

Community School Education Provider Agreement

This Community School Education Provider Agreement (hereinafter the “**Agreement**”) is executed on this ___ day of _____, 2003, to be effective as of _____, by and between the Board of Trustees of International College Preparatory Academy, Inc. an Ohio non-profit corporation (hereinafter “**Board**”), and Cincinnati Education Management LLC, a Delaware limited liability company (hereinafter “**Education Provider**”).

Recitals

Whereas, the Board expects to enter into a community School Contract (hereinafter the “**Charter**”) with the University of Toledo (hereinafter the “**Sponsor**”) to operate an independent Community School (“**School**”) in accordance with Title 33, Chapter 3314 of the Ohio Revised Code, as amended, and all regulations promulgated thereto (hereinafter the “**Community School Law**”) and in accordance with all other applicable federal and state laws;

Whereas, the Board desires to operate the School as an independent Community School authorized by the Sponsor under the Community School Law and any and all other applicable federal and state laws and regulations;

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®**”), as amended from time to time (the “**Educational Program**”);

Whereas, the Board desires to have the Education Provider provide the Educational Program and other services to and on behalf of the School, in accordance with the provisions of the Community School Law and any and all other applicable laws and regulations, and the terms and conditions hereinafter set forth, and the Education Provider desires to provide such services to the School; and

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. Appointment and Acceptance.

- 1.1. The Board represents that it is authorized by law to contract with a private entity for that entity to provide educational management services, The Board further represents that, upon entering into the Charter with the Sponsor, it will be authorized by the Sponsor to supervise and control such School, and will be invested with all powers necessary or desirable for carrying out the Educational Program contemplated in this Agreement.

1.2. The Board hereby (i) appoints and engages the Education Provider for the purpose of providing managerial, administrative and educational services to the School more specifically described herein and (ii) grants to the Education Provider the right, power and authority to the extent permitted by law to carry out the duties and obligations of an Education Provider provided by this Agreement upon the terms and conditions set forth herein.

1.3. The Education Provider hereby accepts such appointment, for the term as set forth in Section 7, as manager, with full, general authority, subject to the terms and conditions of this Agreement, the Charter, Community School Law and all applicable law, to act on behalf of the Board, and in its name, for purposes of managing and administering the School.

2. Cooperation between the Education Provider and the Board.

2.1. The Education Provider shall provide reasonable opportunity for the Board of its designees, upon reasonable notice to the Education Provider and in accordance with guidelines mutually agreeable to the parties, to: (i) observe the Education Provider's educational processes; (ii) review records and information of the School; and (iii) evaluate efforts to meet Evaluation Criteria (as defined in Section 3.5 below). 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, and the Educational Provider shall have the authority in its good faith judgment to ensure such minimized disruption. The Board and the Education Provider mutually recognize that frequent interruptions of the educational process can be detrimental to the progress of the students and an impediment to the mutual goals of the Board of Education Provider.

2.2. The Education Provider is not a division, subsidiary, or part of the Board. The Board is a body corporate and governmental entity authorized by the Community School Law and is not a division, subsidiary, or part of the Education Provider. The relationship between the Education Provider and the Board is based solely on the terms of this Agreement and the terms of any other written agreements between the Education Provider and the Board.

2.3. The Board designates the employees of the Education Provider 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").

2.4. **Independent Contractor Status.** The Parties intend that the relation between them created by this Agreement is that of an independent contractor and not employer-employee. With the exception of the limited purpose identified in subsection 2.3 above. No agent or employee of the Education Provider shall be deemed the agent or employee of the Board except as expressly acknowledged in writing by the Board. The Education Provider will be solely responsible for its acts and for the acts of its agents, employees, and subcontractors and is not authorized to act on behalf of the board.

3. Rights and Obligations of the Board.

3.1 The Board shall be responsible to the Sponsor and the federal government for the operation of the School in accordance with the Charter, the Community School Law and all applicable federal and state laws and regulations, except such waivers and exemptions that are from time to time approved in accordance with the law. The Board, with the management assistance of the Education Provider as set forth in this Agreement, shall comply with the provisions of law regulation student admissions, student records, access to equal educational opportunities, School year and School day requirements, special education, food service, transportation, student testing and state and federal health and safety laws and regulations.

3.2 The Board has the obligation to comply with the provisions of and maintain the Charter for establishment of the School. It shall do and cause to be done all things necessary to ensure that all conditions imposed by the Sponsor in connection with the Charter are fulfilled at all times. Notwithstanding the foregoing, however, the Board has retained the Education Provider to assist it with carrying out its rights and obligations, including maintaining the Charter, complying with all applicable provisions of law, and addressing complaints regarding the School's or the Education Provider's operation from any person or entity.

3.3 If any agent of the Board receives a written complaint regarding any alleged material deficiency in any aspect of the Board's or the Education Provider's operations from any person or entity, or if the Board is notified by the Sponsor or any other governmental authority that the Board or the Education Provider is or may be in material violation of the Community School Law or any other applicable law or regulation (all of the foregoing collectively referred to as "**Potential Violations**"), then the Board shall immediately notify the Education Provider of Potential Violations. Conversely, if the Education Provider is first notified in writing of Potential Violations by any person or entity, it shall promptly notify the Board of such Potential Violations and the actions it intends to take to address the Potential Violations. Upon receiving notice from any source of a potential violation, the Education Provider shall conduct a thorough investigation to determine whether or not the claimed violation in fact exists. The Board shall reasonably cooperate with the Education Provider in the Education Provider's investigation of such Potential Violation.

3.4 If the Board makes a good faith determination that the Education Provider is failing to do all things necessary and reasonable to investigate, remedy, rebut or contest the alleged Potential Violation, then the Board shall provide written notice to the Education Provider of such belief, stating with particularity the reason for its finding and the Parties shall attempt to resolve the dispute in accordance with Section 12 below. If the dispute is not resolved in accordance with Section 12, the Board may, but shall not be obligated to, separately take all reasonable actions to investigate, remedy, rebut or contest the alleged Potential Violation, including but not limited to establishing direct communications with the person(s) raising the Potential Violation or retaining counsel to contest the matter or negotiate a solution. The foregoing notwithstanding, (a) the Board shall not consent to the entry of any judgment or enter into any settlement with respect to a Potential Violation without prior written notice to the Education Provider, and (b) the Board shall not seek the Education Provider's reasonable cooperation in the defense of the matter. Nothing in

this section precludes the Board from independently investigation a Potential Violation at any time. Further, nothing in this section shall prevent the Board from consenting to entry of any judgment or settlement with respect to a Potential Violation.

3.5 **Evaluation Criteria.** The Board shall have the right and obligation to evaluate the progress of the Education Provider towards educating the children in accordance with the evaluation criteria and minimum outcome standards for performance which shall meet or exceed the minimum standards established by the Charter, the Community School Law and any and all other applicable federal and state laws and regulations (hereinafter the “**Evaluation Criteria**”). The Parties agree that such Evaluation Criteria shall initially be the commitments set forth in the Charter. The Evaluation Criteria may be reviewed in conjunction with the preparation of the Annual Operating Budget in accordance with Section 5 below by the Board and the Education Provider and any changes to the Evaluation Criteria shall be mutually agreed upon at such time.

3.6 **Physical Space.** If required, the Board shall cooperate with and assist the Education Provider in finding and acquiring occupancy rights in the physical spaces where the School will operate. The Education Provider, or Education Provider’s sister company, Cincinnati Property Management, shall have the right, subject to all applicable laws and regulations, to control the bidding process with respect to the purchase and/or capital improvement plan for physical spaces which the Education Provider acquires for the School provided that such bidding process is conducted in accordance with any applicable federal and state laws and regulations. With respect to any and all easements under which the Board is tenant, the Education Provider, or Cincinnati Property Management, shall undertake fully to perform and complete the obligations of the Board under such lease. To the extent any late fees are incurred under any such lease through no fault of the Board, the Education Provider or Cincinnati Property Management agrees to pay such fees with non-School funds. The Board shall delegate to the Education Provider or Cincinnati Property Management the management and lease obligations of such real estate.

3.7 **Name of the School.** The name of the School shall be “The International College Preparatory Academy.” During the term of this Agreement, all business cards, letterhead, brochures, press releases, official school correspondence, etc., shall also contain the following words: “a Member of the SABIS® School Network” pursuant to the published corporate guidelines. 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 associated with SABIS®.

3.8 **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, which consent shall not be unreasonably withheld.

3.9 **Rules and Procedures.** The Education Provider may recommend reasonable rules, regulation and procedures applicable to the School which the Board shall approve, such approval not to be reasonably withheld. The Board shall adopt such approved rules, regulations, and procedures in cooperation with the Education Provider and shall authorize the Education Provider to enforce such approved rules, regulations and procedures.

3.10 **Good Faith Obligation.** The Board shall be responsible for its fiscal and academic policies. The Board shall exercise good faith in considering the recommendations of the Education Provider including, but not limited to, the Education Provider's recommendations concerning policies, rules, regulations, procedures, curriculum and budgets, subject to constraints of law and requirements of the Charter. The Board, however, must exercise its fiduciary obligation to do what is in the best interest of the School. The Board shall notify the Education Provider of all of its meetings, to the extent permitted by law.

3.11 **Primary Contract.** The primary contract for Education Provider shall be the Regional Director, and the Board shall notify the Regional Director in all instances where the Board is required to communicate with or notify Education Provider.

4. **Rights and Obligations of the Education Provider.**

4.1 Consistent with the obligations of the Board under the Charter, the Community School Law, and any and all applicable federal and state laws and regulations, and in order to assist the Board in carrying out the terms of the Community School Law and any and all applicable federal and state laws and regulations, the Education Provider shall have the following rights and obligations in connection with the operations of the School and the education of the children enrolled as students in the School.

4.2 To the extent permitted by the Community School Law and other applicable laws, the Education Provider as manager for the School shall hire a School Director, chancellor or other chief operations officer of the school (hereinafter the "School Director") to manage and oversee the operations of the School and the faculty. The Education Provider will consult with the Board before hiring a School Director, and will provide to the Board information regarding each candidate within a reasonable time to allow the Board to review the information prior to consultation.

4.3 In addition to the School Director, the Education Provider will select and hire one or more administrators and such other clerks, counselors, administration and staff as the Education Provider deems necessary and appropriate to manage the School, consistent with the Annual Operating Budget.

4.4 The compensation of all such administration and staff shall be budget items for the purposes of Section 5 below.

4.5 Prior to the beginning of the first academic year, Education Provider may select and hire certain key personnel shall become employees of the Board with benefits and insurance equal to that of all other employees.

4.6 **Authority and Obligation to Manage the School.** The Education Provider shall have the authority and obligation to manage the School as set forth in this Agreement to the fullest extent permitted by applicable law.

4.7 Education of the Students. Subject to the provisions of this Agreement and in accordance with the provisions of the Charter, the Community School Law and any applicable federal and state laws and regulations, the Education Provider shall be responsible for the operation of the School and shall have the right and obligation to educate the children enrolled in the School. That education shall include all aspects of the educational process, including without limitation:

- (a) Implementation and administration of the curriculum and Educational Program identified in the Charter.
- (b) Provision of all personnel and payroll functions on behalf of the School.
- (c) Management of all personnel, including professional development for the School Director, instructional staff, and other necessary personnel.
- (d) Maintenance, administration, and operation of the School facilities and its staff.
- (e) Any food or transportation services provided for the School.
- (f) All extra-curricular programming implemented in connection with the School.
- (g) All aspects of the business administration of the School.
- (h) Any other function necessary or expedient for the administration of the School.

4.8 **Place of Performance.** The Education Provider reserves the right to perform functions other than instruction, such as purchasing, professional development and administrative functions, off-site at other Education Provider locations, unless prohibited by state or local law.

4.9 **Responsibility.** The Education provider shall be responsible and accountable to the Board for the administration, operation and performance of the School in accordance with the Charter.

4.10 **Pupil Performance Standards and Evaluation.** The Education Provider shall implement pupil performance evaluations that permit assessment of the educational progress of each School student. The Education Provider shall be accountable to the Board for the performance of students who attend the School. The Board and the Education Provider will cooperate in good faith to identify other measures and goals for student and School performance.

4.11 **Subcontracts with Other Entities.** The Education Provider shall additionally be entitled, in keeping with the Community School Law and any all applicable federal and state laws and regulations, to contract with public or private entities or with private persons for:

- Food and transportation;
- Custodial services, supplies and equipment;
- Improvements and maintenance to the building sites as the Education Provider deems necessary for the implementation of its program; and

- Any other services the Education Provider deems reasonably necessary to achieve the goals of the School and the Education Provider.

Notwithstanding the foregoing, the Education Provider shall remain ultimately responsible to the Board for any failure of any public or private entity engaged by the Education Provider to provide the foregoing services adequately. The Education Provider shall defend, indemnify and hold harmless the Board with regard to any claim, suit or action brought by a third party arising out of any failure of any public or private entity engaged by the Education Provider in performing its obligations. The expense of any such subcontractors shall be a budget item and payable by the Education Provider.

The Education Provider shall not subcontract the management, oversight or operation of the teaching and instruction program, except as specifically permitted in this Agreement with approval of the Board. The Education Provider shall not make a profit on subcontracts. The Education Provider shall not charge an added fee for expenses paid on behalf of the School unless such fee is approved in advance in writing by the Board.

4.12 **Compliance with Laws.** The Education Provider shall exercise its rights and fulfill its responsibilities and obligations under this Agreement so as to remain in compliance with and so as to assure the Board's compliance with the Community School Law and any and all applicable federal and state laws and regulations. The Education Provider shall also fulfill its responsibilities and obligations with regard to any new policies or procedures as promulgated by the Sponsor and the Board from time to time.

4.13 **Charter Between the Board and Sponsor.** The Education Provider will not act in a manner that will cause the Board to be in breach of its Charter with the Sponsor.

4.14 Reporting by the Education Provider. The Education Provider shall:

4.14.1. At least 90 days prior to the beginning of any school year, provide the Board with specific goals and objectives, consistent with the Charter goals, with regard to the Evaluation Criteria. The specifications of goals and objectives shall be general as to all students and not be required for each individual student.

4.14.2. Report quarterly to the Board, or as often as required under the Community School Law and all other applicable federal or state laws or regulations (whichever is most frequent), its progress toward attaining the Evaluation Criteria. Such quarterly report shall provide the Board with a report of plans in the coming quarter to correct any past deficiencies and/or to move forward to accomplishing the Evaluation Criteria.

4.14.3. Provide the following financial reports to the Board:

- (a) Detailed quarterly statements of all revenues received from all sources, with respect to the School, and detailed statements of all direct expenditures for services rendered to or on behalf of the School in a format showing budget to actual revenues and expenditures with an explanation of major variances;

- (b) Quarterly detailed schedules of expenditures at object level for ratification by the Board, such ratification not to be unreasonably withheld;
- (c) Each regular Board meeting shall be attended by the Director, who will provide a report on School operations, management, and finances. Such report need not be in writing. In the case of an emergency in which the Director is not available, the Director may be represented by an alternate.

4.14.4. Financial records maintained and kept by the Education Provider in relation to the School will be made available to the auditors of the Board, provided reasonable notice is given to the Education Provider before such inspection.

4.14.5. The Education Provider and the Board shall cooperate in the preparation of any and all reports required to be submitted under applicable federal or state laws or regulations.

4.14.6. Representatives of the Education Provider shall meet with the Board during the second two weeks of the month immediately succeeding each fiscal quarter to review the School operations in the quarter just completed in the light of the Annual Operating Budget. These meetings shall be scheduled by the Board.

4.15 **Student and Financial Records.** All financial records and educational records, including student records, regarding the School shall be treated as records of the School and shall be kept securely on-site or electronically accessible on-site and be available for authorized inspection upon reasonable request consistent with law.

4.16 **Student Fees.** The Education Provider may charge fees to students only in accordance with applicable Board policy and provisions of the Community School Law and any other applicable federal or state laws or regulations. Additional revenue accruing as a result of such fees shall be deemed "Revenue" for purposes of Section 5.1.1 below.

4.17 **Due Process Hearings.** The Education Provider shall provide students due process hearings in conformity with Board policy and the requirements of state and federal law regarding discipline, special education, confidentiality and access to records, to an extent consistent with the Board's own obligations. The Board shall retain the right to provide due process hearings as required by law.

4.18 **Services to Disabled Students and Special Education.** The Education Provider shall provide special education services to students who attend the School in conformity with Board policy and the requirements of federal and state law. The Education Provider may subcontract as necessary and appropriate for the provision of services to students whose special needs cannot be met within the School's program, subject to approval by the Board. Such services shall be provided in a manner that complies with federal, state and local laws and applicable regulations and policies.

4.19 **Legal Requirements.** The Education Provider shall provide the educational programs set forth in the Charter. Any changes to the educational programs approved by the Board and the Sponsor must meet federal, state, and local requirements, and the requirements imposed under the Community School Law and the Charter, unless such requirements are or have been waived.

4.20 **Delegation of Authority.** Nothing in this Agreement shall be construed as delegating to the Education Provider any of the powers or authority of the Board which are not subject to delegation by the Board under Ohio law.

4.21 **Insurance.** The Education Provider shall secure, maintain, and be responsible for making all payments associated with general liability insurance coverage and umbrella liability coverage as required by the Charter and any lease, with the Board and the Sponsor listed as additional insured. The Board shall present evidence to the Sponsor that it maintains the requisite insurance in compliance with the provisions of this paragraph. The Board and the Education Provider shall comply with any information or reporting requirements applicable to the respective parties under the required insurance policies with the insurer(s), to the extent practicable. Policies shall have a provision requiring notice to the Education Provider, at least (30) days in advance, upon termination or non-renewal of the policy. The Board may assist the Education Provider in purchasing and maintaining through a company or companies authorized to do business in Ohio such insurance as required by the Charter.

4.21.1. The insurance policies shall contain the following coverages:

- (a) Coverage for claims under worker's or workmen's compensation, disability benefit and other similar employee benefit laws;
- (b) Comprehensive Property Coverage, and Boiler, Machinery and Computer Coverage;
- (c) Comprehensive General Liability Coverage, including Corporal Punishment (if obtainable) and Employment Related Coverage, and Teacher's Professional and Educator's E&O Coverage, including coverage for claims for damage because of damage to or destruction of personal property, including loss of use, bodily injury, sickness or disease, or death caused by Education Provider's or the Board's employees and agents under any applicable employer's liability law, including claims for sexual harassment, with minimum coverage limits;
- (d) Automotive and School Bus Coverage covering claims for damages for bodily injury or death of a person or property damage arising out of ownership, maintenance or use of a motor vehicle, with minimum coverage limits as defined by applicable law;
- (e) Trustee and officer liability insurance (E&O) Coverage providing the broadest form of employer liability coverage available, including coverage for civil rights, defamation suits, and discrimination, human

rights and disability claims, in the minimum coverage limits as defined by applicable law;

- (f) Except as otherwise specified above, the insurance required by the above subparagraphs shall be written for limits commensurate with industry norms and practices as required by applicable law, Such insurance costs and premiums shall be a budget item.

4.22 **Major Changes in Educational Goals and Programs.** The Education Provider agrees to implement the educational goals and programs and curriculum set forth in the Charter. Should the Education Provider determine that it is necessary materially to modify the educational goals or programs; it will inform the Board of the proposed material changes. Only if both the Board and the Sponsor, if required by the Charter, approve the changes, will the Education Provider implement them.

5. **Annual Operating Budget.**

5.1 **Annual Operating Budget.** The Education Provider shall prepare an Annual Operating Budget broken down by month and prepared in accordance with Generally Accepted Accounting principles (GAAP). The Annual Operating Budget shall include all “Revenue” and “Expenses” according to the accounting categories required by the State of Ohio or the Sponsor.

5.1.1. **Revenue.** As used in this Section, the term “Revenue” shall include but not be limited to:

- (a) No less than ninety-seven percent (97%) of fund received, after withholding by the Board of Sponsor’s oversight fee in the amount of up to three percent (3%), pursuant to Community School Law (hereinafter “Tuition Funding”);
- (b) Revenues and additional funds expected to be received from Local, County, State or Federal authorities/bodies;
- (c) Grants, Entitlements and Donations received from Local, County, State, Federal and other independent of governing bodies;
- (d) Revenues and additional fees expected to b received from students for academic and non-academic programs;
- (e) Any other income not explicitly covered above.

5.1.2. **Expenses.** As used in this Section, the term “Expenses” shall include all costs including but not limited to:

- (a) Staff Cost: Salaries, Payroll Taxes (Employer's Contribution), workmen's compensation, applicable benefits like insurance, retirement plan and any other related staff cost;
- (b) General administration expenses, School operating expenses, general maintenance expenses and general operating expenses;
- (c) Books for the students purchases from Education Provider and outside suppliers;
- (d) Expenses related to Grants, Entitlements and Non-Academic programs like Extended Day, Lunch, Transportation, etc.;
- (e) Expenses related to services for disabled students and students with special needs;
- (f) License Fees and Management Fees payable in accordance with this Agreement;
- (g) Lease and rental payment of School land, building, equipment, personal property, etc.
- (h) Capital expenditures including but not limited to computer equipment & software, furniture & fixtures, equipment for art, music, PE, playground, special education, grant programs etc., and improvements to building, and playground;
- (i) Professional services;
- (j) Any other expenses not explicitly covered above.

5.1.3. The Annual Operating Budget shall also include the following:

- (a) Direct and Indirect funds necessary to run the School and maintain its buildings, equipment and supplies;
- (b) Funds allocated to repay loans advances, and interest received from Education Provider or other entities. All such loans and advances shall be documented in writing and approved by the Board;
- (c) Funds projected for acquisition, expansion or upgrading the School infrastructure and equipment.

5.1.4. The parties hereby agree that although the Education Provider shall have primary responsibility for preparing the Annual Operating Budget, it must have final approval by the Board. The Annual Operating Budget as prepared by the Education Provider shall be integrated into the Board's Annual Budget, with the cooperation of the Board as necessary, and shall be approved by the Board at the functional level in compliance with Community School Law.

- 5.1.5. The budget for License and Management Fees shall consist of (1) a License Fee of six percent (6%) of Revenue, as defined in Section 5.1.1, for the use of SABIS®' proprietary pedagogical materials and system; and (2) a Management Fee of eight percent (8%) of Revenue, as defined in Section 5.1.1.

For the purposes of this Section 5.1.5, the term Revenue does not include:

- a) Grants, Donations or Gifts either in-kind or services, individually and specifically applied for and obtained by the Board or by its Sponsor.
- b) Any Fees received by the Board from programs not managed by Education Provider
- c) Any Grants or Entitlements obtained through the efforts of Education Provider to the extent that such exclusion is allowable by Community School Law.

5.2. **Procedure for Approving the Annual Operating Budget.** The Education Provider shall provide to the Board the draft Annual Operating Budget two weeks prior to the date required by applicable law. The Education Provider shall make all appropriate books and records available to the Board to facilitate the Board's review of the draft Annual Operating Budget. The final Annual Operating Budget shall be provided to the Board at least 30 days prior to the date the Board is required to submit the Annual Budget to the Sponsor. No later than two weeks prior to the date the Annual Budget is required to be submitted under the Charter, the Board shall meet to adopt and approve both the Annual Budget and the Annual Operating Budget, and such approval shall not be unreasonably withheld.

- 5.2.1. Any significant deviations in the line item (greater than 15% of any major line item, major line items being those whose budget exceeds 15% of revenues) from the approved Annual Operating Budget must be approved by the Board prior to disbursement. The 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.
- 5.2.2. Any proposed expense from the approved Annual Operating Budget which exceeds a total amount of two thousand dollars (\$2,000) must be approved in writing by the Regional Director prior to the expense being incurred.

6. Payment of Expenses; Funding; Compensation.

6.1 Payment of Expenses.

- 6.1.1. Within five (5) business days of receipt by the Board, no less than ninety-seven percent (97%) of all Tuition Funding (calculated after an oversight fee of up to 3% is withheld for the Sponsor) and one hundred percent (100%) of all other funds, except for those grants and donations secured by the Board and fees from School programs not managed by the Education Provider, shall be advanced to the Education Provider to pay for all operational costs of the School. Documentation for fees and expenses shall subsequently be provided by the

Board for ratification. The Education Provider is entitled to any surplus and has the option, in its sole discretion, fund any deficits created by the Annual Operating Budget without committing the Board to any loans. The Education Provider shall be allowed to recover the amount so funded from the subsequent years the School makes Surplus as allowable by the Community School Law and other applicable laws.

6.2 Funding.

- 6.2.1. All revenues will serve to fund the operation of the School.
- 6.2.2. The Board may request, and the Education Provider may provide, in its sole discretion, a loan of funds to the Board to fulfill any obligations the Board has under this Agreement. Interest rates shall not exceed 1.0% over prime.
- 6.2.3. 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. Although the Board may seek funding and grants from public sources, this shall be the primary responsibility of Education Provider, to whom the Board delegates this responsibility. The Parties hereby agree to 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 of the Education Provider, as applicable. In the absence of a mutual loan agreement between the parties, any outside funding received by either party is the sole property of that party and may be used for any purpose consistent with this Agreement

6.3. Compensation. As compensation for the services provided by Education Provider, the Education Provider shall be paid the following:

- 6.3.1. License Fees of six percent (6%) of Revenue (as defined in Paragraph 5.1.1 of this Agreement) 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 Student Management Systems) provided by the Education Provider during the term of this Agreement or renewal term of this Agreement (the “License Fee”); and
- 6.3.2. Management Fees of eight percent (8%) of Revenue (as defined in Paragraph 5.1.1 of this Agreement), for services provided, 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”).
- 6.3.3. In the event the year-end result is Surplus per the audited financial statements the Education Provider is entitled to the entire surplus as allowable by the Community School Law and other applicable laws.

6.3.4 Upon renewal of the Agreement, Education Provider reserves the right to adjust the License Fee and Management Fee, such adjustment not to exceed an increase of one percent (1%) for each fee.

6.4 **Annual Audit.** The Board, in consultation with Education Provider, shall select and retain an annual financial audit in accordance with the School's Charter. The cost of the audit shall be a budget item.

7. Term.

The term of this Agreement shall be for a period of five (5) years, commencing with the execution of this Agreement and terminating June 30, 2008, and subject to renewal of the Charter and the provisions of the Community School Law and any and all other applicable federal and state laws and regulations. This Agreement may be terminated prior to the end of the initial term in accordance with Section 12 below.

8. Student Recruitment and Admission.

The Education Provider shall be responsible for the recruitment and admission of students, subject to agreement on general recruitment and admission policies. Students shall be selected in accordance with the procedures set forth in the Charter and in compliance with the Community School Law and other applicable law.

9. Employees.

9.1 **Personnel Responsibility.** The Board shall be the employer of all personnel but shall delegate all personnel functions to the Education Provider, including selecting, hiring, training, managing, establishing personnel policies and procedures, reviewing, compensating and terminating all staff associated with the School, including without limitation its teachers and all administrative and support staff. The Education Provider shall consult with the Board with respect to hiring a School Director.

9.2 **School Director.** Because the accountability of the Education Provider to the Board is an essential foundation of this partnership, and because the responsibility of the School Director is critical to its success, the Education Provider will have the authority, consistent with state law to select and supervise the School Director and to hold him or her accountable for the success of the School. Term, duties and compensation of the School Director shall be determined by the Education Provider.

9.3 **Teachers.** Prior to the commencement of the 2003-2004 academic year by the School, and from time to time thereafter, the Education Provider shall determine the number of teachers, and the applicable grade levels and subjects, required for the operation of the School pursuant to the Charter. The Education Provider shall select and hire such teachers, qualified in the grade levels and subjects required, as are needed to carry out the Educational Program of the School. The curriculum taught by such teachers shall be the curriculum prescribed by the Charter. Such teachers 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 hold a valid teaching certificate issued by the state board of education and have undergone a criminal background check, as required by Community School law and other applicable state and federal laws. The term and compensation of teachers at the school shall be determined by the Education Provider.

9.4 **Support Staff.** Prior to the commencement of the 2003-2004 academic year, and from time to time thereafter, the Education Provider shall determine the number of functions of support staff required for the School. The Education Provider shall select and hire such support staff, qualified in the area required. Such support staff may, in the discretion of the Education Provider, work at the School on a full or part time basis. The term, duties and compensation of the support staff shall be determined by the Education Provider.

9.5 **Training.** The Education Provider shall provide training in its methods, curriculum, Educational Program, and technology, to all teaching 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 Community School Law. Training shall occur on-site or at locations to be designated by the Education Provider, at Education Provider's discretion. Expenses for travel and lodging of all training related to the School shall be a budget item.

10. Proprietary Information.

10.1 **Education Provider Prior Rights.** The Board agrees that the Education Provider and/or its parent company owns (a) all trademarks, copyright and other proprietary rights developed prior to the effective date of this Agreement subsisting or created in its instructional materials, training materials developed by the Education Provider, its employees, agents or subcontracts (to the extent such individuals are legally or contractually obligated to assign or have assigned such rights to the Education Provider); and (b) such other similar instructional materials, training materials, methods and other materials that may be developed at the Education Provider's sites other than the School, which is protected by law (hereinafter "**SABIS® Proprietary Information**"). During the term of this Agreement, the Education Provider may identify any SABIS® Proprietary Information to the Board, including that which is currently in existence as well as that which may be created in the future.

10.2 **License to the School.** Execution of this Agreement shall give rise to a limited, non-exclusive, no-transferable license to the Board for the use of any and all SABIS® Proprietary Information used for the purpose of operating the School's educational programs. 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. 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 approval of the Education Provider. To the extent permitted by law, the Board and the Education Provider shall take reasonable measures to assure that no personnel or agents disclose, publish, copy, transmit, modify, alter, utilize or permit copying of SABIS® Proprietary Information contrary to this paragraph.

10.3 **School-Developed Proprietary Materials.** The Education Provider will not claim as proprietary any curriculum or other educational materials developed and paid for by the Board. This provision does not apply to the curriculum and materials for which the School pays the 6% License Fee.

11. Property Ownership.

11.1 With respect to personal property acquisitions, the Education Provider has an obligation to act in the best interest of the School. The Education Provider may use the budgeted portion of the Revenue payment to purchase or finance personal property acquisitions. The Education Provider pledges that, to the extent it is possible, the Board will retain ownership rights in all personal property used at the School.

11.2 Upon termination of this Agreement for any reason, or in the event of a subsequent dissolution of the Education Provider, all property which the Education Provider might lease, borrow or contract for the School shall, in the Board's discretion either (i) be promptly returned to those organizations or individuals from which the Education Provider has leased, borrowed, or contracted for the materials, or (ii) Education Provider shall transfer the lease or contract to the Board. To the fullest extent possible, all contracts and/or leases shall be in the name of the Board.

11.3 Upon termination for any reason, all property purchased by the Board or financed by School funds, including but not limited to any funds the Board may receive pursuant to the Community School Law which do not accrue to the Education Provider in the form of license and management fees and surplus, shall remain the property of the Board.

11.4 All acquisitions or lease purchases made by the Education Provider for the School, including, but not limited to, instructional equipment, supplies, furniture, computers and other technology, shall be owned by and remain the property of the Board.

11.5 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. To the extent that such acquisitions can be made with School funds (including the Revenue payment to the Education Provider), the parties agree that they will be purchased pursuant to 11.3 above. If such acquisitions are lease purchases, the Board shall be the direct party to the lease purchase whenever possible.

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

11.7 All property owned and personally and/or individually by the teachers, administrative and support staff shall remain the property of the individual teachers and staff. Such property includes, but is

not limited to, albums, curriculum manuals, and personal mementos and other materials or apparatus that have been personally financed or personally developed by teachers or staff.

12. Termination, Renewal and Dispute Resolution.

12.1 **Termination for Cause.** Either party may terminate this Agreement in the event of a material breach pursuant to the provisions of 12.2 below.

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

- (i) A meeting shall be held promptly between the Parties, attended 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, they 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 Cincinnati, Ohio and be governed by the laws of the state of Ohio. A judgment upon any award rendered may be entered in any court having jurisdiction thereof.
- (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 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.
- (iv) Each Party shall be responsible for an equal share of the cost of arbitration. However, each Party shall be solely responsible for any expenses incurred by that Party's request for additional witnesses, representation, or services.

12.3 **Due To Adverse Law.** If any federal, state, or local law or regulation or court decision has a material 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.

12.4 **By Mutual Agreement.** Absent a material breach, the Parties may terminate this Agreement only at the end of an academic year, provided mutual written agreement of such termination is reached at least (90) days prior to the end of the academic year.

12.5 **Due to Revocation of the Charter.** In the event that the Charter is revoked, then this Agreement shall automatically terminate effective upon such revocation.

12.6 **Due to Bankruptcy.** In the event of the bankruptcy of the Education Provider, the Agreement shall automatically terminate effective upon the filing of such bankruptcy.

12.7 **School Records.** Upon expiration or termination of this Agreement, all School records 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.

12.8 **No Disparagement.** In the event of any termination of this Agreement, the Parties agree that no party will make (or cause or encourage anyone else to make) any disparaging, untrue, or misleading written or oral statements about or relating to the other party or about or relating to any officer, director, shareholder, agent, employee, or other person acting on such party's behalf.

13. **Indemnification.**

13.1 **Mutual Indemnification.** The Board and the 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, 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 the Education Provider shall at all times be solely responsible for their respective legal expenses and costs, including attorneys' 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.

13.2 **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.

14. **Confidentiality.**

14.1 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 14.2 below. Unless a party has obtained the express prior

written consent of the other party, under no circumstances whatsoever 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.)

14.2 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.

15. Non-Discrimination and Affirmative Action.

All parties agree to comply with all applicable federal and state statutes, rules, regulations and orders dealing with discrimination.

16. Governing Law.

This Agreement shall be governed by, subject to and construed under the laws of Ohio. Any legal actions prosecuted by any other party under this Agreement shall be brought in a court of competent jurisdiction located in Hamilton County, Ohio, 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.

17. 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 and the Education Provider, and be signed by a duly authorized officer, agent or attorney of the Parties.

18. Notice.

Unless otherwise provided in this Agreement, any notice demand or request from one party to any other party or parties hereunder shall be deemed to have sufficiently given or served for all purposes if, and as of the date it is delivered by hand, overnight courier, or facsimile (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 (which addresses may be changed from time to time by written notice from one party to the other):

To the Education Provider:	Udo Schultz, Manager Cincinnati Education Management LLC 6385 Beach Road Eden Prairie, MN 55344
To Board:	Vallrey Crump President International College Preparatory Academy 244 Southern Avenue Cincinnati, OH 45219

19. Waiver.

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

20. Counterparts; Signature by Facsimile.

This Agreement may be signed in counterparts, which shall together constitute the original Agreement. A signature delivered by facsimile shall be considered an original for purposes of this Agreement.

21. Assignability.

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

22. 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.

23. Force Majeure.

Notwithstanding any other provision in this Agreement, the Parties hereto shall not be liable for failure to perform hereunder if the party's 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 within the control of the party, and which cannot be overcome by reasonable diligence and without expense which would be commercially impracticable.

24. Amendments.

This Agreement may only be amended by a writing signed by both parties and approved by the Board at a duly noticed open meeting.

25. 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.

26. Preamble and Headings.

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.

International College Preparatory Academy, Inc.

By _____

Vallrey Crump

Its: President

Cincinnati Education Management LLC

By _____

Udo Schultz

Its: Manager