

REGION VII EDUCATION SERVICE CENTER

DMAC LICENSE AGREEMENT

This Agreement is entered into as of the 1st day of July, 2007 (the "Effective Date") by and between Region VII Education Service Center ("REGION VII ESC") and **KELLER ISD** (the "Licensee").

1. DMAC ACCESS AND USE.

1.01. DMAC Access. REGION VII ESC provides a suite of Internet hosted, multi-user software applications known as the Data Management for Assessment and Curriculum ("DMAC") that is resident on REGION VII ESC's servers, that is accessible through an Internet portal maintained by REGION VII ESC and that permits Authorized Users with appropriate software, data input and connectivity to access purchased modules. Licensee may accomplish tasks using DMAC by establishing an Internet link with REGION VII ESC's Internet server, by entering or posting data using that link and by requesting and receiving Processed Data using that link. REGION VII ESC shall permit Licensee, through the Authorized Users designated by Licensee, to access and use DMAC on a non-exclusive basis, subject to the terms of this Agreement and provided that REGION VII ESC may restrict or condition access and use at any time if it reasonably believes that such continued access or use will imminently and materially disrupt, degrade or injure continued function or use of DMAC with respect to other REGION VII ESC Licensees.

1.02. Product Support. REGION VII ESC shall provide Product Support Service during its regular service hours: 8:00 a.m. through 4:30 p.m., Central Standard Time, weekdays exclusive of federal holidays. After hours support will be available on a fee basis. On-site assistance is available.

1.03. Software and Connectivity Requirements. Proper function of DMAC requires Licensee's compliance with REGION VII ESC's minimum specifications for equipment, software and connectivity. Licensee shall, at its own expense, acquire, select, obtain, install, use and maintain equipment and services meeting or exceeding the specifications provided by REGION VII ESC for user equipment, software, connectivity to the Internet and system configuration, including but not limited to a relationship with a reputable Internet service provider to permit Internet communication with REGION VII ESC's servers. Licensee acknowledges that DMAC Software response times and other performance may be adversely affected by peak usage and limited capacity within the Licensee's own network infrastructure.

1.04. Additional Services. Licensee may request additional services at REGION VII ESC's then current rate for such services and fees. Licensee shall be responsible for all related expenses for any such services. The provision of related services does not include any of the following: (i) maintenance of software or hardware not furnished by REGION VII ESC, or (ii) work or repairs necessitated by repairs or modifications attempted by persons other than REGION VII ESC personnel. If such services are performed, Licensee shall pay all associated fees at REGION VII ESC's then current service rates.

1.05. General Licensee Obligations. Licensee shall provide REGION VII ESC with complete, accurate and timely information necessary to permit REGION VII ESC to provide the services contemplated in this Agreement. Licensee shall maintain and retain necessary and appropriate records of Licensee and enter all necessary data in its possession into DMAC including, but not limited to, usernames and passwords for all Authorized Users using DMAC, as well as assigned administrator privileges. Licensee shall cooperate promptly to provide accurate and full responses to any inquiry or concern of REGION VII ESC for clarification, documentation or further information related to the DMAC Software. Licensee shall designate and make available an administrative contact and technical contact to coordinate activities relating to this Agreement.

Notwithstanding any other provisions of this Agreement, REGION VII ESC performance hereunder is contingent upon the following:

- (a) Licensee's use of DMAC Software and submission of data in accordance with REGION VII ESC specifications;
- (b) Licensee's maintenance of site conditions and equipment in accordance with REGION VII ESC's specifications;
- (c) Licensee's notification of any failure as soon as practicable after becoming aware of the failure; and

(d) Licensee allowing full and free access to REGION VII ESC to Licensee's hardware for purposes of performing any related DMAC services.

1.06. Authorized Users. Licensee shall identify to REGION VII ESC one or more of its personnel as "Authorized Users" who are duly authorized by Licensee to access and use DMAC on its behalf, to submit data into and retrieve data from DMAC on its behalf and to represent Licensee in its access and use of DMAC. Licensee shall not permit individuals to access or use DMAC without authorization or beyond the scope of their authorization.

2. **LICENSE.**

2.01. Grant. REGION VII ESC hereby grants to Licensee a non-exclusive, non-transferable license to access and use DMAC within the United States during the term of this Agreement, under the conditions and requirements set forth in this Agreement. Access and use under this license is conditioned on such compliance with the conditions and requirements of this Agreement.

2.02. Scope of Use.

(a) Licensee shall not use DMAC or any part or aspect of it for any unlawful purpose.

(b) Licensee shall comply with such reasonable policies, procedures and instructions as may be established by REGION VII ESC from time to time concerning access to and use of DMAC upon receipt of written notice to Licensee of such policies, procedures or instructions.

(c) Licensee shall not access or use DMAC except through its Authorized Users. Licensee shall access or use DMAC only to process data originated by the Licensee and shall not access or use DMAC for the processing of data on behalf of any third party.

(d) Licensee shall not distribute or transmit DMAC Software, DMAC Content, or Materials to any third party by any means, including but not limited to, electronically or on disk. Licensee shall not sublicense, download, copy, record, reproduce, reverse engineer, publish, translate or transfer possession, reverse compile or disassemble DMAC Software or Materials. Licensee shall not modify or prepare derivative works from DMAC or any of DMAC Software, DMAC Content, Third Party Items or Materials except and only to the extent that such activity is permitted by applicable law notwithstanding this limitation.

(e) Licensee shall not create Internet "links" to the DMAC Software without prior written permission from REGION VII ESC. Licensee shall not "frame" or "mirror" any Content contained on, or accessible from, the DMAC Software on any other server or Internet-based device.

(f) Licensee shall not introduce or permit to be introduced into DMAC any virus, worm, trojan horse or other software routine program or mechanism to permit unauthorized access into, to disable, to erase in whole or in part or otherwise to adversely effect DMAC, including but not limited to data stored on DMAC, DMAC Software, DMAC Content or any equipment maintained or used by REGION VII ESC.

Violation or default by the Licensee of any requirements or restrictions set forth herein shall constitute breach of a material provision of the Agreement.

2.03. Modifications and Upgrades. Provided that it does not materially and adversely affect or degrade the functionality of DMAC, the ability of Licensee to access and use DMAC, REGION VII ESC shall have the right to substitute, replace, modify or upgrade DMAC or any part or aspect of it as REGION VII ESC deems advisable; and, all substitutions, replacements, modifications and upgrades shall be incorporated in and subject to this Agreement and shall be the exclusive property of REGION VII ESC hereunder.

3. **FEES.**

3.01. Annual Use Fees. As consideration for the license and services to be provided to Licensee pursuant to this Agreement, Licensee shall pay REGION VII ESC the annual use fees as set forth in Exhibit B, based on the Licensee's selection of modules and other pricing variables. Licensee annual use fees will not be prorated or discounted if the term of the agreement is less than one year.

3.02. Payment Terms. Licensee shall have a choice between two payment options as set forth on Exhibit B. All charges and fees owing under this Agreement shall be due and payable thirty (30) days following the date of invoice outlining such charges or fees, and Licensee agrees to pay all such amounts within thirty (30) days pursuant to the Texas Prompt Payment Act.

3.03. Taxes. In addition to the compensation payable as fees to REGION VII ESC pursuant to this Agreement, Licensee shall pay promptly all government taxes or charges assessed, due or levied by reason of or based upon sale or the provision to Licensee of services or goods under this Agreement, excluding ordinary personal property taxes assessed against or payable by REGION VII ESC and excluding taxes on REGION VII ESC's net income.

4. **TERM AND TERMINATION.**

4.01. Term. This Agreement shall take effect upon the Effective Date. The license granted hereunder shall take effect on July 1, 2007 and continue through June 30, 2008, unless terminated earlier as provided herein.

4.02. Termination. Under the following circumstances, either party may terminate this Agreement at any time by giving written notice of termination to the other party:

(a) In the event that the other party defaults in performance of any material provision of this Agreement, and such default continues and is not cured to the notifying party's satisfaction for a period of [thirty (30)] days after written notice to the defaulting party stating the specific default, except that said period of [thirty (30)] days shall be reduced to fifteen (15) days in the event of any failure of Licensee to pay REGION VII ESC sums due under this Agreement; or

(b) Region VII ESC agrees that Licensee has the continuing right to terminate this agreement without notice at the end of any budget period in which funds for this Agreement are not appropriated and such termination shall not be a breach under the terms of this Agreement.

Additionally, REGION VII ESC may terminate this Agreement at any time by giving written notice of termination to Licensee due to breach of Licensee's obligations under Section 2.02.

4.03. Effect of Termination. Upon termination for any reason, including, but not limited to, termination pursuant to the expiration of this Agreement as provided in Section 4.01:

(a) All licenses and rights granted by REGION VII ESC to Licensee herein shall terminate immediately and automatically and, notwithstanding any other provisions of this Agreement, Licensee shall immediately cease use of all licensed items;

(b) Licensee shall continue to be obligated to pay and shall pay to REGION VII ESC all fees otherwise payable in accordance with the terms of Section 3 of this Agreement for all services actually rendered by REGION VII ESC. No refund shall be due licensee if licensee terminates this agreement for the end of the agreement year.

(c) REGION VII ESC shall provide to Licensee a copy of the Licensee Data and the Processed Data in an industry standard data format. Licensee may designate such format to the extent that rendering the data in such designated format is reasonably practicable without expenditure by REGION VII ESC of material additional time and expense;

(d) The rights and obligations of the Parties under this Section, Section 5, Section 6.04, Section 7, and Section 8, and Section 9 of this Agreement shall survive termination of this Agreement and shall remain in full force and effect; and

(e) The parties shall have such further rights as are provided by law subject to the limitations and disclaimers in this Agreement.

5. **SECURITY, CONFIDENTIALITY, AND PROPRIETARY INFORMATION.**

5.01. Security. Each party shall take reasonable steps to maintain the security of communications between them using DMAC and the security of Licensee Data and of information in their respective possession, including but not limited to reasonable steps: to authenticate Authorized Users using individual passwords, to maintain confidentiality of passwords, to maintain physical security of equipment and facilities in their respective control, to exercise appropriate oversight and supervision of their respective personnel, to evaluate their respective security safeguards periodically, to install and maintain

appropriate firewalls and other technical measures where appropriate, and to guard against the intentional or unintentional corruption or loss of data in their respective control. Such steps shall include, but not be limited to, the following:

- (a) Licensee shall maintain an up-to-date list of the names of all Authorized Users including the scope of DMAC access for each Authorized User.
- (b) Upon execution of this Agreement, REGION VII ESC will assign temporary passwords to Authorized Users designated by Licensee.
- (c) Licensee shall assign a permanent password to each Authorized User. Each password shall be unique to each Authorized User and shall be non-transferable. Authorized Users shall log into DMAC Software using only their assigned username and associated password. REGION VII ESC shall permit access to or use of DMAC Software only to users who present appropriate usernames and the associated passwords. Licensee is solely responsible for any and all activities that occur by Authorized Users while using DMAC software and for ensuring that Authorized Users exit or log-off from the account at the end of each session of use. REGION VII ESC shall be entitled to assume, unless notified by Licensee otherwise, that a user presenting a username and associated password is in fact the corresponding Authorized User. Licensee shall not permit anyone other than the relevant Authorized User to use the username and password associated with that Authorized User. If the Licensee or its personnel knowingly or unknowingly furnish a password to an unauthorized person, the Licensee is validating the authority of such person to act on its behalf as to any access or use of DMAC with that password and shall be responsible for any charges, damages or losses incurred or suffered as a result of its failure to maintain the confidentiality of any password. Licensee shall notify REGION VII ESC immediately if it becomes aware of any unauthorized use of any username or password, and REGION VII ESC shall take reasonable steps upon such notification to shut off access or use by such username and associated password. Licensee shall also use its best efforts to stop immediately any copying or distribution of Content that is known or suspected by Licensee.
- (d) Both parties acknowledge that no security measures are perfect and that security breaches may occur despite commercially reasonable efforts. Each party shall promptly report to the other any material system, equipment, or software malfunction, error, breakage or breach that involves the security of Data that such party detects or that it believes is imminent or is likely to have occurred. Each party shall reasonably cooperate with the other in efforts to reduce the effects of any such malfunction, error, breakage or breach, to mitigate damage and restore lost code or data.

5.02. Confidentiality. This paragraph shall be interpreted to be subject to Texas law, including without limitation the Texas Public Information Act, Chapter 552, Texas Government Code. Each party agrees to treat the Confidential Information with at least the same degree of care it uses with respect to its own confidential information and trade secrets of like nature. Neither party will allow any third parties to view or use any Confidential Information of the other party for purposes other than meeting its performance obligations under this Agreement. The receiving party shall have no confidentiality obligations under this Agreement with respect to Confidential Information which the receiving party can demonstrate: (i) is a part of the public domain through no act or omission of the receiving party (ii) was in the receiving party's lawful possession prior to receipt from the disclosing party and was not subject to any limitations on disclosure or use (iii) is independently developed by the receiving party or (iv) is lawfully disclosed hereafter to the receiving party, without restriction, by a third party.

Confidential DMAC Information. Licensee acknowledges that the DMAC, including DMAC Software, DMAC Content, Materials, and all related Intellectual Property, contain valuable trade secrets and confidential information owned by Region VII ESC. Licensee agrees that neither it nor any other party will, directly or indirectly, (i) sell, lease, assign, or otherwise transfer the Confidential Information, (ii) duplicate, reproduce or copy the DMAC Software or Modifications thereto, or (iii) decompile, disassemble or otherwise analyze for reverse engineering purposes the DMAC Software, including all trade secrets and Confidential Information therein. Licensee shall take all reasonable precautions to prevent inadvertent disclosure of the DMAC Software to any third party. Licensee acknowledges and agrees that it shall not permit any third party, nor any employee, representative or agent thereof, that develops, markets or licenses computer programs with functionality similar to the functionality of the DMAC Software to have access to the DMAC Software or to any trade secrets and Confidential Information therein.

5.03. Proprietary Information. DMAC, including DMAC Software, DMAC Content, Materials, and all related Intellectual Property, and the activities and functions performed by REGION VII ESC in response to communications from Licensee, and all right, title and interest in DMAC shall be and remain the exclusive property of REGION VII ESC. All derivative works prepared from DMAC or any part of it and all analysis of non-protected health information shall be and remain the exclusive property of REGION VII ESC.

REGION VII ESC shall have the right at its option to provide a proprietary legend and/or mark on DMAC Software, Materials and DMAC Content; said legend or mark may at REGION VII ESC's option be included at the beginning and/or end of each page, screen or set of data or, at REGION VII ESC's option, in digital form within a field associated with one or more items; the Licensee shall not obscure such legend or mark; and, the Licensee may copy such items only on condition that the legend and mark, if any, is reproduced intact with each item.

Licensee shall hold the proprietary information of REGION VII ESC in confidence and not use it, except in accordance with this Agreement.

6. WARRANTIES.

6.01. Warranty.

(a) *Title and Ownership.* REGION VII ESC represents, warrants and covenants to Licensee that it owns and has all rights, title and interest in and to all intellectual property relating to DMAC, including any and all patents, patents pending, trade secrets, trademarks, copyrights, and all related applications therefore, if any. REGION VII ESC also represents, warrants and covenants that it has all of the necessary licenses and authorizations to sublicense to Licensee the any third party software which may be included in DMAC.

(b) *No Trojan Horse or Others Similar Routines.* REGION VII ESC warrants that DMAC does not contain any virus, "Trojan horse," "worm," or other software routines designed to permit unauthorized access, to disable, erase, or otherwise harm software, hardware or data, or to perform any other similar actions.

6.02. *Availability and Performance.* REGION VII ESC will use reasonable efforts to make the DMAC Software available 24 hours per day, 7 days per week, except for planned maintenance periods. REGION VII ESC reserves the right to perform maintenance of the DMAC Software as needed. REGION VII ESC will use reasonable efforts to limit any unavailability of the DMAC Software due to maintenance to non-business hours and to give at least 24 hours notice of any such known unavailability.

6.03. *Licensee Authorization.* The Licensee warrants to REGION VII ESC on a continuing basis that it and its personnel are duly authorized to submit the Licensee Data, that it and its personnel are duly authorized to access the data requested or retrieved by it or its personnel in connection with the use of DMAC, and that REGION VII ESC is duly authorized to receive, process, and use said data as contemplated in this Agreement.

6.04. **WARRANTY DISCLAIMER.** EXCEPT AS EXPRESSLY PROVIDED HEREIN, REGION VII ESC DOES NOT MAKE NOR SHALL IT BE DEEMED TO MAKE OR HAVE MADE ANY REPRESENTATIONS OR WARRANTIES OF ANY KIND OR NATURE, DIRECTLY OR INDIRECTLY, WHETHER EXPRESS OR IMPLIED TO LICENSEE WITH RESPECT TO ANY SERVICE PROVIDED HEREUNDER; AND, EACH PARTY EXPRESSLY DISCLAIMS ALL WARRANTIES OF MERCHANTABILITY, DESIGN, OPERATION, FITNESS FOR A PARTICULAR PURPOSE, NONINTERFERENCE WITH INFORMATION, AND ACCURACY OF INFORMATIONAL CONTENT AND ALL WARRANTIES ARISING FROM CONDUCT, COURSE OF DEALING OR CUSTOM OR USAGE IN TRADE. NOTWITHSTANDING ANYTHING TO THE CONTRARY IN THIS AGREEMENT, REGION VII ESC SHALL NOT BE LIABLE FOR INDIRECT, EXEMPLARY, PUNITIVE, SPECIAL, INCIDENTAL OR CONSEQUENTIAL DAMAGES, INCLUDING WITHOUT LIMITATION LOST PROFITS OR LOST BUSINESS OPPORTUNITIES, BASED UPON BREACH OF WARRANTY, BREACH OF CONTRACT, NEGLIGENCE, MISREPRESENTATION OR ANY OTHER LEGAL THEORY.

Without limitation of the foregoing, the parties hereby further agree to the following specific disclaimers:

(a) Licensee acknowledges and agrees that DMAC involves complex computer hardware and software that is not necessarily free from defects or able to operate without interruption and that REGION VII ESC does not warrant the same. Except as expressly provided herein, REGION VII ESC does not warrant that DMAC is free from errors or defects and shall not be responsible with respect to any liabilities arising therefrom; and, DMAC and each part or aspect of it is provided "AS IS." REGION VII ESC makes no warranty and shall not be responsible with respect to the results that may be obtained from the use of DMAC or the condition, quality, accuracy, reliability, suitability or functionality of any Data or other information submitted to or retrieved by Licensee in connection with DMAC;

(b) Under no circumstances shall REGION VII ESC be responsible for the acts or omissions of Third Party Sources. REGION VII ESC is not responsible for the condition, quality, accuracy, reliability, suitability or functionality of any

Third Party information, REGION VII ESC makes no warranty concerning the same, and, all Third Party information is provided on an "AS IS" basis only;

(c) REGION VII ESC makes no warranty and shall not be responsible with respect to any interception, access, loss, impairment, delay, corruption, or damage of any outbound code or data after the packet leaves the back end of REGION VII ESC's Internet server or of any inbound code or data before the packet enters the back end of REGION VII ESC's Internet server; and

(d) Licensee assumes full responsibility to evaluate for itself the condition, quality, accuracy, reliability, suitability and functionality of DMAC and any information it obtains from using DMAC. DMAC does not take the place of bookkeepers, accountants, attorneys, or any other professional or licensed financial or legal services providers, and Licensee shall be responsible to obtain and evaluate such services as appropriate.

7. DISPUTE RESOLUTION.

The parties will attempt in good faith to resolve any controversy or dispute arising out of or relating to this Agreement promptly by negotiations between the parties. If the dispute is not resolved by negotiation within 30 days, then, upon notice by one party to the other party, the controversy or dispute shall be mediated by an impartial mediator who is mutually selected by the parties.

8. LIABILITY LIMITATION.

NOTWITHSTANDING THE FOREGOING, IN NO EVENT SHALL REGION VII ESC BE LIABLE FOR ANY INDIRECT, INCIDENTAL, SPECIAL OR CONSEQUENTIAL DAMAGES, OR DAMAGES FOR LOSS OF PROFITS, REVENUE, DATA OR USE, INCURRED BY LICENSEE OR ANY THIRD PARTY, WHETHER IN AN ACTION IN CONTRACT OR TORT, EVEN IF REGION VII ESC HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. REGION VII ESC'S LIABILITY FOR DAMAGES UNDER THIS AGREEMENT SHALL IN NO EVENT EXCEED THE AMOUNT OF FEES PAID BY LICENSEE, AND IF SUCH DAMAGES RESULT FROM LICENSEE'S USE OF THE PRODUCT OR SERVICES, SUCH LIABILITY SHALL BE LIMITED TO FEES PAID FOR THE RELEVANT PRODUCT OR SERVICE GIVING RISE TO THE LIABILITY.

9. MISCELLANEOUS.

9.01. Entire Agreement. The parties agree that this Agreement, together with Exhibits A and B, constitute the entire agreement between the parties relating to the subject matter hereof, which supersede and merge all prior proposals, understandings, and all other agreements, oral or written, whether explicit or implicit, between the parties relating to this Agreement. No amendment of this Agreement shall be effective unless executed by the duly authorized representative of each party.

9.02. Provisions of General Cooperation. Licensee and REGION VII ESC shall each designate a representative who shall be reasonably available during Licensee's regular office hours to confer together in order to promote the efficient performance of this Agreement and to promote clear communication between the parties regarding that performance. Each party shall execute such documents, including without limitation any authorizations, and take such further action as may be reasonably necessary to permit, enable and promote the other's ability to perform its duties and obligations hereunder, provided that neither party shall be required to undertake material additional work, expense or liability not otherwise explicitly required herein.

9.03. Assignment. This Agreement shall inure to the benefit of and be binding upon the parties hereto and their respective legal representatives, successors and permitted assigns; provided, however, that Licensee may not assign this Agreement without the prior written consent of REGION VII ESC, which consent shall not be unreasonably withheld. Any assignment contrary to this Section shall be void *ab initio*.

9.04. Force Majeure. No failure, delay or default in performance of any obligation under this Agreement shall constitute an event of default or a breach of representation or warranty under this Agreement if and to the extent it is caused by a strike; fire; shortage of materials; legal act of a public authority; unavoidable casualty; civil disorder; riot; insurrection; vandalism; war; act of terrorism; inclement weather; failure of the Internet; failure or error of any Internet access provider; failure or impairment of any lines of transmission belonging to any third party; failure or impairment of any third-party server, router, other equipment or software through which Internet transmissions occur; or, other extraordinary cause if such cause or condition is beyond the reasonable control and without the negligence of the party otherwise chargeable, for so long

as such cause or condition continues and for a reasonable period of time thereafter. Notwithstanding the foregoing, such cause or condition shall not include a party's lack of funds, lack of credit, or other financial inability to perform. If a party intends to rely on the foregoing force majeure protection, it shall timely notify the other in order to permit the other in its sole discretion to suspend or curtail its own performance under the Agreement for such time as the failure, delay or default continues.

9.05. Notices. Any notice or other communication required or which may be given hereunder shall be in writing and shall be delivered personally, telexed or sent by facsimile, e-mail or other electronic medium, or by United States mail, postage prepaid, and shall be deemed given when so delivered personally, when received by facsimile, e-mail or other electronic medium, or if mailed, 3 days after the date of mailing, at the addresses listed under the signatures of the parties hereto. Any party may change its address for notice purposes by providing written notice to the other party and such change shall be effective upon receipt.

9.06. Governing Law. The laws of the State of Texas, excluding its conflicts laws, shall govern this Agreement the rights and obligations of the parties hereto, the entire relationship between the parties hereto, and all matters arising out of or relating to this Agreement. Venue shall be in Gregg County, Texas.

9.07. Non-waiver. No provision of this Agreement shall waive any immunity or defense. No provision of this Agreement is a consent to suit.

9.08. Waiver. No failure by any party to insist upon the strict performance of any covenant, agreement, term or condition of this Agreement or to exercise any right or remedy hereunder shall constitute a waiver. No waiver of any breach shall affect or alter this Agreement, but each and every provision and term of this Agreement shall continue in full force and effect with respect to any other existing or subsequent breach.

9.09. Severability. If any portion of this Agreement is held to be invalid, unenforceable or in violation of any law, such provision shall not affect or impair the validity and enforceability of the remainder of this Agreement. In such event, the parties agree that the arbitrator or court making such determination shall have the power to alter or amend such provision so that it shall be enforceable consistent with the intention of the parties. The parties believe that this Agreement comports with all relevant laws and regulations. In the event that all or any portion of this Agreement shall be found to be contrary to any law or regulation, and as a result is nullified or terminated by force of law, neither party shall be liable to the other by reason of such nullification or termination and REGION VII ESC shall be entitled to receive payment for the fair value of the services it has provided.

9.10. Non-Solicitation. During the term of this Agreement and for a period of one (1) year after any expiration or termination of this Agreement, both parties agree not to directly solicit for employment any employee or independent contractor of the other party involved in the performance of services related to this Agreement, without first conferring with, and obtaining the written consent of, the other party. Such prohibition shall not extend to advertisements customarily placed in media circulated to the public.

9.11. Relationship of the Parties; No Third Party Beneficiaries. Neither party nor any of its directors, officers, partners, employees, agents, contract or temporary employees, computer or other consultants, other advisers or any other person or entity acting on behalf of it shall be deemed to be an employee, agent, partner, owner, or joint venturer of the other party for any purpose whatsoever. Each party shall act as an independent contractor, and nothing contained herein shall be construed to be inconsistent with this relationship. In no event shall either party be liable for the debts or obligations of the other party. Except as explicitly set forth herein, none of the provisions of this Agreement shall be for the benefit of or enforceable by any third party or by any creditors of any of the parties.

9.12. Counterparts. This Agreement may be executed in any number of counterparts, with the same effect as if the signatures thereto and hereto were upon the same instrument, but all of such counterparts taken together shall be deemed to constitute one and the same instrument. A facsimile transmission of this signed Agreement shall be legal and binding on all parties hereto.

9.13. Headings and Titles. The headings appearing herein are for convenience and reference only and shall not be deemed to govern, limit, modify, or in any manner affect the scope, meaning, or intent of the provisions of this Agreement.

EXHIBIT A

DEFINITIONS

As used in this Agreement, the terms set forth below shall have the following meanings.

“Authorized Users” shall mean as defined in Section 1.06.

“Licensee Data” shall mean data originating with Licensee that it submits to DMAC and data that is received from Licensee or on its behalf by REGION VII ESC.

“Confidential Information” shall mean the Intellectual Property and any other information prominently marked as “Confidential” or “Proprietary” which is disclosed by one party to the other.

“Data” shall mean, collectively, Licensee Data and Processed Data.

“Effective Date” shall mean the later of (i) the date when the Licensee signs this Agreement or (ii) the date when REGION VII ESC signs this Agreement.

“Enhancements” means any and all changes or additions to DMAC Software, including, new releases and versions thereof, other than Modifications that add significant new functions to, or substantially improve performance of, DMAC Software.

“Error” means any statement or omission in DMAC, Modifications, or Enhancements that causes or results in, in the case of DMAC Software, an incorrect functioning, or, in the case of Materials, an incomplete or incorrect statement.

“Intellectual Property” means any and all intellectual property associated with DMAC, DMAC Software, Modifications and Enhancements, including, without limitation, designs, formulas, procedures, methods, apparatus, ideas, creations, improvements, works of authorship, materials, processes, inventions, techniques, data, know-how, show-how, algorithms, programs, subroutines, tools, patents and patentable materials, copyrights and copyrightable materials, and trade secrets.

“Modifications” shall mean any and all changes or additions to DMAC, other than Enhancements, that correct Errors therein.

“Processed Data” shall mean Licensee Data submitted to REGION VII ESC that has been received back by Licensee in processed form.

“Product Support Service” shall mean telephone, fax, or e-mail advice and guidance for Licensee’s Authorized Users from qualified personnel concerning the effective use of DMAC by Authorized Users. This service is designed to provide assistance on matters specific to DMAC and not on more general matters such as computer programming, use of third-party software, use of the Internet or use of computers generally. REGION VII ESC may, in its discretion on a case-by-case basis, also provide through this service advice and guidance on these more general matters. Questions requiring specialized knowledge of Licensee connectivity or hardware will be referred promptly to the relevant service provider. Response time for inquiries received by After Hours Product Support Services may be subject to delays caused by after hours paging and response time.

“DMAC” shall mean DMAC Software, any Modifications thereto, DMAC Content, and any data included therein as provided by REGION VII ESC.

“DMAC Content” shall mean data, information, functions or formats for organizing data originated by REGION VII ESC that are not Licensee Data or Processed Data and that are supplied on-line to Licensee through DMAC.

“DMAC Software” shall mean the software licensed by REGION VII ESC pursuant to Section 2 as part of DMAC to enable Licensee access and functionality, except that it shall not include any unauthorized alteration or modification of such software made by Licensee or by any third party.

“Third Party Items” shall mean data, information, software and functions originating with or provided by Third Party Sources.

“Third Party Sources” shall mean other sources and providers of data and services with which REGION VII ESC communicates, with which REGION VII ESC arranges for availability of data, information, software or functions to Licensee or with which REGION VII ESC arranges Internet or electronic links for use by or on behalf of Licensee, but not including subcontractors retained by REGION VII ESC to perform services, functions, duties or responsibilities of REGION VII ESC under this Agreement.

SYSTEM REQUIREMENTS*

Browser	Operating System	Scanners	Additional Software
Internet Explorer 5.5 or later (cookies enabled)	Windows 2000 Windows XP Windows ME	Automatic Feed Optical Mark Readers Dual Read Head (NCS & Scantron)	Adobe Acrobat Reader

*The DMAC suite was designed to be used with Microsoft products, although some users have accessed the system using Macintoshes and/or alternative browsers. However, for optimum results we recommend the Windows environment.

EXHIBIT B

FEE SCHEDULE

DMAC Suite Developed by Region 7 Education Service Center

- ☐ ***CIA Alignment (Curriculum, Instruction, Assessment) -- \$500***
Allows users to create curriculum maps for all TEKS-based courses. Local assessment timelines can also be charted through these reports
- ☐ ***Class Notes -- \$5 per teacher***
Allows teachers to post class activities, assignments, and notes on the internet for student and parent access. Can be used as an online lesson plan system
- ☐ ***PGP -- \$400 per middle school and high school campus***
Assists users in developing state-mandated PGP for 6th-11th grade students failing at least one portion of TAKS test. Benchmark results in TEKScore automatically populate into PGP
- ☐ ***State Assessment--\$1,000***
Provides analysis of TAKS, SDAA, and RPTE student data. Track results by district, campus, or teacher. Reports will help track AYP and state accountability measures as well as provide instructional data analysis
- ☐ ***TAG (TEKS Assessment Generator)-- \$800***
Allows users to create TEKS-based assessments. Users may choose test items written and edited by content specialists or enter their own test items. DMAC also provides item writing training to member districts
- ☐ ***TEKScore--\$1,000***
Provides users with a complete tool kit for pre-bubbling answer sheets, scanning, scoring, and analyzing TEKS-based benchmark tests. Track results by district, campus, or teacher
- ☐ ***Tejas LEE--\$500***
Assists with Tejas LEE data collection, reporting, and analysis. The program assists users in the ARI annual evaluation preparation
- ☐ ***TPRI--\$500***
Assists with TPRI data collection, reporting, and analysis. The program assists users in ARI annual evaluation preparation
- ☐ ***Class Roster—3 Options***
required service for TEKScore, TPRI, TejasLEE, PGP, and State Assessment
 - **Option 1**
 - Initial class roster import and one update at semester
 - \$.60 per student based on enrollment
 - **Option 2**
 - Initial class roster import and updates every 6 weeks
 - \$.75 per student based on enrollment
 - **Option 3**
 - DAILY class roster updates
 - \$1.75 per student based on enrollment

<i>DMAC Products</i>		
<input type="checkbox"/>	CIA Alignment (Curriculum, Instruction, Assessment)	\$500
<input type="checkbox"/>	Class Notes	\$ 7,470
<input checked="" type="checkbox"/>	PGP	\$ 3,200
<input checked="" type="checkbox"/>	State Assessment	\$ 1,000
<input checked="" type="checkbox"/>	TEKScore	\$ 1,000
<input type="checkbox"/>	TPRI	\$ 500
<input type="checkbox"/>	Tejas LEE	\$ 500
<input type="checkbox"/>	TAG	\$ 800
<i>Class Roster Fee</i>		(Required for DMAC Products)
<input type="checkbox"/>	Option 1 -- Initial Class Roster Import & update at semester	\$12,835
<input checked="" type="checkbox"/>	Option 2 -- Initial Class Roster Import & update every 6 weeks	\$16,043
<input type="checkbox"/>	Option 3 -- Daily Class Roster Updates	\$37,434
<i>Total DMAC Contract Fee:</i>		\$21,243
<i>Billing Preference:</i>	<input type="checkbox"/> Before September 1, 2007	<input checked="" type="checkbox"/> After September 1, 2007

*On-site training can be purchased at a rate of \$500 per day per trainer plus travel expenses

IN WITNESS OF, the parties hereto have executed this Agreement to be effective as of the date specified in Section 4.01 of this Agreement.

Region VII Education Service Center:

Licensee: (Superintendent)

KELLER ISD

By: Region VII Education Service Center

By: Keller Independent School District

Name: Elizabeth Abernethy

Name: James R. Veitenheimer

Title: Executive Director

Title: Superintendent

Email: eabernethy@esc7.net

Email: _____

Phone: 903.988.6700

Phone: 817.744.1000

Facsimile: _____

Facsimile: _____

Address: 1909 North Longview Street

Address: 350 Keller Parkway

Kilgore, TX75662

Keller, TX 76248

Dated: June 11, 2007

Dated: June 11, 2007