

## CLIENT SERVICES AGREEMENT

This AGREEMENT is signed this \_\_\_\_ day of November 2016 and is effective January 1, 2017 by and between Black River Public School, (hereinafter "BLACK RIVER") whose address is 491 Columbia Avenue, Holland, MI 49423, and BLACK PEARL EDUCATIONAL SERVICES, LLC a Michigan limited liability company located at 2464 Byron Station Drive SW, Byron Center, MI 49315 (hereinafter "BPES").

### RECITALS

A. BLACK RIVER is a public school academy organized to provide public school instruction as a charter school located at 491 Columbia Avenue, Holland, MI 49423, pursuant to a contract ("Charter Contract") issued by the Grand Valley State University Board of Trustees ("GVSU"). Black River is authorized to carry out the educational program set forth in the Charter Contract. BLACK RIVER is authorized by law to contract with a private entity to provide employee administration and management services.

B. BLACK RIVER operates a public school academy under the direction of the BLACK RIVER Board of Directors ("Board").

C. BPES is a Michigan Limited Liability Company with its offices at 2464 Byron Station Drive SW, Byron Center, MI 49315.

D. BPES is an employee management company and offers to Michigan public school academies employee administration and management services including, but not limited to, staff employment, payroll, benefit administration, business management and other similar services.

E. BLACK RIVER desires to engage BPES to perform certain services upon the terms and conditions set forth in this Agreement ("Agreement") and pursuant to its authority, BLACK RIVER hereby contracts with BPES, to the extent permitted by law, specified functions relating to the administration and management services.

F. BLACK RIVER designates the employees of BPES assigned to BLACK RIVER as agents of Black River having a legitimate educational interest such that they are entitled access to educational records under 20 U.S.C. Section 1232g, the Family Educational Rights and Privacy Act ("FERPA").

THEREFORE, the parties agree as follows:

1. Services Provided by BPES. BPES shall provide contract personnel services as outlined in this Agreement.

a) Selection of Employees. All work force positions of BLACK RIVER shall be covered under this Agreement ("Covered Employees") except for substitute teachers that may be provided from an alternative employment entity. BPES shall employ and assign to BLACK RIVER as Covered Employees all such qualified and certified classroom teachers, instructors, administrators, and support staff as may be requested and designated by Black River as necessary to accomplish the educational mission of BLACK RIVER in accordance with the Board approved Budget. Black River's most recently Board approved Budget will be forwarded to BPES. Head of School shall be considered a Covered Employee in accordance with this Agreement but the Board reserves the right to directly employ the Head of School with 30 days written notice to BPES. In the event the Board is considering direct employment of the Head of School, the parties agree that they will meet to discuss changes to this Agreement consistent with that determination. Anytime more specific provisions address the Head of School, those provisions shall be considered to be in addition to the requirements for Covered Employees in general. BPES shall comply with all Federal and State statutes and administrative requirements including, but not limited to, the Immigration Reform and Control Act.

b) Employee Agreements and Compensation. Compensation for all Covered Employees including, but not limited to, health care and retirement benefits shall be established by BPES with input from BLACK RIVER and in accordance with its' Budget, and implemented by BPES. The terms and conditions of such employment shall be set forth in an employment agreement between BPES and each employee or other written document as determined by BPES with input from BLACK RIVER. Information regarding all costs, including the employment costs, annual salary and benefit costs of Covered Employees by individual and category totals (e.g. wages, fringe benefit costs by benefit, etc), will be provided to the Board by BPES upon request.

c) Health Care Insurance. BPES shall provide all eligible Covered Employees assigned to BLACK RIVER who are not covered by a spouse's plan, comprehensive medical care insurance. In addition, BPES shall be responsible for COBRA compliance and continuation of health benefit plans to terminated employees and qualified dependents in accordance with the law, subject to the continuation of this Agreement. If this Agreement terminates, all of BPES's responsibilities with regard to continuation of health insurance cease consistent with Federal and State statutes

d) Retirement Plan. BPES shall make available to BLACK RIVER a an acceptable retirement plan pursuant to IRC Section 401(k) for all eligible Covered Employees. However, Black River's current plan will not be merged into BPES's plan without BPES's prior written approval.

e) Payroll Taxes. BPES shall report and pay all applicable federal, state and local employee and employer payroll taxes from BPES's own accounts from the funds provided by Black River. BPES will act as the W-2 employer for record keeping purposes.

f) Payroll Records. BPES shall maintain and verify all required payroll and benefit records.

g) Policies and Procedures. All payroll, benefit and personnel policies and procedures shall be established by BPES with input from BLACK RIVER consistent with the most recent Board approved Budget.

h) Worker's Compensation Insurance. BPES shall maintain statutory and Charter Contract required Worker's Compensation insurance during the term of this Agreement on all Covered Employees under this Agreement. Upon written request, BPES shall provide a Certificate of Insurance verifying coverage of Worker's Compensation insurance.

i) At-Will Employment Relationship. BPES retains the right to not hire any candidate for employment and to terminate with or without cause any employee. BPES shall provide written notice to the Black River Board President of said terminations.

j) Implementation and Supervision of Policies and Procedures. During the term of this Agreement, BPES shall have the right and authority to implement and supervise personnel policies and procedures relating to the Covered Employees. BPES shall make good faith reasonable efforts to act in the best interest of BLACK RIVER with regard to its policy and procedure in exercising control over Covered Employees. BLACK RIVER agrees to cooperate and assist BPES in the implementation and supervision of all such policies and procedures.

k) Hiring, Evaluating, Supervising, Disciplining and Firing. BPES, through the Head of School, shall have the ultimate authority and control over hiring Covered Employees and/or elimination of positions due to budgetary constraints consistent with the BLACK RIVER approved Budget. BPES, shall hire, employ, and evaluate Head of School of BLACK RIVER in consultation with the Board. BPES shall consult with and work through the Head of School assigned to BLACK RIVER concerning any hiring, evaluating, supervising, disciplining, and firing of Covered

Employees before formal action is taken. BLACK RIVER may recommend termination of the assignment of a Covered Employee to BLACK RIVER, it being understood that BPES retains full control over all personnel decisions involving Covered Employees and has the ultimate authority to resolve and address employee issues and/or concerns)

l) On-site Supervision. BPES shall be responsible for on-site Covered Employee supervision directly and through the Head of School assigned to BLACK RIVER. The Head of School will serve as BPES's liaison to the Board on employment matters. The Head of School will administer the overall operation of BLACK RIVER, report to the Board on all other operational matters, and keep the Board informed of employment related matters. The Head of School shall be the on-site consultant for BPES and shall assist BPES with its administrative and personnel responsibilities on BLACK RIVER's premises. As to all administrative and personnel matters, the Head of School shall coordinate with and report to designated BPES managers and officers at BPES's home office. BPES, after consulting with the Head of School, shall determine the procedures to be employed by Covered Employees in the day-to-day performance of their job responsibilities. BPES shall make certain that all appropriate guidelines concerning BPES's oversight of Covered Employees are followed by the Head of School.

2. BPES Requirements.

a) Compliance with Applicable Criteria. BPES has responsibility for services under Paragraph 1, and assumes sole responsibility that those services set forth in Paragraph 1 provided by BPES are provided in compliance with and conform to:

(i) all applicable federal, state and local government laws, rules and regulations, including, but not limited to all civil rights laws, Bullard-Plawecki Employee Right to Know Act, Whistleblower's Protection Act, Fair Labor Standards Act, and Fair Credit Reporting Act;

(ii) all pertinent policies of those accrediting agencies from which BLACK RIVER has secured or is seeking accreditation, including but not limited to GVSU and the Michigan Department of Education; and

(iii) all other applicable written policies of BLACK RIVER as communicated to BPES through the Head of School, the Board President or Board minutes. Within twenty-four hours of receipt, BPES shall promptly provide to BLACK RIVER, all notices, reports or correspondence from individuals or governmental agencies that assert claims, deficiencies or charges against BLACK RIVER or BPES, that otherwise threaten the suspension, revocation, or

any other action adverse to any approval, authorization, certificate, determination, finances, license or permit required or necessary to own or operate BLACK RIVER.

b) Employment Laws. BPES shall comply with all applicable federal, state and local employment laws. BPES shall comply with the Fair Labor Standards Act and keep overtime limited to BLACK RIVER'S budgetary constraints.

c) Records. BPES shall maintain accurate time records and verify the accuracy of all wage hour information provided to BPES at the end of each pay period. BPES shall verify the accuracy of all wage and salary reports which BPES shall supply to BLACK RIVER at the end of each pay period. BLACK RIVER shall not pay any wages, salaries or other compensation, including employee benefits, directly to Covered Employees subject to Section 1a above.

d) Compliance with Section 503c. On an annual basis, BPES agrees to provide the Board with the same information that a school district is required to disclose under section 18(2) of the State School Aid Act of 1979, MCL 388.1618, for the most recent school fiscal year for which the information is available. BPES, BLACK RIVER and the Board shall disclose and make available all necessary information in compliance with MCL 380.553(5)(m) as delineated in Schedule 6 of the Charter Contract. With thirty (30) days of receipt of this information, the Board shall make the information available on BLACK RIVER's website home page, in a form and manner prescribed by the Michigan Department of Education. The defined terms in section 503c of the Code, MCL 380.503c, shall have the same meaning in this Agreement.

e) Applicant/Employee Background Checks. BPES, its designated subcontractor or other legally approved and/or required entity shall be responsible for performing all pre-employment, and any employment related background, license and eligibility review and other screening and investigation required by federal, state or local law, including the Michigan Revised School Code (the "Code"), of all Covered Employees if permitted by statute or administrative regulation. The results of the screening and investigation will be reported to BPES and BLACK RIVER, or as permitted by statute. BPES, or the entity legally permitted to receive results, will notify the Board President or his/her designee should there be any action proposed or necessitated by the Board according to applicable statute, or if there is a conviction that could result in an issue, including a public relations issue, within the BLACK RIVER community. All costs or fees incurred by BPES in connection with the screening and investigation shall be billed to and paid by BLACK RIVER. The results of the screening and investigation of pre-employment records must be made available for review by the

GVSU Charter Schools Office. It is understood that BPES, and/or Black River, may choose to assign the applicant and employee background checks to a Covered Employee, or alternative entity, as permitted by statute or administrative regulation.

3. BLACK RIVER Requirements. BLACK RIVER shall provide the following:
  - a) Personnel Requirements. BLACK RIVER, through the Head of School, shall advise BPES of the teachers, instructors, and administrators that are necessary to accomplish BLACK RIVER's mission, in accordance with its' Budget.
  - b) Insurance. BLACK RIVER shall maintain casualty and premises liability insurance on all school buildings and premises, and shall maintain professional liability insurance pertaining to the staff that could result in a claim against BLACK RIVER and name BPES as an additional insured. Black River shall provide BPES with a copy of the certificate of insurance and at least thirty (30) days prior written notice of cancellation of or change in the policy, if feasible.
  - c) Financial Reports. BLACK RIVER shall prepare annual budgets and periodic financial reports as required by GVSU, the School Code, and/or statute or as reasonably desired by the Board.
  - d) Employee Benefits. BLACK RIVER shall provide to BPES a written statement with regard to all policies concerning employee benefits, if any. These policies shall comply with all federal, state and local governmental laws and regulations.
  - e) Safety Requirements. BLACK RIVER and BPES shall comply with all safety, health and work laws, regulations and rules relating to Covered Employees and the operation of the premises at BLACK RIVER's expense. BLACK RIVER and BPES shall also comply with all safe work practices and use of protective equipment required by federal, state or local law. All accidents involving employees shall be reported immediately to BPES by the Head of School. BLACK RIVER shall cooperate with BPES's Worker's Compensation carrier and liability insurance carrier who shall have the right to inspect BLACK RIVER's property.
  - f) Confidential Information. BLACK RIVER shall be solely responsible for instituting and maintaining safeguards and procedures for personnel handling confidential information, money or other valuables. BPES may require bonding of such individuals. BLACK RIVER shall give BPES written notice of the individuals who have said responsibility. It shall be the sole responsibility of BLACK RIVER to protect such valuables.
  - g) Discipline, Layoff, or Termination of Employees. BLACK RIVER agrees to comply with all BPES personnel directives, both general and specific,

regarding the discipline, layoff, or termination of Covered Employees. BLACK RIVER further agrees to immediately notify BPES of any material change in the current business operations of BLACK RIVER.

h) Personnel Issues. In the event BLACK RIVER becomes dissatisfied with the performance of any Covered Employee(s), BLACK RIVER, through the Head of School, shall notify BPES, in writing, setting forth the nature of the dissatisfaction, the proposed remedial action, and any specific action requested.

4. Term of Agreement. This Agreement shall commence on January 1, 2017 and continue for a period of forty-two months, through June 30, 2020. Either party may cancel this Agreement, with or without cause, at any time with 60 calendar days prior written notice. The parties acknowledge that as part of any contract reauthorization with GVSU, GVSU may require BLACK RIVER and BPES to submit an entirely new Agreement for review by GVSU. The parties have the option of a renewal of this Agreement; said renewal shall be set forth in writing and executed, by the parties.

5. Fees. BLACK RIVER shall pay BPES the following fees for the services rendered under this Agreement:

a) Service Fee. A Service Fee shall be charged to BLACK RIVER consistent with the service-fee rate schedule attached (the Service Fee rate). If a new Service Fee is agreed to, that schedule shall be attached and incorporated herein. The Service Fee is calculated without regard to individual limitations on wages for purposes of determining the amount of unemployment taxes. The Service Fee shall be billed once per pay period and due upon receipt with said billing including an itemized, detailed breakdown of all costs, fees and expense (i.e. salary and payroll; FUTA; SUTA; Workers Compensation; FICA, a breakdown of fringe benefits, by benefit; etc.) The Service Fee shall be adjusted upon the effective date of any increase or decrease in employee wage rates.

b) Payroll Costs. Payroll costs will be charged to BLACK RIVER, in addition to the service fee, equal to Gross Payroll and associated payroll costs including FICA, FUTA, SUTA, Workers Compensation and any additional taxes passed by the State and/or Federal government during the term of this Agreement. All benefits provided per 1.) c. and 1) d. will be billed to BLACK RIVER on a pay period basis. BPES will provide written notice within 5 business days of receiving notice of an increase to any of the costs other than the service fee costs and include said increase as of the effective date of the increase, however, this provision shall not apply to a change in payroll costs which may vary because of a change in hours worked by employees. BLACK

RIVER, at its election, may respond to the written notice of cost increase by issuing notice to cancel this Agreement effective 60 days after the notice date of the cost increase.

6. Additional Costs, Fees and Expenses. BLACK RIVER shall pay all additional costs or expenses incurred by BPES that are incidental to the performance of this Agreement and that have prior approval of the Board President or his/her designee. These additional costs, fees or expenses may include, but are not limited to, employee replacement costs, applicant/employee background checks, hiring temporary personnel, substitute teachers, fidelity bonding, and BLACK RIVER approved training programs.

7. Payment of Costs, Fees and Expenses. BPES shall debit BLACK RIVER's account through an Automatic Clearing House Transfer (ACHT) withdrawal no earlier than 72 hours, (96 hours if there is a bank holiday during the pay period) and no later than 48 prior to each payroll date, from the designated BLACK RIVER account in an amount equal to the Services Fees, Payroll costs described in Paragraph 5 and Costs, Fees and Expenses described in Paragraph 6 of this Agreement, upon receipt of a detailed billing and authorization from the Black River designee. If there is any disputed amount to an invoice, the non-disputed amount shall be ratified and paid. If there is a disputed amount, whether ratified by the Board or not, the parties shall meet within fourteen (14) days to discuss and attempt to resolve the disputed amount prior to submitting the matter to arbitration as addressed in Paragraph 11. Any errors in payment of costs, fees and expenses will be promptly corrected with the parties acting in good faith and with reasonable efforts.

8. M.U.S.I.C. Insurance Requirements: BLACK RIVER shall maintain insurance coverage in compliance with the required M.U.S.I.C. insurance coverage requirements for a Public School Academy, and in accordance with the limits required by GVSU. BLACK RIVER will be the first named insured and GVSU and BPES will also be named as additional insureds.

a) Vehicle Insurance. BLACK RIVER shall provide liability insurance for any Covered Employee driving any vehicle during the time of day or work year he/she is assigned to BLACK RIVER by BPES. The policy shall insure against bodily injury and property damage with a minimum combined single limit (CSL) of \$1,000,000. BLACK RIVER shall also provide personal injury protection coverage of \$1,000,000. BLACK RIVER shall name BPES as additional insureds on these policies and shall provide thirty (30) days prior written notice of cancellation or material change in such policies, if feasible.



b) General Liability Insurance. BLACK RIVER shall maintain a comprehensive general liability insurance policy in the amount of \$1,000,000 (CSL) insuring BLACK RIVER against bodily injury and property damage liability caused by BLACK RIVER's premises operations or activities conducted off premises related to operation of BLACK RIVER. The policy shall include blanket contractual liability and personal injury coverage. BLACK RIVER shall name BPES as an additional insured on this policy and shall provide thirty (30) days prior written notice of cancellation or material change in the policies, if feasible.

c) Professional Liability Insurance. BLACK RIVER shall provide professional liability insurance, including sexual abuse coverage, in the amount of \$1,000,000 naming BPES as an additional insured. BLACK RIVER shall maintain a Worker's Compensation policy with an "if only" provision. BLACK RIVER shall provide BPES thirty (30) days prior written notice of cancellation or material change in the policies, if feasible.

d) BPES M.U.S.I.C. Insurance Coverage. BPES shall maintain insurance coverage in compliance with the required M.U.S.I.C. insurance coverage requirements for an Educational Service Provider/Management Firm. The policy shall include blanket contractual liability, crime, and personal injury coverage. BPES shall name BLACK RIVER and GVSU as additional insureds on this policy, and BPES shall provide thirty (30) days prior written notice of cancellation or material change of such policies, if feasible.

9. Termination of Agreement.

a) Termination with 60 Days Notice: Either party may terminate this Agreement with or without cause at any time after providing sixty (60) days prior written notice to the other party. If BLACK RIVER and/or BPES becomes obligated for Michigan Public School Employees' Retirement System ("MPSERS") or an unexpected fee or tax is instituted, (e.g. State service tax fee) either party may immediately invoke the 60-day termination notice provision at any time during the contract. Termination of this Agreement shall not affect the continuation of the statutory obligations of either party incurred during the term of this Agreement. BPES shall be relieved of all responsibility under this Agreement, except as provided in Paragraph 9 (d), as of the ending date of the last payroll period immediately preceding termination. BLACK RIVER shall pay all ratified charges due under this Agreement through the last date of service provided by BPES.

b) This Agreement shall terminate, with 60 days notice provided BLACK RIVER pays requisite reimbursements, or as agreed otherwise in writing between the parties, for any of the following events:

- i) BLACK RIVER files for bankruptcy or becomes insolvent;
- ii) The facility where employees are engaged in work for BLACK RIVER is closed or otherwise not available for use;
- iii) BLACK RIVER requests a layoff of 25% or more of the workforce;
- iv) BLACK RIVER and its successors and assigns discontinue operation;
- v) BLACK RIVER meets the definition of a financially distressed business as set forth in the Worker Assistance and Retraining Notification Act;
- vi) BLACK RIVER's Charter Contract is discontinued or not renewed;
- vii) BLACK RIVER's failure to make timely payments as required by this Agreement.

c) In the event BLACK RIVER terminates this Agreement, BLACK RIVER shall pay all charges due under this Agreement through the last date of services provided by BPES.

d) In the event the Charter Contract or this Agreement is terminated for any reason, BPES agrees that it will continue to work with BLACK RIVER to provide a smooth transition to an alternative employee management company or through completion of the transition for a reasonable period of time and without bearing undue costs. Covered Employees shall be entitled to continue with BLACK RIVER through the successor employee management company, if so desired by the successor employee management company and/or the individual involved, and communication between BLACK RIVER and those individuals may continue without interruption or claim that BLACK RIVER or the successor employee management company is interfering in the contractual relations between BPES and the Covered Employee. This provision is a waiver by BPES of any and all claims of contractual and/or tortious interference for attempting to provide continuation of staff between BPES and the successor employee management company for BLACK RIVER.

10. Indemnification.

a) BPES. BPES shall indemnify and hold GVSU and BLACK RIVER, including its officers, directors, and agents, harmless from any and all claims, including

employment related claims by BPES employees or applicants, administrative determinations, judgments, damages, reimbursements, back pay, penalties, fines, costs or loss, demands, suits, including reasonable attorney's fees or other forms of liability that may arise out of, or by reason of, any noncompliance with any agreements, covenants, warranties, or undertakings of BPES contained in or made pursuant to this Agreement and any misrepresentation or breach of representations and warranties of BPES contained in or made pursuant to this Agreement or for wrongful or negligent acts. This indemnification shall include any failure on the part of BPES that results in violations of federal, state and local laws and regulations. BPES shall not be responsible to indemnify BLACK RIVER for the acts or omissions of an unlicensed individual that occur when that individual is not under the supervision of a Covered Employee. The indemnification requirements of this paragraph may be met by the purchase of insurance in a form and amounts acceptable to BLACK RIVER and shall be not less than \$1,000,000 per occurrence.

b) BLACK RIVER. BLACK RIVER shall indemnify and hold GVSU and BPES, including its officers, directors and agents harmless from any and all claims, administrative determinations, judgments, damages, reimbursements, back pay, penalties, fines, costs or loss, demands, suits, including reasonable attorney's fees or other forms of liability that may arise out of, or by reason of, any noncompliance with any agreements, covenants, warranties, or undertakings of BLACK RIVER contained in or made pursuant to this Agreement and any misrepresentation or breach of representations and warranties of BLACK RIVER contained in or made pursuant to this Agreement or for wrongful or negligent acts. This indemnification shall include any failure on the part of BLACK RIVER for violations of federal, state and local laws and regulations. BLACK RIVER shall indemnify and hold BPES harmless for any and all current or potential liabilities, claims, back pay, damages, and judgments, including attorney's fees, that have or may arise out of or by reason of BLACK RIVER's relationship, contractual or otherwise, with any of its previous management companies, including but not limited to Charter HR Educational Services, LLC located at 801 Broadway NW, Suite 200, Grand Rapids, MI 49504 and Axios Charter HR LLC located at 528 4<sup>th</sup> Street NW, Grand Rapids, MI 49504, including any and all of these entities' agents, affiliates, and assignees. BLACK RIVER shall indemnify and hold BPES harmless for any and all current or potential liabilities, claims, back pay, damages, and judgments, including attorney's fees, that have arisen or may arise from any actions or incidents that took place on, in, or around BLACK RIVER property and involving any persons BLACK RIVER employed or contracted with for any services prior to January 1,

2017 . BLACK RIVER shall not indemnify BPES for acts or omissions of an unlicensed individual that may occur when that individual is not under the supervision of BLACK RIVER. The indemnification requirements of this paragraph may be met by the purchase of insurance in a form and amounts acceptable to BPES and shall be not less than \$1,000,000 per occurrence.

c) Indemnification of Grand Valley State University. The parties acknowledge and agree that Grand Valley State University Board of Trustees, Grand Valley University and its members, officers, employees, agents or representatives are deemed to be third party beneficiaries for purposes of this Agreement. As third party beneficiaries, the parties hereby promise to indemnify and hold harmless Grand Valley State University Board of Trustees, Grand Valley State University and its members, officers, employees, agents or representatives from all claims, demands, or liability, including attorney fees, and related expenses, on account of injury, loss or damage without limitation, claims arising from bodily injury, personal injury, sickness, disease, death, property loss or damage or any other losses of any kind whatsoever and not caused by the sole negligence of Grand Valley state University, which arise out of or are in any manner connected with Grand Valley State University Board's approval of the School of Excellence application, the University Board's consideration of or issuance of a Charter Contract, BLACK RIVER's preparation for and operation of a public school, or which are incurred as a result of the reliance by Grand Valley State University and its Board of Trustees members, officers, employees, agents or representatives upon information supplied by BLACK RIVER or BPES, or which arise out of the failure of BLACK RIVER to perform its obligations under the Charter Contract issued to BLACK RIVER by Grand Valley State University Board of Trustees. The parties expressly acknowledge and agree that Grand Valley State University and its Board of Trustee members, officers, employees, agents or representatives may commence legal action against either party to enforce its rights as set forth in this Agreement.

11. Arbitration. In the event of a dispute regarding a breach, alleged breach, validity or interpretation of any provision of this Agreement, both BLACK RIVER and BPES agree to submit such disputes, except as either party may be seeking injunctive relief, to final and binding arbitration as the sole and exclusive remedy for such disputes. Said disputes shall be submitted to the Michigan Mediation and Arbitration Services ("MMAS") and governed by the Michigan Court Rules and Michigan Arbitration Act.

The arbitration hearing will be held in Ottawa County and will be the exclusive remedy for resolving the disagreement. Either party may file for arbitration but must do so with MMAS within one hundred twenty (120) calendar days of the event precipitating the disagreement, or within the applicable statute of limitations, whichever is sooner.

If arbitration is requested by either BLACK RIVER or BPES, the parties shall be entitled to be represented by attorneys and/or counsel of their choice. The parties shall equally split the filing fee, and any administrative fees or costs assessed by MMAS, regardless of who requests the arbitration. The parties will split the arbitrator's fee, and each party will pay its own costs and attorney fees in connection with the arbitration, except as those costs and fees may be reallocated by the arbitrator in the award of damages in accordance with this Agreement or the relevant state or federal statute.

If arbitration is requested, the arbitrator shall allow both parties the right to conduct limited and reasonable discovery, which may include depositions, and for a period of time necessary for the parties to reasonably prepare for the arbitration hearing. The arbitrator is authorized to issue subpoenas to summon witnesses.

The arbitrator may award any and all remedies allowable by the cause of action pled in the request for arbitration, including but not limited to equitable relief and money damages. The arbitrator shall issue a written decision, containing his/her findings of fact and conclusions of law. The arbitrator's award will be final and binding on both parties, and may be enforced in a court of competent jurisdiction.

12. Entire Agreement. This document including its attachments, being executed in multiple and identical counterparts all of which shall constitute part of this Agreement, contains the entire Agreement between the parties with regard to the subject matter of this Agreement. All previous negotiations, statements and preliminary instruments of the parties and their respective representatives are merged into this Agreement. No modification of this Agreement shall be valid or binding unless such modification is in writing, dated and signed by the authorized representative of each party. The conditions of this Agreement extend to and bind the subsidiaries, successors and assigns of each party.

13. Notices. All notices required or permitted by this Agreement shall be in writing and delivered personally or by first class mail, postage prepaid to the address of each party as follows:

BLACK RIVER:  
Black River Public School  
491 Columbia Ave  
Holland, MI 49423

BLACK PEARL EDUCATIONAL SERVICES LLC:  
2464 Byron Station Drive SW  
Byron Center, MI 49315

With a copy to:

Mr. Errol Goldman  
Goldman & Associates, PLC  
5253 W. Lakeview Drive  
Pentwater, MI 49449

Susan Haque  
Haque Law Group PLC  
4460 Oak River Drive  
Grand Rapids, MI 49525

If one of the parties to this Agreement changes his/her or its address, they shall within thirty (30) days notify the other party, in writing, of the new address. Notice shall be deemed received on the date it is delivered or mailed.

14. Responsibility For Performance of Agreement. Each party, its' successors and assigns shall be responsible for the performance of its' obligations under this Agreement.

15. Severability and Validity. The invalidity or unenforceability of any provision or part of this Agreement shall not affect the validity or enforceability of any other provision or part of this Agreement.

16. Contract Interpretation. The Parties acknowledge that this Agreement and the language contained in this Agreement are the result of negotiations between the parties and no part of this Agreement shall be construed against either party by virtue of authorship.

17. No Third-Party Rights. This Agreement is intended solely for the benefit of BPES and BLACK RIVER, and it shall not be construed to create any benefits for or rights in any other person or entity, including employees, students, or their representatives, except as provided in 10.(c).

18. Waiver of Breach. The waiver by one party to this Agreement of a breach of this Agreement by the other party shall not operate as or be construed as a waiver of any subsequent breach or breaches by the other party.

19. Caption Headings. The captions headings for each provision of this Agreement are not part of this Agreement nor shall they be use to construe the provision more broadly or narrowly then the text would indicate.

20. Necessary Documents. The parties shall execute all necessary documents required to carry out the terms and intent of this Agreement.

21. Governing Law. This Agreement shall be construed under the law of the State of Michigan.

22. Counterparts. This Agreement may be executed in identical counterparts, each of which shall be deemed an original.

23. Assignment. This Agreement may not be assigned by either party without the written consent of the other party, prior approval of the Board, except that BPES may assign its rights and duties to an entity within the BPES organization upon 60 days' written notice to the Board and provided the Board approves said assignment.

24. BLACK RIVER Board's Constitutional Duty. No provision of this Agreement shall or is intended to interfere with the Board's duty to exercise its statutory, contractual and fiduciary responsibilities governing the operation of BLACK RIVER as provided under Michigan law. This Agreement does not prohibit the Board from acting as an independent, self-governing public body, or allow public decisions to be made other than in compliance with the Open Meetings Act.

25. Governmental Immunity. Except as provided in this section, no provision of this Agreement is intended to restrict the Board from waiving or requiring it to assert its governmental immunity. Nothing in this paragraph shall prohibit BPES from asserting any defense that may be available to it under this Agreement or under Michigan law. BLACK RIVER shall not waive or assert any rights to the sole detriment of BPES related to BLACK RIVER's obligations to BPES under this agreement unless said actions are the result of an alleged breach of this Agreement by BPES.

26. Financial, Educational, and Student Records. Financial, educational, and student records pertaining to BLACK RIVER are BLACK RIVER property, and such records may be subject to the provisions of the Michigan Freedom of Information Act. All BLACK RIVER records shall be physically or electronically available, upon request, at BLACK RIVER's physical facilities and shall be kept in accordance with applicable state and federal requirements. Except as permitted under applicable law, BPES shall not restrict the authorizer's, the public's, or the independent auditor's access to BLACK RIVER's records consistent with applicable statutes.

27. Independent Auditor. BPES shall not select or designate the independent auditor, accounting firm or legal counsel for BLACK RIVER. All finance and other records of BPES relating to BLACK RIVER will be made available to BLACK RIVER's independent auditor at the request of BLACK RIVER or the auditor.

28. Procurement of Equipment, Materials, and Supplies. If BPES procures equipment, materials, and supplies at the request of or on behalf of BLACK RIVER, BPES shall not include any added fees or charges with the cost of the equipment,

materials, and supplies purchased from third parties. Any equipment, materials, or supplies purchased by BPES and paid for by BLACK RIVER on behalf of or as the agent of BLACK RIVER are the property of BLACK RIVER. When making a purchase on behalf of or as agent of BLACK RIVER, BPES shall comply with Section 1274 of the Code as if BLACK RIVER were making a purchase directly from a third party.

29. BLACK RIVER Proprietary Rights. BLACK RIVER owns all proprietary rights to curriculum or educational materials that:

- a) are both directly developed and paid for by BLACK RIVER;
- b) were developed by BPES at the direction of the Board with BLACK RIVER funds dedicated for the specific purpose of developing such curriculum or educational materials.

All educational materials and teaching techniques used by BLACK RIVER may be subject to disclosure under the Revised School Code and the Freedom of Information Act.

30. BPES Proprietary Rights. BPES owns all proprietary rights over curriculum, educational or BLACK RIVER management materials:

- a) previously developed or copyrighted by BPES or
- b) curriculum, educational or BLACK RIVER management materials that are developed by BPES funds for BLACK RIVER or
- c) materials that are not otherwise dedicated for the specific purpose of developing BLACK RIVER curriculum, educational or BLACK RIVER management materials.

All educational materials and teaching techniques used by BLACK RIVER are subject to disclosure under the Code and the Freedom of Information Act.

31. Employment Liability. BPES is the employer of record for employee compensation, collection of payroll taxes and withholdings, worker's compensation and unemployment liability and payment of benefits, all of which are set forth in this Agreement.

32. Marketing and Development. Should BPES provide marketing and development services to BLACK RIVER, the cost paid by or charged to BLACK RIVER shall be limited to those costs specific to the BLACK RIVER program and shall not include any costs for the marketing and development of BPES.

33. Compliance with Charter Contract. BPES agrees to perform its duties and responsibilities under this Agreement in a manner that is consistent with BLACK RIVER's obligations under the Charter Contract issued by Grand Valley State University



Board of Trustees. The provisions of the Charter Contract shall supersede any competing or conflicting provisions contained in this Agreement.

BLACK RIVER and BPES intend for this Agreement to comply with the Charter Contract and the Education Service Provider Policies in the Contract issued by GVSU's Charter Schools Office. To the extent any provision of this Agreement is inconsistent with the Charter Contract or Policies, that provision is invalid and the Charter Contract and Policies shall govern. Any additional costs of compliance because of changes mandated by GVSU will be borne by BLACK RIVER and subject to BPES's ability to perform. If the additional costs are deemed excessive by the Board, and the matter cannot be resolved, it may opt out of this Agreement by giving 60 days written notice.

34. Revocation or Termination of Charter Contract. If the Charter Contract is revoked or terminated, this Agreement shall automatically terminate on the same **effective** date as the Charter Contract is revoked or terminated without further actions of the parties.

This Agreement is executed as of the date first written above.

Black River Public School

By: \_\_\_\_\_  
Its: Board President – Stephanie Elhart

Black Pearl Educational Services, LLC

By: \_\_\_\_\_  
Its: Manager – Casey Young

11/16/16