

**Education Achievement Authority  
of Michigan**  
Equity. Choice. Reinvention.

**RESOLUTION 2012-54  
AUTHORITY TO APPOINT INTERIM MEMBERS TO PUBLIC SCHOOL ACADEMIES'  
BOARD OF DIRECTORS**

The Executive Committee of the Education Achievement Authority resolves:

1. That the Board of the Education Achievement Authority of the Michigan (the "Board") granted the Chancellor general administrative control and oversight authority in matters related to the Education Achievement Authority of Michigan's (the "Authority") public school academies ("PSA") pursuant to "Resolution 2012-4 Authorizing Public School Academies";
2. That the Chancellor is granted authority to accept and review applications for Public School Academy Board of Directors and to determine whether they meet the EAA's standards for PSA board membership and Board policies;
3. The Chancellor is granted authority to appoint, on an interim basis pending final approval by the EAA Executive Committee, members to the Public School Academy Board of Directors of public school academies chartered by the Authority.

*Certification:*

I certify that this resolution was duly adopted by the Executive Committee of the Education Achievement Authority at a properly-noticed open meeting held with a quorum present on the \_\_\_\_ day of \_\_\_\_\_.

By: \_\_\_\_\_  
President

By: \_\_\_\_\_  
Secretary

  
\_\_\_\_\_  
Legal Counsel  
Approved as to Form

**Education Achievement Authority  
of Michigan**  
Equity. Choice. Reinvention.

**RESOLUTION 2012-55  
APPROVAL OF AMENDMENT TO RESOLUTION 2012-21 –  
BOARD OF DIRECTORS COMPOSITION FOR CHARTER SCHOOLS**

The Executive Committee of the Education Achievement Authority resolves:

1. That the attached Resolution 2012-21, Board of Directors Composition for Charter Schools, previously approved at the May 10, 2012 Board Meeting, is hereby amended as indicated and approved;
2. That the Chancellor is granted authority to amend Board policies and other related documentation consistent with this resolution.

*Certification:*

I certify that this resolution was duly adopted by the Executive Committee of the Education Achievement Authority at a properly-noticed open meeting held with a quorum present on the \_\_\_\_ day of \_\_\_\_\_.

By: \_\_\_\_\_  
President

By: \_\_\_\_\_  
Secretary

  
\_\_\_\_\_  
Legal Counsel  
Approved as to Form

# Education Achievement Authority of Michigan

Equity. Choice. Reinvention.

## RESOLUTION 2012-21 BOARD OF DIRECTORS COMPOSITION

The Executive Committee of the Education Achievement Authority resolves:

1. Public school academies authorized by the Education Achievement Authority of Michigan ("EAA of Michigan") shall be governed by a Board of Directors ("Board") consisting of ~~seven~~ fewer than five and no more than nine members. However, at the formation of the Board, in order to conduct an initial meeting, the Board may be comprised of a minimum of five members. These members shall be appointed from a list of nominees approved by the EAA of Michigan, of its designee.
2. Nominees for the Academy Board. The list of nominees shall be provided to the Chancellor by the Academy and consist of twice the number of vacancies on the Academy Board. However, the list of nominees for the appointment of initial directors may consist of fewer than twice the number of vacancies.
3. Board Member Qualifications. Academy Board members shall include at least one parent or guardian of a child enrolled and attending the Academy. The Board shall not include (i) any director, officer or employee of a management company that contracts directly or indirectly, with the Academy; or (ii) EAA of Michigan officials, as representatives of EAA of Michigan.
4. Board Member Terms. A director of the Board of Directors of the Academy shall hold office for a term of three years, except for the Initial Directors appointed pursuant to this Section of whom one-third shall be appointed for a term of approximately three years, one-third shall be appointed for a term of approximately two years, and one-third shall be appointed for a term of approximately one year, in each case as the initial term may be set to end so as to allow future terms to begin on a day of the year determined by the Academy Board and the Chancellor to be beneficial to the Academy in light of its yearly operational and budget cycle.
5. Appointment of Initial Directors. All Initial Directors of the Board of the Academy shall be appointed by resolution of the EAA of Michigan, or by

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~~the Chancellor, it granted that authority, and shall consist of at least the following:~~

- ~~(a) President, three year term~~
- ~~(b) Vice President, three year term~~
- ~~(c) Secretary, two year term~~
- ~~(d) Treasurer, two year term~~
- ~~(e) Parent Representative, one year term~~

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~~Furthermore, it is agreed that all Initial Directors of the Board may be appointed to a permanent position on the Board in accord with this section.~~ it is agreed that the Initial Directors shall elect the officers of the Board of the Academy at a meeting called by the Board.

6. Removal of Board Member. Any Director may be removed with or without cause by a two-thirds vote of the Academy Board or by the EAA of Michigan.
7. Conflicts of Interests. The selection of Directors shall be in compliance with the requirements of the Incompatible Public Offices Act, Act No. 566, Public Acts of Michigan, 1978, MCL 15.131 to 15.185, including, without limitation, the requirement that such Directors shall not also be members of the EAA of Michigan or administrators, teachers or employees of the Academy.

*Certification*

I certify that this resolution was duly adopted by the Executive Committee of the Education Achievement Authority at a properly-noticed open meeting held with a quorum present on the \_\_\_\_ day of \_\_\_\_\_.

By: \_\_\_\_\_  
President

By: \_\_\_\_\_  
Secretary

\_\_\_\_\_  
Legal Counsel  
Approved as to Form

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Education Achievement Authority  
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**RESOLUTION 2012-56  
APPROVAL OF SERVICE AGREEMENT WITH EDVANTAGES, INC. D/B/A PERFORMANCE  
ACADEMIES, LLC FOR THE PROVISION OF SERVICES**

The Executive Committee of the Education Achievement Authority resolves:

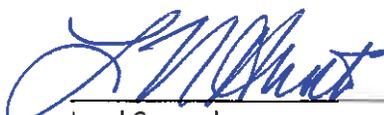
1. That the attached Services Agreement with EdVantages, Inc. d/b/a Performance Academies, LLC for the provision of services from EAA vendors, and related services and resources, for Performance Academies, LLC is approved by the Executive Committee of the Authority as the governing body of the Authority, subject to further negotiations and/or agreements between the parties;
2. That the Chancellor of the Authority is authorized to execute the Services Agreement on behalf of the Authority, subject to the conditions set forth above;
3. That the Secretary of the Executive Committee of the Authority shall enter the terms of the Agreement in the minutes of the proceedings of the Executive Committee of the Authority.

*Certification:*

I certify that this resolution was duly adopted by the Executive Committee of the Education Achievement Authority at a properly-noticed open meeting held with a quorum present on the \_\_\_\_ day of \_\_\_\_\_.

By: \_\_\_\_\_  
President

By: \_\_\_\_\_  
Secretary

  
\_\_\_\_\_  
Legal Counsel  
Approved as to Form



EDUCATION ACHIEVEMENT AUTHORITY of Michigan  
VENDOR CONTRACT JUSTIFICATION FORM

REQUESTER INFORMATION

Date: 8/2/12 Department: Public School Academies Requisition No.: \_\_\_\_\_

Requester Contact Information: Judith Berry 313-456-3110  
Name Telephone Number

CONTRACT INFORMATION

Vendor Name: EdVantages, Inc. d/b/a Performance Academies, LLC

Contract Price: N/A

Funding Source: N/A

Rebecca Lee-Gwin, Ed.D., Date  
Deputy Chancellor, Business, Fiscal Affairs & Operations

Contract Term: One year, with three one year extension options

Equipment/Services to be Provided: Security; custodial, grounds, facility maintenance, waste management, and pest control; student transportation; and student database technology and technical support.

Justification for Contract: EAA and Performance Academies are entering into a contract to provide for Performance Academies to receive services under contracts EAA has entered into with certain service providers. Performance Academies will pay for these services, thus this contract is revenue neutral.

LEVEL OF IMPORTANCE

Essential

Important

Desirable

\_\_\_\_\_  
Legal Counsel  
Approved as to Form

REQUIRED APPROVALS	
Principal/Department Head	Date
Chancellor	Date

**EDUCATION ACHIVEMENT AUTHORITY AND EDVANTAGES, INC. (D/B/A  
PERFORMANCE ACADEMIES, LLC)  
SERVICES AGREEMENT**

THIS SERVICES AGREEMENT (“Agreement”) is hereby entered into the \_\_\_\_ day of August, 2012 (the “Effective Date”) by and between the Education Achievement Authority (“EAA”), a Michigan public body corporate and special authority, and EdVantages, Inc., an Ohio corporation, d/b/a Performance Academies, LLC (“PA”), an Ohio limited liability company authorized to conduct business in Michigan.

**RECITALS**

WHEREAS, EAA and the Michigan Education Choice Center (“MECC”) have entered into an Agreement to Operate a Public School Academy, under Part 6A of the Revised School Code of Michigan, MCL 380.1 *et seq.*

WHEREAS, PA and MECC have entered into a Services Agreement, wherein PA shall perform certain functions in conjunction with the operation of certain schools as Public School Academies.

WHEREAS, EAA has entered into certain contracts with service providers to provide operational support to EAA direct-run and EAA chartered schools.

WHEREAS, PA desires to receive such services under the applicable agreements EAA has entered into with the service providers.

WHEREAS, EAA desires to make such services available.

NOW THEREFORE, in consideration of the foregoing and the mutual covenants set forth herein, the Parties agree as follows:

**ARTICLE I  
TERM AND TERMINATION**

- A. **Initial Term.** The term of this Contract shall be for a period of one (1) year, commencing August \_\_\_\_, 2012 and ending August \_\_\_\_, 2013.
- B. **Renewal Term.** EAA shall have the option to extend this Agreement, or any portion thereof, for up to three (3), one (1) year periods (each a “Renewal Term”), provided that the Parties understand that a specific term and period of performance in any individual Agreement to which EAA is a party with an individual Service Provider for services to be provided on an EAA district-wide basis shall also govern this Agreement.

- C. **Termination for Convenience.** EAA may terminate this Agreement without cause by providing at least sixty (60) days written notice of such termination to PA. EAA shall be compensated for all services provided up to the effective date of termination.
- D. **Termination for Cause.** Either party may terminate this Agreement for cause upon breach by the other party, which breach remains uncured thirty days after written notice describing such breach is given to the breaching party. Notwithstanding the preceding sentence, this Agreement may be terminated immediately by a party upon (i) the commission of an illegal act, unethical practice, or violation of public policy, including theft or embezzlement, by the other party; (ii) conduct by the other party that may adversely affect a party, as determined by such party in its sole discretion, or (iii) the filing of bankruptcy by either party. Further, EAA may terminate this Agreement immediately upon the breach by PA of the provisions of Article VIII.
- E. **Cooperation.** Upon the expiration or termination of this Agreement for any reason, PA shall cooperate with EAA in the orderly completion or transfer of Services and return of all EAA data and information, including any work in progress.

## **ARTICLE II SCOPE AND TERMS OF SERVICES**

- A. **General.** EAA agrees to cause to be provided the following services to PA under existing agreements EAA has entered into with certain Service Providers. PA agrees to work within the existing limitations of those agreements and all EAA policies affecting or related to the services provided. EAA agrees to provide PA with notice of all existing or modified contractual requirements and/or limitations, and any EAA policies affecting the services provided under this Agreement. The parties explicitly understand and agree that each Exhibit attached hereto represents the Scope of Services and Pricing as reflected in the relevant EAA contract with each individual Service Provider. As such, wherein EAA is reflected as a party in each of the Exhibits, it shall be construed as though PA is a party to that agreement to the extent PA actually receives such services. Further, any obligation of EAA contained in each exhibit or actual contract with a Service Provider shall be imputed to PA when PA is the recipient of such services. PA has received a copy of all service contracts which are subject to this Agreement. Further, when pricing terms contained in any Exhibit or actual contract provides for pricing and payment on an aggregate EAA district-wide basis, PA shall be responsible for its pro rata share of such services. EAA agrees to work with and provide such information as is reasonably necessary for PA to be sufficiently aware of its pro rata share of such costs.
- B. **Custodial, Grounds, Facility Maintenance, Waste Management and Pest Control.** Exhibit A.
- C. **Security.** Exhibit B.
- D. **Pupil Transportation.** Exhibits C1-C3.

E. **MISTAR Information System and Technical Support.** Exhibit D.

**ARTICLE III  
COMPENSATION**

- A. **Costs.** All Costs payable to EAA during the term of this Agreement shall be reflected in each Exhibit referenced in Article II. Such costs represent the direct cost that EAA pays to the service providers for such services provided to EAA direct-run facilities. These costs may be modified from time-to-time based on any such modifications of the underlying agreements EAA is a party to with the service providers. EAA shall provide prior notice to PA of any such Cost modifications. Except for the Fees set forth in the applicable Exhibit and the associated Administrative Fee set forth in Section III.B., there are no other fees or costs to be paid by PA to EAA for the provision of Services under this Agreement. PA understands and agrees that any Fees and Administrative Costs paid under this Agreement are in excess of, and do not reduce any amounts due under any other Agreements, including, but not limited to, the Contract to Operate Public School Academies.
- B. **Administrative Fees.** EAA shall charge PA an Administrative Fee in an amount equal to 2.5% for all amounts due for Services provided under this Agreement. Such Administrative Fees represent the cost EAA shall incur for handling and processing invoices, payments, and service coordination.
- C. **Invoices; Payment Period.** EAA shall submit to PA invoices for Services **monthly**. Invoices shall be submitted to: \_\_\_\_\_, **Attention: Accounts Payable**. PA shall pay invoices for Services satisfactorily performed within twenty-five (25) days after receipt of an invoice from EAA. In the event that PA reasonably disputes any amount that appears on an invoice received from EAA, the parties shall work together in good faith to resolve the dispute. In the event of non-payment by PA, EAA shall terminate this Agreement according to Section I.D.

**ARTICLE IV  
REPORTS AND RECORDS**

- A. **Reports.** PA shall maintain such records and submit such reports, as are deemed necessary by EAA. All reports required by EAA shall be submitted in a format acceptable to the EAA. PA will not be responsible for filing on behalf of EAA any state or regulatory reports concerning ridership or reimbursement. PA shall supply information requested by EAA for various reporting requirements to local state and federal agencies. PA shall furnish a database of all students' names, addresses, school of attendance, programs, and any special requirements for Special Education students. If for any reason arising from the failure of PA to provide reports and/or information, EAA is penalized by any entity to which EAA is required to provide such reports and/or information, PA shall be responsible to reimburse EAA for all such expenses, fines, and/or costs incurred. Charter schools operate under their own authority and shall submit any such reports as

may be required by federal, state and local agencies.

## **ARTICLE V REPRESENTATIONS AND WARRANTIES OF EAA**

EAA represents and warrants to PA as follows and acknowledges that PA is relying on such representations and warranties in entering into this Agreement and completing the transactions contemplated hereby:

- A. **Organization and Good Standing.** EAA is duly organized, validly existing and in good standing under the laws of the State of Michigan, has all requisite power and authority to own, operate and lease its properties and is duly authorized to do business in the State of Michigan.
- B. **Power and Authorization.** EAA has all requisite power to enter into this Agreement and to carry out and perform its obligations hereunder. All action required on the part of EAA and its officers, directors and shareholders for the authorization, execution and delivery of this Agreement and the performance by EAA of its obligations hereunder have been taken. This Agreement, when executed and delivered, shall constitute the legal and binding obligation of EAA in accordance with its terms, subject to (a) judicial principles respecting election of remedies or limiting the availability of specific performance, injunctive relief and other equitable remedies and (b) bankruptcy, insolvency, reorganization, moratorium or other similar laws not or hereafter in effect generally relating to or affecting creditors' rights.
- C. **No Conflict or Breach.** The execution, delivery and performance by EAA of its obligations under this Agreement will not result in any violation of, be in conflict with or constitute a default under, in any material respect, any material instrument, mortgage, deed of trust, loan, contract, commitment, judgment, decree, order or obligation binding upon EAA or result in the creation of any mortgage, pledge, lien, encumbrance or charge upon any of its properties or assets.

## **ARTICLE VI REPRESENTATIONS AND WARRANTIES OF PA**

PA represents and warrants to EAA as follows and acknowledges that EAA is relying on such representations and warranties in entering into this Agreement and completing the transactions contemplated hereby:

- A. **Organization and Good Standing.** PA is duly organized, validly existing and in good standing under the laws of the State of Ohio, and has all requisite power and authority and is duly authorized to do business in the State of Michigan.
- B. **Power and Authority.** PA has all requisite power to enter into this Agreement and to carry out and perform its obligations hereunder. All action required on the part of the PA and its officers, and agents for the authorization, execution and delivery of this Agreement and the performance by PA of its obligations hereunder have been taken. This Agreement when executed and delivered, shall constitute the legal and binding

obligations of PA in accordance with its terms, subject to (a) judicial principles respecting election of remedies or limiting the availability of specific performance, injunctive relief and other equitable remedies and (b) bankruptcy, insolvency, reorganization, moratorium or other similar laws not or hereafter in effect generally relating to or affecting creditors' rights.

- C. **No Conflict or Breach.** The execution, delivery and performance by PA of its obligations under this Agreement will not result in any violation of, be in conflict with or constitute a default under, in any material respect, any material instrument, mortgage, deed of trust, loan, contract, commitment, judgment, decree, order or obligation binding upon PA or result in the creation of any mortgage, pledge, lien, encumbrance or charge upon any of its properties or assets.
- D. **No Debarment, Pending Governmental Action or Record of Violations.** PA has not been debarred by either the Federal, State or any local unit of government from providing services, nor is it currently the subject of any debarment or similar proceedings. PA has no record of violation of any Federal, State or local government's procurement, contracting or ethics rules.
- E. **Conflicts; No Undue or Improper Influence or Inducement.** PA represents and warrants that it has disclosed in writing any existing conflicts of interest involving EAA, and that it will disclose in writing to EAA any conflicts that arise during the term of this Agreement. PA represents and warrants that it has not and will not offer to EAA or any of EAA's employees any unlawful inducement, prohibited benefit, or improper incentive to enter into this or any other agreement with EAA.
- F. **Performance of Services; Compliance with Law.** The Services will be performed in a diligent manner in accordance with industry practices, by individuals of suitable training and skill. EAA's actions and performance of the Services throughout the term of this Agreement shall be in full compliance with all applicable federal, state and local laws, rules, regulations and standards. PA has and will maintain throughout the term of this Agreement, all licenses, permits, authorizations and approvals necessary for the lawful conduct of its business.

## ARTICLE VII CONFIDENTIAL INFORMATION

- A. **Standard of Care.** PA acknowledges that it may receive or have access to EAA's "Confidential Information", as that term is defined below. PA will protect EAA's Confidential Information with the same degree of care as PA uses to avoid unauthorized use, disclosure, publication or dissemination of its own confidential information of a similar nature, but in no event, less than a reasonable degree of care. PA shall not disclose or otherwise make available EAA's Confidential Information to any third party without the prior written consent of EAA; provided, however, that PA may disclose the Confidential Information to its officers, employees, and contractors who need access to the Confidential Information to perform their obligations to PA or EAA and who are themselves bound by nondisclosure obligations at least as restrictive as those set forth in

this Article VI. Further, PA shall comply with all confidentiality-related guidelines, standards and law applicable to EAA. PA agrees to immediately notify EAA in the event PA becomes aware of any loss or unauthorized disclosure of EAA's Confidential Information. The provisions of this Article VI shall survive the termination or expiration of this Agreement.

- B. Confidential Information.** "Confidential Information" means any information related to the business, personnel and operations of EAA obtained by PA, and may include, but is not limited to, business affairs, data, manuals, financial and accounting data, data and information concerning students, contracts, intellectual property, proprietary information and other operational information. Confidential Information shall not include anything that PA can document: (i) was generally available to the public at the time it was received by PA, (ii) was known to PA, without restriction, at the time of disclosure, or (iii) was independently developed by PA without any use of the Confidential Information.
- C. Return of Confidential Information.** Upon expiration or termination of this Agreement, PA shall promptly return to EAA all Confidential Information of EAA and all copies, or at EAA's option, PA shall destroy the Confidential Information.

#### **ARTICLE VIII AUDITS**

- A. General.** Upon reasonable notice from EAA, PA shall provide EAA and its agents, regulators, accountants and inspectors access to, and any assistance and information that they may reasonably require with respect to the Services to, among other things, verify the security of EAA Confidential Information, and examine and/or confirm PA's compliance with this Agreement and applicable law.
- B. Cooperation and Record Retention.** PA agrees to maintain accurate books and records in connection with Charter's receipt of Services provided herein. Unless returned to EAA, upon its written request, all such books and records (including, without limitation, all papers, correspondence, data, information, reports, records, receipts, and other sources of information relating to the Services and Fees paid by PA) will be held and preserved for the duration of this Agreement and for a period of six years after the expiration or termination of this Agreement. PA shall make such books and records available to EAA at EAA's request. Further, PA shall, and shall cause its agents, employees and contractors to provide EAA with all assistance required to enable EAA to comply with applicable law and standards pertaining to the disclosure and confidentiality of such books and records.

#### **ARTICLE IX INDEMNIFICATION, DAMAGES, INSURANCE AND WARRANTIES**

- A. Indemnification.** PA shall indemnify and hold harmless EAA and EAA's employees, agents, directors and officers against all liability arising out of, or resulting from any third party claim, suit, action or proceeding arising out of or resulting from (i) the failure of

PA or any of its agents, employees or contractors, to comply with the terms of this Agreement or any applicable law; or (ii) any injury, loss, claim or damages arising from the actions or omissions of PA or an agent, employee, director, officer or contractor of Charter.

- B. Limitation of Liability; No Special Damages.** Notwithstanding any other provision of this Agreement, EAA shall not be liable to the PA for any damages for loss of profits, loss of revenues, loss of goodwill, loss of anticipated savings, loss of data or cost of purchasing replacement services, or any indirect, incidental, special, consequential, exemplary or punitive damages arising out of the performance or failure to perform under this Agreement. Nothing in this Agreement shall be construed as a waiver of governmental immunity, where applicable. No such limitation upon PA's liability for damages shall exist unless expressly set forth in the Terms of this Agreement. **PA hereby explicitly waives EAA of any and all liability arising from the failure of any of EAA's service-provider Vendors to perform such services that are contemplated or provided for under this Agreement.**
- C. Insurance.** At all times during the term of this Agreement, PA shall procure and maintain, at its sole cost and expense, the following types and amounts of insurance coverage issued by an insurance company reasonably acceptable to EAA:
- A. Commercial General Liability, covering bodily and personal injury, property damage, and contractual liability insuring the activities of Charter under this Agreement, in a minimum amount of One Million Dollars (\$1,000,000) per claim and Five Million Dollars (\$5,000,000) in the annual aggregate, adding EAA as an additional insured with respect to this Agreement.
  - B. Commercial Automobile liability with limits of One Million Dollars (\$1,000,000) per claim and Five Million Dollars (\$5,000,000) in the annual aggregate, adding EAA as an additional insured with respect to this Agreement.
  - C. Upon request by EAA, PA shall provide EAA with copies of the certificates of insurance and policy endorsements for all insurance coverage required by Section IX.C. Such certificates of insurance shall not be materially amended or cancelled without thirty days prior written notice to EAA; provided that, prior to such cancellation, PA shall have new insurance policies in place that meet the requirements of Section IX.C.
- D. Disclaimer of Warranties.** EXCEPT AS (1) EXPRESSLY SET FORTH IN THIS AGREEMENT, AND, (2) WITH RESPECT TO PA ONLY, AS SET FORTH IN THE SPECIAL TERMS OF A SERVICE ORDER, NEITHER EAA NOR CHARTER MAKES ANY OTHER REPRESENTATION OR WARRANTY REGARDING THE SERVICES, EXPRESS OR IMPLIED, EITHER IN FACT OR BY OPERATION OF LAW, STATUTORY OR OTHERWISE, INCLUDING WARRANTIES OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR USE.

## **ARTICLE X DISPUTES**

- A. **Informal Dispute Resolution.** EAA and PA will attempt to settle any dispute through informal good faith negotiations. The dispute will be escalated to appropriate senior level management of the parties, if necessary. If such managers are unable to resolve the dispute within ten business days of referral (or any other mutually agreed upon timeframe), the parties will undertake non-binding mediation as described below in a good faith attempt to resolve such dispute.
- B. **Mediation.** There will be a single mediator. If the parties cannot agree upon an acceptable mediator within ten days of termination of the negotiations under Section X.A., each party will select one mediator from a list of not less than five mediators provided by the other party. These two mediators will select a third mediator who will serve as the sole mediator. Subject to the availability of the mediator, the mediation will occur not more than thirty days after the request for mediation. The mediation process will continue until the dispute (or any part thereof) is resolved or until such time as the mediator makes a finding that there is no possibility of resolution short of referring the parties to final and binding arbitration. The mediation will be held in Detroit, Michigan, unless the mediator, on his or her own initiative, wishes to conduct any mediation proceeding by telephone, facsimile transmission or other means of communication. The cost of mediation, including the mediator's fees and expenses, will be shared equally by the parties. Each party will have the right to be represented by attorneys of their own choosing to advise them before and during the mediation process and their attorneys may review any settlement agreement, or other agreement, which the parties have reached through mediation, prior to the execution of such agreement. The parties agree that the mediator is acting in a neutral capacity and is not serving as an attorney, advocate, representative or fiduciary for either or both of them. Each party will pay its own attorney's fees and costs. In connection with the mediation process, the mediator may meet in confidential "caucus" sessions separately with each party. The mediator will be obligated to treat as confidential and refrain from disclosing to the other party or its counsel any information conveyed to the mediator during the caucus sessions unless the party conveying such information authorized the mediator to disclose it to the other party.

## **ARTICLE XI GENERAL PROVISIONS**

- A. **Independent Contractor.** The Services provided herein shall be rendered by Service Providers as independent contractors. The relationship between a Service Provider, EAA, and PA shall not be that of partners, agents, or joint venturers to one another, and nothing contained in this Agreement shall be deemed to constitute a partnership, agency or employment agreement between them for any purposes, including, without limitation, for federal income tax purposes. No provision of this contract shall be for the benefit of any party other than PA and the EAA.

- B. **Tax Exempt Status.** PA acknowledges that EAA is a tax-exempt entity. PA may not use any EAA facility for any unauthorized purpose and will not act in any way that might jeopardize EAA's tax-exempt status.
- C. **Entire Agreement and Amendments.** This Agreement (including the exhibits), together with the documents delivered pursuant hereto, constitutes the entire agreement between the parties with respect to the subject matter hereof and supersedes all prior oral or written agreements, negotiations, representations, discussions and understandings between the parties. This Agreement may be amended only by a written instrument executed by each party.
- D. **Governing Law.** This Agreement shall be construed and interpreted in accordance with the laws of the State of Michigan without giving effect to other conflicts of laws or principles thereof.
- E. **Counterparts.** This Agreement may be executed in one or more counterparts, each of which shall be deemed to be an original and all of which together shall constitute one and the same instrument.
- F. **Binding Effect.** This Agreement shall be binding upon and inure to the benefit of the parties hereto. No party to this Agreement may assign its rights under this Agreement to any other person without obtaining the written permission of the other parties in advance.
- G. **No Third Party Beneficiaries.** Nothing expressed or referred to in this Agreement is intended or shall be construed to give any person other than the parties to this Agreement or their respective successors or permitted assigns any legal or equitable right, remedy or claim under or in respect of this Agreement it being the intention of the parties that this Agreement and the transactions contemplated hereby shall be for the sole and exclusive benefit of such parties or such successors and permitted assigns.
- H. **Expenses.** Each party shall bear its own expenses incurred in connection with this Agreement and with the performance of its obligations hereunder.
- I. **Notices.** All written notices, consents, approvals, requests and other communications ("Notices") required or permitted under this Agreement shall be personally delivered with receipt obtained, or mailed by overnight mail or registered or certified first-class mail, return receipt requested, addressed as follows:

If to the PA, to:

EdVantages, Inc. (d/b/a Performance Academies, LLC)

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

If to the EAA, to:

Education Achievement Authority  
3022 W. Grand Boulevard

Suite 14-652  
Detroit, Michigan 48202  
Attention: Chancellor's Office

All Notices shall be deemed given on the day when hand delivered or, if mailed, on the day following the day of mailing. Either party to this Agreement may change its address for the receipt of Notices at any time by giving Notice to the other party as provided in this Section 10.9.

- J. **Further Assurances.** Each party promptly shall cause to be taken, executed, acknowledged or delivered all such further acts, conveyances, documents and assurances as any other party from time to time reasonably may request in order to carry out and effectuate the intent and purposes of this Agreement.

[signature page follows]

**IN WITNESS WHEREOF**, the parties hereto have caused this Agreement to be signed by their duly authorized representatives with effect from the day and year first above written.

**EDUCATION ACHIEVEMENT AUTHORITY**

By: \_\_\_\_\_

Dr. John W.M. Covington

Title: \_\_\_\_\_

Chancellor

Date: \_\_\_\_\_

**EDVANTAGES, INC. (D/B/A PERFORMANCE ACADEMIES, LLC)**

By: \_\_\_\_\_

**NAME**

Title: \_\_\_\_\_

**TITLE**

Date: \_\_\_\_\_