

EDUCATIONAL PRODUCTS AND SERVICES AGREEMENT

Between the
School Board of Sarasota County, Florida
and
K12 Florida LLC

This EDUCATIONAL PRODUCTS AND SERVICES AGREEMENT (“Agreement”) is made and entered into, by and between the Customer identified below (“Customer”) and K12 Florida LLC (“K12”) as of the date signed by K12, and includes the following exhibits:

- a. Exhibit A (Products and Services)
- b. Exhibit B (K12 Proprietary Marks)
- c. Exhibit C (K12 Current Pricing for Florida Distance Learning Educational Program)

Capitalized terms used herein but not otherwise defined will have the meaning ascribed to them in Section 5.

Customer Information	K12 Information
Contact <u>Deborrah Metheny</u>	Account Rep: <u>Patty Betoni</u>
School/District <u>Sarasota County Schools</u>	
Phone <u>941-927-9000</u>	Phone <u>407-451-4662</u>
Street/PO <u>1960 Landings Blvd.</u>	Street/PO <u>2300 Corporate Park Dr.</u>
City <u>Sarasota</u>	City <u>Herndon</u>
State <u>Florida</u>	State <u>Virginia</u>
Zip <u>34231</u>	Zip <u>20171</u>
Email <u>deborrah_metheny@sarasota.k12.fl.us</u>	E-mail <u>bcarpenter@k12.com</u>
Entity Type: <input type="checkbox"/> SEA <input checked="" type="checkbox"/> LEA <input type="checkbox"/> Non-profit Charter School <input type="checkbox"/> Private School <input type="checkbox"/> Other:	
Educational Program Type: <input checked="" type="checkbox"/> Distance Learning Educational Program. <input type="checkbox"/> Distance Learning with Supplemental Classroom-based Instruction Educational Program <input type="checkbox"/> Classroom-based Program.	
Name of Program or School in which products and services will be used: <u>School District of Sarasota County Virtual School (7001)/Office of School Choice</u>	
Billing Contact Information	
Billing Name <u>Maryann Evans</u> <u>Finance Department</u>	Billing <u>Sarasota County Schools</u> Email <u>maryann_evans@sarasota.k12.fl.us</u>
Billing Address <u>1960 Landings Blvd.</u>	Billing City <u>Sarasota</u>
Billing State <u>Florida</u>	Billing Zip <u>34231</u>
By signing below, I accept the Products and Services and prices herein and have read and understood, and agree to be bound by, all terms and conditions of this Agreement, as well as other applicable K-12 agreements or policies which are expressly incorporated therein by reference. I am a duly authorized officer, partner or principal with full authority to enter into this Agreement on Customer’s behalf.	
Customer	K12 Florida LLC
By: _____	By: _____
Name & Title: <u>Shirley Brown, School Board Chair</u>	Name & Title: _____
Date: _____	Date: _____

1. K12 Products and Services

- 1.1. Description of Educational Products. For each school year during the Term, K12 and Affiliates shall license to Customer, for use in its Program, on a non-exclusive, non-assignable basis, the K12® curriculum (a/k/a Online School or OLS/learning management system), instructional tools and other products for an Educational Program, as described in Exhibit A, during the Term of this Agreement (the "Educational Products"). During the Term, the parties may agree that K12 and Affiliates shall license additional Products (e.g., additional curriculum, supplementary curriculum, and/or educational programs) beyond those listed in Exhibit A, in the event that Customer has sufficient funds to purchase the additional Products or K12 agrees to otherwise provide. Provision of additional Products will be agreed to in writing as an addendum to this Agreement and shall be governed by the terms of this Agreement.
- 1.2. Description of Services. K12 and Affiliates shall provide Customer with the services, as described in Exhibit A, during the Term of this Agreement (the "Services"). During the Term, the parties may agree that K12 and Affiliates shall provide Customer with additional Services beyond those listed in Exhibit A, in the event that Customer has sufficient funds to purchase the additional Services or K12 agrees to otherwise provide. K12's provision of additional Services will be agreed to in writing as an addendum to this Agreement and shall be governed by the Terms of this Agreement.
 - 1.2.1. Place of Performance. Performance of Services is not required to be rendered on Customer premises, unless specifically stated in Exhibit A.
- 1.3. Standard of K12 Performance.
 - 1.3.1. General. It is understood by both parties that the services provided by K12 under this Agreement, will include but not be limited to those deemed necessary to satisfy the requirements of Applicable Law. Customer agrees that it is the Local Educational Agency and that K12 has no responsibility for the provision of special education, the creation, implementation or provision of individualized education programs, the provision of any reasonable accommodations or any services of any nature under the Individuals with Disabilities Education Act (IDEA), the Americans with Disabilities Act (ADA), section 504 of the Rehabilitation Act or any similar law, whether federal, state or local. During the Term of this Agreement, K12 will discuss, formulate and make adjustments and accommodations in furtherance of Individual Education Plans (IEPs) or reasonable accommodations established by Customer, but solely to the extent that K12 may do so without incurring additional direct or indirect costs, unless K12 is otherwise required to do so by law.
 - 1.3.2. Confidentiality of Records. K12 will maintain the confidentiality of personnel, Student and other records in accordance with the requirements of Applicable Law. Customer 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 Customer disclosing to K12 the Student's educational records.
 - 1.3.3. Licensure or Other State Requirements. Except as otherwise provided in this Agreement all personnel performing Administrative Services for K12 on behalf of Customer must comply with all applicable licensure or other requirements of the State and any regulations promulgated there under applicable to persons who perform such services.

2. Customer Responsibilities

- 2.1. Payment. For the Educational Products and Services, Customer shall compensate K12 at the rates and conditions set forth in this Agreement. It is Customer's responsibility to pay for all costs and expenses provided under this Agreement. The compensation provided for herein constitutes full consideration for the Products and Services.
- 2.2. Operation of Program. Customer shall be responsible for all administrative duties of the Program not specified as a K12 duty under this Agreement
- 2.3. Enrollment Approval. Customer will be required to approve all enrollments in the Program prior to Products and Services being provided under this Agreement. To be eligible, Students must meet requirements of Florida Statute (F.S.) 1002.45, which includes Florida residency.

3. Term of Agreement

- 3.1. Initial Term. This Agreement will become effective on July 1, 2010 ("Effective Date") and will end on June 30, 2011 unless sooner terminated under Section 9 of the Agreement.
- 3.2. Renewal. This Agreement will automatically extend for successive additional periods of one (1) year each unless either the Customer or k12 provides written notice of non-renewal to the other no later than sixty (60) days prior to the end of the then current one year term.

4. Pricing

- 4.1. Educational Product and Service Prices. Customer shall pay to K12 the fees as described in Exhibit C.
- 4.2. Fees Not Duplicative. The foregoing fees described in this Section 4 are in addition to and not duplicative of any fees payable by Customer to any Affiliate of K12 pursuant to any separate Agreement between Customer and such Affiliate.

5. Definitions

- 5.1. Affiliates. For purposes of this Agreement, an "Affiliate" of K12 is an entity that controls, is controlled by, or under common control with, K12 and "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.
- 5.2. Applicable Law. Applicable Law is defined herein as the State constitution, the State education laws and/or code, the Elementary and Secondary Education Act, the 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 executive orders, case law and other rulings applicable to the State public schools.
- 5.3. Customer. Customer shall be the legal entity identified on page 1 of this Agreement and its governing authority.
- 5.4. Educational Program. The Educational Program is either a Distance Learning Educational Program, a Distance Learning with Supplemental Classroom-based Instruction Educational Program, or a Classroom-based Program, as designated on page 1 of this Agreement.

- 5.5. Facility. Facility is the Customer's owned or leased administrative and classroom facility.
- 5.6. Program. Program is the school or program of a school, district, or state in which Customer will use the products and services being provided by K12 and identified on page 1 of Agreement.
- 5.7. State. The State is the state in which Customer's program is located and for which laws apply to the operations of Customer's program.
- 5.8. Student. A Student is any Student enrolled and/or taking classes in Customer's Program.
- 5.9 Successful Completion. Successful completion for students in Grades K-5 is completion of a basic education program and promotion to a higher grade level. Successful completion for students in Grades 6-12 is based on course credits earned for high school students or course completions with a passing grade for middle school students.

6. Payment of Product and Service Fees

- 6.1 Invoicing and Payment of Fees. On a quarterly basis, K12 will submit to Customer an invoice for students enrolled in the Program during the prior calendar quarter. Such invoices shall be based on the agreed upon per student annual fee as outlined in Section 4.1 and Exhibit C amortized on a quarterly basis. In the event that the State does not provide Customer with full funding for a student enrolled in the Program, Customer shall only be required to remit the agreed upon fees adjusted by the percentage of total funding the student generated for the Customer during his or her enrollment in the Program. Within thirty (30) days of receipt of the final funding calculations from the FEFP, Customer and K12 will reconcile funding received per student based upon the Pricing schedule outlined in Section 4.1 and Exhibit C to payments made to K12 for students who successfully complete the Program. Any variance in the number of funded students will be corrected by either Customer or K12 within thirty (30) days of the reconciliation.
- 6.1.1 Notwithstanding anything to the contrary in this Agreement, if the education funding level of FEFP decreases below that indicated in Exhibit C, the Customer will provide written notice thereof (including the new total funding level to be provided for such student from all state and federal sources) to K12 as soon as practicable, then, at its option, K12 may elect to either accept the new funding level or terminate the Agreement. K12 is deemed to have accepted the new funding level unless it provides written notice of termination to the Customer within thirty (30) days of receipt of the Customer's notice to K12.
- 6.2 Location of Payment. All payments made hereunder will be made to K12 or its applicable Affiliate, and at the address set forth above, or such other address provided by K12 in writing.
- 6.3 Payment Date and Interest. All fees, and where applicable, advances and debts, payable to K12 and its Affiliates, shall be paid in accordance with the Florida Local Government Prompt Payment Act (F.S. 218.74). Customer agrees to pay interest to the extent permitted by the Florida Local Government Prompt Payment Act.
- 6.3.1 Taxes. Except as otherwise stated herein, K12 is not responsible or in any way liable for any taxes or third-party charges related to the activities, or the ownership or operation of the Program. Without limiting the foregoing, Customer agrees to pay any sales, value-added, or other similar taxes imposed by Applicable Law, except for taxes based on K12's income.

6.4 Disputed Amounts. In the event that any audit takes place regarding Student attendance during the Term that results in a loss of funding to the Customer for such attendance caused by a failure of K12 to accurately or sufficiently record and maintain records of Student attendance, then K12 will reimburse the Customer for such FEFP loss in all categoricals, provided that Customer has notified K12 of the audit as soon as practicable. Such reimbursement will take place without regard to the current contract status between K12 and the Customer.

7. Relationship of the Parties

7.1 Status of the Parties. K12 is not a division or any part of Customer. Customer is a body corporate authorized under State law 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. K12 will operate as an independent contractor to Customer and will be responsible for delivering the Educational Products and Services required by this Agreement. Nothing herein will be construed to create a partnership or joint venture by or between Customer 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 Customer. Customer 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

7.2 No Related Parties or Common Control; Certain Permitted Participations. Except as contemplated by this Agreement or any Agreement between Customer and any Affiliate with respect to the provision of Products and Services described hereunder, K12 will not have any role or relationship with Customer that, in effect, substantially limits Customer's ability to exercise its rights, including termination rights, under this Agreement.

8. Other Schools

8.1 The parties acknowledge that this arrangement is not exclusive and 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").

9. Termination

9.1 Events of Termination

9.1.1 Termination for Breach. Either party may terminate this Agreement for cause with prior written notice to the other party. Termination for cause may be used if a party breaches any material term or fails to fulfill any material condition, term, provision, representation, warranty, covenant or obligation contained in this Agreement and fails to cure within thirty (30) days after receiving written notification from terminating party. Upon termination of this Agreement pursuant to this Section 9.1.1, the non-breaching party shall be entitled to seek any remedies to which it shall be entitled at law or in equity.

9.2 Effect of Termination or Expiration

9.2.1 Except as otherwise agreed by the parties in writing, termination or expiration of this Agreement does not relieve Customer 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.

10. Intellectual Property Rights

10.1 Intellectual Property of K12 and Affiliates.

10.1.1 **Authority to Sublicense.** Customer acknowledges and agrees that K12 has the right to sublicense from K12 Inc. to Customer certain intellectual property rights and interests in and to K12 and its Affiliate's intellectual property, including but not limited to trade secrets, know-how, proprietary data, documents and written materials in any format, artwork, graphics, charts, software, licenses, marketing materials, website design for K12 and its Affiliates, web site design for Customer and curricular materials and any and all customizations and derivative works thereof (collectively, "K12 Proprietary Materials"). Customer further acknowledges and agrees that it has no intellectual property interest or claims in the K12 Proprietary Materials, any customizations and derivative works thereof or any other materials created for use in connection with the K12 Proprietary Materials, and has no right to use the K12 Proprietary Materials unless expressly agreed to in writing by K12. By execution of this agreement, K12 will provide Customer with print and web-compatible marketing resources at no charge.

10.1.2 **Sub-License of K12 Proprietary Materials.** K12 hereby grants Customer a royalty-free, non-exclusive, non-transferable sub-license, during the Term and for a period of ninety (90) days following the expiration or earlier termination of this Agreement, to use and distribute the K12 Proprietary Materials in connection with Customer's Program operations as contemplated in this Agreement. Notwithstanding the foregoing, Customer hereby agrees not to: (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 Section 10.1.2 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, Customer will cease use of the K12 Proprietary Materials, and Customer will return all K12 Proprietary Materials to K12 promptly, including those in the possession of Customer, any teachers and school employees participating in the Program, and Students participating in the Program.

10.1.3 **Rights of K12 in K12 Proprietary Marks.** Customer acknowledges and agrees that, as between Customer and K12, K12 only has the right to sublicense certain intellectual property rights and interests in and to K12 Inc.'s trademarks, service marks, and trade names (including K12, K12 (& Design), trade names, trade dress, and the logo design(s) featured in Exhibit B (collectively, "K12 Proprietary Marks"). Customer 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, unless expressly agreed to in writing in advance by K12, which Agreement K12 may withhold in its sole discretion.

10.1.4 **Sub-License of K12 Proprietary Marks.** K12 hereby grants Customer a royalty-free, non-exclusive, non-transferable sublicense, during the Term and for a period of ninety (90) days following the expiration or earlier termination of this Agreement, to use the K12 Proprietary Marks relating to the Program solely in connection with Customer's operations of Program as contemplated in this Agreement. Notwithstanding the foregoing, Customer will not be permitted to sublicense any rights under this Section 10.1.4 without the advance written approval of K12, which approval may be withheld by K12 in its sole discretion. Upon the termination of such license, Customer will cease

use of the K12 Proprietary Marks.

10.1.5 Limitations on Use of K12 Proprietary Materials and K12 Proprietary Marks by Customer. Customer will use the K12 Proprietary Materials and the K12 Proprietary Marks only as provided in this Agreement. Notwithstanding Sections 10.1.2 and 10.1.4, Customer also will not alter the K12 Proprietary Materials and/or the K12 Proprietary Marks in any way, nor will Customer act or permit action in any way that would impair the rights of K12 in them. Customer'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 Customer's use of the K12 Proprietary Materials and the K12 Proprietary Marks, and Customer will notify K12 promptly in writing of any known infringement thereof and of any use of K 12's Intellectual Property (including the K12 Proprietary Materials, and/or the K12 Proprietary Marks) by a non-party, other than set forth or contemplated by this Agreement, of which Customer becomes aware. K12 and Customer agree to reasonably assist each other in pursuing measures to prevent further use of K 12's Intellectual Property by said non-party. Any references to or use of the K12 Proprietary Materials or the K12 Proprietary Marks by Customer 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.

11. Assignment

11.1 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 person or entity that controls K12 , is controlled by K12 , or is under common control with K12 or to any successor in interest that acquires all or substantially all of the assets of K12. K12 may delegate the performance of its duties hereunder to any person or entity but shall be responsible for the performance, in accordance with the terms of this Agreement, of any services performed by its delegates.

12. Insurance Coverage

12.1 Liability Coverage. Customer is a Florida governmental entity and self-insured pursuant to the provisions stipulated in Florida Statute 768.28. K12 will initiate and maintain for a period of two (2) years after the expiration or termination of this Agreement, at its own expense, comprehensive general liability insurance, including product liability, contractual liability, and advertising injury insurance, with reputable and financially secure insurance carriers for not less than \$1,000,000 (combined single limit for bodily injury and property damage per occurrence and in the aggregate). Such insurance will include Customer and its officers, employees and agents as additional insureds within thirty (30) days after the date of this Agreement. Such insurance will be written to cover claims incurred, discovered, manifested, or made during or after the Term. Nothing in this Agreement is intended to waive or limit any sovereign immunity to which Customer is entitled under Florida law.

12.2 Evidence of Insurance. Customer, by execution of this Agreement, attests to its self-insured status, pursuant to Florida Statute 768.28. K12 will furnish a certificate of insurance evidencing such coverage in Section 12.1 to Customer within thirty (30) days after the date

of this Agreement. Thereafter, K12 will provide thirty (30) days' advance notice to Customer of any cancellation or material adverse change to such insurance.

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

13. REPRESENTATIONS AND WARRANTIES

13.1 Representations and Warranties of K12. K12 hereby represents and warrants to Customer the following:

13.1.1 Organization and Good Standing. K12 Florida LLC is a limited liability company duly organized, validly existing, and in good standing under the laws of the State of Delaware.

13.1.2 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.

13.1.3 K12 warrants that the Services will be performed in an 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 WARRANTY IS 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. K12 SHALL NOT BE LIABLE FOR END-USER INTERNET CONNECTIVITY PROBLEMS IF SUCH PROBLEMS ARE BEYOND THE CONTROL OF K12.

13.1.4 The foregoing warranty 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 Customer or Student; or (c) where there has been improper site preparation or site environment by Customer or Student. In addition, the foregoing warranty shall not apply to requirements not expressly included in this Agreement.

13.2 Representations and Warranties of Customer. Customer hereby represents and warrants to K12:

13.2.1 Organization and Good Standing. Customer is a public school district duly organized, validly existing, and in good standing under the laws of the State.

13.2.2 Power and Authority; Authorization; Binding and Enforceable Agreement. Customer

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 Customer and constitutes the valid and legally binding obligation of Customer, enforceable against Customer 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.

13.2.3 Authority Under Applicable Law. Customer has the authority under Applicable Law to (i) contract with a private entity to perform the Educational Services, Administrative Services and/or 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.

13.2.4 Non-Contravention. There does not exist, and the execution, delivery and performance of this Agreement by Customer of its obligations hereunder will not constitute, under any agreement, contract, note, lease, license, or other instrument to which Customer is party or by which it or any of its properties or assets is bound, any violation, breach or event of default or condition that, after notice or lapse of time or both, would constitute a violation, breach event of default there under by Customer or, to the knowledge of Customer, any other party thereto.

13.2.5 Compliance of Educational Program with Applicable Law. The Educational Program will comply with, and Customer will ensure that it will continue to comply with, Applicable Law.

13.2.6 Provision of Authority to K12. Customer 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.

13.3 Mutual Warranties. Each party warrants to the other that there are no pending actions, claims, suits, or proceedings, to its knowledge, threatened against it, which if adversely determined, would have a material adverse effect on its ability to perform its obligations under this Agreement.

14. MISCELLANEOUS

14.1 Coordination; Exercise of Approval or Consent Rights.

14.1.1 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, K 12's legal counsel and Customer's legal counsel will consult from time to time with respect to the requirements of Applicable Law, and Customer's policies as they relate to Customer's operations of the Program.

14.1.2 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

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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.

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

14.2.1 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.

14.3 Remedies.

14.3.1 Jurisdiction and Venue. Each party: (a) agrees that the sole and exclusive jurisdiction for any action, suit or proceeding arising out of or relating to this Agreement shall be in the Twelfth Judicial Circuit Court in and for Sarasota County, Florida or the federal court encompassing that jurisdiction; (b) agrees that service of any process, summons, notice or document by U.S. registered mail to the address set forth opposite the name of such party at the end of this Agreement shall be effective service of process for any such action, suit or proceeding brought against such party; (c) irrevocably and unconditionally waives any objection to the laying of venue of any action, suit or proceeding arising out of or relating to this Agreement in the Twelfth Judicial Circuit Court or the federal court encompassing that jurisdiction; and (d) irrevocably and unconditionally waives the right to plead or claim, and irrevocably and unconditionally agrees not to plead or claim, that any action suit or proceeding arising out of or relating to this Agreement that is brought in the Twelfth Judicial Circuit Court or the federal court encompassing that jurisdiction has been brought in an inconvenient forum.

14.4 Force Majeure. Notwithstanding any other sections of this Agreement, no party will be liable for any delay in performance or inability to perform 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.

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

14.6 Entire Agreement. This Agreement, including the Addendum and the Exhibits hereto (all of which constitute part of this Agreement), constitutes the entire Agreement of the parties with respect to the subject matter hereof, and supersedes all previous oral and written, and all contemporaneous oral, negotiations, commitments, Agreements and understandings relating hereto.

14.7 Counterparts, Facsimile Transmissions. This Agreement may be executed in counterparts, each of which will be deemed an original, but both of which will

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constitute one and the same instrument. Each party may rely on facsimile signature pages as if such facsimile pages were originals.

14.8 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) two days after mailing as described in clauses (i) and (ii) of the foregoing sentence, (ii) on the date of personal delivery or (iii) on the date of transmission of a facsimile if on a business day during normal business hours (or, if not, the next succeeding business day). Electronic mail does not constitute official notice under this Agreement. The addresses of the parties are:

For K12 Florida LLC:
President
K12 Florida LLC, a Delaware LLC
2300 Corporate Park Drive, Suite 200
Herndon, VA 20171
Fax: (703) 483-7330

With Copy To:
General Counsel
K12 Inc., a Delaware Corporation
2300 Corporate Park Drive, Suite 200
Herndon, VA 20171
Fax: (703) 483-7496

For Customer:
School Board Chair
School District of Sarasota County
1960 Landings Blvd.
Sarasota, FL 35231
Fax: (941) 927-2539

With Copy To:
General Counsel
Matthews, Eastmoore, Hardy, et al Attorneys
1777 Main Street, Suite 500
Sarasota, FL 34236
Fax: (941) 954-7777

14.9 Audit. Upon forty five (45) days written notice, K12 may audit Customer's use of the Products. Customer agrees to cooperate with K12's audit and provide reasonable assistance and access to information. Customer agrees to pay within thirty (30) days of written notification any fees applicable to Customer's use of the Products in excess of the license rights. If Customer does not pay, K12 can end Customer's technical support, licenses and/or this Agreement.

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

14.11 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.

14.12 Interpretation. The parties hereto acknowledge and agree that both (a) the rule of construction to the effect that any ambiguities are resolved against the drafting party and (b) 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.

- 14.13 Severability. The parties intend that each provision hereof constitute a separate Agreement between them. Accordingly, the provisions hereof are severable and in the event that any provision of this Agreement shall be deemed invalid or unenforceable in any respect by a court of competent jurisdiction, the remaining provisions hereof will not be affected, but will, subject to the discretion of such court, remain in full force and effect, and any invalid or unenforceable provision will be deemed, without further action on the part of the parties, amended and limited to the extent necessary to render the same valid and enforceable and reflect the intent of the parties. 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 Customer, such services will be construed to be limited to the extent necessary to make the services valid and binding.
- 14.14 Successors and Assigns. This Agreement will be binding upon, and inure to the benefit of, the parties and their respective successors and permitted assigns.
- 14.15 No Third-Party Rights. This Agreement is made for the sole benefit of Customer and K12 and their respective successors and permitted assigns. Except as set forth in Section 10 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.
- 14.16 Survival of Termination. All representations and warranties made in this Agreement will survive termination of this Agreement.
- 14.17 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.

Exhibit A

K12 Products and Services

I. Educational and Related Products: During the Term, K12 and its Affiliates will provide or cause to be provided to Customer, its Students and its personnel the following educational products (the “Educational Products”):

1. Online School: For each school year during the Term, (i) K12® Curriculum and the OLS/associated learning management system for grades kindergarten through twelve, in each case in Language Arts, Math, Science, and History, and, if required by Applicable Law Art, Music, and/or other electives and (ii) K12® Curriculum and OLS/associated learning management system for such additional grades for which K12 generally offers curriculum to its Customers, in each case for such courses required by Applicable Law. K12 Curriculum shall provide physical education for Students in grades Kindergarten through twelve as required in Florida Statute 1003.455. K12 will provide parents with information regarding waivers from physical education and provide instruction accordingly. K12 shall be subject to the school grading process that is applicable to all Florida schools. In the event that K12 is graded below “C”, the Customer shall have the right to end the Agreement.
2. 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 (defined below).
3. Computers. K12 will not be required to provide computers or monitors. Software will be provided as K12 determines in its discretion to be necessary and suitable to deliver the Program to Students.

II. Administrative Services: During the Term, K12 and its Affiliates will provide or cause to be provided to Customer the administrative services (the “Administrative Services”) set forth below. K12 will provide the Administrative Services at Customer’s Facility, from K12’s office in Florida, and from K12’s offices in Herndon, Virginia and elsewhere, as deemed necessary in K12’s discretion.

Administrative Services shall consist of:

1. Complete program launch and ongoing operational support;
2. Student enrollment into the Program including placement and enrollment conferences;
3. Parent/mentor training and support;
4. NCLB high-qualified, Florida-certified teachers to provide all instruction and support. Teachers will monitor and evaluate Student performance and attendance on a daily basis and provide representation at special education meetings. The presence or absence of each Student shall be recorded once each day. The attendance recordkeeping system shall provide complete and accurate attendance data and shall provide for maintaining auditable records for three years or until applicable audits are completed. The attendance records shall also show the dates of a Student’s enrollment, withdrawal, or re-entry in the school for the applicable year. Attendance of all Students must be maintained during a 180-day school year, matching the Customer’s district calendar.
5. Teacher certification management and evaluations. Teachers and staff will have cleared background checks using state and national criminal history records as required by Florida Statute (F.S.) 1012.32;
6. Survey and academic reporting, and inputs for school accountability reports;
7. Online community newsletters and calendar of events;
8. Support of online clubs and activities;
9. Educational outings and other face-to-face instructional meetings;
10. FCAT preparation in a virtual setting;
11. Bi-monthly meetings regarding Student progress and monitoring including but not limited to a

Exhibit A

- calendar of Student and parent events, workshops, and field trips; and
12. 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 Customer the technology services (the “Technology Services”) set forth below. K12 will provide the Technology Services at Customer’s Facility, from K12’s office in Florida, and from K12’s offices in Herndon, Virginia and elsewhere, as deemed necessary in K12’s discretion.

Technology Services shall consist of:

1. 24/7 monitoring of production services, i.e., SAMS, OLS and VHS;
2. Monitor and analyze system data, to fix production issues as they may arise;
3. Generate reports on pupil academic performance, attendance and progress, and Customer access to extract K12 data;
4. Collaboration facilitated by K12 with the Customer prior to the school year to establish steps and a timeline for all data transfers and reports;
5. Train parents and Students, as deemed appropriate and necessary, on technology systems;
6. Provide Customer care, technology support, and maintenance services on OLS, and software issues for parents and Students;
7. Ensure electronic security of Student records (through the use of encryption, firewalls, etc.);
8. K12 will prevent unauthorized access, maintain data accuracy, and ensure the correct use of information. K12 will use Secure Sockets Layer (SSL) on Customer account information.
9. Prepare for, supervise, and implement all system rollovers at the end of each academic year, allowing coordination with the Customer’s end of year procedures required to report students for the State’s FTE Survey 5;
10. Work with the Customer’s Business Manager to send invoices to the appropriate state, local, and federal entities and contractors, if required;
11. Assist the Customer with local, state, and federal reporting requirements;
12. Assist the Customer on audits related to attendance and other subjects for Students enrolled in Program;
13. Provide online enrollment, facilitate all eligibility, registration and placement services; and
14. Additional Technology Services. Any other services as agreed to in writing by the parties from time to time.

Exhibit B
K12 Proprietary Marks



“K¹²”

“unleash the xPotential”

“xPotential”

“Florida Virtual Academy”

Exhibit C

Pricing

Customer shall pay to K12 \$3,995 for each full-time student in Grades K- 8 and \$4,795 for each full-time Student in grades 9 through 12 who successfully completes the Program and for whom Customer receives funding. For some students with disabilities, including gifted students, the IEP team may determine the need for additional services beyond those provided by K12. Depending on the nature and extent of those additional services, these exceptional students may be able to participate in the K12 program and also receive ESE services from the District.

Enrollment Growth – Student Curriculum and Materials Fee Waiver

For the period ending June 30, 2011, if the Customer's enrollment of students in the Virtual School Program grows to 50 total students, then the per student charge (exclusive of Hardware and ISP Subsidies) for each of the next five (5) students thereafter enrolled through June 30, 2011 shall be waived. Customer is under no obligation, however, to reach those enrollment numbers.

Products and Services Included in this Fee

- 180-Day K¹² On-line School Learning Management System and Curriculum account for each Student (six courses per Student per year)
- Books, materials and on-line access per Student for each course
- Software as described below
- Administrator On-line School Accounts (three)
- Instruction from Florida-certified teachers
- Administrative Services (as delineated in Exhibit A).

Fees will be invoiced quarterly as per Section 6 of the Agreement.

K12 Books and Materials

Each course prescribes a specific set of materials that are needed to teach the course. Students will receive all standard, printed and additional materials available for each course enrollment from K12 Management Inc. At its discretion, upon course completion or withdrawal, K12 Management Inc. will reclaim durable materials for refurbishment and reuse. K12 Management Inc. will inform Students which materials need to be returned and provide USP COD return shipping labels. K12 materials are intended solely for the use of Students in the Program. The Customer is not allowed to resell or transfer the materials or intellectual property in those products to a Student who is not a part of the Program.

Computer Services

K12 will not provide computers or monitors. Software will be provided as K12 determines in its discretion to be necessary and suitable to deliver the Program to students, upon family request. The per student fee, as defined in Section 4.1 and in the above Pricing section, paid by Customer will cover all necessary shipping and reclamation charges.

Internet Services

K12 shall provide one internet service subsidy per family upon request and Customer approval. The subsidy shall be paid by K12 to the family upon successful completion of the program in an amount not to exceed \$10.95 per school month enrolled. K12 shall invoice Customer upon payment of the subsidy and Customer shall reimburse K12 for this expense.

Administrator Online School /Learning Management System Account and Total View Access

K12 allows Customer's on-line real time monitoring of enrolled students' progress, attendance and assessment results for all K12 coursed provided. K12 student data will be reported by K12 under a single school number. K12 will maintain and make available to the Customer student data including, but not limited to, student demographics, student courses, teacher courses, enrollment data, and attendance data. All data must align with methods used by the Florida Auditor General. All data must be maintained by state auditor standards and available to the Customer online.

Exhibit C

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