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JANELLE RIDDER, CLERK

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SUPERIOR COURT  
YAKIMA CO. WA

SUPERIOR COURT OF WASHINGTON FOR YAKIMA COUNTY

TOPPENISH SCHOOL DISTRICT NO.  
202, a Washington Municipal  
Corporation,

Plaintiff,

vs.

SKYLAR ACADEMY a/k/a SKYLAR  
EDUCATION ACADEMY, a  
Washington Nonprofit Corporation;  
YOLANDA PAEZ, an individual,

No. **162 0278739**  
**SUMMONS**

**STATE OF WASHINGTON TO: Defendants above named.**

A lawsuit has been started against you in the above entitled Court by Plaintiff herein. Plaintiff's claim is stated in the written Complaint, a copy of which is served upon you with this Summons.

In order to defend against this lawsuit, you must respond to the Complaint by stating your defense in writing, and serve a copy upon the undersigned attorney for the Plaintiff within twenty (20) days after the service of this Summons, excluding the day of service, if served within the state of Washington, or within sixty (60) days after service of this summons upon you, exclusive of the day of service, if served out

SUMMONS - 1  
617-29\jp\toppenish sch\skylar\SUMMONS

Law Offices  
LYON WEIGAND & GUSTAFSON PS  
Lyon Law Offices - 222 North Third Street  
P.O. Box 1689  
Yakima, Washington 98907  
Telephone (509) 248-7220  
Fax (509) 575-1883

ORIGINAL


1 of the state of Washington, or a default judgment may be entered against you  
2 without notice. A default judgment is one where Plaintiff is entitled to what it asks  
3 for because you have not responded. If you serve a notice of appearance on the  
4 undersigned attorney, you are entitled to notice before a default judgment may be  
5 entered.

6 You may demand that the Plaintiff file this lawsuit with the Court. If you do  
7 so, the demand must be in writing and must be served upon the Plaintiff. Within  
8 fourteen (14) days after you serve the demand, the Plaintiff must file this lawsuit with  
9 the Court, or the service on you of this Summons and Complaint will be void.

10 If you wish to seek the advice of an attorney in this matter, you should do so  
11 promptly so that your written response, if any, may be served on time.

12 This summons is issued pursuant to Rule 4 of the Superior Court Civil Rules  
13 of the State of Washington.

14  
15 **DATED** this 4 day of October, 2016.

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18 JEANIE R. TOLCACHER, WSBA #22313  
19 Lyon Weigand & Gustafson PS  
20 Attorneys for Plaintiff  
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vs.

SKYLAR ACADEMY a/k/a SKYLAR  
EDUCATION ACADEMY, a  
Washington Nonprofit Corporation;  
YOLANDA PAEZ, an individual,

Defendants.

No. **1620278739**

**COMPLAINT FOR BREACH OF  
CONTRACT, FRAUD AND  
INTENTIONAL  
MISREPRESENTATION,  
FRAUDULENT OMISSIONS,  
FRAUDULENT INDUCEMENT,  
NEGLIGENT MISREPRESENTATION  
AND DAMAGES**

**COMES NOW** the Plaintiff, TOPPENISH SCHOOL DISTRICT NO. 202, by  
and through its attorneys of record, Jeanie R. Tolcacher and Lyon Weigand and  
Gustafson PS, and for causes of action against Defendants, alleges as follows:

**I. JURISDICTION AND PARTIES**

1.1 Plaintiff Toppenish School District No. 202 (hereinafter referred to as  
"Toppenish" or "District"), is a public Washington K-12 school district and a  
Washington Municipal Corporation with its principal place of business being in  
Toppenish, Washington.

COMPLAINT FOR BREACH OF CONTRACTS, FRAUD AND  
INTENTIONAL MISREPRESENTATION, FRAUDULENT  
OMISSIONS, FRAUDULENT INDUCEMENT, NEGLIGENT  
MISREPRESENTATION AND DAMAGES - 1  
617-29\ljp\jrt\toppenish sch\skylar\COMPLAINT

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Yakima, Washington 98907  
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ORIGINAL

1.2 At all times material hereto Skylar Academy a/k/a Skylar Education Academy (hereinafter "Skylar"), was a private K-12 accredited Distance Education School, registered as a Washington nonprofit corporation. On information and belief, Skylar's principal place of business is in Kennewick, Washington. Paez is the President and CEO of Skylar.

1.3 On information and belief, Yolanda Paez ("Paez") is a single woman who resides in Yakima County. Paez is the President and CEO of Skylar.

1.4 This Court has jurisdiction over this matter. The parties stipulated to venue in Yakima County Superior Court pursuant to the terms of the written agreement that is the subject of this Complaint.

## II. FACTS

2.1 Plaintiff re-alleges all allegations set forth in paragraphs 1.1 through 1.4 herein.

2.2 In 2013, Paez contacted Toppenish to recruit students for her private school, Skylar Academy. Paez represented that she had the requisite skills, knowledge and expertise to provide a Distance Education School Program for Toppenish in accordance with the rules and regulations of the State of Washington governing K-12 education, as well as federal education statutes and regulations. Paez's representations were material and relied upon by Toppenish.

2.3 Based on Paez's representations, Toppenish entered into a one-year agreement with the Defendants on or about July 26, 2013, wherein the Defendants were to provide a legally compliant Distance Education School Program for Toppenish for the 2013-2014 school year. The terms of the Parties' contract were specifically set forth in a written Services Agreement (hereinafter "Agreement"), a copy of which is attached hereto and fully incorporated by this reference herein as Exhibit A.

2.4 The Agreement required the Defendants to perform specific services and functions, including, but not limited to, providing a program that would comply with RCW 28A.150.262 to qualify for state basic education funding as an ALE

1 (alternative learning experience) and to comply with WAC 392-121-182 for students  
2 claimed under the ALE funding provisions. In addition, the Defendants agreed to  
3 provide services that were in compliance with state laws and regulations governing  
4 compulsory school attendance, admission, and course work; instructional hours,  
5 staffing, payment of taxes and insurance, etc. The Defendants also specifically  
6 agreed to respond to requests for information/reports from the District, state and  
7 federal authorities and to fully cooperate with the District and any auditor and to  
8 provide all information needed for such audit.

9       2.5 Throughout the course of the Agreement, and despite ongoing  
10 efforts from Toppenish to assist the Defendants in fulfilling their contractual  
11 obligations, the Defendants failed to perform and/or provide evidence of  
12 performance of the material terms of the Agreement.

13       2.6 Based on the repeated representations of Paez that the Defendants  
14 were fully performing their contractual obligations of the Agreement and that they  
15 had evidence of such, Toppenish continued to act in good faith (to its detriment) to  
16 fully process all invoices for payment for services the Defendants claimed were  
17 provided in the amount of \$400,151.10 for the 2013-2014 school year.

### 18                               **The ALE Audit**

19       2.7 In January of 2014, the Washington State Auditor's office performed  
20 an audit of the District's ALE programs, including the Skylar program, for the 2013-  
21 2014 school year. The Defendants were unable or unwilling to provide evidence  
22 that they provided legally compliant services under the Agreement that met the  
23 provisions of state ALE requirements and other state and federal requirements. In  
24 an attempt to mitigate its damages, Toppenish appealed the audit finding and hired  
25 consultants to assist the Defendants in providing evidence that they had met the  
26 legal requirements for ALE. Their assistance was unsuccessful as the Defendants  
27 refused to cooperate. As a result, the District's appeal was denied and the Auditor  
28 entered the following finding against the District: "The Toppenish School District did  
29 Education Academy resulting in overfunding of \$843,724.00.

1                   **Failure to Pay Taxes/Industrial Insurance Premiums**

2           2.8    The Agreement required the Defendants to pay all taxes, other than  
3 sales and use taxes. The Defendants failed to do so. As a result, Toppenish was  
4 served with notices of delinquency as set forth herein.

5           2.9    On February 29, 2016, Toppenish received a Notice and Order to  
6 Withhold and Deliver No. 0381125 from the Washington Department of Labor and  
7 Industries for taxes Skylar failed to pay in the amount of \$13,504.15.

8           2.10 On March 8, 2016, Toppenish received written notice from the  
9 Washington State Department of Labor and Industries that Skylar had failed to pay  
10 \$12,979.48 to the state accident fund. RCW 51.12.050 renders Toppenish liable for  
11 said premiums

12           2.11 On or about April 25, 2016, Toppenish received a Notice and Order to  
13 Withhold and Deliver from the State of Washington, Department of Revenue for  
14 Defendants' tax debt in the amount of \$12,591.80 for a judgment entered in Benton  
15 County Washington against the Defendant under Cause No. 16-2-00694-6.

16           2.12 On or about June 13, 2016, Toppenish received a Notice and Order to  
17 Withhold and Deliver No. 63034 against Skylar in the amount of \$5,217.70 for failure  
18 to pay wages.

19                   **III. CAUSES OF ACTION**

20                   **First Cause of Action: Breach of Contract**

21           3.1    Toppenish re-alleges all allegations set forth in paragraphs 1.1 through  
22 2.12.

23           3.2    Toppenish has at all times performed all the provisions of the  
24 Agreement and has done so in the manner specified therein.

25           3.3    Defendants failed and refused to perform their contractual obligations,  
26 including but not limited to providing a legally compliant ALE program. Defendants'  
27 breaches are material and go to the essence of the contract.

1           3.4    As a direct and proximate result of Skylar's material breaches an audit  
2 finding was issued against Toppenish in the amount of \$843,724.00 which resulted  
3 in a loss of funding to the District.

4           3.5    In addition, Defendants' breaches have caused Toppenish to suffer  
5 other damages in an amount to be proven at trial.

6           **Second Cause of Action: Fraud and Intentional Misrepresentation**

7           3.6    Defendants are liable for fraud and intentional misrepresentation  
8 because they made false representations that they could provide a legally complaint  
9 ALE Distance Education Program for Toppenish.

10          3.7    Those representations were material to the provision of services to  
11 Toppenish and its students.

12          3.8    Defendants had actual knowledge of the falsity of the representations  
13 and intended Toppenish to rely on those false representations.

14          3.9    Toppenish had no knowledge of the false representations; it relied  
15 upon the false representations and had a right to rely thereon.

16          3.10   Toppenish has suffered substantial damages in an amount to be  
17 proven at trial as a result.

18               **Third Cause of Action: Negligent Misrepresentation**

19          3.11   Defendants misrepresented that they could provide a legally compliant  
20 ALE Distance Education Program for Toppenish. Those representations were  
21 material to the provision of services to Toppenish and its students.

22          3.12   Defendants were negligent in making those misrepresentations and  
23 knew or should have known that the misrepresentations were the basis for  
24 Toppenish entering into the Agreement.

25          3.13   Toppenish's reliance on Defendants' misrepresentations was  
26 reasonable under the surrounding circumstances.

27          3.14   As a result of Defendants' misrepresentations, Toppenish has suffered  
28 damages in an amount to be proven at trial.

1                                   **Fourth Cause of Action: Fraudulent Omissions**

2  
3           3.15 Defendants are liable for fraudulent omissions because they failed to  
4 disclose to Toppenish that they did not possess the requisite skills, knowledge and  
5 expertise to provide the services outlined in the Agreement.

6           3.16 Defendants had a duty to disclose such material facts to Toppenish.

7           3.17 As a result of Defendants' fraudulent omissions, Toppenish has been  
8 damaged in an amount to be proven at trial.

9                                   **Fifth Cause of Action: Fraudulent Inducement**

10          3.18 Defendants are liable for fraudulent inducement because they made  
11 false representations about their ability to provide a legally complaint ALE Distance  
12 Education Program for Toppenish and its students.

13          3.19 Defendants' representations were false, they knew the representations  
14 were false or acted with reckless disregard for the truth. The Defendants intended to  
15 induce Toppenish's reliance thereon.

16          3.20 Toppenish was ignorant of the falsity of Defendants' statements and  
17 justifiably relied upon the truth of those representations.

18          3.21 As a result of Defendants' representations, Toppenish has been  
19 damaged in an amount to be proven at trial.

20                                   **PRAYER FOR RELIEF**

21           **WHEREFORE**, Toppenish prays for judgment against Defendants as follows:

22           1.     For damages resulting from Defendants' breach of the Agreement in  
23 the amount of \$843.724.00 and such other amounts as to be determined at the time  
24 of trial.

25           2.     For damages in an amount to be proven at trial to compensate  
26 Toppenish for the losses and damages attributable to Defendants' wrongful acts and  
27 omissions as alleged herein.  
28  
29



3. For a judgment against Defendant for all prejudgment interest on all liquidated damage amounts.

4. For post-judgment interest as allowed by law.

5. For Plaintiff's reasonable attorney fees and costs incurred in this action pursuant to the Attorneys' Fees and Costs provisions under the Agreement and as further allowed by law.

6. For such other and further relief as the Court deems just and equitable.

**DATED** this 23 day of September, 2016.

  
JEANIE R. TOLCACHER, WSBA #22313  
Lyon Weigand & Gustafson PS  
Attorneys for Plaintiff


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**VERIFICATION**

I hereby certify under penalty of perjury of the laws of the State of Washington that the following is true and correct:

That I am the Superintendent and Secretary to the Board of Directors of the plaintiff above-named; that I have read the the within and foregoing Complaint, know the contents thereof, and believe the same to be true.


DATED this 23<sup>rd</sup> day of September, 2016, at Toppenish, Washington.

  
**JOHN CERNA**

**EXHIBIT A**

AGREEMENT BETWEEN  
TOPPENISH SCHOOL DISTRICT AND SKYLAR EDUCATION ACADEMY

Services Agreement for the Operation of a Distance Education Program

 This Agreement ("Agreement") is by and between *Toppenish School District* ("District"), a Washington State municipal corporation located at *306 Bolin Drive, Toppenish WA 98948*, and *Skylar Education Academy* ("Provider"), and is entered into on *2013* (the "Effective Date").

The Agreement is for the operation of *Skylar Education Academy* ("Provider").

IN CONSIDERATION of the mutual promises as hereinafter set forth, the parties agree as follows:

Term, duration and renewal

This Agreement's term shall be automatically extended each year unless District terminates by giving written notice of its decision not to extend to Provider not less than 90 calendar days to the then-current Agreement term's expiration. No change in terms and conditions shall be permitted during these extensions unless specifically agreed to in writing.

Responsibilities of Parties

**Responsibilities of Provider.**

*Skylar Education Academy agrees to be a Distance Education School program provider, as approved by OSPI.*

Distance Education School Program Provider

As a Distance Education school program provider, Skylar Education Academy is a private organization that agrees to contract with Toppenish School District to provide a sequential distance education school program.

- Skylar Education Academy agrees to supply a program that offers:
  - o Courses or grade-level coursework delivered primarily electronically using the internet or other computer-based methods. The program must have a component that features lessons and tools for student and data management.
  - o Courses or grade-level coursework taught by a teacher primarily from a remote location using distance education or other electronic tools. Note that access to the teacher may be synchronous or asynchronous.
  - o A sequential program - a set of courses or coursework that may be taken in a single school term or throughout the school year in a manner that could

provide a full-time basic education program if so desired by the student.

Students may enroll in the program as part-time or full-time students.

- Skylar Education Academy agrees to supply all of the following: course content, access to a learning management system, and distance education teachers.
- Skylar Education Academy agrees to allow the contracting district administrative oversight with teachers and curriculum.
- The program provided is full-time.
- The program must comply with RCW 28A150.262 to qualify for state basic education funding as an ALE.

Skylar Education Academy is considered a Multidistrict Educational School Program Provider

Skylar Education Academy is a multidistrict educational school program provider and is subject to the OSPI approval process.

Unless otherwise indicated, all references to Provider under this section shall also include Provider's employees, agents, or Subcontractors.

Skylar Education Academy will cooperate with the Toppenish School district in maintaining a 46:1000 certified teacher to student ratio

**Responsibilities of District.** The District will be responsible for monitoring the Provider's performance under, and compliance with the terms of this Agreement.

### **Management**

#### **District oversight.**

District shall have the full power and authority to oversee the operation of the educational program provided to Toppenish enrolled students. District hereby further agrees to cooperate with Provider in the performance of Provider's duties and obligations under this Agreement and to take such reasonable actions and to execute and deliver all such agreements, documents or instruments as Provider may deem necessary or advisable, in Provider's reasonable judgment, to enable Provider to perform its duties and obligations hereunder. Except as otherwise set forth in this contract, the District's Superintendent has full power and authority to act on behalf of District in connection with the performance of this Agreement and the oversight of the educational program, subject to limitations on the Superintendent's authority under Washington law or District policy.

**Compliance**

District policies and procedures. The parties agree that Program shall follow all District policies and procedures, including, but not limited to, the District graduation requirements for its ALE programs and the District calendar.

Program will be operated in compliance with relevant federal and state laws.

**Contracting.** The parties agree to abide by the provisions of RCW 39A.001 ("Contracting out-Board's powers and duties- Goods and services") and WAC 392-121-188 ("Instruction provided under Agreement").

**No Child Left Behind.** The parties acknowledge that Program must be operated in accordance with Title I of the Elementary and Secondary Education Act of 1965, as amended by No Child Left Behind Act of 2001 (NCLB), Pub. Law No. 107-110, 115 Stat. 1425, any and all state and federal regulations promulgated thereunder, and any subsequent amendments made thereto.

**Compulsory attendance, admission, and course work.** The parties acknowledge that Program shall comply with the provisions of RCW 28A.230, "compulsory school attendance and admission." Program shall comply with the provisions of RCW 28A.230, "compulsory course work and activities."

**Annual instructional hours.** Provider shall supply a program that does not adversely affect the District's ability to comply with the annual instructional hour requirement as defined by WAC 180-16-400.

**Alternative Learning Experience.** Both parties agree to comply with WAC 392-121-18, "alternative learning experience requirements," for students claimed under the Alternative Learning Experience ("ALE") funding provisions.

**Staffing.**

For the students served under this agreement, Provider shall maintain a ratio of CIS FTE to student FTE which is at least equal to the District's basic education funding ratio for the grade level of the students being reported for basic education funding in accordance with WAC 392-121-188.

**Multi-district distance education provider approval.** If Provider is a "multi-district distance education course provider" or "multi-district distance education program provider" as defined by the Office of the Superintendent of Public Instruction (OSPI), the Provider must be approved by OSPI in accordance with chapter 392-502 WAC. The Provider is exclusively responsible for seeking and obtaining OSPI approval.

The Program is considered a distance education program with the capacity to offer a "multi-district distance education program" as defined by the Office of the Superintendent of Public Instruction (OSPI). The Program has been approved by OSPI and directed to comply with the following: "Students will be enrolled through Toppenish School district and for distance education instruction, Skylar Education Academy, under contract with the Toppenish School District to enroll a student in Toppenish High School and use their OSPI approved affiliate distance education program (i.e. Comet and Red Comet teachers) or in the Northwest Allprep School (using Northwest Allprep teachers) an OSPI approved distance program." The District is responsible for seeking and obtaining OSPI approval, and the Provider agrees to comply with requests for information that relate to the approval process.

#### Exclusivity

District and Provider acknowledge that this arrangement is not exclusive and that Provider has the right to provide similar Services to other public or private schools or institutions. Such activities shall be kept separate from the activities of the Program.

#### Termination for Default

If either District or Provider violates any material term or condition of this Agreement or fails to fulfill in a timely and proper manner its obligations under this Agreement, then the aggrieved party shall give the other party written notice of such failure or violation. The responsible party shall correct the violation or failure within 90 calendar days or as otherwise mutually agreed in writing. If the failure or violation is not corrected, this Agreement may be terminated immediately by written notice from the aggrieved party to the other party. The option to terminate shall be at the sole discretion of the aggrieved party. District reserves the right to suspend all or part of the Agreement, withhold further payments, or prohibit Provider from incurring additional obligations of funds during investigation of any alleged Provider compliance breach and pending corrective action by Provider or a decision by District to terminate the Agreement.

In the event of termination of this Agreement by District, District shall have the right to procure the Services that are the subject of this Agreement on the open market and Provider shall be liable for all damages, including, but not limited to: (i) the cost difference between the original Agreement price for the Services and the replacement costs of such Services acquired from another Provider; (ii) if applicable, all administrative costs directly related to the replacement of this Agreement, such as costs of competitive bidding, mailing, advertising, applicable fees, charges or penalties, staff time costs; and, (iii) any other costs to District resulting from Provider's breach. District shall have the right to deduct from any monies due to Provider, or that thereafter become due, an amount for damages that Provider will owe District for Provider's default.

If the Failure to Perform is without the defaulting party's control, fault, or negligence, the termination shall be deemed to be a Termination for Convenience.

This section shall not apply to any failure(s) to perform that results from the willful or negligent acts or omissions of the aggrieved party.

#### **Termination for Convenience**

When, at the sole discretion of District, it is in the best interest of the District, District may terminate this Agreement in whole or in part, by [90 calendar days] written notice to Provider. If this Agreement is so terminated, District is liable only for payments required by the terms of this Agreement for Services received and accepted by District prior to the effective date of termination.

#### **Termination for Withdrawal of Authority**

In the event that District's authority to perform any of its duties is withdrawn, reduced, or limited in any way after the commencement of this Agreement and prior to normal completion, District may terminate this Agreement by [90 calendar days] written notice to Provider. No penalty shall accrue to District in the event this section shall be exercised. This section shall not be construed to permit District to terminate this Agreement in order to acquire similar Services from a third party.

#### **Termination for Non-Allocation of Funds**

If funds are not allocated to District to continue this Agreement in any future period, District may terminate this Agreement by (30 calendar days] written notice to Provider or work with Provider to arrive at a mutually acceptable resolution of the situation. District will not be obligated to pay any further charges for Services including the net remainder of agreed to consecutive periodic payments remaining unpaid beyond the end of the then-current period. District agrees to notify Provider in writing of such non-allocation at the earliest possible time. No penalty shall accrue to District in the event this section shall be exercised. This section shall not be construed to permit District to terminate this Agreement in order to acquire similar Services from a third party.

#### **Termination Procedure**

In addition to the procedures set forth below, if District terminates this Agreement, Provider shall follow any procedures District specifies in District's Notice of Termination.

Upon termination of this Agreement, District, in addition to any other rights provided in this Agreement, may require Provider to deliver to District any property or Work Product specifically produced or acquired for the performance of such part of this Agreement as has been terminated. The section titled Treatment of Assets shall apply in such property transfer.

Unless otherwise provided herein, District shall pay to Provider the agreed-upon Price, if separately stated, for the Services received by District, provided that in no event shall District pay to Provider an amount greater than Provider would have been entitled to if this Agreement had not been terminated. Failure to agree with such determination shall be a dispute within the meaning of the Disputes section of this Agreement. District may withhold from any amounts due Provider such sum as District determines to be necessary to protect District from potential loss or liability.

Provider shall pay amounts due District as the result of termination within thirty (30) calendar days of notice of the amounts due. If Provider fails to make timely payment,



District may charge interest on the amounts due at one percent (1%) per month until paid in full.

"Work Product" as used in this Agreement shall mean data and products produced under this Agreement including, but not limited to, discoveries, formulae, ideas, improvements, inventions, methods, models, processes, techniques, findings, conclusions, recommendations, reports, designs, plans, diagrams, drawings, software, databases, documents, pamphlets, advertisements, books, magazines, surveys, studies, computer programs, films, tapes, and/or sound reproductions, to the extent provided by law.

#### Pricing, Invoice, and Payment

Monthly billings will be prorated, based upon Washington State's FTE allotment. SEA (Skylar Education Academy) shall submit invoices at least monthly by the fifth (5th) business day. The SEA invoice shall be for 90% or 80% as eligible, of the basic education allotment. The invoice shall be for all services rendered during the previous calendar month.

The amount paid to Skylar Education Academy will be 50% of the actual FTE allotment received by Toppenish School District for students for the current school year, 2013-2014

Example:

The current basic support figure for school year 2012-2013 is \$4,850.45 per year. 80% is \$3880.36 divided by 12 = 323.36/student/month x 50% = 161.68

All invoices must be submitted for payment to:  
Toppenish School District Contracts - Lynnette Brizendine  
306 Bolin Drive  
Toppenish, WA 98948-1644 \_\_\_\_\_

Running Start students the district will retain 50% from the eligible student's basic education allotment. The provider will retain only the eligible amount based on 90% of the HS FTE after the district retains the 50%.

At least 120 calendar days before the end of the then-current term of this Agreement, Provider may propose rate increases by written notice to District. Price adjustments will be taken into consideration by District when determining whether to extend this Agreement.

"Price" as used in this Agreement shall mean charges, costs, rates and/or fees charged for the Services performed by Provider under this Agreement and paid in United States dollars.

Provider agrees that all the Prices, terms, warranties, and benefits provided in this Agreement are comparable to or better than the terms presently being offered by Provider to any other governmental entity purchasing the same quantity under similar terms. If during the term of this Agreement Provider shall enter into Agreements with any other governmental entity providing greater benefits or more favorable terms than those provided by this Agreement, Provider shall be obligated to provide the same to District for subsequent purchases.

## **Taxes**

District will pay sales and use *taxes, if any*, imposed on the Services acquired hereunder. Provider must pay all other taxes including, but not limited to, Washington Business and Occupation Tax, other taxes based on Provider's income or gross receipts, or personal property taxes levied or assessed on Provider's personal property. Provider shall complete registration with the Washington State Department of Revenue and be responsible for payment of all taxes due on payments made under this Agreement.

All payments accrued on account of payroll *taxes*, unemployment contributions, any other *taxes*, insurance, or other expenses for Provider or Provider's staff shall be Provider's sole responsibility.

## **Invoice and Payment**

Invoices shall provide and itemize, as applicable:

- a) District Agreement number
- c) Provider *name*, address, phone number, and Federal Tax Identification Number;
- d) Description of Services provided; classes taken, credits of eligible enrolled students
- e) Date(s) that Services were provided, including number of hours worked; *{number of hours worked would not be applicable for a deliverable-based or fixed fee Agreement}*
- f) Provider's Price for Services;
- g) Net invoice Price for each Service;
- h) Applicable taxes;
- i) Other applicable charges;
- j) Total invoice Price; and
- k) Payment terms including any available prompt payment discounts.

## **Contacts**

The District's key contact for Provider will be *Y. Alisen Paez*. The Provider's contact for District will be *Dave Andrews*.

## **Assignment**

With the prior written consent of District, which consent shall *be at District's sole option*, Provider may assign this Agreement including the proceeds hereof, provided that such assignment shall not operate to relieve Provider of any of its duties and obligations.

hereunder, nor shall such assignment affect any remedies available to District that may arise from any breach of the sections of this Agreement. Statements of Work, or warranties made herein including but not limited to, rights of setoff.

District may assign this Agreement or Statements of Work to any public agency, commission, board, or the like, within the political boundaries of the state of Washington, provided that such assignment shall not operate to relieve District of any of its duties and obligations hereunder.

## **Students**

### **Student eligibility**

*Program is open to any student in the state of Washington who transfers into the District under the interdistrict transfer provisions of RCW 28A.180 through 28A.185.*

The parties agree that District shall approve of the provider's written student admissions policy for the program.

The parties acknowledge that Program will only invoice for "enrolled students" residing in Washington state, as defined by WAC 392-121-100.

**Recruitment and enrollment.** The parties agree that Provider will recruit and enroll students in a manner consistent with any applicable district policies and state and federal law.

**Transportation.** The parties acknowledge that District shall have no duty under this Agreement to provide daily transportation to students enrolled in the Program. Any transportation for field trips or other purposes, excepting special education transportation, shall be provided exclusively by the Provider.

**Student Code of Conduct.** The parties acknowledge that students enrolled in the Program are subject to the District code of conduct

**Free basic education.** The parties acknowledge that students will not be charged tuition for courses offered to students for which the district claims state education funding or that are included as part of the legally-required annual average total instructional hour offering of one thousand (1000) hours; provided, that students and/or their parents or other guardians as provided by law may be responsible for fees as specified by the District fee schedule.

**Transitional bilingual instruction.** The parties agree to make available instruction to eligible transitional bilingual students for the purpose of achieving competency in English, as specified in chapter 28A.180 RCW and chapter 392-160 WAC.

Meals. Nothing in this Agreement shall be interpreted or construed to require District or Provider to provide students enrolled in the Program access to federal child nutrition programs administered by the United State Department of Agriculture and the State of Washington, including, without limitation, the National School Lunch Program, the Special Milk Program for Children, the School Breakfast Program, and/or the Summer Food Service Program..

#### Special Education.

IDEA. The parties acknowledge that Program shall comply with the requirements of the Individuals with Disabilities Education Improvement Act of 2004, Pub. Law No. 108-446, 118 Stat. 2647, any and all state and federal regulations promulgated thereunder, and any subsequent amendments made thereto.

The parties acknowledge that all children with disabilities must have the opportunity for an appropriate education at public expense. (RCW 28A.55 and WAC 392-172A.) The provider will be responsible to cooperate with the district in complying with WAC 392-172A-04085 and 392-172A-04090.

Unless contracted with another district or ESD, the provider is responsible for writing and maintaining the individual education plan (IEP) as well as providing additional support. The district and Skylar Education Academy agree to work cooperatively in the completion of each IEP. A copy of each IEP will be provided to the district for approval.

Provider is also responsible for maintaining, developing and modifying any 504 plans. Any expense associated with a 504 plan will be the responsibility of the provider. All 504 plans must be submitted to the district for approval.

Once the district has accepted a student for Skylar Education Academy through the non-resident transfer process, that district is legally responsible for providing special education and related services to the student. The provider is responsible to review the student's educational records including evaluations and IEPs to determine how services will be provided, as well as modify the IEP as appropriate. If the IEP has lapsed the provider will be responsible to work with the district to develop a current IEP. Provider will bear the cost of reevaluation, as needed. A copy of each IEP will be provided to the district for approval.

If the student needs related services, the provider will cooperate with the district in determining how those services will be delivered. Some methods for delivering related services can include:

- contracting with the student's resident district.
- contracting with another district that is located close to the student's physical location, or

- contracting with private providers, or determining whether some services can be provided using teletherapy.

Parties acknowledge that parents of special education children enrolled in non-resident district distance education programs possess all of the procedural safeguards provided by the Individuals with Disabilities Education Act and Section 504 to address the district's obligation to provide a free appropriate public education.

The district agrees to not categorically deny admission to a student under school choice based on disability, or deny admission to a disabled student solely because the student needs special education or related aids or services. Nor may the district ask the parent to revoke consent for special education services as a condition of acceptance. The district must provide disabled students an equal opportunity to meet any appropriate minimum eligibility criteria for admission, consistent with the mission of the distance education school program and Section 504.

### **Recruitment**

Provider agrees to not discriminate against students based on disability in recruitment.

- Provider will not discriminate against students from all segments of the community served by the program, including students with disabilities.
- Promotional materials used by the provider on the internet, in newspapers, and in other distance education or written communications, will state that the program does not discriminate against students based on disability, gender, racial and ethnic minorities, people of all sexual orientations and gender identities in admission or treatment in the program.
- Provider recruitment materials will include the contact information for the person responsible for coordinating the distance education school program's efforts to comply with Section 504 of the Rehabilitation Act and Title II of the Americans with Disabilities Act.
- Provider will make clear in the recruitment materials that if the student does not reside in the district that is offering the distance education school program and wants to attend this program, Washington's interdistrict choice transfer processes must be followed. (Provider must follow those processes are set forth in chapter 392-137 of the Washington Administrative Code).

### **Eligibility Criteria**

Any eligibility criteria developed by the provider for admission to the program must be approved by the district. Eligibility criteria for admission may be developed as long as the criteria are:

1. Neutral on their face with respect to disability:
2. Educationally justified:
3. Applied equally to both disabled and nondisabled students alike; and
4. Subject to modification when necessary to avoid discriminating against a student on the basis of disability, unless the district can demonstrate that making the modification would fundamentally alter the nature of its distance education school program.

### School Records

**Records.** Provider shall maintain student records in compliance with the Family Educational Rights and Privacy Act (FERPA) of 1974, Pub. L. No. 93-380, 88 Stat. 484, and shall retain records in accordance with the record retention laws and schedules(s) of the Washington State Archivist applicable to public school districts, in addition to District record retention policies. Parent and other requests for disclosure of records pursuant to FERPA or the Public Records Act (RCW 42.56) shall be administered by the District, with the assistance and cooperation of Provider.

**Student Information System integration.** The parties agree that Provider shall be responsible for integrating student data into the District's student information system with appropriate safeguards to protect student data confidentiality in accordance with the terms of this Agreement and with state and federal law.

**State reporting.** If at any time during the school year the Program serves more than twenty-five (25) students and said number equals more than one-quarter of one percent (.0025) of the District's annual average full-time equivalent enrollment claimed for basic education funding, the District shall report the certificated instructional employees of Provider as required by the Office of the Superintendent of Public Instruction annual personnel reporting system for calculation of state funding, staff ratios, and statistics.

Provider shall respond to applicable requests for information or reports from District, state, or federal authorities.

### Audits.

In the event of any audit undertaken at the direction of District, the State of Washington, or the United States, and their respective officers, employees, or agents, Provider shall fully cooperate with the District and auditors in providing all information needed for such audit.

### Confidentiality Protection of District's Confidential Information

Provider acknowledges that some of the material and information that may come into its possession or knowledge in connection with this Agreement or its performance may consist of information that is exempt from disclosure to the public or other unauthorized persons under either chapter 42.56 RCW or other state or federal statutes ("Confidential

Information"). Confidential Information includes, but is not limited to, names, addresses, Social Security numbers, e-mail addresses, telephone numbers, financial profiles, credit card information, driver's license numbers, medical data, law enforcement records, agency source code or object code, agency security data, or information identifiable to an individual that relates to any of these types of information. Provider agrees to hold Confidential Information in strictest confidence and not to make use of Confidential Information for any purpose other than the performance of this Agreement, to release it only to authorized employees requiring such information for the purposes of carrying out this Agreement, and not to release, divulge, publish, transfer, sell, disclose, or otherwise make the information known to any other party without District's express written consent or as provided by law. Provider agrees to release such information or material only to employees who have signed a nondisclosure agreement, the terms of which have been previously approved by District. Provider agrees to implement physical, electronic, and managerial safeguards to prevent unauthorized access to Confidential Information.

Immediately upon expiration or termination of this Agreement, Provider shall, at District's option: (i) certify to District that Provider has destroyed all Confidential Information; or (ii) return all Confidential Information to District; or (iii) take whatever other steps District requires of Provider to protect District's Confidential Information.

:District reserves the right to monitor, audit, or investigate the use of Confidential Information collected, used, acquired by Provider through this Agreement.

Violation of this section by Provider may result in termination of this Agreement and demand for return of all Confidential Information, monetary damages, or penalties.

## **General Provisions**

### **Ownership of Services and Content.**

Nothing in this Agreement will be interpreted or construed as a sale or purchase of title to the Services provided by the Provider hereunder. All right, title, and interest in and to any documentation and materials supplied by Provider under this Agreement, derivative works, compilations, collective works, and any know-how and trade secrets related to the Services provided by Provider hereunder, including all intellectual property rights therein and thereto, are and will remain the exclusive property of Provider. District will not have any rights in or to the Services provided by Provider hereunder, except those expressly granted in this Agreement. Provider reserves to itself all rights to the Services provided by Provider hereunder not expressly granted to District under this Agreement.

**Patent and Copyright Indemnification.**

Provider, at its expense, shall defend, indemnify, and save District harmless from and against any claims against District that any Product or Work Product supplied hereunder, or District's use of the Product or Work Product within the terms of this Agreement, infringes any patent, copyright, utility model, industrial design, mask work, trade secret, trademark, or other similar proprietary right of a third party worldwide. Provider shall pay all costs of such defense and settlement and any penalties, costs, damages and attorneys' fees awarded by a court or incurred by District provided that District promptly notifies Provider in writing of the claim, but District's failure to provide timely notice shall only relieve Provider from its indemnification obligations if and to the extent such late notice prejudiced the defense or resulted in increased expense or loss to Provider.

If such claim has occurred, or in Provider's opinion is likely to occur, District agrees to permit Provider, at its option and expense, either to procure for District the right to continue using the Product or Work Product or to replace or modify the same so that they become non-infringing and functionally equivalent. If use of the Product or Work Product is enjoined by a court and Provider determines that none of these alternatives is reasonably available, Provider, at its risk and expense, will take back the Product or Work Product and provide District a refund. In the case of Work Product, Provider shall refund to District the entire amount District paid to Provider for Provider's provision of the Work Product. In the case of Product, Provider shall refund to District its depreciated value. No termination charges will be payable on such returned Product, and District will pay only those charges that were payable prior to the date of such return. Depreciated value shall be calculated on the basis of a useful life *of/our* (4) years commencing on the date of purchase and shall be an equal amount per year over said useful life.

The depreciation for fractional parts of a year shall be prorated on the basis of three hundred sixty-five (365) days per year. In the event the Product has been installed less than one (1) year, all costs associated with the initial installation paid by District shall be refunded by Provider.

Provider has no liability for any claim of infringement arising solely from:

- a) Provider's compliance with any designs, specifications or instructions of District;
- b) Modification of the Product or Work Product by District or a third party without the prior knowledge and approval of Provider; or
- c) Use of the Product or Work Product in a way not specified by Provider;

unless the claim arose against Provider's Product or Work Product independently of any of these specified actions.



#### **Save Harmless.**

Provider shall defend, indemnify, and save District harmless from and against any claims, including reasonable attorneys' fees resulting from such claims, by third parties for any or all injuries to persons or damage to property of such third parties arising from intentional willful or negligent acts or omissions of Provider, its officers, employees, or agents. Provider's obligation to defend, indemnify, and save District harmless shall not be eliminated or reduced by any alleged concurrent District negligence.

#### **Insurance.**

Provider shall, during the term of this Agreement, maintain in full force and effect, the insurance described in this section. Provider shall acquire such insurance from an insurance carrier or carriers licensed to conduct business in the state of Washington and having a rating of A- Class VII or better, in the most recently published edition of Best's Reports. In the event of cancellation, non-renewal, revocation or other termination of any insurance coverage required by this Agreement, Provider shall provide written notice of such to District within one (1) Business Day of Provider's receipt of such notice. Failure to buy and maintain the required insurance may, at District's sole option, result in this Agreement's termination.

The minimum acceptable limits shall be as indicated below, with no deductible for each of the following categories:

- a) Commercial General Liability covering the risks of bodily injury (including death), property damage and personal injury, including coverage for contractual liability, with a Limit of not less than \$1 million per occurrence; \$2 million general aggregate;
- b) Business Automobile Liability (owned, hired, or non-owned) covering the risks of bodily injury (including death) and property damage, including coverage for contractual liability, with a limit of not Less than \$1 million per accident;
- c) Employers Liability insurance covering the risks of Provider's employees' bodily injury by accident or disease with Limits of not less than \$1 million per accident for bodily injury by accident and \$1 million per employee for bodily injury by disease;
- d) Umbrella policy providing excess limits over the primary policies in an amount not less than \$3 million;
- e) Professional Liability Errors and Omissions, with a deductible not to exceed \$25,000, and coverage of not less than \$1 million per occurrence; \$2 million general aggregate; and
- f) Crime Coverage with a deductible not to exceed \$1 million, conditioned upon subsection 31.3 below, and coverage of not less than \$5 million single limit per occurrence

and \$10 million in the aggregate, which shall at a minimum cover occurrences falling in the following categories: Computer Fraud; Forgery; Money and Securities; and Employee Dishonesty.

For Professional Liability Errors and Omissions coverage and Crime Coverage, Provider shall: (i) continue such coverage for six (6) years beyond the expiration or termination of this Agreement, naming District as an additional insured and providing District with certificates of insurance on an annual basis; (ii) within thirty (30) days of execution of this Agreement provide for District's benefit an irrevocable stand-by letter of credit, or other financial assurance acceptable to District, in the amount of \$1 million, during the initial and any subsequent terms of this Agreement, and for six (6) years beyond the expiration or termination of this Agreement to pay for any premiums to continue such claims-made policies, or available tails, whichever is appropriate, at District's sole option, in the event Provider fails to do so. In addition, such irrevocable stand-by letter of credit shall provide for payment of any deductible on the Professional Liability Errors and Omissions policy and the Crime Coverage under the same terms and conditions of such policy as though there were no deductible. "Irrevocable stand-by letter of credit" as used in this Agreement means a written commitment by a federally insured financial institution to pay all or part of a stated amount of money, until the expiration date of the letter, upon presentation by District (the beneficiary) of a written demand therefor.

Provider shall pay premiums on all insurance policies. Such insurance policies shall name District as an additional insured on all general liability, automobile liability, and umbrella policies. Such policies shall also reference an Agreement number and shall have a condition that they not be revoked by the insurer until forty-five (45) calendar days after notice of intended revocation thereof shall have been given to District by the insurer.

All insurance provided by Provider shall be primary as to any other insurance or self-insurance programs afforded to or maintained by the State and shall include a severability of interests (cross-liability) provision.

Provider shall include any subcontractors as insured under all required insurance policies, or shall furnish separate certificates of insurance and endorsements for each subcontractor. Subcontractor(s) shall comply fully with all insurance requirements stated herein. Failure of subcontract(s) to comply with insurance requirements does not limit Provider's liability or responsibility. For the purposes of this Agreement, a "Subcontractor" shall mean one not in the employment of Provider, who is performing all or part of the business activities under this Agreement under a separate contract with Provider.

Provider shall furnish to District copies of certificates of all required insurance within thirty (30) calendar days of this Agreement's Effective Date, and copies of renewal certificates of all required insurance within thirty (60) days after the renewal date. These

certificates of insurance must expressly indicate compliance with each and every insurance requirement specified in this section. Failure to provide evidence of coverage may, at District's sole option, result in this Agreement's termination.

By requiring insurance herein, District does not represent that coverage and limits will be adequate to protect Provider. Such coverage and limits shall not limit Provider's liability under the indemnities and reimbursements granted to District in this Agreement.

#### **Industrial Insurance Coverage.**

Prior to performing work under this Agreement, Provider shall provide or purchase industrial insurance coverage for its employees, as may be required of an "employer" as defined in Title 51 RCW, and shall maintain full compliance with Title 51 RCW during the course of this Agreement. District will not be responsible for payment of industrial insurance premiums or for any other claim or benefit for Provider, or employee of Provider, which might arise under the industrial insurance laws during the performance of duties and Services under this Agreement.

#### **Licensing Standards.**

Provider must register with the Washington State Department of Revenue prior to performing work under the Agreement. Provider will be issued a State Uniform Business Identifier (UBI) number to be used in payment of state taxes. Out-of-state Providers performing work in Washington State are required to have UBI numbers.

Provider shall comply with all applicable local, state, and federal licensing, accreditation and registration requirements and standards necessary in the performance of this Agreement.

#### **Antitrust Violations.**

Provider and District recognize that, in actual economic practice, overcharges resulting from antitrust violations are usually borne by District. Therefore, Provider hereby assigns to District any and all claims for such overcharges as to goods and Services purchased in connection with this Agreement, except as to overcharges not passed on to District resulting from antitrust violations commencing after the date of the bid, quotation, or other event establishing the Price under this Agreement.

#### **Compliance with Civil Rights Laws.**

During the performance of this Agreement, Provider shall comply with all federal and applicable state nondiscrimination laws, including but not limited to: Title VII of the Civil Rights Act, 42 U.S.C. § 12101 et seq.; the Americans with Disabilities Act (ADA); and Title 49.60 RCW, Washington Law Against Discrimination. In the event of Provider's noncompliance or refusal to comply with any nondiscrimination law, regulation or policy, this Agreement may be rescinded, canceled, or terminated in whole or in part under the

Termination for Default sections, and Provider may be declared ineligible for further Agreements with District.

**Severability.**

If any term or condition of this Agreement or the application thereof is held invalid, such invalidity shall not affect other terms, conditions, or applications which can be given effect without the invalid term, condition, or application; to this end the terms and conditions of this Agreement are declared severable.

**Waiver.**

Waiver of any breach of any term or condition of this Agreement shall not be deemed a waiver of any prior or subsequent breach. No term or condition of this Agreement shall be held to be waived, modified, or deleted except by a written instrument signed by the parties.

**Treatment of Assets.**

Title to all property furnished by District shall remain in District. Title to all property furnished and purchased by Provider, shall remain the property of the Provider unless an agreement is arrived between the parties to purchase, pass or vest to District.

Title to all property furnished for which Provider is entitled to reimbursement, other than rental payments, under this Agreement, shall pass to and vest in District pursuant to the Ownership of Services and Content section. As used in this section Treatment of Assets, if the "property" is Provider's proprietary, copyrighted, patented, or trademarked works, only the applicable license, not title, is passed to and vested in District.

Any District property furnished to Provider shall, unless otherwise provided herein or approved by District, be used only for the performance of this Agreement.

Provider shall be responsible for any loss of or damage to property of District that results from Provider's negligence or that results from Provider's failure to maintain and administer that property in accordance with sound management practices.

Upon loss or destruction of, or damage to any District property, Provider shall notify District thereof and shall take all reasonable steps to protect that property from further damage.

Provider shall surrender to District all District property prior to completion, termination, or cancellation of this Agreement.

**Provider's Proprietary Information.**

Provider acknowledges that District is subject to chapter 42.56 RCW and that this Agreement shall be a public record as defined in chapter 42.56 RCW. Any specific information that is claimed by Provider to be Proprietary Information must be clearly identified as such by Provider. To the extent consistent with chapter 42.56 RCW, District shall maintain the confidentiality of all such information marked Proprietary Information.

If a public disclosure request is made to view Provider's Proprietary Information, District will notify Provider of the request and of the date that such records will be released to the requester unless Provider obtains a court order from a court of competent jurisdiction enjoining that disclosure. If Provider fails to obtain the court order enjoining disclosure, District will release the requested information on the date specified.

#### **Governing Law.**

This Agreement shall be governed in all respects by the law and statutes of the state of Washington, without reference to conflict of law principles. However, if the Uniform Computer Information Transactions Act (UCITA) or any substantially similar law is enacted as part of the law of the state of Washington, said statute will not govern any aspect of this Agreement or any license granted hereunder, and instead the law as it existed prior to such enactment will govern. The jurisdiction for any action hereunder shall be exclusively in the Superior Court for the state of Washington. The venue of any action hereunder shall be in the Superior Court for Yakima County, Washington.

#### **Dispute resolution**

##### **Disputes.**

In the event a bona fide dispute concerning a question of fact arises between District and Provider and it cannot be resolved between the parties, either party may initiate the dispute resolution procedure provided herein.

The initiating party shall reduce its description of the dispute to writing and deliver it to the responding party. The responding party shall respond in writing within seven (7) Business Days. The initiating party shall have seven (7) Business Days to review the response. If after this review a resolution cannot be reached, both parties shall have seven (7) Business Days to negotiate in good faith to resolve the dispute.

a) If the dispute cannot be resolved after seven (7) Business Days, a Dispute Resolution Panel may be requested in writing by either party who shall also identify the first panel member. Within seven (7) Business Days of receipt of the request, the other party will designate a panel member. Those two panel members will appoint a third individual to the Dispute Resolution Panel within the next seven 7 Business Days.

b) The Dispute Resolution Panel will review the written descriptions of the dispute, gather additional information as needed, and render a decision on the dispute in the shortest practical time.

c) Each party shall bear the cost for its panel member and share equally the cost of the third panel member.

Both parties agree to be bound by the determination of the Dispute Resolution Panel.

Both parties agree to exercise good faith in dispute resolution and to settle disputes prior to using a Dispute Resolution Panel whenever possible. "Unless irreparable harm will result, neither party shall commence litigation against the other before the Dispute Resolution Panel has issued its decision on the matter in dispute."

District and Provider agree *that*, the existence of a dispute notwithstanding, they will continue without delay to carry out all their respective responsibilities under this Agreement that are not affected by the dispute.

If the subject of the dispute is the amount due and payable by District for Services being provided by Provider, Provider shall continue providing Services pending resolution of the dispute provided District pays Provider the amount District, in good faith, believes is due and payable, and places in escrow the difference between such amount and the amount Provider, in good faith, believes is due and payable.

**Attorneys' Fees and Costs.** If any litigation is brought to enforce any *term*, condition, or section of this Agreement, or as a result of this Agreement in any way, the prevailing party shall be awarded its reasonable attorneys' fees together with expenses and costs incurred with such litigation, including necessary *fees*, *costs*, and expenses for services rendered at both trial and appellate levels, as well as subsequent to judgment in obtaining execution thereof.

In the event that the parties engage in arbitration, mediation or any other alternative dispute resolution forum to resolve a dispute in lieu of litigation, both parties shall share equally in the cost of the alternative dispute resolution *method*, including cost of mediator or arbitrator. In addition, each party shall be responsible for its own attorneys' fees incurred as a result of the alternative dispute resolution method.

**Non-Exclusive Remedies.** The remedies provided for in this Agreement shall not be exclusive but are in addition to all other remedies available under law.

#### **Additional General Provisions:**

**RECORD CHECKS** – The school district requires a record check through the Washington State patrol criminal identification system under RCW 43.43.830 through RCW 43.43.834, 10.97.030 and 10.97.050 and through the federal bureau of investigation before hiring. the record check shall include a finger print check using a complete Washington State criminal identification finger print card.

**SUSPENSION AND DEBARMENT** – The contractor certifies that their organization and principals are not suspended or debarred by the federal government. A listing of suspending and debarred entities can be found at [www.arnet.gov/epl](http://www.arnet.gov/epl).

### *Liquidated Damages*

- a) If Provider does not provide the Services by *the date* agreed upon between District and Provider, then Provider shall provide a revised date and pay to District as fixed and agreed liquidated damages, in lieu of all other damages due to such delay, for each calendar day between the specified *delivery date* and the date that Provider actually provides the Services.
- b) If the revised *delivery date* is more than 90 calendar days from the original *delivery date*, then by written notice to Provider, District may immediately terminate the right of Provider to provide the Services and District may obtain substitute Services from another Provider. In this event, Provider shall be liable for fixed and agreed-upon liquidated damages, in lieu of all other damages due to such delay, in the amount specified above, until substitute Services are provided, or a maximum of 90 calendar days from the original *delivery date*, whichever occurs first.

### **Failure to Perform.**

If Provider fails to perform any substantial obligation under this Agreement, District shall give Provider written notice of such Failure to Perform. If after 90 calendar days from the date of the written notice Provider still has not performed, then District may withhold all monies due and payable to Provider, without penalty to District, until such Failure to Perform is cured or otherwise resolved.

### **Limitation of Liability.**

The parties agree that neither Provider nor District shall be liable to each other, regardless of the form of action, for consequential, incidental, indirect, or special damages except a claim related to bodily injury or death, or a claim or demand based on patent, copyright, or other intellectual property right infringement, in which case liability shall be as set forth elsewhere in this Agreement. This section does not modify any sections regarding liquidated damages or any other conditions as are elsewhere agreed to herein between the parties. The damages specified in the sections titled Termination for Default are not consequential, incidental, indirect, or special damages as that term is used in this section.

Neither Provider nor District shall be liable for damages arising from causes beyond the reasonable control and without the fault or negligence of either Provider or District. Such causes may include, but are not restricted to, acts of God or of the public enemy, acts of a governmental body other than District acting in either its sovereign or contractual capacity, war, explosions, fires, floods, earthquakes, epidemics, quarantine restrictions, strikes, freight embargoes, and unusually severe weather; but in every case the delays must be beyond the reasonable control and without fault or negligence of Provider or District.

Neither party shall be liable for personal injury to the other party or damage to the other party's property except personal injury or damage to property proximately caused by such party's respective fault or negligence.

### Agreement Execution

#### Authority to Bind.

The signatories to this Agreement represent that they have the authority to bind their respective organizations to this Agreement.

#### Counterparts.

Counterparts -This section provides for counterparts or duplicate originals of the Agreement. Each party may sign a separate signature page, each of which will be made a part of the Agreement and be considered an original.

This Agreement may be executed in counterparts or in duplicate originals. Each counterpart or each duplicate shall be deemed an original copy of this Agreement signed by each party, for all purposes.

In Witness Whereof, the parties hereto, having read this Agreement in its entirety, including all attachments, do agree in each and every particular and have thus set their hands hereunto.

This Agreement is effective this 28<sup>th</sup> day of June 2013

Approved

John M. Cerwa

Signature

John M. Cerwa

Print or Type Name

Superintendent

Title

Oppenish S.D.

Approved

Yolanda Perez

Signature

YOLANDA PEREZ

Print or Type Name

CEO, Skylar Education Academy.

Title



Neither party shall be liable for personal injury to the other party or damage to the other party's property except personal injury or damage to property proximately caused by such party's respective fault or negligence.

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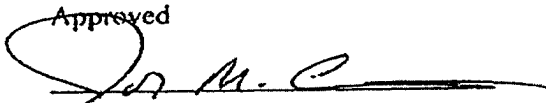
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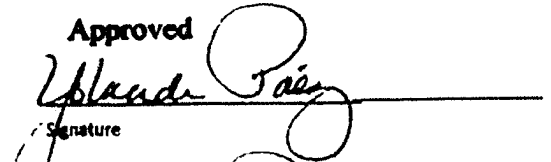
In Witness Whereof, the parties hereto, having read this Agreement in its entirety, including all attachments, do agree in each and every particular and have thus set their hands hereunto.

This Agreement is effective this 26<sup>th</sup> day of July 2013

Approved  
  
Signature

John M. Cerova  
Print or Type Name

Superintendent  
Title  
Loppenish S.D.

Approved  
  
Signature  
Yolanda Paez  
Print or Type Name

CEO

Education Academy