

MANAGEMENT SERVICES AGREEMENT BETWEEN
EDUCATION MANAGEMENT SYSTEMS, INC.,
AND
PATHWAYS IN EDUCATION – NEW ORLEANS, INC.

This MANAGEMENT SERVICES AGREEMENT (“Agreement”) is made and entered into and effective, _____, by and between Education Management Systems, Inc., a Delaware corporation (“EMS”), and Pathways in Education – New Orleans, Inc., a Louisiana nonprofit corporation (“PIE-NOLA”) with reference to the following:

RECITALS

WHEREAS, EMS provides management and other services to charter schools and has expertise in providing educational services to at risk students using independent study instructional modalities;

WHEREAS, PIE-NOLA was created to develop new ways to educate children in Louisiana through the establishment of and/or operation of charter schools;

WHEREAS, PIE-NOLA is actively seeking to establish a charter to serve at-risk students under the purview of the Orleans Parish School Board;

WHEREAS, the charter petition submitted by PIE-NOLA to the Orleans Parish School Board will set forth the governance structure for the charter school and provide, among other things, that the management and day-to-day operation of the charter school may be delegated to third parties;

WHEREAS, PIE-NOLA desires to contract for services, including school management, financial management, accounting, student achievement reporting and human resources services;

WHEREAS, the parties intend that the terms of this Agreement shall be consistent with the terms of any charter petition approved by the Orleans Parish School Board;

NOW, THEREFORE, the parties hereto agree as follows:

ARTICLE 1

1.1 Charter Petition. The parties understand and acknowledge that PIE-NOLA may be bound by and subject to, all the terms and conditions of the Charter Petition or charter agreement between PIE-NOLA and the Orleans Parish School Board (the “OPSB”) (hereinafter referred to as the “Charter Petition”) and that by entering into this Agreement, EMS’s services shall comply with the applicable terms and conditions of the Charter Petition.

1.2 Independent Contractor. The parties to this Agreement intend that:

1.2.1 The relationship between EMS and PIE-NOLA created by this Agreement is that of an independent contractor, and not a partnership or employer-employee or other relationship. No employee of EMS shall be deemed to be the employee of PIE-NOLA. The manner and means of conducting the work pursuant to this Agreement is under the sole control of EMS and EMS will be solely and entirely responsible for its acts and for the acts of its agents, employees, servants, and subcontractors during the entire Term of this Agreement; and,

1.2.2 No agent, employee, or servant of PIE-NOLA shall be deemed to be the employee, agent or servant of EMS. PIE-NOLA will be solely and entirely responsible for its acts and for the acts of its agents, employees, servants, and subcontractors during the entire Term of this Agreement.

ARTICLE 2 TERM

2.1 Unless earlier terminated pursuant to this Agreement, the term ("Term") of this Agreement shall commence on the date PIE-NOLA is awarded a charter from the New Orleans Parish School Board (the "Commencement Date"), and shall expire at midnight on the fifth anniversary of the Commencement Date ("Expiration Date"), provided however, that in the event PIE-NOLA shall at any time cease to be chartered by the OPSB, this Agreement shall terminate thirty (30) days following the effective termination date of PIE-NOLA's charter. No later than eighteen (18) months prior to the Expiration Date, PIE-NOLA will schedule a meeting with EMS to discuss renewal of the Agreement. Following the meeting, if PIE-NOLA or EMS decide to forego renewal, the forgoing party will inform the other party in writing no less than twelve (12) months before the Expiration Date of this determination, or this Agreement will automatically renew for an additional five (5) year term.

ARTICLE 3 SERVICES TO BE PROVIDED BY EMS

3.1 During the Term of this Agreement, except as otherwise provided herein, EMS shall provide to PIE-NOLA as more specifically described herein below, school management, financial management, accounting, student achievement reporting and human resources services (hereafter referred to as the "EMS Services"). Such services are more particularly identified on Exhibit "A," which is attached hereto, and incorporated herein. PIE-NOLA may engage third party vendors for services that overlap with the EMS Services provided under this Agreement, provided, however, that PIE-NOLA will still be obligated to pay EMS the monthly fee pursuant to Article 4.

ARTICLE 4 EMS COMPENSATION

4.1 On the 5th day of each calendar month during the Term of this Agreement, PIE-NOLA shall cause to be paid to EMS a monthly fee for the EMS Services. PIE-NOLA shall initially pay EMS the amount of One Hundred Twenty Seven dollars and no Cents (\$127.00) per student served per month, which amount may be amended by a writing signed by both

parties. The monthly fee will be in addition to PIE-NOLA's obligation to reimburse expenses as provided hereinafter.

ARTICLE 5 FACILITIES RELATED SERVICES

5.1 At the sole discretion of EMS, EMS may enter into and maintain for the benefit of PIE-NOLA leases of commercial real property and office space to provide learning centers for the students of PIE-NOLA. PIE-NOLA shall reimburse EMS or pay directly any and all rentals (including common area charges and other charges assessed directly by the landlord as part of each respective lease) advanced by EMS for the use of commercial premises for PIE-NOLA learning centers. In the event of any disputes with the landlords of the leases, PIE-NOLA will pay directly or reimburse EMS for any fees, costs and expenses incurred in defending any actions brought by or initiated against the landlords in connection with the leases.

5.2 EMS will secure insurance reasonably suitable to protect PIE-NOLA for personal and real property damage caused by hazards at the learning centers. PIE-NOLA will pay directly or reimburse PMG for the cost of such insurance.

ARTICLE 6 STUDENT ACHIEVEMENT REPORTING

6.1 EMS shall provide information to PIE-NOLA's board of trustees sufficient to enable PIE-NOLA's board to monitor the sufficiency of services provided by EMS and whether EMS is in compliance with its obligations under this Agreement.

6.2 EMS shall make available to PIE-NOLA the following reports: monthly report of expenses incurred for reimbursement, monthly ADA or student attendance reports, reports required by the OPSB, budget reports, and year to date budget variance reports. Upon reasonable request, EMS shall provide additional financial data and other data to PIE-NOLA in a format and structure reasonably directed by PIE-NOLA.

6.3 PIE-NOLA shall have the right, upon forty five business days' notice to EMS, to conduct an audit of EMS's financial and other records, relating only to the operation of PIE-NOLA's charter school in Louisiana. EMS shall not be under any obligation to subject its financials to audits, or otherwise, for any of its business other than as it directly relates to services provided to PIE-NOLA in Louisiana. PIE-NOLA shall pay the cost of the audit and such audit may be performed by any Certified Public Accountant of PIE-NOLA's choosing.

6.4 EMS, at its own election or when requested by PIE-NOLA, will contract periodically with an independent evaluator of charter schools to conduct an independent evaluation of PIE-NOLA's educational programs and student achievement. The results of the evaluation will be provided to PIE-NOLA. This independent evaluation will examine the effectiveness and quality of the educational programs and services provided to PIE-NOLA students. The evaluation will use both qualitative and quantitative data. The evaluator will analyze standardized test data and incorporate the results into the evaluation. In addition, the data relating to baseline student Performance Plans; educational and community agency services rendered to PIE-NOLA's students; and enrollment, academic and attendance records will be analyzed. Qualitative data will be collected through structured and unstructured interviews

and questionnaires with PIE-NOLA staff, students, parents and community agency personnel. PIE-NOLA shall pay directly or reimburse EMS for the cost of any evaluation(s) requested by PIE-NOLA.

ARTICLE 7 EDUCATIONAL PROGRAM AND CURRICULUM

7.1 EMS shall provide an education program (the “Program”) to be used in connection with PIE-NOLA’s educational program. The Program shall be initially structured as follows:

7.1.1 The curriculum developed or purchased by EMS shall introduce instruction in higher order skills as early as possible in the Program, in order to offer interesting and challenging curriculum for the purpose of allowing students to progress as quickly as their capabilities will allow. The Program will allow students to use the knowledge that they are accumulating in novel ways to facilitate problem-solving and skill development. Materials shall be designed in a language and format that are readily accessible, and students will be allowed to complete course work at their own pace, as the Program will be formulated based on an initial assessment of the student’s skill levels in reading, math and other core courses. The key components of the Program are as follows:

7.1.2 Students will be encouraged to concentrate their learning efforts on a maximum of one or two core subjects, in order to achieve greater depth of learning in each subject and to focus the students’ attention on specific areas as a way to promote maximum efficiency for faster results.

7.1.3 Students will participate in independent study programs that will allow each student to tailor his or her work pace to meet personal needs and goals.

7.1.4 Students will be placed in core subjects of reading, English and Math based on tested achievement levels. Advancement will be determined on actual mastery of skills. Learning will be thus focused on the specific skills and tasks, which will result in the maximum advancement in the minimum time.

7.2 EMS shall implement PIE-NOLA’s curriculum in a manner that is consistent with the Charter Agreement.

7.3 EMS shall implement or contract to provide data assessment and accountability functions on the academic performance of PIE-NOLA students, including the effect of any outside programs provided by or through EMS or PIE-NOLA. PIE-NOLA shall pay directly or reimburse EMS for the cost of obtaining such assessment and accountability reports, if contracted through a third party.

7.4 EMS shall ensure that PIE-NOLA, including its curriculum, will be nonreligious, nonsectarian and shall not illegally discriminate against any student on the basis of race, creed, color, sex, national origin, religion, ancestry, age, disability, special need, marital status, citizenship or any other legally prohibited basis.

7.5 PIE-NOLA shall pay directly or reimburse EMS for the cost of all curriculum materials and purchasing.

ARTICLE 8 MANAGEMENT OF THE CHARTER SCHOOL

8.1 EMS is not obligated to devote all of its time or business efforts to the affairs of PIE-NOLA.

8.2 EMS and its officers, directors, members, agents, employees and/or affiliates may engage or invest in any business activity of any type or description, including, without limitation, those that might be the same as or similar to the PIE-NOLA's business. PIE-NOLA shall have no right in or to such other activities or to the income or proceeds derived therefrom. EMS shall not be obligated to present any investment opportunity or prospective economic advantage to PIE-NOLA, even if the opportunity is of the character that, if presented to PIE-NOLA, could be invested in by PIE-NOLA.

8.3 In addition to any other duties or obligation of EMS arising under this agreement, EMS shall ensure that, in the event that PIE-NOLA loses its charter or otherwise ceases to operate as charter school, all applicable legal requirements established by the OPSB or other government entity shall be met.

ARTICLE 9 PERSONNEL AND TRAINING

9.1 EMS shall recruit, screen and recommend certificated and non-certificated individuals to PIE-NOLA for employment by PIE-NOLA.

9.2 All personnel recommended by EMS for employment by PIE-NOLA shall have the experience and knowledge appropriate to the position for which they are to be considered for employment.

9.3 All personnel recommended by EMS for employment by PIE-NOLA shall meet standards set forth by Louisiana law, as applicable and such employee's particular job description. Certificated employees shall meet requirements of the Louisiana charter laws.

9.4 When necessary, PIE-NOLA shall work with EMS to obtain OPSB waivers and shall work with EMS to expedite the certification process or alternative accreditation for all new or out-of-OPSB personnel.

9.5 EMS shall provide training in its methods, curriculum, program, and technology to all teaching personnel of PIE-NOLA. Such training shall be at PIE-NOLA's expense, and may be held off-site, at locations selected by EMS. EMS will also provide team building events, at PIE-NOLA's expense, for the benefit of PIE-NOLA employees.

9.6 EMS will administer health and retirement benefits for PIE-NOLA's employees, including all certificated and non-certificated staff.

9.7 Personnel Policies

9.8.1 EMS and PIE-NOLA shall comply with all applicable federal and state laws, concerning employee welfare, safety and health, including, without limitation, the requirements of federal law for a drug free workplace.

9.8.2 Neither EMS nor PIE-NOLA will illegally discriminate against any employee or applicant for employment on the basis of race, creed, color, sex, national origin, religion, ancestry, age, disability, marital status, citizenship, or any other legally prohibited basis, in

its recruitment, selection, training, utilization, termination or other employment-related activities.

ARTICLE 10 SUBCONTRACTING OF SERVICES

10.1 Subcontracting of Services. EMS reserves the right to subcontract any and all services specified in this Agreement to the OPSB and/or to public or private subcontractors, as permitted by law.

10.2 Location of Performance. EMS reserves the right to perform non-instructional functions, such as purchasing materials or developing curriculum, off-site at EMS offices or remote locations, unless prohibited by federal, state laws, rules, or regulations.

ARTICLE 10 SCHOOL YEAR

11.1 School Year. The parties hereto agree that PIE-NOLA shall be in session at least two hundred forty (240) days or more between July 1st and June 30th of each school year.

11.2 Calendar. Notwithstanding the above, the parties understand and agree that the PIE-NOLA will have a year-round, multi-track, staggered start calendar for the programs, or, as necessary, any other calendar that would improve the delivery of instruction to students.

ARTICLE 12 STUDENT PRIVACY

12.1 Family Educational Rights and Privacy: Act. PIE-NOLA shall advise the OPSB to designate EMS and its officers, employees, agents and representatives as having a legitimate educational interest such that they are entitled to access to education records under 20 U.S.C.A. 1232g, the Family Educational Rights and Privacy Act and under applicable Louisiana information and privacy laws. EMS, its officers and employees shall at all times comply with the Family Educational Rights and Privacy Act as well applicable Louisiana information and privacy laws, to include but not be limited to La. RS.17:3914.. Furthermore, EMS will comply with the provisions of Exhibit B, which is incorporated herein.

ARTICLE 13 WARRANTIES AND REPRESENTATIONS

13.1 Representations of PIE-NOLA. PIE-NOLA represents and warrants to EMS that: (i) it is an organization formed, existing and operating under the laws of Louisiana (ii) it has full lawful power and authority to execute, deliver and perform this Agreement, to incur the obligations provided for under this Agreement and to contract with EMS for EMS to provide the services set forth in this Agreement; (iii) the information, if any, PIE-NOLA has furnished to EMS concerning PIE-NOLA's finances, revenues, and student enrollment is accurate and the latest information available at the time of the execution of this Agreement; (iv) the execution, delivery and performance of this Agreement by PIE-NOLA is not a violation or breach of any other agreement between PIE-NOLA and any other person or entity.

13.2 Representations of EMS. EMS represents and warrants to PIE-NOLA that: (i) it is a California corporation organized and existing under the laws of the State of California; (ii) it has full lawful power and authority to execute, deliver and perform this Agreement, to incur the obligations provided for under this Agreement and to contract with PIE-NOLA to provide the services set forth in this Agreement on behalf of PIE-NOLA; (iii) the information, if any, EMS has furnished to PIE-NOLA concerning EMS's finances and revenues is accurate and complete and the latest information available at the time of the execution of this Agreement; (iv) the execution, delivery and performance of this Agreement by EMS is not a violation or breach of any other agreement between EMS and any other person or entity.

ARTICLE 14 INDEMNIFICATION

14.1 EMS shall indemnify and hold PIE-NOLA and its members, managers, employees, officers, subcontractors, agents, representatives and authorized volunteers (collectively "the PIE-NOLA Agents") harmless from and against any and all claims, demands, suits, costs, judgments, or other forms of liability to third parties, actual or claimed, of whatsoever kind or character, including attorneys' fees, brought against PIE-NOLA and/or the PIE-NOLA Agents for injury to property or persons, occurring or allegedly occurring in, on or about PIE-NOLA learning centers as a result of actions by EMS and/or by its employees, officers, directors, subcontractors, representatives, and agents (collectively "EMS's Agents") during the Term of this Agreement or any renewal periods thereof. Upon timely written notice from PIE-NOLA, EMS shall defend PIE-NOLA and/or the PIE-NOLA Agents in any action or proceeding brought thereon with counsel reasonably acceptable to PIE-NOLA.

14.2 PIE-NOLA shall indemnify and hold EMS and EMS's Agents harmless from and against any and all claims, demands, suits, costs, judgments or other forms of liability to third parties, actual or claimed, of whatsoever kind or character, including attorneys' fees, brought against EMS and/or EMS's Agents for injury to property or persons, occurring or allegedly occurring in, on or about PIE-NOLA learning centers as a result of actions by PIE-NOLA and/or by PIE-NOLA's Agents during the Term of this Agreement or any renewal periods thereof. Upon timely written notice from EMS, PIE-NOLA shall defend EMS and/or EMS's Agents in any action or proceeding brought thereon with counsel reasonably acceptable to EMS.

ARTICLE 15 TERMINATION AND CLOSURE

15.1 PIE-NOLA Termination for Cause. PIE-NOLA may terminate this Agreement for Cause prior to the end of the Term, in accordance with the procedures set forth herein. For purposes of this Section, "Cause" means:

15.1.1 Material breach of this Agreement may include failure of EMS to provide services as required by this Agreement, or any other act or failure to act by EMS which undermines the joint purpose of this Agreement. PIE-NOLA may terminate for cause only if PIE-NOLA has provided EMS written notice of the material breach and has allowed EMS a reasonable period in which to remedy such breach. A reasonable period for cure under this section shall not be less than ninety (90) days. If PIE-NOLA can show good cause that

EMS's remedial action is unsatisfactory, PIE-NOLA may terminate the Agreement under this paragraph pursuant to the procedure set forth in Section 15.4.

15.2 EMS Termination. EMS may terminate this Agreement for any reason prior to the end of the Term, in accordance with the procedures set forth in Section 15.4.

15.3 Statutes or Legislative Changes. In the event that any enactment, repeal, promulgation or withdrawal of any federal, state, or local law, regulation, or court or administrative decision or order materially affects the operation of PIE-NOLA in conformity with this Agreement, or otherwise constitutes a violation of law, or otherwise has a material adverse effect on EMS's ability to operate, EMS or PIE-NOLA may elect to deliver written notice to the other of such changes and the resulting consequences. Upon delivery of such notice, the parties shall promptly commence negotiations in good faith regarding a mutually agreeable approach (including without limitation, an amendment to the Agreement) to address the statutory and/or legislative changes. If despite such good faith negotiations the parties are unable to agree upon an acceptable approach to address the statutory and/or legislative changes, then either party may elect to terminate the Agreement without further obligation or liability to the other, by delivering written notice of termination to the other at least one hundred eighty (180) days in advance of the effective date of such termination, or in such lesser time as is reasonable under the circumstances. Among other events, the foregoing section applies to actions that may be made by the State Board of Education and/or Department of Education.

15.4 Termination Notice and Other Termination Procedure

15.4.1 Unless otherwise expressly provided herein, each party shall give the other party at least ninety (90) days advance written notice of a termination of this Agreement prior to the end of its Term.

15.4.2 Notwithstanding any other provision in this Agreement, each party shall use its good faith best efforts to avoid a termination of the Agreement, which becomes effective during the middle of a school year because of the disruption to the educational program and the students. Therefore, in the event this Agreement is terminated by either party prior to the end of the Term, absent unusual and compelling circumstances, the termination will not become effective until the end of the then current school year.

15.4.3 In the event of termination of this Agreement for any reason, EMS shall provide reasonable assistance to PIE-NOLA for up to ninety (90) days after the effective date of termination of the Agreement, and PIE-NOLA agrees to reimburse EMS for the costs and expenses incurred by EMS in providing such assistance, to assist in the closure of the charter school and the transition of students, if necessary.

15.4.4 In the event PIE-NOLA terminates this Agreement prior to the end of the Term, regardless of the reason, then PIE-NOLA shall, for the duration of the Term, be obligated to reimburse EMS for all expenses incurred by EMS on account of the leases (including any outstanding lease liabilities, early termination fees, attorneys' fees and costs incurred in terminating the leases, and any fees, costs and expenses incurred in defending any actions brought by or initiated against the landlords in connection with termination of the leases) and all other reimbursable items listed in Article 5.

ARTICLE 16 INSURANCE

16.1 Liability Insurance

16.1.1 EMS, on behalf of PIE-NOLA and the OPSB, shall secure and maintain, insurance, including, but not limited to, general liability insurance coverage for bodily injury and property damage for the protection of PIE-NOLA, the OPSB, EMS, and their respective officers, directors, board members, employees, students, teachers and volunteers. Such insurance policies shall be issued by an insurance company or companies selected by EMS and licensed to do business in Louisiana. Except as otherwise agreed in writing by PIE-NOLA and EMS, all such insurance coverage shall be primary insurance, with deductibles or SIR's which are outside the policy limits, and shall be occurrence based insurance (and not claims made insurance). PIE-NOLA shall pay directly or reimburse EMS for all costs of such insurance.

16.1.2 PIE-NOLA shall require that its contractors, if providing transportation or other services to PIE-NOLA shall name EMS and its, and their respective officers, directors, board members, employees, and agents as additional insureds under their respective commercial general liability and automobile liability insurance policies for personal injury and property damage; and if such services are provided directly by PIE-NOLA rather than by contracted service, then EMS may ensure such persons shall be named as an additional insured under corresponding PIE-NOLA insurance policies.

16.1.3 The insurance policies maintained by each party pursuant to this Agreement shall be endorsed to state that coverage shall not be suspended, voided, canceled, or reduced, in coverage or limits, except after thirty (30) days prior written notice to EMS and PIE-NOLA. The parties shall furnish one another certified copies of the insurance or certificates of insurance which name one another as additional insured as additional insured and which demonstrate compliance with this Agreement.

16.2 Workers' Compensation Insurance. EMS, on behalf of PIE-NOLA, shall secure and maintain workers' compensation insurance covering PIE-NOLA employees and authorized volunteers. Such insurance policies shall be issued by an insurance company or companies licensed to do business in Louisiana. PIE-NOLA shall pay directly or reimburse EMS for its pro-rata share of such cost.

16.3 Coordination of Risk Management. The parties shall coordinate risk management activities with one another, which shall include the prompt reporting of any and all pending or threatened claims, filing of timely notices of claim, cooperating fully with one another in the defense of any claims and complying with any defense and reimbursement provisions of state governmental immunity laws and applicable insurance policies. The parties shall give each other prompt written notice of any claim arising out of the operation of PIE-NOLA learning centers. Neither EMS nor PIE-NOLA shall compromise, settle, negotiate or otherwise affect any disposition of any claim or potential claims asserted against it to the extent such claims are insured by or through the other party, without the approval of the other party.

ARTICLE 17 CONFIDENTIAL AND PROPRIETARY INFORMATION

17.1 Proprietary Marks and Intellectual Property. PIE-NOLA acknowledges and agrees as follows:

17.1.1 EMS owns, may develop, or may create certain proprietary marks during the course of this Agreement and that all proprietary rights in and to such intellectual property, including but not limited to, all trademarks, trade names, service marks, industrial designs, insignias, logos, and designations (as presently or hereafter comprised) in connection therewith (the “Proprietary Marks”).

In the Event EMS develops logos to be used by PIE-NOLA for the operation of the charter school, then PIE-NOLA will be permitted to use those logos developed by EMS only throughout the duration of the term of this Agreement. Upon the effective date of the termination of this Agreement, PIE-NOLA shall immediately cease using any logos developed by EMS in connection with any and all of PIE-NOLA’s business operations;

17.1.2 EMS also owns, may develop, or purchase curriculum materials, software and other intellectual property to be used in connection with PIE-NOLA educational programs, including but not limited to all copyrights, patents, source codes, technology and trade secrets (as presently or hereafter comprised) in connection therewith (the “Intellectual Property”);

17.1.3 EMS has extensively invested in developing and improving the Proprietary Marks and Intellectual Property and in marketing, refining, advertising, promoting and publicizing the same, all of which have become well and favorably known to the public throughout the United States and elsewhere, and, as a result of such efforts, EMS has acquired valuable goodwill therein; and,

17.2 Validity and Use of Proprietary Marks and Intellectual Property. PIE-NOLA hereby acknowledges the validity of the Proprietary Marks and Intellectual Property identified above and acknowledges that same are the sole property of EMS. PIE-NOLA may use such Proprietary Marks and Intellectual Property only for so long as the right and license granted here remains in force, and only in connection with PIE-NOLA operations, in the manner and for the purposes specified in this Agreement. PIE-NOLA, shall not, either during or after the term of this Agreement, do anything, or aid or assist any other party to do anything, which would infringe upon, harm, or contest the rights of EMS in any of its Proprietary Marks and/or Intellectual Property. PIE-NOLA further agrees that any additional rights that may develop in any of EMS’s Proprietary Marks and/or Intellectual Property in the future, whether as trade names, trademarks, service marks, or copyrighted materials, shall inure and accrue to the benefit of EMS.

17.2.1 Promptly following the termination of this Agreement for any reason, PIE-NOLA shall immediately deliver to EMS all Intellectual Property to include curriculum materials, software and other intellectual property in its possession, together with all notes, records, memoranda, correspondence files and other papers, magnetic tapes, software, discs, manuals and other information in any form relating to EMS (including all copies of these materials). PIE-NOLA acknowledges that it does not have and cannot acquire any rights to these materials. Moreover, PIE-NOLA acknowledges and agrees that it will cease using the corporate name “Pathways in Education” or any derivation thereof, whether it be in a legal or informal setting, following the termination of this Agreement.

17.3 License. Subject to the terms and conditions contained herein, EMS hereby grants to PIE-NOLA, and PIE-NOLA hereby accepts from EMS, a non-exclusive license to use EMS Proprietary Marks and Intellectual Property during the Term.

17.4 Prohibitions on Use. PIE-NOLA agrees not to interfere in any manner with or attempt to prohibit the use of the Proprietary Marks and Intellectual Property by any other entity. PIE-NOLA further agrees to execute any and all other necessary papers, documents, and assurances to effectuate this purpose and agrees to cooperate fully with EMS or its agents in securing all necessary and required authority from any Secretary of State, licensing authority, or any other state or federal authority to the use of the Proprietary Marks and Intellectual Property wherever needed. The grant of the License pursuant to this Agreement, does not grant exclusivity of territory or use to PIE-NOLA.

17.5 Ownership of Proprietary Information. PIE-NOLA agrees that EMS shall own all copyright and other proprietary rights in and to the Proprietary Marks and Intellectual Property, including but not limited to all instructional materials, training materials, curriculum and lesson plans, and any other materials developed by EMS, its employees, agents or subcontractors, during the Term of this Agreement or any renewal Terms hereof EMS shall have the sole and exclusive right to license such materials for use by other OPSB schools or customers, or to modify and/or sell such materials to other OPSB schools and customers. EMS may disclose such proprietary information, including that which is currently in existence as well as that which may be created in the future. PIE-NOLA shall take all measures reasonably necessary to assure that none of its personnel or agents disclose, publish, copy, transmit, modify, alter or utilize the Proprietary Marks and Intellectual Property without EMS's prior written consent.

17.6 Unauthorized Use. PIE-NOLA shall promptly report to EMS any unauthorized use of EMS's Proprietary Marks and/or Intellectual Property that comes to its attention in any manner whatsoever. If requested by EMS, PIE-NOLA will cooperate with EMS in precluding unauthorized use of EMS's Proprietary Marks and Intellectual Property, or any confusingly similar mark or property.

17.7 Confidential Information.

17.7.1 PIE-NOLA acknowledges and agrees that during the Term, it will have access to certain confidential information of EMS, including but not limited to confidential or proprietary business information, curriculum materials, software, property rights and data, know-how, trade secrets, customer and vendor lists, supplier and distributor lists, billing practices and procedures, operating manuals and procedures, pricing policies, operational methods, marketing plans or strategies, financial information, budget information and procedures of EMS ("the Confidential formation").

17.7.2 From and after the commencement of the Term, PIE-NOLA shall keep secret and retain in strictest confidence and shall not use for the benefit of itself or others, all or any of the Confidential Information.

17.7.3 Promptly following the termination of this Agreement for any reason, PIE-NOLA shall immediately deliver to EMS all Confidential Information in its possession, together with all notes, records, memoranda, correspondence files and other papers, magnetic tapes, software, discs, manuals and other information in any form relating to EMS

(including all copies of these materials). PIE-NOLA acknowledges that it does not have and cannot acquire any rights to these materials.

ARTICLE 18 DISPUTE RESOLUTION PROCEDURE

18.1 Mediation. In the event that any controversy claim or dispute between the parties arises relating to the terms of this Agreement, or the breach thereof, the parties hereby agree to initially attempt to settle such disputes by a non-binding mediation, before a single neutral mediator (the “Mediator”), administered by J.A.M.S./ENDISPUTE. The Mediator shall be assigned at random by J.A.M.S./ENDISPUTE and shall take place within Los Angeles County, California.

18.1.1 The mediation shall commence within forty-five (45) calendar days from the date of the receipt of the Mediation Demand sent by the aggrieved party (“Receipt Date”), and shall be concluded no later than sixty (60) calendar days from the Receipt Date. In determining the Receipt Date, the notice provisions of this Agreement shall apply.

18.1.2 The administrative costs of conducting the mediation shall be shared equally between the parties.

18.2 Binding Arbitration. In the event that the parties are unable to resolve any dispute regarding relating to the terms of this Agreement, or the breach thereof, through non binding mediation pursuant to Section 18.1, above, such dispute shall be determined by binding arbitration in accordance with the rules of J.A.M.S./ENDISPUTE and shall take place within Los Angeles County, California. The parties may select any third party arbitrator, including a retired jurist, or other independent party. Any determination of the arbitrator shall be binding on the parties, and may be entered in any court with proper jurisdiction for enforcement thereof. The costs of the arbitrator shall be borne equally by the parties.

ARTICLE 19 MISCELLANEOUS

19.1 Standard of Interpretation. Except as otherwise provided herein, the parties shall perform all actions required herein in a reasonable and timely manner.

19.2 Notices. Any and all notices, demands or other communications required or desired to be given hereunder by any party shall be in writing and shall be validly given or made to another party if served either personally or, if deposited in the United States mail, certified or registered, postage prepaid, return receipt requested. If such notice, demand or other communication be served personally, service shall be conclusively deemed made at the time of such personal service. If such notice, demand or other communication be given by mail, such shall be conclusively deemed given forty-eight (48) hours after the deposit thereof in the United States mail, addressed to the party to whom such notice, demand or other communication is to be given as hereinafter set forth.

19.3 Governing Law and Construction. This Agreement shall, in all respects, be governed by the laws of the State of California applicable to agreements executed and to be wholly performed within the State of California. Nothing contained herein shall be construed so as to require the commission of any act contrary to law, and wherever there is any conflict between any provision contained herein and any present or future statute, law, ordinance or

regulation contrary to which the parties have no legal right to contract, the latter shall prevail but the provision of this Agreement which is affected shall be construed and limited only to the extent necessary to bring it within the requirements of the law.

19.4 Severability. The provisions of this Agreement are severable, and if any one or more provisions shall be determined to be judicially unenforceable, in whole or in part, the remaining provisions shall nevertheless be binding and enforceable.

19.5 Arm's Length Agreement. This Agreement has been negotiated at arm's length and between persons (or their representatives) sophisticated and knowledgeable in the matters dealt with in this Agreement. Accordingly, any rule of law or legal decision that would require interpretation of any ambiguities against the party that has drafted it is not applicable and is waived. The provisions of this Agreement shall be interpreted in a reasonable manner to affect the purpose of the parties and this Agreement.

19.6 Entire Agreement. This Agreement, together with the Charter Agreement, constitutes the entire agreement of the parties with respect to the subject matter hereof and supersedes any and all other written or oral negotiations, understandings or agreements among the parties with respect to the rights and obligations assumed herein and contains all of the covenants and agreements among the parties with respect to such rights and obligations.

19.7 Binding Agreement. The party's rights and obligations under this Agreement are personal and shall not be assignable. Subject to the foregoing, each of the terms and provisions contained herein shall inure to the benefit of and be binding upon the parties hereto and their respective heirs, personal representatives, successors, and assigns.

19.8 Cumulative Remedies. No remedy conferred by any provisions of this Agreement is intended to be exclusive of any other remedy, and each and every remedy shall be cumulative and shall be in addition to every other remedy given hereunder or now or hereafter existing at law or in equity. Except as otherwise provided herein, the election of anyone or more remedies by any party, shall not constitute a waiver of the right to pursue other available remedies.

19.9 Modifications. No amendment, change or modification of this Agreement shall be valid unless in writing, stating that it amends or modifies this Agreement, and signed by all of the parties hereto.

19.10 Additional Acts. Each of the parties hereto shall execute and deliver any and all additional papers, documents and other assurances and shall do any and all acts reasonably necessary in connection with the performance of their obligations hereunder and to carry out the intent of the parties hereto.

19.11 Counterparts. This Agreement may be executed in one or more counter- parts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument.

19.12 Waiver. The waiver by any party to this Agreement of the breach of any provision of this Agreement shall not be deemed a continuing waiver or a waiver of any subsequent breach, whether of the same or another provision of this Agreement.

19.13 Captions. The captions appearing at the commencement of the paragraphs hereof are descriptive only and for convenience in reference. Should there be any conflict between any

such caption and the section at the head of which it appears, the section and not such caption shall control and govern in the construction of this Agreement. The reference to paragraph numbers herein shall be deemed to refer to the numbers preceding each section.

19.14 Force Majeure. Neither party shall be liable if the performance of any part or all of this contract 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 beyond either party's control and which cannot be overcome by reasonable diligence and without unusual expense.

19.15 Jointly Drafted Agreement. The parties acknowledge that this Agreement is the product of the combined involvement and drafting of both parties hereto and that neither party maybe considered or deemed the primary drafter of the Agreement.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement as of the day and year first above written.

Education Management Systems, Inc., a Delaware corporation

By: John Hall

Date

Title: President

Pathways in Education – New Orleans, Inc., a Louisiana Nonprofit Public Benefit Corporation

By:

Date

Title: Member of the Board of Directors

Exhibit A

EMS Services

- A. Provide an academic recovery educational program that is specifically designed for drop outs and at-risk youth and meets all requirements of the charter agreement between PIE-NOLA and OPSB, (see Article 7),
- B. Implement, as deemed necessary, a leadership development program and youth impact program (“Extra Programs”),
- C. Identify and produce curriculum and instructional materials for the Program and any Extra Program (see cost allocation in section 7.5),
- D. Train PIE-NOLA teachers and instructional aides in delivery of the Program to students (see cost allocation in section 9.5),
- E. Upon PIE-NOLA’s request, provide marketing services including, but not limited to, website design and development, social media development, and promotional videos and advertisements (subject to cost allocations as described in the Agreement)
- F. Provide all human resources services needed by PIE- NOLA, including but not limited to advertising for and recruiting teachers and instructional employees, screening prospective new employees, making staffing and employment recommendations to PIE- NOLA, planning and conducting team building events for PIE- NOLA staff, and coordinating all employee benefits,
- G. Provide administrative support and services needed for operation of the school, including program development, and management of day to day operations,
- H. Submit requests for waivers to OPSB as may be necessary for operation of the Charter School’s multi-track calendar,
- I. Provide all accounting services, including all bookkeeping and accounting services,
- J. Arrange for an annual audit of the Charter School to be performed by an auditing firm approved by PIE- NOLA, and any other such audits as may be necessary according to the Agreement (see cost allocation in section 6.3),
- K. Provide to PIE- NOLA the following reports: monthly report of expenses incurred for reimbursement, monthly ADA or student attendance reports, reports required for the sponsoring OPSB, budget reports, year to date budget variance reports, quarterly reports on the account balance, quarterly reports on the contribution of excess revenues, and quarterly reports on the use of charter funds. Upon reasonable request, EMS shall provide additional financial data and other data concerning the charter school to PIE-NOLA in a format and structure reasonably directed by PIE- NOLA.
- L. At the sole discretion of EMS, EMS may enter into leases or otherwise contract with third parties for the use of facilities for school purposes on behalf of PIE-NOLA (see cost allocation in section 5.1),
- M. Procure all insurance needed for operation of the Charter School (see cost allocations in Article 16),

- N. Periodically, or as requested by PIE- NOLA, arrange for independent assessments as described in the Agreement (see cost allocation in section 6.4).
- O. Provide or arrange for further instructional and operational support, program development, or administrative services as needed, consistent with the methodology established in the Agreement and subject to pricing as agreed to by the parties.

Exhibit B

Student Privacy Appendix

WHEREAS, the Family Educational Rights and Privacy Act (FERPA), 20 U.S.C. 1232g and its implementing regulations codified at 34 C.F.R 99. 1 et seq. make personally identifiable student information in education records confidential and, subject to certain exceptions, prohibits the disclosure of such information to third parties,

WHEREAS, FERPA and its implementing regulations allow for an educational agency or institution to share personally identifiable student-level data with contractors performing work on their behalf,

WHEREAS, Louisiana law provides that student data must be protected,

WHEREFORE, the Pathways in Education-New Orleans. Inc. (hereinafter referred to as “PIE-NOLA”) and Education Management Systems, Inc. (hereinafter referred to as “EMS”) do execute this appendix (“Appendix”) subject to the terms and conditions specified herein.

1. Services Provided

This Appendix is being executed contemporaneously with a Management Services Agreement dated _____ by and between PIE-NOLA and EMS to provide for management services to PIE-NOLA students.

2. Privacy Compliance

This Appendix is entered into by PIE-NOLA and EMS in accordance with the provisions of the Family Educational Rights and Privacy Act, 20 U.S.C. Section 1232(g), et seq., (FERPA) and La. RS 17:3914. PIE-NOLA and EMS hereby acknowledges that all document or other material in which student information is contained or which is derived from a student’s education records are deemed confidential pursuant to FERPA and La. RS 17:3914 and will not be disclosed by PIE-NOLA and EMS to any third party.

3. Access to Information and Computer Systems/Information Storage, Retention, and Disposition Policies

PIE-NOLA and EMS shall each maintain the data, whether in hard copy or electronic form, in an area that has limited access and may only be accessed by authorized personnel. PIE-NOLA and EMS shall not permit removal of the data from the limited access area. PIE-NOLA and EMS will ensure that access to the data maintained on computer files or databases is controlled by password protection. PIE-NOLA and EMS shall establish procedures to ensure that the target data cannot be extracted from a computer file or database by unauthorized individuals. PIE-NOLA and EMS shall maintain all physical products containing student-level data in locked cabinets, file drawers, or other secure locations when not in use.

4. Audits

EMS shall permit PIE-NOLA or its authorized representatives to carry out security or audit checks pertaining to security and usage of student data. EMS shall cooperate with PIE-NOLA. PIE-NOLA may request at any time an audit of student data that is in the possession of EMS. PIE-NOLA or its authorized representative shall have access at all reasonable times on working days during working hours at business premises to employees, together with records, books and correspondence and other papers and documentation or media of every kind and employees pertaining to this Appendix that are necessary to carry out such security and audit checks. PIE-NOLA or its authorized representatives shall have the right to reproduce and/or retain copies at its expense of any of the aforementioned information and documents.

5. Security Breach

As used in this Appendix, “Security Breach” means any act or omission that compromises either the security, confidentiality or integrity of student information or the physical, technical, administrative or organizational safeguards put in place by PIE-NOLA and EMS that relate to the protection of the security, confidentiality or integrity of student data, or receipt of a verifiable complaint in relation to the privacy practices of PIE-NOLA and EMS or a breach of this Appendix relating to such privacy practices.

PIE-NOLA and EMS shall take reasonable steps and best efforts, in accordance with industry standards and applicable laws, to prevent security breaches. PIE-NOLA and EMS shall also take reasonable steps, in accordance with industry standards and applicable laws, to immediately remedy any security breach and prevent any further security breach, each at its own expense in accordance with standard practices and applicable law.

PIE-NOLA shall provide EMS with the name and contact information for an employee who shall serve as the primary security contact and shall be available to assist as a contact in resolving issues and fulfilling obligations associated with a security breach, as well as the name and contact information of an employee to serve this role when the primary contact cannot be available; EMS shall immediately notify PIE-NOLA in writing of a security breach after EMS becomes aware of it; and

Immediately following the notification of a security breach, PIE-NOLA and EMS shall coordinate with each other to investigate the security breach. PIE-NOLA and EMS agree to cooperate in handling of the matter, including: (i) assisting with any investigation; (ii) providing physical access to the facilities and operations affected; (iii) facilitating interviews with employees and others involved in the matter; and (iv) making available all relevant records, logs, files, data reporting and other materials required to comply with applicable law or industry standards and as otherwise required and (v) providing any notices to persons or organizations affected by the security breach as required by law.

PIE-NOLA and EMS shall ensure that all procedures implemented to address a Security Breach shall be in compliance with all applicable state and federal laws.

6. Disposal of Information

EMS agrees that at the termination of this Appendix and the MOU/Contract, it must return all data to PIE-NOLA in a usable electronic form, and erase, destroy, and render unreadable all PIE-NOLA data in its entirety in a manner that prevents its physical reconstruction through the use of commonly available file restoration utilities, and certify in writing that these actions have been completed within 30 (thirty) days of the termination of this Appendix or the Management Services Agreement or within 7 (seven) days at the request of PIE-NOLA, whichever shall come first.

7. Liaison Officials

EMS's liaison and PIE-NOLA's liaison for the implementation of this Appendix and for receipt of all notices or other communications required or permitted under this Appendix is:

EMS

[TBD name]
320 N. Halstead St. Ste. 220
626/921.8200
[TBD email address]

PIE-NOLA

[TBD name]
[TBD Address]
[TBD Phone #]
[TBD Email address]

8. Term of Appendix

This Appendix shall begin _____ and shall terminate on _____. The effective date of this Appendix may be extended only if an amendment to that effect is duly executed by the parties and approved by the necessary authorities prior to said termination date. If either party informs the other that an extension of this Appendix is deemed necessary, an amendment may be prepared by one party for appropriate action by the other party.

9. Assignment of Contract

Neither EMS nor PIE-NOLA shall assign any interest in this Appendix by assignment, transfer, or novation, without prior written consent of the other.

10. Jurisdiction, Venue and Governing Law

Exclusive jurisdiction and venue for any and all suits between the EMS and PIE-NOLA arising out of, or related to, this Appendix shall be in the Civil District Court for the Parish of Orleans, State of Louisiana. The laws of the State of Louisiana, without regard to Louisiana law on conflicts of law, shall govern this Appendix.

11. Survival

EMS's obligation under Clauses 2, 3, 4, 5, and 6 shall survive expiration and/or termination of this Appendix and the MOU/Contract.

THUS DONE AND SIGNED at New Orleans, Louisiana, on the day, month and year first written below.

IN WITNESS WHEREOF, the parties have executed this Appendix as of this _____, 2018.

Education Management Systems, Inc., a Delaware corporation

_____	_____
By: John Hall	Date
Title: President	

Pathways in Education – New Orleans, Inc., a Louisiana Nonprofit Public Benefit Corporation

_____	_____
By:	Date
Title: Member of the Board of Directors	