

Digital transformation, accelerated: key technology legal and contract issues for UAE educators

Martin Hayward - Head of Digital & Data - Digital & Data
- Dubai International Financial Centre

Schools, colleges and universities (together, 'Schools') are very busy this summer reviewing and developing their digital strategies. A big part of this will be procuring new technology as they build for a future where online learning will be a key component of the educational offering.

Online learning was a growing part of the education industry, whether K-12 home learning or online higher education courses before the pandemic, but the pandemic has accelerated that progress and moved it from a secondary teaching delivery model to a critical part of a school's offering. Those Schools that had already started their digital transformation journey before the pandemic were well positioned to move swiftly to a virtual teaching model. Other Schools had to scramble at the start of the pandemic to lift and shift from the physical to the virtual classroom, rapidly onboarding video conferencing and collaboration tools.

There are big questions over how education technology will be incorporated into the learning experience and educators are quick to point out that technology is only an enabler and will only be effective if properly located in an effective digital strategy and a learning centred approach. That said, technology is expensive, it takes time to procure, longer to implement successfully and needs to be used properly (by properly trained staff) to ensure a proper return on investment. Schools need to get their technology decisions right. It is difficult, and costly, to reverse technology decisions and Schools need to consider the need for their technology procurements to provide them with agility and flexibility. This article looks at some of the key issues with procuring new technologies, particularly as part of both time and business critical procurements.

Scope it right

The more time spent considering what technologies are the right fit for the school, the better. This is easier said than done at the moment, with the pandemic far from over and a new school year not far away. As a result, institutions need to prioritise the technologies and systems they need now. They need to understand if these are standalone systems or systems that will require lots of integration work into existing platforms, such as learning management systems (more on that below). Is it "off the shelf" and can it be up and running with little customisation or will it need to be customisation or configuration work? Does the technology or system need to scale and change with the institution's needs? If so, any development work, and its cost, needs to be factored in.

Focus on the contract

All this needs to be agreed and covered in the technology contract with the vendor. A clear project plan timeline with milestones and deliverables and penalties for failure to meet them needs to be agreed. Whilst time to implementation is key, time spent on the contract is equally important. Schools do not have

huge technology budgets and money needs to be spent carefully. This makes the procurement and contracting process all the more important.

Make careful vendor choices

The choice of vendor is going to be key. The market for new “ed-tech” solutions is booming. Many are established technology vendors but there has been an explosion of new, small, specialist, vendors with niche solutions that have been key to supporting Schools during the pandemic, offering free trial periods or proofs of concepts and helping Schools triage their immediate technology needs. Many of the ed-tech vendors are established technology players. A lot of ed-tech vendors, though, are start-ups. Schools need to assess the long-term viability of these companies and then seek the necessary contractual protections if they decide to procure their technology - whether it is intellectual property rights (and protections), access to documentation and training, software escrow arrangements and/or access to skilled vendor personnel. Contracts need to have effective business continuity processes and dispute resolution provisions documented. Technology disputes are on the uptick as companies cut costs and technology vendors look to optimise revenues (often through customer auditing). Effective force majeure clauses are, of course, a must.

Consider the delivery model: on premise or managed service

For cost and other reasons, many Schools will be looking at managed services arrangements. As headcounts are reduced, whether as part of pandemic cost cutting measures or as part of an ongoing digital transformation strategy, managed services offerings and the move from budgeted capex to opex, is an attractive one, offering cloud based services and subscription based software. Many Schools may already be comfortable with a largely outsourced IT model, reducing their in-house IT teams. Managed service contracts, though, need careful review to ensure that the Schools get the service delivery they need whilst maintaining the agility to move to a new managed service provider, mitigate data and/or in-source all or part of the services. Service descriptions need to be properly detailed. Service level arrangements are key to ensuring Schools receive the services they need. Development time needs to be carefully scoped. Governance and reporting arrangements are important to ensure that Schools build effective relationships with their managed service providers, closely monitor service delivery and proactively manage issues.

Putting it all together

Another key issue for Schools to consider is whether they are procuring a raft of small solutions that do different things but need to integrate with each other, or with core systems like the learning management system or core back office HR or finance systems to be effective. If a lot of integration is required, Schools need to ensure that the vendors are responsible for the integration work. Some Schools may look to systems integrators who will manage the full end-to-end integration process. Those systems integrators need to accept full responsibility for the delivery of multiple integrated systems and the contracts need to clearly set out these requirements and ensure effective risk transfer for delivery to the systems integrator. As above, scoping the requirements (including the integration requirements) is key.

Focus on data

One of the key benefits that will come from greater technology adoption by Schools will be the amount of data collected on students. Every touchpoint of a student's journey through a school can be captured and analysed. This will be hugely beneficial both from a teaching perspective and for the schools themselves. A rich source of data can be analysed and monetised [[Unlocking the value in data: successfully implementing compliant data monetisation strategies](#)] but this needs to be collected, used, transferred and stored according to applicable laws and regulations, particularly if the data constitutes personal data. Any data processing activities need to be considered in light of both current UAE regulations (e.g. under the UAE criminal law and civil regulations such as the Internet of Things (IoT) regulatory policy [[Being Here: Local Presence Requirements for Telecommunications Equipment and IoT Service Providers in the UAE](#)]) and also with the expectation of new UAE privacy laws being issued in the near future - laws that will likely introduce European data protection principles similar to those introduced in the new DIFC data protection law [[Getting personal: the new DIFC data protection law and what it means for you](#)]. Schools need to ensure that they have a clear lawful basis for their personal data processing activities (e.g. consent), that they know where they are holding personal data, what third parties they transfer such personal data to (e.g. managed service providers) and how long they hold it. All these details should be documented and made available to students (and parents).

What about disruptive new technologies?

Many of the new technologies Schools will be adopting bring new challenges in relation to data protection compliance. New technologies such as artificial intelligence (AI)/machine learning and virtual reality/augmented reality (VR/AR) offer fantastic opportunities for new, enriching and immersive experiences for students. Mobile technologies and wearables will be increasingly adopted. These technologies collect a lot of personal data previously not collected by Schools. The same is true for the video conferencing and collaboration tools that Schools have been using. A detailed analysis of the personal data being collected, how it is being processed and what the legal and regulatory implications are will be essential, particularly where new technologies are being delivered by third parties as part of managed services and stored in cloud environments. From a contract perspective, detailed data protection and IT security requirements need to be placed on service providers.

Added to this is the increased integration of social media platforms, discussion forums and chat rooms used as part of the learning experience which need to ensure that these tools can be used effectively whilst remaining in compliance with applicable laws and regulations.

Competing technology demands

In conclusion, Schools will face a number of competing technology demands as they head into the new school year. As they build out their technology footprint, they need to consider other technology needs (and the legal and contracting issues that go with them). For example, temperature detection technology to meet health requirements, mobile tracing application technology and cybersecurity measures to counter increased cyber threats. All of these come with legal and regulatory considerations that need to be teased out before these technologies are rolled out.

For further information, please contact [Martin Hayward](mailto:m.hayward@tamimi.com) (m.hayward@tamimi.com).