

12955 ROBINS RIDGE ROAD, CHARLEVOIX, MI 49720 PHONE/FAX 231-547-4264

### MANAGEMENT AGREEMENT

**THIS MANAGEMENT AGREEMENT** is made effective as of this 1st day of July, 2017 (the "Effective Date"), by and between Concord Academy Boyne, a Michigan Public School Academy, whose address is 2468 Atkins Road, Boyne, Michigan, 49770 (hereinafter, the "Academy"), and Lakeshore Educational Management, Inc., a Michigan corporation, whose address 12955 Robins Ridge Road, Charlevoix, MI 49720 (hereinafter, "Lakeshore").

### RECITALS:

1. The Academy is organized and operated under Parts 6A of the Revised School Code, MCL 380.1 et seq. ("Code") and pursuant to a charter contract ("Contract") issued by the Lake Superior State University Board of Trustees ("University Board" or "Authorizer") to the Academy. The Contract, and all amendments to the Contract, are collectively referred to in this Agreement as the "Charter." This Agreement shall be subject to, and comply with, the terms and conditions of the Charter, all of which are incorporated by reference into this Agreement.
2. The Academy is organized and administered under the direction of a board of directors ("Academy Board") and has the power, authority, and duties established in the Code and the Charter, specifically including the authority: (1) to enter into binding legal agreements with persons or entities as necessary for the operation, management, financing, and maintenance (MCL 380.504a(d); and (2) to employ or contract with personnel as necessary for the operation of the Academy (MCL 380.506).
3. Lakeshore is in the business of providing comprehensive educational, administrative, management and instructional services to Michigan public school academies.
4. Lakeshore has the expertise, training, capacity, and qualifications to perform the services contemplated under this Agreement.
5. The Academy desires to utilize, and Lakeshore desires to provide, such services upon the terms and conditions herein set forth.

In consideration of the mutual promises and obligations contained herein, the parties agree as follows:

**AGREEMENT:**

1. **Services.** Subject to the terms and conditions of this Agreement, the Academy contracts with Lakeshore, to the extent permitted by law, for all labor, materials, equipment, supplies, and supervision necessary for the provision of educational services to students enrolled in the Academy, and for the operation, management, and maintenance of the Academy as a going concern ("Services"); provided, however, that Lakeshore shall not be responsible to provide custodial and grounds maintenance services except as may be provided by separate agreement or amendment to this Agreement. The Services shall be provided in accordance with the educational goals, curriculum, methods of pupil assessment, methods to be used to monitor compliance with performance of targeted educational outcomes, admission policy and criteria, school calendar and school day schedule, and age and grade range of pupils to be enrolled, as adopted by the Academy Board and included in the Charter issued by the Authorizer to the Academy. The respective responsibilities of Lakeshore and the Academy under this Agreement are set forth with greater specificity in Sections 5 and 6 (inclusive of sub-parts), respectively, of this Agreement.

1.1. **Status of the Parties.** Lakeshore is a for-profit corporation formed under the Michigan Business Corporation Act (Act 284 of 1972, as amended) and is not a division or a part of the Academy. The Academy is a body corporate and a governmental agency authorized by the Code and is not a division or part of Lakeshore. Except as expressly provided in this Agreement, no agent or employee of Lakeshore shall be deemed to be the agent or employee of the Academy. Each party shall be solely responsible for its acts and omissions, and for the acts and omissions of its agents, employees and non-party contractors. The relationship between Lakeshore and the Academy is based solely on the terms of this Agreement, and the terms of any other written agreements between Lakeshore and the Academy.

In the performance of services under this Agreement, Lakeshore (its employees, agents, and contractors) shall be regarded at all times as performing services as independent contractors of the Academy. Consistent with this status, Lakeshore reserves to itself the right to designate the means and methods of accomplishing the objectives and purposes of this Agreement, and the Academy shall not exercise (or have the right to exercise) control or direction over the means and methods utilized by Lakeshore in providing Services under this Agreement. Any other provision of this Agreement notwithstanding, Lakeshore shall not predetermine the Academy Board's course of action in choosing to assert or not assert governmental immunity.

1.2. **No Related Parties.** Lakeshore 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. Nothing in this Agreement shall interfere with the Academy Board's exercise of its statutory, contractual and fiduciary responsibilities governing the operations of the Academy. No provision of this Agreement shall prohibit the Academy 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. The Academy Board shall not include individuals having a prohibited family relationship, as specifically identified in the Charter and applicable law, with individuals who have an ownership interest in, or who are officers or employees of, Lakeshore. None of the voting power of the Academy Board will be vested in Lakeshore or its directors, members, managers, officers, or employees, and none of the voting power of Lakeshore will be vested in the Academy or its directors, members, officers or employees (if any). The Academy and Lakeshore shall not be members of the same "Controlled Group" as defined in Section 1.150-1(1) of the Treasury Regulations, 26 CFR 1.150-1(1), or be related persons as defined in Section 144(a)(3) of the Internal Revenue Code of 1986, as amended, 26 USC 144(a)(3).

1.3. **No Power to Obligate or Bind State of Michigan, University Board, or the University.** The Academy has no authority whatsoever to enter into any contract or other agreement that would financially obligate the State of Michigan, the University Board, or Lake Superior State University ("University"), nor does the Academy have any authority whatsoever to make any representations to lenders or third parties that the State of Michigan, University Board or the University in any way guarantee, are financially obligated for, or are in any way responsible for, any contract, mortgage, loan or other instrument of indebtedness entered into by the Academy.

1.4. **Personnel Qualifications.** Personnel assigned by Lakeshore to perform services under this Agreement shall be fully certificated, licensed, approved and otherwise qualified to perform the functions assigned pursuant to and in conformance with the provisions of the Code, and other applicable statutes or regulations, pertinent to the work performed under this Agreement. Lakeshore will not assign any personnel to perform services under this Agreement who would be ineligible for employment by the Academy if such person(s) were instead employed directly by the Academy. Lakeshore shall maintain proof of certification, licensure or approval for each individual assigned to perform Services under this Agreement, along with a signed consent allowing the Academy to disclose the results of the criminal background check performed on any individual assigned by

Lakeshore to perform services under this Agreement to an appropriate representative of Lakeshore, the individual's employer. No person assigned to the Academy by Lakeshore shall be deemed jointly employed by the parties. To enable the Academy to comply with its reporting obligations under the Michigan Public School Employees Retirement Act (the "MPERS Act"), 1980 PA 300, as amended, Lakeshore: (1) shall promptly notify the Academy in writing of the identity of any individual employed or assigned by Lakeshore to perform services under this Agreement who is a retiree from the Michigan Public School Employees Retirement System ("MPERS"); (2) shall provide information on a pay period basis regarding any such individual's wages or amounts paid and hours of service under this Agreement, as necessary for the Academy to report on a schedule and in such manner as may be determined from time to time by the MPERS, MCL 38.1342(6); and (3) shall report such information on behalf of the Academy on a schedule and in such manner as may be determined from time to time by the MPERS. The Academy has no contractual or legal obligation to pay MPERS payments for any Lakeshore employee assigned to the Academy.

- 1.5 **Criminal History Record and Unprofessional Conduct Checks.** Pursuant to Sections 1230 and 1230a of the Code, the Academy is required to request, receive, use to evaluate qualification for assignment under Sections 1230 and 1230a, retain, and where appropriate report to the Michigan Department of Education regarding, a criminal history check through the Michigan State Police, as well as a criminal records check through the Federal Bureau of Investigation, with regard to all persons assigned by Lakeshore under this Agreement to regularly and continuously work in any of the Academy's facilities or at program sites where the Academy delivers educational programs and services, MCL 380.1230 and 380.1230a.

The Academy shall request the required criminal history record and unprofessional conduct check with regard to all persons assigned by, or sought to be assigned by, Lakeshore under this Agreement to regularly and continuously work in any of the Academy's facilities or at a program site where the Academy delivers educational programs and services, and shall provide Lakeshore with an Determination of Assignment indicating whether the Academy accepts or does not accept the person for assignment. Lakeshore shall obtain from each of its employees, agents or contractors assigned to, or proposed to be assigned to, regularly and continuously work in the Academy's facilities or at a program site where educational programs and services are delivered under this Agreement, written consent as necessary for the Academy to request the criminal history record and unprofessional conduct check pertaining to the consenting employee, agent, or contractor, pursuant to the authorization set forth in Sections 1230(10) and 1230a(8) of the Code. Lakeshore also shall require any subcontractor it engages to provide services under this

Agreement to consent to a criminal history record and unprofessional conduct check regarding the subcontractor's employees that are assigned under contract to regularly and continuously work in the Academy's facilities or at sites where the Academy delivers educational programs or services.

The Academy reserves the right to refuse Lakeshore's assignment of any individual, agent, contractor, or employee of Lakeshore to render Services under this Agreement where the criminal record history of that individual (including any pending criminal charges) indicate, in the judgment of the Academy Board, unfitness to perform Services under this Agreement. In the event that, after assigning an individual, agent, contractor, or employee to perform Services under this Agreement, Lakeshore discovers previously unknown criminal record history or subsequently arising criminal charges or convictions regarding that individual, Lakeshore shall immediately disclose this criminal record history or development to the Academy Board to permit the Academy Board to determine, in its judgment, the continuing fitness of the individual to perform Services under this Agreement.

The parties agree that the Academy shall be responsible for the costs associated with the criminal history checks and criminal records checks required pursuant to the terms of this Agreement and which are accomplished in order to comply with Sections 1230 and 1230a of the Code with respect to Lakeshore's employees, agents, and contractors. The evidence of background and unprofessional conduct checks will be stored on site, in physical form, at the Academy or directly accessible at the Academy facility.

2. **Term.** This Agreement shall become effective as of the date set forth above and shall terminate June 30, 2018, unless terminated earlier by sixty (60) days' written notice by either party or as otherwise set forth in this section.. If the Charter issued by the Authorizer is suspended, revoked or terminated, or a new charter is not issued to the Academy after expiration of the Charter, this Agreement shall automatically be suspended or terminated, as the case may be, on the same date as the Charter is suspended, revoked, terminated or expires without further action of the parties.

3. **Fees.** In consideration of the services to be provided, the Academy shall pay to Lakeshore the following fees:

An annual management fee of \$21,000.00, to be paid in installments of \$875.00 with each semi-monthly payroll.

4. **Expenses.** The Academy shall reimburse Lakeshore the actual cost, without mark-up, of insurance required by the Authorizer to be carried by Lakeshore

and other expenses upon properly presented documentation and approval by the Academy Board. Such reimbursements shall be made to Lakeshore within fifteen (15) days of receipt by the Academy of such documentation. If applicable, Lakeshore shall not markup the costs for supplies, materials, or equipment procured by Lakeshore on the Academy's behalf and all supplies, materials, and equipment procured for the Academy by Lakeshore shall be Academy property. Lakeshore shall provide the Academy with an acceptable method of inventory and an inventory of Academy equipment shall be maintained so that it can be clearly established which property belongs to 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 Lakeshore.

5. Lakeshore's Duties. Lakeshore agrees:

- A. To employ and assign to the Academy, in accordance with the Charter, school calendar adopted by the Academy Board and in conformance with the State Board of Education and School State Aid Act requirements, such duly qualified and certified classroom teachers, instructors, support staff, and administrators (hereinafter, "Lakeshore Employee(s)") as necessary to provide the Services under this Agreement. Provided, however, that all decisions made by Lakeshore, and any discretion exercised by Lakeshore in its selection and assignment of personnel to perform Services under this Agreement, shall be consistent with the parameters adopted and included in the annual budget approved by the Academy Board (Section 6.A.) and the Educational Goals and Programs detailed in the Charter. The final selection and assignment of Lakeshore Employees to the Academy shall be made by Lakeshore.
- B. To conduct a performance evaluation, at least annually, of Lakeshore Employees assigned to the Academy in an administrative or teaching capacity in compliance with a system of performance evaluation that Lakeshore develops, implements and maintains as necessary for the Academy to be in compliance with Section 1249 of the Code. Lakeshore will require the employee assigned to the Academy as the executive director to perform such evaluations in a manner that conforms to the requirements set forth in the Code and other applicable laws. The executive director's evaluation shall be performed by Lakeshore and, to the extent required under Section 1249(3)(a) of the Code, the executive director shall be evaluated by the Academy Board. Lakeshore agrees that it will not assign an individual to teach at the Academy if that individual has been rated as ineffective on his or her two most recent annual year-end evaluations under Section 1249.
- D. To develop, implement and maintain a method of performance-based compensation as necessary for the Academy to be in compliance with

Section 1250 of the Code and to pay Lakeshore Employees, on a semi-weekly basis (24 pays per contract year), a corresponding hourly or annual wage or salary and to provide such additional benefits and compensation, including, but not limited to, health care benefits and retirement benefits, as Lakeshore may deem appropriate; provided, however, that the Academy's obligation to reimburse Lakeshore for the costs incurred by Lakeshore in providing the Services under this Agreement shall not exceed the parameters adopted and included in the annual budget approved by the Academy Board (Section 6.A.). The terms and conditions of such employment shall be set forth in an employment contract between Lakeshore and each Lakeshore Employee in the form of an Employment Agreement, to be agreed upon by Lakeshore and the Employee. Lakeshore's employees, contractors, or agents are not entitled to receive any compensation, benefits or other amenities in any form from the Academy, and the Academy shall not be liable for the payment of salaries, wages, benefits, payroll or taxes for or on behalf of any Lakeshore employee; rather, the Academy's obligation is to reimburse Lakeshore for the approved costs incurred by Lakeshore in providing the Services under this Agreement.

- E. To deliver payroll checks by courier prior to the date of planned distribution or by direct deposit, with actual shipping costs and/or electronic transfer fees billed to the Academy. Lakeshore acknowledges and agrees that it is the sole and exclusive responsibility of Lakeshore to make the requisite tax filings, deductions, and payments to the appropriate federal, state and local tax authorities for and on behalf of all persons employed or engaged by Lakeshore to provide Services under this Agreement. No part of Lakeshore's fee (nor the fees of any subcontractors) shall be subject to withholding by the Academy for payment of social security, unemployment or disability insurance or any other similar state or federal tax obligations. Lakeshore (its agents or subcontractors) shall be solely and exclusively responsible for any taxation consequences to it or its employees as a result of Lakeshore's engagement under this Agreement.
- F. To provide a retirement plan for Lakeshore Employees pursuant to IRC Section 401(K), 403(B), Simple IRA or SEP.
- G. To provide worker compensation insurance coverage of all Lakeshore Employees assigned to the Academy, and to hold the Academy harmless from liability and/or damages arising from issues of workers compensation.
- H. To provide, upon request of the Academy Board or its Authorizer, access to employee records and financial records of Lakeshore as they pertain to the Academy, including financial records requested by accountants

and/or auditors employed by the Academy in the course of their financial audit of the Academy, and to cooperate with and assist the Academy's accountants and/or auditors upon request. All financial and educational records pertaining to the Academy are Academy property. This obligation includes the obligations: (1) to provide to the Academy Board and to the Authorizer all information required by law and/or the Charter; (2) to provide to the Academy Board at least annually all 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 that information is available; and (3) to require that the individual assigned by Lakeshore to serve as the Academy's Executive Director make all of the information described in this Section H(2) available through a link on the Academy's website homepage, in a form and manner prescribed by the MDE. Notwithstanding the foregoing, the Academy Board shall retain the Academy's independent auditor and Lakeshore shall have no authority to select or retain the Academy's independent auditor.

- I. To be responsible for answering, defending and/or resolving any and all claims arising from the assignment and performance of its employees or agents to carry out the Services under this Agreement. However, nothing in this Section is intended, nor shall be construed or implemented, to prohibit Lakeshore from including provisions in any subcontracted services agreement that it may execute with a subcontractor assigning responsibility to the subcontractor to answer, defend and/or resolve any and all claims arising from the assignment and performance of the subcontractor (or its employees or agents) to carry out Services for the Academy.

These claims shall include, but shall not be limited to: proceedings before the Michigan Employment Relations Commission; the National Labor Relations Board; proceedings for unemployment compensation benefits; claims for workers' compensation disability benefits; claims of unlawful discrimination brought before any state or federal agency or court; claims or grievances for breach of contract; and any other claims of whatsoever kind or character arising from or which are attributable to the performance of Services by employees or agents of Lakeshore in connection with this Agreement.

All costs (including legal fees) incurred in connection with the defense of the foregoing matters and any resulting judgments shall be the sole and exclusive responsibility of Lakeshore.

- J. To indemnify, defend, and save and hold harmless the Academy and all of its employees (if any), officers, directors, subcontractors and agents, from and against any and all claims, demands, suits, causes of action,



losses, judgments, liabilities, damages, fines, penalties, forfeitures, or any other forms of liability or loss, including costs and expenses (not limited to reasonable attorney fees, expert and other professional fees), settlement and prosecution (collectively, "Damages") that may arise out of, or by reason of: (1) any noncompliance by Lakeshore (or by any of its employees or others for whom Lakeshore is responsible) with any agreements, covenants, warranties or undertakings of Lakeshore contained in or made pursuant to this Agreement; (2) any misrepresentation or breach of the representations and warranties of Lakeshore (or any of its employees or others for whom Lakeshore is responsible) contained in or made pursuant to this Agreement; and (3) any negligent or intentional tortious act or omission of Lakeshore (or any of its employees or others for whom Lakeshore is responsible). Lakeshore agrees to acquire and maintain insurance coverages that comply with the *Michigan Universities Self-Insurance Corporation (M.U.S.I.C.) Insurance Coverage Requirements for Public School Academy*, as detailed in Appendix A to this Agreement, as may be amended from time to time, and further agrees that the employment practices liability insurance shall include specific coverage for acts of sexual molestation and abuse by its employees or agents (Compliant Insurance). The indemnification requirements of this paragraph may be met by the purchase and maintenance of Compliant Insurance. In addition, Lakeshore agrees that such policy shall provide an endorsement stating that such insurance shall be primary and that insurance carried by the Academy shall be excess and non-contributory. Not later than ten (10) days from the date both parties have executed this Agreement, Lakeshore shall provide the Academy with certificates of insurance evidencing all coverages and endorsements required hereunder. Lakeshore agrees to name the Academy, and its board of directors, board members, officers, agents and employees, as additional insureds under said policy and the policy will include an agreement by the insurer not to cancel, or materially change, such insurance without at least fifteen-days' prior written notice to the Academy. To obtain indemnification, the Academy must promptly notify Lakeshore in the event of a claim and cooperate in resolving the claim. In the event the Authorizer or M.U.S.I.C. requests any change in coverage by education service providers, Lakeshore will comply with any change in the type of or amount of coverage, as requested, within thirty (30) days of notice of the insurance coverage change.

- K. To provide for all covered Lakeshore Employees a comprehensive medical care insurance plan.
- L. To ensure that its employment agreement with any Lakeshore employee assigned to the Academy does not include a non-compete agreement of any nature.

- M. Lakeshore, and any principal or officer of Lakeshore, have not filed for bankruptcy protection within the six (6) months preceding the execution of this Agreement. Lakeshore will notify the Academy Board if Lakeshore or any principal or officer of Lakeshore (including any related organizations or organizations in which a principal or officer of Lakeshore served as a principal or officer) has filed for bankruptcy protection in the last six (6) months or within any application preference period, whichever is longer.

6. **The Academy's Duties.** The Academy agrees:

- A. To advise Lakeshore of the budgetary parameters approved by the Academy Board, as may be amended, specifically including revenue allocated for the personnel costs of the Services to be provided under this Agreement, including the costs of teachers, instructors, staff and administrators. The Academy Board shall be responsible for preparing, revising, approving and amending the Academy's budget in accordance with the requirements set forth in the Contract and applicable law. The Academy Board shall determine the amount of any budget reserve contained in the Academy's annual budget.
- B. To provide information to Lakeshore relative to the performance of Services under this Agreement, student achievement data to the extent permitted by law, and such other information as Lakeshore may deem necessary or useful in completing the performance evaluations of its employees.
- C. To pay to Lakeshore, by electronic fund transfer, an amount equal to the gross amount of approved Service costs for each pay period, not less than forty-eight (48) hours in advance of each Lakeshore pay day, and to provide a faxed fund transfer acknowledgment prior to the actual Lakeshore pay date. For purposes of this section, the term "gross amount" shall include: (1) an amount equal to the gross salary or wages paid by Lakeshore to the individuals assigned by Lakeshore to provide Services under this Agreement for the current Lakeshore pay period; plus (2) an amount equal to the FICA and Medicare contributions required to be paid by Lakeshore as employer of the individuals assigned by Lakeshore to provide Services under this Agreement; plus (3) an amount equal to the contributions required to be paid by Lakeshore to the respective retirement plan of each individual assigned to perform Services under this Agreement; plus (4) such other approved sums as Lakeshore shall be obligated to pay or disburse to or on behalf of the Lakeshore Employees during the current Lakeshore pay period.

- D. To promptly reimburse and to pay to Lakeshore an amount equal to the approved fees for Services and approved costs and expenses as set forth herein.
- E. To include Lakeshore as an additional insured on the general and professional liability insurance policies maintained by the Academy and to provide Lakeshore with a certification from the insurance provider to that effect.
- F. To conduct criminal background checks in compliance with controlling law and Section 1.5 of this Agreement.
- G. To select and retain an independent auditor for the Academy.
- H. To the extent permitted by applicable law, to indemnify, defend, save and hold harmless Lakeshore and all of its employees, officers, directors, subcontractors and agents from and against any and all claims, demands, suits, causes of action, losses, judgments, liabilities, damages, fines, penalties, forfeitures, or any other forms of liability or loss, including costs and expenses (not limited to reasonable attorney fees, expert and other professional fees), settlement and prosecution (collectively, "Damages") that may arise out of or by reason of: (1) any noncompliance by the Academy Board with any agreements, covenants, warranties or undertakings of the Academy contained in or made pursuant to this Agreement; and (2) any grossly negligent or intentional tortious act or omission of the Academy. Provided, however, that nothing in this Agreement is intended, nor shall be construed, as a waiver of immunity from tort liability granted to the Academy (its officers, employees, volunteers and board members) under Michigan's Governmental Tort Liability Act, MCL 691.1401, *et seq.* The indemnification requirements of this paragraph are only binding upon the Academy to the extent (if any) permitted by law and shall be fully satisfied by the purchase of Compliant Insurance. Not later than ten (10) days from the date both parties have executed this Agreement, the Academy shall provide Lakeshore with certificates of insurance evidencing all coverages and endorsements required hereunder. The Academy agrees to name Lakeshore, its officers, agents and employees, as additional insureds under said policy and the policy will include an agreement by the insurer not to cancel, or materially change, such insurance without at least fifteen-days' prior written notice to Lakeshore. To obtain indemnification, Lakeshore must promptly notify the Academy in the event of a claim and cooperation resolving the claim.

7. **Mutual Covenants:** The parties mutually agree:

- A. In the event that the Academy Board shall become dissatisfied with the performance of Services under this Agreement, the Academy Board shall notify Lakeshore in writing, setting forth the nature of dissatisfaction and the proposed remedial actions sought by the Academy. Within thirty (30) days of receipt, Lakeshore shall respond to the Academy Board with their response to the proposed remedial actions sought by the Academy.
- B. Lakeshore shall exercise exclusive supervision, management, and discipline of its Employees assigned to the Academy, subject to the rights of the Academy as set forth herein.
- C. Substitute teachers and any additional instructional services outside the normal curriculum, such as driver's education instructors or contracted personnel, shall be paid by the Academy.
- D. Any other provision notwithstanding, the Authorizer must review and may disapprove this Agreement, and any amendments to this Agreement, before it is final and valid.
- E. Lakeshore represents and warrants, as of the date of execution of this Agreement, that there are no known, asserted or unasserted, liabilities, damages, fines, penalties, demands, forfeitures, claims, suits, causes of action or any other liabilities or losses, including any costs of defense, settlement and prosecution along with attorney, expert and other professional fees, arising out of or related to any negligence, wrongful act or breach of this Agreement or the obligation of Lakeshore or any of its employees or others for whom it is responsible in connection with the performance of the Agreement from July 1, 2012 through the date of execution.
- F. No employee of Lakeshore shall be designated as the Chief Administrative Officer of the Academy, although such employee may be a designee of the Chief Administrative Officer for certain purposes enumerated by Academy Board action.
- G. Upon notice of termination in accordance with the terms of this Agreement, the parties shall cooperate to determine a specified period of time during which Lakeshore will provide services for the orderly transition of employee compensation and benefits to the new provider without disruption to staffing and without any fee Lakeshore might be paid for such transition services. Without additional compensation, Lakeshore will close the books of the then-current fiscal quarter and ensure the Academy's and student records are organized and prepared for an orderly transition to the new provider.
- H. No provision of this Agreement shall alter the Academy Board treasurer's legal obligation to direct that the deposit of all funds received by the

Academy be placed in the Academy's depository account as required by applicable law. The signatories on the depository account shall only be Academy Board members properly designated annually by Academy Board resolution. Interest income earned on Academy depository accounts shall accrue to the Academy.

## 8. Confidentiality and Data Security

- A. Designation as Agents. The Academy designates the employees of Lakeshore as agents of the Academy having legitimate educational interests such that they are entitled to access to education records under the Family Educational Rights and Privacy Act, 20 USC §1232(g) ("FERPA").
- B. Commitment to Preserve. Lakeshore agrees that it shall observe the policies and directives of the Academy to preserve the confidentiality of Covered Data and Information (defined in Subsection 7.B. below) to the extent that Lakeshore (its employees or agents) are permitted to access Covered Data and Information in the course of performing Services under this Agreement.
- C. Covered Data and Information (CDI) includes paper and electronic student education and/or medical record information supplied by the Academy and/or its students or parents/guardians to Lakeshore and includes, without limitation, "education records" and "education record information" as defined under FERPA, 20 USC §1232(g), 34 CFR Part 99, the Individuals with Disabilities Education Act (IDEA), 20 USC §1401 *et seq.*, 34 CFR 300.610 - 300.626, and the Michigan Mandatory Special Education Act, MCL 380.1701 *et seq.*; "relevant records" as defined under Section 504 of the Rehabilitation Act of 1973, 29 USC §794a, 34 CFR 104.36, and the Americans with Disabilities Act, 42 USC §12101 *et seq.*; medical record information as defined under the Health Insurance Portability and Accountability Act ("HIPAA"), 42 USC 1320d - 1329d-8; 45 CFR 160, 162 and 164; and social security numbers, as protected by the federal Privacy Act of 1974, 5 USC §552a; and the Michigan Social Security Number Privacy Act, MCL 445.84. CDI also includes any new records created and maintained by Lakeshore under this Agreement using CDI.
- D. Acknowledgment of Access to CDI. Lakeshore acknowledges that this Agreement allows Lakeshore (its employees and agents) access to CDI, which the Academy may have the ultimate legal responsibility to maintain in a confidential and secure fashion. Accordingly, Lakeshore (its employees and agents) shall provide the Academy with control over the CDI sufficient to satisfy all applicable legal and regulatory standards. In any event, Lakeshore (its employees and agents) shall at all times

make CDI available to the Academy within a reasonable time of receiving a request for same.

- E. Prohibition on Unauthorized Use or Disclosure of CDI. Lakeshore (its employees and agents) agrees to hold CDI in strict confidence. Lakeshore (its employees, agents) shall not use or disclose CDI received from or on behalf of the Academy except as permitted or required by this Agreement, as required or authorized by law, or as otherwise authorized in writing by the Academy, a parent/guardian, or eligible student. Lakeshore agrees that it will protect the CDI it receives from or on behalf of the Academy according to commercially acceptable standards and no less rigorously than it protects its own confidential information. Lakeshore shall ensure that any employee or agent, including a subcontractor or Business Associate (as defined in HIPAA), to whom it provides CDI under this Agreement, understands and agrees to the same restrictions and conditions pertaining to use and disclosure of CDI that apply to Lakeshore under this Agreement.
- F. Return or Destruction of CDI. Upon termination or other conclusion of this Agreement, Lakeshore (its employees and agents) shall return all CDI to the Academy.
- G. Maintenance of the Security of Electronic Information. Lakeshore (its employees and agents) shall develop, implement, maintain and use appropriate administrative, technical and physical security measures to preserve the confidentiality, integrity and availability of all CDI received from, or on behalf of, the Academy or its students. These measures will be extended by Lakeshore to include subcontractors or Business Associates used by Lakeshore.
- H. Reporting of Unauthorized Disclosures or Misuse of Covered Data and Information. Lakeshore, within two business days of discovery, shall report to the Academy any use or disclosure of CDI not authorized by this Agreement or in writing by the Academy. Lakeshore's report shall identify: (i) the nature of the unauthorized use or disclosure, (ii) the CDI used or disclosed, (iii) who made the unauthorized use or received the unauthorized disclosure, (iv) what Lakeshore has done or shall do to mitigate any deleterious effect of the unauthorized use or disclosure, and (v) what corrective action Lakeshore has taken or shall take to prevent future similar unauthorized use or disclosure. Lakeshore shall provide such other information, including a written report, as reasonably requested by the Academy.
- I. Remedies.
  - 1. Notice and Opportunity to Cure. If the Academy reasonably determines in good faith that Lakeshore has materially

breached any of its obligations under the data security provisions of this Agreement, the Academy, in its sole discretion, shall have the right to require Lakeshore to submit to a plan of monitoring and reporting; provide Lakeshore with a fifteen (15) day period to cure the breach; or terminate the Agreement immediately if cure is not possible. Before exercising any of these options, the Academy shall provide written notice to Lakeshore describing the violation and the action it intends to take.

2. Statutory/Regulatory Penalties. In addition, the Parties understand and agree that Lakeshore is subject to any penalties for unauthorized disclosures or misuse of CDI that are or may be imposed, from time to time, under applicable law including, without limitation, that Lakeshore may be prohibited by law from accessing CDI for defined periods of time following any unauthorized disclosure or misuse of CDI, which shall constitute a material breach of this Agreement.
- J. Amendment for Compliance. If the Academy believes in good faith that any data security provision of this Agreement fails to comply with applicable laws or regulations, the Academy shall notify Lakeshore in writing. Within thirty (30) business days of receipt of such notice by Lakeshore, the Parties shall address in good faith the expressed concern(s) and shall amend the terms of this Agreement, if the Academy deems an amendment necessary to bring the Agreement into compliance with applicable laws and regulations. If after such thirty (30) business-day period this Agreement remains non-compliant with applicable laws or regulations with respect to the concern(s) raised under this Section, the Academy shall have the right to immediately terminate this Agreement upon written notice to Lakeshore.
  - K. Certain Prohibitive Conduct Regarding Personally Identifiable Information. Except as permitted under the Code, Lakeshore shall not sell or otherwise provide to a for-profit business entity any personally identifiable information that is part of an Academy Student's education records.
  - L. Certain Prohibitive Conduct Regarding Academy Student Records. If Lakeshore receives information that is part of an Academy Student's education records, Lakeshore shall not sell or otherwise provide the information to any other person except as permitted under the Code.

For purposes of Paragraphs K and L above, the terms "education records" and "personally identifiable information" shall have the same meaning as those terms in section 1136 of the Code, MCL 380.1136.

9. **Financial, Educational, and Student Records.** Notwithstanding any other provision of this Agreement, the financial, educational, and student records of the Academy are the property of the Academy and subject to the provisions of the Freedom of Information Act. All records shall be physically or electronically available, upon request, at the Academy's physical facilities.
10. **General**
- A. **Choice of Law.** This Agreement is made and entered into in the State of Michigan and shall be interpreted according to the laws of Michigan.
  - B. **Entire Agreement.** This Agreement constitutes the entire agreement between the Parties regarding its subject matter and supersedes any prior or contemporaneous understandings or agreements with respect to the services contemplated.
  - C. **Section Headings.** The section headings are used in this Agreement for reference and convenience only and shall not enter into the interpretation of this Agreement.
  - D. **Severability.** If any provision of this Agreement should be invalid, illegal or unenforceable in any respect, the validity, legality and enforceability of the remaining provisions of this Agreement shall not in any way be affected, impaired or prejudiced, unless the deletion of such provision(s) would result in such a material change as to preclude the rendering of the Services contemplated by this Agreement.
  - E. **Amendment.** None of the terms and provisions of this Agreement may be modified or amended in any way except by an instrument in writing executed by authorized representatives of the Academy and Lakeshore.
  - F. **Waiver.** Failure by either Party at any time to require performance by the other Party or to claim breach of any provision of this Agreement shall not be construed as a waiver of any subsequent breach nor affect the validity and operation of this Agreement, nor prejudice either Party with regard to any subsequent action to enforce the terms of this Agreement. Provided, however, that, as a matter of law, course of dealing may be relied upon to resolve any contract ambiguity by evidencing the intent and understanding of the Parties.
  - G. **Assignment.** Neither Party shall assign this Agreement nor its rights and duties hereunder nor any interest herein without prior written consent from the other Party, which consent shall not be unreasonably withheld.



- H. No Third Party Rights. Unless otherwise provided in this Agreement, nothing in this Agreement is intended nor shall be construed to confer third Party beneficiary status or rights, pursuant to MCL 600.1405 or under the common law, to any person or entity that is not a Party to this Agreement.
- I. Time of Essence. The Parties understand and agree that time is of the essence in performing their respective responsibilities under this Agreement.
- J. Force Majeure. Any delay or failure of any Party (the “affected Party”) in the performance of its required obligations under this Agreement shall be excused if and to the extent caused by war, rebellion or insurrection; an act of God; fire; government statute, order or regulation prohibiting the performance of this Agreement; riots; strikes, labor stoppages, lockouts or labor disputes to the extent such occurrences are not caused by the actions of the Party seeking relief under this Section, provided that: (i) written notice of such delay or suspension is given by the affected Party to the other Party within 72 hours of such event, which notice shall set forth in detail the nature of each delay; (ii) the affected Party shall use all commercially reasonable efforts to minimize the extent of such *force majeure* delay; and (iii) additional expense or other adverse financial conditions shall not be deemed *force majeure*. Upon receipt of a notice of *force majeure*, the time for the affected Party’s performance shall be extended for a period of time reasonably necessary to overcome the effect of such delays and the other Party’s sole remedy shall be reimbursement for the additional cost of such delays; provided, however, that either Party may terminate this Agreement under Section 2 of this Agreement if sufficient grounds for termination exist.
- K. Delegation of Authority. Nothing in this Agreement shall be construed as delegating to Lakeshore powers or authority of the Academy Board which are not subject to delegation by the Academy Board under the Charter or applicable law.
- L. Compliance with Law. The Parties to this Agreement agree to comply with all applicable laws and regulations.

11. Provisions Required by University Board.

- A. Indemnification of Lake Superior State University. The parties acknowledge and agree that the University Board, the University and its members, officers, employees, agents or representatives (collectively “Lake Superior State 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 Lake Superior State University from and against all claims, demands, actions, suits, causes of action, losses, judgments, damages, fines, penalties, demands, forfeitures, or any other liabilities or losses of any kind, including costs, attorney fees, and related expenses imposed upon or incurred by Lake Superior State 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 Lake Superior State University, which arise out of or are in any manner connected with Lake Superior State University Board of Trustees' approval of the Academy's application, Lake Superior State University Board of Trustees' consideration of or issuance of a Contract, the Academy Board's or Lakeshore's preparation for and operation of the Academy, or which are incurred as a result of the reliance by Lake Superior State University, the University Board or its members, or their respective officers, employees, agents or representatives, upon information supplied by the Academy Board or Lakeshore, or which arise out of the failure of the Academy Board or Lakeshore to perform its obligations under the Charter or Applicable Law. The parties expressly acknowledge and agree that Lake Superior State University, Lake Superior State 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.

- B. Compliance with Academy's Contract. Lakeshore agrees to perform its duties and responsibilities under this Agreement in a manner that is consistent with the Academy's obligations under the Academy's Contract issued by the Authorizer. The provisions of the Academy's Contract shall supersede any competing or conflicting provisions contained in this Agreement."
- C. Compliance with Section 503c. On an annual basis, Lakeshore agrees to provide the Academy 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 380.1618, for the most recent school fiscal year for which information is available. Within thirty (30) days of receipt of this information, the Academy Board shall make the information available on the Academy's website home page, in a form and manner prescribed by the Michigan Department of Education. The defined terms of section

503c of the Code, MCL 380.503c, shall have the same meaning in this Agreement.”

- D. Incompatible Public Offices and Conflicts of interest Statutes. No individual shall serve simultaneously as an Academy Board member and as owner, officer, director, employee, paid consultant or independent contractor of Lakeshore during the term of this Agreement. Academy Board members have a duty to affirmatively notify the Lake Superior State University Charter School Office of the existence of any possible conflict of interest and no Academy Board member shall hold an incompatible office. As defined in MCL 15.181, “incompatible offices” means public offices held by a public official which, when the official is performing the duties of any of the public offices held by the official, results in any of the following with respect to those offices held:
- (i) The subordination of 1 public office to another.
  - (ii) The supervision of 1 public office by another.
  - (iii) A breach of duty of public office.
- F. Curriculum and Educational Materials. The Academy owns all proprietary rights to curriculum or educational materials that (a) are directly developed and paid for by the Academy; or (b) were developed by the Lakeshore at the direction of the Academy Board with Academy funds. Any educational materials and teaching techniques of Lakeshore used by the Academy are subject to disclosure under the Code and the Freedom of Information Act.
- G. 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 10.7 of the Charter 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 Lakeshore shall have no recourse against the Academy or the Authorizer for implementing such site closure or reconstitution.
- H. Compliance with Section 12.17 of Contract Terms and Conditions. Lakeshore shall make information concerning the operation and management of the Academy, including without limitation the information described in Schedule 4 of the Charter, available to the Academy as deemed necessary by the Academy Board in order to enable

the Academy to fully satisfy its obligations under Section 12.17(a) of the Charter Terms and Conditions.

- I. **Other Agreements Between Parties.** If the Academy intends to enter into a lease, execute a promissory note or other negotiable instrument, or enter into a lease-purchase agreement or other financing relationship with Lakeshore, then such agreements must be separately documented, separately approved, and not be a part of or incorporated into this Agreement. All such agreements must comply with the Charter, as well as any applicable University Board or University policies and guidelines.

**IN WITNESS WHEREOF**, this Agreement is signed by the parties on the date first set forth above.

**"ACADEMY"**

Concord Academy Boyne



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By:  
Its: Board President

**"LAKESHORE"**

Lakeshore Educational Management,  
Inc.



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By: Denise A. Sandison  
Its: President