



Irvine Unified School District

CONTRACT REVIEW FORM

| | | | |
|---|-----------|--|--|
| Company Name: Digital Theatre(US) LLC | | Vendor No: | |
| Contact Name: Luke Flanagan | | Email: jason.nitschke@digitaltheatre.com | |
| Address: 111 W Illinois, 5 th Floor WeWork | | | |
| City: Chicago | State: IL | Zip: 60654 | |
| Phone No.: (646) 652-0150 | | SS or Tax ID No.: 30-1209882 | |

| | | | |
|-------------------------------------|--|-------------------------------------|--|
| Required Documents | | | |
| X | Contract Review Form | <input checked="" type="checkbox"/> | Agreement |
| | | <input checked="" type="checkbox"/> | Certificate of Liability Insurance |
| | | <input checked="" type="checkbox"/> | W-9 Form |
| Other Documents (if required) | | | |
| <input checked="" type="checkbox"/> | Data Privacy Agreement (Digital Provider/User Log-In Required) | | <input checked="" type="checkbox"/> Insurance Waiver |

Description of Services & Objective(s) to be Accomplished:
 Contractor to provide *a cloud based digital learning service.*

A California Student Data Privacy Agreement (CSDPA) is to be established between Irvine Unified School District and the Contractor.

Has this contract been reviewed by any outside legal counsel? No: Yes: Name: _____

IUSD Template - Unmodified: IUSD Template - Modified: _____ Other/Custom Agreement: _____

Is this Contract Associated with a Field Trip: Yes: _____ No:

If yes, and Board approval is required per Board Policy 6153, provide Board approval date: _____

Term/Date(s): 11/30/2020 to 12/31/2021

| | | |
|--|---|---|
| Fee/Cost (not to exceed): \$12,000 | Budget Category No.: | 0100933510-5810 |
| Select One Budget Category: | | |
| <input type="checkbox"/> Community Facilities District – CFD _____ | <input type="checkbox"/> Capital Facilities Fund – Fund 25 | <input type="checkbox"/> Self-Insurance Fund – Fund 67 |
| <input type="checkbox"/> County School Facilities Fund – Fund 35 | <input checked="" type="checkbox"/> Restricted General Fund – Fund 01 | <input type="checkbox"/> Off-Setting Fee Income |
| <input type="checkbox"/> Building Fund – Fund 21 | <input type="checkbox"/> Unrestricted General - Fund 01 | <input checked="" type="checkbox"/> Other: CARES Act Fund |

Submitted by/Originator: Nicole Reynolds Ext: 65080
 Department/Site: VAPA Submittal Date: 11/4/2020
Brac van Patten Printed Name [Signature] Site Principal/Department Administrator Signature

ALL Contracts MUST be approved by IUSD Board of Education.

ORIGINATOR: Submit this signed form along with required documents to Maria Ragas in Business Services for review *at least 6 weeks prior* to scheduled Board meeting.
 Upon Board approval, originals will be filed, Originators notified via email, and copies will be uploaded to J:\SHARE\CONTRACTS\2020-21.

District Approval

Ready for Board Approval: Documents Complete: Michelle Bennett [Signature]
 _____ Approver's Name & Signature
November 17, 2020
 _____ Board Approval Date
[Signature]
 _____ Asst. Superintendent, Business Services

INDEPENDENT CONTRACTOR AGREEMENT

This AGREEMENT is hereby dated this 18th day of November, 2020 (the "Effective Date") between the Irvine Unified School District, hereinafter referred to as "DISTRICT," and Digital Theatre (US) LLC, located at 111 W. Illinois, 5th Floor, We Work, Chicago, IL 60654, hereinafter referred to as "CONTRACTOR."

WHEREAS, DISTRICT is authorized by Section 53060 of the California Government Code to contract with and employ any persons for the furnishing of special Services and advice in financial, economic, accounting, engineering, legal or administrative matters, if such persons are specially trained and experienced and competent to perform the special Services required;

WHEREAS, DISTRICT is in need of such special services and advice; and

WHEREAS, CONTRACTOR is specially trained and experienced and competent to perform the special Services required by the DISTRICT, and such services are needed on a limited basis;

NOW, THEREFORE, the parties agree as follows:

1. Services to be provided by Contractor. CONTRACTOR shall provide digital learning resources through its cloud-based subscription product, Digital Theatre+ (at www.digitaltheatreplus.com), hereinafter referred to as "Services".

2. Term. CONTRACTOR shall commence providing Services under this AGREEMENT on November 30th, 2020 and will diligently perform as required and complete performance by December 31, 2021.

3. Compensation. DISTRICT agrees to pay the CONTRACTOR for Services satisfactorily rendered pursuant to this AGREEMENT a total fee not to exceed Twelve Thousand Dollars (\$12,000.00). DISTRICT shall pay CONTRACTOR within thirty (30) days of receipt of CONTRACTOR's invoice detailing the services rendered.

4. Expenses. DISTRICT shall not be liable to CONTRACTOR for any costs or expenses paid or incurred by CONTRACTOR in performing Services for DISTRICT.

5. Independent Contractor. CONTRACTOR, in the performance of the Services pursuant to this AGREEMENT, shall be and act as an independent contractor. CONTRACTOR understands and agrees that it and all of its employees shall not be considered officers, employees or agents of the DISTRICT, and are not entitled to benefits of any kind or nature normally provided employees of the DISTRICT and/or to which DISTRICT's employees are normally entitled, including, but not limited to, State Unemployment Compensation or Workers' Compensation. CONTRACTOR assumes the full responsibility for the acts and/or omissions of its employees or agents as they relate to the Services to be provided under this AGREEMENT. CONTRACTOR shall assume full responsibility for payment of all federal, state and local taxes or contributions, including unemployment insurance, social security and income taxes with

respect to CONTRACTOR's employees.

6. Materials. CONTRACTOR shall furnish, at its own expense, all labor, materials, equipment, supplies and other items necessary to complete the Services to be provided pursuant to this AGREEMENT. CONTRACTOR's Services will be performed in accordance with generally and currently accepted principles and practices of its profession.

7. Originality of Services/Intellectual Property. CONTRACTOR agrees that all ideas, technologies, formulae, procedures, processes and methods prepared for and submitted by CONTRACTOR to the DISTRICT in connection with the Services set forth in this AGREEMENT, shall be wholly original to CONTRACTOR and shall not be copied in whole or in part from any other source, except that submitted to CONTRACTOR by DISTRICT as a basis for such Services. CONTRACTOR further agrees that all writings, materials, compositions, recordings, teleplays, and/or video productions prepared for, written for, or otherwise (hereinafter referred to as "Content") submitted by CONTRACTOR to the DISTRICT and/or used in connection with the Services set forth in this AGREEMENT, reflect the intellectual property of, and copyright interests held by DISTRICT and shall not be copied or used in whole or in part by CONTRACTOR without DISTRICT's express written permission. CONTRACTOR understands and agrees that all Content produced under this AGREEMENT is the property of DISTRICT and cannot be used without DISTRICT's express written permission. CONTRACTOR acknowledges and agrees that DISTRICT shall have all right, title and interest in said Content, including the right to secure and maintain the copyright, trademark and/or patent of said Content in the name of the DISTRICT.

8. Termination. DISTRICT may, at any time, with or without reason, terminate this AGREEMENT and compensate CONTRACTOR only for Services satisfactorily rendered to the date of termination. Written notice by DISTRICT shall be sufficient to stop further performance of Services by CONTRACTOR. Notice shall be deemed given when received by the CONTRACTOR or no later than three (3) days after the day of mailing, whichever is sooner.

DISTRICT may terminate this AGREEMENT upon giving of written notice of intention to terminate for cause. Cause shall include: (a) material violation of this AGREEMENT by the CONTRACTOR; or (b) any act by CONTRACTOR exposing the DISTRICT to liability to others for personal injury or property damage; or (c) CONTRACTOR is adjudged a bankrupt, CONTRACTOR makes a general assignment for the benefit of creditors or a receiver is appointed on account of CONTRACTOR's insolvency. Written notice by DISTRICT shall contain the reasons for such intention to terminate and unless within ten (10) days after service of such notice the condition or violation shall cease, or satisfactory arrangements for the correction thereof be made, this AGREEMENT shall upon the expiration of the ten (10) days cease and terminate. In the event of such termination, the DISTRICT may secure the required Services from another contractor. If the cost to the DISTRICT to secure the required Services from another contractor exceeds the cost of providing the Services pursuant to this AGREEMENT, the excess cost shall be charged to and collected from the CONTRACTOR. The foregoing provisions are in addition to and not a limitation of any other rights or remedies available to DISTRICT. Written notice by DISTRICT shall be deemed given when received by the CONTRACTOR, or no later than three (3) days after the day of mailing, whichever is sooner.

9. Hold Harmless. CONTRACTOR agrees to and does hereby indemnify, hold harmless and defend the DISTRICT and its governing board, officers, employees and agents from every claim or demand made and every liability, loss, damage or expense, of any nature whatsoever, which may be incurred by reason of:

(a) Liability for damages for: (1) death or bodily injury to person; (2) injury to, loss or theft of property; or (3) any other loss, damage or expense arising out of (1) or (2) above, sustained by the CONTRACTOR or any person, firm or corporation employed by the CONTRACTOR, either directly or by independent contract, upon or in connection with the Services called for in this AGREEMENT, however caused, except for liability for damages referred to above which result from the sole negligence or willful misconduct of the DISTRICT or its officers, employees or agents.

(b) Any injury to or death of any person(s), including the DISTRICT's officers, employees and agents, or damage to or loss of any property caused by any act, neglect, default, or omission of the CONTRACTOR, or any person, firm or corporation employed by the CONTRACTOR, either directly or by independent contract, arising out of, or in any way connected with, the Services covered by this AGREEMENT, whether said injury or damage occurs either on or off DISTRICT's property, except for liability for damages which result from the sole negligence or willful misconduct of the DISTRICT or its officers, employees or agents.

(c) Any liability for damages which may arise from the furnishing or use of any copyrighted or uncopyrighted matter or patented or unpatented invention under this AGREEMENT.

10. Insurance. CONTRACTOR shall insure CONTRACTOR's activities in connection with the Services under this AGREEMENT and agrees to carry insurance to ensure CONTRACTOR's ability to adhere to the indemnification requirements under this AGREEMENT.

10.1 CONTRACTOR shall, at CONTRACTOR's sole cost and expense, maintain in full force and effect the following insurance coverages from a California licensed insurer with an A, VIII, or better rating from A.M. Best or an approved self-insurance program, sufficient to cover any claims, damages, liabilities, costs and expenses (including attorney fees) arising out of or in connection with CONTRACTOR's fulfillment of the obligations under this AGREEMENT:

a. Comprehensive or Commercial General Liability Insurance, including bodily injury, property damage and contractual liability with minimum limits set by the DISTRICT.

| | |
|-------------------------------------|-------------|
| (1) General Aggregate | \$2,000,000 |
| (2) Each Occurrence | \$1,000,000 |
| (3) Products/Completed Operations | \$1,000,000 |
| (4) Personal and Advertising Injury | \$1,000,000 |

| | |
|--------------------------------------|----------|
| (5) Damage to Rented Premises | \$50,000 |
| (6) Medical Expense (any one person) | \$5,000 |

The policy may not contain an exclusion for coverage of claims arising from claims for sexual molestation or abuse. This policy shall include or be endorsed to include abuse and molestation coverage of at least \$1,000,000 for each occurrence.

b. Umbrella (excess) liability insurance coverage with a limit of \$3,000,000, unless waived by the DISTRICT. The policy may not contain an exclusion for sexual molestation or abuse coverage.

c. Business Automobile Liability Insurance for owned, scheduled, non-owned, or hired automobiles with a combined single limit not less than \$1,000,000 per occurrence. (Required only if the CONTRACTOR drives on behalf of the DISTRICT in the course of performing Services.)

d. Professional Liability Insurance with a limit of \$1,000,000 per occurrence, unless waived by the DISTRICT.

e. Workers' Compensation and Employers Liability Insurance in a form and amount covering CONTRACTOR's full liability under the California Workers' Compensation Insurance and Safety Act and in accordance with applicable state and federal laws. The policy shall be endorsed with the insurer's waiver of rights of subrogation against the DISTRICT.

It should be expressly understood, however, that the coverage and limits referred to under a., b., c., and d. above shall not in any way limit the liability of the CONTRACTOR.

10.2 No later than ten (10) days from execution of this AGREEMENT by the DISTRICT and CONTRACTOR, and prior to commencing the Services under this AGREEMENT, CONTRACTOR shall provide DISTRICT with certificates of insurance evidencing all coverages and endorsements required hereunder.

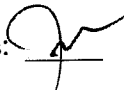
CONTRACTOR shall provide prior written notice to the DISTRICT thirty (30) days in advance of any non-renewal, cancellation, or modification of the required insurance. The certificates of insurance providing the coverages referred to in clauses (a) and (b) above shall name DISTRICT, its Governing Board, officers, and employees, as additional insureds with appropriate endorsements. In addition, the certificates of insurance shall include a provision stating "Such insurance as is afforded by this policy shall be primary, and any insurance carried by DISTRICT shall be excess and noncontributory." Failure to maintain the above mentioned insurance coverages shall be cause for termination of this AGREEMENT.

11. Assignment. The obligations of the CONTRACTOR pursuant to this AGREEMENT shall not be assigned by the CONTRACTOR.

12. Compliance With Applicable Laws. The Services completed herein must meet the approval of the DISTRICT and shall be subject to the DISTRICT's general right of inspection to secure the satisfactory completion thereof. CONTRACTOR agrees to comply with all federal, state and local laws, rules, regulations and ordinances that are now or may in the future become applicable to CONTRACTOR, CONTRACTOR's business, the Services, equipment and personnel engaged in Services covered by this AGREEMENT or accruing out of the performance of such Services.

12.1 Fingerprinting. Education Code section 45125.1 requires that employees of a Contractor providing certain services to school districts must be fingerprinted by the California Department of Justice for a criminal records check, unless the District determines that the Contractor and/or Contractor's employees will have limited or no contact with District's students. In making this determination, the District will consider the totality of the circumstances. If the District has determined that fingerprinting is required, whether or not the Services are one of those listed in Section 45125.1, the Contractor expressly agrees that Contractor and all of Contractor's current and subsequent employees will submit or have submitted fingerprints in a manner required by the California Department of Justice, as set forth in Education Code section 45125.1. Contractor and/or Contractor's current and subsequent employees shall not come in contact with students until the Department of Justice has ascertained that the Contractor and/or Contractor's employees have not been convicted of a serious or violent felony. Contractor shall certify in writing to the District that none of its employees who may come in contact with students have been convicted of a serious or violent felony; and shall provide to the District a list of names of its employees who may come in contact with students. Contractor shall fulfill these requirements at its own expense. The District may require the Contractor and its current and subsequent employees to submit to additional criminal records checks at the District's sole and absolute discretion.

The Services and scope of work defined in this Agreement
will
will not
require the CONTRACTOR to submit to fingerprinting.

CONTRACTOR's Initials: 

13. Force Majeure. Neither party shall be deemed to be in violation of this Agreement if either is prevented from performing any of its obligations hereunder for any reason beyond its reasonable control, including but not limited to acts of God, natural disasters, earthquake, fire, flood, strikes, civil commotion, labor disputes, war, terrorism, infectious

disease, and pandemics. If such an event continues for sixty (60) or more days, either party may terminate this Agreement by providing a written notification and shall not be liable to the other for failure to perform its obligation and any deposits or any pre-paid fees shall be refunded on a pro-rated basis.

14. Permits/Licenses. CONTRACTOR and all CONTRACTOR's employees or agents shall secure and maintain in force such permits and licenses as are required by law in connection with the furnishing of Services pursuant to this AGREEMENT.

15. Employment With Public Agency. CONTRACTOR, if an employee of another public agency, agrees that CONTRACTOR will not receive salary or remuneration, other than vacation pay, as an employee of another public agency for the actual time in which Services are actually being performed pursuant to this AGREEMENT.

16. Entire Agreement/Amendment. This AGREEMENT and any exhibits attached hereto constitute the entire AGREEMENT among the parties to it and supersedes any prior or contemporaneous understanding or AGREEMENT with respect to the Services contemplated, and may be amended only by a written amendment executed by both parties to the AGREEMENT. This AGREEMENT incorporates by this reference, any exhibits, which are attached hereto and incorporated herein.

17. Nondiscrimination. CONTRACTOR agrees that it will not engage in unlawful discrimination in employment of persons because of race, ethnicity, religion, nationality, disability, gender, sex, marital status, age, or other characteristics protected by federal or state laws of such persons.

18. Non Waiver. The failure of DISTRICT or CONTRACTOR to seek redress for violation of, or to insist upon, the strict performance of any term or condition of this AGREEMENT, shall not be deemed a waiver by that party of such term or condition, or prevent a subsequent similar act from again constituting a violation of such term or condition.

19. Notice. All notices or demands to be given under this AGREEMENT by either party to the other shall be in writing and given either by: (a) personal service or (b) by U.S. Mail, mailed either by registered or certified mail, return receipt requested, with postage prepaid. Service shall be considered given when received if personally served or if mailed on the third day after deposit in any U.S. Post Office. The address to which notices or demands may be given by either party may be changed by written notice given in accordance with the notice provisions of this section. At the date of this AGREEMENT, the addresses of the parties are as follows:

District:
Irvine Unified School District
5050 Barranca Parkway
Irvine, CA 92604
Attn: Asst. Superintendent, Business Services

Contractor:
Digital Theatre (US) LLC
111 W Illinois, 5th Floor WeWork
Chicago, IL 60654
Attn: Jason Nitschke

20. Severability. If any term, condition or provision of this AGREEMENT is held by

a court of competent jurisdiction to be invalid, void, or unenforceable, the remaining provisions will nevertheless continue in full force and effect, and shall not be affected, impaired or invalidated in any way.

21. Attorney Fees/Costs. Should litigation be necessary to enforce any terms or provisions of this AGREEMENT, then each party shall bear its own litigation and collection expenses, witness fees, court costs, and attorneys' fees.

22. Headings. The headings contained in this AGREEMENT are provided exclusively for reference and the convenience of the Parties. No legal significance of any type shall be attached to the headings.

23. Counterparts. This AGREEMENT may be signed and delivered in two (2) counterparts, each of which, when so signed and delivered, shall be an original, but such counterparts together shall constitute the one instrument that is the AGREEMENT, and the AGREEMENT shall not be binding on any party until all Parties have signed it.

24. Authorized Signatures. The individual signing this AGREEMENT warrants that he/she is authorized to do so. The Parties understand and agree that a breach of this warranty shall constitute a breach of the AGREEMENT and shall entitle the non-breaching party to all appropriate legal and equitable remedies against the breaching party.

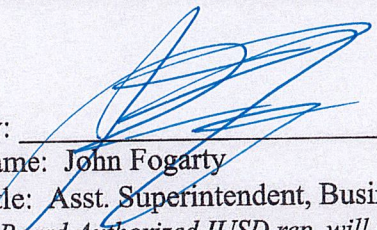
25. Governing Law. The terms and conditions of this AGREEMENT shall be governed by the laws of the State of California with venue in Orange County, California. This AGREEMENT is made in and shall be performed in Orange County, California.


26. Exhibits. This AGREEMENT incorporates by this reference, any exhibits, which are attached hereto and incorporated herein, if applicable.

This AGREEMENT is hereby dated as of the Effective Date.

IRVINE UNIFIED SCHOOL DISTRICT

DIGITAL THEATRE (US) LLC

By: 
Name: John Fogarty
Title: Asst. Superintendent, Business Services
(a Board Authorized IUSD rep. will sign for IUSD)
IUSD Board Approved: November 17, 2020

By: 
Name: Jason Nitschke
Title: V.P. of Sales
Taxpayer Identification No.: 30-1209882

DIGITAL THEATRE+ PERFORMANCE. UNLIMITED.

Digital Theatre (US) LLC
111 W Illinois, 5th Floor, WeWork
Chicago, IL, 60654

Digital Theatre+ subscription quote for Irvine Unified School District

Your Quote

Access for 6 nominated schools: \$12,000 (inc. 37% discount)

Quote valid until October 31st 2020

How to get started

Ordering your subscription is a very easy process and all you need to do is request our online order form.

Once confirmed, we can then have your subscription secured and activated as soon as you wish.

To request your order form please contact: luke.flanagan@digitaltheatre.com or laura.heath@digitaltheatre.com

CALIFORNIA STUDENT DATA PRIVACY AGREEMENT

Version 2.0 (July 3, 2018)

Irvine Unified School District

AND

Digital Theatre (US), LLC

November 30, 2020

This California Student Data Privacy Agreement (“DPA”) is entered into by and between the Irvine Unified School District

(hereinafter referred to as “LEA”) and Digital Theatre (US), LLC (hereinafter referred to as “Provider”) on November 30, 2020 the . The Parties agree to terms as stated herein.

RECITALS

WHEREAS, the Provider has agreed to provide the Local Education Agency (“LEA”) with certain digital educational services (“Services”) pursuant to a contract dated November 30, 2020 (“Service Agreement”); and

WHEREAS, in order to provide the Services described in the Service Agreement, the Provider may receive or create and the LEA may provide documents or data that are covered by several federal statutes, among them, the Family Educational Rights and Privacy Act (“FERPA”) at 20 U.S.C. 1232g (34 CFR Part 99), Children’s Online Privacy Protection Act (“COPPA”), 15 U.S.C. 6501-6506; Protection of Pupil Rights Amendment (“PPRA”) 20 U.S.C. 1232h; and

WHEREAS, the documents and data transferred from LEAs and created by the Provider’s Services are also subject to California state student privacy laws, including AB 1584, found at California Education Code Section 49073.1 and the Student Online Personal Information Protection Act (“SOPIPA”) found at California Business and Professions Code section 22584; and

WHEREAS, for the purposes of this DPA, Provider is a school official with legitimate educational interests in accessing educational records pursuant to the Service Agreement; and

WHEREAS, the Parties wish to enter into this DPA to ensure that the Service Agreement conforms to the requirements of the privacy laws referred to above and to establish implementing procedures and duties; and

WHEREAS, the Provider may, by signing the “General Offer of Privacy Terms” (Exhibit “E”), agree to allow other LEAs in California the opportunity to accept and enjoy the benefits of this DPA for the Services described herein, without the need to negotiate terms in a separate DPA.

NOW THEREFORE, for good and valuable consideration, the parties agree as follows:

1. **Purpose of DPA.** The purpose of this DPA is to describe the duties and responsibilities to
ARTICLE I: PURPOSE AND SCOPE

protect student data transmitted to Provider from the LEA pursuant to the Service Agreement, including compliance with all applicable statutes, including the FERPA, PPRA, COPPA, SOPIPA, AB 1584, and other applicable California State laws, all as may be amended from time to time. In performing these services, the Provider shall be considered a School Official with a legitimate educational interest, and performing services otherwise provided by the LEA. With respect to the use and maintenance of Student Data, Provider shall be under the direct control and supervision of the LEA.

2. **Nature of Services Provided.** The Provider has agreed to provide the following digital educational products and services described below and as may be further outlined in Exhibit "A" hereto:

Digital Theatre+, a cloud-based digital learning service.

3. **Student Data to Be Provided.** The Parties shall indicate the categories of student data to be provided in the Schedule of Data, attached hereto as Exhibit "B".
4. **DPA Definitions.** The definition of terms used in this DPA is found in Exhibit "C". In the event of a conflict, definitions used in this DPA shall prevail over term used in the Service Agreement.

ARTICLE II: DATA OWNERSHIP AND AUTHORIZED ACCESS

1. **Student Data Property of LEA.** All Student Data transmitted to the Provider pursuant to the Service Agreement is and will continue to be the property of and under the control of the LEA. The Provider further acknowledges and agrees that all copies of such Student Data transmitted to the Provider, including any modifications or additions or any portion thereof from any source, are subject to the provisions of this Agreement in the same manner as the original Student Data. The Parties agree that as between them, all rights, including all intellectual property rights in and to Student Data contemplated per the Service Agreement shall remain the exclusive property of the LEA. For the purposes of FERPA, the Provider shall be considered a School Official, under the control and direction of the LEAs as it pertains to the use of Student Data notwithstanding the above. Provider may transfer pupil-generated content to a separate account, according to the procedures set forth below.
2. **Parent Access.** LEA shall establish reasonable procedures by which a parent, legal guardian, or eligible student may review Student Data in the pupil's records, correct erroneous information, and procedures for the transfer of pupil-generated content to a personal account, consistent with the functionality of services. Provider shall respond in a timely manner (and no later than 45 days from the date of the request) to the LEA's request for Student Data in a pupil's records held by the Provider to view or correct as necessary. In the event that a parent of a pupil or other individual contacts the Provider to review any of the Student Data accessed pursuant to the Services, the Provider shall refer the parent or individual to the LEA, who will follow the necessary and proper procedures regarding the requested information.
3. **Separate Account.** If pupil generated content is stored or maintained by the Provider as part of the Services described in Exhibit "A", Provider shall, at the request of the LEA, transfer said pupil generated content to a separate student account upon termination of the Service Agreement; provided, however, such transfer shall only apply to pupil generated content that is severable from the Service.
4. **Third Party Request.** Should a Third Party, including law enforcement and government entities, contact Provider with a request for data held by the Provider pursuant to the Services, the Provider shall redirect the Third Party to request the data directly from the LEA. Provider shall notify the LEA in advance of a compelled disclosure to a Third Party.

5. **Subprocessors**. Provider shall enter into written agreements with all Subprocessors performing functions pursuant to the Service Agreement, whereby the Subprocessors agree to protect Student Data in manner consistent with the terms of this DPA.

ARTICLE III: DUTIES OF LEA

1. **Privacy Compliance**. LEA shall provide data for the purposes of the Service Agreement in compliance with FERPA, COPPA, PPRA, SOPIPA, AB 1584 and all other California privacy statutes.
2. **Annual Notification of Rights**. If the LEA has a policy of disclosing education records under FERPA (4 CFR § 99.31 (a) (1)), LEA shall include a specification of criteria for determining who constitutes a school official and what constitutes a legitimate educational interest in its Annual notification of rights.
3. **Reasonable Precautions**. LEA shall take reasonable precautions to secure usernames, passwords, and any other means of gaining access to the services and hosted data.
4. **Unauthorized Access Notification**. LEA shall notify Provider promptly of any known or suspected unauthorized access. LEA will assist Provider in any efforts by Provider to investigate and respond to any unauthorized access.

ARTICLE IV: DUTIES OF PROVIDER

1. **Privacy Compliance**. The Provider shall comply with all applicable state and federal laws and regulations pertaining to data privacy and security, including FERPA, COPPA, PPRA, SOPIPA, AB 1584 and all other California privacy statutes.
2. **Authorized Use**. The data shared pursuant to the Service Agreement, including persistent unique identifiers, shall be used for no purpose other than the Services stated in the Service Agreement and/or otherwise authorized under the statutes referred to in subsection (1), above. Provider also acknowledges and agrees that it shall not make any re-disclosure of any Student Data or any portion thereof, including without limitation, meta data, user content or other non-public information and/or personally identifiable information contained in the Student Data, without the express written consent of the LEA.
3. **Employee Obligation**. Provider shall require all employees and agents who have access to Student Data to comply with all applicable provisions of this DPA with respect to the data shared under the Service Agreement.
4. **No Disclosure**. De-identified information may be used by the Provider for the purposes of development, research, and improvement of educational sites, services, or applications, as any other member of the public or party would be able to use de-identified data pursuant to 34 CFR 99.31(b). Provider agrees not to attempt to re-identify de-identified Student Data and not to transfer de-identified Student Data to any party unless (a) that party agrees in writing not to

attempt re-identification, and (b) prior written notice has been given to LEA who has provided prior written consent for such transfer. Provider shall not copy, reproduce or transmit any data obtained under the Service Agreement and/or any portion thereof, except as necessary to fulfill the Service Agreement.

5. **Disposition of Data.** Upon written request and in accordance with the applicable terms in subsection a or b, below, Provider shall dispose or delete all Student Data obtained under the Service Agreement when it is no longer needed for the purpose for which it was obtained. Disposition shall include (1) the shredding of any hard copies of any Student Data; (2) Erasing; or (3) Otherwise modifying the personal information in those records to make it unreadable or indecipherable by human or digital means. Nothing in the Service Agreement authorizes Provider to maintain Student Data obtained under the Service Agreement beyond the time period reasonably needed to complete the disposition. Provider shall provide written notification to LEA when the Student Data has been disposed. The duty to dispose of Student Data shall not extend to data that has been de-identified or placed in a separate Student account, pursuant to the other terms of the DPA. The LEA may employ a "Request for Return or Deletion of Student Data" form, a copy of which is attached hereto as Exhibit "D". Upon receipt of a request from the LEA, the Provider will immediately provide the LEA with any specified portion of the Student Data within ten (10) calendar days of receipt of said request.

a. **Partial Disposal During Term of Service Agreement.** Throughout the Term of the Service Agreement, LEA may request partial disposal of Student Data obtained under the Service Agreement that is no longer needed. Partial disposal of data shall be subject to LEA's request to transfer data to a separate account, pursuant to Article II, section 3, above.

b. **Complete Disposal Upon Termination of Service Agreement.** Upon Termination of the Service Agreement Provider shall dispose or delete all Student Data obtained under the Service Agreement. Prior to disposition of the data, Provider shall notify LEA in writing of its option to transfer data to a separate account, pursuant to Article II, section 3, above. In no event shall Provider dispose of data pursuant to this provision unless and until Provider has received affirmative written confirmation from LEA that data will not be transferred to a separate account.

6. **Advertising Prohibition.** Provider is prohibited from using or selling Student Data to (a) market or advertise to students or families/guardians; (b) inform, influence, or enable marketing, advertising, or other commercial efforts by a Provider; (c) develop a profile of a student, family member/guardian or group, for any commercial purpose other than providing the Service to LEA; or (d) use the Student Data for the development of commercial products or services, other than as necessary to provide the Service to LEA. This section does not prohibit Provider from using Student Data for adaptive learning or customized student learning purposes.

ARTICLE V: DATA PROVISIONS

1. **Data Security.** The Provider agrees to abide by and maintain adequate data security measures, consistent with industry standards and technology best practices, to protect Student Data from unauthorized disclosure or acquisition by an unauthorized person. The general security duties of

Provider are set forth below. Provider may further detail its security programs and measures in Exhibit "F" hereto. These measures shall include, but are not limited to:

- a. **Passwords and Employee Access.** Provider shall secure usernames, passwords, and any other means of gaining access to the Services or to Student Data, at a level suggested by the applicable standards, as set forth in Article 4.3 of NIST 800-63-3. Provider shall only provide access to Student Data to employees or contractors that are performing the Services. Employees with access to Student Data shall have signed confidentiality agreements regarding said Student Data. All employees with access to Student Records shall be subject to criminal background checks in compliance with state and local ordinances.
- b. **Destruction of Data.** Provider shall destroy or delete all Student Data obtained under the Service Agreement when it is no longer needed for the purpose for which it was obtained or transfer said data to LEA or LEA's designee, according to the procedure identified in Article IV, section 5, above. Nothing in the Service Agreement authorizes Provider to maintain Student Data beyond the time period reasonably needed to complete the disposition.
- c. **Security Protocols.** Both parties agree to maintain security protocols that meet industry standards in the transfer or transmission of any data, including ensuring that data may only be viewed or accessed by parties legally allowed to do so. Provider shall maintain all data obtained or generated pursuant to the Service Agreement in a secure digital environment and not copy, reproduce, or transmit data obtained pursuant to the Service Agreement, except as necessary to fulfill the purpose of data requests by LEA.
- d. **Employee Training.** The Provider shall provide periodic security training to those of its employees who operate or have access to the system. Further, Provider shall provide LEA with contact information of an employee who LEA may contact if there are any security concerns or questions.
- e. **Security Technology.** When the service is accessed using a supported web browser, Provider shall employ industry standard measures to protect data from unauthorized access. The service security measures shall include server authentication and data encryption. Provider shall host data pursuant to the Service Agreement in an environment using a firewall that is updated according to industry standards.
- f. **Security Coordinator.** If different from the designated representative identified in Article VII, section 5, Provider shall provide the name and contact information of Provider's Security Coordinator for the Student Data received pursuant to the Service Agreement.
- g. **Subprocessors Bound.** Provider shall enter into written agreements whereby Subprocessors agree to secure and protect Student Data in a manner consistent with the terms of this Article V. Provider shall periodically conduct or review compliance

monitoring and assessments of Subprocessors to determine their compliance with this Article.

- h. Periodic Risk Assessment.** Provider further acknowledges and agrees to conduct digital and physical periodic (no less than semi-annual) risk assessments and remediate any identified security and privacy vulnerabilities in a timely manner.

2. Data Breach. In the event that Student Data is accessed or obtained by an unauthorized individual, Provider shall provide notification to LEA within a reasonable amount of time of the incident, and not exceeding forty eight (48) hours. Provider shall follow the following process:

- a.** The security breach notification shall be written in plain language, shall be titled "Notice of Data Breach," and shall present the information described herein under the following headings: "What Happened," "What Information Was Involved," "What We Are Doing," "What You Can Do," and "For More Information." Additional information may be provided as a supplement to the notice.
- b.** The security breach notification described above in section 2(a) shall include, at a minimum, the following information:
 - i.** The name and contact information of the reporting LEA subject to this section.
 - ii.** A list of the types of personal information that were or are reasonably believed to have been the subject of a breach.
 - iii.** If the information is possible to determine at the time the notice is provided, then either (1) the date of the breach, (2) the estimated date of the breach, or (3) the date range within which the breach occurred. The notification shall also include the date of the notice.
 - iv.** Whether the notification was delayed as a result of a law enforcement investigation, if that information is possible to determine at the time the notice is provided.
 - v.** A general description of the breach incident, if that information is possible to determine at the time the notice is provided.
- c.** At LEA's discretion, the security breach notification may also include any of the following:
 - i.** Information about what the agency has done to protect individuals whose information has been breached.
 - ii.** Advice on steps that the person whose information has been breached may take to protect himself or herself.
- d.** Provider agrees to adhere to all requirements in applicable State and in federal law with respect to a data breach related to the Student Data, including, when appropriate or required, the required responsibilities and procedures for notification and mitigation of any such data breach.

- e. Provider further acknowledges and agrees to have a written incident response plan that reflects best practices and is consistent with industry standards and federal and state law for responding to a data breach, breach of security, privacy incident or unauthorized acquisition or use of Student Data or any portion thereof, including personally identifiable information and agrees to provide LEA, upon request, with a copy of said written incident response plan.
- f. Provider is prohibited from directly contacting parent, legal guardian or eligible pupil unless expressly requested by LEA. If LEA requests Provider's assistance providing notice of unauthorized access, and such assistance is not unduly burdensome to Provider, Provider shall notify the affected parent, legal guardian or eligible pupil of the unauthorized access, which shall include the information listed in subsections (b) and (c), above. If requested by LEA, Provider shall reimburse LEA for costs incurred to notify parents/families of a breach not originating from LEA's use of the Service.
- g. In the event of a breach originating from LEA's use of the Service, Provider shall cooperate with LEA to the extent necessary to expeditiously secure Student Data.

ARTICLE VI- GENERAL OFFER OF PRIVACY TERMS

Provider may, by signing the attached Form of General Offer of Privacy Terms (General Offer, attached hereto as Exhibit "E"), be bound by the terms of this DPA to any other LEA who signs the acceptance on in said Exhibit. The Form is limited by the terms and conditions described therein.

ARTICLE VII: MISCELLANEOUS

1. **Term.** The Provider shall be bound by this DPA for the duration of the Service Agreement or so long as the Provider maintains any Student Data. .
2. **Termination.** In the event that either party seeks to terminate this DPA, they may do so by mutual written consent so long as the Service Agreement has lapsed or has been terminated. LEA shall have the right to terminate the DPA and Service Agreement in the event of a material breach of the terms of this DPA.
3. **Effect of Termination Survival.** If the Service Agreement is terminated, the Provider shall destroy all of LEA's data pursuant to Article V, section 1(b), and Article II, section 3, above.
4. **Priority of Agreements.** This DPA shall govern the treatment of student data in order to comply with privacy protections, including those found in FERPA and all applicable privacy statutes identified in this DPA. In the event there is conflict between the DPA and the Service Agreement, the DPA shall apply and take precedence. Except as described in this paragraph herein, all other provisions of the Service Agreement shall remain in effect.
5. **Notice.** All notices or other communication required or permitted to be given hereunder must be in writing and given by personal delivery, or e-mail transmission (if contact information is

provided for the specific mode of delivery), or first class mail, postage prepaid, sent to the designated representatives before:

a. Designated Representatives

The designated representative for the LEA for this Agreement is:

Name: Michelle Bennett
Title: Specialist - IT Contracts

Contact Information:
5050 Barranca Parkway
Irvine, CA 92602
MichelleBennett@iusd.org

The designated representative for the Provider for this Agreement is:

Name: Jason Nitschke
Title: V.P. of Sales

Contact Information:
111 W. Illinois, 5th Floor WeWork
Chicago, IL 60654
jason.nitschke@digitaltheatre.com

b. Notification of Acceptance of General Offer of Terms. Upon execution of Exhibit E, General Offer of Terms, Subscribing LEA shall provide notice of such acceptance in writing and given by personal delivery, or e-mail transmission (if contact information is provided for the specific mode of delivery), or first class mail, postage prepaid, to the designated representative below.

The designated representative for the notice of acceptance of the General Offer of Privacy Terms is:

Name: Jason Nitschke
Title: V.P. of Sales

Contact Information:
111 W. Illinois, 5th Floor WeWork
Chicago, IL 60654
jason.nitschke@digitaltheatre.com

6. Entire Agreement. This DPA constitutes the entire agreement of the parties relating to the subject matter hereof and supersedes all prior communications, representations, or agreements, oral or written, by the parties relating thereto. This DPA may be amended and the observance of any provision of this DPA may be waived (either generally or in any particular instance and

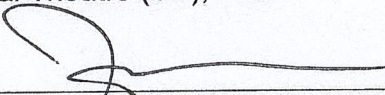
either retroactively or prospectively) only with the signed written consent of both parties. Neither failure nor delay on the part of any party in exercising any right, power, or privilege hereunder shall operate as a waiver of such right, nor shall any single or partial exercise of any such right, power, or privilege preclude any further exercise thereof or the exercise of any other right, power, or privilege.

7. **Severability**. Any provision of this DPA that is prohibited or unenforceable in any jurisdiction shall, as to such jurisdiction, be ineffective to the extent of such prohibition or unenforceability without invalidating the remaining provisions of this DPA, and any such prohibition or unenforceability in any jurisdiction shall not invalidate or render unenforceable such provision in any other jurisdiction. Notwithstanding the foregoing, if such provision could be more narrowly drawn so as not to be prohibited or unenforceable in such jurisdiction while, at the same time, maintaining the intent of the parties, it shall, as to such jurisdiction, be so narrowly drawn without invalidating the remaining provisions of this DPA or affecting the validity or enforceability of such provision in any other jurisdiction.
8. **Governing Law; Venue and Jurisdiction**. THIS DPA WILL BE GOVERNED BY AND CONSTRUED IN ACCORDANCE WITH THE LAWS OF THE STATE OF THE IN WHICH THIS AGREEMENT IS EXECUTED, WITHOUT REGARD TO CONFLICTS OF LAW PRINCIPLES. EACH PARTY CONSENTS AND SUBMITS TO THE SOLE AND EXCLUSIVE JURISDICTION TO THE STATE AND FEDERAL COURTS FOR THE COUNTY IN WHICH THIS AGREEMENT IS FORMED FOR ANY DISPUTE ARISING OUT OF OR RELATING TO THIS SERVICE AGREEMENT OR THE TRANSACTIONS CONTEMPLATED HEREBY.
9. **Authority**. Provider represents that it is authorized to bind to the terms of this Agreement, including confidentiality and destruction of Student Data and any portion thereof contained therein, all related or associated institutions, individuals, employees or contractors who may have access to the Student Data and/or any portion thereof, or may own, lease or control equipment or facilities of any kind where the Student Data and portion thereof stored, maintained or used in any way. Provider agrees that any purchaser of the Provider shall also be bound to the Agreement.
10. **Waiver**. No delay or omission of the LEA to exercise any right hereunder shall be construed as a waiver of any such right and the LEA reserves the right to exercise any such right from time to time, as often as may be deemed expedient.
11. **Successors Bound**. This DPA is and shall be binding upon the respective successors in interest to Provider in the event of a merger, acquisition, consolidation or other business reorganization or sale of all or substantially all of the assets of such business.

[Signature Page Follows]

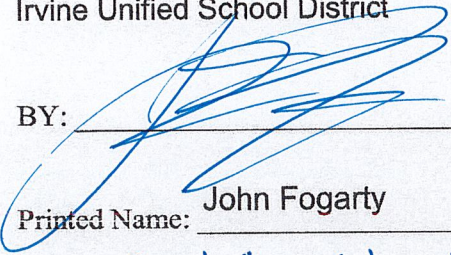
IN WITNESS WHEREOF, the parties have executed this California Student Data Privacy Agreement as of the last day noted below.

Digital Theatre (US), LLC

BY:  Date: October 30, 2020

Printed Name: Jason Nitschke Title/Position: V.P. Of Sales

Irvine Unified School District

BY:  Date: November 18, 2020

Printed Name: John Fogarty Title/Position: Asst Supt Business Services

IUSD Board Approved 11/17/2020

Note: Electronic signature not permitted.

EXHIBIT "A"

DESCRIPTION OF SERVICES

[INSERT DETAILED DESCRIPTION OF PRODUCTS AND SERVICES HERE. IF MORE THAN ONE PRODUCT OR SERVICE IS INCLUDED, LIST EACH PRODUCT HERE]

Digital Theatre+ is a cloud-based digital learning service that delivers access to an ever-growing collection of theatre productions from around the world, covering a breadth of genres, periods and forms, and interviews with current, leading practitioners. Digital Theatre+ captures work that is taking place right now, meaning users have access to current, ground-breaking work no matter the geographical or financial limitations they may face. Each of the theatre productions are augmented by thousands of teaching and learning resources that English and performing arts students and educators need to succeed – all aligned to the California Common Core State Standards for English Language Arts and the California Arts Standards for Theatre.

The Digital Theatre+ platform is ideal for flipped and remote/online learning, is easy to use, highly engaging for students, and is compatible with multiple SSO services and access methods. Our subscription includes 24/7 Access to:

- 460+ full-length productions – including Digital Theatre 's own exclusive live recordings alongside collections from the likes of Royal Shakespeare Company, Shakespeare's Globe, Cineplay, Broadway Digital Archive, Royal Opera House, Stage Russia, Stratford Festival, and more.

- 360+ long-form interviews with industry professionals including actors, directors as well as all backstage staff: lighting technicians, fight coordinators, stage managers, among others -- great for career exploration!

- 12,500+ pages of expertly written learning resources such as study guides, workshops, lectures and essays all written by leading academics and industry professionals.

- A dedicated Digital Theatre+ Account Manager who will provide full support to you throughout your subscription period, providing usage statistics, marketing materials and more!

EXHIBIT "B"

SCHEDULE OF DATA

| Category of Data | Elements | Check if used by your system |
|----------------------------------|--|-------------------------------------|
| Application Technology Meta Data | IP Addresses of users, Use of cookies etc. | ✓ |
| | Other application technology meta data- Please specify: | |
| Application Use Statistics | Meta data on user interaction with application | ✓ |
| Assessment | Standardized test scores | |
| | Observation data | |
| | Other assessment data- Please specify: | |
| Attendance | Student school (daily) attendance data | |
| | Student class attendance data | |
| Communications | Online communications that are captured (emails, blog entries) | |

| Conduct | Conduct or behavioral data | |
|-------------------------------------|--|--|
| Demographics | Date of Birth | |
| | Place of Birth | |
| | Gender | |
| | Ethnicity or race | |
| | Language information (native, preferred or primary language spoken by student) | |
| | Other demographic information- Please specify: | |
| Enrollment | Student school enrollment | |
| | Student grade level | |
| | Homeroom | |
| | Guidance counselor | |
| | Specific curriculum programs | |
| | Year of graduation | |
| Parent/Guardian Contact Information | Other enrollment information- Please specify: | |
| | Address | |
| | Email | |
| | Phone | |

| | | |
|-----------------------------------|--|--|
| Parent/ Guardian ID | Parent ID number (created to link parents to students) | |
| Parent/ Guardian Name | First and/or Last | |
| Schedule | Student scheduled courses | |
| | Teacher names | |
| Special Indicator | English language learner information | |
| | Low income status | |
| | Medical alerts /health data | |
| | Student disability information | |
| | Specialized education services (IEP or 504) | |
| | Living situations (homeless/ foster care) | |
| | Other indicator information- Please specify: | |
| Student Contact Information | Address | |
| | Email | |
| | Phone | |
| Student Identifiers | Local (School district) ID | |

| | | |
|----------------------------------|---|--|
| | number | |
| | State ID number | |
| | Vendor/App assigned student ID number | |
| | Student app username | |
| | Student app passwords | |
| Student Name | First and/or Last | |
| Student In App Performance | Program/appli- cation performance (typing program-student types 60 wpm, reading program-student reads below grade level) | |
| Student Program Membership | Academic or extracurricular activities a student may belong to or participate in | |
| Student Survey Responses | Student responses to surveys or questionnaires | |
| Student work | Student generated content; writing, pictures etc. Other student | |

| | | |
|----------------|--|--|
| | work data - Please specify: | |
| Transcript | Student course grades | |
| | Student course data | |
| | Student course grades/performance scores | |
| | Other transcript data -Please specify: | |
| Transportation | Student bus assignment | |
| | Student pick up and/or drop off location | |
| | Student bus card ID number | |

| | | |
|-------|--|--|
| | Other transportation data -Please specify: | |
| Other | Please list each additional data element used, stored or collected by your application | |

No Student Data Collected at this time _____.
 *Provider shall immediately notify LEA if this designation is no longer applicable.

EXHIBIT "C"

DEFINITIONS

AB 1584, Buchanan: The statutory designation for what is now California Education Code § 49073.1, relating to pupil records.

De-Identifiable Information (DI): De-Identification refers to the process by which the Vendor removes or obscures any Personally Identifiable Information ("PII") from student records in a way that removes or minimizes the risk of disclosure of the identity of the individual and information about them.

Educational Records: Educational Records are official records, files and data directly related to a student and maintained by the school or local education agency, including but not limited to, records encompassing all the material kept in the student's cumulative folder, such as general identifying data, records of attendance and of academic work completed, records of achievement, and results of evaluative tests, health data, disciplinary status, test protocols and individualized education programs. For purposes of this DPA, Educational Records are referred to as Student Data.

NIST: Draft National Institute of Standards and Technology ("NIST") Special Publication Digital Authentication Guideline.

Operator: The term "Operator" means the operator of an Internet Website, online service, online application, or mobile application with actual knowledge that the site, service, or application is used primarily for K-12 school purposes and was designed and marketed for K-12 school purposes. For the purpose of the Service Agreement, the term "Operator" is replaced by the term "Provider." This term shall encompass the term "Third Party," as it is found in applicable state statutes.

Personally Identifiable Information (PII): The terms "Personally Identifiable Information" or "PII" shall include, but are not limited to, student data, metadata, and user or pupil-generated content obtained by reason of the use of Provider's software, website, service, or app, including mobile apps, whether gathered by Provider or provided by LEA or its users, students, or students' parents/guardians. PII includes Indirect Identifiers, which is any information that, either alone or in aggregate, would allow a reasonable person to be able to identify a student to a reasonable certainty. For purposes of this DPA, Personally Identifiable Information shall include the categories of information listed in the definition of Student Data.

Provider: For purposes of the Service Agreement, the term "Provider" means provider of digital educational software or services, including cloud-based services, for the digital storage, management, and retrieval of pupil records. Within the DPA the term "Provider" includes the term "Third Party" and the term "Operator" as used in applicable state statutes.

Pupil Generated Content: The term "pupil-generated content" means materials or content created by a pupil during and for the purpose of education including, but not limited to, essays, research reports, portfolios, creative writing, music or other audio files, photographs, videos, and account information that enables ongoing ownership of pupil content.

Pupil Records: Means both of the following: (1) Any information that directly relates to a pupil that is maintained by LEA and (2) any information acquired directly from the pupil through the use of instructional software or applications assigned to the pupil by a teacher or other LEA employee. For the purposes of this Agreement, Pupil Records shall be the same as Educational Records, Student Personal Information and Covered Information, all of which are deemed Student Data for the purposes of this Agreement.

Service Agreement: Refers to the Contract or Purchase Order to which this DPA supplements and modifies.

School Official: For the purposes of this Agreement and pursuant to 34 CFR 99.31 (B), a School Official is a contractor that: (1) Performs an institutional service or function for which the agency or institution would otherwise use employees; (2) Is under the direct control of the agency or institution with respect to the use and maintenance of education records; and (3) Is subject to 34 CFR 99.33(a) governing the use and re-disclosure of personally identifiable information from student records.

SOPIPA: Once passed, the requirements of SOPIPA were added to Chapter 22.2 (commencing with Section 22584) to Division 8 of the Business and Professions Code relating to privacy.

Student Data: Student Data includes any data, whether gathered by Provider or provided by LEA or its users, students, or students' parents/guardians, that is descriptive of the student including, but not limited to, information in the student's educational record or email, first and last name, home address, telephone number, email address, or other information allowing online contact, discipline records, videos, test results, special education data, juvenile dependency records, grades, evaluations, criminal records, medical records, health records, social security numbers, biometric information, disabilities, socioeconomic information, food purchases, political affiliations, religious information text messages, documents, student identifies, search activity, photos, voice recordings or geolocation information. Student Data shall constitute Pupil Records for the purposes of this Agreement, and for the purposes of California and federal laws and regulations. Student Data as specified in Exhibit "B" is confirmed to be collected or processed by the Provider pursuant to the Services. Student Data shall not constitute that information that has been anonymized or de-identified, or anonymous usage data regarding a student's use of Provider's services.

SDPC (The Student Data Privacy Consortium): Refers to the national collaborative of schools, districts, regional, territories and state agencies, policy makers, trade organizations and marketplace providers addressing real-world, adaptable, and implementable solutions to growing data privacy concerns.

Student Personal Information: "Student Personal Information" means information collected through a school service that personally identifies an individual student or other information collected and maintained about an individual student that is linked to information that identifies an individual student, as identified by Washington Compact Provision 28A.604.010. For purposes of this DPA, Student Personal Information is referred to as Student Data.

Subscribing LEA: An LEA that was not party to the original Services Agreement and who accepts the Provider's General Offer of Privacy Terms.

Subprocessor: For the purposes of this Agreement, the term "Subprocessor" (sometimes referred to as the "Subcontractor") means a party other than LEA or Provider, who Provider uses for data collection, analytics, storage, or other service to operate and/or improve its software, and who has access to PII.

Targeted Advertising: Targeted advertising means presenting an advertisement to a student where the selection of the advertisement is based on student information, student records or student generated content or inferred over time from the usage of the Provider's website, online service or mobile application by such student or the retention of such student's online activities or requests over time.

Third Party: The term "Third Party" means a provider of digital educational software or services, including cloud-based services, for the digital storage, management, and retrieval of pupil records. However, for the purpose of this Agreement, the term "Third Party" when used to indicate the provider of digital educational software or services is replaced by the term "Provider."

EXHIBIT "D"

DIRECTIVE FOR DISPOSITION OF DATA

Irvine Unified School District directs Digital Theatre (US), LLC to dispose of data obtained by Company pursuant to the terms of the Service Agreement between LEA and Company. The terms of the Disposition are set forth below:

| | |
|---|--|
| <u>Extent of Disposition</u> Disposition shall be: | <input type="checkbox"/> Partial. The categories of data to be disposed of are as follows: <input type="checkbox"/> Complete. Disposition extends to all categories of data. |
| <u>Nature of Disposition</u> Disposition shall be by: | <input type="checkbox"/> Destruction or deletion of data. <input type="checkbox"/> Transfer of data. The data shall be transferred as set forth in an attachment to this Directive. Following confirmation from LEA that data was successfully transferred, Provider shall destroy or delete all applicable data. |
| <u>Timing of Disposition</u> Data shall be disposed of by the following date: | <input type="checkbox"/> As soon as commercially practicable <input type="checkbox"/> By (Insert Date) _____ |

Authorized Representative of LEA

Date

Verification of Disposition of Data
by Authorized Representative of Provider

Date

EXHIBIT "E"

GENERAL OFFER OF PRIVACY TERMS

Irvine Unified School District

1. Offer of Terms

Provider offers the same privacy protections found in this DPA between it and Irvine Unified School District and which is dated November 30, 2020 to any other LEA ("Subscribing LEA") who accepts this General Offer through its signature below. This General Offer shall extend only to privacy protections and Provider's signature shall not necessarily bind Provider to other terms, such as price, term, or schedule of services, or to any other provision not addressed in this DPA. The Provider and the other LEA may also agree to change the data provided by LEA to the Provider in Exhibit "B" to suit the unique needs of the LEA. The Provider may withdraw the General Offer in the event of: (1) a material change in the applicable privacy statutes; (2) a material change in the services and products subject listed in the Originating Service Agreement; or three (3) years after the date of Provider's signature to this Form. Provider shall notify CETPA in the event of any withdrawal so that this information may be transmitted to the Alliance's users.

BY: 

Date: OCTOBER 30, 2020

Printed Name: JASON NITSCHKE

Title/Position: V.P. OF SALES

2. Subscribing LEA

A Subscribing LEA, by signing a separate Service Agreement with Provider, and by its signature below, accepts the General Offer of Privacy Terms. The Subscribing LEA and the Provider shall therefore be bound by the same terms of this DPA.

BY: _____

Date: _____

Printed Name: _____

Title/Position: _____

TO ACCEPT THE GENERAL OFFER, THE SUBSCRIBING LEA MUST DELIVER THIS SIGNED EXHIBIT TO THE PERSON AND EMAIL ADDRESS LISTED BELOW

Name: JASON NITSCHKE

Title: V.P. OF SALES

Email Address: jason.nitschke@digitaltheatre.com

EXHIBIT "F" DATA SECURITY REQUIREMENTS

[INSERT ADDITIONAL DATA SECURITY REQUIREMENTS HERE]



Irvine Unified School District Risk Management & Insurance

CONTRACTOR'S REQUEST FOR WAIVER/REDUCTION OF INSURANCE REQUIREMENTS

Contractor requests waiver or reduction of the following insurance requirements for the Agreement, Contract, or Memorandum of Understanding dated OCTOBER 30, 2020 with the Irvine Unified School District ("District"), for the reasons stated:

1. General Liability Insurance. Contractor certifies the products and/or services provided under the current Agreement, Contract, or Memorandum of Understanding would not create a foreseeable liability exposure for the District due to the following reason(s):

100% OF THE SERVICES PROVIDED WILL BE DONE ONLINE AT WWW.DIGITAL THEATREPLUS.COM. NO DIGITAL THEATRE EMPLOYEES WILL EVER BE ON-SITE AT A DISTRICT LOCATION.

2. Excess Liability Insurance. Contractor certifies the products and/or services provided under the current Agreement, Contract, or Memorandum of Understanding would not create a foreseeable liability exposure for the District due to the following reason(s):

100% OF THE SERVICES PROVIDED WILL BE DONE ONLINE AT WWW.DIGITAL THEATREPLUS.COM. NO DIGITAL THEATRE EMPLOYEES WILL EVER BE ON-SITE AT A DISTRICT LOCATION.

3. Abuse and Molestation Insurance (if not included in GL/Excess liability insurance). Contractor certifies they will not have one-on-one contact with students or be left alone on District premises during normal school hours in the performance of the Agreement, Contract, or Memorandum of Understanding.

4. Automobile Liability Insurance. Contractor certifies it will not be using a motor vehicle in the performance of the Agreement, Contract, or Memorandum of Understanding. If a vehicle is used, Contractor certifies it will only be used for personal transportation to and from meetings or service calls on District sites; that it will not be transporting District students or employees; that it will not be driven off paved parking areas on sites; and that Contractor maintains the mandatory minimum California liability coverage on the vehicle.

5. Workers Compensation/Employer's Liability. Contractor certifies it has no employees.

6. Professional Liability Insurance. Contractor certifies it will not be providing professional services, including accounting, auditing, architectural, engineering, legal, surveying, financial, or construction management.

7. Other Insurance. (Explain for waiver or reduction of required level of coverage in detail.)
It is also requested not to include the District as "Additional Insured" for reasons described above. Digital Theatre will provide proof of insurance.
Whether or not a waiver is granted, Contractor understands and agrees to defend, indemnify, and hold harmless the Irvine Unified School District, its Board of Trustees, officers, agents, employees, and volunteers from and against any and all liability, claims, debts, damages, demands, suits, actions, or causes of action of whatsoever kind or nature arising out of or in any manner connected with the performance by Contractor of any of the services hereunder.

| | |
|-----------------------------------|---|
| Signature of District Requestor: | |
| Print Name of District Requestor: | <u>MICHELLE BENNETT</u> Date: <u>10.30.20</u> |
| Signature of Contractor: | |
| Print Name of Contractor: | <u>JASON NITSCHKE</u> Date: <u>OCTOBER 30, 2020</u> |
| Company Name: | <u>DIGITAL THEATRE (US), LLC</u> |
| Type/Location of Service: | <u>CLOUD-BASED DIGITAL LEARNING RESOURCE.</u> |
| Date(s) of Service: | <u>NOVEMBER 30, 2020 - DECEMBER 31, 2021</u> |



Irvine Unified School District


CONTRACTOR'S REQUEST FOR WAIVER/REDUCTION OF INSURANCE REQUIREMENTS

Contractor's Name: **Digital Theatre, LLC**
Type of Service: **Cloud-Based Digital Learning Resource (11/30/20 – 12/31/21)**

FOR DISTRICT USE ONLY

| | | <u>Waiver requested is:</u> | |
|----|------------------------|-----------------------------|-------------------|
| 1. | General Liability | Approved | <u>Denied</u> |
| 2. | Excess Liability | <u>Approved</u> | Denied |
| 3. | Abuse and Molestation | <u>Approved</u> | Denied |
| 4. | Automobile Liability | <u>Approved</u> | Denied |
| 5. | Workers' Compensation | Approved | Denied |
| 6. | Professional Liability | <u>Approved</u> | Denied |
| 7. | Other: _____ | Approved | Denied |

District Representative Name (Print): Stephen B. Bayne, Ed.D. Director, Risk Management

District Representative Signature:  Date: 11/4/20

Comments:

Whether or not a waiver is granted, the Contractor understands that any insurance requirements that may be waived by the Irvine Unified School District (District) does not limit the individual or company's responsibility and/or insurance provider's responsibility (if applicable in the insurance policy to extend coverage) to defend, indemnify, and hold harmless the District, its Board of Trustees, officers, agents, employees, and volunteers from and against any and all liability, claims, debts, damages, demands, suits, actions, or causes of action of whatsoever kind or nature arising out of or in any manner connected with the performance by Contractor of any of the services hereunder.



CERTIFICATE OF LIABILITY INSURANCE

DATE (MM/DD/YYYY)
10/30/2020

THIS CERTIFICATE IS ISSUED AS A MATTER OF INFORMATION ONLY AND CONFERS NO RIGHTS UPON THE CERTIFICATE HOLDER. THIS CERTIFICATE DOES NOT AFFIRMATIVELY OR NEGATIVELY AMEND, EXTEND OR ALTER THE COVERAGE AFFORDED BY THE POLICIES BELOW. THIS CERTIFICATE OF INSURANCE DOES NOT CONSTITUTE A CONTRACT BETWEEN THE ISSUING INSURER(S), AUTHORIZED REPRESENTATIVE OR PRODUCER, AND THE CERTIFICATE HOLDER.

IMPORTANT: If the certificate holder is an ADDITIONAL INSURED, the policy(ies) must have ADDITIONAL INSURED provisions or be endorsed. If SUBROGATION IS WAIVED, subject to the terms and conditions of the policy, certain policies may require an endorsement. A statement on this certificate does not confer rights to the certificate holder in lieu of such endorsement(s).

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|---|--|
| PRODUCER Construction Casualty Insurance, LLC 3637 4th Street North Suite 310 Saint Petersburg, FL 33704 | CONTACT NAME: Holly Rivera PHONE (A/C, No, Ext): (727) 755-7541 FAX (A/C, No): E-MAIL ADDRESS: hrivera@cci-ins.com |
| INSURER(S) AFFORDING COVERAGE | |
| INSURER A : Hartford Insurance Company of the Southeast | |
| NAIC # 19682 | |
| INSURER B : | |
| INSURER C : | |
| INSURER D : | |
| INSURER E : | |
| INSURER F : | |

COVERAGES CERTIFICATE NUMBER: REVISION NUMBER:

THIS IS TO CERTIFY THAT THE POLICIES OF INSURANCE LISTED BELOW HAVE BEEN ISSUED TO THE INSURED NAMED ABOVE FOR THE POLICY PERIOD INDICATED. NOTWITHSTANDING ANY REQUIREMENT, TERM OR CONDITION OF ANY CONTRACT OR OTHER DOCUMENT WITH RESPECT TO WHICH THIS CERTIFICATE MAY BE ISSUED OR MAY PERTAIN, THE INSURANCE AFFORDED BY THE POLICIES DESCRIBED HEREIN IS SUBJECT TO ALL THE TERMS, EXCLUSIONS AND CONDITIONS OF SUCH POLICIES. LIMITS SHOWN MAY HAVE BEEN REDUCED BY PAID CLAIMS.

| INSR LTR | TYPE OF INSURANCE | ADDL INSD | SUBR WVD | POLICY NUMBER | POLICY EFF (MM/DD/YYYY) | POLICY EXP (MM/DD/YYYY) | LIMITS | |
|----------|--|-----------|----------|---------------|-------------------------|-------------------------|---|---|
| A | COMMERCIAL GENERAL LIABILITY | | | 21SBAAF6XR1 | 3/13/2020 | 3/13/2021 | EACH OCCURRENCE \$ 1,000,000 | |
| | <input type="checkbox"/> CLAIMS-MADE <input type="checkbox"/> OCCUR | | | | | | DAMAGE TO RENTED PREMISES (Ea occurrence) \$ | |
| | GEN'L AGGREGATE LIMIT APPLIES PER: | | | | | | | MED EXP (Any one person) \$ 10,000 |
| | <input type="checkbox"/> POLICY <input type="checkbox"/> PRO-JECT <input type="checkbox"/> LOC | | | | | | PERSONAL & ADV INJURY \$ 1,000,000 | |
| | OTHER: | | | | | | GENERAL AGGREGATE \$ 2,000,000 | |
| | AUTOMOBILE LIABILITY | | | | | | PRODUCTS - COMP/OP AGG \$ 2,000,000 | |
| | <input type="checkbox"/> ANY AUTO OWNED AUTOS ONLY | | | | | | | |
| | <input type="checkbox"/> HIRED AUTOS ONLY | | | | | | COMBINED SINGLE LIMIT (Ea accident) \$ | |
| | <input type="checkbox"/> SCHEDULED AUTOS | | | | | | BODILY INJURY (Per person) \$ | |
| | <input type="checkbox"/> NON-OWNED AUTOS ONLY | | | | | | BODILY INJURY (Per accident) \$ | |
| | UMBRELLA LIAB | | | | | | PROPERTY DAMAGE (Per accident) \$ | |
| | EXCESS LIAB | | | | | | | |
| | <input type="checkbox"/> OCCUR <input type="checkbox"/> CLAIMS-MADE | | | | | | EACH OCCURRENCE \$ | |
| | DED RETENTION \$ | | | | | | AGGREGATE \$ | |
| A | WORKERS COMPENSATION AND EMPLOYERS' LIABILITY | | | 21WECAF9Z67 | 3/13/2020 | 3/13/2021 | <input checked="" type="checkbox"/> PER STATUTE <input type="checkbox"/> OTH-ER | |
| | ANY PROPRIETOR/PARTNER/EXECUTIVE OFFICER/MEMBER EXCLUDED? (Mandatory in NH) | Y/N | N/A | | | | E.L. EACH ACCIDENT \$ 100,000 | |
| | If yes, describe under DESCRIPTION OF OPERATIONS below | N | | | | | E.L. DISEASE - EA EMPLOYEE \$ 100,000 | |
| | | | | | | | E.L. DISEASE - POLICY LIMIT \$ 500,000 | |

DESCRIPTION OF OPERATIONS / LOCATIONS / VEHICLES (ACORD 101, Additional Remarks Schedule, may be attached if more space is required)

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| CERTIFICATE HOLDER For Informational Purposes Only | CANCELLATION SHOULD ANY OF THE ABOVE DESCRIBED POLICIES BE CANCELLED BEFORE THE EXPIRATION DATE THEREOF, NOTICE WILL BE DELIVERED IN ACCORDANCE WITH THE POLICY PROVISIONS. AUTHORIZED REPRESENTATIVE |
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