

AGREEMENT FOR PROFESSIONAL SERVICES

This Agreement for Professional Services ("Agreement") is made and entered into as of the 15th day of July, 2015 by and between the Solano Community College District, ("District") and Development Group, Inc. ("Provider"), (together, "Parties").

NOW, THEREFORE, the Parties agree as follows:

1. **Services.** The Provider shall provide Network Engineering and Infrastructure Services to include configuration, rollout, deployment and testing of network system integration as further described in **Exhibit "A,"** descriptions attached hereto and incorporated herein by this reference ("Services").
2. **Term.** Provider shall commence providing services under this Agreement on August 1st, 2015 and will diligently perform as required and complete performance in a timely manner unless this Agreement is terminated and/or otherwise cancelled prior to that time. The parties also agree, this agreement will renew automatically every year not to exceed 10 one year terms.
3. **Submittal of Documents.** The Provider shall not commence the Services under this Agreement until the Provider has submitted and the District has approved the certificate(s) and affidavit(s), and the endorsement(s) of insurance required as indicated below:

<u> X </u>	Signed Agreement
<u> X </u>	Workers' Compensation Certification
<u> X </u>	Insurance Certificates and Endorsements
<u> X </u>	W-9 Form
<u> </u>	Other: _____

4. **Compensation.** District agrees to pay the Provider for services satisfactorily rendered pursuant to this Agreement a total fee not to exceed One Million Nine Hundred Thousand Sixty Three Dollars (\$1,900,062.65). District shall pay Provider according to the following terms and conditions:
 - 4.1. Payment for the Work shall be made for all undisputed amounts based upon the delivery of the work product as determined by the District. Payment shall be made within thirty (30) days after the Provider submits an invoice to the District for Work actually completed and after the District's written approval of the Work, or the portion of the Work for which payment is to be made. The schedule of deliverables and associated values is outlined in **Exhibit "B"**.
5. **Expenses.** District shall not be liable to Provider for any costs or expenses paid or incurred by Provider in performing services for District, except as follows:
 - 5.1. Not applicable
6. **Independent Contractor.** Provider, in the performance of this Agreement, shall be and act as an independent contractor. Provider understands and agrees that it and all of its employees shall not be considered officers, employees, agents, partner, or joint venture of the District, and are not entitled to benefits of any kind or nature normally provided employees of the District and/or to which District's employees are normally entitled, including, but not limited to, State Unemployment Compensation or Worker's Compensation. Provider shall assume full responsibility for payment of all federal, state and local taxes or contributions, including unemployment insurance, social security and income taxes with respect to Provider's employees. In the performance of the work herein contemplated, Provider is an independent contractor or business entity, with the sole authority for controlling and directing the performance of the details of the work, District being interested only in the results obtained.

7. **Materials.** Provider shall furnish, at its own expense, all labor, materials, equipment, supplies and other items necessary to complete the services to be provided pursuant to this Agreement, except as follows:

7.1. Not Applicable

8. **Performance of Services.**

8.1. **Standard of Care.** Provider represents that Provider has the qualifications and ability to perform the Services in a professional manner, without the advice, control or supervision of District. Providers services will be performed, findings obtained, reports and recommendations prepared in accordance with generally and currently accepted principles and practices of its profession for services to California community college districts.

Provider shall carefully study and compare all documents, findings, and other instructions and shall at once report to District, in writing, any error, inconsistency, or omission that Provider or its employees may discover. Provider shall have responsibility for discovery of errors, inconsistencies, or omissions.

8.2. **Meetings.** Provider and District agree to participate in regular meetings on at least a monthly basis to discuss strategies, timetables, implementations of services, and any other issues deemed relevant to the operation of Providers performance of Services.

8.3. **District Approval.** The work completed herein must meet the approval of the District and shall be subject to the District's general right of inspection and supervision to secure the satisfactory completion thereof.

8.4. **New Project Approval.** Provider and District recognize that Provider's Services may include working on various projects for District. Provider shall obtain the approval of District prior to the commencement of a new project.

9. **Originality of Services.** Except as to standard generic details, Provider agrees that all technologies, formulae, procedures, processes, methods, writings, ideas, dialogue, compositions, recordings, teleplays and video productions prepared for, written for, or submitted to the District and/or used in connection with this Agreement, shall be wholly original to Provider and shall not be copied in whole or in part from any other source, except that submitted to Provider by District as a basis for such services, as deployed for the district, excluding all prior work.

10. **Copyright/Trademark/Patent.** Provider understands and agrees that all matters produced under this Agreement shall become the property of District and cannot be used without District's express written permission, excluding any work produced previously, as original work for hire. District shall have all right, title and interest in said matters. Excluding the right to secure and maintain the copyright, trademark and/or patent of said matter weather owned by or Licensed to Provider. No rights are granted to the District hereunder and/or under any Contracts other than expressly set forth herein. Provider consents to use of Provider's name in conjunction with the sale, use, performance and distribution of the matters, for any purpose and in any medium.

11. **Audit.** Provider shall establish and maintain books, records, and systems of account, in accordance with generally accepted accounting principles, reflecting all business operations of Provider transacted under this Agreement. Provider shall retain these books, records, and systems of account during the Term of this Agreement and for five (5) years thereafter.

Provider shall permit the District, its agent, other representatives, or an independent auditor to audit, examine, and make excerpts, copies, and transcripts from all books and records, and to make audit(s) of all billing statements, invoices, records, and other data related to the Services covered by this Agreement. Audit(s) may be performed at any time, provided that the District shall give reasonable prior notice to Provider and shall conduct audit(s) during Provider's normal business hours.

12. Termination.

12.1. **For Convenience by District.** District may, at any time, with or without reason, terminate this Agreement and compensate Provider only for services satisfactorily rendered to the date of termination. Written notice by District shall be sufficient to stop further performance of services by Provider. Notice shall be deemed given when received by the Provider or no later than three days after the day of mailing, whichever is sooner.

12.2. **For Cause by District.** District may terminate this Agreement upon giving of written notice of intention to terminate for cause. Cause shall include:

12.2.1. material violation of this Agreement by the Provider; or

12.2.2. any act by Provider exposing the District to liability to others for personal injury or property damage; or

12.2.3. Provider is adjudged a bankrupt, Provider makes a general assignment for the benefit of creditors or a receiver is appointed on account of Provider's insolvency.

Written notice by District shall contain the reasons for such intention to terminate and unless within five (5) calendar days after that notice the condition or violation shall cease, or satisfactory arrangements for the correction thereof be made, this Agreement shall upon the expiration of the five (5) calendar days cease and terminate. In the event of this termination, the District may secure the required services from another Provider.

13. **Indemnification.** To the furthest extent permitted by California law, Provider shall defend, indemnify, and hold harmless the District, its Governing Board, agents, representatives, officers, consultants, employees, trustees, and volunteers (the "indemnified parties") from any and all claims arising out of, pertaining to, or relating to the negligence, recklessness, or willful misconduct of the Provider. The District shall have the right to accept or reject any legal representation that Provider proposes to defend the indemnified parties.

14. Insurance.

14.1. The Provider shall procure and maintain at all times it performs any portion of the Services the following insurance with minimum limits equal to the amount indicated below.

Type of Coverage	Minimum Requirement
Commercial General Liability Insurance , including Bodily Injury, Personal Injury, Property Damage, Advertising Injury, and Medical Payments Each Occurrence General Aggregate	\$ 2,000,000 \$ 5,000,000
Automobile Liability Insurance - Any Auto Each Occurrence General Aggregate	\$ 2,000,000 \$ 5,000,000
Professional Liability	\$ 2,000,000
Workers Compensation	Statutory Limits
Employer's Liability	\$ 2,000,000

14.1.1. **Commercial General Liability and Automobile Liability Insurance.**

Commercial General Liability Insurance and Any Auto Automobile Liability Insurance that shall protect the Provider, the District, and the State from all claims of bodily injury, property damage, personal injury, death, advertising injury, and medical payments arising performing any portion of the Services. (Form CG 0001 and CA 0001, or forms substantially similar, if approved by the District.)

14.1.2. **Workers' Compensation and Employers' Liability Insurance.**

Workers' Compensation Insurance and Employers' Liability Insurance for all of its employees performing any portion of the Services. In accordance with provisions of section 3700 of the California Labor Code, the Provider shall be required to secure workers' compensation coverage for its employees. If any class of employee or employees engaged in performing any portion of the Services under this Agreement are not protected under the Workers' Compensation Statute, adequate insurance coverage for the protection of any employee(s) not otherwise protected must be obtained before any of those employee(s) commence performing any portion of the Services.

14.1.3. **Professional Liability (Errors and Omissions).** Professional Liability Insurance as appropriate to the Provider profession, coverage to continue through completion of construction plus two (2) years thereafter.

14.2. **Proof of Carriage of Insurance.** The Provider shall not commence performing any portion of the Services until all required insurance has been obtained and certificates indicating the required coverage have been delivered in duplicate to the District and approved by the District. Certificates and insurance policies shall include the following:

14.2.1. A clause stating: "This policy shall not be canceled or reduced in required limits of liability or amounts of insurance until notice has been mailed to the District, stating date of cancellation or reduction. Date of cancellation or reduction shall not be less than thirty (30) days after date of mailing notice."

14.2.2. Language stating in particular those insured, extent of insurance, location and operation to which insurance applies, expiration date, to whom cancellation and reduction notice will be sent, and length of notice period.

14.2.3. An endorsement stating that the District and its Governing Board, agents, representatives, employees, trustees, officers, consultants, and volunteers are named additional insured under all policies except Workers' Compensation Insurance, Professional Liability, and Employers' Liability Insurance. An

endorsement shall also state that Provider's insurance policies shall be primary to any insurance or self-insurance maintained by District. An endorsement shall also state that there shall be a waiver of any subrogation.

14.2.4. All policies except the Professional Liability, Workers' Compensation Insurance, and Employers' Liability Insurance Policies shall be written on an occurrence form.

14.3. **Acceptability of Insurers.** Insurance is to be placed with insurers with a current A.M. Best's rating of no less than A:VII, unless otherwise acceptable to the District.

15. **Assignment.** The obligations of the Provider pursuant to this Agreement shall not be assigned by the Provider.

16. **Compliance with Laws.** Provider shall observe and comply with all rules and regulations of the governing board of the District and all federal, state, and local laws, ordinances and regulations. Provider shall give all notices required by any law, ordinance, rule and regulation bearing on conduct of the Work as indicated or specified. If Provider observes that any of the Work required by this Contract is at variance with any such laws, ordinance, rules or regulations, Provider shall notify the District, in writing, and, at the sole option of the District, any necessary changes to the scope of the Work shall be made and this Contract shall be appropriately amended in writing, or this Contract shall be terminated effective upon Provider's receipt of a written termination notice from the District. If Provider performs any work that is in violation of any laws, ordinances, rules or regulations, without first notifying the District of the violation, Provider shall bear all costs arising therefrom.

17. **Certificates/Permits/Licenses.** Provider and all Provider's employees or agents shall secure and maintain in force such certificates, permits and licenses as are required by law in connection with the furnishing of Services pursuant to this Agreement.

18. **Employment with Public Agency.** Provider, if an employee of another public agency, agrees that Provider will not receive salary or remuneration, other than vacation pay, as an employee of another public agency for the actual time in which services are actually being performed pursuant to this Agreement.

19. **Anti-Discrimination.** It is the policy of the District that in connection with all work performed under Contracts there be no discrimination against any employee engaged in the work because of race, color, ancestry, national origin, religious creed, physical disability, medical condition, marital status, sexual orientation, gender, or age and therefore the Provider agrees to comply with applicable Federal and California laws including, but not limited to the California Fair Employment and Housing Act beginning with Government Code Section 12900 and Labor Code Section 1735 and District policy. In addition, the Provider agrees to require like compliance by all of its subcontractor(s).

20. **No Rights in Third Parties.** This Agreement does not create any rights in, or inure to the benefit of, any third party except as expressly provided herein.

21. **District's Evaluation of Provider and Provider's Employees and/or Subcontractors.** The District may evaluate the Provider in any way the District is entitled pursuant to applicable law. The District's evaluation may include, without limitation:

21.1. Requesting that District employee(s) evaluate the Provider and the Provider's employees and subcontractors and each of their performance.

21.2. Announced and unannounced observance of Provider, Provider's employee(s), and/or subcontractor(s).

22. **Limitation of District Liability.** Other than as provided in this Agreement, District's financial obligations under this Agreement shall be limited to the payment of the compensation provided in this Agreement. Notwithstanding any other provision of this Agreement, in no event, shall District be liable, regardless of whether any claim is based on contract or tort, for any special, consequential, indirect or incidental damages, including, but not limited to, lost profits or revenue, arising out of or in connection with this Agreement for the services performed in connection with this Agreement.
23. **Confidentiality.** The Provider and all Provider's agents, personnel, employee(s), and/or subcontractor(s) shall maintain the confidentiality of all information received in the course of performing the Services. Provider understands that student records are confidential and agrees to comply with all state and federal laws concerning the maintenance and disclosure of student records. This requirement to maintain confidentiality shall extend beyond the termination of this Agreement.
24. **Notice.** Any notice required or permitted to be given under this Agreement shall be deemed to have been given, served, and received if given in writing and either personally delivered or deposited in the United States mail, registered or certified mail, postage prepaid, return receipt required, or sent by overnight delivery service, or facsimile transmission and email addressed as follows:

District:

Solano Community College District
 C/O Kitchell CEM
 360 Campus Lane, Suite 203
 Fairfield, California 94534
 Fax: 707-646-7710
 ATTN: Eric Berger
 Email: Eric.Berger@Solano.edu

Provider:

Development Group, Inc.
 6704 Lockheed Drive
 Redding, California 96002
 FAX: 530-248-3415
 ATTN: Jason Eatmon
 Email: jeatmon@development-group.net

Any notice personally given or sent by facsimile transmission shall be effective upon receipt. Any notice sent by overnight delivery service shall be effective the business day next following delivery thereof to the overnight delivery service. Any notice given by mail shall be effective three (3) days after deposit in the United States mail.

25. **Integration/Entire Agreement of Parties.** This Agreement constitutes the entire agreement between the Parties and supersedes all prior discussions, negotiations, and agreements, whether oral or written. This Agreement may be amended or modified only by a written instrument executed by both Parties.
26. **California Law.** This Agreement shall be governed by and the rights, duties and obligations of the Parties shall be determined and enforced in accordance with the laws of the State of California. The Parties further agree that any action or proceeding brought to enforce the terms and conditions of this Agreement shall be maintained in the county in which the District's administrative offices are located.
27. **Waiver.** The waiver by either party of any breach of any term, covenant, or condition herein contained shall not be deemed to be a waiver of such term, covenant, condition, or any subsequent breach of the same or any other term, covenant, or condition herein contained.
28. **Severability.** If any term, condition or provision of this Agreement is held by a court of competent jurisdiction to be invalid, void or unenforceable, the remaining provisions will nevertheless continue in full force and effect, and shall not be affected, impaired or invalidated in any way.

- 29. **Provisions Required By Law Deemed Inserted.** Each and every provision of law and clause required by law to be inserted in this Contract shall be deemed to be inserted herein and this Contract shall be read and enforced as though it were included therein.
- 30. **Authority to Bind Parties.** Neither party in the performance of any and all duties under this Agreement, except as otherwise provided in this Agreement, has any authority to bind the other to any agreements or undertakings.
- 31. **Attorney Fees/Costs.** Should litigation be necessary to enforce any terms or provisions of this Agreement, then each party shall bear its own litigation and collection expenses, witness fees, court costs and attorney's fees.
- 32. **Captions and Interpretations.** Paragraph headings in this Agreement are used solely for convenience, and shall be wholly disregarded in the construction of this Agreement. No provision of this Agreement shall be interpreted for or against a party because that party or its legal representative drafted such provision, and this Agreement shall be construed as if jointly prepared by the Parties.
- 33. **Calculation of Time.** For the purposes of this Agreement, "days" refers to calendar days unless otherwise specified.
- 34. **Signature Authority.** Each party has the full power and authority to enter into and perform this Agreement, and the person signing this Agreement on behalf of each Party has been properly authority and empowered to enter into this Agreement.
- 35. **Counterparts.** This Agreement and all amendments and supplements to it may be executed in counterparts, and all counterparts together shall be construed as one document.
- 36. **Incorporation of Recitals and Exhibits.** The Recitals and each exhibit attached hereto are hereby incorporated herein by reference.

IN WITNESS WHEREOF, the Parties hereto have executed this Agreement on the date indicated below.

Dated: _____, 20____

Dated: _____, 20____

Solano Community College District

Development Group Inc.

By: _____

By: _____

Print Name: STAN ARTERBERRY

Print Name: _____

Print Title: Interim Superintendent-President

Print Title: _____

Information regarding Provider:

License No.: _____

Address: _____

Telephone: _____

Facsimile: _____

E-Mail: _____

Type of Business Entity:

- _____ Individual
- _____ Sole Proprietorship
- _____ Partnership
- _____ Limited Partnership
- _____ Corporation, State: _____
- _____ Limited Liability Company
- _____ Other: _____

Employer Identification and/or
Social Security Number

NOTE: Section 6041 of the Internal Revenue Code (26 U.S.C. 6041) and Section 1.6041-1 of Title 26 of the Code of Federal Regulations (26 C.F.R. 1.6041-1) requires the recipients of \$600.00 or more to furnish their taxpayer information to the payer. In order to comply with these requirements, the District requires the Contractor to furnish the information requested in this section.

WORKERS' COMPENSATION CERTIFICATION

Labor Code Section 3700 in relevant part provides:

Every employer except the State shall secure the payment of compensation in one or more of the following ways:

- By being insured against liability to pay compensation by one or more insurers duly authorized to write compensation insurance in this State.

- By securing from the Director of Industrial Relations a certificate of consent to self-insure, which may be given upon furnishing satisfactory proof to the Director of Industrial Relations of ability to self-insure and to pay any compensation that may become due to its employees.

I am aware of the provisions of Section 3700 of the Labor Code which require every employer to be insured against liability for workers' compensation or to undertake self-insurance in accordance with the provisions of that code, and I will comply with such provisions before commencing the performance of the Work of this Contract.

Date: _____

Name of Consultant: _____

Signature: _____

Print Name and Title: _____

(In accordance with Article 5 – commencing at Section 1860, Chapter 1, part 7, Division 2 of the Labor Code, the above certificate must be signed and filed with the District prior to performing any Work under this Contract.)

EXHIBIT "A"
DESCRIPTION OF SERVICES TO BE PERFORMED BY CONSULTANT

Scope of services includes the design, engineering and complete systems integration of all work, equipment, materials, components, and apparatus for a complete and fully operational Network Infrastructure system. Consultant is also responsible for including commissioning, testing, training, and close-out/warranty work.

Provider shall provide a Network Infrastructure system that helps the District with their sustainability initiatives while enabling state of the art 21st century teaching and learning. The installed solution shall be: secure, scalable, replicable, affordable, manageable, reliable and capable of providing the full spectrum of communications needs for the College for the next ten plus years.

Specifically, the Provider shall design and integrate a network infrastructure system design that meets these requirements:

- Five Nines Service Level
- Distributed Core switching
- Dual building level data path
- Failover capability
- Graceful system degradation
- Future integration with cloud based disaster recovery and hosting
- Procedural Documentation to support SCC IT staff in maintaining Five Nines level of service
- Upgrade fiber backbones to support 10 gigabit connectivity today, with expansion to 40 gigabit or more in the future.
- Core and Edge to be interconnected at 10Gb, with 40Gb connectivity within the core and datacenter
- 802.11ac WiFi or better
- Ability to support 1000 concurrent users now, progressively scalable to 10,000 in ten years
- Integrated Network Management System to include: intrusion detection, security auditing, historical reporting real time analysis/fault finding/trouble shooting, training and support. Executive dashboards highly desirable.
- Comprehensive Network Admissions Control (NAC) solution to support wired and wireless clients for remediation, security, and on-boarding of personal devices
- Comprehensive, accurate documentation of the new infrastructure

Deployment requirements:

- Near zero operational and educational impact; this includes interoperability with all existing systems during any phased implementation. This will include coordinating installation with class schedules for all buildings.
- Student and Staff safety are to be a paramount consideration throughout the deployment.
- The selected vendor is expected to deliver a full "turnkey solution" at cutover

Cabling/Pathway Oversight:

- Provider shall provide oversight and project management of the cabling portion of the work (to be bid out as a separate project) with a goal of complete integration of all project related required cabling/pathway to ensure successful connectivity between all Providers services and equipment. Provider will coordinate their scope of work with the vendor responsible for completion of fiber/pathways. Provider will coordinate their work with District assigned Project/Construction Manager. Provider will assist and support the District in procuring a vendor to provide necessary services to prepare District Facilities and pathways for the completion of Provider's work.

Further, the Providers design and installation shall comply with all Federal, state, and local laws and codes; and adhere to District Standards, including but not limited to the Solano Community College District 2013 Facilities Master Plan, Book 2: District Standards and the District Technology Services & Support Telecommunications Cabling Material List and meet all the requirements outlined during the RFP process including, but not limited to:

1. Introduction
2. Technical Overview
3. Section 27 13 23 - Optical Fiber Backbone
4. Section 27 21 00 - Network Equipment
5. Section 27 21 26 - Network and Security Management
6. Section 27 21 33 - Wireless Sub System
7. All issued addenda

Throughout the selection process the District made it clear they are looking for a long term Business/Education partner. The Provider will come to have a comprehensive understanding of the organization, structure, mission and objectives of the District as a whole, and the IT department in particular. To meet this goal and ensure the standardization of systems in the longer term this agreement will renew automatically every year not to exceed 10 one year terms.

Any future scopes of work will be issued by the District to the Provider and shall be made on individual Purchase Order. Provider agrees that future work shall be priced as follows:

- Equipment pricing shall not exceed WISCA or CMAS contract pricing or current state approved contract pricing, whichever is lower. Deployment, training and project management services shall not exceed Providers then current published hourly rates, less a 10% discount to Solano College.
- During negotiations with DGI, Cisco as an added value, agreed to support Solano Community College in establishing a Network Academy at the District and to take on the responsibility for completing or arranging the completion of the work in this proposal as further outlined in Exhibit "A1"

EXHIBIT "A1"
CISCO ADDED VALUE

Network Academy

What Cisco will provide the District:

1. Full curriculum development services
2. Up to 5 Training Stations (set of Routers & Switches). This is the physical hardware that the students learn on during their advancement in the provided curriculum.
3. Point of Contact for questions, accreditation advancements and other items needed to ensure maximum value is received from this program for its origin and as it evolves over time.
4. Access to instructor training

What the District will need to provide:

1. Students
2. Physical classroom space
3. Instructors
4. Network Connection to the Internet

Additional information about this program can be found at:

<https://www.netacad.com/get-started/educators>

Work Completion Responsibility

Provided herein is a Letter of Understanding from Lewis H. Ham, III, Cisco Higher Education Specialist regarding Work Completion Responsibility.



Roger Clague
Solano Community College District
4000 Susuin Valley Road
Fairfield, CA 94534

Dear Roger,

Let this Letter of Understanding (LOU) between Solano Community College and Cisco Systems, Inc. serve as Cisco's commitment to delivering exceptional professional services through one of Cisco's many delivery partners.

In the spirit of this relationship there is expressed concern by Solano Community College that if the Cisco partner, Development Group Inc., is unable to fulfill their agreed upon statement of work, or is dismissed for documented "failure to perform" that Cisco will take any and all commercially reasonable efforts to replace the services delivered at parity pricing and quality of delivery.

Cisco will at its discretion tender 3 vendors for Solano to review. Each meeting the high quality standard required in every partner Cisco does business with today.

We hope that this LOU will serve as quality assurance in the delivery of services from our partner community.

A handwritten signature in black ink, appearing to read "L. Ham, III".

Lewis H. Ham, III
Higher Education Specialist
Cisco Systems, Inc.

EXHIBIT "B"
SCHEDULE OF DELIVERABLES AND VALUES

Changes: Any changes to schedule, deliverables and values below are not effective or binding unless agreed upon by District and Provider in a written instrument specifying the scope, schedule and price of such Changes, which instrument shall be deemed to amend this Contract.

Schedule: At the kickoff of the project, the Provider shall develop and present a project schedule for review and comment, review and agreement by the District to a detailed implementation and phasing schedule. Any work plan shall be reviewed and approved by the District prior to Provider moving forward with each phase of the Project including any related equipment.

From Measure Q funds, a total of One Million Six Hundred Seventy Seven Thousand Nine Hundred Ninety Four Dollars (\$1,677,994.00) shall be paid for services outlined in this contract and described in Exhibit A.

From General Operating funds, a total amount of Two Hundred Twenty Two Thousand Sixty Eight Dollars and Sixty Five Cents (\$222,068.65) shall be paid for SMARTnet Services.