

MANAGEMENT AGREEMENT

This Management Agreement (the "Agreement") is entered into as of the 15th day of February, 2017, and effective on July 1, 2017, by and between Accel Schools Ohio LLC, a Delaware limited liability company ("Operator"), and the Berwyn East Academy (the "Academy"), a non-profit Ohio corporation and public community school, by and through its Governing Authority.

RECITALS

A. The Academy is sponsored and authorized by the North Central Ohio Educational Service Center (the "Sponsor") to govern a public community school under Chapter 3314 of the Revised Code of the State of Ohio (as such provision may be amended from time to time, the "Code").

B. The Operator was established, among other things, to manage public schools, and is expected to provide invaluable assistance and expertise, including regulatory, financial, facilities, and other advice, in connection with the operation of the Academy.

C. The Academy and the Operator (collectively, the "Parties") desire to create an enduring educational relationship whereby they will pursue and provide educational excellence at the Academy based on an agreed upon school design, comprehensive educational program and management principles.

THEREFORE, the Parties mutually agree to the following terms:

ARTICLE I. EDUCATIONAL SERVICES AND ADMINISTRATIVE SERVICES

1.01 Educational Services.

- (a) For the Term (as defined in ARTICLE II below), the Operator will provide to the Academy and its students the following educational services (the "Educational Services"):
- (i) Curriculum. The development and implementation of the curriculum or the related, expanded, updated or derivatives of such curriculum shall be provided by the Operator, and agreed to by and between the Academy's Governing Authority. If any part of the curriculum is owned by the Operator, it shall be licensed to the School as part of the Management Fee, including the corresponding use of such resource materials, reference books, videotapes and disks, computer software or other necessary means to access the full curriculum. The costs for the agreed-upon curriculum purchases shall be part of the costs of operation of the Academy, prorated if used by other schools.
 - (ii) Instruction. Oversight and coordination of the services to be provided by instructional personnel, including the administrators, leadership team, teaching and non-teaching or support staff in accordance with ARTICLE V below;
 - (iii) Instructional Tools. The selection of instructional tools, equipment and supplies, including text books, computers, software and multi-media teaching tools;
 - (iv) Extra-Curricular and Co-Curricular Programs. The development and implementation of appropriate and mutually desirable extra-curricular and co-curricular activities and programs;
 - (v) Academic Progress Reports. Provision to the Governing Authority on a monthly basis, a report detailing the Academy's students' academic performance, and the Operator's performance of the Educational and Administrative Services, and such other reports reasonably requested by the Board;
 - (vi) Method of Delivery. Subject to this Agreement, the Contract, the Code and applicable laws, rules, regulations and requirements, the Operator may modify the methods, means and manner by which Administrative Services or Educational Services are provided at any time, but may not transfer regional leaders, administrators, staff, or make material changes without the approval of the Chief Administrator, and, without the consent of the Governing Authority, which shall not be unreasonably

withheld. The Operator shall obtain approval for modifications requiring a change in the Contract.

(vii) Additional Educational Services. Any other services required by the Sponsor, the State of Ohio Department of Education and such other services as are necessary or expedient for the provision of teaching and learning at the Academy as agreed to from time to time between the Operator and the Academy's Governing Authority.

- (b) The Educational Services will be provided in accordance with the educational goals, curriculum, methods of pupil assessment, admissions policy, student recruitment policy, school calendar, school day schedule and age and grade range of pupils to be enrolled at the Academy (the "Educational Program") as adopted by the Governing Authority of the Academy (the "Board") and as provided for in the Academy's contract with its Sponsor ("Contract"). The Chief Administrator and the Superintendent/Regional Representative shall set the School calendar.
- (c) The Operator will be responsible and accountable to the Board for the provision and quality of the Educational Services, the academic success of the students of the Academy and the professional development and training of all administrative, teaching and non-teaching staff.

1.02 Administrative Services.

- (a) For the Term (as defined in ARTICLE II below), subject to the Contract and the approval of the Board, the Operator will provide to the Academy the following administrative services (the "Administrative Services"):
 - (i) Personnel Management. Management and professional development of all personnel providing Educational Services and Administrative Services in accordance with ARTICLE V below;
 - (ii) Facility Operation and Maintenance. Operation and maintenance of the Academy's facility (the "Facility") to the extent consistent with any and all leases or other documents pertaining to the Facility and pursuant to all applicable laws rules and regulations. The Academy shall consider recommendations and proposals of the Operator in a reasonable manner, but shall have the final decision-making power in matters of the Facility locations, expansion, or improvements. This Agreement shall not impact any ownership and/or leasehold interests of the Facility for which the Parties have independently acquired.
 - (iii) Business Administration. Administration of the following business aspects of the Academy;
 - (A) Payroll. Provide payroll services itself or through a suitable alternative payroll provider as the Operator may select from time to time. The Operator shall be responsible for all data input, including errors or omission in data input.
 - (B) Transportation and Food Services. Coordination with entities with which the Academy contracts for the provision of transportation and food services for the students enrolled at the Academy, management and assessment of the services provided under such contracts, and supervision of employees involved in providing such services, all as required by the Board; and
 - (C) Public Relations and Marketing. Coordination and implementation of all advertising, marketing, recruitment, media and public relations efforts, including community outreach programs, and all marketing and enrollment plans which shall be presented to the Academy's Board. All public relations will be subject to the mutual approval of both Parties, which approval may not be unreasonably withheld;
 - (D) Contracts. The bidding, procurement and responsibility for selection of vendors or providers for necessary services or supplies for the Academy, provided however, that the Operator shall not sign any contracts in the name of the Academy. Should a contract need to be in the name of the Academy, it shall be reviewed, authorized and approved by the Board and its legal counsel.
 - (E) Litigation. Reports to the Board of litigation or administration complaints, actions, audits or hearings having to do with the Academy, through the Academy's legal counsel.

(iv) Budgeting and Financial Reporting.

- (A) Annual budgets (the " Budget") will be prepared by the Academy's licensed school treasurer in conjunction with the review and advise of the Operator and the Board, and will be subject to the approval of the Board. Budget compliance and accuracy will be reviewed with the Board monthly. Detail in budgets must be provided to the Board and the Operator in a manner sufficient for the Board and the Operator to monitor all financial issues related to the Academy. The projected annual budgets will include, but not be limited to, the financial details relating to the Educational Services and Administrative Services to be provided pursuant to this Agreement, the supplies and materials, programming and operations. The budget for each Fiscal Year shall be provided prior to May 1st of the immediately preceding Fiscal Year.
- (B) The preparation of detailed statements of all revenues received, from whatever source, with respect to the Academy, and detailed statements of all expenses, including an accounting of all expenditures for services rendered to, or on behalf of, the Academy, whether incurred on-site or off-site.
- (C) The monthly preparation and presentation of a budget to actual comparison of revenues and expenditures and detailed statements of all revenues received, from whatever source, with respect to the Academy, and detailed statements of all expenses, including an accounting of all expenditures for services rendered to, or on behalf of, the Academy by Operator, prepared in conformity with the Contract, Ohio law and any rules and regulations for the Auditor of State's office or any independent certified public accountants, whether incurred on-site or off-site.
- (D) The preparation of other financial statements as required by and in compliance with the Contract, Ohio law and any laws and regulations, including such documentation as may be required by the independent certified public accountants or the Auditor of State retained by the Board to perform annual audits of the Academy's financial statements. The cost of the audit will be the responsibility of the Academy, and will be provided for in the budget.
- (E) The preparation of such other reports on the finances and operation of the Academy as requested or required by the Ohio Department of Education, the Board or the Sponsor or as necessary or requested to enable the Board to monitor performance and assess the effectiveness and efficiency of the operations of and at the Academy.

(v) Other Financial Responsibilities

- (A) The Board must authorize and approve all applications for federal funds or grants. The administration and management of state and federal funds or grants shall be the responsibility of the Operator, unless otherwise specified herein.
- (B) The cost for preparation of the financial statements and provision of a licensed school treasurer and fiscal officer will be the responsibility of the Board, subject to Board approval. provided by a Board chosen licensed school treasurer and fiscal officer. In all cases, the Operator will prepare all of the accounting services and the preparation of financial statements.
- (C) At any time, the Board, at its own expense, may hire its own financial consultant to review the responsibilities and financial records of the Operator as they pertain to the Academy.
- (D) The Operator shall provide complete, accurate, legal, truthful, detailed, and timely financial information (monthly and in at least five days before every regular or re-scheduled regular meeting and as stated in this Agreement). In no case should financial statements be required prior to the tenth (10th) business day prior of the following month. For example, the March financial statements shall not be required prior to April 15th.

(E) The cost of any state special audits or federal audits, whether FTE, special education, food/lunch, title, grant audits required by matters under the Operator's staff or control will be borne by the Operator in the case where the results of the audit are the faults of Operator error. .

(F) Vendors shall be paid on time and in accordance with a written and agreed-upon payment schedule.

(G) Academy funds shall not be used for the benefit of another school or co-mingled with another school's money or accounts, excepting out only the earned and paid Management Fee.

(vi) Maintenance of Financial and Student Records.

(A) The Operator will maintain accurate financial records pertaining to its operation of the Academy, together with all Academy financial records prepared by the Operator, and retain all such records for a period of seven (7) years (or longer if required by the Code or other applicable laws and regulations) from the close of the fiscal year to which such books, accounts and records relate. All the Academy financial records retained by Operator pertaining to the Academy will be available to the Academy, the Sponsor, or the Auditor of State or Ohio Department of Education for inspection and copying upon request. The Board shall have access to copies of all financial back-up documentation, reports, graphs, budgets and similar information for timely review, upon reasonable request.

(B) The Operator will maintain accurate student records pertaining to the students enrolled at the Academy as is required and in the manner provided by the Contract, the Code and applicable laws, rules and regulations, together with all additional Academy student records prepared by or in the possession of Operator, and retain such records permanently on behalf of the Academy, (it being understood that all student and financial records and information are and shall be at all times the property of the Academy).until this Agreement or its successor (if any) is terminated, at which time such records will be delivered to the Academy and become the responsibility of the Board. The Operator and the Academy will maintain the proper confidentiality of such records as required by state and federal law.

(C) The Operator will maintain accurate employment, business and other records pertaining to the operation of the Academy as is required and in the manner provided by the Contract, the Code and applicable state and federal laws and regulations, together with all additional Academy employment, business and other records prepared by or in the possession of Operator, and retain such records permanently on behalf of the Academy until this Agreement or its successor agreement (if any) is terminated, at which time such records will be delivered to the Academy, who shall thereafter be responsible for the retention and maintenance of such records (it being understood that such employment, business, and other records are and shall be at all times the property of the Academy). The Operator and the Academy will maintain the proper confidentiality of such records as required by law and the Charter. If the Operator is the employer or contractor of a party, the original records shall belong to the Operator and copies shall be provide to the Academy upon termination or closure. If the Academy is the employer or contractor of a party, the originals shall belong to the Academy.

(D) The Operator shall provide qualified and experienced Education Management Informational System (EMIS) services, all federal grants management and administration support, all CCIP grant and E-Rate grant support and services and other essential services for accurate data and revenue enhancement of the Academy. All Academy data and electronic records shall be preserved at least once daily to a secure backup system, to protect in case of loss of data. Under all circumstances, the Academy shall be granted unfettered access to such data and electronic records which shall be maintained at a secure location by the Operator.

(vii) Admissions. Implementation of the Academy's admissions, residency and lottery policies in accordance with all applicable state and federal laws rules and regulations.

- (viii) Student Hearings. Administration and enforcement of student disciplinary and special education hearings in conformity with the requirements of the Code and other applicable laws and regulations (including, but not limited to, requirements involving due process and confidentiality) to the extent consistent with the Academy's duties and obligations under the Code and other applicable laws and regulations. If a due process hearing is lost due to matters under the control of Operator's staff and such loss results in monetary findings or legal fees, such fees shall be covered by the Operator's own insurance or Management Fee.
 - (ix) Rules and Procedures. The Parties may each recommend policies, rules, regulations and procedures applicable to the Academy and its students and will enforce such rules, regulations and procedures adopted by the Board that are in compliance with state and federal laws, rules and regulations. The Board and its attorneys are primarily responsible for the policies of the Academy.
 - (x) Parent Satisfaction Forms. The Operator will provide to the Board copies of Parent Satisfaction Forms to be completed by parents of Academy students, with copies and summaries thereof promptly provided to the Academy on an annual basis.
 - (xi) Additional Administrative Services. Any other services reasonably necessary or expedient for the effective administration of the Academy as agreed to from time to time by the Operator and the Board.
- 1.03 Place of Performance; Provision of Offices. The Academy will provide the Operator with necessary and reasonable classroom and office space at the Facility to perform the on-site services described in this Agreement. The Operator will provide instructional, extra-curricular and co-curricular services at the Facility.
- 1.04 Authority. By this Agreement, the Academy provides the Operator such authority as is necessary for it to undertake its responsibilities, duties and obligations provided for in this Agreement, except in cases wherein such authority may not be delegated by the Code, the Contract, or by laws, rules or regulations.

**ARTICLE II.
TERM**

- 2.01 Term. The term of this Agreement is for three (3) years, beginning on July 1, 2017 and ending on June 30, 2020, unless extended as stated in Section 2.02 below.
- 2.02 Renewal. The Term may be renewed at any time before the expiration of a Term or a Renewal Term for an additional period (a "Renewal Term") of three (3) years, each Renewal Term to run from July 1 to June 30 as applicable, unless, (a) written notice of an intent to terminate is given by either Party to the other by December 31 of the year of expiration, or, (b) written notice to renegotiate (which if renegotiation fails results in a termination effective June 30 of that year) is given by either Party to the other prior to any May 1 before the end of the then existing Term or Renewal Term, or, (c) this Agreement is terminated pursuant to Article VI, Section 6.01 or Section 6.02.

**ARTICLE III.
RELATIONSHIP OF THE PARTIES**

- 3.01 Status of the Parties. The Operator is not a division or part of the Academy. The Academy is a separate and distinct corporation authorized under the Code and is not a division or a part of Operator. The relationship between the parties was developed and entered into through arms-length negotiations and is based solely on the terms of this Agreement. Nothing herein will be construed to create a partnership or joint venture by or

between the Academy and the Operator, or to make one the agent or fiduciary of the other. Neither Party will hold itself out as a partner or agent of the other or otherwise state or imply by advertising or otherwise any relationship between it and the other in any manner contrary to the terms of this Agreement. Neither Party has, and neither will represent that it has, the power to bind or legally obligate the other. No employee of the Operator will be considered an employee of the Academy by either Party, for any purpose whatsoever.

- 3.02 No Related Parties or Common Control. The Operator will not have any role or relationship with the Academy that, in effect, substantially limits the Academy's ability to exercise its rights under this Agreement. The Board shall not include any director, officer or employee of the Operator and the Operator may not hire any Board member without the prior written approval of the Board, and subject to all public officer's or Code restrictions. None of the voting power of the Board will be vested in operator or its agents, members, managers, officers, shareholders or employees, and none of the voting power of the directors, officers, managers, owners, or employees or contractors of the Operator will be vested in the Academy. Furthermore, the Academy and the Operator will not be members of the same control group, as defined in Section 1.150-(f) of the regulations under the Internal Revenue Code of 1986 as amended (or its successor), or related persons, as defined in Section 144(a)(3) of the Internal Revenue Code of 1986, as amended (or its successor).
- 3.03 Other Schools. The parties acknowledge that this arrangement is not exclusive and that the Operator may have the right to render similar services to other persons or entities including other public or private schools or institutions ("Other Schools"). The Operator or the Academy's licensed treasurer will maintain separate accounts for reimbursable and other expenses incurred on behalf of the Academy and only charge the Academy for expenses incurred or an agreed upon portion thereof, on behalf of the Academy. All revenues, grants or donations received by the Academy, or by the Operator for the specific benefit of the Academy, will be maintained in separate accounts and used solely for the Academy. If the Operator incurs authorized reimbursable expenses on behalf of the Academy and Other Schools which are incapable of precise allocation between the Academy and Other Schools, then the Operator will allocate such expenses among all such Other Schools and the Academy on a *pro rata* basis based upon the number of students enrolled at the Academy and the Other Schools, or upon such other equitable basis as the Parties shall agree..

ARTICLE IV. CONSIDERATION

- 4.01 Compensation for Services.
- (a) For the term of this Agreement, including any Renewal Term, the Board will pay the Operator an annual fee of thirteen percent (13%) of the annual base state per-pupil allocation funds (the "State Allocation") that the Academy receives for the students enrolled in the Academy (the "Management Fee"). The State Allocation shall not include facilities funding from any source, Medicaid reimbursements or revenue, charitable contributions, private grants unless solicited, prepared, procured and written by Operator and allowable therein, Grant Revenue, proceeds from fundraisers, PTA/PTO income, transportation reimbursement, or casino revenue, (collectively "Non-Qualified Gross Revenue") which shall be retained one hundred percent (100%) for the benefit of the Academy and accounted for separately. "Grant Revenue" shall mean all revenue received as a result of any application submitted by or on behalf of the Academy or any funding agreement reached by or on behalf of the Academy, or any Title funding from the federal government, including but not limited to National School Lunch Program, Individuals With Disabilities in Education Act, CCIP, and other grants for facilities, professional development, replication, transportation, or other needs of the School. Such consideration will not preclude the payment of additional consideration if additional consideration is permitted or specified elsewhere

in this Agreement or in other agreements between the parties. Subject to Article I, Section 1.02(a)(vii)(D), the Operator shall receive an annual fee of twenty thousand dollars (\$20,000) for grants procurement, writing, administration, and management, including all reporting (the "Federal Management Fee"), provided, however, that any failure to use such grant proceeds that cannot be rolled over into the next fiscal year and which result in return to the government or grantor, or, any recovery due to maintenance or effort or other audit shall be deducted from the Federal Management Fee.

- (b) Reasonable Compensation. The Management Fee and the Federal Management Fee under this Agreement is reasonable compensation for services rendered. The Operator's compensation for services under this Agreement will not be based, in whole or in part, on a share of net profits from the operation of the Academy.

4.02 Payment of Costs.

Unless otherwise stated herein, in addition to the Management Fee described in Section 4.01 above, the Academy will reimburse the Operator for all costs incurred and paid by the Operator in providing the Educational Services and Administrative Services to the Academy. Such costs include, but are not limited to, rent and/or lease payments, salaries of the Operator's employees working at the Academy, costs related to curriculum and instructional materials unless otherwise limited herein, textbooks, library books, computers, software, supplies, food service, transportation, and special education, psychological services and medical services unless otherwise limited herein. The Operator will not charge an added fee or interest unless such the Board approves such fee or interest.

4.03 Time and Priority of Payments.

- (a) Subject to the priority set forth in sub-part (b) below and to sub-part (c) below, the Operator will receive its Management Fee in the same number of installments and in the same proportion that the Academy receives its revenues, and each installment of the Management Fee will be due and payable within five (5) business days of receipt by the Academy of the revenues related thereto.
- (b) The Operator shall pay the costs of operating the Academy in the following order of priority:
 - (i) The Governing Authority's expenses paid directly by the Governing Authority, such as its Board expenses, Directors and Officers liability insurance, or reimbursables, audit fee, attorney fees, governance training, the sponsor fee, or Board compensation;
 - (ii) Any Academy Facility payment and other costs due pursuant to any lease, mortgage or Facility financing (If the Academy facility is owned by the Operator or its affiliate or subsidiary, rent shall not exceed an amount to be negotiated—approximately \$450–\$500 per student);
 - (iii) Salaries and Benefits and allowable reimbursables;
 - (iv) All insurance of the Academy;
 - (v) Third party vendors;
 - (vi) Debt to the Operator through notes or advances;
 - (vii) The Management Fee and the Federal Management Fee, which shall be subordinated to (i) through (vi) above.

(c) Interest Rate and Fee Carryovers.

- (i) Loans to the Academy to pay expenses other than the Management Fee and the Federal Management Fee will accrue interest at the prime rate of interest announced by Comerica Bank as its prime rate (the "Prime Rate") for the time overdue;

(ii) There will be no limits to what indebtedness or fees owed to Operator may be carried over from year to year unless expressly provided otherwise in this Agreement;

(iii) With regard to unpaid Management Fees and Federal Management Fees, interest will accrue at the Prime Rate, for the time overdue. This amount will be limited from year to year carryover, to twenty-five percent (25%) of the applicable fee, provided that (a) no accelerated debt payments are made to other third parties, lenders or vendors, (b) the Board does not spend outside of an agreed-to budget which allows it to service its expenses; and (c) the Board does not insist on spending that the Operator disagrees with, excluding however, health, contracted-for education and safety.

4.04 Other Revenue Sources.

(a) The Parties may, together or independently, solicit and receive grants and donations from public and private sources consistent with the mission and of the Academy, in the name of either the Operator or the Academy; provided, however, that any solicitation of such grants by Operator in the name of the Academy or which identifies the Academy shall be subject to the prior approval of the Academy Board. The Academy may also receive funds from other sources and programs, including without limitation any before and after school programs and food sales.

(b) All funds received by the Academy or by the Operator for the benefit of the Academy from such other revenue sources pursuant to this Section 4.04 will be deemed Academy funds, as Grant Revenue and separately accounted for by the Academy's licensed treasurer and Operator.

4.05 Incentive Pay If the Board has no debt to the Operator and is able to timely pay the Management Fee, the Board may, at its sole discretion, agree to pay to the Operator an incentive as a result of the Academy meeting the Incentive Goals identified in Appendix A attached hereto and in the Contract (the "Incentive Pay").

**ARTICLE V.
PERSONNEL AND TRAINING**

5.01 Personnel Responsibility.

(a) The Operator will determine staffing levels, and select, evaluate, assign, discipline, supervise, manage and terminate personnel necessary to carry out the Educational Services, the Administrative Services, the Supplemental Programs, and all other services provided under this Agreement, provided, however, the Operator shall present/report termination decisions to the Board with reasons therefore. The Board shall have the authority to approve the hiring of the Academy's Chief Administrator by the Operator and shall be presented with the Operator's preferred candidates for its input.

(b) Except as otherwise specified or allowed in this Agreement the administrators, teachers and support staff will be employees of the Operator. The Operator will be responsible for conducting reference, employment checks, criminal background checks, unprofessional conduct checks, and licensed professional misconduct reporting on its employees to the extent required under the Code and other applicable laws, rules and regulations as if the employees were employed by a public community school. The Operator shall obtain approval of the Academy of any rehabilitation of employees required or allowed under the Code pursuant to background checks, and the approval of the Academy's legal counsel of any unclean background checks. Obtaining consent to release such background checks to the Academy Board and its legal counsel. The Academy Board shall have the right to approve or disapprove the hiring of the Chief Administrator, which approval shall not be unreasonably withheld. The Operator may not transfer or dismiss of the Chief Administrator without the Academy Board's written consent.

5.02 Other Hiring, Terminating and Supervision. Unless otherwise specified in this Agreement, the Operator will determine the employment terms of and select, supervise and terminate the administration and staff

and to the staff accountable for the success of the Academy. The Superintendent/Regional Representative shall recommend contracts based on attendance, student achievement increases and overall improvement and contributions to the mission of the Academy.

- 5.03 Teachers. Teachers may work at the Academy on a full or part time basis. Each teacher assigned to the Academy will be qualified in his or her grade levels and subject(s), hold a valid teaching license issued by the State of Ohio and be highly qualified to the extent required under the Code. The Operator shall provide the Academy and/or the Sponsor with documentary evidence of its compliance with this Section 5.03.
- 5.04 Support Staff. The Operator will provide the Academy with such support staff as are required to provide the Educational Services, Administrative Services and Supplementary Programs.
- 5.05 Training. The Operator will provide high quality professional development and training in instructional methods, curriculum, the educational program, as well as technology and technology support on a regular and continuous basis, as well as compliance and support staff development and training. All professional development days shall be scheduled with the Superintendent/Regional Representative in accordance with the Academy calendar.

The Operator is not responsible for training outsourced service providers, but shall monitor and oversee the services provided.

ARTICLE VI.

TERMINATION OF AGREEMENT

6.01 Termination.

Either party may terminate this Agreement pursuant to Article II, Section 2.02, or, for cause, as follows:

- (a) in the event that either party fails to remedy a material breach within thirty (30) days after receipt of written notice specifying the breach has been delivered to that party by the other party; or
- (b) upon a breach of the other party that renders the terminating party unable to perform its material obligations under this Agreement, after ten (10) business days prior written notice from the terminating party to the breaching party, with a chance for the breaching party to cure the breach within those ten (10) business days; or
- (c) by the Academy upon a failure of the Operator to account for its expenditures of Academy funds or for other expenses incurred by the Academy at the Operator's direction, which cannot be cured to the Academy's satisfaction within ten (10) business days of written notice from the Academy to the Operator; or
- (d) upon either Party's prior written notice to the other, of the failure to substantially follow policies, procedures, rules, regulations or curriculum duly adopted by the Board which are not in violation of applicable federal and state laws, rules or regulations and regulations, and which failure(s) are not able to be cured without harm, loss, damage to reputation or operations of the Academy; or
- (e) upon the Operator's failure to abide by and meet the educational goals set forth in the Contract; or
- (f) if continued operation of the Academy with Operator as its management company would result in the Academy losing its Contract, or its Sponsor losing its ability to Sponsor the Academy; or
- (g) any act or omission that violates laws, rules or regulations, or, which may cause a breach of the Contract, and which cannot be cured within a time period stated in a prior written notice from one party to the other or which causes monetary, reputational, academic, or material harm; or
- (h) loss or termination of the Contract without a successful replacement contract with an authorized sponsor in the State of Ohio; or
- (i) a decrease in enrollment, or a decrease in amount of funding, or a decrease due to an FTE,

- financial, special education, or other audit that would cause the Academy to operate at a loss; or
- (j) the insolvency, appointment of a receiver, or filing of bankruptcy by the Operator; or
 - (k) any material misrepresentation of or negligence in student enrollment data, testing, or financial data, reporting or other procedures that is not curable, or that causes material or irreparable, monetary loss, reputational or operation harm.
- 6.02 Change in Law. If any federal, State or local law or regulation, court or administrative decision or Attorney General's opinion has a materially adverse effect on the ability of either party to carry out its obligations under this Agreement, such party, upon written notice, may request renegotiation of this Agreement. Such renegotiation will be undertaken in good faith and should the Parties be unable to renegotiate the terms within ninety (90) days after such notice the party requesting the renegotiation may terminate this Agreement on ten (10) days' further written notice, or, at the end of a school year, whichever is earlier.
- 6.03 Advances/Out-of-Pocket Expenses. Upon termination, the Academy shall reimburse the Operator for all expenditures due and owing, for services rendered as of the date of termination. Any carried over debt to the Operatory shall be paid over five years at prime plus 3%, or sooner at the discretion of the Governing Authority.
- 6.04 Return of Personal Property and Materials. Within five business days of any termination by either party for any reason, all materials, supplies, assets, furniture, fixtures, personal property, manuals of each party shall be separated and returned to the party whose funds paid for the same. Pursuant to R.C. 3314.0210, any equipment, furniture, fixtures, instructional materials and supplies, computers, software, printers, other digital devices, or other personal property purchased by the Academy or purchased by the Operator for use in the operation the Academy with state funds that were paid to the Operator pursuant to this Agreement is property of the Academy and is not property of the Operator.
- 6.05 Employees. Upon termination, the Academy shall not have the right to offer employment to or hire any of Operator's employees or contractors for a period of one (1) year unless otherwise agreed to with the Operator for a shorter period of time.

ARTICLE VII. PROPRIETARY INFORMATION AND OWNERSHIP

- 7.01 Ownership. Curriculum or other educational materials purchased by the Operator or by the Academy, with Academy funds or with funds the Operator receives pursuant to this Agreement will be and remain the property of the Academy. Each party shall own its own proprietary rights, marks, trademarks, tradenames, copyrights or other intellectual property, and all derivatives, additions or revisions thereto that exist on the day this Agreement is first signed, or as are thereafter protected or created by it during the Term or any Renewal Term. Operator shall own purchases of curriculum paid for through its own Management Fee upon clear proof of such payment for the curriculum purchased.

ARTICLE VIII. INDEMNIFICATION

- 8.01 Mutual Indemnification. Each Party shall indemnify, defend and save and hold the other and all of their respective employees, officers, directors, members, owners, subcontractors and agents harmless against any and all claims, demands, suits or other forms of liability that may arise out of, or by reason of, any noncompliance by the other with any agreements, responsibilities, duties, undertakings contained in or made pursuant to this Agreement, and any misrepresentations or breach of representations or warranties contained in or made pursuant to this Agreement.

- 8.02 Indemnification of the Sponsor. The Operator will indemnify and hold the Sponsor, its Board, officers, employees, agents and representatives harmless from all claims, demands, or liability, including reasonable attorneys' fees and related expenses, on account of injury, loss or damages, including without limitation, claims arising from bodily injury, personal injury, sickness, disease, death, property loss or damage, or any other loss of any kind whatsoever not caused by the acts or negligence of the Sponsor, which arise out or are caused by the acts or omissions of the Operator in connection with the operations of the Academy, or which are incurred as a result of the reliance by the Sponsor upon representations made in this Agreement or to the Sponsor by the Operator.
- 8.03 Limitations of Liabilities. The Academy will assert all immunities and statutory limitations of liability in connection with any claims arising from its operations, and will not waive any immunities or limitations without the prior written consent of the Operator. The Operator will not waive any of Academy's immunities or statutory limitations of liability without the prior written consent of the Academy.

ARTICLE IX. INSURANCE

- 9.01 Insurance Coverage. The Operator will maintain comprehensive general liability insurance and umbrella insurance coverage for the Academy Board, employment liability coverage and property insurance in the amounts required by the Contract and with the Academy and the Sponsor as additional insureds.
- 9.02 Workers' Compensation Insurance and Unemployment Compensation Insurance. The Operator shall maintain workers' compensation insurance and pay unemployment compensation as required by law, covering its employees, and for the benefit of the Academy.
- 9.03 Directors and Officers Liability. The Academy Board shall obtain its own Directors and Officers Liability Coverage purchased through Academy operating funds.
- 9.04 Medical Insurance and Other Benefits. The Operator shall maintain reasonably and comparatively good medical and other health benefits for its employees and provide proof of the same to the Academy Board. The Operator shall be responsible for all COBRA or other continuation notices.
- 9.05 Retirement. The Operator shall provide retirement plans of a quality sufficient to be competitive and to retain and attract quality staff for all employees working at or for the Academy, in a format as may be required by law.
- 9.06 Policies. Copies of all policies and benefits required in this Agreement shall be given to the Academy Board, and shall have a provision that notice of cancellation be given to the Academy thirty (30) days' prior to any cancellation.

ARTICLE X. WARRANTIES AND REPRESENTATIONS

- 10.01 Representations and Warranties of the Operator. The Operator hereby represents and warrants to the Academy:
- (a) It is a duly organized limited liability company in good standing in the State of Delaware and is authorized to conduct business in the State of Ohio.
 - (b) It has the authority under the Code and other applicable laws and regulations to execute, deliver, perform this Agreement, and to incur the obligations provided for under this Agreement.
 - (c) Its actions under this Agreement have been and are duly and validly authorized, and it will adopt any and all further resolutions or approvals required for execution of this Agreement.

(d) It agrees to comply with the terms and conditions of the Contract.

10.02 Representations and Warranties of the Academy. The Academy hereby represents and warrants to the Operator:

- (a) It may operate and receive the state and federal revenues customarily following the creation and operation of an Ohio community school.
- (b) It has the authority under the Code to contract with a private entity to perform the Educational Services, Administrative Services, Supplemental Programs, and all other services under this Agreement and execute, deliver and perform this Agreement, and to incur the obligations provided for under this Agreement.
- (c) Its Board's execution of this Agreement has been duly and validly authorized.
- (d) To the best of its knowledge, it is not and will not be in breach of the terms of the Contract.
- (e) It is a duly organized non-profit corporation in good standing under the laws of the State of Ohio.
- (f) It shall not after the effective date of this Agreement incur any indebtedness outside the ordinary course of business or enter into any factoring or other debt arrangements without the prior written consent of the Operator.

ARTICLE XI. MISCELLANEOUS

11.01 Sole Agreement. This Agreement supersedes and replaces any and all prior agreements and understandings between the Academy and the Operator.

11.02 Force Majeure. Notwithstanding any other sections of this Agreement, neither party will be liable for any delay in performance or inability to perform due to acts of God or due to war, riot, terrorism, civil war, embargo, fire, flood, explosion, sabotage, accident, labor strike or other acts beyond its reasonable control.

11.03 Governing Law. The laws of the State of Ohio will govern this Agreement, its construction, and the determination of any rights, duties and remedies of the parties arising out of or relating to this Agreement.

11.04 Agreement in Entirety. This Agreement constitutes the entire agreement of the parties.

11.05 Counterparts. This Agreement may be executed in counterpart is, each of which will be deemed an original, but both of which will constitute one and the same instrument.

11.06 Official Notices. All notices and other communications required by the terms of this Agreement will be in writing and sent to the parties hereto at the addresses set forth below (and such addresses may be changed upon proper notice to such addressees). Notice may be given by: (i) certified or registered mail, postage prepaid, return receipt requested, or (ii) facsimile (with confirmation of transmission by sender's facsimile machine) or (iii) by scan and electronic mail delivery with follow-up confirmation of delivery through return email or (iv) by personal delivery to the President of the Academy's Board, or to the Operator's Chief Administrator on site with copies by any other means stated above. Notice will be deemed to have been given two days after mailing, or on the date of personal delivery, or on the date of transmission of a facsimile if on a business day during normal business hours (or, if not, the first business day thereafter), or upon scan and electronic mail with confirmation of delivery. The addresses of the parties are:

To:
Accel Schools Ohio LLC
1650 Tyson's Boulevard, Suite 630
McLean, Virginia 22102

With a copy to:
Parker Partners PLC
Attn: Christina L. Parker, Esq.
P.O. Box 544
McLean, Virginia 22102

To:

Berwyn East Academy
Attn: President, Board of Directors
1850 Bostwick Rd.
Columbus, OH 43227

With a copy to:

Dickinson Wright, PLLC
Attn: Amy J. Borman and Adam Schira
150 E. Gay St. Suite 2400
Columbus, OH 43215

- 11.07 Assignment. This Agreement may not be assigned by either Party without the written consent of the other.
- 11.08 Amendment. This Agreement will not be altered, amended, modified or supplemented except in a written document approved by the Board and signed by authorized officers of both the Academy and Operator.
- 11.09 Waiver. No waiver of any provision of this Agreement will be deemed to be or will constitute a waiver of any other provision, nor will such waiver constitute a continuing waiver unless otherwise expressly stated.
- 11.10 Severability. The invalidity of any of the covenants, phrases or clauses in this Agreement will not affect the remaining portions of this Agreement, and this Agreement will be construed as if such invalid covenant, phrase or clause had not been contained in this Agreement. To the extent that any of the services to be provided by the Operator are found to be an invalid delegation of authority by the Academy, such Services will be constituted to be limited to the extent necessary to make the services valid and binding.
- 11.11 Successors and Assigns. Except as limited by Section 11.07 above, this Agreement will be binding upon, and inure to the benefit of, the parties and their respective successors and assigns.
- 11.12 No Third Party Rights. This Agreement is made for the sole benefit of the Academy and the Operator, and their permitted successors and assigns. Except as otherwise expressly provided, nothing in this Agreement will create or be deemed to create a relationship between the parties to this Agreement, or either of them, and any third person, including a relationship in the nature of a third party beneficiary or fiduciary.
- 11.13 Survival of Termination. All representations, warranties and indemnities made in this Agreement will survive termination of this Agreement.
- 11.14 Binding Effect. This Agreement shall be binding upon and inure to the benefit of the parties hereto, and may be executed in any number of counterparts each of which shall be deemed an original and all of which together shall be deemed one and the same instrument. Electronic signatures shall be deemed as originals

**ARTICLE XII.
ALTERNATIVE DISPUTE RESOLUTION PROCEDURE**

- 12.01 Alternative Dispute Resolution Procedure. The parties hereto will endeavor to resolve in good faith any controversy, disagreement or claim arising between them, whether as to the interpretation, performance or operation of this Agreement or any rights or obligations hereunder. If they are unable to do so, any such controversy, disagreement or claim will be submitted for mediation by either party giving written notice to the other of the existence of a dispute which it desires to have mediated. The place of mediation shall be the County in which the Academy is located. The Parties shall share the cost of a mediator, and if the mediator cannot be mutually agreed upon, each party shall choose one mediator, and the third shall be selected by the Sponsor. The expenses of the mediators shall be split equally by the Parties. In all cases, the results of mediation or the recommendations of the mediators shall be as recommendation and not binding. Either Party may proceed to any court of competent jurisdiction in the County in which the Academy is located seek a relief, if mediation fails.

[Signatures on the next page]

IN WITNESS WHEREOF, the undersigned have executed this Agreement to be effective as of the date and year first above written.

Accel Schools Ohio LLC

By Maria Szalay
Its: COO

Berwyn East Academy

By: D.K. Van Buren
Its: President

APPENDIX A

INCENTIVE GOALS

- a. Academic performance of at least an overall grade of "C" on the Ohio Report Card, an increase in the School's overall performance index score of ten points per year, or a grade of "A" on value added.
- b. Competitive pay and benefits with the average of local home school district and the surrounding community schools, as shown by survey.
- c. Increased enrollment of 15% of the prior spring enrollment, expanding the School to a new grade level causing financial growth, or financial stability by other means.

At beginning of the second year: If all three factors are met, the Management Fee is raised to 14%.

At the beginning of the third year: If all three factors are met the Management Fee is raised to 15%.

At the end of the third year, if renewed: If all three factors are met, the Management Fee will be 15.5% for the new Management Agreement.