

**ACADEMIC AND BUSINESS SERVICES AGREEMENT**  
**By and Between**  
**UP EDUCATION NETWORK, INC. and**  
**THE BOARD OF TRUSTEES OF THE UP ACADEMY CHARTER SCHOOL OF**  
**DORCHESTER and**  
**UP ACADEMY CHARTER SCHOOL OF BOSTON**

This Academic and Business Services Agreement (the “Agreement”) is made and entered as of the “Effective Date,” by and between UP Education Network, Inc., a Delaware not for profit corporation (“UP Education Network”) and the Board of Trustees of UP Academy Charter School of Dorchester, a Massachusetts Horace Mann public charter school, and UP Academy Charter School of Boston, a Massachusetts Horace Mann public charter school (the “Board of Trustees”), each a “Party” and collectively the “Parties.” This agreement should be interpreted consistent with any Memorandum of Understanding entered into by the Board of Trustees and Boston Public Schools.

**WHEREAS**, UP Education Network is a provider of educational services;

**WHEREAS**, the Board of Trustees has been granted by the Massachusetts Board of Elementary and Secondary Education (“BESE”) the authority to operate the Horace Mann public charter schools;

**WHEREAS**, it is the Parties’ intention to create a relationship based on trust, common educational objectives, and clear accountability, through which they will work together to bring educational excellence to UP Academy; and

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

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

**1. DEFINITIONS**

The following terms used in this Agreement shall have the meanings given in this section. In addition, other terms are defined in the substantive provisions of this Agreement.

“Accountability Plan” means the accountability plan for each School prepared by UP Academy, with the assistance of UP Education Network, and approved by the ~~Department Commissioner~~ of Elementary and Secondary Education (“DESE”), pursuant to 603 CMR 1.00, which plan sets rigorous, measurable goals for student learning outcomes, organizational viability, and faithfulness to the Charter as required by BESE and DESE.

“Agreement” has the meaning set forth in the recitals.

“BESE” means the Massachusetts Board of Elementary and Secondary Education.

“Board of Trustees” or “Board” means the Board of Trustees of UP Academy.

“BPS” means Boston Public Schools.

“Charter” means the Board of Trustee’s charter, issued by BESE, which authorizes the Board of Trustees to organize and operate a School, including its Charter Application insofar as may be apt.

~~“Charter Application” “Charter Application” means the final applications submitted to DESE on November 8, 2010 for the UP Academy Charter School of Boston, and November 14, 2012 for the UP Academy Charter School of Dorchester; all subsequent charter amendments granted by the Commissioner of Elementary and Secondary Education or BESE to either school, and the renewal applications submitted to DESE on July 29, 2020 for the UP Academy Charter School of Boston and August 1, 2017 for the UP Academy Charter School of Dorchester, means the final application of UP Academy for a renewal of its Massachusetts Horace Mann III Charter, submitted to DESE on August 1, 2017, with respect to UP Academy Charter School of Dorchester, and submitted to DESE on July 31, 2015, with respect to UP Academy Charter School of Boston.~~

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“Confidential Information” includes, without limitation, any matters protected under the Uniform Trade Secrets Act and any information that UP Education Network has not previously disclosed to the public with respect to the present or future business of UP Education Network, including its operations, services, products, research, inventions, invention disclosures, discoveries, drawings, designs, plans, processes, models, technical information, facilities, methods, systems, trade secrets, copyrights, software, source code, object code, patent applications, procedures, manuals, specifications, any other intellectual property, confidential reports, price lists, pricing formulas, customer lists, financial information (including the revenues, costs, or profits associated with any products or services), business plans, projections, prospects, opportunities or strategies, acquisitions or mergers, advertising or promotions, personnel matters, legal matters, and any other information not generally known outside UP Education Network that may be of value to UP Education Network, but excludes information that (i) constitutes a public record, (ii) was publicly available prior to receipt of such information or becomes publicly available thereafter, (iii) is a matter of public knowledge, or (iv) is lawfully obtained from any source other than UP Education Network or its representatives. “Confidential Information” also includes, without limitation, confidential information and trade secrets that third parties entrust to UP Education Network in confidence.

“Director of Operations” (“DOO”) means UP Academy’s employee, regardless of title, with senior responsibility for managing non-academic operations.

“Director of School Operations” at UP Education Network serves as the manager of the School’s DOO.

“DESE” shall mean the Massachusetts Department of Elementary and Secondary Education.

“Effective Date” has the meaning set forth in the recitals, or the date this Agreement is approved by the BESE or the Commissioner of Elementary and Secondary Education if authority is so delegated, pursuant to G.L. c. 71, § 89, and 603 CMR 1.00, whichever is later.

“Facility” means a building or other structure, of sufficient size to house the student enrollment, suitable for use by UP Academy and meeting all applicable building codes, zoning ordinances and laws, environmental laws and regulations, and all other laws and regulations applicable to the operation of the School.

“Finance Committee” is a committee appointed by the Board of Trustees to provide oversight of the financial operations of UP Academy.

“Key Employees” shall mean the following employees of UP Education Network: Veronica Conforme, ~~Nicole Dorn~~Deanna Vasilikis, Tisha Markette, Mike Bower, Chris Byrnes, ~~Ryan Knight~~Julianna Quinlan, and ~~Vicki Lautsch~~Hillary Casson, or such other persons who succeed them as UP Education Network employees performing services under this Agreement.

“Marks” means all trademarks, service marks, design marks, trade names, domain names, registrations and applications for registration thereof, and any common law rights pertaining thereto, belonging to UP Education Network. Such materials shall include, but are not limited to “UP Education Network.”

“Memoranda of Understanding” means any Type A Memorandum of Understanding, prepared with input from UP Education Network, between UP Academy’s Board of Trustees and BPS, and the Type B Memoranda of Understanding, prepared with input from UP Education Network, between UP Academy’s Board of Trustees, BPS, and the bargaining units of (a) Boston Teachers Union (BTU), (b) Boston Association of School Administrators and Supervisors (BASAS), (c) Administrative Guild of the Boston School System (Guild), (d) Local Union No. 1952, Painters and Allied Trades District Council No. 35 of the Boston School System, and (e) American Federation of State, County and Municipal Employees, AFL-CIO, Council 93 and Affiliate Local 230 of the Boston School System (Cafeteria and Food Service Union). The current versions of each of the foregoing which are attached as Exhibit A hereto.

“Party” and “Parties” has the meaning set forth in the recitals.

“Principal” means the UP Academy employee with senior authority for the day-to-day academic program of a School, as described in its Charter Application.

“Proprietary Information” means any new or useful art, discovery, contribution, finding, process, procedure, system, design, configuration technology, works of authorship or improvements of UP Education Network, whether communicated orally or in writing, including, but not limited to any instructional materials, training materials, curriculum and lesson plans, and other materials developed by UP Education Network, its employees, agents or subcontractors, or any individual working for UP Education Network, and any modifications to or derivatives of any of the foregoing, except to the extent that such information is UP Academy Intellectual Property.

“Regulatory Authority” means any United States federal, State or local government, or political subdivision thereof, any authority, agency or commission entitled to exercise any administrative, executive, judicial, legislative, regulatory or taxing authority or power, any court or tribunal (or any department, bureau or division thereof), any arbitrator or arbitral body, or any similar body.

“School” (or “Schools”) means each of UP Academy Charter School of Dorchester, a Horace Mann public charter school, and UP Academy Charter School of Boston, a Horace Mann public charter school.

“Service Fee” has the meaning set forth in Section.7.2.

“State” means the Commonwealth of Massachusetts.

“Supervised Personnel” mean UP Education Network personnel acting under the supervision of one or more Key Employees.

“UP Education Network” has the meaning set forth in the recitals.

“UP Academy Intellectual Property” means Proprietary Information created using the public funds of UP Academy.

“UP Education Network School Model” means the educational program prescribed by UP Education Network’s operating manuals, to be provided by UP Education Network to each Principal and Director of Operations of UP Academy.

“UP Academy” means each of the Horace Mann public charter schools, UP Academy Charter School of Boston and UP Academy Charter School of Dorchester, each operating under a Charter Application approved by BESE and granted to the Board of Trustees. Where any service, change, budget, contract, decision, or any other act under the Agreement calls for the approval of UP Academy, such approval is to be obtained from the Board of Trustees, or such committee, person or persons expressly

designated by the Board of Trustees to grant such approval.

“Use”, as applied to the Marks or any other Proprietary Information, or any Confidential Information, means the right or the exercise of the right to load, execute, store, transmit, display, copy, disseminate, reproduce, maintain, modify, enhance, create derivative works, make, cause to be made, license or sublicense.

## 2. REPRESENTATIONS AND WARRANTIES

### 2.1 Representations and Warranties of UP Education Network.

UP Education Network represents and warrants as follows:

- (a) Organization. UP Education Network is a non-stock, not for profit corporation duly organized under the laws of the State of Delaware, with the purpose and legal ability to contract to provide educational management services. UP Education Network shall notify the Board of Trustees of any change in its corporate status. UP Education Network shall not change its corporate status such that this Agreement is materially affected.
- (b) Authority. UP Education Network is authorized to do business in the State. UP Education Network has all requisite power and authority to execute and deliver this Agreement, to perform its obligations hereunder, and to consummate the transactions contemplated hereby. This Agreement constitutes a valid and binding obligation of UP Education Network, enforceable against UP Education Network in accordance with its terms.
- (c) Full Disclosure. No representation or warranty of UP Education Network herein and no statement, information or certificate furnished or to be furnished by UP Education Network pursuant hereto or in connection with the transactions contemplated hereby contains any now known untrue statement of a material fact or omits or will omit to state a material fact necessary in order to make the statements contained herein or therein not misleading.
- (d) Litigation. There is no suit, claim, action or proceeding now pending or, to the knowledge of UP Education Network, threatened before any Regulatory Authority, to which UP Education Network is a party or which may result in any judgment, order, decree, liability, award or other determination which will or may reasonably be expected to have an adverse effect upon UP Education Network. No such judgment, order, decree or award has been entered against UP Education Network which has, or may reasonably be expected to have, such effect. There is no claim, action or proceeding now pending or, to the knowledge of UP Education Network, threatened before any Regulatory Authority involving UP Education Network which will or may reasonably be expected to prevent or hamper the consummation of the agreements contemplated by this Agreement.
- (e) Conduct of UP Education Network. UP Education Network has complied, and at all times during the Term will comply, with all local, state and federal laws and regulations that are applicable to UP Education Network, which include, but are not limited to, the Internal Revenue Code, the non-profit corporation law of Massachusetts and relevant Massachusetts law regulating charter schools, including but not limited to M.G.L. c. 71, § 89 and 603 CMR 1.00 et. seq. UP Education Network has maintained and will maintain adequate records of the activities and decisions of UP Education Network to ensure and document compliance with all such laws and regulations. UP Education Network acknowledges that UP Academy is subject to the Massachusetts public records and open meetings laws of Massachusetts,

and relevant Massachusetts law regulating charter schools, and UP Education Network shall assist each School with compliance with any applicable State laws, as provided in this Agreement, including ensuring that UP Academy has access to any and all records deemed public records of the School in order for UP Academy to respond to any public records requests. UP Education Network acknowledges that the Board of Trustees is subject to the Massachusetts Conflict of Interest Law (M.G.L.c. 268A) and that by letter dated January 5, 2011, the State Ethics Commission has advised that certain employees specifically designated to perform contractual duties will be deemed to be “state employees” or “special state employees” for purposes of Massachusetts Conflict of Interest Law.

## 2.2 Representations and Warranties of UP Academy.

UP Academy represents and warrants as follows:

- (a) Organization. The Board of Trustees is the holder of a Charter renewed by BESE on March 8, 2018 with respect to UP Academy Charter School of Dorchester, and a Charter renewed by BESE on ~~July-May 731, 2021~~<sup>45</sup> with respect to UP Academy Charter School of Boston, each for a five-year period. As such, UP Academy is a Massachusetts Horace Mann charter school, duly organized under the laws of the Commonwealth of Massachusetts, with the purpose and legal ability to operate a charter school and to contract for educational management services.
- (b) Authority. Subject to the terms of the Charter and the approval of BESE, the Board of Trustees has all requisite power and authority to execute and deliver this Agreement, to perform its obligations hereunder, and to consummate the agreements contemplated hereby. This Agreement constitutes a valid and binding obligation of the Board of Trustees, enforceable against UP Academy and the Board of Trustees in accordance with its respective terms.
- (c) Litigation. There is no suit, claim, action or proceeding now pending or, to the knowledge of the Board of Trustees, threatened before any Regulatory Authority, to which the Board of Trustees is a party or which may result in any judgment, order, decree, liability, award or other determination which will or may reasonably be expected to have an adverse effect upon the Board of Trustees. No such judgment, order, decree or award has been entered against the Board of Trustees which has, or may reasonably be expected to have, such effect. There is no claim, action or proceeding now pending or, to the knowledge of the Board of Trustees, threatened before any Regulatory Authority involving the Board of Trustees which will or may reasonably be expected to prevent or hamper the consummation of the agreements contemplated by this Agreement.
- (d) Full Disclosure. No representation or warranty of the Board of Trustees herein and no statement, information or certificate furnished or to be furnished by UP Academy pursuant hereto or in connection with the agreement contemplated hereby contains any now known untrue statement of a material fact or omits or will omit to state a material fact necessary in order to make the statements contained herein or therein not misleading.
- (e) Conduct of UP Academy and the Board of Trustees. The Board of Trustees has complied, and at all times during the Term will comply, with all local, state and federal laws and regulations that are applicable to the Board of Trustees and UP Academy, which include, but are not limited to, the Internal Revenue Code, the public records and open meetings laws of Massachusetts, and relevant Massachusetts law regulating charter schools, including but not limited to M.G.L. c. 71, § 89, and 603 CMR 1.00 et seq. The Board of Trustees has

maintained and will maintain adequate records of the activities and decisions of the Board of Trustees to ensure and document compliance with all such laws and regulations. To the extent permitted by law, the Board of Trustees agrees to provide UP Education Network with copies of all such records and to allow UP Education Network to, at UP Education Network's discretion, assist with the preparation and retention of such records to the extent permitted by law.

- (f) Due Authorization. The Board of Trustees is authorized to organize and operate UP Academy and is vested with all powers necessary to carry out the educational program outlined in the Charter. Regardless of the delegation of any duties to UP Education Network, UP Academy shall at all times retain all rights and responsibilities under the Charter.

### **3. AUTHORITY**

#### **3.1 Delegation of Authority to UP Education Network.**

The Board of Trustees hereby authorizes UP Education Network to undertake the functions specified in this Agreement in regards to business and academic services of UP Academy on behalf of the Board of Trustees, exercised in a manner consistent with its Charter, the UP Academy bylaws, and the applicable Memoranda of Understanding, it being understood that, at all times, UP Education Network remains accountable and subject to the oversight of the Board of Trustees as provided for in this Agreement and by law. UP Academy, through its Board of Trustees, also authorizes UP Education Network to take such other actions consistent with the terms of this Agreement, and which are necessary in UP Education Network's good faith and reasonable judgment to properly and efficiently manage or operate UP Academy, provided such actions are consistent with the Charter, policies of the Board of Trustees, applicable laws and the annual UP Academy budget approved by the Board of Trustees. UP Academy and the members of its Board of Trustees shall ensure that UP Education Network has all power and authority necessary to carry out the duties of UP Education Network under this Agreement.

#### **3.2 UP Education Network Authority to Subcontract.**

Except to the extent prohibited by law, this Agreement or the applicable Memoranda of Understanding, UP Education Network may subcontract any function or service it is obligated to provide hereunder in accordance with the budget established by the Board of Trustees, provided that no such subcontract shall relieve or discharge UP Education Network from any obligation or liability under this Agreement. Such subcontracting includes but is not limited to utilizing BPS discretionary services available to pilot and Horace Mann charter schools for a fee. Notwithstanding the foregoing, UP Education Network shall obtain the prior approval of the Board of Trustees in the event that UP Education Network plans to subcontract all or substantially all of the services to be provided to UP Academy in any one or more of the following categories of services (as further described herein):

- (a) Staff Recruiting;
- (b)
- ~~(c)~~ Financial Management.

#### **3.3 Conflict with Charter.**

To the extent there are any conflicts between the terms of the Charter and the terms of this Agreement, the terms of the Charter shall control if the subject of such conflict would require an amendment to the Charter.

## 4. DUTIES AND OBLIGATIONS OF UP EDUCATION NETWORK

### 4.1 Services.

In exchange for the Service Fee, described in [Section 7.2](#) and paid by UP Academy to UP Education Network, UP Education Network will provide a collection of instructional and operational services. The core services to be provided by UP Education Network include but are not limited to the list below; provided, however, that at any time, and from time to time, the Board of Trustees and the CEO of UP Education Network may agree in writing to adjustments to the services to be provided by UP Education Network. In addition, UP Education Network shall provide any other services it deems necessary or expedient for the provision of teaching and learning at UP Academy, and approved by the Board of Trustees.

- Selecting, managing, coaching, and evaluating the Principal (see section 4.5). Selection and evaluation of the Principal are subject to the Board of Trustees' approval, consistent with any applicable Memoranda of Understanding;
- Selecting, managing, coaching, and evaluating the Director of Operations (see section 4.6);
- Advising each School's Principal on the development and implementation of the School's curriculum, subject to the Board of Trustees' approval, in line with the Massachusetts curriculum frameworks, and consistent with all applicable laws;
- Advising and managing the Principal on the development and implementation of instructional methods and assessment systems;
- Advising and managing each School's Principal on the development and implementation of the School's academic program;
- Advising and managing each School's Principal on the development and implementation of the School's staff and providing access to network-wide professional development for schools;
- Advising and managing each School's Principal and Director of Operations on the development and implementation of the School's schedule and calendar;
- Advising and managing relevant School personnel on the development and implementation of the School's special education service provision;
- Advising and managing relevant School personnel on matters related to special education compliance;
- Supporting the completion of certain government and data reports;
- Supporting successful execution of all charter renewal processes;
- Administering and analyzing mid-year and end-of-year surveys of a School's staff members, and providing such analysis to the School's Principal and Director of Operations;
- Preparing for and participating in the UP Academy Board and Committee meetings including providing data and analytical support as needed to inform decision-making;
- Negotiating with relevant collective bargaining units, in collaboration with the Board, Principal, and Director of Operations, when appropriate and necessary;
- Coordinating and leading some but not all School tours;
- Managing and administering the UP Academy website, and marketing UP Academy to external audiences;
- Managing UP Academy media relations;
- Managing the UP Academy governmental relations;
- Advising and managing the Principal and Director of Operations on matters related to neighborhood and community relations;
- Overseeing the process of making major Facility renovations or improvements to the extent required by the Board of Trustees, consistent with any applicable Memoranda of Understanding;



- Managing furniture procurement and purchasing;
- Supporting the design, procurement, and installation of exterior and interior signage;
- Advising and managing the Principal and Director of Operations on matters related to fiscal policies and procedures as adopted by the Board of Trustees (see section 5.4);
- Advising and managing each School's Principal and Director of Operations on the development and management of the School's budget and cash flow (see section 4.4). Budget is subject to Board approval;
- Supporting UP Academy's annual audit process (see section 4.3 and section 5.2);
- Supporting efforts to apply for certain public grants;
- Procuring insurance;
- Advising and managing the Principal and Director of Operations on all procurement and purchasing;
- Advising and managing the Principal and Director of Operations on the determination of annual staff working conditions;
- Providing varied human resource support and services to UP Academy staff members, including advisory on certification matters, payroll matters, and benefits matters;
- Advising and managing the Principal and Director of Operations on their management of human resource matters;
- Managing key aspects of staff onboarding and exiting processes;
- Advising and managing the Principal and Director of Operations on the development and administration of key personnel policies;
- Providing support in managing the UP Academy's technology infrastructure, including direct Information Technology (IT) support services and support in the procurement of major information technology purchases;
- Advising and managing the Principal and Director of Operations on blended learning and related initiatives;
- Administering a periodic UP Education Network sponsored innovation fund competition;
- Advising and managing each School's Principal and Director of Operations on the selection, implementation, and use of the School's student information system(s);
- Advising and managing each School's Director of Operations on School operational and logistical matters, including but not limited to School transportation, food service, and school safety;
- Coordinating the provision of transportation services with BPS;
- Advising and managing the Principal and Director of Operations on matters related to student recruitment, student enrollment, and student enrollment lotteries;
- Advising and managing the Principal and Director of Operations on family relations matters;
- Recruiting staff members for UP Academy when vacancies arise, and coordinating all relevant aspects of the staff hiring processes (see Section 4.7);
- Advising and managing the Principal, Director of Operations, and other UP Academy managers on staff performance and talent management matters;
- At the request of the Principal or Director of Operations, who oversee professional development for a School, leading certain professional development sessions and researching professional development opportunities for the School's staff members;
- Providing management coaching for certain members of the UP Academy leadership team;
- Coordinating UP Academy talent management processes;
- Serving as the primary liaison between UP Academy and BPS; and
- Serving as the primary liaison between UP Academy and DESE.
- Supporting UP Academy to disseminate its best practices to allow UP Academy to meet its obligation to provide models for replication and best practices to the DESE Commissioner and to other public

schools in Boston (the district where UP Academy Dorchester ~~and UP Academy Boston is~~ are located), per MGL c. 71 S. 89.

UP Education Network may, but is not obligated to, provide additional services to UP Academy upon request. UP Education Network and the Board of Trustees agree to negotiate in good faith additional compensation for such additional services. UP Education Network may perform services off-site, except as prohibited by State law. UP Education Network may utilize web-based systems to provide support and counsel to UP Academy.

In addition to any duties and obligations expressly attributed to UP Education Network as set forth in this [Article 4](#), UP Education Network shall have the duties and obligations set forth in [Article 5](#).

#### **4.2 UP Education Network Personnel.**

(a) UP Education Network shall employ and supervise sufficient personnel in order to effectively deliver the services herein and to meet its obligations under this Agreement.

(b) The services to be provided by UP Education Network under this Agreement shall be provided by the Key Employees or by such other UP Education Network personnel acting under the direct supervision of the Key Employees (the "Supervised Personnel"). All such Supervised Personnel shall have the qualifications and training necessary to provide the contracted services in a competent, suitable and timely manner.

(c) It is understood that the services of the Key Employees are specifically bargained for by the Board of Trustees. The Supervised Personnel providing services under the direct supervision of the Key Employees will be selected and assigned by UP Education Network.

(d) All UP Education Network personnel providing services under this Agreement may engage in private professional activities or employment for persons or entities other than UP Academy during normal working hours. It is understood that these activities or employment will include similar support to other schools beyond UP Academy. It is provided, however, that the resources and property of UP Academy may not be used for the performance of UP Education Network business. It is further provided that activities or employment for persons or entities other than UP Academy shall not limit UP Education Network's duties and obligation to UP Academy in this Agreement, and the Parties will annually evaluate these activities or employment.

(e) It is understood that the Key Employees are deemed to be "special state employees" for purposes of the Massachusetts Conflict of Interest Law, G.L. c. 268A, and they are subject to the provisions of that Law. It is not the intention of the Parties that the Supervised Personnel be special state employees, but the Parties acknowledge that the application of the Conflict of Interest Law to such Supervised Personnel is subject to the judgment of the State Ethics Commission.

#### **4.3 Annual Audit.**

UP Education Network shall cooperate and provide all information deemed necessary by UP Academy for the proper completion of its annual financial audit and other reasonably requested information, to the extent such information is in possession or under the control of UP Education Network, needed to complete an annual financial audit of UP Academy.

#### **4.4 Budget and Financial Statements.**

Subject to the requirements of 603 CMR 1.07 and the applicable Memoranda of Understanding, on or before April 1 of each year, UP Education Network, the Principal of each School, and the Director of

Operations of each School will jointly develop a projected budget for the School for the next fiscal year, which the Principal or Director of Operations will submit to Finance Committee for review and approval, and UP Education Network with the Finance Committee shall present the proposed budget to the Board of Trustees for its approval and submission to the superintendent of BPS and the Boston school committee, in accordance with the budget schedule of BPS and no later than April 1<sup>st</sup> of each year. The Board of Trustees shall have exclusive authority to approve the annual budget, or supplements or amendments thereto.

The annual budget for UP Academy shall provide for all anticipated sources of revenue and for payment of all operating expenses related to the opening and operation of UP Academy, including, but not limited to payment to UP Education Network of its Service Fee.

UP Education Network shall submit invoices and all supporting documentation of expenses to UP Academy. UP Academy shall be the lawful owner, lessee or licensee, as applicable of all real and personal property acquired with UP Academy funds (subject to the intellectual property and other proprietary or property rights of third parties therein). Property covered by Article 8 shall be the sole and exclusive property of UP Education Network, subject to the license to UP Academy described therein; all other intellectual property developed by employees of UP Academy (“UP Academy Intellectual Property”) shall be the sole and exclusive property of UP Academy, subject to a license to UP Education Network during the term of this Agreement. UP Education Network shall have no responsibility to make any purchases on behalf of UP Academy or to act as disbursement agent for UP Academy.

UP Education Network agrees to provide all information reasonably deemed necessary by UP Academy for the approval of the budget by the Board of Trustees, and other reasonably requested information. The Director of Operations shall assist UP Education Network with the preparation of monthly financial statements, and reporting to DESE. Such statements shall include whatever information and data as is reasonably necessary to enable the Board of Trustees and UP Education Network to monitor UP Academy’s performance under this and related agreements, including the effectiveness and efficiency of its operations.

The Chief Financial Officer or designee of UP Education Network, the Principal of each School, and the Director of Operations of each School shall also jointly prepare updates to the annual budget for each School as needed for the Board of Trustees’ approval.

#### **4.5 Principal.**

The accountability of UP Education Network to the Board of Trustees is an essential foundation of the Parties’ relationship, and the performance of the Principal is critical to UP Academy’s success. Therefore, the UP Education Network CEO and his/her delegate shall have the authority and responsibility, to the maximum extent consistent with State law and the applicable Memoranda of Understanding, to recruit and supervise the Principal(s) and to hold the Principal(s) accountable for the success of UP Academy.

When a vacancy arises in the Principal position, UP Education Network shall nominate a candidate to become the new Principal. The Board of Trustees shall vote on whether to accept the candidate nominated by UP Education Network. If the Board of Trustees votes not to accept the candidate, UP Education Network shall nominate additional candidates until the Board of Trustees and UP Education Network agree that a candidate so nominated meets their shared standards of excellence.

Once a candidate is agreed upon, UP Education Network shall present the proposed terms of the Principal’s employment to the Board of Trustees, including therein the duties and compensation of the Principal, for the Board of Trustees’ approval. The Board of Trustees shall then vote on the approval of the terms of the Principal’s employment. If the Board of Trustees should vote not to accept the terms of the

employment, UP Education Network shall propose either new terms of employment or a new candidate for Principal. To the extent required by State law and the applicable Memoranda of Understanding, the appointment of the Principal and his or her salary shall be subject to the approval of the superintendent of BPS.

The Principal shall serve pursuant to a contract, which contract may be renewed by the Board of Trustees, subject to the recommendation of UP Education Network. If the Board of Trustees, at its own discretion or at the recommendation of UP Education Network, wishes not to renew the Principal's contract, the Board of Trustees shall pursue non-renewal of the Principal's contract, subject to the approval of the superintendent of BPS to the extent required by State law and the applicable Memoranda of Understanding.

In that event, UP Education Network shall nominate a new candidate to become the Principal and then present terms of that Principal's employment, as provided above, until the Board of Trustees and UP Education Network agree that a candidate so nominated meets their shared standards of excellence, and until the Principal receives approval by the Superintendent of BPS to the extent required by State law and the applicable Memoranda of Understanding between UP Academy and BPS.

Either UP Education Network or the Board of Trustees may recommend termination of the Principal's contract at any time.

UP Education Network will (a) provide an intensive leadership training program for each new Principal, (b) draft for presentation to and vote by the Board of Trustees an evaluation of the Principal once per year, using a comprehensive performance assessment model approved by the Board of Trustees and state educator evaluation regulations, and (c) provide ongoing coaching and training for the Principal.

#### **4.6 Director of Operations.**

Each School operates a Co-Director model whereby the School is formally led by a Principal of the School (see above), who oversees that School's program and who is the School-level employee ultimately accountable for the outcomes of that School, and a Director of Operations (DOO) of the School, who oversees school operations for the School. The relationship between the DOO, the Board, the Principal, and UP Education Network is addressed in this section.

The Parties shall mutually agree upon the division of responsibilities and decision-making rights between the DOO and the Principal of each School. UP Education Network provides professional training for both the Principal and the DOO.

In this role, the Director of School Operations serves as the hiring manager and thus has final authority on who is hired as the School's DOO. The Parties acknowledge that the relationship and fit between the Principal and DOO of each School is essential to the School's success, and therefore the Principal of a School shall meet with any finalists for the DOO position for that School and provide input to the Director of School Operations as part of the hiring process. The Director of School Operations serves as the DOO's day-to-day manager, typically meeting no less frequently than weekly. In this role, the Director of School Operations supports, coaches, and provides feedback to the DOO.

The DOO's annual compensation shall be recommended by the Director of School Operations but must be approved by the Board, given that the salary is paid out of the School's budget.

The Director of School Operations writes the annual evaluation of the DOO. Given the close working relationship of the DOO and the Principal, the Director of School Operations receives and incorporates input from the Principal of a School into the evaluation of the DOO of that School. UP Education Network will share the annual evaluation of the DOO with the Board. When any performance

issues regarding the DOO arise, UP Education Network will communicate these matters to the Board. The Director of School Operations will determine if and when to place a DOO on a performance improvement plan when applicable and serve the primary author of such plan.

If at any time, the Director of School Operations believes that the DOO's employment should be terminated, the Director of School Operations shall seek the input of the Board and the Principal before proceeding with such a decision.

#### **4.7 Recruitment of Teachers and Other School Personnel.**

UP Education Network shall support UP Academy in the recruitment of teachers, administrators, and other personnel for UP Academy. Specifically, UP Education Network will work to build a pool of highly qualified applicants who are licensed and meet all applicable requirements in accordance with State law, through advertising, marketing, outreach, and networking as well as other methods. UP Education Network will conduct preliminary screens of candidates and will forward resumes of promising candidates to the Principal or his/her designee. UP Education Network shall provide regular updates regarding the status of staff recruitment to the Board of Trustees over the course of each academic year. The Principal of a School shall have the final authority to hire all teachers, administrators, and such other personnel in that School, with the exception of the DOO as noted in section 4.6, as are contemplated in the schedule of positions set forth in the School's Charter Application and as may be duly agreed upon by the School and UP Education Network hereafter subject to the applicable Memoranda of Understanding. The Principal of a School shall have the final authority to terminate UP Academy employees of that School, with the exception of the DOO, as noted in section 4.6, although UP Education Network may recommend termination of an UP Academy employee.

The Principal of a School, with the assistance of UP Education Network, shall have the authority to determine the compensation of all of a School's employees, with the exception of the DOO, as noted in section 4.6, subject to annual review by the Board, within the constraints of the budget adopted by the Board of Trustees, the Memorandum of Understanding with BPS, the School's Charter Application, and Massachusetts state law.

The Principal of each School, in consultation with the School's DOO and UP Education Network, shall determine staffing levels and staff responsibilities at that School, within the constraints of the budget adopted by the Board of Trustees, the Memorandum of Understanding with BPS for that School, its Charter Application, and Massachusetts state law.

#### **4.8 Equipment and Information Technology.**

UP Education Network will support UP Academy's facilities and technology management, and support UP Academy in the procurement, at UP Academy's expense, of desks and other furniture, equipment, library and media materials, and other similar materials and furnishings integral to the operation of a school. The Parties acknowledge that any procurement or purchase of supplies or services for UP Academy referenced herein shall be made in compliance with State law, including Mass. Gen. Laws, Chapter 30B ("Chapter 30B").

As provided in Section 4.1, UP Education Network will provide direct information technology (IT) support to UP Academy.

#### **4.9 School Quality Review.**

UP Education Network will conduct a thorough School quality review and submit a report to the Board of Trustees on an annual basis. The quality review will be designed as a comprehensive school

inspection by a team of evaluators selected by UP Education Network and approved by the Board. The team will observe classes and other School operations, analyze a wide variety of data, review student work samples, meet with parents, students, and teachers, and engage in other activities designed to obtain a detailed picture of the School and student success in preparation for Charter renewal. The School and the Board of Trustees shall cooperate with any such quality review. Any data about UP Academy collected by UP Education Network during its annual quality review, or at any other time during the year, shall be made available to the Board upon request.

Nothing herein shall be construed to preclude or restrict the ability of the Board of Trustees to conduct or authorize others to conduct a quality review of the School, or any aspect thereof. UP Education Network shall cooperate with any such quality review.

#### **4.10 Fundraising.**

UP Education Network and UP Academy may together, or UP Academy may independently, solicit and receive grants and donations from public and private sources consistent with the mission and Charter of UP Academy, for the benefit of UP Academy, provided that

- (a) The parties mutually acknowledge a shared goal of operating the core School program model (i.e. the model defined in the School's Charter Application) using public funds without the need for supplementary private funds, and therefore UP Education Network does not intend to fundraise for UP Academy, unless the Parties mutually agree that such fundraising is necessary and appropriate;
- (b) monies raised from UP Education Network fundraising activities specifically for UP Academy shall be given to UP Academy, or to be used for the benefit of UP Academy as directed by the donor;
- (c) any acceptance of such grants or donations, according to guidelines the Board may set from time to time, by UP Education Network in the name of UP Academy, shall be subject to the approval of the Board of Trustees; and
- (d) UP Education Network has the autonomy to determine which sources of raised funds not otherwise included in paragraph (b) above shall be granted to UP Academy.

Nothing herein shall be construed to prohibit UP Education Network from soliciting grants and donations solely for its own general corporate purposes and using such donations or grants solely for such purposes. Monies derived from general UP Education Network fundraising activities that do not expressly reference UP Academy shall be used or distributed as UP Education Network deems appropriate, in its sole discretion, including but not limited to use for the benefit of, or distribution among, other schools that UP Education Network manages.

#### **4.11 Evaluation of the UP Education Network.**

Once DESE has approved the Accountability Plan of UP Academy, both Parties are committed to the achievement of the goals set forth in the Accountability Plan.

The Parties recognize that ongoing feedback from the Board of Trustees to UP Education Network regarding UP Education Network's performance is in the mutual best interest of the Parties. Thus, in addition to the annual written evaluation noted below, the Board Chairperson shall share ideas for improvement and/or concerns with the UP Education Network CEO or his/her designee as part of their

regularly scheduled periodic verbal communication. The Parties assume the majority of feedback to UP Education Network from the Board will be provided through this forum.

Additionally, the Board, at any time, shall document any serious concerns about UP Education Network's actions that may be limiting progress towards goals set forth in the Accountability Plan, if such concerns have arisen, and submit such documentation to UP Education Network. UP Education Network shall have thirty (30) days to submit a formal documented response, including when appropriate a remediation plan, to the Board of Trustees. This mechanism for expressing and addressing concerns shall not limit the Board from resorting to provisions delineated in Section 10.2.

At least once per year, UP Education Network and the Board of Trustees will complete a formal written evaluation of UP Education Network's performance as a school management organization with respect to UP Academy. The evaluation will be based upon a template and format for input jointly agreed to by the Board Chair and the CEO of UP Education Network. The evaluation will include, at a minimum, an assessment of UP Education Network's performance against each School's approved Accountability Plan. The evaluation will be designed to ensure that at least once per year, the Board of Trustees can utilize the Accountability Plan<sup>1</sup> to determine whether the School is achieving its goals related to academic success, organizational viability, and faithfulness to its Charter, set forth in the Accountability Plan and to evaluate operational support described herein, including, but not limited to: an evaluation of the management services provided by UP Education Network, as outlined in this contract; an assessment of the strength of the academic program and School operations; an evaluation of the financial management and human capital management provided by UP Education Network; and an assessment of UP Education Network's ability to ensure the School remains in compliance with all applicable laws and regulations. On an annual basis, the written evaluation report will be presented to the Board of Trustees for discussion and approval. The written evaluation of UP Education Network's performance will be conducted after the conclusion of each school year and will be completed no later than February 28 of the following school year.

## **5. DUTIES AND OBLIGATIONS OF UP ACADEMY**

In addition to any duties and obligations expressly attributed to UP Academy as set forth in [Article 4](#), UP Academy (in collaboration with UP Education Network) shall have the following duties and obligations:

### **5.1 Provision of Suitable School Facilities.**

Subject to the applicable Memoranda of Understanding, should a School need to be relocated in any subsequent year, UP Education Network will find an adequate Facility for the School, as deemed by the Board of Trustees, and coordinate the completion of major capital improvements, as necessary and not already fulfilled by BPS in accordance with relevant Facilities agreements. UP Academy will consult with and obtain approval (not to be unreasonably withheld or delayed) from UP Education Network prior to entering into a lease or purchase of a Facility.

### **5.2 Annual Audit.**

UP Academy shall arrange and pay for a financial annual audit of UP Academy to be conducted in compliance with State law and regulations, and showing the manner in which funds are spent at UP Academy. The annual audit shall be performed by an independent, certified public accountant hired by the Board of Trustees, who shall consult with UP Education Network prior to selecting the certified public accountant.

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<sup>1</sup> The Accountability Plan allows for the creation of measures related to mission and key design elements and dissemination, and also indicates the school's commitment to be publicly accountable for meeting all ten areas of the Charter School Performance Criteria.

### 5.3 Legal Services.

UP Academy may arrange and pay for its own legal services. In the event that UP Education Network incurs expenses for legal services that benefit UP Academy, UP Academy shall promptly pay such expenses, or reimburse UP Education Network for such legal service expenditures, provided UP Academy has previously authorized such legal services expenditure.

UP Academy employees are considered public employees for purposes of tort liability under M.G.L. c. 258.

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

UP Education Network shall provide direct support to UP Academy for the following financial, accounting, and bookkeeping functions:

- (a) timely payment of invoices;
- (b) payroll, in accordance with [Section 5.5](#).
- (c) monthly reconciliation of bank statements; and
- (d) debit and credit entries, using the financial management software selected by UP Education Network.

UP Academy shall be responsible and accountable for procurement, within the constraints of the budget adopted by the Board of Trustees and subject to the procurement requirements of the Uniform Procurement Act, M.G.L. c. 30B. UP Education Network shall provide support and training to the DOO as needed.

UP Education Network shall also work closely with the DOO to ensure accurate and timely financial reporting to the Board of Trustees and funding agencies, including but not limited to the annual report and any other reports to DESE.

### 5.5 Payroll, Employee Salaries and Benefits.

While the Parties expect that BPS will be responsible and accountable for the funding and payment of the salaries, fringe benefits, and State and federal payroll taxes for all individuals employed at UP Academy, in accordance with the applicable Memoranda of Understanding, UP Education Network and UP Academy shall be jointly responsible for monitoring BPS's implementation of these obligations. Should any Memoranda of Understanding ever become inapplicable, void, or expired, in whole or in part, or should BPS fail to fulfill its obligation as outlined in [Section 5.5](#), UP Academy shall be responsible for payment of salaries, fringe benefits, and State and federal payroll taxes.

## 6. OPERATION OF THE SCHOOL

### 6.1 Students with Special Needs.

UP Academy recognizes its obligation to provide a free and appropriate education in the "least restrictive environment" to all students enrolled in UP Academy, regardless of special need, to the extent required by the *Individuals with Disabilities Education Act (IDEA)* and Section 504 of the *Rehabilitation Act of*



1973 and in accordance with M.G.L. c. 71B and 603 CMR 28.00. As required by law, UP Academy shall be open to individuals with disabilities and other special needs. UP Education Network may, on behalf of UP Academy, subcontract as necessary and appropriate to a municipal, public or private contractor or otherwise for the provision of special education services, subject to approval by UP Academy. Any cost, fee or expense associated with such subcontract will be paid by UP Academy.

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

UP Academy shall be responsible for the recruitment of students, both independently and in coordination with BPS's existing student recruitment efforts, including but not limited to the Showcase of Schools. UP Academy shall be responsible for administration of an admissions lottery, if necessary.

Application by or for students shall be voluntary, and shall be in accordance with the School's enrollment policy. Admission shall be open to all individuals who reside within Boston, on a space-available basis without regard to race, color, national origin, creed, sex, gender identity, ethnicity, sexual orientation, mental or physical disability, age, ancestry, athletic performance, special need, proficiency in the English language or a foreign language or academic achievement. If there are more applications for enrollment for any grade in a School than there are spaces available for such grade, students shall be selected using a lottery consisting of a random selection process, as outlined in its Charter and in accordance with applicable state law.

## **6.3 Use of Student Information.**

UP Academy hereby designates UP Education Network as an authorized school official under applicable federal and state laws, including but not limited to 35 CFR Part 99 (FERPA), 603 CMR 23.00, et seq. (Massachusetts Student Records Regulations), and G.L. c. 66A, that it shall have access to all student information necessary to perform its duties. Subject to state and federal laws, UP Education Network may designate contractors as authorized school officials if they provide outsourced institutional services for which the UP Education Network would otherwise use employees and provided they are under the direct control of UP Education Network with respect to the use and maintenance of education records. UP Education Network acknowledges and understands its obligations as an authorized school official with respect to school records and that its employees and agents have been educated as to the importance of information privacy and confidentiality as required under 603 CMR 23.00, et seq. and G.L. c. 71, s. 34H. The provisions of this section shall survive the termination of this Agreement. To the extent that any records maintained or stored by UP Education Network pursuant to this Agreement contain Personal Information of Massachusetts residents, UP Education Network shall comply with Chapters 93H and 93I of the Massachusetts General Laws, including the regulations promulgated pursuant to Chapter 93H at 201 CMR 17.00 et seq. The provisions of this section shall survive the termination of this Agreement.

## **7. FINANCIAL ARRANGEMENTS**

### **7.1 Funding Eligibility.**

The Director of Operations and the Principal of each School shall be responsible for complying with applicable requirements for the purpose of receiving or maintaining that School's eligibility to receive from the City of Boston, from Commonwealth of Massachusetts, and from the federal government all applicable funds to which UP Academy is entitled. UP Education Network shall provide such assistance to UP Academy in the preparation or review of State aid applications and reports as UP Academy may request. UP Academy shall permit UP Education Network to review any such applications and reports prior to their

submission.

The Parties acknowledge that the Board of Trustees has the right to file an appeal with Massachusetts DESE, in accordance with the procedures set forth in 603 CMR 1.07(1), if Board of Trustees determines in its professional judgment that it has received a disproportionate budget allocation. Board of Trustees agrees that it shall not file any such appeal with Massachusetts DESE without first giving UP Education Network at least fourteen (14) days written notice of Board of Trustees's intent to file such an appeal and the grounds upon which any such appeal would be based.

## 7.2 Service Fee.

- (a) UP Academy shall pay UP Education Network a service fee ("Service Fee") equal to either i) fourteen percent (14%) of the net monetary payments made or allocated by BPS to UP Academy, or ii) ~~\$765,000~~725,000, whichever amount is less. For purposes of this calculation, the net monetary payments made or allocated by BPS to UP Academy shall include (i) a "school foundation" payment; (ii) the per pupil allocation payment (the "per pupil allocation payment") which, as of the date of this Agreement, is determined by BPS through a weighted student funding formula, an example of which is attached as Exhibit B hereto; (iii) the "Horace Mann Charter School Buyback Fund" allocation by BPS to UP Academy reduced by purchases from the Horace Mann Charter School Buyback Fund made by UP Academy; and (iv) the nurse and COSESS (Coordinator of Special Education Services and Supports) allocation provided to the School each year; and (v) any other sources of unrestricted funding from BPS. The Service Fee will cover all costs and expenses as enumerated as duties and obligations of UP Education Network in Section 4.
- (b) Subject to Section 7.2(a) and Section 7.2(c), UP Education Network will receive its Service Fee in quarterly installments, invoiced at the end of the second month of each quarter, unless UP Education Network and the Board of Trustees mutually agree to a different timing. Each installment of the Service Fee will be due and payable within thirty (30) days of receipt by UP Academy.
- (c) If UP Education Network fails to meet its obligation to raise the dollar amount of private funds to which it agreed as part of UP Academy's approved budget for any school year and if, as a result, UP Academy's budgeted expenses exceed its revenue for that year, the final payment to UP Education Network with respect to that year (or such smaller portion of the final payment as is equal to the difference between revenue and budgeted expenses for that year (the "Deficit")) shall be deferred until UP Academy shall obtain sufficient resources, through its own means, to meet the budgeted expenses, including the full Service Fee, for that year. If the final payment is not sufficiently large to cover the Deficit, then the final payment plus all or a sufficient portion of the penultimate payment (and payments immediately preceding the penultimate payment, if necessary) shall be deferred in the same manner as stated above.

## 7.3 UP Education Network Not Required to Make Loans or Advances.

UP Education Network shall have no obligation to advance or lend any funds to UP Academy. All loans to UP Academy will be evidenced by appropriate documentation.

## 8. PROPRIETARY INFORMATION AND CONFIDENTIALITY

### 8.1 Proprietary Information.

Prior to entering into this Agreement, UP Education Network has developed Proprietary

Information. UP Academy acknowledges that UP Education Network has a proprietary interest in its Proprietary Information, and that the Proprietary Information is core to UP Education Network's mission. UP Education Network shall own all existing and hereafter created Proprietary Information, except for Proprietary Information created using the public funds of UP Academy (the "UP Academy Intellectual Property"), which shall be owned by UP Academy subject to a non-exclusive perpetual, royalty-free transferrable license to UP Education Network to access and Use the UP Academy Intellectual Property. UP Education Network shall have the sole and exclusive right to license any of its Proprietary Information to third parties.

UP Education Network hereby grants to UP Academy, solely as may reasonably be required in connection with the performance of this Agreement, a nonexclusive, nontransferable, limited right to have access to and Use the Proprietary Information during the Term. UP Academy may permit its agents, subcontractors, vendors and consultants to have access to and Use the Proprietary Information, solely as may be reasonably necessary in connection with the performance of this Agreement, provided that it ensures that such agents, subcontractors, vendors and consultants comply with the terms of this [Article 8](#). Upon termination or expiration of this Agreement, UP Academy shall not have any right to make Use whatsoever of the Marks. All materials furnished by UP Education Network to UP Academy containing any Proprietary Information, including all written and electronic copies, shall be returned to UP Education Network promptly upon termination or expiration of this Agreement.

## **8.2 Marks.**

Ownership of Marks. All Marks created by UP Education Network, including but not limited to "UP Education Network," remain the property of UP Education Network, and no license or other right to Use, modify and/or sell the Marks is granted or implied hereby, except as set forth herein.

License to UP Academy. UP Education Network hereby grants to UP Academy, solely as may reasonably be required in connection with the performance of this Agreement, a nonexclusive, nontransferable, limited right to Use the Marks during the Term. UP Academy may grant its agents, subcontractors, vendors and consultants the right to Use the Marks, solely as may be reasonably necessary in connection with the performance of this Agreement, provided that it ensures that such agents, subcontractors, vendors and consultants comply with the terms of this [Article 8](#).

Cease of Use of Marks. Upon termination or expiration of this Agreement, UP Academy will not have any right to make any Use whatsoever of the Marks. In addition, upon termination, UP Academy will apply to the Commissioner's Office for a change of school name that will no longer include the word "UP". To the extent that UP Academy's corporate name or any other materials include any of the Marks, including but not limited to the UP Education Network name, and unless expressly agreed to in writing by UP Education Network, UP Academy shall immediately upon termination or expiration of this Agreement (i) return to UP Education Network or destroy such materials as may be returned or destroyed and (ii) change such name and/or materials so that they do not include any of the Marks, or any portion of the Marks.

## **8.3 Non-Disclosure of Confidential Information.**

Non-Disclosure. During this Agreement, and for a period of five (5) years after the expiration or termination of this Agreement, UP Academy will hold in strictest confidence, not disclose to any person, firm or corporation, and not exploit or Use, without the express authorization of UP Education Network, any Confidential Information (as hereinafter defined) provided by UP Education Network in connection with this Agreement (including Confidential Information provided prior to the Term of this Agreement). To the extent permitted by law, UP Academy agrees to treat all Confidential Information with the same degree of care as a reasonable and prudent person would accord his or her own confidential information, and shall use its best efforts to assure that it, its employees and its agents do not disclose or Use such Confidential

Information, other than as may be reasonably necessary in connection with the performance of this Agreement.

Return of Confidential Information. Any and all Confidential Information, including all written and electronic copies, in UP Academy's possession or control shall be returned to UP Education Network promptly upon termination or expiration of this Agreement.

#### **8.4 Specific Performance.**

In addition to all of the remedies otherwise available to UP Education Network, including, but not limited to, recovery of damages and reasonable attorneys' fees incurred in the enforcement of this Article 8, UP Education Network shall have the right to injunctive relief to restrain and enjoin any actual or threatened breach of the provisions of this Article 8, which right shall not be delayed by any obligation to mediate described in this Agreement. All of UP Education Network's remedies for breach of this Article 8 shall be cumulative and the pursuit of one remedy shall not be deemed to exclude any other remedies. UP Academy acknowledges and agrees that UP Education Network's rights under this Article 8 are special and unique and that any violation of this Article 8 by UP Academy shall not be adequately compensated by money damages alone.

#### **8.5 Disclosures Required by Law.**

Nothing in Article 8 shall be construed to preclude or restrict any Party from disclosing, disseminating, or producing to third parties any information or materials where such action is required by law (including, without limitation, pursuant to the Public Records Law (M.G.L.c. 66, § 10, or the provisions of G.L. c. 71, § 89), or pursuant to subpoena, court order, civil investigative demand or similar legal process, except as follows. If UP Academy believes that any such disclosure, dissemination or production to third parties of any information or materials that constitute Proprietary Information or Confidential Information as defined herein may be required by law, UP Academy shall provide notice of each proposed disclosure, dissemination or production to enable UP Education Network to pursue any remedies it may have to prevent disclosure or otherwise protect its interests. All Proprietary Information or Confidential Information of UP Education Network to be disclosed, disseminated or produced by UP Academy shall be made available to UP Education Network prior to each proposed disclosure, dissemination or production for the purpose of marking the subject materials to indicate that is UP Education Network's Confidential Information or Proprietary Information. Any such disclosure, dissemination or production will be without charge, except as expressly permitted by UP Education Network or by law relating to the copying and production of documents.

The rights and protections afforded UP Education Network with respect to Confidential Information may be limited by a legal obligation of UP Academy to disseminate best practices to public schools in the Commonwealth of Massachusetts. Accordingly, UP Academy has the right to share Confidential Information with Boston Public Schools, other charter schools, and other district schools.

#### **8.6 Use of Third Party Proprietary Information.**

Neither Party will knowingly infringe upon, or permit any of its employees or agents to knowingly infringe upon, any rights of any third party or knowingly violate the patent, copyright, trademark, trade secret, or other proprietary right of any third party in connection with the performance of this Agreement, and if either Party becomes aware of any such infringement or alleged instance of infringement, such Party agrees to notify the other Party promptly in writing.

### **9. INDEMNIFICATION**

### **9.1 Legal Representation and Costs; Cooperation.**

Except as expressly provided herein or in connection with insurance coverage as well as any indemnification required to be provided in this Agreement by one Party for the benefit of the other, each Party shall be responsible for its own legal representation and legal costs in connection with any legal claim or proceeding. Except where there is an actual or potential conflict of interest, UP Academy and UP Education Network shall fully cooperate with legal counsel for one another in connection with any legal claim asserted against either or both of them. Notwithstanding any other provision of this Agreement, neither Party shall settle or compromise any third party claim against the other without the express written permission of that party.

### **9.2 Indemnification by UP Education Network.**

To the full extent permitted by law, UP Education Network shall indemnify and save UP Academy, its Board, officers, employees, officers, directors, subcontractors and agents (the "UP Academy Indemnitees") wholly harmless from any and all claims, liabilities, demands, or causes of action for or on account of any injury to person, wrongful death, or damage to property or any loss of whatever kind or nature or other forms of liability to third parties (the "Losses") caused by the negligence, gross negligence or willful conduct of UP Education Network in the performance of UP Education Network's obligations hereunder or any breach or violation of UP Education Network's representations, warranties, covenant or agreements contained herein except to the extent the Losses may arise due to the negligence or willful misconduct of UP Academy or its employees or agents. UP Education Network shall assume, on behalf of UP Academy, including its servants, agents, and employees, the defense of any claim or action which may be brought against UP Academy, its officers, agents, servants, or employees and shall reimburse UP Academy including reasonable attorneys' fees and expenses incurred by UP Academy with respect to such claim, except to the extent the Losses may arise due to the negligence or willful conduct of UP Academy or its employees or agents.

UP Academy shall provide timely written notice containing specific facts constituting an obligation of indemnification under this Agreement and UP Education Network shall defend the UP Academy Indemnitees with respect thereto. For purposes of this paragraph, third parties shall be deemed to include, but not be limited to, employees or former employees, volunteers and other agents of UP Education Network.

### **9.3 Indemnification by UP Academy.**

To the full extent permitted by law, UP Academy shall indemnify and save UP Education Network, its board of directors, officers, employees, officers, directors, subcontractors and agents (the UP Education Network Indemnitees) wholly harmless from any and all claims, liabilities, demands, or causes of action for or on account of any injury to person, wrongful death, or damage to property or any loss of whatever kind or nature or other forms of liability to third parties ("UP Education Network Losses") caused by the negligence, gross negligence or willful conduct of UP Academy in the performance of UP Academy's obligations hereunder or any breach or violation of UP Academy's representations, warranties, covenant or agreements contained herein except to the extent the UP Education Network Losses may arise due to the negligence or willful misconduct of UP Education Network or its employees or agents. UP Academy shall assume, on behalf of UP Education Network, including its servants, agents, and employees, the defense of any claim or action which may be brought against UP Education Network, its officers, agents, servants, or employees and shall reimburse UP Education Network including reasonable attorneys' fees and expenses incurred by UP Education Network with respect to such claim, except to the extent the losses may arise due to the negligence or willful conduct of UP Education Network or its employees or agents.

UP Education Network shall provide timely written notice containing specific facts constituting an

obligation of indemnification under this Agreement and UP Academy shall defend UP Education Network Indemnitees with respect thereto. For purposes of this paragraph, third parties shall be deemed to include, but not be limited to, employees or former employees, volunteers and other agents of UP Academy.

#### **9.4 No Waiver.**

The foregoing provisions shall not be deemed a relinquishment or waiver of any kind, including of sovereign immunity of applicable limitations of liability to third parties provided or available to any of the parties under applicable laws of the Commonwealth, other than claims made by one party against the other pursuant to this Agreement.

#### **9.5 UP Education Network Insurance.**

UP Education Network shall maintain insurance consistent with applicable law, all with Lloyd's of London or carriers rated at least A- or higher by A.M. Best licensed in Massachusetts, including:

- Commercial general liability insurance with limits of at least one million dollars (\$1,000,000) per occurrence and two million dollars (\$2,000,000) aggregate with employee coverage;
- Automobile liability insurance of at least one million dollars (\$1,000,000);
- Professional Liability insurance with limits of at least one million dollars (\$1,000,000);
- Workers Compensation insurance for UP Education Network employees; and
- Excess liability insurance with limits of five million dollars (\$5,000,000) (applicable to all of the coverages described above except professional liability).

UP Academy will be shown as an additional insured on all of the above insurance policies where it can be added with no cost to UP Education Network with the exception of Professional Liability and Workers Compensation.

Certificates of insurance evidencing compliance with this section will be furnished by UP Education Network.

#### **9.6 UP Academy Insurance.**

UP Academy shall maintain insurance consistent with applicable law, all with Lloyd's of London or carriers rated at least A- or higher by A.M. Best licensed in Massachusetts, including:

- Commercial general liability insurance with limits of at least one million dollars (\$1,000,000) per occurrence and two million dollars (\$2,000,000) aggregate and having employee coverage;
- Automobile liability insurance of at least one million dollars (\$1,000,000);
- Employee dishonesty insurance with limits of at least one hundred thousand dollars (\$100,000);
- Directors and Officers insurance (which shall include coverage of trustees and officers of the School) with limits of at least one million dollars (\$1,000,000) each claim;
- Property insurance sufficient to protect owned or leased buildings and personal property; and
- Workers Compensation insurance as required by the Commonwealth of Massachusetts.

UP Education Network will be shown as an additional insured on any of the above insurance policies where it can be so added with no cost to UP Academy, with the exception of Workers Compensation, Educators Professional Liability, and Property. Notwithstanding anything herein to the contrary, UP Academy may satisfy its obligation to obtain insurance hereunder through BPS insurance providing the same or better coverage, provided that UP Education Network is named as an additional insured on the BPS insurance policy(ies).

Certificates of insurance evidencing compliance with this section will be furnished by UP Academy.

#### **9.7 Coordination of Risk Management.**

The Parties shall coordinate risk management activities with one another. This will include the prompt reporting of any and all pending or threatened claims, filing of timely notices of claim, cooperating fully with one another in the defense of any claims, and complying with any defense and reimbursement provisions of Commonwealth governmental immunity laws and applicable insurance policies. Neither Party shall compromise, settle, negotiate, or otherwise affect any disposition of any claim or potential claims asserted against it to the extent such claims are insured by or through the other Party without the approval of the other Party.

#### **9.8 Limitation of Liability.**

Except as provided in the second sentence of this Section 9.8, UP Education Network shall not under any circumstances be liable to UP Academy on account of any Losses pursuant to Section 9.2 or damages for breach of contract for more than the aggregate amount of the fees paid to UP Education Network pursuant to this Agreement during the last twelve (12) months of the Term prior to the date of any such Losses or breach, plus, with respect to any Losses or breach covered by one or more insurance policies obtained by UP Education Network pursuant to Section 9.5, the applicable policy limits. The foregoing limitation of liability shall not apply to the extent UP Education Network's obligations pursuant to Section 9.2 of this Agreement result from its willful misconduct or gross negligence, or result solely from its acts or omissions. With respect to such Losses incurred as a result of the active conduct of both UP Academy and UP Education Network in situations other than those described above, the contribution share of each for such Losses shall be based upon the proportionate share of responsibility for such Losses.

### **10. TERM AND TERMINATION**

#### **10.1 Term.**

(a) **Term.** Upon approval of the Board and execution by the Parties, this Agreement shall be for a five-year term (the initial five-year term and each subsequent five-year term are each referred to as a "Term" herein) which shall become effective on the Effective Date and shall end on June 30, 2026~~4~~ with respect to UP Academy Charter School of Boston, and on June 30, 2023 with respect to UP Academy Charter School of Dorchester. Subsequent Terms shall become effective pursuant to Section 10.1(b), below.

#### **(b) Option to Extend.**

(i) Each Party shall have the option to extend this Agreement with respect to one or both Schools, provided that it is not subject to Termination for Cause, as set forth in Section 10.2(a) or Section 10.3(a) below, as applicable.

(ii) The Party or Parties wishing to extend the Agreement shall so notify the other in writing not less than 90 or more than 120 days prior to the expiration of the Term and in its notice shall identify those terms or provisions of the Agreement which it wishes to renegotiate.

(iii) After receipt of a notice as provided above, the Parties shall meet and attempt in good faith to agree upon any terms or provisions identified for renegotiation.

(iv) If the Parties have not reached agreement on the terms and provisions of an agreement for a new Term with respect to one or both Schools within sixty (60) days of the receipt of a notice pursuant to Section 10.1(a), above, and if both Parties wish to continue the management of such School(s) by UP Education Network, either Party may request that open issues be referred to binding arbitration in accordance with Section 11.3, below, provided that UP Education Network's percentage fees are not subject to arbitration.

## 10.2 Termination by UP Academy.

UP Academy may terminate this Agreement with respect to one or both Schools in accordance with the following provisions:

(a) Termination for Cause. Subject to the provisions of subparagraph (b) below, UP Academy may terminate this Agreement with respect to one or both Schools for cause at any time during the Term. For purposes of this Section 10.2, the term “for cause” shall mean:

- (i) UP Education Network becomes insolvent, enters into receivership, is the subject of a voluntary or involuntary bankruptcy proceeding, or makes an assignment for the benefit of creditors;
- (ii) UP Academy’s auditor determines that there is a “material weakness” or a “significant deficiency”, as those terms are defined by GASB, the material weakness or significant deficiency is one that UP Education Network can correct within the notice and cure period provided to UP Education Network pursuant to this Agreement, and UP Education Network fails to make such correction, as determined by UP Academy’s auditor;
- (iii) UP Education Network fails to manage the School on a financially prudent basis by operating within the constraints of the annual budget approved by the Board of Trustees, provided that the Board of Trustees has not unreasonably withheld its consent to required budget adjustments;
- (iv) a Regulatory Authority has revoked any license which may be required for UP Education Network to carry on its business and perform its obligations and functions under this Agreement;
- (v) The School is not meeting or making substantial progress towards the goals laid out in the Accountability Plan;
- (vi) UP Education Network violates any material provision of law with respect to the School from which UP Academy was not specifically exempted and which results in material adverse consequences to UP Academy;
- (vii) UP Education Network materially breaches any of the material terms and conditions of this Agreement;
- (viii) BESE revokes the School’s Charter, does not renew the School’s Charter at the end of the five-year charter term, places the School on probation, or imposes conditions on the School; or
- (ix) Within a twelve (12) month period, the senior-level employees then performing the responsibilities performed by the Chief Executive Officer, the Deputy Chief Executive Officer, the Chief Academic Officer, the Chief Financial Officer, the Chief Talent Officer, and the Chief of Staff of UP Education Network as of the Effective Date of this Agreement are replaced.

(b) UP Education Network Right to Cure. Prior to exercising its right to terminate this Agreement with respect to one or both Schools pursuant to Section 10.2(a), UP Academy shall give UP Education Network written notice of its basis for terminating the Agreement (a “Termination Notice”). The Termination Notice shall specify the section(s) of this Agreement upon which UP Academy is relying on for the termination and the requirements for correction of the breach. Upon receipt of the Termination Notice, UP Education Network shall have 60 business days to remedy the breach (the “Cure Period”). If the breach



is one that is curable but is not corrected within the Cure Period, UP Academy may immediately terminate the Agreement. If the breach is one that is not curable within the 60 business day period described herein, the Cure Period shall be extended to such reasonable period of time as to permit cure.

(c) Deferral of Termination for Waivers. Notwithstanding the foregoing provisions of this Section 10.2, in the event that federal or State rules or regulations, existing as of the Effective Date or thereafter enacted, interfere with the UP Education Network School Model, UP Academy's termination right under Section 10.2(b) shall be deferred for a period of time as may be reasonably required for UP Academy, with UP Education Network's reasonable assistance, to timely apply for and support the waiver of any federal or State rules or regulations that interfere with the UP Education Network School Model. Upon either (i) failure of the Parties' good faith efforts to obtain such a waiver or (ii) the determination of UP Education Network, in its sole discretion, that such waiver is (a) unnecessary, (b) highly unlikely to be obtained or (c) not in the best interests of UP Education Network and UP Academy, UP Academy's right to terminate, and UP Education Network's right to cure, will be restored as set forth in Section 10.2(a) and Section 10.2(b).

### **10.3 Termination by UP Education Network.**

UP Education Network may terminate this Agreement with respect to one or both Schools in accordance with the following provisions:

(a) Termination For Cause. Subject to the provisions of subparagraph (b) below, UP Education Network may terminate this Agreement with respect to one or both Schools for cause at any time during the Term. For purposes of this Section 10.3, the term "for cause" shall mean that:

- (i) UP Academy materially breaches any of the material terms and conditions of this Agreement;
- (ii) UP Academy fails to comply with a material provision of a School's Charter, except to the extent that such failure is caused by UP Education Network;
- (iii) UP Academy violates any material provision of law with respect to UP Academy from which UP Academy was not specifically exempted and which results in material adverse consequences to UP Education Network or to UP Academy;
- (iv) UP Academy takes any action which effectively prevents UP Education Network from performing services in accordance with the terms of this Agreement; or
- (v) BESE revokes a School's Charter, does not renew the School's Charter at the end of the five-year charter term, places the School on probation, or imposes conditions on the School.

(b) UP Academy Right to Cure. Prior to exercising its right to terminate this Agreement pursuant to Section 10.3(a), UP Education Network shall give UP Academy a Termination Notice specifying the Section of this Agreement upon which UP Education Network is relying for the termination and the requirements for correction of the breach. Upon receipt of the Termination Notice, UP Academy shall have 60 business days to remedy the breach. If the breach is one that is curable but is not corrected within the Cure Period, UP Education Network may immediately terminate the Agreement. If the breach is one that is not curable within the 60 business day period described herein, the Cure Period shall be extended to such reasonable period of time as to permit cure.

### **10.4 Termination Upon Agreement of the Parties.**

This Agreement may be terminated upon written agreement of the Parties.

**10.5 Avoidance of Disruptions to Students.**

Notwithstanding the foregoing provisions of this Article 10, each Party shall use its good faith reasonable efforts to avoid a termination of the Agreement that becomes effective during the school year because of the disruption of such termination to the educational program and the students. Therefore, in the event this Agreement is terminated by either Party prior to the end of the Term, absent unusual and compelling circumstances, the termination will not become effective until the end of the school year.

**10.6 Payment of Service Fee.**

Upon termination of this Agreement, UP Academy shall pay UP Education Network any previously unpaid and undisputed portion of the Service Fee for services performed by UP Education Network until the time of termination. Any disputed portion of a Service Fee shall resolved in accordance with the provisions of Article 11.

**10.7 Assistance Following Termination.**

As noted in Section 10.5, notwithstanding the foregoing provisions of this Article 10, each Party shall use its good faith reasonable efforts to avoid a termination of the Agreement that becomes effective during the school year because of the disruption of such termination to the educational program and the students. In the unusual event of termination of this Agreement that becomes effective during the school year, UP Education Network shall provide reasonable assistance to UP Academy for the shorter of the remainder of the current school year or 90 days after the effective date of termination of the Agreement (the "Termination Assistance Period"), to assist in the transition to another plan for management of UP Academy, whether by UP Academy itself or with another charter management organization. During the Termination Assistance Period, UP Education Network will be entitled to receive and UP Academy shall continue to pay UP Education Network's Service Fee.

**10.8 Records upon Termination.**

Upon termination or expiration of this Agreement with respect to a School for any reason or upon request, UP Education Network shall give to that School all student, fiscal and other School records. All School records shall be kept at the School.

**11. GOVERNING LAW, DISPUTE RESOLUTION, JURY WAIVER, AND VENUE**

**11.1 Governing Law.**

This Agreement shall be governed by, construed, interpreted and enforced in accordance with the laws of Massachusetts, without giving effect to the principles of conflict of laws thereof.

**11.2 Dispute Resolution.**

Good Faith Negotiation of Disputes. The Parties agree to cooperate in good faith in all actions relating to this Agreement, to communicate openly and honestly, and generally to attempt to avoid disputes. If, nevertheless, a dispute should arise in connection with this Agreement, either Party may give notice to the other Party of intent to negotiate, and the Parties agree to use their best efforts to resolve such dispute in a fair and equitable manner.

Mediation. In the event any dispute arising out of or relating to this Agreement or the relationship resulting in or from this Agreement (a "Dispute") is unable to be resolved by the Parties (or if one of the

Parties refuses to participate in such negotiations) within twenty calendar days from delivery of the notice of intent to negotiate, either Party may give written notice to the other of a demand for non-binding and confidential mediation, whereupon the Parties shall endeavor to resolve the Dispute by mediation, as follows:

(a) Selection of Mediator. The Party desiring mediation shall submit a written notice of an intention to mediate to the American Arbitration Association (the “AAA”) with a copy to the other Party. The notice shall contain a statement setting forth the nature of the Dispute, the name and address of the other Party, the amount involved, if any, and the remedy sought. The Parties shall thereupon work in good faith to jointly select a mediator. In the event that the Parties are unable to jointly select a mediator within 10 business days, the Party desiring mediation may request that the AAA appoint the mediator. The mediator shall, as promptly as possible, mediate such matter.

(b) Decision; Procedure. Any resolution reached through mediation shall not be conclusive upon the Parties unless agreed to by the Parties. The Parties agree to mediate in good faith. Once an agreement has been reached, any enforcement of the agreement may be submitted to Superior Court in Suffolk County, Massachusetts, and judgment upon the same may be entered.

(c) Fees and Expenses. Each Party shall pay for its own mediation expenses and its attorneys’ fees and expenses for mediation and an equal amount of the fees and expenses of the mediator. The provisions of this mediation procedure may be enforced by any competent court in Suffolk County, Massachusetts, and the Party seeking enforcement shall be entitled to an award of all costs and expenses, including reasonable attorneys’ fees, to be paid by the Party against whom enforcement is ordered.

(d) Confidential and Inadmissible for Purposes of Litigation. All information, offers, promises, conduct and statements, whether oral or written, made in the course of the mediation by any of the Parties, their agents, employees, experts and attorneys and by the mediator are confidential, privileged and inadmissible for any purpose, including any impeachment, in any arbitration or judicial proceeding involving the Parties, provided that evidence that is otherwise admissible or discoverable shall not be rendered inadmissible as a result of mediation.

(e) Except as provided herein, mediation is a condition precedent to the initiation of litigation or binding arbitration as set forth below. Either Party may initiate litigation, with respect to a Dispute submitted to mediation (i) at any time following the second mediation session or 60 days after the date of filing the written request for mediation, whichever occurs first, or (ii) at any time for the sole purpose of preventing the expiration of a limitations period, but in such event mediation shall proceed in advance of any judicial proceedings, which shall be stayed for a period of 60 days from the commencement of the action, or such other period as may be mutually agreed by the parties or by order of the court. The mediation may continue after the commencement of arbitration or litigation if the Parties so desire.

### **11.3 Arbitration.**

As an alternative to litigation, the Parties by mutual agreement may submit the Dispute not resolved by mediation to binding arbitration by a panel of three arbitrators in accordance with the Commercial Arbitration Rules of The American Arbitration Association (the “Arbitration Rules”), except as stated herein. Within seven calendar days following the giving by either Party of a written notice of a demand for arbitration, (1) each Party shall designate its panel representative and (2) the Parties shall designate a third panel member that is agreeable to both Parties. The arbitrators shall convene a hearing as soon as possible thereafter. Each Party may present witnesses, documentary, and other evidence on its behalf, but strict rules of evidence shall not apply. The arbitrators may permit the filing of briefs upon request of either Party. The arbitrators shall issue a written opinion, including a reasoned decision, concerning the Dispute, together with their award, within 30 days following the close of the hearing.

Notices. All notices, demands, claims, responses, requests and documents will be sufficiently given or served if delivered in the manner described in Article 12 of this Agreement.

No Punitive Damages. Notwithstanding anything to the contrary in the Arbitration Rules or otherwise, the arbitrators are not empowered to award punitive damages.

Confirmation of Arbitral Awards; Venue. Any action to confirm an arbitral award rendered pursuant to Section 11.3 shall be brought in the courts of Massachusetts located in UP Academy's county. The Parties hereby irrevocably waive any objection which either may now or hereafter have to personal jurisdiction or the laying of venue for confirmation of an arbitral award in the courts referred to in the preceding sentence. The Parties hereby further irrevocably waive and agree not to plead or claim in any such court that any such action or proceeding brought in any such court has been brought in an inconvenient forum. Nothing herein shall limit the right of either Party, following the confirmation of an arbitral award, to seek to enforce such award in any appropriate state or federal court.

#### **11.4 Litigation.**

In the event that the Parties are unable to resolve the Dispute through mediation, either Party may commence an action in the courts of the Commonwealth of Massachusetts. This provision shall not be construed to expand or restrict any Party's rights or defenses otherwise available in such an action.

The Parties knowingly and willingly waive the right to a jury trial with respect to any Dispute, whether or not subject to the foregoing arbitration provision.

### **12. NOTICE**

All notices, demands, consents or other communications ("notices") which either Party may be required or desire to give to the other Party shall be in writing and shall be deemed delivered when (a) personally delivered, (b) if mailed, five business days after deposit in the United States mail, postage prepaid, certified or registered mail, return receipt requested, (c) if delivered by a reputable overnight carrier, one business day after delivery to such carrier, or (d) if delivered by facsimile, on the date the facsimile transmission is confirmed, provided that, on such date, a separate copy is also delivered pursuant to clause (b) or (c). Delivery by mail, overnight carrier or facsimile shall be addressed to the Parties as follows:

**UP Education Network:**

**Veronica Conforme  
UP Education Network  
77 Summer Street,  
2<sup>nd</sup> Floor  
Boston, MA 02110**

**With a copy to:**

**Elka Sachs  
Krokidas & Bluestein LLP  
600 Atlantic Avenue  
Boston, MA 02210**

**UP Academy Dorchester:**

**Beth Clymer, Chair of the Board  
UP Academy Charter School of Dorchester  
35 Westville Street**

Dorchester, MA 02124

With a copy to:

Melinda M. Phelps, Partner  
Bulkley, Richardson and Gelinias, LLP  
1500 Main Street, Suite 2700, P.O. Box 1550, Springfield, MA 01115-5507

Any Party may change its address for notice by notice given in accordance with the foregoing provisions. Notwithstanding the manner of delivery, whether or not in compliance with the foregoing provisions, any notice, demand or other communication actually received by a Party shall be deemed delivered when so received.

### 13. INTERPRETATION AND CONSTRUCTION; AMENDMENT

#### 13.1 Recitals.

The recitals to this Agreement are hereby incorporated herein as an integral part of this Agreement. In the event of a conflict between the terms and provisions of this Agreement, the terms and provisions of this Agreement shall control.

#### 13.2 Defined Terms and Use of Terms.

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

#### 13.3 Section Headings.

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

#### 13.4 Counterparts.

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

#### 13.5 Entire Agreement.

This Agreement constitutes the entire agreement between the Parties with respect to the subject matter herein, as of the Effective Date, and there are no understandings of any kind except as expressly set forth herein. Further, any and all prior understandings and agreements between the Parties, expressed or implied, written or oral, including the Term Sheet that forms a part of the Charter, are superseded by this Agreement.

#### 13.6 Modifications and Amendments; No Parol Evidence.

This Agreement may be altered, changed, added to, deleted from or modified only by agreement in writing approved by the Board of Trustees and by UP Education Network's Board of Directors. Accordingly, no course of conduct or custom shall constitute an amendment to or modification of this Agreement, and any attempt to amend or modify this Agreement orally, or in a writing not so approved, shall be void. This Agreement may not be modified, supplemented, explained, or waived by parol evidence.

### **13.7 Severability.**

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

### **13.8 Negotiated Agreement.**

The provisions of this Agreement were negotiated by the Parties and this Agreement shall be deemed to have been drafted by both of the Parties, notwithstanding any presumptions at law to the contrary.

## **14. MISCELLANEOUS**

### **14.1 Breach and Waiver.**

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

### **14.2 No Third Party Beneficiary Rights.**

With the exception of DESE, no third party, whether a constituent of UP Academy, a member of the community, a student or parent of a student of UP Academy or otherwise, may enforce or rely upon any obligation of, or the exercise of or failure to exercise any right of, UP Academy or UP Education Network in this Agreement. This Agreement is not intended to create any rights of a third party beneficiary.

### **14.3 Inspection and Access to Records.**

Upon reasonable notice, the Parties shall make available to each other and to DESE for inspection and copying, all books, records, and documents relating to the Parties' obligations and performance under this Agreement.

### **14.4 Assignment.**

This Agreement, including without limitation, the rights granted herein, may not be assigned, delegated, transferred, pledged, or hypothecated by either Party, whether voluntarily or involuntarily without the prior written consent of the other Party; provided, however, that UP Education Network may assign its rights and obligations under this Agreement to a State not-for-profit organization that is (1) related to UP Education Network by legal, beneficial or equitable ownership or other means of control (such as parent/subsidiary or corporations under common control) and (2) dedicated to managing charter schools in the State, subject to the approval of the Board of Trustees, which shall not be unreasonably withheld or delayed. This Agreement shall inure to the benefit of and shall be binding upon the Parties and their successors and assigns, and the name of a Party appearing herein shall be deemed to include the name of such

Party's successors and assigns to the extent necessary to carry out the intent of this Agreement.

**14.5 No Partnership.**

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

**14.6 Further Assurances.**

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

**15. SURVIVAL**

The provisions of Articles 2, 8, 9, 11, 12, 13 and this Article 15, Sections 3.3, 10.6, 10.7, 10.8, 14.1, 14.2, 14.3, 14.4 and 14.5, and any other sections to this Agreement that by their nature extend beyond the expiration or termination of this Agreement shall survive any expiration or termination of this Agreement; provided that any provision that is stated to extend for a specified period of time shall survive only for such specified period of time.

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

IN WITNESS WHEREOF, the Parties have caused this Agreement to be signed and delivered by their duly authorized representatives.

**THIS AGREEMENT CONTAINS AN OPTIONAL BINDING ARBITRATION PROVISION WHICH MAY BE ENFORCED BY THE PARTIES**

**UP EDUCATION NETWORK, INC.**

By: \_\_\_\_\_  
Veronica Conforme

Title: Chief Executive Officer, UP Education Network

Date:

**THE BOARD OF TRUSTEES OF UP ACADEMY CHARTER SCHOOL OF BOSTON and UP ACADEMY CHARTER SCHOOL OF DORCHESTER**

By: \_\_\_\_\_  
Beth Clymer

Title: Board Chairperson, Board of Trustees of UP Academy Charter School of Boston and UP Academy Charter School of Dorchester

Date: