INDEPENDENT CONTRACT AGREEMENT

This Independent Contractor Agreement (the "Agreement") is made and entered into as of July 1, 2017 by and between Midwest Management Group, Inc. ("Midwest") and Midwest School Services ("MSS"), whose headquarters or principal place of business is located at 3170 Old Farm Lane, Commerce Twp., Michigan 48390 and **MARSHALL ACADEMY**, (the "Academy") a Michigan public school academy formed under Part 6(A) of the Revised School Code (the "Code"), as amended, being MCL §380.501 to §380.507.

The Academy is a charter school organized as a public school academy under the Code. The Academy has been issued a contract (the "Contract") by **FERRIS STATE UNIVERSITY BOARD OF TRUSTEES**(the "Authorizer") to organize and operate a public school academy. The Authorizer is the statutory authorizing body. The Code permits a public school academy to contract with persons and entities for the operation and management of the public school academy.

MSS represents and warrants that it is a duly organized Michigan for-profit corporation, in good standing, and that MSS (its officers, employees and agents) has the educational background, managerial experience, expertise, training, capacity, qualifications, and financial resources to provide the Services contemplated under this Agreement through its affiliated network of service providers, MSS provides human resource related administrative services and employees to the Academy.

The Academy and MSS desire to enter into an independent contracting relationship whereby MSS will be engaged to provide the personnel services and Business Management Services as set forth in this Agreement (the "Services"). This Agreement between the Academy and MSS Services sets forth the understandings with respect to the relationship between them, the scope of their relationship and the limitations on the relationship between the parties.

The Academy and MSS further state that MSS shall have full and unfettered authority to hire and fire people to fulfill the contractual terms and conditions as set forth herein, without any involvement, control, direction, of the Academy.

IN CONSIDERATION OF THE MUTUAL PROMISES AND BENEFITS CONTAINED IN THIS AGREEMENT, THE PARTIES AGREE AS FOLLOWS:

I. SERVICES

1.1 MSS agrees to contract to the Academy and the Academy agrees to contract from MSS the Worksite Employees on the terms and conditions in this Agreement. "Worksite Employees" means all employees assigned to fulfill the Academy worksite job positions. MSS shall provide, control and be responsible for all human resources, personnel, payroll, benefits and related administrative functions for Worksite Employees.

1.2 The Academy shall retain control over its instructional activity and all other matters, including but not limited to: the curriculum, books, equipment and educational supplies;; parent relations; student achievement and guidance; student discipline; food; building and

property management; transportation; sports and extracurricular activities; purchasing; public relations; Worksite Employee working conditions.

1.3 The Academy and MSS will consult with each other on personnel related issues; involving Worksite Employees; however the Worksite Employees are exclusively MSS employees and MSS has exclusive and complete control and decision making authority over these areas. Whenever a timely response is requested (or is by its nature required), MSS and the Academy agree to respond to any communication from the other as soon as possible but in no event more than forty-eight (48) hours from the origination of any such communication. Further, MSS shall designate a contact person who is available to respond to Academy communication within such period.

II. TERM OF AGREEMENT

2.1 **Effective Date.** MSS shall provide services commencing on July 1, 2017 ("Effective Date"). This Agreement shall remain in full force and effect through and including June 30, 2018 ("Term"). Each term shall automatically renew for subsequent periods of the same length, unless either party gives the other written notice of intent to terminate. This notice shall be provided at least sixty (60) days prior to the expiration of the then current term.

2.2 **Termination.** This Agreement shall remain in full force and effect until one of the following occurs:

(a) In the event one party shall be in Default under Section 6.5, the other party may immediately terminate this Agreement.

(b) During the Term of this Agreement, either party may terminate the Agreement with sixty (60) days written notice of intent to terminate.

(c) If the Academy's Charter Contract issued by the Ferris State University ("FSU") Board of Trustees is revoked, terminated or a new Charter Contract is not issued to the Academy after expiration of the Academy's Charter Contract, this Agreement shall automatically terminate on the same date as the Academy's Charter Contract is revoked, terminated or expires without further action of the parties.

(d) This Agreement shall automatically terminate in the event of a State-mandated shut down of the Academy.

(e) The Academy may terminate this agreement prior to the end of the term in the event that Midwest is in material breach of the charter contract. A "material breach" includes but is not limited to: any action or inaction by Midwest that places the Contract in jeopardy of revocation, suspension or termination, as evidenced by written notification from the Authorizer, University Board, Superintendent of Public Instruction, or other authorized body or official."

2.3 **Dissolution / Bankruptcy.** This Agreement shall terminate automatically without notice to the Academy if a petition in Bankruptcy Court is filed by or against the Academy, shall have been voluntarily or involuntarily adjudicated bankrupt by any Court of competent jurisdiction, or if a petition is filed for reorganization of the Academy, or if a receiver shall have been appointed for all or a substantial part of the Academy's business.

2.4 **Amendment Caused By Academy Site Closure or Reconstitution.** In the event that the Academy is required (i) to close an Academy site pursuant to a notice issued by the State School Reform/Redesign Officer under Section 507 of the Code, MCL 380.507; or (ii) to undergo a reconstitution pursuant to Section 507 of the Code, MCL 380.507, and Section 10.4 of the Contract Terms and Conditions, and such closure of an Academy site or reconstitution causes an amendment to or termination of this ESP Agreement, the parties agree that this ESP Agreement shall be amended or terminated to implement the Academy site closure or reconstitution, with no cost or penalty to the Academy, and MM1 shall have no recourse against the Academy or the University Board for implementing such site closure or reconstitution.

2.5 **Obligation upon Termination.** On the termination of this Agreement by any party for any reason:

(a) MSS shall immediately notify in writing each Worksite Employee that his/her employment relationship with MSS has been terminated, and

(b) The Academy shall immediately notify in writing each Worksite Employee that this Agreement has been terminated. The Academy shall reimburse MSS for all Worksite Employee compensation and reimbursements pursuant to Section 3, if any, due through the date of termination of this Agreement.

III. PAYMENTS & FEES

3.1 **Initial Fee.** MSS has agreed to waive the Initial Fee.

3.2 **Service Fees.** The Academy shall pay all Fees set forth in Schedule A for services rendered by MSS pursuant to this Agreement. For new employees hired after execution of this Agreement (as opposed to the Effective Date), the Academy agrees to pay MSS an Employee Processing Fee of fifteen ($15) dollars per Worksite Employee as set forth in Schedule A.

(a) The Academy's payment obligation shall continue during normal periods of Worksite Employee absence for vacation, sick leave, legal holidays and emergency situations.

(b) The Fees shall be payable during the entire Term of this Agreement and any unpaid fee shall be immediately due upon termination of this Agreement.

3.3 **Payment.** Payment shall be processed by wire transfer or by Automated Clearing House debit. Payments are due no later than the payroll check date unless the Academy chooses direct deposit for their paychecks ("Due Date"). In that case, payments are due two business days prior to the payroll check date. The Academy acknowledges that MSS will not release payroll checks until they receive evidence that full payment has been received by the Due Date.

3.4 **Reimbursements.** In addition to the Service Fees detailed in Schedule A, the Academy shall amend its budget and reimburse MSS for any and all additional costs and expenses requested and approved by the Marshall Academy Board of Directors ("Academy Board")

in writing in advance; increases in Pass-Through Costs (see Schedule A) mandated by state law or regulation. Any increases in Fixed Costs (See Schedule A) shall be borne and paid by MSS, without reimbursement from the Academy. The Academy acknowledges that MSS is the employer of record and in addition to the fees received by MSS pursuant to this Agreement, MSS shall retain all federal and state tax benefits, credits or deductions in consideration of services rendered to the Academy pursuant to this Agreement, including but not limited to IRS Sec 125 Plan benefits and savings. Further, the Academy shall reimburse MSS for any benefits premium unnecessarily incurred by MSS because a Worksite Employee is laid off or terminated during a benefit month (i.e., the prepaid cost of the premium for the remainder of the month following termination).

3.5 **Late Payments.** All payments not made or sent by the Academy on or before the due date shall be subject to a late charge of three (3%) percent of the amount due. Checks returned from the Academy's bank will be subject to the late payment charge of fifty ($50.00) dollars plus any additional costs incurred by MSS. All amounts shall bear interest at the rate of one and one half (1 ½ %) percent per month, or portion thereof that such amounts remain unpaid.

3.6 **Modification.** Any required adjustment to Federal, State or local taxes shall be effective on the date of such adjustment or change. In the event MSS fails to include the additional cost on the next invoice when due the same shall be due retroactive to the date of change, as mandated, and shall be due by the Academy upon receipt of the next invoice.

3.7 **Verification by the Academy.** The Academy will provide MSS a true, correct and complete list of the Academy's most recent payroll. MSS, through its Liaison, will verify all time submissions of Worksite Employees. If the Academy believes that there is an error in the Worksite Employees submitted time or payment, it shall be the responsibility of the Academy to communicate and provide written notice of the error. Until corrected, the Academy shall not deduct any amount from payment of its current invoice as a credit or setoff. Errors, upon verification, shall be corrected by an adjustment on the next invoice.

3.8 **Continuing Liabilities.** In the event that this Agreement is terminated, by either party, the Academy shall be responsible for any insurance or employment liabilities prepaid or incurred by MSS with respect to the Worksite Employees in the ordinary course on a pro rata basis through the date of termination. Such charges shall be paid by the Academy to MSS upon receipt of an invoice for such amounts.

3.9 **Unemployment Insurance Expense Reimbursement.** In the event of the sale, dissolution, liquidation, reorganization or closing of the Academy's business which causes MSS to terminate or lay-off any Worksite Employee assigned to the Academy under this Agreement, the Academy agrees to promptly reimburse MSS for claims paid for Worksite Employees and related charges incurred by MSS with respect to such employees prior to such sale, dissolution, liquidation, reorganization or closing of the Academy's business.

3.10 **Workers Compensation Injury Reporting.** In order for MSS to pro-actively manage workers compensation claims for the benefit of MSS and the Academy, all work related injuries must be reported by the Academy to MSS on a First Report of Occupational Injury form (supplied by MSS) within twenty-four (24) hours of injury. A fee of one hundred twenty-five dollars ($125.00) will be charged to the Academy for each work related injury

not properly reported within forty-eight (48) hours of occurrence, after the first failure to report within forty-eight (48) hours.

IV. WORK ENVIRONMENT & RELATED MATTERS

4.1 **Worksite Employees.** With MSS's guidance, the Academy shall comply with all safety, health and work laws, regulations and rules at its own expense. With MSS's guidance, the Academy shall also comply with all safe work practices and use of protective equipment required by federal, state or local law at the worksite locations. Accordingly, MSS shall consult with the Academy, and the Academy shall have certain risks and responsibilities including but not limited to, premises liability, safety risks attendant to the ownership of premises and equipment (which are traditionally assigned to the owner of a business, location, or equipment).

4.2 **The Academy Responsibilities.** The Academy shall at its expense (i) comply with all applicable health and safety laws, regulations, ordinances, directives, and rules of controlling Federal, State and local government and (ii) will immediately report all employee accidents and injuries to MSS by completing an Injury Report Form provided by MSS within twenty-four (24) hours after the accident. The Academy shall provide or ensure use of all personal protective equipment, as required by Federal, State or Local law, regulation, ordinance, directive, or rule or as deemed necessary by MSS. MSS, MSS's workers compensation carrier and MSS's liability insurance carrier shall have the right to inspect the Academy's place of business at all times to insure compliance with this Section and with the terms of this Agreement. MSS, through its Liaison, shall be responsible for providing records of hours worked by the Worksite Employees. The Academy shall reimburse MSS for any overtime pay that is or becomes due to or owed to any Worksite Employee.

V. REPRESENTATIONS & WARRANTIES OF THE ACADEMY

The representations and warranties made by the Academy shall survive the termination of this Agreement. The representations and warranties in this Section are deemed to be material and MSS is entering into this Agreement relying on such representations and warranties. The Academy represents and warrants to MSS as follows:

5.1 **Authorization.** The Academy has been duly authorized to execute and deliver this Agreement. The Academy's execution and performance of this Agreement will not, to the best of the Academy's knowledge, with or without the giving of notice or the passage of time or both, (a) violate the provisions of any law, rule or regulation applicable to the Academy; (b) violate any judgment, decree, order or award of any court, governmental body or arbitrator; or (c) violate the provisions of any separate contract, agreement or arrangement to which the Academy is bound.

5.2 **The Academy Employee Plans.** Except as communicated to MSS in writing prior to the execution of this Agreement:

(a) **List of the Academy Employee Plans.** The Academy has supplied MSS with true and complete list of all pension, 401(k) benefit, profit-sharing, retirement, deferred compensation, welfare, insurance disability, bonus, vacation pay or severance pay and other similar plans, programs and agreements ("Academy Employee Plan") relating to the Worksite Employee(s). The Academy has delivered to MSS true and complete copies of all

the Academy Employee Plans which have been reduced to writing, and all modifications for each Academy Employee Plan.

(b) **Retiree Benefits.** No Academy Employee Plan provides health or life insurance benefits for retirees.

(c) **Claims.** To the best of Academy's knowledge, there are no threatened or pending claims, suits or other proceedings by any of the Academy's former employees, plan participants, beneficiaries or spouses of any of the above, the IRS, the Pension Benefit Guaranty Corporation, or any other person or entity involving any Academy Employee Plan, including claims against the assets of any trust, involving any Academy Employee Plan or any right or benefits there under, other than ordinary pursuant to domestic orders.

(d) **Controlled Group.** The Academy is not a member of a "controlled group of corporations" as defined in Section 1563(a) of the Internal Revenue Code of 1986, as amended.

5.3 **Government Investigations.** The Academy has fully disclosed to MSS all government investigations, lawsuits or other adversary proceeding involving the Academy for five (5) years preceding the execution of this Agreement.

5.4 **Contracts and Commitments.** Prior to the execution of this Agreement, the Academy has provided MSS a true and correct copy of each of the following with respect to the Academy's former employees: all collective bargaining, trust, non-competition, employment and consulting agreements, executive compensation, employee stock option and stock purchase, and group life, health and accident insurance and other similar plans, agreements, memoranda or understanding, arrangements or commitments regarding Academy employees to which the Academy is a party or by which the Academy is bound.

5.5 **Workers' Compensation Information.** The Academy has provided MSS with (a) insurance policies covering its former employees for a period of not less than one (1) entire calendar year immediately preceding the execution of this Agreement and all renewal letters regarding such policies, whether or not such policies were, in fact, renewed; and (b) audits regarding such policies for the same time, whether or not such audit was conducted or requested during or after the effective dates of such coverage(s). With respect to such information, the Academy represents that, to the best of its knowledge, the audit information, classification codes and experience modification information provided is complete and accurate and that no information is omitted that would, by its omission, cause such information to be misleading. The Academy acknowledges that, if not provided, there is no known audit or request for audit currently pending or outstanding. In the event MSS incurs any charges or surcharges on behalf of the Academy following an audit of MSS relating to the Academy's business after the date of this Agreement, whether or not such charges or surcharges relate to claims experience, employees classification code changes or otherwise, the Academy shall be fully responsible and shall indemnify MSS for such charges and / or surcharges attributable to the Academy's business and / or Worksite Employees.

5.6 **Employer Relations.**

(a) **Compliance.** The Academy is in compliance with all Federal, State and local laws respecting employment practices, terms and conditions of employment, wages and

hours, and is not engaged in any discriminatory employment or unfair labor practice. There are no arrearages in the payment of wages, taxes or workers compensation assessment or penalties.

(b) **Labor Practices.** Except as the Academy has disclosed in writing prior to the execution of this Agreement:

(i) None of the Academy's former Employees are represented by any labor union and, there is no unfair labor practice complaint against the Academy pending before the National Labor Relations Board or any State or local agency.

(ii) There is no pending labor strike or other material labor strike or other material labor trouble affecting the Academy and there is no material labor grievance pending against or affecting the Academy.

(iii) There are no pending arbitration proceedings arising out of or under any collective bargaining agreement to which the Academy is a party, or to the best of the Academy's knowledge, any basis for which a claim may be made under any collective bargaining agreement to which the Academy is a party affecting the Academy's former employees; and

(iv) There is no pending litigation or other proceeding or basis for an un-asserted claim against the Academy by any of the Academy's former employees or group of former employees which is based on claims arising out of any of the Academy's former employee's employment relationship with the Academy, including, but limited to, claims for breach of contract, tort, discrimination, employee benefits, wrongful termination or any common law or statutory claims.

(c) **Taxes.** The Academy has deducted and remitted to the relevant government authority all taxes, contributions and other amounts required by statute, law or regulation.

VI. COVENANTS OF PARTIES

6.1 **Criminal Background Checks.** MSS and the Academy acknowledge that all Worksite Employees, or any other personnel provided by MSS to the Academy must be in compliance with all the Academy policy, procedures, rules and regulations. MMS shall obtain authorization from the applicant and conduct as a part of the hiring process an Unprofessional Conduct Disclosure Request (UCD) of all employment applicants chosen for hire at the Academy worksite as required under sec. 380.1230b of the Revised School Code Act 451 of 1976 (Code). The School Leader shall appoint an on-site Local Agency Security Officer (LASO) in compliance with Michigan State Police and Federal requirements for conducting criminal background checks, and shall obtain a Conviction Disclosure Form from all employment applicants offered conditional employment at the Academy as required in the Code. The School Leader, acting on behalf of the Academy and / or Board shall provide MSS an Affidavit of Assignment (red light green light letter) for all MSS employees that are to be assigned to the Academy to regularly and continuously work at the Academy, as required by law. MSS 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 checks and criminal conduct. MSS shall require that the results of the unprofessional conduct check are received, reviewed and used (subject to a verification process) by the School Leader, acting on behalf of the Academy and /or Board, only as permitted by law to confirm that the individual does not have a criminal history and to evaluate the qualifications of the individual for his/her assignment. The Academy and MSS shall follow all applicable laws as it relates to this Section 6.1

6.2 **Liability Insurance**. The Academy shall furnish upon signing this Agreement and keep in full force and effect at all times during the Term of this Agreement general liability insurance in an amount not less than one million ($1,000,000) dollars. The Academy shall issue a Certificate of Insurance providing for not less than thirty (30) days advance notice of cancellation or material changes. MSS and the Academy shall maintain such policies of insurance as required by the Michigan Universities Self-Insurance Corporation (M.U.S.I.C.) and the Academy's Charter Contract issued by the FSU Board of Trustees (the "Charter Contract") or Applicable Law. In the event that FSU or M.U.S.I.C. requests any change in coverage by MSS, MSS agrees to comply with any change in the type or amount of coverage, as requested, within thirty (30) days after notice of the insurance coverage change.

6.3 **Motorist Insurance.** In the event that a MSS employee is assigned to fill a job function requiring the employee to operate a vehicle for the Academy, the Academy shall furnish liability insurance. The policy shall insure against public liability for injury and property with a minimum combined single limit of five hundred thousand ($500,000) dollars. The policy shall include uninsured motorist coverage with limits of no less than one hundred thousand ($100,000) dollars. In states where "no-fault" laws apply, equivalent personal injury and property damage coverage shall be included. The Academy shall issue a Certificate of Insurance providing for not less than thirty (30) days advance notice of cancellation or material changes. This coverage period shall survive this Agreement.

6.4 **Indemnification.**

(a) **The Academy.** To the extent permitted by law, the Academy agrees to defend, indemnify and hold harmless MSS, its officers, directors, shareholders, agents and employees from any claims made by Worksite Employees for any claims, demands, losses, costs, fees, penalties, fines or damages arising from any actions, conduct or omissions of the Academy or its officers, directors, shareholders, agents or employees. Such claims shall include, but are not limited to, charges of discrimination brought through the State Department of Labor, the Equal Opportunity Commission, the Workers' Compensation Bureau (or such similar department, commission or board other than State), fees and lawsuits alleging failure to comply with Federal and State wage and hour laws, wrongful termination, discrimination, denial of due process or other employment-related causes of actions resulting from employee discipline or termination. The Academy shall defend and indemnify MSS, its officers, directors, shareholders, agents and employees from employee claims of sexual harassment by the Academy. The Academy shall be entitled to select its counsel and counsel for this indemnification provision. The duty to defend includes the right to pay actual attorney's fees incurred in defending such claims, and the duty to indemnify includes the duty to pay any award imposed by an administrative agency, judgment or settlement against MSS.

(b) **MSS.** MSS agrees to defend, indemnify and hold harmless the Academy, their officers, directors, shareholders, agents and employees for any claims, demands, losses, costs, fees, penalties, fines or damages arising from any actions, conduct or omissions of MSS or its officers, directors, shareholders, agents or employees. Such claims shall include, but are not limited to, charges of discrimination brought through the State Department of Labor, the Equal Opportunity Commission, the Workers' Compensation Bureau (or such similar department, commission or board other than State), fees and lawsuits alleging failure to comply with Federal and State wage and hour laws, wrongful termination, discrimination, denial of due process or other employment-related causes of action. MSS shall defend and indemnify the Academy, its officers, directors, shareholders, agents and employees from employee claims of sexual harassment by MSS. MSS shall be entitled to select its counsel and counsel for this indemnification provision. The duty to defend includes the right to pay actual attorney's fees incurred in defending such claims, and the duty to indemnify includes the duty to pay any award imposed by an administrative agency, judgment or settlement against Academy.

(c) **FSU.** The parties acknowledge and agree that FSU, its Board of Trustees, and its members, officers, employees, agents or representatives (collectively "University") are deemed to be third party beneficiaries for purposes of this Agreement. As third party beneficiaries, MSS hereby promises to indemnify, defend and hold harmless the University from and against all demands, claims, actions, suits, causes of action, losses, judgments, liabilities, damages, fines, penalties, demands, forfeitures, or any other liabilities or losses of any kind whatsoever, including costs and expenses (not limited to reasonable attorney fees, expert and other professional fees) of settlement and prosecution imposed upon or incurred by the University, and not caused by the sole negligence of the University, which arise out of or are in any manner connected with the University Board's approval of the Academy's application, the University Board's consideration of or issuance of a Contract, MSS's preparation for or operation of the Academy, or which are incurred as a result of the reliance

by the University upon information supplied by MSS, or which arise out of MSS's failure to comply with the Contract or applicable law. The parties expressly acknowledge and agree that the University may commence legal action against MSS to enforce its rights as set forth in this section of the Agreement.

6.5 **Default.** Either party shall be in "Default" under this Agreement if following ten (10) days written notice from the other (provided, however, such period shall be extended for an additional reasonable period if the default is of a non-monetary nature and is such that it cannot be cured within ten (10) days and the party has diligently commenced the curing of such default and is diligently pursuing the same to completion) the party has failed to cure a material breach of this Agreement or any bankruptcy, receivership or insolvency proceeding is instituted by or against the party. Any action or inaction by MSS pertaining to this Agreement that is not cured within sixty (60) days of notice thereof which causes the Charter Contract to be revoked, terminated, suspended or to be put in jeopardy of revocation, termination or suspension by Ferris State University is a material breach.

6.6 **Compliance with Employment Related Laws.** The Academy and MSS shall comply with all state and federal Employment Related laws, including but not limited to the following:

(a) All local, state and Federal laws relating to equal employment opportunity and nondiscrimination in employment. MSS shall not be responsible for any action taken by the Academy with respect to the Worksite Employees, unless the Academy secures prior written authorization from MSS.

(b) The Academy shall, upon request by MSS, make available comparable employment opportunities to Worksite Employees eligible for reinstatement following leave as required by the Family & Medical Leave Act ("FMLA") or any comparable law, the Academy shall bear the sole cost of compliance for any Worksite Employee eligible for reinstatement under the FMLA unless such noncompliance is caused by MSS.

(c) The Academy shall, upon request by MSS, make available a reasonable accommodation to any Worksite Employee entitled to such as required by the Americans with Disabilities Act ("ADA"), the Federal Rehabilitation Act or any comparable law. The Academy shall bear the sole cost of providing a reasonable accommodation to any Worksite Employee. The Academy shall bear the sole cost of providing a workplace that is in compliance with any applicable architectural requirements of the ADA, the Federal Rehabilitation Act or similar local, state or Federal law.

(d) The Academy shall give MSS not less than thirty (30) days advance written notice of: (i) any temporary or permanent shutdown of any facility, site of employment or employment unit; or (ii) any reduction in force resulting in the layoff of one-third or more of the persons (counting the Academy employees, Worksite Employees or both) working at any single facility, site of employment or employment unit of the Academy. The Academy shall give equivalent notice to MSS with respect to the Federal Worker Adjustment Retraining and Notification Act and any comparable law.

(e) The Academy shall immediately notify MSS of any personnel action involving or affecting a Worksite Employee that would qualify as a qualifying event under the continuation coverage of COBRA. The Academy shall immediately notify MSS of any

qualifying event affecting any plan beneficiary that would qualify as a qualifying event under COBRA.

(f) No individual shall be considered to be engaged as a Worksite Employee until MSS has received and reviewed, to its sole satisfaction, sufficient pre-employment documentation submitted to MSS within 48 hours of acceptance of employment, including but not limited to Form INS-9 and IRC W-4.

VII. REPRESENTATIONS & WARRANTIES OF MSS

The representation and warranties made by MSS shall survive the termination of this Agreement. The representations and warranties in this Section are deemed to be material and the Academy is entering into this Agreement relying on such representations and warranties. MSS represents and warrants to the Academy as follows:

7.1 **Authorization.** MSS has been duly authorized to execute and deliver this Agreement. MSS's execution and performance of this Agreement will not, to the best of its knowledge, with or without the giving for the passage of time or both, violate the provisions of any law, rule or regulation applicable to MSS.

7.2 **Government Investigations.** MSS has fully disclosed to the Academy all government investigations, lawsuits or other adversary proceeding involving MSS for five (5) years preceding the execution of this Agreement.

7.3 **Compliance.** MSS is in compliance with all Federal, State and local laws respecting employment practices, terms and conditions of employment, wages and hours, and is not engaged in any discriminatory employment or unfair labor practice. There are no arrearages in the payment of wages, taxes or workers compensation assessment or penalties.

7.4 Student Confidentiality. If Midwest receives information that is part of a pupil's education records from any source as permitted under the Code, Midwest shall not sell or otherwise provide the information to any other person except as provided under MCL 380.1136.

VIII. MUTUAL OBLIGATIONS

8.1 **Waiver of Subrogation.** Each party releases and discharges the other party, and any officer, agent, employee or representative of such party, from any liability whatsoever arising from the loss, damage or injury, for any reason, for which insurance is carried by the insured party at the time of such loss, damage or injury, to the extent of any recovery by the insured party. Provided, however, this paragraph shall not apply if its application would invalidate insurance protection.

8.2 **Mutual Cooperation.** The parties agree that, except where conflicts prevent it, they shall render to each other reasonable assistance and shall cooperate in good faith with each other to ensure the proper and adequate defense of any claim, action, suit or proceeding brought by a third party.

8.3 **Confidentiality.** The parties agree to cooperate in such a manner as to preserve and uphold the confidentiality of all business records and the attorney-client and work-product privileges, subject to the Michigan Freedom of Information Act ("FOIA") and the disclosure provisions of the Code.

IX. MISCELLANEOUS

9.1 **Governing Law.** This Agreement shall be interpreted and enforced under the laws of the State of Michigan applicable to contracts made and to be performed entirely within the State without giving effect to choice of law principles of the State. Any claim or controversy arising out of or relating to this Agreement or breach thereof, shall be litigated in the Wayne County Circuit Court or the U.S. District Court for the Eastern District of Michigan. The prevailing party shall be awarded its reasonable attorney fees and costs.

9.2 **Independent Contractor.** MSS is an independent contractor of the Academy and neither party is the agent of the other. The Academy agrees to define "school official" in the Academy's annual notification of rights under 20 U.S.C. § 1232g, 34 C.F.R. § 99, the Family Educational Rights and Privacy Act ("FERPA") to include a contractor who performs an institutional service or function for which the Academy would otherwise use its own employees, who is under the direct control of the Academy with respect to the use and maintenance of personally-identifiable information from education records, and who is subject to the requirements of 34 C.F.R. § 99.33(a) governing the use and re-disclosure of personally identifiable information from education records. The Academy designates MSS and certain of its employees as school officials of the Academy having a legitimate educational interest such that they are entitled to access to educational records under FERPA. MSS and its employees agree to comply with FERPA and corresponding regulations applicable to school officials.

9.3 **Enrolling New Worksite Employee.**

(a) **Selection of Worksite Employees**. MSS shall engage new Worksite Employees only as set forth below. The Academy, through its School Leader, shall recommend job candidates to MSS for interview and potential hiring, and shall not offer employment to any individual without consent of MSS. MSS shall employ and assign to the Academy all such qualified and certified classroom teachers, instructors and support staff that the Academy, through its School Leader, approves and deems necessary to accomplish the educational mission of the Academy, and as provided in the Academy's approved budget and as directed by the Academy Board. Based upon recommendations and receipt of the affidavit for assignment by the Academy, MSS shall make the final selection of all Worksite Employees assigned to the Academy. MSS shall comply with the Immigration Reform and Control Act.

(b) **Hiring, Evaluating, Supervising, Disciplining and Firing.** MSS shall have the complete and exclusive authority and control over hiring, evaluating, supervising, disciplining and firing of Worksite Employees. The Academy School Leader shall oversee the evaluation and daily assignments of the worksite employees.

(c) **MSS Requirements.** MSS, or its designated subcontractor (approved by the Academy) shall be responsible for performing all pre-employment, background, license and eligibility review and other screening and investigation required by federal, state or local law, including the Code, as if employed by the Academy directly. Employment records of Worksite Employees shall be made available to the Academy upon request for purposes of auditing such records for compliance with applicable law. An FBI and State Police records check as required by the Code shall be obtained by the Academy and paid for by the Academy regarding each Worksite Employee for whom such records check has not already been completed.

9.4 **Assignment/Amendment.** This Agreement may not be assigned by either party without prior written consent of the other party and prior notice to FSU. None of the terms and provisions of this Agreement may be modified or amended except by an instrument in writing executed by each party. Any modification or assignment of this Agreement must be done in a manner consistent with FSU's Educational Service Provider Policies.

9.5 **Severability.** If any provision of this Agreement should be invalid, illegal or unenforceable, the validity and enforceability of the remaining provisions contained in this Agreement shall not in any way be affected thereby and the provision deemed invalid, illegal, or unenforceable shall be construed and enforced to the greatest extent legally possible.

9.6 **Waiver.** Failure by either party to require performance by the other party or to claim a breach of any provision of this Agreement will not be construed as a waiver of any subsequent breach nor prejudice either party with regard to any subsequent action.

9.7 **Section Headings.** The Section Headings of this Agreement are for the convenience of the parties only and in no way alter, modify, limit or restrict contractual obligations of the parties.

9.8 **Forms.** The Academy shall utilize forms provided by MSS unless otherwise required by law or regulation.

9.9 **Notices.** Any notice or other communication required by this Agreement shall be sufficiently given in writing and delivered personally, sent by confirmed facsimile transmission, overnight air courier (postage prepaid), or by registered or certified mail (postage prepaid with return receipt requested) addressed as follows:

For the Academy, to:

Marshall Academy
18203 Homer Rd.
Marshall, MI 49068

with a copy to:

Board Attorney

For MSS, to:

Ralph Cunningham
MSS, Inc.
3170 Old Farm Lane
Commerce Township, MI 48390

with a copy to:

David L. Steinberg, Esq.
David L. Steinberg, P.C.
27777 Franklin Road, Ste. 2500
Southfield,, MI 48025-4519

9.10 **Entire Agreement.** This constitutes the entire agreement between the parties with regard to the subject matter herein. No prior oral or written agreement, practice or course of dealing between the parties relating to the subject matter herein shall supersede this Agreement.

9.11 **Authorization.** The individual executing this Agreement is authorized on behalf of the Academy to bind the Academy to the terms set forth herein.

Marshall Academy

Board of Directors Member
18203 Homer Rd.
Marshall, MI 49068

Marshall Academy,
a Michigan public school academy

By: _____

NAME:_____
Its: Board of Directors Member

Dated:_____, **2017**

MSS, Inc.

Ralph Cunningham, President
3170 Old Farm Lane
Commerce Twp., MI 48390

MSS, Inc.,
a Michigan corporation

By:_____

Ralph Cunningham
Its: President

Dated: _____, **2017**

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ADDENDUM
TO EMPLOYEE MANAGEMENT SERVICES AGREEMENT DATED EFFECTIVE AS OF JULY 1, 2017, BY AND BETWEEN THE MARSHALL ACADEMY, A MICHIGAN PUBLIC SCHOOL ACADEMY AND MSS, INC.

This Addendum (this "Addendum") to the above-entitled Employee Management Services Agreement (the "Agreement") is effective the 1st day of July, 2017, by and between the Marshall Academy, a Michigan public school academy (the "Academy") and Midwest School Services, Inc., a Michigan Corporation ("MSS") with reference to the following:

RECITALS:

WHEREAS, the parties have entered into the above referenced Agreement with respect to provision by MSS to the Academy of human resource related administrative services and Worksite Employees; and

WHEREAS, the parties desire to supplement certain provisions of the Agreement to reflect their mutual understanding as to certain agreed upon changes; and

WHEREAS, all capitalized terms herein, unless otherwise defined or modified hereby, shall have the same meaning for such terms as set forth in the Agreement.

NOW, therefore for valuable consideration, receipt of which is hereby acknowledged, the parties agree as follows:

1. On-site Supervision and Worksite Employee Evaluation. MSS and the Academy shall select a Worksite Employee assigned to a staff/administrative position at the Academy to serve as the "Liaison." The Liaison shall bear the responsibility to coordinate and monitor the evaluation and supervision of teaching, maintenance and administrative personnel, as well as the other duties and obligations of MSS. The School Leader and Liaison shall jointly conduct all performance evaluations of Worksite Employees. The Liaison shall assist with human resources and personnel matters on the Academy's premises during normal business hours and the Liaison shall coordinate with and advise MSS as to the status of such matters at such times as requested by MSS's home office. The School Leader shall determine the procedures to be followed by Worksite Employees in the day-to-day performance of their job duties.

2. Personnel Requirements. The Academy, through its School Leader, shall advise MSS of the teachers, instructors, and administrators required by the Academy to perform its mission, as provided in the budget adopted by the Academy Board. Job descriptions and qualifications shall be consistent with Schedule 5 of the Charter Contract (as defined in the Agreement). MSS shall comply with the Code with respect to the evaluation and compensation systems. (See Sections 1249 and 1250 of the Code). By July 15, 2017, the Academy Board shall adopt a personnel classification and pay plan and provide such plan to MSS. The Academy Board shall notify MSS of any significant changes in the level of funding provided to the Academy.

3. Worksite Employee Handbook and Policies. MSS shall provide the Academy with its handbook of personnel policies and procedures, which policies and procedures guide MSS with respect to the discipline, layoff or termination of Worksite Employees. If a Worksite Employee has

a problem or dispute regarding a co-worker, a student, parent, or any other matter, the Worksite Employee shall first bring the problem or dispute to the attention of the MSS Liaison. If the problem or dispute is not resolved in a reasonable time period, the Worksite Employee shall take the matter to MSS and the School Leader. If the issue continues and is related to a co-worker, the issue is to be resolved by MSS. If the issues continues and is related to a student or parent, the issue shall be referred to the Academy Board.

4. Personnel Issues. In the event the Academy becomes dissatisfied with the performance of any individual Worksite Employee, the Academy shall notify MSS, in writing, setting forth the nature of the dissatisfaction, the proposed remedial action, and any specific action requested. Upon receipt of such notice from the Academy, MSS agrees to promptly take such specific action requested; provided however, if such specific action requested is to terminate said Worksite Employee's employment at the Academy's premises, MSS shall promptly suspend and promptly remove such Worksite Employee from the Academy's premises until MSS is able to investigate such request and make a decision as to such Worksite Employee's employment at the Academy's premises. The final decision maker is MSS regarding any termination.

5. Compensation and Benefits. MSS shall present to the Academy Board, on a frequency established by the Academy, the level of compensation and fringe benefits provided to Worksite Employees.

6. Authority. Neither MSS nor any provision of the Agreement shall interfere with the Academy Board's duty to exercise its statutory, contractual and fiduciary responsibilities governing the operation of the Academy. The Agreement shall not in any way restrict the Academy Board from acting as an independent, self-governing public body, or allow public decision to be made other than in compliance with the Open Meetings Act.

7. Governmental Immunity. The Agreement does not in any way require the Academy Board to assert, waive or not waive its governmental immunity.

8. Deposit of Funds. No provision of the Agreement shall affect the right of the Academy Board to direct that the deposit of all funds received by the Academy be placed in the Academy's depository account as required by law. The signatories on the Academy's accounts shall solely be properly designated Academy Board member(s) or Academy Board employees. Interest income earned on Academy's accounts shall accrue to the Academy.

9 Payment. The Academy Board shall either pay or reimburse MSS for approved fees or expenses upon properly presented documentation and approval by the Academy Board or a properly designated Academy Board member. The Academy Board may advance funds to MSS for the fees or expenses associated with the Academy's operation provided that satisfactory documentation for the fees and expenses are supplied for Academy Board ratification. No corporate costs of MSS shall be charged to, or reimbursed by, the Academy.

10. Academy Records. The financial, educational and student records pertaining to the Academy are Academy property and shall be kept confidential, subject to FOIA and the Code. All Academy records shall be physically or electronically available, upon request, at the Academy's physical facilities. Except as permitted under the Charter Contract and applicable law, this Agreement shall not restrict FSU's or the public's access to Academy records. All records should be kept in accordance with applicable State and Federal requirements.

11. Access to MSS Records. All financial and other records of MSS related to the Academy shall be made available to the Academy and/or its independent auditor, who shall be solely selected by the Academy Board.

12. Purchases. All equipment, materials and supplies purchased by MSS on behalf of or as agent of the Academy, shall be and remain the property of the Academy. MSS agrees to comply with the Code including, but not limited to, Sections 1267 and 1274 as if the Academy were making these purchases directly from a third party supplier. If MSS procures equipment, materials and supplies at the request of or on behalf of the Academy, no added service charges or administrative fees shall be imposed.

13. Proprietary Rights. All curriculum and educational materials that (i) are both directly developed and paid for by the Academy; or (ii) were developed by MSS at the direction of the Academy Board with Academy funds, shall be the sole proprietary property of the Academy. Those curriculum or educational materials previously developed or copyrighted by MSS , or that are developed by MSS from funds from the Academy paid to MSS as part of MSS's fee for services, shall be the sole proprietary property of MSS. All educational materials, from any source, as well as teaching techniques used by the Academy, are subject to disclosure under the Code and FOIA.

14. Personnel Responsibility. MSS shall be exclusively responsible for administration and provision of benefits, salaries, worker's compensation, unemployment compensation and liability insurance and for maintenance of Worksite Employees' personnel files and all other employee records required by state and/or federal law and the Charter Contract for Worksite Employees and other employees working on Academy operations.

15. Marketing and Development. Marketing and development costs paid by or charged to the Academy shall be limited to those costs specific to the Academy program as approved by the Academy Board, and shall not include any costs for the marketing and development of the business of MSS.

16. Performance Evaluation of MSS. The Academy Board may develop and implement a process for the review and evaluation of the performance by MSS under the Agreement. The policies and procedures providing for any such evaluation process shall be provided in writing to MSS. The Academy Board shall communicate in writing to MSS the results of any such performance review.

17. Compliance with Academy's Contract. MSS 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 Charter Contract issued by Ferris State University Board of Trustees. The provisions of the Academy's Charter Contract shall supersede any competing or conflicting provisions contained in this Agreement. Any additional costs of compliance because of changes mandated by FSU will be borne by the Academy and MSS equally, provided that any additional costs to MSS shall be limited to its duties and obligations under this Agreement. The Academy and MSS enter into the Agreement with the full understanding that the Educational Service Provider Policies of July 2012 (the "Policies") issued by FSU's Charter Schools Office may undergo revisions. The Academy and MSS agree to amend the Agreement within sixty (60) days of the effective date of FSU's revised Educational Service Provider Policies to conform with such new policies, or as soon as mandated by FSU.

IN WITNESS WHEREOF, the parties hereto have executed this Addendum as of the date set forth above.

WITNESS:

MSS, INC.,
a Michigan corporation

BY: _____
Ralph Cunningham
ITS: PRESIDENT

DATE: 9/13, 2017

WITNESS:

MARSHALL ACADEMY,
a Michigan public school academy

BY: _____
NAME: Mary Kempinski
ITS: BOARD OF DIRECTORS MEMBER

DATE: 9/13, 2017

SCHEDULE A
To Employee Management Service Agreement
Between MSS, Inc. and Marshall Academy

Pass-Through Costs/Reimbursements	Current Rates[1]
Michigan Unemployment Tax	8.80%
Employer Portion Social Security	6.20%
Employer Portion Medicare	1.45%
Federal Unemployment Tax	0.06%

Fixed Workers Compensation Costs		Per $100 of Earnings
Code: 8868	Teachers	.68%
Code: 8810	Clerical	.43%
Code: 9015	Bldg. Maintenance	7.14%
Code: 9058	Food Service	2.24%
Code: 7380	Driver	7.99%

Fixed Fees

Admin Fee, as a percentage of gross wages paid to Worksite Employees.	5.0%
Business Management Services.	$2,500/mo.
Employee Processing Fee (per new hire)[2]	$15.00

[1] Subject to change as mandated by state or federal law or regulation.

[2] Assessed only for new Worksite Employees hired after initial transfer and hire of Worksite Employees following execution of the Agreement.