

**CONTRACT NAME: AGREEMENT BETWEEN SCHOOL LOOP, INC. AND DAVIS JOINT UNIFIED SCHOOL DISTRICT**

**BRIEF DESCRIPTION OF CONTRACT:** This is a two-year renewal agreement between School Loop, Inc. and DJUSD. School Loop is the learning management system used for teaching, learning and communication and is the source of our web hosting (District Office, school and teacher websites), gradebooks and digital content, site parent communication/news, and staff collaboration for instruction and organization.

The term of this contract is from July 1, 2016 through June 30, 2018.

The fiscal impact is \$77,763 over a two-year period. The School Loop subscription is already included in the Technology Department budget; no additional funding is being requested.

# SCHOOL LOOP Order Form

**Customer Name:** Davis Joint Unified School District

**Start Date:** 07/01/2016 **End Date:** 06/30/2018

Service Type	License/Service	Price	Unit	16/17
SL Standard	Free Websites (SL Plus Bundle)	\$ .00	19.00	\$ .00
Integration Services	Grade Export Annual Support	\$1000.00	1.00	\$ 1000.00
SL Plus Gradebook	Secondary	\$5.05	4245.00	\$ 21437.25
SL Plus Gradebook	Summer School	\$1900.00	1.00	\$ 1900.00
Integration Services	Directory Service Annual Support	\$1000.00	1.00	\$ 1000.00
SL Plus Gradebook	Elementary	\$1.75	4272.00	\$ 7476.00
Integration Services	SIS Integration Annual Support	\$1000.00	1.00	\$ 1000.00
Integration Services	Unification	\$250.00	19.00	\$ 4750.00
<b>Subtotal 16/17</b>				<b>\$ 38563.25</b>

Service Type	License/Service	Price	Unit	17/18
Integration Services	Directory Service Annual Support	\$1000.00	1.00	\$ 1000.00
SL Plus Gradebook	Summer School	\$1900.00	1.00	\$ 1900.00
Integration Services	Unification	\$250.00	19.00	\$ 4750.00
SL Standard	Free Websites (SL Plus Bundle)	\$ .00	19.00	\$ .00
SL Plus Gradebook	Elementary	\$1.75	4272.00	\$ 7476.00
Integration Services	SIS Integration Annual Support	\$1000.00	1.00	\$ 1000.00
Integration Services	Grade Export Annual Support	\$1000.00	1.00	\$ 1000.00
SL Plus Gradebook	Secondary	\$5.20	4245.00	\$ 22074.00
<b>Subtotal 17/18</b>				<b>\$ 39200.00</b>
<b>Grand total</b>				<b>\$ 77763.00</b>

<b>General Notes</b>	<p>With this agreement, Davis Joint is exercising their first extension for Y3 and Y4 based on the following pricing model per student:            Secondary - Y3 (\$5.05), Y4 (\$5.20)            Elementary - Y3-Y4 (\$1.75)</p> <p>The district may also choose to exercise a second extension for Y5 and Y6 based on the following pricing model per student:            Secondary - Y5-Y6 (\$5.65)            Elementary - Y5-Y6 (\$1.75)</p>
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<b>Payment Notes</b>	We invoice once a year on July 1st. You will be invoiced separately for each upcoming school year. Payment in full for each school year is due 30 days after the invoice date.
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By signing this Order Form, Customer agrees that any and all subscriptions and services provided by School Loop under this Order Form are subject to the School Loop Master Subscription Agreement which Customer signed with School Loop. Any capitalized terms used but not defined in this Order Form shall have the meanings ascribed to such terms in the Subscription Agreement.

Davis Joint Unified School District

School Loop, Inc.

By (Signature)

By (Signature)

Name/Title (Printed)

Mark Gross CEO / Founder

Name/Title

# SCHOOL Order Form

**Customer Name:** Davis Joint Unified School District

**Start Date:** 07/01/2016    **End Date:** 06/30/2018

\_\_\_\_\_  
Date

\_\_\_\_\_  
Date

## SCHOOL LOOP MASTER SUBSCRIPTION AGREEMENT

This School Loop Subscription Agreement (“**Agreement**”) is agreed to by the Davis Joint Unified School District (“**Customer**”), with an address of 526 B St, Davis, CA 95616 and School Loop, Inc., with an address of 41 Grant Ave, Suite 200, San Francisco, CA 94108 (“**School Loop**”). Customer and School Loop may sign forms (“**Documents**”) referencing this Agreement with order details including School Loop’s Order Form, or by Purchase Order, and each such Document is subject to the terms of the Agreement. The Agreement is effective as of the date the first Document is signed by the Customer and School Loop (the “**Effective Date**”) through 06/30/2018, the end date of the term.

This Agreement permits Customer to purchase and receive a subscription to School Loop’s web-based Service (as defined below) for the period specified on the Document (the “**Subscription Term**”) and sets forth the terms and conditions under which such Service will be provided. This Agreement shall govern Customer’s initial subscription on the Effective Date as well as any future subscription purchases made by Customer which reference this Agreement.

### 1. The Service

**1.1. Provision of Service.** School Loop offers on-line subscription products designed to facilitate the distribution of information regarding students to Customer’s parents, students, school and district staff, and, with the proper approvals, to appropriate people with student information rights (“**Users**”), and provide communications and information-sharing capabilities between teachers, students, school and district staff, people with student information rights, and parents (the “**Service**”). Subject to the terms of this Agreement, School Loop shall host the Service and will make the Service available to Customer during the Subscription Term. From time to time School Loop may make available evaluation or no-charge services.

**1.2. Restrictions.** Customer may use the Service only as expressly authorized by School Loop and for no other purpose. Customer shall not: (a) rent, lease, copy, provide access to or sublicense the Service to a third party, (b) reverse engineer, decompile, disassemble, or otherwise seek to obtain the source code to the Service, or (c) remove or obscure any product identification, proprietary, copyright or other notices contained in the Service (including any reports or data printed from the Service).

**1.3. Professional Services.** If School Loop and Customer agree separately in a Statement of Work (“**SOW**”), School Loop shall provide the professional consulting services described in that SOW (“**Professional Services**”). During the Subscription Term, Customer shall have a license right to use anything delivered as part of the Professional Services internally solely in conjunction with use of the Service under this Agreement, but School Loop shall retain all right, title and interest in and to any such work product, code or software and any derivative, enhancement or modification thereof created by School Loop (or its agents). Each SOW must be signed by both parties before School Loop shall commence work under such SOW.

### 2. Customer Obligations

**2.1. “Customer Content”** means any data, information or other content of any type, including Pupil Records (defined in Section 11 of this Agreement), which is provided by Customer or any User to School Loop for inclusion in the Service; including, without limitation, data, information or other content which Customer or Users input to or upload to the Service. Customer shall assure that use of the Service by Customer and all Customer Content at all times comply with all applicable local, state, federal and international law, regulations and conventions, including, without limitation, those related to data privacy, international communications, and the exportation of technical or personal data. Customer is solely responsible for the accuracy, content and legality of all Customer Content (including its use as authorized hereunder). Customer represents and warrants to School Loop that Customer has sufficient rights in the Customer Content to authorize School Loop to process, distribute and display the Customer Content as contemplated by this Agreement and the Service only, and that the Customer Content does not infringe the rights of any third-party or constitute libel, slander or defamation. Customer represents that all Customer Content complies with Federal and local privacy regulations and its distribution to Users is not a violation of FERPA or of any local laws or education codes if used solely for purposes of delivering the Service to the Customer and for no other purposes. School Loop acknowledges that it has access to Customer Content as required to deliver the Service to Customer, and School Loop represents and warrants that it shall not use Customer Content for any other purposes or allow any third party to use Customer Content for any other purposes.

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**2.2. Access to Service.** If Customer or Users are given access to accounts on School Loop's systems in order to make use of the Service, Customer shall require that all Users, employees and agents accessing such accounts keep user ID and password information confidential, and that each employee or agent not share such information with any unauthorized person. User IDs are granted to individual named persons and may not be shared unless required by law. Customer shall be responsible for actions taken using Customer's and Users' accounts.

**2.3. User Consents.** Customer acknowledges that use of the Service for Customer's purposes hereunder, may require communication with students. School Loop shall have access to student information in accordance with Section 11 of this Agreement. Customer understands and acknowledges that if ordered by Customer, some features of the Service may allow certain Customer Content, excluding Pupil Records, to be made public on the Internet. This publicly available Customer Content may include general information about a school, information regarding school news and events, information posted by teachers about their curriculum (such as course descriptions, syllabi, assignments and the like). Customer agrees that it shall be solely responsible for notifying Users that certain Customer Content, excluding Pupil Records, will be made public on the Internet and for securing the appropriate User consents. Customer also acknowledges that School Loop may make available functionality which allows third parties to access information on the Service or input information on the Service (by way of example and not limitation, functionality which allows synchronizing of a user's School Loop calendar to an external service). Such information shall only be made available to third parties after the express written consent of the Customer is first obtained by School Loop.

### **3. Ownership**

**3.1. Rights in Customer Content.** Customer shall retain all right, title and interest (including any and all intellectual property rights) in and to the Customer Content, and School Loop shall use such Customer Content solely for the purposes of providing the Service. Subject to the terms of this Agreement, Customer hereby grants to School Loop the non-exclusive, worldwide, royalty-free right to use, copy, store, transmit, and modify the Customer Content solely to the extent necessary to provide the Service on behalf of and for the Customer except where doing so is in violation of FERPA or local laws or the California Education Code.

**3.2. Subscription not Sale.** This is a subscription agreement for use of the Service and is not an agreement for sale. Customer agrees that the Service and the end-user documentation and any and all related and underlying School Loop software and technology constitute trade secrets or copyrighted material of School Loop or its suppliers, and that School Loop or its suppliers retain all right, title and interest (including all intellectual property rights) therein. Customer may point their DNS to the sites, and the Customer retains full rights and ownership of their own domain. School Loop may employ a subdomain of schoolloop.com in order to provide the Service, however no ownership or license right in the schoolloop.com domain, or any subdomain, is transferred under this Agreement, and School Loop reserves the sole right to manage any and all domains and subdomains related to the Service as it sees fit subject to the terms of this Agreement. All rights not specifically granted shall be reserved to School Loop. No right, title or interest in any of School Loop's trademarks is granted hereunder.

**3.3. Response to Legal Orders, Demands, or Requests for Data.** Except as otherwise expressly prohibited by law, School Loop will (a) immediately notify Customer of any subpoenas, warrants, or other legal orders, demands, or requests received by School Loop seeking any Customer Content, including, but not limited to, Pupil Records; (b) consult with Customer regarding response; and (c) cooperate with Customer's reasonable requests in connection with efforts by Customer to intervene and quash or modify the legal order, demand or request seeking any Customer Content, including, but not limited to, Pupil Records. Customer will promptly provide a copy of its response to School Loop. School Loop shall promptly supply Customer and requesting party with copies of data required for Customer to respond, and shall cooperate with Customer's and requesting party's reasonable requests in connection with its response.

### **4. Fees and Payment.**

All fees are as set forth in the applicable Order Form and shall be paid by Customer in accordance with the terms of the applicable Order Form. Except as set forth in Section 6.1A (Limited Warranty), or in the Order Form all fees are non-refundable. Payment is due 30 days from Customer's receipt of invoice or PO, whichever is later, unless otherwise set forth on the Order Form. Accounts that are more than 30 days overdue are subject to suspension upon 30 days' notice to Customer.

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## **5. Term and Termination**

**5.1. Term.** This Agreement shall continue until the earlier occurs of (a) expiration or termination of the Subscription Term, or (b) termination in accordance with this Section 5. Customer's subscription shall renew if and as described in the Order Form.

**5.2. Termination for Cause.** Either party may terminate this Agreement: (a) if the other party fails to cure any material breach of this Agreement (including a failure to pay fees) within 30 days after written notice or (b) if the other party files or has filed against it any bankruptcy, dissolution or similar proceeding or enters into any form of arrangement with its creditors (provided such filing is not removed within 60 days thereof).

**5.3. Effect of Termination.** Upon any termination of this Agreement, Customer shall immediately cease any and all use of and access to the Service (including any and all related School Loop software, technology and systems) and delete (or, at School Loop's request and expense, return) any and all copies of the Service documentation provided by School Loop, any School Loop passwords or access codes and any other School Loop Confidential Information in its possession. Termination of this Agreement shall be in addition to, and not in lieu of, any equitable or other remedies available to the terminating party. School Loop shall cooperate with the Customer to provide access to Customer Content, and School Loop shall not limit access to Customer Content during the termination process. School Loop will ensure that all Customer Content and User Data are transferred to Customer or a third party designated by Customer securely, within a reasonable time period without significant interruption in service.

**5.4. Suspension of Service.** School Loop has the right, in its sole reasonable discretion, to suspend the Service immediately if deemed reasonably necessary, (reasonably necessary conditions which, for example, may include breaches of security that risk FERPA protected-data, the publication of pornography or other restricted materials by customer) by School Loop to prevent an immediate and significant harm to School Loop and/or its business. School Loop will provide notice and opportunity to cure if practicable depending on the nature of the breach. Once cured, School Loop will promptly restore the Service. Customer shall receive a pro rata credit for the time of interruption, if such interruption was not caused by the action of the Customer. However, in the event a dispute arises between Customer and School Loop, School Loop expressly agrees to continue to perform its obligations under this Agreement during the pendency of the dispute. Each party agrees to diligently and in good faith attempt to resolve any disputes which may arise.

**5.5. Survival.** The following Sections shall survive any expiration or termination of this Agreement: 1.2 (Restrictions), 3 (Ownership), 4 (Fees and Payment), 5 (Term and Termination), 6.2 (Warranty Disclaimer), 7 (Limitation of Remedies and Damages), 8 (Indemnification), 9 (Confidentiality), 10 (General), and (Protection of Pupil Records).

## **6. Warranty**

**6.1A. Limited Warranty.** School Loop warrants, for Customer's benefit only, that the Service will be provided in substantial conformity with its documentation under normal, proper and intended usage and that the Service does not contain any computer worms, viruses or other harmful code or disabling device or any unlawful, discriminatory, libelous, harmful, obscene material of any kind. School Loop does not warrant that the operation of the Service will be uninterrupted or error-free. School Loop will use reasonable efforts to correct any failure of the Service to conform to its documentation at no charge to Customer. If School Loop determines it cannot resolve a material defect within a reasonable period of time, not to exceed thirty (30) days, Customer will have the right to terminate the Subscription Term and receive a refund of any fees Customer has pre-paid for periods of service it has not yet received, in addition to other remedies available in law or equity. The limited warranty set forth in this Section 6.1A shall not apply to any free services.

**6.1B. Non-Infringement Warranty.** School Loop further warrants, for Customer's benefit only, that (a) School Loop has the right to possess, use and allow Customer to use the Service provided for the purposes contemplated herein, and (b) that to School Loop's knowledge, the Service and any supporting software or equipment of School Loop does not infringe any copyright, trademark or trade secret of any third party.

**6.2. Warranty Disclaimer.** EXCEPT FOR THE LIMITED WARRANTY IN SECTION 6.1, AND TO THE EXTENT PERMITTED BY APPLICABLE LAW, THE SERVICE AND ALL TRAINING SERVICES ARE PROVIDED TO CUSTOMER "AS IS" AND WITH ALL FAULTS. SCHOOL LOOP

AND ITS SUPPLIERS DO NOT REPRESENT OR WARRANT THAT (A) THE SERVICE OR TRAINING SERVICES WILL BE SECURE, TIMELY, UNINTERRUPTED OR ERROR FREE, (B) ANY CUSTOMER CONTENT OR OTHER STORED DATA WILL BE ACCURATE OR NON-CORRUPTED, OR (C) THAT THE SERVICE WILL BE FREE OF ANY VIRUSES OR MALICIOUS CODE WHICH CANNOT BE DETECTED USING COMMERCIALY AVAILABLE PRODUCTS. SCHOOL LOOP SPECIFICALLY DISCLAIMS ANY AND ALL OTHER WARRANTIES, EITHER EXPRESS OR IMPLIED, WITH RESPECT TO THE SERVICE AND TRAINING SERVICE, INCLUDING BUT NOT LIMITED TO IMPLIED WARRANTIES OF MERCHANTABILITY, TITLE AND FITNESS FOR A PARTICULAR PURPOSE, REGARDLESS OF ANY KNOWLEDGE OF CUSTOMER'S PARTICULAR NEEDS. CUSTOMER MAY HAVE OTHER STATUTORY RIGHTS. HOWEVER, TO THE FULL EXTENT PERMITTED BY LAW, THE DURATION OF STATUTORILY REQUIRED WARRANTIES, IF ANY, SHALL BE LIMITED TO THE LIMITED WARRANTY PERIOD. SCHOOL LOOP SHALL NOT BE LIABLE FOR DELAYS, INTERRUPTIONS, THE SERVICE FAILURES AND OTHER PROBLEMS INHERENT IN USE OF THE INTERNET AND ELECTRONIC COMMUNICATIONS OR OTHER SYSTEMS OUTSIDE THE REASONABLE CONTROL OF SCHOOL LOOP.

## **7. Limitation of Remedies and Damages**

**7.1.** NEITHER PARTY SHALL BE LIABLE FOR ANY LOSS OF USE, INTERRUPTION OF BUSINESS, OR ANY INDIRECT, SPECIAL, INCIDENTAL, RELIANCE OR CONSEQUENTIAL DAMAGES OF ANY KIND (INCLUDING LOST PROFITS), REGARDLESS OF THE FORM OF ACTION, WHETHER IN CONTRACT, TORT (INCLUDING NEGLIGENCE), STRICT LIABILITY OR OTHERWISE, EVEN IF INFORMED OF THE POSSIBILITY OF SUCH DAMAGES IN ADVANCE.

**7.2** EITHER PARTY'S ENTIRE LIABILITY RELATING TO THE SUBJECT MATTER OF THIS AGREEMENT SHALL NOT EXCEED THE AMOUNT ACTUALLY PAID BY CUSTOMER TO SCHOOL LOOP UNDER THE APPLICABLE ORDER FORM, PROVIDED THAT THIS LIMITATION OF LIABILITY SHALL NOT APPLY TO SECTION 8, SECTION 9, SECTION 10 AND SECTION 11 OF THIS AGREEMENT.

## **8. Indemnification**

**8.1. Indemnity by School Loop.** School Loop shall indemnify and hold harmless Customer from and against any claim of infringement of a U.S. patent, U.S. copyright, or U.S. trademark asserted against Customer by a third party based upon Customer's authorized use of the Service, provided that School Loop shall have received from Customer: (i) prompt written notice of such claim (but in any event notice in sufficient time for School Loop to respond without prejudice); (ii) the exclusive right to control and direct the investigation, defense, or settlement of such claim; and (iii) all reasonable necessary cooperation of Customer. If Customer's use of any of the Service is, or in School Loop's opinion is likely to be, enjoined due to the type of infringement specified above, or if required by settlement, School Loop may, in its sole discretion: (a) substitute substantially functionally similar services; (b) procure for Customer the right to continue using the Service; or if (a) and (b) are commercially impracticable, (c) terminate the Agreement and refund to Customer the fees paid by Customer for the portion of the Subscription Term which was paid by Customer but not rendered by School Loop. The foregoing indemnification obligation of School Loop shall not apply: (1) if the Service is modified by any party other than School Loop, but solely to the extent the alleged infringement is caused by such modification; (2) the Service is combined with other non-School Loop products or processes not authorized by School Loop, but solely to the extent the alleged infringement is caused by such combination; (3) to any unauthorized use of the Service; (4) to the Customer Content or any third-party deliverables or components contained within the Service; (5) to any action arising as a result of the Customer Content; or (6) to any Free Service. School Loop further agrees to and does hereby indemnify, hold harmless and defend the Customer and its Board of Trustees, officers, employees and agents from every claim or demand made and every liability, loss, damage or expense (including reasonable attorneys' fees), of any nature whatsoever, ("Damages") which arise from any act, neglect, default or omission of School Loop or any person firm, or corporation employed by School Loop in the performance of this Agreement, except for liability for Damages which result from the sole negligence or willful misconduct of the Customer or its officers, employees or agents.

**8.2 Customer Responsibility for Content.** Customer shall indemnify and hold harmless School Loop from and against any and all claims, costs, damages, losses, liabilities and expenses (including reasonable attorneys' fees and costs) arising out of or in connection with any claim alleging (a) that the Customer Content or its use in the Service infringes the rights of, or has caused damage to Customer, a User or other third-party (excluding any claim to the extent based on any underlying School Loop software or technology), (b) any action or inaction by

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Customer or a User resulting in damage to persons or property, or (c) that Customer failed to secure adequate permission from any User for the use of the Customer Content when Customer has a duty to do so hereunder. This indemnification obligation is subject to Customer receiving prompt notice of the claim and having the sole right to control the defense and settlement of all such claims, lawsuits and other proceedings. School Loop agrees to provide such reasonable assistance and cooperation to Customer as is reasonably requested by Customer.

**8.3 Insurance.** School Loop agrees to carry a comprehensive general and automobile liability insurance with limits of One Million Dollars (\$1,000,000.00) per occurrence combined single limit for bodily injury and property damage in a form mutually acceptable to both parties to protect School Loop and Customer against liability or claims of liability which may arise out of this Agreement. School Loop shall provide One Million Dollars (\$1,000,000) in Cyber Liability Insurance to cover Security, Privacy, Business Interruption, Cyber Extortion, and Denial of Service. In addition, School Loop agrees to provide an endorsement to this policy stating "Such insurance as is afforded by this policy shall be primary, and any insurance carried by Customer shall be excess and noncontributory." School Loop shall provide Customer with certificates of insurance evidencing all coverages and endorsements required hereunder including a thirty (30) day written notice of cancellation or reduction in coverage. School Loop agrees to name Customer and its officers, agents and employees as additional insured under said policy. School Loop agrees to maintain workers' compensation insurance as required under the laws of the State of California.

## **9. Confidentiality**

**9.1. "Confidential Information"** means (a) any School Loop software, interfaces, web applications and documentation that are designated as confidential, and (b) information designated as confidential by either party, including, but not limited to, data, designs, drawings, documentation, software (regardless of form or media), prototypes, processes, methods, concepts, research, development and business activities, whether obtained or disclosed verbally or in writing, and (c) any Pupil Records, as defined under relevant education codes and in Section 11 of this Agreement. The Service itself, documentation and technical information provided by School Loop or its agents shall be deemed Confidential Information of School Loop without any marking or further designation. School Loop acknowledges that Customer is a public school district and that certain Customer Content is protected and governed by the Family Educational Rights and Privacy Act, 20 U.S.C § 1232g ("FERPA"), and the local Education Code, and School Loop agrees that it shall be considered a "school official" under FERPA for purposes of accessing pupil information necessary to perform the Service and as such it shall maintain the confidentiality of such data, and will abide by FERPA and the local Education Code.

**9.2. Nondisclosure.** The parties acknowledge that they have been entrusted with Confidential Information of the other party and agree to use reasonable care to protect the confidentiality thereof, using at least the same degree of care that each of them would use to protect their own similar information. Except as otherwise required by applicable law, each party shall not (a) use such Confidential Information of the other party for any purpose except as authorized under this Agreement, (b) disclose any such Confidential Information to any person (except its employees and agents bound by obligations of confidentiality on a need-to-know basis) unless such disclosure is authorized by the other party in writing, or (c) disclose any such Confidential Information required by court or judicial order without first attempting to inform the other party and cooperating with the other party if such party contests the disclosure thereof. Each party agrees to take all reasonable steps to ensure that Confidential Information is not disclosed or distributed by its employees or agents in violation of the terms of this Agreement and to notify the other party promptly and in writing upon its discovery of any unauthorized access or disclosure of any Confidential Information.

**9.3. Exclusions.** The obligations under this Section 9 shall not apply to information which (a) is or becomes a part of public knowledge through no act or omission of the receiving party, (b) was rightfully in the receiving party's possession prior to disclosure by the disclosing party, (c) comes into the possession of the receiving party rightfully from a third party without obligation of confidentiality, (d) is independently developed by the receiving party without the use of any Confidential Information of the disclosing party, or (e) is subject to disclosure under any applicable legal requirement of legal process issued by any court or any competent governmental authority including, but not limited to, disclosure under the California Public Records Act (Gov. Code § 6250, et seq.). It is understood that the Customer is subject to the California Public Records Act. If a request under the California Public Records Act is made to review School Loop's Confidential Information, Customer shall notify School Loop of the request and the date that such records will be released to the requester unless School Loop obtains a court order enjoining that disclosure. If School Loop fails to obtain a court order enjoining that disclosure, the Customer will release the requested information on the date specified.

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**9.4. Enforcement.** Each party understands and agrees that, notwithstanding any other provision of this Agreement, breach of Section 9 (Confidentiality) may cause the other party irreparable damage for which recovery of money damages would be inadequate, and that each party shall therefore be entitled to obtain timely injunctive relief to protect such party's rights under this Agreement in addition to any and all remedies available at law.

## **10. General**

**10.1. Assignment.** This Agreement will bind and inure to the benefit of each party's permitted successors and assigns. Neither party may assign this Agreement except upon the advance written consent of the other party, except that School Loop may assign this Agreement in connection with a merger, reorganization, acquisition or other transfer of all or substantially all of its assets or voting securities. Any attempt to transfer or assign this Agreement without such written consent will be null and void.

**10.2. Severability.** If any provision of this Agreement shall be adjudged by any court of competent jurisdiction to be unenforceable or invalid, that provision shall be limited to the minimum extent necessary so that this Agreement shall otherwise remain in effect.

**10.3. Governing Law; Jurisdiction and Venue.** This Agreement shall be governed by the laws of the State of California and the United States without regard to conflicts of laws provisions thereof, and without regard to the United Nations Convention on the International Sale of Goods or the Uniform Computer Information Transaction Act. Unless waived by Customer in its sole discretion, the jurisdiction and venue for actions related to the subject matter hereof shall be the California state and United States federal courts located in Yolo County, California, and both parties hereby submit to the personal jurisdiction of such courts.

**10.4. Notice.** Any notice or communication required or permitted under this Agreement shall be in writing to the parties at the addresses set forth on the Order Form or at such other address as may be given in writing by either party to the other in accordance with this Section 10.4 and shall be deemed to have been received by the addressee (a) if given by hand, immediately upon receipt; (b) if given by overnight courier service, the first business day following dispatch or (c) if given by registered or certified mail, postage prepaid and return receipt requested, the second business day after such notice is deposited in the mail.

**10.5. Amendments; Waivers.** No supplement, modification, or amendment of this Agreement shall be binding, unless executed in writing by a duly authorized representative of each party to this Agreement. No waiver will be implied from conduct or failure to enforce or exercise rights under this Agreement, nor will any waiver be effective unless in a writing signed by a duly authorized representative on behalf of the party claimed to have waived. No provision of any purchase order or other business form employed by Customer will supersede the terms and conditions of this Agreement, and any such document relating to this Agreement shall be for administrative purposes only and shall have no legal effect.

**10.6. Entire Agreement.** This Agreement, and any other agreement incorporated by this Agreement by reference, including but not limited to any SOW or Subscription Agreement(s) is/are the complete and exclusive statement of the mutual understanding of the parties and supersedes and cancels all previous written and oral agreements and communications relating to the subject matter of this Agreement.

**10.7. Changes to the Service.** Customer acknowledges that the Service is an on-line, subscription-based product, and that in order to provide improved customer experience, new features, and new products may become available. Such changes may require Customer to update or upgrade software or equipment used to access the Service. School Loop shall notify the Customer of any proposed changes in advance. The Customer may choose to terminate the Agreement or Customer may continue with the Agreement, in which case Customer shall be responsible for any such updates or upgrades, provided, however, that under no circumstances shall Customer be required to make any cash payments or otherwise expend any funds to update or upgrade software or equipment used to access the Service.

**10.8. Audit Rights.** Upon School Loop's written request, Customers using any version of School Loop Plus shall furnish School Loop with a signed certification certifying that the Service is being used pursuant to the terms of this Agreement, including any access and user limitations. Without prior reasonable written notice, School Loop may audit the use of the Service by Customer at School Loops expense provided such audit is during regular business hours. Upon contacting, and once a year for the term of the Agreement, Customer shall furnish School Loop with official student enrollment figures for the District and for each school using the Service. If applicable to the type of license, this report will serve as the official student count each year for invoicing throughout the Subscription Term.

**10.9. Force Majeure.** Neither party shall be liable to the other for any delay or failure to perform any obligation under this Agreement (except for a failure to pay fees) if the delay or failure is due to unforeseen events which occur after the signing of this Agreement and which are beyond the reasonable control of such party, such as a strike, blockade, war, act of terrorism, riot, natural disaster or refusal of a license by a government agency.

**10.10. Publicity.** School Loop shall not imply, indicate, or otherwise suggest that the Service and/or any related activities are connected or affiliated with, or endorsed, favored or supported by, or are opposed by Customer. No material may reference Customer, any school name, or Customer logo without the prior written consent of the Customer.

**10.11. Government End Users.** If the user or licensee of the Service is an agency, department, or other entity of the United States Government, the use, duplication, reproduction, release, modification, disclosure, or transfer of the Service, or any related documentation of any kind, including technical data and manuals, is restricted by a license agreement and by the terms of this contract in accordance with Federal Acquisition Regulation 12.212 for civilian purposes and Defense Federal Acquisition Regulation Supplement 227.7202 for military purposes. This product was developed fully at private expense. All other use is prohibited.

**10.12. Subcontractors.** School Loop may use the services of subcontractors for performance of services under this Agreement, provided that School Loop remains responsible for (a) compliance of any such subcontractor with the terms of this Agreement including confidentiality requirements and (b) for the overall performance of the Service as required under this Agreement.

**10.13. Independent Contractors.** The relationship of the parties hereto is that of independent contractors. Neither party shall be deemed to be the legal representative of the other. Each party agrees to assume complete responsibility for its own employees with regard to federal or state employers' liability and withholding tax, worker's compensation, social security, unemployment insurance, and Occupational Safety and Health Administration requirements and other federal, state and local laws.

**10.14. Compliance with Laws.** Customer and School Loop will comply, at their own expense, with all statutes, regulations, laws, rules and ordinances of any governmental body, department or agency which apply to or result from Customer's obligations under this Agreement. Customer agrees not to export the Service directly or indirectly, separately or as part of a system, without first obtaining proper authority to do so from the appropriate governmental agencies or entities, as may be required by law. School Loop will comply, at School Loop's expense, with all statutes, regulations, rules and ordinances of any governmental body, department or agency which apply to or result from School Loop's obligations under this Agreement. School Loop agrees not to export the Service directly or indirectly, separately or as part of a system, without first obtaining proper authority to do so from the appropriate governmental agencies or entities, as may be required by law. School Loop and all School Loop's employees or agents shall secure and maintain in force such permits and licenses as are required by law in connection with the furnishing of Service pursuant to this Agreement. The Service completed herein shall be subject to the Customer's general right of inspection to secure the satisfactory completion thereof.

## **11. PROTECTION OF PUPIL RECORDS**

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

**11.2. 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 Customer's Director of Information Technology in writing of such request. The Customer will provide a written request to School Loop and School Loop shall return the 41 Grant Ave Suite 200, San Francisco, CA 94108 P 650-351-5060F 408-877-1702 [www.schoolloop.com](http://www.schoolloop.com)

Pupil-Generated Content in a format acceptable to the Customer within five (5) days of receiving the Customer'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.

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

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

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

**11.6. Breach Notification Process.** School Loop, within one (1) business day of discovery, shall report to Customer any use or disclosure of Pupil Records not authorized by this Agreement or in writing by the Customer. School Loop'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 School Loop has done or shall do to mitigate any effect of the unauthorized use or disclosure, and (v) what corrective action School Loop has taken or shall take to prevent future similar unauthorized use or disclosure. School Loop shall provide such other information, including a written report, requested by Customer. In the event of an unauthorized disclosure of a Pupil's Records, affected parents, legal guardians, or pupils who have reached the age of 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 School Loop of liability in the event of an unauthorized disclosure of Pupil Records.

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

**11.8. Compliance with Applicable Laws.** The Customer and School Loop will ensure compliance with the California Education Code Section 49073 et seq. and federal Family Educational Rights and Privacy Act (20 U.S.C. Sec. 1232g) through following the confidentiality provisions as set forth in this contract, as well as applicable Customer Board policies. The parties acknowledge and agree that the Customer is subject to federal and local laws relating to the protection of personally identifiable information of students ("PII"), including FERPA, and that School Loop 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, School Loop shall comply with all federal, State and local laws, rules, regulations and ordinances that are now or may in

the future become applicable to School Loop; the services being provided by School Loop; School Loop's business, equipment and personnel engaged in operations covered by this Agreement; 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). School Loop certifies that it is familiar with these laws, as well as any other applicable requirements for the storage and transmission of Pupil Records and School Loop will comply with all such requirements.

**11.9. Prohibition on Targeted Advertising.** School Loop shall not use PII in Pupil Records to engage in targeted advertising.

**11.10. Termination.** If Customer reasonably determines in good faith that School Loop has materially breached any of its obligations under Section 11 of this Agreement, Customer, in its sole discretion, shall have the right to provide School Loop with a written notice of a thirty (30) day period to cure the breach. If School Loop fails to cure a breach within that period of time, Customer may terminate this Agreement immediately.

IN WITNESS WHEREOF, the parties have entered into this Agreement as of the Effective Date.

Davis Joint Unified School District

Customer

\_\_\_\_\_  
Name/Title

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Date

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School Loop, Inc

Mark Gross, CEO

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Date