

EDUCATIONAL SERVICES AGREEMENT

This EDUCATIONAL SERVICES AGREEMENT ("Agreement") is made and entered into by and between Oneida School District No. 351, ("School"), and OVERTURE LEARNING, LLC EDUCATIONAL SERVICES, LLC, an Idaho limited liability company ("Overture Learning, LLC "), as of the date signed by the Parties below. This Agreement shall replace and supersede all prior agreements, oral or written, as of the effective date hereof.

1. Definitions.

- a. Applicable Law. Applicable Law is defined herein as the law of the State of Idaho and all applicable Federal laws, rules, regulations relating to or which the School is subject.
- b. Fiscal or Academic Year. July 1 through June 30.
- c. Program. The services for students taking independent learning courses and/or services to be provided by Overture Learning, LLC as identified in this Agreement.
- d. State. The state in which School's program is located and for which laws apply to the operation of School's program.

2. Description of Program Services and Responsible Party

Service Item and Description	Responsible Party	
	Overture Learning	School
a. Student Recruitment. Recruit independent learning students to OSD who will use Overture Learning, LLC curriculum	X	
b. Registration. Collect and maintain all student registration information and required documentation; provide a copy of each student's complete registration packet along with registration spreadsheet provided by the district.	X	
c. Student Information System. Enter and maintain student data in school's student information system		X
d. Curriculum. Provide core and elective curricula for independent learning students including independent study and virtual (online) coursework	X	
Provide optional courses that a student may attend in-person at a School or Overture Learning, LLC learning center.	X	
e. Mentoring. Monitor student progress; Coordinate assignment of course percentages; Track student attendance (activity) and membership		X
f. Teacher of Record. Review and approve student educational plans, progress reports, and assign final grades		X
g. Assessment and Testing. Coordinate, schedule and provide resources to assess and prepare students for required testing; Administer state and School required academic tests	X	

Service Item and Description	Responsible Party	
	Overture Learning	School
h. Transcripts, Cumulative Files and Grade Reports Request, obtain, store and manage student transcripts		X
i. Special Education. OSD will provide special education and 504 services to students who do or may qualify for these services in accordance with federal and state requirements. There will be a \$2,000. (teacher costs) per student charge for special education services. Overture Learning, LLC will also cover cost of related services (such as speech, physical and/or occupational therapy) and assessments (initial and 3 year) for all 504 and special education services (estimate \$2,000. Per student).	X	X
j. Program Customization. Provide points of learning in curriculum and activities that are specific to the school's emphasis	X	
k. Progress Reporting. Provide periodic reports of student progress, attendance, formative grades and academic testing	X	
l. Final Grades Final grades will be assigned and recorded in student information system. Report cards will be provided as requested.	X	X
m. Student Discipline. Administer discipline in accordance with School student code of conduct and Board policy		X

3. Student Recruitment

- a. Overture Learning, LLC shall recruit students in grades K-8 to the distance learning education program of the School.
- b. New students may be added if a student(s) leave the program during the academic year, in an effort to allow enrollment numbers to remain constant.

4. Term, Renewal and Effective Date.

- a. Effective Date. This Agreement shall commence July 1, 2018 for the 2018 – 2019 academic year.
- b. Term and Renewal. This Agreement shall be for a term of one (1) academic year beginning July 1, 2018 through June 30, 2019. This agreement shall automatically renew for an additional term of one academic year, if not otherwise terminated by either party by written notification of intent to terminate given to the other party no later than March 1 of any applicable academic year.

5. Fees, Invoicing and Payment.

- **Fees, Invoicing and Payment.** For the Services provided, the Oneida School District (OSD) shall pay Overture Learning, LLC at the amounts set forth hereafter for each Unit in the Program. Units are defined as:
 - o each group of forty (40) kindergarten students;
 - o each group of twenty (20) - 1st - 3rd grade students;
 - o each group of twenty-three (23) 4th - 6th grade students;

- o each group of sixteen (16); 7th – 8th grade students; and
 - o each group of fourteen and a half (14.5) - special education students.
- For each Unit the District shall pay \$40,795 per Teacher Unit and \$25,696 per Discretionary Unit (\$66,491. Per Support Unit) minus 10%. The district will be entitled to not less than 10% of the amount.
- In the case of Special Education Units, the district will not collect 10% from funding for those students. The remaining amount of funding, after costs are taken out, will be retained by Overture Learning, LLC . ((Example: approximately \$4,586 Per sped student - Minus \$2,000 (teacher costs) for that student and any additional costs for testing and services (approximately \$2,000.) At the end of the year we will reconcile the exact related and testing costs for special education and 504 students. Overture Learning, LLC will be responsible for any additional amount. If the amount retained for SPED testing / services is not fully spent at the end of the year, then Overture Learning, LLC will be reimbursed the remaining amount.
 - For students who enroll part-time in a public school (this would be more likely for 7-8th grade students) the district will only receive a portion of their unit value from the state. That reduction funding will be passed on to Overture Learning, LLC at the same amount.
- a. Invoicing. Overture Learning, LLC will submit to District an invoice each month for the Units registered as of the Unit count on the week of Sept. 1st. The district will make 9 monthly payments beginning the first week of August, based on the Units being served at the first of each month, yet not to exceed the enrollment count of that first week of school. An adjustment will be made in Oct. payments to reflect any differences in enrollment projections that were made in August.
 - b. Payment Date and Interest. Payment for invoices is due on the last day of the month in which invoiced. School agrees to pay interest at one percent (1%) per month (12% annually) on amounts more than 10 days overdue. In the event any action is undertaken to collect amounts due hereunder, School agrees to pay, in addition to fees and interest, all costs of such collection action.
 - c. Location of Payment. All payments made hereunder will be made to Overture Learning, LLC or its designated Affiliate at the address set forth herein or such other address provided by Overture Learning, LLC in writing.
 - d. It is agreed that the Oneida School District will receive not less than ten percent (10%) of regular Support Unit amounts to Overture Learning, LLC . In the case of Special Education Units, the district will not collect 10% from funding for those students. In the case of special education, the remaining amount of funding, after costs are taken out, will be retained by Overture Learning, LLC .
- 6. Overture Learning, LLC Responsibilities.** In addition to and in performance of the services to be provided by Overture Learning, LLC in Section 2 hereof, Overture Learning, LLC shall have the following responsibilities:
- a. Expenses. Overture Learning, LLC is solely responsible for the expenses of its services and responsibilities in the Program as identified in Section 2 hereof.
 - b. Employment of Personnel. OSD will reflect teachers, staff and other professionals, as needed, as employees to claim for state reimbursement requirements including any qualifying Overture Learning, LLC employees.. OSD will be responsible for costs of teachers except for Overture

Learning, LLC employees. Overture Learning, LLC and OSD will work together to resolve any matters related to employees and their contracts.

- c. Overture Learning, LLC will be responsible to train and monitor the quality of the virtual teachers who OSD have hired. Overture Learning, LLC will work with OSD as to whether employment of OSD employees serving in the program will continue to serve or be terminated.
 - d. Provision of Authority to OSD. Overture Learning, LLC has provided and will provide OSD with all authority, power and access necessary and proper for OSD to undertake its responsibilities, duties, and obligations required by this Agreement.
 - e. General. Services will be provided to the extent deemed necessary and appropriate by Overture Learning, LLC in its professional judgment and discretion to satisfy the requirements of Applicable Law, policies of the State Board of Education and School's policies.
 - f. Confidentiality of Records. Overture Learning, LLC will maintain the confidentiality of personnel, student and other records in accordance with the requirements of Applicable Law.
 - g. Licensure or Other State Requirements. Except as otherwise provided in this Agreement, all personnel performing educational services for Overture Learning, LLC on behalf of students registered at School must comply with all applicable licensure or other requirements of the State and any regulations promulgated thereunder applicable to persons who perform such services.
7. **School Responsibilities.** In addition to and in performance of the services to be provided by School in Section 2 hereof, School shall bear the following responsibilities:
- a. Expenses. School is solely responsible for the expenses of its services and responsibilities hereunder.
 - b. General Oversight. School is responsible for monitoring Overture Learning, LLC 's performance under, and compliance with, the terms of this Agreement and for overseeing Overture Learning, LLC 's implementation of procedures consistent with applicable School policies.
 - c. Compliance with Applicable Law. School will perform its obligations hereunder in a manner consistent with the requirements of Applicable Law, policies of the State Board of Education, and the School's policies.
8. **Conflict of Terms.** In the event of a conflict, ambiguity, or inconsistency between the provisions in this Agreement, including any Addendum and any Exhibit hereto, the provisions in this Agreement shall prevail, except to the extent that this Agreement expressly states that the Parties may provide a different provision in an exhibit, in which case, as to such exhibit only, the corresponding different provision shall prevail.
9. **Relationship of the Parties.** Overture Learning, LLC is not a division or any part of the School. The School is a body corporate authorized under State law and is not a division or any part of Overture Learning, LLC . The relationship between the parties was developed and entered into through arms-length negotiations and is based solely on the terms of this Agreement. Overture Learning, LLC will operate as an independent contractor to the School and will be responsible for delivering the services required by this Agreement. Nothing herein will be construed to create a partnership or joint venture by or between the School and Overture Learning, LLC . Neither party will be the agent of the other except to the extent otherwise specifically provided by this Agreement. Neither party will represent to third parties any ability to bind the other to any duty imposed by

contract, other than this Agreement or as otherwise agreed in writing.

10. Proprietary Data. Except for items that are readily available to educational entities or in the public domain, all of the materials, methods, lists, curricula, names, processes, technologies, trademarks, trade names and other items, tangible or intangible, registered or unregistered, used by Overture Learning, LLC in delivery of the Program services are the property of Overture Learning, LLC or used by Overture Learning, LLC under authority of the legal owner thereof and shall be considered confidential or proprietary information (“Proprietary Information”) Neither the School, nor its owners, directors, employees, agents or affiliates shall have any right or authority to use the Proprietary Information for its own purpose by virtue of this Agreement, both during or after the termination or expiration of this Agreement.

11. Termination.

a. Events of Termination.

- i. Termination for Breach. Either party may terminate this Agreement at any time for cause with ninety (90) days' prior written notice to the other party. Termination for cause may be used if a party breaches any material term or fails to fulfill any material condition, term, provision, representation, warranty, covenant or obligation contained in this Agreement and fails to cure the same within ninety (90) days after receiving written notification from the terminating party. Upon termination of this Agreement pursuant to this Section 11, the non-breaching party shall be entitled to seek any remedies to which it shall be entitled at law or in equity.
- ii. Termination Upon Loss of Authority. This Agreement will terminate immediately upon the termination of the School's operating authority.
- iii. Termination in the Event of Certain Changes in Policies of the State Board of Education or the School. Overture Learning, LLC may terminate this Agreement effective immediately upon written notice to School in the event that the State Board of Education or School adopts or amends a policy, in each case without the prior written consent of Overture Learning, LLC, the effect of which could reasonably be determined to require Overture Learning, LLC to materially increase the level of services required hereunder or which materially increases the financial risk to Overture Learning, LLC arising from its performance hereunder.
- iv. Change in Applicable Law. If any change in Applicable Law that is enacted after the date hereof could reasonably be expected to have a material adverse effect on the ability of either party to carry out its obligations hereunder, such party, upon written notice to the other party (which notice may be given at any time following enactment of such change in Applicable Law, whether or not such change is effective on the date of such enactment or is effective at a later date), may request renegotiation of this Agreement. Such renegotiation will be undertaken in good faith. If the parties are unable to renegotiate and agree upon revised terms within one hundred twenty (120) days after such notice of renegotiation, then the Parties agree to enter into the process for resolving disputes identified in Section 17 of this Agreement.

b. Effect of Termination or Expiration.

- i. Except as otherwise agreed by the parties in writing, termination shall not relieve either party of any obligation for payments due to the other party as of the date of termination or other obligations that continue upon termination as provided in this Agreement.
- ii. In the event this Agreement is terminated for a breach by Overture Learning, LLC pursuant to Section 11(a)(i) prior to the end of a given Fiscal Year, the parties shall

calculate the Fee as of the end of such Fiscal Year as if this Agreement had not been terminated. The parties shall then prorate those amounts to the date of termination of this Agreement, and School shall pay Overture Learning, LLC the prorated amount within 30 days of the effective date of termination.

- iii. In the event this Agreement is terminated by School for any reason other than a breach by Overture Learning, LLC pursuant to Section 11(a)(i) or a change in applicable law pursuant to Section 11(a)(iv) prior to the end of its Term, School shall pay to Overture Learning, LLC an amount equal to the lesser of the remaining fees that would otherwise be due hereunder through the Term hereof at the then current rates in effect and at the most recent measured enrollment level (October 1 or February 1 or three months' fees at the then current rates and enrollment level in effect. Such amount shall be due and payable within 60 days of the effective date of termination. Late payments shall be subject to interest charges as identified in Section 5(c) above.
- iv. Within thirty days of termination hereof, each party shall return all materials, manuals, lists, files, documents, and equipment provided by and/or belonging to the other party.

12. Limitation on Liability. Except in connection with its indemnity obligations, neither party shall be liable for any indirect, consequential, exemplary, incidental, special, or punitive damages including without limitation lost savings, lost funding, lost revenues, lost sales, lost profits, lost opportunity costs, business interruptions, delay damages, damages for third party claims, lost or destroyed data, or any other economic loss, of any type or nature or for events or circumstances beyond the party's control, even if the party has been advised of the possibility of such damages or loss.

13. Assignment. Except as otherwise provided in this Agreement, neither party may assign or delegate any rights or obligations under this Agreement without the prior written consent of the other party. Except as prohibited by Applicable Law, Overture Learning, LLC may assign all of its rights and obligations under this Agreement to any person or entity that controls Overture Learning, LLC, is controlled by Overture Learning, LLC, or is under common control with Overture Learning, LLC or to any successor in interest that acquires all or substantially all of the assets of Overture Learning, LLC (individually and collectively "Affiliate"). Overture Learning, LLC, upon notice to School, may delegate the performance of its duties hereunder to any person or entity but shall remain responsible for the performance, in accordance with the terms of this Agreement, of any services performed by its delegates, except notice shall not be required when Overture Learning, LLC delegates its obligation to provide materials or curricula to third parties in the normal course of business.

14. Indemnity. The party charged with indemnifying and/or defending under this Section 14 (the "Indemnifying Party") shall conduct the defense in any such third party action arising as described herein and the party claiming the benefits of this Section 14 (the "Indemnified Party") promises to cooperate with such defense, provided the Indemnifying Party reasonably consults with the Indemnified Party on any settlement (subject to the consent requirement in the last sentence of this paragraph). Notwithstanding the foregoing, the Indemnified Party may, at its own expense, assist in such defense if it so chooses, provided that the Indemnifying Party shall be entitled to control such defense and all negotiations relative to the settlement of any such claim. Any settlement that would admit any liability on the part of the Indemnified Party shall require such Indemnified Party's prior written consent.

- a. Indemnification of School. Overture Learning, LLC agrees to indemnify, defend, and save and hold School and its employees, officers, directors, trustees, subcontractors, and agents, their respective successors and permitted assigns, harmless against any and all claims, demands, suits, or other forms of liability including without limitation costs and reasonable attorneys' fees (each a "Claim") that may arise out of, or by reason of, any (a) breach of any representation or

warranty, covenant or agreement made or to be performed by Overture Learning, LLC pursuant to this Agreement, (b) noncompliance by Overture Learning, LLC with any Applicable Law in connection with School's operations, but excluding any Claims that arise from conduct undertaken in accordance with the School's instructions, procedures or written policies or in accordance with the written policies of the State Board of Education, except where such instructions arise from and are in accordance with specific advice or explicit recommendations provided by Overture Learning, LLC, and (c) act or omission of Overture Learning, LLC or any of its employees, officers, directors, trustees, subcontractors or agents in connection with its performances, limitations and obligations hereunder that results in injury, death, or loss to person or property except to the extent any Claim arises out of actions or omissions of School.

- b. Indemnification of Overture Learning, LLC. School agrees to indemnify, defend, and save and hold Overture Learning, LLC and each Affiliate of Overture Learning, LLC and all of their respective employees, officers, directors, trustees, subcontractors, and agents, their respective successors and permitted assigns, harmless against any and all Claims that may arise out of, or by reason of, any (a) breach or any representation or warranty, covenant or agreement made or to be performed by School pursuant to this Agreement, (b) noncompliance by School with any Applicable Law in connection with School's operations, and (c) act or omission of School or any of its employees, officers, directors, trustees, subcontractors or agents in connection with School's operations that results in injury, death, or loss to person or property except to the extent any Claims arise out of actions or omissions of Overture Learning, LLC.
- c. Insurance. Each party shall carry appropriate insurance, including general liability, with minimum coverages and limits as required from time to time for governmental/quasi-governmental entities (currently \$1,000,000 per occurrence/\$3,000,000 aggregate) and workers compensation coverage in amounts no less than required by law.

15. Representations and Warranties.

- a. Representations and Warranties of Overture Learning, LLC. Overture Learning, LLC hereby represents and warrants to School:
 - i. Organization and Good Standing. Overture Learning, LLC is a limited liability company duly organized, validly existing, and in good standing under the laws of the State of Utah.
 - ii. Authorized to Conduct Business. Overture Learning, LLC is and at all times shall be registered and authorized to do business in the State of Idaho.
 - iii. Compliance of Educational Products and Services with Applicable Law. The educational products and services provided by Overture Learning, LLC in fulfillment of its responsibilities under this Agreement comply with, and shall at all times during the term of this Agreement, comply with Applicable Law, including the standards for curriculum as issued by the State Board of Education.
 - iv. Power and Authority; Authorization; Binding and Enforceable Agreement. Overture Learning, LLC has full power and authority to execute and deliver this Agreement and to perform its obligations hereunder. This Agreement has been duly authorized and executed by Overture Learning, LLC and constitutes the valid and legally binding obligation of Overture Learning, LLC, enforceable against Overture Learning, LLC in accordance with its terms, except as such enforceability may be limited by bankruptcy, insolvency, reorganization, moratorium, fraudulent conveyance, and other laws of general applicability relating to or affecting creditors' rights and by general principles of equity.
- b. Representations and Warranties of School. School hereby represents and warrants to Overture Learning, LLC:
 - i. Oneida School District is a public school in the State of Idaho.
 - ii. Power and Authority; Authorization; Binding and Enforceable Agreement. School has full power and authority to execute and deliver this Agreement and to perform its obligations hereunder. This Agreement has been duly authorized and executed by School and constitutes the valid and legally

binding obligation of School, enforceable against School in accordance with its terms and conditions, except as such enforceability may be limited by bankruptcy, insolvency, reorganization, moratorium, fraudulent conveyance, and other laws of general applicability relating to or affecting creditors' rights and by general principles of equity.

- iii. **Authority Under Applicable Law.** School has the authority under Applicable Law (i) to contract with a corporate entity to perform the Services, (ii) to execute, deliver, and perform this Agreement and (iii) to incur the obligations provided for under this Agreement.
 - iv. **Compliance of Educational Program with Applicable Law.** School's educational program complies with, and School will ensure that it will continue to comply with the policies and requirements of the State Board of Education and Applicable Law.
- c. **Mutual Warranties.** Each party warrants to the other that, to its knowledge, there are no current, pending or threatened actions, claims, suits, or proceedings which if adversely determined, would have a material adverse effect on its ability to perform its obligations under this Agreement.
- 16. Coordination; Exercise of Approval or Consent Rights.**
- a. **Coordination and Consultation.** The parties will coordinate the performance of their respective services and responsibilities hereunder and will establish such procedures as they shall mutually agree to be effective for achieving the purposes of this Agreement and allowing each of them to perform its obligations and exercise its rights under this Agreement.
 - b. **Approval or Consent Rights.** In performing services and its other obligations under this Agreement, or in exercising its rights under this Agreement, including granting or withholding any consent or approval or making any requests of the other party, each party must act reasonably (including as to the timing of its actions) except to the extent that this Agreement provides that it may act as it determines "in its sole judgment" or "its sole discretion," or words to that effect, in the applicable provision. Whenever it is provided in this Agreement that the parties will or may agree as to a certain matter, each party will have the right to agree or disagree in its sole discretion following good faith discussions.
- 17. Force Majeure.** Notwithstanding any other sections of this Agreement, no party will be liable for any delay in performance or inability to perform due to acts of God or due to war, riot, terrorism, civil war, embargo, fire, flood, explosion, sabotage, accident, labor strike, internet outage or other act beyond its reasonable control and unrelated to its fault or negligence.
- 18. Governing Law.** The laws of the State of Idaho without regard to its conflict of laws provisions will govern this Agreement, its construction, and the determination of any rights, duties, and remedies of the parties arising out of or relating to this Agreement.
- 19. Entire Agreement.** This Agreement, including any Addendum and Exhibit hereto (all of which constitute part of this Agreement), constitutes the entire agreement of the parties with respect to the subject matter hereof, and supersedes all previous oral and written, and all contemporaneous oral negotiations, commitments, agreements and understandings relating hereto.
- 20. Counterparts, Facsimile Transmissions.** This Agreement may be executed in counterparts, each of which will be deemed an original, but both of which will constitute one and the same instrument. Each party may rely on facsimile signature pages as if such facsimile pages were originals.
- 21. Notices.** All notices and other communications required by the terms of this Agreement will be in writing and sent to the parties hereto at the addresses set forth below (and such addresses may be changed upon proper notice to such addressees). Notice may be given by (i) certified or registered mail, postage prepaid, return receipt requested, (ii) reputable overnight carrier, postage prepaid, (iii) facsimile (with confirmation of transmission by sender's facsimile machine), or (iv) personal delivery (with written receipt confirming such delivery). Notice will be deemed to have been given (i) two days after mailing as described in clauses (i) and (ii) of the foregoing sentence, (ii) on the date of personal delivery or (iii) on the date of transmission of a facsimile if on a business day during normal business hours (or, if not, the next succeeding business day). Electronic mail does not constitute official notice under this Agreement. The addresses of the parties are:

For Overture Learning, LLC : 1975 W. Floisand Cir.
Salt Lake City, UT 84116 Malad City, ID 83252

For School: 25 E. 50 S.

- 22. **Amendment.** This Agreement will not be altered, amended, modified, or supplemented except in a written document executed by the parties.
- 23. **Waiver.** No waiver of any provision of this Agreement will be effective unless in writing, nor will such waiver constitute a waiver of any other provision of this Agreement, nor will such waiver constitute a continuing waiver unless otherwise expressly stated.
- 24. **Interpretation.** The parties acknowledge and agree that the terms and provisions of this Agreement will be construed fairly as to all parties hereto and not in favor of or against a party, regardless of which party was generally responsible for the preparation of this Agreement.
- 25. **Severability.** The parties intend that each provision hereof constitute a separate agreement between them. Accordingly, the provisions hereof are severable and in the event that any provision of this Agreement shall be deemed invalid or unenforceable in any respect by a court of competent jurisdiction, the remaining provisions hereof will not be affected, but will, subject to the discretion of such court, remain in full force and effect, and any invalid or unenforceable provision will be deemed, without further action on the part of the parties, amended and limited to the extent necessary to render the same valid and enforceable and reflect the intent of the parties. To the extent that any of the services to be provided are found to be overbroad or an invalid delegation of authority by School, such services will be construed to be limited to the extent necessary to make the services valid and binding.
- 26. **Successors and Assigns.** This Agreement will be binding upon and inure to the benefit of the parties and their respective successors and permitted assigns.
- 27. **No Third-Party Rights.** This Agreement is made for the sole benefit of Overture Learning, LLC and School and their respective successors and permitted assigns. Except as set forth elsewhere herein and except for each Affiliate of Overture Learning, LLC, which shall be a third party beneficiary of this Agreement, nothing in this Agreement will create or be deemed to create a relationship between the parties to this Agreement, or any of them, and any third person, including a relationship in the nature of a third-party beneficiary or fiduciary.
- 28. **Survival of Termination.** All representations, warranties, and indemnities made in this Agreement will survive termination of this Agreement.
- 29. **Headings and Captions.** The headings and captions appearing in this Agreement have been included only for convenience and shall not affect or be taken into account in the interpretation of this Agreement.

By signing below, the Parties acknowledge that they have read and understood and agree to be bound by all terms and conditions of this Agreement, as well as other applicable agreements or policies which are incorporated therein by reference. The signers hereof represent that each is a duly authorized officer, partner or principal with full authority to enter into this Agreement.

Signed this 13th day of June, 2018.

OVERTURE LEARNING, LLC EDUCATIONAL SERVICES, LLC:

ONEIDA SCHOOL DISTRICT

Jennifer Goostrey
Authorized signature

[Signature]
Authorized signature

By: Jennifer Goostrey
(Printed name)

By: [Signature]
(Printed name)

CED
Title

[Signature]
Title