

# REGION 7 EDUCATION SERVICE CENTER DMAC SOFTWARE LICENSE AGREEMENT

This Software License Agreement (the "Agreement") is entered into as of the 1st day of September, 2018 (the "Effective Date") by and between Region 1 Education Service Center ("REGION 1 ESC") and Horizon Montessori (the "Licensee"). Licensee's acknowledgement of this Agreement constitutes acceptance of the Terms of Use and Privacy Policy, attached hereto as Exhibits A and B.

## 1. DMAC CONTENT.

- 1.01. DMAC Services. REGION 7 ESC provides a suite of Internet hosted, multi-user software applications known as "DMAC Solutions" or "DMAC" that is resident on REGION 7 ESC's servers, and accessible through an Internet portal maintained by REGION 7 ESC. Licensees (and their "Authorized Users") with appropriate software, data input and connectivity are permitted to access purchased modules. Licensee may accomplish tasks using DMAC by establishing an Internet link with REGION 7 ESC's Internet server, by entering or posting data using that link and by requesting and receiving Processed Data using that link. REGION 7 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 its Exhibits, and provided that REGION 7 ESC may restrict, condition or terminate Licensee's 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 software and services with respect to other Licensees.
- 1.02. Product Support. REGION 7 ESC shall provide Product Support Service during its regular service hours. Current Product Support hours and contact information can be found at <https://www.dmac-solutions.net/contact>. Additional support services (such as on-site training and assistance) are available for an additional fee.
- 1.03. Software and Connectivity Requirements. Proper function of DMAC requires Licensee's compliance with REGION 7 ESC's minimum specifications for equipment, software and connectivity. Current system requirements can be found at <https://www.dmac-solutions.net/solutions/requirements.aspx>. These requirements may change periodically as new technology is introduced. Subscribers to the e-newsletter will receive alerts when these requirements are changed or update (please see the attached Privacy Policy as Exhibit B). All other Licensee and users who have "opted out" of such e-newsletter will be solely responsible for periodic review of the above-mentioned site for the most current system requirements. Licensee shall, at its own expense, acquire, select, obtain, install, use and maintain equipment and services meeting or exceeding the specifications provided by REGION 7 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 7 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 (such as on-site training, assistance or troubleshooting, custom programming, etc.) at REGION 7 ESC's then current rate for such services and fees as determined by REGION 7 ESC. Licensee shall be responsible for all related expenses for any such additional services beyond the base fees for purchase modules. General Licensee Obligations. Licensee shall provide REGION 7 ESC with complete, accurate and timely information necessary to permit REGION 7 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 DMAC District Administrator privileges (see Paragraph 1.05). Licensee shall cooperate promptly to provide accurate and full responses to any inquiry or concern of REGION 7 ESC for clarification, documentation or further information related to the DMAC Software.
- 1.05. DMAC District Administrator. Each Licensee shall designate one current employee to serve as the "DMAC District Administrator." The DMAC District Administrator shall be designated by name within this

Agreement and shall serve as the primary point of contact between REGION 7 ESC and Licensee. The DMAC District Administrator shall be responsible for the administration and maintenance of the Licensee's DMAC software and services, and shall coordinate the training of Licensee's authorized users on such software and services. The DMAC District Administrator will ensure that all user accounts are kept up to date, and will promptly delete accounts for users no longer employed by Licensee.

Notwithstanding any other provisions of this Agreement, REGION 7 ESC performance hereunder is contingent upon the following:

- (a) Licensee's use of DMAC Software and submission of data in accordance with REGION 7 ESC specifications;
- (b) Licensee's maintenance of site conditions and equipment in accordance with REGION 7 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 7 ESC to Licensee's hardware for purposes of performing any related DMAC services.

1.06. Authorized Users. Licensee shall identify to REGION 7 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.

1.07. Access to Update Information. Only subscribers to the DMAC e-newsletter will receive up-to-date notifications regarding the latest information and news on the DMAC suite of software. Those Licensees who choose to "opt out," in accordance with the Privacy Policy, are solely responsible for routine review of the DMAC website for current system requirements and software updates.

## 2. **LICENSE.**

2.01. Grant. REGION 7 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. REGION 7 ESC is not liable for any damage to property resulting from the unauthorized or unintended uses of its products or services.
- (b) Licensee shall comply with such reasonable policies, procedures and instructions as may be established by REGION 7 ESC from time to time concerning access to and use of DMAC.
- (c) Licensee shall not access or use DMAC except through its DMAC District Administrator and 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 Applications. Licensee shall not “frame” or “mirror” any Content contained on, or accessible from, the DMAC Applications 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 affect DMAC, including but not limited to data stored on DMAC, DMAC Software, DMAC Content or any equipment maintained or used by REGION 7 ESC.

**Violations or default by the Licensee of any requirements or restrictions set forth above shall constitute a material breach of this Agreement and shall be pursued to the fullest extent of the law in accordance with Region 7 ESC’s applicable protections under federal and state copyright and trademark laws.**

- 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 7 ESC shall have the right to substitute, replace, modify or upgrade DMAC or any part or aspect of it as REGION 7 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 7 ESC hereunder.
- 2.04. Retention of Data Stored in DMAC Software. It is the sole responsibility of the Licensee to retain, store, export and maintain data inputted by its DMAC District Administrator or Authorized Users to comply with any applicable state retention policies. DMAC will not provide raw data in exported form to Licensee if requested, but will assist Licensee in the proper exportation of its own data. By signing this Agreement, Licensee agrees that it will not hold REGION 7 ESC responsible for any data inputted into the DMAC website or software.

If Licensee chooses not to renew the Agreement for products and services at the expiration of the Contract Term, Licensee shall be solely responsible for exporting all data previously stored in DMAC websites or software. After expiration of the Contract Term, REGION 7 ESC is no longer responsible for the retention and maintenance of data inputted by Licensee and its Authorized Users and may dispose of such data, in accordance with applicable state and federal law, as determined to be a business necessity.

### 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 7 ESC the annual use fees as set forth in Exhibit A, based on the Licensee’s selection of modules and other pricing variables. **Annual use fees are on an annual, one-year basis only.** Licensee’s annual use fees will not be prorated or discounted if the term of the agreement is less than one year.
- 3.02. Payment Terms. 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 fees owed to REGION 7 ESC pursuant to this Agreement, Licensee shall pay promptly all government taxes or charges assessed, if any, 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 7 ESC and excluding taxes on REGION 7 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 September 1, 2018 and continue through August 31, 2019, unless terminated earlier as provided herein.
- 4.02. Prorated Terms. This License granted under this Agreement shall begin on September 1<sup>st</sup> and expire on August 31<sup>st</sup> regardless of the actual date of commencement of this Agreement. Agreements entered into between the effective date and expiration date will be considered on the one year term and payments will not be prorated accordingly. Licensees commencing this Agreement in the middle of the one year term will be charged regular annual use fees and must renew their Agreement by September 1<sup>st</sup> of the following year to keep the License granted hereunder.
- 4.03. 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 7 ESC sums due under this Agreement; or
  - (b) Region 7 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 7 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.

- 4.04. 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 7 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 7 ESC all fees otherwise payable in accordance with the terms of Section 3 of this Agreement for all services actually rendered by REGION 7 ESC. No refund shall be due Licensee if Licensee terminates this agreement before the expiration of the Contract Term.
  - (c) Before termination or expiration of this Agreement, Licensee shall export and retain all data inputted by its Authorized Users. REGION 7 ESC shall not be liable for the retention of any Licensee data after the termination or expiration of this Agreement.
  - (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 retain all rights as provided by state and federal 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) Upon execution of this Agreement, REGION 7 ESC will assign login information to the DMAC District Administrator. Temporary passwords will also be provided for all teacher users.
- (b) Licensee, through its DMAC District Administrator, shall maintain an up-to-date list of the names of all Authorized Users including the scope of DMAC access for each Authorized User.
- (c) The DMAC District Administrator shall thereafter 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 7 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 7 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. 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 7 ESC immediately if it becomes aware of any unauthorized use of any username or password, and REGION 7 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 in violation of this Agreement.
- (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. Licensee acknowledges that REGION 7 ESC retains the right to limit or restrict access to individual Authorized Users based on breaches of security or this Agreement.

5.02. Confidentiality. Each party agrees to treat any confidential information inputted or shared through use of DMAC products or services 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 DMAC, including DMAC Software, DMAC Content, Materials, and all related intellectual property, contain valuable trade secrets and confidential information owned by REGION 7 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. Texas Public Information Act. To the extent Licensee receives any request under the Texas Public Information Act ("TPIA") that may seek any confidential DMAC information, Licensee hereby agrees, represents and warrants that it: (1) shall not disclose such information; (2) shall provide adequate notice to Region 7 ESC to allow Region 7 ESC to seek protection of the information under the TPIA through the Attorney General or the Courts; and (3) agrees that the release of such information would cause irreparable harm to Region 7 ESC for which no adequate remedy at law exists, except the prevention of such release.

5.04. Proprietary Information. Licensee acknowledges that REGION 7 ESC owns applicable copyright and trademark rights in DMAC, including DMAC Software, DMAC Content, Materials, and all related Intellectual Property, and the activities and functions performed by REGION 7 ESC in response to communications from Licensee. All right, title and interest in DMAC shall be and remain the exclusive property of REGION 7 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 7 ESC.

REGION 7 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 7 ESC's option be included at the beginning and/or end of each page, screen or set of data or, at REGION 7 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 7 ESC in confidence and not use it, except in accordance with this Agreement. Any violation of the above will result in legal action by REGION 7 ESC to defend and protect its trademarks and copyrights under applicable state and federal law.

5.05. Submission of Data to Third Parties. Licensee acknowledges that DMAC provides the capability to submit Licensee Data to certain third parties and grants permission to REGION 7 ESC to submit Licensee Data to third parties through DMAC as requested by the Texas Education Agency or as required by law. Licensee assumes full responsibility for Licensee Data submitted via DMAC, in accordance with the Family Educational Rights and Privacy Act ("FERPA"). REGION 7 ESC makes no representation or warranty and shall not be responsible with regard to the confidentiality of Licensee Data after the data leaves the back end of REGION 7 ESC's Internet server.

## 6. **WARRANTIES.**

6.01. Warranty.

(a) *Title and Ownership*. REGION 7 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 7 ESC also represents, warrants and covenants that it has all of the necessary licenses and authorizations to grant a License to Licensee for any software or data standards which may be included in DMAC.

(b) *No Trojan Horse or Others Similar Routines*. REGION 7 ESC will take all reasonable measures to ensure 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. In the unlikely event that any such viruses are found on DMAC software, Licensee will be notified immediately.

- 6.02. Availability and Performance. REGION 7 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 7 ESC reserves the right to perform maintenance of the DMAC Software as needed. REGION 7 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 7 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 7 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 7 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 7 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 7 ESC does not warrant the same. Except as expressly provided herein, REGION 7 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 7 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 7 ESC be responsible for the acts or omissions of Third Party Sources. REGION 7 ESC is not responsible for the condition, quality, accuracy, reliability, suitability or functionality of any Third Party information, REGION 7 ESC makes no warranty concerning the same, and, all Third Party information is provided on an "AS IS" basis only;
- (c) REGION 7 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 7 ESC's Internet server or of any inbound code or data before the packet enters the back end of REGION 7 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.

Venue for any legal action arising out of this Agreement shall be in the state of Texas, Gregg County.

**8. LIABILITY LIMITATION.**

NOTWITHSTANDING THE FOREGOING, IN NO EVENT SHALL REGION 7 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 7 ESC HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. REGION 7 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 7 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 7 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 7 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.

Please check the desired products and services

<b>2018 -19 Applications Purchased for District/Charter:</b>			
Yes <input checked="" type="checkbox"/>	No <input type="checkbox"/>	State Assessment	\$1,200
Yes <input checked="" type="checkbox"/>	No <input type="checkbox"/>	TEKScore	\$1,000
Yes <input checked="" type="checkbox"/>	No <input type="checkbox"/>	TPRI	\$500
Yes <input type="checkbox"/>	No <input checked="" type="checkbox"/>	Tejas LEE	\$0
Yes <input type="checkbox"/>	No <input checked="" type="checkbox"/>	CIA Alignment	\$0
<b>2018-19 Applications Purchased for Campus(es):</b>			
Yes <input checked="" type="checkbox"/>	No <input type="checkbox"/>	TAG* \$250 per campus (3)	\$750
Yes <input type="checkbox"/>	No <input checked="" type="checkbox"/>	FormWorksTM* - \$100 per campus	\$0
Yes <input checked="" type="checkbox"/>	No <input type="checkbox"/>	Appraisals* - \$250 per campus (3)	\$750
Yes <input type="checkbox"/>	No <input checked="" type="checkbox"/>	PGP/PGP Intervention* - \$400 per campus	\$0
Yes <input checked="" type="checkbox"/>	No <input type="checkbox"/>	Rtl* - \$500 per campus (3)	\$1,500
Yes <input checked="" type="checkbox"/>	No <input type="checkbox"/>	SIP* - \$500 per campus (3)	\$1,500
Yes <input type="checkbox"/>	No <input checked="" type="checkbox"/>	SSI* - \$500 per campus	\$0
Yes <input checked="" type="checkbox"/>	No <input type="checkbox"/>	LEAD4WARD* - \$295 per campus (3)	\$885
Yes <input type="checkbox"/>	No <input checked="" type="checkbox"/>	LPAC* - \$400 per campus	\$0
* Note: Applications can be purchased by individual campuses within a district. For this option, please contact your DMAC representative for assistance.			
<b>Class Roster Fee</b>		<b>(one-time fee required except for CIA, TAG, SIP, or Appraisals)</b>	
<input type="checkbox"/>	Option 1 – Six updates - \$0.65 per student		
<input checked="" type="checkbox"/>	Option 2 – Weekly updates - \$1.00 per student		\$1,350
<input type="checkbox"/>	Option 3 – Daily Updates - \$1.50 per student		
		<b>DMAC Contract Fee:</b>	\$9,435
		<b>Region One ESC Base Fee</b>	\$3,000
		<b>Total 2018-19 Fee:</b>	\$12,435

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.

**LICENSEE:**

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

Name: \_\_\_\_\_

Title: \_\_\_\_\_

**DMAC District Administrator:**

Phone: \_\_\_\_\_

Address: \_\_\_\_\_

\_\_\_\_\_

Dated: \_\_\_\_\_

PO: \_\_\_\_\_

**Region One ESC**

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

Name: Dr. Cornelio Gonzalez

Title: Executive Director

Email: cgonzalez@esc1.net

Phone: (956) 984-6031

Fax: (956) 984-7641

Address: 1900 W. Schunior

Edinburg, TX 78541

Dated: \_\_\_\_\_

## EXHIBIT A -- FEE SCHEDULE

### DMAC Suite Developed by Region 7 Education Service Center

Data Analysis & Assessment		Price
<b>State Assessment</b>	<b>Analysis of State Assessment Data.</b> STAAR or TELPAS reports by district, campus, teacher or student. Tracks federal and state accountability measures and provides data analysis to assist in developing differentiated instruction.	<b>\$1,200*</b> per district
<b>TEKScore</b>	<b>Local Assessments.</b> Incorporates a complete toolkit for scoring and analyzing local assessments (aligned to TEKS, ELPS and/or AP). The Student Response System allows students to input their answers to an assessment online. Utilize the Dashboards at the District/Campus or Teacher levels to quickly drill down and analyze results.	<b>\$1,000*</b> per district
<b>TAG</b>	<b>TEKS Assessment Generator/Online Test Item Bank.</b> Create local assessments. Select from original content aligned to state standards or create your own. TEA Released items and TEKS Resource System items are also available.	<b>\$250</b> per campus
<b>TPRI</b>	<b>Early Reading Performance.</b> Assists with TPRI data collection, reporting and analysis. The program also creates an export for users to complete the ECDS Kindergarten data submission to TEA.	<b>\$500*</b> per district
<b>Tejas LEE</b>	<b>Early Reading Performance.</b> Assists with Tejas LEE data collection, reporting and analysis. The program also creates an export for users to complete the ECDS Kindergarten data submission to TEA.	<b>\$500*</b> per district
<b>lead4ward</b>	<b>Data Tools.</b> Harness the power of DMAC to create digital versions of data tools recommended by lead4ward during their statewide trainings on how to use state and local data to help students and improve instruction.	<b>\$295*</b> per campus
Planning Tools		Price
<b>FormWorks®</b>	<b>Generate Online Forms.</b> Create customized forms and collect data. Forms can be stand-alone (e.g., district surveys, travel requests) or they may be linked to other DMAC applications.	<b>\$100</b> per campus
<b>PGP-High School &amp; PGP-Intervention</b>	<b>Personal Graduation Plan (HS).</b> Facilitates the development and maintenance of four-year plans for high school students allowing users to select assigned courses, graduation plans, Endorsements, Programs of Study and document credits. Meets requirements of HB5. <b>PGP Intervention (MS/JH).</b> Permits users to develop state-mandated personal graduation plans to document intervention/monitoring plans and student/parent goals.	<b>\$400*</b> per campus
<b>Rtl</b>	<b>Response to Intervention.</b> Create and maintain documentation for struggling students. Historical plans, progress monitoring and assessment data complete the interactive web-based plans.	<b>\$500*</b> per campus
<b>SIP</b>	<b>District/Campus Improvement Plans.</b> Collaborate with staff at multiple locations to develop and manage improvement plans. Automatically reconcile expenses and upload custom pages. Updated with Critical Success Factors (CSF) and Commissioner's 4 Priorities and also includes a separate Comprehensive Needs Assessment (CNA) module.	<b>\$500</b> per campus
<b>Appraisals</b>	<b>Appraisal System.</b> Allows administrators to meet state-mandated requirements for teacher appraisals (e.g., T-TESS and T-PESS). Teachers are able to complete and electronically sign their documentation online.	<b>\$250</b> per campus
<b>CIA Alignment</b>	<b>Curriculum Instruction and Assessment.</b> Align and map district built curriculum (i.e., TEKS, ELPS and AP). Users can connect planned instruction to performance on state assessments in order to increase student achievement. Print, export and share documentation with ease.	<b>\$500</b> per district
<b>LPAC</b>	<b>Documentation of LPAC Process.</b> Create and manage ESL and Bilingual forms and letters. Integrates with other DMAC applications assisting with data entry and documentation for EL population. Data Dashboard and Report features available to quickly identify students.	<b>\$400*</b> per campus
<b>SSI</b>	<b>Student Success Initiative.</b> Develop/maintain accelerated instruction plans for students in grades 5 and 8 who have failed the Reading and/or Math portion of state tests. Includes all state forms required for the Grade Placement Committee.	<b>\$500*</b> per campus
FREE Tools		
<b>Student Portfolio</b>	Seamless transfer of individual student data district-wide. Locate students quickly and access all data K-12 in Student Portfolio. Record notes, upload additional information, and print local and state data.	<b>FREE</b>
<b>Utilities</b>	System Management Tools -- Upload and access data, manage user accounts and student enrollment information.	<b>FREE</b>
<b>DMAC Exports</b>	Customize the export of your state and local data included in DMAC as a .csv format.	<b>FREE</b>
<b>*Class Roster Fee -- Annual fee required for applications that need data from your student management system.</b>		<b>Price Per Student</b>
<b>Option 1</b>	Six uploads per year	<b>\$0.65</b>
<b>Option 2</b>	Weekly uploads	<b>\$1.00</b>
<b>Option 3</b>	Upload as needed - including daily	<b>\$1.50</b>

## Region One ESC Base Fee

### For Multiple DMAC Products

School Size	+5A	5A	4A/3A	2A/1A
2-3 DMAC Products	5,000	4,000	3,000	1,000
4-5 DMAC Products	6,000	5,000	4,000	2,000
6-11 DMAC Products	7,000	6,000	5,000	3,000

The base fee includes:

- District technical assistance (On-site)
- District/Campus phone & email technical assistance
- Up to two district TOT training per product (On-site)
- DMAC Academy

**OR**

### For One DMAC Product

School Size	+5A	5A	4A/3A	2A/1A
*Required	2 Days	2 Days	1 Day	1 Day
Technical Assistance	Up to 3 Days	Up to 3 Days	Up to 2 Days	Up to 2 Days
Base Fee Per Product	\$2,000	\$2,000	\$1,000	\$1,000

\*Required for full functional use of the program

The base fee includes:

- District technical assistance (On-site)
- District/Campus phone & email technical assistance
- Up to two district TOT training per product (On-site)
- DMAC Academy

\*Additional on-site training can be purchased at a rate of \$800 per day per trainer

## EXHIBIT B – TERMS OF USE

These Terms and Conditions of Use (the “Terms of Use”) apply to all DMAC Solutions (or “DMAC”) web sites, services, and software. DMAC Solutions reserves the right, at its sole discretion, to change, modify, add or remove portions of these Terms of Use, at any time. The most current version of these Terms of Use are available on the DMAC website at [insert URL].

BY ACCESSING THE DMAC SOLUTIONS SITES OR SERVICES, YOU AGREE TO THESE TERMS OF USE. IF YOU DO NOT AGREE, DO NOT USE THE SITE OR SERVICES. ANY ACCESS OR USE OF THE DMAC SOLUTIONS SITE OR SERVICES WILL CONSTITUTE ACCEPTANCE OF THESE TERMS AND CONDITIONS.

### Privacy

The Privacy Policy at <https://www.dmac-solutions.net/privacy/> establishes the rules governing the security of the data associated with DMAC’s websites and services. By accessing or using the DMAC websites or services, you agree to the terms of the Privacy Policy. Access or use of DMAC web sites, software or services constitutes acceptance of the Privacy Policy.

### Scope of Use

A user may not engage in, foster, or promote behavior that:

1. Violates any local, state, or national statute, regulation, or rule, including, but not limited to, the Family Educational Rights and Privacy Act (FERPA), or the Texas Public Information Act.
2. Is abusive, deceptive, obscene, defamatory, slanderous, offensive, or otherwise inappropriate;
3. Violates or otherwise encroaches on the rights of others, including, but not limited to, infringing or misappropriating any copyrighted or trademarked materials, intellectual property or proprietary right of another;
4. Attempts to gain unauthorized access to any of the Services, whether through hacking, password mining, or any other means;
5. Interferes with or disrupts the DMAC Solutions services, servers or networks connected to the services;
6. Reverse engineers, disassembles, or decompiles the services or software included in any DMAC web site, software or service.

### Accounts, Passwords and Security

User accounts are created and assigned specifically to individuals and should not be shared with any unauthorized user. Any individual who is provided with a user account is solely responsible for the security and privacy of that account. If, for any reason, a user account is compromised or believed to be insecure, the user is required to immediately change the account password. If a user account has been misused, the individual is required to immediately notify DMAC Solutions. Licensees of DMAC software shall provide all authorized users with access to DMAC products and services and shall be solely responsible for authorized users’ acknowledgement and acceptance of the Terms of Use, Privacy Policy and Software License Agreement.

### Ownership of Content

DMAC prohibits the use, modification or reproduction of any Region 7 ESC or DMAC logo, graphic, image, artwork, text, process, interface, tagline or other mark unless express written permission is provided in accordance with its rights under the federal Copyright Act and/or relevant federal or state trademark laws.

Personal content provided by the user/Licensee and stored in DMAC software and web sites is the responsibility and property of the user/Licensee. DMAC does not endorse, support, represent or guarantee the completeness, truthfulness, accuracy, or reliability of any content or communications submitted and/or inputted into DMAC software or web sites by the user.

### Violations

Any violation or suspicious activity of these Terms of Use must be immediately reported to DMAC by phone at 1-866-988-6777 or email [privacy@dmac-solutions.net](mailto:privacy@dmac-solutions.net).

### Termination

DMAC reserves the right to suspend or terminate access to its sites or services, without notice, upon suspicion or evidence of violations of these Terms of Use by any user, Licensee or third party.

## EXHIBIT C – TEA STRATEGIC PRIORITIES (PARTS 1-4)

DMAC offers the following software applications designed to ultimately benefit student outcomes in accordance to TEA Strategic Priorities (Parts 1-4):

PRIORITY ONE - Recruit, support and retain teachers and principals	
<b>Appraisals</b>	<b>Appraisal System.</b> Allows administrators to meet state-mandated requirements for teacher appraisals (e.g., T-TESS and T-PESS). Teachers are able to complete and electronically sign their documentation online.
PRIORITY TWO - Build a foundation of reading and math	
<b>TEKScore</b>	<b>Local Assessments.</b> Incorporates a complete toolkit for scoring and analyzing local assessments (aligned to TEKS, ELPS and/or AP). The Student Response System allows students to input their answers to an assessment online. Utilize the Dashboards at the District/Campus or Teacher levels to quickly drill down and analyze results.
<b>State Assessment</b>	<b>Analysis of State Assessment Data.</b> STAAR or TELPAS reports by district, campus, teacher or student. Tracks federal and state accountability measures and provides data analysis to assist in developing differentiated instruction.
<b>TAG</b>	<b>TEKS Assessment Generator/Online Test Item Bank.</b> Create local assessments. Select from original content aligned to state standards or create your own. TEA Released items and TEKS Resource System items are also available.
<b>TPRI</b>	<b>Early Reading Performance.</b> Assists with TPRI data collection, reporting and analysis. The program also creates an export for users to complete the ECDS Kindergarten data submission to TEA.
<b>Tejas LEE</b>	<b>Early Reading Performance.</b> Assists with Tejas LEE data collection, reporting and analysis. The program also creates an export for users to complete the ECDS Kindergarten data submission to TEA.
<b>CIA Alignment</b>	<b>Curriculum Instruction and Assessment.</b> Align and map district built curriculum (i.e., TEKS, ELPS and AP). Users can connect planned instruction to performance on state assessments in order to increase student achievement. Print, export and share documentation with ease.
<b>lead4ward</b>	<b>Data Tools.</b> Harness the power of DMAC to create digital versions of data tools recommended by lead4ward during their statewide trainings on how to use state and local data to help students and improve instruction.
PRIORITY THREE - Connect high school to career and college	
<b>PGP-High School</b>	<b>Personal Graduation Plan (HS).</b> Facilitates the development and maintenance of four-year plans for high school students allowing users to select assigned courses, graduation plans, Endorsements, Programs of Study and document credits. Meets requirements of HB5.
PRIORITY FOUR - Improve low-performing schools	
<b>LPAC</b>	<b>Documentation of LPAC Process.</b> Create and manage ESL and Bilingual forms and letters. Integrates with other DMAC applications assisting with data entry and documentation for EL population. Data Dashboard and Report features available to quickly identify students.
<b>SSI</b>	<b>Student Success Initiative.</b> Develop/maintain accelerated instruction plans for students in grades 5 and 8 who have failed the Reading and/or Math portion of state tests. Includes all state forms required for the Grade Placement Committee.
<b>PGP-Intervention</b>	<b>PGP Intervention (MS/JH).</b> Permits users to develop state-mandated personal graduation plans to document intervention/monitoring plans and student/parent goals.
<b>Rtl</b>	<b>Response to Intervention.</b> Create and maintain documentation for struggling students. Historical plans, progress monitoring and assessment data complete the interactive web-based plans.
<b>SIP</b>	<b>District/Campus Improvement Plans.</b> Collaborate with staff at multiple locations to develop and manage improvement plans. Automatically reconcile expenses and upload custom pages. Updated with Critical Success Factors (CSF) and Commissioner's 4 Priorities and also includes a separate Comprehensive Needs Assessment (CNA) module.