

STATE OF NEW MEXICO
LEGISLATIVE EDUCATION STUDY COMMITTEE

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September 18, 2013

MEMORANDUM

TO: Legislative Education Study Committee

FR: Kevin Force *Kevin Force*

**RE: COMMITTEE REQUEST: OUTSTANDING QUESTIONS REGARDING
VIRTUAL EDUCATION IN NEW MEXICO**

During the July interim meeting of the Legislative Education Study Committee heard testimony regarding the New Mexico Virtual Academy (NMVA) and its curriculum provider, K12 Virtual Schools, LLC, a wholly owned non-profit subsidiary of K12, Inc., from Ms. Mary Gifford, Senior Vice-President of Education Policy and External Relations of K12, Inc., and Ms. Mari Adkins, Special Education Manager at NMVA. Ms. Gifford and Ms. Adkins presented information about such issues as curriculum, assessments, special education, and student enrollment and withdrawal. In the discussion following the presentations, members requested additional information on several issues, including several questions answered by K12 staff, in writing:

1. Which New Mexico counties do not have student representation at the NMVA?
2. What percentage of students at the NMVA is from the Farmington Municipal Schools?
3. What is the total funding per student?
4. Of the student withdrawals from NMVA, how many drop-out versus how many move back to homeschooling or traditional school, change school districts, etc?

5. Finally, members asked to see a copy of the services agreement between the New Mexico Connections Academy, LLC and the New Mexico online public charter school doing business as "New Mexico Connections Academy," (NMCA) as NMVA provided their own services agreement with K12, Inc. That agreement has been attached to this brief.

This staff brief presents the response to several of these questions:

1. *Which New Mexico counties do not have student representation at the NMVA?*

At the end of school year 2012-2013, Harding County was the only New Mexico County who sent no students to NMVA. As of the beginning of the current school year, Harding and De Baca Counties have no student representation at the academy.

2. *What percentage of students at the NMVA is from the Farmington Municipal Schools?*

LESC staff received from K12 staff a list of students from the Farmington Municipal Schools. According to the list of NMVA students living in San Juan County, the number of students residing in the Farmington School District is at least 81,¹ or 16.5 percent of the total student body of 489 for school year 2012-2013.

3. *What is the total funding per student?*

For school year 2012-2013, total funding per student at NMVA, including federal funds, was \$ 6,254.04; without federal funds, the total was \$ 5,374.74.

4. *Of the student withdrawals from NMVA, how many drop-out versus how many move back to home schooling or traditional school, change school districts, etc?*

According to information from K12:

- the majority, or about 64 percent, of withdrawing students returned either to public or home school (about 34 percent to public schools, 30 percent to home-school);
- about 8.0 percent moved to a school out of state;
- about 4.0 percent attended private schools within New Mexico;
- about 4.0 percent completed their GED;
- one student moved to community college; and
- the remaining student withdrawals were due to nonattendance.

¹ A number of students were designated "undefined."

RECEIVED
VIA E-MAIL

CONNECTIONS ACADEMY OF NEW MEXICO, LLC
CHARTER SCHOOL LEARNING PROGRAMS
STATEMENT OF AGREEMENT

AUG 06 2013

Customer Name: NEW MEXICO ONLINE PUBLIC CHARTER SCHOOL D/B/A NEW MEXICO
CONNECTIONS ACADEMY, a New Mexico public charter school

Summary of Educational Products and Services being requested: Connections Academy of New Mexico, LLC ("CA") will provide a fully integrated and comprehensive virtual school curriculum, educational technology platform, complemented by integrated back office support services, including human resources, training and professional development, technology, and enrollment support services, as more fully set forth in Section 2 below, (collectively "Education Program"), to support the Customer's virtual charter school education program for students in grades 4 through 12 initially, and K through 12 subsequently ("Charter School") during each Academic Year of the Term.

1. **Defined Terms:** Capitalized terms within the Statement of Agreement, and not otherwise defined herein, have the meanings ascribed to them in the Index of Defined Terms, attached hereto and incorporated herein by reference. The terms "Statement of Agreement" and "Agreement" are used interchangeably herein.
2. **CA Responsibilities:**
 - a. **Instructional Program:** CA shall provide to Charter School the instructional program during the Academic Year (the "Curriculum") that is approved by the Charter School's charter authorizer and/or the Public Education Department and that is aligned with both the Common Core State Standards, as adopted by the New Mexico Public Education Department (or PED), and the New Mexico State Standards. Course offerings shall meet the educational content or other standards established by the State of New Mexico in order to be recognized for meeting educational requirements in grades 4-8 or for high school credit in grades 9-12, and adding grades K-3 in subsequent years. The Curriculum shall include, at a minimum, the following:
 - i. Core and elective Courses, augmented by a mix of supporting online and offline education activities and resources, in a combination of synchronous and asynchronous delivery formats (together "Courses");
 - ii. Gifted/talented and Advanced Placement Courses;
 - iii. Test preparatory materials including SAT and ACT preparatory resources;
 - iv. Intensive Science-Technology-Engineering-Math ("STEM") courses;
 - v. Access to clubs and associations such as Chess Club, Poetry Club, Yearbook, and the National Honor Society;
 - vi. To the extent permitted by New Mexico law, optional access to certain courses taught through the International Connections Academy ("iNaCA");

- vii. Up to 14 semester length Courses per Academic Year per Student;
 - viii. In accordance with the license terms set forth in Section 4 below, a license to use all required CA materials in either electronic or print format, as the case may be, including textbooks, curricular materials, ancillary materials such as workbooks, texts and other materials ("Instructional Materials"). If Instructional Materials are available in both print or electronic format, CA can elect, in its sole discretion, which format will be used, except where otherwise required by a student's IEP or 504 Plan;
 - ix. Access to online lesson content, lesson plans, Teachlet® tutorials, and other intangible educational materials included in Courses;
 - x. The ability for teachers to create a Personalized Learning Plan ("PLP") for each Student, as required to meet or exceed any educational standards established by the State of New Mexico or required by the Charter School's Charter;
 - xi. Assistance to the Charter School in Next-Step planning; and
 - xii. A series of assessments designed to gauge the Student's mastery of core concepts and readiness for the State of New Mexico's standardized tests.
- b. Connexus® Access:
- i. In accordance with the license terms set forth in Section 4 below, provide a license for the duration of the Term to access and use CA's proprietary technology platform, known as Connexus®, during the Academic Year for purposes of utilizing the curriculum and services set forth in Section 2 of this Agreement, including providing web-based access from non-school sites to the virtual school program by students, parents/guardians, learning coaches, teachers and administrators;
 - ii. Provide access to other technologies through Connexus®, including the Connexus® student information system ("SIS"), lesson scheduling tools, accountability tools, webmail, instant messaging, secure chat, video and audio streaming, and message board forum;
 - iii. Provide 24/7 technical support through on-line Help (in Connexus®) and live phone support via CA Support Services to parents, students, and staff Monday-Friday 7:00 a.m. – 7:00 p.m. (MT) and on-call support all other times (for Students not using computer hardware and software provided by CA, CA shall provide initial technical support to ensure Students have the minimum requirements necessary to participate in the Education Program, and ongoing technical support on an as needed basis for the Students' use of Connexus®); and
 - iv. Provide for tracking of course materials and Student progress.
- c. Enrollment Processing: Using CA's enrollment service center, provide Charter School with student placement support, as well as enrollment processing, set up and support that are in compliance with local, state and federal law, and act as Charter School's agent throughout the

enrollment process. The enrollment process is fully integrated with and supported through the Connexus[®] system.

- d. Special Education Support Service: Provide support in the provision of special education programs, disability accommodations, and services related to the Charter School's legal and regulatory obligations in connection with the Charter School's special needs students' ability to access the Curriculum and Connexus[®].
- e. Student Records Support: Provide maintenance of Student Records in accordance with state, local, and federal requirements. All Student Record information shall be the sole property of Charter School, subject to applicable law, and to the extent such records are not readily available to the Charter School, will be made available within three (3) business days of a written request from Charter School. Connexus is a thoroughly integrated content and student information system linking all aspects of the student learning process.
- f. New Mexico Connections Academy: Provide a limited, royalty free, nontransferable license for the duration of the Term, unless terminated earlier as described in section 14, to use the name "New Mexico Connections Academy" as the name for the charter school being operated by Charter School under the terms of this Agreement.
- g. Professional and Technical Support Services: Utilizing its proprietary technology platform, Connexus[®], CA shall integrate key functions and services that are critical to maximizing the on-line academic experience and performance of the Students enrolled in the Education Program and the operations of a school, including the following:
 - i. Provide human resources services integral to delivery of the Education Program, including recruiting, training, monitoring, and supporting Charter School staff, as well as supporting the performance evaluation process for all Charter School staff, to ensure the Charter School is staffed by well-trained and effective online learning professionals, payroll and benefits support services, documenting background checks as specified by law, and assisting in the development of an employee handbook and school handbook that shall be submitted for adoption to Charter School's Governing Counsel in compliance with the applicable local, state and federal laws;
 - ii. Provide a program coordinator who is trained in the performance capabilities of the Education Program technologies, methodologies, and processes to collaborate with the Charter School's principal ("Principal");
 - iii. Staff an educational resource center during the hours of 7:00 a.m. – 4:00 p.m. MT during the Academic Year with education professionals trained in the delivery of on-line Curriculum to provide the Principal and his/her teaching staff (together "Instructional Staff") additional education support services and professional development in the areas of special education, gifted education, instructional delivery, and curriculum services;
 - iv. Provide Instructional Staff with access to all Instructional Materials supplied to them and Students through Connexus and Connections' LiveLesson[®] technology, as necessary to carry out teaching responsibilities;

- v. Collaborate with the Governing Council and the Charter School leadership team in the setting of strategic goals focused on meeting the performance framework set out in the Charter;
- vi. Using the Connexus portal and Connections' LiveLesson® technology, provide training and development programs and materials to Students, Students' mentors (referred to in CA materials as "Learning Coaches"), parents/guardians and community coordinators on the Curriculum, Connexus® access, various CA policies and procedures, and other technology to support student learning;
- vii. Provide Governing Council, Administrative Staff, the special education director and Teachers (collectively "Charter School Staff") with training in CA protocols and other best practices, as well as continuing professional development and other related training, leadership development and peer to peer networking opportunities (collectively "Training") that support the Charter School's mission and delivery of the Educational Products and Services. To the extent the Charter School will be required to cover travel, housing and related expenses in connection with such Training, such expenses shall be payable in accordance with the New Mexico Per Diem and Mileage Act and other applicable New Mexico laws governing reimbursable expenses. CA will inform the Charter School of those expenses the Charter School will be required to cover at the time CA notifies the Charter School of the Training opportunity. Such trainings shall not be exclusive, and the Charter School in its discretion may seek other trainings as deemed appropriate.
- viii. Using student enrollment and reporting data within the Connexus system, to which the Governing Council and Principal shall have access on a 24/7 basis, as well as other data, provide accounting support services to the Governing Council and its Licensed Business Manager, including providing all necessary supporting reports for all CA activities under this Agreement, assisting in the development of a budget for the Governing Council's consideration on an annual basis, audit support, accounting services, and local, state and federal financial reporting support, as well as collaboration services with the Governing Council, its finance committee and its audit committee;
- ix. Provide assistance to the Charter School in the development of a student information and community education plan to inform potential students, their parents/guardians, and other interested parties about the Charter School's education program in accordance with applicable law;
- x. Personalize the Student and Instructional Staff access to Connexus through the creation of a Charter School branded registration page, login page and Connexus® menu bar;
- xi. Drawing on the combined experience of the Connections marketing and technology groups, maintain a public website that will contain all information required by the Charter School Law and other information reasonably requested by the Charter School;
- xii. CA will provide for the logistical management of the physical curriculum materials it provides, which shall involve procurement, contracting, storage, fulfillment, and other services required to obtain and deliver these materials.

- xiii. CA will provide college placement services to Students.
- xiv. Leveraging the memberships of other CA branded virtual charter schools' in the National Honor Society, CA will work with the Charter School to set up a chapter of the National Honor Society at the Charter School.

3. Charter School Responsibilities:

- a. Provide all day to day management and administration of the Charter School, including hiring, evaluation and retention of the Principal, as well as the teaching and administrative staff, counseling and other related services, in accordance with applicable local, state, and federal law and in accordance with the Governing Council adopted budget;
- b. Abide by and implement all CA established protocols and procedures in connection with the Education Program, to the extent permitted by or not prohibited by applicable laws.
- c. Establish requirements for Course completion (including awarding of transfer credit where applicable), grade attainment and attendance in order to meet minimum requirements for graduation with a New Mexico public school diploma;
- d. Grant diplomas based on attainment of minimum requirements for graduation with a New Mexico public school diploma;
- e. Administer all State required testing and other State mandated assessments;
- f. Comply with all New Mexico student enrollment requirements;
- g. Obtain and maintain the following policies of insurance, as required and/or permitted by applicable law: director and officer liability, workers compensation with minimum limits established by law, educators' legal liability, employment practices liability and general liability insurance. To the extent permitted by applicable law, CA and its parent company, Connections Education LLC shall be added as additional named insureds on all policies of insurance obtained and maintained by and for the benefit of the Charter School;
- h. Provide employee benefit plans as required by law;
- i. Conduct all operations in compliance with the Charter contract, the Charter School's bylaws, and all applicable state and Federal laws and regulations;
- j. Promptly investigate any concerns or complaints raised by CA involving the performance of any employee of the Charter School;
- k. Comply with applicable laws and regulations concerning the services to Special Need Students, including the provision of necessary disability accommodations, special education programs and services, including development of IEPs, handling administrative proceedings and specialized services, submitting state or federal reports, applying for and administering supplemental funding, and all other administrative services associated with the delivery of services to Special Needs Students. All such services will be provided in a manner that complies with state and federal rules, regulations and policies;

- l. Provide and coordinate, or contract to be provided and coordinated, all direct or related special education services, including, but not limited to, speech therapy, occupational therapy, psychological evaluations, as well as the development and implementation of IEPs and 504 plans;
- m. To the extent permitted by law, and based on funding availability, provide, or contract to be provided, the execution of the targeted community outreach initiatives described in Section 2(viii); and
- n. Provide, or contract to be provided, all other products and services not specifically designated in this Agreement to be performed by CA, as is appropriate for a charter school authorized under New Mexico law, including, but not limited to, providing administrative office space and related support staff, and providing all necessary technology hardware and software to Students and Instructional Staff and any other requirements in the Charter

4. Grant of Rights And Access:

- a. License. CA hereby grants to Charter School a non-exclusive, nontransferable, royalty-free, limited license during the Term of the Agreement for Authorized Users to access and use Connexus® and the Content contained in Connexus®, in connection with the receipt of educational products and services hereunder. CA may update the features and functions of Connexus® from time to time. Any right to use Content shall be solely for the applicable Course for which a Student is enrolled or an Authorized User is otherwise authorized to access.
- b. Permitted and Prohibited Uses. All rights not expressly granted to Charter School and Authorized Users pursuant to the Agreement are reserved to CA, and any uses of Connexus® and Content by Charter School and Authorized Users not expressly permitted in the Agreement are strictly prohibited.

Specifically, Charter School will not, and will not permit Authorized Users, Charter School's employees or agents or any third party to: (i) access the Content or Connexus® except in connection with Courses for which a Student is enrolled, (ii) use Curriculum and Content except in strict compliance with the Agreement and the Terms of Use, (iii) copy, reproduce, modify, alter, transfer, transmit, perform, publish, display, sub-license, distribute, circulate provide access to, rent, or create Derivative Works from the Content or any portion thereof, (iv) decompile, reverse engineer, disassemble, or otherwise determine or attempt to determine the source code (or the underlying ideas, algorithms, structure or organization) of the Content or of Connexus®, (v) upload files that contain viruses, Trojan horses, worms, time bombs, cancelbots, corrupted files, or any other similar software or programs that may damage the operation of Connexus®, (vi) take any actions, whether intentional or unintentional, that may circumvent, disable, damage or impair the control or security systems of Connexus® or the Content, nor allow or assist a third party to do so, (vii) use the Content in a manner that disparages Connexus®, Content, CA or its content providers, or in any manner that CA may, in its sole discretion, deem inappropriate, or (viii) disclose Log-In Information (as defined in Section 2.d. below) or permit access to Connexus® and/or the Content by unauthorized persons using an Authorized User's Log-In Information.

- c. Usage Guidelines and Rules of Conduct. Charter School (including its employees and agents) and Authorized Users may use Connexus® and the Content for bona fide educational and other contracted-for purposes only. Charter School will comply and assure compliance by its employees, agents and the Authorized Users with Terms of Use of Connexus, Privacy Policy, and other applicable CA policies, as may be updated from time to time by CA in its sole discretion. The Privacy Policy and Terms of Use are posted on the Website and are accessible from the Connexus® login page. Charter School acknowledges that CA may also institute basic rules for academic and personal conduct for Authorized Users' use of the Content and Connexus® that are in accordance with applicable laws governing New Mexico public charter schools, and that CA will enforce those rules in its sole discretion, including terminating access for Authorized Users in the event of their failure to adhere to those rules, to the extent permitted by applicable laws. Included in the rules of conduct shall be prohibitions against any Authorized User's attempt to make inappropriate communication or contact with any other Authorized Users through Connexus®, as well as, hacking, viral infection, or other technical attempts to gain unauthorized access to or cause damage to Connexus®. Charter School shall immediately provide CA with written notice of any unauthorized use or distribution of the Content or Program of which Charter School becomes aware and shall take all necessary steps to ensure that such unauthorized use or distribution is terminated.
 - d. Security and Use of Passwords. Each Authorized User will have a user name and password for the purpose of accessing Connexus® and the Content (the "Log-In Information"). Charter School and its Authorized Users must keep all Log-In Information strictly confidential, and all Log-In Information may be used only by the assigned Authorized User. Charter School and its Authorized Users are responsible for maintaining the security and confidentiality of all Log-In Information, and for preventing access to Connexus® and/or the Content by unauthorized persons using an Authorized User's Log-In Information. Unauthorized access to or use of Connexus® and/or the Content by someone using an Authorized User's Log-In information may be attributed to such Authorized User.
 - e. Availability and Support. CA does not guarantee availability of Connexus® 24 hours per day, 7 days per week. CA will respond to general support issues within one (1) business day, after which they will be escalated as may be specified by CA from time to time. The contact for escalation of support issues will be as designated by CA.
 - f. Communications from CA. Charter School acknowledges and agrees that CA may periodically contact Authorized Users for Charter School service purposes. By accessing Connexus® and Content, Charter School and Authorized Users will have consented to receive such communications.
5. **Representation Regarding Non-discrimination:** Neither CA nor the Charter School will discriminate against any person on the basis of race, creed, color, sex, national origin, religion, ancestry, sexual orientation or disability, or any other basis prohibited by federal or New Mexico law.
6. **Health and Safety:** CA and the Charter School shall develop policies related to and adhere to the following standards regarding health and safety, as provided and required by applicable state and federal laws, including but not limited to:

- a. Reporting child abuse or neglect where there is reasonable basis for suspecting there is reasonable suspicion such abuse or neglect is occurring, as required by state law;
 - b. Adopting policies prohibiting the use of drugs, alcohol, weapons and tobacco on school grounds or at school events, as well as bullying, sexual harassment, harassment, other social behaviors prohibited under applicable law; and
 - c. Compliance with all state immunization laws.
- 7. Pricing and Payment Terms:**

In consideration for the bundled services set forth in Section 2 above being provided to the Charter School during the Term, the Charter School agrees to pay CA the sum of (i) a fee of Two Thousand Dollars (\$2,000.00) for each Student enrolled as of November 1st and (ii) a fee of Two Thousand Dollars (\$2,000.00) for each student enrolled as of March 1st (respectively "Per Student Fee"). For example, a student who enrolls in the Charter School on October 15 of a given academic year and withdraws on April 1 of that same academic year will generate a total charge of \$4,000 for the Education Program. Due to potential variability of State and Federal funding and annual expenditures of the Charter School, the Parties agree to negotiate in good faith a reduction in the fee described above if the school's expenditures are projected to exceed its funding, which would have resulted in a cumulative net asset deficit on its audited financial statements. Any such reduction in fee is limited to the year for which such reduction is negotiated, except as otherwise provided for in writing by the parties. CA will not be entitled to recoup payment of the negotiated underage in future years, regardless of funding availability.

CA will invoice the Charter School monthly. Payment will be due within fifteen (15) business days of action by the Charter School Governing Council which shall use its best efforts to review and approve invoices within thirty (30) days of receipt. CA may charge interest at the rate of one and one half percent (1.5%) per month for any invoices over sixty (60) days unless such failure to pay is the result of funds being withheld from the Charter School due to a failure by CA to perform under the terms of this Agreement, or if the Charter School has insufficient funds to pay the invoice as the result of outstanding receivables, deferred payment by the State or Charter Authority of funding due, or if the Charter School is disputing any charges. The Charter School shall notify CA of the basis for any dispute within fifteen (15) days of determination of such dispute and shall work to resolve the dispute within thirty (30) days. All amounts other than any amount in dispute shall be paid according to the terms herein. Funds shall also be subject to adjustment based on any adjustments to Student counts as a result of an audit by the State of New Mexico. Any differences in amounts that were previously paid under this Agreement as a result of such audits shall only be applied to or against the next payment or payments otherwise due under this Section, or if no payment is due, CA shall refund such amount to the Charter School.

To the extent that any adjustments as a result of a state audit are the result of CA's failure to adequately perform its responsibilities under this Agreement, CA will be required to either: (i) return any required funds to the Charter School in the amount determined by the State funding authority, or (ii) to the extent that funds are withheld from future payments to the Charter School, reduce payments otherwise due to CA by the amount funding is withheld.

8. **Enrollment Cap:** The grade levels and maximum number of enrolled Students in a given Academic Year is limited by the enrollment cap established in the Charter, unless and until the Parties are permitted to increase the grade levels and enrollment cap by applicable law.
9. **Services Not Provided by CA Under This Agreement:** The following services are not being provided by CA under the terms of this Agreement. However, for an additional fee to be negotiated between the parties, Charter School may opt to enter into separate contracts with CA to provide the following additional services, pursuant and subject to applicable New Mexico laws.
 - a. **Technology Hardware and Support:** At an annual cost of \$575 per personal computer ("PC") provided to a Student's household, Charter School may lease from CA its standard desktop PC, with preloaded software necessary to fully access and support the curriculum, for use by Students and Instructional Staff. Included in the \$575 fee is CA's standard technology logistical support services. In the event that the Charter School procures its own Hardware and/or Software to be provided to Students, it shall provide written assurances to CA that the Charter School will provide logistical support services comparable to those provided by CA and will assume all liability related to any failure by the Charter School to provide such services.
 - b. **Facility and Capital Equipment/Furnishings Procurement.** Assist in the procurement of the Charter School administrative office space adequate to meet the needs of the Charter School and/or all equipment and furniture required to make such office space functional for its intended purpose, as well as all utilities required to fully meet such functional requirements.
 - i. Facility support charge will be set at an annual rate of \$10,000. The locations, lease terms, and capital purchases required for all facilities provided under this Agreement will be subject to the approval of the Charter School Governing Council and shall comply with all state and federal laws and requirements applicable to such facilities. CA agrees that it will have no beneficial financial interest in any approved lease. The Charter School agrees to reimburse CA any reasonable travel-related costs incurred to support this activity. Any furniture and equipment procured and owned by CA at the Charter School's direction for the Charter School's use will be provided at an annual rental fee of one-fifth (1/5th) of CA's purchased price and may be purchased from CA at any time at a cost equal to its depreciated cost basis (assuming a five year life). CA may offer an additional incentive, in its sole discretion, to the Charter School to facilitate the purchase of the furniture and equipment by the Charter School.
 - ii. If CA is asked to procure facility maintenance and utility services, CA agrees to pass-through all costs from CA to Charter School with no mark-up applied.
 - c. **Office Products and Supplies.** Procure for Charter School all requested office products and supplies needed for the operation of the administrative offices. CA would treat this procurement service as a pass through cost to Charter School with no mark-up applied.
 - d. **Inventory Warehouse Management.** If Charter School procures its own technology hardware, for an annual fee of \$300 per technology hardware unit, CA will provide inventory warehouse management services for Charter School's technology hardware inventory, including handling all to and from shipping of the inventory to the designated user, as directed by Charter School, collection efforts of unreturned inventory, inventory repair (if under warranty) and cleaning,

and inventory storage. A CPU and monitor constitute a single technology hardware unit for purposes of this section 9d.

- e. Internet Subsidy Support Services. Charter School may contract with CA to act as the Charter School's agent in facilitating the Charter School's internet subsidy program. Payment of the internet subsidy to eligible households would be facilitated by CA in the form of prepaid credit cards (with the option for a check or direct deposit potentially available), which will be issued to the parent or guardian (and in certain circumstances, the Student) according to the schedule outlined in the school handbook, provided Charter School has submitted in advance to CA sufficient funds to cover issuance of the payment. In no event will CA advance Charter School funds to support Charter School's internet subsidy program. CA would charge \$25 per each household enrolled at any time during the school year to provide this service. This does not include the cost of the internet subsidy payments themselves.
- f. Other Products and Services not Included. Products and services not included in the bundled pricing include office supplies, office internet and phone, copier rental/usage, office postage, state-required student testing and assessment, staff recruiting and local professional development, and attendance at conferences and seminars. CA will be willing to provide these services at an additional cost to be negotiated by the parties at a future date.

10. Trademarks:

- a. Any use of Connections Education, Connections Academy, Connections Learning, or any of Connection Education's (collectively "CA trademarks") trademarks requires written consent of CA. An up-to-date list of CA's trademarks can be found at <http://www.connectionsacademy.com/Libraries/PDFs/CACCommonLawTrademarks.sflb.ashx>. All such requests shall be submitted to the program manager. Any failure to respond by CA to Charter School's request within 7 business days shall be deemed a denial of consent by CA. Upon execution by the Parties, this Agreement shall be deemed written consent for use of the trade name "New Mexico Connections Academy".
- b. Upon termination of this Agreement, Charter School's license to use as its trade name "New Mexico Connections Academy" shall immediately terminate. Charter School agrees that within 30 calendar days from the date of termination, Charter School shall seek a name change amendment from its authorizer, and all references to "Connections Academy" shall be removed from its trade name, on its signage, stationary, website, marketing materials and any other material or location it appears.

11. Intellectual Property:

- a. Connexus® and all technology, programs, services, and materials hosted thereon, the curriculum, all tangible and intangible education materials, all Connections Education LLC trademarks and copyrighted works, and the trade name "New Mexico Connections Academy" are the intellectual property of CA's parent company, Connections Education LLC. Charter School's right to use and benefit from said intellectual property is limited to its license rights set forth in this Agreement.
- b. Nothing in this Agreement shall be interpreted to be a sale or transfer of ownership interest from CA or Connections Education LLC to Charter School, Administrative staff, Teachers, Students, Parents/Guardians, or learning coaches.

- c. No Charter School funds shall be used by CA or Connections Education LLC to develop or procure Courses or Content or improvements to Connexus®, provided, however, any Charter School funds paid to CA for provision of the education products and services hereunder, once paid, shall not be deemed to be Charter School funds.
- d. Any works created by Charter School's Instructional Staff and derived from Connections Education LLC's Intellectual Property shall be deemed the property of Connections Education LLC, and Charter School agrees to extend all reasonable and appropriate measures to assist Connections Education LLC in securing and perfecting its ownership interest in such derivative works.
- e. Charter School hereby grants to CA and Connections Education LLC, and will require its Instructional Staff to do the same, a worldwide freely transferable, royalty free, perpetual license, in any content contained in such derivative works that are determined to remain the property of Charter School and/or a member of its Instructional Staff. Similarly, to the extent any Instructional Staff created educational content that is hosted on Connexus or in a Connections Education LLC proprietary LiveLesson session, Charter School on behalf of itself and such Instructional Staff hereby grants to Connections Education LLC a worldwide freely transferable, royalty free, perpetual license to use such created educational content for its own commercial purposes.

12. Confidentiality:

- a. Confidential Information. The receiving Party shall use the Confidential Information only in connection with the furtherance of the business relationship between the Parties, and the receiving Party shall make no further use, in whole or in part, of any such Confidential Information. The receiving Party agrees not to disclose, deliver or provide access to all or any portion of the Confidential Information to a third party or to permit a third party to inspect, copy, or duplicate the same. The receiving Party will disclose Confidential Information only to its employees and agents who have a need to know such Confidential Information in connection with the performance of the Agreement and who are under a written obligation to protect the confidentiality of such Confidential Information. The receiving Party will treat the Confidential Information with the same degree of care and confidentiality that the receiving Party provides for similar information belonging to the receiving Party that the receiving Party does not wish disclosed to the public, but not less than holding it in strict confidence.
- b. Student Records. CA and Charter School acknowledge and agree that pursuant to FERPA and any regulations promulgated thereunder, the Parties have certain obligations with regard to maintaining the security, integrity and confidentiality of "education records", as that term is defined by FERPA. The Parties acknowledge that each Party must perform its obligations under the Agreement in compliance with FERPA and any regulations promulgated thereunder. CA and Charter School each designate the staff, employees and volunteers who are providing educational and/or administrative services to the Students as agents of Charter School having a legitimate educational interest and thus entitled to access educational records under FERPA. CA and Charter School shall also maintain Student Records in accordance with any other applicable laws and regulations.

- c. Exceptions. The foregoing shall not prevent the receiving Party from disclosing Confidential Information that must be disclosed by operation of law, provided (i) the receiving Party shall promptly notify the disclosing Party of any such request for disclosure in order to allow the disclosing Party full opportunity to seek the appropriate protective orders, and (ii) the receiving Party complies with any protective order (or equivalent) imposed on such disclosure. It is understood and agreed that this Section 12 c. is not intended to permit the disclosure of education records referenced in 12 b., unless permitted by applicable law.
 - d. Aggregated Data. CA may freely aggregate Charter School owned Student specific data for use in connection with legitimate business purposes so long as such aggregated use does not violate applicable privacy laws, including FERPA, and/or reveal identifying characteristics that would enable a third party to determine the identity of any individual Student, including that Student's legal guardian. All such aggregated data shall be the property of CA. CA may freely use all such aggregated data and identify its source as being New Mexico Connections Academy without the consent of the Charter School.
 - e. Return of Confidential Information. The receiving Party agrees that it will, within ten (10) days after written request by the disclosing Party, return to the disclosing Party, or at the option of the disclosing Party, destroy and certify in writing the destruction of, all Confidential Information received from the disclosing Party, including copies, reproductions, electronic files or any other materials containing Confidential Information.
 - f. Remedy for Breach. The Parties acknowledge that monetary damages may not be a sufficient remedy for unauthorized disclosure of Confidential Information and that a disclosing Party shall be entitled, without waiving any other rights or remedies, and without the posting of bond or other equity, to such injunctive or equitable relief as may be deemed proper by a court of competent jurisdiction.
13. Term: This Agreement will commence on July 1, 2013, and will continue through June 30, 2019 ("Initial Term"), upon finalization of the Performance Contract and Framework between the Public Education Commission and the Charter School. Upon mutual agreement of the Parties, this Agreement may be renewed one (1) renewal term of three (3) years, provided that the option to renew must be made in writing and received by CA no later than February 1 of the year in which the Agreement is scheduled to expire.
14. Termination:
- a. Unless otherwise renewed or earlier terminated, this Agreement shall terminate immediately upon the expiration of the Term. Any notice of early termination shall take effect at the closing of the last day of the Academic Year, unless otherwise agreed to by the Parties or provided for herein. Notices of termination must be made in writing and delivered to the addresses set forth below no later than March 1 of the current Academic Year and shall list all reasons for said early termination. The following early termination provisions shall govern the relationship of the Parties:
 - i. Termination by either Party, immediately, if one Party materially breaches this Agreement and fails to cure such breach within thirty (30) days following written notification of such breach from the other Party;

- ii. Termination by Charter School if sufficient appropriations and authorizations being made by the Legislature of New Mexico to the Charter School for the performance of this Agreement are discontinued or substantially reduced. If sufficient appropriations and authorizations are not made by the Legislature, this Agreement shall terminate immediately upon written notice being given by the Charter School to CA. Charter School's decision as to whether sufficient appropriations are available shall be accepted by Contractor and shall be final. If Charter School proposes an amendment to the Agreement to unilaterally reduce amounts payable to Contractor, Contractor shall have the option to terminate the Agreement or agree to the reduced funding, within thirty (30) days of receipt of the proposed amendment.
 - iii. Termination by CA, immediately, if the payments to which CA is entitled under Section 3 of this Agreement are materially reduced as a result of a change in funding provided to the Charter School or applicable laws or regulations impose requirements that are materially different from those previously provided under this Agreement and CA is unwilling or unable to make the required changes;
 - iv. Termination by CA, at the close of the Academic Year in which the notice of termination is delivered, if there are irreconcilable differences with respect to the manner in which CA and/or the Charter School carries out its responsibilities under the terms of this Agreement;
 - v. Termination by either Party effective at the close of the then-current academic year, or upon the effective date of the charter revocation if the Charter is terminated or if the Charter School is no longer authorized by the Authorizer as required by applicable New Mexico law and regulation;
 - vi. Termination by the Charter School, at the close of the Academic Year in which CA's cure is found to be insufficient, if the Governing Council determines at the end of an Academic Year that the educational products and services set forth in this Agreement do not meet the terms of the Charter, the Charter Contract, or requirements for a computer-based virtual or charter school, as defined by applicable laws and regulations, but only if CA is unable to cure such deficiency after being given reasonable notice thereof and the opportunity to cure any alleged failure to meet such requirements; or
 - vii. Termination by the Charter School, if the Charter School Governing Council determines, after a Performance Review, in the Charter School's sole reasonable discretion, that this Agreement should be terminated for failure to perform, but only if CA is unable to cure such deficiency after being given reasonable notice thereof specifying in detail the deficiency and the opportunity to cure any alleged deficiency in performance. The determination as to whether CA has cured the deficiency shall be made in the sole reasonable discretion of the Charter School; provided, however, that such determination shall be made by the Charter School by no later than March 1.
- b. Obligations on Termination. In the event this Agreement is terminated by either Party for any reason:

- i. CA shall assist and cooperate with the Charter School in the transition from CA to the Charter School, or another service provider, so as to minimize the disruption to the Students;
- ii. Each Party will promptly (not later than thirty (30) days after the effective date of termination) return to the other Party all Confidential Information, property and material of any type belonging to the other Party, including but not limited to, electronic versions, hard copies and reproductions and will not retain copies of any such property or material except as may be expressly permitted in this Agreement or required by applicable law;
- iii. All access to Connexus® and other educational products and services contracted for herein shall be discontinued;
- iv. CA shall provide to Charter School copies of all Student Records not otherwise in Charter School's possession at no additional cost; and
- v. Charter School shall pay CA all amounts due under this Agreement for services rendered upon the earlier of either their due dates or thirty (30) days after the effective date of termination.

15. Indemnification:

- a. Indemnification Obligations. To the extent not covered by insurance or not barred by any State law, Charter School ("Indemnifying Party") shall defend, indemnify and hold the CA and its respective agents and employees (together "Indemnified Party") harmless against and from all costs, expenses, damages, injury or loss (including reasonable attorney's fees) to which the Indemnified Party and their respective agents and employees may be subject by reason of any willful misconduct or gross negligence in the execution or performance of this Agreement. This indemnification shall not apply to any liability claims or demands resulting from the negligence or wrongful act or omission of the Indemnified Party's directors, officers, agents, or employees. This indemnification, defense and hold harmless obligation on behalf of Indemnifying Party shall survive the termination of this Agreement. The Indemnified Party shall have the right, at its own expense, to participate in the defense of any suit, without relieving the Indemnifying Party of any of its obligations hereunder. CA's indemnification obligations toward the Charter School shall be no greater and no less than what the Charter School's indemnification obligations toward CA would be under similar circumstances.
- b. Indemnification Procedure. The Indemnified Party will: (a) promptly notify the Indemnifying Party in writing of any claim, loss, damages, liabilities and costs, and for third party claims, (b) allow the Indemnifying Party to control the defense, and (c) reasonably cooperate with the Indemnifying Party in the defense and any related settlement negotiations. In addition to any defense provided by the indemnifying Party, the indemnified Party may, at its expense, retain its own counsel. If the Indemnifying Party does not promptly assume the Indemnified Party's defense against any third party claim, the Indemnified Party reserves the right to undertake its own defense at the Indemnifying Party's expense. For purposes of this section 15b, Indemnified Party shall refer to Charter School or CA, as the case may be and Indemnifying Party shall refer to Charter School or CA, as the case may be.

16. **Limitation of Liabilities.** In no event will either Party, or such Party's Affiliates, directors, officers, employees, or agents, be responsible or liable for the debts, acts or omissions of the other Party or such Party's Affiliates, directors, officers, employees, or agents.
17. **Insurance:** To the extent allowed by and subject to the requirements and limitations of applicable New Mexico law and regulation, CA will maintain and keep in force the insurance policies set forth in Exhibit A, as amended from time to time upon the agreement of the parties. The Charter School shall maintain and keep in force insurance provided in accordance with New Mexico Public Schools Insurance Authority statutory requirements and at no less than the minimum levels required by the Charter, applicable law, or both, as well as Director and Officer's Insurance in the amount required by the Authorizer or by the Charter. Liability insurance for any facility leased directly and/or managed by the Charter School and any capital equipment or furniture and fixtures owned by the Charter School will be the responsibility of the Charter School.
18. **Sales Tax:** The Charter School shall provide CA with sufficient evidence that it is tax exempt. To the extent that the Charter School is not tax exempt, the Charter School shall be responsible for federal, state, or local taxes assessed, if any, based on the products and services provided by CA to the Charter School under this Agreement. If any sales and use taxes are assessed on purchases made from CA, CA will provide a credit to the Charter School equal to the amount of the sales or use taxes paid by the Charter School.
19. **Notices:** All notices, consents and other communications under this Agreement shall be given in writing and shall be sent by and deemed to have been sufficiently given or served for all purposes as of the date it is delivered by hand, received by overnight courier, or within three (3) business days of being sent by registered or certified mail, postage prepaid to the Parties at the following addresses (or to such other address as hereafter may be designated in writing by such Party to the other Party):
- | | |
|-----------------------|---|
| If to CA: | Connections Education LLC
1001 Fleet Street, 5 th Floor
Baltimore, MD 21202
Attn: Barbara Dreyer, President |
| With a copy to: | Connections Education LLC
1001 Fleet Street, 5 th Floor
Baltimore, MD 21202
Attn: General Counsel |
| If to Charter School: | Governing Council President
4001 Office Court Drive, Suites 201-204
Santa Fe, NM 87507 |
| With a copy to: | Matthews Fox, P.C.
1925 Aspen Drive, Suite 301A
Santa Fe, New Mexico 87505
Attention: Susan B. Fox |

20. **Governing Law:** This Agreement shall be governed and controlled by the laws of the State of New Mexico. Any legal actions prosecuted or instituted by any Party under this Agreement shall be brought in a court of competent jurisdiction located in the State of New Mexico, and each Party hereby consents to the jurisdiction and venue of any such courts for such purpose.
21. **Amendments:** This Agreement may only be amended or modified by a writing signed by both Parties.
22. **Warranty:** CA represents and warrants that its education program is recognized by institutions of higher learning throughout the United States and by the National Honor Society, as evidenced by the number of colleges and universities that have accepted CA graduates into their various degree programs and by the number of CA branded schools that have gained membership into the National Honor Society.
23. **Miscellaneous.**
- a. **Severability.** If any provision of this Agreement is held to be invalid or unenforceable, it shall be ineffective only to the extent of the invalidity, without affecting or impairing the validity and enforceability of the remainder of the provision or the remaining provisions of this Agreement. If any provision of this Agreement shall be or become in violation of any federal, state, or local law, such provision shall be considered null and void, and all other provisions shall remain in full force and effect.
 - b. **Successors and Assigns.** The terms and provisions of this Agreement shall be assignable by either Party only with the prior written permission of the other, which consent shall not be unreasonably withheld; provided that a change in control of Connections or its managing member, notice of which shall be provided by Connections to Charter School Governing Council, shall not be deemed a violation of this Agreement.
 - c. **Complete Agreement; Modification and Waiver.** This Agreement constitutes the entire agreement between the Parties with respect to the matter contained herein and supersedes all prior and contemporaneous agreements, warranties and understandings of the Parties. There are no agreements, representations or warranties of any kind except as expressly set forth in this Agreement. No supplement, modification or amendment of this Agreement shall be binding unless executed in writing by both Parties. No waiver of any provision of this Agreement will be effective unless it is in writing and signed by the Party to be charged with such modification, and no such waiver will constitute a waiver of any other provision(s) or of the same provision on another occasion.
 - d. **Force Majeure.** If any circumstance should occur that is not anticipated or is beyond the control of a Party or that delays or renders impossible or impracticable performance as to the obligations of such Party, the Party's obligation to perform such services shall be postponed for a period equal to the time during which such circumstance shall extend, or, if such performance has been rendered impossible by such circumstance, shall be cancelled.
 - e. **No Third Party Rights.** This Agreement is made for the sole benefit of the Parties. Except as otherwise expressly provided, nothing in this Agreement shall create or be deemed to create a relationship among the Parties or any of them, and any third party, including a relationship in the nature of a third party beneficiary or fiduciary.

- f. Professional Fees and Expenses. Each Party shall bear its own expenses for legal, accounting, and other fees or expenses in connection with the negotiation of this Agreement.
- g. Counterparts. This Agreement may be signed in counterparts, which shall together constitute the signed original Agreement.
- h. Compliance with Laws, Policies, Procedures, and Rules. Each Party will comply with all applicable federal and state laws and regulations including all of the specific requirements of the Charter, applicable local ordinances and the Charter School's policies whether or not specifically listed in this Agreement.
- i. Interpretation of Agreement. The Parties hereto acknowledge and agree that this Agreement has been negotiated at arm's length and between Parties equally sophisticated and knowledgeable in the subject matter dealt with in this Agreement. Accordingly, any rule of law or legal decision that would require interpretation of any ambiguities in this Agreement against the Party that has drafted it is not applicable and this Agreement shall be interpreted in a reasonable manner to affect the intent of the Parties as set forth in this Agreement.
- j. Headings; Exhibits. The section headings contained herein are for convenience only and shall not in any way affect the interpretation or enforceability of any provision of this Agreement. All schedules and exhibits to this Agreement are incorporated herein and shall be deemed a part of this Agreement as fully as if set forth in the body hereof.
- k. Attendance at Meetings. During the Term, CA will have the right to designate an individual or such individuals who shall have attendance rights at all Charter School Board meetings. Such rights are limited exclusively to attendance and provide no rights to participate without the express permission of the Charter School Governing Council. The designated individuals shall also have the right to attend closed or executive sessions where invited by the Governing Council and where such attendance is not prohibited by applicable law.
- l. Electronic Signatures. This Agreement and related documents may be accepted in electronic form (e.g., by scanned copy of the signed document, an electronic or digital signature or other means of demonstrating assent) and each Party's acceptance will be deemed binding on the Parties. Each Party acknowledges and agrees it will not contest the validity or enforceability of this Agreement and related documents, including under any applicable statute of frauds, because they were accepted or signed in electronic form. Each Party further acknowledges and agrees that it will not contest the validity or enforceability of a signed facsimile copy of this Agreement and related documents on the basis that it lacks an original handwritten signature. Facsimile signatures shall be considered valid signatures as of the date hereof. Computer maintained records of this Agreement and related documents when produced in hard copy form shall constitute business records and shall have the same validity as any other generally recognized business records. THIS AGREEMENT SHALL NOT BECOME EFFECTIVE UNTIL APPROVED BY THE CHARTER SCHOOL GOVERNING COUNCIL.
- m. Survival. The rights and responsibilities of Sections 2.e., 7, 10, 11, 12, 14.b., 15, 16, 19, 20, and 23 shall survive the termination of this Agreement.
- n. Status and Relationship of the Parties. CA is a limited liability company organized under the laws of New Mexico, and is not a division or a part of the Charter School. The Charter School is a New

Mexico public charter school authorized by the Charter School Law and is not a division or part of CA. The Parties intend that the relationship created by this Agreement is that of an independent contractor and not employer-employee. Except as expressly provided in this Statement of Agreement, no agent or employee of CA shall be deemed to be an agent or employee of the Charter School. CA shall be solely responsible for its acts and the acts of its agents, employees and subcontractors, and the Charter School shall be solely responsible for its acts and the acts of its agents, employees and subcontractors. The relationship between CA and the Charter School is based solely on the terms of this Statement of Agreement, and the terms and conditions of any other written agreement between CA and the Charter School. CA shall not accrue leave, retirement, insurance, bonding, use of state vehicles, or any other benefits afforded to employees of Charter School or the State of New Mexico as a result of this Agreement. CA acknowledges that all sums received hereunder are personally reportable by CA for income tax purposes as self-employment or business income and are reportable for self-employment tax. CA agrees not to purport to bind the Charter School or the State of New Mexico unless CA has express written authority to do so, and then only within the strict limits of that authority.

- o. Internet Access. Each Student shall have access to the Internet for a sufficient amount of time to complete the instructional program (including assignments, online communication and collaboration, research and access to supplemental online resources). The level of access required is determined by the nature of the curriculum (e.g., the amount of print material) and the developmental level of the child (e.g., what may be appropriate for an eighth grader may not be appropriate for a first grader). At a minimum, access will include one computer connected to the Internet for each household.
- p. Conflict of Interest/Campaign Contribution Disclosure. CA warrants that it presently has no interest and shall not acquire any interest, direct or indirect, which would conflict in any manner or degree with the performance or services required under the Agreement. CA certifies that it has complied with and will continue to comply with the requirements of the Governmental Conduct Act, NMSA 1978 §§ 10-16-1 et. seq., and NMSA 1978 §13-1-191.1.

IN WITNESS WHEREOF, parties have executed this Agreement as of the date of signature by Charter School as stated below.

Agreed to by:

CONNECTIONS ACADEMY OF NEW MEXICO, LLC

DocuSigned by:
 By: Barbara Dreyer
 88C24F02EFF14DE...
 Title: President

NEW MEXICO ONLINE PUBLIC CHARTER SCHOOL

DocuSigned by:
 By: Mark Boitano
 89D002C08D2E43A...
 Title: Board President

INDEX OF DEFINED TERMS

“Academic Year” shall mean the school year as defined by the School Calendar under which Charter School operates.

“Administrative Staff” means any and all individuals employed by or otherwise providing services for or on behalf of the education program operated by Charter School.

“Affiliates” means any entity controlling, controlled by or under common control with another entity. With respect to CA, Affiliate shall also include Pearson PLC and its Affiliates. For the purposes of this definition, “control” means the possession, directly or indirectly, of the power to direct the management and policies of an entity whether through the ownership of voting securities, registered capital, contract or otherwise.

“Authorizer” shall mean the agency or other governmental entity authorized by law in the state in which Charter School is contracting with CA under the terms of the Agreement to provide certain products and services.

“Authorized Users” shall mean the Students, Teachers, Instructional Aides, Administrative Staff, and Mentors who are authorized to access Connexus®, Content and Courses pursuant to the terms of this Agreement entered into by and between Charter School and CA.

“Charter” shall mean the authorization to operate a charter school granted by the Authorizer.

“Charter School Law” shall mean the applicable laws and regulations governing charter schools as codified in statutes and code of regulations of New Mexico under the terms of the Agreement to operate a charter school.

“Confidential Information” shall mean proprietary business, technical and financial information of each of the Parties, including for example and without limitation, each Party’s respective information concerning: (a) business strategy and operations such as business plans, methods, marketing strategies, outreach plans and sales information, pricing information and customer and prospect lists, the identities and locations of vendors and consultants providing services or materials to or on behalf of the disclosing Party; (b) product development such as product designs and concepts; (c) financial information such as budget and expense information, economic models, pricing, cost and sales data, operating and other financial reports and analysis; (d) human resource information such as compensation policies and schedules, employee recruiting and retention plans, organization charts and personnel data; (e) educational content, curricula, teaching outlines, lesson plans, testing processes and procedures; (f) Student Records and other student-related or parent-related personal information; (g) the terms of the Agreement, (h) login and password information for Connexus®; (i) technical information such as development methods, computer software, research, inventions, the design and operation of Connexus®; and (j) other similar non-public information that is furnished, disclosed or transmitted to the receiving Party or to which the receiving Party is otherwise given access by the disclosing Party, orally, in written form, in any type of storage medium, or otherwise. Confidential Information, in whatever form provided, shall remain the exclusive property of the disclosing Party at all times, and the Parties hereby

acknowledge and agree that all such Confidential Information of a Party are its trade secrets. Except as specifically provided for herein, nothing contained in the Agreement or herein shall be construed as granting or conferring any rights in any Confidential Information disclosed to the receiving Party, by license or otherwise.

"Connexus®" means the website or Learning Management System (also sometimes referred to as Education Management System) with the URL <http://www.connexus.com>, or such other URL as CA or its Affiliates may designate from time to time, through which Authorized Users access CA Content via a secure, password protected website. The features and functions of Connexus® may be modified and/or updated from time to time by CA.

"Content" means the components of a Course and/or SDR (as each is defined below) licensed, designed, developed, owned or provided by CA and its third party content partners and delivered in an online format through Connexus® (as defined above) or in an offline format (textbooks and other materials) to teach students in various subjects in grades K-12 and/or to deliver resources in connection with the Services (defined below). Content may include the courseware, data, documentation, text, audio, video, graphics, animation, drawings, programming, icons, images, pictures and charts, Teachlet® tutorials and LiveLesson® sessions. CA reserves the right to add Content, withdraw Content, modify and/or offer substitute Content, in its sole discretion, provided that Charter School will receive reasonable notification concerning any substitution or withdrawal that is substantial.

"Course(s)" means a program of instruction provided by CA, which includes Content accessed through Connexus® and may include support from CA Teachers if specified in the applicable Agreement.

"Curriculum Guide" means the publication available at <http://bluetoad.com/publication/?m=1702&l=1> which sets forth the list of courses offered by CA during a particular academic year and may sometimes be referred to in the Agreement as a "Program Guide".

"Derivative Works" include any translation, editorial revision, annotation, elaboration, or other modification, correction, addition, enhancement, extension, condensation, upgrade, improvement, compilation, abridgement or other form in which the Content may be recast, transformed or adapted, including but not limited to all forms in which such Derivative Works may or may not infringe any of the copyrights in the Content.

"Educational Products and Services" shall mean the Educational Products and Services described in the Agreement or Educational Services Quote to which these terms and conditions are attached and/or incorporated by reference.

"FERPA" means the Family Educational Rights and Privacy Act, 20 U.S.C. § 1232 (g), as amended from time to time.

"Instructional Aide(s)" means any and all individuals who are involved in supporting, facilitating or assisting in the provision of instruction, assessment and/or other Services to Students.

"Intellectual Property" means collectively, rights under patent, trademark, copyright and trade secret laws, and any other intellectual property or proprietary rights recognized in any country or jurisdiction worldwide now or in the future, including but not limited to, moral rights and similar rights.

“Privacy Policy” means that certain statement of CA’s practices for handling personally identifiable and non-personally identifiable information gathered by CA through Connexus® or any web site maintained by CA from time to time.

“Program” shall mean collectively: (a) the additional Educational Products and Services specified to be provided by CA under the Agreement, and (b) the services to be performed by Charter School under the Agreement.

“Program Guide” shall have that meaning ascribed to “Curriculum Guide”, defined above.

“School Calendar” shall be the days when the Educational Products and Services under this Agreement will be delivered to Students and Mentors, as agreed to by the Parties. The initial School Calendar is as specified in the School Handbook. CA will provide Educational Services on those days established to be the School Calendar for the Academic Year. The School Calendar for each Academic Year shall be as approved by Charter School taking into account all reasonable comments and suggestion by CA and shall meet any regulatory requirements for days and hours of instruction required by law or regulation.

“School Handbook” shall mean the set of policies, rules and guidelines that are to be followed by Students, Instructional Aides and Mentors.

“SDR” means Service Delivery Resource and relates to any tools, instructions, assessments or other support materials used in the delivery of Services, either through Connexus® or otherwise.

“Services” means any service provided by CA to Students, including therapeutic or educational services, under the terms of the Agreement between Charter School and CA.

“Student” means any person who is enrolled in: (1) a Program, or (2) a Course offered by CA under the terms of the Agreement.

“Student Records” shall mean those “educational records,” as defined in subsection (a)(4)(A) of FERPA (as defined above) , which Charter School or CA is required to retain in accordance with state law.

“Teacher” means any and all educators (including CA Teachers) involved in providing instruction, assessment and/or other educational support of Students.

“Term” shall have that meaning set forth in Section 13.

“Terms of Use” means certain rules governing how Authorized Users may and may not use Connexus® and any Content accessible through Connexus®. The most current version is located at <https://www.connexus.com/public/termsfuse.html>

“Website” means the CA website with the URL <http://www.connectionsacademy.com/home.aspx> and any subpages connected thereto.



EXHIBIT A

Insurance Certificates





CERTIFICATE OF LIABILITY INSURANCE

DATE (MM/DD/YYYY)
05/03/2013

THIS CERTIFICATE IS ISSUED AS A MATTER OF INFORMATION ONLY AND CONFERS NO RIGHTS UPON THE CERTIFICATE HOLDER. THIS CERTIFICATE DOES NOT AFFIRMATIVELY OR NEGATIVELY AMEND, EXTEND OR ALTER THE COVERAGE AFFORDED BY THE POLICIES BELOW. THIS CERTIFICATE OF INSURANCE DOES NOT CONSTITUTE A CONTRACT BETWEEN THE ISSUING INSURER(S), AUTHORIZED REPRESENTATIVE OR PRODUCER, AND THE CERTIFICATE HOLDER.

IMPORTANT: If the certificate holder is an ADDITIONAL INSURED, the policy(ies) must be endorsed. If SUBROGATION IS WAIVED, subject to the terms and conditions of the policy, certain policies may require an endorsement. A statement on this certificate does not confer rights to the certificate holder in lieu of such endorsement(s).

PRODUCER Marsh & McLennan Agency-SBS, a service of Seabury and Smith, Inc. 9830 Colonnade Boulevard, Suite 400 PO Box 659520 San Antonio, TX 78265-9520	CONTACT NAME PHONE (AG, No, Ext): 899-591-1954 FAX (AG, No): 210-737-3584 E-MAIL ADDRESS:	
	INSURER(S) AFFORDING COVERAGE INSURER A: HANOVER INSURANCE COMPANY INSURER B: HARTFORD CASUALTY INS CO INSURER C: INSURER D: INSURER E: INSURER F:	
INSURED Connections Education, LLC 1001 Fleet Street, 5th Floor Baltimore, MD 21202	NAIC #	

COVERAGES CERTIFICATE NUMBER: REVISION NUMBER:

THIS IS TO CERTIFY THAT THE POLICIES OF INSURANCE LISTED BELOW HAVE BEEN ISSUED TO THE INSURED NAMED ABOVE FOR THE POLICY PERIOD INDICATED. NOTWITHSTANDING ANY REQUIREMENT, TERM OR CONDITION OF ANY CONTRACT OR OTHER DOCUMENT WITH RESPECT TO WHICH THIS CERTIFICATE MAY BE ISSUED OR MAY PERTAIN, THE INSURANCE AFFORDED BY THE POLICIES DESCRIBED HEREIN IS SUBJECT TO ALL THE TERMS, EXCLUSIONS AND CONDITIONS OF SUCH POLICIES. LIMITS SHOWN MAY HAVE BEEN REDUCED BY PAID CLAIMS.

INSR LTR	TYPE OF INSURANCE	ADDITIONAL INSUR	WVRD	POLICY NUMBER	POLICY EFF (MM/DD/YYYY)	POLICY EXP (MM/DD/YYYY)	LIMITS
A	GENERAL LIABILITY <input checked="" type="checkbox"/> COMMERCIAL GENERAL LIABILITY <input type="checkbox"/> CLAIMS-MADE <input checked="" type="checkbox"/> OCCUR <input checked="" type="checkbox"/> Products/Completed included in Gen Agg GENL AGGREGATE LIMIT APPLIES PER: <input type="checkbox"/> POLICY <input type="checkbox"/> PER <input checked="" type="checkbox"/> LOC			RHD077474303	07/01/2012	07/01/2013	EACH OCCURRENCE \$1,000,000 DAMAGE TO RENTED PREMISES (Per occurrence) \$1,000,000 MED EXP (Any one person) \$15,000 PERSONAL & ADV INJURY \$1,000,000 GENERAL AGGREGATE \$2,000,000 PRODUCTS - COMPOP AGG \$
B	AUTOMOBILE LIABILITY <input checked="" type="checkbox"/> ANY AUTO <input type="checkbox"/> ALL OWNED AUTOS <input type="checkbox"/> HIRED AUTOS <input type="checkbox"/> SCHEDULED AUTOS <input type="checkbox"/> NON-OWNED AUTOS			83UENJG9813	07/01/2012	07/01/2013	COMBINED SINGLE LIMIT (Per accident) \$1,000,000 BODILY INJURY (Per person) \$ BODILY INJURY (Per accident) \$ PROPERTY DAMAGE (Per accident) \$
	UMBRELLA LIAB EXCESS LIAB DED RETENTION \$						OCCUR CLAIMS-MADE EACH OCCURRENCE \$ AGGREGATE \$
	WORKERS COMPENSATION AND EMPLOYERS LIABILITY ANY PROPRIETOR/PARTNER/EXECUTIVE OFFICER/MEMBER EXCLUDED? (Mandatory in NH) If yes, describe under DESCRIPTION OF OPERATIONS below		N/A				WC STATU. / TOYH. / TORY LIMITS / ER. EL EACH ACCIDENT \$ EL DISEASE - EA EMPLOYEE \$ EL DISEASE - POLICY LIMIT \$
A	Employment Practice Liab Educator's Legal Liab Retro Date - 07/01/1987			RHD077474303	07/01/2012	07/01/2013	EPLI Limit: 1,000,000 Educator Legal 1,000,000 Deduct on Both: 2,500

DESCRIPTION OF OPERATIONS / LOCATIONS / VEHICLES (Attach ACORD 101, Additional Remarks Schedule, if more space is required)
 New Mexico Connections Academy is included as an Additional Insured where required by written contract with respect to General Liability. Waiver of subrogation is applicable where required by written contract.

CERTIFICATE HOLDER New Mexico Connections Academy c/o Mark Boltano 3915 Hacienda Court, NE Albuquerque, NM 87111	CANCELLATION SHOULD ANY OF THE ABOVE DESCRIBED POLICIES BE CANCELLED BEFORE THE EXPIRATION DATE THEREOF, NOTICE WILL BE DELIVERED IN ACCORDANCE WITH THE POLICY PROVISIONS. AUTHORIZED REPRESENTATIVE 
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CERTIFICATE OF LIABILITY INSURANCE

DATE (MM/DD/YYYY)
5/3/2013

THIS CERTIFICATE IS ISSUED AS A MATTER OF INFORMATION ONLY AND CONFERS NO RIGHTS UPON THE CERTIFICATE HOLDER. THIS CERTIFICATE DOES NOT AFFIRMATIVELY OR NEGATIVELY AMEND, EXTEND OR ALTER THE COVERAGE AFFORDED BY THE POLICIES BELOW. THIS CERTIFICATE OF INSURANCE DOES NOT CONSTITUTE A CONTRACT BETWEEN THE ISSUING INSURER(S), AUTHORIZED REPRESENTATIVE OR PRODUCER, AND THE CERTIFICATE HOLDER.

IMPORTANT: If the certificate holder is an ADDITIONAL INSURED, the policy(ies) must be endorsed. If SUBROGATION IS WAIVED, subject to the terms and conditions of the policy, certain policies may require an endorsement. A statement on this certificate does not confer rights to the certificate holder in lieu of such endorsement(s).

PRODUCER The PLEXUS Groupe LLC 21805 Field Parkway, Suite 300 Deer Park IL 60010		CONTACT Name: Certificates Phone (Ac. No. Ext.): (847) 307-6100 FAX (Ac. No.): (847) 307-6199 E-MAIL: Certificates@plexusgroupe.com Address:	
INSURED Connections Education, LLC 1001 Fleet Street, 5th Floor Baltimore MD 21202		INSURER(S) AFFORDING COVERAGE INSURER A: The Hartford Insurance Company INSURER B: INSURER C: INSURER D: INSURER E: INSURER F:	

COVERAGES CERTIFICATE NUMBER: 12-13 WC REVISION NUMBER:

THIS IS TO CERTIFY THAT THE POLICIES OF INSURANCE LISTED BELOW HAVE BEEN ISSUED TO THE INSURED NAMED ABOVE FOR THE POLICY PERIOD INDICATED. NOTWITHSTANDING ANY REQUIREMENT, TERM OR CONDITION OF ANY CONTRACT OR OTHER DOCUMENT WITH RESPECT TO WHICH THIS CERTIFICATE MAY BE ISSUED OR MAY PERTAIN, THE INSURANCE AFFORDED BY THE POLICIES DESCRIBED HEREIN IS SUBJECT TO ALL THE TERMS, EXCLUSIONS AND CONDITIONS OF SUCH POLICIES. LIMITS SHOWN MAY HAVE BEEN REDUCED BY PAID CLAIMS.

INSR LTR	TYPE OF INSURANCE	ADDL. INSR. W/AVD	POLICY NUMBER	POLICY EFF. (MM/DD/YYYY)	POLICY EXP. (MM/DD/YYYY)	LIMITS	
	GENERAL LIABILITY <input type="checkbox"/> COMMERCIAL GENERAL LIABILITY <input type="checkbox"/> CLAIMS-MADE <input type="checkbox"/> OCCUR GEN'L AGGREGATE LIMIT APPLIES PER: <input type="checkbox"/> POLICY <input type="checkbox"/> PROJ. <input type="checkbox"/> LOC					EACH OCCURRENCE \$ DAMAGE TO RENTED PREMISES (Per occurrence) \$ MED EXP (Any one person) \$ PERSONAL & ADV INJURY \$ GENERAL AGGREGATE \$ PRODUCTS - COMPROP AGG \$	
	AUTOMOBILE LIABILITY <input type="checkbox"/> ANY AUTO <input type="checkbox"/> ALL OWNED AUTOS <input type="checkbox"/> HIRED AUTOS <input type="checkbox"/> SCHEDULED AUTOS <input type="checkbox"/> NON-OWNED AUTOS					COMBINED SINGLE LIMIT (Per accident) \$ BODILY INJURY (Per person) \$ BODILY INJURY (Per accident) \$ PROPERTY DAMAGE (Per accident) \$	
	UMBRELLA LIAB <input type="checkbox"/> EXCESS LIAB <input type="checkbox"/> OCCUR <input type="checkbox"/> CLAIMS-MADE DED. RETENTION \$					EACH OCCURRENCE \$ AGGREGATE \$	
A	WORKERS COMPENSATION AND EMPLOYERS' LIABILITY ANY PROPRIETOR/PARTNER/EXECUTIVE OFFICER/MEMBER EXCLUDED? (Mandatory in NH) If yes, describe under DESCRIPTION OF OPERATIONS below	Y/N	N/A	83WZBM1644	7/1/2012	7/1/2013	<input checked="" type="checkbox"/> WC STATUTORY LIMITS <input type="checkbox"/> OTHER EL EACH ACCIDENT \$ 1,000,000 EL DISEASE - EA EMPLOYEE \$ 1,000,000 EL DISEASE - POLICY LIMIT \$ 1,000,000

DESCRIPTION OF OPERATIONS / LOCATIONS / VEHICLES (Attach ACORD 101, Additional Remarks Schedule, if more space is required)
 Certificate is issued as evidence of coverage.

CERTIFICATE HOLDER New Mexico Connections Academy c/o Mark Boitano, Board President 3615 Haracio Court NE Albuquerque, NM 87111	CANCELLATION SHOULD ANY OF THE ABOVE DESCRIBED POLICIES BE CANCELLED BEFORE THE EXPIRATION DATE THEREOF, NOTICE WILL BE DELIVERED IN ACCORDANCE WITH THE POLICY PROVISIONS. AUTHORIZED REPRESENTATIVE W Fawcett III/ARF
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