

**EDUCATIONAL PRODUCTS AND SERVICES  
AGREEMENT**

Between

UNION SCHOOL CORPORATION

And

K12 VIRTUAL SCHOOLS LLC

**FOR THE UNION SCHOOL CORPORATION'S ONLINE SCHOOL KNOWN AS THE  
INDIANA DIGITAL LEARNING SCHOOL**

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## EDUCATIONAL PRODUCTS AND SERVICES AGREEMENT

Between the  
UNION SCHOOL CORPORATION  
And  
K12 VIRTUAL SCHOOLS LLC

This EDUCATIONAL PRODUCTS AND SERVICES AGREEMENT (“**Agreement**”) is made and entered into, by and between the Union School Corporation, an Indiana public school district located in Modoc, Indiana (hereinafter the “**District**”) and K12 Virtual Schools LLC, a Delaware limited liability company (hereinafter “**K12**”), each a “**Party**” and together the “**Parties**”, as of the date signed by both Parties, and includes the following exhibits:

- a. Exhibit A (Products and Services)
- b. Exhibit B (K12 Proprietary Marks)

### RECITALS

A. **WHEREAS**, the District is governed by The Board of Education of the District (the “**Board**”).

B. **WHEREAS**, the District desires to utilize technology-based applications combined with teacher/student/parent involvement, to provide a virtual online school program. Such online school will be known as Indiana Digital Learning School and is available exclusively for the benefit of resident and non-resident students enrolled in the District.

C. **WHEREAS**, the Program will be called the Indiana Digital Learning School but may also be referred to in abbreviated form, for example, as “**IDLS**.”

D. **WHEREAS**, K12 and its Affiliates were established, among other things, for the following purposes:

- o promoting and encouraging new methods of effective education;
- o implementing innovative and effective instructional systems in elementary and secondary education.

E. **WHEREAS**, K12 will provide the District with a variety of educational products and services in furtherance of the Program. These educational products and services include providing K12 owned and licensed curriculum, online school and learning management systems; teacher support, training, recruitment, hiring and management; financial and school administration services; technology services for a student account management system and other administrative and technology support services specified in this Agreement.

F. **WHEREAS**, it is the intention of both Parties to enter into a long-term relationship in which the Board governs the Program while K12 provides comprehensive educational products and services, including management services, and in which K12 will help assure the financial solvency of the Program in accordance with the terms of this Agreement.

**NOW, THEREFORE**, the Parties mutually agree as follows:

1. **DEFINITIONS**. For the purposes of this Agreement, capitalized terms used herein but not otherwise defined shall have the meaning ascribed to them in this Section 1 as follows:

1.1. **Affiliates**. An Affiliate of K12 is an entity that controls, is controlled by, or under common control with K12, where “control” means the possession, directly or indirectly, of the power to direct or cause the

direction of the management policies of an entity, whether through the ownership of securities, by contract or otherwise.

1.2. Applicable Law. Applicable Law is defined herein as the Constitution of the State (as defined below), the State education laws and/or code, the federal Elementary and Secondary Education Act, the federal Individuals with Disabilities in Education Act, other applicable federal, state or local statutes, ordinances and regulations, any amendments to or recodification of the aforementioned laws, and other binding rulings applicable to public schools in the State.

1.3. Not used.

1.4. Fiscal Year. The Fiscal Year shall run July 1 through June 30.

1.5. Not used.

1.6. Program. The Program is the District's public online educational offering, currently known as the Indiana Digital learning School or any substantially similar school names.

1.7. Program Revenues. Program Revenues are all revenues and income generated or appropriated for and received by or on behalf of the District as attributed to any Student or the Program which includes, but is not limited to, the following sources as applicable: state and local per-pupil basic education funds and other public school state and local funding; Special education funding, tax benefit disbursements, federal funds specific to the Program and/or its students; other funding including, but not limited to, Title I of the Elementary and Secondary Education Act of 1965, as amended (20 U.S.C. §6301 et seq., as amended); State provided facility funding and other income or revenue sources provided by law and obtained by the District and/or K12 which are not specifically excluded herein and all contributions and grants received by or on behalf of the Program and granted as a matter of right and/or practice or through competitive and non-competitive grant processes, which are to assist in the improvement of the facility, the implementation or maintenance of the Program operations.

1.8. Shareholder. A Shareholder is a holder of greater than one percent (1%) of K12's outstanding shares of common stock.

1.9. State. The State is Indiana.

1.10. Student. A Student is any student enrolled and/or otherwise taking course(s) in the Program or previously enrolled, including those pupils who have withdrawn.

1.11. Student Support Staff. Student Support Staff is defined as any position that provides direct services to the Program and its Students which may include a Guidance Counselor, Academic Coach or similar positions.

1.12. Teachers. Teachers shall mean the Program's instructional staff including master and lead teachers and lab attendants, if any.

## **2. K12 RESPONSIBILITIES, EDUCATIONAL PRODUCTS AND SERVICES.**

2.1. Description of Educational Products. During the Term, K12 and Affiliates shall license to the District solely for use in the Program, on a non-exclusive, non-assignable, non-sublicensable basis the products and offerings as described in Exhibit A, including curriculum and access to a learning management system (collectively the "Educational Products"). During the Term, the Parties may agree upon K12 and Affiliates licensing additional products (e.g., new curriculum, supplementary curriculum, and/or educational programs)

beyond those listed in Exhibit A. Provision of additional products will be mutually agreed upon and shall be governed by the terms of this Agreement unless otherwise agreed in writing.

2.2. Description of Administrative and Technology Services. During the Term, K12 and Affiliates shall provide to the District solely for the Program “**Administrative Services**”, including financial and school administration services, teacher recruiting, training and management, and “**Technology Services**” to include a student information system, hosting of an online platform, a student account management system and related technical support and other educational services as described in Exhibit A. The Administrative Services and Technology Services shall collectively be referred to as the “**Services**”. During the Term, the Parties may agree upon K12 and Affiliates providing the District with additional services beyond those listed in Exhibit A. Provision of additional services shall be governed by the terms of this Agreement unless otherwise agreed in writing.

2.3. Special Education, Section 504 and English Language Learner Services. K12 shall assist the District with the provision of special education and/or related special needs services, however, the District, as the Local Education Agency, shall be ultimately responsible for its special education program and related policies. K12’s assistance includes, but is not limited to, approving enrollments in accordance with District policies and Applicable Law, recruiting teachers and procuring related service providers (pursuant to Board approved policies and, if requested, using a Board-approved contract) for Students with special education needs or any Students who have, will have or require an Individualized Education Program (“**IEP**”). All special education-related funding from any source for special education Students shall be included within Program Revenues and shall be used only for the delivery of required special education services. All residual funds not spent during the current school year shall remain in place to be used as needed, to the extent permitted by Applicable Law, in future years to provide special education services. K12 shall assist the District with the provision of English Language Learner (“**ELL**”) services by recruiting teachers, providing services to the Students as required by Applicable Law and conducting an annual review of the Program’s ELL services. K12 shall provide services under Section 504 of the Rehabilitation Act of 1973 as amended (“**504**”) by providing services to the Students as required by Applicable Law and conducting an annual review of 504 services.

2.4. Place of Performance. Performance of Services is not required to be rendered on the District’s premises, if any, unless specifically stated in Exhibit A or for compliance with Applicable Law.

2.5. Standards of K12 Performance.

2.5.1. K12 Compliance. K12 will provide the Educational Products and Services set forth in this Agreement and any amendments hereto in accordance with Applicable Law and Board policies made known to K12 in writing and relating to the Program. Subject to Section 11, K12 shall also comply with changes in Board policies applicable to the Program within thirty (30) days of receipt of written notice and a copy thereof; however, Program Policies (as defined in section 3.2) shall be adopted in accordance with Section 3.2 and Board policies cannot and do not revise, amend or create additional rights or obligations to either Party of this Agreement, except as may be agreed to by both Parties in a written amendment hereto.

2.5.2. Confidentiality of Records/FERPA. The District shall ensure that K12 has the right to access personnel, financial, and Student data related to the Program. As such, K12 will maintain the confidentiality of Program personnel, student and other records in accordance with the requirements of Applicable Law. The District recognizes and agrees that for purposes of the Family Educational Rights and Privacy Act of 1974, 20 U.S.C. § 1232g; 34 CFR Part 99 (“**FERPA**”) and the State open records act, K12 has a legitimate educational interest for purposes of the District disclosing a student’s educational records to K12. The District shall define “school officials” and “legitimate educational interest” as permitted by FERPA, broadly enough to permit the provision of the Educational Products and Services hereunder.

2.5.3. Licensure or Other State Requirements. Except as otherwise provided in this Agreement, K12 will comply with all applicable licensure or other requirements of the State and any regulations promulgated thereunder.

2.5.4. Non-Discrimination. K12 prohibits discrimination in all its programs and activities on the basis of race, color, religion, sex, national origin, age, disability, and where applicable, marital status, familial status, and sexual orientation.

2.6 Courses for Use by the District's Resident Students. During the Term or until the earlier termination of this Agreement, K12 will provide a license for and access to K12's available Spanish I, Spanish II and Spanish III curriculum and associated learning management system in which the District may enroll its resident students. K12 shall also provide the teachers for those Spanish I, Spanish II and Spanish III courses which teachers shall be State certified or possess the necessary credentials, qualifications, background and conduct checks to the extent required by Applicable Law. The courses and teachers set forth in this Section 2.6 shall be made available by K12 without cost to the District or the Program. Notwithstanding anything to the contrary in this Agreement, the District shall be solely responsible for compliance with and all activities associated with the provision of special education and/or related special needs services, English Language Learner ("ELL") services and services or products needed due to Section 504 of the Rehabilitation Act of 1973 as amended.

### **3. DISTRICT RESPONSIBILITIES.**

3.1. Payment Obligation. For the Educational Products and Services, the District shall compensate K12 at the rates and conditions set forth in this Agreement or as amended as mutually agreed in writing.

3.2. Oversight of K12 and the Program. The District shall be responsible for monitoring K12's performance under, and compliance with, the terms of this Agreement in accordance with Applicable Law. The District shall also be responsible for overseeing the Program's operational and financial performance and for working with the Board as required to ensure the District is permitted to operate the Program as a public school entitled to receive public funds, appropriations and revenues. K12 shall reasonably cooperate with such monitoring and oversight.

3.3. Adoption of Policies. The Parties acknowledge and agree that in providing the Services, it shall be the responsibility of K12 to recommend various policies for the operation of the Program ("**Program Policies**"). K12 will implement procedures consistent with such policies, but the District retains ultimate responsibility for adopting policies and for overseeing K12's implementation. K12 will cooperate with such oversight and policy implementation subject to Section 11. K12 and the District will work collaboratively and in a timely manner on the creation of Program policies that may include, but are not limited to, policies relating to the budget, authorization of expenditures, curriculum, transfer and admissions procedures, student conduct online, facility regulations, school calendars, procedures for resolution of parent or student complaints and disputes between Program employees, and the responsible use of computer equipment and other instructional property. To the extent any of the foregoing collaborative policies are not in effect, the Parties agree that K12's standard policies and best practices applicable to the Program shall be used to avoid a lack of any policy. The District shall promptly provide K12 written copies of all policies adopted and must promptly notify K12 in writing of any changes to such policies.

3.4. Program Related Correspondence. The District shall provide K12 with any reports, documents and other findings that are related or may have an impact on the Program and/or K12's obligations herein. Such Program related correspondence includes, but is not limited to, Board resolutions and reports, State audit preliminary and final reports, findings and correspondence, and any reports, financial or otherwise, submitted to a State regulatory body.

3.5. District Compliance. The District will perform its obligations under this Agreement and shall comply with, and govern itself in a manner consistent with, the requirements of Applicable Law.

#### 4. FINANCIAL MATTERS.

4.1. Not used.

4.2. Financial Risk Mitigation. K12 assumes the risk that its fees charged herein may not allow it to operate the School profitably or to cover fully the costs of business during any given period, subject to:

4.2.1. Exclusivity. K12 shall be the sole provider of the Educational Products and Services for the Program unless otherwise waived in writing by an authorized officer of K12. Nothing within this provision, however, shall be construed to preclude the Board in the exercise of its fiduciary obligations to the District. Moreover, the District shall be permitted to procure goods and services for the Program from a third party to the extent expressly required by Applicable Law, solely provided such goods and services are not otherwise included in the Educational Products and Services. Prior to any third party procurements, the District shall give K12 a thirty (30) day right of first refusal to provide such services or goods not enumerated herein or in the future, and if K12 is able and willing to provide such services or goods the District shall procure them from K12.

4.2.1.1. Union Rockets Virtual Academy. Notwithstanding anything to the contrary in Section 4.2.1.1 of this Agreement, the District may continue to offer the program currently known as the Union Rockets Virtual Academy, but only for students enrolled in Union Rockets Virtual Academy as of the Effective Date of this Agreement.

4.2.2. Material Deviations. In the event the District materially breaches this Agreement or otherwise acts in a manner that will have the effect of materially increasing K12's obligations, including payment obligations, or materially decreasing its rights herein, including changing the name of the Program, or adopting adverse policies and the Agreement is not terminated, then to the extent K12 has not otherwise expressly agreed to such material change in writing, K12 reserves the right to invoke any remedies available to it, including termination as set forth in Section 11.1 effective immediately beginning with the Fiscal Year that such breach or action occurred in addition to other remedies available.

4.3. Not used.

4.4. Financial Reports. The Board may request that K12: (i) prepare and submit reports on the Program's finances as often as on a monthly basis in addition to those financial reports required by Applicable Law; or (ii) provide the Board with such other information as reasonably necessary and appropriate to enable the Board to monitor performance under this Agreement, including the effectiveness and efficiency of the Program's operations. All such requests shall be made in writing. The Parties agree that K12 shall supply the foregoing reports and information, solely provided that the Board or its employees or other third parties have given K12 all necessary and current data needed for such reports (as reasonably requested by K12), including, but not limited to, relevant audit findings, Board expenditures and funding detail. Accordingly, the Board shall not withhold, and shall cooperate with K12 to ensure K12 has the needed data and information the Board's control in a timely manner.

4.5. Not used.

4.6. Program Expenses. "**Program Expenses**" are all debts, liabilities, and obligations incurred by K12 on behalf of the Program. Program Expenses will be paid out of the Program Revenues and shall include, but are not limited to, the following Program-related costs:

4.7.1. Administrative Oversight Fee (detailed in Section 6 below)

4.7.2. Program teacher salaries and expenses;

- 4.7.3. Teacher training related expenses;
- 4.7.4. Student Support Staff and related expenses;
- 4.7.5. related services expense for Students with special education needs (as applicable);
- 4.7.6. state test related expenses;
- 4.7.7. school community relationship building;
- 4.7.8. direct mail, printing and related expenses for enrolled Students;
- 4.7.9. amounts due to K12 and its Affiliates, excluding interest on past due amounts;
- 4.7.10. supplemental curriculum and other academic services as agreed to by K12 in writing;
- 4.7.11. reasonable legal fees for representation of the Board as it pertains directly to the Program and not for legal representation or related expenses adverse to K12;
- 4.7.12. incremental insurance including directors' and officers' liability insurance, general liability insurance and other Program-specific insurance coverage, as appropriate;
- 4.7.13. accounting and reporting not comprehended in K12's Services to be provided, payroll processing, audit, and/or tax preparation fees directly associated with the Program;
- 4.7.14. use, sales, income, property or other taxes, if any;
- 4.7.15. incremental office facility expenses related to the Program;
- 4.7.16. fees for required background investigations of Program employees; and all other Program related expenses incurred by K12.

## 5. TERM OF AGREEMENT.

5.1. Term. This Agreement will become effective upon the date of full execution by the Parties for commencement on July 1, 2017 (“**Effective Date**”) and will terminate on June 30, 2022 (“**Initial Term**”) unless sooner terminated under the Section 11 of this Agreement.

5.2. Renewal. Following the Initial Term, this Agreement will automatically extend for successive additional periods of five (5) year(s) (each such period a “**Renewal Term**”), unless (a) either Party provides the other with written notice of non-renewal at least twelve (12) months before the expiration of the then-current Initial Term or Renewal Term (as applicable); or (b) the Agreement is sooner terminated under Section 11. The Initial Term and any Renewal Terms will be referred to collectively as the “**Term**”.

## 6. PRICING, FEES AND PAYMENT.

6.1. Administrative Oversight Compensation. From the Program Revenues, each Fiscal Year the District shall retain five percent (5%) as an oversight fee (hereinafter “**Administrative Oversight Fee**”), with a minimum guaranteed Administrative Oversight Fee of Two Hundred Thousand U.S. Dollars (\$200,000) in Fiscal Year One and Three Hundred Thousand U.S. Dollars (\$300,000) in Fiscal Year Two to cover all administrative expenses, and other costs incurred that are associated with the District's responsibility of supervising, reporting and overseeing the Program's quality, compliance, operational and financial performance in accordance with Applicable Law.

6.2. Educational Product, Administrative and Technology Fees. In consideration of the value of the Educational Products, Administrative Services and Technology Services provided by K12, the District will pay K12 and its Affiliates an “**Products, Administrative and Technology Services Fee**” equal to one hundred percent (100%) of the remaining balance of the Program Revenues after subtracting the Administrative Oversight Fee and Program Expenses, including Teacher and Student Support Staff related salaries and costs (the “**Program Funds**”). The Parties hereby acknowledge that out of the Program Funds paid to K12 pursuant to this subparagraph, K12 shall be responsible for paying all costs and expenses incurred by K12 in providing the Educational Products, Administrative Services and the Technology Services referenced in Exhibit A of this Agreement including, but not limited to, payments to third-party vendors and contractors obtained by K12 and its Affiliates for the Program, and that the balance remaining after the payment of such expenses shall be K12's fee. For the avoidance of doubt, Teacher and Student Support Staff salaries and related expenses shall be paid out of the Program Expenses and not the Program Funds. For



purposes of calculating Program Revenue no District resident student enrolled in the Indiana Digital Learning School shall be counted toward Program Revenues.

## **7. PERSONNEL SUPPORTING THE PROGRAM.**

7.1. K12 Administrative Program Staff. K12 will employ and determine the employment terms for administrative personnel who may include a Principal/Head of School (“HOS”) or equivalent administrative staff position, and such other staff, as K12 deems necessary to deliver the Educational Products and Services described in this Agreement. The responsibilities and performance of K12’s staff will be consistent with Applicable Law. Such administrative personnel may be assigned to the Program on a full- or part-time basis. K12 will have the sole authority to select, supervise, compensate and determine compensation, evaluate, transfer, promote, discipline and dismiss its staff members.

7.2. Program Teachers and Student Support Staff. K12 shall employ and be ultimately responsible for the Teachers and Student Support Staff for the Program to deliver the Educational Products and Services hereunder, except in limited circumstances where K12 deems it reasonably necessary for the District to employ such staff. In accordance with Section 4.6, all costs associated with the employment of such staff (including, without limitation, salaries, benefits, travel and other Program related expenses) shall be deemed a Program Expense. The Teachers and Student Support Staff personnel shall be State certified or possess the necessary credentials, qualifications, background and conduct checks to the extent required by Applicable Law.

7.3. Complaints About K12 Staff. If the District is dissatisfied or concerned about the job performance of a K12 staff member assigned to the Program, the Board shall discuss the matter first with the HOS or its equivalent. In the event the District has a concern or is not satisfied with the HOS’ job performance, the Board will provide K12 official written notice pursuant to this Agreement and set forth the specific issues and requested action with supporting documentation and K12 shall review such request and respond in a timely manner

7.4. Complaints About District Staff. If K12 is dissatisfied or concerned about the job performance of any of the District’s staff assigned to the Program, K12 will recommend disciplinary or other actions including the elimination of specific positions for prompt action by the Board, approval of which will not be unreasonably withheld and subject to any collective bargaining agreement to the extent applicable.

7.5. Determination of Employer Entity. The Parties anticipate that, except as otherwise required by Applicable Law, the HOS and other administrative personnel will be provided by K12. In the event that K12 determines that it is necessary or desirable that any of the K12 staff members providing services under this Agreement become an employee of the District, K12 shall notify the Board of such determination in writing and upon the written agreement of the Board, such K12 staff member shall become an employee of the District; such change shall become effective on the date specified by K12 in such notice. In the event that at any time or from time to time K12 determines that it is necessary or desirable that any of the District’s staff members should become an employee of K12, K12 shall notify the Board of such determination in writing and upon the written agreement of the Board such District employee shall become an employee of K12; such change shall become effective on the date specified by K12 in such notice.

7.6. Background Investigations on K12 Employees. As part of its Administrative Services, K12 will be responsible for arranging for criminal background checks to be conducted on its employees assigned to the Program to the extent required under Applicable Law and will maintain documentary evidence that it has done so. Upon the District’s request, K12 will provide the District with documentary evidence of its compliance, subject to any privacy restrictions or confidentiality requirements imposed by Applicable Law.

7.7. Background Investigations on Program Employees. The District shall be responsible for conducting criminal background checks required by Applicable Law on its employees and staff. The District shall

maintain evidence that it has performed such actions.

## **8. PAYMENT OF PRODUCT AND SERVICE FEES.**

- 8.1 Payment of Fees. The District will pay K12 the agreed upon Program Revenues pursuant to the terms of Section 6.2 within thirty (30) days of the receipt by the District of any Program Revenues.
- 8.2 Location of Payment. All payments made hereunder will be made to K12 (or its designated Affiliate) at the address set forth above, or such other address provided by K12 in writing.
- 8.3 Payment Date and Interest. All Program Revenues unpaid to K12 after thirty (30) days of receipt by the District will accrue interest at one and one-quarter percent (1¼ %) per month but not to exceed fifteen percent (15%) per annum on each overdue amount. The District shall not intentionally withhold payments due to K12. In the event the District intentionally withholds payments due hereunder, K12 may invoke any remedies available to it including, but not limited to, the ability to recover any late fees due hereunder.
- 8.4 Taxes. Except as otherwise stated herein, K12 is not responsible for any taxes or third-party charges related to the activities, or the ownership or operation of the Program. Without limiting the foregoing, the District agrees to pay any sales, use, property, excise, value-added, or other similar taxes, if any, imposed by Applicable Law, except for taxes based on K12's income. For the avoidance of doubt, all fees for the Educational Products and Services set forth herein are exclusive of such taxes.
- 8.5 Documentation of Program Revenues. The District will provide to K12 all documentation of Program Revenues received by the District within ten (10) days of receipt.
- 8.6 Not used.
- 8.7 Disputed Amounts. If the District disputes any charge invoiced by K12 ("**Disputed Amounts**"), the Board (or its authorized designee) must submit a good faith claim in writing regarding the Disputed Amount with documentation reasonably necessary to support the claim no later than ninety (90) days beyond the then-current Fiscal Year audit regarding the Disputed Amount. If the Board (or its authorized designee) does not submit a documented claim to K12 within such time frame regarding such Disputed Amount, then notwithstanding anything in this Agreement to the contrary, the Board waives all rights to dispute and file any claim thereafter regarding such Disputed Amount (and the District also waives all rights to otherwise claim that it does not owe such Disputed Amount or to seek any credits or reimbursements or other amounts of any kind based upon or relating to such Disputed Amount).

## **9. RELATIONSHIP OF THE PARTIES.**

- 9.1. Status of the Parties. K12 is not a division or any part of the District. The District is a body corporate authorized under State law, governed independently by its Board and is not a division or a part of K12. The relationship between the Parties was developed and entered into through arms-length negotiations and is based solely on the terms of this Agreement. The Parties are independent contractors. Nothing herein will be construed to create a partnership or joint venture by or between the District and K12. Neither Party will be the agent of another except to the extent otherwise specifically provided by this Agreement where K12 is authorized to take action on behalf of the District. The District, the Board and their employees will in no case represent to third parties, and will whenever needed disclaim to such parties, any ability to bind K12 to any duty imposed by contract, other than this Agreement or as otherwise agreed in writing by K12.
- 9.2. No Related Parties or Common Control; Certain Permitted Participations. Except as contemplated by this Agreement or any agreement between the District and any Affiliate with respect to the provision of services

described hereunder, K12 will not have any role or relationship with the Board that, in effect, substantially limits the Board's ability to exercise its rights, including termination rights, under this Agreement. None of the Board's voting power shall be vested in K12 or its directors, trustees, members, managers, officers, Shareholders, or employees, and none of the voting power of K12's board of directors or Shareholders of K12 shall be vested in the Board's directors, trustees, members, managers, officers, shareholders, or employees. The Board agrees to take such action as is necessary to permit employees or agents of K12 to have a nonvoting presence at the Board meetings, including executive sessions, during the Term of this Agreement, provided that, the inclusion of employees or agents of K12 in executive sessions will be at Board's discretion and is not inconsistent with Applicable Law.

**10. OTHER SCHOOLS.** The Parties acknowledge that K12 and its Affiliates will have the right to render similar services and provide similar products to other persons or entities including, but not limited to, other public or private schools, institutions or districts within and outside of the State.

**11. TERMINATION.** Events of termination are as follows:

11.1. Termination for Cause. The Parties shall use good faith efforts to resolve all disputes relating to this Agreement as set forth in Section 21; however, either Party may terminate this Agreement for cause at any time with ninety (90) days' prior written notice to the other Party. Termination for cause shall mean the breach of any material term or failure to fulfill any material condition, term, provision, representation, warranty, covenant or obligation contained in this Agreement, and a failure to cure such a breach within forty-five (45) days after receiving written notification from the terminating Party. Upon termination of this Agreement, the non-breaching Party shall be entitled to seek any remedies for which it would be entitled at law or in equity. Additionally, in the event the District does not cure the material breach of this Agreement as set forth in this provision K12, in its sole discretion, may continue performance so long as there are no outstanding payments due to K12 and its Affiliates in lieu of terminating this Agreement, but such continuance shall not be deemed a waiver of any of K12's rights hereunder, including termination.

11.2. Termination for Material Reduction in Program Revenue. K12 may terminate this Agreement in the event there is a material reduction in Program Revenue below the amount for the prior Fiscal Year or such reduction will materially increase the financial risk to K12 in providing the Educational Products and Services. K12 shall notify the Board of its intent to terminate under this provision and provide the Board thirty (30) days' notice so that the Parties may work together to find alternative funding or other means to offset the reduction in Program Revenue. If the Parties are unable to find additional revenue or other means in the thirty (30) day time-frame, K12 may terminate this Agreement and such termination shall be effective: (i) immediately upon written notice by K12 to the Board, if notice or publication of such reduction is given at least ninety days (90) prior to the commencement of the school year to which such reduction is applicable; or (ii) at the end of the school year upon written notice to the Board if notice or publication of such reduction is given during the school year to which such reduction is applicable. In the event K12 elects not to terminate this Agreement in accordance with this provision, K12 may reasonably revise and determine the level of products and services to be provided in accordance with Applicable Law, considering any such funding reduction.

11.3. Not used.

11.4. Termination in the Event of Certain Changes in the Program Policies. K12 may terminate this Agreement effective immediately upon written notice to the District in the event that the Board adopts or amends a policy without the prior written approval of K12, and the effect of such amendment or policy could reasonably be determined to require K12 to increase materially the level of services required to be provided hereunder or to increase materially the financial risk to K12 arising from its performance of its obligations hereunder, thus rendering K12's performance economically unviable as determined by K12. In the event the Board adopts such an adverse policy in the middle of a school year, K12 agrees to use its best efforts to complete the then current school year without waiving any rights and remedies hereunder.

11.5. Change in Applicable Law. If any change in Applicable Law enacted after the date hereof could reasonably be expected to have a material adverse effect on the ability of any Party to carry out its obligations under this Agreement, such Party, upon written notice to the other Party (which notice may be given at any time following enactment of such change in Applicable Law, whether or not such change is effective on the date of such enactment or is effective at a later date), may request renegotiation of this Agreement. Such renegotiation will be undertaken in good faith. If the Parties are unable to renegotiate and agree upon revised terms within one hundred twenty (120) days after such notice of renegotiation, then this Agreement will be terminated effective at the end of the school year in which such notice was given, unless earlier termination is necessary to protect the health, welfare, or safety of students.

## **12. TERMINATION EFFECTS.** Effects of termination are as follows:

12.1. Outstanding Payments Due. Except as otherwise agreed by the Parties in writing, termination does not relieve the District of any obligations for payments outstanding to K12 as of the date of termination including for Educational Products provided and Services rendered during the Term, or other obligations that continue upon termination as provided in this Agreement.

12.2. Return of Equipment. Return of K12-provided equipment, if any, is mandatory. As such, all K12 assets including, but not limited to, computers, printers, related equipment and non-consumable materials that may be provided by or on behalf of K12 are to be returned upon the expiration or termination of this Agreement, in accordance with the policies governing the use and reclamation of such materials. Nonetheless, any damages to such equipment and materials or unreturned equipment and materials will be invoiced to the District at the replacement value which is the cost to replace the equipment anew, without regard to depreciation.

12.3. Fees Owed. In the event this Agreement terminates as provided for herein, or it expires pursuant to its terms, and unless otherwise agreed by the Parties in writing, the District shall owe for all products provided and services rendered in accordance with this Agreement for the period up to and including then current Fiscal Year of the termination or expiration. All such fees will be determined on an accrual basis per the applicable Fiscal Year.

12.4. Loss of Value. The Board acknowledges and agrees that the subject matter of this Agreement is unique and that it would not be possible for K12 to resell the Educational Products or the Services that are the subject of this Agreement. In view of the difficulty in estimating K12's damages incurred, the Parties agree to the extent not precluded by Applicable Law, for the purposes hereof that K12's damages (in addition to those entitled under law or equity) shall be fifteen percent (15%) of the Program Revenues in the Fiscal Year in which the Agreement is being terminated, due within thirty (30) days following date of such termination, if the Agreement is terminated as set forth in Section 11 because of the District's actions or omissions unless said action or omission is in response to state or federal law or direction which is not caused by the negligent action or omission or the willful misconduct of the District, and except as action is taken by the District to terminate this Agreement in accordance with Section 11.1.

## **13. INTELLECTUAL PROPERTY RIGHTS.**

13.1 Proprietary Materials. The District acknowledges and agrees that K12 has the right to license (or sublicense as the case may be) certain intellectual property rights and interests in and to K12 and its Affiliate's (and respective licensor's) intellectual property, including but not limited to curriculum, trade secrets, know-how, proprietary data, documents and written materials in any format, artwork, graphics, charts, software, licenses, marketing materials, Program authorization application, presentations and related petitions and documents, Program name, website design and domain numbers and names including those registered by K12 and/or for K12, its Affiliates and the Program and other materials created for the Program, and curricular materials and any and all customizations and derivative works thereof (collectively, "**K12 Proprietary Materials**"). The District further acknowledges and agrees that: (i) it has no intellectual property interest or

claims in the K12 Proprietary Materials or any customizations and derivative works thereof or any other materials created for use in connection with the K12 Proprietary Materials, (ii) it has no right to use the K12 Proprietary Materials unless expressly agreed to herein by K12, and (iii) K12 and its Affiliates (and respective licensors as the case may be) own all intellectual property rights in and to the K12 Proprietary Materials.

13.2 License of K12 Proprietary Materials. K12 hereby grants the District a royalty-free, non-exclusive, non-transferable sub-license, during the Term and for a period of thirty (30) days following the expiration or earlier termination of this Agreement, to use and distribute the K12 Proprietary Materials solely in connection with the Program operations as contemplated in this Agreement. Notwithstanding the foregoing, the District shall not: (i) modify or otherwise create, or permit third parties to modify or otherwise create, derivative works from or using the K12 Proprietary Materials, (ii) sublicense any rights under this Agreement without the advance written approval of K12, which approval may be withheld by K12 in its sole discretion, or (iii) frame any website owned by K12. Upon the termination of such license, the District will cease use of the K12 Proprietary Materials, and will return all K12 Proprietary Materials to K12 promptly, including those in the possession of the Board, Teachers, District employees and Students participating in the Program.

13.3 Rights of K12 in K12 Proprietary Marks. The District acknowledges and agrees that, as between the District and K12, K12 (and its applicable Affiliates) owns and shall maintain all intellectual property rights, title and interest, including any goodwill, in and to K12 and its Affiliate's trademarks, service marks, trade dress and trade names including the Program name(s), Program logo(s) and related marks and trade dress and the K12 mark, K12 (& Design) and as may be featured in Exhibit B (collectively, "**K12 Proprietary Marks**"). The District further acknowledges and agrees that it has no intellectual property interest or claims in the K12 Proprietary Marks any customizations and derivative works thereof or any other materials created for use in connection with the K12 Proprietary Marks and has no right to use the K12 Proprietary Marks except in the limited capacity as set forth in the Section immediately below or unless expressly agreed to in writing in advance by K12, which agreement K12 may withhold in its sole discretion.

13.4 License of K12 Proprietary Marks. K12 hereby grants the District a royalty-free, non-exclusive, non-transferable sublicense, during the Term and for a period of thirty (30) days following the expiration or earlier termination of this Agreement, to use the K12 Proprietary Marks relating to the Program solely in connection with the operations of Program as contemplated in this Agreement. Notwithstanding the foregoing, the District will not be permitted to sublicense any rights under this Agreement without the advance written approval of K12, which approval may be withheld by K12 in its sole discretion. Upon the termination of such license, the District will cease use of the K12 Proprietary Marks.

13.5 Limitations on Use of K12 Proprietary Materials and K12 Proprietary Marks. The District will use the K12 Proprietary Materials and the K12 Proprietary Marks only as provided in this Agreement. Notwithstanding the foregoing license rights, the District also agrees not to alter, copy, disassemble, reverse engineer or modify the K12 Proprietary Materials and/or the K12 Proprietary Marks in any way, nor will the District act or permit action in any way that would impair the rights of K12 in them. The District's authorized use will not create any right, title, or interest in or to the K12 Proprietary Materials or the K12 Proprietary Marks any customizations and derivative works thereof or any other materials created for use in connection with the foregoing. K12 will have the right to monitor the quality of the District's use of the K12 Proprietary Materials and the K12 Proprietary Marks, and the District will notify K12 promptly in writing of any known infringement thereof and of any use of K12's Intellectual Property (including the K12 Proprietary Materials, and/or the K12 Proprietary Marks) by an unauthorized party, other than set forth or contemplated by this Agreement, of which the District becomes aware. K12 and the District agree to reasonably assist each other in pursuing measures to prevent further use of K12's Intellectual Property by said unauthorized party. Any references to or use of the K12 Proprietary Materials or the K12 Proprietary Marks by the District will contain the appropriate trademark, copyright or other legal notice provided from time to time by K12 and will be subject to additional trademark usage standards developed by K12 and modified from time to time by K12 with advance notice in writing. Moreover, to the extent the District has established any rights, title or interest in the K12 Proprietary Materials or K12 Proprietary Marks, the District hereby assigns and transfers to K12,

its successors and assigns, all of the District's right, title and interest in and to such intellectual property, together with the goodwill of the business symbolized by any of the K12 Proprietary Marks and the right to sue and collect damages and/or profits for past infringements of the such marks.

13.6 Publicity/Press Release. K12 may use the District's name and Program references in a listing of new, representative or continuing schools in press releases, on its website, or in other marketing materials or dissemination of information. The Parties may agree to cooperate in joint marketing activities or in issuing a joint press release at the request of either of them, subject to prior written consent and approval of the form and substance of both the District and K12.

#### **14. LIMITS ON LIABILITY AND DAMAGES.**

14.1 LIMIT OF LIABILITY. K12'S MAXIMUM LIABILITY AND OBLIGATION TO THE DISTRICT AND THE DISTRICT'S EXCLUSIVE REMEDY FOR ANY CAUSE WHATSOEVER, REGARDLESS OF THE FORM OF ACTION, WHETHER IN CONTRACT OR IN TORT, INCLUDING NEGLIGENCE, RELATING TO THIS AGREEMENT SHALL BE LIMITED TO THE RECOVERY OF ACTUAL DIRECT DAMAGES UP TO THE AMOUNT OF FEES PAID UNDER THIS AGREEMENT IN THE PRIOR SIX (6) MONTHS.

14.2 CONSEQUENTIAL DAMAGES. EXCEPT IN CONNECTION WITH ITS INDEMNITY OBLIGATIONS EXPRESSLY SET FORTH HEREIN, NEITHER PARTY SHALL BE LIABLE FOR ANY INDIRECT, EXEMPLARY, PUNITIVE, SPECIAL, INCIDENTAL OR CONSEQUENTIAL DAMAGES, INCLUDING, WITHOUT LIMITATION, ANY LOST SAVINGS, LOST PROFITS, LOST SALES, BUSINESS INTERRUPTIONS, DELAY DAMAGES, DAMAGES FOR THIRD PARTY CLAIMS, LOST OR DESTROYED DATA, EVEN IF THAT PARTY HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. NEITHER OCCASIONAL SHORT-TERM INTERRUPTIONS OF SERVICE OR PRODUCTS, WHICH ARE NOT UNREASONABLE UNDER COMPARABLE INDUSTRY STANDARDS OR INTERRUPTIONS OF SERVICE OR PRODUCTS RESULTING FROM EVENTS OR CIRCUMSTANCES BEYOND K12'S REASONABLE CONTROL SHALL BE CAUSE FOR ANY LIABILITY OR CLAIM AGAINST K12 HEREUNDER, NOR SHALL ANY SUCH OCCASION RENDER K12 IN BREACH OF THIS AGREEMENT.

**15. ASSIGNMENT.** Except as otherwise provided in this Agreement, neither Party may assign or delegate any rights or obligations under this Agreement without the prior written consent of the other Party provided, however, K12 may assign all of its rights and obligations under this Agreement to any Affiliate, acquirer, or successor in interest to the extent not otherwise expressly prohibited by Applicable Law. K12 may delegate the performance of its duties hereunder to any person, contractor or entity but K12 shall be responsible for the performance, in accordance with the terms of this Agreement, of any services performed by its delegees.

**16. INDEMNITY.** The Party charged with indemnifying and/or defending under this provision (the "**Indemnifying Party**") shall conduct the defense in any such third party action arising as described herein and the Party claiming the benefits of this Section 16 (the "**Indemnified Party**") promises to cooperate with such defense, provided the Indemnifying Party reasonably consults with the Indemnified Party on any settlement (subject to the consent requirement in the last sentence of this paragraph). Notwithstanding the foregoing, the Indemnified Party may, at its own expense, assist in such defense if it so chooses, provided that the Indemnifying Party shall be entitled to control such defense and all negotiations relative to the settlement of any such claim. Any settlement that would admit any liability on the part of the Indemnified Party shall require such Indemnified Party's prior written consent.

16.1. Indemnification of the District. K12 will indemnify, defend, and save and hold the District and all of its employees, officers, directors, trustees, subcontractors, and agents, their respective successors and permitted assigns, harmless against any and all claims, demands, suits, or other forms of liability including without limitation costs and reasonable attorneys' fees (each a "**Claim**") that may arise out of, or by reason of, any (a)

breach of any expressed representation or warranty, covenant or agreement made or to be performed by K12 pursuant to this Agreement, (b) noncompliance by K12 with any Applicable Law in connection with the District's operations, but excluding any Claims that arise from conduct undertaken in accordance with the Board's instructions, procedures or written policies, except where such instructions arise from and are in accordance with specific advice or explicit recommendations formally provided by K12, and (c) act or omission of K12 or any of its employees, officers, directors, trustees, subcontractors or agents in connection with the District's operations that results in injury, death, or loss to person or property, except to the extent any Claims arise out of actions or omissions of the District or the Board. K12 and its Affiliates shall not be liable for any Claims related to the enrollment, placement and provision of services to any Students with special education needs.

16.2. Indemnification of K12. The District will indemnify, defend, and save and hold K12 and its Affiliates and all of their respective employees, officers, directors, trustees, subcontractors, and agents, their respective successors and permitted assigns, harmless against any and all Claims that may arise out of, or by reason of, any (a) breach of any expressed representation or warranty, covenant or agreement made or to be performed by the District pursuant to this Agreement, (b) noncompliance by or on behalf of the District or Board with any Applicable Law in connection with District's operations, (c) act or omission of the District or Board or any of its employees, officers, directors, trustees, subcontractors or agents in connection with the District's operations that results in injury, death, or loss to person or property except to the extent any Claims arise out of actions or omissions of K12, and (d) for any Claims that are related to the District's or Board's action or inaction with respect to the enrollment, placement and provision of services to any Students with special education needs.

16.3. Indemnification Procedures.

16.3.1. Notice Requirement. Each Indemnified Party must give written notice to the other of the existence of a Claim promptly after such Indemnified Party first receives notice of the existence of the potential Claim, provided that such Indemnified Party will not be foreclosed from seeking indemnification hereunder by any failure to provide such prompt notice except and only to the extent the Indemnified Party actually incurs an incremental expense or otherwise has been materially prejudiced as a result of such delay.

16.3.2. Defense and Settlement of Claims. Each Indemnified Party seeking indemnification hereunder will permit the Indemnifying Party (at the expense of the Indemnifying Party) to assume the defense of such Claim, provided, that (i) counsel for the Indemnifying Party who will conduct the defense of such Claim must be reasonably satisfactory to such Indemnified Party and (ii) such Indemnified Party may participate in such defense at such Indemnified Party's expense. Except with the prior written consent of the Indemnified Party seeking indemnification hereunder, the Indemnifying Party, in the defense of any Claim, will not consent to entry of any judgment or enter into any settlement. In the event that any Indemnified Party seeking indemnification hereunder has been advised by counsel for the Indemnifying Party that such Indemnified Party may have available to it one or more defenses or counterclaims that are different from, or in addition to, one or more of those that may be available to the Indemnifying Party in respect of such Claim and, in such counsel's reasonable opinion, such counsel could not assert such defenses or counterclaims without creating a conflict of interest, such Indemnified Party will have the right to take over and assume control over the defense of such claim at the sole cost of the Indemnifying Party, provided that if such Indemnified Party does so take over and assume control, such Indemnified Party will not settle such claim without the written consent of the Indemnifying Party. In the event that the Indemnifying Party does not accept the defense of any matter as above provided, the Indemnified Party seeking indemnification hereunder will have the right to defend against such Claim, provided that such Indemnified Party will not settle such Claim without the written consent of the Indemnifying Party. In any event, any Indemnified Party seeking indemnification hereunder and the Indemnifying Party will cooperate in the defense of any claim subject to this Section entitled "Indemnification".

## **17. INSURANCE.**

17.1. Liability Coverage. Each Party will initiate and maintain for a period of two (2) years after the expiration or termination of this Agreement, at its own expense, comprehensive professional and general liability insurance, including product liability, contractual liability (applicable to the indemnification obligations of the said Party set forth herein), and advertising injury insurance, with reputable and financially secure insurance carriers to cover the operations of the said Party, for not less than \$5,000,000 (combined single limit for bodily injury and property damage per occurrence and in the aggregate). Such insurance required by the District (excluding D&O and E&O insurance) will include K12 and its Affiliates and their respective trustees, directors, officers, employees, contractors and agents as additional insureds within thirty (30) days after the date of this Agreement. Such insurance required by K12 (excluding D & O and E & O insurance) will include the District and its respective trustees, directors, officers, employees, contractors and agents as additional insureds within thirty (30) days after the date of this Agreement. Each Party's insurance will be written to cover claims incurred, discovered, manifested, or made during or after the Term.

17.2. Evidence of Insurance. Each Party will furnish a certificate of insurance evidencing such coverage to the other Party within five (5) days of a written request by a Party. The Parties will endeavor to provide thirty (30) days' advance written notice to the other Party of any cancellation or material adverse change to such insurance.

17.3. Insurance Coverage No Limitation on K12's Rights. The District's insurance will be primary coverage and any insurance K12 may purchase shall be excess and non-contributory for all claims directly related to actions or omissions of the District. K12's insurance will be primary coverage and any insurance the District may purchase shall be excess and non-contributory for all claims directly related to actions or omissions of K12. The minimum amounts of insurance coverage required herein will not be construed to impose any limitation on a Party's indemnification obligations expressly set forth herein.

17.4. Workers' Compensation Insurance. Both Parties will initiate and maintain workers' compensation insurance for its respective employees working at or for the Program, as required by Applicable Law.

17.5. Cooperation. All Parties will comply with any information or reporting requirements required by the other Party's insurer(s), to the extent reasonably practicable.

## **18. REPRESENTATIONS AND WARRANTIES.**

18.1. Representations and Warranties of K12. K12 hereby represents and warrants to the District:

18.1.1. Organization and Good Standing. K12 is a company duly organized, validly existing, and in good standing under the laws of the State of Delaware and is a wholly owned subsidiary of K12 Inc.

18.1.2. Power and Authority; Authorization; Binding and Enforceable Agreement. K12 has full limited liability company power and authority to execute and deliver this Agreement and to perform its obligations hereunder. This Agreement has been duly authorized and executed by K12 and constitutes the valid and legally binding obligation of K12, enforceable against K12 in accordance with its terms, except as such enforceability may be limited by bankruptcy, insolvency, reorganization, moratorium, fraudulent conveyance, and other laws of general applicability relating to or affecting creditors' rights and by general principles of equity.

18.1.3. Professional Services. K12 warrants that the Services will be performed in a professional and workmanlike manner in accordance with commercially reasonable industry standards, and deliverables, if any, will materially comply with the agreed upon functional specification set forth in



the applicable Exhibit A, if used in a manner consistent with the conditions for which it was designed. THE FOREGOING WARRANTIES MADE BY K12 IN THIS SECTION (AND ITS SUBSECTIONS) ARE IN LIEU OF ALL OTHER WARRANTIES, EXPRESS, IMPLIED, STATUTORY OR OTHERWISE, INCLUDING, BUT NOT LIMITED TO, ANY IMPLIED WARRANTIES OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE AND K12 AND ITS AFFILIATES MAKE NO GUARANTEES AS TO THE RESULTS OR ACHIEVEMENTS OF THE STUDENTS. WITHOUT LIMITING THE FOREGOING, K12 MAKES NO GUARANTEES AND SHALL NOT BE LIABLE FOR NON-ACCESSIBILITY OF THE K12 WEBSITE, END-USER CONNECTION SPEED OR CONNECTIVITY PROBLEMS.

18.1.4. Non-Conformities. The foregoing warranties shall not apply to defects or non-conformities: (a) resulting from software, hardware or interfacing not supplied by K12, its Affiliates or authorized contractors; or (b) resulting from inadequate or improper maintenance, modification, storage or usage of the K12-provided materials by the District, its employees or Students. In addition, the foregoing warranty shall not apply to requirements not expressly included in this Agreement.

18.2. Representations and Warranties of the District. The District hereby represents and warrants to K12:

18.2.1. Organization and Good Standing. The District is a non-profit corporation duly organized, validly existing, and in good standing under the laws of the State.

18.2.2. Power and Authority; Authorization; Binding and Enforceable Agreement. The District has full power and authority to execute and deliver this Agreement and to perform its obligations hereunder. This Agreement has been duly authorized and executed by the District and constitutes the valid and legally binding obligation of the District, enforceable against it in accordance with its terms and conditions, except as such enforceability may be limited by bankruptcy, insolvency, reorganization, moratorium, fraudulent conveyance, and other laws of general applicability relating to or affecting creditors' rights and by general principles of equity.

18.2.3. Authority Under Applicable Law. The District has the authority under Applicable Law to: (i) contract with a management company to obtain the Services and all other programs and services under this Agreement; (ii) to execute, deliver, and perform this Agreement; and (iii) to incur the obligations provided for under this Agreement.

18.2.4. Non-Contravention. The execution, delivery and performance of this Agreement by the District will not constitute, under any other agreement, note, lease, or other instrument to which the District is a party or by which it or any of its assets is bound, any violation, breach or event of default by the District or any other party thereto.

18.2.5. Provision of Authority to K12. The District has provided and will provide K12 with all authority and power necessary and proper for K12 to undertake its responsibilities, duties, and obligations provided for in this Agreement.

18.2.6. Program Authorization. The Program has been duly authorized by the Board in accordance with Applicable Law. The District has delivered to K12 a true and complete copy of the Board Resolution approving the Program. The District will use best efforts to renew any approvals required for the Program during the Term. The District shall ensure that K12's authorized designee (as delegated by the EVP of School Services) is involved in any renewal or modifications of any third-party agreements, including collective bargaining agreements, that may impact this Agreement and that K12 is provided with copies of all such final documents to the extent not precluded by Applicable Law.

**19. OFFICIAL NOTICES.** All notices and other communications required by the terms of this Agreement will be in writing and sent to the Parties hereto at the addresses set forth below (and such addresses may be changed upon proper notice to such addressees). Notice may be given by: (i) certified or registered mail, postage prepaid, return receipt requested, (ii) reputable overnight carrier, postage prepaid, (iii) facsimile (with confirmation of transmission by sender's facsimile machine), or (iv) personal delivery (with written receipt confirming such delivery). Notice will be deemed to have been given (i) three business days after mailing as described in clause (i) of the foregoing sentence, (ii) on the date of personal delivery, (iii) on the date of transmission of a facsimile if on a business day during normal business hours (or, if not, the next succeeding business day) or (iv) on the next business day if sent as described in clause (ii) of the preceding sentence. Electronic mail does not constitute official notice under this Agreement. The addresses of the Parties are:

For K12:

K12 Virtual Schools, LLC  
ATTN: EVP of School Services  
2300 Corporate Park Drive, Suite 200  
Herndon, Virginia 20171  
Phone: (703) 483-7000  
Fax: (703) 483-7330

With Copy To:

K12 Virtual Schools LLC  
ATTN: General Counsel  
2300 Corporate Park Drive, Suite 200  
Herndon, Virginia 20171  
Phone: (703) 483-7000  
Fax: (703) 483-7496

For District:

Superintendent/Board President  
ADDRESS  
ADDRESS  
Phone: ( ) -  
Fax: ( ) -

With Copy To:

**20. NON-SOLICITATION/NON-HIRING.**

20.1. Non-Solicitation. Each Party agrees that during the Term of this Agreement and for a period ending twelve (12) months after the expiration or termination of this Agreement for any reason, unless mutually agreed by the Parties in writing, one Party will not directly solicit, recruit for employment, offer employment to, offer subcontracting opportunities to, or otherwise employ or use the services of any employees of the other Party or their related companies if that employee or former employee had been assigned to or worked under this Agreement.

20.2. Unpermitted Solicitation/Hiring Remedies. In the event of such unpermitted use or engagement by a Party or its related company of such consultant or employee whether directly or indirectly, in contravention of the clause immediately above, the other Party, at its option, may seek receipt of a sum equivalent to one hundred percent (100%) of that employee's base starting salary with the new employer, or seek any legal or equitable relief against such actions including, but not be limited to, immediate injunctive relief in any court of competent jurisdiction.

20.3. Solicitation Exceptions. For the avoidance of doubt, newspaper, periodical or Internet-based listings of employment opportunities by a Party shall not be considered direct or indirect solicitation of an employee of the other Party; however, such Party shall continue to be precluded from engaging or otherwise using a Party's employee, former employee or consultant as provided for in Section 20.2.

**21. DISPUTE RESOLUTION, VENUE AND GOVERNING LAW.**

21.1. Dispute Resolution Procedure. The Parties agree that they will attempt in good faith to settle any and all disputes arising in connection with this Agreement amicably in the ordinary course of business. If a dispute

is not resolved in the ordinary course of business, the aggrieved Party will submit its dispute in writing to the District's Program manager or its authorized designee and to the HOS of K12. If the dispute is not resolved after ten (10) calendar days from the receipt of such written notice, then the Parties shall escalate the matter to the District's authorized designee and the applicable Regional Vice President for K12. If the dispute is not resolved after five (5) business days thereafter, then the Parties shall escalate the effort to resolve to the Superintendent for the District and the Executive Vice President of School Services for K12 who shall have five (5) days to seek resolution of the matter. The dispute resolution procedures described herein will be deemed complete upon the earlier to occur of the following: (i) the Parties mutually agree in writing to discontinue the dispute resolution procedures; and (ii) the relevant dispute is not resolved within the time periods provided under.

21.2. Mediation and Arbitration. If the Parties are unable to resolve the dispute pursuant to the Section immediately above, the Parties agree that they will attempt in good faith to settle any and all disputes arising out of this agreement, including those disputes relating to the enforceability or validity of this Agreement, through a process of mediation in Fairfax County, Virginia under the supervision of a mutually agreed upon mediator. In the event that mediation fails to settle any such dispute(s), the Parties hereby agree to proceed to mandatory binding arbitration in Fairfax County, Virginia, pursuant to the then existing rules of the American Arbitration Association. Except as may be required by law, neither a Party nor an arbitrator may disclose the existence, content, or results of any arbitration hereunder without the prior written consent of both Parties. Judgment upon the award rendered shall be final and binding and may be enforced by any state or federal court with competent jurisdiction over the arbitrated matter. Each Party will bear its own costs and expenses associated with the dispute resolution procedures set forth in this Section except that the Parties will share equally any fees payable to a professional mediator and/or arbitrator.

21.3. Injunctive Relief. Notwithstanding the foregoing dispute resolution procedures, the District acknowledges that in the event it breaches any provision contained in the Section entitled "Intellectual Property Rights", K12 may suffer irreparable harm in which the full extent of damages may be impossible to ascertain and monetary damages may not be an adequate remedy. As such, in its sole discretion, K12 may seek immediate judicial relief as available in law or equity, and the initiation of any judicial proceeding will suspend the dispute resolution procedures set forth above. K12 will be entitled to enforce this Agreement by an injunction or other equitable relief without the necessity of posting bond or security, in addition to its right to seek monetary damages or any other remedy. The decision by K12 not to seek judicial relief during the above described dispute resolution procedures, will not create any inference regarding the presence or absence of irreparable harm.

21.4. Governing Law. The laws of the State without regard to its conflict of laws provisions will govern this Agreement, its construction, and the determination of any rights, duties, and remedies of the Parties arising out of or relating to this Agreement.

## **22. MISCELLANEOUS.**

### **22.1. Coordination; Exercise of Approval or Consent Rights:**

22.1.1. Coordination and Consultation. The Parties will coordinate the performance of their respective activities hereunder and will establish such procedures as they shall mutually agree to be effective for achieving the purposes of this Agreement and allowing each of them to perform its obligations and exercise its rights under this Agreement. Without limiting the generality of the foregoing, K12's legal counsel and the District's legal counsel will consult from time to time with respect to the requirements of Applicable Law and the District's policies as they relate to the Program's operations.

22.1.2. Approval or Consent Rights. In performing services and its other obligations under this Agreement, or in exercising its rights under this Agreement, including granting or withholding any consents or approvals or making any requests of the other Party, each Party must act reasonably (including as to the timing of its actions) except to the extent that this Agreement provides that it may

act as it determines “in its sole judgment” or “its sole discretion,” or words to that effect, in the applicable provision. Whenever it is provided in this Agreement that the Parties will or may agree as to a certain matter, each Party will have the right to agree or disagree in its sole discretion following good faith discussions.

22.2. Force Majeure. Notwithstanding any other sections of this Agreement, no Party will be liable for any delay in performance or inability to perform (except for payments due hereunder) due to acts of God or due to war, riot, terrorism, civil war, embargo, fire, flood, explosion, sabotage, accident, labor strike, Internet outage or other acts beyond its reasonable control and unrelated to its fault or negligence.

22.3. Entire Agreement. This Agreement including its attachments hereto constitutes the entire agreement of the Parties with respect to the subject matter hereof, and supersedes all previous and contemporaneous oral and written negotiations, commitments, agreements, warranties, representations and understandings. This Agreement will not be altered, amended, modified, or supplemented except in a written document executed by the Parties.

22.4. Counterparts, Facsimile or PDF Transmissions. This Agreement may be executed in counterparts, each of which will be deemed an original, but both of which will constitute one and the same instrument. Each Party may rely on facsimile or PDF signature pages as if such facsimile or PDF pages were originals.

22.5. License Audit. Upon forty-five (45) days written notice, K12 may audit the Program’s use of the Educational Products and the District agrees to cooperate and provide reasonable assistance with such audit. The District agrees to pay within thirty (30) days of written notification any fees applicable to the District’s use of the Educational Products in excess of the license rights granted herein or K12 may revoke the related technical support and license(s).

22.6. Amendment. This Agreement will not be altered, amended, modified, or supplemented except in a written document executed by the Parties.

22.7. Waiver. No waiver of any provision of this Agreement will be effective unless in writing, nor will such waiver constitute a waiver of any other provision of this Agreement, nor will such waiver constitute a continuing waiver unless otherwise expressly stated.

22.8. Interpretation. The Parties hereto acknowledge and agree that the terms and provisions of this Agreement, will be construed fairly as to all Parties hereto and not in favor of or against a Party, regardless of which Party was generally responsible for the preparation of this Agreement.

22.9. Severability. In the event any term, provision or restriction is held to be illegal, invalid or unenforceable in any respect, such finding shall in no way affect the legality, validity or enforceability of all other provisions of this Agreement. To the extent that any of the services to be provided by K12 are found to be overbroad or an invalid delegation of authority by the Board, such services will be construed to be limited to the extent necessary to make the services valid and binding.

22.10. Successors and Assigns. This Agreement will be binding upon, and inure to the benefit of, the Parties and their respective successors and permitted assigns.

22.11. No Third-Party Rights. This Agreement is made for the sole benefit of the District and K12 and their respective successors and permitted assigns. Except as set forth in Sections 13 and 16 and except for each Affiliate of K12, which shall be a third party beneficiary of this Agreement, nothing in this Agreement will create or be deemed to create a relationship between the Parties to this Agreement, or any of them, and any third person, including a relationship in the nature of a third-party beneficiary or fiduciary.

22.12. Survival of Termination. All representations, warranties, and indemnities expressly made in this Agreement will survive termination of this Agreement.

22.13. Headings and Captions. The headings and captions appearing in this Agreement have been included only for convenience and shall not affect or be taken into account in the interpretation of this Agreement.

\* \* \* \* \*

IN WITNESS WHEREOF the Parties have entered into this Agreement as of the date set forth below.

**For and on behalf of  
UNION SCHOOL CORPORATION**

**For and on behalf of  
K12 VIRTUAL SCHOOLS LLC**

Signed: Allen Hayne  
Name: Allen Hayne  
Position: Superintendent  
Date: 7/25/17

Signed: Allison Cleveland  
Name: Allison Cleveland  
Position: EVP  
Date: 7/27/17



**EXHIBIT A**  
**Curriculum and Services**

**I. Educational Products, Pupil Recruiting and Product Related Services:** During the Term, K12 and its Affiliates will provide or cause to be provided to the Program, its Students and its personnel the following Educational Products and related services. Notwithstanding the forgoing, none of the following Educational Products and services shall be provided for the purpose of benefiting the Program or any personnel, applicants or students for any school year beyond the expiration or earlier termination of this Agreement:

1. **Online School:** For the first Fiscal Year of the Initial Term, K12 will provide a license for and access to: (i) K12® Curriculum and associated learning management system for grades K through 8, in each case in Language Arts, Math, Science and History in addition to electives per the K12 course catalogue; and (ii) any third party curriculum K12 generally offers its like-managed virtual schools, in each case for such courses required by Applicable Law. For all subsequent Fiscal Years of the Term, the Program may also offer grades 9 to 12 if so agreed by the Superintendent of the District, in which event, K12 will also provide a license for and access to: (i) K12® Curriculum and associated learning management system for grades 9 through 12, in each case in Language Arts, Math, Science and History in addition to electives per the K12 course catalogue

2. **Instructional Tools and Materials.** Such instructional tools and supplies, including without limitation textbooks and multi-media teaching tools, as K12 determines in its discretion to be necessary to deliver the Educational Program. K12 shall identify which of such materials are durable shall be reclaimed. These materials will be returned in accordance with Section 12.2.

3. **Product Related Services.** Pupil Recruitment and related services are included in the cost of the curriculum and materials:

a. **Additional Instructional Support.** K12 will make available the necessary instructional support and teachers as mutually agreed as the Program may require for the Educational Products and related offerings.

b. **Pupil Recruitment.** Recruitment of students in K12's and its Affiliates discretion, including creation, design and preparation of recruitment materials and advertisements; assist with information sessions and other events via mail, e-mail, print, radio, television, and outdoor advertising. Additionally recruitment includes designing school recruitment materials, letterhead, business cards, and logos to create school identity and developing, designing, and maintaining the Program website. Recruiting campaigns undertaken may be general awareness or combined campaigns, launched to inform potential students about the Program and/or K12 and its Affiliate's programs (including K12 partner schools and programs) in the local area. For the avoidance of doubt, upon the termination or expiration of this Agreement, K12 shall not provide recruiting services during the Term for the forthcoming year(s) in which K12 shall not be providing the Educational Products and Services.

c. **Admissions.** Implementation of the Program's admissions policy and the Student enrollment process. Communicating with potential students and their families and conducting a random lottery if required.

d. **Family Services.** Plan and arrange school orientation sessions. Assist with the design and implementation of parent orientation sessions. Field and respond to incoming calls, letters, faxes, and





e-mails received by K12 about the Program, its curriculum, the application/enrollment process, instructional materials, etc. Help facilitate the creation of a parent manual and/or student handbook.

e. Program Feedback. Obtain feedback on how to improve the Program and curriculum, as appropriate. Create methods for Students, their parents, and teachers to submit comments and suggestions; implement improvements where K12 deems them to be valuable.

f. Computers. K12 may provide or cause to be provided computers, monitors, software and other hardware as K12 determines in its discretion to be necessary to deliver the Program and as agreed to in writing by K12 during the budgeting process. All such equipment shall be promptly returned to K12 upon a Student's withdrawal or upon expiration or termination of this Agreement.

g. Student Clubs and Contests. Access to monitored, private, virtual social clubs for Students. Clubs meet monthly and are formed based on Student feedback on their interests. K12 also provides access to participation opportunities in nationwide art, poetry and craft contests. Access to both Student clubs and contests is voluntary and is open to all Students.

h. High School Services. As requested and as available, K12 may offer the following counseling tools for high school Students where such students will have access to various counseling tool(s) to support college, career planning and exploration. These tools and related offerings are described below:

- i. National and local counseling efforts are buttressed by an online college and career planning platform that helps students organize and plan their futures. This tool helps students keep track of their high school coursework, log extracurricular activities/work hours, and set goals and strategies for achieving those goals. Further, this tool provides values, skills, and interests assessments to help direct students toward professional fields in which they are inclined while also offering a robust college search engine, allowing students to compare colleges across many different facets. Finally, this tool assists students in managing their college applications and searching for scholarships.
- ii. Nationally, K12 offers virtual sessions that aid in helping students recognize the importance of high school performance and post-secondary education planning. K12 exposes students and their parents to a multitude of pathways including attendance at a four-year college or university, community college, vocational/technical college, military, and civilian service opportunities. K12 offers career exploration sessions presenting adults who are professionals across a variety of career clusters. K12 provides college application and admissions sessions covering various types of colleges, components of college applications, and strategies for crafting a competitive application.
- iii. Additionally, during the school year students can take advantage of college and career-focused teacher-led virtual clubs and during the summer K12 offers college and career-focused virtual camps.
- iv. The K12 High School Business Unit provides support for different high school models by working with schools to create offerings and programs that match the needs of various student populations.

**II. Administrative Services:** During the Term, K12 and its Affiliates will provide or cause to be provided to the Program the Administrative Services set forth below. K12 will provide the Administrative Services at District's facility and from K12's offices in Herndon, Virginia and elsewhere, as deemed necessary in K12's discretion. Notwithstanding the forgoing, none of the following services shall be

provided for the purpose of benefiting the Program or any personnel or students for any school year beyond the expiration or earlier termination of this Agreement.

1. Educational Program Consulting. Propose educational goals, curriculum, methods of pupil assessment, admissions policy, student recruitment policy, school calendar, school day schedule, and age and grade range of pupils to be enrolled in the Program. K12's recommendations for the Program will be consistent with Applicable Law.
2. Personnel Assistance. Supervision of all personnel providing Educational Products, Administrative Services and Technology Services. Management of all Program employees including recruiting; hiring recommendations; reference, certification and background checks (excluding performing payroll functions or securing of payroll services; negotiation, securing and management of health, retirement and other benefits which shall be the District's responsibility). Recommend human resources policies, bonus plans, and strategic plans for staffing, development, and growth. Provide teacher performance evaluation models to the District and recommend and, if approved, carry out effective ways to measure teacher performance in a virtual setting.
3. Insurance. Assist the District with obtaining general liability insurance or other insurance required with a reputable carrier for the Program in accordance with this Agreement and Applicable Law.
4. Facility Management. Identify location of the Program's initial or supplemental office facility(ies), as applicable and as needed. Together with District's attorney and designees, assist with negotiating and approving leases, leasehold improvements and lease amendments in accordance with the Program budget.
5. Business Administration. Administration of all business aspects and day-to-day management of the Program. These services shall include:
  - a. Consultation, and services as liaison for District, and other governmental offices and agencies;
  - b. Consultation and advice regarding special education programs, processes, support services and reimbursements;
  - c. Consistent with other provisions of the Agreement, provide school administrative staff as appropriate;
  - d. Work with District's counsel, if any, on legal matters affecting the Program;
  - e. Preparation of forms, operations manuals, handbooks, guides, and policies and procedures as necessary or required by the Board;
  - f. Consultation with respect to, and monitoring and oversight of, State reporting systems;
  - g. Assist District in identifying and applying for grants and other funding opportunities;
  - h. Assist with the administration of federal entitlement programs (e.g., Title I, I.D.E.A.);
  - i. Arrange contracts with school districts, education services centers, and professional service providers for special education, testing and other support services on Program's behalf;
  - j. Establish and implement policies and procedures to maintain proper internal controls;
  - k. Provision of such other administrative and consulting services as agreed in writing by the Parties from time to time; and
  - l. Provision of regulatory compliance services, including responses to audits.
6. Budgeting and Financial Reporting.
  - a. Preparation of a proposed annual budget for the Program, including projected revenues, expenses and capital expenditures;
  - b. As practical and as possible, provide to the Board on a periodic basis, but no more frequently than monthly, detailed statements of all revenues received, from whatever source by the Program, and detailed statements of all direct expenditures for services rendered to the Program;
  - c. Provide to the Board all financial reports required under Applicable Law and by Applicable Law; and

d. Subject to any confidentiality obligations imposed on K12 by third parties, provide to the Board such other information either required by the Board to be made available to Board upon request, in each case within a reasonable time following such written request therefore, and in all cases consistent with Applicable Law.

7. Financial Management.

a. To the extent K12 is responsible for managing the cash of the Program then, in accordance with Board's Program expenditure authorization policy, K12 will, within commercially reasonable periods of time or as required by any agreement governing same, make payment for all Program Expenses, out of the Program funds managed by K12.

b. To the extent K12 is responsible for managing the cash of the Program then, all Program funds will be maintained in an account(s) belonging to the Program over which designated representatives of K12 will have signature authority as approved by the District. The District will immediately transfer to such account(s) all funds received by the Program from any source, including but not limited to per pupil payments or reimbursements received from the local school district, state, federal and/or any other source, as well as any and all contributions received by the Program.

c. Perform necessary planning, forecasting, accounting and reporting functions as appropriate.

d. Assist and coordinate in any third-party audit(s) of the Program.

8. Maintenance of Financial and Student Records.

a. K12 will maintain and keep, or oversee the keeping of, the records and books of the Program at a local administrative facility(ies). K12 may maintain electronic or paper copies of records and provide other services elsewhere, unless prohibited by Applicable Law. The District recognizes and agrees that for purposes of the Family Educational Rights and Privacy Act and the State open records act, K12 has a legitimate educational interest for purposes of the District disclosing to K12 the Program student's educational records.

b. K12 will maintain accurate financial records pertaining to the operation of the Program and will retain all such records for a period of seven (7) years (or longer if required by Applicable Law) from the close of the Fiscal Year to which such books, accounts, and records relate.

c. K12 will maintain accurate student records pertaining to students enrolled in the Program in the manner required by Applicable Law, and retain such records on behalf of the Program at a local facility until this Agreement is terminated, at which time the required student records will be retained by and become the sole responsibility of the District.

d. Ensure accessibility of Program records to the District, its independent auditor and the State for completion of audits required by Applicable Law. The Parties understand that all financial, educational and other records, regardless of source of origin, are the property of the District. The Parties agree to maintain, retain, disclose, and withhold Program records as may be required and in the manner required by Applicable Law.

9. Student Discipline. Provide necessary information and cooperate with the District on the handling of all student disciplinary matters, including without limitation attendance and truancy matters. K12 will recommend policy and procedures for Board adoption consistent with Applicable Law.

10. Annual Reports to District. Create, design, and arrange for publication and dissemination of an annual report regarding the Program.

11. Teacher Effectiveness and Training. Develop new teacher training and ongoing professional development for Teachers. Develop and maintain the K12 Teacher Handbook. Host ongoing Teacher professional development sessions throughout the school year for new and returning Teachers.

12. Program Authorizations. Assist the District in complying with all applicable Board policies, if any, as reasonably interpreted to apply to the Program.

13. Instructional Property Management. Prepare and submit to the District proposed policies and procedures regarding the responsible use of equipment and other instructional property. Arrange for the distribution and re-shipment or return (as necessary) of equipment for families, administrators, and teachers, to the extent provided by or on behalf of K12 as agreed in writing during the budget process.

14. Grants and Donations. On behalf of the Program, K12 may solicit and receive grants and donations from public funds through competitive or non-competitive processes, and private sources consistent with the Program's objectives; provided, however, that any solicitation of such grants and donations by K12 will be subject to the approval of the District and such fund(s) shall be used as designated.

15. Additional Administrative Services. Any other services as agreed to in writing by the Parties from time to time.

**III. Technology Services**: During the Term, K12 and its Affiliates will provide or cause to be provided to the District the Technology Services described below for the Program. K12 will provide the Technology Services at District's facility, if any, and from K12's offices, as deemed necessary and in K12's discretion. Notwithstanding the forgoing, none of the following services shall be provided for the purpose of benefiting the Program or any personnel or students for any school year beyond the expiration or earlier termination of this Agreement

1. 24-7 monitoring of production services, i.e., SAMS and the online learning management system;
2. Monitor and analyze system data, to fix production issues as they may arise;
3. Generate reports on pupil academic performance, attendance and progress;
4. Seek and secure competitive pricing and centralized purchase discounts for computers, monitors, printers, software and other peripherals for the Program;
5. Train school staff, as deemed appropriate and necessary, on technology systems;
6. Develop, design, publish, and maintain the Program's interactive website;
7. Install and maintain the Program's computer network;
8. Generate reports;
9. Develop community tools on the school's website and K12 platform (including password protected threaded discussion and message boards, moderation functionality, directories, etc.);
10. Determine hardware configurations (including software and operating systems) for the school's technology needs;
11. Provide onsite and telephone support for the Program administration in troubleshooting system errors, and telephone support for students;
12. Propose for the District adoption policies and procedures regarding the responsible use of computer equipment and other school property;
13. Support teachers and Program care associates in answering technology-related questions from students, parents, teachers, and administrators;
14. Install software to generate master image of computer configurations for teachers, administrators, and students in order to standardize the user experience and lower costs and turn-around time for implementation and troubleshooting;
15. Ensure electronic security of student records (through the use of encryption, firewalls, etc.);
16. Provide a Web-filtering device to ensure that students do not have access to inappropriate materials on the Internet;
17. Prepare for, supervise, and implement all system roll-overs at the end of each academic year;
18. Design and implement inventory management systems with the school's distribution and hardware vendors, as well as reclamation programs, as needed;
19. Support and design the Program's accounting system;
20. Provide online enrollment, registration and placement services;
21. Provide school email accounts for Program employees;

22. Provide school care and technology support services on the learning management system, computer and software issues;
23. Oversee changes to the Program website to maintain quality assurance and make sure that there are not "version control" problems;
24. Coordinate security, creative, and content issues pertaining to the website;
25. Coordinate Web hosting contracts and relationships with vendors across the State as needed;
26. Handle troubleshooting issues for the school's website and send issues to the appropriate person or division for resolution; and
27. Additional Technology Services in K12's discretion and any other services as agreed to in writing by the Parties from time to time.

**EXHIBIT B**  
K12 Proprietary Marks



K<sup>12</sup>

Unleash the xPotential®

The xPotential®

A+nywhere Learning System®

