

AN AGREEMENT
BY AND BETWEEN
THE TEXAS A&M UNIVERSITY SYSTEM OFFICES
AND 3PLAY MEDIA

This Master Services Agreement (hereafter referred to as “MSA”) is entered into and effective upon final execution (the “Effective Date”), by and between The Texas A&M University System (hereafter referred to as “A&M System”), an agency of the state of Texas, and 3Play Media (hereafter referred to as “Provider”). A&M System and Provider are sometimes hereafter referred to as “Party” individually or “Parties” collectively).

A&M System and Provider hereby agree as follows:

1. SCOPE OF WORK

Provider will work with member of the A&M System (hereafter referred to as “Member” or “Members”) to provide Captioning services on an as needed basis. The services included (but not limited to) in the scope of this MSA are listed in Exhibit A, attached hereto.

This MSA is not a contract to perform work at a specific Member but is intended to demonstrate the ability of each Member to contract individually with the Provider for the services outlined in Exhibit A. It is the responsibility of each Member to negotiate a final agreement for their specific needs. There is no guarantee of Member participation.

2. TERM OF THE AGREEMENT

The initial term of this MSA shall begin upon final execution and will extend for three (3) years. This MSA can be extended for one additional two (2) year term upon written agreement of both parties. Any extensions shall be at the same terms and conditions plus any approved changes to be determined by A&M System and negotiated in writing with the Provider.

3. PAYMENT TERMS

- A. A&M System shall not pay any costs or fees as a direct result of this MSA. For services rendered as a result of this MSA, Member shall pay Provider based on the pricing stated within Exhibit B, attached hereto.
- B. Each Member that chooses to utilize the services within this MSA will be responsible to issue a purchase order or execute their own specific agreement, which references this MSA. This process is further defined in Exhibit A, item 12. Actual payment terms shall be agreed upon and stated within each purchase order or member specific agreement.

4. DEFAULT AND TERMINATION

- A. For Cause: In the event of substantial failure by either party to perform in accordance with the terms hereof, the other party may terminate this MSA upon thirty (30) days written notice of termination setting forth the nature of the failure (the termination shall not be effective if the failure is fully cured prior by the end of the 30-day period), provided that said failure is through no fault of the other party.

- B. For Convenience: A&M System may terminate this MSA at any time upon thirty (30) days prior notice to Provider. Any Member will not receive a refund of any unused prepaid fees resulting from such termination for convenience.
- C. Termination of this MSA for either of the reasons stated above shall not terminate any Member specific agreement or purchase order. Refer to Section 8.M for survivability of terms beyond termination of this MSA.

5. ACCESSIBILITY

Provider represents and warrants that the electronic and information resources and all associated information, documentation, and support that it provides to TAMUS under this MSA (collectively, the "EIRs") comply with the applicable requirements set forth in Title 1, Chapter 213 of the Texas Administrative Code and Title 1, Chapter 206, §206.70 of the Texas Administrative Code (as authorized by Chapter 2054, Subchapter M of the Texas Government Code). To the extent Provider becomes aware that the EIRs, or any portion thereof, do not comply, then Provider shall, at no cost to TAMUS, either (1) perform all necessary remediation or (2) replace the EIRs with new EIRs.

6. PUBLIC INFORMATION

- A. Provider acknowledges that A&M System is obligated to strictly comply with the Public Information Act, Chapter 552, Texas Government Code, in responding to any request for public information pertaining to this MSA, as well as any other disclosure of information required by applicable Texas law.
- B. Upon A&M System's written request, Provider will promptly provide specified contracting information exchanged or created under this MSA for or on behalf of A&M System.
- C. Provider acknowledges that A&M System may be required to post a copy of the fully executed MSA on its Internet website in compliance with Section 2261.253(a)(1), Texas Government Code.
- D. The requirements of Subchapter J, Chapter 552, Texas Government Code, may apply to this agreement and the Provider agrees that the agreement can be terminated if the Provider knowingly or intentionally fails to comply with a requirement of that subchapter.

6. DISPUTE RESOLUTION

The dispute resolution process provided in Chapter 2260, *Texas Government Code*, and the related rules adopted by the Texas Attorney General pursuant to Chapter 2260, shall be used by A&M System and Provider to attempt to resolve any claim for breach of contract made by Provider that cannot be resolved in the ordinary course of business. Provider shall submit written notice of a claim of breach of contract under this Chapter to Billy Hamilton, Deputy Chancellor and Chief Financial Officer for A&M System, who shall examine Provider's claim and any counterclaim and negotiate with Provider in an effort to resolve the claim.

7. INSURANCE

Insurance requirements as stated within Exhibit C, attached hereto.

8. MISCELLANEOUS

- A. **Indemnification. Provider agrees to indemnify and hold harmless A&M System from any third party claim, and any resulting damage, liability, expense or loss to the extent arising out of Provider's negligent or willful errors or omissions under this MSA.** A&M System shall (i) prompt written notice to Provider of the Claim; (b) to the extent permitted by applicable law and with the consent and input of the Texas attorney general, the opportunity to have reasonable control of the defense, with counsel reasonably acceptable to the Texas Attorney General, and settlement thereof; and (c) such reasonable cooperation by the A&M System in the defense as Provider may request, all provided, however, that failure to provide reasonable notice, control and/or cooperation shall not relieve the indemnification obligations hereof unless Provider can demonstrate material prejudice to the defense of a claim caused thereby. Notwithstanding anything to the contrary contained herein, Provider shall not, without the prior written consent of A&M System, settle, compromise or consent to the entry of any judgment with respect to any pending or threatened claim unless the settlement, compromise or consent provides for and includes an express, unconditional release of such claim against the A&M System. Provider's sole obligation hereunder shall be to pay to A&M System: (i) any judgment finally rendered; (ii) amounts payable pursuant to a settlement of a claim; (iii) any monetary fine imposed by the applicable governmental authority; and (iv) reasonable legal costs and expenses incurred by A&M System.
- B. **Independent Contractor.** Provider is an independent contractor, and neither Provider nor any employee of Provider shall be deemed to be an agent or employee of A&M System. A&M System will have no responsibility to provide transportation, insurance or other fringe benefits normally associated with employee status. Provider shall observe and abide by all applicable laws and regulations, policies and procedures, including but not limited to those of A&M System relative to conduct on its premises.
- C. **Delinquent Child Support Obligations.** A child support obligor who is more than 30 days delinquent in paying child support and a business entity in which the obligor is a sole proprietor, partner, shareholder, or owner with an ownership interest of at least 25 percent is not eligible to receive payments from state funds under an agreement to provide property, materials, or services until all arrearages have been paid or the obligor is in compliance with a written repayment agreement or court order as to any existing delinquency. The *Texas Family Code* requires the following statement: "Under Section 231.006, *Texas Family Code*, the vendor or applicant certifies that the individual or business entity named in this contract, bid, or application is not ineligible to receive the specified grant, loan, or payment and acknowledges that this contract may be terminated and payment may be withheld if this certification is inaccurate."
- D. **Payment of Debt or Delinquency to the State.** Pursuant to Section 2252.903, *Texas Government Code*, Provider agrees that any payments owing to Provider under this MSA may be applied directly toward certain debts or delinquencies that Provider owes the State of Texas or any agency of the State of Texas regardless of when they arise, until such debts or delinquencies are paid in full.
- E. **Previous Employment.** Provider acknowledges and understands that Section 2252.901, *Texas Government Code*, prohibits A&M System from using state appropriated funds to

enter into any employment contract, consulting contract, or professional services contract with any individual who has been previously employed, as an employee, by the agency within the past twelve (12) months. If Provider is an individual, by signing this MSA, Provider certifies that Section 2252.901, *Texas Government Code*, does not prohibit the use of state appropriated funds for satisfying the payment obligations herein.

- F. **Not Eligible for Rehire.** Provider is responsible to ensure that employees participating in work for any A&M System member have not been designated by the A&M System as Not Eligible for Rehire as defined in System policy 32.02, Section 4. Non-conformance to this requirement may be grounds for termination of this MSA.
- G. **Franchise Tax Certification.** If Provider is a taxable entity subject to the Texas Franchise Tax (Chapter 171, *Texas Tax Code*), then Provider certifies that it is not currently delinquent in the payment of any franchise (margin) taxes or that Provider is exempt from the payment of franchise (margin) taxes.
- H. **State Auditor's Office.** Provider understands that acceptance of funds under this MSA constitutes acceptance of the authority of the Texas State Auditor's Office, or any successor agency (collectively, "Auditor"), to conduct an audit or investigation in connection with those funds pursuant to Section 51.9335(c), *Texas Education Code*. Provider agrees to cooperate with the Auditor in the conduct of the audit or investigation, including without limitation, providing all records requested. Unless otherwise required by applicable law, such audits shall occur: (a) upon at least 30 days prior written notice, (b) at the Texas State Auditor's Office's expense, and (b) not more than once annually.
- I. **Entire Agreement.** This MSA constitutes the sole agreement of the parties and supersedes any other oral or written understanding or agreement pertaining to the subject matter of this MSA. This MSA may not be amended or otherwise altered except upon the written agreement of both parties.
- J. **Severability.** If any provisions of this MSA are rendered or declared illegal for any reason, or shall be invalid or unenforceable, such provision shall be modified or deleted in such manner so as to afford the Party for whose benefit it was intended the fullest benefit commensurate with making this MSA, as modified, enforceable, and the remainder of this MSA and the application of such provision to other persons or circumstances shall not be affected thereby, but shall be enforced to the greatest extent permitted by applicable law.
- K. **Headings.** Headings appear solely for convenience of reference. Such headings are not part of this MSA and shall not be used to construe it.
- L. **Non-Assignment.** Provider shall neither assign its rights nor delegate its duties under this MSA without the prior written consent of A&M System. Notwithstanding the foregoing, to the maximum extent permitted by applicable law, Provider may assign this Agreement in its entirety without prior written consent but with prior written notice as a result of a merger, acquisition or sale of substantially all of its assets.
- M. **Survivability.** Each party's duties under this MSA, Member specific agreement and/or purchase order, which impose an obligation after expiration or termination of this MSA, will survive unless otherwise stated within the Member specific agreement and/or purchase order.

- N. **HUB Subcontracting Plan.** It is the policy of the state of Texas and the A&M System to encourage the use of Historically Underutilized Businesses (HUBs) in our contracts, purchasing transactions and through subcontracting opportunities. The goal of the HUB program is to promote equal access and equal opportunity to HUB vendors in A&M System contracting and purchasing.

The HUB Subcontracting Plan (HSP) submitted by Provider and attached shall be part of the terms of this MSA. The HSP was submitted as self-performing; however, changes may not be made to the HSP without prior review and approval from the A&M System HUB Program. PROVIDER shall submit to the A&M System HUB Program point of contact a revised HSP for each subcontracting opportunity to be modified.

A&M System HUB Program Contact:

Keith Williams
A&M System HUB Coordinator
Email: soprocurement@tamus.edu
Phone: (979) 458-3265

Member Engagement: If a subcontractor will be used to provide any commodity or service as part of the scope on a Member specific agreement or purchase order, the Provider may be required by that Member to make a good faith effort and complete the state of Texas HSP. If there are pre-existing agreements in place with companies who will be hired as subcontractors, the Provider will show those companies as subcontractors on the HSP and provide an explanation as to why solicitations were not done, e.g. contractual requirements. If no pre-existing agreements with companies who will be hired as subcontractors exist, then the Provider will be expected to make a good faith effort according to the HSP instructions.

In the event that you determine you will be using a subcontractor, please contact the HUB Coordinator at that specific Member for assistance in proper completion of the HSP or any other HSP related questions.

Provider may also be required to submit a HUB Subcontracting Plan (HSP) Prime Contractor Progress Assessment Report (PAR) to any Member that chooses to utilize this MSA. PAR requirements will be defined by each Member specific agreement or purchase order.

- O. **Force Majeure.** Neither party is required to perform any term, condition, or covenant of this MSA, if performance is prevented or delayed by a natural occurrence, a fire, an act of God, an act of terrorism, or other similar occurrence, the cause of which is not reasonably within the control of such party and which by due diligence it is unable to prevent or overcome.
- P. **Loss of Funding.** Performance by a Member under this MSA and Member specific agreement or purchase order may be dependent upon the appropriation and allotment of funds by the Texas State Legislature (the "Legislature"). If the Legislature fails to appropriate or allot the necessary funds, the impacted Member may issue written notice to Provider and Member may terminate their Member specific agreement or purchase

order without further duty or obligation hereunder. Provider acknowledges that appropriation of funds is beyond the control of A&M System and its Members.

- Q. **Governing Law.** The validity of this MSA and all matters pertaining to this MSA, including but not limited to, matters of performance, non-performance, breach, remedies, procedures, rights, duties, and interpretation or construction, shall be governed and determined by the Constitution and the laws of the State of Texas.
- R. **Venue.** Pursuant to Section 85.18, *Texas Education Code*, venue for any suit filed against A&M System shall be in the county in which the primary office of the chief executive officer of A&M System is located, which is Brazos County, Texas.
- S. **Non-Waiver.** Provider expressly acknowledges that A&M System is an agency of the State of Texas and nothing in this MSA will be construed as a waiver or relinquishment by either party of its right to claim such exemptions, privileges, and immunities as may be provided by law.
- T. **Conflict of Interest.** By executing this MSA, Provider and each person signing on behalf of Provider certifies, and in the case of a sole proprietorship, partnership or corporation, each party thereto certifies as to its own organization, that to the best of their knowledge and belief, no member of The A&M System or The A&M System Board of Regents, nor any employee, or person, whose salary is payable in whole or in part by The A&M System, has direct or indirect financial interest in the award of this MSA, or in the services to which this MSA relates, or in any of the profits, real or potential, thereof.
- U. **Prohibition on Contracts with Companies Boycotting Israel.** To the extent that Texas Government Code, Chapter 2271 applies to this MSA, Provider certifies that (a) it does not currently boycott Israel; and (b) it will not boycott Israel during the term of this MSA. Provider acknowledges this MSA may be terminated and payment withheld if this certification is inaccurate.
- V. **Certification Regarding Business with Certain Countries and Organizations.** Pursuant to Subchapter F, Chapter 2252, Texas Government Code, Provider certifies it is not engaged in business with Iran, Sudan, or a foreign terrorist organization. Provider acknowledges this Purchase Order may be terminated if this certification is or becomes inaccurate.
- W. **Prohibition on Contracts Related to Persons Involved in Human Trafficking.** Under Section 2155.0061, Government Code, the vendor certifies that the individual or business entity named in this contract is not ineligible to receive the specified contract and acknowledges that this contract may be terminated and payment withheld if this certification is inaccurate.
- X. **Records Retention.** Provider will preserve all contracting information, as defined under Texas Government Code, Section 552.003 (7), related to the MSA for the duration of the MSA and for seven years after the conclusion of the MSA.
- Y. **Notices.** Any notice required or permitted under this MSA must be in writing, and shall be deemed to be delivered (whether actually received or not) when deposited with the United States Postal Service, postage prepaid, certified mail, return receipt requested, and addressed to the intended recipient at the address set out below. Notice may also be given by regular mail, personal delivery, courier delivery, facsimile transmission, email or

other commercially reasonable means and will be effective when actually received. A&M System and Provider can change their respective notice address by sending to the other party a notice of the new address. Notices should be addressed as follows:

A&M System: The Texas A&M University System
301 Tarrow St., Suite 273
College Station, Texas 77840
Attention: Jeff Zimmermann
Phone: (979) 458-6410
Fax: (979) 458-6250
E-mail: zimmermann@tamus.edu

Provider: 3Play Media
77 North Washington St., Second Floor
Boston, MA 02114
Attention: Josh Miller
Phone: (617) 764-5189 x102
Email: josh@3playmedia.com

IN WITNESS WHEREOF, intending to be bound, the Parties have entered into this MSA as of the Effective Date.

The Texas A&M University System

DocuSigned by:
By Jeff Zimmermann
E2BE2924E69547F...
Jeff Zimmermann
Director, Procurement & Business Services

9/2/2020 | 10:48:53 CDT
Date

3Play Media

DocuSigned by:
By Josh Miller
8D30440849B04DF...
Josh Miller
Co-CEO

9/1/2020 | 19:20:05 PDT
Date

EXHIBIT A – SCOPE

1. **Captioning/Language** – Provider will provide captioning services in English and in English and Spanish simultaneously by request. All captioning will meet ADA Compliance.
2. **Captioning of Live Events** – Provider will utilize an experienced person and not voice recognition software. Provider will provide remote captioning services by following a video signal that is broadcast live and an audio signal via telephone line(s). For events streamed live online, Provider will provide remote captioning services by following a video signal that is streamed live and an audio signal via telephone line(s), if available. If the telephone line option is not available, a webinar-type tool (i.e. Webex, Zoom, Adobe Connect, etc.) will be used with the captioning or chat feature to apply captions. For all live events, a captioning average rate between 225 to 250 words per minute will be used. All captions will match the spoken words in the dialogue and convey background noises and other sounds to the fullest extent possible, using proper spelling, spacing between words, capitalization, and punctuation. Captions will correspond to spoken words and sounds to the greatest extent possible and be displayed on the screen at a speed that can be read by viewers. Captions run from the beginning to the end of the program or event. Provider will ensure 80% or higher accuracy for captioning services of live events. American Disabilities Act guidelines specifically state that persons with disabilities must be given “effective communication that offers full and equal enjoyment.” Captions will not block important content on the screen. Font size should be reasonable legible.
3. **Captioning of Pre-Recorded Content** – Provider will provide 48-96 hour turned around time to caption all pre-recorded media content. Provider may use speech recognition software or computer captioning software to provide captioning services of pre-recorded media content. Captioning services provided for pre-recorded content will be 99% accurate. Captioning services will provide discipline specific terminology whenever possible. Captions will not block important content on the screen. Font size should be reasonable legible.
4. **Supported File Formats for Pre-Recorded Media** – A full list of supported media formats and codecs can be found here: <https://support.3playmedia.com/hc/en-us/articles/227728968-Supported-Formats-and-Codecs>
5. **Caption Files/Transcripts** - Caption files will be in a format that allows Member the ability to download the caption files to generate transcripts upon request.
6. **Editing Captions** – Provider will provide Members the capability to log in and freely edit the captions.
7. **Integration** – Provider will provide a simple way to integrate external services. This includes YouTube, Kaltura, Panopto, Medisite and Instructure Studio.
8. **‘Caption Line Timing’ Offset Requirement and Rework** – Minimum caption line timing requirement of <50ms offset. For rework of severe timing issues (captioned lines that are clearly out of sync with audio), Provider will be reworded the timing of the video at no cost to Members.
9. **Usage Tracking Reports** – Provider will provide a way to track usage of service. Tracking and usage reports will be used for both billing verification and future projection of caption needs. Usage Tracking Reports shall be able to track: Number of Work Orders, Amount expended by Members under the MSA by the A&M System fiscal year or calendar year, Number of hours of captioned events, Number of hours of captioned events and edited transcripts, Number of hours

of captioned pre-recorded events/projects, . Names of the events or media captioned and/or edited, Custom reports populated by key-word search and Number of captioning views (Captioning Viewer Data/Analytics).

10. Intentionally omitted.

11. Account Manager – Provider will designate a single-point-of-contact who will serve as the primary Account manager to oversee and coordinate Captioning Services, provide technical assistance to Members, receive billing inquiries and assist in billing dispute resolution, and manage requirements of the MSA on behalf of vendor (“Account Manager”). The Account Manager will be available during conventional business hours, Monday-Friday 8:00 am – 5:00 pm Central Time. The Account Manager will be responsible for responding in a timely manner to complaints or other notices or advice regarding inaccuracies in close-captioning.

12. Member Ordering Process – Provider will work with contracting Member regarding submission of Work Orders for Captioning Services. The Account Manager will work with the contact on each Work Order to troubleshoot, clarify any requests, and ensure a complete Work Order is submitted. Captioning workflow options and account system access will be provided to Member as outlined in the Provider’s proposal document (3Play-Media-Proposal.pdf) dated April 7, 2020 and found in Exhibit D.

EXHIBIT B – PRICING

- Prices are prorated to the exact media duration (rounded to the nearest second).
- The minimum charge per file is for 1 minute.
- Pricing for pre-recorded captioning will be adjusted annually. The adjustment will be based on the aggregated system-wide usage during the previous 12 month period and will affect the prices going forward.
 - If you spend over \$100,000, the price will be per the schedule below minus \$0.10/min.
 - If you spend less than \$20,000, the price will be per the schedule below plus \$0.10/min.

Prerecorded Captioning + Transcription (Both)

Item	Price
10 calendar day turnaround	\$1.60/min
4 calendar day turnaround	\$1.75/min
48 hour turnaround	\$2.15/min
24 hour turnaround	\$2.55/min
8 hour turnaround \$3.95/min	\$3.95/min
2 hour turnaround \$6.95/min	\$6.95/min
Extremely difficult audio (i.e. poor recording, loud background noise)	+\$1/min
Always Included	
Captions and transcripts (both are included--we do not provide transcription only)	Included
Any number of speakers	Included
99%+ accuracy with two rounds of human QA review	Included
Speaker identification	Included
50+ output formats	Included
40+ platform integrations (including YouTube, Kaltura, Panopto, Mediasite, Instructure/Canvas Studio)	Included
Caption editor	Included
Glossaries	Included
Unlimited technical support	Included
API access	Included

Live Auto Captioning and Transcription (Both)

Item	Price
Real-time captioning using automatic speech recognition	\$0.50/min
Always Included	
Captions and transcripts (both)	Included
Integrations with YouTube, Zoom, JW Player, Brightcove, and Facebook (*Facebook coming soon)	Included
Unlimited technical support	Included
50+ output formats	Included
API access	Included

EXHIBIT C – INSURANCE

Provider shall obtain and maintain, for the duration of this MSA or longer, the minimum insurance coverage set forth below. With the exception of Professional Liability (E&O), all coverage shall be written on an occurrence basis. All coverage shall be underwritten by companies authorized to do business in the State of Texas or eligible surplus lines insurers operating in accordance with the Texas Insurance Code and have a financial strength rating of A- or better and a financial strength rating of VII or better as measured by A.M. Best Company or otherwise acceptable to A&M System. By requiring such minimum insurance, the Owner shall not be deemed or construed to have assessed the risk that may be applicable to Provider under this MSA. Provider shall assess its own risks and if it deems appropriate and/or prudent, maintain higher limits and/or broader coverage. Provider is not relieved of any liability or other obligations assumed pursuant to this MSA by reason of its failure to obtain or maintain insurance in sufficient amounts, duration, or types. No policy will be canceled without unconditional written notice to A&M System at least ten days before the effective date of the cancellation.

Insurance:

<u>Coverage</u>	<u>Limit</u>
A. <u>Worker's Compensation</u>	
Statutory Benefits (Coverage A)	Statutory
Employers Liability (Coverage B)	\$1,000,000 Each Accident
	\$1,000,000 Disease/Employee
	\$1,000,000 Disease/Policy Limit

Workers' Compensation policy must include under Item 3.A. on the information page of the workers' compensation policy the state in which work is to be performed for A&M System. Workers' compensation insurance is required, and no "alternative" forms of insurance will be permitted

B. Automobile Liability

Business Auto Liability Insurance covering all owned, non-owned or hired automobiles, with limits of not less than \$1,000,000 Single Limit of liability per accident for Bodily Injury and Property Damage;

If a separate Business Auto Liability policy is not available, coverage for hired and non-owned auto liability may be endorsed on the Commercial General Liability policy.

Additional Endorsements

The Auto and Commercial General Liability Policies shall name the Texas A&M University System Board of Regents for and on behalf of The Texas A&M University System as additional insured's.

C. Commercial General Liability

Each Occurrence Limit	\$1,000,000
General Aggregate Limit	\$2,000,000
Products / Completed Operations	\$1,000,000
Personal / Advertising Injury	\$1,000,000
Damage to rented Premises	\$300,000
Medical Payments	\$5,000

The required commercial general liability policy will be issued on a form that insures Provider's or its subcontractors' liability for bodily injury (including death), property damage, personal and advertising injury assumed under the terms of this MSA

- D. **Professional Liability (Errors & Omissions)** Insurance with limits of not less than \$1,000,000 each occurrence, \$1,000,000 aggregate. Such insurance will cover all professional services rendered by or on behalf of Provider and its subcontractors under this MSA. Renewal policies written on a claims-made basis will maintain the same retroactive date as in effect at the inception of this MSA. If coverage is written on a claims-made basis, Provider agrees to purchase an Extended Reporting Period Endorsement, effective for two (2) full years after the expiration or cancellation of the policy. No professional liability policy written on an occurrence form will include a sunset or similar clause that limits coverage unless such clause provides coverage for at least three (2) years after the expiration of cancellation of this MSA.
- E. Provider will deliver to A&M System:

Evidence of insurance on a Texas Department of Insurance approved certificate form verifying the existence and actual limits of all insurance after the execution and delivery of this MSA and prior to the performance of any services by Provider under this MSA. Additional evidence of insurance will be provided on a Texas Department of Insurance approved certificate form verifying the continued existence of all required insurance no later than thirty (30) days after each annual insurance policy renewal.

All insurance policies, with the exception of worker's compensation, employer's liability and professional liability will be endorsed and name The Board of Regents for and on behalf of The Texas A&M University System and The Texas A&M University System as Additional Insureds up to the actual liability limits of the policies maintained by Provider. Commercial General Liability and Business Auto Liability will be endorsed to provide primary and non-contributory coverage. The Commercial General Liability Additional Insured endorsement will include on-going and completed operations and will be submitted with the Certificates of Insurance.

All insurance policies will be endorsed to provide a waiver of subrogation in favor of The Board of Regents of The Texas A&M University System and The Texas A&M University System. No policy will be canceled without unconditional written notice to A&M System at least ten days before the effective date of the cancellation. **All insurance policies** will be endorsed to require the insurance carrier providing coverage to send notice to A&M System ten (10) days prior to the effective date of cancellation, material change, or non-renewal relating to any insurance policy required in this Section.

Any deductible or self-insured retention must be declared to and approved by A&M System prior to the performance of any services by Provider under this MSA. Provider is responsible to pay any deductible or self-insured retention for any loss. All deductibles and self-insured retentions will be shown on the Certificates of Insurance.

Certificates of Insurance and Additional Insured Endorsements as required by this MSA will be emailed to the following A&M System contact in SOProurement@tamus.edu.

The insurance coverage required by this MSA will be kept in force until all services have been fully performed and accepted by A&M System in writing, except as may be noted.

EXHIBIT D – MEMBER ORDERING PROCESS

Live Captioning

The live captioning is self-serve and can be ordered through the online account, as described below:

We provide live captioning using speech recognition, which is very cost-effective, reduces caption display latency, and eliminates the need to schedule captioners. Live captioning can be scheduled or initiated any time through a self-service portal. It works on the fly and allows for unlimited capacity. Typical accuracy for live captions is over 80%. Under excellent audio conditions, accuracy can reach 95%. At this time, live captioning is only available in English. More information can be found here:

<https://www.3playmedia.com/solutions/services/liveautocaptioning/>

Integrations

Our live captioning service is integrated with Zoom, YouTube, JW Player, and Brightcove. Facebook is coming soon. You can also use an RTMP or RTSP stream.

How It Works

1. Create a live event
Create a live event in any of our integrated live stream video platforms.
2. Schedule live automatic captioning
Schedule live automatic captioning in 3Play for your corresponding live event.
3. Stream your live event
Your captions will display directly in the video player or through an embed code.
4. Download, edit, or upgrade your live captions/transcript
Access the final captions/transcript (in over 50 formats, including SRT, WebVTT, SMI, SCC, DOCX, TXT) to make edits or order human review and/or other services.

Account Features

- Discipline-specific terminology or a technical vocabulary can be preloaded to increase accuracy. User Management: Your account supports multiple users and role based permissions.
- File Organization: Your account is neatly organized with a hierarchy of a master account, subaccounts, and folders. Subaccounts allow you to compartmentalize your account for discrete control over users, content, billing, and reporting.
- File Storage: All output files are stored indefinitely and for a contractual minimum of 6 years. You can access your files at anytime. You can also request to purge any or all of your data.
- Defense-In-Depth Strategy: Our system runs on parallel production environments with rapid failover ability.
- The result is that the system keeps working even in the worst case scenario. We maintain 99.9% uptime even with scheduled maintenance.

The final captions/transcript are available in over 50 formats, including SRT, WebVTT, SMI, SCC, DOCX, TXT. After the event, you can make edits yourself or order human review.

- **Caption Formats:** We provide all major caption formats with configurable settings. We remain current with emerging industry standards and make new formats available retroactively. Formats include SRT, SMI, STL, SCC, CAP, WebVTT, XML, SBV, DFXP, SAMI, TTML, ADB.XML, QT, SMPTE-TT,

EBU STL, ADBE, Apple XML, AAF, CCA, CPT.XML, ASC, ONL CPC 715, Crackle TT, DECE CFF, Evertz ProCAP, ITT, Matrox4VANC, MCC, MCC V2, Multiplexed SCC, Rhozet, RT, SBV, SonyPictures TT, TIDL Cinema, WMP.TXT, and custom formats.

- You can download a self-contained video file with these options:
 - Encoded closed captions that can be turned on/off.
 - Open captions burned into the video.
- **Transcript Formats:** We provide TXT, Plain DOC, Stamped DOC, PDF, HTML, JSON, and custom formats.
- **Timing Adjustments:** When downloading a caption file you can specify the start and end time. This is useful if you need to adjust a caption file for a video that has been trimmed or extended.
- **Caption Format Conversion:** We provide a free caption format converter.

Pre-Recorded Captioning

There are several ways to upload pre-recorded video files for processing:

- One-click integrations with major video platforms (e.g. YouTube, Kaltura, Panopto, Mediasite, Canvas/Instructure)
- Integrations with cloud storage systems (e.g. Google Drive, Box, Dropbox)
- Desktop (secure HTTPS upload)
- Proxy URL (paste links)
- FTP, FTP/SSL, or SFTP
- API

In each upload scenario, multiple files can be uploaded at the same time. You receive a confirmation that the files were submitted successfully. An email alert is sent if an issue arises.

You can select the type of service and turnaround at the time of upload. You can request add-on services during the time of upload or anytime after the files have been submitted. For example, you might request captioning when you upload a file. Then at a later time, you can add audio description.



We acknowledge that you require use of your form of agreement. We request the addition of these supplemental terms and conditions. We acknowledge that any of these supplemental terms that are invalid or unenforceable against you because of applicable law, shall be deemed excluded and unenforceable (as the case may be), and instead construed in a manner most consistent with applicable governing law. Should any of these supplemental terms conflict with the terms of the Agreement, the terms of the Agreement will control.

SUPPLEMENTAL GENERAL TERMS AND CONDITIONS

1. Source Materials

All content, files, data and other materials provided by a Member to Provider on which to perform the Services (“Source Material(s)”) are subject to Provider’s acceptance. Provider has the right to reject, in its sole and absolute discretion, any Source Material that it is considered to be of such poor quality that: (i) transcription is not possible or (ii) the project is beyond Provider’s resources. If the audio quality of any Source Material appears to be different than the quality represented by a Member, Provider will contact the Member and discuss this discrepancy which may result in increased fees. If the parties are unable to agree on the appropriate rate, Provider may decline to work on the project and, in such case, the Source Materials will be returned to the applicable Member and no Services will be performed by Provider with respect to such Source Material(s). A&M System and Members agrees to not hold Provider liable for any loss or damages to or destruction of any Source Materials, including those that may occur in shipping or transmission electronically.

2. Content Rights and Ownership

A&M System warrants that it or its Member is the owner of (or otherwise has full legal authority to submit) the Source Materials to Provider. A&M System (or Member, as applicable) will retain sole ownership and all rights to the Source Materials they submit to Provider, as well as sole ownership and all rights to the transcript, caption, or other output files (“Deliverables”) created by Provider. Provider acknowledges that Deliverables will be works made for hire and the copyright and all other rights in Deliverables will be the sole and exclusive property of A&M System (or Member, as applicable). If for any reason Deliverables would not be works made for hire, Provider hereby assigns to A&M System (or Member, as applicable), automatically upon creation, Provider’s entire interest in the copyright in Deliverables. Provider reserves the nonexclusive right to maintain and use a copy of Deliverables strictly for internal research and development purposes only. A&M System shall, to the extent authorized under Texas law, reimburse Provider for any expenses reasonably incurred by Provider (including reasonable attorneys’ fees) by reason of (i) Provider’s compliance with the instructions of A&M System in the event of a dispute concerning the ownership, custody or disposition of the Source Materials, and (ii) any misrepresentation by A&M System or Member.

3. Intellectual Property

This Agreement does not convey to A&M System or any Member any ownership rights in any templates, frameworks, methodologies, processes, know-how, technologies, intellectual property, algorithms, plugins, account tools, and/or software (collectively, “Provider Materials”) used to provide the Services. Provider shall retain all patent, copyright, trademark, trade secret, data and



other intellectual property rights in the Provider Materials. A&M System and its Members agrees not to reverse engineer, decompile or otherwise attempt to extract the source code of any Provider Material or any part thereof.

4. Logins

A&M System and its Members may be required to establish a login identifier and a password. A&M System and its Members are each responsible for protecting logins and passwords from unauthorized use, and for all activity that occurs on its account. A&M System and its Members agrees to notify Provider without undue delay if it believes that its login or password has been used without its permission, so that appropriate action can be taken. Provider is not responsible for losses or damage caused by A&M System's or its Member's failure to safeguard its logins and passwords.

5. DISCLAIMER OF WARRANTIES

EXCEPT AS OTHERWISE EXPRESSLY PROVIDED FOR IN THE AGREEMENT, TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW, PROVIDER DOES NOT MAKE AND HEREBY DISCLAIMS AND EXCLUDES ALL OTHER WARRANTIES, TERMS AND CONDITIONS, EXPRESS OR IMPLIED, WHETHER BY LAW OR OTHERWISE, INCLUDING ANY IMPLIED WARRANTIES OR CONDITIONS (1) OF MERCHANTABILITY, SATISFACTORY QUALITY, FITNESS FOR A PARTICULAR PURPOSE, PERFORMANCE, SUITABILITY OR NON-INFRINGEMENT; (2) RELATING TO THIRD-PARTY PRODUCTS, SOFTWARE OR SERVICES; (3) RELATING TO THE PERFORMANCE OF ANY HARDWARE OR SOFTWARE OR PROVIDER'S PERFORMANCE OF THE SERVICES; OR (4) REGARDING THE RESULTS TO BE OBTAINED FROM THE SERVICES. SOFTWARE IS PROVIDED "AS-IS" WITHOUT ANY WARRANTY OR CONDITIONS.

6. Limitation of Liability

- a. WAIVER OF CONSEQUENTIAL DAMAGES. TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW, UNDER NO CIRCUMSTANCES SHALL EITHER PARTY BE LIABLE TO THE OTHER UNDER ANY THEORY OF LIABILITY (WHETHER IN CONTRACT, TORT, WARRANTY OR OTHERWISE) FOR INDIRECT, INCIDENTAL, CONSEQUENTIAL, PUNITIVE SPECIAL OR EXEMPLARY DAMAGES (EVEN IF THAT PARTY HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES) ARISING OUT OF OR CONNECTION WITH THE PERFORMANCE OR FAILURE OF PERFORMANCE OF ANY PROVISION OF THIS AGREEMENT (INCLUDING SUCH DAMAGES INCURRED BY THIRD PARTIES), SUCH AS, WITHOUT LIMITATION, LOSS OF REVENUE, INCOME, ANTICIPATED PROFITS, SAVINGS, LOST BUSINESS, OR LOSS OF GOODWILL OR REPUTATION.
- b. TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW, THE LIABILITY OF EACH PARTY TO THE OTHER PARTY FOR ANY AND ALL CAUSES OF ACTION, WHETHER IN CONTRACT, IN TORT (INCLUDING NEGLIGENCE AND STRICT LIABILITY IN TORT) ARISING OUT OF OR IN CONNECTION WITH THIS AGREEMENT, SHALL NOT EXCEED, IN THE AGGREGATE, THE THE AMOUNT OF THE CHARGES PAID TO PROVIDER IN THE TWELVE (12) MONTH PERIOD IMMEDIATELY PRECEDING THE DATE THAT THE CLAIM GIVING RISE TO SUCH LAIBILITY AROSE.
- c. NOTWITHSTANDING ANY OF THE FOREGOING IN THIS SECTION, THE LIMITATIONS SET FORTH IN SECTION 12(b) SHALL NOT APPLY IN THE CASE OF (I) CLAIMS WHERE SUCH

LIABILITY CAPS ARE PROHIBITED BY APPLICABLE LAW, (II) DAMAGES RESULTING FROM INTENTIONAL TORTS OR (III) FEES PAYABLE UNDER THIS AGREEMENT.

7. Suspension of Services

If A&M System fails to pay Provider's charges (other than disputed charges) within sixty (60) days after the applicable due date of the invoice, Provider may discontinue providing Services. For clarity, we will not suspend Services while A&M System is disputing charges reasonably and in good-faith and is cooperating diligently in resolving the dispute.

8. The following provisions shall also apply but solely with regard to captioning and transcription services:

- a. **Audio Quality.** A&M System agrees and understands that the standard rates are contingent on the Source Material being deemed "Good Audio" and that poor audio characteristics may increase pricing for the Services. "Good Audio" shall mean any Source Material that is clearly recorded in a controlled environment with one person talking at a time with minimal background noise and no media defects. The format must be recorded digitally or transferred to digital format for use with our account system. A&M System acknowledges and agrees that any audio that is not Good Audio may impact the quality and accuracy of the Deliverable.
- b. **Accuracy.** For Source Materials deemed Good Audio, Provider will provide an Accurate Deliverable. "Accurate" shall mean: (1) words are spelled correctly; (2) phrases and sentences make sense as a stand-alone document; and (3) text is a near exact replication of spoken words. "Accurate" shall also mean that the Deliverable will not have an error rate that exceeds one percent (1%). Provider will transcribe all Source Material as it is spoken, including false starts or if the speaker changes direction mid-sentence, but will omit certain unintended utterances, such as "um" and "uh". A&M System acknowledges and agrees that such false starts or unintended utterances will be excluded from the Accuracy calculation.
- c. **Formatting.** A&M System understands that Provider will alter caption formats and appearances within the standard specifications of the particular Deliverable ordered by A&M System. Additional customization will be performed at an additional fee if agreed by 3Play Media. In the event that A&M System provides to Provider a previously produced transcript for caption production or any caption import function, Provider will not correct grammar, proof-read material, or alter time codes unless A&M System commissions additional services. A&M System is solely responsible for the text alignment and caption file production process of any imported caption files.

9. The following provisions shall also apply but solely with regard to audio description services.

- a. **Video Quality.** A&M System acknowledges and agrees that Provider shall have the right, in its sole and absolute discretion, to determine whether the existing pauses in dialogue are sufficient to provide description of the Source Material being presented. In the event that



Provider determines that the existing pause (or pauses, as applicable) are insufficient, A&M System further acknowledges and agrees that Provider shall not include descriptive content for that particular portion of the Source Material.

- b. **Captioning Data.** Provider requires data from caption files to help facilitate the audio description process. A&M System acknowledges that Provider, may, in its sole and absolute discretion, reject any caption files provided by A&M System and not created by Provider and to use its own internal process to generate the necessary caption data to perform the Services.