

**REVISED TERMS AND CONDITIONS  
OF CONTRACT  
ISSUED BY  
THE BOARD OF EDUCATION OF THE  
SCHOOL DISTRICT OF THE CITY OF MUSKEGON HEIGHTS  
TO  
MUSKEGON HEIGHTS PUBLIC SCHOOL ACADEMY SYSTEM  
CONFIRMING THE STATUS OF  
MUSKEGON HEIGHTS PUBLIC SCHOOL ACADEMY SYSTEM  
AS A  
PUBLIC SCHOOL ACADEMY  
REVISED AS OF OCTOBER 28, 2016**

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WHEREAS, the People of the State of Michigan through their Constitution have provided that schools and the means of education shall forever be encouraged and have authorized the Michigan Legislature to maintain and support a system of free public elementary and secondary schools; and

WHEREAS, all public schools in Michigan are subject to the leadership and general supervision of the State Board of Education; and

WHEREAS, the Legislature has authorized an alternative form of public school designated as a “public school academy” to be created to serve the educational needs of students and has provided that students attending these schools shall be eligible for support from the State School Aid Fund; and

WHEREAS, the Legislature has delegated to the governing boards of state public universities, community college boards, intermediate school district boards, and local school district boards, the responsibility for authorizing the establishment of public school academies; and

WHEREAS, the emergency manager for the School District of the City of Muskegon Heights (the “**Emergency Manager**”), is authorized under the Local Financial Stability and Choice Act, Public Act 436 of 2012, as amended, MCL 141.1541 to 141.1575 (the “**Act**”), to act for and in the place and stead of the Board of Education of the School District of the City of Muskegon Heights (the “**District Board**”), the authority of the District Board to exercise power for and on behalf of the School District of the City of Muskegon Heights (the “**District**”) under law is suspended and vested in the Emergency Manager under the Act, and the Emergency Manager is authorized under the Act to exercise solely, for and on behalf of the District, all other authority and responsibilities affecting the District that are prescribed by law to the District Board and superintendent of the District; and

WHEREAS, The Revised School Code, Public Act 451 of 1976, as amended, MCL 380.1 to 380.1852 (the “**Code**”), permits the District to provide educational services to residents of the District either directly or by contract with another public entity; and

WHEREAS, on behalf of the District and the District Board an emergency manager for the District considered the authorization of the System and approved the issuance of a contract to the System; and

WHEREAS, the Emergency Manager has determined under the Act that the financial conditions of the District have been corrected in a sustainable fashion and that the financial emergency within the District has been rectified, and informed the governor of the State of Michigan (the “**Governor**”) of that determination pursuant to the Act;

WHEREAS, the Emergency Manager wants to amend and approve on behalf of the District and the District Board these Revised Terms and Conditions recognizing correction of the financial conditions of the District and to facilitate the transition of the District out of receivership under the Act; and

NOW, THEREFORE, pursuant to the Code and the Act, the Emergency Manager, acting for and in the place and stead of the District Board, grants a contract conferring certain rights, franchises, privileges, and obligations of a public school academy and confirms the status of a public school academy in this state to the System. In addition, the parties agree that the granting of this Contract is subject to the following terms and conditions:

## ARTICLE I DEFINITIONS

Section 1.1. Certain Definitions. For purposes of this Contract, and in addition to the terms defined throughout this Contract, each of the following words or expressions, whenever initially capitalized, shall have the meaning set forth in this section:

- (a) “**Act**” means the Local Financial Stability and Choice Act, Public Act 436 of 2012, as amended, MCL 141.1541 to 141.1575, and any successor statute.
- (b) “**Advisory Board**” means any receivership transition advisory board in place for the District under the Act.
- (c) “**Applicable Law**” means all state and federal law applicable to public school academies.
- (d) “**Application**” means the public school academy application and supporting documentation submitted to the District for the establishment of the System.
- (e) “**Authorizing Resolution**” means the resolution incorporated into Order 2012-9 adopted on behalf of the District Board on July 9, 2012.
- (f) “**Code**” means The Revised School Code, Public Act 451 of 1976, as amended, MCL 380.1 to 380.1852.
- (g) “**Contract**” means, in addition to the definition set forth in the Code, these Terms and Conditions, the Authorizing Resolution, the Resolution, the Master Calendar, any ESP Policies, the Schedules, and the Application.
- (h) “**Director**” means an individual who is a member of the System Board.
- (i) “**District**” means the School District of the City of Muskegon Heights.
- (j) “**District Board**” means the board of education of the District. If an Emergency Manager is in place for the District under the Act, “District Board” means the Emergency Manager to the extent that the Emergency Manager is authorized to act in the place and stead of the District Board under the Act.
- (k) “**Educational Service Provider**” or “**ESP**” means an educational management organization as defined under Section 503c of the Code that has entered into a contract or agreement with the System Board for operation or management of the System, which contract has been submitted to the District Board for review as provided in Section 11.11 and has not been disapproved by the District Board,

and is consistent with any Educational Service Provider Policies adopted by the District Board, as they may be amended from time to time, and Applicable Law.

- (l) “**Educational Service Provider Policies**” or “**ESP Policies**” means any policies adopted by the District Board applicable to a Management Agreement. The District Board may at any time adopt or amend ESP Policies pursuant to amendment procedures under Article IX of these Terms and Conditions.
- (m) “**Emergency Manager**” means the individual appointed and serving under the Act as the emergency manager for the District.
- (n) “**Fund Balance Deficit**” means the System has more liabilities than assets at the end of a school fiscal year, and includes any school fiscal year where the System would have had a budget deficit but for a financial borrowing from, or monetary contribution by an Educational Service Provider or other person or entity to the System. If the System receives a gift or grant of money or financial support from an Educational Service Provider or other person or entity that does not require repayment by the System, and is not conditioned upon the actions or inactions of the System Board, then such gift or grant shall not constitute a financial borrowing or contribution for purposes of determining a Fund Balance Deficit.
- (o) “**Management Agreement**” or “**ESP Agreement**” means an agreement as defined under Section 503c of the Code that has been entered into between an ESP and the System Board for the operation and/or management of the System, which has been submitted to the District Board for review as provided in Section 11.11, and has not been disapproved by the District Board.
- (p) “**Master Calendar**” or “**MCRR**” means the Master Calendar of Reporting Requirements developed and administered by the District Board setting forth a reporting timeline for certain financial, administrative, facility, System Board, and educational information relating to the System. The District Board may, at any time and at the District Board’s sole discretion, amend the Master Calendar, provided that any amendment to the Master Calendar is presented to the Advisory Board within ten (10) days of approval (if an Advisory Board is in place for the District under the Act). If the Advisory Board does not take action on the proposed amendment to the Master Calendar within sixty (60) days, the amendment to the Master Calendar is approved. Upon amendment, changes to the Master Calendar shall automatically be incorporated into this Contract and shall be exempt from the amendment procedures under Article IX of these Terms and Conditions.
- (q) “**Resolution**” means the resolution incorporated into Order 2016-8 adopted by the Emergency Manager on October 19, 2016 establishing a revised method of selection, length of term and number of members format for public school academies. The Resolution may be amended from time to time as provided herein.



- (r) “**Schedules**” means the following Contract documents of the System: Schedule 1: Restated Articles of Incorporation, Schedule 2: First Revised Bylaws, Schedule 3: Fiscal Agent Agreement, Schedule 4: Oversight Agreement, Schedule 5: Description of Staff Responsibilities, Schedule 6: Physical Plant Description, and Schedule 7: Required Information for Public School Academies.
- (s) “**State Board**” means the State Board of Education created by Section 3 of Article 8 of the State Constitution of 1963.
- (t) “**System**” means the Muskegon Heights Public School Academy System, a Michigan nonprofit corporation, established as a public school academy pursuant to this Contract.
- (u) “**System Board**” means the Board of Directors of the System.
- (v) “**Terms and Conditions**” means this document entitled “Revised Terms and Conditions of Contract issued by the Board of Education of the School District of the City of Muskegon Heights to the Muskegon Heights Public School Academy System Confirming the Status of the Muskegon Heights Public School Academy System as a Public School Academy Revised as of October 28, 2016.”

Section 1.2. Captions. The captions and headings used in this Contract are for convenience only and shall not be used in construing the provisions of this Contract.

Section 1.3. Gender and Number. The use of any gender in this Contract shall be deemed to be or include the other genders, including neuter, and the use of the singular shall be deemed to include the plural (and vice versa) wherever applicable.

Section 1.4. Statutory Definitions. Statutory terms defined in Part 6A of the Code shall have the same meaning in this Contract.

Section 1.5. Schedules. All Schedules to this Contract are incorporated into, and made part of, this Contract.

Section 1.6. Application. The Application submitted to the District for the establishment of the System is incorporated into, and made part of, this Contract. In the event that there is an inconsistency or dispute between materials in the Application and the Contract, the language or provisions in the Contract shall control.

Section 1.7. Conflicting Contract Provisions. In the event that there is a conflict between language contained in the provisions of this Contract, the Contract shall be interpreted as follows: (i) the Resolution shall control over any other conflicting language in the Contract; (ii) the Authorizing Resolution shall control over any other conflicting language in the Contract with the exception of language in the Resolution; (iii) the Terms and Conditions shall control over any other conflicting language in the Contract with the exception of language in the Resolution and the Authorizing Resolution; and (iv) the Articles of Incorporation shall control over any other conflicting language in the Contract with the exception of language in the Resolution, Authorizing Resolution and these Terms and Conditions.

**ARTICLE II**  
**RELATIONSHIP BETWEEN THE SYSTEM AND THE DISTRICT**

Section 2.1. Independent Status of District. The District Board is an authorizing body as defined by the Code. In approving this Contract, the District Board voluntarily exercises additional powers given to the District Board under the Code. Nothing in this Contract shall be deemed to be any waiver of the District Board's powers or independent status and the System shall not be deemed to be a part of the District Board or the District.

Section 2.2. Independent Status of the System. The System is a public body corporate and governmental entity authorized by the Code. The System is organized and shall operate as a public school academy and a nonprofit corporation. The System is not a division or part of the District Board or the District. The relationship between the System and the District Board is based solely on the applicable provisions of the Code and the terms of this Contract or other agreements between the District Board and the System, if applicable.

Section 2.3. Financial Obligations of the System Are Separate From the State of Michigan, District Board and the District. Any contract, agreement, note, mortgage, loan or other instrument of indebtedness entered into by the System and a third party shall not in any way constitute an obligation, either general, special, or moral, of the State of Michigan, the District Board, or the District. Neither the full faith and credit nor the taxing power of the State of Michigan or any agency of the State of Michigan, nor the full faith and credit of the District Board or the District shall ever be assigned or pledged for the payment of any System contract, agreement, note, mortgage, loan or other instrument of indebtedness.

Section 2.4. System Has No Power To Obligate or Bind State of Michigan, the District Board or the District. The System has no authority whatsoever to enter into any contract or other agreement that would financially obligate the State of Michigan, District Board or the District, nor does the System have any authority whatsoever to make any representations to lenders or third parties, that the State of Michigan, District Board or the District in any way guarantee, are financially obligated, or are in any way responsible for any contract, agreement, note, mortgage, loan or other instrument of indebtedness entered into by the System.

**ARTICLE III**  
**ROLE OF THE DISTRICT BOARD AS AUTHORIZING BODY**

Section 3.1. District Board Resolutions. The District Board has adopted the Resolution providing for the method of selection, length of term, number of Directors and the qualification of Directors. The District Board has adopted the Authorizing Resolution which approves the issuance of this Contract. The Resolution and the Authorizing Resolution are hereby incorporated into this Contract as Exhibit A. The District Board may change the Resolution, if any proposed changes to the Resolution are presented to the Advisory Board within ten (10) days of approval (if an Advisory Board is in place for the District under the Act). If the Advisory Board does not take action on the proposed changes to the Resolution within sixty (60) days of receipt, then the changes to the Resolution shall automatically be incorporated into this Contract and shall be exempt from the amendment procedures under Article IX of these Terms and Conditions.

Section 3.2. District Board as Fiscal Agent for the System. The District Board is the fiscal agent for the System. As fiscal agent, the District Board assumes no responsibility for the financial condition of the System. The District Board is not liable for any debt or liability incurred by or on behalf of the System, or for any expenditure approved by or on behalf of the System Board. Except as provided in the Oversight Agreement and Article X of these Terms and Conditions, the District Board shall promptly, within three (3) business days of receipt, forward to the System all state school aid funds or other public or private funds received by the District Board for the benefit of the System. The responsibilities of the District Board, the State of Michigan, and the System are set forth in the Fiscal Agent Agreement incorporated as Schedule 3. While exercising duties as a fiscal agent for the System, funds of the System remain funds of the System, and are not funds of the District. Funds of the System transmitted or otherwise held by the System remain funds of the System and are not funds of the District.

Section 3.3. Oversight Responsibilities of the District Board. The District Board has the responsibility to oversee the System's compliance with the Contract and all Applicable Law. The responsibilities of the System and the District Board are set forth in the Oversight Agreement executed by the parties and incorporated as Schedule 4.

Section 3.4. Reimbursement of District Board Expenses. The System shall pay an administrative fee to reimburse the District Board for the expenses associated with the execution of its authorizing body and oversight responsibilities. The terms and conditions of the administrative fee are set forth in Schedule 4.

Section 3.5. District Board Approval of Condemnation. In the event that the System wants to acquire property pursuant to the Uniform Condemnation Procedures Act or other applicable statutes, it shall obtain express written permission for such acquisition from the District Board. The System shall submit a written request to the District Board describing the proposed acquisition and the purpose for which the System wants to acquire the property. The District Board may approve the acquisition, provided that the proposed approval of the acquisition is presented to the Advisory Board within ten (10) days of approval (if an Advisory Board is in place for the District under the Act). If the Advisory Board does not take action on the proposed acquisition within sixty (60) days of receipt, then the acquisition is approved.

Section 3.6. Authorization of Employment. The District Board authorizes the System to employ or contract directly with personnel or staff according to the position information outlined in Schedule 5. However, the System Board shall prohibit any individual from being employed by the System, an Educational Service Provider or an employee leasing company involved in the operation of the System, in more than one (1) full-time position and simultaneously being compensated at a full-time rate for each of these positions. Any employee hired by the System shall be an employee of the System for all purposes and not an employee of the District or Educational Service Provider for any purpose. With respect to any System employees, the System shall have the power and responsibility to: (i) select and engage employees; (ii) pay their wages; (iii) dismiss employees; and (iv) control the employees' conduct, including, but not limited to, the method by which the employee carries out his or her work. The System Board shall be responsible for carrying workers' compensation insurance and unemployment insurance for any System employees.

Section 3.7. District Board Review of Certain Financing Transactions. In the event that the System wants to finance the acquisition, by lease, purchase, or other means, of facilities or equipment, in excess of \$150,000, pursuant to arrangements calling for payments over a period greater than one (1) year, and which include a pledge, assignment, or direction to one or more third parties of a portion of the funds to be received by the System from the State of Michigan under Article I of The State School Aid Act of 1979, Public Act 94 of 1979, as amended, MCL 388.1601 to 388.1772, then the System shall obtain prior review for such financing from the District Board. The System shall submit a written request to the District Board describing the proposed financing transaction, and the facilities or equipment to be acquired with the proceeds thereof. If the proposed transaction is not disapproved by the District Board within sixty (60) days of submission, the District Board may still condition the decision not to disapprove on compliance by the System and any lender, lessor, seller or other party with such terms as the District Board deems appropriate under the circumstances. If the proposed transaction is disapproved, such disapproval may, but shall not be required to, state one or more conditions which, if complied with by the System and any lender, lessor, seller or other party, would cause such disapproval to be deemed withdrawn. If the District Board does not disapprove the proposed financing transaction within sixty (60) days of submission, the District Board shall submit the proposed financing transaction to the Advisory Board (if an Advisory Board is in place for the District under the Act). If the Advisory Board does not take action on the proposed financing transaction within sixty (60) days of receipt of the submission, the proposed financing transaction is not disapproved. No transaction described in this Section may be entered into by the System if the proposed transaction is disapproved by either the District Board or the Advisory Board (if an Advisory Board is in place for the District under the Act). By not disapproving or taking no action on a proposed transaction, the District Board or the Advisory Board (if an Advisory Board is in place for the District under the Act) are in no way giving approval of the proposed transaction, or representing that the System has the ability to meet or satisfy any of the terms or conditions thereof.

Section 3.8. Authorizing Body Contract Authorization Process. Pursuant to the Code, the District Board is not required to issue a contract to the System. This Contract is for a fixed term and will terminate at that end of the Contract Term set forth in Section 12.10 without any further action of either the System or the District Board. The System may seek a new contract by making a formal request to the District Board in writing at least one year prior to the end of the current Contract Term. The District Board shall provide to the System a description of the timeline and process by which the System may be considered for issuance of a new contract. The timeline and process for consideration of whether to issue a new contract to the System shall be determined by the District Board. The standards for the issuance of a new contract shall include increases in academic achievement for all groups of pupils as measured by assessments and other objective criteria established by the District Board as the most important factor of whether to issue or not issue a new contract. The District Board may change its timeline and process for issuance of a new contract at any time, and any such changes shall take effect automatically without the need for any amendment to the Contract. Within ten (10) days of approving changes to the contract authorization process, the District Board shall submit the proposed changes to the Advisory Board (if an Advisory Board is in place for the District under the Act). If the Advisory Board does not take action on the proposed changes within sixty (60) days of receipt, the proposed change is in effect. Consistent with the Code, the District Board may elect not to consider the issuance of a contract, consider reauthorization of the System and

elect not to issue a contract, or consider reauthorization of the System and issue a contract for a fixed term.

## ARTICLE IV

### REQUIREMENT THAT THE SYSTEM ACT SOLELY AS GOVERNMENTAL ENTITY

Section 4.1. Limitation on Actions in Performance of Governmental Functions. The System shall act exclusively as a governmental entity and shall not undertake any action inconsistent with its status as a public body corporate authorized to receive state school aid funds pursuant to Section 11 of Article 9 of the State Constitution of 1963.

Section 4.2. Other Permitted Activities. Consistent with the provisions of this Contract, the System is permitted to engage in lawful activities that are not in derogation of the System's mission and status of operating a public school academy or that would not jeopardize the eligibility of the System for state school aid funds.

Section 4.3. System Board Members Serve In Their Individual Capacity. All Directors of the System Board shall serve in their individual capacity, and not as a representative or designee of any other person or entity. A person who does not serve in their individual capacity, or who serves as a representative or designee of another person or entity, shall be deemed ineligible to continue to serve as a Director of the System Board. A Director who violates this Section shall be removed from office, in accordance with the removal provisions found in the Resolution or Contract Schedule 2: First Revised Bylaws. A Director serves at the pleasure of the District Board and may be removed in accordance with the Resolution.

Section 4.4. Incompatible Public Offices and Conflicts of Interest Statutes. The System shall comply with Public Act 566 of 1978, as amended, MCL 15.181 to 15.185, and Public Act 317 of 1968, as amended, MCL 15.321 to 15.330. The System Board shall ensure compliance with Applicable Law relating to conflicts of interest. Notwithstanding any other provision of this Contract, the following shall be deemed prohibited conflicts of interest for purposes of this Contract:

- (a) An individual simultaneously serving as a System Board member and as an owner, officer, director, employee or consultant of or independent contractor to an Educational Service Provider or an employee leasing company, or a subcontractor to an Educational Service Provider or an employee leasing company that has an ESP agreement with the System;
- (b) An individual simultaneously serving as a System Board member and a System employee;
- (c) An individual simultaneously serving as a System Board member and an independent contractor to the System;
- (d) An individual simultaneously serving as a System Board member and a member of the governing board of another public school; and

- (e) An individual simultaneously serving as a System Board member and a District official, employee, or paid consultant, as a representative of the District.

Section 4.5. Prohibition of Identified Family Relationships. The System Board shall prohibit specifically identified family relationships pursuant to Applicable Law and the Terms and Conditions of this Contract. Notwithstanding any other provision of this Contract, the following shall be deemed prohibited familial relationships for the purposes of this Contract:

- (a) No person shall be appointed or reappointed to serve as a System Board member if the person's mother, mother-in-law, father, father-in-law, son, son-in-law, daughter, daughter-in-law, sister, sister-in-law, brother, brother-in-law, spouse or same-sex domestic partner:
  - (i) Is employed by the System;
  - (ii) Works at or is assigned to the System;
  - (iii) Has an ownership, officer, policymaking, managerial, administrative non-clerical, or other significant role with the System's ESP or employee leasing company.

Section 4.6. Dual Employment Positions Prohibited. Any person working at the System is prohibited by law from being employed at the System in more than one full-time position and simultaneously being compensated for each position.

Section 4.7. Oath of Public Office. System Board members are public officials. Before entering upon the duties of a public school board member, each System Board member shall take, sign and file the constitutional oath of office with the District.

## **ARTICLE V CORPORATE STRUCTURE OF THE SYSTEM**

Section 5.1. Nonprofit Corporation. The System shall be organized and operated as a public school academy corporation organized under the Nonprofit Corporation Act, Public Act 162 of 1982, as amended, MCL 450.2101 to 450.3192 of the Michigan Compiled Laws. Notwithstanding any provision of the Nonprofit Corporation Act, the System shall not take any action inconsistent with the provisions of Part 6A of the Code or other Applicable Law.

Section 5.2. Articles of Incorporation. The Restated Articles of Incorporation of the System, as set forth in Schedule 1, shall be the Articles of Incorporation of the System. Any subsequent amendments to the System's Restated Articles of Incorporation shall only be incorporated into this Contract pursuant to Article IX of these Terms and Conditions.

Section 5.3. Bylaws. The First Amended Bylaws of the System, as set forth in Schedule 2, shall be the Bylaws of the System. Any subsequent amendments to the System's

First Amended Bylaws shall only be incorporated into this Contract pursuant to Article IX of these Terms and Conditions.

Section 5.4. Quorum. Notwithstanding any document in the Contract that is inconsistent with this Section, including the System's Restated Articles of Incorporation and First Amended Bylaws, a quorum of the System Board that is necessary to transact business and to take action shall be a majority of the System Board members.

## **ARTICLE VI OPERATING REQUIREMENTS**

Section 6.1. Governance Structure. The System shall be organized and administered under the direction of the System Board and pursuant to the Governance Structure as set forth in Schedule 7a. The System shall have four officer positions: President, Vice-President, Secretary and Treasurer. The officer positions shall be filled by persons who are members of the System Board. A description of their duties is included in Schedule 2.

Section 6.2. Educational Goals. The System shall pursue the educational goals identified in Schedule 7b. The educational goals shall include demonstrated improved pupil academic achievement for all groups of pupils.

Section 6.3. Educational Programs. The System shall deliver the educational programs identified in Schedule 7b.

Section 6.4. Curriculum. The System shall implement and follow the curriculum identified in Schedule 7c.

Section 6.5. Method of Pupil Assessment. The System shall evaluate pupils' work based on the assessment strategies identified in Schedule 7d. To the extent applicable, the pupil performance of the System shall be assessed using at least the mathematics and reading portions of the Michigan Student Test of Educational Program (M-STEP) or the Michigan Merit Examination (MME), or any successor test, as applicable. The System shall provide the District Board with copies of reports, assessments and test results concerning the following:

- (a) educational outcomes achieved by pupils attending the System and other reports reasonably requested by the District;
- (b) an assessment of the System's student performance at the end of each academic school year or at such other times as the District Board may reasonably request;
- (c) an annual education report in accordance with the Code;
- (d) an annually administered nationally recognized norm-referenced achievement test for the System's grade configuration, or a program of testing approved by the District; and
- (e) all tests required under Applicable Law.

Section 6.6. Application and Enrollment of Students. The System shall comply with the application and enrollment policies identified in Schedule 7e. With respect to the System's

pupil admissions process, the System shall provide any documentation or information requested by the District that demonstrates the following:

(a) The System has made a reasonable effort to advertise its enrollment efforts to all pupils; and

(b) The System's open enrollment period was for a duration of at least 2 weeks and permitted the enrollment of pupils at times in the evening and on weekends.

Section 6.7. School Calendar and School Day Schedule. The System shall comply with the school calendar and school day schedule guidelines as set forth in Schedule 7f.

Section 6.8. Age or Grade Range of Pupils. The System shall comply with the age and grade ranges as stated in Schedule 7g.

Section 6.9. Employer Functions. The System shall function as the public employer of any personnel or staff of the System needed for the exercise of functions or responsibilities of the System under this Contract. Collective bargaining agreements, if any, with any employees of the System shall be the responsibility of the System. The District shall function as the public employer of any personnel or staff of the District needed for the exercise of function or responsibilities of District under this Contract. Collective bargaining agreements, if any, with any employees of the District shall remain the responsibility of the District. The Educational Service Provider shall function as the employer of any personnel or staff of the Educational Service Provider. Collective bargaining agreements, if any, with employees of the Educational Service Provider shall remain the responsibility of the Educational Service Provider. The System has the responsibility, authority, and right to manage and direct the functions, responsibilities, or services performed or exercised by the System or any employees or agents of the System. The District has the responsibility, authority, and right to manage and direct the functions, responsibilities, or services performed or exercised by the District or any employees or agents of the District. The Educational Service Provider has the responsibility, authority, and right to manage and direct the functions, responsibilities, or services performed or exercised by the Educational Service Provider or any employees or agents of the Educational Service Provider, consistent with the requirements of this Contract.

Section 6.10. Employment Relationships. Nothing in this Contract creates an employment relationship between the System and any employees of the District or employees of the Educational Service Provider. Nothing in this Contract creates an employment relationship between the District and any employees of the System or employees of the Educational Service Provider. Nothing in this Contract creates an employment relationship between the Educational Service Provider and any employees of the System or any employees of the District. Nothing in this Contract creates a joint employer relationship between two (2) or more of the following: the System, the District, or the Educational Service Provider.

Section 6.11. Accounting Standards. The System shall at all times comply with generally accepted public sector accounting principles and accounting system requirements that comply with Article I of The State School Aid Act of 1979, Public Act 94 of 1979, as amended,



MCL 388.1601 to 388.1772, and applicable State Board of Education and Department of Education rules.

Section 6.12. Annual Financial Statement Audit. The System shall conduct an annual financial statement audit prepared and reviewed by an independent certified public accountant. In accordance with timeframes set forth in the Master Calendar, the System shall submit one (1) copy of the annual financial statement audit, auditor's management letters and any responses to auditor's management letters to the District and the Advisory Board (if an Advisory Board is in place for the District under the Act).

Section 6.13. Address and Description of Physical Plant(s). The address and description of the physical plant for the System is set forth in Schedule 6. Each of the site(s) listed in Schedule 6 are under the direction and control of the System Board.

Section 6.14. Contributions and Fund Raising. The System may solicit and receive contributions and donations as permitted by law. No solicitation shall indicate that a contribution to the System is for the benefit of the District or the District Board.

Section 6.15. Disqualified Organizational or Contractual Affiliations. The System shall comply with all state and federal law applicable to public schools concerning church-state issues. To the extent disqualified under the state or federal constitutions, the System shall not be organized by a church or other religious organization and shall not have any organizational or contractual affiliation with or constitute a church or other religious organization. Nothing in this Section shall be deemed to diminish or enlarge the civil and political rights, privileges and capacities of any person on account of his or her religious belief.

Section 6.16. Method for Monitoring System's Compliance with Applicable Law and Performance of its Targeted Educational Outcomes. The System shall perform the compliance certification duties required by the District Board and outlined in the Oversight Agreement set forth as Schedule 4. In addition to the District Board's oversight responsibilities and other reporting requirements set forth in this Contract, the System's compliance certification duties shall serve as the method for monitoring the System's compliance with Applicable Law and its performance in meeting its educational goals.

Section 6.17. Matriculation Agreements. Before the System Board approves any matriculation agreement with any public school other than the District, the System shall provide a draft copy of the agreement to the District Board for review. Any matriculation agreement entered into by the System shall be incorporated into Schedule 7 by a contract amendment pursuant to Article IX of these Terms and Conditions. Until a matriculation agreement is incorporated into the Contract, the System is prohibited from granting an enrollment priority to any student under that matriculation agreement.

Section 6.18. Postings of AYP and Accreditation Status. If required by Applicable Law, the System shall post notices to the System's homepage of its website disclosing the adequate yearly progress status and accreditation status of each school in accordance with Section 1280e of the Code.

**ARTICLE VII  
TUITION PROHIBITED**

Section 7.1. Tuition Prohibited; Fees and Expenses. The System shall not charge tuition. The System may impose fees and require payment of expenses for activities of the System where such fees and payments are not prohibited by law.

**ARTICLE VIII  
COMPLIANCE WITH PART 6A OF THE CODE AND OTHER LAWS**

Section 8.1. Compliance with Part 6A of the Code. The System shall comply with Part 6A and other parts of the Code that apply to public school academies. The parties state that a closure of the System or any site operated by the System under this Contract would result in an unreasonable hardship to pupils enrolled in the System or residing in the District, or both, because there is no general powers school district within the geographic boundaries of the District operating a public school and there are insufficient other public school options reasonably available to the pupils. The parties intend to avoid any closure of the System or a site operated by the System under Section 507 of the Code.

Section 8.2. Compliance with State School Aid Act. In order to assure that funds are available for the education of pupils, the System shall comply with all applicable provisions of Article I of The State School Aid Act of 1979, Public Act 94 of 1979, as amended, MCL 388.1601 to 388.1772.

Section 8.3. Open Meetings Act. The System Board shall conduct all of its meetings in accordance with the Open Meetings Act, Public Act 267 of 1976, as amended, MCL 15.261 to 15.275.

Section 8.4. Freedom of Information Act. The records of the System shall be records subject to the provisions of the Freedom of Information Act, Public Act 442 of 1976, as amended, MCL 15.231 to 15.246 ("FOIA"). The System Board shall designate a freedom of information coordinator to assure compliance with FOIA and other applicable law providing for public disclosure or for protection of privacy.

Section 8.5. Public Employees Relation Act. As required by the Code, the System shall comply with Public Act 336 of 1947, as amended, MCL 423.201 to 423.217. The System shall be the public employer for any employees of the System. Any organizational efforts or collective bargaining agreements with any employees of the System shall be the responsibility of the System.

Section 8.6. Prevailing Wage on State Contracts. As required by the Code, the System shall comply with Public Act 166 of, as amended, MCL 408.551 to 408.558.

Section 8.7. Uniform Budgeting and Accounting Act. The System shall comply with the Uniform Budgeting and Accounting Act, as amended, Public Act 2 of 1968, MCL 141.421 to 141.440a.

Section 8.8. Revised Municipal Finance Act. With respect to the System's borrowing money and issuance of bonds, the System shall comply with Part VI of the Revised Municipal Finance Act, as amended, Public Act 34 of 2001, MCL 141.2601 to 141.2613.

Section 8.9. Public Employee Health Benefit Act. The System shall comply with the Public Employees Health Benefit Act, Public Act 106 of 2007, as amended, MCL 124.71 to 124.85.

Section 8.10. Non-discrimination. The System shall be separately responsible for compliance with applicable laws pertaining to equal opportunity and anti-discrimination laws, including, but not limited to: the Elliott-Larsen Civil Rights Act, Public Act 453 of 1976, , as amended, MCL 37.2101 to 37.2804; the Persons with Disabilities Civil Rights Act, Public Act 22 of 1976, as amended, MCL 37.1101 to 37.1607; and Subtitle A of Title II of the Americans with Disabilities Act of 1990, Public Law 101-336, as amended, 42 USC 12101 *et seq.*

Section 8.11. Other State Laws. The System shall comply with other state laws applicable to public school academies. Nothing in this Contract shall be deemed to apply any other state law to the System.

Section 8.12. Federal Laws. The System shall comply with federal laws which are applicable to public school academies. Nothing in this Contract shall be deemed to apply any other federal law to the System.

## **ARTICLE IX AMENDMENT**

Section 9.1. Amendments. The District Board and the System acknowledge that the operation and administration of a public school academy and the improvement of educational outcomes over time will require amendment of this Contract. In order to assure a proper balance between the need for independent development of the System and the statutory responsibilities of the District Board as an authorizing body, the parties have established a flexible process for amending this Contract.

Section 9.2. Process for Amendment Initiated by the System. The System, by a majority vote of its Board of Directors, may, at any time, propose specific changes in this Contract or may propose a meeting to discuss potential revision of this Contract. The proposal will be made to the District Board.

Section 9.3. Process for Amendment Initiated by the District Board. The District Board, or an authorized designee, may, at any time, propose specific changes in this Contract or may propose a meeting to discuss potential revision of this Contract. The System Board may delegate to an officer of the System the review and negotiation of changes or amendments to this Contract. The Contract shall be amended as requested by the District Board upon a majority vote of the System Board.

Section 9.4. Submission of Amendment to Advisory Board. If an Advisory Board is in place for the District under the Act, following approval of the proposed amendment by the System and the District Board, the District Board shall present the proposed amendment to the

Advisory Board within ten (10) days of District Board approval. If the Advisory Board does not take action on the proposed amendment within sixty (60) days of receipt of the amendment from the District Board, the proposed amendment is considered approved.

Section 9.5. Final Approval of Amendments. Amendments to this Contract take effect only after they have been incorporated into the Contract in written form approved by the parties, and the Advisory Board if an Advisory Board is in place for the District under the Act, and executed by the parties.

Section 9.6. Change in Existing Law. If, after the effective date of this Contract, there is a change in Applicable Law which alters or amends rights, the responsibilities or obligations of either the System or the District Board, this Contract shall be altered or amended to reflect the change in existing law as of the effective date of such change. To the extent possible, the responsibilities and obligations of the System and the District Board shall conform to and be carried out in accordance with the change in Applicable Law.

## **ARTICLE X CONTRACT TERMINATION, SUSPENSION, AND REVOCATION**

Section 10.1. Termination by District Board. The District Board may terminate this Contract before the end of the Contract Term as follows:

- (a) Termination Caused by Change in Applicable Law. Following issuance of this Contract, if there is a change in Applicable Law that the District Board determine impairs its rights and obligations under the Contract or requires the District Board to make changes in the Contract that are not in the best interest of the District Board or the District, the District Board may, with the prior approval of the Advisory Board (if an Advisory Board is in place for the District under the Act), terminate the Contract at the end of the System's school fiscal year in which the District Board's decision to terminate is adopted.
- (b) Termination Caused By Placement of System in State School Reform/Redesign School District. If the System is notified by the State School Reform/Redesign Officer that the System will be placed in the State School Reform/Redesign School District pursuant to Section 1280c of the Code, the District Board may, with the prior approval of the Advisory Board (if an Advisory Board is in place for the District under the Act), terminate this Contract at the end of the current school year.

The revocation procedures in Section 10.5 shall not apply to a termination of this Contract under this section.

Section 10.2. Contract Suspension. The District Board's process for suspending the Contract is as follows:

- (a) District Board Action. If the District Board determines that probable cause exists to believe that the System Board (i) has placed staff or students at

risk; (ii) is not properly exercising its fiduciary obligations to protect and preserve the System's public funds and property; (iii) has lost its right to occupancy of the physical facilities described in Schedule 6, and cannot find another suitable physical facility for the System prior to the expiration or termination of its right to occupy its existing physical facilities; (iv) has failed to secure or has lost the necessary fire, health, and safety approvals as required by Schedule 6; (v) has willfully or intentionally violated this Contract or Applicable Law; or (vi) has violated Section 10.5(e) or (f), the District Board may immediately suspend the Contract, pending completion of the revocation procedures set forth in Section 10.5. A copy of the suspension notice, setting forth the grounds for suspension, shall be sent to the System Board, and the Advisory Board (if an Advisory Board is in place for the District under the Act). If this subsection is implemented, the notice and hearing procedures set forth in Section 10.5 shall be expedited as much as possible.

- (b) Disposition of State School Aid Funds. Notwithstanding any other provision of the Contract, any state school aid funds received by the District Board after a decision to suspend the Contract shall be retained by the District Board for the System until the Contract is reinstated, or shall be returned to the Michigan Department of Treasury upon request.
- (c) Immediate Revocation Proceeding. If the System Board, after receiving a notice of Contract suspension from the District Board, continues to engage in conduct or activities that are covered by the suspension notice, the District Board may immediately convene a revocation hearing in accordance with the procedures set forth in Section 10.4(e) of this Contract. The District Board may accelerate the time line for revoking the Contract, if notice of the revocation hearing is provided to the System Board and the Advisory Board at least five (5) days before the hearing. If the District Board determines that the System Board has continued to engage in conduct or activities that are covered by the suspension notice, the District Board may revoke the Charter subject to any approval required by the Advisory Board under this Article X.

Section 10.3. Statutory Grounds for Revocation. In addition to the grounds for an automatic revocation of the Contract as set forth in Section 10.7, this Contract may also be revoked by the District Board upon a determination by the District Board, pursuant to the procedures set forth in Section 10.5, that one or more of the following has occurred:

- (a) Failure of the System to demonstrate improved pupil achievement for all groups of pupils or meet the educational goals set forth in the Contract;
- (b) Failure of the System to comply with all Applicable Law;
- (c) Failure of the System to meet generally accepted public sector accounting principles and demonstrate sound fiscal stewardship; or

- (d) The existence of one or more other grounds for revocation as specified in this Contract.

Section 10.4. Other Grounds for Revocation. In addition to the statutory grounds for revocation set forth in Section 10.3 and the grounds for an automatic revocation of the Contract set forth in Section 10.7, the District Board may revoke this Contract, pursuant to the procedures set forth in Section 10.5, upon a determination that one or more of the following has occurred:

- (a) The System is insolvent, has been adjudged bankrupt, or has operated for two or more school fiscal years with a Fund Balance Deficit;
- (b) The System has insufficient enrollment to successfully operate a public school academy, or the System has lost more than fifty percent (50%) of its student enrollment from the previous school year;
- (c) The System defaults in any of the terms, conditions, promises or representations contained in or incorporated into this Contract;
- (d) The System files amendments to its Articles of Incorporation with the Michigan Department of Licensing and Regulatory Affairs, Bureau of Commercial Services without first obtaining the District Board's approval;
- (e) The District Board discovers grossly negligent, fraudulent or criminal conduct by the System's applicant(s), directors, officers, employees or agents in relation to their performance under this Contract; or
- (f) The System's applicant(s), directors, officers, employees or agents have provided false or misleading information or documentation in connection with the District Board's approval of the Application, the issuance of this Contract, or the System's reporting requirements under this Contract or Applicable Law.
- (g) The System violates the site restrictions set forth in the Contract or the System operates at a site or sites without the prior written authorization of the District Board; or
- (h) The Advisory Board (if an Advisory Board is in place for the District under the Act), the District Board, and their Trustees, officers, members, employees, agents or representatives are not included as third party beneficiaries under any Management Agreement entered into by the System for purposes of indemnifying such parties in accordance with Section 11.10 of the Terms and Conditions.

Section 10.5. District Board Procedures for Revoking Contract. The District Board's process for revoking the Contract is as follows:

- (a) Notice of Intent to Revoke. The District Board, upon reasonable belief that grounds for revocation of the Contract exist, shall notify the System Board

of such grounds by issuing the System Board a Notice of Intent to Revoke for non-compliance with the Contract or Applicable Law. The Notice of Intent to Revoke shall be in writing and shall set forth in sufficient detail the alleged grounds for revocation.

- (b) System Board's Response. Within thirty (30) days of receipt of the Notice of Intent to Revoke, the System Board shall respond in writing to the alleged grounds for revocation. The System Board's response shall be addressed to the District Board, and shall either admit or deny the allegations of non-compliance. If the System's response includes admissions of non-compliance with the Contract or Applicable Law, the System Board's response must also contain a description of the System Board's plan and time line for correcting the non-compliance with the Contract or Applicable Law. If the System's response includes a denial of non-compliance with the Contract or Applicable Law, the System's response shall include sufficient documentation or other evidence to support a denial of non-compliance with the Contract or Applicable Law. A response not in compliance with this Section shall be deemed to be non-responsive. As part of its response, the System Board may request that a meeting be scheduled with the District Board prior to a review of the System Board's response.
- (c) Plan of Correction. Within thirty (30) days of receipt of the System Board's response or after a meeting with System Board representatives, the District Board shall review the System Board's response and determine whether a reasonable plan for correcting the deficiencies can be formulated. If the District Board determines that a reasonable plan for correcting the deficiencies set forth in the Notice of Intent to Revoke can be formulated, the District Board shall develop a plan for correcting the non-compliance ("Plan of Correction"). In developing a Plan of Correction, the District Board is permitted to adopt, modify or reject any of the System Board's response for correcting the deficiencies outlined in the Notice of Intent to Revoke. Prior to issuance, the District Board shall present the proposed Plan of Correction to the Advisory Board (if an Advisory Board is in place for the District under the Act). If the Advisory Board does not take action on the Plan of Correction within sixty (60) days of receipt, then the Plan of Correction shall be in effect. The Notice of Intent to Revoke shall be closed if the District Board determines any of the following: (i) the System Board's denial of non-compliance is persuasive; (ii) the non-compliance set forth in the Notice of Intent to Revoke has been corrected by the System Board; or (iii) the System Board has successfully completed the Plan of Correction.
- (d) Plan of Correction May Include Conditions to Satisfy District Board's Contract Reconstitution Authority. As part of the Plan of Correction, the District Board may reconstitute the System in an effort to improve student educational performance and to avoid interruption of the educational

process. An attempt to improve student educational performance may include, but is not limited to, one of the following actions: (i) removal of 1 or more members of the System Board; (ii) termination of at-will board appointments of 1 or more System Board members; (iii) withdrawal of the System's authorization to contract with an ESP; or (iv) the appointment of a new System Board or a conservator/trustee to take over operations of the System.

- (e) Request for Revocation Hearing. The District Board may initiate a revocation if the District Board determines that any of the following has occurred:
- (i) the System Board has failed to respond to the Notice of Intent to Revoke as set forth in Section 10.5(b);
  - (ii) the System Board's response to the Notice of Intent to Revoke is non-responsive;
  - (iii) the System Board's response admits violations of the Contract or Applicable Law which the District Board deems cannot be remedied or cannot be remedied in an appropriate period of time, or for which the District Board determines that a Plan of Correction cannot be formulated;
  - (iv) the System Board's response contains denials that are not supported by sufficient documentation or other evidence showing compliance with the Contract or Applicable Law;
  - (v) the System Board has not complied with part or all of a Plan of Correction established in Section 10.5(c);
  - (vi) the System Board has engaged in actions that jeopardize the financial or educational integrity of the System; or
  - (vii) the System Board has been issued multiple or repeated Notices of Intent to Revoke.

The District Board shall send a copy of the request for revocation hearing to the Advisory Board (if an Advisory Board is in place for the District under the Act) and the System Board. The request for revocation shall identify the reasons for revoking the Contract.

- (f) Revocation Hearing. Within thirty (30) days of receipt of a request for revocation hearing, the District Board shall convene a revocation hearing. The District Board shall provide a copy of the notice of hearing to the System Board and the Advisory Board (if an Advisory Board is in place for the District under the Act) at least ten (10) days before the hearing. The purpose of the revocation hearing is to gather facts surrounding the District



Board's request for Contract revocation and to determine whether the Contract should be revoked. The revocation hearing shall be held at a location, date and time as determined by the District Board. Within thirty (30) days of the revocation hearing, the District Board shall make a recommendation to the District Board concerning the revocation of the Contract. A copy of the District Board's determination recommendation shall be provided to the Advisory Board (if an Advisory Board is in place for the District under the Act), the System Board, and the Michigan Department of Education.

- (g) Action By Advisory Board. If the District Board votes to revoke the Contract and an Advisory Board is in place for the District under the Act, the District Board's revocation resolution shall be presented to the Advisory Board within ten (10) days of District Board approval. If the Advisory Board does not take action on the District Board's revocation resolution within sixty (60) days of receipt, the District Board's revocation is approved.
- (h) Effective Date of Revocation; Denial of Revocation. If the District Board's revocation resolution is approved, the Contract shall be revoked effective on the date of the District Board's act of revocation, or at a later date as determined by the District Board.
- (i) Disposition of State School Aid Funds. Notwithstanding any other provision of the Contract, any state school aid funds payable for periods after revocation of the Contract may be withheld by the District Board or returned to the Michigan Department of Treasury upon request.

Section 10.6. Venue; Jurisdiction. The parties agree that all actions or proceedings arising in connection with this Contract will be tried and litigated only in the Circuit Court of Muskegon County, Michigan, the Michigan Court of Claims, or the Federal District Court for the Western District of Michigan. The parties hereby irrevocably accept for themselves and in respect of their property, generally and unconditionally, the jurisdiction of such courts. The parties irrevocably consent to the service of process out of any such courts in any such action or proceedings by the mailing of copies thereof by registered or certified mail, postage prepaid, to each such party, at its address set forth for notices in this Contract, such service to become effective ten (10) days after such mailing. The parties irrevocably waive any right they may have to assert the doctrine of forum non conveniens or to object to venue to the extent any proceedings is brought in accordance with this Section 10.6. This Section 10.6 shall not in any way be interpreted as an exception to the System's covenant not to sue contained in Section 11.3 of these Terms and Conditions.

Section 10.7. Automatic Amendment or Revocation by State of Michigan. If the District Board is notified by the State School Reform/Redesign Officer that the System is subject to closure under Part 6A of the Code ("State's Automatic Closure Notice"), then this Contract shall automatically be amended to eliminate the System's authority to operate certain age and grade levels at the site or sites identified in the State's Automatic Closure Notice. If the State's

Automatic Closure Notice includes all of the System's existing sites, then this Contract shall automatically be terminated at the end of the current school year in which the notice is received without any further action of the District Board or the System. The District Board's revocation procedures set forth in Section 10.5 do not apply to an automatic revocation initiated by the State.

Following receipt of the State's Automatic Closure Notice, the District Board shall forward a copy of the State's Automatic Closure Notice to the System Board and request a meeting with System Board representatives to discuss the System's plans and procedures for the elimination of certain age or grade levels at the identified site or sites, or if all of the System's existing sites are included in the State's Automatic Closure Notice, then wind-up and dissolution of the System corporation at the end of the current school year. All System inquiries and requests for reconsideration of the State's Automatic Revocation Notice shall be directed to the State School Reform/Redesign Officer, in a form and manner determined by the State School Reform/Redesign Office or the Michigan Department of Technology Management and Budget.

Section 10.8. Material Breach of Contract. The issuance of an order by the State School Reform/Redesign Officer, pursuant to Section 1280c of the Code, placing the System under the supervision of the State School Reform/Redesign Officer or imposing a Chief Executive Officer, may constitute a material breach of this Contract. Following the issuance of the order, the District Board shall notify the System of the material breach and request a meeting with System Board representatives to discuss the matter. To remedy the material breach, the System shall work toward the development of a corrective action plan that is acceptable to the District Board. In addition to other matters, the corrective action plan shall include the System's redesign plan prepared pursuant to Section 1280c of the Code. The development of a corrective action plan under this Section 10.8 shall not in any way limit the rights of the District Board to terminate, suspend or revoke this Contract.

Section 10.9. Appointment of Conservator/Trustee. Notwithstanding any other provision of the Contract, when the District Board determines that conditions or circumstances exist to lead the District Board to believe that the health, safety, educational or economic interest of the System or its students is at risk, the District Board may, with prior approval from the Advisory Board (if an Advisory Board is in place for the District under the Act), take immediate action against the System pending completion of the process described in Section 10.5. As part of a reconstitution, the District Board may appoint a conservator/trustee to manage the day to day operations of the System in place of the System Board. A conservator/trustee appointed by the District Board shall have all the powers and authority of the System Board under this Contract and Applicable Law. Upon the appointment of a conservator/trustee, the appointment and term of office for each System Board member shall be suspended and the conservator/trustee shall act in place of the System Board.

Section 10.10. System Dissolution Account. If the District Board terminates, revokes or fails to issue a new Contract to the System, the District Board shall notify the System that, beginning thirty (30) days after notification of the District Board's decision, the District Board shall direct up to \$10,000 from each subsequent State School Aid Fund payment, not to exceed a combined total of \$30,000, to a separate System account ("System Dissolution Account") to be used exclusively to pay the costs associated with the wind up and dissolution responsibilities of

the System. Within five (5) business days of the District Board's notice, the System Board Treasurer shall provide the District Board, in a form and manner determined by the District Board, with account detail information and authorization to direct such funds to the System Dissolution Account. The System Dissolution Account shall be under the sole care, custody and control of the System Board, and such funds shall not be used by the System to pay any other System debt or obligation until such time as all the wind-up and dissolution expenses have been satisfied.

## **ARTICLE XI PROVISIONS RELATING TO PUBLIC SCHOOL ACADEMIES**

Section 11.1. The System Budget. The System Board is responsible for establishing, approving, and amending an annual budget in accordance with the Uniform Budgeting and Accounting Act, Public Act 2 of 1968, as amended, MCL 141.421 to 141.440a. By July 1st of each year, the System Board shall submit to the District Board a copy of its annual budget for the upcoming fiscal year. The budget must detail budgeted expenditures at the object level as described in the Michigan Department of Education's Michigan School Accounting Manual. In addition, the System Board is responsible for approving all revisions and amendments to the annual budget. Within 10 business days after System Board approval, revisions or amendments to the System's budget shall be submitted to the District Board.

Notwithstanding any other provision of this Contract, in the event that the System (i) ends a fiscal year with a budget deficit; (ii) fails to comply with the Uniform Budgeting and Accounting Act or the Michigan Department of Education's Michigan School Accounting Manual; (iii) fails to ensure that persons assigned to the System to provide educational services are paid on a timely basis; or (iv) fails to ensure the timely payment of third party vendors, then the District Board, with notice to the Advisory Board (if an Advisory Board is in place for the District under the Act) and the System Board, shall have the power and authority to withhold state school aid payments payable from the State for the System and direct, on the System's behalf, the payment of System payroll or vendor obligations until such time as the District Board, in its sole discretion, determines the System's accounting or financial deficiencies to be rectified.

Section 11.2. Insurance. The System Board shall secure and maintain in its own name as the "first named insured" at all times the following insurance coverages:

- (a) real and personal property insurance covering all of the System's real and personal property, whether owned or leased;
- (b) a minimum of general liability insurance of one million dollars (\$1,000,000) per occurrence and two million dollars (\$2,000,000) aggregate, which must include sexual abuse and molestation coverage and corporal punishment coverage;
- (c) minimum automobile insurance coverage of one million dollars (\$1,000,000);

- (d) workers' compensation insurance or "workers' compensation without employees if any insurance";
- (e) School Leaders Liability insurance of one million dollars (\$1,000,000) per occurrence and three million dollars (\$3,000,000) aggregate; and
- (f) Employee Dishonesty Insurance of five hundred thousand dollars (\$500,000).

The insurance must be obtained from a licensed mutual, stock, or other responsible company licensed to do business in the State of Michigan. The System may join with other public school academies to obtain insurance if the System Board finds that such an association provides economic advantages to the System, provided that each System maintains its identity as first named insured. The System shall list the District and the District Board on the insurance policies as an additional insured on insurance coverages listed in (b), (c) and (e) above. The System shall have a provision included in all policies requiring notice to the District Board, at least thirty (30) days in advance, upon termination or non-renewal of the policy. In addition, the System shall provide copies of all insurance policies required by this Contract on site for inspection by the District Board or its designee.

When changing insurance programs or carriers, the System must provide copies of the proposed policies to the District Board, or its designee, at least thirty (30) days prior to the proposed change. The System shall not cancel its existing coverage without the prior approval of the District Board. In the event the System fails to purchase the insurance coverage required by this Section 11.2, the District Board may purchase on the System's behalf the insurance required under this Section 11.2 and subtract the total cost for placed insurance from the next state school aid payment received by the District Board for forwarding to the System.

The System may expend funds for payment of the cost of participation in an accident or medical insurance program to insure protection for pupils while attending school or participating in a school program or activity. Other insurance policies and higher minimums may be required depending upon academic offerings and program requirements.

The District's insurance carrier periodically reviews the types and amounts of insurance coverages that the System must secure in order for the District to maintain insurance coverage for the authorization and oversight of the System. In the event that the District's insurance carrier requests additional changes in coverage identified in this Section 11.2, the System agrees to comply with any additional changes in the types and amounts of coverage requested by the District's insurance carrier within thirty (30) days after notice of the insurance coverage change.

Section 11.3. Legal Liabilities and Covenant Against Suit. The System acknowledges and agrees that it has no authority to extend the full faith and credit of the District Board, the District or any other authorizing body, or to enter into a contract that would bind the District Board or the District. The System also is limited in its authority to contract by the amount of funds obtained from the state school aid fund, as provided hereunder, or from other independent sources. The System hereby covenants not to sue the Advisory Board (if an Advisory Board is in place for the District under the Act), District Board or the District, or any of its officers,

employees, agents or representatives for any matters that arise under this Contract. The Advisory Board (if an Advisory Board is in place for the District under the Act), District Board and the District do not assume any obligation with respect to any Director, employee, agent, parent, guardian, student, or independent contractor of the System, and no such person shall have the right or standing to bring suit against the Advisory Board, District Board or the District, or any of its employees, agents, or independent contractors as a result of the issuing, overseeing, suspending, terminating or revoking of this Contract, or as a result of not issuing a new Contract at the end of the term of this Contract.

Section 11.4. Lease or Deed for Proposed Locations. The System shall provide to the District Board copies of its lease or deed for the premises in which the System shall operate. A copy of the System's lease or deed shall be incorporated into this Contract under Schedule 6. Any subsequent amendments to any System real estate leasing agreement shall only be incorporated into this Contract pursuant to Article IX of these Terms and Conditions.

Section 11.5. Occupancy and Safety Certificates. The System Board shall: (i) ensure that the System's physical facilities comply with all fire, health and safety standards applicable to schools; and (ii) possess the necessary occupancy and safety certificates for the System's physical facilities. The System Board shall not conduct classes until the System has complied with this Section 11.5. Copies of these certificates shall be incorporated into this Contract under Schedule 6.

Section 11.6. Criminal Background and History Checks; Disclosure of Unprofessional Conduct; Compliance with School Safety Initiative. The System shall comply with Section 1230 and 1230a of the Code concerning criminal background and criminal history checks for its teachers, school administrator(s), and for any other position requiring State Board approval. In addition, the System shall comply with Section 1230b of the Code concerning the disclosure of unprofessional conduct by persons applying for System employment. The System shall comply with Sections 1230c through 1230g of the Code. This Section 11.6 shall apply to such persons irrespective of whether they are employed by the System or employed by an ESP contracting with the System.

Section 11.7. Special Education. Pursuant to Section 1701a of the Code, the System shall comply with Part 29 of the Code concerning the provision of special education programs and services within the System.

Section 11.8. Deposit of Public Funds by the System. The System Board agrees to comply with Section 1221 of the Code regarding the deposit of all public or private funds received by the System. A deposit shall be made within three (3) business days after receipt of the funds by the System.

Section 11.9. Nonessential Elective Courses. If the System Board elects to provide nonessential elective courses to part-time pupils at a nonpublic school building, the System shall comply with Section 166b of The State School Aid Act of 1979, as amended, Public Act 94 of 1979, as amended, MCL 388.1166b. Before providing instruction, the System Board shall ensure that the System has sufficient documentation to qualify for part-time pupil funding under the State School Aid Act. The provision of nonessential elective courses by the System shall be

incorporated into this Contract as an amendment pursuant to Article IX of these Terms and Conditions.

Section 11.10. Required Provisions for ESP Agreements. Any Management Agreement with an ESP entered into by the System must contain the following provisions:

“Indemnification of District. The parties acknowledge and agree that the School District of the City of Muskegon Heights (the “District”), the District’s board of education (the “District’s Board”), the District’s emergency manager, if any (“Emergency Manager”), and the Advisory Board (if an Advisory Board is in place for the District under the Act) are deemed to be third party beneficiaries for purposes of this Agreement. As third party beneficiaries, the parties hereby promise to indemnify and hold harmless the District, the District’s Board, the Emergency Manager, and the Advisory Board (if an Advisory Board is in place for the District under the Act) from all claims, demands, or liability, including attorney fees, and related expenses, on account of injury, loss or damage, including, without limitation, claims arising from bodily injury, personal injury, sickness, disease, death, property loss or damage or any other losses of any kind whatsoever and not caused by the sole negligence of the District, the District’s Board, the Emergency Manager, or the Advisory Board (if an Advisory Board is in place for the District under the Act), which arise out of or are in any manner connected with the Educational Service Provider’s operation of the System, or which are incurred as a result of the reliance by the District, the District’s Board, the Emergency Manager, or the Advisory Board (if an Advisory Board is in place for the District under the Act) upon information supplied by the System Board or the Educational Service Provider, or which arise out of the failure of the System Board or the Educational Service Provider to perform its obligations under the Contract or Applicable Law. The parties expressly acknowledge and agree that the District, the District Board, the Emergency Manager or the Advisory Board (if an Advisory Board is in place for the District under the Act) may commence legal action against either party to enforce the District’s, the District’s Board’s, the Emergency Manager’s, or the Advisory Board’s rights as set forth in this Agreement.”

“Agreement Coterminous With System’s Contract. If the System’s Contract issued by the District Board is suspended, revoked or terminated, or a new charter contract is not issued to the System after expiration of the Contract, this Agreement shall automatically be suspended or terminated, as the case may be, on the same date as the System’s Contract is suspended, revoked, terminated or expires without further action of the parties.”

“Compliance with System’s Contract. The Educational Service Provider agrees to perform its duties and responsibilities under this Agreement in a manner that is consistent with the System’s obligations under the System’s Contract issued by the District Board. The provisions of the System’s Contract shall supersede any competing or conflicting provisions contained in this Agreement.”

“Compliance with Section 503c. On an annual basis, the ESP agrees to provide the System Board with the same information that a school district is required to disclose under Section 18(2) of The State School Aid Act of 1979, as amended, Public Act 94 of 1979, MCL 388.1618, for the most recent school fiscal year for which the information is available. Within thirty (30) days of receipt of this information, the System Board shall make the information available on the System’s website home page, in a form and manner prescribed by the Michigan Department of Education. The defined terms in Section 503c of the Code, shall have the same meaning in this agreement.”

“Compliance with Section 12.21 of Contract Terms and Conditions. The Educational Service Provider shall make information concerning the operation and management of the System, including without limitation the information described in Schedule 4 of the Contract, available to the System as deemed necessary by the System Board in order to enable the System to fully satisfy its obligations under Section 12.21(a) of the Contract Terms and Conditions.”

Section 11.11. Management Agreements. The System may enter into a Management Agreement with an ESP to contract out its administrative and/or educational functions and personnel. For purposes of this Contract, an employee leasing agreement shall be considered a Management Agreement, and an employee leasing company shall be considered an ESP. Prior to entering any Management Agreement with an ESP, the System shall submit a copy of the final draft Management Agreement to the District Board in a form and manner consistent with the ESP policies of the District Board, if any, which are incorporated into and be deemed part of this Contract. A copy of the final executed Management Agreement shall be included in this Contract under Schedule 5. The District Board may, from time to time during the term of this Contract, enact or amend the ESP policies and any amended ESP Policies shall be automatically incorporated into the Contract without further action of the parties. The District Board shall present any proposed ESP policy to the Advisory Board (if an Advisory Board is in place for the District under the Act) within ten (10) days of District Board approval. If the Advisory Board does not take action on the proposed ESP policy within sixty (60) days of receipt, the ESP policy is in effect. The District Board may disapprove a proposed Management Agreement submitted by the System if the Management Agreement is contrary to this Contract or Applicable Law. If the District Board does not disapprove the Management Agreement, the District Board shall submit the Management Agreement to the Advisory Board (if an Advisory Board is in place for the District under the Act) within ten (10) days of the Management Agreement not being disapproved by the District Board. If the Advisory Board does not take action on the proposed Management Agreement within sixty (60) days of receipt, the Management Agreement is not disapproved. If the District Board disapproves the Management Agreement, the District Board shall submit the Management Agreement, along with the reasons for disapproval, to the Advisory Board (if an Advisory Board is in place for the District under the Act) for review. If the Advisory Board does not take action on the proposed Management Agreement within sixty (60) days of receipt, the Management Agreement is disapproved. Any subsequent amendment to a Management Agreement shall be submitted for review by the District Board in the same form and manner as a new Management Agreement.

**ARTICLE XII  
GENERAL TERMS**

Section 12.1. Notices. Any and all notices permitted or required to be given hereunder shall be deemed duly given: (i) upon actual delivery, if delivery is by hand; or (ii) upon receipt by the transmitting party of confirmation or answer back if delivery is by facsimile or telegram; or (iii) upon delivery into United States mail if delivery is by postage paid first class mail. Each such notice shall be sent to the respective party at the address indicated below or to any other address or person as the respective party may designate by notice delivered pursuant hereto:

If to the District Board: School District of the City of Muskegon Heights  
2603 Leahy Street  
Muskegon Heights, Michigan 49444  
Attn: Board Secretary

If to the System: Muskegon Heights Public School Academy System  
2441 Sanford Street  
Muskegon Heights, Michigan 49444  
Attn: Board Secretary

If an Advisory Board is in place for the District, a copy of a notice or communication to a party under this Contract must be transmitted to the Advisory Board by the party providing the notice or communication and addressed using the information specified below:

If to the Advisory Board: Receivership Transition Advisory Board for the School District of the City of Muskegon Heights  
Richard A. Austin Building  
430 W. Allegan Street  
Lansing, Michigan 48933  
Attn: State Treasurer

If a notice or other communication to a party is received after 5:00 p.m. on a business day at the location specified in the address for that party, or on a date that is not a business day, then the notice will be deemed received at 9:00 a.m. on the next business day.

Section 12.2. Severability. If any provision in this Contract is held to be invalid or unenforceable, it shall be ineffective only to the extent of the invalidity, without affecting or impairing the validity and enforceability of the remainder of the provision or the remaining provisions of this Contract. If any provision of this Contract shall be or become in violation of any local, state or federal law, such provision shall be considered null and void, and all other provisions shall remain in full force and effect.



Section 12.3. Successors and Assigns. The terms and provisions of this Contract are binding on and shall inure to the benefit of the parties and their respective successors and permitted assigns.

Section 12.4. Entire Contract. Except as specifically provided in this Contract, this Contract sets forth the entire agreement between the District Board and the System with respect to the subject matter of this Contract. All prior contracts, representations, statements, negotiations, understandings, and undertakings are superseded by this Contract.

Section 12.5. Assignment. This Contract is not assignable by either the System or the District Board.

Section 12.6. Access to Records. To assure the efficient and effective provision of public educational services the system may engage in intergovernmental activities in other public entities in this state, including, but not limited to, the City of Muskegon Heights, the County of Muskegon, and the Michigan Department of Health and Human Services. Activities by the System under this provision may include, without limitation, all of the following:

- (a) Collecting data regarding intergovernmental cooperation and shared services activities.
- (b) Studying the feasibility of intergovernmental cooperation activities.
- (c) Establishing standards, criteria, or model practices for intergovernmental cooperation.
- (d) Developing or enhancing intergovernmental cooperation with one (1) or more other public entities.
- (e) Entering into mutual aid or reciprocal aid agreements or compacts.
- (f) Entering into joint endeavors, joint undertakings, or cooperative agreements with one (1) or more public agencies.
- (g) Providing for safety and security of students and District facilities.

Section 12.7. Access to Records. The District will provide the System with records of the District, including, but not limited to, student records, as requested by the System, in a manner that complies with Applicable Law. The District shall assist the System in obtaining waivers from employees or former employees of the District for review of employee records by the System, if requested by the System.

Section 12.8. Non-Waiver. Except as otherwise provided in these Terms and Conditions, no term or provision of this Contract shall be deemed waived and no breach or default shall be deemed excused, unless such waiver or consent shall be in writing and signed by the party claimed to have waived or consented. No consent by any party to, or waiver of, a breach or default by the other, whether expressed or implied, shall constitute a consent to, waiver of, or excuse for any different or subsequent breach or default.

Section 12.9. Governing Law. The laws of the State of Michigan, without giving effect to its principles of conflicts of law, govern all adversarial proceedings arising out of this Contract or with respect to interpretation, enforcement, validity, construction, and effect of this Contract.

Section 12.10. Counterparts. This Contract may be executed in any number of counterparts. Each counterpart so executed shall be deemed an original, but all such counterparts shall together constitute one and the same instrument.

Section 12.11. Term of Contract. Unless sooner revoked or terminated as provided in this Contract, this Contract shall commence on July 9, 2012 and terminate on the first June 30<sup>th</sup> that is at least one calendar year after the District's emergency loans from the State of Michigan and outstanding obligations to the Michigan Public School Employees Retirement System are paid in full, as determined by the State Treasurer.

Section 12.12. Indemnification. As a condition to receiving a grant of authority from the District Board to operate a public school pursuant to the terms and conditions of this Contract, the System agrees to indemnify, defend and hold harmless the Emergency Manager (if any), the Advisory Board (if an Advisory Board is in place for the District under the Act), the District Board, the District and its members, officers, employees, agents or representatives from all claims, demands, or liability, including attorney fees, and related expenses, on account of injury, loss or damage, including, without limitation, claims arising from bodily injury, personal injury, sickness, disease, death, property loss or damage or any other losses of any kind whatsoever and not caused by the sole negligence of the District, which arise out of or are in any manner connected with the Emergency Manager's receipt, consideration or approval of the Application, the Emergency Manager's or District Board's approval of the Resolution or Authorizing Resolution, legal challenges to the validity of Part 6A of the Code or actions taken by the Emergency Manager or District Board as an authorizing body under Part 6A of the Code, the Emergency Manager's consideration of or issuance of a Contract, the System's preparation for and operation of a public school, or which are incurred as a result of the reliance of the Emergency Manager, the Advisory Board (if an Advisory Board is in place for the District under the Act), the District Board, the District and its members, officers, employees, agents or representatives upon information supplied by the System, or which arise out of the failure of the System to perform its obligations under this Contract. The foregoing provision shall not be deemed a relinquishment or waiver of any kind of governmental immunity provided under Section 7 of Public Act 170 of 1964, as amended, MCL 691.1407.

Section 12.13. Construction. This Contract shall be construed fairly as to both parties and not in favor of or against either party, regardless of which party prepared the Contract.

Section 12.14. Superior Force. If any circumstances occur which are beyond the control of the parties, which delay or render impossible the obligations of one or both of the parties, the parties' obligations to perform such services shall be postponed for an equivalent period of time or shall be canceled, if such performance has been rendered impossible by such circumstances.

Section 12.15. No Non-Party Rights. This Contract is made for the sole benefit of the System and the District Board and no other person or entity, including without limitation, the Educational Service Provider. Except as otherwise provided, nothing in this Contract shall

create or be deemed to create a relationship between the parties hereto, or either of them, and any third person, including a relationship in the nature of a third party beneficiary or fiduciary.

Section 12.16. Non-agency. It is understood that the System is not the agent of the District.

Section 12.17. District Board General Policies on Public School Academies Shall Apply. Notwithstanding any provision of this Contract to the contrary, and with the exception of existing District Board ESP policies or policies regarding public school academies which shall apply immediately, District Board policies clarifying procedure and requirements applicable to public school academies under this Contract, as from time to time adopted or amended, will automatically apply to the System, provided they are not inconsistent with provisions of this Contract. Before issuing general policies under this Section, the District Board shall provide a draft of the proposed policies to the System Board and the Advisory Board (if an Advisory Board is in place for the District under the Act). The System Board shall have at least thirty (30) days to provide comment on the proposed policies before such policies take effect. If the Advisory Board does not take action on the proposed policies within sixty (60) days of receipt, the proposed policies shall take effect.

Section 12.18. Survival of Provisions. The terms, provisions, and representations contained in Section 11.2, Section 11.3, Section 12.14, Section 12.17 and any other provisions of this Contract that by their sense and context are intended to survive termination of this Contract shall survive.

Section 12.19. Information Available to the Public.

- (a) Information to be provided by the System. The System shall make information concerning its operation and management, including without limitation the information described in Schedule 4, available to the public in the same manner and to the same extent as is required for public schools and school districts under Applicable Law.
- (b) Information to be provided by Educational Service Providers. If the System enters into an agreement with an Educational Service Provider for operation or management of the System, the Management Agreement shall contain a provision requiring the Educational Service Provider to make information concerning the operation and management of the System, including without limitation the information described in Schedule 4, available to the System as deemed necessary by the System Board in order to enable the System to fully satisfy its obligations under subparagraph (a).

Section 12.20. Termination of Responsibilities. Upon termination or revocation of the Contract, the District Board or its designee shall have no further obligations or responsibilities under this Contract to the System or any other person or persons in connection with this Contract.

Each party is signing this Contract on the date stated opposite that party's signature. The date of this amendment will be the date this is signed by the last party to sign it (as indicated by the date associated with that party's signature).

The parties acknowledge that Steven M. Schiller as the Emergency Manager for the District is authorized under the Act to act for and in the place and stead of the District Board, the authority of the District Board to exercise power for and on behalf of the District under law is suspended and vested in the Emergency Manager under the Act, and the Emergency Manager is authorized under the Act to exercise solely, for and on behalf of the District, all other authority and responsibilities affecting the District that are prescribed by law to the District Board and superintendent of the District.

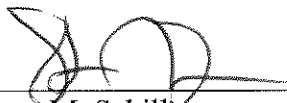
The District Board is issuing this Contract to the System on the date of this Contract.

The System states that the System is able to comply with this Contract and all Applicable Law, and that the System, through its governing board, has approved and agreed to comply with and be bound by of the terms and conditions of this Contract.

Date: October 20, 2016

BOARD OF EDUCATION OF THE  
SCHOOL DISTRICT OF THE CITY OF  
MUSKEGON HEIGHTS

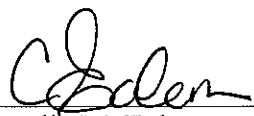
By:

  
\_\_\_\_\_  
Steven M. Schiller  
Emergency Manager

Date: October 29, 2016

MUSKEGON HEIGHTS PUBLIC  
SCHOOL ACADEMY SYSTEM

By:

  
\_\_\_\_\_  
Carmella M. Ealom  
President