



ACCELSST

LICENSE AGREEMENT

This License Agreement (“Agreement”) is entered into this 1st day of July, 2012, by and between **ACCELIFY LLC**, (hereinafter “Provider”) and **Mount Diablo Unified School District** (hereinafter “Customer”), a [special education local plan area] of the state of California.

INTRODUCTION

WHEREAS, the Provider is the operator and owner of a web-based suite of tools, known as AccelSST (hereinafter “AccelSST”), for use by schools, school districts and county offices of education in formulating, updating, tracking, storing and reporting on student data and Student Success Team forms.

WHEREAS, Customer is interested in contracting with Provider in order to use AccelSST in Customer’s region.

NOW, THEREFORE, the Parties hereto agree as follows:

DEFINITIONS

I.1 “AccelSST” means the AccelSST System which is a full-featured system for formulating, updating, tracking, storing and reporting on student data and Student Success Team forms.

I.2 “Administrative Contact” means the individual authorized by Customer to receive and provide information required to administer this Agreement.

I.3 “Agreement” means this License Agreement.

I.4 “Authorized User” means the individual(s) authorized to access AccelSST on behalf of the Customer according to the terms of this Agreement.

I.5 “Customer Data” means documents, information and data submitted to Provider by Customer for processing through AccelSST and/or documents, information and data input or maintained in AccelSST by Customer.

I.6 “Effective Date” means the date upon which this Agreement has been executed by both the Provider and the Customer.

I.7 “Password” means the License code provided to Customer’s Authorized Users to enable access to AccelSST.

I.8 “Personal User Identification” means the identification code given to Customer’s Authorized Users.

I.9 “SELPA” means Customer’s Special Education Local Plan Area.

I.10 “SST” means Student Success Team, a dedicated team providing early identification and early intervention for students.

I.11 “System Launch Date” means the earlier of: a) the date the AccelSST system is ready for use





by Customer at the conclusion of the first training session as described in Section I.14(b) of this Agreement; or b) ninety (90) days after the Effective Date.

I.13 “Training Unit” means one day of training, Administrator or Teacher, whether it is one single all day session or two half day sessions.

ACCELSST SERVICES

I.12 Commencing on the Effective Date, Customer shall have the nonexclusive right, for the purposes and subject to the terms and conditions stated in this Agreement, for Customer’s Authorized Users to obtain access to and use AccelSST at www.seis.org.

I.13 AccelSST is a full-featured system for formulating, updating, tracking, storing and reporting on student data and Student Success Team forms.

I.14 Implementation Steps: The following steps will be undertaken to implement use of AccelSST by the Customer after the Effective Date of this Agreement.

(a) Customer Data Submission and Loading: Customer submits to Provider the Customer Data for loading which meets the AccelSST data structure specifications requested by Provider. Provider loads Customer Data elements into AccelSST as follows:

Data files for **Users**, (Admin, Clerical, Site Level (if any) and teachers) **District Data**, and **School Data** is to be provided for loading no later than ninety (90) days after the signature date on the contract unless specific arrangements have been made between Customer and Provider.

- (1) Loading of Authorized Users
- (2) Loading of School Districts
- (3) Loading of Schools
- (4) Loading of Student demographic data and Student/Teacher Assignments, if applicable.

Student data shall be provided no later than fifteen (15) working days before the first Admin/Clerical Training date. Any subsequent dataloads may be subject to additional fees. Provider retains the right to refuse to do any loading of data provided after training has begun.

Note: Any School District data and/or School data submitted to Provider for loading which does not meet the data-structure specifications requested by Provider may be subject to a new Agreement. Loading of any additional Student Data other than what is provided in the data template provided by Provider, may also be subject to a new Agreement.

(b) Training:

- (1) Administrative Level Training.
- (2) Teacher Training (Direct or Training of Trainers).

Administrator Level Training will be scheduled by the SELPA at least one (1) week prior to the launch of the system. Administrator Level Training sessions last approximately four to five hours and will be conducted in a computer lab setting with groups of 20 to 25 users. Administrator Level Training must be completed





prior to Teacher Training. Under this Agreement, Provider will provide six (6) Training Units. If the number of total users (combined Administrators and Teachers) in the SELPA exceeds the total number that can be trained in the six (6) Training Units, then Provider will implement a “Training of Trainers” model. Trainings for additional staff will be handled using a live Training of Trainers model combined with recorded training videos. Training videos will also be ‘rolled-out’ along with any new major change or feature in the system.

(c) System Launch Date. The system will be considered “launched” at the completion of the first Teacher training, as all trained Teacher and Administrators will begin using AccelSST on a day-to-day basis thereafter.

I.15 Hosting, Enhancement And Maintenance.

(a) AccelSST will be hosted for the Customer for a period of thirty six (36) months commencing with the System Launch Date.

(b) Customer shall select a set of SST forms from the library of such forms which currently exists in AccelSST for use by all users. SELPAs can choose to add any forms currently available in the system for no extra charge for programming or maintenance fee increases, as long as the forms are used as-is with no changes.

(c) Help Desk Services: Both telephone and online Help Desk service will be provided for the duration of this Agreement. Help Desk hours are Monday through Friday 8:00 a.m. through 5:00 p.m., excluding Provider’s holidays. During these hours, Provider shall endeavor to respond to Help Desk inquires within 24 hours of receipt (weekends and holidays excluded).

(d) It is anticipated that enhancements to AccelSST will be ongoing.

I.16 It is understood and agreed that maintenance may be required from time to time and Provider will endeavor to provide Customer with reasonable prior notice of such maintenance by posting such notice on the home page of AccelSST. It is also understood that emergency maintenance may be required and, in such case, prior notice of such maintenance will not be provided to Customers.

LICENSE FEE AND PAYMENT TERMS

I.17 **License Fee:** In consideration for the license to obtain access to and use AccelSST as provided herein, Customer agrees to pay Provider the License Fees calculated based on the aggregate of the average daily attendance reported to the state of California for the Customer and any related entities listed in Appendix “A”. Based on the most recent average daily attendance reported to the state, the License and Set-up Fees are as follows:

(a) Year One License Fee and Set-up Fee: The fee for the term of this contract shall be Thirty-Two Thousand, Two Hundred and Twenty-Two Dollars (\$30,532.00).

(b) Year Two License Fee: The fee for the term of this contract shall be Twenty-Five Thousand, Four Hundred and Thirty-Seven Dollars (\$24,104).

(c) Year Three License Fee: The fee for the term of this contract shall be Twenty-Five Thousand, Four Hundred and Thirty-Seven Dollars (\$24,104).





Note: Provider reserves the right to charge the Provider's standard implementation fee should the Customer agree to a new Agreement at a later date.

I.18 Payment Terms:

(a) Customer shall be invoiced for the License Fee upon the Provider's initial receipt of Customer Data.

(b) Customer shall remit payment to Provider within thirty (30) calendar days of Customer's receipt of invoices.

TERM AND TERMINATION

I.19 This Agreement shall be in effect between the Provider and the Customer beginning with the Effective Date and terminating June 30th, 2015.

I.20 In addition to the right to terminate pursuant to Article XII, either Provider or Customer may terminate this Agreement upon at least thirty (30) days prior written notice to the other party, with such termination under this Section 4.2 to be effective at the end of the current period for which Customer has paid License Fees when the notice of termination is provided. Within thirty (30) days of the effective date of termination of this Agreement, Provider shall return Customer Data to Customer in an ASCII delimited file format or such other mutually agreeable format.

I.21 The provisions under which this Agreement may be terminated shall be in addition to any and all other legal remedies which either party may have for the enforcement of any and all terms hereof, and do not in any way limit any other legal remedy such party may have.

CONTENT AND USE OF ACCELSST

I.22 The Customer shall have the right to provide Customer Data to Provider for inclusion in AccelSST as follows:

(a) Customer is authorized to submit Customer Data to AccelSST. By submission of Customer Data to Provider, Customer grants Provider a nonexclusive, royalty-free license to include the Customer Data in Provider's AccelSST for use by Customer's Authorized Users of AccelSST, with such use to include, but not be limited to copying, displaying, modifying, and preparation of reports under the terms and conditions of this Agreement.

(b) Customer hereby warrants and represents that such Customer Data does not violate any intellectual property rights or privacy rights of third parties. Customer hereby agrees to indemnify, defend and hold harmless Provider from any and all liability associated with Provider's inclusion of Customer Data in AccelSST. Customer further assumes sole responsibility for compliance with all intellectual property and privacy laws by any Authorized Users of the customer.

I.23 Customer shall have the right to possession of its Customer Data at all times during the term of





this Agreement and immediately on the termination of this Agreement.

PROVIDER'S PROPRIETARY RIGHTS IN ACCELSST/NONDISCLOSURE

I.24 Customer acknowledges that AccelSST is the property of the Provider and that the value of AccelSST is in part determined by the Provider's ability to limit access to and use of AccelSST.

I.25 With the exception of Non-public agencies and/or service providers in which the Customer's students are placed, the Customer agrees not to disclose or make available to any third party any of Provider's proprietary property to which Customer is granted access pursuant to this Agreement, including, without limitation, manuals and instructions for operation of AccelSST, knowledge of operating methods, Passwords, Personal User Identification, and the names and designations of any equipment comprising the system.

I.26 To further protect the Provider's Proprietary Rights in AccelSST, Customer agrees to restrict access to AccelSST to Customer's Authorized Users. In addition, Customer agrees to advise each Authorized User before he or she receives access to AccelSST, of the obligations of Customer under this Agreement and require each Authorized User to maintain those obligations.

I.27 AccelSST and all supporting documentation shall remain the property of the Provider.

PROTECTION OF PRIVATE CUSTOMER DATA

I.28 Customer and Provider recognize that some Customer Data relates to pupils in the SELPA and are confidential pursuant to relevant federal and state law, including but not limited to 20 USC section 1232(g) and Education Code sections 49060, *et seq.* Both Customer and Provider certify they will each abide by all applicable state and federal laws concerning confidential student records.

I.29 Customer shall inform each Authorized User of the need to protect Customer Data containing private student information. Customer agrees not to disclose or make available to any third party any private student information to which Customer's Authorized users are granted access pursuant to this Agreement.

I.30 To further protect Customer Data, Customer agrees to restrict access to AccelSST to Customer's Authorized Users. In addition, Customer agrees to advise each Authorized User before he or she receives access to AccelSST, of the obligations of Customer under this Agreement, and require each Authorized User to maintain those obligations.

I.31 Customer Data shall remain the property of Customer.

I.32 Provider will use its best effort to protect Customer Data from changes or physical loss or destruction through the operation of its computer system or by its personnel. "Best efforts" shall include weekly backup of all input provided by Customer and offsite storage of backup material for a 30-day period.

PERSONAL USER IDENTIFICATION AND PASSWORD PROVIDED

I.33 Customer's Authorized Users shall gain access to AccelSST via the Internet through the Authorized Users' Personal User Identification and Password.

I.34 Immediately following the initial data loading of Authorized Users, Customer shall assume sole





responsibility for the management of Personal User Identification and Passwords for all Customers' Authorized Users. The Customers' Administrative Contact, or designee at either the SELPA or school district level, shall be responsible for ensuring that Personal User Identification and Passwords are provided only to Authorized Users and for managing, disabling or authorizing new Authorized Users Personal User Identification and Passwords.

PASSWORD USE AND SECURITY

I.35 Customer agrees to assume sole responsibility for the security of the Passwords issued to it. Customer is solely responsible for disabling lost or stolen Passwords and Personal User Identification and for disabling user accounts that are no longer active.

LIABILITY FOR FAILURES OR DELAYS

I.36 Customer agrees that Provider shall not be liable for any delays or failures in performance or for any interruption of Provider's service and further agrees to indemnify and hold Provider harmless from any loss or claims or loss arising out of the use of Provider's service or any materials provided under this Agreement.

WARRANTY DISCLAIMER

I.37 PROVIDER MAKES NO REPRESENTATIONS OR WARRANTIES OF ANY KIND WITH RESPECT TO SERVICES OR DATA MADE AVAILABLE BY PROVIDER, INCLUDING BUT NOT LIMITED TO THE WARRANTIES OF FITNESS FOR A PARTICULAR PURPOSE OR MERCHANTABILITY. PROVIDER ASSUMES NO RESPONSIBILITY IN CONNECTION WITH THE USE OF ANY OF THE SERVICES OR DATA MADE AVAILABLE BY PROVIDER. CUSTOMER AGREES THAT PROVIDER SHALL NOT BE LIABLE FOR ANY SPECIAL, INCIDENTAL, INDIRECT, PUNITIVE, OR CONSEQUENTIAL DAMAGES OR FOR THE LOSS OF PROFIT, REVENUE OR DATA ARISING OUT OF THE SUBJECT MATTER OF THIS AGREEMENT, EVEN IF CUSTOMER HAS BEEN ADVISED OF THE POSSIBILITY OF POTENTIAL LOSS OR DAMAGE.

DEFAULT

I.38 Events Of Default. This Agreement may be terminated by the nondefaulting party if any of the following events occur: (1) if a party materially fails to perform or comply with this Agreement or any provision hereof; (2) if a party becomes insolvent or admits in writing its inability to pay its debts as they mature, or makes an assignment for the benefit of creditors; (3) if a petition under any foreign, state or United States bankruptcy act, receivership statute, or the like, as they now exist, or as they may be amended, is filed by a party; or (4) if such a petition is filed by any third party, or an application for a receiver is made by anyone and such petition or application is not resolved favorably within ninety (90) days.

I.39 Obligations On Termination By Default. Within ten (10) days after termination of this Agreement, Customer shall cease and desist use of AccelSST. Provider reserves the right to disable any and all Passwords issued to Customer upon Customer's default herein.

NOTICES





I.40 All notices, authorizations, and requests in connection with this Agreement shall be deemed given (i) five (5) days after being deposited in the U.S. mail, postage prepaid, certified or registered, return receipt requested; or (ii) one (1) day after being sent by overnight courier, charges prepaid, with confirming fax; and addressed as first set forth below or to such other address as the party to receive the notice so designates by written notice to the other party.

Provider

Customer

Name: Accelify LLC

Mount Diablo Unified School District

Attn: Alex Brecher
CEO

Attn: Rose Lock
Assistant Superintendent

Address: 4221 Wilshire Blvd
Suite 1704
Los Angeles, CA 90010

Address: 1936 Carlotta Drive
Concord, CA 94519

Phone: (888) 922-2354

Phone: (925) 682-8000

Fax: (877) 922-2354

Fax: (925) 689-1466

GOVERNING LAW, JURISDICTION AND VENUE

I.41 The validity, interpretation, construction and performance of this Agreement shall be governed by the laws of the state of California.

I.42 The California state court, County of San Joaquin, shall have exclusive jurisdiction and venue over any dispute arising out of this Agreement, and Customer hereby consents to the jurisdiction of such courts.

SEVERABILITY

I.43 If any provisions of this Agreement shall be held to be invalid, legality and enforceability of the remaining provisions shall not be in any way affected or impaired thereby.

NONASSIGNABILITY

I.44 This Agreement shall be binding upon, inure to the benefit of the parties hereto and their respective successors and assigns; provided, however that the rights and benefits conferred upon Customer hereunder may not be assigned or otherwise transferred by Customer without prior written consent of the Provider.

ENTIRE AGREEMENT

I.45 This Agreement embodies the entire understanding of the parties and supersedes all previous communications, representations, or understandings, either oral or written, between the parties relating to the subject matter herein.





MODIFICATIONS

I.46 This Agreement may not be supplemented, modified, amended, released or discharged except by an instrument in writing signed by each party’s duly authorized representatives.

NONWAIVER OF RIGHTS

I.47 Customer and Provider agree that no failure to exercise and no delay in exercising any right, power, or privilege on the part of either party shall operate as a waiver of any right, power or privilege under this Agreement. Customer and Provider further agree that no single or partial exercise of any right, power, or privilege under this Agreement shall preclude further exercise thereof.

IN WITNESS WHEREOF, the parties have caused their duly authorized representatives to execute this Agreement as of the date first set forth above.

Provider

Customer

ACCELIFY LLC

Mount Diablo Unified School District

By: _____

By: _____

Name: _____

Name: _____

Title: _____

Title: _____

Date: _____

Date: _____



