

**CONTRACT NAME: AGREEMENT BETWEEN THE
XCSTATS.COM LLC AND DAVIS JOINT UNIFIED SCHOOL
DISTRICT**

BRIEF DESCRIPTION OF CONTRACT: XCStats.com LLC is a web-based service that allows the Davis Senior High School track coach to track attendance quickly and accurately for the athletes enrolled in the Independent Lifetime Sports class. It is also used as a tool to assist the coach in communicating with the 230 student athletes about absences and tasks that need to be completed and with parents when drivers are needed to transport the athletes.

Because of this service, the coach is able to hold the student athletes accountable and to communicate with parents if there is an issue. It is used in many high school track and cross country programs state-wide.

The total cost of this service is \$195 and is being paid by the site track team budget.

DAVIS JOINT UNIFIED SCHOOL DISTRICT

**AMENDMENT TO CLOUD- BASED SOFTWARE AGREEMENT INVOLVING
PUPIL RECORDS**

**EDUCATION CODE SECTION 49073.1 AMENDMENT TO THE XCSTATS
AGREEMENT BETWEEN THE DAVIS JOINT UNIFIED SCHOOL DISTRICT AND
XCSTATS**

THIS AMENDMENT (“Amendment”) to the XCStats Agreement by and between the Davis Joint Unified School District, a public school district of the state of California and XCStats, 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 an online system that enhances the Track and Cross country experience for students, parents and coaches. It allows the coach to keep track of attendance and program details. **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; and

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 23 Day of January, 2017.

Davis Joint Unified School District

By: _____

Its: _____

XCStats

By: Michael Sherwood

Its: OWNER

MICHAEL SHERWOOD



Terms Of Use

- **Acceptance of Terms of Use and Amendments.**
Each time you use or cause access to this web site, you agree to be bound by these Terms of Use, and as amended from time to time with or without notice to you.
- **Our Service.**
Our web site and services provided to you on and through our web site is on an "AS IS" basis. You agree that the owners of this web site exclusively reserve the right and may, at any time and without notice and any liability to you, modify or discontinue this web site and its services or delete the data you provide, whether temporarily or permanently. We shall have no responsibility or liability for the timeliness, deletion, failure to store, inaccuracy, or improper delivery of any data or information. We have no obligation to correct errors or to reload updated revisions of event results. We reserve the right to refuse to load data which is not in a high quality, consistent and uniform format.
- **Event Results and Data Submissions.**
By transmitting files, inputting data or instructing us to access and retrieve data, you grant (or represent and warrant that the owner of such information grants) XCStats.com a royalty-free, perpetual, non-exclusive, worldwide license to use, copy, modify, adapt, transmit, translate, create derivative works from or display any of the information and sublicense to third parties the unrestricted right to exercise any of the foregoing rights granted with respect to such information. You acknowledge and agree that we shall have the right (but not obligation), in our sole discretion, to refuse to publish or to remove or block access to any Content you provide at any time and for any reason, with or without notice.
- **Coach's Login and Password.**
You are responsible to maintain the confidentiality of your password and shall be responsible for all uses via your registration and/or login, whether authorized or unauthorized by you. You agree to immediately notify us of any unauthorized use or your registration, user account or password.
- **Your Conduct.**
You explicitly agree, in using this web site or any service provided, that you shall not: (a) provide any Content or perform any conduct that may be unlawful, illegal, threatening, harmful, abusive, harassing, stalking, tortious, defamatory, libelous, vulgar, obscene, offensive, objectionable, pornographic, designed to or does interfere or interrupt this web site or any service provided, infected with a virus or other destructive or deleterious programming routine, give rise to civil or criminal liability, or which may violate an applicable local, national or international law; (b) impersonate or misrepresent your association with any person or entity, or forge or otherwise seek to conceal or misrepresent the origin of any Content provided by you; (c) provide any Content that may give rise to our civil or criminal liability or which may constitute or be considered a violation of any local, national or international law, including but not limited to laws relating to copyright, trademark, patent, or trade secrets.
- **Indemnification.**
You agree to indemnify and hold us harmless, our subsidiaries, affiliates, related parties, officers, directors, employees, agents, independent contractors, advertisers, partners, and co-branders from any claim or demand, including reasonable attorney's fees, that may be made by any third party, that is due to or arising out of your conduct or connection with this web site or service, your provision of Content, your violation of this Terms of Use or any other violation of the rights of another person or party.
- **DISCLAIMER.**
YOU UNDERSTAND AND AGREE THAT YOUR USE OF THIS WEB SITE AND ANY SERVICES OR CONTENT PROVIDED (THE "SERVICE") IS MADE AVAILABLE AND PROVIDED TO YOU AT YOUR OWN RISK. IT IS PROVIDED TO YOU "AS IS" AND WE EXPRESSLY DISCLAIM ALL WARRANTIES OF ANY KIND, IMPLIED OR EXPRESS, INCLUDING BUT NOT LIMITED TO THE WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, AND NON-INFRINGEMENT. WE MAKE NO WARRANTY, IMPLIED OR EXPRESS, THAT ANY PART OF THE SERVICE WILL BE UNINTERRUPTED, ERROR-FREE, VIRUS-FREE, TIMELY, SECURE, ACCURATE, RELIABLE, OF ANY QUALITY, NOR THAT ANY CONTENT IS SAFE IN ANY MANNER FOR DOWNLOAD. YOU UNDERSTAND AND AGREE THAT NEITHER US NOR ANY PARTICIPANT IN THE SERVICE PROVIDES PROFESSIONAL ADVICE OF ANY KIND AND THAT USE OF SUCH ADVICE OR ANY OTHER INFORMATION IS SOLELY AT YOUR OWN RISK AND WITHOUT OUR LIABILITY OF ANY KIND.
- **LIMITATION OF LIABILITY.**
YOU EXPRESSLY UNDERSTAND AND AGREE THAT WE SHALL NOT BE LIABLE FOR ANY DIRECT, INDIRECT, SPECIAL, INCIDENTAL, CONSEQUENTIAL OR EXEMPLARY DAMAGES, INCLUDING BUT NOT LIMITED TO, DAMAGES FOR LOSS OF PROFITS, GOODWILL, USE, DATA OR OTHER INTANGIBLE LOSS (EVEN IF WE HAVE BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES), RESULTING FROM OR ARISING OUT OF (I) THE USE OF OR THE INABILITY TO USE THE SERVICE, (II) THE COST TO OBTAIN SUBSTITUTE GOODS AND/OR SERVICES RESULTING FROM ANY TRANSACTION ENTERED INTO ON THROUGH THE SERVICE, (III) UNAUTHORIZED ACCESS TO OR ALTERATION OF YOUR DATA TRANSMISSIONS, (IV) STATEMENTS OR CONDUCT OF ANY THIRD PARTY ON THE SERVICE, OR (V) ANY OTHER MATTER RELATING TO THE SERVICE.
- **Copyright.**
All content included on this site, including graphics, text, images, logos, button icons, images, and all related code (including but not limited to HTML, other mark-up languages, and all scripts), as well as the compilation of the content, is the property of Mike Sherwood of Redwood City, Ca and is protected by U.S. and international copyright laws. Any unauthorized use of these materials may violate copyright, trademark or other laws.