

FOR DISCUSSION PURPOSES ONLY**STIPULATED AGREEMENT**

This Stipulated Agreement (“the Agreement”) is made this ___ day of _____, 2018, by and between Nevada Virtual Academy (“NVVA”), a public charter school; and the State Public Charter School Authority (“the SPCSA” or “the Authority”), a state-wide agency sponsoring public charter schools, including NVVA. NVVA and the SPCSA are collectively referred to herein as “the Parties.”

WHEREAS, NVVA is one of the oldest and largest public charter schools in the State of Nevada, serving over 2,000 students statewide, in grades Kindergarten through 12th grade. NVVA is an online or “virtual” public charter school, in that its method of educational delivery is a “distance education program.” See NRS 388.826.

WHEREAS, NVVA was originally granted a written charter contract in 2007, and in 2013 NVVA’s written charter was renewed, upon certain conditions. NVVA’s current charter school contract expires on its own terms on June 30, 2019.

WHEREAS, NVVA may apply for renewal of its charter school contract on or before October 15, 2018. See NRS 388A.285.

WHEREAS, NVVA’s elementary school has historically underperformed, receiving only a one- or two-star rating under Nevada’s Department of Education’s Nevada School Performance Framework (the “NSPF”) in those years when data has been available, most recently receiving a one-star rating under the NSPF, with an adjusted index score of 21/100 for the 2016-2017 school year. NVVA’s middle school has consistently received a two- or three-star rating under the NSPF, most recently receiving a three-star rating for the 2016-2017 school year. NVVA’s high school graduation rate has increased from 36% in 2012, to 63% for the 2014-2015 school year, to 67% for the 2015-2016 school year, and to 84% for the 2016-2017 school year.

WHEREAS, as a result of NVVA’s elementary school’s academic underperformance, on February 21, 2018, the Authority issued NVVA a Notice of Intent to Terminate NVVA’s charter school contract, specifying certain deficiencies and citing NRS 388A.330(1)(a)(4) as the legal basis.

WHEREAS, NVVA disputed the SPCSA’s legal authority to issue the Notice of Intent to Terminate NVVA’s charter school contract, and on March 28, 2018, NVVA sought from the First Judicial District Court (Carson City) declaratory relief and a temporary restraining order, among other relief (Case No. 18 OC 00084 1B). After the SPCSA alleged procedural issues and deficiencies in regard to NVVA’s lawsuit, NVVA voluntarily dismissed that action on April 5,

2018, and immediately re-filed a new action against the Authority, seeking the same relief as was contained in the original complaint (Case No. 18 OC 00088 1B) (the “Litigation”). While NVVA’s request as part of the Litigation for a temporary restraining order, other injunctive relief, and extraordinary writ relief was denied by the Court as not being ripe for judicial review, NVVA’s complaint against the Authority and the underlying substantive issues are currently pending in the Litigation.

WHEREAS, following the issuance of the Notice of Intent to Terminate NVVA’s charter school contract and after the Court deemed the matter not ripe for judicial review, NVVA timely submitted to the Authority a “Comprehensive Academic Improvement Plan,” as was required under the Notice. NVVA’s Comprehensive Academic Improvement Plan proposed to the Authority NVVA’s plan for correcting the specific deficiencies listed in the Notice.

WHEREAS, at its May 14, 2018 SPCSA Board meeting, the Authority Board rejected NVVA’s Comprehensive Academic Improvement Plan, finding the Comprehensive Academic Improvement Plan insufficient to correct the deficiencies identified in the Notice of Intent to Terminate NVVA’s charter school contract and improve the academic underperformance of NVVA’s elementary school.

WHEREAS, pursuant to the Notice of Intent to Terminate NVVA’s charter school contract, NRS 388A.330 and Nevada’s Administrative Procedures Act, a public hearing is scheduled for June 25, 2018, and the notice related to the public hearing states that the Authority will “determine whether to terminate (NVVA’s) charter school contract, amend (NVVA’s) charter school contract to eliminate grade levels or limit enrollment, or approve or reject any resolution, settlement or informal disposition.”

WHEREAS, NVVA and the SPCSA acknowledge a mutual commitment to ensure Nevada families have multiple, high-quality public school options and commit to work together through technical assistance and collaboration to best position NVVA for success under this Agreement.

WHEREAS, NVVA and the SPCSA desire to settle and resolve certain issues, as further described below, related to the Notice of Intent to Terminate NVVA’s charter school contract, NVVA’s potential renewal request, and the Litigation.

THEREFORE, for good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the Parties hereby agree to the following terms and conditions:

1. Administrative Proceedings Related to the Notice of Intent to Terminate NVVA's Charter School Contract.

The Parties agree that if the Authority Board approves this Agreement at the June 25, 2018 public hearing, that the evidentiary proceedings related to the June 25, 2018 public hearing will immediately be vacated.

2. NVVA's Potential Renewal Request.

In regard to NVVA's potential renewal request related to its charter school contract, the Parties agree to the following:

- A. Assuming the data will be available, NVVA shall not include in any potential renewal application due in October 2018 any of its elementary grade levels (Kindergarten through 5th Grade) if the elementary school program receives an adjusted index score under the NSPF of less than 34 for the 2017-2018 school year.

In the event that the foregoing terms and conditions are not met or exceeded, NVVA agrees that within thirty (30) days of the release of the Department of Education's NSPF ratings, it will notify all parents and guardians, by both United States Postal Service and electronic mail, that NVVA's renewal application will not include its elementary school program's grade levels, and that NVVA's elementary school program will close at the end of the 2018-2019 school year. In addition to the foregoing notices, NVVA will prominently post on its website that NVVA will not be including the elementary school program in the school's renewal application, and NVVA's elementary school program will be closing at the end of the 2018-2019 school year. The SPCSA shall approve the form and content of any such notifications, and the SPCSA shall not unreasonably withhold such approval.

In the event of the foregoing, NVVA agrees that it will utilize good faith efforts to assist any current NVVA students and pupils to find alternative educational opportunities.

- B. If NVVA's elementary school program meets the requirement of section 2(A) of this Agreement (an adjusted index score of 34 or greater for NVVA's elementary school for the 2017-2018 school year¹), SPCSA staff will recommend approval of a six (6) year charter school contract renewal as it relates to NVVA's elementary school program² under the following terms and conditions, and with the following annual benchmarks and targets:

¹ State assessments, which are used to calculate the Index scores under the NSPF, require a 95% student participation rate.

² Any recommendation related to NVVA's middle and high school programs will be made based on the performance of those programs. However, SPCSA staff expect to recommend renewal of

1. NVVA's renewed charter contract, as it relates to NVVA's elementary school program, will include the following benchmarks and targets:
 - a. School Year 2018-2019: NSPF Adjusted Index Score for the elementary school of 42 or greater;
 - b. School Year 2019-2020: NSPF Adjusted Index Score for the elementary school of 50 or greater;
 - c. School Year 2020-2021, and each school year thereafter throughout the term of any renewed charter school contract: NSPF Adjusted Index Score for the elementary school of 50 or greater;

Moreover, NVVA will strive to keep a balance of elementary school students where new students enrolled into each grade level will not exceed a 75% returning student to 25% new student ratio and will cut off enrollment of new students in each grade level to ensure the ratio of new students is not exceeded.

In the event that any of the terms and conditions described above, more particularly described in sections 2(B)(2)(a)-(c) of this Agreement, are met or exceeded, NVVA and the SPCSA agree that NVVA may request to increase enrollment the following school year up to 10%.

In the event that any of the terms and conditions described above, more particularly described in sections 2(B)(2)(a)-(c) of this Agreement, are *not* met or exceeded, NVVA and the SPCSA agree to the following:

1. For any school year (referred to herein as "School Year One"), beginning with the 2018-2019 school year, that the NSPF adjusted index score in regard to NVVA's elementary school is not met or exceeded, NVVA agrees that in the 2020-2021 school year, NVVA will freeze elementary enrollment at its current level, and eliminate the entire Kindergarten grade level.
2. For any school year thereafter (referred to herein as "School Year Two"), that the adjusted index score in regard to NVVA's elementary school is not met or exceeded, NVVA agrees that in the subsequent school year after the index score is made public, NVVA will freeze elementary enrollment at its current level, and eliminate its entire 1st Grade.
3. For any school year thereafter (referred to herein as "School Year Three" and so on) that the adjusted index score in regard to NVVA's elementary school is not met or exceeded, NVVA agrees that in the subsequent school year after the index score is

those programs based on those programs' historical performance, and assuming no significant changes related to those programs' performance.

made public, NVVA will freeze enrollment at its current level, and eliminate its 2nd Grade. Each school year thereafter in which NVVA's elementary school program does not meet or exceed the adjusted index score, NVVA will continue to eliminate grade levels, one year at a time, until the entire elementary school is eliminated.

In the event that a grade level is eliminated pursuant to the foregoing, NVVA may submit a charter school contract amendment application requesting reinstatement of the previously eliminated grade level if the elementary school portion of NVVA demonstrates two consecutive school years' of improvement and then after earning the right to reinstate that grade level to apply for the reinstatement of one grade level each year that improvement continues for as long as there are grade levels to reinstate. Such improvement shall be defined as two consecutive school years with an increase of 8 adjusted index points each year under the NSPF or two consecutive years at or above an adjusted index score of 50 for the elementary school program for the first reinstatement and then growth will be based on each additional year of improvement, not an additional two consecutive years, for the reinstatement of additional grade levels.

NVVA and the SPCSA agree that the foregoing enrollment limitations and elimination of grade levels is automatic and non-discretionary. No action on the part of the SPCSA is required prior to the enrollment limitations and elimination of grade levels pursuant to Section 2 of this Agreement.

NVVA and the SPCSA agree that in addition to the foregoing, both parties shall be required to comply with all applicable statutes and regulations relating to public charter schools, and that nothing herein shall prevent either party from enforcing any such requirement, including those contained in statutes and regulations applicable to public charter schools, NVVA's charter school contract, or any performance framework applicable to NVVA.

3. Enrollment.

For the school year remaining under NVVA's current charter school contract, the 2018-2019 school year, and under any potential renewed charter school contract, enrollment shall be limited as follows:

Elementary School:

Kindergarten:	75 students
1 st Grade:	75 students
2 nd Grade:	75 students
3 rd Grade:	75 students

4th Grade: 75 students
5th Grade: 110 students
Total: 485 students

Middle School:

6th Grade: 260 students
7th Grade: 260 students
8th Grade: 260 students
Total: 780 students

High School:

9th Grade: 260 students
10th Grade: 260 students
11th Grade: 260 students
12th Grade: 230 students
Total: 1010 students

Total NVVA enrollment: 2275 students

These enrollment limitations will not apply to any student enrolled at NVVA as of July 31, 2018 and his or her siblings, or to children or family members of an NVVA board member, and children or family members of any individual working at NVVA, whether or not enrolled by July 31, 2018.

If the targets above are met, NVVA may request to increase enrollment the following school year up to 10%.

4. Monitoring, Reporting, and Oversight.

NVVA shall provide the SPCSA with quarterly reports related to enrollment and academic performance. NVVA shall also promptly respond to any and all requests for information by the SPCSA.

The governing body of NVVA must develop internal performance metrics, separate and apart from the NSPF, to measure and monitor student outputs. The SPCSA shall approve any such

internal performance metrics, and the SPCSA shall not unreasonably withhold such approval. Any such internal performance metrics shall not supersede any provision contained in this Agreement.

5. Governing Body Approval of this Agreement.

The respective governing bodies of NVVA and the SPCSA shall each approve this Agreement at public meetings held in accordance with Nevada's Open Meeting Law.

6. Notification to Parents and Guardians Regarding this Agreement.

NVVA agrees to notify any and all parents and guardians of NVVA students as follows:

- A. NVVA agrees to prominently post a notification on its website stating that NVVA is operating under a Stipulated Agreement with the State Public Charter School Authority, and provide a link to this Agreement and any renewed charter school contract. The SPCSA shall approve the form and content of any such notification, and the SPCSA shall not unreasonably withhold such approval.
- B. Any application for enrollment at NVVA shall contain a notification prominently stating that NVVA is operating pursuant to this Stipulated Agreement, and information regarding how to obtain a copy of this Agreement and any renewed charter school contract. The SPCSA shall approve the form and content of any such notification, and the SPCSA shall not unreasonably withhold such approval.
- C. Within 30 days of the execution of this Agreement, NVVA shall notify all parents and guardians of any student enrolled at NVVA, via United States Postal Service and electronic mail, of this Agreement. The SPCSA shall approve the form and content of any such notification, and the SPCSA shall not unreasonably withhold such approval.
- D. Within 30 days of the approval of any renewed charter school contract, NVVA shall notify all parents and guardians of any student enrolled at NVVA, via United States Postal Service and electronic mail, of the renewed charter school contract. The SPCSA shall approve the form and content of any such notification, and the SPCSA shall not unreasonably withhold such approval.
- E. Within 30 days of the issuance of the NSPF ratings, NVVA shall notify all parents and guardians of any student enrolled at NVVA, via United States Postal Service and electronic mail, of its ratings, whether NVVA has met or exceeded the benchmarks and targets set forth in Section 2 of this Agreement, and whether NVVA will be eliminating grade levels the following school year. The SPCSA shall approve the form and content of any such notification, and the SPCSA shall not unreasonably withhold such approval.

7. The Litigation.

Upon execution of this Agreement, the Parties agree to jointly execute and file with the Court a stipulation dismissing the Litigation, with prejudice.

8. Other Public Charter School Statutes, Regulations, and Charter School Contract Provisions.

Nothing herein shall be construed as to render any public charter school statute, regulation, or provision contained in any charter school contract void or unenforceable. Nothing contained in this Agreement shall be construed as a waiver by either party of any such statute, regulation, or provision, and both parties shall be bound by all charter school statutes, regulations, and any other charter school contract terms and provisions.

9. Reference to Nevada School Performance Framework.

Any reference contained in this Agreement to the Nevada School Performance Framework, index scores, or other indicators, measurements or metrics contained in the Nevada School Performance Framework shall include any such indicators, measurements or metrics contained in any substantially similar successor statewide school accountability system implemented by the Department of Education. Any target or benchmark contained in Section 2 of this Agreement shall be construed under any substantially similar index score, indicator, measurement, or metric contained in any such successor statewide school accountability system. To the extent the successor system is not substantially similar, the parties agree to negotiate in good faith to establish targets and benchmarks that better correspond with the new system. To the extent the point attribution calculations change and alter how the index score is determined, the parties also agree to negotiate in good faith to establish targets and benchmarks that better correspond with the revised point attribution system. Any reference in this Agreement to “adjusted index scores” applies equally to any index scores, in the event that NVVA does not receive any adjustment of its index scores under the NSPF.

10. Governing Law, Venue, and Waiver of Judicial Review.

- A. This Agreement shall be construed and interpreted in accordance with the laws of the State of Nevada.
- B. The Parties agree that any dispute related to the administrative proceedings, the Litigation, or this Agreement shall be filed and litigated in a court of competent jurisdiction in the state of Nevada.
- C. NVVA agrees that by executing this Agreement it is waiving any right to judicial review of the issuance of the Notice of Intent to Terminate NVVA’s charter school contract and any and all proceedings related thereto.

11. Entire Agreement.

This Agreement constitutes the entire agreement between the Parties, and this Agreement shall only be amended in writing and signed by both parties.

12. Representations and Warranties.

The Parties represent and warrant that (i) they are not relying upon any statements (verbal or written), understandings, representations, expectations or agreements other than those expressly set forth in this Agreement, (ii) they have had the opportunity to be represented and advised by legal counsel in connection with this Agreement, (iii) this Agreement is being made voluntarily and of each party's own choice and not under coercion or duress, and (vi) they have the full power, authority and capacity to make the commitments contained in this Agreement.

13. Warranties as to Authority to Execute this Agreement.

The signatories to this Agreement warrant and represent that they have authority to execute this Agreement, and to bind NVVA and the Authority, respectively, to the terms and conditions contained in this Agreement.

14. Mutual Contribution.

This Agreement was drafted by representatives of both Parties, and thus shall not be construed or interpreted against any Party.

15. Costs and Attorneys' Fees.

The Parties agree to bear their own costs and attorneys' fees in connection with the administrative proceedings, the Litigation, and this Agreement.

16. Facsimiles Signatures and Counterparts.

This Agreement may be executed in counterparts, and any facsimile signatures shall be deemed original signatures.

Dated this __ day of June, 2018

Dated this __ day of June, 2018

Jason Guinasso
State Public Charter School Authority
Board Chair

Samantha Morris
Nevada Virtual Academy
Governing Body / Board Chair

Approved as to form and content:

Approved as to form and content:

Dated this ____ day of June, 2018

Dated this day of __ June, 2018

Ryan W. Herrick, Esq.
State Public Charter School Authority
General Counsel

Kara B. Hendricks, Esq.
Greenberg Traurig, LLP
Legal Counsel for Nevada Virtual Academy

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