
UNITED STATES SECURITIES AND EXCHANGE COMMISSION

Washington, D.C. 20549

Form 10-Q

(Mark One)

- Quarterly Report Pursuant to Section 13 or 15(d) of the Securities Exchange Act of 1934**
For the quarterly period ended September 30, 2008.

OR

- Transition Report Pursuant to Section 13 or 15(d) of the Securities Exchange Act of 1934**
For the transition period from to .

Commission file number: 001-33883

K12 Inc.

(Exact name of registrant as specified in its charter)

Delaware

(State or other jurisdiction of incorporation or organization)

**2300 Corporate Park Drive
Herndon, VA**

(Address of principal executive offices)

95-4774688

(IRS Employer Identification No.)

20171

(Zip Code)

(703) 483-7000

(Registrant's telephone number, including area code)

Indicate by check mark whether the registrant (1) has filed all reports required to be filed by Section 13 or 15(d) of the Securities Exchange Act of 1934 during the preceding 12 months (or for such shorter period that the registrant was required to file such reports) and (2) has been subject to such filing requirements for the past 90 days. Yes No

Indicate by check mark whether the registrant is a large accelerated filer, an accelerated filer, a non-accelerated filer, or a smaller reporting company. See the definitions of "large accelerated filer," "accelerated filer" and "smaller reporting company" in Rule 12b-2 of the Exchange Act. (Check one):

Large accelerated filer Accelerated filer Non-accelerated filer Smaller reporting company
(Do not check if a smaller reporting company)

Indicate by check mark whether the registrant is a shell company (as defined in Rule 12b-2 of the Exchange Act). Yes No

Indicate the number of shares outstanding of each of the issuer's classes of common stock, as of the close of business on November 12, 2008.

Common Stock, \$0.0001 par value — 28,734,553 shares

K12 Inc.
Form 10-Q
For the Quarterly Period Ended September 30, 2008

Index

	<u>Page Number</u>
Part I.	
	Financial Information
Item 1.	Financial Statements (Unaudited) 2
Item 2.	Management's Discussion and Analysis of Financial Condition and Results of Operations 12
Item 3.	Quantitative and Qualitative Disclosures About Market Risk 18
Item 4T.	Controls and Procedures 19
Part II.	
	Other Information
Item 1.	Legal Proceedings 19
Item 1A.	Risk Factors 20
Item 2.	Unregistered Sales of Equity Securities and Use of Proceeds 20
Item 3.	Defaults Upon Senior Securities 20
Item 4.	Submission of Matters to a Vote of Security Holders 20
Item 5.	Other Information 20
Item 6.	Exhibits 20
Signatures	21
EXHIBIT	31.1
EXHIBIT	31.2
EXHIBIT	32

PART I — FINANCIAL INFORMATION

Item 1. *Financial Statements (Unaudited).*

K12 INC.

UNAUDITED CONDENSED CONSOLIDATED BALANCE SHEETS
(in thousands, except share and per share data)

	September 30, 2008	June 30, 2008
ASSETS		
Current assets		
Cash and cash equivalents	\$ 49,023	\$ 71,682
Accounts receivable, net of allowance of \$1,529 and \$1,458 at September 30, 2008 and June 30, 2008, respectively	88,969	30,630
Inventories, net	14,000	20,672
Current portion of deferred tax asset	8,575	8,344
Prepaid expenses and other current assets	2,820	3,648
Total current assets	163,387	134,976
Property and equipment, net	35,949	24,536
Capitalized curriculum development costs, net	23,943	21,366
Deferred tax asset, net of current portion	11,037	12,749
Goodwill	1,825	1,754
Other assets, net	6,388	1,943
Total assets	\$ 242,529	\$ 197,324
LIABILITIES AND STOCKHOLDERS' EQUITY		
Current liabilities		
Accounts payable	\$ 14,021	\$ 14,388
Accrued liabilities	7,955	4,684
Accrued compensation and benefits	5,653	10,049
Deferred revenue	24,938	3,114
Current portion of capital lease obligations	10,014	6,107
Current portion of notes payable	326	413
Total current liabilities	62,907	38,755
Deferred rent, net of current portion	1,644	1,640
Capital lease obligations, net of current portion	13,522	6,445
Notes payable, net of current portion	112	196
Total liabilities	78,185	47,036
Commitments and contingencies		
Stockholders' equity		
Common stock, par value \$0.0001; 100,000,000 shares authorized; 28,697,673 and 27,944,826 shares issued and outstanding at September 30, 2008 and June 30, 2008, respectively	3	3
Additional paid-in capital	331,763	323,621
Accumulated deficit	(167,422)	(173,336)
Total stockholders' equity	164,344	150,288
Total liabilities and stockholders' equity	\$ 242,529	\$ 197,324

See notes to unaudited condensed consolidated financial statements.

K12 INC.

UNAUDITED CONDENSED CONSOLIDATED STATEMENTS OF OPERATIONS
(in thousands, except share and per share data)

	Three Months Ended September 30,	
	2008	2007
Revenues	\$ 88,625	\$ 59,353
Cost and expenses		
Instructional costs and services	54,421	34,778
Selling, administrative, and other operating expenses	22,835	16,039
Product development expenses	2,195	2,527
Total costs and expenses	79,451	53,344
Income from operations	9,174	6,009
Interest income (expense), net	107	(304)
Income before income tax expense and minority interest	9,281	5,705
Income tax (expense) benefit	(3,786)	7,117
Income before minority interest	5,495	12,822
Minority interest in loss of consolidated subsidiaries, net of tax	419	—
Net income	5,914	12,822
Dividends on preferred stock	—	(1,671)
Preferred stock accretion	—	(6,560)
Net income attributable to common stockholders	\$ 5,914	\$ 4,591
Net income attributable to common stockholders per share:		
Basic	\$ 0.21	\$ 2.25
Diluted	\$ 0.20	\$ 0.20
Weighted average shares used in computing per share amounts (see page 7):		
Basic	28,487,440	2,043,589
Diluted	29,499,102	22,744,525

See notes to unaudited condensed consolidated financial statements.

K12 INC.**UNAUDITED CONDENSED STATEMENTS OF STOCKHOLDERS' EQUITY**
(in thousands, except share data)

	<u>Common Stock</u>		<u>Additional Paid-in Capital</u>	<u>Accumulated Deficit</u>	<u>Total</u>
	<u>Shares</u>	<u>Amount</u>			
Three months ended September 30, 2008					
Balance, June 30, 2008	27,944,826	\$ 3	\$323,621	\$ (173,336)	\$150,288
Exercise of stock options	752,847	—	5,419	—	5,419
Stock compensation expense	—	—	529	—	529
Excess tax benefit from stock-based compensation	—	—	2,194	—	2,194
Net income	—	—	—	5,914	5,914
Balance, September 30, 2008	<u>28,697,673</u>	<u>\$ 3</u>	<u>\$331,763</u>	<u>\$ (167,422)</u>	<u>\$ 164,344</u>

See notes to unaudited condensed financial statements.

K12 INC.
UNAUDITED CONDENSED CONSOLIDATED STATEMENTS OF CASH FLOWS
(in thousands)

	Three Months Ended	
	September 30,	
	2008	2007
Cash flows from operating activities		
Net income	\$ 5,914	\$ 12,822
Adjustments to reconcile net income to net cash used in operating activities:		
Depreciation and amortization expense	4,446	2,252
Stock based compensation expense	529	300
Excess tax benefit from stock-based compensation	(2,194)	—
Deferred income taxes	3,674	(7,117)
Provision for doubtful accounts	70	21
Provision for inventory obsolescence	40	7
Provision for (reduction of) student computer shrinkage and obsolescence	(6)	161
Changes in assets and liabilities:		
Accounts receivable	(58,409)	(34,248)
Inventories	6,632	7,029
Prepaid expenses and other current assets	828	261
Other assets	(4,440)	(933)
Deposits and other assets	28	557
Accounts payable	(367)	4,100
Accrued liabilities	3,271	2,374
Accrued compensation and benefits	(4,396)	(2,880)
Deferred revenue	21,825	12,571
Deferred rent	5	(17)
Net cash used in operating activities	(22,550)	(2,740)
Cash flows from investing activities		
Purchase of property and equipment	(2,397)	(1,530)
Purchase of domain name	—	(250)
Capitalized curriculum development costs	(3,618)	(1,622)
Net cash used in investing activities	(6,015)	(3,402)
Cash flows from financing activities		
Deferred initial public offering costs	—	(1,371)
Net borrowings from revolving credit facility	—	11,000
Repayments on capital lease obligations	(1,466)	(648)
Repayments on notes payable	(170)	(44)
Proceeds from exercise of stock options	5,348	25
Excess tax benefit from stock-based compensation	2,194	—
Repayment of bank overdraft	—	(1,577)
Net cash provided by financing activities	5,906	7,385
Net change in cash and cash equivalents	(22,659)	1,243
Cash and cash equivalents , beginning of period	71,682	1,660
Cash and cash equivalents , end of period	\$ 49,023	\$ 2,903

See notes to unaudited condensed consolidated financial statements.

K12 Inc.

Notes to Unaudited Condensed Consolidated Financial Statements

1. Description of the Business

K12 Inc. and its subsidiaries (K12 or the Company) sell online curriculum and educational books and materials designed for students in grades K-12 and provide management and technology services to virtual public schools. The K12 proprietary curriculum is research-based and combines content with innovative technology to allow students to receive an outstanding education regardless of geographic location. In contracting with a virtual public school, the Company typically provides students with access to the K12 on-line curriculum, offline learning kits, and use of a personal computer. As of September 30, 2008, the Company served schools in 21 states and the District of Columbia, providing curriculum for kindergarten through twelfth grades. The Company expanded into four new states in fiscal year 2009: Hawaii, Indiana, Oregon and South Carolina. In addition, the Company sells access to its on-line curriculum and offline learning kits directly to individual consumers.

2. Basis of Presentation

The accompanying condensed consolidated balance sheet as of September 30, 2008, the condensed consolidated statements of operations for the three months ended September 30, 2008 and 2007, the condensed consolidated statements of cash flows for the three months ended September 30, 2008 and 2007, and the condensed consolidated statement stockholders' equity for the three months ended September 30, 2008 are unaudited. The unaudited interim financial statements have been prepared on the same basis as the annual financial statements and in the opinion of management, reflect all adjustments, which include only normal recurring adjustments, necessary to present fairly the Company's financial position as of September 30, 2008, the results of operations for the three months ended September 30, 2008 and 2007, the results of cash flows for the three months ended September 30, 2008 and 2007 and the stockholders' equity for the three months ended September 30, 2008. The results of the three month periods ended September 30, 2008 are not necessarily indicative of the results to be expected for the year ended June 30, 2009 or for any other interim period or for any other future fiscal year. The consolidated balance sheet as of June 30, 2008 has been derived from the audited consolidated financial statements at that date.

The accompanying unaudited condensed consolidated financial statements of the Company have been prepared in accordance with accounting principles generally accepted in the United States of America for interim financial information and with the instructions to Form 10-Q and Rule 10-01 of Regulation S-X of the Securities Exchange Act of 1934, as amended (Exchange Act). Accordingly, they do not include all of the information and footnotes required by accounting principles generally accepted in the United States of America for complete financial statements. In the opinion of management, these statements include all adjustments (consisting of normal recurring adjustments) considered necessary to present a fair statement of our consolidated results of operations, financial position and cash flows. Preparation of the Company's financial statements in conformity with accounting principles generally accepted in the United States of America requires management to make estimates and assumptions that affect the reported amounts in the financial statements and footnotes. Actual results could differ from those estimates. This quarterly report on Form 10-Q should be read in conjunction with the financial statements and the notes thereto included in the company's latest annual report on Form 10-K filed on September 26, 2008, which contains the Company's audited financial statements for the fiscal year ended June 30, 2008.

K12 Inc.

Notes to Unaudited Condensed Consolidated Financial Statements — (Continued)

3. Summary of Significant Accounting Policies

Consolidation

The condensed consolidated financial statements include the accounts of the Company, its wholly-owned subsidiaries and affiliated companies in which the Company owns, directly or indirectly, or otherwise controls 50% or more of the outstanding voting interests. Under the consolidation method, an affiliated company's results of operations are reflected within the consolidated statements of operations. Earnings or losses attributable to other stockholders of a consolidated affiliated company are classified as "minority interest in loss of consolidated subsidiaries" in the Company's consolidated statements of operations. Minority interest adjusts the Company's consolidated net results of operations to reflect only its share of the after-tax earnings or losses of an affiliated company. Income taxes attributable to minority interest are determined using the applicable statutory tax rates in the jurisdictions where such operations are conducted. These rates vary from country to country. All significant intercompany transactions and balances have been eliminated in consolidation.

Net Income Per Common Share

Basic earnings per share is computed by dividing net income available to common stockholders by the weighted average number of shares of common stock outstanding during the period. Diluted earnings per share reflects the potential dilution that could occur assuming conversion or exercise of all dilutive unexercised stock options and warrants. The dilutive effect of stock options was determined using the treasury stock method. Under the treasury stock method, the proceeds received from the exercise of stock options, the amount of compensation cost for future service not yet recognized by the Company, and the amount of tax benefits that would be recorded in additional paid-in capital when the stock options become deductible for income tax purposes are all assumed to be used to repurchase shares of the Company's common stock. Stock options are not included in the computation of diluted earnings per share when they are antidilutive.

The following schedule presents the calculation of basic and diluted net income per share:

	Three Months Ended September 30,	
	2008	2007
	(In thousands, except share and per share data)	
Net income available to common shareholders — basic and diluted	\$ 5,914	\$ 4,591
Weighted average common shares outstanding — basic	28,487,440	2,043,589
Weighted average common shares outstanding — diluted	29,499,102	22,744,525
Net income (loss) per common share:		
Basic	\$ 0.21	\$ 2.25
Diluted	\$ 0.20	\$ 0.20

Recently Adopted Financial Accounting Pronouncements

The Company adopted the provisions of Financial Accounting Standards Board (FASB) Statement No. 157 (FAS 157), Fair Value Measurements, on July 1, 2008. FAS 157 defines fair value, establishes a framework for measuring fair value under Generally Accepted Accounting Principles (GAAP), and expands disclosures about fair value measurements. The implementation of this Statement was not material to the Company's consolidated financial position or results of operations.

K12 Inc.

Notes to Unaudited Condensed Consolidated Financial Statements — (Continued)

4. Income Taxes

The provision for income taxes is based on earnings reported in the condensed consolidated financial statements. A deferred income tax asset or liability is determined by applying currently enacted tax laws and rates to the expected reversal of the cumulative temporary differences between the carrying value of assets and liabilities for financial statement and income tax purposes. Deferred income tax expense is measured by the change in the deferred income tax asset or liability during the year.

5. Lease Commitments

Capital Leases

As of September 30, 2008, computer equipment and software under capital leases are recorded at a cost of \$30.9 million and accumulated depreciation of \$9.2 million. The Company has an equipment lease line of credit that expires on April 30, 2009 for new purchases on the line of credit. The interest rate on new advances under the equipment lease line is set quarterly. Borrowings under the equipment lease line have interest rates ranging from 6.4% to 8.8% and include a 36-month payment term with a \$1 purchase option at the end of the term. The Company has pledged the assets financed with the equipment lease line to secure the amounts outstanding. The Company entered into a guaranty agreement with the lessor to guarantee the obligations under this equipment lease and financing agreement.

Notes Payable

The Company has purchased computer software licenses and maintenance services through notes payable arrangements with various vendors at interest rates ranging up to 11.4% and payment terms ranging from eighteen months to three years.

The following is a summary as of September 30, 2008 of the present value of the net minimum payments on capital leases and notes payable under the Company's commitments:

<u>September 30,</u>	<u>Capital Leases</u>	<u>Notes Payable</u>	<u>Total</u>
2009	\$ 11,324	\$ 327	\$ 11,652
2010	9,162	111	9,274
2012	5,041	—	5,041
2013	156	—	156
Total minimum payments	25,683	438	26,123
Less amount representing interest (imputed interest rate of 7.7%)	(2,147)	—	(2,149)
Net minimum payments	23,536	438	23,974
Less current portion	(10,014)	(326)	(10,340)
Present value of minimum payments, less current portion	<u>\$ 13,522</u>	<u>\$ 112</u>	<u>\$ 13,634</u>

K12 Inc.

Notes to Unaudited Condensed Consolidated Financial Statements — (Continued)

6. Stock Option Plan

The Company uses the Black-Scholes method to calculate the fair value of stock options. Depending on certain substantive characteristics of the stock option, the Company, where appropriate, utilizes a binomial model. The use of option valuation models requires the input of highly subjective assumptions, including the expected stock price volatility and the expected term of the option. In March 2005, the Securities and Exchange Commission (SEC) issued SAB No. 107 (SAB 107) regarding the SEC's interpretation of SFAS 123R and the valuation of share-based payments for public companies. For options issued subsequent to July 1, 2006, the Company has applied the provisions of SAB 107 in its adoption of SFAS 123R. Under SAB 107, the Company has estimated the expected term of granted options to be the weighted average mid-point between the vesting date and the end of the contractual term. In December 2007, the SEC issued SAB 110 which allows companies to continue to use the simplified method, as defined in SAB 107 to estimate the expected term of stock options under certain circumstances. The Company estimates the volatility rate based on historical closing stock prices of a pool of comparable companies. The dividend yield is zero as the Company has no present intention to pay cash dividends.

SFAS 123R requires management to make assumptions regarding the expected life of the options, the expected liability of the options and other items in determining estimated fair value. Changes to the underlying assumptions may have significant impact on the underlying value of the stock options, which could have a material impact on our financial statements.

The 2007 Equity Incentive Award Plan was adopted by the Company's Board of Directors on October 30, 2007. There were 504,700 stock options granted under the 2007 Equity Incentive Award Plan for the quarter ended September 30, 2008.

Stock option activity during the three months ended September 30, 2008 was as follows:

	Shares	Weighted-Average Exercise Price	Weighted Average Remaining Contractual Life (Years)	Aggregate Intrinsic Value
Outstanding, June 30, 2008	4,766,849	\$ 11.20		
Granted	504,700	23.40		
Exercised	(752,847)	7.15		
Canceled	(97,570)	10.95		
Outstanding, September 30, 2008	<u>4,421,132</u>	<u>\$ 13.28</u>	<u>5.16</u>	<u>\$ 58,434</u>
Stock options exercisable at September 30, 2008	<u>2,098,892</u>	<u>\$ 8.50</u>	<u>4.38</u>	<u>\$ 37,770</u>

The total intrinsic value of options exercised during the three months ended September 30, 2008 was \$12.7 million.

The following table summarizes the option grant activity for the three months ended September 30, 2008.

Grant date	Options Granted	Weighted-Average Exercise Price	Weighted Average Grant-Date Fair Value	Intrinsic Value
July 2008	15,700	\$ 21.94	\$ 9.81	\$ —
August 2008	489,000	\$ 23.45	\$ 10.47	\$ —
	<u>504,700</u>			

K12 Inc.

Notes to Unaudited Condensed Consolidated Financial Statements — (Continued)

On December 10, 2007, the Company received majority stockholder consent, pursuant to Section 228(a) of the Delaware General Corporation Law (the “DGCL”), approving the Company’s 2007 Equity Incentive Award Plan and its 2007 Employee Stock Purchase Plan (which are more fully described in the Company’s registration statement on Form S-1, Registration Number 333-144894). All stockholders were notified of the approval of these plans, pursuant to Section 228(e) of the DGCL, on December 20, 2007. The 2007 Equity Incentive Award Plan and the 2007 Employee Stock Purchase Plan were adopted by the Company’s Board of Directors on October 30, 2007. There were 504,700 stock options granted under the 2007 Equity Incentive Award Plan for the quarter ended September 30, 2008.

As of September 30, 2008, there was \$7.6 million of total unrecognized compensation expense related to unvested stock options granted under the Stock Option Plan adopted in May 2000 and November 2007 and the 2007 Equity Incentive Award Plan. The cost is expected to be recognized over a weighted average period of 2.0 years. The total fair value of shares vested during the three months ended September 30, 2008 was \$5.8 million. During the three months ended September 30, 2008, the Company recognized \$0.5 million of stock based compensation.

7. Commitments and Contingencies

Litigation

In the ordinary conduct of business, the Company is subject to lawsuits, arbitrations and administrative proceedings from time to time. The Company is currently involved in a lawsuit brought by a teacher’s union seeking the closure of the virtual public school the Company serves in Illinois.

Illinois v. Chicago Virtual Charter School

On October 4, 2006, the Chicago Teachers Union and individual taxpayers (“CTU” or plaintiffs) filed a citizen taxpayer’s lawsuit in the Circuit Court of Cook County challenging the decision of the Illinois State Board of Education to certify the Chicago Virtual Charter School (CVCS) and to enjoin the disbursement of state funds to the Chicago Board of Education under its contract with the CVCS. Specifically, the CTU alleges that the Illinois charter school law prohibits any “home-based” charter schools and that CVCS does not provide sufficient “direct instruction” by certified teachers of at least five clock hours per day to qualify for funding. K12 Inc. and K12 Illinois LLC were also named as defendants. On May 16, 2007, the Court dismissed K12 Inc. and K12 Illinois LLC from the case. After three dismissals of their complaint on procedural grounds, the Court granted the plaintiff’s Fourth Amended Citizen Complaint on May 20, 2008. CVCS and the Board of Education of the City of Chicago jointly filed a Motion to Reconsider, which was denied by Memorandum Opinion and Order dated August 8, 2008. The case is now in the discovery stage. The Company continues to participate in the defense of CVCS under an indemnity obligation in its service agreement with that school, which requires the Company to indemnify CVCS against certain liabilities arising out of the performance of the service agreement, and certain other claims and liabilities, including liabilities arising out of challenges to the validity of the virtual school charter. The Company is not able to estimate the range of potential loss if the plaintiff were to prevail and a claim was made against the Company for indemnification. In fiscal year 2008 and for the three months ended September 30, 2008, average enrollments in CVCS were 407 and 586, respectively and the Company derived 1.3% and 1.0%, respectively of its revenues from CVCS.

The Company expenses legal costs as incurred.

K12 Inc.

Notes to Unaudited Condensed Consolidated Financial Statements — (Continued)

8. Joint Venture

On August 15, 2008, a subsidiary of the Company entered into an agreement to establish a joint venture with a Middle East partner. The purpose of the joint venture is to develop and manage the distribution of the Company's learning system in the Gulf Cooperating Countries. The Company's investment into this joint venture consists of \$1 million in cash and contributed assets in return for a 66.7% ownership interest. The Company's Middle East partner will contribute \$5 million in cash in return for a 33.3% ownership interest. The Company accounts for this joint venture under the consolidated method of accounting.

9. Supplemental Disclosure of Cash Flow Information

	Three Months Ended	
	September 30,	
	2008	2007
Cash paid for interest	\$ 255	\$ 281
Cash paid for taxes, net of refunds	\$ (12)	\$ —
Supplemental disclosure of non-cash investing and financing activities:		
New capital lease obligations	\$ 12,450	\$ 6,964

10. Recent Accounting Pronouncements

In December 2007, the FASB issued Statement of Financial Accounting Standards ("SFAS") No. 141R (revised 2007), *Business Combinations*, which replaces SFAS No. 141. The statement retains the purchase method of accounting for acquisitions, but requires a number of changes, including changes in the way assets and liabilities are recognized in the purchase accounting. It also changes the recognition of assets acquired and liabilities assumed arising from contingencies, requires the capitalization of in-process research and development at fair value, and requires the expensing of acquisition-related costs as incurred. SFAS No. 141R is effective for the Company beginning July 1, 2009 and will apply prospectively to business combinations completed on or after that date.

In December 2007, the FASB issued SFAS No. 160, *Noncontrolling Interests in Consolidated Financial Statements, an amendment of ARB 51*, which changes the accounting and reporting for minority interests. Minority interests will be recharacterized as noncontrolling interests and will be reported as a component of equity separate from the parent's equity, and purchases or sales of equity interests that do not result in a change in control will be accounted for as equity transactions. In addition, net income attributable to the noncontrolling interest will be included in consolidated net income on the face of the income statement and, upon a loss of control, the interest sold, as well as any interest retained, will be recorded at fair value with any gain or loss recognized in earnings. SFAS No. 160 is effective for the Company beginning July 1, 2009 and will apply prospectively, except for the presentation and disclosure requirements, which will apply retrospectively. The Company does not believe that the provisions of this statement will have a material effect on its financial condition, results of operations and disclosures.

In March 2008, the FASB issued SFAS No. 161, *Disclosures About Instruments and Hedging Activities* — amendment of FASB Statement No. 133 (SFAS No. 161). SFAS No. 161 changes the disclosure requirements for derivative instruments and hedging activities. SFAS No. 161 is effective for financial statements issued for fiscal years beginning after November 15, 2008. As SFAS No. 161 relates only to disclosure, the Company anticipates that the adoption of SFAS No. 161 will not have a material effect on its consolidated financial statements.

Item 2. Management's Discussion and Analysis of Financial Condition and Results of Operations.

This Management's Discussion and Analysis of Financial Condition and Results of Operations (MD&A) is intended to assist in understanding and assessing the trends and significant changes in our results of operations and financial condition. As used in this MD&A, the words, "we," "our" and "us" refer to K12 Inc. and its consolidated subsidiaries. This MD&A should be read in conjunction with our condensed consolidated financial statements and related notes included in this report, as well as the consolidated financial statements and MD&A of our Annual Report on Form 10-K for the fiscal year ended June 30, 2008. The following overview provides a summary of the sections included in our MD&A:

- Forward-Looking Statements — cautionary information about forward-looking statements and a description of certain risks and uncertainties that could cause our actual results to differ materially from our historical results or our current expectations or projections.
- Executive Summary — a general description of our business and key highlights of the three months ended September 30, 2008.
- Critical Accounting Policies and Estimates — a discussion of critical accounting policies requiring critical judgments and estimates.
- Results of Operations — an analysis of our results of operations in our consolidated financial statements.
- Liquidity and Capital Resources — an analysis of cash flows, sources and uses of cash, commitments and contingencies, seasonality in the results of our operations, the impact of inflation, and quantitative and qualitative disclosures about market risk.

Forward-Looking Statements

This MD&A contains certain forward-looking statements within the meaning of Section 21E of the Securities Exchange Act of 1934, as amended. Historical results may not indicate future performance. Our forward-looking statements reflect our current views about future events, are based on assumptions and are subject to known and unknown risks and uncertainties that could cause actual results to differ materially from those contemplated by these statements. Factors that may cause differences between actual results and those contemplated by forward-looking statements include, but are not limited to, those discussed in "Risk Factors" in Part I, Item 1A, of our Annual Report on Form 10-K for the fiscal year ended June 30, 2008, including any updates found in Part II, Item 1A, "Risk Factors," of this quarterly report. We undertake no obligation to publicly update or revise any forward-looking statements, including any changes that might result from any facts, events, or circumstances after the date hereof that may bear upon forward-looking statements. Furthermore, we cannot guarantee future results, events, levels of activity, performance, or achievements.

Executive Summary

We are a technology-based education company. We offer proprietary curriculum and educational services created for online delivery to students in kindergarten through 12th grade, or K-12. Our mission is to maximize a child's potential by providing access to an engaging and effective education, regardless of geographic location or socio-economic background. Since our inception, we have invested more than \$130 million to develop curriculum and an online learning platform that promotes mastery of core concepts and skills for students of all abilities. This learning system combines a cognitive research-based curriculum with an individualized learning approach well-suited for virtual schools and other educational applications.

We deliver our learning system to students primarily through virtual public schools. We offer virtual schools our proprietary curriculum, online learning platform and varying levels of academic and management services, which can range from targeted programs to complete turnkey solutions, under long-term contracts. As of September 30, 2008, substantially all of our enrollments were served through 32 virtual public schools to which we provide full turnkey solutions and seven virtual public schools to which we provide limited management services, located in 21 states and the District of Columbia. For the first quarter of fiscal year 2009 versus the same period in the prior year, we increased average enrollments in the virtual public schools we serve to approximately 56,200 students from 39,500 students, an increase of 42.4%, and increased revenues to \$88.6 million from \$59.4 million, an increase of 49.3%.

For the three months ended September 30, 2008, approximately 85.4% of our enrollments were associated with virtual public schools to which we provide turnkey management services as compared to 80.8% for the same period in the prior year. We are responsible for the complete management of these schools and therefore, we recognize as revenues the funds received by the schools, up to the level of costs incurred. These costs are substantial, as they include the cost of teacher compensation and other ancillary school expenses. Accordingly, enrollments in these schools generate substantially more revenues than enrollments in other schools where we provide limited or no management services. In these situations, our revenues are limited to direct invoices and are independent of the total funds received by the school from a state or district.

We generate almost all of our revenues from virtual public schools and these revenues depend on per pupil funding amounts financed by federal, state and local taxpayers. Budget appropriations for education at all levels of government are determined through the political process, which may also be affected by conditions in the economy at large. Per pupil funding levels are typically established on an annual basis and generally increase at modest levels from year to year. While we expect these trends to continue over time, the current economic environment may adversely impact government revenues causing unanticipated reductions in school funding or delays in payments which, if material, could adversely impact our revenues and cash flow.

Parents can also purchase our curriculum and online learning platform directly to facilitate or supplement their children's education. Additionally, we have piloted portions of our curriculum in brick and mortar classrooms with promising academic results. We recently launched the K12 International Academy, an online private school which serves students in the U.S. and throughout the world. The school utilizes the same K12 curriculum, systems, and teaching practices as the virtual public schools we serve. The school is accredited by the Commission on International and Trans-Regional Accreditation (CITA), the Southern Association of Colleges and Schools (SACS), and is recognized by the State of Virginia as a degree granting institution of secondary learning.

On August 15, 2008, a subsidiary of the Company entered into an agreement to establish a joint venture with a Middle East partner. The purpose of the joint venture is to develop and manage the distribution of our learning system in the Gulf Cooperating Countries. The K12 International Academy has a branch facility in Dubai, operated under this joint venture. Our investment into this joint venture consists of \$1 million in cash and contributed assets in return for a 66.7% ownership interest. Our Middle East partner agreed to contribute \$5 million in cash in return for a 33.3% ownership interest. Our condensed consolidated financial statements reflect the results of operations of this joint venture. Earnings or losses attributable to our partner are classified as "minority interest in loss of consolidated subsidiaries" in our consolidated statements of operations. Minority interest adjusts our consolidated net results of operations to reflect only our share of the after-tax earnings or losses of an affiliated company. Income taxes attributable to minority interest are determined using the applicable statutory tax rates in the jurisdictions where such operations are conducted.

Our revenues and operating results normally fluctuate as a result of seasonal variations in our business, principally due to the number of months that our virtual public school are fully operational and changes in the number of enrollments. While school administrative offices are generally open year round, a school typically serves students during a 10 month academic year. A school's academic year will typically start in August or September, our first fiscal quarter, and finish in May or June, our fourth fiscal quarter. Consequently, our first

and fourth fiscal quarters may have fewer than three months of full operations when compared to the second and third fiscal quarters. In addition, we experience a seasonal increase in enrollments in August and September, although students will enroll to a lesser extent during the school year.

In the first fiscal quarter, we ship and recognize revenues for materials to students for the beginning of the school year. This generally results in higher materials revenues and margin in the first quarter versus other quarters. In the first and fourth fiscal quarters, online curriculum and computer revenues are generally lower as these revenues are primarily earned during the school academic year which may provide for only one or two months of these revenues in these quarters versus the second and third fiscal quarters. The combined effect of these factors results in higher revenues in the first fiscal quarter than in the subsequent quarters.

Operating expenses are also seasonal. Instructional costs and services expenses increase in the first fiscal quarter primarily due to the costs incurred to ship student materials at the beginning of the school year. Instructional costs may increase significantly quarter-to-quarter as school operating expenses increase. For example, enrollment growth will require additional teaching staff, thereby increasing salary and benefits expense. School events may be seasonal, (e.g. professional development, proctored exam related expenses, and community events,) impacting the quarterly change in instructional costs. The majority of our recruiting and selling expenses are incurred in the first and fourth fiscal quarters, as our primary enrollment season is July through September. A significant portion of our overhead expenses does not vary with the school year or enrollment season.

Critical Accounting Policies and Estimates

The preparation of financial statements in conformity with United States of America generally accepted accounting principles requires us to make estimates and assumptions about future events that affect the amounts reported in our consolidated financial statements and accompanying notes. Future events and their effects cannot be determined with certainty. Therefore, the determination of estimates requires the exercise of judgment. Actual results could differ from those estimates, and any such differences may be material to our consolidated financial statements. Critical accounting policies are disclosed in our fiscal year 2008 audited consolidated financial statements, which are included our Annual Report filed on Form 10-K for the fiscal year ended June 30, 2008. Other than described in the condensed consolidated financials, there have been no significant updates to our critical accounting policies from those disclosed in the Annual Report.

Results of Operations

The following table sets forth average enrollment data for each of the periods indicated:

	Three Months Ended	
	September 30,	
	2008	2007
Total enrollments	56,233	39,493
Enrollments associated with managed schools as a percentage of total enrollments	85.4%	80.8%
High School enrollments as a percentage of total enrollments	20.9%	14.5%

The following table sets forth statements of operations data for each of the periods indicated:

	Three Months Ended September 30,	
	2008	2007
	(In thousands)	
Revenues	\$88,625	\$59,353
Cost and expenses		
Instructional costs and services	54,421	34,778
Selling, administrative, and other operating expenses	22,835	16,039
Product development expenses	2,195	2,527
Total costs and expenses	79,451	53,344
Income from operations	9,174	6,009
Interest income (expense), net	107	(304)
Income before income taxes and minority interest	9,281	5,705
Income tax benefit (expense)	(3,786)	7,117
Income before minority interest	5,495	12,822
Minority interest in income of consolidated subsidiaries, net of tax	419	—
Net income	\$ 5,914	\$ 12,822

The following table sets forth statements of operations data as a percentage of revenues for each of the periods indicated:

	Three Months Ended September 30,	
	2008	2007
Revenues	100.0%	100.0%
Cost and expenses		
Instructional costs and services	61.4	58.6
Selling, administrative, and other operating expenses	25.7	27.0
Product development expenses	2.5	4.3
Total costs and expenses	89.6	89.9
Income from operations	10.4	10.1
Interest income (expense), net	0.1	(0.5)
Income before income taxes and minority interest	10.5	9.6
Income tax benefit (expense)	(4.3)	12.0
Income before minority interest	6.2	21.6
Minority interest in income of consolidated subsidiaries, net of tax	0.5	—
Net income	6.7%	21.6%

We have included below a discussion of our operating results and significant items which explain the material changes in our operating results during the last three months versus the prior year.

Comparison of the Three Months Ended September 30, 2008 and Three Months Ended September 30, 2007

Revenues. Our revenues for the three months ended September 30, 2008 were \$88.6 million, representing an increase of \$29.2 million, or 49.3%, as compared to revenues of \$59.4 million for the three months ended September 30, 2007. Average enrollments increased 42.4% to 56,233 for the three months ended September 30, 2008 from 39,493 for the three months ended September 30, 2007. The increase in average

enrollments was primarily attributable to 37.5% enrollment growth in existing states. New school openings in Hawaii, Indiana, Oregon, and South Carolina contributed approximately 4.8% to enrollment growth. In new and existing states combined, high school enrollments contributed approximately 15.3% to enrollment growth. High school enrollments constituted approximately 20.9% of our enrollments for the three months ended September 30, 2008 as compared to 14.5% in the prior period. Also contributing to the growth in revenues was the increase in the percentage of enrollments associated with managed schools, which generate higher revenue per enrollment than non-managed school enrollments. The percentage of enrollments associated with managed schools increased to 85.4% for the three months ended September 30, 2008 from 80.8% for the three months September 30, 2007.

Instructional Costs and Services Expenses. Instructional costs and services expenses for the three months ended September 30, 2008 were \$54.4 million, representing an increase of \$19.6 million, or 56.5% as compared to instructional costs and services of \$34.8 million for the three months ended September 30, 2007. This increase was primarily attributable to a \$12.4 million increase in expenses to operate and manage the schools and a \$7.2 million increase in costs to supply books, educational materials and computers to students, including depreciation and amortization. As a percentage of revenues, instructional costs increased to 61.4% for the three months ended September 30, 2008, as compared to 58.6% for the three months ended September 30, 2007. This increase as a percentage of revenues is primarily attributable to three factors: 1) an increase in the percentage of managed school enrollments relative to total enrollments from 80.8% to 85.4%. Managed school enrollments generate more revenue than those associated with non-managed schools, but have higher instructional costs as a percentage of revenues; 2) an increase in the percentage of high school enrollments relative to total enrollments from 14.5% to 20.9%. High school enrollments have higher costs as a percentage of revenues due to increased teacher and related services costs; and 3) incremental freight charges due to expedited student materials shipments and fuel surcharges, partially offset by reduced costs of student materials and computers.

Selling, Administrative, and Other Operating Expenses. Selling, administrative, and other operating expenses for three months ended September 30, 2008 were \$22.8 million, representing an increase of \$6.8 million, or 42.4%, as compared to selling, administrative and other operating expenses of \$16.0 million for the three months ended September 30, 2007. This increase is primarily attributable to a \$2.3 million increase in student recruiting costs, a \$0.9 million increase in personnel costs primarily due to increased headcount and a \$3.7 million increase in other expenses. As a percentage of revenues, selling, administrative, and other operating expenses decreased to 25.8% for the three months ended September 30, 2008 as compared to 27.0% for the three months ended September 30, 2007 primarily due to greater leverage on our corporate overhead and fixed selling resources. Partially offsetting this leverage were increased investments in demand generating activities and our international expansion efforts.

Product Development Expenses. Product development expenses for the three months ended September 30, 2008 were \$2.2 million, representing a decrease of \$0.3 million, or 13.1%, as compared to product development expenses of \$2.5 million for the three months ended September 30, 2007. Employee headcount and contract labor increased, but was offset by greater utilization of these resources for capitalized curriculum. As a percentage of revenues, product development expenses decreased to 2.4% for the three months ended September 30, 2008 as compared to 4.3% for the three months ended September 30, 2007 as we were able to leverage these costs over a larger revenue base generated from the growth in enrollments.

Interest income, net. Net interest income for the three months ended September 30, 2008 was \$0.1 million, as compared to a net interest expense of \$0.3 million for the three months ended September 30, 2007. The change is primarily due to interest income for the three months ended September 30, 2008 of \$0.3 million generated on our cash balances, partially offset by interest expense on capital lease obligations for the three months ended September 30, 2008 of \$0.2 million.

Income Taxes. Income tax expense for the three months ended September 30, 2008 was \$3.8 million, or 40.8% of income before income taxes, as compared to an income tax benefit of \$7.1 million for the three months ended September 30, 2007. The income tax benefit for the three months ended September 30, 2007

reflects a \$9.7 million tax benefit as we were able to reverse the valuation allowance on net deferred tax assets generated by our net operating losses that were fully reserved in prior periods. Had that reversal not occurred, we would have recorded an income tax expense of \$2.6 million, or 45.1% of income before income taxes.

Minority interest. Minority interest for the three months ended September 30, 2008 was \$0.4 million, reflecting losses attributable to shareholders in our joint venture. There was no minority interest for the three months ended September 30, 2007.

Liquidity and Capital Resources

As of September 30, 2008 and June 30, 2008, we had cash and cash equivalents of \$49.0 million and \$71.7 million, respectively. We financed our operating activities and capital expenditures during the three months ended September 30, 2008 primarily through the use of cash on hand and capital lease financing.

Our cash requirements consist primarily of day-to-day operating expenses, capital expenditures and contractual obligations with respect to facility leases, capital equipment leases and other operating leases. Capital expenditures are expected to increase in the next several years as we invest in additional courses, new releases of existing courses and additional computers to support increases in virtual school enrollments. We expect that our capital expenditures in the 12 months ended September 30, 2009 will be approximately \$35 million to \$45 million for student computers, curriculum development and related systems. We expect to be able to fund these capital expenditures with cash on hand, cash generated from operations and capital lease financing. We lease all of our office facilities. We expect to make future payments on existing leases from cash generated from operations. Based on our current operating and capital expenditure forecasts, we believe that the combination of funds currently available and funds to be generated from operations will be adequate to finance our ongoing operations for at least the next twelve months.

Operating Activities

Net cash used in operating activities for the three months ended September 30, 2008 and 2007 was \$22.6 million and \$2.7 million, respectively.

The overall increase of \$19.8 million was primarily due to a decrease in net income of \$6.9 million, a \$24.2 million increase in the amount of cash used to finance accounts receivable, a \$4.5 million increase in the use of cash in accounts payable, a \$3.5 million use of cash in other assets, and a \$2.2 million adjustment for the excess tax benefit from stock compensation expense. These amounts were partially offset by a \$10.8 million change in adjustments for deferred income taxes, a \$9.3 million increase in the change in deferred revenues, a \$2.2 million increase in depreciation and amortization and \$0.6 million increase in changes in other assets and liabilities.

The increase in accounts receivable is primarily attributable to the growth in revenues as well as slower initial payments from new schools and growth in schools with slower payment trends. Accounts receivable balances tend to be at the highest levels in the first quarter as we begin billing for students and many of our billing arrangements include upfront fees. Deferred revenues are primarily a result of invoicing upfront fees, not cash payments. Deferred revenue balances tend to be highest in the first quarter, when the majority of students enroll, and are generally amortized over the course of the fiscal year. The decrease in accounts payable is primarily due to slower payments in the three months ended September 30, 2007 prior to the completion of our initial public offering.

Investing Activities

Net cash used in investing activities for the three months ended September 30, 2008 and 2007 was \$6.0 million and \$3.4 million, respectively.

Net cash used in investing activities for the three months ended September 30, 2008 was primarily due to investment in capitalized curriculum of \$3.6 million, primarily related to the production of high school courses and elementary school math courses and \$2.4 million in property and equipment. In addition, we financed purchases of \$12.5 million of computers and software, primarily for use by students, through capital leases.

Net cash used in investing activities for the three months ended September 30, 2007 was attributable to investment in capitalized curriculum of \$1.6 million, primarily related to the development of high school courses and \$1.5 million in property and equipment. In addition, we financed purchases of \$7.0 million of computers and software, primarily for use by students, through capital leases.

Financing Activities

Net cash provided by financing activities for the three months ended September 30, 2008 and 2007 was \$5.9 million and \$7.4 million, respectively.

For the three months ended September 30, 2008, net cash provided by financing activities was primarily due to the proceeds from the exercise of stock options of \$5.3 million and the excess tax benefit from stock compensation expense of \$2.2 million offset by payments on capital leases and notes payable totaling \$1.6 million. As of September 30, 2008, there were no borrowings outstanding on our \$20 million line of credit.

For the three months ended September 30, 2007, net cash provided by financing activities was primarily due to net borrowings on our line of credit of \$11.0 million offset by payments and costs of \$3.6 million.

Off Balance Sheet Arrangements, Contractual Obligations and Commitments

There were no substantial changes to our guarantee and indemnification obligations in the three months ended September 30, 2008.

Our contractual obligations consist primarily of leases for office space, capital leases for equipment and other operating leases. The total amount due under contractual obligations increased during the three months ended September 30, 2008 primarily due to approximately \$11.0 million for capital leases related to student computers.

Item 3. *Quantitative and Qualitative Disclosures About Market Risk*

Interest Rate Risk

At September 30, 2008 and June 30, 2008, we had cash and cash equivalents totaling \$49.0 million and \$71.7 million. Our excess cash has been invested primarily in U.S. treasury money market funds although we may also invest in money market accounts, government securities, corporate debt securities and similar investments. Future interest and investment income is subject to the impact of interest rate changes and we may be subject to changes in the fair value of our investment portfolio as a result of changes in interest rates.

Our short-term debt obligations under our revolving credit facility are subject to interest rate exposure, however as we had no outstanding balance on this facility as of September 30, 2008, fluctuations in interest rates would not have a material impact on our interest expense.

Foreign Currency Exchange Risk

We currently operate in a foreign country, but we do not transact a material amount of business in a foreign currency and therefore fluctuations in exchange rates will not have a material impact on our financial statements. However, we continue to pursue opportunities in international markets. If we enter into any material transactions in a foreign currency or establish or acquire any subsidiaries that measure and record their financial condition and results of operation in a foreign currency, we will be exposed to currency transaction risk and/or currency translation risk. Exchange rates between U.S. dollars and many foreign currencies have fluctuated significantly over the last few years and may continue to do so in the future. Accordingly, we may decide in the future to undertake hedging strategies to minimize the effect of currency fluctuations on our financial condition and results of operations.

Item 4T. Controls and Procedures

Evaluation of Disclosure Controls and Procedures

We maintain disclosure controls and procedures (as defined in Exchange Act Rule 13a-15(f)) that are designed to ensure that information required to be disclosed in our Exchange Act reports is recorded, processed, summarized and reported within the time periods specified in the SEC's rules and forms and that such information is accumulated and communicated to our management, including our Chief Executive Officer and Chief Financial Officer, as appropriate, to allow timely decisions regarding required disclosure. In designing and evaluating the disclosure controls and procedures, management recognizes that any controls and procedures, no matter how well designed and operated, can provide only reasonable assurance of achieving the desired control objectives, and management necessarily was required to apply its judgment in evaluating the cost benefit relationship of possible controls and procedures.

We carried out an evaluation, under the supervision and with the participation of management, including our Chief Executive Officer and Chief Financial Officer, of the effectiveness of our disclosure controls and procedures as required by Rules 13a-15(e) and 15d-15(e) of the Exchange Act. Based on this review, our Chief Executive Officer and Chief Financial Officer concluded that these disclosure controls and procedures were effective as of September 30, 2008 at the reasonable assurance level.

Changes in Internal Control Over Financial Reporting

During the quarter ended September 30, 2008, there were no changes in our internal control over financial reporting that have materially affected, or are reasonably likely to materially affect, our internal control over financial reporting.

Part II. Other Information

Item 1. Legal Proceedings.

In the ordinary conduct of our business, we are subject to lawsuits and other adjudicative proceedings from time to time, including but not limited to, employment and contractual disputes. In addition, a lawsuit has been brought by the teacher's union that seeks the closure of the virtual public school we serve in Illinois. This lawsuit is described in the condensed consolidated financial statements and in our Annual Report .

Item 1A. Risk Factors

There have been no material changes to the risk factors disclosed in “Risk Factors” in Part I, Item 1A, of our Annual Report on Form 10-K for the fiscal year ended June 30, 2008.

Item 2. Unregistered Sales of Equity Securities and Use of Proceeds.

None.

Item 3. Defaults Upon Senior Securities.

None.

Item 4. Submission of Matters to a Vote of Security Holders.

None.

Item 5. Other Information.

None.

Item 6. Exhibits.

(a) *Exhibits.*

The exhibits listed on the accompanying Exhibit Index are filed as part of this report and such Exhibit Index is incorporated herein by reference.

SIGNATURES

Pursuant to the requirements of the Securities Exchange Act of 1934, the registrant has duly caused this report to be signed on its behalf by the undersigned thereunto duly authorized.

K12 INC.

Date: November 13, 2008

/s/ Ronald J. Packard

Ronald J. Packard

Chief Executive Officer

(Principal Executive Officer and Authorized
Signatory)

/s/ John F. Baule

John F. Baule

Chief Operating Officer and Chief Financial Officer

(Principal Financial Officer and Authorized
Signatory)

EXHIBIT INDEX

Number

- 10.1* Form of Indemnification Agreement for Non-Management Directors and for Officers of K12 Inc.
- 31.1* Certification of Principal Executive Officer Required Under Rule 13a-14(a) of the Securities Exchange Act of 1934, as amended.
- 31.2* Certification of Principal Financial Officer Required Under Rule 13a-14(a) of the Securities Exchange Act of 1934, as amended.
- 32* Certification of Principal Executive Officer and Principal Financial Officer Required Under Rule 13a-14(b) of the Securities Exchange Act of 1934, as amended, and 18 U.S.C. Section 1350.

* Filed herewith.

INDEMNIFICATION AGREEMENT

This Indemnification Agreement (this "Agreement") is made as of _____ (the "Effective Date") by and between K12 Inc., a Delaware corporation (the "Company"), and _____ who serves as a director and/or officer of the Company ("Indemnitee").

WHEREAS, highly competent persons have become more reluctant to serve corporations as directors or officers unless they are provided with adequate protection through insurance and/or indemnification against the risks of claims being asserted against them arising out of their service to and activities on behalf of such corporations;

WHEREAS, the board of directors of the Company (the "Board") has determined that, in order to help attract and retain qualified individuals as directors and officers, the best interests of the Company and its investors will be served by attempting to maintain, on an ongoing basis, at the Company's sole expense, insurance to protect persons serving the Company and its subsidiaries as directors or officers from certain liabilities. Although the furnishing of such insurance has been a customary and widespread practice among United States-based corporations and other business enterprises for many years, the Company believes that, given current market conditions and trends, such insurance may be available to it in the future only at higher premiums and with more exclusions. At the same time, directors and officers in service to corporations or business enterprises are being increasingly subjected to expensive and time-consuming litigation;

WHEREAS, the Board has determined that, in order to help attract and retain qualified individuals as directors and officers, the best interests of the Company and its investors will be served by assuring such individuals that the Company will indemnify them to the maximum extent permitted by law;

WHEREAS, the Third Amended and Restated Certificate of Incorporation (the "Certificate of Incorporation") of the Company permit, and the Amended and Restated Bylaws (the "Bylaws") of the Company require, indemnification of the officers and directors of the Company, and Indemnitee may also be entitled to indemnification pursuant to the Delaware General Corporation Law ("DGCL"); and

WHEREAS, the Certificate of Incorporation, the Bylaws and the DGCL expressly provide that the indemnification provisions set forth therein are not exclusive, and thereby contemplate that contracts may be entered into between the Company and its directors and officers with respect to indemnification and the advancement of defense costs;

WHEREAS, the Board has determined that the increased difficulty in attracting and retaining such persons is detrimental to the best interests of the Company's investors and that the Company should act to assure such persons that there will be increased certainty of such protection in the future;

WHEREAS, it therefore is reasonable, prudent and necessary for the Company contractually to obligate itself to indemnify, and to advance defense costs on behalf of, such

persons to the fullest extent permitted by applicable law so that they will serve or continue to serve the Company free from undue concern that they will not be so indemnified;

WHEREAS, this Agreement is a supplement to and in furtherance of the Certificate of Incorporation, Bylaws and any resolutions adopted pursuant thereto, and shall not be deemed a substitute therefor, nor shall it be deemed to diminish or abrogate any rights of Indemnitee thereunder;

WHEREAS, the Board recognizes that the Indemnitee does not regard the protection available under the Company's Certificate of Incorporation, the Bylaws and insurance program as adequate in the present circumstances, and may not be willing to serve or continue to serve as a director, officer or in such other capacity as the Company may request without adequate protection, and the Company desires Indemnitee to serve in such capacity; and

WHEREAS, Indemnitee is willing to serve, and continue to serve, as a member of the Board (and any committee thereof) or as an officer of the Company, on the condition that he or she be indemnified as provided for herein.

NOW, THEREFORE, in consideration of the premises and the covenants contained herein, the Company and Indemnitee do hereby covenant and agree as follows:

1. **Services to the Company.** Indemnitee will serve or continue to serve, at the will of the Company, as a director or officer of the Company for so long as Indemnitee is duly elected or appointed or until Indemnitee tenders his or her resignation. This Agreement shall not serve as a binding commitment on the part of Indemnitee to continue to serve in such capacity, or on the part of the Company to cause him or her to be nominated to successive terms as a director or officer or to not otherwise be removed for cause or without cause, as permitted under law.

2. **Definitions.** As used in this Agreement:

(a) "Beneficial Owner" shall have the meaning given to such term in Rule 13d-3 issued under the Exchange Act (as defined below); provided, however, that Beneficial Owner shall exclude any Person becoming a Beneficial Owner by reason of the stockholders of the Company approving a merger of the Company with another entity.

(b) A "Change in Control" shall be deemed to occur upon the earliest to occur after the date of this Agreement of any of the following events:

(i) Acquisition of Stock by Third Party. Any Person (as defined below, but excluding any subsidiary or employee benefit plan of the Company), subsequent to the date of this Agreement, becomes the Beneficial Owner, directly or indirectly, of securities of the Company representing fifty percent (50%) or more of the combined voting power of the Company's then outstanding securities entitled to vote generally in the election of directors, unless (1) the change in the relative Beneficial Ownership of the Company's securities by any Person results solely from a reduction in the aggregate number of outstanding shares of securities entitled to vote generally in the election of directors, or (2) such acquisition was approved in advance by the Continuing Directors (as defined below) and such acquisition would not constitute a Change in Control under part (iii) of this definition;

(ii) Change in Board of Directors. Individuals who, as of the date hereof, constitute the Board, and any new director whose election by the Board or nomination for election by the Company's stockholders was approved by a vote of at least two thirds of the directors then still in office who were directors on the date hereof or whose election for nomination for election was previously so approved (collectively, the "Continuing Directors"), cease for any reason to constitute at least a majority of the members of the Board;

(iii) Corporate Transactions. The effective date of a reorganization, merger or consolidation of the Company (a "Business Combination"), in each case, unless, following such Business Combination: (1) all or substantially all of the individuals and entities who were the Beneficial Owners of securities entitled to vote generally in the election of directors immediately prior to such Business Combination beneficially own, directly or indirectly, more than fifty one percent (51%) of the combined voting power of the then outstanding securities entitled to vote generally in the election of directors of the Company resulting from such Business Combination (including, without limitation, a corporation which as a result of such transaction owns the Company or all or substantially all of the Company's assets either directly or through one or more Subsidiaries) in substantially the same proportions as their ownership, immediately prior to such Business Combination, of the securities entitled to vote generally in the election of directors; (2) no Person (excluding any corporation resulting from such Business Combination) is the Beneficial Owner, directly or indirectly, of fifteen percent (15%) or more of the combined voting power of the then outstanding securities entitled to vote generally in the election of directors of such corporation except to the extent that such ownership existed prior to the Business Combination; and (3) at least a majority of the Board resulting from such Business Combination were Continuing Directors at the time of the execution of the initial agreement, or of the action of the Board, providing for such Business Combination;

(iv) Liquidation. The approval by the stockholders of the Company of a complete liquidation of the Company or an agreement or series of agreements for the sale or disposition by the Company of all or substantially all of the Company's assets, other than factoring the Company's current receivables or escrows due (or, if such approval is not required, the decision by the Board to proceed with such a liquidation, sale, or disposition in one transaction or a series of related transactions); or

(v) Other Events. There occurs any other event of a nature that would be required to be reported in response to Item 6(e) of Schedule 14A of Regulation 14A (or a response to any similar item on any similar schedule or form) promulgated under the Exchange Act, whether or not the Company is then subject to such reporting requirement.

(c) "Corporate Status" shall describe the status of a person who is or was a director, officer, trustee, partner, member, fiduciary, employee or agent of the Company or of any other Enterprise (as defined below), which such person is or was serving at the request of the Company.

(d) "Disinterested Director" shall mean a director of the Company who is not and was not a party to the Proceeding (as defined below) in respect of which indemnification is sought by Indemnitee.

(e) "Enterprise" shall mean any corporation, limited liability company, partnership, joint venture, trust, employee benefit plan or other enterprise of which Indemnitee is or was serving at the request of the Company as a director, officer, trustee, administrator, partner, member, fiduciary, employee or agent.

(f) "Exchange Act" shall mean the Securities Exchange Act of 1934, as amended.

(g) "Expenses" shall include all reasonable attorneys' fees, retainers, court costs, transcript costs, fees of experts and accountants, witness fees, travel expenses, duplicating costs, printing and binding costs, telephone charges, postage, delivery service fees, and all other disbursements or expenses of the types and amounts customarily incurred in connection with prosecuting, defending, preparing to prosecute or defend, investigating, being or preparing to be a witness in, or otherwise participating in, a Proceeding. Expenses also shall include costs incurred in connection with any appeal resulting from any Proceeding, including, without limitation, the premium, security for, and other costs relating to any bond, supersedeas bond, or other appeal bond or its equivalent. Expenses, however, shall not include amounts paid in settlement by Indemnitee or the amount of judgments or fines against Indemnitee.

(h) "Independent Counsel" shall mean a law firm, or a member of a law firm, that is experienced in matters of corporation law and neither presently is, nor in the past five (5) years has been, retained to represent: (i) the Company or Indemnitee in any matter material to either such party (other than with respect to matters concerning the Indemnitee under this Agreement, or other indemnitees under similar indemnification agreements), or (ii) any other party to the Proceeding giving rise to a claim for indemnification hereunder. Notwithstanding the foregoing, the term "Independent Counsel" shall not include any person who, under the applicable standards of professional conduct then prevailing, would have a conflict of interest in representing either the Company or Indemnitee in an action to determine Indemnitee's rights under this Agreement.

(i) References to "finer" shall include any excise tax assessed on a person with respect to any employee benefit plan pursuant to applicable law.

(j) References to "serving at the request of the Company" shall include any service provided at the request of the Company as a director, officer, trustee, administrator, partner, member, fiduciary, employee or agent of the Company which imposes duties on, or involves services by, such director, officer, trustee, administrator, partner, member, fiduciary, employee or agent with respect to an employee benefit plan, its participants or beneficiaries.

(k) "Person" shall have the meaning set forth in Sections 13(d) and 14(d) of the Exchange Act; provided, however, that Person shall exclude (i) the Company and (ii) any trustee or other fiduciary holding securities under an employee benefit plan of the Company or a subsidiary of the Company.

(l) Any action taken or omitted to be taken by a person for a purpose which he or she reasonably believed to be in the interests of the participants and beneficiaries of an employee benefit plan shall be deemed to have been taken in "good faith" and for a purpose

which is "not opposed to the best interests of the Company", as such terms are referred to in this Agreement and used in the DGCL.

(m) The term "Proceeding" shall include any threatened, pending or completed action, suit, arbitration, alternate dispute resolution mechanism, investigation, inquiry, administrative hearing or any other actual, threatened or completed proceeding, whether brought in the right of the Company or otherwise and whether of a civil, criminal, administrative or investigative nature, including any related appeal, in which Indemnitee was, is or will be involved as a party or witness or otherwise by reason of the fact that Indemnitee is or was a director, officer, trustee, administrator, partner, member, fiduciary, employee or agent of the Company, by reason of any action taken or not taken by him or her while acting as director, officer, trustee, administrator, partner, member, fiduciary, employee or agent of the Company, or by reason of the fact that he or she is or was serving at the request of the Company as a director, officer, trustee, administrator, partner, member, fiduciary, employee or agent of any other Enterprise, in each case whether or not serving in such capacity at the time any liability or expense is incurred for which indemnification, reimbursement, or advancement of expenses can be provided under this Agreement.

3. Indemnity in Third-Party Proceedings. The Company shall indemnify and hold harmless Indemnitee in accordance with the provisions of this Section 3 if Indemnitee is made, or is threatened to be made, a party to or a participant in (as a witness or otherwise) any Proceeding, other than a Proceeding by or in the right of the Company to procure a judgment in its favor. Pursuant to this Section 3, Indemnitee shall be indemnified and held harmless against all judgments, fines, penalties, amounts paid in settlement, if such settlement is approved in writing in advance by the Company, which approval shall not be unreasonably withheld, (including, without limitation, all interest, assessments and other charges paid or payable in connection with or in respect of any of the foregoing) (collectively, "Losses") and Expenses actually and reasonably incurred by Indemnitee or on his or her behalf in connection with such Proceeding or any action, discovery event, claim, issue or matter therein or related thereto, if Indemnitee acted in good faith, for a purpose which he or she reasonably believed to be in or not opposed to the best interests of the Company and, in the case of a criminal Proceeding, in addition, had no reasonable cause to believe that his or her conduct was unlawful.

4. Indemnity in Proceedings by or in the Right of the Company. The Company shall indemnify Indemnitee in accordance with the provisions of this Section 4 if Indemnitee is made, or is threatened to be made, a party to or a participant in (as a witness or otherwise) any Proceeding by or in the right of the Company to procure a judgment in its favor. Pursuant to this Section 4, Indemnitee shall be indemnified and held harmless against all Expenses actually and reasonably incurred by him or her or on his or her behalf in connection with the defense or settlement of such Proceeding or any action, discovery event, claim, issue or matter therein or related thereto, if Indemnitee acted in good faith, for a purpose which he or she reasonably believed to be in or not opposed to the best interests of the Company. No indemnification, however, shall be made under this Section 4 in respect of any claim, issue or matter as to which Indemnitee shall have been adjudged to be liable to the Company, unless and only to the extent that the court in which the Proceeding was brought or, if no Proceeding was brought in a court, any court of competent jurisdiction, determines upon application that, in view of all the

circumstances of the case, Indemnitee fairly and reasonably is entitled to indemnification for such portion of the Expenses as the court deems proper.

5. Indemnification for Expenses Where Indemnitee is Wholly or Partly Successful. Notwithstanding and in addition to the provisions of Section 3 and 4 of this Agreement, to the extent that Indemnitee is a party to a Proceeding and is successful, on the merits or otherwise, in the defense of any claim, issue or matter therein, the Company shall indemnify and hold harmless Indemnitee against all Expenses actually and reasonably incurred by him or her or on his or her behalf in connection with such successful defense. For the avoidance of doubt, if Indemnitee is not wholly successful in such Proceeding but is successful, on the merits or otherwise, as to one or more but less than all claims, issues or matters in such Proceeding, the Company shall indemnify Indemnitee against all Expenses actually and reasonably incurred by him or her or on his or her behalf in connection with each successfully resolved claim, issue or matter. For purposes of this Section 5, and without limitation, the termination of any claim, issue or matter in such a Proceeding by withdrawal or dismissal, with or without prejudice, shall be deemed to be a successful result as to such claim, issue or matter.

6. Indemnification for Expenses of a Witness. To the extent that Indemnitee is, by reason of his or her Corporate Status, a witness in or otherwise incurs Expenses in connection with any Proceeding to which Indemnitee is not a party, he or she shall be indemnified and held harmless by the Company against all Expenses actually and reasonably incurred by him or her or on his or her behalf in connection therewith.

7. Additional Indemnification.

(a) Notwithstanding any limitation in Sections 3, 4, or 5 hereof or in Section 145 of the DGCL or other applicable statutory provision, the Company shall indemnify Indemnitee to the fullest extent permitted by law if Indemnitee is made, or is threatened to be made, a party to any Proceeding (including a Proceeding by or in the right of the Company to procure a judgment in its favor) against all Losses and Expenses actually and reasonably incurred by Indemnitee in connection with the Proceeding, provided that no indemnification shall be made under this Section 7(a) on account of Indemnitee's conduct which constitutes a breach of Indemnitee's duty of loyalty to the Company or its investors or is an act or omission not in good faith or which involves intentional misconduct or a knowing violation of the law.

(b) For purposes of Sections 7(a), the meaning of the phrase "to the fullest extent permitted by law" shall include, but not be limited to:

(i) to the fullest extent authorized or permitted by the then-applicable provisions of the DGCL or other applicable statutory provision, that authorize or contemplate indemnification by agreement, or the corresponding provision of any amendment to or replacement of the DGCL or other applicable statutory provision, and

(ii) to the fullest extent authorized or permitted by any amendments to or replacements of the DGCL or other applicable statutory provision, adopted after the date of this Agreement that increase the extent to which a corporation limited liability company or

partnership, as applicable, may indemnify its officers, directors or persons holding similar fiduciary responsibilities.

(c) Indemnitee shall be entitled to the prompt payment of all Expenses reasonably incurred in enforcing successfully (fully or partially) this Agreement.

8. Contribution. To the fullest extent permissible under applicable law, if the indemnification provided for in this Agreement is unavailable to Indemnitee in whole or in part for any reason whatsoever, the Company, in lieu of indemnifying Indemnitee, shall contribute to the amount incurred by Indemnitee, whether for judgments, fines, penalties, excise taxes, amounts paid or to be paid in settlement and/or for Expenses, in connection with any claim relating to an indemnifiable event under this Agreement, in such proportion as is deemed fair and reasonable in light of all of the circumstances of such Proceeding in order to reflect (i) the relative benefits received by the Company, on the one hand, and Indemnitee, on the other, as a result of the event(s) and/or transaction(s) giving cause to such Proceeding; and/or (ii) the relative fault of the Company, on the one hand (and its directors, officers, employees and agents) and Indemnitee, on the other, in connection with such event(s) and/or transaction(s).

9. Exclusions. Notwithstanding any provision in this Agreement, the Company shall not be obligated under this Agreement to make any indemnity in connection with any claim made against Indemnitee:

(a) for which payment actually has been received by or on behalf of Indemnitee under any insurance policy or other indemnity provision, except with respect to any excess beyond the amount actually received under such insurance policy or other indemnity provision;

(b) for an accounting of profits made from the purchase and sale (or sale and purchase) by Indemnitee of securities of the Company or any subsidiary of the Company within the meaning of Section 16(b) of the Exchange Act, as amended, or similar provisions of state blue sky law, state statutory law or common law;

(c) prior to a Change in Control, in connection with any Proceeding (or any part of any Proceeding) initiated by Indemnitee, including any Proceeding (or any part of any Proceeding) initiated by Indemnitee against the Company (other than any Proceeding referred to in Sections 14(d) or (e) below or any other Proceeding commenced to recover any Expenses referred to in Section 7(c) above) or its directors, officers, employees or other indemnitees, unless (i) the Board authorized the Proceeding (or any part of any Proceeding) prior to its initiation or (ii) the Company provides the indemnification, in its sole discretion, pursuant to the powers vested in the Company under applicable law; or

(d) if the funds at issue were paid pursuant to a settlement approved by a court and indemnification would be inconsistent with any condition with respect to indemnification expressly imposed by the court in approving the settlement.

10. Advances of Expenses; Defense of Claim.

(a) The Company shall advance pursuant to this Section 10(a) the Expenses incurred by Indemnitee in connection with any Proceeding within thirty (30) days after the receipt by the Company of a written statement or statements requesting such advances from time to time, whether prior to or after final disposition of any Proceeding. Advances shall be unsecured and interest free. Advances shall be made without regard to Indemnitee's ability to repay such advances. Advances shall include any and all reasonable Expenses incurred pursuing an action to enforce such right to receive advances. Notwithstanding any provision of this Agreement to the contrary, the Indemnitee shall be entitled to advances of Expenses incurred by him or her or on his or her behalf in connection with a Proceeding that Indemnitee claims is covered by Sections 3 and 4 hereof, prior to a final determination of eligibility for indemnification and prior to the final disposition of the Proceeding, upon the execution and delivery to the Company of an undertaking by or on behalf of the Indemnitee providing that the Indemnitee will repay such advances to the extent that it ultimately is determined that Indemnitee is not entitled to be indemnified by the Company. This Section 10(a) shall not apply to any claim made by Indemnitee for which indemnity is excluded pursuant to Section 9.

(b) The Company will be entitled to participate in the Proceeding at its own expense.

(c) The Company shall not settle any action, claim or Proceeding (in whole or in part) which would impose any Expense, judgment, fine, penalty or limitation on the Indemnitee without the Indemnitee's prior written consent, which consent shall not be unreasonably withheld.

11. Procedure for Notification and Application for Indemnification.

(a) Within sixty (60) days after the actual receipt by Indemnitee of written notice that he or she is a party to or is requested to be a participant in (as a witness or otherwise) any Proceeding, Indemnitee shall submit to the Company a written notice identifying the Proceeding. The failure by the Indemnitee to notify the Company within such sixty (60) day period will not relieve the Company from any liability which it may have to Indemnitee (i) other than under this Agreement, and (ii) under this Agreement, provided that if the Company can establish that such failure to notify the Company in a timely manner resulted in actual prejudice to the Company, then the Company will be relieved from liability under this Agreement only to the extent of such actual prejudice.

(b) Indemnitee shall at the time of giving such notice pursuant to Section 11(a) or thereafter deliver to the Company a written application for indemnification. Such application may be delivered at such time as Indemnitee deems appropriate in his or her sole discretion. Following delivery of such a written application for indemnification by Indemnitee, the Indemnitee's entitlement to indemnification shall be determined promptly according to Section 12(a) of this Agreement and the outcome of such determination shall be reported to Indemnitee in writing within forty-five (45) days of the submission of such application.

12. Procedure Upon Application for Indemnification.

(a) Upon written application by Indemnitee for indemnification pursuant to Section 11(b) or written statement by Indemnitee for advances of Expenses pursuant to Section 10(a), a determination with respect to Indemnitee's entitlement thereto pursuant to the mandatory terms of this Agreement, pursuant to statute, or pursuant to other sources of right to indemnity, shall be made in the specific case: (i) by a majority vote of the Disinterested Directors, whether or not such directors otherwise would constitute a quorum of the Board; (ii) by a committee of Disinterested Directors designated by a majority vote of such directors, whether or not such directors would otherwise constitute a quorum of the Board, (iii) if there are no Disinterested Directors, by Independent Counsel in a written opinion to the Board, a copy of which shall be delivered to Indemnitee or (iv) by the stockholders of the Company. Indemnitee shall reasonably cooperate with the person, persons or entity making the determination with respect to Indemnitee's entitlement to indemnification, including providing to such person, persons or entity upon reasonable advance request any documentation or information which is not privileged or otherwise protected from disclosure and which is reasonably available to Indemnitee and reasonably necessary to such determination. Any costs or Expenses (including attorneys' fees and disbursements) incurred by Indemnitee in so cooperating with the person, persons or entity making such determination shall be borne by the Company (irrespective of the determination as to Indemnitee's entitlement to indemnification) and the Company hereby indemnifies and agrees to hold Indemnitee harmless from any such costs and Expenses.

(b) If it is determined that Indemnitee is entitled to the indemnification requested by the Indemnitee in a written application submitted to the Company pursuant to Section 11(b), payment to Indemnitee shall be made within ten (10) days after such determination. All advances of Expenses requested in a written statement by Indemnitee pursuant to Section 10(a) prior to a final determination of eligibility for indemnification shall be paid in accordance with Section 10.

(c) In the event the determination of entitlement to indemnification or advancement of Expenses is to be made by Independent Counsel pursuant to Section 12(a) hereof, the Independent Counsel shall be selected as provided in this Section 12(c). If a Change in Control shall not have occurred, the Independent Counsel shall be selected by the Board, and the Company shall give written notice to Indemnitee advising him or her of the identity of the Independent Counsel so selected. If a Change in Control shall have occurred, the Independent Counsel shall be selected by Indemnitee (unless Indemnitee shall request that such selection be made by the Board, in which event the preceding sentence shall apply), and Indemnitee shall give written notice to the Company advising it of the identity of the Independent Counsel so selected. In either event, Indemnitee or the Company, as the case may be, may, within ten (10) days after such written notice of selection shall have been received, deliver to the Company or to Indemnitee, as the case may be, a written objection to such selection; provided, however, that such objection may be asserted only on the ground that the Independent Counsel so selected does not meet the requirements of "Independent Counsel" as defined in Section 2 of this Agreement, and the objection shall set forth with particularity the factual basis of such assertion. Absent a proper and timely objection, the person so selected shall act as Independent Counsel. If a written objection is made and substantiated, the Independent Counsel so selected may not serve as Independent Counsel unless and until such objection is withdrawn or a court of competent

jurisdiction has determined that such objection is without merit. If, within twenty (20) days after submission by Indemnitee of a written request for advancement of Expenses or indemnification pursuant to Section 10(a) or 11(b) hereof, no Independent Counsel shall have been selected and not objected to, either the Company or Indemnitee may petition a court of competent jurisdiction for resolution of any objection which shall have been made by the Company or Indemnitee to the other's selection of Independent Counsel and/or for the appointment as Independent Counsel of a person selected by the court or by such other person as the court shall designate, and the person with respect to whom all objections are so resolved or the person so appointed shall act as Independent Counsel under Section 12(a) hereof.

(d) The Company shall pay the reasonable fees and expenses of the Independent Counsel and to fully indemnify such Independent Counsel against any and all Expenses, claims, liabilities and damages arising out of or relating to this Agreement or its engagement pursuant hereto.

(e) Upon the due commencement of any judicial proceeding or arbitration pursuant to Section 14(a) of this Agreement, any Independent Counsel shall be discharged and relieved of any further responsibility in such capacity (subject to the applicable standards of professional conduct then prevailing).

13. Presumptions and Effect of Certain Proceedings.

(a) Presumption in Favor of Indemnitee. In making a determination with respect to entitlement to indemnification or advancement of Expenses hereunder, the person or persons or entity making such determination shall presume that Indemnitee is entitled to indemnification or advancement of Expenses under this Agreement if Indemnitee has submitted an application for advancement of Expenses in accordance with Section 10(a) of this Agreement or indemnification in accordance with Section 11(b) of this Agreement, and the Company shall have the burden of proof to overcome that presumption.

(b) No Presumption Against Indemnitee. Neither the failure of the Company (including by its directors or Independent Counsel) to have made a determination prior to the commencement of any action pursuant to this Agreement nor an actual determination by the Company (including by its directors or Independent Counsel) that Indemnitee has not met the applicable standard of conduct for indemnification shall be a defense to the action or create a presumption that Indemnitee has not met the applicable standard of conduct.

(c) Sixty Day Period for Determination. If the person, persons or entity empowered or selected under Section 12 of this Agreement to determine whether Indemnitee is entitled to indemnification or advancement of Expenses shall not have made a determination within sixty (60) days after receipt by the Company of an application therefor, a determination of entitlement to indemnification or advancement of Expenses shall be deemed to have been made and Indemnitee shall be entitled to such indemnification, absent (i) a misstatement by Indemnitee of a material fact, or an omission of a material fact necessary to make Indemnitee's statement not materially misleading, in connection with the application for indemnification or advancement of Expenses, or (ii) a prohibition of such indemnification under applicable law; provided, however, that such sixty (60) day period may be extended for a reasonable time, not to exceed an

additional thirty (30) days, if the person, persons or entity making the determination with respect to entitlement to indemnification in good faith requires such additional time for the obtaining or evaluating of documentation and/or information relating thereto.

(d) No Presumption from Termination of a Proceeding. The termination of any Proceeding or of any claim, issue or matter therein, by judgment, order, settlement or conviction, or upon a plea of nolo contendere, or its equivalent, shall not of itself adversely affect the right of Indemnitee to indemnification or create a presumption that Indemnitee did not act in good faith and for a purpose which he or she reasonably believed to be in or not opposed to the best interests of the Company or, with respect to any criminal Proceeding, that Indemnitee had reasonable cause to believe that his or her conduct was unlawful.

(e) Reliance as Safe Harbor. For purposes of any determination of good faith, Indemnitee shall be deemed to have acted in good faith if Indemnitee's action or failure to act is based on the records or books of account of the Company or any Enterprise other than the Company, including financial statements, or on information supplied to Indemnitee by the officers of the Company or any Enterprise other than the Company in the course of their duties, or on the advice of legal counsel for the Company or any Enterprise other than the Company or on information or records given or reports made to the Company or any Enterprise other than the Company by an independent certified public accountant or by an appraiser or other expert selected by the Company or any Enterprise other than the Company, except if the Indemnitee knew or had reason to know that such records or books of account of the Company, information supplied by the officers of the Company, advice of legal counsel or information or records given or reports made by an independent certified public accountant or by an appraiser or other expert were materially false or materially inaccurate. The provisions of this Section 13(e) shall not be deemed to be exclusive or to limit in any way the other circumstances in which the Indemnitee may be deemed or found to have met any applicable standard of conduct.

(f) Actions of Others. The knowledge and/or actions, or failure to act, of any other director, officer, trustee, administrator, partner, member, fiduciary, employee or agent of the Company or any Enterprise other than the Company shall not be imputed to Indemnitee for purposes of determining the right to indemnification under this Agreement.

14. Remedies of Indemnitee.

(a) Adjudication/Arbitration. In the event that (i) a determination is made pursuant to Section 12 of this Agreement that Indemnitee is not entitled to indemnification under this Agreement, (ii) advancement of Expenses is not timely made pursuant to Section 10 of this Agreement, (iii) subject to Section 13(b), no determination of entitlement to indemnification shall have been made pursuant to Section 12(a) of this Agreement within sixty (60) days after receipt by the Company of the application for indemnification, or (iv) payment of indemnification is not made pursuant to Sections 3, 4, 5, 6, 7 and 12(b) of this Agreement within ten (10) days after a determination has been made that Indemnitee is entitled to indemnification, or after receipt by the Company of a written request for any additional monies owed with respect to a Proceeding as to which it already has been determined that Indemnitee is entitled to indemnification, Indemnitee shall be entitled to an adjudication by a court of his or her entitlement to such indemnification or advancement of Expenses. Alternatively, Indemnitee, at

his or her option, may seek an award in arbitration to be conducted by a single arbitrator pursuant to the Commercial Arbitration Rules of the American Arbitration Association. The Company shall not oppose Indemnitee's right to seek any such adjudication or award in arbitration.

(b) Indemnitee Not Prejudiced by Prior Adverse Determination. In the event that a determination shall have been made pursuant to Section 12(a) of this Agreement that Indemnitee is not entitled to indemnification, any judicial proceeding or arbitration commenced pursuant to this Section 14 shall be conducted in all respects as a de novo trial, or arbitration, on the merits, and Indemnitee shall not be prejudiced by reason of the prior adverse determination. In any judicial proceeding or arbitration commenced pursuant to this Section 14, the Company shall have the burden of proving Indemnitee is not entitled to indemnification or advancement of Expenses, as the case may be.

(c) Company Bound by Prior Determination. If a determination shall have been made pursuant to Section 12(a) of this Agreement that Indemnitee is entitled to indemnification, the Company shall be bound by such determination in any judicial proceeding or arbitration commenced pursuant to this Section 14, absent (i) a misstatement by Indemnitee of a material fact, or an omission of a material fact necessary to make Indemnitee's statement not materially misleading, in connection with the application for indemnification, or (ii) a prohibition of such indemnification under applicable law.

(d) Expenses. In the event that Indemnitee, pursuant to this Section 14, seeks a judicial adjudication of or an award in arbitration to enforce his or her rights under, or to recover damages for breach of, this Agreement, Indemnitee shall be entitled to recover from the Company, and shall be jointly and severally indemnified by the Company against, any and all Expenses actually and reasonably incurred by him or her in such judicial adjudication or arbitration if it shall be determined in such judicial adjudication or arbitration that Indemnitee is entitled to receive all or part of the indemnification or advancement of Expenses sought which the Company had disputed prior to the commencement of the judicial proceeding or arbitration.

(e) Advances of Expenses. If requested by Indemnitee, the Company shall (within ten (10) days after receipt by the Company of a written request therefore) advance to Indemnitee the Expenses which are incurred by Indemnitee in connection with any judicial proceeding or arbitration brought by Indemnitee for indemnification or advance of Expenses from the Company under this Agreement or under any directors' and officers' liability insurance policies maintained by the Company, if the Indemnitee has submitted an undertaking to repay such Expenses if Indemnitee ultimately is determined to not be entitled to such indemnification, advancement of Expenses or insurance recovery, as the case may be. The Indemnitee's financial ability to repay any such advances shall not be a basis for the Company to decline to make such advances.

(f) Precluded Assertions by the Company. The Company shall be precluded from asserting in any judicial proceeding or arbitration commenced pursuant to this Section 14 that the procedures and presumptions of this Agreement are not valid, binding and enforceable and shall stipulate in any such court or before any such arbitrator that the Company is bound by all the provisions of this Agreement.

15. Non-exclusivity; Survival of Rights; Insurance; Subrogation.

(a) Rights of Indemnitee Not Exclusive. The rights of indemnification and to receive advancement of Expenses as provided by this Agreement shall not be deemed exclusive of any other rights to which Indemnitee may at any time be entitled under applicable law, the Certificate of Incorporation, or the Bylaws, any agreement, vote of investors or a resolution of directors, members, partners, or otherwise. No right or remedy herein conferred by this Agreement is intended to be exclusive of any other right or remedy, and every other right and remedy shall be cumulative and in addition to every other right and remedy given hereunder or now or hereafter existing at law or in equity or otherwise. The assertion or employment of any right or remedy hereunder, or otherwise, shall not prevent the concurrent or subsequent assertion or employment of any other right or remedy.

(b) Survival of Rights. No amendment, alteration or repeal of this Agreement or of any provision hereof shall limit or restrict any right of Indemnitee under this Agreement in respect of any action taken or omitted by such Indemnitee in his or her Corporate Status prior to such amendment, alteration or repeal.

(c) Change of Law. To the extent that a change in Delaware law, whether by statute or judicial decision, permits greater indemnification or advancement of Expenses than would be afforded currently under the Certificate of Incorporation or the Bylaws, or this Agreement, it is the intent of the parties hereto that Indemnitee shall enjoy and be conferred by this Agreement the greater benefits so afforded by such change.

(d) Insurance. To the extent that the Company maintains an insurance policy or policies providing liability insurance for directors, officers, trustees, administrators partners, members, fiduciaries, employees, or agents of the Company or of any other Enterprise which such person serves at the request of the Company, Indemnitee shall be covered by such policy or policies in accordance with its or their terms to the maximum extent of the coverage available for any such director, trustee, partner, member, fiduciary, officer, employee or agent under such policy or policies. If, at the time the Company receives notice from any source of a Proceeding as to which Indemnitee is a party or a participant (as a witness or otherwise) the Company has director and officer liability insurance in effect that covers Indemnitee, the Company shall give prompt notice of such Proceeding to the insurers in accordance with the procedures set forth in the respective policies. The Company shall thereafter take all necessary or desirable action to cause such insurers to pay, on behalf of the Indemnitee, all amounts payable as a result of such Proceeding in accordance with the terms of such policies.

(e) Subrogation. In the event of any payment under this Agreement, the Company, shall be subrogated to the extent of such payment to all of the rights of recovery of Indemnitee, who shall execute all papers required and take all action necessary to secure such rights, including execution of such documents as are necessary to enable the Company to bring suit to enforce such rights.

(f) Other Payments. The Company shall not be liable under this Agreement to make any payment of amounts otherwise indemnifiable (or for which advancement is

provided hereunder) if and to the extent that Indemnitee has otherwise actually received such payment under any insurance policy, contract, agreement or otherwise.

(g) Other Indemnification. The Company's obligation to indemnify or advance Expenses hereunder to Indemnitee who is or was serving at the request of the Company as a director, officer, trustee, administrator partner, member, fiduciary, employee or agent of any other Enterprise shall be reduced by any amount Indemnitee has actually received as indemnification or advancement of expenses from such Enterprise.

16. Duration of Agreement. This Agreement shall continue until and terminate upon the later of: (a) ten (10) years after the date that Indemnitee shall have ceased to serve as any of the following: a director, officer, agent or employee of the Company or as a director, officer, trustee, administrator partner, member, fiduciary, employee or agent of any other corporation, partnership, joint venture, trust, employee benefit plan or other Enterprise which Indemnitee served at the request of the Company; or (b) one (1) year after the final termination of any Proceeding (including after the expiration of any rights of appeal) then pending in respect of which Indemnitee is granted rights of indemnification or advancement of Expenses hereunder and of any proceeding commenced by Indemnitee pursuant to Section 14 of this Agreement (including any rights of appeal of any Proceeding commenced pursuant to Section 14). This Agreement shall be binding upon the Company and its respective successors and assigns and shall inure to the benefit of Indemnitee and his or her heirs, executors and administrators.

17. Severability. If any provision or provisions of this Agreement shall be held to be invalid, illegal or unenforceable for any reason whatsoever: (a) the validity, legality and enforceability of the remaining provisions of this Agreement (including, without limitation, each portion of any Section of this Agreement containing any such provision held to be invalid, illegal or unenforceable, that is not itself invalid, illegal or unenforceable) shall not in any way be affected or impaired thereby and shall remain enforceable to the fullest extent permitted by law; (b) such provision or provisions shall be deemed reformed to the extent necessary to conform to applicable law and to give the maximum effect to the intent of the parties hereto; and (c) to the fullest extent possible, the provisions of this Agreement (including, without limitation, each portion of any Section of this Agreement containing any such provision held to be invalid, illegal or unenforceable, that is not itself invalid, illegal or unenforceable) shall be construed so as to give effect to the intent manifested thereby.

18. Enforcement.

(a) The Company expressly confirms and agrees that it has entered into this Agreement and assumed the obligations imposed on it hereby in order to induce Indemnitee to serve, or to continue to serve, as a director or officer of the Company, and the Company acknowledges that Indemnitee is relying upon this Agreement in serving or continuing to serve as a director or officer of the Company.

(b) This Agreement constitutes the entire agreement between the parties hereto with respect to the subject matter hereof and supersedes all prior agreements and understandings, oral, written and implied, between the parties hereto with respect to the subject matter hereof.

19. Modification and Waiver. No supplement, modification or amendment of this Agreement shall be binding unless executed in writing by each of the parties hereto. No waiver of any of the provisions of this Agreement shall be deemed or shall constitute a waiver of any other provisions of this Agreement nor shall any waiver constitute a continuing waiver.

20. Successors and Binding Agreement.

(a) The Company will require any successor (whether direct or indirect, by purchase, merger, consolidation, reorganization or otherwise) and any acquiror of all or substantially all of the business or assets of the Company by agreement in form and substance reasonably satisfactory to Indemnitee and/or his or her counsel, expressly to assume and agree to perform this Agreement in the same manner and to the same extent the Company would be required to perform it if no such succession had taken place.

(b) This Agreement will be binding upon and inure to the benefit of the Company and any successor to the Company, including, without limitation, any person acquiring directly or indirectly all or substantially all of the business or assets of the Company whether by purchase, merger, consolidation, reorganization or otherwise (and such successor will thereafter be deemed the "Company" for purposes of this Agreement), but will not otherwise be assignable or delegatable by the Company.

(c) This Agreement will inure to the benefit of and be enforceable by the Indemnitee's personal or legal representatives, executors, administrators, successors, heirs, distributees, legatees and other successors.

(d) This Agreement is personal in nature and neither of the parties hereto will, without the consent of the other, assign or delegate this Agreement or any rights or obligations hereunder except as expressly provided in Sections 20(a), (b) and (c). Without limiting the generality or effect of the foregoing, Indemnitee's right to receive payments hereunder will not be assignable, whether by pledge, creation of a security interest or otherwise, other than by a transfer by the Indemnitee's will, devise, a grantor's trust instrument under which the Indemnitee or his estate is the sole beneficiary, or by the laws of descent and distribution, and, in the event of any attempted assignment or transfer contrary to this Section 20(d), the Company will have no liability to pay any amount so attempted to be assigned or transferred.

21. Notices. All notices, requests, demands and other communications under this Agreement shall be in writing and shall be deemed to have been duly given if: (i) delivered by hand and receipted for by the party to whom said notice or other communication shall have been directed, on the date of such receipt, or (ii) mailed by certified or registered mail with postage prepaid, on the third business day after the date on which it is so mailed:

(a) If to Indemnitee, at the address indicated on the signature page of this Agreement, or such other address as Indemnitee subsequently shall provide in writing to the Company.

(b) If to the Company to:

K12 Inc.
2300 Corporate Park Drive
Herndon, Virginia 20171
Attention: General Counsel

or to any other address as may have been furnished to Indemnitee in writing by the Company.

22. Applicable Law and Consent to Jurisdiction. This Agreement and the legal relations among the parties shall be governed by, and construed and enforced in accordance with, the laws of the State of Delaware, without regard to its conflict of laws, principles or rules. Except with respect to any arbitration commenced by Indemnitee pursuant to Section 14 of this Agreement, the Company and Indemnitee hereby irrevocably and unconditionally (i) agree that any action or proceeding arising out of or in connection with this Agreement shall be brought only in the Chancery Court of the State of Delaware (the "Delaware Court"), and not in any other state or federal court in the United States of America or any court in any other country, (ii) consent to submit to the exclusive jurisdiction of the Delaware Court for purposes of any action or proceeding arising out of or in connection with this Agreement, (iii) irrevocably appoint, to the extent such party is not a resident of the State of Delaware, CT Corporation, 1209 Orange Street, Wilmington, New Castle County, Delaware 19808 as its agent in the State of Delaware as such party's agent for acceptance of legal process in connection with any such action or proceeding against such party with the same legal force and validity as if served upon such party personally within the State of Delaware, (iv) waive any objection to the laying of venue of any such action or proceeding in the Delaware Court, and (v) waive, and agree not to plead or to make, any claim that any such action or proceeding brought in the Delaware Court has been brought in an improper or inconvenient forum.

23. Identical Counterparts. This Agreement may be executed in one or more counterparts, each of which shall for all purposes be deemed to be an original but all of which together shall constitute one and the same Agreement. Only one such counterpart signed by the party against whom enforceability is sought needs to be produced to evidence the existence of this Agreement.

24. Miscellaneous. Use of the masculine pronoun shall be deemed to include usage of the feminine pronoun where appropriate. The headings of the paragraphs of this Agreement are inserted for convenience only and shall not be deemed to constitute part of this Agreement or to affect the construction thereof.

[The remainder of this page is intentionally left blank.]

IN WITNESS WHEREOF, the parties have caused this Agreement to be signed as of the day and year first above written.

K12 INC.

INDEMNITEE

By: _____

Name:

Title:

Name: _____

Address for Notices to Indemnitee:

CERTIFICATION OF PRINCIPAL EXECUTIVE OFFICER

I, Ronald J. Packard, certify that:

- (1) I have reviewed this quarterly report on Form 10-Q of K12 Inc.;
- (2) Based on my knowledge, this report does not contain any untrue statement of a material fact or omit to state a material fact necessary to make the statements made, in light of the circumstances under which such statements were made, not misleading with respect to the period covered by this report;
- (3) Based on my knowledge, the financial statements, and other financial information included in this report, fairly present in all material respects the financial condition, results of operations and cash flows of the registrant as of, and for, the periods presented in this report;
- (4) The registrant's other certifying officer and I are responsible for establishing and maintaining disclosure controls and procedures (as defined in Exchange Act Rules 13a-15(e) and 15d-15(e)) for the registrant and have:
 - a. Designed such disclosure controls and procedures, or caused such disclosure controls and procedures to be designed under our supervision, to ensure that material information relating to the registrant, including its consolidated subsidiaries, is made known to us by others within those entities, particularly during the period in which this report is being prepared;
 - b. Evaluated the effectiveness of the registrant's disclosure controls and procedures and presented in this report our conclusions about the effectiveness of the disclosure controls and procedures, as of the end of the period covered by this report based on such evaluation; and
 - c. Disclosed in this report any change in the registrant's internal control over financial reporting that occurred during the registrant's most recent fiscal quarter (the registrant's fourth fiscal quarter in the case of an annual report) that has materially affected, or is reasonably likely to materially affect, the registrant's internal control over financial reporting; and
- (5) The registrant's other certifying officer and I have disclosed, based on our most recent evaluation of internal control over financial reporting, to the registrant's auditors and the audit committee of the registrant's board of directors (or persons performing the equivalent functions):
 - a. All significant deficiencies and material weaknesses in the design or operation of internal control over financial reporting which are reasonably likely to adversely affect the registrant's ability to record, process, summarize and report financial information; and
 - b. Any fraud, whether or not material, that involves management or other employees who have a significant role in the registrant's internal control over financial reporting.

Date: November 13, 2008

/s/ Ronald J. Packard

Ronald J. Packard
Chief Executive Officer
(Principal Executive Officer)

CERTIFICATION OF PRINCIPAL FINANCIAL OFFICER

I, John F. Baule, certify that:

- (1) I have reviewed this quarterly report on Form 10-Q of K12 Inc.;
- (2) Based on my knowledge, this report does not contain any untrue statement of a material fact or omit to state a material fact necessary to make the statements made, in light of the circumstances under which such statements were made, not misleading with respect to the period covered by this report;
- (3) Based on my knowledge, the financial statements, and other financial information included in this report, fairly present in all material respects the financial condition, results of operations and cash flows of the registrant as of, and for, the periods presented in this report;
- (4) The registrant's other certifying officer and I are responsible for establishing and maintaining disclosure controls and procedures (as defined in Exchange Act Rules 13a-15(e) and 15d-15(e)) for the registrant and have:
 - a. Designed such disclosure controls and procedures, or caused such disclosure controls and procedures to be designed under our supervision, to ensure that material information relating to the registrant, including its consolidated subsidiaries, is made known to us by others within those entities, particularly during the period in which this report is being prepared;
 - b. Evaluated the effectiveness of the registrant's disclosure controls and procedures and presented in this report our conclusions about the effectiveness of the disclosure controls and procedures, as of the end of the period covered by this report based on such evaluation; and
 - c. Disclosed in this report any change in the registrant's internal control over financial reporting that occurred during the registrant's most recent fiscal quarter (the registrant's fourth fiscal quarter in the case of an annual report) that has materially affected, or is reasonably likely to materially affect, the registrant's internal control over financial reporting; and
- (5) The registrant's other certifying officer and I have disclosed, based on our most recent evaluation of internal control over financial reporting, to the registrant's auditors and the audit committee of the registrant's board of directors (or persons performing the equivalent functions):
 - a. All significant deficiencies and material weaknesses in the design or operation of internal control over financial reporting which are reasonably likely to adversely affect the registrant's ability to record, process, summarize and report financial information; and
 - b. Any fraud, whether or not material, that involves management or other employees who have a significant role in the registrant's internal control over financial reporting.

Date: November 13, 2008

/s/ John F. Baule

John F. Baule
Chief Financial Officer and Chief Operating Officer
(Principal Financial Officer)

The following certifications are being furnished solely to accompany the Report pursuant to 18 U.S.C. § 1350 and in accordance with SEC Release No. 33-8238. These certifications shall not be deemed “filed” for purposes of Section 18 of the Securities Exchange Act of 1934, as amended, nor shall they be incorporated by reference in any filing of the Company under the Securities Act of 1933, as amended, whether made before or after the date hereof, regardless of any general incorporation language in such filing.

Certification of Principal Executive Officer

Pursuant to 18 U.S.C. Section 1350, as created by Section 906 of the Sarbanes-Oxley Act of 2002, the undersigned officer of K12 Inc., a Delaware corporation (the “Company”), hereby certifies, to his knowledge, that:

- (1) the accompanying Quarterly Report of the Company on Form 10-Q for the period ended September 30, 2008 (the “Report”) fully complies with the requirements of Section 13(a) or Section 15(d), as applicable, of the Securities Exchange Act of 1934, as amended; and
- (2) the information contained in the Report fairly presents, in all material respects, the financial condition and results of operations of the Company.

Dated: November 13, 2008

/s/ Ronald J. Packard
Ronald J. Packard
Chief Executive Officer
(Principal Executive Officer)

Certification of Principal Financial Officer

Pursuant to 18 U.S.C. Section 1350, as created by Section 906 of the Sarbanes-Oxley Act of 2002, the undersigned officer of K12 Inc., a Delaware corporation (the “Company”), hereby certifies, to his knowledge, that:

- (1) the accompanying Quarterly Report of the Company on Form 10-Q for the period ended September 30, 2008 (the “Report”) fully complies with the requirements of Section 13(a) or Section 15(d), as applicable, of the Securities Exchange Act of 1934, as amended; and
- (2) the information contained in the Report fairly presents, in all material respects, the financial condition and results of operations of the Company.

Dated: November 13, 2008

/s/ John F. Baule
John F. Baule
Chief Financial Officer and Chief Operating Officer
(Principal Financial Officer)

A signed original of this written statement required by Section 906 has been provided to K12 Inc. and will be retained by K12 Inc. and furnished to the Securities and Exchange Commission or its staff upon request.