

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

**BRIEF DESCRIPTION OF CONTRACT:** This license agreement is for a web-based information system to collect and summarize student behavior data. This software works in conjunction with the Positive Behavioral Interventions and Supports (PBIS) program at Montgomery Elementary School.

**FISCAL IMPACT:** The cost of this agreement is allocated in the site budget.



# License Agreement & School Information Form

For Internal Use Only  
EDOrgID \_\_\_\_\_

NCES School ID

## School Profile

Country  State/Province  District

School Name

Address

City  State/Province  Zip/Postal Code

Mailing Address

City  State/Province  Zip/Postal Code

Phone  Fax  Website

Grade Levels From:  To:  Additional School Information, if applicable

Administrator Name  Email\*  Password\*\*

\*Your PBISApps login will be your email address      \*\*This is a temporary password. An individual password will be created the first time you login.

## Billing Profile

Payer Business Name  Contact Person

Mailing Address  City, State, Zip

Email address for invoices

By authorized signature below, Licensee accepts and agrees to be bound by the terms and conditions of the preceding Agreement:

Signature \_\_\_\_\_ Printed Name  Date

Email Address  Licensee desires access to

### Optional Data Sharing Agreement

In addition to receiving access to the Licensed Software, the Licensee, by signature below, agrees to share data in an anonymous format with the Technical Assistance Center for Positive Behavioral Interventions and Supports (PBISTA Center) projects at Oregon including State and District Evaluators for evaluation research and summary. It is understood that the projects are in compliance with the Family Educational Rights and Privacy Act, (34 CFR 99.31(6)) and human subjects regulations (Protection of Human Subjects 45 CFR 46). It is further understood that this consent may be withdrawn at any time for any reason by Licensee. Except as prohibited by law, this Optional Data Sharing Agreement shall be subject, as applicable, to the same terms as the License Agreement.

Licensee Signature \_\_\_\_\_ Name & Title  Date

This bottom portion to be filled out by certified SWIS/CICO-SWIS/ISIS-SWIS facilitator.

Facilitator Name  Email

I affirm, in my judgement the school above meets readiness requirements for adopting SWIS, CICO-SWIS, and/or I-SWIS.

Facilitator Signature \_\_\_\_\_ Date

**Addendum No. 1C to Technology Services Agreement  
for California Assembly Bill 1584 Compliance**

This Addendum No. 1C is entered into between Davis Joint Unified School District [insert Local Educational Agency name] ("LEA") and Oregon ("Service Provider") on March 11, 2019 ("Effective Date".)

**WHEREAS**, the LEA and the Service Provider entered into an agreement for technology services titled SWIS™, CICO-SWIS™ and ISIS-SWIS™ LICENSE AGREEMENT ("Technology Services Agreement") on March 11, 2019 and any addenda on N/A;

**WHEREAS**, the LEA is a California public entity subject to all state and federal laws governing education, including but not limited to California Assembly Bill 1584 ("AB 1584"), the California Education Code, the Children's Online Privacy and Protection Act ("COPPA"), and the Family Educational Rights and Privacy Act ("FERPA");

**WHEREAS**, AB 1584 requires, in part, that any agreement entered into, renewed or amended after January 1, 2015 between a local education agency and a third-party service provider must include certain terms; and

**WHEREAS**, the LEA and the Service Provider desire to have the Technology Services Agreement and the services provided comply with AB 1584.

**NOW, THEREFORE**, the Parties agree as follows:

1. The terms and conditions of the Technology Services Agreement and any addenda are incorporated herein by reference.
2. The term of this Addendum shall expire on the termination date stated in the Technology Services Agreement or in any addenda to such Technology Services Agreement, whichever controls.
3. Pupil records<sup>1</sup> obtained by Service Provider from LEA continue to be the property of and under the control of the LEA.
4. The procedures by which pupils may retain possession and control of their own pupil generated content are outlined as follows: **Currently no application in the Suite enables students to create content.**
5. The options by which a pupil may transfer pupil-generated content to a personal account include: **The SWIS Suite applications do not enable pupils to create content.**
6. Parents, legal guardians, or eligible pupils may review personally identifiable information in the pupil's records and correct erroneous information by the following protocol: **Access to student data is controlled and managed by the school. Parent, guardian, or student**

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<sup>1</sup> Pupil records include any information directly related to a pupil that is maintained by the LEA or acquired directly from the pupil through the use of instructional software or applications assigned to the pupil by a teacher or other LEA employees. Pupil records do not include de-identified information (information that cannot be used to identify an individual pupil). De-identified information, including aggregated de-identified information, may be used by the third party to (1) improve educational products for adaptive learning purposes and for customized pupil learning; (2) demonstrate the effectiveness of the operator's products in the marketing of those products; or (3) for the development and improvement of educational sites, services, or applications.

**review of and changes to such information can be made by communicating with the student's school.**

7. Service Provider shall take actions to ensure the security and confidentiality of pupil records, including but not limited to designating and training responsible individuals on ensuring the security and confidentiality of pupil records, by the following measures: **Oregon adheres to the terms of the Student Privacy Pledge as defined at [https://studentprivacypledge.org/?page\\_id=45](https://studentprivacypledge.org/?page_id=45). Oregon takes numerous measures to secure data as detailed at <https://www.pbisapps.org/Applications/Pages/Confidentiality-and-Security.aspx>.**
8. In the event of an unauthorized disclosure of a pupil's records, Service Provider shall report to an affected parent, legal guardian, or eligible pupil pursuant to the following procedure: **In the event of an unauthorized disclosure of personal information, Oregon will adhere to the University of Oregon's Data Security Incident Response Procedure as documented at <https://it.uoregon.edu/system/files/UO%20Data%20Security%20Incident%20Response%20Procedure.pdf>. In addition, Oregon will promptly notify SWIS Suite licensees whose data was, or may have been, disclosed by the breach, unless a law enforcement agency determines that notification will impede a criminal investigation.**
9. Service Provider shall not use any information in a pupil record for any purpose other than those required or specifically permitted by the Technology Services Agreement.
10. Service Provider certifies that a pupil's records shall not be retained or available to the Service Provider upon completion of the terms of the Technology Services Agreement, except for a case where a pupil chooses to establish or maintain an account with Service Provider for the purpose of storing pupil-generated content, either by retaining possession and control of their own pupil-generated content, or by transferring pupil generated content to a personal account. Such certification will be enforced through the following procedure: **Upon completion of the term of the agreement or at the request of the Licensee, Oregon will remove all pupil records associated with Licensee use of the SWIS Suite from its production databases. Information in any backup files will then be deleted over time through the regular backup process.**
11. LEA agrees to work with Service Provider to ensure compliance with FERPA and the Parties will ensure compliance through the following procedure: **The right of parents or eligible students to inspect and review the student's education records, and to have corrections made where needed, is addressed in item (6) above. Oregon will not release any student personal information without permission from the parent or eligible student except as specified in 34 CFR § 99.31.**

**IN WITNESS WHEREOF**, parties execute this Agreement on the dates set forth below.

Date \_\_\_\_\_

Davis Joint Unified School District

\_\_\_\_\_  
Bruce E. Colby

Date: March 11, 2019

Oregon

\_\_\_\_\_  
*[Signature]*



### SWIS™ Suite LICENSE AGREEMENT

Licensed Software and Internet Access Subscription

Authorized SWIS Facilitator:

Name: Amy Higgins Boyd  
Dated: March

Note: This License Agreement (Agreement) must indicate the name of the Authorized SWIS Facilitator above for the school or institutional Licensee named in the Agreement, which follows.

IMPORTANT - READ CAREFULLY: This Agreement is a legal agreement between your organization or entity, (hereinafter referred to as "Licensee") and the University of Oregon, an institution of higher education located in Eugene, Oregon ("Oregon") for use of the School-Wide Information System™ ("SWIS™") Suite, which includes SWIS™, Check-in/ Check-out SWIS ("CICO-SWIS™"), or Individual-SWIS (I-SWIS™) (together "Licensed Software"). This Agreement is effective as of the date of last authorized signature below ("Effective Date").

#### LICENSEE INFORMATION

Organization: Davis Joint Unified School District  
Address: 526 B Street Montgomery Elementary  
Address: Davis CA 95616 1441 Danbury St Davis CA 95618

#### BACKGROUND

Oregon has developed a school-wide positive behavioral interventions and support program ("PBIS") that uses the Licensed Software to support and sustain positive behavior management programs by providing a rich set of efficient data collection, analysis, and reporting tools, as part of its teaching and research mission, which is described in greater detail at the following website: <https://www.pbisapps.org/Applications/Pages/SWIS-Suite.aspx>.

As a research and educational courtesy, Oregon will license the Licensed Software to Licensee to provide them with, and allow them to provide others with, accurate, efficient, practical information for decision making about school-wide discipline and targeted interventions and to manage their accounts, in accordance with this Agreement.

Oregon is a collaborator working with educators across the United States to improve the effectiveness of schools, and is not a commercial vendor. All License Fees, as further described in Attachment A, are used to continue the maintenance and development of these tools for the education community.

NOW, THEREFORE, in consideration of the promises, conditions and representations contained herein, Licensee agrees as follows:



## I. DEFINITIONS

### 1. Authorized Users

Authorized Users are those individuals officially affiliated with the Licensee, or an Authorized School or Site, and are added by an Authorized SWIS Facilitator.

### 2. Authorized Site

An Authorized Site is one contiguous school office complex or building comprising the Licensee's administrative offices, or the offices of any school under Licensee's control that has obtained authorization from LICENSEE to implement a positive behavior support program using the Licensed Software ("Authorized School") if Licensee is an organization (e.g., district, ESD, state, grant) licensing Licensed Software for a set of schools. Extensions or related offices located in separate locations are considered separate sites unless otherwise agreed to in writing by Oregon.

### 3. School Information Form

The School Information Form is used to collect data to uniquely identify the Authorized Site(s) for inclusion in the SWIS database and to summarize the Licensee school's overall necessary information to implement SWIS at the Authorized Site(s).

## II. TERMS AND CONDITIONS

### 1. License Grant

Contingent upon Licensee's timely payment of License Fees to Oregon pursuant to Section II. 3. and compliance with this Agreement, Oregon grants to Licensee a non-exclusive, non-transferable, license ("License") to use the Licensed Software for non-commercial education and research purposes only. Such License includes the right to access the Licensed Software systems.

### 2. Access and Permitted Use and Support

A. Access within the Authorized Site(s) is restricted to Authorized Users. Only Authorized Users may have access to the Licensed Software; any violation or unauthorized use constitutes cause for termination of the Agreement pursuant to Section 4.B(i). Additional information on security and confidentiality can be found in Attachment B.

B. Licensee shall use reasonable efforts to ensure that only Authorized Users have access to Licensed Software and that such Authorized Users will not make any unauthorized copies nor transfer or aid in the transferring of the Licensed Software or any portion of data obtained thereby to any third parties. Licensee shall not transfer, sublicense or provide unauthorized access to the Licensed Software without prior written authorization from Oregon.

C. Licensee shall have access to Licensed Software updates including distribution media and technical documentation and maintenance releases of Licensed Software, if any, as Oregon releases them.

D. Oregon will provide Licensee with telephone and email support between 7:00 AM and 4:00 PM Pacific Time, Monday through Friday, to the extent Licensee reasonably requires the support, and as Oregon's staffing and schedule obligations reasonably permit.



3. Payment

- A. Oregon will invoice Licensee by billing the Licensee or a Third Party Payer (as defined below) and such fee ("License Fee" as further specified in Attachment A) shall be due and payable upon receipt. Licensee may designate an entity other than Licensee (such as a state department of education) to pay the License Fee on Licensee's behalf ("Third Party Payer"). The Licensee, directly or through its Third Party Payer, agrees to pay Oregon the appropriate License Fee within 30 days of receipt of the invoice from Oregon. Any payments provided by Licensee or by the Third Party Payer to Oregon shall be irrevocable by Licensee or Third Party Payer, except as provided in Section 4.B(i) and (ii), and shall be made in U.S. dollars.
- B. Licensee agrees to pay Oregon the appropriate License Fee specified in Attachment A and on subsequent annual invoices, and on supplemental invoices, received, if any, if the Licensee adds additional Authorized Sites mid-year that are approved by Oregon.
- C. Licensee shall complete all financial administration required by Licensee.

4. Term and Termination

- A. Term. The initial term of this Agreement shall begin on the Effective Date and shall continue until the following August 31 ("Access Period") followed by a "download data only" eighteen month period ("Inactive Period") if the Agreement is not renewed in accordance with Section 5. The Agreement may also be terminated in accordance with this Section 4. Oregon will activate Licensed Software and website access upon receipt of a completed, signed License Agreement and the License Fee. The Inactive Period is provided by Oregon to Licensee as a reasonable timeframe for Licensee to download and transition its data into another system. No other use of the Licensed Software is permitted by Licensee during the Inactive Period.
- B. Termination.
  - (i) Termination for Default. Breach of any material term or condition of this Agreement by Licensee shall be grounds, at Oregon's sole discretion, for immediate termination of this license. In the case of such termination by Oregon, License Fees shall be non-refundable. Breach of any material term or condition of this Agreement by Oregon shall be grounds, at Licensee's sole discretion, for immediate termination of this license, and in the case of such termination, Licensee shall receive a pro-rated refund of the unused License Fee, such amount to be based on remaining full months of the License as determined by Oregon.
  - (ii) Termination for Convenience. Either party may cancel the Agreement at any time by providing the other party with thirty (30) days prior written notice. In the case of such termination by Oregon, the Licensee shall receive a pro-rated refund of the unused License Fee, such amount to be based on remaining full months of the License as determined by Oregon. In the case of such termination by Licensee, License Fees shall be non-refundable.
- C. No Use after Termination. Upon termination of this Agreement, Licensee and all Authorized Users shall cease using any portion of Licensed Software.
- D. Licensee's Obligations after Termination. Termination of this Agreement shall not extinguish any of Licensee's obligations under this Agreement which by their terms continue after the date of termination.



5. License Renewal

- A. At the end of the initial Access Period, Licensee may renew the Agreement for an additional one year Access Period, and for subsequent one year Access Periods at the end of each additional Access period, by payment of an invoice generated annually from Oregon ("License Renewal"). Any renewal is subject to the approval of Oregon which may be granted or withheld in its sole discretion.
- B. If the License Renewal payment is not received within 60 days following the receipt by the Licensee of the invoice, access to Licensed Software system will expire except as otherwise allowed during the Inactive Period in Section 4.A. Oregon reserves the right to modify the terms of this Agreement for any renewal period including the modification of the fees for any renewal period upon thirty (30) days prior written notice.

6. Delivery

- A. The Licensed Software will be delivered as web-based software for use by the Licensee. It is the responsibility of the Licensee to establish and maintain Internet connections for access to the Licensed Software website(s) and to provide and install suitable Internet web browsers and any other software necessary to access the Licensed Software system(s).
- B. Oregon shall use reasonable efforts to provide continuous availability of and advanced notice of planned interruptions to the Licensed Software through the Internet. It is understood that availability will be subject to periodic interruption due to maintenance of the server(s), installation or testing of software, the loading of new information files, and downtime related to equipment or services outside the control of Oregon including public and private telecommunications services or Internet nodes or facilities.

7. Warranty and Indemnification

- A. Indemnification. To the extent permitted by law, Licensee hereby agrees to indemnify and hold harmless Oregon and its officers, directors, agents, volunteers and employees, from and against any and all claims, demands, damages, costs, and other related items arising or in any way connected with the use of or access to Licensed Software by Licensee or by any third party use of or access to Licensed Software through Licensee. Licensee assumes all liability for decisions made using any data reported from Licensed Software.
- B. NO WARRANTY AND LIMITATION OF LIABILITY. OREGON PROVIDES ACCESS TO LICENSED SOFTWARE ON AN "AS IS" BASIS. LICENSEE AGREES TO BEAR ALL RISKS ASSOCIATED WITH THE USE OF LICENSED SOFTWARE. OREGON MAKES NO REPRESENTATIONS OR WARRANTIES, EXPRESS OR IMPLIED. BY WAY OF EXAMPLE, BUT NOT LIMITATION, OREGON MAKES NO REPRESENTATIONS OR WARRANTIES OF MERCHANTABILITY OR FITNESS FOR ANY PARTICULAR PURPOSE (EVEN IF OREGON KNOWS OF SUCH PURPOSE), OR THAT THE USE OF LICENSED SOFTWARE WILL NOT INFRINGE ANY PATENTS, COPYRIGHTS, TRADEMARKS OR OTHER RIGHTS OF THIRD PARTIES. EXCEPT FOR INDEMNITY OBLIGATIONS OR AMOUNTS ACTUALLY DUE FOR PROVISION OF LICENSED SOFTWARE, IN NO EVENT SHALL ANY PARTY'S AGGREGATE LIABILITY UNDER ANY THEORY OR FOR ANY REASON WHATSOEVER EXCEED THE AMOUNTS ACTUALLY PAID BY AND/OR DUE FROM LICENSEE IN THE TWELVE (12) MONTH PERIOD IMMEDIATELY PRECEDING THE EVENT GIVING RISE TO SUCH CLAIM. IN NO EVENT SHALL ANY PARTY AND/OR ITS LICENSORS BE LIABLE TO ANYONE FOR ANY INDIRECT, PUNITIVE, SPECIAL, EXEMPLARY, INCIDENTAL, CONSEQUENTIAL OR OTHER DAMAGES OF ANY TYPE OR KIND (INCLUDING LOSS OF DATA, REVENUE, PROFITS, USE



OR OTHER ECONOMIC ADVANTAGE) ARISING OUT OF, OR IN ANY WAY CONNECTED WITH THE LICENSED SOFTWARE, INCLUDING BUT NOT LIMITED TO THE USE OR INABILITY TO USE THE LICENSED SOFTWARE, OR FOR ANY CONTENT OBTAINED FROM OR THROUGH THE LICENSED SOFTWARE, ANY INTERRUPTION, INACCURACY, ERROR OR OMISSION, REGARDLESS OF CAUSE IN THE CONTENT, EVEN IF THE PARTY FROM WHICH DAMAGES ARE BEING SOUGHT OR SUCH PARTY'S LICENSORS HAVE BEEN PREVIOUSLY ADVISED OF THE POSSIBILITY OF SUCH DAMAGES.

- C. Licensee acknowledges and agrees that Oregon's liability, if any, is subject to the limitations and conditions of the Oregon Tort Claims Act, Oregon Revised Statutes sections 30.260-30.300, and the Oregon Constitution, Article XI, Section 7.

## 8. General

### A. Assignment

This Agreement may not be assigned or transferred by Licensee.

### B. Entire Agreement, Modification, and Waiver

This Agreement sets forth the entire agreement between the parties, and replaces any previous agreement between the parties, with respect to the subject matter hereof, and may not be modified or amended except by written agreement executed by the parties hereto. No waiver, consent, modification, or change of any terms of this Agreement shall be binding unless the same is in writing and signed by both parties and all necessary approvals have been obtained. Such express waiver, consent modification, or change, if made, shall be effective only in the specific instance and for the specific purpose set forth in such signed writing.

### C. Licensee's Authority

Licensee represents and warrants that the individual executing this Agreement on behalf of Licensee is duly authorized to execute and deliver this Agreement on behalf of Licensee in accordance with duly adopted organizational documents or agreements and if appropriate a resolution of Licensee, and that this Agreement is binding upon Licensee in accordance with its terms.

### D. Force Majeure

Oregon's failure to perform any term or condition of this Agreement as a result of conditions beyond its control such as, but not limited to, war, strikes, fires, floods, acts of God, governmental restrictions, power failures, or damage or destruction of any network facilities or servers, shall not be deemed a breach of this Agreement.



## Attachment A: License Fees

LICENSEE will pay the following License Fees to OREGON (The fees listed below are per school per academic year per application (SWIS, CICO-SWIS, I-SWIS) a school accesses)

If Licensee is an individual school, the price per bundle of applications is:

|                                                  |                                                                               |                                                   |
|--------------------------------------------------|-------------------------------------------------------------------------------|---------------------------------------------------|
| 1 application<br>(SWIS,<br>CICO-SWIS,<br>I-SWIS) | 2 applications<br>(SWIS+CICO-<br>SWIS, SWIS+I-<br>SWIS, CICO-<br>SWIS+I-SWIS) | 3 applications<br>(SWIS+CICO-<br>SWIS+I-<br>SWIS) |
| \$350                                            | \$460                                                                         | \$570                                             |

If Licensee is an organization (e.g., district, ESD, state, grant) purchasing applications for a set of schools, Licensee will be billed at the following tiers:

|               | 1 application<br>(SWIS, CICO-SWIS, I-<br>SWIS) | 2 applications<br>(SWIS+CICO-SWIS,<br>SWIS+I-SWIS, CICO-<br>SWIS+I-SWIS) | 3 applications<br>(SWIS+CICO-SWIS+I-<br>SWIS) |
|---------------|------------------------------------------------|--------------------------------------------------------------------------|-----------------------------------------------|
| 1-19 schools  | \$350                                          | \$460                                                                    | \$570                                         |
| 20-39 schools | 10% discount (\$315)                           | 10% discount (\$414)                                                     | 10% discount (\$513)                          |
| 40+ schools   | 20% discount (\$280)                           | 20% discount (\$368)                                                     | 20% discount (\$456)                          |

All organizational Licensees have the option to prepay for schools' bundled applications at the appropriate tiered rate. If Licensee does not prepay the Licensee Fee, it will be invoiced upon account setup at the appropriate tier.

License Fees will be prorated from the first full month of access to the application. Applications purchased as a bundle at the initial point of purchase will receive the bundled discount. Applications purchased one at a time throughout the year are each billed at the prorated 1-application rate. All applications initially purchased one at a time will be renewed at any applicable bundled rates.



## **Attachment B: Privacy and Security**

Privacy and security are among our highest priorities for the SWIS Suite. We work diligently to maintain student and teacher privacy and treat all sensitive data and personal information according to the standards in providing education and research tools. This Privacy & Security Statement outlines the specific steps we take to ensure that all sensitive data is treated carefully and appropriately.

### **Privacy**

The protection of student, staff, and family personal information is critical to our work. As such, PBISApps has endorsed the Student Privacy Pledge (<https://studentprivacypledge.org/>), a strong set of commitments drafted with the involvement of educational non-profit groups, the Software & Information Industry Association, and public sector educational leaders. PBISApps is run by Educational and Community Supports, a research center in the University of Oregon's College of Education. As part of a public research university, we are ineligible to be a signatory to the pledge but have committed to following each aspect of the pledge completely. This privacy statement outlines our commitments and the steps we take to ensure that personal (i.e., individually identifiable) information remains private. For detailed information about our privacy and security commitments, see <https://www.pbisapps.org/Applications/Pages/Confidentiality-and-Security.aspx>.