



Pacific Coast Academy

Special Board Meeting

Date and Time

Thursday June 17, 2021 at 7:00 PM PDT

Meeting Held via Teleconference

Zoom Link

<https://zoom.us/j/95593040377>

Meeting ID: 955 9304 0377

Join by Phone

(669) 900-6833

Agenda

	Purpose	Presenter	Time
I. Opening Items			7:00 PM
A. Call the Meeting to Order		Jessica Ackermann	
B. Record Attendance		Jessica Ackermann	1 m
C. Approval of Agenda	Vote	Jessica Ackermann	1 m
D. Public Comments			5 m
E. Closed Session: STUDENT RETENTION APPEAL, Student # 2021-0001	Discuss		10 m
F. Closed Session: STUDENT RETENTION APPEAL, Student # 2021-0002			10 m
G. Closed Session: STUDENT RETENTION APPEAL, Student # 2021-0003			10 m
H. Closed Session: STUDENT RETENTION APPEAL, Student # 2021-0004			10 m
I. Closed Session: STUDENT RETENTION APPEAL, Student # 2021-0005			10 m

	Purpose	Presenter	Time
II. Other Business			7:57 PM
A. Granite Mountain Settlement	Vote	Shari Erlendson	5 m
B. Purchase of Enrichment Operating System (EOS)	Vote	Shari Erlendson	5 m
III. Closing Items			8:07 PM
A. Adjourn Meeting	Vote	Jessica Ackermann	1 m

Prepared By:
Jennifer Faber

Noted By:

Board Secretary

Public comment rules: Members of the public may address the Board on agenda or non-agenda items. Please raise your hand if you have a comment. Speakers may be called upon to speak. We ask that comments are limited to 2 minutes each, with no more than 15 minutes per single topic so that as many people as possible may be heard. If a member of the public utilizes a translator to address the board, those individuals are allotted 4 minutes each. If the board utilizes simultaneous translation equipment in a manner that allows the board to hear the translated public testimony simultaneously, those individuals are allotted 2 minutes each. By law, the Board is allowed to take action only on items on the agenda. The Board may, at its discretion, refer a matter to district staff or calendar the issue for future discussion.

Note: Pacific Coast Academy Governing Board encourages those with disabilities to participate fully in the public meeting process. If you need a disability-related modification or accommodation, including auxiliary aids or services, to participate in the public meeting, please contact the Pacific Coast Academy Office at [\(619\) 749-1928](tel:6197491928) at least 48 hours before the scheduled board meeting so that we may make every reasonable effort to accommodate you. (Government Code § 54954.2; Americans with Disabilities Act of 1990, § 202 (42 U.S.C. § 12132)).

Cover Sheet

Granite Mountain Settlement

Section: II. Other Business
Item: A. Granite Mountain Settlement
Purpose: Vote
Submitted by:
Related Material:
Signature Version Settlement Agreement GMCS - PCA final 6-9-2021.pdf

BACKGROUND:

This is a settlement agreement between Granite Mountain Charter School and Pacific Coast Academy for the due to from amounts between the two schools. This settlement has been reviewed by Jerry Sims.

SETTLEMENT AGREEMENT

This Settlement Agreement is entered into by Granite Mountain Charter School (“GMCS”) and Pacific Coast Academy (“PCA”), each of which is referred to individually as a “Party” and collectively as the “Parties,” with reference to the following:

RECITALS

A. GMCS is a nonprofit corporation organized under the laws of the State of California in 2019 to operate a public charter school.

B. PCA is a nonprofit corporation organized under the laws of the State of California in 2017 to operate a public charter school.

C. GMCS and PCA each had a contractual relationship during the 2019-2020 school year with Provenance (formerly known as Inspire District Office) under which Provenance provided certain support services related to the operation of the charter schools operated by GMCS and PCA respectively. Prior to and continuing through the 2019-2020 school year, Provenance provided similar support services to additional charter schools that are not parties to this Agreement (the “Other Schools”). In providing support services to GMCS and PCA Provenance made transfers to PCA from GMCS’s bank account without GMCS’ or PCA’s approval

D. On September 26, 2019, Provenance caused the sum of \$1,000,000 to be transferred from GMCS’ bank account to PCA’s bank account (the “Transfer”).

E. In order for the Parties to operate their public charter schools it was necessary for the Parties to employ various personnel including instructional staff. Provenance managed the payment of the Parties’ staffs from funds in the Parties’ bank accounts. Provenance had assigned certain teachers to GMCS, PCA and the Other Schools for purposes of paying their salaries and expenses despite that fact that those teachers provided services to students of schools other than the one that paid their salaries and expenses.

F. As a result of Provenance’s assignment of payments for teachers, PCA paid certain teachers for services provided to GMCS’ students and GMCS paid certain teachers for services provided to PCA’s students.

G. Effective July 1, 2019, GMCS, PCA and Other Schools entered into the Memorandum of Understanding for Personnel Services (“MOU”) by which they agreed to reimburse each other for the cost paid by one School for teachers of another School’s students. The MOU contemplated monthly statements and payments to properly allocate the cost of teachers to the appropriate Schools. Provenance was intended to administer the billing process but failed to do so.

H. While the MOU contemplated reimbursement at hourly rates, Provenance did not establish protocols to capture hours and teachers did not track their hours. The Parties have determined that the only data available upon which to now allocate the amounts paid to teachers consists of the student rosters of each teacher. Thus, for the 2019-2020 school year, the Parties multiplied the cost of each teacher by the fraction consisting of a teacher’s students in a particular

school divided by the total number of that teacher's students in order to determine the allocation of that teacher's cost to each school.

I. Using the allocation method set forth above, the Parties determined that the amount paid by GMCS to teachers for services to PCA students for the 2019-2020 school year was \$232,969.27, and the amount paid by PCA to teachers for services to GMCS students for the 2019-2020 school year was \$514,874.00.

NOW, THEREFORE, in consideration of the foregoing, the Parties stipulate and agree as follows:

1. Incorporation of Recitals: The foregoing recitals, set out at paragraphs A through I, inclusive, are true and correct and are an integral part of this Settlement Agreement.

2. Representations and Warranties: Each signatory on behalf of a Party, by signing below represents and warrants that he or she is authorized to enter this Settlement Agreement on behalf of the indicated Party.

3. MOU Allocations: The Parties agree to allocate the shared personnel expenses for the 2019-2020 school year under the MOU as set forth above, and that GMCS owes PCA the sum of \$514,874.00, and that PCA owes GMCS the sum of \$232,969.27, resulting in a net due from GMCS to PCA of \$281,904.73 (the "MOU Allocations").

4. The Transfer: The Parties agree that PCA shall repay to GMCS the amount of the Transfer, \$1,000,000.00, less the \$281,904.73 net amount due to PCA pursuant to the MOU Allocations, as set forth in paragraph 3 above.

5. Payment: PCA shall pay to GMCS the sum of \$718,095.27 within thirty (30) days after PCA's receipt of this Settlement Agreement fully executed by PCA and GMCS, by check made payable to Granite Mountain Charter School, and delivered to Granite Mountain Charter School, Attn: Brook MacMillan, 8560 Alianto Road, Lucerne Valley, California 92356.

6. Mutual Release of Claims: Excepting only those claims and obligations arising under this Settlement Agreement, GMCS and PCA hereby forever release and discharge each other, and their past, present and future direct and indirect owners, parents, subsidiaries, sisters, directors, officers, partners, members, shareholders, beneficiaries, insurers, agents, attorneys, representatives, employees, predecessors, successors, and assigns, from any and all claims, demands, costs, liabilities, obligations, actions and causes of action of every nature, kind or description, whether legal or equitable, known or unknown, liquidated or unliquidated, contingent or non-contingent, suspected or unsuspected that are owned or assertable by or for the benefit of any Party which in any way relate to the MOU and/or the Transfer. Notwithstanding anything to the contrary in this paragraph 6, the Parties do not intend to release, and do not release, Provenance, Inspire Charter Schools, or any person or entity responsible on behalf of Provenance or Inspire Charter School, from any claim either of the Parties may hold, whether or not related to the MOU and/or the Transfer.

7. General Release and Waiver of Civil Code Section 1542: The releases set forth in the preceding paragraph are general releases in connection with the MOU and/or the Transfer, and are intended to and do encompass all known and unknown claims, demands, actions and causes of action

of every kind and nature, known or unknown, existing, claimed to exist, which a Party may have against the other Party, arising out of or resulting from or in any way connected with the MOU and/or the Transfer, except as provided elsewhere in this Settlement Agreement. In connection with this Settlement Agreement, each Party hereby knowingly, voluntarily, and expressly waives any and all rights such Party may have pursuant to section 1542 of the California Civil Code, which reads as follows:

A general release does not extend to claims which the creditor does not know or suspect to exist in his or her favor at the time of executing the release, which if known by him or her must have materially affected his or her settlement with the debtor.

The Parties acknowledge they may hereafter discover facts different from, or in addition to, those now known or believed to be true with respect to the matters released hereunder and agree that this Settlement Agreement, and the releases provided in the preceding paragraph, shall remain effective in all respects notwithstanding the discovery or existence of any such different or additional facts. HOWEVER, the parties do not release any claims or causes action against Provenance, Charter Impact, Inspire District Office, or any related entities, employees, managers or representatives.

8. Assumption of Risk: It is expressly understood and agreed by the Parties that the facts with respect to this Settlement Agreement may turn out to be different from the facts now known or believed by the Parties to be true. Each Party expressly assumes the risk of the facts turning out to be different and agrees that this Settlement Agreement will be, in all respects, effective and not subject to termination or rescission by reason of any such differences.

9. No Admission of Liability: The Parties acknowledge that this Settlement Agreement represents a compromise of disputed claims and that, by entering into this Settlement Agreement, none of the Parties admits or acknowledges the existence of any liability or wrongdoing.

10. Further Assurances and Cooperation: The Parties hereby provide assurances of cooperation to each other and agree to take any and all necessary and reasonable steps, including executing any other and further documents or instructions, and performing any other and further acts, appropriate to affect the intent of this Settlement Agreement.

11. Notices: The Parties may give notice to each other by sending a written communication by overnight mail, facsimile or e-mail to the Parties at the addresses set forth below.

If to Granite Mountain Charter School:

Granite Mountain Charter School
Attn: Brook MacMillan
8560 Aliento Road
Lucerne Valley, CA 02356
Email: brook@granitemountainschool.com

With a copy to counsel:

Marc R. Greenberg, Esq.
Tucker Ellis LLP
515 South Flower Street
Forty Second Floor
Los Angeles, CA 90071
Email: marc.greenberg@tuckerellis.com

If to Pacific Coast Academy:

Pacific Coast Academy
Attn: Krystin Demofonte
12915 Danielson Street, STE 103
Poway, CA 92064
Email: krystin.demofonte@pacificcoastacademy.org

With a copy to counsel:

Gerald N. Sims, Esq.
PYLE SIMS DUNCAN & STEVENSON, APC
1620 Fifth Avenue, Suite 400
San Diego, CA 92101
Email: jerrys@psdslaw.com

12. Legal Fees: Each Party shall bear its own attorneys' fees and costs in connection the Mediation and the State Court Action, including the negotiation, documentation, execution, delivery, and performance of this Settlement Agreement.

13. Governing Law: This Settlement Agreement is to be construed under and governed by the internal laws of the State of California (without regard to conflict of laws principles).

14. Entire Settlement Agreement: This Settlement Agreement contains the entire agreement and understanding among the Parties concerning the matters set forth herein and supersedes all prior or contemporaneous stipulations, negotiations, representations, understandings, and discussions among the Parties or their respective counsel with respect to the subject matter of this Settlement Agreement. No other representations, covenants, undertakings, or other earlier or contemporaneous agreements respecting these matters may be deemed in any way to exist or bind any of the Parties. The Parties acknowledge they have not executed this Settlement Agreement in reliance on any promise, representation, or warranty other than those in this Settlement Agreement.

15. Neutral Construction of the Settlement Agreement: This Settlement Agreement is the product of negotiation among the Parties and represents the jointly conceived and bargained-for language mutually determined by the Parties to express their intentions in entering into this

Settlement Agreement. Any ambiguity or uncertainty in this Settlement Agreement is therefore to be deemed to be caused by or attributable to the Parties collectively and is not to be construed against any particular Party. Instead, this Settlement Agreement is to be construed in a neutral manner, and no term or provision of this Settlement Agreement as a whole is to be construed more or less favorably to any one Party. Furthermore, the Parties hereby waive section 1654 of the California Civil Code.

16. No Oral Modifications: This Settlement Agreement may not be modified except as mutually agreed to in a writing that is signed by all of the Parties.

17. No Waiver: No waiver, forfeiture or forbearance of or concerning any provision of this Settlement Agreement shall be deemed or shall constitute a waiver, forfeiture or forbearance of or concerning any of the other provisions hereof, or a continuing waiver, forfeiture or forbearance.

18. Severability and Reformation: If, for any reason, any provision of this Settlement Agreement is determined to be invalid or unenforceable, such provision shall be automatically reformed to embody the essence of that provision to the maximum extent permitted by law, and the remaining provisions of this Settlement Agreement shall be construed, performed and enforced as if the reformed provision had been included in this Settlement Agreement at inception unless to do so would result in manifest injustice to a Party.

19. Independent Counsel: Each Party represents and warrants to each other Party that it has received independent legal advice from attorneys of its own choosing with respect to the legal effect of this Settlement Agreement.

20. Headings: The headings set forth in this Settlement Agreement are used for convenience only and are not to be used to interpret, construe, or in any way affect the meaning of the terms and provisions of this Settlement Agreement.

21. Counterparts: This Settlement Agreement may be executed in several counterparts, and any and all such executed counterparts, taken together, will constitute a single agreement binding on all Parties to this Settlement Agreement. Facsimiled or scanned signatures may be taken as the actual signatures

IN WITNESS WHEREOF, the Parties have executed this Settlement Agreement as of the date(s) set forth below.

GRANITE MOUNTAIN CHARTER SCHOOL,
a California Corporation

Sign: Brook MacMillan

By: Brook MacMillan

Title: Executive Director

Date: 6/10/21

PACIFIC COAST ACADEMY,
A California Corporation

Sign: _____

By: _____

Title: _____

Date: _____

Cover Sheet

Purchase of Enrichment Operating System (EOS)

Section:	II. Other Business
Item:	B. Purchase of Enrichment Operating System (EOS)
Purpose:	Vote
Submitted by:	
Related Material:	PCA software agreement Final 6 16 2021 (002) (2).pdf

SETTLEMENT AGREEMENT AND MUTUAL RELEASE

This SETTLEMENT AGREEMENT AND MUTUAL RELEASE (“**Agreement**”) is hereby entered into on this ___ day of June 2021 (“**Effective Date**”) by and between **PACIFIC COAST ACADEMY** (“**PCA**” or “**School**”) and **PROVENANCE**, with reference to the following. PCA and PROVENANCE are hereinafter collectively referred to as the “**Parties**.”

I. RECITALS

1.1 PROVENANCE is a nonprofit corporation, formerly known as Inspire District Office, organized under the laws of the State of California in 2017, for the purpose of providing administration and educational support services to certain charter schools including PCA, formerly known as Learning Latitudes.

1.2 PCA, formerly known as Learning Latitudes, is a nonprofit corporation organized under the laws of the State of California in 2017 to operate a public charter school.

1.3 PCA contends that the charter school operated by PCA was originally established at the behest of Inspire Charter Schools, a California nonprofit corporation organized in 2014 (“**ICS**”). PCA contends that ICS helped to establish and then provided services to several charter schools in addition to the one now operated by PCA.

1.4 PCA contends that, in 2017, ICS caused each of the charter schools under its ownership and control to be transferred into a newly formed California nonprofit corporation, and the charter school now operated by PCA was transferred into Learning Latitudes, which later changed its name to “Pacific Coast Academy.”

1.5 PCA contends that the charter schools no longer subject to ICS sole statutory membership remained connected by way of their service agreements with Inspire District Office, which later changed its name to PROVENANCE.

1.6 In order to facilitate management and record keeping, the schools contend that they funded development of a customized software platform. The schools contend that ICS contracted with Point West for the development of the software platform and the schools, as authorized by their respective boards of directors, provided funding to pay for the development of the software. In addition, the schools contend that certain employees of some of the schools assisted with the development of the software while being compensated by the schools which employed them.

1.7 The software developed for and used by the schools, accessible through the website www.icsinspirationstation.com, includes, but is not limited to, the following: the

Enrichment Ordering System (which includes the OSP System, the vendor site, amazon punchout and vendor punchout), Curriculum Ordering System, Tech extension to the Ordering System, Lender Library, Field Trip and Events, and Curriculum Suite (the “**Software**”).

1.8 PCA contends that it owns all right, title, and interest in and to all Intellectual Property Rights (as defined in Section 2.1.1 below) implicated by PCA’s use of the Software in connection with operating its school, including, without limitation, the right to a complete copy of the current version Software to use in perpetuity. PROVENANCE disagrees with PCA’s contentions, and contends that it owns the Software free of any claim by PCA or other schools. These conflicting claims to ownership of the Software is referred to herein as the “**Software Dispute**.” The Parties represent that there are other conflicting claims and disputes between the Parties, concerning other issues (including, without limitation, financial and monetary liabilities to each other), which are not a part of this Agreement or the mutual releases given hereunder. This Agreement is limited to the Parties’ compromise of the Software Dispute.

1.9 PROVENANCE asserts that it is insolvent and intends to shut down and wind down its business and enter into a General Assignment for Benefit of Creditors (“**ABC**”) made under California laws. The anticipated date of the making of the ABC is June 30, 2021, or earlier, and the proposed assignee of the ABC is AATK2, LLC (“**Assignee**”). Upon the effectiveness of the ABC, the PROVENANCE expects to sell its interests in the Software to Yosemite Valley Charter School and Monarch River Academy (“**Software Buyer**”), and other assets of PROVENANCE will be sold by the Assignee to recover money for the benefit of PROVENANCE’s creditors.

1.10 In anticipation of the ABC and shut down of PROVENANCE, PROVENANCE and PCA have expressed their desire to resolve the Software Dispute by PCA paying a sum certain in exchange for PROVENANCE providing PCA (i) full access to the Software in perpetuity (e.g., allowing PCA to obtain and copy any and all object code(s), source code(s), and supporting documentation for the Software) for the purposes of migrating its PCA-specific data (such as, but not limited to, student records, financial data, and human resources data) and enabling PCA to continue to use the Software on its own account in connection with the operation of its school and successor schools in perpetuity free of any adverse claims by any party, and (ii) full and exclusive ownership and control of any and all, websites, URLs, domains, webpage content, and any like intellectual property dedicated solely for PCA.

1.11 The Parties agree that it is in their best interests to resolve the Software Dispute independent of other issues and disputes between the Parties, and, therefore, it is their intention to settle only the Software Dispute defined above at this time on the terms set forth herein. Neither this Agreement nor any act required by this Agreement will be construed as an admission of any allegation made herein.

II. AGREEMENTS

FOR GOOD AND VALUABLE CONSIDERATION, the adequacy of which is acknowledged by the Parties, and in consideration of the mutual promises and covenants set forth below, the Parties agree as follows:

2.1 Software Source Code and School-Specific Intellectual Property and Data.

2.1.1 For the purposes of this Agreement, “Intellectual Property Rights” means (i) rights in any patent, copyright, trademark, trade dress, and trade name; (ii) related registrations and applications for registration; (iii) trade secrets, moral rights (*droit moral*) and goodwill; and (iv) and all similar or equivalent rights or forms of protection provided by applicable law in any jurisdiction throughout the world.

2.1.2 Effective only upon the receipt by Assignee of the Payment Obligation and the effectiveness of the releases set forth in Article III below, PROVENANCE shall immediately provide (i) full access to the Software to PCA in perpetuity (e.g., allow PCA to obtain and copy any and all object code(s), source code(s), and supporting documentation for the Software) for the purposes of enabling PCA to migrate its PCA-specific data (such as but not limited to student records, financial data, and human resources data) and enabling PCA to continue to use the Software on its own account to operate its school and successor schools in perpetuity, and (ii) full and exclusive ownership and control of any and all websites, URLs, internet domains, webpage content, and any like intellectual property dedicated solely for PCA (“**School Data**”). Neither PROVENANCE nor the Assignee is agreeing to provide any technical assistance, other actions or other support necessary for the School Data to be migrated to the School. Under no circumstances will the Payment Obligation be refundable. Accordingly, effective upon the receipt by Assignee of the Payment Obligation and the effectiveness of the releases set forth in Article III below, but subject to the provisions of Section 2.1.3 below, PROVENANCE hereby grants to PCA a limited, non-exclusive, transferrable, irrevocable, perpetual, fully paid-up, and royalty-free license to use, reproduce, perform, display, modify, improve, create derivative works of, distribute, import, make, have made, sell and offer to sell any and all Intellectual Property Rights implicated by PCA’s use of the Software solely in connection with operating its school or successor schools.

2.1.3 Assignee represents that Software Buyer has consented to the provisions of 2.1 above; however, nothing herein shall be deemed as a sale, conveyance or transfer of any ownership rights or interests in and to the Software to PCA. For purposes of clarity, the Parties agree and acknowledge that PCA is

being granted access to and the source code to the Software for the limited purposes of enabling School to migrate the School Data to a separate platform of its choosing and to continue to use the Software on its own account to operate its schools subject to the full and complete payment of the Payment Obligation, and School has no right to sell, license, transfer to any third party its rights under this Agreement or to exploit, use, or commercialize the Software for any purpose other than to operate its schools.

2.2 Payment Obligation. Within ____ business days of the Effective Date, School shall deliver \$25,000 (“**Payment Obligation**”) to AATK, LLC (“**Escrow Holder**”), which shall hold the funds pending the effectiveness of the ABC and deliver the funds to the Assignee upon the effectiveness of the ABC. The Escrow Holder’s sole obligation and duty shall be to deliver the funds to the Assignee upon the effectiveness of the ABC, and Escrow Holder shall have no duty, obligation or liability to School of any kind.

III. MUTUAL RELEASE

3.1 Excepting those claims and obligations arising under this Agreement, upon the full and complete payment of the Payment Obligation, the Parties hereby release and forever discharge each other, the Assignee, Software Buyer, and all of their past or present respective officers, directors, board members, estates, attorneys, professionals, employees and agents other than Herbert Nichols (together the “**Releases Releasees**”), from any and all claims, demands, controversies, actions, causes of action, suits, proceedings, liabilities, fines, penalties, costs, expenses, attorneys’ fees, damages, obligations or rights arising from the Software Dispute only, whether known or unknown, fixed or contingent, and liquidated or unliquidated. This release is limited to the Software Dispute and no other claims by or against either of the Parties are being released under this Agreement.

3.2 It is the Parties’ intention that the foregoing release shall be effective as a bar to all matters released herein. In furtherance, and not in limitation of such intention, the release described herein shall remain in effect as a full and complete release of claims, notwithstanding the discovery or existence of any additional information or different facts or claims. To further effectuate this intention, the Parties hereby waives their rights under California Civil Code section 1542, and any statute, rule, or legal doctrine similar to California Civil Code section 1542. Section 1542 provides as follows:

A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS THAT THE CREDITOR OR RELEASING PARTY DOES NOT KNOW OR SUSPECT TO EXIST IN HIS OR HER FAVOR AT THE TIME OF EXECUTING THE RELEASE AND THAT, IF KNOWN BY HIM OR HER, WOULD HAVE MATERIALLY AFFECTED HIS OR HER SETTLEMENT WITH THE DEBTOR OR RELEASED PARTY.

In waiving the provisions of California Civil Code section 1542, the Parties acknowledge that they may hereafter discover facts in addition to or different from those that they now believe to be true with respect to the matters released herein, but agree that they have taken that possibility into account in reaching this Agreement, and that the release given here shall remain in effect as a full and complete release notwithstanding the discovery or existence of such additional or different facts, as to which it expressly assumes the risk.

School

Provenance

IV. REPRESENTATION AND WARRANTIES

4.1 The Parties have obtained all necessary authority and consent to enter into this Agreement, including, without limitation, approval of their Boards of Directors.

4.2 Except as to the anticipated sale of the Software to the Software Buyer as described in Section 1.9 above, none of the Parties has transferred, assigned or otherwise conveyed any interest in the Software to a third party.

4.3 Each of the Parties has had an opportunity to review and consider the terms and effect of this Agreement with the preparation and assistance of counsel. The Parties agree that they have executed this Agreement voluntarily, without coercion or duress of any kind, and on the advice of their independent counsel.

4.4 None of the Parties has made any statement or representation regarding any fact relied upon in entering into this Agreement, and the Parties do not rely upon any statement, representation or promise of any of the Parties in executing this Agreement, or in making the settlement, *except* as expressly stated in this Agreement.

4.5 The Parties further agree that the consideration recited in this Agreement is the sole and only consideration for this Agreement, and that no representations, promises, or inducements have been made by any of the Parties or their officers, employees, agents or attorneys thereof other than those appearing in this Agreement.

4.6 This Agreement contains the entire agreement and understanding concerning settlement of the Software Dispute referenced herein and supersedes and replaces all prior negotiations of proposed agreements, written or oral, if any, and may be modified or amended only by a writing signed by all of the Parties.

4.7 Each Party has read this Agreement and understands its contents.

4.8 The Parties are aware that they may discover claims or facts in addition to or different from those they now know or believe to be true with respect to the Software Dispute referenced herein. Nevertheless, the Parties intend fully, finally, and forever to settle and release all such matters and all claims regarding the Software Dispute. In furtherance of such intention, except as may otherwise be set forth herein, the releases will remain in effect as full and complete releases notwithstanding the discovery or existence of any additional or different claims or facts.

4.9 This Agreement is intended to be and is final and binding, regardless of any mistake of law or fact.

4.10 Each of the Parties has cooperated in the drafting and preparation of this Agreement. This Agreement is to be interpreted in accordance with the plain meaning of its terms and not strictly for or against any of the Parties. The terms of this Agreement are enforceable pursuant to California law.

4.11 Should any provision or part of a provision of this Agreement be held invalid, the invalidity does not affect other provisions of the Agreement which can be given effect without the invalid provision, and to this end the provisions of this Agreement are severable.

V. MISCELLANEOUS

5.1 Modification and/or Amendment: This Agreement may be amended and modified only by a written agreement signed by the Parties.

5.2 Successors and Assigns: This Agreement shall inure to the benefit of, and shall be binding upon the Parties, and their successors, assigns, heirs, partners, agents, officers, corporations, partnerships, partners, shareholders, representatives, and each of them.

5.3 Applicable Law; Attorneys Fee Provision: This Agreement will be construed in accordance with the laws of the State of California. Except as otherwise expressly provided herein, the Parties to this Agreement shall bear their own expenses and costs, including but not limited to attorneys' fees and court costs. However, in the event that any of the Parties to this Agreement is required to take legal action to enforce its terms then such party of parties shall be entitled to recover such party(s) reasonable attorney's fees and costs, if said party is the prevailing party.

5.4 Recitals: Each term of this Agreement is contractual and not merely a recital.

5.5 Construction: This Agreement shall be construed as a whole in accordance with its fair meaning and in accordance with the laws of the State of California, without regard to conflicts of laws principles thereof. The language of the Agreement shall not be construed for or against any particular party. The headings used herein are for reference only and shall not affect the construction of this Agreement. The parties, and each of them, acknowledge, warrant and represent that the parties and their counsel (if any) have each participated in the drafting of this Agreement and of each provision hereof and, accordingly, in construing and interpreting this Agreement the parties hereto, and each of them, agree that no provision of this Agreement shall be construed or interpreted against any party because such provision, or the Agreement as a whole, was purportedly prepared, drafted or requested by such party.

5.6 Counterparts: This Agreement may be executed in any number of counterparts, any of which shall be deemed to be the original. THIS AGREEMENT SHALL NOT BE EFFECTIVE UNTIL THE EXECUTION AND DELIVERY BETWEEN EACH OF THE PARTIES OF AT LEAST ONE FULL SET OF COUNTERPARTS. FOR THIS PURPOSE, THE PARTIES AUTHORIZE EACH OTHER TO DETACH AND COMBINE ORIGINAL SIGNATURE PAGES AND CONSOLIDATE THEM INTO A SINGLE ORIGINAL. A FACSIMILE OR PDF SIGNATURE SHALL BE DEEMED AN ORIGINAL AND ANY ONE SUCH AGREEMENT WITH COMPLETELY EXECUTED COUNTERPARTS SHALL BE SUFFICIENT PROOF OF THIS AGREEMENT.

BY SIGNING THIS AGREEMENT WHERE INDICATED BELOW, I CERTIFY THAT I HAVE READ THE FOREGOING AGREEMENT IN ITS ENTIRETY THAT I FULLY UNDERSTAND ALL THE WORDS, LANGUAGE, TERMS AND CONDITIONS CONTAINED HEREIN AND THAT I AGREE TO BE BOUND BY ALL THE TERMS AND CONDITIONS SET FORTH HEREIN.

Dated: _____, 2021

By: _____

Print Name: _____

School

Dated: _____, 2021

By: _____

Print Name: _____

Provenance