

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

**BRIEF DESCRIPTION OF CONTRACT:** Schoology is a learning management system for K-12 schools, high education institutions and corporations that allows users to create, manage, and share content and resources. DSIS will use this system as a single, consistent platform to house and deliver curriculum and maintain student records.

This is a three-year agreement beginning July 1, 2017 and ending on June 30, 2020. The cost for this service is \$4,000 per year with an additional \$4,500 fee for implementation the first year and will be allocated in the DSIS site budget.

**DAVIS JOINT UNIFIED SCHOOL DISTRICT**

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

**EDUCATION CODE SECTION 49073.1 AMENDMENT TO THE SCHOOLOGY  
AGREEMENT BETWEEN THE DAVIS JOINT UNIFIED SCHOOL DISTRICT AND  
SCHOOLOGY, INC.**

**THIS AMENDMENT** (“Amendment”) to the **Schoology** Agreement by and between the Davis Joint Unified School District, a public school district of the state of California and **Schoology**, a corporation, dated April 28, 2017 (“Agreement”) (a true and correct copy of which is attached hereto as Exhibit “A” and is hereby made and entered into as of April 28, 2017 as follows:

**WHEREAS**, Vendor provides a full learning management platform with tools to manage content, design lessons and assess student learning.

**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 if known: (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, take all reasonable efforts to 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 to the extent such policies are consistent with the provisions of this Agreement. 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 28th Day of April, 2017.

**Davis Joint Unified School District**

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

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

**Schoology**

DocuSigned by:  
By: Amar Shrivastava

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VP Finance

## EXHIBIT A - MASTER SUBSCRIPTION AGREEMENT

**THIS SUBSCRIPTION AGREEMENT** (this “Agreement”) sets forth the terms and conditions pursuant to which Schoology, Inc. (“Schoology”) provides its end user subscribers (each, a “Subscriber”) with access to Schoology’s proprietary learning management system and secure academic social network more particularly described on Schoology’s website located at [www.schoology.com](http://www.schoology.com) (the “Schoology System”). Subscriber may place orders under this Agreement by submitting separate ordering document(s) specifying the services to be provided by Schoology hereunder (each, a “Sales Order”). Each Sales Order shall incorporate the terms and conditions of and be governed by this Agreement. Submitting or acceptance of a Sales Order or Subscriber’s use of or access to the Schoology System shall constitute Subscriber’s unconditional acceptance of this Agreement. The Sales Order can be accepted only in accordance with the terms of this Agreement. Additional or different terms proposed by Subscriber will not be applicable unless accepted in writing by Schoology. No change, modification, or revision of the Sales Order or this Agreement shall be effective unless in writing and signed by both Subscriber and Schoology. This Agreement shall be effective upon the earlier of the date of Subscriber’s submission or acceptance of any Sales Order or the date of Subscriber’s first use of or access to the Schoology System (the “Effective Date”). If there is a conflict between the terms of this Agreement and the terms of a Sales Order, the terms of this Agreement will control.

1. **Grant of License; Subscription.** Subject to the terms and conditions of this Agreement and the applicable Sales Order, Schoology hereby grants to Subscriber a limited, non-exclusive, non-transferable, license to access and use the Schoology System during the term specified in the Sales Order, including any renewals thereof (the “Term”). Subscriber hereby accepts the subscription to the Schoology System more particularly described in the Sales Order (the “Subscription”). Subscriber shall not (a) copy the Schoology System or any part, feature, function or user interface thereof (b) use the Schoology System to store or transmit infringing, libelous, or otherwise unlawful or tortious material, or to store or transmit material in violation of third-party privacy rights (c) attempt to gain unauthorized access to the Schoology System or its related systems or networks; and (d) reverse engineer the Schoology System (to the extent such restriction is permitted by law).

2. **Billing and Payment.** Subscriber shall pay all fees specified in the applicable Sales Order. Schoology shall send an invoice to Subscriber, and Subscriber shall pay the full amount due within 30 days of the invoice date by mailing a check or depositing the amount due via wire transfer (in which case Subscriber must contact Schoology at [billing@schoology.com](mailto:billing@schoology.com) for wire transfer instructions). Except as otherwise specified in a Sales Order, (a) all payment obligations are non-cancelable and all fees paid are non-refundable (including upon termination hereof), (b) quantities purchased cannot be decreased during the relevant subscription Term, and (c) the Subscription fees indicated in a Sales Order are based on the Subscriptions purchased and not actual usage up to the number of Subscriptions purchased. If Subscriber uses more than the number of Subscriptions purchased as indicated in the Sales Order, Schoology may submit an amended invoice for the amount of such excess usage, and Subscriber shall pay the fees applicable to the variance within 30 days of the invoice date. Except to the extent fixed in the Sales Order, Schoology’s Subscription fee is subject to change by Schoology without notice and in its sole discretion. Subscriber shall be solely responsible for any taxes, including personal property taxes, or local licensing fees resulting from Subscriber’s Subscription or in connection with Schoology’s delivery of Schoology System under this Agreement, provided that Schoology shall be responsible for taxes on its net income derived from this Agreement.

3. **Ownership.** All right, title, and interest in and to the Schoology System and all underlying ideas, concepts, procedures, processes, principles, know-how, methods of operation, images, source code,

and specifications related thereto, together with any updates, enhancements, modifications, improvements or derivative works thereto, in each case including all copyrights, trade names, trademarks and other intellectual property rights therein (collectively, the “Schoolology IP”), is, and shall remain the sole and exclusive property of Schoolology. Certain Schoolology IP is protected by United States copyright laws (and other laws relating to intellectual property). The Schoolology System is licensed, not sold, to Subscriber hereunder and, except for the express limited license rights granted to Subscriber in accordance with the terms of this Agreement, no right, title or interest in or to the Schoolology IP is granted or otherwise transferred by Schoolology in connection with this Agreement. Schoolology shall have, and Subscriber hereby grants to Schoolology, a royalty-free, perpetual, worldwide, non-exclusive, irrevocable right to use or incorporate into the Schoolology System and/or any specifications, without restriction or obligation, any suggestions, enhancements, recommendations or other feedback provided by Subscriber with respect to the Schoolology System.

**4. Enterprise Services.** Subscriber may procure implementation, training or other professional services (“Enterprise Services”) in a Sales Order. Schoolology will use commercially reasonable efforts to perform such Enterprise Services and unless otherwise expressly agreed in a Sales Order, all Enterprise Services will be deemed accepted upon delivery.

**5. Confidential Information.** (a) “Confidential Information” means all information disclosed by a party (“Disclosing Party”) to the other party (“Receiving Party”), whether orally or in writing, that is designated as confidential or that reasonably should be understood to be confidential given the nature of the information and the circumstances of disclosure. Confidential Information includes, without limitation, business and marketing plans, technology and technical information, product plans and designs, and business processes disclosed by the Disclosing Party. Further, Confidential Information of Schoolology includes the Schoolology IP, including any updates, enhancements, modifications, improvements and derivative works thereto. In addition, any data uploaded by Subscriber to the Schoolology System (hereinafter “Subscriber Data”) and “FERPA Records” (as defined below) are confidential to Subscriber. However, Confidential Information does not include any information that (i) is or becomes generally known to the public without breach of any obligation owed to the Disclosing Party, (ii) was known to the Receiving Party prior to its disclosure by the Disclosing Party without breach of any obligation owed to the Disclosing Party, (iii) is received from a third party without breach of any obligation owed to the Disclosing Party, or (iv) was independently developed by the Receiving Party without use of or reference to the Disclosing Party’s Confidential Information.

(b) The Receiving Party will use the same degree of care that it uses to protect the confidentiality of its own confidential information of like kind (but not less than reasonable care) to (i) not use any Confidential Information of the Disclosing Party for any purpose outside the scope of this Agreement and (ii) except as otherwise authorized by the Disclosing Party in writing, limit access to Confidential Information of the Disclosing Party to its employees, agents and contractors to the extent necessary to perform its obligations under this Agreement.

(c) The parties acknowledge that (i) Confidential Information may include personally identifiable information from education records that are subject to the Family Educational Rights and Privacy Act, as amended (“FERPA Records”); and (ii) to the extent that Confidential Information includes FERPA Records, Schoolology will be considered a “School Official” (as that term is used in FERPA and its implementing regulations) and will comply with the requirements and obligations of School Officials under FERPA. Each party represents and warrants to the other party that it will comply with all provisions of FERPA applicable to such party’s performance hereunder.

(d) The parties also acknowledge that Confidential Information may include personally identifiable information from children under the age of 13, subject to the Children’s Online Privacy Protection Act and related regulations (“COPPA”). Subscriber acknowledges that it will act as agent for the parents of students under the age of 13 for purposes of COPPA. Schoolology presumes that Subscriber’s authorization is based

on having obtained parental consent where necessary. Subscriber further acknowledges that it has read, fully understands, and agrees to abide by Schoology's Privacy Policy & Terms of Use, available at [www.schoology.com](http://www.schoology.com) and as may be revised from time-to-time, incorporated by reference herein.

6. **Subscriber Information.** As between Schoology and Subscriber, Subscriber owns all information regarding its schools or districts that it uploads to the Schoology System. Schoology shall implement commercially reasonable administrative, technical, and physical safeguards for the protection of the security, confidentiality and integrity of Subscriber Data.

7. **Renewals; Termination.** The Term is defined in the applicable Sales Order and may only be extended upon mutual written agreement of the parties. A party may terminate this Agreement for cause upon 30 days written notice to the other party in the event that the other party commits a material breach of its obligations under this Agreement and such breach remains uncured at the expiration of such notice period. Upon the termination or expiration of this Agreement for any reason, Schoology shall, for a period of 30 days following such termination or expiration, maintain student information and permit Subscriber with access to such data, in Schoology-augmented reporting form, including norms and learning statements. The sections titled "Billing and Payment," "Ownership," "Confidentiality," "Renewals; Termination," "Limitation of Liability," "Disclaimers," "Indemnification," "Miscellaneous" shall survive any termination or expiration of this Agreement.

8. **Support & Maintenance.** Schoology may, from time to time, provide to Subscriber updates, enhancements, modifications, improvements in and to the Schoology System which shall all be subject to the terms and conditions of this Agreement. Schoology has system maintenance periods throughout the year that will affect Subscriber's ability to interact with the Schoology System. Schoology shall use commercially reasonable efforts to notify Subscriber in advance of any disruptions.

9. **Limited Warranty.** Schoology warrants to Subscriber that, during the applicable Term,: (a) this Agreement, the Sales Order and any specifications furnished by Schoology will accurately describe the applicable administrative, physical, and technical safeguards for the protection of the security, confidentiality and integrity of the Subscriber data, and (b) the Schoology System, when used in accordance with the specifications furnished by Schoology, will perform substantially in accordance with such specifications. In the event the Schoology System fails to conform to the foregoing warranties, Schoology shall use commercially reasonable efforts to correct such non-conformity. If Schoology is unable to correct the non-conformity, Schoology shall terminate this Agreement and refund to Subscriber any prepaid Subscription fees covering the remainder of the Term after the effective date of termination. The limited remedies described in this Section are Schoology's sole obligations and Subscriber's exclusive remedies for any breach of the limited warranties set forth herein. The limited warranties provided in this Section are void if the non-conformity results from (x) use of the Schoology System in connection with software or hardware not compatible with the Schoology System or not meeting the technical specifications furnished by Schoology; (y) improper or inadequate maintenance of Subscriber's equipment or software; or (z) inadequate Internet connectivity or bandwidth. Subscriber is solely responsible for the results obtained and decisions made from its use of the Schoology System. The Schoology System may include open source software components and use of such components may be subject to additional terms and conditions.

10. **Disclaimers.** (a) EXCEPT FOR THE EXPRESS LIMITED WARRANTIES PROVIDED IN SECTION 9, TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW, THE SCHOOLOGY SYSTEM IS PROVIDED "AS-IS" AND WITHOUT WARRANTY OF ANY KIND, EITHER EXPRESS OR IMPLIED, INCLUDING BUT NOT LIMITED TO ANY IMPLIED WARRANTY OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE OR USE, QUALITY, PRODUCTIVENESS OR CAPACITY, OR THAT THE OPERATION OF THE SOFTWARE INCLUDED WITHIN THE SCHOOLOGY SYSTEM WILL BE ERROR FREE. ALL OTHER WARRANTIES RELATING TO THE SCHOOLOGY SYSTEM OR THIS AGREEMENT ARE HEREBY EXPRESSLY DISCLAIMED BY SCHOOLOGY. EXCEPT AS PROVIDED HEREIN, THE

ENTIRE RISK AND LIABILITY ARISING OUT OF THE USE OF THE SCHOOLOGY SYSTEM REMAINS WITH SUBSCRIBER, INCLUDING, BUT NOT LIMITED TO, WHEN SUBSCRIBER'S PRACTICES ARE INCONSISTENT WITH *THE STANDARDS FOR EDUCATIONAL AND PSYCHOLOGICAL TESTING* (1999) BY THE AMERICAN EDUCATIONAL RESEARCH ASSOCIATION. WITHOUT LIMITING THE FOREGOING, THERE IS NO WARRANTY FOR PERFORMANCE ISSUES (A) CAUSED BY FACTORS OUTSIDE OF SCHOOLOGY'S REASONABLE CONTROL; (B) RESULTING FROM ANY ACTION OR INACTION OF SUBSCRIBER OR SUBSCRIBER'S THIRD PARTIES; OR (C) RESULTING FROM SCHEDULED MAINTENANCE PERIODS.

(b) SCHOOLOGY DOES NOT AND CANNOT CONTROL PERFORMANCE OF THE SCHOOLOGY SYSTEM BASED ON THE FLOW OF DATA TO OR FROM SCHOOLOGY'S NETWORK AND OTHER PORTIONS OF THE INTERNET, WHICH DEPENDS IN LARGE PART ON THE PERFORMANCE OF INTERNET SERVICES PROVIDED OR CONTROLLED BY THIRD PARTIES. AT TIMES, ACTIONS OR INACTIONS OF SUCH THIRD PARTIES CAN IMPAIR OR DISRUPT SUBSCRIBER'S CONNECTIONS TO THE INTERNET (OR PORTIONS THEREOF). ALTHOUGH SCHOOLOGY WILL USE COMMERCIALY REASONABLE EFFORTS TO REMEDY AND AVOID SUCH EVENTS, SCHOOLOGY CANNOT GUARANTEE THAT SUCH EVENTS WILL NOT OCCUR. ACCORDINGLY, SCHOOLOGY DISCLAIMS ANY AND ALL LIABILITY RESULTING FROM OR RELATED TO SUCH EVENTS.

(c) IN CONNECTION WITH USING THE SCHOOLOGY SYSTEM, SUBSCRIBER MAY PURCHASE PRODUCTS AND/OR SERVICES FROM, AND/OR PARTICIPATE IN PROMOTIONS OF, THIRD PARTIES. TRANSACTIONS RELATING TO ANY SUCH THIRD PARTY PRODUCTS, SERVICES AND/OR PROMOTIONS, AND ANY TERMS ASSOCIATED THEREWITH, ARE SOLELY BETWEEN SUBSCRIBER AND THE RELEVANT THIRD PARTIES. SCHOOLOGY DOES NOT SUPPORT, ENDORSE OR MAKE ANY REPRESENTATIONS OR WARRANTIES REGARDING, ANY SUCH THIRD PARTY PRODUCTS, SERVICES AND/OR PROMOTIONS, AND IN NO EVENT WILL SCHOOLOGY HAVE ANY LIABILITY WHATSOEVER IN CONNECTION THEREWITH.

11. **Limitations of Liability.** EXCEPT TO THE EXTENT THE FOLLOWING LIABILITY LIMITATION IS PROHIBITED BY APPLICABLE LAW, IN NO EVENT WILL SCHOOLOGY, ITS DEVELOPERS, OR ITS SUPPLIERS BE LIABLE FOR ANY LOST PROFITS, LOST OPPORTUNITY, LOST SAVINGS, LOSS OF GOODWILL, LOST BUSINESS, LOSS OF ANTICIPATED BENEFITS, BUSINESS INTERRUPTION, LOSS OF BUSINESS INFORMATION, LOSS OF OR DAMAGE TO DATA, COMPUTER FAILURE OR MALFUNCTION, OR ANY INDIRECT, SPECIAL, INCIDENTAL, CONSEQUENTIAL, OR PUNITIVE DAMAGES ARISING OUT OF OR AS A RESULT OF THIS AGREEMENT, THE USE OF OR INABILITY TO USE THE SCHOOLOGY SYSTEM OR THE PROVISION OF ENTERPRISE SERVICES, EVEN IF SCHOOLOGY HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. IN NO EVENT WILL SCHOOLOGY'S, ITS DEVELOPERS' OR SUPPLIERS' ENTIRE LIABILITY FOR ALL CLAIMS ARISING OUT OF OR AS A RESULT OF THIS AGREEMENT EXCEED THE AMOUNT ACTUALLY PAID BY SUBSCRIBER FOR THE RIGHT TO USE THE SCHOOLOGY SYSTEM IN THE TWELVE (12) MONTHS PRECEDING THE INCIDENT GIVING RISE TO LIABILITY. THE FOREGOING LIMITATIONS WILL APPLY WHETHER AN ACTION IS IN CONTRACT OR TORT AND REGARDLESS OF THE THEORY OF LIABILITY.

12. **Indemnification.** Subscriber agrees to indemnify, defend and hold harmless Schoology and Schoology's officers, directors, employees, agents, and representatives, from and against any and all claims, damages, expenses, judgments, fines, and amounts paid in settlement in connection with any proceeding arising from Subscriber's breach of this Agreement or its use of the Schoology System.



### 13. **Miscellaneous**

13.1 **Publicity**. Subscriber consents to Schoology's use and/or references to Subscriber's name, directly or indirectly, in Schoology's marketing and training materials. Subscriber may not use Schoology's name or trademark without Schoology's prior written consent.

13.2 **Force Majeure**. Neither party shall be liable for any delay or failure to perform any obligation hereunder due to causes beyond its control, including without limitation, war, riot, insurrection, civil commotion, terrorist activity, fire, industrial disputes of whatever nature, acts of nature, computer crimes, epidemics, acts or omissions of third party vendors or suppliers, equipment failures, public enemies of government, failure of telecommunications, system malfunctions, fire, or other casualty.

13.3 **Waiver and Severability**. Waiver by Schoology of any default or breach by Subscriber of any provision contained in this Agreement does not constitute a waiver of any subsequent default or breach of the same or any other provision of this Agreement. If any part of this Agreement shall be held invalid, illegal, in conflict with any law, or otherwise unenforceable by a court of competent jurisdiction, the remainder of this Agreement will nevertheless remain in full force and effect.

13.4 **No Third Party Beneficiaries**. The parties do not intend to confer any right or remedy on any third party.

13.5 **Entire Agreement**. This Agreement contains the entire understanding of the parties regarding the subject matter of this Agreement and supersedes all prior and contemporaneous negotiations and agreements, whether written or oral, between the parties with respect to the subject matter of this Agreement.

13.6 **Assignment**. Subscriber may not assign this Agreement to any third party without the prior written consent of the Schoology. Any such purported assignment shall be null and void. Subject to the foregoing, this Agreement shall be binding upon and inure to the benefit of the parties and their respective successors, and permitted assigns, if any.

13.7 **Notices**. Any notice required under this Agreement shall be in writing and effective when (a) delivered personally against receipt, (b) deposited in the mail and registered or certified with return receipt requested, postage prepaid, (c) shipped by a recognized courier service and addressed to either party as designated in this Agreement, (d) delivered by email to an email address designated by the recipient, or (e) delivered via any of the foregoing at the addresses specified in the Sales Order or such other address as may be provided by the recipient in accordance with this Section.

13.8 **Controlling Law and Venue**. This Agreement shall be construed and controlled by the laws of the State of California, U.S.A., without giving effect to principles of conflict of laws. The United Nations Convention on Contracts for the International Sale of Goods is specifically disclaimed and shall not apply to this Agreement. Courts located in the County of Yolo, California shall be the exclusive forum for any litigation arising out of this Agreement. Subscriber hereby waives any objections to venue, personal jurisdiction, or forum non conveniens.

13.9 **Counterparts**. This Agreement may be executed in counterparts, each of which shall be deemed an original, and the counterparts shall together constitute one and the same instrument, notwithstanding that all of the parties are not signatory to a single original or the same counterpart. The parties may also deliver and accept facsimile or electronically scanned signatures, which shall be binding upon the parties as if the signature were an original.

13.10 **Independent Contractor**. The parties are acting and shall act as independent contractors. Neither party is, nor will be deemed to be, an agent, legal representative, joint venturer or partner of the other party for any purpose. Neither party will be entitled to (a) enter into any contracts in

the name of or on behalf of the other party; (b) pledge the credit of the other party in any way or hold itself out as having authority to do so; or (c) make commitments or incur any charges or expenses for or in the name of the other party. Neither party's personnel are, nor shall they be deemed to be at any time during the term of this Agreement, employees of the other party.



Learning Management System

ENTERPRISE EDITION

*Sales Order for:*

**Davis Joint Unified School District**

**Davis JUSD - Davis School for Independent Study (Final)**

**526 B ST**

**DAVIS, CA 95616-3811**

James Tremaine

Regional Sales Director

[jtremaine@schoolology.com](mailto:jtremaine@schoolology.com)

**Schoolology, Inc.**

2 Penn Plaza, 10<sup>th</sup> Floor

New York, NY 10121

<https://schoolology.com>

This document represents an agreement between Davis Joint Unified School District (Davis Joint Unified School District) and Schoolology, Inc. (Schoolology) for the purchase of services in connection with Schoolology's web-based Learning Management System (LMS). All costs are represented in Exhibit A, Pricing.

## Enterprise Subscription

Davis Joint Unified School District's Enterprise Subscription to Schoolology's LMS includes the products and services described below. All associated database hardware, maintenance and upgrades are included.

### **User Authentication**

Davis Joint Unified School District will have access to Schoolology's flexible Administrative Configuration Interface, which allows system administrators to manage user single sign-on (SSO) configuration, providing integration with Davis Joint Unified School District's remote identity provider.

### **Advanced User Management**

Davis Joint Unified School District will have access to Schoolology's advanced User Management Interface which allows system administrators to manage user roles, permissions, privacy, and overall system settings. This also affords administrators the ability to manage user, course and enrollment data.

### **Enterprise Management Interface**

Davis Joint Unified School District will have the ability to create and manage multiple institutions and/or departments/divisions using the Enterprise Management Interface. System administrators can organize users by department, building, or institution, and have the ability to designate other

users as administrators. In addition, system administrators can manage all users, institutions, and/or departments/divisions from the main parent account.

## Branding

Schoolology will provide custom branding services to the user interface for Davis Joint Unified School District's instance of the LMS. The top banner and links will be branded with Davis Joint Unified School District's desired color scheme, and the Schoolology logo will be replaced with Davis Joint Unified School District's logo. In addition, Davis Joint Unified School District will receive domain customization (e.g. [lms.clientname.org](https://lms.clientname.org)) or subdomain customization (e.g. [clientname.schoolology.com](https://clientname.schoolology.com)).

## Support Services

All Schoolology users can access support documentation 24/7/365 via the Schoolology Help Center (<https://support.schoolology.com>). This resource contains a wealth of curated content, including role-based user guides, a document center with quick reference cards and release notes, troubleshooting tips, Schoolology FAQ's, and an archive of regularly updated trainings, videos, and webinars. Schoolology also provides active community support within the Help Center, with discussions and responses moderated by Schoolology employees, and regular announcements of new Schoolology features.

As an Enterprise client you will have access to priority support. You may choose up to three (3\*) dedicated Support Contacts from your organization, whose role is to relay any questions, concerns or ideas to the Schoolology team. Support Contacts can contact Schoolology by:

1. **Phone:** Support Contacts may contact a Schoolology representative by using a unique support code which can be found by clicking the "Help Center" icon (Only visible to Support Contacts).
2. **Ticketing System:** Support Contacts may create and track their own support tickets by going directly to [support.schoolology.com](https://support.schoolology.com).
3. **Chat:** Support contacts may use the Chat feature to contact a Schoolology representative to ask questions and troubleshoot issues.

\*More contacts are available at \$500/license/year

The Schoolology Support Team will work with Davis Joint Unified School District to provide ongoing support throughout your partnership with Schoolology.

Standard Support includes 24/7/365 Online Help Center access, 24/7/365 Community access, and web ticket, phone, and chat support for Support Contacts during business hours (Monday-Friday 8 am - 8 pm ET). Standard support is included in the cost of subscription.

Support Contacts are qualified, through training and experience, to provide first line support to local users. Typical issues resolved by Support Contacts include access problems and general usage questions. In addition, when users in the organization outside of the scope of the Support package contact the Schoolology Help Desk, they will be assisted by Schoolology's Support team. We believe that we should make our greatest effort in helping you and your users succeed. However, please note that these users may receive a later response than Support Contacts or other supported staff and faculty members at the organization.

## Services

After we have received Davis Joint Unified School District's signed Sales Order, a member of Davis Joint Unified School District's Implementation Team will receive an Implementation Verification Document to verify information and gather any additional account information. Upon receiving the verification document, a Schoolology Client Success Manager (CSM) will schedule a Kickoff Call to begin the implementation process. During the Kickoff Call, the Schoolology CSM will review all of the initial setup steps that Davis Joint Unified School District will need to get started, as well as address any potential questions or needs that Davis Joint Unified School District might require.

After the Kickoff Call, Davis Joint Unified School District will have access to Schoolology's consulting services, which includes check-in calls and support during implementation. During this process, we establish milestones for your Schoolology Subscription, system configuration, and product training. Schoolology will provide continual support throughout the implementation process through our Implementation and Support Teams.

## **Implementation**

During the beginning stages of the implementation process, Schoolology's CSM will work closely with Davis Joint Unified School District's Implementation Team to help guide them through the Schoolology setup process. Items included in your implementation are Schoolology configuration, data consolidation, custom branding, domain customization, technical planning, data population, user authentication and consulting. These items contribute to the overall success of your implementation strategy.

In addition to the standard implementation services you will also receive:

- Regular communication for monitoring the progress of the implementation.
- Instruction and consulting on system administration tools.
- Assistance with all aspects of the implementation process via guidance, documentation, and other non-hands-on help.
- Guidance for setting up custom authentication or single sign-on.
- Guidance and Best Practices for migrating content from existing LMS into Schoolology.

A successful implementation is one that aligns with the needs and goals of Davis Joint Unified School District. The Schoolology Implementation Team will work with Davis Joint Unified School District to provide guidance and support throughout the implementation process to ensure your goals are met to your satisfaction.

## **Training\***

Training is an important aspect of your implementation. Experience has shown us that developing Schoolology experts within an organization helps our clients achieve continued success using Schoolology. Davis Joint Unified School District will work with a member of Schoolology's

Professional Development team to draw from our extensive course catalog to develop an appropriate training plan that best fit your needs.

Together we will devise a training plan employing the following training delivery method(s):

**Web Training** - Our web training is setup for a maximum of 10 attendees and we recommend holding them in a computer lab with a projector and speaker phone. Most sessions are one to two hours in length and are most successful with a moderator present to facilitate questions. No-shows to sessions or cancellations within 24 hours can result in the loss of web hours of training.

As part of your implementation, Davis Joint Unified School District will receive the following training:

- Schoology Enterprise System Administration Training
- "Schoology for Master Instructors" - 6 hours of web training; 1 group of 10 attendees (recommended delivery: 3 - two hour sessions)
- Follow-up Schoology Training - 2 hours of web training; groups of 10 attendees; your choice of courses from the course catalog

A successful Schoology rollout is one that aligns with the needs and goals of Davis Joint Unified School District. The Schoology Professional Development team will work with your project leaders in advance to determine the most effective training plan for your organization.

\*Training services will expire one (1) year from contract start date.

The Schoology Team strives to ensure that Davis Joint Unified School District has a positive implementation experience, receives effective professional development and has access to appropriate support resources after your implementation is complete.



## Master Subscription Agreement

By executing this Sales Order, you acknowledge that you have read, understood, and agreed to be bound by the terms and conditions of the Master Subscription Agreement previously entered into between Schoolology and Subscriber and located at

<https://dl.dropboxusercontent.com/s/v4qvyscel04vyjs/UC%20Davis.pdf>. The Master Subscription Agreement governs your acquisition and use of our services set forth in this Sales Order.

### SUBSCRIBER NAME:

Davis Joint Unified School District

Signature:

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Printed Name:

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Title:

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Date:

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# Cost Summary

## Exhibit A – Pricing

Contract Start Date: **July 1, 2017**  
 Contract End Date: **June 30, 2020**  
 Enrollment: **500**

### Year One

Description	Quantity	Rate	Subtotal
Flat Rate Enterprise Subscription	1	\$4,000.00	\$4,000.00
Enterprise Implementation	1	\$4,500.00	\$4,500.00
			<b>\$8,500.00</b>

### Year Two

Description	Quantity	Rate	Subtotal
Flat Rate Enterprise Subscription	1	\$4,000.00	\$4,000.00
			<b>\$4,000.00</b>

### Year Three

Description	Quantity	Rate	Subtotal
Flat Rate Enterprise Subscription	1	\$4,000.00	\$4,000.00
			<b>\$4,000.00</b>

**Grand Total: US \$16,500.00**

The initial payment is due 30 days after the invoice date. All renewal subscriptions are invoiced 30 days prior to the start of the new term. Payment for renewal subscriptions must be received within 10 business days after the start of a new term.

***This Sales Order is valid until June 30, 2017.***

Thank you for your business!