

MANAGEMENT AGREEMENT

MANAGEMENT SERVICES AGREEMENT

This Management Services Agreement (the "Agreement") is made and entered into as of the 1st day of July 2019 by and between **PROMISE SCHOOLS**, a Michigan nonprofit corporation, and the **HIGHLAND PARK PUBLIC SCHOOL ACADEMY SYSTEM** (the "Academy"), a Michigan public school academy organized under Part 6A of the Revised School Code (the "Code").

WHEREAS, The Academy is a public school academy located at 45 E. Buena Vista St, Highland Park, MI 48203 authorized pursuant to a contract (the "Contract") issued by the School District of the City of Highland Park Board of Education ("HPBOE"); and

WHEREAS, The Academy operates under the direction of the Highland Park Public School Academy System Board of Directors ("Academy Board"); and

WHEREAS, Promise Schools is a Michigan nonprofit corporation which will provide for educational and managerial services to the Academy

WHEREAS, Promise Schools, through the educational and managerial services it provides, will implement a comprehensive educational program and management methodologies for the Academy; and

WHEREAS, The Academy Board desires to engage Promise Schools to provide certain services related to the Academy's Educational Programs as set forth in the Contract ("the Educational Undertakings") and operations.

NOW, THEREFORE, IT IS AGREED AS FOLLOWS:

ARTICLE I CONTRACTUAL RELATIONSHIP

A. **Authority.** The Academy has been granted a Contract by HPBOE to organize and operate a public school academy pursuant to the terms and conditions set forth in the Contract and related attachments. The Academy Board is authorized to enter into binding legal agreements with persons or entities as necessary for the operation, management, financing, and maintenance of the public school academy; provided that no provision of such a contract shall be effective to the extent it conflicts with the Academy Board's statutory prerogatives and duties or the terms of the Contract.

B. **Contract.** Acting under and in the exercise of such authority, the Academy Board hereby contracts with Promise Schools, to the extent permitted by law, for specified functions relating to the provision of educational services and the management and operation of the Academy; provided, that this Agreement is subject to all of the terms and conditions of the Contract. The Contract shall be deemed incorporated herein by reference.

C. **Status of the Parties.** Promise Schools is a Michigan non-profit corporation, and is not a division or part of the Academy. The Academy is a body corporate and governmental entity authorized by the Code, and is not a division or part of Promise Schools. The relationship between Promise Schools and the Academy is based solely on the terms of this Agreement. Promise Schools will be solely responsible for its acts and the acts of its agents, employees and subcontractors, provided, that this language shall not limit the indemnification agreements provided herein below. The parties to this Agreement intend that the relationship between them created by this Agreement is that of an independent contractor.

During the Term of this Agreement, the Academy may disclose otherwise confidential data and information to Promise Schools and its respective officers, directors, employees and designated agents to the extent permitted by Applicable Law in order that Promise Schools may operate the Educational Undertakings for the benefit of the students of the Academy, including without limitation, the Family Educational Rights and Privacy Act, the Individual with Disabilities Education Act ("IDEA"), 20 USC §1401 et seq., 34 CFR 300.610 -300.626; Section 504 of the Rehabilitation Act of 1973, 29 USC §794a, 34 CFR 104.36; the Michigan Mandatory Special Education Act, MCL 380.1701 et seq.; the with Disabilities Act, 42 USC §12101 et seq.; the Health Insurance Portability and Accountability Act ("HIPAA"), 42 USC 1320d -13200d-8; 45 CFR 160, 162 and 164; Privacy Act of 1974, 5 USC §552a; and the Michigan Social Security Number Privacy Act, MCL 445.84. Such disclosure shall be conducted only in a manner that is compliant with applicable law, including the disclosure processes related to the specific statute governing the information being disclosed.

Employees of Promise Schools, to the extent they have a legitimate educational interest related to providing the Educational Undertakings, defined herein shall be designated as "school officials" by the Academy Board under 20 U.S.C. § 1232g, the Family Educational Rights and Privacy Act ("FERPA"); and the Academy shall disseminate the notice(s) required pursuant to FERPA and its related regulations.

The Academy Board may by resolution designate an officer or employee of Promise Schools, as may be mutually agreed upon by Promise Schools and the Academy, to assist a member of the Academy Board with the performance of the duties of the CAO under the Uniform Budgeting and Accounting Act, MCL 141.421 et. seq., and to provide oversight of other contractors of the Academy, as designated by the Academy Board from time to time.

ARTICLE II TERM

A. **Term.** Except as otherwise provided in this Agreement, this Agreement shall become effective July 1, 2019 and shall cover three academic years, commencing on July 1, 2019 and ending on June 30, 2022 (the "Term"), with a two academic year automatic renewal, commencing on July 1, 2022 and ending on June 30, 2024, based on achievement of satisfactory performance review. If the Academy's Contract ends or is terminated for any reason, this Agreement shall be coterminous with the Academy's Contract.

B. **Renewal Consideration.** On or before 60 calendar days prior to the end of the school fiscal year in which the Term or any renewal term expires, the Academy shall review the performance of Promise Schools and provide notice of its intention to approve a new agreement for an additional year or years, subject to the negotiation of the terms for the new Agreement (unless it is during a renewal term) and the issuance or continued existence of a new Contract by HPBOE. In the event that the Academy Board takes no action as contemplated herein, and the Academy Board and Promise Schools do not renew this Agreement at the end of its Term, Promise Schools shall cease to be obligated by the terms and conditions recited herein as of midnight, June 30 (August 31 if the Academy has an extended school year in the year of termination) of the last effective year of this Agreement and shall have no further responsibility or liability to the Academy, except as provided in paragraph VII. H, Transition Services.

ARTICLE III FUNCTIONS OF PROMISE SCHOOLS

A. **Responsibility.** Promise Schools shall be responsible and accountable to the Academy Board for the Academy's administration, operation, and performance. On and after the Commencement Date, Promise Schools shall be responsible for the Academy's day-to-day management and shall undertake such responsibilities in good faith and in the Academy's best interests. Promise Schools is granted such power and authority on the Academy's behalf as is reasonably necessary or appropriate to perform its obligations under this Agreement. Nothing in this Agreement shall be construed to confer upon Promise Schools authority to act where the Michigan Revised School Code, Part 6A requires official action by the Academy Board.

B. **Evaluation Standards and Reporting.**

1. **Pupil Performance Standards and Evaluation.** Promise Schools is responsible for and accountable to the Academy Board for the performance of students who attend the Academy. Promise Schools shall implement pupil performance evaluations which permit evaluation of the educational progress of each Academy student, using measures of student and school performance required by the Contract and such additional measures as shall be mutually agreed between the Academy Board and Promise Schools that are consistent with the Contract. Promise Schools shall be responsible for the following:
 - a. Achieving educational goals and related measures as outlined in the Charter Contract.
 - b. Meeting Pupil Performance Standards that will be agreed to by Promise Schools and the Academy Board prior to the start of the 2019-20 school year and as will be contained within Exhibit B.
2. **Annual Budget Preparation.** Promise Schools will provide the Academy Board with a proposed annual budget in accordance with the provisions of Exhibit A.
3. **Financial Reporting.** Promise Schools shall provide financial reporting in accordance with the provisions of Exhibit A.

4. **Operational Reporting.** The Academy Board and Promise Schools shall establish annually a format for monthly data dashboard reporting to ensure that the Academy Board can regularly monitor student and school performance, operational, and financial performance. In order to enable the Academy Board to monitor Promise Schools' educational performance and the efficiency of its operation of the Academy, upon the request of the Academy Board, Promise Schools will provide written reports to the Academy Board on any topic of Academy activity or operations and which are consistent with this Agreement. These special reports will be provided in a timely fashion, but not less than one (1) week after the request for the report is received by Promise Schools unless the Academy Board and Promise Schools mutually agree upon an extended timetable.

C. **Educational Program.** Promise Schools shall implement all educational undertakings ("Educational Undertakings"), which is defined as all aspects of school operation including but not limited to administering the curriculum and all aspects of the "educational program" as defined in the Academy's Contract. Such items shall also include operationalizing the Academy calendar, administering the methods of pupil assessment, the ages and grades of instruction and all reporting requirements set forth in the Contract. In the event that Promise Schools determines that it is advisable to modify any of the Educational Undertakings set forth in the Contract, Promise Schools will provide written notification to the Academy Board specifying the changes it recommends and the reasons for the proposed changes. No changes in the Educational Undertakings shall be implemented without the prior written approval of the Academy Board, which may be fulfilled by action of the Academy Board at a meeting convened pursuant to the Michigan Open Meetings Act. Promise Schools shall provide the Academy Board with periodic written reports, at least annually, specifying the level of achievement of each of the Academy's Educational Undertakings as set forth in the Contract and detailing its plan for meeting any Educational Undertakings that are not being attained.

D. **Subcontracts.** It is anticipated that Promise Schools will utilize subcontracts to provide some of the services it is required to provide to the Academy including but not limited to transportation, food service and special education services. Promise Schools shall not subcontract the management, oversight or operation of the educational program, without the prior written approval of the Academy Board. Academy Board prior approval of other subcontracts is not required unless the costs for these subcontracted services exceed the funds appropriated for that purpose in the Academy's approved budget, or is in excess of the contract amount required to be approved by the Academy Board by the Academy's contractual obligations to HPBOE, or such approval is required by law. Regardless of whether Promise Schools chooses to subcontract one or more aspects of its duties hereunder, it shall nevertheless remain responsible to the Academy for the provision and quality of such services.

E. **Place of Performance.** Instruction services other than field trips and activities and courses at college campuses or internship sites will normally be performed at the Academy facilities. Promise Schools may perform functions other than instruction, such as purchasing, professional development, and administrative functions at off-site locations, unless prohibited by the Contract or applicable law. The Academy shall provide Promise Schools with sufficient office space for administration of the Academy. All student records and books of the Academy,

as well as copies of minutes of both regular and executive sessions of the Academy Board and all required compliance materials ("Academy Documents") shall be maintained at the Academy site at the Academy's sole expense. For purposes of this agreement, the parties acknowledge and agree that the term "acceptable format" shall mean a format compliant with all applicable law, including the Freedom of Information Act, and in compliance with all applicable requirements set by state and federal agencies, including any record retention schedule published by the Michigan Department of Education.

F. **Acquisitions.** All acquisitions made by Promise Schools for the Academy purchased with Academy funds, including, but not limited to, instructional materials, equipment, supplies, furniture, computers and other technology, shall be owned by and remain the property of the Academy. Promise Schools and its subcontractors shall comply with Section 1274 of the Code and the Academy Board's purchasing policy as if the Academy were making these purchases directly from a third party supplier and Promise Schools will not include any fees or charges to the cost of equipment, materials and supplies purchased from third parties when it seeks reimbursement for the cost of these acquisitions.

G. **Student Recruitment and Retention.** Promise Schools shall be responsible to ensure that the Academy undertakes the lawful recruitment, enrollment, and re-enrollment of students subject to the provisions of the Contract. Students shall be enrolled in accordance with the procedures set forth in the Contract and in compliance with applicable law. Promise Schools shall follow all applicable procedures regarding student recruitment, enrollment and lottery management, and shall be responsible for publication of appropriate public notices and scheduling open houses.

H. **Student Due Process Hearings.** Promise Schools shall ensure that students are provided with procedural and substantive due process in conformity with the requirements of state and federal law regarding discipline, special education, confidentiality and access to records, to an extent consistent with the Academy's own obligations, and as set forth in the Academy Board policies and Student Handbook. The Academy Board shall retain the right to provide due process as required by law and to determine whether any student will be expelled. In making any decision regarding the suspension or expulsion of a student, Promise Schools will act in conformity with Michigan law – including, but not limited to, sections 1310 through 1311 of the Michigan Revised School Code, MCL 380.1310 through 380.1311. In the event that Promise Schools facilitates a student due process hearing, they shall inform the Academy Board that an expulsion hearing is scheduled as well as the result of the hearing.

I. **Legal Requirements.** Promise Schools shall be responsible to ensure that the Academy provides Educational Programs that meet federal, state, and local requirements, and the requirements imposed under the Code and Contract, unless such requirements are or have been waived.

J. **Rules and Procedures.** The Academy Board shall adopt rules, regulations and procedures applicable to the Academy and Promise Schools is directed to enforce the rules, regulations and procedures adopted by the Academy Board. Promise Schools shall assist the

Academy Board in its policy making function by recommending the adoption of reasonable rules, regulations and procedures applicable to the Academy.

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

L. **Authority.** Promise Schools shall have the authority and power necessary to undertake its responsibilities described in this Agreement, except in cases wherein such power may not be delegated by law nor approved by the Academy Board.

M. **Compliance with Academy's Contract.** Promise Schools agrees to perform its duties and responsibilities under this Agreement in a manner that is consistent with the Academy's obligations under the Contract issued by the HPBOE. The provisions of the Academy's Contract shall supersede any competing or conflicting provisions contained in this Agreement. Promise Schools will not act in a manner that will cause the Academy to be in material breach of its Contract with HPBOE, as determined by HPBOE. Any action or inaction by Promise Schools that is not cured within 60 calendar days of notice thereof which causes the Charter Contract to be put in jeopardy of revocation, termination, or suspension by HPBOE is a material breach.

N. **Additional Programs.** The services provided by Promise Schools to the Academy under this Agreement consist of the Educational Undertakings as set forth herein and the educational program and all other aspects of operating the school and providing instruction as set forth in the Contract, as the same may change from time to time. The Academy Board may decide to provide additional programs. Any revenues collected from such programs will go directly to the Academy. The Academy may also purchase additional services from Promise Schools at a mutually agreeable cost.

O **Good Conduct.** Promise Schools, its employees, contractors and subcontractors, as representatives of the Academy, shall be expected to conform to the highest ethical and legal standards expected of public officials, in their dealings with the Academy and otherwise. Likewise, the Academy Board and its individual members shall be expected to conform to the highest ethical and legal standards expected of public officials in their dealings with Promise Schools and its agents and subcontractors.

P. **Marketing.** Promise Schools may place their brand/logo on Highland Park Public School Academy System marketing materials.

Q. **Budget Information.** On an annual basis, the Promise Schools shall provide the Academy Board all of the same information that a school district is required to disclose under section 18(2) of the State School Aid Act, MCL 388.1618(2), for the most recent school fiscal year in which the information is available. Within thirty (30) calendar days of receiving the information under section 18(2), Promise Schools shall make this information publicly available on the Academy's website on behalf of the Academy Board, in a form and manner prescribed by the Michigan Department of Education. Promise Schools shall update said information as it is revised or amended.

R. **Privacy.** Except as permitted under the Code, Promise Schools shall not sell or otherwise provide to any entity any personally identifiable information that is part of an Academy student's education records. If Promise Schools receives information that is part of an Academy student's education records, Promise Schools shall not sell or otherwise provide the information to any other person except as permitted under state or federal law – including the Family Educational Rights and Privacy Act, 20 USC 1232g. For purposes of this section, the terms “education records” and “personally identifiable information” shall have the same meaning as those terms in section 1136 of the Code, MCL 380.1136. In the event Promise Schools or its staff assigned to the Academy receives a request under Michigan's Freedom of Information Act for information related to any student data, it shall apply the exemption in MCL 15.243(2). Promise Schools shall also abide by and implement MCL 380.1136.

S. **Data Breach.** Promise Schools shall develop and maintain, with the Academy Board's approval, a data breach response plan to address the release of personally identifiable information from Academy education records or other information not suitable for public release. In the event of a data breach, Promise Schools and the Academy shall follow the data breach response plan. The data breach response plan will be incorporated into the Academy's technology plan.

ARTICLE IV OBLIGATIONS OF THE BOARD

A. **Oversight.** The Academy Board is responsible for the governance and oversight of the Academy.

B. **Board Policy Authority.** The Academy Board is responsible for determining the fiscal and academic policies that will govern the operation of the Academy, including but not limited to, policies relative to the conduct of students while in attendance at the Academy or enroute to and from the Academy and regulations governing the procurement of supplies, materials and equipment. The Academy Board shall exercise good faith in considering the recommendations of Promise Schools on issues including, but not limited to, policies, rules, regulations, procedures, curriculum and budgets, subject to the constraints of law and requirements of the Contract.

C. **Building Facility.** The Academy Board is responsible for the acquisition by either purchase or lease of a building facility that complies with all of the requirements of the Contract and applicable law. The Academy Board is also responsible for the establishment of a capital reserve to support major maintenance and capital projects and for dedicating budget resources to support the facility's maintenance and operation.

D. **Academy Employees.** The Academy Board may employ such employees as it deems necessary. The cost to employ Academy employees shall be paid by the Academy Board. This paragraph does not apply to individuals employed by Promise Schools or any entity which Promise Schools subcontracts with to provide services pursuant to this Agreement.

E. **Educational Consultants.** The Academy Board may retain an educational consultant or consultants to review the operations of the Academy and the performance of Promise Schools under this Agreement. Promise Schools shall cooperate with the educational consultant or consultants and will provide those individuals with prompt access to records, facilities, and information as if such requests came from the full Academy Board. Promise Schools shall have no authority to select, evaluate, assign, supervise or control any educational consultant retained by the Academy Board. The cost to hire an educational consultant shall be paid by the Academy Board.

F. **Legal Counsel.** The Academy Board shall select and retain legal counsel to advise it regarding its rights and responsibilities under the Contract, this Agreement and applicable law.

G. **Audit.** The Academy Board shall select and retain an independent auditor to perform the annual financial audit in accordance with the Contract and applicable state law.

H. **Budget.** The Academy Board is responsible for adopting a budget in accordance with the provisions of the Uniform Budgeting and Accounting Act, MCL 141.421 et seq, that has adequate resources to fulfill its obligations under the Contract, including but not limited to its oversight of Promise Schools, lease payments, the organization of the Academy, negotiation of the Contract and any amendments, payment of employee costs, insurance required under the Contract and this Agreement, the annual financial audit and retention of the Academy Board's legal counsel and consultants. In addition, the Academy Board is responsible for determining the budget reserve amount included as part of the Academy's annual budget, for implementing fiscal policies that will assist the Academy in attaining the stated budget reserve amount and for approving necessary amendments to the budget to reflect necessary deviations from the adopted budget. The budget may be amended from time to time as deemed necessary by the Academy Board.

I. **Academy Funds.** The Academy Board shall determine the depository institution of all funds received by the Academy in compliance with MCL 380.1221. The Academy Board or Academy Board's treasurer shall deposit all funds received by the Academy in the Academy's depository account in the name of the treasurer as an officer of the Academy and in the manner and form prescribed by the Academy Board. Signatories on the depository account shall be Academy Board members and may also include Promise Schools officers if any as authorized by the Academy Board, which the Academy Board may or may not undertake, in its sole discretion. All interest or investment earnings on Academy deposits shall accrue to the Academy. The Academy Board shall provide Academy funding on a consistent and timely basis to Promise Schools to fulfill its obligations under this Agreement.

J. **Governmental Immunity.** The Academy Board shall determine when to assert, waive or not waive its governmental immunity.

ARTICLE V EVALUATIONS OF PROMISE SCHOOLS

A. **Evaluation of Promise Schools.** The Academy Board shall evaluate the performance of Promise Schools at least annually to provide Promise Schools with an understanding of the Academy Board's view of its performance under this Agreement. The Academy Board will determine the format to conduct this evaluation, but will seek reasonable input as to said form from Promise Schools as to same. The evaluation of Promise Schools will, at a minimum, be written and consist of a review of Promise Schools' ability to meet and exceed the goals stated in the Academy's Contract, progress in meeting pupil performance standards outlined in paragraph III.F. of this Agreement, a review of Promise Schools' performance of its responsibilities under this Agreement, and any other factors of concern to the Academy Board. Promise Schools shall be entitled to provide a written response to the evaluation which shall be maintained in the Academy Documents. The failure of the Academy Board to formally evaluate Promise Schools in a given year shall cause Promise Schools' performance in the year in question to be presumed "satisfactory."

B. **Evaluation of Promise Schools Staff.** Promise Schools shall abide by MCL 380.1249 and applicable law as the Academy Board designee and in so doing shall undertake such actions required by MCL 380.1249 and applicable law as it relates to evaluation of all staff assigned to the Academy who must be evaluated.

ARTICLE VI FINANCIAL ARRANGEMENT

A. **School Source of Funding.** As a Michigan public school, the source of funding for the Academy is State School Aid payments based upon the number of students enrolled in the Academy combined with such other payments as may be available from state and federal sources for specific programs and services.

B. **Other Revenue Sources.** In order to supplement and enhance the state school aid payments and improve the quality of education at the Academy, the Academy Board and Promise Schools shall endeavor to obtain revenue from other sources. All funds received by Promise Schools or the Academy from such other revenue sources shall inure to and be deemed the property of the Academy, except as otherwise agreed by the parties in writing.

C. **Compensation for Services.** The Academy shall pay Promise Schools an annual fee equal to ten percent (10%) of the total state revenues that the Academy receives, directly or indirectly, from the State of Michigan pursuant to the State School Aid Act of the 1979, as amended, for the particular students enrolled in the Academy. In the event that this Agreement is terminated mid-term, such fee shall be prorated for months of actual service, in accordance with Article VII, subsection F.

D. **Reasonable Compensation.** The Academy acknowledges and agrees that compensation payable to Promise Schools under this Agreement is reasonable compensation for the services to be rendered by Promise Schools to the Academy under this Agreement. Promise Schools' compensation for services under this Agreement will not be based, in whole or in part, on a share of net operating budget surplus from the operation of the Academy.

E. Payment of Educational Undertakings Costs. In addition to the Academy's obligation to reimburse Promise Schools for services as provided in paragraph VI. C., supra, all costs reasonably incurred in providing the Educational Undertakings at the Academy shall be paid by the Academy. Such costs shall include, but shall not be limited to, curriculum materials, professional development, textbooks, library books, costs for computer and other equipment, software, supplies utilized at the Academy for educational purposes, services provided pursuant to subcontract, building payments, maintenance, utilities, capital improvements, costs for personnel provided at the Academy either by Promise Schools or through an entity with which Promise Schools subcontracts for staff (including payroll and benefits support fees), and marketing and development costs. Any such costs paid by or charged to the Academy shall be limited to those costs specific to the Academy program, and shall not include any costs for the marketing, development, or personnel of Promise Schools or otherwise. The Academy Board must be informed of the level of compensation and fringe benefits provided to employees of Promise Schools assigned to the Academy.

The Academy shall not reimburse Promise Schools the costs for the time of Promise Schools' principals, directors, officers, or shareholders in providing Services to the Academy. Corporate costs including costs or expenses of the management and operation of Promise Schools, shall not be charged to or reimbursed by, the Academy. Promise Schools shall also not receive reimbursement for its costs and/or damages associated with employee litigation against Promise Schools, unless such litigation arises due to actions taken by or at the direction of the Academy or in any situation which the Academy is subject to indemnification obligations.

F. Payment of Payroll. Promise schools shall invoice the Academy for payroll no later than ten business days prior to each payroll date. The payroll invoice shall include the estimated payroll costs for the next payroll run, as well as any adjustments from the prior payroll run resulting from differences in estimated and actual payroll costs. Promise Schools shall be advanced funds for payroll costs no later than the third business day preceding each payroll date for Promise Schools' employees performing services at the Academy. "Payroll Costs" include salary, benefits, and other costs attributable to personnel assigned to perform services at the Academy under this Agreement, including but not limited to gross wages, FICA, Medicare, FUTA, SUTA, Workers' Compensation Insurance, Professional Liability Insurance, employer portions of health, dental, vision and life insurance, payroll and benefits support fees, and 410K employer contributions (if any). Said funds shall be deposited by the Academy into the payroll account designated by Promise Schools. If Payroll Costs have not been funded by the Academy by the payroll date, Promise Schools will make final payroll payments and may send lay-off notices to Promise School employees. At that time, Promise Schools will also provide the Academy an invoice for all accrued Promise Schools' staff wages (earned but not yet paid) for employees and staff assigned to the Academy for payment.

G. Reimbursement for Advancement of Funds. On occasion, Promise Schools may advance funds for the operation of the Educational Undertakings, in which case Promise Schools will submit fees and expenses and properly presented documentation to the Academy Board for approval and reimbursement at the next regularly scheduled meeting. The Academy Board will advance funds to Promise Schools for the fees and expenses associated with the Academy's operation provided that documentation for the fees and expenses are provided for Academy

Board ratification and are provided for in the Academy's budget, as amended from time to time. In paying costs on behalf of the Academy, Promise Schools shall not charge an added fee. Reimbursable costs shall be incorporated in the budgets approved by the Academy Board. Each budget shall contain the Fee and reimbursable costs, including but not limited to, those associated with employment of Promise Schools' personnel at the Academy. Any costs reimbursed to Promise Schools that are determined by the independent audit not to be reasonably incurred on behalf of the Educational Program of the Academy shall be promptly returned to the Academy by Promise Schools.

H. Time and Priority of Promise Schools Management Payment. The compensation due to Promise Schools pursuant to Paragraph C of this Article shall be calculated for each school year at the same time as the State of Michigan calculates the State School Aid, and adjustments to such calculation shall occur at the same time as the State of Michigan makes adjustments to the State School Aid. Promise Schools shall receive its compensation pursuant to Paragraph C of this Article in eleven (11) installments beginning in October of each academic year and ending in August of such academic year. Such installment amounts shall be due and payable within ten (10) calendar days of receipt by the Academy of each of its State School Aid payments. Payments due and owing to Promise Schools pursuant to Paragraph E of this Article shall be made by the Academy to Promise Schools on the last day of each month, and shall be 10% of each month's state aid payment from the State of Michigan. The sum of these monthly payments shall constitute the 10% management fee that is discussed herein.

I. No Related Parties or Common Control. In interpreting this Agreement and in the provision of the required services, Promise Schools shall not have any role or relationship with the Academy that, in effect, substantially limits the Academy's ability to exercise its rights, including cancellation rights, under this Agreement. As required by the Academy's Articles of Incorporation and Bylaws, the Academy Board may not include any directors, officer or employee of a management company that contracts with the Academy. In furtherance of such restriction, it is agreed between the Academy and Promise Schools that none of the voting power or governing body of the Academy will be vested in Promise Schools or its directors, members, managers, officers, shareholders and employees, and the Academy and Promise Schools will not be related parties as defined in Treas. Reg. § 1.150-1(b).

The Academy shall satisfy its payment obligation under this Article to Promise Schools in the following order of priority: (1) to reimburse Promise Schools pursuant to Paragraph E of this Article for sums due and owing for previous months; (2) to reimburse Promise Schools pursuant to Paragraph E of this Article for sums due and owing for the current month; (3) to pay Promise Schools pursuant to Paragraph C of this Article for installment payments due and owing for previous months; and (4) to pay Promise Schools pursuant to Paragraph C of this Article for installment payments due and owing for the current month.

J. Audit Report Information. Promise Schools will make all of its financial and other records related to the Academy available to the Academy, the independent auditor selected by the Academy Board, and the HOBEO upon request.

K. Other Financial Relationships. Any lease, promissory notes or other contingent negotiable instruments, lease-purchase agreements or other financing agreements between the Academy and Promise Schools shall be contained in a document separate from this Agreement. Promise Schools does not enter this Agreement with an interest in entering into promissory notes or other financing agreements and is not expected by the Academy to serve as guarantor for promissory notes or other financing agreements through other lenders. Promise Schools shall not enter into any lease, promissory note, or other negotiable instruments, lease-purchase agreements, or other financing agreements on behalf of the Academy that extends beyond the duration of this Management Agreement without prior approval from the Academy Board.

L. Access to Records. Promise Schools shall keep accurate financial, educational, personnel, and student records pertaining to its operation of the Academy, together with all Academy financial records prepared by or in the possession of Promise Schools, and shall retain all of these records in accordance with applicable state and federal requirements. Financial, educational, operational and student records that are now or may in the future come into the possession of Promise Schools remain Academy records and are required to be returned by Promise Schools to the Academy upon demand, provided that Promise Schools may retain copies of records necessary to document the services provided to the Academy and its actions under the Agreement. However, the Academy Board shall not unreasonably restrict Promise Schools' or its agents' and subcontractors' access to Academy Documents. Promise Schools and the Academy shall maintain the proper confidentiality of personnel, student and other records as required by law. All Academy records shall be physically or electronically available, upon request, at the Academy's physical facilities. The financial, educational, operational and student records pertaining to the Academy are public documents subject to disclosure in accordance with the provisions of applicable law. This Agreement shall not be construed to restrict HPBOE's or the public's access to these records under applicable law or the Contract.

M. Reporting Compliance. Promise Schools shall provide to the Academy Board annually all of the same information that a school district is required to disclose under section 18(2) of the state school aid act of 1979, MCL 388.1618, for the most recent school fiscal year for which that information is available. On behalf of the Academy Board, Promise Schools shall make such information available on the Academy's website in a form and manner prescribed by the Michigan Department of Education and by applicable law. Promise Schools shall make available to the Academy Board all information concerning the operation and management of the Academy, including without limitation the information described in the Contract, available to the Academy as deemed necessary by the Academy Board. On behalf of the Academy, Promise Schools shall make such information available to the public in the same manner and to the same extent as is required for public schools and school districts under Applicable Law.

Promise Schools shall also marshal and maintain the reporting information required under MCL 380.503(6)(l)&(m) on behalf of the Academy Board. On behalf of the Academy Board, Promise Schools shall make such information available on the Academy's website in a form and manner prescribed by applicable law.

ARTICLE VII PERSONNEL AND TRAINING

A. **School Leader.** The terms of employment of the School Leader shall be determined by Promise Schools. Promise Schools shall have the sole authority, consistent with the subparagraph B, below, to hire, compensate, evaluate, assign, discipline, transfer and terminate the School Leader, and to hold the School Leader accountable for the performance of the Academy. Promise Schools will listen and consider any concerns, feedback, or criticisms the Academy's Board has relative to the School Leader. Prior to the placement of a new School Leader at the Academy, other than in an interim capacity, the Academy Board shall have an opportunity to meet with the candidate or review the candidate's qualifications and to provide feedback to Promise Schools. However, Promise Schools shall have the ultimate authority to place the School Leader at the Academy. The School Leader shall have a valid administrator certificate issued by the State Board of Education or be in the process of completing an alternate certification program, as required by the Code.

B. **Personnel.** Promise Schools shall be responsible for the selection and hiring of qualified personnel to perform services at the Academy. All teaching staff working at the Academy shall be appropriately certified and considered highly qualified. Promise Schools shall have the responsibility and authority, subject to subparagraph A above, to select, hire, evaluate, assign, discipline, transfer, and terminate personnel, or subcontract therefor, consistent with the Budget, applicable law, and this Agreement. No contracts between Promise Schools and staff assigned to the Academy (including by way of example and not limitation, administrators, teachers, counselors and the like) shall contain non-compete agreements of any nature whatsoever.

C. **Employee Bonuses.** Promise Schools shall establish bonus criteria for all personnel assigned to work at the Academy, calculate employee bonuses based on performance data, and ensure payment of bonuses subject to the availability of funds in the bonus budget approved by the Academy Board on an annual basis. The Academy Board will be provided the opportunity to give feedback on bonus criteria used by Promise Schools.

D. **Criminal Background Checks.** As part of its services under this Agreement, Promise Schools will, to the extent permitted by applicable law, be responsible for conducting or arranging for criminal background and conduct checks on its employees assigned to the Academy to ensure that the Academy fulfills its responsibilities to: a) conduct criminal background and record checks required by Applicable Law; and, b) maintain evidence that it has performed such actions.

E. **Unprofessional Conduct Checks.** Promise Schools agrees that it will conduct unprofessional conduct checks in accordance with MCL 380.1230b before hiring an employee assigned to work at the Academy.

F. **Training.** Promise Schools shall be responsible for ensuring that all staff members assigned to work at the Academy including, the Administrators, teachers and paraprofessionals, receive training required by law and which is consistent with the Academy mission.

ARTICLE VIII TERMINATION OF AGREEMENT

A. Termination by the Academy for Cause. This Agreement may be terminated by the Academy for cause prior to the end of the term specified in Article II in the event that Promise Schools fails to remedy a material breach within a period reasonable under the circumstances, which shall not be longer than sixty (60) calendar days after notice from the Academy. Material breach may include, but is not limited to, a failure to carry out its responsibilities under this Agreement such as a failure to make required reports to the Academy Board, failure to account for its expenditures or to pay operating costs (provided funds are available to do so), or failure to meet or make appropriate progress towards meeting the outcomes stated in Paragraph III.F. of this Agreement and the Contract (which failure is not proximately caused by the Academy Board); a violation of the Contract or of applicable law and any action or inaction by Promise Schools that places the Academy's Charter Contract in jeopardy of revocation, termination or suspension as discussed above. In order to terminate this Agreement for cause, the Academy Board is required to provide Promise Schools with written notification of the facts it considers to constitute material breach and a reasonable period of time within which Promise Schools has to remedy this breach. After the period to remedy the material breach has expired and if Promise Schools has failed to remedy the breach, the Academy Board may terminate this Agreement by providing Promise Schools with written notification of termination.

It is understood by Promise Schools and the Academy that the Authorizer's metrics of Educational Performance, and growth towards those metrics, is essential and constitutes a high performing school (metrics listed in Exhibit B). The parties also agree that the public measurement is the State designated assessment, as may be amended from time-to-time by the state, and that continued growth and comparison of first the composite district and second the state benchmarks is the desired goal. Promise Schools in cooperation with the Academy will work toward attainment of these Educational Performance metrics.

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

C. Agreement Coterminous With Academy's Contract. If the Academy's Contract issued by HPBOE is revoked, terminated or a new charter contract is not issued to the Academy

after expiration of the Academy's Contract, this Agreement shall automatically be suspended or terminated, as the case may be, on the same date as the Academy's Contract is suspended, revoked, terminated or expires without further action of the parties. The Academy shall pay to Promise Schools all amounts due and owing for services provided up to the date of termination and Promise Schools shall have no further responsibility or liability to the Academy, except as set forth in Paragraph VIII. H.

D. Termination by Either Party Without Cause. Promise Schools or the Academy Board may elect to terminate the Agreement, without cause, at the end of a school year. Promise Schools shall give the Academy Board written notification of termination at least one-hundred eighty (180) calendar days prior to the termination date. The Academy Board shall give Promise Schools written notification of termination at least one-hundred eighty (180) calendar days prior to the termination date.

E. 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 30 calendar days after the notice, the party requiring the renegotiation may terminate this Agreement on 60 calendar days further written notice.

F. Effective Date of Termination. In the event this Agreement is terminated by either party prior to the end of the term specified in Article II, the termination will not become effective until the end of that school year absent extenuating circumstances.

G. Rights to Property Upon Termination. Upon termination of this Agreement all equipment, whether purchased by the Academy or by Promise Schools with state school aid funds or other funds secured by the Academy, shall remain the exclusive property of the Academy. Promise Schools shall have the right to reclaim any usable property or equipment (e.g., including, but not limited to, desks, computers, copying machines, fax machines, telephones) that were purchased by Promise Schools with Promise Schools funds. Fixtures and building alterations shall not become the property of Promise Schools.

H. Transition. Transition. In the event of termination or expiration of this Agreement or if this Agreement is terminated due to a Contract revocation, reconstitution, termination or non-renewal, Promise Schools shall, without additional charge:

- (i) close the financial records on the then-current school fiscal year which includes, but is not limited to, the completion and submission of the annual financial audit, state and federal grant reporting and all other associated reporting within required timelines established by the appropriate local, state or federal authority;
- (ii) organize and prepare student records for transition to the new ESP, self-management or in the case of a school closure, transfer to a student's new school as designated by the student's parent / legal guardian or to a person or entity authorized to hold such records;

- (iii) provide for the orderly transition of employee compensation and benefits to the new ESP or self-management without disruption to staffing, or in the case of school closure, final payment of all employee compensation, benefit and tax obligations related to services provided by Promise Schools to the Academy;
- (iv) organize and prepare the Academy's records, both electronic and hard-copy, for transition to the new ESP, self-management or dissolution; and
- (v) provide for the orderly transition to the new ESP, self-management or dissolution of all Academy-owned assets including, but not limited to, furniture, fixtures, equipment, real estate, and insurance. This includes any keys, log-in information and passwords related to any Academy asset.

PS shall complete transition items (ii) through (v) above on or before June 30th of the transition year. PS shall complete transition item (i) above within a reasonable timeframe from when the school year end financial records are available. For any transition services past June 30th that are not set forth in item (i) above, PS shall be paid a fee equal to 1/365 of the Annual Management Fee paid to PS during the last full fiscal year, multiplied by the number of calendar days the Academy Board has requested PS assistance during the transition period.

I. **Transition in Event of Breach.** The Academy Board and Promise Schools agree to make all efforts necessary to remedy a breach of this Agreement in order to continue school operations until completion of the then-current school fiscal year. If a breach cannot be remedied, the Academy Board and Promise Schools agree to work cooperatively to transition management and operations of the school without disrupting the school's operations. Promise Schools shall perform this transition in a similar manner as described under Article VIII, H above. In the event this Agreement is terminated by either party prior to the end of the term specified in Article II, the termination will not become effective until the earlier of (i) an approved agreement by the Academy with another ESP (or self-management) is in effect; or (ii) the end of the current school year in which the termination is invoked.

J. **Closure and Reconstitution.** In the event that the Academy is required (i) to close an Academy site pursuant to a notice issued by the State School Reform/Redesign Officer under Section 507 of the Code, MCL 380.507; or (ii) to undergo a reconstitution pursuant to Section 507 of the Code, MCL 380.507, and the Contract Terms and Conditions, and such closure of an Academy site or reconstitution causes an amendment to or termination of this Agreement, the parties agree that this Agreement shall be amended or terminated to implement the Academy site closure or reconstitution, with no cost or penalty to the Academy, and Promise Schools shall have no recourse against the Academy or the HPBOE for implementing such site closure or reconstitution.

ARTICLE IX PROPRIETARY INFORMATION

A. **Proprietary Information.** The Academy shall own all copyright and other proprietary rights to all instructional materials, training materials, curriculum and lesson plans, and any other materials developed by Promise Schools, its employees, agents or subcontractors, or by any individual working for or supervised by Promise Schools, which were developed during working hours or during time for which the individual is being paid by Promise Schools which (i) were directly developed and paid for by the Academy; or (ii) were developed by Promise Schools at the direction of the Academy Board with Academy funds dedicated for the specific purpose of developing such curriculum or materials. Promise Schools' educational materials and teaching techniques used by the Academy are subject to disclosure under the Code and the Freedom of Information Act.

B. **Required Disclosure.** The Academy shall be permitted to report any new teaching techniques or methods of significant revisions to known teaching techniques or methods to HPBOE and to the State Board of Education, which teaching techniques or methods may thereafter be made available to the public, as provided in Section 505(3) of the Code, notwithstanding anything contained in this Article IX to the contrary.

C. **Non-Disclosure of Proprietary Information; Remedy for Breach.** Except as specifically required by the Authorizer, Code, the Contract, a court order or subpoena, the smooth operation of the Academy as an educational institution or the Michigan Freedom of Information Act, the proprietary information and materials of Promise Schools shall be held in strict confidence by the Academy. Any and all proprietary information and materials of the Academy shall be held in strict confidence by Promise Schools and its employees, agents, representatives, and affiliates, and shall not be disclosed.

Except as excluded above, during the Term of this Agreement, and continuing for three (3) years thereafter, both parties agree that they will not use or disclose to anyone, directly or indirectly, for any purpose whatsoever, any such proprietary information without the prior written consent of the other party.

ARTICLE X INDEMNIFICATION

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

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

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

D. Indemnification for Negligence. To the extent permitted by law, the Academy shall indemnify and hold harmless Promise Schools, its Board of Directors, partners, officers, employees, agents and representatives, from any and all claims and liabilities which Promise Schools may incur and which arise out of the negligence of the Academy's directors, officers, employees, agents or representatives. Promise Schools shall indemnify and hold harmless the Academy, and the Academy's Board of Directors, officers, employees, agents or representatives, from any and all claims and liabilities which the Academy may incur and which arise out of the negligence of Promise Schools' directors, officers, employees, agents or representatives.

E. Indemnification of the Highland Park Board of Education. To the extent permitted by law, the Academy and Promise Schools shall indemnify and hold harmless HPBOE, its Board of Directors, partners, officers, employees, agents and representatives, from any and all claims and liabilities which the Academy or Promise Schools may incur and which arise out of the negligence of the Academy's or Promise School's directors, officers, employees, agents or representatives.

ARTICLE XI INSURANCE

A. Insurance of the Academy. The Academy shall secure and maintain such policies of insurance as required by the Contract. This coverage shall include the building and related capital facilities if they are the property of the Academy. The Academy shall maintain such insurance in an amount and on such terms required by the provisions of the Contract, including the indemnification of Promise Schools required by this Agreement. The Academy shall, upon request, present evidence to Promise Schools that it maintains the requisite insurance in compliance with the provisions of this paragraph. Promise Schools shall assist the Academy in securing and maintaining the foregoing policies of insurance as required by the Contract, with the Academy listed as an additional insured. Promise Schools shall comply with any information

or reporting requirements applicable to the Academy under the Academy's policy with its insurer(s), to the extent practicable.

B. **Insurance of Promise Schools.** Promise Schools shall maintain such insurance in an amount and on such terms as are reasonably acceptable to the Academy Board and as may be required by the provisions of the Contract, including the indemnification of the Academy required by this Agreement. Promise Schools shall, upon request, present evidence to the Academy and HPBOE that it maintains the requisite insurance in compliance with the provisions of this paragraph. The Academy shall comply with any information or reporting requirements applicable to Promise Schools under Promise Schools' policy with its insurer(s), to the extent practicable.

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

ARTICLE XII MISCELLANEOUS

A. **Sole Agreement.** This Agreement supersedes and replaces any and all prior agreements and understandings between the Academy and Promise Schools on the subject matter hereof.

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, act of God, sabotage, accident, or any other casualty, or cause beyond either party's control, and which cannot be overcome by reasonable diligence and without unusual expense.

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

If to Promise Schools:
Promise Schools
4201 Outer Drive West
Detroit, MI 48221

With a copy to Promise Schools' attorney:
Aimee R. Gibbs
Dickinson Wright
500 Woodward Ave., Suite 4000
Detroit, MI 48226

If to Academy:
Highland Park Public School Academy System
45 E Buena Vista St

Highland Park, MI 48203
Attention: Board President

And a copy to the Board Attorney:
Robert Schindler
Lusk Albertson, PLC
409 E. Jefferson Ave., Fifth Floor
Detroit, MI 48226

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 been contained in this Agreement.

E. **Successors and Assigns.** 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, by the parties. Any modification to this Agreement must be made in writing, approved by the Academy Board and Promise Schools, and signed by a duly authorized officer. In addition, any modification to this Agreement must be completed in a manner consistent with HPBOE's Educational Service Provider Policies, if any, and the Contract before it can become effective.

G. **Non-Waiver.** No failure of a party in exercising any right, power or privilege under this Agreement shall affect such right, power or privilege, nor shall any single or partial exercise thereof preclude any further exercise thereof or the exercise of any other right, power or privilege. The rights and remedies of the parties under this Agreement are cumulative and not exclusive of any rights or remedies which any of them may otherwise have.

H. **Assignment.** Promise Schools may not assign this Agreement without the prior written approval of the Academy Board. Any assignment must be completed in a manner consistent with HPBOE's Educational Service Provider Policies, if any and the Contract.

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

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

K. **Compliance with Law.** The parties agree to comply with all applicable laws and regulations.

L. **Warranties and Representations.** Both the Academy and Promise Schools represent that each has the authority under law to execute, deliver and perform this Agreement and to incur the obligations provided for under this Agreement, that its actions have been duly and validly authorized, and that it will adopt any and all resolutions or expenditure approvals required for execution of this Agreement.

M. **Dispute Resolution Procedure.** Any and all disputes between the parties concerning any alleged breach of this Agreement or arising out of or relating to the interpretation of this Agreement or the parties' performance of their respective obligations under this Agreement that are unable to be resolved through discussion and negotiation shall be resolved by arbitration, and such an arbitration procedure shall be the sole and exclusive remedy for such matters. The arbitrator shall be selected from a panel provided by and in accordance with the rules of the American Arbitration Association. The arbitration shall be conducted in accordance with the rules of the American Arbitration Association, with such variations as the parties and the arbitrator unanimously accept. Any arbitration hearing shall be conducted in Wayne County, Michigan. The award shall be in writing, shall be signed by the arbitrator, and shall include a statement setting forth the reasons for the disposition of any claim. A judgment on the award rendered by the arbitrators may be entered in any court having appropriate jurisdiction. The cost of arbitration administration and the Arbitrator's time, shall be split by the parties. Prior to filing for arbitration, the parties will enter into non-binding mediation. A mediator will be agreed to by the parties and the cost of the mediator will be shared equally by the parties. Mediation may be waived only by mutual agreement of both parties.


[signature page to follow]

The parties have executed this Agreement as of the day and year first above written.

PROMISE SCHOOLS

By 
Melissa Hamann, President and CEO

HIGHLAND PARK PUBLIC SCHOOL ACADEMY SYSTEM BOARD

By 
President, Board of Directors
