



Service Agreement

THIS AGREEMENT is made this 24th day of June, 2019 (the "Agreement Date") by and between GRM INFORMATION MANAGEMENT SERVICES, having a place of business at 8500 Mercury Lane Pico Rivera, CA 90660 ("GRM") and the Subscriber NEWPORT MESA UNIFIED SCHOOL DISTRICT, having a place of business at 2985 Bear Street Costa Mesa, CA 92626, ("Subscriber");

WHEREAS, GRM provides (i) imaging and conversion services designed to facilitate the conversion of paper files or microforms to electronic images (hereinafter the "Imaging Services") and (ii) electronic document storage and retrieval warehousing services known as VisualVault (hereinafter referred to as "VisualVault") designed to electronically store Subscriber's documents (the "Data") and allow Subscriber to access and retrieve the stored documents via the internet (such electronic document storage and retrieval warehousing services hereinafter collectively referred to as the "Hosting Services", and together with the Imaging Services, the "Services").

WHEREAS, the Subscriber has a need for one or more of such Services.

NOW, THEREFORE, in consideration of the mutual premises and covenants hereinafter set forth, the parties agree as follows;

1. **Term of Agreement** – The term of this Agreement shall commence on the actual date of the commencement of the Services or any portion thereof (the "Effective Date") and will continue until the completion of the Services described in the Statement of Work (defined below) unless sooner terminated in accordance with the terms of this Agreement (hereinafter the "Term").
2. **Services** - GRM will, internally or through a third party imaging consultant, cause the Services to be provided to Subscriber in accordance with the terms of this Agreement and any Statement of Work (hereinafter defined). All Services shall be performed in accordance with the specifications and the time frames set forth in the Statement of Work, as may be modified from time to time in accordance with the terms of this Agreement. "Statement of Work" shall mean an addendum to this Agreement that defines a particular project to be undertaken by GRM at the request of Subscriber. Each Statement of Work shall be generally in the form set forth in Schedule A and, for the particular project covered by the Statement of Work, shall include: (i) a description of the Services to be performed; and (ii) the schedule on which such Services are to be developed and delivered. Upon execution, each such Statement of Work shall be deemed a part of this Agreement. To the extent that any provision contained in the Statement of Work is inconsistent with a provision set forth in this Agreement, the provisions of this Agreement shall control.
3. **Payment for Services** – GRM shall issue invoices on a monthly basis and payment shall be due within thirty (30) days of the invoice. Charges for Services shall be as set forth in the Statement of Work. Any payment not received by the due date shall be assessed a late fee of up to 10% of the outstanding unpaid sum and bear interest at the greater of 1.5 percent (1.50%) per month or the highest legal rate then in effect, from the due date until fully paid. If Subscriber fails to pay, GRM may, upon written notice, declare the Subscriber in breach and suspend the provision of some or all of the Services to Subscriber. Subscriber shall pay all sales taxes, which may be levied or assessed in connection with the provision of the Services.
4. **Access to Data and Authorization**
Subscriber will provide GRM and/or its employees and agents access to the Data being converted, wherever situated, to enable GRM to perform the Services. Subscriber represents to GRM that Subscriber has lawful possession of and legal right to the Data being serviced hereunder, and that Subscriber has the legal right and authority to enter into this Agreement and perform its obligations hereunder.
5. **Inspection Period**
Subscriber shall have thirty (30) days from the date that deliverables are made in connection with such Services performed to inspect such deliverables. Failure to make any objection within such thirty (30) day period shall be conclusive evidence of Subscriber's full satisfaction with the Services provided and any deliverables made in connection therewith, and any right to thereafter object shall be deemed forever waived.
6. **No Consequential Damages** – NOTWITHSTANDING ANYTHING CONTAINED IN THIS AGREEMENT TO THE CONTRARY, IN NO EVENT SHALL EITHER PARTY, ITS DIRECTORS, OFFICERS, EMPLOYEES, AGENTS OR AFFILIATES, BE LIABLE TO THE OTHER PARTY FOR ANY INDIRECT, INCIDENTAL, SPECIAL, EXEMPLARY, PUNITIVE OR CONSEQUENTIAL DAMAGES (EVEN IF SUCH PARTY HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES) OR LOST PROFITS ARISING OUT OF THE PERFORMANCE, ATTEMPTED PERFORMANCE OR NON-PERFORMANCE OF THE SERVICES (OR PORTION THEREOF) HEREUNDER, INCLUDING, BUT NOT LIMITED TO, DAMAGES RESULTING FROM THE USE OF, OR INABILITY TO USE, THE SERVICES OR ANY PORTION THEREOF, DELAYS IN DELIVERY OR COMPLETION OF THE SERVICES, INACCURACY OR MISREPRESENTATION OF DATA, OR LOSS OF PROFITS, DATA, BUSINESS OR GOODWILL.
7. **No Warranties** – EXCEPT AS EXPRESSLY SET FORTH HEREIN, GRM MAKES NO EXPRESS WARRANTIES AND EXPRESSLY DISCLAIMS ANY IMPLIED WARRANTIES OF NON-INFRINGEMENT, MERCHANTABILITY, TITLE AND FITNESS FOR A PARTICULAR PURPOSE. GRM MAKES NO WARRANTY AS TO THE SUFFICIENCY OR SUITABILITY FOR SUBSCRIBER'S USE OF THE SERVICES FOR ANY PURPOSE, OR SPECIFIC REQUIREMENTS IN CONNECTION THEREWITH, OR THAT ACCESS TO THE SERVICES WILL BE UNINTERRUPTED AT ALL TIMES OR ERROR FREE.

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8. **Limitation of Liability** – NOTWITHSTANDING ANYTHING CONTAINED IN THIS AGREEMENT TO THE CONTRARY, GRM'S TOTAL LIABILITY FOR ANY AND ALL CLAIMS, WHETHER IN AN ACTION IN CONTRACT OR IN TORT, INCLUDING BUT NOT LIMITED TO, NEGLIGENCE OR STRICT LIABILITY, FOR ANY LOSS OR INJURY ARISING OUT OF, CONNECTED WITH OR RESULTING FROM GRM'S PERFORMANCE OR BREACH OF THIS AGREEMENT OR THE USE, PERFORMANCE OR NON-PERFORMANCE OF THE SERVICES HEREUNDER, OR ANY PART THEREOF, SHALL NOT EXCEED THE TOTAL AMOUNT OF THE FEES PAID BY SUBSCRIBER TO GRM.
9. **Proprietary Information and Security**
- (a) Proprietary Information. Each party will regard any information provided to it by the other party as proprietary or confidential ("Proprietary Information") and each party will protect the confidentiality of the other party's Proprietary Information in the same manner as it protects its own valuable proprietary information. Subscriber expressly agrees that image enabling software, workflow enabling software, other software utilized in connection with the Services, any documentation and the terms and conditions of this Agreement are the Proprietary Information of GRM. Subscriber will not remove or destroy any proprietary markings or restrictive legends placed upon or contained within any of the software or any associated documentation. Each party agrees, for itself and its agents and employees, to protect the confidentiality of any proprietary information of third parties in its possession and accepts liability for any breach of this Agreement by its agents or employees.
- (b) Exceptions. Information will not be deemed Proprietary Information hereunder if such information: (i) is known to the receiving party prior to receipt from the disclosing party directly or indirectly, other than from a source having an obligation of confidentiality to the disclosing party; (ii) becomes known (independently of disclosure by the disclosing party) to the receiving party directly or indirectly from a source other than one having an obligation of confidentiality to the disclosing party; (iii) becomes publicly known or otherwise publicly available, except through a breach of this Agreement by the receiving party; or (iv) is independently developed by the receiving party. The receiving party may disclose Proprietary Information pursuant to the requirements of applicable law, legal process or government regulation, provided that it gives the disclosing party reasonable prior written notice (if lawful to do so) to permit the disclosing party to contest such disclosure, and such disclosure is otherwise limited to the required disclosure.
10. **Entire Agreement** – This Agreement (and any Statement of Work annexed hereto) constitutes the entire agreement of the parties with respect to the subject matter hereof, and supersedes all previous proposals, oral or written, and all negotiations, conversations or discussions heretofore and between the parties related to this Agreement. Each party acknowledges that it has not been induced to enter into this Agreement by any representation or statements, oral or written, not expressly contained herein. The parties acknowledge that GRM has set its prices and entered into this Agreement in reliance upon the limitations of liability and the disclaimers of warranties and damages set forth herein, and that the same form an essential basis of the bargain between the parties.
11. **Governing Law** – This Agreement will be governed by and interpreted in accordance with the laws of the State of New Jersey, without regard to its conflict of laws principles. Any claims or legal actions by one party against the other arising out of the relationship between the parties contemplated herein (whether or not arising under this Agreement) shall be governed by the laws of the State of New Jersey and shall be commenced and maintained in any state or federal court located in such state, and each party hereto hereby consents and submits to the exclusive jurisdiction and venue of any such court. No proceeding, regardless of form, arising out of the subject matter of this Agreement will be brought by Subscriber more than two (2) years after the claim becomes known to Subscriber.
12. **Notices** – All notices hereunder shall be in writing and shall be delivered in person or may be sent by reputable overnight courier, express mail or postage prepaid certified or registered air mail, addressed to the party for whom it is intended, at the address set forth herein.
13. **Miscellaneous** – (a) If any provision of the Agreement is determined by a court of competent jurisdiction to be invalid or unenforceable, such provision shall, to such extent as it shall be determined to be invalid or unenforceable, be deemed to be null and void, but the remaining terms of this Agreement shall otherwise remain in full force and effect. (b) Either party may assign this Agreement in whole as part of a corporate reorganization, consolidation, merger, or sale of substantially all of its assets with prior written notice to the other party. Any other assignment of this Agreement, in whole or in part, shall require the prior written consent of the other. This Agreement will bind and inure to the benefit of each party's successors and permitted assigns. (c) Any waiver, amendment, supplement or modification of this Agreement will not be effective unless set forth in writing and signed by an authorized representative of both parties. Any such written waivers, amendments, supplements and modifications will be deemed a part of this Agreement as if incorporated herein. The failure of either party to exercise any of its rights under this Agreement will not be deemed a waiver or forfeiture of such rights.
14. **Counterparts** – This Agreement may be executed in counterparts, which taken together, will constitute one Agreement, and any party hereto may execute this Agreement by signing such counterpart.
15. **Effect of Termination** – Upon the termination of this Agreement for any reason: (i) Subscriber shall be liable for all fees and any additional charges incurred prior to the date of termination and throughout any period of suspension of the Services, and (ii) Subscriber shall also be liable for all fees incurred as part of this Agreement as a result of GRM's return of all Subscriber's Data. GRM will promptly return all of Subscriber's Data in its possession, if any, at Subscriber's expense. The provisions of Sections 6, 7, 8 and 9 of this Agreement shall survive the termination hereof. In the event either party fails to perform or observe any material covenant, condition or agreement hereunder or pay any amounts owed hereunder, then the other party may, upon thirty (30) days' written notice, terminate this Agreement if such breach has not been cured to the reasonable satisfaction of the non-breaching party within such 30-day period.
19. **Force Majeure** – Except with respect to Subscriber's monetary obligations hereunder (which shall not be subject to force majeure), neither party hereto will be liable for any failure or delay in performance of its obligations hereunder by reason of any event or circumstance beyond its reasonable control, including without limitation acts of God, war, terrorism, fire, flood, or shortage or failure of suppliers; provided, however, that for any force majeure event extending for more than 60 days, the party not claiming the existence of a force majeure will have the right to give notice of termination of this Agreement pursuant to Section 15.

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20. **Delivery of Data/Hosting Services** - Upon the completion of all Imaging Services referenced in the Statement of Work, GRM shall deliver and electronically store Subscriber's Data onto VisualVault, and allow Subscriber to access and retrieve the stored documents via a password protected internet connection. Subscriber authorizes GRM to upload its scanned Data (as described in Exhibit A, annexed hereto) onto VisualVault for the purpose of such Data delivery, after which GRM shall provide Hosting Services, free of charge, for a period of ninety (90) days, allowing Subscriber free online access on a twenty-four (24) hour basis. Thereafter, such Hosting Services shall continue at GRM's standard rates therefor until such time as Subscriber shall provide written notice to GRM of its election to cancel same. All uses of VisualVault and Hosting Services by Subscriber shall comply with the then current version of GRM's Acceptable Use Policy (hereinafter the "Use Policy") available online to Subscriber under a link entitled "Acceptable Use", which Use Policy may be amended from time-to-time, effective upon the posting of the revised Use Policy on-line. The Company reserves the right to suspend or terminate the Hosting Services, effective immediately, upon the Company's discovery of any unacceptable use. The Hosting Services are intended for the internal use of Subscriber only, and Subscriber shall be responsible for administering the procedures relating to the assignment and administration of all identification codes and passwords authorizing access to VisualVault on behalf of or for the benefit of Subscriber.

IN WITNESS WHEREOF, the parties have caused the Agreement to be executed on the date first above written.

GRM Information Management Services

Newport Mesa Unified School District

By: _____

By: _____

Printed:

Printed:

Title:

Title:

Date:

Date:

Initial: _____