

CONTRACT NAME: AGREEMENT BETWEEN FACTS ON FILE, INC. DBA LEARN360 AND THE DAVIS JOINT UNIFIED SCHOOL DISTRICT

BRIEF DESCRIPTION OF CONTRACT: This is an agreement between Facts of File, Inc. DBA Learn360 and Davis Joint Unified School District. District elementary teachers and students can use Learn360 to stream and download from a library with over 11,000 videos and 100,000+ video clips, teacher guides, audio programs, original source newsreels, images, math activities, science diagrams, timelines and other valuable resources.

Because it is correlated to Common Core as well as State and National Standards, finding the right clip is easy for all teachers and students.

The annual cost of this service is \$5,681 and is included in the District budget for Instructional Services.



Digital License Agreement LEARN360 Subscription Plan

This Agreement made 10/6/2016 between Facts on File, Inc. dba Learn360 and Infobase Learning, 132 West 31st Street, 16th Floor, New York, NY 10001 ("Licensor") and **Davis Joint USD, 526 B Street, Davis, CA 95616** ("Licensee") regarding access to Video Titles and Digital Media content, controlled by Licensor to be made available to Licensee per agreed upon Term on a subscription basis and as set forth in the Terms of Use located at <http://learn360.infobase.com/PortalTerms.aspx>

This Agreement shall be governed by and construed in accordance with the laws of the State of California without regard to its conflict of law principles that would cause the application of the laws of another jurisdiction.

Key Definitions

LEARN360: A cloud-based content hosting and digital media delivery, management platform operated by Licensor that is accessed by Authorized Users.

Authorized Users: Current educators, administrators, students, or staff of Licensee (whether on a permanent, temporary, contract or visiting basis) and individuals who are enrolled at Licensee's school(s) listed in Exhibit A hereto (the community), who are permitted to access LEARN360 from within the Licensee's premises or from such other places where Authorized Users work or study (including but not limited to Authorized Users' offices and homes) and who have been issued a password or other authentication by Licensee. Educators, administrators, students, or staff of Licensee not affiliated with Licensee who are physically present at Licensee's site(s) ("walk-ins") are permitted access while physically present.

Commercial Use: Use for the purposes of monetary reward (whether by or for Licensee or Authorized User) by means of admission charge or fee for viewing, sale, loan, transfer, or other form of exploitation of the Video Titles.

Subscription Term: The period during which Licensee and Authorized Users may access the LEARN360 platform.

Video Title and Digital Media: A complete individual video program, which may be available in whole or in part on the LEARN360 platform or acquired separately in digital or hard copy format. All other digitized media resources such as teacher guides, student activities and worksheets, music tracks, audio and video speeches and audio books or other digital media Licensor may add to the LEARN360 platform.

Term and Termination

The pricing for this license (the "Fees") for the Term shall be as follows:

Option A:

Quantity	Product	Currently Yearly Rate	Subscriber's Rate	Years	Total
10	Learn360	\$995 to \$1295 per school	\$1.14 per student with a minimum of \$425 and a maximum of \$925 per school	1	\$5,681
Learn360 License Total					\$5,681

Option B:

Quantity	Product	Current Yearly Rate	Subscriber's Rate	Years	Total

Agreed:

- ☐ ☐ **Option A One-Year**
- ☐ ☐ **Option B Three Year**

The offer set forth in this Agreement shall be open through 12/1/2016.

The term of this Agreement shall commence on the **12/1/2016** and continue in force through **11/30/2017**. Expiration and nonrenewal of subscription will result in immediate termination, whereupon all access of Licensee and Authorized Users to LEARN360 shall cease.

Notwithstanding the above, this Agreement may be terminated by Licensor if Licensee materially fails to perform or comply with this Agreement or any provision hereof. Termination hereunder shall be effective 30 days after written notice of termination given by Licensor to Licensee, if Licensee's defaults have not been cured within such 30 day period.

All other terms and conditions governing this license shall be as set forth in the Terms of Use. Licensor may revise such Terms of Use from time to time. In the event of a direct conflict between the terms of this Agreement and the terms of the then-current Terms of Use, the terms of this Agreement shall control.

Grant of License

Licensor grants to Licensee a non-exclusive, non-transferable license to provide Authorized Users access to LEARN360 consistent with the provisions of this Agreement. Grant of License is conditional upon payment of subscription fee to Licensor by Licensee or third party acting on behalf of Licensee. Grant of License is provided to Licensee only and is not extended to corporate parent, subsidiaries, or other affiliated institutions unless specifically provided for in this Agreement. Any rights not specifically included herein are reserved to Licensor.

Permitted Uses of LEARN360

LEARN360 is licensed solely to Licensee and Authorized Users for classroom teaching, research, presentations, and educational non-commercial multimedia projects for use in educational institutions, provided no admission or other fees are charged for public viewing. Licensee and Authorized Users may stream, display, publicly perform (except when public performance is restricted by copyright holders), or exhibit the Video Titles asynchronously on a single computer or network, course management system, or password-protected website. Licensee and Authorized Users may electronically save, organize, and share Video Titles or parts thereof with other Authorized Users using tools provided with LEARN360.

Prohibited Uses of LEARN360

Neither Licensee nor Authorized Users may (1) mount or distribute any element of LEARN360 on any electronic network accessible to parties who are not Authorized Users, including without limitation the Internet and the World Wide Web; (2) use all or any part of LEARN360 for Commercial Use or; (3) copy, transmit, modify, distribute, sell, or create derivative works from the Video Titles except as expressly permitted under applicable law or as described herein. Interlibrary loan functionality is not supported by the LEARN360 platform.

Composition of LEARN360

Licensor may add Video Titles and Digital Media to LEARN360 at regular intervals during the course of the Subscription Term at no added cost to Licensee. Licensor may also be required to purge from LEARN360 at regular, scheduled intervals Video Titles and or Digital Media that are no longer in distribution, after which such Video Titles and Digital Media will be removed from LEARN360 and will no longer be accessible by Licensee or Authorized Users. Licensor agrees to provide advance notice of discontinuation whenever reasonably possible, and will offer Licensee the option to purchase a permanent license, provided Licensor has the right to do so.

Password Protection/License Compliance

Licensee agrees to protect its passwords from use by unauthorized persons by taking reasonable measures to prevent access by unauthorized persons. Licensee further agrees to take all necessary, reasonable, and prudent precautions to keep others from violating this Agreement. Licensee agrees that the Licensor shall have the right to seek and obtain immediate injunctive relief to enforce obligations under this Agreement and to seek other available remedies under the law.

Disclaimer of Warranties

LEARN360 is supplied 'as is' and Licensor makes no representations or warranties of any kind, express or implied, including, but not limited to, warranties of design, site availability, accuracy of the information contained in the Video Titles and Digital Media, merchantability, or fitness of use for a particular purpose. Licensee's use of LEARN360 is at Licensee's sole risk.

Limitation of Liability

Under no circumstances shall the Licensor, its affiliates or content providers be liable to the Licensee or any other person, including but not limited to Authorized Users, for any special, exemplary, incidental or consequential damages of any character arising out of the inability to use, or the use of, the Video Titles. Irrespective of the cause or form of action, the Licensor's aggregate liability for any claims, losses, or damages arising out of any breach of this License shall in no circumstances exceed the subscription fee paid by the Licensee to the Licensor under this license in respect of the Subscription Term during which such claim, loss or damage occurred. The foregoing limitation of liability and exclusions of certain damages shall apply regardless of the success or effectiveness of other remedies.

Licensor shall not be responsible for any problems or delays that may occur in or on or be related to any of Licensee's computer hardware, firmware, software, or use thereof. This includes, but is not limited to, problems that may occur as a result of Licensee's installation and use of the Licensed Materials or technical support provided by Licensor.

Indemnification

Each party agrees to indemnify and hold the other harmless for any losses, claims, damages, awards, penalties, or injuries incurred by any third party, including reasonable attorney's fees, which arise from any alleged breach of such indemnifying party's representations and warranties made under this Agreement, provided that the indemnifying party is promptly notified of any such claims. This indemnity shall survive the termination of this Agreement.

Trademarks

Except as permitted by applicable laws, Licensee is prohibited from using any of the marks appearing on the Video Titles and Digital Media without express written consent from their respective trademark owners.

Miscellaneous

~~Licensor's rights, including but not limited to all rights of remedy for Licensee's breaches under this Agreement, shall continue in perpetuity.~~ With the exception of the rights to use LEARN360, all other provisions of this Agreement shall survive termination and shall continue to legally bind Licensee. No delay or failure of Licensor to take action under this Agreement will constitute a waiver by Licensor, unless expressly waived in writing by Licensor.

This Agreement constitutes the complete agreement of the parties and contains the entire understanding of the parties hereto relating to LEARN360, supersedes any prior written or oral agreement or understandings between the parties with respect to LEARN360, and cannot be changed or terminated orally but only in writing signed by both parties.

Licensee / Educational Organization:

Signature: _____

Title: _____

Printed Name: _____

Date: _____

Bill To:

Name: _____

Title: _____

Implementation Contact:

Name: _____

Title: _____

Please fax the signed agreement to:

Attention: Steve Finch

Fax # **212-313-9443**

P.O.# _____

Please make purchase order out to "Infobase Learning" and remit payment (NET 30 DAYS) to:

Infobase Learning

PO Box 26223

New York, NY 10087-6223

Federal Tax ID: 13-3720604

SCHEDULE A LICENSED SCHOOL(S)

For large school districts please include the list of authorized users in an Excel spreadsheet or expand the form and e-mail to: sfinch@inbobase.com

Infobase Learning

Exhibit A - Licensee School(s) Setup

Product: Enter the subscription product(s) here					
Licensee Schools - School Name	School Contact: First Name	School Contact: Last Name	Title	e-mail address	School Phone #
Birch Lane Elementary					
Cesar Chavez Elementary					
Davis School for Independent Studies					
Fairfield Elementary					
Fred T. Korematsu Elementary School					
Marguerite Montgomery Elementary					
North Davis Elementary					
Patwin Elementary					
Pioneer Elementary					
Robert E. Willett Elementary					

Customer Support

Tier 1: Customers receive a live support person when they call during normal business hours (Monday- Friday 7:30 am EST- 8:30pm EST). Support requests are also handled via e-mail. Any voicemails or e-mails submitted after business hours are returned promptly the next business day. Problems that cannot be resolved by LEARN360 Tier 1 representatives are immediately escalated to Tier 2.

Tier 2: Representatives have additional remote support tools at their disposal that allow for more in depth resolution solving possible. LEARN360 Tier 2 representatives use GoTo Assist to remotely connect, troubleshoot and fix any Mac or PC LEARN360 issue a customer has. 90% of the issues logged by our support department are resolved over the phone at the time of call in.

Tier 3: In the event that a customer's support issue requires that of a programmer interaction, those issues are promptly handed off for a quick resolution. LEARN360 support representatives maintain an open line of communication throughout the entire process, ensuring that the customer knows exactly what is being done to resolve their issue.

Davis Joint Unified School District

Infobase Learning

Terms of Service

Jurisdiction, Venue, & Interpretation

The Terms of Service shall be governed by and construed in accordance with the laws of the State of California. Each party consents to personal jurisdiction and venue in Yolo County. The United Nations Convention on Contracts for the International Sale of Goods is specifically disclaimed. If a court of competent jurisdiction rules as invalid any provision of this agreement or the application of any provision to any person or circumstance, the parties agree that the court should endeavor to give effect to the parties' intentions as reflected in the provision, and all other provisions shall remain in full force and effect. You agree that regardless of any statute or law to the contrary, any claim or cause of action arising out of or related to the Service, the use of the Infobase Learning website or the Terms of Service, must be filed within one (1) year after such claim or cause of action arose or be forever barred.

If any provisions of this Amendment to the Digital License Agreement Subscription Plan or Digital License Agreement Terms of Service conflict or are otherwise contrary to the original terms of the Agreement, the terms of this Amendment prevail.

Accepted as addendum to Learn 360 Terms of Service.

By:



Title:

NATIONAL ACCOUNTS MANAGER

Date:

November 30, 2016