



**PROJECT AGREEMENT  
FOR THE  
DESIGN, BUILD, FINANCE, AND  
MAINTENANCE OF  
PRINCE GEORGE'S COUNTY PUBLIC  
SCHOOLS ALTERNATIVE  
CONSTRUCTION FINANCING PACKAGE 1  
BY AND BETWEEN  
THE BOARD OF EDUCATION OF  
PRINCE GEORGE'S COUNTY  
AND  
PRINCE GEORGE'S COUNTY EDUCATION  
& COMMUNITY PARTNERS, LLC**



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**PROJECT AGREEMENT FOR THE  
DESIGN, BUILD, FINANCE, AND MAINTENANCE OF  
PRINCE GEORGE’S COUNTY PUBLIC SCHOOLS  
ALTERNATIVE CONSTRUCTION FINANCING PACKAGE 1  
BY AND BETWEEN  
THE BOARD OF EDUCATION OF PRINCE GEORGE’S COUNTY  
AND  
PRINCE GEORGE’S COUNTY EDUCATION & COMMUNITY PARTNERS, LLC**

**THIS PROJECT AGREEMENT FOR THE DESIGN, BUILD, FINANCE, AND MAINTENANCE OF PRINCE GEORGE’S COUNTY PUBLIC SCHOOLS ALTERNATIVE CONSTRUCTION FINANCING PACKAGE 1** (this “**Agreement**”) is made as of the 15<sup>th</sup> day of December, 2020 (the “**Commercial Close Date**”) by and between the Board of Education of Prince George’s County (the “**Board**” or “**PGCPS**”) and Prince George’s County Education & Community Partners, LLC, a limited liability company organized and existing under the laws of the State of Delaware (“**Developer**”).

**RECITALS**

**WHEREAS**, Section 126 of Division II, Title 4, Subtitle 1 of the Education Article of the Annotated Code of Maryland permits county boards of education, with the approval of the county governing body, to utilize certain “alternative financing methods” in order to “finance or to speed delivery of, transfer risks of, or otherwise enhance the delivery of public school construction”; and

**WHEREAS**, under subsection (a)(2) of Section 126 of Division II, Title 4, Subtitle 1 of the Education Article of the Annotated Code of Maryland, such “alternative financing methods” include “public-private partnership agreements, in which a county board contracts with a county revenue authority or a private entity for the acquisition, design, construction, improvement, renovation, expansion, equipping, or financing of a public school, and may include provisions for cooperative use of the school or an adjacent property and generation of revenue to offset the cost of construction or use of the school” and “design-construct-operate-maintain-finance arrangements that permit a county board to contract with a county revenue authority or a private entity for the design, construction, operation, and maintenance of a public school under terms agreed to by the parties”; and

**WHEREAS**, the approved 20-year *Educational Facilities Master Plan* (as amended in FY 2019) establishes the Blueprint for PGCPS to ensure adequate educational facilities are provided to meet the needs of PGCPS’ 134,000 students and nearly 22,000 full- and part-time employees, adopting the use of alternative construction financing to deliver school facilities in the timeliest and most cost-effective manner possible, while guaranteeing life cycle asset performance; and

**WHEREAS**, to advance consideration of alternative construction financing options, in May 2018, the County Council approved Resolution No. CR-33-2018 establishing a P3 Alternative Financing School Infrastructure Work Group (“**Work Group**”) for the purpose of supporting, encouraging, and establishing a work group to explore a Public-Private Partnership Alternative

Financing School Infrastructure Program for public school construction and replacement projects in the County; and

**WHEREAS**, the Work Group is comprised of representatives from the County Executive’s office, the County Council, and PGCPS; and

**WHEREAS**, PGCPS, with the support of the Work Group, issued Request for Qualifications No. DCP19-24, Public-Private Partnership for the Design, Construction, Financing, and Maintenance of Prince George’s County Public Schools Alternative Construction Financing Package 1 on May 30, 2019 (as amended, the “**RFQ**”); and

**WHEREAS**, on August 28, 2019, Developer, as one of the shortlisted proposers selected by PGCPS as a result of its statement of qualifications submitted under the RFQ, was invited to submit a bid under the terms of the Request for Proposals No. DCP19-24A, Public-Private Partnership for the Design, Construction, Financing, and Maintenance of Prince George’s County Public Schools Alternative Construction Financing Package 1 (as amended, the “**RFP**”); and

**WHEREAS**, on September 19, 2019, the Board passed a resolution accepting PGCPS’ Chief Executive Officer’s recommendation to procure six middle and/or K-8 schools as Alternative Construction Financing Package 1; and

**WHEREAS**, PGCPS, with the support of the Work Group, issued the RFP on November 20, 2019; and

**WHEREAS**, on September 14, 2020, Developer submitted a proposal in response to the RFP (the “**Proposal**”); and

**WHEREAS**, on October 5, 2020, Developer was recommended by PGCPS to enter into this Agreement; and

**WHEREAS**, on October 20, 2020, the County Council adopted Resolution No. CR-100-2020 evidencing its support of the MOU and the Project; and

**WHEREAS**, on October 20, 2020, the Chair of the Board, the County Executive, and the Chair of the County Council executed the *Memorandum of Understanding with Respect to Prince George’s County Public Schools’ Public-Private Partnership Program* (as amended, supplemented, or replaced from time to time in accordance therewith, the “**MOU**”); and

**WHEREAS**, on October 21, 2020, the Board passed a Resolution approving PGCPS’ entry into an Exclusive Negotiating Agreement and, if applicable in accordance therewith, this Agreement, with Developer; and

**WHEREAS**, PGCPS desires that Developer design, build, finance, and maintain the Schools in accordance with the specifications and requirements of this Agreement, and Developer agrees to design, build, finance, and maintain the Schools in accordance with the specifications and requirements of this Agreement; and

**WHEREAS**, the Parties desire to enter into this Agreement to set forth the roles, responsibilities, and rights of the Parties with respect to the Project.

**NOW, THEREFORE**, for and in consideration of the mutual covenants, representations, warranties, and agreements contained herein, and other valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties covenant and agree as follows:

## **ARTICLE 1 DEFINITIONS**

Unless otherwise specified or the context otherwise requires, for the purposes of this Agreement, the following terms have the following meanings:

“**AAA**” has the meaning set forth in Section 24.4 (Binding Arbitration for Design-Build Disputes).

“**Accessibility Condition**” has the meaning set forth in Section 1.1 (Definitions) of Exhibit X-2 (Deductions).

“**Actual Response Time**” has the meaning set forth in Section 1.1 (Definitions) of Exhibit X-2 (Deductions).

“**Actual Site Availability Date**” has the meaning set forth in Section 5.3.3 (Actual Site Availability Dates).

“**Adelphi Area Middle School**” means the School to be constructed on the Site described in Exhibit A-1 (Legal Description of Adelphi Area Middle School Land).

“**Ad Hoc School Use**” means any unscheduled use of a School for Educational Activities or Educational Support Activities.

“**Affiliate**” means in relation to any Person: (a) any other Person having Control of that Person; (b) any other Person over whom that Person has Control; or (c) any Person over whom any other Person referred to in (a) above also has Control, where “**Control**” of a Person by another Person means that other Person (whether alone or with others, and whether directly or indirectly at any tier): (i) holds the majority of voting rights in the controlled Person; (ii) has the right to appoint the majority of the board of directors (or equivalent) of that controlled Person; and/or (iii) exercises control over that controlled Person’s affairs. In the case of an Equity Member, if the Equity Member is an investment fund, “**Affiliate**” includes such Equity Member’s general partner but does not include any other investment fund in which its general partner is an equity investor as a general partner.

“**Agreement**” means this *Project Agreement for the Design, Build, Finance, and Maintenance of Prince George’s County Public Schools Alternative Construction Financing Package 1* entered into by and between PGCPS and Developer, as may be amended in accordance with the terms hereof.

“**Annual Service Plan**” has the meaning set forth in Section 4.2 (Annual Service Plans) of Exhibit W (Services Requirements).

“**Anticipated School Occupancy Readiness Notice**” means a written notice provided by Developer to PGCPs and the Independent Engineer in accordance with Section 4.1.7 of Exhibit J (Form of Independent Engineer Agreement) setting forth the date on which Developer anticipates the relevant School will be in a condition necessary to satisfy the School Occupancy Readiness Conditions.

“**Applicable Law**” means (a) any federal, State, or local law, statute, code, or regulation; (b) any formally adopted and generally applicable rule, requirement, determination, standard, policy, implementation schedule, permit requirement, or other order of any Governmental Authority having appropriate jurisdiction; and (c) any Governmental Approval, in each case having the force of law and applicable from time to time to the Project or any element thereof; provided that to the extent that State funds are not used by PGCPs to make any payment it is obligated to make under this Agreement, Section 2-203(f) and Title 5, Subtitle 3 of the Education Article of the Maryland Annotated Code and the regulations governing the Public School Construction Program shall be excluded from this definition.

“**Appointed Representative**” means a representative of a Financing Party identified in a Step-In Notice, which may be the Collateral Agent or a third party, including any other Financing Party.

“**Approved Document**” has the meaning set forth in Section 27.14.2 (Approved Documents).

“**Assigned PGCPs Hazardous Materials**” has the meaning set forth in Section 4.9.1.2 (Developer Responsibility for Certain PGCPs Hazardous Materials).

“**Athletic Fields**” has the meaning set forth in the Educational Specifications.

“**Availability Condition**” has the meaning set forth in Section 1.1 (Definitions) of Exhibit X-2 (Deductions).

“**Availability Payment**” means the fee to be paid by PGCPs to Developer, which together with any applicable Progress Payment, Milestone Payments, Relief Payments or Delay Payments, compensate Developer for Developer’s performance of the Design-Build Work and Services, as set forth and calculated in accordance with Section 14.4 (Availability Payments) and Exhibit X-1 (Payment Calculations).

“**Availability Payment Credit Cap**” has the meaning set forth in Section 14.4.3.1 (Limit on Monthly Availability Payment Adjustments).

“**Base Case Equity IRR**” means 14.34%, being Developer’s Nominal blended equity internal rate of return calculated on an after-tax basis at the level of Developer in accordance with

the Financial Model on the Effective Date, having regard to Distributions made and projected to be made.

“**Base Case Financial Model**” means the Developer’s financial model for the Project as of the Financial Close Date, which is attached in electronic format as Exhibit U (Financial Model and Related Information).

“**Base FF&E**” means the items identified as Base FF&E in the Educational Specifications.

“**Bedding-In Period**” has the meaning set forth in Section 2.1 (Entitlement to Make Deductions) of Exhibit X-2 (Deductions).

“**Billing Period**” means the period of time from (and including) the first day to (and including) the last day of each calendar month following the earlier of (a) the date that a right to a Relief Payment or Delay Payment starts to accrue, or (b) the first School Occupancy Readiness Date, except that (i) the first Billing Period shall be equal to the period of time from (and including) the date of the earlier event identified in (a) and (b) to (and including) the last day of the month in which such event occurs, and (ii) the last Billing Period shall end on the last day of the Term.

“**BMS**” or “**BMCS**” means the building management control system and controls which control the delivery of heat, ventilation, and humidity to each School necessary to maintain indoor air quality and thermal comfort, as described in Section 2.7 of Appendix W-1 (Facilities Maintenance) to Exhibit W (Services Requirements).

“**Board**” means the Board of Education of Prince George’s County, Maryland.

“**Bond**” means any taxable or tax-exempt bond.

“**Building Systems**” means the architectural, mechanical, electrical, and other systems in or servicing the Schools, which include, without limitation, the electrical system, heating and ventilation system, air conditioning, BMS, plumbing system, fire protection, fire alarm system, security system, master clock, and building elevators described in the Technical Requirements.

“**Business Days**” means Monday through Friday, inclusive, other than days on which the administrative offices of PGCPs are closed.

“**Capital Charge**” means the Capital Charge for all Schools, which is equal to \$22,986,971.86 as of Financial Close and shall be adjusted in accordance with Exhibit X-1 (Payment Calculations).

“**Capital Expenditure**” means an expenditure related to the Project which is treated as a capital expenditure in accordance with GAAP.

“**Capital Modification**” means, on any Site, any material change to any part of the physical assets occurring after a School Occupancy Readiness Date, including the alteration, addition,

demolition, or extension of the physical assets constituting the Project or the installation of new structures, equipment, systems, or technology.

“**Carry Over**” has the meaning set forth in Exhibit X-1 (Payment Calculations).

“**Casualty Property**” has the meaning set forth in Section 20.7.1 (Notice to PGCPs).

“**Casualty Restoration**” has the meaning set forth in Section 20.7.2 (Obligation to Restore).

“**Change in Law Event**” means the coming into effect after the Proposal Submittal Date of (a) any Applicable Law or any modification (including repeal) of any Applicable Law that existed on the Proposal Submittal Date, compliance with which, in accordance with the Contract Standards, materially expands the scope or materially interferes with, delays, or increases the cost of performing the Design-Build Work or the Services, or (b) any Discriminatory Change in Tax Law; provided, however, that the following are not considered Change in Law Events: (i) any law, statute, code, or regulation that has been enacted or adopted on or before the Proposal Submittal Date to take effect after the Proposal Submittal Date; (ii) the denial, delay in issuance of, or imposition of any term or condition in connection with any Governmental Approval required for the Design-Build Work or the Services; (iii) a change in the nature or severity of actions typically taken by a Governmental Authority to enforce compliance with Applicable Law in effect as of the Proposal Submittal Date; (iv) any increase in any fines or penalties provided for under Applicable Law in effect as of the Proposal Submittal Date; (v) any act, event, or circumstance that would otherwise constitute a Change in Law Event but that does not change the requirements imposed on Developer by the Contract Standards in effect as of the Proposal Submittal Date; or (vi) any change in Tax law, except for any Discriminatory Change in Tax Law. Developer shall promptly notify PGCPs of any Change in Law Event about which it becomes aware.

“**Change of Control**” means a Transfer within a Person resulting in such Person no longer being an Affiliate of the Person(s) that had Control over such Person immediately prior to such Transfer.

“**Change Order**” means a written order signed by PGCPs and Developer making a Design-Build Change. A Change Order shall be deemed to constitute an amendment to this Agreement.

“**Cleaning Services**” has the meaning set forth in Section 2.1 (PGCPs Retained Responsibilities) of Exhibit W (Services Requirements).

“**Cleaning Standards**” has the meaning set forth in Section 2.1 (PGCPs Retained Responsibilities) of Exhibit W (Services Requirements).

“**Cleared Person**” has the meaning set forth in Section 3.10 (Cleared Persons) of Exhibit W (Services Requirements).

“**CMMS**” means the computerized maintenance management system for the Schools.

**“Collateral Agent”** means the financial institution named as Collateral Agent in Article 26 (Notices), or such other financial institution listed or otherwise designated to act as trustee or agent on behalf of or at the direction of the Lenders or the Person or Persons so designated in the Financing Documents with respect to the Senior Debt from time to time outstanding, together with its permitted successors and assigns thereunder, as notified by Developer to PGCPS in writing to be serving in such capacity at any time.

**“COMAR”** means the Code of Maryland Regulations.

**“Commercial Arbitration Rules”** mean the AAA commercial arbitration rules in effect at the time the administrative filing requirements are met for a Demand for Arbitration submitted to the AAA under this Agreement.

**“Commercial Close Date”** means the date this Agreement is executed by the Parties as identified in the Preamble.

**“Commercially Useful Function”** means when an MBE or CBB, as applicable, (a) is responsible for the execution of a distinct element of the work of the contract; (b) carries out its responsibilities by actually performing, managing, and supervising the work involved; and (c) furnishes supervision, labor, tools, equipment, materials, and supplies necessary to perform a distinct element of the contract work.

**“Commissioning”** means, for each School, the commissioning of the School conducted pursuant to Article 9 (Commissioning) and Exhibit R (Commissioning Requirements).

**“Commissioning Fine Tuning Period”** means, for each School, the period commencing on the first Business Day of the Services Period, at a time when the School can be operated under fully loaded occupancy cycles for four complete seasons after the School Occupancy Readiness Date (or such earlier time as PGCPS may reasonably agree), whereby Developer verifies through various testing that all key systems in the School, including heating, air conditioning, and ventilation, are functioning in accordance with the Contract Standards.

**“Commissioning Plan”** means, for each School, the commissioning plan for the School prepared pursuant to Exhibit R (Commissioning Requirements).

**“Commissioning Tests”** means the commissioning tests set forth in Exhibit R (Commissioning Requirements).

**“Committed Investment”** has the meaning set forth in Exhibit Z (Calculation of Termination Compensation).

**“Community Engagement and Outreach Plan”** means the plan attached as Exhibit N (Community Engagement and Outreach Plan), as such plan may be amended with the written approval of PGCPS.

**“Community Investment Program”** means the Community Investment Program attached as Exhibit M (Community Investment Program), as such program may be amended with the written approval of PGCPs.

**“Compensation Event”** shall mean any of the following events or circumstances in connection with which Developer is claiming entitlement to payment or compensation from PGCPs in accordance with this Agreement:

(a) any Direct Losses incurred by Developer resulting from any elections or other State or County activities held at a School during the Pre-Occupancy Period in accordance with Section 10.7.2 (PGCPs Access Rights);

(b) any costs claimed by Developer resulting from any Capital Modification due to a Relief Event in accordance with Section 15.4 (Capital Modifications Required Due to Relief Events);

(c) any costs claimed by Developer resulting from any Capital Modification at PGCPs’ direction in accordance with Section 15.5 (Capital Modifications at PGCPs’ Direction);

(d) the amount of Developer’s Services Change Report preparation costs owed to Developer in accordance with Section 15.6.2 (Services Change Report);

(e) any amount payable by PGCPs on account of a Relief Event pursuant to Section 16.5 (Compensation Relief Available Upon Occurrence of a Relief Event);

(f) any Direct Losses claimed by Developer resulting from Vandalism that are recoverable pursuant to Section 20.8.2 (Costs);

(g) any Direct Losses claimed by Developer related to CMMS migration or compatibility pursuant to subsection (b) of Section 6.2 (Functionality Requirements) of Exhibit W (Services Requirements); and

(h) any Direct Losses claimed by Developer associated with providing the assistance described in subsection (c) of Section 2.12 (Roads, Grounds, and Landscape Maintenance) of Appendix W-1 (Facilities Maintenance) to Exhibit W (Services Requirements).

**“Conceptual Design”** means, individually or collectively, as applicable, those designs set forth in Exhibit A-5 (Conceptual Design for Adelphi Area Middle School), Exhibit B-5 (Conceptual Design for Drew-Freeman Middle School), Exhibit C-5 (Conceptual Design for Hyattsville Middle School), Exhibit D-5 (Conceptual Design for Kenmoor Middle School), Exhibit E-5 (Conceptual Design for Southern Area K-8 School), and Exhibit F-5 (Conceptual Design for Walker Mill Middle School).

**“Conditions Precedent”** mean those conditions precedent to the Effective Date as set forth in Section 6.2 (Conditions Precedent).

**“Confidential Information”** means (a) “personal information”, as defined in the Maryland Public Information Act, which is collected, acquired, or obtained by Developer or PGCPs in relation to or in the course of providing the Design-Build Work or the Services, and includes any information about an identifiable individual other than contact information, which is the name, position name or title, business telephone number, business address, business email or business fax number of the individual; and (b) information of a Party that constitutes a trade secret, or is otherwise business proprietary and financial information the Party has designated as confidential and which is supplied, or to which access is granted, to or on behalf of the other Party (whether before or after the Effective Date), either in writing, or in any other form, directly or indirectly pursuant to discussions with the other Party and includes all analyses, compilations, studies, and other documents whether prepared by or on behalf of a Party which contain or otherwise reflect or are derived from such designated information, and all other information that can be treated as confidential pursuant to the Maryland Public Information Act.

**“Construction Cost Index”** means the twenty (20)-city average construction cost index, as published by Engineering News-Record, for which the base year is 1913, or if such publication ceases to be in existence, a comparable index selected by PGCPs and approved by Developer, acting reasonably.

**“Construction Documents”** means those documents created during Construction Document Development that describe the quality, configuration, size, and relationship of all components to be incorporated into the Project. Construction Documents shall consist of a complete set of drawings and specifications sufficient for all permitting requirements that are consistent with the Project program, the construction budget, and the Construction Schedule.

**“Construction Schedule”** means, individually or collectively, as applicable, the schedules set forth in Exhibit A-6 (Construction Schedule for Adelphi Area Middle School), Exhibit B-6 (Construction Schedule for Drew-Freeman Middle School), Exhibit C-6 (Construction Schedule for Hyattsville Middle School), Exhibit D-6 (Construction Schedule for Kenmoor Middle School), Exhibit E-6 (Construction Schedule for Southern Area K-8 School), and Exhibit F-6 (Construction Schedule for Walker Mill Middle School).

**“Contingent Funding Liabilities”** has the meaning set forth in Exhibit Z (Calculation of Termination Compensation).

**“Contract Standards”** means the standards, terms, conditions, methods, techniques, requirements, and practices imposed or required by: (a) Applicable Law; (b) the Technical Requirements; (c) the Plans; (d) Good Industry Practice; (e) applicable written equipment manufacturers’ specifications; (f) applicable Insurance Requirements; and (g) any other standard, term, condition, or requirement specifically provided in this Agreement to be observed by Developer.

**“Contract Year”** means each of: (a) the period from the Effective Date to the next June 30<sup>th</sup>; (b) each subsequent period of twelve (12) calendar months commencing on July 1<sup>st</sup>; and (c) the period from July 1<sup>st</sup> immediately preceding the expiration or termination of this Agreement

(for whatever reason) to and including the Termination Date. Any computation made on the basis of a Contract Year shall be adjusted on a pro-rata basis to take into account any Contract Year of less than 365 or 366 days, whichever is applicable.

“**Contractor Termination Notice**” has the meaning set forth in Section 12.2 (Replacement of Non-Performing Services Provider or Subcontractor) of Exhibit X-2 (Deductions).

“**Cost to Complete**” has the meaning set forth in Exhibit Z (Calculation of Termination Compensation).

“**Cost Substantiation**” has the meaning described in Section 14.14.2 (Costs Requiring Cost Substantiation).

“**Cost Substantiation Certificate**” has the meaning set forth in Section 14.14.2.2 (Cost Substantiation Certificate).

“**County**” means Prince George’s County, Maryland.

“**County Based Business**” or “**CBB**” means a business that is (a) either located in the County or derives the majority of its revenue in the County, and (b) duly certified as a County Based Business in the County, as determined by the Prince George’s County Office of Central Services.

“**County Council**” means the Council of Prince George’s County, Maryland.

“**County Executive**” means the County Executive of Prince George’s County, Maryland.

“**Critical Event**” has the meaning set forth in Section 1.1 (Definitions) of Exhibit X-2 (Deductions).

“**Cure Notice**” has the meaning set forth in Section 12.7.6 (Right to Cure).

“**Cure Period**” has the meaning set forth in Section 12.7.6 (Right to Cure).

“**Decoration**” means any decoration authorized by PGCPS on the interior walls of a School by a PGCPS Person, including the hanging and attachment of items such as artwork, pictures, teaching aids, or seasonal decorations, and including the installation of fixtures such as display boards, pencil sharpeners, soap and paper towel dispensers to the extent that such activities do not impact the integrity of the Maintained Elements, alter the design of the Schools, or affect the function of any Building System.

“**Deductions**” means those deductions from the otherwise applicable Availability Payment that PGCPS is permitted to take as offsets on account of specified instances of non-performance as described in Exhibit X-2 (Deductions).

“**Deductions Credit**” means any credit due to PGCPS in accordance with Exhibit X-2 (Deductions).

“**Deferral of Compensation**” has the meaning set forth in Section 14.14.5 (Deferral of Compensation).

“**Deferred Payment**” has the meaning set forth in Section 14.14.3 (PGCPS Payment Methods).

“**Delay Payment**” means the payment to be made by PGCPS in accordance with Section 14.13 (Delay Payment), which shall be calculated as set forth in Exhibit X-1 (Payment Calculations).

“**Delayed School**” has the meaning set forth in Section 14.13 (Delay Payment).

“**Delayed School Due to a Relief Event**” means any School that has both a Scheduled School Occupancy Readiness Date and School Occupancy Readiness Date after August 14, 2023.

“**Demand for Arbitration**” shall mean the standard Commercial Demand for Arbitration form, or its equivalent, available from the AAA at the time a Dispute is submitted to AAA for arbitration under this Agreement.

“**Demand Maintenance**” means ad hoc and responsive unscheduled Facilities Maintenance.

“**Demand Requisition**” means any request for service, report of a Performance Failure, report of an Unavailability Event, or any other report or inquiry made to the Help Desk or to Developer regarding the Services, including reports generated electronically by the BMS, the CMMS, or other electronic monitoring systems operated by Developer in the Schools.

“**Demolition Work**” means the demolition of the schools existing on the Effective Date on the Adelphi Area Middle School Land, the Drew-Freeman Middle School Land, the Hyattsville Middle School Land, and the Walker Mill Middle School Land.

“**Design Development**” means the phase that defines and develops the important aspects of the Project. The exterior, interior layouts, room sizes, and materials are more fully designed to address specific space accommodations, equipment, and furnishings, building design, materials, and colors, and complete definitions of all systems serving the Project (HVAC, plumbing, electrical, etc.) are developed. All design decisions necessary for permitting are completed during this phase in order to prepare the Construction Documents.

“**Design Development Documents**” means those documents created during Design Development that define at various levels of completeness the topics included in the definition of Design Development and illustrate and describe the refinement of the design of the Project, establishing the scope, relationships, forms, size, and appearance of the Project by means of plans, sections, and elevations, typical construction details, and equipment layouts and a specification

book, which will specify the materials that have been selected and other technical information about the Project systems.

**“Design-Build Additional Compensation Amounts”** means, in respect of any School, amounts determined in accordance with Section 14.14 (Payments for Compensation Events and Other Additional Costs) to be owed to Developer for a claim, event, or circumstance occurring during the Design-Build Period.

**“Design-Build Agreement”** means the design and construction agreement between Developer and Design-Builder, a certified copy of which has been delivered by Developer to PGCPs, as amended, supplemented, or replaced from time to time.

**“Design-Build Agreement Price”** means \$452,764,717, the lump sum price payable by Developer to the Design-Builder under the Design-Build Agreement for the Design-Build Work as of the Commercial Close Date.

**“Design-Build Change”** means a change, including an addition, deletion, alteration, substitution, or modification to Developer’s Design-Build Work obligations under this Agreement made pursuant to Section 7.20 (Design-Build Changes Requested by PGCPs).

**“Design-Build Disputes”** has the meaning set forth in Section 24.3 (Mediation of Certain Disputes During the Design-Build Period).

**“Design-Build Monitor”** has the meaning set forth in Section 7.17.3 (Developer Tests and Inspections; Design-Build Monitor).

**“Design-Build Period”** means the period commencing on the Effective Date and ending upon completion of all Design-Build Work.

**“Design-Build Period MBE and CBB Participation”** has the meaning set forth in Section 4.7.2 (MBE and CBB Subcontracting Plan).

**“Design-Build Period Reserve Account”** has the meaning set forth in Section 7.6.1 (Design-Build Period Reserve Amount).

**“Design-Build Quality Management Plan”** means Developer’s plan for quality assurance and quality control in implementing the Design-Build Work set forth in Exhibit Q (Design-Build Quality Management Plan), as such plan may be amended with the written approval of PGCPs.

**“Design-Build Representative”** means the representative appointed by Developer in accordance with Section 4.5 (Developer Representatives).

**“Design-Build Security”** means a performance bond in an amount equal to the Design-Build Agreement Price issued by one or more surety companies that are admitted as bonding carriers listed on the then most current version of U.S. Treasury Circular 570 or any replacement or substitute U.S. government listing, having an A.M. Best Company’s rating of at least A-:VII or

better (if A.M. Best Company changes its rating system or ceases to provide ratings at some later date, then such insurance company shall have a rating from A.M. Best Company (or some other comparable rating service if A.M. Best Company ceases to provide ratings) comparable to the “A-:VII or better” requirement set forth above) and are duly licensed and authorized to conduct and transact surety business in the State.

“**Design-Build Work**” means everything required to be furnished and done for and relating to the design, construction, and Commissioning of the Project by Developer pursuant to this Agreement during the Design-Build Period, including the Demolition Work and the Athletic Fields.

“**Design-Build Work Plan**” means the plan set forth in Exhibit EE (Design-Build Work Plan).

“**Design-Build Work Value**” has the meaning set forth in Exhibit Z (Calculation of Termination Compensation).

“**Design-Builder**” means Gilbane Building Company or any assignee or replacement permitted under this Agreement.

“**Designated School Users**” has the meaning set forth in Section 1.2 (Liaison with the Project Management Unit) of Exhibit W (Services Requirements).

“**Developer**” has the meaning set forth in the Preamble to this Agreement.

“**Developer Continuation Costs**” has the meaning set forth in Section 1.1 of Exhibit Z (Calculation of Termination Compensation).

“**Developer Default**” has the meaning set forth in Section 19.1 (Default by Developer).

“**Developer Default Notice**” has the meaning set forth in Section 19.2 (Developer Default Notice and Cure Periods).

“**Developer Fault**” means (a) a breach by Developer of any of Developer’s material obligations under this Agreement; (b) a breach of any material representation or warranty made by Developer under this Agreement; (c) willful misconduct of any Developer Person; or (d) a grossly negligent act or omission of any Developer Person.

“**Developer Hazardous Materials**” has the meaning set forth in Section 4.9.1.4 (Developer Hazardous Materials).

“**Developer Interest**” means the interest of Developer in the Project created by this Agreement and the rights and obligations of Developer under this Agreement.

“**Developer Person**” means (a) Developer; (b) the Project Contractors; (c) Subcontractors; (d) any director, officer, employee, or agent of Developer, the Project Contractors, or

Subcontractors in each case acting as such; and (e) any representative, advisor (including any legal and financial advisor), contractor, or subcontractor (of any tier) of Developer, the Project Contractors, or Subcontractors in connection with the Project.

“**Direct Losses**” means, in respect of an event or circumstance, without duplication, all damages, losses, liabilities, penalties, fines, assessments, charges, deposits, forfeitures, obligations, judgments, demands, and out-of-pocket and documented costs (including increased Capital Expenditures) or expenses (including the reasonable cost of legal or professional services), whether arising under statute, contract, or at common law, actually suffered or incurred by Developer, which result directly from such event or circumstance:

(a) net of avoidable costs to include all costs and expenditures which (i) are saved or avoided as a result of, or in responding to, the event or circumstance or its effects; or (ii) if Developer acted reasonably and in accordance with this Agreement (including Section 2.5 (General Duty of Developer to Mitigate)) would have been saved or avoided as a result of, or in responding to, the event or circumstance or its effects;

(b) net of related Insurance Proceeds, Insurance Receivables, and/or any amounts which Developer would have recovered (in respect of such event or circumstance) if Developer had complied with the requirements of this Agreement or any policy of insurance maintained or required to be maintained under this Agreement; and

(c) excluding any indirect losses to include any actual or anticipated loss of revenue, loss of profits, loss of use, loss of contract, loss of goodwill, loss of production, loss of business, loss of business opportunity, or any exemplary, punitive, or special damages, or any consequential or indirect loss or damages of any nature claimed, suffered, or allegedly suffered by any Developer Person, in each case whether or not foreseeable, and excluding any contingent liability until such liability becomes actual.

“**Discriminatory Change in Tax Law**” means the coming into effect after the Proposal Submittal Date of any Applicable Law or any modification (including repeal) of any Applicable Law that existed on the Proposal Submittal Date that results in the imposition of Taxes or a change in Taxes and which specifically applies to discriminate against (a) the Project or Developer with respect to the Project and not other projects or persons; (b) other similar projects delivered through public-private partnerships or performance-based infrastructure delivery methods, or another delivery method similar to them and not other projects; (c) persons that have contracted with PGCPs or other Governmental Authorities to deliver capital projects on a public-private partnership or performance-based infrastructure basis similar to the basis on which the Project was delivered and not other persons; or (d) persons holding shares or other evidences of ownership in persons whose principal business is contracting with Governmental Authorities to deliver capital projects on a public-private partnership or performance-based infrastructure basis similar to the basis on which the Project was delivered and not other persons.

“**Dispute**” has the meaning set forth in Section 24.1 (Informal Dispute Resolution).

“**Disputes Manager**” has the meaning set forth in the Independent Engineer Agreement.

“**Distributions**” means, without duplication or double counting, whether in cash or in kind, any:

- (a) distribution to Unit Holders or other distribution in respect of Units;
- (b) redemption or purchase of Units or reduction of limited liability company capital or the amount of a Unit Holder’s contribution stated in the articles of organization or any other reorganization or variation to limited liability company capital;
- (c) payment in respect of Junior Debt (whether of fees, principal, interest including capitalized interest and interest on overdue interest, breakage costs, or otherwise and whether or not such items are included or excluded from the definition of Junior Debt);
- (d) payment, loan, contractual arrangement, including any management agreement or payment in respect thereof or transfer of assets or rights, in each case to the extent made or entered into after the Effective Date and not in the ordinary course of business and on commercially reasonable terms including to any current or former Unit Holder;
- (e) conferral of any other benefit which is not conferred and received in the ordinary course of business and on commercially reasonable terms, including to any current or former Unit Holder, any current or former Affiliate of any current or former Unit Holder, or Developer;
- (f) other payment to any current or former Unit Holder, any current or former Affiliate of any current or former Unit Holder or Developer howsoever arising and whether made pursuant to the terms of an agreement or otherwise or in respect of any class of Units or other securities of or interests in Developer if, in any such case, such payment would not have been made were it not for occurrence of any Refinancing or Change in Control; or
- (g) the early release of any reserves or any Contingent Funding Liabilities, the amount of such release being deemed to be a gain for the purposes of any calculation of Refinancing Gain, and where any such Distribution is not in cash, the equivalent cash value of such Distribution will be calculated in a manner that is consistent with the calculation of the Base Case Equity IRR in the Financial Model.

“**DPIE**” means the Prince George’s County Department of Permitting, Inspections and Enforcement.

“**Drew-Freeman Middle School**” means the School to be constructed on the Site described in Exhibit B-1 (Legal Description of Drew-Freeman Middle School Land).

“**Educational Activities**” means all curriculum, teaching, career guidance, extra-curricular, remedial, training, practice, vocational, scholastic, and educational activities provided for the benefit of students to be undertaken at each School.

**“Educational Specifications”** means, collectively, those specifications set forth in Exhibit T-1 (Educational Specifications for Adelphi Area Middle School, Drew-Freeman Middle School, Kenmoor Middle School, and Walker Mill Middle School), Exhibit T-2 (Educational Specifications for Hyattsville Middle School), and Exhibit T-3 (Educational Specifications for Southern Area K-8 School).

**“Educational Support Activities”** means all parent and administrative support functions carried out in support of the Educational Activities, including, but not limited to, parent-teacher interviews, professional development activities of teaching staff, staff meetings, curriculum development activities, before and after school care activities, and other activities that support Educational Activities.

**“Effective Date”** means the date on which all Conditions Precedent have been fulfilled in accordance with Article 6 (Conditions Precedent; Effective Date), as identified by the Parties in the Effective Date Certificate.

**“Effective Date Certificate”** means the certificate in the form of Exhibit H (Form of Effective Date Certificate) that will be executed by the Parties on the Effective Date.

**“Effective Date Deadline”** means the date that is fifteen (15) days after the Commercial Close Date, as such date may be extended by a mutual written agreement of the Parties.

**“Emergency Event”** has the meaning set forth in Section 1.1 (Definitions) of Exhibit X-2 (Deductions).

**“Employee Information”** has the meaning set forth in Exhibit Z (Calculation of Termination Compensation).

**“Employee Payment”** has the meaning set forth in Exhibit Z (Calculation of Termination Compensation).

**“Energy Management Plan”** has the meaning set forth in Section 4.6 (Energy Management Plan) of Exhibit W (Services Requirements).

**“Environmental Damages”** means all claims, judgments, damages (including punitive damages), losses, penalties, fines, liabilities (including strict liability or liability without fault), encumbrances, liens, costs, and expenses of investigation and defense of any claim, whether or not such is ultimately defeated, and of any settlement or judgment, of whatever kind or nature, contingent or otherwise, matured or unmatured, foreseeable or unforeseeable, any of which are incurred at any time as a result of any environmental condition, on or off a Site, whether or not yet discovered, including, without limitation, fees incurred for the services of attorneys, consultants, contractors, experts, laboratories, and all other costs incurred in connection with investigation, remediation, and mitigation, including the preparation of any feasibility studies or reports and the performance of any remedial, abatement, containment, closure, restoration, or monitoring work.

**“Environmental Law”** means any Applicable Law relating to (a) the protection of health, safety, and the indoor or outdoor environment; (b) the conservation, management, or use of natural resources and wildlife; (c) the protection or use of surface water and groundwater; (d) the management, manufacture, possession, presence, use, generation, transportation, treatment, storage, disposal, release, threatened release, abatement, removal, remediation, or handling of or exposure to Hazardous Materials; or (e) pollutant or contaminant (including any release to air, land, surface water, and groundwater), including, without limitation, the Comprehensive Environmental Response, Compensation and Liability Act of 1980, as amended, 42 U.S.C. § 9601 et seq.; the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act of 1976, and subsequently amended, 42 U.S.C. § 6901 et seq.; the Hazardous Materials Transportation Act, 49 U.S.C. § 5101 et seq.; the Federal Water Pollution Control Act, as amended by the Clean Water Act of 1977, 33 U.S.C. § 1251 et seq.; the Oil Pollution Act of 1990, 33 U.S.C. § 32701 et seq.; the Federal Insecticide, Fungicide, and Rodenticide Act, as amended, 7 U.S.C. § 136-136y, the Clean Air Act, as amended, 42 U.S.C. § 7401 et seq.; the Toxic Substances Control Act of 1976, as amended, 15 U.S.C. § 2601 et seq.; the Safe Drinking Water Act of 1974, as amended, 42 U.S.C. § 300f et seq.; the Emergency Planning and Community Right-To-Know Act of 1986, 42 U.S.C. § 11001 et seq.; the Occupational Safety and Health Act of 1970, 29 U.S.C. § 651 et seq.; the National Environmental Policy Act of 1969, 42 U.S.C. § 4321 et seq.; and any similar, implementing, or successor law, and any amendment, rule, regulatory order, guidance, or directive issued thereunder.

**“Environmental Management Plan”** has the meaning set forth in Section 4.5 (Environmental Management Plan) of Exhibit W (Services Requirements).

**“Equity Contribution”** means any equity contribution in cash to Developer and any loan or advance to Developer by any Unit Holder or any Affiliate thereof required pursuant to a taxable Financing.

**“Equity IRR”** means, at any time, Developer’s Nominal blended equity internal rate of return calculated on an after-tax basis at the level of Developer in accordance with the Financial Model, having regard to Distributions made and projected to be made.

**“Equity Member”** means any person that makes an Equity Contribution as part of Developer’s Financing of the Project.

**“Escrow Account”** means that account or, as applicable, subaccounts established in accordance with the Escrow Agreement.

**“Escrow Agent”** means the entity appointed to act as Escrow Agent under the Escrow Agreement.

**“Escrow Agreement”** means the agreement to be executed among PGCPS, Developer, and Escrow Agent prior to the Effective Date in the form set forth in Exhibit I (Form of Escrow Agreement), as amended, supplemented, or replaced from time to time in accordance therewith.

“**Event**” has the meaning set forth in Section 1.1 (Definitions) of Exhibit X-2 (Deductions).

“**Exempt Refinancing**” means:

(a) a change in taxation or change in accounting treatment pursuant to changes in Applicable Law or GAAP;

(b) any amendments, supplements, or consents to Financing Documents or the exercise by a Lender of rights, waivers, consents, and similar actions which do not provide a financial benefit to Developer;

(c) an amendment, variation, or supplement of an agreement approved in writing by PGCPs as part of any Capital Modification or Change Order;

(d) a sale of Junior Debt or Units in Developer by Unit Holders or, in the case of Junior Debt, Affiliates of Unit Holders, or securitization of the existing rights or interests attaching to Junior Debt or Units in Developer or its direct, 100% Unit Holder, if any;

(e) a Qualifying Bank Transaction;

(f) a conversion of Units into Junior Debt or of Junior Debt into Units, provided that the total principal amount of all Junior Debt outstanding immediately following the conversion plus amounts paid to Developer by way of subscription for Units outstanding immediately following the conversion does not exceed the total amounts paid to Developer by way of subscription for Units outstanding immediately prior to the conversion plus the total principal amount of all Junior Debt outstanding immediately prior to the conversion;

(g) a secondary transaction in the Bond or private placement market;

(h) a re-set of an interest rate (excluding margin) pursuant to the express terms of any Financing Documents;

(i) any Refinancing that is identified in the Base Case Financial Model or that is otherwise materially consistent with, or effectuates the intent of, the terms identified in the Base Case Financial Model; or

(j) any Refinancing that (i) occurs due to the failure or imminent failure of Developer to comply with any material financial obligation under any Financing Document; (ii) results in the cure of such failure or imminent failure; and (iii) does not result in an increase to the Equity IRR beyond the original Equity IRR.

“**Expected Site Availability Date**” has the meaning set forth in Section 5.3.1 (Expected Site Availability Dates).

“**Expedited Procedures**” means the expedited procedures set forth in the Commercial Arbitration Rules.

**“Expiration Date”** means June 30, 2053; provided, however, if (a) there is a Delayed School Due to a Relief Event, and (b) PGCPS does not elect to make a Lump Sum Services Payment to Developer in accordance with Section 11.7 (Optional Shortened Services Period Following a Relief Event), the Expiration Date shall be extended such that the Expiration Date shall be the next June 30 following thirty (30) years of Services for all Schools.

**“Extraordinary Item(s)”** shall mean any of the following, which may be included in the Availability Payment as charges or credits in accordance with Section 14.4 (Availability Payments) and Exhibit X-1 (Payment Calculations):

(a) with respect to the coming into effect after the Proposal Submittal Date of (i) any Applicable Law, or (ii) any modification (including repeal) of any Applicable Law that existed on the Proposal Submittal Date, compliance with which results in revenue gain for Developer, an amount agreed to by the Parties or decided in accordance with Article 24 (Resolution of Disputes) to compensate PGCPS for any decrease in the net cost of Developer of performing the Design-Build Work or Services as the result of such change in law event;

(b) any deficit amount outstanding in excess of the final Milestone Payment in accordance with Section 4.7.4 (Failure to Achieve Design-Build Period MBE and CBB Participation);

(c) any amount owed to PGCPS under Section 4.9.1.4 (Developer Hazardous Materials);

(d) the amount agreed to in any Change Order entered into in accordance with Section 7.21.2 (Election to Accept Non-Conforming Design-Build Work);

(e) PGCPS’ share of any Refinancing Gain in accordance with Section 12.13.2 (PGCPS’ Share of Refinancing Gain);

(f) the amount of any credits, payments, or reimbursements owed to PGCPS in accordance with Section 14.9 (PGCPS Right of Set-Off);

(g) additional compensation determined in accordance with Section 14.14 (Payments for Compensation Events and Other Additional Costs) to be owed to Developer due to Developer’s actual financing costs exceeding its estimated financing costs under Section 14.14.6 (Restoration of Financial Balance for Deferral of Compensation);

(h) PGCPS’ share of any net savings related to Capital Modifications in accordance with Section 15.1.2 (Conditioned Approvals);

(i) PGCPS’ share of any cost savings related to a Services Change in accordance with Section 15.6.9 (Cost Savings);

(j) the amount of any credits due to PGCPS for an Unused School in accordance with Section 15.8 (Unused School);

(k) any amounts owed to PGCPs under Section 19.17.4.1 that PGCPs elects to claim as an Extraordinary Item;

(l) any payment owed to PGCPs or Developer under Section 20.2.7 (Failure to Provide Insurance Coverage);

(m) any credit due to PGCPs or Developer in connection with an Uninsurable Risk in accordance with Section 20.5.2.2 or Section 20.5.6.2, respectively;

(n) any payment owed to Developer under Section 20.5.2.3(i);

(o) the amount of any self-insurance retentions or deductibles paid by PGCPs in connection with an event or circumstance to the extent arising from or contributed to, directly or indirectly, a Developer Fault pursuant to Section 4.6 of Exhibit CC (Required Insurance); and

(p) any compensation due to Developer that PGCPs elects to pay as an Extraordinary Item in accordance with Section 14.14 (Payments for Compensation Events and Other Additional Costs).

“**Facilities Maintenance**” has the meaning set forth in Section 11.1.1 (Delivery of Services).

“**FERPA**” has the meaning set forth in Section 22.7.3 (Protection of Student Records).

“**Field Maintenance Person**” has the meaning set forth in Section 1.1 (Definitions) of Exhibit X-2 (Deductions).

“**Final Construction Documents**” has the meaning set forth in Section 7.3.4 (Final Construction Documents).

“**Financial Close**” means the first date that funding is available to Developer under the Financing Documents.

“**Financial Close Security**” has the meaning set forth in Section 6.1 (Financial Close Security).

“**Financial Model**” means the Base Case Financial Model, as updated and replaced from time to time in accordance with the terms of this Agreement.

“**Financing**” means the funding provided by a Financing Party to Developer pursuant to the Financing Documents, which may be in the form of taxable or tax-exempt debt obligations in accordance with Applicable Law.

“**Financing Documents**” means, collectively, agreements entered into on or prior to Financial Close by Developer and a Financing Party with respect to the financing of this Project,

and any agreement representing the refinancing thereof, which agreement shall be reasonably satisfactory in form and substance to PGCPS.

“**Financing Party**” means, collectively, any Lenders, Equity Members, and the Collateral Agent.

“**Five Year Maintenance Plan**” has the meaning set forth in Section 4.3 (Five Year Maintenance Plans) of Exhibit W (Services Requirements).

“**Force Majeure Event**” means any of the following events or circumstances occurring after the Commercial Close Date if and to the extent such event or circumstance materially interferes with or delays the Design-Build Work or Services, as applicable, except to the extent that such event or circumstance arises from or is contributed to by, directly or indirectly, a Developer Fault:

(a) unusually severe and abnormal weather conditions at a Site (as compared with the five year average weather statistics compiled by the United States National Oceanic and Atmospheric Administration for the time of year and locality of the Site), landslides, underground movement, earthquakes, tidal waves, tornadoes, hurricanes, floods, and lightning;

(b) fire, explosion, or pressure waves caused by aircraft or other aerial device traveling at supersonic speeds;

(c) epidemics, pandemics, quarantines, or orders, recommendations, health alerts, policies, rules, and regulations issued by a Governmental Authority relating thereto and labor shortages in connection therewith;

(d) civil disturbance (including armed violence and hostage taking), war, armed conflict, riot, insurrection, nuclear explosion, or nuclear, radioactive, chemical, or biological contamination, sabotage and related causes; and

(e) terrorism or threats thereof, including domestic terrorism, shootings, or similar events, or the declaration of a state of emergency by any Governmental Authority.

“**Functional Unit**” has the meaning set forth in Section 1.1 (Definitions) of Exhibit X-2 (Deductions).

“**GAAP**” means generally accepted accounting principles in effect and consistently applied in the United States (including the accounting recommendations published in the Handbook of the American Institute of Certified Public Accountants).

“**Good Industry Practice**” means using standards, practices, methods, and procedures which, at the time they are employed and in light of the circumstances known or reasonably believed to exist at such time, are generally recognized and accepted as good design, development, construction, operation, maintenance, repair, replacement, or management practices, as applicable to a good commercial standard, conforming to Applicable Law, for schools and other public or

institutional buildings serving similar purposes to the Project in the State, and exercising the degree of skill and care, diligence, prudence, and foresight which would reasonably and ordinarily be expected from a qualified, skilled, and experienced person engaged in a similar type of undertaking or managing work under the same or similar circumstances.

**“Governmental Approvals”** means all permits, licenses, authorizations, consents, certifications, exemptions, rulings, entitlements, and approvals issued by a Governmental Authority of whatever kind and however described which are required under Applicable Law to be obtained or maintained by any Person with respect to the Project.

**“Governmental Authority”** means any federal, State, regional, or local legislative, executive, judicial, or other governmental board, department, agency, authority, commission, administration, court, or other body, or any official thereof, having jurisdiction in any way over or in respect of any aspect of the performance of this Agreement or the Project, including DPIE, but excluding PGCPs in its capacity as a counterparty to this Agreement.

**“Governmental Delay”** means a delay in performance by Developer directly caused by one or more of the following:

(a) with respect to any matter that requires the approval of PGCPs specifically under this Agreement, where Developer has provided PGCPs sufficient information to respond to such request for approval, PGCPs fails to complete its review within the response period contemplated in this Agreement or specify in reasonable detail the reason for PGCPs’ disapproval or rejection of such matter and the changes that would be required for approval;

(b) with respect to any matter that requires the review or consent of any Governmental Authority, including any Governmental Approval (other than permitting, which is addressed in subsection (c) below), where Developer has provided such Governmental Authority sufficient information to respond to such request for approval, such Governmental Authority not completing its review or issuing a decision on such Governmental Approval or consent within the customary response period for the matter in question;

(c) a delay of more than thirty (30) days beyond the date set forth in a Construction Schedule for the receipt of any permit (including permits for Utilities and those ancillary to or required for the issuance of the building permit for each School), but only to the extent that (i) such delay in receipt directly causes a delay of a critical path matter in such Construction Schedule, and (ii) Developer timely submitted its application for the relevant permit, has complied (and is continuing to comply) with all submission requirements of the applicable Governmental Authority, and otherwise with its obligations set forth in Section 7.7.3 (Diligent Prosecution); and

(d) with respect to any matter that requires the review or consent of any Governmental Authority, including any Governmental Approval, a Governmental Authority requires a material change to the Final Construction Documents which is inconsistent with the Technical Requirements, imposing conditions that are not customary for the matter in question and would

constitute a material change to the Design-Build Work Plan or the Construction Schedules, or acting outside of such Government Authority's powers contained in Applicable Law.

**"Gross Floor Area"** has the meaning set forth in Section 1.1 (Definitions) of Exhibit X-2 (Deductions).

**"Handback Certificate"** has the meaning set forth in Section 25.7 (Final Condition Assessment).

**"Handback Deficiency Notice"** has the meaning set forth in Section 25.7 (Final Condition Assessment).

**"Handback Inspector"** has the meaning set forth in Section 25.2 (Handback Inspector).

**"Handback Requirements"** has the meaning set forth in Section 25.1 (Handback Requirements).

**"Handback Retainage"** has the meaning set forth in Section 25.4 (Determination of Handback Retainage).

**"Handback Retainage Account"** has the meaning set forth in Section 25.5 (Establishment and Use of the Handback Retainage Account).

**"Handback Survey"** has the meaning set forth in Section 25.3 (Handback Survey).

**"Handback Work"** has the meaning set forth in Section 25.3 (Handback Survey).

**"Handback Work Plan"** has the meaning set forth in Section 25.3 (Handback Survey).

**"Hazardous Material"** means (a) asbestos and any asbestos containing material; (b) any substance that is defined or listed in, or otherwise classified pursuant to, any Environmental Law or any other Applicable Law as a "hazardous substance," "hazardous material," "hazardous waste," "infectious waste," "toxic substance," or "toxic pollutant," or "pollutant and contaminant," or any other formulation intended to define, list, or classify substances by reason of deleterious properties, such as ignitability, corrosivity, reactivity, carcinogenicity, toxicity, reproductive toxicity, or Toxicity Characteristic Leaching Procedure (TCLP) toxicity; (c) any petroleum and drilling fluids, produced waters and other wastes associated with the exploration, development, or production of crude oil, natural gas, or geothermal resources; and (d) any petroleum product, polychlorinated biphenyls, urea formaldehyde, radon gas, radioactive material (including any source, special nuclear, or by-product material), medical waste, chlorofluorocarbon, lead or lead-based product, and any other substance identified by Applicable Law as a hazardous material the presence of which could be detrimental to the Sites or hazardous to health or the environment.

**"Help Desk"** means the contact point established by Developer in respect of the Help Desk Services for the notification of Demand Requisitions, the occurrence of Events, and other matters arising in relation to the provision of Services.

“**Help Desk Services**” has the meaning set forth in Section 11.1.1 (Delivery of Services).

“**HIPAA**” has the meaning set forth in Section 22.7.2 (Educational, Medical, and Psychological Records).

“**Hyattsville Middle School**” means the School to be constructed on the Site described in Exhibit C-1 (Legal Description of Hyattsville Middle School Land).

“**Improvement(s)**” shall mean any building (including footings and foundations) and other improvements, equipment, and appurtenances of every kind and description now existing or hereafter erected, constructed, or placed, above or below grade, upon Land or within the air space above Land (whether temporary or permanent).

“**Income Tax**” means any Tax imposed on the income of a Person by any federal, State or local Governmental Authority.

“**Independent Engineer**” means BTY US, LLC, or any assignee or replacement permitted under this Agreement.

“**Independent Engineer Agreement**” means the agreement to be entered into between PGCPs, Developer, and the Independent Engineer in the form set forth in Exhibit J (Form of Independent Engineer Agreement), as amended, supplemented, or replaced from time to time in accordance therewith.

“**Independent Inspector**” has the meaning set forth in Section 1.3 (Joint Technical Review) of Exhibit W (Services Requirements).

“**Index-Linked**” means, with respect to any financial amount referred to in this Agreement that is expressed to be subject to indexation, such financial amount shall be adjusted by the following formula:

$$FA_m = FA_{base} \times \left( \frac{b_{y-1}}{a} \right)$$

$FA_m$  means the financial amount in the applicable Contract Year

$FA_{base}$  means the financial amount as of Financial Close

$a$  means the value of the Inflation Index as of the May immediately preceding Financial Close (May 2020), or 265.733.

$b_{y-1}$  means the value of the Inflation Index as of May immediately preceding the applicable Contract Year.

“**Indicative Step-In Notice**” has the meaning set forth in Section 12.7.4 (Indicative Notice).

**“Indicative Step-In Notice Period”** means the period commencing on the date of delivery of an Indicative Step-In Notice and ending on the earlier of: (a) the Step-In Date; (b) the date of delivery of a Withdrawal Notice; or (c) one hundred and eighty (180) days following the date of delivery of the Indicative Step-In Notice.

**“Indicative Substitution Notice”** has the meaning set forth in Section 12.7.4 (Indicative Notice).

**“Inflation Index”** means the All Items Consumer Price Index for All Urban Consumers (CPI-U) in the Washington-Baltimore, DC-MD-VA-WV Consolidated Metropolitan Statistical Area as published by the Bureau of Labor Statistics using a reference year of 1982-1984 that equals 100.0 or, if such index in its present form becomes unavailable, such similar index as may be agreed by the Parties, acting reasonably.

**“Informational Questions”** has the meaning set forth in Section 5.10 (PGCPS Satisfaction System) of Exhibit W (Services Requirements).

**“Inspection”** has the meaning set forth in Section 2.3 (Inspection of PGCPS Retained Responsibilities) of Exhibit W (Services Requirements).

**“Inspection Period”** has the meaning set forth in Section 2.3 (Inspection of PGCPS Retained Responsibilities) of Exhibit W (Services Requirements).

**“Inspection Report”** has the meaning set forth in Section 2.3 (Inspection of PGCPS Retained Responsibilities) of Exhibit W (Services Requirements).

**“Insurance Account”** means an account that may be established by the Parties in accordance with the Escrow Agreement.

**“Insurance Proceeds”** means the amount of any insurance proceeds received by a Person in respect of a claim made under any policy of insurance required to be maintained under this Agreement.

**“Insurance Receivables”** means Insurance Proceeds which a Person is entitled to receive but which have not been received.

**“Insurance Requirements”** means any rule, regulation, code, or requirement issued by any insurer that has issued a policy of Required Insurance, as in effect during the Term, compliance with which is a condition to the effectiveness of such policy.

**“Intended Uses”** means the uses for the Schools as described in the Technical Requirements.

**“Joint Technical Review”** has the meaning set forth in Section 1.3 (Joint Technical Review) of Exhibit W (Services Requirements).

**“Junior Debt”** means indebtedness owing by Developer to any of its Unit Holders or Affiliates of Unit Holders which ranks subordinate in all respects to the Senior Debt, excluding (a) all amounts not actually paid to Developer by cash advance, rights entitling Developer to a cash advance, or other consideration; (b) all fees, including commitment fees, standby fees or other fees, paid or to be paid by Developer, other than to any Unit Holder or any Affiliate of a Unit Holder; and (c) capitalized interest and interest on overdue interest.

**“Kenmoor Middle School”** means the School to be constructed on the Site described in Exhibit D-1 (Legal Description of Kenmoor Middle School Land).

**“Key Personnel”** has the meaning set forth in Section 4.4 (Key Personnel).

**“Key Ratios”** means the minimum debt service coverage ratio and the average debt service coverage ratio as set out in the Base Case Financial Model.

**“Land”** means, individually or collectively, as applicable, the real property (including fixtures thereon) described in Exhibit A-1 (Legal Description of Adelphi Area Middle School Land), Exhibit B-1 (Legal Description of Drew-Freeman Middle School Land), Exhibit C-1 (Legal Description of Hyattsville Middle School Land), Exhibit D-1 (Legal Description of Kenmoor Middle School Land), Exhibit E-1 (Legal Description of Southern Area K-8 School Land), and Exhibit F-1 (Legal Description of Walker Mill Middle School Land).

**“Late Delivery Damages”** means the amount of Five Thousand Dollars (\$5,000) per School per day after the Scheduled School Occupancy Readiness Date up to a maximum aggregate, per School, of One Million Dollars (\$1,000,000).

**“LEED”** means the Leadership in Energy and Environmental Design Green Building Rating System, developed and maintained by the U.S. Green Building Council.

**“LEED Cure Period”** has the meaning set forth in Section 7.24 (LEED Requirements).

**“LEED Requirements”** means the technical standards for a LEED “silver” rating for new construction that are in effect as of the Proposal Submittal Date.

**“Lenders”** means all Persons providing debt financing to Developer under the Financing Documents.

**“Life Cycle Plan”** has the meaning set forth in Section 4.4 (Life Cycle Plan) of Exhibit W (Services Requirements).

**“Life Cycle Schedule”** has the meaning set forth in Section 4.1 (Life Cycle Schedule and Start-Up Plan) of Exhibit W (Services Requirements).

**“Liquidated Damage Right”** has the meaning set forth in Section 19.16 (PGCPS Liquidated Damage Rights).

**“Longstop Date”** means, for each School, the date that is three hundred and sixty-five (365) days after the Scheduled School Occupancy Readiness Date for that School.

**“Longstop Return Date”** has the meaning set forth in Section 9.10 (Longstop Return Date) of Exhibit X-2 (Deductions).

**“Loss”** or **“Losses”** means, with respect to any Person, all damages, losses, liabilities, penalties, fines, assessments, charges, deposits, forfeitures, obligations, judgments, demands, and out-of-pocket and documented costs (including increased Capital Expenditures) or expenses (including the reasonable cost of legal or professional services), whether arising under statute, contract, or at common law, actually suffered or incurred by such Person, but excluding any actual or anticipated loss of revenue, loss of profits, loss of use, loss of contract, loss of goodwill, loss of production, loss of business, loss of business opportunity, or any exemplary, punitive, or special damages, or any consequential or indirect loss or damages of any nature claimed, suffered, or allegedly suffered, in each case whether or not foreseeable, and any punitive, special, indirect, and consequential damages, and any contingent liability until such liability becomes actual.

**“Lump Sum Services Payment”** has the meaning set forth in Section 11.7.2 (Exercise of Option).

**“Maintained Elements”** means all elements of the Project, constructed or installed pursuant to this Agreement, including all manufactured equipment, building systems, improvements, property, or assets, whether or not constituting personal property or fixtures, constituting part of the Project, but excluding in each case Moveable FF&E.

**“Maintenance Access Times”** means the times set forth in the Annual Service Plan during which Developer may perform Facilities Maintenance.

**“Master Specifications”** means those specifications set forth in Exhibit T-4 (Master Specifications).

**“Maximum Unknown Land Condition Cost”** has the meaning set forth in Section 5.8.4 (Maximum Unknown Land Condition Cost).

**“MBE and CBB Report”** has the meaning set forth in Section 18.8 (MBE and CBB Reporting).

**“MBE and CBB Subcontracting Plan”** means the MBE and CBB Subcontracting Plan set forth in Exhibit L (MBE and CBB Subcontracting Plan), as such plan may be amended with the written approval of PGCPS.

**“Milestone Payment Notice”** has the meaning set forth in Section 14.3.1 (Milestone Payments).

“**Milestone Payment(s)**” means the amounts eligible for payment from PGPCS to Developer in accordance with Section 14.3 (Milestone Payments).

“**Minority Business Enterprises**” or “**MBE**” means any legal entity, other than a joint venture, that is (a) at least fifty-one percent (51%) owned and controlled by one or more minority person(s), organized to engage in commercial transactions, and (b) duly certified as an MBE by either the Maryland Department of Transportation (MDOT), the Prince George’s County Supplier Development and Diversity Division (SDDD), or the Washington Metropolitan Area Transit Authority (WMATA). Minority person means a member of a socially or economically disadvantaged minority group which includes African American/Black (not of Hispanic origins), Asian American, Native American, Women, Hispanic, Physically and Mentally Disabled, and not-for-profit entities organized to promote the interests of the physically or mentally disabled individuals and those that are accredited by the Department of Education, Division of Rehabilitation, as Community Rehabilitation Programs.

“**Monthly Billing Statement**” has the meaning set forth in Section 14.6 (Monthly Billing Statements).

“**Monthly Design-Build Report**” means the report required to be submitted by Developer to PGPCS as described in Section 18.6 (Monthly Design-Build Report).

“**MOSHA**” means the Maryland Occupational Safety and Health Act, codified as Title 5 of the Labor and Employment Article of the Laws of Maryland, including the applicable regulations promulgated thereunder, each as amended or superseded from time to time.

“**MOU**” has the meaning set forth in the Recitals.

“**Moveable FF&E**” means the items identified as Moveable FF&E in the Educational Specifications.

“**NA Charge**” has the meaning set forth in Section 14.4.3 (Net Adjustments and Carry Over).

“**NA Charges Cap**” has the meaning set forth in Section 14.4.3.2 (NA Charges Cap).

“**NA Credit**” has the meaning set forth in Section 14.4.3 (Net Adjustments and Carry Over).

“**Net Adjustments**” has the meaning set forth in Section 14.4.3 (Net Adjustments and Carry Over).

“**Net Equity**” means, on and as of the Termination Date, an amount equal to the sum of all Equity Contributions made prior to the Termination Date *less* the sum of all Distributions made prior to the Termination Date; provided that, if such difference shall result in an amount that is less than zero (0), such amount shall be deemed to be zero (0).

“**New Trees**” has the meaning set forth in Section 2.11 (Reforestation).

“**Nominal**” means calculated in nominal terms at current prices recognizing adjustment for indexation in respect of forecasted inflation.

“**Non-Financial Termination Costs**” has the meaning set forth in Exhibit Z (Calculation of Termination Compensation).

“**Operating Hours**” has the meaning set forth in Section 1.1 (Definitions) of Exhibit X-2 (Deductions).

“**Operational Condition**” has the meaning set forth in Section 1.1 (Definitions) of Exhibit X-2 (Deductions).

“**Outstanding Committed Investment**” has the meaning set forth in Exhibit Z (Calculation of Termination Compensation).

“**Overdue Rate**” means a rate of interest equal to the prime rate as published in The Wall Street Journal (Eastern Edition), or a mutually agreeable alternative source of the prime rate if it is no longer published in The Wall Street Journal (Eastern Edition) or the method of computation thereof is substantially modified.

“**Parties**” means, collectively, PGCPs and Developer.

“**Party**” means, individually, PGCPs or Developer.

“**Performance Failure**” has the meaning set forth in Section 1.1 (Definitions) of Exhibit X-2 (Deductions).

“**Performance Failure Deduction**” has the meaning set forth in Section 1.1 (Definitions) of Exhibit X-2 (Deductions).

“**Performance Monitoring Program**” has the meaning set forth in Section 5.1 (Developer Performance Monitoring) of Exhibit W (Services Requirements).

“**Performance Monitoring Report**” has the meaning set forth in Section 5.2 (Periodic Reporting) of Exhibit W (Services Requirements).

“**Permanent Repair**” has the meaning set forth in Section 1.1 (Definitions) of Exhibit X-2 (Deductions).

“**Permanent Repair Deadline**” has the meaning set forth in Section 8.2 (Rectification Plan Proposal) of Exhibit X-2 (Deductions).

“**Permitted Debt**” means (a) trade or other similar indebtedness incurred in the ordinary course of business; (b) Taxes and governmental charges, salaries, related employee payments, and

trade payables; (c) contingent liabilities relating to the endorsement of negotiable instruments received in the normal course of business or incurred with respect to any Governmental Approvals, the Project Contracts, or this Agreement; and (d) debt incurred by way of loans from Unit Holders; but does not include any Senior Debt (other than the Senior Debt incurred or issued on the Financial Close Date).

**“Permitted Encumbrances”** means, as of any particular time, any one or more of the following:

(a) encumbrances for utility charges, taxes, rates, and assessments not yet delinquent or, if delinquent, the validity of which is being contested diligently and in good faith by Developer and against which Developer has established appropriate reserves in accordance with GAAP;

(b) any encumbrance arising out of any judgment rendered which is being contested diligently and in good faith by Developer, the execution of which has been stayed or against which a bond or bonds in the aggregate principal amount equal to such judgments shall have been posted with a financially-sound insurer and which does not have a material and adverse effect on the ability of Developer to perform the Design-Build Work or the Services;

(c) any encumbrance arising in the ordinary course of business imposed by law dealing with materialmen’s, mechanics’, workmen’s, repairmen’s, warehousemen’s, landlords’, vendors’, or carriers’ encumbrances created by law, or deposits or pledges which are not yet due or, if due, the validity of which is being contested diligently and in good faith by Developer and against which Developer has established appropriate reserves;

(d) servitudes, licenses, easements, encumbrances, restrictions, rights-of-way, and rights in the nature of easements or similar charges which shall not in the aggregate materially and adversely impair the performance of the Design-Build Work or the Services by Developer;

(e) applicable zoning and building bylaws and ordinances, municipal bylaws and regulations, and restrictive covenants, which do not materially interfere with the performance of the Design-Build Work or the Services by Developer;

(f) encumbrances which are created on or before the Proposal Submittal Date;

(g) encumbrances which are created by a Change in Law Event on or after the Proposal Submittal Date;

(h) any encumbrance created by an act or omission by any Governmental Authority or with respect to which PGCPS has given its consent; and

(i) any servitudes, licenses, easements, restrictions, rights-of-way, rights, and encumbrances specifically identified in the Title Reports.

**“Person”** means an individual, a general or limited partnership, a joint venture, a company, a corporation, a trust, an unincorporated organization, or a Governmental Authority.

“**PGCPS**” has the meaning set forth in the Preamble.

“**PGCPS Activities**” means, collectively, (a) Educational Activities, (b) Educational Support Activities, (c) Ad Hoc School Use, (d) Third Party and Community Use, (e) the performance of the PGCPS Retained Responsibilities, or (f) any other activity at a School duly authorized by PGCPS to be performed by a Person at a School or required by Applicable Law, other than any activity performed by any Developer Person.

“**PGCPS Default**” has the meaning set forth in Section 19.5 (Default by PGCPS).

“**PGCPS Default Notice**” has the meaning set forth in Section 19.6 (PGCPS Default Notice and Cure Periods).

“**PGCPS Fault**” means (a) a breach by PGCPS of any of PGCPS’ material obligations under this Agreement; (b) a breach of any material representation or warranty made by PGCPS under this Agreement; (c) willful misconduct of any PGCPS Indemnitee; or (d) a grossly negligent act or omission of any PGCPS Indemnitee.

“**PGCPS Hazardous Materials**” has the meaning set forth in Section 4.9.1.1 (PGCPS Hazardous Materials).

“**PGCPS Indemnitee**” means, collectively (a) the Board; (b) any director, officer, employee, or agent of the Board in each case acting as such; and (c) the County, including, without limitation, any agencies, instrumentalities, and departments of the County, and the County’s elected and appointed officials (including, without limitation, the County Executive and the County Council), officers, directors, agents, and employees.

“**PGCPS Information**” means the information contained in Exhibit A-3 (Title Report for Adelphi Area Middle School Land); Exhibit A-4 (Information Regarding the Adelphi Area Middle School Site); Exhibit B-3 (Title Report for Drew-Freeman Middle School Land); Exhibit B-4 (Information Regarding the Drew-Freeman Middle School Site); Exhibit C-3 (Title Report for Hyattsville Middle School Land); Exhibit C-4 (Information Regarding the Hyattsville Middle School Site); Exhibit D-3 (Title Report for Kenmoor Middle School Land); Exhibit D-4 (Information Regarding the Kenmoor Middle School Site); Exhibit E-3 (Title Report for Southern Area K-8 School Land); Exhibit E-4 (Information Regarding the Southern Area K-8 School Site); Exhibit F-3 (Title Report for Walker Mill Middle School Land); and Exhibit F-4 (Information Regarding the Walker Mill Middle School Site), all of which were delivered by PGCPS to Developer in advance of the Proposal Submittal Date.

“**PGCPS Lender Notice**” has the meaning set forth in Section 12.7.2 (PGCPS Lender Notice).

“**PGCPS Person**” means (a) the Board; (b) any director, officer, employee, or agent of the Board in each case acting as such; (c) students, volunteers, and visitors using or present at the School(s) with PGCPS’ approval; and (d) any representative, advisor (including any legal and

financial advisor), contractor, or subcontractor (of any tier) of the Board in connection with the Project or at a School, other than any Developer Person.

“**PGCPS Placed Insurance**” has the meaning set forth in Section 4.4 of Exhibit CC (Required Insurance).

“**PGCPS Prospective Termination Notice**” has the meaning set forth in Section 12.7.3 (PGCPS Prospective Termination Notice).

“**PGCPS Prospective Termination Notice Period**” means the period beginning on the date of giving of a PGCPS Prospective Termination Notice and ending on the earlier of: (a) the Step-In Date; (b) the date PGCPS gives the Collateral Agent notice of revocation of a PGCPS Prospective Termination Notice; and (c) the proposed Termination Date set forth in the PGCPS Prospective Termination Notice.

“**PGCPS Retained Responsibilities**” has the meaning set forth in Section 2.1 (PGCPS Retained Responsibilities) of Exhibit W (Services Requirements).

“**PGCPS Satisfaction Report**” has the meaning set forth in Section 5.10 (PGCPS Satisfaction System) of Exhibit W (Services Requirements).

“**PGCPS Satisfaction System**” has the meaning set forth in Section 5.10 (PGCPS Satisfaction System) of Exhibit W (Services Requirements).

“**PII**” has the meaning set forth in Section 22.7.1 (Personally Identifiable Information).

“**Plans**” means, collectively, the Design-Build Work Plan, the Design-Build Quality Management Plan, the Safety Plan, the Commissioning Plans, the Handback Work Plan, the Start-Up Plan, the Annual Service Plan, the Five Year Maintenance Plan, the Life Cycle Plan, the Services Quality Management Plan, the Environmental Management Plan, the Energy Management Plan, the MBE and CBB Subcontracting Plan, the Community Investment Program, and the Community Engagement and Outreach Plan.

“**Post-Refinancing Financial Model**” has the meaning set forth in Exhibit V (Calculation and Payment of Refinancing Gains).

“**Pre-Occupancy Period**” means, for each School, the period (if any) between the occurrence of School Occupancy Readiness and the School Occupancy Readiness Date.

“**Pre-Occupancy Period Activities**” has the meaning set forth in Section 10.7.2 (PGCPS Access Rights).

“**Pre-Refinancing Financial Model**” has the meaning set forth in Exhibit V (Calculation and Payment of Refinancing Gains).

**“Principal in Charge”** means the representative appointed by Developer from time to time with primary responsibility for communicating with PGCPs in respect of the Project, as identified by Developer to PGCPs in writing.

**“Principal Insured Risk”** means a risk that would be insured against by policies for the insurance referred to in Sections 1 and 2 of Exhibit CC (Required Insurance).

**“Progress Payment”** means the amount of Fifteen Million Dollars (\$15,000,000.00) that PGCPs shall pay to Developer in accordance with Section 14.2 (Progress Payment).

**“Prohibited Person”** means any of the following Persons:

(a) any Person (or any Person whose operations are directed or controlled by a Person) who has been convicted of, has pleaded guilty in a criminal proceeding for, or is an on-going target of a grand jury investigation concerning a felony for one or more of the following: (i) fraud; (ii) intentional misappropriation of funds; (iii) bribery; (iv) conspiracy to commit a crime; (v) making false statements to a governmental agency; (vi) improperly influencing a governmental official; and (vii) extortion;

(b) any Person organized in or controlled from a country, the effects of the activities with respect to which are regulated or controlled pursuant to the following United States laws and the regulations or executive orders promulgated thereunder: (i) the Trading with the Enemy Act of 1917, 50 U.S.C. § 4301 et seq., as amended; (ii) the International Emergency Economic Powers Act of 1977, 50 U.S.C. § 1701 et seq., as amended; and (iii) the Antiterrorism and Arms Export Amendments Act of 1989, codified at Section 6(j) of the Export Administration Act of 1979, 50 U.S.C. § 4605, as amended;

(c) any Person who has engaged in any dealings or transactions (i) in contravention of the applicable money laundering laws or regulations or conventions; or (ii) in contravention of Executive Order No. 13224 dated September 24, 2001 issued by the President of the United States (Executive Order Blocking Property and Prohibiting Transactions with Persons Who Commit, Threaten to Commit, or Support Terrorism), as may be amended or supplemented from time-to-time or any published terrorist or watch list that may exist from time to time;

(d) any Person who appears on or conducts any business or engages in any transaction with any person appearing on the list maintained by the U.S. Treasury Department’s Office of Foreign Assets Control located at 31 C.F.R., Chapter V, Appendix A or is a person described in Section 1 of the Anti-Terrorism Order described above;

(e) any Person who could be debarred if the standards applied in Section 10A-148 of Prince George’s County, Maryland Code of Ordinances were applied to such Person’s failure to satisfy a contractual obligation to the County;

(f) any Person who is disqualified from doing any work at a PGCPs location site due to his/her status (i) as a registered sex offender under Maryland Criminal Procedure Article Section

11.722; (ii) individuals convicted of a crime involving third or fourth degree sexual offense under sections 3-307 or 3-308 of the Criminal Law Article, child sexual abuse under Section 3-602 of the Criminal Law Article, a crime of violence as defined in Section 14-101 of the Criminal law Article, or comparable offenses in another state pursuant to Maryland Education Article Section 6-113; and (iii) Persons identified as an alleged abuser or neglecter following completing of a Child Protective Services investigation with a finding of “indicated” child abuse or neglect;

(g) any Person who is on the County’s list of debarred, suspended, or ineligible Persons; or

(h) any Affiliate of any of the Persons described in any one or more of clauses (a) through (g) above.

“**Project**” means the design, build, financing, testing, commissioning, maintenance, and life cycle rehabilitation of the Schools and all other Design-Build Work and Services provided in accordance with this Agreement.

“**Project Component**” means each of the components of the Project identified in Exhibit Y (Handback Useful Life Requirements).

“**Project Contractor Breakage Costs**” has the meaning set forth in Exhibit Z (Calculation of Termination Compensation).

“**Project Contractors**” means, collectively, the Design-Builder and the Services Provider.

“**Project Contracts**” means, collectively, the Design-Build Agreement and the Services Agreement.

“**Project Management Unit**” or “**PMU**” means the multi-disciplinary unit established by PGCPs for the purpose of administering this Agreement and overseeing Developer’s performance under this Agreement.

“**Project Readiness**” means that the School Occupancy Readiness Dates have been achieved for all Schools.

“**Project Readiness Date**” means the date when Project Readiness has been achieved.

“**Proposal**” has the meaning set forth in the Recitals.

“**Proposal Submittal Date**” means September 14, 2020.

“**Punch List**” has the meaning set forth in Section 10.4.1 (Punch List).

“**Punch List Items**” means, for any School, any defects, deficiencies, and items of outstanding work that would not materially impair PGCPs Activities or the performance of the

Services and could be rectified with minimal interference to the occupancy, use, and lawful operation of the School.

“**QMS**” means Developer’s quality management system.

“**Qualified Insurer**” means an insurer authorized to do business in the State and having a Financial Strength Rating of “A-” and a Financial Size Category of “Class IX” or better in the latest evaluation of A.M. Best Company (if A.M. Best Company changes its rating system or ceases to provide ratings at some later date, then such insurance company shall have a rating from A.M. Best Company (or some other comparable rating service if A.M. Best Company ceases to provide ratings) comparable to the requirement set forth above).

“**Qualifying Bank Transaction**” means (a) the disposition by a Lender to a Qualifying Institution, any other Lender, or an Affiliate of such Lender of any of its rights or interests in the Financing Documents; (b) the assignment of its interest in or grant by a Lender of any rights of participation in respect of the Financing Documents in favor of (i) any of its Affiliates or another Lender; (ii) any Qualifying Institution or any trustee thereof; or (iii) a local authority or public authority; (c) the syndication of a Lender’s rights and interests under any Financing Document; or (d) the disposition or grant by a Lender to a Qualifying Institution, any other Lender, or an Affiliate of such Lender of any other form of benefit or interest in either the Financing Documents or the revenues or assets of Developer, whether by way of security or otherwise.

“**Qualifying Institution**” means (a) an United States trust company, insurance company, investment company, pension fund, or institution which has at least Five Hundred Million Dollars in assets, including entities wholly owned by any of the foregoing; (b) a bank regulated by the Board of Governors of the Federal Reserve System of the United States or a United States bank, saving and loan institution, insurance company, investment company, employee benefit plan, or other institution that has or manages at least Five Hundred Million Dollars in assets and would be a “qualified institutional buyer” under United States securities law, including entities wholly owned by any of the foregoing; (c) an institution which is recognized or permitted under the law of any member state of the European Economic Area (in this definition, “**EEA**”) to carry on the business of a credit institution pursuant to Council Direction 2000/12/EC relating to the taking up and pursuit of the business of credit institutions or which is otherwise permitted to accept deposits in any other EEA member state; (d) an institution which is recognized or permitted under the law of the United Kingdom to carry on the business of a credit institution pursuant to Applicable Law in the United Kingdom; (e) an institution which is recognized or permitted under the law of any member state of the Organization for Economic Cooperation and Development (in this definition, “**OECD**”) to carry on within the OECD member states the business of a credit institution, insurance company, investment company, or pension fund and which has or manages at least Five Hundred Million Dollars in assets, including entities wholly owned by any such institution; or (e) any other institution PGPCS designates in writing as a “Qualifying Institution.”

“**Qualifying Refinancing**” means any Refinancing that will give rise to a Refinancing Gain greater than zero that is not an Exempt Refinancing.

**“Quarter”** means the period of time, as applicable, between (a) January 1 – March 31; (b) April 1 – June 30; (c) July 1 – September 30; and (d) October 1 – December 31, except that (i) the first Quarter shall be equal to the period of time between the start of the first Billing Period and the next closest Quarter end, and (ii) the last Quarter shall end on the last day of the Term.

**“Quarterly Net Adjustments Report”** has the meaning set forth in Section 14.7 (Quarterly Net Adjustments Report).

**“Rated Questions”** has the meaning set forth in Section 5.10 (PGCPS Satisfaction System) of Exhibit W (Services Requirements).

**“Reasonable Wear and Tear”** means normal day-to-day wear and tear that could reasonably be expected to exist at schools similar to the Schools, operating in a similar environment and similar circumstances and of a similar age, but does not include any degradation in the functionality or operability of the Schools such that the Schools or any of the Building Systems and Maintained Elements of the Schools fails to meet the Availability Conditions or the performance requirements and standards set forth in the Services Requirements, and which, for certainty, excludes Vandalism.

**“Recording Frequency”** has the meaning set forth in Table 1 of Appendix X-2 (Performance Failure Deductions) to Exhibit X-2 (Deductions).

**“Recurring Termination Payment”** has the meaning set forth in Exhibit Z (Calculation of Termination Compensation).

**“Recurring Termination Payment Distributions”** has the meaning set forth in Exhibit Z (Calculation of Termination Compensation).

**“Recurring Termination Payment Schedule”** has the meaning set forth in Exhibit Z (Calculation of Termination Compensation).

**“Re-Commissioning Plan”** has the meaning set forth in Section 12.2 of Exhibit R (Commissioning Requirements).

**“Rectification”** has the meaning set forth in Section 1.1 of Exhibit X-2 (Deductions).

**“Rectification Period”** has the meaning set forth in Section 1.1 of Exhibit X-2 (Deductions).

**“Rectification Plan”** has the meaning set forth in Section 1.1 of Exhibit X-2 (Deductions).

**“Rectification Plan Proposal”** has the meaning set forth in Section 1.1 of Exhibit X-2 (Deductions).

**“Refinancing”** means:

(a) Developer incurring, creating, assuming, or permitting to exist any Debt other than Permitted Debt;

(b) any amendment, variation, novation, supplement, or replacement of any Senior Debt or Senior Financing Agreement or any refinancing of Senior Debt;

(c) the exercise of any right, or the grant of any waiver or consent, under any Senior Financing Agreement;

(d) the disposition of any rights or interest in, or the creation of any rights of participation in respect of, the Senior Financing Agreements or Senior Debt or the creation or granting of any other form of benefit or interest in the Senior Financing Agreements, the Senior Debt, or the contracts, revenues, or assets of Developer whether by way of security or otherwise;

(e) the execution and delivery by Developer of any instrument relating in any way to the financing of the Project, other than the Senior Financing Agreements, instruments relating to the Junior Debt and the organizational agreement governing Developer; or

(f) any other arrangement put in place by Developer or another person which has an effect which is similar to any of (a) through (e) above or which has the effect of limiting Developer's ability to carry out any of the actions referred to in (a) through (e) above.

**"Refinancing Gain"** has the meaning set forth in Exhibit V (Calculation and Payment of Refinancing Gains).

**"Reforestation Plan"** has the meaning set forth in Section 2.11 (Reforestation).

**"Reimbursement Agreements"** means the Proposal Preparation Reimbursement Agreements PGCPs entered into with each bidder in accordance with the RFP.

**"Relief Event"** means (a) a Governmental Delay; (b) a Force Majeure Event; or (c) any of the following events or circumstances occurring after the Commercial Close Date if and to the extent such event or circumstance materially interferes with or delays the Design-Build Work or the Services, as applicable, except to the extent that such event or circumstance arises from or is contributed to by, directly or indirectly, a Developer Fault:

(i) a Change in Law Event;

(ii) a PGCPs Fault or PGCPs Default;

(iii) a preliminary or permanent injunction or temporary restraining order or other order is issued by a Governmental Authority of competent jurisdiction or other legal restraint or prohibition (including any condemnation or other taking by eminent domain) enjoining, interfering, or preventing the Project from proceeding or Developer or PGCPs from performing its respective obligations under this Agreement;

(iv) performance of work in, under, adjacent to, or near any Site carried out by a PGCPSPerson or a Governmental Authority that materially disrupts or prevents Developer’s performance of the Design-Build Work or the Services, as applicable;

(v) any reduction, suspension, interruption, or cessation in delivery of, or failure to provide and maintain, adequate and suitable supply of a Utility service to any Site, whether planned or unplanned;

(vi) implementation of or compliance with an affirmative obligation required by a Governmental Authority or PGCPSPerson in or in connection with any traffic studies or other studies or reports required to be performed or delivered to Developer after the Proposal Submittal Date that was not reasonably foreseeable to Developer based on the information available as of the Proposal Submission Date;

(vii) the closure, due to an accident, construction, or otherwise, of a road necessary for direct access to a Site by order of a Governmental Authority having police power;

(viii) delay in the payment of any Insurance Receivable beyond thirty (30) days from the approval date of the related claim;

(ix) the existence of any encumbrance enforceable against or affecting the Sites or Schools other than a Permitted Encumbrance;

(x) an official or unofficial strike, lockout, work rule, job action, or other labor dispute by public sector employees or private sector employees (other than employees of any Developer Person) (a) which (i) is regional or national in nature and affects the PGCPSPerson system, the construction, building maintenance, or facilities management industry generally, or (ii) takes place at a facility manufacturing materials or equipment for the Project and is not directed at the Project, and (b) which event lasts for more than thirty (30) days; and

(xi) any other event that, under a specific provision of this Agreement, constitutes or is deemed to constitute a Relief Event, including:

(1) the discovery of any historical, archeological, architectural, or other cultural artifacts, relics, remains, or objects of antiquity in accordance with Section 4.9.5 (Artifacts);

(2) if, in accordance with Section 5.3.3 (Actual Site Availability Dates), an Actual Site Availability Date deviates from the Expected Site Availability Date set forth in Section 5.3.1 (Expected Site Availability Dates);

(3) a delay in receipt of the final results of a security clearance check application from the relevant security clearance check authority in accordance with Exhibit O (Background Check Requirements);

(4) the release, presence, or remediation of any Unknown Land Conditions in accordance with Section 5.8 (Unknown Land Conditions);

(5) PGCPs' failure to remove underground storage tanks in accordance with Section 5.9 (Underground Storage Tanks);

(6) a delay directly caused by (a) certain PGCPs tests, observations, and inspections in accordance with Section 7.17.1 (PGCPs Tests, Observations, and Inspections), provided such efforts do not reveal any material failure or non-compliance by Developer, or (b) uncovering of certain Design-Build Work in accordance with Section 7.17.4 (Notice of Covering Design-Build Work);

(7) implementing a Change Order reflecting a Design-Build Change in accordance with Section 7.20 (Design-Build Changes Requested by PGCPs);

(8) the need to acquire Moveable FF&E in excess of the types and quantities set forth in Section 7.22.2 (Moveable FF&E);

(9) PGCPs' failure to cure a PGCPs Default in accordance with Section 19.7 (Developer Remedies Upon PGCPs Default);

(10) to the extent set forth in Section 2.4 of Exhibit W (Services Requirements), the failure of PGCPs to perform any of the PGCPs Retained Responsibilities in accordance with Good Industry Practice or any other standard expressly applicable to PGCPs under this Agreement; and

(11) to the extent set forth in Section 3.8 (School Use and Scheduling) of Exhibit W (Services Requirements), Developer accommodating Unscheduled Third Party and Community Use or Ad Hoc School Use upon less than forty-eight (48) hours' notice from PGCPs.

**“Relief Payment”** means the payment to be made by PGCPs in accordance with Section 14.11 (Relief Payment), which shall be calculated as set forth in Exhibit X-1 (Payment Calculations).

**“Remedial Program”** has the meaning set forth in Section 19.3 (Remedial Program).

**“Removed Trees”** has the meaning set forth in Section 2.11 (Reforestation).

**“Reporting Error”** has the meaning set forth in Section 11.3 (Reporting Errors) of Exhibit X-2 (Deductions).

**“Reported Event Time”** has the meaning set forth in Section 1.1 (Definitions) of Exhibit X-2 (Deductions).

**“Reporting Failure”** has the meaning set forth in Section 11.2 (Reporting Failures) of Exhibit X-2 (Deductions).

**“Required FF&E”** means the Base FF&E and Moveable FF&E listed in the Educational Specifications.

**“Required Design-Build Period Insurance”** means the insurance specified in Section 1 of Exhibit CC (Required Insurance).

**“Required Insurance”** means the Required Design-Build Period Insurance and the Required Services Period Insurance.

**“Required Services Period Insurance”** means the insurance specified in Section 2 of Exhibit CC (Required Insurance).

**“Required Response Time”** has the meaning set forth in Section 1.1 (Definitions) of Exhibit X-2 (Deductions).

**“Required Subcontractors”** means those entities listed in Exhibit BB (Required Subcontractors) and such other entities that PGCPS may notify Developer of in writing to perform the same services as those entities listed in Exhibit BB (Required Subcontractors).

**“Respond”** and **“Response”** have the meaning set forth in Section 1.1 (Definitions) of Exhibit X-2 (Deductions).

**“Restricted Action”** means the exercise of, and delivery of any notice to Developer with respect to, any right to (a) cancel, terminate, step in, novate, expropriate, condemn, or take any other action that may result in PGCPS having a right to take any such action; (b) cancel, step in, novate, or otherwise assume (whether directly or through a substitute entity) the benefit or burden of Developer’s rights against, or obligations to, a Project Contractor, as the case may be, or any payment or performance bonds or guaranties delivered in connection therewith; or (c) make any claim or take any action or enforce any rights under or in connection with any collateral agreement or security agreement entered into by PGCPS, a Project Contractor, or Developer.

**“Return Date”** has the meaning set forth in Section 9.3 (Notice Requirements) of Exhibit X-2 (Deductions).

**“RFP”** has the meaning set forth in the Recitals.

**“RFQ”** has the meaning set forth in the Recitals.

**“Routine Event”** has the meaning set forth in Section 1.1 (Definitions) of Exhibit X-2 (Deductions).

**“Safety Condition”** has the meaning set forth in Section 1.1 (Definitions) of Exhibit X-2 (Deductions).

**“Safety Plan”** means Developer’s plan to ensure the health and safety of PGCPS Persons, Developer Persons, and the general public affected by the Project during the Design-Build Period as set forth in Exhibit P (Safety Plan), as such plan may be amended with the written approval of PGCPS.

“**Scheduled Maintenance**” means planned and preventive Facilities Maintenance.

“**Scheduled Maintenance Plan**” has the meaning set forth in Section 2.2 (Scheduled Maintenance) of Appendix W-1 (Facilities Maintenance) to Exhibit W (Services Requirements).

“**Scheduled School Occupancy Readiness Date**” means July 15, 2023 with respect to each School, as such date may be extended with respect to a School as a result of a Relief Event in accordance with Section 16.3 (Schedule Relief Upon Occurrence of a Relief Event).

“**Schematic Development Documents**” has the meaning set forth in Section 7.3.1 (100% Schematic Design).

“**School**” or “**Schools**” means, individually or collectively, the buildings, related structures, Utility connections, landscaping, and other improvements to be constructed and maintained by Developer pursuant to this Agreement on the Land.

“**School Availability Payment**” has the meaning set forth in Exhibit X-1 (Payment Calculations).

“**School Capital Charge**” has the meaning set forth in Exhibit X-1 (Payment Calculations).

“**Schools Condition Report**” has the meaning set forth in Section 1.3(d) (Joint Technical Review) of Exhibit W (Services Requirements).

“**School Occupancy Readiness**” means, for a School, satisfaction of the relevant School Occupancy Readiness Conditions as evidenced by the issuance of a School Occupancy Readiness Certificate for such School.

“**School Occupancy Readiness Certificate**” means, for each School, the certificate delivered to PGCPs and Developer by the Independent Engineer in accordance with Section 4.2 of the Independent Engineer Agreement, substantially in the form of Appendix E to Exhibit J (Form of the Independent Engineer Agreement).

“**School Occupancy Readiness Conditions**” means, for each School, the conditions set forth in Section 10.2 (School Occupancy Readiness Conditions).

“**School Occupancy Readiness Date**” means, for any School, the later of (i) July 15, 2023, or (ii) the date on which School Occupancy Readiness occurs for the School; provided, however, for any School that has not achieved School Occupancy Readiness before August 14, 2023, the School Occupancy Readiness Date shall be deemed to be (x) with respect to Kenmoor Middle School or Walker Mill Middle School, if School Occupancy Readiness occurs before December 30, 2023, December 30, 2023, and (y) in all other cases and for all other Schools, the next July 15 following the date on which School Occupancy Readiness is achieved for the relevant School, unless such requirement is waived by PGCPs in its sole and absolute discretion; provided further that PGCPs may, in its sole and absolute discretion, waive any of the requirements set forth above

in order to permit early delivery and occupancy of a School at any time following School Occupancy Readiness for a School, in which case, PGCPs shall provide Developer at least thirty (30) days prior written notice of its intent to occupy a School for any PGCPs Activity (other than those activities permitted during the Pre-Occupancy Period), and the School Occupancy Readiness Date for such School shall be the date such occupancy occurs.

**“School Occupancy Readiness Deficiency Report”** means a report that may be delivered by the Independent Engineer to PGCPs and Developer to indicate that any School Occupancy Readiness Conditions have not been satisfied for a School, as further described in Section 10.3.3 (Deficiencies) and the Independent Engineer Agreement.

**“School Occupancy Readiness Notice”** means a written notice, in the form attached as Appendix D to Exhibit J (Form of the Independent Engineer Agreement), provided by Developer to PGCPs and the Independent Engineer, requesting certification of School Occupancy Readiness with respect to a School.

**“School Services Charge”** has the meaning set forth in Exhibit X-1 (Payment Calculations).

**“School Substantial Completion”** has the meaning set forth in Section 8.1 (Conditions to Substantial Completion for the Schools).

**“Seasonal Fine Tuning Reports”** has the meaning set forth in Exhibit R (Commissioning Requirements).

**“Senior Debt”** means (a) all amounts, including interest, default interest, and capitalized interest, owing to the Senior Lenders under the Senior Financing Agreements, provided that default interest will not include any increased interest, fees, or penalty amounts payable by Developer for any reason other than failure by Developer to pay any amount when due; (b) Senior Debt Breakage Amounts payable by Developer (but not Senior Debt Breakage Amounts payable or credited to Developer); and (c) all other transaction fees, costs, and expenses for which Developer is responsible under the Senior Financing Agreements, including, without limitation, banking fees, premiums, or reimbursement obligations with respect to financial insurance policies and agent and trustee fees.

**“Senior Debt Breakage Amounts”** means any prepayment premiums or penalties, make-whole payments, or other prepayment amounts, including costs of early termination of any hedging arrangement, that Developer must pay, or that may be payable or credited to Developer, under any Senior Financing Agreement or otherwise as a result of the payment, redemption, acceleration, or reduction of all or any portion of the principal amount of Senior Debt prior to its scheduled payment date, excluding, however, any such amounts included in the principal amount of any Refinancing.

**“Senior Executive”** has the meaning set forth in Section 24.1 (Informal Dispute Resolution).

**“Senior Financing Agreements”** means the Financing Documents entered into with respect to or in connection with the Senior Debt or, in the event of any Refinancing, any agreements replacing such Financing Documents and such other agreements entered into in connection with such Refinancing.

**“Senior Lenders”** means the Lenders to whom Senior Debt is owed.

**“Services”** means all operation and maintenance obligations of Developer, including anything required to be furnished by Developer, pursuant to this Agreement during the Services Period.

**“Services Additional Compensation Amounts”** means, in respect of any School, amounts determined in accordance with Section 14.14 (Payments for Compensation Events and Other Additional Costs) to be owed to Developer for a claim, event, or circumstance occurring during the Services Period.

**“Services Agreement”** means the agreement between Developer and Services Provider, a certified copy of which has been delivered by Developer to PGCPs, as amended, supplemented, or replaced from time to time.

**“Services Change”** means a change, including an addition, deletion, alteration, substitution, or modification, to Developer’s Services obligations under this Agreement, made pursuant to Section 15.6 (Services Changes).

**“Services Change Certificate”** means a certificate issued by PGCPs describing and authorizing a Services Change, the value or method of valuation of the Services Change, and the adjustment, if any, to the Availability Payment associated with the Services Change.

**“Services Change Notice”** has the meaning set forth in Section 15.6.1 (Services Changes).

**“Services Change Report”** has the meaning set forth in Section 15.6.2 (Services Change Report).

**“Services Charge”** means the Services Charge for all Schools, which is equal to \$6,372,006.23 (Index-Linked) as of Financial Close.

**“Services Monitor”** has the meaning set forth in Section 11.8 (Services Monitor).

**“Services Period”** means, in respect of any School, the period from the School Occupancy Readiness Date for that School to the Termination Date.

**“Services Period MBE and CBB Participation”** has the meaning set forth in Section 4.7.2 (MBE and CBB Subcontracting Plan).

“**Services Period Representative**” means the representative appointed by Developer in accordance with Section 4.5 (Developer Representatives) and Section 1.1 (Developer Services Period Representative(s)) of Exhibit W (Services Requirements).

“**Services Period Reserve Account**” has the meaning set forth in Section 11.6.1 (Services Period Reserve Amount).

“**Services Provider**” means Honeywell International Inc. or any assignee or replacement permitted under this Agreement.

“**Services Quality Management Plan**” means the quality plan established by Developer, based on the QMS and updated annually, to measure and monitor delivery of the Services and other obligations set forth in Exhibit W (Services Requirements).

“**Services Requirements**” mean those requirements imposed on Developer pursuant to this Agreement during the Services Period, including those set forth in Exhibit W (Services Requirements).

“**Site**” or “**Sites**” means, individually or collectively, as applicable, (a) the Land, (b) all Improvements on the Land as of the Commercial Close Date, (c) any and all Improvements from time to time constructed by Developer on the Land, and (d) all appurtenances, rights, easements, rights-of-way, tenements, and hereditaments now or hereafter incident to the Land.

“**Southern Area K-8 School**” means the School to be constructed on the Site described in Exhibit E-1 (Legal Description of Southern Area K-8 School Land).

“**Staging Plan**” means the plan established by Developer to identify the storage of construction equipment, supplies, and other staging issues for each Site set forth in Exhibit S (Staging Plan), as such plan may be amended with the written approval of PGCPs.

“**Start-Up Plan**” has the meaning set forth in Section 4.1 (Start-Up Plan) of Exhibit W (Services Requirements).

“**State**” means the state of Maryland.

“**Step-In Date**” means five (5) Business Days after delivery of a Step-In Notice.

“**Step-In Notice**” has the meaning set forth in Section 12.8 (Collateral Agent Step-In).

“**Step-In Period**” means the period from the Step-In Date up to and including the earliest of: (a) the last day of the Cure Period; (b) the Step-Out Date; (c) the date of any substitution under Section 12.10 (Substitution of Developer); (d) the date of any termination of this Agreement by PGCPs; and (e) the Expiration Date.

“**Step-Out Date**” means the date that is twenty (20) Business Days after the date of a Step-Out Notice.

“**Step-Out Notice**” has the meaning set forth in Section 12.9 (Collateral Agent Step-Out).

“**Subcontract**” means any contract entered into by a Project Contractor (except those contracts entered into between each Project Contractor and Developer), or a subcontractor of a Project Contractor of any tier, with one or more Persons in connection with the carrying out of Developer’s obligations under this Agreement, as amended or replaced from time to time.

“**Subcontractor**” means any Person (other than a Project Contractor) that enters into a Subcontract.

“**Suitable Substitute Developer**” means a Person that: (a) has the legal capacity, power, and authority to become a party to and perform the obligations of Developer under this Agreement; (b) employs Persons having the appropriate qualifications, experience, and technical competence (whether directly or through subcontracts) and has resources available (including applicable committed financial resources) sufficient to enable such Person to perform the obligations of Developer under this Agreement; (c) is not a Prohibited Person; and (d) is approved in writing by PGCPs.

“**Surveyed Element**” has the meaning set forth in Section 5.10 (PGCPs Satisfaction System) of Exhibit W (Services Requirements).

“**Tax**” means, from time to time, all taxes, surtaxes, duties, levies, imposts, rates, payments, assessments, withholdings, dues, and other charges of any nature imposed by any Governmental Authority, together with all fines, interest, penalties on or in respect of, or in lieu of or for non-collection of, those taxes, surtaxes, duties, levies, imposts, rates, payments, assessments, withholdings, dues, and other charges.

“**Technical Requirements**” means, collectively, the standards, terms, conditions, methods, techniques, requirements, and practices imposed, required by, or set forth in the Educational Specifications (as may be modified in accordance with Section 4.14 (Modifications to Educational Specifications)), the Base FF&E, the Moveable FF&E, the Master Specifications, the Services Requirements, and, upon approval by PGCPs, the Final Construction Documents.

“**Temporary Alternative Accommodation Notice**” has the meaning set forth in Section 9.1 (Developer Option to Provide) of Exhibit X-2 (Deductions).

“**Temporary Availability Condition**” has the meaning set forth in Section 8.2 (Rectification Plan Proposal) of Exhibit X-2 (Deductions).

“**Temporary Repair**” has the meaning set forth in Section 1.1 (Definitions) of Exhibit X-2 (Deductions).

“**Temporary Repair Deadline**” has the meaning set forth in Section 1.1 (Definitions) of Exhibit X-2 (Deductions).

“**Term**” has the meaning set forth in Section 2.1 (Term).

**“Termination by Court Ruling”** means the issuance of a final, non-appealable court order by a court of competent jurisdiction: (a) to the effect that this Agreement is void, unenforceable, or impossible to perform in its entirety, except where void, unenforceable, or impossible to perform by reason of a Developer Fault; or (b) upholding the binding effect on Developer or PGCPs of a Change in Law Event that causes impossibility of performance of a fundamental obligation of Developer or PGCPs under this Agreement.

**“Termination Compensation”** means the amount, if any, to be paid by PGCPs in the event this Agreement is terminated by Developer or by PGCPs after the Effective Date and prior to the expiration of the Term, as calculated in accordance with Exhibit Z (Calculation of Termination Compensation).

**“Termination Compensation Claim”** has the meaning set forth in Section 19.14.1 (Termination Compensation Claim).

**“Termination Compensation Due Date”** has the meaning set forth in Exhibit Z (Calculation of Termination Compensation).

**“Termination Compensation Lump Sum Payoff Date”** has the meaning set forth in Exhibit Z (Calculation of Termination Compensation).

**“Termination Date”** means the earlier of the Expiration Date or the date of termination of this Agreement provided in Article 19 (Events of Default, Remedies, Termination, and Termination Compensation).

**“Termination Deductions Amount”** has the meaning set forth in Exhibit Z (Calculation of Termination Compensation).

**“Third Party and Community Use”** means any use of a School, other than for Educational Activities or Educational Support Activities, pursuant to a lease or license or access agreement between PGCPs and a third party, or any arrangements for the non-commercial use of a School for community-based programs, including, without limitation, community sports, arts and crafts, meetings, club activities, church services, election activities, and any other community based function with the approval of PGCPs or required by Applicable Law.

**“Title Reports”** means the information collectively set forth in Exhibit A-3 (Title Report for Adelphi Area Middle School Land), Exhibit B-3 (Title Report for Drew-Freeman Middle School Land), Exhibit C-3 (Title Report for Hyattsville Middle School Land), Exhibit D-3 (Title Report for Kenmoor Middle School Land), Exhibit E-3 (Title Report for Southern Area K-8 School Land), and Exhibit F-3 (Title Report for Walker Mill Middle School Land).

**“Total Contract Value”** has the meaning set forth in Section 4.7.1 (Minimum Quantitative Requirement).

**“Total Unavailability”** has the meaning set forth in Section 1.1 (Definitions) of Exhibit X-2 (Deductions).

“**Transfer**” means to sell, convey, assign, encumber, transfer, or otherwise dispose of.

“**Trees Deficit**” has the meaning set forth in Section 2.11 (Reforestation).

“**Unavailability Deduction**” has the meaning set forth in Section 1.1 (Definitions) of Exhibit X-2 (Deductions).

“**Unavailability Event**” has the meaning set forth in Section 1.1 (Definitions) of Exhibit X-2 (Deductions).

“**Unavailable**” and “**Unavailability**” have the meaning set forth in Section 1.1 (Definitions) of Exhibit X-2 (Deductions).

“**Uninsurable**” means, in relation to a risk, (a) insurance as required under this Agreement is not available in respect of the Project with Qualified Insurers; or (b) the insurance premium payable or the terms and conditions for insuring such risk at the levels and on the terms required by this Agreement are such that contractors, concessionaires, owners, or others having a substantially similar interest in a project such as the Project are not generally insuring against such risk with Qualified Insurers.

“**Uninsurable Risk**” has the meaning set forth in Section 20.5.2 (Consequences of Risks Becoming Uninsurable).

“**Unit Holders**” means the holder or owner of Units.

“**Units**” means units or other equity interests of any class in the capital of Developer.

“**Unknown Land Condition**” means a condition in or on the Land that was not disclosed in or reasonably inferable from the PGCPIS Information that is required to be addressed by Applicable Law or in order to perform the Design-Build Work which impacts the construction of a School on the Land as established in accordance with Section 5.8 (Unknown Land Conditions), including for the avoidance of doubt and without limiting the scope of the definition, the following items only to the extent that the conditions or characteristics listed are not disclosed in or reasonably inferable from the PGCPIS Information:

(a) surface or subsurface structures, materials, properties, conditions, or characteristics having historical, cultural, archaeological, religious, or similar significance;

(b) any wetlands or habitat of an endangered, threatened, or protected species as provided in Applicable Law;

(c) the presence of Hazardous Materials (other than those introduced to any Site after the Effective Date by, caused by, or attributable to any acts or omissions of any Developer Person) in, on, or under any Site (including presence in air, surface water, groundwater, soils, or subsurface strata);

(d) releases and contamination from wells or underground storage tanks for the storage of Hazardous Materials present anywhere in, on, or under any Site prior to the Effective Date; or

(e) Land and soil conditions which differ materially from the information provided in the PGCPs Information.

“**Unknown Land Condition Notice**” means the notice described in Section 5.8.1 (Unknown Land Condition Notice).

“**Unknown Land Condition Remedial Work**” means the notice described in Section 5.8.4 (Maximum Unknown Land Condition Cost).

“**Unused School**” has the meaning set forth in Section 15.8 (Unused School).

“**Use Condition**” has the meaning set forth in Section 1.1 (Definitions) of Exhibit X-2 (Deductions).

“**Use Impediment**” has the meaning set forth in Section 1.1 (Definitions) of Exhibit X-2 (Deductions).

“**Utilities**” or “**Utility**” means any and all utility services and installations whatsoever (including gas, water, sewer and sanitary waste, electricity, including back-up and stand-by emergency power, stormwater, telephone, telecommunications, and internet), and all piping, wiring, conduit, and other fixtures of every kind whatsoever related thereto or used in connection therewith.

“**Utility Company**” means any company designated by PGCPs to provide Utilities to the Schools or the Sites.

“**Vandalism**” means any damage to, or destruction (including graffiti) of, the Schools or any part thereof (including all mechanical equipment, structures, improvements, grounds, and all other property constituting the Project), which requires repair, and which is caused by malicious, intentional, or willful conduct where such conduct was not reasonably contemplated by Reasonable Wear and Tear or the Intended Uses.

“**Walker Mill Middle School**” means the School to be constructed on the Site described in Exhibit F-1 (Legal Description of Walker Mill Middle School Land).

“**Withdrawal Notice**” has the meaning set forth in Section 12.7.5 (Withdrawal Notice).

“**Work Group**” has the meaning set forth in the Recitals.

## ARTICLE 2 GENERAL PROJECT TERMS

**2.1 Term.** The term of this Agreement shall commence on the Commercial Close Date and continue until the earlier of (i) 11:59 p.m. Eastern Time on the Expiration Date, or (ii) the effective time of a termination made in accordance with this Agreement (the “**Term**”).

**2.2 No Developer Ownership.** In no event shall Developer have any ownership interest in the Sites, including the Schools.

**2.3 Assumption of Risk.** Except to the extent expressly allocated to PGCPs or otherwise provided for under this Agreement, all risks, costs, and expenses in relation to the performance by Developer of Developer’s obligations under this Agreement are allocated to, and accepted by, Developer as its entire and exclusive responsibility.

**2.4 Other Opportunities.** Except as expressly provided in this Agreement, or as may be specifically agreed in writing between PGCPs and Developer during the Term, PGCPs reserves the right to all commercial and other opportunities for, or related to, the Project, the Schools, and the Sites.

**2.5 General Duty of Developer to Mitigate.** In all cases where Developer is entitled to receive from PGCPs any compensation in addition to the payments described in Section 3.1 (Payments), costs, damages, or extensions of time, Developer will use commercially reasonable efforts to mitigate such amount required to be paid by PGCPs to Developer under this Agreement, or the length of the extension of time. Upon request from PGCPs, Developer will promptly submit a detailed description, supported by all such documentation as PGCPs may reasonably require, of the measures and steps taken by Developer to mitigate and meet its obligations under this Section 2.5 (General Duty of Developer to Mitigate).

**2.6 General Duty of PGCPs to Mitigate.** In all cases where PGCPs is entitled to receive from Developer any compensation, costs, or damages, but not in any other case, PGCPs will use all reasonable efforts to mitigate such amount required to be paid by Developer to PGCPs under this Agreement, provided that such obligation will not require PGCPs to: (a) take any action which is contrary to the public interest, as determined by PGCPs in its sole discretion; or (b) alter the amount of any Deductions it is entitled to make in accordance with this Agreement. PGCPs will have no obligation to mitigate, implied or otherwise, except as set forth in this Section 2.6 (General Duty of PGCPs to Mitigate) or as otherwise expressly set forth in this Agreement. Upon request from Developer, PGCPs will promptly submit a detailed description, supported by all such documentation as Developer may reasonably require, of the measures and steps taken by PGCPs to mitigate and meet its obligations under this Section 2.6 (General Duty of PGCPs to Mitigate).

**2.7 Naming.** PGCPs will have the exclusive right to name the Schools and any other parts of the Sites and retains all rights, trademarks, naming, and branding regarding the Schools, the Sites, and any parts thereof.

**2.8 Signs.** Developer acknowledges that PGCPs reserves and retains all rights to signage in relation to the Sites, including the Schools. Developer will not erect or maintain any signs on the Sites or in the Schools without the written consent of PGCPs, not to be unreasonably withheld or delayed and which shall comply with Applicable Law. Developer acknowledges that it is unlikely that PGCPs will consent to any signage containing the name of Developer or any Project Contractor or Subcontractor after any School Occupancy Readiness Date.

**2.9 Cooperation.** PGCPs agrees, to the extent consistent with Applicable Law, at Developer's request to: (a) provide reasonable assistance to Developer to carry out the Project and to make available to Developer the benefits of Developer rights provided hereunder; (b) provide reasonable cooperation in seeking the assistance of the appropriate Governmental Authorities in carrying out the operation and maintenance of the Schools when completed; (c) provide reasonable assistance to Developer in obtaining any relevant consents required to be obtained by Developer; and (d) if any claim is asserted against Developer, or Developer is made a party in any action or proceeding, in connection with the Project, provide reasonable assistance, as requested by Developer, within the discretion of PGCPs; provided that Developer shall provide PGCPs with (i) written notice of the assistance requested promptly upon receipt of any applicable complaint, summons, or court order, and (ii) all relevant facts and information which is reasonably necessary with respect to such PGCPs cooperation. Unless otherwise expressly agreed to in this Agreement, nothing herein shall require PGCPs to provide any funding for the Project or to incur any obligations or liabilities or to take any action, give any consent, or enter into any document inconsistent with the provisions of this Agreement or which would modify the consideration or rights provided to PGCPs under this Agreement.

**2.10 Public Communication and Consultation.** PGCPs and Developer agree to cooperate with each other on all aspects of public communication and consultation with respect to the Project.

**2.10.1 Press Releases.** Developer shall use good faith efforts to coordinate with PGCPs on all press releases issued by Developer relating to the Project starting from the Commercial Close Date; provided, however, any press releases prepared by Developer that reference the duties, obligations, or commitments of PGCPs with respect to the Project shall be subject to PGCPs' prior written approval in its sole and absolute discretion, which PGCPs written approval shall be obtained prior to publication of the press release. PGCPs shall use good faith efforts to coordinate with Developer on all press releases issued by PGCPs relating to the Project starting from the Commercial Close Date.

**2.10.2 Notice to PGCPs.** Developer shall coordinate with, invite, and provide notice to PGCPs of all significant Project public events (such as community meetings, stakeholder meetings, presentations to parent-teacher associations, or other meetings with School officials or the public) organized by Developer. For any event involving the community or public officials (such as the County Executive and her/his staff, County Council members and their staff, Board members and their staff, members of the State legislature and their staff, members of the United States Congress and their staff, and executives of other governmental or inter-governmental organizations), Developer shall use commercially reasonable efforts to timely notify PGCPs and

schedule such meetings such that PGCPs representatives may attend. Any event organized by Developer that is required to be coordinated with PGCPs pursuant to this Section 2.10.2 (Notice to PGCPs) that are to be attended by public officials will be coordinated using the protocols appropriate to the office of the public official as reasonably directed by PGCPs.

**2.10.3 Community Engagement and Outreach Plan.** Developer shall comply with Exhibit N (Community Engagement and Outreach Plan) with respect to public involvement, education, and outreach on the Project (including input from the community that is impacted by the Project as the Schools are designed, developed, constructed, and operated). Developer shall document all public meetings, including a narrative description of the events of each meeting, the concerns raised by members of the public, and Developer’s responses to such concerns. Such documentation shall be submitted by Developer to PGCPs promptly following each meeting. Developer shall make reasonable modifications, with PGCPs’ approval, to the Project to accommodate feedback from the community. Developer shall be in compliance with the Maryland General Provisions Code, Title 3, Subtitle 3 of the Open Meetings Act.

**2.11 Reforestation.** Together with or prior to submission of the 65% Design Development Documents in accordance with Section 7.3.2 (65% Design Development), Developer shall submit to PGCPs a plan (the “**Reforestation Plan**”) which identifies the number of trees Developer plans to remove from each Site in order to perform the Design-Build Work (collectively, the “**Removed Trees**”) and the number of new trees Developer plans to plant on each Site (collectively, the “**New Trees**”). Developer shall use its best efforts so that Developer plants on each Site an equal number of New Trees of a similar species as the Removed Trees on each Site. To the extent Developer is unable to do so, Developer shall use its best efforts so that the total number of New Trees planted on all Sites equals the total number of Removed Trees from all Sites. To the extent, despite Developer’s best efforts, Developer is unable to plant an equal number of New Trees as Removed Trees on all Sites (the “**Trees Deficit**”), the Reforestation Plan shall identify (a) the total number of Removed Trees from each Site, (b) the total number of New Trees at each Site, and (c) the Trees Deficit. If PGCPs agrees, acting reasonably, that Developer cannot reasonably plant enough New Trees on any of the Sites to satisfy any such Trees Deficit, Developer shall be deemed to have satisfied its obligations with respect to the Trees Deficit.

### **ARTICLE 3 PGCPs’ GENERAL OBLIGATIONS**

**3.1 Payments.** Subject to and in accordance with the provisions of this Agreement, including Developer meeting the requirements for payment set forth in this Agreement, PGCPs will pay Developer the amounts expressly provided for in this Agreement.

**3.2 Provision of Sites.** PGCPs will make the Sites available to Developer for the Project in accordance with this Agreement.

**3.3 PGCPs Ownership of Land.** PGCPs owns the Land in fee simple, subject to the easements and other exceptions to title indicated or referred to in the Title Reports.

**3.4 School Decisions.** PGCPs retains sole decision-making authority with respect to the operation and use of the Schools, including authorizing any uses within the Schools, consistent with the terms of this Agreement.

**3.5 PGCPs Retained Responsibilities.** PGCPs shall perform the PGCPs Retained Responsibilities in accordance with the standards set forth in Exhibit W (Services Requirements).

#### **ARTICLE 4 DEVELOPER'S GENERAL OBLIGATIONS**

**4.1 General Project Obligations.** Subject to and in accordance with the provisions of this Agreement, Developer will perform the Project through the provision of the Design-Build Work and the Services.

**4.2 No Other Business.** Developer will not engage in any business or activity other than the business or activities conducted for the purpose of the Project.

**4.3 Project Contractors.** The Project Contractors can only be replaced by Developer with the prior written approval of PGCPs. The Project Contracts shall include clauses consistent with the requirements of this Agreement.

**4.4 Key Personnel.** Attached as Exhibit K-2 (Key Personnel) is a list of Persons (collectively, the "**Key Personnel**") that Developer will utilize in managing the Project and performing the Design-Build Work and the Services. With respect to each Key Personnel, Developer will use commercially reasonable efforts to retain the Key Personnel to perform the duties for the period described in Exhibit K-2 (Key Personnel). If for any reason any Key Personnel resigns or is otherwise unavailable to perform the duties described in Exhibit K-2 (Key Personnel), then Developer will use commercially reasonable efforts to retain a replacement with similar expertise and experience to the unavailable Key Personnel. Developer shall submit information with respect to any such replacement(s) to PGCPs at least ten (10) Business Days prior to such replacement(s) assuming responsibility on the Project; provided, however, that within five (5) Business Days of receiving such notice, PGCPs, acting reasonably, will have the opportunity to object to such replacement(s), and, in such event, Developer shall propose another replacement(s) for consideration by PGCPs. Failure of PGCPs to object to any replacement proposed by Developer within ten (10) Business Days from receipt of Developer's written request shall be deemed to represent no objection to the proposed replacement. No later than twelve (12) months prior to the earliest School Occupancy Readiness Date, Developer will notify PGCPs of the name and qualifications of the person designated by Developer to be the "Lead Executive" or equivalent as of the start of the Services Period, and such person will from the date of such notice also be a Key Personnel for the purposes of this Section 4.4 (Key Personnel).

**4.5 Developer Representatives.** Developer shall appoint a Design-Build Representative and a Services Period Representative to have primary responsibility for communicating with PGCPs regarding Design-Build Work and Services issues, respectively. Developer's Design-Build Representative and Services Period Representative may be the same

person, and Developer may change its Design-Build Representative or Services Period Representative through the provision of written notice to PGCPs. Exhibit W (Services Requirements) details further responsibilities of the Services Period Representative.

**4.6 Use of Subcontractors.** PGCPs acknowledges that Developer may carry out the Design-Build Work and Services by contracting such obligations to the Project Contractors who in turn may contract all or part of their obligations under any agreement with Developer to one or more Subcontractors. In respect of the Project, Developer will not contract with, or allow any of its Project Contractors or any Subcontractors to contract with, any Person that is a Prohibited Person. Notwithstanding the use of Project Contractors or Subcontractors, Developer will not be relieved or excused from any of its obligations or liabilities under this Agreement; will remain principally liable to PGCPs for the due observance and performance of all the covenants, obligations, agreements, and conditions of this Agreement that are to be observed and performed by Developer; and, as between itself and PGCPs, will be wholly responsible for the acts, omissions, breaches, defaults, non-compliance, negligence, and willful misconduct of its subcontractors, including Project Contractors, Subcontractors, and any other Developer Persons, as if they were the acts, defaults, or negligence of Developer. Accordingly, all references in this Agreement to any act, omission, breach, default, non-compliance, negligence, or willful misconduct of Developer will be construed to include any such act, omission, breach, default, non-compliance, negligence, or willful misconduct committed by a Developer Person, including any Project Contractor or Subcontractor.

**4.7 Use of Minority Business Enterprises and County Based Businesses.**

**4.7.1 Minimum Quantitative Requirement.** Developer shall be required to cause at least thirty percent (30%) of the Total Contract Value in connection with the Project to be incurred pursuant to contracts with MBEs, with a minimum of twenty percent (20%) of those MBE contracts being directed towards CBBs. For purposes of this MBE minimum quantitative requirement, the “**Total Contract Value**” shall refer to Developer’s total design and construction expenditures during the Design-Build Period, as well as Developer’s total Services expenditures during the Services Period, which, for clarity, excludes (a) financing, financing costs, interest on financing, and related fees, (b) insurance costs, and (c) mobilization payments made to the Services Provider during the Design-Build Period.

**4.7.1.1 Design-Build Period MBE and CBB Participation.** Developer shall pay, or cause to be paid, at least thirty percent (30%) of the total design and construction expenditures (excluding (a) financing, financing costs, interest on financing, and related fees, (b) insurance costs, and (c) mobilization payments made to the Services Provider during the Design-Build Period) to MBEs and CBBs to perform Commercially Useful Functions during the Design-Build Period (such percentage being referred to as, the “**Design-Build Period MBE and CBB Participation**”).

**4.7.1.2 Services Period MBE and CBB Participation.** Developer shall pay, or cause to be paid, at least thirty percent (30%) of the total Services expenditures (excluding (a) financing, financing costs, interest on financing, and related fees, (b) insurance

costs, and (c) mobilization payments made to the Services Provider during the Design-Build Period) to MBEs and CBBs to perform Commercially Useful Functions during the Services Period (such percentage being referred to as, the “**Services Period MBE and CBB Participation**”).

**4.7.2 MBE and CBB Subcontracting Plan.** Developer’s MBE and CBB Subcontracting Plan evidencing how Developer intends to meet both the MBE and CBB subcontracting requirements of Section 4.7.1 (Minimum Quantitative Requirement) is attached hereto as Exhibit L (MBE and CBB Subcontracting Plan). Developer shall implement and comply with such MBE and CBB Subcontracting Plan.

**4.7.3 Credit for Commercially Useful Functions Only.** Developer shall only be credited towards the MBE minimum quantitative requirement stated in Section 4.7.1 (Minimum Quantitative Requirement) for funds disbursed to MBE companies that perform a Commercially Useful Function.

**4.7.4 Failure to Achieve Design-Build Period MBE and CBB Participation.** No later than ten (10) Business Days prior to the Project Readiness Date, Developer shall provide PGCPs with a written assessment identifying (a) whether Developer will meet the Design-Build Period MBE and CBB Participation (for both the MBE and CBB components) prior to the completion of the Design-Build Period, (b) the amount of design and construction expenditures (excluding (i) financing, financing costs, interest on financing, and related fees, (ii) insurance costs, and (iii) mobilization payments made to the Services Provider during the Design-Build Period) during the Design-Build Period to date, (c) a reasonable estimate of expenditures to be made during the remainder of the Design-Build Period by Developer, and (d) the amount of such funds actually or reasonably expected to be disbursed to MBE and CBB companies to perform Commercially Useful Functions through the remainder of the Design-Build Period. To the extent Developer’s good faith assessment projects that Developer will fail to meet the Design-Build Period MBE and CBB Participation (for either the MBE or CBB component) prior to the completion of the Design-Build Period, PGCPs shall deduct from the final Milestone Payment as a Liquidated Damages Right an amount equal to twenty-five percent (25%) of any deficit (a) between the amount of design and construction expenditures (excluding (i) financing, financing costs, interest on financing, and related fees, (ii) insurance costs, and (iii) mobilization payments made to the Services Provider during the Design-Build Period) that would have been disbursed to MBEs had Developer met the MBE component of the Design-Build Period MBE and CBB Participation and the amount of such funds Developer actually and reasonably expects to be disbursed to MBEs to perform Commercially Useful Functions prior to the completion of the Design-Build Period, and (b) between the amount of design and construction expenditures (excluding (i) financing, financing costs, interest on financing, and related fees, (ii) insurance costs, and (iii) mobilization payments made to the Services Provider during the Design-Build Period) that would have been disbursed to CBBs had Developer met the CBB component of the Design-Build Period MBE and CBB Participation and the amount of such funds Developer actually and reasonably expects to be disbursed to CBBs to perform Commercially Useful Functions prior to the completion of the Design-Build Period. To the extent such deficit exceeds the amount of the final Milestone Payment, any such outstanding amounts shall be applied as an Extraordinary Item credit for the benefit of PGCPs to the first Availability Payment following the

Project Readiness Date (subject to Section 14.4.3.1 (Limit on Monthly Services Charge Adjustments)).

**4.7.5 MBE and CBB Participation Failures at the Expiration Date.** If Developer fails to meet either the minimum quantitative requirement set forth in Section 4.7.1 (Minimum Quantitative Requirement) or the Services Period MBE and CBB Participation (for both the MBE and CBB component) by the Expiration Date, PGCPS shall be entitled, as a Liquidated Damages Right, to be included on the final Quarterly Net Adjustments Report, to payment from Developer of an amount equal to:

(a) if applicable, five percent (5%) of any deficit (a) between (i) the amount of the Total Contract Value that would have been disbursed to MBEs above the minimum quantitative requirement set forth in Section 4.7.1 (Minimum Quantitative Requirement) had Developer met the MBE component of the Design-Build Period MBE and CBB Participation and the Services Period MBE and CBB Participation, and (ii) the amount of the Total Contract Value Developer actually disbursed to MBEs to perform Commercially Useful Functions during the Term, and (b) between (i) the amount of the Total Contract Value that would have been disbursed to CBBs above the minimum quantitative requirement set forth in Section 4.7.1 (Minimum Quantitative Requirement) had Developer met the CBB component of the Design-Build Period MBE and CBB Participation and the Services Period MBE and CBB Participation, and (ii) the amount of such funds Developer actually disbursed to CBBs to perform Commercially Useful Functions during the Term; plus

(b) if applicable, twenty-five percent (25%) of any deficit (a) between (i) the amount of the Total Contract Value that would have been disbursed to MBEs had Developer met the minimum quantitative requirement set forth in Section 4.7.1 (Minimum Quantitative Requirement) and the amount of the Total Contract Value Developer actually disbursed to MBEs to perform Commercially Useful Functions during the Term, and (b) between (i) the amount of the Total Contract Value that would have been disbursed to CBBs had Developer met the minimum quantitative requirement set forth in Section 4.7.1 (Minimum Quantitative Requirement), and (ii) the amount of such funds Developer actually disbursed to CBBs to perform Commercially Useful Functions during the Term; provided, however,

(c) Developer shall be entitled to a credit against the amount of the deficit calculated under this Section 4.7.5 (MBE and CBB Participation Failures at the Expiration Date) equal to any Liquidated Damages Right paid by Developer under Section 4.7.4 (Failure to Achieve Design-Build Period MBE and CBB Participation).

**4.8 Compliance with Applicable Law.** Developer shall perform the Design-Build Work and Services in accordance with Applicable Law and shall cause all Developer Persons to comply with Applicable Law.

**4.9 Compliance with Environmental Law.** Developer hereby covenants that, at Developer's sole cost and expense, Developer shall comply with all provisions of Environmental Law applicable to the Project and all uses, improvements, and appurtenances of, at, and to the

Sites. Except as may otherwise be agreed to by the Parties in accordance with Section 5.8.5 (Addressing Certain Unknown Land Conditions), Developer shall perform all investigations, removal, disposal, remedial actions, cleanup and abatement, corrective action, or other remediation that may be or is required pursuant to any applicable Environmental Law, and no PGCPs Indemnitee shall have any responsibility or liability with respect thereto except as expressly set forth in this Agreement.

#### **4.9.1 Hazardous Materials.**

**4.9.1.1 PGCPs Hazardous Materials.** The Parties acknowledge and agree that Developer is not the generator, operator, arranger, or transporter of any Hazardous Substances present in, on, or under the Sites that existed at the Sites prior to the Effective Date (irrespective of when such Hazardous Substances are discovered and whether they are Unknown Land Conditions) (the “**PGCPs Hazardous Materials**”) and shall not be identified as such on any waste manifests and documentation required under Applicable Law.

**4.9.1.2 Developer Responsibility for Certain PGCPs Hazardous Materials.** To the extent required by Environmental Law, Developer is responsible for the proper disposal of any PGCPs Hazardous Materials that are (i) disclosed in the PGCPs Information, or (ii) within the improvements existing on the Land as of the Effective Date that are part of the Demolition Work (collectively, the “**Assigned PGCPs Hazardous Materials**”). Developer assumes responsibility for the proper disposal of any Assigned PGCPs Hazardous Materials. Developer will have exclusive decision-making authority with regard to the selection of the destination facility to which the Assigned PGCPs Hazardous Materials will be transported. Developer and PGCPs shall jointly execute any disposal manifests associated with the removal of the Assigned PGCPs Hazardous Materials from the Sites.

**4.9.1.3 Unknown PGCPs Hazardous Materials.** Except for the Assigned PGCPs Hazardous Materials, any PGCPs Hazardous Materials that Developer, by reason of performing its responsibilities with respect to the Design-Build Work or the Services, must address under Environmental Law shall be treated as Unknown Land Conditions and responsibility for addressing the unknown PGCPs Hazardous Materials shall be determined in accordance with Section 5.8 (Unknown Land Conditions).

**4.9.1.4 Developer Hazardous Materials.** Developer will be the generator, operator, arranger, and transporter of any Hazardous Materials brought to the Sites by any Developer Person (the “**Developer Hazardous Materials**”) and shall be identified as such on all waste manifests and documentation required under Applicable Law. In the event PGCPs is nonetheless deemed to be a generator, operator, arranger, or transporter of any Developer Hazardous Materials by any Governmental Authority having jurisdiction, Developer shall pay PGCPs as an Extraordinary Item an amount equal to all reasonable expenses incurred by PGCPs as a result thereof.

**4.9.2 Developer Indemnification.** Without limiting the generality of Section 21.2 (Developer’s Obligation to Indemnify), Developer hereby indemnifies and holds harmless

each PGCPS Indemnitee from and against any and all Environmental Damages created, caused, or released by any Developer Person; provided, however, that Developer shall not be required to indemnify any PGCPS Indemnitee to the extent that such Environmental Damage was caused by a PGCPS Fault or a PGCPS Default. Without limiting the foregoing, if the presence or release of any Hazardous Materials on or from a Site caused or permitted by any Developer Person results in any contamination of a Site or Environmental Damage, Developer shall promptly take all actions at its sole cost and expense as are necessary to return the Site to the condition existing prior to the introduction of such Hazardous Material.

**4.9.3 Notices of Violation.** Developer shall provide PGCPS and PGCPS shall provide Developer with copies of any written notices of violations of Environmental Law that Developer or PGCPS, as applicable, has received or is aware of relating to any potential environmental liability with respect to the Land, the Sites, or the Project, promptly after the applicable Party receives or becomes aware of such notice or allegation.

**4.9.4 Non-Routine Correspondence.** Developer shall provide PGCPS and PGCPS shall provide Developer with copies of all non-routine correspondence with Governmental Authorities related to enforcement actions or notices of violations affecting any potential environmental liability that Developer or PGCPS, as applicable, has received or is aware of relating to the Project promptly after the applicable Party receives or becomes aware of such non-routine correspondence.

**4.9.5 Artifacts.** Developer shall not cause or permit to be removed or disturbed any historical, archeological, architectural, or other cultural artifacts, relics, remains, or objects of antiquity in violation of Applicable Law. In the event such items are discovered, Developer shall immediately notify PGCPS and protect the site and the material from further disturbance until PGCPS gives clearance to proceed, and Developer may notify PGCPS of a Relief Event if applicable in accordance with Article 16 (Relief Events).

**4.10 Compliance with Plans.** Developer shall comply with all Plans and shall submit annual updates to each Plan (or a certification that Developer reviewed the Plan and no updates are required) on or before July 1<sup>st</sup> of each year, or such earlier time period as may be set forth in the Technical Requirements. Any changes to the Plans need to be approved in writing by PGCPS, which such approval shall not be unreasonably withheld.

**4.11 Compliance with PGCPS Policies.** Developer shall comply with any reasonable policies issued by PGCPS that are applicable to all visitors or contractors entering PGCPS property for which PGCPS notifies Developer of in writing. As of the Commercial Close Date, PGCPS has notified Developer of, and Developer has agreed to require all Developer Persons to comply with, the following policies: AP 0500 School Visitor Access; 4218 Dating and Sexual Relationships Among Students and Employees, Independent Contractors and Volunteers; 4219 Inappropriate Interactions Among Students and Employees, Independent Contractors and Volunteers; and 4221 Employee and Adult Use of Student Restrooms, Locker Rooms and Designated Changing Areas.

**4.12 Community Investment Program.** Developer shall implement the Community Investment Program described in Exhibit M (Community Investment Program).

**4.13 Behavior on Sites.** Developer shall at all times maintain, and cause all Developer Persons to maintain, courteous business-like relations with all PGCPs Persons. PGCPs may require, in writing, that Developer remove from a Site any Developer Person that is an individual and that PGCPs deems to be engaged in unlawful, unruly, offensive, or otherwise objectionable behavior.

**4.14 Modifications to Educational Specifications.** So long as all required educational program areas and functional capabilities identified in the Educational Specifications are provided within a School, the size of a School or individual area(s) within a School identified in the Educational Specifications may be reduced at Developer's election by up to ten percent (10%). Prior to implementing any reduction authorized by this Section 4.14 (Modifications to Educational Specifications), Developer shall submit to PGCPs a report detailing any planned modification(s).

**4.15 Prevailing Wages.** In accordance with PGCPs policy, wages paid on this Project will be subject to the prevailing wage rates issued by the State of Maryland, Department of Labor, Licensing and Regulation pursuant to the authority of the Commissioner of Labor and Industry given under State Finance and Procurement Article, Section 17-209, Annotated Code of Maryland. The wage determination for this Project is included as Exhibit AA (Wage Determination). State Finance and Procurement Article, Section 17-201 through 17-226 inclusive shall apply.

**4.16 Required Subcontractors.** For the services listed in Exhibit BB (Required Subcontractors), Developer must subcontract with the Required Subcontractors to perform the services listed therein.

**4.17 Amendments to Project Contracts.** Developer shall promptly provide copies of any amendments to the Project Contracts to PGCPs.

## **ARTICLE 5 SITES**

**5.1 Schools.** In accordance with the terms and conditions set forth in this Agreement, Developer will be responsible for performing the Design-Build Work and Services at the following Schools, which collectively total 973,440 square feet:

(a) Adelphi Area Middle School, with an as-built enrollment capacity of 1,200 middle school students and 144,055 square feet;

(b) Drew-Freeman Middle School, with an as-built enrollment capacity of 1,200 middle school students and 144,055 square feet;

(c) Hyattsville Middle School, with an as-built enrollment capacity of 1,200 middle school students and 162,505 square feet;

(d) Kenmoor Middle School, with an as-built enrollment capacity of 1,200 middle school students and 144,055 square feet;

(e) Southern Area K-8 School, with an as-built enrollment capacity of 800 elementary school students and 1,200 middle school students and 234,715 square feet; and

(f) Walker Mill Middle School, with an as-built enrollment capacity of 1,200 middle school students and 144,055 square feet.

**5.2 Familiarity with the Sites.** Developer acknowledges that Developer is generally familiar with surface conditions, normal and usual soil conditions, roads, Utilities, topographical conditions, and air and water quality conditions in the area in which the Sites are located, including access, availability, disposal, handling, and storage of materials and equipment; and availability and quality of labor and Utilities), and has received and reviewed the PGCPS Information provided to it hereunder or obtained by Developer in the course of performing Developer’s obligations under this Agreement. Developer also acknowledges that Developer has satisfied itself as to the character, quality, and quantity of surface and subsurface materials or obstacles to be encountered insofar as this information is reasonably ascertainable or inferable from the PGCPS Information.

**5.3 Availability of Sites.**

**5.3.1 Expected Site Availability Dates.** PGCPS expects that the Sites will be made available to Developer on or before each of the following dates (each, an “**Expected Site Availability Date**”):

Site	Expected Site Availability Date
Adelphi Area Middle School Site	July 15, 2021
Drew-Freeman Middle School Site	Existing athletic fields, on the Effective Date; remainder of the Site, July 15, 2021
Hyattsville Middle School Site	July 15, 2021
Kenmoor Middle School Site	Effective Date
Southern Area K-8 School Site	Effective Date
Walker Mill Middle School Site	Effective Date

**5.3.2 Changes to Expected Site Availability Dates.** To the extent PGCPS, in its sole discretion, determines that any Site cannot be made available to Developer on or before an Expected Site Availability Date, PGCPS shall provide written notice to Developer of an amended Expected Site Availability Date.

**5.3.3 Actual Site Availability Dates.** PGCPS shall provide a written notice to Developer confirming the date of each Site’s availability for Developer’s access in accordance with Section 5.4.2 (Access Following Actual Site Availability Dates) (each, an “**Actual Site Availability Date**”); provided, however, that a separate notice is not required and the Actual Site Availability Date is the Effective Date for the existing athletic fields on the Drew-Freeman Middle

School Site, the Kenmoor Middle School Site, the Southern Area K-8 School Site, and the Walker Mill Middle School Site. To the extent that any Actual Site Availability Date deviates from the Expected Site Availability Date set forth in Section 5.3.1 (Expected Site Availability Dates), Developer may notify PGCPs of a Relief Event if applicable in accordance with Article 16 (Relief Events). Prior to the Actual Site Availability Date, PGCPs shall have (i) removed all loose furnishings from the schools existing on the Adelphi Area Middle School Land, the Drew-Freeman Middle School Land, and the Hyattsville Middle School Land as of the Effective Date; and (ii) paid all outstanding utility bills.

## **5.4 Access to the Sites.**

**5.4.1 Access Prior to Actual Site Availability Dates.** Prior to any Actual Site Availability Dates, any access to the Sites desired by Developer shall be coordinated through PGCPs, and Developer shall not access the Sites unless Developer has the prior written authorization from PGCPs. Developer will have the opportunity to visit the Sites between 8:00 a.m. and 4:00 p.m. on a Saturday or Sunday for up to four hours at a time. Developer must provide at least five (5) Business Days advance written notice to PGCPs. Such notice shall include the nature of the activities to be performed and the preferred hours of access to each Site. PGCPs will advise Developer as to whether the requested time is available and, to the extent it is not, will coordinate with Developer to confirm another mutually acceptable time.

### **5.4.2 Access Following Actual Site Availability Dates.**

**5.4.2.1 Granting of License.** Following each Actual Site Availability Date, subject to Section 5.4.2.2 (Continued Use of Certain Sites by PGCPs) and Section 5.5 (Security Clearance and Site Access Protocol), this Agreement shall be deemed to constitute the granting of a license to Developer and, upon Developer's authorization, to Developer Persons, for full access to the Sites for the purpose of performing the Design-Build Work and the Services, including mobilization and performing engineering, analysis, and such additional subsurface and geotechnical studies or tests as deemed necessary by Developer prior to commencement of construction.

**5.4.2.2 Continued Use of Certain Sites by PGCPs.** Following the Actual Site Availability Date through the applicable School Occupancy Readiness Date, PGCPs will continue to use and operate the existing school buildings and parking lots on the Kenmoor Middle School Site and the Walker Mill Middle School Site for Educational Activities, Educational Support Activities, Ad Hoc School Use, Third Party and Community Use, and any other activity duly authorized by PGCPs or required by Applicable Law. It is understood that, following the Actual Site Availability Date, Developer will have full use of, and access to, areas outside such existing school buildings and parking lots on the Kenmoor Middle School Site and the Walker Mill Middle School Site and may, in accordance with the Safety Plan, install fencing as needed to secure the construction areas on such Sites. In its development of its Safety Plan, Design-Build Quality Management Plan, and Design-Build Work Plan, and in accordance with Section 7.16 (Accident Prevention and Coordination), Developer shall coordinate with PGCPs to ensure the continued uninterrupted operation by PGCPs of the existing school buildings and

parking lots on the Kenmoor Middle School Site and the Walker Mill Middle School Site and the safety of all PGCPs Persons and the public accessing such existing Improvements during the Design-Build Period.

**5.4.3 Developer Responsibility.** At all times, Developer shall assume all risks associated with access to the Sites by any Developer Persons (except for risks expressly assumed herein by PGCPs) and shall, to the extent and in proportion to the degree of fault or negligence by any Developer Person in causing any harm, indemnify, defend, and hold harmless each PGCPs Indemnitee in accordance with Section 21.2 (Developer's Obligation to Indemnify) from and against all Loss arising therefrom.

**5.4.4 Real Property Taxes.** PGCPs will be responsible for any real property taxes or payments in lieu of real property taxes payable in respect of any Site.

**5.5 Security Clearance and Site Access Protocol.** Developer will establish and implement, throughout the Term, procedures for obtaining and reviewing with PGCPs criminal records checks and other background checks in accordance with Exhibit O (Background Check Requirements) and as may be reasonably required by PGCPs from time to time, for all employees and agents of Developer Persons.

**5.6 Utilities.** During the Design-Build Period, Developer shall make all arrangements necessary to ensure the connection of all Utilities as required in order to construct and operate the Schools. During the Services Period, PGCPs will contract with and pay directly to the Utilities any charges incurred for the receipt of Utilities at the Sites.

**5.7 Permitted Uses.** Developer may access, use, and permit to be used the Sites only for purposes of performing the Project and in accordance with the terms and conditions of this Agreement. No other uses shall be permitted during the Term without PGCPs' prior written approval, in its sole and absolute discretion.

**5.8 Unknown Land Conditions.**

**5.8.1 Unknown Land Condition Notice.** In the event either Developer or PGCPs discovers an Unknown Land Condition, the identifying Party shall provide written notice to the other Party within seven (7) days of discovery of the purported Unknown Land Condition (the "**Unknown Land Condition Notice**"); provided, however, if the Unknown Land Condition may give rise to a safety issue, the Party identifying the purported Unknown Land Condition shall provide immediate notice to the other Party. The Unknown Land Condition Notice shall include a description of the purported Unknown Land Condition and any information known by such Party with respect to how the purported Unknown Land Condition could impact the Design-Build Work.

**5.8.2 Response.** Within seven (7) days of receipt of an Unknown Land Condition Notice, the Party receiving the Unknown Land Condition Notice shall respond in writing to the other Party indicating (i) that such Party agrees that the purported Unknown Land Condition is an Unknown Land Condition; or (ii) that such Party disagrees that the purported Unknown Land

Condition is an Unknown Land Condition and refers the determination of an Unknown Land Condition for resolution in accordance with Article 24 (Resolution of Disputes), and if the matter is so referred, the Parties will request the party responsible for resolving the Dispute to determine the schedule and performance relief and the amount of Direct Losses payable to Developer as a result of the existence of such Unknown Land Condition.

**5.8.3 Assessment Meeting.** Within five (5) days of receipt of an undisputed Unknown Land Condition Notice or a determination in accordance with Article 24 (Resolution of Disputes) that a disputed circumstance is an Unknown Land Condition, the Parties shall meet to discuss a plan to address the Unknown Land Condition, including allocation of responsibilities, actions, and costs associated with such Unknown Land Condition.

**5.8.4 Maximum Unknown Land Condition Cost.** The assessment meeting described in Section 5.8.3 (Assessment Meeting) shall establish the timing and costs of the work necessary to remediate such Unknown Land Condition and to enable the Design-Build Work to proceed (collectively, the “**Unknown Land Condition Remedial Work**”). To the extent the Unknown Land Condition Remedial Work identified in the assessment meeting described in Section 5.8.3 (Assessment Meeting) can be performed with Direct Losses to Developer of less than Four Hundred Thousand Dollars (\$400,000.00) (cumulative of all Unknown Land Conditions on all Land, the “**Maximum Unknown Land Condition Cost**”), then Developer shall proceed in accordance with the agreed upon plan, which shall be documented in writing by the Parties, and Developer may notify PGPCS of a Relief Event if applicable in accordance with Article 16 (Relief Events).

**5.8.5 Addressing Certain Unknown Land Conditions.** To the extent the cost to remediate or modify the Design-Build Work on account of an Unknown Land Condition will exceed the Maximum Unknown Land Condition Cost, Developer shall provide written notice to PGPCS identifying the Direct Losses in excess of the Maximum Unknown Land Condition Cost that Developer anticipates to remediate or modify the Design-Build Work on account of such Unknown Land Condition. Within thirty (30) days of receipt of such notice, PGPCS shall notify Developer whether (a) PGPCS will remediate the Unknown Land Condition such that the Design-Build Work can proceed on the Land, and Developer may notify PGPCS of a Relief Event if applicable in accordance with Article 16 (Relief Events); (b) Developer should remediate the Unknown Land Condition or modify the Design-Build Work in accordance with a written plan agreed upon by PGPCS and Developer, and Developer may notify PGPCS of a Relief Event if applicable in accordance with Article 16 (Relief Events) provided that any compensation relief requested shall be limited to Direct Losses associated with implementing the plan that are in excess of the Maximum Unknown Land Condition Cost; (c) the Parties may amend this Agreement to eliminate the Land and the scope of the Design-Build Work and Services to be performed on such Land from the Project and make equitable adjustments to the Milestone Payments and the Availability Payments, in consideration of the reduced Project scope and any payments Developer will owe to a Financing Party as a result of the elimination of the Land from the Project; or (d) the Parties shall amend this Agreement to reflect PGPCS’ replacement of the Land with alternate land.

**5.9 Underground Storage Tanks.** PGCPs will remove the following underground storage tanks, as more specifically described in the applicable PGCPs Information:

- (a) By August 1, 2021, PGCPs will remove Drew-Freeman MS #19824;
- (b) By August 1, 2021, PGCPs will remove Adelphi ES #14703
- (c) By August 1, 2021, PGCPs will remove Hyattsville MS #18791;
- (d) By August 1, 2021, PGCPs will remove Kenmoor MS # 18293; and
- (e) Within forty-five (45) days following the School Occupancy Readiness Date for Walker Mill Middle School, PGCPs will remove Walker Mill MS #18837.

To the extent PGCPs fails to do remove those underground storage tanks by the dates set forth in this Section 5.9 (Underground Storage Tanks), Developer may notify PGCPs of a Relief Event if applicable in accordance with Article 16 (Relief Events).

## **ARTICLE 6 CONDITIONS PRECEDENT; EFFECTIVE DATE**

**6.1 Financial Close Security.** On or before the Commercial Close Date, Developer delivered to PGCPs cash, in escrow, and/or one or more standby letter(s) of credit, financial close bond(s), or demand guarantee(s) in an aggregate amount equal to Ten Million Dollars (\$10,000,000.00) (the “**Financial Close Security**”). The Financial Close Security shall designate PGCPs as the beneficiary.

**6.2 Conditions Precedent.** Developer shall be responsible for satisfying the following conditions prior to the Effective Date Deadline (collectively, the “**Conditions Precedent**”):

**6.2.1 Financial Close.** Financial Close has been achieved.

**6.2.2 Payments to Escrow Agent for Bidder Stipends.** Developer shall have provided evidence of the initiation of a wire transfer to the Escrow Agent of One Million Dollars (\$1,000,000.00) for the purpose of reimbursements in accordance with Reimbursement Agreements.

**6.2.3 Deposit to Design-Build Period Reserve Account.** Developer shall have provided evidence of the initiation of a wire transfer in the amount of Two Million Dollars (\$2,000,000.00) to fund the Design-Build Period Reserve Account in accordance with Section 7.6.1 (Design-Build Period Reserve Amount).

**6.2.4 Deposit to Scholarship Fund.** Developer shall have provided evidence of the initiation of a wire transfer in the amount of One Million Dollars (\$1,000,000.00) to the Excellence in Education Foundation for PGCPs, Inc., which the Parties acknowledge and agree

represent cost savings from the Proposal agreed upon by PGCPs and Developer between the Proposal Submittal Date and the Commercial Close Date.

**6.2.5 Legal Opinion.** Developer has delivered to PGCPs a legal opinion evidencing the authority of Developer to enter into this Agreement, the Escrow Agreement, the Independent Engineer Agreement, the Design-Build Agreement, and the Financing Documents, and the enforceability of such agreements, in a form mutually agreed upon by Developer and PGCPs.

**6.3 Termination Prior to the Effective Date.** This Agreement may be terminated prior to the Effective Date solely as set forth below:

**6.3.1 Mutual Consent.** By the mutual consent of PGCPs and Developer in a written instrument at any time prior to the Effective Date Deadline; or

**6.3.2 Failure to Achieve Conditions Precedent.** By PGCPs, upon notice to Developer, if any of the Conditions Precedent have not been satisfied by the Effective Date Deadline.

**6.4 Effect of Termination Prior to the Effective Date.** In the event of termination of this Agreement in accordance with Section 6.3 (Termination Prior to the Effective Date), this Agreement shall forthwith become void, and there shall be no liability or obligation on the part of PGCPs or Developer or their respective representatives for any Losses or Direct Losses in any respect whatsoever.

**6.5 Disposition of the Financial Close Security.**

**6.5.1 PGCPs Return.** PGCPs shall return to Developer the Financial Close Security within three (3) Business Days of the Effective Date. If this Agreement is terminated as provided in Section 6.3.1 (Mutual Consent), then PGCPs shall return to Developer the Financial Close Security within ten (10) Business Days of termination.

**6.5.2 PGCPs Retention.** If this Agreement is terminated as provided in Section 6.3.2 (Failure to Achieve Conditions Precedent), then PGCPs may immediately draw on the Financial Close Security and retain such funds for use by PGCPs in its sole discretion.

**6.6 Reimbursement.** If this Agreement is terminated as provided in Section 6.3.2 (Failure to Achieve Conditions Precedent), Developer is deemed to have forfeited any right to receive a stipend under the Reimbursement Agreement.

**ARTICLE 7  
DESIGN AND CONSTRUCTION**

**7.1 General Design Requirements.** Unless otherwise stipulated in this Agreement, Developer shall perform the Design-Build Work in compliance with the Contract Standards. The Technical Requirements are intended to include the basic design principles, concepts, and

requirements for the Design-Build Work but do not include the final, detailed design, plans, or specifications or indicate or describe each and every item required for full performance of the Design-Build Work or for achieving Project Readiness. Developer agrees to prepare and furnish all necessary detailed designs, plans, drawings, and specifications in conformity with this Agreement and the Contract Standards. Developer further agrees that it shall not have the right to bring any claim whatsoever against any PGCPS Person arising out of any designs, plans, drawings, or specifications included in the RFP or made available during the Project's procurement process. Developer shall use the Conceptual Designs as the basis for the further design of the Project and shall incorporate reasonable comments from PGCPS on the Conceptual Designs when further developing the design of the Project. In no event shall Developer proceed with the physical construction of any particular segment of the Design-Build Work without first complying with the requirements of the design submittal protocol set forth in this Agreement. Developer shall give due consideration and provide written responses, in the time and manner provided in this Agreement, to any comments delivered by PGCPS as to Developer's design submittals. Save to the extent Developer is entitled to a Relief Event pursuant to Section 7.17.4 (Notice of Covering Design-Build Work), neither compliance by Developer with the Technical Requirements, nor review and comment by PGCPS on Developer's design submittals, nor any failure or delay by PGCPS in commenting on any design submittals shall in any way relieve Developer of full responsibility for the design, construction, performance, operation, and maintenance of the Project in accordance with the Contract Standards.

**7.2 Design Review.** Developer shall prepare, or cause to be prepared, design documents necessary or appropriate to carry out and complete the Design-Build Work in accordance with the Technical Requirements. The Parties understand and accept that Developer is wholly and exclusively responsible for producing Project designs in accordance with the Technical Requirements and this Agreement; however, the Parties commit to working collaboratively during the design process to ensure that the Project design meets PGCPS' objectives as set forth in this Agreement. Developer will prepare, or cause to be prepared, design documents for the building shells and improvements for implementation of the Project in accordance with the Technical Requirements. Representatives of the PMU and its advisors shall attend the design process meetings to ensure PGCPS has input into the design process and ensure that PGCPS' concerns, comments, and requirements are articulated to Developer prior to Developer's submittal of design documents for formal review. The design process meetings shall occur a minimum of every two (2) weeks or more frequently as agreed upon by the Parties. For the formal review of design documents, Developer shall submit design documents for each School to PGCPS at the following levels of completion for the approval of PGCPS in accordance with the provisions of Section 7.3 (Design Review Defined): 100% Schematic Design, 65% Design Development, 95% Design Development, and Final Construction Documents.

### **7.3 Design Review Defined.**

**7.3.1 100% Schematic Design.** For each School, the Schematic Design phase documents (“**Schematic Development Documents**”) should be a mock-up or “outline” of the working drawings prepared at the scale(s) and sheet size needed for Construction Documents and shall reflect the requirements of the Technical Requirements. Schematic Development Documents

should illustrate the concepts of the design and include spatial relationship, scale, and form of the improvements and include a site plan, floor plans, sections, and elevation, and other illustrative materials including overall dimensions. All disciplines shall exhibit generally equivalent levels of completeness and display approximately thirty-five percent (35%) development of the information required for construction. A cost estimate for the Design-Build Work shall be provided with these documents.

**7.3.2 65% Design Development.** For each School, the 65% Design Development Documents shall contain documents prepared at the scale(s) and sheet sizes needed for Construction Documents and supporting materials that clearly demonstrate Project design progress, adherence to Project scope, and design criteria and coordination between disciplines. All disciplines shall exhibit equivalent levels of completeness and display approximately sixty-five percent (65%) development of the information required for construction. The 65% Design Development Documents submission should include the Reforestation Plan described in Section 2.11 (Reforestation).

**7.3.3 95% Design Development.** For each School, the 95% Design Development Documents submission shall contain documents prepared at the scale(s) and sheet sizes needed for Construction Documents and supporting materials that clearly demonstrate Project design progress, adherence to Project scope, and design criteria and coordination between disciplines. All disciplines shall exhibit equivalent levels of completeness and display ninety-five percent (95%) development of the information required for construction.

**7.3.4 Final Construction Documents.** The 100% final drawings, specifications, and other documents (“**Final Construction Documents**”) shall be acceptable to PGCPs for Developer construction and shall reflect the permit approved drawings. All prior Construction Document submissions shall be revised/corrected to incorporate applicable PGCPs review comments and shall be resubmitted as Final Construction Documents. Except for any changes required to comply with the Technical Requirements, each additional change provided by PGCPs as part of the review of the Final Construction Documents shall be considered a Design-Build Change. The submission of Final Construction Documents for each School shall include the following completed items:

- (a) Record drawings for the School with professional seals and signatures of the registered architect(s) and engineer(s);
- (b) Record specifications;
- (c) Construction time schedule;
- (d) Construction submittal and sample schedule/log;
- (e) Supporting materials (analyses and calculations);
- (f) Electronic file copies of the specifications;

- (g) Electronic file copies of the drawings; and
- (h) Responses to 95% review comments (if not submitted earlier).

Upon PGCPs approval of the Final Construction Documents, Developer shall be required to comply with the Final Construction Documents when performing the Design-Build Work, and such documents identified under this Section will be collectively referred to and deemed incorporated into the Technical Requirements.

**7.4 PGCPs Design Review and Responses.** For each design review, PGCPs shall return its comments on the design documents to Developer within seven (7) Business Days after receipt of the design documents. In the event PGCPs does not approve the submitted design documents or in the alternative returns the submitted design documents with comments, PGCPs shall meet with Developer in a one- or two-day working session immediately following PGCPs' disapproval or return of the design documents with comments, to use best efforts to address and resolve all comments. PGCPs may only disapprove a submittal if, in the opinion of PGCPs, the submittal is inconsistent with the Technical Requirements or previous comments submitted to Developer and agreed to by Developer during one of the design review periods outlined above. PGCPs shall provide reasons and details explaining the non-conformance. In no case shall the meeting occur later than five (5) Business Days following Developer's receipt of PGCPs' comments. If the Parties are unable to reach an agreement on the design documents, the Parties shall use the dispute procedures set forth in Article 24 (Resolution of Disputes).

**7.5 Requirements for Registration of Designers.** The design of architectural, structural, mechanical, electrical, civil, or other engineering features of the Technical Requirements shall be accomplished or reviewed and approved by architects or engineers registered in the State to practice in the particular professional field involved.

#### **7.6 Design-Build Period Reserve Account.**

**7.6.1 Design-Build Period Reserve Amount.** The Escrow Agreement shall require that the Escrow Agent establish a separate interest-bearing account for the sole benefit of the Project (the "**Design-Build Period Reserve Account**"). On or before the Effective Date, Developer shall deposit Two Million Dollars (\$2,000,000.00) into the Design-Build Period Reserve Account. To the extent any funds remain in the Design-Build Period Reserve Account at the end of the Design-Build Period, PGCPs shall instruct the Escrow Agent to apply the remaining funds in the Design-Build Period Reserve Account to the final Milestone Payment. In the event the Termination Date occurs prior to the end of the Design-Build Period, PGCPs shall have the right to instruct the Escrow Agent to disburse such funds directly to PGCPs for use by PGCPs in its sole discretion. Developer shall not be permitted to claim, receive, or recover from PGCPs any compensation or reimbursement (outside of the Capital Charge and Services Charge) for expenditures made from the Design-Build Period Reserve Account in accordance with this Agreement.

**7.6.2 Use of Funds.** During the Design-Build Period, PGCPs may direct, in its sole discretion, that Developer use funds in the Design-Build Period Reserve Account for any purpose that PGCPs determines benefits the Project, including, but not limited to, funding compensation claims determined in accordance with Section 14.14 (Payments for Compensation Events and Other Additional Costs).

## **7.7 Governmental Approvals.**

**7.7.1 Developer Responsibility.** Developer shall obtain and maintain, at its sole expense, any Governmental Approvals required under Applicable Law for its development and operation of the Project and shall pay all fees, costs, and charges due in connection therewith. With PGCPs' prior written approval, and except with respect to trade permits, PGCPs may be listed as the owner on permit applications. Developer shall be responsible for complying with all terms and conditions of any Governmental Approvals at its sole expense. Subject to Section 7.7.2 (Limited Assistance by PGCPs), PGCPs will not co-sign or otherwise be identified as a responsible party for any such permits or activities that Developer conducts on or about the Sites. Developer shall manage the process of obtaining the Governmental Approvals in a manner which affords PGCPs a reasonable opportunity to review and comment upon such submittals and all material documentation submitted to and issued by any Governmental Authority in connection therewith. Where practicable, Developer shall provide PGCPs with advance notice of and an opportunity to jointly participate in meetings, including permit application meetings, with Governmental Authorities relating to the Project. Developer shall not knowingly take any action in any application, data submittal, or other communication with any Governmental Authority regarding the Governmental Approvals or the terms and conditions thereof that would impose any unreasonable cost or burden on PGCPs or that would contravene this Agreement. PGCPs reserves the right to reject, modify, alter, amend, delete, or supplement any information supplied, or term or condition proposed, by Developer which would have the effect described in the preceding sentence.

**7.7.2 Limited Assistance by PGCPs.** PGCPs shall, upon request by Developer, assign any Governmental Approvals it may have obtained in the name of any PGCPs Person, or execute applications for permits, as fee owner of the Land, to the extent required by the applicable Governmental Authority, at no cost, expense, obligation, or liability to PGCPs. Upon the reasonable request of Developer made directly to PGCPs, and at Developer's expense, PGCPs will provide Developer with existing relevant data and documents that are within PGCPs' custody or control or are reasonably obtainable by PGCPs and which are reasonably required in order for Developer to request or obtain Governmental Approvals required for its performance of the Design-Build Work. This covenant shall not obligate PGCPs to staff Developer's permitting or development efforts, to undertake any new studies or investigations with respect to the Project, or to affirmatively seek to obtain the issuance of any Governmental Approvals.

**7.7.3 Diligent Prosecution.** In no event shall Developer commence demolition, construction, or renovation at a Site until Developer has obtained all Governmental Approvals required for such work. Developer shall submit its applications for Governmental Approvals to the applicable Governmental Authority within a period of time that Developer reasonably believes

in good faith is sufficient to allow issuance of such Governmental Approvals prior to the date necessary to avoid the delay of any date set forth on the Construction Schedule. From and after the date of Developer's submission of an application for a Governmental Approval, Developer shall diligently prosecute such application until receipt of the Governmental Approval.

**7.7.4 Developer Assumption of Permitting Risk for Design-Build Work.**

Developer explicitly assumes the risk of obtaining and maintaining all Governmental Approvals needed to complete the Design-Build Work, including the risk of delay, non-issuance, or imposition of any term or condition in connection therewith by a Governmental Authority; provided, however, that in accordance with Article 16 (Relief Events), Developer may be afforded relief from the assumption of such risk in the event of the occurrence of a Governmental Delay or Change in Law Event. In assuming this risk, Developer acknowledges in particular that the Governmental Authority issuing any Governmental Approval may impose terms and conditions which require Developer to make changes or additions to the Project, the Sites, property adjacent to or near the Land, or Project operations which may increase the cost or risk to Developer of performing the Design-Build Work or Services, all of which costs or risks shall be for the account of and borne by Developer if said terms and conditions imposed by the Governmental Authority are in accordance with Applicable Law.

**7.8 Commencement and Prosecution of Design-Build Work.** Commencing on the Effective Date, Developer shall proceed to undertake, perform, and complete the Design-Build Work in accordance with the Contract Standards.

**7.8.1 Schedule for School Substantial Completions.** Developer shall commence construction of each School and shall thereafter diligently prosecute the same to School Substantial Completion, in each case, in accordance with the milestones and deadlines identified within the Construction Schedule, as such dates may be extended in accordance with this Agreement.

**7.8.2 Longstop Dates.** Failure to satisfy the School Occupancy Readiness Conditions for a School by the applicable Longstop Date shall constitute a Developer Default upon which PGCPS may terminate this Agreement for cause in accordance with Article 19 (Events of Default, Remedies, Termination, and Termination Compensation).

**7.8.3 Athletic Fields.** So long as Developer diligently prosecutes to completion, Developer may complete the relevant Athletic Field(s) at a School within eleven (11) months following the applicable School Occupancy Readiness Date.

**7.8.4 Existing Walker Mill Middle School Demolition.** So long as Developer diligently prosecutes to completion, Developer may demolish the school existing on the Walker Mill Middle School Land as of the Effective Date within eleven (11) months following the School Occupancy Readiness Date for Walker Mill Middle School.

**7.9 Construction Sequencing and Schedule.** Developer shall not be limited in the sequencing or staging of the Design-Build Work, except to the extent this Agreement or the Contract Standards impose limitations.

**7.10 Design-Build Work Plan.** The Design-Build Work Plan shall serve as the basis for coordination, advancement, and oversight of all activities relating to the performance of the Design-Build Work (as such plan may be amended, with PGCPs' written approval, the "**Design-Build Work Plan**").

**7.11 Quality Assurance and Quality Control.** Developer shall have full responsibility for quality assurance and quality control for the Design-Build Work, including compliance with the Design-Build Quality Management Plan set forth in Exhibit Q (Design-Build Quality Management Plan).

**7.12 Notice Prior to Construction Commencement.** Developer shall provide PGCPs with at least thirty (30) days' notice prior to commencing construction on any of the Sites and shall provide any additional notifications contemplated by the Community Engagement and Outreach Plan.

**7.13 Material and Technical Requirements.** For the Design-Build Work, Developer shall install the most recent model of any item prescribed by the Technical Requirements, subject to PGCPs' written approval. In the case where the most recent model has changed materially from that prescribed by the Technical Requirements, Developer shall install the closest match from the same model line or manufacturer, subject to PGCPs' written approval. In the case where the model prescribed by the Technical Requirements is unavailable, and there is no successor model available from the same manufacturer, Developer shall propose a substitute for PGCPs' written approval. Developer shall obtain PGCPs' written approval of selected items to be incorporated into the Design-Build Work to the extent any such selections deviate from the Technical Requirements, whether such deviation is caused by (i) Developer's requirement to use the most recent model as described above, (ii) Developer's requirement to use the closest match from the same model line or manufacturer as described above, (iii) due to an unavailability of an item required by the Technical Requirements as described above, or (iv) Developer's election. When requesting approval of any deviation from the Technical Requirements, Developer shall furnish to PGCPs the name of the manufacturer, the model number, and other information concerning the performance, capacity, nature, and rating of the machinery and mechanical and other equipment. Developer shall also obtain PGCPs' written approval of the material or articles which Developer contemplates incorporating into the Design-Build Work to the extent any such material or articles deviate from the Technical Requirements. When requesting approval, Developer shall provide full information concerning the material or articles. Developer shall ensure that when directed to do so, Developer shall submit samples for approval at Developer's expense, with all shipping charges prepaid. PGCPs shall respond in writing to any approval requested pursuant to this Section 7.13 (Material and Technical Requirements) no later than seven (7) days from receipt of Developer's written request; provided, however, if PGCPs does not approve within such seven (7) day period, such request shall be deemed to be rejected by PGCPs. Any structural components, mechanical systems, electrical system, plumbing systems, materials, parts, components,

equipment, and machinery so approved in writing by PGCPs to be incorporated into the Design-Build Work shall be deemed to be incorporated in the Technical Requirements from the date of such approval.

**7.14 Operation and Storage Areas.** Developer shall ensure that all Developer Persons shall, under procedures prescribed by PGCPs, use only established roadways and authorized staging and storage areas as set forth in the Staging Plan. When materials are transported in prosecuting the Design-Build Work, vehicles shall not be loaded beyond the loading capacity recommended by the manufacturer of the vehicle or prescribed by any federal or State law or regulation. When it is necessary to cross curbs or sidewalks, Developer shall protect them from damage. Developer shall promptly repair or cause to be repaired any damaged curbs, sidewalks, or roads caused by Developer's activities on the Sites.

**7.15 Removal of Construction Debris.** Developer shall at all times keep the Sites, including storage areas, free from accumulations of construction debris. Before completing the Design-Build Work, Developer shall remove from the Sites any rubbish, tools, scaffolding, equipment, and materials that were brought on the Sites by any Developer Person and that are not a portion of the Design-Build Work. Prior to each School Occupancy Readiness Date and upon completing the Design-Build Work, Developer shall leave the Design-Build Work area in a reasonably neat and orderly condition satisfactory to PGCPs.

**7.16 Accident Prevention and Coordination.** In accordance with its Safety Plan, Design-Build Quality Management Plan, and Design-Build Work Plan, Developer shall provide and maintain work environments and procedures which will (a) take reasonable steps during construction to safeguard the public, PGCPs Persons, and PGCPs property, materials, supplies, and equipment exposed to Developer operations and activities; and (b) minimize and coordinate with PGCPs in advance of any activities that may cause an interruption in PGCPs operations or disruption to PGCPs activities on Sites where existing schools remain in operation during the Design-Build Period. For these purposes, Developer shall: (a) provide appropriate safety barricades, signs, and signal lights; and (b) comply with Maryland Labor and Employment Article Title 5 and Title 6 and COMAR §§ 09.12.20 through 09.12.25, 09.12.31, 09.12.33, 09.112.35, 09.12.36, 09.12.38, and 29 CFR §§ 1910 and 1926. Developer shall insert this Section 7.16 (Accident Prevention and Coordination), with appropriate changes in the designation of the parties, in all construction subcontracts for the Project.

**7.17 Testing, Observations, Inspections, and Uncovering of Design-Build Work.**

**7.17.1 PGCPs Tests, Observations, and Inspections.** PGCPs reserves the right to oversee and to perform, at reasonable times and with reasonable notice, any inspections and tests, without reservation (to include civil, structural, mechanical, electrical, chemical, or other tests), as deemed necessary to assure that Developer is performing in accordance with this Agreement, including the Technical Requirements. Observations and inspections may be made on a daily basis on work performed at Developer's place of business or at any location where work is being performed in conjunction with this Agreement. Observations or inspections by PGCPs or its designated representatives (including employees, agents, representatives, and contractors,

which may be selected in PGCPs' discretion) are for the sole benefit of PGCPs and shall not (i) relieve Developer of responsibility for providing adequate quality control measures during the Term (including quality control for items covered by this Agreement that may be subcontracted); (ii) relieve Developer of responsibility for damage to or loss before Commissioning; (iii) constitute or imply Commissioning; or (iv) affect the continuing rights of PGCPs after Commissioning. Developer shall promptly furnish, at no cost to PGCPs, all facilities, labor, and material reasonably needed for safe access to the Design-Build Work and to perform such safe and convenient inspections and tests as may be required by PGCPs. PGCPs' costs of any such test, observation, or inspection shall be borne by PGCPs, unless such test, observation, or inspection reveals a material failure of the Design-Build Work to comply with this Agreement or Applicable Law, in which event Developer shall pay all reasonable costs and expenses of such observation, inspection, or test within ten (10) Business Days after receipt of an invoice from PGCPs. In the event that any requested test, observation, or inspection does not reveal any material failure or non-compliance as set forth herein, Developer may notify PGCPs of a Relief Event if applicable in accordance with Article 16 (Relief Events). Any such inspections shall be performed in accordance with any reasonable safety protocols established by Developer and shall not unreasonably interrupt, interfere with, or impede the performance of the Design-Build Work.

**7.17.2 Independent Engineer Tests and Inspection.** The Parties acknowledge the Independent Engineer Agreement allows the Independent Engineer, on the terms provided therein, to review the Design Documents to confirm compliance of the Project with the Technical Requirements; to conduct structural peer reviews; to test construction materials; and to inspect the Project during construction. The rights of PGCPs to review, comment on, test, or inspect the Design-Build Work shall apply notwithstanding the performance by the Independent Engineer or its subcontractors of similar duties.

**7.17.3 Developer Tests and Inspection; Design-Build Monitor.** Developer shall maintain an adequate inspection system and perform such inspections of any construction on the Sites regularly. Upon reasonable notice, PGCPs shall have the right to participate in any inspections or tests of the Design-Build Work performed by Developer or any Design-Build Monitor (defined below). To the extent Developer or a Financing Party retains a third-party monitor (each, a "**Design-Build Monitor**") to provide oversight of the Design-Build Work, Developer shall require (or shall require such Financing Party to require) that the Design-Build Monitor provide a copy of all determinations and documentation to PGCPs simultaneously with the provision of such determinations or documentation to Developer or such Financing Party, as applicable.

**7.17.4 Notice of Covering Design-Build Work.** Developer shall give PGCPs reasonable advance notice of its upcoming schedule with respect to the covering and completion of any Design-Build Work, and shall update such notice, if necessary, within a reasonable time period before such covering and completion. PGCPs shall give Developer reasonable notice (a minimum of forty-eight (48) hours) of any intended inspection or testing of such Design-Build Work in progress prior to its covering or completion, which notice shall be sufficient to afford PGCPs a reasonable opportunity to conduct a full inspection of such Design-Build Work. At PGCPs' written request, Developer shall take apart or uncover for inspection or testing any

previously-covered or completed Design-Build Work; provided, however, that PGCPs' right to make such requests shall be limited to circumstances where there is a reasonable basis for concern by PGCPs as to whether the disputed Design-Build Work complies with the requirements of this Agreement. The cost of uncovering, taking apart, or replacing such Design-Build Work along with the costs related to any delay in performing Design-Build Work caused by such actions, shall be borne as follows:

**7.17.4.1** by Developer, if such Design-Build Work was covered prior to any observation or test required by the Contract Standards or prior to any observation or test for which PGCPs was not provided reasonable advance notice hereunder and did not have the appropriate observers observe the test; and

**7.17.4.2** in all other cases, as follows:

(a) by Developer, if such observation or test reveals that the Design-Build Work does not comply with this Agreement; or

(b) by PGCPs, promptly following receipt of an invoice therefor from Developer, if such observation or test reveals that the Design-Build Work complies with this Agreement.

**7.17.4.3** In the event such Design-Build Work does comply with this Agreement, Developer may claim a Relief Event if applicable in accordance with Article 16 (Relief Events).

**7.18 Design-Build Security.** Developer shall maintain the Design-Build Security, or cause the same to be maintained, until the later of the Project Readiness Date or the date on which all Design-Build Work is completed.

**7.19 Additional Bond Security.** Developer shall promptly furnish replacement or additional security if (a) any surety upon any bond, or issuing financial institution for other security, furnished with this Agreement no longer meets the requirements of Design-Build Security, or (b) the value of the Design-Build Work to be performed under this Agreement is increased above the original Design-Build Agreement Price pursuant to a Change Order so that the penal sum of any bond becomes inadequate to cover the Design-Build Work outstanding for the Project, in which case, Developer shall ensure such penal sum is increased on a dollar for dollar basis.

**7.20 Design-Build Changes Requested by PGCPs.** Subject to Section 15.7 (Restrictions on Capital Modifications, Services Changes, and Design-Build Changes Directed by PGCPs), PGCPs shall have the right, but not the obligation, to make Design-Build Changes at any time prior to the applicable School Occupancy Readiness Date at its discretion for any reason whatsoever, whether and however the exercise of such rights affects this Agreement. Any such Design-Build Change and any related change in the terms and conditions of this Agreement shall be reflected in a Change Order. Developer may notify PGCPs of a Relief Event if applicable in

accordance with Article 16 (Relief Events) in connection with implementing a Change Order reflecting a Design-Build Change.

## **7.21 Correction of Design-Build Work.**

**7.21.1 Correction of Non-Conforming Design-Build Work.** Throughout the Design-Build Period, Developer, without charge, shall complete, repair, replace, restore, re-perform, rebuild, and correct promptly any Design-Build Work found by PGCPs not to conform with the Contract Standards.

**7.21.2 Election to Accept Non-Conforming Design-Build Work.** PGCPs may elect by Change Order, at Developer's request, to accept non-conforming Design-Build Work and charge Developer (through an Extraordinary Item) an amount agreed upon by the Parties by which the value of the Design-Build Work or Services has been reduced.

**7.21.3 Relation to Other Obligations.** The obligations specified in this Section 7.21 (Correction of Design-Build Work) establish only Developer's specific obligation to correct the Design-Build Work and shall not be construed to establish any limitation with respect to any other obligations or liabilities of Developer under this Agreement. This Section 7.21 (Correction of Design-Build Work) is intended to supplement (and not to limit) Developer's obligations under the Commissioning Tests, School Occupancy Readiness Conditions, and any other provisions of this Agreement or Applicable Law.

## **7.22 Furniture, Fixtures, and Equipment.**

**7.22.1 Required FF&E.** Subject to Section 7.22.2 (Moveable FF&E) regarding Moveable FF&E, Developer shall furnish, pay for, install, and maintain as part of the Maintained Elements all furniture, fixtures, and equipment required for the Project as set forth in the Required FF&E.

**7.22.2 Moveable FF&E.** Developer shall be responsible for selecting, after due consideration of PGCPs' input, and initially purchasing the Moveable FF&E from one of the Required Subcontractors listed in Exhibit BB (Required Subcontractors). Developer shall have no liability to PGCPs for any damages or losses that may occur as a consequence of Developer's purchasing of the Moveable FF&E from the Required Subcontractors. Unless otherwise agreed in writing by the Parties, Developer shall install the Moveable FF&E prior to each School Occupancy Readiness Date, and, following such installation of the Moveable FF&E at each School, Developer shall have no further responsibility with respect to the Moveable FF&E. Moveable FF&E shall be deemed to be part of the Project only to the extent of Developer's obligations with respect thereto as provided in this Section 7.22.2 (Moveable FF&E).

**7.23 Warranties of Design-Build Work.** Developer shall, for the protection of PGCPs, obtain from the Project Contractors, all Subcontractors, vendors, suppliers, and other persons from which Developer procures structures, improvements, fixtures, machinery, equipment, and materials to be incorporated in the Project such warranties and guarantees as are normally provided

with respect thereto or, to the extent superior in scope or length, as are specifically required in the Contract Standards, each of which shall either be assigned to PGCPS to the full extent of the terms thereof or shall list PGCPS as a third party beneficiary. No such warranty shall relieve Developer of any obligation hereunder, and no failure of any warranted or guaranteed structures, improvements, fixtures, machinery, equipment, or material shall be the cause for any increase in the Availability Payments or excuse any nonperformance of the Design-Build Work unless such failure is itself attributable to a Relief Event. Developer shall enforce such warranties and guarantees as provided in Section 11.5 (Developer Enforcement of Project Warranties).

**7.24 LEED Requirements.** Developer shall design and build each School in a manner sufficient to meet the LEED Requirements, but for the avoidance of doubt shall not be required to achieve certification from the U.S. Green Building Council. In the event the Independent Engineer determines that a School does not satisfy the intent of the LEED Requirements as of the School Occupancy Readiness Date for that School, Developer shall, within thirty (30) days of such determination (the “**LEED Cure Period**”), take such actions as are necessary to satisfy the intent of the LEED Requirements. If the Independent Engineer determines that a School still does not satisfy the intent of the LEED Requirements at the end of the LEED Cure Period, the Deductions set forth in Exhibit X-2 (Deductions) will apply until such time that the Independent Engineer notifies the Parties that the LEED Requirements have been achieved.

## **ARTICLE 8 SUBSTANTIAL COMPLETION**

**8.1 Conditions to Substantial Completion for the Schools.** For each School, “**School Substantial Completion**” shall occur only when all of the following conditions have been satisfied for such School, as determined by the Independent Engineer, except to the extent that any or all of such conditions have been waived by PGCPS:

**8.1.1 Physical Completion.** Design-Build Work of the applicable School, including any associated parking, is in all respects physically complete and in compliance with this Agreement, except for (a) the Commissioning Tests; (b) Punch List Items; (c) at Developer’s election, the Athletic Fields; and (d) if applicable, the Demolition Work associated with the school existing on the Effective Date on the Walker Mill Middle School Land;

**8.1.2 Maintained Elements.** The Maintained Elements for the School are installed such that the Maintained Elements are ready for use and defect free, except for Punch List Items and, at Developer’s election, the Athletic Fields;

**8.1.3 Safety and Security Systems.** The School’s security and safety systems are functional in accordance with the Technical Requirements; and

**8.1.4 Utilities.** All Utilities specified or required under this Agreement to be arranged for by Developer are connected and functioning properly.

**8.2 Notice of School Substantial Completion.** Developer shall give PGCPs and the Independent Engineer at least thirty (30) days' prior written notice of the expected date of each School Substantial Completion.

## **ARTICLE 9 COMMISSIONING**

**9.1 Commissioning Generally.** Developer shall comply with the Commissioning requirements of Exhibit R (Commissioning Requirements) and for each School shall, as provided therein:

(a) Prepare a detailed Commissioning Plan for the conduct of the Commissioning Tests, meeting the minimum requirements set forth therein;

(b) Include in the Commissioning Plan criteria for achieving the LEED Requirements for the School;

(c) Conduct Commissioning activities during design and construction for the School;

(d) Perform Commissioning Tests necessary to demonstrate School Occupancy Readiness for the School; and

(e) Conduct Commissioning Tests during the Commissioning Fine Tuning Period for the School.

**9.2 Commissioning Tests Report.** Promptly upon its completion of the Commissioning Tests for a School, Developer shall deliver to PGCPs and the Independent Engineer a copy of the Commissioning Tests report prepared by or on behalf of Developer pursuant to Exhibit R (Commissioning Requirements).

## **ARTICLE 10 OCCUPANCY READINESS**

### **10.1 Independent Engineer.**

**10.1.1 Independence and Qualifications.** In accordance with the Independent Engineer Agreement, the Independent Engineer is required to act impartially and independently of PGCPs and Developer in the performance of its duties as contemplated in this Agreement and the Independent Engineer Agreement. At all times, the Independent Engineer shall (i) possess skills in design review (including architectural review, structural peer review, and mechanical, electrical, and plumbing) for compliance with design requirements and technical specifications similar to the Technical Requirements, institutional building construction involving complex structural systems similar to the Schools, construction cost consulting, construction claims adjusting, and structural retrofit construction to act as the Independent Engineer; (ii) have a technical background and in-depth expertise with the Commissioning process related to recently constructed buildings of

similar complexity, size, and type to the Schools including verification techniques, functional performance testing, system equipment, and operation and maintenance knowledge; and (iii) bring a total building commissioning perspective to the Project and is knowledgeable in (and where applicable, federal, State, and local): (1) building fire codes; (2) water-based extinguishing systems; (3) detection systems; (4) LEED; (5) energy efficiency imperatives; and (6) other building requirements, which skills may be acquired through a joint venture, association or, with the approval of PGCPs and Developer, a subcontractor, or (b) any assignee or replacement permitted under this Agreement.

**10.1.2 Limitations.** Nothing in this Agreement shall be interpreted as giving the Independent Engineer any responsibility or authority for any aspect of the Design-Build Work, or as relieving Developer of its responsibility for the Design-Build Work as set forth in this Agreement, and neither Developer nor the Design-Builder nor any Subcontractor shall be entitled to rely on any advice or approvals that the Independent Engineer may give with respect to the Design-Build Work.

**10.1.3 Joint Approval Required.** PGCPs and Developer shall not, without the other's prior written approval, which approval shall not be unreasonably withheld or delayed:

- (a) terminate, repudiate, or discharge the Independent Engineer for any reason;
- (b) waive, settle, compromise, or otherwise prejudice any rights or claims which the other may have from time to time against the Independent Engineer;
- (c) amend or vary the terms of the Independent Engineer Agreement or the services to be performed by the Independent Engineer; or
- (d) enter into a separate agreement with the Independent Engineer in connection with the Project.

**10.1.4 Cooperation and Costs.** PGCPs and Developer shall cooperate with one another generally in relation to all matters within the scope of or in connection with the appointment of the Independent Engineer. All instructions and representations issued or made by either PGCPs or Developer shall be simultaneously copied to the other, and both PGCPs and Developer shall be entitled to attend all inspections undertaken by, or meetings involving, the Independent Engineer. Except as otherwise provided in the Independent Engineer Agreement, all costs (including legal fees of any counsel retained by the Independent Engineer) of the Independent Engineer shall be borne equally by Developer and PGCPs. Unless otherwise agreed to by the Parties in writing, the maximum costs payable by each Party to the Independent Engineer during the term of the Independent Engineer Agreement shall be the amount set forth in the Independent Engineer Agreement.

**10.1.5 Independent Engineer as Mediator Prior to Completion of Design-Build Work.** During the Design-Build Period, the Disputes Manager appointed in accordance

with the Independent Engineer Agreement shall act as the mediator for purposes of any mediation conducted under Section 24.3 (Mediation of Certain Disputes During the Design-Build Period).

**10.1.6 Replacement of Independent Engineer.** In the event that the Independent Engineer Agreement is terminated in accordance with the terms of the Independent Engineer Agreement or the Independent Engineer is otherwise unable or unavailable to perform its duties under the Independent Engineer Agreement, PGCPs and Developer shall cooperate with one another in order to appoint, in accordance with this Section 10.1.6 (Replacement of Independent Engineer), a replacement consultant to act as the Independent Engineer as soon as reasonably practicable. The replacement Independent Engineer shall be competitively selected and agreed to by both PGCPs and Developer, acting reasonably, and shall possess qualifications required by Section 10.1.1 (Independence and Qualifications). In the event that PGCPs and Developer are unable to agree within twenty (20) Business Days of the previous Independent Engineer's appointment expiring or being terminated, or within twenty (20) Business Days of the Independent Engineer's inability to perform its duties under the Independent Engineer Agreement, the matter may be resolved in accordance with Article 24 (Resolution of Disputes). To the extent possible, PGCPs and Developer shall work with the Independent Engineer in order for such Independent Engineer to continue to fulfill its obligations under the Independent Engineer Agreement until a replacement Independent Engineer is appointed by PGCPs and Developer.

## **10.2 School Occupancy Readiness Conditions.**

**10.2.1 Conditions.** For each School, the following conditions shall constitute the "School Occupancy Readiness Conditions," each of which shall be and remain satisfied in all material respects by Developer in order to achieve School Occupancy Readiness and establish the School Occupancy Readiness Date for that School:

(a) **Substantial Completion.** School Substantial Completion has occurred;

(b) **Ready for Use.** The Independent Engineer has issued a letter of confirmation to PGCPs indicating that the entirety of the School, including all buildings and systems as well as parking, but, if so elected by Developer, excluding the Athletic Fields, are ready for use for the purposes of all PGCPs Activities (except for Punch List Items, which in each case shall be in shell and core in accordance with the Contract Standards) and to the best of its knowledge have been designed and built in accordance with this Agreement;

(c) **No Encumbrances.** There are no encumbrances registered or recorded on the relevant Site, including any part of the School, other than Permitted Encumbrances;

(d) **Successful Commissioning.** Developer has completed Commissioning of the School in accordance with the relevant Commissioning Plan, and the Commissioning Tests have been successfully performed and satisfied for the School (subject to

such Commissioning which is identified in the relevant Commissioning Plan to be conducted after the School Occupancy Readiness Date);

(e) **Certificate of Use and Occupancy.** A temporary or final certificate of use and occupancy has been issued for the School by DPIE, and, to the extent a temporary certificate of use and occupancy has been issued, Developer has submitted to PGCPs a corrective action plan outlining the deficiencies with anticipated milestone dates;

(f) **Governmental Authority Readiness Confirmations.** All Governmental Authorities having jurisdiction have confirmed (and issued all pertinent Governmental Approvals or other documents in respect thereof) that all buildings and structures on the relevant Site are ready for occupancy;

(g) **Required Services Period Insurance.** Developer has obtained and submitted to PGCPs certificates of insurance for all Required Services Period Insurance;

(h) **Life Cycle Schedule.** Developer has delivered to PGCPs a Life Cycle Schedule for the School as required by Exhibit W (Services Requirements);

(i) **Start-Up Plan.** Developer has delivered to PGCPs a Start-Up Plan for the School as required by Exhibit W (Services Requirements);

(j) **Required FF&E.** Developer has procured and installed all Required FF&E; and

(k) **Establishment and Funding of the Services Period Reserve Account.** The Services Period Reserve Account shall be established and funded by Developer in accordance with Section 11.6.1 (Services Period Reserve Amount).

**10.2.2 “Ready for Use”.** For purposes of subsection (b) of Section 10.2.1 (Conditions), in determining whether the School or any Maintained Element is “ready for use,” the following factors shall be taken into account:

- (a) the requirements of this Agreement;
- (b) the ability of PGCPs Persons to access the School and the risk of injury to PGCPs Persons;
- (c) the security requirements set forth in the Technical Requirements are operational;
- (d) any apparent hazard or nuisance;
- (e) the need to conduct school operations in a reasonably quiet and stable environment free from dust, chemical, smoke, and other health and safety concerns;

(f) the proper installation of all Maintained Elements and Required FF&E, and the functionality of all Maintained Elements; and

(g) a temporary or final certificate of use and occupancy has been issued for the School by DPIE.

### **10.3 School Occupancy Readiness Certificates.**

**10.3.1 Independent Engineer Inspection.** For each School, upon request by Developer in accordance with the Independent Engineer Agreement, the Independent Engineer shall inspect the School as soon as possible but no later than five (5) Business Days following such a request and determine whether to issue the School Occupancy Readiness Certificate for the School in accordance with the Independent Engineer Agreement and this Agreement.

**10.3.2 Certificate Issuance.** If the Independent Engineer determines that the School Occupancy Readiness Conditions for a School have been satisfied or waived by PGCPs in accordance with Section 10.4.3 (Waiver of School Occupancy Requirements), the Independent Engineer shall deliver, within two (2) Business Days from the inspection referred to in Section 10.3.1 (Independent Engineer Inspection), a duplicate signed original School Occupancy Readiness Certificate for the School to PGCPs and Developer pursuant to the Independent Engineer Agreement.

**10.3.3 Deficiencies.** If, upon inspection and review, the Independent Engineer determines that any of the School Occupancy Readiness Conditions have not been satisfied for a School, the Independent Engineer shall as soon as possible, but no later than three (3) Business Days following the date on which the relevant issue is identified, deliver to PGCPs and Developer a School Occupancy Readiness Deficiency Report in accordance with the Independent Engineer Agreement detailing the deficiencies the Independent Engineer considers are required to be rectified by Developer in order for the School Occupancy Readiness Conditions to be satisfied. Within seven (7) Business Days of Developer's receipt of a School Occupancy Readiness Deficiency Report, Developer shall provide the Independent Engineer and PGCPs with details of all additional rectification actions that need to be performed by Developer at the relevant School to address all of the matters raised in the School Occupancy Readiness Deficiency Report, and Developer shall perform all such additional rectification actions. Upon Developer's notification of such rectification to the Independent Engineer in accordance with the Independent Engineer Agreement, the Independent Engineer, as soon as possible, but no later than three (3) Business Days following the date Developer provides such notification, shall review Developer's rectification actions and either issue a duplicate signed original School Occupancy Readiness Certificate for the School to PGCPs and Developer or issue a revised School Occupancy Readiness Deficiency Report.

**10.3.4 Effect of Issuance.** The School Occupancy Readiness Certificate shall establish the School Occupancy Readiness Date for the relevant School and be final and binding on PGCPs and Developer with respect to the occurrence of the School Occupancy Readiness Date for that School.

**10.3.5 Matters Not Affected by Certificate Issuance.** For any School, neither the issuance of the School Occupancy Readiness Certificate for the School, nor any use by PGCPs of any part of the School or the commencement of any PGCPs Activities under the terms of this Agreement, shall:

(a) limit the obligations of Developer under this Agreement, including its obligation to complete the Design-Build Work for the School in accordance with this Agreement and to remedy any defects, deficiencies, or items of outstanding Design-Build Work existing or discovered for the School prior to or after the date of the School Occupancy Readiness Certificate or the date of the Punch List for the School;

(b) be construed as an approval by PGCPs of the School or the manner in which the Design-Build Work has been carried out by Developer for the School; or

(c) have any effect other than as specified in Section 10.3.4 (Effect of Issuance).

**10.3.6 Retain Rights.** PGCPs shall retain all of its rights with respect to any matter not affected by the issuance of School Occupancy Readiness Certificates.

#### **10.4 Punch List Items.**

**10.4.1 Punch List.** For each School, the Independent Engineer, in consultation with PGCPs and Developer, shall, prior to inspection of a School to determine whether a School has met the School Occupancy Readiness Conditions, prepare a list of all Punch List Items (each, a “**Punch List**”) identified at that time and an estimate of the cost and the time for rectifying such Punch List Items. The Independent Engineer shall not withhold the School Occupancy Readiness Certificate by reason solely that there are Punch List Items for the School. For each School, the relevant Punch List shall be a statement of repairs, corrections, and adjustments to the Design-Build Work, and incomplete aspects of the Design-Build Work, which in the Independent Engineer’s opinion:

(a) Developer can complete within the timeframe established in accordance with Section 10.4.4 (Rectification of Punch List Items), and with minimal interference to the occupancy and use of the School; and

(b) would represent, to perform or complete, a total cost of not more than one percent (1%) of the portion of the Design-Build Agreement Price payable with respect to such School (unless PGCPs determines that a higher percentage is acceptable).

To the extent School Occupancy Readiness is achieved for any School on the basis of a temporary certificate of use and occupancy, the need to obtain a permanent certificate of use and occupancy from DPIE shall be included as a Punch List Item for that School.

**10.4.2 Minimal Impact on School Operations.** For each School, the Punch List shall contain the schedule for the completion and rectification of the Punch List Items for that

School. In determining the relevant time for rectifying Punch List Items, Developer shall schedule the completion and rectification of Punch List Items so as to minimize, to the greatest extent reasonably possible, any impairment of PGCPs Persons' use and enjoyment of the relevant School, disruption of the Services, and PGCPs Activities.

**10.4.3 Waiver of Occupancy Readiness Requirements.** For any School, PGCPs may, in its sole discretion, waive any School Occupancy Readiness Condition, and the failure to meet any such requirement shall constitute a Punch List Item for that School.

**10.4.4 Rectification of Punch List Items.** For each School, Developer shall complete and rectify all Punch List Items within one hundred and twenty (120) days after the relevant School Occupancy Readiness Date or such other earlier period as the Independent Engineer may specify in the Punch List for the School. Developer acknowledges and agrees that the completion and rectification of Punch List Items may require work outside of standard business hours in order to accommodate the efficient operation of the School and conduct of PGCPs Activities.

**10.4.5 Failure to Rectify Punch List Items.** In the event that Developer fails to complete and rectify the Punch List Items specified in the Punch List for a School within the time period specified pursuant to Section 10.4.4 (Rectification of Punch List Items) and upon not less than three (3) Business Days prior written notice from PGCPs:

(a) PGCPs may withhold from the Availability Payment a holdback amount that is two hundred percent (200%) of the amount estimated by the Independent Engineer for PGCPs to complete and rectify Punch List Items (to the extent then outstanding); and

(b) PGCPs may engage others to perform the work necessary to complete and rectify the Punch List Items, at the risk and cost of Developer, and PGCPs may deduct such cost from the holdback amount set forth in subsection (a) of this Section 10.4.5 (Failure to Rectify Punch List Items).

Upon completion and rectification of all of the Punch List Items for a School pursuant to this Section 10.4.5 (Failure to Rectify Punch List Items), PGCPs shall release to Developer the then remaining amount of the holdback related to the School. If the cost of such completion and rectification exceeds the amount of such holdback, then Developer shall reimburse PGCPs for all such excess cost. During the time period specified pursuant to Section 10.4.4 (Rectification of Punch List Items), Developer shall not incur any Deductions on account of any uncompleted or unrectified Punch List Items.

**10.5 Late Delivery Damages.** In the event that School Occupancy Readiness has not been achieved for a School by the applicable Scheduled School Occupancy Readiness Date, then PGCPs shall be entitled to deduct Late Delivery Damages from the applicable Milestone Payment until School Occupancy Readiness is achieved, or the One Million Dollars (\$1,000,000) per School cap on Late Delivery Damages is reached.

**10.6 Failure to Achieve School Occupancy Readiness by the Applicable Longstop Date.** In the event Developer fails to achieve School Occupancy Readiness by the applicable Longstop Date, a Developer Default hereunder shall be deemed to have occurred, and PGCPS may pursue all remedies available under Article 19 (Events of Default, Remedies, Termination, and Termination Compensation) in accordance with the terms thereof.

**10.7 Pre-Occupancy Period.**

**10.7.1 Developer Obligations.** During any Pre-Occupancy Period, Developer shall, with respect the applicable School:

**10.7.1.1** maintain possession of the School, which will remain closed for any business activity, including any PGCPs Activity and access by PGCPs Persons (except for Pre-Occupancy Period Activities);

**10.7.1.2** perform minimum facilities maintenance activities as are customarily required to keep a commercial building vacant but ready for occupation within thirty (30) days-notice, provided that no Deductions shall be applicable to the performance of such facilities maintenance provided during this period;

**10.7.1.3** consistent with its obligations under this Agreement throughout the Term, use care and diligence, and take all reasonable and appropriate precautions, to protect the School, the Site, and the public from loss, damage, or destruction; and

**10.7.1.4** insure the School against property and equipment perils on the terms set forth in Sections 1.1, 1.2 and 1.3 of Exhibit CC (Required Insurance).

**10.7.2 PGCPs Access Rights.** During any Pre-Occupancy Period, PGCPs shall only access the applicable School with prior notice to Developer, and accompanied by Developer authorized personnel for the limited purposes of (a) inspecting Site conditions, (b) preparing for an imminent commencement of PGCPs Activities, or (c) holding elections or other State or County activities (collectively, the “**Pre-Occupancy Period Activities**”); provided that any Direct Losses resulting from any activities set forth in (c) shall be paid for solely by PGCPs as a Compensation Event.

**10.7.3 Limitation on Compensation to Developer During the Pre-Occupancy Period.** During the Pre-Occupancy Period for a School, Developer shall bear all cost and expenses associated with the applicable School, including performing the obligations set forth in Section 10.7.1 (Developer Obligations), except as expressly provided below:

**10.7.3.1** Developer’s right if any to receive Delay Payments with respect to the School; and

**10.7.3.2** Developer’s right to claim compensation in accordance with Article 16 (Relief Events) with respect to a Relief Event that arises during the Pre-Occupancy Period. For purposes of determining whether Developer has a right to claim a Relief Event during

the Pre-Occupancy Period, but without limiting this Section 10.7.3 (Limitation on Compensation to Developer During the Pre-Occupancy Period), Developer’s performance of the obligations set forth in Section 10.7.1 (Developer Obligations) shall be considered part of the Design-Build Work.

For clarity, except as set forth above, PGCPs shall have no obligation to compensate Developer for any costs, expenses, losses or otherwise incurred by Developer with respect to a School during such School’s Pre-Occupancy Period, even in the event that a Pre-Occupancy Period for a School is needed, in whole or in part, due to such School’s Scheduled School Occupancy Readiness Date being extended. Developer’s right to compensation relief related to a Relief Event occurring before the Pre-Occupancy Period shall be limited to costs incurred by Developer prior to commencement of the Pre-Occupancy Period.

## **ARTICLE 11 SERVICES**

### **11.1 Developer Obligations.**

**11.1.1 Delivery of Services.** At all times during the Services Period, Developer shall provide the Services in accordance and compliance with the specifications set forth in Exhibit W (Services Requirements), the relevant Plans then in effect, and all other requirements of this Agreement. The Services shall include and Developer shall perform the facility maintenance services allocated to Developer in Appendix W-1 (Facilities Maintenance) to Exhibit W (Services Requirements) (the “**Facilities Maintenance**”) and the help desk services described in Appendix W-2 to Exhibit W (Services Requirements) (the “**Help Desk Services**”).

**11.1.2 Delivery of Plans.** Developer shall deliver the relevant Plans in accordance with Exhibit W (Services Requirements), update such Plans as required by Exhibit W (Services Requirements), and comply with the Plans.

**11.1.3 Additional Services.** Developer agrees that in addition to the Services Requirements, Developer will provide all other ancillary and additional services as may be reasonably required to achieve the standards and specifications set forth in this Agreement.

### **11.2 PGCPs Responsibilities.**

**11.2.1 Retained Responsibilities.** PGCPs will perform the PGCPs’ Retained Responsibilities related to the operations and maintenance of the Schools as set forth in Section 2.1 of Exhibit W (Services Requirements).

**11.2.2 PGCPs Not Responsible for the Services.** PGCPs’ rights of review, acceptance, approval, or confirmation of compliance with respect to any aspect of the Services will be for PGCPs’ benefit only, and no acceptance, approval, or confirmation of compliance by any PGCPs Person will in any way relieve Developer of its obligation for all aspects of the Services, except as may be expressly set forth in this Agreement or expressly waived by PGCPs in writing.

**11.3 Joint Technical Reviews.** In accordance with Section 1.3 of Exhibit W (Services Requirements), at the end of each five year period throughout the Services Period (the first such five year period commencing on the Project Readiness Date), Developer and PGCPs, supported by a mutually agreed and duly qualified Independent Inspector and such technical resources as are mutually deemed necessary, will conduct a Joint Technical Review of the Project. The Independent Inspector shall be experienced in conducting facility condition assessments for public schools.

**11.4 Unavailability Events and Performance Failures.**

**11.4.1 Deductions.** PGCPs shall have the right to impose Deductions for Unavailability Events and Performance Failures as and to the extent provided in Article 14 (Payments) and Exhibit X-2 (Deductions).

**11.4.2 Additional Developer Obligations.** In the event the same Unavailability Event or Performance Failure occurs repeatedly or persistently, and Developer is not excused from performance as a result of a Relief Event, Developer shall, in addition to incurring Deductions, take any action (including making all capital investments, improvements, or modifications, repairs, replacements, and operating and management practices changes) necessary in order to continue or resume performance hereunder and eliminate the cause of, and avoid or prevent recurrences of such Unavailability Event or Performance Failure. Further, if any such Unavailability Event or Performance Failure involves a violation of Applicable Law, Developer shall (a) promptly provide PGCPs, within twenty-four (24) hours, with copies of any notices sent to or received from any Governmental Authority having regulatory jurisdiction with respect to any violations of Applicable Law, and (b) pay any other resulting fines, levies, assessments, impositions, penalties, or other charges resulting therefrom.

**11.4.3 Minimizing Interruption to PGCPs Activities.** Developer shall perform its maintenance, repair, replacement, and related obligations, except for such maintenance, repair, replacement, and related obligations required in response to an Emergency Event, Unavailability Event, or Performance Failure, in a manner that minimizes disruption or interference with PGCPs Activities. Notwithstanding anything to the contrary in Section 2.6 (General Duty of PGCPs to Mitigate), and subject to Developer's rights set forth in Section 3.9 (Scheduling Services) in Exhibit W (Services Requirements), PGCPs has no obligation to conduct PGCPs Activities at a time or location or otherwise to accommodate any maintenance, repair, replacement, or related activities, except for such maintenance, repair, replacement, and related obligations required in response to an Emergency Event, Unavailability Event, or Performance Failure.

**11.5 Developer Enforcement of Project Warranties.** During the Term, Developer shall be responsible for meeting the maintenance obligations under all manufacturers' warranties on new equipment purchased and installed in the Project by Developer and shall be the agent of PGCPs in enforcing all equipment warranties and guarantees, including warranties and guarantees of the Design-Build Work obtained by Developer pursuant to Section 7.23 (Warranties of Design-Build Work). Developer shall not be required to commence or maintain any litigation with respect

to such warranties or guarantees but may do so in its sole discretion. Developer shall cooperate with and assist PGCPS if PGCPS seeks to enforce warranties and guarantees through litigation.

## **11.6 Services Period Reserve Account.**

**11.6.1 Services Period Reserve Amount.** The Escrow Agreement shall require that the Escrow Agent establish a separate interest-bearing account for the sole benefit of the Project (the “**Services Period Reserve Account**”). Developer shall deposit into the Services Period Reserve Account One Hundred and Fifty Thousand Dollars (\$150,000.00) on or before the Project Readiness Date, with a pro rata amount per School deposited on or before each School Occupancy Readiness Date. At the beginning of each subsequent Contract Year, Developer shall deposit such additional funds as are necessary so that there is One Hundred Fifty Thousand Dollars (\$150,000.00), Index-Linked, following the Project Readiness Date, or such lesser pro rata amount per School following each School Occupancy Readiness Date prior to the Project Readiness Date. To the extent any funds remain in the Services Period Reserve Account at the end of the Term, the balance in the Services Period Reserve Account shall be applied to the last Availability Payment. Developer shall not be permitted to claim, receive, or recover from PGCPS any compensation or reimbursement (outside of the Capital Charge and Services Charge) for expenditures made from the Services Period Reserve Account in accordance with this Agreement or contributions made to the Services Period Reserve Account by Developer in accordance with this Section 11.6.1 (Services Period Reserve Amount).

**11.6.2 Use of Funds.** During the Services Period, PGCPS may direct, in its sole discretion, that Developer use funds in the Services Period Reserve Account for any purpose that PGCPS determines benefits the Project, including, but not limited to funding compensation claims determined in accordance with Section 14.14 (Payments for Compensation Events and Other Additional Costs).

**11.7 Optional Shortened Services Period Following a Relief Event.** To the extent that (a) the School Occupancy Readiness Date for at least one School is achieved on July 15, 2023, and (b) there is at least one School that is a Delayed School Due to a Relief Event, then PGCPS, at its sole option, may exercise the option described in this Section 11.7 (Optional Shortened Services Period Following a Relief Event) as follows:

**11.7.1 Notice of Intent to Exercise Option.** On or before June 30, 2048, PGCPS may provide a written notice to Developer identifying that PGCPS desires that the Expiration Date remain June 30, 2053, despite the occurrence of a Delayed School Due to a Relief Event.

**11.7.2 Exercise of Option.** In order to exercise the option described in Section 11.7.1 (Notice of Intent to Exercise Option), on or before June 30, 2052, PGCPS shall make a lump sum payment to Developer in an amount equal to thirty-seven and two-tenths of a percent (37.2%) of the Services Charge payable for any Delayed School Due to a Relief Event for the period between July 1, 2053 and the Expiration Date had this option not been exercised (the “**Lump Sum Services Payment**”). In addition to the Lump Sum Services Payment, Developer shall be entitled to claim any Direct Losses, to be determined in accordance with Section 14.14

(Payments for Compensation Events and Other Additional Costs), resulting from the exercise of the option described in this Section 11.7 (Optional Shortened Services Period Following a Relief Event).

**11.8 Services Monitor.** To the extent Developer or a Financing Party retains a third-party monitor (each, a “**Services Monitor**”) to provide oversight of the Services, Developer shall require (or shall require the Financing Party to require) that (a) copies of all reports, determinations, and documentation provided to or produced by the Services Monitor are transmitted simultaneously to PGCPs, and (b) PGCPs have the right to participate, upon reasonable notice, in any inspections or tests performed by any Services Monitor.

## **ARTICLE 12 PROJECT FINANCING AND REFINANCING**

**12.1 Developer’s Obligations.** Developer shall be solely responsible for obtaining any financing for the development, design, and construction of the Project and the performance of Developer’s other obligations under this Agreement, which financing shall comply with all requirements of this Agreement. The financing on this Project shall not be cross-collateralized with any other project.

**12.2 PGCPs’ Obligations.** PGCPs agrees, to the extent consistent with Applicable Law, to cooperate with Developer with respect to Developer’s documentation reasonably necessary to obtain and maintain financing for the development, design, and construction of the Project and the performance of Developer’s other obligations under this Agreement. Nothing herein shall require PGCPs to provide any funding for the Project or to incur any obligations or liabilities or to take any action, give any consent, or enter into any document inconsistent with the provisions of this Agreement, it being understood, however, that the foregoing shall not be interpreted to excuse PGCPs from its obligation to pay Availability Payments or any other amounts due and owing hereunder from time to time. So long as any of Developer’s obligations under any Financing Document (other than inchoate contingent obligations) remains outstanding, PGCPs shall, unless directed otherwise by the Collateral Agent, cause the Escrow Agent to deposit all amounts payable by PGCPs under this Agreement into an account controlled by the Collateral Agent to be designated to PGCPs and the Escrow Agent by the Collateral Agent.

**12.3 No Recourse to PGCPs.** All debt or other financing obligations issued or incurred by Developer in connection with this Agreement or the Project shall be issued or incurred only in the name of Developer. PGCPs shall have no obligation to make payments on any such indebtedness or such other financing obligations, or to join in, execute, or guarantee any note or other evidence of indebtedness of Developer.

**12.4 Limited Recourse to Developer.** Notwithstanding anything herein to the contrary, the liability of Developer under this Agreement to PGCPs and each obligation of Developer hereunder owed to PGCPs (including, but not limited to its indemnity obligations) shall be “limited recourse obligations” and, accordingly, the sole source of satisfaction of such obligations shall be limited to Developer’s interest in (a) this Agreement; (b) the Project; and (c) Developer’s

other assets, if any. PGCPs shall not seek to obtain payment or recourse from any member or beneficial owner of Developer or nonprofit sponsor of Developer; recourse being limited to Developer's assets as set forth above. Notwithstanding anything herein to the contrary, no member, director, officer, or trustee of Developer or the beneficial owner or nonprofit sponsor of Developer shall have any personal liability whatsoever arising under this Agreement, and none of the assets of such members, directors, officers, or trustees shall be subject to judgment, foreclosure, or seizure by PGCPs for any matter arising under this Agreement.

**12.5 Financing Party.** During the Term, PGCPs acknowledges that, in connection with Developer's financing of the Project, Developer will grant a security interest to the Collateral Agent in all of Developer's rights, title, and interests in and to this Agreement. PGCPs, Developer, and the Collateral Agent shall execute a consent and estoppel in the form of Exhibit DD (Consent and Estoppel) to evidence PGCPs' (a) consent to any such financing; (b) consent to the conditional or collateral assignment of this Agreement to the Collateral Agent; and (c) certifications to the Lenders as to the status of this Agreement and the performance of Developer hereunder as of the date of such certification. Within ten (10) days after assigning or encumbering any portion of its interest in all or any portion of this Agreement, Developer shall furnish to PGCPs a written notice thereof (a) setting forth the name and address of the Collateral Agent; (b) setting forth the name and address of any Financing Party; and (c) certification provided by each Financing Party that such Financing Party is not a Prohibited Person. PGCPs agrees that Developer's assignment of, and grant of the security interest in and first lien over, all of Developer's rights, title, and interests in and to this Agreement, the performance by PGCPs, the Collateral Agent (on behalf of the Lenders), and Developer of their respective obligations hereunder, and the enforcement by the Collateral Agent (on behalf of the Lenders) of its rights under the Financing Documents, in each case, shall neither constitute a Developer Default or any other breach by Developer of this Agreement nor would, with the giving of notice or lapse of time or both, constitute a Developer Default or any other breach by Developer of this Agreement, nor require the consent of PGCPs, other than as provided herein.

## **12.6 Exercise of Remedies by Financing Party.**

**12.6.1 Succession in Ownership of Developer Interest.** If a Financing Party or any successor in interest after a Financing Party has succeeded to ownership of the Developer Interest by virtue of the default by Developer under this Agreement or otherwise, then this Agreement shall continue in full force and effect, so long as such Financing Party or such successor is diligently taking such action as is reasonable under the circumstances to cure all continuing Developer Defaults (excepting bankruptcy-type defaults) and such continuing Developer Defaults (excluding bankruptcy-type defaults) are in fact cured during the Cure Period. In such event, for the period of time during which a Financing Party or any successor succeeding to ownership of the Developer Interest continues to hold the Developer Interest, such Financing Party or such successor shall become liable and fully bound by the provisions of this Agreement, and PGCPs will attorn to such Financing Party and/or such successor for the balance of the Term and on all other terms and conditions herein set forth.

**12.6.2 Assignment of Other Developer Interests.** Developer shall be entitled to collaterally assign its interest in the Independent Engineer Agreement and the Escrow Agreement in connection with its financing of the Project. If at any time a Financing Party or its successor has succeeded to Developer's Interest in this Agreement, then Developer shall also be deemed to have assigned its rights, title, and interests in and to the Independent Engineer Agreement and the Escrow Agreement to such Financing Party or successor, as applicable.

## **12.7 Rights of Financing Party.**

**12.7.1 Intended Third-Party Beneficiary.** PGCPs and Developer agree that each Financing Party shall be a direct, intended third-party beneficiary of the provisions of this Article 12 (Project Financing and Refinancing) (inclusive of all other provisions of this Agreement necessary to give a Financing Party's rights under Article 12 (Project Financing and Refinancing) full force and effect) and to the extent a Financing Party is expressly granted other rights under this Agreement or succeeds to the Developer Interest for the purpose of enforcing the rights granted to it.

**12.7.2 PGCPs Lender Notice.** PGCPs shall provide written notice (a "PGCPs Lender Notice") with respect to any Developer Default to the Collateral Agent simultaneously with providing Developer such notice at the notice address provided pursuant to Section 12.5 (Financing Party), provided that delivery of the notice or failure to deliver notice to the Collateral Agent shall not extend the time for Developer to cure any default.

**12.7.2.1** A PGCPs Lender Notice shall contain a summary of the facts relating to the relevant event in order to assist each Financing Party in determining an appropriate course of action, which shall include (i) the unperformed obligations of Developer under this Agreement; (ii) any grounds for termination of this Agreement in sufficient detail, with applicable supporting documentation, and with references to the specific provisions of this Agreement, to enable each Financing Party to assess the scope and amount of any liability of Developer resulting therefrom; and (iii) all amounts then due and payable by Developer to PGCPs under this Agreement, if any, on or before the date of the PGCPs Lender Notice and which remain unpaid at such date and, by cross-reference to the applicable provision(s) of this Agreement, the nature of Developer's obligation to pay such amounts.

**12.7.2.2** PGCPs shall from time to time update any PGCPs Lender Notice issued as and when PGCPs becomes aware of any unperformed obligations of Developer (including non-payment of undisputed amounts that have become due) under this Agreement that were not specified in the relevant PGCPs Lender Notice.

**12.7.2.3** For the avoidance of doubt, nothing in this Section 12.7.2 (PGCPs Lender Notice) shall prevent the concurrent running of multiple PGCPs Lender Notices.

### **12.7.3 PGCPS Prospective Termination Notice.**

**12.7.3.1** PGCPS shall not terminate or deliver any notice having the effect of terminating this Agreement or take any Restricted Action without giving to the Collateral Agent written notice (a “**PGCPS Prospective Termination Notice**”) stating:

12.7.3.1.1 that a Developer Default has occurred and the proposed Termination Date, which will not be sooner than one hundred and eighty (180) days after the PGCPS Prospective Termination Notice; and

12.7.3.1.2 the grounds for termination in reasonable detail, with supporting documentation, and with reference to the specific provisions of this Agreement, including: (i) the nature of any Developer Default forming the basis of such notice and the resulting grounds for termination of this Agreement so as to enable Developer and each Financing Party to assess the scope and amount of any liability of Developer resulting therefrom; (ii) the nature and amount of all amounts then due and payable by Developer to PGCPS under this Agreement, if any, on or before the date of the PGCPS Prospective Termination Notice and which remain unpaid at such date; and (iii) a reasonably estimated amount of any amounts PGCPS reasonably foresees shall become due and payable from Developer to PGCPS under this Agreement.

**12.7.3.2** PGCPS shall not terminate or deliver any notice that would have the effect of terminating this Agreement or take any Restricted Action that would have the effect of terminating this Agreement prior to the expiration of the one hundred and eighty (180) day period referred to in Section 12.7.3.1.1; provided, however, that until the expiration of such period, PGCPS shall be entitled to require Developer to remedy any Developer Default and, subject in each case to the rights of each Financing Party (including specifically any rights that each Financing Party has under this Agreement that may or must precede exercise of any of the following rights by PGCPS), PGCPS shall be entitled to exercise all rights under this Agreement other than termination of this Agreement.

**12.7.4 Indicative Notice.** At any time upon the occurrence of a Developer Default, the receipt of a PGCPS Prospective Termination Notice, or an event of default under the Financing Documents, the Collateral Agent may, without limiting any other of a Financing Party’s rights and remedies, give notice to PGCPS of its intention to nominate a representative of the Collateral Agent, on behalf of the Lenders, to step-in in accordance with Section 12.8 (Collateral Agent Step-In) (an “**Indicative Step-In Notice**”) or to effectuate a substitution for Developer in accordance with Section 12.10 (Substitution of Developer) (an “**Indicative Substitution Notice**”).

**12.7.5 Withdrawal Notice.** If at any time after the giving of an Indicative Step-In Notice, Indicative Substitution Notice, or a PGCPS Prospective Termination Notice, the Collateral Agent has determined that it is not, or is no longer, considering appointing a representative or effecting a substitution of Developer’s rights and liabilities under this Agreement with a Suitable Substitute Developer in accordance with this Agreement, the Collateral Agent shall give PGCPS notice (a “**Withdrawal Notice**”), and thereafter the provisions of this Article 12 (Project Financing and Refinancing) shall not be applicable with respect to the event that led to

such Indicative Step-In Notice, Indicative Substitution Notice, or PGCPs Prospective Termination Notice, and PGCPs shall have the right to take any and all action available to it under this Agreement as of the effective date of the Withdrawal Notice.

**12.7.6 Right to Cure.** A Financing Party shall have the right (but not the obligation) to take such actions as may be necessary, in their sole discretion, to cure or cause Collateral Agent to cure on their behalf, a Developer Default prior to any Step-In Period and without the necessity of issuing an Indicative Step-In Notice or Indicative Substitution Notice. Prior to exercising any such right, the Collateral Agent shall deliver a written notice thereof to PGCPs (a “**Cure Notice**”). PGCPs will accept performance by or on behalf of a Financing Party as performance by Developer. Any acts by or on behalf of a Financing Party in the exercise of such right shall be deemed to be acts of Developer for the purposes of this Agreement, including the indemnity provisions hereof. Any payment to be made or action to be taken by a Financing Party hereunder as a prerequisite to keeping this Agreement in effect shall be deemed properly to have been made or taken by such Financing Party if such payment is made or action is taken by a nominee, agent, or assignee of the rights of such Financing Party. Any exercise of a Financing Party’s rights to cure hereunder shall not result in the assumption by such Financing Party of Developer’s obligations hereunder. A Financing Party may exercise such rights for a period (the “**Cure Period**”) commencing on the date of delivery of a Cure Notice and ending on the earlier of: (a) the Step-In Date; (b) the date of delivery of a Withdrawal Notice; or (c) one hundred and eighty (180) days following the delivery of a PGCPs Prospective Termination Notice.

**12.7.7 No Material Modifications.** PGCPs will not accept any election to terminate this Agreement by Developer or enter into any amendment or modification of this Agreement that could adversely impact a Financing Party without the prior written consent thereto of the Collateral Agent.

**12.7.8 No Requirement to Perform.** Nothing herein shall be construed to require a Financing Party to perform any obligations of Developer under this Agreement or otherwise to cure any default of Developer, but only grants to such Financing Party the option to do so, and the exercise by such Financing Party of its rights and remedies under the Financing Documents shall not constitute an assumption of Developer’s obligations under this Agreement (except to the extent such obligations are expressly so assumed by an instrument in writing executed by such Financing Party).

**12.8 Collateral Agent Step-In.** The Collateral Agent may give PGCPs notice (a “**Step-In Notice**”) at any time during an Indicative Step-In Notice Period or a PGCPs Prospective Termination Notice Period, as the case may be. The Step-In Notice shall (a) state that the Collateral Agent intends to exercise its step-in rights under this Agreement, and (b) identify the Appointed Representative. From the Step-In Date through the Step-Out Date, the Appointed Representative shall be entitled to exercise and enjoy the rights and powers of Developer under this Agreement, including any rights to cure a Developer breach and to address any PGCPs notices then delivered by PGCPs to Developer or to Collateral Agent during the Step-In Period, and shall perform Developer’s obligations under this Agreement. During the Step-In Period, PGCPs shall interact with the Appointed Representative and not Developer, and PGCPs’ receipt of the Step-In

Notice shall be, and be deemed to be, a good and effective discharge of a Developer obligation under this Agreement.

**12.9 Collateral Agent Step-Out.** The Collateral Agent or the Appointed Representative may at any time during the Step-In Period deliver to PGCPS a written notice (a “**Step-Out Notice**”) which specifies the Step-Out Date. Upon the expiration of the Step-In Period: (a) PGCPS shall be released from all obligations under this Article 12 (Project Financing and Refinancing) to the Authorized Representative arising from and after the effective date of the step-out set out in the Step-Out Notice; (b) the Authorized Representative shall be released from all obligations and liabilities under this Article 12 (Project Financing and Refinancing) to PGCPS arising from and after such date; and (c) PGCPS shall no longer interact with the Appointed Representative and shall interact with Developer in connection with this Agreement. Developer shall continue to be bound by the terms of this Agreement notwithstanding the giving or occurrence of a Cure Notice, an Indicative Notice, a Step-In Notice, a Step-In Period, a Step-Out Notice, a Step-Out Date, any action by the Collateral Agent, Appointed Representative, or any Financing Party, and Developer shall be liable for any and all obligations and liabilities arising under this Agreement prior to the expiration of the Step-in Period from actions or inactions of the Collateral Agent, the Appointed Representative, or any Financing Party. Developer shall remain liable for any unpaid undisputed amounts due and payable to PGCPS by Developer under this Agreement.

**12.10 Substitution of Developer.** At any time (a) upon the occurrence of a Developer Default, and where relevant to such a Developer Default, during the continuance of a Developer Default, or (b) during the Step-In Period, the Collateral Agent may, on thirty (30) days prior written notice to PGCPS and any Appointed Representative, cause the assignment of Developer’s rights and liabilities under this Agreement, and all of Developer’s right, title, and interest in this Agreement to a Suitable Substitute Developer in accordance with the provisions of this Section 12.10 (Substitution of Developer). Upon any substitution referred to in this Section 12.10 (Substitution of Developer) becoming effective, (a) Developer and PGCPS shall retain their obligations under this Agreement to each other, including with respect to indemnification under this Agreement whether arising prior to or following such substitution, and the Suitable Substitute Developer shall not acquire any liability to PGCPS with respect to such obligations; (b) the Suitable Substitute Developer and PGCPS shall assume all new obligations under this Agreement from and after the applicable substitution date and shall cure all continuing Developer Defaults (excepting bankruptcy-type defaults) within the Cure Period; (c) any subsisting ground for termination of this Agreement by PGCPS shall be deemed to have no effect and any subsisting Termination Notice will be automatically revoked to the extent that the continuing Developer Defaults (excepting bankruptcy-type defaults) are cured within the Cure Period; and (d) any Deduction or series of Deductions or consequences arising under this Agreement resulting from any Unavailability Events or Performance Failures hereunder that arose prior to that time, shall not apply to the Suitable Substitute Developer after the substitution.

## **12.11 Specific Covenants.**

### **12.11.1 PGCPS Covenants.** PGCPS agrees that PGCPS shall:

**12.11.1.1** As soon as is reasonably practicable, at Developer's expense and following completion of any internal approvals as may be required by PGCPS, take whatever action any Financing Party, an Appointed Representative, or a Suitable Substitute Developer may reasonably require for perfecting any assignment, transfer, or release under this Agreement, including the execution of any transfer or assignment, and the giving of any notice, order, or direction and the making of any registration which, in each case, such Financing Party, Appointed Representative, or Suitable Substitute Developer reasonably requires; and

**12.11.1.2** Not, prior to the date the Collateral Agent has notified PGCPS in writing that the Senior Debt has been discharged, unless the Collateral Agent has consented in writing (acting reasonably): (i) appoint any trustee, receiver, liquidator, sequestrator, administrator, or other custodian in connection with the bankruptcy of Developer or any of its assets; or (ii) commence any formal step (including petition, proposal, application, convening of a meeting, or other proceeding) taken with a view to or for the purpose of considering, or seeking any order or resolution in connection with, or enter into any formal agreement regarding, a dissolution, bankruptcy, receivership, winding-up, liquidation, administration, or other similar proceedings or any other proceeding seeking a stay of proceedings, reorganization, debt arrangement, compromise of the claims of creditors or any distribution of assets in respect of Developer (whether voluntary or involuntary) made or commenced by any party under the United States Bankruptcy Code, 11 U.S.C. § 101 et seq., as amended from time to time and any successor statute thereto, or any similar state law relating to bankruptcy, insolvency, the rights and remedies of creditors, the appointment of receivers or the liquidation of companies and estates that are unable to pay their debts when due.

**12.11.2 Collateral Agent Covenant.** In its appointment as Collateral Agent, Developer shall require that the Collateral Agent notify PGCPS of any decision by a Financing Party to exercise its remedies of cure, step-in, or substitution of Developer under the Financing Documents upon the Collateral Agent's receipt of written notice thereof.

**12.12 New Agreement.** In the event this Agreement shall be terminated by rejection, or otherwise, during a case in which Developer is the debtor under Title 11, United States Code, or other similar federal or state statute, then PGCPS shall, at the option of a Financing Party, upon notice of such Financing Party to PGCPS given within thirty (30) days thereafter, enter into a new agreement with such Financing Party having terms substantially identical to this Agreement, pursuant to which such Financing Party shall have all of the rights and obligations of Developer hereunder.

## **12.13 Refinancing.**

**12.13.1 Consent Required for Refinancing.** Developer shall not enter into any Refinancing other than an Exempt Refinancing without the prior written consent of PGCPS,

provided that PGCPs' consent to any Refinancing will not be unreasonably withheld or delayed if such Refinancing occurs after the Project Readiness Date, has no material and adverse effect on Developer's ability to perform its obligations under this Agreement, and does not increase any liability or potential liability of PGCPs (unless PGCPs is specifically compensated for such liability or potential liability).

**12.13.2 PGCPs' Share of Refinancing Gain.** PGCPs shall be entitled to receive a fifty percent (50%) share of any Refinancing Gain arising from a Qualifying Refinancing, to be determined as set forth in Article 3 of Exhibit V (Calculation and Payment of Refinancing Gains).

**12.13.3 Developer Proposal to Refinance.** Developer shall promptly provide PGCPs with full details of any proposed Qualifying Refinancing, as set forth in Article 2 (Data and Projections Required for the Calculation of Refinancing Gain) of Exhibit V (Calculation and Payment of Refinancing Gains). PGCPs shall (before, during, and within two years after any Qualifying Refinancing) have unrestricted rights of audit over any proposed Financial Model, books, records, and other documentation (including any aspect of the calculation of the Refinancing Gain) used in connection with such Qualifying Refinancing.

**12.13.4 Payment to PGCPs.** Payment to PGCPs of its portion of any Refinancing Gain shall be made as set forth in Article 5 (Payment of PGCPs' Portion of Refinancing Gain) of Exhibit V (Calculation and Payment of Refinancing Gains).

**12.13.5 Calculation of Refinancing Gain.** The Refinancing Gain shall be calculated as set forth in Article 3 (Calculation of the Refinancing Gain) of Exhibit V (Calculation and Payment of Refinancing Gains).

**12.13.6 PGCPs Cooperation.** PGCPs shall cooperate, as reasonably requested by Developer, in connection with the closing of any Refinancing, including providing customary legal opinions and instruments and other documents; provided, however, that PGCPs shall not incur any costs or expenses in connection with any Refinancing.

## **ARTICLE 13 FINANCIAL MODEL**

### **13.1 Financial Model.**

**13.1.1 Copy Received.** The Financial Model has been provided electronically to PGCPs and is deemed incorporated herein as Exhibit U (Financial Model and Related Information). A summary of such information is included in Exhibit U (Financial Model and Related Information). The Financial Model is considered proprietary to Developer and its contents shall be treated as Confidential Information by all PGCPs Persons.

**13.1.2 Risk of Errors or Omissions.** Developer shall bear the entire risk of any errors in or omissions from the Financial Model and shall not be entitled to any compensation from

or other redress against PGCPs in relation to any loss or damage that it suffers in consequence of such error or omission.

**13.1.3 No Guaranteed Return.** In no event shall the agreement of the Parties to establish and maintain the Financial Model for certain purposes hereunder be construed to mean that Developer is entitled to receive a guaranteed rate of return on equity invested in connection with the Project.

## **13.2 Financial Model Updates.**

**13.2.1 Updates.** The Financial Model shall only be updated in the following circumstances:

(a) in connection with a Qualifying Refinancing in accordance with Section 12.13 (Refinancing); or

(b) as otherwise required from time to time, to reflect changes as required by this Agreement, upon agreement of both Parties.

The Financial Model update shall only incorporate (a) changes to revenues and expenses that arise directly from the circumstances described above, and (b) consequential changes to the Senior Debt draw down schedule, funding and release of reserves, financing costs, debt service profile, equity draw down schedule, and Developer's profile of Distributions. The Financial Model update shall not (x) generally update projections through the end of the Term based on current market conditions, or (y) incorporate information or assumptions based on Developer's actual financial performance, except by mutual agreement as set forth in Article 2 (Data and Projections Required for the Calculation of Refinancing Gain) of Exhibit V (Calculation and Payment of Refinancing Gains). Following approval by PGCPs, the Financial Model update shall become the Financial Model and shall be attached to this Agreement.

**13.2.2 Financial Model Audits.** Any Financial Model update required under Section 13.2 (Financial Model Updates) shall be audited by an independent audit firm, and Developer shall deliver a copy of the firm's audit and opinion to PGCPs prior to such Financial Model update becoming effective under this Agreement. In such a case, Developer shall solely bear the cost of the audit.

**13.2.3 Developer Preparation.** Developer shall prepare the Financial Model updates and shall provide PGCPs with each Financial Model update and a complete set of the updated and revised assumptions, and other data that form a part of the Financial Model as updated, including updated and revised projections and calculations with respect to revenues, expenses, the repayment of Senior Debt and Distributions.

**13.2.4 Access and Challenges.** PGCPs shall have the right at all times to gain access, on an open book basis, to the Financial Model and each Financial Model update and the set of updated and revised assumptions and other data that form part of each such model. PGCPs

shall have the right to challenge the validity, accuracy, or reasonableness of any Financial Model update or the related updated and revised assumptions and data. In the event of a challenge, the immediately preceding Financial Model version that has not been challenged shall remain in effect pending the outcome or the challenge or until a new Financial Model update is issued and unchallenged.

**13.2.5 Changes to Financial Model Formulas.** In no event shall the Financial Model formulas be changed except with the prior written agreement of both Parties.

**13.2.6 PGCPs Audit.** Prior to making any use of the output of the Financial Model, PGCPs may, at its own expense, review and audit the Financial Model and all amendments and updates thereto prepared by Developer. Developer shall provide such information as is reasonably required by PGCPs to conduct such audit on an annual basis and as otherwise required from time to time.

## **ARTICLE 14 PAYMENTS**

**14.1 Use of Escrow Agent.** PGCPs has decided, for its convenience, to use the Escrow Agent and requested that Developer and the Escrow Agent enter into the Escrow Agreement as a mechanism to effect such payments. PGCPs will deposit, or cause to be deposited, into the Escrow Account all funds due to Developer under this Agreement at least two (2) Business Days prior to any payment by PGCPs becoming due to Developer, and, as of the Commercial Close Date, anticipates depositing such funds prospectively on a quarterly basis. Notwithstanding the foregoing, the use of the Escrow Agent shall not excuse, delay, or impede the making by PGCPs of any payment to which it is obligated under this Agreement. If the Escrow Agent fails to make any payment when due on behalf of PGCPs as contemplated in this Agreement or the Escrow Agreement, then PGCPs shall make such payment within seven (7) Business Days following Developer's written demand.

**14.2 Progress Payment.** Within fifteen (15) days after receiving a written notice from Developer, certified by the Independent Engineer, identifying that fifty percent (50%) of the Design-Build Agreement Price has been expended, PGCPs shall pay a Progress Payment in the amount of Fifteen Million Dollars (\$15,000,000.00) to Developer. Notwithstanding Section 14.1 (Use of Escrow Agent) and this Section 14.2 (Progress Payment), PGCPs may withhold the Progress Payment if and so long as a Developer Default has occurred and continues without the circumstances giving rise to the Developer Default being fully cured, rectified, or remedied by Developer.

### **14.3 Milestone Payments.**

**14.3.1 Milestone Payments.** Subject to the limited exceptions set forth in Section 14.3.2 (Exceptions to Timing of Milestone Payment Notices Due to Relief Events), and in accordance with Section 14.3.3 (Payment), PGCPs shall pay Developer Milestone Payments equal to Five Million Dollars (\$5,000,000.00) per School, as such amount may be offset in accordance

with this Agreement, within fifteen (15) days after receiving a written notice from Developer (the “**Milestone Payment Notice**”) identifying that the School Occupancy Readiness Date has been achieved for a School.

**14.3.2 Exceptions to Timing of Milestone Payment Notices Due to Relief Events; Limitation on Compensation.** Notwithstanding Section 14.3.1 (Milestone Payments), in the event that the Scheduled School Occupancy Readiness Date for a School is extended beyond July 15, 2023 due to a Relief Event, Developer may deliver to PGCPs a Milestone Payment Notice with respect to such School(s) upon the later of (i) the School achieving School Substantial Completion, as certified by the Independent Engineer, or (ii) July 15, 2023. The right to payment of the Milestone Payment in accordance with this Section 14.3.2 (Exceptions to Timing of Milestone Payment Notices Due to Relief Events; Limitation on Compensation) shall be Developer’s sole remedy with respect to any change in the timing of receipt of such Milestone Payment due to a Relief Event.

**14.3.3 Payment.** Within fifteen (15) days after receiving a Milestone Payment Notice, PGCPs shall pay Developer the Milestone Payment, as such amount may be offset in accordance with this Agreement. Notwithstanding Section 14.1 (Use of Escrow Agent) and this Section 14.3.3 (Payment), PGCPs may withhold any Milestone Payment if and so long as a Developer Default has occurred and continues without the circumstances giving rise to the Developer Default being fully cured, rectified, or remedied by Developer, and PGCPs may withhold any funds from the Milestone Payment as authorized herein.

**14.4 Availability Payments.** Beginning on the first Billing Period that Availability Payments can be made and through the Termination Date, on a monthly basis, PGCPs shall pay the Availability Payment due to Developer in accordance with this Agreement. For avoidance of doubt, there shall be no right to receive or otherwise claim the School Capital Charge amounts listed in Table 2 of Exhibit X-1 (Payment Calculations) or School Services Charge for any period of time prior to any School Occupancy Readiness Date for a particular School.

**14.4.1 Availability Payments Calculation.** Availability Payments shall be calculated and earned by Developer according to the methodology set forth in this Section 14.4 (Availability Payments) and Exhibit X-1 (Payment Calculations).

**14.4.2 Availability Payment Formula.** The Availability Payment shall be calculated in accordance with the following formula, as more specifically defined in Exhibit X-1 (Payment Calculations):

$$AP = (\sum SAP) - CO \pm NA$$

Whereby,

AP = Availability Payment

SAP = School Availability Payment

CO = Carry Over  
NA = Net Adjustments

Whereby,

SAP = (SCC + SSC)

Whereby,

SCC = School Capital Charge

SSC = School Services Charge

**14.4.3 Net Adjustments and Carry Over.** The “**Net Adjustments**”, which may be a charge or a credit, shall be calculated in accordance with the following formula, as more specifically defined in Exhibit X-1 (Payment Calculations):

NA = DC ± EI

Whereby,

NA = Net Adjustments

DC = Deductions Credit

EI = Extraordinary Items

Where the Net Adjustments in a Quarterly Net Adjustments Report reflect a payment owed by Developer, such NA amount shall be referred to as an “**NA Credit**,” and where the Net Adjustments in a Quarterly Net Adjustments Report reflect a payment owed by PGCPS, such NA amount will be referred to as an “**NA Charge**.”

**14.4.3.1 Limit on Monthly Availability Payment Adjustments.** It is the intent of the Parties that Carry Over and NA Credit amounts not be applied to the Capital Charge in any given Billing Period. Therefore, for any Billing Period, the maximum Carry Over and NA Credit amounts that can be applied is an amount equal to the Services Charge for that Billing Period (the “**Availability Payment Credit Cap**”). Any Carry Over amounts created as a result of the Availability Payment Credit Cap shall be billed monthly with interest from the date created until paid at the Overdue Rate during the next Billing Period(s) (together with any preexisting Carry Over) until fully paid, subject to the Availability Payment Credit Cap. The Services Charge for any given Billing Period shall be first reduced by any applicable Carry Over generated from prior Billing Periods before applying any NA Credit and determining any new Carry Over amounts. Any Carry Over remaining after the final Billing Period shall be paid from Developer to PGCPS within ten (10) Business Days of the Termination Date.

**14.4.3.2 NA Charges Cap.** During each Contract Year, the maximum NA Charges that PGCPs expects to be able to pay on a non-deferred basis on account of Services Additional Compensation Amounts is an amount equal to one percent (1%) of the expected Capital Charge and Services Charge to be paid by PGCPs during the Contract Year (without considering any Net Adjustments or Carry Over amounts applied to such Services Charges), plus any amounts available in the Services Period Reserve Account that PGCPs elects to apply towards NA Charges (the “**NA Charges Cap**”). If the Services Additional Compensation Amounts for a given Contract Year exceed the NA Charges Cap for that Contract Year, then any NA Charges in excess of the NA Charges Cap that accrue during the remainder of such Contract Year shall be paid as a deferred lump sum payment (subject to Section 14.14.5 (Deferral of Compensation) and Section 14.14.6 (Restoration of Financial Balance for Deferral of Compensation)) in the form of an Extraordinary Item to be included either (i) on the first Monthly Billing Statement of the succeeding Contract Year for those excess amounts that have been agreed to by the Parties in accordance with Section 14.14.1 (Price Negotiations) or substantiated by Developer in accordance with Section 14.14.2 (Costs Requiring Cost Substantiation), in either case, prior to September 15 of the current Contract Year, or (ii) on the first Monthly Billing Statement of the second succeeding Contract Year for those excess amounts that have been agreed to by the Parties in accordance with Section 14.14.1 (Price Negotiations) or substantiated by Developer in accordance with Section 14.14.2 (Costs Requiring Cost Substantiation), in either case, after September 15 of the current Contract Year. For the avoidance of doubt, any Design-Build Additional Compensation Amounts shall not be considered in determining whether the NA Charges Cap has been exceeded during any Contract Year, as Design-Build Additional Compensation Amounts will be paid pursuant to the payment schedule and method established in accordance with Section 14.14.3 (PGCPs Payment Methods).

**14.5 Limitation on Payments.** Other than the payments and compensation amounts expressly provided for in this Agreement, Developer shall have no right to any further payment from PGCPs in connection with the Design-Build Work and Services or otherwise in connection with the Project.

**14.6 Monthly Billing Statements.** For each Billing Period, Developer shall provide PGCPs an invoice by the fifteenth (15<sup>th</sup>) day of the Billing Period (each, a “**Monthly Billing Statement**”) setting forth the amount of the Availability Payment, Relief Payment(s), and/or Delay Payment(s) due with respect to such Billing Period. Except for Monthly Billing Statements that must reflect Net Adjustments in accordance with Section 14.7 (Quarterly Net Adjustments Report), the Monthly Billing Statement shall set forth the amount of the Availability Payment due without Net Adjustments but including any Carry Over that can be applied. For Monthly Billing Statements that must reflect Net Adjustments in accordance with Section 14.7 (Quarterly Net Adjustments Report), the Monthly Billing Statement shall reflect the applicable Net Adjustments amount and, in addition, shall separately reflect, as applicable, any preexisting Carry Over amount from prior Billing Periods, any new Carry Over amount resulting from application of any Net Adjustments that month, and the aggregate Carry Over left to be applied in subsequent Billing Periods. PGCPs shall pay the Monthly Billing Statement on the last Business Day of the Billing Period.

**14.7 Quarterly Net Adjustments Report.** By the fifteenth (15<sup>th</sup>) day following the end of each Quarter, Developer shall provide PGCPs with a Net Adjustments report for the foregoing Quarter (each, a “**Quarterly Net Adjustments Report**”). The Quarterly Net Adjustments Report shall set forth on a per School basis all Deductions and Extraordinary Items accrued during the Quarter and the Net Adjustments amount resulting therefrom and, in addition, shall state the annual Availability Payment and each component thereof as calculated for the then-current Contract Year, together with the accumulated payments for each component to the date of such report and such other documentation or information as PGCPs may reasonably require to determine the accuracy and appropriateness of the report in accordance with this Agreement. Developer shall reflect the Net Adjustments amount from the relevant Quarterly Net Adjustments Report on the Monthly Billing Statement that follows the month in which the Quarterly Net Adjustments Report is received, subject to Section 14.8 (Billing Disputes). A final Quarterly Net Adjustments Report shall be provided to PGCPs by the fifteenth (15<sup>th</sup>) day following the end the Term reflecting all outstanding Carry Over or other amounts due or payable to each Party. The Parties shall treat the final Quarterly Net Adjustments Report as an invoice for which any payment owed by Developer shall be paid to PGCPs by the last Business Day of the month in which the final Quarterly Net Adjustments Report was submitted, and for which any payment owed by PGCPs shall be paid to Developer by no later than (a) the first July 30 following the date of the final Quarterly Net Adjustments Report if such report is delivered on or before September 15 of the calendar year in which the Term ends, or (b) the second July 30 following the date of the final Quarterly Net Adjustments Report if such report is delivered after September 15 of the calendar year in which the Term ends.

**14.8 Billing Disputes.** If PGCPs disputes in good faith any amount or item billed by Developer in a Monthly Billing Statement or included in a Quarterly Net Adjustments Report, PGCPs shall pay all amounts when due as though there was no dispute but shall provide Developer with a written objection indicating the amount being disputed and the reasons then known to PGCPs for the dispute. When any dispute referred to in this Section 14.8 (Billing Disputes) is finally resolved, if payment by either PGCPs or Developer of amounts disputed was not required, such amount shall be charged as an Extraordinary Item, as a credit or a charge (as applicable), on the next Quarterly Net Adjustments Report after the date of resolution of the dispute (or on a standalone invoice to the extent the such dispute is resolved after submission of the final Quarterly Net Adjustments Report), with interest from the date such amount was inappropriately paid to the date it is actually paid at the Overdue Rate.

**14.9 PGCPs Right of Set-Off.** If PGCPs determines that any credits, payments, reimbursements, or Liquidated Damage Rights are owed to PGCPs in accordance with this Agreement and have not been reflected in any previously submitted Quarterly Net Adjustments Report or Monthly Billing Statement, PGCPs shall notify Developer, and Developer shall include such amounts as an Extraordinary Item in the next Quarterly Net Adjustments Report provided to PGCPs. In the event Developer does not include such amounts in the next Quarterly Net Adjustments Report provided to PGCPs in accordance with this Section 14.9 (PGCPs Right of Set-Off), PGCPs shall have the right to offset, first and prior to any other adjustments, the Services Charge portion of the Availability Payment otherwise payable for the next Billing Period up to the

amount of such credits, payments, reimbursements, or Liquidated Damage Rights subject to Section 14.4.3.1 (Limit on Monthly Availability Payment Adjustments).

**14.10 Late Availability Payments.** In the event PGCPs fails to make an Availability Payment when due under Section 14.6 (Monthly Billing Statements):

(a) interest shall accrue thereon, as and to the extent provided in Section 14.11 (Interest on Overdue Amounts); and

(b) if such failure continues for the period described in Section 19.5 (Default by PGCPs), then such failure shall constitute a PGCPs Default, and Developer shall have the remedies set forth in Section 19.7 (Developer Remedies Upon PGCPs Default).

**14.11 Interest on Overdue Amounts.** If payment of any amount payable under this Agreement is not made when due (including Termination Compensation), simple interest will be payable on such amount at the Overdue Rate and shall be calculated on the basis of a 365-day year from the date such payment is due under this Agreement until paid. The Party to whom payment is owed and overdue shall notify the other Party at least quarterly of the overdue amount.

**14.12 Relief Payment.** To the extent that a Scheduled School Occupancy Readiness Date for a School is extended due to a Relief Event beyond July 15, 2023, commencing on July 15, 2023, Developer shall have the right to claim a Relief Payment for the applicable School, as calculated in accordance with Exhibit X-1 (Payment Calculation), through the earlier of (x) School Occupancy Readiness occurring for the applicable School, or (y) the applicable Scheduled School Occupancy Readiness Date as extended. For each month such a claim is permitted, Developer shall submit a Monthly Billing Statement to PGCPs reflecting the amount of the Relief Payment being claimed, and PGCPs shall cause Developer to be paid the applicable Relief Payment in accordance with the terms of Section 14.6 (Monthly Billing Statements).

**14.13 Delay Payment.** To the extent that a School Occupancy Readiness Date occurs for a School after August 14, 2023 (any such School, a “**Delayed School**”), Developer shall be entitled to claim a Delay Payment for the Delayed School commencing on the date on which School Occupancy Readiness occurs for the Delayed School, as calculated in accordance with Exhibit X-1 (Payment Calculation), through the School Occupancy Readiness Date for the Delayed School. For each month such a claim is permitted, Developer shall submit a Monthly Billing Statement to PGCPs reflecting the amount of the Delay Payment being claimed, and PGCPs shall cause Developer to be paid the applicable Delay Payment in accordance with the terms of Section 14.6 (Monthly Billing Statements).

**14.14 Payments for Compensation Events and Other Additional Costs.** This Agreement obligates PGCPs to pay for certain additional costs resulting from Compensation Events or as may otherwise be provided herein. Except for costs to be determined in accordance with Section 15.6 (Services Changes) or as otherwise expressly stated in this Agreement, the amount of such additional costs to be paid by PGCPs shall be determined in accordance with this Section 14.14 (Payments for Compensation Events and Other Additional Costs).

**14.14.1 Price Negotiations.** It is the expectation of the Parties, to the extent reasonably possible in the circumstances, that additional costs reasonably expected by Developer to be borne by PGCPs under this Agreement and determined in accordance with this Section 14.14 (Payments for Compensation Events and Other Additional Costs), will be negotiated and agreed to in advance of Developer incurring such costs or performing related work or in any other circumstance agreed to by the Parties. Where such costs are anticipated to be claimed, Developer shall provide PGCPs with a written notice requesting negotiation of such costs, which notice shall identify the basis in this Agreement for its compensation claim. Subject in all cases to PGCPs' right to object to or dispute Developer's entitlement to compensation from PGCPs, as part of these negotiations, the Parties shall seek to agree with regard to the amounts owed, as well as the scope and schedule for the implementation of the relevant work (where applicable), and Developer shall furnish PGCPs with all information reasonably required by PGCPs regarding Developer's actual or expected costs, including any mark-up to be charged. If mutual agreement on costs or price is reached, PGCPs shall deliver to Developer written notice of the method and funding source(s) it intends to use to pay Developer (along with a payment schedule where required) in accordance with Section 14.14.3 (PGCPs Payment Methods) and Section 14.14.4 (PGCPs Funding Options). Upon receipt of such notice, the Parties shall seek to further agree as to any additional compensation that may be owed under Section 14.14.6 (Restoration of Financial Balance for Deferral of Compensation) as well as the documentation required in order to receive scheduled payments. Where final mutual agreement is reached under this Section 14.14.1 (Price Negotiations), Developer's actual costs shall not be subject to Cost Substantiation unless the Parties agree that Developer shall perform additional work on a guaranteed maximum price basis or PGCPs otherwise indicates as part of the Parties' negotiations establishing costs or price that after-the-fact Cost Substantiation with respect to all or a portion of Developer's actual costs will be required.

**14.14.2 Costs Requiring Cost Substantiation.** The Parties shall follow the process ("Cost Substantiation") described in this Section 14.14.2 (Costs Requiring Cost Substantiation) with respect to any additional costs to be determined in accordance with this Section 14.14 (Payments for Compensation Events and Other Additional Costs) that have not been determined as part of a price negotiation under Section 14.14.1 (Price Negotiations). Cost Substantiation is likely to be required when Developer undertakes efforts on an emergency basis to mitigate a Relief Event or the Parties are unable to agree as contemplated in Section 14.14.1 (Price Negotiations). Where required, Cost Substantiation shall be provided as soon as reasonably practicable after the costs which require substantiation have been incurred by Developer.

**14.14.2.1 Cost Substantiation Generally.** In incurring costs which are or may be subject to Cost Substantiation, Developer shall utilize competitive practices to the maximum reasonable extent (including, where practicable, obtaining three competing quotes or estimates for costs expected to be in excess of Fifty Thousand Dollars (\$50,000) (Index-Linked)), and shall enter into Subcontracts on commercially reasonable terms and prices in light of the work to be performed and PGCPs' potential obligation to pay for it; provided, however, that Developer shall not be required to utilize competitive practices for additional work self-performed by a Project Contractor or Subcontractor that is an original party to (and not an assignee under) a Project Contract or Subcontract that preexisted the need and request for additional work. If Developer is

not required to utilize competitive practices, Developer shall instead demonstrate to PGCPs that the costs for which PGCPs is financially responsible are commercially reasonable.

**14.14.2.2 Cost Substantiation Certificate.** Where Cost Substantiation is required, Developer shall provide PGCPs with a “**Cost Substantiation Certificate**,” which must include an itemization of each cost Developer is claiming to be owed and the provision(s) of this Agreement under which such cost is chargeable to PGCPs, a description of the competitive or other process utilized by Developer to obtain the commercially reasonable price (if applicable pursuant to Section 14.14.2.1 (Cost Substantiation Generally)), and a statement that such services and materials are reasonably required pursuant to this Agreement. Unless the costs subject to Cost Substantiation are lower than Fifteen Thousand Dollars (\$15,000.00) in the aggregate, the Cost Substantiation certificate shall be accompanied by copies of such documentation as shall be necessary to reasonably demonstrate that the cost as to which Cost Substantiation is required has been paid. Such documentation shall be in a format reasonably acceptable to PGCPs and shall include reasonably detailed information concerning all Subcontracts and, with respect to self-performed work:

- (a) the amount and character of materials, equipment, and services furnished or utilized, the Persons from whom purchased, the amounts payable therefor, related delivery and transportation costs, and any sales or personal property Tax;
  - (b) a statement of the equipment used and any rental payable therefor;
  - (c) employee hours, duties, wages, salaries, benefits, and assessments;
- and
- (d) profit, administration costs, bonds, insurance, Tax, premiums overhead, and other expenses.

Developer’s entitlement to reimbursement for the costs of self-performed work shall be subject to Cost Substantiation and the limitations set forth in this Section 14.14.2 (Costs Requiring Cost Substantiation).

**14.14.2.3 Evidence of Costs Incurred.** To the extent reasonably necessary to confirm direct costs subject to Cost Substantiation, copies of timesheets, invoices, canceled checks, expense reports, receipts, and other documents, as appropriate, shall be delivered to PGCPs, with the request for reimbursement of such costs.

**14.14.2.4 Mark-Ups.** For any self-performed work requiring Cost Substantiation, Developer shall be entitled to a mark-up of five percent (5%) for a combination of overhead, risk, profit, and contingency for costs of its own personnel. For any subcontracted work requiring Cost Substantiation, a mark-up of five percent (5%) for a combination of overhead, risk, profit, and contingency for costs of its Subcontractors shall be permitted.

**14.14.3 PGCPS Payment Methods.** PGCPS may elect, in its sole and exclusive discretion, but subject to Section 14.14.5 (Deferral of Compensation), to pay any amounts determined in accordance with this Section 14.14 (Payments for Compensation Events and Other Additional Costs) through one or any combination of the below methods:

- (a) as a non-deferred lump sum payment, to the extent permitted by Applicable Law;
- (b) as progress payments invoiced as work is completed;
- (c) as a deferred lump sum payment or periodic payments over the Term (in either case, a “**Deferred Payment**”); or
- (d) as an adjustment to the Availability Payment over the Term.

Following either the Parties’ agreement on price in accordance with Section 14.14.1 (Price Negotiations) or PGCPS’ receipt of a Cost Substantiation Certificate, PGCPS shall provide Developer with written notice of the method chosen for paying Developer the amounts determined to be owed in accordance with this Section 14.14 (Payments for Compensation Events and Other Additional Costs).

If PGCPS elects, in any case and in PGCPS’ sole discretion, to pay Developer in whole or part using a Deferred Payment, PGCPS’ notice shall include a payment schedule that is consistent with the terms of Section 14.14.8 (Timing of Deferred Lump Sum and Periodic Payments); provided, however, at any later time PGCPS may choose to complete compensation through a non-deferred lump sum payment based on the present value of the remaining Deferred Payment owed.

#### **14.14.4 PGCPS Funding Options.**

**14.14.4.1 Prior to School Occupancy Readiness Dates.** To the extent PGCPS elects, in its sole discretion, to pay Design-Build Additional Compensation Amounts prior to the School Occupancy Readiness Date of the impacted School, in whole or in part, using one or more of the payment methods described in items (a) through (c) in Section 14.14.3 (PGCPS Payment Methods), PGCPS may further elect, in its sole discretion, to fund such payment(s) either by (i) directing the Escrow Agent to pay Developer from funds deposited in the Escrow Account for such purposes, or (ii) directing Developer to be reimbursed with funds from the Design-Build Period Reserve Account (or using a combination of the two funding sources). For the avoidance of doubt, nothing in this Section 14.14.4 (PGCPS Funding Options) or elsewhere in this Agreement is intended to require PGCPS to pay Design-Build Additional Compensation Amounts prior to the School Occupancy Readiness Date of the impacted School.

**14.14.4.2 On or After School Occupancy Readiness Dates.** To the extent PGCPS elects, in its sole discretion, to pay any amounts owed on or after the School Occupancy Readiness Date of the impacted School using one or more of the payment methods described in items (a) through (c) in Section 14.14.3 (PGCPS Payment Methods), PGCPS may

further elect, in its sole discretion, to fund such payment(s) (i) by directing Developer to be reimbursed with funds from the Services Period Reserve Account, (ii) as an Extraordinary Item to be included on the next Quarterly Net Adjustments Report where any of the non-deferred payment methods described in items (a) or (b) in Section 14.14.3 (PGCPS Payment Methods) are selected, or (iii) as an Extraordinary Item to be included on a later Quarterly Net Adjustments Report(s) to be specified in advance in the payment schedule provided by PGCPS where a Deferred Payment is selected, subject in the case of (ii) or (iii) to the limits set forth in Section 14.4.3.2 (NA Charges Cap).

#### **14.14.5 Deferral of Compensation.**

**14.14.5.1** If PGCPS elects to compensate Developer in whole or part using the methods described in items (c) or (d) of Section 14.14.3 (PGCPS Payment Methods) (collectively, “**Deferral of Compensation**”), Developer shall use diligent efforts to obtain funding from the Lenders, or other lenders if permitted by the Financing Documents, to finance the applicable effort and related costs in advance of receiving the required compensation payments from PGCPS. Developer shall submit documentation to PGCPS demonstrating that Developer’s financing plan presents a financially efficient solution reflective of current market conditions.

**14.14.5.2** If, despite such diligent efforts and the additional compensation that would be paid pursuant to this Section 14.14 (Payments for Compensation Events and Other Additional Costs), Developer is unable to obtain such financing (or PGCPS disapproves of any such proposed financing in PGCPS’ sole discretion), then PGCPS and Developer shall exercise good faith efforts to negotiate a mutually acceptable Developer provided debt financing solution. In the event that a mutually acceptable Developer provided debt financing solution cannot be reached, Developer may finance the applicable effort and related costs with equity at a financing cost that is not higher than the original Equity IRR. To the extent Developer is unable or unwilling to provide additional equity, the Parties agree that PGCPS shall compensate Developer on the deferred basis selected in accordance with Section 14.14.8 (Timing of Deferred Lump Sum and Periodic Payments) with interest accruing at the Overdue Rate from the date the relevant amount was determined to be owed in accordance with this Section 14.14 (Payments for Compensation Events and Other Additional Costs) and, in respect of any Services Additional Compensation Amounts, subject to the limits set forth in Section 14.4.3.2 (NA Charges Cap).

**14.14.6 Restoration of Financial Balance for Deferral of Compensation.** If PGCPS elects to compensate Developer through Deferral of Compensation, Developer shall be entitled to additional compensation determined in accordance with this Section 14.14.6 (Restoration of Financial Balance for Deferral of Compensation) as necessary to restore the reduction in the Base Case Equity IRR and Key Ratios resulting from the Deferral of Compensation, which additional compensation shall be Developer’s sole remedy with respect to losses incurred or adverse impact to Developer as a result of PGCPS’ decision to compensate Developer through Deferral of Compensation. To the extent it is necessary to initially calculate the additional compensation to which Developer is entitled based on an estimate of future financing costs, and (i) the actual financing costs exceed the estimated financing costs, Developer shall be permitted to claim as an Extraordinary Item a further additional amount needed to fully

restore the reduction in the Base Case Equity IRR and Key Ratios based on the actual financing costs, or (ii) if the actual financing costs are less than the estimated costs, the amount of the additional compensation to be paid to Developer under this Section shall be reduced such that the amount paid to Developer is the actual amount necessary to restore the reduction in the Base Case Equity IRR and Key Ratios resulting from the Deferral of Compensation. As soon as reasonably practicable after the method of financing is determined in accordance with Section 14.14.5 (Deferral of Compensation), Developer shall provide PGCPs with the total amount of compensation that Developer considers will be owed on the expected date of payment identified by PGCPs to restore the Base Case Equity IRR and Key Ratios as a result of the Deferral of Compensation, including supporting calculations and documentation. Where this calculation is based on an estimate of future financing costs, within fifteen (15) Business Days prior to the payment date, Developer shall provide PGCPs with an updated calculation of the amount of compensation that Developer considers to be owed to restore the Base Case Equity IRR and Key Ratios as a result of the Deferral of Compensation based on the actual financing costs incurred. PGCPs shall promptly give notice to Developer of any objections to the amount of compensation claimed or requests for additional information, and Developer shall promptly respond to such notice. If any of PGCPs' objections persist, or its information requests go unanswered, after ten (10) Business Days following delivery of PGCPs' notice to Developer, the Parties will cooperate to have the issue resolved in a timely manner pursuant to the dispute procedures set forth in Article 24 (Resolution of Disputes). In no event shall Developer be entitled to any compensation for losses unrelated and not directly caused by the Deferral of Compensation.

**14.14.7 Timing of Non-Deferred Lump Sum Payments.** Where PGCPs elects to compensate Developer for Design-Build Additional Compensation Amounts in the form of a non-deferred lump sum payment to be made prior to the School Occupancy Readiness Date of the impacted School or for Services Additional Compensation Amounts to be funded by directing reimbursement from the Services Period Reserve Account, payment shall be due thirty (30) days after PGCPs' receipt of (a) an undisputed Cost Substantiation Certificate (where applicable), or (b) all documentation required pursuant to the negotiated lump sum payment terms in order to receive payment. Where a non-deferred lump sum payment will be made on or after the School Occupancy Readiness Date of the impacted School as an Extraordinary Item, the relevant amount shall be included as an Extraordinary Item in the next Quarterly Net Adjustments Report following PGCPs' receipt of the information described in (a) and (b) of the preceding sentence, subject to the limits set forth in Section 14.4.3.2 (NA Charges Cap).

**14.14.8 Timing of Deferred Lump Sum and Periodic Payments.** Where PGCPs elects to compensate Developer, in whole or in part, for Design-Build Additional Compensation Amounts in the form of Deferred Payment(s) to be made prior to the School Occupancy Readiness Date of the impacted School or for Services Additional Compensation Amounts to be funded by directing reimbursement from the Services Period Reserve Account, payment shall be due on the later of (a) the payment date(s) set forth in the payment schedule, or (b) fifteen (15) days following PGCPs' receipt of (i) an undisputed Cost Substantiation Certificate (where applicable), or (ii) all documentation required pursuant to the negotiated lump sum or periodic payment terms in order to receive the Deferred Payment(s). Where Deferred Payment(s) will be made on or after the School Occupancy Readiness Date of the impacted School as an Extraordinary Item, the relevant

amount shall be included as an Extraordinary Item in the Quarterly Net Adjustments Report(s) identified in the related payment schedule; provided, however, where PGCPs has not received (x) an undisputed Cost Substantiation Certificate (where applicable), or (y) all documentation required pursuant to the negotiated lump sum or periodic payment terms in order to receive the Deferred Payment(s) prior to the date of such Quarterly Net Adjustments Report(s), such amounts shall be reflected on the Quarterly Net Adjustments Report following PGCPs' receipt of the information described in (x) and (y) of this sentence, subject in all cases to the limits set forth in Section 14.4.3.2 (NA Charges Cap).

**14.14.9 Timing of Progress Payments Invoiced as Work is Completed.** Where PGCPs elects to compensate Developer in the form of progress payments invoiced as the relevant work is completed, prior to the School Occupancy Readiness Date of the impacted School, payment of all undisputed amounts shall be due and owing thirty (30) days after each date PGCPs receives from Developer an invoice, not more often than monthly, for the costs incurred for such work during the previous month, which invoice shall be itemized by the components of costs permitted to be recovered under this Agreement with respect to such event or circumstance. On or after the School Occupancy Readiness Date of the impacted School, and where PGCPs has elected for Developer to be reimbursed from the Services Period Reserve Account, payment of all undisputed amounts shall be due and owing thirty (30) days after each date PGCPs receives the invoice described above. Otherwise, Developer shall include on each Quarterly Net Adjustments Report the costs incurred for the relevant work during the relevant Quarter.

## **ARTICLE 15 PROJECT CHANGES AND ADDITIONS**

### **15.1 Capital Modifications.**

**15.1.1 PGCPs Approval.** PGCPs shall have the right, in its sole discretion, to accept, reject, or approve all Capital Modifications. All Capital Modifications and related changes to the terms and conditions of this Agreement shall be reflected in a written amendment to this Agreement.

**15.1.2 Conditioned Approvals.** PGCPs shall have the express right to condition its approval of Capital Modifications upon a sharing of any net cost savings expected to result therefrom to be split sixty-five percent (65%) to PGCPs and thirty-five percent (35%) to Developer, or upon any further term or condition that PGCPs may seek to establish with respect thereto.

**15.1.3 Responsibility for Costs.** All Capital Modifications shall be made and implemented in accordance with this Article 15 (Project Changes and Additions). Developer shall bear the cost and expense of all Capital Modifications required in accordance with Section 15.3 (Capital Modifications Arising from Repairs and Replacements or Required to Remedy a Developer Fault). The responsibility for the cost and expense of any Capital Modifications requested by Developer in accordance with Section 15.2 (Capital Modifications at Developer's Request) shall be determined by PGCPs in its sole discretion in accordance with its approval rights

under this Article 15 (Project Changes and Additions). PGCPs shall bear the cost and expense of all Capital Modifications made pursuant to Section 15.4 (Capital Modifications Required Due to Relief Events) and pursuant to Section 15.5 (Capital Modifications at PGCPs' Direction).

**15.2 Capital Modifications at Developer's Request.** Developer shall give PGCPs written notice of, and reasonable opportunity to review and comment upon, any Capital Modification proposed to be made at Developer's request. To assist PGCPs in the exercise of its approval rights under Section 15.1 (Capital Modifications), the notice shall contain sufficient information for PGCPs to determine that the Capital Modification: (a) does not materially diminish the capacity of the Project to be operated so as to meet the Contract Standards; (b) does not materially impair the quality, integrity, durability, and reliability of the Project; (c) is reasonably necessary or is advantageous for Developer to fulfill its obligations under this Agreement; and (d) is feasible.

**15.2.1 No Developer Ownership.** In no event shall Developer have any ownership interest in the Sites, including the Schools, as a result of any Capital Modification.

**15.3 Capital Modifications Arising from Repairs and Replacements or Required to Remedy a Developer Fault.** In the event that (a) any repair or replacement proposed to be performed by Developer in satisfaction of its obligations under Article 11 (Services), or (b) any capital investment, improvement, or modification required to be made by Developer in order to remedy a Developer Fault, can be reasonably expected to result in a material change to the Project, such repair, replacement, capital investment, improvement, or modification shall constitute a Capital Modification. In no event shall the rejection or modification of any such Capital Modification by PGCPs relieve Developer of its obligation to perform maintenance, repair, and replacement required under Article 11 (Services) or perform any other obligation hereunder. Except as otherwise agreed to by PGCPs, the design and construction costs of any such Capital Modification under this Section, and any related operation, maintenance, repair, and replacement costs, shall be borne by Developer.

**15.4 Capital Modifications Required Due to Relief Events.** Upon the occurrence of a Relief Event, Developer shall promptly proceed to make or cause to be made all repairs, replacements, and restoration to the Project reasonably necessary to address the Relief Event, as provided in Article 16 (Relief Events). PGCPs shall have the right, but not the obligation, to direct Developer to make Capital Modifications in connection with any such repair, replacement, or restoration work. The design and construction costs attributable to any such Capital Modification and any related operation, maintenance, repair and replacement costs shall be determined in accordance with Section 14.14 (PGCPs Payments for Compensation Events and Other Additional Costs) and borne by PGCPs, and considered separate from any compensation claim Developer may have under Article 16 (Relief Events) with respect to its response to the underlying Relief Event. Developer shall not be required to undertake any Capital Modification under this Section 15.4 (Capital Modifications Required Due to Relief Events) unless and until the Parties have agreed upon a scope, price, and schedule for the implementation of the Capital Modification in accordance with Section 14.14 (PGCPs Payments for Compensation Events and Other Additional Costs) and all other applicable provisions of this Agreement.

**15.5 Capital Modifications at PGCPs' Direction.** Subject to Section 15.7 (Restrictions on Capital Modifications, Services Changes, and Design-Build Changes Directed by PGCPs), PGCPs shall have the right to make Capital Modifications at any time and for any reason whatsoever after a School Occupancy Readiness Date, whether and however the exercise of such rights affects this Agreement. The design and construction costs attributable to any such Capital Modification and any related operation, maintenance, repair, and replacement costs shall be determined in accordance with Section 14.14 (PGCPs Payments for Compensation Events and Other Additional Costs) and borne by PGCPs. Developer shall not be required to undertake any Capital Modification under this Section 15.5 (Capital Modifications at PGCPs' Direction) unless and until the Parties have agreed upon a scope, price, and schedule for the implementation of the Capital Modification in accordance with all applicable provisions of this Agreement.

## **15.6 Services Changes.**

**15.6.1 Services Changes.** PGCPs may, on a quarterly basis each Contract Year during the Term (except more frequently as may be appropriate to address urgent PGCPs circumstances), subject to Section 15.7 (Restrictions on Capital Modifications, Services Changes, and Design-Build Changes Requested by PGCPs), require Developer to implement a Services Change in accordance with this Section 15.6 (Services Changes). The implementation procedure set forth in this Section 15.6 (Services Changes) shall apply with respect to all Services Changes which PGCPs may require during the Term. In the event PGCPs requests a Services Change, PGCPs shall issue to Developer a written notice (a "**Services Change Notice**") that includes a description of the contemplated Services Change sufficient to permit Developer to prepare a Services Change Report.

**15.6.2 Services Change Report.** Within fifteen (15) Business Days, or such longer period as the Parties agree acting reasonably, after Developer's receipt of the Services Change Notice, Developer shall prepare and deliver to PGCPs a report for the contemplated Services Change ("**Services Change Report**"). A Services Change Report shall include, to the extent that it is relevant to the proposed Services Change:

- (a) a description of the scope of the contemplated Services Change with respect to the Services;
- (b) a comparison of the scope of Services as a result of the contemplated Services Change as compared to the scope prior to the Services Change;
- (c) an estimate of all costs, if any, reasonably necessary for and directly associated with the contemplated Services Change, as further described in Section 15.6.3 (Valuation of a Services Change), including the following, as applicable:
  - (i) all Services labor, material, and equipment costs, supported as the case may be by quotations from the Services Provider and applicable Subcontractors;

- (ii) any costs related to Developer's management and oversight of the Project that should reasonably be included in the contemplated Services Change;
- (iii) all costs of an amendment or renewal of a Governmental Approval required by the contemplated Services Change;
- (iv) all insurance costs; and
- (v) all financing costs;
- (d) an estimate of the cost savings, if any, resulting from the contemplated Services Change;
- (e) a description of any changes to the Financing Documents that would be required to reflect a change in the risk profile of the Project arising from the contemplated Services Change;
- (f) a description of any changes to the Availability Payment that are required to reflect any costs or cost savings described in items (c) and (d) above;
- (g) identification of any amounts payable by PGCPS to Developer, if any, other than the Availability Payment;
- (h) Developer's proposal as to how any increased costs to Developer resulting from the contemplated Services Change may be funded;
- (i) the value of the loss or reduction of benefits resulting from the contemplated Services Change;
- (j) a description of any additional consents or approvals required, including amendments, if any, of any Governmental Approvals required to implement the contemplated Services Change;
- (k) a description of any impact on the obligations of Developer under any Project Contracts;
- (l) a description of the extent to which the contemplated Services Change or the implementation thereof would interfere with Developer's ability to comply with any of its obligations under this Agreement, the Project Contracts, and any Governmental Approvals;
- (m) the name of any Subcontractors which the Services Provider intends to engage for the purposes of assisting with the implementation of the contemplated Services Change;
- (n) a description of any further effects (including, without limitation, benefits and impairments) which Developer foresees as being likely to result from the contemplated Services Change or the implementation thereof;

(o) a description of any actions that would be reasonably required by PGCPs to implement the contemplated Services Change;

(p) a description of the steps Developer will take to implement the contemplated Services Change, in such detail as is reasonable and appropriate; and

(q) a description of any impact on expected usage of Utilities for the current Contract Year and subsequent Contract Years.

If Developer prepares a Services Change Report pursuant to this Section and PGCPs elects not to proceed with the contemplated Services Change, then PGCPs shall pay Developer's Services Change Report preparation costs in accordance with Section 14.14 (PGCPs Payments for Compensation Events and Other Additional Costs). Notwithstanding the foregoing, PGCPs shall not be responsible for any Developer costs associated with a Services Change Report prepared pursuant to Section 15.6.10 (Services Changes at Developer Request).

**15.6.3 Valuation of a Services Change.** PGCPs and Developer shall negotiate in good faith the costs or savings associated with any Services Change in accordance with Section 15.6.5 (Agreement on a Services Change). If the Parties fail to agree on the costs or savings of such Services Change, the costs or savings shall be determined as set forth in this Section 15.6.3 (Valuation of a Services Changes). The costs or savings of a Services Change shall be the net incremental additional costs or savings of implementing the Services Change, calculated as the aggregate cost, if any, of any additions to Developer's Services obligations required to implement the Services Change minus the aggregate cost savings, if any, from all reductions in Developer's Services obligations resulting from the implementation of such Services Change. A Services Change may have a net cost, a net saving, or may result in no net cost or saving. The costs of a Services Change are the aggregate of the costs reasonably incurred by Developer or the Services Provider to implement the Services Change, supported by invoices, purchase orders, time sheets, and other customary industry documentation, as follows:

(a) the amounts of all Subcontractor or supplier agreements;

(b) the direct costs incurred for the Services personnel, based on the number of personnel hours required to undertake the Services Change;

(c) the direct costs incurred for the procurement of materials, consumables, and equipment, for the supply and delivery of such materials, consumables, and equipment, including the costs of any associated testing, commissioning, spare parts, manuals, and software, and including any related design and engineering costs;

(d) the costs incurred for the evaluation of proposals and award of a contract for work associated with the Services Change, and the supervision and management of such contracts;

(e) all direct costs incurred by Developer or the Services Provider in procuring and managing the Services Change (including costs of advisors and extra costs under any management services agreements entered into by Developer); and

(f) all other additional direct costs pertaining to the Services Change, including disposal, insurance, bonding, financing, Governmental Approvals, and directly attributable overheads, calculated at the direct cost to the entity that directly incurs such costs, and the costs incurred or borne by Developer or the Services Provider in preparing a Services Change Report.

The costs applied pursuant to this subsection shall be no greater than the market rates prevailing at the time of the implementation of the Services Change paid between parties contracting at arm's length. In addition to the costs incurred by Developer or the Services Provider described above in this Section 15.6.3 (Valuation of a Services Change), a mark-up not to exceed the limits set forth in Section 14.14.2.4 (Mark-Ups) shall be applied without duplication to such aggregate costs as full payment for all other costs, including indirect overhead costs and profit.

**15.6.4 Justification and Supporting Documentation.** Developer shall use, or will cause the Services Provider to use, commercially reasonable efforts to obtain competitive quotations and proposals for all work, equipment, and materials required to implement a Services Change. The cost estimates included in a Services Change Report shall be in sufficient detail to allow evaluation by PGCPS and will include such supporting information and justification as is necessary to demonstrate that:

(a) Developer has used commercially reasonable efforts, including utilizing competitive quotes or proposals, to minimize the cost of a contemplated Services Change and maximize potential related cost savings;

(b) Developer and the Services Provider have valued the Services Change as described in Section 15.6.3 (Valuation of a Services Change), and have not included other margins or mark-ups;

(c) the full amount of any and all expenditures that have been reduced or avoided (including any Capital Expenditure) have been fully taken into account; and

(d) Developer has mitigated or will mitigate the impact of the contemplated Services Change, including on the performance of the Services, the expected usage of Utilities, and the direct costs to be incurred.

**15.6.5 Agreement on a Services Change.** Within fifteen (15) Business Days, or such longer period as the Parties agree acting reasonably, following receipt by PGCPS of a Services Change Report prepared in accordance with Section 15.6.2 (Services Change Report), PGCPS may deliver to Developer any requests for clarifications or amendments, and the Parties' representatives shall meet and use commercially reasonable efforts to agree to the Services Change Report. Such agreement shall include the costs, payments (including payment of direct costs and adjustments to the Availability Payment, if any), and other information contained in the Services

Change Report. If PGCPs would be required by Applicable Law to require Developer to competitively solicit any contract in relation to a contemplated Services Change, PGCPs may require Developer to seek and evaluate competitive proposals for the proposed Services Change. PGCPs may modify any Services Change Notice delivered pursuant to Section 15.6.1 (Services Changes), in writing, at any time prior to the Parties reaching an agreement on the Services Change Report pursuant to this Section 15.6.5 (Agreement on a Services Change). In the event PGCPs delivers notice of any such modification to Developer, Developer shall notify PGCPs of any significant changes to the Services Change Report within twenty (20) Business Days after receipt of such modification notice.

**15.6.6 Services Change Certificate.** Upon agreement of the Parties with respect to the Services Change in accordance with Section 15.6.5 (Agreement on a Services Change), PGCPs shall issue a signed Services Change Certificate to Developer. In the event PGCPs and Developer do not agree on the Services Change, PGCPs may issue a Services Change Certificate in accordance with Section 15.6.7 (Disagreement on Services Change Report). Developer shall not proceed with a Services Change prior to receiving a signed Services Change Certificate from PGCPs. A Services Change Certificate issued in accordance with this Section 15.6.6 (Services Change Certificate) shall be binding on PGCPs and Developer. Upon receipt of a Services Change Certificate, Developer shall implement the Services Change, without prejudice to Developer's right to refer any dispute concerning the Services Change in accordance with Article 24 (Resolution of Disputes), including valuation of the Services Change in accordance with Section 15.6.3 (Valuation of a Services Change).

**15.6.7 Disagreement on Services Change Report.** In the event PGCPs and Developer cannot agree on a Services Change Report, PGCPs may elect not to proceed with the Services Change described in the Services Change Notice delivered to Developer. Alternatively, PGCPs may issue the Services Change Certificate to Developer stating PGCPs' determination of the matters referred to in the Services Change Report, and if Developer disagrees with all or any of the determinations set forth in the Services Change Certificate, then Developer may deliver to PGCPs a written notice identifying any such disagreements within ten (10) Business Days of receipt of the Services Change Certificate. Following delivery of the notice to PGCPs identifying any points of disagreement to the Services Change Certificate, Developer may, (a) pursuant to its rights under Section 15.7 (Restrictions on Capital Modifications, Services Changes, and Design-Build Changes Requested by PGCPs) refuse to implement the Services Change; or (b) without prejudice to its rights with respect to such disagreements, use commercially reasonable efforts to implement the Services Change as directed in the Services Change Certificate. If Developer fails to timely deliver the notice to PGCPs identifying any points of disagreement with the Services Change Certificate as set forth in this subsection, Developer shall be deemed to have waived any such objections to the Services Change Certificate.

**15.6.8 Responsibility and Payment for Services Changes.** Except as specifically provided in this Agreement, PGCPs shall bear no risk or liability whatsoever arising from any Services Change other than the liability to make payment in connection therewith. PGCPs shall bear the cost and expense of all Services Changes made pursuant to this Section 15.6 (Services Changes). Payments between the Parties and any adjustments to Availability Payments

in respect of a Services Change will be made in accordance with any agreed basis for payment set out in the Services Change Certificate. The basis for payment may at PGCPS's discretion include progress draws, milestone payments, lump sum payments, time and materials or maximum amounts. If no basis for payment is included in the Services Change Certificate, payment will be made in accordance with Section 14.14 (PGCPS Payments for Compensation Events and Other Additional Costs).

**15.6.9 Cost Savings.** In the event any Services Change is reasonably expected to result in a net cost savings to Developer, the Parties shall negotiate in good faith the extent to which any such net cost savings shall be shared with PGCPS, and the Availability Payment shall be reduced accordingly.

**15.6.10 Services Changes at Developer's Request.** Developer may give PGCPS written notice of, and reasonable opportunity to review and comment upon, any Services Change proposed to be made at Developer's request. PGCPS shall have the right, in its sole discretion, to accept, reject, approve, or modify all such Services Change requests made by Developer. The responsibility for the cost and expense of any Services Change requested by Developer in accordance with this subsection shall be determined by PGCPS in its sole discretion. The written notice provided by Developer shall contain sufficient information for PGCPS to determine that the Services Change:

- (a) does not diminish the capacity of the Project to be operated so as to meet the Contract Standards;
- (b) does not impair the quality, integrity, and reliability of the Services;
- (c) is reasonably necessary or is advantageous for Developer to fulfill its obligations under this Agreement; and
- (d) is feasible.

PGCPS shall not unreasonably deny any Services Change request made by Developer that complies with the requirements of this Section 15.6.10 (Services Changes at Developer's Request) and will result in cost savings to both PGCPS and Developer. Any Services Change proposed to be made at Developer's request, and accepted by PGCPS, shall be implemented as set forth in this Section 15.6 (Services Changes), except that the notice provided by Developer pursuant to this Section 15.6.10 (Services Changes at Developer's Request) shall take the place of the Services Change Notice.

**15.7 Restrictions on Capital Modifications, Services Changes, and Design-Build Changes Directed by PGCPS.** PGCPS shall not at any time during the Term require, and Developer may refuse to implement, a Capital Modification, Services Change, or Design-Build Change requested by PGCPS which:

- (a) would be contrary to Applicable Law;

(b) would render any Required Insurance void or voidable unless PGCPs agrees to provide replacement insurance or other security reasonably satisfactory to Developer;

(c) would cause the revocation of any Governmental Approval required for Developer to perform its obligations under this Agreement, and such Governmental Approval would not, using commercially reasonable efforts, be capable of amendment or renewal;

(d) would require a new Governmental Approval for Developer to perform its obligations under this Agreement, which Governmental Approval would not, using commercially reasonable efforts by Developer or PGCPs, as applicable, be obtainable;

(e) would materially and adversely affect the risk allocation and payment regime under this Agreement with respect to the Design-Build Work or the Services, unless the material and adverse effects of such a Capital Modification, Services Change, or Design-Build Change are remedied by PGCPs to Developer's reasonable satisfaction;

(f) would result in a change to the essential nature of the Project; or

(g) Developer would not, using commercially reasonable efforts, be able to implement within the time specified.

If Developer, acting reasonably, determines that a Capital Modification, Services Change, or Design-Build Change is unacceptable because it contravenes one or more of the above, then Developer will promptly give notice to PGCPs of its objection, with written reasons. If PGCPs disagrees, the Parties will cooperate to have the issue resolved in a timely manner pursuant to the dispute procedures set forth in Article 24 (Resolution of Disputes).

**15.8 Unused School.** If, during the Services Period, PGCPs is only using twenty percent (20%) or less of a School for a period greater than ninety (90) consecutive days (each, an "**Unused School**"), PGCPs may claim as an Extraordinary Item credit a reduction of twenty-five percent (25%) of the unadjusted School Services Charge attributable to each Unused School, as calculated on a pro rata daily basis, for the period commencing on the ninety-first (91<sup>st</sup>) day that PGCPs started using less than twenty (20%) of the Unused School and ending on the date that PGCPs started using more than twenty percent (20%) of the Unused School.

## **ARTICLE 16 RELIEF EVENTS**

### **16.1 Relief Events.**

**16.1.1 Extent of Relief Available to Developer.** If a Relief Event occurs, Developer may seek and shall be entitled to relief as and to the extent provided in this Article 16 (Relief Events) and in accordance with the procedures set forth in Section 16.2 (Relief Event Procedure).

**16.1.2 Mitigation Given Effect.** Any relief to which Developer is entitled on account of a Relief Event shall be reduced or adjusted to account for the effect of any Losses or delays resulting from a failure by Developer to reasonably comply with Section 2.5 (General Duty of Developer to Mitigate), including by making commercially reasonable efforts to mitigate the length of any delay caused by a Relief Event.

**16.1.3 Applicable Law Compliance.** Nothing in this Article shall be interpreted as relieving Developer of its obligation, following any and all Relief Events, to perform its obligations under this Agreement in compliance with Applicable Law.

**16.2 Relief Event Procedure.** The following procedure will apply if a Relief Event occurs:

**16.2.1 Notice and Written Report.** In order to assert an entitlement based on the occurrence of a Relief Event, Developer shall give notice of the occurrence of the Relief Event to PGCPs as soon as practicable, and in any event within ten (10) Business Days after the date Developer has knowledge that the Relief Event has caused or is likely to cause an entitlement under this Agreement. Developer's notice shall include a written report:

- (a) describing the Relief Event and the cause thereof, to the extent known;
- (b) specifying the Site(s) impacted by the Relief Event;
- (c) stating the date on which the Relief Event began and its estimated duration;
- (d) summarizing the anticipated consequences of the Relief Event and the expected impact on the performance of Developer's obligations under this Agreement, which summary shall be provided on a per Site basis to the extent Developer expects that the Relief Event will impact Developer's performance at more than one Site;
- (e) summarizing the actions Developer is taking or plans to take to mitigate the effects of the Relief Event, including commercially reasonable efforts to mitigate the length of any delay; and
- (f) indicating the nature and scope of Developer's potential entitlement to relief in accordance with this Article 16 (Relief Events).

**16.2.2 Updates.** Developer shall provide PGCPs with weekly written updates, together with further details and supporting documentation, as Developer receives or develops additional information pertaining to the Relief Event and the matters described in Section 16.2.1 (Notice and Written Report). In particular, Developer shall notify PGCPs (on a per Site basis, where multiple Sites are impacted by the same event) of the cessation of a Relief Event and of the time when performance of its affected obligations can be resumed, which notice shall be given as soon as practicable after the cessation of the Relief Event.

**16.2.3 Submittal of Relief Request.** Developer shall submit to PGCPs a further written notice making its request for specific relief (on a per Site basis, where multiple Sites are impacted by the same event), the basis therefor under this Article 16 (Relief Events), and the event giving rise to the requested relief within thirty (30) days after the provision of the notice referred to in Section 16.2.1 (Notice and Written Report). If the specific relief cannot reasonably be ascertained within such thirty (30)-day period, Developer, at the conclusion of such thirty (30)-day period, shall furnish a further notice to PGCPs establishing the date by which the appropriate requested relief shall be definitively requested and the basis for such extension. Developer shall then specify the specific relief by the date established in such further notice.

**16.2.4 Delay in Notification.** If any Relief Event notice or any required information is submitted by Developer to PGCPs after the dates required under this Section, then Developer shall be entitled to relief provided due to the occurrence of the Relief Event except to the extent that the ability to mitigate was adversely affected as a result of the delay in providing such notice or information; provided, however, that if the period of delay in providing the required Relief Event notice or information is six (6) months or more, the rights of Developer with respect to the applicable Relief Event will be of no further force or effect.

**16.2.5 Multiple and Overlapping Claims.** Developer may make multiple but not duplicative claims with respect to a Relief Event.

**16.2.6 Burden of Proof and Mitigation.** Developer shall bear the burden of proof in establishing the occurrence of a Relief Event and the entitlement to relief based thereon (e.g., that the Relief Event is in fact the cause of any claimed delay or impact) and shall demonstrate that Developer complied with its mitigation obligations under Section 2.5 (General Duty of Developer to Mitigate), including by making commercially reasonable efforts to mitigate the length of any delay.

**16.2.7 Resumption of Performance.** Promptly following the occurrence of a Relief Event, Developer shall use all commercially reasonable efforts to eliminate the cause thereof and resume performance in accordance with this Agreement.

**16.2.8 PGCPs Response.** Within thirty (30) days after receipt of a relief request by Developer pursuant to Section 16.2.3 (Submittal of Relief Request), PGCPs shall issue a written determination as to the extent, if any, to which it concurs with Developer's request, and the reasons therefor.

**16.2.9 Agreement or Dispute.** The agreement of the Parties as to the specific relief to be given Developer on account of a Relief Event shall be evidenced in writing including, if the nature of the relief requires, by a written amendment to this Agreement or a Change Order. Either Party may refer any dispute under this Article for resolution in accordance with Article 24 (Resolution of Disputes).

**16.3 Schedule Relief Available Upon Occurrence of a Relief Event.** To the extent a Relief Event occurs before the School Occupancy Readiness Date for a School, and Developer

complies with the provisions of Section 16.2 (Relief Event Procedure), the applicable Construction Schedule will be amended and the relevant Scheduled School Occupancy Readiness Date, as well as the applicable Longstop Date, will be postponed by such time as is reasonable in the circumstances to take account of the effect of the delay caused by the Relief Event.

**16.4 Performance Relief Available Upon Occurrence of a Relief Event.** If a Relief Event occurs, and Developer complies with the provisions of Section 16.2 (Relief Event Procedure), Developer shall not be responsible or liable for, or deemed in default or breach hereof because of, any failure or delay in complying with its obligations under or pursuant to this Agreement which Developer cannot perform solely as a result of one or more Relief Events or its or their effects or by any combination thereof, and PGCPS shall not have the right to impose Deductions for Unavailability Events or Performance Failures to the extent caused by a Relief Event in accordance with Section 2.3 (Relief Events) of Exhibit X-2 (Services Requirements).

**16.4.1 Developer Information.** PGCPS shall provide Developer information reasonably requested in order for Developer to assert a Relief Event claim.

**16.5 Compensation Relief Available Upon Occurrence of a Relief Event.** If a Relief Event occurs, and Developer complies with the provisions of Section 16.2 (Relief Event Procedure), Developer shall be entitled to claim payment from PGCPS of an amount, to be determined and paid in accordance with Section 14.14 (PGCPS Payments for Compensation Events and Other Additional Costs), necessary to place Developer in a no better or worse position than Developer would have been in had the Relief Event not occurred (subject to any express limitations on compensation for a particular event or circumstance set forth in this Agreement, as further described in Section 16.5.1 (Limits on Compensation Relief)), which assessment shall take into consideration the following (without duplication):

- (a) Direct Losses resulting from the relevant Relief Event, which for the avoidance of doubt may include any self-insurance retentions or deductibles of up to Two Hundred and Fifty Thousand Dollars (\$250,000.00) paid as a direct result of such event or circumstance;
- (b) any net increase or decrease in the cost to Developer of performing the Design-Build Work or the Services as a direct result of such event or circumstance; and
- (c) any other amounts separately payable to Developer under this Agreement, including the Progress Payment, Milestone Payments, Delay Payments, Relief Payments, and/or Availability Payments payable to Developer.

For clarity, the reference to leaving Developer in a “no better or worse position” shall be construed for purposes of Article 16 (Relief Events) by reference to Developer’s:

- (a) rights, duties, and liabilities under or arising pursuant to performance of this Agreement, the Financing Documents, and the Project Contracts; and

(b) ability to perform its obligations and exercise its rights under this Agreement, the Financing Documents, and the Project Contracts, so as to ensure that:

(i) Developer is left in a position which is no better or worse in relation to the Key Ratios and the Equity IRR by reference to the version of the Base Case Financial Model applicable immediately prior to the relevant event than had the relevant event not occurred; and

(ii) the ability of Developer to comply with this Agreement is not adversely affected or improved as a consequence of the relevant event.

**16.5.1 Limits on Compensation Relief.** Notwithstanding the general relief offered in Section 16.5 (Compensation Relief Available Upon Occurrence of a Relief Event), the Parties understand and agree that receipt of compensation may be deferred pursuant to Section 14.14.5 (Deferral of Compensation) and that this Agreement limits the compensation that can be claimed by Developer in connection with certain Relief Events or in particular events or circumstances, including compensation with respect to:

(a) Unknown Land Conditions as set forth in Section 5.8 (Unknown Land Conditions);

(b) Developer's obligation to fund and PGCPS' right to direct use of the Design-Build Period Reserve Account and the Services Period Reserve Account in accordance with this Agreement;

(c) Developer efforts during the Pre-Occupancy Period in accordance with Section 10.7.3 (Limitation on Compensation to Developer During the Pre-Occupancy Period);

(d) delayed receipt of Milestone Payments in accordance with Section 14.3.2 (Exceptions to Timing of Milestone Payment Notices Due to Relief Events; Limitation on Compensation);

(e) Deferral of Compensation in accordance with Section 14.14.6 (Restoration of Financial Balance for Deferral of Compensation);

(f) costs not covered by Required Insurance due to self-insurance retentions or deductibles above Two Hundred and Fifty Thousand Dollars (\$250,000.00) in accordance with Section 20.2.11 (Reductions for Insurance Proceeds and Insurance Receivables); and

(g) any other limitation on compensation, relief, or recovery set forth in this Agreement.

## **ARTICLE 17 ASSIGNMENT AND TRANSFER**

**17.1 Restrictions on Transfers by Developer.** Except for the collateral assignment of the Developer Interest to a Financing Party, and exercise by a Financing Party of its rights and

remedies hereunder (including rights as a third party beneficiary), in accordance with Section 12.7 (Rights of Financing Party), Developer may not Transfer all or any part of the Developer Interest, or otherwise grant an interest, privilege, or license in connection with this Agreement, without the prior written consent of PGPCS, which consent may be withheld in PGPCS' sole and absolute discretion through the earlier of (i) the fifth (5<sup>th</sup>) anniversary of the Effective Date, provided that such anniversary occurs at least two (2) years following the Project Readiness Date, or (ii) the second (2<sup>nd</sup>) anniversary of the Project Readiness Date, and shall not be unreasonably withheld or delayed by PGPCS after the expiration of the applicable period. Any prospective assignee shall demonstrate to the satisfaction of PGPCS that it is not a Prohibited Person and that the proposed assignment will not violate any Applicable Law.

**17.1.1 Change of Control.** A Change of Control of Developer shall be deemed to be a Transfer of the Developer Interest for purposes of this Article. The restriction in Section 17.1 (Restrictions on Transfers by Developer) shall not apply to and no Change in Control of the Developer shall occur:

(a) in connection with the exercise of rights of the Senior Lenders under the Senior Financing Agreements;

(b) arising from any bona fide open market transaction in any shares or other securities of the Developer or of any Equity Member or of any holding company of an Equity Member effected on a recognized public stock exchange;

(c) in connection with a reorganization or transfer of interests within a group of persons under common control (whether directly or indirectly), or of any intermediate entity in the chain of ownership of such persons, so long as there is no substantive change in the person or group of persons that ultimately have control (individually or collectively) of such persons; or

(d) in connection with a reorganization or transfer of interests within a group of funds or similar entities managed (whether directly or indirectly) by any Equity Member or any Affiliate thereof, so long as there is no substantive change in the person or group of persons that ultimately manage (individually or collectively) such funds or similar entities.

**17.1.2 Developer Default.** No Transfer of all or any of the Developer Interest shall be made or have any force or effect if, at the time of such Transfer, there has occurred a Developer Default that has not been remedied or an event that with the lapse of time, the giving of notice, or otherwise would constitute a Developer Default.

**17.1.3 Covenant.** Before any assignment is carried out as described in this Article 17 (Assignment and Transfer), the prospective assignee shall covenant in writing to the satisfaction of PGPCS that it shall assume, respect, and fully honor all covenants, conditions, obligations, and liabilities of Developer contained in this Agreement.

**17.1.4 Assumption.** Unless and to the extent otherwise expressly agreed to in writing by PGPCS, any assignee shall be deemed to have assumed all of the obligations of

Developer under this Agreement, and no assignment shall relieve Developer of any of its obligations hereunder.

**17.1.5 Attempted Transfer.** Any attempted Transfer of this Agreement by Developer, including its respective permitted successors or assigns, must include the provisions of this Article 17 (Assignment and Transfer).

**17.1.6 No Recognition.** Subject to Section 17.1.5 (Attempted Transfer), any attempted Transfer in violation of this Article 17 (Assignment and Transfer) shall be null and void *ab initio* and of no force or effect, and PGCPs shall not be obligated to recognize any right of any Person to an interest in this Agreement or to conduct any other activities at any Sites otherwise authorized under this Agreement that was acquired in violation of this Article 17 (Assignment and Transfer).

**17.2 Permitted Succession and Assignments.** Developer and PGCPs agree that all of the covenants, conditions, obligations, and liabilities contained in this Agreement shall be binding upon and inure to the benefit of any and all permitted successors and assigns of Developer to the same extent as if the successors and assigns were in each case named as a party to this Agreement.

**17.3 Restrictions on Transfers by PGCPs.** PGCPs may not assign, transfer or otherwise grant an interest, privilege, or license in connection with this Agreement, except to another Governmental Authority which assumes in writing and is legally capable of discharging all the obligations of PGCPs under this Agreement, without the prior written consent of Developer, which consent may be withheld in Developer's sole and absolute discretion.

## **ARTICLE 18 RECORDS AND REPORTING REQUIREMENTS**

**18.1 Records and Reports.** Developer will, at its own cost and expense, retain and maintain the records and reports referred to in Section 18.5 (Records to be Kept) in accordance with this Article 18 (Records and Reporting Requirements) and other applicable terms of this Agreement, in chronological order, in a form that is capable of audit.

**18.2 Access to Records.** Developer will make all such records available to PGCPs or its representatives or advisors for inspection and copying (at PGCPs' expense) during normal business hours upon reasonable notice, and, upon request from PGCPs, provide PGCPs with electronic copies of any such records as soon as reasonably practicable. All such records shall be kept at Developer's principal office (which at all times shall be in the continental United States).

**18.3 Maintenance of Records.** True copies of the original records may be kept by Developer if it is not practicable to retain original records. Developer shall retain and maintain records referred to in Section 18.5 (Records to be Kept) for at least six (6) years unless a different retention period is expressly stated herein with regard to a particular type of record, all in sufficient detail, in appropriate categories and generally in such a manner to enable Developer to comply with its obligations and exercise rights under this Agreement. On the expiration of such period or

at the earlier request of PGCPS after termination of this Agreement, Developer shall deliver all those records (or, if those records are required by statute to remain with Developer, copies thereof) to PGCPS in the manner and at such locations as PGCPS specifies.

**18.4 Disposal of Records.** Prior to destroying or disposing of any records required to be maintained under Section 18.5 (Records to be Kept), Developer will give PGCPS sixty (60) days' prior written notice of Developer's intention to destroy or dispose of records. Such notice shall specify with particularity the records to be destroyed or disposed. If within such sixty (60)-day period PGCPS gives notice to Developer that PGCPS wishes to receive any of the records, then Developer will, at the cost and expense of PGCPS, deliver such records to PGCPS in the manner and at such location(s) as PGCPS specifies.

**18.5 Records to be Kept.** Developer shall retain the following, without duplication:

- (a) this Agreement, its Exhibits, the Project Contracts, Subcontracts, Financing Documents, and all other documents and instruments in respect of any financing, including all amendments to such agreements;
- (b) the Financial Model, including all prior versions, amendments, and modifications;
- (c) records relating to the appointment of the Design-Build Representative and the Services Period Representative, Key Personnel, and the Independent Engineer;
- (d) documents relating to Governmental Approvals, including applications, refusals, and appeals;
- (e) notices, reports, results, and certificates relating to the Design-Build Work, Commissioning, and Capital Modifications, including all as-built drawings and permits;
- (f) all records relating to any inspections of the Schools conducted under Applicable Law or by or for any Governmental Authority;
- (g) all operation and maintenance manuals;
- (h) all notices delivered to the Help Desk and all responses from the Help Desk in respect of such notices for a period of six (6) years after such notice was delivered;
- (i) all electronically and manually recorded information with respect to the provision of the Services including Events, Availability Conditions, Unavailability Events, and Performance Failures for a period of six (6) years after such information was recorded;
- (j) all electronically and manually recorded information with respect to actions initiated by Developer to respond to and rectify Events, Availability Conditions, Unavailability Events, and Performance Failures for a period of six (6) years following rectification of such matters;

- (k) documents relating to Relief Events;
- (l) comprehensive maintenance and overhaul records for each School, including the date, time, and scope of each such activity;
- (m) all Performance Monitoring Reports and the information and data used to prepare such reports for a period of six (6) years following the date of each such report;
- (n) invoices and payments, including calculation thereof;
- (o) all documents relating to the dispute resolution procedures as set out in Article 24 (Resolution of Disputes) for a period of ten (10) years following the initiation of such dispute;
- (p) all documents relating to a Refinancing (other than Exempt Refinancing);
- (q) documents relating to a request for the consent of PGCPs to any Change in Control by Developer;
- (r) all records required by Applicable Law (including in relation to health and safety matters) to be maintained by Developer with respect to the Design-Build Work and Services;
- (s) all documents relating to the Required Insurance;
- (t) receipts of expenditures incurred and amount of funds withdrawn from the Design-Build Period Reserve Account and the Services Period Reserve Account, together with (a) evidence of the costs that are the subject of such drawings; (b) the purpose for which funds have been used; (c) evidence that all Project Contractors and Subcontractors have waived any rights to Liens; (d) the balance remaining in the Services Period Reserve Account; and (e) such other supporting information as PGCPs may reasonably require;
- (u) documents referred to in Exhibit X-2 (Deductions); and
- (v) all other records, notices, or certificates required to be produced or maintained by Developer pursuant to the express terms of this Agreement.

**18.6 Monthly Design-Build Report.** During the Design-Build Period, Developer shall submit a monthly report (each, a “**Monthly Design-Build Report**”) to PGCPs on or before the tenth (10<sup>th</sup>) day of each month to report on activities during the prior month. The Monthly Design-Build Report shall be in a format agreed to by PGCPs and Developer, which may be through a third-party software system, and shall include, at a minimum:

- (a) a detailed account, certified by Developer, of current progress of the Design-Build Work as compared to the Construction Schedule and the Design-Build Work Plan;

- (b) the date on which Developer anticipates it will achieve Substantial Completion for each School;
- (c) either confirmation that there have been no changes or a description of any changes in the ownership of the interest in, or Control of, Developer and the Project Contractors;
- (d) the status of any Governmental Approvals;
- (e) any significant events occurring during the prior month;
- (f) a summary of activities expected to be undertaken by Developer during the upcoming month and upcoming critical tasks to be performed in order to maintain the Construction Schedule;
- (g) a summary of Developer’s activities with respect to, and in furtherance of, the Community Engagement and Outreach Plan;
- (h) a description of any expenditures incurred, amount of funds withdrawn from, and amount of funds remaining in the Design-Build Period Reserve Account; and
- (i) such other information reasonably requested by PGCPs.

Developer shall include as part of each Monthly Design-Build Report a reasonable number of construction photographs taken since the last report submitted by Developer. Developer shall also contemporaneously submit to PGCPs any progress reports related to the development and construction of the Project that it submits to a Financing Party.

**18.7 Performance Monitoring Report.** During the Services Period, Developer shall deliver to PGCPs a quarterly Performance Monitoring Report in accordance with Section 5.2 (Periodic Reporting) of Exhibit W (Services Requirements).

**18.8 MBE and CBB Reporting.** To ensure Developer is meeting the MBE and CBB minimum quantitative requirement stated in Section 4.7.1 (Minimum Quantitative Requirement) and to measure compliance with the MBE and CBB Subcontracting Plan, throughout the Term, PGCPs shall provide a web-based, secure portal for data capture and reporting purposes. Developer will be responsible for ensuring that all Project Contractors and Subcontractors use this portal and provide the required information on a monthly basis (each, a “**MBE and CBB Report**”). Project Contractors and Subcontractors shall be required to input all necessary wage, benefit, and payroll data, as well as upload back-up documentation for submission to PGCPs. This data shall be provided monthly based on the Project Contractors’ and/or Subcontractors’ payroll periods. Developer will input and update on a monthly basis as part of each MBE and CBB Report the following data for all Project Contractors and Subcontractors: demographics, geographic location, certification status, contract value, and change order values. Project Contractors and Subcontractors will provide data on the amount they have been paid on each Project Contract and Subcontract, as applicable.

**18.9 Additional Reports.** In addition to the Monthly Design-Build Report, quarterly Performance Monitoring Report, and the MBE and CBB Report, at the time intervals as outlined below, Developer shall submit to PGCPs:

**18.9.1** Annually, within ninety (90) days after the end of Developer’s fiscal year, an independent audit;

**18.9.2** Within fifteen (15) Business Days after the end of each month in which Developer has received notice that a Developer Default has occurred and/or is continuing, monthly income statements for the Project, including calculations of net cash flow, and updates on actions being taken to remediate the Developer Default; and

**18.9.3** Within thirty (30) Business Days after receipt of a written request by PGCPs, such additional information as may reasonably be requested by PGCPs and which is reasonably available to Developer.

**18.10 Limited Effect of Reports.** Developer’s submittal of reports is for PGCPs’ information only and shall not limit or otherwise affect Developer’s obligations to comply with the requirements of this Agreement. PGCPs’ acceptance of any reports shall not bind PGCPs in any manner and shall not imply PGCPs approval or consent to any of the matters set forth therein.

**ARTICLE 19**  
**EVENTS OF DEFAULT, REMEDIES, TERMINATION, AND TERMINATION**  
**COMPENSATION**

**19.1 Default by Developer.** The occurrence of any one or more of the following events during the Term shall constitute a “**Developer Default**” under this Agreement:

**19.1.1** If Developer fails to comply with, perform, or observe any material obligation, covenant, agreement, term, or condition in this Agreement;

**19.1.2** A School Occupancy Readiness Date does not occur on or before the Longstop Date for the relevant School (as such date may be extended pursuant to this Agreement) as provided in Section 10.6 (Failure to Achieve School Occupancy Readiness by the Applicable Longstop Date);

**19.1.3** Developer breaches Article 17 (Assignment and Transfer);

**19.1.4** If Developer (a) admits, in writing, that it is unable to pay its debts as such become due; (b) makes an assignment for the benefit of creditors; (c) files a voluntary petition under Title 11 of the United States Code, or if such petition is filed against it and an order for relief is entered, or if Developer files any petition or answer seeking, consenting to, or acquiescing in any reorganization, arrangement, composition, readjustment, liquidation, dissolution, or similar relief under the present or any future United States Bankruptcy Code or any other present or future Applicable Law, or shall seek or consent to or acquiesce in or suffer the appointment of any trustee, receiver, custodian, assignee, sequestrator, liquidator, or other similar official of Developer or of

all or any substantial part of its properties or of the Project or any interest therein; or (d) takes any corporate action in furtherance of any action described in this Section 19.1.4;

**19.1.5** If within ninety (90) days after the commencement of any proceeding against Developer seeking any reorganization, arrangement, composition, readjustment, liquidation, dissolution, or similar relief under the present or any future United States Bankruptcy Code, or any other present or future Applicable Law, such proceeding has not been dismissed, or if, within ninety (90) days after the appointment, without the consent or acquiescence of Developer, of any trustee, receiver, custodian, assignee, sequestrator, liquidator, or other similar official of Developer or of all or any substantial part of its properties or of the Project or any interest therein, such appointment has not been vacated or stayed on appeal or otherwise, or if, within ninety (90) days after the expiration of any such stay, such appointment has not been vacated;

**19.1.6** If a levy under execution or attachment has been made against all or any part of the Project or any interest therein created, incurred, assumed, or suffered to exist by Developer or any Person claiming through it, and such execution or attachment has not been vacated, removed, or stayed by court order, bonding, or otherwise within sixty (60) days after Developer becomes aware of such levy, unless such levy resulted from actions or omissions of PGCPs;

**19.1.7** Any representation or warranty made by Developer under this Agreement is false or misleading in any material respect on the date made;

**19.1.8** Developer abandons the Project by failing to perform a material part of the Design-Build Work or the Services for a continuous period in excess of thirty (30) days where such failure is not consistent with the Construction Schedule, as applicable, and is not expressly permitted or excused by the terms of this Agreement;

**19.1.9** Developer repudiates in writing any of its material obligations under this Agreement; or

**19.1.10** Developer accumulates Deductions that amount to ten percent (10%) or more of the Services Charge in each Billing Period for any twelve (12) consecutive Billing Periods, such that the ten percent (10%) threshold is met or exceeded in all twelve (12) consecutive Billing Periods. For the purposes of this Section 19.1.10, when calculating the amount of Deductions incurred in the applicable twelve (12) consecutive month period, neither (i) Deductions for Total Unavailability, nor (ii) LEED Deductions applied pursuant to Section 5.4 (LEED Deductions) of Exhibit X-2 (Deductions), shall be included in such calculation. Further, solely for the purposes of this Section 19.1.10, to the extent Developer is replaced by a Suitable Substitute Developer, the Deductions shall be reset to zero on the date such substitution occurs.

**19.2 Developer Default Notice and Cure Periods.** PGCPs shall provide a written notice, giving particulars of Developer's failure in reasonable detail ("**Developer Default Notice**") upon the occurrence of a Developer Default. Notwithstanding the foregoing, Developer shall

notify PGCPs of the occurrence, and details, of any Developer Default of which it becomes aware and of any event or circumstance which is likely, with the passage of time or otherwise, to constitute or give rise to a Developer Default, in either case promptly on Developer becoming aware of its occurrence. Upon receipt of a Developer Default Notice, Developer shall have the following cure periods:

**19.2.1** for a Developer Default under Section 19.1.1,

**19.2.1.1** a period of thirty (30) days after Developer receives a Developer Default Notice; or

**19.2.1.2** if, despite Developer's commencement of meaningful steps to cure immediately after receiving the Developer Default Notice, the Developer Default cannot be cured within such thirty (30) day period, Developer will have such additional period of time as is needed to cure the Developer Default provided that Developer continues to demonstrate, to the satisfaction of PGCPs, that (a) it is proceeding diligently, and will continue to proceed diligently, to cure or cause to be cured such failure; (b) its actions can be reasonably expected to cure or cause to be cured such failure within a reasonable period of time acceptable to PGCPs; (c) such failure will be cured within such period of time; and (d) such failure is in fact cured within one hundred and twenty (120) days (or any later period authorized by PGCPs in writing in PGCPs' sole discretion);

**19.2.2** for a Developer Default under Section 19.1.3 or Section 19.1.7, a period of thirty (30) days after Developer receives a Developer Default Notice; and

**19.2.3** for a Developer Default under Section 19.1.2, Section 19.1.4, Section 19.1.5, Section 19.1.6, Section 19.1.8, Section 19.1.9, or Section 19.1.10, there is no additional cure period.

**19.3 Remedial Program.** If a Developer Default occurs, PGCPs may, without prejudice to any other right or remedy available to it, require Developer to prepare and submit, within thirty (30) days of being notified, a remedial program (a "**Remedial Program**"). Notwithstanding the foregoing, Developer may, without being required by PGCPs, submit to PGCPs a Remedial Program in connection with an existing or potential Developer Default.

**19.3.1 Remedial Program Requirements.** A Remedial Program must set out specific actions and an associated schedule to be followed by Developer to cure the relevant Developer Default and reduce the likelihood of such defaults occurring in the future.

**19.3.2 Acceptance.** Upon receiving a Remedial Program, PGCPs shall review it and, within thirty (30) days of receipt thereof, PGCPs shall notify Developer whether such Remedial Program is acceptable (in PGCPs' sole discretion). If within thirty (30) days of receipt of a Remedial Program, PGCPs has not notified Developer whether such Remedial Program is acceptable or not, the Remedial Program shall be deemed not to be accepted. If PGCPs notifies Developer that its Remedial Program is acceptable, Developer shall implement such Remedial

Program in accordance with its terms, and while Developer is diligently implementing such Remedial Program, PGCPs shall be precluded from exercising any remedies in connection with the underlying Developer Default as set forth in Section 19.4 (Remedies by PGCPs Upon Developer Default).

**19.4 Remedies by PGCPs Upon Developer Default.** Upon the failure to cure a Developer Default in accordance with the timeframes set forth in Section 19.2 (Developer Default Notice and Cure Periods), or where, pursuant to Section 19.3 (Remedial Program), a Remedial Program has been accepted by PGCPs and Developer fails to comply with the Remedial Program or cure the Developer Default, in each case in accordance with the schedule provided in such Remedial Program, PGCPs may, by notice to Developer, declare Developer to be in default and do any or all of the following as PGCPs, in its sole discretion, shall determine, subject to any rights of a Financing Party as set forth in Article 12 (Project Financing and Refinancing), including specifically any rights that such Financing Party has under this Agreement that may or must precede exercise of any of the following rights by PGCPs.

**19.4.1** PGCPs may terminate this Agreement by giving written notice to Developer ninety (90) days prior to the effective date of such termination.

**19.4.2** If the Developer Default is by reason of the failure to pay any monies to another Person, PGCPs may (without obligation to do so) make payment on behalf of Developer of such monies unless such nonpayment is due to a bona fide dispute, and any amount so paid by PGCPs shall be payable by Developer to PGCPs within five (5) days after demand therefor.

**19.4.3** PGCPs may mitigate or cure the Developer Default in accordance with Section 19.17 (PGCPs' Temporary Step-In Rights) (but this shall not obligate PGCPs to cure or attempt to cure a Developer Default or, after having commenced to cure or attempted to cure a Developer Default, to continue to do so).

**19.4.4** PGCPs may seek to recover its Losses arising from such Developer Default and any amounts due and payable under this Agreement and, in connection therewith, exercise any recourse available to any PGCPs Person who is owed damages or a debt.

**19.4.5** If Developer fails to perform any of its obligations with respect to construction of the Project as set forth in this Agreement, PGCPs shall be entitled to exercise its rights under the bonds identified in Section 7.18 (Design-Build Security) and Section 7.19 (Additional Bond Security). In addition, subject to the rights of the surety, PGCPs may perform such obligation or cause such obligation to be performed, in which case PGCPs shall be entitled to withhold from any amounts due to Developer an amount equal to the reasonable, documented costs and expenses incurred or to be incurred by PGCPs to cure any breach or other failure of Developer to perform any of its obligations under this Agreement. PGCPs shall notify Developer and the surety in writing of any draw on or execution of the bonds identified in Section 7.18 (Design-Build Security) and Section 7.19 (Additional Bond Security) and the circumstances leading to such draw.

**19.4.6** PGCPs may exercise any of its other rights and remedies provided for hereunder or at law or equity.

**19.5 Default by PGCPs.** The occurrence of any one or more of the following events during the Term shall constitute a “**PGCPs Default**” under this Agreement:

**19.5.1** if PGCPs fails to make any payment obligation when due;

**19.5.2** if PGCPs fails to comply with, perform, or observe any material non-payment obligation, covenant, agreement, term, or condition in this Agreement; or

**19.5.3** any representation or warranty made by PGCPs under this Agreement is false or misleading in any material respect on the date made.

**19.6 PGCPs Default Notice and Cure Periods.** Developer shall provide a written notice, giving particulars of PGCPs’ failure in reasonable detail (“**PGCPs Default Notice**”) upon the occurrence of a PGCPs Default. Notwithstanding the foregoing, PGCPs shall notify Developer of the occurrence, and details, of any PGCPs Default of which it becomes aware and of any event or circumstance which is likely, with the passage of time or otherwise, to constitute or give rise to a PGCPs Default, in either case promptly on PGCPs becoming aware of its occurrence. Upon receipt of a PGCPs Default Notice, PGCPs shall have the following cure periods:

**19.6.1** for a PGCPs Default under Section 19.5.1 or Section 19.5.3, a period of thirty (30) days after PGCPs receives a PGCPs Default Notice; and

**19.6.2** for a PGCPs Default under Section 19.5.2,

**19.6.2.1** a period of sixty (60) days after PGCPs receives a PGCPs Default Notice; or

**19.6.2.2** if, despite PGCPs’ commencement of meaningful steps to cure immediately after receiving the PGCPs Default Notice, the PGCPs Default cannot be cured within such sixty (60) day period, PGCPs will have such additional period of time as is needed to cure the PGCPs Default provided that PGCPs continues to demonstrate, to the satisfaction of Developer, that (a) it is proceeding diligently, and will continue to proceed diligently, to cure or cause to be cured such failure; (b) its actions can be reasonably expected to cure or cause to be cured such failure within a reasonable period of time acceptable to Developer; (c) such failure will be cured within such period of time; and (d) such failure is in fact cured within one hundred and twenty (120) days (or any later period authorized by Developer in writing in Developer’s sole discretion).

**19.7 Developer Remedies Upon PGCPs Default.** Upon the failure to cure a PGCPs Default in accordance with the timeframes set forth in Section 19.6 (PGCPs Default Notice and Cure Periods), Developer may, by written notice to PGCPs, declare PGCPs to be in default and, at its option, exercise one or more of the following, as applicable:

**19.7.1** suspend performance of its Design-Build Work or Services obligations, as applicable, until such time as PGCPs has demonstrated to the reasonable satisfaction of Developer that PGCPs will perform and is capable of performing its obligations under this Agreement;

**19.7.2** claim a Relief Event if applicable in accordance with Article 16 (Relief Events); or

**19.7.3** terminate this Agreement by giving written notice to PGCPs; provided, however, for a PGCPs Default under Section 19.5.1, Developer cannot terminate this Agreement until sixty (60) days after the PGCPs Default Notice was provided.

**19.8 Termination for Convenience by PGCPs.** In the event that PGCPs desires to terminate this Agreement, PGCPs may do so by giving written notice to Developer ninety (90) days prior to the effective date of such termination.

**19.9 Reserved.**

**19.10 Termination Due to Uninsurable Risk.** This Agreement may be terminated by PGCPs in accordance with Section 20.5.2.1 or Section 20.5.2.3(ii) in connection with an Uninsurable Risk.

**19.11 Termination by Court Ruling.** To the extent a Termination by Court Ruling occurs, this Agreement shall be terminated as of the date of issuance of a final, non-appealable court order by a court of competent jurisdiction.

**19.12 Exclusive Termination Right.** After the Effective Date, neither Party shall have the right to terminate this Agreement for breach except as provided in this Article 19 (Events of Default, Remedies, Termination, and Termination Compensation).

**19.13 Consequences of Termination or Reversion.** Upon the termination or expiration of this Agreement, notwithstanding any claims the Parties may have against each other, the following provisions shall apply:

**19.13.1 Surrender.** On the Termination Date, Developer shall, without any legal action whatsoever being necessary on the part of PGCPs, relinquish and surrender care, custody, and control of the Project (including all improvements to the Project) and all materials, goods, machinery, equipment, hardware, parts, supplies, and other property of Developer (including inventories) that is included in the Project and used in connection with Developer's performance of any of its obligations under this Agreement. The Project (including all improvements to the Project) shall be surrendered in good order, condition, and repair (Reasonable Wear and Tear excepted), determined reasonably in accordance with the then applicable Contract Standards, free and clear of all encumbrances other than the Permitted Encumbrances; provided that Developer shall satisfy any obligation to surrender rights to proprietary intellectual property of Developer by extending to PGCPs on reasonable terms an irrevocable license to use such proprietary intellectual property in connection with the Project.

**19.13.2 Notice.** Developer hereby waives any notice now or hereafter required by Applicable Law with respect to transfer of the Project on the Termination Date.

**19.13.3 Responsibility.** PGCPs shall, as of the Termination Date, assume full responsibility for the Design-Build Work, to the extent not completed, and the Services, and as of such date, Developer shall have no liability or responsibility for such obligations occurring after such date.

**19.13.4 Costs.** Developer shall be liable for all costs, expenses, and other amounts for which it is liable or responsible hereunder incurred up to but not including the Termination Date, and PGCPs shall be liable for all costs, expenses, and amounts incurred in connection with the Design-Build Work and Services on and after the Termination Date.

**19.13.5 Records and Plans.** Developer, at its sole cost and expense, shall promptly deliver to PGCPs copies of all records and other documents relating to the Project that are in the possession of any Developer Person as PGCPs, acting reasonably, may request. All plans, drawings, specifications, and models prepared in connection with the Design-Build Work and in Developer's possession and all "as-built" drawings shall become the sole and absolute property of PGCPs, and Developer shall promptly deliver to PGCPs in electronic and hard copy format all such plans, drawings, specifications, and models and all such as-built drawings (including any auxiliary works, if undertaken) in sufficient detail to enable PGCPs to operate, maintain, dismantle, reassemble, and adjust the Schools and components thereof as PGCPs may reasonably require. All information provided to PGCPs by Developer shall be accurate, comprehensive, and up-to-date in all respects.

**19.13.6 Technology and Know-How.** Subject to the rights of any third party permitted under this Agreement, Developer shall provide to PGCPs (a) a copy of all technical documents, including functional specifications, operating manuals, and business processes charts, necessary to support continued operation of the Schools, and (b) an irrevocable royalty-free license in respect of use of such documents.

**19.13.7 Subcontracts.** At the request of PGCPs, Developer and PGCPs shall execute an agreement or agreements between Developer, PGCPs, and any subcontractor providing services at the election of PGCPs, pursuant to which any contract between Developer and any such subcontractor relating to the provision of the services is to be novated or assigned to PGCPs on the Termination Date.

**19.13.8 Evidence of Termination.** Developer and PGCPs shall execute and deliver to the other Party, as applicable, any instruments reasonably requested by either Party to evidence such termination.

**19.13.9 Assistance.** Developer shall assist PGCPs in such manner as PGCPs may require to ensure the orderly transition of the performance of the Services to PGCPs or such other third party as may be selected by PGCPs.

**19.13.10 Adjustments.** PGCPS and Developer shall make appropriate adjustments, including adjustments relating to any Subcontracts assigned to PGCPS at PGCPS' request that are incurred prior to the Termination Date, and any adjustments and payment therefor shall be made by the appropriate Party on the Termination Date, but shall be subject to readjustment if necessary because of error in matters such as information, calculation, payments, and omissions that are identified within the period of one hundred and eighty (180) days following the Termination Date; provided, however, that PGCPS and Developer acknowledge that certain adjustments or readjustments may have to be made when a third party provides to PGCPS or Developer a final adjustment amount in respect of a matter, and for such matters the adjustment and readjustment date shall each be correspondingly extended.

#### **19.14 Termination Compensation Process.**

**19.14.1 Termination Compensation Claim.** If Developer wishes to claim Termination Compensation, within one hundred and twenty (120) days after the Termination Date, or such longer period as may be agreed to in writing by PGCPS at PGCPS' sole discretion, Developer shall submit a complete termination inventory schedule identifying the amount of Termination Compensation claimed under the applicable scenario in Exhibit Z (Calculation of Termination Compensation) to PGCPS ("**Termination Compensation Claim**"). In the event Developer fails to timely submit a Termination Compensation Claim, Developer is deemed to have waived any claims with respect to Termination Compensation.

**19.14.2 Termination Compensation Claim Documentation.** The Termination Compensation Claim shall include the following certifications, as applicable:

(a) Developer shall certify to PGCPS in writing that either (a) the termination of this Agreement did not give rise to any right on the part of Developer or any Affiliate(s) of Developer to seek to recover proceeds under any insurance policy or policies or bond maintained by Developer or such Affiliate(s), or (b) the termination of this Agreement did give rise to a right on the part of Developer and/or any Affiliate(s) of Developer to seek to recover proceeds under one or more insurance policies or bonds maintained by Developer and/or such Affiliate(s), the appropriate claim or claims have been made in respect of such insurance, and Developer and/or such Affiliate(s) of Developer have recovered under such insurance the aggregate amount of proceeds to be set forth in such certificate, with the amount of such proceeds to be endorsed by the insurer(s) or insurance broker(s) of Developer and/or such Affiliate(s) of Developer as have been duly paid Developer and/or such Affiliate(s), as the case may be;

(b) Developer shall certify to PGCPS in writing any amounts owed by PGCPS calculated as of the Termination Date, setting forth such calculations;

(c) Developer shall deliver to PGCPS a certificate setting forth the calculation and aggregate amount of any and all cash balances of Developer as of the Termination Date, including, without limitation, any reserves of Developer;

(d) The Unit Holders shall certify to PGCPS in writing that they have released Developer from any payment, performance, or other obligations to them that may have arisen prior to the Termination Date; and

(e) Developer shall deliver to PGCPS an itemized list of all amounts claimed under Section 19.14.2(b), which list shall provide detailed calculations of each amount claimed, the relevant contract under which such amount is claimed, and a textual description of the reason such amount under such contract became due and payable prior to the Termination Date or has become due and payable as a result of the termination of this Agreement. Such list shall be attached to a certificate of a duly authorized officer of Developer, certifying, for and on behalf of Developer, as to the reasonableness and accuracy of the statements made therein.

**19.14.3 Agreement on Termination Compensation.** After receipt of the information described in Section 19.14.2 (Termination Compensation Claim Documentation), PGCPS and Developer may agree in writing upon the whole or any part of the amount to be paid or remaining to be paid as Termination Compensation. If PGCPS and Developer fail to agree on the whole amount to be paid as Termination Compensation, PGCPS shall disburse to Developer such undisputed amounts that PGCPS agrees are due as Termination Compensation at the time required by Exhibit Z (Calculation of Termination Compensation), and Developer may, within thirty (30) days of the failure to reach agreement, refer the disputed amount to resolution in accordance with Article 24 (Resolution of Disputes).

#### **19.14.4 Disbursement to Developer.**

**19.14.4.1** PGCPS shall disburse to Developer the amount determined as Termination Compensation in accordance with this Section 19.14 (Termination Compensation Process) to such account as Developer may instruct in writing no later than the Termination Compensation Due Date, unless PGCPS elects to make Recurring Termination Payments in accordance with and pursuant to Exhibit Z (Calculation of Termination Compensation).

**19.14.4.2** To the extent PGCPS elects to make Recurring Termination Payments, on the date set forth in the Recurring Termination Payment Schedule, PGCPS shall disburse funds to the account identified in writing by Developer or, to the extent Developer provides evidence of Developer's assignment of the Recurring Termination Payments to the Collateral Agent, to the account identified in writing by the Collateral Agent. To the extent Developer assigns Developer's rights to the Recurring Termination Payments to the Collateral Agent, Developer shall assign its interest in the Escrow Agreement to the Collateral Agent.

**19.15 Calculation of Termination Compensation.** The Termination Compensation shall be calculated based on the applicable scenario set forth in Exhibit Z (Calculation of Termination Compensation).

## **19.16 PGCPS Liquidated Damage Rights.**

**19.16.1 Liquidated Damage Rights Defined.** PGCPS' rights under this Agreement include the right (each of the following, a "**Liquidated Damage Right**"):

(a) to withhold from the final Milestone Payment and any Availability Payments funds under the circumstances set forth in Section 4.7.4 (Failure to Achieve Design-Build Period MBE and CBB Participation);

(b) to withhold from the Availability Payment or otherwise receive a payment from Developer of funds under the circumstances set forth in Section 4.7.5 (Failure to Achieve Services Period MBE and CBB Participation);

(c) to withhold Late Delivery Damages from the applicable Milestone Payment in accordance with Section 10.5 (Late Delivery Damages); and

(d) to impose Deductions from certain payments owed by PGCPS to Developer under the circumstances set forth in Exhibit X-2 (Deductions).

**19.16.2 Sole Remedy; Exceptions.** The Parties acknowledge and agree that PGCPS' actual damages or losses in each such circumstance are impossible to ascertain as of the Commercial Close Date and that the amounts payable to, or to be retained by, PGCPS through the exercise of any Liquidated Damage Right are a fair and reasonable estimate of fair compensation to PGCPS for the intended circumstance, as applicable, shall constitute liquidated damages in each such circumstance, and are not a penalty against Developer. Developer is expressly estopped from claiming, and waives any right to claim, that the exercise of any Liquidated Damage Right by PGCPS amounts to a penalty or is not enforceable. The liquidated damages resulting from PGCPS' exercise of a Liquidated Damage Right shall constitute the only damages payable by Developer to PGCPS to compensate PGCPS for the damages or losses resulting from the specific circumstances contemplated by such Liquidated Damage Right, and the exercise of such right by PGCPS shall constitute PGCPS' sole remedy in respect of such circumstances; provided, however, that such limitation is subject and without prejudice to:

(a) any entitlement of PGCPS to specific performance of any obligation of Developer under this Agreement;

(b) any right of PGCPS under Section 11.4.2 (Additional Developer Obligations) to require Developer to take additional action upon the repeated or persistent occurrence of unexcused Unavailability Events or Performance Failures;

(c) any entitlement of PGCPS to injunctive relief;

(d) PGCPS' step-in rights under Section 19.17 (PGCPS' Temporary Step-In Rights);

(e) any right of PGCPs to declare the occurrence of a Developer Default under Section 19.4 (Remedies by PGCPs Upon Developer Default), including a Developer Default resulting from the significant accumulation of Deductions based on the occurrence of Unavailability Events or Performance Failures;

(f) Developer's indemnification obligations under Section 4.9.2 (Developer Indemnification) and Article 21 (Liability; Indemnification);

(g) the determination of Developer liability in respect of a termination for Developer Default made pursuant to Article 4 (Termination Due to Developer Default) of Exhibit Z (Calculation of Termination Compensation); or

(h) any other express right of PGCPs pursuant to this Agreement.

### **19.17 PGCPs' Temporary Step-In Rights.**

**19.17.1 PGCPs Step-In and Rectification Rights.** If PGCPs reasonably considers that (a) a breach by Developer of any obligation under this Agreement (including a Developer Default), or (b) an event (i) is likely to create an immediate and serious threat to the health or safety of any PGCPs Person, any property, the environment or the reputation, integrity of, or public confidence in, the Project and any related operations, or (ii) is prejudicial to the ability to carry on PGCPs Activities to a material degree, then PGCPs, acting reasonably, may either:

**19.17.1.1** require Developer by notice to take such steps as are necessary or expedient to mitigate or rectify such state of affairs (including, if applicable, due to Developer's breach of any terms or conditions of this Agreement), and Developer shall use commercially reasonable efforts to comply with PGCPs' requirements as soon as reasonably practicable; or

**19.17.1.2** if it considers that there is not sufficient time for Developer to take the necessary steps to address the situation referred to in clauses (b)(i) or (ii) of this Section 19.17.1 (PGCPs Step-In and Rectification Rights), or if Developer (a) does not confirm, within five (5) Business Days of a written notice delivered in accordance with Section 19.17.1.1, or such shorter period as is appropriate in the case of an emergency, that it is willing to take such steps as are required in such notice or present an alternative plan acceptable to PGCPs (acting reasonably) to mitigate, rectify, and protect against such circumstances, or (b) fails to take the steps as are referred to or required in such notice delivered or accepted alternate plan within such time as set forth in such notice or accepted alternate plan (as PGCPs, acting reasonably, may extend), take such steps as it considers are necessary, appropriate, or expedient (either itself or by engaging others) to mitigate, rectify, or protect against such state of affairs and to ensure performance of the relevant obligations under this Agreement to the standards required (or as close as possible to those standards as the circumstances permit). Such steps may include the partial or total suspension of the right and obligation of Developer to provide the relevant Design-Build Work or Services, but only for so long as the circumstances referred to in Section 19.17.1 (PGCPs Step-In and Rectification Rights) subsist. PGCPs will carry out such steps as quickly as is practicable, and in such manner as will minimize interference with Developer's performance of its obligations under

this Agreement. PGCPs' exercise of any rights under this Section 19.17 (PGCPs' Temporary Step-In Rights) shall not affect PGCPs' rights against Developer by reason of a Developer Default or breach (even if PGCPs' efforts have the effect of curing such Developer Default or breach), nor constitute a waiver of PGCPs' rights to pursue any action for any past, present, or future breach by Developer, and PGCPs may seek specific performance, injunction, or other equitable remedies, it being acknowledged that damages are an inadequate remedy for a Developer Default.

**19.17.2 Project Contracts and Subcontracts.** Developer shall ensure that all Project Contracts and Subcontracts permit PGCPs to exercise its rights under Section 19.17 (PGCPs' Temporary Step-In Rights).

**19.17.3 Notice of Capital Modifications.** PGCPs shall notify Developer of any Capital Modification which PGCPs intends to make pursuant to the exercise of the PGCPs rights under Section 19.17.1 (PGCPs Step-In and Rectification Rights) and provide Developer a reasonable opportunity, taking into account all the circumstances, to comment on the proposed Capital Modification. In making such Capital Modification, PGCPs will reasonably consider comments received in a timely manner from Developer on the proposed Capital Modification.

**19.17.4 Allocation of Costs and Provision of Relief for PGCPs' Exercise of Step-In Rights.**

**19.17.4.1** To the extent that any of the circumstances set forth in Section 19.17 (PGCPs' Temporary Step-In Rights) arise as a result of any breach by Developer of its obligations under this Agreement (including a Developer Default), then Developer shall pay PGCPs the amount of all costs and expenses reasonably incurred by PGCPs in exercising its rights under Section 19.17.1 (PGCPs Step-In and Rectification Rights) and an additional mark-up of fifteen percent (15%) of such costs and expenses in respect of indirect costs and overhead not otherwise directly attributable to the exercise of such rights. Such amounts shall be paid to PGCPs within five (5) days after written demand therefor unless PGCPs identifies that, in lieu of a separate payment, PGCPs will claim such costs and expenses as an Extraordinary Item.

**19.17.4.2** In all other cases, PGCPs shall compensate Developer, and provide schedule and performance relief to Developer, for actions taken under Section 19.17 (PGCPs' Temporary Step-In Rights) in the manner provided in Article 16 (Relief Events) as if such circumstances constituted a Relief Event affecting Developer; provided, however, in no case shall PGCPs incur any liability to Developer for any act or omission of PGCPs or any other Person in the course of exercising its rights under Section 19.17 (PGCPs' Temporary Step-In Rights) unless resulting from recklessness or gross negligence.

**19.18 No Effect on Contract Services.** The exercise by PGCPs of any of its rights under Section 19.16 (PGCPs Liquidated Damage Rights) or Section 19.17 (PGCPs' Temporary Step-In Rights) shall not reduce or affect in any way Developer's responsibility hereunder to perform the Design-Build Work or the Services.

**19.19 No Duplicative Recovery or Claims Outside Contract.** Every right to claim compensation, indemnification, or reimbursement under this Agreement shall be construed so that recovery is without duplication to any other amount recoverable under this Agreement. Neither Party shall be entitled to make any claim against the other Party for compensation, indemnification, or reimbursement other than as provided under this Agreement. However, a Party will not be prevented from enforcing a right or remedy on the basis that another right or remedy hereunder deals with the same or similar subject matter, and no single or partial exercise by a Party of any right or remedy precludes or otherwise affects the exercise of any other right or remedy to which that Party may be entitled.

**19.20 No Special, Consequential, or Punitive Damages.** In no event shall either Party be liable to the other or obligated in any manner to pay to the other Party any special, incidental, consequential, punitive, or similar losses or damages based upon claims arising out of or in connection with the performance or non-performance of its obligations or otherwise under this Agreement, or any representation made in this Agreement being materially incorrect, whether such claims are based upon contract, tort, negligence, warranty, or any other legal theory. This Section 19.20 (No Special, Consequential, or Punitive Damages) shall not limit the recovery of any such losses or damages under Article 21 (Liability; Indemnification) in respect of claims by third parties.

**19.21 Survival.** Notwithstanding any other provision of this Agreement, the following provisions hereof will survive the expiration or any earlier termination of this Agreement:

- (a) Section 4.7.5 (MBE and CBB Participation Failures at the Expiration Date);
- (b) Section 4.9 (Compliance with Environmental Law);
- (c) Article 12 (Project Financing and Refinancing);
- (d) Section 14.4.3.1 (Limit on Monthly Availability Payment Adjustments);
- (e) Section 14.4.3.2 (NA Charges Cap);
- (f) Section 14.6 (Monthly Billing Statements);
- (g) Section 14.7 (Quarterly Net Adjustments Report);
- (h) Section 14.8 (Billing Disputes);
- (i) Section 18.5 (Records to be Kept);
- (j) Article 19 (Events of Default, Remedies, Termination, and Termination Compensation), as applicable to the obligations of the Parties following the Termination Date;
- (k) Article 21 (Liability; Indemnification);

- (l) Article 24 (Resolution of Disputes);
- (m) Article 25 (Handback at End of Term);
- (n) Section 27.24 (Confidentiality);
- (o) Any Required Insurance with a tail as set forth in Exhibit CC (Required Insurance), together with any provisions necessary to give effect to the above provisions.

## **ARTICLE 20 RISK OF LOSS; INSURANCE; DAMAGE AND DESTRUCTION**

**20.1 Risk of Loss.** Except to the extent explicitly otherwise provided in this Agreement, PGCPS will have no liability whatsoever in matters regarding the Design-Build Work, the Services, or any other activity performed by any Developer Person pursuant to this Agreement. Except to the extent explicitly otherwise provided in this Agreement, during the Design-Build Period, Developer shall, without prejudice to any other rights of PGCPS, bear all risk of loss or damage or destruction to the Sites arising from any causes whatsoever, except to the extent caused by any PGCPS Indemnitee. During the Services Period, PGCPS shall, without prejudice to any other rights of Developer, bear all risk of loss or damage or destruction to the Sites arising from any causes whatsoever, except to the extent caused by any Developer Person.

### **20.2 Required Insurance.**

**20.2.1 Required Insurance.** At all times during the Design-Build Period, Developer shall obtain or cause to be obtained, maintain, and comply with the terms and conditions of the Required Design-Build Period Insurance. At all times during the Services Period, Developer or PGCPS, as applicable, shall obtain or cause to be obtained, maintain, and comply with the terms and conditions of the Required Services Period Insurance. The insurance must meet the requirements set forth in this Section 20.2 (Required Insurance) and Exhibit CC (Required Insurance).

**20.2.2 Premiums.** Developer or PGCPS, as applicable, shall pay all premiums for the Required Insurance as the same become due and payable and, within fifteen (15) days after payment, shall provide PGCPS or Developer, as applicable, with proof that all Required Insurance is in place. Developer or PGCPS, as applicable, shall be liable for any deductible amount in the event of a loss otherwise covered by the Required Insurance.

**20.2.3 Additional Insured, Additional Named Insured, or Joint Loss Payee.** The Required Insurance shall provide by appropriate language that PGCPS, Developer, and each Project Contractor, as applicable, is an additional insured, additional named insured, or joint loss payee, as set forth in Exhibit CC (Required Insurance), that the insurance afforded by such policies is primary insurance, and that all rights of the insurer for contribution or otherwise from PGCPS, Developer, any Project Contractor, or other insurers of PGCPS, Developer, or any Project Contractor, as applicable, are waived. Each such policy shall provide that any losses shall be

payable notwithstanding any act or failure to act or negligence of any Developer Person, any PGCPs Person, any Financing Party, or any other person.

**20.2.4 Project Contractors and Subcontractors.** Developer shall require that all Project Contractors and Subcontractors secure and maintain all insurance coverage and other financial sureties required by Applicable Law and otherwise comply with the Insurance Requirements in connection with their presence and the performance of their duties at the Sites or concerning the Project.

**20.2.5 Compliance with Insurer Requirements.** Developer and PGCPs shall comply promptly with the requirements of all insurers pertaining to the Sites and the Project under any policy of Required Insurance to which such is a named insured, a co-insured, or an additional insured person. Neither Party shall knowingly do or permit anything to be done or fail to take any reasonable action that results in the cancellation or reduction of coverage under any policy of Required Insurance to which such Party is a named insured, co-insured, or an additional insured person.

**20.2.6 Evidence of Insurance.** Certificates of insurance, and, if requested by PGCPs or Developer, as applicable, binders of insurance, evidencing the effectiveness of the insurance coverage that Developer or PGCPs, as applicable, is required hereunder to maintain or cause to be maintained shall be delivered to PGCPs or Developer, as applicable, on or prior to the Effective Date and not less than thirty (30) days prior to the expiration or termination of coverage. Duplicate or certified copies of such policies shall be delivered to PGCPs or Developer, as applicable, within fifteen (15) days after demand. Notice of insurance policy changes by Developer or PGCPs, as applicable, shall be furnished to PGCPs or Developer, as applicable.

**20.2.7 Failure to Provide Insurance Coverage.** If Developer or PGCPs, as applicable, fails to pay any premium for Required Insurance, or if any insurer cancels any Required Insurance policy and Developer or PGCPs, as applicable, fails to obtain replacement coverage so that the insurance is maintained on a continuous basis, or if Developer or PGCPs, as applicable, fails to provide evidence of Required Insurance to PGCPs or Developer, as applicable, in accordance with Exhibit CC (Required Insurance), PGCPs or Developer, as applicable, may, but is not obligated to, pay such premium or procure similar insurance coverage from another insurer, and, upon such payment by PGCPs or Developer, as applicable, the amount thereof shall be reimbursable to the paying Party as an Extraordinary Item. Subject to Section 20.5 (Uninsurable Risks), the failure of Developer or PGCPs, as applicable, to obtain and maintain any Required Insurance shall not relieve Developer or PGCPs, as applicable, of its liability for any losses intended to be insured thereby, be a satisfaction of any Developer or PGCPs liability under this Agreement, or in any way limit, modify, or satisfy Developer's or PGCPs' indemnity obligations hereunder.

**20.2.8 Waiver of Subrogation.** Developer or PGCPs, as applicable, shall cause the Required Insurance to be endorsed so as to provide that the insurer or insurers waive any right of subrogation against PGCPs, Developer, and each Project Contractor, as applicable.

**20.2.9 Cancellation.** Each of Developer and PGCPs understands and agrees that cancellation of any Required Insurance will constitute a failure to comply in a material respect with a material provision of this Agreement. Each policy shall contain an endorsement that will prohibit its cancellation or material modification prior to the expiration of thirty (30) days after notice of such proposed cancellation or material modification to PGCPs or Developer, as applicable.

**20.2.10 Not a Limit on Liability.** Developer's or PGCPs', as applicable, maintenance of the Required Insurance for which Developer or PGCPs, as applicable, is responsible shall effect no limitation on the liability of the Parties otherwise set forth in this Agreement.

**20.2.11 Reductions for Insurance Proceeds and Insurance Receivables.** Whenever this Agreement obligates PGCPs or Developer, as applicable, to pay any amount to Developer or PGCPs, as applicable, in respect of an event or circumstance for which, or with respect to the consequences of which, an insurance claim may be made by Developer or PGCPs, as applicable, under the Required Insurance, the amount which PGCPs or Developer, as applicable, is obligated to pay will be reduced by the amount of Insurance Proceeds and Insurance Receivables which Developer or PGCPs, as applicable, recovers or would have been entitled to recover if it had complied with the requirements of this Agreement or the requirements of any policy of Required Insurance; provided that, in respect of any Relief Event, Insurance Proceeds and Insurance Receivables shall not include costs not covered due to self-insurance retentions or deductibles of up to Two Hundred and Fifty Thousand Dollars (\$250,000.00) paid by Developer as a direct result of such Relief Event.

**20.3 Required Design-Build Period Insurance.** Developer shall obtain and keep in force, or cause to be obtained and kept in force, throughout the Design-Build Period, the policies of insurance listed in Section 1 (Design-Build Period Insurance) of Exhibit CC (Required Insurance). Copies of these policies or binders of insurance as may be specified by PGCPs shall be delivered to PGCPs promptly when received by Developer. Each policy shall be obtained and be effective prior to the performance of any work or commencement of any activity intended to be insured by each policy.

**20.4 Required Services Period Insurance.** Developer or PGCPs, as applicable, shall obtain and keep in force, or cause to be obtained and kept in force, throughout the Services Period, the policies of insurance listed in Section 2 (Services Period Insurance) of Exhibit CC (Required Insurance). Copies of these policies or binders of insurance as may be specified shall be delivered to PGCPs or Developer, as applicable, promptly when received by Developer or PGCPs, as applicable. Each policy shall be obtained and be effective prior to the performance of any work or commencement of any activity intended to be insured by each policy.

## **20.5 Uninsurable Risks.**

**20.5.1 Risks Becoming Uninsurable.** Each Party will promptly notify the other Party if a Principal Insured Risk becomes or is expected to become Uninsurable. Such notice shall

include supporting documentation identifying the due diligence performed by the Party and the Party's rationale in assessing that the Principal Insured Risk has become or is expected to become Uninsurable.

**20.5.1.1** If both Parties agree or it is determined in accordance with Article 24 (Resolution of Disputes) that the relevant Principal Insured Risk is or is about to become Uninsurable and that the Principal Insured Risk being Uninsurable is not and will not be caused by a Developer Fault or a PGCPs Fault, then the Parties, together with their respective insurance advisors, will meet to discuss the means by which such Principal Insured Risk should be managed (including considering the feasibility of self-insurance by either or both Parties).

**20.5.1.2** To the extent a Principal Insured Risk becomes Uninsurable due to a Developer Fault or a PGCPs Fault, Developer or PGCPs, as applicable, shall not be relieved of the requirement to insure the Principal Insured Risk and any failure to do so may, as applicable, be considered a Developer Default or PGCPs Default.

**20.5.2 Consequences of Risks Becoming Uninsurable.** If the requirements of Section 20.5.1.1 are satisfied but the Parties cannot agree within twenty (20) Business Days on how to manage a Principal Insured Risk that becomes Uninsurable (the "**Uninsurable Risk**"), then:

**20.5.2.1** if the Uninsurable Risk is third party liability, if and for so long as the Uninsurable Risk is Uninsurable, PGCPs may by notice to Developer terminate this Agreement whereupon Developer will be entitled to Termination Compensation as provided in Section 3 of Exhibit Z (Calculation of Termination Compensation);

**20.5.2.2** if the Uninsurable Risk is not third party liability or if (and for as long as) PGCPs has not terminated this Agreement under Section 20.5.2.1, then this Agreement will continue, but neither Developer nor PGCPs will be obligated by this Agreement to maintain insurance in respect of the Uninsurable Risk and references in this Agreement to the insurance required by this Article 20 (Risk of Loss; Insurance; Damage and Destruction) or Exhibit CC (Required Insurance) will be construed accordingly. In such event, the Availability Payments will thereafter be adjusted by agreement of the Parties acting reasonably or, failing such agreement, by Article 24 (Resolution of Disputes), from the date upon which the Uninsurable Risk became Uninsurable, to reflect any savings in Developer's insurance cost as a result of Developer not having to insure against the Uninsurable Risk; and

**20.5.2.3** subject to Section 20.5.3 (Third Party Liability Insurance as an Uninsurable Risk), on the occurrence of the Uninsurable Risk, PGCPs will either:

(i) pay to Developer as an Extraordinary Item an amount equal to the insurance proceeds that would have been payable directly to Developer or any Project Contractor under the relevant policies in respect of the Uninsurable Risk had the relevant insurance continued to be available and in effect, and this Agreement will continue; or

(ii) by notice to Developer, terminate this Agreement whereupon Developer will be entitled to Termination Compensation as provided in Section 3 of Exhibit Z (Calculation of Termination Compensation),

except that PGPCS may not, in any such case, terminate this Agreement pursuant to Section 20.5.2.3(ii) if Developer releases PGPCS from all obligations under Section 20.5.2.3(i) and deposits to the Insurance Account an amount equal, in the reasonable opinion of PGPCS, to the insurance proceeds, and all amounts in respect of deductibles and waiting periods that would have been the responsibility of Developer under this Article 20 (Risk of Loss; Insurance; Damage and Destruction) or Exhibit CC (Required Insurance), that would have been payable in respect of the Uninsurable Risk that occurred had the relevant insurance continued to be available and in effect.

**20.5.3 Third Party Liability Insurance as an Uninsurable Risk.** If this Agreement is terminated pursuant to Section 20.5.2.3(ii) and at the date of such termination third party liability is an Uninsurable Risk, and if:

**20.5.3.1** there is an outstanding third party claim against a Developer Person at the Termination Date; or

**20.5.3.2** following the Termination Date, a third party claim is subsequently made against a Developer Person in respect of any event or circumstance that occurred before the Termination Date, which, in either case, would have been covered by the third party liability insurance that either PGPCS or Developer would have been required to carry had that risk not been an Uninsurable Risk, then PGPCS will pay to Developer as part of the Termination Compensation the amount for which such Developer Person becomes liable in respect of such claim in addition to the compensation payable pursuant to Section 20.5.2.3(ii).

**20.5.4 Subrogation.** If PGPCS makes any payment to Developer pursuant to Section 20.5.2.3(i) or Section 20.5.3, then PGPCS, to the extent of the amount paid, will be subrogated to Developer's rights against any third party in respect of the occurrence or claim as a result of which the payment was made, other than any third party that was an insured under the last policy of insurance to cover the Uninsurable Risk before it became Uninsurable, to the extent the insurers did not have a right of subrogation against such third party.

**20.5.5 Continuing Attempts to Insure Uninsurable Risks.** When there is an Uninsurable Risk for which Developer or PGPCS, as applicable, is responsible to obtain insurance under Exhibit CC (Required Insurance), Developer or PGPCS, as applicable, will approach the insurance market on a regular basis and in any event at regular intervals of no longer than six months to establish whether the Uninsurable Risk remain Uninsurable.

**20.5.6 Uninsurable Risks Becoming Insurable.** Where a risk that was previously an Uninsurable Risk ceases to be so and either Party becomes aware or is informed by the other Party that this is the case, the Party responsible for obtaining the insurance under Exhibit CC (Required Insurance), will forthwith take out, maintain, and pay for or cause to be taken out,

maintained, and paid for insurance in accordance with the requirements of this Agreement in respect of the risk, and in any case:

**20.5.6.1** Section 20.5.1.1, Section 20.5.2 (Consequences of Risks Becoming Uninsurable), Section 20.5.4 (Subrogation), and Section 20.5.5 (Continuing Attempts to Insure Uninsurable Risks) will no longer apply to the risk so long as it is not an Uninsurable Risk; and

**20.5.6.2** the Availability Payments will be adjusted by agreement of the Parties acting reasonably or, failing such agreement, by Article 24 (Resolution of Disputes), from the date upon which the Uninsurable Risk became insurable, to reflect any increase in Developer's insurance cost as a result of having to insure the risk that ceased to be an Uninsurable Risk.

## **20.6 Protection of Sites from Damage and Destruction.**

**20.6.1 Protection.** Developer shall use care and diligence, and shall take commercially reasonable and appropriate precautions, to protect the Sites from loss, damage, or destruction. Developer shall report to PGCPs and the insurers immediately upon obtaining knowledge thereof, any damage or destruction to a Site and as soon as practicable thereafter shall submit a full report to PGCPs. Developer shall also submit to PGCPs within twenty-four (24) hours of receipt copies of all accident and other reports filed with or given to Developer by any insurer, adjuster, or Governmental Authority.

**20.6.2 Repair of Property.** Developer shall promptly repair or replace all property owned by PGCPs or any other public or private owner that is damaged by any Developer Person in connection with the performance of, or the failure to perform, the Design-Build Work or the Services. The repair and replacements shall restore the damaged property, to the maximum extent reasonably practicable, to the character and condition existing immediately prior to the damage.

**20.6.3 Agreement Not Affected by Damage or Destruction.** Except as otherwise expressly provided herein, the partial destruction or damage or complete destruction of Improvements by fire or other casualty will not permit either Party to terminate this Agreement or entitle Developer to demand any increase in any amounts payable to Developer under this Agreement.

## **20.7 Casualty Restoration.**

**20.7.1 Notice to PGCPs.** In the event that any item or part of a Site shall be damaged (except *de minimis* damage of Twenty-Five Thousand Dollars (\$25,000.00) or less (or such greater amount as PGCPs and Developer shall from time-to-time mutually establish in writing)) or destroyed by a fire or other casualty, ordinary or extraordinary, foreseen or unforeseen (the "**Casualty Property**"), Developer shall promptly give notice thereof and of the estimated amount of such casualty loss to PGCPs.

**20.7.2 Obligation to Restore.** Subject to Section 20.7.3 (Insufficient Insurance), Developer shall as soon as practicable after the casualty, repair, restore, rebuild, or cause to be repaired, restored, or rebuilt, the Casualty Property as nearly as possible to the character and condition with materials of like kind and quality and without deduction for depreciation that existed immediately prior to such loss or damage (a “**Casualty Restoration**”), subject to PGCPs agreeing to pay to Developer the amount, if any, by which the cost of such Casualty Restoration exceeds the maximum amount of insurance coverage required under this Agreement for such risk or, if no insurance coverage is required under this Agreement for such risk, an amount equal to the total costs of such Casualty Restoration, as such costs are mutually agreed upon by Developer and PGCPs. If PGCPs agrees, PGCPs will pay such amounts promptly upon receipt of one or more invoices from Developer indicating that such amounts are due and payable by Developer in connection with such Casualty Restoration. For the purposes of this Section 20.7.2 (Obligation to Restore), the maximum amount of insurance coverage is (a) in respect of insurance required to be obtained by Developer, the full amount of coverage required under this Agreement for such risk prior to any deductibles for which Developer is responsible pursuant to Exhibit CC (Required Insurance), or (b) in respect of insurance required to be obtained by PGCPs, the full amount of applicable Insurance Proceeds and applicable Insurance Receivables, plus any deductibles for which Developer is responsible pursuant to Exhibit CC (Required Insurance).

**20.7.3 Insufficient Insurance. If:**

**20.7.3.1** one or more Schools is completely or substantially destroyed;

**20.7.3.2** the cost of the relevant Casualty Restoration exceeds the maximum amount of insurance coverage (which, for greater certainty, is the maximum amount of coverage prior to any deductibles for which Developer is responsible pursuant to Exhibit CC (Required Insurance)) required under this Agreement for the risk that caused the destruction; and

**20.7.3.3** neither PGCPs nor Developer has agreed to pay the amount by which the cost of such Casualty Restoration exceeds the Insurance Proceeds and Insurance Receivables with respect to such destruction,

at any time on or after the date that is thirty (30) days after the destruction, either Party may, by notice to the other Party, request that the Parties amend this Agreement to (i) eliminate the impacted Land and School(s) from this Agreement, (ii) reduce the scope of the Design-Build Work and/or the Services to be performed on such Land and at such School(s) as a result of the removal of the impacted Land and School(s) from the Project, and (iii) make equitable adjustments to the Milestone Payments and the Availability Payments in consideration of the reduced Project scope and any payments Developer will owe to a Financing Party as a result of the elimination of the impacted Land and School(s) from the Project.

**20.7.4 Disposition of Insurance Proceeds.** All Insurance Proceeds received as a result of a casualty loss shall be applied to a Casualty Restoration to the extent required to effect such Casualty Restoration, provided that any excess Insurance Proceeds related to a Casualty Restoration during the Design-Build Period shall be released to Developer for their application in

accordance with the terms of the Financing Documents and any excess Insurance Proceeds related to a Casualty Restoration during the Services Period shall be released to PGCPs for use by PGCPs in its sole discretion.

**20.7.5 Commencement of Construction Work.** Developer shall apply for building permits no later than thirty (30) days following receipt of the Insurance Proceeds and shall commence the construction work in connection with a Casualty Restoration within thirty (30) days after receipt of the building permits. Developer shall diligently pursue the completion of the Casualty Restoration.

**20.7.6 Developer's Failure to Perform Casualty Restoration.** Absent PGCPs' written agreement to the contrary, if Developer refuses, or fails promptly to repair, restore, or rebuild, or cause the repair, restoration, or rebuilding of the Casualty Property, or any part of the Sites, including the Improvements, damaged or destroyed, to the satisfaction of PGCPs, PGCPs may undertake the rebuilding or restoration of the Casualty Property, and any other improvement or the damaged or destroyed portion thereof, and may complete it, by contract or otherwise, and may take possession of and use any materials on the Site(s) necessary for completing the Design-Build Work. In the event PGCPs elects to rebuild or restore the Casualty Property, all applicable Insurance Proceeds relative to the Casualty Property shall be applied first to complete such rebuilding or reconstruction. Subject to the other provisions of this Agreement, PGCPs may retain any remaining balance of the Insurance Proceeds.

## **20.8 Vandalism.**

**20.8.1 Response.** Developer shall Respond to and Rectify all incidents of Vandalism reported to the Help Desk. Each such reported incident will constitute an Unavailability Event with respect to the impacted Functional Unit(s) and be classified as a Routine Event, Critical Event, or Emergency Event in accordance with the requirements of this Agreement. Developer acknowledges that the Schools will be subject to Reasonable Wear and Tear commensurate with their Intended Uses and that ongoing maintenance, repair, renewal, or replacement of the Maintained Elements associated with Reasonable Wear and Tear is the responsibility of Developer under this Agreement. Reasonable Wear and Tear will not include Vandalism. Additionally, all damage or destruction caused in whole or in part by any Developer Person or others who may be on the Sites at the invitation of any Developer Person, will be for the account of Developer and will trigger Demand Maintenance, including with respect to the calculation of Deductions.

**20.8.2 Costs.** Developer shall be entitled to reimbursement of its Direct Losses incurred in respect of all Demand Maintenance, Rectification, Response, clean-up, removal, renewal, maintenance, repair, or replacement activities that are required to remediate acts of Vandalism. PGCPs may direct that Developer be reimbursed for such costs from funds in the Services Period Reserve Account or through any other payment method available in accordance with Section 14.14 (Payments for Compensation Events and Other Additional Costs).

**20.8.3 Developer Obligations.** With respect to all Vandalism, Developer will:

**20.8.3.1** investigate, document, photograph, and provide a description in a report to PGCPs of the damage, along with an identification, to the extent possible, of the individual(s) responsible for such damage, within five (5) days of discovery of Vandalism; and

**20.8.3.2** provide such documentation as may be reasonably required by PGCPs, its insurers, police, and Governmental Authorities.

**20.8.4 Reporting.** Developer shall further provide quarterly incident and financial reporting of all Vandalism as part of the Performance Monitoring Report as required by Section 5.2 of Exhibit W (Services Requirements). Any amounts that are found to have been improperly withdrawn from the Services Period Reserve Account in connection with a Vandalism claim from Developer shall, at the election of PGCPs, either be immediately returned to the Services Period Reserve Account or offset against Availability Payments, as an Extraordinary Item. For purposes of this Section, the term “improperly withdrawn” refers to the withdrawal of funds in circumstances where Developer cannot provide evidence establishing that the funds were used to remediate acts of Vandalism in accordance with this Section 20.8 (Vandalism) and a finding of improper withdrawal is not being disputed in good faith by Developer.

## **ARTICLE 21 LIABILITY; INDEMNIFICATION**

**21.1 PGCPs Not Liable for Injury or Damage.** PGCPs shall not be liable to any Developer Person for any loss, cost, liability, claim, damage, expense (including, without limitation, reasonable attorneys’ fees and disbursements), penalty, or fine incurred in connection with or arising from any injury, whether physical (including, without limitation, death), economic, or otherwise to a Developer Person in, about, or concerning the Sites or any damage to, or loss (by theft or otherwise) of, any of a Developer Person’s property in, about, or concerning the Sites, irrespective of the cause of injury, damage, or loss or any latent or patent defects in the Sites, except to the extent authorized by Applicable Law, (i) if any of the foregoing is due to a PGCPs Fault or PGCPs Default, (ii) if any of the foregoing is due to a violation of Applicable Law by any PGCPs Indemnitee, or (iii) as otherwise expressly set forth in this Agreement.

**21.2 Developer’s Obligation to Indemnify.** Developer shall defend and indemnify each PGCPs Indemnitee from and against all Losses that any PGCPs Indemnitee may sustain in connection with any loss or physical damage to property or assets of any PGCPs Indemnitee, or any claim made by one or more third parties (including for loss of or physical damage to property or assets), or any claim for, or in respect of, the death, personal injury, disease, or illness of any person, including any PGCPs Indemnitee, arising by reason of any:

**21.2.1** breach of any material representation or warranty by Developer under this Agreement;

**21.2.2** a grossly negligent act or omission of Developer;

**21.2.3** breach by Developer of any material provisions of this Agreement or any document, instrument, or agreement delivered to PGCPs as required under this Agreement, except for any of the events or circumstances resulting in the imposition of Liquidated Damage Rights pursuant to Section 19.16 (PGCPs Liquidated Damage Rights); or

**21.2.4** breach by Developer of, or non-compliance by Developer with any Governmental Approval or Applicable Law, or the failure of Developer to obtain all necessary Governmental Approvals in accordance with this Agreement or Applicable Law,

except to the extent caused by a PGCPs Fault or PGCPs Default. Developer's obligations under this Section 21.2 (Developer's Obligation to Indemnify) shall not be limited by any coverage exclusions or other provisions in any Required Insurance or other insurance maintained by Developer which is intended to respond to such events. This Section 21.2 (Developer's Obligation to Indemnify) may be relied upon by any PGCPs Indemnitee and may be enforced directly by any of them against Developer in the same manner and for the same purpose as if pursuant to a contractual indemnity between them and Developer.

### **21.3 Indemnification Procedures.**

**21.3.1 Notice.** If any PGCPs Indemnitee receives any notice, demand, letter, or other document concerning any claim for which it appears that the PGCPs Indemnitee is, or may become entitled to, indemnification or compensation under this Agreement in respect of the entire claim, the PGCPs Indemnitee shall give notice in writing to Developer as soon as reasonably practicable and in any event within ten (10) Business Days after receipt thereof.

**21.3.2 Developer Right to Dispute Claim.** If notice is given as provided in Section 21.3.1 (Notice), Developer shall be entitled to dispute the claim at Developer's own expense and take conduct of any defense, dispute, compromise, or appeal of the claim and of any incidental negotiations. The PGCPs Indemnitee will give Developer all reasonable cooperation, access, and assistance for the purposes of considering and resisting such claim.

**21.3.3 Conflicts of Interest.** In defending any claim as described in Section 21.3.2 (Developer Right to Dispute Claim) in which there is a conflict of interest between Developer and the PGCPs Indemnitee, the PGCPs Indemnitee may appoint independent legal counsel in respect of such claim and, if it is determined that the PGCPs Indemnitee is entitled to indemnification by or compensation from Developer, all reasonable costs and expenses incurred by the PGCPs Indemnitee in so doing will be included in the indemnity or compensation from Developer.

**21.3.4 Rights and Duties of the Parties.** With respect to any claim conducted by Developer pursuant to Section 21.3.2 (Developer Right to Dispute Claim):

**21.3.4.1** Developer shall keep PGCPs fully informed and consult with PGCPs and, as needed, the PGCPs Indemnitee, about material elements of the conduct of the claim;

**21.3.4.2** Developer shall demonstrate to the PGCPs Indemnatee, at the reasonable request of the PGCPs Indemnatee, that Developer has sufficient means to pay all costs and expenses that Developer may incur by reason of conducting the claim; and

**21.3.4.3** Developer shall not pay or settle such claims without the consent of the PGCPs Indemnatee, such consent not to be unreasonably withheld or delayed.

**21.3.5 PGCPs Indemnatee Rights to Conduct Defense.** The PGCPs Indemnatee may, at its expense, take conduct of any defense, dispute, compromise, or appeal of the claim and of any incidental negotiations if:

**21.3.5.1** Developer fails to notify the PGCPs Indemnatee of its intention to take conduct of the relevant claim within ten (10) Business Days after the notice from the PGCPs Indemnatee under Section 21.3.2 (Developer Right to Dispute Claim) or notifies the PGCPs Indemnatee that it does not intend to take conduct of the claim; or

**21.3.5.2** Developer fails to comply in any material respect with Section 21.3.4 (Rights and Duties of the Parties).

**21.3.6 Transfer of Conduct of Claim to PGCPs Indemnatee.** The PGCPs Indemnatee may at any time give notice to Developer that it is retaining or taking over, as the case may be, the conduct of any defense, dispute, compromise, settlement or appeal of any claim, or of any incidental negotiations, to which Section 21.3.2 (Developer Right to Dispute Claim) applies at the PGCPs Indemnatee's cost. On receipt of such notice Developer will promptly take all steps necessary to transfer the conduct of such claim to the PGCPs Indemnatee and will provide to the PGCPs Indemnatee all reasonable cooperation, access, and assistance for the purposes of considering and resisting such claim. The PGCPs Indemnatee shall not pay or settle any such claims without the consent of Developer, such consent not to be unreasonably withheld or delayed.

**21.3.7 Infringement of Intellectual Property Rights.** In response to any claim of infringement or alleged infringement of the intellectual property rights of any person, Developer may replace such infringing or allegedly infringing item provided that the replacement (a) is performed without additional cost to PGCPs, and (b) has at least equal quality performance capabilities when used in conjunction with the Project.

## **ARTICLE 22 ADDITIONAL REQUIREMENTS**

**22.1 General Records Clause.** Developer's contracts, files, accounts, records, and other documents related to this Agreement (with the exception of records and documents subject to the attorney-client privilege) shall be open to examination and/or audit by PGCPs and made available by Developer to PGCPs and/or its designated agents at any time upon reasonable prior notice, during performance under this Agreement and for a period of six (6) years after PGCPs' final payment is made to Developer, or such longer period of time as required by Applicable Law.

**22.2 Compliance with Applicable Law.** Developer shall comply with all Applicable Law during the performance of the Design-Build Work and the Services.

**22.3 Eligibility to Work in the United States.** Developer shall comply with all Applicable Law relating to the employment of aliens. It is a mandatory requirement of this Agreement that employees of any Developer Person are screened through the Federal Government's E-Verify system, found at [www.dhs.gov/E-Verify](http://www.dhs.gov/E-Verify).

**22.4 Governing Law and Venue.** This Agreement is governed by and shall be construed in accordance with, and interpreted under, the laws of the State. Any disputes, legal cases, or other controversies arising out of this Agreement shall be filed in the Circuit Court for Prince George's County, Maryland, and subject to Maryland State Law. Additionally, if applicable, all materials, supplies, equipment, or services supplied as a result of this Agreement shall comply with the applicable United States and Maryland Occupational Safety and Health Act Standards.

**22.5 Federal Noise Control Act Compliance.** Materials, supplies, equipment, or services shall comply in all respects with the Federal Noise Control Act of 1972, where applicable.

**22.6 Protection of Property.** Developer shall use reasonable care to avoid damaging existing buildings, equipment, and property at the Sites, and all material furnished by PGCPs. If Developer's failure to use reasonable care causes damage to any property, Developer must replace or repair the damage at no expense to PGCPs as directed by PGCPs. If Developer fails or refuses to make such repair or replacement, Developer will be liable for the cost, which may be deducted from the Availability Payment.

**22.7 Protection of Information.**

**22.7.1 Personally Identifiable Information.** Personally Identifiable Information ("PII") includes any information that can be associated with or traced to any individual, including an individual's name, address, telephone number, e-mail address, credit card information, social security number, or other similar specific factual information, regardless of the media on which such information is stored (e.g., on paper or electronically) and includes such information that is generated, collected, stored, or obtained as part of this Agreement, including transactional and other data pertaining to PGCPs Persons. The Parties will comply with all applicable privacy and other laws and regulations relating to protection, collection, use, and distribution of PII. In no event may PII be sold or transferred to third parties, or otherwise provide third parties with access thereto. If any Developer Person becomes aware of a suspected or actual breach of security involving PII, Developer will notify PGCPs within twenty-four (24) hours of a management-level employee becoming aware of such occurrence.

**22.7.2 Educational, Medical, and Psychological Records.** Developer acknowledges its responsibility to ensure compliance with the confidentiality provisions of the Family Educational Records Privacy Act (34 CFR §99), the Health Insurance Portability and Accountability Act of 1996 ("HIPAA") 45 CFR Part 160 and Part 164, Subparts A and E, and

COMAR §13A.08.02, with respect to school records provided by PGCPS, if applicable. Any confidential information provided by PGCPS to Developer, including all copies thereof, must be used by Developer only as provided for by this Agreement and only for the purposes described. Such information shall not be disseminated or disclosed to any third party without the expressed written consent of PGCPS and can only be done in accordance with applicable privacy laws. Developer agrees to return to PGCPS all such information within fifteen (15) days after the expiration or termination of this Agreement, or with the express consent of PGCPS, Developer may destroy such information within fifteen (15) days after termination or expiration of this Agreement certifying to PGCPS in writing that the information has been destroyed.

**22.7.3 Protection of Student Records.** Developer Persons, at their expense, have a duty to and shall protect from disclosure any and all student records which they come to possess or control, wherever and however stored or maintained, in a commercially reasonable manner in conformance with current industry standards. Developer Persons shall implement and maintain a comprehensive data security program for the protection of student records whether the records are stored electronically and/or in hard copy form. The safeguards contained in such program shall be consistent with and comply with the safeguards for protection of student records, and information of a similar character, as set forth in all applicable federal and state law and written policy of PGCPS or the Maryland State Board of Education concerning the confidentiality of student records. Such data-security program shall include, but not be limited to, the following:

- (a) a security policy for employees related to the storage, access, and transportation of data containing student records;
- (b) reasonable restrictions on access to records containing student record information, including access to any locked storage where such records are kept;
- (c) a process for reviewing policies and security measures at least annually;
- (d) creating secure access controls to student records, including but not limited to passwords; and
- (e) encryption of student records that are stored on laptops, portable devices, or being transmitted electronically. Developer Persons shall be required to notify PGCPS as soon as is practicable, but no later than twenty-four (24) hours, after they become aware of or suspect that any student records which any Developer Person possesses or controls have been subject to a student records breach.

Developer shall incorporate the requirements of this Section 22.7.3 (Protection of Student Records) in all subcontracts requiring each Developer Person to safeguard student records in the same manner as provided for in this Section 22.7.3 (Protection of Student Records). Nothing in this Section 22.7.3 (Protection of Student Records) shall supersede in any manner any Developer Person's obligations pursuant to HIPAA, the Family Educational Rights and Privacy Act ("FERPA"), or the provisions of this Agreement concerning the obligations of Developer as a service provider to PGCPS.

**22.7.4 Flow Down Requirements.** Developer will flow down in all written agreements with and otherwise ensure compliance with the requirements of this Section 22.7 (Protection of Information) by any Project Contractor, Subcontractor, or other third party to which Developer provides access to, in accordance with this Section, the information covered by this Section 22.7 (Protection of Information).

**22.8 Public Statements.** Developer shall not use or reference the name or emblem of the Board in issuing any press releases or otherwise making any public statement with respect to this Agreement (unless such press release or statement is required by Applicable Law or the requirements of any listing agreement with any applicable stock exchange) without the prior written consent of PGPCS, which consent will not be unreasonably withheld. The unauthorized use of the name or emblem of PGPCS is prohibited by the United States Criminal Code – Section 706.

## **ARTICLE 23 REPRESENTATIONS AND WARRANTIES**

**23.1 Representations and Warranties of Developer.** As of the Commercial Close Date, Developer hereby represents and warrants to PGPCS as follows:

**23.1.1 Due Formation.** Developer is a limited liability company, duly formed and validly existing and in good standing and has full power and authority under the laws of the State of Delaware to conduct the business in which it is now engaged, and is registered and in good standing as a foreign limited liability company with the State.

**23.1.2 Organization and Members.** Attached as Exhibit K-1 (Organizational Chart) is a true, accurate, and complete organizational structure chart of Developer, including all members and their respective ownership interests in Developer, and the senior management positions of Developer and the responsibilities and duties of each such position, together with the names of the individuals who will fill such positions and summaries of the background and experience of each such individual.

**23.1.3 Execution, Delivery, and Performance.** Developer has the full right, power, and authority to perform the Project as provided in this Agreement and to carry out Developer's obligations hereunder, and all requisite action necessary to authorize Developer to enter into this Agreement and to carry out its obligations hereunder have been taken. This Agreement has been duly executed and delivered by Developer, and constitutes the legal, valid, and binding obligation of Developer, enforceable against Developer in accordance with its terms. The person signing this Agreement on behalf of Developer is authorized to do so.

**23.1.4 No Consents.** No consent or authorization of, or filing with, any Person (including any Governmental Authority), which has not been obtained or will not be obtained, is required in connection with the execution, delivery, and performance of this Agreement by Developer.

**23.1.5 No Violation.** The execution, delivery, and performance of this Agreement by Developer and the transactions contemplated hereby and the performance by Developer of its obligations hereunder do not violate any of the terms, conditions, or provisions of (a) Developer's organizational documents, (b) any judgment, order, injunction, decree, regulation, or ruling of any court or other Governmental Authority, or law to which Developer is subject, or (c) any agreement or contract to which Developer is a party or to which it is subject.

**23.1.6 No Litigation.** There is no litigation, arbitration, administrative proceeding, or other similar proceeding pending or, to Developer's knowledge, threatened in writing against Developer which, if decided adversely to Developer, (a) would impair Developer's ability to enter into and perform its obligations under this Agreement, or (b) would materially adversely affect the financial condition or operations of Developer.

**23.1.7 No Bankruptcy.** Neither Developer nor any of its members is the subject debtor under any federal, state, or local bankruptcy or insolvency proceeding, or any other proceeding for dissolution, liquidation, or winding up of its assets.

**23.1.8 No Prohibited Person.** Developer has not, and to Developer's knowledge, no Affiliate of Developer has engaged or contracted with any Prohibited Person as defined in this Agreement.

**23.1.9 Representations as to the Base Case Financial Model.** The Base Case Financial Model:

- (a) was prepared by or on behalf of Developer in good faith;
- (b) was audited and verified by an independent recognized model auditor prior to the Commercial Close Date;
- (c) fully discloses all cost, revenue, and other financial assumptions and projections used by Developer in determining to enter into this Agreement and by an Equity Member in making an Equity Contribution;
- (d) is substantially identical to the financial model presented to and relied upon by the Lenders in entering into the Financing Documents; and
- (e) is the only financial model used by Developer for the purposes described in items (c) and (d) of this subsection.

**23.1.10 No Employees or Automobiles.** Developer does not have any employees or own any automobiles. Developer agrees to provide thirty (30) days' prior written notice to PGCPs in advance of hiring any employees or acquiring any automobiles and will obtain any necessary insurance coverage for such acts in accordance with Exhibit CC (Required Insurance).

**23.2 Representations and Warranties of PGCPs.** As of the Commercial Close Date, PGCPs hereby represents and warrants to Developer as follows:

**23.2.1 Execution, Delivery, and Performance.** PGCPS (a) has all requisite right, power, and authority to execute and deliver this Agreement and to perform its obligations under this Agreement, and (b) has taken all necessary action to authorize the execution, delivery, and performance of this Agreement by PGCP. This Agreement has been duly executed and delivered by PGCP, and constitutes the legal, valid, and binding obligation of PGCP, enforceable against it in accordance with its terms. The Person signing this Agreement on behalf of PGCP is authorized to do so.

**23.2.2 Ownership of Land.** PGCP owns the Land in fee simple, subject to the easements and other exceptions to title indicated or referred to in the Title Reports. PGCP will continue to own or lease the Land for the Term.

**23.2.3 No Violation.** The execution, delivery, and performance by PGCP of this Agreement and the transactions contemplated hereby and the performance by PGCP of its obligations hereunder will not violate any of the terms, conditions, or provisions of (a) any judgment, order, injunction, decree, regulation, or ruling of any court or other Law to which PGCP is subject, or (b) any agreement or contract to which PGCP is a party or to which it is subject.

**23.2.4 No Litigation.** There is no litigation, arbitration, administrative proceeding, or other similar proceeding pending or, to PGCP's knowledge, threatened in writing against PGCP involving the Project or that, if decided adversely to PGCP, would impair PGCP's ability to perform its obligations under this Agreement.

**23.2.5 No Consents.** No consent or authorization of, or filing with, any Person, which has not been obtained, is required in connection with the execution, delivery, and performance of this Agreement by PGCP.

**23.3 Restatement as of the Effective Date.** The representations and warranties of Developer in Section 23.1 (Representations and Warranties of Developer) and PGCP in Section 23.2 (Representations and Warranties of PGCP) are affirmed by Developer and PGCP respectively as true and correct as of the Effective Date and shall be updated and restated in writing by each of Developer and PGCP as true and correct as of the Effective Date.

## **ARTICLE 24 RESOLUTION OF DISPUTES**

**24.1 Informal Dispute Resolution.** If any claim, controversy, dispute, or disagreement arising out of, or relating to, this Agreement, the breach thereof, the subject matter thereof, or any legal duty incident thereto, whether stated in contract, or otherwise (collectively, a "**Dispute**") should arise between the Parties to this Agreement, both Parties agree to meet and confer in good faith to resolve the Dispute. PGCP shall include the Associate Superintendent for Supporting Services, and Developer shall include the Principal in Charge and the Design-Build Representative or the Services Period Representative, as applicable, in such meeting, to occur within ten (10) Business Days after any Dispute in an effort to resolve the Dispute. If the Dispute is not resolved

through such meeting to the satisfaction of both Parties, the Parties shall meet a second time, and PGCPs shall include the Chief Operating Officer, or his or her designee, and Developer shall include a Senior Executive representing each Unit Holder in such meeting, to occur within ten (10) Business Days after such initial meeting in an effort to resolve the Dispute. To the extent possible, each Party shall diligently carry out their respective obligations under this Agreement during the pendency of any Dispute. For purposes of this Section 24.1 (Informal Dispute Resolution), “**Senior Executive**” means an executive who is in a position of authority above that of the Principal in Charge, and, subject only to approval of the board of directors or similar governing body, has full authority to resolve and settle a Dispute.

**24.2 Mediation Generally.** To the extent any Dispute is not resolved through the informal dispute resolution process set forth in Section 24.1 (Informal Dispute Resolution), the Parties shall enter into non-binding mediation. The costs of the mediator shall be divided equally between PGCPs and Developer. Except to the extent determined by Section 24.3 (Mediation of Certain Disputes During the Design-Build Period), the selected mediator shall be a professional mutually acceptable to the Parties who has no current or on-going relationship to either Party. The mediator shall have full discretion as to the conduct of the mediation. Each Party shall participate in the mediator’s program to attempt to resolve the dispute until and unless the Parties reach agreement with respect to the disputed matter or one Party determines in its sole discretion that its interests are not being served by the mediation. Mediation is intended to assist the Parties in resolving Disputes. No mediator shall be empowered to render a binding decision.

**24.3 Mediation of Certain Disputes During the Design-Build Period.** The Parties agree that the Disputes Manager appointed in accordance with the Independent Engineer Agreement shall act as the mediator for any non-binding mediation conducted under Section 24.2 (Mediation Generally) with respect to (i) any Dispute relating to the matters listed below, or (ii) any other Dispute related to the Design-Build Work that the Parties mutually agree to refer to the Dispute Manager for resolution in accordance with Section 24.2 (Mediation Generally) and this Section 24.3 (Mediation of Certain Disputes During the Design-Build Period) (“**Design-Build Disputes**”):

(a) this Agreement as it relates to design development matters and construction matters, including particularly time-sensitive determinations relating to (i) the occurrence of a Relief Event during the Design-Build Period, and (ii) the satisfaction of the School Occupancy Readiness Conditions pursuant to Article 10 (Occupancy Readiness) (to the extent not required to be resolved in accordance with Section 4.3 (Expedited Dispute Resolution Procedure) of Exhibit J (Form of the Independent Engineer Agreement);

(b) the schematic design and the Parties’ rights and obligations under the design review provisions set forth in Section 7.1 (General Design Requirements), Section 7.2 (Design Review), Section 7.3 (Design Review Defined), and Section 7.4 (PGCPs Design Review and Responses) including whether any applicable Technical Requirements are being complied with and interpretation of the intent of the Technical Requirements applicable to the Design-Build Work;

- (c) any proposed Design-Build Change and delays in construction of the Project resulting from such Design-Build Change;
- (d) the cost impact associated with any proposed Design-Build Change; and
- (e) whether a purported Unknown Land Condition is an Unknown Land Condition and other related issues in accordance with Section 5.8 (Unknown Land Conditions).

**24.4 Binding Arbitration for Design-Build Disputes.** To the extent any Design-Build Dispute is not resolved through mediation as set forth in Section 24.3 (Mediation of Certain Disputes During the Design-Build Period), the disputing Party shall, by submission of a Demand for Arbitration to the American Arbitration Association (“AAA”) (with a copy provided simultaneously to the other Party) within five (5) Business Days of the final recommendation from the mediator or termination of the mediation by either Party in accordance with Section 24.2 (Mediation Generally), submit the Dispute to binding arbitration, which arbitration shall be conducted by the AAA applying its Commercial Arbitration Rules (subject to Section 24.4.3 (Expedited Resolution)) by one or more arbitrators appointed in conformity with such Commercial Arbitration Rules.

**24.4.1** In any arbitration conducted under this Section 24.4 (Binding Arbitration for Design-Build Disputes), each arbitrator must have legal training and at least 10 years of legal experience, with expertise in public-private partnerships, development partnerships, and construction disputes. The arbitration shall take place in Prince George’s County, Maryland.

**24.4.2** During the pendency of any Dispute submitted to arbitration hereunder, the Parties agree to continue to perform without delay their respective obligations under this Agreement which are not affected by such Dispute.

**24.4.3** The award or decision rendered by the arbitrator shall be final and binding, and judgment may be entered upon it in accordance with Applicable Law in any court having jurisdiction, and the arbitrator shall also have the power to determine allocation of costs between the Parties of the proceedings, including, without limitation, the costs of the arbitrator and any and all reasonable attorneys’ fees and costs. The arbitrator shall have no authority to award punitive or other exemplary damages.

**24.4.4 Expedited Resolution.** Any Design Build-Disputes (i) reasonably likely to cause a delay of the Construction Schedule if left unresolved, and (ii) involving a good faith monetary demand of less than Five Hundred Thousand Dollars (\$500,000) per school or Three Million Dollars (\$3,000,000) in the aggregate shall be decided in accordance with the Expedited Procedures of the Commercial Arbitration Rules (regardless of the number of parties involved in the Dispute), except that all Design-Build Disputes whose subject matter includes the category of dispute described in Section 24.3(b) above shall be decided in accordance with the Expedited Procedures regardless of the actual or potential dollar amount at-issue or either Party’s position with regard to the likelihood of delay. In the event that a Dispute in a single arbitration proceeding involves more than one category of Dispute, one of which is a Dispute described in Section 24.3(b),

and the inclusion of such Section 24.3(b) Dispute is the sole basis for the other joined Dispute(s) to be subject to the Expedited Procedures, the Dispute described in Section 24.3(b) shall be bifurcated from the other Disputes(s) and decided using the Expedited Procedures. In the event that bifurcation of the Section 24.3(b) Dispute(s) is not practicable, all of the joined Disputes shall be decided using the Expedited Procedures. Nothing in this section shall prevent the Parties from mutually agreeing to conduct any Dispute in accordance with standard Commercial Arbitration Rules rather than the Expedited Procedures and vice versa.

**24.5 Formal Dispute Resolution.** To the extent any Dispute is not resolved through mediation as set forth in Section 24.2 (Mediation Generally) and Section 24.3 (Mediation of Certain Disputes During the Design-Build Period), and is not a Dispute required to be resolved in accordance with Section 24.4 (Binding Arbitration of Design-Build Disputes), the Parties may pursue whatever rights and remedies they may have at law or in equity.

## **ARTICLE 25 HANDBACK AT END OF TERM**

**25.1 Handback Requirements.** On the Expiration Date (and not on any earlier Termination Date), the following conditions must be satisfied (collectively, the “**Handback Requirements**”):

(a) the Schools and each of the elements comprising the Schools (including, without limitation, the Maintained Elements) shall be in a condition which is consistent with (i) the Schools and each of the elements of the Schools having been designed and constructed in accordance with the Technical Requirements, and (ii) Developer having performed the Services in accordance with the Services Requirements; and

(b) the remaining useful life of each Project Component shall be no less than the required useful life for the Project Component as set forth in Exhibit Y (Handback Useful Life Requirements).

**25.2 Handback Inspector.** Prior to commencing the Handback Survey, Developer and PGCPs shall mutually agree upon and select a duly qualified independent inspector (a “**Handback Inspector**”) to perform those responsibilities assigned to the Handback Inspector in this Article 25 (Handback at End of Term). The cost of the Handback Inspector will be shared equally between Developer and PGCPs.

**25.3 Handback Survey.** In conjunction with the preparation of the Annual Service Plan for the year commencing three (3) years prior to the Expiration Date, Developer and PGCPs, supported by the Handback Inspector, shall conduct a joint inspection and survey of each of the Schools (the “**Handback Survey**”). Developer shall provide to the Handback Inspector and PGCPs any information as may be reasonably requested and/or as may be reasonably necessary or appropriate to complete the Handback Survey. If the Handback Survey indicates that on the Expiration Date, any element of the Schools (taking into account future major maintenance items anticipated in Developer’s Annual Service Plan or required by Exhibit W (Services Requirements)

over the remainder of the Term) shall not be in a condition consistent with the Handback Requirements, within sixty (60) days after completion of the Handback Survey, Developer shall deliver to PGCPs and the Handback Inspector:

- (a) a description of the additional work (the “**Handback Work**”) required to be carried out to satisfy the Handback Requirements at the Expiration Date;
- (b) Developer’s plan to perform the Handback Work (the “**Handback Work Plan**”), including the method and schedule for performing the Handback Work; and
- (c) a cost estimate for the Handback Work.

**25.4 Determination of Handback Retainage.** Upon submittal of the items required by Section 25.3 (Handback Survey), the Handback Inspector will review and comment on Developer’s Handback Work Plan and shall, after giving due consideration to Developer’s cost estimate, determine in good faith the amount (the “**Handback Retainage**”) that the Handback Inspector reasonably believes is necessary to complete the Handback Work.

**25.5 Establishment and Use of Handback Retainage Account.** PGCPs shall hold back and retain from the Availability Payment an amount equal to the Handback Retainage and deposit such amount in an interest-bearing account held by the Escrow Agent in accordance with the Escrow Agreement (the “**Handback Retainage Account**”). The account shall be the property of PGCPs, subject to Developer’s withdrawal rights under this Section 25.5 (Establishment and Use of Handback Retainage Account). Developer shall have the right, upon the submittal of certified requisitions to PGCPs and the Handback Inspector with full supporting receipts or other evidence of payment, to withdraw from such account amounts necessary to reimburse itself for amounts actually expended in the performance of the Handback Work. In lieu of PGCPs’ withholding the Handback Retainage for deposit in the Handback Retainage Account, Developer may deliver to PGCPs a performance bond, letter of credit, or other cash collateral.

**25.6 Performance of the Handback Work and Further Inspection.** Developer shall implement the Handback Work Plan and take all other steps necessary to assure compliance with the Handback Requirements. At least one hundred and eighty (180) days prior to the Expiration Date, Developer, PGCPs, and the Handback Inspector shall conduct a further joint inspection and survey of the condition of the Schools and the progress of the Handback Work. Notwithstanding PGCPs’ participation in the Handback Survey or review of the Handback Work Plan, the Handback Retainage or other agreed upon security, or the complete or partial performance of the Handback Work, Developer shall not be released from any obligation to conduct any other inspection, service, or other action as required by this Agreement.

**25.7 Final Condition Assessment.** On, or within five (5) Business Days after the Expiration Date, the Handback Inspector shall either (a) issue to Developer and PGCPs a handback certificate confirming Developer’s compliance with the Handback Requirements (a “**Handback Certificate**”), or (b) notify Developer and PGCPs of the Handback Inspector’s decision not to issue a Handback Certificate, identifying which Handback Work was not properly performed

and/or any School(s) that do not comply with the Handback Requirements and stating the Handback Inspector's estimate of the cost the Handback Inspector reasonably believes is necessary to complete all work required for the School(s) to comply with the Handback Requirements (a "Handback Deficiency Notice").

**25.7.1 Return of Remaining Handback Retainage.** In the event the Handback Inspector issues a Handback Certificate in accordance with Section 25.7 (Final Condition Assessment), within thirty (30) days of the Expiration Date, PGCPS shall return, or instruct the Escrow Agent to return, any remaining Handback Retainage to Developer.

**25.7.2 Outstanding Handback Work.** In the event the Handback Inspector issues a Handback Deficiency Notice in accordance with Section 25.7 (Final Condition Assessment), Developer shall either (a) complete any work necessary to remediate the deficiencies identified in the Handback Deficiency Notice within sixty (60) days following the Expiration Date, or (b) pay to PGCPS, no later than thirty (30) days after the Expiration Date, an amount equal to the cost of completing the deficiencies identified in the Handback Deficiency Notice. In the event that any such outstanding work is completed such that the Handback Inspector issues a Handback Certificate in accordance with Section 25.7 (Final Condition Assessment), within thirty (30) days of such Handback Certificate being issued, PGCPS shall return, or instruct the Escrow Agent to return, any remaining Handback Retainage to Developer.

**25.8 Termination Prior to Expiration.** If the Termination Date occurs prior to the Expiration Date, the amount standing to the credit of the Handback Retainage Account shall be withdrawn and paid to PGCPS; provided that any amount payable to Developer in respect of the Handback Retainage Account balance pursuant to Exhibit Z (Calculation of Termination Compensation) shall be withdrawn and paid to Developer and credited against PGCPS' payment obligation in respect thereof.

## ARTICLE 26 NOTICES

Any and all notices, demands, consents, requests, and responses thereto permitted or required to be given under this Agreement shall be in writing, signed by or on behalf of the party giving the same (including by the Collateral Agent or any other Financing Party), and shall be deemed to have been properly given or served and shall be effective upon being personally delivered or by electronic communication (including email (and PDF or similar documentary attachment) and Internet or intranet websites) pursuant to procedures approved in writing by PGCPS and Developer from time to time, or within three (3) Business Days upon being deposited in the United States Mail, postage prepaid, certified mail, return receipt requested, to the recipient at the address of such recipient set forth below or at such other address as such recipient may designate by written notice specifically designated as a notice of a change of address and given in accordance herewith; provided, however, that notice of change of address shall not be effective until the date of receipt hereof. Rejection or other refusal to accept or inability to deliver because

of changed address of which no notice has been received shall also constitute receipt. Any such notice, demand, or request shall be addressed as follows:

PGCPS: Chief Executive Officer  
Prince George's County Public Schools  
14201 School Lane  
Upper Marlboro, MD 20772  
Email: [ceo@pgcps.org](mailto:ceo@pgcps.org)

With a copy to: Public-Private Partnership (P3) Program Office  
Prince George's County Public Schools  
Louis Wilson Sr. Facilities Administration Building  
13300 Old Marlboro Pike  
Upper Marlboro, MD 20772  
Email: [jason.washington@pgcps.org](mailto:jason.washington@pgcps.org)

With a copy to: Office of General Counsel  
Prince George's County Public Schools  
14201 School Lane  
Upper Marlboro, MD 20772  
Email: [diana.wyles@pgcps.org](mailto:diana.wyles@pgcps.org)

Developer: Prince George's County Education & Community  
Partners, LLC  
c/o Fengate Capital Management Ltd.  
2275 Upper Middle Road East #700  
Oakville, ON L6H 0C3  
Canada  
Email: [andrea.mclean@fengate.com](mailto:andrea.mclean@fengate.com) with a copy to  
[fengatenotice@fengate.com](mailto:fengatenotice@fengate.com)

With a copy to: Prince George's County Education & Community  
Partners, LLC  
c/o Gilbane Development Company  
7 Jackson Walkway  
Providence, RI 02903  
Email: [dearly@gilbaneco.com](mailto:dearly@gilbaneco.com)

Collateral Agent: Deutsche Bank Trust Company Americas  
Trust and Agency Services  
60 Wall Street, 24th Floor  
Mail Stop: NYC60 – 2410  
New York, NY 10005

Attention: Project Finance Agency Services,  
PRINCE GEORGE'S COUNTY EDUCATION &  
COMMUNITY PARTNERS, LLC  
Fax: (646) 961-3317

## **ARTICLE 27 MISCELLANEOUS PROVISIONS**

**27.1 Number and Gender.** In this Agreement, words in the singular include the plural and vice versa and words in one gender include all genders.

**27.2 Headings.** The division of this Agreement into Articles, Sections, and other subdivisions is for convenience of reference only and shall not affect the construction or interpretation of this Agreement. The headings in this Agreement are not intended to be full or precise descriptions of the text to which they refer and shall not be considered part of this Agreement.

**27.3 References to this Agreement.** The words "herein," "hereby," "hereof," "hereto," and "hereunder" and words of similar import refer to this Agreement as a whole and not to any particular portion of it. The words "Article," "Section," "paragraph," "sentence," "clause," and "Schedule" mean and refer to the specified article, section, paragraph, sentence, clause, or schedule of or to this Agreement.

**27.4 References to any Person.** A reference in this Agreement to any Person at any time refers to such Person's permitted successors and assigns.

**27.5 Meaning of Including.** In this Agreement, the words "include," "includes," or "including" mean "include without limitation," "includes without limitation," and "including without limitation," respectively, and the words following "include," "includes," or "including" shall not be considered to set forth an exhaustive list.

**27.6 Meaning of Discretion.** In this Agreement, the word "discretion" with respect to any Person means the sole and absolute discretion of such Person.

**27.7 Meaning of Notice.** In this Agreement, the word "notice" means "written notice," unless specified otherwise.

**27.8 Consents and Approvals.** Unless specified otherwise, wherever the provisions of this Agreement require or provide for or permit an approval or consent by either Party, such approval or consent, and any request therefor, must be in writing (unless waived in writing by the other Party).

**27.9 Trade Meanings.** Unless otherwise defined herein, words or abbreviations that have well-known trade meanings are used herein in accordance with these meanings.

**27.10 Laws.** Unless specified otherwise, references to a Law are considered to be a reference to (a) such Law as it may be amended from time to time, (b) all regulations and rules pertaining to or promulgated pursuant to such Law, (c) the successor to the Law resulting from recodification or similar reorganizing of Laws, and (d) all future Laws pertaining to the same or similar subject matter.

**27.11 Currency.** Unless specified otherwise, all statements of or references to dollar amounts or money in this Agreement are to the lawful currency of the United States of America.

**27.12 Generally Accepted Accounting Principles.** All accounting and financial terms used herein, unless specifically provided to the contrary, shall be interpreted and applied in accordance with GAAP.

**27.13 Calculation of Time.** For purposes of this Agreement, a period of days shall be deemed to begin on the first day after the event that began the period and to end at 5:00 p.m., which time shall be determined by the time in the state of Maryland, on the last day of the period. If, however, the last day of the period does not fall on a Business Day, the period shall be deemed to end at 5:00 p.m., which time shall be determined by the time in the state of Maryland, on the next Business Day. For purposes of calculation of days, calendar days shall apply except to the extent Business Days are specifically identified.

**27.14 Approvals, Consents, and Performance by PGCPs.**

**27.14.1 Procedures.** Wherever the provisions of this Agreement require or provide for or permit an approval or consent by PGCPs of or to any action, Person, Document, or other matter contemplated by this Agreement, the following provisions shall apply: (a) such request for approval or consent must (i) be in writing and contain or be accompanied by any documentation or information required for such approval or consent in reasonably sufficient detail, as reasonably determined by PGCPs, (ii) clearly set forth the matter in respect of which such approval or consent is being sought; (b) such approval or consent shall not be unreasonably or arbitrarily withheld, conditioned, or delayed (unless such provision provides that such approval or consent may be unreasonably or arbitrarily withheld, conditioned, or delayed or is subject to the discretion of PGCPs); (c) PGCPs shall advise Developer by written notice either that it consents or approves or that it withholds its consent or approval, in which latter case it shall set forth, in reasonable detail, its reasons for withholding its consent or approval, which reasons may include the insufficiency, as determined by PGCPs acting reasonably, of the information or documentation provided; (d) unless a time period is specifically set forth elsewhere herein, PGCPs shall provide the foregoing written notice no later than fifteen (15) Business Days after receipt of Developer's request; (e) if the responding notice mentioned in clause (iii) of this Section 27.14.1 (Procedures) indicates that PGCPs does not approve or consent, Developer may take whatever steps may be necessary to satisfy the objections of PGCPs set forth in the responding notice and, thereupon, may resubmit such request for approval or consent from time to time and the provisions of this Section 27.14.1 (Procedures) shall again apply; (f) if the disapproval or withholding of consent mentioned in clause (c) of this Section 27.14.1 (Procedures) is subsequently determined pursuant to Article 24 (Resolution of Disputes) to have been improperly withheld or conditioned by PGCPs,

such approval or consent shall be deemed to have been given on the date of such final determination; and (g) for the avoidance of doubt, any dispute as to whether or not a consent or approval has been unreasonably withheld, conditioned, or delayed shall be resolved in accordance with the provisions of Article 24 (Resolution of Disputes).

**27.14.2 Approved Documents.** Subject to the other provisions hereof, wherever in this Agreement an approval or consent by PGCPs is required with respect to any document, proposal, certificate, plan, drawing, specification, contract, agreement, budget, schedule, report, or other written instrument whatsoever (an “**Approved Document**”), following such approval, such Approved Document shall not be amended, supplemented, replaced, revised, modified, altered, or changed in any manner whatsoever without obtaining a further approval in accordance with the provisions of this Section 27.14.2 (Approved Documents).

**27.15 Incorporation of Exhibits.** The Exhibits are integral to, and are made a part of, this Agreement. In the event of any conflict between the terms of this Agreement and the terms of any Exhibit, the terms of this Agreement shall control.

**27.16 Order of Precedence.** In the event of a conflict between the terms and conditions of this Agreement and any exhibit or attachment, the order of precedence shall be as follows: (a) Agreement terms and conditions; and (b) all other exhibits attached to this Agreement. In the event of a direct conflict between any provision of the Educational Specifications and any provision of the Master Specifications, the provision in the Educational Specifications shall prevail.

**27.17 Covenant Against Contingent Fees.** Developer warrants that no person or agency has been retained to solicit or secure this Agreement for a commission, percentage, brokerage, or contingent fee, except bona fide employees or bona fide established commercial agencies maintained by Developer for the purpose of securing business.

**27.18 Nondiscrimination.** Developer agrees that it will not discriminate against any person because of race, color, religion, sex, or national origin in furnishing, or by refusing to furnish, to such person or persons the use of any Sites, including any and all services, privileges, accommodations, and activities identified in this Agreement.

**27.19 No Joint Venture.** Notwithstanding anything identifying this Project as a “public-private partnership” in any document, nothing contained in this Agreement creates a partnership or joint venture between the Parties. Nothing in this Agreement shall render either Party liable to any third party for the debts or obligations of the other Party.

**27.20 Failure to Insist on Compliance.** No failure to exercise, and no delay in exercising, any right or remedy under this Agreement will be deemed to be a waiver of that right or remedy. No waiver of any breach of any provision of this Agreement will be deemed to be a waiver of any subsequent breach of that provision or of any similar provision. The failure of one Party to insist upon strict performance by the other Party of any of its obligations under this Agreement in any instance shall not be construed as a waiver of such Party’s right to the future

performance of such obligations. No waiver by PGCPS or Developer of any provisions of this Agreement shall be effective unless expressed in writing and signed by an authorized representative of PGCPS or Developer, as applicable.

**27.21 Counterparts and Delivery by Electronic Mail.** This Agreement (i) may be executed in any number of counterparts, each of which shall be deemed an original, and all of which when taken together shall constitute one and the same instrument, and (ii) may not be amended or modified except in a writing signed by PGCPS and Developer. Execution and delivery of this Agreement by facsimile or e-mail .pdf shall be sufficient for all purposes and shall be binding on any Person who so executes.

**27.22 Severability.** Each provision of this Agreement shall be valid and enforceable to the fullest extent permitted by law. If any provision of this Agreement is held to be invalid, unenforceable or illegal to any extent, such provision shall be severed and such invalidity, unenforceability, or illegality shall not prejudice or affect the validity, enforceability, and legality of the remaining provisions of this Agreement. If any such provision of this Agreement is held to be invalid, unenforceable, or illegal, the Parties will promptly endeavor in good faith to negotiate new provisions to eliminate such invalidity, unenforceability, or illegality and to restore this Agreement as nearly as possible to its original intent and effect.

**27.23 Third Party Rights.** PGCPS and Developer agree that each Financing Party shall each be express third party beneficiaries of the provisions of Article 12 (Project Financing and Refinancing) (inclusive of all other provisions necessary to give Collateral Agent's rights under Article 12 (Project Financing and Refinancing) full force and effect). This Agreement is exclusively for the benefit of PGCPS and Developer and shall not provide any third parties (with the sole exceptions of the rights of (a) any third party PGCPS Indemnitee as provided in Section 21.2 (Developer's Obligation to Indemnify), and (b) any Financing Party with respect to their respective third-party beneficiary rights of the provisions of Article 12 (Project Financing and Refinancing) with any remedy, claim, liability, reimbursement, cause of action, or other rights.

#### **27.24 Confidentiality.**

**27.24.1 Confidential Information.** Subject to Section 27.24.2 (Exceptions), each Party will hold in confidence any Confidential Information received from the other Party, except that this Section will not restrict either Party from disclosing or granting access to such information to its professional advisers and consultants, to the extent necessary, to enable it to perform (or to cause to be performed) or to enforce its rights or obligations under this Agreement, and provided further that Developer may, subject to obtaining confidentiality restrictions similar to those set forth in this Agreement:

(a) provide to any Financing Party and other potential lenders, equity providers, underwriters, arrangers, investment dealers, monoline insurers and their respective advisors such documents and other information as are reasonably required by them in connection with raising financing for the Project or complying with the terms of the Senior Financing Agreements or related agreements; and

(b) provide to a Project Contractor and its advisors, or provide or cause to be provided to other third parties, Confidential Information which is necessary to enable Developer to perform (or to cause to be performed) its obligations under this Agreement.

**27.24.2 Exceptions.** Subject to any restrictions on the Confidential Information which are imposed by a third party that may own any Confidential Information, the obligation to maintain the confidentiality of the Confidential Information does not apply to Confidential Information:

(a) which is or comes into the public domain otherwise than through any disclosure prohibited by this Agreement;

(b) to the extent any person is required to disclose such Confidential Information by Applicable Law or, in the case of PGCPs, by generally applicable State, County, or PGCPs information disclosure policies; or

(c) that PGCPs may be entitled to receive from Developer pursuant to this Agreement for the operation, maintenance, or improvement of the Project in the event of, or following, termination of this Agreement.

**27.24.3 Equitable Relief.** Without prejudice to any other rights and remedies that the other Party may have, each of the Parties agrees that damages may not be an adequate remedy for a breach of Section 27.24 (Confidentiality), and that the other Party will, in such case, be entitled to the remedies of injunction, specific performance, or other equitable relief for any threatened or actual breach of this Section 27.24 (Confidentiality).

**27.25 Entire Agreement.** This Agreement, together with the Escrow Agreement and the Independent Engineer Agreement, contain the entire agreement between the Parties hereto with respect to the transactions contemplated by this Agreement. Without limiting the generality of the foregoing, this Agreement shall completely and fully supersede all other understandings and agreements among the Parties with respect to such transactions, including the RFP and the Proposal, except to the extent any portions of the Proposal are included within this Agreement.

[Signatures on the Following Pages]



PRINCE GEORGE'S COUNTY EDUCATION & COMMUNITY PARTNERS, LLC

By: *Vernita Tsang*

Name: Vernita Tsang

Title: Vice President