

CYBR SCHOOL LLC SERVICE AGREEMENT

1. The School District (the “District”) and CybrSchool LLC (“CybrSchool”), are hereby entering into this Statement of Agreement (“Agreement”) whereby District is contracting with CybrSchool to receive access to certain virtual education products through the Acellus Learning System, CybrSchool’s learning management system (LMS), along with associated support services, as more fully set forth herein (collectively “the Education Program”), said Education Program to be offered to Students in a District-operated online school (“School”).
2. **Defined Terms:** Capitalized terms within the Agreement, not otherwise defined herein, have the meanings ascribed to them in the Index of Defined Terms, attached hereto and incorporated herein by reference.
3. **CybrSchool Responsibilities:**
 - a. Education Program. CybrSchool shall provide Curriculum to the District, which shall include, at a minimum, the following:
 - i. CybrSchool standard Course offerings, including core and elective subjects.
 - ii. In accordance with the license terms set forth in Section 5 below, a license to use all required curricular and instructional materials that are part of CybrSchool’s standard offerings, including lesson manuals, lesson videos, and other instructional resources (collectively “Instructional Materials”).
 - b. Acellus Learning System Access.
 - i. In accordance with the license terms set forth in Section 5 below, CybrSchool shall provide the District with a license for the duration of the Term to access and use CybrSchool’s technology platform, known as Acellus Learning System, for purposes of utilizing the Education Program.
 - ii. Access will be provided to the Acellus Learning System, including the student information system, live class monitor, messaging system, video and audio one-on-one live sessions, and the ability to track Student progress.
 - c. Promotion via CybrSchool Website.
 - i. CybrSchool will add District to its partner database so that parents who are browsing the CybrSchool Website (cyberschool.com) may enroll Student(s) into the Education Program.
 - ii. Promotion via the CybrSchool Website is provided on a “best efforts” basis without guarantee that any Student or Students will be enrolled in the Education Program.
 - d. Technical Support Services.
 - i. Provide technical support through online live chat and live phone support to Teachers, Caretakers of Students, and Administrative Staff Monday-Friday 8:30 a.m. to 5:00 p.m. (CST), excluding holidays.
4. **District Responsibilities:**
 - a. Oversight and Compliance. The District shall be responsible for adopting any necessary policies to ensure the School and District comply with all necessary state and federal law; for promptly informing CybrSchool of any obligations or deficiencies in the School’s or District’s operations that require CybrSchool to act; and for providing oversight of the School in a manner that fully implements the Education Program as designed by CybrSchool.

- i. Curriculum. The District is responsible for ensuring all curriculum meets applicable state and federal standards and that the School satisfies all further state and federal regulations regarding the operations of the School. CybrSchool agrees to take reasonable efforts to assist the District in ensuring full compliance with state and federal standards.
- b. Abide by Established Protocols, Policies, and Procedures. Abide by all CybrSchool established protocols, policies, and procedures in connection with the Education Program.
- c. Diplomas. Grant diplomas based on attainment of minimum requirements for graduation with a School diploma.
- d. Enrollment. Enroll each Student into the School in accordance with local, state, and federal law.
- e. Insurance. Obtain and maintain all necessary insurance for the School, as required by state and federal laws.
- f. Reporting. Satisfy all reporting requirements by filing all necessary information with the state or other regulatory authorities. In correlation with the District's reporting responsibilities, the District shall report Students for all funding sources for which such Students are eligible in the same manner as the District reports and receives money for other students enrolled in the District.
- g. Standardized Testing Administration. The District shall be responsible for administering any required standardized tests at its own cost, including all state required testing and other state or federally mandated assessments.
- h. Teacher of Record. The District shall be responsible for the operation and integrity of the School ("School Operations"), including any necessary recruitment and employment of licensed and/or credentialed teachers in accordance with state law. All School Operations shall be carried out in accordance with federal and state law.
- i. Provision of Computer Technology for Students. The District may, in its sole discretion and at its own expense, make available to the Students, Computer Technology for each eligible Student who is enrolled.
- j. Complaints. The District shall promptly investigate any concerns or complaints raised by CybrSchool involving the performance of any member of the School Staff or other personnel providing support services as part of the Education Program, regardless of whether: (i) employed by the District; (ii) or retained as an independent contractor.
- k. Counseling and Related Services. Provide all necessary academic counseling and other related services to Students, including assisting in the development of protocols and providing consultative support in connection therewith.
- l. Services to Students with Disabilities. It is the responsibility of the District to ensure that the Education Program complies with the requirements of the Individuals with Disabilities Education Improvement Act of 2004 ("IDEA") and any and all state and federal regulations promulgated in connection therewith. To that end, the District will provide all Special Education Services in a manner that complies with state and federal law.
 - i. Admission Process/Procedure. To ensure that the needs of Students with Disabilities are met, the District is responsible for obtaining the most recent IEP or Section 504 Plan for any Student with Disabilities and ensuring the School complies with these individual plans.
- m. English Language Learners. At its sole cost, the District shall provide resources and support for Students who are English language learners ("ELLs") designed to enable ELLs to acquire sufficient English language proficiency to participate in a mainstream English language instructional program.
- n. Attendance. Reviewing and verifying attendance is the sole responsibility of the District. The District shall maintain such records as are required to comply with all attendance rules and apportionment requirements specified by applicable law. If requested by the District, CybrSchool agrees to take reasonable efforts to assist the District with adhering to attendance requirements.

- o. District Liaison. The District shall designate one individual who shall serve as District Liaison, and shall be the primary interface with CybrSchool, for the provision of services under this Agreement.
- p. Repository of School Records. The District shall be the repository of all Permanent Student Records and other permanent School records required by law.

5. **Grant of Rights and Access:**

- a. License to Access the Acellus Learning System and Instructional Materials. CybrSchool utilizes the Acellus Learning System and hereby grants to the District a non-exclusive, nontransferable, royalty-free, limited license during the Term of the Agreement for Authorized Users to access and use the Acellus Learning System and the Content and Instructional Materials contained in the Acellus Learning System in connection with the receipt of Educational Products and Services hereunder (collectively the "Licensed Collateral"). This Agreement provides only the District and the District's specifically authorized instructors, administrators, students, and parents (the "Authorized Users") access to and use of the Licensed Collateral. The Authorized Users' right to access and use the Licensed Collateral is subject to CybrSchool's Intellectual Property provisions set forth in Section 9 below.
- b. Use Restrictions. Authorized Users will use the Acellus Learning System solely for the intended purpose for which their access is granted. Authorized Users will not: (i) modify, copy, or create derivative works based on the Acellus System; (ii) frame or mirror any part of the Acellus System, other than for your own internal educational or training purposes and not in violation of any use or User restrictions; (iii) reverse engineer, decompile, or disassemble any portion of the Acellus System; (iv) access or allow others to access the Acellus System in order to build, market, or offer a competitive product or service, or copy any ideas, features, functions, answers, questions, contents, or graphics of the Acellus System; (v) license, sublicense, sell, resell, rent, lease, transfer, assign, distribute, time share, or otherwise commercially exploit or make the Acellus System available to any third party, other than to Users as contemplated by this Agreement; (vi) send spam or otherwise unsolicited messages through the Acellus System in violation of applicable laws; (vii) send or store infringing, obscene, threatening, libelous, or otherwise unlawful or tortious material, including material that is harmful to children or violates third party privacy rights, on the Acellus System; (viii) intentionally send or store any viruses, worms, time bombs, Trojan horses, or other harmful or malicious code, files, scripts, agents, or programs on or through the Acellus System; (ix) interfere with or disrupt the integrity or performance of the Acellus System or the data contained therein; (x) attempt to gain unauthorized access to the Acellus System or its related systems or networks; (xi) publicly display or publicly perform the Acellus System without our prior written permission; or (xii) violate any applicable federal, state, or local laws. The District shall comply with these restrictions and shall ensure compliance by Authorized Users under the District's control, including District's employees.
- c. System Availability. We will use commercially reasonable efforts to make the Acellus System available (subject to routine maintenance) to Authorized Users via the Internet 24 hours a day, 7 days a week. However, the system may be unavailable from time to time, may be offered for a limited time, or may vary depending on your region or device. We strive to keep the system up and running; however, all online services suffer occasional disruptions and outages, and we are not liable for any disruption or loss you may suffer as a result. All access rights for Authorized Users will be via the worldwide web using a browser and Internet connection compliant with all the System Requirements (described in section 5(d)). **NONETHELESS, ACCESS TO THE ACELLUS SYSTEM IS PROVIDED ON AN "AS IS" AND "AS AVAILABLE" BASIS, WITHOUT ANY ADDITIONAL WARRANTIES OF ANY KIND. WE DO NOT WARRANT THAT ACCESS TO THE SYSTEM WILL BE UNINTERRUPTED OR ERROR-FREE.**
- d. System Requirements. Our Acellus Technical Specifications webpage ("System Requirements") (found at <https://www.science.edu/acellus/support/>) details the necessary hardware, software, system configuration, network infrastructure, and other operational requirements necessary for you to successfully operate and use the Acellus System. The System Requirements are subject to periodic change. You acknowledge that you are responsible for the cost, operation, and availability of, and you and your Users compliance with, all elements of the System Requirements.
- e. System Updates and Alterations. You may need software updates to keep using the System. We may automatically check your version of the software and download software updates or configuration changes. Such updates are subject to these Terms unless other terms accompany the updates, in which case, those other terms apply. We do not guarantee that we will continue supporting the version of the System you

purchased or licensed. Additionally, there may be times when we need to remove or change features or functionality of the System. We have no obligation to continue providing all features or functions of the version of the System you purchased or licensed.

6. **Representation Regarding Non-discrimination:** Neither CybrSchool nor the District will discriminate against any person on the basis of race, creed, color, sex, national origin, religion, ancestry, sexual orientation, disability, or any other basis prohibited by federal or state law.
7. **Health and Safety:** The District will develop and implement training policies for the School related to the following standards regarding health and safety:
 - a. Reporting child abuse or neglect where there is reasonable basis for suspecting such abuse or neglect is occurring, as required by state law;
 - b. Adopting policies prohibiting the use of drugs, alcohol, weapons, and tobacco in School operated facilities or at School sponsored events;
 - c. Adopting policies prohibiting bullying, sexual harassment, harassment, and other social behaviors prohibited under applicable law; and
 - d. Complying with all state immunization laws.
8. **Pricing and Payment Terms:**
 - a. Invoicing.
 - i. CybrSchool shall invoice the District monthly for any Students enrolled which have not yet been included on an invoice during the current Academic Year. The amount of the invoice shall equal the then current rate, multiplied by the number of Students covered by the invoice. The District shall remit payment to CybrSchool for these invoices within thirty (30) days of receipt. The Parties may establish alternate payment arrangements by mutual agreement. In no event shall failure by CybrSchool to invoice the District constitute an abrogation of the District's obligation to make payment to CybrSchool.
 - ii. CybrSchool may charge interest at the rate of one-half percent (0.5%) per month for any unpaid invoices that are sixty (60) days past the due date on the invoice, unless such failure to pay is the result of: (i) funds being withheld from the District due to a failure by CybrSchool to perform under the terms of this Agreement; or (ii) the District disputes any invoice charges.
 - iii. The District shall notify CybrSchool of any dispute of an invoice, and the basis for such dispute within five (5) days of receipt of the invoice, and shall work to resolve the dispute within thirty (30) days. In the event a dispute cannot be amicably resolved, it shall be subject to the provisions of Section 22 of this Agreement.
 - iv. The District shall timely pay all amounts due to CybrSchool. Unless the District has disputed an invoice, CybrSchool may suspend or cancel your access to all CybrSchool programs and services for failure to timely submit payments.
 - b. District's Payment Obligations. The costs of CybrSchool shall constitute a current expenditure of the District. The District's funding obligation under this Agreement will be from year-to-year only, and shall not constitute a multiple fiscal year direct or indirect debt or other financial obligation of the District.
 - c. Sales Tax. The District shall provide CybrSchool with documentation evidencing the District's tax-exempt status. To the extent that the District is not tax exempt, the District shall be responsible for federal, state, or local taxes assessed, if any, based on the Educational Products and Services provided to the District under this Agreement.

9. **Intellectual Property:**

- a. Limitations on Use. The Acellus Learning System and all technology, programs, services, and materials hosted thereon, the Curriculum, all tangible and intangible education materials, and all trademarks and copyrighted works are the intellectual property of CybrSchool or its Affiliates. The District's right to use and benefit from said intellectual property is limited to its license rights set forth in this Agreement and shall terminate automatically with the termination or expiration of the Agreement.
- b. No Sale. Nothing in this Agreement shall be interpreted to be a sale or transfer of ownership interest in Intellectual Property from CybrSchool or its affiliates.
- c. Derivative Works. Any works created by the School Staff and derived from CybrSchool's Intellectual Property shall be deemed the property of CybrSchool, and the School agrees to extend all reasonable and appropriate measures to assist CybrSchool in securing and perfecting its ownership interest in such derivative works.
- d. Aggregated Data. Student specific data, including corresponding Caretaker data, is the property of the District, Student and/or the Caretaker ("Student Information"), CybrSchool will not use any such District owned Student Information for any non-school related purpose. CybrSchool, however, may freely aggregate School owned Student Information so long as such aggregated use does not reveal identifying characteristics that would enable a third party to determine the identity of any individual Student, including the Student's Caretaker. All such aggregated data shall be the property of CybrSchool and CybrSchool may identify its source as being the School without the consent of the District.

10. Confidentiality:

- a. Confidential Information. The receiving party shall use the Confidential Information of the disclosing party 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 disclosing party's 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. Protection of Student Records. The Parties acknowledge and agree that under state law and under 20 U.S.C. 1232g, the Family Educational Rights and Privacy Act ("FERPA"), and including any regulations promulgated thereunder, each Party has certain obligations with regard to maintaining the security, integrity, and confidentiality of "education records", as that term is defined by FERPA, and not releasing such information to third parties who are not authorized under FERPA and that have no legitimate educational interest in accessing Student Records. The Parties hereby designate District and CybrSchool staff, the School Staff, volunteers, and third-party providers who are providing any educational or administrative services to the Student, as agents of the District who are entitled to access educational records. The Parties agree that they shall perform their obligations under this Agreement in compliance with FERPA, and any regulations promulgated thereunder. The Parties shall also maintain Student Records in accordance with any other applicable state, local, and federal 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 subsection is not intended to permit the disclosure of education records referenced above, unless permitted by applicable law.
- d. Return of Confidential Information. Except for Student Records, 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.

- e. 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.

11. Protection of Goodwill and Academic Integrity of the Program: The Parties recognize that CybrSchool has invested substantial money and resources in developing a nationally recognized virtual education program under the “CybrSchool” brand and that it has an inherent interest in protecting the goodwill generated in correlation therewith, as well as the academic integrity of the Education Program. The Parties also recognize that the District has a vested interest in CybrSchool protecting such goodwill, as well as the academic integrity of the Education Program in relation with its mission to advance the education interests of its Students. Accordingly, as part of its responsibilities, CybrSchool is hereby authorized to perform ongoing and periodic reviews of School records documenting the manner in which the Program is delivered to Students, including documentation of interactions between Teachers and/or Administrative Staff with Students and Caretakers.

12. Term and Termination:

- a. Term: This Agreement will begin on the quote date and will automatically renew annually, unless terminated in accordance with this Section (Section 12) by either party. By written agreement, the parties to this Agreement may decide to impose an expiration date for this Agreement rather than allowing the Agreement to automatically renew annually. If the Parties decided to impose an expiration date on this Agreement, the Agreement shall terminate immediately upon such expiration date.
- b. Termination for Cause. A party may terminate this Agreement for cause: (i) 30 days after written notice of a material breach to the other party if such breach remains uncured at the expiration of such period; or (ii) if the other party ceases to conduct business in the ordinary course, files a petition for liquidation bankruptcy, fails to have an involuntary petition for bankruptcy dismissed or converted to a non-liquidation bankruptcy within 60 days after filing, or makes an assignment of essentially all assets for the benefit of creditors.
- c. Termination without Cause. The Parties may mutually agree to terminate this Agreement without cause at any time. The termination must be in writing and signed by both Parties.
- d. Effect of Termination. Upon termination of the Agreement, except as expressly provided otherwise in this Agreement, (i) all rights, licenses, consents, and authorizations granted by either party to the other will immediately terminate; (ii) you shall immediately cease all use of any Services provided by us; and (iii) we will immediately disable all access to the Services provided to you.
- e. Outstanding Fees. Termination will not relieve the District of the obligation to pay any outstanding fees to CybrSchool prior to the effective date of termination. All paid and outstanding fees are non-cancelable and non-refundable.

13. Indemnification:

- a. Indemnification Obligations. Each party shall defend, indemnify, save, and hold harmless the other party, its Affiliates, Parent, subsidiaries and its respective directors, officers, agents and employees (together “Indemnified Party”) against and from any and all claims, actions, liabilities, costs, expenses, damages, injury, or loss (including reasonable attorney’s fees) made, brought, incurred, or alleged by any third party (“Claim”) to which the Indemnified Party, its Affiliates, and their respective directors, officers, agents, and employees may be subject to liability by reason of any wrongdoing, misconduct, negligence, willful misconduct, or default by the Indemnifying Party, its agents, employees, subcontractors, or assigns in connection with the performance of this Agreement. This indemnification, defense, and hold harmless obligation on behalf of Indemnifying Party shall survive the termination of this Agreement.
- b. Indemnification Procedure. The Indemnified Party will: (a) promptly notify the Indemnifying Party in writing of any claim, loss, damages, liabilities, and costs; (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.

14. **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.
15. **Notices.** All notices under this Agreement will be in writing and will be deemed given upon: (a) personal delivery; (b) the second business day after certified mailing; (c) the second business day after sending by facsimile; or (d) the second business day after sending by email. Notices to us will be addressed to the attention of our representative, as listed on the Quote Form. Notices to you will be addressed to the attention of the person signing the Quote Form for you.
16. **Governing Law:** THE AGREEMENT AND THESE STANDARD TERMS AND ANY SALE HEREUNDER WILL BE GOVERNED BY THE LAWS OF THE STATE OF MISSOURI, WITHOUT REGARD TO CONFLICTS OF LAWS RULES. MISSOURI LAW SHALL APPLY TO ANY AND ALL CLAIMS, WHETHER ARISING OUT OF TORT OR CONTRACT.
17. **Venue:** ANY AND ALL CLAIMS, WHETHER ARISING OUT OF TORT OR CONTRACT, MUST BE BROUGHT IN JACKSON COUNTY, MISSOURI. CUSTOMER CONSENTS TO THE JURISDICTION OF THE FEDERAL AND STATE COURTS LOCATED IN JACKSON COUNTY, MISSOURI. CUSTOMER SUBMITS TO THE JURISDICTION THEREOF AND WAIVES THE RIGHT TO CHANGE VENUE. CUSTOMER FURTHER CONSENTS TO THE EXERCISE OF PERSONAL JURISDICTION BY ANY JACKSON COUNTY COURT WITH RESPECT TO ANY SUCH PROCEEDING. ARBITRATION BROUGHT IN CONFORMITY WITH SECTION 22 OF THESE STANDARD TERMS SHALL ALSO BE VENUED AND CONDUCTED IN JACKSON COUNTY, MISSOURI.
18. **Time Limitation for Bringing Claims.** YOU AGREE THAT REGARDLESS OF ANY STATUTE OR LAW TO THE CONTRARY, ANY CLAIM OR CAUSE OF ACTION ARISING OUT OF OR RELATED TO USE OF THE ACELLUS SYSTEM, OR ANY PART THEREOF, OR THESE STANDARD TERMS MUST BE FILED WITHIN ONE (1) YEAR AFTER SUCH CLAIM OR CAUSE OF ACTION AROSE OR BE FOREVER BARRED.
19. **Limitation of Liability.** EXCEPT FOR BREACHES OF CONFIDENTIALITY OBLIGATIONS (WHICH ARE LIMITED TO \$50,000 IN THE AGGREGATE FOR ALL CLAIMS AGAINST EITHER PARTY IN ANY CALENDAR YEAR) IN NO EVENT WILL EITHER PARTY'S AGGREGATE LIABILITY ARISING OUT OF OR RELATED TO THIS AGREEMENT, WHETHER IN CONTRACT, TORT, OR UNDER ANY OTHER THEORY OF LIABILITY, EXCEED THE AMOUNTS ACTUALLY PAID UNDER THIS AGREEMENT.
20. **Warranty Disclaimer.** EXCEPT AS EXPRESSLY STATED HEREIN, WE MAKE NO WARRANTIES OF ANY KIND, WHETHER EXPRESS, IMPLIED, STATUTORY, OR OTHERWISE, AND WE SPECIFICALLY DISCLAIM ALL IMPLIED WARRANTIES, INCLUDING ANY WARRANTIES OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE, TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW. YOU UNDERSTAND THAT USE OF THE SERVICES IS AT YOUR OWN RISK.
 - a. **Courseware and Instruction Disclaimer.** All Course Content is provided on an "as is," "as available" basis. We do not warrant that the content of the course(s) or instruction will meet your expectations. We do not warrant the accuracy or reliability of any information provided. We will use reasonable efforts to keep the information current and to ensure the accuracy or completeness of materials available through Acellus. You acknowledge that any reliance on such information shall be at your sole risk. We reserve the right, in our sole discretion, to correct any errors or omissions in the instructional programs or course offerings.
 - b. **Legal Compliance & Privacy Policy.** CybrSchool will comply with, and will cause each of its employees, agents, and contractors to comply with all state, federal, and municipal laws and regulations applicable to its performance under this Agreement ("Applicable Laws"), including without limitation the Family Educational Rights and Privacy Act ("FERPA") and the Children's Online Privacy Protection Act ("COPPA"). CybrSchool's Privacy Policy, which is incorporated by reference into these terms and conditions, contains additional terms regarding CybrSchool's use of and commitment to safeguarding Student Data, and compliance with other student privacy laws. The privacy policy is available at <https://www.cybrschool.com/privacy/>. District is responsible for providing notice of the privacy policy to parents of its students and for obtaining any necessary parental consents for students, as may be required

by Applicable Law.

21. Exclusion of Consequential and Related Damages. IN NO EVENT WILL EITHER PARTY HAVE ANY LIABILITY TO THE OTHER FOR ANY LOST PROFITS OR FOR ANY INDIRECT, SPECIAL, INCIDENTAL, PUNITIVE, OR CONSEQUENTIAL DAMAGES HOWEVER CAUSED AND, WHETHER IN CONTRACT, TORT, OR UNDER ANY OTHER THEORY OF LIABILITY, WHETHER OR NOT THE PARTY HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES.

- a. In states where the exclusion or limitation of incidental or consequential damages is not allowed, the limitations or exclusions will apply to the greatest extent permitted by law.

22. Binding Arbitration: THIS CONTRACT CONTAINS A BINDING ARBITRATION PROVISION WHICH MAY BE ENFORCEABLE BY THE PARTIES.

- a. Any claim, dispute, or controversy (whether arising out of contract, tort, statute, common law or otherwise; and whether preexisting, present or future) arising from or relating to this Agreement, or the breach thereof, that cannot be settled amicably by the parties, except for any claim for injunctive relief pertaining to a party's use, misappropriation, or disclosure of the Acellus System, Customer Data, or Confidential Information, shall be settled by arbitration (the "Arbitration"). This arbitration provision is bilateral and applies equally to all parties to this Agreement.
- b. The Agreement shall be governed by and interpreted in accordance with the laws of the State of Missouri. The Arbitration proceedings, however, will be administered by the American Arbitration Association ("AAA") in accordance with its Commercial Arbitration rules, which you can find at www.adr.org. To the extent the applicable AAA rules conflict with this Agreement, this Agreement shall be binding.
- c. This binding arbitration provision means all Claims will be resolved by a neutral arbitrator rather than a judge or jury. You should be aware that normal court procedures and rules may not apply. Additionally, your right to appeal may no longer exist or may be significantly limited.
- d. Before engaging in Arbitration, all parties shall engage in good-faith efforts to resolve any claim or controversy. To this effect, they shall consult and negotiate with each other in good faith and, recognizing their mutual interests, attempt to reach a just and equitable solution satisfactory to both parties. If they do not reach such solution within a period of 60 days, then, upon notice by either party to the other, all disputes, claims, questions, or differences shall be finally settled by Arbitration.
- e. The Arbitration shall be governed by the following rules: a) The Arbitration hearings shall be held in Jackson County, Missouri; b) The dispute shall be heard and determined by a single arbitrator (the "Arbitrator") who shall be selected in accordance with the AAA's Commercial Arbitration Rules; c) Each party will bear its own cost of any legal representation, discovery, or research required to complete Arbitration (all AAA fees will be divided evenly); d) The Arbitrator shall make his or her award in writing within two months of the start of the Arbitration – or within such time-period as agreed to in writing by the parties hereto; and f) The decision of the Arbitrator shall be final, conclusive, and binding upon the parties hereto. A judgment of any court having jurisdiction may be entered upon the Arbitration award.
- f. Neither we nor you will have the right to litigate any Claim subject to this binding arbitration provision in court or to have a jury trial on that Claim or to engage in pre-arbitration discovery, except as provided for in the applicable arbitration rules or by agreement of the parties. Further, you will not have the right to participate as a representative or member of any class of claimants pertaining to any Claim. Any court having jurisdiction may enter judgment on the award rendered by the arbitrator(s). The existence or results of any arbitration will be treated as confidential.
- g. All claims or controversies pertaining to the collection of amounts due to us arising out of sales hereunder may be litigated in court rather than through arbitration.
- h. In a dispute involving \$25,000 or less, the dispute shall be resolved by the submission of documents and no hearing shall be held. If the arbitrator determines there is good cause for a hearing, it shall occur telephonically unless the arbitrator decides otherwise.

- i. Delegation Provision. An arbitrator shall have exclusive authority to resolve any dispute relating to the Agreement's enforceability including any claim that all or any part of this Agreement is void or voidable.
- j. Severability Clause. In the event any portion of this Arbitration agreement is found void or invalid, the remaining section shall survive and remain binding.

23. Miscellaneous.

- a. Authority to enter into Agreement. The District and the District's agent executing this Agreement hereby certifies that he or she has the full authority to enter into this Agreement and all necessary approvals to enter into this Agreement and lawfully bind the District have been obtained (whether from an Administrator, the District's School Board, etc.).
- 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 CybrSchool or its managing member, notice of which shall be provided by CybrSchool to the District, 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 additional agreements, representations, or warranties of any kind between the parties, 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) in this Agreement or constitute a waiver of the same provision on another occasion.
- d. Force Majeure. We shall not be liable for any delay or failure to perform our obligations hereunder if such delay or failure arises from any cause or causes beyond our reasonable control. Such causes shall include, but are not limited to, acts of God, pandemics, floods, fires, government restrictions, wars, insurrections, labor strife, or failure of suppliers, communication or data systems, subcontractors, or carriers to perform their obligations.
- 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 applicable local ordinances and the School's policies.
- 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 if set forth in the body hereof.

- k. Electronic Signatures. This Agreement and related documents may be executed 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 that 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 scanned PDF for facsimile copy of this Agreement and related documents on the basis that it lacks an original handwritten signature. Facsimile and scanned PDF 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.
- l. Status and Relationship of the Parties. CybrSchool is a limited liability company organized under the laws of Missouri, and is not a division or a part of the District. The District is an independent government body and is not a division or part of CybrSchool. 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 Agreement, no agent or employee of CybrSchool shall be deemed to be an agent or employee of the District. CybrSchool shall be solely responsible for its acts and the acts of its agents, employees, and subcontractors, and the District shall be solely responsible for its acts and the acts of its agents, employees, and subcontractors. The relationship between CybrSchool and the District is based solely on the terms of this Agreement, and the terms and conditions of any other written agreement between CybrSchool and the District.

INDEX OF DEFINED TERMS

"Academic Year" shall mean the school year as defined by the School Calendar under which the 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 the School.

"Affiliates" means any entity controlling, controlled by, or under common control with another entity. With respect to CybrSchool, "Affiliate" shall include International Academy of Science 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.

"Authorized Users" shall mean the Students, Caretakers, Teachers, Administrative Staff, and District personnel who are authorized to access the Acellus Learning System, the Content, Instructional Materials, and Courses pursuant to the terms of this Agreement.

"Caretaker" shall mean the parent(s), legal guardian(s), or another individual designated by a parent or legal guardian as a Student's Caretaker.

"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 project 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) unpublished educational content, curriculum, teaching outlines, lesson plans, testing processes and procedures; (f) Student Records and other student-related or parent-related personal information; (g) the terms of this Agreement; (h) login and password information for the Acellus Learning System; (i) technical information such as development methods, computer software, research, inventions, the design and operation of the Acellus Learning System; 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 this Agreement shall be construed as granting or conferring any rights in any Confidential Information disclosed to the receiving party, by license or otherwise.

“Acellus Learning System” means the website or Educational Management System (also sometimes referred to as Learning Management System, EMS or LMS) with the URL <https://www.acellus.com>, or such other URL as CybrSchool or its Affiliates may designate from time to time, through which Authorized Users access Acellus Content via a secure, password protected website. The features and functions of the Acellus System may be modified and/or updated from time to time.

“Content” means the components of a Course and/or SDR (as each is defined below) provided by CybrSchool through the Acellus Learning System (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, tutorials, and live sessions. CybrSchool reserves the right to add Content, withdraw Content, modify and/or offer substitute Content, in its sole discretion, provided that the School will receive reasonable notification concerning any substitution or withdrawal that is substantial.

“Course(s)” shall be comprised of a set of lessons and assessments, including Instructional Materials, that, together with District provided additions and/or modifications, shall meet the educational content or other standards established by the State.

“Curriculum” means a program of instruction provided by CybrSchool, which includes Content and Instructional Materials accessed primarily through the Acellus Learning System, that, together with District provided additions and/or modifications, shall meet the educational content or other standards established by the State.

“Curriculum Guide” means the publication which sets forth the list of Courses offered by CybrSchool during a particular Academic year and may sometimes be referred to in this 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, abridgment, or other form in which the Content or Instructional Materials or other Licensed Collateral 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 or Instructional Materials.

“Destroyed” means at minimum removing personally identifiable information from the Student Record stored on CybrSchool’s production systems.

“District Liaison” shall mean a staff person employed by the District who shall administer and monitor the performance of CybrSchool as specified in this Agreement.

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

“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 limit to, moral rights, industrial designs rights and similar rights, and shall in all cases include Marketing Leads and materials and other related collateral developed by CybrSchool, regardless of whether such data, materials and collateral are developed specifically for the School.

“Licensed Collateral” shall mean the Acellus Learning System and all technology, programs, services, and materials hosted there on to which District is granted access; the Curriculum; and all tangible and intangible education materials and other proprietary and copyright protected works to which District is granted a right of use (whether in digital, print or both and including third party content contained therein or linked to therefrom), all trademarks of CybrSchool or its Affiliates.

“Permanent Student Record” shall mean those records required to be maintained by the District in accordance with state and federal law, which shall include, but may not be limited to: attendance records; test, evaluation and statewide assessment records; immunization records as required by law; records concerning the education of students with disabilities required to be collected and maintained by state or federal law; such other records as directed by the District to be included as part of the Permanent Student Record.

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

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

“Related Services” shall mean services related to the provision of speech therapy, occupational therapy, physical therapy, counseling, social skill development, psycho-educational evaluations, closed captioning, sign language interpreting, transition and job coaching, academic support for the vision and hearing impaired, adapted physical education, assistive technology, and other services of similar nature.

“School Calendar” shall be the days when the Educational Products and Services under this Agreement will be delivered to Students, as defined by the School Handbook. CybrSchool will provide Educational Products and Services on those days established to be the School Calendar for the Academic Year, except that Students may continue to report attendance during scheduled school holidays to the extent permitted under State law. The School Calendar for each Academic Year is to be determined by the District, taking into account all reasonable comments and suggestion by CybrSchool, 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, published by the District, that are to be followed by Students and their Caretakers.

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

“Special Education Lead Administrator” is that person employed to oversee all Special Education Services. It is the Special Education Lead Administrator’s responsibility to keep informed of (and to inform CybrSchool of) any state legislative or regulatory enactments that impact the provision of Special Education Services by CybrSchool, as well as to supervise the special education Teachers and implement a District approved model for special education instruction.

“Special Education Services” shall mean all necessary special education programs and services, including the development and implementation of IEPs and Section 504 plans, handling administrative proceedings and specialized services, submitting state or federal reports, applying for and administering supplemental funding, providing other Related Services and all other administrative services associated with the delivery of services to Students with Disabilities.

“Students with Disabilities” shall mean Students (as hereinafter defined) who have been identified as disabled under the Federal Individuals with Disabilities Education Act, as amended (“IDEA”) or Section 504 of the Federal Rehabilitation Act of 1973.

“Student” means any person who is enrolled in the School.

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

“Teacher” means any and all educators involved in providing instruction, assessment, and/or other educational support of Students pursuant to the terms of the Agreement.

“Website” means any website maintained by CybrSchool or its Affiliates, including but not limited to, the URLs <https://www.acellus.com> and <https://www.cybrschool.com> and any subpages connected thereto.

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