



## SUBSCRIPTION AND SERVICES AGREEMENT

<b>Agreement Number</b>	<b>SLSD2011</b>
<b>Customer</b>	<b>Southern Lehigh School District</b>
<b>Address</b>	<b>5775 Main Street</b>
<b>Address</b>	<b>Center Valley, PA 18034</b>
<b>Contact</b>	<b>Mrs. Leah Christman</b>
<b>Telephone</b>	<b>(610) 282-3121 x5110</b>

The party noted in the customer line above ("**Customer**") with the address set forth above, and K12 Systems, Inc. ("**K12 Systems**" or "**K12**") with offices at Two Windsor Plaza, 7540 Windsor Drive, Suite 314, Allentown, Pennsylvania 18195 hereby enter into this Subscription and Services Agreement ("**Agreement**") effective as of the 19th day of February, 2014 ("**Effective Date**") (hereinafter, Customer and K12 shall each be referred to as a "**Party**" and shall together be referred to as the "**Parties**".)

WHEREAS, Customer desires K12 to provide a Subscription to its Sapphire Software and other K12 Intellectual Property as specified herein, and to provide additional services, to it, as more fully set forth herein, and;

WHEREAS, K12 desires to provide a Subscription to its Sapphire Software and other K12 Intellectual Property as specified herein, and to provide additional services, to Customer, as more fully set forth herein;

NOW, THEREFORE, in consideration of the mutual promises and undertakings set forth herein, and for good and valuable consideration, the Parties agree as follows:

**1) Definitions.**

Any Capitalized term used, but not defined, in the Agreement shall have the meaning that is given to it in Schedule A of the Agreement.

**2) Orders and Statements of Work.**

**A. Ordering Process.** This Agreement sets forth the terms and conditions under which the Parties agree that Customer may purchase a Subscription (as defined in **Section 1, Schedule A** of the Agreement (**Definitions**)), i.e. a License right granted under **Section 3(A)** of the Agreement (**Grant of License from K12 to Customer**) for a Subscription Period (as defined in **Section 1, Schedule A**, of the Agreement (**Definitions**)) in return for an annual Fee to be paid as described in **Section 7(A)** of the Agreement (**Fees Owed**), or any Services (as defined in **Section 1, Schedule A** of the Agreement (**Definitions**)), each as requested on a separate mutually executed Order (as defined in **Section 1, Schedule A** of the Agreement (**Definitions**)). No obligation to furnish or to pay for a particular Subscription, or Service, arises under this Agreement until K12 accepts an executed Agreement and Order for such Subscription, or Services, placed by Customer, and Customer is not authorized to access or use any other K12 products or services, unless expressly set forth in the Agreement. Each Order, as applicable, when fully executed, shall be incorporated into this Agreement by reference and designated sequentially as Exhibit A-1, Exhibit A-2, etc.

**B. Order Term.** The term of an Order shall commence upon the Order Effective Date and, unless terminated earlier in accordance with the terms of this Agreement or the Order, if the Order pertains to a Subscription, continue for a Setup Period (as defined in **Section 1, Schedule A**, of the Agreement (**Definitions**)) and an Initial Subscription Period as stated in the Order (hereinafter, the Setup Period and the Initial Subscription Period shall be referred to as the "**Initial Order Term**") at which time, unless otherwise stated in the Order, the Order will automatically renew until the next calendar

anniversary of the date of termination of the Initial Subscription Period (each, a "**Renewal Order Term**", which is the same period as an annual "**Renewal Subscription Period**") (hereinafter, the Initial Order Term and each Renewal Order Term shall be referred to as an "**Order Term**") unless either Party sends the other Party written notice that it does not wish to renew more than thirty (30) days prior to the expiration of the then current Order Term. If the Order pertains solely to Professional Services, the Initial Order Term will not automatically renew as stated herein, but terminate at the end of the Initial Order Term stated in the Order unless the Parties mutually agree to extend it under the terms of the Order itself.

**C. Order Termination.** An Order may be terminated for any of the following reasons: (i) by K12 for Customer's failure to make monetary payment of any amount due to K12 under this Agreement for a Subscription or any Services set forth in the Order by the date such payment is due (hereinafter, a termination under this Subsection (i) shall be referred to as a "**Termination for Nonpayment**"); (ii) by either Party upon written notice to the other Party after the other Party's breach of any material non-monetary provision of this Agreement or any Order (including, but not limited to, a breach of **Section 3** of the Agreement (**K12 Intellectual Property**) or a breach of **Section 4** of the Agreement (**K12 Confidential and Proprietary Information**)) that is not cured within thirty (30) days written notice of such breach to the breaching Party (hereinafter, a termination under this Subsection (ii) shall be referred to as a "**Termination for Breach**"); (iii) by either Party when (a) the other Party is the subject of a Chapter 7 petition of involuntary bankruptcy which is not dismissed within sixty (60) calendar days; (b) the other Party is the subject of a Chapter 7 petition of voluntary bankruptcy which is not dismissed within thirty (30) days; or (c) the other Party makes a general assignment for the benefit of creditors or is appointed a receiver on account of its insolvency; and (iv) by Customer for its convenience at any time upon ninety (90) calendar days written notice of termination (hereinafter, a termination under this Subsection (iv) shall be referred to as a "**Customer Termination for Convenience**").

**D. Monetary Obligations Upon Early Order Termination.** In the case of a Termination for Nonpayment, a Termination for Breach resulting from the Customer's breach, or a Customer Termination for Convenience invoked by Customer, any unpaid payment obligations of Customer shall survive and continue beyond termination and K12 shall be considered to have earned all Fees (as defined in **Section 7** of the Agreement (**Fees and Expenses; Taxes**)) set forth in the terminated Order and, for the avoidance of any doubt, shall be entitled to retain Fees that have already been paid by Customer and to collect the balance of any Fees that remain unpaid by Customer. In this respect, the Parties acknowledge and agree that K12 will rely on this Agreement when making investments and entering into long term contracts necessary to provide Customer with a Subscription and other Services. Accordingly, to the extent of these damages, both Parties agree and acknowledge that such damages (i) are not a penalty and have been determined based upon facts and circumstances of both Parties at the time of the negotiation and execution of the Agreement, (ii) have been established with the knowledge of the difficulty of accurately ascertaining the exact amount of the damages; (iii) constitute a fair and reasonable approximation of the damages K12 would sustain if the damages were readily ascertainable; and (iv) shall not require that any additional proof be provided.

**E. Dispute Regarding Order Termination.** In the event that (i) a Party disputes the other Party's claim of material breach or (ii) a Party tenders a cure to the alleged breach within the cure period and the other Party disputes that such tendered cure is sufficient to cure such breach or render such breach non-material, the Parties shall immediately escalate the matter to the executives specified in **Section 24** of the Agreement (**Dispute Resolution and Arbitration**) and, in such case, such executives shall use their commercially reasonable efforts to resolve the problem within thirty (30) calendar days after the escalation to them (or such longer period of time as is agreed to by such executives). If the persons described in **Section 24** of the Agreement (**Dispute Resolution and Arbitration**) have not been able in good faith to resolve the dispute, either Party may elect to refer the matter to binding arbitration in accordance with the terms of **Section 24** of the Agreement (**Dispute Resolution and Arbitration**) and the Parties shall initiate the arbitration proceedings promptly thereafter. The foregoing dispute process shall not limit or restrict such Party's right to seek any other remedy available under law for any breach by the other Party of the terms of this Agreement, including, but not limited to, the right to seek damages, injunctive relief or specific performance.

### 3) K12 Intellectual Property.

**A. Grant of License from K12 to Customer.** Subject to the terms and conditions of this Agreement, for each Subscription acquired by Customer under an Order, K12 hereby grants to Customer a non-exclusive, non-transferable and non-assignable (except where the Agreement itself may be assigned as permitted in **Section 27** of this Agreement (**Assignment**)), and non-sublicensable (except for Non-Employee Staff (as defined in **Section 3(C)** of the Agreement (**Authorized Users**)) and Third-Party Computer Consultants (as defined in **Section 3(C)** of the Agreement (**Authorized Users**)) as permitted in **Section 3(C)** of the Agreement (**Authorized Users**) below) right and license ("**License**") for Customer and its Authorized Users to access and use (i) the Sapphire Software specified in an Order, and any applicable portions thereof, and Updates (as defined in **Section 1, Schedule A** of the Agreement (**Definitions**)) and Enhancements (as defined in **Section 1, Schedule A**, of the Agreement (**Definitions**)), each as supplied to Customer by K12 under the terms of this Agreement and the Order associated with a Subscription, (ii) any Documentation (as defined in **Section 1, Schedule A**, of the Agreement (**Definitions**)) associated with a Subscription provided by K12 to Customer, (iii) any Templates (as defined in **Section 1, Schedule A**, of the Agreement (**Definitions**)), including Reports (as defined in **Section 1, Schedule A**, of the Agreement (**Definitions**)), generated by the Sapphire Software, (iv) any Deliverables (as defined in **Section 1, Schedule A**, of the Agreement (**Definitions**)) created by K12 pursuant to any Order, and (v) any other K12 Confidential and Proprietary Information (as defined in **Section 4** of the Agreement (**K12 Confidential and**

**Proprietary Information**)) shared with Customer by K12 (hereinafter, the items identified in (i) through (v) above individually and collectively shall be referred to as "**K12 Intellectual Property**"), during any applicable Order Term (as defined in **Section 2(B)** of the Agreement (**Order Term**)) based upon any License Parameters (as defined in **Section 1, Schedule A**, of the Agreement (**Definitions**)) for its internal business use in the Kindergarten through 12<sup>th</sup> grade school environment for administrative purposes, which includes permitting Parents (as defined in **Section 1, Schedule A**, of the Agreement (**Definitions**)) to have user name and password to access the Sapphire Software and any Templates utilized therein. This License shall not be construed to permit K12 to use or disclose K12 Intellectual Property for any other purpose, except as expressly permitted by this **Section 3 (K12 Intellectual Property)** of this Agreement. All rights not specifically granted in this Agreement are reserved by K12. In this respect, Customer acknowledges that the License granted under this **Section 3(A)** of this Agreement (**Grant of License from K12 to Customer**) does not provide it with title to or ownership of the Sapphire Software, which is located on K12's servers, or any other K12 Intellectual Property or any other K12 products, software or Services, or any other right to access or use the same, but only a right of limited use under the terms and conditions of this Agreement and any Order.

**B. K12 Ownership.** K12 and its licensors shall own and retain all right, title and interest in and to the K12 Intellectual Property, and all Intellectual Property Rights and goodwill associated with the same; provided, however, to the extent any of the foregoing or any Derivative Works (as defined in **Section 1, Schedule A**, of the Agreement (**Definitions**)) of the same contains Customer information, including Student Data, all right, title and interest in and to any Customer Information, including Student Data, will be owned by Customer and licensed to K12 solely as described in **Section 5** of the Agreement (**Customer Information**).

**C. Authorized Users.** Customer's faculty and staff that are employees of Customer are hereby deemed to be authorized users of the K12 Intellectual Property that is licensed by Customer under the terms of this Agreement. Customer shall have a right to sublicense the K12 Intellectual Property to its faculty and staff that are not employees ("**Non-Employee Staff**") and to third-party consultants that are performing computer hardware and software consulting services for Customer ("**Third-Party Computer Consultants**") pursuant to an agreement with terms no less protective of the K12 Intellectual Property, including any K12 Confidential and Proprietary Information, than the terms of this **Section 3** of the Agreement (**K12 Intellectual Property**) and **Section 4** of the Agreement (**K12 Confidential and Proprietary Information**). Although not "Authorized Users" as such term is defined in this Agreement, Parents are authorized under **Section 3(A)** of this Agreement (**Grant of License from K12 to Customer**) to access the Sapphire Software and Templates, including Reports, online via user name and passwords. In all instances, Customer agrees that it shall be directly responsible to K12 for the actions and inactions of its administrators, faculty and staff any third-party consultants, including, without limitation, Non-Employee Staff and Third-Party Computer Consultants, and any Parents, with regard to any such party's access and use of the K12 Intellectual Property, including the Sapphire Software, and any other K12 products, software and services, whether or not permitted herein, and any failure on the part of any Authorized User to comply with the terms of **Section 3** of the Agreement (**K12 Intellectual Property**) and **Section 4** of the Agreement (**K12 Confidential and Proprietary Information**).

**D. Restrictions.** Except as expressly permitted in this Agreement, under no circumstances may Customer, or any of its administrators, faculty or staff or any third-party consultants, without prior written permission from K12: (a) use the K12 Intellectual Property or other K12 products, software or services to provide products, software or services to another school, college, university, or other third party; (b) directly or indirectly provide access to the K12 Intellectual Property or provide other K12 products, software or services, in whole or in part, to another school, college, university or other third party, or (c) sublicense its rights with respect to this Agreement.

**E. Further Restrictions.** Customer agrees that its administrators, faculty or staff third-party consultants or Parents shall not (i) attempt, or allow others, to modify, adapt, decompile, decrypt, disassemble, extract or reverse engineer any part of the K12 Intellectual Property, including, the Sapphire Software, or any other K12 products, software or services, or (ii) knowingly use the Sapphire Software to (a) engage in spamming or other impermissible advertising, marketing or other activities, including, without limitation, any activities that violate anti-spamming laws or regulations; (b) transmit, display or store infringing, obscene, threatening, indecent, libelous, slanderous, defamatory or otherwise unlawful or tortious material, including material that is harmful to children or violates third party privacy rights; (c) introduce malicious programs (such as viruses, worms or trojan horses) into the Sapphire Software; (d) interfere with or disrupt the integrity or performance of the Sapphire Software, the K12 services or the data contained or used therein; (e) attempt to gain unauthorized access to the Sapphire Software or its related systems or networks; or (f) harass or interfere with another user's use of the K12 Intellectual Property, including the Sapphire Software, or any other K12 products, software or services. K12 reserves the right to suspend access to and use of the K12 Intellectual Property, including the Sapphire Software, and any other products, software and/or services with respect to any individual user that K12 reasonably believes has undertaken, or participated in, any of the foregoing activities.

**F. System Security.** K12 will take commercially reasonable steps to provide security for the unauthorized access of Customer Information that is stored within, or accessible through, its Sapphire Software ("**security measures**") and backup and recovery to protect Customer Information that is stored within, or accessible through, its Sapphire Software, and will establish and maintain safeguards against the destruction, loss, or alteration of Customer Information in the possession of K12 that is stored within, or accessible through, its Sapphire Software, using reasonable commercial methods and methods which are no less rigorous than those maintained by K12 with respect to its own similar information residing on its systems, including, for example, (i) using recognized industry methods to protect from network attack and other malicious, harmful or disabling data, work, code or programs, and (ii) the maintenance of independent archival and backup copies of the Customer Information stored within or accessible through the Sapphire Software. More specifically, the Sapphire Software includes security measures such as verification of the authenticity of users and access control lists, and security shields through Secure Sockets Layer (SSL) or equivalent security software and a combination of public-key and symmetric key encryption. During the Term, K12 will not intentionally destroy any Customer Information stored within its Sapphire Software (unless otherwise permitted under this Agreement) without the prior express written consent of Customer. Notwithstanding the foregoing, K12 will not be responsible for a compromise in its security measures due to a third-party's intentional effort to penetrate them using techniques intended to by-pass generally acceptable security measures in the computer software industry ("**Hacking**").

K12 will not share Customer Information, including Student Data, with any third-party other than what is permitted under **Section 5** of this Agreement (**Customer Information**). Without Customer's approval, which may be withheld in its sole discretion, or as otherwise permitted under **Section 5(D)** of this Agreement (**Anonymous Data**), Customer Information shall not be (a) sold, assigned or leased to third parties by K12, its Affiliates (as defined in **Section 1, Schedule A**, of this Agreement (**Definitions**)) or its agents, or (b) commercially exploited in any form by or on behalf of K12, its Affiliates or its agents.

K12 shall provide Customer with the ability to generate passwords and/or user identifications, which shall be used by Customer to provide access to the Sapphire Software for its Authorized Users and Parents. Customer will control and manage access to the Sapphire Software and to all Customer Information, including Student Data, stored within, or accessible through, the Sapphire Software. Customer will instruct its Authorized Users and Parents as to the importance of maintaining the confidentiality of passwords and/or user

identifications. Customer acknowledges that Customer's data security may be compromised if Customer's Authorized Users or Parents do not follow all applicable security policies and procedures and take other appropriate steps to maintain the security of the Sapphire Software, including, without limitation, maintaining the confidentiality of user identifications and passwords, frequent changing of passwords and maintaining appropriate internal controls to monitor access to and use of the Sapphire Software.

If K12 is given access to the Customer's computer systems in connection with the performance of support, K12 shall make reasonable efforts to abide by, and not intentionally violate, any security measures employed by the Customer and made known to K12 in writing.

#### **4) K12 Confidential and Proprietary Information**

**A. Trade Secret.** Customer acknowledges that K12 believes that information about its K12 Intellectual Property and its Services and its pricing information under this Agreement are its confidential and proprietary information and trade secrets ("**K12 Confidential and Proprietary Information**") and agrees that it will keep the same in confidence and protect it from direct or indirect disclosure to any and all third parties, and restrict its use as provided in this Agreement.

**B. Injunctive Relief.** Customer acknowledges that unauthorized disclosure of such K12 Confidential and Proprietary Information may cause substantial economic loss to K12 or its licensors. Customer therefore acknowledges and agrees that K12 may obtain injunctive relief, including permanent or temporary restraining orders, against the breach or threatened breach of the provisions contained in this **Section 4 (K12 Confidential and Proprietary Information)**.

**C. No Additional Copies.** K12 Confidential and Proprietary Information will not be copied, in whole or in part, except when essential for correcting, generating or modifying K12 Confidential and Proprietary Information for Customer's authorized use under this Agreement. Customer will mark each copy of K12 Confidential and Proprietary Information, including its storage media, with all notices which appear on the original.

**D. Right to Know Act.** K12 acknowledges that Customer is a governmental entity and, as such, K12 Confidential and Proprietary Information may be the subject of a request made by a member of the public for the same under the Pennsylvania Right to Know Law; however, if and when any requests are made by a member of the public with respect to any K12 Confidential and Proprietary Information, including, without limitation, any requests regarding the Sapphire Software, any Documentation, any Templates, including Reports, or any Deliverables, Customer agrees that it will abide by the obligations that are placed on it under the Right to Know law, including any notice requirements there under, prior to its disclosure of such information.

**E. Governmental Orders, etc..** Notwithstanding the foregoing, Customer is not prohibited from disclosing any K12 Confidential and Proprietary Information which is required to be disclosed by applicable Law or court or governmental order so long as Customer first notifies K12 in advance thereof, with sufficient time as possible under the circumstances to allow K12 to respond to the request, or from disclosing any information which is publicly known or is available or obtained from a source not bound by an obligation of confidentiality to K12.

**F. Pennsylvania Data Breach Notification Act.** K12, by executing this Agreement, agrees to abide by the provisions of the Pennsylvania Data Breach Notification Act ("**PDBNA**") to the extent that the same applies to it. Because K12 will be maintaining, storing, and/or managing computerized data on Customer's behalf, K12 agrees to provide Customer with notice of any breach of the security system following its discovery by K12 in accordance with any terms of the PDBNA that are applicable to K12. Customer will make determinations and discharge any remaining duties under the "PDBNA" that pertain to Customer.

**G. Notifying Authorized Users of Obligations.** Customer will inform its employees and other Authorized Users of their obligations under this **Section 4** of the Agreement (**K12 Confidential and Proprietary Information**) and instruct them so as to ensure all such obligations are met.

## 5) Customer Information

**A. Customer Information.** During the Term of this Agreement, Customer and its Authorized Users and Parents may provide K12 with certain Customer Information, including Student Data. As between K12 and Customer, subject to the license in **Section 5(B)** of this Agreement (**Grant of License from Customer to K12**) below, all right, title and interest in and to such Customer Information, and any Intellectual Property Rights thereto, is the exclusive and proprietary property of Customer. K12 shall use commercially reasonable efforts to prevent any violation of Customer's Intellectual Property Rights and shall under no circumstances, use, sell, lease, assign, rent, sublicense or otherwise transfer the Customer Information provided to it by Customer during its supply of the Subscription or performance of the Services, except as expressly provided in this **Section 5** of the Agreement (**Customer Information**), including **Section 5(C)** of this Agreement (**Anonymous Data**) and **Section 5(D)** of this Agreement (**Government and Other Reporting**).

**B. Grant of License from Customer to K12.** Subject to the terms and conditions of this Agreement, Customer hereby grants to K12 a limited, nonexclusive, non-transferable and non-assignable (except where the Agreement itself may be assigned as permitted under **Section 27** of this Agreement (**Assignment**)), non-sublicenseable (except for license to third-party consultants of K12 as permitted under **Section 5(G)** of this Agreement (**Third-Party Consultants of K12**) below) and fully paid-up, right and license (i) during the Term of this Agreement to copy, use, store, transmit and prepare Derivative Works of any Customer Information to the extent necessary for K12 to perform its obligations under this Agreement and for Customer to receive the benefit of the Subscription and the K12 Intellectual Property licensed by it and/or any Services acquired by it under the Agreement, and (ii) thereafter, to copy, use and store in the Sapphire Software the Customer Information that will continue to reside within the Sapphire Software.

**C. License Restriction.** This license shall not be construed to permit K12 to copy, use, store, transmit or prepare Derivative Works of Customer Information or otherwise disclose Customer Information for any other purpose, except as expressly permitted by this **Section 5** of this Agreement (**Customer Information**), including K12's use of Anonymous Data as described in **Section 5(D)** of this Agreement (**Anonymous Data**) and K12's use of Customer Information for government and other reporting purposes as described in **Section 5(E)** of this Agreement (**Government and Other Reporting**). All rights not expressly granted herein are reserved by Customer.

**D. Anonymous Data.** Notwithstanding **Section 5(C)** of this Agreement (**License Restriction**), Customer hereby grants to K12 a perpetual, non-exclusive, non-transferable and non-assignable (except where the Agreement itself may be assigned as permitted under **Section 27** of this Agreement (**Assignment**)), non-sublicenseable (except for third-party consultants and service providers of K12 as permitted in **Section 5(G)** of this Agreement (**Third-Party Consultants of K12**) below) and fully paid up right and license to create, copy, transmit, use, display and prepare Derivative Works of anonymous data related to the activity of Customer's Authorized Users within the Sapphire Software, for product improvement and general research and analytical purposes.

**E. Government and Other Reporting.** Notwithstanding **Section 5(C)** of this Agreement (**License Restriction**), Customer acknowledges and agrees that certain features of the Sapphire Software allow for the submission of Reports to state and federal agencies, including the Pennsylvania Information Management System, and if Customer acquires Sapphire Software with these features, Customer is consenting to, and the Parties are agreeing to, K12's submission of Reports to the federal and state government

agencies specified within the Sapphire Software or any Order for the Sapphire Software. In addition, Customer and K12 may agree in an Order for K12's submission of Reports or other data to other organizations as requested by Customer.

**F. Governmental Order, etc..** Notwithstanding the foregoing, K12 is not prohibited from disclosing any Customer Information which is required to be disclosed by applicable Law or court or governmental order so long as K12 first notifies Customer in advance thereof, with sufficient time as possible under the circumstances to allow Customer to respond to the request, or from disclosing any information which is publicly known or is available or obtained from a source not bound by an obligation of confidentiality to K12.

**G. Third-Party Consultants of K12.** K12 agrees that it will not disclose or distribute any Customer Information or permit any person or entity to have access to any such Customer Information, other than K12's employees and third-party consultants or service providers who have executed an agreement with terms no less protective of the Customer Information than the terms of this **Section 5** of the Agreement (**Customer Information**) solely for such third-parties to perform services for K12 so that K12 may perform services for Customer under the terms of this Agreement or otherwise exercise its rights with respect to Anonymous Data as described in **Section 5(D)** of this Agreement (**Anonymous Data**) and to government and other Reports or data as described in **Section 5(E)** of this Agreement (**Government and Other Reporting**). K12 shall use, at a minimum, the same degree of care as to such Customer Information, and shall maintain its confidentiality as K12 uses in respect to its own K12 Confidential and Proprietary Information. In all instances, K12 shall be responsible for the actions and inactions of its Third-Party Consultants with regard to their access and use of Customer Information.

**H. Customer Information Upon Termination.** In the event of expiration or termination of this Agreement, K12 will prepare and provide Customer with Student Data in CSV (comma separated values) format. However, Customer acknowledges and agrees that Customer Information stored within the Sapphire Software, including Student Data, will not be provided to Customer in native database format due to the proprietary manner in which such data is formatted on K12's system, and copies of documents or other written materials that have been uploaded onto the Sapphire Software by K12, or Customer or its Authorized Users, will not be retrieved from the Sapphire Software or otherwise made available to Customer without a separately quoted professional services fee for the cost of the labor required for the retrieval of such documents.

**I. Domain Name.** Domain ownership will remain with the Customer. Customer will direct its domain name to point to K12.

**H. K12's Use of Customer's Name.** K12 agrees that it will not intentionally disclose the identity of Customer on its Web site, or in its advertising, press releases, customer lists or other publicly released publicity without the Customer's prior written consent, which will not be unreasonably withheld.

**I. K12's Disclosure of Student and Employee Names.** K12 agrees that it will not use or disclose the names of any Students or Parents or Customer employees or other Non-Employee Staff and/or any private, confidential, and/or personally identifiable information pertaining to any Students or Parents or Customer's employees or other Non-Employee Staff to any third-party except as expressly permitted elsewhere in this **Section 5** of this Agreement (**Customer Information**).

**J. Customer Information in K12 Templates.** Customer Information, including Student Data, files that appear in K12 Templates, including Reports, remain the property of Customer, although the Templates, including Reports, themselves are owned by K12, retain their copyrighted status and are K12 Confidential and Proprietary Information and must not be disclosed to third-parties by Customer. Although K12 retains ownership in Templates, including Reports, that contain Customer Information and licenses

the same to Customer under **Section 3(A)** of the Agreement (**Grant of License from K12 to Customer**), K12 remains subject to the obligations under this **Section 5** of this Agreement (**Customer Information**) with respect to the use and disclosure of the Customer Information included in the Templates, including the Reports.

## 6) Term and Termination of Agreement.

**A. Term of Agreement.** This Agreement shall be effective by reason of the signature of the Parties, and shall commence on the Effective Date and continue in full force and effect unless terminated by K12 or Customer under **Section 6(B)** of this Agreement (**Termination of Agreement**) (hereinafter, the “**Term**”).

**B. Termination of Agreement.** Either Party may terminate this Agreement for convenience at any time upon ninety (90) days written notice to the other Party; however, other than as set forth in **Section 6(C)** of this Agreement (**Effect of Termination of Agreement**), the effect of such termination shall only be that no further Orders shall be executed under the terms of this Agreement and therefore, any Subscriptions, or Services, set forth in an Order in effect as of the date of termination of this Agreement shall continue for the period of the applicable Order unless separately terminated under **Section 2(C)** of this Agreement (**Order Termination**).

**C. Effect of Termination of Agreement.** Upon termination or expiration of this Agreement, all licenses granted hereunder shall immediately terminate regardless of the reason for termination. Notwithstanding the termination of this Agreement for any reason, the rights and duties of the parties under Sections 2(D), 2(E), this Section 6(C), 7, 9, 10, 12, 13, 22, 23, 24, 25, 26, 27 and 29 and all provisions pertaining to ownership or restriction of intellectual property and confidentiality of information shall survive such termination and remain in full force and effect.

## 7) Fees and Expenses; Taxes.

**A. Fees Owed.** Non-Refundable fees for a Subscription to the Sapphire Software and related K12 Intellectual Property licensed under **Section 3(A)** of this Agreement (**Grant of License from K12 to Customer**), and Services, to be paid by Customer to K12 hereunder shall be set forth in each applicable Order (hereinafter, generally referred to as “**Fees**”).

**B. Price Protection for Subscription; Hourly Rates for Professional Services.** Non-refundable Fees for a Subscription to the Sapphire Software and related K12 Intellectual Property licensed under **Section 3(A)** of this Agreement (**Grant of License from K12 to Customer**) will be at a fixed annual rate as stated in a Subscription Order. Support Services may be included in the Fees for a Subscription or there may be a separate non-refundable Fee for Support Services as stated in a Subscription Order. Separate non-refundable Fees shall apply for any Professional Services as stated in a Work Order. If additional Services are required beyond those stated in the initial Subscription Order, including, for example, startup assistance is requested related to startup conversion efforts beyond the initial fixed price for Professional Services regarding conversion stated in a Subscription Order, additional training is needed, or other additional one-time startup augmentation services are needed, K12 will provide a separate Work Order to Customer that specifies the additional work to be done, responsibilities, timeframes, and/or daily rates. K12 may request payment for Services up-front, or invoicing for Services may follow after the Services specified in the Order have been completed, each as specified in an applicable Order.

**C. Currency.** All prices are quoted in U.S. dollars and all payments shall be made in U.S. dollars.

**D. Payment.** Payment will be rendered by Customer to K12 within thirty (30) calendar days of the date of any invoice that is issued by K12 to Customer. K12 agrees that each invoice that it issues will be deposited into the U.S. mail at the address specified for Customer

on the first page of this Agreement within three (3) calendar days of the date of the invoice.

**E. Increase in Fees for a Renewal Order Term for a Subscription.** At least sixty (60) days prior to the beginning of each Renewal Order Term (a/k/a Renewal Subscription Period) for a Subscription to the Sapphire Software and related K12 Intellectual Property, K12 shall have the option to send Customer a written notice increasing the annual Fee for the Subscription and, unless Customer sends K12 written notice that it does not wish to renew the Subscription more than thirty (30) days prior to the expiration of then current Order Term (a/k/a Subscription Period) (and the commencement of the new Renewal Order Term) (a/k/a Renewal Subscription Period), such Order with the modified annual Fee for the Subscription shall go into effect upon commencement of the Renewal Order Term (a/k/a Renewal Subscription Period).

**F. Travel Expenses.** All fees incurred by Customer are exclusive of K12’s travel-related expenses incurred by K12 for on-site service or other service requested by Customer. For these services, Customer agrees to reimburse K12 for pre-approved travel and out-of-pocket expenses incurred by K12. Customer agrees to include reimbursements in the next monthly payment owed to K12.

**G. Taxes.** Customer shall, as required by law, pay all United States state and local sales and use tax or other similar United States transfer tax in the nature of sales or use tax, however denominated (each, a “**Tax**”), which is directly and solely attributable to purchases by Customer from K12 for consideration under this Agreement. K12 shall bill such Tax to Customer in the amount required by law, separately stating the amount and type of the billed Tax on the applicable invoice; Customer shall pay such billed amount of Tax to K12; and K12 shall remit such billed amount of Tax to the appropriate tax authorities as required by law; provided, however, that K12 shall not bill to or otherwise attempt to collect from Customer any Tax with respect to which Customer provides K12 with (i) a Tax exemption certificate prepared in accordance with applicable law or (ii) other evidence, reasonably acceptable to K12, that such Tax does not apply.

**H. Late Fees and Interest.** In the event that any charges on an invoice are not paid in full within thirty (30) days of the invoice date, Customer shall pay an additional late payment fee equal to 2% of the unpaid amount, plus simple interest at the rate of 1.5% per month beginning thirty (30) days after the date of the invoice. If Customer fails to pay charges on an invoice within sixty (60) days after the date of the invoice, Customer agrees that K12 may, after providing seven (7) days written notice to Customer, suspend the Subscription and the provision of Services, including turning off Customer’s access to the Sapphire Software. K12 reserves the right at any time to condition provision of the the Subscription and Services on reasonable assurance of payment. Customer shall reimburse K12 for all reasonable collection expenses, including reasonable attorneys’ fees and court costs, for delinquent amounts.

## 8) Support Services.

**A. Description.** Subject to the exceptions set forth in **Section 8(B)** of the Agreement (**Alterations**), **Section 8(C)** of the Agreement (**Attachments**) and **Section 8(D)** of the Agreement (**No Telephone Training**) below, K12 offers Software Support to Customer with each Subscription included in the annual fee for the Subscription or provides Support Services, or any aspect thereof, to Customer with a Subscription for a separate Fee as specified in a Subscription Order.

**B. Alterations.** Customer agrees that it will give K12 prior written notice of any proposed alterations to the Sapphire Software and acknowledges and agrees that K12 shall have no obligation to provide Support Services to Customer for any non-K12 modified Sapphire Software. Should K12 agree to maintain, support or correct modified Sapphire Software, K12 may impose additional charges above the annual fee for the Subscription or any other fee that may be charged in an Order. Further, K12 is not responsible for any malfunction, nonperformance or degradation of performance of

Sapphire Software, supplies, or maintenance support materials caused by or resulting directly or indirectly from any alteration that is not created by or at the direction or request of K12.

**C. Attachments.** In the event that problems arise from applying in-house solutions, or from running in-house utility programs, or from running in-house data correction programs, apart from K12's utilities and apart from consultation with K12, charges for corrections will be billed to Customer based on the hourly or daily rates in force at that time for K12 customers generally.

**D. No Telephone Training.** While Telephone consulting is included as part of Support Services, enabling corrective actions to be taken to the extent possible under such circumstances, Customer training by telephone is not provided as part of Support Services. Rather, on-site or internet-based training is a chargeable service characterized as a "Professional Service" under this Agreement based on a published daily rate.

## 9) K12 Warranty.

**A. K12 Representations and Warranties.** K12 represents and warrants to Customer that:

(i) K12 is a corporation or other recognized legal business or entity duly organized, validly existing, and in good standing under the Laws of the state in which it is incorporated, organized, and/or operating, this Agreement has been validly executed and delivered by K12, and the provisions set forth in this Agreement constitute legal, valid, and binding obligations of K12 which are enforceable against K12 in accordance with its terms;

(ii) K12 has all requisite corporate power and authority to enter into this Agreement, and to carry out the transactions contemplated by this Agreement;

(iii) K12's execution and delivery of this Agreement and K12's performance or compliance with the terms of this Agreement will not conflict with, result in a breach of, constitute a default under, or require the consent (except as set forth herein) of any third-party under any license, sublicense, lease, contract, agreement or instrument to which K12 is bound;

(iv) the Sapphire Software made available to Customer by K12 under the terms of this Agreement when properly used for the purpose and in the manner authorized by this Agreement will substantially perform as described in the Documentation in all material respects; and

(v) the Services provided hereunder will be performed with reasonable care and skill by employees with the requisite knowledge and experience to perform them.

**B. Warranty Exceptions.** Notwithstanding **Section 9(A)** of this Agreement (**K12 Warranties and Representations**), warranty coverage shall not extend to circumstances in which any failure in the Sapphire Software is the result of hardware or software failure on the Customer end (whether server or work station related), any malicious action on the part of Customer or any third party gaining access to Customer's servers and/or work stations, including, but not limited to malware, computer viruses or other compromising of operating system, applications or system data, or any Hacking. In fact, Customer acknowledges that, if a Customer Authorized User or other third-party permitted access to the Sapphire Software introduces any malware or computer virus or otherwise takes any malicious action compromising the Sapphire Software, Customer may be subject to a claim by K12.

**C. No Warranty for Third-Party Products.** K12 may direct Customer to third parties having products or services that may be of interest to Customer for use in conjunction with the K12 Intellectual Property. Notwithstanding any K12 recommendation, referral or introduction, Customer will independently investigate and test third-party products and services and will have sole responsibility for determining suitability for use of third-party products and services.

K12 has no liability with respect to claims relating to or arising from use of third-party products and services.

**D. Limited Remedy.** If Customer believes that K12 is failing to meet its warranty obligation under **Section 9(A)(iv)** of this Agreement, Customer shall send K12 written notice of such claim ("**warranty claim**") and Customer's sole and exclusive remedy shall be that K12 shall repair or replace the Sapphire Software that is subject of a Subscription and, if K12 is unable to repair or replace the Sapphire Software within a reasonable period of time, notwithstanding Customer's obligations to make payment of any Fees due under the terms of **Section 7** of this Agreement (**Fees and Expenses; Taxes**), K12 shall provide Customer with a refund of all Fees pre-paid with respect to the Subscription for the Sapphire Software that is the subject of the warranty claim and relieve Customer of its obligation to pay any Fees payable with respect to the same for the remainder of the Order Term regarding the Subscription for the Sapphire Software.

**E. LIMITATION.** EXCEPT AS DESCRIBED IN **SECTION 9(A)** OF THIS AGREEMENT (**K12 REPRESENTATIONS AND WARRANTIES**) ABOVE, K12 MAKES NO OTHER WARRANTY, EXPRESS OR IMPLIED, WITH RESPECT TO ANY SUBSCRIPTION, SOFTWARE OR SERVICES PROVIDED BY K12 HEREUNDER. K12 HEREBY DISCLAIMS ALL IMPLIED WARRANTIES AND CONDITIONS, WHETHER STATUTORY, ARISING FROM COURSE OF DEALING, USAGE OR TRADE PRACTICE, OR OTHERWISE, INCLUDING WITHOUT LIMITATION TERMS AS TO QUALITY, MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE AND NONINFRINGEMENT. K12 MAKES NO WARRANTY THAT THE THE SAPPHIRE SOFTWARE OR CUSTOMER'S USE THEREOF WILL BE UNINTERRUPTED OR ERROR-FREE. K12 DISCLAIMS ANY REPRESENTATION OR WARRANTY CONCERNING ANY PRESENT OR FUTURE USE, INTEGRATION OR COMPATIBILITY WITH ANY OTHER PRODUCTS OR SERVICES SUPPLIED BY K12.

## 10) Customer Warranty.

**A. Customer Representations and Warranty.**

Customer represents and warrants to K12 that:

(i) Customer is a recognized legal business or entity duly organized, validly existing, and in good standing under the Laws of the state in which it is incorporated, organized, and/or operating, this Agreement has been validly executed and delivered by Customer, and the provisions set forth in this Agreement constitute legal, valid, and binding obligations of Customer which are enforceable against Customer in accordance with its terms;

(ii) Customer has all requisite power and authority to enter into this Agreement, and to carry out the transactions contemplated by this Agreement; and

(iii) Customer's execution and delivery of this Agreement and Customer's performance or compliance with the terms of this Agreement will not conflict with, result in a breach of, constitute a default under, or require the consent (except as set forth herein) of any third-party under any license, sublicense, lease, contract, agreement or instrument to which Customer is bound.

**B. LIMITATION.** EXCEPT AS DESCRIBED IN **SECTION 10(A)** OF THIS AGREEMENT (**CUSTOMER REPRESENTATIONS AND WARRANTIES**) ABOVE, CUSTOMER MAKES NO OTHER WARRANTY, EXPRESS OR IMPLIED, WITH RESPECT TO ITS RECEIPT OF THE SUBSCRIPTION, SOFTWARE OR SERVICES FROM K12.

## 11) Third Party Services

**A. Import / Export Processing Fee.** Transfer of Customer Information from the Sapphire Software or vice versa to a third-party product and/or service ("**Third Party Service**") will be processed in

the following manner: K12 Systems will work with Customer to accommodate the needs of Customer. When incorporating the process of data transfer through (push/pull) method with understanding that if the import/export utility program already exists in the Sapphire Software utility library, K12 will charge Customer only for the processing time at its then current hourly rate for such services. If the utility program does not exist in the Sapphire Software utility library, meaning that K12 has not done any import/export with that particular Third-Party services vendor/product, K12 will build the utility program based on product software specification under the new service. K12 will assess the scope of the project and will submit a proposal for written approval to Customer under a separate Work Order.

**B. Customer Use of Third-Party Services.** If Customer elects to use a Third-Party Service that is accessed through an integration from the Sapphire Software to the third party's applications, the privacy policies and other terms and conditions applicable to the use of such Third Party Services may differ from those applicable to the use of the Sapphire Software or the other K12 products and Services, and Customer's access to and use of the Third Party Services shall be subject to such policies and terms and conditions. To the extent that Customer's use of such Third Party Services requires the transfer of, or access to, any Customer Information, including any Student Data, by the third party, (i) Customer hereby expressly consents to such transfer and/or access upon written notice by Customer to K12 that Customer has an agreement with the third-party, and (ii) K12 agrees to make such transfer or permit such access. K12 MAKES NO REPRESENTATIONS OR WARRANTIES AS TO THE THIRD PARTY SERVICES, EITHER EXPRESS OR IMPLIED, INCLUDING ANY IMPLIED WARRANTIES OF MERCHANTABILITY, QUALITY, ACCURACY, PERFORMANCE, FITNESS FOR A PARTICULAR PURPOSE, OR NON-INFRINGEMENT, AND K12 SHALL NOT BE LIABLE TO CUSTOMER FOR ANY CLAIMS, EXPENSES, COSTS OR OTHER DAMAGES OF ANY KIND ARISING OUT OF OR RELATING TO THE THIRD PARTY SERVICES OR CUSTOMER'S USE THEREOF.

## 12) Limitation on Liability

**A. LIMITATION ON TYPE OF DAMAGES.** IN NO EVENT SHALL K12 BE LIABLE FOR ANY INDIRECT, SPECIAL, PUNITIVE, OR CONSEQUENTIAL DAMAGES OF ANY KIND OR NATURE WHATSOEVER, SUFFERED BY CUSTOMER, INCLUDING WITHOUT LIMITATION, LOST PROFITS OR GOODWILL, BUSINESS INTERRUPTIONS OR OTHER ECONOMIC LOSS ARISING OUT OF OR RELATED TO THIS AGREEMENT OR ANY USE OF OR FAILURE TO BE ABLE TO USE THE SAPPHIRE SOFTWARE OR ANY OTHER K12 PRODUCTS OR SERVICES.

**B. LIMITATION ON AMOUNT OF DAMAGES.** K12'S MAXIMUM AGGREGATE LIABILITY UNDER THIS AGREEMENT WILL IN NO EVENT EXCEED THE TOTAL FEES THAT ARE PAID OR PAYABLE BY CUSTOMER TO K12 PURSUANT TO ANY ORDER UNDER THIS AGREEMENT

**C. EXCEPTIONS.** NOTWITHSTANDING SECTION 12(A) OF THIS AGREEMENT (LIMITATION ON TYPE OF DAMAGES) AND SECTION 12(B) OF THIS AGREEMENT (LIMITATION ON AMOUNT OF DAMAGES), THE LIMITATIONS SET FORTH THEREIN SHALL NOT APPLY TO: (I) THE AMOUNTS COVERED UNDER K12'S INDEMNIFICATION OBLIGATIONS TO CUSTOMER UNDER SECTION 13 OF THE AGREEMENT (INDEMNIFICATION), AND (II) A CLAIM FOR DEATH, PERSONAL INJURY OR PROPERTY DAMAGE ARISING FROM ANY NEGLIGENT ACTS OR OMISSIONS ON THE PART OF K12 OR ITS EMPLOYEES DURING K12'S PROVISION OF THE SUBSCRIPTION, THE K12 INTELLECTUAL PROPERTY OR ANY SERVICES UNDER THIS AGREEMENT.

**D. APPLICABILITY.** OTHER THAN AS STATED IN SECTION 12(C) OF THIS AGREEMENT (EXCEPTIONS), THE LIMITATIONS SET FORTH IN THIS SECTION 12 OF THIS AGREEMENT (LIMITATION ON LIABILITY) SHALL APPLY WHETHER SUCH LIABILITY IS ASSERTED ON THE BASIS OF CONTRACT, TORT,

OR OTHERWISE, EVEN IF K12 HAS BEEN WARNED OF THE POSSIBILITY OF ANY SUCH LOSS OR DAMAGE, AND EVEN IF ANY OF THE LIMITED REMEDIES IN THIS AGREEMENT FAILS OF THEIR ESSENTIAL PURPOSE.

## 13) Indemnification

**A. K12 Indemnification.** K12 will, at its own expense, defend any action brought by an unaffiliated third party against Customer, and pay any final judgment awarded, or settlements entered into by K12, in such actions, solely to the extent that such action is based upon:

a claim that its K12 Intellectual Property (excluding any third party software or systems) infringe a third party's United States patents or copyrights or misappropriates a third party's trade secrets.

If the K12 Intellectual Property provided hereunder becomes, or in K12's opinion is likely to become, the subject of an infringement claim, K12 may, at its option and expense, either: (a) procure the right to continue using the same; or (b) replace or modify the same so that it becomes non-infringing; or if either (a) or (b) is not commercially reasonable, (c) terminate this Agreement upon ninety (90) days advance written notice to Customer and reimburse Customer for any pre-paid but unearned Fees and relieve Customer of its obligations to pay any Fees payable for the remainder of the Order Term for a Subscription for K12 Intellectual Property that is the subject of the claim. Notwithstanding the foregoing, K12 will have no obligation under this Section 13 of the Agreement (Indemnification) or otherwise with respect to any infringement claim based upon: (i) any use of the K12 Intellectual Property not in accordance with this Agreement; (ii) any use of the K12 Intellectual Property in combination with products, equipment, software, content or data not supplied by K12; or (iii) any use of any release of the Sapphire Software other than the most current release made available to Customer. THIS ARTICLE 13 STATES K12'S ENTIRE LIABILITY AND CUSTOMER'S SOLE AND EXCLUSIVE REMEDY FOR INFRINGEMENT CLAIMS OR ACTIONS.

**B. Customer.** Customer will, at its own expense, defend any action brought by a third party against K12, and will pay any final judgment awarded, or settlement entered into, in any such action, provided that such action is based upon:

(i) claims made against K12 or any of its affiliates by Customer's users where there is no fault on the part of K12 as the basis for such claim, or

(ii) a claim that the Customer Information infringes any party's United States patents or copyrights or misappropriates such third party's trade secrets.

If any Customer Information is or becomes, or in K12's opinion is (a) likely to become the subject of such a claim, or (b) indecent, obscene, threatening, libelous, slanderous, defamatory, illegal, or otherwise unlawful or tortious, including material that is harmful to children or violates third party privacy or publicity rights, K12 shall give Customer notice of the potential issue and K12 may, without liability under this Agreement, remove such Customer Confidential Information from the Sapphire Software until such time as the issue has been resolved.

THIS SECTION 13 STATES CUSTOMER'S ENTIRE LIABILITY AND K12'S SOLE AND EXCLUSIVE REMEDY FOR INFRINGEMENT CLAIMS OR ACTIONS.

**C. Both Parties.** In connection with performance of this Agreement, to the extent not prohibited by law, each Party ("Indemnifying Party") agrees to indemnify and hold harmless the other Party, its Affiliates providing or receiving Services hereunder, and their respective officers, directors, employees, consultants and agents (collectively, "Indemnified Party") against any claim asserted by any third party for bodily injury or death or damage to tangible personal property to the extent the same was caused by the gross negligence or willful misconduct of the Indemnifying Party, its directors, officers, employees, authorized consultants, agents, or contractors and to the extent such indemnification is covered by

liability insurance.

**D. Indemnification Conditions.** The obligations in this Section 13 are expressly conditioned upon the party seeking defense: (a) giving the party offering such defense (the “**Defending Party**”) timely notice of any such action; (b) giving the Defending Party sole control of the defense thereof, and any related settlement negotiations; and (c) providing reasonable cooperation and assistance to the Defending Party in the defense of such action.

#### **14) Compliance With Laws.**

K12 agrees that it will not make available or distribute any Student Data in violation of the Federal Family Educational Rights and Privacy Act (FERPA) or any state equivalent of FERPA and will, at all times, otherwise comply with all applicable Laws in providing a Subscription to the K12 Intellectual Property or the other K12 Services. Further, K12 will comply with Customer’s privacy and security policy that is provided to it in writing by Customer with respect to the use and security of any Student Data that is stored by the Sapphire Software so long as such privacy and security policy complies with Law and is reasonable in its obligations to Students with respect to the handling of Student Data.

Customer agrees that it will not make available or distribute any Student Data in violation of the Federal Family Educational Rights and Privacy Act (“**FERPA**”) or any state equivalent of FERPA and will, at all times, comply with all Laws in using the Sapphire Software, or other K12 Intellectual Property, or the other K12 Services.

Further, Customer acknowledges and agrees that (i) it is responsible for obtaining any consents that may be required by a Parent in order for Customer to post Student Data in any community portal and, (ii) by granting user identifications and/or passwords, Customer controls, defines and manages access to Customer Information and related records and data that will be used within the Sapphire Software. Customer is responsible for (a) compliance with all foreign and domestic privacy and student record Laws that may be applicable to Customer’s use of the Sapphire Software or the other K12 products, software and Services; (b) securing all necessary prior consents (if any are required) for the collection, storage and use of education records, data and personal information within the Sapphire Software; and (c) the creation of, and compliance with, applicable policies regarding the access and use by Customer’s authorized users of personally identifiable information stored on the Sapphire Software.

#### **15) Cooperation**

K12 shall not be responsible for any delay in, or inability to perform, any Services that results from a delay or failure in performance by Customer. Customer will make its management and technical personnel, who will work with K12 and will perform those activities described as Customer’s responsibility in this Agreement or any Order, reasonably available to K12.

#### **16) On-Site Visits.**

All K12 employees shall always be in the presence of a Customer representative when working on Customer premises.

#### **17) Data Conversion.**

Data shall be converted to required format for the Sapphire Software. K12 shall make reasonable commercial efforts to ensure that the integrity of original data shall not be compromised during the conversion process.

#### **18) Other Software.**

Customer acknowledges that certain features of the Sapphire Software may permit access to or use of the Sapphire Software from mobile and/or other handheld devices that may require the document load of a separate application to promote ease of access to the Sapphire Software. In such case, Customer and/or its

Authorized Users or Parents may need to agree to separate application terms that appear upon download of this software.

#### **19) Customer Operational Responsibilities.**

Customer acknowledges it has independently determined that the Sapphire Software and other K12 Intellectual Property and the Services ordered and licensed or acquired, as applicable, under this Agreement, based on the representations and warranties in this Agreement, meet its requirements and the requirements of its Authorized Users and Parents at various office and building sites.

Customer has sole responsibility for use of the Sapphire Software, including operating procedures, audit controls, accuracy and security of input and output data, restart and recovery routines, and other procedures necessary for Customer’s intended use of the Sapphire Software in providing services to its Parents and others.

K12 Sapphire Software is an “Off-the-Shelf” design whose rules are intended to support generic national norms and standards of many customers. Tools are provided with the package to enable customization of Reports, addition of new data fields, and other locally-desired variations.

Except for the initial training to be supplied by K12, as specified in an Order, Customer will accept the responsibility to keep its personnel educated and trained in the proper use and operation of the Sapphire Software and that the Sapphire Software is used in accordance with applicable K12 Documentation.

#### **20) Audit**

K12 reserves and Customer acknowledges and grants to K12, the right to audit Customer’s access to, and use of, the K12 Intellectual Property, up to once per year, following reasonable prior notice, at K12 expense. Customer shall provide K12’s employees, representatives and agents with access to the Sapphire Software and such modifications, additions, alterations and additional computer programs, for the purpose of conducting such audit, during Customer’s normal business hours, and upon reasonable prior notice, provided that such audit shall not disrupt Customer’s normal operations and activities. Audit times shall be at a time approved by Customer.

#### **21) Force Majeure**

With the exception of a party’s obligation to make payments due to the other party (whether based on services performed or guaranteed fees), neither party shall be considered to be in default due to causes beyond its reasonable control, including acts or omissions of the government or any military authority.

#### **22) Sovereign Immunity**

Nothing herein shall be deemed a waiver of any immunity provided to Customer by applicable Law, including, but not limited to, the Political Subdivisions Tort Claims Act.

#### **23) Notice**

**A. General.** Unless expressly stated otherwise herein, any notice, demand, request or delivery required or permitted to be given by a party pursuant to this Agreement shall be in writing and in each case addressed to the receiving party at such party’s address as set forth in this Agreement or as subsequently modified by the receiving party pursuant to written notice to the other party. Notices shall be effective upon receipt and shall be deemed to be received as follows: (a) when delivered personally, (b) if delivered by nationally recognized overnight courier, effective the business day following the date of shipment, or (c) if by U.S. mail (certified or registered mail return receipt requested, postage prepaid) the earlier of actual receipt or three business days from the date deposited in the mail.

**B. Legal Notice to K12.** Unless hereinafter changed by written notice to Customer, any notice to K12 required by **Section 2(C)** of



the Agreement (**Order Termination**), **Section 6(B)** of the Agreement (**Term and Termination**) and/or **Section 13(D)** of the Agreement (**Indemnification Conditions**) shall be delivered or mailed to:

K12 Systems Inc.  
Two Windsor Plaza  
7540 Windsor Drive, Suite 314  
Allentown, Pennsylvania, 18195.

#### 24) Dispute Resolution & Arbitration

In the event of any dispute, claim or controversy arising out of or relating to this Agreement or the breach thereof (a "**Dispute**"), including any dispute regarding Disputed Charges, the parties shall first attempt to resolve the Dispute, without formal proceedings, through a telephone conference between K12's designated representative and Customer's designated representative. If the parties do not reach a solution within a period of thirty (30) days, then upon notice by either party to the other, the Dispute shall be finally determined and settled by binding arbitration to be conducted in Philadelphia, Pennsylvania, USA. The parties may choose an arbitrator and rules of arbitration by mutual agreement. The powers of the arbitrator shall include the granting of injunctive relief. The parties agree to permit reasonable discovery proceedings as determined by the arbitrator. The parties agree that the arbitrator shall have no jurisdiction to consider evidence with respect to or render an award or judgment for punitive damages (or any other amount awarded for the purpose of imposing a penalty), incidental or consequential damages. The arbitrator shall award all costs of the arbitration, including arbitrator's fees, arbitration filing fees, travel costs of witnesses, costs of depositions and reasonable attorney fees to the substantially prevailing party; provided, however, that the arbitrator's award for the costs of the arbitration shall not exceed the actual amount paid by the substantially prevailing party. The parties agree that all facts and other information relating to any arbitration arising under this Agreement shall be kept confidential to the fullest extent permitted by law.

#### 25) Governing Law

This Agreement and all related disputes between the parties shall be construed under and controlled by the laws of the Commonwealth of Pennsylvania, excluding its choice of law principles that would require the application of the Laws of another jurisdiction, and the parties hereto hereby consent to exclusive jurisdiction and venue in the Commonwealth of Pennsylvania, USA for any claims raised. Each party hereby waives any claim that any legal proceeding brought in accordance with this section has been brought in an inconvenient forum or that the venue of that proceeding is improper. In no event shall this Agreement be governed by the United Nations Convention on Contracts for the International Sale of Goods.

#### 26) Non-Solicitation

The Customer agrees that, without K12's prior written consent, Customer will not, during the Term of this Agreement and for a period of three (3) years after expiration or termination of this Agreement, employ or use the services of any person (whether as an officer, director, shareholder, partner, employee, agent, consultant or independent contractor) who was a K12 employee or developer and who provided services to Customer on behalf of K12 during the Term of the Agreement.

In the event the Customer breaches this provision, K12 shall be entitled to liquidate damages as calculated herein to compensate K12 for locating, recruiting, hiring and training a replacement person. K12's liquidated damages shall be a sum equal to two (2) times the gross annual compensation of the person who the Customer has wrongfully hired or engaged. Gross annual compensation means twelve times the wrongfully hired person's last full month's compensation from K12, including pro rata bonuses and benefits without set off for any sums due K12. The Parties agree and acknowledge that this amount is a reasonable, liquidated amount and not a penalty.

#### 27) Assignment

Neither party shall assign or otherwise transfer this Agreement, or any of its rights and obligations under this Agreement, without the prior written consent of the other party, which consent shall not be unreasonably withheld, except that K12 may assign this Agreement or any rights or obligations arising under this Agreement to an Affiliate, a third-party that is purchasing all or substantially all of its assets or an entity that is a surviving entity as a result of a merger or other change of control. Any attempted assignment or transfer except as permitted herein will be null and void. This Agreement shall be binding upon and inure to the benefit of the parties hereto and their respective successors and assigns.

#### 28) Disaster Recovery Plan

K12 shall have in place a disaster recovery plan that will appropriately provide for the reasonable recovery and resumption of the Sapphire Software and its Services in the event of a Disaster (a "**Disaster Recovery Plan**"). The Disaster Recovery Plan shall be appropriately tailored to coordinate with and supplement the disaster recovery and business continuity plans of Customer with regard to its respective, applicable business operations, and K12 shall at all times maintain such Disaster Recovery Plan in force and effect, performing the tasks and activities described therein, and adhering to the policies, practices, and procedures set forth therein, as necessary and appropriate in the provision of the Sapphire Software.

#### 29) Miscellaneous

**A. Entire Agreement.** This Agreement, including each Order and any schedules or exhibits thereto, including each Order, sets forth the entire understanding of the parties with respect to the subject matter covered by the Agreement and supersedes any and all prior and contemporaneous understandings, representations, proposals, communications and agreements, whether written or oral, between the parties with respect to such subject matter. If there is any conflict or ambiguity between the Agreement itself and any Order, then the Agreement shall control, but solely to the extent of the conflict or ambiguity.

**B. Amendments.** This Agreement may only be amended in a writing executed by both parties.

**C. Invalid Provisions.** If any provision of this Agreement, or any portion thereof, is held to be invalid or unenforceable in any respect for any reason, then that particular provision or portion notwithstanding, the remaining provisions of this Agreement shall not be in any way impaired.

**D. Waiver.** No waiver of satisfaction of a condition or nonperformance of an obligation under this agreement will be effective unless it is in writing and signed by the party granting the waiver. The failure of either party to enforce any of the provisions of this Agreement, or of any rights with respect thereto shall in no way be considered a waiver of such provisions or rights, or in any way affect the validity of this Agreement. Nor will the failure by any party hereto to enforce any of such provisions or rights prejudice such party from later enforcing or exercising the same or any other provisions or rights which it may have under this Agreement.

**E. Captions and Headings.** The captions and headings in this Agreement are inserted only as a matter of convenience and for reference and in no way define the scope or content of this Agreement or the construction of any provision hereof or of any document or instrument referred to herein.

**F. Counterparts.** This Agreement may be executed in one or more counterparts, each of which shall be deemed an original but all of which together will constitute one and the same instrument.

**F. Execution and Delivery.** Execution and delivery of this Agreement may be evidenced by facsimile or PDF transmission.

The persons executing this Agreement for and on behalf of the parties hereto represent that they are fully authorized to do so for and on behalf of their respective principals and that they have read, understood and agreed to the terms and conditions of this Agreement.

<b>K12 Systems, Inc.</b>	<b>Southern Lehigh School District</b>
<b>Signature:</b>	<b>Signature:</b>
<b>Name Printed: Ms. Brenda Shahpari Azar</b>	<b>Name Printed:</b>
<b>Title: President/CEO</b>	<b>Title:</b>
<b>Date:</b>	<b>Date:</b>

## Schedule A

“**Agreement**” shall mean this Subscription and Services Agreement, and any Orders and any exhibits, schedules or amendments thereto.

“**Authorized Users**” shall mean Customer’s administrators, faculty and staff, including teachers, counselors, coaches and nurses, Non-Employee Staff and Third-Party Computer Consultants who Customer permits to have access to the K12 Intellectual Property.

“**Anonymous Data**” shall mean anonymous data related to student performance and the activity of Customer’s Authorized Users stored within the Sapphire Software collected by K12 for product improvement and general research and analytical purposes.

“**Customer Confidential Information**” shall mean any information, documents and/or data that is received by K12 from Customer or its Authorized Users and loaded into the Sapphire Software, or is uploaded by Customer or its Authorized Users into the Sapphire Software, including any Student Data.

“**Deliverables**” shall mean any deliverables or other work product to be provided to Customer by K12 hereunder, including any deliverables as described in an Order.

“**Derivative Work**” shall mean a work based upon one or more preexisting works or any other form in which a work may be recast, transformed, or adapted. A work consisting of editorial revisions, annotations, elaborations, or other modifications which, as a whole, might represent an original work of authorship, is still a Derivative Work.

“**Disaster**” shall mean a force of nature that has catastrophic consequences.

“**Documentation**” shall mean written manuals and other materials providing a description of the functionality of the Sapphire Software.

“**Enhancement**” shall mean additional functionality not previously present in the Sapphire Software that is ordered by Customer. For the avoidance of doubt, an “Enhancement” shall not include different modules or product offerings of Sapphire Software.

“**Intellectual Property Rights**” shall mean patents, copyrights, trademarks, trade secrets and any other intellectual property right, whether or not registered.

“**Laws**” shall mean any national, regional, state or local law, statute, rule, regulation, code, ordinance, administrative ruling, judgment, decree, order or directive of any jurisdiction applicable to this Agreement or the Subscription or Services.

“**License Parameters**” shall mean any specific limitation on a License (as defined in **Section 3(A)** of the Agreement (**Grant of License from K12 to Customer**)) as stated in an Order, including, for example, number of Students.

“**Order**” shall mean an order that is signed by the Parties and sets forth Subscriptions any Subscriptions, and Services (as defined in **Section 1, Schedule A**, of the Agreement (**Definitions**)), purchased by Customer and pricing for the same. The term “Order” may include a “Subscription Order” or a “Work Order”.

“**Parents**” shall mean the adult parents or legal guardians of the Students that are attending school at Customer’s facilities.

“**Professional Services**” shall include initial setup and configuration services, implementation services, training services and any other services specified in an Order for which there is a separate charge.

“**Reports**” shall mean federal and state reports.

“**Sapphire Software**” shall mean the Sapphire Software computer system (including, but not limited to, software, hardware, interfaces and other components, including, but not limited to, access to support components such as help desk) used by K12 to deliver software and content over the Internet aimed at Kindergarten through 12<sup>th</sup> grade school environments for administrative purposes and to otherwise provide other Services to Customer, and any Updates or Enhancements to the Sapphire Software that K12 decides to generally make available to all of its customers.

“**Services**” shall mean Support Services or Professional Services.

“**Student Data**” shall mean data about the Students, including, personal information and performance information.

“**Students**” shall mean the children K through 12 that are attending school at Customer’s facilities.

“**Setup Period**” shall mean the period from the Order Effective Date to the Actual Go-Live Date that is set forth in a Subscription Order for a Subscription.

“**Subscription**” shall mean a License right granted under **Section 3(A)** of the Agreement (**Grant of License from K12 to Customer**) for a Subscription Period in return for an annual Fee paid as described in **Section 7** of the Agreement (**Fees and Expenses; Taxes**).

“**Subscription Order**” shall mean an order that is signed by the Parties and sets forth any Subscriptions, and related Services (as defined in **Section 1, Schedule A**, of the Agreement (**Definitions**)), purchased by Customer and pricing for the same.

“**Subscription Period**” shall mean the Initial Subscription Period and any Renewal Subscription Periods set forth in a Subscription Order.

**“Support Services”** shall mean hotline support, access to K12’s FTP site for downloading of Documentation and other resources, yearend federal and state Report changes, and Updates and Enhancements that K12 generally makes available to all of its customers. Support Services may be included in the fixed price for a Subscription, but may incur a separate charge as stated in an Order.

**“Templates”** shall mean proprietary content and data structures pertaining to the output of the Sapphire Software, including Reports.

**“Update”** shall refer to bug fixes, patches and corrections that are made to the Sapphire Software.

**“Work Order”** shall mean any form pertaining to Professional Services that is signed by the Parties and sets forth the details or terms of the work, including the time frame for Professional Services, responsibilities of the Parties, Deliverables and/or pricing.

Any capitalized term that is not otherwise defined in this Schedule A shall have the meaning that is given to it elsewhere in the Agreement.