

## CLIENT SERVICES AGREEMENT

This Client Services Agreement (the “Agreement”) is effective September 20, 2022

**BETWEEN:** **CS PARTNERS, INC.**, a Michigan corporation d/b/a **PARTNER SOLUTIONS** (“Partner Solutions”); **CSP MANAGEMENT INC.**, a Michigan corporation d/b/a **PARTNER SOLUTIONS FOR SCHOOLS** (“Partner Solutions for Schools” and together with “Partner Solutions”, collectively “PS”)

**AND:** **WEST MICHIGAN AVIATION ACADEMY**, a Michigan public school academy (the "Academy") organized under Part 6(A) of the Revised School Code (the “Code”), as amended, being MCL §380.501 to §380.507.

### RECITALS

The Academy has been issued a contract (the “Contract”) by Grand Valley State University (the “Authorizer”) to organize and to operate as a public school academy.

The Code permits a public school academy to contract with entities for certain services of the public school academy.

As a wholly owned subsidiary of Partner Solutions, Partner Solutions for Schools is the employer of record for all staff assigned to work at the Academy. Partner Solutions offers to public school academies back office human resource services and financial services (the “Services”). Together, Partner Solutions and Partner Solutions for Schools are jointly responsible for providing the Services under this Agreement.

The Academy desires to engage PS to provide such Services based on the terms and conditions set forth in this Agreement.

For good and valuable consideration, the receipt and legal sufficiency of which are hereby expressly acknowledged, the parties hereto agree as follows:

#### 1. RELATIONSHIP OF THE PARTIES

- A. Relationship of the Parties. PS is not a division, subsidiary or any part of the Academy. The Academy is a corporate and governmental entity authorized under the Code. The Academy is not a division or any part of PS. The relationship between the parties hereto was developed and entered into through arms-length negotiation and is based solely on the terms of this Agreement. PS (its officers, directors, employees, and designated agents) shall be regarded at all times as performing services as independent contractors for the Academy.
- B. The Board. Academy’s Board of Directors (the “Board”) is the governing body with oversight responsibilities over the Academy. The parties acknowledge that throughout this Agreement the term “Board” and the term “Academy” are sometimes used interchangeably in some sections for the sole purpose of readability based on the nature and subject-matter of the article/section. This Agreement is executed by a duly authorized member of the Board (on behalf of the Academy), and by so executing this Agreement the Board acknowledges and accepts all obligations and responsibilities related to the Board as set forth in this Agreement.

The Academy shall retain control and have responsibility over all its business and instructional operations including but not limited to, the educational program, instructional equipment and supplies, student achievement, student discipline, special education, parent engagement, food service, budgeting, purchasing, transportation, athletics, extracurricular activities, building and property management, policy and procedure

implementations and oversight. The Board is responsible for the monitoring and the accountability for academic outcomes; appropriate implementation of policies and procedures including special education processes; parent, student and community interactions; and all of the day to day operations of the Academy.

- C. Confidentiality. During the Term of this Agreement, and only to the extent permitted by law, the Academy may disclose or provide access to confidential data and information to Partner Solutions and its respective officers, directors, employees, staff assigned to the Academy (“Worksite Staff”) and designated agents. PS and its related entities may access confidential data and information, to the extent permitted by Academy Board Policies and applicable law, including without limitation, the Family Educational Rights and Privacy Act (“FERPA”), 20 USC §1232g, 34 CFR Part 99; Section 1136 of the Michigan Revised School Code, MCL 380.1136; the Individual with Disabilities Education Act (“IDEA”), 20 USC §1401 *et seq.*, 34 CFR 300.610-300.626; Section 504 of the Rehabilitation Act of 1973, 29 USC §794a, 34 CFR 104.36; the Michigan Mandatory Special Education Act, MCL 380.1701 *et seq.*; the American with Disabilities Act, 42 USC §12101 *et seq.*; the Health Insurance Portability and Accountability Act (“HIPAA”), 42 USC 1320d - 13200d-8; 45 CFR 160,162 and 164; and social security numbers, as protected by the Federal Privacy Act of 1974, 5 USC §552a; and the Michigan Social Security Number Privacy Act, MCL 445.84.

The Academy agrees to define “school official” in the Academy’s annual notification of rights under FERPA to include a contractor who performs an institutional service or function for which the Academy would otherwise use its own employees, having a legitimate educational interest such that they are entitled to access educational records under FERPA. PS and its employees and subcontractors agree to comply with FERPA and corresponding regulations applicable to school officials, as well as the pupil privacy requirements of section 1136 of the Code, MCL 380.1136. If PS receives education record information from any sources as permitted under the Code, PS shall use the education record information only as contemplated by this Agreement and PS shall not sell or otherwise provide the information to any other person or entity except as provided by law.

- D. Contractors and Subcontractors. Each Party will be solely responsible for the acts of its own contractors and subcontractors.
- E. No Related Parties or Common Control. The parties hereby agree that none of the voting power of the governing body of the Academy or the Board will be vested in PS or its directors, members, managers, officers, shareholders, or employees. Further, the Academy and PS are not, and shall not become: (a) members of the same controlled group, as that term is defined in the Internal Revenue Code of 1986, as amended (the “IRS Code”); or (b) related persons, as that term is defined in the IRS Code.
- F. Compliance with Academy’s Contract. PS agrees to perform its duties and responsibilities under this Agreement in a manner that is consistent with the Academy’s obligations under the Academy’s Contract issued by Grand Valley State University Board of Trustees. The provisions of the Academy’s Contract shall supersede any competing or conflicting provisions contained in this Agreement.
- G. Compliance with Section 11.23 of Contract Terms and Conditions. The ESP shall make information concerning the operation and management of the Academy, including without limitation the information described in Schedule 6 of the Contract, available to the Academy as deemed necessary by the Academy Board in order to enable the Academy to fully satisfy its obligations under Section 11.23(a) of the Contract Terms and Conditions.
- H. Compliance with Section 503c [or 553c if SOE]. On an annual basis, PS agrees to provide the Academy Board with the same information that a school district is required to disclose under section 18(2) of the State School Aid Act of 1979, MCL 388.1618, for the most recent school fiscal year for which the information is available. Within thirty (30) days of receipt of this information, the Academy Board shall make the information available on the Academy’s website home page, in a form and manner prescribed by the Michigan Department of Education. The defined terms in section 503c [553c if SOE] of the Code, MCL 380.503c [553c if SOE], shall have the same meaning in this Agreement.

## 2. SCHOOL LEADER

- A. School Leader Role. The School Leader ("School Leader") will be hired by Partner Solutions for Schools and shall administer the educational program and curriculum at the Academy. The School Leader will hold all required certifications as required by the Code.

PS will provide administrative support to the School Leader to staff the Academy. After qualified staff are selected by the School Leader, Partner Solutions for Schools will onboard and provide additional administrative support to the School Leader. It is the responsibility of the School Leader to verify and confirm that all teaching assignments align with teacher certification.

The School Leader or designee shall be responsible for approving and submitting appropriate hours-worked for all hourly Worksite Staff. The School Leader will notify PS of any staffing needs and/or change in status regarding Worksite Staff prior to any reassignment.

If the Board becomes dissatisfied with the performance of the School Leader, it shall state the causes of such dissatisfaction in writing and deliver it to PS. PS shall have a reasonable period of time to remedy the dissatisfaction; however, if it cannot remedy the dissatisfaction, PS shall remove and replace the School Leader at the Academy as soon as practicable. Additionally, it is agreed that any dissatisfaction of the Board shall be reasonable in nature and related specifically to the duties and responsibilities of the School Leader at the Academy.

If a School Leader separates from the Academy, the Board or its designee shall identify and appoint a new School Leader, subject to PS' approval. In the alternative, the Board may elect to contract with a third party to identify a School Leader, subject to PS and Board approval.

## 3. BACK OFFICE HUMAN RESOURCE SERVICES BY PARTNER SOLUTIONS FOR SCHOOLS

- A. Worksite Staff. Partner Solutions for Schools shall employ Worksite Staff as may be necessary to accomplish the educational mission of the Academy consistent with the Academy's budget approved by the Board. Partner Solutions for Schools shall have the complete and exclusive authority and control over human resource matters such as approval of hiring, terminating, disciplining, and reassigning of Worksite Staff. All other functions and responsibilities related to the Academy's operations, including but not limited to those set forth in Paragraph 1.B. of this Agreement, shall be the sole and exclusive responsibility of the Academy. See Exhibit A for additional specifics.

- B. Compensation. Compensation for Worksite Staff shall be established by the Academy and paid by Partner Solutions for Schools. For purposes of this Agreement, "compensation" shall include salary, fringe benefits, and state, federal, local and social security withholdings. Partner Solutions for Schools shall be responsible for paying its portion of social security, unemployment, and any other taxes required by law to be paid on behalf of its Worksite Staff. Unless required by applicable statute, court or administrative decision, or Attorney General's opinion, Partner Solutions for Schools shall not make payment to the Michigan Public School Employees' Retirement System or any other public retirement system on behalf of Worksite Staff. Teachers employed by Partner Solutions for Schools shall not be considered teachers for purposes of continuing tenure under MCL §38.71 et. seq.

- C. Health Benefits. Partner Solutions for Schools shall provide to Worksite Staff group health and other benefits (i.e., dental, vision, disability, life insurance, etc.) subject to eligibility requirements under the plan and applicable laws. Partner Solutions for Schools will also provide COBRA benefits to eligible Worksite Staff.

- D. 401K Plan Administration. Partner Solutions for Schools will complete and sign all necessary 401K regulatory and plan documents as required by law and as fiduciary agent of the plan.

- E. Payroll Taxes. Partner Solutions for Schools shall report and pay all applicable federal, state and local payroll taxes.
- F. Payroll Records. Partner Solutions for Schools shall maintain and verify all required payroll and benefit records.
- G. Michigan Public School Employees Retirement System (MPERS). If Worksite Staff discloses to Partner Solutions for Schools their participation in MPERS, Partner Solutions for Schools: (a) shall promptly notify the Academy in writing of the identity of any individual assigned by Partner Solutions for Schools to perform services at the Academy who is a retirant from the Michigan Public School Employees Retirement System (MPERS); and (b) shall provide information on a pay period basis regarding any such individual's wages or amounts paid and hours of service under this Agreement, as necessary for the Academy to report on an Exhibit and in such manner as may be determined from time to time by MPERS. MCL 38.1342(6).
- H. Non-Compete Agreement. PS agrees that it shall not impose any contractual requirement or contractual obligation on Worksite Staff to enter into a non-compete provision or agreement.
- I. Pilots. Partner Solutions has delegated the performance of some payroll functions for the pilots to Michigan Employment Group, Inc.. Partner Solutions still retains the responsibility for any duties or obligations under this Agreement for this group of employees.

#### 4. **ACADEMY RESPONSIBILITIES**

- A. Facility. Academy shall comply with all health and safety laws, regulations, ordinances, directives, and rules of controlling federal, state, and local government and will immediately report all workplace accidents and injuries of Worksite Staff to Partner Solutions for Schools by fully completing and sending an incident report form within 24 hours after the accident. Academy agrees to comply at its expense with any specific directives from Partner Solutions for Schools, Partner Solutions for Schools' workers' compensation carrier, or any government agency having jurisdiction over the workplace health and safety. Academy shall provide or ensure use of all personal protective equipment, as required by federal, state or local law, regulation, ordinance, directive, or rule or as deemed necessary by Partner Solutions for Schools, its workers' compensation or liability insurance carrier. Partner Solutions for Schools or its insurance carriers shall have the right to inspect Academy's place of business at all reasonable times to ensure compliance with the terms of this Agreement.
- B. Fair Labor Standards Act. Academy shall provide through the School Leader or designee complete and accurate information to Partner Solutions for Schools concerning the nature and extent of the duties performed or to be performed by the Worksite Staff and Academy shall be responsible for providing records of hours worked by the Worksite Staff upon request by Partner Solutions for Schools via on-line system provided. Academy shall reimburse Partner Solutions for Schools for any overtime pay that is or becomes due to or owed to any Worksite Staff.
- C. Complaints. Academy will immediately (within 24 hours) report to Partner Solutions for Schools any complaints by Worksite Staff concerning any alleged violation of employment, immigration or safety laws or regulations and will cooperate with Partner Solutions for Schools in investigating and resolving any such complaints. Any complaints about Academy operations (such as complaints from students, parents, authorizer, visitors, etc...) shall be the sole responsibility of the Academy.
- D. Notification Requirements. Academy will immediately (within 24 hours) report civil or administrative proceedings regarding employment matters and notify Partner Solutions for Schools of any requests for leave of absence, resignation or other change in status of any Worksite Staff. The Academy is also required to notify PS in writing if the Academy receives a notification from their Authorizer discussing a possibility of

an intent to revoke the Contract and/or non-renewal or closure is discussed by a Board member or their Authorizer.

- E. Evaluation of Worksite Staff. Evaluation and compensation systems shall be selected by the Academy and shall comply with all applicable laws. The Academy through the School Leader shall conduct teacher performance evaluations as it relates to the delivery of the curriculum in the Academy and as required by the Michigan Department of Education.

If the Board becomes dissatisfied with the performance of Worksite Staff, the Board shall state the causes of such dissatisfaction in writing and deliver it to Partner Solutions for Schools. It is agreed that any dissatisfaction shall be reasonable in nature and related specifically to the duties and responsibilities of the Worksite Staff at the Academy.

## 5. JOINT RESPONSIBILITIES

- A. Direction and Control of Worksite Staff. Partner Solutions for Schools will administer payroll and benefit services for the Academy, pay the wages of Worksite Staff and has the right to hire, fire, promote, reassign, discipline and terminate any Worksite Staff in consultation with the Academy and as otherwise provided in this Agreement. In performing the above responsibilities, the School Leader will confer and consult with Partner Solutions for Schools and the Academy as necessary or requested or as otherwise provided in this Agreement before hiring, firing, promoting, reassigning, disciplining and/or terminating any Worksite Staff. The Academy, through the School Leader, will be responsible for the day to day activities of Worksite Staff to operate the Academy in compliance with Academy policies, procedures, their Authorizer contract and all applicable law.

The Academy agrees to follow Partner Solutions for Schools' directives, policies and procedures to maintain compliance in employment issues. In relation to Academy's day-to-day control of Worksite Staff, the Academy may have opportunity to make decisions or take action that is governed by employment laws, including but not limited to the Americans with Disabilities Act, the Family and Medical Leave Act, the National Labor Relations Act, the Fair Labor and Standards Act, and any other federal, state, or local employment and discrimination laws. If the Academy makes such decision or takes such action without consulting PS or if the Academy fails or refuses to abide by the advice provided by PS on such issue, Academy agrees to indemnify, defend, and hold PS harmless from any and all claims or liabilities which may arise as a result from such decision or action, or failure to abide by the advice of PS and its instructions as an employer.

- B. Criminal Background Checks. Partner Solutions for Schools and the Academy acknowledge that Worksite Staff assignments must be in compliance with Sections 1230, 1230a, 1230b and related provisions of the Code pertaining to criminal background checks and unprofessional conduct checks whether or not they in fact apply to Worksite Staff and that said compliance will be a term and condition of Partner Solutions for Schools' employees, working at the Academy.

The Academy, through the School Leader, shall conduct criminal background checks on all Worksite Staff as required by law. Partner Solutions will track the results and provide reporting as requested. The Academy is responsible for any costs associated with performing the criminal background check.

Partner Solutions for Schools shall conduct unprofessional conduct checks on all Worksite Staff. Partner Solutions for Schools will forward any negative results of unprofessional conduct checks to the School Leader, acting on behalf of the Board.

Partner Solutions for Schools shall consult with the Academy for any non-listed felony before exercising any discretion pursuant to the above referenced statutes.

## 6. BACK OFFICE FINANCIAL SERVICES BY PARTNER SOLUTIONS

- A. Budget Process. Partner Solutions shall provide a budgeting tool to the School Leader in order to construct a budget for Board approval. It is the responsibility of the Board to review, revise, and approve the annual budget. The Academy's CAO shall not be an employee of Partner Solutions but shall be a member of the Academy Board or their designee. The Board and CAO shall remain responsible for any and all budgeting, accounting, bookkeeping, payments, and all financial decisions.
- B. Travel Reimbursement. In the performance of the Back Office Services Partner Solutions will attend Board meetings as requested for the budget, budget revisions and/or such other essential business services. In the event Partner Solutions is requested by the Academy Board to travel to other Academy meetings, events or the like, the Academy shall pay ordinary and customary costs to Partner Solutions for such travel. The costs for such travel will be mutually agreed upon by the Academy Board and Partner Solutions prior to the occurrence of that travel.
- C. Financial Services. Partner Solutions shall provide the Board via the School Leader the following below. See Exhibit B for specific details.
  - 1. a projected annual budget;
  - 2. detailed monthly statements (or as requested by the Board via the School Leader) no more than thirty (30) days after month's end. Financial statements will be provided as directed by the Board via the School Leader within reason prior to each Board meeting to allow time for all Board members to review the information prior to the meeting. These financial statements shall include: a balance sheet, a statement of revenues, expenditures and changes in fund balance at object level detail with comparison of budget-to-actual and a cash flow statement. These statements shall include all revenues received, from whatever source, with respect to the Academy, and detailed budgets with statements of all direct expenditures for the Services rendered to or on behalf of the Academy, whether incurred on-site or off-site;
  - 3. facilitate the annual audit in compliance with applicable laws showing the manner in which funds are spent at the Academy, however, it is acknowledged that only the Academy shall select and retain independent auditors and the Academy shall contract directly with any auditor of its choice, and Partner Solutions will cooperate with the production of any and all documents necessary for the audit. Any such audit shall be the property of the Academy; and,
  - 4. other information as reasonably requested by the Board via the School Leader to enable the Board to monitor Partner Solutions' performance under the Agreement.
- D. Academy Funds. All funds received by the Academy shall be placed in the Academy's depository account as required by law. The signatories on the Academy Board accounts shall solely be Academy Board members or properly designated Academy Board employees. Interest income earned on Academy accounts shall accrue to the Academy.
- E. Purchases. Partner Solutions will not purchase any materials or equipment with Partner Solutions' funds unless requested by the Academy Board and accompanied by an approved Academy purchase order.
- F. Academy's Rights to Curriculum and Educational Materials. The Academy shall own, without restriction, all proprietary rights to curriculum and educational materials that are or were directly developed by the Academy and paid for with Academy funds.

## 7. FEE AND PAYMENT

- A. Service Fee. During the Term of this Agreement, the Board shall pay Partner Solutions an annual fee of three and a half percent (3.5%) of the total Aid received from the State of Michigan, pursuant to the State School Aid Act of 1979, as amended for the particular number of students enrolled in the Academy (the "Fee").

The parties intend that this Agreement meet all of the applicable safe harbor conditions as set forth in Sections 5.02 through Sections 5.07 of the Revenue Procedure 2017-13. In this regard, the Academy and PS make

the following representations:

- i. (A) PS' compensation under this Agreement is reasonable compensation for services to be rendered hereunder and is not based, in whole or in part, on a share of net profits and/or a share of the net losses from the operation of the Academy or upon the disposition, damage or destruction of the Academy's property; (B) This Agreement does not pass on to PS the burden of bearing any share of net losses from the operation of the Academy or upon the disposition, damage or destruction of the Academy's property; (C) The term of this Agreement is not greater than 30 years or 80 percent of the useful life of the Academy's school facilities currently financed with tax-exempt debt (if shorter) including all renewal options; (D) The Academy bears the risk of loss upon the disposition, damage or destruction of the Academy's property; and (E) PS is not entitled to and will not take any federal tax position that is inconsistent with being a service provider under this Agreement to the Academy.
- ii. In interpreting this Agreement and in the provision of the services required hereunder, PS shall not have any role or relationship with the Academy that, in effect, substantially limits the Academy's ability to exercise its rights and obligations under State law. As required by the Academy's Article of Incorporation and Bylaws, the Academy Board may not include any director, officer or employee of a management company that contracts with the Academy. In furtherance of such restriction, it is agreed between the Academy and PS that none of the voting power of the governing body of the Academy will be vested in PS or its directors, members, managers, officers, shareholders and employees, and the Academy and PS will not be related parties as defined in Treas. Reg. 1.150-1(b).

- B. Payroll Costs. The Academy will also pay Partner Solutions for Schools, on an at-cost basis for properly invoiced salary, benefits, and other costs attributable to Worksite Staff ("Payroll Costs"), including but not limited to gross wages, FICA, Medicare, FUTA, SUTA, workers' compensation insurance, professional liability insurance, separation costs, employer portions of health, dental, vision and life insurance, and 401K employer contributions (if applicable).

Partner Solutions for Schools shall be in receipt of funds for Payroll Costs no later than the third business day preceding each payroll date ("Payroll Date") for Partner Solutions for Schools' Worksite Staff. Said funds will be received by Partner Solutions for Schools via an electronic transfer, either initiated by the Academy or by Partner Solutions for Schools, whichever is agreed upon by both parties. For purposes of this Agreement the Payroll Date shall be that date or dates established annually by Partner Solutions for Schools.

If the Payroll Costs funding is not received in full three (3) business days prior to the Payroll Date, payroll will not be processed until full payment is received from the Academy, unless prior arrangements have been made in writing between the Academy and Partner Solutions for Schools

- C. Reimbursable Expenses. In addition to the Fee, the Academy shall reimburse Partner Solutions for Schools for all costs reasonably incurred and paid by Partner Solutions for Schools directly attributable to and appropriately apportioned to providing the Services as specified in this Agreement ("Reimbursable Expenses"). Such costs include, but are not limited to, Payroll Costs for Worksite Staff that were not advanced under Section B above, costs mandated by governmental entity, administrative agency or court of law (for example, payment into the Michigan Public School Employees Retirement System), employment ads, recruiting fees, background screening fees, Concentra testing fees, advanced training or Academy-specific training, job fair booth fees, substitute charges/fees, and other mutually agreed upon expenses.

Reimbursable Expenses incurred by Partner Solutions for Schools will be paid by the Academy by the 15<sup>th</sup> day of the month following the month the expenditure was incurred by Partner Solutions for Schools.

If desired, the Board may advance funds to Partner Solutions for Schools for such costs reimbursable under the Agreement before such costs are incurred (rather than reimburse Partner Solutions for Schools after the expense is incurred).

- D. Availability of Funds. Notwithstanding any other term or provision in this Agreement to the contrary, Partner Solutions for Schools shall not be, directly or indirectly, liable to any third party for any cost or expense incurred by the Academy, and Partner Solutions for Schools shall only be required to perform its responsibilities under this Agreement to the extent Partner Solutions for Schools has received funds from the Academy.
- E. Other Institutions. The Academy acknowledges that Partner Solutions for Schools may enter into agreements similar to this Agreement with other public or private educational schools or institutions (the “Institutions”). Partner Solutions for Schools shall maintain separate accounts for reimbursable expenses incurred on behalf of the Academy and for reimbursable expenses incurred on behalf of the Institutions. Partner Solutions for Schools shall only charge the Academy for expenses incurred on behalf of the Academy.

If Partner Solutions for Schools incurs reimbursable expenses on behalf of the Academy and the Institutions which are incapable of precise allocation between the Academy and the Institutions, then Partner Solutions for Schools shall allocate such expenses among the Institutions and the Academy, on a pro-rata basis, based on the number of students enrolled at the Academy and the Institutions, or the number of staff assigned to the Academy and the Institutions or upon such other equitable basis as agreed by the parties.

## 8. TERM AND TERMINATION

- A. Term. This Agreement shall be effective for the duration of the Academy’s current authorizing Contract with the Authorizer, subject to earlier termination under this Section. The Term will be for a six (6) year, nine (9) months and ten (10) days period beginning September 20, 2022 and ending June 30, 2029 (the “Term”).
- B. Termination by PS. PS may terminate this Agreement prior to the end of the Term in the event the Board fails to remedy a material breach within the required time frames below.
1. PS may immediately terminate this Agreement with no additional liability or responsibility if Partner Solutions for Schools fails to receive compensation for Payroll Costs. For this breach only, the Academy has until the Payroll Date to fund payroll or to reach an agreement with Partner Solutions for Schools on the payment of these funds or else an immediate breach may be declared.
  2. PS may also immediately terminate this Agreement with no additional liability or responsibility upon the occurrence of any of the following:
    - a) Academy operations cease to exist due to, but not limited to, bankruptcy or insolvency, discontinued operations by successors and assigns, facility closure in a manner that prevents worksite staff from working, or reconstitution;
    - b) The Academy requests a reduction in workforce of more than 20%;
    - c) The Academy is a financially distressed business as set forth in the Worker Adjustment and Retraining Notification Act (WARN), 29 U.S.C. §2101, et seq. The Board shall notify Partner Solutions for Schools 90 days prior to the facility closure in order for Partner Solutions for Schools to satisfy notice requirements to Worksite Staff under WARN;
    - d) A determination has been made by a governmental entity, administrative agency or court of law that Partner Solutions for Schools is required to pay into MPSERS.
    - e) Failure by the Academy to pay the Fee or Reimbursable Expenses;



- f) If there is a substantial and unforeseen increase in the cost of administering services of this Agreement; or
- g) The Academy makes decisions inconsistent with the recommendations of PS.

The Academy has thirty (30) days after notice from PS to remedy any of these breaches except for the breach of non-payment of Payroll Costs.

Termination prior to the end of the Term shall not relieve the Academy of any financial or other obligations to PS outstanding as of the date of termination. Failure by PS to (a) declare a breach, (b) place the Academy on notice thereof, or (c) exercise or exert any remedy available to PS under this Agreement or applicable laws, shall not be deemed a waiver of PS's rights and remedies whatsoever.

Notwithstanding the foregoing, PS may terminate this Agreement without cause and without penalty to be effective upon completion of an academic year provided that PS delivers written notice of intention to terminate to the Academy at least ninety (90) days prior to the end of the then-current academic year.

C. Termination by the Academy. The Academy may terminate this Agreement prior to the end of the Term in the event that PS fails to remedy a material breach within the required time frames below. A material breach includes, but is not limited to:

- 1) Material failure by PS to account for its expenditures or to pay funds for all compensation required for payroll (provided that Partner Solutions for Schools has received such funds from the Academy to do so);
- 2) Material failure by PS to provide the Services as required by this Agreement;
- 3) A determination has been made by a governmental entity, administrative agency or court of law that Partner Solutions for Schools is required to pay into MPSERS; or
- 4) Any action or inaction by PS that places the Contract in jeopardy of revocation, suspension or termination, as evidenced by written notification from the Authorizer and is not cured within sixty (60) days of that notice.

PS has ten (10) days after notice from the Academy to remedy a breach that involves the non-payment of funds for all "compensation" required for payroll (provided that Partner Solutions for Schools has received such funds from the Academy to do so) or to reach an agreement with the Academy on the payment of those funds. PS has thirty (30) days after written notice from the Academy to remedy all other breaches. Upon expiration of this Agreement, or termination for any reason, all amounts due to PS shall immediately become due and payable by the Academy, unless otherwise agreed in writing by PS.

Notwithstanding the foregoing, the Academy may terminate this Agreement without cause and without penalty to be effective upon completion of an academic year provided that the Academy delivers written notice of intention to terminate to PS at least ninety (90) days prior to the end of the then-current academic year.

D. Revocation or Termination of Contract. If the Academy's Contract issued by the Grand Valley State University Board of Trustees is revoked or terminated, this Agreement shall automatically terminate on the same date as the Academy's Contract is revoked or termination without further action of the parties.

E. Amendment Caused By Academy Site Closure or Reconstitution. In the event that the Academy is required (i) to close an Academy site pursuant to a notice issued by the State School Reform/Redesign Officer under Section 507 [561 if SOE] of the Code, MCL 380.507 [.561 if SOE]; or (ii) to undergo a reconstitution pursuant to Section 507 [561 if SOE] of the Code, MCL 380.507 [561 if SOE], and of the Contract Terms and Conditions, and such closure of an Academy site or reconstitution causes an amendment to or termination

of this ESP Agreement, the parties agree that this ESP Agreement shall be amended or terminated to implement the Academy site closure or reconstitution, with no cost or penalty to the Academy, and the ESP shall have no recourse against the Academy or the University Board for implementing such site closure or reconstitution.

## 7. INDEMNIFICATION AND COOPERATION

- A. Indemnification of PS. To the extent permitted by law, the Academy shall indemnify, save, and hold harmless PS and all of its employees, officers, directors, subcontractors, and agents against any and all lawsuits and causes of action or other forms of liability that may arise out of or by reason of any noncompliance by the Academy with any agreements, covenants, warranties or undertakings of the Academy contained in or made pursuant to this Agreement; any misrepresentations or breach of this Agreement, enforcement of this Agreement, or Academy's obligations hereunder, including but not limited to, failure to timely and accurately notify PS of any workplace injuries, leaves of absence, hours worked, change in employment status; any claim arising out of the Academy's educational and school operations (including but not limited to student achievement, special education, student discipline, student or parent issues, implementation of policies and procedures); any violations of law by the Academy, its officers, directors, contractors or other agents; any act or omission of the Academy, its officers, directors, contractors or other agents; any incorrect information received from Academy that was relied upon by PS; any acts or failures to act by Academy which occurred prior to the Effective Date of this Agreement; and if the Academy makes a personnel decision without consulting PS or if Academy fails or refuses to abide by the advice provided by PS on such personnel issue.

In the event that the Academy or PS receives funds for the benefit of the Academy pursuant to a grant, endowment, scholarship, or other source of governmental funding ("Funding"), the Academy shall be solely responsible for the Funding and any liabilities associated therewith, including any Funding that is ordered returned to the distributing agency. The Academy further agrees, to the extent permitted by law, to indemnify, save, and hold harmless PS and all of its employees, officers, directors, subcontractors, and agents against any and all lawsuits and causes of action or other forms of liability that may arise in connection with the Funding.

In addition, to the extent permitted by law, the Academy shall indemnify, save, hold harmless, and reimburse PS for any and all legal expenses and costs associated with the defense of any such claim, demand or suit, including any claim for failure to pay wages or overtime based on the hours worked reports approved and submitted by the School Leader. The Academy agrees to advance to PS all costs, actual attorneys' fees, actual experts' fees, and similarly related expenses immediately upon request so that PS is not required to pay such expenses out of its own funds.

PS agrees that for any claim for indemnification made by PS, to the extent the interests of PS and the Academy are aligned, the parties agree to coordinate a defense to minimize the costs of such defense. To the extent the Academy shall be responsible for indemnification of PS, the Academy shall have the right to select the attorneys of its choice and to make all decisions and in every respect control the manner in which PS and the Academy are defended. Notwithstanding the foregoing, in no event shall the Academy indemnify PS for the attorney fees accrued by PS in the regular course of business.

To the extent the parties are coordinating a defense, the parties shall utilize shared counsel which shall be paid for by the Academy and no reimbursement of any costs or fees shall be necessary. The Academy may reimburse PS for pre-approved legal expenses and costs associated with the defense of any such claim, demand, or suit which are not otherwise covered by the shared defense.

If desired, all or part of the indemnification obligations set forth in this section may be met by the purchase of insurance by the Academy. The indemnification in this Section shall also specifically apply, without limitation, to any current claims or litigation at the time this Agreement is executed, as well as any future or additional claims or litigation regarding any prior activities of the Academy.

- B. Indemnification of the Academy. PS shall indemnify, save, and hold harmless the Academy and all of its employees (if any), officers, directors, volunteers, subcontractors, and agents against any and all lawsuits and causes of action or other forms of liability that may arise out of, or by reason of any noncompliance by PS with any agreements, covenants, warranties, or undertakings of PS contained in or made pursuant to this Agreement, and any misrepresentation or breach of this Agreement.

In addition, PS shall indemnify, save, hold harmless, and reimburse the Academy for any and all legal expenses and costs associated with the defense of such claim, demand or suit. PS agrees to advance to the Academy all costs, actual attorneys' fees, actual experts' fees, and such similarly related expenses immediately upon request so that the Academy is not required to pay such expenses out of its own funds.

This indemnification shall not apply to any matter that involves Academy operations, including but not limited to, student achievement, student discipline, special education, parent and community engagement, food service, transportation, athletics, extracurricular activities, building and property management, compliance issues, and/or policy and procedure implementation.

The Academy agrees that for any claim for indemnification made by the Academy, to the extent the interests of PS and the Academy are aligned, the parties agree to coordinate a defense to minimize the costs of such defense. To the extent PS shall be responsible for indemnification of the Academy, PS shall have the right to select the attorneys of its choice and to make all decisions and in every respect control the manner in which PS and the Academy are defended. Notwithstanding the foregoing, in no event shall PS indemnify the Academy for the attorney fees accrued by the Board in the regular course of business.

To the extent the parties are coordinating a defense, the parties shall utilize shared counsel which shall be paid for by PS and no reimbursement of any costs or fees shall be necessary. PS may reimburse the Academy for pre-approved legal expenses and costs associated with the defense of any such claim, demand, or suit which are not otherwise covered by the shared defense.

If desired, all or part of the indemnification obligations set forth in this section may be met by the purchase of insurance by PS. The indemnification in this Section shall also specifically apply, without limitation, to any current claims or litigation at the time this Agreement is executed, as well as any future or additional claims or litigation regarding any prior activities of PS.

- C. Indemnification for Negligence. To the extent permitted by law, each party to this Agreement shall indemnify and hold harmless the other, and their respective boards of directors, shareholders, officers, employees, volunteers, agents, or representatives, from any and all claims and liabilities which they may incur, and which arise out of the negligence of any of the other party's board of directors, shareholders, officers, employees, volunteers, agents, or representatives.
- D. Immunities and Limitations. The Academy may assert all immunities from and statutory limitations of liability in connection with any claims arising under this Agreement.
- E. Responsibility of Academy. The Academy will be solely and entirely responsible for its acts and omissions and for the acts and omissions of the Academy's agents and employees (if any) in connection with the performance of the Academy's responsibilities under this Agreement; provided, however, that nothing in this Agreement is intended, nor will be construed, as a waiver of the governmental immunity provided to the Academy and its incorporators, board members, officers, employees, and volunteers under Section 7 of Act 170, Public Acts of Michigan, 1964, as amended, MCL 691.1407. If PS is made a party to any litigation involving claims arising out of or relating in any way to any alleged acts and/or omissions of the Academy or its directors, agents, or employees, if any, the Academy will provide any reasonable assistance requested by PS in the defense against such claims as long as such assistance does not adversely affect the Academy's ability to defend against such claims.
- F. Mutual Duty to Cooperate. The parties acknowledge that each party has a duty and obligation to cooperate

with the other party, and further that such duty to cooperate is a material part of this Agreement. The purpose of the duty to cooperate is to enable each party to perform its obligations as efficiently as possible. The duty to cooperate also includes reasonable assistance in the event of litigation or a dispute involving a party related to the Academy or the Services provided, such as provision of testimony, records and/or documents reasonably related to the litigation or dispute (which are not otherwise protected from disclosure).

G. Indemnification of Grand Valley State University. The parties acknowledge and agree that the Grand Valley State University Board of Trustees, Grand Valley State University and its members, officers, employees, agents or representatives are deemed to be third party beneficiaries for purposes of this Agreement. As third party beneficiaries, the parties hereby promise to indemnify and hold harmless Grand Valley State University Board of Trustees, Grand Valley State University and its members, officers, employees, agents or representatives from all claims, demands, or liability, including attorney fees, and related expenses, on account of injury, loss or damage, including, without limitation, claims arising from bodily injury, personal injury, sickness, disease, death, property loss or damage or any other losses of any kind whatsoever and not caused by the sole negligence of Grand Valley State University, which arise out of or are in any manner connected with Grand Valley State University Board's approval of the Application, the University Board's consideration of or issuance of a Contract, the Academy's preparation for and operation of a public school, or which are incurred as a result of the reliance by Grand Valley State University and its Board of Trustees members, officers, employees, agents or representatives upon information supplied by the Academy or the ESP, or which arise out of the failure of the Academy to perform its obligations under the Contract issued to the Academy by Grand Valley State University Board of Trustees. The parties expressly acknowledge and agree that Grand Valley State University and its Board of Trustee members, officers, employees, agents or representatives may commence legal action against either party to enforce its rights as set forth in this Agreement.

## 8. INSURANCE

A. Academy Insurance. The Academy will secure and maintain general liability and umbrella insurance coverage in accordance with its Contract. This coverage will include the building and related capital facilities if they are the property of the Academy. The Academy will maintain such insurance in an amount and on such terms as required or permitted by the provisions of the Contract, including the indemnification of PS required by this Agreement, and naming PS as an additional insured. The Academy will, upon request, present evidence to PS that it maintains the requisite insurance in compliance with the provisions of this section. PS will comply with any information or reporting requirements applicable to the Academy under the Academy's policy with its insurer(s), to the extent practicable. Nothing in this Agreement is intended, nor shall be construed, as a waiver or relinquishment of any immunity from action or liability enjoyed by the Academy under controlling law.

B. PS Insurance. PS will secure and maintain general liability and umbrella insurance coverage, and workers compensation coverage with the Academy listed as an additional insured. PS will maintain such policies of insurance as are required by the Contract, including the indemnification of the Academy as required by this Agreement. In the event that the Authorizer requests any change in coverage, PS agrees to comply with any change in the type or amount of coverage as requested, within thirty (30) days after notice of the insurance coverage change. PS will, upon request, present evidence to the Academy or its Authorizer that it maintains the requisite insurance in compliance with the provisions of this section. The Academy will comply with any information or reporting requirements applicable to PS under PS's policy with its insurer(s), to the extent practicable.

C. Workers' Compensation Coverage. Additionally, each party shall maintain workers' compensation insurance, as required by state law, covering their respective employees, if any.

## 9. WARRANTIES AND REPRESENTATIONS

A. Warranties and Representations of the Academy. The Academy represents to PS that (a) it has the authority

under law to execute, deliver and perform this Agreement and to incur the obligations provided for under this Agreement, (b) its actions have been duly and validly authorized, and (c) it will adopt the necessary resolutions or expenditure approvals required for execution of this Agreement.

- B. Warranties and Representations of Partner Solutions. Partner Solutions represents and warrants to the Academy that (a) it is a Michigan corporation in good standing duly authorized to conduct business in the State of Michigan, (b) it has the authority under applicable laws to execute, deliver and perform this Agreement and to incur the obligations provided for under this Agreement, (c) its actions have been duly and validly authorized, and (d) it will adopt any and all resolutions required for execution of this Agreement.
- C. Warranties and Representations of Partner Solutions for Schools. Partner Solutions for Schools represents and warrants to the Academy that (a) it is a Michigan corporation in good standing duly authorized to conduct business in the State of Michigan, (b) it has the authority under applicable laws to execute, deliver and perform this Agreement and to incur the obligations provided for under this Agreement, (c) its actions have been duly and validly authorized, and (d) it will adopt any and all resolutions required for execution of this Agreement.
- D. Mutual Representations and Warranties. Each party represents and warrants to the other party that except as disclosed in writing to the other party, to its knowledge, there are no pending actions, claims, suits, or proceedings, whether threatened or reasonably anticipated, against or affecting it, which if adversely determined would have a material adverse effect (as might be reasonably determined by the non-affected party if disclosed) on its ability to perform its obligations under this Agreement.

## 10. ALTERNATIVE DISPUTE RESOLUTION

- A. Mediation. Any and all disputes between the parties concerning any alleged breach of this Agreement or arising out of or relating to the interpretation of this Agreement or the parties' performance of their respective obligations under this Agreement shall first be communicated in writing to the other party and mutually discussed between the parties with an opportunity to cure. If no resolution can be ascertained through that mutual discussion, then the matter will be submitted to mediation for resolution in Kent County, Michigan. Both parties must mutually agree upon the mediator selected and shall participate in all meetings in good faith. The mediation shall be conducted in accordance with the rules of the American Arbitration Association seated in Kent County, Michigan, with such variations as the parties and arbitrators unanimously accept. The parties will share equally in the costs of the mediation including forum fees, expenses and charges of the mediator.
- B. Arbitration. If the mediation does not result in a mutually satisfactory compromise, then the matter shall be resolved by arbitration, and such procedure shall be the sole and exclusive remedy for such matters. Unless the parties agree upon a single arbitrator, the arbitration panel shall consist of three (3) persons. The arbitration shall be conducted in accordance with the rules of the American Arbitration Association seated in Kent County, Michigan, with such variations as the parties and arbitrators unanimously accept. The arbitrators' award shall be final and binding. A judgment on the award rendered by the arbitrators may be entered in any court having appropriate jurisdiction, by any party, without the consent of the other party. The losing party shall pay the cost of arbitration, not including attorney fees. It shall be within the discretion and purview of the arbitrator or arbitration panel to award reasonable attorney fees to the prevailing party.

## 11. MISCELLANEOUS

- A. Entire Agreement. This Agreement supersedes and replaces any and all prior written or oral agreements and understandings between the Academy and PS. This Agreement constitutes the entire agreement of the parties.
- B. Force Majeure. Notwithstanding any other sections of this Agreement, neither party shall be liable for any delay in performance or inability to perform due to acts of God or beyond human control or control of the parties including but not limited to war, riot, embargo, fire, explosion, sabotage, accident, labor strike, flood, terrorism, school closure, pandemic or other acts beyond their reasonable control.

- C. Governing Law. This Agreement and the rights of the parties hereto shall be interpreted according to the laws of the State of Michigan.
- D. Governmental Immunity. Nothing in this Agreement is intended, nor will be construed, as a waiver of the governmental immunity provided to the Academy and its incorporators, board members, officers, employees (if any), and volunteers under Section 7 of Act 170, Public Acts of Michigan, 1964, as amended, MCL 691.1407.
- E. Official Notices. All notices or other communications required by the terms of this Agreement shall be in writing and sent to the parties at the addresses set forth below. Notice may be given by certified or registered mail, postage prepaid, return receipt requested, or personal delivery. Notices shall be deemed to have been given on the date of personal delivery, or, if given by mail, the postmark date. Personal delivery can be accomplished by email to any email hereafter the subject of authorized use for said purpose by the recipient. Unless amended or updated in writing, the addresses of the parties hereto for the purposes of this Agreement shall be:

THE ACADEMY:                      Board President  
    West Michigan Aviation Academy  
    5363 44<sup>th</sup> Street, SE  
    Grand Rapids, MI 49512

PS:                                      Partner Solutions  
    Partner Solutions for Schools  
    c/o Chris Matheson  
    869 South Old US 23  
    Brighton, Michigan 48114

- F. Assignment. This Agreement shall not be assigned (a) by PS, without prior consent of the Board, in writing which consent shall not be unreasonably withheld; or (b) by the Academy, without the prior consent of PS, in writing, which consent shall not be unreasonably withheld. PS may, without the consent of the Board, delegate the performance of but not responsibility for any duties and obligations of PS hereunder to any independent contractor, expert or professional adviser.
- G. Limitation of Liability. EXCEPT FOR AMOUNTS EXPRESSLY DUE AND OWING UNDER THIS AGREEMENT, EACH PARTY'S TOTAL LIABILITY TO THE OTHER AND ANY THIRD PARTIES UNDER OR ARISING OUT OF THIS AGREEMENT SHALL BE LIMITED TO THE AGGREGATE AMOUNTS PAID OR DUE AND OWING BY THE ACADEMY TO PS HEREUNDER. THIS LIMITATION DOES NOT APPLY TO ANY AMOUNTS OWED PURSUANT TO A PARTY'S INDEMNIFICATION OBLIGATIONS UNDER THIS AGREEMENT. PS' TOTAL LIABILITY TO THE ACADEMY UNDER OR ARISING OUT OF THIS AGREEMENT SHALL BE LIMITED TO THE AGGREGATE AMOUNTS PAID OR DUE AND OWING BY THE ACADEMY TO PS HEREUNDER.
- H. Amendment. This Agreement may only be amended in writing, signed by a duly authorized representative of each party.
- I. Effect of Headings. The underlined headings are included for convenience of the reader, and if the underlined headings are inconsistent with the other text the underlined text shall be disregarded.
- J. Waiver. No waiver of any portion of this Agreement shall be deemed or shall constitute a waiver of any other provision, nor shall such waiver constitute a continuing waiver unless otherwise expressly stated in writing.
- K. Severability. The invalidity of any portion or term of this Agreement shall not affect the remaining portions or terms of this Agreement. In the event a portion or a term of this Agreement is deemed invalid, the parties shall cooperatively work together to modify the invalid portion or term as minimally as possible to cure the

invalidity, while at all times preserving the spirit and purpose of the applicable portion or term.

- L. Successors and Assigns. This Agreement shall be binding upon and inure to the benefit of the parties and their respective successors and permitted assigns.
- M. No Third Party Rights. This Agreement is made for the sole benefit of the Academy and PS. Except as otherwise expressly provided herein, nothing in this Agreement shall create or be deemed to create a relationship between the parties, or either of them individually with any third person, third party beneficiary, fiduciary, or the Authorizer.
- N. Survival of Termination. All representations, warranties, and indemnities made in this Agreement shall survive any termination or expiration of this Agreement without limitation.
- O. Delegation of Authority; Compliance with Laws. Nothing in this Agreement shall be construed as delegating to PS any of the powers or authority of the Board which are not subject to delegation by the Board in accordance with all applicable laws. The parties agree to comply with all applicable laws.
- P. Academy Property/Ownership. The parties agree that the Academy shall be the owner of all documentation, education records, data, licenses, copyright, inventions, trade names and marks, logos, including the Academy's official name and name it is known by or formerly known as, developed, produced or created pursuant to the performance of this Agreement, funded by the Academy, by use of time paid for by the Academy and no matter by whom produced or created and which were owned or possessed or asserted by the Academy prior to this Agreement. PS shall return to or make available to the Academy anything owned by the Academy on demand.
- Q. PS Property/Ownership. The parties agree that PS shall be the owner of all documentation, education records, data, licenses, copyright, inventions, trade names and marks, logos, including PS's official name and name it is known by or formerly known as, developed, produced or created pursuant to the performance of this Agreement, funded by PS, by use of time paid for by PS and no matter by whom produced or created and which were owned or possessed or asserted by PS prior to this Agreement. The Academy shall return to or make available to PS anything owned by PS on demand.
- R. Tax Exempt Financing. If the Academy has any outstanding tax-exempt bonds and/or any future tax-exempt debt obligations, the parties intend that this Agreement meet all of the applicable safe harbor conditions as set forth in Sections 5.02 through Sections 5.07 of Revenue Procedure 2017-13. In this regard, the Academy and PS make the following representations: (1) (a) PS's compensation under this Agreement is reasonable compensation for services to be rendered hereunder and is not based, in whole or in part, on a share of net profits and/or a share of the net losses from the operation of the Academy or upon the disposition, damage or destruction of the Academy's property; (b) This Agreement does not pass on to PS the burden of bearing any share of net losses from the operation of the Academy or upon the disposition, damage or destruction of the Academy's property; (c) The term of this Agreement is not greater than 30 years or 80 percent of the remaining useful life of the Academy's tax-exempt bond financed school facility (if shorter) including all renewal options; (d) The Academy bears the risk of loss upon the disposition, damage or destruction of the Academy's property; and (e) PS is not entitled to and will not take any federal tax position that is inconsistent with being a service provider under this Agreement to the Academy. In interpreting this Agreement and in the provision of the services required hereunder, PS shall not have any role or relationship with the Academy that, in effect, substantially limits the Academy's ability to exercise its rights and obligations under State law. (2) As required by the Academy's Article of Incorporation and Bylaws, the Academy Board may not include any director, officer or employee of a management company that contracts with the Academy. In furtherance of such restriction, it is agreed between the Academy and PS that none of the voting power of the governing body of the Academy will be vested in PS or its directors, members, managers, officers, shareholders and employees, and the Academy and PS will not be a "related party" as defined in Treas. Reg. 1.150-1(b).
- S. Execution. The parties may execute this Agreement by facsimile or in counterparts. A facsimile or photographic copy of this Agreement may be relied upon by either party, or any third party, as if it were an

original signature copy. If this Agreement is executed in counterparts, the separate counterpart signature pages shall be combined and treated by the parties, or any third party, as if the separate counterpart signature pages were part of one original signature copy. If the parties agree, signatures may be replaced by representations made in writing and exchanged by the parties in whatever form they agree.

- T. Review by Independent Counsel. The parties agree that each has reviewed, or had the opportunity to review, this Agreement with its own independent legal counsel prior to the execution of this Agreement.



The undersigned hereby execute this Agreement to be effective as of the date set forth first above.

**THE ACADEMY:**

**WEST MICHIGAN AVIATION ACADEMY**, a Michigan public school academy

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

Its: Board President

**PS:**

**PARTNER SOLUTIONS  
PARTNER SOLUTIONS FOR SCHOOLS**

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

Its: Designated Officer