

MESA

PUBLIC SCHOOLS

March 8, 2013

Patrick Nelson
Superintendent
Amphitheater Unified School District
701 W. Wetmore
Tucson, AZ 85705

Helen Riddle
Director

Mesa Distance Learning Program

Re: Mesa Unified School District and Amphitheater District IGA for
Distance Learning and Related Services

1025 N. Country Club Drive

Mesa, Arizona

85201-3307

www.mdlp.org

(480) 472-0885

Fax (480) 472-0887

Dear Superintendent Nelson:

This letter will confirm that we are extending the term of this agreement which ends
June 30, 2013, through June 30, 2016.

Please confirm that you agree to this extension by signing this letter in the space
provided below and returning it to me.

Sincerely,



Helen Riddle
Director, Mesa Distance Learning Program

Copy: Tom Pickrell, General Counsel

The foregoing is accepted and agreed to:



Patrick Nelson, Superintendent
Amphitheater Unified School District

Date 3-19-13

NO. 27860
Filed with the Secretary of State
Date Filed: 12/2/05
Janice K. Brewer
Secretary of State

**Mesa Distance Learning Program
Services Agreement**

By: *[Signature]*

This Services Agreement is entered into as of May 25, 2005, (hereinafter the "Effective Date") by and between Mesa Unified School District No. 4 (hereinafter "Mesa"), and Amphitheater Unified School District No. 10. ("Amphitheater").

RECITALS

Mesa has developed a certain proprietary distance learning program, including proprietary computer software, for students to receive comprehensive K-12 academic instruction via the Internet (MDLP). MDLP consists of the items described in Schedule A.

Mesa desires to obtain from Amphitheater, and Amphitheater desires to provide to Mesa for a fee, certain support services for students who reside in Amphitheater's territory and are enrolled by Mesa in its distance learning program, upon the terms and conditions set forth in this Agreement.

NOW THEREFORE, in consideration of the foregoing premises and of the mutual covenants contained herein, Amphitheater and Mesa agree as follows:

1. MDLP LICENSE

Mesa grants Amphitheater a nonexclusive, nontransferable license for Amphitheater to use MDLP solely for the purpose of supporting Mesa's efforts to provide distance learning services to students who reside in Amphitheater's territory and who are enrolled in the Mesa Distance Learning Program. The license and use of MDLP is limited to the term of this Agreement and is at all times subject to the terms and conditions set forth in this Agreement, including without limitation, the License Terms and Conditions set forth in Schedule B.

2. AMPHITHEATER SERVICES

Amphitheater agrees to perform the support services for Mesa as described in Schedule C ("Services"). Amphitheater's obligation to provide the Services is limited to the term of this Agreement and is subject to the terms and conditions set forth in this Agreement.

3. PAYMENT

For the Services provided under this Agreement, Mesa shall pay to Amphitheater, or Amphitheater will pay to Mesa, a fee calculated according to Schedule D. Payments shall be made annually or semiannually upon presentation of a written invoice. An interest penalty equal to one percent per month (or portion thereof) on any delinquent amount owed under this Agreement may be charged.

4. TERM

This Agreement shall commence on the Effective Date and end June 30, 2008.

5. TERMINATION

Default. In the event that either party materially fails to perform or comply with any provision of this Agreement, and fails to remedy the default within 30 days after receipt of written notice to that effect, then the non-defaulting party shall have the right, at its sole option and upon written notice to the other, to terminate this Agreement.

System Incompatibility. In the event Mesa cannot successfully install MDLP on Amphitheater's computer system, Amphitheater or Mesa, at any time prior to final acceptance of installation by Amphitheater, may terminate this Agreement, and all fees paid to Mesa under this Agreement shall be refunded.

A.R.S. §38-511. This agreement may be terminated by either party for conflict of interest pursuant to A.R.S. §38-511.

6. NOTICES

A notice required by this Agreement shall be sent by U.S. certified mail, return receipt requested, or delivered by hand to the party at the address indicated in Schedule E or such other address requested by notice to the other party. A notice shall be considered given when received.

7. INDEMNITY

To the extent permitted by law, each party will indemnify, hold harmless and, with counsel reasonably acceptable to the other, defend the other party and its officers, employees and agents from and against all losses arising out of or in connection with any negligent or willful act or omission of the party and its agents, including without limitation to the extent such act or omission causes or contributes to (i) any bodily injury, sickness, disease or death; (ii) any injury to or destruction of tangible or intangible property (including computer programs and data or any loss of use resulting therefrom); or (iii) any violation of any statute, ordinance or regulation.

8. LIMITATION OF LIABILITY

Damages Limitation. Each party disclaims any and all liability for any indirect, special or consequential damages or lost profits arising out of or related to this Agreement, even if that party has been advised of the possibility thereof, or knew or should have known thereof, including without limitation, any claims for loss of data or software, negligence or delay of a party in providing any goods or performing any Services hereunder.

Limitation On Any Recovery. Each party specifically agrees that the other party's liability for damages for any cause whatsoever, regardless of the form of action, whether in contract or in tort, shall be limited to the total fees paid by the other party under this Agreement.

One-Year Limitation Period. No action arising out of any breach or claimed breach of this Agreement or transactions contemplated by this Agreement may be brought by either party more than one year after the cause of action has accrued. For purposes of this Agreement, a cause of action will be deemed to have accrued when a party knew or reasonably should have known of the breach or claimed breach.

Uncontrollable Events. Neither party shall be liable for any delays in the performance of any of its obligations hereunder due to causes beyond its reasonable control; provided, however, that this provision shall not operate to excuse Amphitheater from prompt payment of any amounts required to be paid under this Agreement.

9. REMEDIES; ATTORNEYS' FEES

A breach by either party of any of the provisions of this Agreement shall entitle the other to all rights and remedies provided by the Agreement or pursuant to applicable law. The prevailing party in any action to enforce or interpret any provision of this Agreement shall be entitled to reasonable attorneys' fees and disbursements, including but not limited to court costs and fees, fees and costs of expert witnesses, fees of court reporters and transcripts.

10. APPLICABLE LAW

This Agreement shall be governed by the laws of the State of Arizona and by applicable federal law. Any action or proceeding brought by a party with respect to the breach or enforcement of the terms of this Agreement shall be brought in the courts of the State of Arizona situated in Maricopa County.

11. SEVERABILITY

If any one or more provisions of this Agreement are, for any reason, held invalid, illegal or unenforceable in any respect, such invalidity, illegality or unenforceability shall not affect any other provision contained in this Agreement.

12. WAIVER

A waiver by either party of any of the terms, conditions and covenants to be performed by the other shall not be construed to be a waiver of any succeeding breach, nor of any other term, condition or covenant contained in this Agreement.

13. ENTIRE AGREEMENT

This Agreement states the entire agreement between the parties concerning its subject matter and supersedes all related prior oral and written negotiations and understandings. This Agreement may not be amended except by a mutual written agreement of the parties.

IN WITNESS WHEREOF, Amphitheater and Mesa caused this Agreement to be executed by their respective duly authorized representatives as of the dates indicated by their representatives' signatures.

Mesa Unified School District No. 4

Debra Duvall
Signature

Name: Debra Duvall

Title: Superintendent

Date: November 22, 2005

**Amphitheater Unified School District
No. 10**

Vicki Balentine
Signature

Name: Vicki Balentine, Ph.D.

Title: Superintendent

Date: July 5, 2005

SCHEDULE A

MDLP DESCRIPTION

The Mesa Distance Learning Program offers students nationwide, electronic instruction in grades 1-12 leading to a high school diploma upon successful completion of the program. The basic core program currently has over 57 high-quality, interactive online courses taught by certified teachers. The Mesa Distance Learning Program provides multimedia-rich curriculum aligning to state and national standards as well as numerous online tools for both parents and students. The Program is more fully described on its website: www.mdip.org

SCHEDULE B

TERMS AND CONDITIONS OF MDLP LICENSE

Mesa's grant of a license to use MDLP is at all times subject to the following terms and conditions:

1. Amphitheater shall use MDLP solely for the purpose of providing support services to students who are enrolled in the MDLP program and who live in the Amphitheater territory, and only as expressly authorized in the MDLP Subscription Agreement.
2. The license shall terminate upon the termination of the MDLP Services Agreement. Upon termination, Amphitheater shall permanently remove MDLP from all computers under Amphitheater's control and return to Mesa all documentation received from Mesa in connection with the MDLP Services Agreement.
3. The license is nonexclusive and nontransferable.
4. Amphitheater shall (i) hold MDLP, including without limitation, its source code, in confidence and not disclose it to anyone other than Amphitheater's employees and consultants who require disclosure in connection with Amphitheater's use of MDLP and who agree to fully adhere to the same confidentiality obligation; (ii) not remove any Mesa copyright, trademark or other proprietary notice from MDLP; and (iii) not transfer MDLP or assign this Agreement or any rights regarding MDLP. Any attempted transfer or assignment shall be void and of no force or effect. These obligations shall survive notwithstanding any termination or expiration of this Agreement, and if any breach of these obligations is not remedied within ten days of written notice thereof from Mesa. Mesa may, in addition to any other legal or equitable remedies available to it, immediately terminate this Agreement.
5. Rights in, title to and ownership of MDLP as delivered, including patents and copyrights, shall at all times remain with Mesa.
6. Mesa's exclusive warranty for MDLP is that, for a period of one year from completion of installation of MDLP, MDLP shall operate free of defects in media and material. If MDLP is not in conformance with this warranty, Mesa shall, at its expense, repair or modify MDLP or, at its option, replace MDLP. The foregoing exclusive warranty is contingent upon Amphitheater procuring computer hardware and software licenses that are adequate for the installation and operation of MDLP. Further, the foregoing exclusive warranty is contingent upon the proper use of MDLP in accordance with the specifications and instructions and do not apply to software on which the original identification marks have been removed or altered or to defects or failures due to (i) disaster, accident, neglect or misuse by Amphitheater; (ii) failures or defects of electrical power, external electrical circuitry, air conditioning or humidity control; (iii) the use therewith of software not provided by Mesa; or (iv) any person other than Mesa or its authorized representative modifying, repairing or altering MDLP. Notwithstanding the foregoing, Amphitheater shall have the right to modify MDLP with the understanding that Mesa disclaims all warranties with respect to performance and defects, and infringement of any third party intellectual property rights, with respect to the modified software. EXCEPT AS EXPRESSLY STATED HEREIN, THERE ARE NO WARRANTIES EXPRESS OR IMPLIED, BY OPERATION OF LAW OR OTHERWISE, OF SERVICES OR SOFTWARE FURNISHED HEREUNDER OR IN CONNECTION THEREWITH. MESA DISCLAIMS ALL IMPLIED WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE. NO REPRESENTATIONS OR OTHER AFFIRMATIONS OF FACT, INCLUDING WITHOUT LIMITATION, STATEMENTS REGARDING CAPACITY, SUITABILITY FOR USE OR PERFORMANCE OF MDLP, WHETHER MADE BY MESA EMPLOYEES OR OTHERWISE, WHICH IS NOT CONTAINED IN THIS AGREEMENT, SHALL BE DEEMED TO BE A WARRANTY BY MESA FOR ANY PURPOSE, OR GIVE RISE TO ANY LIABILITY OF MESA WHATSOEVER.

7. If a claim is made or an action brought that MDLP, as delivered, infringes a U. S. patent, or any copyright, trademark or trade secret, Mesa will defend Amphitheater against such claim and will pay resulting costs, damages and attorneys' fees finally awarded provided that (i) Amphitheater promptly notifies Mesa in writing of the claim, and (ii) Mesa has sole control of the defense and all related settlement negotiations. Mesa's obligation under this Section is conditional upon Amphitheater's agreement that if MDLP, or the use or operation thereof, becomes, or in Mesa's opinion is likely to become, the subject of such a claim, Mesa may, at its expense, either procure the right for Amphitheater to continue using MDLP or, at its option, replace or modify MDLP so that it becomes non-infringing (provided such replacement or modification does not materially adversely affect Amphitheater's intended use of MDLP as contemplated hereunder). Mesa shall have no liability for any claim based on the combination, operation or use of any MDLP with MDLP not supplied by Mesa if such a claim would have been avoided by use of other MDLP, whether or not capable of achieving the same results, or based upon alteration or modification of MDLP furnished by Mesa. THE FOREGOING STATES THE ENTIRE OBLIGATION OF MESA WITH RESPECT TO INFRINGEMENT OF PATENTS, COPYRIGHTS, TRADEMARKS AND TRADE SECRETS.
8. The provisions of this Agreement which by their nature are intended to survive the termination, cancellation, completion or expiration of the Agreement, including without limitation any covenants of confidentiality and any express limitations of or releases from liability, shall continue as valid and enforceable obligations of the parties notwithstanding any such termination, cancellation, completion or expiration.

Schedule C

Statement of Services

During the term of the MDLP Services Agreement, Amphitheater shall generally advise students of the opportunity to participate in MDLP, when deemed appropriate by Amphitheater, and perform the following support services for students who reside in Amphitheater's territory and enroll in MDLP:

- Proctoring the final examination for a course at a Amphitheater facility.
- Providing any face-to-face instruction or counseling that Amphitheater, in its discretion, desires to provide an enrolled student.
- Providing any special education services to students with disabilities who participate in MDLP.
- Providing coordination of the program at Amphitheater.
- Providing registration services to students and families of Amphitheater.
- Assisting in the design/revision of MDLP courses when desired.
- Assisting students and families as needed.

All Services performed by Amphitheater pursuant to this Agreement will be rendered in a professional manner in accordance with generally accepted professional standards prevailing at the time. Amphitheater shall be solely responsible for assigning its employees and agents to perform the Services.

The relationship created by this Agreement is that of Amphitheater as an independent contractor providing services to Mesa. This Agreement does not create the relationship of principal-agent, employee-employer, partnership or joint venture.

Schedule D

Service Fee Formula

<p>1. Student who is <u>not</u> enrolled in an Amphitheater school immediately prior or after entering the Mesa Distance Learning Program</p>	<p>Mesa will pay to Amphitheater 50% of the adjusted ADM for each student as listed on the report from the State Department of Education (ADM).</p>
<p>2. Student who is enrolled in an Amphitheater school immediately prior and after entering the Mesa Distance Learning Program</p>	<p>A. If a student takes four or more courses at Amphitheater, Amphitheater will claim the ADM for the student and pay to Mesa \$150 per semester course.</p> <p>B. If a student is taking less than four courses at Amphitheater, Amphitheater and Mesa will each claim their respective portions of ADM for the student. Mesa will receive \$150 per semester course or 50% of adjusted ADM, as mutually agreed by Mesa and Amphitheater.</p>

Schedule E

Notice and Contact Information

Notice:

Mesa Public Schools
63 E. Main Street #101
Mesa, Arizona 85201-7422
Attn: Superintendent

Notice:

Amphitheater School District
701 W. Wetmore Road
Tucson, AZ 85705-1547
Attn: Superintendent

Primary Contact Person for Implementation
of MDLP Services Agreement:

Director of Distance Learning
Mesa Public Schools
546 N. Stapley Drive, Building 4
Mesa, Arizona 85203
480-472-7253
480-472-7251 (fax)

Primary Contact Person for Implementation
of MDLP Services Agreement:

Richard Faidley
Executive Director Student Services
701 W. Wetmore Road
Tucson, AZ 85705-1547
520-696-5230
520-696-5067 (fax)

Party Responsible for Payment:

Accounts Payable Department
Mesa Public Schools
63 E. Main Street #101
Mesa, Arizona 85201-7244
480-472-0106

Primary Contact for Billing Information:

Accounts Receivable Department
Amphitheater School District
701 W. Wetmore Road
Tucson, AZ 85705-1547
520-696-5130

**Amphitheater Public Schools
Intergovernmental Agreement
Determination of Legal Counsel**

Agency Name(s): Mesa Unified School District No. 4

Effective Date: July 1, 2005

Termination Date: June 30, 2008

Renewal: By agreement.

Purpose: To purchase from Mesa a proprietary distance learning program, including proprietary computer software, for students to receive comprehensive K-12 academic instruction via the Internet (MDLP).

Pursuant to A.R.S. § 11-952(D), I have reviewed the above referenced Intergovernmental Agreement and have determined it to be in proper form and within the power and authority granted to Amphitheater Public Schools under the laws of Arizona.

Dated this 27th day of June, 2005.



Todd A. Jaeger, Esq.
General Counsel
Associate to the Superintendent