



MASTER AGREEMENT FOR PURCHASE OF SERVICES AND/OR PRODUCTS

THIS MASTER AGREEMENT FOR PURCHASE OF SERVICES AND/OR PRODUCTS (this "**Agreement**"), as of the date of last signature (the "**Effective Date**"), is entered into by Santa Rosa City Schools, a California Education District ("**Customer**"), and DEVELOPMENT GROUP, INC., a California corporation ("**DGI**"). Customer and DGI may sometimes hereinafter be collectively referred to as the "**Parties**" or, individually, as a "**Party**."

RECITALS

- A. DGI is in the business of designing, installing and integrating data and communications systems, and selling and implementing certain products and technology.
- B. This Agreement states the general terms and conditions by which DGI, from time to time from and after the Effective Date, will deliver to Customer, and Customer will receive and purchase from DGI, certain Services (as hereinafter defined) and/or Products (as hereinafter defined).
- C. The Parties intend this Agreement to cover and apply to any and all Services and Products from time to time provided and/or sold to Customer by DGI.

AGREEMENT

FOR VALUABLE CONSIDERATION, the receipt and sufficiency of which are acknowledged, the Parties, each intending to be legally bound, hereby agree as follows:

1. Recitals; Definitions; Affiliates.

- 1.1. **Incorporation of Recitals.** The Recitals hereto are material to this Agreement, are true, correct and complete, and are incorporated herein by this reference as if fully set forth.
- 1.2. **Definitions.** For all purposes of this Agreement and in addition to other capitalized terms defined elsewhere in this Agreement, the following capitalized terms shall have the respective meanings set forth hereinafter:
 - 1.2.1. "**Affiliate**" shall mean, with respect to a Party, any entity that directly or indirectly, controls, is controlled by, or is under common control with such Party, where "control" (and variants thereof) shall mean the ability (whether directly or indirectly) to direct the affairs of another by means of ownership, contract or otherwise.
 - 1.2.2. "**Applicable Law**" shall mean any international, federal, state and/or local statute, regulation and/or ordinance applicable to this Agreement and/or the performance thereof.
 - 1.2.3. "**Associated Contract**" shall mean any Proposal, Statement of Work, Customer Service Order or Block Time Account accepted according to the provisions of **Section 2.2**.
 - 1.2.4. "**Customer Technology**" shall mean Customer's proprietary technology, including, without limitation, Customer's Network design, content, software tools, hardware designs, algorithms, software (in source and object forms), user interface designs, architecture, class libraries, objects and documentation (both printed and electronic), know-how, trade secrets and any related intellectual property rights (whether owned by Customer or licensed to Customer by a third party) and also including, without limitation, any derivatives, improvements, enhancements and/or extensions of Customer Technology conceived, reduced to practice and/or developed by Customer and/or any of Customer's licensors during the term of this Agreement.



- 1.2.5. **"Data"** shall mean all data and other information uploaded by Customer to a Product.
- 1.2.6. **"DGI Technology"** shall mean DGI's proprietary technology, including, without limitation, DGI's Services, software tools, hardware designs, algorithms, software (in source and object forms), user interface designs, architecture, class libraries, objects and documentation (both printed and electronic), know-how, trade secrets and any related intellectual property rights (whether owned by DGI or licensed to DGI by a third party) and also including, without limitation, any derivatives, improvements, enhancements and/or extensions of DGI Technology conceived, reduced to practice and/or developed by DGI and/or any of DGI's licensors during the term of this Agreement.
- 1.2.7. **"Products"** shall mean the equipment, materials and/or other items sold and delivered to Customer by DGI under this Agreement or a Proposal.
- 1.2.8. **"Proposal"** shall mean any written document submitted to Customer by DGI offering to perform Services for or provide Products to Customer, which (i) refers to this Agreement, (ii) is subject to acceptance by Customer pursuant to **Section 2.2**, and (iii) specifies the fees, Services and Products for a particular project or phase thereof. A Proposal may, but need not be, in response to a formal "request for proposal" from Customer.
- 1.2.9. **"Service Commencement Date"** shall mean the date DGI will begin providing the Services to Customer as set forth in a Proposal.
- 1.2.10. **"Services"** shall mean the work, implementation, integration, consulting, training and/or other services described in a Proposal and provided to Customer by DGI employees and/or subcontractors.
- 1.3. **Orders by Affiliates; Joint and Several Liabilities.** The Parties acknowledge that this Agreement enables Customer, on behalf of itself or one or more of its Affiliates, and/or any of its Affiliates on such Affiliate's own behalf, to request Proposals and to execute and deliver directly any Associated Contract, subject to the terms of this Agreement. Customer shall designate to DGI in writing any and all Affiliates which are entitled to request Proposals and to execute and deliver Associated Contracts hereunder. Each Associated Contract executed and delivered by an Affiliate of Customer hereunder shall constitute an independent contract between such Affiliate and DGI; provided that Affiliate and Customer shall be jointly and severally liable for payment of fees, charges and other sums and performance under this Agreement and the applicable Associated Contract. Customer acknowledges that execution and delivery of an Associated Contract hereunder shall represent such Affiliate's independent acceptance of, and agreement to be bound by, the terms and conditions of this Agreement. Whenever any Affiliate executes and delivers an Associated Contract hereunder, all references to the term "Customer" as used herein and/or in such Associated Contract shall mean Customer and such Affiliate, jointly and severally.
2. **Services and Products.**
- 2.1. **Identification of Services and/or Products.** The Products to be furnished from time to time by DGI to Customer (or its Affiliate) and the Services to be provided from time to time by DGI to Customer (or its Affiliate) shall be set forth and described in one or more Proposals which, when accepted pursuant to **Section 2.2**, shall become Associated Contracts which shall be attached hereto from time to time and incorporated herein by this reference. Each Associated Contract shall become binding and enforceable as a separate contract between Customer and DGI, and shall incorporate therein and be subject to the terms, provisions and conditions of this Agreement. Customer acknowledges and recognizes that DGI is not the manufacturer of any Products purchased by Customer from DGI. In purchasing any Products, Customer shall rely exclusively on the representations and warranties made by the manufacturer or supplier and on the specifications and other information furnished by the manufacturer or supplier only and not on any representation, warranty, statement, specification or other information furnished by DGI.



- 2.2. **Creation of Associated Contract.** The Parties acknowledge that, before a Proposal becomes an Associated Contract binding upon either Party, it must be validly accepted by Customer and must include a Customer Stocking Letter when professional services are performed at a DGI facility. Customer may create an Associated Contract only by accepting a Proposal by (i) signing and delivering to DGI a counterpart of the Proposal, subject to the terms and conditions of a separate “Designation of Authorized Purchasing Agent” agreement, (ii) signing and delivering to DGI any other written document that states that Customer or its Affiliate accepts the Proposal, and/or (iii) by transmitting its acceptance by electronic transmission, including, without limitation, email from an authorized representative of Customer. In order to be effective, each form of acceptance referenced in the immediately preceding sentence must be given and made without any accompanying conditions, qualifications, interlineations, addenda, supplements, amendments and/or other changes to the pertinent Proposal and/or this Agreement. Any form of acceptance that is given and made with conditions, qualifications, interlineations, addenda, amendments and/or other changes to the Proposal shall be deemed a counteroffer and shall not be binding or enforceable as an Associated Contract unless consented to in writing by DGI. Customer acknowledges that an Associated Contract shall not be created by delivering a pre-printed form of purchase order to DGI if such purchase order contains standard, pre-printed or other additional terms, provisions and/or conditions that conflict with the Proposal and/or this Agreement. Any such additional terms, provisions and/or conditions shall be null and void as between the Parties.
- 2.3. **Effect of Acceptance.** Customer’s acceptance of a Proposal pursuant to **Section 2.2** shall constitute Customer’s acceptance and confirmation of the binding nature of this Agreement and the terms, provisions and conditions of the resulting Associated Contract.
- 2.4. **Conflicts.** If the terms, provisions and conditions of any Associated Contract expressly conflicts with any term, provision or condition of this Agreement, the terms, provisions and conditions contained in the Associated Contract shall prevail and be controlling.
3. **Performance by DGI.**
- 3.1. **Reasonable Commercial Efforts.** Subject to Customer’s compliance with the terms, provisions and conditions of this Agreement and Customer’s performance of its obligations under the Associated Contract, DGI shall use reasonable commercial efforts to provide the Services to Customer and/or deliver the Products to Customer, according to the terms, provisions and conditions of this Agreement and the Associated Contract.
- 3.2. **Changes to Scope.** Changes to the scope, cost and/or schedule of the Services and/or Products contained in an Associated Contract, including, without limitation, changes made to the previously-approved design or layout of the project, changes which in DGI’s sole discretion make the project a “rush” project, extensive alterations, a change in the objectives of Customer and new work or Products requested by Customer (collectively, “**Changes**”), are not effective or binding unless agreed upon by DGI and Customer in a written instrument specifying the scope, schedule and price of such Changes, which instrument shall be deemed to amend the Associated Contract. DGI shall not be bound to any Changes requested by Customer prior to the mutual execution of such written instrument. DGI may stop all work relating to the Services, at the expense of Customer, until the scope, schedule and price of such Changes are agreed upon in writing by both parties. Customer acknowledges that DGI cannot change its allocation of personnel with less than thirty (30) days written notice.
4. **Term, Termination, Suspension and Extension.**
- 4.1. **Term.** The term of this Agreement shall be effective as of the Effective Date and shall continue in effect until terminated as provided herein. Each Associated Contract shall be effective as of the date Customer accepts or is deemed to have accepted the pertinent Proposal and shall continue in effect until the earlier of (i) the date that all Services and/or Products to be provided by DGI under the Associated Contract have



been provided, or (ii) the date either the Associated Contract or this Agreement is terminated as provided herein.

- 4.2. **Immediate Termination by Reason of Certain Events.** Either Party may, by delivering written notice to the other Party (a **“Termination Notice”**), immediately terminate this Agreement and all outstanding Associated Contracts for cause if the other Party (i) is adjudicated insolvent, (ii) terminates or ceases its business operations, (iii) makes an assignment for the benefit of its creditors, or (iv) is adjudicated bankrupt or becomes the subject of dissolution, liquidation and/or bankruptcy proceedings, whether voluntarily or involuntarily. DGI may immediately terminate this Agreement by delivering a Termination Notice to Customer if there is a merger, purchase, transfer or other acquisition of substantially all of Customer’s assets or a controlling interest in Customer.
- 4.3. **Termination for Breach.** Either Party may, by delivering a Termination Notice to the other Party, terminate this Agreement and/or an Associated Contract for cause if such other Party is in breach of its obligations under this Agreement and/or an Associated Contract and fails to cure such breach within thirty (30) days after its receipt of written notice of such breach from the non-breaching Party or, if such breach cannot reasonably be cured within such thirty (30) day period, the breaching Party fails to commence and diligently pursue remedial steps to cure the breach within such thirty (30) day period.
- 4.4. **Termination for Convenience.** Customer may cancel the performance of Services by DGI at any time upon thirty (30) days’ prior written notice to DGI. In the event of cancellation, Customer shall pay, within ten (10) days of DGI’s demand therefor, DGI’s reasonable and proper cancellation charges which shall include (i) the cost of all Products ordered for it by DGI less credits provided by the Product vendor for any return, (ii) a percentage of the price payable for Services to be performed reflecting the percentage of work performed, and (iii) costs resulting from termination and the costs and expenses, including the costs and expenses of DGI’s personnel, in responding to and processing the cancellation. Any cancellation by Customer shall relieve DGI of any liability or responsibility for Products delivered or Services performed prior to the cancellation.
- 4.5. **Extension or Suspension.** In addition to the cancellation right set forth in **Section 4.4**, Customer shall have the right to extend schedules or suspend the Services at any time, upon written notice to DGI. Any delay in the performance by DGI of its obligations to Customer caused by Customer or its other contractors or suppliers shall be treated as an extension. DGI shall resume the delivery of any suspended Services when directed to do so by Customer. The delivery schedule and time for performance shall be extended for a period reflecting the delay caused by an extension or suspension. DGI shall also be entitled to an adjustment of all prices to cover reasonable stand-by fees and additional costs incurred by DGI by reason of an extension or suspension.
5. **Fees, Expenses and Payment.**
- 5.1. **Fees and Expenses.** Customer shall pay to DGI the fees for Services and/or the purchase price for Products as specified in each Associated Contract. Customer shall reimburse DGI for all reasonable travel and out-of-pocket expenses incurred in connection with DGI’s performance of the Services and/or delivery of the Products. Unless the applicable Associated Contract states otherwise, DGI may incur on behalf of Customer (and Customer shall be liable for) expenses and charges imposed by third party vendors in performance of the Services or obtaining the Products, and such expenses and charges are not or may not be included in any fees quoted to Customer. Customer shall pay such expenses and charges in addition to the fees specified in the Associated Contract and the expenses of DGI referenced in the first sentence of this section. Customer’s failure to pay all such fees, expenses and/or charges that are not the subject of a good-faith dispute regarding which Customer has notified DGI in writing, shall constitute a material breach of this Agreement and the applicable Associated Contract. If Customer is a signatory to this Agreement but



its Affiliate is signatory to an Associated Contract, both Customer and the Affiliate shall be jointly and severally liable to DGI for payment and performance under this Agreement and the Associated Contract.

- 5.2. **Time of Payment.** Customer shall make payments to DGI as required under this Agreement and each Associated Contract. Unless otherwise specified in an Associated Contract, Customer shall pay the full amount of each invoice submitted by DGI within (30) days after its receipt, without setoff, counterclaim, deduction, recourse or other defense.
- 5.3. **Overdue Payments.**
- 5.3.1. **Late Payment Charge.** Customer hereby acknowledges that late payment of invoiced amounts and other sums due to DGI hereunder and/or under an Associated Contract will cause DGI to incur costs not contemplated by this Agreement and/or the Associated Contract, the exact amount of which are and will be extremely difficult to ascertain. Such costs include, but are not limited to, processing, and financing charges. Accordingly, unless otherwise stated in the applicable Associated Contract, if any invoiced amount or any other sum due from Customer is not received by DGI by the date due, Customer shall pay to DGI a late charge equal to five percent (5.0%) of such overdue amount. The Parties acknowledge that such late charge represents a fair and reasonable estimate of the costs DGI will incur by reason of late payment by Customer.
- 5.3.2. **Interest.** In addition to any late charge assessed pursuant to **Subsection 5.3.1** and unless otherwise stated in the applicable Associated Contract, any invoiced amount or other sum due to DGI, if not paid when due, shall bear interest from the date due until paid in full at the rate of 1.5% per month, or, if less, at the highest rate permissible under Applicable Law, provided that interest shall not be payable on late charges incurred by Customer.
- 5.3.3. **No Default Cure.** Payment of interest and/or late charges without payment in full of the delinquent invoiced amount shall not excuse or cure any default by Customer hereunder and/or under any Associated Contract.
- 5.4. **Frequency of Invoices.** Unless otherwise stated in the applicable Associated Contract, DGI may bill Customer from time to time as often as DGI deems necessary, in its discretion. If the applicable Associated Contract specifies a flat fee for Services and/or Products, and unless otherwise stated in such Associated Contract, such fee shall be considered earned by DGI and payable by Customer upon the earlier of (i) delivery of the Products, or (ii) substantial performance of the Services.
- 5.5. **Fee Estimates.** If DGI provides any estimate of fees for work to be done at an hourly rate or rates, such estimate shall not constitute a final statement of such fees and shall not be binding upon DGI. DGI does not make, and hereby expressly disclaims, any representation and/or warranty that any such estimate will correctly approximate the actual fees of DGI for such work.
- 5.6. **Deposits.** If a deposit is required under any Associated Contract, Customer shall, unless otherwise stated in such Associated Contract, within two (2) business days after the effective date of the Associated Contract, deliver such deposit to DGI. DGI may commingle any such deposit in the same account or accounts with deposits from other customers and other funds of DGI. Any interest that may accrue on any such deposit shall be the sole property of DGI, without credit to Customer against any fees or expenses owed. All deposits shall be non-refundable unless otherwise indicated in the Associated Contract.
- 5.7. **Taxes.** Unless otherwise expressly stated in an Associated Contract, DGI's fees shall not include any direct or indirect local, state, federal or foreign taxes, levies, duties and/or similar governmental assessments of any nature, including, without limitation, value-added, use and withholding taxes (collectively, "**Taxes**"). Customer shall be solely liable and responsible for paying all Taxes associated with its purchases of Services and/or Products hereunder, excluding any taxes based upon DGI's income or ownership of property. If DGI has the legal obligation to pay or collect Taxes for which Customer is liable under this section, the



appropriate amount shall be invoiced to and paid by Customer, unless Customer timely provides DGI with a valid tax exemption certificate authorized by the pertinent taxing authority.

6. **Delivery, Title and Risk of Loss.** DGI shall deliver all Products to Customer FOB destination. All transportation, freight, handling and other shipping costs and charges are the responsibility of Customer. Title and risk of loss, including title and risk of loss to the Products, including materials and equipment to be installed by DGI or used and consumed by DGI in the performance of its installation obligations, if any, shall pass to Customer upon delivery to the Customer FOB destination.

7. **Certain Obligations of Customer.**

- 7.1. **Information.** Customer shall furnish to DGI all information regarding its facilities, operations, communication processes and systems, utilities, service providers and other aspects or matters reasonably required by DGI to furnish the Products or perform the Services. Such information as Customer shall furnish to DGI shall be deemed to be non-proprietary and non-confidential unless otherwise agreed in writing by Customer and DGI at the time the information is furnished. Customer acknowledges that any Services to be provided by DGI are dependent on the accuracy and completeness of the information provided by Customer (or made available by others to DGI at the request or direction of Customer) to DGI and the knowledge and cooperation of the employees, contractors and other representatives appointed or designated by Customer to work with DGI.
- 7.2. **Access.** With respect to any Services to be performed by DGI at Customer's site, Customer shall make those portions of such site on or with respect to which DGI shall perform Services and its access thereto continuously available to DGI in an unobstructed and uninterrupted manner. DGI shall attempt to perform the services to be performed by it within Customer's normal working hours; however, Customer recognizes that the schedule for performance, the nature of work or the optimum time for performing the Services may occur during other than normal working hours and in such event Customer shall provide DGI access to the site during such non-normal working hours as DGI shall request. Customer shall also provide DGI access to such of Customer's suppliers, contractors and employees and its resources at the site of the work that DGI determines are incidental, useful or necessary for DGI to provide the Services.
- 7.3. **Cooperation.** Customer shall cooperate fully with DGI with respect to the delivery of Products and in the performance of Services by DGI. Such cooperation shall include, but not be limited to, (i) timely responses to inquiries made by DGI, (ii) timely responses to requests by DGI for approvals and authorizations, (iii) providing DGI with local and remote computer access to Customer's computer and other systems and access to information and materials in Customer's possession or subject to its control that may be incidental, useful to or required by DGI in the performance of Services or with respect to the furnishing of Products, and (iv) providing DGI such consents, approvals, rights, permits and licenses required by DGI to access, use and modify data and third party products and programs. At such time as DGI begins work on any computer or other system of Customer, Customer shall provide DGI with all applicable passwords and other information required for DGI to access such system and perform Services thereon or with respect thereto. DGI shall follow all reasonable security rules and procedures of Customer which are communicated in writing by Customer to DGI from time to time.
- 7.4. **Government Authorizations.** Customer shall, at its cost and expense, obtain all federal, state and local governmental permits, licenses, approvals and other authorizations required with respect to or for the performance of any of the Services at its facilities.
- 7.5. **Export Control Laws.** Products delivered by DGI and the products and systems of the Customer on or with respect to which DGI performs Services are intended for use within the United States. If Customer exports or intends to export any of such Products or systems, or any part thereof, Customer shall be responsible and liable for, at Customer's cost and expense, compliance with all export control laws of the United States. Customer further recognizes that software programs embedded in Products and systems worked on by



DGI may be encrypted or contain encryption capabilities which are subject to such laws and the foregoing obligations of Customer.

8. Proprietary Rights.

- 8.1. **Restrictions.** Customer shall not, and shall not permit any third party to, (i) modify, copy and/or create derivative works based on any Products and/or Services supplied by DGI hereunder or under any Associated Contract, (ii) frame or mirror any content forming part of any Products, other than on Customer's own Network or otherwise for its own internal business purposes, (iii) reverse engineer, de-compile, disassemble and/or otherwise attempt to discover the source code of any Products, and/or (iv) access any Products in order to build a competitive product or service, or copy any ideas, features, functions and/or graphics of the Products.
- 8.2. **DGI Intellectual Property.** As between DGI and Customer, and subject to the limited rights expressly granted hereunder and/or under any Associated Contract, DGI reserves any and all rights, titles and interests it may have in and to the Products, the Services and DGI Technology, including, without limitation, all related patent, copyright, trademark and other intellectual property rights, whether owned by or licensed to DGI. No rights are granted to Customer hereunder and/or under any Associated Contract other than as expressly set forth herein and/or in the applicable Associated Contract. To the extent legally permissible, DGI shall own all rights, titles and interests, including, without limitation, all intellectual property rights, in and to any improvements to the Products (including, without limitation, those relating to any new programs, upgrades, modifications, refinements and/or enhancements (collectively, "**Improvements**"), developed by or for DGI in connection with providing any Products or Services to Customer, even when such Improvements result from Customer's request. To the extent, if any, that ownership of such Improvements does not automatically vest in DGI by reason of this Agreement or otherwise, Customer hereby assigns and transfers to DGI any and all rights, titles and interests that Customer may have in or to the Improvements.
- 8.3. **Customer's Intellectual Property.** As between Customer and DGI, Customer exclusively owns all rights, titles and interests in and to all Data and Customer Technology. All content created by, or by DGI for, Customer during performance of any Services, including, without limitation, templates, links, linkages, images, graphs and photos (collectively, "**Work Product**"), and all Customer Technology, shall be the sole and exclusive property of Customer. DGI shall not use the same Work Product created for Customer under this Agreement and an Associated Contract and/or any Customer Technology for another DGI customer; provided, however, that nothing in the preceding clause shall be interpreted to preclude DGI from using the same functionality, format, code, design, concept, workflow, integration or other idea represented in the Work Product.

9. Warranties and Disclaimers.

- 9.1. **Mutual Warranties of Authority.** Each Party represents and warrants that (i) it has the legal power to enter into this Agreement, (ii) the signatory hereto has the authority to bind it, (iii) when executed and delivered, this Agreement will constitute the legal, valid and binding obligation of such Party, enforceable according to its terms, and (v) when executed and delivered, each Associated Contract will constitute the legal, valid and binding obligation of such Party, enforceable according to its terms.
- 9.2. **Customer Warranties.** Unless and to the extent otherwise expressly stated in an Associated Contract, Customer hereby represents and warrants to and for the benefit of DGI that, as of the Effective Date and the effective date of each Associated Contract, (i) the Data does not and will not infringe on any copyright, patent, trade secret and/or other proprietary right held by any third party and was not and will not be compiled or used by Customer in any manner that violates Applicable Law, and (ii) Customer will not use any Product in a manner that violates Applicable Law.



- 9.3. **DGI Warranties.** Unless and to the extent otherwise expressly stated in an Associated Contract, DGI hereby represents and warrants to and for the benefit of Customer that, as of the Effective Date and the effective date of each Associated Contract, (i) DGI owns and will own, or otherwise has or will have sufficient rights (whether by license or otherwise) in, all Products delivered to Customer under any Associated Contract, and (ii) all Services provided or to be provided hereunder and/or under any Associated Contract will be performed in a professional and workmanlike manner.
- 9.4. **Disclaimer as to Products.** As referenced herein, DGI is not the manufacturer of any Products purchased by Customer from DGI. In purchasing any Products, Customer will be relying exclusively on the representations and warranties made by the manufacturer or supplier and on the specifications and other information furnished by the manufacturer or supplier only and not on any representation, warranty, statement, specification or other information furnished by DGI. The only warranties offered are those of the manufacturer or supplier of the Products furnished. EXCEPT AS OTHERWISE SPECIFICALLY PROVIDED HEREIN AND/OR IN ANY ASSOCIATED CONTRACT, AND TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW, DGI EXPRESSLY DISCLAIMS ANY AND ALL WARRANTIES, CONDITIONS, REPRESENTATIONS AND GUARANTEES WITH RESPECT TO THE PRODUCTS AND SERVICES, WHETHER EXPRESS OR IMPLIED, ARISING BY LAW, USAGE OF TRADE, COURSE OF DEALING AND/OR COURSE OF PERFORMANCE, PRIOR ORAL OR WRITTEN STATEMENTS OR OTHERWISE, INCLUDING, WITHOUT LIMITATION, ANY WARRANTY OF MERCHANTABILITY AND/OR FITNESS FOR A PARTICULAR PURPOSE. DGI DOES NOT AND SHALL NOT WARRANT THE PERFORMANCE OR RESULTS CUSTOMER MAY OBTAIN BY RECEIVING ANY SERVICES FROM DGI OR USING ANY PRODUCTS SUPPLIED BY DGI. NO REPRESENTATION OR OTHER AFFIRMATION OF FACT, INCLUDING, WITHOUT LIMITATION, STATEMENTS REGARDING CAPACITY, SUITABILITY FOR USE OR PERFORMANCE OF ANY PRODUCTS NOT CONTAINED IN THIS AGREEMENT SHALL BE DEEMED TO BE A WARRANTY BY DGI. CUSTOMER EXPRESSLY WAIVES ANY CLAIM THAT IT MAY HAVE AGAINST DGI BASED ON THE FAILURE OF ANY PRODUCT TO PERFORM AS REPRESENTED OR WARRANTED BY THE MANUFACTURER OR SUPPLIER OR TO COMPLY WITH THE SPECIFICATIONS, PERFORMANCE CRITERIA AND OTHER WRITTEN INFORMATION FURNISHED BY THE MANUFACTURER OR SUPPLIER WITH RESPECT TO THE PRODUCT OR ON ANY PRODUCT LIABILITY OR INFRINGEMENT OR ALLEGED INFRINGEMENT OF ANY PATENT, COPYRIGHT, TRADEMARK, TRADE SECRET OR OTHER INTELLECTUAL PROPERTY RIGHTS WITH RESPECT TO ANY PRODUCT. EXCEPT AS OTHERWISE SPECIFICALLY PROVIDED HEREIN AND/OR IN ANY ASSOCIATED CONTRACT, AND TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW, DGI HEREBY FURTHER DISCLAIMS ANY OTHER WARRANTY OF ANY KIND, WHETHER STATUTORY, WRITTEN, ORAL, EXPRESSED OR IMPLIED, INCLUDING, WITHOUT LIMITATION, WARRANTIES OF FITNESS FOR A PARTICULAR PURPOSE AND MERCHANTABILITY, SHALL BE APPLICABLE TO THE SERVICES PROVIDED BY DGI.
- 9.5. **Survival.** Notwithstanding the termination or the expiration of this Agreement and/or the performance of any Associated Contract, the warranties set forth in this article with respect to any Product delivered and/or Services performed shall extend for a period of one year after such termination, expiration, delivery of such Product and/or completion of such Services.
10. **Limitation of Liability.**
- 10.1. **Limited Liability.** IN NO EVENT SHALL EITHER PARTY'S LIABILITY ARISING OUT OF OR RELATED TO THIS AGREEMENT AND/OR ANY PROPOSAL ACCEPTED HEREUNDER, WHETHER IN CONTRACT, TORT, STRICT LIABILITY OR UNDER ANY OTHER THEORY OF LIABILITY, EXCEED THE AGGREGATE SUMS PAID BY CUSTOMER IN THE TWELVE (12) CALENDAR MONTHS PRECEDING THE INCIDENT GIVING RISE TO LIABILITY; PROVIDED, HOWEVER, THAT IN NO EVENT SHALL CUSTOMER'S LIABILITY TO DGI BE LESS THAN THE SUM OF ALL OUTSTANDING FEES AND EXPENSES OWED BY CUSTOMER AND ANY OF ITS AFFILIATES PLUS ALL INTEREST, LATE CHARGES AND COLLECTION COSTS ASSOCIATED THEREWITH. NOTWITHSTANDING THE FOREGOING, CUSTOMER'S EXCLUSIVE REMEDY, AND DGI'S ENTIRE LIABILITY, FOR ANY BREACH OF THE



WARRANTIES IN **ARTICLE 9.0** WITH RESPECT TO SERVICES SHALL BE LIMITED TO RE-PERFORMANCE OF THE SERVICES; PROVIDED, THAT CUSTOMER HAS NOTIFIED DGI WITHIN THIRTY (30) DAYS OF THE DISCOVERY OF ANY DEFICIENCIES IN THE SERVICES WHICH DO NOT CONFORM TO THE WARRANTY REQUIREMENTS. DGI SHALL AT ITS EXPENSE MAKE SUCH CORRECTIONS AND MODIFICATIONS IN THE SERVICES PERFORMED BY DGI AS MAY BE REQUIRED. DGI'S LIABILITY FOR DEFICIENCIES IN SERVICES PROVIDED BY IT SHALL BE LIMITED TO DEFICIENCIES WHICH ARE DISCOVERED WITHIN ONE YEAR FROM THE DATE OF COMPLETION OF SUCH SERVICES AND WHICH RESULT FROM DGI'S FAILURE TO OBSERVE AND ADHERE TO THE WARRANTY STANDARDS. DGI'S LIABILITY SHALL BE FURTHER LIMITED TO THE CORRECTION OF SUCH DEFICIENCIES TO THE EXTENT OF 100% OF THE COMPENSATION PAID OR PAYABLE TO DGI FOR THE PERFORMANCE OF SUCH SERVICES AND SHALL BE SUBJECT TO ANY OTHER PROVISIONS OF THESE TERMS AND CONDITIONS LIMITING THE LIABILITY OF DGI.

10.2. Exclusion of Consequential and Similar Damages. IN NO EVENT SHALL EITHER PARTY HAVE ANY LIABILITY TO THE OTHER PARTY FOR ANY INDIRECT, INCIDENTAL, PUNITIVE, CONSEQUENTIAL, EXEMPLARY AND/OR SPECIAL DAMAGES OF ANY KIND OR NATURE HOWEVER CAUSED (INCLUDING, WITHOUT LIMITATION, LOST PROFITS AND LOSS OF GOODWILL), WHETHER IN CONTRACT, TORT, STRICT LIABILITY OR UNDER ANY OTHER THEORY OF LIABILITY, WHETHER OR NOT THE LIABLE PARTY HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES.

11. Miscellaneous Provisions.

11.1. Force Majeure. A Party shall not be liable for nonperformance or delay in performance hereunder (other than performance of obligations regarding payment of money) caused by any event reasonably beyond the control of such Party, including, without limitation, wars, hostilities, revolutions, riots, civil commotion, national emergency, strikes, lockouts, slowdowns, unavailability of supplies, delays in transportation, accidents, disruptions, delay or failure to act by any vendor or supplier (including, without limitation, a supplier of Products or any supplier of services, including utility services, to Customer), Product unavailability or scarcity, epidemics, fire, flood, severe weather, earthquake, force of nature, theft, vandalism, explosion, embargo or any law, proclamation, regulation, ordinance or other act or order or failure to act of any court, government, governmental agency or quasi-governmental agency. The time for performance shall be extended for a period equal to the time lost by reason of the delay.

11.2. Entire Agreement. This Agreement and any Associated Contract supersede and take precedence over any and all other agreements regarding the matters contained herein between the Parties. This Agreement and any Associated Contract shall not be amended, modified or supplemented except by a written instrument signed by both Parties.

11.3. Assignment. This Agreement shall not be assigned by either party without the prior written consent of the other party, which shall not be unreasonably withheld, provided however, that either party may, without the prior consent of the other, assign all of its rights under this Agreement to (i) a purchaser of all or substantially all assets related to this Agreement, or (ii) a third party participating in a merger, acquisition, sale of assets or other corporate reorganization in which either party is participating. Any attempt to assign this Agreement in violation of this provision shall be void and of no effect. This Agreement shall bind and insure to the benefit of the parties and their respective successors and permitted assigns.

11.4. Governing Law. This Agreement shall be construed and governed in accordance with the laws of the State of California, without regard to its conflicts of law provisions.

11.5. Severability. If, for any reason, any term or provision contained in this Agreement shall be held to be unenforceable, it shall be deemed fully severable, and the rest of this Agreement shall continue in full force and effect.



- 11.6. **Waiver.** Waiver by one Party of the performance of any covenant, condition or promise shall not invalidate this Agreement, nor shall it be considered to be a continuing waiver of such covenant, condition or promise, or a waiver by such Party of any other covenant, condition or promise hereunder. All waivers must be in writing in order to be enforceable.
- 11.7. **Binding Effect.** The terms, conditions and covenants herein contained shall bind and inure to the benefit of Customer (and, as applicable, its Affiliates) and DGI, and their respective heirs, successors, legal representatives, administrators and permitted assigns.
- 11.8. **No Party Deemed Drafter.** If there is a dispute between the Parties over the meaning of this Agreement and/or any Associated Contract, no Party shall be deemed to have been the drafter hereof or thereof, and the principle of law that contracts are construed against the drafter shall not apply.
- 11.9. **Holidays.** In the event any date for performance of any obligation or the giving of any notice pursuant to this Agreement occurs on a federal or California state holiday or on a Saturday or Sunday, then the next business day shall be deemed the applicable date for performance or notice.
- 11.10. **Relationship of the Parties.** Both Parties are independent contractors under this Agreement. Nothing contained in this Agreement is intended nor is it to be construed so as to constitute Customer and DGI as partners, agents or joint ventures with respect to this Agreement and/or any Associated Contract. Neither Party hereto shall have any express or implied right or authority to assume or create any obligations on behalf of or in the name of the other Party or to bind the other Party to any contract, agreement or undertaking with any third party.
- 11.11. **Use of Party's Name.** No right, express or implied, is granted by this Agreement to either Party to use in any manner the name of the other Party or any trade name or trademark of the other in connection with the performance of this Agreement or otherwise.
- 11.12. **Further Assurances.** Each Party shall execute, acknowledge and deliver such further instruments, and do all such other acts as may be necessary or appropriate in order to carry out the purposes and intent of this Agreement.
- 11.13. **Attorneys' Fees.** In the event of any default by either Party of its respective obligations hereunder, such Party shall reimburse the other Party upon demand for any costs or expenses the non-defaulting Party incurs as a result thereof whether or not suit is commenced or judgment is entered. Such costs shall include, without limitation, attorneys' fees and costs incurred for the negotiation of a settlement, preparation of a notice of default, enforcement of rights or otherwise. Furthermore, if any action to enforce the terms of this Agreement is commenced, the prevailing Party shall be entitled to an award of its attorneys' fees and costs.
- 11.14. **Counterparts.** This Agreement and any Associated Contract may be executed in several counterparts and all so executed shall constitute one Agreement and Associated Contract, binding on the Parties even though all Parties are not signatories to the original or the same counterpart. The execution pages of counterparts may be attached to any one copy of the Agreement and/or such Associated Contract to form a single, complete document. The transmission of a signed copy of this Agreement or an Associated Contract via facsimile or e-mail shall constitute execution and delivery hereof, provided the Parties shall deliver original ink-signed counterparts as soon as reasonably possible thereafter.

[Remainder of page intentionally left blank. Signature page follows.]



development group, inc

IN WITNESS WHEREOF the Parties have executed this Agreement as of the Effective Date.

CUSTOMER:

Santa Rosa City Schools, California Education District

By: _____


Title: _____

Printed Name: _____

Date: _____

DGI:

DEVELOPMENT GROUP, INC., a California corporation

By: 

Title: PRESIDENT

Printed Name: DANER LOCKWOOD

Date: 3-20-2019