

This Confidential Data Privacy Agreement (“**DPA**”) is entered into by and between:

THE BOARD OF EDUCATION OF JEFFERSON COUNTY KENTUCKY, a political subdivision of the Commonwealth of Kentucky, with its principal place of business at 3332 Newburg Road, Louisville, Kentucky 40218 (the “**Board**” or “**Jefferson County Public Schools**”) and

Interplay Learning, Inc., a corporation organized under the laws of Texas with its principal place of business located at 3500 Jefferson Street, Suites 206 and 320, Austin, TX 78731 (the “**Provider**”).

WHEREAS, the Provider is providing educational or digital services to the Board.

WHEREAS, the Provider and the Board recognize the need to protect personally identifiable student information and other regulated data exchanged between them as required by applicable laws and regulations, such as the Family Educational Rights and Privacy Act (“**FERPA**”) at 20 U.S.C. § 1232g (34 CFR Part 99); the Children’s Online Privacy Protection Act (“**COPPA**”) at 15 U.S.C. § 6501-6506 (16 CFR Part 312), applicable state privacy laws and regulations and

WHEREAS, the Provider and the Board desire to enter into this DPA for the purpose of establishing their respective obligations and duties in order to comply with applicable laws and regulations.

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

ARTICLE I: PURPOSE AND SCOPE

1. **Entire Agreement.** This DPA together with the Interplay Learning Terms of Use attached hereto as Exhibit F and incorporated herein is the entire agreement between the Parties and supersedes any and all agreements, representations, and negotiations, either oral or written, between the Parties before the effective date of this DPA. This DPA may not be amended or modified except in writing as provided below. This DPA is supplemented by the Board’s Procurement Regulations currently in effect (hereinafter “**Regulations**”) that are incorporated by reference into and made part of this DPA. In the event of a conflict between any provision of this DPA and the Regulations, the Regulations shall prevail. In the event there is conflict between the terms of the DPA and any other writing, including, but not limited to, Exhibit F, the Service Agreement and Provider Terms of Service or Privacy Policy, the terms of this DPA shall control.
2. **Term.** This DPA shall be effective as of December 14, 2022 (the “**Effective Date**”) and shall continue for three (3) years, terminating on December 13, 2025.
3. **Services.** The services to be provided by Provider to the Board pursuant to this DPA are detailed in **Exhibit “A”** (the “**Services**”). Any compensation to be provided by the Board to Provider is also detailed in **Exhibit “A”** (the “**Compensation**”). Each party shall be responsible for their portion of costs that may result from data sharing. Examples of potential costs to the Board are costs associated with the compiling of Confidential Data requested under this DPA and costs associated with the electronic delivery of Confidential DATA to Provider.
4. **Purpose of DPA.** The purpose of this DPA is to describe the duties and responsibilities to protect Confidential Data including compliance with all applicable federal, state, and local privacy laws,

rules, and regulations, all as may be amended from time to time. In performing the Services, the Provider shall be considered a School Official with a legitimate educational interest, and performing services otherwise provided by the Board. Provider shall be under the direct control and supervision of the Board, with respect to its use of Confidential Data.

5. **Confidential Data to Be Provided.** In order to perform the Services described above, the Board shall provide Confidential Data as identified in the Schedule of Data, attached hereto as **Exhibit “B”**.
6. **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 terms used in any other writing, including, but not limited to the Service Agreement, Terms of Service, Privacy Policies etc.

ARTICLE II: DATA OWNERSHIP AND AUTHORIZED ACCESS

1. **Confidential Data Property of the Board.** All Confidential 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 Board. The Provider further acknowledges and agrees that all copies of such Confidential Data transmitted to the Provider, including any modifications or additions or any portion thereof from any source, are subject to the provisions of this DPA in the same manner as the original Confidential Data. The Parties agree that as between them, all rights, including all intellectual property rights in and to Confidential Data contemplated per the Service Agreement, shall remain the exclusive property of the Board. For the purposes of FERPA, the Provider shall be considered a School Official, under the control and direction of the Board as it pertains to the use of Confidential Data, notwithstanding the above.
2. **Parent Access.** To the extent required by law the Board shall establish reasonable procedures by which a parent, legal guardian, or eligible student may review Education Records and/or Confidential Data correct erroneous information, and procedures for the transfer of student-generated content to a personal account, consistent with the functionality of services. Provider shall respond in a reasonably timely manner (and no later than forty five (45) days from the date of the request or pursuant to the time frame required under state law for the Board to respond to a parent or student, whichever is sooner) to the Board’s request for Confidential Data in a student’s records held by the Provider to view or correct as necessary. In the event that a parent of a student or other individual contacts the Provider to review any of the Confidential Data accessed pursuant to the Services, the Provider shall refer the parent or individual to the Board, who will follow the necessary and proper procedures regarding the requested information.
3. **Separate Account.** If Student-Generated Content is stored or maintained by the Provider, Provider shall, at the request of the Board, transfer, or provide a mechanism for the Board to transfer, said Student-Generated Content to a separate account created by the student.
4. **Law Enforcement Requests.** Should law enforcement or other government entities (“Requesting Party(ies)”) contact Provider with a request for Confidential Data held by the Provider pursuant to the Services, the Provider shall notify the Board in advance of a compelled disclosure to the Requesting Party, unless lawfully directed by the Requesting Party not to inform the Board of the request.

5. **Subprocessors.** Provider shall enter into written agreements with all Subprocessors performing functions for the Provider in order for the Provider to provide the Services pursuant to the Service Agreement, whereby the Subprocessors agree to protect Confidential Data in a manner no less stringent than the terms of this DPA.
6. **Research and Program Evaluation.** For any project, involving data collection or research (e.g., program evaluation or monitoring activities), student or staff participation is voluntary. As a federally authorized Institutional Review Board (IRB), the Board complies with the federal definition for research, which includes sharing of Personally Identifiable Information (PII) for the purposes of answering a question or evaluating activities for effectiveness beyond standard educational or operational procedures. Thus, all data collection and research activities must be approved by the Board's IRB and shall not begin before approval is secured from the IRB. If Provider wishes to collect data specifically for program evaluation or research purposes, or if Provider wishes to use identifiable data for program evaluation or research purposes, Provider must apply for and obtain permission from the Board's IRB prior to beginning any research or evaluation related data collection.

ARTICLE III: DUTIES OF THE BOARD

1. **Provide Data in Compliance with Applicable Laws.** The Board shall provide Confidential Data for the purposes of obtaining the Services in compliance with all applicable federal, state, and local privacy laws, rules, and regulations, all as may be amended from time to time.
2. **Annual Notification of Rights.** If the Board has a policy of disclosing Education Records and/or Confidential Data under FERPA (34 CFR § 99.31(a)(1)), the Board 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.** The Board shall take reasonable precautions to secure usernames, passwords, and any other means of gaining access to the services and hosted Confidential Data.
4. **Unauthorized Access Notification.** The Board shall notify Provider promptly of any known unauthorized access. The Board 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 federal, state, and local laws, rules, and regulations pertaining to Confidential Data privacy and security, all as may be amended from time to time, including but not limited to FERPA; the Kentucky Family Educational Rights and Privacy Act, KRS 160.700 et seq.; the Richard B. Russell National School Lunch Act, 42 U.S.C. 1751 et seq.; the Child Nutrition Act of 1966, 42 U.S.C. 1771 et seq.; 7 C.F.R. 245.6 et seq.; the Personal Information Security and Breach Investigation Procedures and Practices Act, KRS 61.931 et seq.; and the Kentucky Open Records Act, KRS 61.820 et seq.
2. **Data Custodian.** For the purposes of this DPA and ensuring Provider's compliance with the terms of this DPA and all application of state and federal law, Provider designated Stephen Strike as the data custodian ("Data Custodian") of the Confidential Data. The Board will release

all data and information under this DPA to Data Custodian. Data Custodian shall be responsible for transmitting all data requests and maintain a log or other record of all data requested and received pursuant to this DPA, including confirmation of the return or destruction of data as described below. The Board may, upon request, review the records Provider is required to keep under this DPA.

3. **Authorized Use.** The Confidential Data shared pursuant to the Service Agreement, including persistent unique identifiers, shall be used for no purpose other than the Services outlined in **Exhibit "A"** or stated in the Service Agreement and/or otherwise authorized under the statutes referred to herein this DPA. Provider will not contact the individuals included in the data sets without obtaining advance written authorization from the Board.
4. **Provider Employee Obligation.** Provider shall require all of Provider's employees and agents who have access to Confidential Data to comply with all applicable provisions of this DPA with respect to the Confidential Data shared under the Service Agreement. Provider agrees to require and maintain an appropriate confidentiality agreement from each employee or agent with access to Confidential Data pursuant to the Service Agreement.
5. **Insurance.** Provider shall maintain, during the term of this Agreement, a cyber-insurance liability policy, in the amount of \$5M. Upon request, Provider shall furnish the certificate of insurance evidencing this coverage. The certificate of insurance shall name the Board of Education of Jefferson County as additional insured in the Description of Operations section of the Certificate of Insurance which shall read:

Board of Education of Jefferson County
Attn: Insurance/Real Estate Dept.
3332 Newburg Road
Louisville, Kentucky 40218

6. **No Disclosure.** Provider acknowledges and agrees that it shall not make any re-disclosure of any Confidential Data or any portion thereof, including without limitation, user content or other nonpublic information and/or personally identifiable information contained in the Confidential Data other than as required by law or court order. If Provider becomes legally compelled to disclose any Confidential Data (whether by judicial or administrative order, applicable law, rule, regulation, or otherwise), then Provider shall use all reasonable efforts to provide the Board with prior notice before disclosure so that the Board may seek a protective order or other appropriate remedy to prevent the disclosure or to ensure the Board's compliance with the confidentiality requirements of federal or state law. This prohibition against disclosure shall not apply to aggregate summaries of De-Identified information or to Subprocessors performing services on behalf of the Provider pursuant to this DPA. Provider will not Sell Confidential Data to any third party.
7. **De-Identified Data:** Provider agrees not to attempt to re-identify De-Identified Confidential Data. De-Identified Data may be used by the Provider for those purposes allowed under FERPA and the following purposes: (1) assisting the Board or other governmental agencies in conducting research and other studies; and (2) research and development of the Provider's educational sites, services, or applications, and to demonstrate the effectiveness of the Services; and (3) for adaptive Learning purpose and for customized student Learning. Provider's use of De-Identified Data shall survive termination of this DPA or any request by the Board to return or destroy Confidential Data. Except

for Subprocessors, Provider agrees not to transfer de-identified Confidential 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 the Board who has provided prior written consent for such transfer. Prior to publishing any document that names the Board explicitly or indirectly, the Provider shall obtain the Board's prior written approval.

8. **Disposition of Data.** Upon written request from the Board, Provider shall dispose of or provide a mechanism for the Board to transfer Confidential Data obtained under the Service Agreement in a usable format, within sixty (60) days of the date of said request and according to a schedule and procedure as the Parties may reasonably agree. Upon termination of this DPA, if no written request from the Board is received to return the data in a usable format, Provider shall dispose of all Confidential Data after providing the Board with reasonable prior notice. The duty to dispose of Confidential Data shall not extend to Confidential Data that had been De-Identified or placed in a separate student account pursuant to section II 3. The JCPS may employ a **"Directive for Disposition of Data"** form, a copy of which is attached hereto as **Exhibit "D"**. If the JCPS and Provider employ **Exhibit "D"**, no further written request or notice is required on the part of either party prior to the disposition of Confidential Data described in **Exhibit "D"**.
9. **Advertising Limitations.** Provider is prohibited from using, disclosing, or selling Confidential Data to (a) inform, influence, or enable Targeted Advertising; or (b) develop a profile of a student, family member/guardian or group, for any purpose other than providing the Service to the Board. This section does not prohibit Provider from using Confidential Data (i) for adaptive Learning or customized student Learning (including generating personalized Learning recommendations); or (ii) to make product recommendations to teachers or JCPS employees; or (iii) to notify account holders about new education product updates, features, or services or from otherwise using Confidential Data as permitted in this DPA and its accompanying exhibits.
10. **Liability.** Provider agrees to be responsible for and assumes all liability for any claims, costs, damages or expenses (including reasonable attorneys' fees) that may arise from or relate to Provider's intentional or negligent release of personally identifiable student, parent or staff data ("Claim" or "Claims"). Provider agrees to hold harmless the Board and pay any costs incurred by the Board in connection with any Claim. The provisions of this Section shall survive the termination or expiration of this DPA.

ARTICLE V: DATA PROVISIONS

1. **Data Storage.** Where required by applicable law, Confidential Data shall be stored within the United States. Upon request of the Board, Provider will provide a list of the locations where Confidential Data is stored.
2. **Audits.** No more than once a year, or following unauthorized access, upon receipt of a written request from the Board with at least ten (10) business days' notice and upon the execution of an appropriate confidentiality agreement, the Provider will allow the Board to audit the security and privacy measures that are in place to ensure protection of Confidential Data or any portion thereof as it pertains to the delivery of services to the JCPS . The Provider will cooperate reasonably with the Board and any local, state, or federal agency with oversight authority or jurisdiction in connection with any audit or investigation of the Provider and/or delivery of Services to students and/or the Board, and shall provide reasonable access to the Provider's facilities, staff, agents and the Board's Confidential Data and all records pertaining to the Provider, the Board and delivery

of Services to the Board. Failure to reasonably cooperate shall be deemed a material breach of the DPA.

3. **Data Security.** The Provider agrees to utilize administrative, physical, and technical safeguards designed to protect Confidential Data from unauthorized access, disclosure, acquisition, destruction, use, or modification. The Provider shall adhere to any applicable law relating to data security. The provider shall implement an adequate Cybersecurity Framework based on one of the standards set forth in Exhibit "E". Additionally, Provider may choose to further detail its security programs and measures that augment or are in addition to the Cybersecurity Framework in Exhibit "E". Provider shall provide, in the Standard Schedule to the DPA, contact information of an employee who the Board may contact if there are any data security concerns or questions. Additionally, The Provider agrees to maintain a minimum security standard including but limited to the following precautions and protections:

- a) Encrypting all data, at rest and in transit;
- b) Maintaining multi-factor authentication on accounts that can access the network or email remotely, including 3rd party accounts;
- c) Securing access to any physical areas/electronic devices where sensitive data are stored;
- d) Establishing and enforcing well-defined data privilege rights which follow the rule of least privilege and restrict users' access to the data necessary for this to perform their job functions;
- e) Ensuring all staff and 3rd parties sign a nondisclosure statement, and maintaining copies of the signed statements;
- f) Installing end-point protection including but not limited to anti-malware and anti-spyware on any device connected to the network that has access to scoped data, when applicable

4. **Data Breach.** In the event of an unauthorized release, disclosure or acquisition of Confidential Data that compromises the security, confidentiality or integrity of the Confidential Data maintained by the Provider the Provider shall provide notification to the Board within seventy-two (72) hours of confirmation of the incident, unless notification within this time limit would disrupt investigation of the incident by law enforcement. In such an event, notification shall be made within a reasonable time after the incident. Provider shall follow the following process:

- (1) The security breach notification described above shall include, at a minimum, the following information to the extent known by the Provider and as it becomes available:
 - i. The name and contact information of the individual reporting a breach 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; and
 - i. A general description of the breach incident, if that information is possible to determine at the time the notice is provided.
- (2) Provider agrees to adhere to all federal and state requirements with respect to a data breach related to the Confidential Data, including, when appropriate or required, the required responsibilities and procedures for notification and mitigation of any such data breach.
- (1) 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 Confidential Data or any portion thereof, including personally identifiable information and agrees to provide the Board, upon request, with a summary of said written incident response plan.
- (2) The Board shall provide notice and facts surrounding the breach to the affected students, parents or guardians, or staff, as applicable.
- (3) In the event of a breach originating from the Board's use of the Service, Provider shall cooperate with the Board to the extent necessary to expeditiously secure Confidential Data.

5. Kentucky Personal Information Security and Breach Investigation Procedures and Practices Act. If Provider receives Personal Information as defined by and in accordance with the Kentucky Personal Information Security and Breach Investigation Procedures and Practices Act, KRS 61.931, et seq. (the "Act"), Provider shall secure, protect and maintain the confidentiality of the Personal Information by, without limitation, complying with all requirements applicable to "non-affiliated third parties" set forth in the Act, including but not limited to the following:

- a. "Personal Information" is defined in accordance with KRS 61.931(6) as an individual's first name or first initial and last name; personal mark; or unique biometric or genetic print or image, in combination with one (1) or more of the following data elements:
 - i. An account, credit card number, or debit card number that, in combination with any required security code, access code or password, would permit access to an account;
 - ii. A Social Security number;
 - iii. A taxpayer identification number that incorporates a Social Security number;
 - iv. A driver's license number, state identification card number or other individual identification number issued by an agency;

- v. A passport number or other identification number issued by the United States government; or
 - vi. Individually Identifiable Information as defined in 45 C.F.R. sec. 160.013 (of the Health Insurance Portability and Accountability Act), except for education records covered by FERPA.
- b. As provided in KRS 61.931(5), a "non-affiliated third party" means any person or entity that has a contract or agreement with an agency and receives (accesses, collects or maintains) personal information from the agency pursuant to the contract or agreement.
 - c. Provider shall not re-disclose, without the written consent of JCPS, any "personal information," as defined in KRS 61.931, or any other personally identifiable information of a student or other persons, such as employees.
 - d. Provider agrees to cooperate with JCPS in complying with the response, mitigation, correction, investigation, and notification requirements of the Act.
 - e. Provider agrees to undertake a prompt and reasonable investigation of any breach as required by KRS 61.933.

6. **Cloud Computing Service Providers.** If Provider is a cloud computing service provider (as defined in KRS 365.734(1)(b) as "any person other than an educational institution that operates a cloud computing service"), Provider agrees that:

Provider shall not process student data for any purpose other than providing, improving, developing, or maintaining the integrity of its cloud computing services, unless the provider receives express permission from the student's parent. Provider shall work with the student's school and district to determine the best method of collecting parental permission. KRS 365.734 defines "process" and "student data."

Pursuant to KRS 365.734(2), Provider shall not in any case process student data to advertise or facilitate advertising or to create or correct an individual or household profile for any advertisement purposes.

Pursuant to KRS 365.734(2), Provider shall not sell, disclose, or otherwise process student data for any commercial purpose.

Pursuant to KRS 365.734(3), Provider shall certify in writing to the agency that it will comply with KRS 365.734(2).

ARTICLE VI: MISCELLANEOUS

7. **Termination.** Either party may terminate this DPA if the other party breaches any terms of this DPA, provided however, the breaching party shall have thirty (30) days to cure such breach and this DPA shall remain in force. . This DPA may be terminated for convenience by sending written notice to Interplay Learning *at least thirty* (30) days prior to the expiration of the then-current Termination date; however, in the event of any termination for convenience all portions of the Service are *completely non-refundable*. With respect to any Service Agreement still in

effect as of the date of such termination for convenience, and upon your request, your Service Agreement will remain active to the end of your then-current Service Term to the extent your Term has been paid; provided that Interplay Learning's Terms of Use will continue in effect and govern such Term until its expiration or earlier termination for cause.

8. **Effect of Termination Survival.** If the Service Agreement is terminated, the Provider shall destroy all of JCPS's Confidential Data pursuant to Article IV, section 6.
9. **Priority of Agreements.** This DPA shall govern the treatment of Confidential Data in order to comply with the privacy protections, including those found in FERPA and all applicable privacy statutes identified in this DPA. In the event there is conflict between the terms of the DPA and the Service Agreement, Terms of Service, Privacy Policies, or with any other bid/RFP, license agreement, or writing, the terms of this DPA shall apply and take precedence.
10. **Modification.** No waiver, alteration or modification of the provisions of this Agreement shall be binding unless in writing and mutually agreed upon. Any modifications or additions to this Agreement must be negotiated and approved by both parties.
11. **Disputes.** Any differences or disagreements arising between the Parties concerning the rights or liabilities under this DPA, or any modifying instrument entered into pursuant to this DPA, shall be resolved through the procedures set out in the Regulations.
12. **Notices.** All notices or other communication required or permitted to be given hereunder may be given via e-mail transmission, or certified mail, sent to the designated representatives below.

The designated representative for the Board for this DPA is:

Name: Robert Moore Title: Chief of Schools

Address: 3332 Newburg Road, Louisville, KY 40218

Phone: 502-485-7623 Email: robert.moore4@jefferson.kyschools.us

The designated representative for the Provider for this DPA is:

Name: Andy Hughes _____ Title: VP of Sales

Address: 3500 Jefferson Avenue, Suite 206, Austin, TX 78731

Phone: (512) 373-5076 _____ Email: ahughes@interplaylearning.com

13. **Amendment and Waiver.** 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.
14. **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.

15. **Governing Law; Venue and Jurisdiction.** THIS DPA WILL BE GOVERNED BY AND CONSTRUED IN ACCORDANCE WITH THE LAWS OF THE COMMONWEALTH OF KENTUCKY, 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 JEFFERSON COUNTY KENTUCKY FOR ANY DISPUTE ARISING OUT OF OR RELATING TO THIS DPA OR THE TRANSACTIONS CONTEMPLATED HEREBY.
16. **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. In the event that the Provider sells, merges, or otherwise disposes of its business to a successor during the term of this DPA, the Provider shall provide written notice to the Board no later than sixty (60) days after the closing date of sale, merger, or disposal. Such notice shall include a written, signed assurance that the successor will assume the obligations of the DPA and any obligations with respect to Confidential Data within the Service Agreement. The Board has the authority to terminate the DPA if it disapproves of the successor to whom the Provider is selling, merging, or otherwise disposing of its business.
17. **Authority.** Each party represents that it is authorized to bind to the terms of this DPA, including confidentiality and destruction of Confidential Data and any portion thereof contained therein, all related or associated institutions, individuals, employees or contractors who may have access to the Confidential Data and/or any portion thereof.
18. **Relationship of Parties.** The Board is not an employee, agent, partner or co-venturer of or with Services Provider. Neither Services Provider nor the Board shall represent or imply to any party that it has the power or authority to enter into a contract or commitment in the name of or on behalf of the other, or to otherwise bind the other.
19. **Equal Opportunity.** During the performance of this DPA, Provider agrees that Provider shall not discriminate against any employee, applicant or subcontractor because of race, color, national origin, age, religion, marital or parental status, political affiliations or beliefs, sex, sexual orientation, gender identity, gender expression, veteran status, genetic information, disability, or limitations related to pregnancy, childbirth, or related medical conditions. If the Compensation is paid from federal funds, this DPA is subject to Executive Order 11246 of September 24, 1965 and in such event the Equal Opportunity Clause set forth in 41 Code of Federal Regulations 60-1.4 is hereby incorporated by reference into this DPA as if set forth in full herein.
20. **Prohibition on Conflicts of Interest.** It shall be a breach of this DPA for Provider to commit any act which is a violation of Article XI of the Regulations entitled "Ethics and Standards of

Conduct,” or to assist or participate in or knowingly benefit from any act by any employee of the Board which is a violation of such provisions.

21. Contractor shall be in continuous compliance with the provisions of KRS Chapters 136, 139, 141, 337, 338, 341, and 342 that apply to Provider for the duration of this DPA and shall reveal any final determination of a violation by the Provider of the preceding KRS chapters.

22. **Access to School Grounds.** No employee or agent of Provider shall access the Board’s school grounds on a regularly scheduled or continuing basis for purposes of providing services to students under this DPA.

IN WITNESS WHEREOF, The Board and Provider execute this DPA as of the Effective Date above.

BOARD OF EDUCATION OF JEFFERSON COUNTY KENTUCKY

By: _____ Date: _____
Printed Name: Dr. Martin A. Pollio _____
Title/Position: Superintendent

INTERPLAY LEARNING, INC.

By: Andy Hughes Date: 11/29/2022
Printed Name: Andy Hughes
Title/Position: Vice President, Sales

EXHIBIT "A"

DESCRIPTION OF SERVICES

Provider shall provide software licenses and support for the following products at prices equal or below Provider's standard pricing rates for the products:

SkillMill by Interplay Learning ("The Site")

STATEMENT OF WORK

BACKGROUND AND UNDERSTANDING

Interplay develops and delivers 3D and Virtual Reality interactive simulation training and testing applications for the professional trade workforce. Interplay hosts a broad catalog of digital training ("General Catalog") for learning trade skills including simulations and video courses, knowledge checks and assessments. With a VR headset, users are immersed in a life-like virtual environment.

OBJECTIVE

THE BOARD OF EDUCATION OF JEFFERSON COUNTY KENTUCKY is seeking a more effective and scalable way to deliver interactive training to its student population. Additionally, it is seeking to deliver VR ready training content to enhance the student experience and bring additional equipment to life in the lab.

INCLUDED DELIVERABLES

Interplay agrees to provide Lincoln the following primary areas of service.

- 1) **General Catalog Training:** Interplay general catalog training access.
 - a. Interplay will deliver training access to students in skilled trades training programs.
 - b. The General Catalog includes all courses available in the SkillMill platform.
<https://skilledtrades.interplaylearning.com/#catalog>. Interplay releases new courses throughout the year. Those courses will become available upon their launch to all learners in the SkillMill platform.
- 2) **Service:** Ongoing hosting, maintenance and technical support.
 - a. Interplay Customer and Technical Support is available during business hours to advise and assist clients through any technical challenges they may encounter. Customer Success will walk you through the support detail during your kickoff, including processes.
 - b. There are no data hosting requirements. Interplay safely and securely hosts your data on the award winning, Amazon Web Services.
- 3) **Technical Professional Services:**
 - a. Access to SkillMill Platform: white label, SSO.
 - b. LTI integration access and support, if requested.

- 4) **Business Professional Services:** Implementation resources, training services, customer success support.
- a. Customer success resources will assist your firm with all reasonable business needs during and after Interplay has been implemented. These business needs include adoption best practices, LMS integration support, and other day to day user or administrator needs.

PRICING and PAYMENT TERMS

Standard Vendor Pricing is \$396 per learner. Interplay Learning's pricing to The Board of Education of Jefferson County Kentucky is \$200 per learner for 90 Learners per year, with 10 admin seats for free, for a total of 100 seats.

3-year term to be paid annually:

\$18,000 Year 1: Due by Nov. 16, 2022

\$18,000 Year 2: Due by Nov. 16, 2023

\$18,000 Year 3: Due by Nov. 16, 2024

Year 2 and 3 payments are due within 30 days upon invoice receipt.

Total contract value of: \$54,000.

AP Contact for The Board of Education of Jefferson County is:
Edward Muns, 502-485-3146

THE BOARD OF EDUCATION OF JEFFERSON COUNTY KENTUCKY may select to expand to a larger tier of learners during the three-year agreement, at which time Interplay and THE BOARD OF EDUCATION OF JEFFERSON COUNTY KENTUCKY will draft an addendum.

Upon signing of the agreement and delivery of the initial invoice, Interplay will begin customer success support to ensure an effective rollout of the training.

OWNERSHIP OF THE DIGITAL TRAINING

The Interplay General Catalog content and all associated delivery and engine code that powers the training content are the sole property of Interplay.

Change of Ownership

Any major ownership structure changes to Interplay, like Interplay being acquired or going public, will not impact the access to the training to students during the duration of the agreement.

TECHNICAL SPECIFICATIONS

The simulations as outlined above will be accessible via an internet browser or a Windows application and will be hosted on the Interplay platform. Interplay will promote the Desktop and Virtual Reality applications for optimal user experience and product performance.

End User hardware requirements for online use:

Laptop/desktop on windows-based computers

OS: Windows 7 SP1+, Mac OS X 10.13+, Ubuntu 20.04+, SteamOS+.

Graphics card with DX10 (shader model 4.0) capabilities.

CPU: Apple Silicon, x86, x64 architecture with SSE2 instruction set support.

Apple iPad: player requires iOS 12 or higher; A7 SoC+; Metal Graphics API;

Android Tablet: OS 7.1 (Nougat) or newer; ARMv7 CPU with NEON support or ARM64; OpenGL ES 2.0 or newer

WebGL: Versions of Chrome and Firefox (Safari coming soon) that are:

- WebGL 2.0 capable
- HTML 5 standards compliant
- 64-bit
- WASM capable

Universal Windows Platform: Windows 10 and a graphics card with DX10 (shader model 4.0) capabilities

End User hardware requirements for Virtual Reality use:

GPU: Nvidia GeForce GTX 970, AMD Radeon R9 290 equivalent or better.

CPU: Intel i5-4590, AMD FX 8350 equivalent or better.

RAM: 4 GB or more.

Video Output: HDMI 1.4, DisplayPort 1.2 or newer.

USB Port: 1x USB 2.0 or better port.

Operating System: Windows 7 SP1, Windows 8.1 or later, Windows 10.

HTC Vive, Oculus Rift S HMD or equivalent

QUEST 2

COMPENSATION

Not to exceed standard vendor pricing as stated on page 13 of this Agreement.

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.	<input checked="" type="checkbox"/>
	Other application technology meta data- Please specify:	<input type="checkbox"/>
Application Use Statistics	Meta data on user interaction with application	<input type="checkbox"/>
Assessment	Standardized test scores	<input type="checkbox"/>
	Observation data	<input type="checkbox"/>
	Other assessment data-Please specify:	<input type="checkbox"/>
Attendance	Student school (daily) attendance data	<input type="checkbox"/>

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	Student class attendance data	<input type="checkbox"/>
Communications	Online communications captured (emails, blog entries)	<input type="checkbox"/>
Conduct	Conduct or behavioral data	<input type="checkbox"/>
Demographics	Date of Birth	<input type="checkbox"/>
	Place of Birth	<input type="checkbox"/>
	Gender	<input type="checkbox"/>
	Ethnicity or race	<input type="checkbox"/>
	Language information (native, or primary language spoken by student)	<input type="checkbox"/>
	Student disability information	<input type="checkbox"/>

Category of Data	Elements	Check if Used by Your System
	Other demographic information-Please specify:	<input type="checkbox"/>
Enrollment	Student school enrollment	<input type="checkbox"/>
	Student grade level	<input type="checkbox"/>
	Homeroom	<input type="checkbox"/>
	Guidance counselor	<input type="checkbox"/>
	Specific curriculum programs	<input type="checkbox"/>
	Year of graduation	<input type="checkbox"/>
	Other enrollment information-Please specify:	<input type="checkbox"/>

Parent/Guardian Contact Information	Address	<input type="checkbox"/>
	Email	<input type="checkbox"/>
	Phone	<input type="checkbox"/>
Parent/Guardian ID	Parent ID number (created to link parents to students)	<input type="checkbox"/>
Parent/Guardian Name	First and/or Last	<input type="checkbox"/>
Schedule	Student scheduled courses	<input type="checkbox"/>
	Teacher names	<input type="checkbox"/>
Special Indicator	English language Learner information	<input type="checkbox"/>
	Low income status	<input type="checkbox"/>
	Medical alerts/ health data	<input type="checkbox"/>

Category of Data	Elements	Check if Used by Your System
	Specialized education services (IEP or 504)	<input type="checkbox"/>
	Living situations (homeless/foster care)	<input type="checkbox"/>
	Other indicator information-Please specify:	<input type="checkbox"/>
Staff Data	First and Last Name	<input checked="" type="checkbox"/>
	Email Address	<input checked="" type="checkbox"/>
	Staff ID number	<input type="checkbox"/>
	Other information – Please specify	<input type="checkbox"/>
Student Contact Information	Address	<input type="checkbox"/>
	Email	<input checked="" type="checkbox"/>
	Phone	<input type="checkbox"/>

Student Identifiers	Local (School district) ID number	<input type="checkbox"/>
	State ID number	<input type="checkbox"/>
	Provider/App assigned student ID number	<input type="checkbox"/>
	Student app username	<input checked="" type="checkbox"/>
	Student app passwords	<input checked="" type="checkbox"/>
Student Name	First and/or Last	<input checked="" type="checkbox"/>
Student In App Performance	Program/application performance (typing program- student types 60 wpm, reading program- student reads below grade level)	<input type="checkbox"/>
Student Program Membership	Academic or extracurricular activities a student may belong to or participate in	<input type="checkbox"/>
Student Survey Responses	Student responses to surveys or questionnaires	<input type="checkbox"/>
Student work	Student generated content; writing, pictures, etc.	<input type="checkbox"/>

Category of Data	Elements	Check if Used by Your System
	Other student work data -Please specify:	<input type="checkbox"/>
Transcript	Student course grades	<input type="checkbox"/>
	Student course data	<input type="checkbox"/>
	Student course grades/ performance scores	<input type="checkbox"/>
	Other transcript data - Please specify:	<input type="checkbox"/>
Transportation	Student bus assignment	<input type="checkbox"/>
	Student pick up and/or drop off location	<input type="checkbox"/>
	Student bus card ID number	<input type="checkbox"/>

	Other transportation data – Please specify:	<input type="checkbox"/>
Other	<p>Please list each additional data element used, stored, or collected by your application:</p> <p>Data specific to student user activity in the platform including total activity time, points earned, attempts, assignment completion percentage and knowledge checks</p>	<input checked="" type="checkbox"/>
None	<p>No Confidential Data collected at this time. Provider will immediately notify JCPS if this designation is no longer applicable.</p>	<input type="checkbox"/>

EXHIBIT “C”

DEFINITIONS

Compensation: Amounts to be paid to the Provider in exchange for software licenses and support. The maximum amount of Compensation that may be paid under this DPA is set forth in Attachment A. The Board is not obligated to pay the maximum Compensation amount solely by its inclusion in this DPA. Compensation owed is determined by the purchase orders submitted to Provider. The cost for any single license or support provided under this DPA shall not exceed Provider’s standard pricing for that product.

De-Identified Data and De-Identification: Records and information are considered to be De-Identified when all personally identifiable information has been removed or obscured, such that the remaining information does not reasonably identify a specific individual, including, but not limited to, any information that, alone or in combination is linkable to a specific student and provided that the educational agency, or other party, has made a reasonable determination that a student’s identity is not personally identifiable, taking into account reasonable available information.

Educational Records: Educational Records are records, files, documents, and other materials directly related to a student and maintained by the school or local education agency, or by a person acting for such 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.

Metadata: means information that provides meaning and context to other data being collected; including, but not limited to: date and time records and purpose of creation Metadata that have been stripped of all direct and indirect identifiers are not considered Personally Identifiable Information.

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 for K–12 school purposes. Any entity that operates an internet website, online service, online application, or mobile application that has entered into a signed, written agreement with the Board to provide a service to the Board shall be considered an “operator” for the purposes of this section.

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

Regulations: The Board Procurement Regulations, available on the JCPS website, as may be amended from time to time.

Student Generated Content: The term “Student-Generated Content” means materials or content created by a student in the services 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 student content.

School Official: For the purposes of this DPA 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 Confidential Data including Education Records; and (3) Is subject to 34 CFR § 99.33(a) governing the use and re-disclosure of Personally Identifiable Information from Education Records.

Service Agreement: Refers to the Contract, Purchase Order or Terms of Service or Terms of Use.

Confidential Data: Confidential Data includes any data, whether gathered by Provider or provided by the Board 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, birthdate, home or other physical address, telephone number, email address, or other information allowing physical or 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, individual purchasing behavior or preferences, food purchases, political affiliations, religious information, text messages, documents, student identifiers, search activity, photos, voice recordings, geolocation information, parents' names, or any other information or identification number that would provide information about a specific student. Confidential Data includes Meta Data. Confidential Data further includes "Personally Identifiable Information (PII)," as defined in 34 C.F.R. § 99.3 and as defined under any applicable state law. Confidential Data shall constitute Education Records for the purposes of this DPA, and for the purposes of federal, state, and local laws and regulations. Confidential Data as specified in Exhibit "B" is confirmed to be collected or processed by the Provider pursuant to the Services. Confidential 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.

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

Targeted Advertising: means presenting an advertisement to a student where the selection of the advertisement is based on Confidential Data or inferred over time from the usage of the operator's Internet web site, online service or mobile application by such student or the retention of such student's online activities or requests over time for the purpose of targeting subsequent advertisements. "Targeted Advertising" does not include any advertising to a student on an Internet web site based on the content of the web page or in response to a student's response or request for information or feedback.

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 Education Records and/or Confidential Data, as that term is used in some state statutes. However, for the purpose of this DPA, 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**

The Board of Education of Jefferson County Kentucky directs Provider to dispose of data obtained by Provider pursuant to the terms of the Service Agreement between The Board and Provider. The terms of the Disposition are set forth below:

1. Extent of Disposition

_____ Disposition is partial. The categories of data to be disposed of are set forth below or are found in an attachment to this Directive:

[Insert categories of data here]

_____ Disposition is Complete. Disposition extends to all categories of data.

2. Nature of Disposition

_____ Disposition shall be by destruction or deletion of data.

_____ Disposition shall be by a transfer of data. The data shall be transferred to the following site as follows:

[Insert or attach special instructions]

3. Schedule of Disposition

Data shall be disposed of by the following date:

_____ As soon as commercially practicable.

_____ By **[Insert Date]**

Signature

Authorized Representative of the Board

Date

Verification of Disposition of Data

Authorized Representative of Provider

Date

EXHIBIT “E”

DATA SECURITY REQUIREMENTS

Adequate Cybersecurity Frameworks

Provider will utilize one of the following known and credible cybersecurity frameworks which can protect digital learning ecosystems.

Cybersecurity Frameworks

	MAINTAINING ORGANIZATION/GROUP	FRAMEWORK(S)
X	American Institute of CPAs	SOC2
	International Standards Organization (ISO)	Information technology — Security techniques — Information security management systems (ISO 27000 series)
	The Board of Education of Jefferson County	Board provided standardized questionnaire

EXHIBIT "F"**TERMS OF USE**

When you visit, view, use, or access our website interplaylearning.com and/or any applicable subdomains thereof, or any applications, mobile applications, functionalities, training simulations, virtual reality training simulations, content, SCORM content, materials, Interactive features, or other online services provided by Interplay Learning (collectively, and along with the services available from the foregoing, the **"Site"**), whether as a guest, registered user, or through an agreed upon and provisioned SCORM content provider you're agreeing to the following terms and conditions.

1. INTRODUCTION

These Terms of Use, as may be amended from time to time, together with any documents, policies, or terms they incorporate by reference (collectively, these **"Terms of Use"**), are entered into by and between you and Interplay Learning, Inc., a Delaware corporation (**"Interplay Learning"**, **"we"**, or **"us"**). For purposes of these Terms of Use, **"you"** includes, individually and collectively, you (the user or Customer) and any individual, affiliate, Business User, or Business employee that is visiting, viewing, using, or accessing the Site or our provisioned SCORM content through your content (LMS) provider, under your Plan. To the extent that you have entered into an enterprise license agreement, master sales order, master services agreement, or other written agreement fully executed and signed by an authorized representative of Interplay Learning that contains terms that directly conflict with any terms of these Terms of Use, then the conflicted terms set forth in such other agreement will control.

You acknowledge and agree that by (i) visiting, viewing, using, or accessing the Site, (ii) clicking **"Agree"**, **"Purchase"**, **"Submit"**, or similar links, or (iii) signing or confirming a Sales Order or other agreement incorporating these Terms of Use, that you have read, understand, and agree to be bound by these Terms of Use, irrespective of whether you are a guest or a registered user of the Site. IF YOU DO NOT AGREE TO THESE TERMS OF USE, THEN YOU MAY NOT ACCESS OR USE THE SITE OR HAVE ACCESS TO INTERPLAY LEARNING'S PROVISIONED SCORM CONTENT. INTERPLAY LEARNING'S ALLOWANCE OF YOUR USE AND ACCESS TO THE SITE IS EXPRESSLY CONDITIONED UPON YOUR ASSENT TO ALL OF THE TERMS AND CONDITIONS OF THESE TERMS OF USE, TO THE EXCLUSION OF ALL OTHER TERMS.

2. PRIVACY POLICY

Your privacy is important to us, and we are committed to protecting your personal information. Any personal information submitted in connection with your use of the Site is subject to our privacy policy found at <https://www.interplaylearning.com/privacy> (the **"Privacy Policy"**), which is hereby incorporated by this reference and available in Exhibit 1 at the end of this document. We will use information about you that we obtain either directly from you or that we obtain by nature of your use of the Site in accordance with our Privacy Policy solely in furtherance of providing you and improving the Site.

3. SITE ACCESS AND ACCOUNT REGISTRATION

To access the Site, you may be asked to provide certain account information and other details. This account information helps us to create and maintain a Interplay Learning account for you, which is necessary for providing you the content, customer service, and network management that comes with the Site; as such, it is a condition of your use of the Site that all account information you provide is correct, current, and complete. You agree that all account information you provide is governed by our Privacy Policy and you consent to all actions we take with respect to your information consistent with our Privacy Policy.

With regard to your username, password, any other piece of information you provide to us as part of our security procedures (collectively, “**Account Information**”), you agree to treat such Account Information as confidential, and you must not disclose it to any other person or entity. You also acknowledge that your Account Information is personal to you, and you agree not to provide any other person with access to the Site using your Account Information. You agree to notify us immediately (support@interplaylearning.com) of any unauthorized access to or use of your Account or provisioned SCORM/LTI Content. Information or any other breach of security that you become aware of. You should use particular caution when accessing your account from a public or shared computer so that others are not able to view or record your Account Information or other personal information.

Except as provided herein, you may not transfer your Account Information to any other person and you may not use anyone else’s Account Information or account at any time. In cases where you have nevertheless authorized or registered another person to use your account or Plan, or where you have acted negligently in safeguarding your Account Information as set forth above, you agree you are fully responsible for (i) the acts and omissions of such person accessing the Site with your Account Information, (ii) controlling the person’s access to and use of the Site, and (iii) the consequences of any use or misuse by such person.

4. INTERPLAY LEARNING SUBSCRIPTION PLANS

For purposes herein, “**License Fee**” means all forms of the Business License Fee, as applicable. We reserve the right to increase or decrease any License Fee at any time; however, to the extent you have paid your License Fee in advance, the increase or decrease will not become effective for your Plan until the end of your current subscription term or your next renewal. For purposes herein, “**Payment Method**” means the Business Payment Method, as applicable.

4.1 BUSINESS PLANS

1. Business License(s). Interplay Learning grants you a non-exclusive, non-transferable license (“**Business License**”) to use the Site or SCORM/LTI Course Content for the subscription term length set forth herein in strict accordance with these Terms of Use. Any renewal of the Initial Business Term (or a Renewal Business Term), whether such renewal occurs by way of your Automatic Business Renewal, a renewal Sales Order, or otherwise, shall be deemed a “**Renewal Business Term**”, and together with the Initial Business Term, the “**Business Term**”, as applicable.

2. Individual Business Subscriptions. The Business License allows a specific number of your employees or affiliate employees to register as Interplay Learning users (each, a “**Business User**”) and receive access to the Site or to SCORM/LTI Course Content by way of your Business License. Each Business User must be designated by the business purchasing the Business License or by such business’s designated Plan Manager, after which each Business User will be provisioned unique Account Information to register for an Interplay Learning account and receive access to use the Site through an individual single-use business subscription (an “**Individual Business Subscription**”). Each Individual Business Subscription is to be used solely by the named Business User and for the internal purposes of the business provisioning the Business License. Each Individual Business Subscription may not be shared amongst Business Users nor may it be shared amongst multiple employees, affiliate employees, contractors, agents, or other individuals
3. Business License Fee. Interplay Learning’s grant of the Business License is expressly conditioned on timely payment of the then-applicable annual license fee in advance for all Individual Business Subscriptions on or added to your Business Plan in the amount and on the billing frequency set forth in a Sales Order (individually, and collectively, the “**Business License Fee**”).
 - I. Payment by Debit or Credit Cards, PayPal®, or Third Parties. By registering for, subscribing to, or purchasing a Business Plan and providing billing information, you grant us and our authorized third-party payment processor(s) the right to process payment for your Business License Fee via the debit card, credit card, PayPal® account, third-party payment provider, or reseller you provide, authorize, or maintain on your Business Plan account (individually, and collectively, “**Business Payment Method**”).
 - II. Payment by Invoice. Your Business License Fee will be billed as of the effective date of the subscription start date set forth during the Sales Order. You hereby agree the Business License Fee is due as of the date of any Interplay Learning invoice, payable within ten (10) days of said date, unless otherwise specifically provided in a Sales Order.
 - III. Automatic Business Renewal. BUSINESS LICENSE FEES MAY CHANGE AND WILL RENEW AT THE THEN-APPLICABLE RATE. Unless otherwise set forth in a Sales Order, YOU UNDERSTAND AND AGREE THAT AT THE END OF EACH APPLICABLE BUSINESS TERM WE WILL AUTOMATICALLY RENEW YOUR BUSINESS PLAN (INCLUDING ALL INDIVIDUAL BUSINESS SUBSCRIPTIONS ON YOUR BUSINESS PLAN) FOR THE SAME LENGTH OF TERM AND PROCESS YOUR BUSINESS PAYMENT METHOD OR INVOICE FOR PAYMENT OF THE APPLICABLE BUSINESS LICENSE FEE FOR THE RENEWAL BUSINESS TERM AT THE THEN-APPLICABLE PRICE FOR A BUSINESS PLAN. In the event of a material change in the terms of the automatic renewal, we will provide you with notice of the material change and provide information regarding how to cancel your Business Plan in a manner that is capable of being retained by you. All charges are in US Dollars. Any reduction in the applicable Business License Fee (for example, where you reduce the number of Business Users on your account) will take effect in your next Renewal Business Term period following notification. Any increase in the applicable Business License Fee (for example, where you upgrade your package or add additional Business Users) will take

effect from the date of notification (so that a pro-rata payment shall be made for the remainder of the Business Term, with the full payment to be made from the beginning of the following Renewal Business Term). *By way of example, if you select 100 Individual Business Subscriptions under a 1-year Business Plan beginning January 1, 2021, we will process your Business Payment Method or invoice you for the 1-year cost of 100 Individual Business Subscriptions on the renewal date. Your 100 Individual Business Subscriptions will expire on December 31, 2021, and unless you notify us at least 30 days prior to December 31, 2021, we will renew your Business Plan on or around January 1, 2022 for one year and on or around January 1st each year thereafter for 100 Individual Business Subscriptions at the then-applicable price for such subscriptions.*

IV. Suspension Because of Nonpayment. If payment is not received within the required time period, or if we are unable to renew your Business Plan based on inaccurate or outdated Business Payment Method information, we may suspend your access to the Site (including all of your Business Users' access) until payment is received. In the event we suspend your Business Plan because of nonpayment, no additional time will be added to the then-applicable Business Term.

V. Taxes. The Business License Fee is exclusive of taxes. When processing your Business Payment Method or invoicing, we may include a separate charge for any applicable sales, use, value-added, or excise taxes, and any other similar taxes, duties or charges of any kind, other than taxes on Interplay Learning's income, imposed by any federal, state, or local governmental entity on any amounts payable by you under these Terms of Use or any Sales Order. We will remit taxes collected, if any, to the appropriate taxing authority.

4. Additional Subscriptions. As a Business Plan subscription holder, you or your Plan Manager may purchase additional Individual Business Subscriptions during the Initial Business Term or any Renewal Business Term, as applicable. The Business Users' access to the Site by way of the new subscriptions is conditioned upon timely payment of the applicable Business License Fee for each Individual Business Subscription added, which will be prorated for the number of days remaining in your then-current Business Term and paid by your Business Payment Method on file (or invoice), as selected during Checkout.
5. Designation of Business Users. As a Business Plan subscription holder (depending on your Plan), you may designate one or more of your employees to act as plan manager(s) (each, a "**Plan Manager**") with regard to your Business Plan. Any Plan Manager you authorize will have the ability to purchase Individual Business Subscriptions and assign and authorize them to your Business Users via the Site's Business Plan administrative functionalities. If your Plan requires it, or if you desire, we can assign and authorize Individual Business Subscriptions after your purchase so long as you provide us with the first name, last name, and email address of the individuals that will be your Business Users entitled to access the Site subject to these Terms of Use. Contact your designated Interplay Learning Sales Representative or sales@interplaylearning.com for more details.

6. Individual Business Subscription Transfers. You acknowledge and agree that the Individual Business Subscriptions granted under these Terms of Use under each Sales Order are specific to the individual Business Users you designate. Except as set forth in a Sales Order or in the next sentence, the Individual Business Subscriptions granted under these Terms of Use are *not transferable* to any other individual for any reason, and you will take all commercially reasonable steps to prevent your Business Users from granting access to the Site to any other individuals. Notwithstanding the foregoing, if one of your employees or affiliate employees registered as an individual Business User ceases to be employed by you or an affiliate prior the expiration of the Business Term, you may notify us by emailing support@interplaylearning.com and (i) request that we de-activate such former employee's access to use the Site and (ii) designate a replacement employee or affiliate employee as a new Business User for the remainder of the applicable Business Term.
7. Your Marks. As a Business Plan subscription holder, you agree that we may use your logo and name; provided that such use may be for informational purposes only in marketing efforts, solely for the purpose of identifying you as a customer of Interplay Learning, and for no other purpose.

5. PROPRIETARY MATERIALS

- (a) Use of Interplay Learning's Proprietary Materials. The Site contains copyrighted materials, trademarks, proprietary and confidential information, and intellectual property of Interplay Learning and licensors of Interplay Learning (collectively, "**Proprietary Materials**"), including without limitation source code, video, text, software, photos, graphics, images, music, and sound. You agree not to modify, publish, transmit, participate in the transfer or sale of, create derivative works of, or in any way exploit, in whole or in part, any Proprietary Materials. Proprietary Materials may only be accessed through the Site or via agreement through provisioned SCORM Content into your content provider/LMS. The applicable License granted you by these Terms of Use is a right of access through the Site only, and does not grant to you any right to download or store any Proprietary Materials in any medium, other than (i) that downloadable content that may be provided for certain training courses, including exercise files, course slides, and sample code, (ii) files that are automatically cached by your web browser for display purposes, and (iii) if we provide desktop, mobile, or other applications for download, a single copy of such application for your computer or mobile device solely for your own, personal use, provided you agree to be bound by an applicable end user license agreement for such application (collectively, the "**Authorized Downloadable Materials**"). Authorized Downloadable Materials are held by you pursuant to a limited revocable right only, and are subject to all restrictions described herein, including the prohibition on further transfer, sale, creation of derivative works, or exploitation in any manner.
- (b) Reservation of Rights. Interplay Learning reserves all intellectual property rights to the Proprietary Materials, other than as specifically granted under the applicable License granted you under these Terms of Use. No posting, copying, transmission, retransmission, distribution, redistribution, publication, republication, decompilation, disassembling, reverse engineering, or otherwise reproducing, storing, transmitting, modifying, or commercially exploiting any Proprietary Materials in any form or by any means, for any purpose, is permitted without our express written permission.

- (c) Interplay Learning Copyright and Marks. The entire Site is © 2017 - 2019 Interplay Learning, Inc. All Rights Reserved. Complying with all applicable copyright laws is your responsibility. "Interplay Learning" and other Interplay Learning marks and logos are service marks and trademarks of Interplay Learning.
- (d) Equitable Relief. You acknowledge that a breach of any proprietary rights described in these Terms of Use may cause us irreparable damage, for which the award of damages would not be adequate compensation. Consequently, you agree that we may institute an action to enjoin you from any and all acts in violation of those provisions, which remedy will be cumulative and not exclusive, and we may seek the entry of an injunction enjoining any breach or threatened breach of those provisions, in addition to any other relief to which we may be entitled at law or in equity.
- (e) Third-Party Marks. Other trademarks, service marks, and logos used throughout the Site are the trademarks, service marks, or logos of their respective owners. These may include: Apple®, the Apple logo, and iPad, which are trademarks of Apple Inc., registered in the U.S. and other countries; Android®, Google Play® and the Google Play logo, which are trademarks of Google Inc; and PayPal®, which is a registered trademark of PayPal, Inc.
- (f) Violation of Copyright or Intellectual Property Laws. We respect the intellectual property of others, and we ask our users to do the same. We may, in appropriate circumstances and at our sole discretion, remove or disable access to any materials on the Site that we believe (or are notified) may infringe on the rights of others. If you believe that your work has been copied in a way that constitutes copyright infringement or otherwise infringes on your intellectual property rights, please report it to us promptly.

6. MOBILE AND OTHER DEVICES

If you use a mobile device or Interplay Learning-provided mobile application to access the Site, the following additional terms and conditions ("**Mobile Terms**") also apply:

1. You agree that you are solely responsible for all message and data charges that apply to use of your mobile device to access the Site. All such charges are billed by and payable to your mobile service provider. Please contact your participating mobile service provider for pricing plans, participation status, and details.
2. You understand that wireless service may not be available in all areas at all times and may be affected by product, software, coverage, or service changes made by your service provider or otherwise. Additional terms and conditions may apply to your use of our mobile applications based on the type of mobile device that you use.
3. YOUR ACCESS TO OR USE OF THE SITE VIA YOUR MOBILE DEVICE OR INTERPLAY LEARNING- PROVIDED MOBILE APPLICATION CONFIRMS YOUR AGREEMENT TO THESE TERMS OF USE, INCLUDING BUT NOT LIMITING THESE MOBILE TERMS.

7. USER CONTENT AND FEEDBACK

1. **Interactive Features.** The Site from time to time may provide you with the ability to upload, post, submit, publish, or transmit to other users or persons (hereinafter, “**post**”) via online forums, chat capabilities, user discussion groups, blogs, online profiles, or other online forums (“**Interactive Features**”).
2. **User Content.** The Interactive Features are intended to provide you and other users with valuable resources on selected topics. Some, if not most, of the content found on such Interactive Features is provided by third-party users, and not us (such content, “**User Content**”). The third-party user (including you, if applicable) is solely responsible for the User Content and for complying with applicable laws relating thereto.
 1. All User Content you submit to the Interactive Features (including for inclusion on the Site) or that is otherwise made available to Interplay Learning will be considered non-confidential and non-proprietary, and by so doing, you hereby grant us and our affiliates and service providers, and each other and our respective licensees, successors, and assigns the right to use, reproduce, modify, perform, display, distribute, and otherwise disclose to third parties any such material.
 2. To the extent that you provide any User Content, you represent and warrant that (a) you have all necessary rights, licenses and/or clearances to provide such User Content as provided above, (b) such User Content is accurate and reasonably complete, (c) as between you and Interplay Learning, you are responsible for the payment of third-party fees, if any, related to the provision and use of such User Content, (d) such User Content does not and will not infringe or misappropriate any third-party rights or constitute a fraudulent statement or misrepresentation or unfair business practices, and (e) you agree to comply with all applicable rules regarding online conduct and acceptable content we may post on the Site or Interactive Features from time to time, including those set forth in Section 8 below.
 3. **Feedback.** We welcome and encourage you to provide feedback, comments, and suggestions for improvements to the Site (“**Feedback**”). You acknowledge and agree that any and all Feedback provided by way of the Site or otherwise will be the sole and exclusive property of Interplay Learning, and you hereby irrevocably assign to Interplay Learning and agree to irrevocably assign to Interplay Learning all of your right, title, and interest in and to all Feedback, including without limitation all worldwide patent rights, copyright rights, trade secret rights, and other proprietary or intellectual property rights therein. At our request and expense, you will execute documents and take such further acts as we may reasonably request to assist Interplay Learning to acquire, perfect, and maintain its intellectual property rights and other legal protections for the Feedback.
 4. **Monitoring and Enforcement.** We have the right to:
 1. remove or refuse to post any User Content or Feedback for any or no reason in our sole discretion;
 2. take any action with respect to any User Content or Feedback that we deem necessary or appropriate in our sole discretion, including if we believe that such User Content or Feedback violates these Terms of Use, infringes any intellectual property right or other right of any person or entity, threatens the personal safety of users of the Site or the public, or could create risk or liability for Interplay Learning;

3. disclose your identity or other information about you to any third party who claims that material posted by you violates their rights, including their intellectual property rights or their right to privacy;
4. take appropriate legal action, including without limitation referral to law enforcement for any illegal or unauthorized use of the Site; and
5. terminate or suspend your access to all or part of the Site for any violation of these Terms of Use; and

Without limiting the foregoing, we have the right to fully cooperate with any law enforcement authorities or court order requesting or directing us to disclose the identity or other information of anyone posting any User Content, Feedback, or materials on or through the Site. YOU WAIVE AND HOLD HARMLESS US AND OUR AFFILIATES, LICENSEES, AND SERVICE PROVIDERS FROM ANY CLAIMS RESULTING FROM ANY ACTION TAKEN BY US OR ANY OF THE FOREGOING PARTIES DURING OR AS A RESULT OF ITS INVESTIGATIONS AND FROM ANY ACTIONS TAKEN AS A CONSEQUENCE OF INVESTIGATIONS BY EITHER US, SUCH PARTIES, OR LAW ENFORCEMENT AUTHORITIES.

Notwithstanding anything to the contrary, we have no obligation to review any User Content, Feedback, or materials before they are posted on the Site, and we cannot ensure prompt removal of objectionable material after it has been posted. Accordingly, we assume no liability for any action or inaction regarding transmissions, communications, or content provided by any user or third party, and we have no liability or responsibility to anyone for performance or nonperformance of the activities described in this Section.

8. INTERPLAY LEARNING “Dos and Don’ts”

You acknowledge and agree that the Site contains content and materials that are viewable through online streaming methods and they are not to be downloaded by you (or your Business Users), except under the limited circumstances and for the limited times as permitted by your Plan. In addition, you agree to adhere and abide to the following DOs and DON'Ts.

(a) DOs (User Obligations). You acknowledge and agree that you (and your Business Users) will:

- Comply with all applicable federal, state, local, or international law or regulations (including without limitation any laws regarding copyright, intellectual property, privacy and personal identity, or the export of data or software to and from the U.S. or other countries);
- Provide true and accurate information to us and keep it updated;
- Use the Interactive Features in a respectful manner; and
- Exit from your account at the end of each session or use of the Site.

(b) DON'Ts (Prohibited Conduct). You acknowledge and agree that you (and your Business Users), **will not**:

- reproduce, redistribute, transmit, assign, sell, broadcast, rent, share, lend, modify, adapt, edit, create derivative works of, license, capture, download, save, upload, print, or otherwise transfer or retain information or content available on the Site or from a secondary learning management or content system other than with regard to Authorized Downloadable Materials, subject to the limited permissions set forth herein;
- manually or systematically harvest, scrape, collect or otherwise extract information or data contained on the Site or Interplay Learnings' provisioned SCORM content, other than permitted use of Authorized Downloadable Materials or temporary storage of video materials for offline viewing (if permitted by your Plan).
- permit or provide others access to the Site or Interplay Learning's SCORM content using your Account Information or otherwise, or the Account Information of another authorized user;
- impersonate or attempt to impersonate Interplay Learning, an Interplay Learning employee, another user, or any other person or entity (including without limitation by using e-mail addresses or Account Information associated with any of the foregoing) or provide incorrect or knowingly false information;
- remove or modify any copyright, trademark, legal notices, or other proprietary notations from the Proprietary Materials or any other content available on the Site;
- violate or attempt to violate the Site's security mechanisms, attempt to gain unauthorized access to the Site or assist others to do so, or otherwise breach the security of the Site or corrupt the Site in any way;
- co-brand or frame the Site or establish a link in such a way as to suggest any form or association, approval, or endorsement on our part, without the prior express written permission of an authorized representative of Interplay Learning;
- use any portion of the Site to aid in transmitting, or procure the sending of, any advertising or promotional material, including any "junk mail", "chain letter", or "spam" or any other similar solicitation;
- post to the Interactive Features or any other portion of the Site any inappropriate, offensive, racist, hateful, sexist, pornographic, false, misleading, infringing, defamatory, or libelous content;

- use the Site or its contents (including User Content) to recruit, solicit, or contact in any form other users or potential users for employment or contracting for a business not affiliated with us without the prior express written permission of an authorized representative of Interplay Learning;
 - use or attempt to use the Site to store or transmit software viruses, worms, time bombs, Trojan horses, or any other computer code, files, or programs designed to interrupt, destroy, or limit the functionality of any computer software, hardware, or telecommunications equipment;
 - decompile, reverse engineer, or otherwise attempt to obtain the source code of the Site or course content provisioned to you;
 - engage in any conduct that restricts or inhibits anyone's use or enjoyment of the Site, or which, as determined by us, may harm us or users of the Site or expose them to liability; and/or
 - use the Site in any manner that could disable, overburden, damage, or impair the Site, interfere with any other party's use of the Site (including their ability to engage in real time activities through the Site), or otherwise attempt to interfere with the proper working of the Site;
 - submit any User Content to the Site that contravenes the Anti-Discrimination Policy.
- (c) Restricted Use of Site. We reserve the right to monitor use of the Site and to suspend, revoke, deny, disable, or terminate your access or the access of any of your Business Users if you or they have violated any provisions of these Terms of Use (including the DOs and DON'Ts above) or if your or their usage behavior exceeds normal limits, as determined in our sole discretion. The term "**normal limits**" will be determined solely by Interplay Learning.
- (d) Restricted Use of Provisioned SCORM or LTI Content. We reserve the right to monitor use of our Course Content within other platforms and to suspend, revoke, deny, disable, or terminate your access or the access of any of your Business Users if you violate any provisions of these Terms of Use (including the DOs and DON'Ts above) or if your usage behavior exceeds normal limits, as determined in our sole discretion. The term "**normal limits**" will be determined solely by Interplay Learning.
- (e) Geographic Restrictions. No Site content or materials may be downloaded or exported

(i) into (or to a resident of) Cuba, Libya, North Korea, Iran, Syria, Russia, or any other country subject to an applicable embargo or other trade restriction by any government regulatory agency having jurisdiction, or (ii) by or to any person or entity on the United States Treasury Department's list of Specially Designated Nationals (SDN) or the United States Commerce Department's Consolidated Screening List (CSL). By accessing, using the Site, or provisioning SCORM/LTI content, you represent and warrant that you are not located in, under the control of, or a national or resident of any such country or on any such list. Although the Site may be accessible worldwide, we make no representation that the Site is appropriate or available for use in locations outside the United States, and accessing the Site or provisioned content from territories where its contents or materials are illegal, is prohibited. Those who choose to access the Site from other locations do so at their own initiative and are responsible for compliance with local laws. Any offer for any product, service, and/or information made in connection with the Site is void where prohibited.

9. REPRESENTATION, WARRANTIES, AND COVENANTS

(a) Your Representations and Warranties. You represent and warrant that:

(i) You are (i) 18 years of age or older or an emancipated minor, and (ii) are fully able and competent to form a binding contract with Interplay Learning by entering into these Terms of Use.

(ii) You are over the age of 13 as NO portions of the Site are intended for children under 13. If you are under 13 years of age, you may not register for an account or otherwise use the Site or our Course Content;

(iii) You are solely responsible for all service, telephony, data charges, and other fees and costs associated with your access to and use of the Site, including without limitation maintaining all internet, browser software and extensions, computer hardware, telephone, and other equipment required for such access.

(b) Authority. You and Interplay Learning each represent, warrant, and covenant that it has the full power and authority to: (i) enter into an agreement subject to these Terms of Use; (ii) perform its obligations hereunder, and that its performance hereunder does not conflict with, limit, or be contrary to any other agreement; (iii) and that by so doing, it does not violate any applicable laws or any contractual relationship.

(c) Interplay Learning Intellectual Property. We represent, warrant, and covenant that: (i) we have and will have all rights, titles, licenses, intellectual property, permissions and approvals necessary in connection with our performance under these Terms of Use to grant you the License and rights granted hereunder; and (ii) neither the Site (including the Proprietary Materials), nor the provision or utilization thereof as contemplated under these Terms of Use, will infringe, violate, trespass or in any manner contravene or breach or constitute the unauthorized use or misappropriation of any intellectual property of any third party.

- (d) Reliance and Functionality. Interplay Learning does not warrant that the content or functions of the Site will meet your requirements or that the operation of the Site will be uninterrupted or error free. The content and materials presented on or through the Site, or via SCORM, are made available solely for general information purposes. We do not warrant the accuracy, completeness, or usefulness of this information. Any reliance you place on such information is strictly at your own risk. We disclaim all liability and responsibility arising from or related to any reliance placed on such materials by you, your Business Users, or any other visitor to the Site or provisioned SCORM content, or by anyone who may be informed of any of its contents. In addition, you must provide access to a test account within your chosen external LMS or content provider in order to receive support from Interplay Learning when using provisioned SCORM content. Failure to provide a test account may result in an inability to provide user assistance. The Site (including without limitation our blogs and Interactive Features) may include content provided by third parties, including materials provided by other users, bloggers, or third-party licensors, syndicators, aggregators, and reporting services. All statements and opinions expressed in these materials, and all articles and responses to questions and other content, other than the content provided by Interplay Learning, are solely the opinions and the responsibility of the person or entity providing those materials. These materials do not necessarily reflect the opinion of Interplay Learning. We are not responsible or liable to you or any third party, for the content or accuracy of any materials provided by any third parties.
- (e) Availability of Site. You recognize that the traffic of data through the Internet may cause delays during your use of or access to the Site, and accordingly, you agree not to hold us liable for delays that are ordinary in the course of Internet use. You further acknowledge and accept that the Site may not be available on a continual 24- hour basis due to such delays, delays caused by our upgrading, modification, or standard maintenance of the Site, or any other delays outside of our control.
- (f) Third-party services, links, SSO, OAuth, etc. If any portion of the Site contains services (e.g., discussion forums), links, resources, or materials provided by third parties, including without limitation URL links, discussion forum engines, single-sign on services (SSO), OAuth resources (e.g., Facebook, GitHub, LinkedIn, etc.), or capabilities to share to social media websites, these are provided for your convenience only. This may include links contained on courses or in advertisements, including banner advertisements and sponsored links on the Site. We have no control over the contents, software, or privacy practices of these third-party services, links, resources, or materials, and accept no responsibility for them or for any loss or damage that may arise from your use of them—if you access or use them, you do so entirely at your own risk.

10. INDEMNIFICATION

- (a) Indemnification. To the extent permitted by law, each party agrees to defend, indemnify and hold harmless the other party, its directors, employees, licensors, independent contractors, providers, subsidiaries, and affiliates, and its and their respective officers, directors, employees, contractors, agents, licensors, suppliers, successors and assigns (each, a “**Interplay Learning Indemnitee**”) from and against any claims, liabilities, damages, judgments, awards, losses, costs, expenses or fees (including reasonable attorneys’ fees) (hereinafter, “**Claims**”) arising out of or relating to: (i) your violation of these Terms of Use or the Mobile Terms; (ii) your User Content or Feedback posted to the Site; (iii) any use by you of the Site’s material, content, services, or products other than as expressly authorized in these Terms of Use; or (iv) your use of any information obtained from the Site.

- (b) Indemnification Procedure. You agree to cooperate as fully as reasonably required in the defense of any Claims, including asserting any available defenses. We reserve the right, at our own expense, to assume the exclusive defense and control of any Claims or matter otherwise subject to indemnification by you and you may not in any event settle any Claims without our prior written consent.

11. NO WARRANTY; LIMITATIONS ON LIABILITY

1. No Warranty. THE SITE IS PROVIDED ON AN "AS IS" AND "AS AVAILABLE" BASIS, WITHOUT WARRANTY OF ANY KIND, WHETHER EXPRESSED OR IMPLIED. NEITHER INTERPLAY LEARNING NOR ANY PERSON OR ENTITY ASSOCIATED WITH INTERPLAY LEARNING MAKES ANY PROMISE, WARRANTY, OR REPRESENTATION WITH RESPECT TO THE COMPLETENESS, SECURITY, RELIABILITY, QUALITY, ACCURACY OR AVAILABILITY OF THE SITE. WITHOUT LIMITING THE FOREGOING, NEITHER INTERPLAY LEARNING NOR ANY PERSON OR ENTITY ASSOCIATED WITH INTERPLAY LEARNING PROMISES, REPRESENTS OR WARRANTS THAT THE SITE OR CONTENT OBTAINED THROUGH THE SITE OR ANY PORTION THEREOF WILL BE ACCURATE, RELIABLE, ERROR-FREE OR UNINTERRUPTED, THAT DEFECTS WILL BE CORRECTED, THAT THE SITE OR THE SERVER THAT MAKES THEM AVAILABLE ARE FREE OF VIRUSES OR OTHER HARMFUL COMPONENTS, OR THAT THE SITE OR ITS CONTENT OR MATERIALS WILL OTHERWISE MEET YOUR NEEDS OR EXPECTATIONS. INTERPLAY LEARNING HEREBY DISCLAIMS ALL WARRANTIES OF ANY KIND, WHETHER EXPRESS OR IMPLIED, STATUTORY OR OTHERWISE, INCLUDING BUT NOT LIMITED TO ANY WARRANTIES OF MERCHANTABILITY, NON-INFRINGEMENT, AND FITNESS FOR PARTICULAR PURPOSE.
2. Limitation on Liability. IN NO EVENT WILL INTERPLAY LEARNING, ITS AFFILIATES, OR THEIR LICENSORS, SERVICE PROVIDERS, EMPLOYEES, AGENTS, OFFICERS, OR DIRECTORS BE LIABLE TO YOU, ANY OF YOUR AFFILIATES OR BUSINESS USERS, OR ANY THIRD PARTY WITH RESPECT TO THE SITE OR THE SUBJECT MATTER OF THESE TERMS OF USE UNDER ANY CONTRACT, NEGLIGENCE, TORT, STRICT LIABILITY, OR OTHER LEGAL OR EQUITABLE THEORY, EVEN IF FORESEEABLE, FOR: (i) ANY AMOUNT IN THE AGGREGATE IN EXCESS OF THE GREATER OF THE AMOUNT YOU HAVE PAID TO INTERPLAY LEARNING FOR THE SITE IN THE ONE (1) YEAR IMMEDIATELY PRIOR TO LIABILITY ARISING; (ii) PERSONAL INJURY; (iii) ANY SPECIAL, INDIRECT, INCIDENTAL, PUNITIVE, OR CONSEQUENTIAL DAMAGES OF ANY KIND WHATSOEVER, INCLUDING WITHOUT LIMITATION LOSS OF REVENUE, LOSS OF PROFITS, LOSS OF BUSINESS, LOSS OF ANTICIPATED SAVINGS, LOSS OF USE, OR LOSS OF GOODWILL; (iv) DATA LOSS OR COST OF PROCUREMENT OF SUBSTITUTE GOODS OR SERVICES; (v) ANY MATTER BEYOND OUR REASONABLE CONTROL; OR (vi) ANY ACTIONS OF, OR SERVICES PROVIDED BY, THIRD-PARTY SERVICE PROVIDERS OR INDEPENDENT CONTRACTORS (INCLUDING MENTORS) PROVIDING SERVICES ON BEHALF OF INTERPLAY LEARNING OR VIA THE SITE.



CERTIFICATE OF LIABILITY INSURANCE

DATE (MM/DD/YYYY)

07/19/2022

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).

PRODUCER Lumen Insurance Technologies, LLC 119 Nueces St Second Floor Austin TX 78701	CONTACT NAME: David Wayne Perez PHONE (A/C, No, Ext): (512) 937-3289 E-MAIL ADDRESS: dperez@lumeninsure.com FAX (A/C, No): (512) 937-3289																					
INSURED Interplay Learning, Inc. 3500 Jefferson Street Suite 206 and 320 Austin TX 78731	<table><tr><th colspan="2">INSURER(S) AFFORDING COVERAGE</th><th>NAIC #</th></tr><tr><td>INSURER A:</td><td>VALLEY FORGE INS CO</td><td>20508</td></tr><tr><td>INSURER B:</td><td>CONTINENTAL CAS CO</td><td>20443</td></tr><tr><td>INSURER C:</td><td>CONTINENTAL INS CO</td><td>35289</td></tr><tr><td>INSURER D:</td><td></td><td></td></tr><tr><td>INSURER E:</td><td></td><td></td></tr><tr><td>INSURER F:</td><td></td><td></td></tr></table>	INSURER(S) AFFORDING COVERAGE		NAIC #	INSURER A:	VALLEY FORGE INS CO	20508	INSURER B:	CONTINENTAL CAS CO	20443	INSURER C:	CONTINENTAL INS CO	35289	INSURER D:			INSURER E:			INSURER F:		
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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 SUBR INSD WVD	POLICY NUMBER	POLICY EFF (MM/DD/YYYY)	POLICY EXP (MM/DD/YYYY)	LIMITS
A	<input checked="" type="checkbox"/> COMMERCIAL GENERAL LIABILITY <input type="checkbox"/> CLAIMS-MADE <input checked="" type="checkbox"/> OCCUR GEN'L AGGREGATE LIMIT APPLIES PER: <input checked="" type="checkbox"/> POLICY <input type="checkbox"/> PRO-JECT <input type="checkbox"/> LOC OTHER:	X	6025563662	03/31/2022	03/31/2023	EACH OCCURRENCE \$ 2,000,000 DAMAGE TO RENTED PREMISES (Ea occurrence) \$ 300,000 MED EXP (Any one person) \$ 10,000 PERSONAL & ADV INJURY \$ 1,000,000 GENERAL AGGREGATE \$ 4,000,000 PRODUCTS - COMP/OP AGG \$ 4,000,000 \$
A	<input type="checkbox"/> AUTOMOBILE LIABILITY <input type="checkbox"/> ANY AUTO <input checked="" type="checkbox"/> OWNED AUTOS ONLY <input type="checkbox"/> SCHEDULED AUTOS <input checked="" type="checkbox"/> HIRED AUTOS ONLY <input type="checkbox"/> NON-OWNED AUTOS ONLY	X	6025563662	03/31/2022	03/31/2023	COMBINED SINGLE LIMIT (Ea accident) \$ 1,000,000 BODILY INJURY (Per person) \$ BODILY INJURY (Per accident) \$ PROPERTY DAMAGE (Per accident) \$ \$
B	<input checked="" type="checkbox"/> UMBRELLA LIAB <input type="checkbox"/> EXCESS LIAB DED <input checked="" type="checkbox"/> RETENTION \$ 10000	X	6025564472	03/31/2022	03/31/2023	EACH OCCURRENCE \$ 1,000,000 AGGREGATE \$ \$
C	WORKERS COMPENSATION AND EMPLOYERS' LIABILITY ANY PROPRIETOR/PARTNER/EXECUTIVE OFFICER/MEMBER EXCLUDED? (Mandatory in NH) If yes, describe under DESCRIPTION OF OPERATIONS below	N/A	7014748569, 7014727060	03/31/2022	03/31/2023	<input checked="" type="checkbox"/> PER STATUTE <input type="checkbox"/> OTH-ER E.L. EACH ACCIDENT \$ 1,000,000 E.L. DISEASE - EA EMPLOYEE \$ 1,000,000 E.L. DISEASE - POLICY LIMIT \$ 1,000,000
B	Errors & Omissions including Cyber		6025504479	03/31/2022	03/31/2023	Each wrongful act 5,000,000 Aggregate 5,000,000

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

Certificate holder is listed as additional insured.

CERTIFICATE HOLDER

Board of Education of Jefferson County
Attn: Insurance/Real Estate Dept
3332 Newburg Road
Louisville

KY 40218

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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