

**First Amendment to the Educational Products and Services Agreement
Between
Ohio Digital Learning School
And
K12 Virtual Schools L.L.C.**

By this First Amendment (“**Amendment**”), the Parties desire to revise the July 1, 2019 Educational Products and Services Agreement (“**Agreement**”) between the Ohio Digital Learning School (“**School**”) and K12 Virtual Schools L.L.C. (“**K12**”). This Amendment shall be effective upon full execution by the Parties. Defined terms in this Amendment shall have the meanings ascribed to them in the Agreement, unless otherwise defined herein. In the event of any conflict between the Agreement and this Amendment, this Amendment shall prevail.

RECITALS

WHEREAS, the Parties have entered into this Amendment to address and amend certain Financial Matters between the Parties.

Now, therefore, for good and valuable consideration, the Parties agree as follows:

1. Section 5.1 “Net Asset Position and Assumption of Financial Risk” shall be deleted in its entirety:

5.1 Net Asset Position and Assumption of Financial Risk. Except as otherwise set forth in this Agreement, K12 assumes the risk that its fees may not allow it to operate profitably and/or fully recover the amounts invoiced. Each Party, however, shall take all reasonable steps necessary to avoid a Negative Change in Net Assets and to avoid concluding a Fiscal Year in a Negative Net Asset Position, excluding adjustments related to GASB 68 and GASB 75, during the Term. If the School’s audited financial statements ends a Fiscal Year in a Negative Net Asset, then provided there has been no material breach of the Agreement by the Board, K12 will provide sufficient credits (“**Balanced Budget Credits**”) during the Term to be applied to K12 invoices. The cumulative total of Balanced Budget Credits shall never exceed the total of the Administrative Services Fee and the Technology Services Fee (defined in Section **Error! Reference source not found.**) due to K12 for the then-current Fiscal Year. All Balanced Budget Credits shall be accounted for and documented.

and replaced with the following:

5.1 Net Asset Position and Assumption of Financial Risk. Except as otherwise set forth in this Agreement, K12 assumes the risk that its fees may not allow it to operate profitably and/or fully recover the amounts invoiced. Each Party, however, shall take all reasonable steps necessary to avoid a Negative Change in Net Assets and to avoid concluding a Fiscal Year in a Negative Net Asset Position, excluding adjustments related to GASB 68 and GASB 75, during the Term. If the School’s audited financial statements ends a Fiscal Year in a Negative Net Asset, then provided there has been no material breach of the Agreement by the Board, K12 will provide sufficient credits (“**Balanced Budget Credits**”) during the Term to be applied to K12 invoices. Further, at the discretion of K12, Balanced Budget Credits will be applied each Fiscal Year for the Term of the Agreement to K12 Curriculum, Materials, Computers and Miscellaneous K12 invoices up to the amount to avoid concluding a Fiscal Year in a Negative Net Asset Position, excluding adjustments related to GASB 68 and GASB 75 during the Term. All Balanced Budget Credits shall be accounted for and documented.

Any references in the Agreement to Section 5.1 “Net Asset Position and Assumption of Financial Risk”, shall be read to mean this revised Section 5.1 entitled “Net Asset Position and Assumption of Financial Risk”.

All other provisions of the Agreement shall remain unchanged and in full force and effect.

K12 Virtual Schools L.L.C.

By: Tony Bennett
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Its: SVP - School Management

Date: 1/4/2021

Ohio Digital Learning School

By: Jennifer I. Wise
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Its: Board President

Date: 12/23/2020

**EDUCATIONAL PRODUCTS AND SERVICES
AGREEMENT**

Between

OHIO DIGITAL LEARNING SCHOOL

and

K12 VIRTUAL SCHOOLS L.L.C.

**FOR THE OHIO DIGITAL LEARNING SCHOOL SPONSORED BY THE OHIO COUNCIL OF
COMMUNITY SCHOOLS FOR OHIO STUDENTS IN GRADES 9 THROUGH 12 – NO LESS THAN
16 AND NOT OLDER THAN 21.**

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EDUCATIONAL PRODUCTS AND SERVICES AGREEMENT

Between the
OHIO DIGITAL LEARNING SCHOOL
And
K12 VIRTUAL SCHOOLS L.L.C.

This EDUCATIONAL PRODUCTS AND SERVICES AGREEMENT (“**Agreement**”) is made and entered into between the Governing Body (the “**Board**”) of the OHIO DIGITAL LEARNING SCHOOL, an OHIO nonprofit entity, (hereinafter the “**School**”) and K12 Virtual Schools L.L.C., a Delaware limited liability company (hereinafter “**K12**”), each a “**Party**” together the “**Parties**”, and includes the following exhibits:

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

BACKGROUND

A. The Board was authorized by the OHIO COUNCIL OF COMMUNITY SCHOOLS (the “**Sponsor**”) pursuant to a charter contract (the “**Charter**”) to operate and govern the OHIO DIGITAL LEARNING SCHOOL, a virtual public charter school, also referred to as **ODLS** in short form.

B. The School’s mission is to offer an innovative way of learning through the use of technology combined with teacher, student and parent (learning coach) involvement, to provide a dropout prevention and recovery school model for high school students throughout the State of OHIO (“**State**”).

C. The Board and Sponsor entered into the Charter dated [REDACTED] [CHARTER DATE], pursuant to Chapter 3314 of the Ohio Revised Code, to operate the School which will utilize K12 products and services in accordance with this Agreement.

D. K12 and its Affiliates (defined below) will provide the Board with a variety of educational products and services which may include curriculum, learning management system, teacher training, school administration and technology services specified in this Agreement.

NOW THEREFORE, the Parties 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 the Constitution of the State of Ohio and federal, state or local statutes and regulations applicable to public charter schools in the State, and any amendments to, or recodification of, the aforementioned laws and the Sponsor Contract.
 - 1.3. **Change in Net Assets.** A Change in Net Assets is the difference in a given Fiscal Year between the School Revenues and School Expenses as certified by an independent audit in accordance with Generally Accepted Accounting Principles (GAAP).
 - 1.3.1. A “Positive Change in Net Assets” means School Revenues exceeded School Expenses in a given Fiscal Year.

- 1.3.2. A “Negative Change in Net Assets” means School Expenses exceeded School Revenues in a given Fiscal Year.
- 1.4 Facility. Facility is the real property leased for the School’s administrative offices located at Toledo, Ohio.
- 1.5 Fiscal Year. The Fiscal Year is the period from July 1 through June 30.
- 1.6 Net Asset Position. Net Asset Position means the difference between total assets and liabilities of the School at the end of a given Fiscal Year as certified by an independent audit in accordance with GAAP.
- 1.6.1. A “Positive Net Asset Position” means that total assets of the School exceed total liabilities of the School.
- 1.6.2. A “Negative Net Asset Position” means that total liabilities of the School exceed total assets of the School.
- 1.7 School Revenue. School Revenue is all funding received by or on behalf of the Board as attributed to any Student or the School 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; federal funds for the School and/or its Students; other funding including, but not limited to, Title I funding; State provided facility funding and other income or revenue sources provided by law and obtained by the School, Board and/or K12 (which are not specifically excluded herein) and all contributions and grants received by or on behalf of the School or its Board. School Revenues shall not include: (i) income generated by Students individually or collectively via student fundraisers (whether such fund raiser is School-sponsored), and (ii) private charitable donations made to the School’s general fund.
- 1.8 NOT USED.
- 1.9 Section. Section means the reference to the applicable paragraph or sub-paragraph of this Agreement unless the context states otherwise.
- 1.10 Special Education Student. A Special Education Student is any Student who has, will have, or requires an Individualized Education Program (“IEP”).
- 1.11 Student. A Student is any pupil enrolled and/or otherwise taking course(s) in the School or previously enrolled, including those pupils who have withdrawn.
- 1.12 Student Support Staff. Student Support Staff means any position, other than Teachers, that provides direct services to the School and its Students, which may include a guidance counselor or nurse.
- 1.13 Teachers. Teachers are staff providing direct instruction to the Students including master and lead teachers, if any.

2. K12 RESPONSIBILITIES, EDUCATIONAL PRODUCTS AND SERVICES.

- 2.1 Educational Products. During the Term, K12 and Affiliates shall license to the Board solely for use in the School, on a non-exclusive, non-assignable, non-sublicensable basis the products and offerings, as described in Section I of Exhibit A, to include curriculum, access to an online school and learning management system(s), instructional tools and other products and product related services as set forth in Section I of Exhibit A (collectively the “**Educational Products**”). Notwithstanding the forgoing, no Educational Products shall be provided for the purpose of benefiting the Board, the School or any personnel or students for any School year beyond the expiration or termination of this Agreement.

- 2.2 Administrative and Technology Services. During the Term, K12 and Affiliates shall provide to the Board solely for the School “**Administrative Services**”, including financial and school administration services, Teacher 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**”. Notwithstanding the forgoing, no Services shall be provided for the purpose of benefiting the Board, the School or any personnel or students for any School year beyond the expiration or termination of this Agreement.
- 2.3 Place of Performance. Performance of Services is not required to be rendered at the Facility and may be performed at K12’s corporate offices or elsewhere in K12’s discretion, unless specifically stated in Exhibit A or for compliance with Applicable Law or the Charter.
- 2.4 K12 Compliance. K12 will provide the Educational Products and Services and shall maintain the confidentiality of School personnel, Student data and other records in material compliance with Applicable Law, the Charter, and School policies made known to K12 in writing and relating to the School. Subject to Section 3.2 and Section 13, K12 shall also comply with changes in School policies within thirty (30) days unless required earlier by applicable law of receipt of written notice and a copy thereof.
- 2.5 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, veteran or familial status, and sexual orientation, and on all other bases required by Applicable Law.

3. BOARD RESPONSIBILITIES AND GOVERNANCE.

- 3.1 School Oversight and Governance. The Board shall be responsible for overseeing the School’s quality, operational and financial performance in accordance with the Charter and Applicable Law and working with the Sponsor and other authorities as required by law. K12 shall reasonably cooperate with such monitoring and oversight. The Board shall also be responsible for monitoring K12’s performance to ensure compliance with the Charter and the terms of this Agreement.
- 3.2 Adoption of Policies. K12 shall recommend various School policies. The Board, however, retains ultimate responsibility for adopting policies and for overseeing K12’s implementation. K12 will cooperate with the implementation of School policies and adopt procedures consistent with such policies, subject to Section 13. The Parties will work collaboratively in a timely manner on the creation of School policies. Until collaborative policies are in effect, the Parties agree that K12’s standard policies and practices applicable to similarly situated schools shall be used to avoid a lack of any policy. The Board shall promptly provide K12 written copies of all School policies adopted and must promptly notify K12 in writing of any changes to such policies. The Parties agree that no School policies shall revise, amend or create additional rights or obligations to either Party of this Agreement, except as may be agreed to by both Parties as a written amendment hereto.
- 3.3 Confidentiality of Records/FERPA. The Board shall ensure that K12 has the right to access personnel, Student and School financial data. 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, the Board acknowledges and agrees that K12 has a legitimate educational interest for purposes of the School representatives disclosing a student’s educational records to K12. The Board 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.

- 3.4 School Related Documents. The Board shall promptly provide K12 with reports, documents and other findings that are related to, or may have an impact on, the School and/or K12's obligations herein. Such School related correspondence includes, but is not limited to, Board resolutions and reports, minutes of Board meetings, State audit preliminary and final reports, and Sponsor reports, findings and correspondence, and any reports, financial or otherwise, submitted to a State regulatory body to the extent the Board retains documents and not K12. The Board shall not withhold information, and shall cooperate with K12 to ensure K12 has the needed data and information within the Board's control in a timely manner.
- 3.5 Board Governance. The Board will perform its obligations under this Agreement and shall materially comply with, and govern itself in a manner consistent with, the requirements of Applicable Law, the Charter and the Sponsor's policies.

4. SPECIAL EDUCATION, 504 AND ENGLISH LANGUAGE LEARNERS.

- 4.1 Special Education. Pursuant to Applicable Law including the Individuals with Disabilities Education Act ("IDEA", 20 U.S.C. 1400), the School as the Local Education Agency is ultimately responsible for appropriately communicating and implementing any policies, required special education and related services to Special Education Students. K12 shall assist the School with the provision of services for Special Education Students. K12's assistance will include approving enrollments in accordance with related policies and Applicable Law, providing general education curriculum, recruiting teachers and providing procurement support for related service providers. Where a School-based K12 employee is the representative attending meetings related to Special Education Students, including IEP meetings, at a minimum K12 will complete an annual IDEA audit. All policies defining the services and support to Special Education Students must be approved by the School's Board.
- 4.2 ELL and 504. Pursuant to Applicable Law including Title VI of the Civil Rights Act of 1964 (42 U.S.C. 2000d *et. seq.*), the Equal Educational Opportunities Act (20 U.S.C. 39) and Title III of the Elementary and Secondary Education Act, as amended by the Every Student Succeeds Act (20 U.S.C. 28 and 70), the School as the LEA is ultimately responsible for providing any policies, required educational and related services to English Language Learners ("ELL") and Students under Section 504 of the Rehabilitation Act of 1973 ("504"), as amended. K12 shall assist with its obligations by providing translation assistance during enrollment for ELL Students (and their guardians), recruiting ELL-licensed teachers, providing general education curriculum and providing procurement support for services to ELL and 504 Students consistent with this Agreement. K12 shall conduct an annual review of the School's 504 and ELL services. All policies defining the services and support to ELL Students and for the 504 population of Students must be approved by the School's Board.

5. FINANCIAL MATTERS.

- 5.1 Net Asset Position and Assumption of Financial Risk. Except as otherwise set forth in this Agreement, K12 assumes the risk that its fees may not allow it to operate profitably and/or fully recover the amounts invoiced. Each Party, however, shall take all reasonable steps necessary to avoid a Negative Change in Net Assets and to avoid concluding a Fiscal Year in a Negative Net Asset Position, excluding adjustments related to GASB 68 and GASB 75, during the Term. If the School's audited financial statements ends a Fiscal Year in a Negative Net Asset, then provided there has been no material breach of the Agreement by the Board, K12 will provide sufficient credits ("**Balanced Budget Credits**") during the Term to be applied to K12 invoices. The cumulative total of Balanced Budget Credits shall never exceed the total of the Administrative Services Fee and the Technology Services Fee (defined in Section 7) due to K12 for the then-current Fiscal Year. All Balanced Budget Credits shall be accounted for and documented.

- 5.2 Balanced Budget Credit Remittances. If the School's budget ends a Fiscal Year in a Positive Net Asset Position, as evidenced by its audited financial statements conducted in accordance with GAAP for such Fiscal Year, and K12 has issued Balanced Budget Credits (including in prior years) for which a balance remains, then the Board will remit to K12 the Positive Net Assets for that Fiscal Year, to the extent not prohibited by law, up to the cumulative amount of previously issued Balanced Budget Credits.
- 5.3 Financial Risk Mitigation. As a material inducement for entering into this Agreement and issuing Balanced Budget Credits, the Board and K12 agree that K12 is willing to assume the financial risks set forth herein, subject to both the Balanced Budget Credit remittance above and the risk mitigation efforts set forth below, each of which are material terms of this Agreement.
- 5.3.1 Third Party Provider(s). K12 shall be the sole provider of the Educational Products and Services for the School unless otherwise waived in writing by an authorized officer of K12. The Board shall be permitted to procure goods and services from a third party ("**Third Party Provider**") to the extent required by Applicable Law, solely provided such goods and services are not otherwise included in the Educational Products and Services. Prior to any procurement from a Third Party Provider, the Board shall give K12 a thirty (30) day right of first refusal to provide such services or goods not enumerated herein, and if K12 is able and willing to provide such services or goods the Board shall procure them from K12; provided, however, that this does not preclude or restrict the Board in its exercise of fiduciary duties.
- 5.3.2 School Budget. The Board will adopt an annual School budget for each Fiscal Year during the Term. To the extent the Agreement is effective for the upcoming Fiscal Year, K12 will present to the Board (or its authorized delegates or subcommittee) a proposed School budget for such upcoming year. The proposed budget will include forecasting assumptions and will be presented on or before May 31. The Board shall consider the budget proposed by K12 and will act to approve a final School budget no later than June 30th prior to the start of such Fiscal Year. In the event the Parties cannot agree in writing upon a final budget (or any budget modification), K12 shall only be obligated to issue Balanced Budget Credits, if any, up to the amount proposed and reflected in the original budget submission or in any proposed modifications to such budget by K12. The Board shall not unreasonably withhold approval on any budget or modification proposed by K12.
- 5.3.3 Budget Modifications. K12 may submit to the Board proposed modifications to the School budget to account for actual School student enrollment for such school year, changes in key assumptions or other changes deemed reasonably necessary or appropriate. The Parties will work in good faith to agree in writing on modifications to the final School budget but, in any event, the Board shall act on any modifications proposed by K12 at the next scheduled Board meeting of the proposal thereof.
- 5.3.4 Variances from Budgets. If the Board (or its employees or designees) causes the School to experience a Negative Change in Net Assets of more than two percent (2%) during the entire Fiscal Year above any Balanced Budget Credits proposed by K12 in the annual or modified budgets (or above an amount otherwise agreed to in writing by K12), then K12 reserves the right to limit the Balanced Budget Credits up to such 2% variance.
- 5.3.5 Financial Risk Remedies. In the event the Board, its employees or designees act in a manner that will have the effect of materially increasing K12's obligations or materially decreasing its rights herein, for example by changing the name of the School, amending the Charter, adopting adverse policies not otherwise required by law and the Agreement is not terminated by K12 as permitted herein, then to the extent K12 has not otherwise expressly agreed to such material change in writing, K12 reserves the right to reasonably modify the level and depth of Services to the extent such modification does not violate the Charter or Applicable Law and/or to suspend

the issuance of Balanced Budget Credits effective immediately beginning with the Fiscal Year that such action occurred, in addition to invoking any other rights and remedies available.

- 5.4 Advances Made by K12 on Behalf of the Board. If the available cash receipts of the School are insufficient to cover payment of Start Up Costs (defined in Section 5.5) or School Expenses on a timely basis, and the Board is unable to obtain funding from other sources to cover such deficiency, then K12 may advance the Board an amount to allow payment of such expenses on a timely basis (collectively hereinafter referred to as “**Advances**”). K12 will have no obligation to make any Advances in any Fiscal Year for expenditures for: (i) any items in excess of the lesser of the amount proposed by K12 for the budget or the approved budgeted amount, except to the extent that such excess amounts are reasonably due to events beyond the Board’s control; (ii) amounts payable to K12 pursuant to this Agreement or any other agreement between K12 or its Affiliates and the Board; or (iii) any matters as to which K12 or any other person or entity is entitled to indemnification under this Agreement. The Advances will be due and owing to K12 in accordance with Section 10.2. All advances shall be accounted for and documented and bear interest only as described in Section 10.2.
- 5.5 Start Up Costs. “**Start Up Costs**” are those School-related project management, insurance, legal, recruiting and hiring fees, equipment expenses and other administrative costs incurred by or on behalf of the Board as reasonably necessary (which may be incurred prior to the execution of this Agreement) to obtain School approval or to open the School. The Board agrees to provide a detailed breakdown with the appropriate receipts for all such costs which will be subject to audit by K12. Start Up Costs paid by K12, if any, by or on behalf of the Board shall be invoiced and paid in accordance with Section 10.2. In no event shall K12 be obligated to cover Start Up Costs that exceed twenty-five thousand dollars (\$25,000), without K12’s prior written approval.
- 5.6 School Audit and Financial Data. The School’s audit may be conducted by the Ohio Auditor of State or its designee pursuant to OCR 115.56. In the alternative, if permitted by the Ohio Auditor of State, K12, in collaboration with the Board, will arrange for an independent audit of the School’s financial statements. The Board shall have the sole discretion to reasonably reject any auditor proposed by K12. The cost of the audit shall be a school expense.
- 5.7 School Expenses. The Board will be responsible for all debts, liabilities, and obligations incurred by or on behalf of the Parties for the School (collectively “**School Expenses**”) during the Term of the Agreement to the extent such debts, liability, and obligations have been approved by the Board. Any debts, liabilities, and obligations incurred by K12 shall be pre-approved by the Board unless otherwise approved in the annual or modified budget. School Expenses shall be expenses for the benefit of the School years during the Term and shall be determined in accordance with the budget process set forth herein. School Expenses will be paid out of the School Revenues and shall include, but are not limited to, the following School-related costs:
- 5.7.1 Oversight fees to Sponsor, if any;
 - 5.7.2 Teacher and Student Support Staff salaries and benefits including related third party provider services such as payroll and benefit services;
 - 5.7.3 Teacher and Student Support Staff related expenses, including, without limitation, professional development, training related costs and other expenses;
 - 5.7.4 offices for administrative staff and related expenses;
 - 5.7.5 related services expenses for Special Education Students and for 504 and ELL Students (as applicable);
 - 5.7.6 proctored examinations, student test preparation and related costs of exam administration to include facilities, equipment and proctors;
 - 5.7.7 school community relationship building;
 - 5.7.8 direct mail, printing and related expenses for enrolled Students;
 - 5.7.9 amounts due to K12 and its Affiliates, including interest as listed in Section 10.2 on Advances

- and past due amounts;
- 5.7.10 supplemental curriculum and other academic services as agreed to by K12 in a written amendment to this Agreement;
- 5.7.11 reasonable legal fees for representation of the Board as it pertains directly to the School;
- 5.7.12 insurance including educator's legal liability insurance (also known as school leaders errors and omissions insurance), employment practices liability insurance, general liability insurance and other School/Board insurance coverage, as appropriate;
- 5.7.13 accounting and reporting not included in K12's Services including without limitation, payroll processing, audit, and/or tax preparation fees directly associated with the School;
- 5.7.14 all expenses related to the K12 guarantee for the costs of audit and all final costs of audit pursuant R.C. 3314.50;
- 5.7.15 other fees and/or expenses involved in oversight of the Academy or K12 under this agreement. The Academy agrees that K12 will not be obligated to advance funds under Section 5.4 for any oversight expenses, including the employment of program or financial oversight personnel or services, that exceed \$100,000 per Fiscal Year.
- 5.7.16 use, sales, income, property or other taxes, if any;
- 5.7.17 fees for required background investigations of Board employees;
- 5.7.18 Facility and infrastructure related expenses; and
- 5.7.19 all other School related expenses approved in the budget per Section 5.3 (and its subsections), however, if any total School Expenses are, as reasonably known, going to be incurred at a variance of two percent (2%) or more above the budgeted amount, they must be pre-approved in writing by K12;

6. **TERM OF AGREEMENT.**

- 6.1 **Term.** The Agreement will become effective upon the date of full execution for the benefit of the Fiscal Year commencing on July 1, 2019 ("**Effective Date**") and will terminate on June 30, 2024 ("**Initial Term**") unless sooner terminated under Section 13. In the event the Sponsor and/or the Charter changes, this Agreement shall automatically survive and be performed in accordance with the new Charter, these terms and conditions and Applicable Law, unless this Agreement is otherwise terminated in accordance with Section 13.
- 6.2 **Renewal.** Following the Initial Term, this Agreement will automatically extend for the term of the Charter Contract renewal and any successive additional Charter Contract renewals (each period a "**Renewal Term**"), unless: (a) either Party provides the other with written notice of non-renewal at least eighteen (18) months before the expiration of the then-current Initial Term or Renewal Term (as applicable); or (b) the Agreement is sooner terminated under Section 13. The Initial Term and any Renewal Terms will collectively mean the "**Term**".

7. **FEES AND PAYMENT PRIORITY.**

- 7.1 **Administrative Oversight Compensation.** From those State revenues of the School Revenues (for example, excluding federal pass-throughs, block grants, federal special education and other federal funding), the Board shall pay to the Sponsor, or the Sponsor may withhold, Three percent (3%) of such revenues (hereinafter "**Administrative Oversight Fee**") to cover all administrative expenses, and other costs incurred that are associated with the Sponsor's responsibility of supervising, reporting and overseeing the School's quality, compliance, operational and financial performance in accordance with Applicable Law and the Charter.
- 7.2 **Educational Product Prices.** The Board shall pay K12 and its Affiliates for the Educational Products based on the then current national K12 Managed Virtual School Pricing for similarly situated, similarly branded schools ("**Product Price List**"). Notwithstanding anything in this Agreement to the contrary, for each Educational Product set forth in the Product Price List, the Board agrees that the fees for such

Educational Products will be subject to change, no more than once per calendar year, at K12's reasonable discretion and communicated to the Board during the annual budget process.

- 7.3 Administrative Services Fee. The Board agrees to pay K12 and its Affiliates fifteen percent (15%) of the School Revenues for the Administrative Services (the “**Administrative Services Fee**”) for each Fiscal Year of the Agreement.
- 7.4 Technology Services Fee. The Board agrees to pay K12 and its Affiliates seven percent (7%) of the School Revenues for the Technology Services (the “**Technology Services Fee**”) for each Fiscal Year of the Agreement.
- 7.5 Detailed Accounting. If the fees due to K12 are in excess of twenty (20) percent, K12 will provide a detailed accounting of the School Revenues pursuant to ORC 3314.024.
- 7.6 Priority of Payments. The Administrative Oversight Fee shall be paid (or withheld) from the School Revenues and the remaining School Expenses shall be paid in the following order of priority: (1) Teacher and Student Support Staff salaries and benefits, including applicable payroll taxes, (2) all other remaining non-K12 related School Expenses with the exception of any Third Party Provider fees which shall be subordinate to K12's fees, (3) Advances made by K12, (4) fees for Educational Products, (5) Administrative Services Fee and Technology Services Fee payable to K12 and its Affiliates, including any fees for administrative or technology products and services purchased for the School in addition to those enumerated in Exhibit A, (6) Balanced Budget Credits, if any, and (7) Third Party Provider(s).
- 7.7 Business Judgment. In its business judgment, the Board agrees that the economic arrangement including the Balanced Budget Credits and fees payable to K12 hereunder are reasonable, necessary, and fair compensation for the Educational Products and Services.

8. GRANTS, DONATIONS AND RESTRICTED SCHOOL REVENUE.

- 8.1 Grants and Donations for the School. Subject to the Board's written approval, the School and K12 may, together or independently, on behalf of the School, solicit and receive grants and donations from public funds through competitive or non-competitive processes, and private sources consistent with the School's objectives; provided, however, that any solicitation and/or receipt of such grants and donations by K12 will be subject to the written approval of the Board.

To the extent permitted by applicable law, K12 shall be responsible for the administration of grant funds from third parties used in support of the School. K12 shall ensure that such grant funds are used in accordance with applicable statutory and regulatory requirements and the terms of the pertinent grant agreements, including but not limited to, administrative and reporting requirements, and adherence to cost principles and audit requirements for federal awards, where applicable. Prior to delivery to respective granting organizations, K12 will provide the Board with copies of all reports with respect to the administration and use of grant funds in such form and manner to permit adequate time for the Academy Board to review and comment.

For the avoidance of doubt, nothing in this Agreement shall authorize K12 to act as an agent of the School or Board with respect to the solicitation or receipt of grant funds or public funds, although the Board reserves the right to separately authorize such agency relationship in writing with respect to specific grant or funding opportunities.

- 8.2 Grants and Donations for K12. Nothing in this Agreement shall be construed to prohibit K12 from soliciting funds or grants solely for non-School related purposes and using such funds or grants solely for such purposes. Such funds or Grants shall not be considered School Revenues.

- 8.3 Restricted School Revenue. If the School receives School Revenue the use of which is restricted by Applicable Law, K12 shall use that portion of the revenue solely for the purposes permitted by Applicable Law.

9. PERSONNEL MATTERS.

- 9.1 K12 Staff Assigned to the School. K12 will employ and determine the employment terms for personnel whose duties are primarily administrative, which may include a Head of School (“HOS”) or equivalent administrative staff position, and such other staff as K12 deems necessary to deliver the Educational Products and Services. Such administrative personnel may be assigned to the School 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.
- 9.2 Complaints About K12 Staff. If the Board is dissatisfied or concerned about the job performance of a K12 staff member assigned to the School, the Board shall discuss the matter first with the HOS or its equivalent. In the event the Board 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.
- 9.3 Teachers and Student Support Staff. The Board shall employ and be ultimately responsible for the Teachers and Student Support Staff which may include Guidance Counselor(s) and School Nurse(s). K12, however, will assist with recruiting, supervising and disciplining Teachers and Student Support Staff and making recommendations regarding the terms of employment, hiring and firing of Teachers and Student Support Staff. K12 shall recommend to the Board the appropriate number of staff to employ in order to fulfill the Charter Contract obligation to maintain the student-teacher ratio. Upon approval of that recommendation by the Board, K12 will continuously collaborate with the Board to assure that the Board fulfills its obligation to the Charter Contract. The terms of employment will be set by the Board in consultation with K12. Teachers and Student Support Staff shall be State licensed or possess the necessary credentials, qualifications, background and conduct checks all to the extent required by Applicable Law and/or the Charter.
- 9.4 Complaints About Student Support Staff. If K12 is dissatisfied or concerned about the job performance of any of the Board’s staff assigned to the School, K12 will recommend disciplinary actions (up to and including termination) for prompt action by the Board, approval of which will not be unreasonably withheld.
- 9.5 Background Investigations on K12 Employees. As part of its Administrative Services, K12 will be responsible for criminal background checks to be conducted on its employees assigned to the School to the extent required under Applicable Law and will maintain documentary evidence that it has done so. Upon the Board’s request, K12 will provide the Board with documentary evidence of its compliance of this Section 9.5, subject to any privacy restrictions or confidentiality requirements imposed by Applicable Law. K12 shall not assign any of its employees to render services to the School under this Agreement if such person has been convicted of the “disqualifying offenses” set forth in the statute.
- 9.6 Background Investigations on Board Employees. The Board shall, or shall ensure that its professional employment organization (“PEO”), if any, conducts criminal background checks and ensures all applicable staff including Teachers, hold and maintain the necessary licensures to comply with Applicable Law for teaching each of the courses they are assigned. The Board shall maintain (or ensure its PEO maintains) evidence that it has performed the foregoing actions. K12 shall assist the Board as necessary and appropriate to support this obligation, but will rely on the Board (or its PEO) to provide Teacher licensing rules and requirements and to ensure Teachers provide and maintain current licenses in an easily accessible and verifiable manner.

10. PAYMENT OF EDUCATIONAL PRODUCT AND SERVICE FEES.

- 10.1 **Invoicing and Payment of Fees.** K12 will submit to the Board, a detailed invoice for the Educational Products and Services delivered for the prior calendar month. Any fees calculated as a percentage of School Revenue will be calculated based upon the approved budget (or subsequent updates) in effect for the applicable calendar month. These fees will be billed monthly for services rendered during the Term and shall be due and payable in accordance with Section 10.2. If the Board is required to repay funds received by the School from the State of Ohio due to an FTE adjustment or other obligation, then K12 shall repay the School the fees it received based on a percentage amount with respect to such funds.
- 10.2 **Payment Date and Interest.** All invoices payable to K12 and its Affiliates are due within thirty (30) days from the later of the receipt of the invoice or when the Board receives the funding applicable to the product(s) or service(s) invoiced (regardless if funding is received after the Term). Payment of each Advance is due thirty (30) days from the date the Advance is made. Except solely for amounts disputed in good faith pursuant to Section 10.6, if the Board fails to pay an invoice or repay any Advance when due, then in addition to any other remedies, K12 reserves the right to charge and the Board agrees to pay interest on the past due amount at the lesser of one and one-quarter percent (1¼%) per month or the maximum rate allowed by Applicable Law. All payments made hereunder will be made to K12 (or its designated Affiliate) by wire transfer to the account provided by K12 in writing, unless an alternative payment method is provided for in the K12 invoice.
- 10.3 **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 School. Without limiting the foregoing, the Board agrees to pay all 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 any taxes.
- 10.4 **Year-End Adjustments.** Within ninety (90) days after completion of the School's audited financial statements for each Fiscal Year, K12 will prepare and submit to the Board a statement and calculation of the total amounts of the Administrative Services and Technology Services Fees or other Service fees set forth in this Agreement (collectively "**Service Fees**") payable with respect to, and based on, the School's audited financial statements for such Fiscal Year. If the total amount of the Service Fees calculated in accordance with the foregoing sentence exceeds the total amount invoiced by K12 for such fees, K12 will submit an invoice for payment in accordance with Section 10.1. Overpayment of Service Fees, if any, will be applied to or against the next payment(s) or payment(s) otherwise due to K12 or any Affiliate, or if no payments are due, K12 shall refund the excess amount to the Board. Any overpayment to the School shall be handled as listed in Section 10.1.
- 10.5 **Payment Out of School Funds Managed by K12.** Subject to School expenditure authorization policy (as approved by the Board), K12 is authorized by the Board to act as a payment agent to pay School Expenses and to pay itself the fees set forth in this Agreement. All such expenditures will be paid out of the School's funds managed by K12 in accordance with the approved or modified budget.
- 10.6 **Disputed Amounts.** The Board shall notify K12 in writing prior to an invoice due date of any amount it disputes in good faith ("**Dispute Notice**"). The Dispute Notice shall detail the reasons for such dispute and the Board agrees to pay all undisputed amounts in accordance with Section 10.2. The Parties shall seek to resolve these disputed amounts in accordance with the dispute resolution provisions set forth in Section 23. Notwithstanding anything to the contrary in this Agreement, K12 may file suit in a court of competent jurisdiction to recover all past due amounts.

10.7 **Non-Payment Remedies.** If the Board fails to pay any amount for which a timely Dispute Notice is not received, then notwithstanding anything in this Agreement to the contrary, in addition to invoking any other legal or equitable rights available to K12, upon ten (10) days written notice to the Board, K12 reserves the right to: (i) suspend the provision of any or all of its Educational Products and Services offered hereunder; (ii) cease processing enrollments for any new School students; and/or (iii) terminate this Agreement at the end of the then-current school year or for the coming school year if such notice is provided to the Board no later than June 30. The Board shall be liable for costs incurred by K12 to collect any undisputed amounts due hereunder, including reasonable attorneys' fees, and no Balanced Budget Credits shall be issued by K12 to cover any such fees or any late fees due to K12.

11. **PARTIES' RELATIONSHIP.** K12 is not a division or any part of the Board. The Board is a body corporate authorized under State law, governed independently by its Board of Directors 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 Board 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 Board and School. 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.

12. **OTHER SCHOOLS.** The Parties acknowledge that K12 and its Affiliates will have the right to render similar services to other persons or entities including other public or private schools, institutions or districts within and outside of the State.

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

13.1 **Termination for Cause.** The Parties shall use good faith efforts to resolve all disputes relating to this Agreement as set forth in Section 23; 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 Board does not cure the material breach of this Agreement as set forth in this provision K12, in its sole discretion, may suspend the issuance of Balanced Budget Credits in lieu of terminating this Agreement.

13.2 **Termination for Material Reduction in School Revenue.** K12 may terminate this Agreement in the event there is a material reduction in School Revenue and such reduction will materially increase the financial risk to K12 in fulfilling its obligations under the Agreement. 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 School 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.

- 13.3 Termination Upon Loss of School Approval, Charter or Non-Profit Status. This Agreement may be terminated by either Party upon written notice to the other Party: (i) if the Sponsor provides written notice that it has terminated, revoked, or not renewed the Charter or if the Charter has not been authorized, or (ii) upon determination that the School is no longer a public benefit corporation established under Chapter 1702 of the revised code as required under ORC 3314.03(A)(1), or (ii) upon a final adverse determination by the highest court in the State that the School is no longer valid under law or its ruling has the effect of terminating the School. Such termination will be effective upon the date of the termination, revocation or non-renewal.
- 13.4 Termination for Failure to Approve Budget. In the event that the Board does not approve a budget or reasonable modifications to a budget, or the next scheduled Board meeting following the submission of a proposal by K12, K12 may terminate this Agreement effective at the end of the then-current school year in which the budget or reasonable modification is not approved, or if the lack of approval is for an upcoming school year that has not commenced, K12 may terminate this Agreement upon written notice prior to the commencement of the upcoming school year.
- 13.5 Termination in the Event of Certain Changes in the Charter or School Policies. K12 may terminate this Agreement effective immediately upon written notice to the Board in the event that the Charter is amended or the Board or the Sponsor adopts or amends a policy, in each case 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 or Sponsor 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.
- 13.6 Change in Applicable Law. If any change in Applicable Law (other than those changes encompassed within Section 13.2) 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.

14. TERMINATION EFFECTS. Effects of termination are as follows:

- 14.1 Outstanding Payments Due. Except as otherwise agreed by the Parties in writing, termination does not relieve the Board of any obligations for payments outstanding to K12 as of the date of termination or other obligations that continue upon termination as provided in this Agreement.
- 14.2 Return of Equipment. Return of K12-provided equipment is mandatory. 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 Board at the Replacement Value. The Replacement Value is the cost to replace the equipment anew. Any property acquired by K12 in the manner prescribed in ORC 3314.0210 shall be distributed in accordance with ORC 3314.015(E) and ORC 3314.074.

- 14.3 Balanced Budget Credits Outstanding. In the event this Agreement expires or is terminated, the Board shall wind up the affairs of the School, including any final audit, in a prompt manner not to exceed thirty (30) days beyond expiration or termination. To the extent there are outstanding Balanced Budget Credits remaining, the Board shall fully exhaust the School's net assets to pay off the outstanding balance of Balanced Budget Credits, provided, however, if any Balanced Budget Credits remain after the School's net assets are fully exhausted, the remaining Balanced Budget Credits shall be fully forgiven. Notwithstanding the foregoing sentence, if the Parties enter into a subsequent agreement commencing on or about the end of the Term for substantially similar Education Products and Services, under substantially similar terms as this Agreement, the Balanced Budget Credits may not be forgiven, but will be treated in accordance with the new contract as mutually agreed by the Parties.
- 14.4 Fees Payable. 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 Board shall owe for all products and services rendered to include the Administrative and Technology Services Fees, Educational Products and Services in accordance with this Agreement for the period up to and including then current Fiscal Year of the termination or expiration, provided all products and services are provided through the end of the current fiscal year. All such fees will be determined on an accrual basis per the School's audited financial statement up to and including the year in which this Agreement terminates or expires.
- 14.5 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 School 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 because of the Board's actions or omissions unless said action or omission is in response to Applicable Law or direction or Sponsor decision which is not caused by the negligent action or omission or the willful misconduct of the Board, and except as action is taken by the Board to terminate this Agreement in accordance with Section 13.1.

15. INTELLECTUAL PROPERTY RIGHTS.

- 15.1 Proprietary Materials. K12 (and its Affiliates and respective licensors) owns all rights, title and interest in intellectual property, including, but not limited to, copyrighted works, curriculum, learning management systems, tangible and intangible education materials and instructional content, trade secrets, know-how, artwork, graphics, software, marketing materials and related documents, the School name, website design and domain numbers and names including those registered by K12 and/or for K12, its Affiliates and the School and other materials created for the School, and any and all customizations and derivative works thereof (collectively, "**K12 Proprietary Materials**").
- 15.2 Limited License to K12 Proprietary Materials. During the Term and for a period of thirty (30) days following the expiration or earlier termination of this Agreement, K12 hereby grants the Board a royalty-free, non-exclusive, non-transferable right and license to access, use and distribute the K12 Proprietary Materials solely in connection with the School operations as contemplated in this Agreement. Upon the termination of such license, the School will cease use of the K12 Proprietary Materials, and will promptly ensure the return of all non-consumable materials to K12 including those in the possession of the Board, School employees and Students.
- 15.3 Rights of K12 in K12 Proprietary Marks. The School acknowledges and agrees that, as between the Board 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, logos, trade dress and trade names including the School name(s), School logo(s) and related

marks and trade dress and the K12 mark and K12 (& Design) as may be featured in Exhibit B and any customizations or derivatives therefore (collectively, “**K12 Proprietary Marks**”). The Board further acknowledges and agrees that it has no intellectual property interest or claims in the K12 Proprietary Marks 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 Section 15.4 or unless expressly agreed to in writing in advance by K12, which K12 may withhold in its sole discretion.

- 15.4 Sub-License of K12 Proprietary Marks. During the Term and for a period of thirty (30) days following the expiration or earlier termination of this Agreement, K12 hereby grants the School a royalty-free, non-exclusive, non-transferable sublicense to use the K12 Proprietary Marks relating to the School solely in connection with the operations of the School as contemplated in this Agreement. Notwithstanding the foregoing, the School 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 School will cease use of the K12 Proprietary Marks.
- 15.5 Limitations on Use of K12 Proprietary Materials and K12 Proprietary Marks by School. The School will use the K12 Proprietary Materials and the K12 Proprietary Marks only as provided in this Agreement. Notwithstanding the foregoing license rights, the School shall not: (i) alter, disassemble, reverse engineer or modify the K12 Proprietary Materials or the K12 Proprietary Marks in any way, or permit any action that would impair the rights of K12 in them, (ii) sublicense any rights under this Agreement without the advance written approval of K12 (which may be held in K12’s sole discretion) or (iii) frame any website owned by K12. The School’s (and Students’) authorized use will not create any right, title, or interest in or to the K12 Proprietary Materials or the K12 Proprietary Marks. K12 will have the right to monitor the quality of the School’s use of the K12 Proprietary Materials and the K12 Proprietary Marks, and the School will notify K12 promptly in writing of any known infringement or of any use of K12’s intellectual property by an unauthorized party. K12 and the School 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 School will contain the appropriate trademark, copyright or other legal notice provided from time to time by K12 and the K12 Proprietary Marks will be subject to additional trademark usage standards developed by K12.
- 15.6 Established Rights. To the extent the Board or its employees has established any rights, title or interest in the School name, trademark or domain name (see Exhibit B), K12 Proprietary Materials or K12 Proprietary Marks, the Board hereby assigns and transfers to K12, its successors and assigns, all of the Board’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. If the Board or its employees incorporate any of their respective intellectual property into the K12 Proprietary Materials, upon incorporation K12 shall be granted a perpetual, royalty-free, worldwide, non-exclusive right and license to use, distribute, modify and create derivative works from such intellectual property.
- 15.7 Publicity/Press Release. K12 may refer to and identify the School in a listing of new, representative, continuing or prior customers 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 School and K12.
- 15.8 License Audit. To the extent reasonably necessary and upon prior written notice, K12 may audit the use of the Educational Products and the Board agrees to cooperate and provide reasonable assistance with such audit. The Board agrees to pay within thirty (30) days of written notification, any fees

applicable to the Board's or its School employees' use of the Educational Products in excess of the license rights granted herein and/or K12 may revoke the related technical support and license(s).

16. LIMITS ON LIABILITY AND DAMAGES.

- 16.1 LIMIT OF LIABILITY. K12'S MAXIMUM LIABILITY AND OBLIGATION TO THE BOARD AND THE BOARD'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.
- 16.2 CONSEQUENTIAL DAMAGES. EXCEPT IN CONNECTION WITH A PARTY'S 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 NOR 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.

17. INDEMNITY.

- 17.1 Indemnification of the Board. K12 will indemnify, defend, and hold harmless the Board and all of its employees, officers, directors, trustees, subcontractors and agents (collectively ("**Board Indemnitees**") from and against 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 School's operations, but excluding any Claims that arise from conduct undertaken in accordance with the Sponsor's, the Board's or the Board Indemnitees' instructions, procedures or written policies, except where such instructions arise from and are in accordance with explicit recommendations formally provided by or on behalf of K12, and (c) act or omission of K12 or K12 Indemnitees (defined below) in connection with School'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 Board, the Board Indemnitees or the Sponsor. 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, ELL or 504 needs, except to the extent caused by K12 and its Affiliates by action or inaction.
- 17.2 Indemnification of K12. The Board will indemnify, defend, save and hold K12 and its Affiliates and all of their respective employees, officers, directors, subcontractors, and agents and their respective successors and permitted assigns (collectively "**K12 Indemnitees**"), harmless against all Claims that may arise out of, or by reason of, any: (i) breach of any expressed representation or warranty, covenant or agreement made or to be performed by the Board (or its designees) pursuant to this Agreement, (ii) noncompliance by or on behalf of the Board with any Applicable Law in connection with School's operations, (iii) act or omission of the Board or Board Indemnitees in connection with the School'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 or K12 Indemnitees, and (d) for any Claims that are related to

the Board's (or its designees') action or inaction with respect to the enrollment, placement and provision of services to any Students with or seeking special education, ELL or 504 needs, except to the extent caused by K12 or its Affiliates.

17.3 Indemnification Procedures

17.3.1. Notice Requirement. Each party seeking indemnification hereunder ("**Indemnified Party**") must give written notice to the other Party charged with indemnifying hereunder ("**Indemnifying Party**") of the existence of a Claim promptly after the Indemnified Party first receives notice of the existence of the potential Claim; provided, however, the 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 Indemnifying Party is materially prejudiced as a result of such delay.

17.3.2. Defense and Settlement of Claims. The Indemnified Party will permit the Indemnifying Party (at the expense of the Indemnifying Party) to assume the defense of any Claim, provided that counsel for the Indemnifying Party who will conduct the defense must be reasonably satisfactory to the Indemnified Party. The Indemnified Party shall cooperate in the defense. At its own expense, the Indemnified Party may also assist in the defense and may assert other defenses or counterclaims, to the extent a conflict of interest between the Parties is not created, provided the Indemnified Party does not settle any Claims without the prior written consent of the Indemnifying Party. Any settlement that would admit any liability on the part of the Indemnified Party shall require such Indemnified Party's prior written consent.

18. 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 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 delegates.

19. INSURANCE.

19.1 Liability Coverage. Each Party will initiate and maintain during the Term, at its own expense, general liability insurance (including contractual liability insurance to cover the respective indemnification obligations herein) for not less than \$5,000,000 (combined single limit for bodily injury and property damage per occurrence and in the aggregate). The Board will initiate and maintain during the Term and for two (2) years thereafter, employment practices liability insurance and school leaders/educators' legal liability/errors and omissions (or similar) insurance, each in limits of no less than \$1,000,000 per claim/aggregate. K12 will initiate and maintain during the Term and for two (2) years thereafter, employment practices liability insurance and errors and omissions insurance, each in limits of no less than \$1,000,000 per claim/aggregate. All such insurance policies shall be placed with reputable and financially secure insurance carriers with A.M. Best & Co. ratings of no less than A-. Within thirty (30) days after the Effective Date and annually thereafter, each Party's required insurance (excluding E&O insurance) will include the other Party (and their Affiliates and respective directors, officers, employees and contractors (each as applicable) as additional insureds. Each Party's general liability and contractual liability insurance will be written to cover claims incurred, discovered, manifested, or made during or after the Term.

19.2 Evidence of Insurance. Each Party will furnish a certificate of insurance evidencing such coverage to the other Party within seven (7) days of 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, including impairment of the limit of liability by twenty-five percent (25%) or more, to such insurance.

- 19.3 Insurance Coverage No Limitation on Rights. A Party's insurance will be its primary coverage and any insurance the other Party may purchase shall be excess and non-contributory for all claims directly related to actions or omissions of the said covered Party. 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.
- 19.4 Workers' Compensation Insurance. Both Parties will initiate and maintain workers' compensation insurance for its respective employees working at or for the School, as required by Applicable Law.
- 19.5 Cooperation. All Parties will comply with any information or reporting requirements required by the other Party's insurer(s), to the extent reasonably practicable.

20. REPRESENTATIONS AND WARRANTIES.

- 20.1 Representations and Warranties of K12. K12 hereby represents and warrants to the Board:
- 20.1.1 Organization and Good Standing. K12 is a company duly organized, validly existing, and in good standing under the laws of the State of Delaware.
- 20.1.2. 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.
- 20.1.3. 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 as applicable in 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.
- 20.1.4. 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 Board, its employees or Students. In addition, the foregoing warranty shall not apply to requirements not expressly included in this Agreement.
- 20.2 Representations and Warranties of the School. The Board hereby represents and warrants to K12:
- 20.2.1. Organization and Good Standing. The Board is a non-profit corporation duly organized, validly existing, and in good standing under the laws of the State.
- 20.2.2. Power and Authority; Authorization; Binding and Enforceable Agreement. The Board has full power and authority to execute and deliver this Agreement and to perform its obligations

hereunder.

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

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

20.2.5. Provision of Authority to K12. The Board 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.

20.2.6. Charter Enforceability and Renewal. The Charter or preliminary Charter Contract is in full force and effect and constitutes a valid and binding obligation of each party thereto, enforceable in accordance with its terms. The Board has delivered a true and complete copy of the Charter (and the Sponsor agreement(s) and MOU's, if any) to K12. The Board will use best efforts to: (a) maintain the Charter in full force and effect during the Term and, (b) to renew the Charter prior its expiration with assistance from K12 which such assistance shall only be provided if this Agreement is in full force and effect for the term of the renewal period of the Charter.

20.2.7. Certain Provisions of the Charter. The Charter will, when approved, authorize the Board to operate the School and receive the federal, state and local education funds identified in this Agreement, as well as other revenues, and otherwise vests the Board with all powers necessary and desirable for carrying out the School operations and other activities contemplated in this Agreement.

21. **OFFICIAL NOTICES.** All notices and other communications required under this Agreement will be in writing and sent to the Parties to the addresses below, which may be changed upon proper written notice. Notices hereunder may be given by: (i) first class U.S. mail postage prepaid, (ii) reputable overnight carrier postage prepaid, or (iii) personal delivery (with written receipt confirming such delivery). Notice will be deemed to have been given three business days after mailing as described in clauses (i) or (ii) of the foregoing sentence or on the date of personal delivery. Electronic mail does not constitute official notice under this Agreement, however, courtesy copies of notices may be sent via e-mail. The addresses of the Parties are as follows:

| | |
|---|---|
| For the Board: Ohio Digital Learning School ATTN: Board President 1745 Indian Wood Circle Maumee, OH 43537 Phone: TBA Email: TBA | With a Copy To: Amy Goodson, Esquire Goodson Law 288 South Munroe Rd. Tallmadge, OH 44278 Phone: (330) 962.6776 <u>Email: Amy@AmyGoodsonLaw.com</u> |
| For K12: K12 Virtual Schools L.L.C. ATTN: President Academics, Policy and School Group 2300 Corporate Park Drive Herndon, Virginia 20171 Phone: 703-483-7000 | With a Copy To: K12 Inc. ATTN: General Counsel 2300 Corporate Park Drive Herndon, Virginia 20171 Phone: 703-483-7000 Email: legal@k12.com |

22. NON-SOLICITATION/NON-HIRING.

- 22.1 **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, a 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.
- 22.2 **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. The Board acknowledges and agrees that no Balanced Budget Credits shall be issued by K12 to cover any penalty, damages or other relief owed by the Board upon a violation of this provision.
- 22.3 **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 22.2.

23. DISPUTE RESOLUTION, VENUE AND GOVERNING LAW.

- 23.1 **Dispute Resolution Procedure.** The Parties agree that they will, within a period not to exceed ten (10) days, attempt in good faith to settle all disputes arising in connection with this Agreement amicably in the ordinary course of business escalating up to the Board President for the School and the Executive Vice President (or their designee) for K12. If a dispute is not resolved in such timeframe, the aggrieved Party may proceed to arbitration and/or invoke any other remedies in accordance with this Agreement.
- 23.2 **Arbitration.** Subject to Section 23.1, if an aggrieved Party elects to arbitrate an unresolved dispute, the Parties shall proceed to mandatory binding arbitration in Lucas County, Ohio, 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 unless disclosure is required under Ohio law. 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 arbitrator.
- 23.3 **Injunctive Relief.** Notwithstanding the foregoing dispute resolution procedures, the Board acknowledges that in the event it breaches any of K12's 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. In its sole discretion, K12 may seek immediate judicial relief as available in law or equity. K12 will be entitled to enforce its intellectual property rights under 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 agreed dispute resolution procedure, will not create any inference regarding the presence or absence of irreparable harm.
- 23.4 **Governing Law.** The laws of the State of Ohio 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.

24. **FORCE MAJEURE.** Notwithstanding any other provisions 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 a Party's reasonable control and unrelated to its fault or negligence.

25. **COORDINATION, EXERCISE OF APPROVAL OR CONSENT RIGHTS.**

25.1 **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 School's legal counsel will consult from time to time with respect to the requirements of Applicable Law, the Charter, and the Board's and the Sponsor's policies as they relate to the Board's operations, provided, however, no such consultation shall be construed as providing legal advice to the other Party.

25.2 **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 discussion.

26. **MISCELLANEOUS.**

26.1 **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.

26.2 **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.

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

26.4 **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.

26.5 **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

26.6 **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.

- 26.7 Successors and Assigns. This Agreement will be binding upon, and inure to the benefit of, the Parties and their respective successors and permitted assigns.
- 26.8 No Third-Party Rights. This Agreement is made for the sole benefit of the Board and K12 and their respective successors and permitted assigns. Except as set forth in Sections 15 and 17 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.
- 26.9 Survival of Termination. All representations, warranties, and indemnities expressly made in this Agreement will survive termination of this Agreement.
- 26.10 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' authorized representatives, having been duly authorized to execute this Agreement which constitutes a valid and legally binding obligation of the Parties, have entered into this Agreement as of the date set forth below.

For and on behalf of

OHIO DIGITAL LEARNING SCHOOL

Signed: Jennifer L Wise
Name: Jennifer L Wise
Position: Chairperson
Date: 4-17-19

For and on behalf of

K12 VIRTUAL SCHOOLS L.L.C.

Signed: Nate Davis
Name: Nate Davis
Position: CEO
Date: April 19, 2019

EXHIBIT A
Educational Products and Services

I. Educational Products and Product-Related Services. During the Term, K12 and its Affiliates will provide or cause to be provided to the Board for the School and its Students and its personnel the Educational Products and product-related services in accordance with the fees published on the then current Product Price List provided to the Board. The Educational Products to be provided in accordance with the terms of the Agreement, as K12 determines in its reasonable discretion are as follows:

A. Online School. For each school year during the Term, K12 will provide a license for and access to proprietary and licensed: (i) curriculum and a 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; and (ii) third party curricula K12 generally offers its managed virtual schools, in each case for such courses required by Applicable Law.

B. Instructional Tools and Materials. Instructional tools and supplies, including without limitation textbooks and multi-media teaching tools. K12 shall identify which materials are durable and must be reclaimed and such materials must be returned as set forth in Section 14.2. K12 will provide instructions and pre-paid shipping materials and labels to facilitate the return of these materials. Any property acquired by K12 in the manner prescribed in ORC 3314.021 shall be considered property of the School

C. Instructional Support. K12 will make available the necessary instructional support as mutually agreed upon in accordance with the Product Price List as the School may require for the Educational Products and related offerings.

D. 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 curriculum 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 as set forth in Section 14.2. K12 will provide instructions and pre-paid shipping materials and labels to facilitate the return of these materials. Any property acquired by K12 in the manner prescribed in ORC 3314.0210 shall be considered property of the School.

E. Testing Support. During the Term, as agreed upon by the Parties K12 may provide, or cause to be provided to the School, equipment, logistics and technical support and related services to assist with State required online testing of Students ("**State Testing**") as reasonably necessary. Invoices for State Testing equipment and personnel provided to the School will be issued after each testing cycle in accordance with the annual School State Testing Price List. State Testing may include:

1. Site Surveys: K12 will physically validate facilities for testing sites and will notify the Board (or its designated School employees) if proposed facilities are found unsuitable. In all rooms where assessments will be administered mobile lab technology will be simulated and tested to include ISP signal quality measurements; optimal placement of network devices will be documented and primary and secondary networks will be identified and deployed as needed.

2. Technical Point of Contact: K12 will provide a technical point of contact to support the School with the State Testing.

3. Onsite Support: Onsite support including set up and tear down of equipment provided as reasonably required by technicians (with national criminal records background check), however, School teachers must be present when onsite tech is in proximity of Students.

4. Troubleshooting. Site monitoring and PC troubleshooting to be provided onsite and/or remote as reasonably required.

II. Administrative Services. During the Term, K12 and its Affiliates will provide or cause to be provided to the Board the Administrative Services. Notwithstanding the forgoing, no Services shall be provided for the purpose of benefiting the Board, the School or any personnel or students for any School year beyond the Term. The Administrative Services to be provided in accordance with the Agreement, as K12 determines in its reasonable discretion are as follows.

A. Educational School Consulting. Propose and implement educational goals, methods of pupil assessment, school policies, school calendar, school day schedule, and age and grade range of pupils to be enrolled in the School. K12's recommendations for the School will be consistent with the Agreement, Applicable Law and the Charter.

B. Contracted Personnel and Support Services. Supervision of all personnel providing Educational Products and Services. Provide support services to include management of School employees including recruiting assistance and hiring recommendations; provided, however the Board's staff or its PEO shall be responsible for performing all reference, certification and background checks and other related services on its personnel and for performing payroll functions or securing of payroll services; negotiation, securing and management of health, retirement and other benefits all of which shall be the Board's or its PEO's responsibility. K12 will work with the Board's staff and its applicable PEO to recommend human resources policies, bonus plans, and strategic plans for staffing, development, and growth. K12 will also provide teacher performance evaluation models to the Board for its employees and recommend and, if approved, carry out effective ways to measure teacher performance in a virtual setting. K12 shall recommend to the Board the appropriate number of staff to employ in order to fulfill the Charter Contract obligation to maintain the student-teacher ratio. Upon approval of that recommendation by the Board, K12 will continuously collaborate with the Board to assure that the Board fulfills its obligation to the Charter Contract.

C. Pupil Recruitment-Related Services:

1. Pupil Recruitment. Recruitment of students in K12's and its Affiliates discretion, including creation, design and preparation of recruitment materials and advertisements; assistance with information sessions and other events via mail, e-mail, print, radio, television, and outdoor advertising. Additionally, recruitment activities include designing school recruitment materials, letterhead, business cards, and logos to create school identity and developing, designing, and maintaining the School website. Recruiting campaigns undertaken may be general awareness or combined campaigns, launched to inform potential students about the School and/or K12 and its Affiliate's programs (including K12 partner schools and programs) in the local area. Information that K12 obtains with respect to leads generated including, but not limited to, statistics, trends and contact information shall be owned by K12 (and its Affiliates).

2. Admissions. Implementation of the School's admissions policy, including management of the application and the Student enrollment process. Communicating with potential students and their families and conducting a random lottery if required.

3. 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 School, its curriculum, the application/enrollment process, instructional materials, etc. Maintain a parent manual and/or student handbook. Conduct exit interviews with select Students and their parents who withdraw in order to learn more about how to improve the program for Students.

4. School Feedback. Obtain feedback on how to improve the School 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.

5. 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.

6. High School Services: As requested and as available, K12 may offer 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 as follows:

a) 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 interest 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.

b) 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.

c) 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.

d) 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.

D. Special Education Students: K12 will assist the Board with approving enrollments for Special Education Students in accordance with related policies and Applicable Law. K12 will provide general education curriculum and upon request, make referrals for related service providers for the Board to consider. K12 will complete an annual IDEA audit for the School.

E. ELL and 504 Students: K12 will assist the Board with its ELL and 504-related obligations by providing translation assistance during enrollment for ELL Students (and their guardians). K12 will provide general education curriculum and upon request, make referrals for services to ELL and 504 Students for the Board to consider. K12 shall conduct an annual review of the School's 504 and ELL services.

F. Insurance. Assist the Board with obtaining general liability insurance or other insurance required with a reputable carrier in accordance with this Agreement, the Charter, (the Lease if applicable) and Applicable Law.

G. Facility Management. As may be applicable, help identify location of the Board's initial or supplemental office Facility(ies) for the School. Together with Board's attorney and designees, assist with negotiating and approving leases, leasehold improvements and lease amendments in accordance with the School budget, provided leases and related documents require Board approval.

H. Business Administration. Administration of business aspects and day-to-day management of School operations to include the following:

1. Consultation, and services as liaison for the Board with the Sponsor, and other governmental offices and agencies.
2. Consultation and advice regarding special education programs, processes, support services and reimbursements.
3. Consistent with other provisions of the Agreement, provide school administrative staff as appropriate.
4. Work with Board's counsel, if any, on legal matters affecting the School.
5. Preparation of forms, operations manuals, handbooks, guides, and policies and procedures as necessary or required by the Charter or Sponsor.
6. Consultation with respect to, and monitoring and oversight of, State reporting systems.
7. Assist School in identifying and applying for grants and other funding opportunities.
8. Assist as requested and as appropriate with the administration of federal entitlement programs (e.g., Title I, I.D.E.A.).
9. Arrange contracts with school districts, education services centers, and professional service providers for special education, testing, and other support services on the School's behalf, where such contract shall be subject to Board approval.
10. Establish and implement policies and procedures to maintain proper internal controls.
11. Provision of regulatory compliance services, including responses to audits.

I. Budgeting and Financial Reporting. Assistance with finance-related administrative duties to include the following:

1. Preparation of a proposed annual budget for the School, including projected revenues, expenses and capital expenditures. The School budget and subsequent modifications shall be adopted in accordance with the process set forth in the Agreement.
2. Upon the Board's request as frequently as monthly, K12 will prepare and submit reports on the School's finances, including detailed statements of all revenues received by the Board for the School (from whatever source) and direct expenditures for Services rendered to the School, in addition to those financial reports required by Applicable Law or the Charter as well as provide the Board with such other information as reasonably necessary and appropriate to enable the Board to monitor performance under the Charter and related agreements, including the effectiveness and efficiency of the School's operations. Requests must be made in writing and the foregoing information will be delivered 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.
3. Subject to any confidentiality obligations imposed on K12 by third parties, provide to the Board for the School or the Sponsor such other information either required by the Sponsor or the Board within a reasonable time following a written request thereof.
4. To the extent applicable, assist in the preparation of required non-profit filings, including form 990 tax returns. Notwithstanding the foregoing, K12 will not be responsible for filing School's Form 1023, but will work with Board's counsel and/or accountant to prepare the application for tax-exempt status, as necessary.

- J. Financial Management. Assistance with financial management to include the following:
1. In accordance with School expenditure authorization policy, K12 will, within commercially reasonable periods of time or as required by any agreement governing same, make payment for all School Expenses, out of the School funds managed by K12.
 2. All School Revenues will be maintained in an account(s) belonging to the Board over which designated representatives of K12 will have signature authority as approved by the Board in writing. The Board will immediately transfer to such account(s) all School Revenue received for the School from any source, as well as any contributions received by the Board for the School.
 3. Perform necessary planning, forecasting, accounting and reporting functions as appropriate.
 4. Assist with and help coordinate in any third-party audit(s) of the School's financials.
- K. Maintenance of Financial and Student Records
1. K12 will maintain and keep the School records and books at the Facility. K12 may maintain electronic or paper copies of records and provide other services elsewhere, unless prohibited by Applicable Law. The Board 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 Board and its employees disclosing to K12 the School student's educational records.
 2. K12 will maintain financial records pertaining to the operation of the School and will retain all such records for a period of seven (7) years (or longer if required by Applicable Law or archival or litigation purposes) from the close of the Fiscal Year to which such books, accounts, and records relate.
 3. K12 will maintain student educational records pertaining to students enrolled in the School in the manner required by Applicable Law and retain such records on behalf of Board at the Facility until this Agreement is terminated, at which time such records will be retained by and become the sole responsibility of Board.
 4. Ensure accessibility of School educational records to the Board, its independent auditor and the State for completion of audits required by Applicable Law. The Parties understand that all School-related financial and Student educational records are the property of the Board.
- L. Student Discipline. Provide necessary information and cooperate with Board (or its designated School employees) 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 and the body of this Agreement.
- M. Annual Reports to Sponsor. Create, design, and arrange for publication and dissemination of an annual report regarding the School.
- N. 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.
- O. Sponsor Policies and Charter Renewal. Assist the Board in complying with all applicable Sponsor policies as reasonably interpreted to apply to the School. Assist the Board with drafting the School's Charter renewal application, including working with the Board to develop any

necessary budgetary and curriculum information. Support Board members in their preparation to present and defend the School's Charter renewal application before the Sponsor.

P. Instructional Property Management. Prepare and submit to the Board (or its designees) 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.

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

R. 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 Board for the School the technology services (the "**Technology Services**") described below. Notwithstanding the forgoing, none of the Technology Services shall be provided for the purpose of benefiting the School or any personnel or students for any school year beyond the expiration or earlier termination of this Agreement.

- A. 24-7 monitoring of production services, i.e., SIMS and the on-line learning management system;
- B. Monitor and analyze system data, to fix production issues as they may arise;
- C. Generate reports on pupil academic performance, attendance and progress;
- D. Seek and secure competitive pricing and centralized purchase discounts for computers, monitors, printers, software and other peripherals for the Charter School;
- E. Train school staff, as deemed appropriate and necessary, on technology systems;
- F. Develop, design, publish, and maintain the School's interactive website;
- G. Install and maintain the School's computer network;
- H. Generate reports;
- I. Develop community tools on the School's website and K12 platform (including moderation functionality, directories, etc.);
- J. Determine hardware configurations (including software and operating systems) for the School's technology needs;
- K. Provide onsite and telephone support for the School administration in troubleshooting system errors, and telephone support for students;
- L. Propose for the School adoption policies and procedures regarding the responsible use of computer equipment and other School property;
- M. Support teachers and School care associates in answering technology-related questions from students, parents, teachers, and administrators;
- N. 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;
- O. Ensure electronic security of student records (through the use of encryption, firewalls, etc.);
- P. Provide a Web-filtering device to ensure that students do not have access to inappropriate materials on the Internet;
- Q. Prepare for, supervise, and implement all system roll-overs at the end of each academic year;

- R. Design and implement inventory management systems with the School's distribution and hardware vendors, as well as reclamation programs, as needed;
- S. Provide online enrollment, registration and placement services;
- T. Provide school email accounts for school employees;
- U. Provide School care and technology support services on the learning management system, computer and software issues;
- V. Oversee changes to the School website to maintain quality assurance and make sure that there are not "version control" problems;
- W. Coordinate security, creative, and content issues pertaining to the website;
- X. Coordinate Web hosting contracts and relationships with vendors across the State as needed;
- Y. Handle troubleshooting issues for the School's website and send issues to the appropriate person or division for resolution; and
- Z. 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



K¹²
Unleash the xPotential®
The xPotential®
A+nywhere Learning System®



Trademark Quality Control – Restricted Content: The Board shall not use the K12 Proprietary Marks in connection with harmful, threatening, unlawful, defamatory, infringing, abusive, inflammatory, harassing, vulgar, obscene, fraudulent, hateful or otherwise offensive material, or in any manner that would be likely to tarnish or adversely impact the reputation, quality, value and goodwill associated with K12 and/or the K12 Proprietary Marks.

