

**CHARTER**

**DATED AS OF  
{DATE}**

**BETWEEN**

**STATE UNIVERSITY OF NEW YORK  
BOARD OF TRUSTEES**

**AND**

**{NAME} CHARTER SCHOOL**

**RFP Charter No. \_\_\_\_ per § 2852(9)(a)**

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## DEFINITION OF TERMS

**Education Corporation:** as defined further herein, a New York, not-for-profit, charter school education corporation that comes into existence through the issuance of a charter and the formation of a corporation pursuant to Article 56 and §§ 216 and 217 of the New York Education Law, respectively. Each charter school education corporation is entitled to operate one **school** in one or more **sites** for each charter issued to it.

**program:** an element of an overall educational program that may be shared among schools within the same education corporation without further legal authority beyond the Charter. A program is not created by any provision of New York Education Law.

**Provisional Charter:** as defined further herein, the certificate of incorporation of a charter school Education Corporation. The Education Corporation has only one provisional charter even though it may have been issued more than one charter in order to operate more than one **school**. The Provisional Charter is issued for a period of five (5) years or less and is not perpetual. The Charter Agreement is not the Provisional Charter. As the term is sometimes used, an Education Corporation has one “Charter,” which consists of the Charter Agreement, including the charter application, and the Provisional Charter.

**school:** a vehicle for the delivery of a complete educational program to students that has: independent leadership; dedicated staff; and defined facilities. An education corporation may have the authority to operate more than one school so long as a charter has been issued for each such school, which shall be listed in or part of the Charter Agreement and/or reflected in the Provisional Charter. Note a school may be housed in more than one physical **site**. A school is its own Local Educational Agency (LEA) for federal program purposes except the education of students with disabilities and its own accountability unit for purposes of the federal Elementary and Secondary Education Act of 1965 (ESEA), as amended by the Every Student Succeeds Act (ESSA), and the New York State Education Department’s Accountability Designations.

**site:** one of a number of facility locations for a single charter school typically representing a grade range. (For example, K-4 site, 5-8 site, or 9-12 site.) A site would not be its own LEA, ESSA, or state Accountability Designation unit. More than one charter school building tightly clustered (i.e., a campus) would be a “single site” under New York Education Law. Without receiving an additional charter an education corporation may not educate students of the same grade level in more than one site. The number of charters issued to an education corporation will determine the maximum number of sites it may have for any particular grade.

**RFP CHARTER No. \_\_\_\_\_**

This agreement, executed on this \_\_\_\_ day of June 2021 by and between the State University of New York Board of Trustees (the "**Trustees**") and Re-Shawn Rogers (the "Applicant(s)") (collectively, the "**Parties**"), to establish {NAME} CHARTER SCHOOL (the "**Education Corporation**") an independent and autonomous not-for-profit education corporation under the New York Charter Schools Act of 1998 (as amended, the "**Act**"), codified as Article 56 of the New York Education Law (RFP No. \_\_\_\_\_), per Education Law § 2852(9)(a).

**WITNESSETH:**

**WHEREAS** the State of New York (the "**State**") enacted the Act; and

**WHEREAS** pursuant to Education Law §§ 2851 and 2852, the Trustees have the authority to recommend for approval proposals to establish charter schools in the State, and thereafter to enter into agreements with applicants setting forth the terms and conditions under which charter schools shall operate, such agreements until issued in final form to be known as proposed charters; and

**WHEREAS** the Applicant(s), in response to a request for proposals ("**RFP**") published by the Trustees, submitted a proposal for establishment of the Education Corporation and the operation of one or more schools pursuant to Education Law § 2852(9-a) (as modified and/or supplemented, the "**Proposal(s)**"); and

**WHEREAS** the Trustees have (i) determined that the Proposal(s) satisfies each and every applicable requirement set forth in Education Law § 2852 and the Act, and all other applicable laws, rules, and regulations, and (ii) approved the Proposal(s) for recommendation to the State Board of Regents (the "**Regents**"); and

**WHEREAS** pursuant to the Act, the Regents shall approve the proposed charter, issue a provisional charter, and incorporate an education corporation to establish and operate the charter school(s), or same shall be deemed approved and issued;

**NOW, THEREFORE**, in consideration of the mutual covenants, representations, warranties, and agreements contained herein, the Parties hereby agree as follows:



## SECTION 1. ESTABLISHMENT OF EDUCATION CORPORATION

1.1 Charter. This agreement (the “**Charter Agreement**”), which specifically incorporates the following:

(a) certain terms of operation set forth collectively and attached hereto in **Exhibit A**, and shall incorporate the initial charter applications or proposals of any additional schools that may hereafter be approved by the Trustees, all of which shall be set forth in **Schedule 1**, and which shall be hereafter referred to collectively as the Terms of Operation (the “**Terms of Operation**”);

(b) the Additional Assurances and Terms, if any, set forth in Exhibit A (the “**Additional Assurances and Terms**”);

(c) the Monitoring Plan, attached hereto as **Exhibit B** (the “**Monitoring Plan**”);

(d) the Assurances Regarding Students with Disabilities, attached hereto as **Exhibit C** (the “**Students with Disabilities Assurances**”);

(e) the Assurances Regarding the Provision of Fiscal Audits and Dissolution, attached hereto as **Exhibit D** (the “**Fiscal Audits and Dissolution Assurances**”); and,

(f) the Accountability Plan(s) developed by each school to be operated by the Education Corporation or to be developed during the first year of operation by any additional school the Corporation may be permitted to operate, and further described herein and set forth in Exhibit A, (the “**Accountability Plans**”);

shall constitute, before its approval by the Regents, the proposed charter (the “**Proposed Charter**”). When approved or deemed approved by the Regents, the Proposed Charter shall be known as the charter (the “**Charter**”). The Charter shall set forth the terms of operation of, and be binding on, the Education Corporation, an education corporation incorporated by the Regents under a certificate of incorporation issued pursuant Education Law § 2853(1) (the “**Provisional Charter**”), which will be issued to include the authority of the Education Corporation to operate one or more schools as set forth in Schedule 1.

1.2 Effective Date; Term.

(a) Subject to any limitations imposed herein and any provision to delay the effective date set forth in the Additional Assurances and Terms, the Charter shall take effect immediately upon, and only upon, its issuance by the Regents (the “**Effective Date**”). The term of the Provisional Charter shall not exceed five (5) years in which instruction is provided to pupils at the last school for which the Education Corporation was issued a charter plus the period commencing with the Effective Date and ending with the opening of that school, which may be delayed by planning years as described in section 3.1 hereof. The Provisional Charter shall expire

thereafter unless earlier terminated or renewed. The Charter is deemed issued upon approval of the Proposed Charter, either by action of the Regents or operation of law pursuant to Education Law § 2852(9-a)(f).

(b) If the Education Corporation is granted additional authority to operate additional schools under the Act, the charter term shall be extended to include a period of five (5) years in which instruction is provided to pupils in such school(s) plus the period commencing with the new effective date and ending with the opening for instruction of the last school for which the Education Corporation was issued a charter, which may be delayed by planning years as described in section 3.1 hereof.

(c) Notwithstanding any other provision of the Charter Agreement, in the event that the Provisional Charter expires on a date when a new instructional school year has recently commenced, the Education Corporation's school(s) will not be able to provide instruction during that commenced school year unless the Education Corporation applies to the Trustees for, and is granted, a Provisional Charter extension or renewal in accordance with the *Policies for the Renewal of Charter School Education Corporations and Charter Schools Authorized by the Board of Trustees of the State University of New York* or similar policy, as may be in effect at that time, or is given other explicit authority to provide instruction by the Trustees or their designee.

1.3 Amendment of Proposed Charter. Prior to its issuance, the Proposed Charter is subject to modification as follows.

(a) The Education Corporation agrees that (i) should the Charter Schools Institute (the "**Institute**") on behalf of the Trustees determine upon further review that one or more exhibits or attachments of the Terms of Operation, or provisions of the Charter Agreement, are inconsistent in one or more respects with applicable laws, rules or regulations, or the Charter Agreement, and (ii) the Regents provide an opportunity for amendment of the Proposed Charter, the Education Corporation shall make such changes to the Charter Agreement as requested by the Institute such that the Charter Agreement meets such legal requirements; it being understood that such changes shall be required only after the Education Corporation or its designee has had the opportunity to fully discuss any such requested changes with the Institute.

(b) If the Institute determines that the Charter Agreement requires amendment for the reasons indicated immediately above, but the Regents do not permit amendment, and there is no other opportunity for same, and the Charter is issued or reissued as the case may be, the Education Corporation agrees to make such amendments to the Charter Agreement (and seek a revision to same or the Charter to the extent required by law to effect such changes), it being understood that prior thereto, the Institute shall provide the Education Corporation with a full and fair opportunity to discuss any such required changes.

1.4 New Information. The Education Corporation's school(s) shall not continue to provide instruction to any student and the Education Corporation shall not be eligible

to receive any funds, or if it has received funds, any further funds, as would otherwise inure to the Education Corporation under Education Law § 2856, if:

(a) the Trustees receive information after the date on which the Proposed Charter or an amendment thereto is executed that provides substantial reason to believe either (i) the Terms of Operation contain material misstatements or material omissions of fact or (ii) the Education Corporation and/or any entity with which the Education Corporation intends to contract to provide day-to-day management of any school or schools, is unable to oversee and operate the school or schools in a fiscally and educationally sound manner consistent with the terms of the Provisional Charter, Charter Agreement, Act, and all other applicable laws (the “**New Information**”); and

(b) the Trustees acting on the New Information, issue in writing to the Education Corporation a statement setting forth in particular the New Information and the reasons why the Education Corporation shall not be permitted to provide instruction at a particular school or schools, or to receive the public funds contemplated under the Act. Upon appropriate showing by the Education Corporation, the Trustees may withdraw such statement and permit the Education Corporation’s school(s) to provide instruction to students and permit the Education Corporation to receive public funds contemplated under Education Law § 2856 for such school(s). In the event that the Trustees issue the statement described by this subsection either prior to December 31 of the year that the charter(s) issued to permit operation of said school(s) becomes effective, or, in the case of charter(s) issued on the first business day of a calendar year, and such statement is not withdrawn by the Trustees on or before September 21 of the year immediately succeeding the year in which such charter becomes effective, or on or before September 21, respectively, such charter(s) shall be deemed to be void *ab initio*. It shall be the ongoing obligation of the Applicant(s) (until the Effective Date) and Education Corporation (upon and after the Effective Date) to provide in writing to the Trustees any New Information of which the Applicant(s) or Education Corporation is or are in, or come(s) into, possession.

#### 1.5 Authority to Operate Additional Schools, Sites and Programs.

(a) The Education Corporation shall have the authority to operate the schools set forth in Schedule 1 and described in the Terms of Operation. Each school operated by the Education Corporation shall have its own, separate Accountability Plan, and, when applicable, Enrollment and Retention Targets. The Monitoring Plan shall be applied to each school by the Trustees, and to the Education Corporation, as applicable. Subject to the requirements of the Act and the application or proposal requirements of the Trustees, the Education Corporation may operate such additional schools as the Trustees may approve in accordance with the Act.

(b) The Education Corporation shall have the authority to operate in as many sites as permitted by the Act and as approved pursuant to this Charter Agreement by the Trustees so long as the number of separate sites for any particular grade does not exceed the number of schools the Education Corporation may operate. Notwithstanding the immediately foregoing,

restriction, if the Education Corporation has been issued a separate charter for duplicate grade(s) pursuant to the Act, the Education Corporation may operate such additional site(s).

(c) So long as set forth and described in the Terms of Operation, the Education Corporation may share programs, settings, classes and services between and among schools unless otherwise prohibited by the Act, the Provisional Charter, this Charter Agreement, or applicable law.

(d) The Education Corporation shall have the authority to operate such pre-Kindergarten and other programs specifically authorized by law subject to applicable laws, rules, and regulations.

1.6 School Names. The names of the Education Corporation's school(s) shall be set forth in Schedule 1. The Education Corporation shall have the authority to amend or alter the name of any school it has the authority to operate provided that such school name is not already in use in the State, and further provided that such name change shall become effective only upon the approval of the Institute and upon notice to the Regents or their designee, which may require Charter revision.

## **SECTION 2. OPERATION OF EDUCATION CORPORATION**

2.1 Code of Ethics; Conflicts of Interest. The Education Corporation, its trustees, officers, and employees shall abide by the code of ethics and/or conflicts of interest policy of the Education Corporation set forth in the Terms of Operation, which must conform to those provisions of the Act and New York General Municipal and Not-For-Profit Corporation Laws made applicable by the Act, and include standards with respect to disclosure of conflicts of interest regarding any matter brought before board of trustees of the Education Corporation (the "**Education Corporation Board**"). The Education Corporation shall disseminate the code in written form to each of its trustees, officers, and employees. Modifications to the code of ethics shall require prior written approval of the Trustees.

2.2 Governance; Education Corporation Board; Bylaws. The Education Corporation shall be governed by the Education Corporation Board, which shall consist of those individuals specifically named in the Terms of Operation (the "**Corporate Trustees**") as updated by subsequent election and approval, resignation, removal, or other disposition in accordance with the Bylaws (defined below) and this Charter Agreement. The Education Corporation Board shall have final authority for policy and operational decisions of the Education Corporation and each school although nothing herein shall prevent the Education Corporation Board from delegating decision-making authority to officers, employees, and agents of the Education Corporation. The Education Corporation Board shall operate pursuant to the following requirements and restrictions:

(a) The Education Corporation Board shall initially operate pursuant to the bylaws set forth in the Terms of Operation. The Education Corporation Board shall meet within thirty (30) days of the Effective Date and duly ratify such bylaws. Thereafter, the Education Corporation Board shall operate pursuant to the bylaws of the Education Corporation whether such bylaws be those initially set forth in the Terms of Operation or as amended pursuant to subsection (b) of this section 2.2 (initially or as amended, the “**Bylaws**”), as well as the Act and applicable provisions of the Not-For-Profit Corporation, Education, and General Municipal Laws.

(b) The Bylaws may not be amended in any material respect without the prior written approval of the Trustees, such approval not to be unreasonably withheld, and in no event can they conflict with any term of the Provisional Charter, Charter Agreement or law including provisions of the Education, General Municipal and Not-for-Profit Corporation Laws applicable to charter schools. In seeking modification of the Bylaws, the Education Corporation Board shall submit to the Trustees a duly approved resolution of the Education Corporation Board setting forth the proposed material changes to the Bylaws.

(c) The Education Corporation Board shall have as its members such total number of Corporation Trustees and shall reserve seats on the Education Corporation Board for such specified members or constituent groups in such numbers as is set forth in the Terms of Operation. In no event shall a person with an interest in a for-profit contract with the Education Corporation serve on the Education Corporation Board except to the extent permitted by the General Municipal and the Not-For-Profit Corporation Laws. The Bylaws or code of ethics/conflict of interest policy shall contain provisions consistent therewith.

(d) Notwithstanding any provision to the contrary in the Charter Agreement, Terms of Operation, or Bylaws, in no event shall the Education Corporation Board, at any time, be comprised of voting members of whom more than forty percent (40%) are directors, officers, employees, agents, or otherwise affiliated with any single entity (with the exception of the Education Corporation or of another charter school education corporation), regardless of whether said entity is affiliated or otherwise partnered with the Education Corporation. For the purposes of this subsection, “single entity” shall mean any individual entity, as well as any and all related entities such as parents, subsidiaries, affiliates, and partners. The Trustees may, at their sole discretion, waive this restriction upon a written request from the Education Corporation.

(e) Where the Education Corporation has engaged a not-for-profit educational service provider or other entity that provides comprehensive management services to the Education Corporation or any of its schools pursuant to a contract between such entity and the Education Corporation:

(i) no more than two (2) Corporate Trustees may be affiliated with such not-for-profit entity, or have immediate family members so affiliated; provided, however, that in such case the following restrictions shall apply and be contained in the Bylaws:

(A) termination of the contract with the not-for-profit educational service provider or other entity shall constitute cause for removal of such person(s) from the Education Corporation Board, and upon such termination such person(s) may be removed from the Education Corporation Board by vote of a majority of the Corporate Trustees provided there is a quorum of at least a majority of the entire Education Corporation Board present at the meeting;

(B) such person(s) shall not hold the offices of chair or treasurer of the Education Corporation Board;

(C) when the Education Corporation Board has proper grounds to go into executive session pursuant to the New York Open Meetings Law (as defined herein), and the Education Corporation Board is to discuss or vote upon an issue related to the not-for-profit management company or entity, the personnel of such company or entity, or such person(s), the Education Corporation Board may, after such person(s) has had an opportunity to fully address the Education Corporation Board, continue such executive session outside of the presence of such person(s); and,

(D) the number of Corporate Trustees shall not be less than seven (7) where two (2) Corporate Trustees are affiliated with the not-for-profit entity and not less than six (6) where one (1) Corporate Trustee is affiliated with the not-for-profit entity.

(f) The Education Corporation Board shall notify the Trustees within five (5) business days of any of the following Corporate Trustee actions: removal; resignation; expiration of term without re-election; or, otherwise leaving the Education Corporation Board.

(g) The Education Corporation Board shall require that each Corporate Trustee who has served during a school year shall file annually a disclosure report (the “**School Trustee Disclosure Report**”) with the Trustees, the form and requirements of which shall be provided by the Trustees. The School Trustee Disclosure Report shall set forth and attest to transactions between the Education Corporation, on the one hand, and a Corporate Trustee and/or any entity with which such Corporate Trustee is affiliated on the other, as such transactions may be defined by the Trustees. As set forth in section 6.1 of this Charter Agreement, the School Trustee Disclosure Report for each Corporate Trustee shall be submitted yearly as part of each school's annual report (the “**Annual Report**”). In the event that any Corporate Trustee fails to file a School Trustee Disclosure Report within thirty (30) days of its due date of August 1, or such report is in material respects incomplete, misleading or untruthful, and the Trustees inform the Education Corporation Board of its determination in this regard, the Education Corporation, notwithstanding any provision of its Bylaws, shall in a timely fashion remove such Corporate Trustee pursuant to a vote of the Education Corporation Board and the failure of the Education Corporation Board to so act shall be a material violation of the charter as described in the Act. Should a Corporate Trustee resign from or otherwise leave the Education Corporation Board without having submitted a School Trustee Disclosure Report for any year in which such Corporate Trustee served, the Education Corporation shall provide the Trustees with

a record of the transactions required by the School Trustee Disclosure Report for that Corporate Trustee for each relevant school year, such reports to be signed by the Education Corporation and due on August 1 as part of the Annual Report.

2.3 Selection of New Education Corporation Board Members. All Corporate Trustees shall possess appropriate qualifications for membership on the Education Corporation Board, as such qualifications are set forth in the Terms of Operation, and shall be seated pursuant to the following procedures. Prior to the appointment or final election of any new Corporate Trustee, the Education Corporation Board must submit to the Trustees (pursuant to a duly approved resolution of the Education Corporation Board) the name of the proposed Corporate Trustee and such individual must timely provide to the Trustees, in writing and/or in person, such background information as the Trustees shall require (the “**School Trustee Background Information**”). Within forty-five (45) days of receiving the name of the proposed Corporate Trustee and the School Trustee Background Information, the Trustees shall in writing reject or approve such individual. In the event that the Trustees do not provide in writing an approval or rejection within the forty-five (45) day time period, the proposed Corporate Trustee may be seated so long as such action would be consistent with the Bylaws and any other applicable Terms of Operation. A failure by the Education Corporation or the proposed Corporate Trustee to timely provide the School Trustee Background Information to the Trustees shall be grounds for his or her rejection.

2.4 Contracting with Educational Service Providers. Any entity that provides all or a substantial subset of all services necessary to operate and oversee any school’s educational program on a fee basis and pursuant to a fee-based contract shall be known as an educational service provider (“**Educational Service Provider**”) and the contract under which such services are provided shall be referred to as a management contract (“**Management Contract**”). Any other contractual arrangements including, but not limited to, leases, subleases, lease-purchase agreements, credit facilities, loan agreements, promissory notes, negotiable instruments, and other debt instruments, that are contemplated between the Education Corporation on the one hand and the Educational Service Provider, its partners, parents, subsidiaries, agents, and affiliates (including any entity that holds an economic interest in the Educational Service Provider) on the other, shall be known collectively, together with the Management Contract, as ESP Contracts (“**ESP Contracts**”). The following requirements and provisions relating to Educational Service Providers, Management Contracts and ESP Contracts shall apply.

(a) The Trustees reserve the right to review and disapprove for good cause shown any and all ESP Contracts that the Education Corporation seeks to execute, amend, or renew during the time that the Provisional Charter is in effect. Good cause shown includes, but is in no way limited to, a finding that the ESP Contract(s) at issue does not, under the totality of the circumstances, allow the Education Corporation effective and sufficient means to hold the Educational Service Provider accountable including means to terminate the Educational Service Provider without placing the Education Corporation’s or the subject school(s)’s further existence

in peril. The above terms are in addition to the requirements of sections 3.14 and 3.15 of the Charter Agreement.

(b) To facilitate the Trustees' rights of review and disapproval, the Education Corporation shall provide the Trustees with any proposed ESP Contract or proposed material amendment thereto no later than thirty (30) days prior to the proposed date of execution. In addition to the foregoing, prior to a school's first year of operation, and where no prior Management Contract has been in place for that school, the Education Corporation must submit the proposed Management Contract to the Trustees by no later than May 1 immediately preceding the start of the school year. When submitting an ESP Contract, the Education Corporation must include a written opinion of the Education Corporation Board's legal counsel stating that the ESP Contract has been reviewed by legal counsel to the Education Corporation Board. Within thirty (30) days of receiving the proposed ESP Contract, the Trustees shall notify the Education Corporation Board if the agreement is disapproved, except that the Trustees, at their discretion, may extend the review period an additional thirty (30) days. It is expressly understood that should the Trustees not disapprove an ESP Contract, the Trustees by such action are in no way endorsing or approving the contract, the fee arrangements if any or any other provisions contained therein.

(c) To the extent that the Terms of Operation contemplate that any of the Education Corporation's schools would be operated with the assistance of an Educational Service Provider pursuant to a Management Contract, the Education Corporation shall obtain the prior written approval of the Trustees prior to operating the school without such Educational Service Provider's assistance. Notwithstanding the above, it is understood that circumstances may require the Education Corporation to terminate and/or not renew a Management Contract and thereafter operate a school without the services of the Educational Service Provider identified in the Terms of Operation (or otherwise subsequently approved by the Trustees) prior to obtaining the permission of the Trustees. Where the Trustees determine, at their sole discretion, that such circumstances exist, and the Education Corporation has made good faith efforts to timely inform the Trustees of the circumstances, the Trustees may waive the Education Corporation's breach of the prior permission requirement and allow the Education Corporation to seek permission *ex post facto*.

(d) Management Contracts shall set forth with particularity, *inter alia*, the extent of the Educational Service Provider's participation in the organization, operation and governance of the Education Corporation and any school, and contain a provision requiring the Educational Service Provider to provide the Trustees access to its annual financial statements audit as set forth in section 5.

(e) To further and facilitate their review, the Trustees may require the Education Corporation to submit together with any ESP Contract, additional information or assurances.



(f) Upon the execution of an ESP Contract, and any extension or revision thereto, a copy of such contract or revised contract shall be promptly provided to the Trustees.

2.5 Transactions with Affiliates. In addition to the applicable requirements of the General Municipal and Not-For-Profit Corporation Laws, the Education Corporation shall not, directly or indirectly, enter into or permit to exist any transaction (including the purchase, sale, lease, or exchange of any property or the rendering of any service) with any affiliate of the Education Corporation, any member past or present of the Education Corporation Board, or any employee past or present of the Education Corporation, any immediate family member of the foregoing individuals, or any entity with which any such person is affiliated unless:

(a) the transaction, if with an entity, is with a not-for-profit entity;

(b) the terms of such transaction (considering all the facts and circumstances) are no less favorable to the Education Corporation than those that could be obtained at the time from a person or entity that is not such an affiliate, member or employee or an individual related thereto; and,

(c) the involved Corporate Trustee, officer, or employee must recuse him/herself from voting on or deciding any matters related to such transaction;

it being understood that the Trustees may ask for third-party valuation of such transactions.

### **SECTION 3. OPERATION OF SCHOOLS**

3.1 Planning Years and Prior Actions. The Education Corporation shall continue or commence instruction, as the case may be, in conformity with the schedule set forth in the Terms of Operation for each school it is permitted to operate.

(a) Subject to the foregoing limitation, planning years applicable to any school or schools set forth in the Terms of Operation shall not require further approval of the Trustees or constitute a revision to the Charter.

(b) The Education Corporation may seek the Trustees' approval to take one (1) to two (2) additional planning years for any school(s), which approval shall not be unreasonably withheld.

(c) The Education Corporation may seek the Trustees' approval to take more than (2) planning years in the aggregate, which may be granted in the Trustees' discretion and which may require charter renewal in accordance with the Act.

(d) In the event the Education Corporation is unable to open a school or schools by such date(s) including taking and completing the Prior Actions (as described

immediately below) to the satisfaction of the Trustees to permit the school(s) to open, the charter(s) issued that permitted the Education Corporation to operate such school(s) shall be deemed to be void *ab initio*, and, if necessary, the Education Corporation shall cooperate with the Institute to transfer, re-use, or restructure such charter or right to operate such school(s).

(e) Notwithstanding the foregoing subsections of this section 3.1 of the Charter Agreement, the Education Corporation shall not permit any schools to provide instruction to any student until and unless the Trustees issue a written statement to the Education Corporation, with a copy to the Regents, attesting that said school has completed all or substantially all of the Prior Actions published on the website of the Institute (the “**Prior Actions**”) to the satisfaction of the Trustees with such conditions as they may require. Upon such confirmation, the restrictions on the school(s) set forth in the immediately foregoing sentence shall be of no further force and effect. Notwithstanding the foregoing, in the event that such a school is unable to take and complete all of the Prior Actions to the satisfaction of the Trustees prior to September 21 of the year immediately succeeding the year in which the school commences instruction, the charter issued that permitted the Education Corporation to operate such school shall be deemed to be void *ab initio*. Notwithstanding anything to the contrary in this section, the Prior Actions are in addition to any other condition set forth in the Provisional Charter, Charter Agreement, or the Act.

3.2 Mission Statement. Each school operated by the Education Corporation shall operate under its mission statement set forth in the Terms of Operation. However, the Education Corporation may change, amend, or otherwise modify the mission statement of any school and such changes shall not require the permission of the Trustees or constitute a revision to the Charter Agreement so long as the changes are approved by the Education Corporation Board and generally consistent with the key design elements (the “**Key Design Elements**”) set forth in the Terms of Operation, and the Education Corporation reports the modification to the Trustees as part of the school’s Annual Report as required by section 6.1 of the Charter Agreement. Nothing herein shall require the Education Corporation to adopt the same or similar mission statements for each school it is permitted to operate.

3.3 Age; Grade Range; Number of Students. Each school operated by the Education Corporation shall provide instruction to pupils in such ages, grades, and numbers in each year of operation as set forth in the Terms of Operation (the “**Projected Enrollment Structure**”), and the Education Corporation shall obtain the prior written permission of the Trustees for variances from those terms, except as specifically set forth in subsections (a) and (b) below.

(a) Each school operated by the Education Corporation may enroll a total number of students different from such number as is set forth in the Projected Enrollment Structure (the “**Projected Enrollment**”) for such school so long as (i) the total enrollment of such school does not exceed one hundred and twenty percent (120%) of the Projected Enrollment, or (ii) the total enrollment of such school is not less than eighty percent (80%) of the Projected Enrollment or fifty (50) students, whichever is greater.

(b) The Education Corporation may, with respect to any school it is authorized to operate, vary the number of students in any particular grade and/or number of students within a class from that provided for in the Projected Enrollment Structure for the purpose of accommodating staffing exigencies, attrition patterns and facilities, and such changes shall not require the permission of the Trustees or constitute a revision to the Charter.

(c) Notwithstanding subsection (a) or (b) of this section, the Education Corporation shall not make any change in the Projected Enrollment Structure, with respect to any school it is authorized to operate, without the written permission of the Trustees that results in or has the effect of (i) eliminating or nearly eliminating a grade or grades the school was scheduled to serve under the Projected Enrollment Structure, (ii) not enrolling any returning student scheduled to be served under the Projected Enrollment Structure, or (iii) eliminating any student's seat after the student has been admitted to the school with the understanding that there is no requirement that every returning student must have a seat in the next higher grade level or program so long as same is set forth in the Terms of Operation.

### 3.4 Admissions; Enrollment; Attendance; Transfer.

(a) Each school the Education Corporation is permitted to operate shall have in place and implement comprehensive policies for admissions, enrollment, and attendance, which policies shall be approved by the Education Corporation Board and shall be consistent with applicable law and regulations. Such policies shall provide in detail the procedures and practices utilized by each school in regards to admission, enrollment, attendance and withdrawal including, *inter alia*, the period in which applications for admission shall be timely, how to obtain an application for admission, the practices in operating the random selection process in accordance with section 119.5 of Title 8 of the Official Compilation of Codes, Rules and Regulations of the State of New York (8 N.Y.C.R.R. § 119.5), the maintenance of a wait list, the implementation of the preferences required by law and any at-risk school design factors pursuant to Education Law § 2854(2) as set forth in the Terms of Operation, and the taking of attendance pursuant to 8 N.Y.C.R.R. § 104.1. With the exception of any changes in the at-risk school design factors, the Education Corporation Board shall have the authority to make changes to such policies and such changes shall not require the permission of the Trustees or constitute a revision to the Charter Agreement. Such changes, however, must be consistent with applicable law and regulations, and the Education Corporation must report such changes to the Trustees as part of each school's annual report as required by section 6.1 of the Charter Agreement.

(b) The Education Corporation shall utilize reasonable outreach and marketing measures to make potential applicants aware of opportunities for enrollment at each of its schools. The Trustees, upon a finding that the outreach and marketing measures taken by the Education Corporation are inconsistent with applicable law; the Terms of Operation; or the enrollment and retention targets for students with disabilities, English language learners, and students who are eligible applicants for the federal Free and Reduced Price Lunch Program, (i) prescribed by the Trustees for any school to be operated by the Education Corporation, (ii) to be

prescribed by the Trustees for any school during the first year of operation under Trustees' authorization if the Act mandates such targets or, (iii) during the first year such targets are otherwise applicable to such school by the Act (the "**Enrollment and Retention Targets**"), may require the Education Corporation to take remedial action including, but not limited to, requiring the Education Corporation to extend any or all of its schools' enrollment periods, delay or void random selection processes, implement at-risk school design factors, and/or conduct further specified outreach and marketing steps. Only to the extent specifically provided for in the Terms of Operation or the Additional Assurances and Terms shall any school apply an at-risk of academic failure school design factor and/or limit admission to a single sex and any change to such factors as are provided for by the Terms of Operation or the Additional Assurances and Terms shall require the prior written approval of the Trustees, it being understood that such changes may also require a revision to the Charter, such determination to be made by the Trustees.

(c) Applicants that have designated a particular school or schools on an application must be entered into a random selection process for those schools. However, the Education Corporation may offer admission in a different school in addition to, or if the applicant was not selected, in lieu of, admission to the designated school provided that the Education Corporation's or the schools' admissions policies in the Terms of Operation describe such process.

(d) The Education Corporation may transfer students between schools it is authorized to operate, provided the following conditions are met:

(i) the Education Corporation or each involved school has a specific transfer policy set forth in the Terms of Operation;

(ii) the transfer policy treats similarly situated students in a like manner, does not unfairly discriminate against any student or group of students and comports with federal due process in terms of any disciplinary transfers; and,

(iii) the transfer policy does not or does not as applied have the effect of interfering or skewing the student performance results to be reported pursuant to each school's Accountability Plan as further described below.

### 3.5 Educational Programs.

(a) The Education Corporation shall implement and provide educational programs at its school(s) that are designed to permit and do permit students to meet or exceed the performance standards adopted by the Regents and the goals, and measures of progress towards those goals, of the school(s) as set forth in the Accountability Plan for each school further described below. Subject to the immediately foregoing requirements, the Education Corporation shall have the right to make any modifications to the educational programs of its schools as it deems necessary including, but not limited to, the curriculum, pedagogical approach, and staffing structure, and such modifications shall not require the permission of the Trustees or be deemed

a revision to the Charter Agreement, provided however, that any such modifications shall be generally consistent with the Terms of Operation and applicable law, and the Education Corporation or each school, as the case may be, reports such modifications as part of its annual report as required by section 6.1 of the Charter Agreement.

(b) Subject to any restraints in the Act, Provisional Charter, or this Charter Agreement, the Education Corporation may offer or share programs, settings, classes, and services between and among schools including grade level programs, specialized programs such as programs for students with disabilities or English language learners, and other programs so long as each such program is described in the Terms of Operation, each student participating in such program is included in the enrollment and Accountability Plan of the student's sending school, unless the Trustees, in their sole discretion, otherwise permit.

3.6 Evaluation of Students. The Education Corporation shall implement, for each school, student assessment requirements applicable to other public schools and those set forth in the Terms of Operation except as otherwise specifically provided by applicable law. The Education Corporation shall ensure that each school administers the complete battery of State tests applicable to each grade and Regents examinations or Regents approved alternative assessment, if applicable, to the same extent such examinations are required of other public school students, as well as any standardized or other examinations required by each school's Accountability Plan. In addition, each school shall supplement those assessment tools with the other assessment tools required by the Terms of Operation, if any, or as are required by or set forth in each school's Accountability Plan further described below.

3.7 Accountability Plans. By May 15 of the school year in which any school first commences instruction, the Education Corporation shall ensure that such school creates an Accountability Plan, which plan upon its completion shall be incorporated into the Charter Agreement as a Term of Operation pursuant to section 1.1. The Accountability Plan shall replace and substitute for the assessment measures and educational goals and objectives set forth in the school's charter application in the Terms of Operation, but shall not provide for less stringent assessment measures or educational goals and objectives than those set forth in the school's charter application. The specific terms, form, and requirements of a school's Accountability Plan including any required goals and measures, are set forth in the Accountability Plan Guidelines (the "**Accountability Plan Guidelines**") maintained and disseminated by the Trustees, and currently on the website of the Institute. Such guidelines shall be binding on the Education Corporation. Upon a school's creation of an Accountability Plan, the Education Corporation shall fully implement, maintain, and report progress on, the Accountability Plan pursuant to the requirements of the Accountability Plan Guidelines, the annual reporting guidelines maintained by the Trustees (the "**Annual Reporting Guidelines**") (currently on the website of the Institute), as well as pursuant to section 6.1 of the Charter Agreement. Material amendments to any Accountability Plan shall be approved by the Trustees and shall be consistent with the Accountability Plan Guidelines then in effect. The Education Corporation understands that any school's success in meeting the goals and measures set forth in its Accountability Plan shall be the predominant criterion by which the success of the school's education program will be

evaluated by the Trustees upon the Education Corporation's application for renewal of the authority to operate such school. In addition, the collective success of the Education Corporation's schools in meeting such goals and measures shall be a criterion to be evaluated by the Trustees upon the Education Corporation's application for extension of its Provisional Charter pursuant to Education Law § 2851(4).

3.8 School Calendars; Days and Hours of Operation. The days and hours of operation of each school shall be determined by the Education Corporation at its discretion subject to the following restrictions:

(a) The days and hours of operation shall at all times be sufficient to allow each school to meet the student performance standards set by the Regents and the academic achievement goals and other goals set forth in each school's Accountability Plan and in no event shall any school provide less instructional time during a school year than is required of other public schools with instructional time to be divided generally in equal amounts and over 170 or more days.

(b) To allow parents to determine whether a school's program is appropriate for their child(ren), the Education Corporation shall in each year of the charter term determine the days and hours of operation of each school for the next school year by February 1 of the then current school year and shall make such information readily available to parents seeking to enroll their child(ren) in or return their child(ren) to each school. The Education Corporation shall not thereafter for the next school year make any material changes to the days and hours of operation of any school from those determined on each February 1<sup>st</sup> date that have the effect of shortening the number of days of instruction or hours in which such instruction is provided without obtaining the prior written permission of the Trustees, it being understood that such permission shall not be forthcoming except for good cause shown.

(c) Notwithstanding subsection (b) above, in the first school year in which a school provides instruction, the days and hours of operation shall be those set forth in the school's charter application in the Terms of Operation, except that the Education Corporation shall have the discretion, and without seeking permission of the Trustees, to (i) provide ten (10) fewer days of instruction than the amount set forth in the Terms of Operation for such school and (ii) lengthen the school day and school year for such school as it deems necessary and appropriate so long as the Education Corporation provides timely notice to parents of such changes and provides the minimum amount of instruction as required under subsection 3.8(a).

3.9 Student Disciplinary Codes. Each school shall maintain and implement written rules and procedures for student discipline including guidelines for suspension and expulsion, and shall disseminate those procedures to students and parents. Such guidelines and procedures must be consistent with applicable law including, but not limited to, requirements for due process, provision of alternative instruction and federal laws and regulations governing the discipline and placement of students with disabilities. In the first year of operation of any school, the school's discipline policy must be consistent with the discipline policy set forth in the

school's charter application in the Terms of Operation. Thereafter, the Education Corporation shall have the authority to make such modifications to the student disciplinary code of any school as it deems necessary and appropriate, and such modifications shall not require the permission of the Trustees or be deemed to constitute a revision to the Charter, except that material modifications of the disciplinary code shall be approved by the Education Corporation Board prior to such modifications becoming effective, and shall be reported as part of each school's annual report as required by section 6.1 of the Charter Agreement.

3.10 Complaint Policies. The Education Corporation shall implement and maintain a complaint policy for each school to receive and handle complaints brought pursuant to Education Law § 2855(4). Initially, such policy shall be that policy set forth in each school's charter application as set forth in the Terms of Operation. The Education Corporation shall have the power to amend each school's complaint policy in any way it deems necessary and appropriate, so long as such amendments are approved by the Education Corporation Board and are consistent with applicable law and due process, and reported as part of each school's annual report as required by section 6.1 of the Charter Agreement. A copy of each school's complaint policy shall be distributed to the parents and/or guardians of students enrolled in the respective school and made readily available to all others requesting a copy. The Education Corporation shall also provide a copy of each school's current complaint policy to the Trustees. Upon resolution of a complaint, the Education Corporation shall provide to the complainant:

- (a) its written determination and any remedial action thereto;
- (b) a written notice to the complainant that he or she may appeal the determination of the Education Corporation to the Trustees; and,
- (c) a copy of the Trustees' grievance policies (as they are posted on the website of the Institute).

3.11 Student Transportation. The Education Corporation shall meet the transportation needs of students ineligible for transportation pursuant to Education Law § 3635 only to the extent provided for in each school's charter application as set forth in the Terms of Operation. The Education Corporation may contract with a school district for the provision of supplemental transportation services to any school. All transportation provided by the Education Corporation shall comply with all safety laws and regulations applicable to other public schools. Notwithstanding the above, the Education Corporation's failure to provide such supplemental transportation as is contemplated in the Terms of Operation for a school where such transportation was to be provided by contract with the school district, shall not be deemed a material or substantial violation of the charter as defined in the Act, where the Education Corporation has attempted to negotiate such contract in good faith with the applicable school district. In such event, the Trustees may require the Education Corporation to provide the contemplated supplemental transportation services by alternate means if such means would be reasonable under the circumstances.

3.12 Health Services. The Education Corporation shall provide health services at each school as are set forth in the Terms of Operation, or their equivalent, so long as the services provided meet applicable law.

3.13 Food Services. The Education Corporation shall provide the food services designated for each school consistent with or equivalent to those outlined in the Terms of Operation so long as the services provided meet applicable law.

3.14 Facilities; Locations. The building(s) in which any school is to be located shall be known as its school facility (the “**School Facility**”).

(a) Prior to May 15 of the year that any school intends to provide instruction for the first time, the Education Corporation shall have:

(i) entered into a lease, purchase agreement or other such agreement that provides the Education Corporation with all rights and permissions necessary to operate the school in the School Facility according to the plan for the school set forth in the Terms of Operation (the “**Facility Agreement**”), which term includes financing agreements related to the facility the Education Corporation will enter into, and any master lease, sublease, or other similar agreement affecting the Facility Agreement or use of the School Facility. The Education Corporation shall provide the Trustees a copy of the Facility Agreement for review and approval, and a letter from counsel attesting counsel has reviewed the Facility Agreement, prior to the May 15 deadline;

(ii) provided to the Trustees for review and approval a detailed schedule setting forth the steps necessary to make the School Facility ready for commencement of instruction, together with the dates upon which such steps will be completed (the “**Facility Completion Schedule**”). The Facility Completion Schedule shall indicate the permits and licenses required to be obtained prior to the Education Corporation being legally able to operate the school in the School Facility (including, but not limited to, a certificate of occupancy or equivalent) (collectively the “**Permits**”) with the dates on which each such Permit shall be obtained, a detailed construction / renovation timeline (if applicable), which describes the work to be completed and the dates when such work will be completed, and an updated and detailed budget for all costs associated with preparing the School Facility for occupancy; and,

(iii) provided to the Trustees for review updated annual budgets (A) for the school for the remainder of the period of the Education Corporation has authority to operate the school, and (B) for the Education Corporation for the remainder of the Provisional Charter term, each reflecting the costs of the Facility Agreement in the form set forth in section 5.5 herein, provided, however, that unless the Trustees specifically request such budgets, same shall be due on the schedule required by section 5.5.

(b) In the event the Education Corporation does not have a Facility Agreement in place by May 15 of the calendar year in which a school intends to first provide instruction at a



School Facility, the school may not commence instruction until the start of the school year succeeding such scheduled start date, subject, however, to having (i) entered into a Facility Agreement, (ii) provided to the Trustees such agreement, attorney review, as well as the Facility Completion Schedule by May 15 of such succeeding year, and (iii) the subsequent approval of the Trustees. Notwithstanding the immediately foregoing sentence, the Trustees may waive the restrictions contained therein upon good cause shown and extend the date upon which the Facility Agreement and Facility Completion Schedule would be otherwise due. A failure to obtain the permission of the Trustees as specified above shall cause any Facility Agreement entered into without such permission to be voidable at the discretion of the Trustees.

(c) In the event that the Trustees find, through their review of the Facility Completion Schedule, the Facility Agreement or any other inquiry or investigation, that it is unlikely that a School Facility will be completed and that all Permits will be obtained in time for the opening of the School Facility on the scheduled opening date, the Trustees may require the Education Corporation to delay the school's commencement of instruction until the next academic year or such other date as the Trustees may designate. In the event that the Trustees require such delay, they shall provide their reasons in writing to the Education Corporation by July 15 of the year in which the school is then scheduled to provide instruction so long as the Education Corporation has complied with the requirements of this section.

(d) Pursuant to Education Law § 2851(2)(j), and notwithstanding any contrary provision of this section, in the event that the Terms of Operation do not identify a School Facility for a particular school, the Education Corporation shall notify the Trustees and the Regents within ten (10) business days of such School Facility having been identified.

(e) The Education Corporation shall take such actions as are necessary to ensure that the Facility Agreement and Permits for each School Facility are valid and in force at all times that the Education Corporation has authority to operate in such School Facility. Approvals of renewals or extensions of Facility Agreements shall follow the procedures set forth in this section or section 3.15, as applicable, provided that the Education Corporation need not provide a letter from counsel if the Facilities Agreement would be renewed on the same terms as the original.

3.15 Changes in Location and/or Expansion Plans. The Education Corporation may change the physical location of a School Facility or obtain additional buildings for a school within the same school district (in the case of the New York City School District, the borough) or obtain additional space in a building a school already occupies provided that the Education Corporation satisfies the provisions of the Act including, but not limited to, Education Law § 2853(1)(b-1) and provided further that:

(a) the Education Corporation notifies the Trustees of the proposed change in location or addition of facilities, in the case of an August or September opening, prior to May 15 of the calendar year in which the school intends to provide instruction in the new or additional School Facility, or, in the case of any other opening, one hundred and twenty (120) days prior to

the proposed commencement of instruction in the new or additional School Facility, and provides the Trustees with (i) a Facility Agreement, (ii) a Facility Completion Schedule, (iii) a letter from legal counsel for the Education Corporation indicating that such counsel has reviewed such Facility Agreement, and (iv) updated annual budgets (A) for the school for the remainder of the period the Education Corporation may operate the school, and (B) for the Education Corporation for the remainder of the Provisional Charter term, each reflecting the costs of the Facility Agreement in the form set forth in section 5.5, provided, however, that unless the Trustees specifically request such budgets in the case of an August or September opening, the budgets may be submitted on the schedule required by section 5.5; and provided further that

(b) the Trustees do not issue a denial to the Education Corporation within sixty (60) days of its receipt of such notification and complete information. The Trustees may issue a denial only for good cause. A failure to provide the Trustees with the notice period and/or Facility Agreement, attorney review, or Facility Completion Schedule for the School Facility required by subsection 3.15(a) within the time frames set forth therein shall constitute good cause. Notwithstanding the foregoing, the Trustees may shorten or otherwise waive the one hundred and twenty (120) day notice or other requirement for good cause shown. A failure to obtain the permission of the Trustees as specified above shall cause any Facility Agreement entered into without such permission to be voidable at the discretion of the Trustees.

3.16 Monitoring Plan and Oversight. The Education Corporation acknowledges that the Trustees, or their authorized agents, and the Regents have the right to visit, examine into and inspect the Education Corporation as well as any school or program the Education Corporation may operate and any records related to any of the foregoing. To permit the Trustees to fulfill their oversight function under the Act and ensure that the Education Corporation and each of its schools is in compliance with all applicable laws, rules and regulations and the terms and conditions of this Charter Agreement and the Provisional Charter, the Education Corporation agrees to abide by the Monitoring Plan that the Institute will implement for the Education Corporation and each school as applicable, the requirements of which are set forth at Exhibit B.

3.17 Education of Students with Disabilities and Funding of Services.

(a) The Education Corporation shall provide services and accommodations to students with disabilities as set forth for each school in the Terms of Operation and in accordance with the Students with Disabilities Assurances set forth in Exhibit C hereto, the Individuals with Disabilities Education Act (20 U.S.C. § 1401 *et seq.*) (the “**IDEA**”), the Americans with Disabilities Act (42 U.S.C. § 12101 *et seq.*) (the “**ADA**”), section 504 of the Rehabilitation Act of 1973 (29 U.S.C. § 794) (“**Section 504**”), all applicable regulations promulgated pursuant to such federal laws, and the individualized education program (“**IEP**”) of each student as determined by the committee or subcommittee on special education of the student's school district of residence or as assigned by such district (“**CSE**”). Pursuant to Education Law § 2853(4)(a), each school shall provide such appropriate and required services either directly, cooperatively with another school operated by the Education Corporation, or by contract with another provider, and, to the extent not otherwise indicated in the Terms of Operation, the Education Corporation may, elect to have

certain services provided by a student's school district of residence. The Education Corporation may seek reimbursement from a student's district of residence for the education of students with disabilities and related services provided by the Education Corporation, pursuant to a student's IEP or Section 504 plan, to the extent permitted under Education Law § 2856 and the New York Laws of 2002, chapter 83, part H, § 102.

(b) The Education Corporation is authorized to receive from a local school district direct payment of any federal or State aid attributable to a student with a disability attending any school in proportion to the level of services for such student with a disability that the school provides directly or indirectly as provided by law, or as set forth in contract.

#### **SECTION 4. PERSONNEL**

4.1 Status. The Education Corporation Board shall employ and/or contract with necessary personnel. The Education Corporation shall provide written notice to the Trustees within five (5) business days of the hiring or departure (by resignation or dismissal) of the director, principal or head of any school, however designated, as well as any similarly titled person managing or overseeing multiple schools for the Education Corporation. The organizational structure of the Education Corporation and each school shall be consistent with the structures set forth in the Terms of Operation.

4.2 Personnel Policies; Staff Responsibilities. The Education Corporation shall make available in written form its hiring and personnel policies and procedures for the Education Corporation, and, if applicable, for each school including the qualifications required by the Education Corporation and each school in the hiring of teachers, school administrators, and other school employees as well as a description of staff responsibilities. Such policies and procedures shall be consistent with those set forth in the Terms of Operation, and should clearly indicate that the Trustees have access to all personnel files to the extent permissible by law.

4.3 Instructional Providers. The Education Corporation shall employ or otherwise utilize in instructional positions only those individuals who are certified in accordance with the requirements applicable to other public schools, or who are otherwise qualified to teach under Education Law §§ 2854(3)(a-1)(i)-(iv) and applicable federal law including the federal Every Student Succeeds Act ("ESSA") and the IDEA. For purposes of this section, "instructional positions" means all those positions involving duties and responsibilities that, if otherwise undertaken in the New York public schools, would require teacher certification. At any school, teachers excepted from certification shall not in total comprise more than the number permitted under Education Law § 2854(3)(a-1), and shall have the qualifications required by state and federal law including, but not limited to, those imposed under the ESSA, as applicable. A teacher certified or otherwise approved by the Commissioner of Education of the State (the "Commissioner") shall not be counted against these numerical limits.

4.4 Paraprofessionals. Paraprofessionals employed by the Education Corporation must meet all credentialing requirements imposed by applicable federal law.

4.5 Background Checks; Fingerprinting. The Education Corporation shall establish, maintain, and implement procedures for conducting background checks (including a fingerprint check for a criminal record) of, and appointing on a conditional and/or emergency conditional basis (if applicable), all Education Corporation employees and prospective employees (whether part or full time) who work or would work in any school, as well as any individual who has regular access to the students enrolled in any school (including, but not limited to, employees and agents of any company or organization which is a party to a contract to provide services to the Education Corporation's school(s)) to the extent required by Education Law § 2854(3)(a-2) and the applicable requirements of 8 N.Y.C.R.R. part 87. Such procedures shall contain a specific provision that requires all criminal history reports to be reviewed by two or more employees designated by the Education Corporation Board in its personnel policies or otherwise. The Education Corporation may, but is not required to, conduct any and all other background checks permitted by law.

4.6 Collective Bargaining. In all cases when the Education Corporation is a party to a collective bargaining agreement, the Education Corporation must provide a copy thereof to the Institute including any extensions and side letters, amendments and renewals.

(a) In accordance with Education Law § 2854(3)(b-1), in the event that student enrollment at any school on the first day on which the school commences instruction does not exceed two hundred fifty (250) or the average daily student enrollment of the school does not exceed two hundred fifty (250) at any point during the first two (2) years after the school commences instruction then employees of the Education Corporation employed at such school shall not be deemed members of any existing collective bargaining unit representing employees of the school district in which the school is located, and the Education Corporation and its employees located at such school shall not be subject to any existing collective bargaining agreement between the school district and its employees or be recognized as any particular bargaining unit.

(b) If the conditions in subsections (a) immediately above are not met, then the employees of any school who are eligible for representation under Article 14 of the New York Civil Service Law shall be deemed to be represented in a separate negotiating unit at the school by the same employee organization, if any, that represents like employees in the school district in which the school is located.

(c) The Education Corporation may, in its sole discretion, choose whether or not to offer the terms of any existing collective bargaining agreement to any school or Education Corporation employees. If employees of a school of the Education Corporation are not represented by an existing collective bargaining unit, the Education Corporation shall afford reasonable access to any employee organization during the reasonable proximate period before any representation question is raised. If the employee organization is a challenging organization,

reasonable access shall be provided to any organization seeking to represent employees beginning with a date reasonably proximate to a challenge period.

4.7 Teacher Retirement Systems. To the extent permitted by law, the employees of the Education Corporation may be deemed employees of a local school district for the purpose of providing retirement benefits including membership in the teachers' retirement system and other retirement systems open to employees of public schools. The financial contributions for such benefits shall be the responsibility of the Education Corporation and its employees. Notwithstanding any contrary provision of the Charter Agreement, the parties shall abide by further regulations promulgated by the Commissioner, in consultation with the New York State Comptroller, to implement the provisions of this section including 8 N.Y.C.R.R. § 119.2.

## **SECTION 5. FINANCIAL OPERATIONS OF EDUCATION CORPORATION**

### 5.1 Management and Financial Controls.

(a) The Education Corporation shall at all times maintain appropriate governance and managerial procedures and financial controls and maintain same at each school, program or other activity operated by the Corporation.

(b) Upon the granting of the authority to operate an additional new school (i.e., authority not acquired through merger) and prior to its opening: (i) the Education Corporation's Treasurer, or an employee or agent acting on behalf of the Education Corporation pursuant to a specific delegation of authority from the Education Corporation Board, shall certify to the Trustees that substantially similar financial controls have been instituted for the new school; or, (ii) the Education Corporation shall comply with the Initial Statement procedures set forth in subsection 5.1(c). Any certification required by this section shall be in the form and manner, and submitted on the schedule, set forth on the website of the Institute.

(c) The Education Corporation shall provide a statement to the Trustees, no later than sixty (60) days from the date the Regents approve the authority of the Corporation to operate a new school (or is approved by operation of law), concerning the status of management and financial controls (the "**Initial Statement**") of the school. The Initial Statement must address whether the Education Corporation has documented adequate controls at that school relating to:

(i) preparing financial statements in accordance with generally accepted accounting principles ("**GAAP**");

(ii) payroll procedures;

(iii) accounting for contributions and grants;

(iv) procedures for the creation and review of quarterly financial statements, which procedures shall specifically identify the individual who will be responsible for preparing and reviewing such financial statements for the Education Corporation and for each school; and,

(v) appropriate internal financial controls and procedures.

The Initial Statement shall be reviewed and ratified by the Education Corporation Board prior to its submission to the Trustees. The Education Corporation shall thereafter, but within the sixty (60) day period, retain an independent certified public accountant or independent certified public accounting firm licensed in the State to perform an agreed-upon procedures engagement (the “**Independent Accountants’ Report**”) in accordance with attestation standards established by the American Institute of Certified Public Accountants. The purpose of the engagement will be to assist the Education Corporation Board and the Trustees in evaluating the Initial Statement and the procedures, policies and practices established there under. The resulting Independent Accountants’ Report should be provided to the Education Corporation Board no later forty-five (45) days after the commencement of such engagement with a copy to the Trustees. In the event that the Independent Accountants’ Report reveals that any of the above management and financial controls (subsections (i)–(v) of this subsection) are not in place, the Education Corporation shall remedy such deficiencies no later than forty-five (45) days from the date the Independent Accountants’ Report was received by the Education Corporation Board and shall provide to the Trustees within that forty-five (45) day period a statement that all deficiencies identified in the Independent Accountants’ Report have been corrected. Such statement shall identify the steps undertaken to correct the identified deficiencies. The Trustees may require additional evidence to verify the correction of all such deficiencies. All documents required to be submitted pursuant to this section 5.1 shall be submitted electronically in accordance with guidance published on the website of the Institute.

5.2 Financial Statements; Interim Reports. All financial statements that the Education Corporation is required to prepare shall be in accordance with GAAP then in effect for not-for-profit corporations. During each year of operation, the Education Corporation shall prepare and submit to the Trustees within forty-five (45) days of the end of each quarter of its fiscal year an unaudited statement of income and expenses for that preceding quarter in such form and electronic format as prescribed and disseminated by the Trustees and currently available through the website of the Institute to include, but not be limited to, certain financial statements for each school operated by the Education Corporation in addition to the aggregated statements for the Education Corporation as determined by the Institute; provided, however, the statement for the fourth quarter shall be due within thirty (30) days.

5.3 Audits.

(a) The Education Corporation shall retain an independent certified public accountant or certified public accounting firm licensed in the State to perform annually an audit of the Education Corporation’s annual financial statements. The independent audit of the Education Corporation’s financial statements must be performed in accordance with generally

accepted auditing standards and *Government Auditing Standards* issued by the Comptroller General of the United States, as well as any additional requirements and guidelines provided by the Trustees to include certain information, schedules and testing related to each school operated by the Education Corporation. The audited financial statements must be submitted to the Trustees by November 1 of each year. In addition, and pursuant to the same timetable, the Education Corporation must require its independent certified public accountant to issue a report on compliance with laws, regulations, contracts and grants and on internal controls over financial reporting, based on its audit of the financial statements. The Education Corporation must submit this report to the Trustees together with a corrective plan addressing any weaknesses or problems identified in the planning and performance of the audit, or management or advisory letters. The corrective plan must address each suggestion for consideration of management contained in the foregoing audit, letters, or compliance report and include a timetable that identifies the date by which each corrective step will have been completed.

(b) An Education Corporation that contracts with an Educational Service Provider must submit to the Trustees, or, at the Trustees' option, provide the Trustees access to, audited financial statements of the Educational Service Providers by November 1 of each year.

All documents required to be submitted pursuant to this section 5.3 shall be submitted electronically in accordance with guidance published on the website of the Institute.

5.4 Fiscal Year. The fiscal year of the Education Corporation shall begin on July 1 of each calendar year of the term of the Provisional Charter and shall end on June 30 of the subsequent calendar year.

5.5 Annual Budgets and Cash Flow Projections.

(a) The Education Corporation shall prepare and provide to the Trustees a copy of its annual budgets and cash flow projections for (i) the Education Corporation as a whole, (ii) each school, and (iii) each program or other activity each fiscal year by no later than June 30 of the immediately preceding fiscal year.

(b) During the Education Corporation's first fiscal year in which its first school(s) provides instruction, the Education Corporation shall provide its annual budget by August 1 of such year in the event that the budget or projection differs in any material respect from that set forth in the Terms of Operation. Thereafter, when a new school of the Education Corporation commences instruction, the Education Corporation must submit its and all of its operating schools' budgets and cash flow projections in accordance with subsection (a) immediately above, but may submit the budget and cash flow projection of the new school by August 1 of such year in the event that the budget or projection differs in any material respect from that set forth in the Terms of Operation for such school.

(c) All annual budgets and cash flow projections shall be in such form and electronic format as prescribed and disseminated by the Trustees, which will be available on the website of the Institute.

5.6 Maintenance of Corporate Status; Tax Exemptions. The Education Corporation shall maintain its status as a not-for-profit New York education corporation and its federal tax-exempt status pursuant to § 501(c)(3) of the Internal Revenue Code. The Education Corporation shall provide the Trustees with copies of all applications and filings relating to its seeking and maintaining its § 501(c)(3) tax-exempt status.

5.7 Insurance. The Education Corporation shall, at its own expense, purchase and maintain the insurance coverage for liability, property loss, and the personal injury of students for the Education Corporation and for each school or site as is described in the Terms of Operation together with any other additional insurance that the Education Corporation deems necessary. Such insurance policies shall continue in effect. In the case of additional schools, the applicable insurance must be in effect prior to employees or students being present in a School Facility. The Education Corporation shall provide the Trustees with certificates of insurance or other satisfactory proof evidencing coverage including, but not limited to, renewal policies within five (5) days of the commencement of each such policy, or additions, riders or amendments thereto covering additional schools. All such insurance policies shall contain a provision requiring notice to the Trustees, at least thirty (30) days in advance, of any material change, nonrenewal or termination. Notwithstanding any provision to the contrary, the Education Corporation shall take all steps necessary to comply with any additional regulations promulgated by the Commissioner and State Superintendent of Insurance to implement Education Law § 2851(2)(o).

## **SECTION 6. REPORTS**

6.1 Annual Reports. No later than August 1 succeeding a school year in which any school provided instruction (or received funding under Education Law § 2856), the Education Corporation, pursuant to Education Law § 2857(2), shall submit to the Trustees and the Regents and cause to be posted on the Education Corporation's or each school's website, an Annual Report for each school setting forth the academic program and performance of each school for the preceding school year. The Annual Report shall be in such form as shall be prescribed by the Commissioner and shall include at least the following components.

(a) A charter school report card, which shall be in such form and provide such data as set forth at 8 N.Y.C.R.R. § 119.3, which shall be easily accessible to the community including making it publicly available by transmitting it to local newspapers of general circulation and making it available for distribution at Education Corporation Board meetings.

(b) A discussion of each school's progress made towards achievement of the goals set forth in the Terms of Operation including its Accountability Plan.



(c) A certified financial statement setting forth, by appropriate categories, the revenues and expenditures for each school for the preceding school year including a copy of the most recent independent fiscal audit of the Education Corporation.

In addition, as part of the Annual Report, the Education Corporation shall provide for each school the following information to the Trustees.

(d) A report on the progress of each school in meeting the goals and measures of the Accountability Plan during the last school year (the “**Accountability Plan Progress Report**”). The Accountability Plan Progress Report must contain data addressing each goal and measure in the school’s Accountability Plan and should report data as required by the Trustees in order for the Trustees to substantiate outcomes. The Accountability Plan Progress Report shall be prepared pursuant to any requirements set forth by the Trustees including the Annual Reporting Guidelines, which will be available on the website of the Institute, and may require the Education Corporation to give the Trustees direct access to State assessment and other student performance data held by state and/or local agencies and/or make the Trustees an agent of the Education Corporation for such purposes. To the extent permitted by the Regents, the Accountability Plan Progress Report may be submitted in satisfaction of the requirement set forth at subsection 6.1(a) of this Charter Agreement. Should the Accountability Plan Progress Report indicate that the school has not met one or more of the goals in its Accountability Plan, the Trustees may require the Education Corporation to submit a corrective plan for the school pursuant to section 8.5 of the Charter Agreement.

(e) The school calendar for the present school year, such calendar to be consistent with subsection 3.8(b) of the Charter Agreement, setting forth the days and hours of operation for the regular school session as well as the summer session in the succeeding calendar year, if any is to be provided.

(f) The statement of assurances relating to compliance with requirements under the Provisional Charter, Charter Agreement and applicable law, the form and requirements of which shall be determined by the Trustees and contained in the Annual Reporting Guidelines.

(g) A School Trustee Disclosure Report for each Corporate Trustee who served on the Education Corporation Board during the preceding year in such form and manner as prescribed by the Trustees and as contained in the Annual Reporting Guidelines.

(h) A statement regarding rates of attrition for both students and teachers during the previous fiscal and school year, the form and requirements of which shall be determined by the Trustees and as contained in the Annual Reporting Guidelines.

(i) A brief statement, as more fully described in the Annual Reporting Guidelines, setting forth changes to the school’s educational program and mission as well as governing and organizational structures, during the previous fiscal and school year.

(j) The school’s progress in meeting the Enrollment and Retention Targets, the form and requirements of which shall be determined by the Trustees and contained in the Annual Reporting Guidelines or otherwise posted on the website of the Institute.

6.2 Financial Reports. The Education Corporation shall provide the financial reports required by sections 5.1, 5.2, 5.3 and 5.5 of the Charter Agreement pursuant to the terms and dates specified therein.

6.3 Child Abuse in an Educational Setting. Whenever the Education Corporation makes a determination under Article 23-B of the Education Law that there is a reasonable suspicion to believe that an act of child abuse has occurred at one of its schools (within the meaning of the statute), the Education Corporation must notify the Trustees of the same in addition to the other required statutory notifications. The Trustees shall not re-disclose this information except in accordance with applicable law.

## **SECTION 7. OTHER COVENANTS AND WARRANTIES**

7.1 Compliance with Laws and Regulations. The Education Corporation shall operate at all times in accordance with the Act and other applicable laws, rules and regulations and its schools shall meet the same health and safety, civil rights, and student assessment requirements as are applicable to other public schools, except as otherwise set forth in the Act.

7.2 Freedom of Information and Open Meetings Laws. The Education Corporation shall maintain and implement policies in order to ensure that it is in compliance with Articles Six (“**FOIL**”) and Seven (“**Open Meetings Law**”) of the New York Public Officers Law and all corresponding regulations.

(a) The Education Corporation shall: (i) issue FOIL “regulations” in accordance with the regulations of the Committee on Open Government; (ii) maintain a FOIL policy for each school accessible to parents; and (iii) post and have accessible the required notices and lists, as applicable, set forth in Article 6 of the Public Officers Law.

(b) The Education Corporation Board shall: (i) promulgate an Open Meetings Law policy that is accessible to parents in each school; (ii) post notices and provide a media advisory in accordance with the Open Meetings Law regarding each Education Corporation Board meeting; and (iii) take and maintain minutes of all meetings and executive sessions of the Education Corporation Board and its committees, if any.

7.3 Non-discrimination. The Education Corporation shall not discriminate against any student, employee or any other person on the basis of ethnicity, national origin, gender (except with respect to students in single-sex schools), or disability or any other ground that would be unlawful if done by any other public school. It shall take all steps necessary to ensure that discrimination does not occur, as required by federal civil rights laws.

## SECTION 8. CORPORATE AND SCHOOL RENEWAL; CORRECTIVE PLANS; TERMINATION

8.1 Corporate Renewal Notice. No later than August 1 in the calendar year prior to expiration of the Provisional Charter, which date the Trustees may, at their sole discretion and upon notice, extend, the Education Corporation may provide to the Trustees an application to extend the Provisional Charter in accordance with Education Law § 2851(4) (the “**Extension Application**”). The Trustees may, at their sole discretion, waive the August 1 date restriction upon a written request from the Education Corporation; however, the publication of a later application deadline date on the website of the Institute shall constitute such waiver. The Extension Application shall conform to the Institute’s guidelines and contain:

(a) a report of the progress made by the Education Corporation in achieving the educational objectives set forth in the Charter;

(b) a detailed financial statement disclosing the cost of administration, instruction, and other spending categories for the Education Corporation that will allow a comparison of such costs to other schools, both public and private;

(c) copies of each of the Annual Reports of the schools operated by the Education Corporation including the school report cards and certified financial statements;

(d) evidence of parent and student satisfaction at each school;

(e) the means by which each school will meet or exceed each school’s Enrollment and Retention Targets;

(f) a summary of the current status of any school’s probationary status, closure plan, or corrective action plan; and,

(g) such other material and information as is required by the Trustees.

8.2 Approval or Denial of Charter Extension. The Trustees shall either approve or deny the Extension Application. In the event that the Extension Application is not approved, then the parties to the Charter Agreement shall fulfill their respective obligations hereunder to the end of the term of the Provisional Charter, and the Education Corporation shall follow the procedures for dissolution as set forth in Education Law § 2851(2)(t) as supplemented by section 8.9 of this Charter Agreement. In the event that the Extension Application is granted, the Trustees, pursuant to Education Law §§ 2851(4) and 2852, shall enter into a proposed renewal charter with the Education Corporation and forward the proposed renewal charter and Extension Application to the Regents. Nothing herein shall obligate the Trustees to approve an Extension Application or resubmit a proposed renewal charter.

8.3 School Renewal Notice. No later than August 1 in the calendar year that is the last year of a school's Accountability Period (as defined in the Accountability Plan Guidelines), the Education Corporation may provide to the Trustees an application to extend the authority to operate a school (the "**School Renewal Application**"). The Trustees may, at their sole discretion, waive the August 1 date restriction upon a written request from the Education Corporation; however, the publication of a later application deadline on the website of the Institute shall constitute such waiver. The School Renewal Application shall conform to the Institute's guidelines and contain:

(a) a report of the progress of the school in achieving the educational objectives set forth in the Terms of Operation;

(b) a detailed financial statement disclosing the cost of administration, instruction, and other spending categories for the school that will allow a comparison of such costs to other schools, both public and private;

(c) copies of each of the Annual Reports of the school including the school report cards and certified financial statements;

(d) evidence of parent and student satisfaction at the school;

(e) the means by which the school will meet or exceed its Enrollment and Retention Targets; and,

(f) such other material and information as is required by the Trustees.

8.4 Approval or Denial of School Renewal. The Trustees shall either approve or deny the School Renewal Application. In the event that the School Renewal Application is not approved, the Education Corporation shall close the school at the end of the school year that corresponds with the end of the period the Education Corporation may operate the school, and the Education Corporation shall follow the procedures for school closure as set forth in section 8.10 of this Charter Agreement. In the event that the School Renewal Application is granted in whole or part, the Trustees, pursuant to Education Law § 2852(7), shall enter into a proposed charter revision with the Education Corporation to amend the Terms of Operation to allow the Education Corporation to operate the school for an additional period of time in accordance with the Trustees renewal practices, which will be available on the website of the Institute, and forward the proposed revision to the Regents. In the event the Provisional Charter term does not correspond to the school's renewal period, and the Provisional Charter would expire prior to the expiration of the school's renewal term, the Trustees will, upon application, so extend the charter term unless there is cause to revoke or terminate the Charter at that time pursuant to the Act or this Charter Agreement. Nothing herein shall obligate the Trustees to approve a School Renewal Application or an Extension Application or resubmit a proposed revision to renew the authority to operate a school.

8.5 Corrective Plans. If the Trustees determine that the Education Corporation or any of its schools, programs or sites is not progressing toward one or more of the performance or education goals set forth in the Charter, that the quality of a school's, program's or site's educational program or the Education Corporation's governance practices are not satisfactory, or that the Education Corporation or any of its schools or sites is not in compliance with the terms and conditions of the Provisional Charter or the Charter Agreement including the Monitoring Plan, then the Trustees, in consultation with the Education Corporation, may develop and require the Education Corporation to implement a corrective plan ("**Corrective Plan**"). Nothing contained herein shall require the Trustees to undertake the development of a Corrective Plan or be in derogation of the Trustees' or the Regents' ability to revoke the Provisional Charter, terminate the authority to operate a school, site or program, place the Education Corporation on probationary status, or initiate mandatory remedial action in accordance with the Act and sections 8.6 and 8.7 of the Charter Agreement.

8.6 Grounds for Charter Termination or Revocation. The Charter may be terminated and revoked:

(a) by the Trustees or the Regents in accordance with Education Law § 2855;  
or,

(b) by mutual agreement of the Parties hereto.

8.7 Grounds for School Closure. The Education Corporation's authority to operate any school, site, or program may be terminated or revoked:

(a) should the Trustees determine that one of the grounds set forth in Education Law § 2855 apply to such school, site, or program; or

(b) by mutual agreement of the Parties hereto.

8.8 Notice and Procedures.

(a) Should the Trustees determine that one of the grounds for termination or revocation of the Charter as defined under the Act has occurred or is occurring, the Trustees may, at their discretion, elect as follows:

(i) to terminate the Charter; or

(ii) terminate the Education Corporation's authority to operate one or more programs, schools, or sites, or any combination thereof; or,

(iii) to place the Education Corporation on probationary status and prepare and cause the Education Corporation to implement a remedial action plan the terms and conditions of which the Education Corporation must agree to abide by in all respects.

(b) Should the Trustees elect to terminate the Charter, the Trustees shall provide notice of such to the Education Corporation Board at least thirty (30) days prior to the effective date of the proposed termination. Such notice shall include a statement of reasons for the proposed termination. Prior to termination of the Charter, the Education Corporation shall be provided an opportunity to be heard and present evidence in opposition to termination.

(c) Should the Trustees elect to place the Education Corporation on probationary status, such probation shall be effective upon notice to the Education Corporation. In the event that the Education Corporation is placed on probationary status, and does not abide by the terms and conditions of the remedial action plan to the satisfaction of the Trustees, or refuses to implement such plan, the Trustees may declare the Charter terminated with notice of such decision to be given to the Education Corporation Board at least five (5) days prior to the termination date set by the Trustees. The terms and conditions of a remedial plan may include, but are not limited to, the termination of the authority of the Education Corporation to operate a school, site, or program.

(d) Should the Trustees elect to terminate the authority of the Education Corporation to operate a school or site, the Trustees shall provide notice of such to the Education Corporation Board in the same manner as set forth in subsection (b) of this section 8.8.

(e) Should the Trustees elect to terminate the authority of the Education Corporation to operate a program as described in subsection 1.5(c) or (d), the Trustees shall provide notice of such to the Education Corporation, in any manner acceptable under this Charter Agreement.

#### 8.9 Education Corporation Dissolution and Reserve Fund.

(a) In the event of termination of the Charter, whether prematurely or otherwise, the Education Corporation shall establish and follow procedures consistent with those required by Education Law § 2851(2)(t) for the transfer of students and student records to the school district in which each school is located and for the disposition of the Education Corporation's assets to another charter school located within the school district or the school district in which the Education Corporation is located. In addition, in case of such an event, voluntary surrender of the Charter or the closure of all of the schools of the Education Corporation without termination of the Charter, the Education Corporation will follow any additional procedures required by the Trustees or the Regents to ensure an orderly dissolution or transition process, (including the implementation of an education corporation or school closure plan as provided by and/or posted on the website of the Institute; appointment of pupil placement coordinators, a custodian of records, and any other necessary personnel; and

providing the Institute with a parent contact list).

(b) The Education Corporation must create a dissolution reserve fund or account for purposes of school closure and/or dissolution of the Education Corporation in an amount to be determined as follows:

(i) seventy-five thousand dollars (\$75,000) per school for each of the first two (2) schools operated by the Education Corporation to be funded, at a minimum, by reserving twenty-five thousand dollars (\$25,000) per year during the first three (3) years of operation of each school;

(ii) twenty-five thousand dollars (\$25,000) per school for each additional school operated by the Education Corporation to be reserved in the first year of operation of each school up to a maximum of three hundred and fifty thousand dollars (\$350,000).

(c) In the event any of the conditions in sections 8.6 or 8.8 exist or any of the following events:

(i) grounds for termination or revocation of the Charter or of the authority of the Education Corporation to operate any of its schools exist as set forth in the Act or this Charter Agreement, or there is fiscal mismanagement, lack of organizational viability, or lack of educational soundness; or

(ii) when the Trustees make a finding that any school of the Education Corporation is far from meeting most of the goals in its Accountability Plan and not making substantial progress toward meeting those goals;

(iii) when the Trustees deny approval of a charter extension for the Education Corporation or deny school renewal for one or more schools; or

(iv) current or future litigation, or other events that threaten the fiscal soundness of the Education Corporation as determined by the Trustees;

the Trustees may require the escrow or other third-party safeguarding of the funds in the dissolution reserve account, and may require disbursement of funds therefrom to be pursuant to terms and conditions determined by the Trustees or their designee.

(d) In the event the Education Corporation draws down funds from the dissolution reserve fund but does not dissolve, the Education Corporation shall deposit funds into the account to maintain the minimum balance set forth in this Charter Agreement. The Education Corporation shall provide notice to the Trustees anytime funds from the dissolution reserve fund are drawn or used for any purpose not set forth in this section.

(e) The provisions of this section 8.9 shall survive the termination, revocation

or expiration of this Charter Agreement, the Charter, or the Provisional Charter.

8.10 School Closure Procedures and Plan. In the event of non-renewal or closure of one of the schools or sites operated by the Education Corporation, whether prematurely or otherwise, the Education Corporation shall establish and follow procedures consistent with those required by Education Law § 2851(2)(t), implement a school closure plan as published by the Institute at that time and/or on the website of the Institute, and follow any additional procedures required by the Trustees to ensure an orderly closure or transition process to include providing the Institute with a parent contact list. The Education Corporation must put in place procedures to transfer students to other schools operated by the Education Corporation or the school district in which the school is located, and inform parents regarding educational options. In addition, the Education Corporation must retain and safeguard any student records from such school, and forward copies of same to each student's new school or district as appropriate and requested. The Education Corporation shall cooperate with the Trustees in any effort to transfer, re-use, or restructure such charter, or authority to operate such school or site.

## **SECTION 9. MISCELLANEOUS**

9.1 Disclaimer of Liability. The parties acknowledge the Education Corporation is not operating as the agent, or under the direction and control, of the Institute, Trustees, or Regents except as required by law, Provisional Charter, or this Charter Agreement, and that none of the Institute, Trustees, or Regents assumes any liability for any loss or injury resulting from:

(a) the acts and omissions of the Education Corporation, its directors, trustees, agents, or employees;

(b) the use and occupancy of the building or buildings, occupied by the Education Corporation, or any matter in connection with the condition of such building or buildings;

(c) any debt or contractual obligation incurred by the Education Corporation.

The Education Corporation acknowledges that it is without authority to extend the faith and credit of the Institute, Trustees, Regents, or public district schools to any third party.

9.2 Notice of Receipt of Summons, Complaint or Other Litigation. The Education Corporation shall provide written notice to the Trustees within five (5) business days of the receipt or filing of any civil or criminal summons, complaint, arbitration, or other litigation papers in which either the Education Corporation or any Corporate Trustee, officer, or employee (acting in his or her corporate capacity) is a named party to the action or other proceeding.

9.3 Governing Law. This Charter Agreement shall be governed by, subject to and construed under the laws of the State without regard to its conflicts of law provisions.



9.4 Waiver. No waiver of any breach of this Charter Agreement shall be held as a waiver of any other or subsequent breach.

9.5 Counterparts; Signature by Facsimile. This Charter Agreement may be signed in counterparts, which shall together constitute the original Charter Agreement. Signatures received by electronic transmission with legally valid and binding electronic signature by either of the Parties shall have the same effect as original signatures.

9.6 Terms and Conditions of Operation.

(a) The Parties expressly agree that the Terms of Operation set forth overall goals, standards and general operational policies of the Education Corporation and the school(s) and site(s) it is permitted to operate, and that the Terms of Operation are not a complete statement of each detail of the Education Corporation's or the schools' or sites' operations. To the extent that the Education Corporation desires to implement specific policies, procedures, or other specific terms of operation that supplement or otherwise differ from those set forth in the Terms of Operation, the Education Corporation shall be permitted to implement such policies, procedures, and specific terms of operation without seeking the permission of the Trustees or a revision to the Charter Agreement, provided that such policies, procedures and terms of operation and any changes thereto are not otherwise prohibited, circumscribed, or limited by the Act, other applicable law, the Provisional Charter or this Charter Agreement.

(b) Where there is a conflict between the terms of the Charter Agreement and the Terms of Operation, the terms of the Charter Agreement shall govern. Where a provision of the Charter Agreement provides additional terms or conditions as to modifying a specific policy, provision or term of operation, such specific terms and conditions shall govern. Where a provision of the Additional Assurances and Terms conflicts with the general Terms of Operation or the Charter Agreement such provision of the Additional Assurances and Terms shall govern. Where a provision of the Charter Agreement conflicts with the Provisional Charter, the terms of the Provisional Charter shall govern.

9.7 Revision. This Charter Agreement may be revised only by written consent of the Parties hereto and, in the case of material revisions, only pursuant to Education Law § 2852(7).

9.8 Assignment. This Charter Agreement may not be assigned or delegated by the applicant(s) or the Education Corporation under any circumstances, it being expressly understood that the Charter granted hereby runs solely and exclusively to the benefit of the Education Corporation.

9.9 Notices. Any notice, demand, request, or submission from one Party to any other Party or Parties hereunder shall be deemed to have been sufficiently given or served for all purposes if and as of the date, it is delivered by hand, overnight courier, electronic mail as an attachment thereto with a legally valid and binding electronic signature or an electronic image



THE STATE UNIVERSITY OF NEW YORK  
BOARD OF TRUSTEES

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Date

By: Susan Miller Carello, acting for the  
State University of New York Board of Trustees

Title: Executive Director, State University of New York,  
Charter Schools Institute

{NAME{  
CHARTER SCHOOL

---

Date

By:

Title:

# SCHEDULE 1

**The Education Corporation has the authority to operate the following schools (until the stated date):**

1. {NAME} Charter School (through July 31, 20\_\_)<sup>1</sup>.

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<sup>1</sup> To coincide with the term of the Provisional Charter per Paragraph 1.2 of this Agreement.

# **EXHIBIT A**

## **TERMS OF OPERATION**

# **EXHIBIT B**

## **MONITORING PLAN**

## Monitoring Plan

As provided in the Charter Agreement, the Education Corporation agrees to abide by a Monitoring Plan, the general components of which are set forth below. The requirements of the Monitoring Plan, are in addition to any notification, record-keeping, or reporting requirements set forth in the Charter Agreement or applicable law including any obligation to receive the written approval of the Trustees of the Institute, and/or to seek approval for revision of the Charter pursuant to Education Law § 2852(7).

- A. The Education Corporation shall maintain the following records in its offices for inspection by the Trustees and the Regents:
1. Records concerning the enrollment and admissions process including all applications received and documents concerning the lottery process if conducted;
  2. Student academic and health records;
  3. Attendance records for students including withdrawals of students from each school and the reason(s) for such withdrawals including, but not limited to, reports made to the Regents regarding withdrawals;
  4. Individual Education Programs and other documentation concerning the Individuals with Disabilities Education Act (“IDEA”) as well as documentation concerning section 504 of the Rehabilitation Act of 1973 for children with disabilities enrolled in each school;
  5. Staff rosters including records of hiring, resignation, and termination of employees of the Education Corporation;
  6. Evidence of credentials and/or qualifications for all teachers;
  7. Evidence that required fingerprint supported background checks and emergency conditional appointments, if any, have been conducted for all school employees;
  8. Certificates of occupancy or other facility-related certification or permits;
  9. Lease agreements and/or mortgages or deeds;
  10. Loan documents;
  11. Contracts in excess of \$1,000 including management contracts;
  12. Education Corporation or school policies in areas such as financial management, personnel, student discipline (including suspension and expulsion), complaints, health

and safety, student privacy and transportation, Freedom of Information Law, Open Meetings Law and other areas required by the Charter Agreement or law;

13. Grievances made by students, parents, teachers, and other employees of the Education Corporation including, but not limited to, complaints received by the Education Corporation Board or designee pursuant to Education Law § 2855(4), together with documentation of all actions taken in response;
  14. Inventory of all assets of the Education Corporation that have been purchased with public funds including grant funds;
  15. Documents sufficient to substantiate each school's progress on the measurable goals set forth in its Accountability Plan; and,
  16. Student level discipline records including, but not limited to, information regarding in-school and out-of-school suspensions, and expulsions for all students (including students with disabilities) available by grade and year reflecting:
    - a. number of suspension/expulsion incidents; and,
    - b. number of different students involved in suspension/expulsion incidents.
- B. To corroborate information submitted by the Education Corporation to the Trustees, and in order to ensure the Education Corporation's full compliance with the Act, the Provisional Charter, and the Charter Agreement, the Trustees will:
1. Make at least one visit to each school in its first year of operation, not including the Prior Action Visit. Such visits may include an inspection of the physical plant, all categories of records set forth in subsection A of the Monitoring Plan, interviews with the director of the school and other personnel, and observation of instructional methods. Visits in later years may decrease in frequency and be conducted by consultants or agents of the Charter Schools Institute;
  2. During the first term of authority to operate a school, make at least one other visit to a school, which may be announced or unannounced. In subsequent terms, the Institute may conduct visits on a sampling basis for schools that demonstrate high levels of academic and fiscal soundness, compliance with applicable laws, rules, and regulations, and whose academic performance makes it likely they will improve student learning and achievement;
  3. Require the Education Corporation to make available necessary information in response to the Trustee's inquiries including information necessary for the Trustees to prepare annual or semi-annual evaluations of each school's financial operations, academic program, future outlook and other areas;



4. Conduct internal investigations as appropriate on its own initiative or in response to (i) concerns raised by students, parents, employees, local school districts and other individuals or groups including, but not limited to, complaints brought pursuant to Education Law § 2855(4). Where appropriate, the Trustees shall issue remedial orders as permitted by Education Law § 2855(4);
  5. Review as necessary the Education Corporation's and its schools' operations to determine whether any changes in such operations require formal revision of the Charter pursuant to Education Law § 2852(7) and, if so, determine whether such revision should be recommended for approval; and
  6. Encourage relevant officers, employees and agents of the Education Corporation to attend conferences, seminars and training sessions identified or sponsored by the Trustees and which are designed to assist the Education Corporation to fulfill its mission.
- C. The Education Corporation Board shall provide the Institute with:
1. a copy of all minutes from each of its meetings, committee meetings and executive sessions within 30 days of the meeting or session regardless of whether same have been ratified or approved;
  2. an updated list of Corporate Trustees and Officers by August 1 each year and within five (5) business days of such person's removal; resignation; expiration of term without re-election; or, otherwise leaving the Education Corporation Board; and,
  3. an updated list of each director, principal or head of school for each site of each school, however designated, by August 1 each year and within five (5) business days of any hire or departure of such person.
- D. The Education Corporation shall track, and maintain information regarding, any and all student-level suspensions (including in-school and out-of-school suspensions of less than one day) and expulsions including, but not limited to:
1. the date the disciplinary action was instituted;
  2. the duration of any suspension;
  3. the reason for such suspension or expulsion;
  4. the student's status as an English Language Learner ("ELL"), a student with a disability under the IDEA or a student who qualifies for the federal Free or Reduced Price Lunch program("FRPL"); and,

5. other student demographic information.

The Education Corporation shall provide the Institute with such information on a quarterly basis in accordance with guidance maintained and disseminated by the Trustees and available on the website of the Institute. Such guidance shall be binding on the Education Corporation.

E. The Education Corporation shall track, and maintain information regarding, any and all student-level enrollment and retention information including, but not limited to:

1. the date of any student withdrawal, transfer or discharge;
2. the reason for each withdrawal, transfer or discharge;
3. the student's status as an ELL, student with a disability under the IDEA or a FRPL student; and,
4. other student demographic information.

The Education Corporation shall provide the Institute with such information on a quarterly basis in accordance with guidance maintained and disseminated by the Trustees and available on the website of the Institute. Such guidance shall be binding on the Education Corporation.

## **EXHIBIT C**

### **ASSURANCES REGARDING STUDENTS WITH DISABILITIES**

## Assurances Regarding Students with Disabilities

The Education Corporation provides the following assurances regarding the provision of education and other services to students with disabilities to be enrolled at each proposed charter school.

- The Education Corporation will adhere to all provisions of federal law relating to students with disabilities including the IDEA, Section 504, and Title II of the ADA which are applicable to it.
- The Education Corporation will, consistent with applicable law, work with Local Education Agency (LEA) school districts to ensure that all students with disabilities that qualify under the IDEA:
  - have available a free appropriate public education (“FAPE”);
  - are appropriately evaluated;
  - are provided with an IEP;
  - receive an appropriate education in the least restrictive environment (LRE);
  - are involved in the development of and decisions regarding the IEP, along with their parents; and,
  - have access to appropriate procedures and mechanisms, along with their parents, to resolve any disputes or disagreements related to a school’s or school district’s provision of FAPE.
- Unless otherwise approved by the Trustees, the Education Corporation will employ for each school, at a minimum, **a person properly certified in New York in any Students with Disabilities Certificate Title** as the school’s students with disabilities coordinator, whose responsibilities will include coordinating with CSEs; providing information to and obtaining information from CSEs as needed throughout the year; determining if entering students have IEPs; and working with CSEs and school districts to ensure that all required settings and related services are being provided and that all IEPs are appropriate in the context of the charter school overall setting. The Education Corporation may permit the students with disabilities coordinator to take on additional administrative duties to the extent that they do not interfere with the coordinator’s responsibilities to ensure the school’s compliance with the IDEA, Section 504 and Title II of the ADA.
- Each school will make available, as required by IDEA regulations, a student’s regular and special education teachers (and other required school personnel) for meetings convened by such student’s CSE, and provide such teachers and personnel with copies of the student’s IEP.

- Each school will ensure that parents of children with disabilities are informed of how their children are progressing on annual IEP goals and in the general curriculum at least as frequently as parents of regular education children.
- Each school will abide by the applicable provisions and regulations of the IDEA and the Family Educational Rights and Privacy Act (FERPA) as they relate to students with disabilities including, but not limited to, having procedures for maintaining student files in a secure and locked location with limited access.
- Each school's students with disabilities coordinator will retain such data and prepare such reports as are needed by each disabled student's school district of residence or the State Education Department in order to permit such entities to comply with federal law and regulations.
- Each school will comply with its obligations under the Child Find requirements of IDEA including 34 C.F.R. § 300.111, and will provide appropriate notification to parents in connection therewith as applicable, including notifying them prior to providing a child's name to a CSE for potential evaluation.
- No school or the Education Corporation will convene its own CSE, make IDEA evaluations of children suspected of being disabled, create IEPs, reevaluate or revise existing IEPs or conduct due process hearings. The Education Corporation understands that these responsibilities are left solely to the CSE of the student's district of residence and the Education Corporation will implement IEPs as written.
- Appropriate Education Corporation personnel will attend such training and technical assistance seminars regarding the education and servicing of students with disabilities as is required by the Trustees including those sponsored by the State Education Department.

**EXHIBIT D**

**ASSURANCES REGARDING  
THE PROVISION OF  
FISCAL AUDITS AND DISSOLUTION**

## **Assurances Regarding the Provision of Fiscal Audits and Dissolution**

The Education Corporation provides the following assurances regarding the provision of fiscal audits and dissolution of the Education Corporation.

### **Fiscal Audits**

- The Education Corporation will provide for an annual independent fiscal audits conducted by a certified public accountant or certified public accounting firm licensed in New York State.
- The Education Corporation will ensure such consolidated audited financial statements include:
  - A statement of income and expenditures and a balance sheet for the most recent fiscal year for each school of the Education Corporation for which the Education Corporation has received approval to operate. A separate income and expenditure statement and balance sheet should be included for each approved school or site in a start-up phase, and for schools or sites for which opening has been delayed;
  - A statement of income and expenditures and a balance sheet for the most recent fiscal year for any central or regional back office component;
  - A statement of income and expenditures and a balance sheet for the most recent fiscal year for any other distinct component of the Education Corporation;
  - A consolidated statement of income and revenues and a consolidated balance sheet for the Education Corporation; and,
  - A federal single audit report, if applicable.
- An Education Corporation with the authority to operate multiple schools must provide specific procedures for conducting independent audits of consolidated financial statements for the Education Corporation and all of its schools.

### **Dissolution Procedures**

The Education Corporation will:

- Create a communication plan for students, families and staff. The communication plan shall take into account timing to ensure students are able to take advantage of other school choice options that may be available.
- Provide the Institute with the parent names and addresses of all students enrolled in the school, at the time, by grade to enable the Institute to communicate directly with families regarding the process as necessary.
- Transfer all student records, testing materials, etc. to the school district of location of the charter school and make available a copy of such records to each student's parent or legal guardian.

- Designate one or more trustees and/or employees to assist in the closure of the school, from an operational and financial perspective.
- Transfer the Education Corporation's fixed assets (if any, after the payment of all debts) in accordance with the law at the time of dissolution.
- Provide the procedures that the school would follow in the event of the closure and dissolution of the Education Corporation including for the transfer of students and student records, execution of a SUNY Closure Plan, and for the disposition of school assets.
- Establish an escrow account, in the case of a single-school education corporation, of no less than \$75,000 to pay for legal, final audit and other wind up expenses associated with dissolution should it occur. The budget shall reflect this commitment and include funding of \$25,000 increments in the school's first three years of instruction. (Note that a separate reserve fund does need to be established and be reflected separately in the financial statements and notes to the financial statements.)
- In the case of an education corporation operating multiple charter schools, the Education Corporation must follow the dissolution reserve fund provisions in its charter agreement and reserve the appropriate amount of funds accordingly.

The Education Corporation understands that the above provisions largely apply to an education corporation operating one charter school, and that the above provisions must be modified in the case where the Education Corporation operates multiple charter schools and some, but not all, of those schools close.