

**FLAT RIVER ACADEMY
BOARD OF DIRECTORS RESOLUTION
PROPOSED EDUCATIONAL SERVICES PROVIDER AGREEMENT**

A regular meeting of the Board of Directors ("Board") of Flat River Academy ("Academy"), a public school academy, located at 9481 Jordan Road, in the City of Greenville, County of Montcalm, State of Michigan, was held in the Media Room at the Academy on Monday, June 28, 2021, at 6:30pm.

The meeting was called to order by President Jason Olvera.

Present: Jason Olvera, Jennifer Gibson, Jennifer Piotrowski

Absent: _____

The following preamble and resolution were offered by Member Jennifer Piotrowski and supported by Member Jennifer Gibson :

WHEREAS:

- A. The Academy is authorized under Section 503c of the Michigan Revised School Code (Code) (MCL 380.503c) to enter into an agreement with an educational management organization (also known as an educational services provider) "to provide comprehensive educational, administrative, management, or instructional services or staff" to the Academy; under Section 504a(d) of the Code (MCL 380.504a(d)) "to enter into binding legal agreements with persons or entities as necessary for the operation, management, financing, and maintenance of the public school academy"; and under Section 506 of the Code (MCL 380.506), with the approval of its authorizing body, the Saginaw Valley State University Board of Control ("University Board"), to "employ or contract with personnel as necessary for the operation of the public school academy****"; and
- B. The Academy Board previously entered into an Educational and Personnel Services Agreement with Midwest School Services, Inc. ("Midwest School Services") for a term commencing on July 1, 2020 and terminating on June 30, 2021; and
- C. Pursuant to Article II, Section 2.6 and Article VI, Sections 6.5 and 6.15 of the *Contract to Operate a Public School Academy Between the Saginaw Valley State University Board of Control and Flat River Academy* ("Charter Contract") effective July 1, 2021, the University Board has authorized the Academy Board to enter into or renew an agreement with an Educational Services Provider (ESP) provided that the Academy complies with the requirements of Section 6.15 of the Charter Contract and applicable law; and
- D. The Academy Board desires to enter into an Educational and Personnel Services Agreement ("ESP Agreement") with Midwest School Services for a term commencing on July 1, 2021 and terminating on June 30, 2025, subject to earlier termination as provided in the ESP Agreement, a copy of which is attached at **Appendix A**, for operation and management of the

academic and educational program of the Academy, including business services, in accordance with the requirements of Academy Board policy, the Charter Contract, and applicable law; and

- E. The Academy Board has performed sufficient due diligence to establish that Midwest School Services has the requisite educational and management expertise to operate the Academy in compliance with the Charter Contract and applicable law; and
- F. The Academy Board has complied with the requirements of Article VI, Section 6.15 of the Charter Contract, including without limitation:
 - (1) Submission of the proposed ESP Agreement to the Saginaw Valley State University School/University Partnership Office (SVSU/SUPO) for Authorizer review and non-disapproval;
 - (2) Consideration of the ESP Due Diligence Questionnaire completed by representatives of the Academy Board and Midwest School Services, respectively, a copy of which is attached at **Appendix B**;
 - (3) Consideration of the SVSU/SUPO Educational Service Prover Agreement Checklist, a copy of which is attached at **Appendix C**;
 - (4) Consideration of a Certificate of Good Standing issued to the Academy by the Michigan Department of Licensing and Regulatory Affairs (LARA) dated April 9, 2021, a copy of which is attached at **Appendix D**;
 - (5) Retention of independent legal counsel to review the proposed ESP Agreement and to prepare the legal opinion required by the SVSU SUPO on compliance of the proposed ESP with Section 6.14 of the Charter Contract and controlling law;
 - (6) Provision to all Academy Board Members of an opportunity to review the proposed ESP Agreement with the Academy's legal counsel; and
 - (7) Provision of an opportunity for public comment on the proposed ESP Agreement *before* the Academy Board acted on this Resolution.

NOW, THEREFORE, BE IT RESOLVED, THAT:

- 1. The Academy Board hereby determines that the proposed ESP Agreement, substantially in the form attached, is in the best financial and educational interests of the Academy.
- 2. The Academy Board hereby authorizes and delegates all necessary authority to the Academy Board President (or designee) to timely execute the proposed ESP Agreement on behalf of the Academy Board.

3. The Academy Board hereby authorizes the Academy Board President (or designee) to coordinate with the Academy's legal counsel to promptly submit the fully executed ESP Agreement to the SVSU SUPO with the required legal opinion.
4. All resolutions and parts of resolutions insofar as they conflict with the provisions of this resolution are hereby rescinded.

Ayes: Members Jason Olvera, Jennifer Piotrowski, Jennifer Gibson

Nays: Members _____

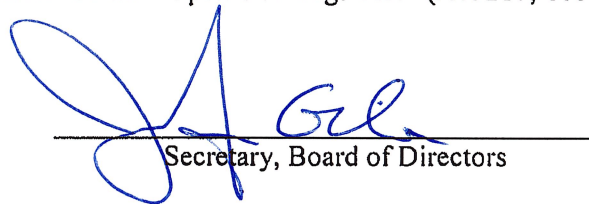
Absent: Members _____

Resolution declared adopted by a vote of 3 : 0.



Secretary, Board of Directors

The undersigned, duly qualified and acting Secretary of the Board of Directors of Flat River Academy, a public school academy, located in the City of Greenville, County of Montcalm, State of Michigan, hereby certifies that the foregoing constitutes a true and complete copy of a resolution adopted by the Academy Board at a regular meeting held on Monday, June 28, 2021, the original of which is part of the Board's minutes. The undersigned further certifies that notice of the meeting was given to the public pursuant to the provisions of the "Open Meetings Act" (Act 267, PA 1976, as amended).



Secretary, Board of Directors

APPENDIX A

EDUCATIONAL AND PERSONNEL SERVICES AGREEMENT

THIS EDUCATIONAL AND PERSONNEL SERVICES AGREEMENT is made as of this ___ day of June, 2021, by and between **FLAT RIVER ACADEMY**, a Michigan public school academy established under Part 6A of the Michigan Revised School Code (“the Academy”), with offices located at 9481 Jordan Road, Greenville, Michigan, 48809, and **MIDWEST SCHOOL SERVICES, INC.**, a Michigan for-profit corporation (“Midwest School Services”), with offices located at 3170 Old Farm Lane Commerce Twp., Michigan, 48390.

WITNESSETH:

WHEREAS, the Academy is organized and operated under the Michigan Revised School Code and pursuant to a contract (the "Contract") issued by the Saginaw Valley State University ("SVSU") Board of Control (the “SVSU Board”) and has the powers, authority and duties established therein, specifically including the authority to enter into binding legal agreements with persons or entities as necessary for the operation, management, financing, and maintenance of the Academy; and

WHEREAS, Midwest School Services offers business, administrative, education support, and human resource services relative to the operations of public school academies and has the expertise, training, capacity and qualifications to perform the services contemplated under this Agreement; and

WHEREAS, the Academy's Board of Directors ("Academy Board") desires to contract with Midwest School Services, for Midwest School Services to provide Services to the Academy on the terms and conditions contained herein; and

WHEREAS, Midwest School Services desires to provide such Services to the Academy on the terms and conditions contained herein.

NOW, THEREFORE, IN CONSIDERATION OF THE MUTUAL PROMISES AND BENEFITS CONTAINED HEREIN, IT IS AGREED AS FOLLOWS:

SECTION 1 SERVICES AND RELATIONSHIP OF PARTIES

A. Subject to the terms and conditions of this Agreement, and as permitted by applicable law, the Academy hereby contracts with Midwest School Services for the provision of educational, business, administrative, facility, and management services concerning operation and management of the Academy, including without limitation, all labor, equipment, and materials necessary for the provision of the same, as set forth herein (collectively, the “Services”). Midwest School Services agrees to perform its duties and responsibilities under this Agreement in a manner that (1) is consistent with the Academy's obligations under the

Contract and (2) complies with the requirements of the Contract. The provisions of the Academy's Contract shall supersede any competing or conflicting provisions contained in this Agreement.

B. PERSONNEL SERVICES

1.1 Personnel Services. Midwest School Services shall provide highly qualified personnel as necessary for Midwest School Services to perform the Services contemplated by this Agreement in accordance with the Academy's requirements and budget ("Personnel Services"), including personnel to perform the Business Services described in subsection 1.C. of this Agreement.

1.2 Personnel Requirements. Personnel assigned by Midwest School Services to perform Services under this Agreement for the Academy shall be fully certified, licensed, approved and otherwise qualified to perform the functions assigned pursuant to and in conformance with the provisions of the Michigan Revised School Code, and other applicable statutes or regulations, pertinent to the work performed under this Agreement. Midwest School Services will not furnish any personnel to the Academy who would be ineligible for employment by the Academy if such person(s) were instead employed directly by the Academy under applicable statutory and regulatory provisions.

1.3 Background Checks. Pursuant to the requirements of Sections 1230 and 1230a of the Revised School Code, the Academy shall perform a criminal history check through the Michigan State Police ("MSP"), as well as a criminal records check through the Federal Bureau of Investigation ("FBI"), with regard to all persons assigned by Midwest School Services under this Agreement to regularly and continuously work in any of the Academy's facilities or at any other sites where the Academy delivers educational programs and services. The Academy has entered into an agreement with the Montcalm Area Intermediate School District ("Montcalm ISD") to serve as a clearinghouse in requesting, receiving, and reviewing Criminal History Record Information (CHRI) and in issuing green/light letters, except as to individuals with CHRI that requires Board consideration. To the extent authorized by law, the Superintendent assigned by Midwest School Services shall be designated to act on behalf of the Academy Board, with the Montcalm ISD, to comply with Sections 1230 and 1230a and shall comply with security, training, and other applicable provisions of the FBI's *Criminal Justice Information Services Security Policy* pertaining to noncriminal justice agencies. For purposes of this subsection, "security" includes: (a) maintaining CHRI in a physically secure location at the Academy (or encrypted if stored electronically) accessible only by authorized and trained individuals; and (b) maintaining a log of any dissemination of CHRI for an allowed purpose. For purposes of anticipated audit(s) by the MSP Criminal Justice Information Center and/or the FBI, the Board President, or Board designee, shall securely maintain the following for each individual employed or assigned by Midwest School Services for whom the Academy is required to perform a criminal background check: (i) Position Description (or at least the title of the position as identified on the "Affidavit for Assignment"); (ii) Affidavit for Assignment (a/k/a MSP-approved Red Light/Green Light letter); (iii) Live Scan Finger Print Consent Form; and (iv) Dissemination Log (if any authorized dissemination of CHRI has occurred).

Midwest School Services agrees that it shall not assign any of its employees, agents or other individuals to perform any Services under this Agreement where such individuals would regularly and continuously work in the Academy's facilities or other sites where the Academy delivers educational programs and services if such person has been convicted of any of the following offenses:

- (A). Any "listed offense" as defined under Section 2 of the Sex Offenders Registration Act, MCL 28.722; or Any offense enumerated in Sections MCL 380.1535a or 380.1539b of the Revised School Code, MCL 380.1535a; 380.1539b; or
- (B). Any felony. Provided, that with prior written approval of the Superintendent of the Academy and of Academy Board an individual who has been convicted of a felony (other than a "listed offense" as defined above) and who is regularly and continuously providing Services under this Agreement at the Academy facilities or other sites where the Academy delivers educational programs and services may be permitted to perform such Services when, in the judgment of the Superintendent and Academy Board, that individual's presence will not pose a danger to the safety or security of the Academy students or employees; or
- (C). Any misdemeanor conviction involving sexual or physical abuse as those terms are defined in Sections 1230(10) and 1230a(8) of the Revised School Code.
- (D). Any offense of a substantially similar enactment (to those enumerated in A-D, above) of the United States or another State; or
- (E). Any other offense that would, in the judgment of the Academy, create a potential risk to the safety and security of students serviced by the Academy or employees (if any) of the Academy.

Before hiring or engaging an applicant for assignment at the Academy under this Agreement, Midwest School Services shall conduct an unprofessional conduct in a manner that mirrors the requirements of section 1230b of the Revised School Code that would apply in the event the Academy were hiring the individual, MCL 380.1230b. Midwest School Services further acknowledges and agrees that all persons employed, contracted or assigned to fulfill the job positions as set forth in the Contract or any other individuals set forth herein shall not be assigned to work at the Academy until the requirements of the applicable state and federal laws, rules, and regulations have been satisfied. The Academy reserves the right to refuse Midwest School Services' assignment of any individual, agent or employee of Midwest School Services to render services under this Agreement where the criminal record history of that individual (including any pending criminal charges) indicate, in the Academy's judgment, unfitness to perform services under this Agreement.

1.4 Independent Contractors. In the performance of Services under this Agreement, Midwest School Services (its agents, contractors and employees) shall be regarded at all times as performing Services as independent contractors of the Academy. Consistent with that status, Midwest School Services reserves to itself the right to solely determine the means and methods

of performing services under this Agreement. Notwithstanding the foregoing, during the term of this Agreement, the Academy may disclose Confidential Data and Information (as defined in Section 4 of this Agreement) to Midwest School Services (its employees or agents) to the extent permitted by applicable law, including without limitation, the Family Educational Rights and Privacy Act (FERPA), 20 USC §1232(g), 34 CFR Part 99; Section 1136 of the Michigan Revised School Code, MCL 380.1136; the Individuals 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 Americans with Disabilities Act, 42 USC §12101 *et seq*, and the Health Insurance Portability and Accountability Act (HIPAA), 42 USC 1320d – 13200d-8; 45 CFR 160, 162 and 164.

1.5 Midwest School Services as Employer. All individuals whom Midwest School Services may select and assign to provide Services at the Academy under this Agreement will be employed by Midwest School Services. The Academy will not under any circumstances be regarded or considered to be the employer of any such individuals. Midwest School Services shall be exclusively and solely responsible for compensating, hiring, retaining, evaluating, disciplining, dismissing and otherwise regulating the employment conditions, employment rights, compensation and other similar matters relative to all individuals whom Midwest School Services utilizes in connection with providing Services under this Agreement. Midwest School Services shall adopt, implement and maintain a performance evaluation system for all required personnel as required by applicable law. At the Academy's request, Midwest School Services will remove any of the employees assigned to provide Services under this Agreement; provided, that this provision will in no way affect the right of Midwest School Services, in its sole discretion as employer, to hire, assign, reassign, discipline and/or terminate its own employees. Midwest School Services shall not include non-compete or non-solicitation agreements (of any nature) in any contract that it executes with staff assigned in any capacity to perform services for the Academy pursuant to this Agreement.

Midwest School Services shall pay all salaries, wages, benefits, payroll and other taxes to or on account of its employees or agents arising out of or resulting from Services performed under the terms of this Agreement. The Academy shall not be liable for the payment of any such salaries, wages, benefits, payroll or taxes thereon for or on behalf of any Midwest School Services employee or agent. Midwest School Services employees and agents are not entitled to receive any compensation, benefits or other amenities in any form from the Academy, including, but not limited to, mileage, conference fees and other expenses. This provision does not limit or otherwise affect the Academy's responsibility to make payments for the Services in accordance with Section 2 of this Agreement.

Midwest School Services acknowledges and agrees that it is solely and exclusively responsible for making the requisite tax filings, deductions and payments to the appropriate federal, state and local tax authorities for and on behalf of all persons assigned by Midwest School Services to provide Services under this Agreement. No part of Midwest School Services invoiced fees shall be subject to withholding by the Academy for payment of social security, unemployment or disability insurance or any other similar state or federal tax obligations.

Midwest School Services shall be solely and exclusively responsible for any taxation consequences to it or its agents or employees as a result of Midwest School Services' engagement under this Agreement. Midwest School Services agrees to defend, indemnify and hold harmless the Academy from any and all such claims.

1.6 Claims Relating to Midwest School Services' Employees/Subcontractors/Agents. Midwest School Services shall be responsible for answering, defending and/or resolving any and all claims arising out of the assignment and performance of the employees or agents it provides to carry out the Services under this Agreement.

These claims shall include, but shall not be limited to: proceedings before the Michigan Employment Relations Commission; the National Labor Relations Board; proceedings for unemployment compensation benefits; claims for workers' compensation disability benefits; claims of unlawful discrimination brought before any state or federal agency or court; claims or grievances for breach of contract; and any other claims of whatsoever kind or character arising from or which are attributable to the performance of Services by employees or agents of Midwest School Services in connection with this Service Agreement.

All costs (including legal fees) incurred in connection with the defense of the foregoing matters and any judgments resulting therefrom shall be the sole and exclusive responsibility of Midwest School Services.

1.7 Academy's Policies. Midwest School Services agrees that the individuals it assigns to the Academy under this Agreement will abide by those policies of the Academy which are applicable to performance of Services under this Agreement including, but not limited to, policies pertinent to:

- (A) Corporal punishment/physical contact/seclusion & restraint with/of students;
- (B) Non-discrimination;
- (C) Child abuse and neglect reporting;
- (D) Sexual harassment;
- (E) Confidentiality of student records and student record information;
- (F) Blood borne pathogens exposure control;
- (G) Administration of medication to pupils;
- (H) Communicable diseases;
- (I) Alcohol/controlled substance possession and use;
- (J) Copyright; and
- (K) Emergency Procedures (Fire Drills, lock downs or evacuations).

A copy of the above policies has been provided to Midwest School Services by the Academy. Midwest School Services and the Academy will cooperate in orientation of Midwest School Services' employees to the above policies and in the conduct of Academy-specific orientation and training applicable to performance of Services under this Agreement.

1.8 Professional Standards. Midwest School Services agrees that the individuals it assigns to the Academy under this Agreement will adhere to professional standards and will perform all Services required under this Agreement in a manner consistent with generally accepted proficiency and competency for the type and nature of Services rendered. Midwest School Services represents that it has secured or will secure the necessary licenses, approvals, permits and regulatory authorizations to provide the Services contemplated in this Agreement.

1.9 Records Checking/Volunteers. Midwest School Services will provide a policy and registration form, and implement procedures, for records checking of school volunteers through at least the Internet Criminal History Access Tool ("ICHAT") and Michigan's Sex Offender Registry ("SOR"). Midwest School Services shall ensure that all individuals approved to serve as volunteers at the Academy have undergone an ICHAT and SOR records check at least once per school year.

C. **BUSINESS SERVICES**

1.10 Business Services. Subject to the terms and conditions contained herein, Midwest School Services will provide the following business services (the "Business Services") to the Academy during the Term, as hereinafter defined:

- (A) Midwest School Services will prepare the Academy's financial statements, annual and amended budgets, and other similar documents required for financial compliance and oversight purposes; provided, however that only the Academy Board has the authority to approve operating budgets and expenditures. The Academy is responsible for designating the Chief Administrative Officer of the Academy pursuant to the Uniform Budgeting and Accounting Act (2 PA 1968), MCL 141.422b. No employee of Midwest School Services shall be designated as the Chief Administrative Officer of the Academy within the meaning of the Uniform Budgeting and Accounting Act (2 PA 1968), MCL 141.422b(3).
- (B) Midwest School Services will provide bookkeeping and accounting services, as required by law and/or contract.
- (C) Midwest School Services will provide accounts payable management; provided, however, that only Academy Board members or properly designated Academy Board employees (if any) shall be signatories on Academy Board accounts. No provision of this Agreement shall alter the Academy Board treasurer's legal obligation to direct that the deposit of all funds received by the Academy be placed in the Academy's depository account as required by law. Interest earned on Academy accounts shall accrue to the Academy. At no time will Academy funds be commingled or in any way subject to the dominion and/or control of Midwest School Services in connection with the performance of Midwest School Services' accounting services.

- (D) Midwest School Services will provide qualified personnel to assure the Academy's compliance with fiscal and other regulatory schemes and in meeting all associated reporting requirements.
- (E) Midwest School Services will provide qualified personnel to prepare appropriate and necessary federal and state program applications.
- (F) Midwest School Services will provide transportation consulting and transportation support services including, but not limited to, assisting in such matters as leasing buses, contracting for busing services, evaluating and assisting in potential bus purchases, ensuring that drivers are properly licensed and that vehicles are properly tested and registered.
- (G) Midwest School Services will assist the Academy in preparing applications for state aid anticipation loans and/or state aid bridge loans.

1.11 Recruitment of Students. The Academy will be responsible for marketing the Academy and for the recruitment of students. All marketing and development costs incurred by the Academy will be paid directly by the Academy, and Midwest School Services will not be required to pay for any costs or fees relating to the Academy's marketing or recruitment efforts. Marketing and development 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 and development of Midwest School Services.

1.12 Grant of Authority. The Academy's Board of Directors will grant to Midwest School Services all required authority and power necessary to undertake its responsibilities as described in this Agreement, except where such delegation of authority and power is prohibited by law. No provision of this Agreement shall interfere with the Academy Board's constitutional duty to exercise its statutory, contractual and fiduciary responsibilities governing the operation of the Academy. No provision of this Agreement shall prohibit the Academy Board from acting as an independent, self-governing public body, or allow public decisions to be made other than in compliance with the Open Meetings Act. The Academy's duties under the Contract shall not be limited or rendered impossible by action or inaction of Midwest School Services.

1.13 Recordkeeping and Reporting Requirements.

- (A) Midwest School Services will keep accurate financial records and provide monthly financial reports associated with the Services performed on behalf of the Academy (including a balance sheet, an object-level detailed statement of revenues, expenditures and changes in fund balance that includes a comparison of budget-to-actual information and an explanation of variances). Financial reports will be in a format mutually agreed upon between the Academy Board and Midwest School Services unless otherwise required by the Contract or applicable law. Midwest School Services will also be responsible for retaining all financial records according to applicable state and federal requirements.

- (B) Midwest School Services shall provide to the Academy Board at least annually all of the information that a school district is required to disclose under section 18(2) of the State School Aid Act of 1979, MCL 388.1618(2), for the most recent school fiscal year for which that information is available. Within 30 days after receiving the information described in this subsection, the Academy Board shall make all of the information it receives from Midwest School Services under this subsection available through a link on the Academy's website homepage, in a form and manner prescribed by the Michigan Department of Education.
- (C) Midwest School Services shall make information concerning its operation and management of the Academy, including without limitation the information described in the Contract, available to the Academy Board as deemed necessary by the Academy Board in order to enable the Academy to fully satisfy its obligation under the Contract and under subsection 503(6)(l) of the Code to make all information concerning operation and management of the Academy available to the public and to the Academy's Authorizing Body in the same manner as is required by state law for school districts.
- (D) Midwest School Services shall collect, maintain, and make available to Academy Board all of the information required under subsection 503(6)(m) of the Code for the Academy Board to fulfill its obligation to make specifically delineated information concerning operation and management of the Academy available to the public and to the Academy's authorizing body.
- (E) Midwest School Services will maintain the proper confidentiality of personnel, students and other records as required by applicable law and this Agreement.
- (F) All financial records will be made physically or electronically available to the Academy's Board, or its agents or employees (if any) for inspection and/or copying, at the Academy Board's discretion.
- (G) Midwest School Services will, upon request of the Academy Board, but not less than quarterly, provide the Academy Board detailed statements at object level for ratification of all expenditures with an explanation of variances for Services rendered to or on behalf of the Academy. All finance and other records related to the Academy that are in the possession or control of Midwest School Services will be made available to the Academy's independent auditor upon request, and Midwest School Services and its staff shall cooperate with said auditor. The Academy Board is solely responsible for selecting, retaining, and compensating the independent auditor for the Academy. The Academy Board also shall be

responsible: (a) for determining the budget reserve included in the Academy's annual budget and any budget amendments; and (b) for implementing fiscal policies that will assist the Academy in attaining the stated budget reserve amount(s).

- (H) In addition to financial records, Midwest School Services will provide information to the Academy and its Board of Directors periodically, as requested by the Academy Board, sufficient in form and substance to enable the Academy to monitor Midwest School Services' performance and the efficiency of its performance of the Services.
- (I) All financial, educational, and student records pertaining to the Academy are Academy property and such records are subject to Michigan's Freedom of Information Act. All such records must be stored, in physical form, on-site at the Academy's facility or directly accessible at the Academy facility. All records pertaining to teacher and administrator certification, as well as a copy of Midwest School Services' employee handbook, shall be maintained physically onsite or directly accessible at the Academy facility.

1.14 Unusual Events. Each Party agrees to notify the other immediately of any known health, safety or other violations of law, regulation, or the Contract, and of any anticipated labor, employee or funding problems, or of any other problems or issues that could adversely affect the Academy or Midwest School Services in complying with its responsibilities hereunder.

SECTION 2 FEES AND REIMBURSEMENT

2.1 Service Fees and Reimbursement. The Academy shall pay Midwest School Services the following fees as reasonable compensation for the Services Midwest School Services will provide to the Academy during the term of this Agreement. No portion of the compensation paid by the Academy to Midwest School Services under this Agreement is based on a share of the net profits of the Academy. If the provisions of this Agreement regarding service fees and reimbursement are determined to result in private business use of the Academy's facilities under Rev. Proc. 97-13 as amended by Rev. Proc. 2001-39, Rev. Proc. 2016-44, 2016-36 IRB 316, and Rev. Proc. 2017-13 (and as may be further amended), the Parties agree to renegotiate the service fees and reimbursement provisions of this Agreement as necessary to maintain the qualified use and tax-exempt nature of any Academy bond funded property. However, Midwest School Services may terminate this Agreement in accordance with Section 6 hereof if the Academy requests or demands a reduction in Midwest School Services' net service fees and reimbursement under this section without a corresponding reduction in Services to the Academy.

The Academy will pay to Midwest School Services an annual ESP Services Fee, not to exceed budgeted amounts approved by the Academy's Board of Directors, in the amount of nine percent (9%) of the total aid received from the State of Michigan, pursuant to the State School

Aid Act of 1979, as amended, as adjusted and/or pro-rated in compliance with the State School Aid Act.

The Academy acknowledges and agrees that Midwest School Services will under no circumstances be required to provide personnel or Services if the cost of same exceeds Academy Board-approved budget limits, subject to Section 6.7 herein.

2.2 Additional Services. Midwest School Services may, at the request of the Academy, provide additional services that the Academy Board deems appropriate or necessary. Should Midwest School Services be requested to provide such additional services, the Parties will negotiate a reasonable fee/compensation prior to the time that such services are rendered, and will execute a written amendment to this Agreement describing both the nature and extent of such services and the compensation to be provided to Midwest School Services.

2.3 Reimbursement of Expenses. Midwest School Services may, with prior Academy Board of Directors' approval, purchase equipment, materials, and supplies for the benefit of the Academy, the cost of which will be reimbursed by the Academy Board in accordance with this paragraph. Such equipment, materials, and supplies shall be and remain the property of the Academy. Should Midwest School Services procure equipment, materials, or supplies on behalf of the Academy, Midwest School Services will not include any added fees or charges with the cost of the equipment, materials, and supplies purchased from a third party supplier. Midwest School Services will at all times comply with the Revised School Code (including MCL 380.1274 and 380.1267) and all Board policies as if such purchases were being made directly by the Academy. All supplies, materials and equipment procured by Midwest School Services for the Academy shall be inventoried by an acceptable method of inventory and an inventory of Academy equipment shall be maintained so that it can be clearly established which property belongs to the Academy.

The Academy Board may approve the reimbursement of reasonable expenses incurred by Midwest School Services. Reimbursement will only be permitted under this Agreement for actual and direct expenses that are pre-approved by the Academy Board and paid by Midwest School Services to unrelated Parties, provided Midwest School Services submits an itemized accounting of all such expenses to the Academy's Board, along with any relevant documentation.

SECTION 3 CONFIDENTIALITY and DATA SECURITY

3.1 Preservation of Covered Data and Information. Midwest School Services agrees that it shall observe the policies and directives of the Academy to preserve the confidentiality of Covered Data and Information (defined in Subsection 3.2 below) to the extent that Midwest School Services (its employees, subcontractors and agents) are permitted to access Covered Data and Information in the course of performing Services under this Agreement.

3.2 Definition of Covered Data and Information. Covered Data and Information (CDI) includes paper and electronic student education and/or medical record information supplied by

the Academy and/or its students or parents/guardians to Midwest School Services and includes, without limitation, “education records” and “education record information” as defined under FERPA and IDEA, and as incorporated into MCL 380.1136; “protected health information” as defined under HIPAA; “relevant records” as defined under Section 504; and social security numbers. CDI also includes any new records created and maintained by Midwest School Services under this Agreement using CDI.

3.3 Acknowledgment of Access to CDI. Midwest School Services acknowledges that this Agreement allows Midwest School Services (its employees, subcontractors and agents) access to CDI, for which the Academy may have the ultimate legal responsibility to maintain in a confidential and secure fashion. Accordingly, Midwest School Services (its employees, subcontractors and agents) shall provide the Academy with control over the CDI sufficient to satisfy all applicable legal and regulatory standards. In any event, Midwest School Services (its employees, subcontractors and agents) shall at all times make CDI available to the Academy within a reasonable time of receiving a request for same.

3.4 Prohibition on Unauthorized Use or Disclosure of CDI. Midwest School Services (its employees, subcontractors and agents) agrees to hold CDI in strict confidence. Midwest School Services (its employees, subcontractors and agents) shall not use or disclose CDI received from or on behalf of the Academy except as permitted or required by this Agreement, as required or authorized by law, or as otherwise authorized in writing by the Academy, a parent/guardian, or eligible student. Midwest School Services agrees that it will protect the CDI it receives from or on behalf of the Academy according to commercially acceptable standards and no less rigorously than it protects its own confidential information. Midwest School Services shall ensure that any employee or agent, including a subcontractor or Business Associate (as defined in HIPAA), to whom it provides CDI under this Agreement, understands and agrees to the same restrictions and conditions pertaining to use and disclosure of CDI that apply to Midwest School Services under this Agreement.

3.5 Return or Destruction of CDI. Upon termination, cancellation, expiration or other conclusion of this Agreement (or as required by applicable law), Midwest School Services (its employees, subcontractors and agents) shall return all CDI to the Academy.

3.6 Maintenance of the Security of Electronic Information. Midwest School Services (its employees, subcontractors and agents) shall develop, implement, maintain and use appropriate administrative, technical and physical security measures to preserve the confidentiality, integrity and availability of all CDI received from, or on behalf of, the Academy or its students. These measures will be extended by contract to all agents, including subcontractors or Business Associates, used by Midwest School Services.

3.7 Reporting of Unauthorized Disclosures or Misuse of Covered Data and Information. Midwest School Services, within one day of discovery, shall report to the Academy any use or disclosure of CDI not authorized by this Agreement or in writing by the Academy. Midwest School Services’ report shall identify: (i) the nature of the unauthorized use or disclosure, (ii) the CDI used or disclosed, (iii) who made the unauthorized use or

received the unauthorized disclosure, (iv) what Midwest School Services has done or shall do to mitigate any deleterious effect of the unauthorized use or disclosure, and (v) what corrective action Midwest School Services has taken or shall take to prevent future similar unauthorized use or disclosure. Midwest School Services shall provide such other information, including a written report, as reasonably requested by the Academy. Midwest School Services shall take appropriate action, in accordance with MCL 445.72, to notify affected individuals whose CDI may have been compromised.

3.8 Remedies.

- (A) If the Academy reasonably determines in good faith that Midwest School Services has materially breached any of its obligations under the data security provisions of this Agreement, the Academy, in its sole discretion, shall have the right to require Midwest School Services to submit to a plan of monitoring and reporting; provide Midwest School Services with a thirty (30) day period to cure the breach; or terminate the Agreement immediately if cure is not possible. Before exercising any of these options, the Academy shall provide written notice to Midwest School Services describing the violation and the action it intends to take.
- (B) In addition, the Parties understand and agree that Midwest School Services is subject to any penalties for unauthorized disclosures or misuse of CDI that are or may be imposed, from time to time, under applicable law including, without limitation, that Midwest School Services may be prohibited by law from accessing CDI for defined periods of time following any unauthorized disclosure or misuse of CDI, which shall constitute a material breach of this Agreement.

3.9 Copyright. Midwest School Services shall advise and train at least annually the individuals assigned by Midwest School Services to perform services under the Agreement about copyright restrictions and requirements. Midwest School Services will also establish and implement a procedure to monitor copyright compliance and respond to inquiries from the individuals it assigns to perform services under this Agreement about copyright restrictions and requirements. If Midwest School Services fails to satisfy these responsibilities and the Academy is found to be in violation of any copyright restrictions or requirements, or if the Academy is alleged to be in violation of any such copyright restrictions or requirements, Midwest School Services agrees to indemnify and hold harmless the Academy against any such actions or claims brought by copyright holders.

3.10 Indemnity. Midwest School Services shall defend, indemnify, and hold the Academy harmless from all claims, liabilities, damages, or judgments involving a third Party, including the Academy's costs and attorney fees, which arise as a result of Midwest School Services' failure to meet any of its obligations under the data security provisions of this Agreement. Midwest School Services further agrees to indemnify the Academy to the extent stated above for all alleged violations of copyright, trademark, or patent rights which may be asserted against the Academy arising from or out of the Academy's use of Midwest School Services-provided products and Services under this Agreement.

3.11 Amendment for Compliance. If the Academy believes in good faith that any data security provision of this Agreement fails to comply with applicable laws or regulations, the Academy shall notify Midwest School Services in writing. Within thirty (30) business days of receipt of such notice by Midwest School Services, the Parties shall address in good faith the expressed concern(s) and shall amend the terms of this Agreement, if the Academy deems necessary to bring the Agreement into compliance. If after such thirty (30) business day period this Agreement remains non-compliant with applicable laws or regulations with respect to the concern(s) raised under this Section, the Academy shall have the right to terminate this Agreement for cause in accordance with Section 6 hereof.

SECTION 4 INTELLECTUAL PROPERTY

4.1 The Academy Board hereby agrees and acknowledges that in the course of the performance of this Agreement, the Academy may be exposed to certain confidential information or trade secrets of Midwest School Services including, but not limited to, know-how, technical information, computer software, training materials, training methods and practices, courseware and related information, all of which shall be considered to be confidential in nature (the "Intellectual Property"). The Academy agrees, subject to the limitations of MCL 380.505(3), the Freedom of Information Act, any other law, and the Academy's Contract with its authorizer, that any Intellectual Property communicated to or received or observed by the Academy shall be held in confidence and not disclosed to others without Midwest School Services' prior written consent. All Intellectual Property disclosed to or observed or received by the Academy shall at all times remain the property of Midwest School Services and all documents together with any copies or excerpts thereof shall be promptly returned to Midwest School Services upon request. The provisions of this Section 4 shall not apply to curriculum or other materials developed and paid for by the Academy or developed by Midwest School Services at the direction of the Academy or its Board with Academy funds or to any information subject to disclosure under the law. The Academy shall own all proprietary rights to curriculum or educational materials that (1) are both directly developed and paid for by the Academy; or (2) were developed by Midwest School Services at the direction of the Academy Board with Academy funds dedicated for the specific purpose of developing such curriculum or materials.

4.2 Marks. Midwest School Services owns the title and all related rights regarding the names, logos, and trademarks for "Midwest School Services, Inc." The Academy owns the title and all related rights regarding the names, logos, and trademarks for "Flat River Charter School Academy" and each of the Academy's school buildings. Each Party agrees it shall not use the names, logos, trademarks, mascots, emblems, and/or plaques of the other Party without that entity's prior written approval.

SECTION 5
LIABILITY, INSURANCE AND INDEMNITY

5.1 Indemnification.

a. Midwest School Services. Midwest School Services shall indemnify and hold the Academy (and its officers, directors, representatives, trustees and agents) harmless from and against all liabilities, damages, fines, penalties, demands, forfeitures, claims, suits, causes of action or any other liabilities or losses, including all costs of defense, settlement and prosecution, along with attorney, expert and other professional fees, arising out of or related to any act, omission, negligence, wrongful act, misconduct, or breach or noncompliance with any agreement, representation, warranty or covenant on the part of Midwest School Services, its agents or employees contained in this Agreement or the provision of any of the services contained in or made pursuant to this Agreement.

Midwest School Services shall be solely and entirely responsible for its acts and omissions and for the acts and omissions of Midwest School Services' agents, employees and subcontractors in connection with the performance of Services under this Agreement and agrees to defend and indemnify the Academy from any and all such claims and/or judgments resulting from such acts or omissions.

The above promise of indemnity and defense shall not apply to liability which results from the sole negligence, wrongful act or breach of this Agreement by the Academy, its board members, officers, or employees (if any).

(b) Academy. To the extent permitted by law, the Academy shall indemnify and hold Midwest School Services harmless from and against all liabilities, damages, fines, penalties, demands, forfeitures, claims suits, causes of action or any other liabilities or losses, including all costs of defense, settlement and prosecution, along with attorney, expert and other professional fees, which result solely from the wrongful acts of Board members, officers, or employees (if any) of the Academy.

5.2 Workers' Compensation Insurance. Midwest School Services agrees to procure and maintain in full force and effect Workers' Compensation Insurance covering its employees, and to ensure that its subcontractors similarly maintain such insurance for any employees assigned by Midwest School Services to the Academy, while those persons are engaged in performing Services under this Agreement. If a claim is filed under the provisions of the Michigan Workers' Compensation Disability Act against the Academy by an employee of Midwest School Services or any of its subcontractors relating to performance of Services under this Agreement, Midwest School Services agrees to defend and hold harmless the Academy from such claims(s). Midwest School Services agrees to provide the Academy, upon request of the Academy, with certifications evidencing the required coverage.

5.3 General Insurance. Midwest School Services shall procure and maintain such policies of insurance as required by law, the Contract and/or the Michigan Universities Self Insurance

Corporation (MUSIC) that, in any event, shall provide no less protection than comprehensive general liability, umbrella insurance, and employment practices liability insurance, including specific coverage for acts of sexual molestation and abuse by its employees and agents, with limits of not less than One Million Dollars (\$1,000,000) per occurrence, and Two Million Dollars (\$2,000,000) combined single limit for bodily injury and property damage, in a form acceptable to both Parties, to protect Midwest School Services and the Academy against liability or claims of liability which may arise out of Midwest School Services' (including Midwest School Services' employees, subcontractors and agents) performance under this Agreement. Midwest School Services' insurance is separate from and in addition to the insurance the Academy Board is required to obtain under the Contract. In addition, Midwest School Services agrees that such policy shall provide an endorsement stating that such insurance shall be primary and that insurance carried by the Academy shall be excess and non-contributory and that any policy carried by Midwest School Services shall not be changed, revoked or modified absent thirty (30) days' prior written notice to the Academy Board President and the SVSU President. Not later than ten (10) days from the date both Parties have executed this Service Agreement, Midwest School Services shall provide the Academy with certificates of insurance evidencing all coverages and endorsements required hereunder. Midwest School Services agrees to name the Academy and Saginaw Valley State University, and their respective officers, agents and employees, as additional insureds under said policy. Midwest School Services agrees that, in the event the SVSU President modifies the level, type, scope or other aspects of required coverage, Midwest School Services shall undertake like and similar modifications within thirty (30) days of being notified of such change.

5.4 Responsibility of Academy. The Academy shall be solely and entirely responsible for its acts and omissions and for the acts and omissions of the Academy's Board members and employees (if any) in connection with the performance of the Academy's responsibilities under this Agreement; provided, however, that nothing in this Agreement is intended, nor shall be construed, as a waiver of the governmental immunity provided to the Academy and its incorporators, board members, officers, employees, and volunteers under section 7 of 1964 PA 170, MCL 691.1407. If Midwest School Services is made a Party to any litigation involving claims arising out of the acts and/or omissions of the Academy's Board members or employees (if any), the Academy will provide any reasonable assistance requested by Midwest School Services in the defense against such claims.

5.5 Indemnification of Saginaw Valley State University. The parties acknowledge and agree that the Saginaw Valley State University Board of Control, Saginaw Valley State University and its members, officers, employees, agents or representatives are deemed to be third party beneficiaries for purposes of this Agreement. As third party beneficiaries, the parties hereby promise to indemnify and to hold harmless Saginaw Valley State University Board of Control, Saginaw Valley State University and its members, officers, employees, agents or representatives from all claims, demands, or liability, including attorney fees, and related expenses, on account of injury, loss or damage, including, without limitation, claims arising from bodily injury, personal injury, sickness, disease, death, property loss or damage or any other losses of any kind whatsoever and not caused by the sole negligence of Saginaw Valley State University, which arise out of or are in any manner connected with Saginaw Valley State University Board's approval of the Public School Academy application, the University Board's consideration of or issuance of a Contract, the Academy's preparation for and operation of a public school, or which are

incurred as a result of the reliance by Saginaw Valley State University and its Board of Control members, officers, employees, agents or representatives upon information supplied by the Academy or the Educational Management Organization, or which arise out of the failure of the Academy to perform its obligations under the Contract issued to the Academy by Saginaw Valley State University Board of Control. The parties expressly acknowledge and agree that Saginaw Valley State University and its Board of Control members, officers, employees, agents or representatives may commence legal action against either party to enforce its rights as set forth in this Agreement.

SECTION 6 TERM OF AGREEMENT AND TERMINATION DURING TERM

6.1. Term and Termination.

- (A) The duration of the Agreement will be four years, beginning on July 1, 2021 through June 30, 2025, subject to earlier termination under this Agreement, if warranted. The maximum term of this Agreement shall not, in any event, exceed the length of the Contract.
- (B) Midwest School Services represents and warrants, as of the date of execution of this Agreement, that there are no known, asserted or unasserted, liabilities, damages, fines, penalties, demands, forfeitures, claims, suits, causes of action or any other liabilities or losses, including any costs of defense, settlement and prosecution along with attorney, expert and other professional fees, arising out of or related to any negligence, wrongful act or breach of this Agreement or the obligation of Midwest School Services, or any of its employees or others for whom it is responsible, in connection with the performance of the Agreement from July 1, 20017 through the date of execution.

6.2 Reclamation of Property. Upon the conclusion of the Term or upon termination, and subject to Section 2.3. and 1.13(G), Midwest School Services shall have the right to reclaim any property or equipment it provided to the Academy, or receive payment for the depreciated cost of such equipment if same was purchased by Midwest School Services.

6.3 Termination for Cause. Either Party may terminate this Agreement for cause prior to the conclusion of the Term if the other Party fails to remedy a material breach of this Agreement within thirty (30) days after receipt of a written notice of breach from the other Party.

- (A) A material breach on the part of the Academy includes, but is not limited to, failure to make payments to Midwest School Services as required by this Agreement.
- (B) A material breach on the part of Midwest School Services includes, but is not limited to, failure to account for its expenditures or to pay operating costs (provided funds are available to do so), and inadequate

performance of its obligations under the Agreement. Any action or inaction by Midwest School Services that is not cured within 30 days of notice thereof which causes the Contract to be revoked, terminated, suspected, or reconstituted, or which causes the Contract to be put in jeopardy of revocation termination, reconstitution, or suspension by the SVSU Board is a material breach.

6.4 Termination Due to Insolvency. Notwithstanding any provision in this Agreement to the contrary, this Agreement may be terminated by either Party immediately in the event the other Party is declared bankrupt or insolvent, or if a receiver is appointed or any proceedings are commenced, voluntary or involuntary, by or against such Party under any bankruptcy or similar law and such status is not cured within sixty (60) days from its occurrence. Midwest School Services attests that none of the following has filed for bankruptcy protection within the last six (6) months, or any applicable preference period, whichever is longer, and shall notify the Academy Board in writing within 10 business days of any of the following filing for bankruptcy protection: (a) any principal or officer of Midwest School Services; or (b) Midwest School Services as a corporate entity, including any related organization(s) in which a principal or officer of Midwest School Services served as a principal or officer.

6.5 Condition Precedent.

- (A) The Parties acknowledge and agree that the effectiveness of this Agreement is expressly contingent on the continued validity of the Contract or the issuance, prior to expiration of the Contract, of a new contract by a new authorizer such that the Academy is able to continue operations without violating Michigan laws governing public school academies and without losing any necessary sources of funding.
- (B) Should the actions or omissions of Midwest School Services cause the Academy's contract to be revoked, terminated or suspended, or should the actions or omissions result in the Academy receiving official notification from the Authorizer, State Superintendent, or other authorized body or official, which notification evidences the initiation or intent to initiate proceedings for the termination, revocation or suspension of the Contract, this Agreement may be terminated by the Academy without cost or penalty. Likewise, this Agreement may be terminated without cost or penalty to the Academy if directed by the Authorizer as part of the process of reconstitution. Midwest School Services agrees that early termination or amendment of this Agreement pursuant to this subsection shall be without recourse against the Academy, SVSU or any third party affiliated with or engaged by the Academy or SVSU, by the Midwest School Services or any subcontracted person or entity of the Midwest School Services.

6.6 Dispute Resolution. The Academy and Midwest School Services agree to act immediately and in good faith to mutually resolve any disputes that may arise 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. Any disputes that the Parties are not able to resolve within thirty (30) days after one Party provides the other Party with a written notice of default may be submitted to binding arbitration, which will be the sole and exclusive remedy for such matters. This provision does not restrict any Party's ability to terminate this Agreement in accordance with any applicable provision hereof. The arbitration shall be conducted in accordance with the Uniform Arbitration Act, 2012 PA 371, MCL 691.1681 – 691.1713, and rules of the American Arbitration Association by an impartial arbitrator knowledgeable and expert in Michigan and federal education law, seated in Kent, Ionia, or Montcalm Counties, Michigan, with such variations as the parties and arbitrators may unanimously accept. The final decision shall be a cause decision (written explanation). The Authorizer shall be notified of said decision, and upon the Authorizer's request, the cause opinion shall be made available. The arbitrators' award shall be final and binding. A judgment on the award rendered by the arbitrator may be entered in any court having appropriate jurisdiction, by any party, without the consent of the other party. The losing party shall pay the cost of arbitration, not including attorney fees. It shall be within the discretion and purview of the arbitrator to award reasonable attorney fees to the prevailing party and to make the determination as to which, if any, party qualifies as a "prevailing party."

6.7 In the event of termination of this Agreement for any reason by either Party prior to the end of the Agreement's term, Midwest School Services shall provide the Academy reasonable assistance for up to 90 days after the effective date of the termination to allow the Academy to transition to another educational services provider or self-management. However, the Academy will use its best efforts to limit the scope of any such post-termination assistance, which will be focused on ensuring a smooth transition between service providers or to a self-management model, and under no circumstances will Midwest School Services be required to provide onsite personnel for the Academy post-termination. This provision may not be construed to require Midwest School Services to continue providing the level of Services described in this Agreement without compensation. However, Midwest School Services shall, without charge: (a) close the books on the then-current fiscal quarter; (b) ensure that the Academy's organizational and financial records are organized and prepared for transition to the new ESP or for self-management; (c) ensure that the Academy's student records are organized and prepared for transition to the new ESP or for self-management; and (d) ensure the orderly transition of compensation and benefits information to a new ESP or for self-management to the extent, if any, that staff assigned by Midwest School Services to perform services for the Academy under this Agreement may be employed by a new ESP or as a result of self-management to perform post-termination services for the Academy.

SECTION 7
NON-DISCRIMINATION

The Parties to this Agreement agree not to discriminate against any employee or applicant for employment with respect to hire, terms, conditions or privileges of employment, or a matter directly or indirectly related to employment, due to race, color, religion, sex, national origin, pregnancy, age, height, weight, disability, marital status or veteran status.

The Parties further agree not to discriminate against any student or other recipient of Services under this Agreement due to race, color, religion, sex, national origin, or disability in the delivery of programs and Services rendered under this Agreement. Breach of covenants recited in this Section shall be regarded as a material breach of this Agreement.

SECTION 8
MISCELLANEOUS

8.1 Counterparts. This Agreement may be executed in one or more counterparts, all of which taken together will constitute one single agreement between the Parties.

8.2 Section Headings. The section headings used herein are for reference and convenience only and shall not enter into the interpretation hereof.

8.3 No Waiver. No delay or omission by either Party hereto to exercise any right or power occurring upon any noncompliance, violation or default by the other Party with respect to any of the terms of this Agreement shall impair any such right or power or be construed to be a waiver thereof. A waiver by either of the Parties hereto of any of the covenants, conditions or agreements to be performed by the other shall not be construed to be a waiver of any succeeding breach thereof or of any covenant, condition, or agreement herein contained.

8.4 Governing Law. This Agreement shall be governed by and construed in accordance with the laws of the State of Michigan.

8.5 Entire Agreement. This Agreement constitutes the entire agreement between the Parties and contains the entire understanding of the Parties with respect to its subject matter, and supersedes all prior and contemporaneous agreements, understandings and negotiations. No amendment, change, waiver, modification or discharge hereof shall be valid unless: (a) it is in writing; (b) is executed by the Party against whom such change, waiver, modification or discharge is sought to be enforced; (c) complies with the Contract, specifically including Section 6.14 (Required Contents of Contracts with ESP); (d) is submitted to the Authorizer's Designee within 10 days after such amendment and is accompanied by the SVSU-required Legal Opinion; and (e) receives, in writing from the Director of the SVSU School/University Partnership Office, a notification of non-disapproval.

8.6 Notices. Under this Agreement, if one Party is required to give notice to the other, such notice shall be deemed given if hand delivered or mailed by U. S. registered mail, return receipt requested, first-class, postage pre-paid and addressed as follows:

If to Midwest School Services: President
Midwest School Services, Inc.
3170 old Farm Lane
Commerce Twp., MI 48390

With a copy to: David Steinberg, Of Counsel
Jaffe, Raitt, Heuer & Weiss, P.C.,
27777 American Way
Southfield, MI 48083

If to the Academy: Board President
Flat River Academy Charter School
9481 Jordan Rd.
Greenville, MI 48838
TIME SENSITIVE

With a copy to: Margaret M. Hackett
Thrun Law Firm, P.C.
3260 Eagle Park Drive, NE, Suite 121
Grand Rapids, MI 49525

If to the Authorizer: Saginaw Valley State University
School/University Partnership Office
College of Education
EN-145 7400 Bay Road
University Center, MI 48710

8.7 No Assignment. Neither Party may assign or transfer either this Agreement or any obligation incurred hereunder. Any attempt to do so in contravention of this Paragraph shall be void and of no force and effect.

8.8 Severability. If any provision of this Agreement is held by a court of competent jurisdiction to be invalid, void or unenforceable in any manner, the remaining provisions of this Agreement shall nonetheless continue in full force and effect without being impaired or invalidated in any way. In addition, if a court of competent jurisdiction may modify any provision of this Agreement such that it may be fully enforced, then that provision shall be so modified and fully enforced as modified.

8.9 Time of Essence. The Parties understand and agree that time is of the essence in performing their respective responsibilities under this Agreement.

8.10 Force Majeure. Any delay or failure of any Party (the “affected Party”) in the performance of its required obligations hereunder shall be excused if and to the extent caused by war, rebellion or insurrection; an act of God; fire; government statute, order or regulation prohibiting the performance of this Agreement; riots; strikes, labor stoppages, lockouts or labor disputes to the extent such occurrences are not caused by the actions of the Party seeking relief

under this Section, provided that (i) written notice of such delay or suspension is given by the affected Party to the other Party within 72 hours of such event, which notice shall set forth in detail the nature of each delay; (ii) the affected Party shall use all commercially reasonable efforts to minimize the extent of such force majeure delay; and (iii) additional expense or other adverse financial conditions, including the Academy's inability to make any required payments under this Agreement for reasons other than an act of government, shall not be deemed force majeure. Upon receipt of a notice of force majeure, the time for the affected Party's performance shall be extended for a period of time reasonably necessary to overcome the effect of such delays and the other Party's sole remedy shall be reimbursement for the additional cost of such delays; provided, further, that if such delay by Midwest School Services would materially impair the value of the services to be provided under this Agreement, the Academy may terminate this Agreement by written notice to Midwest School Services within fifteen (15) calendar days of receiving Midwest School Services' notice of force majeure, in which event the Academy shall receive a refund of all monies paid hereunder for Services which Midwest School Services has failed to deliver.

8.11 No Third Party Rights. Except as provided in Section 5.5 of this Agreement, nothing in this Agreement shall be intended to confer third Party beneficiary status or rights, pursuant to MCL 600.1405 or under the common law, to any person or entity that is not a Party to this Agreement.

8.12 No Agency. Each of the respective Parties is entering into this Agreement and acting hereunder solely as an independent contractor and not as an agent or representative of the other Party.

8.13 Review by Independent Counsel. Each Party agrees that it has reviewed, or had the opportunity to review, this Agreement with its own independent legal counsel prior to the execution of this Agreement.

8.14 Governmental Immunity. Nothing in this Agreement shall be construed to predetermine the Academy Board's course of action in choosing to assert or not assert governmental immunity.

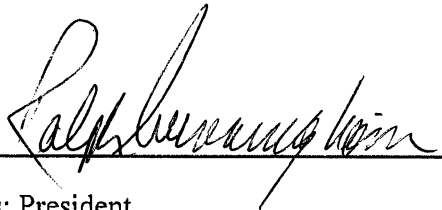
SECTION 9 AUTHORIZATION

9.1 This Agreement is not final and valid unless first reviewed by the Academy's Authorizing Body, which may disapprove this Agreement if contrary to the Contract or applicable law.

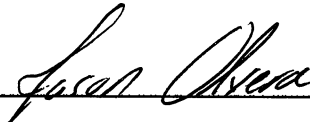
Intentionally left blank; signature page follows

9.2 This Agreement has been duly authorized, executed and delivered by the Parties and constitutes a legal, valid and binding obligation upon each of them, enforceable in accordance with its terms. Each person placing his/her signature below represents and warrants that he/she is the signatory duly authorized to execute this Agreement on behalf of the Academy or Midwest School Services, as is respectively applicable.

MIDWEST SCHOOL SERVICES, INC. FLAT RIVER PUBLIC SCHOOL
ACADEMY

By: 

Its: President
Dated: June __, 2021

By: 

Its: Board President
Dated: June 28, 2021

APPENDIX B

**Saginaw Valley State University
School/University Partnership Office**

EDUCATIONAL SERVICE PROVIDER DUE DILIGENCE QUESTIONNAIRE

Academy Name:	Flat River Academy
Proposed Educational Service Provider Name (ESP):	Midwest School Services, Inc.
Academy Designee(s) for ESP Agreement Negotiations:	Jason Olvera, Meg Hackett
Address:	9481 Jordan Rd. Greenville, MI 48838
Academy Legal Counsel:	Thrun Law Firm – Meg Hackett
Educational Service Provider's Address:	3170 Old Farm Ln., Commerce Twp., MI 48390
Educational Service Provider's Legal Counsel:	David L. Steinberg of Counsel Jaffee, Raitt, Heuer & Weiss PC 27777 Franklin Rd. Ste. 2500 Southfield, MI 48034 248-272-1562

A. General Information

1. Has the Academy Board approved the ESP Agreement through a formal vote at a public board meeting?
Yes
2. Did all Academy Board members have a reasonable opportunity to review the ESP agreement with the Academy's legal counsel before considering the ESP agreement? If not, explain.
Yes
3. List all other names under which the ESP or any affiliates operates.
Midwest Management Group, MM1, Midwest Substitute Staffing, Midwest School Services
4. Is the ESP an individual or an entity? If an entity, what type or form of entity?
Michigan C Corp
5. Who is the ESP's primary banking institution?
PNC Bank
6. Who is the ESP's accounting firm? List the name, address, and telephone number of firm and name of contact person.
Morris Kalish + Walgren, P.C., Thomas Collins, CPA 26877 Northwestern Hwy Suite 200,

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Southfield, MI 48033 248-352-6300
7. List all entities that are affiliated with the ESP (i.e., parent company, affiliates, and other entities wholly owned or partially owned by the ESP or the owners, officers, directors, managers or key employees of the ESP).
Midwest Management Group, Inc., Midwest School Services Inc., MM1, Inc., Midwest Substitute Staffing, Inc.,
8. List all persons who are owners, officers, directors, managers or in key management positions with the ESP.
Ralph Cunningham, President Frank Patterson Director of Business Services Elizabeth Thompson Director of HR & Charter School Services
9. List all persons or entities with whom the ESP plans to subcontract for services provided to the Academy. If the ESP has an ownership, financial, or other interest in the subcontractor, please disclose that interest.
N/A
10. Please provide a list of the public school academies or other schools (public or private) for which the ESP provides services.
Detroit Community Schools, West Village Academy, Greater Heights Academy, Michigan Math & Science Academy, Rising Stars Academy, Woodland Park Academy, State Street Academy, Old Redford Academy, Charlton Heston Academy, Marshall Academy, George Washington Carver Academy
11. Separate from the ESP agreement, does the ESP plans to have any other lease, license, contract or other agreement with the Academy? If so, please provide a short summary of such agreement and attach a copy of same.
No
12. Has or will the ESP provide any start-up funding for the Academy? If so, please describe.
No.
13. Does the ESP plan to provide any services related to the Academy obtaining cash flow borrowings? If so, please provide a description of the service and what fees, if any, are being charged?
Yes, the ESP would assist the Academy in preparing documents and negotiations for a short-term loan. No fees are associated with obtaining short term notes.
14. Does the ESP plan to purchase materials, equipment or supplies for the Academy? If so, please describe what will be procured and confirm that such purchases will comply with section 1274 of the Revised School Code, MCL 380.1274.
No.

B. Conflicts of Interest Questions

**Saginaw Valley State University
School/University Partnership Office**

15. Within the past 10 years has the ESP or any owner, officer, director, manager or employee of the ESP had any contracts, agreements or business dealings with any member of the Academy Board or their immediate family ¹ ?
No.
16. Within the past 10 years has the ESP or any owner, officer, director, manager or employee of the ESP employed any member of the Academy Board or their immediate family?
No.
17. Within the past 10 years, has any owner, officer, director, manager or employee of the ESP served on any board with any member of the Academy Board or their immediate family?
No.
18. Is any owner, officer, director, manager or employee of the ESP related to any member of the Academy Board or their immediate family?
No.
19. Please disclose any other relationship(s) between the ESP, its owner, officer, director, manager or employee and the Academy Board or their immediate family.
None.
20. Does the ESP or its owners, officers, directors, managers or employees have any other legal, contractual or financial relationship not addressed above that may create an actual, potential, or perceived conflict of interest? If so, explain.
No

C. Background Information

21. Has any owner, officer, director, manager or employee of the ESP been convicted of a felony?
No.
22. Has any owner, officer, director, manager or employee of the ESP been convicted of a crime involving embezzlement, dishonesty or the misuse of funds?
No
23. Has any owner, officer, director, manager or employee of the ESP been convicted of a crime involving fraud?

¹ "Immediate family," for purposes of this due diligence questionnaire, mother, mother-in-law, father, father-in-law, son, son-in-law, daughter, daughter-in-law, sister, sister-in-law, brother, brother-in-law, spouse or same-sex domestic partner, aunt, uncle, niece or nephew.

**Saginaw Valley State University
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No	24. Has any principal or officer of the ESP, or the ESP (including any related organizations or organizations in which a principal or officer of the ESP served as a principal or officer) as a corporate entity, filed for bankruptcy protection in the last six (6) months or within any applicable preference period, whichever is longer?
No	25. Within the past 10 years, has the ESP had any contract for management services with a public school terminated or not renewed? If the answer is "yes," please provide additional details.
No	26. Within the past 10 years, has the ESP or any owner, officer, director, manager or employee of the ESP sued or been sued by a public school that had or has a contract with the ESP? If the answer is "yes," please provide additional details.
No	27. Within the past 10 years, is or has the ESP or any owner, officer, director, manager or employee of the ESP been subject to a garnishment or had imposed upon them a federal or state tax lien? If the answer is "yes," please provide additional details.
No	28. Please provide the name and contact information of three references who can verify the ESP's business practices and performance. A charter sponsor or authorizing body reference from another state is preferred if the ESP operates in other locations. David Patterson, dpatterson@charltonhestonacademy.com, Carletta Counts, ccounts@westvillageacademy.org, Noah Wilson, wilsonn@marshallacademy.org
	29. Provide the mission, vision, and values statement for the ESP. Midwest Management Group believes all students can learn and deserve to be educated in a clean, safe, loving environment, so they can achieve excellence in character, learn to be responsible citizens and be prepared for success in higher
	30. Provide a written statement regarding the ESP's experience in providing educational services, including the types of educational service to be provided to the Academy. Since 2005, Midwest Management Group, Inc. through its affiliated companies have been providing a variety of services to charter schools in Michigan. Initially, we offered human resources services. Over time, we added business management, board liaison, curriculum and instructional coaching services. We provide business management, human resources and curriculum services to Flat River Academy.

Academy Board
Representative:

Jason Olvera

(please print)

Signature:

Jason Olvera

Title:

Board President

Date:

June 28th, 2021

APPENDIX C

**Saginaw Valley State University
School/University Partnership Office**

Educational Service Provider Agreement Checklist

The following must be submitted to SVSU upon renewal of an ESP Agreement or a new ESP Agreement:

- X Proposed ESP Agreement
- X Draft Legal Opinion Letter
- X ESP Agreement Checklist

For each provision listed below, please indicate where in the proposed ESP Agreement the required provision may be found. Be specific in identifying the clause or paragraph in which the provision is located.

EXCERPT FROM SVSU CONTRACT:

“Section 6.14 Required Contents of Contracts with ESP. The Academy may enter into or renew an agreement with an ESP for the operation or management of the Academy, provided the Academy complies with all of the requirements of this part and applicable law. At least thirty (30) days prior to the proposed effective date or one regular board meeting of the Academy Board of Directors, whichever is longer, the form of management agreement, along with: (i) an opinion of the Academy’s independent legal counsel, addressed to the University President for reliance thereon, that all such requirements, including any requirements of Applicable Law have been met and that there are no improper and/or unlawful interrelations or conflicts created by same (the “Legal Opinion”) and (ii) documentation sufficient to establish to the University President’s satisfaction that the ESP has the requisite educational and management expertise to operate the Academy in compliance with this Contract and all applicable law, including the requested information about the ESP outlined in the Academy’s Phase II Application must be furnished to SVSU for review. The University may disapprove of the proposed agreement if, in the sole opinion of the University, it is contrary to applicable law or the terms of this Contract. Additionally, the agreement must comply with the following:

Required Contents of ESP Contracts	Specific Location in Proposed ESP Agreement
1. The Academy Board must ensure that, at all times during the term of this Contract, any ESP employed by the Academy maintains comprehensive general liability and umbrella insurance coverage at levels satisfactory to the University President (see Article 12). The insurance coverage required of the ESP shall not be in lieu of the	Section 5.3

Flat River Academy – Educational and Personnel Services Agreement with Midwest School Services, Inc. (July 1, 2021 – June 30, 2025)

Required Contents of ESP Contracts	Specific Location in Proposed ESP Agreement
<p>insurance coverage requirements applicable to the Academy. Any policy of insurance maintained by the ESP must include coverage for sexual molestation or abuse, must name the University as an additional, named insured, and shall not be changed, revoked or modified absent thirty (30) days’ notice to the University President. The ESP Agreement shall also specify that, in the event the University President modifies the level, type, scope or other aspects of such coverage, then the ESP shall undertake like and similar modifications within 30 days of being notified of such change.</p>	
<p>2. The Academy Board must ensure that, and the ESP Agreement shall provide that, any ESP performing services at the Academy shall comply with the requirements under this Contract to the extent such ESP is performing services on behalf of the PSA.</p>	<p>Sections 1(A) (General), 1.3 (CHRI), 1.14 (Notice of Non-Compliance), 2.3 (Procurement), 3.7 (Data Security), 5.1 (Indemnity), 5.5 (Indemnity), and 6.3(B) (Breach)</p>
<p>3. No provision of the ESP Agreement shall interfere with the Academy Board’s duties under the Contract, and the Academy’s duties under the Contract shall not be limited or rendered impossible by action or inaction of the ESP.</p>	<p>Section 1.12</p>
<p>4. No provision of the ESP Agreement shall predetermine the Academy Board’s course of action in choosing to assert or not assert governmental immunity.</p>	<p>Sections 5.4 and 8.14</p>
<p>5. The ESP Agreement shall state that all financial, educational, and student records pertaining to the Academy are Academy property and that such records are subject to the provisions of Michigan’s Freedom of Information Act. All such records must be stored, in physical form, on-site at the Academy’s facility or directly accessible at the Academy facility. All records pertaining to teacher and administrator certification, as well as a copy of the employee handbook shall be maintained physically on site or directly accessible at the Academy facility.</p>	<p>Section 1.13(I)</p>
<p>6. The ESP Agreement shall state that all of the Academy’s financial and other ESP-related records will be made available to the Academy’s independent auditor and that the ESP staff will cooperate with said auditor, and that the ESP shall not select or retain the Academy’s auditor.</p>	<p>Section 1.13(G)</p>

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Required Contents of ESP Contracts	Specific Location in Proposed ESP Agreement
7. The ESP Agreement must certify that there shall be no markup of costs for supplies, materials, or equipment procured by the ESP on the Academy’s behalf and that the Academy and that all supplies, materials, and equipment procured for the Academy by the ESP shall be inventoried by an acceptable method of inventory and further that an inventory of Academy equipment shall be maintained so that it can be clearly established which property belongs to the Academy.	Section 2.3
8. The ESP Agreement shall contain a provision that states upon termination, the ESP shall work for a specified period of time to transition to a new ESP. There may be a fee set forth for this service.	Section 6.7
9. The ESP Agreement shall contain a provision that states upon termination the ESP shall, without charge (i) close the books on the then-current fiscal quarter; (ii) organize and prepare the Academy’s records for transition to the new ESP; (iii) organize and prepare student records for transition to the new ESP; and (iv) provide for the orderly transition of employee compensation and benefits to the new ESP without disruption to staffing.	Section 6.7
10. The ESP Agreement shall prohibit the ESP from executing contracts with its staff assigned to the Academy (including by way of example and not limitation, teachers administrators, counselors and the like) that contain noncompete agreements of any nature.	Section 1.5
11. The Academy Board and the ESP may not substantially amend the management contract without notifying the University President. No amendment shall be contrary to this section and shall be accompanied by a Legal Opinion. Whether or not substantial, the Academy shall submit to the University President Designee all amendments to the management contract within 10 days after such amendment.	Section 8.5
12. The ESP Agreement shall contain the following provision: <u>“Indemnification of Saginaw Valley State University.</u> The parties acknowledge and agree that the Saginaw Valley State University Board of Control, Saginaw Valley State University and its members, officers, employees, agents or representatives are deemed to be third party beneficiaries for purposes of this Agreement. As third party beneficiaries, the parties hereby promise to indemnify and hold harmless Saginaw Valley State University Board of Control, Saginaw Valley State University and its members, officers, employees, agents or representatives from all claims, demands, or liability, including attorney fees, and related expenses, on account of injury, loss or damage, including, without limitation, claims arising from bodily injury, personal injury, sickness, disease, death, property loss or	Section 5.5

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Required Contents of ESP Contracts	Specific Location in Proposed ESP Agreement
<p>damage or any other losses of any kind whatsoever and not caused by the sole negligence of Saginaw Valley State University, which arise out of or are in any manner connected with Saginaw Valley State University Board’s approval of the Public School Academy application, the University Board’s consideration of or issuance of a Contract, the Academy’s preparation for and operation of a public school, or which are incurred as a result of the reliance by Saginaw Valley State University and its Board of Control members, officers, employees, agents or representatives upon information supplied by the Academy or the Educational Management Organization, or which arise out of the failure of the Academy to perform its obligations under the Contract issued to the Academy by Saginaw Valley State University Board of Control. The parties expressly acknowledge and agree that Saginaw Valley State University and its Board of Trustee members, officers, employees, agents or representatives may commence legal action against either party to enforce its rights as set forth in this Agreement.”</p>	
<p>13. The ESP Agreement shall require all ESP employees to undergo criminal background and unprofessional conduct checks required by applicable law and for the ESP to store evidence of such on site, in physical form, at the Academy or directly accessible at the Academy facility.</p>	<p>Section 1.3</p>
<p>14. The ESP Agreement shall contain a provision requiring the educational service provider to make information available to the Academy as deemed necessary by the Academy Board in order to enable the Academy to fully satisfy its obligations under Section 7.4 of this Contract and also at least the information that a school district is required to be disclosed under MCLA 388.1618 for the most recent fiscal year for which that information is available.</p>	<p>Sections 1.13(A) - and (D)</p>
<p>15. No ESP employee shall be designated as the Chief Administrative Officer of the Academy, although such employee may be a designee of the Chief Administrative Officer for certain purposes enumerated by Board action.</p>	<p>Section 1.10A</p>
<p>16. The ESP shall notify the Academy Board if any principal or officer of the ESP, or the ESP (including any related organizations or organizations in which a principal or officer of the ESP served as a principal or officer) as a corporate entity, has filed for bankruptcy protection in the last six (6) months or within any applicable preference period, whichever is longer.</p>	<p>Section 6.4</p>

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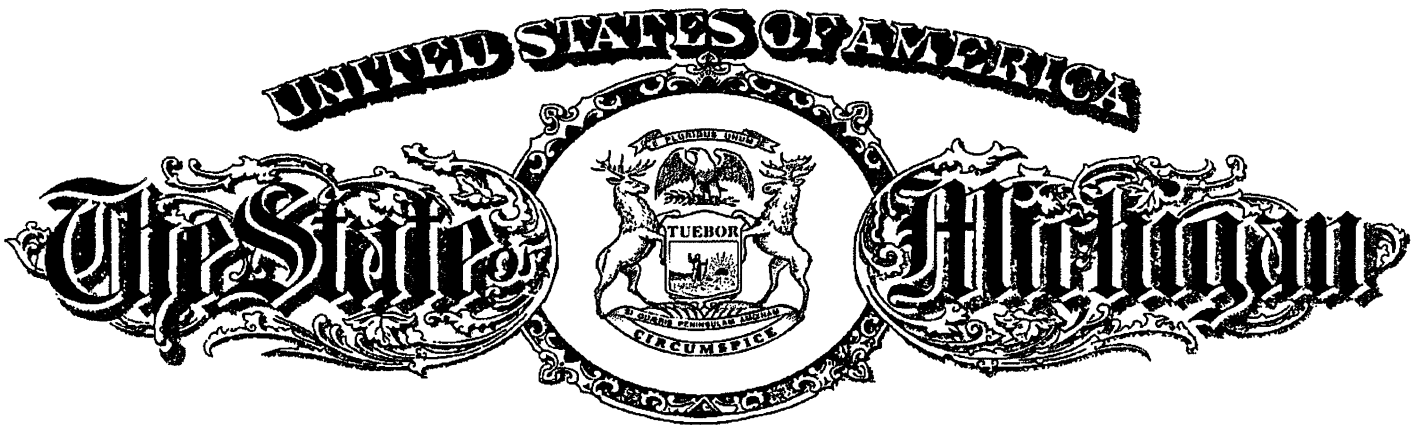
Required Contents of ESP Contracts	Specific Location in Proposed ESP Agreement
17. The ESP Agreement must contain a provision providing for the early termination or amendment of the ESP Agreement, with no cost or penalty to the Academy, and no recourse to the University or any third party affiliated with or engaged by the University, by the ESP or any subcontracted person or entity of the ESP, in the event the University determines to exercise its prerogative under MCLA 380.507(7) and Section 9.3 hereof to reconstitute the Academy by requiring the termination or amendment of the ESP Agreement.	Section 6.5(B)
18. The ESP Agreement shall contain a provision requiring that it make available to the Authorizer and to the public the information required under MCL 380.503.	Section 1.13(B) – (D)
19. The ESP Agreement shall contain a provision requiring it to adopt, implement and maintain a performance evaluation system for all required personnel as required by applicable law.	Section 1.5
20. No ESP Agreement or Amendment may become effective until and unless the Director of SUPO notifies the Academy in writing that it has reviewed and does not disapprove of the ESP Agreement or Amendment thereto.	Sections 9.1 and 8.5
21. The ESP Agreement may not be assigned or assignable to any third party.	Section 8.7
22. The ESP Agreement shall not exceed the length of the Contract.	Section 6.1(A)

PSA Attorney Name:
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 Thrun Law Firm, P.C.

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Phone Number:
 616-588-7701

APPENDIX D



Department of Licensing and Regulatory Affairs
Lansing, Michigan

This is to Certify That

FLAT RIVER ACADEMY

was validly incorporated on August 6, 1996 as a Michigan nonprofit corporation, and said corporation is validly in existence under the laws of this state.

This certificate is issued pursuant to the provisions of 1982 PA 162 to attest to the fact that the corporation is in good standing in Michigan as of this date and is duly authorized to conduct affairs in Michigan and for no other purpose.

This certificate is in due form, made by me as the proper officer, and is entitled to have full faith and credit given it in every court and office within the United States.



In testimony whereof, I have hereunto set my hand,
in the City of Lansing, this 9th day of April, 2021.

Linda Clegg

Linda Clegg, Director

Corporations, Securities & Commercial Licensing Bureau

Sent by electronic transmission

Certificate Number: 21040262405

Verify this certificate at: URL to eCertificate Verification Search <http://www.michigan.gov/corpverifycertificate>.