

## 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 July 1, 2020 for the 2020-2021 academic year.
- b. Term and Renewal - This agreement shall be for a 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 for an additional term of one academic year (July 1, 2021 through June 30, 2022) 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. Curriculum and Progress Monitoring - Provide a comprehensive curriculum according to District 93 Board Policies 2100, 2520 and 2540 to parents and students enrolled in the District through Overture Learning. Provide progress reporting and testing requirements that meet District and State standards. Update program requirements and practices when necessary to better comply with District and State Standards and communicate changes to the District, teachers, and parents.
- b. Enrollment and Registration - Enroll 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. The District may allow or provide exemptions to the enrollment limit by providing written notification to Overture Learning. This written notification can be in the form of an email.
- c. Learning Management System - Maintain an online Learning Management System Portal to allow parents and students to provide progress and submissions for mentor teacher review.
- d. Training and Support for District Teachers and Personnel - Provide needed training to District employees and teachers necessary for using Overture Learning's online system. Provide ongoing support and training to teachers through regular teacher meetings.
- e. Parent and Student Orientation - Provide parents a handbook outlining program framework. Give parents a program overview, including requirements, processes, and training on use of Learning Management System. Continue support for parents regarding LMS, reimbursements, etc. throughout the academic year.
- f. Communication with Enrolled Parents and Students - Provide regular and timely communication to parents regarding program changes, LMS updates, events, etc. Manage an online forum for parents and teachers to reference regarding common questions about Overture

Learning's program. Maintain a periodic email newsletter for parents and teachers with announcements and communications. Provide proofreading and feedback on District communications to parents.

- g. 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.
- h. Expenses - Overture Learning is solely responsible for the expenses of its services and responsibilities under this Agreement.
- i. Confidentiality of Records - Maintain the confidentiality of personnel, students, and other records in accordance with applicable state law. Overture Learning 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 Learning's performance and compliance with the terms of this Agreement and implementation of procedures consistent with applicable District policies.
- b. Registration and Enrollment - Provide registration requirements including links to online registration forms and yearly Enrollment Deadline to Overture Learning and interested families.
  - i. Establish an enrollment limit either by providing a hard number of enrollments permitted for the academic year or by providing an enrollment deadline, allowing all students who register by the enrollment deadline. The enrollment limit for the 2020-2021 school year will be 425 students. The District may adjust the enrollment limit at any time by providing notice to Overture Learning via email.
  - ii. Review, approve, and maintain registration information. In cases where submitted registration information is incomplete or additional information is required, the District has the primary responsibility of working with parents to submit all required information and forms. Provide Overture Learning with necessary enrollment information on all students registered in Overture Learning's program within 3 business days of registration.
- c. Teachers and Mentoring - Provide teachers licensed according to the requirements of the state to serve as mentors to parents of students. Teachers 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). Teachers will regularly review student educational plans and progress reports with parents. Teachers will meet regularly with an Overture Learning administrator or another teacher designated as a Mentor Teacher to receive additional training, discuss responsibilities and review their assigned students' progress.
- d. Parent and Student Onboarding - Licensed teachers will meet with parents and provide mentoring and assist parents in finalizing curriculum choices. Teachers will then set up students in LMS.
- e. State Required Assessments and Testing - Coordinate, schedule, and arrange for administration of any and all state required testing.

- f. 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 the 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 Learning will reevaluate this provision and adjust it as needed by way of written amendment to this Agreement.
- g. 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. Fees, Invoicing, and Payment

- a. Fees - Based on the circumstances described, fees will be charged on a per student basis as follows:
  - i. For each student enrolled in Overture Learning by the enrollment date provided in Section 3b, the District shall pay Overture Learning an annual amount of \$2,500 per student in grades 1-8 and \$1,250 per Kindergarten student. In the event that one of these students cancels enrollment mid-year, Overture may replace that student with another student as described in section 2b and the District will not be required to pay an additional fee.
  - ii. For each student enrolled in Overture Learning after the enrollment date provided in Section 3b and approved by the District as an exception to the enrollment limit described in Section 3b.i, the District shall pay Overture Learning an amount of \$250 initial enrollment fee plus \$250 for each full month remaining in the school year (September-May) for students in grades 1-8 and a \$125 initial enrollment fee plus \$125 for each month remaining in the school year (September-May) for students in Kindergarten. Mid-month enrollments will be prorated.
- b. Invoicing and Payment - Overture Learning will provide an invoice for 60% of this total amount on or about July 1 for students enrolled by this date. Additional invoices for 60% of total enrollment fees will be provided in August, September and October for additional students enrolled during each month up until the enrollment date in Section 4. Overture Learning will provide invoices for the remaining 40% of this total amount as follows: monthly from January through April (10% per month). The monthly invoice amount will be adjusted based on any students who cancel enrollment prior to this date. Invoices will be paid within 14 calendar days of the invoice date. For students registering after the Enrollment Deadline as described in section 4a.ii, Overture Learning will provide an invoice for 60% of the total prorated annual fee upon receiving the student's registration information and the remaining 40% will be added to the January through April invoices in increments of 10% per month, with any remaining balances being reconciled in the April invoice.
- 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 any 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 Learning in writing.
5. **Relationship of Parties** - Overture Learning 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 Learning. 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 Learning 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 Learning. 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.
6. **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.
7. **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 State Board of Education or the District**. Overture Learning may terminate this Agreement effective immediately upon written notice to District in the event that the State Board of Education or District adopts or amends a policy, in each case without the prior written consent of Overture Learning, the effect of which could reasonably be determined to require Overture Learning to materially increase the level of services required hereunder or which materially increases the financial risk to Overture Learning 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 Learning 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 the District shall pay Overture Learning 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 Learning prior to the end of its Term, the District shall pay to Overture Learning 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.
- 8. **Confidentiality of Records** - As required by the Idaho Student Data Accessibility, Transparency, and Accountability Act of 2014, Idaho Code Title 33, Section 133 (the "Act"), with respect to the sharing of personally identifiable information ("PII") from Student Data, (as defined below) released to Overture Learning by the District for purpose of providing web-based products and services as purchased by the District:
  - a. Overture Learning agrees to comply with all applicable Idaho state and federal laws pertaining to the confidentiality and security of PII, including but not limited to the Family Educational Rights and Privacy Act (FERPA), 20 U.S.C. §1232g and its implementing regulations and the Act.
  - b. Overture Learning guarantees to have in place appropriate Administrative Security, Physical Security, and Logical Security controls and measures to protect from a Data Breach or unauthorized data disclosure;
  - c. Overture Learning agrees to notify the District as soon as possible and without unreasonable delay after Overture Learning discovers that a Data Breach or unauthorized data disclosure has occurred, in accordance with Idaho Code 28-S1-10S.
  - d. Overture Learning will restrict access to PII, as defined below, to the authorized staff (including employees, contractors, and agents) of the vendor who require such access to perform their



assigned duties and who are under contractual obligations of confidentiality to Overture Learning;

- e. Overture Learning is prohibited from any secondary use of personally identifiable information, as defined below, including sales, marketing or advertising;
- f. Upon written request by the District following the termination of the subscription to the web-based products and services provided by Overture Learning, all records containing PII provided by the District will be destroyed or returned to the District within sixty (60) days from the date of request; otherwise Overture Learning will destroy such PII records within a commercially reasonable period of time.
- g. Overture Learning agrees to accept the following penalties for non-compliance with these provisions resulting in a Violation under the Act:  
The District's option and right to immediate termination of web-based products and services. Upon receipt of written notice from the District under this provision, Overture Learning will refund to the District all fees paid to Overture Learning for the affected web-based products and services in the current fiscal year, less the amount prorated for months of use prior to the Violation;
- h. Overture Learning will indemnify and hold harmless the District and its employees from any and all third-party claims arising from Overture Learning's breach of these terms.
- i. Overture Learning is not responsible to maintain records for students once they have discontinued enrollment in the program.
- j. Definitions: Regarding section 4 of this agreement, the following definitions are included:

**Administrative Security** consists of policies, procedures, and personnel controls including security policies, training, and audits, technical training, supervision, separation of duties, rotation of duties, recruiting and termination procedures, user access control, background checks, performance evaluations, and disaster recovery, contingency, and emergency plans. These measures ensure that authorized users know and understand how to properly use the system in order to maintain security of data.

**Data Breach** is the unauthorized acquisition of PII.

**Logical Security** consists of software safeguards for an organization's systems, including user identification and password access, authenticating, access rights and authority levels. These measures ensure that only authorized users are able to perform actions or access information in a network or a workstation.

**Personally Identifiable Information (PII)** includes: a student's name; the name of a student's family; the student's address; the students' social security number; a student education unique identification number or biometric record; or other indirect identifiers such as a student's date of birth, place of birth or mother's maiden name; and other information that alone or in combination is linked or linkable to a specific student that would allow a reasonable person in the school community who does not have personal knowledge of the relevant circumstances, to identify the student.

**Physical Security** describes security measures designed to deny unauthorized access to facilities or equipment .

**Student Data** means data collected at the student level and included in a student's educational

records.

**Unauthorized Data Disclosure** is the intentional or unintentional release of PII to an unauthorized person or untrusted environment.

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 interruption, 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 Learning may assign all of its rights and obligations under this Agreement to any person or entity that controls Overture Learning, is controlled by Overture Learning, or is under common control with Overture Learning, or to any successor in interest that acquires all or substantially all of the assets of Overture Learning. Overture Learning, 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 Learning 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 the District** - Overture Learning 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 Learning pursuant to this Agreement, (b) noncompliance by Overture Learning 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 Learning, and (c) act or omission of Overture Learning 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 Learning - The District agrees to indemnify, defend, and save and hold Overture Learning and each affiliate of Overture Learning 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 Learning.
- 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 Learning hereby represents and warrants to the District:
  - i. Organization and Good Standing - Overture Learning 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 Learning 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 - 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 Learning 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 Learning and constitutes the valid and legally binding obligation of Overture Learning, enforceable against Overture Learning 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 warrants to Overture Learning:
  - i. The District is a public school entity in the State of Idaho.

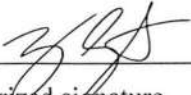


- ii. **Power and Authority** - The District has full power and authority to execute and deliver this Agreement and to perform its obligations hereunder. This Agreement has been duly authorized and executed by the District and constitutes the valid and legally binding obligation of the District, enforceable 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), constitutes the entire agreement of the parties with respect to the subject 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.

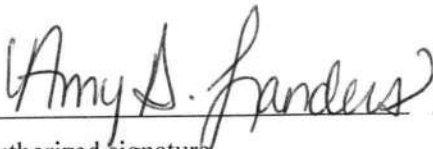
19. **Severability** - The parties intend that each provision hereof constitute a separate agreement between them. Accordingly, the provisions hereof are severable and in the event that any provision of this Agreement shall be deemed invalid or unenforceable in any respect by a court of competent jurisdiction, 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

      8/28/2020      By: James Goostrey  
Authorized signature      Date      Printed Name

BONNEVILLE JOINT SCHOOL DISTRICT NO 93

      9/9/20      By: Amy D - Landers  
Authorized signature      Date      Printed Name