

2016-2017 MEMBER AGREEMENT Idaho Digital Learning Blended Consortium

This Member Agreement (“**Agreement**”) is entered into on July 1, 2016 (“**Effective Date**”) between Idaho Digital Learning Academy, a governmental entity organized and existing under the laws of the State of Idaho, with a principal place of business at 300 W. Fort Street, Boise, ID 83702 (Main Campus) (“**IDLA**”) and Idaho Falls School District, acting by and through its Board of Trustees (“**Member**”).

1. **Authority**

Chapter 55, Title 33, Idaho Code authorizes IDLA to enter into agreements with school districts and other agencies for the provision of its products and services to the school district; and Chapters 5 and 6, Title 33, Idaho Code give the Member’s Board of Trustees broad authority to operate and maintain the school district and to procure such personal property and curricular materials as necessary therefore.

2. **PURPOSE OF AGREEMENT**

Member wishes to contract with IDLA for the Term (i) for a license to access IDLA’s online learning services (the “**Consortium**”) and all courses, curriculum, articles, text, notes, documents, images, assessment items, assignments, instructional information, and all other contents, resources, materials and services produced, published, displayed, or distributed which are currently provided or subsequently added to the Consortium (the “**Content**”) and (ii) for the provision of certain services as specifically set forth in Appendix A (“**Services**”). The purpose and objective of this Agreement is to allow IDLA to provide the Member with the following:

- Access to learning and course management software;
- Online course and curriculum Content provided through the consortium;
- Training, setup, and support for the Member for implementation of an online or blended delivery model of the Content.

The scope of Services, initial set up fees, and Membership Fees shall be selected by the Member and set forth in Appendix A. Appendix A may be amended, from time to time, by mutual written consent of the parties, for the purpose of increasing or decreasing the level and scope of the Services to be provided by IDLA.

3. **Grant of License**

Pursuant to the terms and conditions of this Agreement, IDLA grants the Member and the authorized educators, administrators, or students of the Member, or any other third party as approved and authorized by IDLA in writing (collectively, the “**Users**”), for the Term of this Agreement, a limited, non-exclusive, terminable, non-transferable license (“**License**”) to access the Consortium and the Content contained therein, subject to any limitations set forth in this Agreement and Appendix A, and to use and edit the Content pursuant to the terms and conditions set forth in this Agreement and the Terms of Use. The Member’s License shall be contingent upon full payment of Member’s Membership Fees, as set forth in Appendix A. The Member’s

License shall terminate upon termination of this Agreement, as provided in Section

4. **TERM and Termination**

a. **Term** This Agreement shall commence upon the Effective Date and expire on **June 30, 2017** or upon the earlier termination by a Party in accordance with Section 4(b) hereof (the “**Initial Term**”). Access to the Consortium, the Content, and Services provided by IDLA shall be immediately terminated upon the expiration or termination of this Agreement.

b. **Renewal Term** Following completion of the Initial Term, this Agreement may be renewed annually for one year renewal periods by mutual written agreement of the Parties (each, a “**Renewal Term**”, and collectively, with the Initial Term, the “**Term**”).

c. **Termination Without Cause** Either party may terminate this Agreement at any time, with or without cause, upon thirty (30) calendar days' written notice to the other party. Such notice shall specify the date of termination.

d. **Termination for Breach** Abandonment or breach of any Term of this Agreement by either party may be grounds for immediate termination of this Agreement at the sole discretion of the other party. Waiver of any breach by either party shall not be deemed a waiver of the requirements of the entire contract.

e. **Termination for Unsuitable Content** In the event IDLA determines that any Member Contributed Content (as defined in Section 8) jeopardizes IDLA's accreditation, the accreditation of any course or curriculum Content, or is otherwise unsuitable for continued use, IDLA may either (i) immediately terminate this Agreement; or (ii) require the Member and its Users to immediately terminate the use of the applicable Member Contributed Content or Content. Additionally, IDLA, at its discretion, may elect to modify, revise, or correct the Member Contributed Content or Content, as deemed necessary by IDLA.

f. **Termination upon Holdback or Failure to appropriate** The Parties understand and agree that because IDLA is a governmental entity and the Member is a publicly funded school or school district, this Agreement shall in no way bind or obligate IDLA, Member, or the State of Idaho beyond the term of any particular appropriation of funds, to IDLA, by the State Legislature. IDLA and Member reserve the right to terminate the Agreement, in whole or in part, if the legislature of the State of Idaho does not appropriate sufficient funds as may be required for IDLA or Member. IDLA or Member may also terminate this Agreement if the executive branch of the State of Idaho mandates any cuts in or holdbacks of funding. Should IDLA or Member decide to terminate this Agreement under this provision, such termination shall become effective upon thirty (30) calendar days' written notice to the other party.

5. **FEE FOR SERVICES**

IDLA shall provide to the Member the Services in exchange for payment in full of the Membership Fees, as set forth in Appendix A. In the event Member ceases using the Services prior to the end of the Term (i) Member shall not be entitled to a refund of any fees paid to IDLA through the date of termination and (ii) Member is liable for payment of the Membership Fee for the full Term of the Agreement, unless otherwise determined by IDLA, in its sole discretion.

6. **DELIVERY OF SERVICES**

IDLA shall have no duty to provide any Services to Member, or permit access to the Consortium, until the Membership Fee has been paid in full, as specifically set forth in Appendix A.

7. **USE OF content**

During the Term of this Agreement, the Member may modify the Consortium's Content to comply with and correspond to the specific educational requirements of the Member. Member shall limit access and use of the Consortium, Assessment and the Content therein to Member's Users, and neither the Member nor the Users may (i) allow any third party access to the Consortium or (ii) sell, lend, rent, lease, license or otherwise provide the Assessment and Content, in its current form or any modified form, to any third party, without the written consent of IDLA. At all times during the term of this Agreement, the Member must comply with the Terms of Use.

8. **MEMBER contributed content**

Member and Member's Users may modify or revise the Content, or add or contribute Member-created content, materials, courses and curriculum, assessment items, assignments and/or information to the Consortium ("**Member Contributed Content**"). The Member Contributed Content shall be available for use by IDLA and other Consortium members. The Member and Member's Users grant IDLA an irrevocable, perpetual, royalty-free license to use, execute, reproduce, display, perform and distribute copies of, and prepare derivative works of, the Member Contributed Content. All Member Contributed Content shall remain available on the Consortium, unless otherwise removed by IDLA pursuant to Section 4(e). All derivative works of Content, originally owned in whole or part by IDLA, shall remain the sole property of IDLA.

9. **IDLA RESPONSIBILITIES**

IDLA's responsibilities under this Agreement, pursuant to Appendix A, may include the following:

- a. IDLA shall provide to the Member the Services selected by the Member on Appendix A.
- b. IDLA shall provide Member with limited access to a learning management system for course administration purposes including the limited ability to copy course curriculum and add/remove User accounts, during the Term, in accordance with Appendix A.
- c. IDLA shall provide limited technical support during the Term of the Agreement, including the provision of training to an on-site technical specialist to be located at the Member's site during the initial set-up.
- d. IDLA shall provide consulting to Member regarding establishment and implementation of a successful online delivery model.

10. **Member RESPONSIBILITIES**

Member's responsibilities under this Agreement include the following:

- a. Member shall identify student and teacher blended users on Appendix A;
- b. Member shall identify and select the desired Services and pricing on Appendix A;
- c. Member shall be responsible for the provision of all technical support for Member's Users at all times, including before and during the implementation of this Agreement;
- d. The Member shall be responsible for (i) monitoring student correspondence and work to ensure the safety of students and (ii) providing appropriate services to protect the students' safety;

e. The Member shall ensure that all textbooks and resources (online or otherwise) are available to each student participant prior to the start of and during all classes;

f. The Member shall comply with all federal, state, and local laws, rules and regulations, including but not limited to requirements established for a student with a disability under the Americans with Disabilities Act, as may be amended from time to time, the Individuals with Disabilities Education Act, as may be amended from time to time, or under the Rehabilitation Act, as may be amended from time to time; and

g. The Member shall allow IDLA to share Member's experiences and limited details regarding the implementation and success measures regarding their online course delivery model. Member may also share their experience on blended learning with other educators.

11. **RESTRICTIONS**

Except as otherwise expressly permitted herein, Member and its principals, agents and employees shall not (and shall not allow any third party) to violate the Terms of Use. Member, Users, and their affiliates hereby agree that any attempts to violate this Agreement or the Terms of Use shall constitute a material breach of this Agreement.

12. **MEMBER Representations AND WARRANTIES**

Member represents and warrants that (i) it has full power and authority to enter into this Agreement, and to agree to all the terms and conditions contained therein and in the Terms of Use, attached hereto and amended from time to time, and has received all parental and other permissions required to permit IDLA to obtain and retain information (including personal information) from Users; (ii) only Member or its Users shall access the Consortium and the Content; (iii) Member and its Users will at all times use the Consortium and the Content only as expressly permitted by this Agreement and the Terms of Use; and (iv) any content, materials, and/or information contributed by Users, and any revisions to the Content by Users, does not and will not contain any libelous, unlawful or infringing materials or content, will not infringe upon any party's proprietary rights, including without limitation statutory or common-law copyright, trademark and right of privacy, and will not violate any law, regulation or right of any kind whatsoever or give rise to any actionable claim or liability.

13. **WARRANTY & REMEDIES**

Member accepts and agrees that the Consortium, its Content, and the Services provided by IDLA, are "as-is" and with all faults accepted, with no warranties, express or implied, of any kind. IDLA makes no representation or warranty of any kind, whether express or implied (either in fact or by operation of law), with respect to the Consortium, its Content, and the Services provided by IDLA or IDLA's authorized designee. IDLA expressly disclaims and Member hereby accepts such disclaimer of all implied warranties, including, but not limited to, any implied warranties of noninfringement, merchantability, fitness for a particular purpose, and validity of intellectual property rights. IDLA does not warrant that the Consortium or its Content is error-free or that operation of the Consortium shall be secure or uninterrupted. To the full extent permitted by law, the duration of statutorily required warranties, if any, shall be limited to the shortest permissible duration.

14. **INDEMNIFICATION**

a. **Member Indemnification** Member shall defend, indemnify and hold harmless

IDLA and each of its officers, directors, employees and agents (collectively the “**Indemnified Parties**”) against and in respect of any expense, cost, loss, debt, liability, damage, obligation, claim, demand, judgment or settlement of any nature or kind, including, but not limited to, all reasonable costs and expenses and attorney fees arising out of, resulting from or based upon any pending or threatened claim, action, proceeding or suit that an Indemnified Party may suffer based upon Member’s or User’s (i) acts or omissions, (ii) use of the Content or Services, (iii) upon any breach of any representation, warranty, undertaking or other obligation of the Member or User, under this Agreement, (iv) violation by Member or Users of the Terms of Use, or (v) use of any portion of the Content with products or services not supplied by IDLA.

b. **IDLA Indemnification** IDLA agrees to defend, indemnify, and hold harmless the Member from and against any and all damages, expenses, costs, claims, judgments and liabilities including, without limitation, reasonable attorney’s fees, incurred by the Member (unless caused by the negligence or wrongful acts or omissions of the Member) arising from or in connection with any grossly negligent or wrongful act or omission by IDLA with respect to the provision of the Services.

15. **LIMITATION OF LIABILITY**

Member and Users assume the entire risk as to the use, results, and performance of the Consortium, the Content contained therein, and the Services provided by IDLA. Notwithstanding anything in this Agreement to the contrary, IDLA shall not be liable or obligated with respect to any subject matter of this Agreement or under contract, negligence, strict liability or any other legal or equitable theory (i) for any amounts in excess in the aggregate of the fees paid to IDLA by Member during the twelve-month period prior to the date the claim arose or could have arisen; (ii) for any direct, indirect, special, punitive, incidental or consequential damages (including, but not limited to, claims for any lost profits, business interruption, cost of procurement of substitute goods, technology, services or rights); (iii) for failure of the Consortium, interruption of use or loss or corruption of data or Content; or other pecuniary loss arising out of the use of or inability to use (a) the Consortium or its Content by the Member or (b) Services provided by IDLA, (iv) any delays errors, or omissions, or any defect, quality, accuracy, completeness, timeliness, availability or performance relating to the Consortium or Content contained therein, or (iv) for any matter beyond IDLA’s reasonable control. To the extent that the exclusion or limitation of incidental or consequential damages is prohibited by law, any such prohibited limitations and exclusions shall not apply to Member.

16. **Survivability**

All representations, warranties, remedies, and indemnities shall survive the expiration or prior termination of the Member Agreement.

17. **CONFIDENTIAL INFORMATION**

Except for any disclosure required by law, each party agrees to retain all confidential information received from the other party in confidence, not to disclose any such information to any other person, and not to use any such information for its own benefit, to the other party’s detriment or for any purpose other than in furtherance of this Agreement. All information which either party and any of its agents receives at any time from the other party or any of its agents shall be deemed confidential and subject to the provisions of this section (including without limitation the Content and Services), whether the information shall be received orally, in writing,

visually, by inspection of documents, products or processes, by electronic transmission, or in any other form or manner, excepting only information which the recipient establishes was generally available to the public at the time of disclosure or subsequently became generally available to the public other than as a result, directly or indirectly, of disclosure by the recipient or its agents. Information shall be confidential and shall be subject to this section whether or not it is marked or designated “confidential” at the time of disclosure. Notwithstanding the provisions above, all student related data received or utilized under this Agreement shall be maintained and disclosed under the provisions of the Family Educational Rights and Privacy Act (FERPA).

18. **Return of Confidential Information**

Upon termination of this Agreement, Member and each User shall cease to access or return to IDLA all Content and other confidential information of IDLA.

19. **NO AUTHORITY TO BIND OTHER PARTY**

One party under this Agreement shall have no authority to enter into contracts or Agreements on behalf of the other party. All contracts or Agreements shall be entered on behalf of the executing party or executed jointly by both parties. The procedures set forth in this Agreement are intended for the sole use and benefit of IDLA and Member. No third party or other State entity may rely on these procedures. Any failure of IDLA or Member to follow any or all of these procedures, or any future amendment or modification of these procedures, shall not establish any liability of IDLA or Member to any third party or other entity of the State of Idaho.

20. **DISCRIMINATION**

The Parties hereby agree that no person shall, on the basis of race, color, creed, national origin or gender, be excluded from or denied participation in or otherwise subjected to discrimination in relation to any activity associated with this Agreement.

21. **INTERPRETATIONS**

Governing Law Any claim, action, suit, proceeding or dispute arising out of the Agreement shall in all respects be governed by, and interpreted in accordance with, the laws of the State of Idaho, without regard to the conflicts of law provisions thereof. The parties hereby consent, acknowledge and agree that venue and jurisdiction for any action, suit or proceeding arising out of these Terms of Use shall vest exclusively in the federal or state courts of general jurisdiction located in Ada County, Idaho.

Attorneys’ Fees Should any party employ an attorney for the purpose of enforcing this Agreement, the prevailing party shall receive its reasonable attorneys’ fees and costs.

Assignment The Parties respective obligations and duties as set forth herein are to be performed by the parties and may not be assigned or subcontracted by either party without the written consent of the other party.

Failure or Omissions No delay or failure by either party to exercise any right under this Agreement, and no partial or single exercise of that right, shall constitute a waiver of that or any

other right, unless otherwise expressly provided in this Agreement.

Severability If any part of this Agreement shall be determined to be invalid, illegal or unenforceable, or declared null and void by any court of competent jurisdiction, then such part shall be reformed, if possible, to conform to the law and, in any event, the remaining parts of this Agreement shall be fully effective and operative insofar as reasonably possible.

Compliance with Laws and Regulations Each party shall be and shall remain in compliance with all applicable federal, state and local laws and mandatory regulations in performance of its obligations pursuant to this Agreement.

Dispute. If a dispute arises between the parties regarding their rights or obligations under this Agreement, the parties shall first attempt to settle the dispute by direct discussions. If the dispute cannot be settled by the parties by direct discussions, then the parties agree to endeavor to settle the dispute in an amicable manner by mediation administered by the American Arbitration Association under its Commercial Mediation Rules. Thereafter, any unresolved dispute arising from or relating to this Agreement or a breach of this Agreement shall be resolved as provided by this Agreement and by law.

Resolution of Certain Claims – Injunctive Relief. Member and the Users acknowledge and agree that the Consortium and the Content contained therein, possess a special, unique and extraordinary character that makes difficult the assessment of the monetary damages that would be sustained as a result of unauthorized use, and that unauthorized use may cause immediate and irreparable damage to IDLA for which IDLA would not have an adequate remedy at law. Therefore, Member agrees that, in the event of such unauthorized use, in addition to such other legal and equitable rights and remedies as may be available to IDLA, IDLA shall be entitled to injunctive and other equitable relief without the necessity of proving damages or furnishing a bond or other security.

22. **Force Majeure**

The obligations of either party to perform under this Agreement will be excused during each period of delay caused by acts of God, or by shortages of power, materials or transportation, government orders, labor strikes, work stoppages or disruptions, war (even if not declared), hostilities, terrorism, or embargos which are beyond the reasonable control of the party obligated to perform (“**Force Majeure Event**”). In the event that either party ceases to perform its obligations under this Agreement due to the occurrence of a Force Majeure Event, such party shall: (i) immediately notify the other party in writing of such Force Majeure Event and its expected duration, and (ii) take all reasonable steps to recommence performance of its obligations under this Agreement as soon as possible. In the event that any Force Majeure Event delays a party’s performance for more than 90 days following notice by such party pursuant to this Agreement, the other party may terminate this Agreement immediately upon written notice to such party.

23. **Entire Agreement**

This Agreement and its Appendices constitute the entire agreement between the parties, and supersede all prior oral and written agreements and understandings between the parties.

This Agreement cannot be modified or amended, except in writing signed by all parties. In the event of any inconsistency between this Agreement and its Appendices, this Agreement shall control.

24. USE AND USERS

Idaho Digital Learning Blended Consortium membership provides annual access to Idaho Digital Learning technologies, digital content, and professional development as outlined below.

The maximum number of Users purchased by Member limits the number of Users. Member may create Users at any time. A User is created when Member provides username login access to Learning Management System (LMS). A User is a student, teacher, staff member, administrator or school official that has a LMS username. If Member exceeds purchased users, Member will be bumped to next user band as outlined in Appendix A Fee Matrix.

25. TECHNOLOGY

The Member package of technology is a suite of online and blended learning technologies that are assembled to provide a robust, engaging learning environment for online and blended learning. To accommodate for potential changes, Idaho Digital Learning reserves the right to upgrade technologies and substitute functionality sources during the Agreement.

26. **Idaho Digital Learning Consortium Fees**

| | |
|--|-----------------|
| Total Student Users | 1999 |
| Total Instructors | 45 |
| Total Membership Fees (see Fee Matrix) | \$13,500 |
| PD Customizations: | |
| User Customizations: | |
| Total Fees | |

| | |
|--------------------------------|---|
| DISTRICT MEMBER | |
| District: | Idaho Falls School District #91 |
| Phone: | (208)525-7500 |
| Address: | 690 John Adams Parkway Idaho Falls, ID 83401 |
| Date: 10/10/2016 | Name: Jennifer Jackson Title: Director of Curriculum & P.D. Signature:  |
| IDAHO DIGITAL LEARNING | |
| Date: 10/10/2016 | Name: Dr. Sherawn Reberry Title: Director of Education Programs  Signature: |

Idaho Digital Learning Academy
PO BOX 10017, Boise, ID 83707
300 W. Fort Street, Boise, ID 83702 (Main Campus)
1-208-570-3063

APPENDIX A

Idaho Digital Learning Consortium Technologies

- **Agilix Buzz** - learning management system (LMS), accessible from a customized domain for each member.

DIGITAL CONTENT The Member package includes access to a digital content repository of learning objects, full courses contributed by other consortium members, online course and curriculum content provided through the consortium, and access to development specialists to support the new development of original multimedia interactive learning objects.

Idaho Digital Learning **Content Repository:**

Current Content Availability: learning objects, units, and lesson plans.

*Idaho Digital Learning objects include games, lessons and presentations.

** Online lessons and instructional content do not include assessment banks.

Idaho Digital Learning - Consortium Courses

- Courses and content developed by other Consortium Members.
- Under Creative Commons licensing, teacher- built courses will be shared, edited, and shared back to the larger community within the consortium.

Idaho Digital Learning - IDLA Full Courses

- Online courses and content developed by the Idaho Digital Learning Academy
- Content and Assessments cannot be shared with educators outside of the consortium.

Idaho Digital Learning Interactivity Templates

- Access to-Idaho Digital Learning Interactivity templates used to create interactive learning objects
- All teacher-created learning objects will be shared back into the consortium.

PROFESSIONAL DEVELOPMENT

Professional development will begin with the design of the district's/schools strategic plan. Professional development needs will be determined at that time and this contract will cover those needs in the strategic plan. Live training will be delivered at a central location designated by the Consortium Member's Administration.

Professional Development Goals

1. Train teachers in the best practices of blended learning as defined through the strategic planning process.

2. Train teachers in the use of a Learning Management System conducive to the learning environment.
3. Work in a partnership to deliver courses using nationally recognized best practices for course delivery in different modalities (i.e. iNacol Standards) and pedagogy.

CONSULTING The consortium fees includes limited access to Idaho Digital Learning Professional Development Specialists and/or district liaisons for consultation and planning support.

SUPPORT. The consortium includes limited access to technology and training support.

Idaho Digital Learning Consortium FEES.

of District Consortium Teachers

| Total Student Users | 1-5 | 6-15 | 16-25 | 26-45 | 46-65 |
|-----------------------------|----------|----------|----------|----------|----------|
| 0-99 | \$3,500 | na | na | na | na |
| 100-249 | \$4,750 | \$4,750 | \$5,750 | na | na |
| 250-499 | \$6,500 | \$6,500 | \$7,500 | \$8,500 | na |
| 500-999 | \$9,500 | \$9,500 | \$10,500 | \$11,500 | \$13,500 |
| 1000-1999 | \$11,500 | \$11,500 | \$12,500 | \$13,500 | \$15,500 |
| Student User Minimum -----> | 1 | 100 | 100 | 250 | 500 |

Customized pricing will be given for more than 65 teachers or 2000 or more student users.

Customized Blended Solutions*

Idaho Digital Learning is able to provide additional technology, training and content options outside of the Idaho Digital Learning Consortium options outlined in Appendix A. Idaho Digital Learning can customize solutions and pricing on a per district or per school basis in order to provide solutions and services to meet unique requests.