

Amended and Restated Management Agreement

by and between the

Midnimo Cross Cultural Middle School

and

Educational Solutions Co.

Effective July 1, 2012

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AMENDED AND RESTATED MANAGEMENT AGREEMENT

This Amended and Restated Management Agreement ("Agreement") is made effective as of the 1st day of July, 2007 between Educational Solutions Co. ("EdSolutions"), an Ohio non-profit corporation, by and through its Board of Directors, located at 1132 Windsor Avenue, Columbus, Franklin County, Ohio 43221, and Midnimo Cross Cultural Middle School ("School"), an Ohio non-profit corporation, by and through its Board of Directors, located at 1132 Windsor Avenue, Columbus, Ohio 43221.

RECITALS

The School is organized as an Ohio community school under the Ohio Revised Code ("Code"), including but not necessarily limited to Chapters 3314 and 1702. Ultimate authority over the School is vested in the Board of Directors (the "Board"). The School has been granted a Charter Contract ("Contract") by the St. Aloysius Orphanage ("Sponsor") to operate an Ohio community school.

EdSolutions is organized to support educational institutions, and to provide educational and management services and products, human resources administration, including school personnel and business management, curricula, programs, contract administration and technology. The products and services of EdSolutions are designed to serve the needs of the schools it supports.

EdSolutions and the School hereby desire to fully amend and restate the management agreement they entered into on July 1st, 2007, (the "Prior Agreement") under which EdSolutions contracted to manage and support the School based upon the EdSolutions educational program, and sound school and business principles and management.

THEREFORE, it is mutually agreed as follows:

**ARTICLE I
TERM**

This Agreement shall become effective on July 1, 2012, and is for a term of five (5) years, until June 30, 2017. Thereafter, this Agreement shall automatically renew for one (1) year terms, subject to the termination provisions in Article VIII below.

**ARTICLE II
CONTRACTING RELATIONSHIP**

- A. Agreement. The School hereby contracts with EdSolutions and EdSolutions agrees to manage the School in accordance with the terms of this Agreement and the School's Contract.
- B. Relationship and Status of the Parties. EdSolutions is a separate Ohio non-profit corporation, and is not a division or a part of the School. The School is an Ohio non-profit corporation authorized by the Code to operate as an Ohio public community school, and is not a division or a part of EdSolutions. EdSolutions and the School have received tax-exempt status under Section 501(c)(3) of the Internal Revenue Code ("IRC"). EdSolutions is an IRC Section 509(a)(3) supporting organization that was organized to support Ohio public community schools.
- C. Assignment/Assumption of Contracts. EdSolutions assumed the obligations of the School under its existing contracts (the "Assigned Contracts") on the effective date of the Prior Agreement. The School shall have a duty to satisfy and/or fulfill any contractual obligation or duty that arose under the Assigned Contracts prior to the effective date of the Prior Agreement. The School has or will, if required under the terms of any of the Assigned Contracts, obtain the written consent to assignment from the other party(ies) to the Assigned Contracts. In the event, the School is required to obtain the consent of a party to the assignment of a contract but is unable to, the School and Ed Solutions shall structure an agreement that will enable the School to meet its contractual obligations under such contract while allowing EdSolutions to administer or manage such contract.
- D. Designation of Agents. The Board of the School designates the directors of EdSolutions as agents of the School having a legitimate educational interest solely for the purpose of entitling such

persons to have access to education records under 20 U.S.C. §1232g of the Family Educational Rights and Privacy Act ("FERPA").

The parties wish to satisfy the requirements of Section 5 of Rev. Proc. 93-19, 1993 1 C.B., 526, so that the provision of EdSolutions' services under this Agreement does not cause the School's facilities to be treated as used in a private business use under Section 141(b) of the Internal Revenue Code of 1986, as amended.

ARTICLE III FUNCTIONS OF EDSOLUTIONS

A. Responsibility. EdSolutions shall be responsible and accountable to the School for the management of the School. The Executive Director of EdSolutions, or his delegate, will attend every meeting of the School's Board of Directors. The Executive Director or his delegate, subject to the ultimate authority of the School's Board, shall propose an agenda for and conduct each meeting of the School's Board of Directors. At its regularly scheduled Board meetings, the Executive Director or another representative of EdSolutions will account to the School for EdSolutions' management of the following:

- Personnel and Human Resources Administration
- Program of Instruction
- Purchasing
- Strategic Planning
- Public Relations
- Financial Planning
- Recruiting
- Compliance Issues
- Budgets
- Contracts
- Equipment and Facilities
- Such other reasonable responsibilities as EdSolutions may deem necessary to carry out the obligations under the Contract

B. Educational Program. The educational program shall be selected by and the program of instruction shall be implemented by EdSolutions. EdSolutions, by and through its Superintendent and through the head of the school ("Principal" for purposes herein), shall supervise the teaching

staff and the day-to-day implementation of the educational program. EdSolutions shall be responsible for the following areas:

- Educational Staff Recruitment;
- Educational Staff Professional Development;
- Management of day-to-day activities of Educational Staff;
- Evaluation of Educational Staff Performance;
- Oversight of course and curriculum design recommended by EdSolutions;
- Development, maintenance and administration of all State mandated and other testing;
- Parent education as deemed necessary; and
- Such other reasonable responsibilities as EdSolutions may deem necessary to carry out the obligations under the Contract;

C. Strategic Planning. EdSolutions shall continually assess the status of, formulate and, as necessary, revise strategic plans for the continuing educational and financial needs of the School.

D. Public Relations. EdSolutions shall manage the public relations strategy for the development of beneficial and harmonious relationships with parents, the community, the Sponsor and the State of Ohio.

E. Grants and Fund Raising. Either the School or EdSolutions, or both, shall locate grants and potential sources for donations and may hire consultants or other entities to assist with making application for and obtaining the same. Grants and/or private donations may be solicited or applied for by either party, either on behalf of the School or EdSolutions as mutually agreed to by the parties. All donations or grants received by and for the School shall be expended by EdSolutions exclusively for the benefit of the School. However, any federal grants received by or on behalf of the School that are to be used for the purchase of supplies, equipment, or other property shall be expended by the School (even though managed by EdSolutions), and the School, in conformance with federal regulation, shall retain title to such property.

F. Special Functions. Subject to the oversight and authority of the Board as provided herein, the services EdSolutions shall provide for the School shall include the following:

Operational Services

1. Financial Management

- ♦ Revenue and cash management
- ♦ Selection of benefit packages for School staff
- ♦ Management and monitoring of invoices
- ♦ Coordination of monthly budgets and financial reports to the Board of the School
- ♦ Coordination of yearly audits
- ♦ Management of banking relationships
- ♦ Revision of budget and financial planning
- ♦ Assistance in monitoring of Treasurer/Fiscal Officer

2. Compliance Management

- ♦ Student enrollment reports
- ♦ Annual report to the State of Ohio
- ♦ Reports to ODE (including EMIS)
- ♦ Recommendations of Policies for the Board and the School

3. Management of Equipment/Furniture/Property

- ♦ Selection and procurement of phone system, furniture, office machines, computers and other equipment
- ♦ Negotiation and arrangement of leases or purchase agreements
- ♦ Inventory of equipment
- ♦ Tracking and handling of surplus property
- ♦ Building Code compliance
- ♦ Repair and maintenance of personal property

4. Other

- ♦ Superintendent/CEO
- ♦ Administrative services management
- ♦ Management of non-teaching staff
- ♦ Professional development not related to teaching
- ♦ Management and negotiation of all contracts and purchased services including, but not limited to legal services
- ♦ Such other reasonable responsibilities as EdSolutions may deem necessary to carry out the obligations under the Contract
- ♦ Principals as needed

G. Delegation or Subcontracts. EdSolutions may delegate its responsibilities to employees of EdSolutions, or, EdSolutions shall have the right to subcontract with third parties to provide any or

all of the services it agrees to provide the School under this Agreement including but not limited to, payroll, fiscal services and/or any technology related services.

H. Place of Performance. Except for the daily instruction of the School's students, EdSolutions may perform its functions under this Agreement at any location within the State of Ohio. The School shall provide sufficient space at its premises to enable EdSolutions to carry out its duties and obligations that arise under this Agreement.

I. Student Recruitment. EdSolutions and the School shall be jointly responsible for the recruitment of students in compliance with the School's general recruitment and admission policies.

J. Legal Requirements. EdSolutions, in cooperation with the School, shall assist the School in meeting federal, state and local laws and regulations, and the requirements imposed by the Contract.

K. Rules and Procedures. EdSolutions shall recommend the adoption of and changes in policies, rules, regulations and procedures applicable to the School and shall manage, through its staff, the enforcement of such policies, rules, regulations and procedures adopted by the School or required by its Contract.

L. Grades and Student Population. EdSolutions shall make recommendations to the School concerning limiting, increasing or decreasing the number of grades offered and the number of students served per grade or in total. EdSolutions shall obtain the approval of the School's current Sponsor for any such changes, if required, and, the School shall cooperate in all such endeavors.

ARTICLE IV PERSONNEL AND TRAINING

A. Personnel Responsibility. EdSolutions shall select, hire and, if necessary terminate, all teaching, administrative or other staff, and evaluate, assign, discipline and transfer personnel consistent with state and federal law. EdSolutions, in its sole discretion, may remove any staff member, with reasonable cause (or otherwise if such staff member is an at-will employee).

B. Superintendent/CEO and Principals. EdSolutions shall select the administration and establish the terms of employment. EdSolutions shall hold the Superintendent/CEO and any Principal

accountable for the successful education of the students of the School and may delegate any obligations under this Agreement to such Principal.

C. Teachers. EdSolutions shall determine the number of teachers required for each grade level and subject taught in the School for each school year. During the school year EdSolutions shall evaluate the School's need for teachers, and make appropriate adjustments in teacher staffing and assignments. Teachers may work at the School on a full- or part-time basis. If assigned to the School on a part-time basis, such teachers may also work elsewhere as long as such other work is also part-time and, in the sole discretion of EdSolutions, does not interfere with their work at the School. Each teacher assigned to the School shall hold a valid teaching certificate or license issued by the State Board of Education of Ohio under the Code, or shall otherwise satisfy the requirements for non-certified teachers.

D. Support Staff. EdSolutions shall determine the number and functions of support staff required for the operation of the School for each school year. During the school year EdSolutions shall evaluate the School's staffing requirements and make appropriate adjustments to its staffing assignments and numbers.

E. Employer of Personnel. The personnel who perform services at the School shall be employees or contractors of EdSolutions and shall be compensated by EdSolutions subject to the payment provisions of Article VI.

ARTICLE V OBLIGATIONS OF THE SCHOOL

The School shall exercise good faith in considering and adopting the recommendations of EdSolutions including, but not limited to, recommendations concerning policies, rules, regulations, procedures, curriculum, budgets, expenditures, fund raising, public relations, and school entrepreneurial affairs. The School shall cooperate with EdSolutions in all of EdSolutions' obligations hereunder. The School authorizes EdSolutions to make the required contributions to the appropriate State Retirement Systems for its employees, from the Fee as defined below.

**ARTICLE VI
FINANCIAL ARRANGEMENTS**

A. Payment. The School shall pay or cause to be paid to EdSolutions, the revenues consisting of all amounts paid or payable to the School as state and federal per pupil allocations, transportation, technology or other operational funds, and private donations, endowments or grants applied for and received on behalf of the School (the "Fee"), excluding the lesser of two percent of the base state per pupil allocation, or, \$30,000, annually. The excluded amount will be retained by the School as a Board Reserve to be used for the School's benefit, including those purposes set forth in Article VI, Part C below, or may be accumulated into subsequent fiscal or school years. Both EdSolutions and the School agree that EdSolutions' compensation under this Agreement is reasonable compensation for the services it will provide under the Agreement and that the School shall have no rights in or claims with respect to the Fee once it is paid, so long as EdSolutions is not deemed to have breached this Agreement. The Fees paid to EdSolutions pursuant to this Agreement will be used solely to perform its obligations and duties that arise under this Agreement and to provide reasonable compensation to EdSolutions.

B. Expenses to be Covered by EdSolutions. EdSolutions shall be responsible for payment of the following costs and expenses incurred under this Agreement:

1. All wages, compensation and expenses of EdSolutions or the School including but not limited to those for the Principal, Treasurer, assistants, administrators, clerical staff, teachers and janitorial services. For purposes of this Agreement, the compensation of EdSolutions' employees shall include salary, fringe benefits, and city, state and federal tax withholdings to the extent required by law, and all other legitimate and reasonable related expenses or reimbursements;
2. Workers' compensation, Directors and Officers coverage for the Directors and Officers of EdSolutions and the Board of Directors of the School, and other insurance including, but not limited to, any necessary comprehensive or premises liability insurance;
3. All costs to accomplish the obligations of EdSolutions pursuant to Article III above;

4. Attorney fees necessitated by the obligations of EdSolutions pursuant to the Agreement and necessary to assure compliance and legal operations of the School;
5. All other costs allocated to EdSolutions in this Agreement;
6. EdSolutions office expenses and supplies;
7. The cost of all services of the ODE and/or the School's current Sponsor;
8. Leases for equipment and the School offices or facilities; and
9. Travel, lodging and other expenses incurred pursuant to services rendered by EdSolutions.

EdSolution's obligation to pay such expenses is, however, contingent upon EdSolutions receiving the Fee pursuant to Article VI, part A above and the adequacy thereof.

C. Expenses to be Covered by the School. The School shall be responsible from its Board Reserve, for payment of the following costs and expenses:

1. Expenses for fund raising and grant writing accomplished by the School;
2. Such other expenses for the benefit of the School at the Board's discretion; or
3. Mediator's fees pursuant to Article XII below.

D. Other Schools. The School acknowledges that EdSolutions may enter into similar management agreements with other Ohio public community schools. EdSolutions shall maintain separate and appropriate books and records for the receipts and expenses of the School and the other schools that EdSolutions manages, if any, and shall allocate to the School only those expenses incurred on its behalf. If EdSolutions incurs expenses which are not precisely allocable, then EdSolutions shall allocate such expenses among the community schools it manages on a prorated basis, based upon the number of students enrolled or upon such other equitable basis acceptable to the parties.

E. Financial Reporting of EdSolutions. EdSolutions shall provide the School's Board with:

1. a proposed and projected annual budget prior to the beginning of each fiscal year;

2. statements of all revenues received with respect to the School, and statements of all direct expenditures for services rendered to or on behalf of the School;
3. consultation to respond to all annual audits in compliance with state law and regulations;
4. reports on School operations and finances on at least a quarterly basis;
5. other information reasonably requested by the Board relating to the performance of the School; and
6. a reasonable opportunity to inspect, examine, audit and otherwise review the books, records, accounts, ledgers and other financial documents maintained by EdSolutions for the School.

F. **Grants.** The School shall provide EdSolutions with statements of all funds received by the School from grants applied for by the School, donations or endowments and statements of all expenditures and investments made with such funds, as well as with the Board Reserve funds.

G. **Loans.** The School or EdSolutions may make loans to the other party provided such loans are documented. The School, upon its dissolution or upon any termination of this Agreement by either party, shall pay in full all outstanding amounts due EdSolutions under any loan agreements, or pursuant to any notes, advances, or EdSolution's assumptions of debts related to the School, that are documented in writing.

ARTICLE VII ADDITIONAL PROGRAMS

The services provided by EdSolutions to the School under this Agreement consist of all management responsibilities during the school year and school day. This is a total performance Agreement. EdSolutions may recommend or establish additional programs including, but not limited to, parent, adult, or community education and pre-kindergarten, on such terms and conditions as EdSolutions determines beneficial to the School.

ARTICLE VIII
TERMINATION OF AGREEMENT WITH CAUSE

A. Termination by EdSolutions. EdSolutions may terminate this Agreement with or without cause, prior to the end of the term specified in Article I, within ninety (90) days after written notice from EdSolutions. Reasons for termination may include, but are not limited to, failure to make payments to EdSolutions as required by this Agreement, failure of the State of Ohio to adequately fund the operations of the School, or the School's failure to adhere to the personnel, curriculum, program or similar material recommendations of EdSolutions, however, termination can occur for any or no reason. Upon such termination, EdSolutions shall have the option to reclaim any usable property or equipment (e.g., copy machines, personal computers) provided or installed by EdSolutions from its Fee, and not paid for by the School through its Board Reserve, or to reclaim the depreciated cost of such equipment. Provided, however, all assets, to the extent fully paid for by the School through its Board Reserve or with federal or state grants that require that the School retain title to assets purchased with such grants, shall remain the property of the School.

B. Termination by the School. The School may terminate this Agreement after prior written notice to EdSolutions, upon the occurrence of either of the following:

1. Upon sixty (60) days prior written notice, in the event that EdSolutions shall be found guilty of a felony or fraud, gross negligence, or commits an act of willful or gross misconduct in the rendering of services under this Agreement; or
2. In the event that EdSolutions fails to remedy a material breach of its duties or obligations under this Agreement within six (6) months after written notice of the breach is provided to EdSolutions by the School, if EdSolutions has failed to cure and has failed to reasonably commence cure of such breach during the first three (3) months of the notice period.

C. Change in Law. If any federal, state or local law or regulation, or court decision has a material adverse impact on the ability of either party to carry out its obligations under this Agreement, then either party, upon written notice, may request renegotiation of the Agreement and if the parties are unable or unwilling to renegotiate the terms within ninety (90) days after the notice,

the party requesting the renegotiation may terminate this Agreement upon thirty (30) days further written notice.

**ARTICLE IX
PROPRIETARY INFORMATION**

To the extent that materials, documents or ideas were, or are, owned, designed, developed, formulated, written by or created by EdSolutions, the School agrees that EdSolutions shall own all copyright, trademark, licensure, royalty or other proprietary rights to all instructional materials, training materials, curriculum and lesson plans, and any other materials provided by EdSolutions, its employees, members, Board of Directors, officers or contractors. The School shall have the right to use such materials during the term of this Agreement. To the extent materials, documents or ideas were formulated by, written by or created by the School, the School shall have the sole and exclusive right to license such materials for use by other schools, districts, public schools, customers or other persons or entities or to modify and/or sell materials. The School shall treat any proprietary information owned, designed, developed, written or created by EdSolutions as though it were a trade secret or protected by copyright, and shall refrain from disclosing, publishing, copying, transmitting, modifying, altering or utilizing such proprietary information during the term of this Agreement or at any time after its expiration other than to the extent necessary for implementation of this Agreement and shall take such other actions as EdSolutions may reasonably request in writing to protect the same. The School shall take all necessary reasonable action to ensure that no employee or agent of the School discloses, publishes, copies, transmits, modifies, alters or utilizes the propriety information of EdSolutions in any manner other than permitted by this Article IX.

**ARTICLE X
INDEMNIFICATION**

The School covenants and agrees that it will indemnify and hold EdSolutions, and its officers, Board of Directors, members, agents, and employees harmless from any claims, losses, damages, costs, charges, expenses, liens, settlements or judgments, including interest thereon,

whether to any person, including employees of EdSolutions, or property or both, by reason of any negligence or omission on the part of the School arising directly out of or in connection with the School's performance under this Agreement, to which EdSolutions or any of its officers, Board of Directors, members, agents or employees may be subject, including but not limited to those related in any way to the School's failure to follow the recommendations of EdSolutions. The School shall not be liable to indemnify EdSolutions or any of its officers, Board of Directors, members, agents or employees for damages directly caused by or resulting from the sole negligence of EdSolutions or any of its Board of Directors, officers, members, agents or employees.

EdSolutions covenants and agrees that it will indemnify and hold the School and its officers, Board of Directors, agents and employees harmless from any claim, loss, damage, cost, charge, expense, lien, settlement or judgment, including interest thereon, whether to any person, including employees of the School, or property or both, by reason of any negligent act or omission on the part of EdSolutions, arising directly out of or in connection with EdSolutions' performance, under this Agreement, to which the School or any of its officers, Board of Directors, agents or employees may be subject. EdSolutions shall not be liable to indemnify the School or any of its officers, Board of Directors, agents or employees for damages directly caused by or resulting from the sole negligence of the School or any of its officers, Board of Directors, agents or employees.

ARTICLE XI WARRANTIES AND REPRESENTATIONS

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

parties, this Agreement will be a binding contract which shall be fully enforceable against the parties under the laws of the State of Ohio.

**ARTICLE XII
ALTERNATIVE 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, shall be submitted to mediation. Unless the parties agree upon a single mediator, the panel shall consist of three persons, including one person who is selected by the School, one selected by EdSolutions and one selected by the two mediators selected by the School and EdSolutions. The mediation shall be conducted in accordance with the rules of any local mediation or arbitration association mutually agreed to by the parties, such as the Columbus Bar Association, with such variations as the parties and the mediator unanimously accept. All mediators' fees shall be split equally between the School and EdSolutions. However, this paragraph is not intended to and nor shall it be construed to preclude or bar the School and/or EdSolutions from pursuing any available administrative remedy or action at law or in equity if the parties are unable to resolve their dispute through mediation.

**ARTICLE XIII
MISCELLANEOUS**

- A. Sole Agreement. This Agreement supersedes and replaces any and all prior agreements and understandings between the School and EdSolutions.
- B. Force Majeure. Neither party shall be liable if the performance of any part or all of this Agreement is prevented, delayed, hindered, or otherwise made impracticable or impossible by reason of any strike, flood, riot, fire, explosion, war, or act of God, sabotage, accident, or any other major casualty or similar cause beyond either party's control, and which cannot be overcome by reasonable diligence and/or without unusual expense.

C. Notices. All notices, demands, requirements and consents under this Agreement shall be in writing, shall be delivered to each party and shall be effective when received by the parties. Notice may be sent or delivered:

To EdSolutions:
Robert Stephens, Ph.D., Executive Director
1155 Highland Street
Columbus, OH 43201
Phone: 614-989-4588
Facsimile: 614-299-0908

To the School: Michelle Cross Cultural
middle school
1500 W 3rd Ave Ste 125
Columbus, OH 43212
Attn: President, Board of Directors
Phone: 614-299-1007
Facsimile: 614-299-3684

D. 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 be contained in this Agreement. By agreement of the parties, such invalidated covenant, phrase or clause shall be replaced or, absent such agreement, the remaining provisions shall be construed so as to effect the parties' original intent to the fullest extent possible.

E. Successors and Assign. This Agreement shall be binding upon, and inure to the benefit of the parties and their respective successors and assigns.

F. Entire Agreement. This Agreement is the entire agreement between the parties relating to the services provided and the compensation for such services.

G. Non-waiver. A party's failure to exercise any right, power or privilege under this Agreement shall not affect or limit 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 any of them may otherwise have.

H. Assignment. This Agreement shall not be assigned by either party without the prior written consent of the other party, provided, EdSolutions may without the consent of the Board delegate the performance for such duties and obligations of EdSolutions as specifically set forth herein.

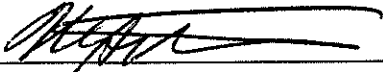



I. Survival of Termination. All representations, warranties and indemnities made herein shall survive termination of this Agreement.

J. Governing Law. This Agreement shall be governed by and enforced in accordance with the laws of the State of Ohio.

EDUCATIONAL SOLUTIONS CO.

MIDNIMO CROSS CULTURAL MIDDLE SCHOOL

By: 

By: 

Its: Executive Director

Its: Governing Board President

Date: 5/24/12

Date: 05-24-12

