

**CONNECTIONS ACADEMY OF NEW MEXICO, LLC
CHARTER SCHOOL VIRTUAL LEARNING PROGRAMS
DISTRICT PARTNERS PLUS AGREEMENT**

Customer Name: Pecos Cyber Academy
Contact Person: Kyla Anderson, Board President
Phone Number: 505-466-1019
Email Address: wktwanderson@gmail.com
Effective Date: July 1, 2022

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1. **(Pecos Cyber Academy)** (“School”) and Connections Academy of New Mexico, LLC (“Connections”), a subsidiary of Connections Education LLC, are hereby entering into this District Partners Plus Agreement (“Agreement”) whereby School, by and through its Governing Council, is contracting with Connections to receive access to certain virtual education products for grades K through 5 and 9 through 12 through Connexus[®], Connections’ education platform, along with associated support services, as more fully set forth herein (collectively “the Education Program”).
 2. **Defined Terms.** Capitalized terms within the Agreement, not otherwise defined herein, have the meanings ascribed to them in the Index of Defined Terms, attached hereto and incorporated herein by reference.
 3. **Connections Responsibilities.**
 - a. **Education Program:** Provide the Curriculum which, when supplemented with Teacher provided additions and modifications, meets the State Standards, as adopted by the New Mexico Public Education Department, and the New Mexico State Standards. The Curriculum shall include, at a minimum, the following:
 - i. Connections standard Course offering, including core and elective subjects, augmented by a mix of supporting online and offline instruction and intervention resources.
 - ii. Access to clubs, activities, and special events described in the Program Guide.
 - iii. To the extent permitted by New Mexico law, optional access to certain courses taught through the Pearson Virtual Academy (“PVA”);
 - iv. For high school Curriculum only:
 1. Advanced Placement Courses.
 2. Test preparatory materials that may include SAT and ACT preparatory resources.
 - v. In accordance with the license terms set forth in Section 6 below, a license to use all required curricular and instructional materials that are part of Connections’ standard offering, including textbooks, ancillary materials such as workbooks, kits, novels and other instructional resources (collectively “Instructional Materials”). Instructional Materials will be provided consistent with the Parties course of conduct during the 2022-2023 Academic Year with the exception that Instructional Materials for grades 9 through 12 will be available in digital format only. Access to online lesson content,

instructional materials, including Teachlet® tutorials, and other intangible educational resources included in Courses.

b. Platform Access:

- i. In accordance with the license terms set forth in Section 6 below, a license for the duration of the Term to access and use Connections' proprietary technology platform (the "Platform") for purposes of utilizing the Education Program set forth in Section 3 of this Agreement, including providing web-based access from non-school sites to the Education Program by Students, Caretakers of Students, Learning Coaches, Teachers and Administrative Staff;
- ii. Access to other technologies, including those offered through Connexus®, including the Connexus® student information system, lesson scheduling tools, accountability tools, webmail system, video and audio streaming, and message board forum; and the ability to track Student progress;
- iii. Create user accounts for Student, parent and/or caretakers and provide School Teachers and Administrative staff with capability to monitor enrolled students, as well as change user account holder's information within the Platform with written School permission
- iv. Provide School with capability to place Students into courses through the Platform's Course Placement Tool. Connection's enrollment teams are available to assist with course placement on an as needed basis;

c. Repository of School Records: The Governing Council hereby appoints Connections as a repository of electronic Student Records, and other School records. Connections shall store and maintain such electronic Student Records, and other School records in accordance with state, local and federal requirements, and consistent with commercially reasonable technical and organizational measures intended to protect against (i) accidental or unauthorized destruction; (ii) accidental or intentional loss or alteration; or (iii) unauthorized disclosure or access. Connections shall be obligated to maintain said repository for a period of 2 years following the Effective Date of this Agreement for no additional fee. Connections repository responsibilities under this section shall not extend to School records generated during the 2022-2023 Academic Year for grades 6 through 8.

d. Student Records Support: In furtherance of its Platform Access obligations set forth in section 3b. above and in connection with its repository obligations set forth in 3c above:

- i. Provide School with the ability to receive from Caretakers all Student Records electronically through its secure, password-protected system ("Server"), and shall provide maintenance of such Student Records in accordance with state, local and federal requirements and consistent with commercially reasonable technical and organizational measures intended to protect against: (i) accidental or unauthorized destruction; (ii) accidental or intentional loss or alteration; or (iii) unauthorized disclosure or access.
- ii. Connections shall maintain the confidentiality of all Students' records in compliance with applicable state and federal laws, and pursuant to the confidentiality provisions set out in Section 17 of this Agreement. Connections shall maintain such records as are required to comply with all attendance rules and apportionment requirements specified by applicable law.
- iii. Connections shall provide reasonable support to Customer with a one-time migration of records from the Pearson student information system to the Powerschool student information system. Connections shall provide formatted exports of requested data

in Powerschool standard import formats for upload to a secure location provided by Customer, taking into consideration the time of year any such support requests are received, and the degree of effort required to fulfill such support requests. Any such support requests must accommodate Connections ongoing support obligations to its Connections Academy customers and other established business operation priorities. All Student Record information shall remain the property of the School and, to the extent not immediately available through the School's on-demand access, shall be provided to the School via a secure means within five (5) business days of the School's written request for such information. Unless the parties expressly agree to a longer time period, Connections shall certify to the School within one year from the date it receives instructions as to what Student Records are to be returned or Destroyed that it has complied with the instructions of the School in connection with such notice.

- e. Testing and Assessments: Provide monthly consultation for the School to plan and administer all State required assessments in the grade levels being served under this Agreement. In addition, provide support for the School to administer a series of benchmark assessments designed to gauge the Student's mastery and progress in core concepts and readiness for the State of New Mexico's required tests in ELA and math. The delivery of these services will be during the 2022-2023 Academic Year. School acknowledges that the data stored on the School's SIS does not automatically transmit into the Platform, School is responsible for ensuring all SIS data necessary for the delivery of testing and assessment services is uploaded to the Platform and that such data is accurate and up to date. School further acknowledges that the delivery of this service requires time sensitive execution that is dependent on School's timely execution of tasks identified by Connections as the School's responsibility.
 - i. Provide 24/7 technical support through live phone support via Connections Support Services to parents, students, and staff Monday-Friday 8:00 a.m. to 10:00 p.m. (ET); and July – September 10:00 am to 7:00 pm (ET) Saturday and Sunday. For Students not using computer technology provided by Connections, Connections shall provide initial technical support to ensure Students have the minimum requirements necessary to participate in the Education Program, and ongoing technical support on an as needed basis for the Students' use of Connexus®.
 - ii. Provide all Teachers with access to all Instructional Materials supplied to Students as necessary to conduct their teaching responsibilities. Delivery of this service shall be consistent with the manner in which service delivery occurred during the 2020-2021 Academic Year.
 - iii. Provide training and support programs and materials to Students, Learning Coaches, Caretakers, and community coordinators on the Curriculum, use of Connexus®, various Connections policies and procedures, and other technology to support Student learning as appropriate
 - iv. As part of Connections' Education Program responsibilities, and in order to facilitate the School's ability to oversee the delivery of services, (“Program Oversight”), Connections shall make key personnel reasonably available for advisement and consultation with members of the Governing Council, Authorizer, and/or Executive Director or his or her designee. Except to the extent otherwise agreed, reasonable expenses incurred by Connections, including hospitality related expenses, in

connection with Program Oversight, shall be paid out of the fee for Educational Services paid to Connections.

- v. Provide comprehensive logistic services, in connection with the Connections' provided physical Curriculum materials, including procurement, contracting, storage, fulfillment, and other services required to obtain, deliver, collect, and warehouse these materials.
- f. Provision of Computer Technology for School Staff: For all School Staff supporting grades K through 5 and grades 9 through 12, and the Executive Director, provide and maintain in good working condition the Computer Technology necessary to provide the Education Services. Connections shall also provide School Staff and Administrators with computers. Any Computer Technology provided by Connections will be the exclusive property of Connections or its contractors and will be returned upon the termination of this Agreement or upon the termination of employment, whichever is sooner. The School shall be responsible for ensuring the return of Computer Technology.
- g. Provision of Computer Technology for Students: At the election of the Governing Council, provide a comprehensive Computer Technology solution to Students, which shall include procuring, imaging, delivering, repairing, replacing, warehousing and collection of such Computer Technology, as well as other related comprehensive logistical support services, such as, set up, Connexus[®] interface mapping, and technical support, in accordance with Connections' established policies and procedures. Additionally, Connections shall provide a computer to all Students enrolled in grades K through 5 and grades 9 through 12.

4. **Governing Council Responsibilities.**

- a. Governance: Obtain and maintain the governance and organizational structure required by law and/or the Charter.
- b. Management of the School: The Governing Council shall be responsible for managing the day to day affairs of the School, including hiring, employing, and overseeing the supervision and evaluation of School Staff, as well as oversight of this Agreement and all aspects of the School's operations. The Governing Council may delegate these responsibilities to the Executive Director.
- c. Pecos Connections Academy: Except for Customer's ongoing efforts with the IRS to change the School's name from Pecos Connections Academy to Pecos Cyber Academy and the School's ongoing use of the name Pecos Connections Academy as its legal name of record with certain state and federal agencies, the School acknowledges its license to use the name "Pecos Connections Academy" and the accompanying "Star Person" design mark has terminated. Any and all public facing collateral, including website, social media, marketing, signage, etc. shall not carry the name Pecos Connections Academy or the "Star Person" mark.
- d. SIS Transition. The Governing Council shall designate a representative to work closely with Connections designated representative in transitioning the School to the PowerSchool SIS as more specifically set forth in section 3 d. iii.
- e. The Governing Council shall perform any responsibility assigned to Connections under the terms of this Agreement to the extent it is in conflict with or nullified by any applicable law, regulation and/or the terms of the Charter.
- f. The Governing Council shall perform any responsibility not explicitly assigned to Connections under the terms of this Agreement that would otherwise be the responsibility of the School under applicable law, regulation and/or the terms of the Charter, unless and

until, Connections and the School reach agreement regarding under what conditions such responsibilities will be delegated to Connections.

- g. Handbooks: The School's license to use the employee and School handbooks developed by Connections shall terminate as of the June 30, 2023. The Governing Council shall be responsible for developing and approving employee and School handbooks.
- h. Education Program Administration: Administer the Education Program.

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

- a. License to Access Connexus and Instructional Materials. Connections hereby grants to the School a non-exclusive, nontransferable, royalty-free, limited license during the Term of the Agreement for Authorized Users to access and use Connexus[®] and the Content and Instructional Materials contained in Connexus[®] in connection with the receipt of the Educational Program hereunder (collectively the "Licensed Collateral"). The School's right to access and use the Licensed Collateral is solely for the intended purpose for which such access is granted and is subject to Connections' Intellectual Property provisions set forth in Sections 10 and 11 below. Connections may update the features and functions of Connexus[®] from time to time. Any right to use the Content and Instructional Materials shall be solely for the applicable Course for which a Student is enrolled, or that an Authorized User is otherwise authorized to access.
- b. Permitted and Prohibited Uses. All rights not expressly granted to the School and Authorized Users pursuant to the Agreement are reserved to Connections, and any uses of the Licensed Collateral by the School and Authorized Users not expressly permitted in the Agreement are strictly prohibited.

Specifically, unless otherwise authorized by Connections in furtherance of the delivery of Education Program related services, School will not, and will not permit Authorized Users, School's employees or agents or any third party to: (i) access the Content and Instructional Materials or Connexus[®], except in connection with Courses for which a Student is enrolled; (ii) use the Curriculum, Content and Instructional Materials except in strict compliance with the Agreement and the Terms of Use; (iii) copy, reproduce, modify, alter, transfer, transmit, perform, publish, display, sub-license, distribute, circulate provide access to, rent, or create Derivative Works from the Content and Instructional Materials or any portion thereof; (iv) decompile, reverse engineer, disassemble, or otherwise determine or attempt to determine the source code (or the underlying ideas, algorithms, structure or organization) of the Content and Instructional Materials or of Connexus[®]; (v) upload files that contain viruses, Trojan horses, worms, time bombs, cancelbots, corrupted files, or any other similar software or programs that may damage the operation of Connexus[®]; (vi) take any actions, whether intentional or unintentional, that may circumvent, disable, damage or impair the control or security systems of Connexus[®] or the Content and Instructional Materials, nor allow or assist a third party to do so; (vii) use the Content and Instructional Materials in a manner that disparages Connexus[®], Content, Instructional Materials, Connections or its content providers, or in any manner that Connections may, in its sole discretion, deem inappropriate; or (viii) disclose Log-In Information (as defined in Section 6 e. below) or permit access to Connexus[®] and/or the Content and Instructional Materials by unauthorized persons using an Authorized User's Log-In Information.

- c. Usage Guidelines and Rules of Conduct. The School (including its employees and agents) and Authorized Users may use the Licensed Collateral for bona fide educational and other contracted-for purposes only. The School will comply and assure compliance by its employees, agents, and the Authorized Users with Terms of Use of Connexus[®], Privacy Policy, and other applicable Connections policies, as may be updated from time to time by Connections in its sole discretion. The Privacy Policy and Terms of Use are posted on the Website and are accessible from the Connexus[®] login page. The School acknowledges that

Connections may also institute basic rules for academic and personal conduct for Authorized Users' use of the Licensed Collateral, and that Connections will enforce those rules in its sole discretion, including terminating access for Authorized Users in the event of their failure to adhere to those rules. Included in the rules of conduct shall be prohibitions against any Authorized User's attempt to make inappropriate communication or contact with any other Authorized Users through Connexus[®], as well as, hacking, viral infection, or other technical attempts to gain unauthorized access to, or cause damage to Connexus[®]. The School shall immediately provide Connections with written notice of any unauthorized use or distribution of the Content, Instructional Materials, or Education Program of which the School becomes aware and shall take all necessary steps to ensure that such unauthorized use or distribution is terminated.

- d. **Security and Use of Passwords.** Each Authorized User will have a user name and password for the purpose of accessing Connexus[®] and the Content and Instructional Materials (the "Log-In Information"). The School and its Authorized Users must keep all Log-In Information strictly confidential, and all Log-In Information may be used only by the assigned Authorized User. The School and its Authorized Users are responsible for maintaining the security and confidentiality of all Log-In Information, and for preventing access to Connexus[®] and/or the Content and Instructional Materials by unauthorized persons using an Authorized User's Log-In Information. Unauthorized access to or use of Connexus[®] and/or the Content and Instructional Materials by someone using an Authorized User's Log-In information may be attributed to such Authorized User.
 - e. **Availability and Support.** Connections strives to provide access to Connexus 24 hours per day, 7 days per week; however, it is anticipated that there will be periodic system interruptions due to occasional computer technology failures, system maintenance and updates, and/or internet provider service interruptions.
6. **Representation Regarding Non-discrimination:** Neither Connections nor the School will discriminate against any person on the basis of race, creed, color, sex, national origin, religion, ancestry, sexual orientation or disability, or any other basis prohibited by federal or New Mexico law
7. **Pricing and Payment Terms:**
- a. **Fee Schedule.** During each year of the term, as compensation for the Educational Program provided by Connections under the terms of this Agreement, Connections shall be paid in accordance with the schedule of fees for services (the "Fee Schedule"). See Exhibit A: Draft Fee Schedule.
 - b. **Invoicing.** Connections will invoice the School monthly. Payment will be due within five (5) business days of action by the Governing Council, which shall use its best efforts to review and approve invoices within thirty (30) days of receipt. Connections may charge interest at the rate of one and one half percent (1.5%) per month for any invoices over sixty (60) days unless such failure to pay is the result of funds being withheld from the School due to a failure by Connections to perform under the terms of this Agreement, or if the School is disputing any charges. The School shall notify Connections of the basis for any dispute within five (5) days of determination of such dispute and shall work to resolve the dispute within thirty (30) days. All amounts other than any amount in dispute shall be paid according to the terms herein. Funds shall also be subject to adjustment based on any adjustments to Student counts as a result of an audit by the State of New Mexico. Any differences in amounts that were previously paid under this Agreement, as a result of such adjustments, shall only be applied to or against the next payment or payments otherwise due under this section, or if no payment is due, Connections shall refund such amount to the School.

c. Realigning of Responsibilities:

- i. To the extent there is a realigning of responsibilities between the parties pursuant to section 4 b. iv. above, the parties shall negotiate a corresponding adjustment in the Fee Schedule for the Academic Year in which said alignment of responsibilities occurs.
- ii. To the extent Connections' delegation of responsibilities is expanded/reduced beyond what is set forth in section 3 above, the parties shall negotiate a corresponding increase/decrease in the Fee Schedule for the Academic Year in which said expansion/reduction of responsibilities occurs. No expansion/reduction of responsibilities shall become effective until such time as the Governing Council approves a Fee Schedule incorporating such corresponding increase/decrease.

8. Trademarks:

- a. Connections and its Affiliates are the owners of various trademarks, service marks, logos, or trade names used in its business of providing Educational Products and Services. Connections trademarks can be found at: <http://www.connectionsacademy.com/Libraries/PDFs/CACCommonLawTrademarks.pdf> (collectively, the "Licensed Marks"). Any use of Connections trademarks is prohibited except with the express written permission of Connections and then only to the extent of and consistent with such permission and Connections trademark usage guidelines located at: <http://www.connectionsacademy.com/terms-of-use/trademark-guidelines.aspx>. Connections retains all right, title, and interest in and to the Licensed Marks and any related proprietary rights not expressly granted to the School hereunder. All goodwill attributable to the Licensed Marks will inure exclusively to the benefit of Connections. Upon termination of this Agreement, **any permitted use of Connection's trademarks** shall also immediately terminate. The School agrees that within thirty (30) calendar days from the date of termination, all references to any Licensed Marks shall be removed from the School's signage, stationary, website, marketing materials and any other material or location it appears.

9. Intellectual Property:

- a. Limitations on Use. Connexus[®] and all technology, programs, services, and materials hosted thereon, the Curriculum, all tangible and intangible education materials, all Connections Education LLC trademarks, and copyrighted works, are the intellectual property of Connections' parent company, Connections Education LLC. The School's right to use and benefit from said intellectual property is limited to its license rights set forth in this Agreement and shall terminate automatically with the termination of expiration of this Agreement.
- b. No Sale. Nothing in this Agreement shall be interpreted to be a sale or transfer of ownership interest from Connections or Connections Education LLC to the School, School Staff, Students, Caretakers, or Learning Coaches.
- c. No Use of School Funds to Develop or Procure. No School funds shall be used by Connections or Connections Education LLC to develop or procure Courses or Content or Instructional Materials or improvements to Connexus[®], provided, however, any School funds paid to Connections for provision of the Educational Program hereunder, once paid, shall not be deemed to be School funds.
- d. Derivative Works. Any works created by the School Staff and derived from Connections Education LLC's Intellectual Property shall be deemed the property of Connections Education LLC, and the School agrees to extend all reasonable and appropriate measures to

assist Connections Education LLC in securing and perfecting its ownership interest in such derivative works.

- e. Derivative Works License. The School hereby grants to Connections, and Connections Education LLC, and will require its School Staff to do the same, a worldwide freely transferable, royalty free, perpetual license, in any content contained in any Derivative Works that are determined to remain the property of the School and/or a member of its School Staff. Similarly, to the extent that any School Staff created educational content is hosted on Connexus® or in a Connections Education LLC proprietary LiveLesson® session, the School, on behalf of itself and such School Staff, hereby grants to Connections Education LLC, a worldwide freely transferable, royalty free, perpetual license to use such Instructional Staff created educational content for its own commercial purposes.

10. **Confidentiality**:

- a. Confidential Information. The receiving party shall use the Confidential Information of the disclosing party only in connection with the furtherance of the business relationship between the parties, and the receiving party shall make no further use, in whole or in part, of any such Confidential Information. The receiving party agrees not to disclose, deliver, or provide access to all or any portion of the disclosing party's Confidential Information to a third party or to permit a third party to inspect, copy, or duplicate the same. The receiving party will disclose Confidential Information only to its employees and agents who have a need to know such Confidential Information in connection with the performance of the Agreement and who are under a written obligation to protect the confidentiality of such Confidential Information. The receiving party will treat the Confidential Information with the same degree of care and confidentiality that the receiving party provides for similar information belonging to the receiving party that the receiving party does not wish disclosed to the public, but not less than holding it in strict confidence.
- b. Student Records. Connections and the School acknowledge and agree that pursuant to FERPA and any regulations promulgated thereunder, the parties have certain obligations with regard to maintaining the security, integrity and confidentiality of "education records", as that term is defined by FERPA (also referred to herein as "Student Records"). The parties acknowledge that the School at all times retains ownership of Student Records and that each party must perform its obligations under the Agreement in compliance with FERPA and any regulations promulgated thereunder. Connections and the School each designate the Executive Director, Charter School Staff, Governing Council members, third party service providers (including Connections) and volunteers who are providing educational and/or administrative services to the Students, as agents of the School, as individuals having a legitimate educational interest, and thus entitled to access educational records under FERPA. Connections and the School shall also maintain Student Records in accordance with any other applicable laws and regulations, and this Agreement in general, specifically section 3 c.
- c. Exceptions. The foregoing shall not prevent the receiving party from disclosing Confidential Information that must be disclosed by operation of law, provided: (i) the receiving party shall promptly notify the disclosing party of any such request for disclosure in order to allow the disclosing party full opportunity to seek the appropriate protective orders; and (ii) the receiving party complies with any protective order (or equivalent) imposed on such disclosure. It is understood and agreed that this section 17c is not intended to permit the disclosure of education records referenced in 17b, unless permitted by applicable law.
- d. Return of Confidential Information. The receiving party agrees that it will, within ten (10) days after written request by the disclosing party, return to the disclosing party, or at the option of the disclosing party, destroy and certify in writing the destruction of, all Confidential Information received from the disclosing party, including copies, reproductions, electronic files or any other materials containing Confidential Information.

- e. **Remedy for Breach.** The parties acknowledge that monetary damages may not be a sufficient remedy for unauthorized disclosure of Confidential Information and that a disclosing party shall be entitled, without waiving any other rights or remedies, and without the posting of bond or other equity, to such injunctive or equitable relief as may be deemed proper by a court of competent jurisdiction.

11. **Term.** This Agreement will commence on July 1, 2022 and shall expire on June 30, 2023. Upon written notice being provided by School of its intent to renew the Agreement, such notice being provided by or before February 1 of the Academic Year of the then current Term, this Agreement is subject to four (4) one (1) year renewal terms. (Each such one-year term being the "Term".) Connections shall have thirty (30) days from the date of notice to decline to continue providing services under the terms of this Agreement and to provide written notice of its intent to Customer

12. **Termination.**

- a. **Grounds For Early Termination:** Unless otherwise renewed or earlier terminated, this Agreement shall terminate immediately upon the expiration of the Term. Except as specifically provided for herein, this Agreement can only be terminated before its expiration as follows:
 - i. By both parties if they agree in writing to the termination;
 - ii. Termination by either party, immediately, if one party materially breaches this Agreement and fails to cure such breach within thirty (30) days following written notification of such breach from the other party. In the event objectively ascertainable reasonable efforts have been made to effect such cure and the breach at issue does not objectively lend itself to cure within such 30 day period, then such additional time as necessary to complete said cure, but in no event longer than 60 days following written notification of such breach;
 - iii. Termination by either party, immediately, if the Charter is terminated, or if the School is no longer authorized by the Authorizer as required by applicable state law and regulation;
- b. **Obligations on Termination:** In the event this Agreement is terminated by either party for any reason:
 - i. Each party will promptly (not later than thirty (30) days after the effective date of termination) return to the other party all Confidential Information, property and material of any type belonging to the other party, including but not limited to, electronic versions, hard copies and reproductions and will not retain copies of any such property or material except as may be expressly permitted in this Agreement or required by applicable law;
 - ii. All access to Connexus[®] and other Educational Products and Services contracted for herein shall be discontinued;
 - iii. Connections shall provide to the School copies of all Student Records not otherwise in the School's possession ;
 - iv. School shall pay Connections all amounts due under this Agreement upon the earlier of either their due dates or thirty (30) days after the effective date of termination.

13. **Indemnification.**

- a. **Indemnification Obligations:** Each party shall defend, indemnify, save and hold harmless the other party, its Affiliates, Parent, subsidiaries and its respective directors, officers,

agents and employees (together "Indemnified Party") against and from any and all claims, actions, liabilities, costs, expenses, damages, injury or loss (including reasonable attorney's fees) made, brought, incurred, or alleged by any third party ("Claim") to which the Indemnified Party, its Affiliates and their respective directors, officers, agents and employees may be subject to liability by reason of any wrongdoing, misconduct, negligence, willful misconduct or default by the Indemnifying Party, its agents, employees, subcontractors, or assigns in connection with the performance of this Agreement. This indemnification, defense and hold harmless obligation on behalf of Indemnifying Party shall survive the termination of this Agreement. The School's indemnification obligations hereunder shall be limited to the extent permitted by New Mexico law, and in particular, NMSA 1978, § 6-6-11 (Bateman Act).

- b. **Indemnification Procedure:** The Indemnified Party will: (a) promptly notify the Indemnifying Party in writing of any claim, loss, damages, liabilities and costs, and for third party claims; (b) allow the Indemnifying Party to control the defense; and (c) reasonably cooperate with the Indemnifying Party in the defense and any related settlement negotiations. In addition to any defense provided by the Indemnifying Party, the Indemnified Party may, at its expense, retain its own counsel. If the Indemnifying Party does not promptly assume the Indemnified Party's defense against any third-party claim, the Indemnified Party reserves the right to undertake its own defense at the Indemnifying Party's expense.
14. **Limitation of Liabilities.** In no event will either party, or such party's Affiliates, directors, officers, employees, or agents, be responsible or liable for the debts, acts or omissions of the other party, or such party's Affiliates, directors, officers, employees, or agents.
15. **Business Tax.** The School shall provide Connections with support that it is tax exempt. To the extent that the School is not tax exempt, the School shall be responsible for all state or local taxes assessed, including gross receipts tax, if any, based on the Education Program provided by Connections hereunder.
16. **Notices.** All notices, consents and other communications under this Agreement shall be given in writing and shall be sent by and deemed to have been sufficiently given or served for all purposes as of the date it is delivered by hand, received by overnight courier, or within three (3) business days of being sent by registered or certified mail, postage prepaid to the parties at the following addresses (or to such other address as hereafter may be designated in writing by such party to the other party):

If to Connections: Connections Academy of New Mexico,
LLC c/o Connections Education LLC dba
Pearson Virtual Schools USA
10960 Grantchester Way, 3rd Floor
Columbia, MD 21044
Attn: General Manager

With a copy to: Connections Education LLC dba Pearson
Virtual Schools USA
10960 Grantchester Way, 3rd Floor
Columbia, MD 21044
Attn: General Counsel

If to the School: **Pecos Cyber Academy**
C/O Dr. Kim Hite-Pope
1503 West Pierce St.
Carlsbad, NM 88220

17. **Governing Law.** This Agreement shall be governed and controlled by the laws of the State of New Mexico. Any legal actions prosecuted or instituted by any party under this Agreement shall be brought in a court of competent jurisdiction located in the State of New Mexico, and each party hereby consents to the jurisdiction and venue of any such courts for such purpose.

18. **Miscellaneous.**

- a. **Severability:** If any provision of this Agreement is held to be invalid or unenforceable, it shall be ineffective only to the extent of the invalidity, without affecting or impairing the validity and enforceability of the remainder of the provision or the remaining provisions of this Agreement. If any provision of this Agreement shall be or become in violation of any federal, state, or local law, such provision shall be considered null and void, and all other provisions shall remain in full force and effect.
- b. **Successors and Assigns:** The terms and provisions of this Agreement shall be assignable by either party only with the prior written permission of the other, which consent shall not be unreasonably withheld; provided that a change in control of Connections or its managing member, notice of which shall be provided by Connections to the Governing Council, shall not be deemed a violation of this Agreement.
- c. **Complete Agreement; Modification and Waiver:** This Agreement constitutes the entire agreement between the parties with respect to the matter contained herein and supersedes all prior and contemporaneous agreements, warranties, and understandings of the parties. There are no agreements, representations, or warranties of any kind except as expressly set forth in this Agreement. No supplement, modification or amendment of this Agreement shall be binding unless executed in writing by both parties. No waiver of any provision of this Agreement will be effective unless it is in writing and signed by the party to be charged with such modification, and no such waiver will constitute a waiver of any other provision(s) or of the same provision on another occasion.
- d. **Force Majeure:** If any circumstance should occur that is not anticipated or is beyond the control of a party, or that delays or renders impossible or impracticable performance as to the obligations of such party, the party's obligation to perform such services shall be postponed for a period equal to the time during which such circumstance shall extend, or,

if such performance has been rendered impossible by such circumstance, shall be cancelled.

- e. No Third-party Rights: This Agreement is made for the sole benefit of the parties. Except as otherwise expressly provided, nothing in this Agreement shall create or be deemed to create a relationship among the parties or any of them, and any third party, including a relationship in the nature of a third-party beneficiary or fiduciary.
- f. Professional Fees and Expenses: Each party shall bear its own expenses for legal, accounting, and other fees or expenses in connection with the negotiation of this Agreement.
- g. Counterparts: This Agreement may be signed in counterparts, which shall together constitute the signed original Agreement.
- h. Compliance with Laws, Policies, Procedures, and Rules: Each party will comply with all applicable federal and state laws and regulations including all of the specific requirements of the Charter, applicable local ordinances, and the School's policies whether or not specifically listed in this Agreement.
- i. Interpretation of Agreement: The parties hereto acknowledge and agree that this Agreement has been negotiated at arm's length and between parties equally sophisticated and knowledgeable in the subject matter dealt with in this Agreement. Accordingly, any rule of law or legal decision that would require interpretation of any ambiguities in this Agreement against the party that has drafted it is not applicable and this Agreement shall be interpreted in a reasonable manner to affect the intent of the parties as set forth in this Agreement.
- j. Headings; Exhibits: The section headings contained herein are for convenience only and shall not in any way affect the interpretation or enforceability of any provision of this Agreement. All schedules and exhibits to this Agreement are incorporated herein and shall be deemed a part of this Agreement as fully as if set forth in the body hereof.
- k. Electronic Signature: This Agreement, and related documents, may be accepted in electronic form (e.g., by scanned copy of the signed document, an electronic or digital signature or other means of demonstrating assent) and each party's acceptance will be deemed binding on the parties. Each party acknowledges and agrees that it will not contest the validity or enforceability of this Agreement and related documents, including under any applicable statute of frauds, because they were accepted or signed in electronic form. Each party further acknowledges and agrees that it will not contest the validity or enforceability of a signed scanned PDF or facsimile copy of this Agreement and related documents, on the basis that it lacks an original handwritten signature. Facsimile and scanned PDF signatures shall be considered valid signatures as of the date hereof. Computer maintained records of this Agreement and related documents when produced in hard copy form shall constitute business records and shall have the same validity as any other generally recognized business records.
- l. Survival. The rights and responsibilities of sections 8, 10, 11, 14, 15, 16, 18, 19, 20, shall survive the termination of this Agreement.

Status and Relationship of the Parties. Connections is a limited liability company organized under the laws of New Mexico and is not a division or a part of the School. The School is a New Mexico public charter school authorized by the Charter School Law and is not a division or part of Connections. The parties intend that the relationship created by this Agreement is that of an independent contractor and not employer-employee. Except as expressly provided in this Agreement, no agent or employee of Connections shall be deemed to be an agent or employee of the School. Connections shall be solely responsible for its acts and the acts of its agents, employees and subcontractors, and the School shall be solely responsible for its acts and the acts of its agents,

employees, and subcontractors. The relationship between Connections and the School is based solely on the terms of this Agreement, and the terms and conditions of any other written agreement between Connections and the School.

Authority to Enter into Agreement. Each Party represents and warrants that it has the right, power, and authority to enter into this Agreement, to become a Party hereto and to perform its obligations hereunder. This Agreement is a legal, valid and binding obligation of such Party, enforceable against such Party in accordance with its terms. Each party further warrants that the individuals who have signed this Agreement have the legal power, right, and authority to make this Agreement and to bind each respective party.

Agreed to by:

PECOS CYBER ACADEMY

CONNECTIONS ACADEMY OF NEW MEXICO, LLC

By: _____

By: _____

Title: _____

Title: _____

INDEX OF DEFINED TERMS

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

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

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

“Authorizer” shall mean the agency or other governmental entity authorized by law in the state in which the School is contracting with Connections under the terms of the Agreement to provide Educational Program (as defined below).

“Authorized Users” shall mean the Students, Caretakers, Teachers, Instructional Aides, Administrative Staff, Learning Coaches, and School Board members who are authorized to access Connexus®, the Content, Instructional Materials and Courses pursuant to the terms of this Agreement.

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

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

“Charter School Law” shall mean the applicable laws and regulations governing charter schools as codified in statutes and code of regulations of New Mexico.

“Confidential Information” shall mean proprietary business, technical and financial information of each of the parties, including for example and without limitation, each party’s respective information concerning: (a) business strategy and operations such as business plans, methods, marketing strategies, outreach plans and sales information, pricing information and customer and prospect lists, the identities and locations of vendors and consultants providing services or materials to or on behalf of the disclosing party; (b) product development such as product designs and concepts; (c) financial information such as budget and expense information, economic models, pricing, cost and sales data, operating and other financial reports and analysis; (d) human resource information such as compensation policies and schedules, employee recruiting and retention plans, organization charts and personnel data; (e) unpublished educational content, curricula, teaching outlines, lesson plans, testing processes and procedures; (f) Student Records and other student-related or parent-related personal information; (g) the terms of this Agreement, (h) login and password information for Connexus®; (i) technical information such as development methods, computer software, research, inventions, the design and operation of Connexus®; and (j) other similar non-public information that is furnished, disclosed or transmitted to the receiving party or to which the receiving party is otherwise given access by the disclosing party, orally, in written form, in any type of storage medium, or otherwise. Confidential Information, in whatever form provided, shall remain the exclusive property of the disclosing party at all times, and the parties hereby acknowledge and agree that all such Confidential Information of a party are its trade secrets. Except as specifically provided for herein, nothing contained in this Agreement shall be construed as granting or conferring any rights in any Confidential Information disclosed to the receiving party, by license or otherwise.

"Connexus[®]" means the website or Education Management System (also sometimes referred to as Learning Management System, EMS or LMS) with the URL <http://www.Connexus.com>, or such other URL as Connections or its Affiliates may designate from time to time, through which Authorized Users access Connections Content via a secure, password protected website. The features and functions of Connexus[®] may be modified and/or updated from time to time by Connections. Access to Connexus[®] is governed by the Terms of Use located at <https://www.Connexus.com/public/termsOfUse.html> and defined below.

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

"Course(s)" shall be comprised of a set of lessons and assessments, including Instructional Materials, that shall meet the educational content or other standards established by the State of New Mexico in order to be recognized for high school credit in grades 9-12 and/or for meeting educational requirements in grades K-8, as the case may be.

"Curriculum" means a program of instruction provided by Connections, which includes Content and Instructional Materials accessed primarily through Connexus[®], that, together with Teacher provider additions and/or modifications, shall meet the educational content or other standards established by the State of New Mexico in order to be recognized for high school credit in grades 9-12 or for meeting educational requirements in grades K-8.

"Curriculum Guide" means the publication which sets forth the list of Courses offered by Connections during a particular Academic Year and may sometimes be referred to in this Agreement as a "Program Guide".

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

"Destroyed" means at minimum removing personally identifiable information from the Student Record stored on Connections' production systems.

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

"Governing Council" shall mean the governing board of the School.

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

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

“Learning Coach” shall mean a Caretaker of the Student or another adult specifically designated by the Student’s Caretaker, or the Student where over 18 or emancipated, who will perform the responsibilities as defined in the Caretaker Acknowledgement, Designated Learning Coach Agreement or Eligible Student Acknowledgement, respectively, and the School Handbook, which shall be subject to the review and approval annually by the Governing Council. Learning Coaches are not employees or contractors of either the School or Connections; shall not receive any compensation for their services from either Connections or the Governing Council; and shall look solely to the Caretaker to collect any alleged agreed to compensation. Learning Coaches shall not fall within the definition of “Instructional Aides”.

“Licensed Collateral” shall mean Connexus® and all technology, programs, services, and materials hosted thereon to which Customer is granted access, the Curriculum, all tangible and intangible education materials and other proprietary and copyright protected works to which Customer is granted a right of use (whether in digital, print or both and including third party content contained therein or linked to therefrom), all Connections Education LLC trademarks, and the trade name “Commonwealth Connections Academy”.

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

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

“School Calendar” shall be the days when the Educational Program under this Agreement will be delivered to Students, as defined by the School Handbook. Connections will provide the Educational Program on those days established to be the School Calendar for the Academic Year, except that Students may continue to report attendance during scheduled school holidays to the extent permitted under State of New Mexico law. The School Calendar for each Academic Year is subject to the prior approval of the Governing Council, taking into account all reasonable comments and suggestion by Connections, and shall meet any regulatory requirements for days and hours of instruction required by law or regulation.

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

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

“Special Education Director” is that person employed to oversee the Special Education Services per Section 5. It is the Special Education Director’s responsibility to keep informed of (and to inform Connections of) any state legislative or regulatory enactments that impact the provision of Special Education Services, as well as to supervise the special education Teachers and implement a Connections approved model for special education instruction.

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

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

"Student" means any person actively enrolled in the School.

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

“Teacher” means any and all educators (including Connections Teachers) involved in providing instruction, assessment and/or other educational support of Students pursuant to the terms of this Agreement and the Charter.

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

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

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

EXHIBIT A: FEE SCHEDULE

Schedule of fees for the Educational Program under the Terms of the Agreement:

Fee Type	Rate	Basis
Fee Per Student	\$1,999	Charged in installments per each student enrolled in the Education Program at the end of the month and utilizing Connexus [®] as evidenced by each student's first login, and thereafter measured monthly for nine months of the school year – 9/30, 10/31, 11/30, 12/31, 1/31, 2/28, 3/31, 4/30, 5/31 (or last day of the school year)
Short Term Substitute Teaching Services	\$300	Per day
Internal Course Sales	\$2.75	Per Student, per Course, per day, invoiced monthly