

## MANAGEMENT SERVICES AGREEMENT

BY AND BETWEEN

LIGHTHOUSE ACADEMIES AND

LIGHTHOUSE ACADEMIES OF ARKANSAS

This Management Services Agreement (the "Agreement") is made and entered into as of 17th day of November, 2008 (the "Effective Date") by and between Lighthouse Academies, Inc., a Delaware not for profit corporation ("Lighthouse Academies") and Lighthouse Academies of Arkansas ("LAA"). LAA is a non profit public benefit corporation, formed pursuant to the Arkansas Nonprofit Corporation Act of 1993. LAA is contracting with Lighthouse Academies to provide management services to Jacksonville Lighthouse Charter School (JLCS), an Arkansas open enrollment charter school ("LAA") together with "Lighthouse Academies" each a "Party" and collectively the "Parties").

**WHEREAS**, it is the Parties' intention to create a relationship based on trust, common educational objectives, and clear accountability;

**WHEREAS**, LAA anticipates receiving a charter contract from the Arkansas State Board of Education to organize and operate Jacksonville Lighthouse Charter School (the "School");

**WHEREAS**, LAA and Lighthouse Academies desire to create relationship through which they will work together to bring educational excellence to the School;

**WHEREAS**, the Parties desire to enter into a written agreement to set forth the terms and conditions of their agreement;

**NOW, THEREFORE**, in consideration of the recitals and the mutual covenants, representations, warranties, conditions and agreements hereinafter expressed, the Parties agree as follows:

### 1. DEFINITIONS

"Annual Audit" means an annual audit of the School conducted by an independent certified public accountant in compliance with applicable State and federal laws and regulations.

"Annual Budget" means the annual budget for the School.

"Applicable Revenues" means all revenues received by LAA or the School from Federal, State, county or local allocations and grants for the School. "Applicable Revenues" does not include any funds received as donations or gifts or revenues from other sources, unless the parties agree in writing that any such other revenues shall be included in Applicable Revenues.

"Authorizer" means an institution permitted by the Charter School Law of Arkansas to serve as a sponsor of a charter School.

"Charter Contract" means the contract between LAA and the Authorizer that authorizes LAA to organize and operate the School, the terms of which are hereby incorporated into this Agreement.

“Code” means the laws of the State.

“Charter School Law” means the laws permitting the creation of charter schools in *the State* and governing the development and operation of charter Academies in *the State*.

“Confidential Information” means (i) any business or technical information of a Party that is not generally known or publicly available; (ii) any information that a Party treats or maintains as confidential, proprietary, restricted, or otherwise as not to be disclosed generally; (iii) any information disclosed to or known by a Party that is not generally known or publicly available and that in any way relates to either Party’s products; services; techniques or know-how; trade secrets; ideas; processes; computer programs; documents; materials; business information; marketing materials (including costs, pricing, and customer lists); and (iv) all information received in confidence from third parties by a Party. Notwithstanding any other provision of this Agreement to the contrary, Confidential Information shall not include any information that is required to be disclosed by a final order from a court or governmental agency (provided that the Party making such disclosure provides prior notice to the other Party if allowed by the court or agency).

“Education Program” means a curriculum, based on the Lighthouse Academies Curriculum, which will form the basis of the Charter Contract.

“Facility” means a building or other structure, of sufficient size to house (i) the Minimum Opening Enrollment during the initial year and (ii) the Minimum Enrollment Level for three (3) years following the initial year, suitable for use by the School and meeting all applicable building codes, zoning ordinances and laws, environmental laws and regulations, and all other laws and regulations applicable to the operation of a School.

“Facility Contract” means the lease or other contract for the use or ownership of a Facility.

“Management Services” means oversight of the School’s educational programs, supervision of the School’s Principal, and administration of the School’s business affairs, including the following services: provision of the Lighthouse Academies Curriculum; ongoing curriculum consultation; recruitment, selection and supervision of the Principal; recruitment of teachers and other School staff; human resources management and consultation; periodic review and oversight of personnel files; oversight of employee benefits program; oversight of ADA compliance; oversight of FMLA compliance; if applicable; budget preparation; consultation regarding the Facility; development of suggested School and Board policies, consultation regarding procurement of equipment, supplies, textbooks and property, casualty, liability, and officers and directors insurance.

“Material Adverse Change” means (i) a reduction of more than 10 percent in the available combined federal and State funding for the School on a per pupil basis in comparison to the funding that is available for the fiscal year in which the effective date falls; (ii) a reduction of more than 10 percent in the available combined federal and State funding for the School on a per pupil basis in comparison to the funding that is available during any subsequent fiscal year; (iii) the enactment, repeal, promulgation or withdrawal of any federal, state, or local law, regulation, or court or administrative decision or order finding that this Agreement or the operation of the School in conformity with this Agreement or LAA’s Charter Contract with the Authorizer violates the School’s, the Authorizer’s or the state’s responsibilities, duties or obligations under the federal or State constitutions, statutes, laws, rules or regulations, or any contract or agreement. (iv) there is a failure to achieve Minimum Enrollment Levels set forth herein; (v) if LAA is unable to locate, secure and provide a suitable Facility for the School; (vi) if the Authorizer revokes its Charter Contract with LAA; (vii) if the State revokes the Charter Contract

between the Authorizer and LAA pursuant to State statute; (viii) if the landlord for any reason terminates the Facility Contract or the School's or Lighthouse Academies' right to use the Facility; or (ix) the use of the Facility becomes impractical by reason of fire, flood or other act of God for any period of time which would reasonably interfere with the education of the students.

"Minimum Enrollment Levels" is the level set forth in Section 6.4. The Minimum Enrollment Level shall be calculated based on the actual student enrollment of the School on the first day of academic classes during each year of the contract.

"Principal" means the Director or Headmaster or person in charge of the day-to-day operation of the School.

"School" means the academic institution authorized by the Charter Contract.

"School Design" means the School design based on the Lighthouse Academies Curriculum that will become part of the Charter.

"State" means Arkansas.

"Student" or "student" means a person who is enrolled in the School.

"Target Area" means the area in which LAA intends to locate the School, which area is Pulaski County Arkansas.

## **2. REPRESENTATIONS AND WARRANTIES**

### **2.1 Representations and Warranties of Lighthouse Academies.**

Lighthouse Academies represents and warrants as follows:

(i) Organization. Lighthouse Academies is a non-stock, not for profit corporation duly organized under the laws of the state of Delaware, with the purpose and legal ability to contract to provide educational management services. Lighthouse Academies shall notify LAA of any change in its corporate status, which change shall not affect this Agreement.

(ii) Authority. Lighthouse Academies has all requisite power and authority to execute and deliver this Agreement, to perform its obligations hereunder, and to otherwise consummate the transactions contemplated hereby. This Agreement constitutes a valid and binding obligation of Lighthouse Academies, enforceable against Lighthouse Academies in accordance with its terms.

(iii) Full Disclosure. No representation or warranty of Lighthouse Academies herein and no statement, information or certificate furnished or to be furnished by Lighthouse Academies pursuant hereto or in connection with the transactions contemplated hereby contains any untrue statement of a material fact or omits or will omit to State a material fact necessary in order to make the statements contained herein or therein not misleading.

### **2.2 Representations and Warranties of LAA.**

LAA represents and warrants as follows:

(i) Organization. LAA is, and at all times during the Term will be, a non profit corporation of Arkansas, with the purpose and legal ability to contract to operate a charter school (s) and to contract for educational management services;

(ii) Authority. LAA has all requisite power and authority to execute and deliver this Agreement, to perform its obligations hereunder, and to otherwise consummate the agreements contemplated hereby and thereby. This Agreement constitutes a valid and binding obligation of LAA, enforceable against LAA in accordance with its respective terms.

(iii) Litigation. There is no suit, claim, action or proceeding now pending or threatened before any court, grand jury, administrative or regulatory body, Government agency, arbitration or mediation panel or similar body to which LAA is a Party or which may result in any judgment, order, decree, liability, award or other determination which will or may reasonably be expected to have an adverse effect upon LAA. No such judgment, order, decree or award has been entered against LAA nor has any liability been incurred which has, or may reasonably be expected to have, such effect. There is no claim, action or proceeding now pending or threatened before any court, grand jury, administrative or regulatory body, Government agency, arbitration or mediation panel or similar body involving LAA which will or may reasonably be expected to prevent or hamper the consummation of the agreements contemplated by this Agreement.

(iv) Full Disclosure. No representation or warranty of LAA herein and no statement, information or certificate furnished or to be furnished by LAA pursuant hereto or in connection with the agreement contemplated hereby contains any untrue statement of a material fact or omits or will omit to State a material fact necessary in order to make the statements contained herein or therein not misleading.

(v) Reputation of Officers, Directors and Employees. No member of LAA's Board of Directors, officer of LAA, or employee of LAA has committed, or during the term of this Agreement will commit, an act constituting a criminal offense, a morally offensive act, an act that could negatively impact the reputation of the School, or any other act involving dishonesty, disloyalty, fraud or breach of trust.

(vi) Conduct of LAA. LAA has complied, and at all times during the Term will comply, with all local, State and federal laws and regulations governing that are applicable to LAA, which include, but are not limited to the internal revenue code, the non-profit corporation law of Arkansas, and the open records and meetings laws of Arkansas. LAA has maintained and will maintain adequate records of the activities and decisions of LAA to ensure and document compliance with all such laws and regulations. LAA agrees to provide Lighthouse Academies with copies of all such records and to allow Lighthouse Academies to, at Lighthouse Academies' discretion, assist with the preparation and retention of such records.

(vii) Due Authorization. Upon execution of a Charter Contract by LAA and the Authorizer, LAA will be authorized to organize and operate the School and will be vested by the Authorizer with all powers necessary to carry out the educational program outlined in the Charter Contract.

### **3. DELEGATION OF AUTHORITY TO LIGHTHOUSE ACADEMIES**

LAA hereby authorizes Lighthouse Academies to undertake certain function in regards to management, operation, and administration of the School on behalf of LAA only to the extent such services are specifically stated in this Agreement or any valid amendment to this Agreement, it being understood that, at all times, Lighthouse Academies remains accountable and subject to the oversight of

LAA, the Authorizer, and Arkansas authorities, as provided for in this Agreement and by law. LAA hereby grants to Lighthouse Academies the power and authority, on behalf of LAA and consistent with federal and Arkansas law and subject to the other terms and conditions of this Agreement and the oversight of JLCS as follows:

- (i) to prepare the School's Annual Budget, which shall be subject to approval by the Board of Trustees of the charter school;
- (ii) to perform the following personnel functions: the determination of staffing levels, selection of personnel, determination of staff responsibilities, compensation and other terms and conditions of employment, provide counsel as to evaluation, training and discipline of personnel, establish and implement human resources systems and functions to be executed by JLCS staff, which may include or consist of the utilization of web based services which will be periodically monitored by Lighthouse Academies;
- (iii) to review each calendar month the financial statements and budget prepared by or on behalf of the Board of the School
- (iv) to provide initial training and set up of financial systems to JLCS staff and members of the School Board, which may include or consist of the utilization of web based services which will be periodically monitored by Lighthouse Academies;
- (v) to conduct periodic review of financial systems to test the accuracy of such systems;
- (vi) to establish, implement, and evaluate an educational program and curriculum for the School as provided for in this Agreement and the Charter Contract;
- (vii) to conduct professional development for the Principal and instructional personnel;
- (viii) to select instructional materials, equipment and supplies;
- (ix) to exercise such other powers as provided for elsewhere in this Agreement to the extent consistent with this Agreement and State law;
- (x) to take such other actions that in the opinion of Lighthouse Academies may be necessary or desirable to properly and efficiently operate the School.

#### **4. DUTIES AND OBLIGATIONS OF LIGHTHOUSE ACADEMIES**

##### **4.1 Implementation of Curriculum Requirements.**

Subject to oversight by the LAA Board of Trustees, Lighthouse Academies shall implement its School Design in a manner that is consistent with Arkansas law, including requirements regarding content and subjects of instruction, unless such requirement has been waived by State or local authorities.

#### **4.2 Evaluation.**

Lighthouse Academies shall implement pupil performance evaluation systems which permit evaluation of the educational progress of each student at the School. LAA shall, with Lighthouse Academies' assistance, ensure that the students take all Arkansas required standardized tests in accordance with State laws and regulations. In addition, LAA, with Lighthouse Academies' assistance, shall ensure that the students take a nationally recognized standardized test (i.e. Stanford 10) in both the fall and spring of each year. LAA, with Lighthouse Academies' assistance, shall maintain detailed statistical information on the performance of (i) the School as a whole, (ii) each individual student, and (iii) each grade. Lighthouse Academies and LAA shall cooperate in good faith to identify other measures of and goals for student and School performance, including but not limited to parent, teacher, and student satisfaction.

#### **4.3 Reports to LAA.**

Lighthouse Academies shall provide guidance to and train school personnel in order to allow school personnel to provide LAA with reports on School operations, finances, including detailed reports regarding budgeted versus actual expenditures, and student performance within 30 days of the end of each calendar. Such reports shall be made to the Board of Trustees of LAA prior to a meeting of the Board to allow such information to be disclosed at all public meetings in accordance with the Arkansas Open Door Law. Nothing in this paragraph shall be construed to be in derogation of LAA's ultimate legal authority and responsibility for the School under its Charter Contract; rather, it shall be construed as effectuating Lighthouse Academies' accountability to LAA for the operation of the School and the achievement of student learning.

Lighthouse Academies shall provide LAA and/or the Authorizer such reports and information as may be required for LAA to comply with the terms and conditions of the Charter and applicable law.

#### **4.4 Corrective Action Plan.**

Lighthouse Academies shall cooperate and participate in any corrective action plan approved by the Authorizer to remedy any breach of the Charter that in any way involves services provided by Lighthouse Academies.

#### **4.5 Authority to Subcontract.**

Lighthouse Academies shall not subcontract the management, oversight or operation of the teaching and instructional program, except as specifically provided in this Agreement, or as otherwise agreed upon in writing by LAA. Lighthouse Academies may subcontract all other functions, except as otherwise provided for in this Agreement. All subcontracts shall be in writing, shall be subject to the provisions of and be consistent with this Agreement. No subcontract permitted hereunder shall relieve or discharge Lighthouse Academies from any obligation or liability under this Agreement.

#### **4.6 Other Special Student Services.**

Lighthouse Academies may, on behalf of LAA, subcontract for the provision of other special student services, including English as a Second Language, psychologists, social workers, or therapists.

#### **4.7 Location of Performance.**

Lighthouse Academies may perform functions other than professional development, off-site at Lighthouse Academies' central services division or elsewhere, except as prohibited by State law, with the prior approval of LAA, which shall not be unreasonably withheld. Lighthouse Academies may utilize web based systems to provide oversight and counsel to the School. Lighthouse Academies shall maintain an office, to be defined for these purposes as a suitable work area, at the charter school facility or within the limited radius of the charter school facility required by the Charter.

#### **4.8 Federal State and Local Program Requirements.**

Through its School Design, Lighthouse Academies shall provide educational programs that meet federal, state, and local requirements unless such requirements have been waived.

#### **4.9 Projected Budget.**

Lighthouse Academies shall provide LAA with a projected budget prior to opening the School, such budget to be subject to the approval of LAA.

#### **4.10 Principal.**

Because the accountability of Lighthouse Academies to LAA is an essential foundation of this relationship, and because the responsibility of the Principal of the School is critical to its success, Lighthouse Academies shall have the authority and responsibility, consistent with State law, to recruit, select, employ and supervise the Principal and to hold him or her accountable for the success of the School. The foregoing notwithstanding, LAA shall have the right to review the initial selection criteria, interview final round Principal candidates, and make a recommendation to Lighthouse Academies. The Principal shall be employed by and will be subject to dismissal by Lighthouse Academies for cause. Lighthouse Academies acknowledges the right of LAA to participate in the annual review the performance of the Principal.

#### **4.11 Selection of Teachers and Other Personnel.**

The Principal and Lighthouse Academies shall have authority and responsibility to recruit, select and hold accountable the teachers and the non-teaching staff in the School. All employees working at the School shall be employees of LAA.

#### **4.12 Terms and Conditions of Employment of the Teachers and Non-teaching Staff.**

All School staff shall be employees of Lighthouse Academies. Among other terms and conditions to be set by Lighthouse Academies, the Principal and the teachers and non-teaching staff shall be employed subject to the following:

- (i) selection and assignment by the Principal of staff within the School, with guidance to provided by Lighthouse Academies;
- (ii) performance reviews consistent with Lighthouse Academies' principles of accountability;

- (iii) the work year and work day and the professional development training program prior to the opening of the School envisioned by Lighthouse Academies School Design;
- (iv) attendance at and successful participation in all training conducted by Lighthouse Academies or by LAA;
- (v) continuing employment of the Principal and other personnel at the School shall be subject to an annual satisfactory evaluation regarding each staff member, which shall be completed by his/her immediate supervisor. Staff who are rated unacceptable shall be subject to termination at any time by Lighthouse Academies, upon recommendation of the Principal, or by LAA;
- (vi) Lighthouse Academies shall ensure the provision and payment of the following to or on behalf of all employees, subject to the payment by LAA to Lighthouse Academies prior to any payment of such expenses by Lighthouse Academies as stated in Sections 5.6 and 7.5 below and subject to the budget approved by the LAA Board of Trustees: salaries, benefits, worker's compensation, unemployment compensation and liability insurance.
- (vii) All employees will be subject to the Arkansas "Employment At-Will" doctrine, and no collective bargaining or tenure agreement shall be made with any employee or group of employees

**4.13 Certification and Accreditation of Staff.**

Lighthouse Academies shall provide oversight and advice to LAA regarding any required Arkansas State Department of Education certifications or waivers and shall assist LAA in expediting the certification process or alternative accreditation for all personnel subject to the accreditation requirements.

**4.14 Training of Instructional Staff.**

Lighthouse Academies shall provide training in its methods, curriculum, program, and technology, to all teaching personnel.

**4.15 Non-Instructional Staff Training.**

Lighthouse Academies shall provide training to all non-instructional personnel as Lighthouse Academies determines is necessary.

**4.16 Subcontracting and Use of Web Based Services.**

Lighthouse Academies may subcontract to an third party to provide any of the services mandated by this Agreement or to fulfill any obligations of Lighthouse Academies arising under this Agreement. Lighthouse Academies may utilize web based programs or vendors to provide any service required under this Agreement.

**5. DUTIES AND OBLIGATIONS OF THE COMPANY**

**5.1 Provision of Suitable School Facilities.**

(i) LAA shall use its best efforts to provide the School with a suitable Facility located in the Target Area. Lighthouse Academies will use commercially reasonable efforts to assist LAA in the

identification and development of a Facility. LAA will consult with and obtain approval from Lighthouse Academies prior to entering into a lease or purchase of a Facility. Lighthouse Academies and LAA shall also work together to provide Facilities needed to expand the School in the future.

(ii) In the event LAA leases the Facility, LAA's lease with the landlord shall provide that the landlord shall maintain the site in accordance with all applicable federal, state, and local laws, codes, rules and regulations, except to the extent they have been waived by proper authorities. The lease shall also require the landlord to procure and maintain insurance, or otherwise hold harmless Lighthouse Academies, LAA and the Authorizer for damage or loss to the property leased from the landlord. LAA shall seek to provide in its lease that the landlord shall secure from the insurers waivers of subrogation as against LAA, the Authorizer, Lighthouse Academies and its facilities managers, their respective officers, employees, and agents, for the full amount of the policy and any deductibles.

(iii) LAA shall procure and maintain insurance, or otherwise hold harmless Lighthouse Academies for damage or loss to the property, whether such property is leased or owned by LAA. Lighthouse Academies shall not be liable under any lease or other document pertaining to a facility.

## **5.2 Equipment.**

Lighthouse Academies shall use its best efforts to procure such desks and other furniture, equipment, library and media materials, and other similar materials and furnishings integral to the operation of a School and such improvements as are reasonably necessary for the implementation of Lighthouse Academies School Design within the resources allocated in the Board approved budget. LAA acknowledges that ultimate responsibility for the procurement of any needed furniture, equipment or technology shall rest with LAA.

## **5.3 Annual Audit.**

LAA shall conduct an Annual Audit in compliance with State law and regulations showing the manner in which funds are spent at the School. The Annual Audit shall be performed by a certified public accountant selected by LAA. LAA shall consult with Lighthouse Academies prior to selecting the certified public accountants who will conduct the Annual Audit. Lighthouse Academies will make available all finance and other records of Lighthouse Academies related to LAA and records of LAA, to the extent such information is in possession or under the control of Lighthouse Academies, to the independent auditor and to the State Board of Accounts for completion of audits required by law or by the Charter. Lighthouse Academies will ensure that such records are produced in Arkansas at LAA's offices or at the charter school.

## **5.4 Accounting, Bookkeeping, Procurement, and other Financial Functions.**

Lighthouse Academies shall be responsible and accountable for all financial, accounting, and bookkeeping functions, including the payment of all invoices, reconciling bank statements, debit and credit entries, procurement, and purchasing. As provided for in the agreement, Lighthouse Academies will provide oversight and guidance in the implementation, training, and review of all such functions. LAA shall employ the financial systems recommended by Lighthouse Academies, which may be a web based system.

## **5.5 Financial, Educational and Other Records**

The financial, educational and other records pertaining to the charter school, whether or not generated by Lighthouse Academies, are charter school property. All such records shall be subject to inspection and copying under the provisions of the Arkansas public records statute, including any subsequent amendments thereto.

#### **5.6 Payroll, Employee Salaries and Benefits.**

Lighthouse Academies shall be responsible and accountable for the payment of the salaries, fringe benefits, and State and federal payroll taxes for all individuals employed at the School, subject to payment by LAA to Lighthouse Academies for all such expenses prior to the expenditure for such expenses by Lighthouse Academies. All such payments shall be made on a timely basis, in accordance with all State and federal laws and regulations, including all tax requirements. Lighthouse Academies shall use the third party payroll service and system selected by Lighthouse Academies, which may be provided via web access. As provided for in the agreement, Lighthouse Academies will provide training and guidance in the implementation of all such functions required by Lighthouse Academies' procedures to be performed at the school site, including the processing of new employees and payroll.

#### **5.7 Power and Authority.**

LAA shall ensure that Lighthouse Academies has all power and authority necessary to carry out the duties of Lighthouse Academies under this Agreement. This shall include ensuring that no other entity or any individual, including any officer, agent or director of LAA, has or exercises any authority which might interfere with the duties of Lighthouse Academies.

### **6. OPERATION OF THE SCHOOL**

#### **6.1 Special Education.**

LAA and Lighthouse Academies recognize their obligation to provide an appropriate education to all students enrolled in the School, regardless of special need in accordance with the requirements of the Individuals with Disabilities Act and section 504 of the Rehabilitation Act of 1973. Lighthouse Academies may, on behalf of LAA, subcontract as necessary and appropriate to a municipal, public or private contractor or otherwise for the provision of special education services, subject to approval by LAA, which shall not be unreasonably withheld.

#### **6.2 Recruitment and Admission.**

Lighthouse Academies and LAA shall be jointly responsible for the recruitment of students. Application by or for students shall be voluntary, and shall be in writing. Admission shall be open to all individuals who reside within the State on a space-available basis without regard to race, color, national origin, creed, sex, ethnicity, sexual orientation, mental or physical disability, age, ancestry, athletic performance, special need, proficiency in the English language, academic achievement, or any other basis that would be illegal if used by a public School district. LAA shall seek a diverse student body that from the community it serves. If there are more applications for enrollment in the School than there are spaces available, students shall be selected to attend using a random selection process. However, as permitted by law, preference for enrollment will be children of the founding members and to siblings of students enrolled in the School and, after the first year, to students who were enrolled in the School in the previous year.

### **6.3 Annual Budget.**

On or before April 1 of each year of the Initial Term or any Renewal Term, Lighthouse Academies and LAA shall mutually agree to an Annual Budget. The Annual Budget for the School shall provide for payment of all operating expenses related to the operation of the School, including, but not limited to reimbursement to Lighthouse Academies of certain expenses including Lighthouse Academies' Service Fee, all principal compensation which shall include the principal's salary and benefit costs, debt payments owing and owed to Lighthouse Academies by LAA, marketing and publishing costs, supplies, maintenance, staff development, curriculum materials, assessment materials and consulting fees, other third party consulting expenses, transportation and travel, public relations, printing, duplicating, postage, accountability plan costs, legal fees and accounting fees. With respect to these items, Lighthouse Academies shall act as the disbursement agent on behalf of LAA to timely pay all such agreed upon Annual Budget expenditures, out of funds available therefore from LAA bank accounts, from which LAA shall give Lighthouse Academies authority to remit payments. LAA shall be the lawful owner of all real and personal property purchased with such funds. Lighthouse Academies shall have no responsibility to make any purchases on behalf of LAA or to act as disbursement agent for LAA unless and until the funds for such expenditures are in LAA bank accounts to which Lighthouse Academies has access. Lighthouse Academies shall provide documentation to LAA for all such expenditures. The board of LAA shall retain the ability to disapprove any expenditure not within the charter school's approved budget or otherwise approved by LAA's board.

### **6.4 Minimum Enrollment Level.**

The School will first open on or about August 17, 2009 (the "Opening Date") with students in grades Kindergarten through 6, provided the Minimum Enrollment Level is met. Should the School fail to achieve the Minimum Enrollment Level prior to the opening date, this Agreement may be terminated by Lighthouse Academies upon 30 days written notice to LAA. The Minimum Enrollment Level for each year of this Agreement shall be ninety percent (90%) of the enrollment stated in the Board approved budget.

### **6.5 Disabled Students and Those with Other Special Needs.**

Subject to the provisions of subsection 1 of this Section, the School shall be open to individuals with handicapping conditions and other special needs to the extent that such individuals can be accommodated within Lighthouse Academies School Design, as required by law.

### **6.6 School Year.**

The normal School year will consist of approximately 190 days of regular instruction for students. Lighthouse Academies may extend the School year, subject to LAA approval and available funds. The School's calendar shall be developed annually by the Principal in consultation with Lighthouse Academies and LAA, and shall extend from on or about August 17 through on or about June 30. The School day shall be approximately eight hours per day for students.

### **6.7 School Policies and Code of Conduct.**

LAA and Lighthouse Academies are committed to the success of Lighthouse Academies' educational program as described in the Lighthouse Academies School Design and related documents that are incorporated by reference herein. This is the educational program that is incorporated by reference in the School's Charter Contract with the Authorizer. LAA, in exercising its legal authority

under the State School Code and its Charter Contract with the Authorizer, shall exercise good faith in considering and adopting Lighthouse Academies' recommendations, so that Lighthouse Academies' School Design may be properly implemented. LAA will adopt, and the Principal and staff shall administer the Lighthouse Academies Code of Conduct for the School.

#### **6.8 Due Process.**

LAA shall provide students due process hearings in conformity with the requirements of State and federal law regarding discipline, special education, confidentiality and access to records. The Principal shall have the authority to suspend a student as provided for by law, subject to appeal to the Chairperson of LAA or such other member of LAA as LAA may designate. Only LAA may expel a student.

#### **6.9 Board Seats.**

Lighthouse Academies shall have up to two seats on the Board of Trustees.

#### **6.10 Family Educational Rights and Privacy Act.**

LAA hereby designates employees of Lighthouse Academies as agents of LAA having a legitimate educational interest such that they are entitled access to education records under 20 U.S.C. § 1232g, the Family Educational Rights and Privacy Act ("FERPA"). Lighthouse Academies, its officers and employees shall comply with FERPA at all times.

#### **6.11 State and Federal Waivers.**

LAA shall, with Lighthouse Academies' assistance, timely apply for and support the waiver of any federal or State rules or regulations that interfere with Lighthouse Academies' School Design.

### **7. FINANCIAL ARRANGEMENTS**

#### **7.1 Funding Eligibility.**

LAA shall comply with the requirements of the State for the purpose of receiving or maintaining its eligibility to receive from the State the per pupil allowance (PPA) which LAA is entitled to receive for each student enrolled and in attendance in the School as provided for in the applicable School aid act. Lighthouse Academies shall provide such assistance to LAA in the preparation or review of State Aid Act applications and reports as LAA may request. LAA shall permit Lighthouse Academies to review any such applications and reports prior to their submission. LAA shall apply for all State Aid funds or other monies which it receives from the Authorizer on behalf of the School. The Board of Trustees of LAA shall be and remain the fiscal agent for the charter school as required by law.

#### **7.2 Donations and Grants.**

Both LAA and Lighthouse Academies may solicit and receive grants and donations consistent with the mission of the School.

#### **7.3 Extracurricular Fees.**

Consistent with local practice and as allowed by law, LAA may charge fees to students for extra services such as summer activities, extracurricular clubs and after school athletics.

**7.4 Service Fee.**

During the planning year (2008-2009) Lighthouse Academies will be reimbursed for development costs from the Walton Family Foundation grant awarded to Lighthouse Academies and the charter school start up grant.

During the first year of operation of the School, the Annual Budget shall include an allocation for reimbursement to Lighthouse Academies for any previously unreimbursed out-of-pocket expenses incurred by Lighthouse Academies related to organizing the School, on behalf of LAA or in furtherance of Lighthouse Academies' obligations hereunder before the opening of the School. Such payments shall be made to Lighthouse Academies in equal monthly installments during September through May of the first year of operation of the School. In the event that at the end of May of the first year of operation there remain previously unreimbursed out-of-pocket expenses, LAA shall continue to make monthly payments until such previously unreimbursed out-of-pocket expenses have been fully reimbursed.

Lighthouse Academies' Service Fee for the management services described in this agreement shall be as follows:

2009-2010	\$50,000
2011-2012	\$150,000
2012-2013	\$150,000
2013-2014	\$150,000

The Service Fee shall be paid in quarterly in advance on July 1, October 1, January 1 and April 1 of each year.

**7.5 Expenses**

In addition to the Service Fee, LAA shall pay expenses to Lighthouse Academies in accordance with the terms of this paragraph. LAA shall pay to Lighthouse Academies all amounts due to or on behalf of LAA employees at least three (3) business days prior to the due date of such expenses. Such employment related expenses for which LAA must pay prior to the remittance of any funds by Lighthouse Academies include salaries, payroll taxes, medical, dental and disability insurance premiums, workers compensation premiums, unemployment taxes, and liability insurance premiums provided such liability insurance covers the LAA employees. LAA shall reimburse Lighthouse Academies for all expenses directly and specifically related to LAA and incurred by Lighthouse Academies, including but not limited to postage, printing, marketing and development, travel to and from the school by Lighthouse Academies' staff, third party consultants providing professional development to LAA, and checks.

**7.6 No Loans or Advances from Lighthouse Academies.**

Lighthouse Academies shall have no obligation to advance or loan any funds to LAA.

## **8. PROPRIETARY INFORMATION AND CONFIDENTIAL INFORMATION**

### **8.1 Proprietary Information.**

LAA shall own all proprietary rights to curriculum or educational materials that (i) are both directly developed and paid for by the School; or (ii) were developed by Lighthouse Academies at the direction of LAA with charter school funds dedicated for the specific purpose of developing such curriculum or materials for this School.

Lighthouse Academies shall own all other Proprietary Information, which shall be defined as all copyright and other proprietary rights to all instructional materials, training materials, curriculum and lesson plans, and any other materials developed by Lighthouse Academies, its employees, agents or subcontractors, by any individual working for or supervised by Lighthouse Academies. Lighthouse Academies shall have the sole and exclusive right to license such materials for use by other School districts or customers or to modify and/or sell such material to other School districts and customers. During the term of this Agreement, Lighthouse Academies may disclose such Proprietary Information, including that which is currently in existence as well as that which may be created in the future. LAA shall treat all such Proprietary Information as though it were a trade secret and copyrighted, and shall use such efforts as may be reasonably requested by Lighthouse Academies so as not to disclose, publish, copy, transmit, modify, alter or utilize such Proprietary Information during the term of this Agreement or at any time after its expiration other than to the extent necessary for implementation of this Agreement. LAA shall use such efforts as may be reasonably requested by Lighthouse Academies to assure that no School personnel or agent disclose, publish, copy, transmit, modify, alter or utilize Lighthouse Academies' Proprietary Information without Lighthouse Academies' prior written consent.

### **8.2 Treatment of Confidential Information.**

The Parties agree to the following provisions:

(i) Confidential Information. LAA acknowledges that prior to the Term of this Agreement, Lighthouse Academies may have disclosed, and during the Term of this Agreement Lighthouse Academies may disclose, Confidential Information to LAA. LAA agrees that it will not at any time or in any manner, directly or indirectly, use or disclose any trade secrets or other Confidential Information to anyone, and that LAA will not use Confidential Information for any purpose other than those provided for herein.

(ii) Protection of Confidential Information. LAA shall preserve and take all reasonable precautions to prevent the disclosure of the Confidential Information to any persons, entities, and/or firms other than those expressly authorized by Lighthouse Academies to receive such information.

(iii) Use of Confidential Information. LAA agrees that the Confidential Information: (i) shall be used solely in furtherance of this Agreement, and shall not otherwise be used for the benefit of LAA or others; (ii) shall not be copied or reproduced by LAA without the express written permission of Lighthouse Academies, except for such copies as may be reasonably required for accomplishment of provisions of this Agreement; and (iii) shall not be disclosed to any third party without the prior written consent of Lighthouse Academies. LAA agrees that it will not knowingly infringe upon, or permit any of its employees or agents to infringe upon, any rights of any third party or knowingly violate the patent, copyright, trademark, trade secret, or other proprietary right of any third party in connection with the performance of this Agreement. If LAA becomes aware of any infringement or alleged instance of infringement, LAA agrees to notify Lighthouse Academies promptly in writing.

(iv) Return of Confidential Information. LAA will promptly deliver to Lighthouse Academies any and all Confidential Information, including all written and electronic copies, in LAA's possession or control upon termination or expiration of this Agreement or upon request by Lighthouse Academies.

(v) Rights to Confidential Information. Except as required for the Parties' performance hereunder, nothing in this Agreement shall be construed to require Lighthouse Academies to provide, or to entitle LAA to obtain, any Confidential Information or any rights therein. LAA agrees that these confidentiality obligations shall survive the expiration or termination of this Agreement for five years.

(vi) Specific Performance. In addition to all of the remedies otherwise available to Lighthouse Academies, including, but not limited to, recovery of damages and reasonable attorneys' fees incurred in the enforcement of this Section, Lighthouse Academies shall have the right to injunctive relief to restrain and enjoin any actual or threatened breach of the provisions of this Section. All of Lighthouse Academies' remedies for breach of this Section shall be cumulative and the pursuit of one remedy shall not be deemed to exclude any other remedies. LAA acknowledges and agrees that Lighthouse Academies' rights under this Section are special and unique and that any violation of this Section by LAA would not be adequately compensated by money damages alone.

## **9. INDEMNIFICATION**

### **9.1 Survival of Representations and Warranties.**

All representations and warranties hereunder shall be deemed to be material and relied upon by the Parties with or to whom the same were made, notwithstanding any investigation or inspection made by or on behalf of such Party or Parties. The representations and warranties covered in this Agreement will survive the termination or expiration of this Agreement.

### **9.2 Indemnification of LAA.**

Lighthouse Academies shall hold LAA and its respective affiliates and the shareholders, directors, officers, partners, successors, assigns, and agents of each of them (the "LAA Indemnified Persons"), harmless and indemnify each of them from and against any and all claims, losses, damages, liabilities, penalties, fines, expenses or costs ("Claims"), plus reasonable attorneys' fees and expenses incurred in connection with Claims and/or enforcement of this Agreement, plus interest from the date incurred through the date of payment at the prime lending rate of *Wall Street Journal*, Midwest edition, from time to time prevailing (in all, "Indemnified Claims"), incurred or to be incurred by any LAA Indemnified Person resulting from or arising out of any breach or violation of Lighthouse Academies' representations, warranties, covenants, or agreements contained in this Agreement.

### **9.3 Indemnification of Lighthouse Academies.**

LAA shall hold Lighthouse Academies and its affiliates and the shareholders, directors, officers, partners, successors, assigns, and agents of each of them (the "Lighthouse Academies Indemnified Persons") harmless and indemnify each of them from and against any and all Indemnified Claims incurred or to be incurred by any of them resulting from or arising out of any breach or violation of LAA's representations, warranties, covenants and agreements contained in this Agreement.

#### **9.4 Indemnification of the Authorizer.**

Lighthouse Academies shall hold the Authorizer and its affiliates and the shareholders, directors, officers, partners, successors, assigns, and agents of each of them (the “Lighthouse Academies Indemnified Persons”) harmless and indemnify each of them from and against any and all Indemnified Claims incurred or to be incurred by any of them resulting from or arising out of any breach or violation of Lighthouse Academies’ representations, warranties, covenants and agreements contained in this Agreement.

#### **9.5 Limitation of Claims of LAA**

Notwithstanding anything in this Agreement to the contrary, there shall be no liability for any Claim and Lighthouse Academies shall have no obligations or liabilities pursuant to Subsection 9.2 :

(a) until the aggregate of the Claims suffered or incurred by LAA exceeds Five Thousand Dollars (\$5,000) (the “Deductible”). After the Deductible has been met there shall be liability for the aggregate of all Claims. In computing the amount of the Claims incurred by LAA, the amount of any income tax savings actually realized by LAA as a result thereof as well as the income tax cost arising out of such indemnity, if any, shall be taken into account;

(b) to the extent such liabilities exceed the lesser of (i) the Service Fee paid to Lighthouse Academies during the academic year in which the action or omission giving rise to the Claim occurred and (ii) the amount of any insurance proceeds received for an insured event under insurance policies referenced in this Agreement.

(c) if the claim for indemnification is made pursuant to Subsection 9.2, to the extent that Lighthouse Academies can demonstrate that LAA had, prior to the Closing, actual knowledge that the applicable representation or warranty was untrue or incomplete or had been breached or that the applicable covenant had been breached or was unfulfilled prior to the Closing.

#### **9.6 Limitation on Claims of Lighthouse Academies**

Notwithstanding anything in this Agreement to the contrary, there shall be no liability for any Claim and LAA shall have no obligations or liabilities pursuant to subsection 9.3:

(a) until the aggregate of the Claims suffered or incurred by Lighthouse Academies exceeds Five Thousand Dollars (\$5,000) (the “Deductible”). After the Deductible has been met there shall be liability for the aggregate of all Claims. In computing the amount of the Claims incurred by Lighthouse Academies, the amount of any income tax savings actually realized by Lighthouse Academies as a result thereof as well as the income tax cost arising out of such indemnity, if any, shall be taken into account;

(b) if the claim for indemnification is made pursuant to subsection 9.3, to the extent that LAA can demonstrate that Lighthouse Academies had, prior to the Closing, actual knowledge that the applicable representation or warranty was untrue or incomplete or had been breached prior to the Closing.

#### **9.7 Indemnification of Third-Party Claims**

The obligations and liabilities of any Party to indemnify any other under this Section with respect to a Claim relating to or arising from a Claim relating to third parties (a "Third Party Claim") shall be subject to the following terms and conditions:

(i) Notice and Defense. The Party to be indemnified (the "Indemnified Party") will give the Party from whom indemnification is sought (the "Indemnifying Party") prompt written notice of any such Claim, and the Indemnifying Party may undertake the defense thereof by representatives chosen by it. Failure to give notice shall not affect the Indemnifying Party's duty or obligations under this Section except to the extent the Indemnifying Party is prejudiced thereby. If the Indemnifying Party undertakes the defense of a Third party Claim, then the Indemnifying Party shall be deemed to accept that it has an indemnification obligation under this Section with respect to such Third party Claim, unless it shall in writing reserve the right to contest its obligation to provide indemnity with respect to such Third party Claim. So long as the Indemnifying Party is defending any such Third party Claim actively and in good faith, the Indemnified Party shall not settle such Claim. The Indemnified Party shall make available to the Indemnifying Party or its representatives all records and other materials required by them and in the possession or under the control of the Indemnified Party, for the use of the Indemnifying Party and its representatives in defending any such Claim, and shall in other respects give reasonable cooperation in such defense.

(ii) Failure to Defend. If the Indemnifying Party, within thirty (30) days after notice of any such Claim, fails to dispute the obligation of the Indemnifying Party with respect to such Claim and fails to defend such Claim actively and in good faith, then the Indemnified Party will (upon written notice to the Indemnifying Party) have the right to undertake the defense, compromise or settlement of such Claim or consent to the entry of a judgment with respect to such Claim, on behalf of and for the account and risk of the Indemnifying Party, and the Indemnifying Party shall thereafter have no right to challenge the Indemnified Party's defense, compromise, settlement or consent to judgment therein.

(ii) Indemnified Party's Rights. Anything in this Section to the contrary notwithstanding, (i) if there is a reasonable probability that a Claim may materially and adversely affect the Indemnified Party other than as a result of money damages or other money payments, the Indemnified Party shall have the right to defend, compromise or settle such Claim, and (ii) the Indemnifying Party shall not, without the written consent of the Indemnified Party, settle or compromise any Claim or consent to the entry of any judgment which does not include as an unconditional term thereof the giving by the claimant or the plaintiff to the Indemnified Party of a release from all liability in respect of such Claim.

## **9.8 Payment**

The Indemnifying Party shall promptly pay the Indemnified Party any amount due under this Section. Upon judgment, determination, settlement or compromise of any third party claim, the Indemnifying Party shall pay promptly on behalf of the Indemnified Party, and/or to the Indemnified Party in reimbursement of any amount theretofore required to be paid by it, the amount so determined by judgment, determination, settlement or compromise and all other Claims of the Indemnified Party with respect thereto, unless in the case of a judgment an appeal is made from the judgment. If the Indemnifying Party desires to appeal from an adverse judgment, then the Indemnifying Party shall post and pay the cost of the security or bond to stay execution of the judgment pending appeal. Upon the payment in full by the Indemnifying Party of such amounts, the Indemnifying Party shall succeed to the rights of such Indemnified Party, to the extent not waived in settlement, against the third party who made such third party claim.

## **9.9 Adjustment of Liability**

In the event an Indemnifying Party is required to make any payment under this Section in respect of any damages, liability, obligation, loss, claim, or other amount indemnified hereunder, such Indemnifying Party shall pay the Indemnified Party an amount (the “Adjusted Amount”) which is equal to the sum of (i) the amount of such damages, liability, obligation, loss, claim or other amount, minus (ii) the amount of any insurance proceeds the Indemnified Party actually receives with respect thereto, minus (iii) any third party payments actually received by the Indemnified Party with respect to such damages, liability, obligation, loss, claim or other amount after demand or notice to such third party from the Indemnifying Party (with the consent of the Indemnified Party which will not be unreasonably withheld).

## **10. LIABILITY INSURANCE**

Lighthouse Academies shall maintain, at its expense, in force during the term of this Agreement, commercial general liability insurance in a good and solvent insurance company or companies and in an amount not less than Two Million Dollars (\$2,000,000.00) with respect to injury or death to any one person and Two Million Dollars (\$2,000,000.00) with respect to injury or death to more than one person in any one accident or other occurrence and Two Million Dollars (\$2,000,000.00) with respect to damage to property. Such policy or policies shall have deductibles of no more than \$5,000.00.

LAA shall maintain, at its expense, in force during the term of this Agreement, commercial general liability insurance in a good and solvent insurance company or companies and in an amount not less than Two Million Dollars (\$2,000,000.00) with respect to injury or death to any one person and Two Million Dollars (\$2,000,000.00) with respect to injury or death to more than one person in any one accident or other occurrence and Two Million Dollars (\$2,000,000.00) with respect to damage to property. Such policy or policies shall have deductibles of no more than \$5,000.00.

## **10. TERM AND TERMINATION**

### **10.1 Term.**

This Agreement shall have an initial term commencing on the Effective Date and ending on the later of June 30 following the fifth anniversary of the Effective Date or the expiration of the initial term of the Charter (the “Initial Term”), and shall automatically be renewed for additional renewal terms ending on the later of June 30 of each year or the expiration of any renewal term of the Charter (each a “Renewal Term” and collectively with the Initial Term the “Term”) unless written notice of intent to terminate or renegotiate is given by either Party not later than the December 31 prior to the end of the Initial Term or the December 31 prior to the end of any Renewal Term (the “Annual Renewal Date”). In no event shall any term, renewal or renegotiations extend beyond the effective date of any Charter Contract granted to LAA.

### **10.2 Termination by LAA.**

LAA may terminate this Agreement only in accordance with the following provisions:

(i) Termination for Cause. Subject to the provisions of subparagraph (ii) below, LAA may terminate this Agreement for cause at any time during the Term of this Agreement. For purposes of this subsection 2 of this Section, the term “for cause” shall mean:

- (a) the School fails to make reasonable progress toward achievement of agreed-upon goals and student performance standards identified in the Agreement after a period of at least three years from the Effective Date of this Agreement;
- (b) Lighthouse Academies violates any material provision of law with respect to the School from which the School was not specifically exempted and which results in material adverse consequences to LAA or the School; or
- (d) Lighthouse Academies materially breaches any of the essential terms and conditions of this Agreement and thereby undermines the purposes of this Agreement.

In the event LAA terminates the Agreement with cause prior to the opening of the School, LAA shall not be liable to Lighthouse Academies for any further payments under this Agreement, including any previously unreimbursed out-of-pocket expenses incurred by Lighthouse Academies related to organizing the School, on behalf of LAA or in furtherance of Lighthouse Academies' obligations hereunder after the granting of the Charter Contract and before the opening of the School.

(ii) Lighthouse Academies Right to Cure. Prior to exercising its right to terminate this Agreement, LAA shall give Lighthouse Academies written notice of its basis for terminating the Agreement (the "Termination Notice"). The Termination Notice shall specify the section of this Agreement upon which LAA is relying on for the termination and, if the termination is done pursuant to subsection 2(i) of this Section, LAA shall specify the specific terms of the Agreement that have been violated and the requirements for correction of the violation. Upon receipt of the Termination Notice, Lighthouse Academies shall have 60 business days to remedy the breach. If the breach is not corrected within the cure period LAA may terminate the Agreement in accordance with the applicable paragraph of this subsection 2 of this Section.

### **10.3 Termination by Lighthouse Academies.**

Lighthouse Academies may terminate this Agreement in accordance with the following provisions:

(i) Termination For Cause. Lighthouse Academies may terminate this Agreement at any time for cause. For purposes of this subsection 10.3 of this Section, the term "for cause" means any violation of any provisions of this Agreement by LAA, any breach of a representation or warranty made by LAA, the violation of any covenant made by LAA, or an action by LAA which materially interferes with or limits the ability of Lighthouse Academies to perform under this Agreement, such as is stated in Section 11.6 below. In the event Lighthouse Academies terminates the Agreement, Lighthouse Academies shall be entitled to receive any previously unreimbursed out-of-pocket expenses incurred by Lighthouse Academies related to organizing the School on behalf of LAA or in furtherance of Lighthouse Academies' obligations hereunder.

(ii) Termination Without Cause. Lighthouse Academies may terminate this Agreement without cause at any time prior to thirty business days before to the Opening Date specified herein upon the delivery of 60 days' written notice to LAA.

(iii) Minimum Enrollment. Lighthouse Academies may terminate this Agreement as stated in subsection 6.4 above.

#### **10.4 Termination Resulting From a Material Adverse Change.**

Upon the occurrence of a Material Adverse Change, Lighthouse Academies or the School may elect to deliver written notice to the other, triggering the provisions of this Section (a “Notice of Material Adverse Change”). Upon receipt of a Notice of a Material Adverse Change, the Parties shall promptly commence negotiations in good faith regarding a mutually agreeable approach (including without limitation, an amendment to the Agreement, alternative funding arrangements, etc.) to address the Material Adverse Change. If despite such good faith negotiations the Parties are unable to agree upon an acceptable approach to address the Material Adverse Change, then either Party may elect to terminate the Agreement, subject to subsection 2 of this Section, by delivering written notice of termination to the other at least 60 days in advance of the effective date of such termination, or in such lesser time as is reasonable or mandated under the circumstances. The termination provisions of this section shall not be construed to in any way limit the termination for cause provisions contained in subsections 2 & 3 of this Section 10. Upon a termination due to a Material Adverse Change, LAA shall reimburse Lighthouse Academies for any previously unreimbursed out-of-pocket expenses incurred by Lighthouse Academies related to organizing the School, on behalf of LAA or in furtherance of Lighthouse Academies' obligations hereunder.

#### **10.5 Avoidance of Disruptions to Students.**

Notwithstanding the foregoing provisions of this Section, each Party shall use its good faith best efforts to avoid a termination of the Agreement that becomes effective during the School year because of the disruption to the educational program and the students. Therefore, in the event this Agreement is terminated by either Party prior to the end of the term specified above, absent unusual and compelling circumstances, the termination will not become effective until the end of the School year.

#### **10.6 Assistance Following Termination by Lighthouse Academies.**

In the event of termination of this Agreement by Lighthouse Academies, Lighthouse Academies shall provide reasonable assistance to LAA for the shorter of the remainder of the current School year or 90 days after the effective date of termination of the Agreement, to assist in the transition to another School program. During such termination period Lighthouse Academies will be entitled to receive and LAA shall continue to pay Lighthouse Academies' Service Fee and shall reimburse Lighthouse Academies for all expenses incurred by Lighthouse Academies in providing such transition assistance.

### **11. MISCELLANEOUS**

#### **11.1 Governing Law.**

This Agreement shall be governed by, construed, interpreted and enforced in accordance with the laws of Arkansas, without giving effect to the principles of conflict of laws thereof; provided, however, that the Federal Arbitration Act (“FAA”), to the extent applicable and inconsistent, will supersede the laws of the State and shall govern. If any action is brought to enforce an arbitral award rendered pursuant to subsection 2 of this Section, venue for such action shall be in the courts of Arkansas located in Pulaski County or the courts of the United States serving Jacksonville Arkansas. The Parties hereby irrevocably waive any objection which either may now or hereafter have to the laying of venue of any actions or proceedings arising out of or in connection with this Agreement brought in the courts referred to in the preceding sentence and hereby further irrevocably waive and agree not to plead or claim in any such court that any such action or proceeding brought in any such court has been brought in an inconvenient forum.

## 11.2 Alternative Dispute Resolution.

(i) Good Faith Negotiation of Disputes. The parties agree to cooperate in good faith in all actions relating to this Agreement, to communicate openly and honestly, and generally to attempt to avoid disputes in connection with this Agreement. If, nevertheless, a dispute should arise in connection with this Agreement, the parties agree to use their best efforts to resolve such dispute in a fair and equitable manner and without the need for expensive and time-consuming litigation. In the event any dispute arises between LAA and Lighthouse Academies concerning this Agreement, it shall be resolved in accordance with the following alternative dispute resolution procedure.

(ii) Binding Arbitration. Any controversy or claim arising out of or relating to this Agreement, the relationship resulting in or from this Agreement, the breach of any duties hereunder or any other relationship, transaction or dealing between the parties (collectively "Disputes") will be settled by binding arbitration in accordance with the Commercial Arbitration Rules of The American Arbitration Association. Notwithstanding anything set forth herein to the contrary, all notices, arbitration claims, responses, requests and documents will be sufficiently given or served if mailed or delivered to the parties hereto as described in the Notice provision of this Agreement. Any award rendered by the arbitrator(s) may be entered as a judgment or order and confirmed or enforced by either Party in any State or federal court having competent jurisdiction thereof. If either Party brings or appeals any judicial action to vacate or modify any award rendered pursuant to arbitration or opposes the confirmation of such award and the Party bringing or appealing such action or opposing confirmation of such award does not prevail, such Party will pay all of the costs and expenses (including, without limitation, court costs, arbitrators fees and expenses and attorneys' fees) incurred by the other Party in defending such action. Additionally, if either Party brings any action for judicial relief in the first instance without pursuing arbitration prior thereto, the Party bringing such action for judicial relief will be liable for and will immediately pay to the other Party all of the other Party's costs and expenses (including, without limitation, court costs and attorneys' fees) to stay or dismiss such judicial action and/or remove it to arbitration. The failure of either Party to exercise any rights granted hereunder shall not operate as a waiver of any of those rights. This Agreement concerns transactions involving commerce among the several states. The arbitrators will not be empowered to award punitive damages. The agreement to arbitrate will survive termination of this Agreement. **IF THIS AGREEMENT IS FOUND NOT TO BE SUBJECT TO ARBITRATION, THE PARTIES KNOWINGLY AND WILLINGLY WAIVE ANY RIGHT THEY HAVE UNDER APPLICABLE LAW TO A TRIAL BY JURY IN ANY DISPUTE ARISING OUT OF OR IN ANY WAY RELATED TO THIS AGREEMENT OR THE ISSUES RAISED BY THAT DISPUTE.**

(iii) Arbitration of Termination by LAA. Not later than 30 days following a Notice of Termination, either Party may submit the matter to arbitration by delivering written notice to the other. Within 7 days following the date of the written notice, each side shall designate a recognized and independent educational professional as its panel representative; within 7 days thereafter, these representatives shall designate the neutral. The arbitrators shall convene a hearing as soon as possible thereafter. Each Party may present witnesses, documentary, and other evidence in its behalf, but strict rules of evidence shall not apply. The arbitrators shall permit the filing of briefs upon request of either Party. The arbitrators shall issue a written opinion concerning the matters in controversy together with their award. They shall issue their award within 30 days following the close of the hearing, and judgment upon the award may be entered in any court having jurisdiction thereof.

### **11.3 Breach and Waiver.**

No failure on the part of any Party to enforce the provisions of this Agreement shall act as a waiver of the right to enforce any provision. Further, no waiver of any breach of this Agreement shall (a) be effective unless it is in writing and executed by the Party charged with the waiver, or (b) constitute a waiver of a subsequent breach, whether or not of the same nature. All waivers shall be strictly construed. No delay in enforcing any right or remedy as a result of a breach of this Agreement shall constitute a waiver thereof. No waiver of any provision of this Agreement shall be deemed or shall constitute a waiver of any other provision. Nor shall such waiver constitute a continuing waiver unless otherwise expressly stated.

### **11.4 No Third party Beneficiary Rights.**

With the exception of the Authorizer, no third party, whether a constituent of the School, a member of the community, a student or parent of a student of the School or otherwise, may enforce or rely upon any obligation of, or the exercise of or failure to exercise any right of; LAA or Lighthouse Academies in this Agreement. This Agreement is not intended to create any rights of a third party beneficiary.

### **11.5 Negligent, Wrongful or Unlawful Acts of a Party.**

Nothing in this Agreement shall affect or alter in any way responsibility of either Party of this Agreement for the negligent, wrongful or unlawful act of that Party's employees, agents, contractors.

### **11.6 Delegation of Authority.**

Nothing in the Agreement shall be construed as delegating to Lighthouse Academies any of the powers or authority of LAA which are not subject to delegation by LAA under the applicable State law or under the Charter. LAA may revoke any powers granted to Lighthouse Academies hereunder by written notice to Lighthouse Academies; provided, however, that any such revocation shall in no way impact the obligations of LAA, including its obligation to make the payments owed to Lighthouse Academies pursuant to this Agreement. Should any such revocation make it impossible or impracticable for Lighthouse Academies to perform its responsibilities under this Agreement, Lighthouse Academies may

### **11.7 Compliance with Laws.**

Unless specifically waived by appropriate governmental authority, Lighthouse Academies shall comply with all applicable laws, rules, regulations, ordinances, order or requirements of the State and any governmental authority relating to its delivery of the goods or services specified in this Agreement.

### **11.8 Charter Contract shall Control.**

Any provisions of this Agreement that are contrary to or conflicting with the Charter Contract shall be superseded by the terms and conditions of the Charter Contract.

### **11.9 LAA Access and Inspection.**

Lighthouse Academies shall make available to LAA or the Authorizer for inspection and copying, upon reasonable notice, all books, records, and documents relating to Lighthouse Academies'

obligations and performance under this Agreement, the operation of the School, and Lighthouse Academies' receipt and expenditure of funds under this Agreement.

#### **11.10 Notices.**

All notices, consents and other communications ("notices") which either Party may be required or desire to give the other Party shall be in writing and shall be given by personal service, telecopy, nationally recognized overnight courier service, registered air mail or certified mail (or by equivalent means) to the other Party at its respective address or telecopy telephone number set forth below. Notices shall be deemed to be given upon deposit into the mail by the Party doing the notifying. Notices delivered by telecopy shall be confirmed in writing by overnight courier and shall be deemed to be given upon deposit into the mail by the Party doing the notifying.

Lighthouse Academies:

Michael Ronan  
Lighthouse Academies  
1661 Worcester Road  
Suite 207  
Framingham, MA 10701

Lighthouse Academies of Arkansas:

#### **11.11 Defined Terms and Use of Terms.**

All defined terms used in this Agreement shall be deemed to refer to the masculine, feminine, neuter, singular and/or plural, in each instance as the context and/or particular facts may require. Use of the terms "hereunder," "herein," "hereby," and similar terms refer to this Agreement.

#### **11.12 Section Headings.**

The headings in this Agreement are for the convenience of the parties only, and shall have no effect on the construction or interpretation of this Agreement and are not part of this Agreement.

#### **11.13 Recitals, Appendices, Exhibits and Schedules.**

Each recital stated in this Agreement and each appendix, exhibit and schedule to this Agreement to which reference is made in this Agreement is hereby incorporated in this Agreement as an integral part thereof. In the event of a conflict between the terms and provisions of this Agreement and the terms and provisions of any appendix, exhibits or schedules, the terms and provisions of this Agreement, absent the appendix, exhibits and schedules, shall control.

#### **11.14 Entire Agreement.**

This Agreement constitutes the entire agreement between the Parties with respect to the subject matter herein, as of the Effective Date, and there are no understandings of any kind except as expressly

set forth herein. Further, any and all prior understandings and agreements, expressed or implied, written or oral, between the Parties are superseded hereby.

#### **11.15 Modifications and Amendments.**

This Agreement (including any exhibits and schedules to this Agreement) may be altered, changed, added to, deleted from or modified only by agreement in writing executed by the authorized officer of Lighthouse Academies and the Chairperson of LAA, as authorized by LAA. Accordingly, no course of conduct or custom shall constitute an amendment or modification of this Agreement. Any attempt to modify this Agreement orally, or in a writing not signed by both Parties, shall be void. This Agreement may not be modified, supplemented, explained, or waived by parol evidence.

#### **11.16 Assignment.**

This Agreement, including without limitation, the rights granted herein, may be assigned, delegated, transferred, pledged, or hypothecated by Lighthouse Academies, whether voluntary or involuntary, with the prior written consent of LAA. LAA shall not consent to such an assignment if due diligence does not provide evidence that the proposed assignee has the appropriate financial resources, educational services and managerial experience to provide the services contracted under this Agreement. This Agreement shall inure to the benefit of and shall be binding upon the Parties and their successors and assigns, and the name of a Party appearing herein shall be deemed to include the name of such Party's successors and assigns to the extent necessary to carry out the intent of this Agreement.

#### **11.17 Counterparts.**

This Agreement may be executed in Counterparts, each of which shall be deemed to be an original and both together shall be deemed to be one and the same Agreement.

#### **11.18 No Partnership.**

This Agreement does not constitute, and shall not be construed as constituting, a partnership or joint venture between the Parties.

#### **11.19 Further Assurances.**

The Parties agree that they will execute and deliver or cause to be executed and delivered from time to time such other documents and will take such other actions as the other Party reasonably may require to more fully and efficiently carry out the terms of this Agreement.

#### **11.20 Severability.**

In case any one or more of the provisions or parts of a provision contained in this Agreement shall, for any reason, be held to be invalid, illegal, or unenforceable in any respect in any jurisdiction, such invalidity, illegality, or unenforceability shall not affect any other provision or part of a provision of this Agreement in such jurisdiction, but this Agreement shall be reformed and construed in any such jurisdiction as if such invalid or illegal or unenforceable provision or part of a provision had never been contained herein and such provision or part shall be reformed so that it would be valid, legal, and enforceable to the maximum extent permitted in such jurisdiction.

**11.21 Negotiated Agreement.**

The provisions of this Agreement were negotiated by the Parties and this Agreement shall be deemed to have been drafted by the Parties, notwithstanding any presumptions at law to the contrary. Both Parties acknowledge that they have consulted with independent legal counsel regarding this Agreement.

**- SIGNATURES ARE ON THE FOLLOWING PAGE -**

IN WITNESS WHEREOF, the Parties have executed and delivered this Agreement as of the date first written above

**THIS AGREEMENT CONTAINS A BINDING ARBITRATION PROVISIONS WHICH MAY BE ENFORCED BY THE PARTIES**

**LIGHTHOUSE ACADEMIES, INC.**

By:



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Title: CEO

**LIGHTHOUSE ACADEMIES OF ARKANSAS**

By:



Title: Board President