractor's right to require such a bond.

**26. Confidential Information Belongs Solely to the District.** The District's Confidential Information and all other confidential information and data relating to the District's business are the District's exclusive property, and the Contractor therefore agrees that:

- a. All District notes, data, reference materials, sketches, drawings, memoranda, disks, documentation and records in any way incorporating or reflecting and of the Confidential Information and all proprietary rights in the District's Confidential Information, including the District's copyrights, trade secrets and patents shall belong exclusively to the District.
- b. At all times while this Agreement is in effect, the Contractor will keep secret and will not disclose, for any purpose outside the scope of this Agreement, to any third party, take or misuse any of the District's Confidential Information, or any other confidential information the Contractor acquires or has access to because of its provision of services.
- c. At all times while this Agreement is in effect, the Contractor will not use or seek to use any of the District's Confidential Information for the Contractor's own benefit or for the benefit of any other person or business in any way adverse to the District's interests.
- d. The Contractor will 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 District for any purpose outside the scope of this Agreement. Contractor shall 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.
- e. On the District's request or on termination of this Agreement, the Contractor will make the service available for District to export any District data uploaded or entered into the service.
- f. After termination of this Agreement, the Contractor will preserve the secrecy of and will not disclose directly or indirectly to any other person or business any of the District's Confidential Information.

g. The Contractor will promptly advise the District of any unauthorized disclosure or use of the District's Confidential Information by any person or entity.

The Parties agree this provision is intended to express the District's rights and the Contractor's duties to the District under the Colorado Uniform Trade Secrets Act, C.R.S. 7-74-101, et seq., and other applicable law. Additionally, the Contractor's obligation regarding the preservation and return of the District's Confidential Information will continue for sixty (60) days after expiration or termination of this Agreement.

**27. Notices, Process.** Any notice this Agreement requires must be in writing and will be effective only if hand-delivered or sent by certified U.S. mail, return receipt requested, to the party entitled to receive the notice at the Contractor's address provided in this Agreement, while the District's Notice address is as follows: Adams 12 Five Star Schools, Chief Operating Officer, 1500 East 128<sup>th</sup> Avenue, Thornton, CO 80241; or at such other address that either party may provide later to the other party. Each party agrees to waive service of process in any action brought to enforce or to interpret this Agreement and the parties further agree that service of the complaint and any other pleading, discovery, order or document in any such action that would otherwise have to be served by personal service will be deemed served three (3) days after being sent to the other party and that party's attorney as provided above.

**28. Purposely Deleted**

IN WITNESS OF THE PARTIES AGREEMENTS, the District and the Contractor have executed this Agreement on the date(s) indicated below:

CONTRACTOR: Edgenuity Inc.

*Sari Factor*  
Signature **Sari Factor**

CEO  
Name and Title

8860 E. Chaparral Rd, Ste. 100  
Address

Scottsdale, AZ 85250  
City, State, Zip

31-1692050  
Tax ID

1/26/2017  
Date

I hereby certify that the individuals requested in this Agreement are not school district employees, and are not family members of mine. Any finding to the contrary may require repayment and/or further disciplinary action up to and including termination.

**ADAMS 12 FIVE STAR SCHOOLS  
IN THE CITY OF THORNTON, COUNTY OF ADAMS  
STATE OF COLORADO**

RECOMMENDED BY:

\_\_\_\_\_  
Site Administrator's Signature

\_\_\_\_\_  
Name and Title

\_\_\_\_\_  
School or Department

\_\_\_\_\_  
Date

APPROVED BY:  
*Cindy Roth*  
Authorized Designee of the Board of Education

*Cindy Roth, Buyer*  
Name and Title

1/27/17  
Date

This form must be completed in full, submitted to the District's Purchasing Department, and approved and executed by the duly authorized designee of the Board of Education prior to the commencement of the Contractor's provision of services. THE DISTRICT SHALL NOT BE LIABLE FOR PAYMENT FOR ANY SERVICES PERFORMED BY THE CONTRACTOR PRIOR TO APPROVAL.

**Exhibit B**  
**Adams 12 Five Star Schools**  
**Data Privacy Addendum**

The provisions of this Data Privacy Addendum are a part of the Independent Contractor Agreement and apply to all Contractors that will or may have access to student information.

**Covered Data**

As used in this addendum, confidential information, confidential data, student information, student data, and personally identifiable information ("PII") have the same meaning. Student PII means information collected, maintained, generated or inferred that alone or in combination personally identifies an individual student or the student's parent or family, in accordance with C.R.S. § 22-16-103(13) & 34 C.F.R. § 99.3.

**Compliance with State and Federal Law**

All data sharing, use, and storage will be performed in accordance with the requirements of the Family Educational Rights and Privacy Act of 1974 as amended, 20 U.S.C. § 1232g & 34 C.F.R. § 99 ("FERPA") and C.R.S. § 22-16-101, *et seq.*

**Contractor Obligations:**

1. *Uses and Disclosures as Provided in the Agreement.* Contractor may use and disclose the confidential information provided by the District only for the purposes described in the Agreement and only in a manner that does not violate local or federal privacy regulations. Only the individuals or classes of individuals will have access to the data that need access to the confidential information to do the work described in the Agreement. Contractor shall ensure that any subcontractors who may have access to confidential information are contractually bound to follow the provisions of the Agreement.
2. *Nondisclosure Except as Provided in the Agreement.* Contractor shall not use or further disclose the confidential data except as stated in and explicitly allowed by the Agreement and state and federal law. Contractor does not have permission to re-disclose data to a third party except for purposes of this Agreement.
3. *Safeguards.* Contractor agrees to take appropriate commercially reasonable administrative, technical and physical safeguards designed to protect the security, privacy, confidentiality, and integrity of student information. Contractor shall ensure that student information is secured and encrypted to the greatest extent practicable during use, storage and/or transmission. Contractor agrees that student information will be stored on equipment or systems located domestically.
4. *Reasonable Methods.* Contractor agrees to use "reasonable methods" to ensure to the greatest extent practicable that Contractor and all parties accessing data are compliant with state and federal law. Specifically, this means: 1. Only de-identified student data may be used for the purposes of educational research. 2. Contractor must protect confidential data from re-identification, further disclosures, or other uses, except as authorized by the District in accordance with state and federal law. Approval to use confidential data for one purpose does not confer approval to use it for another.

5. *Confidentiality.* Contractor agrees to protect student information according to acceptable standards and no less rigorously than they protect their own confidential information.
6. *Reporting.* Contractor shall report to the District within 48 hours of Contractor becoming aware of any use or disclosure of the confidential information in violation of the Agreement or applicable law.
7. *Data Destruction.* District Confidential information must be destroyed in a secure manner or returned to the District at the end of the work described in the Agreement. Contractor agrees to send a written certificate that the data was properly destroyed or returned within 30 days of the end of the work as described in the proposal. Additionally, during the term of the Agreement, Contractor shall destroy confidential information upon request of the District as soon as practicable. Contractor shall destroy confidential information in such a manner that it is permanently irretrievable in the normal course of business.
8. *Minimum Necessary.* Contractor attests that the confidential information requested represents the minimum necessary information for the services as described in the Agreement and that only necessary individuals or entities who are familiar with and bound by this addendum will have access to the confidential information in order to perform the work.
9. *Authorizations.* When necessary, Contractor agrees to secure individual authorizations to maintain or use the confidential information in any manner beyond the scope or after the termination of the Agreement.
10. *Data Ownership.* The District is the owner of all data and materials uploaded or entered within the service. Contractor does not obtain any right, title, or interest in any of the data furnished by the District.
11. *Misuse or Unauthorized Release.* Contractor shall notify the District as soon as possible upon discovering the misuse or unauthorized release of student PII held by Contractor or one of its subcontractors, regardless of whether the misuse or unauthorized release is the result of a material breach of the Agreement.
12. *Data Breach.* In the event of a data breach, Contractor will be responsible for contacting and informing any parties, including students, which may have been affected by the security incident. Contractor will promptly notify the District upon the discovery of any data breach.

### **Prohibited Uses**

Contractor shall not sell student PII; use or share student PII for purposes of targeted advertising; or use student PII to create a personal profile of a student other than for accomplishing the purposes described in the Agreement.

Notwithstanding the previous paragraph, Contractor may use student PII to ensure legal or regulatory compliance or take precautions against legal liability; respond to or participate in the judicial process; protect the safety of users or others on Contractor's website, online service, or application; or investigate a matter related to public safety. Contractor shall notify the District as soon as possible of any use described in this paragraph.

### **School Service Contract Provider Additional Provisions**

If Contractor is a School Service Contract Provider – defined in C.R.S. § 22-16-103 as an entity that enters into a contract with the District to provide a website, online service, or application that is designed and marketed primarily for using in a school and collects, maintains or uses student personally identifiable information – the following provisions shall apply:

1. *Data Collection Transparency and Privacy Policy.* Contract shall provide clear information that is understandable by a layperson explaining the data elements of student PII that Contractor collects, the learning purpose for which it collects the student PII, and how Contractor uses and shares the student PII. The information must include all student PII that Contractor collects regardless of whether it is initially collected or ultimately held individually or in the aggregate. Contractor shall provide the District with a link to the information on a webpage maintained and updated by Contractor so that the District may post the link on its website.
2. *Notice Before Making Changes to Privacy Policy.* Contractor shall provide notice to the District before making material changes to Contractor's privacy policy that affects student PII.
3. *Access to Student Information.* Upon request by the District, Contractor agrees to provide in a readable electronic format a copy of all student PII maintained by the Contractor for individual students.
4. *Correction of Inaccurate Student PII.* Contractor shall facilitate access to and correction of any factually inaccurate student PII in response to a request for correction that the District receives.
5. *Grounds for Termination.* Contractor understands that any breach by Contractor or any subcontractor of this addendum, state or federal law regarding student information, or the Contractor's privacy policy described above, may be grounds for termination of the Agreement in accordance with C.R.S. § 22-16-107(2)(a).

