

## MANAGEMENT SERVICES AGREEMENT

This Management Services Agreement (the “**Agreement**”) is made and entered into as of July 1, 2022 by and between **SER-Metro Detroit Jobs For Progress, Inc.**, a Michigan nonprofit corporation (“**SER**”) and **SER YouthBuild Learning Academy**, a body corporate and public school academy organized under the Michigan Revised School Code, Act 451 of 1976, as amended (the “**Code**”) (the “**Academy**”).

### RECITALS

- A. The Academy is a public school academy with two sites located at 5555 Conner Avenue, Detroit, Michigan 48213 and 5200 Stecker Street, Dearborn, MI 48126 (the “**Sites**”). The Academy has been issued Public School Academy Contract (the “**Charter Contract**”) executed by and between Detroit Public Schools Community District (“**DPSCD**”) and the Academy dated July 1, 2022. The Academy operates under the direction of its Board of Directors (the “**Academy Board**”).
- B. SER is a Michigan nonprofit corporation that, among its various activities, provides educational, operational, administrative, and managerial services to schools.
- C. The Academy desires to engage SER to perform those services as the Academy’s management company pursuant to this Agreement.

### ARTICLE 1

#### CONTRACTUAL RELATIONSHIP

- 1.1. **Authority.** The Academy represents to SER that: (1) the Academy has been granted the Charter Contract to organize and operate a public school academy; (2) the Academy is authorized by the Code and Charter Contract to contract with an independent entity to provide educational management services, provided the agreement with such entity complies with the DPSCD Public School Academy Educational Service Providers Requirements (the “**ESP Requirements**”); and (3) the Academy has all powers and authorities necessary or desirable for carrying out the educational program contemplated in this Agreement.
- 1.2. **Contract.** The parties hereto agree that SER, to the extent permitted by law, shall provide all labor, materials, and supervision necessary for the provision of educational services to students of the Academy, and shall provide for the management, operation, and maintenance of the Academy, in accordance with the educational goals, curriculum, methods of pupil assessment, admissions policy and criteria, school calendar and school day schedule, and age and grade range of pupils to be enrolled, educational goals, and methods to be used to monitor compliance with performance of targeted educational outcomes, all as previously adopted by the Academy Board, submitted in the Academy’s

application to DPSCD (the “**Application**”), and included in the Charter Contract between the Academy and DPSCD (the “**Educational Program**”).

1.3. **Status of the Parties.** SER is a Michigan nonprofit corporation and is not a division or a part of the Academy. The Academy, as a public school academy, is a body corporate and governmental entity authorized by the Code, and is not a division or part of SER. The relationship between SER and the Academy is based solely on the terms of this Agreement and those of any other agreements that may exist from time to time between them with the prior written approval of DPSCD.

1.4. **Independent Contractors; Limited Designation of Agency.**

1.4.1. The parties to this Agreement acknowledge and agree that the relationship between them created by this Agreement is that of independent contractors, and that, except as expressly set forth in Section 1.4.2 below, no employee or agent of either party (including, without limitation, any employees or agents of SER assigned to work exclusively at the Academy) shall be deemed an employee or agent of the other party. Each party is solely responsible for its acts and the acts of its directors, officers, employees, subcontractors, and agents.

The parties hereby acknowledge and agree that no provision of this Agreement shall (i) interfere or otherwise impede the duties of the Academy Board pursuant to the terms of the Charter Contract, and (ii) the duties of the Academy pursuant to the Charter Contract shall not be limited or rendered impossible by action or inaction of SER.

1.4.2. Notwithstanding the foregoing:

1.4.2.1. SER and those of its directors, officers, employees, and designated agents having a legitimate educational interest in the Educational Program and its students (including, without limitation, student record information) are hereby designated by the Academy Board as agents of the Academy such that they are authorized to access educational records of the Academy’s students under 20 U.S.C. § 1232g, the Family Educational Rights and Privacy Act (“**FERPA**”). “**Legitimate educational interest**” shall be defined as having a responsibility for helping the student achieve one (1) or more of the educational goals of the Academy or if the record is necessary in order for the employee to perform an administrative, supervisory or instructional task or to perform a service or benefit for the student or the student’s family. Except as set forth in this Section, no agent or employee of SER shall be deemed to be an agent of the Academy. SER and its applicable directors, officers, employees, and designated agents agree to comply with FERPA and corresponding regulations applicable to school officials.

1.4.2.2. During the Term of this Agreement, the Academy may disclose confidential data and information to SER and its directors, officers, employees, and designated agents to the extent permitted by applicable law (including, without limitation, the Individuals with Disabilities Education Act (“IDEA”), 20 USC § 1401 *et seq.*, 34 CFR 300.610-300.626; Section 504 of the Rehabilitation Act of 1973, 29 USC § 794a, 34 CFR 104.36; the Michigan Mandatory Special Education Act, MCL 380.1701 *et seq.*; the Americans with Disabilities Act, 42 USC §12101 *et seq.*; the Health Insurance Portability and Accountability Act (“HIPAA”), 42 USC §§ 1320d – 13200d-8; 45 CFR 160, 162 and 164; and social security numbers, as protected by the federal Privacy Act of 1974, 5 USC § 552a; and the Michigan Social Security Number Privacy Act, MCL 445.84), provided that such data and information shall only be used in accordance with such laws and only in the performance of SER’s services under this Agreement.

1.4.2.3. SER and its directors, officers, employees, and designated agents may be designated by the Academy Board as agents of the Academy as otherwise expressly designated by written agreement between the parties and, if applicable, with consent from any other person whose consent is required by applicable law or contract.

1.5. **Access.** Subject to Section 1.4.2, the Academy hereby grants SER and its personnel access to and use of the Sites and all personal property and documents of the Academy as may be reasonably necessary for SER’s performance of its services hereunder. The Academy also agrees to furnish, without charge, adequate space at the Sites for use by SER and its personnel in performing its services hereunder.

1.6. **Conflict of Interest.** SER shall have a written conflict of interest policy, a copy of which shall be made available to the Academy Board upon request. Without prior written approval from the Academy Board, SER shall not execute contracts with any third party for services to be provided to or on behalf of the Academy where there is a substantial likelihood of a potential conflict of interest or actual conflict of interest between SER and such third party.

## ARTICLE 2 TERM

2.1. **Term.** This Agreement shall become effective on July 1, 2022, and, unless earlier terminated in accordance with Article 7, shall expire on June 30, 2025 (the “**Term**”).

2.2. **Renewal.** At the end of the Term, the Academy and SER may extend the Agreement, subject to prior written notice from DPSCD that it does not disapprove of the extension, or any amendment thereof; provided, however, that this Agreement shall not extend beyond the term of the Charter Contract, as amended from time to time.

**ARTICLE 3  
FUNCTIONS OF SER**

3.1. **Responsibility.** SER shall be responsible and accountable to the Academy Board for performing all of the management, operation, administration, and education functions at and on behalf of the Academy in accordance with this Agreement, applicable law, and Academy Board policies; provided, however, that SER's responsibilities are expressly limited by the budget, and neither SER nor the Academy shall be required to expend funds in excess of the amount(s) set forth in such budget, as amended from time to time by the Academy Board. SER will do all things reasonably and professionally required to maintain the Academy's solvency and to prevent the Academy from experiencing an operating or fund balance deficit. Notwithstanding the foregoing, SER shall not be obligated to reduce the amounts of or waive any fees or expenses to which it is entitled under this Agreement, make expenditures in excess of funds available to or to be available to the Academy for reimbursement thereof, or otherwise subsidize the operation of the Academy.

3.2. **Educational Program and Reporting on Goals.**

3.2.1. The Educational Program has been reviewed and approved by resolution of the Academy Board adopted for use at the Academy. The implementation of the Educational Program may be adapted and modified by SER from time to time, it being understood that an essential principal of this Educational Program is its flexibility, adaptability and capacity to change in the interest of continuous improvement, and efficiency, and that the Academy and SER are interested in results and not in inflexible prescriptions. Any substantial adaptation or modification of the Educational Program shall be subject to the prior written approval of the Academy Board, and, if required under the Contract, by DPSCD.

3.2.2. SER shall provide the Academy Board with written reports specifying the level of achievement of each of the Academy's educational goals set forth in the Charter Contract and detailing its plan for meeting any educational goals that are not being attained, such reports to be submitted on a not less than quarterly basis and upon reasonable prior request of the Academy Board.

3.3. **Annual Budget Preparation.**

3.3.1. SER will prepare and provide the Academy Board with a proposed annual budget that shall conform to the State of Michigan's accounting manual and the Uniform Budgeting and Accounting Act, MCL 141.421 *et seq.*, and be in a form satisfactory to the Academy Board and to DPSCD. The budget shall contain object-level detail and comply with public accounting standards. The budget shall include anticipated revenues and projected expenses and costs reasonably associated with operating the Academy and the Educational Program including, but not limited to, the projected cost of all services and educational programs provided to the Academy, rent and lease payments, debt service, maintenance and repairs to the Sites, supplies and furnishings necessary to operate the Academy, taxes, insurance premiums, utilities,

professional fees, and other costs and expenses related to the operation of the Academy.

3.3.2. The proposed annual budget shall be submitted to the Academy Board for approval at least thirty (30) days before the date when the approved budget is required to be submitted to DPSCD. SER may not make deviations from the approved budget between major function areas without the prior approval of the Academy Board.

3.4. **Specific Functions.** Without limiting the foregoing, SER shall be responsible for performing the following functions to the extent permitted by the Charter Contract and applicable law, and subject to the Academy Board's oversight:

3.4.1. **Board Services:** (1) participation in strategic planning with the Academy Board for the continuing educational and financial benefit of the Academy; and (2) preparation of processes and procedures governing operations of the Academy as approved by the Academy Board;

3.4.2. **Educational Program Services:** (1) implementation and administration of the Educational Program; (2) provision of special education services to students who attend the Academy in conformity with the requirements of applicable laws, regulations, and Academy Board policies; (3) curriculum improvement services; (4) student environment management and parent outreach; (5) implementation and enforcement of student codes of conduct, including policies and procedures approved by the Academy Board; and (6) administration of extra-curricular and co-curricular activities and programs;

3.4.3. **Accounting and Financial Services:** (1) pupil accounting; (2) budget preparation, including preparing the annual budget as set forth in Section 3.3 and amended budgets throughout the year, as necessary, and financial management services, as defined in this Agreement; (3) preparation of applications for grants and special programs as requested by or with permission from the Academy Board; (4) processing funding applications for special programs and facility improvements as requested by or with permission from the Academy Board; (5) other financial services, including accounting, bookkeeping services, accounts payable, and accounts receivable; and (6) acquisition of instructional and non-instructional materials, equipment, and supplies, and the maintenance of an inventory system of all equipment;

3.4.4. **Staffing:** (1) subject to the requirements of Article 6, selection, employment, and supervision of all teachers and staff; and (2) personnel management services, including, without limitation, recordkeeping, wage and benefits administration, training, and technical assistance necessary to support the teachers and staff providing services to the Academy;

3.4.5. **Other Services:** (1) supervision of the school support services programs, including food service and facilities maintenance; (2) preparation and filing of required local, state, and federal reports, including, without limitation, membership reports to

Wayne RESA and the Michigan Department of Education and any reports required by DPSCD, subject to review by the Academy Board prior to filing; (3) information and technology system development and management; and (4) any other function necessary or expedient for the administration of the Academy with prior approval from the Board.

- 3.5. **Subcontracts.** SER shall not subcontract the management, oversight, or operation of the teaching and instructional portions of the Educational Program Services without the specific prior written approval of the Academy Board, but SER otherwise reserves the right to subcontract any and all aspects of the other services it is providing to the Academy under this Agreement. Except as described in the previous sentence, Academy Board approval of subcontracts is not required unless the cost for these subcontracted services exceeds the funds appropriated for that purpose in the Academy's approved budget or Academy Board approval is required by the Charter Contract or by the Academy Board's procurement policy.
- 3.6. **Place of Performance.** Teaching and instructional services other than field trips will normally be performed at the Sites (as such may be expanded or changed from time to time in compliance with the Charter Contract). SER may perform functions other than teaching and instruction, such as purchasing, professional development, and administrative functions, at other locations unless prohibited by applicable law.
- 3.7. **Student Recruitment.** Students shall be selected in accordance with the procedures set forth in the Charter Contract and in compliance with the Code and other applicable law. The Academy Board shall be responsible for establishing the recruitment and admission policies for the Academy. SER shall implement such policies, follow all applicable procedures regarding student recruitment, enrollment, and lottery management, and be responsible for publication of appropriate public notices and scheduling of open houses, as may be required.
- 3.8. **Pupil Performance Standards and Evaluation.** SER is responsible for and accountable to the Academy Board for the performance of students who attend the Academy. SER shall implement pupil performance evaluations which permit evaluation of the educational progress of each Academy student, using measures of student and school performance required by the Charter Contract and such additional measures as shall be mutually agreed upon between the Academy Board and SER that are consistent with the Charter Contract.
- 3.9. **Student Due Process Hearings.** The Academy Board shall establish student discipline policies and procedures. SER shall implement such policies and procedures in conformity with the requirements of applicable state and federal law regarding discipline, special education, confidentiality, and access to records, to the degree that it is consistent with the Academy's own obligations.
- 3.10. **Legal Requirements.** SER shall provide educational programs for Academy students that meet the requirements of applicable law, including the Code and the Charter Contract., unless such requirements are or have been waived by the applicable authority.

- 3.11. **Rules and Procedures.** As further specified in Section 4.1, the Academy Board shall adopt rules, regulations, and procedures applicable to the Academy, and SER is directed to enforce the rules, regulations, and procedures adopted by the Academy. SER shall assist the Academy Board in its policy-making function by recommending the adoption of reasonable rules, regulations, and procedures applicable to the Academy. Notwithstanding anything herein to the contrary, the Academy Board shall exercise independent judgement and discretion while determining whether to adopt or approve the same.
- 3.12. **School Year and School Day.** The school year and the school day shall be as provided in the Charter Contract. The number of days of pupil instruction and the number of hours of pupil instruction shall not be extended beyond the minimum number of hours and days of pupil instruction required under applicable law unless SER consents to such extension.
- 3.13. **Authority.** SER shall have all authority and power necessary to undertake its responsibilities described in this Agreement except in the event that such power may not be delegated by the Academy Board by law.
- 3.14. **Records.** SER shall keep accurate financial, educational, operational, and student records pertaining to its operation of the Academy, together with all Academy financial records prepared by or in the possession of SER, and retain all of these records in accordance with applicable state and federal law (including, without limitation, the Michigan Department of Education's public records retention policy) and the ESP Requirements. Financial, educational, operational, and student records that are now or may in the future come into the possession of SER remain Academy records and are required to be returned by SER to the Academy upon demand, provided that SER may retain copies of records necessary to document the services provided to the Academy and its actions under the Agreement. SER and the Academy shall maintain the proper confidentiality of personnel, student, and other records as required by law. All Academy records shall be physically or electronically available, upon request, at the Academy's physical facilities. The Academy's financial, educational, operational, and student records are public documents subject to disclosure in accordance with the provisions of applicable law, including the Michigan Freedom of Information Act, Public Act 442 of 1976, and this Agreement shall not be construed to restrict DPSCD's or the public's access to such records under applicable law or the Charter Contract.
- 3.15. **Information Reporting.** SER shall provide to the Academy all information and documentation concerning the operation and management of the Academy sufficient to satisfy the Academy Board's requirements under the Charter Contract, including, without limitation, the transparency reporting information required pursuant to the Charter Contract, MCL 388.1618, and MCL 380.503.
- 3.16. **Additional Grades and Student Population.** SER shall make recommendations to the Academy Board concerning limiting, increasing, or decreasing the number of grades offered and the number of students served per grade or in total, within the limits provided for in the Charter Contract.

- 3.17. **Compliance with Academy’s Charter Contract and ESP Requirements.** SER shall perform its duties and responsibilities under this Agreement in a manner that is consistent with the Academy’s obligations under the Charter Contract, the ESP Requirements, and applicable law.
- 3.18. **Bankruptcy of SER Principal or Officer.** SER shall notify the Academy Board if any principal or officer of SER, or SER (including any related organizations or organizations in which a principal or officer of SER served as a principal or officer) as a corporate entity, has filed for bankruptcy protection in the last six (6) months or within any applicable preference period, whichever is longer.

## **ARTICLE 4 OBLIGATIONS OF THE BOARD**

- 4.1. **Academy Board Policy Authority; Good Faith.**
  - 4.1.1. The Academy Board is responsible for determining the fiscal and academic policies that will govern the operation of the Academy, including, but not limited to, policies relative to the conduct of students while in attendance at the Academy or en route to and from the Academy, policies relative to conduct of teachers and other SER employees while on the Academy’s premises, and policies and regulations governing the procurement of supplies, materials, and equipment to be used at the Academy. The Academy Board shall further retain the obligation, as provided in Section 1274 of the Code, to adopt written policies governing the procurement of supplies, materials, and equipment.
  - 4.1.2. The Academy Board shall exercise good faith in considering the recommendations of SER on issues including, but not limited to, policies, rules, regulations, procedures, curriculum, and budgets, subject to the constraints of law and the requirements of the Charter Contract. SER shall not adopt or implement such recommendations without first obtaining the Academy Board’s approval.
- 4.2. **Conduct of Criminal Background Checks.** The Academy Board shall comply with the requirements of Sections 1230, 1230a, 1230b, and related provisions of the Code pertaining to criminal background and criminal conduct checks with regard to all persons SER intends to assign or engage under this Agreement to regularly and continuously work in any of the Sites where the Academy delivers the Educational Program. The Academy Board shall also cooperate with SER in good faith in complying with Section 6.2 of this Agreement.
- 4.3. **Real Property.** The Academy Board is responsible for providing, either by purchase or lease, the Sites as necessary and appropriate for the conduct of the Academy’s school operations. Such Sites shall comply with all requirements of the Charter Contract and applicable law.



- 4.4. **Academy Employees.** The Academy Board may employ such employees as it deems necessary. The cost to employ Academy employees shall be paid with funds budgeted for the same by the Academy Board.
- 4.5. **Educational Consultants.** The Academy Board may retain an educational consultant or consultants to review the operations of the Academy and the performance of SER under this Agreement. If one is retained, SER shall reasonably cooperate with the educational consultant or consultants and shall provide such persons with prompt access to records, facilities, and information during SER's normal business hours as if such requests came directly from the Board. SER shall have no authority to select, evaluate, assign, supervise, or control any educational consultant employed by the Academy Board. The cost to employ an educational consultant shall be paid by the Academy Board.
- 4.6. **Legal Counsel.** The Academy Board shall select and retain legal counsel to advise it regarding its rights and responsibilities under the Charter Contract, this Agreement, and applicable law. Such legal counsel shall advise on the negotiation of this Agreement and shall not represent SER or any of SER's directors, officers, or employees.
- 4.7. **Audit.** The Academy Board shall select and retain the independent auditor to perform the annual financial audit in accordance with the Charter Contract and applicable state law.
- 4.8. **Budget.** The Academy Board is responsible for adopting a budget in accordance with the provisions of the Uniform Budgeting and Accounting Act, MCL 141.421 *et seq.*, that has adequate resources to fulfill its obligations under the Charter Contract and this Agreement, including, but not limited to, its oversight of and obligations to SER, the organization of the Academy, negotiation of the Charter Contract and any amendments, payment of employee costs, insurance required under the Charter Contract and this Agreement, the annual financial audit, and retention of the Board's educational consultants and legal. In addition, the Academy Board is responsible for determining the budget reserve amount included as part of the Academy's annual budget, for implementing fiscal policies that will assist the Academy in attaining the stated budget reserve amount, and for approving necessary amendments to the budget to reflect necessary deviations from the adopted budget. The budget may be amended from time to time as deemed necessary by the Academy Board. The Academy Board acknowledges and agrees that SER's responsibilities under this Agreement are expressly limited by the budget, and neither SER nor the Academy shall be required to expend funds in excess of the amount(s) set forth in such budget.
- 4.9. **Academy Funds.** The Academy Board shall determine the depository institution of all funds received by the Academy. All funds received by the Academy shall be deposited in the Academy's depository account. Signatories on the depository account shall be Academy Board members and/or Academy Board designated employees. All interest or investment earnings on Academy deposits shall accrue to the Academy. The Academy Board shall pay its obligations, subject to the right to reasonably investigate and timely dispute the same, under this Agreement on a consistent and timely basis.

- 4.10. **Governmental Immunity.** The Academy Board shall have the sole power to determine when to assert, waive, or not waive its governmental immunity.
- 4.11. **Compliance with Academy’s Charter Contract and ESP Requirements.** The Academy Board shall perform its duties and responsibilities under this Agreement in a manner that is consistent with the Academy’s obligations under the Charter Contract, the ESP Requirements, and applicable law.
- 4.12. **Evaluation of SER.** The Academy Board will evaluate the performance of SER on an annual basis to provide SER with an understanding of the Academy Board’s view of its performance under this Agreement. All evaluations conducted by the Academy Board or a representative of the Academy Board will be provided to SER in writing, no later than thirty (30) days following the conclusion of the evaluation. SER will be provided thirty (30) days to respond to the evaluation in writing, if it wishes to do so. Special evaluations may occur at any time at the sole discretion of the Academy Board.
- 4.13. **Chief Administrative Officer.** The Academy Board shall designate a Chief Administrative Officer of the Academy as provided under Section 2b(3) of the Uniform Budgeting and Accounting Act, MCL 141.421 *et seq.* No SER employee shall be designated as the Chief Administrative Officer of the Academy.

**ARTICLE 5**  
**FINANCIAL ARRANGEMENT**

**5.1. Sources of Funding.**

- 5.1.1. As a Michigan public school academy, the primary source of funding for the Academy is State School Aid received pursuant to the State School Aid Act, Act 94 of 1979, as amended (“**State School Aid**”). State School Aid payments are based upon the number of students enrolled in the Academy. The Academy will also receive other payments as may be available from state and federal sources for specific programs and services.
- 5.1.2. In order to supplement and enhance the State School Aid payments and improve the quality of education at the Academy, the Academy Board and SER, with prior Academy Board approval, shall endeavor to obtain additional revenue from other sources. In this regard:
  - 5.1.2.1. The Academy Board and/or SER shall solicit and receive donations consistent with the mission of the Academy.
  - 5.1.2.2. The Academy Board and/or SER may apply for and receive grant money, in the name of the Academy. SER shall provide advance written notification to the Academy Board of any grant applications it intends to make.

5.1.2.3. To the extent permitted under the Code and with prior Academy Board approval, SER may charge reasonable fees to students for extra services such as summer programs, after school programs, and athletics, and SER may charge reasonable fees to non-Academy students who participate in such programs.

5.1.2.4. All funds received by SER or the Academy from such other revenue sources shall inure to and be deemed the property of the Academy.

## **5.2. Compensation for Services.**

5.2.1. The Academy shall pay SER an annual management fee for each school year during the term of this Agreement. The base amount of this annual fee shall be twelve percent (12%) of the sum of all funds the Academy receives directly or indirectly under Section 5.1 attributable to the school year of the Academy during which SER provides services under this Agreement, less any amounts retained by DPSCD.

5.2.2. The compensation due to SER shall be calculated by SER for each school year at the same time as the State of Michigan calculates the State School Aid, and adjustments to such calculation shall occur at the same time as the State of Michigan makes adjustments to the State School Aid.

5.2.3. The parties agree that SER's compensation under this Agreement is reasonable compensation for services rendered. SER's compensation for services under this Agreement is not based, in whole or in part, on a share of net profits from the operation of the Academy. The fee set forth in this Section 5.2 is intended to compensate SER for all expenses it incurs for the administrative, financial, and management services SER is required to provide under this Agreement, including, but not limited to, expenses associated with budgeting, accounting, Academy Board support, employee recruitment, hiring, and training, and compliance. SER will provide sufficient professional and non-professional staff in these areas and is responsible for their compensation. The costs to be paid by SER under this Paragraph do not include payments for costs under Section 5.3 or Personnel Costs (as defined below) pursuant to Article 6, all of which are to be reimbursed by the Academy.

## **5.3. Payment of Educational Program Costs.**

5.3.1. In addition to the fee set forth in Section 5.2, the Academy shall reimburse SER for reasonable costs that are consistent with the Academy's annual budget approved by the Academy Board and reasonably incurred and expended by SER in providing the Educational Program and other goods and services pursuant to this Agreement. Such costs include, but are not limited to, the Personnel Costs, curriculum and instructional materials, professional learning and development required by the state or other governmental entities, textbooks, library books, computer and other equipment, software, supplies utilized at the Academy for educational purposes,

building payments, maintenance, utilities, capital improvements, interest and fees actually incurred by SER in connection with any financing arrangements or delays in reimbursement by the Academy, marketing and development costs (provided that such costs paid by or charged to the Academy shall be limited to those costs specific to the Academy's Educational Program, and shall not include any costs for the marketing and development of SER), food service, transportation, and services provided pursuant to subcontract (which may include, without limitation, special education, psychological services and medical services for students), if any. Notwithstanding the foregoing, the Academy shall also reimburse SER for costs incurred or paid by SER as a result of services provided or actions taken pursuant to prior Academy Board authorization but that are not consistent with the then-current budget, and the Academy Board shall subsequently make such amendments to the budget as necessary to address such costs. As set forth in Section 5.3.5, Corporate Costs of SER and any services to be provided by SER that are Corporate Costs of SER but are performed by a subcontractor shall not be charged to, reimbursed by, or passed through as an additional cost to the Academy.

- 5.3.2. SER shall submit to the Secretary of the Academy Board an itemized statement of costs to be reimbursed by the Academy in a form satisfactory to the Academy Board (the "**Statement of Costs**"), at least five (5) days prior to the regularly scheduled monthly meeting of the Academy Board.
- 5.3.3. At its sole discretion, the Academy Board may advance funds to SER for the fees and expenses associated with the Academy's operation, provided that documentation for the fees and expenses are provided by SER to the Academy Board within sixty (60) days of when the applicable expense is incurred.
- 5.3.4. SER shall not charge mark-up the costs for services, supplies, materials, and/or equipment procured by SER on behalf of the Academy; provided, however, that "actual costs" shall include any interest and fees that may be associated with the applicable procurement arrangement. Any costs reimbursed to SER that are determined by the independent audit not to be reasonably incurred on behalf of the educational program of the Academy shall be promptly returned to the Academy by SER.
- 5.3.5. The following costs and expenses of SER (collectively, the "**Corporate Costs**") are provided as part of the management fee paid pursuant to Section 5.2 and shall not be separately charged to, or reimbursed by, the Academy: (a) the costs for the time of SER's directors or executive management in providing Services to the Academy; (b) SER's rent and insurance costs (except insofar as facilities are subleased to the Academy and sublease rent may be applied to pay rent and insurance obligations to the applicable landlord); (c) the accounting and financial services set forth in subsections (2), (5), and (6) of Section 3.4.3 (for clarity, the accounting and financial services set forth in subsections (1), (3), and (4) of Section 3.4.3 shall not be Corporate Costs of SER and may be separately charged to and reimbursed by the Academy); and (d) SER's legal or human resources.

Notwithstanding the foregoing, nothing herein shall affect any payment obligations the Academy may have with respect to the Consulting and Services Agreement between the parties for preoperational services.

5.4. **Personal Property.** All acquisitions of personal property made by SER using Academy funds or for which SER is reimbursed by the Academy, including, but not limited to, instructional materials, equipment, supplies, furniture, computers, and other technology, shall be owned by and remain the property of the Academy. SER and its subcontractors will comply with Sections 1267 and 1274 of the Code as if the Academy were making these purchases directly from a third-party supplier. All supplies, materials, and equipment procured for the Academy by SER shall be inventoried using a commercially reasonable method of inventory, and such inventory shall be maintained so it can be clearly established which property belongs to the Academy.

5.5. **Timing and Priority of Payments.**

5.5.1. The fee due to SER pursuant to Section 5.2 shall be paid in eleven installments within five (5) business days of receipt by the Academy of its monthly State School Aid installment during each of the months of October through August for the Academy's school year during which SER provides services under this Agreement (for example, for SER's services during the 2022–2023 school year, SER shall receive payments in each of the months of October 2022 – August 2023). Notwithstanding the foregoing, all payments attributable to services provided by SER in any Academy school year shall be made by June 30 of that school year if SER will not be providing services under this Agreement or there is or will be a modification of this Agreement in the subsequent school year.

5.5.2. Payments due and owing to SER pursuant to Section 5.3 shall be made within fifteen (15) days of the Academy's receipt of the Statement of Costs or other invoice therefor.

5.5.3. Any amounts not paid by the Academy when due to SER shall be subject to interest charges, from the date due until paid, at the rate of five percent (5.0%) per annum, or the highest interest rate allowable by applicable law (whichever is less), payable monthly.

5.5.4. The Academy shall satisfy its payment obligations to SER in the following order of priority: (1) to reimburse SER pursuant to Section 5.3 for sums due and owing for previous months (including any interest accrued thereon pursuant to Section 5.5.3); (2) to reimburse SER pursuant to Section 5.3 for sums due and owing for the current month; (3) to pay SER for installment payments of SER's fee due and owing pursuant to Section 5.2 for previous months (including any interest accrued thereon pursuant to Section 5.5.3); and (4) to pay SER for installment payments of SER's fee due and owing pursuant to Section 5.2 for the current month.

- 5.6. **Other Schools.** The Academy acknowledges that SER may enter into management and other service agreements with other public or private schools or institutions (collectively, “**Other Schools**”). SER shall separately account for reimbursable expenses incurred on behalf of the Academy and any Other Schools, and only charge the Academy for expenses incurred on behalf of the Academy. If SER incurs authorized reimbursable expenses on behalf of Academy and Other Schools which are incapable of precise allocation between the Academy and such Other Schools, then SER shall allocate such expenses among the Academy and all such Other Schools on a pro-rata basis based upon the number of students enrolled at the Academy and the Other Schools, or upon such other equitable basis as is acceptable to the parties.
- 5.7. **Financial and Operational Reporting.**
- 5.7.1. At each regularly scheduled meeting, SER shall provide the Academy Board with a monthly cash flow analysis, an aged report of accounts payable, a bank reconciliation, and a written report detailing the status of the budget to actual revenues and a detailed schedule of expenditures at an object level for review and approval by the Academy Board. SER shall present the Academy Board with a balance sheet and a statement of revenues, expenditures, and changes in fund balance at each regularly scheduled meeting. All financial reports must explain any variances from the approved budget, if any, and shall contain recommendations for necessary budget corrections, and shall be prepared at least five (5) days in advance of the Academy Board meeting to be available to the Academy Board and its designees in preparation for Academy Board meetings. SER shall provide special reports as necessary to keep the Academy Board informed of changing conditions.
- 5.7.2. In order to enable the Academy Board to monitor SER’s performance and the efficiency of its operation of the Academy, upon the reasonable request of the Board, SER will provide written reports to the Academy Board on any topic of Academy activity or operations and which are consistent with this Agreement. These special reports will be provided in a timely fashion, but not less than thirty (30) days after the request for the report is received by SER, unless the Academy Board and SER mutually agree upon an extended timetable or information reasonably required to complete such report is not available during such period.
- 5.8. **Audit Report Information.** SER will make all of its financial and other records related to the Academy available to the independent auditor selected by the Academy Board. SER staff will cooperate with said independent auditor.

## **ARTICLE 6 PERSONNEL AND TRAINING**

- 6.1. **Personnel Responsibility.**

- 6.1.1. Subject to the Charter Contract, SER shall have the sole responsibility and authority to determine staffing levels, and to select, evaluate, assign, discipline and transfer personnel, consistent with state and federal law, and consistent with the budget approved by the Academy Board and parameters adopted and included within the Educational Program. Such staff may include, without limitation, a School Leader and such qualified teachers, instructional support, pupil support, food service, secretarial, security, and other staff required to operate the Academy.
- 6.1.2. SER shall be the employer of the School Leader and all teaching and instructional personnel provided by SER to the Academy and performing functions on behalf of the Academy pursuant to this Agreement. All costs attributable to these employees, including wages, salaries, health insurance, dental care insurance, eye care insurance, retirement/pension benefits, other fringe benefits, and all payroll taxes required to be paid by SER under applicable law including unemployment and social security tax payments (collectively, the “**Personnel Costs**”) will be paid by SER and reimbursed by the Academy. Unless required by applicable statute, court, or administrative decision or Attorney General’s opinion, SER shall not make payments to the Michigan Public School Employees’ Retirement System or any other public retirement system on behalf of its employees. Teachers employed by SER shall not be considered teachers for purposes of continuing tenure under MCLA Section 38.71 *et seq*, and shall not be considered employees of the Academy or the Board.
- 6.1.3. SER will provide the Academy Board with a detailed listing of the anticipated Personnel Costs for all employees of SER who will be assigned to provide services at the Academy. The Academy Board will reimburse SER for all such Personnel Costs, provided such costs are not, in the aggregate, in excess of the amounts approved in the annual budget.
- 6.1.4. A copy of SER’s employee handbook shall be maintained physically on-site or be directly accessible at all Sites.
- 6.1.5. SER shall not execute contracts with its staff assigned to the Academy that contain non-compete agreements of any nature.
- 6.2. **Criminal Background Checks.** SER agrees that it shall not assign any of its employees, agents, or other individuals to perform any services under this Agreement except as permitted under Sections 1230, 1230a, 1230b, and related provisions of the Code pertaining to criminal background and criminal conduct checks. Further, SER shall perform unprofessional conduct checks as required by the Code. Evidence of such background checks and unprofessional conduct checks required by law shall be stored on site, in a secure location and in physical form, at the Academy or be directly accessible at the Academy facility.
- 6.3. **School Leader.** SER will have the authority, consistent with applicable law, and with input from the Academy Board, to select and supervise the Academy’s School Leader (“**School**

**Leader**”) and to hold that individual accountable for the success of the Academy. At the request of the Academy Board, SER will review the performance of the School Leader with the Academy Board. The School Leader will be a SER employee, but SER agrees to provide the Academy Board an opportunity to meet with the School Leader prior to placement at the Academy and, absent unusual or compelling circumstances, to consult with the Academy Board in advance prior to taking any action that would alter the employment status of the School Leader. However, SER shall have the ultimate authority to place the School Leader at the Academy. Upon receipt of written notification indicating that, and setting forth in reasonable detail the reasons why, the Academy Board is not satisfied with the performance of the School Leader, SER will provide a replacement School Leader if the performance problems are not resolved within a period of time that is reasonable under the circumstances. The School Leader shall have an administrator’s certificate covering the applicable grade levels of the Academy. The employment arrangements with the School Leader and the duties and compensation of the School Leader shall be determined by SER. All records pertaining to administrator certification shall be maintained physically on-site or be directly accessible at all Sites.

- 6.4. **Teachers.** SER shall determine the number of teachers required for the operation and the applicable grade levels and subjects required for the operation of the Academy. SER shall provide the Academy with such teachers, qualified in the grade levels and subjects, as are required for operation of the Academy in accordance with the Charter Contract and the approved budget. The curriculum taught by such teachers shall be the curriculum prescribed by the Academy. Such teachers may, at the discretion of SER, work at the Academy on a full or part time basis. If assigned to the Academy on a part time basis, such teachers may also work at other schools operated by SER. Each teacher assigned to the Academy shall hold a valid teaching certificate issued by the State Board of Education under the Code, to the extent required under the Code, and have undergone a criminal background check and unprofessional conduct check, as required under the Code. All records pertaining to teacher certification shall be maintained physically on-site or be directly accessible at all Sites.
- 6.5. **Support Staff.** SER shall determine the number and functions of support staff required for the operation of the Academy. The parties anticipate that such support staff may include, without limitation, clerical staff, administrative assistants to the School Leader, a bookkeeping staff, and other staff.
- 6.6. **Training.** SER shall ensure training in its methods, curriculum, program, and technology, is provided to the School Leader and teaching and instructional staff on a regular and continuing basis and shall insure that its staff receives all training required by law. The School Leader, teachers, paraprofessionals, and other support staff employees shall receive such other training as SER determines is reasonable and necessary under the circumstances.



## **ARTICLE 7 TERMINATION OF AGREEMENT**

- 7.1. **Termination by the Academy for Cause.** This Agreement may be terminated by the Academy for cause prior to the end of the term specified in Article 2 in the event that SER should fail to remedy a material breach within a period reasonable under the circumstances, which shall not be longer than sixty (60) days after notice from the Academy. A material breach by SER may include, but is not limited to: (1) a failure to carry out its responsibilities under this Agreement, such as a failure to make required reports to the Academy Board; (2) failure to account for its expenditures or to pay operating costs (provided funds are available to do so); (3) any action or inaction by SER that is not cured within sixty (60) days of notice thereof which causes the Charter Contract to be revoked, terminated, or suspended or which causes the Charter Contract to be put in jeopardy of revocation, termination, or suspension; or (4) otherwise violating the Charter Contract or applicable law. In order to terminate this Agreement for cause, the Academy Board is required to provide SER with written notification of the facts it considers to constitute a material breach and the period of time within which SER has to remedy this breach. After the period to remedy the material breach has expired, the Academy Board may terminate this Agreement by providing SER with written notification of termination.
- 7.2. **Termination by SER for Cause.** This Agreement may be terminated by SER for cause prior to the end of the term specified in Article 2 in the event the Academy fails to remedy a material breach within a period reasonable under the circumstances, which shall not be longer than sixty (60) days after notice from SER. A material breach by the Academy may include, but is not limited to: (1) the Academy's failure to carry out its responsibilities under this Agreement, such as a failure to make payments to SER as and when required by this Agreement; (2) a failure to give consideration to the recommendations of SER regarding the operation of the Academy, including, without limitation, approving expenditures that are not, in SER's reasonable opinion, consistent with the Academy's continued financial viability or ability to meet pre-existing obligations as and when such become due; or (3) violating the Charter Contract or applicable law. In order to terminate this Agreement for cause, SER is required to provide the Academy Board with written notification of the facts it considers to constitute material breach and the period of time within which the Academy has to remedy this breach. After the period to remedy the material breach has expired, SER may terminate this Agreement by providing the Academy Board with written notification of termination.
- 7.3. **SER's Option to Terminate.** In addition to any other termination rights it may possess hereunder, SER may, by written notice to the Academy, terminate this Agreement effective upon the expiration or the effective date of any termination of any lease or sublease for any of the Sites between SER or any of its affiliates and the Academy.
- 7.4. **Termination upon Loss of Charter Contract.** This Agreement shall automatically terminate effective upon the expiration of the Charter Contract or, if earlier, the effective date of any termination or revocation of the Charter Contract.

- 7.5. **DPSCD Required Termination or Amendment.** In the event DPSCD exercises its right under the Charter Contract to reconstitute the Academy by requiring early termination or amendment of the Charter Contract, Management Agreement or by revoking the power of the Academy to enter into agreements with educational service providers, then neither DPSCD nor any third party affiliated with or engaged by DPSCD shall be liable, directly or indirectly, for such action resulting from such action. Other than the Academy's obligation to make payments and to reimburse amounts owed for rendered services and SER's expenses (including, without limitation, such expenses as are incurred prior to the effectiveness of termination and any costs or expenses arising from the termination of third-party agreements as a result of the termination of this Agreement) under this Agreement to SER as of the date of early termination or amendment of the Charter Contract, such early termination or amendment will not result in any additional cost or penalty to the Academy and the obligation to make any other payments, pursuant to the terms of this Agreement or otherwise, shall end as of the date of such termination.
- 7.6. **Change in Law.** If any federal, state, or local law, regulation, or court decision has a material adverse impact on the ability of either party to carry out its obligations under this Agreement, then either party, upon written notice to the other, may request renegotiation of the Agreement. If the parties are unable or unwilling to renegotiate the terms within ninety (90) days after said notice, the party requesting the renegotiation may terminate this Agreement on ninety (90) days' further written notice to the other party.
- 7.7. **Effective Date of Termination.** In the event this Agreement is terminated by either party prior to the end of the term specified in Article 2, the termination will not become effective until the end of the school year in which this Agreement was terminated absent unusual and compelling circumstances, which shall include, but shall not be limited to, the Academy's failure or inability to meet its payment and reimbursement obligations to SER or SER's failure to materially comply with the terms of the Charter Contract.
- 7.8. **Rights to Payment upon Termination.** Termination of this Agreement for any reason shall not relieve the Academy of any obligations for outstanding or accrued payments to SER as of the effective date of termination, and SER shall continue to be paid its fees and reimbursed for costs incurred in accordance with Article 5 through the effective date of such termination.
- 7.9. **Rights to Property upon Termination.** Upon termination of this Agreement, any personal property purchased on behalf of the Academy with State School Aid funds, proceeds from a grant to the Academy, or other Academy funds shall remain the exclusive property of the Academy. SER shall have the right to reclaim any usable property or equipment (including, but not limited to, desks, computers, copying machines, fax machines, and telephones) that were purchased by SER with SER funds.
- 7.10. **Transition.** In the event of termination of this Agreement for any reason by either party prior to the end of the Agreement's term, SER shall provide the Academy reasonable assistance for up to ninety (90) days, , after the effective date of the termination to allow a transition back to a regular school program or to transition to another education service

provider. SER may charge a reasonable fee for such services, which shall be no higher on a prorated monthly basis than the standard monthly fee then in effect during the regular term of this Agreement, and shall continue to be entitled to reimbursement for costs and expenses related to providing such services in accordance with this Agreement. Upon termination, and contingent upon SER's compensation as set forth in the foregoing sentence, SER shall: (1) close the books on the then-current fiscal quarter; (2) organize and prepare the Academy's records for transition to a new education service provider, if any; (3) organize and prepare student records for transition to a new education service provider, if any; (4) provide for the orderly transition of employee compensation and benefits to a new education service provider, if any, without disruption to staffing; and (5) fully cooperate with an audit of its books and records performed by an independent party.

## **ARTICLE 8 PROPRIETARY INFORMATION**

### **8.1. Definitions.**

8.1.1. **“Educational Materials”** means all curriculum, print and electronic textbooks, instructional materials, lesson plans, teacher guides, workbooks, tests, and other curriculum-related materials licensed, developed or otherwise owned by the Academy or SER.

8.1.2. **“Confidential Information”** means any confidential and non-public trade, technical or business knowledge, information and materials regarding the Academy, or SER (or their respective affiliates), which is given by one party to the other, or any of their respective representatives, in any form, whether printed, written, oral, visual, electronic or in any other media or manner. “Confidential Information” includes, but is not limited to, research, operations and procedures, financial projections, pricing, sales, expansion plans and strategies, services data, trade secrets and other intellectual property, or the results of any mediation or private adjudication, except for information which a party can show by contemporaneous written records was developed or formulated independently of work or services performed for, or in connection with performance of, this Agreement. Notwithstanding the foregoing, the disclosure of the other party's Confidential Information as required to be disclosed by law, rule, or regulation or by reason of subpoena, court order or government action shall not constitute a breach of this Agreement; however, in such event the party required to disclose such information will reasonably cooperate with the party whose information is required to be disclosed in order to obtain a protective order applicable to such disclosure. All Confidential Information will remain the sole property of the party disclosing such information or data.

8.2. **Academy Materials.** The Academy shall own all right, title and interest in and to Educational Materials that are: (1) licensed or owned by the Academy as of the effective date of this Agreement; or (2) licensed, developed, characterized, conceived, derived, generated, identified, or otherwise made by the Academy during the Term, provided such materials

do not reference the SER Materials (as defined below), or incorporate any Confidential Information of SER (collectively, the “**Academy Materials**”). The Academy Materials shall include all intellectual property rights associated therewith.

- 8.3. **SER Materials.** SER shall own all right, title and interest in and to Educational Materials that are: (1) licensed or owned by SER as of the effective date of this Agreement; (2) licensed, developed, characterized, conceived, derived, generated, identified, or otherwise made by SER during the Term, provided such materials do not reference Academy Materials or incorporate any Confidential Information of the Academy; and (3) any and all Educational Materials and non-curriculum materials provided to the Academy by SER relating to the Educational Program, including all changes and derivatives thereof (collectively, the “**SER Materials**”).
- 8.4. **Derivative Works.** The parties acknowledge that to the extent any Educational Materials created by the Academy are derivative of the SER Materials, use of such derivative materials during the Term is subject to the license granted herein, and the license to use such derivative materials shall cease as of the date of expiration or termination of this Agreement.
- 8.5. **No Transfer or Sale.** The Academy acknowledges and agrees that SER is not transferring or selling, and the Academy is not receiving, purchasing or acquiring, any intellectual property or proprietary rights in or to the SER Materials. SER acknowledges and agrees that the Academy is not transferring or selling, and SER is not receiving, purchasing or acquiring, any intellectual property or proprietary rights in or to the Academy Materials.
- 8.6. **Licenses.** SER hereby grants the Academy a non-exclusive, non-transferable license (without the right to sublicense) to use the SER Materials, and any Educational Materials created by the Academy which are derivative of the SER Materials, solely in furtherance of the Educational Program during the Term, including without limitation, the right to reproduce, publicly display, distribute and create derivative works of the same, in hard copy format or electronically, within the United States. The Academy represents and warrants that during the Term, and following the expiration or termination of this Agreement, the Academy will not exploit or assist any third party to exploit any of the SER Materials for commercial purposes. Subject to applicable law, the Academy grants SER a non-exclusive, non-transferable license (without the right to sublicense) to use the Academy Materials, and any Educational Materials created by SER which are derivative of the Academy materials, solely in furtherance of the Educational Program during the Term, including without limitation, the right to reproduce, publicly display, distribute and create derivative works of the same, in hard copy format or electronically, within the United States. SER represents and warrants that during the Term, and following the expiration or termination of this Agreement, SER will not exploit or assist any third party to exploit any of the Academy Materials for commercial purposes.
- 8.7. **SER Marks.** During the Term, SER grants the Academy (1) a non-exclusive, revocable, non-transferable license (without the right to sublicense) to use SER’s trade name(s) and SER’s trademark(s), and (2) a non-exclusive, revocable, non-transferable sub-license

(without the right to further sublicense) to use [the “YouthBuild” trade name and trademark pursuant to that certain [License Agreement, dated [DATE], between SER and Youth-Build] (collectively, the “Marks”) solely for the purposes of promoting and advertising the Academy. SER shall have the opportunity to review and approve all artwork, copy or other materials utilizing the Marks prior to any production or distribution thereof. All uses of the Marks require SER’s prior written permission. The Academy shall acquire no rights in or to the Marks, and all goodwill associated with the Marks shall inure to the benefit of and remain with SER. Upon expiration or termination of this Agreement, the Academy shall immediately discontinue use of the Marks and shall remove the Marks from its locations, vehicles, websites, telephone directory listings and all other written or electronic promotional materials. If necessary, the Academy shall execute appropriate documents to change its corporate name (and/or any assumed names) to a name dissimilar to the Marks which shall not incorporate any words or terms (in any combination) that are identical or confusingly similar to, or a colorable imitation or dilutive of such the Marks, and promptly thereafter shall file any necessary documents to effect such name change with the appropriate authorities in all jurisdictions in which the Academy is qualified to do business. From and after such expiration or termination of this Agreement, the Academy shall not use any words or terms (in any combination) that are identical or confusingly similar to, or a colorable imitation or dilutive of, the Marks (except “YouthBuild,” and then only after the Academy has otherwise obtained the right to use such name from a third party other than SER).

- 8.8. **Assignment.** Each party shall, and hereby does assign to the other, without additional compensation, such right, title and interest in and to any intellectual property as is necessary to fully effect the ownership provisions set out herein, and any accrued rights of action in respect thereof. Each party shall, if so requested by the other, execute all such documents and do all such other acts and things as may be reasonably required to comply with this Agreement to vest in the appropriate party all rights in the relevant intellectual property and shall procure execution by any named inventor of all such documents as may reasonably be required by the other party in connection with any related patent application.
- 8.9. **Required Disclosure.** To the extent required by Section 505(3) of the Code and pursuant to the terms of the Charter Contract, the Academy shall be permitted to report any new teaching techniques or methods of significant revisions to known teaching techniques or methods to DPSCD and to the Michigan Department of Education, which teaching techniques or methods may thereafter be made available to the public. To the extent required under the Code and the Freedom of Information Act, MCL 15.231 *et seq.*, SER’s educational materials and teaching techniques used at the Academy are subject to public disclosure.

## ARTICLE 9 INDEMNIFICATION

- 9.1. **Indemnification of SER.** To the extent permitted by law, the Academy shall indemnify and hold SER and all of its affiliates and its and their directors, officers, employees,

subcontractors, and agents harmless against any and all third-party claims, demands, suits, or other forms of liability that may arise out of, or by reason of: (1) any noncompliance by the Academy with any agreements, covenants, warranties, or undertakings of the Academy contained in or made pursuant to this Agreement; (2) any misrepresentation or breach of the representations and warranties of the Academy Board contained in or made pursuant to this Agreement; and (3) the gross negligence or intentional activity of the Academy's directors, officers, employees, subcontractors, or agents. In addition, and to the extent permitted by law, the Academy shall reimburse SER for any and all legal expenses and costs associated with the defense of any such claim, demand, or suit. The indemnification requirements of this Paragraph may be met by the purchase of insurance in a form and amounts acceptable to SER. Notwithstanding the foregoing, the Academy will not indemnify and hold SER, its affiliates, directors, officers, employees, subcontractors, and agents harmless for costs and/or damages associated with employee litigation against SER, unless such litigation arises due to actions taken by or at the direction of the Academy.

9.2. **Indemnification of the Academy.** SER shall indemnify and hold the Academy and all of its directors, officers, employees, subcontractors, and agents harmless against any and all third-party claims, demands, suits, or other forms of liability that may arise out of, or by reason of: (1) any noncompliance by SER with any agreements, covenants, warranties, or undertakings of SER contained in or made pursuant to this Agreement, including any and all employment-related claims, demands, or suits by SER employees, former employees, or applicants; (2) any misrepresentation or breach of the representations and warranties of SER contained in or made pursuant to this Agreement; and (3) the gross negligence or intentional activity of SER's directors, officers, employees, subcontractors, and agents. In addition, SER shall reimburse the Academy for any and all legal expenses and costs associated with the defense of any such claim, demand, or suit. The indemnification requirements of this paragraph may be met by the purchase of insurance in a form and amounts acceptable to the Academy.

9.3. **Limitations of Liabilities.**

9.3.1. The Academy may assert all immunities and statutory limitations of liability in connection with any claims arising under this Agreement.

9.3.2. EXCEPT FOR THE PARTIES' RESPECTIVE INDEMNIFICATION OBLIGATIONS UNDER SECTION 9.1 AND SECTION 9.2 OF THIS AGREEMENT, IN NO EVENT SHALL EITHER PARTY BE LIABLE TO THE OTHER PARTY UNDER THIS AGREEMENT FOR ANY INCIDENTAL, CONSEQUENTIAL, INDIRECT, STATUTORY, SPECIAL, EXEMPLARY OR PUNITIVE DAMAGES, INCLUDING, BUT NOT LIMITED TO, LOST PROFITS, LOSS OF USE, LOSS OF TIME, INCONVENIENCE, LOST BUSINESS OPPORTUNITIES, DAMAGE TO GOOD WILL OR REPUTATION, AND COSTS OF COVER, REGARDLESS OF WHETHER SUCH LIABILITY IS BASED ON BREACH OF CONTRACT, TORT, STRICT LIABILITY OR OTHERWISE, AND EVEN IF ADVISED OF THE POSSIBILITY OF SUCH DAMAGES OR SUCH DAMAGES COULD HAVE

BEEN REASONABLY FORESEEN. SER'S ENTIRE AGGREGATE LIABILITY FOR ANY CLAIMS RELATING TO THIS AGREEMENT SHALL NOT EXCEED THE FEES PAID OR PAYABLE BY THE ACADEMY TO SER UNDER THIS AGREEMENT IN THE TWELVE (12) MONTH PERIOD IMMEDIATELY PRECEDING THE EVENTS GIVING RISE TO SUCH LIABILITY. THIS SECTION SHALL SURVIVE THE TERMINATION OF THE AGREEMENT.

9.4. **Indemnity For DPSCD.** In consideration for DPSCD co-authorizing the Academy to operate as a public school academy pursuant to the terms of the Charter Contract, which is of material value to SER, SER shall indemnify, defend, and hold harmless DPSCD, the DPSCD Board of Education, DPSCD's officers, employees, agents, attorneys and those acting on behalf of their officers, employees, attorneys and agents from any and all claims (actual and threatened), disputes, demands, actions, expenses, liabilities, complaints, causes of action, rights, debts, rights of contribution and indemnification, contractual obligations, expenses, damages, and liabilities, including without limitation, investigative costs, reasonable attorney's fees, court costs, accountings, and expenses related to any defense arising, directly or indirectly, from bodily injury, personal injury, sickness, disease, death, property loss or damage, and any other demands, losses, liabilities or claims of any kind whatsoever, except to the extent of the gross negligence or willful misconduct DPSCD and the DPSCD Board of Education, which arises out of or is in any manner connected with (i) DPSCD's approval of the application for a public school academy, (ii) the DPSCD Board of Education and DPSCD's consideration of or issuance of the Charter Contract and notice to the Academy that DPSCD will not 'disallow' the Management Agreement and ancillary instruments related to Academy operations, (iii) SER's preparation for and operation of a public school or public school academy, (iv) the reliance by the DPSCD Board of Education, DPSCD, and DPSCD's officers, employees, agents or representatives upon information supplied by SER, (v) the failure of SER to perform duties and obligations pursuant to the terms of the Charter Contract, and this Agreement, (vi) the Academy's or SER's violation, directly or indirectly, of any and all lease terms, (if applicable) in connection with Academy's occupancy of and/or operations at the Sites, (vii) SER's performance of this Agreement, (viii) the infringement of patent or other proprietary rights in any material, process, machine, or appliance sued in the operation of the Academy, and (ix) any other matter related to operation of the public school academy pursuant to the terms of this Agreement and all ancillary instruments between SER, the Academy, and/or third parties.

9.4.1. *Terms of Insurance and Indemnification.* SER shall agree that the indemnification shall not be met solely by complying with the insurance requirements described in this Agreement and insurance is not a substitute for the indemnity.

9.4.2. *Notice of Claims.* SER and DPSCD shall notify each other (whichever applicable) in writing within ten (10) days of any actual or potential claim subject to the indemnification provision in this Agreement.

9.4.3. *Defense of DPSCD.* SER shall take such reasonable steps as may be necessary or appropriate to defend DPSCD, and its Board of Education, officers, employees,

agents and representatives until such time that SER proves that no further indemnification with respect to a claim or action is owed. SER shall not attempt to settle, settle or compromise any claim or suit subject to the indemnification provision without written notice to and prior approval from DPSCD.

9.4.4. *DPSCD Defense Option.* DPSCD and the DPSCD Board of Education shall have the option, at DPSCD's sole discretion and the reasonable expense of SER, to exclusively undertake and conduct the defense and/or settlement of any matters specified in this section.

9.4.5. *Legal Action.* SER expressly acknowledges and agrees that DPSCD and the DPSCD Board of Education may, at DPSCD and the DPSCD Board of Education's sole discretion and without assuming any liability whatsoever, commence legal action against SER to enforce the rights of DPSCD, DPSCD Board of Education, and the Academy pursuant to the terms of this Agreement and Charter Contract.

9.4.6. *Survival.* The indemnification provisions of this Charter Contract shall survive the termination or expiration of this Agreement, the Charter Contract and ancillary instruments between SER, Academy, and/or third parties.

9.5. **Indemnity For WRESA.** In consideration for WRESA co-authorizing the Academy to operate as a public school academy pursuant to the terms of the Charter Contract, which is of material value to SER, SER shall indemnify, defend, and hold harmless WRESA, WRESA Board of Education, WRESA's officers, employees, agents, attorneys and those acting on behalf of their officers, employees, attorneys and agents from any and all claims (actual and threatened), disputes, demands, actions, expenses, liabilities, complaints, causes of action, rights, debts, rights of contribution and indemnification, contractual obligations, expenses, damages, and liabilities, including without limitation, investigative costs, reasonable attorney's fees, court costs, accountings, and expenses related to any defense arising, directly or indirectly, from bodily injury, personal injury, sickness, disease, death, property loss or damage, and any other demands, losses, liabilities or claims of any kind whatsoever, except to the extent of the gross negligence or willful misconduct WRESA and the WRESA Board of Education, which arises out of or is in any manner connected with (i) DPSCD's approval of the application for a public school academy, (ii) the WRESA Board of Education and WRESA's consideration of or issuance of the Charter Contract and notice to the Academy that DPSCD will not 'disallow' the Management Agreement and ancillary instruments related to Academy operations, (iii) SER's preparation for and operation of a public school or public school academy, (iv) the reliance by WRESA Board of Education, WRESA, and WRESA's officers, employees, agents or representatives upon information supplied by SER, (v) the failure of SER to perform duties and obligations pursuant to the terms of the Charter Contract, and this Agreement, (vi) SER's violation, directly or indirectly, of any and all lease terms, (if applicable) in connection with Academy's occupancy of and/or operations at the Sites, (vii) SER's performance of this Agreement, (viii) the infringement of patent or other proprietary rights in any material, process, machine, or appliance sued in the operation of the Academy, and (ix) any



other matter related to operation of the public school academy pursuant to the terms of this Agreement and all ancillary instruments between SER, the Academy, and/or third parties.

- 9.5.1. *Terms of Insurance and Indemnification.* SER shall agree that the indemnification shall not be met solely by complying with the insurance requirements described in this Agreement and insurance is not a substitute for the indemnity.
- 9.5.2. *Notice of Claims.* SER and WRESA shall notify each other (whichever applicable) in writing within ten (10) days of any actual or potential claim subject to the indemnification provision in this Agreement.
- 9.5.3. *Defense of WRESA.* SER shall take such reasonable steps as may be necessary or appropriate to defend WRESA, and its Board of Education, officers, employees, agents and representatives until such time that SER proves that no further indemnification with respect to a claim or action is owed. SER shall not attempt to settle, settle or compromise any claim or suit subject to the indemnification provision without written notice to and prior approval from WRESA.
- 9.5.4. *WRESA Defense Option.* WRESA and the WRESA Board of Education shall have the option, at WRESA's sole discretion and the reasonable expense of SER, to exclusively undertake and conduct the defense and/or settlement of any matters specified in this section.
- 9.5.5. *Legal Action.* SER expressly acknowledges and agrees that WRESA and the WRESA Board of Education may, at WRESA and the WRESA Board of Education's sole discretion and without assuming any liability whatsoever, commence legal action against SER to enforce the rights of WRESA, WRESA Board of Education, and the Academy pursuant to the terms of this Agreement and Charter Contract.
- 9.5.6. *Survival.* The indemnification provisions of this Charter Contract shall survive the termination or expiration of this Agreement, the Charter Contract and ancillary instruments between SER, Academy, and/or third parties.

## **ARTICLE 10 INSURANCE**

- 10.1. **Insurance of the Academy.** The Academy shall secure and maintain such policies of insurance as required by DPSCD and the Charter Contract, with SER listed as an additional insured if permitted by the applicable insurer and/or with respect to the applicable coverage. This coverage shall include the building and related capital facilities if they are the property of the Academy. The Academy shall maintain such insurance in an amount and on such terms as required by the provisions of the Charter Contract, including the indemnification of SER required by this Agreement. The Academy shall, upon request, present evidence to SER that it maintains the requisite insurance in compliance with the

provisions of this paragraph. SER shall comply with any information or reporting requirements applicable to the Academy under the Academy’s policy with its insurer(s), to the extent practicable.

10.2. **Insurance of SER.** SER shall secure and maintain such policies of insurance as required by DPSCD and the Charter Contract and as specified in this section. SER shall name the Academy and DPSCD as an additional insured if permitted by the applicable insurer and/or with respect to the applicable coverage. SER shall notify DPSCD within five (5) business days of discovering that insurers object to listing DPSCD as an additional insured and the type of the subject coverage. Insurance certificates documenting SER’s and the Academy’s required insurance coverages are attached here as Exhibit A. Updated insurance certificates shall be provided to the Academy or SER, as appropriate, and DPSCD within seven (7) days of the expiration or replacement of such insurance policies. The Academy shall comply with any information or reporting requirements applicable to SER under SER’s policy with its insurer(s), to the extent practicable. Any policy of insurance maintained by SER shall not be changed, revoked, or modified absent thirty (30) days’ notice to DPSCD. In the event DPSCD modifies the level, type, scope, or other aspects of such coverage, then SER shall undertake like and similar modifications within thirty (30) days of being notified of such change.

10.3. **Required Coverages.** SER and the Academy shall each maintain the following coverages:

POLICY TYPE	MINIMUM COVERAGE REQUIREMENTS
<i>Commercial Property Policy</i> This shall be an all risk policy covering real and personal property of the Academy both on premises and in transit. Replacement cost coverage is required.	Replacement cost for the Academy’s real and personal property on premises and in transit.
<i>Comprehensive General Liability</i> This shall include, but not be limited to, personal injury and property damage for premises and operations, product liability, fire legal liability, and non-owned automobile and contractual liability.	\$1,000,000 per occurrence/\$2,000,000 aggregate
<i>Automobile Liability/Statutory No-Fault</i> This coverage must be provided on all licensed vehicles owned, leased, or rented by SER for the benefit of the Academy or in connection with performance of SER operations for the Academy.	\$1,000,000
<i>Umbrella Excess Liability</i> This coverage must provide a minimum of follow form excess liability coverage.	\$2,000,000

<i>Workers Compensation</i> Statutory benefits for the State of Michigan. This coverage must provide wage and medical benefits of work-related injuries and employer's liability coverage.	As required by Michigan law, Employer's Liability coverages of \$500,000
<i>Employee Fidelity Bond or Equivalent</i> This policy must include, but not be limited to, employee theft, forgery, burglary, and robbery both on and off premises.	\$500,000
<i>SER Board of Directors Liability</i> This policy should cover the SER Board, executive staff, and employees for "wrongful acts" errors or omissions not typically covered by general liability policies.	\$1,000,000
<i>Sexual Molestation and Abuse Rider.</i>	\$1,000,000/\$2,000,000 aggregate

**ARTICLE 11  
REPRESENTATIONS AND WARRANTIES**

- 11.1. **Academy Representations and Warranties.** In addition to any other representations and warranties set forth in this Agreement, the Academy represents and warrants that it has the authority under law to execute, deliver, and perform this Agreement and to incur the obligations provided for under this Agreement, that its actions have been duly and validly authorized, and that it will adopt any and all resolutions or expenditure approvals required for execution of this Agreement.
- 11.2. **SER Representations and Warranties.** In addition to any other representations and warranties set forth in this Agreement, SER represents and warrants that it has the authority under law to execute, deliver, and perform this Agreement and to incur the obligations provided for under this Agreement, that its actions have been duly and validly authorized, and that it will adopt any and all resolutions or expenditure approvals required for execution of this Agreement.
- 11.3. **Mutual Representations and Warranties.** Each party represents and warrants to the other that there are no pending actions, claims, suits, or proceedings that, to its knowledge, are threatened or reasonably anticipated against or affecting it, which, if adversely determined, would have a material adverse effect on its ability to perform its obligations under this Agreement.

**ARTICLE 12**  
**COMPLIANCE WITH CHARTER CONTRACT**

- 12.1. **Charter Contract; Conflict.** Each of the parties hereby agrees to comply with the Charter Contract and the ESP Requirements. The provisions of the Charter Contract shall supersede any competing or conflicting provisions contained in this Agreement.
- 12.2. **Academy Board Due Diligence.** The Academy Board represents and warrants that it has performed the necessary due diligence of SER and provided all information to the DPSCD Office of Charter Schools pursuant to the ESP Requirements, as applicable, prior to entering into this Agreement.
- 12.3. **Academy Board Members.** All Academy Board employees and their respective spouses and immediate family members hereby agree that they do not have any direct or indirect ownership, employment, contractual, or management interest in SER. The relationship between the Academy and SER shall be consistent with the conflicts of interest and prohibited familial relationship provisions set forth in the Charter Contract and applicable law.
- 12.4. **ESP Agreement.** This Agreement is an arms-length, negotiated agreement between an informed Academy Board and SER. The Academy Board represents that: (1) all Academy Board members have been given the opportunity to review the Agreement with the Academy’s legal counsel; (2) prior to approving this Agreement, the Academy Board obtained a legal opinion from its legal counsel, in the form provided in the ESP Requirements; and (3) the Academy Board has approved this Agreement with a formal vote at a public board meeting, and the Academy Board provided an opportunity for public comment on this Agreement prior to such vote.
- 12.5. **DPSCD Review of Agreement.** SER acknowledges that this Agreement is subject to review by DPSCD and shall not be effective unless and until the Academy is notified in writing that DPSCD does not disapprove of this Agreement.

**ARTICLE 13**  
**MISCELLANEOUS**

- 13.1. **Force Majeure.** Neither SER nor the Academy shall be liable for the failure or delay of fulfilling or performing any term of this Agreement nor deemed to have defaulted under or breached this Agreement, when and to the extent such failure or delay is caused by or results from the following force majeure events (“**Force Majeure Events**”) which are beyond the affected party’s (“**Impacted Party**”) reasonable control: (a) floods, hurricanes, tornadoes, volcanic eruptions, earth quakes, tsunamis, storms and other geologic processes or acts of God; (b) acts or threats of terrorism, war, invasion, hostilities (whether war is declared or not), riots, or other acts of civil unrest; (c) labor disputes, slowdowns, stoppages, strikes or other industrial disturbances; (d) government acts, orders or laws; (e) quarantines, or local, state, regional or national emergencies; (f) actions by a governmental

authority; (g) epidemics, pandemics, communicable disease outbreaks or serious public health issues; (h) shortages of adequate power or transportation facilities or any other cause, whether similar in kind to the foregoing or otherwise, beyond the Impacted party's reasonable control. SER's financial inability to perform, changes in costs or availability of materials, components or services, market conditions or supplier actions, or contract disputes will not excuse performance by SER. Written notice of the Impacted party's failure or delay in performance due to the Force Majeure Event must be given to the other party within five (5) business days following commencement of the Force Majeure Event. The written notice shall describe the Force Majeure Event and actions taken to minimize the impact thereof. The Impacted Party shall use diligent efforts to end the failure or delay and ensure the effects of such Force Majeure Event are minimized. The Impacted Party shall resume performance of its obligations as soon as reasonably practicable after the removal of the cause. In the event that the Impacted Party's failure or delay remains uncured for a period of thirty (30) consecutive days following submission of the written notice, the other party may terminate this Agreement immediately upon written notice.

- 13.2. **Notices.** All notices, demands, requests, and consents required or permitted to be given hereunder shall be in writing and shall be deemed to have been given: (1) when delivered by hand (with written confirmation of receipt); (2) when received by the addressee if sent by a nationally recognized overnight courier (receipt requested); (3) on the date sent by e-mail of a PDF document (with confirmation of transmission) if sent during normal business hours of the recipient, and on the next business day if sent after normal business hours of the recipient; or (4) on the fourth business day after the date mailed, by certified or registered mail, return receipt requested, postage prepaid. Such communications must be sent to the respective parties at the following addresses (or at such other address for a party as shall be specified in a notice given in accordance with this Section 13.2):

To SER:

SER-Metro Detroit Jobs For Progress, Inc.  
Attn: Eva Garza Dewaelsche  
9301 Michigan Ave.  
Detroit, Michigan 48210

With a copy (which shall not constitute notice) to:

Bodman PLC  
Attn: Emily J. Kwolek  
1901 St. Antoine Street  
6<sup>th</sup> Floor at Ford Field  
Detroit, Michigan 48226

To the Academy:

SER Youthbuild Learning Academy  
Attn: Board President  
9301 Michigan Avenue Detroit, Michigan  
48210

With a copy (which shall not constitute notice) to:

Shifman & Carlson, P.C.  
Attn: Robert J. Gavin  
34705 West Twelve Mile Road, Suite 160  
Farmington Hills, MI 48331

With a copy (which shall not constitute notice) to:

Detroit Public Schools Community  
District  
Attn: Office of Adult and Charter Schools  
3011 W. Grand Blvd., Suite 9  
Fisher Building,  
Detroit, MI 48202

And

With a copy (which shall not constitute notice) to:

Detroit Public Schools Community  
District  
Attn: Office of the General Counsel  
3011 W. Grand Blvd., Suite 1002  
Fisher Building,  
Detroit, MI 48202

- 13.3. **Severability.** The invalidity of any of the covenants, phrases, or clauses in this Agreement shall not affect the remaining portions of this Agreement, and this Agreement shall be construed as if such invalid covenant, phrase, or clause had not been contained in this Agreement.
- 13.4. **Successors and Assigns.** This Agreement shall be binding upon, and inure to the benefit of, the parties and their respective successors and assigns.
- 13.5. **Entire Agreement.** This Agreement is the entire agreement between the parties relating to the services provided herein and to the compensation for such services by the parties. Any modification to this Agreement must be made in writing, approved by the Academy Board and SER, not be disapproved by DPSCD and signed by a duly authorized officer of each.
- 13.6. **Amendments and Modifications.** The Academy Board must submit any and all amendments or modifications of this Agreement to DPSCD not less than 45 days prior to the Academy Board's approval of such amendments or modifications. No amendment or modification of this Agreement shall be effective unless and until DPSCD has notified the Academy in writing that it does not disapprove of the modification.
- 13.7. **Survival.** Notwithstanding the expiration or termination of this Agreement for any reason, the parties hereto shall be required to carry out all provisions of this Agreement which

contemplate performance subsequent to such expiration or termination, and any such expiration or termination shall not affect any liability or other obligation which shall have accrued prior to such expiration or termination. Without limiting the generality of the foregoing, Article 5 (Financial Arrangement), Sections 7.8 (Rights to Payment upon Termination), 7.9 (Rights to Property upon Termination), and 7.10 (Transition), Article 8 (Proprietary Information), Article 9 (Indemnification) shall survive the termination or expiration of this Agreement for any reason.

- 13.8. **Non-Waiver.** A failure of a party in exercising any right, power, or privilege under this Agreement shall not affect such right, power, or privilege, nor shall any single or partial exercise thereof preclude any further exercise thereof or the exercise of any other right, power, or privilege. The rights and remedies of the parties under this Agreement are cumulative and not exclusive of any rights or remedies which either party may otherwise have.
- 13.9. **Assignment.** Neither party may assign this Agreement, either in whole or in part, without the prior written consent of the other party and prior written notification to DPSCD, and any such assignment must be made in a manner consistent with DPSCD's ESP Requirements. Any other assignment of this Agreement shall be null and void.
- 13.10. **Governing Law; Venue.** This Agreement shall be governed by and enforced in accordance with the laws of the State of Michigan, without regard to conflicts of laws principles thereof. The parties consent to the exclusive jurisdiction of the federal or state courts located in or with jurisdiction over Wayne County, Michigan. The Parties hereby consent to and submit to the personal and subject matter jurisdiction of said courts, and waive any claim that such forum is inconvenient.
- 13.11. **Compliance with Laws.** The parties agree to comply with all applicable laws and regulations of the United States of America, the State of Michigan, and any respective political subdivisions in the performance of this Agreement.
- 13.12. **Delegation of Authority.** Nothing in this Agreement shall be construed as delegating to SER any of the powers or authority of the Academy Board that are not subject to delegation by the Academy under the Code, any other law of the State of Michigan, or the Charter Contract.
- 13.13. **DPSCD Non-Disapproval.** This Agreement shall not be effective unless or until unless and until DPSCD has notified the Academy in writing that it does not disapprove of this Agreement.
- 13.14. **Counterparts.** This Agreement may be executed in one or more counterparts, each of which will be deemed to be an original, but all of which together will constitute one and the same instrument, without necessity of production of the others. An executed signature page delivered via facsimile transmission or electronic signature shall be deemed as effective as an original executed signature page.

[SIGNATURE PAGE FOLLOWS]



The parties have executed this Agreement as of the day and year first above written.

**SER**

SER-Metro Detroit Jobs For Progress, Inc.

**ACADEMY**

SER YouthBuild Learning Academy

By: *Eva G. Dewaelsche*  
Name: Eva Garza Dewaelsche  
Title: President

By: *Felix Valbuena Jr*  
Name: Dr. Felix Valbuena  
Title: Board President

[SIGNATURE PAGE TO MANAGEMENT SERVICES AGREEMENT]