Master Software and Services Agreement
SAN LEANDRO UNIFIED

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schools@dreambox.com
www.dreambox.com

Order Form #: DB071959263

Quote Valid Until: Jul. 15, 2020

Order Form		
Customer: SAN LEANDRO UNIFIED SCH DIST	**Service Start Date:** 08-25-2020 **Service End Date:** 08-24-2023	**Subscription Period:** 36 Months
Customer's Point of Contact: Name: Joanne Clark Title: Director of Prevention & Intervention Services Phone:(510) 667-3552 E-Mail: joanneclark@slusd.us	**Customer's Billing Address:** Attn: Joanne Clark San Leonardo USD - Purchasing department 835 E. 14th street, Suite 200 SAN LEANDRO, CA 94577	**Agreement Prepared By:** Sandi Maxinoski Title: District Partner Manager Phone: E-Mail: sandi.maxinoski@dreambox.com

Pricing		
Software and Services	**Quantity**	**List Price**
Renewal 501-1,000 DreamBox Site License Three Year Renewal License for Roosevelt Elementary School: 10% Discount Applied	3	$ 23,625.00
Subtotal:		$23,625.00
Outside of the states of Washington, South Carolina, Arizona and Hawaii, customers are responsible for remitting any taxes imposed by their states. — Sales Tax:		$ 0.00
Total:		$23,625.00

Invoicing and Payment Terms			
Subscription Period/ Total Fees/Additional Terms	**Fee Schedule**	**Invoice Schedule**	**Payment Schedule**
Term Length (months): **36** *Total Fees:* **$23,625.00**	$23,625.00	8/25/2020	8/25/2020

Payment Options

- To pay by purchase order, please email your purchase order to schools@dreambox.com or fax your purchase order to 425-484-6476.
- To pay by credit card for Order Forms totaling less than $8,000.00, please click here.
- As Covid-19 uncertainties continue to extend closures nationwide, we understand many offices are closed and may have trouble accessing physical items such as checks. We would like to encourage and help customers to process payments electronically. Our banking information is below and can also be found on your DreamBox Learning invoice. This banking information can be used to process an ACH or a wire. Please email us at Accountsreceivable@dreambox.com should your banking institution require additional information from us for processing payments. Please remit via ACH to:

DreamBox Learning, Inc.
Bridge Bank
Routing #: 121143260
Account #: 102517190

Should you need any assistance with setup or have additional questions regarding payment, please contact Accounts Receivable at accountsreceivable@dreambox.com.

By signing below the parties are accepting the Terms and Conditions incorporated into this Agreement

DREAMBOX LEARNING, INC

Signature: _____

Name: Lance Lundman

Title: Chief Financial Officer

Date: _____

CUSTOMER: SAN LEANDRO UNIFIED

Signature: _____

Name: _____

Title: _____

Date: _____

TERMS AND CONDITIONS

DreamBox Learning, Inc. ("**DreamBox Learning**") offers software products and services that provide personalized math instruction in an engaging environment for students. DreamBox Learning provides a three-pronged approach to math, focusing on teaching concepts, problem-solving, and procedures, that is underpinned with an intelligent, adaptive engine that sequences and personalizes instruction to meet the needs of each student. DreamBox Learning's software products and services are offered to you on a software-as-a-service basis pursuant to the terms and conditions set forth in this Software-as-a-Service Agreement (the "**Agreement**"). This Agreement is made and entered into by and between DreamBox Learning and you, the customer identified on the attached order form ("**you**" or "**Customer**"). This Agreement sets forth the terms and conditions pursuant to which DreamBox Learning agrees to provide to you access to and use of the software products and services described in this Agreement (collectively, the "**Software and Services**"). This Agreement comprises the attached order form (the "**Order Form**") and these terms and conditions (the "**Terms and Conditions**"), each of which are an integral part of this Agreement and incorporated herein by this reference. If this Agreement reflects your understanding, please indicate your agreement to be legally bound hereto by having a duly authorized signatory sign the Order Form. The Agreement will only be effective when executed and delivered by a duly authorized signatory of each party. Capitalized terms used but not otherwise defined in these Terms and Conditions (whether in singular, plural, or possessive) have the meaning ascribed to such terms in these Terms and Conditions or the Order Form.

1. CUSTOMER ACCOUNT

1.1 **Access**. These Terms and Conditions govern your access to the Software and Services. The Software and Services comprise the software to which you are granted access by DreamBox Learning (the "**Software**") and the services provided by DreamBox Learning to you in connection therewith (the "**Services**"). Beginning on the Service Start Date, DreamBox Learning will provide you with the account activation information necessary for you to access the Software and Services via an online account (the "**Customer Account**"). Notwithstanding anything to the contrary herein, you will be responsible for obtaining and maintaining at your expense all the necessary hardware, software, connections to the Internet, and other systems and networks required in order to access the Customer Account and the Software and Services provided in connection therewith. You are solely responsible for the confidentiality and use of the usernames, passwords, and account identifiers associated with the Customer Account. In no event will DreamBox Learning be liable for any loss of your data or other claims to the extent the same arose from unauthorized access to the Customer Account.

1.2 **Updates; Enhancements.** At no charge to you, DreamBox Learning will install on its servers any software updates deemed reasonably necessary to address errors, bugs, or other performance issues in the Customer Account or the Software and Services (collectively, "**Updates**"). Updates, if any, will be subject to this Agreement. DreamBox Learning reserves the right at any time and without prior notice to Customer to temporarily limit Customer's access to the Customer Account and use of the Software and Services in order to perform repairs, make modifications, or as a result of circumstances beyond DreamBox Learning's reasonable control. DreamBox Learning may, in its sole discretion, modify, enhance, or otherwise change the Software and Services upon written notice to you. DreamBox Learning shall not be obligated to provide to you any new feature, functionality, or service for which DreamBox Learning generally charges a separate fee.

1.3 **License.** Subject to the terms and conditions of this Agreement, DreamBox Learning hereby grants to you a limited, non-exclusive, non-sublicenseable, non-transferable license during the Subscription Period to access the Customer Account and permit designated administrators, faculty members, staff members, and enrolled students to use the Software and Services, as made available to you via the Customer Account, commencing on the Service Start Date, solely for your own educational purposes.

1.4 **Protections Against Unauthorized Use.** You will take all appropriate steps and precautions to protect the Software and Services from unauthorized use by your officers, directors, trustees, administrators, faculty, staff, employees, agents, and students, and any third parties who obtain access to the Software and Services directly or indirectly through you, including any former officers, directors, trustees, administrators, faculty, staff, employees, agents, or students. You understand that nothing in the license granted to you in Section 1.3 above permits you to disclose know-how, trade secrets, or other non-public information disclosed to you by DreamBox Learning to any third party without obtaining DreamBox Learning's advance written consent except as otherwise required by applicable state or federal law. In the event of any actual or suspected unauthorized use by anyone who obtained access to the Software and Services directly or indirectly through you, you will take all steps reasonably necessary to terminate such unauthorized use. Further, you will provide to DreamBox Learning such cooperation and assistance related to any such unauthorized use as DreamBox Learning may reasonably request.

1.5 **End Users' Compliance with Website Terms of Use.** You understand that your users of the Software and Services (i.e., your designated administrators, faculty members, staff members, and students) will be bound by the terms and conditions set forth in DreamBox Learning's Website Terms of Use (available at http://www.dreambox.com/terms or a successor site) to which such individuals will consent in connection with their access to and use of the Software and Services.

1.6 **Reservation of Rights**. The Software and Services are licensed to you, not sold. You acknowledge that the Software and Services and any and all intellectual property rights therein, including any know-how, trade secrets, and other non-public information related to the Software and Services, are, and shall remain, the sole and exclusive property of DreamBox Learning and contain DreamBox Learning's confidential and proprietary materials. All uses of DreamBox Learning's trademarks and related goodwill incidental to your access to the Customer Account or use of the Software and Services will inure solely to DreamBox Learning and you will obtain no rights with respect to any of DreamBox Learning's trademarks. You acknowledge and agree that, if you or your officers, directors, trustees, administrators, faculty, staff, employees, agents, or students provide any feedback or suggestions to DreamBox Learning concerning the Software and Services (including identifying any errors or improvements) ("**Feedback**"), DreamBox Learning is hereby assigned all right, title, and interest in and to the Feedback, including any and all intellectual property rights therein, and DreamBox Learning is free to use the Feedback without any payment or restriction.

2. PAYMENT

Unless otherwise stated in the Order Form: (i) Purchase Orders referencing the Order Form are due within thirty (30) days of the Effective Date of this Agreement, and (ii) Payment is due within thirty (30) days of receipt of Invoice but no later than fifteen (15) days from Service Start Date.

3. SERVICES

3.1 **Delivery**. Professional Development may be delivered on-site or by electronic means (webinar), as outlined in the applicable Order Form. All Professional Development will be utilized during the term of the Order Form. Professional Development not utilized during the term of the Order Form will be forfeited.

3.2 **Cancelation**.

(a) On-site Professional Development canceled within 15 business days of the scheduled on-site visit will result in forfeiture. DreamBox Learning shall have no obligation to reschedule on-site. Notwithstanding the foregoing, if on-site visit is canceled due to acts of God, government regulations, disaster, or strikes DreamBox will work in good faith with the Customer to reschedule.

(b) Webinars canceled within 3 business days of the scheduled webinar will result in forfeiture. DreamBox Learning shall have no obligation to reschedule the webinar. Notwithstanding the foregoing, if webinar is canceled due to acts of God, government regulations, disaster, or strikes DreamBox will work in good faith with the Customer to reschedule.

(c) Should DreamBox be unable to deliver on-site Professional Development during the term of the Order Form due to prolonged school closures, inability for DreamBox employees to travel safely, or other instance which may cause it to be unsafe for DreamBox employees to interact in person with Customer employees then DreamBox will deliver the same Professional Development content virtually on the committed dates.

4. TERM AND TERMINATION

4.1 **Term**. This Agreement will become effective as of the Effective Date, and it will continue in effect until it is terminated in accordance with Sections 4.2, 4.3, and/or 4.4 below (the "**Term**"). For the avoidance of doubt, the Term comprises the period between the Effective Date and the Service Start Date, the Subscription Period, and any additional Renewal Period.

4.2 **Subscription Period**. The "**Subscription Period**" will be for the duration set forth in the Order Form. Following the end of the Subscription Period, the Order Form will automatically expire. Parties may mutually agree in writing, in a new Order Form, to renew this Agreement for one or more additional periods "**Renewal Period**" .

4.3 **Termination without Cause**. Neither party may terminate this Agreement without cause. For termination for cause, see Section 4.4 below. Notwithstanding the foregoing, you may terminate this Agreement at the end of the Subscription Period or the then-current Renewal Period. In the event that after the first 12 months of your Subscription Period or during a Renewal Period the amount necessary to pay the Fee, or Fees, are not included in your budget appropriation for the applicable period you may terminate your current Order Form, provided that (a) you use your best efforts to seek and obtain the necessary amount to meet your payment obligations hereunder in each applicable budget appropriation; (b) you notify us of your intent to terminate the agreement within 60 days after the applicable budget appropriation is approved and no later than 30 days prior to the end of the Initial Period or the Renewal Period, as the case may be, and (c) you do not, and you hereby agree that you will not, seek and obtain replacement software or services that are the same as or similar to the Software and Services during the applicable appropriation period.

4.4 **Termination or Suspension for Cause**. Either party may terminate this Agreement and the rights granted hereunder by written notice to the other party in the event of any material breach by the other party of any term or condition set forth herein, if such breach remains uncured 10 days after receipt by the defaulting party of a written notice of default from the non-defaulting party. In addition to other remedies available to DreamBox Learning, it may, in its sole discretion, suspend your access to the Customer Account and use of the Software and Services if payment of any Fee is due and payable and remains outstanding for more than 45 days.

4.5 **Survival**. Upon termination or expiration of this Agreement, all rights and duties of the parties toward each other pursuant to the Agreement cease except that: (a) within 30 days after the effective date of termination, you will pay all amounts owing to DreamBox Learning, including any Fees accrued prior to the effective date of termination; and (b) Sections 1.4, 1.5, 1.6, 4.5, and 7 survive termination or expiration of this Agreement.

5. PRIVACY

DreamBox Learning understands and agrees that you have obligations under the Family Educational Rights and Privacy Act and regulations and guidelines issued thereunder, as the same may be amended from time to time ("**FERPA**"), and other privacy laws to protect the confidentiality of personally identifiable information, as that term is defined in FERPA ("**PII**"), and to obligate those to whom you disclose PII to perform certain functions on your behalf in order to meet requirements and safeguards with respect to the use of such PII. During the term of this Agreement, DreamBox Learning is designated as your authorized representative (as that term is defined in FERPA) to receive, obtain, or create PII residing in one or more of DreamBox Learning's computer information systems used to host the Software and perform the Services. Without limiting any other obligations of this Agreement, DreamBox Learning will (a) not use PII for any purpose other than as expressly allowed under this Section 5; (b) not further disclose PII to any person, other than (i) to your applicable public school district and its employees or (ii) as specifically required or authorized by federal law; and (c) implement policies and procedures consistent with FERPA and in accordance with generally accepted practices, privacy laws, and regulations to safeguard PII from unauthorized use and further disclosure. Notwithstanding the foregoing, you acknowledge and agree that you are responsible for notifying DreamBox Learning concerning any changes to your public school district or its administrators, faculty members, staff members, students, parents, or guardians that may affect DreamBox Learning's privacy policies. DreamBox Learning has no obligations to change its practices unless and until it has received notification from you of any such change, or changes, including, without limitation, any change in desired access by an administrator, faculty member, staff member, student, parent, or guardian.

6. NOTICE

Any notice required or permitted under the terms of this Agreement or required by law must be in writing and must be: (a) delivered in person, (b) sent by first class mail, or (c) sent by overnight air courier, in each case properly posted and fully prepaid to the address set forth on the Order Form. Either party may change its address for notices by notice to the other party given in accordance with this Section 6. Notices will be deemed

given at the time of actual delivery in person, three business days after deposit in the mail as set forth above, or one day after delivery to an overnight air courier service.

7. WARRANTY

DREAMBOX LEARNING DOES NOT WARRANT THE SOFTWARE OR SERVICES, EXCEPT AS SPECIFICALLY AGREED TO IN WRITING, AND EXPRESSLY DISCLAIMS ALL IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, QUALITY, ACCURACY, TITLE, AND NON-INFRINGEMENT. YOU WILL NOT HAVE THE RIGHT TO MAKE OR PASS ON ANY REPRESENTATION OR WARRANTY ON BEHALF OF DREAMBOX LEARNING TO ANY THIRD PARTY. NEITHER PARTY SHALL HAVE ANY CONTRACTUAL INDEMNIFICATION OBLIGATIONS TO THE OTHER PARTY.

8. MISCELLANEOUS

The Terms and Conditions and the Order Form contain the entire agreement of the parties with respect to the subject matter of this Agreement and supersede all previous communications, representations, understandings, and agreements, either oral or written, between the parties with respect to said subject. No terms, provisions, or conditions of any sales order, purchase order, acknowledgement, or other business form that either party may use in connection with the transactions contemplated by this Agreement will have any effect on the rights, duties, or obligations of the parties under, or otherwise modify, this Agreement, regardless of any failure of a receiving party to object to these terms, provisions, or conditions. This Agreement may not be amended, except by a writing signed by both parties. Applicable activation codes for the subscription purchased by you will be issued following receipt of your authorized signature on the Order Form. Receipt of a signed Order Form from you represents a binding agreement to purchase access to and use of the Software and Services. All Fees and payments are non-refundable, unless you terminate this Agreement for cause pursuant to Section 4.4 above, in which case you will receive a prorated refund of any Fees paid in advance of receipt of the Software and Services. You will remit all payments in US Dollars. Fees are exclusive of any applicable taxes or surcharges. Taxes and surcharges, if applicable, are subject to change at the time of invoicing. DreamBox Learning will not charge you taxes or surcharges if you provide us with a valid tax exemption certificate. The parties shall attempt to settle any dispute, controversy, or claim arising out of or in connection with this Agreement through consultation and negotiation in good faith and a spirit of cooperation. This Agreement and all disputes, claims, or controversies arising out of or in connection with this Agreement, including any question regarding its formation, existence, validity, enforceability, performance, interpretation, breach, or termination shall be governed by and construed in accordance with the substantive local laws of the Customer's home state as provided in the Order Form, without reference to its choice of law rules and not including the provisions of the 1980 U.N. Convention on Contracts for the International Sale of Goods. Each party hereby irrevocably consents to the exclusive jurisdiction and venue of the federal and state courts located in the Customer's home county and state, in connection with any action arising out of or in connection with this Agreement and agrees that service of process to the party's address set forth on the Order Form (as may be updated from time-to-time by written notice to the other party in accordance with this Section 8) will constitute effective service within the Customer's home state. It is the express intention of the parties that DreamBox Learning perform the Services as an independent contractor. Nothing in this Agreement will in any way be construed to constitute DreamBox Learning as your agent, employee, or representative. Any waiver of the provisions of this Agreement or of a party's rights or remedies under this Agreement must be in writing to be effective. Failure, neglect, or delay by a party to enforce the provisions of this Agreement or its rights or remedies at any time, will not be construed as a waiver of the party's rights under this Agreement and will not in any way affect the validity of the whole or any part of this Agreement or prejudice the party's right to take subsequent action. Exercise or enforcement by either party of any right or remedy under this Agreement will not preclude the enforcement by the party of any other right or remedy under this Agreement or that the party is entitled by law to enforce. If any term, condition, or provision in this Agreement is found to be invalid, unlawful, or unenforceable to any extent, the parties will endeavor in good faith to agree to amendments that will preserve, as far as possible, the intentions expressed in this Agreement. If the parties fail to agree on an amendment, the invalid term, condition, or provision will be severed from the remaining terms, conditions, and provisions of this Agreement, which will continue to be valid and enforceable to the fullest extent permitted by law. This Agreement may be executed in counterparts, each of which will be deemed to be an original and together will constitute one and the same agreement. This Agreement may also be executed and delivered by facsimile or other electronic means and such execution and delivery will have the same force and effect of an original document with original signatures. This Agreement will be binding upon and will inure to the benefit of the parties and their respective successors and assigns.