

EDUCATIONAL SERVICES AGREEMENT

This EDUCATIONAL SERVICES AGREEMENT ("Agreement") is made and entered into by and between Bonneville Joint School District No. 93 ("District"), and OVERTURE LEARNING, LLC, an Idaho limited liability company ("Overture Learning"), as of the date signed by the Parties below. This Agreement shall replace and supersede all prior agreements, oral or written, as of the effective date hereof.

1. Terms of Contract

- a. Effective Date - This Agreement shall commence as of September 4, 2018 for the 2018-2019 academic year.
- b. Term and Renewal - This agreement shall be for the term of one (1) academic year beginning on the Effective Date and ending on June 30th of the calendar year following. This agreement shall automatically renew each year for an additional term of one academic year (July 1st through June 30th) if not otherwise terminated by either party by written notification of intent to terminate given to the other party no later than March 1st of any applicable academic year.

2. Description of Responsibilities for Overture Learning, LLC

- a. Student Recruitment - Recruit students in grades K-8 as distance learning students registered with the District. New student(s) may be added to replace student(s) who cancel registration in the program during the academic year in an effort to allow enrollment numbers to remain constant.
- b. Registration and Enrollment - Collect and maintain all student registration information, forms, and required documentation (collectively "Registration Packet"). Provide a copy of each student's complete Registration Packet to the District.
- c. Mentoring - Provide teachers licensed according to requirements of the state to serve as mentors to parents of students. Mentors will assist in providing suggestions and guidance to parents in areas of curriculum, educational materials/resources, and methods of teaching in an effort to assist parents in the education of their student(s). Mentors will regularly review student educational plans and progress reports with parents.
- d. Progress Reports - Maintain progress reports of each student's progress and submissions and provide access for teachers/mentors and the District to review such progress and submissions.
- e. State Required Assessments and Testing - Coordinate, schedule, and arrange for administration of state required testing. Where students live within the District's physical boundaries, such assessments and testing may be provided by the District as arranged with Overture.
- f. Expenses - Overture is solely responsible for the expenses of its services and responsibilities under this Agreement.
- g. Employment of Personnel - Overture is responsible for the hiring, training, and payment of licensed teachers and other administrative staff to carry out its responsibilities under this Agreement and in accordance with applicable state law.
- h. Confidentiality of Records - Maintain the confidentiality of personnel, students, and other records in accordance with applicable state law. Overture is not responsible to maintain records for students once they have discontinued enrollment in the program.

3. Description of Responsibilities of the District

- a. General Oversight - The District is responsible for the monitoring of Overture's performance and compliance with the terms of this Agreement and implementation of procedures consistent with applicable District policies.

- b. **Special Education** - The District will provide special education and 504 services to any student(s) who do or may qualify for such services in accordance with federal and state requirements. The District will be responsible for the expenses of providing these services (such as speech, physical, and/or occupational therapy) including assessments and other evaluations so long as total number of students receiving special education and 504 services does not exceed 10% of the total number of students enrolled in the program. If this number exceeds 10%, the District and Overture will reevaluate this provision and adjust it as needed by way of written amendment to this Agreement.
- c. **Transcripts, Cumulative Files and Grade Reports** - The District is responsible to request, obtain, store, and manage student transcripts and files. The District is responsible to maintain any records required beyond or outside of the current academic year.

4. Enrollment

- a. Final enrollment information and packets will be provided to the District no later than October 5, 2018.
- b. Each year that the Agreement continues without written termination, final enrollment information will be due to the District on the first Friday in October.

5. Fees, Invoicing, and Payment

- a. **Fees** - For each student enrolled by the enrollment date provided in Section 4, the District shall pay Overture an amount of \$4,000 per student in grades 1-8 and \$2,000 per Kindergarten student.
- b. **Invoicing and Payment** - After submission of final enrollment information, Overture will provide an invoice of 60% of this total amount for payment within 14 calendar days of the invoice date. Overture Learning will provide invoices for the remaining 40% of this total as follows: monthly from January through April (10% per month) and the District will make payment within 14 calendar days of the invoice date. The monthly invoice amount will be adjusted based on any students who cancel enrollment prior to this date.
- c. **Interest** - The District agrees to pay as invoiced by the dates mentioned above. The District agrees to pay interest in the amount of one percent (1%) per month (12% annually) on an amounts more than 10 calendar days overdue. In the event that any action is undertaken to collect amounts due hereunder, the District agrees to pay, in addition to fees and interest, all costs of such collection action.
- d. **Location of Payment** - All payments made hereunder will be made payable to Overture Learning, LLC or its designated Affiliate at the address set forth herein or other such address provided by Overture in writing.

- 6. **Relationship of Parties** - Overture is not a division or any part of the District. The District is a body corporate authorized under State law and is not a division or any part of Overture. The relationship between the parties was developed and entered into through arms-length negotiations and is based solely on the terms of this Agreement. Overture will operate as an independent contractor to the District and will be responsible for delivering the services required by this Agreement. Nothing herein will be construed to create a partnership or joint venture by or between the District and Overture. Neither party will be the agent of the other except to the extent otherwise specifically provided by this Agreement. Neither party will represent to third parties any ability to bind the other to any duty imposed by contract, other than this Agreement or as otherwise agreed in writing.

- 7. **Proprietary Information** - Except for items that are readily available to educational entities or in the public domain, all of the materials, methods, lists, curricula, names, processes, technologies, trademarks, trade names and other items, tangible or intangible, registered or unregistered, used by Overture Learning, LLC in delivery of the Program services are the property of Overture Learning, LLC

or used by Overture Learning, LLC under authority of the legal owner thereof and shall be considered confidential or proprietary information (“Proprietary Information”) Neither the District, nor its owners, directors, employees, agents or affiliates shall have any right or authority to use the Proprietary Information for its own purpose by virtue of this Agreement, both during or after the termination or expiration of this Agreement.

8. Termination

- a. Termination for Breach - Either party may terminate this Agreement at any time for cause with ninety (90) days' prior written notice to the other party. Termination for cause may be used if a party breaches any material term or fails to fulfill any material condition, term, provision, representation, warranty, covenant or obligation contained in this Agreement and fails to cure the same within ninety (90) days after receiving written notification from the terminating party. Upon termination of this Agreement pursuant to this Section, the non-breaching party shall be entitled to seek any remedies to which it shall be entitled at law or in equity.
- b. Termination Upon Loss of Authority - This Agreement will terminate immediately upon the termination of the District's operating authority.
- c. Termination in the Event of Certain Changes in Policies of the Idaho State Department of Education or the District, Overture may terminate this Agreement effective immediately upon written notice to District in the event that the Idaho State Department of Education or District adopts or amends a policy, in each case without the prior written consent of Overture, the effect of which could reasonably be determined to require Overture to materially increase the level of services required hereunder or which materially increases the financial risk to Overture arising from its performance hereunder.
- d. Change in Applicable Law - If any change in applicable state law that is enacted after the date hereof could reasonably be expected to have a material adverse effect on the ability of either party to carry out its obligations hereunder, such party, upon written notice to the other party (which notice may be given at any time following enactment of such change in applicable state 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 either party may provide ninety (90) day written notice of termination of this Agreement.
- e. Effects of Termination:
 - i. Except as otherwise agreed by the parties in writing, termination shall not relieve either party of any obligation for payments due to the other party as of the date of termination or other obligations that continue upon termination as provided in this Agreement.
 - ii. In the event this Agreement is terminated for a breach by Overture prior to the end of a given academic year, the parties shall calculate the Fee as of the end of such academic year as if this Agreement had not been terminated. The parties shall then prorate those amounts to the date of termination of this Agreement, and District shall pay Overture the prorated amount within 30 days of the effective date of termination.
 - iii. In the event this Agreement is terminated by the District for any reason other than a breach by Overture prior to the end of its Term, the District shall pay to Overture any fees due under the current term of this Agreement. Such amount shall be due and payable within 60 days of the effective date of termination. Late payments shall be subject to interest charges as identified in Section 5(c) above.

- 9. Limitation on Liability** - Except in connection with its indemnity obligations, neither party shall be liable for any indirect, consequential, exemplary, incidental, special, or punitive damages including without limitation lost savings, lost funding, lost revenues, lost sales, lost profits, lost opportunity costs, business interruptions, delay damages, damages for third party claims, lost or destroyed data, or any other economic loss, of any type or nature or for events or circumstances beyond the party's control, even if the party has been advised of the possibility of such damages or loss.
- 10. 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. Except as prohibited by applicable state law, Overture may assign all of its rights and obligations under this Agreement to any person or entity that controls Overture, is controlled by Overture, or is under common control with Overture, or to any successor in interest that acquires all or substantially all of the assets of Overture. Overture, upon notice to the District, may delegate the performance of its duties hereunder to any person or entity but shall remain responsible for the performance, in accordance with the terms of this Agreement, of any services performed by its delegates, except notice shall not be required when Overture delegates its obligation to provide materials or curricula to third parties in the normal course of business.
- 11. Indemnity** - The party charged with indemnifying and/or defending under this Section (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 (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.
- a. Indemnification of District** - Overture agrees to indemnify, defend, and save and hold the District and 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 representation or warranty, covenant or agreement made or to be performed by Overture pursuant to this Agreement, (b) noncompliance by Overture with any Applicable Law in connection with District's operations, but excluding any claims that arise from conduct undertaken in accordance with the District's instructions, procedures or written policies or in accordance with the written policies of the State Board of Education, except where such instructions arise from and are in accordance with specific advice or explicit recommendations provided by Overture, and (c) act or omission of Overture or any of its employees, officers, directors, trustees, subcontractors or agents in connection with its performances, limitations and obligations hereunder that results in injury, death, or loss to person or property except to the extent any Claim arises out of actions or omissions of the District.
- b. Indemnification of Overture** - The District agrees to indemnify, defend, and save and hold Overture and each affiliate of Overture 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 or any representation or warranty, covenant or agreement made or to be performed by the District pursuant to this Agreement, (b) noncompliance by the District with any Applicable Law in connection with District's operations, and (c) act or omission of the District 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 Overture.

- c. Insurance - Each party shall carry appropriate insurance, including general liability, with minimum coverages and limits as required from time to time for governmental/quasi-governmental entities (currently \$1,000,000 per occurrence/\$3,000,000 aggregate) and workers compensation coverage in amounts no less than required by law.

12. Representations and Warranties

- a. Overture hereby represents and warrants to the District:
 - i. Organization and Good Standing - Overture is a limited liability company duly organized, validly existing, and in good standing under the law of the State of Idaho.
 - ii. Authorized to Conduct Business - Overture is and at all times shall be registered and authorized to do business in the State of Idaho.
 - iii. Compliance of Educational Products and Services with applicable law - The educational products and services provided by Overture Learning, LLC in fulfillment of its responsibilities under this Agreement comply with, and shall at all times during the term of this Agreement, comply with Applicable Law, including the standards for curriculum as issued by the State Board of Education.
 - iv. Power and Authority - Overture 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 Overture and constitutes the valid and legally binding obligation of Overture, enforceable against Overture 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.
- b. The District hereby represents and warrant to Overture:
 - i. The District is a public school entity in the State of Idaho.
 - ii. Power and Authority - 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 the District 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.
 - iii. Authority Under Applicable Law - The District has the authority under Applicable Law (i) to contract with a corporate entity to perform the services, (ii) to execute, deliver, and perform this Agreement and (iii) to incur the obligations provided for under this Agreement.
 - iv. Compliance of Educational Program with Applicable Law - The District's educational program complies with, and the District will ensure that it will continue to comply with the policies and requirements of the State Board of Education and applicable state law.

13. Governing Law - The laws of the State of Idaho 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.

14. Entire Agreement - This Agreement, including any Addenda and Exhibits hereto (all of which constitute part of this Agreement), constitute the entire agreement of the parties with respect to the sub-

ject matter hereof, and supersedes all previous oral and written, and all contemporaneous oral negotiations, commitments, agreements and understandings relating hereto.

- 15. Counterparts, Facsimile 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 signature pages as if such facsimile pages were originals.
- 16. 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) two days after mailing as described in clauses (i) and (ii) of the foregoing sentence, (ii) on the date of personal delivery or (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). Electronic mail does not constitute official notice under this Agreement. The addresses of the parties are:

For Overture Learning, LLC :	PO Box 182, Montpelier ID 83254
For District:	3497 N Ammon Rd, Idaho Falls ID 83401
- 17. Amendment** - This Agreement will not be altered, amended, modified, or supplemented except in a written document executed by the parties.
- 18. 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.
- 19. Severability** - The parties intend that each provision hereof constitute a separate agreement between them. Accordingly, the provisions hereof are severable and in the event that any provision of this Agreement shall be deemed invalid or unenforceable in any respect by a court of competent jurisdiction, the remaining provisions hereof will not be affected, but will, subject to the discretion of such court, remain in full force and effect, and any invalid or unenforceable provision will be deemed, without further action on the part of the parties, amended and limited to the extent necessary to render the same valid and enforceable and reflect the intent of the parties.
- 20. Successors and Assigns** - This Agreement will be binding upon and inure to the benefit of the parties and their respective successors and permitted assigns.
- 21. Survival of Termination** - All representations, warranties, and indemnities made in this Agreement will survive termination of this Agreement.

By signing below, the Parties acknowledge that they have read and understood and agree to be bound by all terms and conditions of this Agreement, as well as other applicable agreements or policies which are incorporated therein by reference. The signers hereof represent that each is a duly authorized officer, partner or principal with full authority to enter into this Agreement.

OVERTURE LEARNING, LLC

Jennifer Goostrey 9/13/2018 By: Jennifer Goostrey
Authorized signature Date Printed Name

BONNEVILLE JOINT SCHOOL DISTRICT NO. 93

Paul Jenkins 13 Sep 18 By: PAUL JENKINS
Authorized signature Date Printed Name