

DDI Contract No: \_\_\_\_\_

## MASTER PRODUCTS AND SERVICES AGREEMENT

THIS MASTER PRODUCTS AND SERVICES AGREEMENT (this “**Agreement**”) is made as of this 1<sup>st</sup> day of August, 2021 ( the “**Effective Date**”), between Development Dimensions International, Inc., a Delaware corporation, located at 1225 Washington Pike, Bridgeville, PA 15017 (“**DDI**”), together with its Affiliates, and County of Nevada, a California government agency, located at 950 Maidu Ave., Nevada City, CA 95959 with a D-U-N-S ® Number of 01-097-9029 (“**Client**,” each a “**Party**” and collectively with DDI, the “**Parties**”), together with its Affiliates.

### I. SCOPE OF WORK

- A. **Services and Forms.** Subject to the terms and conditions of this Agreement, **DDI** and/or its Affiliates (to the extent an Affiliate of DDI is designated as the contracting party on behalf of DDI in an applicable SOW) will provide to Client and/or its Affiliates (to the extent an Affiliate of Client is designated as the contracting party on behalf of Client in an applicable SOW) products or services, as may be requested by Client and specified in one or more statements of work (each a “**SOW**,” attached hereto as a template and Exhibit A collectively) (the “**Products**” or “**Services**”). Sales of Services or Products may be authorized only by the proper execution by both Parties of a SOW, or purchase order (each a “**PO**,” attached hereto as a template and Exhibit B collectively) that is conditioned on a SOW and must specify, without limitation, the scope, objective, and time frame of the work, including line item pricing as provided by DDI, as applicable. All changes to the scope, duration, or other aspects of a SOW must be agreed upon in a duly authorized, fully executed, written amendment to the applicable SOW using a scope change, the form of which can be provided by DDI upon request. Individuals who participate in the Services provided to Client or utilize the Materials, whether employees, contractors, or job candidates, are referred to herein as “**Participants**.”
- B. **Affiliates.** An “**Affiliate**” of a Party shall mean any entity directly or indirectly controlling, controlled by or under common control with such Party. As used in this definition, control shall mean the power to direct the management and policies of the entity in question, whether through the ownership of voting securities, by contract, or otherwise. References to a Party shall also be deemed to include that Party’s Affiliates. For avoidance of doubt, Affiliates of DDI include DDI Selection & Development Systems ULC (Canada), DDI Consultores do Brasil, Ltda (Brazil), DDI México, Oficina Cd. de México (México), Development Dimensions International France S.A.S. (France), DDI Deutschland Assessment, Training, Beratung, GmbH (Germany), Development Dimensions International (U.K.) Ltd. (United Kingdom), DDI India Private Limited (India), Development Dimensions International Philippines, Inc. (Philippines), and DDI-Asia/Pacific International, Ltd. (with offices in Australia, China, Hong Kong, Malaysia, Singapore, Taiwan and Thailand). The terms and conditions of the Agreement shall be incorporated into each SOW and bind each Affiliate designated as a contracting party in an applicable SOW as if said Affiliate had originally executed this Agreement on its own behalf. The terms and conditions of the Agreement shall bind Affiliates as if said Affiliate had originally executed the Agreement on its own behalf.
- C. **Order of Precedence.** If there is any conflict between the Agreement and any SOW, the conflict will be resolved by giving effect first to the Agreement and secondly to the SOW. Notwithstanding the foregoing, a SOW may modify the terms of the Agreement only with respect to Services under that particular SOW, and only if the SOW expressly identifies the section of the Agreement intended to be modified. The preprinted terms and conditions on a standard PO and any other terms and conditions set forth on any quote, acknowledgement or other correspondence exchanged between the Parties and relating to the Services will be disregarded and of no effect hereunder unless expressly attached to and incorporated into a SOW. The Parties agree that in no event shall any pre-printed PO terms govern Client’s purchases while this Agreement is in effect, and such terms shall be null and void and of no effect, even if such terms state otherwise.

## II. TERM AND FEES

### A. **Term.**

- (i) **Initial Term.** The Initial Term of this Agreement commences as of the Effective Date and will continue in effect for three (3) years from such date unless terminated earlier pursuant to any of the Agreement's express provisions (the "Initial Term").
- (ii) **Renewal Term.** This Agreement may be renewed for additional successive one (1) year terms with written approval of both parties unless earlier terminated pursuant to any of the Agreement's provisions (a "Renewal Term" and, collectively, with the Initial Term, the "Term").
- (iii) **Renegotiation Option:** In view of the fact that it is unknown how long the products and services will be employed by County and that County will require ongoing maintenance and support of the products for as long as the system is operational.

- B. Fees and Invoicing.** Fees and pricing for the Products and Services will be set forth in each SOW or PO. DDI will invoice Client upon the schedule set forth in the applicable SOW or PO. Payment is due thirty (30) days after the date of each invoice and is to be made in U.S. dollars, unless otherwise noted on the DDI invoice. DDI reserves the right to suspend the provision of any Services or not deliver any upcoming Products if Client fails to pay any undisputed amounts/fees when due hereunder. Such suspension or non-delivery shall not be deemed a breach of DDI's obligations under this Agreement. DDI will invoice as work is performed, when Tools or Results are accessed, and for expenses as incurred. DDI invoices for certain licenses in advance. Materials will be invoiced when shipped; other Services will be invoiced when delivered.

- C. Taxes.** Pricing of Products and Services is not inclusive of taxes. Client shall pay all sales and use taxes, and any other similar taxes, duties and charges of any kind, including, but not limited to, all applicable federal, state, GST, VAT and Provincial taxes, applicable duties, electronic delivery taxes, excise taxes, levies, and import fees (collectively, "**Taxes**") imposed in connection with DDI's provision of the Services, including in connection with its sale and shipment or importation of any Products delivered to Client under this Agreement. Client shall provide any applicable tax exemption claims in writing to DDI in advance of placing an order. DDI shall be solely responsible for all Taxes associated with or assessed on its income, revenue, gross receipts, personnel, or real or personal property or other assets. All fees set forth in an SOW are exclusive of Taxes. Without limiting the foregoing and unless otherwise required by law, neither Party shall be responsible for withholding, paying, or filing tax returns with respect to any applicable income, payroll, social security, Medicare, unemployment, or other applicable taxes and assessments on the other Party's behalf.

- D. Freight.** If any tangible Products are to be delivered, unless otherwise requested by Client, DDI will ship the Products ground service, pre-paid, and add associated freight charges to the invoice. If Client requests rush or overnight shipment, or if DDI must use rush shipments to ensure project activities are performed timely or to meet project scheduling needs, DDI will pre-pay and add express freight charges to Client's invoice. If the Products are equipment to be returned to DDI, DDI will provide Client a pre-paid shipping carton to return the Products to DDI. DDI will deliver Materials (as defined below) FOB Destination.

- E. Reimbursable Expenses.** Client shall reimburse DDI for all previously approved, reasonable out-of-pocket travel expenses incurred by DDI personnel, including round-trip coach class airfare and reasonable ground transportation, lodging and meals, within thirty (30) days of receipt by Client of an invoice from DDI accompanied by all receipts. DDI shall submit all travel expense receipts within sixty (60) days of incurring the expense. If Client requires DDI to follow Client's reimbursable expense policy, such shall be attached hereto as an Exhibit. Meals and lodging will

only be reimbursed based on the federal per diem rate for the State of California, Northern California region:

- F. **Travel Time.** Client shall reimburse DDI for travel time only in the following scenarios. Travel time is considered from the first flight time to arrival at the destination per direction of travel: (i) Travel time fee is 50% of the daily delivery rate of the home country of the consultant: for international or transoceanic travel time that is over six (6) hours, but less than ten (10) hours; if a non-local specific resource is requested by Client, and the travel time is more than three (3) hours, but less than six (6) hours; or if intra-country travel includes a remote location, and travel time (flight and ground) is six (6) hours, but less than ten (10) hours. A remote location is defined as a location approximately 100 miles or more from a commercial airport. (ii) Travel time fee is 100% of the daily delivery rate of the home country of the consultant with proof of receipts for all expenses. Meals and lodging will only be reimbursed based on the federal per diem rate for the State of California, Northern California region: for international or transoceanic travel time that is ten (10) hours or more; if a non-local specific resource is requested by Client; or if intra-country travel includes travel to a remote location, and travel time (flight and ground) is ten (10) hours or more.
- G. **Cancellation/Rescheduling Terms.** In the event Client or DDI cancels or reschedules any session of Services, the cancelling or rescheduling Party will pay for all non-refundable costs incurred by the other Party. Client also agrees to pay DDI a cancellation/rescheduling fee for each session that is canceled or rescheduled by Client and the fee will be per the below chart.

Cancellation/Rescheduling	Cancellation/Rescheduling Fee
11-20 business days before scheduled session	20% of session fee
2-10 business days before scheduled session	50% of session fee
1-0 business days before scheduled session	100% of session fee

### III. PERSONNEL, SUBCONTRACTORS AND SUBPROCESSORS

- A. **DDI Personnel.** DDI will determine the methods of performing the Services in its own discretion and act as an independent contractor. Client may notify DDI that Client no longer wishes for particular DDI personnel to perform Services. After receipt of such notice, DDI will promptly remove and replace that person with another person of suitable ability and qualifications. If DDI has specific performance obligations under an SOW that are impacted by personnel changes requested by Client, the Parties shall agree in writing to any reasonable adjustments. Client is not authorized to direct DDI to terminate the employment (or contract) of any of DDI's employees (or contractors). To the extent that any SOW requires performance by DDI at Client facilities, DDI personnel will comply with reasonable Client-provided policies and procedures regarding workplace conduct, access, security and use of Client facilities, systems, and property.
- B. **Applicable Laws and Personnel.** In its performance of Services and/or provision of Products to Client, DDI and its personnel will reasonably comply with applicable laws for the jurisdiction in which the applicable Service or Products are being provided as in effect and as interpreted and enforced at the time Services are provided or actions are taken. In addition, Client will perform its obligations in a manner that reasonably complies with applicable laws (including identifying and procuring required permits, certificates, approvals, and inspections). Client will promptly notify DDI upon the occurrence of the filing of a claim or lawsuit by a Participant, initiation of an investigation by a Participant or government agency, initiation of a government agency audit, or disposition of a claim or lawsuit that relates to any testing provided hereunder.

- C. **Third Party Providers.** Client acknowledges that DDI may utilize one or more subprocessor in the ordinary course and scope of its business operations for ancillary services. Client provides general authorization for use of the subprocessors on the list at the link provided: <https://corp.ddiworld.com/thirdpartyproviders>. DDI will be responsible for the actions of such in their performance of Services provided hereunder and shall inform Client of any intended changes concerning the addition or replacement of other subprocessors.
- D. **Equipment.** If DDI is to loan DDI-owned equipment for use with the Services, such equipment will be loaned for a limited term to be defined in the SOW. Client shall promptly return to DDI all equipment which shall: (a) be free and clear of all liens (other than liens of DDI) and rights of third parties; (b) be in the same condition as when delivered to Client, ordinary wear and tear excepted; (c) include all DDI's insignia or markings; and (d) be in compliance with applicable law.

#### IV. OWNERSHIP

##### A. Client Ownership and Third Party Ownership

- (i) Results. Client shall own any usage statistics, reports, scores and results generated from client's authorized use of DDI Tools (as defined below) (collectively "**Results**"). For avoidance of doubt, Results shall not include the design, form or format of reports, or any DDI content or competencies contained within a report. DDI will have no proprietary interest in any Results, except that DDI shall have the right to use the Results in anonymized and aggregated form for its statistical norming, research and development. When used for these purposes, these Results will not be personally identifiable, nor will such information be aggregated in such a way as to compromise the anonymity of the Participants.
- (ii) Client Intellectual Property. Any intellectual property provided by Client ("**Client Intellectual Property**") shall remain the sole property of Client. Client provides such Client Intellectual Property under a non-exclusive, non-transferable, non-sublicensable license for DDI to use solely in the provision of Products and Services hereunder and for no other purpose.
- (iii) Third Party Content. DDI may provide recommendations of third party content to use with the Products or Services, and Client acknowledges and agrees Client is solely responsible for obtaining from such third party the proper license(s) to use such third party content, including any intellectual property therein, if Client elects to access any such third party content.

##### B. DDI Ownership

- (i) General. Except for Section IV.A above, DDI shall retain all right, title, and interest in and to all Products and Services, including Materials and Tools (as defined below). DDI provides Client a non-exclusive, non-transferable, non-sublicensable, worldwide license to use Products, Services, Materials, and Tools solely for Client's internal business purposes. Services that DDI provides require that DDI protect the anonymity of the Participants and maintain the integrity and value of the Services; and as such, Client will not have access to the line item responses provided at the Participant level. Client must purchase a license for Materials or Tools for each Participant.
- (ii) Products and Equipment. If DDI is to provide equipment as part of the Services, DDI will maintain ownership of said equipment.



- (iii) Materials. “Materials” means all copyright-protected Products provided to Client by DDI, regardless of the format. No right to modify, translate, or copy such Materials is given, unless previously provided in writing by DDI; DDI will retain copyrights on all modified, copied, and translated Materials. Electronic Materials and/or hard copy Materials are not returnable for refund.
- (iv) Workshop Delivery. As part of the Services, DDI employees certified as trainers (“**DDI Trainers**”) or Client employees trained and certified by DDI as trainers (“**Client Trainers**”) may perform workshops (“**DDI Workshops**”) for Participants. Clients may also have Client employees trained as Master Trainers, and such Master Trainers may certify additional employees as Client Trainers. No other personnel are authorized to perform DDI Workshops. Client Trainers and Client Master Trainers may only perform DDI Workshops as previously agreed with DDI. Without written consent of DDI and entry into a separate agreement with DDI, no third parties may deliver DDI Workshops within Client’s organization, even if third parties have been certified to deliver DDI Workshops within other organizations.
- (v) Technology Services. Web-based or Cloud-based applications, virtual reality programs, equipment, assessments, testing, software systems and related tools which may be used by DDI to perform and provide Services (“**Tools**”) will reside on computer equipment within the United States, with security provisions commensurate with this Agreement. These Tools are the property of DDI or have been licensed by DDI, and DDI retains all rights to such. Client hereby confirms that their systems are compatible with the specifications at <https://www.ddiworld.com/techdocs>. DDI reserves between 3:00 AM and 8:00 AM EST each Saturday, to perform routine and emergency maintenance. As part of its routine business, DDI reserves the right to sunset, at DDI’s discretion, any of its Tools with 120-day written notice to Client.

## V. CONFIDENTIALITY

In the course of the Parties’ performance under this Agreement and each SOW or PO, it is anticipated that each Party (the “**Receiving Party**”) will acquire knowledge (orally, by visual observation, or in writing) of certain nonpublic or proprietary information of or relating to the other Party (the “**Disclosing Party**”) to be confidential and proprietary, including without limitation: (i) matters of a technical nature such as know-how, formulas, trade secrets, methods, processes, strategies, inventions, or research projects; (ii) matters of a business nature such as information about costs, profits, pricing, markets, sales, suppliers, customers, employees, plans for future development, plans for future products, marketing plans, or strategies; (iii) personal information pertaining to the Disclosing Party’s employees, Participants, contractors, or agents; (iv) in the case of DDI as Disclosing Party, Materials and Tools including the content, design, input screens, and output screens, and (v) any other information of a similar nature not generally disclosed by the Disclosing Party to the public, all of which information is referred to collectively hereafter as “**Confidential Information**.”

- A. **Use and Disclosure of Confidential Information.** The Receiving Party agrees: (1) to use the Disclosing Party’s Confidential Information only in connection with performing or receiving performance under this Agreement; (2) to protect the Confidential Information of the Disclosing Party from unauthorized use or disclosure with at least the same degree of care as it employs to its own Confidential Information, but in any event no less than a reasonable degree of care; (3) except to the extent otherwise permitted in this Agreement, as required to perform its obligations under this Agreement, or as permitted by applicable law, not to copy any Confidential Information in whole or in part; reverse compile, reverse assemble, or access with intent to “hack” all or any portion of the Confidential Information; modify the Confidential Information; or disclose the Confidential Information of the Disclosing Party to any third parties. Notwithstanding the foregoing, disclosure is permitted to the Receiving Party’s and its Affiliates’: (a) employees with a

need to know in connection with this Agreement, (b) contractors that have a need to know in connection with this Agreement and that are bound by agreements with terms similar to this Agreement regarding the protection of Confidential Information; or (c) professional advisors who are bound by an obligation (under law or contract) to protect the confidentiality of such information.

- B. General Exclusions.** Information will not be deemed Confidential Information of the Disclosing Party if such information: (i) was, at the time of disclosure, in the public domain or becomes part of the public domain without disclosure by the Disclosing Party; (ii) was rightfully in the possession of the Receiving Party at the time of the initial disclosure; or (iii) was received after disclosure from a third Party who had a lawful right to disclose such information to the Receiving Party without any obligation to restrict its further disclosure. The Receiving Party will not be considered to have breached its obligations by disclosing Confidential Information of the Disclosing Party to the extent required to satisfy any legal requirement of a competent government body; provided that, promptly upon receiving any such request and prior to making such disclosure, to the extent that it may legally do so, the Receiving Party advises the Disclosing Party in writing of the required disclosure in order that the Disclosing Party may interpose an objection or take any action to protect its Confidential Information.
- C. Return of Information.** Upon expiration or Termination of this Agreement for any reason, the Receiving Party will, at the Disclosing Party's written request, return all Confidential Information of the Disclosing Party (including all copies and summaries thereof) or, at the Receiving Party's option, certify destruction or anonymization of the same. Neither Party has any obligation to retain Confidential Information of the other Party except as required to meet performance obligations otherwise agreed to by the Parties. The foregoing shall not require the Receiving Party to delete archived copies or system back-up copies maintained for disaster recovery purposes and legal requirements.
- D. Controller and Processor.** The Parties agree that Client is the data controller ("**Controller**") under this Agreement and determines the purpose and means of the processing of any Client Personal Information (as defined below). Client hereby requests DDI to be its data processor ("**Processor**") and requires DDI to provide Participants with their individual Results. DDI will provide Client's internal participants with their individual Results. In addition, any individual entered into DDI systems by Client or by DDI as a "client administrator" is authorized to access outputs, Products, and Services, unless otherwise agreed upon in writing. Client administrator may share Results internally to others per Client's internal policies. Client is responsible for determining, communicating, and managing access levels and parameters. DDI shall reasonably and at Client's cost, cooperate with Client to enable Client to address and resolve any complaints, requests, or inquiries from Participants, including but not limited to requests to correct, delete, or block personal data. If a Participant requests this data, DDI will inform Client of any request and will cooperate reasonably with Client regarding the Participant's request. Questions regarding data protection can be directed to [DataProtectionOfficer@ddiworld.com](mailto:DataProtectionOfficer@ddiworld.com). For the provision of Services associated with the Agreement, Controller hereby instructs Processor to transfer Client Personal Information (as defined below) to servers in the United States.
- E. Personal Information.** "**Client Personal Information**" means any information about a person obtained by DDI on behalf of Client that could be used to identify that person, including a name, email address, or voice sample. In performing the Services, DDI will process Client Personal Information that it receives, possesses, or otherwise obtains in relation to this Agreement in accordance with applicable data security laws, including but not limited to European Union Regulation 2016/679, including regulations with regard to transfers of Client Personal Information to countries outside the European Economic Area or Switzerland and onward transfers, only on documented instructions from Client and for the purposes of performing the Services hereunder.

- (i) Security Incident. A “**Security Incident**” shall mean any unauthorized access to or unauthorized acquisition or disclosure of Client Personal Information, any loss or theft of hardware or media in which Client Personal Information is stored, or any acquisition or disclosure, without valid authorization, of Client Personal Information. If DDI becomes aware of any access to, loss, or unauthorized disclosure of any Client Personal Information, DDI shall promptly notify Client per applicable regulations to enable Client to expeditiously implement its own response program. Such notice shall summarize in reasonable detail, to the extent known, the nature of the Security Incident and the actions DDI has taken or intends to take to mitigate the effect of such Security Incident; take all commercially necessary and appropriate actions to investigate and mitigate the Security Incident, including without limitation, using good faith efforts to remedy any deficiencies in its security measures; and keep Client reasonably informed as to the progress of all investigation, mitigation and remediation efforts. Where any such Security Incident has likely resulted in an unauthorized disclosure of Client Personal Information that triggers a requirement under applicable law that Client notify a regulatory or enforcement authority, an individual, or other entity, DDI shall provide Client with reasonably sufficient information to enable Client to provide such notices.
- (ii) Retention of Client Personal Information. DDI will hold Client Personal Information as long as is necessary for performing, or having performed, its obligations under the Agreement, and for ensuring, after Services have been provided, that such Personal Information is held for relevant statutes of limitations periods in the U.S., not to exceed five (5) years. Upon request by Client, DDI shall ensure that Client Personal Information is de-identified in DDI’s application databases. If Client wishes to obtain a copy of its Client Personal Information prior to it being de-identified, then it may request the copy, in a reasonable format, and DDI shall provide that copy, at Client’s cost, to Client within 30 days of the written request.
- (iii) Privacy and Security Program. DDI has and maintains a written privacy and information security program that can be accessed at the link provided: <https://www.ddiworld.com/gisp>. DDI’s security measures include procedures and measures designed to prevent unauthorized or illegal access to Client Personal Information, both tangible and maintained in online systems and portable devices in accordance with industry standards. DDI hosts client-facing Tools at a primary and secondary ISO-27001 and SSAE-18 certified data center operated by a third party. Systems to protect DDI’s servers in these facilities include fire prevention, security alarms, video surveillance, multiple levels of card access, 24-hour staffing and detailed access and visitor logs. DDI’s headquarters buildings in Pittsburgh, Pennsylvania and each regional office all employ industry standard physical security measures. All servers hosting Client Personal Information are in the United States, and thus, all data is transferred to the United States. In no event during the Term shall DDI materially diminish the protections provided by the controls set forth in DDI’s written privacy and information security program that are in effect as of the Effective Date.

F. **Notice of Unauthorized Disclosure.** The Receiving Party must immediately notify the Disclosing Party upon discovery of any unauthorized use or disclosure of Confidential Information of the Disclosing Party and will cooperate with Disclosing Party in every reasonable way to help regain possession of the Confidential Information and prevent its further unauthorized use or disclosure. In the event of disclosure by a subcontractor or professional advisor of Receiving Party as described above, Receiving Party has an affirmative obligation to immediately notify Disclosing Party, and at Receiving Party’s cost, pursue all legal rights on behalf of Disclosing Party reasonably requested by Disclosing Party in connection with such disclosure.

G. **Equitable Relief.** The Parties acknowledge and agree that monetary damages may not be a sufficient remedy for unauthorized use or disclosure of Confidential Information and that the Disclosing

Party will be entitled, without waiving any other rights or remedies, to seek such injunctive or equitable relief as may be deemed proper by a court of competent jurisdiction.

- H. **No Warranty.** Except as set forth in this Agreement, neither Party makes any express or implied warranty of any kind as to any of its Confidential Information, including, without limitation, as to the accuracy, completeness, fitness for a particular purpose, operability or merchantability of any of its Confidential Information, and neither Disclosing Party shall have any liability under any theory whatsoever with respect to any use by the Receiving Party of any information, whether Confidential Information or otherwise, given to or obtained by the Receiving Party under this Agreement.

## VI. REPRESENTATIONS AND WARRANTIES

- A. **DDI Representations and Warranties.** DDI represents and warrants that: (i) Services will be rendered in a competent, professional manner, with promptness and diligence; (ii) DDI is the lawful owner or licensee of any proprietary Materials or Tools used in the performance of the Services contemplated hereunder, and DDI has the right to permit Client use of such proprietary Material or Tools and such will not infringe the intellectual property or other rights of any third party; (iii) DDI will withhold and pay all amounts required by law for any employer or employee tax or contribution and that all persons performing work during the Term for Client hereunder are or will be employees or contractors of DDI, and that such persons will not be entitled to any of Client's employee benefits.
- B. **Client Representations and Warranties.** Client represents and warrants that: (i) Client shall be fully responsible and liable for its and its Participants' use(s) of all Results, Products and Services; (ii) Client understands and agrees that certain elements of an employee selection or development process involve decisions made solely by Client and not by DDI ("**Client Decisions**"). DDI shall have no liability or indemnification obligation to Client or any third party in connection with any Claims that arise out of or relate to Client Decisions; (iii) Client shall be responsible for ensuring conformance of its own equipment to the most current technical specifications necessary for its participants to access DDI Tools, for ensuring its equipment is operational and for ensuring adequate internet access for its participants. DDI shall not be held in default of performance or operational obligations due to any technical or design problem within the Client's electronic network that compromises its Participants' access to the internet; (iv) Client will ensure that all passwords provided by DDI to Client for access to DDI Tools are used only by authorized Participants to whom such password is issued and that such password will not be shared among Participants; (v) Client will ensure no minors will utilize the Materials, Services, or Tools provided hereunder; (vi) Client will ensure that it has all necessary and appropriate consents and notices in place to enable lawful transfer of Client Personal Information to DDI for the duration and purposes of this Agreement; (vii) Client either owns any intellectual property it provides to DDI hereunder or Client has obtained a proper license to use such intellectual property, including the right to sublicense it to DDI for use and Client's provision of any Client-provided intellectual property to DDI will not infringe upon the intellectual property or other rights of any third party.
- C. **WARRANTY DISCLAIMER. THE WARRANTIES SET FORTH IN THIS SECTION VI REPRESENT THE EXCLUSIVE WARRANTIES WITH RESPECT TO THE PRODUCTS AND SERVICES PROVIDED BY DDI HEREUNDER, AND ARE IN LIEU OF ALL OTHER WARRANTIES OR CONDITIONS OF ANY KIND, WHETHER EXPRESS OR IMPLIED, WRITTEN OR ORAL, INCLUDING, WITHOUT LIMITATION, ANY IMPLIED WARRANTIES OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE. DDI DOES NOT WARRANT THAT THE OPERATION OF ANY PRODUCT OR SERVICE WILL BE UNINTERRUPTED OR ERROR-FREE, AND**



**DOES NOT WARRANT THE ACCURACY OR COMPLETENESS OF RESPONSES AND/OR RESULTS.**

**VII. INSURANCE**

DDI shall procure and maintain, at its sole cost and expense, for the duration of the Agreement insurance against claims for injuries to persons or damage to property which may arise from or in connection with the performance of the work hereunder by DDI, its agents, representatives, or employees. DDI shall procure and maintain for the duration of the contract insurance claims arising out of their services and including, but not limited to loss, damage, theft or other misuse of data, infringement of intellectual property, invasion of privacy and breach of data. Coverage shall be at least as broad as:

- A. **Commercial General Liability (CGL):** Insurance Services Office Form CG 00 01 covering CGL on an “occurrence” basis, including products and completed operations, property damage, bodily injury and personal & advertising injury with limits no less than **\$2,000,000** per occurrence. If a general aggregate limit applies, either the general aggregate limit shall apply separately to this project/location (ISO CG 25 03 or 25 04) or the general aggregate limit shall be twice the required occurrence limit.
- B. **Automobile Liability:** Insurance Services Office Form Number CA 0001 covering, Code 1 (any auto), or if Contractor has no owned autos, Code 8 (hired) and 9 (non-owned), with limit no less than **\$1,000,000** per accident for bodily injury and property damage.
- C. **Workers’ Compensation** insurance as required by the State of California, with Statutory Limits, and Employer’s Liability Insurance with limit of no less than **\$1,000,000** per accident for bodily injury or disease.
- D. **Technology Professional Liability Errors and Omissions Insurance** appropriate to the DDI’s profession and work hereunder, with limits not less than **\$2,000,000** per occurrence. Coverage shall be sufficiently broad to respond to the duties and obligations as is undertaken by DDI in this agreement and shall include, but not be limited to, claims involving infringement of intellectual property, copyright, trademark, invasion of privacy violations, information theft, release of private information, extortion and network security. The policy shall provide coverage for breach response costs as well as regulatory fines and penalties as well as credit monitoring expenses with limits sufficient to respond to these obligations.
  - (i) The Policy shall include, or be endorsed to include, property damage liability coverage for damage to, alteration of, loss of, or destruction of electronic data and/or information “property” of the Client in the care, custody, or control of DDI. If not covered under the DDI’s liability policy, such “property” coverage of the Client may be endorsed onto DDI’s Cyber Liability Policy as covered property as follows:
  - (ii) Cyber Liability coverage in an amount sufficient to cover the full replacement value of damage to, alteration of, loss of, or destruction of electronic data and/or information “property” of the Client that will be in the care, custody, or control of DDI.
  - (iii) The Insurance obligations under this Agreement shall be the greater of 1—all the Insurance coverage and limits carried by or available to DDI; or 2—the minimum Insurance requirements shown in this Agreement. Any insurance proceeds in excess of the specified limits and coverage required, which are applicable to a given loss, shall be available to Client. No representation is made that the minimum Insurance requirements of this Agreement are sufficient to cover the indemnity or other obligations of DDI under this Agreement.

The insurance policies are to contain, or be endorsed to contain, the following provisions:

- A. **Additional Insured Status:** The Client, its officers, employees, agents, and volunteers are to be covered as additional insureds on the CGL policy with respect to liability arising out of the work or operations performed by or on behalf of DDI including materials, parts, or equipment furnished in connection with such work or operations. General liability coverage can be provided in the form of an endorsement to DDI's insurance (at least as broad as ISO Form CG 20 10 11 85 or both CG 20 10, CG 20 25, CG 20 33, or CG 20 38; and CG 20 37 forms if later revisions used.)
- B. **Primary Coverage** For any claims related to this contract, DDI's insurance shall be primary insurance primary coverage at least as broad as ISO CG 20 01 04 13 as respects the Client, its officers, employees, agents, and volunteers. Any insurance or self-insurance maintained by the Client, its officers, employees, agents, and volunteers shall be excess of DDI's insurance and shall not contribute with it.
- C. **Notice of Cancellation** This policy shall not be changed without first giving thirty (30) days prior written notice and ten (10) days prior written notice of cancellation for non-payment of premium to the County of Nevada.
- D. **Waiver of Subrogation** DDI hereby grants to Client a waiver of any right to subrogation which any insurer of said DDI may acquire against the Client by virtue of the payment of any loss under such insurance. DDI agrees to obtain any endorsement that may be necessary to affect this waiver of subrogation, but this provision applies regardless of whether or not the Client has received a waiver of subrogation endorsement from the insurer.
- E. **Acceptability of Insurers:** Insurance is to be placed with insurers authorized to conduct business in the state with a current A.M. Best's rating of no less than A:VII, unless otherwise acceptable to the Client.
- F. **Claims Made Policies** if any of the required policies provide coverage on a claims-made basis:
  - (i) The Retroactive Date must be shown and must be before the date of the Agreement or the beginning of Agreement work.
  - (ii) Insurance must be maintained and evidence of insurance must be provided for at least five (5) years after completion of the Agreement of work.
  - (iii) If the coverage is canceled or non-renewed, and not replaced with another claims-made policy form with a Retroactive Date, prior to the contract effective date, DDI must purchase "extended reporting" coverage for a minimum of five (5) years after completion of Agreement work.
- G. **Verification of Coverage** DDI shall furnish the Client with original Certificates of Insurance including all required amendatory endorsements. However, failure to obtain and provide verification of the required documents prior to the work beginning shall not waive DDI's obligation to provide them. The Client reserves the right to require complete, certified copies of all required insurance policies, including endorsements required by these specifications, at any time.
- H. **Subcontractors** DDI shall require and verify that all subcontractors maintain insurance meeting all the requirements stated herein, and DDI shall ensure that Client is an additional insured on insurance required from subcontractors. For CGL coverage subcontractors shall provide coverage

with a format at least as broad as CG 20 38 04 13.

- I. **Conformity of Coverages** If more than one policy is used to meet the required coverages, such as an umbrella policy or excess policy, such policies shall be following form with all other applicable policies used to meet these minimum requirements. For example, all policies shall be Occurrence Liability policies or all shall be Claims Made Liability policies, if approved by the Client as noted above. In no cases shall the types of policies be different.
- J. **Premium Payments** The insurance companies shall have no recourse against the Client and funding agencies, its officers and employees or any of them for payment of any premiums or assessments under any policy issued by a mutual insurance company.
- K. **Material Breach** Failure of DDI to maintain the insurance required by this agreement, or to comply with any of the requirements of this section, shall constitute a material breach of the entire agreement.
- L. **Certificate Holder** The Certificate Holder on insurance certificates and related documents should read as follows:  
         County of Nevada  
         950 Maidu Ave.  
         Nevada City, CA 95959  
 Upon initial award of a contract to your firm, you may be instructed to send the actual documents to a County contact person for preliminary compliance review.

Certificates which amend or alter the coverage during the term of the contract, including updated certificates due to policy renewal, should be sent directly to Contract Administrator

## **VIII. INDEMNITIES; LIMITATION OF LIABILITY**

- A. **DDI Indemnities.** DDI will indemnify and defend Client, its Affiliates and each of their directors, officers, employees, consultants, affiliates, and agents from and against all final, non-appealable third-party claims, demands, suits, causes of action, awards, judgments and liabilities, reasonable attorneys' fees, and costs (collectively "**Claims**") (i) based on the actual or alleged infringement or violation of the patent, copyright, license, trademark, trade name or other proprietary right of a third party by DDI, its employees, agents or other person operating on its behalf (the foregoing indemnification shall not apply to the extent that (a) DDI has created intellectual property according to specifications given to it by Client and such work is a subject of the Claim; or (b) Client has modified a Product and that Product as so modified are the subject of the Claim); and (ii) arising out of the willful misconduct or negligent acts of DDI, its employees, contractors, agents, or other persons acting on its behalf that cause death or injury to persons; or damage to or loss of or destruction of any real or tangible personal property. The indemnification obligations set forth above shall not apply to losses for which DDI is not responsible under principles of comparative or contributory fault.
- B. **Client Indemnities.** Client will indemnify and defend DDI, its Affiliates, and each of their directors, officers, employees, consultants, affiliates, and agents from and against all Claims (i) arising out of the willful misconduct or negligent acts of Client, its employees, contractors, agents, or other persons acting on its behalf that cause death or injury to persons; and damage to or loss of or destruction of any real or tangible personal property; and (ii) of infringement arising out of or related to Client Intellectual Property. The indemnification obligations set forth above shall not apply to losses for which Client is not responsible under principles of comparative or contributory fault.

- C. LIMITATION OF LIABILITY. WITH THE EXCEPTION OF DAMAGES ARISING AS THE RESULT OF THE WILLFUL MISCONDUCT OR GROSS NEGLIGENCE OF A PARTY, IN NO EVENT SHALL EITHER PARTY BE LIABLE TO THE OTHER PARTY FOR SPECIAL, INDIRECT, INCIDENTAL, CONSEQUENTIAL, OR PUNITIVE DAMAGES, INCLUDING WITHOUT LIMITATION, DAMAGES FOR LOSS OF PROFITS, LOSS OF USE, BUSINESS INTERRUPTION OR OTHER PECUNIARY LOSS. THE AGGREGATE LIABILITY OF EITHER PARTY UNDER THIS AGREEMENT IS LIMITED TO THE GREATER OF FEES PAID BY CLIENT TO DDI UNDER THIS AGREEMENT DURING THE TWELVE (12) MONTHS PRECEDING THE EVENT THAT GAVE RISE TO SUCH LIABILITY OR \$250,000.**

## **IX. DISPUTE RESOLUTION**

The Parties will attempt in good faith to address and resolve by negotiation any legal controversy or claim arising out of or relating to this Agreement.

## **X. TERMINATION**

- A. Termination for Cause.** This Agreement may be terminated immediately by a Party if the other:
- (i) commits a material breach of this Agreement, which breach has not been cured after the breaching Party receives twenty (20) business days' advance written notice with the specifics of the breach to be cured; or
  - (ii) appoints a receiver, liquidator, assignee, or trustee or files under Title 11 of the United States Code or any other applicable Federal or State bankruptcy, insolvency or other similar law of a petition for relief, or the filing against such Party under Title 11 of the United States Code or any other applicable Federal or State bankruptcy, insolvency or other similar law of an involuntary petition which remains undismissed or unstayed for a period of thirty (30) consecutive days, or such Party consents to the filing of such a petition.
- B. Termination for Convenience.** Either Party may terminate this Agreement without regard to cause upon thirty (30) business days' prior written notice to the other Party.
- C. Other Termination Matters.** Upon Termination of this Agreement for any reason:
- (i) DDI and Client will account to each other for all matters outstanding with respect to this Agreement and DDI will deliver to Client a final accounting of all amounts DDI claims are due hereunder within thirty (30) business days of the Termination hereof and Client shall, within thirty (30) business days after delivery of the final accounting, pay to DDI all amounts due, subject to Client's right to withhold disputed portions of payments under this Agreement, which amounts shall be considered a Dispute.
  - (ii) Client shall promptly return all DDI equipment and property in any format including all translated and source files of Materials, if applicable, and will discontinue use of all Products, Tools, and Services. Client is not required to return Participant Materials that have been already distributed to Participants under this Agreement.
  - (iii) The Termination of this Agreement and obligations set forth in this section will not affect the rights of any Party hereto with respect to any damages it has suffered because of any breach of this Agreement, nor will it affect the rights or obligations of any Party hereto arising out of events occurring prior to the date of Termination. Obligations of indemnification and confidentiality, and other obligations which by their nature would continue after Termination, will survive the expiration or Termination of this Agreement.



## XI. GENERAL

- A. **Assignment.** This Agreement is binding on and inures to the benefit of the Parties hereto and their respective permitted successors and permitted assigns. Either Party may assign any of its rights and/or delegate any of its obligations under this Agreement, in whole or in part, to any person or entity if it promptly provides written notice to the other Party of such assignment and/or delegation. Any purported assignment or delegation in violation of this Section XI.A shall be null and void. No assignment or delegation shall relieve Client of any of its obligations under this Agreement. DDI may assign any of its rights or delegate any of its obligations to any Affiliate or to any person acquiring all or substantially all of the assets of DDI or a DDI business unit without Client's consent.
- B. **Entire Agreement.** This Agreement, including any SOWs or POs thereto, executed in accordance with this Agreement, constitutes the entire agreement between the Parties with respect to the subject matter contained in this Agreement and supersedes all prior agreements with respect to such subject matter. No modification, waiver, or discharge hereof will be valid unless in writing and signed by an authorized representative of both Parties.
- C. **Notices.** All notices, requests, demands and determinations under this Agreement will be in writing and will be deemed duly given and received upon actual receipt (or independent confirmation thereof) by the following designees; however a Party may from time to time change its address or designee for notification purposes by giving the other prior written notice of the new address or designee and the date, at least twenty (20) days from the date of the notice, upon which it will become effective.
- |  |  |
|--|--|
| <p>In the case of DDI:<br/> 1225 Washington Pike<br/> Bridgeville, PA 15017<br/> ATTN: General Counsel</p> | <p>In the case of Client:<br/> 950 Maidu Ave.<br/> Nevada City, CA 95959<br/> ATTN: County Counsel</p> |
|--|--|
- D. **Governing Law; Venue; Jurisdiction.** The parties have executed and delivered this Contract in the County of Nevada, State of California. The laws of the State of California shall govern the validity, enforceability or interpretation of this Contract. Nevada County shall be the venue for any action or proceeding, in law or equity that may be brought in connection with this Contract. THE PARTIES SPECIFICALLY WAIVE ALL RIGHTS TO TRIAL BY JURY.
- E. **Relationship of Parties.** Neither Party is the agent of the other, nor has any authority to represent the other.
- F. **Severability and Survival.** The invalidity of any provision of this Agreement will not affect the validity and binding effect of any other provision. Any invalid provision will be severed from this Agreement and the remainder of the Agreement will be enforced to the maximum extent permitted by applicable law and in keeping with the original intention of the Parties. Any provision of this Agreement that contemplates performance or observance after Termination or expiration of this Agreement will survive Termination or expiration of this Agreement and continue in full force and effect.
- G. **Force Majeure.** DDI will not be liable for any default or delay in the performance of its obligations under this Agreement if and to the extent such default or delay is caused, directly or indirectly, by

fire, flood, earthquake, elements of nature or acts of God, epidemics, pandemics, civil disorders, strikes, lock-outs, embargoes, or any other cause beyond the reasonable control of DDI.

- H. **Authority.** Each Party executing this Agreement hereby warrants: (a) the entity on whose behalf such person is signing is duly organized and validly existing under the laws of its state of organization; (b) such entity has full right and authority to enter into this Agreement and to perform all its obligations hereunder; and (c) each person signing this Agreement is duly and validly authorized to do so.
- I. **Counterparts.** This Agreement and any SOW or PO may be executed in two or more counterparts, including counterparts transmitted by in electronic format, each of which shall be deemed an original and all of which, taken together, shall constitute one and the same instrument.

IN WITNESS WHEREOF, Client and DDI have each caused this Agreement to be signed and delivered by its duly authorized officer, all as of the Effective Date.

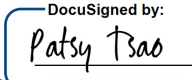
**CLIENT:**

County of Nevada

By: \_\_\_\_\_  
 Name \_\_\_\_\_  
 (Print): \_\_\_\_\_  
 Title: \_\_\_\_\_

**DDI:**

Development Dimensions International, Inc.

By:   
 Name 030248C73D124E7...  
 (Print): Patsy Tsao  
 Title: SVP & CFO

DDI Legal Approval Initials:

