

EDUCATIONAL SERVICE PROVIDER AGREEMENT

This Educational Service Provider Agreement ("Agreement") is made and entered into as of the 1st day of July, 2019, by and between Bold Education Connections, LLC, (hereafter referred to as "BEC") a Michigan Limited Liability Company located at 7257 State Rd., Apt. A, Burtchville, Michigan and East Shore Leadership Academy ("Academy") located at 1403 7th St., Port Huron, Michigan, by and through its Board of Directors ("Board") formed under Part 6A of the Revised School Code (the "Code"), as amended, being Sections 380.501 to 380.507 of the Michigan Compiled Laws located in Michigan.

The following is a recital of facts underlying this Agreement:

The Academy is a public school academy, organized under the Code. The Academy has been issued a contract (the "Contract") from the Northern Michigan University Board of Trustees ("Authorizer") to organize and operate a public school academy. The Code permits a public school academy to contract with persons and entities for the operation and management of the public school academy.

BEC specializes in providing educational institutions, with a variety of educational services and products, including management, curriculums, educational programs, teacher training, and technology. BEC's products and services are designed to serve the needs of a diverse student population.

The Academy and BEC desire to create an enduring educational partnership, whereby the Academy and BEC will continue working together to bring educational excellence and innovation to the Port Huron area, based on BEC's school design, comprehensive educational program, institutional principles and management methodologies.

In order to implement an innovative educational program at the Academy, the parties, desire to establish this arrangement for the management and operation of certain of the Academy's educational and administrative activities or functions.

Therefore, it is mutually agreed as follows:

ARTICLE I

TERM

A. **Effective.** This Agreement shall become effective upon execution and shall expire as of June 30, 2023.

B. **Agreement Coterminous With Academy's Contract.** If the Contract is suspended, revoked or terminated, or a new charter contract is not issued to the Academy after expiration of the Contract, this Agreement shall automatically be suspended or terminated, as the case may be, on the same date as the Contract is suspended, revoked, terminated or expires without further action of the parties. Notwithstanding the foregoing, the Academy shall have the right to terminate this Agreement, without penalty or cause, at the end of the third year of the contract term. In all other cases, the parties will follow termination provisions set forth in Article VIII herein.

ARTICLE II

CONTRACTUAL RELATIONSHIP

A. **Authority.** The Academy represents that it is authorized by law to contract with a private entity and for that entity to provide educational and management services. The Academy further represents that it has been issued the Contract by the Authorizer to organize and operate a public school academy situated in Michigan. The Board is therefore authorized by the Authorizer to supervise and control such academy, and is vested with all powers within applicable law for carrying out the educational program contemplated in this Agreement.

B. **Contract.** Acting under and in the exercise of such authority, the Academy hereby contracts with BEC to the extent permitted by law, to provide all functions relating to the provision of educational services and the management and operation of the Academy in accordance with the terms of this Agreement and the in accordance with the Contract. BEC shall comply with all

terms and conditions of the Contract to the extent BEC is performing services on behalf of the Academy. BEC agrees to perform its duties and responsibilities under this Agreement in a manner that is consistent with the Academy's obligations under the Contract. The provisions of the Contract shall supersede any competing or conflicting provisions contained in this Agreement.

C. Status of the Parties. BEC is a for-profit corporation, 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 BEC. The relationship between BEC and the Academy is based solely on the terms of this Agreement. No provision of this Agreement shall interfere with the Board's fiduciary duties and the Board's responsibilities under the Contract and applicable law. The Academy's duties and responsibilities under the Contract and applicable law shall not be limited or rendered impossible by any action or inaction of BEC. No provision of this Agreement shall predetermine the Board's course of action in choosing to assert or not assert governmental immunity. Further, no provision of this Agreement shall prohibit the Board from acting as an independent, self-governing public body, or allow public decisions to be made other than in compliance with the Open Meetings Act.

D. Independent Contractor Status. The parties to this Agreement intend that the relationship between them created by this Agreement is that of an independent contractor, and not employer-employee. No agent or employee of BEC shall be determined to be the agent or employee of the Academy except as expressly acknowledged in writing by the Academy. Notwithstanding the foregoing, BEC and its employees are designated as agents of the Academy for the limited purpose of allowing them access to educational records under the federal Family Educational Rights and Privacy Act (FERPA). BEC will be solely responsible for its acts and the acts of its agents, employees, and subcontractors.

E. Bankruptcy Notice. BEC shall notify the Board if any principal or officer of BEC, or BEC

as a corporate entity (including any related organizations or organizations in which a principal or officer of the BEC served as a principal or officer), has filed for bankruptcy protection in the last six (6) months or within any applicable preference period, whichever is longer.

ARTICLE III

FUNCTIONS TO BE PERFORMED BY THE CONTRACTOR

In consideration of the management fee paid by the Academy, BEC shall perform the following:

A. Responsibility. BEC shall be responsible, and accountable to the Academy, for the management, operation and performance of the Academy.

B. Educational Program. The educational program and the program of instruction shall be designed by BEC in cooperation with the Academy, and may be adapted and modified from time to time with prior Board approval and in conjunction with the Contract amendment process established by the Authorizer, it being understood that an essential principle of a successful, effective educational program is its flexibility, adaptability, and capacity to change in the interest of continuous improvement and efficiency, and that the Academy and BEC are interested in academic excellence, developing leadership skills in each student, and meeting student's individual learning styles, that will develop students into well rounded individuals and not in inflexible prescriptions.

C. Strategic Planning. BEC shall help design strategic plans for the continuing educational and financial benefit of the Academy.

D. Public Relations. BEC shall design an ongoing public relations strategy for the development of beneficial and harmonious relationships with other organizations and the community, for joint implementation by the BEC and the Board.

E. Specific Functions. The services BEC will provide the Academy include, but are not limited to the following, which shall be consistent with the Board's legal obligations under the

Contract and applicable law:

Operational Public School Academy Services

1. Financial
 - * Develop salary schedules
 - * Select benefit packages
 - * Determine retirement options
 - * Develop proposed budget
2. Educational Planning
 - * Coordinate with the Board the writing of the curriculum expansion
 - * Recommend methods of assessments
 - * Coordinate with the Board the writing and developing of the school improvement plans
 - * Assist in seeking accreditation through North Central Association/Education
 - * Assist in the development and planning of technology needs through the School Improvement Plan
3. Staff Development
 - * Workshops and seminars
 - * Professional Growth activities
4. Problem Solving
 - * Personnel issues
 - * Conflict resolution
 - * Student/parent/teacher issues
 - * Safety issues
5. Compliance Issues
 - * Membership reports
 - * Annual reports
 - * Annual audits
6. Equipment/Furniture
7. Contracted Services (as needed)
 - * Maintenance (building)
 - * Cleaning supplies/equipment
 - * Snow removal
 - * Lawn service
 - * Painting
 - * Landscaping
 - * Parking lot maintenance
8. Reporting
 - * Information auditors reasonably request
 - * Reports on operations, finances, and student performance
 - * Monthly financial statements
 - * Compensation and fringe benefits of employees
 - * Other information

Assets provided, or caused to be provided, to the Academy by BEC with funds BEC has received from sources other than the Academy under Article V shall remain the property of BEC or the

providing entity unless agreed in writing to the contrary. All acquisitions made by BEC for the Academy with funds BEC has received pursuant to Article V including, but not limited to, instructional materials, equipment, supplies, furniture, computers and technology, shall be owned by and remain the property of the Academy. The Board shall retain the obligation, as provided in Section 1274 of the Code, to adopt written policies governing the procurement of supplies, materials, and equipment. In the event that BEC purchases supplies, materials, or equipment from third parties as agent for or on behalf of the Academy, BEC shall comply with the Code including, but not limited to, section 1274 of the Code, as if the Academy were making such purchases directly from a third party. BEC certifies that there shall be no markup of costs for supplies, materials, or equipment procured by BEC on the Academy's behalf and that said supplies, materials and/or equipment shall be inventoried in such a way that it can be clearly established which property belongs to the Academy.

F. Subcontracts. BEC reserves the right to subcontract any and all aspects of all other services it agrees to provide to the Academy, including, but not limited to transportation, food service, payroll and/or any computer services with the prior approval of the Board. BEC shall not, however, subcontract the management, oversight, staffing, or operation of the teaching and instructional program, except as specifically permitted herein or with the prior written approval of the Board.

G. Place of Performance. BEC reserves the right to perform functions other than instruction, such as purchasing, professional development and administrative functions, off site, unless prohibited by the Contract or applicable law.

H. Student Recruitment. BEC and the Academy shall be jointly responsible for the recruitment of students subject to agreement on general recruitment and admission policies adopted by the Board. Application for admission into the Academy by or for students shall be voluntary, and shall be in writing. Students shall be selected in accordance with the procedures

set forth in the Contract and in compliance with the Code and other applicable law.

I. **Legal Requirements**. BEC shall assist in providing educational programs that meet applicable laws and regulations, and the requirements imposed under the Code and the Contract.

J. **Rules and Procedures**. BEC shall recommend reasonable rules, regulations and procedures applicable to the Board. BEC is authorized and directed to enforce such rules, regulations and procedures adopted by the Board. Nothing in this section shall limit the authority or discretion of the Board to adopt rules and procedures applicable to the Academy.

K. **School Years and School Day**. The school year and the school day shall be scheduled as required by law and as set forth in the Contract.

L. **Additional Grades and Student Population**. BEC, in connection with the Academy Administrator shall make recommendations to the Board concerning limiting, increasing, or decreasing the number of grades offered and the number of students served per grade or in total, within the limits provided for by the Contract. The Board shall be responsible for determining the number of grades offered and the number of students per grade, consistent with the requirements set forth in the Contract.

ARTICLE IV

OBLIGATIONS OF THE BOARD

The Board shall exercise good faith in considering the recommendations of BEC and the Academy Administrator including, but not limited to, recommendations concerning policies, rules, regulations, procedures, curriculum, budgets, fund raising, public relations and school entrepreneurial affairs. BEC does understand all of these decisions remain the responsibility of the Board and may not be delegated to BEC.

ARTICLE V

FINANCIAL ARRANGEMENTS

A. Compensation for Services. During the term specified in Article I, the Academy shall pay BEC a capitation fee of an amount equal to eleven (11%) percent ("Fee"), based upon all of the funds received by the Academy that the State of Michigan determines the Academy is entitled to receive pursuant to the State School Aid Act of 1979, as amended, for the particular students enrolled in the Academy ("SSA") and the 31A –At Risk, Title I, IIA, IID and V program funds, to the extent permitted by applicable law. The Academy shall pay the Fee upon receipt of its SSA on a monthly basis. The parties agree that the Fee amount is reasonable compensation for the provision of the services provided by BEC. The SSA may change according to overall changes in the student allocations by the State of Michigan. The Fee shall not be less than \$100,000 nor exceed \$800,000 in any one academic year of the Academy. If the provisions of this Agreement regarding the Fee and reimbursement are determined to result in private business use of the Academy's facilities under Rev. Proc. 2017-13 (and as may be further amended), the parties agree to renegotiate the Fee and reimbursement provisions of this Agreement as necessary to maintain the qualified use and tax-exempt nature of any Academy bond funded property.

B. No Related Parties or Common Control. BEC will not have any role or relationship with the Academy that, in effect, substantially limits the Academy's ability to exercise its rights, including cancellation rights, under this Agreement. The Board may not include any director, officer or employee of a management company that contracts with the Academy. In furtherance of such restriction, it is agreed between the Academy and BEC that none of the voting power of the governing body of the Academy will be vested in BEC or its directors, members, managers, officers, shareholders, and employees, and none of the

voting power of the governing body of BEC will be vested in the Academy or its directors, members, managers, officers, shareholders, and employees. The Academy and BEC will not employ the same individuals. Further, the Academy and BEC will not be members of the same controlled group, as defined in Section 1.150-1 (f) of the regulations under the Internal Revenue Code of 1986, as amended, or related persons, as defined in Section 144(a)(3) of the Internal Revenue Code of 1986, as amended. No BEC employee shall be designated as the Chief Administrative Officer of the Academy, although such employee may be a designee of the Chief Administrative Officer (who shall be a Board member or Academy employee appointed by the Board, if any) for certain purposes enumerated by Board action.

- C. **Payment of Costs.** In addition to the Fee described in this Section, the Academy shall reimburse BEC for all costs incurred and paid by BEC in providing the Educational Program and other goods and services, pursuant to Articles III, V, VI, and XI of this Agreement, at the Academy provided such costs are consistent with the Academy budget approved by the Board. Such costs include, but are not limited to, advertising, typing, printing, duplicating, postage, application fees, curriculum materials, textbooks, library books, furniture and equipment, computers, supplies, salaries and related expenses of BEC employees assigned to the Academy to provide goods and services to the Academy, building payments, maintenance, capital improvements and subcontractor fees. In paying costs on behalf of the Academy, BEC shall not charge an added fee. The Academy shall not reimburse BEC for any costs incurred or paid by BEC as a result of services provided or actions taken outside the scope of this Agreement. The Board may pay or reimburse BEC for approved fees or expenses upon properly presented documentation and approval by the Board, or the Board may advance funds to BEC for the fees or expenses associated with the Academy's operation provided that

documentation for the fees and expenses are provided for the Board ratification at its next regularly scheduled meeting and the fees and expenses are consistent with the Board's approved budget. No corporate costs of BEC shall be charged to, or reimbursed by, the Academy, and no person who is an owner of BEC shall receive a salary that is payable as an Academy expense.

D. Time and Priority of Payments. The Fee due to BEC shall be calculated for each school year at the same time as the State of Michigan calculates the SSA, and adjustments to such calculation shall occur at the same time as the State of Michigan makes adjustments to the SSA. BEC shall receive the Fee as calculated pursuant to the preceding sentence in eleven (11) installments beginning in October of each school year and ending in August of each school year. Such installment amounts shall be due and payable within five (5) days of receipt by the Academy of its monthly SSA. Payments due and owing to BEC shall be made by the Academy to BEC on or before the last day of each month.

E. Other Revenue Sources. In order to supplement and enhance the school aid payments received from the State of Michigan, and improve the quality of education, the Academy and BEC shall endeavor to obtain revenue from other sources. In this regard:

- (1) The Academy and/or BEC shall solicit and receive grants and donations consistent with the mission of the Academy.
- (2) Academy and/or BEC may apply for and receive grant money, in the name of the Academy subject to the prior approval of the Board.
- (3) To the extent permitted under the Code and approved by the Board, BEC may charge fees to students for extra services such as summer and after school programs, athletics, etc., and charge non-Academy students who participate in such programs. BEC and the Academy will split all revenue collected, in a proportion agreed upon by the parties in advance of BEC conducting such

programs, less expenses to the Academy caused by such programs, if not prohibited by law.

F. Other Institutions. The Academy acknowledges that BEC may enter into similar management agreements with other public or private educational schools or institutions ("Institutions"). BEC shall maintain separate accounts for reimbursable expenses incurred on behalf of the Academy and other Institutions, and only charge the Academy for expenses incurred on behalf of the Academy. If BEC incurs authorized reimbursable expenses on behalf of Academy and other Institutions which are incapable of precise allocation between the Academy and such Institutions, to the extent permitted under applicable law, then BEC, shall allocate such expenses among all such Institutions, and the Academy, on a pro-rata basis based upon the number of students enrolled at the Academy and the Institutions, or upon such other equitable basis as is acceptable to the parties. All grants or donations received by the Academy or by BEC for the specific benefit of the Academy, shall be used solely for the Academy. Marketing and development costs paid by or 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 BEC or any Institution.

G. Reporting. BEC shall provide the Academy with:

- (1) All information the Academy's auditors reasonably request.
- (2) Reports on Academy operations, finances, and student performance, upon request of the Board, the Authorizer or the State of Michigan.
- (3) Monthly financial statements that at a minimum include a balance sheet, a cash flow statement and an object-level detailed statement of revenues, expenditures and changes in fund balance that includes a comparison of budget-to-actual information and an explanation of variances.

- (4) Level of compensation and fringe benefits of employees assigned to the Academy.
- (5) Other information on a periodic basis to enable the Academy to monitor BEC's educational performance and the efficiency of its operations of the Academy.

H. Access to Records. BEC shall keep accurate records pertaining to its operation of the Academy, together with all Academy records prepared by or in the possession of BEC, and shall retain all of said records in accordance with the Contract and applicable law. All financial, educational and student records pertaining to the Academy are Academy property. Such records are subject to the Michigan Freedom of Information Act and shall be physically stored at the Academy's physical facilities or directly accessible at the Academy facility and shall be maintained in accordance with the policies of the Michigan Department of Education (the "Department"). All records shall be kept in accordance with applicable State and Federal requirements. All records pertaining to teacher and administrator certification, as well as a copy of the employee handbook shall be maintained physically on site or directly assessable at the Academy facility. BEC and the Academy shall maintain the proper confidentiality of personnel, student and other records as required by law. The Academy and BEC agree that employees of BEC, to the extent they have a legitimate educational interest in so doing, are authorized access to educational records under 20 U.S.C. § 1232g, 34 CFR 99 the Family Educational Rights and Privacy Act ("FERPA"), provided the Academy disseminates the notice required pursuant to FERPA and its related regulations, and the Academy may disclose confidential data and information to BEC, and its respective officers, directors, employees and designated agents to the extent permitted by applicable law, including without limitation, FERPA; the Individual 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 American 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; Privacy Act of 1974, 5 USC §552a; and the Michigan Social Security Number Privacy Act, MCL 445.84. If BEC receives information that is part of a pupil's education records from any source as permitted under the Code, BEC shall not sell or otherwise provide the information to any other person except as provided under MCL 380.1136. BEC shall make all information available to the Academy as deemed necessary by the Board to fully satisfy its obligation under the Contract. On an annual basis, BEC agrees to provide the Board with the same information that a school district is required to disclose under section 18(2) of the State School Aid Act of 1979, MCL 388.1618, for the most recent school fiscal year for which the information is available. Within thirty (30) days of receipt of this information, the Board shall make the information available on the Academy's website home page, in a form and manner prescribed by the Department. The defined terms in section 503c of the Code, MCL 380.503c, shall have the same meaning in this Agreement.

- I. **Annual Budget.** BEC will provide the Board with a proposed 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 reasonably satisfactory to the Board and to the Authorizer by no later than June 1st of each year. The budget shall contain object level detail and comply with public accounting standards applicable to public schools and public school academies in Michigan and required by applicable law. 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 Board shall be responsible for reviewing, revising, and approving the annual budget of the Academy and determining the budget reserve amount included as part of the Academy's annual budget. In addition, the Board is responsible for implementing fiscal policies that will assist the Academy in attaining the stated budget reserve amount, as may be amended from time to time.

- J. Annual Audit.** The Board shall select and retain an independent auditor, and shall pay for an annual financial audit to be conducted in accordance with the Contract and applicable state law. BEC shall cooperate with said auditor and will make sure that all Academy's financial records and BEC records related to the Academy will be made available to the Academy and the Academy's independent auditor. BEC shall not be permitted to select, retain, evaluate or replace the independent auditor.
- K. Payment of Academy Funds.** The Academy shall invest and deposit funds received by the Academy in accordance with the Contract and applicable law. BEC and any owner, officer or employee of BEC shall not be a signatory on any financial, banking or depository account of the Board. Only a Board member approved by the Board may be designated as a signatory on any Academy account. All interest earned on Academy depository accounts shall accrue to the Academy.
- L. Compliance with Section 12.17 of the Contract.** BEC shall make information concerning the operation and management of the Academy, including without limitation the information described in Schedule 4 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 12.17(a) of the Contract.

ARTICLE VI

PERSONNEL & TRAINING

- A. **Employer of Personnel.** Except as specified in this Agreement, all teaching and instructional personnel performing functions on behalf of the Academy shall be employees of BEC. The Academy is not an employer or joint-employer of BEC employees. Compensation of all employees of BEC shall be paid by BEC. For purposes of this Agreement, "Compensation" shall include salary, health insurance, dental, vision, life insurance, 401k, and state and federal tax withholdings. BEC shall be responsible for paying social security, unemployment, workers' compensation, and any other taxes required by law to be paid on behalf of its employees. Unless required by applicable statute, court or administrative decision, or Attorney General's opinion, BEC shall not make payments to the Michigan Public School Employees' Retirement System or any other public retirement system on behalf of its employees. Teachers employed by BEC shall not be considered teachers for purposes of continuing tenure under MCLA § 38.71 *et seq.*
- B. **Personnel Responsibility.** Subject to the Contract and the Board policies, BEC shall, in cooperation with the Academy, recommend to the Board staffing levels, and select, evaluate, assign, discipline and transfer personnel, consistent with state and federal law, and consistent with the parameters adopted and included within Board approved budget and the Contract. The Academy and BEC agree that BEC has all the rights, discretion and authority required by law to constitute an "employer" as defined in 29 U.S.C. §152(2) of the National Labor Relations Act and is subject to the jurisdiction of the National Labor Relations Board. The Board reserves the right to have BEC personnel placed elsewhere by BEC if the Academy is dissatisfied with their performance. BEC shall not have contracts with staff assigned to the Academy (including by way of example and not

limitation, teachers, administrators, counselors and the like) which contain non-compete agreements of any nature.

- C. **Principal.** Because the accountability of BEC to the Academy is an essential foundation of this partnership, and because the responsibility of a principal ("Principal") is critical to its success, the Principal will be an employee of BEC and BEC will have the authority, consistent with state law, to select and supervise the Principal and to hold him or her accountable for the success of the Academy. The employment contract with the Principal, and the duties and compensation of the Principal, shall be determined by BEC with the consent of the Board. The Principal and BEC, in turn, will have similar authority to select and hold accountable the teachers in the Academy.
- D. **Teachers.** Subject to the Contract and the Board policies, and from time to time thereafter, BEC shall recommend to the Board the number of teachers, and the applicable grade levels and subjects, required for the operation of the Academy. Thereafter, the Board shall determine the number and applicable grade levels and subjects of the Academy. BEC shall provide the Academy with such teachers, qualified in the grade levels and subjects required, as are required by the Board and the Contract. The curriculum taught by such teachers shall be the curriculum prescribed by the Academy and set forth by the Contract. Such teachers may, at the discretion of BEC, work at the Academy on a full or part time basis, provided that if teachers work at the Academy on a part time basis, such teachers' salaries and benefits shall be pro-rated in the Academy's budget. If assigned to the Academy on a part time basis, such teachers may also work at other schools managed or operated by BEC. Each teacher assigned or retained to the Academy shall hold a valid teaching certificate issued by the State Board of Education under the Code and shall have undergone the same criminal background and record check and unprofessional conduct checks, as required under the Code for teachers who

are employees of the Academy. Teacher evaluations shall be performed by BEC in accordance with applicable law.

- E. Support Staff.** BEC shall recommend, and the Board shall determine, the number and functions of support staff required for the operation of the Academy. The parties anticipate that such support staff may include clerical staff, administrative assistants to the Principal, bookkeeping staff and maintenance personnel. Such support staff may, at the discretion of BEC, work at the Academy on a full or part time basis, provided that if personnel does work at the Academy on a part time basis, such support staff's salaries and benefits shall be pro-rated in the Academy's budget. If assigned to the Academy on a part time basis, such support staff may also work at other schools managed or operated by BEC. Support staff assigned or retained to the Academy shall obtain any necessary certification or licensing under applicable law and shall have undergone any necessary criminal background and record check and unprofessional conduct checks under applicable law.
- F. Training.** BEC shall provide training in its methods, curriculum, program, and technology to all teaching personnel on a regular and continuous basis. Such methodology shall at a minimum utilize BEC's teaching staff to utilize their own professional abilities to provide in-service training to each other. Instructional personnel will receive at least the minimum number of professional development hours as required under the Code. Non-instructional personnel shall receive such training as BEC determines as reasonable and necessary under the circumstances.
- G. Criminal Background Checks.** As part of its services under this Agreement, BEC will, to the extent permitted by applicable law, be responsible for arranging for criminal background and conduct checks on its employees assigned to the Academy to ensure that the Academy fulfills its responsibilities to: a) conduct criminal background and record checks required by Applicable Law; and, b) maintain evidence that it has performed such

actions.

1. **Criminal Background Checks.** Pursuant to the requirements of Sections 1230 and 1230a of the Code, the Academy shall perform a criminal history check through the Michigan State Police ("MSP"), as well as a criminal records check through the Federal Bureau of Investigation ("FBI"), with regard to all persons assigned by BEC under this Agreement who regularly and continuously work in any of the Academy's facilities or at any other sites where the Academy delivers educational programs and services.

2. **Designation of LASO.** The Board has designated a BEC employee as the Academy's local agency security officer ("LASO") and has granted the designated LASO access to the MSP's Criminal History Record Internet Subscription Service ("CHRISS") process so that the LASO can view criminal history record information ("CHRI") results on persons assigned by BEC under this Agreement who regularly and continuously work in any of the Academy's facilities or any other sites where the Academy delivers educational programs and services. The LASO designated by the Academy shall be responsible for: (i) identifying who is accessing CHRI; (ii) identifying how the Academy is connected to CHRI; (iii) ensuring security measures are in place at the Academy to prevent the unauthorized access to CHRI; and (iv) support policy compliance and ensure the reporting of any CHRI incident to the MSP Information Security Officer ("ISO"). To the extent authorized by law to access CHRI through the CHRISS process, the LASO shall act in coordination with the designated Board member, to comply with Sections 1230 and 1230a and shall comply with security, training, and other applicable provisions of the FBI's Criminal Justice Information Services Security Policy pertaining to the Academy, as a noncriminal justice agencies ("NCJA"). For purposes of this subsection, "security" includes: (a) maintaining CHRI in a physically

secure location at the Academy (or encrypted if stored electronically) accessible only by authorized and trained individuals; and (b) maintaining a log of any dissemination of CHRI for an allowed purpose.

3. **Criminal Background Records.** For purposes of anticipated audit(s) by the MSP Criminal Justice Information Center and/or the FBI, the designated Board member, with assistance from the LASO, shall securely maintain the following for each individual employed or assigned by BEC for whom the Academy is required to perform a criminal background check: (i) Position Description (or at least the title of the position as identified on the "Affidavit for Assignment"); (ii) Affidavit for Assignment (a/k/a MSP-approved Red Light/Green Light letter); (iii) Live Scan Finger Print Consent Form; and (iv) Dissemination Log (if any authorized dissemination of CHRI has occurred).

4. **Non-employment for Listed Offenses.** BEC agrees that it shall not assign any of its employees, agents or other individuals to perform any services under this Agreement where such individuals would regularly and continuously work in the Academy's facilities or other sites where the Academy delivers educational programs and services if such person has been convicted of any of the following offenses:

(i) Any "listed offense" as defined under Section 2 of the Sex Offenders Registration Act, MCL 28.722; or

(ii) Any offense enumerated in Sections MCL 380.1535a or 380.1539b of the Revised Academy Code, MCL 380.1535a; 380.1539b; or

(iii) Any felony. Provided, that with prior written approval of the Board, an individual who has been convicted of a felony (other than a "listed offense" as defined above) and who is regularly and continuously providing services under this Agreement at the Academy facilities or other sites where the Academy delivers educational programs and services may be permitted to perform such services when, in the judgment of the Board, that individual's presence will not pose a danger to the safety or security of the Academy students or employees; or

(iv) Any misdemeanor conviction involving sexual or physical abuse as those terms are defined in Sections 1230(10) and 1230a(8) of the Code.

(v) Any offense of a substantially similar enactment (to those enumerated in A-D, above) of the United States or another State; or

(vi) Any other offense that would, in the judgment of the Academy, create a potential risk to the safety and security of students serviced by the Academy or employees (if any) of the Academy.

The Academy reserves the right to refuse BEC's assignment of any individual, agent or employee of BEC to render services under this Agreement where the criminal record history of that individual (including any pending criminal charges) indicate, in the Board's judgment, unfitness to perform services under this Agreement.

H. Unprofessional Conduct Checks. Before hiring or engaging an applicant for assignment at the Academy under this Agreement, BEC shall conduct an Unprofessional Conduct Disclosure in a manner that mirrors the requirements of Section 1230b of the Code that would apply in the event the Academy were hiring the individual, MCL 380.1230b. BEC further acknowledges and agrees that Worksite Employees or any other individuals set forth herein shall not be assigned to work at the Academy until the requirements of the applicable state and federal laws, rules and regulations have been satisfied.

ARTICLE VII

ADDITIONAL PROGRAMS

A. Additional Programs. The services provided by BEC to the Academy under this Agreement consist of the Education Program during the school year and school day as set forth in the Contract. With prior approval of the Board, BEC may provide additional programs including, but not limited to, adult and community education, summer school, and other special programs. In such cases where BEC is responsible for the cost of providing such additional programs, BEC and the Academy will split, in a proportion agreed upon by the parties in advance of BEC conducting such programs, with the Academy all revenues collected, less expenses to the Academy caused by such programs.

- B. **Food Service and Transportation.** BEC will not initially provide transportation services to students at the Academy. If approved by the Board, the students will be provided a catered breakfast and lunch program under the normal school lunch program.

ARTICLE VIII

TERMINATION OF AGREEMENT

- A. **Termination By BEC.** BEC may terminate the Agreement with cause prior to the end of the term specified in Article I in the event the Academy fails to remedy a material breach with sixty (60) days after notice from BEC. A material breach may include, but is not limited to, failure to make payments to BEC as required by this Agreement, or unreasonable failure to adhere to the personnel, curriculum, program, or similar material recommendations of BEC.
- B. **Termination by the Academy.** The Academy may terminate this Agreement with cause prior to the end of the term in the event that BEC should fail to remedy a material breach within sixty (60) days after notice from the Academy. Material breach may include, but is not limited to, violation of this Agreement, violation of the Contract, failure to account for its expenditures or to pay operating costs (providing funds are available to do so), any action or inaction by BEC that places the Contract in jeopardy, or unreasonable failure to meet performance standards.
- C. **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 renegotiating of the Agreement; and if the parties are unable or unwilling to renegotiate the terms within thirty (30) days after the notice, the party requiring the renegotiation may terminate this Agreement on thirty (30) days further written notice.
- D. **Effective Date of Termination.** In the event that this Agreement is terminated by either

party prior to the end of the term specified in Article I, absent unusual and compelling circumstances, the termination will become effective at the end of the current school fiscal year.

E. Expiration. Upon expiration of this Agreement at the completion of the Contract term and where there is no renewal, or upon the termination of this Agreement, whether with or without cause, BEC shall have the right to (a) reclaim any usable property or equipment (e.g., copy machines, personal computers) it provided to the Academy at BEC's expense and not paid for by the Academy, or (b) to make payment for any such property, at the sole option of the Academy. If the Academy chooses to purchase such property, the purchase price shall be either fair market value of such property determined as of the effective date of the termination or expiration of this Agreement or the depreciated cost of such property, whichever is less. Fixtures and building alterations shall become the property of the building owner.

F. Transition and Termination. Upon termination, BEC shall work for a period up to ninety (90) days if deemed necessary by the Academy to transition to a new Educational Service Provider or Academy self-management. The fee shall be in accordance with the compensation stated herein. However, upon termination, BEC shall, without charge (i) close the books on the then-current fiscal quarter; (ii) organize and prepare the Academy's records for transition to the new ESP or Academy self-management; (iii) organize and prepare student records for transition to the new ESP or Academy self-management; and (iv) provide for the orderly transition of employee compensation and benefits to the new ESP or Academy self-management without disruption to staffing.

G. No Penalty Early Termination. In the event that the Academy is required (i) to close an Academy site pursuant to a notice issued by the Department 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 the Contract Terms and Conditions, and such closure of an Academy site or reconstitution causes an amendment to or termination of this Agreement, the parties agree that this Agreement shall be amended or terminated to implement the Academy site closure or reconstitution, with no cost or penalty to the Academy, and BEC shall have no recourse against the Academy or the Authorizer for implementing such site closure or reconstitution.

ARTICLE IX

PROPRIETARY INFORMATION

- A. **Proprietary Information.** The Academy owns all proprietary rights to curriculum or educational materials that: (i) are both directly developed and paid for by the Academy; or (ii) were developed by BEC at the direction of the Board with Academy funds. BEC owns all proprietary rights to curriculum and educational materials previously developed or copyrighted by BEC, curriculum and educational materials developed by BEC not using funds from the Academy. BEC and the Academy shall each have the sole and exclusive right to license materials for which they own proprietary rights for use by other school districts, public schools and customers or to modify and/or sell material to other schools and customers. The Academy and BEC each shall use reasonable efforts to ensure that its personnel and agents refrain from disclosing, publishing, copying, transmitting, modifying, altering or utilizing proprietary information owned by the other party. BEC's educational materials and teaching techniques used by the Academy are subject to disclosure under the Code and the Freedom of Information Act.
- B. **Required Disclosure.** The Academy Administrator shall be permitted to report any new teaching techniques or methods of revisions to known teaching techniques or methods to the Board and to the State Board of Education, which 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 IX to the contrary.

ARTICLE X

INDEMNIFICATION

A. Indemnification. To the extent permitted by law and without waiving any governmental or other immunities, the Academy shall indemnify and save and hold BEC and all if its employees, officers, directors, subcontractors, and agents (collectively "BEC Employees") harmless against any and all claims, demands, suits, or other forms of liability that may arise out of, or by reason of, any action taken or not taken by the Academy or any Academy Employees (as defined below) in the event of any claim that this Agreement or any part thereof is in violation of law; 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 BEC for any and all legal expenses and costs associated with the defense of any such claim, demand, or suit.

BEC shall indemnify and save and hold the Academy and all if its employees, officers, directors, subcontractors, and agents (collectively "Academy Employees") harmless against any and all claims, demands, suits, or other forms of liability that may arise out of, or by reason of, any action taken or not taken by BEC or any BEC Employees in the event of any claim that this Agreement or any part thereof is in violation of law; any noncompliance by BEC with any agreements, covenants, warranties, or undertakings of BEC 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, BEC shall reimburse the Academy for any and all legal expenses and costs associated with the defense of any such claim, demand, or suit.

B. Indemnification of Northern Michigan University. The parties acknowledge and agree that the Northern Michigan University Board of Trustees, Northern Michigan University and its members, officers, employees, agents or representatives (collectively referred to as "the University") 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 University from and against all claims, demands, actions, suits, causes of action, losses, judgments, damages, fines penalties, forfeitures, or any other liabilities or losses of any kind, including costs, attorney fees, and related expenses imposed upon or incurred by the University, on account of injury, loss or damage, including, without limitation, claims arising from bodily injury, personal injury, sickness, disease, death, property loss or damage or any other losses of any kind whatsoever and not caused by the sole negligence of the University, which arise out of or are in any manner connected with Northern Michigan University Board of Trustees' approval of the Academy's application, Northern Michigan University Board of Trustees' consideration of or issuance of a Contract, the Academy Board's or BEC's preparation for and operation of the Academy, or which are incurred as a result of the reliance by the University upon information supplied by the Academy Board or BEC, or which arise out of the failure of the Academy Board or BEC to perform its obligations under the Contract, the Agreement or Applicable Law, as applicable. The parties expressly acknowledge and agree that the University, Northern Michigan University Board of Trustees and its members, and their respective officers, employees, agents or representatives, or any of them, may commence legal action against either party to enforce its rights as set forth in this Agreement.

ARTICLE XI

INSURANCE

BEC shall secure and maintain insurance coverage as required by Michigan University Self Insurance Corporation ("MUSIC") and the Contract. The Academy shall maintain insurance coverages in the amounts required by the Contract. Any insurance maintained by BEC shall be separate and in addition to any insurance maintained by the Academy pursuant to the Contract. The Academy shall also maintain such insurance as shall be necessary to indemnify BEC as provided in this Agreement. Each party shall, upon request, present evidence to the other that it maintains the requisite insurance in compliance with the provisions of this paragraph. BEC 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. BEC insurance shall include coverage for sexual molestation or abuse, will list the Academy as an additional named insured and shall not be changed, revoked or modified absent thirty (30) day's notice to the Academy and Authorizer. In the event the Authorizer or MUSIC requests any change in coverage by BEC, BEC 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.

ARTICLE XII

WARRANTIES AND REPRESENTATIONS

The Academy and BEC each represent that it has the authority under law to execute, deliver, and perform this Agreement, and to incur the obligations provided for under this Agreement, that its actions have been duly and validly authorized, and that it will take all steps reasonably required to implement this Agreement. The Academy and BEC mutually warrant to the other that there are no pending actions, claims, suits, or proceedings, to its knowledge, threatened or reasonably anticipated against or affecting it, which if adversely determined, would have a material adverse effect on its ability to perform its obligations under this Agreement.

ARTICLE XIII

MISCELLANEOUS

- A. **Sole Agreement.** This Agreement supersedes and replaces any and all prior agreements and understanding between the Academy and BEC. If the Academy and BEC wish to enter into a lease, execute promissory notes or other negotiable instruments, or enter into a lease-purchase agreement or other financing relationships, such agreements must be separately documented and approved and must comply with the terms of the Contract, Authorizer policies and applicable law.
- 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 part's control, and which cannot be overcome by reasonable diligence and without unusual expense.
- C. **Notices.** All notices, demands, requests, and consents under this Agreement shall be in writing, shall be delivered to each party, and shall be effective when received by the parties or mailed to the parties at their respective addresses set forth below, or at such other address as may be furnished by a part to the other party:

With a copy to:

East Shore Leadership Academy
1403 7th Street
Port Huron, MI 48060
Attn. President, Board of Directors

Bold Education Connections, LLC
Corporate Headquarters
7257 State Rd. Apt. A
Burtchville, MI 48059
Attention: Nancy J. Gardner

Dickson Wright, PLLC
500 Woodward Ave, Ste 4000
Detroit, MI 48226
Attention: George P. Butler, III

Davis Burket Savage Listman
Brennan
10 N. Main Street
Suite 401
Mt. Clemens, MI 48043
Attention: John L. Burket

- D. **Severability**. The invalidity of any of the covenants, phases, 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, phase, 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. No modification of this Agreement shall be valid or binding unless such modification is in writing, dated and signed by the authorized representative of each party and done in a manner consistent with the Contract and the Authorizer's Educational Service Provider Policies. Said amendment shall not be contrary to this Section and it must be accompanied by a Legal Opinion.
- G. **Non-Waiver**. No failure of either party in exercising any right, power, or privilege under this Agreement shall affect such right, power, or privileges, 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**. This Agreement shall not be assigned by either party without the prior written consent of the other party and any assignment must be done in a manner consistent with the Contract and the Authorizer's Educational Service Provider Policies.
- I. **Survival of Termination**. All representations, warranties, and indemnities made herein shall survive termination of this Agreement.

J. **Governing Law.** This Agreement shall be governed by and enforced in accordance with the law of the State of Michigan.

This Agreement is effective as of the day and year first above written.

BOLD EDUCATION CONNECTIONS, LLC

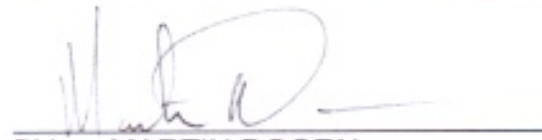


BY: NANCY J. GARDNER

ITS: President

DATE: 5-20-2019

EAST SHORE LEADERSHIP ACADEMY



BY: MARTIN DOORN

ITS: President

DATE: 5-20-2019