

**CONTRACT TO OPERATE  
A PUBLIC SCHOOL ACADEMY**

**- between -**

**the Saginaw Valley State University Board of Control**

**- and -**

**MERRITT ACADEMY,  
a Michigan Public School Academy**

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## CONTRACT

Pursuant to the Michigan Revised School Code (“Code”), and in particular being Part 6A, Sections 380.501 through and including 380.507 of the Michigan Compiled Laws, the Saginaw Valley State University Board of Control (“University Board”) grants a contract confirming the status of a public school academy in this State to the Merritt Academy (the “Academy”), a Michigan public school academy. The Parties agree that the granting of this Contract is subject to the following terms and conditions, and this Contract is effective as of the 1st day of July 2020.

### ARTICLE I DEFINITIONS

Section 1.1. Certain Definitions. For purposes of this Contract, and in addition to the terms defined throughout this Contract, each of the following words or expressions, whenever initially capitalized, shall have the meaning set forth in this section:

- (a) “Academy” means the Michigan nonprofit corporation named the Merritt Academy, which is established as a public school academy pursuant to this Contract, is located within the New Haven Community Schools in the Macomb Intermediate School District.
- (b) “Academy Board” means the Board of Directors of the Merritt Academy, each of whom must be a U.S. Citizen to hold office and remain in good standing, and as listed on the University’s Board Member List.
- (c) “Applicable Law” means all state and federal law and regulations applicable to public school academies. This term also applies to any Executive Order of the Governor of the State of Michigan under section 1 of article 5 of the Michigan Constitution of 1963, the Emergency Management Act, 1976 PC 390, as amended, MCL 30.401 et seq. and/or the Emergency Posers of the Governor Act of 1945, 1945 PA 302, as amended, MCL 10.31 et seq. and to all laws cited herein.
- (d) “Application” means the Phase I and Phase II Application to the Saginaw Valley State University (including all attachments and the executed Assurances page) in which representations were made to the University regarding the program and its operation, which representations were material inducements to the University to grant the Contract.
- (e) “Authorizing Body” or “Authorizer” means the Saginaw Valley State University Board of Control.
- (f) “Board Member List” means the University’s official document listing the names and terms of each member of the Academy Board appointed by the University, the current list being incorporated into Schedule 13 of this Contract.
- (g) “Code” means the Michigan Revised School Code, Act No. 451 of the Public Acts of 1976, as amended, being Sections 380.1 to 380.1852 of the Michigan Compiled Laws.

- (h) “Department” means the Michigan Department of Education.
- (i) “Director” means a person who is a member of the Academy Board of Directors.
- (j) “ESP” means the educational service provider, employee leasing company or third-party management company contracted by the Academy Board, if any.
- (k) “Policy” means the Policy Statement adopted by resolution of the Saginaw Valley State University Board of Control, as amended from time to time, establishing the method of selection, length of term and number of members of the Academy Board.
- (l) “President” means the President of Saginaw Valley State University and shall also include his/her authorized designee.
- (m) “Relative” means 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, domestic or same-sex partner.
- (n) “Resolution” means the Resolution of the University Board establishing Merritt Academy as a public school academy.
- (o) “School/University Partnership Office” (SUPO) means the office charged by the University Board with overseeing authorized public school academies, schools of excellence and strict discipline academies.
- (p) “State Board of Education” means the State Board of Education, established pursuant to the Michigan Constitution of 1963, Article 8, Section 3.
- (q) “State Superintendent” means the State Superintendent of Public Instruction.
- (r) “University” means Saginaw Valley State University established pursuant to Article 8, sections 4 and 6 of the 1963 Michigan Constitution and MCL 390.711 et seq.
- (s) “University Board” means the Saginaw Valley State University Board of Control, and also its designee (the University President or the Director of the School/University Partnership Office), as the case may be.

Section 1.2. Schedules. All schedules to this Contract are part of this Contract and incorporated into this Contract as if fully stated herein.

Section 1.3. Statutory Definitions. Statutory terms defined in the Code and as set forth in applicable law shall have the same meaning in this Contract.

**ARTICLE II**  
**ROLE OF SAGINAW VALLEY STATE UNIVERSITY**  
**BOARD OF CONTROL AS AUTHORIZING BODY**

Section 2.1. Method of Selection, Length of Term, and Number of Members of the Board of Directors. The University Board has adopted the Policy providing for the method of selection, length of term, number of members, qualification of members, the procedure for removal of members and the names of the initial Academy Board. The Policy is incorporated into this Contract as Schedule 1 (see Policy Statement part V).

Section 2.2. Method for Monitoring Academy's Compliance with Applicable Law and Performance of its Targeted Educational Outcomes. The University Board has the responsibility to oversee the Academy's compliance with the Contract and all Applicable Law. Additionally, the Academy shall be responsible for the following:

- (a) The Academy shall provide the President with (i) a copy of the annual educational report prior to the date required for publication by Applicable Law and submit to the President documentation sufficient to demonstrate the Academy's progress in meeting its educational goals, including with respect to student success on all assessments administered, and (ii) the monthly report required under MCLA 380.552 (20) for public school academies operating an online program or distance learning program, if permitted in this Contract.
- (b) In the event that the President determines that the Academy's educational outcomes are not meeting the targeted educational goals, the University, at its discretion, may require an objective evaluation of student performances by an educational consultant, acceptable to the President. The Academy shall pay for the expense of the evaluation.
- (c) The Academy shall submit audited financial reports, including auditor's management letters and any exceptions noted by the auditors, to the University President. The reports shall be prepared by the Academy's independent auditor and submitted to the President prior to the date by which such audited financial reports must be submitted to the State of Michigan pursuant to Applicable Law.
- (d) The Academy shall provide the President with a copy of the proposed annual budget for the upcoming fiscal year of the Academy no later than July 1.
- (e) The Academy shall provide to the President agendas and notice in advance of all Academy Board meetings and minutes of all Academy Board meetings. All notices of special meetings shall be accompanied by an affidavit that the posting was undertaken in accordance with this Contract, the Academy Board's bylaws and Applicable Law.
- (f) The Academy shall promptly notify the President of correspondence received from the Michigan Department of Education or State Board of Education that requires a formal response and provide a copy of said response.

- (g) The Academy shall immediately report to the President any litigation or formal proceedings alleging a violation or violations of Applicable Law by the Academy, its officers, employees, agents, and/or contractors and/or the ESP, its officers, employees, agents, and/or contractors or subcontractors.
- (h) The Academy shall permit visitation of its facilities and programs at any time by representatives of the University authorized by the President. No advance notice is required.
- (i) The Academy shall permit examination and/or duplication of any or all records the Academy is required to maintain and/or submit at any time by representatives of the University authorized by the President.
- (j) The Academy shall provide certification of its adoption of such policies as the Academy Board deems reasonable and necessary to discharge its functions and to comply with Applicable law.

Section 2.3. Reimbursement of University Board Costs. Pursuant to MCL 380.502(6), the Academy shall pay the University Board an administrative fee to reimburse the University Board for the costs of its execution of its oversight responsibilities. The fee is deemed earned upon the commencement of a given fiscal year of the Academy and shall be 3% of the total of all state school aid payments received by the Academy for that fiscal year. The University may choose, at its sole discretion, to waive all or a portion of the fee.

Section 2.4. Reimbursement for University Board Services Associated with Third-Party Subpoenas and Freedom of Information Act Requests. If the University Board receives a Freedom of Information Act Request or a subpoena from a third party (including the Academy, its counsel, the Academy's ESP or its counsel) demanding the production of Academy documents related to pending litigation or proceedings involving the Academy, the Academy's ESP (or any subcontractor of the ESP or other contractors of the Academy) or any third party, the University Board may charge the Academy for the cost of the services associated with the University Board's response to the subpoena or FOIA request (including actual attorney's fees in fulfilling the request). The parties agree that the Academy may avoid the obligation to pay for services by the University Board associated with responses for requests for documents by directly producing Academy documents to the requesting party.

In the event the University receives a subpoena or other valid order or process from a Court of competent jurisdiction compelling testimony of a member of the University's Board of Control, its President or any other of its officers, directors, or other personnel, the Academy shall pay all legal fees and costs (including actual attorney's fees) related to the required testimony.

Section 2.5. University Board as Fiscal Agent for the Academy. The University Board is the fiscal agent for the Academy. The University shall retain any amount owed to the University by the Academy pursuant to this Contract, provided that the University Board shall retain no more than the total of (a) 3% of each installment for its University Board Costs and (b) the costs associated with responding to a subpoena or FOIA request under Section 2.4 in the event the Academy declines to produce such documents itself. For purposes of this section, the responsibilities of the University, the State of Michigan, and the Academy are set forth in the Fiscal Agent Agreement incorporated herein as Schedule 2.

Section 2.6. Authorization of Employment. The Academy may employ or contract with personnel, in accordance with all state law requirements regarding certification (including certified teachers, administrators, and chief business officials) according to Applicable Law, and qualifications of certain employees of public schools, except that noncertified teachers and/or administrators may be used as permitted by Applicable Law. Academy shall make available to the University for its review all licenses, certifications, and other qualifications of Academy personnel required by law, and shall undertake or cause to be undertaken all criminal background and unprofessional conduct checks required by applicable law.

Section 2.7. Borrowings by the Academy. The Academy shall not incur indebtedness or borrow money except in accordance with applicable law and with the prior approval of the University. It is the Academy's obligation to provide the University with sufficient notice and time to review any and all closing documents prior to any anticipated closing. Failure to do so risks non-approval of the borrowing in question or non-delivery of any certificates requested of the authorizing body. The Academy may not levy taxes. Notwithstanding the foregoing, the Academy, only after obtaining the prior written approval of the SUPO Director, which consent may be withheld for any reason, may incur debt only as follows:

- (a) Short-term: The Academy may incur temporary debt in accordance with Section 1225 of the Code provided, at the option of SUPO, it submits forms of the proposed financing documents (including term sheet, amortization schedule and cash flow) to the attention of the Director of SUPO at least fifteen (15) business days prior to closing and obtains his/her written nondisapproval of the transaction prior to closing. For transactions involving the Michigan Finance Authority's annual State Aid Note Pool program, in recognition of the fact that the documents are of a standardized set and have historically been released to counsel and require return by counsel in a compressed time period, in lieu of providing transaction documents, the Academy will provide the State Aid Note Program application, cash flow workbook, and all application-related materials to SUPO simultaneous with submission to the State Aid Note Program staff. The SUPO's nondisapproval of any transaction hereunder is not a representation by SUPO of any aspect of the Academy's operations, the Academy's credit-worthiness, or the Academy's ability to repay the indebtedness incurred. Credit decisions regarding indebtedness are expressly the responsibility of the lender.
  
- (b) Long-term: The Academy may enter into long-term indebtedness in the manner and form permitted by applicable law provided it submits forms of the proposed financing documents (including term sheet, amortization schedule and any preliminary offering document, e.g., a Preliminary Official Statement) to the attention of the Director of SUPO at least thirty (30) days prior to closing and obtains his/her written nondisapproval of the transaction. The SUPO's nondisapproval of any transaction does not mean that SUPO expresses or implies any opinion as to the veracity or completeness of any representation made in any offering document or that SUPO is making any representations of the Academy's credit-worthiness or its ability to repay any indebtedness so incurred. Credit decisions regarding indebtedness are expressly the responsibility of the lender.

- (c) An instrument of indebtedness entered into by the Academy and a third party shall not in any way constitute an obligation, either general, special, or moral of the State of Michigan or the University. Neither the full faith and credit nor the taxing power of the State of Michigan or any agency of the State, nor the full faith and credit of Saginaw Valley State University shall ever be pledged for the payment of any Academy instrument of indebtedness.
- (d) The Academy has no authority whatsoever to enter into any contract or other agreement that would financially obligate the State of Michigan or Saginaw Valley State University, nor does the Academy have any authority whatsoever to make any representations to lenders or third parties, that the State of Michigan or Saginaw Valley State University in any way guarantee, are financially obligated, or are in any way responsible for any agreement, promissory note, contract, mortgage, loan or other instrument of indebtedness entered into by the Academy. No party shall attribute any representation regarding the Academy in any manner, including in relation to any financing or financial undertaking that does not appear in a document physically signed with a wet signature by the Director of SUPO.
- (e) In the event that indebtedness of any sort contemplated by the Academy requires an intercept of state school aid for payment of debt service, a certificate or certification by the University or the University President, the issuance of such is subject to the sole discretion of the University, through its designee, the Director of SUPO. It is the Academy's responsibility to provide ample notice of at least sixty (60) days of its need for same to ensure sufficient time for review, unless extenuating circumstances prohibit such review, in which case, the Academy shall provide notice at the earliest possible opportunity.

**ARTICLE III**  
**REQUIREMENT THAT ACADEMY ACT SOLELY**  
**AS GOVERNMENTAL ENTITY**

Section 3.1. Governmental Entity. The Academy shall act exclusively as a governmental entity and shall delegate none of its governmental functions, including the determination to assert or not to assert governmental immunity under Applicable Law.

Section 3.2. Independent Status of the Academy. The Academy is a body corporate and governmental entity authorized by the Code. It is organized and shall operate as a public school academy and a Michigan nonprofit corporation. The Academy is not a division or a part of Saginaw Valley State University. The relationship between the Academy and the University is based solely on the applicable provisions of the Code and the terms of this Contract or other written agreements between the University and the Academy.

Section 3.3. Prohibition of Identified Family Relationships. No person shall be a member of the Academy Board if he or she is a Relative of another member of the Academy Board; an employee, officer or individual with an ownership interest in the Academy's ESP or a Relative of such individual; or if he or she works at the Academy or provides contracted services to the Academy or is a Relative of such individual. Additionally, no Relative may occupy a supervisory position over another Relative. Likewise, prohibitions against holding incompatible public office

and against specified conflicts of interest set forth in MCL 15.181 to 15.185 and MCL 15.321 to 15.330, respectively, shall be scrupulously observed.

Section 3.4. Prohibition of Tuition and Religious Affiliation. The Academy shall not impose tuition of any nature and shall not be organized by a church or other religious organization and shall not have any organizational or contractual affiliation with or constitute a church or other religious organization.

Section 3.5. Prohibition of Employment in More than One Full-time Position. No individual shall be employed by or at the Academy in more than 1 full-time position in which he or she is compensated at a full-time rate for each of those positions.

Section 3.6. Other Permitted Activities. Nothing in this Contract shall prohibit the Academy from engaging in other lawful activities that are not in derogation of the Academy's status as a public school or that would not jeopardize the eligibility of the Academy for state school aid funds. Subject to Section 2.5 of this Contract, the Academy may enter into agreements with other public schools, public school academies, governmental units, businesses, community and nonprofit organizations where such agreements contribute to the effectiveness of the Academy or advance education in this state.

#### **ARTICLE IV PURPOSE**

Section 4.1. Academy's Purpose. The Academy's purpose is as stated in the Articles of Incorporation as set forth in Schedule 3 attached hereto.

#### **ARTICLE V CORPORATE STRUCTURE OF THE ACADEMY**

Section 5.1. Michigan Nonprofit Corporation. The Academy's corporate structure is that of a Michigan nonprofit corporation, organized pursuant to MCL 450.2101.

Section 5.2. Articles of Incorporation. Unless amended pursuant to this Contract, the Articles of Incorporation of the Academy, as set forth in Schedule 3, shall be the Articles of Incorporation of the Academy.

Section 5.3. Bylaws. Unless amended pursuant to this contract, the Bylaws of the Academy, as set forth in Schedule 4 shall be the Bylaws of the Academy.

#### **ARTICLE VI OPERATING REQUIREMENTS**

Section 6.1. Governance Structure. The Academy shall be organized and administered as a Michigan nonprofit corporation under the direction of the Academy Board and pursuant to the governance structure as set forth in the Bylaws. The Academy's Board of Directors shall meet monthly unless another schedule is mutually agreed upon by the President and the Academy. The

Academy shall not delegate this duty of organization and administration of the Academy without the express affirmative consent of the University.

Section 6.2. Contributions and Fund Raising. The Academy may solicit and receive contributions and donations as permitted by law. No solicitation shall indicate that a contribution to the Academy is for the benefit of Saginaw Valley State University. The University shall not be required to receive any contributions or donations for the benefit of the Academy. If the University accepts contributions or donations for the benefit of the Academy, it shall forward such funds to the Academy within three (3) business days of receipt.

Section 6.3. Educational Goals and Programs. The Academy shall pursue the educational goals identified in Schedule 5. Such goals may be amended pursuant to Section 8.1 of Article VIII of this Contract. The Academy shall provide, annually, a report to Saginaw Valley State University of its performance in meeting these objectives. This report shall contain a statement of student growth and achievement as well as the summarized results of all standardized testing administered at the Academy. In addition to any educational goals set forth in Schedule 5, the educational goals shall include demonstrated improved pupil academic achievement for all groups of pupils, and the Academy shall not be identified as being in the bottom 5% of all public schools in the State; if the Academy is so identified, it shall present to the Director within 60 days of being so identified its plan for improvement that comports with applicable law. To the extent applicable, the progress of the pupils in the Academy shall be assessed using at least Michigan's statewide assessments under MCLA 380.1279g or such successor instrument required by applicable law.

Section 6.4. Curriculum. The Academy shall have flexibility in developing, realigning, and implementing the curriculum identified in Schedule 6.

Section 6.5. Staff Responsibilities. Subject to Section 2.5 of this Contract, the University Board authorizes the Academy to employ or contract with personnel as outlined in Schedule 7, which shall include copies of any agreement with an ESP or board liaison which the Academy may enter into, job descriptions (including identification of certifications required under Applicable Law) and a schematic or narrative governance structure of the Academy.

Section 6.6. Admission Policy. The Academy shall comply with all admissions policies and criteria required by laws applicable to public school academies under the Code. The Academy must make a reasonable effort to advertise its enrollment openings. Open enrollment must be for a period of at least two (2) weeks and shall permit the enrollment of pupils by parents and/or guardians at times in the evening and weekends, and shall comply with all requirements of Applicable Law. Schedule 9.

Section 6.7. School Calendar/School Day Schedule. The Academy shall comply with all minimum standards governing the length of the school term, minimum number of days and hours of instruction required by law applicable to public school academies under the Code. The Academy shall provide the Authorizer copies of any waivers it has obtained related to days and hours of instruction or calendar. Schedule 10.

Section 6.8. Age/Grade Range of Pupils Enrolled. The Academy shall offer programs for the grades and ages indicated in Schedule 11. The Academy may add or delete additional grades in the future, pursuant to Section 8.1 of Article VIII of this Contract.

Section 6.9. Annual Financial Audit. The Academy shall commission an annual financial audit to be conducted by an independent auditor selected and retained by the Academy Board.

Section 6.10. Address and Description of Proposed Physical Plant. The address of the proposed physical plant for the Academy and a description of same, including certificates of occupancy and other required agency approvals, lease, land contract or deed, as applicable, and a brief description of any financing transaction entered into by the Academy for facility acquisition, and the debt-service schedule thereof is attached as Schedule 8. Except as permitted by written amendment to this Contract, the Academy shall not operate at a site other than the single site requested for the configuration of grades that will use the site.

- (a) No lease to occupy any portion of the Academy's physical plant shall exceed the term of the Academy's Contract except with the prior approval of the University President or his/her designee.
- (b) No new public school academy may locate within the boundaries of a community district except in accordance with the provisions of the Code.

Section 6.11. Reports to the University President. The Academy shall provide the University President with copies of reports and assessments concerning the educational outcomes achieved by pupils attending the Academy.

Section 6.12. Accounting Standards. The Academy shall at all times comply with accounting standards required by Applicable Law, including generally accepted public sector accounting principles.

Section 6.13. Placement of University Student Interns. The Academy may be a placement site for University students in training to serve in public schools. Such placements shall be without charge to the University and subject to other terms and conditions as the Academy and the University agree.

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. 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:

- (a) In negotiating and finalizing any such contract, the Academy Board must seek the advice of independent legal counsel, who must deliver to the University President

the Legal Opinion referenced above. The ESP Management Agreement must be approved by the Academy Board, during a meeting open to the public held pursuant to the Michigan Open Meetings Act.

- (b) 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 13). The insurance coverage required of the ESP shall not be in lieu of the 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 Management 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.
- (c) The Academy Board must ensure that, and the ESP Management 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.
- (d) No provision of the ESP Management 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.
- (e) No provision of the ESP Management Agreement shall predetermine the Academy Board's course of action in choosing to assert or not assert governmental immunity.
- (f) The ESP Management 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, except for some data which may be contained in such records, which may be redacted or withheld as permitted by applicable law, which shall be specifically cited in the event of withholding or redaction. All such records must be stored, in physical form, on-site at the Academy's facility or be 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.
- (g) The ESP Management 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.
- (h) The ESP Management 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.

- (i) The ESP Management 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 reasonable fee set forth for this service.
- (j) The ESP Management 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.
- (k) The ESP Management 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 and/or nonsolicitation agreements of any nature.
- (l) 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.
- (m) The ESP Management Agreement shall contain the following provision:  
“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 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 Trustee members, officers,

employees, agents or representatives may commence legal action against either party to enforce its rights as set forth in this Agreement.”

- (n) The ESP Management Agreement shall require all ESP employees to undergo criminal background and unprofessional conduct checks required by applicable law in the matter presented therein.
- (o) The ESP Management 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) 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.
- (q) 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.
- (r) The ESP Management Agreement must contain a provision providing for the early termination or amendment of the ESP Management 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 Management Agreement.
- (s) The ESP Management Agreement shall contain a provision requiring that it make available to the Authorizer and to the public the information required under MCL 380.503.
- (t) The ESP Management 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.
- (u) No ESP Management 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 Management Agreement or Amendment thereto.
- (v) The ESP Management Agreement may not be assigned or assignable to any third party.

(w) The ESP Management Agreement shall not exceed the length of the Contract.

Section 6.15. University Board Approval of Condemnation. In the event that the Academy desires to acquire property pursuant to condemnation, it shall obtain the express written permission of the University Board for such acquisition; such written permission shall be in the form of a resolution adopted at a public meeting of the University Board. The Academy shall submit such written request to the University Board 120 days prior to the next regularly scheduled meeting of the University Board. The University Board reserves unto its sole discretion the determination to act, table or decline to act upon such request.

Section 6.16. Reporting of Total Compensation. The Academy Board shall, upon request, report to the Authorizing Body the total compensation for each individual working at the Academy.

Section 6.17. Contract Administration. If the Academy employs a Board liaison or contract administrator, it shall specify the role of such contract administrator or Board liaison in Schedule 7 and include a copy of its agreement with same.

Section 6.18. Prohibition of Employment in More than One Full-time Position. No employee of the Academy or its ESP, if any, may be employed for a total of more than 1.0 full-time position.

## **ARTICLE VII COMPLIANCE WITH THE CODE AND OTHER LAWS**

Section 7.1. Compliance with the Code. The Academy shall comply with the Code.

Section 7.2. Compliance with State School Aid Act. In order to assure that funds are available for the education of pupils, the Academy shall comply with all applicable provisions of the State School Aid Act of 1979, as amended from time to time. The Academy may expend funds from the State School Aid Act for any purpose permitted by the State School Aid Act of 1979 and may enter into contracts and agreements determined by the Academy as consistent with the purposes for which the funds were appropriated.

Section 7.3. Open Meetings Act. The Academy Board shall conduct all of its meetings, including committee or other meetings, in accordance with the Michigan Open Meetings Act, Act No. 267 of the Public Act of 1976, being Sections 15.261 to 15.275 of the Michigan Compiled Laws, as amended, as required.

Section 7.4. Freedom of Information Act. The records of the Academy shall be records subject to the provisions of the Michigan Freedom of Information Act ("FOIA"), Act No. 442 of the Public Acts of 1976, being Sections 15.231 to 15.246 of the Michigan Compiled Laws, as amended. The Academy Board shall designate a freedom of information officer to assure compliance with FOIA and other applicable law providing for public disclosure or for protection of privacy.

Section 7.5. Public Employees Relations Act. The Academy shall comply with Act No. 336 of the Public Acts of 1947, being Sections 423.201 to 423.216 of the Michigan Compiled

Laws. Organizational efforts and collective bargaining agreements, if any, with employees of the Academy shall be the responsibility of the Academy.

Section 7.6. Non-discrimination. Each party shall be separately responsible for compliance with all applicable laws pertaining to equal opportunity and non-discrimination.

Section 7.7. Other State Laws and Regulations and Federal Laws and Regulations. The Academy shall comply with other state and federal laws which are applicable to public school academies as public bodies and public schools, including but not limited to, those statutes and laws set forth in Part 6A of the Code, including, but not limited to, those set forth in MCL 380.503(7)(a) – (e), all laws relating to criminal background and unprofessional conduct checks and the terms of this Contract. Likewise the Academy shall comply with such federal laws and regulations applicable to public school academies as public bodies and public schools.

Section 7.8. Federal Laws. The Academy shall comply with federal laws which are applicable to public school academies as public bodies. Nothing in this Contract shall be deemed to apply any other federal law to the Academy.

Section 7.9. Matriculation Agreement(s). The Academy shall not enter into a matriculation agreement without the prior written approval of Saginaw Valley State University, which must be obtained through the Contract Amendment Process described in Article VIII.

Section 7.10. Partnership Agreement. If the Department and State Reform Office imposes a partnership agreement on the Academy, the Academy shall work collaboratively with the Department, the State Reform Office and other partners to implement the partnership agreement. In the event that a provision in the partnership agreement is inconsistent with a provision in this Contract, this Contract shall control.

Section 7.11. Certifications. The Academy shall use only certified staff, including teachers, business officials and administrators, unless permitted to use uncertified staff, and then it may do so only in accordance with applicable law.

Section 7.12. Transparency Reporting. The Academy shall collect, maintain, and make information concerning its operation and management available to the public and to the University in the same manner as is required by state law for a public school district, including at least the following:

- (a) a copy of this Contract and all attachments, schedules and amendments;
- (b) a list of all currently serving members of the Academy Board of Directors, including their names, addresses, and terms of office;
- (c) copies of all policies approved by the Academy Board of Directors;
- (d) all board materials, agendas, formal resolutions and minutes (excluding minutes kept of closed sessions maintained according to the Open Meetings Act) of all regular and special meetings of the Board of Directors of the Academy;

- (e) a copy of the budget, and any amendments thereto, approved by the Academy Board of Directors;
- (f) copies of all bills paid for amounts of \$10,000.00 or more in the form that they are submitted to the Academy Board;
- (g) quarterly financial reports submitted to the University;
- (h) a current list of all teachers and school administrators working at the Academy, including their individual salaries (as submitted to the registry of educational personnel), copies of their teaching or school administrator's certificates or permits (as applicable), evidence of compliance with the criminal background and unprofessional conduct checks required by the Code;
- (i) copies of all leases or deeds, or both, and of any equipment leases;
- (j) copies of all management or service contracts approved by the Academy Board of Directors;
- (k) all health and safety reports and certificates, including those relating to fire safety, environmental matters, asbestos inspections, boiler inspection and food service;
- (l) any management letters issued as part of the Academy's annual audit;
- (m) within 20 days after the board or board of directors is informed by the appropriate authority of the adequate yearly progress status of its schools for the purposes of the no child left behind act of 2001, Public Law 107-110, for the most recent school year for which it is available, post a notice of the adequate yearly progress status of each school it operates on the homepage of its website;
- (n) within 20 days after the board or board of directors is informed by the department of the accreditation status of its schools for the purposes of section 1280 for the most recent school year for which it is available, post a notice of the accreditation status of each school it operates on the homepage of its website; and
- (o) all other information required by applicable law.

## **ARTICLE VIII AMENDMENT**

Section 8.1. Process for Amending the Contract. Either party may propose changes in this Contract or may propose a meeting to discuss potential revision of this Contract. The University Board delegates to its President the review and approval of changes or amendments to this Contract.

Section 8.2. Process for Amending the Articles. The Academy, by a majority vote of its Board of Directors, may at any time, propose specific changes to the Articles of Incorporation or may propose a meeting to discuss potential revisions to the Articles of Incorporation. The proposal

will be made to the University Board through its designee. The University Board delegates to its President the review and approval of changes or amendments to the Articles of Incorporation. In the event that a proposed change is not accepted by the University President, the University Board shall consider and vote upon a change proposed by the Academy Board following an opportunity for a written and oral presentation to the University Board by the Academy Board.

The University Board, or an authorized designee, may, at any time, require specific changes to the Articles of Incorporation or may propose a meeting to discuss potential revision. The Academy Board may delegate to an officer of the Academy the review and negotiation of changes or amendments to the Articles of Incorporation. Any Amendment(s) to the Articles of Incorporation required by the University Board or its designee, shall be approved by the Academy at the next-occurring public meeting following the receipt by the Academy of such required amendment(s). Such amendment(s) shall be promptly filed with the Michigan Department of Licensing and Regulatory Affairs, Corporations Division by the Academy or its designee.

Amendments to the Articles of Incorporation take effect only after they have been filed with the Michigan Department of Licensing and Regulatory Affairs, Corporations Division. In addition, for Academy-initiated amendments, the Academy shall file with the amendment a copy of the University Board's or its designee's approval of the amendment.

Section 8.3. Process for Amending the Bylaws. The Bylaws may be altered, amended or repealed and new Bylaws may be adopted by obtaining (a) the affirmative vote of a majority of the Academy Board at any regular or special meeting of the Academy Board, if a notice setting forth the terms of the proposal has been given in accordance with the notice requirements for special meetings, and (b) the written approval of the changes or amendments by the University President. In the event that a proposed change is not accepted by the University President, the University Board shall consider and vote upon a change proposed by the Academy Board following an opportunity for a written and oral presentation to the University Board by the Academy Board.

The University Board, or its designee, may require an amendment or amendments to the Academy's Bylaws. Such amendment(s) shall be approved by the Academy Board and take effect at the next public meeting of the Academy Board following notice of the required amendment(s).

Amendments to the bylaws take effect only after they have been approved by both the Academy Board and the University President or University Board.

## **ARTICLE IX ENFORCEMENT AND REVOCATION**

Section 9.1. Grounds for Revocation. This Contract may be revoked by the University Board upon a determination by the University Board, pursuant to the procedures set forth in Section 9.2, that one or more of the following has occurred:

- (a) Failure of the Academy to abide by and meet the educational goals set forth in this Contract or to demonstrate improved pupil academic achievement for all groups of pupils as set forth herein;

- (b) Failure of the Academy to comply with all Applicable Law;
- (c) Substantial failure to comply with any applicable State Board rule expressly applicable to public school academies;
- (d) Failure of the Academy to meet generally accepted public sector accounting principles or demonstrate sound fiscal stewardship;
- (e) Failure of the Academy to pay for services provided to the Academy by a nonauthorizing local or intermediate school district if the Academy requested and contracted for the services;
- (f) The Academy is insolvent or has been adjudged bankrupt;
- (g) The Academy, in the sole discretion of the University President, defaults in any of the terms, conditions, promises or representations contained in or incorporated into this Contract;
- (h) The University President discovers negligent, fraudulent or criminal conduct by the Academy's applicant(s), directors, or officers in relation to their performance under this Contract or determines that any principal, agent or employee of the Academy's ESP has engaged in same;
- (i) The Academy files amendments to its Articles of Incorporation with the Michigan Department of Licensing and Regulatory Affairs, Corporations Division without first obtaining the University's approval;
- (j) The Academy has insufficient enrollment to successfully operate its program and/or enrollment falls below twenty-five (25) students;
- (k) The Academy's applicant(s), directors, officers, employees, or agents (including the ESP, its employees or directors) have provided the University false or misleading information or documentation in the performance of this Contract;
- (l) The Academy acts in any way that is inconsistent with the University's responsibility to oversee the Academy's compliance with Contract and all other applicable law;
- (m) Failure by the Academy to fulfill any insurance obligation under Article XII of this Contract, including any failure by the Academy to increase its insurance coverage or purchase additional insurance if so requested by the University;
- (n) Refusal by the Academy or its agents (including the ESP) to provide the University President access to any documentation that is (a) required under this Contract or (b) which he/she deems necessary to carry out his/her oversight function;
- (o) Failure by the Academy to adopt any amendment required by the University Board or its designee;

- (p) Designation of the Academy as being in the lowest performing 5% of schools in the State.

Section 9.2. Procedures for Revoking Contract. The University Board or the President may revoke this Contract at any time for any reason identified in this Contract or any reason, in the University's sole discretion, consistent with the University's responsibility to oversee the Academy's compliance with this Contract and applicable law. The decision of the University to revoke this Contract is solely within the discretion of the University, is final, and is not subject to review by a court or any state agency. If this Contract is revoked or terminated for any reason, either before, during, after or without implementing corrective action, as described below, the University is not liable for such action to the Academy, a pupil of the Academy, the parent or guardian of a pupil of the Academy, or any other person or entity. The revocation of the Contract shall be effective as of a date determined by the University, but in no event later than 15 days after the revocation by the University Board or the President.

Section 9.3. Corrective Action by Order of Reconstitution. The University, in its sole discretion, may issue an Order of Reconstitution requiring the Academy to undertake a plan of corrective action in order to avoid revocation of its Contract ("Corrective Action"). The plan of Corrective Action may include cancellation of the Academy's contract with its ESP, withdrawal of the University's approval of the ESP Management Agreement, termination of one or more Academy Directors' service, appointment of a new member or members to the Academy Board of Directors, elimination of the Academy's ability to offer certain age and grade levels at an identified site or designation of a trustee or receiver to take over the operation of the Academy. In the event a Corrective Action plan is undertaken, the following steps will be observed:

- (a) the University will notify the Academy, in writing, of the specific educational performance or operational issues that it deems failing at the Academy and its intent to revoke the Academy's Contract if the issues are not corrected by a date certain, which will be no earlier than 90 days (absent exigent circumstances) after the date of the notice;
- (b) within thirty days after receipt of the notice described above, the Academy shall respond to the University with any information that the Academy Board of Directors deems relevant to the issues and a plan of correction;
- (c) if the University approves of the plan of correction, it shall be implemented, and the Contract shall be amended accordingly; if the University disapproves the plan of correction, it may implement corrective action in a manner that it, in its sole discretion, deems appropriate to the situation or continue with the revocation of the Contract as it sees fit.

Section 9.4. Termination by Operation of Law. In the event the University Board is notified by the Department that an Academy site is subject to closure under section 507 of the Code, MCL 380.507 ("State's Automatic Closure Notice"), then this Contract shall automatically be amended to eliminate the Academy's authority to operate certain age and grade levels at the site or sites identified in the State's Automatic Closure Notice. If the State's Automatic Closure Notice includes all of the Academy's existing sites, then this Contract shall automatically be terminated at the end of the current school year in which either the State's Automatic Closure Notice is received without any further action of the University Board or the Academy.

Following receipt of the State's Automatic Closure Notice, the SUPO Director shall forward a copy of the notice to the Academy Board and may request a meeting with the Academy Board representatives to discuss the Academy's plans and procedures for the elimination of certain age or grade levels at the identified site or sites, or if all of the Academy's existing sites are included in that notice, then wind-up and dissolution of the Academy corporation at the end of the current school year. All Academy inquiries and requests for reconsideration of the State's Automatic Closure Notice, including the granting of any hardship exemption by the Department rescinding the State's Automatic Closure Notice ("Pupil Hardship Exemption"), shall be directed to the Department, in a form and manner determined by the Department.

If the Department rescinds the State's Automatic Closure Notice for an Academy site or sites by granting a Pupil Hardship Exemption, the Academy is not required to close the identified site(s) but shall present to the University, the Department's school improvement plan, if applicable, for the identified site(s).

If the Department elects not to issue a Pupil Hardship Exemption and the SUPO Director determines, in his or her discretion, that the closure of one or more sites as directed by the Department creates a significant economic hardship for the Academy as a going concern or the possibility of a mid-year school closure, then the SUPO Director may recommend to the University Board that the Contract be terminated at the end of the current school year (hereinafter "Economic Hardship Termination"). If the University Board approves the Economic Hardship Termination recommendation, then this Contract shall terminate at the end of the current school year without any further action of the parties.

## **ARTICLE X SUPERINTENDING CONTROL**

Section 10.1. Superintending Control in the Event of an Emergency. Notwithstanding the foregoing, when the President determines that probable cause exists to believe that the health or safety of the Academy's students is at risk, or that the security of the Academy's property or funds are at risk, the President, or his/her designee, may exercise superintending control over the Academy whether or not there is a pending revocation of the Contract being considered.

## **ARTICLE XI TERMINATION**

Section 11.1. Grounds for Termination by the Academy. This Contract may be terminated by the Academy upon a determination by the Academy Board of Directors that one of the following has occurred:

- (a) The Academy has lost its right to occupancy of the Physical Plant described in Section 6.11 and could not find another suitable physical plant for the Academy prior to the expiration or termination of its right to occupy its existing Physical Plant;
- (b) The Academy is insolvent or adjudged bankrupt;

- (c) The Academy has insufficient enrollment to successfully operate a public school academy and/or enrollment at the Academy falls below twenty-five (25) students.

Section 11.2. Procedures for Terminating Contract. The Academy shall not terminate this Contract unless the following procedures have been implemented:

- (a) Notice. The Academy, upon reasonable belief that grounds for termination of the Contract exist, shall notify the President of such grounds. The notice shall be in writing and shall set forth in sufficient detail the grounds for termination. The President may conduct a preliminary review of the alleged basis for termination.
- (b) Determination by University. Upon receipt by the President of the grounds for termination, the University may accept or reject the request for termination within 30 days.
- (c) Effective Date for Termination. If the President determines that grounds exist for termination of this Contract, the Academy Board may act to terminate this Contract. The termination shall be effective upon University determination.

## **ARTICLE XII PROVISIONS RELATING TO CHARTER SCHOOLS**

Section 12.1. Saginaw Valley State University Faculty Employment in the Academy. Subject to the ability of the Academy to reach separate agreement on the terms, the Academy is permitted to use Saginaw Valley State University faculty as classroom teachers in any grade.

Section 12.2. The Academy Faculty Appointment to Saginaw Valley State University Faculty. Nothing in this Contract shall prohibit a member of the Academy faculty from being appointed to or serving as a member of the Saginaw Valley State University faculty.

Section 12.3. Student Conduct and Discipline. The Academy Board shall adopt, abide by and enforce its own set of written policies concerning student conduct and student discipline.

Section 12.4. Employment Qualifications for Classroom Teachers. The Academy shall employ high quality classroom teachers, as that term is defined in the Elementary and Secondary Education Act, 20 USC Chapter 70, who meet the certification requests set forth in the Code.

Section 12.5. Criminal Background Check. The Academy shall comply with all sections 1230a of the Code and all applicable law concerning criminal background checks. In the event the Academy contracts with an ESP, the ESP shall comply with this section as if it were the Academy and certify such compliance to the Academy and the University President.

Section 12.6. Academy Budget. The Academy Board is responsible for establishing and approving an annual budget, as well as any required amendments thereto. Copies of the annual budget and any amendment thereto will be provided to the University.

Section 12.7. Transportation. The Academy Board may enter into contracts with other school districts or other persons, including municipal and county governments, for the transportation of the Academy students to and from school and for field trips. In addition, the Academy Board may use funds received from state school aid payments to pay for student transportation.

Section 12.8. Intramural and Interscholastic Sports. The Academy is authorized to join any organization, association, or league which has as its objective the promotion and regulation of sport and athletic, oratorical, musical, dramatic, creative arts, or other contests by or between pupils.

Section 12.9. Legal Liabilities. The Academy acknowledges and agrees that it has no authority to extend the faith and credit of the University or to enter into a contract that would bind the University. The Academy also is limited in its authority to contract by the amount of funds obtained from the state school aid fund, as provided hereunder, or from other independent sources. The Academy hereby covenants not to sue the University or any of the members of its board of control, officers, employees, agents, or representatives for any matters that arise under this Contract. The University does not assume any obligation with respect to any director, employee, agent, parent, guardian, student, or independent contractor, of the Academy, and no such person shall have the right or standing to bring suit against the University or any of the members of its Board of control, employees, agents, or independent contractors as a result of the issuing or revocation of this Contract.

Section 12.10. Lease and Occupancy and Safety Certificates. Upon request, the Academy shall provide to the University President (a) copies of its lease or deed for the premises in which the Academy shall operate; (b) copies of certificates of occupancy and safety which are required by law for the operation of a public school.

Section 12.11. Deposit of Public Funds by the Academy. The Academy shall deposit or invest all funds received by the Academy in a bank, savings and loan association, credit union, or other institution which is eligible to be a depository of the funds of a public school academy and in instruments permitted by law for such deposit and/or investment.

Section 12.12. Unprofessional Conduct Check. The Academy shall comply with all sections of the Code concerning unprofessional conduct checks for all staff positions. In the event the Academy contracts with an ESP, the ESP shall comply with same as if it were the Academy and certify such to the Academy and the University President.

### **ARTICLE XIII INSURANCE AND INDEMNIFICATION**

Section 13.1. Insurance. The Academy Board shall insure the real and personal property of the Academy and shall purchase general liability insurance. The Academy may join with other public school academies to obtain real and personal property and casualty insurance if the Academy Board finds that such an association provides economic advantages to the Academy. The Academy shall list the University on the insurance policies as an additional named insured. In addition, the Academy shall send to the President copies of its insurance policies. The Academy may expend funds for payment of the cost of participation in an accident or medical insurance

program to insure protection for pupils while attending school or participating in a school program or activity.

Section 13.2. Minimum Insurance Coverage. The Academy shall maintain at least the minimum insurance coverages required from time to time by University insurance providers, including but not limiting to, M.U.S.I.C. At the time of execution of this contract these coverages are as follows, and shall include coverage for sexual molestation and abuse:

- (a) Commercial General or Public Liability: \$1 million per occurrence, \$2 million aggregate, PSA First Named Insured, SVSU Additional insured with primary and noncontributory coverage including coverage for sexual molestation or abuse and corporal punishment;
- (b) Automobile Liability: \$1 million per accident, PSA First Named insured, SVSU Additional insured with primary and noncontributory coverage, Higher limits are required is PSA has its own buses;
- (c) Workers Compensation: Meeting statutory requirements with \$1 million Employers' Liability Limits;
- (d) School Leaders Errors and Omissions: \$1 million per occurrence, \$3 million aggregate, PSA First Named insured, SVSU Additional insured with primary and noncontributory coverage;
- (e) Crime (Including Employee Dishonesty coverage) as well as third-party coverage insuring cash, securities and property: \$500,000 per occurrence and third-party coverage;
- (f) Umbrella: \$4 million "per occurrence" limit and aggregate or unlimited aggregate at a \$2 million limit, PSA First Named insured, SVSU Additional insured with primary and noncontributory coverage.

Section 13.3. Additional Insurance Requirements. The Academy agrees that it shall maintain any and all insurance coverage required by the University through a carrier with an AM Best rating of "A" or higher. The Academy shall purchase additional coverage or policies if so requested by the University or required by the University's insurance providers or by law. The Academy agrees to enter into additional agreements regarding indemnification, insurance and subrogation that may be required by the University's insurance providers. The ESP shall purchase, and provide evidence to the University Board, insurance meeting the requirements set forth above (including the inclusion of coverage for sexual molestation and abuse as well as corporal punishment), naming the Academy and the University as additional, named insureds with primary and noncontributory coverage. Any ESP Management Agreement shall require that such ESP (or employee leasing company) obtain insurance coverage similar to the insurance coverage required of the Academy hereunder.

Section 13.4. Indemnification. The parties acknowledge and agree that the University, its Board of Control (jointly and severally), members, officers, employees and agents are deemed to be third-party beneficiaries for purposes of this Agreement. As third-party beneficiaries, the Academy hereby promises to indemnify and hold harmless the University, its Trustees, members,

officers, employees and agents from all claims, demands, or liability, including actual attorney fees, and related expenses on account of injury, losses, damage (both incidental and consequential), 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 the University, which arise out of or are in any manner connected with the University's approval of the Academy's application or the issuance of this Contract, the Academy's preparation for and operation of a public school, or which are incurred as a result of reliance by the University. The parties expressly acknowledge and agree that the University and its Board of Control (jointly and severally) members, officers, employees or agents may commence legal action against either party to enforce the rights set forth in this Agreement. Any ESP Management Agreement entered into between the Academy and an ESP shall likewise contain this promise to indemnify the University and its Board of Control (jointly and severally) members, officers, employees and agents by the ESP.

#### **ARTICLE XIV GENERAL TERMS**

Section 14.1. Notices. Any and all notices permitted or required to be given hereunder shall be deemed duly given: (i) upon actual delivery, if delivery is by hand; or (ii) upon receipt by the transmitting party of confirmation or answer back if delivery is by facsimile, telex or telegram; or (iii) upon delivery into United States mail if delivery is by postage paid first class mail. Each such notice shall be sent to the respective party at the address indicated below or to any other person or address as the respective party may designate by notice delivered pursuant hereto:

If to Saginaw Valley State University Board of Control:

Director  
School/University Partnership Office  
Saginaw Valley State University  
7400 Bay Road  
University Center, Michigan 48710

If to Academy: Board President  
Merritt Academy  
59900 Havenridge Road  
New Haven, Michigan 48048

Section 14.2. Severability. If any provision in this Contract is held to be invalid or unenforceable, it shall be ineffective only to the extent of the invalidity, without affecting or impairing the validity and enforceability of the remainder of the provision or the remaining provisions of this Contract. If any provision of this Contract shall be or become in violation of any local, state, or federal law, such provision shall be considered null and void, and all other provisions shall remain in full force and effect.

Section 14.3. Successors and Assigns. The terms and provisions of this Contract are binding on and shall inure to the benefit of the parties and their respective successors and permitted assigns.

Section 14.4. Entire Contract. This Contract sets forth the entire agreement between the University Board and the Academy with respect to the subject matter of this Contract. All prior application materials, contracts, representations, statements, negotiations, understandings, and undertakings are superseded by this Contract.

Section 14.5. Assignment. This Contract is not assignable by either party without the prior written consent of the other party.

Section 14.6. Non-Waiver. Except as provided herein, no term or provision of this Contract shall be deemed waived and no breach or default shall be deemed excused, unless such waiver or consent shall be in writing and signed by the party claimed to have waived or consented. No consent by any party to, or waiver of, a breach or default by the other, whether expressed or implied, shall constitute a consent to, waiver of, or excuse for any different or subsequent breach or default.

Section 14.7. Construction. This Contract shall be construed fairly as to both parties and not in favor of or against either party, regardless of which party prepared the Contract.

Section 14.8. Force Majeure. If any circumstances occur which are beyond the control of the parties, which delay or render impossible the obligations of one or both of the parties, the parties' obligations to perform such services shall be postponed for an equivalent period of time or shall be canceled, if such performance has been rendered impossible by such circumstances.

Section 14.9. No Third-Party Rights. This Contract is made for the sole benefit of the Academy and the University. Except as otherwise expressly provided, nothing in this Contract shall create or be deemed to create a relationship between the parties hereto, or either of them, and any third person, including a relationship in the nature of a third-party beneficiary or fiduciary.

Section 14.10. Non-agency. It is understood that the Academy is not the agent of the University.

Section 14.11. Governing Law. This Contract shall be governed and controlled by the laws of the State of Michigan as to interpretation, enforcement, validity, construction, and effect, and in all other respects.

Section 14.12. Counterparts. This Contract may be executed in any number of counterparts. Each counterpart so executed shall be deemed an original, but all such counterparts shall together constitute one and the same instrument.

Section 14.13. Term of Contract. This Contract shall commence on July 1, 2020, and shall remain in full force and effect for a period of five (5) academic years, ending June 30, 2025, unless sooner terminated according to the terms hereof. The Contract may be renewed or extended, and, under such circumstances, the length of any Contract renewal or extension may vary, as determined in the University's sole and absolute discretion. The University President shall ascertain the success that the Academy has achieved in the implementation of its Educational Program using, in part, the reports provided under Section 6.3, the results it obtains through reported data from pupil assessments and the Academy's annual education report and use these results to inform his/her decision regarding renewal, extension and/or termination. Such decisions shall, nevertheless, be subject to his/her sole and absolute discretion. The most important factor that the

University will consider in contemplating the renewal of the Academy's Contract will be increases in academic achievement for all groups of pupils as measured by assessments and other objective criteria.

Section 14.14. University Board General Policies on Charter Schools Shall Apply. Notwithstanding any provision of this Contract to the contrary, if the University Board adopts additional general policies clarifying procedure and the requirements applicable to public school academics under this contract, the University Board's general policies as from time to time amended will automatically apply to the Academy after thirty (30) days' notice, provided they are not inconsistent with provisions of this Contract. The Academy shall comply with all such policy statements and operating guidelines prepared by the University and/or the University Board.

Section 14.15. Compliance with All Applicable Law. The execution of this contract is by a duly-authorized member of the Academy Board and the signator and Academy Board certify compliance by the Academy and the Academy Board with the terms and conditions of this Contract and all applicable law.

Section 14.16. Contract Submission to MDE. This Contract shall be submitted to the Michigan Department of Education within ten (10) days of issuance.

The undersigned have read, understand, and agree to comply with and be bound by the terms and conditions set forth in this Contract.

(SIGNATURES ON NEXT PAGE)

ACADEMY:  
MERRITT ACADEMY,  
a Michigan Public School Academy

By: *Ann Bochetyn*

Its: *School Board President*

Date: *5/28/2020*

UNIVERSITY:  
Saginaw Valley State University  
Board of Control

By: \_\_\_\_\_

Its: President

Date: \_\_\_\_\_

ACADEMY:  
MERRITT ACADEMY,  
a Michigan Public School Academy

UNIVERSITY:  
Saginaw Valley State University  
Board of Control

By: \_\_\_\_\_

By: 

Its: \_\_\_\_\_

Its: President

Date: \_\_\_\_\_

Date: 6/1/2020