Scottsdale Unified School District #48

DATA SECURITY AND CONFIDENTIALITY AGREEMENT

This DATA SECURITY AND CONFIDENTIALITY AGREEMENT ("Data Agreement") dated
August 13th, 2019   , by and between **Scottsdale Unified School District #48** (the
"District') and __Playworks__   , and its subcontractors and agents (the "Service
Provider").

RECITALS

A. In providing services to the District, Service Provider may have access to confidential
    records, data and information concerning students and employees of the District.

B. Service Provider agrees to the provisions of this Data Agreement and to the
    requirements of state and federal law with respect to the receipt, review, storage and
    transmission of information received from the District.

C. This Data Agreement shall be in addition to any underlying agreement for goods and
    services entered into between the parties.

NOW THEREFORE, THE PARTIES HEREBY AGREE AS FOLLOWS:

1. Covered Data and Information. All records, information, and data of the District to which
    Service Provider has access are hereafter referred to as "CDI". CDI includes, but is not
    limited to, all paper and electronic student education records, information and data
    supplied by the District, as well as any such records, information and data provided by
    students of the District, all personally identifiable records, information and data concerning
    students and employees of the District, and all personally identifiable information and other
    non-public information supplied, including but not limited to student data, employee data,
    and user content.

2. Limited Use of De-identified, aggregate or anonymized CDI. CDI does not include
    deidentified, aggregate or anonymized CDI. The District permits the Service Provider to use
    de-identified, aggregate or anonymized CDI for the purpose of research and development to
    improve the service offered by the Service Provider. Service Provider may not transfer any
    de-identified, aggregate or anonymized CDI to a third party without the express written
    consent of the District.

3. Compliance with all Applicable Laws. Service Provider agrees to comply with the
    requirements of The Family Educational Rights and Privacy Act (FERPA), the Pupil Protection
    Rights Act (PPRA), and any other federal and/or state law governing the privacy of CDI. If
    Service Provider processes data outside of the United States, Service Provider specifically

agrees to be bound by A.R.S. § 18-551. and -552, as amended, A.R.S. § 15-241, FERPA, PPRA and any other applicable Arizona or federal law governing CDI.

4. Access to CDI. Service Provider hereby acknowledges that the Service Provider has access to CDI and that such shall be subject to the terms and conditions of this Data Agreement. Service Provider will only collect CDI as necessary to fulfill its duties as agreed to in any underlying agreement for goods or services.

5. Use of CDI. Service Provider will use CDI only for the purpose of fulfilling its duties and providing services as agreed to in any underlying agreement for goods or services.

6. Data Mining. Service Provider is prohibited from mining CDI for any purposes other than as agreed to in writing between the parties. Data mining or scanning of user content for the purpose of advertising or marketing to anyone is prohibited. Service Provider will not use any CDI to advertise or market to anyone without express written permission of the District.

7. Confidentiality of CDI. Service Provider agrees to hold CDI in strict confidence. Service Provider shall not use or disclose CDI received from or on behalf of the District except as permitted or required by this Data Agreement, as required by law, or as otherwise authorized in writing by the District. Service Provider agrees that it will protect CDI it receives from or on behalf of the District according to commercially acceptable standards and no less rigorously than it protects its own confidential information.

8. Data De-Identification. Service Provider may have permission via any underlying agreement to provide goods or services to use de-identified CDI for purposes as identified in the agreement. De-identified CDI will have all direct and indirect personal identifiers removed. This includes, but is not limited to, name, identification numbers, date of birth, demographic information, location information and school identification numbers. Service Provider agrees not to attempt to re-identify de-identified CDI and agrees not to transfer de-identified CDI to any party without permission. Any receiving party shall agree in writing not to attempt re-identification and shall agree to be bound by the terms of this Data Agreement.

9. Reporting Student CDI. Service Provider may at times have reason to report CDI of District students to third parties as provided by express written permission from the District or as required by law. In reporting aggregated, de-identified data containing CDI, Service Provider shall:

    a. Not disclose data about categories of 10 or fewer students;

    b. Not report a total count of students;

    c. Not report percentages of 0% or 100%; and

    d. Report data in ranges rather than specific numbers.

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10. Return or Destruction of CDI. Upon termination, cancellation, expiration or other conclusion of the work or services provided to the District by Service Provider, Service Provider shall return all CDI to the District. If the return of CDI is not feasible, Service Provider shall destroy any and all CDI and represent in writing to the District that it has destroyed all CDI and no longer has any CDI in its possession or control. Service Provider shall ensure that all CDI it is possession or the possession of any subcontractors or agents is destroyed or returned to the District when no longer needed for the specified purposes as authorized by the District.

11. Security of Electronic Information. Service Provider shall develop, implement, maintain and use appropriate administrative, technical and physical security measures and technical safeguards to preserve the confidentiality, integrity and availability of all electronically maintained or transmitted CDI received from or on behalf of the District or its students or employees. Service Provider shall store and process CDI in accordance with industry best practices to secure CDI from unauthorized access, disclosure and use. These security measures and technical safeguards shall be extended by express written agreement to all subcontractors and third parties used by Service Provider. Service Provider shall at a minimum:

    a. Protect and maintain the confidentiality of passwords used to access CDI;

    b. Notify the District when Service Provider's access to CDI is no longer necessary;

    c. Notify the District within two days of discovery if passwords used to access CDI by Service Provider, a subcontractor, or other third party are lost, stolen, or otherwise obtained or potentially obtained by unauthorized users.

    Service Provider will conduct periodic risk assessments and remediate any identified security vulnerabilities in a timely manner.

12. Reporting of Disclosure or Misuse of CDI. Service Provider shall, within two days of discovery, report to the District any and all use or disclosure of CDI not authorized by this Data Agreement or authorized in writing by the District. Service Provider's report shall identify:

    a. The nature of the unauthorized use or disclosure;

    b. The CDI used or disclosed;

    c. The identity of the person or entity who made the unauthorized use or received the unauthorized disclosure;

    d. What Service Provider has done or shall do to mitigate any deleterious effect of the unauthorized use or disclosure; and

    e. What corrective action Service Provider has taken or shall take to prevent further similar unauthorized use or disclosure.

Service Provider shall provide such other information, including a written report, as reasonably requested by the District. Service Provider shall have a plan for responding to a breach of data security developed pursuant to best practices in the industry and shall share that plan with the District upon request.
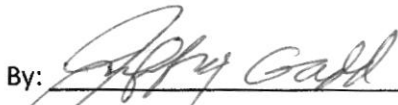
13. <u>District Access</u>. Any CDI held by Service Provider will be made available to the District upon request.

14. <u>Rights to Intellectual Property</u>. This Data Agreement does not give Service Provider any rights, implied or otherwise, to CDI, data, content or intellectual property except as expressly stated in any underlying agreement between the parties. This includes but is not limited to the right to share, sell or trade CDI. The District acknowledges that this agreement does not convey any intellectual property right in any of Service Provider's materials or content, including any revisions of derivative work or material. Service Provider-owned materials shall remain the property of the Service Provider. All rights, including copyright, trade secrets, patent and intellectual property rights shall remain the sole property of the Service Provider.

15. <u>Indemnity</u>. Service Provider shall defend and hold the District, its Board Members, officers, agents and employees, harmless from all claims, liabilities, damages or judgments involving a third party, including the District's costs and reasonable attorneys' fees, which arise as a result of Service Provider's failure to meet any of its obligations under this Data Agreement. Service Provider shall also comply with the breach notification requirements under applicable law that arise from the result of Service Provider's failure to meet any of its obligations under this Data Agreement.

16. <u>Remedies</u>. If the District determines in good faith that Service Provider has materially breached any of its obligations under this Data Agreement, the District shall have the right to require Service Provider to submit to a plan of monitoring and reporting; to provide Service Provider with a fifteen (15) day period to cure the breach; or to terminate the work or services of Service Provider for the District immediately. Prior to exercising any of these options, the District shall provide written notice to Service Provider describing the violation and the action the District intends to take. The remedies described herein may be exercised by the District in its sole discretion and are in addition to any remedies permitted by law or pursuant to any other agreement between the parties.

17. <u>Subcontractors</u>. Service Provider shall require that any subcontractor or agent receiving CDI is authorized by the District to receive CDI and that the subcontractor or agent expressly agrees to be bound to the terms of this Data Agreement.

18. <u>Modifications</u>. Service Provider will not modify or change how CDI is collected, used or shared under the terms of this Data Agreement in any way without advance notice to and consent from the District.
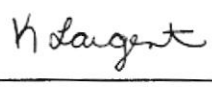
19. Arizona Law. This Data Agreement is made in the State of Arizona and shall be interpreted by the laws of the State of Arizona. Any dispute arising out of or relating to this Data Agreement shall be brought in the Maricopa County Superior Court or the United States District Court, District of Arizona.

20. Cancellation. The District reserves all rights that it may have to cancel this Data Agreement for possible conflicts of interest under A.R.S. § 38-511, as amended.

21. Arbitration. To the extent permitted by A.R.S. §§12-1518 and 12-133, the parties agree to resolve any dispute arising out of this Agreement by arbitration.

22. Amendments. All references to provisions of statutes, codes and regulations include any and all amendments thereto.

23. Miscellaneous. The provisions of this Data Agreement shall survive the termination, cancellation or completion of all work, services, performance or obligations by Service Provider to the District. This Data Agreement shall be binding upon the parties hereto, their officers, employees and agents. Time is of the essence of this Data Agreement. Except as expressly modified by the provisions of this Data Agreement, any underlying agreement for goods or services shall continue in full force and effect. In the event any inconsistencies exist between the terms of this Data Agreement and any underlying agreement, this Data Agreement shall control.

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be duly executed by its authorized parties on its behalf.

Scottsdale Unified School District #48

By: _Jeffy Gall_

Title: _CFO_

Date: _8/16/19_

VENDOR NAME: Playworks

By: _K Largent_

Title: Partnerships Director

Date: 8/13/19

SUSD Purchase Order General Terms and Conditions

1. **Vendor** acknowledges any breach of the Terms and Conditions shall be deemed a material breach subject to penalties up to and including termination of contract.

2. **Business Operations** - By accepting this purchase order, vendor certifies that in accordance with ARS Sections 35-391 et seq. and 35-393 et. seq., the vendor hereby certifies that the vendor does not have scrutinized business operations in Sudan nor scrutinized business operations in Iran.

3. **Fingerprinting Requirements -**

   A contractor, subcontractor or vendor or any employee of a contractor, subcontractor or vendor, who is contracted to supply services on a regular basis (at least five (5) times during a month) shall at its own expense, obtain a valid fingerprint clearance card in accordance with A.R.S. 41-1758.

   A copy of the valid fingerprint clearance card shall be supplied to the District upon request.
   An exception to this requirement may be made as authorized in Governing Board policy.

4. **E-Verification** - By accepting this purchase order, vendor agrees to comply and maintain compliance with FINA, ARS 41-4401 and 23-214 which requires compliance of federal immigration laws by State employers, State contractors and State sub-contractors in accordance with the E-Verify Employee Eligibility Verification Program.

5. **Registered Sex Offender Restriction -**
   Pursuant to this order, the named vendor agrees by acceptance of this order that no employee of the vendor or a subcontractor of the vendor, who has been adjudicated to be a registered sex offender, will perform work on District premises or equipment at any time when District students are, or are reasonably expected to be, present. The vendor further agrees by acceptance of this order that a violation of this condition shall be considered a material breach and may result in a cancellation of the order at the District's discretion.

6. **Offer, Acceptance and Modification** - This purchase order is an offer by the Scottsdale Unified School District #48 (Buyer) to Seller to enter into the purchase agreement herein described. Seller's acceptance shall be indicated by the prompt and current shipment, or promise to ship, the goods described, or the prompt and current performance, or promise to perform, the services or work described. Buyer reserves the right to revoke or modify this offer. None of the terms and conditions contained in this purchase order may be added to, modified, superseded or otherwise altered except by written authorization of the Purchasing Department. Each shipment received by Buyer from Seller, or any work done by Seller, shall be deemed to be only upon the terms and conditions contained in the is purchase order, and cannot be altered by any terms and conditions contained in any acknowledgement, invoice or other form of Seller, regardless of any act by Buyer of accepting or paying for any shipment or similar act of Buyer. If the goods or services described in this purchase order are the subject of a contract awarded by the Buyer through competitive bidding, or are the subject of a separate contract for services entered into by an authorized representative of the District, then such contracts, together with this purchase order, form the contract, and they are as fully a part of the contract as if hereto attached or repeated.

7. **Invoices and Statements** - Seller shall furnish invoices to Buyer as specified on the face of this purchase order, or as directed in writing by Buyer. Each purchase order must be separately invoiced. Seller shall include on each invoice the number of this purchase order and the location of the destination facility. Seller shall also furnish upon request separate monthly statements to Buyer covering invoices payable to Buyer.

8. **Sales, Use and Federal Excise Taxes** - District is exempt from Federal Excise Taxes. A Use tax will be paid by the District directly to the State. Local sales taxes will be paid and collected by the Seller/Vendor.

9. **Cancellation** - Buyer reserves the right to cancel all or any portion of the purchase order if Seller does not make deliveries as specified, time being of essence in this contract, or if Seller breaches any of the terms thereof including, without limitation the warranties of Seller.

10. **Delivery Schedules** - If specific quantities or delivery dates are not shown on the face of this order, deliveries are to be made both in quantities and at times specified in schedules furnished by Buyer. Buyer may from time to time change delivery schedules or direct temporary suspension of scheduled shipments or suspension of work or services without this implying any modification of the price or other terms and conditions of this purchase order.

11. **Excusable Delays** - Neither Buyer or Seller shall be liable for a failure to perform that arises from causes or events beyond reasonable control and without its faults, or negligence, including labor disputes of any kind. In the event of ad delay in performance, Buyer, at its option, may accept delayed delivery of goods or delayed provision of services or work or cancel this order without obligation to Seller.

12. **Packing Marking and Shipping** - No additional charges of any kind, including charges for packing, marking, routing, shipping, or other extras will be allowed unless specifically agreed to in writing in advance by Buyer. If Buyer agrees to pay shipping charges, vendor will prepay freight charges and include on the invoice. Seller shall pack, mark and ship goods in suitable and durable containers in accordance with the requirements of Buyer and the requirements of the carrier. Seller shall make shipments utilizing the most economical means. Seller shall reimburse Buyer for all expenses incurred by Buyer as a result of improper packing, marking or routing or shipping based upon written notice of such expenses.

13. **Inspection, Acceptance and Title** - All goods shall be received subject to Buyer's right of inspection and rejection. Detective goods or goods not in accordance with Buyer's specifications will be held for Seller's instruction at Seller's risk and if Seller so directs, will be returned at Seller's expense. If inspection discloses that all or any part of the goods received are not in accordance with Buyer's specifications, Buyer shall have the right to cancel any unshipped portion of the order. Payment for goods on this order prior to inspection shall not constitute acceptance thereof, and is without prejudice to any and all claims that Buyer may have against Seller.

14. **Warranty and Indemnity** - Seller warrants that the goods delivered to Buyer or work or services performed for Buyer pursuant to this purchase order will conform to Buyer's specifications and instructions and will be free of defects in materials and workmanship. Notwithstanding Buyer's inspection as provided for in Section 10, Seller shall indemnify, defend and hold Buyer harmless from any damages to property or personal injuries resulting from or reasonably attributable to any defect in goods or services provided by Seller hereunder.

15. **Proprietary Rights** - Seller, at its expense, will defend every claim that may be brought against Buyer for any alleged infringements of Seller of any present or future patent, trademark, copyright, industrial design right or other proprietary right based in any manner on the purchase or use of the goods or services hereof. Seller will indemnify and hold Buyer harmless from all expenses and damages that Buyer may sustain by reason of such claims. All technical information disclosed by Seller to Buyer in connection with these goods or services is disclosed on a nonconfidential basis. Seller agrees that any information received during any furtherance of Seller's obligations in accordance with this purchase order, which concerns the personal, financial, or other affairs of the Scottsdale Unified School District #48 will be treated by Seller in full confidence and will not be revealed to other persons, firms or organizations.

16. **Governmental Regulations** - Seller agrees to comply with all federal, state and local laws, rules, regulations, executive orders and ordinances which may be applicable to Seller in performance of its obligations under this purchase order.

17. **Interpretation of Contract** - This contract shall be construed according to the laws of the State of Arizona.

18. **Cancellation** - This contract is subject to cancellation pursuant to ARS 38-511.

19. **Transportation** - Unless otherwise specified, if transportation charges apply, they must be prepaid and added to invoice. No C.O.D. shipments accepted.

20. **Materials Safety Data Sheets** - MSDS must accompany the delivery of materials defined under hazard communications laws.

21. **Packing List** - Packing list must be enclosed with each shipment referencing the P.O. number of each package. The P.O. number must appear on all correspondence.

22. **Reassignment** - This order may not be reassigned or transferred without written permission of the Purchasing Department

23. **Right to Inspect** - Vendor further acknowledges that the School District retains the legal right to inspect the papers of any contractor or subcontractor employee who works on the contract to ensure compliance by the contractor or subcontractor.

24. **Agreements** – All agreements such as a Contract, Memorandum of Understanding, City of Scottsdale Use Permit are subject to legal review and only Governing Board authorized agents have the authority to execute agreements. In addition, Arizona State law specifically requires all Intergovernmental Agreements ("IGA's") to be reviewed by legal counsel (A.R.S. 11-952(D)).

25. **Ancillary Agreements**

The Scottsdale School District approved Purchase Orders will serve in lieu of additional agreements that require a signature from a school district official. Some exceptions apply depending on the level of complexity of the procurement