



BAY MILLS
COMMUNITY COLLEGE
CHARTER SCHOOLS OFFICE

September 9, 2022

Jill Thompson
Michigan Department of Education
608 West Allegan Street
PO Box 30008
Lansing, MI 48909

Dear Ms. Thompson:

Attached please find Contract Amendment No. 1 for Detroit Community Schools. If you have any questions, please contact me at (906) 248-8446.

Sincerely,

A handwritten signature in blue ink that reads "Mariah Wanic".

Mariah Wanic, Director of Charter Schools

Cc: Pat Devlin, Detroit Community Schools Board President

CONTRACT AMENDMENT NO. 1

BETWEEN

BAY MILLS COMMUNITY COLLEGE BOARD OF REGENTS
(AUTHORIZING BODY)

AND

DETROIT COMMUNITY SCHOOLS
(PUBLIC SCHOOL ACADEMY)

**CONTRACT AMENDMENT NO. 1
DETROIT COMMUNITY SCHOOLS**

In accordance with Article IX of the Terms and Conditions, incorporated as part of the Contract to Charter a Public School Academy and Related Documents, issued by the **BAY MILLS COMMUNITY COLLEGE BOARD OF REGENTS** ("College Board") to **DETROIT COMMUNITY SCHOOLS** ("Academy") on **July 1, 2021** ("Contract"), the parties agree to amend the Contract as follows:

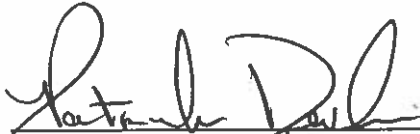
1. Amend Contract Schedule 5: Description of Staff Responsibilities, by adding at the end of that schedule the newest educational service provider agreement attached as Exhibit 1.

This amendment is hereby approved by the College Board and the Academy through their authorized designees and shall have an effective date of July 1, 2022.



By: Mariah Wanic, Director of Charter Schools
Bay Mills Community College
Designee of the College Board

Dated: 9/9/22



By: Patrick Devlin, President
Detroit Community Schools
Designee of the Academy

Dated: 9/12/2022

Exhibit 1

EDUCATIONAL AND PERSONNEL SERVICES AGREEMENT

THIS EDUCATIONAL AND PERSONNEL SERVICES AGREEMENT is made as of this 30th day of June, 2022, by and between **DETROIT COMMUNITY SCHOOLS**, a Michigan public school academy established under Part 6A of the Michigan Revised School Code ("the Academy"), with offices located at 12675 Burt Road, Detroit, Michigan, 48223, and **MMI, INC.**, a Michigan for-profit corporation ("MMI"), with offices located at 27655 Middlebelt Rd., Commerce Twp., Michigan, 48334.

WITNESSETH:

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

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

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

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

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

SECTION 1 **SERVICES AND RELATIONSHIP OF PARTIES**

A. Subject to the terms and conditions of this Agreement, and as permitted by applicable law, the Academy hereby contracts with MMI for the provision of educational, business, administrative, facility, and management services concerning operation and management of the Academy, including without limitation, all labor, equipment, and materials necessary for the provision of the same, as set forth herein (collectively, the "Services"). MMI agrees to perform its duties and responsibilities under this Agreement in a manner that is consistent with the Academy's obligations under the Contract. The provisions of the Academy's Contract shall supersede any competing or conflicting provisions contained in this Agreement.

B. PERSONNEL SERVICES

1.1 Personnel Services. MM1 shall provide highly qualified personnel as necessary for MM1 to perform the Services contemplated by this Agreement in accordance with the Academy's requirements and budget ("Personnel Services"), including personnel to perform the Business Services described in subsection 1.C. of this Agreement.

1.2 Personnel Requirements. Personnel assigned by MM1 to perform Services under this Agreement for the Academy shall be fully certified, licensed, approved and otherwise qualified to perform the functions assigned pursuant to and in conformance with the provisions of the Michigan Revised School Code, and other applicable statutes or regulations, pertinent to the work performed under this Agreement. MM1 will not furnish any personnel to the Academy who would be ineligible for employment by the Academy if such person(s) were instead employed directly by the Academy under applicable statutory and regulatory provisions.

1.3 Background Checks. Pursuant to the requirements of Sections 1230 and 1230a of the Revised School Code, the Academy shall perform a criminal history check through the Michigan State Police, as well as a criminal records check through the Federal Bureau of Investigation, with regard to all persons assigned by MM1 under this Agreement to regularly and continuously work in any of the Academy's facilities or at program sites where the Academy delivers educational programs and services. To the extent authorized by law to access Criminal History Record Information (CHRI), the Superintendent assigned by MM1 shall act on behalf of the Academy Board, with the Montcalm ISD, to comply with Sections 1230 and 1230a and shall comply with security, training, and other applicable provisions of the FBI's *Criminal Justice Information Services Security Policy* pertaining to noncriminal justice agencies. For purposes of this subsection, "security" includes: (a) maintaining CHRI in a physically secure location at the Academy (or encrypted if stored electronically) accessible only by authorized and trained individuals; and (b) maintaining a log of any dissemination of CHRI for an allowed purpose. For purposes of anticipated audit(s) by the Michigan State Police (MSP) Criminal Justice Information Center and/or the Federal Bureau of Investigation, the Board President, or its designee, shall securely maintain the following for each individual employed or assigned under contract on whom the Academy was required to perform a criminal background check: (i) Position Description (or at least the title of the position as identified on the "Affidavit for Assignment"); (ii) Affidavit for Assignment (a/k/a MSP-approved Red Light/Green Light letter); (iii) Live Scan Finger Print Consent Form; and (iv) Dissemination Log (if any authorized dissemination of CHRI has occurred).

MM1 agrees that it shall not assign any of its employees, agents or other individuals to perform any Services under this Agreement where such individuals would regularly and continuously work in the Academy's facilities or program sites if such person has been convicted of any of the following offenses:

- (A). Any "listed offense" as defined under Section 2 of the Sex Offenders Registration Act, MCL 28.722; or
- (B). Any offense enumerated in Sections MCL 380.1535a or 380.1539b of the Revised School Code, MCL 380.1535a; 380.1539b; or

- (C). Any felony. Provided, that with prior written approval of the Superintendent of the Academy and of its Board of Directors an individual who has been convicted of a felony (other than a “listed offense” as defined above) and who is regularly and continuously providing Services under this Agreement at the Academy facilities or program sites may be permitted to perform such Services when, in the judgment of the Superintendent and Board of Directors of the Academy, that individual’s presence will not pose a danger to the safety or security of the Academy students or employees; or
- (D). Any misdemeanor conviction involving sexual or physical abuse as those terms are defined in Sections 1230(10) and 1230a(8) of the Revised School Code.
- (E). Any offense of a substantially similar enactment (to those enumerated in A-D, above) of the United States or another State; or
- (F). Any other offense that would, in the judgment of the Academy, create a potential risk to the safety and security of students serviced by the Academy or employees (if any) of the Academy.

Before hiring or engaging an applicant for assignment at the Academy under this Agreement, MM1 shall conduct an unprofessional conduct in a manner that mirrors the requirements of section 1230b of the Revised School Code that would apply in the event the Academy were hiring the individual, MCL 380.1230b. The Academy reserves the right to refuse MM1’s assignment of any individual, agent or employee of MM1 to render Services under this Agreement where the criminal record history of that individual (including any pending criminal charges) indicate, in the Academy’s judgment, unfitness to perform Services under this Agreement.

1.4 Independent Contractors. In the performance of Services under this Agreement, MM1 (its agents, contractors and employees) shall be regarded at all times as performing Services as independent contractors of the Academy. Consistent with that status, MM1 reserves to itself the right to designate the means and methods of accomplishing the objectives and purposes of this Agreement and the Academy shall not exercise (or have the right to exercise) control or direction over the means and methods utilized by MM1 in providing Services under this Agreement. Notwithstanding the foregoing, during the term of this Agreement, the Academy may disclose Confidential Data and Information (as defined in Section 4 of this Agreement) to MM1 (its employees or agents) to the extent permitted by applicable law, including without limitation, the Family Educational Rights and Privacy Act (FERPA), 20 USC §1232(g), 34 CFR Part 99; Section 1136 of the Michigan Revised School Code, MCL 380.1136; the Individuals with Disabilities Education Act (IDEA), 20 USC §1401 *et seq.*, 34 CFR 300.610 – 300.626; Section 504 of the Rehabilitation Act of 1973, 29 USC §794a, 34 CFR 104.36; the Michigan Mandatory Special Education Act, MCL 380.1701 *et seq.*; the Americans with Disabilities Act, 42 USC §12101 *et seq.*; and the Health Insurance Portability and Accountability Act (HIPAA), 42 USC 1320d – 13200d-8; 45 CFR 160, 162 and 164.

1.5 MM1 as Employer. All individuals whom MM1 may select and assign to provide Services at the Academy under this Agreement will be employed by MM1. The Academy will not under any circumstances be regarded or considered to be the employer of any such

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

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

MMI acknowledges and agrees that it is solely and exclusively responsible for making the requisite tax filings, deductions and payments to the appropriate federal, state and local tax authorities for and on behalf of all persons assigned by MMI to provide Services under this Agreement. No part of MMI invoiced fees shall be subject to withholding by the Academy for payment of social security, unemployment or disability insurance or any other similar state or federal tax obligations. MMI shall be solely and exclusively responsible for any taxation consequences to it or its agents or employees as a result of MMI's engagement under this Agreement. MMI agrees to defend, indemnify and hold harmless the Academy from any and all such claims.

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

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

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

1.7 Academy's Policies. MM1 agrees that the individuals it assigns to the Academy under this Agreement will abide by those policies of the Academy which are applicable to performance of Services under this Agreement including, but not limited to, policies pertinent to:

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

A copy of the above policies has been provided to MM1 by the Academy. MM1 and the Academy will cooperate in orientation of MM1' employees to the above policies and in the conduct of Academy-specific orientation and training applicable to performance of Services under this Agreement.

1.8 Professional Standards. MM1 agrees that the individuals it assigns to the Academy under this Agreement will adhere to professional standards and will perform all Services required under this Agreement in a manner consistent with generally accepted proficiency and competency for the type and nature of Services rendered. MM1 represents that it has secured or will secure the necessary licenses, approvals, permits and regulatory authorizations to provide the Services contemplated in this Agreement.

1.9 Records Checking/Volunteers. MM1 will provide a policy and registration form, and implement procedures, for records checking of school volunteers through at least the Internet Criminal History Access Tool ("ICHAT") and Michigan's Sex Offender Registry ("SOR"). MM1 shall ensure that all individuals approved to serve as volunteers at the Academy have undergone an ICHAT and SOR records check at least once per school year.

C. BUSINESS SERVICES

1.10 Business Services. Subject to the terms and conditions contained herein, MM1 will provide the following business services (the "Business Services") to the Academy during the Term, as hereinafter defined:

- (A) MM1 will prepare the Academy's financial statements, annual and amended budgets, and other similar documents required for financial compliance and oversight purposes; provided, however that only the Academy Board has the authority to approve operating budgets and expenditures. No employee of MM1 shall be designated as the Chief

Administrative Officer of the Academy within the meaning of the Uniform Budgeting and Accounting Act (2 PA 1968), MCL 141.422b(3).

- (B) MM1 will provide bookkeeping and accounting services, as required by law and/or Contract.
- (C) MM1 will provide accounts payable management; provided, however, that only Academy Board members or properly designated Academy Board employees (if any) shall be signatories on Academy Board accounts. No provision of this Agreement shall alter the Academy Board Treasurer's legal obligation to direct that the deposit of all funds received by the Academy be placed in the Academy's depository account as required by law. Interest earned on Academy accounts shall accrue to the Academy. At no time will Academy funds be commingled or in any way subject to the dominion and/or control of MM1 in connection with the performance of MM1's accounting services.
- (D) MM1 will provide qualified personnel to assure the Academy's compliance with fiscal and other regulatory schemes and in meeting all associated reporting requirements.
- (E) MM1 will provide qualified personnel to prepare appropriate and necessary federal and state program applications.
- (F) MM1 will provide transportation consulting and transportation support services including, but not limited to, assisting in such matters as leasing buses, contracting for busing services, evaluating and assisting in potential bus purchases, ensuring that drivers are properly licensed and that vehicles are properly tested and registered.
- (G) MM1 will assist the Academy in preparing applications for state aid anticipation loans and/or state aid bridge loans.

1.11 Recruitment of Students. The Academy will be responsible for marketing the Academy and for the recruitment of students. All marketing and development costs incurred by the Academy will be paid directly by the Academy, and MM1 will not be required to pay for any costs or fees relating to the Academy's marketing or recruitment efforts. Marketing and development costs paid by or charged to the Academy shall be limited to those costs specific to the Academy program and shall not include any costs for the marketing and development of MM1.

1.12 Grant of Authority. The Academy's Board of Directors will grant to MM1 all required authority and power necessary to undertake its responsibilities as described in this Agreement, except where such delegation of authority and power is prohibited by law. No provision of this Agreement shall interfere with the Academy Board's constitutional duty to exercise its statutory, contractual and fiduciary responsibilities governing the operation of the Academy. No provision of this Agreement shall prohibit the Academy Board from acting as an independent, self-governing public body, or allow public decisions to be made other than in compliance with the Open Meetings Act.

1.13 Recordkeeping and Reporting Requirements.

- (A) MM1 will keep accurate financial records and provide monthly financial reports associated with the Services performed on behalf of the Academy (including a balance sheet, an object-level detailed statement of revenues, expenditures and changes in fund balance that includes a comparison of budget-to-actual information and an explanation of variances). Financial reports will be in a format mutually agreed upon between the Academy Board and MM1 unless otherwise required by the Contract or applicable law. MM1 will also be responsible for retaining all financial records according to applicable state and federal requirements.
- (B) MM1 shall provide to the Academy Board at least annually all of the information that a school district is required to disclose under section 18(2) of the State School Aid Act of 1979, MCL 388.1618(2), for the most recent school fiscal year for which that information is available. Within 30 days after receiving the information described in this subsection, the Academy Board shall make all of the information it receives from MM1 under this subsection available through a link on the Academy's website homepage, in a form and manner prescribed by the Michigan Department of Education.
- (C) MM1 shall make information concerning its operation and management of the Academy available to the Academy Board as necessary for the Academy Board to fulfill its obligation under subsection 503(6)(l) of the Code to make all information concerning operation and management of the Academy available to the public and to the Academy's Authorizing Body in the same manner as is required by state law for school districts.
- (D) MM1 shall collect, maintain, and make available to Academy Board all of the information required under subsection 503(6)(m) of the Code for the Academy Board to fulfill its obligation to make specifically delineated information concerning operation and management of the Academy available to the public and to the Academy's authorizing body.
- (E) MM1 will maintain the proper confidentiality of personnel, students and other records as required by applicable law and Section 3 of this Agreement.
- (F) All financial records will be made physically or electronically available to the Academy's Board of Directors, agents, or employees for inspection and/or copying, at the Academy's discretion.
- (G) MM1 will, upon request of the Academy Board, but not less than quarterly, provide the Academy Board detailed statements at object level for ratification of all expenditures with an explanation of variances for Services rendered to or on behalf of the Academy. All finance and other records related to the Academy that are in the possession or control of

MM1 will be made available the Academy's independent auditor upon request, and MM1 shall cooperate with said auditor. The Academy Board is solely responsible for selecting, retaining, and compensating the independent auditor for the Academy. The Academy Board also shall be responsible: (a) for determining the budget reserve included in the Academy's annual budget and any budget amendments; and (b) for implementing fiscal policies that will assist the Academy in attaining the stated budget reserve amount(s).

- (H) In addition to financial records, MM1 will provide information to the Academy and its Board of Directors periodically, as requested by the board of directors of the Academy, sufficient in form and substance to enable the Academy to monitor MM1' performance and the efficiency of its performance of the Services.
- (I) All financial, educational, and student records pertaining to the Academy are Academy property and such records are subject to Michigan's Freedom of Information Act. All such records must be stored, in physical form, on-site at the Academy's facility or directly accessible at the Academy facility. All records pertaining to teacher and administrator certification, as well as a copy of MM1' employee handbook, shall be maintained physically onsite or directly accessible at the Academy facility.

1.14 Unusual Events. Each Party agrees to notify the other immediately of any known health, safety or other violations of law, regulation, or the Contract, and of any anticipated labor, employee or funding problems, or of any other problems or issues that could adversely affect the Academy or MM1 in complying with its responsibilities hereunder.

SECTION 2
FEES AND REIMBURSEMENT

2.1 Service Fees and Reimbursement. The Academy shall pay MM1 the following fees as reasonable compensation for the Services MM1 will provide to the Academy during the term of this Agreement. No portion of the compensation paid by the Academy to MM1 under this Agreement is based on a share of the net profits of the Academy. If the provisions of this Agreement regarding service fees and reimbursement are determined to result in private business use of the Academy's facilities under Rev. Proc. 97-13 as amended by Rev. Proc. 2001-39, Rev. Proc. 2016-44, 2016-36 IRB 316, and Rev. Proc. 2017-13 (and as may be further amended), the Parties agree to renegotiate the service fees and reimbursement provisions of this Agreement as necessary to maintain the qualified use and tax-exempt nature of any Academy bond funded property. However, MM1 may terminate this Agreement in accordance with Section 6 hereof if the Academy requests or demands a reduction in MM1' net service fees and reimbursement under this section without a corresponding reduction in Services to the Academy.

The Academy will pay to MM1 an annual ESP Services Fee, not to exceed budgeted amounts approved by the Academy's Board of Directors, in the amount of nine percent (9%) of the Academy's state aid entitlement, as adjusted and/or pro-rated in compliance with the State School Aid Act.

The Academy will pay MM1 a four percent (0%) fee for managing ESSER Grant funding.

The Academy acknowledges and agrees that MM1 will under no circumstances be required to provide personnel or Services if the cost of same exceeds Board-approved budget limits.

2.2 Additional Services. MM1 may, at the request of the Academy, provide additional services that the Academy's board deems appropriate or necessary. Should MM1 be requested to provide such additional services, the Parties will negotiate a reasonable fee/compensation prior to the time that such services are rendered, and will execute a written addendum to this Agreement describing both the nature and extent of such services and the compensation to be provided to MM1.

2.3 Reimbursement of Expenses. MM1 may, with prior Academy Board of Directors' approval, purchase fixed assets for the benefit of the Academy, the cost of which will be reimbursed by the Academy Board in accordance with this paragraph. For any such purchases, MM1 will retain a security interest in the relevant assets until the cost of such assets are fully reimbursed. Upon full payment to MM1 from the Academy, such assets will be the property of the Academy. Should MM1 procure equipment, materials, or supplies on behalf of the Academy and paid for by the Academy, MM1 will not include any added fees or costs with respect to the items purchased with the Academy's funds. MM1 will at all times comply with the Revised School Code (including MCL 380.1274 and 380.1267) and all Board policies as if such purchases were being made directly by the Academy. All supplies, materials and equipment procured by MM1 for the Academy shall be inventoried by an acceptable method of

inventory and an inventory of Academy equipment shall be maintained so that it can be clearly established which property belongs to the Academy.

The Academy Board may approve the reimbursement of reasonable expenses incurred by MM1. Reimbursement will only be permitted under this Agreement for actual and direct expenses that are pre-approved by the Academy Board and paid by MM1 to unrelated Parties, provided MM1 submits an itemized accounting of all such expenses to the Academy's Board, along with any relevant documentation.

SECTION 3 **CONFIDENTIALITY and DATA SECURITY**

3.1 Preservation of Covered Data and Information. MM1 agrees that it shall observe the policies and directives of the Academy to preserve the confidentiality of Covered Data and Information (defined in Subsection 3.2 below) to the extent that MM1 (its employees, subcontractors and agents) are permitted to access Covered Data and Information in the course of performing Services under this Agreement.

3.2 Definition of Covered Data and Information. Covered Data and Information (CDI) includes paper and electronic student education and/or medical record information supplied by the Academy and/or its students or parents/guardians to MM1 and includes, without limitation, "education records" and "education record information" as defined under FERPA and IDEA, and as incorporated into MCL 380.1136; "protected health information" as defined under HIPAA; "relevant records" as defined under Section 504; and social security numbers. CDI also includes any new records created and maintained by MM1 under this Agreement using CDI.

3.3 Acknowledgment of Access to CDI. MM1 acknowledges that this Agreement allows MM1 (its employees, subcontractors and agents) access to CDI, for which the Academy may have the ultimate legal responsibility to maintain in a confidential and secure fashion. Accordingly, MM1 (its employees, subcontractors and agents) shall provide the Academy with control over the CDI sufficient to satisfy all applicable legal and regulatory standards. In any event, MM1 (its employees, subcontractors and agents) shall at all times make CDI available to the Academy within a reasonable time of receiving a request for same.

3.4 Prohibition on Unauthorized Use or Disclosure of CDI. MM1 (its employees, subcontractors and agents) agrees to hold CDI in strict confidence. MM1 (its employees, subcontractors and agents) shall not use or disclose CDI received from or on behalf of the Academy except as permitted or required by this Agreement, as required or authorized by law, or as otherwise authorized in writing by the Academy, a parent/guardian, or eligible student. MM1 agrees that it will protect the CDI it receives from or on behalf of the Academy according to commercially acceptable standards and no less rigorously than it protects its own confidential information. MM1 shall ensure that any employee or agent, including a subcontractor or Business Associate (as defined in HIPAA), to whom it provides CDI under this Agreement, understands and agrees to the same restrictions and conditions pertaining to use and disclosure of CDI that apply to MM1 under this Agreement.

3.5 Return or Destruction of CDI. Upon termination, cancellation, expiration or other conclusion of this Agreement, MM1 (its employees, subcontractors and agents) shall return all CDI to the Academy.

3.6 Maintenance of the Security of Electronic Information. MM1 (its employees, subcontractors and agents) shall develop, implement, maintain and use appropriate administrative, technical and physical security measures to preserve the confidentiality, integrity and availability of all CDI received from, or on behalf of, the Academy or its students. These measures will be extended by contract to all agents, including subcontractors or Business Associates, used by MM1.

3.7 Reporting of Unauthorized Disclosures or Misuse of Covered Data and Information. MM1, within one day of discovery, shall report to the Academy any use or disclosure of CDI not authorized by this Agreement or in writing by the Academy. MM1's report shall identify: (i) the nature of the unauthorized use or disclosure, (ii) the CDI used or disclosed, (iii) who made the unauthorized use or received the unauthorized disclosure, (iv) what MM1 has done or shall do to mitigate any deleterious effect of the unauthorized use or disclosure, and (v) what corrective action MM1 has taken or shall take to prevent future similar unauthorized use or disclosure. MM1 shall provide such other information, including a written report, as reasonably requested by the Academy. MM1 shall take appropriate action, in accordance with MCL 445.72, to notify affected individuals whose CDI may have been compromised.

3.8 Remedies.

- (A) If the Academy reasonably determines in good faith that MM1 has materially breached any of its obligations under the data security provisions of this Agreement, the Academy, in its sole discretion, shall have the right to require MM1 to submit to a plan of monitoring and reporting; provide MM1 with a thirty (30) day period to cure the breach; or terminate the Agreement immediately if cure is not possible. Before exercising any of these options, the Academy shall provide written notice to MM1 describing the violation and the action it intends to take.
- (B) In addition, the Parties understand and agree that MM1 is subject to any penalties for unauthorized disclosures or misuse of CDI that are or may be imposed, from time to time, under applicable law including, without limitation, that MM1 may be prohibited by law from accessing CDI for defined periods of time following any unauthorized disclosure or misuse of CDI, which shall constitute a material breach of this Agreement.

3.9 Copyright. MM1 shall advise and train at least annually the individuals assigned by MM1 to perform services under the Agreement about copyright restrictions and requirements. MM1 will also establish and implement a procedure to monitor copyright compliance and respond to inquiries from the individuals it assigns to perform services under this Agreement about copyright restrictions and requirements. If MM1 fails to satisfy these

responsibilities and the Academy is found to be in violation of any copyright restrictions or requirements, or if the Academy is alleged to be in violation of any such copyright restrictions or requirements, MM1 agrees to indemnify and hold harmless the Academy against any such actions or claims brought by copyright holders.

3.10 Indemnity. MM1 shall defend, indemnify, and hold the Academy harmless from all claims, liabilities, damages, or judgments involving a third Party, including the Academy's costs and attorney fees, which arise as a result of MM1's failure to meet any of its obligations under the data security provisions of this Agreement. MM1 further agrees to indemnify the Academy to the extent stated above for all alleged violations of copyright, trademark, or patent rights which may be asserted against the Academy arising from or out of the Academy's use of MM1-provided products and Services under this Agreement.

3.11 Amendment for Compliance. If the Academy believes in good faith that any data security provision of this Agreement fails to comply with applicable laws or regulations, the Academy shall notify MM1 in writing. Within thirty (30) business days of receipt of such notice by MM1, the Parties shall address in good faith the expressed concern(s) and shall amend the terms of this Agreement, if the Academy deems necessary to bring the Agreement into compliance. If after such thirty (30) business day period this Agreement remains non-compliant with applicable laws or regulations with respect to the concern(s) raised under this Section, the Academy shall have the right to terminate this Agreement for cause in accordance with Section 6 hereof.

SECTION 4 **INTELLECTUAL PROPERTY**

4.1 The Academy Board hereby agrees and acknowledges that in the course of the performance of this Agreement, the Academy may be exposed to certain confidential information or trade secrets of MM1 including, but not limited to, know-how, technical information, computer software, training materials, training methods and practices, courseware and related information, all of which shall be considered to be confidential in nature (the "Intellectual Property"). The Academy agrees, subject to the limitations of MCL 380.505(3), the Freedom of Information Act, any other law, and the Academy's Contract with its authorizer, that any Intellectual Property communicated to or received or observed by the Academy shall be held in confidence and not disclosed to others without MM1's prior written consent. All Intellectual Property disclosed to or observed or received by the Academy shall at all times remain the property of MM1 and all documents together with any copies or excerpts thereof shall be promptly returned to MM1 upon request. The provisions of this Section 4 shall survive the termination or expiration of this Agreement. The provisions of this Section 4 shall not apply to curriculum or other materials developed and paid for by the Academy or developed by MM1 at the direction of the Academy or its Board with Academy funds or to any information subject to disclosure under the law. The Academy shall own all proprietary rights to curriculum or educational materials that (1) are both directly developed and paid for by the Academy; or (2) were developed by MM1 at the direction of the Academy Board with Academy funds dedicated for the specific purpose of developing such curriculum or materials.

4.2 Marks. MM1 owns the title and all related rights regarding the names, logos, and trademarks for "MM1, Inc." The Academy owns the title and all related rights regarding the names, logos, and trademarks for "Detroit Community Schools" and each of the Academy's school buildings. Each Party agrees it shall not use the names, logos, trademarks, mascots, emblems, and/or plaques of the other Party without that entity's prior written approval.

SECTION 5 LIABILITY, INSURANCE AND INDEMNITY

5.1 **Indemnification.**

a. MM1. MM1 shall indemnify and hold the Academy (and its officers, trustees and agents) harmless from and against all liabilities, damages, fines, penalties, demands, forfeitures, claims, suits, causes of action or any other liabilities or losses, including all costs of defense, settlement and prosecution, along with attorney, expert and other professional fees, arising out of or related to any negligence, wrongful act or breach of this Agreement or the obligations of MM1 or any of its employees or others for whom it is responsible in connection with the performance of the Agreement.

MM1 shall be solely and entirely responsible for its acts and omissions and for the acts and omissions of MM1' agents, employees and subcontractors in connection with the performance of Services under this Agreement and agrees to defend and indemnify the Academy from any and all such claims and/or judgments resulting from such acts or omissions.

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

(b) Academy. To the extent permitted by law, the Academy shall indemnify and hold MM1 harmless from and against all liabilities, damages, fines, penalties, demands, forfeitures, claims suits, causes of action or any other liabilities or losses, including all costs of defense, settlement and prosecution, along with attorney, expert and other professional fees, which result solely from the wrongful acts of Board members, officers, or employees (if any) of the Academy.

5.2 Workers' Compensation Insurance. MM1 agrees to procure and maintain in full force and effect Workers' Compensation Insurance covering its employees, and to ensure that its subcontractors similarly maintain such insurance for any employees assigned by MM1 to the Academy, while those persons are engaged in performing Services under this Agreement. If a claim is filed under the provisions of the Michigan Workers' Compensation Disability Act against the Academy by an employee of MM1 or any of its subcontractors relating to performance of Services under this Agreement, MM1 agrees to defend and hold harmless the Academy from such claims(s). MM1 agrees to provide the Academy, upon request of the Academy, with certifications evidencing the required coverage.

5.3 General Insurance. MM1 shall procure and maintain such policies of insurance as required by law, the Contract and/or the Michigan Universities Self Insurance Corporation (MUSIC) that, in any event, shall provide no less protection than comprehensive general liability

and employment practices liability insurance, including specific coverage for acts of sexual molestation and abuse by its employees and agents, with limits of not less than One Million Dollars (\$1,000,000) per occurrence, and Two Million Dollars (\$2,000,000) combined single limit for bodily injury and property damage, in a form acceptable to both Parties, to protect MM1 and the Academy against liability or claims of liability which may arise out of MM1' (including MM1' employees, subcontractors and agents) performance under this Agreement. MM1' insurance is separate from and in addition to the insurance the Academy Board is required to obtain under the Contract. In addition, MM1 agrees that such policy shall provide an endorsement stating that such insurance shall be primary and that insurance carried by the Academy shall be excess and non-contributory and that the policy shall not be changed, revoked or modified absent thirty (30) days' prior written notice to the Academy Board President and the BMCC President. Not later than ten (10) days from the date both Parties have executed this Service Agreement, MM1 shall provide the Academy with certificates of insurance evidencing all coverages and endorsements required hereunder. MM1 agrees to name the Academy and Bay Mills Community College, and their respective officers, agents and employees, as additional insureds under said policy. MM1 agrees that, in the event the BMCC President modifies the level, type, scope or other aspects of required coverage, MM1 shall undertake like and similar modifications within thirty (30) days of being notified of such change.

5.4 Responsibility of Academy. The Academy shall be solely and entirely responsible for its acts and omissions and for the acts and omissions of the Academy's Board members and employees (if any) in connection with the performance of the Academy's responsibilities under this Agreement; provided, however, that nothing in this Agreement is intended, nor shall be construed, as a waiver of the governmental immunity provided to the Academy and its incorporators, board members, officers, employees, and volunteers under section 7 of 1964 PA 170, MCL 691.1407. If MM1 is made a Party to any litigation involving claims arising out of the acts and/or omissions of the Academy's Board members or employees (if any), the Academy will provide any reasonable assistance requested by MM1 in the defense against such claims.

5.5 Indemnification of Bay Mills Community College. The parties acknowledge and agree that the Bay Mills Community College Board of Control, Bay Mills Community College and its members, officers, employees, agents or representatives are deemed to be third party beneficiaries for purposes of this Agreement. As third party beneficiaries, the parties hereby promise to indemnify and to hold harmless Bay Mills Community College Board of Control, Bay Mills Community College 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 Bay Mills Community College, which arise out of or are in any manner connected with Bay Mills Community College Board's approval of the Public School Academy application, the University Board's consideration of or issuance of a Contract, the Academy's preparation for and operation of a public school, or which are incurred as a result of the reliance by Bay Mills Community College and its Board of Control members, officers, employees, agents or representatives upon information supplied by the Academy or the Educational Management Organization, or which arise out of the failure of the Academy to perform its obligations under the Contract issued to the Academy by Bay Mills Community College Board of Control. The parties expressly acknowledge and agree that Bay Mills Community College and its Board of Control members, officers, employees, agents or

representatives may commence legal action against either party to enforce its rights as set forth in this Agreement.

SECTION 6
TERM OF AGREEMENT AND TERMINATION DURING TERM

6.1. Term and Termination.

- (A) The duration of the Agreement will be one year, beginning on July 1, 2022 through June 30, 2023, subject to earlier termination under this Agreement, if warranted. The maximum term of this Agreement shall not, in any event, exceed the length of the Contract.
- (B) MM1 represents and warrants, as of the date of execution of this Agreement, that there are no known, asserted or unasserted, liabilities, damages, fines, penalties, demands, forfeitures, claims, suits, causes of action or any other liabilities or losses, including any costs of defense, settlement and prosecution along with attorney, expert and other professional fees, arising out of or related to any negligence, wrongful act or breach of this Agreement or the obligation of MM1, or any of its employees or others for whom it is responsible, in connection with the performance of the Agreement from July 1, 20017 through the date of execution.

6.2 Reclamation of Property. Upon the conclusion of the Term or upon termination, and subject to Section 2.3. and 1.13(G), MM1 shall have the right to reclaim any property or equipment it provided to the Academy, or receive payment for the depreciated cost of such equipment if same was purchased by MM1.

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

- (A) A material breach on the part of the Academy includes, but is not limited to, failure to make payments to MM1 as required by this Agreement.
- (B) A material breach on the part of MM1 includes, but is not limited to, failure to account for its expenditures or to pay operating costs (provided funds are available to do so), and inadequate performance of its obligations under the Agreement. Any action or inaction by MM1 that is not cured within 30 days of notice thereof which causes the Contract to be revoked, terminated, suspected, or reconstituted, or which causes the Contract to be put in jeopardy of revocation termination, reconstitution, or suspension by the BMCC Board is a material breach.

6.4 Termination Due to Insolvency. Notwithstanding any provision in this Agreement to the contrary, this Agreement may be terminated by either Party immediately in

the event the other Party is declared bankrupt or insolvent, or if a receiver is appointed or any proceedings are commenced, voluntary or involuntary, by or against such Party under any bankruptcy or similar law and such status is not cured within sixty (60) days from its occurrence. MM1 attests that none of the following has filed for bankruptcy protection within the last six (6) months, or any applicable preference period, whichever is longer, and shall notify the Academy Board in writing within 10 business days of any of the following filing for bankruptcy protection: (a) any principal or officer of MM1; or (b) MM1 as a corporate entity, including any related organization(s) in which a principal or officer of MM1 served as a principal or officer.

6.5 Condition Precedent.

- (A) The Parties acknowledge and agree that the effectiveness of this Agreement is expressly contingent on the continued validity of the Contract or the issuance, prior to expiration of the Contract, of a new contract by a new authorizer such that the Academy is able to continue operations without violating Michigan laws governing public school academies and without losing any necessary sources of funding.
- (B) Should the actions or omissions of MM1 cause the Academy's contract to be revoked, terminated or suspended, or should the actions or omissions result in the Academy receiving official notification from the Authorizer, State Superintendent, or other authorized body or official, which notification evidences the initiation or intent to initiate proceedings for the termination, revocation or suspension of the Contract, this Agreement may be terminated by the Academy without cost or penalty. Likewise, this Agreement may be terminated without cost or penalty to the Academy if directed by the Authorizer as part of the process of reconstitution. MM1 agrees that early termination or amendment of this Agreement pursuant to this subsection shall be without recourse against the Academy, BMCC or any third party affiliated with or engaged by the Academy or BMCC, by the MM1 or any subcontracted person or entity of the MM1.

6.6 Dispute Resolution. The Academy and MM1 agree to act immediately and in good faith to mutually resolve any disputes that may arise concerning any alleged breach of this Agreement, or arising out of or relating to the interpretation of this Agreement or the Parties' performance of their respective obligations under this Agreement. Any disputes that the Parties are not able to resolve within thirty (30) days after one Party provides the other Party with a written notice of default may be submitted to binding arbitration, which will be the sole and exclusive remedy for such matters. This provision does not restrict any Party's ability to terminate this Agreement in accordance with any applicable provision hereof. The arbitration shall be conducted in accordance with the Uniform Arbitration Act, 2012 PA 371, MCL 691.1681 – 691.1713, and rules of the American Arbitration Association by an impartial arbitrator knowledgeable and expert in Michigan and federal education law, seated in Kent, Ionia, or Montcalm Counties, Michigan, with such variations as the parties and arbitrators may unanimously accept. The final decision shall be a cause decision (written explanation).

The Authorizer shall be notified of said decision, and upon the Authorizer's request, the cause opinion shall be made available. The arbitrators' award shall be final and binding. A judgment on the award rendered by the arbitrator may be entered in any court having appropriate jurisdiction, by any party, without the consent of the other party. The losing party shall pay the cost of arbitration, not including attorney fees. It shall be within the discretion and purview of the arbitrator to award reasonable attorney fees to the prevailing party and to make the determination as to which, if any, party qualifies as a "prevailing party."

6.7 In the event of termination of this Agreement for any reason by either Party prior to the end of the Agreement's term, MM1 shall provide the Academy reasonable assistance for up to 90 days after the effective date of the termination to allow the Academy to transition to another educational services provider or self-management. However, the Academy will use its best efforts to limit the scope of any such post-termination assistance, which will be focused on ensuring a smooth transition between service providers or to a self-management model, and under no circumstances will MM1 be required to provide onsite personnel for the Academy post-termination. This provision may not be construed to require MM1 to continue providing the level of Services described in this Agreement without compensation. However, MM1 shall, without charge: (a) close the books on the then-current fiscal quarter; (b) ensure that the Academy's organizational and financial records are organized and prepared for transition to the new ESP or for self-management; (c) ensure that the Academy's student records are organized and prepared for transition to the new ESP or for self-management; and (d) ensure the orderly transition of compensation and benefits information to a new ESP or for self-management to the extent, if any, that staff assigned by MM1 to perform services for the Academy under this Agreement may be employed by a new ESP or as a result of self-management to perform post-termination services for the Academy.

SECTION 7 **NON-DISCRIMINATION**

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

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

SECTION 8 **MISCELLANEOUS**

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

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

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

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

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

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

If to MMI: President
MMI, Inc.
27655 Middlebelt Rd.,
Commerce Twp., MI 48390

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

If to the Academy: Board President
Detroit Community Schools
12675 Burt Rd.
Detroit, MI 48223

With a copy to: BOD Law Firm

to the Authorizer: Bay Mills Community College
12214 W. Lakeshore Dr.
Brimley, MI 49715

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

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

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

8.10 Force Majeure. Any delay or failure of any Party (the "affected Party") in the performance of its required obligations hereunder shall be excused if and to the extent caused by war, rebellion or insurrection; an act of God; fire; government statute, order or regulation prohibiting the performance of this Agreement; riots; strikes, labor stoppages, lockouts or labor disputes to the extent such occurrences are not caused by the actions of the Party seeking relief under this Section, provided that (i) written notice of such delay or suspension is given by the affected Party to the other Party within 72 hours of such event, which notice shall set forth in detail the nature of each delay; (ii) the affected Party shall use all commercially reasonable efforts to minimize the extent of such force majeure delay; and (iii) additional expense or other adverse financial conditions, including the Academy's inability to make any required payments under this Agreement for reasons other than an act of government, shall not be deemed force majeure. Upon receipt of a notice of force majeure, the time for the affected Party's performance shall be extended for a period of time reasonably necessary to overcome the effect of such delays and the other Party's sole remedy shall be reimbursement for the additional cost of such delays; provided, further, that if such delay by MM1 would materially impair the value of the services to be provided under this Agreement, the Academy may terminate this Agreement by written notice to MM1 within fifteen (15) calendar days of receiving MM1' notice of force majeure, in which event the Academy shall receive a refund of all monies paid hereunder for Services which MM1 has failed to deliver.

8.11 No Third Party Rights. Except as provided in Section 5,5 of this Agreement, nothing in this Agreement shall be intended to confer third Party beneficiary status or rights, pursuant to MCL 600.1405 or under the common law, to any person or entity that is not a Party to this Agreement.

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

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

SECTION 9
AUTHORIZATION

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

9.2 This Agreement has been duly authorized, executed and delivered by the Parties and constitutes a legal, valid and binding obligation upon each of them, enforceable in accordance with its terms. Each person placing his/her signature below represents and warrants that he/she is the signatory duly authorized to execute this Agreement on behalf of the Academy or MM1, as is respectively applicable.

MM1, INC.

DETROIT COMMUNITY SCHOOLS

By: _____

Its: President

Dated: June __, 2022

By: 

Its: Board President

Dated: ~~June~~ __, ~~2022~~

September 2, 2022

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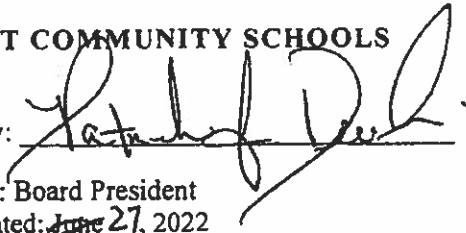
MM1, INC.

DETROIT COMMUNITY SCHOOLS

By: _____



By: _____



Its: President

Its: Board President

Dated: ~~June 27~~, 2022

Dated: ~~June 27~~, 2022

July 29, 2022

July