



Encompass Web Solution Service Agreement

For

Solano Community College District
Fairfield, CA

March 24, 2010

<http://www.solano.edu>

iModules Software, Inc.
7400 W. 132nd Street, Suite 300 • Overland Park, KS 66213
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This agreement contains confidential and proprietary iModules Software, Inc. information intended solely for the institution indicated above and other related parties under contract with the institution and in agreement not to disclose any information to third parties without the written permission of iModules.



Service Agreement

This Agreement is made this ____ day of March 2010, by and between **iModules Software, Inc.** ("Company") and **Solano Community College District** ("Client")(One College, 3 Campuses: Fairfield, Vacaville Center & Vallejo Center). Whereas, Client engages and authorizes Company to provide services as described below:

Project Contact Information:

Name _____ Title _____
 Address _____
 City _____ State _____ Zip _____ Country _____
 Phone _____ Fax _____ Email _____
 Current Site URL: _____

Billing Information:

Name _____ Title _____
 Address _____
 City _____ State _____ Zip _____ Country _____
 Phone _____ Fax _____ Email _____

Services to be provided:

<u>Encompass Online Solution</u>	Price
Design, Initial Setup & Implementation Fee: Year 1 (04/01/2010 – 03/31/2011)	\$17,626
<p>A one-time setup/design fee for the Encompass Solution which includes design, implementation, programming, training, hosting, license, maintenance and data importation of a properly formatted data base. Complete solution functionality is described as follows.</p> <p>This fee is payable as follows: The payment of seventeen thousand, six hundred twenty-six dollars (\$17,626) is due upon execution and delivery of this Agreement.</p>	

<p>Annual License, Maintenance & Hosting Fee:</p> <p style="text-align: right;">Year 2 (04/01/2011 – 03/31/2012) \$15,126 Year 3 (04/01/2012 – 03/31/2013) \$16,438</p>	
<p>The annual license/maintenance fee allows the Company to provide services to Client including site hosting, customer service, training, feature enhancements, maintenance, filtering and administrative privileges. This fee is paid annually in advance for the duration of this contract with the first payment due on 04/01/2011. This fee is for a 2-year period ending on 03/31/2013.</p>	

Inclusive Services:

<p>Design Services</p>	<p>N/C</p>
<p>Design Services defines the look and feel (brand) of the site. A Custom Design provides client the resources to create a completely new look and feel for the new site that properly communicates Clients mission, values and spirit. Client will work with Company designers to create and establish this new site design. Some limitations or design adjustments from existing website may apply; i.e.; Some images rotators will be replaced with new system and or adjusted in size, possible removal of non essential pages, reorganization of content, etc. Additionally, any external solutions will need to remain on existing servers and be built into the iModules design.</p>	
<p>Training</p>	<p>N/C</p>
<p>Prior to site going "live", Client will attend a training class (3 days) at Company offices. Client can bring up to 6 staff members at no charge. Client is only responsible for traveling and lodging expenses. This training class will be coordinated through Implementation and Company training department. Client will be provided at least thirty days advance notice of training session. Once "live", Client can sign up for additional training at no additional charge.</p>	
<p>Professional Services</p>	<p>N/C</p>
<p>Company will provide ten (10) hours of managed services through the implementation timeline to aid client in preparing the site for launch. These hours of services can be used at the discretion of the client and coordinated through the project manager.</p>	



Each of the undersigned acknowledges that it has reviewed and accepted this Service Agreement and the iModules Terms and Conditions (which are incorporated herein by this reference). Termination of this Service Agreement is governed by the Terms and Conditions per Paragraph 2.

Company: iModules Software, Inc.

Client: Solano Community College District

Name: _____

Name: _____

Title: _____

Title: _____

Signature: _____

Signature: _____

Encompass Project Summary

Encompass from iModules is a robust web communication tool that can be configured to meet multiple objectives. The following outline describes the technical and functional aspects, implementation details, and project deliverables necessary to create a solution to meet the needs of *Solano Community College* (SCC). Specific requirements are outlined in Appendix A.

- **Integration of Data with Banner**
 - Description: It is important to the business practices of the SCC Advancement Division that a solid data integration plan is established between Encompass and Banner.
 - Solution: iModules offers a variety of ways to move data in and out of Encompass, including SGHE Connector for Encompass, Web Services API, SFTP, and import/export files. iModules will work with the SCC Advancement Division to put the absolute best process in place that meets the necessary business requirements for SCC.

- **Online Events Management**
 - Description: The current process for managing event registrations is not dynamic. SCC is also looking to improve the user experience. Online Event Registration data needs to be able to be communicated with the Banner Database.
 - Solution: iModules will deliver an events management system that will allow easy creation of events at both the main level and club level, and provide an experience for the end user that is engaging and easy to navigate.
 - Event Registrations collected through our online forms will be able to be shared with the Banner Database using various data sync options within our tools. Available tools for creation of forms for: President's Circle, Presidential Community Partnership Award, etc. All SCC Events like http://www.solano.edu/educational_foundation/upcoming_events.html can be created within the capabilities of the tools of Encompass.

- **Gift Processing**
 - Description: SCC will benefit from an integrated solution, improving user experience, and streamlining the online donation process. This process needs to be able to communicate with the Banner Database as well.
 - Solution: iModules will deliver an online donation system that SCC can utilize that will enable them to easily create a campaign, and process transactions in an efficient and easy manner. Also, with the integrated email marketing system, Encompass will allow SCC to easily solicit campaigns effectively and efficiently to their constituents. Online gifts collected in the Encompass system will be able to be shared with the Banner Database using various data sync options within our tools.
Online Giving:
 - The listed application for download can be created in a dynamic, interactive form through our Campaign Tools. This can integrate secure eGateway transactions. Please select one of the supported iModules eGateways. This example campaign can be created within the capabilities of the tools of Encompass. iModules will include the creation of this campaign or a campaign very similar. Additional campaigns can

be created using our tools or through the included professional services hours:
http://www.solano.edu/president/scholarship_foundation.html

- ***Integrated Electronic Communication Tool (Creation and Sending of Bulk Email)***
 - Description: iModules is offering a marketing system that allows for easy segmentation and creation of email communication.
 - Solution: iModules delivers an email marketing system that not only allows for easy segmentation of the database based on member data and actions, but also allows for the reuse of content to populate an email message. This reuse of content will, again, increase staff efficiencies, as well as, maintain a consistent message to the constituency.

- ***Online Community, Directory, Networking and Member Engagement***
 - Description: SCC does not have an online environment that will allow alumni, gives to SCC or friends of the Community College...to network with each other and engage with the institution in one place.
 - Solution: Using the Encompass platform, SCC will be able to create both social and professional networking opportunities for their alumni. Features can include: Online Directory, Class Notes, Message Boards, Facebook Connect, Blogs, Personal and Professional profiles, etc. In addition, they will be able to use sub-communities and groups that will allow segments of the alumni population to identify himself/herself based on geography, interest, school, department, etc. This new engaging presence will allow SCC to improve and build stronger relationships with its alumni and other constituent groups.

- ***Website Design***
 - Description: The Foundation/fundraising/Alumni office needs a solution that will allow them have same look and feel as the institutional website that properly communicates SCC's mission, values, and spirit while incorporating the functionality needed to engage their constituents. However, unique to help engage participation.
 - Solution: iModules will work with SCC to put together a fresh and engaging experience for the association and its members. This design will be similar but and a unique design with a match of the necessary institutional site characteristics. SCC will work with iModules Design Services and define what would work best at SCC.

- ***Content Management System***
 - Description: In order to empower members of the alumni and development staff to maintain their own pages, SCC needs a system that will allow for content creation and approval for all website pages.
 - Solution: iModules will deliver full featured content management system that will allow SCC to produce workflow process that will streamline communication and increase the rate of content changes to the website.

Note: The project summary is based on the iModules experience of nearly 600 clients across the country and nation. The final implementation of Encompass may vary from the scope of use below. Changes to the scope of use may cause project implementation timelines to be altered.

Legal entities

Encompass will be licensed to support the following legal entities and institutions:

Entity 1 Solano Community College District
Campuses include: Fairfield, Vacaville Center, Nut Tree, SBDC, TAFB Vallejo Center
The Design and layout of this solution will appear as one site and link to the iModules Encompass product from the main URL: www.solano.edu . Each campus above may have their own URL, however the design and implementation is intended to be created around one college with multiple campuses.

Communities

The Encompass solution will be licensed to support the following Communities*:

Included	Community	Constituent Type	Constituent Size	Offline or Backend Database	Encompass Admin's (Qty)
Yes	Alumni/Constituent/Member Site	Alumni	XXXX	SunGard Banner Advancement	2+ Unlimited included

* Note: Unless otherwise indicated, all of the above communities will reside within a single instance of the Encompass platform.

Design Services

Client will receive a Unique Design as described below. The design includes up to 3 design revisions to approve a final design. iModules will produce two design templates to be used throughout the website unless additional templates are specified below.

Design - A Custom Design will provide a complementary design based on an existing institutional or alumni website. Client is responsible for providing all web imagery, including logos, banners, etc. in the following format:

- Layered Photoshop documents (JPG and GIF flat files are not workable formats)
- HTML mock-ups or full HTML sites

Mobile Marketing for Encompass – A site can be created to allow SCC to have an ideal mobile site for supported devices such as iPhones, Palm Pre, and Google Android. The iModules Design Service team will work with SCC to create templates and mobile html mock-ups that will allow SCC to have a site that's ideal to navigate from a mobile device as part of its' Encompass solution. This can be use of Professional Services and is an optional charge.

The following custom or design matches for the following communities and sub-communities have been included in this scope of work.

Community	Unique Design for Community	If Unique Design is required is Design Custom or a Design Match	Number of Templates
Foundation/Giving/Alumni/	Yes	Custom Design	2

Constituent/ Member Site			
Mobile Templates	No	Mock-ups/ Templates to match alumni/constituent site ideal for viewing on supported mobile device	INQUIRE

Other Unique Design Requirements:

iModules will provide:

After work as stated above is approved and signed off by the Client and launched (“live”), any design changes, custom design work or additional functionality requested by Client will be billed based on hours required to implement requested changes. Company will provide Client estimate and Work Order for Client approval prior to beginning any such request. Additional Services will be billed at \$150/hr.

Encompass Features

Encompass will be configured to support the following detailed features

Donation Campaigns

Included	Campaigns	Brief Description
Yes	Giving Campaigns	Qty = 2+ Multiple campaigns can be supported. iModules will include one built out campaign.
Yes	Unique Channel/Site	This campaign requires a unique site or channel including a URL.
Yes	Merchant ID's	Client must select iModules supported Gateway.
Yes	Other Requirements	Reporting output. See needs analysis for details.

Membership Management

Included	Membership Campaigns	Brief Description
No	Membership Dues	
No	Tuition Fees	
No	Multiple Merchant ID's	
Yes/No	Other Requirements	

Events Management

Included	Scope	Brief Description
Yes	Calendar Announcements	
Yes	Simple RSVP Events	
Yes	Complex Events	
No	Multiple Merchant ID's	

Custom Forms (Optional)

Included	Scope	Brief Description
Yes	Custom Form 1	As needed

Email Marketing

Included	Scope	Brief Description
Yes	Email Volume	Estimated Volume of Emails/Month = ?
Yes	Custom Email Templates	Custom Email templates Qty = 1- billable hours for additional
Yes	eNewsletters	Frequency of eNewsletters = (Monthly/Qtrly/Annual)

Email Forwarding, Email Accounts and Email Appends

Included	Scope	Brief Description
Yes	Email Forwarding/ Webmail	Google Mail Email forwarding (Manual set up until Google integration is completed as a future enhancement).
No	Email & Data Appends	The iModules Email & Data Append Service offering is designed to provide Clients a simple and efficient means of obtaining email addresses, current address information and other data for their constituent records.

Content Management

Included	Scope	Brief Description
No	CMS – Main Website	Content management system for all content pages and community features. Only Foundation, Alumni, Giving pages.
Yes	CMS - Community	Content management system for community
Yes	Google Analytics	Google Analytics will be utilized to provide web traffic analytics.
Yes	Managed Services - Implementation Project	Managed Services provides the ability for iModules to help build out the client generated content on the site. This service can support the implementation effort or be purchased separately as an ongoing service. 10 hours included.

Networking

Included	Scope	Brief Description
Yes	Directory Search	Basic and Advanced Directory Search or Career Center search capabilities will be deployed
Yes	Admin Created Groups	These are assigned or opt in groups created and managed by the Administrators based on selective data fields in the profile
Yes	Member Created Groups	
Yes	Blogs	
Yes	Message Boards	
Yes	Class Notes	
No	Facebook Page	Fan Page will be created on Facebook. iModules can provide this at an hourly rate. iModules can provide several options for step by step procedures. For example: <u>iModules shortcuts on how to....</u> or <u>http://tutorialblog.org/how-to-create-a-facebook-fan-page</u> or start building here...

		http://www.facebook.com/pages/create.php
Yes	Connect for Encompass	Connect for Encompass is the iModules add-on feature to connect member identity and content from our client websites directly to Facebook. The two most valuable features are single sign-on and News Feed propagation. When a member first visits a Connect-enabled site they will have the option to authenticate both with Facebook and also with the alumni community. Once that is successful, the accounts are "connected" and on future logins, the member can authenticate with either their community or Facebook username/password.

Career Center Integration

Included	Scope	Brief Description
Yes	Career Center	Build connections and enable career networking between all of your members with Job Postings and Career Mentoring, along with systems for Business Card profile, Mentor profile, Resume profile, Classifieds and more.
No	Experience for Encompass	Experience for Encompass ("EFE" or the "Software") is the iModules add-on feature that brings personalized Experience jobs and content to the Encompass Career Center, as well as providing an on-ramp to additional Experience services available at Experience web sites. The two most valuable features of EFE are Single Sign-on to Experience and personalized Experience jobs and career guidance Gadgets.

Data and Integration

The data upload process and standard import/export tools are included in the base price.

Data Upload and Import/Export Process - As a standard part of implementation, Client will provide to Company a comma separated file (csv) of Client constituent/member data that will be pre-loaded into the solution (services) listed above prior to site launch. Online community database will be created from data map provided by Client. Client will be responsible for providing data for uploading into the online database to iModules in an Excel or CSV file format. After the initial launch, Client will attend import/export training and is responsible for imports/exports on an ongoing basis.

SFTP Services with Encompass - Clients can import/export a file via a secure FTP (SFTP) connection. These services enable clients to build an automated process from their back end data system. Once an import file is uploaded to the SFTP, it is automatically picked up by the Import Member Data service. The file is imported into the community as a regular import with the administrator receiving the standard import tool email notification that it has been imported. Nightly exports are generated and placed on the secure FTP to automate the retrieval of member updates made in the iModules system.

Additional Advanced data integration options are available below.

Included	Integration Option	Brief Description
Yes	SGHE Connector for Encompass	The SGHE Connector for Encompass developed as part of the SunGard and iModules partnership, provides the ability to display campaign history from SunGard's Banner Advancement solutions within the Encompass profile and also provides a Bi-directional synchronization of constituent data. Implementation of Connector may occur later than overall Encompass Solution implementation.
Yes	Web Services for Encompass	Company provides as a standard feature of the services data integration capabilities through Web Services. Web Services are industry standard interfaces through which applications can share data over the Internet.
No	Single Sign-on Authentication	Company currently provides user authentication against a Client-specific CAS or LDAP directory. Logins utilize a Username and Password to authenticate the member against the data stored in a directory outside the iModules solution. Note: *CAS and LDAP cannot be used in conjunction with Facebook Connect.

No	Offline Database Conversion	Banner database
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eCommerce –This utility provides the Client the ability to process e-commerce transactions within the online community (Encompass). There is no charge or transaction fee for this service from Company to Client. Client is responsible for establishing an account with an Internet Merchant provider and is responsible for any bank charges. The chart below shows the third party gateway providers which are currently supported by Company.

Standard e-commerce providers - Please circle the preferred Payment Gateway Provider you wish to service online transactions. If you don't know your preferred Gateway provider at the time of signing this Agreement, it will be asked for during implementation. Connections to these providers is handled via remote API. Selection of any provider not listed below will have additional charges.

If you do not know the e-commerce provider, one of the following can be selected at a later date at any point during implementation.

Agilis	Cybersource**	Official Payments	Skipjack
Authorize.Net	IATS	Paymentech	TransNational
Blue Fin	Merchant e-Solutions	PayPal – PayFlow Pro	Touchnet
Cashnet	Moneris eSelect Plus	Plug n' Play	USA ePay
Commweb	QuickPAY (Nelnet)	Secure Pay	Elavon ViaKlix
YourPay / LinkPoint	Neos	Shift4	Elavon Virtual Merchant

* Note: if PayPal is chosen it also requires the purchase of PayFlowPro 'Basic Fraud Protection' package.

Client Training Included in this Agreement

Our training options attempt to match this flexibility by providing many ways for you to learn the platform and become familiar with its features. We offer training resources and product information resources for all phases of your site management, providing a comprehensive approach focused on helping you succeed every step of the way. Below is a description of the various training and other resources available to our Clients.

Tutorials - Our tutorials are short, interactive “movies” demonstrating how a module or feature within a module is used. Tutorials may be accessed at any time from our Client Community and through the administrative tools of your site. Unlimited access to these tutorials is included in your license fees.

Modulars - Modulars are instructor-led group sessions held via phone/Web conference. You can register on the Client Community for the date and time you would like to attend each session. Unlimited access to these sessions is included in your license fees.

“How-to” Documents - Our step-by-step “How-to” Documents walk you through how to use each Encompass module. The documents can be accessed from the Client Community and through the administrative tools of your site. Unlimited access to these documents is included in your license fees.

Workshops - Each month a different Encompass module is reviewed in an in-depth session hosted by iModules. The focus of each workshop is “why” you should use a module and “how” using the integrated Encompass feature set can benefit your institution’s goals and initiatives. There is no fee for participation in these workshops.

Best Practice Documents - We encourage you to learn more about the most effective ways to develop a successful online community through our Best Practices series. These documents are available for download on the Client Community at no charge.

Impact Groups - Impact Group meetings allow you to meet face to face with other iModules clients in your area to share how you’re utilizing Encompass tools and gain new ideas from other Encompass users. These meetings are held in various cities and hosted by our clients. There is no fee for participation in these groups.

Included	Scope	Brief Description
Yes	Kansas Build Session	Up to eight people from your institution will travel to our offices in Overland Park, Kansas for a Build Session, where they will work to build out 80-90% of your site content prior to launch. A review of each Encompass module will be given, with the majority of time dedicated to building out site content. An iModules expert is in the room during the Build Session to answer questions, give guidance, and offer advice. Client is responsible for their traveling and lodging expenses. Quote Assumes: Up to 4 attendees at Kansas Build Session.
No	Onsite Build Session	Given the number of administrators anticipated with the launch and management of the Client community, iModules can provide on-site training at Client’s campus. The cost would be at a daily rate plus direct T&E expenses for airline, hotel and transportation fees. Quote Assumes: One trainer onsite for 3 days. Not to exceed: \$4,200 if needed for Fairfield, CA onsite.

No	Train the Trainer Preparation and Onsite Session	Up to four people including the trainers from your institution will travel to our offices in Overland Park, Kansas for a Build Session, where they will work to build out 80-90% of your site content prior to launch. A review of each Encompass module will be given, with the majority of time dedicated to building out site content. An iModules expert is in the room during the Build Session to answer questions, give guidance, and offer advice. This hands on knowledge is a critical component of training for the Client Trainer. Client is responsible for their raveling and lodging expenses. iModules will also participate in the initial on-site training session at Client's campus. The initial session of on-site training provided on the school's campus would be at a daily rate plus direct T&E expenses for airline, hotel and transportation fees. Quote Assumes: One trainer onsite for 3 days
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Marketing Services

Included	Design Service	Brief Description
Yes	Marketing Kit – Launch Package	<p>Company offers an initial launch package for the marketing of the community including:</p> <ul style="list-style-type: none"> • E-mail Template & Content • eNewsletter Template & Content • Postcard or Flier • Event Drop Card • Feature & Social Networking Tiles • Facebook Fanpage Design and Setup
No	eMagazine	<p>This solution provides our clients with the ability to host an interactive electronic copy of their print magazine or newsletter. We will convert an existing PDF to an interactive eMagazine that constituents can view in their web browser. The product features page turning, quick chapter navigation, 1-step zooming, and printing directly from a simple, elegant user interface. Provide the average size of the eMagazine and subscription frequency.</p> <p>Qty of Pages = XX</p> <p>Frequency of Subscription = (Monthly/Qtrly/Annual)</p>

Appendix A: Specific Requirements

SunGard Higher Education Connector for Encompass (Banner)

The current version of the SGHE Connector for Encompass will be enhanced for Banner Advancement in second half of 2010. Work on the enhancements will be completed for a beta release in the August 2010 timeframe, with a production release in the November 2010 timeframe. There is also planned development for 2011; however, a timeframe for those enhancements has yet to be finalized.

Planned Connector Enhancements for 2010:

- The current list of supported fields to be synchronized with Encompass and Banner Advancement will be increased in number to approximately 90. A finalized list of fields will be made available by SunGard in March 2010.
- Web Services will be deployed to enhance the automation of data exchange between the two systems. This enhancement will include support for data exchange based on date/time stamp and an optional review process before committing the data to Banner Advancement.

Planned Release: 3rd Quarter 2010

Planned Connector Enhancements for early 2011:

- Scheduling - Provide a scheduling utility for setting the time parameters for the data exchange between Encompass and Banner Advancement.
- Gift and Pledge – Ability to easily move gift and pledge transaction data from Encompass to Banner Advancement; to include an optional review process before committing data to Banner Advancement.

Planned Release: 4th Quarter 2010 / 1st Quarter 2011

Service Agreement Terms and Conditions

1. Company shall develop, host, operate, and maintain services as described in the Service Agreement between Company and Client.
2. This Agreement shall commence upon the date first written in the Service Agreement and shall continue for a term of five (5) years. Prior to expiration of initial term, both parties will negotiate in good faith an extension of this Agreement. Furthermore, this Agreement may be terminated by either party at any time upon a material breach of this Agreement (including failure to make any payments on a timely basis), which is not remedied by the party in breach within thirty (30) days after receiving written notice of such material breach from the other party. Company may immediately terminate this Agreement for violation of Section 9 below. In addition, Client may immediately terminate this Agreement if, at any time (1) Company is no longer able to provide the level of network services provided for under this Agreement; (2) any breach of network security occurs; or (3) Company breaches any obligation of confidentiality created under this Agreement.
3. Upon the termination of this Agreement, Company shall cease to host, operate and maintain the Services for Client. Upon termination of this Agreement, Company shall immediately cease using and promptly return to Client (or at Client's request destroy) all copies of Content (defined below), transactional data, member or user information, and any other works, information, data, records, files, tapes, or diskettes which belong to Client. Company shall cooperate in the prompt transfer of such information as requested by Client.
4. Client shall, in its sole discretion, provide Company with all text, data, graphics, artwork, designs, audio-visual components, recordings, films, photographs, and other information and materials (the "Content") that Client considers necessary for the design, development, and support of Services to be provided to Client. Subject to the approval of Client, Company may adapt, translate, manipulate, restructure, and reformat the Content as necessary to create, modify, and maintain Services. Client shall have the right of approval of any changes or additions to the Services. Client shall have sole responsibility for securing any needed rights or permissions from any third party for any Content and for the use of any third-party facility or link. Company shall have the sole responsibility for securing any necessary rights or permissions from any third party regarding the use of third-party software and any feature capabilities of the software structure.
5. The Content, provided such items and/or materials are not available in the public domain, including all screen designs, characters, artwork, graphics, text, audio-visual components, recordings, films, photographs, trademarks, logos, and/or materials provided to Company by Client under this Agreement shall be the exclusive property of Client, which shall have sole responsibility for any third-party claims of intellectual property infringement relating thereto. Client's Content rights do not include any rights to Company's servers, facilities, or property.
6. Company will be the exclusive owner of any pre-existing materials that Company holds title to or has licensed from a third party and which is used in connection with the operation, maintenance, hosting or design of the Services (the "Company Property"). Company Property includes all computer programs, software, data, equipment, methods of doing business, design methods and all copyrights, trademarks and patent rights associated therewith provided by Company under this Service Agreement in connection with the development, hosting, operation, and maintenance of the Services.
7. All transactional data and other member or user information received by or collected from Services provided by Company shall be the property of Client, subject to a revocable, limited, non-assignable license to use such information solely for Company's internal use and to assist Client in evaluating Service performance, developing customer or user information or other data requested by Client.
8. Company will affix all proper Client copyright notice to any tangible and electronic versions of pages created for Client by Company and any associated documentation as requested by Client.
9. Company Services may be used only for lawful purposes. Any posting or transmission of data in violation of state or federal law by Client, its members or any users is strictly prohibited. This includes, but is not limited to, data that is threatening, obscene, indecent, defamatory, discriminatory or which belongs to a third party. It also includes the posting or transmission of data in violation of export control laws. Client agrees to indemnify and hold Company harmless from any claims by third parties resulting from Client's or its Member's use of the Services. In addition, Company may immediately terminate this Agreement if any data, information or statements are posted on or transmitted on, through or related to Services which is reasonably deemed by Company to be threatening, obscene, indecent, defamatory, discriminatory or otherwise violates rights of third parties or law.

10. Warranty Disclaimer, Except as provided herein, the parties make no other WARRANTIES OF ANY KIND, EITHER EXPRESS OR IMPLIED, INCLUDING BUT NOT LIMITED TO WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE. Company SHALL HAVE NO LIABILITY OR RESPONSIBILITY FOR the content on THE SERVICES PROVIDED.
11. Limitation of Liability. Company SHALL NOT BE LIABLE TO Client OR ANY OF Client's MEMBERS FOR Client's PARTICIPATION IN OR ARISING OUT OF, RELATED TO OR IN CONNECTION WITH CONTENT FROM SERVICES PROVIDED.
12. Company warrants that Services will be up and running continuously during the term of this Agreement, except for regularly scheduled maintenance. The parties, however, acknowledge that the internet is an imperfect medium and that interruptions may occur. Should a service interruption occur, Company will use reasonable efforts to bring the Services back online within 30 minutes of the time of interruption, regardless of the time or date the service interruption first occurs.
13. Billing for Company's services will normally commence upon contract signing. Invoices are payable upon receipt. Whenever any payment is not made within 45 days of the date in which Client receives an undisputed invoice, Client shall pay within 30 days a late charge equal to 1 (one) percent above the rate accrued on June 30 of the prior year by the Pooled Money Investment Account, not to exceed a rate of 15 percent, except that, if the amount of the penalty is seventy-five dollars (\$75) or less, the penalty shall be waived and not paid by Client, as provided for in California Government Code § 927.6(b). Client may dispute an invoice submitted by Company for reasonable cause if Client notifies Company within 15 working days from receipt of the invoice, or delivery of the property or services, whichever is later. No invoice shall be disputed on the basis of minor or technical defects. Client shall reimburse Company upon demand for all reasonable costs incurred (including reasonable attorneys' fees) in collecting past due amounts owed by Client, and such costs shall likewise accrue interest from the date first due. [See Note.]

NOTE 1: Under California Government Code § 927.1(a), any state agency that acquires property or services pursuant to a contract with a business, including any approved change order or contract amendment, is required to make payments to the person or business on the date required by the contract "or be subject to a late payment penalty." A community college district is considered a "state agency." (Educ. Code § 8091.) Except where payment is made directly by a state agency pursuant to Section 927.6, any undisputed invoice received by a state agency shall be submitted to the

Controller for payment by the required payment approval date. (Gov. § 927.3.) To avoid late payment penalties, a public entity must submit a warrant for payment within 45 calendar days from the date that the agency receives an undisputed invoice. (Gov. § 927.4.)

If the contractor is a certified small business, a nonprofit organization, a nonprofit public benefit corporation, or a small business or nonprofit organization that provides services or equipment under the Medi-Cal program, the state agency must pay to the contractor a penalty of 0.25 percent of the amount due, per calendar day, from the required payment date. However, nonprofit organizations are shall only be eligible to receive a penalty payment if it has been awarded a contract in an amount less than five hundred thousand dollars (\$500,000). (Gov. § 927.6(a).)

For all other businesses, the state agency must pay a penalty at a rate of 1 percent above the rate accrued on June 30 of the prior year by the Pooled Money Investment Account, not to exceed a rate of 15 percent, except that, if the amount of the penalty is seventy-five dollars (\$75) or less, the penalty shall be waived and not paid by the state agency. (Gov. § 927.6(b).)

Except in the event of an emergency, this provision for late payment penalties may not be waived, altered, or limited by a state agency acquiring property or services pursuant to a contract, or by any person or business contracting with a state agency to provide property or services. (Educ. Code § 927.1(b).) It is assumed for purposes of this contract that Company does not meet the requirements of a certified small business, nonprofit organization, nonprofit public benefit corporation, or any of the other exceptions provided for in Government Code 927.6(a). If this is incorrect, please let me know.

14. The Parties acknowledge the likely disclosure to each other during this Agreement of Confidential Information, the secrecy of which provides the disclosing Party an important commercial benefit. Each Party agrees to protect the secrecy of such information and not to use such information other than in furtherance of this Agreement, nor to disclose such Confidential Information to any other person or entity, other than to its employees or agents who need access to such information, without the written consent of the other Party. All Confidential Information shall remain the exclusive property of the disclosing Party. "Confidential Information" means any and all information regarding the Party's intellectual property, trade secrets, proprietary data, business plans and forecasts, marketing strategies, financial information, account information, products or services under development, computer software, source codes, object codes, documentation and programmer commentary, analytical techniques and processes, transactional data and other customer or user information, and any other materials or information created or developed by a Party in connection with this Agreement. "Confidential Information" does not include information that (1) was available to a Party free of any confidentiality obligation to the other Party at the time of disclosure; (2) is made available by a Party expressly without restriction on disclosure; (3) is or becomes available to the public on or after the date of this Agreement (other than through prohibited disclosure by a Party); or (4) is developed by a Party independently of such Confidential Information.
15. Each Party represents and warrants that (1) it is an organization duly formed and validly existing in good standing under the laws of its formation and has all the necessary powers and authorities to enter into and perform this Agreement; (2) the execution and performance of this Agreement does not and will not conflict with its certificate of formation or by-laws, or any applicable law or regulation, and will not breach or constitute default under any agreement, instrument, or order to which it is subject; and (3) it is the owner of, or has a non-exclusive license to use, any copyrights, patents, trademarks, trade secrets, or other intellectual property granted or conveyed herein, and that any rights, licenses, or other uses granted by such Party does not infringe or misappropriate any right of any third party. Company warrants that it owns or otherwise possesses sufficient rights to use, display, access, and permit Client to use, display, and access any Company Property and any third-party software used in connection with the Services contemplated by this Agreement.
16. Company agrees to defend, indemnify, and hold harmless Client, including its members, officers, directors, employees, partners, or agents from any and all expenses, claims, demands, liabilities, fines,

penalties, or judgments, including attorneys' fees, arising from (1) any claim of copyright or other intellectual property infringement relating to any Company Property, any changes by Company to Content, any third-party software licensed by Company used in the performance of the Agreement, or any other contributions of Company used in the performance of this Agreement; (2) the material breach of any representation or warranty contained herein; and (3) any gross negligence or willful misconduct of Company.

17. Client agrees to defend, indemnify, and hold harmless Company, including its members, officers, directors, employees, partners, or agents from any and all expenses, claims, demands, liabilities, fines, penalties, or judgments, including attorneys' fees, arising from (1) any claim of copyright or other intellectual property infringement relating to any Content provided to Company by Client except for Content as changed, added, deleted, or modified by Company; (2) the material breach of any representation or warranty contained herein; and (3) any gross negligence or willful misconduct of Client.
18. Company continues to work towards ADA and section 508 website design and compliance standards. This work is ongoing and built into development cycles. However, given various client requests and needs Company cannot provide a specific deliverable date on a complete ADA and section 508 fully compliant solution.
19. The laws of the state of **California** shall govern this Agreement. Each of the parties hereby submits to the jurisdiction of the state and federal courts located in the state of California. In the event that any term or provision of this Agreement shall for any reason be held to be invalid, illegal, or unenforceable in any respect, such invalidity, illegality, or unenforceability shall not affect any other term or provision, and this Agreement shall be interpreted and construed as if such term or provision, to the extent the same shall be held to be invalid, illegal, or unenforceable, had never been contained herein. These Terms and Conditions and the terms of the Service Agreement together represent the matter hereof and supersedes all previous representations, understandings or agreements, oral or written, between the parties with respect to the subject matter hereof, and shall prevail notwithstanding any variances with terms and conditions of any order submitted. Use of Company's services constitutes acceptance of these Terms and Conditions and the terms of the Service Agreement, which agreement cannot be modified except by written instrument signed by the parties hereto. In any legal action between the parties hereto concerning this Agreement, the prevailing party shall be entitled to recover reasonable attorneys' fees and costs. Neither Party may assign any right or obligation under this Agreement without the prior written consent of the other Party, except in



connection with the sale, merger, or transfer of substantially all of the assets of such Party or to a wholly-owned subsidiary of such Party.

20. The Parties agree that Company is retained and shall operate as an independent contractor and is not and shall not be deemed to be engaged in a partnership, joint venture, or agency relationship of any kind. Neither Party has, nor shall be deemed to have, the right or authority to represent the other Party or to create any obligation, express or implied, on behalf of the other Party.

21. If Company is prevented from performing or is unable to perform any of its obligations under this Agreement due to causes beyond the reasonable control of Company, including but not limited to acts of God, acts of civil or military authorities, riots or civil disobedience, wars, strikes or labor disputes, fires, interruptions in telecommunications or internet services or network provider services (each, a "Force Majeure Event"), Company's performance shall be excused and the time for performance shall be extended accordingly provided that Company promptly takes all commercially reasonable steps to resume full performance. If Company's performance is prevented or delayed for more than thirty (30) consecutive days due to a Force Majeure Event, then Client may terminate this Agreement upon delivery of written notice to Company.