

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

BRIEF DESCRIPTION OF CONTRACT: This agreement is between Ablenet and DJUSD for a software license. The Ablenet program provides support and intervention materials for Special Education students.

DAVIS JOINT UNIFIED SCHOOL DISTRICT

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

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

THIS AMENDMENT (“Amendment”) to the **Ablenet, Inc** Agreement by and between the Davis Joint Unified School District, a public school district of the state of California and Ablenet., 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 February 8, 2018 as follows:

WHEREAS, Vendor provides a a K-12 standards-based curriculum developed for students with disabilities.

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.

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 8th Day of February, 2018

Davis Joint Unified School District

By: _____

Its: _____

Ablenet, Inc. [Vendor]

By:  _____

Its: Kate MacRae

Website Terms of Use

PHOTOS & GRAPHIC IMAGES

All photographs and graphic images on the AbleNet, Inc. website (<http://www.ablenetinc.com>) or on its Flickr Photostream (<http://www.flickr.com/photos/ablenetinc>) are copyrighted and intended for personal, non-commercial purposes. They are not to be used in conjunction with a sales item or on a commercial website unless specific arrangements with AbleNet have been made prior to the photo's use.

MOVIE FILES

All movie files on the AbleNet, Inc. website (<http://www.ablenetinc.com>) or on its YouTube (<http://www.youtube.com/user/ablenetinc>) channel are copyrighted and intended for personal, non-commercial purposes. You may link to the Web page where the resources are described or found, but you may not place the individual resource directly on your Web site unless specific arrangements with AbleNet have been made prior to the video's use.

OTHER SITE RESOURCES

All other written content, downloadable files, presentations, etc found on the AbleNet, Inc. website are copyrighted and intended for personal, non-commercial purposes. You may link to the Web page where the resources are described or found, but you may not place the individual resource directly on your Web site unless specific arrangements with AbleNet have been made prior to the video's use.

CONTACT INFORMATION

AbleNet, Inc.
2625 Patton Road
Roseville, MN 55113-1308
Toll Free: (800) 322-0956 (US & Canada)
Phone: (651) 294-2200
Fax: (651) 294-2259
E-mail: customerservice@ablenetinc.com (<mailto:customerservice@ablenetinc.com>)

[ABOUT US \(HTTPS://WWW.ABLENETINC.COM/RESOURCES/ABOUT-US\)](https://www.ablenetinc.com/resources/about-us)

[CONTACT US \(HTTPS://WWW.ABLENETINC.COM/RESOURCES/CONTACT-US\)](https://www.ablenetinc.com/resources/contact-us)

[POLICIES \(HTTPS://WWW.ABLENETINC.COM/RESOURCES/POLICIES\)](https://www.ablenetinc.com/resources/policies)

 [Website Terms of Use \(https://www.ablenetinc.com/resources/website-terms-of-use\)](https://www.ablenetinc.com/resources/website-terms-of-use)

[Website Privacy Policy \(https://www.ablenetinc.com/resources/website-privacy-policy\)](https://www.ablenetinc.com/resources/website-privacy-policy)

Legal and Copyright Disclaimer (<https://www.ablenetinc.com/resources/legal-and-copyright-disclaimer>)

Website Privacy Policy

AbleNet, Inc. has established the following privacy policy to help its customer and visitors of this site understand the way we conduct business. This privacy statement covers www.ablenetinc.com. The statement covers the following topics:

- What personally identifiable information AbleNet collects.
- What personally identifiable information third parties collect through the website.
- What organization collects the information.
- How AbleNet uses the information.
- With whom AbleNet may share user information.
- What choices are available to users regarding collection, use and distribution of the information.
- What types of security procedures are in place to protect the loss, misuse or alteration of information under AbleNet's control.
- How users can correct any inaccuracies in the information.

If users have questions or concerns regarding this statement, they should contact:

AbleNet, Inc.
2625 Patton Road
Roseville, MN 55113
Toll Free: (800) 322-0956 (US & Canada)
Phone: (651) 294-2200
Fax: (651) 294-2259
Fax (651) 294-2222 (Orders & Quotes Only)

AbleNet is the sole owner of the information collected on www.ablenetinc.com. AbleNet collects information from our users at several different points on our website.

ORDER

We request information from the user on our order form. A user must provide contact information (such as name, email, and shipping address) and financial information (such as credit card number, expiration date). This information is used for billing purposes and to fill customer's orders. If we have trouble processing an order, the information is used to contact the user.

INFORMATION USE

In addition to billing purposes, you agree AbleNet has the right to use your personal and purchase information for its own internal marketing purpose.

PROFILE

We store information that we collect through cookies, log files, clear gifs, and/or third parties to create a profile of our users. A profile is stored information that we keep on individual users that details their viewing preferences. Consequently, collected information is tied to the users personally identifiable information to provide offers and improve the content of the site for the

user. This profile is used to tailor a user's visit to our website, and to direct pertinent marketing promotions to them. We do not share your profile with other third parties.

LOG FILES

Like most standard websites, our servers create log files that we use. This includes internet protocol (IP) addresses, browser type, internet service provider (ISP), referring/exit pages, platform type, date/time stamp, and number of clicks to analyze trends, administer the site, track user's movement in the aggregate, and gather broad demographic information for aggregate use. IP addresses, etc. are not linked to personally identifiable information.

COMMUNICATIONS FROM THE SITE

SPECIAL OFFERS AND UPDATES

We send all new members a welcoming email to verify password and username. Established members will occasionally receive information on products, services, special deals, and a newsletter. Out of respect for the privacy of our users we present the option to not receive these types of communications. Please see the Choice and Opt-out section.

NEWSLETTER

If a user wishes to subscribe to our newsletter, we ask for contact information such as name and email address. Out of respect for our users privacy we provide a way to opt-out of these communications. Please see the Choice and Opt-out section.

SERVICE ANNOUNCEMENTS

On rare occasions it is necessary to send out a strictly service related announcement. For instance, if our service is temporarily suspended for maintenance we might send users an email. Generally, users may not opt-out of these communications, though they can deactivate their account. However, these communications are not promotional in nature.

CUSTOMER SERVICE

We communicate with users on a regular basis to provide requested services and in regards to issues relating to their account. We reply via email or phone, in accordance with the users wishes.

SHARING

LEGAL DISCLAIMER

Though we make every effort to preserve user privacy, we may need to disclose personal information when required by law wherein we have a good-faith belief that such action is necessary to comply with a current judicial proceeding, a court order or legal process served on our website.

AGGREGATE INFORMATION (NON-PERSONALLY IDENTIFIABLE)

We share aggregated demographic information with our partners and advertisers. This is not linked to any personally identifiable information.

BUSINESS TRANSITIONS

In the event AbleNet goes through a business transition, such as a merger, being acquired by another company, or selling a portion of its assets, users' personal information will, in most instances, be part of the assets transferred.

CHOICE/OPT-OUT

Our users are given the opportunity to "opt-out" of having their information used for purposes not directly related to our site at the point where we ask for information. For example, our order form has an "opt-out" mechanism so users who buy a product from us, but don't want any marketing material, can keep their email address off of our lists.

Users who no longer wish to receive our newsletter and promotional communications may opt-out of receiving these communications by replying to unsubscribe in the subject line in the email or email us at customerservice@ablenetinc.com (<mailto:customerservice@ablenetinc.com>).

LINKS

This website contains links to other sites. Please be aware that we, AbleNet, are not responsible for the privacy practices of such other sites. We encourage our users to be aware when they leave our site and to read the privacy statements of each and every website that collects personally identifiable information. This privacy statement applies solely to information collected by this website.

SECURITY

This website takes every precaution to protect our users' information. When users submit sensitive information via the website, their information is protected both online and off-line.

When our registration/order form asks users to enter sensitive information (such as credit card number and/or social security number), that information is encrypted and is protected with the best encryption software in the industry – SSL. While on a secure page, such as our order form, the lock icon on the bottom of Web browsers such as Mozilla Firefox, Apple Safari and Microsoft Internet Explorer becomes locked, as opposed to un-locked, or open, when users are just "surfing."

While we use SSL encryption to protect sensitive information online, we also do everything in our power to protect user-information off-line. All of our users' information, not just the sensitive information mentioned above, is restricted in our offices. Only employees who need the information to perform a specific job (for example, a customer service representative) are granted access to personally identifiable information. Our employees must use password-protected screen-savers when they leave their desk. When they return, they must re-enter their password to re-gain access to user information. Furthermore, ALL employees are kept up-to-date on our security and privacy practices. Every quarter, as well as any time new policies are added, our employees are notified and/or reminded about the importance we place on privacy, and what they can do to ensure our users' information is protected.

If users have any questions about the security at our website, users can send an email to customerservice@ablenetinc.com.

SUPPLEMENTATION OF INFORMATION

In order for this website to properly fulfill its obligation to users it is necessary for us to supplement the information we receive with information from third party sources.

NOTIFICATION OF CHANGES


If we decide to change our privacy policy, we will post those changes to this privacy statement, on the home page, and other places we deem appropriate so our users are always aware of what information we collect, how we use it, and under what circumstances, if any, we disclose it.

ABOUT US ([HTTPS://WWW.ABLENETINC.COM/RESOURCES/ABOUT-US](https://www.ablenetinc.com/resources/about-us))

CONTACT US ([HTTPS://WWW.ABLENETINC.COM/RESOURCES/CONTACT-US](https://www.ablenetinc.com/resources/contact-us))

POLICIES ([HTTPS://WWW.ABLENETINC.COM/RESOURCES/POLICIES](https://www.ablenetinc.com/resources/policies))

Website Terms of Use (<https://www.ablenetinc.com/resources/website-terms-of-use>)

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Legal and Copyright Disclaimer (<https://www.ablenetinc.com/resources/legal-and-copyright-disclaimer>)