


**AGENDA REQUEST FORM**  
**THE SCHOOL BOARD OF BROWARD COUNTY, FLORIDA**

Meeting Date <b>07/23/13</b>	<table style="width:100%; border-collapse: collapse;"> <tr> <td style="width:50%; padding: 5px;">Open Agenda <input checked="" type="checkbox"/> Yes    <input type="checkbox"/> No</td> <td style="width:50%; padding: 5px;">Special Order Request <input type="checkbox"/> Yes    <input checked="" type="checkbox"/> No</td> </tr> </table>	Open Agenda <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No	Special Order Request <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No	Agenda Item Number <b>EE-5</b>
Open Agenda <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No	Special Order Request <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No			

TITLE:	<b>Agreement with K12 Florida, LLC</b>										
REQUESTED ACTION:	Approve the Agreement with K12 Florida, LLC.										
SUMMARY EXPLANATION AND BACKGROUND:	<p>In accordance with Florida Statute 1002.45, school districts must offer a full-time K-12 virtual education program to Florida students. The School Board of Broward County, Florida (SBBC), meets the requirements for grades 6-12 through Broward Virtual School. K12 Florida, LLC, is a Florida Department of Education approved provider of K-5 virtual education services. K12 Florida, LLC, offers a turn-key solution. Approval of this Agreement will bring SBBC in compliance with the Virtual Instruction Program established by Florida Statute 1002.45. Each of the other five most populous public school districts in Florida have contracted with K12 Florida, LLC, to comply with this legislation.</p> <p>This Agreement has been reviewed and approved as to form and legal content by the Office of the General Counsel.</p>										
SCHOOL BOARD GOALS:	<input type="checkbox"/> •Goal 1: High Quality Instruction <input checked="" type="checkbox"/> •Goal 2: Continuous Improvement <input type="checkbox"/> •Goal 3: Effective Communication										
FINANCIAL IMPACT:	It is anticipated that there will be no negative financial impact to the District. K12 Florida, LLC, will charge the District \$4,295 per student annually. Per Florida Statute 1002.45, fees will be covered through Full-Time Equivalent (FTE) funding as stipulated in the Florida Education Finance Program (FEFP).										
EXHIBITS: (List)	1. Proposed Agreement										
BOARD ACTION:	<table style="width:100%; border-collapse: collapse;"> <tr> <td style="width:50%; text-align: center; vertical-align: middle;"><b>APPROVED</b></td> <td style="width:50%; padding: 5px;">SOURCE OF ADDITIONAL INFORMATION:</td> </tr> <tr> <td style="padding: 5px;">(For Official School Board Records' Office Only)</td> <td style="padding: 5px;"> <table style="width:100%; border-collapse: collapse;"> <tr> <td style="width:70%;">Christopher McGuire</td> <td style="width:30%;">754-321-1120</td> </tr> <tr> <td>Carol Barker</td> <td>754-321-0506</td> </tr> <tr> <td style="font-size: small;">Name</td> <td style="font-size: small;">Phone</td> </tr> </table> </td> </tr> </table>	<b>APPROVED</b>	SOURCE OF ADDITIONAL INFORMATION:	(For Official School Board Records' Office Only)	<table style="width:100%; border-collapse: collapse;"> <tr> <td style="width:70%;">Christopher McGuire</td> <td style="width:30%;">754-321-1120</td> </tr> <tr> <td>Carol Barker</td> <td>754-321-0506</td> </tr> <tr> <td style="font-size: small;">Name</td> <td style="font-size: small;">Phone</td> </tr> </table>	Christopher McGuire	754-321-1120	Carol Barker	754-321-0506	Name	Phone
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**THE SCHOOL BOARD OF BROWARD COUNTY, FLORIDA**

**Maurice L. Woods**   
*Chief Strategy & Operations Officer*  
*Office of Strategy & Operations*

Approved in Open Board Meeting on:

**'JUL 23 2013**

By:



School Board Chair

**AGREEMENT**

**THIS AGREEMENT** is made and entered into as of this 23<sup>rd</sup> day of July, 2013,  
by and between

THE SCHOOL BOARD OF BROWARD COUNTY, FLORIDA  
(hereinafter referred to as "SBBC")  
a body corporate and political subdivision of the State of Florida  
whose principal place of business is  
600 Southeast Third Avenue  
Fort Lauderdale, Florida 33301

and

K12 Florida, LLC  
(hereinafter referred to as "K12 Florida")  
2300 Corporate Park Drive  
Herndon, VA 20171

**WHEREAS**, SBBC desires to obtain curriculum and related services to offer a virtual instruction program to students enrolled in its school district; and

**WHEREAS**, K12 Florida is willing to provide such curriculum and related services to enable SBBC to provide a virtual instruction program to SBBC's students.

**NOW, THEREFORE**, in consideration of the premises and of the mutual covenants contained herein and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the Parties hereby agree as follows:

**ARTICLE 1 - RECITALS**

1.01 **Recitals.** The parties agree that the foregoing recitals are true and correct and that such recitals are incorporated herein by reference.

## ARTICLE 2 – SPECIAL CONDITIONS

2.01 **Term Agreement:** Unless terminated earlier pursuant to Section 3.04 of this Agreement, the term of this Agreement shall commence on July 1, 2013 and conclude on June 30, 2014.

2.02 **Description of Services:** K12 Florida will provide SBBC with products and services including, where applicable, a limited, non-exclusive, non-transferable license, without sublicense right, for access to the K12 Florida or Affiliates online courses, curriculum, learning management system and applicable instructional tools and online services, for the term of this Agreement. K12 Florida will provide curriculum and instructional materials aligned to Florida's Next Generation State Standard and comply with and adhere to the implementation timeline for Common Core State Standards published by the State of Florida. K12 Florida will maintain confidentiality of student information in a secure manner and provide student data to SBBC in a timely manner.

2.03 **Price and Payment:** The prices and billing terms for the products, services, and licenses will be as set forth in the Online Educational Products and Services Order SBBC by K12 Florida or its affiliates and full payment of such invoices shall be due by SBBC no more than thirty (30) days from the date of such invoice. If full payment is not timely received, K12 Florida, in its sole discretion, may cease the provision of any or all products, services and licenses. SBBC agrees to pay interest at one and one quarter percent (1.25%) per month on any unpaid balance from the due date. If SBBC wishes to dispute any charge invoiced to SBBC by K12 Florida or its affiliates, SBBC must submit a good faith claim regarding the disputed amount, in a format clearly delineated to coincide with the format of the disputed invoice and with documentation as may reasonably be required by K12 Florida and its affiliates to support the claim no later than ninety (90) days after the date of the invoice.

2.04 **Taxes:** SBBC represents that it is exempt from sales and use taxes imposed by the state and local government divisions in which it is located; SBBC must provide K12 Florida with SBBC's exemption certificates or other proof of SBBC tax-exempt status.

2.05 **Information Requirements:** SBBC will provide K12 Florida with all information reasonably required by K12 Florida to provide the products, services, and licenses required under this Agreement

2.06 **FERPA and Confidentiality:** As a public entity receiving federal Title I funds, SBBC represent that K12 Florida is a "school official" with a "legitimate educational interest" under the definition of those terms set forth in the SBBC's Family Educational Rights and Privacy Act ("FERPA") notification(s) to students and parents during the term of this Agreement. K12 Florida agrees to develop, implement, maintain and use appropriate administrative, technical or physical security measures to the full extent required by FERPA SBBC recognizes and agrees that for purposes of all applicable laws, K12 Florida has a legitimate educational interest for purposes of SBBC disclosing education records of its student

to K12 Florida. To the extent permitted by applicable law, K12 Florida may provide SBBC with confidential information (as designated by K12 Florida) required by SBBC in writing for its internal use or reporting to regulatory authorities. SBBC agrees to develop, implement, maintain and use appropriate administrative, technical or physical security measures to maintain the confidentiality of such confidential information.

2.07 **Special Education and Disabilities:** As a public entity receiving federal Title I funds, SBBC agrees that it is the Local Education Agency responsible for the provision of special education. The provision of special education, the creation, implementation or provision of Individualized Education Program (IEPs), the provision of reasonable accommodations or any services of any nature under the Individuals with Disabilities Education Act, the American with Disabilities Act, Section 504 of the Rehabilitation Act or any similar law, whether federal, state or local are not services provided under this Agreement. Notwithstanding the forgoing, during the term of this Agreement, K12 Florida will discuss, formulate and make adjustments and accommodations in furtherance of IEPs or reasonable accommodations established by SBBC, but solely to the extent that k12 Florida may do so without incurring direct or indirect costs.

2.08 **Publicity:** During the term of this Agreement, SBBC hereby agrees that K12 Florida and its affiliates shall have the right, but not the obligation, to list SBBC as a customer in other materials promoting the Content. K12 Florida will remove SBBC's name from any such list within thirty (30) days after any termination of this Agreement.

2.09 **Audit Rights:** This section shall only be applicable if a Non-Hosting Solution is applicable to the order place by SBBC. SBBC shall maintain books and records in connection with its use of the Aventa courses for the Period of this Agreement and for at least three (3) years after the date this Agreement terminates or expires. K12 Florida or its representatives may audit the relevant books and records of SBBC during the term of this Agreement, and for three (3) years after the expiration of this Agreement to ensure compliance with this Agreement. Any such audit shall be conducted during regular business hours at SBBC's facilities and shall not unreasonably interfere with SBBC's business activities. Audits shall be conducted to no more than once annually. If an audit reveals that SBBC has underpaid fees due to K12, all such fees shall be paid immediately, together with interest at the rate of prime plus one percent (1%); and in the event such underpayment is in excess of five percent (5%) of the total (ii) in accordance with its then current practices at periodic intervals designated by K12 Florida, K12 Florida may request that SBBC deliver in writing to K12 Florida a summary of the actual number of students that are currently enrolled by SBBC and using the courses. Unless otherwise set forth in the applicable Order, all license fees shall be payable in accordance with the number of students determined pursuant to the Reporting Process.

2.10 **Warranty:** K12 Florida warrants that the services will be performed in a professional and workmanlike manner in accordance with commercially reasonable industry standards. THE FOREGOING WARRANTY IS IN LIEU OF ALL OTHER WARRANTIES, EXPRESS, IMPLIED WARRANTIES OF MERCHANTABILITY OR FITNESS FOR A

PARTICULAR PURPOSE AND K12 FLORIDA MAKES NO GUARANTEES AS TO THE RESULTS OR ACHIEVEMENTS OF THE STUDENTS. WITHOUT LIMITING THE FOREGOING, K12 FLORIDA MAKES NO GUARANTEES AND SHALL NOT BE LIABLE FOR OUTAGES OR OTHER NON-ACCESSIBILITY TO THE K12 FLORIDA WEBSITE, END-USER CONNECTION SPEED OR CONNECTIVITY PROBLEMS REGARDLESS OF THE CAUSE. K12 FLORIDA OFFIERS NO WARRANTIES WITH RESPECT TO ANY THIRD PARTY PRODUCTS OR SERVICES PROVIDED PURSUANT TO THIS AGREEMENT. K12 FLORIDA DOES NOT WARRANT THAT USE THE SITE OR CONTENT WILL BE UNINTERRUPTED OR ERROR-FREE, THAT ERRORS WILL BE CORRECTED OR THAT IT WILL BE FREE OF VIRUSES OR OTHER HARMFUL COMPONENTS.

2.11 **Intellectual Property:** SBBC acknowledges and agrees that all courses, content, software, graphics, pictures documents, licenses, designs and materials and any and all derivatives thereof (collectively referred to herein as “Works”) made available to SBBC pursuant to this Agreement are protected by copyrights, trademarks, service marks, patents, trade secrets, or other proprietary rights and laws and K12 Florida (or its affiliates or licensors) own all right, title and interest in and to the Works and has no rights to make any use of such Works except as expressly granted herein. Except as expressly authorized in writing by an officer of K12 Florida, SBBC agrees not to sell, license, sub-license, rent modify, distribute, copy, reproduce, transmit, publicly display, publicly perform, publish, adapt, edit or create derivative works from any of the Works. SBBC will not act or permit any action that would impair any of K12 Florida’s (or its Affiliates’ or licensors’) rights in the Works. SBBC agrees not to: (a) disassemble, reverse compile, reverse engineer or otherwise attempt to discover the source code of or trade secrets embodied in the Works (or any portion thereof); (b) distribute, lend, rent, sell, transfer or grant sublicenses to, or otherwise make available the Works (or any portion thereof) to third parties, including, but not limited to, making such works available (i) through resellers, OEMs, other distributors, or (ii) as an application service provider, service bureau, or rental source, unless expressly permitted in the Order; (c) embed or incorporate in any manner the Works (or any element thereof) into other applications of SBBC or third parties; (d) use or transmit the Works in violation of any applicable law, rule or regulation, including any export/import laws, (e) in any way access, use, or copy any portion of the Works ( including the logic and /or architecture thereof and any trade secrets included therein) to directly or indirectly develop, promote, distribute, sell or support any product or service that is competitive with the Works, (f) remove, obscure or alter any copyright notices or any name, log, tagline or other designation of K12 Florida or its affiliates displayed on any portion of the Works. SBBC shall not permit any third party to perform any of the foregoing actions and shall be responsible for all damages and liabilities incurred as a result of such actions. SBBC acknowledges that in the event SBBC breaches any provision contained in this Paragraph, K12 Florida’s interests will be irreparably injured, the full extent of K12 Florida’s damages may be impossible to ascertain, and monetary damages will not be an adequate remedy. SBBC agrees that K12 Florida will be entitled to

enforce this Agreement by an injunction or other legal or equitable relief without the necessity of posting bond or security, in addition to its right to seek monetary damages or any other remedy.

2.12 **Indemnification and Limitation upon Liability:** K12 Florida agrees to defend, indemnify, and hold harmless SBBC and its employees, contractors, officers, and board members from and against any and all liabilities, claims, damages, injuries, judgments, demands and expenses, including court costs and attorney's fees, that arise out of or in connection with any acts or omission of K12 Florida related to or arising from this Agreement (collectively "Claims") except to the extent that such Claims arise out of actions or omissions of SBBC and subject to the conditions precedent that a) SBBC provide written notice to K12 Florida within thirty (30) days of its receipt of the Claim and b) SBBC permits K12 to assume the control and defense of the Claim with counsel selected by K12 Florida. IN NO EVENT SHALL K12 FLORIDA'S LIABILITY TO SBBC AND ITS EMPLOYEES, CONTRACTORS, OFFICERS AND BOARD MEMBERS UNDER THIS AGREEMENT OR FOR ANY MATTER OR CAUSE OF ACTION ARISING IN CONNECTION HEREWITH EXCEED THE AMOUNT PAID BY SBBC TO K12 FLORIDA HEREUNDER. IN NO EVENT SHALL K12 FLORIDA BE LIABLE TO SBBC, WHETHER UNDER THEORY OF CONTRACT, TORT OR OTHERWISE, FOR ANY INDIRECT, INCIDENTAL, PUNITIVE, CONSEQUENTIAL, OR SPECIAL DAMAGES (INCLUDING ANY DAMAGE TO BUSINESS REPUTATION, LOST PROFITS OR LOST DATA), WHETHER FORESEEABLE OR NOT AND WHETHER K12 FLORIDA IS ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. To the extent permitted by law, SBBC agrees to defend, indemnify, and hold harmless K12 Florida and its Affiliates and all of their employees, contractors, officers, and board members from and against any and all liabilities, claims, Damages, injuries, judgments, demands and expenses, including court costs and attorney's fees, that arise out of or in connection with any acts or omissions of SBBC related to or arising from this Agreement( collectively "Claims") except to the extent that such Claims arise out of actions or omissions of K12 Florida and subject to the conditions precedent that a) K12 Florida provide written notice to SBBC within thirty (30) days of its receipt of the Claim and b) K12 Florida permits SBBC to assume the control and defense of the Claim with counsel selected by SBBC. Nothing herein is intended to serve as a waiver of sovereign immunity by SBBC or of any rights or limits to liability existing under Section 768.28. Florida Statutes.

2.13 **Dispute Resolution:** The parties agree that they will use their best efforts to settle any and all disputes arising out of, under or in connection with this Agreement, including without limitation the validity, interpretation, performance and breach hereof, prior to initiating any legal proceeding, whether judicial or administrative in nature. The efforts shall be primarily between the Chief Operating Officer for K12 and the Superintendent of the SBBC or their respective designees.

2.14 **Miscellaneous:** a) K12 Florida is not division or any part of SBBC. SBBC is not a division or any part of K12 Florida. Nothing herein is intended to be construed as or to create a partnership or joint venture by or between K12 Florida and SBBC; b) SBBC and all

users of licensed products shall comply with the terms and conditions of the Terms of Use pertaining to the use of courseware, web sites and learning management systems, as such terms are set forth therein; c) All representations, warranties and indemnities made in this Agreement will survive termination of this agreement; and d) K12 Florida will provide all services, licenses and materials under this Agreement either directly or in conjunction with its affiliates. An “affiliate” of K12 is an entity that controls, is controlled by, or under common control with, K12 Florida 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. K12 Florida and its affiliates shall be referred to collectively as K12 Florida.

2.15 **Background Screening:** K12 Florida agrees to comply with all requirements of Sections 1012.32 and 1012.465, Florida Statutes, and all of its personnel who (1) are to be permitted access to school grounds when students are present, (2) will have direct contact with students, or (3) have access or control of school funds, will successfully complete the background screening required by the referenced statutes and meet the standards established by the statutes. This background screening will be conducted by SBBC in advance of K12 Florida or its personnel providing any services under the conditions described in the previous sentence. K12 Florida shall bear the cost of acquiring the background screening required by Section 1012.32, Florida Statutes, and any fee imposed by the Florida Department of Law Enforcement to maintain the fingerprints provided with respect to K12 Florida and its personnel. The parties agree that the failure of K12 Florida to perform any of the duties described in this section shall constitute a material breach of this Agreement entitling SBBC to terminate immediately with no further responsibilities or duties to perform under this Agreement. To the extent permitted by law, K12 Florida agrees to indemnify and hold harmless SBBC, its officers and employees from any liability in the form of physical or mental injury, death or property damage resulting in K12 Florida failure to comply with the requirements of this Section or with Sections 1012.32 and 1012.465, Florida Statutes. Nothing herein shall be construed as a waiver by SBBC or K12 Florida of sovereign immunity or of any rights or limits to liability existing under Section 768.28, Florida Statutes.

2.16 **Order of Priority:** In the event of a conflict between documents, which are incorporated herein by reference, the parties agree that the order of priority shall be as follows:

1. This Agreement
2. Appendix A

### **ARTICLE 3 – GENERAL CONDITIONS**

3.01 **No Waiver of Sovereign Immunity.** Nothing herein is intended to serve as a waiver of sovereign immunity by any agency or political subdivision to which sovereign immunity may be applicable or of any rights or limits to liability existing under Section 768.28, Florida Statutes. This section shall survive the termination of all performance or obligations under this Agreement and shall be fully binding until such time as any proceeding brought on account of this Agreement is barred by any applicable statute of limitations.

3.02 **No Third Party Beneficiaries.** The parties expressly acknowledge that it is not their intent to create or confer any rights or obligations in or upon any third person or entity under this Agreement. None of the parties intend to directly or substantially benefit a third party by this Agreement. The parties agree that there are no third party beneficiaries to this Agreement and that no third party shall be entitled to assert a claim against any of the parties based upon this Agreement. Nothing herein shall be construed as consent by an agency or political subdivision of the State of Florida to be sued by third parties in any matter arising out of any contract.

3.03 **Independent Contractor.** The parties to this agreement shall at all times be acting in the capacity of independent contractors and not as an officer, employee or agent of one another. Neither party or its respective agents, employees, subcontractors or assignees shall represent to others that it has the authority to bind the other party unless specifically authorized in writing to do so. No right to SBBC retirement, leave benefits or any other benefits of SBBC employees shall exist as a result of the performance of any duties or responsibilities under this Agreement. SBBC shall not be responsible for social security, withholding taxes, contributions award of attorney's fees for non-compliance with that law. Each party acknowledges that this Agreement and all attachments thereto are public records and do not constitute trade secrets.

3.04 **Equal Opportunity Provision.** The parties agree that no person shall be subjected to discrimination because of age, race, color, disability, gender identity, gender expression marital status, national origin, religion, sex or sexual orientation in the performance of the parties' respective duties, responsibilities and obligations under this Agreement.

3.05 **Termination.** This Agreement may be canceled with or without cause by SBBC during the term hereof upon ninety (90) days written notice to K12 Florida of its desire to terminate this Agreement, except that no termination shall occur while any student is enrolled in a course. In the event of such termination, SBBC shall pay K12 Florida for all services rendered through the effective date of termination.

3.06 **Termination for Cause.** The parties agree that, in the event that either party is in default of its obligations under this Agreement, the non-defaulting party shall provide to the defaulting party (30) days written notice to cure the default. However, in the event said default cannot be cured within said thirty (30) day period and the defaulting party is diligently attempting in good faith to cure same, the time period shall be reasonably extended to allow the defaulting party additional cure time. Upon the occurrence of a default that is not cured during the applicable cure period; this Agreement may be terminated by the non-defaulting party upon thirty (30) days notice. This remedy is not intended to be exclusive of any other remedy, and



each and every such remedy shall be cumulative and shall be in addition to every other remedy now or hereafter existing at law or in equity or by statute or otherwise. No single or partial exercise by any party of any right, power, or remedy hereunder shall preclude any other or future exercise thereof. Nothing in this section shall be construed to preclude termination for convenience pursuant to Section 3.05.

3.07 **Annual Appropriation.** The performance and obligations of SBBC under this Agreement shall be contingent upon an annual budgetary appropriation by its governing body. If SBBC does not allocate funds for the payment of services or products to be provided under this Agreement, this Agreement may be terminated by SBBC at the end of the period for which funds have been allocated. SBBC shall notify the other party at the earliest possible time before such termination. No penalty shall accrue to SBBC in the event this provision is exercised, and SBBC shall not be obligated or liable for any future payments due or any damages as a result of termination under this section.

3.08 **Excess Funds.** Any party receiving funds paid by SBBC under this Agreement agrees to promptly notify SBBC of any funds erroneously received from SBBC upon the discovery of such erroneous payment or overpayment. Any such excess funds shall be refunded to SBBC with interest calculated from the date of the erroneous payment or overpayment. Interest shall be calculated using the interest rate for judgments under Section 55.03, Florida Statutes, applicable at the time the erroneous payment or overpayment was made by SBBC.

3.09 **Public Records.** Each party shall maintain its own respective records and documents associated with this Agreement in accordance with the records retention requirements applicable to public records. Each party shall be responsible for compliance with any public documents request served upon it pursuant to Section 119.07, Florida Statutes, and any resultant award of attorney's fees for non-compliance with that law. Each party acknowledges that this Agreement and all attachments thereto are public records and do not constitute trade secrets.

3.10 **Compliance with Laws.** Each party shall comply with all applicable federal and state laws, codes, rules and regulations in performing its duties, responsibilities and obligations pursuant to this Agreement.

3.11 **Place of Performance.** All obligations of SBBC under the terms of this Agreement are reasonably susceptible of being performed in Broward County, Florida and shall be payable and performable in Broward County, Florida.

3.12 **Governing Law and Venue.** This Agreement shall be interpreted and construed in accordance with and governed by the laws of the State of Florida. Any controversies or legal problems arising out of this Agreement and any action involving the enforcement or interpretation of any rights hereunder shall be submitted to the jurisdiction of the State courts of the Seventeenth Judicial Circuit of Broward County, Florida.

3.13 **Entirety of Agreement.** This document incorporates and includes all prior negotiations, correspondence, conversations, agreements and understandings applicable to the matters contained herein and the parties agree that there are no commitments, agreements or

understandings concerning the subject matter of this Agreement that are not contained in this document. Accordingly, the parties agree that no deviation from the terms hereof shall be predicated upon any prior representations or agreements, whether oral or written.

3.14 **Binding Effect.** This Agreement shall be binding upon and inure to the benefit of the parties hereto and their respective successors and assigns.

3.15 **Assignment.** Neither this Agreement or any interest herein may be assigned, transferred or encumbered by any party without the prior written consent of the other party, except that 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 and which is authorized as a provider by the Florida Department of Education. There shall be no partial assignments of this Agreement including, without limitation, the partial assignment of any right to receive payments from SBBC.

3.16 **Incorporation by Reference.** Exhibits attached hereto and referenced herein shall be deemed to be incorporated into this Agreement by reference.

3.17 **Captions.** The captions, section designations, section numbers, article numbers, titles and headings appearing in this Agreement are inserted only as a matter of convenience, have no substantive meaning, and in no way define, limit, construe or describe the scope or intent of such articles or sections of this Agreement, nor in any way effect this Agreement and shall not be construed to create a conflict with the provisions of this Agreement.

3.18 **Severability.** In the event that any one or more of the sections, paragraphs, sentences, clauses or provisions contained in this Agreement is held by a court of competent jurisdiction to be invalid, illegal, unlawful, unenforceable or void in any respect, such shall not affect the remaining portions of this Agreement and the same shall remain in full force and effect as if such invalid, illegal, unlawful, unenforceable or void sections, paragraphs, sentences, clauses or provisions had never been included herein.

3.19 **Preparation of Agreement.** The parties acknowledge that they have sought and obtained whatever competent advice and counsel as was necessary for them to form a full and complete understanding of all rights and obligations herein and that the preparation of this Agreement has been their joint effort. The language agreed to herein expresses their mutual intent and the resulting document shall not, solely as a matter of judicial construction, be construed more severely against one of the parties than the other.

3.20 **Amendments.** No modification, amendment, or alteration in the terms or conditions contained herein shall be effective unless contained in a written document prepared with the same or similar formality as this Agreement and executed by each party hereto.

3.21 **Waiver.** The parties agree that each requirement, duty and obligation set forth herein is substantial and important to the formation of this Agreement and, therefore, is a material term hereof. Any party's failure to enforce any provision of this Agreement shall not be deemed a waiver of such provision or modification of this Agreement unless the waiver is in writing and signed by the party waiving such provision. A written waiver shall only be effective

as to the specific instance for which it is obtained and shall not be deemed a continuing or future waiver.

3.22 **Force Majeure.** Neither party shall be obligated to perform any duty, requirement or obligation under this Agreement if such performance is prevented by fire, hurricane, earthquake, explosion, wars, sabotage, accident, flood, acts of God, strikes, or other labor disputes, riot or civil commotions, or by reason of any other matter or condition beyond the control of either party, and which cannot be overcome by reasonable diligence and without unusual expense ("Force Majeure"). In no event shall a lack of funds on the part of either party be deemed Force Majeure.

IN WITNESS WHEREOF, the Parties hereto have made and executed this Agreement on the date first above written.

**FOR SBBC**

(Corporate Seal)

THE SCHOOL BOARD OF BROWARD  
COUNTY, FLORIDA

By Laurie Rich Levinson

Laurie Rich Levinson, Chair

ATTEST:

Robert W. Runcie

Robert W. Runcie, Superintendent of Schools

Approved as to Form and Legal Content:

[Signature] 07/02/13  
Office of the General Counsel

FOR K12 FLORIDA, LLC

(Corporate Seal)

K12 Florida, LLC

ATTEST:

By [Signature]

\_\_\_\_\_, Secretary

-or-

[Signature]  
Witness

[Signature]  
Witness

The Following Notarization is Required for Every Agreement Without Regard to Whether the Party Chose to Use a Secretary's Attestation or Two (2) Witnesses.

STATE OF VIRGINIA

COUNTY OF FAIRFAX

The foregoing instrument was acknowledged before me this 3rd day of JULY, 2013 by Gregg Levin of \_\_\_\_\_ Name of Person  
K12 FLORIDA LLC, on behalf of the corporation/agency.  
Name of Corporation or Agency

He/She is personally known to me or produced \_\_\_\_\_ as identification and did/did not first take an oath. \_\_\_\_\_ Type of Identification

My Commission Expires:

[Signature]  
Signature - Notary Public  
STEPHANIE LAUREL BJORK  
Printed Name of Notary

7042118  
Notary's Commission No.



APPENDIX A

**ONLINE EDUCATIONAL PRODUCTS AND SERVICES ORDER**

This Online Educational Products and Services Order (this "Order"), dated as of July 1, 2013 (the "Order Effective Date"), is between The School Board of Broward County, Florida, 6600 Nova Drive, Davie, FL 33317 ("SBBC") and K12 Florida LLC ("K12"), 2300 Corporate Park Drive, Herndon, VA 20171. This Order incorporates and is in all respects subject to the K12 Online Educational Products and Services Agreement Terms (the "Terms") that is published at <http://www.k12.com/online-educational-products-services-agreement-terms> on the date that this Order bears the signatures of both SBBC and K12. All capitalized terms that are not defined in this Order will have the meanings assigned to those terms in the Terms.

I am authorized by SBBC to enter into this Order for the products, services and licenses indicated herein, at the prices set forth below and pursuant to the Terms.

Accepted by SBBC:

\_\_\_\_\_ (signature) \_\_\_\_\_ (date)

\_\_\_\_\_ (print name) \_\_\_\_\_ (title)

Accepted by K12:

\_\_\_\_\_ (signature) \_\_\_\_\_ (date)

\_\_\_\_\_ (print name) \_\_\_\_\_ (title)

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**1. Period.**

Subscription July 1, 2013 through June 30, 2014.

**2. Territory.** Students served by The School Board of Broward County, FL ("SBBC").

**3. Description of Educational Products.** SBBC will be provided the Educational Products specified in this Order.

K12 Full-time Enrollment Program for Students Taking 4 to 6 courses (Grades K - 8).

The full-time K12 program consists of three components: courses, materials and educational tools and services.

Courses:

An enrollment portal into which SBBC will enroll its students in the Territory into available K12 courses including Language Arts/English, Math, Science, History, Art, Music, available World Languages and, for grades 9 to 12, electives. Each full-time student concurrently enrolls in four to six courses. SBBC is responsible for determining the proper placement of students in appropriate courses. Within two (2) weeks following K12's receipt of a completed account set-up form from SBBC, K12 will provide access for SBBC to enroll its students.

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A Learning Management System (LMS) or "K12 Hosting Services" for the delivery of K12 courses and access to a synchronous collaboration tool and system generated reports on academic performance, attendance and progress.

### Materials:

Instructional text or e-books, supplies and teaching tools (collectively, "Materials") for K-8 students. Materials for SBBC's teachers and High School students are ordered separately. K12 will reclaim durable Materials by informing SBBC and/or its students which Materials need to be returned and providing pre-paid return shipping labels. K12 Materials are intended solely for the use of the teachers and the students enrolled in K12 courses to whom K12 provides the Materials. SBBC shall not transfer or resell the Materials to any other person. If a replacement component is required or a durable Material is not returned, the SBBC will be invoiced for the component or Materials (plus shipping, if applicable). SBBC will provide K12 with reasonable assistance in obtaining durable Materials from students and their parents.

### Educational Tools and Services:

Program launch and operational support, an online parent/mentor information session, learning management and technical support on K12 products and services. Supervision and implementation of year-end system rollovers.

Supplemental tests and study assistance, diagnostic tests, K12's Strategies for Success, access to an online community, an orientation course package, a teacher hotline and support website, access to a counseling system for high school students, a school messenger telephony service with automated alerts and a tool to assist identification of plagiarism.

- K12 Courses: for student taking 1 to 3 courses, including but not limited to summer program enrollments. (Grades K to 8).

### Courses

An enrollment portal into which SBBC will enroll its students in the Territory into available K12 courses including Language Arts/English, Math, Science, History, Art, Music, available World Languages and, for grades 9 to 12, electives. SBBC is responsible for determining the proper placement of students in appropriate courses. Within two (2) weeks following K12's receipt of a completed account set-up form from SBBC, K12 will provide access for SBBC to enroll its students.

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Aventa Original Credit and Credit Recovery Courses (Grades 6 to 12).

The available Aventa licensed online educational courseware. Aventa may from time to time, in its sole discretion, deliver or otherwise make available to SBBC certain updated courseware, which such updates shall also be subject to all of the Terms. SBBC acknowledges and agrees that certain courseware and updates thereto may be designed to utilize separate textbook products or course materials and SBBC shall be responsible for procuring such materials. A complete list of required materials may be accessed [and purchased from Aventa Learning] at <http://aventalearning.com/enroll-now/textbook-PO-order-form>.

- Full-time Program with students taking 4 to 6 courses
- Courses-only for students taking 1 to 3 courses (not eligible for recruitment or administrator professional development)

4. **Description of Services.** SBBC will be provided the following Services under this Order:

Instructional Services: SBBC will be provided qualified teachers, licensed as required by applicable state law, for instruction to enrolled students for selected courses.

Aventa Hosting Solution:

The set-up, configuration and hosting of the applicable courseware for the delivery of Aventa courses, solely for the provision of educational services to its students in the Territory enrolled in SBBC's educational programs.

Aventa Teacher Training:

Online Teacher Training: Basic Synchronous Virtual *(Includes one synchronous virtual training session for teachers on Blackboard, offered at scheduled times twice a week.)*

Custom Online Teacher Training: *(Includes one SBBC, two-hour virtual session for teachers of Aventa curriculum. Pre-requisite: Any other Instructor training offered.)*

Aventa New Teacher Induction (online): *(Includes one two-hour virtual session of professional development for new teachers of Aventa Curriculum. This session is a pre-requisite for Aventa Ongoing Professional Development.)*

Aventa Ongoing Professional Development: *(Includes one two-hour virtual session of professional development for new teachers of Aventa Curriculum. Pre-requisite: Aventa New Teacher Induction.)*

Complementary Online Mentor Training: Required for SBBC's Purchasing Aventa Credit Recovery. *(Includes one 2 hour virtual training session. Open registration.)*

5. **Description of Other Related Products**

Hardware: SBBC is provided, for each student **requested by SBBC**, a computer, monitor, printer and software appropriate for access to the K12-provided student courses and curriculum. Upon the earlier of student withdrawal or termination of the Agreement, K12 will provide families with pre-paid shipping labels



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to return computers, monitors, printers and software, and families shall be responsible for returning same. SBBC is not responsible for a family's failure to return hardware or software.

6. **Fees.** For the Services and/or Products provided under this Order, SBBC shall pay to K12 and/or its Affiliates the following Fees:

K12 Full-time Enrollment Program for Students Taking 4 to 6 courses (Grades K -8).

Costs set forth below for each Student are "not-to-exceed" figures. The components of the program will be billed separately to allow for materials returns, prorating fees for student withdrawal and for student consumption of fewer than 6 full year or 12 semester courses. The roll-up of the component level billing will "not exceed" the student level fees listed below.

K12 will invoice SBBC for the components of the program as follows: (a) courses and educational tools and services will be billed quarterly (in October, January, April and July) ; (b) materials will be invoiced upon shipment

Materials costs are refunded 100% if the student is withdrawn within 10 days of order placement, or 50% if the student is withdrawn between the 11th and 30th day. There is no refund or credit on materials for withdraws occurring after 30 days. Fees will not be charged for a student for any month following notice to K12 of the student's withdrawal from the course. No other refunds, credits or cancellations are allowed.

*For K-8 Program, including instruction from K12 teachers*  
\$4,295.00 per Students grades K to 8

*SBBC shall not be responsible for payments for enrolled students in such courses who withdraw from the program or are non-completers.*

*For K-8 Program, not including instruction from K12 teachers or recruiting*  
\$2,500.00 per Student taking 6 concurrent courses  
\$2,160.00 per Student taking 5 concurrent courses  
\$1,820.00 per Student taking 4 concurrent courses

K12 Courses: for Students Taking 1 to 3 courses

Materials costs are refunded 100% if the student is withdrawn within 10 days of order placement, or 50% if the student is withdrawn between the 11th and 30th day. There is no refund or credit on materials for withdraws occurring after 30 days. Fees will not be charged for a student for any month following notice to K12 of the student's withdrawal from the course. No other refunds, credits or cancellations are allowed. Special course material fee applies to lab sciences, advanced placement and technology courses.

K12 will invoice SBBC as follows: (a) courses will be billed quarterly (in October, January, April and July); (b) materials will be invoiced upon shipment

\$340.00 per Student per K-8 course with Materials and without K12 teachers  
\$170.00 per K-8 course per semester for Mark<sup>12</sup> reading with materials, without teachers

K12 Instruction:

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Billed quarterly as applicable for the particular course. Fees will not be charged for a student for any month following notice to K12 of the student's withdrawal from the course. No other refunds, credits or cancellations are allowed.

\$250.00 per Student for each K-8 course per full-year

Aventa Subscription License (Per Enrollment):

Aventa provides a 28-day grace period for students who enroll. If a student withdraws within 28 days from when the student enrolls, Aventa will refund 100% of the course fees but only if this withdrawal was received in writing by Aventa by fax or email before the grace period ended. Enrollments under the subscription license model will be invoiced on a quarterly basis.

AP Online Courses      \$329.00 / Semester Course (Includes course, Aventa Hosting Solution, and Instruction)

Online Courses      \$299.00 / Semester Course (Includes course, Aventa Hosting Solution and Instruction)

Online Courses      \$50.00 / Semester Course (Includes course and Aventa Hosting Solution)

AP Boot Camp      \$125.00/Course (Content, Hosting, Instruction)

Aventa Enrolled User Pricing<sup>1</sup>: (Includes Content and Hosting)

\$2,500 per Block of 10 Reusable Enrolled User Licenses. Each "Enrolled User License" allows a single student to be enrolled into multiple Aventa courses (0.5 credits each). All courses in the standard Aventa catalog (including Credit Recovery courses), and Middlebury Interactive Language Competency and Non-Honors Fluency courses are available under this license with the exception of courses designated as "Premium Electives". Instruction by Aventa or Middlebury Interactive Teachers is not included but may be added as needed for an additional charge as indicated below. Enrolled User Licenses are valid for one year from date of purchase. When a student drops or completes all course(s) and surrenders their license, that Enrolled User License may be reassigned to another student to take the same or different courses. During the original Subscription Period set forth in Paragraph 1 above, SBBC may at its option purchase additional Enrolled User Licenses by submitting a purchase order or written authorization to Aventa indicating the number of additional Enrolled User Licenses desired. The term of these subsequent Enrolled User Licenses shall also be one year from the date of purchase. *\*The cost of Instruction for Credit Recovery Courses only is included in the Aventa Enrolled User Pricing.* Aventa does not provide refunds with the Enrolled User Promotion. By its very nature if a student drops from a course the seat is then open for a new enrollment.

Aventa Instruction:

\$195.00 Aventa Teacher support for 6-12. Per Semester Course for AP courses

\$175.00 Aventa Teacher support for 6-12. Per Semester Course for non-AP courses

*\*Aventa Instruction for Credit Recovery Courses – included in Enrolled User Pricing*

Aventa Training

Online Teacher Training: Basic Synchronous Virtual

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<sup>1</sup> Enrolled User license models are intended for part-time online students, blended learning students, and for students requiring a full-time online schooling program for a defined period of time, including alternative education and hospital homebound students. The Enrolled User Licenses are not intended for use as a full-time virtual schooling program. We reserve the right to audit to ensure intended use for part-time / blended programs and alternative education populations.

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*Billed at setup. No refunds, credits or cancellations are allowed.*

\$199.00 per teacher *(Includes one synchronous virtual training session for teachers on Blackboard, offered twice per week.)*

*Custom Online Teacher Training:*

*Billed at setup. No refunds, credits or cancellations are allowed.*

\$250.00 per 2 hour online session *(Includes one SBBC, two-hour virtual session for teachers of Aventa curriculum) Prerequisite –Online Teacher Training.)*

*Aventa New Teacher Induction (online)*

Billed at setup. No refunds, credits or cancellations are allowed.

\$550.00 per teacher for \_\_\_ teachers *(Includes one two-hour virtual session of professional development for new teachers of Aventa Curriculum. This training is a pre-requisite for Aventa Ongoing Professional Development.)*

*Aventa Ongoing Professional Development:*

Billed at setup. No refunds, credits or cancellations are allowed.

\$100.00 per teacher. Includes One 2 hour, virtual session for ongoing professional development. *(Pre-requisite: Aventa New Teacher Induction.)*

*In-Person Teacher Training: 1 Day Onsite*

Billed at setup. No refunds, credits or cancellations are allowed.

\$2,500 per day. Includes all expenses

*Complimentary Online Mentor Training: 2 Hour Virtual Session (Required for SBBC's Purchasing Aventa Credit Recovery)*

\$0 per two hour session. Open Registration.

ISP Subsidy – Quarterly Billing

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K12 provides an internet service provider ("ISP") subsidy, for each student requested by SBBC. The subsidy shall be \$9.95 for each month a student is actively enrolled in the K12 courses through the SBBC. The ISP subsidy will not exceed ten (10) months per academic year and is limited to one (1) per family.

\$99.50 per student (Billed Quarterly)

Hardware:

Thirty percent (30%) billed at student enrollment, with the remainder billed quarterly. These annual costs are credited or refunded, as appropriate, for cancellations only if the hardware has not yet shipped. Fees will not be charged for a student for any month following notice to K12 of the student's withdrawal from all courses. No other refunds, credits or cancellations are allowed.

**\*Hardware will only be provided to students at the request of the SBBC.**

\$525.00 per student – desktop computers

\$725.00 per student – laptop computers

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**FLORIDA AMENDMENT TO THE  
ONLINE EDUCATIONAL PRODUCTS AND SERVICES ORDER**

This Amendment is entered into between Broward Virtual Education, 6600 Nova Drive, Davie, FL 33317 ("SBBC") and K12 Florida LLC ("K12"), 2300 Corporate Park Drive, Herndon, VA 20171 as of the date on which it bears the authorized signatures of both parties and is intended to amend only the terms and conditions of the Online Educational Products and Services Order ("Order") dated as of July 1, 2013 and the K12 Online Educational Products and Services Agreement Terms (the "Terms") that are incorporated into said Order.

The following Florida Virtual Instruction Program Requirements §1002.45 shall be added to the K12 Online Educational Products and Services Agreement Terms (the "Terms").

1. K12 shall comply with all statutory requirements of § 1002.45 F. S.
2. K12 represents that to the best of its knowledge, all curriculum provided complies in all material respects to the Florida Next Generation Sunshine State Standards for each grade level and subject. Course, and unit descriptions for grades K-8 are available at <http://www.k12.com/courses/k-8-courses> and for high school at <http://www.k12.com/courses/high-school-courses> and <http://aventalearning.com/state-standards/florida>

All courses include detailed assessments to ensure student mastery of Florida requirements. Details about the assessments are available from the Florida Department of Education in the K12 Florida LLC provider application.

3. In the event K12 provides products and services to students in grades 9 through 12, as required by § 1003.428, s. §1003.429, or s. §1003.43 K12 shall provide a method for determining that a student has satisfied. K12 provides a percentage grade to the SBBC and the SBBC can use these percentage grades within their own system. K12 does not assign letter grades. Schools can make the determination regarding how best to use the information supplied.
4. **TEACHER RATIOS:** K12 takes into account the needs of individual students, families, schools and teachers in assigning teacher loads. Student-teacher ratios will vary program to program. An average ratio for grades K-3 full-time is 65:1, K-3 grades part-time (.5 teacher) is 30:1, 4-8<sup>th</sup> grade full-time is 65:1, 4<sup>th</sup>-8<sup>th</sup> grade part-time (.5 teacher) is 30:1. In high school grades 9-12<sup>th</sup> core courses with full-time teachers have an average ratio of 200:1. Part-time teacher ratios for 9<sup>th</sup>-12<sup>th</sup> grade core courses are broken down as follows: .75 part-time teachers have a 150:1 ratio, .5 part-time teachers have a 100:1 ratio, and .25 part-time teachers have a 50:1 ratio. 9-12<sup>th</sup> grade elective courses with full-time teacher ratios are 250:1
5. Method for resolving conflicts among parties:

**DISPUTE RESOLUTION:** The parties agree that they will use their best efforts to settle any and all disputes arising out of, under or in connection with this Agreement, including without limitation the validity, interpretation, performance and breach hereof, prior to initiating any legal proceeding, whether judicial or administrative in nature. The efforts shall be primarily between the Executive Vice President of Operations for K12 and the Superintendent of the SBBC or their respective designees. The laws of the State of Florida, without regard to its conflict of laws provisions, will govern all disputes arising out of or related to this Agreement, including the validity, enforceability or construction thereof. Each party submits to the jurisdiction of the state and federal courts located in the State of Florida for purposes of any action, suit or proceeding arising out of or related to this Agreement and agrees not to plead or

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claim that any action, suit or proceeding arising out of or related to this Agreement that is brought in such courts has been brought in an inconvenient forum.

6. Authorized reasons for termination of contract:

**NOTICE OF NON-RENEWAL:** The period of this Agreement is as specified in the Order ("Period"). Following the Subscription Period, this Agreement will automatically extend for successive additional Subscription Periods of one (1) year (each such period a "Renewal Period"), unless (a) either party provides the other with written notice of non-renewal at least six (6) months before the expiration of the then-current Subscription Period or Renewal Period (as applicable); (b) the Agreement is sooner terminated under the section labeled Termination; or (c) the SBBC (as defined in the Order) provides K12 with written notice of non-renewal as set forth under the section of these K12 Online Educational Products and Services Agreement Terms labeled Price And Payment.

**TERMINATION FOR CAUSE:** 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 may be used if a party breaches any material term or fails to fulfill any representation, warranty, or material condition, term, provision or obligation contained in this Agreement and fails to cure within thirty (30) days of such notice from the terminating party. Upon termination, the non-breaching party shall be entitled to seek any remedies to which it shall be entitled at law or in equity. If any change in applicable law that is enacted after the date hereof could reasonably be expected to have a material adverse effect on the ability of any party to carry out its obligations under this Agreement, such party, upon written notice to the other party may request renegotiation of this Agreement. Such renegotiation shall be undertaken in good faith. If the parties are unable to renegotiate and agree upon revised terms within 120 days of such notice of renegotiation, then this Agreement shall be terminated effective at the end of the school year in which such notice was given. Termination of this Agreement does not relieve SBBC of any obligations for payments outstanding to K12 as of the date of termination and does not relieve either party of any obligations that continue upon termination.

**TERMINATION DUE TO ANNUAL FEE INCREASE:** K12 reserves the right to change the prices set forth in any Order no more often than once per Renewal Period (if any). K12 will provide written notice of any price increase to SBBC at least ninety (90) days' prior to the start of the Renewal Period (if any) for which it would be applicable. SBBC may, in its sole discretion, terminate the Agreement within thirty (30) days of such notice. Such termination will be effective at the end of the then-current Period or Renewal Period (if any).

7. As required by Florida statute, K12 shall be responsible for all debts for the SBBCs virtual instruction program that arise out of K12's performance of this contract if the contract is not renewed or is terminated. This does not excuse the SBBC from paying any obligations incurred resulting from its obligations under this contract or from the payment of any debts incurred under this contract for termination, unless such termination is as provided for under the clause titled Termination for Cause.

8. The Section of the Terms labeled **Price and Payment** is revised to read:

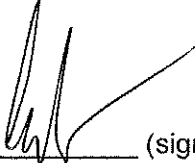
**PRICE AND PAYMENT:** The prices and billing terms for the products, services, and licenses will be as set forth in this Amendment. Invoices shall be submitted to SBBC by K12 and full payment of such invoices shall be due by SBBC no more than forty five (45) days from the date of an invoice. If full payment is not timely received, K12, in its sole discretion, may cease the provision of any or all products, services and licenses. SBBC agrees to pay interest at one percent (1%) per month on any unpaid balance from 30 days after the due date in accordance with the Local Governmental Prompt

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Payment Act, Fla. St. Chapter 218. If SBBC wishes to dispute any charge invoiced to SBBC by K12 or its Affiliates, SBBC must submit a good faith claim regarding the Disputed Amount, in a format clearly delineated to coincide with the format of the disputed invoice and with documentation as may reasonably be required by K12 and its Affiliates to support the claim no later than ninety (90) days after the date of the invoice. K12 will provide written notice of any price increase to SBBC at least ninety (90) days' prior to the start of the Renewal Period (if any) for which it would be applicable. SBBC may, in its sole discretion, terminate the Agreement within thirty (30) days of such notice. Such termination will be effective at the end of the then-current Period or Renewal Period (if any).

9. All other terms, conditions and provisions of the Order and Terms remain in full force and effect.

For K12:



\_\_\_\_\_ (signature)

**Gregg Levin**

\_\_\_\_\_ (title)

**Senior Vice President** (date)

For SBBC:

\_\_\_\_\_ (signature)

\_\_\_\_\_ (title)

\_\_\_\_\_ (date)