

## **EDUCATION SERVICES PROVIDER AGREEMENT**

This Education Services Provider Agreement (the “Agreement”) is made and entered into as of **19th day of March** by and between **Entrepreneurial Ventures in Education** (“EVE”), a Massachusetts based non-profit corporation, and Kids Care Elementary (“KCE”) and together with EVE, the “Parties”), an Ohio non-profit corporation and public school academy.

**WHEREAS**, KCE operates under the direction of a Board of Directors (the “Board”) and is authorized pursuant to a contract (the “Charter Contract”) issued by St. Aloysius (“Authorizer” or “Sponsor”).

**WHEREAS**, EVE is a Massachusetts based non-profit corporation authorized to transact business in the State of Ohio, and providing direct educational services to public school academies. EVE has the ability to implement a comprehensive educational program and training methodologies for KCE; and

**WHEREAS**, KCE desires to engage EVE to perform those services as a direct educational service provider pursuant to this Agreement.

**WHEREAS**, it is intended that KCE shall accomplish its mission by utilizing the services of EVE. KCE hereby acknowledges this intent and approves this Agreement for direct educational services of KCE by EVE.

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

### **ARTICLE I:**

#### **CONTRACTUAL RELATIONSHIP**

A. **Authority.** KCE has been granted the Charter Contract by the Authorizer to organize and operate a public charter school, together with the powers necessary or desirable for carrying out the educational program set forth in the Charter Contract. KCE is authorized to contract with a private entity to provide educational services, provided that the management agreement shall comply with the authorizer’s educational services provider requirements (the “ESP Requirements”).

B. **Contract.** Acting under and in the exercise of such authority, KCE hereby contracts with EVE for specified functions relating to the provision of direct educational services and school turnaround activities of the KCE.

C. **Status of the Parties.** EVE is a Massachusetts non-profit corporation and is not a division or a part of KCE. KCE is a public charter school authorized by the Code, and is not a division or part of EVE. The relationship between EVE and KCE is based solely on the terms of this Agreement. The Parties to this Agreement intend that the relationship between them created

by this Agreement is that of an independent contractor, and that, except as expressly set forth in paragraph D below, no employee of EVE shall be deemed to be an agent of KCE. EVE is solely responsible for its acts and the acts of its agents, employees, and subcontractors. Employees of EVE, even those assigned to work exclusively at KCE, are not employees of KCE.

D. **Designation of School Officials for Purposes of FERPA.** Agents and employees of EVE having a legitimate educational interest in student record information, are hereby designated by the Board as “school officials” of KCE such that they are authorized access to educational records of the KCE’ students under 20 U.S.C. § 1232g, the Family Educational Rights and Privacy Act (“FERPA”). “Legitimate educational interest” shall be defined as having a responsibility for helping the student achieve one (1) or more of the educational goals of KCE or if the record is necessary in order for the employee to perform an administrative, supervisory, or instructional task or to perform a service or benefit for the student or the student’s family. Except as set forth in this paragraph D, no agent or employee of EVE shall be deemed to be an agent of KCE.

## ARTICLE II:

### WARRANTIES AND REPRESENTATIONS

A. **Representation.** KCE represents that it has the authority under State law to execute, deliver, and perform this Agreement, to incur obligations provided for under this Agreement, to incur obligations provided for under this Agreement and to contract with EVE for EVE to provide the services set forth in this Agreement on behalf of the school.

B. **Certification As to Pending Claims.** KCE certifies that, as of the date of this Agreement, there are no pending actions, claims, suits, or proceedings, to the knowledge of the School, threatened or reasonably anticipated against or affecting the School, which if adversely determined, would have a material adverse effect on the ability of the Charter School to perform its obligations under this Agreement. Further, the School warrants that the information in has furnished EVE concerning the Schools’ facilities, finances, revenues, student enrollment and staffing is accurate and the latest information available at the time of the execution of this Agreement.

C. **Authority of EVE.** EVE represents and warrants that it is a non-profit corporation organized and existing under the laws of the State of Massachusetts, with lawful power and authority to enter into this Agreement, acting by and through its duly authorized officers.

### **ARTICLE III:**

#### **TERM**

A. **Term.** This Agreement shall become effective March 1, 2021 and shall expire on June 30, 2025. However, the term of this Agreement is subject to a continued Charter Contract from Authorizers and continued state per capita funding.

B. **Renewal.** This Agreement shall be automatically renewed for one additional year upon expiration of the initial term unless either party provides written notice of its intent to terminate or renegotiate to the other at least one hundred and eighty (180) days prior to expiration of the Agreement.

### **ARTICLE IV:**

#### **FUNCTIONS OF EVE**

A. **Responsibility.** Under the direction of the Board, EVE shall be responsible for providing direct educational services to KCE. Such functions include but are not limited to:

1. Implementation and administration of the educational program;
2. EVE shall work with and cooperate with the School's licensed fiscal officer to ensure the school's financial health and sustainability, as well as compliance management.
3. Student recruitment planning, strategy and execution;
4. Acquisition of instructional and non-instructional material, equipment and supplies and the maintenance of an inventory system of all equipment;
5. Recruitment, selection and supervision of all teachers and staff and the personnel management services (training, coaching, and technical assistance) necessary to support those employees;
6. Supervision of the school support services programs including food service and facilities maintenance;
7. Preparation of required authorizer, local, state, and federal reports with prior review by the Board;
8. Information and technology system management;
9. Preparation of applications for grants and special programs as requested by the Board;

10. Processing funding applications for special programs and facility improvements as requested by the Board;
11. Administration and coordination of extra-curricular and co-curricular activities and programs;
12. Development of critical processes and procedures governing operations of the School as determined by the Parties and as approved by the Board;
13. Provision of special education and English Language Learners services to students who attend the School in conformity with the requirements of applicable law, regulations and Board policies;
14. Participation in strategic planning with the board for the continuing educational and financial benefit of the School;
15. Implementation and enforcement of student codes of conduct;
16. Coordinate community relations activities.
17. Any other function necessary or expedient for the administration of the School with prior approval from the Board.

**C. Educational Goals and Program.** EVE shall implement the educational goals and programs set forth in the Charter Contract, including, but not limited to, methods of pupil assessment, admission policy and criteria, school calendar and school day schedule, age and grade classifications for pupils to be enrolled, and methods to be used to monitor performance towards targeted educational outcomes. In the event that EVE determines that it is advisable to modify the educational goals and programs set forth in the Charter Contract, EVE will provide written notification to the Board specifying the changes it recommends and the reasons for the proposed changes. No changes in the educational goals and programs shall be implemented without the prior written approval of the Board and a Charter Contract amendment approved by the Board and Authorizer. EVE shall provide the Board with periodic written reports specifying the level of achievement of each of the School's educational goals set forth in the Charter Contract and detailing its plan for meeting any educational goals that are not being attained, such reports to be submitted on a regular periodic basis and upon request of the Board.

**D. Subcontracts.** It is anticipated that EVE will utilize subcontracts to provide some of the services it is required to provide to the School under this Agreement. EVE may not subcontract the management, oversight, or operation of the teaching and instructional program without the specific prior written approval of the Board. Except as described in the previous sentence, Board approval of subcontracts is not required unless the cost for these subcontracted services exceeds the funds appropriated for that purpose of the School's approved budget or Board approval is required by the Charter Contract or by the Board's procurement policy. EVE will receive no additional fee as a result of subcontracting of any services, all of which shall be provided without markup.

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

If the School should expand to other locations in the future, such expansion will be accomplished by amendments to this Agreement and the Charter Contract.

F. **Acquisitions.** All acquisitions made by EVE for the School using any funds belonging to the School, including, but not limited to, instructional materials, equipment, supplies, furniture, computers, and other technology, shall be owned by and remain the property of the School. EVE will not add any fees or charges to the cost of the equipment, materials, and supplies purchased from third Parties when it seeks reimbursement for the cost of these acquisitions from the School. All supplies, materials, and equipment procured for the School by EVE shall be inventoried by an acceptable method of inventory, and an inventory of the School equipment shall be maintained so that it can be clearly established which property belongs to the School.

G. **Pupil Performance Standards and Evaluation.** EVE is responsible for and accountable to the Board for the performance of students who attend the School. EVE shall implement pupil performance evaluations which permit evaluation of the educational progress of each student, using measures of student and school performance required by the Charter Contract and such additional measures as shall be mutually agreed upon between the Board and EVE, which are consistent with the Charter Contract.

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

I. **Student Due Process Hearings.** EVE shall provide students with procedural and substantive due process in conformity with the requirements of state and federal law regarding discipline, special education, confidentiality, and access to records, to the degree that it is consistent with the School's own obligations. The Board shall retain the right to provide due process as required by law and to determine whether any student will be expelled.

J. **Legal Requirements.** EVE shall provide educational programs that meet the requirements imposed under the Code and the Charter Contract, unless such requirements are or have been waived.

K. **Rules and Procedures.** The Board shall adopt rules, regulations, and procedures applicable to the School, and EVE is directed to enforce the rules, regulations, and procedures adopted by the School. EVE shall assist the Board in its policy making function by

recommending the adoption of reasonable rules, regulations, and procedures applicable to the School.

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

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

N. **Charter Contract with Authorizer.** EVE will not act in a manner that will cause the School to be in breach of its Charter Contract with the Authorizer.

O. **Additional Programs.** The services provided by EVE to the School under this Agreement include, but are not limited to, providing the educational program described in the Charter Contract, as the same may change from time to time. The Board may decide to provide additional programs, including, but not limited to, summer school. The School may also purchase additional services from EVE at a mutually agreeable cost.

P. **Academy Financial Health.** EVE shall work with the school's treasurer to do all things reasonably and professionally required to prevent the Schools' finances from experiencing any operating or fund balance deficits and shall do all things reasonably and professionally required to keep the School solvent.

Q. **Compliance with the Charter Contract and ESP Requirements.** EVE agrees to perform its duties and responsibilities under this Agreement in a manner that is consistent with the School's obligations under the Charter Contract, the ESP Requirements and applicable law. The provisions of the Charter Contract shall supersede any competing or conflicting provisions contained in this Agreement. Any action or inaction by EVE that is not cured within sixty (60) days of notice thereof which causes the Charter Contract to be revoked, terminated, or suspended or which causes the Charter Contract to be put in jeopardy of revocation, termination, or suspension by the Authorizer is a material breach of this Agreement by EVE.

## ARTICLE V:

### **OBLIGATIONS OF THE BOARD**

A. **Board Policy Authority.** The Board is responsible for determining the fiscal and academic policies that will govern the operation of the School, including, but not limited to, policies relative to the conduct of students while in attendance at, or en route to, school, and policies and regulations governing the procurement of supplies, materials, and equipment to be used at the School. The Board shall exercise good faith in considering the recommendations of EVE on issues including, but not limited to, policies, rules, regulations, procedures, curriculum, and budgets, subject to the constraints of law and the requirements of the Charter Contract.

B. **Building Facility.** The Board is responsible for the acquisition by either purchase or lease of building facilities that comply with all of the requirements of the Charter Contract and applicable law.

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

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

E. **Legal Counsel.** The Board shall select and retain legal counsel to advise it regarding its rights and responsibilities under the Charter Contract, this Agreement, and applicable law. Such legal counsel shall advise on the negotiation of this Agreement and shall not represent EVE or any EVE owner(s), director(s), officer(s), or employee(s). While the Board's counsel and EVE's counsel may meet and confer on issues, the Board shall not seek direct advisement from EVE's legal counsel.

F. **Audit.** The Board shall select and retain the independent auditor to perform the annual financial audit in accordance with the Charter Contract and applicable state law. The Board and previous management company shall retain full responsibility for managing and completing the audit and Form 990 (Return of Organization Exempt from Income Tax relating to the 2020 - 2021 school year for the School.

G. **Budget.** The Board is responsible for adopting a budget in accordance with the relevant provisions of the Ohio Code and asserts that it has adequate resources to fulfill its obligations under the Charter Contract, including, but not limited to, its oversight of EVE, the organization of the School, negotiation of the Charter Contract and any amendments, payment of employee costs, insurance required under the Charter Contract and this Agreement, the annual financial audit, and retention of the Board's legal counsel and consultants. In addition, the Board is responsible for determining the budget reserve amount included as part of the School's annual budget, for implementing fiscal policies that will assist the School in attaining the stated budget reserve amount, and for approving necessary amendments to the budget to reflect necessary deviations from the adopted budget. The budget may be amended from time to time as deemed necessary by the Board.

H. **School Funds.** The Board shall determine the depository institution of all funds received by the School. All funds received by the School shall be deposited in the School's depository account. All interest or investment earnings on deposits shall accrue to the School. The Board shall pay its obligations under this Agreement on a consistent and timely basis.

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

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

K. **Evaluation of EVE.** The Board will evaluate the performance of EVE to provide EVE with an understanding of the Board's view of its performance under this Agreement. All evaluations conducted by the Board or a representative of the Board will be provided to EVE in writing, no later than thirty (30) days following the conclusion of the evaluation. EVE will be provided thirty (30) days to respond to the evaluation in writing, if it wishes to do so. Special evaluations may occur at any time at the discretion of the Board.

## ARTICLE VI:

### **FINANCIAL ARRANGEMENT**

A. **School's Source of Funding.** The major source of funding for the School is State School Aid received pursuant to the State School Aid Act, Act 94 of 1979, as amended ("State School Aid"). State School Aid payments are based upon the number of students enrolled in the the School. The School will also receive other payments as may be available from state and federal sources for specific programs and services.

B. **Other Revenue Sources.** In order to supplement and enhance the State School Aid payments and improve the quality of education at the School, the Board and EVE, with prior Board approval, shall endeavor to obtain revenue from other sources. In this regard:

1. The School and/or EVE shall solicit and receive donations consistent with the mission of the School.
2. The School and/or EVE may apply for and receive grant money, in the name of the School. EVE shall provide advance written notification to the Board of any grant applications it intends to make.
3. To the extent permitted under the Code, EVE may charge fees to students for extra services such as summer programs, after school programs, and athletics, and EVE may charge non-School students who participate in such programs.
4. All funds received by EVE or the School from such other revenue sources shall inure to and be deemed the property of the School.

C. **Compensation for Services.** The School shall pay EVE an annual management fee for each school year during the term of this Agreement. The amount of this annual fee shall be twelve percent (12%) of the sum of: (a) all funds the School receives directly or indirectly under Paragraph A attributable to the school year during which EVE provides services under this Agreement less amounts retained by the Authorizer, plus (b) all funds that the School receives directly or indirectly under Paragraph B (except for individual donations, obtained without the assistance of EVE, that are made to the School). The amount of the annual fee is subject to



reduction in a mutually agreeable amount by the Parties in any school year if extenuating circumstances make payment of the entire annual fee inappropriate.

EVE's annual management fee shall be paid in twelve (12) installments, for the school year of KCE during which EVE provides services under this Agreement. EVE will cooperate with the School to modify the exact date of any monthly installment payment to coordinate with the timing of the funds received by the School, provided that all monthly installment payments must be remitted within thirty (30) days of the original payment date of such monthly installment payment.

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

**E. Payment of Educational Program Costs.** In addition to the School's obligation to reimburse EVE for the compensation of certain EVE employees under Article VI, all costs reasonably incurred in providing the educational programs at the School shall be paid by the School in accordance with the annual budget approved by the Board. Such costs shall include, but shall not be limited to, curriculum materials, professional learning and development required by the state or other governmental entities, textbooks, library books, computers and other equipment, software, and supplies utilized at the School for educational purposes, services provided pursuant to subcontract, building payments, maintenance, utilities, capital improvements, and marketing and development costs. Marketing and development costs paid by or charged to the School shall be limited to those costs specific to the School program, and shall not include any costs for the marketing and development of EVE. The Board shall pay or reimburse EVE monthly for approved fees and expenses upon properly presented documentation and approval by the Board. In paying costs on behalf of the School, EVE shall not charge any additional amounts or markups. Any costs reimbursed to EVE that are determined by the independent audit not to be reasonably incurred on behalf of the educational program of the School shall be promptly returned to the School by EVE. No corporate costs of EVE shall be charged to, or reimbursed by the School.

**F. EVE Costs.** The annual management fee set forth in Article VI, Section C is intended to compensate EVE for all expenses it incurs for the administrative, and management services EVE is required to provide under this Agreement, including, but not limited to, expenses associated with board support, employee recruitment, hiring, and training, and compliance. EVE will provide sufficient professional and non-professional staff in these areas and is responsible for their compensation. The costs to be paid by EVE under this Paragraph do not include payments for personnel provided pursuant to Article VI (B), (C), and (D) that are to be reimbursed by the School under Article VII (A) or educational program costs under Article V (E).

**G. Other Public School Academies.** The School acknowledges that EVE has entered, or will enter into, management agreements with other public/charter school academies. EVE shall separately account for reimbursable expenses incurred on behalf of the School and other public school academies, and only charge the School for expenses incurred on behalf of the School. EVE must maintain separate accounts for the receipt of the School funds and payment of

expenses. Comingling of the School funds with EVE funds or funds of other schools is strictly prohibited.

H. **No Other Financial Relationships.** Other than the financial arrangements described in this Agreement, EVE and the School shall have no other financial relationships. No lease, promissory notes or other negotiable instruments, lease-purchase agreements, or other financing agreements between the School and EVE shall be permitted, and such arrangements are strictly prohibited.

I. **Access to Records.** EVE shall keep accurate records pertaining to its operation of the School, together with all the School records prepared by or in the possession of EVE (the “Records”), and retain all of these records in accordance with applicable state and federal law and the ESP Requirements. Educational, operational, and student records that are now or may in the future come into the possession of EVE remain the School’s records and are required to be returned by EVE to the School upon demand, provided that EVE may retain copies of records necessary to document the services provided to the School and its actions under the Agreement. The Parties shall maintain the proper confidentiality of personnel, student, and other records as required by law. All School records shall be physically or electronically available, upon request, at the School’s physical facilities. The educational, operational, and student records pertaining to the School are public documents subject to disclosure in accordance with the provisions of applicable law. This Agreement shall not be construed to restrict the Authorizer’s or the public’s access to these records under applicable law or the Charter Contract.

J. **Audit Report Information.** EVE will make all of the School’s Records available to the independent auditor selected by the Board. EVE staff will fully cooperate with said independent auditor.

K. **Bankruptcy of ESP Principal or Officer.** EVE shall notify the School’s Board if any principal or officer of EVE, or EVE (including any related organizations or organizations in which a principal or officer of EVE served as a principal or officer) as a corporate entity, has filed for bankruptcy protection in the last six (6) months or within any applicable preference period, whichever is longer.

L. **Conflict of Interest.** EVE shall have a written conflict of interest policy, a copy of which shall be made available to the Board upon request. EVE shall not execute contracts with any third Parties for services to be provided to or on behalf of the School where there is a conflict of interest between EVE and the third party.

M. **Transition Services.** EVE will provide the School with reasonable assistance necessary to transition from its current management service company to EVE. This includes, but is not limited to, assistance with state, federal and/or Authorizer reporting requirements, and any other mutually agreed upon services. Parties agree to set a fee for these transition services that is mutually agreed upon and consistent with the cost of these services on the open market.

## ARTICLE VII:

### **PERSONNEL AND TRAINING**

A. **Personnel Responsibility.** EVE is responsible for providing the School with qualified administrators and teachers, instructional support, pupil support, food service, secretarial, security, and other staff required to operate the School within the staffing and compensation levels approved by the Board in its annual budget (the “School Employees”). EVE shall have the authority to select, evaluate, assign, discipline, transfer, and terminate the employment of all School Employees, with the exception of the Board employees, if any, consistent with applicable law and the provisions of this Agreement. EVE, in its sole discretion, may use an employee leasing agency (the “Leasing Agency”) to provide the School Employees; such School Employees will be employees of the leasing agency. Prior to the first payroll, EVE will provide the Board with a detailed listing of the anticipated compensation and fringe benefit costs for all School Employees.

1. **School Leadership.** EVE shall select and hire qualified principal and other personnel to perform services at the School. The Principal shall be the main educator on site and shall be an employee of the Board. Regardless of whether the Principal is an employee of the Board or the EVE, EVE shall be the Principal’s supervisor and shall hold Principal accountable for the results and day-to-day educational operations of the School. The Board shall approve and ratify all school leader contracts, as well as EVE’s recommendation for termination. Notwithstanding anything to the contrary herein, two members of the Board shall have the right to interview any Principal candidate selected by EVE along with the management organization, and provide input to EVE. If one of the two Board members does not approve of the candidate, then EVE shall select another candidate and the process will continue. Any rejection of a principal candidate by both Board members must be in writing, and shall enumerate specific reasons for the objection. The Board understands the need for a stable candidate and shall not withhold approval without good reason, knowing that leadership onsite is essential to the success of the School and knowing that EVE is hired for its educational expertise. The Board as a whole shall approve and ratify the Principal’s contract pursuant to its delegation of this responsibility to EVE, and as employer of the Principal.
2. **Teachers.** As part of the annual budgeting process, EVE shall make a recommendation to the Board regarding the number of teachers and the applicable grade levels and subjects required for the operation of the School pursuant to the Charter Contract. EVE shall provide the School with such teachers, qualified in the grade levels and subjects required, as are required by the School. The Board, however, shall ultimately decide the number of teachers, the applicable grade levels, and subjects taught at School as prescribed in the Charter Contract. Teachers shall be employed by KCE. Each teacher assigned to or retained by the School shall be a highly qualified teacher with a valid teaching certificate or temporary special permit issued

by the Ohio Department of Education under the Code, to the extent required under the Code and the Every Student Succeeds Act.

3. **Support Staff.** As part of the annual budgeting process, EVE shall make a recommendation to the Board regarding the number of support staff required for the operation of the School pursuant to the Charter Contract. EVE shall provide the School with such support staff, qualified in the areas required, as are required by the School. Such support staff may, in the discretion of EVE, work at the School on a full or part-time basis. If assigned to the School on a part-time basis, such support staff may also work at other schools operated by EVE in the same city. Each support staff employee assigned to or retained by the School shall have received the training and hold the certificates, degrees, or licenses legally required for the position to which they are assigned under the Code and the Every Student Succeeds Act.

**B. Payroll.** EVE shall collaborate with the treasurer to ensure payroll accuracy. All records pertaining to teacher and administrator certification, as well as a copy of the employee handbook, shall be maintained physically on site or be directly accessible at all the Schools' facilities. Neither EVE, nor the leasing agency shall execute contracts with its staff assigned to the School that contain non-compete agreements of any nature.

**C. Criminal Background Checks.** EVE agrees that no individuals shall be assigned to perform any services under this Agreement that has not cleared the requisite criminal background check pursuant to applicable Ohio Code. The Board may require that the results of criminal background checks are received, reviewed, and used (subject to a verification process) by a qualified governmental employee acting on behalf of the School and/or the Board, only as permitted by law to confirm that the individual does not have a criminal history in violation of the Code. The Board shall require the qualified governmental employee to provide a letter with a determination for assignment indicating if the individual is in compliance with the requirements of the Code or not. EVE shall not assign to the School any individual for whom EVE has received determination of non-assignment.

**D. Training.** EVE shall ensure training is provided to the School Leader, teachers, and paraprofessionals on a regular and continuing basis and shall insure that School Employees receive all training required by law. The School Leader, teachers, paraprofessionals, and other support staff employees shall receive such other training as EVE determines is reasonable and necessary under the circumstances.

## ARTICLE VIII:

### **TERMINATION OF AGREEMENT**

**A. Termination by the School for Cause.** This Agreement may be terminated by the School for cause prior to the end of the term specified in Article III in the event that EVE

should fail to remedy a material breach within a period reasonable under the circumstances, which shall not be longer than sixty (60) days after notice from the School. A material breach by EVE may include, but is not limited to, a failure to carry out its responsibilities under this Agreement, such as a failure to make required reports to the Board; or violating the Charter Contract or applicable law. In order to terminate this Agreement for cause, the Board is required to provide EVE with written notification of the facts it considers to constitute material breach and the period of time within which EVE has to remedy this breach. After the period to remedy the material breach has expired, the Board may terminate this Agreement by providing EVE with written notification of termination.

**B. Termination by EVE for Cause.** This Agreement may be terminated by EVE for cause prior to the end of the term specified in Article III in the event the School fails to remedy a material breach within a period reasonable under the circumstances, which shall not be longer than sixty (60) days after notice from EVE. A material breach by the School may include, but is not limited to, a failure to carry out its responsibilities under this Agreement, such as a failure to make payments to EVE as required by this Agreement; a failure to give consideration to the recommendations of EVE regarding the operation of the School; or violating the Charter Contract or applicable law. In order to terminate this Agreement for cause, EVE is required to provide the Board with written notification of the facts it considers to constitute material breach and the period of time within which the School has to remedy this breach. After the period to remedy the material breach has expired, EVE may terminate this Agreement by providing the Board with written notification of termination.

**C. Termination by Loss of Charter Contract.** This Agreement shall automatically terminate in the event that the School no longer possesses a Charter Contract to operate a public school academy, including, but not limited to, a termination or revocation of the Charter Contract or a failure to renew an existing Charter Contract.

**D. Authorizer Required Termination or Amendment.** This Agreement shall be terminated or amended with no cost or penalty to the School, and no recourse to the Authorizer or any third party affiliated with or engaged by Authorizer, by EVE or any subcontracted person or entity of EVE, in the event the Authorizer determines to exercise its prerogative under the Charter Contract to require the termination or amendment of this Agreement.

**E. Change in Law.** If any federal, state, or local law, regulation, or court decision has a material adverse impact on the ability of either party to carry out its obligations under this Agreement, then either party, upon written notice to the other, may request renegotiation of the Agreement. If the Parties are unable or unwilling to renegotiate the terms within ninety (90) days after said notice, the party requesting the renegotiation may terminate this Agreement on one hundred-twenty (120) days further written notice.

**F. Effective Date of Termination.** In the event this Agreement is terminated by either party prior to the end of the term specified in Article III, absent unusual and compelling circumstances, the termination will not become effective until the end of the school year in which this Agreement was terminated.

G. **Rights to Property upon Termination.** Upon termination of this Agreement, anything purchased with state school aid funds (or other School funds) shall remain the exclusive property of the School. EVE shall have the right to reclaim any usable property or equipment (including, but not limited to, desks, computers, copying machines, fax machines, and telephones) that were purchased by EVE with EVE funds. Fixtures and building alterations or any kind are the sole property of the School.

H. **Transition.** In the event of termination of this Agreement for any reason by either party prior to the end of the Agreement's term, EVE shall provide the School reasonable assistance for up to ninety (90) days after the effective date of the termination to allow a transition back to a regular school program or to transition to another education service provider. EVE may charge a reasonable fee for such services, which shall be no higher on a per month basis than the average standard monthly fee paid during the regular term of this Agreement. Upon termination, EVE shall without charge: (i) organize and prepare the School's records for transition to a new ESP, if any and (ii) organize and prepare student records for transition to a new ESP.

## **ARTICLE IX:**

### **PROPRIETARY INFORMATION**

A. **Copyright and Proprietary Information.** All instructional materials, training materials, curriculum, lesson plans, and any other materials developed by EVE, its employees, agents, or subcontractors, or by any individual working for or supervised by EVE, which (i) were directly developed and paid for by the School, or (ii) were developed by EVE at the direction of the Board using School funds, shall be considered "work made for hire" as such term defined in Section 101 of the Copyright Act, 17 U. S. Code, Section 101 and the School shall own all copyright and other proprietary rights to such instructional materials, training materials, curriculum, lesson plans, and any other materials.

B. **Required Disclosure.** The School shall be permitted to report any new teaching techniques or methods of significant revisions to known teaching techniques or methods to the Authorizer and to the Ohio Department of Education, which teaching techniques or methods may thereafter be made available to the public.

## **ARTICLE X:**

### **INDEMNIFICATION**

A. **Indemnification of EVE.** To the extent permitted by law, the School shall indemnify and hold EVE (which term for purposes of this Paragraph A, includes EVE's officers, directors, and employees) harmless against any and all claims, demands, suits, or other forms of liability that may arise out of, or by reason of, employment of former employees, prior relationships with vendors and any noncompliance by the School with any agreements,

covenants, warranties, or undertakings of the School contained in or made pursuant to this Agreement; and any misrepresentation or breach of the representations and warranties of the Board contained in or made pursuant to this Agreement. In addition, and to the extent permitted by law, the School shall reimburse EVE for any and all reasonable legal expenses and costs associated with the defense of any such claim, demand, or suit. The indemnification requirements of this Paragraph may be met by the purchase of insurance in a form and amounts acceptable to EVE.

**B. Limitations of Liabilities.** The School may assert all immunities and statutory limitations of liability in connection with any claims arising under this Agreement.

**C. Indemnification of the School.** EVE shall indemnify and hold the School (which term for purposes of this Paragraph C, includes the School's officers, directors, agents, and employees) harmless against any and all claims, demands, suits, or other forms of liability that may arise out of, or by reason of, any noncompliance by EVE with any agreements, covenants, warranties, or undertakings of EVE contained in or made pursuant to this Agreement and any misrepresentation or breach of the representations and warranties of EVE contained in or made pursuant to this Agreement. In addition, EVE shall reimburse the School for any and all reasonable legal expenses and costs associated with the defense of any such claim, demand, or suit. The indemnification requirements of this paragraph may be met by the purchase of insurance in a form and amounts acceptable to the School.

**D. Indemnification for Negligence.** To the extent permitted by law, the School shall indemnify and hold harmless EVE, and EVE's Owners, Board of Directors, partners, officers, employees, agents, and representatives, from any and all claims and liabilities which EVE may incur and which arise out of the negligence or intentional activity of the School's directors, officers, employees, agents, or representatives. EVE shall indemnify and hold harmless the School, and the School's Board, officers, employees, agents, and representatives, from any and all claims and liabilities which the School may incur and which arise out of the negligence or intentional activity of EVE's owner, directors, officers, employees, agents, or representatives.

## **ARTICLE XI:**

### **INSURANCE**

**A. Insurance for the School.** The School shall secure and maintain such policies of insurance as required by and the Charter Contract. This coverage shall include the building and related capital facilities if they are the property of the School. The School shall maintain such insurance in amounts and on such terms as required by the provisions of the Charter Contract, including the indemnification of EVE required by this Agreement. The School shall, upon request, present evidence to EVE that it maintains the requisite insurance in compliance with the provisions of this paragraph. EVE shall comply with any information or reporting requirements applicable to the School under its policy with its insurer(s), to the extent practicable.

**B. Insurance for EVE.** EVE shall secure and maintain such policies of insurance as required by the Authorizer and the Charter Contract, with the School and Authorizer listed as

additional insureds. EVE shall maintain such insurance in amounts and on such terms as are reasonably acceptable to the School and as required by the provisions of the Charter Contract, including the indemnification of the School required by this Agreement. EVE shall, upon request, present evidence to the School and Authorizer that it maintains the requisite insurance in compliance with the provisions of this paragraph. The School shall comply with any information or reporting requirements applicable to EVE under EVE's policy with its insurer(s), to the extent practicable. Any policy of insurance maintained by EVE must include coverage for sexual molestation or abuse, must name the Authorizer as an additional, named insured, and shall not be changed, revoked, or modified absent thirty (30) days' notice to the Authorizer. In the event the Authorizer modifies the level, type, scope, or other aspects of such coverage, then EVE shall undertake like and similar modifications within thirty (30) days of being notified of such change.

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

## ARTICLE XII:

### COMPLIANCE WITH CHARTER CONTRACT

A. **Charter Contract.** The Parties hereby agree to comply with the Charter Contract and the ESP Requirements.

B. **School Board Due Diligence.** The Board hereby agrees to perform the necessary due diligence of EVE and provide all information to the Authorizer pursuant to the ESP Policies, if any.

C. **School Board Members.** All School Board members and their respective spouses and immediate family members hereby agree that they do not have any direct or indirect ownership, employment, contractual or management interest in EVE. The relationship between the School and EVE shall be consistent with the conflicts of interest and prohibited familial relationship provisions set forth in the Charter Contract and applicable law.

D. **ESP Agreement.** This Agreement is an arms-length, negotiated agreement between an informed Board and EVE. The Board shall not approve this Agreement until all Board members have been given the opportunity to review the Agreement with the School's legal counsel. Prior to the Board's approval of this Agreement, the Board shall obtain a legal opinion from its legal counsel, in the form provided in the ESP Requirements. The Board shall only approve this Agreement with a formal vote at a public board meeting. Prior to the Board's vote on this Agreement, the Board shall provide an opportunity for public comment on this Agreement.

E. **Information Reporting.** EVE is hereby required to make information concerning the operation and management of the School, including, but not limited to, information in the Charter Contract, including all exhibits, attachments, and the like, available to the School as deemed necessary by the Board in order to enable the School to fully satisfy its obligations under the Charter Contract. EVE shall make information available to the School as deemed necessary



by the Board in order to enable the School to fully satisfy its transparency reporting under the Charter Contract, and also at least the information that a school district is required to disclose under applicable law for the most recent fiscal year for which that information is available.

### **ARTICLE XIII:**

#### **MISCELLANEOUS**

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

B. **Notices.** All notices, demands, requests, and consents under this Agreement shall be in writing, shall be delivered to each party, and shall be effective when received by the Parties or mailed to the Parties at their respective addresses set forth below, or at such other address as may be furnished by a party to the other party:

If to EVE:  
Earl Martin Phalen, CEO  
1001 Marina Drive Apt. #410  
Quincy, MA 02171

**And a copy to EVE's counsel:**

Nicole J. Scott, Esq.  
4914 Cooper Road #42634  
Blue Ash, OH 45242

If to School:  
Kids Care Elementary  
c/o Board President  
3400 Kohr Blvd.  
Columbus, OH 43224

**And a copy to Board's Attorney:**

Adam J. Schira, Esq.  
150 East Gay Street, Suite 2400  
Columbus, Ohio 43214

C. **Severability.** The invalidity of any of the covenants, phrases, or clauses in this Agreement shall not affect the remaining portions of this Agreement, and this Agreement shall be construed as if such invalid covenant, phrase, or clause had not been contained in this Agreement.

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

E. **Entire Agreement.** This Agreement is the entire agreement between the Parties relating to the services provided and to the compensation for such services by the Parties. Any modification to this Agreement must be made in writing, approved by the Board and EVE, and signed by a duly authorized officer of each.

F. **Amendments and Modifications.** The Board must submit any and all amendments or modifications of this Agreement to the Authorizer not less than 45 days prior to the Board's approval of such amendments or modifications. No amendment or modification of

this Agreement shall be effective unless and until the Authorizer has notified the School in writing that it does not disapprove of the modification.

G. **Non-Waiver.** A failure of a party in exercising any right, power, or privilege under this Agreement shall not affect such right, power, or privilege, nor shall any single or partial exercise thereof preclude any further exercise thereof or the exercise of any other right, power, or privilege. The rights and remedies of the Parties under this Agreement are cumulative and not exclusive of any rights or remedies which either party may otherwise have.

H. **Assignment.** EVE may not assign this Agreement without the prior written approval of the Board and prior written notification to Authorizers. Any assignment must be done in a manner consistent with the Authorizer's ESP Policies.

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

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

K. **Compliance with Law.** The Parties agree to comply with all applicable laws and regulations in their performance of this Agreement.

L. **Dispute Resolution Procedure.** Any and all disputes between the Parties concerning any alleged breach of this Agreement or arising out of or relating to the interpretation of this Agreement or the Parties' performance of their respective obligations under this Agreement that are unable to be resolved through discussion and negotiation shall be resolved by arbitration. Such an arbitration procedure shall be the sole and exclusive remedy for such matters. The arbitrator shall be selected from a panel provided by and in accordance with the rules of the American Arbitration Association, and the arbitration shall be conducted in accordance with the rules of the American Arbitration Association, with such variations as the Parties and the arbitrator unanimously accept. A judgment on the award rendered by the arbitrator may be entered in any court having appropriate jurisdiction and shall be binding upon the Parties. Any such judgment shall require a cause opinion as to the final decision and shall be made available to the Authorizer upon request. The cost of arbitration, not including attorney fees, shall be paid by the losing party. It shall be in the discretion of the arbitrator to award reasonable attorney fees to the prevailing party, to be paid by the losing party, if awarded.

**The Parties have executed this Agreement as of the day and year provided below.**

**ENTREPRENEURIAL VENTURES IN EDUCATION**

By: 

Earl Martin. Phalen, CEO

Dated: 03/24/2021

**Kids Care Elementary**

By: 

Kendrea Moorer, Board President

Dated: 3/19/2021