

**CONTRACT NAME: AGREEMENT BETWEEN ROBUST  
PHYSICAL FITNESS TESTING AND DAVIS JOINT UNIFIED  
SCHOOL DISTRICT**

**BRIEF DESCRIPTION OF CONTRACT:** This contract between Robust Physical Fitness Testing and DJUSD is to provide online software for Physical Fitness Testing of students in grades 5, 7 and 9.

The term of this agreement is from March 2017 through June 2017. The first year will be free and the costs for subsequent years will be \$2,400 per year. The funds for this expenditure are allocated in the District budget for Curriculum and Instruction.

**DAVIS JOINT UNIFIED SCHOOL DISTRICT**  
**AMENDMENT TO CLOUD- BASED SOFTWARE AGREEMENT INVOLVING**  
**PUPIL RECORDS**  
**EDUCATION CODE SECTION 49073.1 AMENDMENT TO THE ROBUST PFT**  
**BETWEEN THE DAVIS JOINT UNIFIED SCHOOL DISTRICT AND ROBUST PFT**

**THIS AMENDMENT** (“Amendment”) to the **Robust PFT** Agreement by and between the Davis Joint Unified School District, a public school district of the state of California and Robust PFT a corporation, dated January 23, 2017 (“Agreement”) (a true and correct copy of which is attached hereto as Exhibit “A” and is hereby made and entered into as of January 23, 2017as follows:

**WHEREAS**, Vendor provides software to report Physical Fitness Testing Data

**WHEREAS**, as a California public school district, the District is subject to the California Education Code;

**WHEREAS**, Vendor is a “third party” under Education Code section 49073.1, which defines “third party” as a provider of digital educational software or services, including cloud-based services, for the digital storage, management, and retrieval of pupil records;

**WHEREAS**, Education Code section 49073.1 requests that any contract for the provision of services entered into between District and Vendor contain certain provisions specified in sections (b)(1) through (b)(9) of Education Code section 49073.1;

**WHEREAS**, The District and Vendor desire to amend the terms in their Agreement that will satisfy the requirements of Education Code section 49073.1.

**NOW, THEREFORE, DISTRICT AND VENDOR AGREE TO THE FOLLOWING TERMS IN COMPLIANCE WITH EDUCATION CODE SECTION 49073.1.**

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

**2. Ownership and Control of Pupil-Generated Content.** Pupils may retain possession and control of their own Pupil-Generated Content, as defined herein, or may transfer Pupil-Generated Content to a personal account by notifying the District’s Director of Technology in writing of such request. The District will provide a written request to Vendor and Vendor shall return the Pupil-Generated Content in a format acceptable to the District within five (5) days of receiving the District’s

request. For purposes of this contract, "Pupil Generated Content" includes essays, research reports, portfolios, creative writing, music or other audio files, photographs, but does not include pupil responses to a standardized assessment where pupil possession and control would jeopardize the validity and reliability of that assessment.

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

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

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

6. **Breach Notification Process.** Vendor, within one (1) business day of discovery, shall report to District any use or disclosure of Pupil Records not authorized by the Agreement or otherwise authorized in writing by the District. Vendor's report shall identify: (i) the nature of the unauthorized use or disclosure; (ii) the Pupil Records used or disclosed, (iii) who made the unauthorized use or received the unauthorized disclosure, (iv) what Vendor has done or shall do to mitigate any effect of the unauthorized use or disclosure, and (v) what corrective action Vendor has taken or shall take to prevent future similar unauthorized use or disclosure. Vendor shall provide such other information, including a written report, requested by District. In the event of an unauthorized disclosure of a Pupil's Records, affected parents, legal guardians, or pupils who have reached the age of eighteen (18) will be notified in writing and provided with details and next steps to address the specific breach. Compliance with these requirements shall not, in itself, absolve Vendor of liability in the event of an unauthorized disclosure of Pupil Records.

7. **Retention and Destruction of Pupil Records.** Vendor certifies that a pupil's records shall not be retained or available to Vendor upon completion of the term of the contract. At the termination of the contract, Pupil Records in the possession of Vendor shall be returned and/or destroyed. Upon termination, cancellation, expiration or other conclusion of the contract, Vendor shall return all

Pupil Records to District in a format acceptable to District, or if return is not feasible as determined by District in written notice to Vendor, destroy any and all Pupil Records. Vendor shall not destroy any Pupil Records without express written permission of District. Vendor shall comply with any litigation hold or order to preserve Pupil Records.

8. **Compliance with Applicable Laws.** The District and Vendor will jointly ensure compliance with the federal Family Educational Rights and Privacy Act ("FERPA") (20 U.S.C. Sec. 1232g) through following the confidentiality provisions as set forth in this contract, as well as applicable District Board policies. The parties acknowledge and agree that the District is subject to federal and local laws relating to the protection of personally identifiable information ("PII") of students, including FERPA, and that Vendor is obtaining such PII as a "school official" under section 99.31 of FERPA for the purpose of providing the services hereunder. In addition to FERPA, Vendor shall comply with all federal, state and local laws, rules, regulations and ordinances that are now or may in the future become applicable to Vendor; the services being provided by Vendor; Vendor's business, equipment and personnel engaged in operations covered by this contract; and the protection of Pupil Records and PII, including but not limited to Education Code section 49060 *et seq.*, the Children's Online Privacy Protection Act (COPPA) and the Student Online Personal Information Protection Act (SOPIPA). Vendor certifies that it is familiar with these laws, as well as any other applicable requirements for the storage and transmission of Pupil Records and Vendor will comply with all such requirements.

9. **Prohibition on Targeted Advertising.** Vendor shall not use PII in Pupil Records to engage in targeted advertising.

10. **Governing Law and Venue.** The Agreement and this Amendment shall be governed by and construed in accordance with the laws of the State of California. Any dispute, claims, demands or actions arising out of or in relation to the Agreement and this Amendment shall be brought in and resolved by the Superior Court of the County of Yolo.

11. **Effect of Amendment.** If any provisions of this Amendment to the Agreement conflict or are otherwise contrary to the original terms of the Agreement, the terms of this Amendment prevail.

Except as specifically modified herein, all other terms and conditions contained in the Agreement between the District and Vendor shall remain unchanged and in full force and effect.

Dated this 1 Day of February, 2017.

**Davis Joint Unified School District**

By: \_\_\_\_\_

Its: \_\_\_\_\_

**Robust PFT**

By:  \_\_\_\_\_

Its: Owner



PO BOX 11264  
 Fresno CA, 93772  
 (559) 289-4515  
 customercare@robustpft.com

# ESTIMATE

Date	Estimate No.
01/31/17	11

Bill To
Marcia Bernard 526 B Street Davis, CA 95616 mbernard@djusd.net

Terms	P.O. No.	Subscription Date	School Year		
P.O. - 30 Days		01/31/17	2017-18		
Subscription Length	Description		Schools	Each	Total
Year 1	(Year 1) 2016-17= (FREE)  - Full Access to Robust PFT - Customer Care 24/7 - Collaborate with district PFT Coordinator- Free District demo & training.		12	0.00	0.00
Year 2	(Year 2) 2017-18 - Full Access to Robust PFT - Customer Care 24/7 Sales Tax		12	200.00  0.00%	2,400.00  0.00
Thank you for your business.			Total		\$2,400.00