

J.C. Squires  
Business Operations Manager  
Long Beach Department of Parks, Recreation and Marine  
2760 Studebaker Road  
Long Beach, CA 90815-1697

Quote #224332 REV 06  
07-May-2008  
Quote Valid for 60 Days

RE: Blair Field Video Retrofit

**30672**

Dear J.C.:

Daktronics, Inc. appreciates the opportunity to provide a formal Quote to Long Beach Department of Parks, Recreation and Marine ("Customer"). The following delineated equipment and services per the following Sections A-E will be the basis of our Quote.

**A. EQUIPMENT**

**Base Option**

- One (1) ProStar® Video Display PS-23s-112x480-RGB
  - Approximate Active Area: 8'4" H x 36'0" W
  - LED pixels are on 23mm Centers
  - Matrix Size: 112x480
  - One (1) BA-2002 Baseball Scoreboard with 46mm Team Name Message Centers
- Control Equipment
  - One (1) Venus® 7000 ME Tower Control System with Monitor
  - One (1) All Sport® 5000 Series Controller with Carrying Case
  - One (1) V-Link® 4000 Video Processor

**TOTAL PRICE \$ 413,640.00**

**Optional Service Plans:**

Five (5) Year Gold Service Plan

Add To Total Price: \$12,535.00

One (1) Year Platinum Followed by Four (4) Year Gold Service Plan

Add To Total Price: \$15,275.00

Five (5) Year Platinum Service Plan

Add To Total Price: \$26,225.00



**B. PAYMENT**

Purchase price shall also include any additions or deletions pursuant to any duly authorized change orders.

Payment schedule is contingent upon approved credit\*. One or more of the following may be requested for approved credit:

- a) Independent credit agency report.
- b) A bank reference from your primary commercial bank.
- c) Trade references from two suppliers who have extended credit within the past year.
- d) Last 3 years' audited financial statements.

\* If credit is not acceptable, Customer may have to provide a form of guarantee to secure open account.

The Payment Schedule is as follows:

30% Due With Order

60% Due Prior to Shipment

10% Due 30 Days after Shipment

## C. SERVICES AND TRAINING

### PROJECT MANAGEMENT

- Engineering Design Assistance
  - Provide engineering to determine and finalize design.
  - Provide structural design.
  - Complete shop drawings.
  - Provide electrical drawings detailing electrical specifications.
  - Provide engineering stamped drawings (used for permitting).
- Technical Contracting
  - Assign a project manager from Daktronics.
  - Define specific scopes of work with project details for Customer and Daktronics.
  - Establish project installation timelines and detail issues.
  - Coordinate preliminary and/or final project shop drawings as per scope of work prior to contracting or bid award.
- Construction Management
  - Daktronics project manager finalizes project installation Gant chart for Customer review.
  - Coordinate project details for shop drawing and project approval elements.
  - Coordinate all aspects of equipment manufacturing and delivery to site.
  - Coordinate with subcontractors and Customer on completing site work and installation of equipment.
  - Coordinate Daktronics Technicians on-site for any required specific duties which may include equipment installation supervision, signal hook-ups, control room set-up, system testing and on-site training.
  - Coordinate and finalize project completion punch list and project acceptance.
- Installation Supervision
  - Daktronics technician, who will be familiar in advance with the project, system construction, assembly, and testing at the factory, will be the installation supervisor on site.
  - General duties involved with installation regarding mechanical, signal, electrical, structural, and operational issues that arise during installation.

### CUSTOMER SERVICE

- Maintenance Training
  - During installation, Daktronics on-site technician will provide Customer personnel and local technicians on-site basic maintenance training. This training will cover the replacement of components and operational system setup.
  - A set of operational and maintenance manuals will be provided for this system and used as the guideline for training.
  - A set of riser diagrams will also be provided to Customer and local technician, if one is identified.
- Venus Controller Training Seminars
  - Access to one regularly held display operator training seminar in Brookings, South Dakota or at one of our many regional training seminars located throughout the United States.
- Spare Parts Package
  - Daktronics offers adequate spare parts to support our products with every contract; well-trained engineers and project managers assess the custom display and recommend the quantities of each component for spare parts packages.

- Parts Exchange Program
  - Daktronics will send a reconditioned replacement part from Daktronics and will include a pre-paid return-shipping label. The customer sends the failed component to Daktronics in the same packaging they received the replacement part.
- Customer Service Support
  - Daktronics Customer Service will assign a service coordinator to serve as the key point of contact for all service needs.
  - Technical phone support will be provided at no additional charge during the warranty and extended service period. Service agreements are available to extend this coverage both during and after regular business hours; Monday – Friday, 8:00 AM – 5:00 PM Central Time, excluding Daktronics observed holidays.

## KEYFRAME/CONTENT SERVICES

- Operator Training
  - Operation manuals may be sent in advance prior to shipment of displays.
  - A factory representative from Daktronics will conduct a personalized on-site training seminar designed to cover the major components of operator training on the equipment. Customer will provide personnel and appropriate space to conduct training. This on-site training seminar will include up to 4 days of consecutive training.
  - Quarterly newsletters.
  - Toll-free operator assistance during the warranty period and with the purchase of a service agreement.
- Operator Training Seminar
  - Access to regularly held Operator Training Seminars in Brookings, South Dakota or at one of our many Operator Training cells located throughout the United States.
- Content Service and Provision
  - Toll-free telephone programming consultations during normal business hours.
  - Daktronics will provide the following content programming as part of this agreement
    - Daktronics will provide a media kit containing:
      1. Looping flag animation
      2. Fireworks animation
      3. Test pattern
    - Additional content as provided by Keyframe.

**D. INSTALLATION RESPONSIBILITIES**

See Attachment A

Daktronics and Customer will mutually agree, in writing, on any changes to the equipment or services provided or project payment schedule. Daktronics will not honor any back charges unless approved in advance in writing by a Daktronics Company Manager.

All change order work performed by Daktronics or a subcontractor of Daktronics, will be performed at cost plus 20% overhead and profit.

**E. WARRANTY**

One Year Standard Warranty and limitation of Seller's Liability as delineated in Attachment SL-02374 is included.

One (1) Year Gold Service Plan SL-05659 is concurrent with the One Year Standard Warranty.

**EXCLUSIONS:**

The following in addition to any exclusions provided in section 5.3 of the Service Plan will be excluded from the above stated Warranty and Extended Service, if applicable.

- Electrical Switch Gear or Distribution Equipment
- HVAC Equipment

**DELIVERY:**

Equipment is quoted FOB Destination via independent carrier. Ship Date will be determined after contract is signed, down payment received, and shop drawings approved.

**TAXES:**

No taxes have been included in the price. Customer will be assessed all taxes and other governmental charges in connection with the sale, purchase, transportation, delivery, or use, of any of the goods provided, with the exception of taxes based upon Daktronics' net income. If Customer is tax-exempt or purchasing for resale, a copy of Customer's tax-exempt certificate shall be required at time of order.

**CHANGE ORDERS:**

Without voiding the contract, the parties may agree to change the scope, timing, or other aspect of the deliverables. Such changes shall be referred to as a change order. All change orders shall be in writing and shall set forth the change in scope, price, schedule and payment terms and shall be executed by a proper authority for each party. Neither party shall have an obligation to perform any changes unless a written change order is executed by both parties prior to commencement of the work that is the subject of the change order.

Thank you for allowing Daktronics to submit a quotation on this project. We appreciate your consideration and are excited about the possibility of working with you on this project. If you have any questions regarding this quote please contact the following:

Robin Hall      or  
California Regional Manager  
(949) 230-8213  
rhall@Daktronics.com

Zach Stuessi  
Project Manager  
(605) 691-9975  
zstuess@Daktronics.com

The Terms and Conditions, which apply to this quotation, are available on request  
[SL-02375 Standard Terms and Conditions of Sale](#)  
[SL-07862 Software License Agreement](#)

The documents referred to in this Quote are integral parts of this Quotation. The parties hereby acknowledge and agree that the terms and conditions contained within this Quote along with the terms and conditions of the Daktronics [Standard Terms and Conditions \(SL-02375\)](#), the [Standard Warranty and Limitations of Liability \(SL-02374\)](#) and the [Software License \(SL-07862\)](#) (together the "Terms and Conditions") constitute the full and final understanding between both parties. By receiving this Quotation, Customer acknowledges that it has had an opportunity and means to review the Terms and Conditions as provided in the website addresses above. In the alternative, hard copy of these Terms and Conditions will be provided upon request. Further it is acknowledged and agreed that the price of the equipment and/or the provision of services contained within this quotation are expressly conditioned upon Customer's acceptance of the Terms and Conditions without change. Any modification of the Terms and Conditions may require a corresponding change in the price. The parties agree that due to the volatile market for raw materials, including but not limited to structural steel, aluminum, copper wire, and conduit, Daktronics reserves the right to adjust bid pricing at time of contract award. Any increase in the price of these raw materials shall be reflected in the contract price.

DAKTRONICS shall provide and perform only such copy or customization as described on this attachment or as provided for in the approved shop drawings. DAKTRONICS and CUSTOMER will mutually agree, in writing, on any changes to the equipment or services provided or project payment schedule. DAKTRONICS will not honor any back charges unless approved, in advance, in writing by a DAKTRONICS Company Manager.

The term "Software" means the original computer software program and all whole or partial copies of this software program in whatever form or media provided. The Software consists of, but is not limited to, machine-readable instructions, its components, manuals and other such documentation, data, audio-visual content, (such as images, text, recordings, or pictures), and all other related materials provided pursuant to the terms and conditions of this Agreement. The Software is licensed to CUSTOMER per [SL-07862](#).

**ACCEPTANCE**

The Undersigned has actual authority to execute this document and Daktronics, Inc. is relying upon such authority.

Customer hereby agrees to purchase the equipment as defined in Section A "Equipment", and the parties hereby acknowledge and agree that the terms and conditions contained within this Quote along with 1) Standard Terms and Conditions, 2) Software License Agreement, 3) Standard Warranty and Limitation of Liability, 4) Service Plan as indicated below and 5) Sections A - E (collectively, the "Contract Documents") constitute the full and final understanding of the parties regarding the sale of equipment and/or the provision of services and entirely replace and supersede any previous understanding or agreement between the parties. By executing this agreement, Customer acknowledges that it has had opportunity and means to review the Contract Documents as provided. Further it is acknowledged and agreed that the price of the equipment and/or the provision of services contained within this agreement are expressly conditioned upon Customer's acceptance of the Contract Documents without change. Any modification of the Contract Documents may require a corresponding change in price. The parties acknowledge and agree that its' design and installation services meet the requirements of IBC 2003 and is priced accordingly. In the event Daktronics is required to conform its design or installation to a code with requirements greater than those set forth in IBC 2003, the parties acknowledge and agree that the purchaser shall be fully responsible for all costs associated with the increased code requirements. Further, Daktronics reserves the right to increase the quoted price if the applicable law requires standards in excess of the IBC 2003 standards of installation. Accordingly, the Customer acknowledges and agrees to the Contract Documents as evidenced by its attestation below.

Unless specifically outlined in any Attachments or Agreement, this order does not include the following:

- Physical installation
- Electrical installation
- Installation supervision
- Preventative maintenance
- Cable or conduit including labor
- Freight or insurance costs
- Any applicable taxes
- Any additional site related costs
- Appropriate structure, footings and engineering
- Bonding

Customer hereby confirms that the Equipment is to be delivered to, and may be installed by Customer or Daktronics (as indicated elsewhere herein) at the address specified below:

Product Delivery Address:	Installation/End User Address:
Customer: _____	Customer: _____
Address: _____	Address: _____
City, State, Zip: _____	City, State, Zip: _____
Province/Country: _____	Province/Country: _____
Phone: _____ Fax: _____	Phone: _____ Fax: _____
Contact: _____	Contact: _____
E-mail: _____	E-mail: _____

**In witness hereof, the parties hereto have executed this agreement and through their duly authorized officers.**

<b>CUSTOMER:</b> Assistant City Manager		
By: <u>[Signature]</u>	Name/Title: <u>Patrick H. West City Manager</u>	Date: <u>5.23.08</u>
	Signature	Print or Type
<b>DAKTRONICS, INC.:</b>		
By: <u>[Signature]</u>	Name/Title: <u>ROBIN HALL / REGION MGR</u>	Date: <u>5/28/08</u>
	Signature	Print or Type
By: <u>[Signature]</u>	Name/Title: <u>Nathan Stensland / Region Coordinator</u>	Date: <u>5/30/08</u>
	Signature	Print or Type

**EXECUTED PURSUANT  
 TO SECTION 301 OF  
 THE CITY CHARTER**

APPROVED AS TO FORM  
May 15, 2008  
**ROBERT E. SHANNON, City Attorney**  
[Signature]  
**DEPUTY CITY ATTORNEY**





SECTION D  
INSTALLATION RESPONSIBILITIES - BASEBALL

Responsible Party:		
Daktronics	Purchaser	Description
X		1. Removal and disposal of existing baseball scoreboard.
	NA	2. Soil compaction test.
	X	3. Secure construction permits.
	X	4. Engineering certification stamp for support structure design including footings.(existing condition).
X		5. Riser diagrams of electrical and signal.
X		6. Shop drawing and attachment detail submittals.
	NA	7. Provide camera-ready artwork for ad panels and logos.
	X	8. Approval of all engineering drawings, riser diagrams and shop drawings, equipment locations and ad copy layouts.
	X	9. Unobstructed access to Blair Field
	NA	10. Locate underground utilities.
X		11. Crating and shipping of all equipment to Blair Field via common or independent carrier.
X		12. Unloading of all equipment from carrier.
	NA	13. Digging of footings including dirt removal. Fabrication and installation of steel cages, re-bar, or bolt attachments. Pouring and finishing of concrete for footings. (Note: In the event we hit rock, water, or anything unexpected while digging the footings, if we do work, the Purchaser will be responsible for any additional costs, plus Overhead and Profit of 20%). (Existing condition).
X		14. Steel fabrication and complete structure installation of support structure, excluding levels of catwalks. (Existing Condition).
	X	15. Prime and paint main support structure. (Existing Condition).
X		16. Lift and mount baseball scoreboard and video display.
X		17. Unpack, set-up, hook-up, and testing of control system.
	X	18. Primary power and transformer, fused and lockable breaker-disconnect switch or electrical distribution panel (to be located 5' off the ground on one of the supporting beams).
X		19. Secondary power, conduits, power cable, power hook-up from the fused electrical panel to all Daktronics supplied load centers or internal power termination panels.
	X	20. Low voltage electrical contactors and wiring.
	X	21. Air-conditioned control room for all control systems (on venue site or off).
X		22. Furnish all signal cable for scoreboard/video board.
	X	23. Provide and install signal cable conduit, as delineated in riser diagrams.
X		24. Labor to pull all new signal cable (and remove existing cable, if required)
X		25. Terminate signal cable.
	X	26. Interface cabling with audio system including conduit, cabling and installation of cabling.
X		27. Site clean up after Daktronics work.
	X	28. Provide personnel for maintenance and operator training.
	X	29. Final acceptance, per DF1252.
	NA	30. Landscaping.

NOTE: All Change Order work, performed by Daktronics or Daktronics Subcontractor, will be performed at Cost Plus 20% Overhead and Profit.



## SOFTWARE LICENSE

This Software License is provided to the Purchaser within the Software itself. A hardcopy is reproduced here for your reference.

### SOFTWARE LICENSE ("LICENSE")

**PLEASE READ THIS LICENSE CAREFULLY BEFORE USING THE SOFTWARE PURCHASED FROM DAKTRONICS. DAKTRONICS WILL LICENSE THE SOFTWARE TO PURCHASER ONLY IF PURCHASER FIRST ACCEPTS THESE TERMS. BY INSTALLING, COPYING, OR USING THIS SOFTWARE IN ANY WAY, PURCHASER IS ACKNOWLEDGING THAT PURCHASER HAS READ THIS LICENSE, UNDERSTANDS IT, AND AGREES TO BE BOUND BY ITS TERMS AND CONDITIONS. IF PURCHASER DOES NOT AGREE TO THE TERMS OF THIS LICENSE, PURCHASER MAY NOT INSTALL, COPY, OR OTHERWISE USE THIS SOFTWARE.**

For the purposes of this License, the term "Software" means the original computer software program and all whole or partial copies of this software program in whatever form or media provided. The Software consists of, but is not limited to, machine-readable instructions, its components, manuals and other such documentation, data, audio-visual content, (such as images, text, recordings, or pictures), and all other related materials provided pursuant to the terms and conditions of this Agreement.

The Software is owned by Daktronics or one of its subsidiaries and is protected by U.S. and international copyright laws and treaties, and it is being licensed to Purchaser pursuant to the terms and conditions of this License; in no event is the Software being sold.

Purchaser shall not acquire rights to the ownership, source code, or intellectual property rights of the software. Further, Purchaser covenants and warrants that it shall not duplicate, copy or transfer the software without the express consent of Daktronics. Purchaser agrees to maintain Daktronics' copyright notice on the licensed software and to include the same on any authorized copies it makes. Purchaser agrees not to decompile, disassemble, decode or reverse engineer any software program delivered to Purchaser or any portion thereof.

This License constitutes the complete understanding regarding the use of this Software, and supersedes and replaces any prior oral or written communications between Purchaser and Daktronics, and any prior software license agreement between Purchaser and Daktronics.

**1. Grant of License.** Daktronics hereby grants to Purchaser a nonexclusive license to (i) use the Software, and (ii) to make and install copies of the Software to support the level of use authorized, provided that Purchaser reproduces the copyright notice and any other legends of ownership on each copy, or partial copy, of the Software, subject to the usage limitations contained in the terms of the agreement pursuant to which this License is granted, as such terms are set forth in the Standard Terms and Conditions of Sale underlying such agreement and any Attachments thereto (collectively, the "Agreement"). If the Agreement does not define usage limitations, Purchaser usage shall be limited to a single license to be used on a single main operating PC and a single redundant backup PC.

If the Software subject to this Agreement is an upgrade from the previous software, Purchaser authorization to use the previous software is hereby terminated. Purchaser will ensure that anyone who uses the Software does so only in accordance with the terms and conditions of this Agreement.

Data collected and/or stored by the Software shall be the Purchaser's property and Daktronics shall have no claim or interest in such data.

Purchaser may not (i) use, copy, modify or distribute the Software except as provided in this License; (ii) reverse assemble, reverse compile, otherwise translate or create derivative works based upon the Software, except as specifically permitted by law without the possibility of contractual waiver; (iii) use the Software in a manner that does not comply with all applicable laws in the jurisdiction(s) in which Purchaser uses the Software; or (iv) sublicense, rent, lease or otherwise transfer the Software, except as allowed in this License. Modifications to the Software will void the Software warranty as provided in Section 6 below.

**2. Transfer of Rights and Obligations.** Purchaser may transfer all of its licensed rights and obligations under this License to a Related Party only by transferring a copy of this License and all copies of the Software to the Related Party. Upon such a transfer to a Related Party, Purchaser shall permanently delete all copies of the Software and have no further rights to use the Software in any manner. No other assignment of Purchaser licensed rights and obligations shall be permitted and any attempt to make such a disallowed transfer shall be void and of no effect.

For the purposes of this License, the phrase "Related Party" shall mean those entities that: (i) are wholly owned subsidiaries of Purchaser company, (ii) own at least a majority of the beneficial ownership of Purchaser company, or (iii) have at least a majority of their beneficial ownership owned by an entity that owns at least a majority of the beneficial ownership of Purchaser company.

**3. Nondisclosure.** The Software licensed hereunder is and will continue to be the exclusive proprietary property of Daktronics. Purchaser agrees to use its best efforts to ensure that its employees, agents, representatives and consultants do not disclose the Software, or any part thereof, to any third party. In the event that Purchaser should use the Software to perform services for others, or need to allow its agents or consultants to use the Software in the manner contemplated hereby for the operation of the Equipment (as defined in the Agreement), Purchaser may disclose external or interface details as may be reasonably necessary to properly use the Software, but Purchaser may not disclose any design characteristics or implementation detail thereof. This nondisclosure obligation shall survive the termination of the Agreement and this License.

In the event of a breach or threatened breach by Purchaser or its agents, representatives or employees of the nondisclosure obligations of this License, Purchaser hereby agrees that Daktronics will suffer irreparable harm for which there is no adequate remedy at law and, without limiting whatever other rights and remedies Daktronics may have, Purchaser hereby consents to the issuance of an injunction in Daktronics' favor enjoining any such breach of the nondisclosure obligations of the Agreement and this License by any court of competent jurisdiction. Further, Purchaser hereby agrees to pay Daktronics for any and all fees and costs, including attorneys' fees, incurred by Daktronics in enforcing the nondisclosure obligations of this Agreement.

**4. Evidence of License.** The Agreement along with this License is evidence that Purchaser is authorized to use this Software and is eligible for Support Services (as defined in Section 8 below).

**5. Charges and Taxes.** No charges are payable hereunder with respect to Purchaser's use of the Software as authorized by Section 1 above, or the Support Services or other services to be provided by Daktronics pursuant to this License. Notwithstanding the foregoing, in the event Purchaser desires Software upgrades after the expiry of the Warranty period, such upgrades shall be purchased at additional charge.

If any authority imposes a duty, tax, levy or fee excluding those based on Daktronics' net income that is based upon the provision of the license to use the Software that is contained herein, Purchaser agrees to pay that amount, or supply exemption documentation.

**6. Warranty.** Daktronics acknowledges and agrees that the Software is being provided as part of an integrated hardware and software system referred to as the Equipment in the Agreement, and the Software and the other components of the Equipment are subject to the various warranties and requirements as set forth in the Agreement and its Attachments. Subject to the foregoing warranties and requirements, Daktronics does not warrant uninterrupted or error-free operation of the Software. Purchaser is responsible for the results obtained from the use of the Software.

In the event Purchaser makes any change or modification to the Software, Purchaser agrees that such change and modification is the property of Daktronics as derivative works of the Software. Furthermore, immediately upon Purchaser making any such change or modification to the Software, the foregoing warranty of Daktronics with respect to such Software shall no longer apply, and Daktronics shall have the right to charge Purchaser for any additional Support Services that Purchaser should request regarding such changes or modifications at Daktronics' prevailing rates; however, Daktronics shall be under no obligation to provide such services.

**7. Limitation of Liability.** The parties acknowledge that all warranties, conditions and other contractual term regarding the Software, and all liability of Daktronics, are subject to the limitations set forth in the Agreement and in Section 6 above.

**8. Support Services.** Daktronics will provide Support Services to Purchaser at no additional charge for one (1) year following the date of the Agreement or for such longer period of time in accordance with the Warranty or separate maintenance agreement. The charge for these services has been included in the Purchase Price for the Equipment. Such fees are based on total amount of authorizations granted for the Software. Purchaser may terminate Support Services for the Software at any time by giving Daktronics written notice.

Support Services include the following: (i) support regarding the operation of the Software during Daktronics' normal business hours, (ii) best efforts through its central error correction activity at Daktronics' office to correct errors, malfunctions or defects to the Software, and (iii) updates and enhancements of the Software which are made available to all other customers of Daktronics pursuant to the Support Services at no additional cost. Support Services shall only extend to the most current version of the Software and any previous versions for only one hundred-eighty (180) days following the release of a new version.

Purchaser is responsible for: (i) the interface between the Software and all other software used by Purchaser, (ii) installing, managing, and operating any updates and enhancements delivered under this Agreement, (iii) payment to Daktronics, within thirty (30) days from the date of receipt of the Invoice by Purchaser, for all Support Services which are requested by Purchaser and result from Purchaser modifications to the product or interfacing with Purchaser's hardware or software system, and (iv) incorporating all new releases of the Software when received.

During the warranty period and in addition to the Support Services, Daktronics shall undertake the efforts necessary to promptly correct any failure of the Software to function in conformance with its warranty.

**9. Termination.** This License may be terminated in the following ways: (i) Purchaser may terminate this License by providing written notice in the event that Daktronics materially breached the terms of this License, and where such material breach has not been cured within thirty (30) days following the provision of written notice of such material breach by Purchaser to Daktronics, (ii) Daktronics may terminate this License in the event that Purchaser does not pay the amounts which are due under this License or the Agreement entered into between Purchaser and Daktronics, or in the event that Purchaser should, in any material respect, breach any of the terms of this License or the Agreement, and where such nonpayment or breach has not been cured within thirty (30) days after Purchaser receives notice thereof from Daktronics.

If either party terminates this License for any reason (i) Purchaser will be obligated to pay Daktronics all of the amounts which are due related to the Software and the Agreement, and (ii) Purchaser will certify in writing that Purchaser has removed the Software from Purchaser's systems and destroyed all copies. In no event shall Purchaser become entitled to any refund in the event of termination of this License, unless Purchaser terminates this License as a result of a material breach of the material terms of this License by Daktronics, in which event Purchaser may be entitled to direct actual damages pursuant to the limitations of Section 7 herein and as described in the Agreement.

**10. General.** Nothing in this license is intended to affect any statutory rights of consumers that cannot be waived or limited by contract. This License may not be changed orally but only by an agreement in writing signed by the party against whom enforcement of any waiver, change, modification, extension or discharge is sought.

Purchaser agrees to comply with applicable export laws and regulations.

If any provision of this license is held to be unenforceable for any reason, such provision shall be reformed only to the extent necessary to make it enforceable, and such reformation shall not affect the enforceability of such provision under other circumstances, or of the remaining provisions hereof under any circumstances.

This License shall be governed by the laws of the State of South Dakota without regard to conflicts of law provisions, and Purchaser consents to the exclusive jurisdiction of the state and federal courts sitting in the State of South Dakota, except that Daktronics shall have the right to commence, initiate or maintain any action, suit or litigation in the jurisdiction where Purchaser is located or present, including, without limitation, to seek and enforce any injunction against any violation or anticipated violation of Purchaser of this License. Neither Purchaser nor Daktronics shall have any liability under this License for any delay in performance or failure to perform which delay or failure to perform is caused by circumstances which are beyond its reasonable control, including without limitation acts of God, natural disaster, labor or material shortages, war, earthquakes, acts of terrorism, etc.

## Standard Terms and Conditions of Sale

1. **Scope of the Work.** The scope of the Work shall include the Equipment as defined on Attachment A, any licensed Software, the Services as defined in Attachment C, the installation services provided by Daktronics as defined on Attachment D (excluding installation services which are the responsibility of Purchaser), and the Warranty as defined in Attachment E.
2. **Change Orders.** The parties, without invalidating the Agreement, may modify the scope of the Work. The modifications shall be referred to as "Change Orders." The parties shall mutually agree in writing as to the cost or credit from a Change Order as well as any modifications in delivery time; which written agreement shall be an express condition precedent to the effectiveness of any Change Order. Daktronics shall not perform any Change Order or change directive or any other such modification order without the prior written approval of both parties.
3. **Software.** All Software, including firmware, which is furnished to Purchaser, is licensed to the Purchaser per the terms and conditions of Attachment F.
4. **Conditions Precedent.** The obligations of Daktronics in this Agreement are subject to the express condition precedent that Purchaser shall perform its obligations under the Agreement. Daktronics may, in its sole discretion, waive these conditions.
5. **Payment Terms.** Payment terms shall be 30% down payment upon execution of the Agreement, balance due prior to shipping unless otherwise stated in the Standard Sales Agreement or Attachment B. If the Payment Terms in this Section 5 and Attachment B are inconsistent, then the Payment Terms stated in Attachment B control. Daktronics reserves the right to require payment in advance and to otherwise modify credit terms based upon the credit review. Daktronics will include a monthly service charge of 1.5% per month on amounts outstanding after the due date. Daktronics may accept partial payment in an amount less than the full amount of any invoice, but such acceptance shall not constitute a waiver of Daktronics' right to collect the remaining balance, notwithstanding Daktronics' endorsement of a check or other negotiable instrument. Unless otherwise stated, the Purchase Price is exclusive of federal, state and local taxes, including without limitation sales, use, excise, privilege, transactional, gross receipts, ad valorem or any other transactional tax or customs and duties ("Tax" or "Taxes") paid or payable by Daktronics, however designated, levied or based on amounts payable to Daktronics under or in connection with this Agreement. Purchaser shall immediately pay upon demand the full amount of any such applicable Tax and shall hold harmless and indemnify Daktronics from the claims of any governmental authority asserting that any such Tax is due and payable. Purchaser must present an exemption certificate if it claims any exemption from Tax. Absent presentation of an exemption certificate, all applicable Taxes shall be added to the purchase price of the Equipment.
6. **Cancellation.** In the case Purchaser cancels an order for convenience, Daktronics, in its sole discretion, may charge a cancellation and restocking fee to recover costs.
7. **Delivery and Risk of Loss.** All purchases shall be delivered FOB Daktronics' facility in Brookings, South Dakota. Purchaser shall bear the risk of loss once the Equipment is delivered to the Purchaser at the Daktronics' facility. Daktronics shall coordinate the shipment of the Equipment and shall ship the Equipment in accordance with Purchaser's instructions. Daktronics shall not be responsible for damage occurring to the Equipment during shipment. If for any reason Purchaser is not able to take delivery of the Equipment, Daktronics may, at its sole discretion, store the equipment. All costs of the storage, including taxes and insurance, shall be immediately payable by Purchaser upon demand by Daktronics.
8. **Installation.** Subject to the terms and conditions of the Agreement, the Purchaser shall perform its respective obligations, if any, as designated on Attachment D. Purchaser shall fully cooperate with Daktronics in connection with the installation of the Equipment. The Purchaser agrees and acknowledges that Daktronics may subcontract any of the Work to third parties selected by Daktronics; provided, however (i) nothing herein shall create any contractual relationship between the Purchaser and any subcontractor; and (ii) Daktronics shall be fully responsible hereunder for the performance, actions and omissions of Daktronics' employees, all subcontractors and all other persons or entities performing any of the Services on the project described herein, as if such performance, actions and omissions were those of Daktronics.
9. **Acceptance; Substantial Completion.** Unless otherwise provided for, Acceptance shall be defined as follows. In the case of the sale of Equipment without installation by Daktronics, Acceptance shall be accomplished upon delivery of the Equipment. In the case of the sale of Equipment with installation by Daktronics, Acceptance shall be accomplished upon: (a) Substantial Completion (as defined below); and (b) the provision of all Services in accordance with the requirements of this Agreement as set forth in Attachment C, (except services which are on-going in nature, such as warranty services); (c) the completion and documentation of testing and other reviews demonstrating that the Equipment and the Services meet all the requirements of this Agreement; and (d) delivery to the Purchaser of such testing and review documentation.  
  
"Substantial Completion" means the operational availability of the Equipment to the Purchaser in accordance with its specifications, without regard to punch-list items, or other non-substantial items which do not affect the operation of the Equipment.
10. **Title.** Title to the Equipment shall pass from Daktronics to the Purchaser upon Substantial Completion. No transfer, renewal, extension or assignment of this Agreement or of any interest therein shall operate as a payment or transfer of title to the Purchaser or in any manner relieve the Purchaser of its obligations. No title shall pass to Purchaser with respect to Software, as defined in Attachment A, which is furnished, solely on a license basis.
11. **Security Interest.** Daktronics reserves, and Purchaser grants to Daktronics, a first priority, purchase money security interest in the Equipment until such time as the Purchase Price has been received in full by Daktronics. Purchaser shall execute and deliver such further documents as reasonably requested by Daktronics to preserve and perfect such security interests, including but not limited to Uniform Commercial Code financing statements, if applicable.
12. **Lien Waiver.** Upon payment of all amounts owed under the Agreement and subject to any additions or subtractions by Change Order, Daktronics shall irrevocably waive and release any and all rights to serve or record any lien, verified statement of claim, or claim against any payment or performance bond arising from Daktronics' provision of the Work.
13. **Warranty.** Attachment E is the Standard Warranty and Limitation of Daktronics' Liability (the "Warranty"), which is the complete and final warranty with regard to the Equipment. The obligations of Daktronics under the Warranty are limited to replacing, repairing or giving credit for, any of the Equipment which shall, within the warranty period, fail due to faulty design, workmanship, manufacture or installation. Purchaser acknowledges and agrees that the provisions of the Warranty constitute the sole and exclusive remedy available to it with regard to said defective Equipment.
14. **Warranty Disclaimer.** EXCEPT AS SET FORTH IN THE STANDARD WARRANTY AND LIMITATION OF DAKTRONICS' LIABILITY, DAKTRONICS EXCLUDES ALL WARRANTIES, EXPRESS OR IMPLIED, INCLUDING BUT NOT LIMITED TO ANY IMPLIED WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE. Critical and unforeseeable factors beyond the control of Daktronics prevent it from eliminating all risks in connection with the use of the Equipment. Purchaser acknowledges and assumes all risks and liability resulting from the handling, storage and use of the Equipment. The Warranty shall become null and void if the Purchaser alters the Equipment or the Software in a manner inconsistent with the specifications of the Equipment or the Software. Further, the Warranty shall become null and void if the Purchaser, its employees, agents, representatives or subcontractors performs repairs to the Equipment, without the express written consent of Daktronics.
15. **Confidentiality.** Purchaser shall consider all information, including the terms and conditions of this Agreement, furnished by Daktronics to be confidential and shall not disclose any such information to any other person, or use such information itself for any purpose other than fulfillment of this Agreement unless Purchaser obtains written permission from Daktronics to do so. This confidentiality requirement shall apply but is not limited to drawings, specifications, or other documents prepared by Daktronics for Purchaser this Agreement. Purchaser shall provide confidential information only to those of its agents, servants and employees who have been informed of the requirements of this paragraph and have agreed to be bound by them. The provisions of this paragraph shall survive termination of the Agreement.

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16. Use of Image. Purchaser agrees and consents to allow Daktronics to make reference to the installed Equipment, the Purchaser or the premises, use their respective logos, trademarks or any other graphical representation of the Equipment, or use photographs of the installed Equipment or list the installed Equipment and facility in any material of any kind used or produced by or at the direction of Daktronics of any kind, without the prior written consent of the Purchaser; provided, however, that Daktronics may not, without prior written consent do any of the foregoing in a manner which implies endorsement by Purchaser.

17. Default. Daktronics reserves the right to terminate this contract and accelerate all amounts due and payable if Purchaser fails to make payment to Daktronics within ten days of the agreed payment dates unless otherwise stated in Attachment B or otherwise fails to comply with this Agreement, or any proceeding is filed by or against Purchaser in bankruptcy. Daktronics reserves all its rights (both legal and equitable) under the contract, applicable statutes, or the common law. Selection of a remedy by Daktronics shall in no way be construed as a waiver of other remedies available to Daktronics. If Purchaser fails to perform any covenant or obligation under this Agreement or any other agreement that Purchaser has with Daktronics, including without limitation the failure to pay when due any amounts owed to Daktronics under this Agreement or any other agreement between the parties, Daktronics shall be excused from the performance of any of its obligations under this Agreement and any other Agreement it has with the Purchaser until such time as said default is cured, if ever.

18. Indemnity. Daktronics shall indemnify, defend and hold harmless the Purchaser and their respective subsidiaries, officers, directors, shareholders, partners, employees, agents, insurers, successors and assigns from any and all liability, losses, damages, costs or expenses (collectively, "Losses") arising out of or in any way related to: (i) any material breach of this Agreement by Daktronics; (ii) any negligent act or omission by Daktronics or its personnel, agents, subcontractors, or others engaged by Daktronics or under Daktronics' control related to the execution of this Agreement; (iii) any claim against any indemnified party by reason of or alleging any unauthorized or infringing use by an indemnified party of any patent, process, trade secret, copyright, trademark, or other intellectual property right regarding the Equipment or the Software and its components; or, (iv) any fine or assessment with respect to any violation or alleged violation of any Applicable Laws regarding safety or health.

The Purchaser shall indemnify, defend and hold harmless Daktronics and its subsidiaries, officers, directors, shareholders, partners, representatives, employees, agents, insurers, successors and assigns of each of the foregoing from any and all Losses arising out of or in any way related to: (i) any material breach of this Agreement by the Purchaser; or (ii) any negligent act or omission by the Purchaser or its personnel, agents, subcontractors, or others engaged by the Purchaser or under their control (other than Daktronics or its personnel, agents, subcontractors, or others engaged by Daktronics or under Daktronics' control).

19. Limitation of Liability. Daktronics' liability shall be limited solely to the repair or replacement of the Equipment or giving credit for the Equipment under the warranty clause herein, if the applicable warranty period described in that clause has not expired. The damage limitation provided in this Agreement and the remedies stated herein shall be exclusive and shall be Purchaser's sole remedies. The parties agree that in no event whatsoever shall the liability of either party exceed the amount of the purchase price. It is agreed that in no event shall either party be liable for special, incidental, consequential or indirect damages, regardless of cause. Purchaser explicitly accepts the provisions of this paragraph in return for the prices granted for the Equipment. Purchaser understands and agrees that the prices granted herein would be higher in the absence of this limitation of liability. No action against Daktronics shall be commenced more than one year after the accrual of the cause of action. Daktronics shall have no liability with respect to claims relating to or arising from use of third-party products and services.

20. Force Majeure. Daktronics shall be excused from any liability under this Agreement for any delay in performance or failure to perform which delay or failure to perform is caused by circumstances which are beyond the reasonable control of the Daktronics, including without limitation acts of God, natural disaster, labor or material shortages, war, earthquakes, acts of terrorism, etc.

21. Assignment. Unless otherwise stated, this Agreement may not be assigned by either party without the written consent of the other party; provided, however, that Daktronics may assign its rights to receive payment from Purchaser without consent from the Purchaser.

22. Acceptance of Terms. Daktronics' acceptance of Purchaser's order is on the express condition that only the terms and conditions set forth herein shall apply to the sale. Any term, provision or condition in conflict with, in addition to or in modification of any of the terms and conditions herein shall not be binding upon Daktronics unless an authorized representative of Daktronics accepts such term, provision or condition in writing. Daktronics' failure to object to any term or condition contained in any communication from Purchaser shall not be deemed a waiver of the terms and conditions herein.

23. Miscellaneous. This Agreement shall be governed by the laws of the state of South Dakota without regard to its conflict of law principles. The parties agree that the United Nations Convention on the International Sale of Goods shall not apply to this Agreement. The parties consent to the jurisdiction and venue of the courts of South Dakota for any action, suit or proceeding. This Agreement represents the entire agreement of the parties and supersedes any previous understanding or agreement and may not be modified except by writing. This Agreement may not be amended or altered in any manner except in a writing signed by both parties. This Agreement may be executed in counterparts. Each party hereto shall pay its own expenses, including without limitation accounting and attorneys' fees, in connection with this Agreement. The Purchaser and Daktronics are not partners or joint venturers. If any part of this Agreement is in any manner held to be invalid, illegal, void, or to be in conflict with any law, then the validity of the remaining portions or provisions of this Agreement shall not be affected, and such part, term, paragraph or provision shall be construed and enforced in a manner designed to effectuate the intent expressed in this Agreement to the maximum extent permitted by law.

## DAKTRONICS STANDARD WARRANTY AND LIMITATION OF LIABILITY

This Standard Warranty and Limitation of Liability (the "Warranty") sets forth the warranty provided by Daktronics with respect to the Equipment. By accepting delivery of the Equipment, Purchaser agrees to be bound by and accept these terms and conditions. All defined terms within the Warranty shall have the same meaning and definition as provided elsewhere in the Agreement.

DAKTRONICS WILL ONLY BE OBLIGATED TO HONOR THE WARRANTY SET FORTH IN THESE TERMS AND CONDITIONS UPON RECEIPT OF FULL PAYMENT FOR THE EQUIPMENT.

### 1. Warranty Coverage

A. Daktronics warrants to the original end-user that the Equipment will be free from Defects (as defined below) in materials and workmanship for a period of one (1) year (the "Warranty Period"). The warranty period shall commence on later of: (i) four weeks from the date that the equipment leaves Daktronics' facility; or (ii) Substantial Completion as defined in the agreement. The warranty period shall expire on the first anniversary of the commencement date.

B. Daktronics' obligation under this Warranty is limited to, at Daktronics' option, replacing or repairing, any Equipment or part thereof that is found by Daktronics not to conform to the Equipment's specifications. Unless requested by Daktronics, any defective part of component shall be returned to Daktronics for repair or replacement. Daktronics may, at its option, provide on-site warranty service. Daktronics shall have a reasonable period of time to make such replacements or repairs and all labor associated therewith shall be performed during regular working hours.

C. Daktronics shall pay transportation charges for the return of any defective component of the Equipment. If returned Equipment is repaired or replaced under the terms of this warranty, Daktronics will prepay transportation charges back to Purchaser; otherwise, Purchaser shall pay transportation charges to return the Equipment back to the Purchaser. All returns must be pre-approved by Daktronics before shipment. Daktronics shall not be obligated to pay freight for any unapproved return..

D. Any replacement parts or Equipment will be new or serviceably used, comparable in function and performance to the original part or Equipment, and warranted for the remainder of the Warranty Period. Purchasing additional parts or Equipment from the Seller does not extend this Warranty Period.

E. Defects shall be defined as follows. With regard to the Equipment (excepting LEDs), a "Defect" shall refer to a material variance from the design specifications that prohibit the Equipment from operating for its intended use. With respect to LEDs, "Defects" are defined as LED pixels that cease to emit light. The limited warranty provided by Daktronics does not impose any duty or liability upon Daktronics for partial LED pixel degradation or the provision of replacement communication methods including but not limited to, wire, fiber optic cable, conduit, or trenching for the purpose of overcoming local site interference.

THIS LIMITED WARRANTY IS THE ONLY WARRANTY APPLICABLE TO THE EQUIPMENT AND REPLACES ALL OTHER WARRANTIES OR CONDITIONS, EXPRESS OR IMPLIED, INCLUDING, BUT NOT LIMITED TO, THE IMPLIED WARRANTIES OR CONDITIONS OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE. SPECIFICALLY, EXCEPT AS PROVIDED HEREIN, THE SELLER UNDERTAKES NO RESPONSIBILITY FOR THE QUALITY OF THE EQUIPMENT OR THAT THE EQUIPMENT WILL BE FIT FOR ANY PARTICULAR PURPOSE FOR WHICH PURCHASER MAY BE BUYING THE EQUIPMENT. ANY IMPLIED WARRANTY IS LIMITED IN DURATION TO THE WARRANTY PERIOD. NO ORAL OR WRITTEN INFORMATION, OR ADVICE GIVEN BY THE COMPANY, ITS AGENTS OR EMPLOYEES, SHALL CREATE A WARRANTY OR IN ANY WAY INCREASE THE SCOPE OF THIS LIMITED WARRANTY.

THIS LIMITED WARRANTY IS NOT TRANSFERABLE.

### 2. Exclusion from Warranty Coverage

The limited warranty provided by Daktronics does not impose any duty or liability upon Daktronics for:

A. Any damage occurring, at any time, during shipment of Equipment unless otherwise provided for in the Agreement. When returning Equipment to Daktronics for repair or replacement, Purchaser assumes all risk of loss or damage, and agrees to use any shipping containers that might be provided by Daktronics and to ship the Equipment in the manner prescribed by Daktronics;

B. Any damage caused by the unauthorized adjustment, repair or service of the Equipment by anyone other than personnel of Daktronics or its authorized repair agents;

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- C. Damage caused by the failure to provide a continuously suitable environment, including, but not limited to: (i) neglect or misuse, (ii) a failure or sudden surge of electrical power, (iii) improper air conditioning or humidity control, or (iv) any other cause other than ordinary use;
- D. Damage caused by fire, flood, earthquake, water, wind, lightning or other natural disaster, strike, inability to obtain materials or utilities, war, terrorism, civil disturbance or any other cause beyond Daktronics' reasonable control;
- E. Failure to adjust, repair or replace any item of Equipment if it would be impractical for Daktronics personnel to do so because of connection of the Equipment by mechanical or electrical means to another device not supplied by Daktronics, or the existence of general environmental conditions at the site that pose a danger to Daktronics personnel;
- F. Any statements made about the product by salesmen, dealers, distributors or agents, unless such statements are in a written document signed by an officer of Daktronics. Such statements as are not included in a signed writing do not constitute warranties, shall not be relied upon by Purchaser and are not part of the contract of sale;
- G. Any damage arising from the use of Daktronics products in any application other than the commercial and industrial applications for which they are intended, unless, upon request, such use is specifically approved in writing by Daktronics; or
- H. Any performance of preventive maintenance.

### 3. Limitation of Liability

It is specifically agreed that the price of the Equipment is based upon the following limitation of liability. In no event shall Daktronics (including its subsidiaries, affiliates, officers, directors, employees, or agents) be liable for any special, consequential, incidental or exemplary damages arising out of or in any way connected with the Equipment or otherwise, including but not limited to damages for lost profits, cost of substitute or replacement equipment, down time, lost data, injury to property or any damages or sums paid by Purchaser to third parties, even if Daktronics has been advised of the possibility of such damages. The foregoing limitation of liability shall apply whether any claim is based upon principles of contract, tort or statutory duty, principles of indemnity or contribution, or otherwise.

In no event shall Daktronics be liable to Purchaser or any other party for loss, damage, or injury of any kind or nature arising out of or in connection with this Warranty in excess of the purchase price of the Equipment actually delivered to and paid for by the Purchaser. The Purchaser's remedy in any dispute under this Warranty shall be ultimately limited to the Purchase Price of the Equipment to the extent the Purchase Price has been paid.

### 4. Assignment of Rights

The Warranty contained herein extends only to the original end-user (which may be the Purchaser) of the Equipment and no attempt to extend the Warranty to any subsequent user-transferee of the Equipment shall be valid or enforceable without the express written consent of Daktronics.

### 5. Dispute Resolution

Any dispute between the parties will be resolved exclusively and finally by arbitration administered by the American Arbitration Association ("AAA") and conducted under its rules, except as otherwise provided below. The arbitration will be conducted before a single arbitrator. The arbitration shall be held in Brookings, South Dakota. Any decision rendered in such arbitration proceedings will be final and binding on each of the parties, and judgment may be entered thereon in any court of competent jurisdiction. This arbitration agreement is made pursuant to a transaction involving interstate commerce, and shall be governed by the Federal Arbitration Act.

### 6. Governing Law

The rights and obligations of the parties under this warranty shall not be governed by the provisions of the United Nations Convention on Contracts for the International Sales of Goods of 1980. Both parties consent to the application of the laws of the State of South Dakota to govern, interpret, and enforce all of Purchaser and Daktronics rights, duties, and obligations arising from, or relating in any manner to, the subject matter of this Warranty, without regard to conflict of law principles.

### 7. Availability of Service Agreement

For Purchaser's protection in addition to that afforded by the warranties set forth herein, Purchaser may purchase a service agreement covering the Equipment. The service contract, available from Daktronics, provides for electronic parts repair for an extended period from the date of expiration of the warranty. Alternatively, service agreement may be purchased in conjunction with the warranty. For further information, contact Daktronics customer service.

## Standard Terms and Conditions of Service

1. **Scope of Service Agreement.** The scope of the Service Agreement may provide for equipment listed on either the face of the document or Attachment A and may include those services as defined on Attachment A (excluding maintenance services which are the responsibility of Purchaser as defined on Attachment A or services which may be purchased for an additional fee). Response Times are defined on Attachment A.

2. **Commencement Date.** Unless otherwise agreed to in writing, this Service Agreement becomes effective upon the date stated as the "Commencement Date" on the cover page of this Agreement.

3. **Conditions Precedent.** The obligations of Daktronics in this Agreement are subject to the express condition precedent that Purchaser shall perform its obligations under the Agreement, particularly those obligations defined in Attachment A. Daktronics may, at its sole discretion, waive these conditions. The Purchaser's rights and Daktronics obligation under this Service Agreement shall be suspended until all payments owing to Daktronics are current.

4. **Payment Terms.** Purchaser agrees to pay Daktronics according to the Payment Schedule as outlined on the face of this document or on Attachment B. In addition, the Purchaser agrees to pay or reimburse Daktronics for any taxes or charges resulting from this Agreement that are levied by a taxing authority, and shall hold harmless and indemnify Daktronics from the claims of any governmental authority asserting that any such Tax is due and payable.

5. **Conditions of Coverage.** This Service Agreement provides for the services defined on Attachment A. In addition, Daktronics will replace failed LED pixels, if greater than 1.0% of the total number of pixels in the sign have failed in any calendar year during the term of the Agreement, provided the sign is installed with the recommended ventilation/air conditioning system for its location. Air conditioning systems must be maintained according to manufacturer's specifications. Pixel failure occurs when the pixel will no longer emit light. This agreement does not cover LED degradation, which occurs when the LEDs continue to emit light, but at some lesser level of brightness. Pixel repair will be performed at the Daktronics Repair Center.

Daktronics will repair or replace failed radio components. A radio component has failed when it does not transmit or receive data properly. Local site interference or obstructions may cause intermittent or complete failure of radio performance. This Agreement does not include the provision of replacement communication methods (such as wire, fiber optic cable, conduit, trenching or other solutions) for the purpose of overcoming local site interference.

Certain failures may result in a required total replacement and/or upgrade of any or all of the components in the system. In the event of a failure, the component will be checked thoroughly and if the component can be repaired or replaced, the costs of the repair or the replacement part are included in this Agreement.

If the component cannot be repaired or replaced for whatever reason, and an upgrade is required, then the Purchaser shall be responsible for the difference in cost between the upgraded component and the cost of the repaired or replaced component to the extent the cost of the upgraded component exceeds the cost of the repaired or replaced component. Further, the Purchaser shall be responsible for any additional upgrades required by the upgraded component in the integrated system.

6. **Service outside the Scope of Services** listed on Attachment A may be provided on a time and material basis according to the then current rates. Subject to the limitations in the Scope of Services, Daktronics will maintain the equipment for normal wear and tear. The equipment may require additional maintenance beyond the Scope of Services attributable to causes other than normal wear and tear. Such causes may include, but are not limited to: inadequate or improper power, improper care or abuse of equipment, unauthorized attempts to repair or modify the equipment, failures caused by environmental conditions beyond Daktronics' control such as corrosives and metallic pollutants, acts of God or nature (including damage done by vermin), terrorism, vandalism, or war.

Service does not include paint or refinishing the equipment or furnishing material for this purpose, electrical work external to the equipment, or service of accessories, alterations, attachments, or other devices not furnished by Daktronics unless otherwise agreed in writing. Batteries and metallic or fiber optic data cable are not covered unless otherwise agreed to in writing.

This Agreement does not cover defects or failure resulting from the use of replacement parts not supplied by Daktronics.

Costs of normal access to the display(s) are covered under this Agreement. Normal access is defined as unfettered, solid, unrestricted access to the entire display with a 45' aerial lift or bucket truck for an outdoor display, taking into account environmental or site conditions, or 15' for an indoor display. Special circumstances will not be covered under this Agreement, including but not limited to: costs of additional lift equipment, or presence of any additional equipment and/or personnel to insure safety of service personnel.

In no event shall Daktronics be obliged to perform Services under this Agreement during the existence of Adverse Conditions. "Adverse Conditions" include, among others, without limitation, the following: severe inclement weather, hazardous site conditions including infestations of animals or dangerous insects, saturated ground conditions, or residence or occupation by unauthorized personnel. The determination of a site condition as an Adverse Condition shall be at the sole discretion of Daktronics.

Inaccessibility due to Adverse Conditions will exempt a location from coverage under this Agreement until such time as the display(s) become accessible once again.

7. **Service Request.** Purchaser shall fully cooperate with Daktronics in connection with the service of the Equipment. The Purchaser shall immediately notify Daktronics in writing of equipment failure and allow Daktronics full and free access to the equipment. Waiver of liability or other restrictions shall not be imposed as a requirement prior to accessing the site. Also, the Purchaser will allow Daktronics to use necessary machines, communication facilities, and other equipment at no charge.

8. **Return Items.** All items returned to Daktronics must have a Return Material Authorization (RMA) number. For exchange items, the number is included with the shipment of the exchange unit. For repair items, an RMA number can be obtained by phone (877-605-1116), (international +1-605-697-4417), fax (605-697-4444) or e-mail (helpdesk@daktronics.com) unless otherwise directed by Daktronics.

9. **Shipping.** When returning Equipment to Daktronics for repair or replacement, Purchaser assumes all risk of loss or damage, and agrees to use any shipping containers, which might be provided by Daktronics, and to ship the Equipment in the manner prescribed by Daktronics.

10. **Limitation of Warranty.** Daktronics shall be under no obligation to furnish continued service under this Agreement if the equipment is moved from its location of initial installation or reinstalled without the prior written approval of Daktronics, unless the displays were designed by Daktronics to be mobile.

11. **Confidentiality.** Purchaser shall consider all information, including the terms and conditions of this Agreement, furnished by Daktronics to be confidential and shall not disclose any such information to any other person, or use such information itself for any purpose other than fulfillment of this Agreement unless Purchaser obtains written permission from Daktronics to do so. Purchaser shall provide confidential information only to those of its agents, servants and employees who have been informed of the requirements of this paragraph and have agreed to be bound by them. The provisions of this paragraph shall survive termination of the Agreement.

12. **Default.** Daktronics reserves the right to terminate this contract and accelerate all amounts due and payable if Purchaser fails to make payment to Daktronics within ten days of the agreed payment dates or otherwise fails to comply with this Agreement, or any proceeding is filed by or against Purchaser in bankruptcy. Daktronics reserves all its rights (both legal and equitable) under the contract, applicable statutes, or the common law. Selection of a remedy by Daktronics shall in no way be construed as a waiver of other remedies available to Daktronics. If Purchaser fails to perform any covenant or obligation under this Agreement or any other agreement that Purchaser has with Daktronics, including without limitation the failure to pay when due any amounts owed to Daktronics under this Agreement or any other agreement between the parties, Daktronics shall be excused from the performance of any of its obligations under this Agreement and any other Agreement it has with the Purchaser until such time as said default is cured, if ever.

13. **Indemnity.** Daktronics shall indemnify, defend and hold harmless the Purchaser and their respective subsidiaries, officers, directors, shareholders, partners, employees, agents, insurers, successors and assigns from any and all liability, losses, damages, costs or expenses (collectively, "Losses") arising out of or in any way related to: (i) any material breach of this Agreement by Daktronics; (ii) any negligent act or omission by Daktronics or its personnel, agents, subcontractors, or others engaged by Daktronics or under Daktronics' control related to the execution of this Agreement; (iii) any claim against any indemnified party by reason of or alleging any unauthorized or infringing use by an indemnified party of any patent, process, trade secret, copyright, trademark, or other intellectual property right regarding the Equipment or the Software and its components; or, (iv) any fine or assessment with respect to any violation or alleged violation of any Applicable Laws regarding safety or health.

The Purchaser shall indemnify, defend and hold harmless Daktronics and its subsidiaries, officers, directors, shareholders, partners, representatives, employees, agents, insurers, successors and assigns of each of the foregoing from any and all Losses arising out of or in any way related to: (i) any material breach of this Agreement by the Purchaser; or (ii) any negligent act or omission by the Purchaser or its personnel, agents, subcontractors, or others engaged by the Purchaser or under their control (other than Daktronics or its personnel, agents, subcontractors, or others engaged by Daktronics or under Daktronics' control).

14. **Limitation of Liability.** The parties agree that in no event whatsoever shall the liability of either party exceed the amount of the purchase price. It is agreed that in no event shall either party be liable for special, incidental, consequential or indirect damages, regardless of cause. Purchaser understands and agrees that the prices granted herein would be higher in the absence of this limitation of liability. No action against Daktronics shall be commenced more than one year after the accrual of the cause of action. Daktronics shall have no liability with respect to claims relating to or arising from use of third-party products and services.

15. **Force Majeure.** Daktronics shall be excused from any liability under this Agreement for any delay in performance or failure to perform which delay or failure to perform is caused by circumstances which are beyond the reasonable control of the Daktronics, including without limitation acts of God, natural disaster, labor or material shortages, war, earthquakes, acts of terrorism, etc.

16. **Assignment.** Unless otherwise stated, this Agreement may not be assigned by either party without the written consent of the other party.

17. **Termination.** If either party neglects or fails to perform any of its obligations under this Agreement, and such failure continues for a period of thirty (30) days after written notice thereof, the other party shall have the right to terminate this Agreement.

18. **Miscellaneous.** This Agreement shall be governed by the laws of the state of South Dakota without regard to its conflict of law principles. The parties consent to the jurisdiction and venue of the courts of South Dakota for any action, suit or proceeding. This Agreement represents the entire agreement of the parties and supersedes any previous understanding or agreement. This Agreement may not be amended or altered in any manner except in a writing signed by both parties. This Agreement may be executed in counterparts. Each party hereto shall pay its own expenses, including without limitation accounting and attorneys' fees, in connection with this Agreement. The Purchaser and Daktronics are not partners or joint venturers. If any part of this Agreement is in any manner held to be invalid, illegal, void, or to be in conflict with any law, then the validity of the remaining portions or provisions of this Agreement shall not be affected, and such part, term, paragraph or provision shall be construed and enforced in a manner designed to effectuate the intent expressed in this Agreement to the maximum extent permitted by law.



## Attachment A

### GOLD® Services Scope of Services

#### Services Included

1. Daktronics parts coverage which includes:
  - a. Daktronics Rapid Parts™ Exchange Program.
  - b. Repair or replacement of failed electronic parts or assemblies.
  - c. Shipping of repaired or replaced failed electronic components from Daktronics.
2. Technical support via telephone during business hours as defined below.
3. Access to the Service Coordination Center.

**Gold shall not include** nor be construed to include any service or support that is not expressly stated above in the definition of the Gold service. Examples of services that are not within the scope of Gold service include, but are not limited to, the following:

1. On-site labor to diagnose and/or replace failed electronic components.
2. Remote monitoring services.
3. After hours telephone support.

Above listed exclusions are available as billable services. Quotes may be provided upon request.

#### Business Hours:

Monday through Friday, 8 am to 5 pm CST (excludes Daktronics observed holidays).

#### Purchaser Responsibilities

The maintenance items <sup>N.S.</sup> listed below are the responsibility of the Purchaser; failure to properly maintain equipment may, ~~at Daktronics's discretion~~ <sup>B.A.</sup>, relieve Daktronics of its responsibilities under the Standard Terms and Conditions Service Agreement attached hereto.

1. Throughout the term of this Agreement, Purchaser shall maintain site conditions within the common environmental range of all system devices as specified by Daktronics.
2. Purchaser is responsible for routine operator functions such as content creation or management.
3. Purchaser is responsible for routine maintenance functions.
4. Purchaser is responsible for management of customer-owned spare parts inventory.
5. Purchaser is responsible for costs of any on-site labor to diagnose and/or replace failed electronic components.