

**AGREEMENT**

**Contract #UVA-AGR-2216**

This Agreement executed this\_day of November 2022, by and between the Rector and Visitors of the University of Virginia, (the “University”) and 3Play Media, Inc. (“3Play Media”) to meet the requirements of the University and the Virginia Higher Education Procurement Consortium (“VHEPC”) and its members (collectively the “University”).

**TERM**

The initial term of this Agreement will be for two years effective upon execution of this Agreement, with the ability to renew on the same or similar terms and conditions, for one additional two-year period and three subsequent one-year periods. 3Play Media and the University will mutually agree at least 180 days prior to each renewal option on whether to renew the terms of this Agreement.

**WITNESS**

By its Request for Proposal RFP-UVA-00063-LP021722 for Captioning and Related Services dated February 17, 2022, the University requested proposals from firms to provide Captioning and Related Services (the “Goods and Services”). In response to the RFP, 3Play Media submitted a written proposal on March 17, 2022, and a letter responding to negotiations dated June 6, 2022. The parties, having negotiated concerning the Goods and Services wish to express in this Agreement the basis on which 3Play Media will provide the Goods and Services to the University.

Accordingly, and in consideration of the mutual premises and provisions hereof, the parties hereby agree as follows:

I. Contents

These documents are hereby incorporated into this Agreement:

A. Agreement Attachment 1, Contractual Provisions.

The parties agree that, for the purposes of any request made under the Commonwealth of Virginia's Freedom of Information Act (FOIA) regarding this Agreement, the University may also disclose:

- A. The RFP dated February 17, 2022, including its Attachments 1, 2, 3, 4 & 5;
- B. 3Play Media's Proposal submitted on March 17, 2022; and
- C. 3Play Media's response to negotiations with the University, consisting of documents dated June 6, 2022, from Dustin Feldman (3Play Media) to Lori Ponton (University).

II. Specific Provisions

All services provided by 3Play Media under this Agreement will be provided remotely. No services will be provided on site at any University facility or other facility of the Commonwealth of Virginia.

**Scope of Goods and Services**

These specific provisions are restated here for clarification:

3Play Media will provide services such as audio-visual captioning/transcription, live captioning/CART, and audio description. Services include, but are not limited to:

A. General Requirements

**1. Live Captioning (remote)**

A transcriptionist transcribes all that is heard during a live event (i.e., video conferencing, conference calls, classroom lecture and discussion, meetings, presentations, conferences, sports venues, etc.) with text displayed on a computer monitor, on a web page, through a projection system, or other medium or device which can display the text of the audio created in real-time with a high-level of accuracy and minimal latency.

Live captioning will be required for both in-person and remote events. Firms may offer one or both services. Both services will require the services of human transcriptionists.

## **2. Post-production Captioning**

Post-production captions are added to a video after it has been recorded, also known as prerecorded media. Captions are text versions of the verbal and non-verbal audio content, synchronized with video, and include descriptions of all audio components necessary to understand the content and context of the video. It is the expectation the creation and resulting caption files will follow best practices and guidelines such as those outlined in the [WCAG Standards for Time-Based Media](#) and [The Captioning Key](#).

Although most of the media requiring captions will be video, audio-only files will also be submitted for transcription-only services.

Proposed post-production captioning services may include one or more of the following:

- Closed captioning
- Open captioning
- Transcription only
- Translation

## **3. Audio Descriptions**

Audio Description is the verbal depiction of key visual elements in media and live productions and involves the interspersion of these depictions with the program's original audio.

It is the expectation the creation and resulting caption files will follow best practices and guidelines such as those outlined in the [WCAG Standards for Time-Based Media](#) and [The Description Key](#).

Proposed audio description services may include one or more of the following:

- Machine-generated descriptions
- Descriptions provided by human narration
- Combination of the two options above
- Services for live events
- Services for prerecorded media

B. Fees

The fees described in this Section will be offered to the University, and the Virginia Higher Education Procurement Consortium (“VHEPC”) and its members who order services under this Agreement during the term of this Agreement.

3Play Media will provide the following tiered pricing:

1. Live Captioning
  - A tiered pricing structure that covers the aggregate spend of all services across all participating institutions during the life of the contract (2 years):
    - After the first \$100,000, the live professional captioning price will automatically drop to \$2.20/min going forward.
    - After the first \$500,000, the live professional captioning price will automatically drop to \$2.10/min going forward.
    - After the first \$1,000,000, the live professional captioning price will automatically drop to \$2.00/min going forward.
  - Prices are prorated to the exact event duration (rounded to the nearest second).
  - The minimum charge is for 1 minute.

<b>Live Professional Captioning and Transcription (Both)</b>	
Human live captioning/transcription	\$2.30/min

<b>Live Automated Captioning and Transcription (Both)</b>	
Real-time captioning using automatic speech recognition	\$0.40/min
<b>Clean up recorded version to 99% accuracy</b>	
10-business day cleanup	\$1.20/min
4-business day cleanup	\$1.35/min
2-business day cleanup	\$1.65/min
1-business day cleanup	\$2.15/min
8-hour cleanup	\$3.35/min

2-hour cleanup	\$6.35/min
Change turnaround to calendar days/hours (10 calendar days, 4 calendar days, 48 hours, 24 hours)	add \$0.05/min

<b>Always Included with Live Captions</b>	
Captions and transcripts (both) within minutes after the event	Included
Integrations with YouTube, Zoom, Facebook, Brightcove	Included
30+ supported workflows via RTMP/CEA-608 protocols	Included
Unlimited technical support	Included
Library of terms	Included
Speaker labels	Included
API	Included

## 2. Post Production Captioning & Transcription

- A tiered pricing structure that covers the aggregate spend of all services across all participating institutions during the life of the contract (2 years):
  - After the first \$100,000, the post production captioning and transcription prices for all turnarounds will automatically decrease by \$0.10 per minute from the starting rate going forward.
  - After the first \$500,000, the post production captioning and transcription prices for all turnarounds will automatically decrease by \$0.20 per minute from the starting rate going forward.
  - After the first \$1,000,000, the post production captioning and transcription prices for all turnarounds will automatically decrease by \$0.30 per minute from the starting rate going forward.
- Prices are prorated to the exact event duration (rounded to the nearest second).
- The minimum charge is for 1 minute.

<b>Post Production Transcription + Captioning</b>	
English 10-business day turnaround	\$1.60/min
English 4-business day turnaround	\$1.75/min
English 2-business day turnaround	\$2.05/min
English 1-business day turnaround	\$2.55/min
English 8-hour turnaround	\$3.75/min
English 2-hour turnaround	\$6.75/min
Change turnaround to calendar days/hours (10 calendar days, 4 calendar days, 48 hours, 24 hours)	add \$0.05/min

<b>Always Included (No Additional Charge)</b>	
Captions and transcripts	Included
40+ integrations	Included
99%+ accuracy with two rounds of human QA review	Included
50+ output formats	Included
Retroactive processing of emerging formats	Included
Speaker identification	Included
Any number of speakers	Included
Caption editor	Included
Interactive transcript and video plugins	Included
Library of terms	Included
Indefinite storage of captions and transcripts	Included
API	Included
Extremely difficult audio (i.e., poor recording, loud background noise)	Included

<b>Non-English</b>	
Spanish captioning and transcription	add \$1.35/min
Dual Spanish and English captioning and transcription	\$4.30/min
Captioning/transcription in 20+ languages	Available upon request
Translation to 40+ languages	Available upon request

<b>Transcription Only</b>	
10-business day turnaround	\$1.30/min
4-business day turnaround	\$1.45/min
2-business day turnaround	\$1.75/min
1-business day turnaround	\$2.25/min
8-hour turnaround	\$3.45/min
2-hour turnaround	\$6.45/min
Change turnaround to calendar days/hours (10 calendar days, 4 calendar days 48 hours, 24 hours)	add \$0.05/min
<b>Always Included with Transcription Only</b>	
99%+ accuracy with two rounds of human QA review	Included
10+ output formats	Included
Speaker identification	Included
Any number of speakers	Included
Transcript editor	Included
Library of terms	Included
Extremely difficult audio (i.e., poor recording, loud background noise)	Included

### 3. Audio Description

- A tiered pricing structure that covers the aggregate spend of all services across all participating institutions during the life of the contract (2 years):
  - After the first \$100,000, the audio description prices for all turnarounds will automatically decrease by \$0.25 per minute from the starting rate going forward.
  - After the first \$500,000, the audio description prices for all turnarounds will automatically decrease by \$0.50 per minute from the starting rate going forward.
  - After the first \$1,000,000, the audio description prices for all turnarounds will automatically decrease by \$0.75 per minute from the starting rate going forward.
- Prices are prorated to the exact event duration (rounded to the nearest second).
- The minimum charge is for 1 minute.

<b>Audio Description</b>	
<b>Item</b>	<b>Price</b>
English 5-business day turnaround (standard audio description)	\$7.00/min
English 2-business day turnaround (standard audio description)	\$9.00/min
English 1-business day turnaround (standard audio description)	\$11.00/min
Extended audio description	add \$4.00/min
Spanish audio description	add \$1.00/min
<b>Always Included</b>	
Platform integrations	Included
Audio description plugin	Included
Text-based and media-based outputs	Included
Merged caption + description outputs	Included
Audio description editor	Included
Synthesized voice with multiple voices and speeds	Included

### 4. Other

<b>Item</b>	<b>Price</b>
HIPAA workflow	\$0.25/min
Rendered video with open/encoded captions and audio descriptions	\$10 per file

on/off encoded or muxed with source audio	
Captioning only (upload an existing transcript with a video)	\$0.80/min
Computer-generated captions and transcripts with the ability to edit or upgrade to human-perfected captions.	\$0.15/min
Automated caption placement	\$0.25/min
Human caption placement	\$0.50/min
API	Included
Account creation	Included
Unlimited technical support	Included

C. Payment Terms and Invoicing

3Play Media will be paid in accordance to the payment terms selected by 3Play Media upon registration to do business with the University. 3Play Media will submit invoices referencing the correct purchase order number to the appropriate University Accounts Payable Division which will be shown on the purchase order for invoicing. The University's invoices will be sent to:

University of Virginia Accounts Payable  
P.O. Box 3025  
Scranton, PA 18508  
Email: [vendor-invoices@virginia.edu](mailto:vendor-invoices@virginia.edu)

D. Contract Administrators

1. Primary Administration: The individual named below will serve as the point of contact at the University for day-to-day operations under this Agreement. The Primary Administrator cannot approve amendments or price changes to this Agreement. 3Play Media will channel specific service request communications through:

- Lori Kressin  
Coordinator of Academic Accessibility  
VP for Academic Affairs  
University of Virginia  
102 Cresap Rd.  
P.O. Box 400199  
Charlottesville, VA 22901  
E: [coaa@virginia.edu](mailto:coaa@virginia.edu)  
Ph: 434-982-5784
- Korey Singleton, Manager  
Assistive Technology Initiative

George Mason University  
Aquia Building RM 238 MSN: 6A11  
4400 University Drive  
Fairfax, VA 22030  
E: [ati@gmu.edu](mailto:ati@gmu.edu)  
Ph: 703-993-4743

2. Secondary Administration: 3Play Media will channel all Contract Administration questions not pertaining to a specific service request through the VHEPC and University's Procurement & Supplier Diversity Services department, and specifically the individuals named below:

- **University of Virginia**  
Devon Stribling, Senior Sourcing Specialist  
Procurement & Supplier Diversity Services  
University of Virginia  
Carruthers Hall, 1001 N. Emmet Street  
P.O. Box 400202  
Charlottesville, Virginia 22904-4202  
Email: [dts6c@virginia.edu](mailto:dts6c@virginia.edu)  
Ph: 434-924-1742
  
- **VHEPC**  
Ryan Balber, Director  
VHEPC  
Carruthers Hall, 1001 N. Emmet Street  
Charlottesville, Virginia 22904-4202  
Email: [rb7pq@virginia.edu](mailto:rb7pq@virginia.edu)  
Phone: 434-297-6099; Mobile: 217-649-9700

3Play Media will not make any commitments or comments, or actions on behalf of the University without the explicit direction of the Contract Administrators. The University reserves the right to change its Contract Administrators, upon notice to 3Play Media.

E. Price Escalation

Changes to Price List: The VHEPC will only entertain proposed changes to the price list for review on a *yearly basis (July-June)*, unless it is in the best interest of the VHEPC to make cost reduction changes that will benefit the VHEPC participating members. 3Play Media is expected to notify the VHEPC of any price decreases to their published price

list, and to make price changes to any web based catalog within 30 days. If price decreases are made for services that are on unfilled purchase orders, those items will be sold to the VHEPC members for the lower cost. Promotional Priced services, which are below the VHEPC net price, are included, and the promotional price, if a price advantage to the participating VHEPC members, must also be offered and included in any open, unfilled, purchase orders at the promotional price for the term of the promotion.

Any proposed price increase adjustments will be reviewed yearly, based on the University fiscal year (July-June). The VHEPC reserves the right to audit and review any proposed changes. The VHEPC requires thirty (30) calendar days after receiving a written letter documenting and justifying the reasons for a requested increase; and after receiving any reports requested, showing the total dollar (\$) impact for each participating members (based on the services sold to that particular member from the previous fiscal year). The 30 days for analysis begins after receiving all requested information, in the format requested, and accepted by the VHEPC. Price adjustments will not go into effect until after all the analysis is complete, and recommendation is documented by the VHEPC Contract Administrator, and approved by the Director of the VHEPC. Once approved the price adjustment will be effective the following first of the Month.

3Play Media should note that price adjustments are not guaranteed and the VHEPC retains the right to verify price movement against various market analytics. Price adjustments will not be granted for any amount over the stated Producer's Price Index (PPI) percent (%) adjustment, except in special and documented instances (i.e. a force majeure event). The PPI is an average of the change in the price of tracked indices. The VHEPC expects that any changes will be below the average, and will not exceed the ceiling, defined as the yearly percent % change in the index tracked. The VHEPC is using the Bureau of Labor Statistics (BLS) data in order to show a fair and equitable adjustment, if it is so warranted, based on hard data and purchase history. PPI data can be accessed through the Bureau of Labor Statistic's web page located at: [www.bls.gov/ppi/data.htm](http://www.bls.gov/ppi/data.htm)

Additionally, the VHEPC will not entertain a price increase based on the cost associated with “the cost of doing business”; which includes, but is not limited to, overhead and transportation costs. There also will be no additional cost increase passed on to the VHEPC by means of surcharges, or other price increases, unless approved by the VHEPC Contract Administrator prior to implementation; and as a result of price analysis of the market conditions.

F. VHEPC Reporting Requirements

3Play Media will provide quarterly reporting data of all activity for VHEPC members and non-member spend. Reporting data will be sent to the VHEPC Contract Administrator listed in Section D. Part 2.

G. Special Work Performance Requirements

3Play Media will maintain a mandatory background check and drug and alcohol-testing program for all captioning employees when performing on-site Services. A Criminal History Records Check must be completed through the Virginia State Police for each captioning employee who performs on-site Services. If the check reveals any of the following, 3Play Media will not assign that individual to perform Services for the University:

1. Any felony
2. Any of the following misdemeanor offenses, regardless of when the conviction occurred:
  - Burglary
  - Breaking and entering
  - Robbery
  - Theft
  - Larceny
  - Any sexual offenses
3. Any of the following misdemeanor offenses if convicted within the previous five years:
  - Forgery
  - Fraud
  - Assault and battery
  - Weapons violations
  - Possession, distribution, sale or delivery of a controlled substance

The University reserves the right to review information obtained via 3Play Media's mandatory background check and drug and alcohol-testing program upon request for all employees assigned by 3Play Media to University projects/work.

#### H. Compliance

3Play Media warrants that the service(s) it will provide to the University is fully compliant with all state and federal laws, regulations, industry codes, and guidance that may be applicable to the service, which may include:

1. Any applicable national, federal, state or local law, rule, directive or regulation relating to the privacy of personal information, including, without limitation, the Family Educational Rights and Privacy Act, 20 U.S.C. §1232g, and its implementing regulations ("FERPA), the Americans with Disabilities Act, and the Virginia Consumer Data Protection Act. FERPA regulated data is considered Sensitive Data, as defined below.

#### I. Data Protection

Sensitive, non-public "University Data" is strictly regulated by state or federal law. Such data includes but is not limited to: business, administrative and financial data, intellectual property, and patient, student and personnel data ("Sensitive Data").

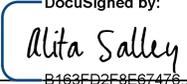
To the extent the University shares Sensitive Data with 3Play Media as part of the Source Materials (defined in Section MM. Additional Terms), the University shall establish a separate account within the 3Play Media Portal for such Sensitive Data. Customer acknowledges and agrees that 3Play Media is reliant upon Customer in determining if Sensitive Data are contained in any Source Materials and is not responsible for any breach under the Agreement or otherwise liable to Customer if Sensitive Data are submitted by Customer through an incorrect account.

If 3Play Media provides goods or services to the University and will receive, create, or come into non-incidental contact with University Data, 3Play Media agrees to abide by the terms and conditions of the [Data Protection Addendum](#). Further, if 3Play Media

provides goods or services to the University and will receive, create, or come into non-incident contact with patient or UVa health plan participant Protected Health Information as that term is defined in 45 C.F.R. § 160.103, 3Play Media is a Business Associate, and agrees to abide by the terms and conditions of the [Business Associate Addendum](#) in addition to the Data Protection Addendum.

**ACCEPTANCE**

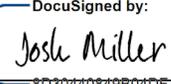
**For the Rector and Visitors  
of the University of Virginia**

DocuSigned by:  
  
B163FD2F8E67476...  
Alita Salley, Interim Director  
Procurement and Supplier Diversity Services

11/15/2022  
Date

RFP-UVA-00063-LP021722  
Contract #UVA-AGR-2216

**For 3Play Media, Inc.**

DocuSigned by:  
  
8D30440849B04DF...  
Josh Miller  
Co-Chief Executive Officer and Co-Founder

11/15/2022  
Date

## Attachment 1

### General Contractual Provisions

A. Nondiscrimination

During the performance of this Agreement, 3Play Media will comply with the contract provisions contained in Section 2.2-4311(1)& (2) of the Code of Virginia or any successor provisions which may be applicable to this Agreement. Also, in accordance with Section 2.2- 4343.1, the University does not discriminate against faith-based organizations.

B. Conflict of Interests

3Play Media represents to the University that its entering into this Agreement with the University and its performance through its agents, officers and employees does not and will not involve, contribute to nor create a conflict of interest prohibited by the Virginia State and Local Government Conflict of Interests Act (Va. Code 2.2-3100 *et seq*), the Virginia Ethics In Public Contracting Act (Va. Code 2.2-4367 *et seq*), the Virginia Governmental Frauds Act (Va. Code 18.2-498.1 *et seq*) or any other applicable law or regulation.

C. Independent Contractor

3Play Media is not an employee of the University, but is engaged as an independent contractor. 3Play Media will indemnify and hold harmless the Commonwealth of Virginia, the University, and its employees and agents, with respect to all withholding, Social Security, unemployment compensation and all other taxes or amounts of any kind relating to 3Play Media's performance of this Agreement. Nothing in this Agreement will be construed as authority for 3Play Media to make commitments which will bind the University, or to otherwise act on behalf of the University, except as the University may expressly authorize in writing.

D. Drug-Free Workplace

This provision applies to the extent the Code of Virginia Section 2.2-4312 is applicable to 3Play Media and the services performed under this Agreement.

3Play Media, its agents and employees are prohibited, under the terms of this Agreement, Code of Virginia Section 2.2-4312, and the Commonwealth of Virginia, Department of Human Relations Management Policy Number 1.05, from manufacturing, distributing, dispensing, possessing, or using any unlawful or unauthorized drugs or alcohol while on University property.

During the performance of this Agreement, 3Play Media agrees to 1) provide a drug-free workplace for 3Play Media's employees; 2) post in conspicuous places, available to employees and applicants for employment, a statement notifying employees that the unlawful manufacture, sale, distribution, dispensation, possession, or use of a controlled substance or marijuana is prohibited in 3Play Media's workplace and specifying the actions that will be taken against employees for violations of such prohibition; 3) state in all solicitations or advertisements for employees placed by or on behalf of 3Play Media that it maintains a drug-free workplace; and 4) include the provisions of the foregoing clauses in every subcontract or purchase order of over \$10,000, so that the provisions will be binding upon each subcontractor or vendor.

For the purposes of this section, "drug-free workplace" means a site for the performance of work done in connection with a specific agreement awarded to a 3Play Media, the employees of whom are prohibited from engaging in the unlawful manufacturing, sale, distribution, dispensation, possession or use of any controlled substance or marijuana during the performance of this Agreement.

E. Information Technology Access

All electronic and information technology procured through this agreement must meet the applicable accessibility standards of Section 508 of the Rehabilitation Act of 1973 (29 U.S.C. 794d) as amended and is viewable at <https://www.section508.gov/>. Additionally, in accordance with § 2.2-3504 of the Code of Virginia, the following will apply to all information technology Agreements:

NON-VISUAL ACCESS TO TECHNOLOGY: All information technology (the

"Technology") which is purchased or upgraded by the University will comply with the following non-visual access standards from the date of purchase or upgrade until the expiration of this Agreement

- O Effective, interactive control and use of the Technology will be readily achievable by non-visual means;
- O Technology equipped for non-visual access will be compatible with information technology used by other individuals with whom any blind or visually impaired user of the Technology interacts;
- O Non-visual access technology will be integrated into any networks used to share communications among employees, program participants or the public; and
- O Technology for non-visual access will have the capability of providing equivalent access by non-visual means to telecommunications or other interconnected network services used by persons who are not blind or visually impaired.

Installation of hardware, software, or peripheral devices used for non-visual access is not required when the Technology is being used exclusively by individuals who are not blind or visually impaired, but applications programs and underlying operating systems (including the format of the data) used for the manipulation and presentation of information will permit the installation and effective use of non-visual access software and peripheral devices.

The agreement must provide a detailed explanation of how compliance with the foregoing non-visual access standards is achieved and a validation of concept demonstration.

F. Unauthorized Alien Use

3Play Media warrants that it does not knowingly employ an "unauthorized alien," as such term is defined in the federal Immigration Reform and Control Act of 1986. 3Play Media furthermore agrees that, during the term of this Agreement, it will not knowingly employ an unauthorized alien.

G. Additional Federal Grant Provisions

The following provisions apply to a contract made under a federal grant: [Appendix II to Part 200 - Contract Provisions for Non-Federal Entity Contracts Under Federal Awards.](#)

H. Assignment

Neither party to this Agreement will have the right to assign this Agreement in whole or in part without the prior written consent of the other.

I. Amendments

No amendment of this Agreement will be effective unless it is reduced to writing and executed by the University's Director of Procurement and Supplier Diversity Services, or other authorized party, and by the individual signing Teknion's proposal or by other individuals named by either party as specified in the Notices provision below. If 3Play Media deviates from the terms of this Agreement without a written amendment, it does so at its own risk.

J. Notices

Any notice required or permitted to be given under this Agreement will be in writing and will be deemed duly given: (1) if delivered personally, when received; (2) if sent by recognized overnight courier service, on the date of the receipt provided by such courier service; (3) if sent by registered mail, postage prepaid, return receipt requested, on the date shown on the signed receipt, or (4) if sent by facsimile, when received (as verified by sender's machine) if delivered no later than 4:00 p.m. (receiver's time) on a business day or on the next business day if delivered (as verified by sender's machine) after 4:00 p.m. (receiver's time) on a business day or on a non-business day. All such notices will be addressed to a party at such party's address or facsimile number as shown below.

If to the University:

Procurement and Supplier Diversity Services  
Strategic Sourcing Director  
University of Virginia  
P.O. Box 400202  
Charlottesville, Virginia 22904-4202  
Phone: 434-924-4019  
Fax: 434-982-2690

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If to 3Play Media:

General Counsel  
3Play Media, Inc.  
77 N. Washington Street  
Floor 2  
Boston, MA 02114  
Email: [legal@3playmedia.com](mailto:legal@3playmedia.com)

K. University Registration

3Play Media agrees to register and remain registered as a supplier with the University during the term of this Agreement, and to comply with all applicable terms and conditions associated with registration.

L. eVA Registration / Transaction Fee

The eVA Internet electronic procurement solution is the Commonwealth of Virginia's comprehensive electronic procurement system. The portal is a gateway for firms to conduct business with state agencies and public bodies. All agencies and public bodies are expected to utilize eVA and all firms desiring to provide goods and/or services in the Commonwealth are encouraged to participate in the eVA Internet e-procurement solution.

3Play Media is required to register in the eVA Internet e-procurement solution as a condition of award and remain eVA registered during the term of this Agreement. 3Play Media will be subject to an eVA transaction fee, for which 3Play Media will be invoiced by Commonwealth of Virginia, Department of General Services. 3Play Media may not recoup the eVA fee by invoicing the University for the fee. Additional information is available at [www.eva.virginia.gov](http://www.eva.virginia.gov)

3Play Media must ensure that only eVA registered sites are maintained in the University's supplier registration system. If the firm does not meet this requirement throughout the term of the Agreement, 3Play Media may be responsible for all additional eVA expenses incurred by the University as a result of the firm not maintaining proper eVA registration

and / or having a non-eVA registered site(s) within the University's supplier registration system.

M. Waiver

No waiver of any right will be deemed a continuing waiver, and no failure on the part of either party to exercise wholly or in part any right will prevent a later exercise of such or any other right.

N. Indemnification

To the extent permitted by the laws of the Commonwealth of Virginia, the University agrees to indemnify and hold harmless 3Play Media from third party claims and resulting damages and liabilities to the extent caused by the acts or omissions of the University's officers, employees, or agents acting pursuant to this Agreement. Nothing contained herein will be interpreted as a waiver of the sovereign immunity of the Commonwealth of Virginia, or as imposing any obligation to seek to indemnify pursuant to the Code of Virginia. Notwithstanding the foregoing, the University shall not be required to indemnify 3Play Media to the extent such claims, liabilities, judgments, penalties, losses, costs, damages, and expenses is found by a court of competent jurisdiction to be the result of the gross negligence or willful misconduct of 3Play Media.

To the extent permitted by the laws of the Commonwealth of Virginia, 3Play Media agrees to indemnify and hold harmless the University from third party claims and resulting damages and liabilities to the extent caused by the acts or omissions of 3Play Media's officers, employees, or agents acting pursuant to this Agreement. Notwithstanding the foregoing, 3Play Media shall not be required to indemnify the University to the extent such claims, liabilities, judgments, penalties, losses, costs, damages, and expenses is found by a court of competent jurisdiction to be the result of the gross negligence or willful misconduct of the University

O. Termination

If 3Play Media fails to provide quality goods or services in a professional manner, solely as determined by the University, and, upon receipt of notice from the University, does not correct the deficiency to the University's satisfaction within 15 calendar days or a time agreed to by both parties in writing, the University reserves the right to terminate this Agreement upon written notice to 3Play Media.

In addition, this Agreement may be terminated by the University for convenience by providing 30 days' notice. The University remains responsible for payment of all products and services it has implemented, used or purchased through the time of termination.

P. Non-Appropriation

Funding for any Agreement between the University and 3Play Media is dependent at all times upon the appropriation of funds by the Virginia General Assembly and/or any other organization of the Commonwealth authorized to appropriate such funds. In the event that funding to support this Agreement is not appropriated, whether in whole or in part, then this Agreement may be terminated by the University effective the last day for which appropriated funding is available.

Q. Right of Audit

The University reserves the right to audit or cause to be audited 3Play Media's books and accounts regarding the University's account at any time during the term of this Agreement and for three years thereafter. 3Play Media will make available to the University all books and records relating to performance of this Agreement as may be requested during said period. This specifically includes, but is not limited to, the right of the University to require 3Play Media to perform self-audits within reasonable parameters established by the University.

R. Contractual Claims Procedure

The Virginia Acts of Assembly of 2007, Chapter 943, Chapter 3, Exhibit P and its attachments requires contractors with the University to submit any claims, whether for money or other relief, in writing no later than 60 days after final payment; however, written notice of the contractors intention to file such a claim must be given at the time of

the occurrence or beginning of the work upon which the claim is based.

The University's procedure for deciding such contractual claims is:

1. 3Play Media must provide the written claim to:  
Procurement and Supplier Diversity Services  
Strategic Sourcing Director  
University of Virginia  
Carruthers Hall  
1001 North Emmet Street  
P.O. Box 400202  
Charlottesville, Virginia 22904-4202
2. Although 3Play Media may, if it chooses, attempt to resolve its claim by dealing with a University department other than the one stated in Section 1 above, 3Play Media must submit any unresolved claim in writing no later than 60 days after final payment to the Strategic Sourcing Director if it wishes to pursue its claim.
3. Upon receiving the written claim, the Strategic Sourcing Director will review the written materials relating to the claim and decide whether to discuss the merits of the claim with 3Play Media. If such discussion is to be held, the Strategic Sourcing Director will contact 3Play Media and arrange such discussion. The manner of conducting such discussion will be as the Strategic Sourcing Director and 3Play Media mutually agree.
4. The Strategic Sourcing Director will mail his or her decision to 3Play Media within 60 days after receipt of the claim. The decision will state the reason for granting or denying the claim.
5. 3Play Media may appeal the decision to:  
Director of Procurement and Supplier Diversity Services  
University of Virginia  
Carruthers Hall  
1001 North Emmet Street  
P.O. Box 400202  
Charlottesville, Virginia 22904-4202

Provide a written statement explaining the basis of the appeal within 15 days after 3Play Media's receipt of the decision.

6. Upon receiving the written appeal, the Director of Procurement and Supplier Diversity Services will review the written materials relating to the claim and decide whether to discuss the merits of the claim with 3Play Media. If such discussion is to be held, the Director of Procurement and Supplier Diversity Services will contact 3Play Media and arrange such discussion. The manner of conducting such discussion will be as the Director of Procurement and Supplier Diversity Services and 3Play Media mutually agree.
7. The Director of Procurement and Supplier Diversity Services will mail his or her decision to 3Play Media within 60 days after the Director of Procurement and Supplier Diversity Services receipt of the appeal. The decision will state the reasons for granting or denying the appeal.

Nothing in this procedure will preclude either party from filing a claim in any court of the Commonwealth of Virginia to seek legal or equitable remedy if a dispute should arise, in addition to such other remedies as are expressly provided in this Agreement. 3Play Media may not, however, file such claim unless and until it has complied fully with the procedure set forth in this provision.

S. Cooperative Procurement / Use of Agreement by Third Parties

It is the intent of this Agreement to allow for cooperative procurement. Accordingly, any public body, public or private health or educational institution, or any University related foundation may access this Agreement if authorized by 3Play Media.

Participation in this cooperative procurement is strictly voluntary. If authorized by 3Play Media, this Agreement may be extended to the entities indicated above to purchase at fees in accordance with this Agreement. 3Play Media will notify the University in writing of any such entities accessing this Agreement. No modification of this Agreement or execution of a separate agreement is required to participate. 3Play Media will provide semi-annual usage reports for all entities accessing this Agreement. Participating entities will place their own orders directly with 3Play Media and will fully and independently administer their use of this Agreement to include contractual disputes, invoicing and

payments without direct administration from the University. The University will not be held liable for any costs or damages incurred by any other participating entity as a result of any authorization by 3Play Media to extend this Agreement. It is understood and agreed that the University is not responsible for the acts or omissions of any entity, and will not be considered in default of this Agreement no matter the circumstances.

Use of this Agreement does not preclude any participating entity from using other agreements or competitive processes as the need may be.

T. The University's Authorized Representatives

The only persons who are or will be authorized to speak or act for the University in any way with respect to this Agreement are those whose positions or names have been specifically designated in writing to 3Play Media by the University's Director of Procurement and Supplier Diversity Services.

U. Purchasing Manual

This Agreement is subject to the provisions of the Commonwealth of Virginia "Purchasing Manual for Institutions of Higher Education and Their Vendors" and any subsequent revisions, which is available at this web site: <https://vascupp.org/>

V. Goods and/or Services

During the term of this Agreement, 3Play Media will provide for the University the goods and/or services offered to the University by the firm in its proposal and/or any addenda to its proposal which has been approved in writing by the University and as may be further specified by the University in writing when it selected the firm.

W. Future Goods and/or Services

The University reserves the right to have 3Play Media provide additional goods and/or services that may be required by the University during the Term of this Agreement. Any such goods and/or services will be provided under the same terms and conditions of this Agreement. Such additional goods and services may include other products, components, accessories, subsystems or services provided by 3Play Media. If described in the price list

set forth in the Agreement, such goods and services shall be provided in accordance with the price list set forth in the Agreement, during the Term of this Agreement.

X. Ordering Procedures

The University does not place verbal orders for Goods and/or Services. The University may only place orders for the Goods and/or Services by issuing a formal written Purchase Order in advance of 3Play Media's provision of any Goods and/or Services. Accordingly, at the University's request, 3Play Media will issue a proposal/quotation listing the Goods and/or Services desired by the University and the corresponding fees and/or fee estimates. After any necessary discussions and/or revisions, the University will issue a corresponding Purchase Order for a specified fee amount. This specified fee amount cannot be exceeded by 3Play Media unless a new formal written Purchase Order or Purchase Order revision is issued by the University authorizing a specific additional fee amount. Under no circumstances does the University authorize 3Play Media to provide the Goods and/or Services before receipt of a formal written Purchase Order corresponding to its proposal/quotation. If 3Play Media provides Goods and/or Services prior to receipt of a formal written Purchase Order, or incurs costs in excess of authorized purchase order fee amounts, it does so at its own risk.

Y. Fair Employment Contracting Act

In accordance with Code of Virginia Section 2.2-4201, during the performance of this Agreement, 3Play Media agrees as follows, in each case to the extent the Code of Virginia Section 2.2-4201 is applicable to 3Play Media:

1. 3Play Media will not discriminate against any employee or applicant for employment because of race, religion, color, sex, or national origin, except where religion, sex, or national origin is a bona fide occupational qualification reasonably necessary to the normal operation of 3Play Media. 3Play Media agrees to post in conspicuous places, available to employees and applicants for employment, notices setting forth the provisions of this nondiscrimination clause, including the names of all contracting agencies with which the contractor has contracts of over \$10,000.

2. 3Play Media will, in all solicitations or advertisements for employees placed by or on behalf of 3Play Media, state that 3Play Media is an equal opportunity employer. However, notices, advertisements and solicitations placed in accordance with federal law, rule or regulation shall be deemed sufficient for the purpose of meeting the requirements of this provision.
3. If 3Play Media employs more than five employees, 3Play Media shall (i) provide annual training on 3Play Media's sexual harassment policy to all supervisors and employees providing services in the Commonwealth of Virginia, except such supervisors or employees that are required to complete sexual harassment training provided by the Department of Human Resource Management, and (ii) post 3Play Media's sexual harassment policy in (a) a conspicuous public place in each building located in the Commonwealth of Virginia that 3Play Media owns or leases for business purposes and (b) 3Play Media's employee handbook.

3Play Media shall include the provisions of subparagraphs 1, 2, and 3 above in every subcontract or purchase order of over \$10,000, so that such provisions shall be binding upon each subcontractor or vendor.

Z. Marketing

The University encourages 3Play Media to appropriately and specifically market itself to applicable end-using University departments that may be interested in 3Play Media's Goods and/or Services. However, 3Play Media will not use non-specific mass marketing formats; such as, but not limited to, spam, emails and junk mail. In the event that 3Play Media engages in non-specific mass marketing formats, the University, in its sole discretion, may choose to terminate this Agreement immediately.

AA. Compliance

3Play Media will comply with all applicable laws and industry standards in performing services under this Agreement. Any 3Play Media personnel visiting the University's facilities will comply with all applicable University policies regarding access to, use of, and conduct within such facilities.

**BB. Intellectual Property Rights/Disclosure**

Unless expressly agreed to the contrary in writing, all goods, products, materials, documents reports, writings, video images, photographs or papers of any nature including software or computer images prepared or provided by 3Play Media (or its subcontractors) for the University will not be disclosed to any other person or entity without the written permission of the University. 3Play Media warrants to the University that the University will own all rights, title and interest in any and all intellectual property rights created in the performance or otherwise arising from this Agreement and will have full ownership and beneficial use thereof free and clear of claims of any nature by any third party including without limitation copyright or patent infringement claims. 3Play Media will execute any assignments or other documents needed for the University to perfect such rights. Notwithstanding the foregoing, for research collaboration pursuant to subcontracts under sponsored research agreements administered by the University's Office of Sponsored Programs, intellectual property rights will be governed by the terms of the grant or contract to the University to the extent such grant or contract requires intellectual property terms to apply to subcontractors.

**CC. Brand Standards**

3Play Media warrants that any Creative Work produced for the University (1) will comply with the University's brand standards and (2) in its end application, will fit the visual look and feel of the overall brand aesthetic, brand concept, color palette, visual effects, photographic and video style standards, and make correct use of all marks including logos and identity components. 3Play Media agrees that the University, in its sole discretion, will determine 3Play Media's compliance with this Provision. Creative Work includes, but is not limited to: websites, applications, electronic communications, newsletters, advertisements, mailings, magazines, and other communication materials (digital and print) produced for the University by 3Play Media. For additional guidance, 3Play Media should consult the UVA Brand Guidelines at <http://brand.virginia.edu> or contact University Communications ([brandguidelines@virginia.edu](mailto:brandguidelines@virginia.edu)).

**DD. International Traffic in Arms Regulations (ITAR)**

If 3Play Media is providing any items, data or services under this order that are controlled

by the Department of State, Directorate of Defense Trade Controls, International Traffic in Arms Regulations (ITAR), it must notify (by sending an email to export-controls@virginia.edu), and receive prior written authorization from, the University's Office of Export Controls before delivery. The notification provided by the supplier shall include the name of the University of Virginia point of contact, identify each ITAR controlled commodity, provide the associated U.S. Munitions List (USML) category number(s), and indicate whether or not the determination was reached as a result of a commodity jurisdiction or self-classification process. 3Play Media agrees that if it fails to notify the University that it is providing ITAR-controlled items, data or services, it shall reimburse the University for any fines, legal costs and other fees imposed by the above-named regulatory agency for any violation of export controls regarding the provided items, data or services

EE. License Requirements

Certain statutes and regulatory agencies require that some firms be properly registered and licensed, or hold a permit, prior to performing specific types of services. It is 3Play Media's responsibility to comply with the rules and regulations issued by the appropriate regulatory agencies and possess and maintain the appropriate licenses if applicable for the Goods and/or Services to be provided under this Agreement. A copy of any such applicable license and/or permit must be furnished upon request to the University or VASCUPP member institution. For example, if 3Play Media will be providing removal, repair, improvement, renovation or construction-type services they, or a qualified individual employed by the firm, must possess and maintain an appropriate State of Virginia Class A, B, or C Contractor License (as required by applicable regulations and value of services to be performed) for the duration of this Agreement.

FF. Force Majeure

Neither Party will be deemed in default or otherwise liable hereunder due to its inability to perform by reason of any fire, earthquake, flood, epidemic, accident, explosion, casualty, strike, lockout, labor controversy, riot, civil disturbance, act of public enemy, embargo, war, act of God, or any municipal, county, state, national or international ordinance or law or any executive, administrative, judicial or similar order, including

orders from any governing body (which order is not the result of any act or omission to act which would constitute a default under this Agreement), or any failure or delay of any transportation, power, or other essential thing required, or similar causes beyond the Party's control. Any delay in performance will be no greater than the event of force majeure causing the delay.

#### GG. Promotional Activity

During the Term of the Agreement, 3Play Media may reference the University as a customer in sales and marketing materials and public statements (Promotional Materials), provided such Promotional Materials do not include opinions explicitly or implicitly attributed to the University about the quality of the goods and/or services provided to the University. In no event shall 3Play Media request that the University or any University employee endorse 3Play Media or 3Play Media's goods and/or services. Promotional Materials may include the name "University of Virginia" and UVA's approved institutional logo solely to identify accurately the University as an entity to whom 3Play Media provides goods and/or services. Furthermore, the University grants 3Play Media a limited, nonexclusive license to display the University's Marks solely as they are made available to 3Play Media in connection with 3Play Media's goods and/or services

#### HH. Insurance

3Play Media shall procure and maintain and require any Subcontractor to procure and maintain for the duration of the contract, insurance against claims which may arise from or in connection with the performance of the work and the results of that work by 3Play Media, its agents, representatives, employees or subcontractor. Beginning on the Commencement Date and continuing during the Initial Term of the Contract and any Renewals or extensions thereof, 3Play Media, at 3Play Media's expense, shall keep in force, with an insurance company with a current A.M. Best's rating of no less than A:VII, one which is authorized to transact business in Virginia, and in a form acceptable to UVA the following:

**Commercial General Liability (CGL):** providing CGL coverage on an "occurrence" basis, including for

(X) bodily injury liability including: death, assault or battery,  
(X) property damage liability for damage to property of third parties,  
(X) personal injury liability,  
(X) contractual liability,  
(X) products / completed operations liability and with limits no less than Two Million Dollars (\$2,000,000) per occurrence and Four Million Dollars (\$4,000,000) aggregate. *Limits may be met through CGL plus umbrella coverage.*

{X} **Automobile Liability:** providing coverage on all vehicles (i.e., owned, non-owned, and hired) operated with combined minimum limits of liability of at least One Million Dollars (\$1,000,000) per occurrence for bodily injury and property damage. The requirement for coverage for “owned” vehicles applies only to the extent vehicles are owned by 3Play Media.

{X} **Workers’ Compensation:** providing coverage of at least the statutory amounts covering all employees, and employer’s liability insurance with minimum limits of One Million Dollars (\$1,000,000) for each coverage part.

{X} **Employment Practices Insurance:** providing coverage against claims made by any employee, former employee, or potential employee or third party who alleges discrimination (e.g., age, sex, race, or disability), wrongful termination of employment, harassment or any other employment practices-related injuries with limits of liability of at least One Million Dollars (\$1,000,000).

{X} **Cyber Insurance:** providing coverage against information security and privacy breaches (including social engineering coverage, legal and forensic services, credit monitoring programs, website media content liability, crisis management and public relations and violations of Payment Card Industry compliance with combined limits of liability of at least One Million Dollars (\$1,000,000).

#### **Other Insurance Provisions**

The insurance policies are to contain, or be endorsed to contain, the following provisions:

***Additional Insured Status***

The Commonwealth of Virginia, and the Rector and Visitors of the University of Virginia, its officers, employees, and agents are to be covered on the CGL policy with respect to liability arising out of work or operations performed including materials, parts, or equipment furnished in connection with such work or operations.

***Primary Coverage***

For any claims related to this contract, 3Play Media's insurance coverage shall be primary insurance as respects the Commonwealth of Virginia, the Rector and Board of Visitors of the University of Virginia, its officers, employees, and agents. Any insurance or self-insurance maintained by the Commonwealth of Virginia, the Rector and Board of Visitors of the University of Virginia, its officers, employees, and agents shall be excess of 3Play Media's insurance and shall not contribute with it.

***Notice of Cancellation***

Each insurance policy required above shall provide that coverage shall not be canceled, except with notice to UVA.

***Waiver of Subrogation***

3Play Media will grant to UVA a waiver of any right to subrogation which any insurer of 3Play Media may acquire against UVA by virtue of the payment of any loss under such insurance. 3Play Media will agree to obtain any endorsement that may be necessary to effect this waiver of subrogation, but this provision applies regardless of whether or not UVA has received a waiver of subrogation endorsement from the insurer.

***Deductibles and Self-Insured Retentions***

Any deductibles or self-insured retentions must be declared to and approved by UVA. UVA may require 3Play Media to purchase coverage with a lower deductible or retention or provide proof of ability to pay losses and related investigations, claim administration, and defense expenses within the retention.

### ***Claims Made Policies***

If any of the required policies provide claims-made coverage:

1. The Retroactive Date must be shown and must be before the date of the contract or the beginning of contract work.
2. Insurance must be maintained, and evidence of insurance must be provided ***for at least five (5) years after completion of the contract of work.***
3. If coverage is canceled or non-renewed, and not replaced ***with another claims- made policy form with a Retroactive Date prior to*** the contract effective date, 3Play Media must purchase “extended reporting” coverage for a minimum of ***five (5)*** years after completion of work.

### ***Verification of Coverage***

3Play Media shall furnish UVA with original certificates and amendatory endorsements, or copies of the applicable policy language effecting coverage required by this clause. All certificates and endorsements are to be received and approved by UVA before work commences. However, failure to obtain the required documents prior to the work beginning shall not waive 3Play Media’s obligation to provide them. UVA reserves the right to require complete, certified copies of all required insurance policies, including endorsements required by these specifications, at any time.

### ***Special Risks or Circumstances***

UVA reserves the right to modify these requirements, including limits, based on the nature of the risk, prior experience, insurer, coverage, or other special circumstances.

## II. Virginia’s Freedom of Information Act (FOIA)

This Agreement is governed by and subject to the Commonwealth of Virginia’s Freedom of Information Act (FOIA). All pricing information, consistent with the public interest and the underlying policy of the Commonwealth of Virginia, is open to the inspection of any qualified requestor and cannot be designated as confidential, proprietary or trade secret to avoid disclosure. Pricing information is also shared on a need-to-know basis both within the University and its affiliates and consultants for purposes of operational

review, transaction management, contract compliance & monitoring, benchmarking and performance improvement. Attempts to prevent disclosure of pricing information by designating it as confidential, proprietary or trade secret will be ignored. In addition, any non-price information considered by a firm to be proprietary or to constitute trade secret(s) is also subject to disclosure under FOIA, except that information provided by 3Play Media that constitutes proprietary information or trade secret(s), other than pricing information, may be exempted from disclosure if 3Play Media invokes the protections of Virginia Code Section 2.2-4342(F) in writing and follows its stated requirements prior to or upon submission of the information for which 3Play Media is seeking protection.

JJ. Governing Law

This Agreement will be governed and construed in all respects by the laws of the Commonwealth of Virginia.

KK. Entire Agreement

This is the entire agreement between the University (including University employees and other End Users) and 3Play Media. In the event that 3Play Media enters into terms of use agreements or other agreements or understanding, whether electronic, click-through, verbal or in writing, with University employees or other End Users, such agreements shall be null, void and without effect, and the terms of this Agreement shall apply.

LL. Agreement Signature

This Agreement may be executed in counterparts, each of which will be deemed an original, and both of which taken together will constitute one and the same document. Electronically transmitted signatures will be deemed originals for all purposes relating to the agreement.

MM. Additional Terms

**“Accessibility Service Professionals”** means the individuals who perform captioning, transcription, editing, description and other related services on behalf of 3Play Media.

**“Affiliates”** means any corporation, partnership or other entity now existing or hereafter organized that directly or indirectly controls, is controlled by or under common control

with a party. For purposes of this definition “control” means the direct possession of a majority of the outstanding voting securities of an entity.

“**Personnel**” means 3Play Media’s and its Affiliates’ employees and Accessibility Service Professionals.

“**Vendors**” means 3Play Media’s hosting service provider, translation service providers, and software vendors who provide platforms, software, services, tools and applications that 3Play Media and/or its Affiliates uses in order to provide the 3Play Media Portal and the Services.

Services. “**3Play Media Portal**” means 3Play Media’s online account system and associated tools, applications and features, including the application programming interface, or API, which University may use to integrate its or a third party’s applications, products and services. During the term of this Agreement, 3Play Media will provide University access to the 3Play Media Portal. University will use the 3Play Media Portal to submit Source Materials, which 3Play Media and its Affiliates will use to provide the University with the Services. In order to use the 3Play Media Portal, University is required to establish a login identifier and a password (“**Credentials**”). University is responsible for all activity associated with its Credentials, and for keeping its Credentials secure. 3Play Media’s Turnaround Service Level Agreement describes duration upload limits, deadlines, and turnaround times. 3Play Media’s Quality and Accuracy Service Level Agreement describes quality thresholds and accuracy standards. Together, these agreements are called the “SLAs.” The SLAs are available at: <http://www.3playmedia.com/sla/>. Services are performed remotely or at 3Play Media’s or its Affiliates’ facilities and are not performed at University’s locations. Services may be performed outside of the United States.

Source Materials. “**Source Materials**” means all videos, media, audio lines, video feed, content, files, data and other materials provided by University to 3Play Media or its Affiliates for use in connection with the Services, that are submitted via the 3Play Media Portal or otherwise provided to 3Play Media or its Affiliates. University represents and warrants that (i) it either owns fully and outright or otherwise possesses and has obtained all rights, approvals, licenses, consents and permissions as are necessary to perform its obligations under this Agreement, exercise its rights under this Agreement, and allow 3Play Media to use the Source Materials under this Agreement; (ii) the Source Materials, and their use in connection with the Services, as set out in the Agreement and Orders, directly or indirectly, does not infringe, violate or misappropriate any third party’s rights; and (iii) University complies with all applicable laws and regulations. University will provide 3Play Media a copy of the Source Materials and not the original Source Materials. 3Play Media is not responsible for any loss of, damage to, or destruction of any Source Materials, including any loss associated with electronic transmission. 3Play Media may reject Source Material for any legitimate reason, including that it considers the Source Material to be of such poor quality that transcription is impossible or would be overly burdensome on its resources. 3Play Media will notify University of such rejection via the 3Play Media Portal or email. Upon receipt of such notice, University may resubmit an alternate version of the impacted Source Material. University retains ownership of all right, title and interest in and to all Source Materials. University grants 3Play Media permission to use the Source Materials and Deliverables as required for

3Play Media and its Personnel (and Vendors who are acting solely on 3Play Media's or its Affiliates' behalf) to provide use of the 3Play Media Portal, the API, the Services and the Deliverables to University.

Deliverables. "**Deliverables**" means any transcript, caption, or other output files created using the Source Materials in the performance of the Services and delivered to University by 3Play Media or its Affiliates. All Deliverables are the sole property of University upon University's payment in full of all associated fees due hereunder. Any copyrightable work in the Deliverables shall be a "work made for hire". University grants 3Play Media a non-exclusive, worldwide, and royalty-free right to run the Source Materials and Deliverables through speech recognition software (in their original form but with an anonymized file name) in order to provide the Services and to improve the performance of the Services. For the avoidance of doubt, University acknowledges that once the files have been run through the speech recognition software the software algorithms use the resulting speech to text to teach and improve the Services (such improvements, "**Machine Learning**"), any such Machine Learning cannot be "unlearned".

3Play Media Materials. All right, title and interest in and to the Services, the API, the 3Play Media Portal and Pre-Existing Materials, and in each case, all derivatives and copies thereof (including any and all patents, copyrights, utility models, industrial designs/design patents, trade secret rights, registered and/or unregistered trademarks, trade names and other proprietary and/or industrial rights embodied therein or associated therewith) (collectively, the "**3Play Media Materials**") are the sole property of 3Play Media's (or, as applicable, its licensors). All rights not expressly granted to University in this Agreement are reserved by 3Play Media and its licensors. To the extent any Pre-Existing Material is incorporated into any Deliverable, 3Play Media hereby grants to University a non-exclusive, worldwide, royalty free, fully paid-up license to use such Pre-Existing Material solely for University's lawful use, distribution and exploitation of the Deliverables and not separate therefrom. "**Pre-Existing Materials**" means any software, information, documentation, templates, frameworks, tools, methodologies, data, designs, concepts, ideas, techniques, processes, know-how, technology, algorithms, and plug-ins, owned or licensed by 3Play Media or its Affiliates prior to the commencement or independent of the Services and all intellectual property rights therein, some of which may be included in the Services or the development of the Deliverables hereunder, and shall also include any enhancements made by 3Play Media or its Affiliates to the 3Play Media Materials while performing the Services hereunder.

Feedback. 3Play Media welcomes ideas, suggestions, and feedback about the 3Play Media Materials ("**Feedback**"). University provides Feedback voluntarily, and 3Play Media may use and incorporate any Feedback that University provides to 3Play Media or its Affiliates into the Services and/or the 3Play Media Materials, without restriction. Feedback is not confidential. 3Play Media is under no obligation to (1) pay compensation or provide attribution for any Feedback; or (2) respond to any Feedback.

Obligations. University will: (a) not knowingly input or upload into the Services, the 3Play Media Portal, the API, the Source Materials or the Deliverables any virus or other form of malicious code; (b) comply with all applicable United States federal and state laws and regulations, including US export control laws (and University will not disclose

any Source Materials or other information requiring an authorization to be exported unless the authorization is required solely for export to countries subject to trade sanctions) and applicable privacy laws; (c) take reasonable precautions to prevent unauthorized or improper use or disclosure of the 3Play Media Materials; and (d) not remove, alter or obscure any trademark, proprietary label or notice associated with the 3Play Media Materials. In addition, University will not (and will not authorize any third party to): (i) modify, alter, adapt, translate, decompile, disassemble or reverse engineer the 3Play Media Materials; (ii) attempt to reconstruct, identify or discover any source code, underlying ideas, underlying user interface techniques or algorithms of the 3Play Media Materials or any portion thereof; (iii) sell, loan, lease, transfer, license, sublicense, copy, market, distribute or the 3Play Media Materials; (iv) use the 3Play Media Materials to create a competitive product or service, or to copy any ideas, features, functions or graphics of the 3Play Media Materials; or (v) use the 3Play Media Materials for any timesharing, service bureau, subscription, rental or other computer based services to third parties.

Third Party Services. Certain elements of the Services may be performed by 3Play Media's Affiliates and their Accessibility Service Professionals and Vendors, who may be operating as independent contractors. 3Play Media is responsible for the performance of any Affiliates, Accessibility Service Professionals, and Vendors under this Agreement.