

## Education Service Provider Agreement

This Education Service Provider Agreement executed on this 25<sup>th</sup> day of April, 2013, (the "Agreement") by and between the Board of Trustees of Lowell Collegiate Charter School (the "Board") with offices at 1857 Middlesex Street, Lowell, MA 01851 beginning September 1, 2013 and 1075 Westford Street, Suite 303, Lowell, MA 01851 from March 1, 2013 through August 31, 2013, and Springfield Education Management LLC ("SEM") or ("Education Provider"), a Delaware Limited Liability Company with an office at 6385 Beach Road, Eden Prairie, Minnesota 55344.

### PREAMBLE

WHEREAS, the Board has been granted a charter, which shall include the Charter Application or Petition, from the Massachusetts Board of Elementary and Secondary Education ("Authorizer"), to be effective July 1, 2013 to June 30, 2018, to operate an independent Public Charter School in accordance with all Massachusetts State Charter School laws and regulations, Mass. Gen. Laws ch. 71, § 89 and 603 Code Mass. Regs. §1.00 et seq., and in accordance with all other applicable federal and state laws;

WHEREAS, the Education Provider is in the business of educating children in accordance with the Educational Program and philosophy of SABIS® Educational Systems, Inc., ("SABIS") and is desirous of working with the Board to implement the SABIS® Education Program and Philosophy at the School;

WHEREAS, the Board desires to have the Education Provider provide managerial, administrative, and educational services to and on behalf of the School, in accordance with the provisions of the Charter School Law, and any and all other applicable laws and regulations, and upon the terms and conditions hereinafter set forth, and the Education Provider desires to provide such services to the Board; and

WHEREAS, the Board and Education Provider share a common vision that diligent use of the SABIS® Educational System will help a randomly selected, diverse group of students become responsible citizens with a love of life-long learning; The mission of the Lowell Collegiate Charter School is to provide an academically rigorous and successful world-class college preparatory public educational program that enables all students, regardless of their background, to achieve their full potential, to be prepared for success in college, equipped with the ability and desire for lifelong learning, and develop strong civic, ethical, and moral values in a safe, caring, and rigorous environment built on a school ethos that emphasizes high behavioral and academic expectations;

### WITNESSETH

NOW, THEREFORE, in consideration of the mutual covenants, representations, warranties and agreements contained herein and for other good and lawful consideration, the

receipt of which is hereby acknowledged, the parties hereby agree as follows:

1. Duties and Obligations of the Board.

1.1. Governance. The Board has the ultimate responsibility for establishing the school's budget and determining its curriculum pursuant to M.G.L. c. 71, Section 89(w). The Board shall be responsible for the oversight, but not the day-to-day management, of the School. The Board's oversight responsibilities shall be limited to that which is required by law. The Board shall comply with all of the provisions of applicable law including, but not limited to, those regulating access to equal educational opportunities, open meeting laws, the Board's own by-laws, and freedom of information laws. The Board shall carry out its duties under this Agreement in such a manner as to minimize disruption to the orderly functioning and administration of the School. Unreasonable interference by the Board of the day-to-day management of the School will be considered a material breach of this Agreement and subject to the provisions of Section 8.2.1.

1.2. Appointment. The Board represents that it is authorized by law, subject to the approval of Authorizer, to contract with a private entity for that entity to provide educational management services. The Board hereby appoints and engages the Education Provider for the purpose of providing managerial, administrative, and educational services to the School more specifically described herein.

1.3. Maintenance of Charter. The Board has the obligation to comply with the provisions of and to maintain the Charter, granted by the Authorizer for a five year charter term, including the Charter Application (the Charter and Charter School Application shall hereinafter be referred to as the "Charter"), for establishment of an independent Public Charter School ("the School"), in accordance with all Massachusetts Charter School laws and regulations (hereinafter the "Charter School Law") and in accordance with all other applicable federal and state laws.

1.4 Communication with Education Provider. The Board has the obligation to comply with the provisions of and maintain the Charter granted by the Authorizer for establishment of the School. The Board shall do and cause to be done all things necessary to ensure that all conditions imposed by the Authorizer in connection with the grant of the Charter are fulfilled at all times. If the Board is notified by the Commonwealth of Massachusetts, the Authorizer or any other governmental authority, or by any other person or entity that it may be in violation of the Charter School Law or any other applicable law or regulation, the Board shall take whatever action it deems necessary and appropriate to:

1.4.1. Determine if a claimed violation in fact exists; and

1.4.2. If a violation is determined to exist, the Board may take whatever actions

it deems necessary to correct the violation and return to full compliance; or if it is determined that no such violation exists, take whatever actions it deems necessary and appropriate to contest the claimed violation; and

1.4.3. Regardless of what action is taken by the Board, they shall keep SEM appraised as to the status of their actions and where possible act in a cooperative manner with SEM to address any purported violation as described above.

1.4.4. Upon notice of purported violation as described above, the Board shall immediately, but not later than ten (10) days from receipt of said notice, notify SEM of the claimed violation and may request SEM to assist in any of the actions set forth above by whatever reasonable means are necessary and appropriate.

1.4.5. If the Board requests SEM to take action, within thirty (30) days of the Boards' notification or earlier if specified in the Boards' Notice of Violation, and regardless of the results of any investigation, SEM shall respond in writing stating the results of the investigation and identifying all steps proposed to be taken to either address the violation or contest the claimed violation. The Board shall then approve or disapprove of SEM's planned actions and/or identify further action to be taken. SEM shall comply with any reasonable request for information or reasonable demand for action determined by the Board to be necessary.

1.4.6. In addition to its responsibilities set forth in this Section 1.4, SEM shall have the right to respond on its own behalf to the appropriate governmental authority or other person or entity alleging any violation of law in connection with the operation of the School

1.5. Evaluation of Education Provider. Education Provider shall cooperate fully with the Board in the Board's review of the progress of Education Provider towards educating the children in accordance with the Accountability Plan to be submitted and approved by the Massachusetts Department of Elementary and Secondary Education ("ESE"). Any third-party evaluation must be performed by a mutually agreed upon evaluator. Any evaluation of the Education Provider must not disrupt the educational process. Such evaluation may consider the Accountability Plan as a criterion, along with other criteria the Board deems appropriate. The first evaluation under this Agreement shall not commence prior to the completion of one full academic year. Thereafter, evaluations shall be conducted annually.

1.6. Student Enrollment. Education Provider and the Board shall work cooperatively in recruiting and admitting students to the School, subject to the Charter School Law, School Policies, and any and all other applicable federal and state laws and regulations. Students shall be admitted to the School as determined pursuant to policies established by the Board in close consultation with the Education Provider and in conformance with the

requirements of ESE. Education Provider shall be responsible for administering the School's recruitment, retention, admissions, lottery, and enrollment processes in accordance with the policies established by the Board, the Charter School Law, and any and all other applicable federal and state laws and regulations.

1.7. Legal Status and Tax Status. The School is a public charter school established by a charter issued by Authorizer. The Board is a public entity and the individual members are considered special state employees.

1.8. Physical Space. The Board shall be responsible for finding and acquiring occupancy rights in the physical spaces where the School will operate, and for ensuring the physical spaces will be ready for occupancy at least three weeks prior to the first day of school. The Board shall be responsible for all construction, health and safety laws. All costs incurred in locating facilities, including but not limited to surveying, engineering, renovation, consultant costs, and initial lease payments, shall be paid from funds allocated in the Start-Up Budget, and additional lease payments shall be part of the Operating Budget. The Board shall delegate to the Education Provider the management of such real estate. The Education Provider must approve in writing all decisions related to the acquisition, remodeling and maintenance of the facilities. The Education Provider is responsible for developing and implementing a policy, subject to Board approval, for determining who has access to the building, including who has keys to the building, regardless of who signs the lease or owns the property.

1.9. Name of the School. The name of the School shall be "Lowell Collegiate Charter School". During the term of this Agreement, all business cards, letterhead, brochures, signs, press releases, official school correspondence, websites, including social media sites, etc., shall also contain the following words: "Member of the SABIS® School Network" pursuant to the corporate guidelines and the SABIS® Logo- the olive tree with the date 1886. If Education Provider or another SABIS® affiliate no longer manages the School, the Board shall not be permitted to use any copyrighted or protected name or logo associated with SABIS® and shall immediately remove and return all items containing the SABIS® name and or logo.

1.10. Publicity. The Board shall not refer to the Education Provider or any entity affiliated with the Education Provider in any advertising or other publication in connection with goods or services rendered by the Education Provider without the prior written approval of the Education Provider.

1.11. Governing Board Training. Prior to the opening of the school, all Board members shall participate in formal School Governing Board training with a board trainer or program chosen in consultation with the Education Provider and the Board. The cost of such training shall be a Start-Up Budget item. All Board members shall participate in formal School Governing Board training each year the School is open as well as a Board self- evaluation in relation to Charter School Board best practices. The cost of such training shall be a budget item.

## 2. Duties and Obligations of Education Provider.

Consistent with the obligations of the Board under the Charter School Law and regulations (Mass. Gen. Laws ch. 71, § 89 and 603 Code Mass. Regs. §1.00 et seq.), School Policies, and any and all applicable federal and state laws and regulations, Education Provider shall have the following duties and obligations in connection with the operations of the School and education of the children enrolled as students in the School.

### 2.1. Duties and Obligation to Manage School.

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

- (a) Implementation of the education program and program of instruction (specifically, the SABIS® curriculum, SABIS® books and SABIS® Educational System identified in the Charter), inclusive of all special education and English language learner program requirements;
- (b) Development and administration of the school's curriculum and determination of the applicable grade levels and subjects;
- (c) Selection, hiring and performance review of all personnel, including the school director, and payroll functions on behalf of the Board;
- (d) Professional development for directors, instructional personnel, and other administrative staff;
- (e) Maintenance and operation of the School facilities;
- (f) Management and administration of the School, its staff, facilities, and programs;

- (g) Management and administration of all extra-curricular programming, including but not limited to before and after school care and programs, implemented in connection with the School;
- (h) Management and oversight of all required reports due to ESE; and
- (i) Administration and oversight of improvement to the facility necessary for the implementation of its program.

2.1.2. Education Provider shall be responsible for procuring the services set forth in this Section 2.1.2 and may, at its sole discretion, and in conformance with Massachusetts charter school law, subcontract with public or private entities or with private persons, in the name of the Board and as set forth in the Budget, in furtherance of the objectives of this Agreement for:

- Food and transportation;
- Custodial services, supplies and equipment;
- Special education services;
- Construction of new buildings and/or improvements to existing building sites as Education Provider deems necessary for the implementation of its program, subject to the consent, by majority vote, of the Board and the availability of adequate financing; and
- Any other services as consented to by the Board that Education Provider deems reasonable and necessary to achieve the goals of the Board and Education Provider, including but not limited to nursing, after-school programs, security, drafting requests for proposals, and drafting grant applications.

2.2. Student Outcomes. Education Provider shall provide to the Board the reports set forth in 2.3. for the Board's review and approval, and shall set student standards for performance which shall meet or exceed the minimum standards established by the Accountability Plan, the Charter School Law, School Policies, and any and all other applicable federal and state laws and regulations. It shall be the responsibility of Education Provider that the students shall meet annually agreed upon standards for performance which shall provide for:

- Full compliance with the Charter School Law, the methods and philosophy as set forth in the Charter, School Policies, and any other applicable law or regulation.
- Student testing in the first month of school using a nationally recognized norm-reference test to establish a benchmark. Students will be tested

again in spring, using another form of the same test, to determine their improvement during the year. A one month gain for each month of school between the Fall and Spring administration of the test is expected.

- Student proficiency in essential concepts per subject. Through frequent testing, as needed, as well as final exams at the end of each term, students will display proficient understanding of essential subject material as defined by the Education Provider curriculum.

### 2.3. Reporting by Education Provider.

2.3.1. Education Provider shall submit an annual report to the Board, before August 1, reporting its progress towards attaining student outcomes.

2.3.2. Education Provider shall provide to the Board on a quarterly basis a budget analysis showing budget versus actual comparisons in the same format as the budget. In consultation with the Education Provider, the Board shall engage an independent audit firm to complete the annual audit, in accordance with Generally Accepted Accounting Principles ("GAAP"), and Education Provider shall comply with all reasonable requests. The cost of the audit shall be a budget item. All financial reports provided or prepared by the Education Provider for the purpose of submission to ESE, will follow ("GAAP") and will comply with ESE's prescribed format for charter school reporting.

2.3.3. Education Provider shall provide full opportunity for the Board to observe the Education Provider educational processes, review curriculum, review appropriate data, and meet and confer with designated Education Provider contacts, provided arrangements are made in advance with the Education Provider and provided the educational process is not disrupted. Any contact between Board Members and School staff must be made through the School Director.

2.3.4. Education Provider shall report regularly through reports submitted by the School Director at Board Meetings or at other times, as necessary.

2.4. Fees. Fees may only be charged to students in accordance with applicable provisions of the Charter School Law, School Policies, and any other applicable federal or state laws or regulations. No fees may be charged or assessed to students by either party without the prior written approval of the other party.

### 2.5. Insurance.

2.5.1. The Education Service Provider undertakes to maintain insurance as listed in Appendix A to protect the interest of the School and other interested parties. Such insurance shall be taken out by the Education Service Provider at the cost and expense of the School.

2.6. Charter between the Board and Authorizer. Neither the Board nor the Education Provider will act, or fail to act, in a manner that will cause the Board to be in breach of its Charter with the Authorizer.

3. Budget, Funding, and Compensation to Education Provider.

3.1. Budget. All revenues will serve to fund the operation of the School. Education Provider, no later than May 31 of each year, or earlier if required by law, shall prepare and present to the Board for its approval, a detailed recommended operating budget and capital outlay budget for the next fiscal year (the "Proposed Budget"). The Proposed Budget shall show each area of expenditure as a separate line item, including funds allocated for use by the Board for legal fees, and incidental Board administrative expenses ("Board Expenses"), and fees and payments to Education Provider. Funds allocated for Board Expenses shall not exceed \$50 per student. The Board shall review the Proposed Budget with Education Provider and shall provide Education Provider with the Board's comments, in writing, within a reasonable period of time. If the Board and Education Provider are not able to agree on a Budget before the expiration of the current fiscal year, the last approved Budget, adjusted only to reflect enrollment changes, shall remain in effect until a Budget has been agreed upon or finalized through the dispute resolution process set forth herein.

If the parties have not reached agreement on the Budget within thirty (30) days of the submission of the Proposed Budget by Education Provider to the Board either party may request that open issues be referred to binding arbitration in accordance with Section 8.2.2., below, provided that the arbitrator(s) shall be required to consider the following:

- (1) the effect on educational outcomes for the students;
- (2) the funding provided for in previous budgets and the amounts actually expended; and
- (3) the projected levels of revenue and expense for the year in issue.

3.1.1. Net Loss. Education Provider is not obligated to cover any Net Loss (as per the audited financial statements) of the School. The Net Loss, in its entirety, shall be the responsibility of the Board and the Board shall indemnify and hold the Education Provider harmless for any Net Loss, including all costs and attorney's fees. However, in the event of a Net Loss, Education Provider will work with the Board to review and revise the Budget in order to minimize the financial impact.

3.1.2. Start-Up Costs. The Education Provider will submit to the Board a budget for the anticipated pre-opening expenses, including a contingency of 15%



in order to take into account any extraordinary additional expenses. The Education Provider will obtain the consent of the Board in advance for unbudgeted expenses exceeding 5% of the total Start-Up Budget.

3.1.3. Gaps in State Funding. In the event that there is a gap between Per Pupil Tuition Funding from the State and expenses incurred by the School due to the Per Pupil Tuition Funding cycle set by the State (i.e. Tuition Funding is not received on the first day of each month or the first day of each quarter), the Board is responsible for covering the gap either using the budget reserve or with a line of credit. The line of credit shall be with a third party or, if third party funding is not available, may be with the Education Provider at the Education Provider's sole discretion. Any line of credit provided by Education Provider will require a separate agreement between the Board and Education Provider, and interest will be charged. Such line of credit is designed to be a short-term solution and the Board shall be required to build a reserve, or acquire a third-party line of credit, sufficient to finance funding gaps, and such reserve shall be used first to finance any funding gaps. All loans to, or investments in, the School by Education Provider, must be evidenced by supporting appropriate documentation.

3.2 Funding. All funds received in connection with the School shall be deposited in the School's bank account. Expenditures from the School's bank account shall be made only in accordance with the Budget (as it may be modified by agreement from time to time) and upon approval in writing by the Director of the School or the Business Manager to whom the Director may delegate this responsibility. The School Director and one other School employee, as determined by the Education Provider, shall have authority to sign checks written on the School's bank account.

Subject to applicable laws and regulations, either party may apply for and receive funding from private sources to be used for the benefit of the School. The Parties shall cooperate in good faith in applying for applicable funding; provided, however, that neither party shall be obligated to participate in such funding application if such party makes a good faith determination that such funding is not in the best interest of the Board or of the Education Provider, as applicable. The Board shall coordinate with the Education Provider before applying for outside funding to ensure that such funding is in line with the School's mission and goals. The Education Provider may make recommendations to the Board regarding the proposed use of outside funding consistent with this Agreement. Education Provider further agrees that any grants received from any federal or state agency or nonprofit corporation shall be used as directed by the grantor of the grant and any unexpended funds from those sources shall not be deemed as unexpended funds, and shall not be part of the base upon which Education Provider's fees are calculated, nor in any calculation of the Year End Operating Balance. If Education Provider obtains grant funds for the School and such grant funds contain a component for administration, Education Provider shall be entitled to that component if allowed under the terms of the grant and by

law.

The Parties acknowledge that all non-grant funds allocated for the operational support of the School shall be spent in accordance with the Board-approved Operating Budget. Significant line item deviations at the object level greater than fifteen percent (15%) of any major line item, major line items being those whose budget exceeds fifteen percent (15%) of Total Revenues, from the approved Operating Budget must be approved by the Board prior to disbursement. Education Provider shall provide the Board with all relevant information with respect to such deviation and the Parties shall engage in good faith negotiations to resolve such extra-budgetary requests. If the parties cannot reach an agreement, the issue shall be resolved pursuant to the procedures contained in Paragraph 8.2.2 of this Agreement.

### 3.3. Compensation to Education Provider.

3.3.1. License Fees of eight percent (8%) of Total Per Pupil Tuition Funding (as defined in MGL, Chapter 71, section 89 (ff)) for the use of SABIS® pedagogical materials (including but not limited to curriculum, pacing charts, AMS exams of Math & English, Periodic exams of Math, English, Science, Spanish, Social studies, and SABIS® School Management System) provided by the Education Provider during the term of this Agreement or renewal term of this Agreement (the "License Fee"); and

3.3.2. Management Fees of six percent (6%) of Total Per Pupil Tuition Funding (as defined in MGL, Chapter 71, section 89 (ff)) for services provided as described in the Charter, including but not limited to methodologies, teaching techniques, operating policies & procedures, on-going advice, academic strategies to enhance standards, staff distributions & timetabling, and academic oversight (the "Management Fee").

3.3.3. Upon renewal of the Agreement, Education Provider reserves the right to adjust the License Fee and Management Fee.

3.3.4. Support Services. Those services requested by the Board from independent contractors may be performed by Education Provider or Education Provider's parent company, SABIS® Educational Systems, Inc., provided that such services are included in the Approved Operating Budget, and further provided that Education Provider's cost to provide the services is less than the cost of an independent contractor. These services may include but are not limited to grant writing, website development, facilities search, and drafting of RFPs which fall outside of the Agreement. Such services, upon Board approval, will be billed at Education Provider's then-current rate and are in addition to the Management Fee and License Fee.

3.3.5. All License and Management Fees and support services fees, if any, shall be paid within three (3) business days of receipt by the Board of Per Pupil Tuition funding paid by the State to the Board. The balance of all Fees shall be paid within thirty (30) days of the final installment payment. The Education Provider shall have a lien on Per Pupil Tuition funding paid to the Board as security for the Fees owed to the Education Provider.

3.3.6. Education Provider shall be entitled to reimbursement for expenses related to the performance of this Agreement, which are not part of the operating budget, only with the advance written approval of the Board based upon findings that: (a) the expense was necessary; (b) the expense is one that should not be borne by Education Provider because it is beyond the scope of the management services for which Education Provider is being compensated by the Management Fee; and (c) Education Provider has submitted invoices and the expense is supported by appropriate documentation.

#### 4. Term and Renewal.

4.1. Term. This Agreement shall commence on the date this Agreement is signed and end on July 30, 2018, and subject to renewal of the Charter and the provisions of the Charter School Law and any other applicable federal and state laws and regulations.

4.1.1. Option to Renew. This Agreement may renew for an additional 5 year term, subject to section 3.3.3 of this Agreement as well as the approval of the Authorizer. If either party wishes to renew and/ or renegotiate the Agreement, then the party should give notice of its intent at least eighteen (18) months prior to the expiration of the Term, and the parties will have a period of 6 months to renegotiate. During this period of time the Education Provider will continue managing the School under the terms of this Agreement except that any function or action related to preparing the School for the year following the end of this term will be placed on hold unless and until a new Agreement is executed. In the event that the parties wish to renegotiate the Agreement, a new Management Agreement must be signed and approved by Authorizer before Education Provider will assist in the preparation of a charter renewal application.

#### 5. Employees.

5.1. Teachers and Staff. The Board shall be the employer of all personnel but shall delegate all personnel functions to the Education Provider, including

selecting, hiring, training, managing, reviewing, and terminating all staff associated with the School, including without limitation its teachers and all administrative and support staff,

establishing personnel policies and procedures, and determining teacher and staff compensation. The Education Provider shall determine the number of teachers and the number of support staff required for the operation of the School pursuant to the Charter. The Education Provider shall select and hire such teachers, at its sole discretion, qualified in the grade levels and subjects required, and support staff as are needed to carry out the SABIS® Educational System of the School. Such teachers and support staff may, at the discretion of the Education Provider, work at the School on a full or part time basis. Each teacher hired or retained by the Education Provider shall be qualified as required by 603 CMR 1.07 and all teachers and staff shall have undergone a criminal background check and an unprofessional conduct check, as required by Charter School Law and other applicable state and federal laws.

5.2 School Director. Because the accountability of Education Provider to the Board is an essential foundation of this relationship, and because the responsibility of School Director of the School is critical to its success, the Board delegates to Education Provider the authority and responsibility, consistent with State law, to make recommendations for the recruitment, hiring, supervision, and termination of School Director for Board approval, with such approval not to be unreasonably withheld, and to assist in holding School Director accountable for the success of the school.

5.3. Training. The Education Provider shall provide training in its methods, curriculum, and the SABIS® Educational System to all personnel on a regular and continuous basis, or as deemed necessary by the Education Provider. All personnel shall receive such training as the Education Provider determines as reasonable and necessary under the circumstances, or as required by Charter School Law. Training shall occur on-site or at locations to be designated by Education Provider, at Education Provider's discretion. Expenses for training and seminars, including travel and lodging, related to the School shall be a budget item.

## 6. Proprietary Information.

6.1. Education Provider's Prior Rights. The Board agrees that Education Provider has the licensing right for (a) all trademarks, copyrights and other proprietary rights developed prior to the effective date of this Agreement, and hereinafter subsisting or created in its instructional materials, training materials, methods and other materials developed by Education Provider, its affiliates (including but not limited to SABIS® Educational Systems, Inc.) their employees, agents or subcontractors (to the extent such individuals are legally or contractually obligated to assign or have assigned such rights to Education Provider or to SABIS® Educational Systems, Inc.); and (b) such other similar instructional materials, training materials, methods and other materials that may be

developed at Education Provider sites or sites of Education Provider affiliated entities, which is protected by law ("SABIS® Proprietary Information"). During the term of this Agreement, Education Provider may identify and disclose to the School SABIS Proprietary Information, including that which is currently in existence as well as that which may be created in the future. The Board shall not disclose, publish, copy, transmit, modify, alter, or utilize SABIS' Proprietary Information during the Term or at any time after the expiration of this Agreement other than to the extent necessary for implementation of this Agreement, the operation of the Schools, the dissemination of best practices by Commonwealth Charter Schools required by Charter School Law, or state or federal law.

6.2. License to Board. Execution of this Agreement shall give rise to a revocable, limited, non-exclusive, non-transferable license, for the use of SABIS® Proprietary Information to the Board for the purpose of operating the School's SABIS® Educational System, and Education Provider shall be paid a fee therefore as provided in Section 3.3.1. The Board shall be separately charged for books and consumable materials provided by the Education Provider to the School, even if such books and consumable materials contain SABIS® Proprietary Information. Except to the extent necessary for implementation of this Agreement, the operation of the Schools, the dissemination of best practices by Commonwealth Charter Schools required by Charter School Law, or state or federal law, the Board shall not disclose, publish, copy, transmit, or utilize SABIS® Proprietary Information during the term of this Agreement or at any time after its expiration without the prior written approval of Education Provider.

6.3. Jointly Developed Proprietary Information ("Derivative Works"). Derivative Works may only be created with written permission of Education Provider, including any and all curriculum or other educational materials which the Board may wish to develop using part or all of SABIS® Proprietary Information. Any such Derivative Works shall be considered SABIS® proprietary information and treated in accordance with Paragraph

6.1 of this Agreement. Education Provider will not claim as proprietary any curriculum or other educational materials developed and paid for by the Board, provided that such materials are developed wholly independently and without the use, directly or indirectly, of any SABIS® Proprietary Information.

6.4. Education Provider Warranty and Indemnification. Education Provider warrants that it has all necessary rights to license the SABIS® Proprietary Information to the Board. Education Provider shall defend at its own cost any claim or action against the Board or the School for infringement of any patent, copyright, trade secret or other proprietary interest of any third party based upon any materials furnished or licensed hereunder or upon the Board's or the School's use of such furnished or licensed materials. Education Provider further agrees to indemnify and hold the Board and the School harmless from any and all liabilities, losses, damages, costs and expenses associated with any such claim incurred by the Board or the School including reasonable attorney's fees. If any SABIS Proprietary Information and/or other materials furnished

hereunder is/are involved in such claim or action are held to constitute infringement and the use thereof is enjoined, Education Provider shall at its own expense: (1) procure for the Board and the School the right to continue using such materials; (2) modify the materials to become non-infringing but functionally equivalent; (3) replace such materials with equally suitable and functionally equivalent non-infringing materials; or (4) grant the Board an appropriate refund.

6.5. The Education Provider will cooperate with the Board and work diligently to provide models for replication and best practices to facilitate the Board's compliance with Mass. Gen. Laws Chapter 71, section 89 (dd).

## 7. Property Ownership.

7.1. With respect to property acquisitions, the Education Provider has an obligation to act in the best interest of the School. All property purchased through the operating Budget with Per Pupil Tuition funds the Board may receive pursuant to the Charter School Law, other than funds which accrue to Education Provider (including, but not limited to, the fees referenced in Paragraph 3.3, any reimbursed Education Provider expenses, lease payments, and any funds advanced under a Line of Credit, if applicable), as well as funds the Board may acquire through government or private grants or donations, shall remain the property of the Board.

7.2. All contracts, whether with public or private entities, shall be entered into whenever possible in the name of the Board or School, as appropriate. Education Provider shall not be required to directly enter into any contract. Further, Education Provider shall not be required to guarantee any contract entered into on behalf of or by the School or the Board. Any contract or lease which Education Provider enters into for the use of property, whether real or personal, for the School shall include, if possible, a provision that the contract may be assigned to the Board. Upon termination of this Agreement, and in the event of subsequent dissolution of Education Provider, all property which Education Provider might lease, borrow or contract for use, shall be promptly returned to those organizations or individuals from which Education Provider has leased, borrowed, or contracted for the materials unless the Board votes to assume said contract or lease, and then Education Provider shall assign said contract(s) or lease(s) to the Board, if possible. All contracts shall, when possible, also include a provision terminating the contract upon termination of this Agreement at the option of either the Board or Education Provider, but in no event shall the contract exceed the term of the charter, unless prior approval is received from the Board and the Authorizer, however, either party may elect to continue and assume the obligations of the contract.

7.3. All acquisitions that, due to the Board's inability to purchase or finance, are purchased by the Education Provider with non-School funds including, but not limited to, instructional materials, equipment, supplies, furniture, computers and other technology, shall be owned by and remain the property of the Education Provider. Any property

purchased with funds advanced to the Board by the Education Provider under a Line of Credit note shall be considered collateral until the note is repaid. The Board shall execute any documents required by the Education Provider to secure the collateral, including but not limited to any security instruments including but not limited to a note, security agreement and UCC statement.

7.4. Upon termination for any reason, all property which has been purchased or financed by the Education Provider with its own funds, including but not limited to the funds paid by the Board to the Education Provider for License or Management Fees under this Agreement, will remain the property of the Education Provider.

7.5. All property owned personally and/or individually by the teachers, administrative and support staff shall remain the property of the individual teachers and staff.

## 8. Amendments, Termination and Dispute Resolution.

8.1. Amendments. All amendments to this Agreement shall be in writing executed by both parties and approved by Authorizer.

### 8.2. Termination and Dispute Resolution.

8.2.1. Termination for Cause. Either party may terminate this Agreement in the event of a material breach pursuant to the provisions of 8.2.2 below.

8.2.2. Dispute Resolution. If either party at any time believes the other party has committed a material breach of the terms of the Charter, Charter School Law, any applicable law or regulation, or this Agreement, notice shall be given in writing to the other party as provided in Section 1.4 stating in detail the nature of such violation. Thereafter:

(i) The parties shall meet within ten (10) days of the notice, unless the parties are otherwise required to meet sooner in the notice, and such meeting shall be attended either in person at the school or by telephone or video conference by individuals with decision making authority regarding the dispute, to confer as to the violation and in good faith attempt to negotiate a mutually acceptable remedy.

(ii) If, within thirty (30) days after the written notice, the parties are unable to agree to a mutually acceptable remedy, the parties agree to submit the dispute to binding arbitration in accordance with the Commercial Arbitration Rules of the American Arbitration Association. The arbitration shall take place in Massachusetts and be governed by the laws of the Commonwealth of Massachusetts. The arbitrator shall be jointly chosen by the Board and the Education Provider.

(iii) The arbitrator shall make a determination within fifteen (15) days of the matter being brought before the arbitrator. If the arbitrator determines that (1) one party has materially breached the terms of the

Charter, Charter School Law, any applicable law or regulation, or this Agreement, and that (2) the breaching party either cannot or refuses to remedy the breach, the non-breaching party may terminate the Agreement upon thirty (30) days written notice and recover actual damages.

(iv) Each Party shall be responsible for an equal share of the cost of the arbitrator's fees and expenses. However, each Party shall be solely responsible for any expenses incurred by that Party's request for additional witnesses, representation, or services.

8.2.3. Notwithstanding any other provisions of this Section 8.2, this Agreement may be terminated by the Board or SEM, within seven (7) days following written notice, such notice by certified mail, confirmed by requested return receipt, if SEM fails to resolve or cure, within a reasonable period of time, to the satisfaction of the Board, not to be unreasonably applied, to any matter arising out of the following events:

- (i) Insolvency of SEM;
- (ii) The filing by or against SEM of any petition or application under any bankruptcy law;
- (iii) The taking of the interest of SEM in this Agreement by execution or other process of law against SEM;

8.2.4. Mutual Written Agreement. The parties may terminate this Agreement at any time by mutual written agreement at the end of any academic year, provided either party gives six (6) months advanced written notice prior to the last day of the academic year, by certified mail, confirmed by requested return receipt.

8.2.5. Due To Adverse Law. If any federal, state, or local law or regulation or court decision has a materially adverse impact on the ability of either party to carry out its obligations under this Agreement, and the Parties agree as to the material adverse impact, then either party, upon written notice to the other party, may request good faith renegotiation of the Agreement; and if the Parties are unable to reach agreement on such terms, after good faith negotiations, prior to the end of the academic year, then either party may terminate the Agreement as of June 30 unless sooner termination is required by law.



8.2.6. Due to Charter Termination. In the event that the Charter is revoked or not renewed, then this Agreement shall automatically terminate as of the date of the effective date of said revocation or effective date of non-renewal.

8.2.7. Due to Adverse Conditions. If any Adverse Condition including, but not limited to, a decrease in state funding, or if a condition of the Charter makes it impossible, in the sole judgment of the Education Provider, for the Education Provider to continue managing the School, the Education Provider may terminate this Agreement upon written notice to the Board.

8.2.8. Due to Dissolution of the Board. In the event that the Board is dissolved, Education Provider may, in its sole discretion, terminate this Agreement.

8.2.9. Due to School Performance. In the event the Authorizer imposes conditions, or places the School on probation, the Board may terminate this Agreement upon written notice to the Education Provider.

8.2.10. Neither party shall be liable if the performance of this Agreement, in whole or in part, is prevented, delayed, hindered or otherwise made impracticable or impossible by reason of any strike, flood, riot, fire, explosion, war, act of God, sabotage, accident or any other casualty or cause not the party's fault, and which cannot be overcome by reasonable diligence and without unusual expense.

8.2.11. The Board acknowledges that this Agreement and all other agreements entered into between Education Provider, or any of its affiliates, subsidiaries, successors and/or assigns are deemed to be mutually dependent upon each other and a breach of any one agreement by the Board, may at the option of Education Provider, or any of its affiliates, subsidiaries, successors and/or assigns, be deemed a breach of any and all other agreements between the parties.

8.2.12. No Disparagement. In the event of any termination of this Agreement, the Parties agree that neither party will express in any manner, directly or indirectly, any communication, whether verbal, in writing, electronically transferred or otherwise, that is derogatory, critical of, or negative toward the other party or any of its affiliates or representatives. Notwithstanding the foregoing, nothing in Section 8.2.11 or elsewhere in this Agreement shall prohibit either party from making any statement or disclosure required by local, state or federal law or ordinance.

8.3. Avoidance of Disruptions to Students. Notwithstanding the foregoing provisions of

this Section 8, the Board and the Education Provider shall use good faith best efforts to avoid a termination of the Agreement that becomes effective during the school year because of the disruption to the educational program and the students. Therefore, in the event this Agreement is terminated by either Party prior to the end of the Term, absent unusual and compelling circumstance, the termination will not become effective until the end of the school year.

8.4. Assistance Following Termination. In the event of termination of this Agreement by Education Provider, Education Provider shall provide reasonable assistance to the Board for the shorter of the remainder of the current school year or 90 days after the effective date of termination of the Agreement (the "Termination Assistance Period"), to assist in the transition to another plan for management of the School, whether by the Board itself or with another provider. During the Termination Assistance Period, Education Provider will be entitled to receive and the Board shall continue to pay Education Provider's License and Management Fee.

8.5. Payment of Education Provider License and Management Fee. Upon termination of this Agreement, the Board shall pay the Education Provider any previously unpaid and undisputed portion of the License and Management Fees for services performed by Education Provider until the time of termination. Any disputed portion of the License and Management Fees shall be resolved in accordance with the provisions of 8.2.2.

8.6. School Records. Upon expiration or termination of this Agreement, all School records, including student records, employee files, financial documents and/or otherwise defined by State law shall be retained and thereafter maintained by the Board. The Education Provider may make and keep copies of the records to the extent permitted by law.

## 9. Indemnification.

9.1. Unless otherwise provided herein, the Board and Education Provider agree to indemnify, save and hold harmless each other from and against any and all claims, allegations, suits, fines, penalties, expenses, costs, liabilities, and damages, whether in contract, tort or otherwise arising out of or in connection with each party's performance of its particular portion of this Agreement by reason of its acts, inaction, omissions, negligence, reckless or intentional conduct except and to the extent such losses arise out of the gross negligence or willful misconduct of the indemnified party and further provided that the party against whom any claim is made notifies the other party within a reasonable time of becoming aware of such matter, and the other party is afforded an opportunity to participate in the defense or disposition of such matter and any negotiated settlement, agreement or judgment, including engaging legal counsel of its choice. The Board and Education Provider shall at all times be solely responsible for their respective legal expenses and costs, including attorney's fees. The right of indemnification under

this section shall be in addition to and not exclusive of all other rights to which any indemnified party may be otherwise entitled by contract or by law.

9.2. No Waiver to Third Parties. The foregoing provisions shall not be deemed a relinquishment or waiver of any rights or immunities of the parties to third parties.

10. Non-Discrimination.

The Board and Education Provider shall comply with all applicable federal and state statutes, rules, regulations and orders dealing with discrimination.

11. Professional Fees and Expenses.

Each party shall bear its own expenses for legal, accounting and other fees or expenses in connection with the negotiation of this Agreement.

12. Student and Financial Records.

All financial records and educational records, including student records, are records of the Board and shall be kept on-site or electronically accessible on-site and be available, subject to any and all applicable laws, for authorized inspection, pursuant to local, state and federal law, upon reasonable request. Such records are subject to the provisions of the Family Educational Rights and Privacy Act ("FERPA") and the applicable state Freedom of Information and/or Open Records Act. The Board designates the employees of the Education Provider or Education Provider affiliates as agents of the Board having a legitimate educational interest solely for the purpose of entitling such persons access to education records under 20 U.S.C. §1232g, the Family Educational Rights and Privacy Act ("FERPA"). Upon termination of this Agreement, the Education Provider shall have the right to make copies of all financial and educational records, to the extent permitted by law, and shall also have the right to engage an independent audit firm to complete an audit, in accordance with Generally Accepted Accounting Principles ("GAAP"), and the Board shall comply with all reasonable requests. The cost of the audit shall be shared equally by both parties to this Agreement.

13. Governing Law.

This Agreement shall be governed by, subject to and construed under the laws of the Commonwealth of Massachusetts. Any legal actions prosecuted or instituted by any party under this Agreement shall be brought in a court of competent jurisdiction located in Massachusetts and each party hereby consents to the jurisdiction and venue of any such courts for such purposes. The parties knowingly and voluntarily waive any right either of them has to a trial by jury in any proceeding which is in any way connected with this Agreement or any related agreement, or the relationship established under them.

Any notice, demand or request 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, facsimile (with confirmation) or electronic mail (with confirmation) or within three (3) business days of being sent by registered or certified mail, postage prepaid, to the parties at the following addresses:

To: Education Provider                      Mahdi Kansou  
   Springfield Education Management, LLC  
   6385 Beach Road  
   Eden Prairie, MN 55344

Copy to: Legal Counsel                      Pamela Spera  
   SABIS Educational Systems, Inc.  
   6385 Beach Road  
   Eden Prairie, MN 55344

To: Board of Trustees                      William Merrill  
   Board President  
   1857 Middlesex Street  
   Lowell, MA 01851

Copy to: Board Legal Counsel              John F Cox Esq  
   755 Dutton Street  
   Lowell Ma 01854

14. Waiver.

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

15. Counterparts; Signature by Facsimile.

This Agreement may be signed in counterparts, which shall together constitute the original Agreement and become effective upon Board approval. A signature delivered by facsimile shall be considered an original for purposes of this Agreement; however, a duly executed original will be sent to Authorizer.

16. Assignability.

This Agreement may not be assigned or delegated by Education Provider or by the Board without the prior written consent of the other such consent not to be unreasonably withheld. This Agreement shall be enforceable by, and shall inure to the benefit of the parties hereto and their permitted successors and assigns, and no others.

17. Confidentiality.

17.1. Each party hereby acknowledges that by virtue of its entering into and performing under this Agreement, it will generate, be exposed to and have access to the Confidential Information of the other party, as such term is defined in subsection 18.2 below. Unless a party has obtained the express prior written consent of the other party, under no circumstances whatsoever, unless otherwise required by law, shall a party at any time: (i) communicate to any person or entity (other than the other party) any Confidential Information; (ii) permit access by any person or entity (other than the other party) to any Confidential Information; or (iii) use any Confidential Information for such party's own account or for the account of any person or entity (other than the other Party).

17.2. For purposes of this Agreement, "Confidential Information" shall mean (i) any financial, business, planning, software, operations, services, potential services, products, potential products, designs, technical information and/or know-how, formulas, production, purchasing, marketing, sales, personnel, customer, broker, supplier, or other information of any party; (ii) any papers, data, records, processes, methods, techniques, systems, models, samples, devices, equipment, compilations, invoices, customer lists, or documents of any party; (iii) any confidential information or trade secrets of any third party provided to any party in confidence or subject to other use or disclosure restrictions or limitations; and (iv) any other information, written, oral, or electronic, whether existing now or at some time in the future, whether pertaining to current or future developments, and whether previously accessed by any party or to be accessed during its future engagement with the other party, which pertains to such party's affairs or interests or with whom or how such party does business. Each party acknowledges and agrees that Confidential Information does not include (i) information properly in the public domain, (ii) information in either party's possession which does not pertain to the business of the Board or of the Education Provider.

18. Severability. In the event that any provision of this Agreement or the application thereof to any person or in any circumstances shall be determined to be invalid, unlawful, or unenforceable to any extent, the remainder of this Agreement, and the application of such provision to persons or circumstances other than those as to which it is determined to be invalid, unlawful or unenforceable, shall not be affected thereby, and each remaining provision of this Agreement shall continue to be valid and may be enforced to the fullest extent permitted by law.

19. Warranties and Representations. Both the Board and the Education Provider represent that each has the authority under law to execute, deliver and perform this Agreement and to incur the obligations provided for under this Agreement, that its actions have been duly and validly authorized, and that it will adopt any and all resolutions or expenditure approvals required for the execution of this Agreement.

20. Preamble and Heading. The Preamble is a general statement of purpose only and not a term of this Agreement. It does not affect in any way the meaning or interpretation of this Agreement. The headings of the sections of this Agreement are for reference only and shall not affect in any way the meaning or interpretation of this Agreement.
21. Entire Agreement. This Agreement embodies the entire agreement and understanding between the Parties with respect to the subject matter hereof and supersedes all prior oral or written agreements and understandings relating to the subject matter hereof. No statement, representation, warranty, covenant or agreement of any kind not expressly set forth in this Agreement shall affect, or be used to interpret, change or restrict, the express terms and provisions of this Agreement. Any modification of this Agreement must be made in writing, be approved by the Board, Education Provider, and Authorizer, and be signed by a duly authorized officer, agent or attorney of the Parties.
22. Miscellaneous. This Agreement supersedes and replaces any and all prior agreements and understandings between the Board and Education Provider.

Lowell Collegiate Charter School

By Signed by William Merrill (April 25, 2013)

Its: Board President

Springfield Education Management LLC

By Signed by Mahdi Kansou (April 25, 2013)

Its: Manager

Primary contact for all matters not requiring formal notice under Section 14:

George Saad  
6385 Beach Rd.  
Eden Prairie, MN 55344  
gsaad@sabis.net  
952-918-1850