

**KERN COMMUNITY COLLEGE DISTRICT
RESOLUTION NO. R-01-2025**

RESOLUTION OF THE BOARD OF TRUSTEES OF THE KERN COMMUNITY COLLEGE DISTRICT APPROVING AN AGREEMENT WITH DREAMSCAPE LEARN, INC. AS THE SOLE SOURCE PROVIDER TO DEVELOP A VIRTUAL REALTY CLASSROOM CENTER FOR STUDENT LEARNING

WHEREAS, the Kern Community College District's ("District") is committed to the development of educational programs and environments utilizing state-of-the-art technology to enhance and advance the education to its students;

WHEREAS, as part of this commitment, the District has explored procuring a virtual-reality classroom that enables users to physically interact in a three-dimensional (3D) virtual environment to bring advanced immersive learning experiences to the District's students (the "Virtual Reality Pod Programs");

WHEREAS, Dreamscape Learn, Inc. ("DSL") is an educational virtual reality company that specializes in creating fully immersive educational virtual reality services, including providing free roam pods, virtual laboratories, education programs, and specific hardware and equipment and supporting services for their programs;

WHEREAS, the District has conducted a good faith due diligence search for sources of virtual reality classroom systems at a reasonable price and determined that DSL is the only entity which can provide Virtual Reality Pod and Programs that meet the District's instructional needs by offering a trailer-based seated virtual-reality classroom and associated hardware, software, and services;

WHEREAS, District staff has determined, based on its due diligence search, that DSL is the only possible provider of the Virtual Reality Pod and Programs to the District because DSL is the only distributor, installer, and servicer of the specific Virtual Reality Pod and Programs needed by the District and that competitive bidding for virtual reality classroom systems would not provide a better product or a better price and therefore, would waste District resources and frustrate the District's ability to provide a system that meets the District's specific and unique needs;

WHEREAS, pursuant to applicable law, the District wishes to award a contract to DSL to supply, install, and service the Virtual Reality Pod and Programs for the District;

WHEREAS, District staff shall in consultation with legal counsel, has negotiated the required agreement to procure the Virtual Reality Pod and Programs from DSL titled the Mobile Pod Master License, Supply and Services Agreement, attached hereto as Exhibit A (the “DSL Agreement”);

WHEREAS, District staff believes that terms, conditions, and prices set forth in the DSL Agreement to provide, install, and warranty the Virtual Reality Pod and Programs for the District’s use are reasonable and appropriate;

WHEREAS, Public Contract Code section 20651 states that a community college district is required to competitively bid any purchase of equipment with a contract value over \$114,500 or any procurement of public works with a contract value over \$15,000;

WHEREAS, California law provides that, “Where competitive proposals work an incongruity and are unavailing as affecting the final result or where they do not produce any advantage . . . the statute requiring competitive bidding does not apply” (*Hiller v. City of Los Angeles* (1961) 197 Cal.App.2d 685, 694), and that public entities need not comply with competitive bidding processes where to do so would be impractical or futile and would not serve the purposes of competitive bidding, including in situations where there is only one supplier or provider of a needed commodity. (*Los Angeles Dredging Company v. City of Long Beach* (1930) 2 Cal. 348; *Graydon v. Pasadena Redevelopment Agency* (1980) 104 Cal.App.3d 631);

WHEREAS, District staff, in consultation with legal counsel, has determined that DSL is the only provider that can meet the specific and technical needs of the District and DSL provides the professional and specialized services necessary to ensure the Virtual Reality Pod and Programs benefits District students in accordance with the District’s goals;

WHEREAS, based on the foregoing, it would be incongruous, futile, and unavailing to solicit public bids for the purchase, installation, and servicing of the Virtual Reality Pod and Programs; and

WHEREAS, the District therefore desires to enter into the DSL Agreement for the purchase, installation, and servicing of the Virtual Reality Pod and Programs.

NOW THEREFORE, the Board of Trustees of the Kern Community College District ("Board") hereby resolves, determines, and finds the following:

1. The foregoing recitals are true and correct.
2. The Virtual Reality Pod and Programs offered by DSL as further set forth in the DSL Agreement constitute the only product and program that can meet the District's needs and goal of providing a state-of-the-art virtual reality learning environment to enhance, promote, and advance the education of District students.
3. DSL is the only entity that can supply, install, and service the Virtual Reality Pod and Programs.
4. The DSL Agreement, attached to this resolution, is hereby approved.
5. The District's Chancellor or a designee is authorized to take all steps and perform all actions necessary to execute and implement this resolution including, but not limited to, making any non-substantive changes to the DSL Agreement that District staff, in consultation with legal counsel, deem necessary and execute the finalized DSL Agreement.
6. If the DSL Agreement require additional substantive changes, the District's Chancellor or a designee is authorized to negotiate such changes with DSL and present the finalized DSL Agreements to the Board at a future meeting for ratification.

I, Steven Bloomberg, Secretary of the Board of Trustees of the Kern Community College District, do hereby certify that the foregoing Resolution was introduced and adopted by the Board of Trustees of the Kern Community College District at a regular meeting thereof held on the 30th day of January, 2025, by the following forgoing vote.

AYES: 7 NOES: 0 ABSENT: 0 ABSTAIN: 0

I, John Corkins, President of the Kern Community College District Board of Trustees, do hereby certify that the foregoing is a full, true, and correct copy of the resolution passed and adopted by said Board at a regularly scheduled and conducted meeting held on said date, which resolution is on file in the office of said Board.

John S. Corkins
President of the Board of Trustees
Kern Community College District

Exhibit A

[Mobile Pod Master License, Supply and Service Agreement]

MOBILE POD

MASTER LICENSE, SUPPLY AND SERVICES AGREEMENT

This Mobile Pod Master License, Supply and Services Agreement (this “**Agreement**”) is entered into this 30th day of January, 2025 (the “**Effective Date**”) by and between Dreamscape Learn, Inc., a Delaware corporation (“**DSL**”), and Kern Community College District, a California community college (“**Customer**”). Customer and DSL are sometimes referred to in this Agreement collectively as the “**Parties**” and each individually as a “**Party**.”

1. **Definitions.** Capitalized terms used but not otherwise defined in this Agreement have the meanings given to them in **Schedule 1**.
2. **Mobile Pod.**
 - 2.1 **Mobile Pod Procurement.** **Schedule 2** (the “**Pricing Schedule**”) sets forth the amount payable to DSL by Customer for the Mobile Pod; DSL shall pay the Mobile Pod Vendor the applicable purchase under the Mobile Pod Fabrication Agreement from the funds payable by Customer under as set forth in the Pricing Schedule. Customer will enter into a separate agreement with the Mobile Pod Vendor to procure and purchase the Mobile Pod attached hereto as “**Schedule 8**” (the “**Vehicle Agreement**”). As set forth herein, DSL shall take all actions required by the Vehicle Agreement to deliver the Mobile Pod to “Customer’s Location”, identified as the Customer’s office located at , 2100 Chester Ave., Bakersfield, CA 93301 and therefore, DSL shall indemnify Customer pursuant to Section 16 for any damage, claim, or loss arising from DSL’s compliance with the Vendor Agreement. Once the Mobile Pod Vendor has completed fabrication of the Mobile Pod and DSL has completed its technical installation of the Equipment in the Mobile Pod (the “**DSL Technical Installation**”), DSL shall cause the Mobile Pod Vendor to issue a manufacturer’s certificate/statement of origin (“**MCO/MSO**”) directly to Customer, and Customer shall apply for title and/or registration for the Mobile Pods (for the avoidance of doubt, DSL is not the seller or reseller of the Mobile Pods as title does not pass through DSL). As noted above, DSL shall cause the Mobile Pod Vendor to enter into the Vehicle Agreement with Customer (the “**Vehicle Agreement**”), substantially in the form attached hereto as **Schedule 8**, concurrently with delivery of the Mobile Pods. Delivery of the Mobile Pod to the Customer shall be coordinated between the Customer and DSL and is estimated to occur no later than one hundred and eighty (180) days after execution hereof. DSL shall provide at least twenty (20) days’ notice of the date and time of delivery of the Mobile Agreement to Customer’s Location. Customer shall be responsible for all costs associated with delivery of the Mobile Pod, which will be set forth in **Schedule 3** (the “**Delivery SOW**”). DSL shall ensure the Mobile Pod Vendor delivers the Mobile Pod, issues the MCO/MSO, and executes the Vehicle Agreement. Customer shall have the right to

terminate this Agreement immediately without penalty or cost, in the event the Mobile Pod Vendor fails to deliver the Mobile Pod, issue the MCO/MSO, and execute the Vehicle Agreement.

- 2.2 Inspection. Upon delivery to Customer's Location , Customer shall have the right to inspect the Mobile Pod and Platform to confirm that the Mobile Pod and Platform are substantially operable and reasonably conform to their respective specifications. Unless Customer informs DSL within one (1) day of delivery that the Mobile Pod and/or Platform are not substantially operable, or that the Mobile Pod and/or Platform do not reasonably conform to their respective specifications, Customer will be deemed to have accepted delivery from DSL. Failure of Customer to identify a nonconformance during the above-referenced inspection period shall not be deemed to be a waiver of any specification, requirement, term or condition hereof. In the event Customer objects to the Mobile Pad for any reason during the inspection period, the Parties shall meet in good faith to develop a plan to address the Customer's objection and shall revise this Agreement as necessary to incorporate the time and requirements needed to address the College's objection.
- 2.3 Title; Registration; Licensing; Insurance. Customer shall be solely responsible for ensuring completion of all applicable title, registration, licensing and insurance requirements relating to ownership, transportation, parking and/or operation of the Mobile Pod under any applicable Law, including without limitation, any of the following as applicable: registration with any state department of motor vehicle; registration with the US Department of Transportation, ensuring any driver transporting the Mobile Pod has a valid commercial driver's license, and hazard, damage and liability insurance. Customer shall add DSL as an additional insured for all insurance policies related to operation of the Mobile Pod.
- 2.4 Enterprise Systems Integration. A statement of work relating to integration of the Platform within the Customer's enterprise systems (the "**Integration**") is attached as Schedule 4 (the "**Integration SOW**"). The Integration SOW sets forth the description, scope, responsibility matrix, total cost and payment schedule, in each case based on the information and assumptions set forth therein. Each Party will carry out its obligations as set forth in the Integration SOW. A Material Change will cause an increase in costs and fees payable by Customer and will be handled pursuant to the Change Order process set forth in Section 2.5 below.
- 2.5 Change Order Procedure. Revisions to the Delivery or Integration SOW may be requested by a Party at any time upon the submission of a written change request ("**Change Request**"). If Customer initiates the Change Request, then within thirty (30) days of receipt of a Change Request from Customer, DSL will submit a change order ("**Change Order**"), including time and costs, for such changes to Customer. If DSL initiates the Change Request, the Change Order shall be included with the Change Request for the Customer's consideration. DSL shall not proceed with a Change Request initiated by DSL without prior written approval by Customer. The Change Order shall become binding upon the Parties

only upon the execution thereof by the Parties, after which time the Delivery SOW and/or Integration SOW, as applicable, will be deemed amended by such Change Order.

3. Platform Site License.

- 3.1 **Limited License.** Subject to the terms of this Agreement, DSL hereby grants Customer a limited, non-exclusive, non-assignable, non-transferable right and license to use the Platform, from and after the Go Live Date and continuing during the Term hereunder, with Customer's Students and Instructors (the "**Mobile Pod Platform License**"). With the exception of routine functionality testing, Customer shall not use the Platform until the Go Live Date. Customer shall pay DSL an annual Mobile Pod Platform Site License fee ("**Mobile Pod Platform Site License Fee**") based on pricing and eligibility criteria defined in the Pricing Schedule. Customer acknowledges that the Mobile Pod Platform Site License Fee is calculated on the basis of the total Students enrolled with Customer, whether or not Customer elects to make the Platform available to all such Students. The Platform Site License Fee shall be payable as set forth in **Section 10** below.
- 3.2 **Backstage Manager.** The Mobile Pod Platform Site License includes the limited, non-exclusive, non-assignable, non-transferable right and license to use DSL's portal for administrators to manage the Mobile Pod configuration and Equipment, referred to as the Backstage Manager.
- 3.3 **Control Center.** The Mobile Pod Platform Site License includes the limited, non-exclusive, non-assignable, non-transferable right and license to use DSL's cloud-based portal for Instructors and Students to schedule, monitor, and manage DSL learning experiences, referred to as the Control Center. Control Center shall be hosted by DSL.
- 3.4 **Software Development Kit.** The Platform Site License includes the limited, non-exclusive, non-assignable, non-transferable right and license to use the SDK in accordance with the terms of this Agreement.

4. Courseware.

- 4.1 **Limited License.** Subject to the terms of this Agreement, DSL hereby grants Customer a limited, non-exclusive, non-assignable, non-transferable right and license to display, perform and/or operate the Courseware identified on the Pricing Schedule, from and after the Go Live Date and continuing during the Term hereunder, to Customer's Students (the "**Courseware License**"). DSL will have no obligation to customize or otherwise modify Courseware. Customer shall not publish, duplicate, modify, make derivative works of, or otherwise use Courseware except as expressly provided herein. With the exception of routine functionality testing, Customer shall not use the Courseware until the Go Live Date.
- 4.2 **Modalities.** Current functionality of Courseware includes use by Students who are on premises at the Mobile Pod location or using one of the laptop or desktop computers connected to the Platform and streaming to laptop or desktop computers for remote Students. Other functionality, such as use by Students remotely through DSL-supported

stand-alone VR headsets is currently under development, and DSL shall make this functionality available to Customer when DSL makes this functionality generally available to its other customers, on generally similar commercial terms.

- 4.3 **Courseware License Fee.** For each Courseware licensed hereunder, Customer shall pay DSL a courseware license fee (“**Courseware License Fee**”), which for any Fiscal Year shall be the greater of: (a) the minimum Courseware License Fee set forth for such Fiscal Year in the Pricing Schedule (the “**Minimum Courseware License Fee**”); or (b) the fee calculated totaling, for each Academic Term which concluded during such Fiscal Year, the number of Students in such Academic Term who accessed the Courseware multiplied by the fee per Student per Academic Term for such Courseware indicated on the Pricing Schedule (the “**Calculated Courseware License Fee**”). The Courseware License Fee shall be payable as set forth in **Section 10** below.
- 4.4 **Learning Materials.** The Courseware License Fee includes any accompanying Learning Materials that DSL may deliver relating to Courseware, and Customer shall have the limited right to use such bundled Learning Materials only in connection with its use of Courseware. Customer shall not publish, duplicate, modify, make derivative works of, or otherwise use the Learning Materials except as expressly provided herein.
 - (a) **Additional Courseware.** Customer acknowledges that this Agreement does not grant Customer any right to any additional Courseware that may be developed by or on behalf of DSL, nor does it obligate DSL to create or provide any additional Courseware other than the Courseware specifically identified in the Pricing Schedule. Without limiting the foregoing, should DSL develop additional Courseware that it makes generally available to its other customers, such Courseware may be made available to Customer on terms to be mutually agreed by each Party.

5. **Classroom Environments**

- 5.1 **Environment Starter Pack.** DSL will provide Customer with a set of virtual environments. Other virtual environments may be or become available, and DSL may make such environments available to Customer to the extent DSL generally makes such environments available to DSL’s other customers on pricing and other terms to be mutually agreed by each Party. Customer shall have the limited right to use the virtual environments only in connection with its use of the Platform and the Mobile Pod.

6. **Mobile Pod Operation.**

- 6.1 **Operation of the Mobile Pod.** From the issuance of the MCO/MSO for the Mobile Pod and throughout the remainder of the Term, Customer will operate the Mobile Pod in accordance with: (a) this Agreement; (b) any DSL guidelines, procedures, requirements and standards, as may reasonably be developed and communicated by DSL that do not conflict with the terms of this Agreement; (c) any guidelines, procedures, requirements and standards provided by the manufacturers of the components of the Mobile Pod; and (d) applicable Law.

6.2 Minimum System Requirements. Customer shall ensure that the Mobile Pod continuously meets the minimum requirements to operate the Platform and the Mobile Pod, which shall be outlined by guidelines and procedures in Section 6.1.

6.3 Promotion and Marketing.

- (a) Customer shall use its best efforts to promote the use of the Platform by Students and prospective Students. All aspects and elements of the Mobile Pod, whether specifically using the DSL IP, Equipment or otherwise, that are observable by Students, and any advertising or marketing materials in connection therewith (including, without limitation, artwork, promotional materials, electronic or print media, social media, mobile media and other marketing items), will be subject to the prior written approval of DSL in each instance, in its good faith discretion. DSL will provide approval of any advertising or marketing materials within 10 business days of submission; failure of DSL to approve such materials within 10 business days will be deemed to be disapproval.
- (b) Customer agrees that DSL may: (i) use Customer's name and logo to identify Customer as a customer of DSL in DSL's advertising or marketing materials (including, without limitation, artwork, promotional materials, electronic or print media, social media, mobile media and other marketing items); (ii) publicize success stories and anonymized data relating to Customer, its Students and Instructors; and (iii) issue a press release identifying Customer as a DSL customer and describing the nature of the products and services to be provided. Use of Customer's name and/or logo to identify Customer as customer of DSL on DSL's website and social media channels as well as corporate communications is hereby approved. Additional use of Customer's name and/or logo will be subject to the prior written approval of Customer in each instance, in its good faith discretion. Customer will provide such approval within 10 business days of submission; failure of Customer to approve such materials within 10 business days will be deemed to be disapproval.

6.4 Waiver. Customer shall ensure that, as part of the Platform, all users execute a commercially reasonable waiver of liability, the form of which will be mutually approved by the Parties (such approval will not be unreasonably withheld).

6.5 Standard of Care. With respect to the Mobile Pod, Customer will deploy and operate the Mobile Pod in the same manner and quality and using the same standard of diligence and care and service levels with or at which the same or similar services are provided in connection with Customer's normal operations, and in any event in no less than a timely, professional and competent manner using such diligence and care in accordance with all industry standards and best practices as may reasonably be expected of an experienced institution. Customer will devote such time and effort to the performance under this Agreement as may be necessary to comply with this Agreement and the reasonable instructions and guidelines of DSL.

- 6.6 Qualified Personnel. Without limiting the foregoing, Customer will retain a sufficient number of qualified personnel in connection with the day-to-day operation of the Mobile Pod, including personnel to drive the Mobile Pod (as necessary), and manage and facilitate the Student on-site experience as well as address routine technical issues.
- 6.7 Compliance with Laws. Customer acknowledges and agrees that it will, in any and all matters related to the Mobile Pod and use of all rights hereunder, comply in all respects with all applicable Laws, including without limitation Laws relating to employment, health and safety, data security and data privacy. Customer may not remove or export or allow the export or re-export of any Equipment, DSL IP or anything related thereto, or any direct product thereof in violation of any restrictions, laws or regulations of the United States Department of Commerce, the United States Department of Treasury Office of Foreign Assets Control, or any other United States or foreign agency or authority. Additionally, Customer agrees that it will not remove any copyright, trademark or proprietary notices contained in or provided through the Equipment or the DSL IP, including without limitation any such notices on any documents, graphics, information, data, screenshots and other materials downloaded, copied, stored, printed or otherwise retrieved and saved through the Equipment or the DSL IP.
- 6.8 Operating Expenses. Customer will be responsible for all ongoing operating costs and expenses in connection with such Mobile Pod, including as nonlimiting examples, fuel, routine maintenance of the Mobile Pod's attached vehicle, electrical connectivity, managed network licenses and cloud hosting fees, all as applicable. If any such costs or expenses are incurred by or on behalf of DSL, such costs and expenses will be invoiced to and paid by Customer in accordance with **Section 10**.

7. Equipment; Equipment Warranty.

- 7.1 Use of Equipment. Customer shall own all right, title, and interest in and to the Equipment included within the Mobile Pod(s) purchased hereunder, provided, however, Customer understands and acknowledges that this Agreement is intended only to authorize particular and specific usage of the Equipment and the Mobile Pod solely in accordance with the terms and conditions of this Agreement. Customer acknowledges that Customer must use such Equipment specifically as described herein. All such Equipment will be considered accepted upon delivery. Customer agrees to use all Equipment in a careful and proper manner as contemplated in applicable user Documentation, and in compliance with all applicable laws and regulations. At no time will Customer modify any Equipment, the firmware contained therein, or permit repairs to be performed upon Equipment by persons other than DSL's authorized service technicians during the Equipment Warranty Period, as described below.

7.2 Equipment Limited Warranty.

- (a) Subject to the terms set forth herein below, DSL will replace any defective Equipment failing during the six (6) month period commencing on the Go Live Date (the "**Equipment Warranty Period**"). Customer acknowledges that replacement Equipment may be new or refurbished Equipment of equivalent

functionality. For any hardware or software provided pursuant to the Mobile Pod Fabrication Agreement (i.e., trailer components, generators, cooling systems, chassis) (the “**Mobile Vendor Equipment**”), the Mobile Pod Vendor’s warranty shall apply for such Equipment. For the avoidance of doubt, any motor vehicle used to transport the Mobile Pod shall not be covered by DSL’s Equipment Warranty Period or the Support Services.

(b) Notwithstanding the preceding **Section 7.2(a)**, Customer agrees that DSL will have no obligations under this section due to defects resulting from (i) modifications or repairs made by anyone other than DSL or its authorized service technicians; (ii) improper installation (unless the installation was performed by DSL); (iii) improper facility preparation by Customer (including but not limited to electrical and mechanical infrastructure); (iv) accident or abuse; (v) use with systems not meeting DSL’s published minimum technical requirements; and/or (vi) Customer’s use of the Equipment in any manner or for any purpose inconsistent with applicable Documentation. DSL’s obligations under this **Section 7.2** shall constitute DSL’s entire liability and Customer’s sole remedy for any defective Equipment in breach of the foregoing warranty.

8. Platform Warranty, Maintenance and Support.

8.1 **Platform Limited Warranty.** Subject to the terms of this Agreement, DSL warrants that the Platform shall perform substantially in accordance with the Documentation for a period of 90 days from the Go Live Date. Thereafter, DSL’s sole obligation with respect to defects or inoperability relating to the Platform shall be exclusively as set forth below.

8.2 **Support Services.** From and after the Go Live Date and continuing during the Term hereunder, DSL shall provide, either directly or through a DSL-contracted provider, the support services (the “**Support Services**”) as particularly described in the service-level agreement attached as **Schedule 5 (“SLA”)**. The fee for the Support Services provided by or on behalf of DSL under the SLA is set forth on the Pricing Schedule (the “**Support Services Fee**”). To the extent DSL’s personnel are requested to provide support services beyond the obligations set forth on the SLA, and DSL elects to perform such services, Customer shall pay for such services at DSL’s then-current hourly support cost. Customer will pay or reimburse all reasonable travel expenses and other reasonable costs incurred by DSL personnel in connection with the Support Services and any additional support services requested and provided hereunder, which shall include an administrative charge.

9. Upgrades; Refreshes.

9.1 **Upgrades.** If during the Term there are changes to the Equipment or Platform infrastructure required to maintain operability, DSL shall be responsible for the cost of the necessary Equipment relating to such changes. For the avoidance of doubt, software patches, corrections or updates released by DSL under the SLA must be installed within the time period indicated by DSL, as set forth in the SLA.

9.2 Equipment Refreshes. Customer acknowledges that certain elements of the Equipment, by their nature, will require periodic maintenance, repair or replacement.

10. Payments and Reports.

10.1 Reporting Key Contacts. **Schedule 6** sets forth each Party's primary contact information for submission and review of the reporting requirements set forth herein. Each Party shall notify the other Party upon any change in the key contact information set forth on **Schedule 6**.

10.2 Reporting. Within thirty (30) days after each Fiscal Year, Customer shall submit to DSL a written report ("Annual Report") with respect to the preceding Fiscal Year (each, a "Reporting Period") stating the following:

- (a) The number of Academic Terms which concluded during each such Reporting Period;
- (b) The number of enrolled Students as of the start of each Academic Term which concluded during each such Reporting Period.
- (c) For each Academic Term which concluded during each such Reporting Period:
 - (i) The number of students enrolled in each course that concluded during each such Academic Term in which a Courseware License was used;
 - (ii) The number of unique Students who accessed the Courseware during each such Academic Term;

10.3 Review of Annual Report. In connection with DSL's review of the applicable Annual Report, Customer will promptly make available such information, documentation and personnel as may be reasonably requested by DSL.

10.4 Invoicing and Payment.

- (a) The Platform Site License Fee, Minimum Courseware License Fee, and Support Services Fee are invoiced upon the commencement of the Fiscal Year.
- (b) Customer acknowledges that the Platform Site License Fee is determined by pricing bands based upon the number of enrolled Students; should such number of enrolled Students increase during a Fiscal Year beyond the maximum number in the pricing band for which the Platform Site License Fee was originally calculated, it shall be Customer's obligation to notify DSL, once Customer is aware of the increase beyond the maximum number of a pricing band. In such instance, DSL shall invoice Customer for the difference between the Platform Site License Fee originally issued and the Platform Site License Fee applicable to the higher number of Students enrolled with Customer. Customer's failure to notify DSL of an increase in enrolled Students shall not relieve Customer of its obligation to pay the applicable increase in the Platform Site License Fee.

- (c) For the Courseware License Fee if the Calculated Courseware License Fee for any Fiscal Year is greater than the applicable Minimum Courseware License Fee already paid, DSL shall invoice Customer for the difference.
- (d) Notwithstanding the foregoing, given that it is possible that the Go Live Date will occur on a date other than the first day of a Fiscal Year, in such case the above fees for the Fiscal Year in which the Go Live Date occurs shall be prorated based on the Proration Percentage, as defined below:

“Proration Percentage” is calculated as follows:

<i>Number of Days from Start of Fiscal Year to Go Live Date:</i>	<i>Applicable Proration Percentage (i.e., Percentage of Fees Payable)</i>
1 – 90	100%
91 – 180	75%
Greater than 180	50%

- (e) DSL shall additionally invoice Customer for any other additional fees or charges as they arise under the SLA (as and to the extent such fees and charges are agreed to in advance by Customer).
- (f) The Delivery SOW and Integration SOW set forth the invoicing schedule related thereto.
- (g) All payments by Customer hereunder are due within thirty (30) days of DSL’s invoice.

10.5 **Taxes.** Each Party shall be solely responsible for the payment of all taxes, fees, duties, levies or similar amounts imposed on its respective income arising directly or indirectly from the activities of the Parties under this Agreement. Customer shall be responsible for payment of all sales and use taxes, value added taxes (VAT), or similar charges relating to Customer’s purchase and use of any products (including any licenses) and/or services hereunder. Subject to the foregoing, to the extent Customer is required by applicable law to deduct and withhold taxes from the consideration otherwise payable pursuant to this Agreement to DSL, Customer shall (a) notify DSL in writing of such determination, and (b) pay the amounts of such taxes to the proper governmental authority in a timely manner and promptly transmit to DSL an official tax certificate or other evidence of such payment sufficient to enable DSL to claim such payment of taxes. To the extent that amounts are so withheld, such withheld amounts shall be treated for all purposes of this Agreement as having been paid to DSL.

10.6 **Books and Records.** Customer shall maintain at its principal office usual books of account and records showing its actions under this Agreement, and sufficient to determine Customer’s compliance with its obligations hereunder. Upon reasonable notice, but not more than once per calendar year, DSL may have an independent certified public accountant or independent auditor inspect such books and records for purposes of

verifying the accuracy of the amounts paid under this Agreement (“**Audit**”), during regular business hours, with not less than thirty (30) business days’ advance written notice. In the event that such Audit shows that Customer has underpaid DSL by the greater of ten percent (10%) or more with respect to any Reporting Period, Customer shall pay, within thirty (30) days after demand by DSL, the reasonable costs and expenses of such Audit (including the fees charged by DSL’s accountants and attorneys involved in the Audit), in addition to the amount of any underpayment and any interest (at the rate described in **Section 10.7** below) thereon. Customer agrees to reasonably cooperate with DSL’s accountant or auditors and attorneys in connection with any such Audit.

- 10.7 Late Payment Interest. Without limiting any of DSL’s rights and remedies hereunder, any payment required hereunder that is made late (including unpaid portions of amounts due) shall bear interest, compounded monthly, at the US Prime rate for each applicable month as published by the Wall Street Journal. Any interest charged or paid in excess of the maximum rate permitted by applicable law shall be deemed the result of a mistake and interest paid in excess of the maximum rate shall be credited or refunded (at the Customer’s option) to Customer.
- 10.8 USD. All amounts payable to DSL hereunder must be paid by Customer to DSL in United States Dollars. If any currency conversion shall be required in connection with the calculation of amounts payable hereunder, the exchange rate shall as quoted by the Wall Street Journal as of the last day of each applicable Reporting Period (and if no rate is published on such date, then the latest rate published by the Wall Street Journal during such Reporting Period).

11. Intellectual Property

- 11.1 Ownership of DSL IP. Customer acknowledges and agrees that DSL owns and will retain all right (including without limitation IP Rights), title and interest in and to the DSL IP and the Trademarks.
- 11.2 Customer Created Content. Subject to the rights reserved herein to DSL relating to the DSL IP, DSL acknowledges that (as between DSL and Customer) Customer owns the Customer Created Content; provided, however, that:
 - (a) Customer shall not charge its Students or Instructors a digital materials, lab, or other fee for access to Customer Created Content unless DSL and Customer have each agreed in writing on a revenue sharing agreement related to such Customer Created Content with commercial terms acceptable to each Party in its discretion.
 - (b) Customer hereby grants to DSL the right to sell, modify, create derivative works relating to, and otherwise use the Customer Created Content in connection with DSL’s customers on commercial terms acceptable to each Party in its discretion, such terms to be reflected in a written agreement executed by the Parties.

11.3 Limitations:

(a) Customer will not:

- (i) use any DSL IP in any manner (a) that violates any third-party right, including any IP Rights; (b) that is unlawful, harassing, abusive, tortious, threatening, vulgar, defamatory, intentionally misleading, pornographic or obscene, or that violates the privacy of any person or group or promotes racism, bigotry, hatred, or physical harm against any group or individual or is otherwise objectionable; (c) that is in violation of any Law; or (d) to build or improve a competitive product or service;
- (ii) directly or indirectly, reverse engineer, decompile, disassemble or otherwise attempt to discover the source code or underlying structure, algorithms, ideas or know-how relevant to any DSL IP, modify, translate, or create derivative works based on any DSL IP (except for the limited rights to create Customer Created Content, which remain subject to the terms hereof), or use any DSL IP for the benefit of a third party;
- (iii) Copy, or otherwise reproduce, or publish the SDK, in whole or in part;
- (iv) modify, adapt, alter, translate, or incorporate into or with other software or create a derivative work of any part of the SDK, (except for the limited rights to create Customer Created Content, which remain subject to the terms hereof); or
- (v) distribute the SDK (other than the incorporation of distributable elements of the SDK in Customer Created Content in accordance with the terms hereof).

(b) Customer acknowledges that the SDK may be updated from time to time by DSL. Future versions of the SDK may not necessarily be compatible with Customer Created Content developed on earlier versions.

11.4 **Reservation of Rights.** Except as otherwise expressly provided in this Agreement, DSL grants no right (including without limitation IP Rights), title or license to any Intellectual Property, whether by implication, by estoppel or otherwise, and all such rights are expressly reserved.

11.5 **Third-Party Infringement.** Customer will notify DSL of any known, suspected or threatened infringement of DSL IP by third parties of which Customer becomes aware and of any claims of infringement by third parties. DSL may take whatever action it deems necessary in its sole discretion with respect to such known, suspected or threatened infringement, and Customer will reasonably cooperate with DSL, at DSL's expense, with respect to DSL's investigations and legal actions for the enforcement or protection of the DSL IP. DSL shall have sole control of any action in connection with any such infringement.

12. Confidentiality.

12.1 Definition. **“Confidential Information”** of a Party (the “**Disclosing Party**”) means all information and documentation of such Party, including without limitation, technical, scientific, economic, financial or commercial information, accounting data, plans, studies, prototypes, experimental data and tests, drawings, graphical representations, specifications or source code, and/or other information, in any case, whether disclosed to or accessed by the other Party (the “**Recipient**”) in connection with this Agreement, which is either identified by the Disclosing Party as confidential or proprietary or which the Recipient knows or reasonably should know is confidential and proprietary. For the avoidance of doubt, Confidential Information includes without limitation (b) any information developed by reference to or use of the Disclosing Party’s information. The term “Confidential Information” will not include information that (a) is independently developed by the Recipient, as demonstrated by the recipient’s written records, without violating the Disclosing Party’s proprietary rights, (b) is or becomes publicly known (other than through unauthorized disclosure), (c) is disclosed by the owner of such information to a third party free of any obligation of confidentiality, (d) is already known by the Recipient at the time of disclosure, as demonstrated by the Recipient’s written records, and the Recipient has no obligation of confidentiality other than pursuant to this Agreement or any confidentiality agreements between the Parties entered into before the Effective Date, or (e) is rightfully received by the Recipient free of any obligation of confidentiality, provided that (A) the Recipient has no knowledge that such information is subject to a confidentiality agreement and (B) such information is not of a type or character that a reasonable person would have regarded it as confidential. Confidential Information shall not include the terms of this Agreement nor any invoicing or payment records pursuant to this Agreement, if and to the extent such items are subject to disclosure pursuant to the California Public Records Act.

12.2 Use and Disclosure Restrictions. The Recipient will not use the Confidential Information of the Disclosing Party except as necessary for the performance of, or as expressly permitted by, this Agreement, or disclose such Confidential Information to any third party except to those of its employees and subcontractors that need to know such Confidential Information for the purpose of performing this Agreement; provided, that the Recipient will be liable hereunder for any subsequent use or disclosure of such information by such employees and subcontractors not permitted herein. The Recipient will use all reasonable efforts to maintain the confidentiality of all such Confidential Information in its possession or control, but in no event less than the efforts that the Recipient ordinarily uses with respect to its own proprietary information of similar nature and importance. The foregoing obligations will not restrict the Recipient from disclosing Confidential Information: (a) as required by Law and pursuant to the order or requirement of a court, administrative agency, or other Governmental Authority; provided, that to the extent permitted by Law, the Recipient gives notice to the Disclosing Party sufficient to permit the Disclosing Party to contest such order or requirement; (b) to assert its rights under this Agreement; and (c) on a confidential basis to its legal and/or financial advisors and potential investors or acquirers.

13. Data Privacy and Security.

- 13.1 Privacy. DSL maintains a publicly available Privacy Policy, accessible at <https://dreamscapelearn.com/privacy>, that describes its privacy practices with respect to collection, use, storage, and access to Personal Information, and agrees to comply with applicable privacy laws and regulations. Customer agrees and shall ensure that its Students, Instructors and/or administrators do not use the Platform to collect, upload, retrieve, transmit, send, and/or store any Protected Health Information as defined under HIPAA. The Parties shall comply with **Schedule 7** (Data Privacy Agreement) attached hereto and incorporated herein.
- 13.2 Experience Data. Subject to applicable limitations under federal and state law and applicable privacy policies, DSL reserves all right, title and interest in and to Experience Data, which shall remain the property of DSL. Notwithstanding the foregoing, Customer and its administrators and Instructors shall have access to the Experience Data generated by Customer's Students and Instructors during the Term solely for use in relation to Customer's internal business purpose in accordance with this Agreement. Upon DSL's request, Customer shall also provide to DSL anonymized data relating to Student and Instructor experiences as well as learning outcomes.
- 13.3 Data Security. DSL has implemented and shall maintain administrative, physical, and technical safeguards consistent with industry standards for protection of the security, confidentiality, and integrity of Personal Information.

14. Term and Termination.

- 14.1 Term. The term of this Agreement (the "Term") will commence on the Effective Date and expire on June 30, 2029, unless sooner terminated pursuant to the terms hereof. The Parties shall discuss in good faith renewal on commercially reasonable terms.
- 14.2 Termination for Cause. Either Party may terminate this Agreement upon notice to the other Party if such other Party commits a material breach of this Agreement, including the failure to pay when due any amount payable under this Agreement, and, if such breach is capable of cure, does not cure such breach within 30 days after written notice thereof.
- 14.3 Termination for Bankruptcy/Insolvency. To the extent possible under applicable law, either Party may terminate this Agreement immediately if the other Party becomes insolvent, admits in writing its inability to pay its debts as they mature, makes an assignment for the benefit of creditors, becomes subject to control of a trustee, receiver or similar authority, or becomes subject to any bankruptcy or insolvency proceeding.
- 14.4 Effects of Termination. Promptly upon the termination for any reason or expiration of this Agreement, Customer will cease, and will cause its agents to cease, all use of the DSL IP, including the Trademarks, and destroy or erase all copies of any DSL IP in Customer's possession or control; and (b) each Party will erase or destroy all of the Confidential Information of the other Party in such Party's possession or control, except as may be required by law.

14.5 Survival. The following Sections will survive the expiration or termination of this Agreement for any reason: 10.5-10.8, 11-13, 14.4-14.5, and 15-18.

15. Disclaimer; Limitation of Liability.

15.1 EXCEPT AS SET FORTH IN **SECTION 7.2 AND SECTION 8.1**, THE EQUIPMENT AND THE PLATFORM ARE PROVIDED "AS IS" AND WITH ALL FAULTS, AND DSL MAKES NO, AND HEREBY DISCLAIMS ALL, WARRANTIES REGARDING THE EQUIPMENT AND THE PLATFORM, WHETHER EXPRESS, STATUTORY OR IMPLIED, INCLUDING: ANY IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE AND NON-INFRINGEMENT; ANY WARRANTY THAT THE EQUIPMENT OR PLATFORM WILL OPERATE UNINTERRUPTED OR ERROR FREE; AND ANY WARRANTY AS TO THE RESULTS THAT MAY BE OBTAINED FROM USE OF THE EQUIPMENT OR PLATFORM.

15.2 EXCEPT IN THE EVENT OF A PARTY'S (A) WILLFUL MISCONDUCT OR INTENTIONAL BREACH OR (B) GROSS NEGLIGENCE, IN NO EVENT WILL A PARTY BE LIABLE TO THE OTHER PARTY FOR ANY CONSEQUENTIAL, INCIDENTAL, SPECIAL OR INDIRECT DAMAGES (INCLUDING, BUT NOT LIMITED TO, FROM ANY DESTRUCTION TO PROPERTY OR FROM ANY LOSS OF USE, REVENUE, PROFIT, TIME OR GOODWILL) BASED ON ACTIVITY ARISING OUT OF OR RELATED TO THIS AGREEMENT, WHETHER PURSUANT TO A CLAIM FOR BREACH OF CONTRACT OR ANY OTHER CLAIM OF ANY TYPE. NOTWITHSTANDING THE FOREGOING, NOTHING IN THIS **SECTION 15.2** IS INTENDED TO OR SHALL LIMIT OR RESTRICT (A) THE INDEMNIFICATION RIGHTS OR OBLIGATIONS OF ANY PARTY UNDER **SECTION 16** OR (B) DAMAGES AVAILABLE FOR A PARTY'S BREACH OF ITS CONFIDENTIALITY OBLIGATIONS UNDER **SECTION 12**.

15.3 EXCEPT IN THE EVENT OF A PARTY'S (A) WILLFUL MISCONDUCT OR INTENTIONAL BREACH OR (B) GROSS NEGLIGENCE, IN NO EVENT SHALL EITHER PARTY'S AGGREGATE LIABILITY TO THE OTHER PARTY UNDER THIS AGREEMENT EXCEED \$1,250,000. NOTWITHSTANDING THE FOREGOING, NOTHING IN THIS **SECTION 15.3** IS INTENDED TO OR SHALL LIMIT OR RESTRICT (A) THE INDEMNIFICATION RIGHTS OR OBLIGATIONS OF ANY PARTY UNDER **SECTION 16**, OR (B) DAMAGES AVAILABLE FOR A PARTY'S BREACH OF ITS CONFIDENTIALITY OBLIGATIONS UNDER **SECTION 12**.

15.4 The Parties hereto acknowledge that the limitations and exclusions of liability and disclaimers of warranty set forth in this Agreement form an essential basis of the bargain between the Parties and are reasonable under the circumstances.

16. Indemnity.

16.1 DSL Indemnified Claims. DSL hereby agrees to indemnify, defend and hold harmless Customer, its Board members and all officers, directors, employees and agents of each of the foregoing, from and against any and all third-party claims and, whether or not a claim is made, any liabilities, obligations, losses, damages, costs, fees, penalties, fines, settlements, charges or other expenses of any kind (including, without limitation, reasonable attorneys' fees and legal costs), in each case arising out of or relating to: (a) the inaccuracy of, or DSL's breach of, any representation, warranty or covenant

hereunder, (b) the operation by DSL of its business, (c) DSL's gross negligence, willful misconduct or fraud or (e) any and all claims, actions or proceedings by a third party alleging that any DSL IP infringes, misappropriates, or violates the IP Rights of such third party, and to indemnify Customer from and against all amounts awarded in final judgement of such claims, actions or proceedings by a court of competent jurisdiction. DSL's obligations under this **Section 16.1** will not apply to any claim, action or proceeding that is based on or arises out of: (a) any combination of the DSL IP with any hardware, software, services, information or materials not provided by DSL under this Agreement; (b) any modification to the DSL IP by Customer or by any third party (other than an Affiliate of DSL); (c) any use of the DSL IP in any manner not permitted by this Agreement; or (d) any misuse or abuse of the DSL IP.

16.2 **Customer Indemnified Claims.** Customer hereby agrees to indemnify, defend and hold harmless DSL, its successors and permitted assigns, DSL's Affiliates and the officers, directors, employees and agents of each of the foregoing, from and against any and all third-party claims and, whether or not a claim is made, any liabilities, obligations, losses, damages, costs, fees, penalties, fines, settlements, charges or other expenses of any kind (including, without limitation, reasonable attorneys' fees and legal costs), in each case arising out of or relating to: (a) the inaccuracy of, or Customer's breach of, any representation, warranty or covenant hereunder (including, without limitation, any failure to use or operate the Equipment in material compliance with all DSL guidelines and manufacturer guidelines and warranties), (b) the operation by Customer of its business, other than to the extent such claim, if brought against Customer, would be a subject to indemnification pursuant to **Section 16.1**, (c) Customer's breach of **Section 12**, or (d) Customer's gross negligence, willful misconduct or fraud.

16.3 **Indemnification Procedure.** The obligations of the indemnifying Party under this **Section 16** are conditioned upon the indemnified Party (a) notifying the indemnifying Party promptly in writing of any claim for which it is seeking indemnification under this Agreement (provided, however, that any failure of the indemnified Party to promptly notify the indemnifying Party will not relieve the indemnifying Party of its indemnification obligations, except to the extent such failure materially prejudices the indemnifying Party), (b) providing reasonably available information and assistance regarding such claim, and (c) permitting the indemnifying Party to have sole control over the defense and settlement of the claim.

17. **Insurance**. During the Term, Customer will obtain and maintain at its own expense insurance of the type and in the following amounts:

Commercial General Liability Limits as follows:

- a. Bodily Injury and Property Damage Liability
 - \$1,000,000 Each Occurrence
 - \$2,000,000 General Aggregate (other than Products/Completed Operations)
 - \$2,000,000 Products/Completed Operations Aggregate
 - \$1,000,000 Personal & Advertising Injury
 - \$1,000,000 Premises Damage
 - \$10,000 Medical Payments
- b. Business Automobile Liability
 - \$1,000,000 combined single limit per accident for bodily injury and property damage
- c. Worker's Compensation, Employer's Liability
 - Minimum \$1,000,000 per employee
 - Minimum \$1,000,000 per accident
- d. Umbrella Liability
 - \$10,000,000 each occurrence
 - \$10,000,000 General Aggregate per location

For coverage under general liability, automobile liability, and any other coverages required under local Law, Customer will: (a) cause DSL to be named as an "Additional Insured" (or, under all risk property insurance, "Loss Payee") on all certificates for such coverage, including as an insured with respect to third-party claims or actions made or brought directly against DSL or its Affiliates or against DSL and Customer as co-defendants and arising out of or in connection with this Agreement; (b) cause such coverage to be written as a primary policy not contributing with any other coverage which DSL may carry; and (c) cause the certificates for such coverage to stipulate that DSL will receive 30 days' prior notice of any cancellation or reduction in coverage. Notwithstanding anything to the contrary in the preceding sentence, no such cancellation or alteration will relieve Customer of its continuing obligation to maintain the insurance coverage required hereunder. To the extent third party insurance is obtained or maintained pursuant to this **Section 17**, Customer will, upon DSL's request, furnish to DSL certificates of insurance or other appropriate documentation (including evidence of renewal of insurance) evidencing all coverages required pursuant to this Section. Customer will at all times maintain each such insurance coverage with insurers authorized to do business in the state, states or country where the work is to be performed and with a rating of at least A-VII by the A.M. Best Company (or an equivalent rating by a company similar to A.M. Best Company). Customer and its insurers will waive any and all rights of subrogation against DSL.

18. **General**.

18.1 **Construction**. References to this Agreement include the Schedules; references to any Schedules include any attachments thereto. References in this Agreement to any Law include such Law in changed or supplemented form or to a newly adopted Law replacing

a previous Law. Words denoting the singular will include the plural and vice versa and words denoting any gender include all genders. All dollar amounts are expressed in United States dollars (US\$). The division of this Agreement into separate Sections and Schedules and the insertion of headings will be for convenience of reference only and will not affect the construction or interpretation of this Agreement. The words "include," "includes" and "including" will be deemed to be followed by the phrase "without limitation." The expressions "hereof", "herein", "hereto", "hereunder", "hereby" and similar expressions refer to this Agreement as a whole and not to any particular section or Schedule of this Agreement. The words "shall" and "will" are used interchangeably and both mean the specified action or forbearance is mandatory. Unless otherwise indicated, a reference to a "Section" or "Schedule" is a reference to the specified section or Schedule of this Agreement. Unless otherwise modified, the words "day," "month," and "year" mean and refer, respectively, to a calendar day, month and year.

- 18.2 Precedence. Except as may be otherwise specified herein, in the event of conflict, the body of this Agreement will prevail over any Schedule, unless the conflicting provision of the higher precedent document is specifically identified and declared to be overridden by the lower precedent document.
- 18.3 Entire Agreement. This Agreement (including all Schedules hereto) contains the entire agreement between the Parties and supersedes all previous agreements or representations, whether written or oral, between the Parties regarding the subject matter of this Agreement. Neither Party is bound by any communication outside of this Agreement, except subsequent written amendments executed by both Parties.
- 18.4 Severability. If any provision of this Agreement is found by a court of competent jurisdiction or other valid tribunal to be invalid or otherwise unenforceable, the invalid or unenforceable provision will be deemed amended to remove such provision, and the remaining Agreement will be construed to give maximum effect to the intention of the Parties at the time of execution of the Agreement. If the invalidity or unenforceability of any provision makes a fundamental purpose of the Agreement ineffective in the determination of the Party asserting its validity or enforceability, that Party may immediately terminate the entire Agreement with written notice.
- 18.5 Modification and Waiver. No provision of this Agreement will be deemed modified by any course of dealing or conduct, any act or failure to act by a Party or its agents, or by a Party's failure to object to any of the other Party's acts or omissions which may violate the terms of this Agreement. No failure to object to any event of default committed by either Party in one instance will constitute a waiver or license to commit or continue events of default in other or like instances.
- 18.6 Governing Law; Jurisdiction. This Agreement and the rights and obligations of the Parties under this Agreement will be governed by and construed in accordance with the Laws of the State of California, without giving effect to the principles thereof relating to the conflicts of Laws.

18.7 **Sole and Exclusive Venue.** Each Party irrevocably agrees that any legal action, suit or proceeding brought by it in any way arising out of this Agreement must be brought solely and exclusively in the state courts of the State of California located in Kern County, and irrevocably accepts and submits to the sole and exclusive jurisdiction of each of the aforesaid courts *in personam*, generally and unconditionally with respect to any action, suit or proceeding brought by it or against it by the other Party. Nothing in this **Section 18.7** will prevent a Party against whom any legal action, suit or proceeding is brought by the other Party in such courts from seeking to remove such legal action, suit or proceeding, pursuant to applicable federal Law, to the district court of the United States for the Central District of California located in Kern County, and in the event an action is so removed each Party irrevocably accepts and submits to the jurisdiction of the aforesaid district court.

18.8 **Assignment and Sublicensing.** The rights and obligations of Customer under this Agreement are personal and may not be assigned, sublicensed or otherwise transferred. Any assignment without such consent will be void *ab initio* and of no effect. DSL may assign, delegate or subcontract its rights or obligations under this Agreement, in whole or in part, without the consent of Customer, including without limitation as part of a merger, reorganization, consolidation or sale of all or substantially all of the assets of DSL to which this Agreement relates.

18.9 **Relationship.** The Parties intend to create an independent contractor relationship, and nothing contained in this Agreement will be construed to make either DSL or Customer partners, joint venturers, principals, agents or employees of the other. Neither Party will have any right, power or authority, express or implied, to bind the other.

18.10 **Counterparts/Execution.** This Agreement may be executed in any number of counterparts, each of which will be deemed an original, but all of which together will constitute one and the same instrument. Execution of a fax or electronic copy of this Agreement will have the same force and effect as execution of an original, and a fax or electronic signature (including a signature in an Adobe PDF or similar copy of this Agreement) will be deemed an original and valid signature.

18.11 **Force Majeure.** With the exception of payment obligations, any delay or failure in the performance by either Party hereunder will be excused if and to the extent caused by an event or circumstance which is beyond the control and without the fault or negligence of the Party affected and which by the exercise of reasonable diligence the Party affected was unable to prevent.

18.12 **Notices.** Each party's address for purposes of this **Section 18.12** will be as set forth below, provided that a party may change its address upon notice to the other party. All notices and communications required or permitted to be given by either party under this Agreement must be in writing. No notice will be effective unless given in accordance with this **Section 18.12**. Notice delivered by hand will be deemed received immediately upon actual delivery. Notice sent by an internationally recognized express overnight courier with a reliable system for tracking delivery will be deemed received on the second business day after sending. Notice sent by registered or certified mail, return receipt

requested, postage prepaid, will be deemed received on the fourth business day after sending. Notice sent by email will be deemed received when received during business hours at the location for the recipient set forth below (or, if not received during business hours, then at 9:00 am the next business day); provided, however, that email will not constitute an effective method of giving notice pursuant to Section 14.2 or Section 16.3.

If to DSL:

Dreamscape Learn, Inc.
Attention: Amit Kumar, General Counsel
5730 Buckingham Pkwy
Culver City, CA 90230
Email: akumar@dreamscapelearn.com

With a copy (which will not constitute notice) to:

Dreamscape Learn, Inc.
Attention: Legal Department
5730 Buckingham Pkwy
Culver City, CA 90230
Email: legal@dreamscapelearn.com

If to Customer:

Kern Community College District
Attention: Dr. Steven Bloomberg,
Chancellor
2100 Chester Avenue
Bakersfield, CA 93301
Email:
steven.bloomberg@kccd.edu

18.13 Expenses. Each of Customer and DSL will be responsible for its own costs and expenses incurred in the negotiation and preparation of this Agreement.

[Signature page follows.]

By signing below, the Parties agree to all terms of this Agreement as of the date first set forth above.

DREAMSCAPE LEARN, INC.

KERN COMMUNITY COLLEGE DISTRICT

By: _____

By: _____

Name: _____

Name: _____

Title: _____

Title: _____

Date: _____

Date: _____

SCHEDULES

Schedule 1 (Definitions)

Schedule 2 (Pricing Schedule)

Schedule 3 (Delivery SOW)

Schedule 4 (Integration SOW)

Schedule 5 (Service-Level Agreement)

Schedule 6 (Payments and Reporting – Key Contacts)

Schedule 7 (Data Privacy Agreement)

Schedule 8 (Vehicle Agreement)

SCHEDULE 1

DEFINITIONS

“Academic Term” means a division of the school year during which a course of studies is offered, and includes a semester, quarter, or single consolidated summer term, as described by Customer in the course catalog(s) published to Customer’s Students.

“Affiliate” means, with respect to any Person, any entity which directly or indirectly controls, or is under common control with, or is controlled by such Person. As used in this definition, **“control”** (and its correlative terms “controlled by” and “under common control with”) means possession, directly or indirectly, of power to direct or cause the direction of management or policies (whether through beneficial ownership of securities or other ownership interests, by contract or otherwise). For the avoidance of doubt, for the purposes of this Agreement, DSL and Customer are not Affiliates of each other.

“Backstage Manager” means a software portal for administrators to manage the Pod configuration and Equipment. The Backstage Manager allows for set up of the initial hardware configuration, management of hardware updates, monitoring and switching Pod modes between Courseware and Immersive Classroom Software configurations, deploying content to the Pod(s), and monitoring the local content library.

“Control Center” means a cloud-based software portal for Instructors and Students to schedule, monitor, and manage DSL learning experiences. The Control Center allows for scheduling and managing experiences within the Pod, creation and configuration of reservations, creation and management of users, and monitoring of the scheduling and reservation dashboards.

“Courseware” means educational content published by or on behalf of DSL for use exclusively on the Platform (inclusive of Courseware which may be developed for use in connection with the Immersive Classroom Software).

“Documentation” means the standard manuals, tutorials, reference materials and similar materials, whether in print or electronic format, ordinarily provided by DSL to customers that describe the functionality of the Platform.

“DSL IP” means (a) all Intellectual Property, including any software (including, without limitation, the Platform, the SDK, Backstage Manager, and the software and firmware residing on the Equipment), documentation, or content (including without limitation Courseware as well as environments for the Immersive Classroom Software), made available by DSL to Customer under this Agreement; (b) the Customer Created Content; (c) any modifications to, improvements upon or derivative works of any of the foregoing; and (d) the Trademarks.

“Equipment” means all hardware necessary to operate the Platform consisting of: equipment racks, chairs, headsets, desk haptic components, haptic transducers, and joysticks.

“Experience Data” means all data other than Personal Information which is collected by either Party relating to the use of the Platform, which may include, without limitation, de-identified, statistical information, derived from analysis of Customer’s users’ interaction with the Platform, Courseware,

Immersive Classroom Software, and/or any other products or services provided by or on behalf of DSL hereunder.

“Fiscal Year” means the twelve month annual accounting period used by Customer beginning on [DATE] of each year.

“Go Live Date” means the date the MCO/MSO is issued.

“Governmental Authority” means any federal, national, foreign, state, provincial or local government, or any political subdivision thereof, any multinational organization or authority or any authority, agency or commission entitled to exercise any administrative, executive, judicial, legislative, police, regulatory or taxing authority or power, any court or tribunal (or any department, bureau or division thereof), or any arbitrator or arbitral body.

“Immersive Classroom Software” means the software through which the Platform enables Students and Instructors to become synchronously networked as life-like avatars into the same virtual collaboration space.

“Instructors” means the faculty and instructional staff of Customer.

“Intellectual Property” means intangibles, including inventions, works of authorship, documents (whether in draft or final, complete or incomplete form), utility models, trade secrets, software, subroutines, codes, databases, algorithms, designs, know-how, processes, procedures, methodologies, ideas, names, symbols, logos, industrial designs of any kind, text, translations and any similar intangibles, as well as the software, documentation, materials, copies and other materialized forms or representations of such intangibles.

“IP Rights” means copyrights, patent rights, rights to patent applications, trademarks, trade names, service marks, trade secrets and designs of any kind, or any other proprietary rights recognized in any country of the world, whether or not currently perfected, including “*droit moral*” rights, “moral rights of authors” and all other similar rights however denominated throughout the world, in each case to any Intellectual Property.

“Law” means any federal, national, foreign, state, provincial or local law, statute, standard, ordinance, code, rule, regulation, resolution or promulgation, any order, writ, judgment, injunction, decree, stipulation, ruling, determination or award entered by or with any Governmental Authority, or any license, franchise, permit or similar right granted under any of the foregoing, or any similar provision having the force or effect of law.

“Learning Materials” means the written materials which accompany Courseware, consisting of mission memoranda, instructor guides, and other materials (each, as applicable) made available by DSL.

“Mobile Pod” means a trailer-based seated virtual-reality classroom powered by the Platform, consisting of Equipment and Mobile Vendor Equipment.

“Mobile Pod Vendor” means the third-party manufacturer of the trailer frame and certain components of the Mobile Pod.

“Mobile Pod Fabrication Agreement” means the fabrication and services agreement between the Mobile Pod Vendor and DSL.

“Person” means any individual, corporation, proprietorship, firm, partnership, limited partnership, limited liability company, trust, association, Governmental Authority or other entity.

“Personal Information” means any information relating or unique to an identified or identifiable, or which can be used to identify, a particular person. Personal Information may include: (i) name; (ii) address; (iii) phone number; (iv) e-mail address; (v) social security number or other government-issued identifier; and (v) credit card information.

“Platform” means, collectively the DSL immersive platform which: (i) enables several users to physically interact in a three-dimensional (3D) virtual environment, when applicable, which can be seen and heard through a virtual reality headset and/or other modalities as described in the Agreement; (ii) follows the positioning and movements of the users in the Pod using a system of movement recording, which enables them to see their own body and to physically move in the virtual environment with a very low latency; and (iii) consists of the Software that includes, without limitation, the following five main feature and functionality components: (a) tracking – the detection of movement of certain users (who are in the Pod or otherwise using a modality which permits such tracking) in real time from a motion capture system which may be optical, inertial or otherwise; (b) real-time animation – the processing of movement data and the animation in real time of the users’ virtual characters; (c) for those users using a virtual reality headset, a virtual reality display – the integration of the virtual reality headset with the game engine and the combination of the data of the headset’s sensor with the data of the movement recording; (d) networking, monitoring and control – a dedicated network and monitoring infrastructure allowing multiple users to access and share a common virtual reality space; (e) the SDK; (f) the Control Center; the Backstage Manager; and (h) the Immersive Classroom Software.

“SDK” means the software development kit, which is a set of software libraries, software packages and development tools which allows a user to create virtual reality experiences using the Unity game engine. The SDK includes API information, sample source and object code, tools, documentation, and other related items, together with any and all enhancements, upgrades, or updates that may be provided to Customer by DSL, at DSL’s discretion, if and when available.

“Security Breach” means the unlawful or unauthorized acquisition from DSL of Personal Information of Customer’s Students or Instructors which compromises the security, confidentiality, or integrity of such Personal Information.

“Software” means all computer programs (in any language or format, including, without limitation, source code, machine language, object code or other executable or binary code, assembly code and compiled executable versions of the source code), including, without limitation, (i) testing, development, production and all other versions thereof; (ii) routines, subroutines, libraries and firmware; and (iii) software compilations, software implementations of algorithms, software tool sets, compilers, models, job control language, software development kits, application programming interfaces and development tools.

“Student” means a student enrolled directly with Customer.

“Trademarks” means DSL’s registered names, logos, designs, service marks, slogans and trademarks and any other forms of identification.

Schedule 2
Pricing Schedule



DREAMSCAPE LEARN (DSL) PRICING SCHEDULE

KERN COMMUNITY COLLEGE DISTRICT

This Pricing Schedule is part of the Master License, Supply and Services Agreement (the **“Agreement”**) between Dreamscape Learn, Inc., a Delaware corporation (“DSL”), and Kern Community College District, a public community college located in Bakersfield, CA (“Customer”) dated as of _____, 2025. This Pricing Schedule is governed by the terms and conditions of the Agreement. Initially capitalized terms used but not otherwise defined herein have the meaning ascribed to them in the Agreement.

Hardware/Materials

Customer is purchasing the following number of Pod(s), the capacity and specification of each such Pod, and the purchase price for the Pod(s):

Mobile Pod Procurement			
<i>Quantity</i>	<i>Capacity and Specification</i>	<i>Unit Purchase Price</i>	<i>Extended Total</i>
1	16-user mobile classroom pod	\$ 1,039,000.00	\$ 1,039,000.00
1	Branding/graphics package	\$ 20,000.00	\$ 20,000.00
Hardware Total			\$ 1,059,000.00

Sales Tax on Pod Procurement	
Bakersfield, CA sales tax rate	8.25%
Total sales tax on pod procurement	\$ 87,367.50

Sales tax shall be applied as required by applicable law, subject to any sales tax exemption(s) that may apply, as documented by valid exemption documentation.

Services

Deployment Services

Service	Description	Extended Total
Technical Installation & Commissioning	Includes DSL and third party labor to provide oversight and final assembly, startup, and testing at the mobile pod fabricator's production facility	\$ 90,000.00
Delivery and Training	Trucking to final destination, on-site operational training	\$ 15,000.00
Enterprise Integration	Supports scheduling, reservations, user management, and pod software management	\$ 100,125.00
Deployment Services Total		\$ 205,125.00

Software

Platform Site License Fee

Estimated Customer Total Student Enrollment = to be confirmed before mobile pod delivery

Platform Site License Fee	Applicable Platform Site License Fee for Fiscal Year				
	2024-25	2025-26*	2026-27	2027-28	2028-29
2,501-5,000 Students	\$ -	\$ 115,000.00	\$ 115,000.00	\$ 115,000.00	\$ 115,000.00

*202-26 Platform Site License Fee indicated above already takes into account the Proration Percentage based on the anticipated Go Live Date. Should the Go Live Date change such that the Proration Percentage Changes, the Platform Site License Fee shall be recalculated accordingly by applying the applicable Proration Percentage to the full year amount of \$115,000.

Platform Site License Fee Upgrade

Should the number of enrolled Students exceed in any Fiscal Year beyond the maximum number in the pricing band for which the Platform Site License Fee was originally calculated, then the applicable Platform Site License Fee for such Fiscal Year shall be determined based on the table below:	Platform Site License Fee per Fiscal Year
5,001 to 10,000 Students	\$ 143,750.00
10,001 to 20,000 Students	\$ 201,250.00
20,001 to 30,000 Students	\$ 258,750.00
30,001 to 40,000 Students	\$ 316,250.00
40,001 to 50,000 Students	\$ 373,750.00
Greater than 50,000 Students	Quoted upon request

Courseware License Fees						
<i>Courseware Title</i>	<i>Minimum Courseware License Fee (based on projected Student volumes)</i>					
Biology in the Alien Zoo	2024-25	2025-26*	2026-27	2027-28	2028-29	
Projected # of Students per Academic Term <i>(Minimum additional orders must be in increments of 10)</i>	-	200	300	400	500	
Number of Academic Terms per Fiscal Year	2	2	2	2	2	
Fee per Student per Academic Term (for purposes of Calculated Courseware License Fee)	\$ 100.00	\$ 100.00	\$ 100.00	\$ 100.00	\$ 100.00	
Biology in the Alien Zoo courseware fees	\$ -	\$ 40,000.00	\$ 60,000.00	\$ 80,000.00	\$ 100,000.00	
Chemistry (planned for commercial release in Fall 2025)	2024-25	2025-26	2026-27	2027-28	2028-29	
Projected # of Students per Academic Term <i>(Minimum additional orders must be in increments of 10)</i>	-	100	200	300	400	
Number of Academic Terms per Fiscal Year	2	2	2	2	2	
Fee per Student per Academic Term (for purposes of Calculated Courseware License Fee)	\$ 100.00	\$ 100.00	\$ 100.00	\$ 100.00	\$ 100.00	
Chemistry courseware fees	\$ -	\$ 20,000.00	\$ 40,000.00	\$ 60,000.00	\$ 80,000.00	

*2025-26 Courseware License Fee indicated above already takes into account the Proration Percentage based on the anticipated Go Live Date. Should the Go Live Date change such that the Proration Percentage Changes, the Courseware License Fee shall be recalculated accordingly by applying the applicable Proration Percentage to the appropriate full year amount.

Support

	2024-25	2025-26*	2026-27	2027-28	2028-29
Support Services Fee	\$ -	\$ 30,000.00	\$ 30,000.00	\$ 30,000.00	\$ 30,000.00

*2025-26 Cloud and Support Services Fees indicated above already takes into account the Proration Percentage based on the anticipated Go Live Date. Should the Go Live Date change such that the Proration Percentage Changes, the Support Services Fee shall be recalculated accordingly by applying the applicable Proration Percentage to the full year amount of \$30,000.

Summary

<i>Category</i>	2024-25	2025-26	2026-27	2027-28	2028-29	<i>Total</i>
Hardware (excluding allowances)	\$ 1,059,000.00	\$ -	\$ -	\$ -	\$ -	\$ 1,059,000.00
Services (excluding allowances)	\$ 205,125.00	\$ -	\$ -	\$ -	\$ -	\$ 205,125.00
Software (Platform Site License Fee based on current enrollment, and based on Minimum Courseware License Fee and Minimum Immersive Classroom Software License Fee; actuals may differ)	\$ -	\$ 175,000.00	\$ 215,000.00	\$ 255,000.00	\$ 295,000.00	\$ 940,000.00
Support	\$ -	\$ 30,000.00	\$ 30,000.00	\$ 30,000.00	\$ 30,000.00	\$ 120,000.00
Total	\$ 1,264,125.00	\$ 205,000.00	\$ 245,000.00	\$ 285,000.00	\$ 325,000.00	\$ 2,324,125.00

Notwithstanding that sales tax is only shown on Pod Procurement, sales tax may also be applicable on other line items in this Pricing Schedule to the extent required by applicable law, subject to any sales tax exemption(s) that may apply, as documented by valid exemption documentation.

**Schedule 3
Delivery SOW**

DELIVERY STATEMENT OF WORK

This Deployment Statement of Work (this “**Delivery SOW**”) is a part of the Master License, Supply and Services Agreement (the “**Agreement**”) to which it is attached. Capitalized terms not otherwise defined in this Deployment SOW have the meaning ascribed to them in the Agreement.

PROJECT DESCRIPTION

Dreamscape Learn will deliver one (1) Mobile Immersive Classroom pod.

SCOPE OF WORK

The Mobile Immersive Classroom pod will include the following:

1. Sixteen (16) user stations outfitted with DMX-controlled air effects and control stick, chair with low frequency audio effects, VR headset (tethered to the station) with audio.
2. One station will have the capability of functioning as a seated professor station in the applications that utilize it.
3. On-board diesel generator.
4. Air conditioning and heating
5. Hydraulically-operated slideouts and leveling system.
6. Wheelchair lift for ADA accessibility.

Assumptions

1. Mobile Pod trailer will be delivered to the Customer location, where training will take place with DSL training team and Customer operating team, followed by final handover.
2. Customer will be responsible for providing a vehicle, with Operating personnel, to tow the trailer. Truck will be equivalent to an F-550 with a 5th wheel hitch assembly.
3. DSL will provide technical O&Ms furnished by the trailer manufacturer.

SCHEDULE

The Mobile Immersive Classroom pod will be delivered to the Customer location approximately 180 days from executed contract and receipt of deposit payment.

CONTRACT BREAKDOWN AND PAYMENT SCHEDULE

CONTRACT BREAKDOWN	
16-User Mobile Immersive Classroom Pod	\$1,039,000.00
Branding and Signage allowance	\$20,000.00
Bakersfield, CA, 8.25% Sales Tax on procured items	\$87,367.50
Installation and Commissioning	\$90,000.00
Delivery and Training	\$15,000.00
TOTAL	\$1,251,367.50

**Notwithstanding that sales tax is only shown on Pod Procurement, sales tax may also be applicable on other line items in this Pricing Schedule to the extent required by applicable law, subject to any sales tax exemption(s) that may apply, as documented by valid exemption documentation.*

PAYMENT SCHEDULE			
Payment #1	Invoiced upon Agreement execution	50%	\$625,683.75
Payment #2	50% fabrication complete	35%	\$437,978.63
Payment #3	Delivery/acceptance	15%	\$187,705.13
TOTAL		100%	\$1,251,367.50

**All payments due upon invoicing.*

Schedule 4
Integration SOW

INTEGRATION STATEMENT OF WORK

This Integration Statement of Work (this “**Integration SOW**”) is a part of the Master License, Supply and Services Agreement (the “**Agreement**”) to which it is attached. Capitalized terms not otherwise defined in this Integration SOW have the meaning ascribed to them in the Agreement.

1. PROJECT DESCRIPTION

DSL will configure a sitewide rack with access to DSL Backstage Manager, setup access to DSL Control Center including integration between DSL Control Center and Kern CCD LMS, and provide support during setup to verify successful functioning for a 16-user¹ Mobile Pod for Kern Community College District.

2. DESCRIPTION OF ENTERPRISE APPLICATIONS

Backstage Manager

The DSL Backstage Manager is an on-premises product for operators and administrators to manage a single Mobile Pod configuration and equipment.

- Set up initial hardware configuration.
- Manage hardware updates.
- Monitor and Switch Pod modes.
- Monitor local content library.

Control Center

The DSL Control Center is a Cloud Portal for Instructors and Learners to schedule, monitor, and manage their DSL learning experiences.

- Easily schedule and manage showtimes.
- Create and configure reservations.
- Create and manage users.
- Monitor Scheduling and Reservation Dashboards

LMS Integration

LMS integration with DSL allows for single sign on between the LMS platform and DSL Control Center, and completion tracking of Pod or 2D experiences.

¹ Professor would be seated in one of the 16 stations during synchronous experiences.

- Instructors and students can access Control Center from the LMS for scheduling and reservation tasks without having to create a separate DSL account.
- Access for instructors and students to 2D/remote experiences.
- Capability to report student completion of experiences (in Mobile Pod or 2D/remote) to the LMS gradebook.

3. DELIVERABLES

- Configuration of Mobile Pod sitewide rack
- DSL Backstage Manager setup
- DSL Control Center setup
- Kern CCD LMS Integration configuration
- Verification of installation
- Onsite training for operational staff

4. PHASES OF WORK

DSL will complete the deliverables outlined within this Integration SOW according to the following 4 Phases:

Phase 1 - Discovery

- DSL will work with Customer to identify and create an inventory of all configuration data necessary to setup Enterprise applications.
- *Output: A Discovery Specification of all tasks required to configure Enterprise applications for Customer*

Phase 2 - Execution

- DSL will conduct all setup and configuration tasks required to provide access to Enterprise applications.
- *Output: Sitewide rack will be configured according to the Discovery specification.*

Phase 3 - Deploy and Test

- DSL will deploy Enterprise applications and work with Customer to verify connectivity and expected functionality.
- *Output: Sitewide rack and all Enterprise application configurations will be tested and verified prior to installation.*

Phase 4 – Verification and Support

- DSL will work with Customer to verify proper functioning of Pods onsite and provide support as needed to ensure proper Pod functioning.

- *Output: Verified Pod installation*

5. CUSTOMER RESPONSIBILITIES

Customer shall provide:

- Access to relevant Customer IT staff to provide necessary configuration information.
- Access to on-prem network, and any other access requirements as defined in the Discovery Specification
- Access to Customer IT staff to assist and verify successful installation.

6. ASSUMPTIONS

For DSL to fulfill the deliverables outlined in this Integration SOW, the following is assumed:

- **Customer installation is a nominal installation.**
 - No site-specific constraints that require any redesign or additional use-cases.
- **Customer LMS integration is with a standards based (LTI) LMS platform.**
 - Custom integration requirements may add additional scope for integration.
- **Customer LMS integration is with a single instance of the LMS platform**
 - Integration with multiple LMS instances may add additional scope for integration.
- **Delivery of current, production content library**
 - New or specialized content may add additional scope for integration.

7. SCHEDULE

Schedule will be delivered as part of Phase 1 – Discovery Specification deliverable.

8. CONTRACT BREAKDOWN AND PAYMENT SCHEDULE

The below contract breakdown reflects the information shown in the current Pricing Schedule.

Description	Amount
Enterprise integration for 1 16-user Mobile Pod with integration into Kern CCD LMS.	\$100,125

PAYMENT SCHEDULE			
Payment #1	Invoiced upon Agreement Execution	50%	\$50,062.50
Payment #2	Invoiced upon Go-Live Date	50%	\$50,062.50
TOTAL		100%	\$100,125.00



SCHEDULE 5

DREAMSCAPE LEARN (DSL) SERVICE LEVEL AGREEMENT

This Service Level Agreement (this “**SLA**”) is a part of the Master License, Supply and Services Agreement (the “**Agreement**”) to which it is attached. Capitalized terms not otherwise defined in this S A have the meaning ascribed to them in the Agreement.

This SLA provides the framework for how DSL provides support to Customer.

1. Help Center

- 1.1 The DSL Help Center is an online resource available twenty-four hours a day, seven days a week, excluding scheduled downtime. The Help Center is a website designed to enable Customer and its users to find answers to common questions through the Knowledge Base and access self-guided training materials on demand. Members of the Customer’s organization can create an account using their institutional email to gain access to the Help Center.
- 1.2 DSL will use commercially reasonable efforts to inform Customer in advance regarding scheduled downtime to the Help Center and to schedule such downtime during non-peak hours.

2. Support Tickets

- 2.1 Support tickets may be submitted through the Help Center by Authorized Users.
- 2.2 Authorized Users are personnel of Customer who have requested and received authentication credentials from DSL. Customer can designate up to five (5) Authorized Users. Customer may change an Authorized User by notifying DSL. DSL may reasonably require proposed Authorized Users to complete technical training modules prior to issuing credentials to ensure their familiarity with the basic technical elements of the DSL platform.

3. Severity levels

- 3.1 When submitting the support ticket, the Authorized User will indicate the severity level of the issue based on the guidelines below. Severity levels may be changed by DSL support staff after initial contact and assessment of the issue.

Severity 1 – Urgent	
Definition	A critical problem in which the DS Platform and/or Pod (i) are down, inoperable, inaccessible, or unavailable, (ii) otherwise materially cease operation, or (iii) perform or fail to perform so as to prevent useful work from being done.
Examples	Pod: Application, server, or infrastructure issue renders the Pod inoperable or unusable. SDK: Cannot run any instructional experiences; unable to load any content to the Pod. [†]
Severity 2 – High	
Definition	A problem in which the DS Platform and/or Pod (i) are severely limited or major functions are performing improperly, and the situation is significantly impacting certain portions of users' operations or productivity, or (ii) have been interrupted but recovered, and there is high risk of recurrence.
Examples	Pod: Application, server, or infrastructure issue causes the Pod not to perform properly, user experiences impacted. SDK: Some content unable to load or crashes the Pod but situation is deemed recoverable. [†]
Severity 3 – Normal	
Definition	A minor or cosmetic problem with the DS Platform and/or Pod that (i) is an irritant, affects non-essential functions, or has minimal operations impact, (ii) is localized or has isolated impact, (iii) is a nuisance, (iv) results in visual errors, or (v) is otherwise not Severity 1 or Severity 2, but represents a failure of the DS Platform and/or Pod to conform to specifications.
Examples	Pod: Hardware issue or RMA with spare devices available. SDK: Non-critical bug, acceptable workaround exists. [†]
Severity 4 – Low	
Definition	A question or request regarding the DS Platform and/or Pod that (i) cannot be answered by searching the knowledgebase, has no immediate operations impact, and does not represent a failure of Services to conform to specifications.
Examples	Pod/SDK: Questions, advice, enhancement requests, training. [†]

[†] Only includes experiences that have been directly provided or validated by DSL. Issues relating to or otherwise stemming from Customer created content (i.e., any content not directly provided or validated by DSL) is not covered by this S A.

Configuration of computers used for development (not provided by DS) and any issues related to the development tools (Unity / Drivers / External Libraries) are not covered by this S A.

4. Target response Times

- 4.1 DSL will use commercially reasonable efforts to respond to issue(s) identified in a support ticket based on the below target response times.
- 4.2 For support tickets received during or outside of DSL's normal business hours, which are Monday - Friday, 6:00AM to 5:00PM Pacific Time, excluding holidays, the target response times are as follows:

Severity Level	Within Business Hours	Outside Business Hours
1	1 hour	Within 6 hours
2	2 hours	Within 12 hours
3	1 day	Treated as if submitted at the beginning of the next business hour
4	2 days	Treated as if submitted at the beginning of the next business hour

- 4.3 For Severity 1 and 2 support tickets received outside of DSL's normal business hours, target response time will be the earlier of: (i) the Outside Business Hours response time listed in the table above, or (ii) the Business Hours response time starting from the next normal business hour. For example, if a Severity 1 ticket is submitted on Monday at 9:00PM Pacific Time, DSL will use commercially reasonable efforts to respond by 3:00AM Pacific Time Tuesday. If a Severity 1 ticket is submitted on Monday at 4:00AM Pacific Time, DSL will use commercially reasonable efforts to respond by 7:00AM Pacific Time.
- 4.4 Resolution times will vary depending on the complexity and uniqueness of the issue.

5. Software Updates

- 5.1 DSL will issue software updates periodically to correct errors, improve performance or non-conformance of the products which Customer has licensed from DSL. Release notes will be made available in the Help Center.
- 5.2 Customer will receive a notification regarding availability of an applicable software update as well as instructions as to how to install it. Customer shall follow such instructions and install such update within the time period indicated by DSL; failure to do so within such time period shall result in DSL being relieved of any obligations relating to warranties or this SLA which DSL in good faith believes are attributable, in whole or in part, to such failure. For any pod-related software updates resulting in extended hardware downtime, DSL will coordinate such updates with Customer.

6. Hardware Return Authorization

6.1 If Customer's DSL-furnished hardware experiences an unresolvable error or failure and is covered by an applicable warranty under the Agreement, Customer's Authorized User may request a return authorization by submitting a support ticket. DSL will reply based on the guidelines above to assist customer with return and repair or replacement (as applicable) of the hardware. o unauthorized returns will be accepted by DSL.

SC EDU E 6 – PAYMENTS AND REPORTING / KEY CONTACTS

DS :

Dreamscape Learn, Inc.
Attention: Finance Department
5730 Buckingham Pkwy
Culver City, CA 90230
Email: dsl-accountspayable@dreamscapelearn.com

Customer:

Kern Community College District
Attention: Dr. Steven Bloomberg, Chancellor
2100 Chester Avenue
Bakersfield, CA 93301
Email: steven.bloomberg@kccd.edu

SC EDU E 7 – DATA PRIVACY AGREEMENT

SCHOOL DATA PRIVACY AGREEMENT

This School Data Privacy Agreement (this “**DPA**”) is a part of the Master License, Supply and Services Agreement (the “**Agreement**”) to which it is attached. Capitalized terms not otherwise defined in this DPA have the meaning ascribed to them in the Agreement. In the event of a conflict between the Agreement and the DPA, the terms of the DPA shall govern.

RECITALS

WHEREAS, DSL has agreed to provide the Customer with certain digital educational services (“**Services**”) as described in the Agreement.

WHEREAS, in order to provide the Services, DSL may receive or create and the Customer may provide documents or data that are covered by several federal statutes, among them, the Federal Educational Rights and Privacy Act (“**FERPA**”) at 20 U.S.C. 1232g and 34 CFR Part 99, Children’s Online Privacy Protection Act (“**COPPA**”), 15 U.S.C. 6501-6502; Protection of Pupil Rights Amendment (“**PPRA**”) 20 U.S.C. 1232h; and the Individuals with Disabilities Education Act (“**IDEA**”), 20 U.S.C. §§ 1400 et. seq.

WHEREAS, the Parties wish to enter into this DPA to ensure that the Services provided conform to the requirements of the privacy laws referred to above and to establish implementing procedures and duties; and

NOW THEREFORE, for good and valuable consideration, the parties agree as follows:

ARTICLE I: PURPOSE AND SCOPE

1. **Purpose of DPA.** The purpose of this DPA is to describe the duties and responsibilities to protect Personally Identifiable Information (as defined in **Exhibit B** to this DPA) transmitted to DSL from the Customer in connection with the Services, including compliance with all applicable state privacy statutes, including the FERPA, PPRA, COPPA, IDEA, and other applicable laws. In performing these services, to the extent Personally Identifiable Information from Pupil Records (as defined in **Exhibit B** to this DPA) are transmitted to DSL from Customer, DSL shall be considered a School Official under the direct control and supervision of the Customer (with respect to handling, processing, and/or management of Personally Identifiable Information and Pupil Records) with a legitimate educational interest, and performing services otherwise provided by the Customer.

2. **Nature of Services Provided.** DSL has agreed to provide the digital educational services described in the Agreement.

3. **Personally Identifiable Information to Be Provided.** In order to perform the Services, DSL shall list the categories of data collected, managed or shared as described below or as indicated in the Schedule of Data, attached hereto as **Exhibit A**.

4. **DPA Definitions.** The definition of terms used in this DPA is found in **Exhibit B** to this DPA.

ARTICLE II: DATA OWNERSHIP AND AUTHORIZED ACCESS

1. **Personally Identifiable Information Property of Customer.** As between Customer and DSL, all Personally Identifiable Information or any other Pupil Records transmitted to DSL pursuant to this DPA is and will continue to be the property of and under the control of the Customer, or to the party who provided such data. DSL further acknowledges and agrees that all copies of such Personally Identifiable Information or any other Pupil Records transmitted to DSL, including any further data collected on behalf of the Customer, are also subject to the provisions of this DPA in the same manner as the original Personally Identifiable Information or Pupil Records. The Parties agree that as between them, all rights, including all intellectual property rights in and to Personally Identifiable Information or any other Pupil Records contemplated per this DPA shall remain the exclusive property of the Customer; and all rights, including all intellectual property rights in and to DSL's services, platform, and application, shall remain the exclusive property of DSL. DSL will cooperate and provide Personally Identifiable Information within thirty (30) days at the Customer's request.
2. **Parent Access.** DSL shall cooperate and respond within thirty (30) days to Customer's request for Personally Identifiable Information in a pupil's records held by DSL to view or correct as necessary. In the event that a parent of a pupil or other individual contacts DSL to review any of the Pupil Records of Personally Identifiable Information accessed pursuant to the Services, DSL shall refer the parent or individual to the Customer, who will follow the necessary and proper procedures regarding the requested information.
3. **Separate Account.** DSL shall, at the request of the Customer, transfer Student Generated Content (if any) to a separate student account when required by law.
4. **Third Party Request.** DSL shall notify the Customer in advance of a compelled disclosure to a Third Party, unless legally prohibited.
5. **Subprocessors.** DSL shall enter into written agreements with all Subprocessors performing functions pursuant to this DPA, whereby the Subprocessors agree to protect Personally Identifiable Information in a manner consistent with the terms of this DPA.

ARTICLE III: DUTIES OF CUSTOMER

1. **Privacy Compliance.** Customer shall provide data for the purposes of the DPA and the Agreement in compliance with the FERPA, PPRA, IDEA, and other applicable law.
2. **Parent Notification of Rights.** Customer shall ensure that its annual notice under FERPA defines vendors, such as DSL, as "School Officials" and what constitutes a legitimate educational interest. The Customer will provide parents with a notice of the websites and online services under this DPA for which it has consented to student data collection to on behalf of the parent, as permitted under COPPA. For avoidance of doubt, nothing herein shall be construed to disclaim DSL's obligations to comply with COPPA in its own operations.
3. **Unauthorized Access Notification.** Customer shall notify DSL promptly of any known or suspected unauthorized access. Customer will assist DSL in any efforts by DSL to investigate and respond to any unauthorized access.
4. **Compliance.** The Customer shall provide Student Data for the purposes of the Agreement in

compliance with any applicable state or federal laws and regulations (including FERPA) and municipal ordinances pertaining to data privacy and security applicable to the District. If the Customer provides Student Data to DSL, the Customer represents, warrants and covenants to DSL:

- a. Customer has complied with all applicable provisions of FERPA relating to disclosures to school officials with a legitimate educational interest, including, without limitation, informing parents in their annual notification of FERPA rights that the Customer defines “school official” to include service providers and defines “legitimate educational interest” to include services such as the type provided by DSL; or obtained all necessary parental or eligible student written consent to share the Student Data with DSL;
- b. Customer will not provide information to DSL from any student or parent/legal guardian that has opted out of the disclosure of “directory information” as described under the definition of Personally Identifiable Information within this DPA. DSL depends on the Customer to ensure that the Customer is complying with the FERPA provisions regarding the disclosure of any student information that will be shared with DSL;
- c. Customer shall take reasonable precautions to secure against unauthorized access or disclosure any usernames, passwords, and other means of gaining access to DSL’s system, services, and hosted data; and
- d. Customer shall notify DSL immediately of any known or suspected unauthorized use or access of DSL’s services or Student Data. The Customer will assist DSL in any efforts by DSL to investigate and respond to any unauthorized use or access.

ARTICLE IV: DUTIES OF DSL

1. **Privacy Compliance.** DSL shall materially comply with all state and Federal laws and regulations pertaining to data privacy and security applicable to its provision of the Services, including FERPA, COPPA, PPRA, etc.
2. **Authorized Use.** Personally Identifiable Information shared pursuant to this DPA, including persistent unique identifiers, shall be used for no purpose other than the Services stated in this DPA and as authorized under the statutes referred to in subsection (1), above. DSL also acknowledges and agrees that it shall not make any re-disclosure of any Personally Identifiable Information or any portion thereof other than to its subcontractors, including without limitation, any Personally Identifiable Information, metadata, user content or other non- public information and/or personally identifiable information contained in the Personally Identifiable Information, without the express written consent of the Customer, unless it fits into the de-identified information exception in Article IV, Section 4, or there is a court order or lawfully issued subpoena for the information.
3. **Employee Obligations.** DSL shall require all employees and agents who have access to Personally Identifiable Information to comply with all applicable provisions of this DPA with respect to the data shared under the Service Agreement.
4. **Use of De-identified Information.** De-identified information (as defined in **Exhibit B** to this DPA) may be used by DSL for any purpose consistent with applicable law.

5. **Disposition of Data.** Upon written request and in accordance with the applicable terms in subsections below, DSL shall dispose or delete all Personally Identifiable Information obtained under this DPA when it is no longer needed for the purposes for which it was obtained. Disposition will include (1) the shredding of any hard copies of any Personally Identifiable Information, (2) erasing, or (3) otherwise modifying the personal information in those records to make it unreadable or indecipherable by human or digital means. The duty to dispose of Personally Identifiable Information shall not extend to data that has been de- identified or placed in a separate student account, pursuant to the terms of the agreement. The Customer may employ a request for return or deletion of Personally Identifiable Information form. Upon receipt of a request from the Customer, the provider will, to the extent commercially practicable provide the Customer with any specified portion of the Personally Identifiable Information within thirty (30) days of the receipt of said request.
 - a. **Partial Disposal During the Term of Service Agreement.** Throughout the term of the Agreement, Customer may request partial disposal of Personally Identifiable Information obtained under the Agreement that is no longer needed. Partial disposal of data shall be subject to Customer's request to transfer data to a separate account, pursuant to Article II Section 3, above.
 - b. **Complete Disposal upon Termination of Agreement.** Upon termination of the Agreement DSL shall dispose or securely destroy all Personally Identifiable Information obtained under the service agreement based on DSL's schedule of deletion relating to data of customers generally.
6. **Advertising Prohibition.** DSL is prohibited from using or selling Personally Identifiable Information to (a) market or advertise to students or families/guardians; or (b) develop a profile of a student, family member/guardian or group, for any commercial purpose other than providing the Service to Customer. This section does not prohibit DSL from generating legitimate personalized learning recommendations or other activities permitted under applicable law.
7. **Penalties.** The failure to comply with the requirements of this DPA could subject DSL and any third party to all allowable penalties assessable against DSL under state and federal law. In the event the Family Policy Compliance Office of the U.S. Department of Education determines that DSL improperly disclosed personally identifiable information obtained from the Customer's education records, the Customer may not allow DSL access to the Customer's education records for at least five years.

ARTICLE V: DATA PROVISIONS

1. **Data Security.** DSL agrees to maintain a comprehensive information security program that is reasonably designed to protect the security, privacy, confidentiality, and integrity of Personally Identifiable Information and makes use of appropriate administrative, technological, and physical safeguards.
2. **Unauthorized Access or Data Breach.** In the event that Personally Identifiable Information are reasonably believed by DSL or school Customer to have been disclosed (lost, accessed or obtained) in violation of the Family Educational Rights and Privacy Act (20 U.S.C. § 1232g) or other federal

or state law applicable to such information accessed or obtained by an unauthorized individual, DSL shall follow the following process:

- a. provide prompt notification to Customer upon verification of the incident and allow the Customer or its authorized representatives to reasonably participate in the investigation of the incident.
- b. notification will be provided to the contact(s) identified in Agreement pursuant to the notice provisions of the Agreement. Such notification shall include:
 - i. date, estimated date, or date range of the loss or disclosure;
 - ii. Personally Identifiable Information that was or is reasonably believed to have been lost or disclosed;
 - iii. remedial measures taken or planned in response to the loss or disclosure.
- c. promptly take action to prevent further access;
- d. take all legally required measures in working with Customer to remediate the breach, which may include toll free telephone support with informed customer services staff to address questions by affected parties and/or provide monitoring services if necessary given the nature and scope of the loss or disclosure;
- e. cooperate with Customer efforts to communicate to affected parties;
- f. if Customer requests DSL's assistance providing notice of unauthorized access, and such assistance is not unduly burdensome to DSL, DSL shall notify the affected parent, legal guardian or eligible pupil of the unauthorized access, which shall include the information listed in subsections (b) and (c), above. If requested by Customer, DSL shall reimburse Customer for reasonable and customary costs incurred to provide legally required notifications to parents/families of a DSL data breach involving Personally Identifiable Information that does not originate from Customer's improper or unauthorized use of the Services.

EXHIBITA

SCHEDULE OF DATA

Category of Data	Elements	Check if used by your system	Conduct	Conduct or behavioral data
Application Technology Meta Data	IP Addresses of users, Use of cookies etc.		Demographics	Date of Birth
	Other application technology meta data-Please specify:			Place of Birth
Application Use Statistics	Meta data on user interaction with application		Enrollment	Gender
				Ethnicity or race
Assessment	Standardized test scores		Enrollment	Language information (native, preferred or primary language spoken by student)
	Observation data			Other demographic information-Please specify:
	Other assessment data-Please specify:			Student school enrollment
Attendance	Student school (daily) attendance data			Student grade level
	Student class attendance data			Homeroom
Communications	Online communications that are captured (emails, blog entries)			Guidance counselor
				Specific curriculum programs
				Year of graduation
Parent/Guardian Contact Information				Other enrollment information-Please specify:

Parent/ Guardian ID	Parent ID number (created to link parents to students)	
Parent/ Guardian Name	First and/or Last	
Schedule	Student scheduled courses	
	Teacher names	
Special Indicator	English language learner information	
	Low income status	
	Medical alerts /health data	
	Student disability information	
	Specialized education services (IEP or 504)	
	Living situations (homeless/ foster care)	
	Other indicator information- Please specify:	
Student Contact Information	Address	
	Email	
	Phone	
Student Identifiers	Local (School district) ID	

	number	
	State ID number	
	Provider/App assigned student ID number	
	Student app username	
	Student app passwords	
Student Name	First and/or Last	
Student In App Performance	Program/applica- tion performance (typing program-student types 60 wpm, reading program-student reads below grade level)	
Student Program Membership	Academic or extracurricular activities a student may belong to or participate in	
Student Survey Responses	Student responses to surveys or questionnaires	
Student work	Student generated content; writing, pictures etc.	
	Other student	

	work data - Please specify:	
Transcript	Student course grades	
	Student course data	
	Student course grades/perfor- mance scores	
	Other transcript data -Please specify:	
Transportation	Student bus assignment	
	Student pick up and/or drop off location	
	Student bus card ID number	

	Other transportation data -Please specify:	
Other	Please list each additional data element used, stored or collected by your application	

No Student Data Collected at this time ____.
*Provider shall immediately notify LEA if this designation is no longer applicable.

OTHER: Use this box, if more space needed.

EXHIBIT B

DEFINITIONS

Data Breach means an event in which Personally Identifiable Information is exposed to unauthorized disclosure, access, alteration or use.

De-Identifiable Information (DII): De-Identification refers to the process by which DSL removes or obscures any Personally Identifiable Information from student records in a way that removes or minimizes the risk of disclosure of the identity of the individual and information about them. Anonymization or de-identification should follow guidance equivalent to that provided by U.S. Department of Education publication “Data De-identification: An Overview of Basic Terms” or NISTIR Special Publication (SP) 8053 De-Identification of Personally Identifiable Information. DSL’s specific steps to de-identify the data will depend on the circumstances, but should be appropriate to protect students. Some potential disclosure limitation methods are blurring, masking, and perturbation. De-identification should be designed to ensure that any information when put together cannot indirectly identify the student, not only from the viewpoint of the public, but also from the vantage of those who are familiar with the individual.

Indirect Identifiers: Any information that, either alone or in aggregate, would allow a reasonable person to be able to identify a student to a reasonable certainty.

Personally Identifiable Information (PII): The terms “Personally Identifiable Information” or “PII” shall include Student Data, metadata, and user or student-generated content obtained by reason of the use of DSL’s Services, including “directory information” under applicable law, comprised of the following:

- Staff, Student or Parent First, Middle and Last Name
- Staff, Student or Parent Telephone Number(s)
- Discipline Records
- Special Education Data
- Grades
- Criminal Records
- Health Records
- Biometric Information
- Socioeconomic Information
- Political Affiliations
- Text Messages
- Student Identifiers Photos
- Videos
- Grade
- Home Address Subject
- Email Address
- Test Results
- Juvenile Dependency Records Evaluations

- Medical Records
- Social Security Number
- Disabilities
- Food Purchases
- Religious Information Documents
- Search Activity
- Voice Recordings
- Date of Birth
- Classes
- Information in the Student’s Educational Record
- Information in the Student’s Email

DSL: For purposes of the DPA, the term “DSL” means provider of digital educational software or services, including cloud-based services, for the digital storage, management, and retrieval of pupil records.

Pupil Records: Means both of the following: (1) Any information that directly relates to a pupil that is maintained by Customer and (2) any information acquired directly from the pupil through the use of instructional software or applications assigned to the pupil by a teacher or other local educational Customer employee.

Securely Destroy: Securely Destroy: Securely Destroy means taking actions that render data written on physical (e.g., hardcopy, microfiche, etc.) or electronic media unrecoverable by both ordinary means.

School Official: For the purposes of this DPA and pursuant to 34 CFR 99.31 (B), a School Official is a contractor that: (1) Performs an institutional service or function for which the agency or institution would otherwise use employees; (2) Is under the direct control of the agency or institution with respect to the use and maintenance of education records; and (3) Is subject to 34 CFR 99.33(a) governing the use and re-disclosure of personally identifiable information from student records.

Student Data: Student Data includes any data governed by FERPA, whether gathered by DSL or provided by Customer or its users, students, or students’ parents/guardians, that is descriptive of the student including, but not limited to, information in the student’s educational record or email, first and last name, home address, telephone number, email address, or other information allowing online contact, discipline records, videos, test results, special education data, juvenile dependency records, grades, evaluations, criminal records, medical records, health records, social security numbers, biometric information, disabilities, socioeconomic information, food purchases, political affiliations, religious information text messages, documents, student identifies, search activity, photos, voice recordings or geolocation information. Student Data shall constitute Pupil Records for the purposes of this DPA, and for the purposes of applicable Federal laws and regulations. Student Data is confirmed to be collected or processed by DSL pursuant to the Services. Student Data shall not constitute that information that has been anonymized or de-identified, or anonymous usage data regarding a student’s use of DSL’s services.

Student Generated Content: Alternatively known as user-created content (UCC), is any form of content, such as images, videos, text and audio, that have been created and posted by student users on online platforms. For the avoidance of doubt, nothing contained herein shall limit Customer's obligations under Section 12.2 of the Agreement.

Subprocessor: For the purposes of this DPA, the term "Subprocessor" (sometimes referred to as the "Subcontractor") means a party other than Customer or DSL, who DSL uses for data collection, analytics, storage, or other service to operate and/or improve its software, and who has access to PII.

Third Party: The term "Third Party" means an entity that is not DSL or Customer.

Schedule 8
Vehicle Agreement

Vehicle Agreement

1. Applicability

(a) These terms and conditions of sale (these "Terms") govern the sale of the specialty exhibit vehicle (the "Vehicle") and certain design and build services related to the fabrication of the Vehicle (the "Services") by SPEVCO, Inc., a North Carolina corporation ("Seller") to the owner of the Vehicle named below ("Vehicle Owner").

2. Delivery of Goods

(a) Unless otherwise agreed in writing by the parties, Seller shall deliver the Vehicle to 8118 Reynolda Road, Pfafftown, NC 27040 (the "Delivery Point"). Vehicle Owner (through Dreamscape Learn, Inc. "DSL") shall take delivery of the Vehicle. Vehicle Owner shall be responsible for all loading costs and provide equipment and labor reasonably suited for receipt of the Vehicle at the Delivery Point and will unload and release all transportation equipment promptly, so Seller incurs no demurrage or other expense.

(b) If for any reason, Vehicle Owner fails to accept delivery of the Vehicle: (i) risk of loss to the Vehicle shall pass to Vehicle Owner; (ii) the Vehicle shall be deemed to have been delivered; and (iii) Seller, at its option, may store the Vehicle until Vehicle Owner picks it up, whereupon Vehicle Owner shall be liable for all related costs and expenses (including, without limitation, storage, maintenance and insurance cost of \$15,000 per month).

(c) Vehicle Owner shall obtain and maintain all necessary licenses and consents and comply with all applicable laws as it relates to ownership and operation of the Vehicle.

3. Shipping Terms Delivery of the Vehicle shall be made FOB the Delivery Point.

4. Title and Risk of Loss All right, title and interest in and to the Vehicle and any components thereof shall remain with Seller until payment of the Price in full to Seller, along with all other costs and expenses due Seller hereunder. Title and risk of loss passes to Vehicle Owner upon payment of the Price in full and delivery of the Vehicle at the Delivery Point.

5. Inspection of Vehicle

(a) Vehicle Owner designates DSL to inspect the Vehicle within ten (10) days of notification that the Vehicle is ready for delivery. Vehicle Owner will be deemed to have accepted the Vehicle unless it (or DSL) notifies Seller in writing of any Nonconformance during the Inspection Period and furnishes such written evidence or other documentation as required by Seller. "Nonconformance" means only that the Vehicle delivered is different than identified in the specifications. For the avoidance of doubt, the inspection referred to in this paragraph during the Inspection Period is only relevant to whether or not Vehicle Owner accepts possession and title; failure to identify a Nonconformance during the Inspection Period does not result in any waiver by Vehicle Owner of any specification, requirement, term or condition hereof.

(b) If Vehicle Owner or DSL timely notifies Seller of any Nonconformance, Seller shall correct the Nonconformance.

(c) Except as provided under Section 5(b), the sale of the Vehicle to Vehicle Owner is made on a one-way basis and Vehicle Owner has no right to return the Vehicle purchased under this Agreement to Seller.

6. Seller Expenses

(a) Vehicle Owner agrees to reimburse Seller for all reasonable travel and out-of-pocket expenses incurred by Seller in connection with the

performance of the Services, provided, however, that such expenses are approved in advance by Vehicle Owner.

7. Limited Warranty

(a) The SPEVCO Limited Warranty (the "Limited Warranty") is attached hereto.

(b) Except for the limited warranty and the terms hereof, Seller makes no warranty whatsoever with respect to the vehicle and any services provided by seller in connection therewith, including any (i) warranty of merchantability or (ii) warranty of fitness for a particular purpose; whether express or implied by law, course of dealing, course of performance, usage of trade, or otherwise.

(c) Products and components manufactured by a third party may be contained in, incorporated into, attached to or packaged together with, the Vehicle. Such third party products expressly listed on an exhibit hereto (such "Third Party Products") are not covered by Seller's Limited Warranty; the list of Third Party Products remains subject to change based on design finalization, in which case Seller shall notify Vehicle Owner within fifteen (15) days of the design finalization date. For the avoidance of doubt, seller makes no representations or warranties with respect to any Third-Party Product, including any (i) warranty of merchantability; (ii) warranty of fitness for a particular purpose; or (iii) warranty against infringement of intellectual property rights of a third party; whether express or implied by law, course of dealing, course of performance, usage of trade, or otherwise. Seller shall provide all documentation for Third Party Products, including warranty terms, upon delivery of the vehicle. Seller hereby assigns to Vehicle Owner Seller's rights under any applicable manufacturer's warranty for the Third Party Products.

(d) The Seller shall not be liable for a breach of the Limited Warranty unless: (i) Vehicle Owner gives written notice of the defective Vehicle or Services, as the case may be, reasonably described, to Seller within thirty (30) days of the time when Vehicle Owner discovers the defect; (ii) if applicable, Vehicle Owner provides Seller a reasonable opportunity after receiving the notice of breach of the warranty to examine at the Vehicle Owner's location, or have an authorized third-party representative examine, the Vehicle at Vehicle Owner's designated location and (iii) Seller reasonably verifies Vehicle Owner's claim that the Vehicle or Services are defective. In the event Seller claims the Vehicle is not "defective" and therefore, not subject to the warranty set forth herein, Vehicle Owner reserves the right to initiate legal proceedings to address the dispute between the Parties regarding whether the issue with the Vehicle fits the "defective" requirement set forth herein. In the case that there is no ability for Seller or one of Seller's authorized third-party representatives to make the repair at the Vehicle's then-current location within two (2) weeks, Seller and Vehicle Owner may mutually agree to have the Vehicle returned to Seller's place of business at with costs for such transport to be mutually agreed. However, if the repair needed at Seller's place of business is due to Seller's design defect as part of the fabrication process, the costs for transportation shall be assigned to Seller.

(e) The Seller shall not be liable for a breach of the Limited Warranty if: (i) the defect arises because Vehicle Owner failed to follow Seller's written instructions as to the storage, use or maintenance of the

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Vehicle; or (ii) Vehicle Owner alters or repairs the Vehicle without the prior written consent of Seller, and such alteration or repair resulted in the issue for which coverage is sought under the Limited Warranty.

8. Limitation of Liability; Assumption of Risk

(a) in no event shall Seller be liable to Vehicle Owner for any loss of use, revenue or profit or loss of data or diminution in value, or for any consequential, indirect, incidental, special, exemplary, or punitive damages whether arising out of breach of contract, tort (including gross negligence), or otherwise, regardless of whether such damages were foreseeable and whether or not seller has been advised of the possibility of such damages, and notwithstanding the failure of any agreed or other remedy of its essential purpose.

(b) in no event shall Seller's aggregate liability arising out of or related to this agreement, whether arising out of or related to breach of contract, tort (including negligence), or otherwise, exceed \$500,000.

(c) without limiting the generality of the foregoing, Vehicle Owner assumes all risk and liability for the results obtained by the use of the vehicle in the practice of any process, whether in terms of operating cost general effectiveness, success or failure, and regardless of any oral (but not written) statements made by Seller, by way of technical advice or otherwise, related to the use of the vehicle.

9. Compliance with Law

Vehicle Owner shall comply with all applicable laws, regulations, and ordinances. Vehicle Owner shall maintain in effect all the licenses, permissions, authorizations, consents, and permits that it needs to carry out its obligations under this Agreement. Vehicle Owner shall comply with all export and import laws of all countries involved in the sale of the Vehicle under this Agreement or any resale of the Vehicle by Vehicle Owner. Vehicle Owner assumes all responsibility for shipments of the Vehicle requiring any government import clearance. Seller shall comply with all applicable laws, regulations, and ordinances. Seller shall maintain in effect all the licenses, permissions, authorizations, consents, and permits that it needs to carry out its obligations under this Agreement.

10. Waiver No waiver by a party of any of the provisions of this Agreement is effective unless explicitly set forth in writing and signed by such party. No failure to exercise, or delay in exercising, any right, remedy, power or privilege arising from this Agreement operates, or may be construed, as a waiver thereof. No single or partial exercise of any right, remedy, power or privilege hereunder precludes any other or further exercise thereof or the exercise of any other right, remedy, power, or privilege.

SPEVCO,

By:

Name:

Title:

Address for Notices:

11. Governing Law All matters arising out of or relating to this Agreement are governed by and construed in accordance with the internal laws of the State of California without giving effect to any choice or conflict of law provision or rule (whether of the State of California or any other jurisdiction) that would cause the application of the laws of any jurisdiction other than those of the State of California.

12. Submission to Jurisdiction Any legal suit, action, or proceeding arising out of or relating to this Agreement shall be instituted in the federal courts of the United States of America or the courts of the State of California, and each party irrevocably submits to the exclusive jurisdiction of such courts in any such suit, action, or proceeding.

13. Notices

All notices, requests, consents, claims, demands, waivers, and other communications hereunder (each, a "Notice") shall be in writing and addressed to the parties at the addresses set forth below the signature line of each party or to such other address that may be designated by the receiving party in writing. All Notices shall be delivered by personal delivery, nationally recognized overnight courier (with all fees pre-paid), facsimile (with confirmation of transmission), or certified or registered mail (in each case, return receipt requested, postage prepaid). Except as otherwise provided in this Agreement, a Notice is effective only (a) upon receipt of the receiving party, and (b) if the party giving the Notice has complied with the requirements of this Section.

14. Severability

If any term or provision of this Agreement is invalid, illegal, or unenforceable in any jurisdiction, such invalidity, illegality, or unenforceability shall not affect any other term or provision of this Agreement or invalidate or render unenforceable such term or provision in any other jurisdiction.

15. Survival

Provisions of these Terms which by their nature should apply beyond their terms will remain in force after any termination or expiration of this Agreement including, but not limited to, the following provisions: Compliance with Laws, Confidential Information, Governing Law, Submission to Jurisdiction and Survival.

16. Amendment and Modification

These Terms may only be amended or modified in a writing stating specifically that it amends these Terms and is signed by an authorized representative of each party.

Vehicle Owner: _____

By: _____

Name: _____

Title: _____

Address for Notices:

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