

**CONTRACT NAME: AGREEMENT BETWEEN COUNSELORAPP (SCUTA SD) AND DAVIS JOINT UNIFIED SCHOOL DISTRICT**

**BRIEF DESCRIPTION OF CONTRACT:** This is an agreement between CounselorApp (SCUTA SD) and Davis Joint Unified School District for a web-based application that allows school counselors to analyze their daily tasks and see how they align to American School Counseling Associate Standards.

**FISCAL IMPACT:** The cost of this license for 2017-2018 is included in the approved site budgets at DaVinci Charter Academy and Davis Senior High School.

**DAVIS JOINT UNIFIED SCHOOL DISTRICT**

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

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

**THIS AMENDMENT** (“Amendment”) to the **CounselorApp** Agreement by and between the Davis Joint Unified School District, a public school district of the state of California and CounselorApp, Inc., a corporation, dated August 19, 2017 (“Agreement”) (a true and correct copy of which is attached hereto as Exhibit “A” and is hereby made and entered into as of August 19, 2017 as follows:

**WHEREAS**, Vendor provides a management tool for counselors which allow counselors to input their daily tasks and see how they align to ASCA (American School Counseling Association Standards). It is a confidential and comprehensive time analysis system and a secure web-based application.

**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. 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 15 day of September, 2017

**Davis Joint Unified School District**

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

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

**CounselorApp [Vendor]**

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

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

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**DAVIS JOINT UNIFIED SCHOOL DISTRICT**

Saturday, 19th August 2017

**Attn : Nicole Chiamparino Roper**

nchiamparino@djusd.net

(707) 225-5080

Dear Nicole Chiamparino Roper,

Thank you for the opportunity to quote **SCUTA SD** for your **school district**.

**SCUTA** is a modern, secure, web based application with an annual license. SCUTA has quickly become an advocate for school counseling programs globally. It is the solution of choice for managing school counseling programs, documenting their effectiveness, monitoring compliance with the ASCA National Model, use of time analysis and preparation for RAMP.

**SCUTA SD** includes one management license and a license for each of your school counselors. The extension specifies what version of **SCUTA** your school counselors receive. In **SCUTA SD Pro**, school counselors receive a **SCUTA Pro** license whereas in **SCUTA SD MAX**, they receive a **SCUTA Max** license. All SCUTA SD customers receive individualized onboarding. Managers received a one on one web tutorial demonstrating user management and program analysis. School counselors receive training that will guarantee successful use of SCUTA and illustration of best business practices.

**SCUTA Pro** is a confidential, comprehensive documentation and use of time analysis system. It is an invaluable tool for school counselors who want to do best practice, keep accurate records, follow the ASCA National Model directives and maximize the evaluation of their school counseling programs.

**SCUTA MAX**, is our latest release which expands on the capabilities of SCUTA Pro by including Goals, Mission Statements, Curriculum, Lesson plans, Mindset/behaviours, state standards, Focus, Referrals, and more... It's reports include Referral Source Analysis, Focus Analysis and Lesson Analysis to name a few.

Qty	License	Cost	Qty Discount	Cost per User	Total Cost
1	SCUTA SD	0	0%	0	\$0
2	SCUTA Pro	125	0%	125	\$250
2	SCUTA MAX	195	0%	195	\$390

You decide which SCUTA best meets your need. Either way, you will receive a free SCUTA SD license and free training. Please feel free to contact me if you have any questions or if you need further assistance.

Thank you,

Madison Hoguet  
madison@counselorapp.com  
SCUTA Sales & Support  
CounselorApp.com

Buy Now : <http://counselorapp.com/buy>See a Tutorial : <http://counselorapp.com/scuta-introduction>Complete your Order : <http://counselorapp.com/sdordercompletion>

**SEND PAYMENTS TO:**

**zLabs**  
1500 Colesville Road,  
Bethlehem, PA 18015

INVOICE ID: 17230

ORDER ID : 2845

PURCHASE ORDER: 2845

**Attn :** Courtenay Tessler  
DAVIS JOINT UNIFIED  
courtenaytess@gmail.com  
(530) 757-5400

Friday, 15th September 2017

Welcome to SCUTA!

Thank you for your order. SCUTA is a modern, secure, web based application with an annual per user license. SCUTA has quickly become the leading advocacy tool for school counseling programs.

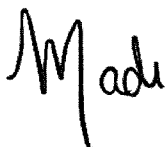
The following details your purchase:

**Invoice Details**

Items	Description	Quantity	Price	Subtotal
SCUTA MAX	Annual SCUTA user license	6	\$195	\$1170
Scheduling	Online Appointment Scheduling	6	\$50	\$300
Discount	5% Quantity Discount	6	- \$12	- \$74
<b>Total</b>				<b>\$1,396</b>

Please feel free to contact me if you have any questions or if you need further assistance.

Thank you



Madison Hoguet  
madison@counselorapp.com  
SCUTA Sales & Support  
CounselorApp.com

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CONTACT

BLOG



# CounselorApp's Terms of Service

Before using any of CounselorApp's services, you are required to read, understand and agree to these terms.

You may only create an account after reading and accepting these terms.

The column on the right provides a short explanation of the terms of use and is not legally binding.

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Put Simply:

**By using CounselorApp© and any of its web applications you agree to the terms below.**

## Trademarks

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## User Account, Password, and Security

The COUNSELORAPP® Website is an account – based service. The individual user (You) are responsible for maintaining the privacy of your account and password. You are entirely responsible for any and all activities that occur under your account. You agree to immediately notify us of any breach of security or unauthorized use of your account. COUNSELORAPP® is not liable for any loss that may occur due to the unauthorized, or authorized use of your account or password, with or without your knowledge. You, can however, be held responsible for any loss that COUNSELORAPP® may incur due to the authorized or unauthorized use of your account or password with or without your knowledge. You also agree to not use anyone else's account at any time, unless you have received direct written consent from the account holder to do so.

Put Simply:

**Keep your account information safe. If something goes wrong let us know.**

## Personal, Non-Commercial and Commercial Use Limitation

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Put Simply:

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Put Simply:

## **Again – Don't do anything illegal with your account.**

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Put Simply:

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Put Simply:

**We respect the work of others. If anything is wrong, please send an email with all the details to [info@COUNSELORAPP.com](mailto:info@COUNSELORAPP.com).**

## **No Agency**

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**We can stop providing services at any time. You can stop using your account or close it at any time as well.**

## Modifying your subscription

Modifying Your Subscription. If You choose to upgrade your plan or number of staff during Your elected subscription period, any incremental cost will be pro-rated and billed alongside your next monthly recurring billing, or within your multi-month subscription on a monthly basis.

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The account owner (as defined in the sign-up procedure) is responsible for canceling your account, and can cancel the account by cancelling the recurring payments from within PayPal, or by contacting COUNSELORAPP directly. Once You cancel Your account You will lose access to all of Your content, and We preserve the right to delete all such content in the normal course of operation. This content cannot be recovered once Your account is cancelled. If You cancel the Service before the end of Your current paid-up subscription period, Your cancellation will take effect immediately and You will not be charged again. Regardless of Your billing cycle, there are no refunds or credits for partial months of Service, plan downgrades, or refunds for unused time if You close Your account before the end of Your subscription period. No exceptions will be made in order to treat everyone equally and keep Our administrative costs low for the ultimate benefit of Our customer base. Downgrading Your plan level may cause the loss of content, features, or capacity of Your account and COUNSELORAPP does not accept any liability for such loss. COUNSELORAPP reserves the right to contact You about special pricing or other promotional offers.

Put Simply:

**You can cancel at any time. We do not give refunds.**

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We reserve the right to change the terms, notices, and conditions of services, of the COUNSELORAPP® website, including but not limited to, the services/sites offered, and the charges that you may incur in the future. It is solely your responsibility to regularly review these Terms of Use and the other Policies of the COUNSELORAPP® Website, to ensure you are up to date with all the terms, conditions, and charges, associated with COUNSELORAPP®. Your continued use of the COUNSELORAPP® Website, signifies your consent and agreement to all COUNSELORAPP® policies, terms, conditions, and notices.

Put Simply:

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You hereby expressly and irrevocably release and forever discharge COUNSELORAPP®, its affiliated and associated companies, and their respective directors, officers, employees, agents, representatives, independent and dependent contractors, licensees, successors and assigns of and from any and all actions, causes of action, suits, proceedings, liability, debts, judgments, claims and demands whatsoever in law or equity which you ever had, now have, or hereafter can, shall or may have, for or by reason of, or arising directly or indirectly out of your use of the Site and the Services. You hereby agree to indemnify and hold harmless COUNSELORAPP®, its affiliated and associated companies, and their respective directors, officers, employees, agents, representatives, independent and dependent contractors, licensees, successors and assigns from and against all claims, losses, expenses, damages and costs (including, but not limited to, direct, incidental, consequential, exemplary and indirect damages), and reasonable attorneys' fees, resulting from or arising out of (i) a breach of these Terms, (ii) Content posted on the Site, (iii) the use of the Services, by you or any person using your account or COUNSELORAPP® Username and password, or (iv) any violation of any rights of a third party.

Put Simply:

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