



Board of Education Agenda Request

Name/Business Name: Marie Bouma

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Address or Site/Department:

Business and Finance Department

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Regular Meeting Special Meeting Work Session

Requested Meeting Date: November 15, 2023

Agenda Topic:

Consider approval of Master Service Agreement between Dreamscape Learn, Inc. and Alamogordo Public Schools and any resulting Purchase Requisitions.

Agenda Category: Action Item Presentations/Recognitions
 Consent Agenda (Action) Departmental Reports
 Information to the Board APS Board Policy Manual

Name and Title of Person(s) Presenting Agenda Item:

Marie Bouma Chief Procurement Officer

Please e-mail this form to boardbook@alamogordoschools.org or lisa.patterson@alamogordoschools.org and attach all supporting documents to the e-mail.

Alamogordo Public Schools
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Alamogordo, NM 88311-0650



Office of Business and Finance

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The following contract is an unsigned draft of the final contract which is awaiting signature from the contractor. This draft will be replaced by the signed final copy upon receipt.



Customer:

Customer Fiscal Year:

MASTER LICENSE, SUPPLY AND SERVICES AGREEMENT

This Master License, Supply and Services Agreement (this “**Agreement**”) is entered into this ____ day of _____, 202__ (the “**Effective Date**”) by and between Dreamscape Learn, Inc., a Delaware corporation (“**DSL**”), and [Customer Entity Name and Jurisdiction] (“**Customer**”). Customer and DSL are sometimes referred to in this Agreement collectively as the “**Parties**” and each individually as a “**Party**.”

1. **Definitions.** Capitalized terms used but not otherwise defined in this Agreement have the meanings given to them in **Schedule 1**.
2. **Pre-Construction, Procurement, Deployment and Integration.**
 - 2.1 **Site Preparation.** Customer, at its sole expense, shall provide a space meeting the minimum requirements specified by DSL, in dust-free condition and in accordance with the technical requirements provided by DSL. Customer shall be responsible for all architecture and engineering (including securing the necessary permits and licenses), documentation, and general construction necessary for site preparation.
 - 2.2 **Procurement.** **Schedule 2** (the “**Pricing Schedule**”) sets forth the number of Pod(s), the capacity and specification of each such Pod, and the purchase price for the Pod(s) that Customer is purchasing from DSL. DSL hereby sells, and Customer hereby buys, the Pod(s) set forth on the Pricing Schedule.
 - 2.3 **Deployment.** A statement of work relating to pre-construction, delivery, installation and configuration of the Pod(s) at the Customer Site (“**Deployment**”) is attached as **Schedule 3** (the “**Deployment SOW**”). Deployment may involve, as applicable: (a) preconstruction services, including for example, development of sketches, diagrams and exhibits; providing facility and design input; site survey(s); attending coordination meetings with Customer’s architect, engineer(s) and/or contractor(s); and reviewing RFIs and submittals; (b) procurement; (c) shipping; (d) installation; (e) software commissioning; (f) pod operations training; (g) project administration; and (h) other professional services relating to the above. For the avoidance of doubt, DSL does not provide any permitting or construction documents. The Deployment SOW sets forth the description, scope, responsibility matrix, total cost and payment schedule, in each case based on the information and assumptions set forth therein. Each Party will carry out its obligations as set forth in the Deployment SOW. Commencement of Deployment remains contingent on the condition of the Customer Site satisfying the DSL’s requirements described above. Material deviations or modifications in scope, timing, permitting or other assumptions outside of DSL’s control (a “**Material Change**”) will

cause an increase in the amount payable by Customer, as advised by DSL as soon as practicable following a Material Change.

- 2.4 Enterprise Systems Integration. A statement of work relating to integration of the Platform within the Customer's enterprise systems (the "**Integration**") is attached as **Schedule 4** (the "**Integration SOW**"). The Integration SOW sets forth the description, scope, responsibility matrix, total cost and payment schedule, in each case based on the information and assumptions set forth therein. Each Party will carry out its obligations as set forth in the Integration SOW. A Material Change will cause an increase in costs and fees payable by Customer, as advised by DSL as soon as practicable following a Material Change.
- 2.5 Change Order Procedure. Revisions to the Deployment SOW or Integration SOW, other than those caused by a Material Change (which are addressed above), may be requested by a Party at any time upon the submission of a written change request ("**Change Request**"). If Customer initiates the Change Request, then within thirty (30) days of receipt of a Change Request from Customer, DSL will submit a change order ("**Change Order**"), including time and costs, for such changes to Customer. If DSL initiates the Change Request, the Change Order shall be included with the Change Request. The Change Order shall become binding upon the Parties only upon the execution thereof by the Parties, after which time the Deployment SOW and/or Integration SOW, as applicable, will be deemed amended by such Change Order.

3. Platform Site License.

- 3.1 Limited License. Subject to the terms of this Agreement, DSL hereby grants Customer a limited, non-exclusive, non-assignable, non-transferable right and license to use the Platform, from and after the Go Live Date and continuing during the Term hereunder, with Customer's Students and Instructors (the "**Platform Site License**"). With the exception of routine functionality testing, Customer shall not use the Platform until the Go Live Date. Customer shall pay DSL an annual Platform Site License fee ("**Platform Site License Fee**") based on pricing and eligibility criteria defined in the Pricing Schedule. Customer acknowledges that the Platform Site License Fee is calculated on the basis of the total Students enrolled with Customer, whether or not Customer elects to make the Platform available to all such Students. The Platform Site License Fee shall be payable as set forth in **Section 11** below.
- 3.2 Backstage Manager. The Platform Site License includes the limited, non-exclusive, non-assignable, non-transferable right and license to use DSL's portal installed at the Customer Site for administrators to manage the Pod configuration and Equipment, referred to as the Backstage Manager.
- 3.3 Control Center. The Platform Site License includes the limited, non-exclusive, non-assignable, non-transferable right and license to use DSL's cloud-based portal for Instructors and Students to schedule, monitor, and manage DSL learning experiences, referred to as the Control Center. Control Center shall be hosted by DSL.

3.4 Software Development Kit. The Platform Site License includes the limited, non-exclusive, non-assignable, non-transferable right and license to use the SDK in accordance with the terms of this Agreement.

4. Courseware.

4.1 Limited License. Subject to the terms of this Agreement, DSL hereby grants Customer a limited, non-exclusive, non-assignable, non-transferable right and license to display, perform and/or operate the Courseware identified on the Pricing Schedule, from and after the Go Live Date and continuing during the Term hereunder, to Customer's Students (the "**Courseware License**"). DSL will have no obligation to customize or otherwise modify Courseware. Customer shall not publish, duplicate, modify, make derivative works of, or otherwise use Courseware except as expressly provided herein. With the exception of routine functionality testing, Customer shall not use the Courseware until the Go Live Date.

4.2 Modalities. Current functionality of Courseware includes use by Students who are on premises at the Customer Site, either inside the Pod(s) or using one of the laptop or desktop computers connected to the Platform and streaming to laptop or desktop computers for remote Students. Other functionality, such as use by Students remotely through DSL-supported stand-alone VR headsets is currently under development, and DSL shall make this functionality available to Customer when DSL makes this functionality generally available to its other customers, on generally similar commercial terms.

4.3 Courseware License Fee. For each Courseware licensed hereunder, Customer shall pay DSL a courseware license fee ("**Courseware License Fee**"), which for any Fiscal Year shall be the greater of: (a) the minimum Courseware License Fee set forth for such Fiscal Year in the Pricing Schedule (the "**Minimum Courseware License Fee**"); or (b) the fee calculated totaling, for each Academic Term which concluded during such Fiscal Year, the number of Students in such Academic Term who accessed the Courseware multiplied by the fee per Student per Academic Term for such Courseware indicated on the Pricing Schedule (the "**Calculated Courseware License Fee**"). The Courseware License Fee shall be payable as set forth in Section 11 below.

4.4 Learning Materials. The Courseware License Fee includes any accompanying Learning Materials that DSL may deliver relating to Courseware, and Customer shall have the limited right to use such bundled Learning Materials only in connection with its use of Courseware. Customer shall not publish, duplicate, modify, make derivative works of, or otherwise use the Learning Materials except as expressly provided herein.

(a) Additional Courseware. Customer acknowledges that this Agreement does not grant Customer any right to any additional Courseware that may be developed by or on behalf of DSL, nor does it obligate DSL to create or provide any additional Courseware other than the Courseware specifically identified in the Pricing Schedule. Without limiting the foregoing, should DSL develop

additional Courseware that it makes generally available to its other customers, such Courseware may be made available to Customer on terms to be mutually agreed by each Party.

5. Immersive Classroom Software.

- 5.1 Limited License. Subject to the terms of this Agreement, DSL hereby grants Customer a limited, non-exclusive, non-assignable, non-transferable right and license to display, perform, and/or operate the Immersive Classroom Software, from and after the Go Live Date and continuing during the Term hereunder, with Customer's Students and Instructors (the "**Immersive Classroom Software License**"). With the exception of routine functionality testing, Customer shall not use the Immersive Classroom Software until the Go Live Date.
- 5.2 Modalities. Current functionality of the Immersive Classroom Software is limited to use by Students who are on premises at the Customer Site, inside the Pod(s). Functionality for use by Students remotely is currently under development, and DSL shall make this functionality available to Customer when DSL makes this functionality generally available to its other customers on generally similar commercial terms.
- 5.3 Immersive Classroom Software Environments. DSL will provide a set of virtual environments as part of the Immersive Classroom Software License. Other virtual environments may be or become available, and DSL may make such environments available to Customer to the extent DSL generally makes such environments available to DSL's other customers on pricing and other terms to be mutually agreed by each Party. Customer shall have the limited right to use the virtual environments only in connection with its use of the Immersive Classroom Software License.
- 5.4 Immersive Classroom Software License Fee. Customer shall pay DSL a license fee for the Immersive Classroom Software License (the "**Immersive Classroom Software License Fee**"), which for any Fiscal Year shall be the greater of: (a) the minimum Immersive Classroom Software License Fee set forth for such Fiscal Year in the Pricing Schedule (the "**Minimum Immersive Classroom Software License Fee**"); or (b) the fee calculated totaling, for each Academic Term which concluded during such Fiscal Year, the number of Students in such Academic Term who accessed the Immersive Classroom Software multiplied by the fee per Student per Academic Term for such Immersive Classroom License indicated on the Pricing Schedule (the "**Calculated Immersive Classroom Software License Fee**"). The Immersive Classroom Software License Fee shall be payable as set forth in **Section 11** below.

6. [Intentionally omitted.]

7. Customer Site Operation.

- 7.1 Operation of the Customer Site. From the completion of Deployment and throughout the remainder of the Term, Customer will operate the Customer Site in accordance with:

(a) this Agreement; (b) any DSL guidelines, procedures, requirements and standards, as may reasonably be developed and communicated by DSL; and (c) applicable Law.

7.2 Minimum System Requirements. Customer shall ensure that the Customer Site continuously meets the minimum requirements to operate the Platform. Without limiting the foregoing, Customer acknowledges that continuous, always-on, unfiltered (i.e., unfirewalled) internet connectivity is required for the Platform with a minimum 100 Megabits per second bandwidth for each uploading and downloading, together with a minimum of three (3) public IP addresses and two (2) copper handoff ports (as such requirements are subject to increase, to the extent provided in any DSL guidelines).

7.3 Promotion and Marketing.

(a) Customer shall use its best efforts to promote the use of the Platform by Students and prospective Students. All aspects and elements of the Customer Site, whether specifically using the DSL IP, Equipment or otherwise, that are observable by Students, and any advertising or marketing materials in connection therewith (including, without limitation, artwork, promotional materials, electronic or print media, social media, mobile media and other marketing items), will be subject to the prior written approval of DSL in each instance, in its good faith discretion. DSL will provide approval of any advertising or marketing materials within 10 business days of submission; failure of DSL to approve such materials within 10 business days will be deemed to be disapproval.

(b) Customer agrees that DSL may: (i) use Customer's name and logo to identify Customer as a customer of DSL in DSL's advertising or marketing materials (including, without limitation, artwork, promotional materials, electronic or print media, social media, mobile media and other marketing items); (ii) publicize success stories and anonymized data relating to Customer, its Students and Instructors; and (iii) issue a press release identifying Customer as a DSL customer and describing the nature of the products and services to be provided. Use of Customer's name and/or logo to identify Customer as customer of DSL on DSL's website and social media channels as well as corporate communications is hereby approved. Additional use of Customer's name and/or logo will be subject to the prior written approval of Customer in each instance, in its good faith discretion. Customer will provide such approval within 10 business days of submission; failure of Customer to approve such materials within 10 business days will be deemed to be disapproval.

7.4 Waiver. Customer shall ensure that, as part of the Platform, all users execute a commercially reasonable waiver of liability, the form of which will be mutually approved by the Parties (such approval will not be unreasonably withheld).

7.5 Standard of Care. With respect to the Customer Site, Customer will deploy and operate the Customer Site in the same manner and quality and using the same standard of

diligence and care and service levels with or at which the same or similar services are provided in connection with Customer's normal operations, and in any event in no less than a timely, professional and competent manner using such diligence and care in accordance with all industry standards and best practices as may reasonably be expected of an experienced institution. Customer will devote such time and effort to the performance under this Agreement as may be necessary to comply with this Agreement and the reasonable instructions and guidelines of DSL.

- 7.6 Qualified Personnel. Without limiting the foregoing, Customer will retain a sufficient number of qualified personnel in connection with the day-to-day operation of the Customer Site, including personnel to manage and facilitate the Student on-site experience as well as address routine technical issues.
- 7.7 Compliance with Laws. Customer acknowledges and agrees that it will, in any and all matters related to the Customer Site and use of all rights hereunder, comply in all respects with all applicable Laws, including without limitation Laws relating to employment, health and safety, data security and data privacy. Customer may not remove or export or allow the export or re-export of any Equipment, DSL IP or anything related thereto, or any direct product thereof in violation of any restrictions, laws or regulations of the United States Department of Commerce, the United States Department of Treasury Office of Foreign Assets Control, or any other United States or foreign agency or authority. Additionally, Customer agrees that it will not remove any copyright, trademark or proprietary notices contained in or provided through the Equipment or the DSL IP, including without limitation any such notices on any documents, graphics, information, data, screenshots and other materials downloaded, copied, stored, printed or otherwise retrieved and saved through the Equipment or the DSL IP.
- 7.8 Operating Expenses. Customer will be responsible for all ongoing operating costs and expenses in connection with such Customer Site, including as nonlimiting examples, utilities, connectivity, managed network licenses and cloud hosting fees, all as applicable. If any such costs or expenses are incurred by or on behalf of DSL, such costs and expenses will be invoiced to and paid by Customer in accordance with **Section 11**.

8. Equipment; Equipment Warranty.

- 8.1 Use of Equipment. Customer shall own all right, title, and interest in and to the Equipment included within the Pod(s) purchased hereunder, provided, however, Customer understands and acknowledges that this Agreement is intended only to authorize particular and specific usage of the Equipment solely in accordance with the terms and conditions of this Agreement. Customer acknowledges that Customer must use such Equipment specifically as described herein. All such Equipment will be considered accepted upon delivery. Customer agrees to use all Equipment in a careful and proper manner as contemplated in applicable user Documentation, and in compliance with all applicable laws and regulations. At no time will Customer modify any Equipment, the firmware contained therein, or permit repairs to be performed upon

Equipment by persons other than DSL's authorized service technicians during the Equipment Warranty Period, as described below.

8.2 Equipment Limited Warranty.

- (a) Subject to the terms set forth herein below, DSL will replace any defective Equipment failing during the six (6) month period commencing on the Go Live Date (the "**Equipment Warranty Period**"). Customer acknowledges that replacement Equipment may be new or refurbished Equipment of equivalent functionality.
- (b) Notwithstanding the preceding **Section 8.2(a)**, Customer agrees that DSL will have no obligations under this section due to defects resulting from (i) modifications or repairs made by anyone other than DSL or its authorized service technicians; (ii) improper installation (unless the installation was performed by DSL); (iii) improper facility preparation by Customer (including but not limited to electrical and mechanical infrastructure); (iv) accident or abuse; (v) use with systems not meeting DSL's published minimum technical requirements; and/or (vi) Customer's use of the Equipment in any manner or for any purpose inconsistent with applicable Documentation. DSL's obligations under this **Section 8.2** shall constitute DSL's entire liability and Customer's sole remedy for any defective Equipment in breach of the foregoing warranty.

9. Platform Warranty, Maintenance and Support.

- 9.1 Platform Limited Warranty. Subject to the terms of this Agreement, DSL warrants that the Platform shall perform substantially in accordance with the Documentation for a period of 90 days from the Go Live Date. Thereafter, DSL's sole obligation with respect to defects or inoperability relating to the Platform shall be exclusively as set forth below.
- 9.2 Support Services. From and after the Go Live Date and continuing during the Term hereunder, DSL shall provide, either directly or through a DSL-contracted provider, the support services (the "**Support Services**") as particularly described in the service-level agreement attached as **Schedule 5 ("SLA")**. The fee for the Support Services provided by or on behalf of DSL under the SLA is set forth on the Pricing Schedule (the "**Support Services Fee**"). To the extent DSL's personnel are requested to provide support services beyond the obligations set forth on the SLA, and DSL elects to perform such services, Customer shall pay for such services at DSL's then-current hourly support cost. Customer will pay or reimburse all reasonable travel expenses and other reasonable costs incurred by DSL personnel in connection with the Support Services and any additional support services requested and provided hereunder, which shall include an administrative charge.

10. Upgrades; Refreshes.

- 10.1 Upgrades. As the Platform evolves, DSL may, in its sole discretion, recommend the upgrade or replacement of the Equipment and/or Platform (each, an "**Upgrade**") upon

reasonable notice to Customer. Customer will cooperate with DSL in the installation of each such Upgrade and will transition to any DSL-recommended Upgrade within a reasonable period of time (in any event, not to exceed six months after such DSL-recommended Upgrade is made available to Customer); failure to implement such Upgrade within such time period shall result in DSL being relieved of any obligations relating to warranties or the SLA which DSL in good faith believes are attributable, in whole or in part, to such failure. Customer shall be responsible for the cost of the Equipment related to Upgrades (with a reasonable administrative fee if procured by DSL), as well as fees at DSL's then-current hourly rates for any services provided by DSL in connection with the installation and/or integration of such Upgrade. For the avoidance of doubt, software patches, corrections or updates released by DSL under the SLA must be installed within the time period indicated by DSL, as set forth in the SLA.

10.2 Equipment Refreshes. Customer acknowledges that certain elements of the Equipment, by their nature, will require periodic maintenance, repair or replacement. Customer shall reserve and take all steps to appropriate an annual budget for such refreshing of Equipment based on the estimated amount set forth in **Schedule 2**.

11. **Payments and Reports**.

11.1 Reporting Key Contacts. **Schedule 6** sets forth each Party's primary contact information for submission and review of the reporting requirements set forth herein. Each Party shall notify the other Party upon any change in the key contact information set forth on **Schedule 6**.

11.2 Reporting. Within thirty (30) days after each Fiscal Year, Customer shall submit to DSL a written report ("**Annual Report**") with respect to the preceding Fiscal Year (each, a "**Reporting Period**") stating the following:

- (a) The number of Academic Terms which concluded during each such Reporting Period;
- (b) The number of enrolled Students as of the start of each Academic Term which concluded during each such Reporting Period.
- (c) For each Academic Term which concluded during each such Reporting Period:
 - (i) The number of students enrolled in each course that concluded during each such Academic Term in which a Courseware License was used;
 - (ii) The number of unique Students who accessed the Courseware during each such Academic Term;
 - (iii) The number of students enrolled in each course that concluded during each such Academic Term in which the Immersive Classroom Software was used; and

- (iv) The number of unique Students who accessed the Immersive Classroom Software during each such Academic Term.

11.3 Review of Annual Report. In connection with DSL’s review of the applicable Annual Report, Customer will promptly make available such information, documentation and personnel as may be reasonably requested by DSL.

11.4 Invoicing and Payment.

- (a) The Platform Site License Fee, Minimum Courseware License Fee, Minimum Immersive Classroom Licensee Fee and Support Services Fee are invoiced upon the commencement of the Fiscal Year.
- (b) Customer acknowledges that the Platform Site License Fee is determined by pricing bands based upon the number of enrolled Students; should such number of enrolled Students increase during a Fiscal Year beyond the maximum number in the pricing band for with the Platform Site License Fee was originally calculated, it shall be Customer’s obligation to notify DSL. In such instance, DSL shall invoice Customer for the difference between the Platform Site License Fee originally issued and the Platform Site License Fee applicable to the higher number of Students enrolled with Customer. Customer’s failure to notify DSL of an increase in enrolled Students shall not relieve Customer of its obligation to pay the applicable increase in the Platform Site License Fee.
- (c) For each of the Courseware License Fee and the Immersive Classroom License Fee, if the Calculated Courseware License Fee and/or the Calculated Immersive Classroom License Fee for any Fiscal Year are greater than the applicable Minimum Courseware License Fee and/or Minimum Immersive Classroom Licensee Fee already paid, DSL shall invoice Customer for the difference.
- (d) Notwithstanding the foregoing, given that it is possible that the Go Live Date will occur on a date other than the first day of a Fiscal Year, in such case the above fees for the Fiscal Year in which the Go Live Date occurs shall be prorated based on the Proration Percentage, as defined below:

“Proration Percentage” is calculated as follows:

<i>Number of Days from Start of Fiscal Year to Go Live Date:</i>	<i>Applicable Proration Percentage (i.e., Percentage of Fees Payable)</i>
1 – 90	100%
91 – 180	75%
Greater than 180	50%

- (e) DSL shall additionally invoice Customer for any other additional fees or charges as they arise under the SLA.

- (f) The Deployment SOW and the Integration SOW set forth the invoicing schedule related thereto.
 - (g) All payments by Customer hereunder are due within thirty (30) days of DSL's invoice.
- 11.5 Taxes. Each Party shall be solely responsible for the payment of all taxes, fees, duties, levies or similar amounts imposed on its respective income arising directly or indirectly from the activities of the Parties under this Agreement. Customer shall be responsible for payment of all sales and use taxes, value added taxes (VAT), or similar charges relating to Customer's purchase and use of any products (including any licenses) and/or services hereunder. Subject to the foregoing, to the extent Customer is required by applicable law to deduct and withhold taxes from the consideration otherwise payable pursuant to this Agreement to DSL, Customer shall (a) notify DSL in writing of such determination, and (b) pay the amounts of such taxes to the proper governmental authority in a timely manner and promptly transmit to DSL an official tax certificate or other evidence of such payment sufficient to enable DSL to claim such payment of taxes. To the extent that amounts are so withheld, such withheld amounts shall be treated for all purposes of this Agreement as having been paid to DSL.
- 11.6 Books and Records. Customer shall maintain at its principal office usual books of account and records showing its actions under this Agreement, and sufficient to determine Customer's compliance with its obligations hereunder. Upon reasonable notice, but not more than once per calendar year, DSL may have an independent certified public accountant or independent auditor inspect such books and records for purposes of verifying the accuracy of the amounts paid under this Agreement ("**Audit**"), during regular business hours, with not less than thirty (30) business days' advance written notice. In the event that such Audit shows that Customer has underpaid DSL by the greater of ten percent (10%) or more with respect to any Reporting Period, Customer shall pay, within thirty (30) days after demand by DSL, the reasonable costs and expenses of such Audit (including the fees charged by DSL's accountants and attorneys involved in the Audit), in addition to the amount of any underpayment and any interest (at the rate described in Section 11.7 below) thereon. Customer agrees to reasonably cooperate with DSL's accountant or auditors and attorneys in connection with any such Audit.
- 11.7 Late Payment Interest. Without limiting any of DSL's rights and remedies hereunder, any payment required hereunder that is made late (including unpaid portions of amounts due) shall bear interest, compounded monthly, at the US Prime rate for each applicable month as published by the Wall Street Journal. Any interest charged or paid in excess of the maximum rate permitted by applicable law shall be deemed the result of a mistake and interest paid in excess of the maximum rate shall be credited or refunded (at the Customer's option) to Customer.
- 11.8 USD. All amounts payable to DSL hereunder must be paid by Customer to DSL in United States Dollars. If any currency conversion shall be required in connection with the

calculation of amounts payable hereunder, the exchange rate shall as quoted by the Wall Street Journal as of the last day of each applicable Reporting Period (and if no rate is published on such date, then the latest rate published by the Wall Street Journal during such Reporting Period).

12. Intellectual Property.

- 1.1 Ownership of DSL IP. Customer acknowledges and agrees that DSL owns and will retain all right (including without limitation IP Rights), title and interest in and to the DSL IP and the Trademarks.
- 1.2 Customer Created Content. Subject to the rights reserved herein to DSL relating to the DSL IP, DSL acknowledges that (as between DSL and Customer) Customer owns the Customer Created Content; provided, however, that:
 - (a) Customer shall not charge its Students or Instructors a digital materials, lab, or other fee for access to Customer Created Content unless DSL and Customer have each agreed in writing on a revenue sharing agreement related to such Customer Created Content with commercial terms acceptable to each Party in its discretion.
 - (b) Customer hereby grants to DSL the right to sell, modify, create derivative works relating to, and otherwise use the Customer Created Content in connection with DSL's customers on commercial terms acceptable to each Party in its discretion, such terms to be reflected in a written agreement executed by the Parties.
- 1.3 Limitations:
 - (a) Customer will not:
 - (i) use any DSL IP in any manner (a) that violates any third-party right, including any IP Rights; (b) that is unlawful, harassing, abusive, tortious, threatening, vulgar, defamatory, intentionally misleading, pornographic or obscene, or that violates the privacy of any person or group or promotes racism, bigotry, hatred, or physical harm against any group or individual or is otherwise objectionable; (c) that is in violation of any Law; or (d) to build or improve a competitive product or service;
 - (ii) directly or indirectly, reverse engineer, decompile, disassemble or otherwise attempt to discover the source code or underlying structure, algorithms, ideas or know-how relevant to any DSL IP, modify, translate, or create derivative works based on any DSL IP (except for the limited rights to create Customer Created Content, which remain subject to the terms hereof), or use any DSL IP for the benefit of a third party;
 - (iii) Copy, or otherwise reproduce, or publish the SDK, in whole or in part;

- (iv) modify, adapt, alter, translate, or incorporate into or with other software or create a derivative work of any part of the SDK, (except for the limited rights to create Customer Created Content, which remain subject to the terms hereof); or
 - (v) distribute the SDK (other than the incorporation of distributable elements of the SDK in Customer Created Content in accordance with the terms hereof).
 - (b) Customer acknowledges that the SDK may be updated from time to time by DSL. Future versions of the SDK may not necessarily be compatible with Customer Created Content developed on earlier versions.
- 12.1 Reservation of Rights. Except as otherwise expressly provided in this Agreement, DSL grants no right (including without limitation IP Rights), title or license to any Intellectual Property, whether by implication, by estoppel or otherwise, and all such rights are expressly reserved.
- 12.2 Third-Party Infringement. Customer will notify DSL of any known, suspected or threatened infringement of DSL IP by third parties of which Customer becomes aware and of any claims of infringement by third parties. DSL may take whatever action it deems necessary in its sole discretion with respect to such known, suspected or threatened infringement, and Customer will reasonably cooperate with DSL, at DSL's expense, with respect to DSL's investigations and legal actions for the enforcement or protection of the DSL IP. DSL shall have sole control of any action in connection with any such infringement.

13. Confidentiality.

- 13.1 Definition. **"Confidential Information"** of a Party (the **"Disclosing Party"**) means all information and documentation of such Party, including without limitation, technical, scientific, economic, financial or commercial information, accounting data, plans, studies, prototypes, experimental data and tests, drawings, graphical representations, specifications or source code, and/or other information, in any case, whether disclosed to or accessed by the other Party (the **"Recipient"**) in connection with this Agreement, which is either identified by the Disclosing Party as confidential or proprietary or which the Recipient knows or reasonably should know is confidential and proprietary. For the avoidance of doubt, Confidential Information includes without limitation (a) the terms of this Agreement and (b) any information developed by reference to or use of the Disclosing Party's information. The term **"Confidential Information"** will not include information that (a) is independently developed by the Recipient, as demonstrated by the recipient's written records, without violating the Disclosing Party's proprietary rights, (b) is or becomes publicly known (other than through unauthorized disclosure), (c) is disclosed by the owner of such information to a third party free of any obligation of confidentiality, (d) is already known by the Recipient at the time of disclosure, as demonstrated by the Recipient's written records, and the Recipient has no obligation of

confidentiality other than pursuant to this Agreement or any confidentiality agreements between the Parties entered into before the Effective Date, or (e) is rightfully received by the Recipient free of any obligation of confidentiality, provided that (A) the Recipient has no knowledge that such information is subject to a confidentiality agreement and (B) such information is not of a type or character that a reasonable person would have regarded it as confidential.

- 13.2 Use and Disclosure Restrictions. The Recipient will not use the Confidential Information of the Disclosing Party except as necessary for the performance of, or as expressly permitted by, this Agreement, or disclose such Confidential Information to any third party except to those of its employees and subcontractors that need to know such Confidential Information for the purpose of performing this Agreement; provided, that the Recipient will be liable hereunder for any subsequent use or disclosure of such information by such employees and subcontractors not permitted herein. The Recipient will use all reasonable efforts to maintain the confidentiality of all such Confidential Information in its possession or control, but in no event less than the efforts that the Recipient ordinarily uses with respect to its own proprietary information of similar nature and importance. The foregoing obligations will not restrict the Recipient from disclosing Confidential Information: (a) as required by Law and pursuant to the order or requirement of a court, administrative agency, or other Governmental Authority; provided, that to the extent permitted by Law, the Recipient gives notice to the Disclosing Party sufficient to permit the Disclosing Party to contest such order or requirement; (b) to assert its rights under this Agreement; and (c) on a confidential basis to its legal and/or financial advisors and potential investors or acquirers.

14. Data Privacy and Security.

- 14.1 Privacy. DSL maintains a publicly available Privacy Policy, accessible at the following link [*LINK IN THE PROCESS OF BEING UPDATED*] that describes its privacy practices with respect to collection, use, storage, and access to Personal Information, and agrees to comply with applicable privacy laws and regulations. Customer agrees and shall ensure that its Students, Instructors and/or administrators do not use the Platform to collect, upload, retrieve, transmit, send, and/or store any Protected Health Information as defined under HIPAA.
- 14.2 FERPA. DSL acknowledges and understands that the Customer may be required to protect certain Personal Information and student education records from disclosure under the Family Educational Rights and Privacy Act ("**FERPA**") including regulations promulgated thereunder. To the extent the Customer is subject to FERPA, and to limited extent DSL is subject to FERPA in its capacity as a third-party service provider, DSL agrees to: (i) secure all Personal Information and student education records related to Customer's students using industry standard security practices; and (ii) use reasonable commercial efforts to protect Personal Information and student education records in its possession and/or control to the extent required of third party service providers to which such information is released. DSL shall retain data as necessary for completion of its services, pursuant to DSL's internal data retention policy. DSL shall not be liable to

Customer for the use or re-disclosure of any metadata which DSL reasonably believes falls outside the scope of the information protected by FERPA. Customer shall be solely responsible for obtaining any parental or guardian consents necessary or advisable under FERPA or any other applicable privacy or data protection law, including those relating to minors, to enable Students to use the products and services hereunder and at DSL's reasonable request, provide evidence of such consents.

- 14.3 Experience Data. Subject to applicable limitations under federal and state law and applicable privacy policies, DSL reserves all right, title and interest in and to Experience Data, which shall remain the property of DSL. Notwithstanding the foregoing, Customer and its administrators and Instructors shall have access to the Experience Data generated by Customer's Students and Instructors during the Term solely for use in relation to Customer's internal business purpose in accordance with this Agreement. Upon DSL's request, Customer shall also provide to DSL anonymized data relating to Student and Instructor experiences as well as learning outcomes.
- 14.4 Data Security. DSL has implemented and shall maintain administrative, physical, and technical safeguards consistent with industry standards for protection of the security, confidentiality, and integrity of Personal Information.
- 14.5 Security Breach. In the event DSL becomes aware of a Security Breach, DSL will use commercially reasonable efforts to promptly notify Customer of such Security Breach and shall reasonably assist Customer in resolving such breach. DSL will promptly investigate the Security Breach and take reasonable measures to identify its root cause(s). As information is collected or otherwise becomes available, unless prohibited by law, DSL will provide Customer with a description of the Security Breach, the type of data that was the subject of the breach, and other information Customer may reasonably request concerning the affected persons. The Parties agree to coordinate in good faith on developing the content of any related public statements or any required notices for the affected persons and/or the relevant data protection authorities.

15. Term and Termination.

- 15.1 Term. The term of this Agreement (the "**Term**") will commence on the Effective Date and expire _____ () years after the end of the Fiscal Year in which the Go Live Date occurs, unless sooner terminated pursuant to the terms hereof.
- 15.2 Termination for Cause. Either Party may terminate this Agreement upon notice to the other Party if such other Party commits a material breach of this Agreement, including the failure to pay when due any amount payable under this Agreement, and, if such breach is capable of cure, does not cure such breach within 30 days after written notice thereof.
- 15.3 Termination for Bankruptcy/Insolvency. To the extent possible under applicable law, either Party may terminate this Agreement immediately if the other Party becomes insolvent, admits in writing its inability to pay its debts as they mature, makes an

assignment for the benefit of creditors, becomes subject to control of a trustee, receiver or similar authority, or becomes subject to any bankruptcy or insolvency proceeding.

- 15.4 Effects of Termination. Promptly upon the termination for any reason or expiration of this Agreement, (a) Customer will cease, and will cause its agents to cease, all use of the DSL IP, including the Trademarks, and destroy or erase all copies of any DSL IP in Customer's possession or control; and (b) each Party will erase or destroy all of the Confidential Information of the other Party in such Party's possession or control.
- 15.5 Survival. The following Sections will survive the expiration or termination of this Agreement for any reason: 11.5, 11.6, 11.7, 11.8, 12, 13, 14, 15.4, 15.5, and 16 – 19.

16. Disclaimer; Limitation of Liability.

- 16.1 EXCEPT AS SET FORTH IN **SECTION 8.2 AND SECTION 9.1**, THE EQUIPMENT AND THE PLATFORM ARE PROVIDED "AS IS" AND WITH ALL FAULTS, AND DSL MAKES NO, AND HEREBY DISCLAIMS ALL, WARRANTIES REGARDING THE EQUIPMENT AND THE PLATFORM, WHETHER EXPRESS, STATUTORY OR IMPLIED, INCLUDING: ANY IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE AND NON-INFRINGEMENT; ANY WARRANTY THAT THE EQUIPMENT OR PLATFORM WILL OPERATE UNINTERRUPTED OR ERROR FREE; AND ANY WARRANTY AS TO THE RESULTS THAT MAY BE OBTAINED FROM USE OF THE EQUIPMENT OR PLATFORM.
- 16.2 EXCEPT IN THE EVENT OF A PARTY'S (A) WILLFUL MISCONDUCT OR INTENTIONAL BREACH OR (B) GROSS NEGLIGENCE, IN NO EVENT WILL A PARTY BE LIABLE TO THE OTHER PARTY FOR ANY CONSEQUENTIAL, INCIDENTAL, SPECIAL OR INDIRECT DAMAGES (INCLUDING, BUT NOT LIMITED TO, FROM ANY DESTRUCTION TO PROPERTY OR FROM ANY LOSS OF USE, REVENUE, PROFIT, TIME OR GOODWILL) BASED ON ACTIVITY ARISING OUT OF OR RELATED TO THIS AGREEMENT, WHETHER PURSUANT TO A CLAIM FOR BREACH OF CONTRACT OR ANY OTHER CLAIM OF ANY TYPE. NOTWITHSTANDING THE FOREGOING, NOTHING IN THIS **SECTION 16.2** IS INTENDED TO OR SHALL LIMIT OR RESTRICT (A) THE INDEMNIFICATION RIGHTS OR OBLIGATIONS OF ANY PARTY UNDER **SECTION 17** OR (B) DAMAGES AVAILABLE FOR A PARTY'S BREACH OF ITS CONFIDENTIALITY OBLIGATIONS UNDER **SECTION 13**.
- 16.3 EXCEPT IN THE EVENT OF A PARTY'S (A) WILLFUL MISCONDUCT OR INTENTIONAL BREACH OR (B) GROSS NEGLIGENCE, IN NO EVENT SHALL EITHER PARTY'S AGGREGATE LIABILITY TO THE OTHER PARTY UNDER THIS AGREEMENT EXCEED \$1,000,000. NOTWITHSTANDING THE FOREGOING, NOTHING IN THIS **SECTION 16.3** IS INTENDED TO OR SHALL LIMIT OR RESTRICT (A) THE INDEMNIFICATION RIGHTS OR OBLIGATIONS OF ANY PARTY UNDER **SECTION 17**, OR (B) DAMAGES AVAILABLE FOR A PARTY'S BREACH OF ITS CONFIDENTIALITY OBLIGATIONS UNDER **SECTION 13**.
- 16.4 The Parties hereto acknowledge that the limitations and exclusions of liability and disclaimers of warranty set forth in this Agreement form an essential basis of the bargain between the Parties and are reasonable under the circumstances.

17. Indemnity.

- 17.1 DSL Indemnified Claims. DSL hereby agrees to defend Customer against any and all claims, actions or proceedings by a third party alleging that any DSL IP infringes, misappropriates, or violates the IP Rights of such third party, and to indemnify Customer from and against all amounts awarded in final judgement of such claims, actions or proceedings by a court of competent jurisdiction. DSL's obligations under this **Section 17.1** will not apply to any claim, action or proceeding that is based on or arises out of: (a) any combination of the DSL IP with any hardware, software, services, information or materials not provided by DSL under this Agreement; (b) any modification to the DSL IP by Customer or by any third party (other than an Affiliate of DSL); (c) any use of the DSL IP in any manner not permitted by this Agreement; or (d) any misuse or abuse of the DSL IP.
- 17.2 Customer Indemnified Claims. Customer hereby agrees to indemnify, defend and hold harmless DSL, its successors and permitted assigns, DSL's Affiliates and the officers, directors, employees and agents of each of the foregoing, from and against any and all third-party claims and, whether or not a claim is made, any liabilities, obligations, losses, damages, costs, fees, penalties, fines, settlements, charges or other expenses of any kind (including, without limitation, reasonable attorneys' fees and legal costs), in each case arising out of or relating to: (a) the inaccuracy of, or Customer's breach of, any representation, warranty or covenant hereunder (including, without limitation, any failure to use or operate the Equipment in material compliance with all DSL guidelines and manufacturer guidelines and warranties), (b) the operation by Customer of its business, other than to the extent such claim, if brought against Customer, would be a subject to indemnification pursuant to **Section 17.1**, (c) Customer's breach of **Section 13**, or (d) Customer's gross negligence, willful misconduct or fraud.
- 17.3 Indemnification Procedure. The obligations of the indemnifying Party under this **Section 17** are conditioned upon the indemnified Party (a) notifying the indemnifying Party promptly in writing of any claim for which it is seeking indemnification under this Agreement (provided, however, that any failure of the indemnified Party to promptly notify the indemnifying Party will not relieve the indemnifying Party of its indemnification obligations, except to the extent such failure materially prejudices the indemnifying Party), (b) providing reasonably available information and assistance regarding such claim, and (c) permitting the indemnifying Party to have sole control over the defense and settlement of the claim.
- 18. Insurance.** During the Term, Customer will obtain and maintain at its own expense insurance of the type and in the amounts to be mutually and reasonably agreed. For coverage under general liability and any other coverages required under local Law, Customer will: (a) cause Customer to be named as an "Additional Insured" (or, under all risk property insurance, "Loss Payee") on all certificates for such coverage, including as an insured with respect to third-party claims or actions made or brought directly against DSL or its Affiliates or against DSL and Customer as co-defendants and arising out of or in connection with this Agreement; (b) cause such coverage to be written as a primary policy not contributing with any other coverage

which DSL may carry; and (c) cause the certificates for such coverage to stipulate that DSL will receive 30 days' prior notice of any cancellation or reduction in coverage. Notwithstanding anything to the contrary in the preceding sentence, no such cancellation or alteration will relieve Customer of its continuing obligation to maintain the insurance coverage required hereunder. To the extent third party insurance is obtained or maintained pursuant to this **Section 18**, Customer will, upon DSL's request, furnish to DSL certificates of insurance or other appropriate documentation (including evidence of renewal of insurance) evidencing all coverages required pursuant to this Section. Customer will at all times maintain each such insurance coverage with insurers authorized to do business in the state, states or country where the work is to be performed and with a rating of at least A-VII by the A.M. Best Company (or an equivalent rating by a company similar to A.M. Best Company). Customer and its insurers will waive any and all rights of subrogation against DSL.

19. General.

- 19.1 Construction. References to this Agreement include the Schedules; references to any Schedules include any attachments thereto. References in this Agreement to any Law include such Law in changed or supplemented form or to a newly adopted Law replacing a previous Law. Words denoting the singular will include the plural and vice versa and words denoting any gender include all genders. All dollar amounts are expressed in United States dollars (US\$). The division of this Agreement into separate Sections and Schedules and the insertion of headings will be for convenience of reference only and will not affect the construction or interpretation of this Agreement. The words "include," "includes" and "including" will be deemed to be followed by the phrase "without limitation." The expressions "hereof", "herein", "hereto", "hereunder", "hereby" and similar expressions refer to this Agreement as a whole and not to any particular section or Schedule of this Agreement. The words "shall" and "will" are used interchangeably and both mean the specified action or forbearance is mandatory. Unless otherwise indicated, a reference to a "Section" or "Schedule" is a reference to the specified section or Schedule of this Agreement. Unless otherwise modified, the words "day," "month," and "year" mean and refer, respectively, to a calendar day, month and year.
- 19.2 Precedence. Except as may be otherwise specified herein, in the event of conflict, the body of this Agreement will prevail over any Schedule, unless the conflicting provision of the higher precedent document is specifically identified and declared to be overridden by the lower precedent document.
- 19.3 Entire Agreement. This Agreement (including all Schedules hereto) contains the entire agreement between the Parties and supersedes all previous agreements or representations, whether written or oral, between the Parties regarding the subject matter of this Agreement. Neither Party is bound by any communication outside of this Agreement, except subsequent written amendments executed by both Parties.
- 19.4 Severability. If any provision of this Agreement is found by a court of competent jurisdiction or other valid tribunal to be invalid or otherwise unenforceable, the invalid or unenforceable provision will be deemed amended to remove such provision, and the

remaining Agreement will be construed to give maximum effect to the intention of the Parties at the time of execution of the Agreement. If the invalidity or unenforceability of any provision makes a fundamental purpose of the Agreement ineffective in the determination of the Party asserting its validity or enforceability, that Party may immediately terminate the entire Agreement with written notice.

- 19.5 Modification and Waiver. No provision of this Agreement will be deemed modified by any course of dealing or conduct, any act or failure to act by a Party or its agents, or by a Party's failure to object to any of the other Party's acts or omissions which may violate the terms of this Agreement. No failure to object to any event of default committed by either Party in one instance will constitute a waiver or license to commit or continue events of default in other or like instances.
- 19.6 Governing Law; Jurisdiction. This Agreement and the rights and obligations of the Parties under this Agreement will be governed by and construed in accordance with the Laws of the State of California, without giving effect to the principles thereof relating to the conflicts of Laws.
- 19.7 Sole and Exclusive Venue. Each Party irrevocably agrees that any legal action, suit or proceeding brought by it in any way arising out of this Agreement must be brought solely and exclusively in the state courts of the State of California located in Los Angeles County, and irrevocably accepts and submits to the sole and exclusive jurisdiction of each of the aforesaid courts *in personam*, generally and unconditionally with respect to any action, suit or proceeding brought by it or against it by the other Party. Nothing in this **Section 19.7** will prevent a Party against whom any legal action, suit or proceeding is brought by the other Party in such courts from seeking to remove such legal action, suit or proceeding, pursuant to applicable federal Law, to the district court of the United States for the Central District of California located in Los Angeles County, and in the event an action is so removed each Party irrevocably accepts and submits to the jurisdiction of the aforesaid district court.
- 19.8 Assignment and Sublicensing. The rights and obligations of Customer under this Agreement are personal and may not be assigned, sublicensed or otherwise transferred. Any assignment without such consent will be void *ab initio* and of no effect. DSL may assign, delegate or subcontract its rights or obligations under this Agreement, in whole or in part, without the consent of Customer, including without limitation as part of a merger, reorganization, consolidation or sale of all or substantially all of the assets of DSL to which this Agreement relates.
- 19.9 Relationship. The Parties intend to create an independent contractor relationship, and nothing contained in this Agreement will be construed to make either DSL or Customer partners, joint venturers, principals, agents or employees of the other. Neither Party will have any right, power or authority, express or implied, to bind the other.
- 19.10 Counterparts/Execution. This Agreement may be executed in any number of counterparts, each of which will be deemed an original, but all of which together will

constitute one and the same instrument. Execution of a fax or electronic copy of this Agreement will have the same force and effect as execution of an original, and a fax or electronic signature (including a signature in an Adobe PDF or similar copy of this Agreement) will be deemed an original and valid signature.

- 19.11 Force Majeure. With the exception of payment obligations, any delay or failure in the performance by either Party hereunder will be excused if and to the extent caused by an event or circumstance which is beyond the control and without the fault or negligence of the Party affected and which by the exercise of reasonable diligence the Party affected was unable to prevent.
- 19.12 Notices. Each party's address for purposes of this **Section 19.12** will be as set forth below, provided that a party may change its address upon notice to the other party. All notices and communications required or permitted to be given by either party under this Agreement must be in writing. No notice will be effective unless given in accordance with this **Section 19.12**. Notice delivered by hand will be deemed received immediately upon actual delivery. Notice sent by an internationally recognized express overnight courier with a reliable system for tracking delivery will be deemed received on the second business day after sending. Notice sent by registered or certified mail, return receipt requested, postage prepaid, will be deemed received on the fourth business day after sending. Notice sent by email will be deemed received when received during business hours at the location for the recipient set forth below (or, if not received during business hours, then at 9:00 am the next business day); provided, however, that email will not constitute an effective method of giving notice pursuant to **Section 15.2** or **Section 17.3**.

If to DSL:

Dreamscape Learn, Inc.
Attention: _____
5730 Buckingham Pkwy
Culver City, CA 90230
Email: _____

With a copy (which will not constitute notice) to:

Dreamscape Learn, Inc.
Attention: Legal Department
5730 Buckingham Pkwy
Culver City, CA 90230
Email: _____

If to Customer:

[Customer Address and Email]

- 19.13 Expenses. Each of Customer and DSL will be responsible for its own costs and expenses incurred in the negotiation and preparation of this Agreement.

[Signature page follows.]

By signing below, the Parties agree to all terms of this Agreement as of the date first set forth above.

DREAMSCAPE LEARN, INC.

[Customer]

By: _____

By: _____

Name: _____

Name: _____

Title: _____

Title: _____

Date: _____

Date: _____

SCHEDULES

Schedule 1 (Definitions)

Schedule 2 (Pricing Schedule)

Schedule 3 (Deployment SOW)

Schedule 4 (Integration SOW)

Schedule 5 (Service-Level Agreement)

Schedule 6 (Payments and Reporting – Key Contacts)

SCHEDULE 1 DEFINITIONS

“Academic Term” means a division of the school year during which a course of studies is offered, and includes a semester, quarter, or single consolidated summer term, as described by Customer in the course catalog(s) published to Customer’s Students.

“Affiliate” means, with respect to any Person, any entity which directly or indirectly controls, or is under common control with, or is controlled by such Person. As used in this definition, **“control”** (and its correlative terms “controlled by” and “under common control with”) means possession, directly or indirectly, of power to direct or cause the direction of management or policies (whether through beneficial ownership of securities or other ownership interests, by contract or otherwise). For the avoidance of doubt, for the purposes of this Agreement, DSL and Customer are not Affiliates of each other.

“Backstage Manager” means the software portal installed at the Customer Site for administrators to manage the Pod configuration and Equipment. The Backstage Manager allows for set up of the initial hardware configuration, management of hardware updates, monitoring and switching Pod modes between Courseware and Immersive Classroom Software configurations, deploying content to the Pod(s), and monitoring the local content library.

“Control Center” means a cloud-based software portal for Instructors and Students to schedule, monitor, and manage DSL learning experiences. The Control Center allows for scheduling and managing experiences within the Pod, creation and configuration of reservations, creation and management of users, and monitoring of the scheduling and reservation dashboards.

“Courseware” means educational content published by or on behalf of DSL for use exclusively on the Platform (inclusive of Courseware which may be developed for use in connection with the Immersive Classroom Software).

“Customer Site” means the venue to be operated by Customer at the location set forth on **Schedule 3** that will feature the Pod(s) based on DSL specifications for the Platform.

“Documentation” means the standard manuals, tutorials, reference materials and similar materials, whether in print or electronic format, ordinarily provided by DSL to customers that describe the functionality of the Platform.

“DSL IP” means (a) all Intellectual Property, including any software (including, without limitation, the Platform, the SDK, Backstage Manager, and the software and firmware residing on the Equipment), documentation, or content (including without limitation Courseware as well as environments for the Immersive Classroom Software), made available by DSL to Customer under this Agreement; (b) the Customer Created Content; (c) any modifications to, improvements upon or derivative works of any of the foregoing; and (d) the Trademarks.

“Equipment” means all hardware necessary to operate the Platform which are procured by DSL hereunder, including, as nonlimiting examples, headsets, helmets, rigs, network racks, lights, and cameras.

“Experience Data” means all data other than Personal Information which is collected by either Party relating to the use of the Platform, which may include, without limitation, de-identified, statistical information, derived from analysis of Customer’s users’ interaction with the Platform, Courseware, Immersive Classroom Software, and/or any other products or services provided by or on behalf of DSL hereunder.

“Fiscal Year” means the twelve month annual accounting period used by Customer beginning on [DATE] of each year.

“Go Live Date” means the date DSL informs Customer that the Deployment and Integration are substantially completed such that the Platform is available for use by Customer.

“Governmental Authority” means any federal, national, foreign, state, provincial or local government, or any political subdivision thereof, any multinational organization or authority or any authority, agency or commission entitled to exercise any administrative, executive, judicial, legislative, police, regulatory or taxing authority or power, any court or tribunal (or any department, bureau or division thereof), or any arbitrator or arbitral body.

“Immersive Classroom Software” means the software through which the Platform enables Students and Instructors to become synchronously networked as life-like avatars into the same virtual collaboration space.

“Instructors” means the faculty and instructional staff of Customer.

“Intellectual Property” means intangibles, including inventions, works of authorship, documents (whether in draft or final, complete or incomplete form), utility models, trade secrets, software, subroutines, codes, databases, algorithms, designs, know-how, processes, procedures, methodologies, ideas, names, symbols, logos, industrial designs of any kind, text, translations and any similar intangibles, as well as the software, documentation, materials, copies and other materialized forms or representations of such intangibles.

“IP Rights” means copyrights, patent rights, rights to patent applications, trademarks, trade names, service marks, trade secrets and designs of any kind, or any other proprietary rights recognized in any country of the world, whether or not currently perfected, including “*droit moral*” rights, “moral rights of authors” and all other similar rights however denominated throughout the world, in each case to any Intellectual Property.

“Law” means any federal, national, foreign, state, provincial or local law, statute, standard, ordinance, code, rule, regulation, resolution or promulgation, any order, writ, judgment, injunction, decree, stipulation, ruling, determination or award entered by or with any Governmental Authority, or any license, franchise, permit or similar right granted under any of the foregoing, or any similar provision having the force or effect of law.

“Learning Materials” means the written materials which accompany Courseware, consisting of mission memoranda, instructor guides, and other materials (each, as applicable) made available by DSL.

“Person” means any individual, corporation, proprietorship, firm, partnership, limited partnership, limited liability company, trust, association, Governmental Authority or other entity.

“Personal Information” means any information relating or unique to an identified or identifiable, or which can be used to identify, a particular person. Personal Information may include:

(i) name; (ii) address; (iii) phone number; (iv) e-mail address; (v) social security number or other government-issued identifier; and (v) credit card information.

“Platform” means, collectively the DSL immersive platform which: (i) enables several users to physically interact in a three-dimensional (3D) virtual environment, when applicable, which can be seen and heard through a virtual reality headset and/or other modalities as described in the Agreement; (ii) follows the positioning and movements of the users in the Pod using a system of movement recording, which enables them to see their own body and to physically move in the virtual environment with a very low latency; and (iii) consists of the Software that includes, without limitation, the following five main feature and functionality components: (a) tracking – the detection of movement of certain users (who are in the Pod or otherwise using a modality which permits such tracking) in real time from a motion capture system which may be optical, inertial or otherwise; (b) real-time animation – the processing of movement data and the animation in real time of the users’ virtual characters; (c) for those users using a virtual reality headset, a virtual reality display – the integration of the virtual reality headset with the game engine and the combination of the data of the headset’s sensor with the data of the movement recording; (d) networking, monitoring and control – a dedicated network and monitoring infrastructure allowing multiple users to access and share a common virtual reality space; (e) the SDK; (f) the Control Center; and (g) the Backstage Manager

“Pod” means a location-based virtual reality pod. The specifications for each Pod hereunder are set forth on **Schedule 2**.

“SDK” means the software development kit, which is a set of software libraries, software packages and development tools which allows a user to create virtual reality experiences using the Unity game engine. The SDK includes API information, sample source and object code, tools, documentation, and other related items, together with any and all enhancements, upgrades, or updates that may be provided to Customer by DSL, at DSL’s discretion, if and when available.

“Security Breach” means the unlawful or unauthorized acquisition from DSL of Personal Information of Customer’s Students or Instructors which compromises the security, confidentiality, or integrity of such Personal Information.

“Software” means all computer programs (in any language or format, including, without limitation, source code, machine language, object code or other executable or binary code, assembly code and compiled executable versions of the source code), including, without limitation, (i) testing, development, production and all other versions thereof; (ii) routines, subroutines, libraries and firmware; and (iii) software compilations, software implementations of algorithms, software tool sets, compilers, models, job control language, software development kits, application programming interfaces and development tools.

“Student” means a student enrolled directly with Customer.

“Trademarks” means DSL’s registered names, logos, designs, service marks, slogans and trademarks and any other forms of identification.



**DREAMSCAPE LEARN (DSL) PRICING SCHEDULE
ALAMOGORDO PUBLIC SCHOOLS (APS)**

This Pricing Schedule is a part of the Master License, Supply and Services Agreement (the “**Agreement**”) to which it is attached. Capitalized terms not otherwise defined in this Pricing Schedule have the meaning ascribed to them in the Agreement.

For the purposes of this Pricing Schedule, a ‘Year’ shall mean the 12-month period starting from the Customer’s Fiscal Year start date.

Hardware/Materials

Customer is purchasing the following number of Pod(s), the capacity and specification of each such Pod, and the purchase price for the Pod(s):

Pod Procurement			
<i>Quantity</i>	<i>Capacity and Specification</i>	<i>Unit Purchase Price</i>	<i>Extended Total</i>
1	31-user Classroom pod (30 student desks + 1 instructor desk)	\$ 720,000.00	\$ 720,000.00
Installation Materials and Shipping			\$ 42,000.00
Hardware Total			\$ 762,000.00

Sales Tax on Pod Procurement	
Alamogordo, NM sales tax rate	7.875%
Total sales tax on pod procurement	\$ 60,007.50

Note: Sales tax may be avoided if buyer provides proper sales tax exempt documentation.

Installation Allowance	Year 1
Front of House/FF&E Allowance: Millwork, construction, design and furniture costs for Pod entrance area - does not include student dev workstations.	\$ -

Note: This allowance is provided for budgetary purposes only, and any installation materials or services will be subject to execution of a statement of work satisfactory to both Parties.

Hardware Repair and Replacement Allowance	Year 1	Year 2	Year 3	Year 4
Allocation for VR headset and other equipment refreshing/replacement over time.	\$ -	\$ 15,000.00	\$ 15,000.00	\$ 15,000.00

Note: This allowance is provided for budgetary purposes only. Customer may source hardware repairs and replacements from DSL, which shall be subject to execution of a statement of work or purchase order satisfactory by both Parties, or Customer may source hardware repairs and replacements from a third-party provider upon DSL's approval.

Services

Deployment Services

Service	# of Pods	Description	Extended Total
Preconstruction	1	Includes campus site surveys, drawings and estimates, facility, and design input, engage with client architects and engineers, project planning and purchasing	\$ 110,000.00
Installation	1	Labor and travel for field installation, project coordination, construction oversight, 3rd party installation support, testing, and on-site training	\$ 125,000.00
Enterprise Integration	N/A	Supports scheduling, reservations, user management, and pod software management	\$ 100,125.00
Deployment Services Total			\$ 335,125.00

Software

Platform Site License Fee

Platform Site License Fee	Applicable Platform Site License Fee for Fiscal Year			
	Year 1*	Year 2	Year 3	Year 4
1 - 2,500 Students	\$ 37,500.00	\$ 75,000.00	\$ 75,000.00	\$ 75,000.00

*Year 1 Platform Site License Fee indicated above already takes into account the Proration Percentage based on the anticipated Go Live Date. Should the Go Live Date change such that the Proration Percentage Changes, the Platform Site License Fee shall be recalculated accordingly by applying the applicable Proration Percentage to the full year amount of \$75,000.

Platform Site License Fee Upgrade

<i>Should the number of enrolled Students exceed in any Fiscal Year beyond the maximum number in the pricing band for which the Platform Site License Fee was originally calculated, then the applicable Platform Site License Fee for such Fiscal Year shall be determined based on the table below:</i>	<i>Platform Site License Fee per Fiscal Year</i>
2,501 to 5,000 students	\$ 100,000.00
5,001 to 10,000 students	\$ 125,000.00
10,001 to 20,000 students	\$ 175,000.00
20,001 to 30,000 students	\$ 225,000.00
30,001 to 40,000 Students	\$ 275,000.00
40,001 to 50,000 Students	\$ 325,000.00
Greater than 50,000 Students	Quoted upon request

Courseware License Fee

<i>Courseware Title</i>	<i>Minimum Courseware License Fee (based on projected Student volumes)</i>			
	<i>Year 1*</i>	<i>Year 2</i>	<i>Year 3</i>	<i>Year 4</i>
Biology in the Alien Zoo				
Projected # of Students per Academic Term <i>(Minimum additional orders must be in increments of 10)</i>	200	400	400	400
Number of Academic Terms per Fiscal Year	1	1	1	1
Fee per Student per Academic Term (for purposes of Calculated Courseware License Fee)	\$ 50.00	\$ 50.00	\$ 50.00	\$ 50.00
Biology in the Alien Zoo Minimum Courseware License Fee	\$ 10,000.00	\$ 20,000.00	\$ 20,000.00	\$ 20,000.00

*Year 2 Courseware License Fee indicated above already takes into account the Proration Percentage based on the anticipated Go Live Date. Should the Go Live Date change such that the Proration Percentage Changes, the Courseware License Fee shall be recalculated accordingly by applying the applicable Proration Percentage to the full year amount of \$20,000.

Immersive Classroom License Fee

	<i>Minimum Immersive Classroom Software License Fee (based on Total Student Enrollment)</i>			
	<i>Year 1*</i>	<i>Year 2</i>	<i>Year 3</i>	<i>Year 4</i>
Total Student Enrollment	1,500	2,500	3,000	3,000
Fee per Student per Academic Term (for purposes of Calculated Immersive Classroom Software Fee)	\$ 5.00	\$ 5.00	\$ 5.00	\$ 5.00
Minimum Immersive Classroom Software License Fee	\$ 7,500.00	\$ 12,500.00	\$ 15,000.00	\$ 15,000.00

*Year 1 Courseware License Fee indicated above already takes into account the Proration Percentage based on the anticipated Go Live Date. Should the Go Live Date change such that the Proration Percentage Changes, the Courseware License Fee shall be recalculated accordingly by applying the applicable Proration Percentage to the full year amount of \$15,000.

Support**Support**

	<i>Year 1*</i>	<i>Year 2</i>	<i>Year 3</i>	<i>Year 4</i>
Support Services Fee	\$ 10,000.00	\$ 20,000.00	\$ 20,000.00	\$ 20,000.00

*Year 1 Support Services Fee indicated above already takes into account the Proration Percentage based on the anticipated Go Live Date. Should the Go Live Date change such that the Proration Percentage Changes, the Support Services Fee shall be recalculated accordingly by applying the applicable Proration Percentage to the full year amount of \$20,000.

Summary

<i>Category</i>	<i>Year 1</i>	<i>Year 2</i>	<i>Year 3</i>	<i>Year 4</i>	<i>Total</i>
Hardware (excluding sales tax and allowances)	\$ 762,000.00	\$ -	\$ -	\$ -	\$ 762,000.00
Services (excluding allowances)	\$ 335,125.00	\$ -	\$ -	\$ -	\$ 335,125.00
Software (Platform Site License Fee based on current enrollment, and based on Minimum Courseware License Fee and Minimum Immersive Classroom Software License Fee; actuals may differ)	\$ 55,000.00	\$ 107,500.00	\$ 110,000.00	\$ 110,000.00	\$ 382,500.00
Support	\$ 10,000.00	\$ 20,000.00	\$ 20,000.00	\$ 20,000.00	\$ 70,000.00
Total	\$ 1,162,125.00	\$ 127,500.00	\$ 130,000.00	\$ 130,000.00	\$ 1,549,625.00



DREAMSCAPE LEARN (DSL) SERVICE LEVEL AGREEMENT

This Service Level Agreement (this “**SLA**”) is a part of the Master License, Supply and Services Agreement (the “**Agreement**”) to which it is attached. Capitalized terms not otherwise defined in this SLA have the meaning ascribed to them in the Agreement.

This SLA provides the framework for how DSL provides support to Customer.

1. Help Center

- 1.1 The DSL Help Center is an online resource available twenty-four hours a day, seven days a week, excluding scheduled downtime. The Help Center is a website designed to enable Customer and its users to find answers to common questions through the Knowledge Base and access self-guided training materials on demand. Members of the Customer’s organization can create an account using their institutional email to gain access to the Help Center.
- 1.2 DSL will use commercially reasonable efforts to inform Customer in advance regarding scheduled downtime to the Help Center and to schedule such downtime during non-peak hours.

2. Support Tickets

- 2.1 Support tickets may be submitted through the Help Center by Authorized Users.
- 2.2 Authorized Users are personnel of Customer who have requested and received authentication credentials from DSL. Customer can designate up to five (5) Authorized Users. Customer may change an Authorized User by notifying DSL. DSL may reasonably require proposed Authorized Users to complete technical training modules prior to issuing credentials to ensure their familiarity with the basic technical elements of the DSL platform.

3. Severity Levels

- 3.1 When submitting the support ticket, the Authorized User will indicate the severity level of the issue based on the guidelines below. Severity levels may be changed by DSL support staff after initial contact and assessment of the issue.

Severity 1 – Urgent	
Definition	A critical problem in which the DSL Platform and/or Pod (i) are down, inoperable, inaccessible, or unavailable, (ii) otherwise materially cease operation, or (iii) perform or fail to perform so as to prevent useful work from being done.
Examples	Pod: Application, server, or infrastructure issue renders the Pod inoperable or unusable. SDK: Cannot run any instructional experiences; unable to load any content to the Pod. ¹
Severity 2 – High	
Definition	A problem in which the DSL Platform and/or Pod (i) are severely limited or major functions are performing improperly, and the situation is significantly impacting certain portions of users' operations or productivity, or (ii) have been interrupted but recovered, and there is high risk of recurrence.
Examples	Pod: Application, server, or infrastructure issue causes the Pod not to perform properly, user experiences impacted. SDK: Some content unable to load or crashes the Pod but situation is deemed recoverable. [†]
Severity 3 – Normal	
Definition	A minor or cosmetic problem with the DSL Platform and/or Pod that (i) is an irritant, affects non-essential functions, or has minimal operations impact, (ii) is localized or has isolated impact, (iii) is a nuisance, (iv) results in visual errors, or (v) is otherwise not Severity 1 or Severity 2, but represents a failure of the DSL Platform and/or Pod to conform to specifications.
Examples	Pod: Hardware issue or RMA with spare devices available. SDK: Non-critical bug, acceptable workaround exists. [†]
Severity 4 – Low	
Definition	A question or request regarding the DSL Platform and/or Pod that (i) cannot be answered by searching the knowledgebase, has no immediate operations impact, and does not represent a failure of Services to conform to specifications.
Examples	Pod/SDK: Questions, advice, enhancement requests, training. [†]

4. Target Response Times

¹ Only includes experiences that have been directly provided or validated by DSL. Issues relating to or otherwise stemming from Customer created content (i.e., any content not directly provided or validated by DSL) is not covered by this SLA.

Configuration of computers used for development (not provided by DSL) and any issues related to the development tools (Unity / Drivers / External Libraries) are not covered by this SLA.

- 4.1 DSL will use commercially reasonable efforts to respond to issue(s) identified in a support ticket based on the below target response times.
- 4.2 For support tickets received during or outside of DSL’s normal business hours, which are Monday - Friday, 6:00AM to 5:00PM Pacific Time, excluding holidays, the target response times are as follows:

Severity Level	Within Business Hours	Outside Business Hours
1	1 hour	Within 6 hours
2	2 hours	Within 12 hours
3	1 day	Treated as if submitted at the beginning of the next business hour
4	2 days	Treated as if submitted at the beginning of the next business hour

- 4.3 For Severity 1 and 2 support tickets received outside of DSL’s normal business hours, target response time will be the earlier of: (i) the Outside Business Hours response time listed in the table above, or (ii) the Business Hours response time starting from the next normal business hour. For example, if a Severity 1 ticket is submitted on Monday at 9:00PM PST, DSL will use commercially reasonable efforts to respond by 3:00AM PST Tuesday. If a Severity 1 ticket is submitted on Monday at 4:00AM PST, DSL will use commercially reasonable efforts to respond by 7:00AM PST.
- 4.4 Resolution times will vary depending on the complexity and uniqueness of the issue.

5. Software Updates

- 5.1 DSL will issue software updates periodically to correct errors, improve performance or non-conformance of the products which Customer has licensed from DSL. Release notes will be made available in the Help Center.
- 5.2 Customer will receive a notification regarding availability of an applicable software update as well as instructions as to how to install it. Customer shall follow such instructions and install such update within the time period indicated by DSL; failure to do so within such time period shall result in DSL being relieved of any obligations relating to warranties or this SLA which DSL in good faith believes are attributable, in whole or in part, to such failure. For any pod-related software updates resulting in extended hardware downtime, DSL will coordinate such updates with Customer.

6. Hardware Return Authorization

- 6.1 If Customer's DSL-furnished hardware experiences an unresolvable error or failure and is covered by an applicable warranty under the Agreement, Customer's Authorized User may request a return authorization by submitting a support ticket. DSL will reply based on the guidelines above to assist customer with return and repair or replacement (as applicable) of the hardware. No unauthorized returns will be accepted by DSL.