

## **MANAGEMENT SERVICES AGREEMENT**

This Management Services Agreement (the "Agreement") is made and entered into as of the 1st day of July 2014 by and between **Choice Schools Associates, L.L.C.**, a Michigan limited liability company ("CSA"), and **Benton Harbor Charter School** (the "Academy"), a body corporate and public school academy organized under the Michigan Revised School Code (the "Code").

**WHEREAS**, The Academy operates a public school academy pursuant to a contract (the "Contract") issued by Ferris State University Board of Trustees (University Board); and

**WHEREAS**, The Academy operates a public school academy under the direction of the Academy Board (the "Board"); and

**WHEREAS**, CSA is a limited liability company providing educational and managerial services to public school academies that has the ability to implement a comprehensive educational program and management methodologies for the Academy; and

**WHEREAS**, The Academy desires to engage CSA to perform certain services related to the Academy's educational program and operations.

**NOW, THEREFORE, IT IS AGREED AS FOLLOWS:**

### **ARTICLE I**

#### **CONTRACTUAL RELATIONSHIP**

**A. Authority.** The Academy has been granted the Contract by the University Board to organize and operate a public school academy, together with the powers necessary or desirable for carrying out the educational program set forth in the Contract. The Academy is authorized by law to contract with a private entity to provide educational management services, provided that no provision of such a contract shall be effective if it would prohibit the Board from acting as an independent, self-governing public body, allow public decisions to be made other than in compliance with the Open Meetings Act, or interfere with the Board's constitutional duty to exercise its statutory, contractual and fiduciary obligations governing the operation of the Academy.

**B. Delegated Authority.** Acting under and in the exercise of such authority, the Academy hereby delegates to CSA, to the extent permitted by law, specified functions relating to the provision of educational services and the management and operation of the Academy; provided, however, that, this Agreement is subject to all the terms and conditions of the Contract. The Contract shall be deemed incorporated herein by this reference. In the event of any inconsistency between provisions of this Agreement and provisions of the Contract, the provisions of the Contract shall prevail.

**C. Status of the Parties.** CSA is a limited liability company of Michigan, and is not a division or a part of the Academy. The Academy is a body corporate and governmental entity authorized by the Code, and is not a division or part of CSA. The relationship between CSA and

the Academy is based solely on the terms of this Agreement. The parties to this Agreement acknowledge that the relationship between them created by this Agreement is that of an independent contractor, and that except as expressly set forth in this Agreement, no employee of CSA shall be deemed to be an agent or employee of the Academy. CSA will be solely responsible for its acts and the acts of its agents, employees and subcontractors.

**D. Independent Contractor/Designation of Agents.** The parties to this Agreement intend that the relationship between them is that of an independent contractor, not as an employee-employer relationship. CSA is not a division of any part of the Academy. The relationship between the parties was developed and entered into through arm's length negotiations and is based solely on the terms of this Agreement. No agent or employee of the Academy shall be determined to be an agent or employee of CSA for any reason or purpose. No agent or employee of CSA shall be determined to be an agent or employee of the Academy, except as follows:

(i) CSA, and its respective officers, directors, employees and designated agents are each hereby authorized to serve as agents of the Academy having a legitimate educational interest in the Program and its students for purposes of the Family Educational Rights and Privacy Act, 20 U.S.C. §1232g et seq., ("FERPA"), such that they are jointly and severally entitled to access the educational records of the Program for all purposes related to FERPA.

(ii) During the term of this Agreement, the Academy may disclose confidential data and information to CSA, and its respective officers, directors, 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.

(iii) As otherwise expressly designated by written agreement of the parties with consent from anyone whose consent is required by law or contract.

## ARTICLE II

### TERM

**A. Term.** This Agreement shall become effective July 1, 2014, and shall cover five academic years commencing on July 1, 2014 and ending on June 30, 2019, subject to a continued Contract from the University Board and continued state per capita funding. The Contract from the University Board is effective through June 30, 2019 and the parties recognize that during the reauthorization process the University Board may condition an extension of the Contract upon modifications to this Agreement or submission of a new Agreement.

**B. Revocation or Termination of Academy's Contract.** If the Academy's Contract issued by the University Board is revoked or terminated, this Agreement shall automatically

terminate on the same date as the Academy's Contract is revoked or terminated without further action by the parties.

### **ARTICLE III**

#### **FUNCTIONS OF CSA**

A. **Responsibility.** Under the policy direction and general supervision of the Board, CSA shall be responsible for the management, operation, administration, and education at the Academy. Such functions include, but are not limited to:

1. Implementation and administration of the Educational Program contained in the Contract;
2. Curriculum improvement services;
3. Student environment management and community outreach/marketing services;
4. Computer services;
5. Budget preparation and financial management services;
6. Accounting and bookkeeping services;
7. Risk management;
8. Accounts payable;
9. Acquisition of instructional and non-instructional material, equipment and supplies;
10. Selection, employment and supervision of all teachers and staff and the personnel management services (recordkeeping, wage and benefits administration, training and technical assistance) necessary to support those employees;
11. Food service management;
12. Transportation management;
13. Facilities maintenance;
14. Preparation of required ISD, local, state and federal reports;
15. Information and technology system development and management;
16. Preparation of applications for grants and special programs;
17. Securing funding sources for special programs and facility improvements;

18. Operation of the school building and the installation of technology integral to school design;
19. Administration of extra-curricular and co-curricular activities and programs approved by the Board;
20. Preparation of regulations governing operations of the Academy and implementation of such regulations as are approved by the Board;
21. Provide special education services to students who attend the Academy in conformity with the requirements of state and federal laws and applicable regulations and policies;
22. Preparation of strategic plans for the continuing educational and financial benefit of the Academy;
23. Implementation of an ongoing public relations strategy for the development of beneficial and harmonious relationships with other organizations and the community;
24. Preparation and enforcement of student codes of conduct after Board approval;
25. Any other function necessary or expedient for the administration of the Academy with approval from the Board.

**B. Educational Goals and Program.** CSA shall implement the educational goals and programs set forth in the Contract, and established by the Board including but not limited to methods of pupil assessment, admission policy and criteria, school calendar and school day schedule, age and grade classifications or pupils to be enrolled, and methods to be used to monitor performance towards targeted educational outcomes (collectively the "Educational Program"). In the event that CSA determines that it is advisable to modify the Educational Program set forth in the Contract, CSA will provide written notification to the Board specifying the changes it recommends and the reasons for the proposed changes. No changes in the Educational Program shall be implemented without the prior approval of the Board and the University Board. CSA shall provide the Board with periodic written reports specifying the level of achievement of each of the Academy's educational goals set forth in the Contract and detailing its plan for meeting any educational goals that are not being attained. These reports will be submitted to the Board immediately prior to the Board's regular meeting in January and July each year, and at such other times as specified in Board policy as the same may be changed from time to time. The Educational Program shall be in compliance with applicable state and federal laws, rules and regulations.

**C. Subcontracts.** It is anticipated that CSA will utilize subcontracts to provide some of the services it is required to provide to the Academy, including but not limited to transportation and/or food service. CSA shall not subcontract the management, oversight or operation of the teaching and instructional program, without the prior approval of the Board. Board approval of other subcontracts is not required unless the cost for these subcontracted services exceeds the funds appropriated for that purpose in the Academy's approved budget.



CSA shall not expend funds in excess of the Academy's Board approved budget or any Board approved amendment thereof. Every subcontract entered into without Board approval, and the appropriation(s) from which it will be paid, shall be reported to the Board at its next meeting.

**D. Place of Performance.** Instruction services other than field trips will normally be performed at the Academy facilities. CSA may perform functions other than instruction, such as purchasing, professional development, and administrative functions at off-site locations, unless prohibited by the Contract or applicable law. The Academy shall provide CSA with the necessary office space at the Academy site to perform all services described in this Agreement.

**E. Acquisitions.** All acquisitions made by CSA for 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. CSA and its subcontractors will comply with all federal and state laws, rules and regulations in addition to such policies as the Board may, from time to time adopt, under Section 1267 and Section 1274 of the Code as if the Academy were making these purchases directly from a third party supplier and CSA will not include any fees or charges to the cost of the equipment, materials and supplies purchased from third parties when it seeks reimbursement for the cost of these acquisitions.

**F. Pupil Performance Standards and Evaluation.** CSA is responsible for and accountable to the Board for the performance of students who attend the Academy. CSA 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 Contract or applicable laws and such additional measures as shall be mutually agreed between the Board and CSA including but not limited to parent satisfaction surveys.

**G. Student Recruitment.** CSA shall be responsible for the recruitment of students subject to the provisions of the Contract or applicable laws, and the policies adopted by the Board. Students shall be selected in accordance with the procedures set forth in the Contract and in compliance with the Code and other applicable law. CSA shall follow all applicable procedures regarding student recruitment, enrollment and lottery management, and shall be responsible for publication of appropriate public notices and scheduling open houses.

**H. Student Due Process Hearings.** CSA shall provide students with procedural and substantive due process in conformity with the requirements of applicable law regarding discipline, special education, confidentiality and access to records, to an extent consistent with the Academy's own obligations. The Board shall retain the right to provide due process as required by law and to determine whether any student will be expelled.

**I. Legal Requirements.** CSA shall provide educational programs that meet the requirements under the Contract and applicable law, unless such requirements are or have been waived.

**J. Policies and Procedures.** The Board shall consider, adopt and conduct its operations in conformity with policies and procedures applicable to the Academy, and CSA is directed to enforce the policies and procedures adopted by the Board. CSA shall assist the Board in its policy making function by recommending the adoption of reasonable policies and procedures applicable to the Academy.

**K. School Year and School Day.** The school year and the school day shall be as provided in the Contract and as defined annually by the Board and defined by law.

**L. Authority.** CSA shall have authority and power necessary to undertake its responsibilities described in this Agreement except in the case(s) wherein by law such power may not be delegated.

**M. Compliance with Academy's Contract.** CSA agrees to perform its duties and responsibilities under this Agreement in a manner that is consistent with the Academy's obligations under the Academy's Contract issued by the University Board, including all schedules attached thereto and policies referenced therein, as they may be amended. The provisions of the Academy's Contract shall supersede any competing or conflicting provisions contained in this Agreement. CSA agrees to assist the Academy in complying with all of the Academy's reporting, recordkeeping, and other obligations under the Academy's Contract. CSA shall not act in a manner which will cause the Academy to be in breach of its Contract. Any action or inaction by CSA that causes the Contract to be in jeopardy of termination is a material breach of the Agreement. In addition, a failure of CSA to perform reasonably the functions set forth in Article III may be considered a material breach of this Agreement.

**N. Additional Programs.** The services provided by CSA to the Academy under this Agreement consist of the Educational Program as set forth in the Contract, as the same may change from time to time. The Academy may decide to provide additional programs, including but not limited to summer school. Any revenues collected from such programs will go directly to the Academy. The Academy may also purchase additional services from CSA at mutually agreeable cost. Such additional services purchased by the Academy from CSA shall be documented in writing as an amendment to this Agreement.

**O. Annual Budget Preparation.** CSA will provide the Board with an annual budget that shall conform to the State accounting manual and the Uniform Budgeting and Accounting Act, MCL 141.421 et seq. and in a form satisfactory to the Board and in compliance with the Contract. The budget shall contain reasonable detail as requested by the Board and as necessary to comply with the General Accepted Accounting Practices (GAAP) 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 Academy facilities, supplies and furnishings necessary to operate the Academy, taxes, insurance premiums, utilities, professional fees, and other costs and expenses connected to the operation of the Academy. The proposed budget shall be submitted to the Board for approval not later than 30 days prior to the date when the approved budget is required to be submitted to the University Board under the Contract.

**P. Compliance with Section 503c.** On an annual basis, CSA agrees to provide the Board with the same information that a school district is required to disclose under section 18(2) of the State Aid Act of 1979, MCL.380.1618, for the most recent school fiscal year for which the information is available. Within thirty (30) day of receipt of this information, the Board shall make the information available on the Academy's website home page, in a form and manner prescribed by the Michigan Department of Education. The defined terms in section 503c of the Code, MCL 380.503c, shall have the same meaning in this Agreement.

**Q. Compliance with Section 11.26 of Contract.** CSA shall make information concerning the operation and management of the Academy, including without limitation the information described in Schedule 8 of the Contract, available to the Academy as deemed necessary by the Board in order to enable the Academy to fully satisfy its obligations under Section 11.26(a) of the Contract Terms and Conditions.

**R. Suspension and Debarments List.** Federal agencies are required to award contracts only to presently responsible sources and cannot award funds to entities that have been suspended or debarred from doing business with the federal government. The Academy is a recipient of federal funding and CSA is required to refrain from any action that will result in being suspended or debarred. CSA certifies and affirms that it is not included on the federal Suspension and Debarments list of Excluded Parties List; nor is CSA affiliated with any party that is included on the federal Suspension and Debarments list of Excluded Parties List.

## **ARTICLE IV**

### **OBLIGATIONS OF THE BOARD**

**A. Board Policy Authority.** The Board is responsible for determining the fiscal and academic policies that will govern the operation of the Academy, including policies relative to the conduct of students while in attendance at the Academy or enroute to and from the Academy and regulations governing the procurement of supplies, materials and equipment. The Board shall exercise good faith in considering the recommendations of CSA 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 Contract. Failure of CSA and the Board to agree on educational policies is grounds for termination of the Agreement by either party.

**B. Building Facility.** The Board is responsible for the acquisition by either purchase or lease of a building facility that complies with all of the requirements of the Contract.

**C. Academy Employees.** The Board may employ such employees as it deems necessary. The cost to employ Academy employees shall be paid by the Board.

**D. Educational Consultants.** The Board may retain an educational consultant or consultants to review the operations of the Academy and the performance of CSA under this Agreement. CSA shall cooperate with the educational consultant or consultants and will provide those individuals with prompt access to records, facilities and information as if such requests came from the full Board. CSA shall have no authority to select, evaluate, assign, supervise or control any educational consultant employed by the Board, and agrees that it will not bring or threaten to bring any legal action against any educational consultant for the performance of the functions requested to be performed by the Board and which are consistent with this Agreement. The cost to employ an educational consultant shall be paid by the Board.

**E. Legal Counsel.** The Board shall select and retain legal counsel to advise it on any matter, including, but not limited to its rights and responsibilities under the Contract, this Agreement and applicable law.

**F. Audit.** The Board shall select and retain an Independent auditor to perform the annual financial audit in accordance with the Contract and applicable state law.

**G. Budget.** The 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 Contract, including but not limited to its oversight of CSA, the organization of the Academy, negotiation of the Contract and any amendments, payment of employee costs, insurance required under the Contract and this Agreement, the annual financial audit and retention of the Board's legal counsel and consultants. CSA may not make expenditures or commitments which deviate from the amounts or purposes of appropriations contained in the approved budget without the prior approval of the Board in the form of an approved amendment of the budget in accordance with applicable law and the Contract. In addition, the 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 Board.

**H. Academy Funds.** The Board shall determine the depository of all funds received by the Academy. All funds received by the Academy shall be initially deposited in the Academy's depository account. Signatories on the depository account shall be current Board members properly designated annually by Board resolution. All interest or investment earnings on Academy deposits shall accrue to the Academy. The Board shall provide Academy funding on a consistent and timely basis to CSA to fulfill its obligations under this Agreement.

**I. Governmental Immunity.** The Board shall determine when to assert, waive or not waive its governmental immunity.

**J. Contract with University Board.** The Board will not act in a manner which will cause the Academy to be in breach of its Contract with the University Board.

**K. Evaluation of CSA.** The Board will evaluate the performance of CSA each year to provide CSA with an understanding of the Board's view of its performance under this Agreement. A preliminary evaluation will normally occur in January of each year followed by a year-end evaluation in June. The Board will determine the format to conduct this evaluation. Special evaluations may occur at any time.

## **ARTICLE V**

### **FINANCIAL ARRANGEMENT**

**A. Primary Source of Funding.** As a Michigan public school academy, the primary source of funding for the Academy is state school aid payments based upon the number of students enrolled in the Academy combined with such other payments as may be available from state and federal sources for specific programs and services.

**B. Other Revenue Sources.** In order to supplement and enhance the state school aid payments and improve the quality of education at the Academy, the Board and CSA shall endeavor to obtain revenue from other sources. In this regard:

1. The Academy and/or CSA shall solicit and receive donations consistent with the mission of the Academy.



2. The Academy and/or CSA may apply for and receive grant money, in the name of the Academy. CSA shall provide advance notification to the Board of any grant applications it intends to make and receive the approval of the Board for the application prior to filing or submitting the grant application.
3. To the extent permitted under the Code, CSA may charge fees to students for extra services such as summer programs, after school programs and athletics and charge non-Academy students who participate in such programs approved by the Board.

All funds received by CSA or the Academy from such other revenue sources shall inure to and be deemed the property of the Academy, except as otherwise agreed by the parties in writing as an amendment to this Agreement.

**C. Compensation for Services.** For the term of this Agreement, the Academy shall pay CSA an annual fee. This annual fee shall be as follows:

1. **2014-2015 School Year.** The annual fee to be paid for services performed between July 1, 2014 through June 30, 2015 shall be ten (10.00%) percent of all gross revenues.
2. **2015-2016 School Year.** The annual fee to be paid for services performed between July 1, 2015 through June 30, 2016 shall be ten (10.00%) percent of all gross revenues.
3. **2016-2017 School Year.** The annual fee to be paid for services performed between July 1, 2016 through June 30, 2017 shall be ten (10.00%) percent of all gross revenues.
4. **2017-2018 School Year.** The annual fee to be paid for services performed between July 1, 2017 through June 30, 2018 shall be ten (10.00%) percent of all gross revenues.
5. **2018-2019 School Year.** The annual fee to be paid for services performed between July 1, 2018 through June 30, 2019 shall be ten (10.00%) percent of all gross revenues.

For purposes of this Section, the term "gross revenues" means the sum of (a) the amount of all payments applicable to a school year that the Academy receives directly or indirectly under Article V, Paragraph A including amounts retained by the University Board plus (b) the amount of all grants received by the Academy under Article V, Paragraph B(2) that were initiated and administered by CSA and which are to be expended during that school year.

CSA's annual fee shall be paid in twelve (12) equal monthly installments beginning in July of each school year. The exact day of the month that each monthly installment payment is to be paid will coincide with the timing of any state aid payment from the State of Michigan to be received in that month. In months where no state school aid payments are to be received, the day of the month when that monthly installment will be due will be mutually agreed upon by the

parties after taking into consideration available year-end funds and the timing of funds to be made available from state aid anticipation notes or other sources. All installments of the annual fee for the 2018-2019 school year shall be paid by June 30, 2019 if this Agreement is not extended beyond that scheduled termination date. The amount of the annual fee is subject to reduction in a mutually agreeable amount in any school year if extenuating circumstances make the entire annual fee inappropriate.

**D. Reasonable Compensation.** CSA's compensation under this Agreement is reasonable compensation for services rendered. CSA's compensation for services under this Agreement will not be based, in whole or in part, on a share of net profits from the operation of the Academy.

**E. Payment of Educational Program Costs.** In addition to the Academy's obligation to reimburse CSA for the compensation of certain of its employees under Article VI, all costs reasonably incurred in providing the Educational Program at the Academy shall be paid by the Academy. Such costs shall include, but shall not be limited to, curriculum materials, professional textbooks, library books, computer and other equipment, software, supplies utilized at the Academy for educational purposes, building payments, maintenance, utilities, capital improvements, and marketing and development. Marketing and development costs charged to the Academy shall be limited to those costs specific to the Academy Program, and shall not include any costs for the marketing and development of CSA. The Board shall pay or reimburse CSA monthly for approved fees and expenses upon properly presented documentation and approval by the Board, but reimbursements for the cost of compensation of CSA employees under Article VI shall be made not later than three (3) business days before that compensation is due to the employees. At its option, the Board may advance funds to CSA for the fees and expenses associated with the Academy's operation provided that documentation for the fees and expenses are provided for Board ratification. In paying costs on behalf of the Academy, CSA shall not charge an added fee. Any costs reimbursed to CSA 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 CSA.

**F. CSA Costs.** The annual fee to be paid to CSA set forth in Article V, Section C is intended to compensate CSA for all expenses it incurs for administrative and financial services it is required to provide under this Agreement, including but not limited to, expenses associated with individuals providing professional and curriculum development services, accounting services, clerical services, CSA legal services, management and budgeting services, and administrative services. CSA will provide sufficient professional and non-professional staff in these areas, who shall be compensated by CSA. In addition, the annual fee is intended to compensate CSA for all costs incurred by CSA to provide these services. The annual fee does not include payments for CSA personnel provided pursuant to Article VI (B), (C), and (D), the cost of which will be reimbursed in accordance with Article VI (A).

**G. Other Public School Academies.** The Academy acknowledges that CSA has entered, or will enter into management agreements with other public school academies. CSA shall separately account and provide written detail for reimbursable expenses incurred on behalf of the Academy and other public school academies, and only charge the Academy for expenses incurred on behalf of the Academy.



**H. Financial Reporting.** On not less than a monthly basis, CSA shall provide the Board with a written report detailing the status of the budget to actual revenues and a detailed schedule of expenditures at an object level detail for review and approval by the Board. This report shall explain any variances from the approved budget and shall contain recommendations for necessary budget corrections. The foregoing presentation shall be in a form and format acceptable to the Board and shall be provided to Board members not less than three (3) business days prior to the Board meeting at which the information will be considered in the Board packets sent to Board members in preparation for Board meetings. CSA shall provide special reports as necessary to keep the Board informed of changing conditions.

**I. Operational Reporting.** At least two (2) times per year, December and May unless agreed otherwise, CSA will provide the Board with comprehensive written reports detailing Academy operations, finances and student performance. In order to enable the Board to monitor CSA's educational performance and the efficiency of its operation of the Academy, upon the request of the Board, CSA will provide written reports to the 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 one (1) week after the request for the report is received by CSA unless the Board and CSA mutually agree upon an extended timetable.

**J. Audit Report Information.** CSA will make all of its financial and other records related to the Academy available to the independent auditor selected by the Board.

**K. Other Financial Relationships.** Any lease, promissory notes or other negotiable instruments, lease-purchase agreements or other financing agreements between the Academy and CSA shall be contained in a document separate from this Agreement, and shall be separately approved by the University Board, and shall comply with all applicable law, the Contract issued by the University Board, and any applicable policies created by the University Board and/or the University Charter Schools Office.

**L. Access to Records.** CSA shall keep accurate financial records pertaining to its operation of the Academy, together with all Academy financial records prepared by or in the possession of CSA, and retain all of these records for a period as required by Bulletin 1022 of Michigan's Record Retention Schedule or applicable law, whichever period is the longest, from the close of the fiscal year to which such books, accounts and records relate. CSA shall further make information concerning the operation and management of the Academy, including but not limited to, information required to be kept by the Contract with the University Board, including all exhibits, schedules, and the like, available to the Academy as deemed necessary by the Board in order to enable the Academy to fully satisfy its obligations under the Contract with the University Board. Financial, educational, operational and student records that are now or may in the future come into the possession of CSA remain Academy records and are required to be returned by CSA to the Academy upon demand. CSA 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 financial, educational, operational and student records pertaining to the Academy are Academy property, and are public records subject to disclosure in accordance with the provisions of the Michigan Freedom of Information Act. This Agreement shall not be construed to restrict the University Board's or the public's access to these records under the Freedom of Information Act or the Contract except to the extent permitted by law.

## ARTICLE VI

### PERSONNEL AND TRAINING

**A. Personnel Responsibility.** CSA is responsible for providing the Academy with a School Principal and qualified teaching, food service, secretarial, maintenance and transportation staff to operate the Academy within the staffing levels approved by the Board in its annual budget. CSA shall have the authority to select, evaluate, assign, discipline, transfer and terminate the employment of all individuals working at or for the Academy with the exception of the Board employees, if any, consistent with state and federal law and the provisions of this Agreement. With the exception of Board employees, if any, CSA shall be the employer of all individuals working at or for the Academy and will be responsible for the payment of all costs attributable to these employees, including wages, salaries, fringe benefits, unemployment costs, workers compensation costs, and liability insurance costs. Unless required by applicable statute, court or administrative decision, or Attorney General's opinion, CSA shall not make payments to the Michigan Public School Employees' Retirement System or any other public retirement system on behalf of its employees. CSA will provide the Board with a detailed listing of the actual compensation and fringe benefit costs for all employees of CSA who will be assigned to provide services at the Academy. The Board will reimburse CSA for the cost of the salaries, fringe benefits, and social security withholdings of employees assigned to the Academy, provided that these costs are not higher than anticipated and approved in the annual budget. At its option, the Board may advance funds to CSA for the cost of the salaries, fringe benefits and social security of employees assigned to the Academy provided that documentation for the fees and expenses are provided for Board review at its next regularly scheduled Board meeting and are consistent with budget allocations. At the request of the Board, CSA will provide payroll services for employees of the Board. CSA will not assign any employee to work at the Academy who has not successfully completed a pre-employment background check (including criminal history, criminal background and unprofessional conduct checks), credential verification, and a pre-employment physical if appropriate. CSA will not place in the employment contracts with any of its employees assigned to work at the Academy any restrictions that would prevent the Academy from employing those individuals at the Academy or would prevent those individuals from working for the Academy or for any other entity providing educational services to the Academy. CSA agrees that any provision of an employment agreement with any of its employees that would be in violation of this provision is void and shall not be enforceable in any forum. CSA will comply with the requirements of applicable law regarding the evaluation of its employees based in part upon data on student growth and the establishment of employee compensation levels that include job performance and job accomplishments as a significant factor.

**B. School Principal.** CSA shall provide the Academy with a Principal who shall be responsible for the daily operational control of the Academy and to make recommendations to CSA regarding employees to be assigned to the Academy. CSA will have the authority, consistent with state law, to select and supervise the Principal and to hold that individual accountable for the success of the Academy. The Principal will be a CSA employee, but the individual selected by CSA must be acceptable to the Board. CSA will consult with the Board prior to hiring the Principal and will consult with the Board prior to taking any action that would alter the employment status of the Principal. At the request of the Board, CSA will review the performance of the Principal with the Board. Upon receipt of written notification indicating that the Board is not satisfied with the performance of the Principal, CSA will provide a replacement Principal if the performance problems are not resolved. The Board will reimburse CSA for any

reasonable costs associated with the termination of the Principal during a school year, at the Board's request. The employment contract with the Principal, and the duties and compensation of the Principal shall be determined by CSA, but that individual must be assigned on a full time basis to the Academy and may not be providing services to any other school or Academy without the prior approval of the Board. If CSA chooses to execute a contract with a Principal that has a term longer than one year, the Board reserves the right to have the School Administrator placed elsewhere by CSA if the Board is dissatisfied with that individual's performance at the end of any school year and such an action will be considered a non-renewal rather than a termination for purposes of this Agreement.

**C. Teachers.** As part of the annual budgeting process, CSA shall make a recommendation to the Board regarding the number of teachers required for the operation of the Academy pursuant to the Contract and applicable law. CSA shall provide the Academy with such teachers, qualified in the grade levels and subjects, as are required by the Academy. The curriculum taught by such teachers shall be the curriculum prescribed in the Contract. Such teachers may, in the discretion of CSA, 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 CSA. Each teacher assigned to or retained by the Academy shall be a highly qualified teacher with a valid teaching certificate issued by the State Board of Education under the Code, to the extent required under the Code and the No Child Left Behind Act of 2001 or other applicable law. If CSA chooses to execute contracts with teaching staff that have a term of longer than one year, the Board reserves the right to have teachers placed elsewhere by CSA if the Board is dissatisfied with their performance at the end of any school year. Teachers employed by CSA shall not be considered teachers for purposes of continuing tenure under MCL Section 38.71 *et. seq.*

**D. Support Staff.** As part of the annual budgeting process, CSA shall make a recommendation to the Board regarding the number of support staff required for the operation of the Academy pursuant to the Contract. CSA shall provide the Academy with such support staff, qualified in the areas required, as are required by the Board. Such support staff may, in the discretion of CSA, work at the Academy on a full or part time basis. If assigned to the Academy on a part time basis, such support staff may also work at other schools operated by the CSA. Each support staff employee assigned to or retained by the Academy shall have received the training and hold the certificates, degrees or licenses legally required for the position to which they are assigned under the Code and the No Child Left Behind Act of 2001 or other applicable law. CSA will provide annual performance reviews of the performance of support staff to the Board. If CSA chooses to execute contracts with support staff that have a term of longer than one year, the Board reserves the right to have support staff placed elsewhere by CSA if the Board is dissatisfied with their performance at the end of any school year.

**E. Training.** CSA shall provide training to the School Administrators, teachers and paraprofessionals on a regular and continuing basis and shall insure that they receive all training required by law. The School Administrators, teachers, paraprofessionals and other support staff employees shall receive such other training as CSA determines as reasonable and necessary under the circumstances.

## **ARTICLE VII**

### **TERMINATION OF AGREEMENT**

**A. 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 II in the event that CSA should fail to remedy a material breach within a period reasonable under the circumstances, which in no event shall be longer than sixty (60) days after notice from the Academy. A material breach may include, but is not limited to, (1) failure to account for its expenditures or to pay operating costs (providing funds are available to do so), (2) failure to follow policies or procedures duly adopted by the Board, (3) failure to follow the Educational Program, (4) a violation of the Contract or of applicable law, or (5) any action or inaction by CSA that places the Contact in jeopardy. In order to terminate this Agreement for cause, the Board is required to provide CSA with written notification of the facts it considers to constitute material breach and the period of time within which CSA has to remedy this breach not to exceed sixty (60) days. After the period to remedy the material breach has expired, the Board may terminate this Agreement by providing CSA with written notification of termination.

**B. Termination by CSA for Cause.** This Agreement may be terminated by CSA for cause prior to the end of the term specified in Article II in the event the Academy fails to remedy a material breach within a period reasonable under the circumstances, which in no event shall be longer than sixty (60) days after notice from CSA. Material breach may include, but is not limited to, a failure by the Academy to carry out its responsibilities under this Agreement (such as a failure to make payments to CSA as required by this Agreement or a failure to give consideration to the recommendations of CSA regarding the operation of the Academy); a violation of the Contract or applicable law. In order to terminate this Agreement for cause, CSA is required to provide the 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 not to exceed sixty (60) days. After the period to remedy the material breach has expired, CSA may terminate this Agreement by providing the Board with written notification of termination.

**C. Termination by Either Party Without Cause.** If CSA and the Board are unable to agree on Educational Programs, curriculum or other educational policies that affect the Academy in a significant way, either party may elect to terminate this Agreement at the end of a school year, provided that the terminating party gives the other party written notification of termination at least sixty (60) calendar days prior to the termination date.

**D. Change in Law.** If any federal, state or local law or 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, may request renegotiation of the Agreement; and if the parties are unable or unwilling to renegotiate the terms within 90 calendar days after the notice, the party requesting the renegotiation may terminate this Agreement on 30 calendar days further written notice.

**E. Rights to Property Upon Termination.** Upon termination of this Agreement all equipment, whether purchased by the Academy or by CSA with state school aid funds or other funds secured by or for the Academy, shall remain the exclusive property of the Academy. CSA shall have the right to reclaim any usable property or equipment (e.g., including, but not limited to, desks, computers, copying machines, fax machines, telephones) that was purchased by CSA



with funds other than those turned over under Article V(C). Fixtures and building alterations shall become the property of the Academy.

**F. Transition.** In the event of termination of this Agreement for any reason by either party prior to the end of the Agreement's term, CSA shall provide the Academy reasonable assistance for up to 90 calendar days after the effective date of the termination to allow a transition back to a regular school program or to another education service provider.

## **ARTICLE VIII**

### **PROPRIETARY INFORMATION**

**A. Proprietary Information.** The Academy shall own all copyright and other proprietary rights to all instructional materials, training materials, curriculum and lesson plans, and any other materials developed by CSA, its employees, agents or subcontractors, or by any individual working for or supervised by CSA, which (i) were directly developed and paid for by the Academy; or (ii) were developed by CSA at the direction of the Board with Academy funds dedicated for the specific purpose of developing such curriculum or materials.

**B. Required Disclosure.** The Academy shall be permitted to report any new teaching techniques or methods of significant revisions to known teaching techniques or methods to Ferris State University, the ISD in which the Academy is located and to the State Board of Education, which teaching techniques or methods may thereafter be made available to the public, as provided in Section 505(3) of the Code, notwithstanding anything contained in this Article VIII to the contrary. Any educational materials and teaching techniques developed by CSA and/or used by the Academy are subject to disclosure under the Code and the Freedom of Information Act.

## **ARTICLE IX**

### **INDEMNIFICATION**

**A. Indemnification of CSA.** To the extent permitted by law, the Academy shall indemnify and hold CSA (which term for purposes of this Paragraph A, includes CSA's officers, directors, agents and employees) harmless against any and all claims, demands, suits, or other forms of liability that may arise out of, or by reason of, any noncompliance by the Academy with any agreements, covenants, warranties, or undertakings of the Academy contained in or made pursuant to this Agreement; and any misrepresentation or breach of the representations and warranties of the Board contained in or made pursuant to this Agreement. In addition, the Academy shall reimburse CSA 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 reasonably acceptable to CSA.

**B. Limitations of Liabilities.** The Academy may assert or not assert, waive or not waive, all immunities and statutory limitations of liability in connection with any claims arising under this Agreement.

**C. Indemnification of the Academy.** To the extent permitted by law, CSA shall indemnify and hold the Academy (which term for purposes of this Paragraph C, includes the

Academy's officers, directors, agents and employees) harmless against any and all claims, including any and all employment related claims by CSA employees or applicants, demands, suits, or other forms of liability that may arise out of, or by reason of, any noncompliance by CSA with any agreements, covenants, warranties, or undertakings of CSA contained in or made pursuant to this Agreement; and any misrepresentation or breach of the representations and warranties of CSA contained in or made pursuant to this Agreement. In addition, CSA 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 reasonably acceptable to the Academy.

**D. Indemnification for Negligence.** To the extent permitted by law, the Academy shall indemnify and hold harmless CSA, and CSA's Board of Directors, partners, officers, employees, agents and representatives, from any and all claims and liabilities which CSA may incur and which arise out of the negligence of the Academy's directors, officers, employees, agents or representatives. To the extent permitted by law, CSA shall indemnify and hold harmless the Academy, and the Academy's Board, officers, employees, agents or representatives, from any and all claims and liabilities which the Academy may incur and which arise out of the negligence of CSA's directors, officers, employees, agents or representatives. Nothing contained herein shall be deemed to be a waiver by the Academy of its right to assert the privilege of governmental immunity or any other affirmative defenses provided by law.

**E. Indemnification of Ferris State University.** The parties acknowledge and agree that the Ferris State University Board of Trustees, Ferris State University and its members, officers, employees, agents or representatives are deemed to be third party beneficiaries for purposes of this Agreement. As third party beneficiaries, the parties hereby promise to indemnify, defend and hold harmless the Ferris State University Board of Trustees, Ferris State University and its members, officers, employees, agents or representatives from all claims, demands, or liability, including attorney fees and related expenses, on account of injury, loss or damage, including, without limitation, claims arising from bodily injury, personal injury, sickness, disease, death, property loss or damage or any other losses of any kind whatsoever and not caused by the sole negligence of Ferris State University, which arise out of or are in any manner connected with the Ferris State University Board of Trustees' approval of the Application, the University Board's consideration of or issuance of a Contract, the Academy's preparation for and operation of a public school, or which are incurred as a result of the reliance by Ferris State University and its Board of Trustees members, officers, employees, agents or representatives upon information supplied by the Academy or CSA, or which arise out of the failure of the Academy to perform its obligations under the Contract issued to the Academy by the Ferris State University Board of Trustees. The parties expressly acknowledge and agree that Ferris State University and its Board of Trustee members, officers, employees, agents or representatives may commence legal action against either party to enforce its rights as set forth in this section of the Agreement.

## **ARTICLE X**

### **INSURANCE**

**A. Insurance of the Academy.** The Academy shall secure and maintain in its own name as the "first named insured" such insurance in an amount and on such terms as are required by the provisions of the Contract, including the indemnification of CSA required by this



Agreement. In the event that the University Board's insurance carrier requests changes in the coverage identified in the Contract, the Academy agrees to comply with the change in the type and amount as requested by the University Board within thirty (30) days after notice of the insurance coverage change. The Academy shall, upon request, present evidence to CSA that it maintains the requisite insurance in compliance with the provisions of this paragraph. CSA 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.

**B. Insurance of CSA.** CSA shall secure and maintain general liability insurance with the Academy listed as an additional insured. CSA shall maintain such insurance in an amount and on such terms as are reasonably acceptable to the Academy and as required by the provisions of the Contract, including the indemnification of the Academy and Ferris State University required by this Agreement. CSA shall, upon request, present evidence to the Academy that it maintains the requisite insurance in compliance with the provisions of this paragraph. The Academy shall comply with any information or reporting requirements applicable to CSA under CSA's policy with its insurer(s), to the extent practicable.

**C. Workers' Compensation Insurance.** Each party shall maintain workers' compensation insurance when and as required by law, covering their respective employees.

## **ARTICLE XI MISCELLANEOUS**

**A. Sole Agreement.** This Agreement supersedes and replaces any and all prior agreements and understandings between the Academy and CSA on the subject matter hereof.

**B. Force Majeure.** Neither party shall be liable if the performance of any part or all of this Agreement is prevented, delayed, hindered or otherwise made impracticable or impossible by reason of any strike, flood, riot, fire, explosion, war, act of God, sabotage, accident, or any other casualty, or cause beyond either party's control, and which cannot be overcome by reasonable diligence and without unusual expense.

**C. Notices.** All notices, request, consents demands and other communications from one party to the other that are given pursuant to the terms of this Agreement shall be in writing and shall be delivered (including delivery by commercial delivery service), or sent by United States mail, certified or registered, postage prepaid, or sent by nationally recognized overnight courier. Notices shall be deemed given (i) on the date of delivery, if delivered via commercial delivery service (unless such date is a weekend or holiday in which event such notice shall be deemed given on the next succeeding Business Day), (ii) three (3) Business Days following deposit in the United States Mail, if sent via certified mail or registered mail or (iii) on the Business Day next succeeding the date upon which such notice is given to any nationally recognized overnight courier. All notices, request, consents, demands and other communications shall be addressed as follows:

If to CSA:

Choice Schools Associates LLC

Attn: Sidney L. Faucette  
975 Three Mile Rd NW

Grand Rapids, MI 49544

If to Academy:

Benton Harbor Charter School  
Attn: Board President  
455 Riverview Drive, Suite 1  
Benton Harbor, MI 49022

And a copy to Board Attorney

Mr. Errol Goldman  
Goldman & Associates, PLC  
5253 W. Lakeview Drive  
Pentwater, MI 49449

**D. 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.

**E. Successors and Assigns.** This Agreement shall be binding upon, and inure to the benefit of, the parties and their respective successors and assigns.

**F. Entire Agreement.** This Agreement is the entire agreement between the parties relating to the services provided, and the compensation for such services, by the parties. Any modification to this Agreement must be made in writing, approved by the Board and CSA, and signed by a duly authorized officer. In addition, the Board must also secure the approval of the University Board before any modification to this Agreement can become effective.

**G. Non-Waiver.** No failure of a party in exercising any right, power or privilege under this Agreement shall 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 any of them may otherwise have.

**H. Assignment.** CSA may not assign this Agreement without the prior written approval of the Board.

**I. Governing Law.** This Agreement shall be governed by and enforced in accordance with the laws of the state of Michigan.

**J. Delegation of Authority.** Nothing in this Agreement shall be construed as delegating to CSA any of the powers or authority of the Board that are not subject to delegation by the Board under Michigan law or the Contract.

**K. Compliance with Law.** The parties agree to comply with all applicable laws and regulations.

**L. Warranties and Representations.** Both the Academy and CSA represent that each 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.

**M. Dispute Resolution Procedure.** Any and all disputes between the parties concerning any alleged breach of this Agreement or arising out of or relating to the interpretation of this Agreement or the parties' performance of their respective obligations under this Agreement that are unable to be resolved through discussion and negotiation shall be resolved by arbitration, and such an arbitration procedure shall be the sole and exclusive remedy for such matters. The arbitrator shall be selected from a panel provided by and in accordance with the rules of the American Arbitration Association. The arbitration shall be conducted in accordance with the rules of the American Arbitration Association, with such variations as the parties and the arbitrator unanimously accept. Any arbitration hearing shall be conducted either in Benton Harbor, Michigan or in Grand Rapids, Michigan as determined by the arbitrator. The arbitrator shall be required to issue a cause opinion with a written explanation as to the final decision. This cause opinion shall be made available to the Ferris State University Charter Schools Office upon request. A judgment on the award rendered by the arbitrators may be entered in any court having appropriate jurisdiction to ensure compliance with the applicable law and this Agreement. The cost of arbitration, not including attorney fees, shall be paid by the losing party. It shall be in the discretion of the arbitration panel to award reasonable attorney fees to the prevailing party, to be paid if awarded by the losing party.

**N. Modification to Conform to Changed University Board Policies.** The parties intend that this Agreement shall comply with Ferris State University Educational Service Provider Policies, as the same may be changed from time to time. In the event that changes in Ferris State University Educational Service Provider Policies implemented after the date of execution of this Agreement cause any provision of this Agreement to be in conflict the revised Policies, the parties agree to amend this Agreement to eliminate the conflict within thirty (30) days after being advised of such conflict.

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

**CHOICE SCHOOLS ASSOCIATES, L.L.C. BENTON HARBOR CHARTER SCHOOL**

By \_\_\_\_\_  
Sidney L. Faucette, CEO

By \_\_\_\_\_  
President, Board of Directors

By \_\_\_\_\_

By \_\_\_\_\_