

## MANAGEMENT AGREEMENT

This Management Agreement (the "*Agreement*") is entered into as of May 6, 2018 ("Effective Date") by and between Accel Schools Cleveland FB LLC, a Delaware limited liability company ("*Manager*"), and Lorian Bilingual Academy (the "*School*"), a non-profit Ohio corporation and public community school.

### RECITALS

Whereas, the School is organized as an Ohio nonprofit corporation under Chapter 1702 of the Ohio Revised Code (as such provision may be amended from time to time) and the School has entered into a School Sponsorship Agreement (the "*Sponsorship Agreement*") with Ohio Council of Community Schools (the "*Sponsor*") pursuant to which the School is authorized to operate a public community school under Chapter 3314 of the Ohio Revised Code. The Ohio Revised Code and amendments thereto are hereinafter referred to as the "*Code*";

Whereas, the Manager was established, among other reasons, 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 School; and

Whereas, the School and the Manager (individually, a "*Party*" and collectively, the "*Parties*") desire to create an enduring educational relationship whereby they will pursue and provide educational excellence at the School based on an agreed upon school design, comprehensive educational program and management principles.

**NOW THEREFORE**, in consideration of their mutual promises and covenants, and intending to be legally bound hereby the Parties agree to the following terms:

### ARTICLE I.

#### EDUCATIONAL SERVICES AND ADMINISTRATIVE SERVICES

##### 1.1 Educational Services.

- (a) During the Term (as defined in ARTICLE II below), Manager will provide to the School the following educational services (the "*Educational Services*"):
  - (i) Curriculum. Implementation of the educational goals and programs set forth in the Sponsorship Agreement (the "*Educational Program*"). In the event that Manager determines it is necessary to modify the Educational Program, Manager shall inform the School of the proposed changes and obtain School approval, and if required under the Sponsorship Agreement, approval of the Sponsor.
  - (ii) Instruction. Oversight and coordination of the services to be provided by instructional personnel, including the Head of School ("*HOS*") and the rest of the School's leadership team and its teachers and support staff, all in accordance with ARTICLE VI below.
  - (iii) Instructional Tools. Selection of instructional tools, equipment and supplies, including text books, computers, curriculum, software and multi-media teaching tools.

- (iv) Extra-Curricular and Co-Curricular Programs. Oversight of appropriate extra-curricular and co-curricular activities and programs (but not Supplemental Programs as defined in ARTICLE V below).
- (b) Additional Educational Services. Any other services required by the Sponsor and/or the State of Ohio (the "**State**") Department of Education (the "**ODOE**") and such other services as are necessary or expedient for the provision of teaching and learning at the School as agreed to from time to time between Manager and the School. 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 School as adopted by the School and as provided for in the Sponsorship Agreement, as the same may be amended.
- (c) Manager will be responsible and accountable to the School for the provision of the Educational Services, provided, however, that such obligations, duties and responsibilities are limited by the School Budget established pursuant to Section 1.2(a)(vi) below, and Manager will not be required to expend funds on such services in excess of the amounts set forth in such School Budget.

1.2 Administrative Services.

- (a) During the Term, Manager will provide to the School 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 VI below.
  - (ii) Business Administration. Administration of all business operations of the School subject to the direction of the School.
  - (iii) Payroll. Management of the School's payroll. Manager will be responsible for all data input.
  - (iv) Transportation and Food Services. Coordination with entities with which the School contracts for the provision of transportation and food services for the students enrolled at the School, management and assessment of the services provided under such contracts, and supervision of employees involved with providing such services, all as required by the School.
  - (v) Public Relations. Coordination and assistance with any and all advertising, media and public relations efforts, including community outreach programs. All public relations will be subject to the mutual approval of both Parties, which approval may not be unreasonably withheld.
  - (vi) Budgeting and Financial Reporting.
    - (A) A proposed annual budget will be prepared by Manager (in cooperation with the School's fiscal officer) in a mutually agreeable format by June 1<sup>st</sup> of the immediately preceding fiscal year and will be subject to the approval of the School which shall not to be unreasonably withheld or delayed and in all cases shall be provided no later than June 30 of the immediately preceding fiscal year. The approved budget is the "**Budget**". The fiscal officer shall be responsible for the preparation of other financial statements as required by and in compliance with the Sponsorship Agreement, the Code and other applicable laws and regulations, including such documentation as may be required by the

independent certified public accountants retained by the School to perform annual audits of the School's financial statements. The cost for preparation of the financial statements will be the responsibility of the School. The cost of the fiscal officer and the audit will be the responsibility of the School, and will be provided for in the Budget.

- (B) The Manager will provide the School with monthly financial forecast and analysis reports (Forecasted P&L / Cash Balances) and all other support as needed. The Manager will provide the following accounting information and services: accounts payable coding; payroll journal entries; expense accrual journal entries; and support for grant writing / reporting / draw down; assist the fiscal officer with the preparation of monthly financial reporting to the Board; and support for all State reporting requirements. The Manager will prepare a five-year financial plan in conjunction with the fiscal officer.
  - (C) On behalf of the School, the fiscal officer is responsible for preparation of (i) such other reports on the finances and operation of the School as requested or required by the ODOE, the School or the Sponsor to ensure compliance with the terms of the Sponsorship Agreement; (ii) monthly unaudited financial statements; and (iii) year-end unaudited financial statements which will be provided within forty-five (45) days after the end of the fiscal year.
  - (D) The Manager will provide other information on a periodic basis or requested with reasonable notice as may be reasonably necessary to enable the School to monitor Manager's performance under this and related agreements including the effectiveness and efficiency of its operations at the School.
  - (E) On behalf of the School, the fiscal officer will maintain accurate financial records pertaining to its operation of the School, together with all School financial records prepared by the fiscal officer, and retain all such records for a period of five (5) 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 School financial records retained by the fiscal officer pertaining to the School will be available to the School, the Sponsor, the Auditor of State, the ODE or the United States Department of Education (the "*USDOE*") and to all other appropriate regulatory authorities for inspection and copying upon reasonable request, it being understood that in most cases such copies will be made available within thirty (30) business days of request.
- (vii) School's Right to Audit. The School reserves the right to conduct or to appoint others to conduct examinations, at the School's expense, of the books and records maintained for the School.
  - (viii) Maintenance of Student Records.
    - (A) Manager will maintain accurate student records pertaining to the students enrolled at the School as is required and in the manner provided by the Sponsorship Agreement, the Code and applicable laws and regulations, together with all additional School student records prepared by or in the possession of Manager, and retain such records on behalf of the School, until this Agreement expires or is terminated, at which time such records will be delivered to the School which shall thereafter be solely responsible for the retention and

maintenance of such records (it being understood that such student records are and shall be at all times the property of the School). Manager and the School will maintain the proper confidentiality of such records as required by law and the Sponsorship Agreement.

(B) Manager will maintain accurate employment, business and other records pertaining to the operation of the School as is required and in the manner provided by the Sponsorship Agreement, the Code and applicable laws and regulations, together with all additional School employment, business and other records prepared by or in the possession of Manager, and retain such records on behalf of the School until this Agreement expires or is terminated, at which time such records will be delivered to the School which shall thereafter be solely 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 School). Manager and the School will maintain the proper confidentiality of such records as required by law and the Sponsorship Agreement.

(C) The financial, educational and student records pertaining to the School are the property of the School, and such records are subject to the applicable provisions of State and federal law. Manager shall help ensure that to the extent requested by the School, all School records shall be physically or electronically available, upon request, at the School.

(D) Manager shall provide such other information, including a written report, as reasonably requested by the School.

- (ix) Admissions. Implementation of the School's admission policy in accordance with the Sponsorship Agreement, the Code and applicable laws and regulations.
- (x) Student Hearings. Administration and enforcement of student disciplinary and special education hearings in conformity with the requirements of the Code, the procedures established by the School, and other applicable laws and regulations (including, but not limited to, requirements involving due process and confidentiality) to the extent consistent with the School's duties and obligations under the Code and other applicable laws and regulations.
- (xi) Academic Progress Reports. Provide to the School on a periodic basis as necessary or appropriate for the School to satisfy its obligations under the Sponsorship Agreement, the Code and other applicable laws and regulations, a report detailing (A) the School's students' academic performance, (B) Manager's performance against mutually acceptable criteria of the Educational Services and Administrative Services, and (C) such other reports reasonably requested by the School.
- (xii) Rules and Procedures. Recommend rules, regulations and procedures applicable to the School and its students and will enforce such rules, regulations and procedures adopted by the School that are not in direct conflict with this Agreement, the Sponsorship Agreement, the Code and other applicable laws and regulations.
- (xiii) Student Recruitment. Recruitment of students subject to agreement on general recruitment and admission policies to the extent as budgeted for in the Budget or as otherwise approved by the School. Students shall be selected in compliance with the procedures set forth in the Sponsorship Agreement and State and federal laws.

(xiv) Additional Administrative Services. Any other services reasonably necessary or expedient for the effective administration of the School as agreed to from time to time by Manager and the School.

(A) The Administrative Services will be provided in a manner consistent with the Educational Program, the Code, the Sponsorship Agreement, and local, State and federal laws and applicable regulations and policies.

(B) Subject to this Agreement, the Sponsorship Agreement, the Code, and other applicable laws and regulations, Manager may modify the methods, means and manner by which such Administrative Services are provided at any time, provided that Manager supplies the School with written notice of such modifications.

(C) Manager will be responsible and accountable to the School for the provision of the Administrative Services, provided that such obligations, duties, and responsibilities are limited by the Budget established in Section 1.2(a)(vi) above, and Manager will not be required to expend funds on such services in excess of the amounts set forth in such Budget.

1.3 Place of Performance; Provision of Offices. The School will provide Manager with necessary and reasonable classroom and office space at [Address to be determined], Lorain, OH (the "Facility") to perform all services described in this Agreement. Manager will provide instructional, extra-curricular and co-curricular programs at the Facility. Manager may provide other services elsewhere, unless prohibited by the Sponsorship Agreement, the Code and other applicable laws and regulations.

1.4 Authority. By this Agreement, the School provides Manager such authority and power as is necessary and proper for Manager 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, and any other applicable laws and regulations.

## **ARTICLE II. TERM**

2.1 Term. The term of this Agreement will commence on July 1, 2018 (the "**Start Date**") and shall continue thereafter through June 30, 2023 (the "**Initial Term**") unless sooner terminated pursuant to ARTICLE VII or mandated by regulation or statute. In the event the Sponsor and/or the Sponsorship Agreement changes, this Agreement shall automatically survive and be performed in accordance with the new Sponsorship Agreement, these terms and conditions and applicable law, unless this Agreement is otherwise terminated in accordance with ARTICLE VII herein.

2.2 Renewal. On the fifth anniversary of the Start Date, and thereafter each five (5) years (the "**Renewal Date**"), this Agreement will automatically extend for successive additional periods of five (5) years or consistent with the length of the renewal term from the Sponsor) (each such period a "**Renewal Term**"), unless (a) either Party provides the other with written notice of non-renewal at least eighteen (18) months before the applicable Renewal Date; or (b) the Agreement is sooner terminated under ARTICLE

VII. The Initial Term and any Renewal Terms will be referred to collectively as the “*Term*”.

### **ARTICLE III. RELATIONSHIP OF THE PARTIES**

- 3.1 Status of the Parties. Manager is not a division or any part of the School. The School is a separate and distinct corporation authorized under the Code and is not a division or a part of Manager. The relationship between the Parties was developed and entered into through arms-length negotiations and is based solely on the terms of this Agreement and those of any other agreements that may exist from time to time between the Parties. Nothing herein will be construed to create a partnership or joint venture by or between the School and Manager or to make one the agent or fiduciary of the other. Neither the School nor Manager 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 the School nor Manager has, and neither will represent that it has, the power to bind or legally obligate the other. No employee of Manager will be considered an employee of the School by either Party for any purpose whatsoever.
- 3.2 Manager Attendance at Board Meetings. Manager shall attend the School’s board of directors’ (the “Board”) meetings as appropriate or necessary. The Board shall not schedule any regular, special or emergency Board meeting without first confirming in writing that Manager has the opportunity to attend a proposed meeting at a specific time, date and location. The Board shall provide Manager with notice of any regular, special or emergency meeting of the Board when it provides members of the Board with notice of the meetings.
- 3.3 No Related Parties or Common Control. Manager will not have any role or relationship with the School that, in effect, substantially limits the School’s ability to exercise its rights, including cancellation rights, under this Agreement. Any director, officer or employee of Manager shall be prohibited from serving on the Board. None of the voting power of the Board will be vested in Manager or its directors, members, managers, officers, shareholders and employees, and none of the voting power of the Board or shareholders of Manager will be vested in the School or its directors, members, managers, officers, shareholders (if any) and employees. Furthermore, the School and Manager 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) (the “*Internal Revenue Code*”), or related persons, as defined in Section 144(a)(3) of the Internal Revenue Code.
- 3.4 Other Schools. The Parties acknowledge that this arrangement is not exclusive and that Manager will have the right to render similar services to other persons or entities including other public or private schools or institutions.

**ARTICLE IV.  
CONSIDERATION**

4.1 Compensation for Services.

- (a) Management Fee. The School will pay Manager an annual fee of (i) thirteen and a half percent (13.5%) of the state and local school funds (the "*State Aid*") that the School receives, directly or indirectly, pursuant to the Code, for the particular students enrolled in the School (the "*State Allocation*"), plus (ii) subject to federal law and regulations, an amount equal to thirteen and a half percent (13.5%), multiplied by the funds (the "*Federal Funds*") that the School receives, directly or indirectly, from the federal government, exclusive of Free and Reduced Lunch Revenues (the "*Federal Allocation*") (the Federal Allocation together with the State Allocation are the "*Management Fee*"). Neither the State Allocation nor Federal Allocation shall include charitable contributions, transportation funding, facility funding, or proceeds from fundraisers ("*Non-Qualified Gross Revenue*"), which shall be retained entirely by 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. If the School has no debt to the Manager and is able to timely pay the Management Fee, the School may, at its sole discretion, agree to pay to the Manager an incentive as a result of the School meeting the Incentive Goals identified in Appendix A attached hereto and in the Sponsorship Agreement.
- (b) Reasonable Compensation. The Management Fee under this Agreement is reasonable compensation for services rendered. Manager'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 School.
- (c) Annual Reconciliation. The Management Fee shall be subject to annual reconciliation based upon actual enrollment and actual revenue received (including the final month of the Term, even though the payment may be made beyond expiration or termination of the Term).

- 4.2 Payment of Costs. In addition to the Management Fee described in Section 4.1 above, the School will reimburse Manager for all costs incurred and paid by Manager in providing the Educational Services and Administrative Services, provided such costs are within the limits of the Budget. Such costs may include, but are not limited to, mortgage, rent and/or lease payments (including costs pursuant to any equipment lease or Facility lease that the Parties may enter into), Facility maintenance and utility costs, salaries of Manager's employees or subcontractors assigned to the staff of the School, costs related to curriculum, instructional materials, textbooks, library books, computers, software, supplies, food service, transportation, special education, psychological services and medical services. Except as may be provided in any equipment lease or Facility lease, in charging for such costs to the School and paying for such costs, Manager will not charge an added fee unless such fee is approved in advance by the School.

4.3 Time and Priority of Payments.

- (a) Manager will receive its Management Fee in the same number of installments and in the same proportion that the School receives its revenues. Each installment of the Management Fee will be due and payable by the School upon receipt of invoice.
- (b) Manager will notify the School of any payments due and owing to Manager pursuant to Section 4.2 above as soon as possible after the end of each month and the School will make such payments to Manager upon receipt of invoice.
- (c) The School will satisfy its payment obligations under this Article to Manager in the following order of priority: (i) payments due and owing under Section 4.2 above for salaries and benefits of Manager employees or subcontractors assigned to the staff of the School; (ii) all other payments due and owing under Section 4.2 above, with the oldest amounts due first; and (iii) payments due and owing pursuant to Section 4.1 above with the oldest amounts due first.

4.4 Interest Rate and Fee Carryovers.

- (a) Unless otherwise agreed by the Parties, unpaid Management Fees and loans to the School, if any, to pay expenses will accrue interest at the one-month London Interbank Offer Rate ("**LIBOR**"), plus four percent (4%) for the time overdue.
- (b) There will be no limits to what indebtedness or fees owed to Manager may be carried over from year to year unless expressly provided otherwise in this Agreement.

**ARTICLE V.  
SUPPLEMENTAL PROGRAMS**

5.1 Supplemental Programs. In addition to the Educational Services and Administrative Services provided by Manager to the School, Manager may, subject to School approval (which approval shall not be unreasonably withheld), provide additional services, which may benefit the School by increasing its exposure in the community, including, but not limited to, pre-kindergarten, summer school, academic camps, before and after school programs, vocational training, and latch-key programs to students and non-students of the School (the "**Supplemental Programs**"), provided that nothing herein shall require Manager to provide any such Supplemental Programs. Manager may retain the full amount of any and all revenues collected from or for such Supplemental Programs, and Manager will be responsible for the full cost of providing such Supplemental Programs. The School will permit Manager to operate such Supplemental Programs at the Facility without charge to Manager; provided, however, that Manager shall provide to the School a fee equal to thirteen and a half percent (13.5%) of the profits (if any) derived by Manager from such Supplemental Programs.

5.2 Manager shall prepare detailed statements on a monthly basis of all revenues received, from whatever source, with respect to the Supplemental Programs, and detailed statements of all expenses, including an accounting of all expenditures for services rendered, whether incurred on-site or off-site.

5.3 Subject to and in accordance with provisions in Article IX below, Manager will indemnify, defend and save and hold the School and all of its Representatives (as defined below)

harmless against any and all claims, demands, suits or other forms of liability (including reasonable attorney's fees and costs) that directly arise out of any Supplemental Program. In addition, Manager will reimburse the School for any and all reasonable legal expenses and costs associated with the defense of any such claim, demand or suit. This indemnification provision shall survive the termination or expiration of the Agreement.

## **ARTICLE VI. PERSONNEL AND TRAINING**

### **6.1 Personnel Responsibility.**

- (a) Subject to Sections 1.1 and 1.2 above, the Sponsorship Agreement, the Code and other applicable laws and regulations, Manager will have the sole responsibility and authority to determine staffing levels, and to select, evaluate, assign, discipline, supervise, manage and terminate personnel necessary to carry out the Educational Services, the Administrative Services, the Supplemental Programs (if any) and all other services provided under this Agreement.
- (b) Except as specified in this Agreement or as required by the Code or the Sponsorship Agreement, the HOS, teachers and support staff recommended by Manager pursuant to this Agreement will be employees or subcontractors of Manager. Manager will be responsible for conducting reference checks, employment checks, criminal background checks and unprofessional conduct checks on its employees and subcontractors to the extent required under the Code and other applicable laws and regulations as if the employees and subcontractors were employed by an School. Upon request, Manager will provide the School with documentary evidence of such background checks. Manager will share on a confidential basis with the School its performance reviews and assessment of the HOS.

**6.2 Head of School.** The HOS will be an employee of Manager and Manager will determine the employment terms of the HOS. Manager will have the authority, consistent with the Code and other applicable laws and regulations, to select, supervise and terminate the HOS and to hold him or her accountable for the success of the School.

**6.3 Teachers.** Manager will provide to the School such teachers as are required to provide the Educational Services, Administrative Services and Supplementary Programs (if any). Manager, in consultation with the HOS, will determine the number and assignments of such teachers. Such teachers may work at the School on a full or part time basis. Each teacher assigned to the School will be qualified in his or her grade levels and subjects, and, to the extent required under the Code and other applicable laws and regulations, hold a valid teaching certificate issued by the ODOE. Further, to the extent required under the Code and other applicable laws and regulations, such teachers shall have undergone a criminal background check and unprofessional conduct check as if such teachers were employees of the School. Upon request, Manager shall provide the School with documentary evidence of its compliance with this Section 6.3. Manager shall keep the School informed of all teaching staff related actions and decisions on a regular basis.

**6.4 Support Staff.** Manager will provide the School with such support staff as are required to provide the Educational Services, Administrative Services and Supplementary Programs

(if any). Such support staff may include, among others, teachers' aides, clerical staff, and administrative assistants to the HOS, bookkeepers and maintenance personnel. Such support staff may work at the School on a full or part time basis.

- 6.5 Training. Manager will provide training in its instructional methods, curriculum, educational program and support technology to its instructional personnel on a regular and continuous basis. Such training will enable the School's instructional staff to provide in-service training to each other. Non-instructional personnel will receive such training as Manager determines to be reasonable and necessary under the circumstances.
- 6.6 Non-Solicitation/Non-Hiring.
- (a) During the Term and one (1) year thereafter, each Party may not directly or indirectly solicit, recruit for employment, offer employment to, offer subcontracting opportunities to, or otherwise employ or use the services of any current or former consultant or employee of the other Party or its Affiliates if that consultant or employee or former consultant or employee had been assigned to or worked under this Agreement. "Affiliate" means any entity that, directly or indirectly through one or more intermediaries, controls, is controlled by, or is under common control with, the Manager whether through ownership of voting securities, by contract interest or otherwise.
  - (b) Unpermitted Solicitation/Hiring Remedies. In the event of such unpermitted use or engagement by a Party of such consultant or employee whether directly or indirectly, in contravention of the clause immediately above, the other Party, at its option, may seek receipt of a sum equivalent to one hundred percent (100%) of that employee's compensation during their first year with the new employer, or seek any legal or equitable relief against such actions including, but not be limited to, immediate injunctive relief in any court of competent jurisdiction. The one (1) year period of time in this Section will be extended by the amount of time that a Party engages in any activity in violation of this Agreement and while the aggrieved Party seeks enforcement of this Agreement. The School acknowledges and agrees that no advances or past uncollected fees shall be issued by Manager to cover any penalty, damages or other relief owed by the School upon a violation of this provision.
  - (c) Solicitation Exceptions. For the avoidance of doubt, newspaper, periodical or Internet-based listings of employment opportunities by a Party shall not be considered direct or indirect solicitation of an employee of the other Party or Affiliate. However, such Party shall continue to be precluded from engaging or otherwise using a Party's and Affiliates' employee, former employee or consultant provided for in this Section 6.6.

## ARTICLE VII. TERMINATION OF AGREEMENT

### 7.1 Termination By Manager.

- (a) Manager may terminate this Agreement effective at the end of the then-current school year if the School fails to make any payment of money due to the Manager within thirty (30) days of written notice from Manager to School that such payment is

overdue, excluding overdue payments resulting from a payment dispute or delay between the School and any funding entity.

- (b) Manager may terminate this Agreement in the event that the School is in material default under any other condition, term or provisions of this Agreement (except late payment which is addressed above) or the Sponsorship Agreement, and the default remains uncured for thirty (30) days after the School receives written notice from the Manager or Sponsor, as applicable, of the default. However, if the default cannot be reasonably cured within thirty (30) days, and the School promptly undertakes or continues efforts to cure the material default within a reasonable time, the failure shall not be grounds for termination. Notwithstanding the foregoing, if the School's default creates an imminent danger to the life of students, parents or others, the default must be cured immediately upon notice from the Manager, and Manager may terminate the Agreement effective immediately if not so cured.
- (c) Manager may terminate this Agreement if there is any adverse and material change in local, State or federal funding for the School's students; provided that any notice of termination delivered to the School based upon an adverse and material change in funding shall be effective when the funding change goes into effect or such later date as designated by the Manager.
- (d) Manager may terminate this Agreement effective immediately upon written notice to the School in the event that the School adopts or amends a policy, and the effect of such amendment or policy would reasonably be determined by Manager to increase materially the financial risk to Manager arising from its performance of its obligations hereunder, thus rendering Manager's performance economically unviable. In the event the School adopts such an adverse policy in the middle of the school year, Manager agrees to use its best efforts to complete its obligations for the then-current school year without waiving any rights and remedies hereunder.
- (e) Manager may terminate this Agreement effective immediately upon written notice to the School in the event that the School undergoes adverse change that makes the School financially unviable.

7.2 Termination By the School. The School may terminate this Agreement in the event that Manager fails to remedy a material breach of this Agreement within ninety (90) days after written notice from the School. Termination by the School will not relieve the School of any obligations for payments outstanding to Manager as of the date of the termination, nor will it relieve Manager for liability for financial damages suffered by the School as a consequence of Manager's breach (or of the School's termination as a result thereof) of this Agreement.

7.3 Termination of the Sponsorship Agreement. This Agreement will terminate upon the School's ceasing to be a party to a valid and binding sponsorship agreement, provided, however, that this Agreement will continue to remain in effect until the date of termination or expiration of a Term (as applicable) if (i) the School has entered into a subsequent sponsorship agreement, and (ii) this Agreement has not been terminated pursuant to this ARTICLE VII. Termination pursuant to this paragraph will not relieve the School of any obligations for payments outstanding to Manager as of the date of termination.

- 7.4 Change in Law. If any federal, State or local law or regulation, court or administrative decision or Attorney General's opinion could reasonably be expected to have an adverse effect on the ability of either Party to carry out its obligations under this Agreement, such Party, upon written notice to the other Party, may request renegotiation of this Agreement. That notice may be given at any time following enactment of such change in applicable law, whether or not such change is effective on the date of such enactment or is effective at a later date. Renegotiation will be undertaken in good faith. If the Parties are unable to renegotiate and agree upon revised terms within one hundred twenty (120) days after such notice of renegotiation, then this Agreement will be terminated effective at the end of the academic year in which such notice was given unless earlier termination is necessary to protect the health, welfare, or safety of students. Manager may terminate this Agreement effective immediately upon written notice to School in the event Manager undergoes or is required to undergo a change that makes Manager, as determined in its sole judgment, financially unviable.
- 7.5 Real and Personal Property. Upon termination or expiration of this Agreement by either Party for any reason, all real and personal property leased by Manager to the School will remain the real and personal property and leases of Manager, and all other personal property purchased by Manager with the funds provided to Manager by the School pursuant to Section 4.2 above will be the personal property of the School. Notwithstanding the above, if any lease shall contain a buy-out or purchase option, the School shall have the right to exercise such option and purchase such equipment.
- 7.6 Return of Materials and Records. On the later of (a) five (5) business days after any termination or expiration of this Agreement by either Party for any reason, and (b) the effective date of termination as established in this Article VII, the School shall (i) assemble in a safe place all operational, systems and other administrative manuals and material, and copies thereof, and (ii) the President of the School shall certify to Manager in writing that the School has ceased use of any proprietary materials relating to the Educational Program and has deleted the materials from all databases and storage media maintained by the School. At Manager's direction, the School will promptly permit representatives of Manager or its Affiliate to pick up all such materials at the School. Manager shall return to the School all student educational records and all School-titled equipment and material (if any). Notwithstanding the foregoing, in the event that the School closes for any reason, the Manager shall comply with Section 3314.44 of the Ohio Revised Code and instead transmit the educational records of each student to said student's school district of residence.

## **ARTICLE VIII. PROPRIETARY INFORMATION, OWNERSHIP AND LICENSE**

- 8.1 Proprietary Information and Ownership. The School acknowledges that Manager owns the intellectual property rights and interests in the curriculum, learning systems, assessment

systems and pedantic methods licensed to or utilized by the School during the Term of this Agreement ("**Protected Materials**") and to the name "ACCEL™" (such name being a trademark of Manager). The School acknowledges and agrees that it has no intellectual or property interest or claims in the Protected Materials, or such name and has no right to use the Protected Materials or such name, unless expressly agreed to in writing by Manager. In accordance with all laws and regulations, Manager shall have the right to install signs on the School facilities, including under the name of the School, describing the services provided by Manager or its assignees, including "Managed by ACCEL Schools" or "Educational Services Provided by ACCEL Schools." Upon any expiration or termination of this Agreement, those signs shall be promptly removed.

- 8.2 License. The Manager developed and owns proprietary rights to the Protected Materials and the Lorain Bilingual Academy name (the "Name"). The Manager hereby grants the School a limited revocable license to use the Protected Materials and the Name in connection with the School during the Term. When this Agreement is terminated or expires, the license granted herein shall automatically terminate and the School shall: (a) immediately cease using the Protected Materials and Name; (b) if the School chooses to continue doing business and/or will not dissolve within six (6) months of the termination or expiration of this Agreement, change its corporate name to some name other than the Name, which new name shall not consist in any variation or manner of the word or words Lorain Bilingual Academy, used alone or in any combination; and (c) notify the Sponsor, the ODOE and any other oversight entity including, but not limited to, the Ohio Secretary of State, of the name change. The School may not use the Protected Materials for any purpose other than strictly within the scope of the license granted in this Agreement without the prior written consent of the Manager.

## **ARTICLE IX. INDEMNIFICATION AND LIMITATIONS OF LIABILITIES**

- 9.1 Indemnification of Manager. To the extent permitted by Ohio law, the School will indemnify, defend and save and hold Manager and its Affiliates and all of their respective employees, officers, directors, subcontractors and agents (collectively, "**Representatives**") harmless against any and all penalties, claims, demands, suits or other forms of liability (including reasonable attorney's fees and costs) that may arise out of, or by reason of, any wrongdoing, misconduct or negligence by the School or its Representatives; noncompliance by any of them with any agreements, covenants, or undertakings of the School contained in or made pursuant to this Agreement; any misrepresentations of the School contained in or made pursuant to this Agreement; any action or omission by the School or its Representatives that results in injury, death or loss to person or property; and any violation by them of violation of State or federal law. In addition, the School will reimburse Manager, its Affiliates and their Representatives for any and all reasonable legal expenses and costs associated with the defense of any such penalty, claim, demand or suit. Further, the Parties acknowledge and agree that Manager and its Affiliates shall have no liability or responsibility for activities of the School that occurred prior to the Start Date, including, but not limited to, management of the School by any third parties. The indemnification requirements of this Section 9.1 may be met by the purchase of insurance

pursuant to ARTICLE X below. This indemnification obligation shall survive the termination or expiration of this Agreement.

- 9.2 Indemnification of the School. Manager will indemnify, defend and save and hold the School and its Representatives harmless against any and all penalties, claims, demands, suits or other forms of liability (including reasonable attorney's fees and costs) that may arise out of, or by reason of, any wrongdoing, misconduct, or negligence of Manager, its agents, employees or assigns or noncompliance by Manager with any agreements, covenants, or undertakings of Manager contained in or made pursuant to this Agreement, and any misrepresentation of the Manager contained in or made pursuant to this Agreement. In addition, Manager will 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 Section 9.2 may be met by the purchase of insurance pursuant to ARTICLE X below. This indemnification obligation shall survive the termination or expiration of this Agreement.
- 9.3 Defense. A Party seeking indemnification under this ARTICLE IX (the "*Indemnitee*") shall give notice to the indemnifying Party (the "*Indemnitor*") of a claim or other circumstances likely to give rise to a request for indemnification, promptly after the Indemnitee becomes aware of the same. The Indemnitor, with Indemnitee consent, which shall not be unreasonably withheld, conditioned or delayed, shall be afforded the opportunity to undertake the defense of and to settle by compromise or otherwise any claim for which indemnification is available under this ARTICLE IX. The Indemnitor's selection of legal counsel is subject to the Indemnitee's approval (which approval shall not be unreasonably withheld). If an Indemnitor so assumes the defense of any claim, the Indemnitee may participate in such defense with legal counsel of the Indemnitee's selection and at the expense of the Indemnitee. Indemnitor may not settle any claim against Indemnitee or otherwise consent to any final order or judgement regarding same if such settlement, final order or judgement includes an admission of wrongdoing in Indemnitee's or Affiliate's name unless Indemnitee or Affiliate, as applicable, consents in writing. If the Indemnitor, upon the expiration of the fifteen (15) days after receipt of notice of a claim by the Indemnitee under this ARTICLE IX, has not assumed the expense of the defense thereof, the Indemnitee may thereupon undertake the defense thereof on behalf of, and at the risk and expense of, the Indemnitor, with all reasonable costs and expenses of such defense to be paid by the Indemnitor.
- 9.4 Limitations of Liabilities.
- (a) Immunities and Statutory Limitations. The School will assert all immunities and statutory limitations of liability in connection with any third party claims arising from its operations, and will not waive any immunities or limitations without the prior written consent of Manager. Notwithstanding this ARTICLE IX, to the fullest extent permitted by law, the School will waive the defense of governmental immunity in any dispute between the Parties.
- (b) MAXIMUM OBLIGATIONS. EXCEPT AS TO THE PARTIES' INDEMNIFICATION OBLIGATIONS, TO THE EXTENT PERMITTED BY LAW

EACH PARTY'S MAXIMUM LIABILITY AND OBLIGATION TO THE OTHER PARTY AND THE EXCLUSIVE REMEDY FOR ANY CAUSE WHATSOEVER, REGARDLESS OF THE FORM OF ACTION, WHETHER IN CONTRACT OR IN TORT, INCLUDING NEGLIGENCE, RELATING TO THIS AGREEMENT SHALL BE LIMITED TO THE RECOVERY OF ACTUAL DIRECT DAMAGES UP TO THE AMOUNT OF FEES PAID UNDER THIS AGREEMENT IN THE TWELVE (12) MONTHS IMMEDIATELY PRECEDING THE DATE A CLAIM IS MADE.

- (c) ECONOMIC DAMAGES. EXCEPT IN CONNECTION WITH ITS INDEMNITY OBLIGATIONS EXPRESSLY SET FORTH HEREIN, NEITHER PARTY SHALL BE LIABLE FOR ANY INDIRECT, EXEMPLARY, PUNITIVE, SPECIAL, INCIDENTAL OR CONSEQUENTIAL DAMAGES, INCLUDING, WITHOUT LIMITATION, ANY LOST SAVINGS, LOST PROFITS, LOST SALES, BUSINESS INTERRUPTIONS, DELAY DAMAGES, OR LOST OR DESTROYED DATA, EVEN IF THAT PARTY HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES.
- (d) REASONABLENESS. NEITHER OCCASIONAL SHORT-TERM INTERRUPTIONS OF SERVICE OR PRODUCTS, WHICH ARE NOT UNREASONABLE UNDER COMPARABLE INDUSTRY STANDARDS NOR INTERRUPTIONS OF SERVICE OR PRODUCTS RESULTING FROM EVENTS OR CIRCUMSTANCES BEYOND MANAGER'S OR ITS AFFILIATES' REASONABLE CONTROL SHALL BE CAUSE FOR ANY LIABILITY OR CLAIM AGAINST MANAGER HEREUNDER, NOR SHALL ANY SUCH OCCASION RENDER MANAGER IN BREACH OF THIS AGREEMENT.

- 9.5 Right of Set-Off. Either Party may, but shall not be obligated to, set off against any and all payments due the other Party under this Agreement, any amount to which the Party is entitled to be indemnified hereunder provided that there has been a final judicial determination thereof.

## **ARTICLE X. INSURANCE**

- 10.1 Insurance Coverage. The School will maintain the types of and limits on insurance policies as follows unless different types and/or higher requirements are set forth in the Sponsorship Agreement: commercial general liability in amounts no less than \$1 million per occurrence and \$2 million in the aggregate; excess or umbrella extending coverage as broad as primary commercial general liability coverage in an amount no less than \$3 million; automobile in the amount of \$1 million; directors and officers/school leaders, employment practices liability and errors and omission, in amounts no less than \$1 million per occurrence and \$1 million in the aggregate; and employers liability in an amount no less than \$1 million. The insurance coverage shall be not only for the School, its directors, officers and employees, but also such policies shall name Manager, its Affiliates and their respective Representatives as additional insureds under such policies. School shall provide Manager with a certificate of insurance evidencing such coverage upon reasonable request. All insurance policies shall (a) be issued by companies in good standing and authorized to do business in the

State and having an AM Best rating of A or better, (b) written in standard form, and (c) provide that the policies may not be canceled except after thirty (30) days' written notice to the Manager and Sponsor. Upon Manager's request, the School shall deliver to the Manager a copy of such policies. The School will comply with any information requests from its insurer(s) and all reporting requirements applicable to such insurance.

- 10.2 Workers' Compensation Insurance. Each Party will maintain workers' compensation insurance as required by law, covering its respective employees.
- 10.3 Cooperation. Each Party will, upon request, present evidence to the other that it maintains the requisite insurance in compliance with the provisions of this ARTICLE X. Each Party will comply with any information or reporting requirements required by the other Party's insurer(s), to the extent reasonably practicable.

## **ARTICLE XI. REPRESENTATIONS AND WARRANTIES**

- 11.1 Representations and Warranties of Manager. Manager hereby represents and warrants to the School:
- (a) Manager is a duly formed limited liability company in good standing and is authorized to conduct business in the State.
  - (b) To the best of its knowledge, Manager has the authority under the Code and other applicable laws and regulations to execute, deliver, and perform this Agreement, and to incur the obligations provided for under this Agreement.
  - (c) Manager's actions under this Agreement have been and will be duly and validly authorized, and it will adopt any and all further resolutions or expenditure approvals required for execution of this Agreement.
  - (d) The services to be performed under this Agreement will be performed in a professional and workmanlike manner in accordance with commercially reasonable industry standards. THE FOREGOING WARRANTIES ARE IN LIEU OF ALL OTHER WARRANTIES, EXPRESS, IMPLIED, STATUTORY OR OTHERWISE, INCLUDING, BUT NOT LIMITED TO, ANY IMPLIED WARRANTIES OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE. MANAGER AND ITS AFFILIATES MAKE NO GUARANTEES AS TO THE GRADES OR TEST RESULTS TO BE OBTAINED BY THE STUDENTS. WITHOUT LIMITING THE FOREGOING, MANAGER AND ITS AFFILIATES MAKE NO GUARANTEES AND SHALL NOT BE LIABLE FOR NON-ACCESIBILITY OF ANY WEBSITE, SYSTEM OR PROGRAM, END-USER CONNECTION SPEED OR CONNECTIVITY PROBLEMS, REGARDLESS OF THE REASON.
- 11.2 Representations and Warranties of the School. The School hereby represents and warrants to Manager:
- (a) The Sponsorship Agreement (i) authorizes the School to operate and receive the State, federal and local education funds, as well as other revenues; (ii) approves the Education Program and other activities contemplated by this Agreement; and (iii) vests the School

with all powers necessary and desirable for carrying out the Education Program and other activities contemplated in this Agreement.

- (b) The School has the authority under the Code and other applicable laws and regulations 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) The School's actions have been duly and validly authorized, and the School will adopt any and all further resolutions or expenditure approvals required for execution of this Agreement; provided, however, that with regard to expenditures, such resolutions and approvals shall be required only if the relevant information is available to the School and the School has sufficient funds in the approved Budget to pay for such expenditures.
- (d) The School is not in breach of the terms of the Sponsorship Agreement.
- (e) The School has no intellectual or property rights or claims in the curriculum or other educational materials provided by Manager or in the name "ACCEL™" and will make no such claims in the future.
- (f) The School shall not after the Effective Date 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 Manager, which consent shall not be unreasonably withheld, conditioned or delayed.

11.3 Mutual Warranties. Each Party to the Agreement warrants to the other that there are no pending actions, claims, suits or proceedings, to its knowledge, threatened or reasonably anticipated against or affecting it, which if adversely determined, would have a material adverse effect on its ability to perform its obligations under this Agreement.

## ARTICLE XII. CONFIDENTIALITY AND NON-DISCLOSURE

12.1 Confidential Information. Without the prior written consent of the other Party, neither Party will at any time: (a) use for its own benefit or purposes or for the benefit or purposes of any other person, corporation or business organization, entity or enterprise; or (b) disclose in any manner to any person, corporation or business organization, entity or enterprise any trade secret, proprietary information, data, know-how or knowledge (including but not limited to curricula information, financial information, marketing information, cost information, vendor information, research, marketing plans, educational concepts and employee information), whether transferred in written or other tangible information, or transferred orally, visually, electronically or by any other means, belonging to, or relating to the affairs of a Party or any of its Affiliates (the "Disclosing Party") or received through association with the Disclosing Party (collectively, "Confidential Information"), whether the Confidential Information was received by the Receiving Party before or after the commencement of this Agreement. Confidential Information does not include information a Party receives (the "Receiving Party") and can show that it: (i) was known to the Receiving Party prior to its association with the Disclosing Party; (ii) had become available to the public other

than by a breach of this Agreement by the Receiving Party; or (iii) was disclosed to the Receiving Party by a third person or entity that was not prohibited by a contractual, fiduciary or other legal obligation to the Disclosing Party from disclosing the Confidential Information.

- 12.2 Care and Authorized Use. Receiving Party will use at least the same degree of care to prevent unauthorized use and disclosure of Confidential Information as that Party uses with respect to its own confidential information (but in no event less than a reasonable degree of care); use Confidential Information only in performance of its obligations under this Agreement; and not disclose or grant access to such Confidential Information to any third party except on a need-to-know basis and based on a confidentiality agreement with terms at least as strict as those contained in this Agreement. This Agreement does not prohibit the Receiving Party from disclosing Confidential Information it is legally compelled to disclose by oral questions, interrogatories, requests for information or documents, subpoenas, investigative demands, judicial orders or similar process. However, if the Receiving Party is legally compelled to disclose any Confidential Information, the Receiving Party covenants to use its best efforts to provide the Disclosing Party with prompt written notice (not more than forty-eight (48) hours after learning it will be compelled to disclose) so that the Disclosing Party may seek a protective order or other appropriate remedy and/or waive compliance with the provisions of this Agreement. In the event that a protective order or other remedy is not obtained, or that the Disclosing Party waives compliance with the provisions of this Agreement, the Receiving Party covenants to furnish only that portion of the Confidential Information that the Receiving Party is legally required to disclose, and to exercise its best efforts to obtain reliable assurance that the Confidential Information will be treated confidentially.
- 12.3 Disclosure to Departments of Education. Notwithstanding the forgoing, either Party may disclose this Agreement to the United States Department of Education (“USDOE”) or ODOE provided, however, that as a condition to such disclosure, the Party shall provide reasonable advance notice to the other Party, and use its commercially reasonable best efforts to obtain a written non-disclosure agreement with the USDOE and ODE to treat the Agreement in accordance with the terms of this Article 12.
- 12.4 Survival. This Article 12 shall survive any expiration or termination of this Agreement.

### **ARTICLE XIII MISCELLANEOUS**

- 13.1 Integration, Sole Agreement, and Third Party Beneficiaries. This Agreement (together with any exhibits, schedules or documents referred to herein) is the entire agreement between the Parties, sets forth all of the promises, covenants, agreements, conditions and undertakings of the Parties with respect to the subject matter hereof, and supersedes all prior and contemporaneous agreements and understandings, negotiations, inducements or conditions, express or implied, oral or written, if any, between the Parties with respect to the subject matter hereof. Except as limited by Section 13.7 below, this Agreement shall

be binding upon and is for the exclusive benefit of the Parties, and their respective affiliates, successors and permitted assigns, and not for the benefit of any third party, nor shall it be deemed to confer or have conferred any rights, express or implied, upon any other third party including a relationship in the nature of a third party beneficiary or fiduciary.

- 13.2 Force Majeure. In the event that either Party is delayed, hindered, or prevented from performing any act required under this Agreement by reason of fire or other casualty, acts of God, strike, lockout, labor dispute, inability to procure services or materials, failure of power, riots, terrorism, insurrection, war or other reason of like nature not the fault of the delayed Party, its performance shall be excused for the period of the delay and the time for performance shall be extended for a period equivalent to the period of the delay. This Section shall not excuse School from prompt payment of any amounts required by the terms of this Agreement. As soon as practicable, the Party experiencing a force majeure event shall: (a) notify the other Party about the event, and (b) resume performance of its obligations under this Agreement upon conclusion of the event.
- 13.3 Governing Law, Jurisdiction and Waiver of Jury Trial. 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. Jurisdiction and venue are proper in the county in which the School is located. The Parties each waive any right to trial by jury in any litigation involving this Agreement, including breach, interpretation or performance thereof.
- 13.4 Construction. The Parties acknowledge and agree that this Agreement is the result of extensive negotiations between the Parties and their respective counsel, and that this Agreement shall not be construed against either Party by virtue of its role or its counsel's role in the drafting hereof. Paragraph captions or headings of various articles, sections and other subdivisions are used herein for convenience of reference only and are not intended to be used, nor shall they be used, in interpreting this instrument or modifying, defining or limiting any of the terms or provisions hereof.
- 13.5 Counterparts. This Agreement may be executed in counterparts, each of which will be deemed an original, but both of which will constitute one and the same instrument. Each Party may rely on facsimile signature pages as if such facsimile pages were originals.
- 13.6 Notices. Either Party may change the address to which notice to it, or copies thereof, shall be addressed by giving notice thereof to the other Party hereto in conformity with the following. All notices and other communications permitted or required by the terms of this Agreement shall be in writing and sent to the Parties hereto at the addresses set forth below. Notice shall be deemed given: (a) upon receipt if sent by certified or registered mails, postage prepaid, return receipt requested, (b) on the day it is sent if by facsimile (with confirmation of transmission by sender's facsimile machine) and a copy simultaneously sent by nationally recognized overnight courier on a business day during normal business hours, or the next business day thereafter if sent on a non-business day or after normal business hours, (c) upon delivery if sent by personal delivery (with written confirmation of delivery), or (d) upon delivery if by sent by nationally recognized overnight carrier (with written confirmation of delivery). The addresses of the Parties are:

**To:**  
Lorain Bilingual Academy  
Attn: Board President  
[address]  
Facsimile:

**With a copy to:**  
Jamie Callender  
Callender Law Group  
100 E. Broad St, Suite 690  
Columbus, Ohio 43215

**To:**  
Accel Schools Ohio LLC  
Attn: Chief Operating Officer  
1650 Tysons Boulevard, Suite 600  
McLean, VA 22102  
Facsimile: 703-991-8930

**With a copy to:**  
Pansophic Learning US LLC  
Attn: General Counsel  
1650 Tysons Boulevard, Suite 600  
McLean, VA 22102  
Facsimile: 703-991-8930

- 13.7 Assignment. Neither Party may assign this Agreement without the prior written consent of the other Party (which consent shall not be unreasonably withheld). Notwithstanding the foregoing, Manager may, without prior written consent from or notice to the School, assign this Agreement to its Affiliates or in connection with a merger, acquisition, asset sale or corporate reorganization and may without the consent of the School, delegate the performance of but not responsibility for any duties and obligations of Manager hereunder to any affiliate, independent contractors, experts or professional advisors.
- 13.8 Amendment and Cumulative Effect. This Agreement will not be altered, amended, modified or supplemented except in a written document approved by the School and signed by both the Board President or other authorized officer of the School and an authorized officer of Manager. The rights and remedies of the Parties hereto are cumulative and not exclusive of the rights and remedies that they otherwise might have now or hereafter, at law, in equity, by statute or otherwise.
- 13.9 Waiver and Delay. Except to the extent that a Party hereto may have otherwise agreed in writing, no waiver by that Party of any condition of this Agreement or breach by the other Party of any condition of this Agreement or breach by the other Party of any of its obligations or representations hereunder or thereunder shall be deemed to be a waiver of any other condition or subsequent or prior breach of the same or any other

obligation or representation by the other Party, nor shall any forbearance by a Party to seek a remedy for any noncompliance or breach by the other Party be deemed to be a waiver by the first Party of its rights and remedies with respect to such noncompliance or breach.

- 13.10 Severability. If any term, condition or provision of this Agreement is invalid, illegal or incapable of being enforced by any rule of law or public policy, all other terms, conditions and provisions of this Agreement shall nevertheless remain in full force and effect so long as the economic or legal substance of the transactions contemplated hereby is not affected in any manner adverse to either Party. Upon such determination that any term, condition or provision is invalid, illegal or incapable of being enforced, the Parties shall negotiate in good faith to modify this Agreement so as to effect the original intent of the Parties as closely as possible in an acceptable manner to the extent that the transactions contemplated hereby are fulfilled to the extent possible.
- 13.11 Assertion of Claims. No Party shall bring any claim relating to this Agreement beyond one year after the date on which the Party became aware, or should reasonably have become aware, of the facts giving rise to any alleged liability of the other Party and, in any event, no later than two (2) years after (a) the last day of the Term, or (b) the earlier termination of this Agreement for any reason. The provisions of the preceding sentence shall not apply to claims for payment of amounts due under the "Fees" Section of this Agreement or loans.
- 13.12 Injunctive Relief and Dispute Resolution.
- (a) Injunctive Relief. The School acknowledges that the covenants set forth in Sections "Non-Solicitation/Non-Hiring", "Proprietary Information and Ownership", "License", and "Confidentiality and Non-Disclosure" above are reasonable in scope and content and necessary to protect the Manager and its business interests. The School understands and agrees that the breach or threatened breach of Sections "Non-Solicitation/Non-Hiring", "Proprietary Information and Ownership", "License", and "Confidentiality and Non-Disclosure" of this Agreement would give rise to the aggrieved Party suffering irreparable harm which harm would be inadequately compensable in money damages. Accordingly, in addition to any other remedies available to it, the aggrieved Party shall be entitled to a restraining order and/or an injunction prohibiting the breach or threatened breach of any provision, requirement or covenant of this Agreement, without the requirement of posting a bond, in addition to and not in limitation of any other legal remedies which may be available.
- (b) Dispute Resolution Procedure. The Parties agree that they will attempt in good faith to settle any and all disputes arising in connection with this Agreement amicably in the ordinary course of business. If a dispute is not resolved in the ordinary course of business, the aggrieved Party will submit its dispute in writing to the Board's president and Manager's Chief Operating Officer or equivalent who shall have ten (10) business days to seek resolution of the matter. The dispute resolution procedures described herein will be deemed complete upon the earlier to occur of the following:
- (i) the Parties mutually agree in writing to discontinue the dispute resolution procedures herein; and
  - (ii) the relevant dispute is not resolved within the time periods provided herein.

- (c) Arbitration. Subject to the provisions of Sections 13.12(a) and 13.12(d), any dispute arising out of or relating to this Agreement, including the breach, termination or validity hereof, shall be settled by binding arbitration in accordance with the rules of the JAMS with an arbitration panel consisting of a single arbitrator. The need for and scope of formal discovery will be determined by agreement of the Parties or, if the Parties are unable to agree, the arbitrator. The arbitrator will render an opinion/award within thirty (30) days from the date of the hearing, and the opinion/award shall be written and include findings of fact and conclusions of law. The Parties agree that an arbitration award ("Underlying Award") may be appealed pursuant to JAMS's Optional Arbitration Appeal Procedure ("Appeal Procedure") which the Parties adopt as it exists on the effective date of this Agreement; the Underlying Award shall, at a minimum, be a reasoned award; and the Underlying Award shall not be considered final until after the time for filing a notice of appeal pursuant to the Appeal Procedure has expired. Appeals must be initiated within thirty (30) days of receipt of an Underlying Award, as defined by JAMS, by filing a Notice of Appeal with JAMS. The arbitration will be governed by the Federal Arbitration Act, 9 U.S.C. §§ 1-16, and judgment upon the award rendered by the arbitration panel or, if applicable, a decision rendered under the Appeal Procedure, may be entered by any court having jurisdiction thereof. The arbitrator is not empowered to award any damages or losses described in the "Limitations of Liability" Section and each Party expressly waives and foregoes any right to the damages or losses.
- (d) Exceptions. Notwithstanding anything else in this Agreement, claims for monies due and claims for injunctive relief as provided for in Section 13.12(a) above, and/or claims for grant or financial assistance reimbursement due may at either Party's option be brought separately and immediately in a court of competent jurisdiction or pursued through arbitration as set forth above.
- (e) Shared Fees and Expenses. The fees and expenses of JAMS and the arbitration panel should be shared equally by the Parties before the arbitration award is made. The arbitration award shall require the Party which does not prevail in the arbitration to reimburse the prevailing Party for the one half of the fees and expenses of JAMS and arbitration panel paid by the prevailing Party.
- 12.13 Survival on Termination or Expiration. The following Articles and/or Sections shall survive termination or expiration of this Agreement: Consideration and Supplemental Programs (to the extent they relate to amounts owing for periods through the expiration or termination of this Agreement); Non-Solicitation/Non-Hiring; Termination of Agreement (to the extent they relate to obligations after expiration and termination); Proprietary Information, Ownership and License; Indemnification and Limitations of Liabilities; Confidentiality and Non-Disclosure; Interpretation, Sole Agreement and Third Party Beneficiaries; Governing Law, Jurisdiction and Waiver of Jury Trial; Construction; Counterparts; Notices; Assignment; Amendment and Cumulative Effect; Waiver and Delay; Severability; Assertion of Claims; Injunctive Relief and Dispute Resolution; Survival on Termination or Expiration; and any provision that, based on its nature, should survive.

*[signature page follows]*

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

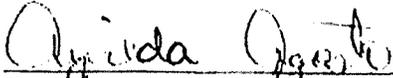
**Accel Schools Cleveland FB LLC**

**Lorain Bilingual Academy**

By: 

Name: Ronald J. Packard

Title: CEO

By: 

Name: Laila Agosto

Title: President

## **APPENDIX A**

### **INCENTIVE GOALS**

An additional one and one-half percent (1.5%) Management Fee annual bonus for a Performance Index score of ten (10) points above similar schools and/or a grade of "A" or "B" on value added score issued by the state of Ohio.