EDUCATIONAL PRODUCTS AND SERVICES AGREEMENT

Between

THE NEW MEXICO VIRTUAL ACADEMY GOVERNING COUNCIL

And

K12 VIRTUAL SCHOOLS LLC
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EDUCATIONAL PRODUCTS AND SERVICES AGREEMENT

Between the
THE NEW MEXICO VIRTUAL ACADEMY GOVERNING COUNCIL
And
K12 VIRTUAL SCHOOLS LLC

This EDUCATIONAL PRODUCTS AND SERVICES AGREEMENT ("Agreement") is made and entered into, by and between The New Mexico Virtual Academy Governing Council, a New Mexico governmental entity (hereinafter the “School”) and K12 Virtual Schools LLC, a Delaware limited liability company (hereinafter “K12”), each a “Party” together the “Parties”, as of the date signed by both Parties, and includes the following exhibits:

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

RE bât i A L S

A. WHEREAS, the mission of the School is to utilize research-based learning and technology applications, combined with teacher/student/parent involvement, to provide a new, innovative model of public charter school education adapted to the needs of elementary, middle and high school students throughout the State of New Mexico.

B. WHEREAS, The New Mexico Virtual Academy Governing Council was granted a charter from the Farmington Municipal Schools to operate a charter school to be called New Mexico Virtual Academy that will utilize K12 products and services in accordance with this Agreement.

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

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

D. WHEREAS, K12 will provide the School with a variety of educational products and services in furtherance of the School’s mission. These educational products and services include providing the K12® Curriculum, online school and learning management systems; teacher training and recruitment; financial and school administration services; technology services for a student account management system and other administrative and technology support services specified in this Agreement and the Charter as applicable to the Program.

E. WHEREAS, it is the intention of both Parties to enter into a long-term relationship in which The New Mexico Virtual Academy Governing Council governs the Program while K12 provides the educational products and services set forth herein, and in which K12 will assure the financial solvency of the Program in accordance with the terms of this Agreement.

NOW, THEREFORE, the Parties mutually agree as follows:

1. DEFINITIONS. For the purposes of this Agreement, capitalized terms used herein but not otherwise defined shall have the meaning ascribed to them in this Section 1 as follows:
1.1. **Affiliates.** An “Affiliate” of K12 is an entity that controls, is controlled by, or under common control with K12, where “control” means the possession, directly or indirectly, of the power to direct or cause the direction of the management policies of an entity, whether through the ownership of securities, by contract or otherwise.

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

1.3. **Council.** The Council is the Governing Council that governs the School.

1.4. **Charter.** The Charter is defined as the authorization provided to the School by the Charter Authorizer pursuant to Applicable Law, permitting the School to operate as a public charter school and entitled to receive public funds, appropriations and other revenues.

1.5. **Charter Authorizer.** The Charter Authorizer is the entity which has been granted the authority by law to permit the School to operate in accordance with the Charter and Applicable Law. The Charter Authorizer is currently the Farmington Municipal Schools in Farmington, New Mexico.

1.6. **Change in Net Assets.** A Change in Net Assets is the difference in a given Fiscal Year between the Program Revenues and Program Expenses as certified by an independent audit in accordance with Generally Accepted Accounting Principles (GAAP).

   1.6.1. A “Positive Change in Net Assets” means Program Revenues exceeded Program Expenses in a given Fiscal Year.

   1.6.2. A “Negative Change in Net Assets” means Program Expenses exceeded Program Revenues in a given Fiscal Year.

1.7. **Facility.** Facility means the real property, compliant with the Americans with Disabilities Act and all other Applicable Law, leased by The New Mexico Virtual Academy Governing Council for the School’s learning center in Farmington, New Mexico for the benefit of students located in the vicinity of Farmington and, as required and agreed in writing, other Student learning and tutoring centers in accordance with the terms herein.

1.8. **Fiscal Year.** The Fiscal Year shall run July 1 through June 30.

1.9. **Net Asset Position.** Net Asset Position means the difference between total assets and liabilities of the Program at the end of a given Fiscal Year as certified by an independent audit in accordance with GAAP.

   1.9.1. A “Positive Net Asset Position” means that total assets of the Program exceed total liabilities of the Program.

   1.9.2. A “Negative Net Asset Position” means that total liabilities of the Program exceed total assets of the Program.

1.10. **Program.** The Program is the Council’s public online educational offering, currently known as New Mexico Virtual Academy.
1.11. Program Revenues. Program Revenues are all revenues and income generated or appropriated for and received by or on behalf of the School as attributed to any Student, the School or the Program which includes, but is not limited to, the following sources as applicable: state and local per-pupil basic education funds and other public school state and local funding; federal funds specific to the Program and/or its students; other funding including, but not limited to, Title I of the Elementary and Secondary Education Act of 1965, as amended (20 U.S.C. §6301 et seq., as amended); State provided facility funding and other income or revenue sources provided by law and obtained by the School and/or K12 which are not specifically excluded herein and all contributions and grants (including but not limited to Charter School Block Grants and other grants as applicable) received by or on behalf of the School and granted as a matter of right and/or practice or through competitive and non-competitive grant processes, which are to assist in the improvement of the Facility, the implementation or maintenance of the Program, and/or School operations. Program Revenues shall not include: (i) income generated by Students individually or collectively via student fundraisers (whether not such fund raiser is School-sponsored), and (ii) private charitable donations made to the School’s general fund; all to the extent K12 is not required to manage, track, report on or otherwise assist with the generation, disbursement or collection of such income or donations.

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

1.13. State. The State is New Mexico.

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

2. K12 RESPONSIBILITIES, EDUCATIONAL PRODUCTS AND SERVICES.

2.1. Description of Educational Products. During the Term, K12 and Affiliates shall license to the School solely for use in the Program, on a non-exclusive, non-assignable, non-sublicensable basis the products and offerings, as described in Exhibit A, to include the K12® curriculum, access to its online school and designated learning management system(s) and/or available third party curriculum, instructional tools and other products and offerings (collectively the “Educational Products”). During the Term, the Parties may agree upon K12 and Affiliates licensing additional products (e.g., new curriculum, supplementary curriculum, and/or educational programs) beyond those listed in Exhibit A. Provision of additional products will be mutually agreed upon and shall be governed by the terms of this Agreement unless otherwise agreed in writing.

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

2.3. Special Education Services. K12 shall assist with the provision of special education and/or related special needs services including but not limited to recruiting teachers and procuring related service providers, to Students with special education needs or any Students who have, will have or require an Individualized Education Program (“IEP”). All special education-related funding from any source for the Special Education Students shall be included within Program Revenues.
2.4. **Place of Performance.** Performance of Services is not required to be rendered at the Facility, unless specifically stated in Exhibit A or for compliance with Applicable Law or the Charter. During the Term, K12 will maintain an administrative office within the State.

2.5. **Standards of K12 Performance.**

2.5.1. **K12 Compliance.** K12 will provide the Educational Products and Services set forth in this Agreement and any amendments hereto in accordance with Applicable Law, the Charter, and Council policies made known to K12 in writing and relating to the Program. Subject to Section 11, K12 shall also comply with changes in Council policies within thirty (30) days of receipt of written notice and a copy thereof; however, Program Policies (as defined in section 3.2) shall be adopted in accordance with Section 3.2.

2.5.2. **Confidentiality of Records.** K12 will maintain the confidentiality of Program personnel, student and other records in accordance with the requirements of Applicable Law. The School recognizes and agrees that for purposes of the Family Educational Rights and Privacy Act of 1974, 20 U.S.C. § 1232g; 34 CFR Part 99 (“FERPA”) and the State open records act, K12 has a legitimate educational interest for purposes of the School disclosing a student’s educational records to K12. The School 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. The Parties agree that, while K12 will be authorized to use student education records to the full extent permitted by Applicable Law, K12 does not possess an ownership interest in such records.

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

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

3. **SCHOOL RESPONSIBILITIES.**

3.1. **Oversight of K12.** The School shall be responsible for monitoring K12’s performance under, and compliance with, the terms of this Agreement in accordance with Applicable Law. The School shall also be responsible for overseeing and managing the Program's quality, operational and financial performance and for relations with the Charter Authorizer. K12 shall reasonably cooperate with such monitoring and oversight.

3.2. **Adoption of Policies.** The Parties acknowledge and agree that in providing the Services, it shall be the responsibility of K12 to recommend various policies for the operation of the Program (“Program Policies”). K12 will implement procedures consistent with such policies to the extent that such policies impact services provided by K12 pursuant to this Agreement, but the School retains ultimate responsibility for adopting policies and for overseeing K12’s implementation. K12 will cooperate with such oversight and policy implementation subject to Section 11. K12 and the School will work collaboratively and in a timely manner on the creation of Program policies that may include, but are not limited to, policies relating to the budget, authorization of expenditures, curriculum, admissions procedures, student conduct at the Facility and online, Facility regulations, school calendars, procedures for resolution of parent or student complaints and disputes between School employees, and the responsible use of computer equipment and other instructional property. Until the foregoing policies are in effect, the Parties agree that K12’s standard policies and practices applicable to the Program shall be used to avoid a lack of any policy and that K12 will provide a copy of the written standard policies and practices to the Council as soon as practicable. The Schoolshall
promptly provide K12 written copies of all policies adopted and must promptly notify K12 in writing of any changes to such policies.

3.3. **School Compliance.** The School will perform its obligations under this Agreement and shall comply with, and govern itself in a manner consistent with, the requirements of Applicable Law, the Charter and the Charter Authorizer’s policies.

3.4. **Lease Compliance.** The School agrees to comply fully and completely with the terms and conditions of the Lease (defined in Section 4.3.5 below) and shall be responsible for any monetary obligations incurred thereunder in accordance with this Agreement.

3.5. **Access to Financial Information.** No less often than monthly during the Term, the School will provide K12 access to, and copies of, all monthly financial statements, bank statements, cash statements, reconciliations and transaction-level detail of each of these.

3.6. **Access to Special Education Records.** The School will provide K12 access to all special education records of Students, to the full extent permitted by Applicable Law.

4. **FINANCIAL MATTERS.**

4.1. **Financial Risks Assumed by K12.** K12 assumes the risks, except as otherwise set forth in this Agreement that its fees may not allow it: i) to operate profitably, and/or ii) to fully recover the amounts invoiced by K12 to the School in accordance with this Agreement. In addition, the Parties agree that the Program will not conclude a Fiscal Year during the Term in a Negative Net Asset Position. Accordingly, the Parties further agree that each of them shall take all reasonable steps and approaches necessary to avoid a negative change in Net Assets or conclude a Fiscal Year in a Negative Net Asset Position during the Term. For each year of the Agreement, provided that there has been no material breach of the Agreement by the School, if the School ends a fiscal year in a Negative Net Asset Position, the Parties agree that K12 will provide sufficient credits (“K12 Fee Credits”) to be applied to K12 invoices to ensure that the Program does not experience a Negative Net Asset Position at the end of said Fiscal Year.

4.2. **K12 Fee Credit Remittances.** Should the Program end 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 K12 Fee Credits in prior years for which a balance remains, the School will reimburse K12 up to the cumulative amount of previously issued K12 Fee Credits, as detailed below:

   a. The total amount of K12 Fee Credits remitted over the Term will not exceed the amount of K12 Fee Credits issued during the Term.
   b. K12 Fee Credits will not be due until the School is in a Positive Net Asset Position, if ever.
   c. In no single Fiscal Year will the amount of any remittance exceed 50% of the then current Fiscal Year Positive Net Asset Position, as determined by an independent audit before the payment of K12 Fee Credits.
   d. If the Program ends the year in a Positive Net Asset Position the amount due K12 will be determined as follows:
      i. Of the first $100,000 or less of the Positive Net Asset Position, the amount due K12 will be 25% of such amount, not to exceed $25,000.
      ii. Of the second $100,000 or less of the Positive Net Asset Position, if any, the amount due K12 will be 50% of such $100,000 or $50,000. The amount due K12 will not exceed $75,000, for the first $200,000 of Positive Net Assets.
      iii. If the Positive Net Asset Position exceeds $200,000 the amount due K12 will be 75% of the amount over $200,000 plus the $75,000 noted in the point immediately following.
above.
e. The payments described above and the 50% limit on the Positive Net Asset Position of the School, is to ensure that the school is will not be put into a Negative Net Asset Position.
f. Finally, at the end of the Term if there is a balance of K12 Fee Credits which have not been remitted such credits will be forgiven by K12, subject to the termination provisions of this Agreement.

4.3. Financial Risk Mitigation. As an inducement for entering into this Agreement and issuing K12 Fee Credits, the School and K12 agree that K12 is willing to assume the financial risks set forth herein, subject to both the K12 Fee Credit remittance (Section 4.2) above and all of the risk mitigation efforts set forth below, each of which are material terms of this Agreement:

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

4.3.2. Final Program Budgets. The School will adopt an annual Program budget for each Fiscal Year during the Term and the Parties agree that K12 will present to the Council (or its authorized delees or subcommittee) a proposed Program budget for each such Fiscal Year. The proposed Program budget will include assumptions provided by K12. The Parties will work in good faith to agree in writing on a final Program budget for the initial year of the Agreement on or before September 1, provided that the Council shall consider the budget proposed by K12 and will act to approve a final Program budget not later than September 30 of the initial school year. In subsequent years, K12 will present a proposed budget for the succeeding Fiscal Year by May 1 and the Council shall consider the budget proposed by K12 and will act to approve a final Program budget not later than thirty (30) days prior to the start of the 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 K12 Fee Credits, if any, up to the amount proposed and reflected in the original budget submission or any proposed modifications to such budget by K12.

4.3.3. Budget Modifications. K12 may submit to the Council proposed modifications to the Program budget to take into account the actual Program student enrollment for such school year, other changes in key assumptions or other changes deemed necessary or appropriate. The Parties will work in good faith to agree in writing on modifications to the final Program budget but, in any event, the Council shall act on any modifications proposed by K12 within thirty (30) days of the proposal thereof.

4.3.4. Variances from Budgets. In the event that the Council, or its employees or designees cause, through their actions or omissions without agreement of K12, the Program to experience a Negative Net Asset Position within the Fiscal Year of more than two percent (2%) above the agreed to amount in writing by K12, if any, then K12 reserves the right to limit the K12 Fee Credits up to such 2% variance.

4.3.5. Lease Terms and Compliance. Within 120 days of the Effective Date, the School shall enter into a lease agreement or other arrangement (“Lease”) for the Facility, which shall be located within the geographic boundaries of the Charter Authorizer, which Lease shall be subject to the reasonable
written approval of K12. All Facility costs shall be a Program Expense. The School agrees that it will not amend, modify, terminate or extend the Lease or enter into a new lease for any facility or location other than the Facility without the prior written consent of K12. Additionally, the School agrees that it will not exercise any rights under the Lease which will have the effect of increasing its obligations, including payment obligations, or decreasing its rights under the Lease. For the avoidance of doubt, in the event the School violates this Section or otherwise breaches the Lease, K12 reserves the right to suspend the issuance of K12 Fee Credits effective immediately beginning with the Fiscal Year that such breach occurred.

4.4. Advances Made by K12 on Behalf of the School. If the available cash receipts of the Program are, from time to time, insufficient to cover payment of Program Expenses on a timely basis, and the School is unable to seek funding from other sources to cover such deficiency, K12 may advance the School such amounts to allow payment of such Program Expenses on a timely basis (collectively hereinafter referred to as “Advances”) provided that, K12 will have no obligation to make any Advances in any Fiscal Year for expenditures: (i) for any items that are 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 beyond the Council’s control and due to events beyond the Council’s control; (ii) for amounts payable to K12 pursuant to this Agreement or any other agreement between K12 or its Affiliates and the School; or (iii) for 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 by the School thirty (30) days after K12 invoices the School for such funds.

4.5. Not Used.

4.6. Financial Reports. The Council may request that K12: (i) prepare and submit reports on the Program’s finances as often as on a monthly basis in addition to those financial reports required by Applicable Law or the Charter; or (ii) provide the Council with such other information as reasonably necessary and appropriate to enable the Council to monitor performance under the Charter and related agreements, including the effectiveness and efficiency of the Program’s operations. All such requests shall be made in writing.

4.7. Program Audit. K12, in collaboration with the School (and, if required by Applicable Law, the Charter Authorizer, will arrange for an independent audit of the Program’s financial statements. The cost of such audit shall be a Program Expense.

4.8. Program Expenses. The School will be responsible for all debts, liabilities, and obligations incurred on behalf of the Program by or on behalf of the Parties (collectively, “Program Expenses”) during the Term of the Agreement. Program Expenses shall be determined in accordance with the budget process set forth herein, will be paid out of the Program Revenues and shall include, but are not limited to, the following Program-related costs:

4.8.1. teacher related expenses;
4.8.2. teacher training related expenses;
4.8.3. offices for administrative staff and related expenses;
4.8.4. Student Support Staff (defined in Section 7.4 below) related expenses;
4.8.5. related services expense for Students with special education needs (as applicable);
4.8.6. state test related expenses;
4.8.7. school community building;
4.8.8. direct mail, printing and related expenses for enrolled Students;
4.8.9. amounts due to K12 and its Affiliates, including interest on Advances and past due amounts;
4.8.10. supplemental curriculum and other academic services as agreed to by K12 in writing;
4.8.11. reasonable legal fees for representation of the Council as it pertains directly to the Program and not for legal representation or related expenses adverse to K12;
4.8.12. insurance including directors’ and officers’ liability insurance, general liability insurance and other Program insurance coverage, as appropriate;  
4.8.13. accounting and reporting not comprehended in K12’s Services to be provided, payroll processing, audit, and/or tax preparation fees directly associated with the Program;  
4.8.14. use, sales, income, property or other taxes, if any;  
4.8.15. fees for required background investigations of School employees;  
4.8.16. Facility and infrastructure related expenses; and  
all other Program related expenses approved in the budget, however, if any total Program 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.

5. **TERM OF AGREEMENT.**

5.1. **Term.** This Agreement will become effective upon the date of full execution by the Parties, for commencement on July 1, 2012 (“Effective Date”) and will terminate on June 30, 2022 (“Initial Term”) unless sooner terminated under the Section 11 of this Agreement. In the event the Charter Authorizer 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 11 herein.

5.2. **Renewal.** Following the Initial Term, this Agreement will automatically extend for successive additional periods of seven (7) year(s) (each such period a “Renewal Term”), unless (a) either Party provides the other with written notice of non-renewal at least two (2) years before the expiration of the then-current Initial Term or Renewal Term (as applicable); or (b) the Agreement is sooner terminated under Section 11. The Initial Term and any Renewal Terms will be referred to collectively as the “Term”. Except and unless the Agreement is terminated by the School pursuant to Section 11.1 of this Agreement, in the event that the Term does not equal at least ten (10) years, the Council shall not enter into any agreement or arrangement with any other third party entity that provides or offers to charter schools or public school districts similar services or products provided pursuant to this Agreement until eighteen (18) months from the last date on which this Agreement was in full force and effect.

6. **PRICING, FEES AND PAYMENT.**

6.1. **Not Used.**

6.2. **Educational Product Prices.** In consideration of the value of the Educational Products provided by K12 (including teaching support) as specified in detail in Exhibit A, the School will pay K12 and its Affiliates for the Educational Products based on the then current national K12 Virtual Academy Pricing for similarly situated schools (“Product Price List”). Notwithstanding anything in this Agreement to the contrary, for each Educational Product set forth in the Product Price List, the School 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 School during the annual budget process. Payment for the Educational Products shall be made in accordance with Section 8 below.

6.3. **Administrative Services Fee.** In consideration of the value of the Administrative Services provided by K12, as specified in detail in Exhibit A, the School agrees to pay K12 and its Affiliates fifteen percent (15%) of the Program Revenues (the “Administrative Services Fee”) for each Fiscal Year of the Agreement. Payment for the Administrative Services Fee shall be made in accordance with Section 8 below.
6.4. Technology Services Fee. In consideration of the value of the Technology Services provided by K12 as specified in detail in Exhibit A, the School agrees to pay K12 and its Affiliates seven percent (7%) of the Program Revenues for the Technology Services (the “Technology Services Fee”) for the each Fiscal Year of the Agreement. Payment for the Technology Service Fee shall be made in accordance with Section 8 below.

6.5. Priority of Payments. Payments from the Program Revenues shall be paid in the following order of priority: (1) Teacher salaries, including applicable payroll taxes, (2) Program Expenses identified in Section 4.8 above to include Advances and fees for Educational Products; (3) Administrative and Technology Service Fees payable to K12 and its Affiliates, including any fees for administrative or technology products and services purchased by the School in addition to those enumerated in Exhibit A; and (4) K12 Fee Credits, if any.

6.6. Business Judgment. The School hereby agrees, in the exercise of its business judgment, that the economic arrangement included herein, including the K12 Fee Credits and fees payable to K12 hereunder are reasonable, necessary, and fair compensation for the Educational Products and Services provided for the Term, particularly in light of the Agreement’s provision requiring K12 to provide assurance of the School’s financial solvency to the extent set forth in Section 4 of this Agreement.

7. PERSONNEL SUPPORTING THE PROGRAM.

7.1. K12 Staff Assigned to the Program. K12 will employ and determine the employment terms for its administrative personnel who may include a School Operations Director (“SOD”) or equivalent administrative staff position, and such other staff as K12 deems necessary to deliver the Educational Products and Services described in this Agreement. The SOD will be K12’s direct liaison to the Council and will be the person responsible for the supervision and direction of K12’s administrative personnel providing Products and Services to the School. Such administrative personnel may be assigned to the Program on a full- or part-time basis. K12 will have the sole authority to select, supervise, compensate and determine compensation, evaluate, transfer, promote, discipline and dismiss its staff members.

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

7.3. School Staff Assigned to the Program. The School shall employ and be ultimately responsible for its staff assigned to the Program (“School Program Staff”). For all School Program Staff, K12 will advertise the position, identify and interview candidates, perform any background checks required by law or requested by the School, and shall present its recommendations and related candidate resume to the School. The School may interview any candidate or candidates provided by K12, or may seek any other candidates on its own. In the event that the School intends to hire a candidate not among those recommended by K12, K12 shall first be afforded an opportunity to interview and screen the candidate and to provide its advice and recommendation concerning the candidate to the School. The School has final and sole authority for all hiring decisions of School Program Staff and such persons hired will be employees of Customer and not of K12. K12 will help the School supervise, discipline and terminate the School Program Staff and K12 will recommend to the council the salary and other compensation to be paid by the School to the School Program Staff. Such activities will be performed by K12 in consultation with the Council. The School Support Staff may be employed on a full- or part-time basis. In accordance with Section 4.8, the School will be responsible for all costs associated with the employment of such staff (including, without limitation,
salaries, benefits, travel and other Program related expenses). “School Program Staff” is defined to mean the Head Administrator/Operations Coordinator, Business Manager, and Special Education Coordinator. The Council will ensure that all School Program Staff shall be State certified or possess the necessary credentials, qualifications, background and conduct checks as required by Applicable Law and/or the Charter. K12 shall have the right but not the obligation to annually recommend to the Council that each of the School Program Staff be retained, terminated, or reassigned for the subsequent academic year. The Council shall not make its decision on retention, termination or reassignment until it has received a written recommendation from K12 or a written communication from K12 that it will not make such a recommendation.

7.3.1 **Head Administrator/Operations Coordinator** – The Head Administrator/Operations Coordinator shall be a licensed school administrator responsible for employing, fixing the salaries of, assigning, supervising, terminating and discharging the School Program Staff and Teachers, all subject to the policies of the Council and subsequent to the recommendations of K12 as set forth in this Agreement. The Head Administrator/Operations Coordinator’s duties will be to work with institutions of higher education to develop a program and complete agreements to offer dual credit courses for Program Students; supervising general operational activities necessary to meet the legal requirements of operating a school in New Mexico that the Council has not delegated to K12 pursuant to this Agreement; manage and operate the Facility, including the supervision of its academic aspects, and ensuring that the student academic performance, progress and attendance at the Facility are compliant with School requirements.

7.3.2 **Business Manager.** The Business Manager’s duties will be to be responsible for all accounting functions of the School. The Business Manager will, in accordance with the School’s expenditure authorization policy, make payment for all Program Expenses, out of the Program funds. All Program funds will be maintained in an account(s) belonging to School. The School will immediately transfer to such account(s) all funds received by the Program from any source, including but not limited to per pupil payments or reimbursements received from the local school district, state, federal and/or any other source, as well as any and all contributions received by the Program. The Business Manager will maintain accurate financial records pertaining to the operation of the Program and will be responsible for the retention of all such records in accordance with Applicable Law.

7.3.3 **Special Education Coordinator** – The Special Education Coordinator’s duties will be to ensure that the School is compliant with all special education and Section 504 requirements, and that students with IEPs are receiving appropriate ancillary services.

7.4. **Complaints About School-Student Support Staff.** If K12 is dissatisfied or concerned about the job performance of a School Program Staff member, K12 will discuss the matter with the Council and may, if it determines it to be appropriate, provide the Council with written notice pursuant to this Agreement and set forth the specific issues and requested action with supporting documentation and the Council shall review such request during a Board meeting and respond in a timely manner to K12.

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

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

7.7. **Background Investigations on School Employees.** As part of its Administrative Services, K12 will help ensure that the School fulfills its responsibilities to: a) conduct criminal background checks required by Applicable Law; and b) maintain evidence that it has performed such actions.

7.8. **Confidentiality.** K12 will permit the School Support Staff to participate in select discussions and meetings in which such persons, employed by K12 for other schools, participate to the extent reasonably appropriate as determined by K12. As a condition precedent to such participation, the School shall require each such person to sign a Confidentiality Agreement in a form determined in K12’s sole discretion and shall provide the original executed agreements to K12.

7.9. **Teachers.** Unless otherwise agreed in writing by K12 and the School, the School will employ all teachers for the Program and will be responsible for all costs associated with their employment (including, without limitation, salaries, benefits, travel, professional development and other Program related expenses). All such costs are Program Expenses, as set forth in section 4.8 of this Agreement. The School will review recommendations that may be made by K12 regarding the hiring or dismissal of teachers by School, but will have the authority to determine in its sole discretion whether any person to be employed by School as a teacher shall be hired or any teacher employed by School shall be dismissed. The School shall also formulate and implement binding decisions on disciplinary matters relating to teachers employed by the School. The School recognizes and agrees that it is solely the employer of the teachers for all purposes under Applicable Law.

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

8.1. **Invoicing and Payment of Fees.** K12 will submit to the School, a detailed invoice for the Educational Products and Services delivered for the prior calendar month. For any fees calculated as a percentage of Program Revenue, such fees will be calculated based upon the approved budget or subsequent updates in effect for the applicable calendar month and will be billed for services rendered on a monthly basis during the Term, even though Program Revenue may be received by the School beyond the expiration of the Term. Payment of K12 fees for Educational Products and Services will not cause the School to fail to meet its other financial obligations, subject, at all times, to section 4.3 of this Agreement.

8.2. **Location of Payment.** All payments made hereunder will be made to K12 (or its designated Affiliate) and at the address set forth above, or such other address provided by K12 in writing.

8.3. **Payment Date and Interest.** All invoices payable to K12 and its Affiliates are due within thirty (30) days from the invoice date. Advances will be due thirty (30) days from the date the advance is made by K12. School agrees to pay interest on overdue Advances at a rate of prime plus two percent (2%), not to exceed fifteen percent (15%) per annum. All other amounts past due and owing by the School to K12 will accrue interest at one and one-quarter percent (1¼ %) per month but not to exceed fifteen percent (15%) per annum on each overdue amount. Interest will not accrue if the School is in a Negative Net Asset Position or if Program revenues are not available for the payment of K12 fees for Educational Products or Services or for
Advances. The School shall not intentionally withhold payments due to K12. In the event the School withholds payments due hereunder, no K12 Fee Credits shall be issued by K12 to cover any late fees due hereunder. In any mediation or arbitration between K12 and the Council for fees provided for in this Agreement, the prevailing party shall be compensated by the losing party for attorneys’ fees to recover costs.

8.4. Taxes. Except as otherwise stated herein, K12 is not responsible for any taxes or third-party charges related to the activities, or the ownership or operation of the Program. Without limiting the foregoing, the School agrees to pay any sales, use, property, excise, value-added, or other similar taxes, if any, imposed by Applicable Law, except for taxes based on K12’s income. For the avoidance of doubt, all fees for the Educational Products and Services set forth herein are exclusive of such taxes.

8.5. Year-End Adjustments. Within thirty (30) days after completion of the School’s audited financial statements for each Fiscal Year, K12 will prepare and submit to the Council a statement 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 such Fiscal Year, including the calculation of such amounts (which calculations will be based upon 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 pursuant to Section 8.1, then the excess amount will be payable to K12; if such total amount is less than the total amount invoiced by K12 pursuant to Section 8.1, then the shortfall amount will be payable to the School. Payment of any excess Service Fees payable to K12 will be due thirty (30) days after the submission of the statement thereof. Reimbursement to the Council of any overpayment of Service Fees will be due thirty (30) days after the submission of the statement thereof, provided, that K12 may elect in its discretion to set-off the amount any such overpayment against any outstanding obligations of the School to K12 or any Affiliate of K12.

8.6. Not used.

8.7. Disputed Amounts. If the School disputes any charge invoiced by K12 (“Disputed Amounts”), the Council (or its authorized designee) must submit a good faith claim in writing regarding the Disputed Amount with documentation reasonably necessary to support the claim no later than one hundred twenty (120) days beyond the then-current Fiscal Year audit regarding the Disputed Amount (the “Dispute Period”). The Dispute Period will be tolled during the period of time, if any, in which the School could not have determined through reasonable diligence that a dispute over a charge existed. If the Council (or its authorized designee) does not submit a documented claim to K12 within such time frame regarding such Disputed Amount, then notwithstanding anything in this Agreement to the contrary, the Council waives all rights to dispute and file any claim thereafter regarding such Disputed Amount (and the School also waives all rights to otherwise claim that it does not owe such Disputed Amount or to seek any credits or reimbursements or other amounts of any kind based upon or relating to such Disputed Amount).

8.8. Audit Rights. With respect to fees payable to K12 under this Agreement, the School shall, upon reasonable prior notice, during the Term and for a period of two (2) years thereafter, make all of the School’s relevant records reasonably available to K12 and its auditors and other representatives at the place or places where such records are normally kept, for inspection during normal business hours. K12 may request to inspect such records no more than twice in any twelve (12) month period. In the event that the results of any such audit or inspection support a final determination that the School owes K12 an amount in excess of Fifty Thousand Dollars ($50,000), the School shall reimburse K12 its reasonable out-of-pocket costs and expenses incurred in conducting such audit or inspection.

9. RELATIONSHIP OF THE PARTIES.
9.1. **Status of the Parties.** K12 is not a division or any part of the School. The School is a body corporate authorized under State law, governed independently by its Council 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 School 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 School. The School, the Council and their employees will in no case represent to third parties, and will whenever needed disclaim to such parties, any ability to bind K12 to any duty imposed by contract, other than this Agreement or as otherwise agreed in writing by K12.

9.2. **Relationship Between the Council and the School.** The School is an entity organized under the laws of the State and governed by its Council. Although many provisions in this Agreement refer to the Program and grant rights or impose obligations on the School, it is the Council that has the final legal responsibility under this Agreement to K12 and the Charter Authorizer.

9.3. **No Related Parties or Common Control; Certain Permitted Participations.** Except as contemplated by this Agreement or any agreement between the Council and any Affiliate with respect to the provision of services described hereunder, K12 will not have any role or relationship with the Council that, in effect, substantially limits the Council’s ability to exercise its rights, including termination rights, under this Agreement. None of the Council’s voting power shall be vested in K12 or its directors, trustees, members, managers, officers, Shareholders, or employees, and none of the voting power of K12’s Council of directors or Shareholders of K12 shall be vested in the Council’s or its Charter Authorizer’s directors, trustees, members, managers, officers, shareholders, or employees. The Council agrees to take such action as is necessary to permit employees or agents of K12 to have a nonvoting presence at the Council meetings, including executive sessions (other than those intended to review or evaluate K12’s performance, this Agreement or legal matters potentially adverse to K12), during the Term of this Agreement, provided that, the inclusion of employees or agents of K12 in executive sessions will not be inconsistent with Applicable Law.

10. **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 or institutions within and outside of the State (“Other Schools”). Notwithstanding the forgoing, K12 will not enter into any agreements with any publicly funded school in San Juan, McKinley, Cibola or Rio Arriba counties in New Mexico by which K12 would provide, during the Term, administrative and technical services for a virtual academy similar in scope to the Agreement between Customer and K12. K12 will be free to provide products and other services to public school districts in those counties.

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

11.1. **Termination for Cause.** The Parties shall use good faith efforts to resolve all disputes relating to this Agreement as set forth in Section 21; however, either Party may terminate this Agreement at any time with ninety (90) days’ prior written notice to the other Party for cause. 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 thirty (30) 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 Customer does not cure the material breach of this Agreement as set forth in this provision K12’s, in its sole discretion, may suspend the issuance of K12 Fee Credits detailed in Section 4 in lieu of terminating this Agreement.

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

11.3. Termination Upon Loss of Program Approval, Charter or Non-Profit Status. This Agreement may be terminated immediately by either Party upon written notice to the other Party: (i) if the Charter Authorizer provides written notice that it has terminated, revoked, or non-renewed the Charter, or (ii) upon a final adverse determination by the highest court in the State that the Program is no longer valid under law or its ruling has the effect of terminating the Program.

11.4. Termination for Failure to Approve Budget. In the event that the Council does not approve a budget or reasonable modifications to a budget within thirty (30) days following the submission of a proposal therefore 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.

11.5. 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 School in the event that the Charter is amended or the Charter Authorizer adopts or amends a policy, 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 Charter Authorizer adopts such a policy in the middle of a school year, K12 agrees to use its best efforts to complete the then current school year without waiving any rights and remedies hereunder.

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

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

12.1. Outstanding Payments Due. Except as otherwise agreed by the Parties in writing, termination does not relieve the School 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.
12.2. **Return of Equipment.** Return of K12-provided equipment is mandatory. As such, all K12 assets including, but not limited to, computers, printers, related equipment and non-consumable materials that may be provided by or on behalf of K12 are to be returned upon the expiration or termination of this Agreement, in accordance with the policies governing the use and reclamation of such materials. Nonetheless, any damages to such equipment and materials or unreturned equipment and materials will be invoiced to the School at the Replacement Value. The Replacement Value is the fair market value cost to replace the equipment.

12.3. **K12 Fee Credits Outstanding.** In the event this Agreement expires or is terminated pursuant to Section 11, to the extent there are outstanding K12 Fee Credits remaining, the School shall fully exhaust its Net Assets to pay off the outstanding K12 Fee Credits, provided however, if any K12 Fee Credits remain after the Net Assets are fully exhausted, the remaining K12 Fee Credits shall be fully forgiven.

12.4. **Fees Owed.** In the event this Agreement terminates as provided for herein, or it expires pursuant to its terms, and unless otherwise agreed by the Parties in writing, the School 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. 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.

12.5.

13. **INTELLECTUAL PROPERTY RIGHTS.**

13.1. **Proprietary Materials.** The School acknowledges and agrees that K12 has the right to license (or sublicense as the case may be) certain intellectual property rights and interests in and to K12 and its Affiliate’s (and respective licensor’s) intellectual property, including but not limited to curriculum, trade secrets, know-how, proprietary data, documents and written materials in any format, artwork, graphics, charts, software, licenses, marketing materials, Program name, website design and domain numbers and names including those registered by K12 and/or for K12, its Affiliates and the Program and other materials created for the Program, and curricular materials and any and all customizations and derivative works thereof (collectively, “**K12 Proprietary Materials**”). The School further acknowledges and agrees that: (i) it has no intellectual property interest or claims in the K12 Proprietary Materials or any customizations and derivative works thereof or any other materials created for use in connection with the K12 Proprietary Materials, (ii) it has no right to use the K12 Proprietary Materials unless expressly agreed to herein by K12, and (iii) K12 and its Affiliates (and respective licensors as the case may be) own all intellectual property rights in and to the K12 Proprietary Materials.

13.2. **Sub-License of K12 Proprietary Materials.** K12 hereby grants the School a royalty-free, non-exclusive, non-transferable sub-license, during the Term and for a period of thirty (30) days following the expiration or earlier termination of this Agreement, to use and distribute the K12 Proprietary Materials solely in connection with the Program operations as contemplated in this Agreement. Notwithstanding the foregoing, the School shall not: (i) modify or otherwise create, or permit third parties to modify or otherwise create, derivative works from or using the K12 Proprietary Materials, (ii) sublicense any rights under this Agreement without the advance written approval of K12, which approval may be withheld by K12 in its sole discretion, or (iii) frame any website owned by K12. Upon the termination of such license, the School will cease use of the K12 Proprietary Materials, and will return all K12 Proprietary Materials to K12 promptly, including those in the possession of the Council, any teachers and School employees participating in the Program, and students participating in the Program.
13.3. **Rights of K12 in K12 Proprietary Marks.** The School acknowledges and agrees that, as between the School and K12, K12 (and its applicable Affiliates) owns and shall maintain all intellectual property rights, title and interest, including any goodwill, in and to K12 and its Affiliate's trademarks, service marks, trade dress and trade names including the Program name(s), Program logo(s) and related marks and trade dress and the K12 mark, K12 (& Design) and as may be featured in Exhibit B (collectively, “**K12 Proprietary Marks**”). The School further acknowledges and agrees that it has no intellectual property interest or claims in the K12 Proprietary Marks any customizations and derivative works thereof or any other materials created for use in connection with the K12 Proprietary Marks and has no right to use the K12 Proprietary Marks except in the limited capacity as set forth in Section 13.4 or unless expressly agreed to in writing in advance by K12, which agreement K12 may withhold in its sole discretion.

13.4. **Sub-License of K12 Proprietary Marks.** K12 hereby grants the School a royalty-free, non-exclusive, non-transferable sublicense, during the Term and for a period of thirty (30) days following the expiration or earlier termination of this Agreement, to use the K12 Proprietary Marks relating to the Program solely in connection with the operations of Program as contemplated in this Agreement. Notwithstanding the foregoing, the 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.

13.5. **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 also agrees not to not alter, copy, disassemble, reverse engineer or modify the K12 Proprietary Materials and/or the K12 Proprietary Marks in any way, nor will the School act or permit action in any way that would impair the rights of K12 in them. The School's authorized use will not create any right, title, or interest in or to the K12 Proprietary Materials or the K12 Proprietary Marks any customizations and derivative works thereof or any other materials created for use in connection with the foregoing. K12 will have the right to monitor the quality of the 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 thereof and of any use of K12's Intellectual Property (including the K12 Proprietary Materials, and/or the K12 Proprietary Marks) by an unauthorized party, other than set forth or contemplated by this Agreement, of which the School becomes aware. 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 will be subject to additional trademark usage standards developed by K12 and modified from time to time by K12 with advance notice in writing. Moreover, to the extent the School has established any rights, title or interest in the K12 Proprietary Materials or K12 Proprietary Marks, the School hereby assigns and transfers to K12, its successors and assigns, all of the School's right, title and interest in and to such intellectual property, together with the goodwill of the business symbolized by any of the K12 Proprietary Marks and the right to sue and collect damages and/or profits for past infringements of the such marks.

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

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

14.1. **Limit of Liability.** The maximum liability and obligation of one party to the other and each party’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 PROVIDED, HOWEVER, THAT THIS LIMITATION SHALL NOT APPLY WITH RESPECT TO ANY OF THE INDEMNIFICATION OBLIGATIONS SET FORTH IN SECTION 16 OF THIS AGREEMENT, OR TO THE OBLIGATIONS SET FORTH IN SECTION 20.2 OF THIS AGREEMENT TO ANY OBLIGATIONS OF THE SCHOOL SET FORTH IN THIS AGREEMENT REGARDING ANY PAYMENTS TO K12.

14. CONSEQUENTIAL DAMAGES. EXCEPT IN CONNECTION WITH ITS INDEMNITY OBLIGATIONS EXPRESSLY SET FORTH HEREIN, NEITHER PARTY SHALL BE LIABLE FOR ANY INDIRECT, EXEMPLARY, PUNITIVE, SPECIAL, INCIDENTAL OR CONSEQUENTIAL DAMAGES, INCLUDING, WITHOUT LIMITATION, ANY LOST SAVINGS, LOST PROFITS, LOST SALES, BUSINESS INTERRUPTIONS, DELAY DAMAGES, DAMAGES FOR THIRD PARTY CLAIMS, LOST OR DESTROYED DATA, EVEN IF THAT PARTY HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. NEITHER OCCASIONAL SHORT-TERM INTERRUPTIONS OF SERVICE OR PRODUCTS, WHICH ARE NOT UNREASONABLE UNDER COMPARABLE INDUSTRY STANDARDS 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 REND K12 IN BREACH OF THIS AGREEMENT.

15. ASSIGNMENT. Except as otherwise provided in this Agreement, neither Party may assign or delegate any rights or obligations under this Agreement without the prior written consent of the other Party. Except as prohibited by Applicable Law, K12 may assign all of its rights and obligations under this Agreement to any Affiliate. K12 may delegate the performance of its duties hereunder to any person or entity but K12 shall be responsible for the performance, in accordance with the terms of this Agreement, of any services performed by its delegees.

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

16.1. Indemnification of the School. K12 will indemnify, defend, and save and hold the School and all of its employees, officers, directors, trustees, subcontractors, and agents, their respective successors and permitted assigns, harmless against any and all claims, demands, suits, or other forms of liability including without limitation costs and reasonable attorneys’ fees (each a “Claim”) that may arise out of, or by reason of, any (a) breach of any expressed representation or warranty, covenant or agreement made or to be performed by K12 pursuant to this Agreement, (b) noncompliance by K12 with any Applicable Law in connection with the School’s operations, but excluding any Claims that arise from conduct undertaken in accordance with the Charter Authorizer’s, the School’s or the Council’s instructions, procedures or written policies, except where such instructions arise from and are in accordance with specific advice or explicit recommendations formally provided by K12, and (c) act or omission of K12 or any of its employees, officers, directors, trustees, subcontractors or agents in connection with 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 School or the Council. K12 and its Affiliates shall not be liable for any Claims related to the
enrollment, placement and provision of services to any Students with special education needs.

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

16.3. Indemnification Procedures.

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

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

17. INSURANCE.

17.1. Liability Coverage. Each Party will initiate and maintain for a period of two (2) years after the expiration or termination of this Agreement, at its own expense, comprehensive professional and general liability insurance, including product liability, contractual liability (applicable to the indemnification obligations of the said Party set forth herein), and advertising injury insurance, with reputable and financially
secure insurance carriers to cover the operations of the said Party, for not less than $5,000,000 (combined single limit for bodily injury and property damage per occurrence and in the aggregate). Such insurance required by the School (excluding D&O and E&O insurance) will include K12 and its Affiliates and their respective trustees, directors, officers, employees, contractors and agents as additional insureds within thirty (30) days after the date of this Agreement. Such insurance required by K12 (excluding D & O and E & O insurance) will include the School and its respective trustees, directors, officers, employees, contractors and agents as additional insureds within thirty (30) days after the date of this Agreement. Each Party shall also initiate and maintain for a period of two (2) years after the expiration or termination of this Agreement, at its own expense, employment practices liability insurance with reputable and financially secure insurance carriers to cover the operations of the said Party, for not less than $1,000,000 per claim and in the aggregate. The School shall also initiate and maintain for a period of two (2) years after the expiration or termination of this Agreement, at its own expense, fidelity and crime insurance with limits of liability not less than $500,000 with reputable and financially secure insurance carriers. All of each Party’s insurance will be written to cover claims incurred, discovered, manifested, or made during or after the Term.

17.2. Evidence of Insurance. Each Party will furnish a certificate of insurance evidencing such coverage to the other Party within thirty (30) days after the effective date of this Agreement. Thereafter, the Parties will endeavor to provide thirty (30) days’ advance written notice to the other Party of any cancellation or material adverse change to such insurance.

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

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

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

18. REPRESENTATIONS AND WARRANTIES.

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

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

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

18.1.3. Professional Services. K12 warrants that the Services will be performed in a professional and workmanlike manner in accordance with commercially reasonable industry standards, and deliverables, if any, will materially comply with the agreed upon functional specification set forth in the applicable Exhibit A, if used in a manner consistent with the conditions for which it was
designed. THE FOREGOING WARRANTIES MADE BY K12 IN THIS SECTION (AND ITS SUBSECTIONS) ARE IN LIEU OF ALL OTHER WARRANTIES, EXPRESS, IMPLIED, STATUTORY OR OTHERWISE, INCLUDING, BUT NOT LIMITED TO, ANY IMPLIED WARRANTIES OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE AND K12 AND ITS AFFILIATES MAKE NO GUARANTEES AS TO THE RESULTS OR ACHIEVEMENTS OF THE STUDENTS. WITHOUT LIMITING THE FOREGOING, K12 MAKES NO GUARANTEE AND SHALL NOT BE LIABLE FOR NON-ACCESSIBILITY OF THE K12 WEBSITE, END-USER CONNECTION SPEED OR CONNECTIVITY PROBLEMS REGARDLESS OF THE REASON.

18.1.4. Non-Conformities. The foregoing warranties shall not apply to defects or non-conformities: (a) resulting from software, hardware or interfacing not supplied by K12, its Affiliates or authorized contractors; (b) resulting from inadequate or improper maintenance, modification or usage by the School, its employees or Students; or (c) where there has been improper site preparation or site environment by the School, its employees or Students. In addition, the foregoing warranty shall not apply to requirements not expressly included in this Agreement.

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

18.2.1. Organization and Good Standing. The School is a legal entity duly organized, validly existing, and in good standing under the laws of the State.

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

18.2.3. Authority Under Applicable Law. The School, in the exercise of its management responsibilities has the authority under Applicable Law to: (i) contract with K12 to obtain the Administrative Services and Technological Services and all other programs and services under this Agreement; (ii) to execute, deliver, and perform this Agreement; and (iii) to incur the obligations provided for under this Agreement.

18.2.4. Non-Contravention. The execution, delivery and performance of this Agreement by the School will not constitute, under any other agreement, note, lease, or other instrument to which the Council 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 any other party thereto.

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

18.2.6. Charter Enforceability and Renewal. The Charter is in full force and effect and constitutes a valid and binding obligation of each party thereto, enforceable in accordance with its terms. The Council has delivered a true and complete copy of the Charter (and the School-Charter Authorizer agreement(s), if any) to K12. The Council will use best efforts to maintain the Charter in full force and effect during the Term and to renew the Charter upon its expiration with assistance from K12.
18.2.7. Certain Provisions of the Charter. The Charter will, when approved, authorize the School to operate and receive the federal, state and local education funds identified in this Agreement, as well as other revenues, and otherwise vests the Council with all powers necessary and desirable for carrying out the Program and other activities contemplated in this Agreement. The Council will use its best efforts to seek approval from the Charter Authorizer to extend the Program to additional grade levels and to increase the authorized enrollment of the Program, unless doing so would be contrary to the Council’s fiduciary duties.

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

For K12: With Copy To: 
K12 K12
ATTN: EVP of School Services ATTN: General Counsel
2300 Corporate Park Drive, Suite 200 2300 Corporate Park Drive, Suite 200
Herndon, Virginia 20171 Herndon, Virginia 20171
Fax: (703) 483-7330 Fax: (703) 483-7496

For School: 
Larry Palmer
6320 Foothills Dr
Farmington, NM 87402-4940

Fax: 

20. NON-SOLICITATION/NON-HIRING.

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

20.2. Unpermitted Solicitation/Hiring Remedies. In the event of such unpermitted use or engagement by a Party or its related company of such consultant or employee whether directly or indirectly, in contravention of the clause immediately above, the other Party, at its option, may seek receipt of a sum equivalent to one hundred percent (100%) of that employee’s base starting salary with the new employer, or seek any legal or
equitable relief against such actions including, but not be limited to, immediate injunctive relief in any court of competent jurisdiction. The School acknowledges and agrees that no K12 Fee Credits shall be issued by K12 to cover any penalty, damages or other relief owed by the School upon a violation of this provision.

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

21. DISPUTE RESOLUTION, VENUE AND GOVERNING LAW.

21.1. Dispute Resolution Procedure. The Parties agree that they will attempt in good faith to settle any and all disputes arising in connection with this Agreement amicably in the ordinary course of business. If a dispute is not resolved in the ordinary course of business, the aggrieved Party will submit its dispute in writing to the Council’s authorized designee and to the direct supervisor of the SOD (currently the Regional Vice President) of K12. If the dispute is not resolved after ten (10) calendar days from the receipt of such written notice, then the Parties shall escalate the matter to the Council Chair and the EVP of School Services for K12. The dispute resolution procedures described herein will be deemed complete upon the earlier to occur of the following: (i) the Parties mutually agree in writing to discontinue the dispute resolution procedures; and (ii) the relevant dispute is not resolved within the time periods provided under.

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

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

21.4. Governing Law. The laws of the State of New Mexico will govern this Agreement, its construction, and the determination of any rights, duties, and remedies of the Parties arising out of or relating to this Agreement.

22. MISCELLANEOUS.

EDUCATIONAL PRODUCTS AND SERVICES AGREEMENT
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22.1. **Coordination; Exercise of Approval or Consent Rights:**

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

22.1.2. **Approval or Consent Rights.** In performing services and its other obligations under this Agreement, or in exercising its rights under this Agreement, including granting or withholding any consents or approvals or making any requests of the other Party, each Party must act reasonably (including as to the timing of its actions) except to the extent that this Agreement provides that it may act as it determines “in its sole judgment” or “its sole discretion,” or words to that effect, in the applicable provision. Whenever it is provided in this Agreement that the Parties will or may agree as to a certain matter, each Party will have the right to agree or disagree in its sole discretion following good faith discussions.

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

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

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

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

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

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

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

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

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

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

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

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

* * * * * * *

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

For and on behalf of

THE NEW MEXICO VIRTUAL ACADEMY GOVERNING COUNCIL

Signed: ________________________  Signed: ________________________

Name: ________________________  Name: ________________________

Position: ________________________  Position: ________________________

Date: ________________________  Date: ________________________

EDUCATIONAL PRODUCTS AND SERVICES AGREEMENT
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EXHIBIT A
Curriculum and Services

I. Educational Products, Pupil Recruiting and Product Related Services: During the Term, K12 and its Affiliates will provide or cause to be provided to the School, its Students and its personnel, without regard to any third party agreements between the School and other entities, the following Educational Products and related services either directly or through consultation and/or oversight in accordance with the fees published on the Product Price List provided to the Council:

1. Online School: For each school year during the Term, K12 will provide a license for and access to: (i) the K12® Curriculum and associated learning management system for grades 6 through 8 (which grades may be extended by the Parties in writing subject to all of the terms of this Agreement), for those core subject areas required by the State (Language Arts, Math, Science, History) as well as other courses offered or required for these grades (Art, Music and foreign language); (ii) K12® Curriculum and associated learning management system for grades 9 through 12 (provided, however, that during the first Fiscal Year of the Term, grade 12 will not be provided), in each case in Language Arts, Math, Science and History in addition to electives per the K12 course catalogue; and (iii) any third party curriculum K12 generally offers its managed virtual schools, in each case for such courses required by Applicable Law.

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

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

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

   b. Pupil Recruitment. Recruitment of students in K12’s and its Affiliates discretion, including creation, design and preparation of recruitment materials and advertisements; assist with information sessions and other events via mail, e-mail, print, radio, television, and outdoor advertising. Additionally recruitment includes designing school recruitment materials, letterhead, business cards, and logos to create school identity and developing, designing, and maintaining the 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.

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

   d. Family Services. Plan and arrange school orientation sessions. Assist with the design and implementation of parent orientation sessions. Field and respond to incoming calls, letters, faxes, and e-mails received by K12 about the Program, its curriculum, the application/enrollment process, instructional materials, etc. Help facilitate the creation of a parent manual and/or student handbook.
e. **Program Feedback.** Obtain feedback on how to improve the Program and curriculum, as appropriate. Create methods for Students, their parents, and teachers to submit comments and suggestions; implement improvements where K12 deems them to be valuable.

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

g. **High School Services:** As requested and as available, K12 may offer the following for High School students:

   i. **Social Networking –** Access to a monitored, private, virtual social community for students, parents and teachers to communicate and connect. Students may benefit from exchanging ideas and information with students around the country using the K12 program and gaining a sense of connectedness within the boundaries of a contained but national community. Through the community, the Program could also have its own sub-community to generate school pride as well as provide its own content and clubs, a school calendar, announcements, and information on upcoming activities and outings.

   ii. **Counseling Tools –** Counseling tool(s) to support college, career planning and exploration.

II. **Administrative Services:** During the Term, K12 and its Affiliates will provide or cause to be provided to School without regard to any third party agreements between the School and other entities the administrative services (the “Administrative Services”) either directly or through consultation and/or oversight set forth below. K12 will provide the Administrative Services from K12’s offices in Herndon, Virginia and elsewhere, as deemed necessary in K12’s discretion.

   1. **Educational Program Consulting.** Propose educational goals, curriculum, methods of pupil assessment, admissions policy, student recruitment policy, school calendar, school day schedule, and age and grade range of pupils to be enrolled in the Program. K12’s recommendations for the Program will be consistent with Applicable Law and the Charter.

   2. **Personnel Assistance.** Supervision of all K12 personnel providing Educational Products, Administrative Services, and Technology Services. Support for School Program Staff and Teachers to include assistance with recruiting; hiring recommendations; reference, certification and background checks (excluding performing payroll functions or securing of payroll services; negotiation, securing and management of health, retirement and other benefits which shall be School’s responsibility). Recommend human resources policies, bonus plans, and strategic plans for staffing, development, and growth. Provide teacher performance evaluation models to School and recommend and, if approved, carry out effective ways to measure teacher performance in a virtual setting.

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

   4. **Facility Management.** Identify location of the School’s initial or supplemental Facility(ies) for the Program. Together with School’s attorney and designees, assist with negotiating and approving leases, leasehold improvements and lease amendments.
5. **Business Administration.** Administration of selected business aspects of the Program. These services shall include:
   a. Consultation, and services as liaison for School with the Charter Authorizer, and other governmental offices and agencies;
   b. Consultation and advice regarding special education programs, processes, support services and reimbursements;
   c. Consistent with other provisions of the Agreement, provide school administrative staff as appropriate;
   d. Work with School’s counsel, if any, on legal matters affecting the Program;
   e. Preparation of forms, operations manuals, handbooks, guides, and policies and procedures as necessary or required by the Charter or Charter Authorizer;
   f. Consultation with respect to, and monitoring of, state reporting systems;
   g. Assist School in identifying and applying for grants and other funding opportunities;
   h. Assist with the administration of federal entitlement programs (e.g., Title I, I.D.E.A.);
   i. Arrange contracts with school districts, education services centers, and professional service providers for special education, testing and other support services on School’s behalf;
   j. Provision of such other administrative and consulting services as agreed in writing by the Parties from time to time.
   k. Provision of regulatory compliance services, including responses to audits.

6. **Budgeting and Financial Reporting.**
   a. Preparation of a proposed annual budget for the Program, including projected revenues, expenses and capital expenditures. The Parties will work in good faith to agree in writing on a final Program budget for the initial year of the Agreement on or before September 1, provided that the Council shall consider the budget proposed by K12 and will act to approve a final Program budget not later than September 30 of the initial school year. In subsequent years, K12 will present a proposed budget for the succeeding Fiscal Year by May 1 and the Council shall consider the budget proposed by K12 and will act to approve a final Program budget not later than thirty (30) days prior to the start of the Fiscal Year. On an annual basis, K12 will submit to School any proposed modifications to the annual budget for that school year to take into account the actual student enrollment for such school year and other changes in key assumptions. K12 shall also submit to School from time to time any other proposed modifications to the annual budget as K12 shall deem to be necessary or desirable, to be acted upon by School consistent with Applicable Law and this Agreement.
   b. To the extent applicable, assist in the preparation of required budgeting and forecasting filings.

7. **Financial Planning.**
   a. Perform necessary planning, forecasting, and budgeting functions as appropriate.

8. **Maintenance of Student Records.**
   a. K12 may maintain electronic or paper copies of records and provide other services elsewhere, unless prohibited by Applicable Law. The School 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 School disclosing to K12 the Program student’s educational records.
   b. K12 will maintain accurate student records pertaining to students enrolled in the Program in the manner required by Applicable Law, and retain such records on behalf of School until this Agreement is terminated, at which time such records will be retained by and become the sole responsibility of School.
   c. Ensure accessibility of Program records to School. The Parties understand that all
educational records, regardless of source of origin, are the property of School. The Parties agree to maintain, retain, disclose, and withhold Program records as may be required and in the manner required by Applicable Law.

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

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

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

12. **Charter Authorizer Policies and Charter Renewal.** Assist School in complying with all applicable Charter Authorizer policies as reasonably interpreted to apply to the Program. Assist School with drafting the Program’s Charter renewal application, including working with School to develop any necessary budgetary and curriculum information. Prepare Council members to present and defend School’s Charter renewal application before the Charter Authorizer.

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

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

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

**III. Technology Services:** During the Term, K12 and its Affiliates will provide or cause to be provided to School without regard to any third party agreements between the School and other entities the technology services (the “Technology Services”) described below either directly or through consultation and/or oversight. K12 will provide the Technology Services at School’s Facility (defined below) and from K12’s offices, as deemed necessary and in K12’s discretion.

1. 24-7 monitoring of production services, i.e., SAMS and the on-line learning management system;
2. Monitor and analyze system data, to fix production issues as they may arise;
3. Generate reports on pupil academic performance, attendance and progress;
4. Seek and secure competitive pricing and centralized purchase discounts for computers, monitors, printers, software and other peripherals for the Charter School;
5. Train school staff, as deemed appropriate and necessary, on technology systems;
6. Develop, design, publish, and maintain the Program’s interactive website;
7. Install and maintain the Program’s computer network;
8. Generate reports;
9. Develop community tools on the school’s website and K12 platform (including password protected threaded discussion and message Councils, moderation functionality, directories, etc.);
10. Determine hardware configurations (including software and operating systems) for the school’s technology needs;
11. Provide onsite and telephone support for the Program administration in troubleshooting system errors, and telephone support for students;
12. Propose for the School adoption policies and procedures regarding the responsible use of computer equipment and other school property;
13. Support teachers and School care associates in answering technology-related questions from students, parents, teachers, and administrators;
14. Install software to generate master image of computer configurations for teachers, administrators, and students in order to standardize the user experience and lower costs and turn-around time for implementation and troubleshooting;
15. Ensure electronic security of student records (through the use of encryption, firewalls, etc.);
16. Provide a Web-filtering device to ensure that students do not have access to inappropriate materials on the Internet;
17. Prepare for, supervise, and implement all system roll-overs at the end of each academic year;
18. Design and implement inventory management systems with the school’s distribution and hardware vendors, as well as reclamation programs, as needed;
19. Provide online enrollment, registration and placement services;
20. Provide school email accounts for school employees;
21. Provide School care and technology support services on the learning management system, computer and software issues;
22. Oversee changes to the Program website to maintain quality assurance and make sure that there are not “version control” problems;
23. Coordinate security, creative, and content issues pertaining to the website;
24. Coordinate Web hosting contracts and relationships with vendors across the State as needed;
25. Handle troubleshooting issues for the school’s website and send issues to the appropriate person or division for resolution; and
26. 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

EDUCATIONAL PRODUCTS AND SERVICES AGREEMENT
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