

EDUCATIONAL SERVICE PROVIDER AGREEMENT

This Educational Service Provider Agreement is made and entered into as of the 28th day of May, 2015, by and between The Romine Group, Inc., (hereafter referred to as “TRG”) a Michigan corporation located at 7877 Stead Street, Utica, Michigan and Merritt Academy (“Academy”) by and through its Board of Directors (“Academy Board”) formed under Part 6A of the Revised School Code (the “Code”), as amended, being Sections 380.501 to 380.507 of the Michigan Compiled Laws located in Michigan.

The following is a recital of facts underlying this Agreement:

The Academy is a public school academy, organized under the Code. The Academy has been issued a contract (the “Contract”) from the Saginaw Valley State University Board of Trustees (“University Board”) to organize and operate a public school academy, with the University Board as the as the authorizing body. The Code permits a public school academy to contract with persons and entities for the operation and management of the public school academy.

TRG specializes in providing educational institutions, vocational schools, businesses, churches and other organizations with a variety of educational services and products, including management, curricula, educational programs, teacher training, and technology. TRG’s products and services are designed to serve the needs of a diverse student population.

The Academy and TRG have engaged in an enduring educational partnership, whereby the Academy and TRG have worked together to bring educational excellence and innovation to the Saint Clair County area, based on TRG’s school design, comprehensive educational program, institutional principles and management methodologies.

In order to continue the implementation of an innovative educational program at the Academy, the parties desire to establish this arrangement for the management and operation of certain of the Academy's educational and administrative activities or functions.

Therefore, it is mutually agreed as follows:

ARTICLE I

TERM

This Agreement shall become effective upon execution and shall run for a term of 5 years and be terminable by the Academy at will on or after the third anniversary date of this Agreement.

ARTICLE II

CONTRACTUAL RELATIONSHIP

- A. **Authority.** The Academy represents that it is authorized by law to contract with a private entity and for that entity to provide educational and management services. The Academy further represents that it has been issued a Contract by the University Board to organize and operate a public school academy situated in Michigan. The Academy Board is vested with all powers within applicable law for carrying out the educational program contemplated in this Agreement.
- B. **Contract.** Acting under and in the exercise of such authority, the Academy hereby contracts with TRG to the extent permitted by law, to provide all functions relating to the provision of educational services and the management and operation of the Academy in accordance with the terms of this Agreement and the Academy's Contract. TRG shall comply with all terms and conditions of the Contract to the extent TRG is performing services on behalf of the Academy.

- C. **Status of the Parties.** TRG is a for-profit corporation, and is not a division or a part of the Academy. The Academy is a body corporate and governmental entity authorized by the Code, and is not a division or part of TRG. The relationship between TRG and the Academy is based solely on the terms of this Agreement. No provision of this Agreement shall interfere with the Academy's Board under the Contract or applicable law and the Academy's duties under the Contract shall not be limited or rendered impossible by any action or inaction of TRG.
- D. **Independent Contractor Status.** The parties to this Agreement intend that the relationship between them created by this Agreement is that of an independent contractor, and not employer-employee. No agent or employee of TRG shall be determined to be the agent or employee of the Academy except as expressly acknowledged in writing by the Academy. Notwithstanding the foregoing, TRG and certain of its employees shall be designated as "School Officials" under the Family Educational Rights and Privacy Act, 20 U.S.C. §1232g, for the limited purpose of allowing them access to educational records. Such designation shall be undertaken by appropriate Academy Board action. TRG will be solely responsible for its acts and the acts of its agents, employees, and subcontractors. No provision of this Agreement shall predetermine the Academy Board's course of action in choosing to assert or not assert governmental immunity.
- E. **Bankruptcy Notice.** TRG shall notify the Academy Board if any principal or officer of TRG, or TRG as a corporate entity (including any related organizations or organizations in which a principal or officer of the TRG served as a principal or officer), has filed for bankruptcy protection in the last six (6) months or within any applicable preference period, whichever is longer.

ARTICLE III

FUNCTIONS TO BE PERFORMED BY THE CONTRACTOR

In consideration of the management fee paid by the Academy, TRG shall perform the following:

A. **Responsibility**. TRG shall be responsible, and accountable to the Academy, for the management, operation and performance of the Academy.

B. **Educational Program**. The Educational Program is defined as follows. The program of instruction shall be as set forth in the Academy's Contract, and may be adapted and modified from time to time with prior Board approval and in conjunction with the Contract amendment process established by the University Board. TRG shall be responsible for the following additional areas, which are part of the Educational Program:

1. **Strategic Planning**. TRG shall help the Academy Board design strategic plans for the continuing educational and financial benefit of the Academy.

2. **Public Relations**. TRG shall work with the Academy Board to design an ongoing public relations strategy for the development of beneficial and harmonious relationships with other organizations and the community, for joint implementation by the Academy and its Board.

3. **Special Functions**. The services TRG will provide the Academy include, but are not limited to the following:

- i. Financial. For example:
 - * Develop salary schedules
 - * Select benefit packages
 - * Determine retirement options
 - * Budgeting and financial forecasting
 - * Cash management
 - * Bookkeeping
 - * Account reconciliation

- * Management of all federal, state and local grants
 - * Purchasing
 - * Procurement
 - * All other functions traditionally undertaken by the business-services office of a public school
- ii. Educational Planning. For example:
- * Coordinate with the Board the writing of the curriculum expansion
 - * Recommend methods of assessments
 - * Coordinate with the Board the writing and developing of the school improvement plans
 - * Assist in seeking accreditation through North Central Association/Education
 - * Assist in the development and writing of the technology plan
 - * Implementation of current curriculum
 - * All aspects of design and implementation of programs for special education and related services
 - * Management of 504 Plans
 - * All aspects of design and implementation of IEPs and plans for ELL students
 - * All aspects of delivering the educational program approved by the University Board
- iii. Staff Development. For example:
- * Workshops and seminars
 - * Professional Growth activities
- iv. Problem Solving. For example:
- * Personnel issues
 - * Conflict resolution
 - * Student/parent/teacher issues
- v. Compliance Issues. For example:
- * Membership reports
 - * Annual reports
 - * Annual audits
 - * Charter contract compliance
 - * All transparency requirements, as required by state and federal law and the Contract.
- vi. Equipment/Furniture. For example:
- * Inventory
- vii. Contracted Services (as needed). For example:
- * Maintenance (building)

- * Cleaning supplies/equipment
- * Snow removal
- * Lawn service
- * Painting
- * Landscaping
- * Parking lot maintenance
- * Playground equipment
- * Athletic equipment

viii. Human Resources. For example:

- * All aspects of Human Resources Management, including but not limited to appropriate hiring, evaluation and termination (as necessary) of all staff assigned to the Academy in accordance with applicable law.

Assets provided, or caused to be provided, to the Academy by TRG with TRG's funds shall remain the property of TRG unless agreed in writing to the contrary. Upon termination of this Agreement, the Academy, at its sole election, may choose to purchase all or some of said property for its fair market value. All acquisitions made by TRG for the Academy with funds TRG has received pursuant to Article V including, but not limited to, instructional materials, equipment, supplies, furniture, computers and technology, shall be owned by and remain the property of the Academy. The Board shall retain the obligation, as provided in Section 1274 of the Code, to adopt written policies governing the procurement of supplies, materials, and equipment. In the event that TRG purchases supplies, materials, or equipment from third parties as agent for or on behalf of the Academy, TRG shall comply with Section 1274 of the Code as if the Academy were making such purchases directly from a third party. TRG certifies that there shall be no markup of costs for supplies, materials, or equipment procured by TRG on the Academy's behalf and that all supplies, materials and/or equipment shall be inventoried in such a way that it can be clearly established which property belongs to the Academy.

C. **Additional Services.** Any services being provided by TRG to the Academy not described in this Agreement shall be subject to a separate, written contract.

- D. **Subcontracts.** TRG reserves the right to subcontract any and all aspects of all other services it agrees to provide to the Academy, including, but not limited to transportation, food service, payroll and/or any computer services with the prior approval of the Academy Board. TRG shall not subcontract the management, oversight, staffing, or operation of the teaching and instructional program, except as specifically permitted herein or with the prior approval of the Academy Board. Notwithstanding the foregoing, TRG shall remain responsible to the Academy for the quality of such services it chooses to subcontract, as well as the compliance by such subcontractors with the Contract and all applicable law. Further, the Academy shall not pay a fee or markup for such Subcontract.
- E. **Place of Performance.** TRG reserves the right to perform functions other than instruction, such as purchasing, professional development and administrative functions, off site, unless prohibited by state or local law.
- F. **Student Recruitment.** TRG and the Academy shall be jointly responsible for the recruitment of students subject to agreement on general recruitment and admission policies. Application by or for students shall be voluntary, and shall be in writing. Students shall be selected in accordance with the procedures set forth in the Academy's Contract and in compliance with the Code and other applicable law.
- G. **Legal Requirements.** TRG shall assist in providing educational programs that meet federal, state, and local laws and regulations, and the requirements imposed under the Code and the Academy's Contract, unless such requirements are, or have been waived.
- H. **Rules and Procedures.** TRG shall recommend reasonable rules, regulations and procedures applicable to the Academy and is authorized and directed to enforce such

rules, regulations and procedures adopted by the Academy Board.

- I. **School Years and School Day.** The school year and the school day shall be scheduled as required by law and the Academy's Contract.
- J. **Additional Grades and Student Population.** TRG in connection with the Academy Administrator shall make the recommendation to the Academy Board concerning limiting, increasing, or decreasing the number of grades offered and the number of students served per grade or in total, within the limits provided for by the Academy's Contract.

ARTICLE IV

OBLIGATIONS OF THE BOARD

The Academy shall exercise good faith in considering the recommendations of TRG and the Academy Administrator including, but not limited to their recommendations concerning policies, rules, regulations, procedures, curriculum, budgets, fund raising, public relations and school entrepreneurial affairs. TRG does understand all of these decisions remain the responsibility of the Academy Board and may not be delegated directly to TRG.

ARTICLE V

FINANCIAL ARRANGEMENTS

- A. **Compensation for Services.** During the term specified in Article I, the Academy shall pay TRG a capitation fee of an amount equal to ten (10%) percent, based upon all of the funds received by the Academy that the State of Michigan determines the Academy is entitled to receive pursuant to the State School Aid Act of 1979, as amended, for the particular students enrolled in the Academy ("SSA") and the 31A –At Risk, Title I, IIA, IID and V program funds. The SSA may change according to overall changes in the

student allocations by the State of Michigan. Such fee shall not be less than \$250,000 nor exceed \$500,000 in any one academic year of the Academy. The SSA may change according to overall changes in the student allocations by the State of Michigan.

B. No Related Parties or Common Control. TRG will not have any role or relationship with the Academy that, in effect, substantially limits the Academy's ability to exercise its rights, including cancellation rights, under this Agreement. The Board may not include any director, officer or employee of a management company that contracts with the Academy. In furtherance of such restriction, it is agreed between the Academy and TRG that none of the voting power of the governing body of the Academy will be vested in TRG or its directors, members, managers, officers, shareholders, and employees, and none of the voting power of the governing body of TRG will be vested in the Academy or its directors, members, managers, officers, shareholders, and employees. The Academy and TRG will not employ the same individuals. Further, the Academy and TRG will not be members of the same controlled group, as defined in Section 1.150-1 (f) of the regulations under the Internal Revenue Code of 1986, as amended, or related persons, as defined in Section 144(a)(3) of the Internal Revenue Code of 1986, as amended. No TRG employee shall be designated as the Chief Administrative Officer of the Academy, although such employee may be a designee of the Chief Administrative Officer for certain purposes enumerated by Board action.

C. Payment of Costs. In addition to the fee described in this Section, the Academy shall reimburse TRG for all costs incurred and paid by TRG in providing the Educational Program and other goods and services provided for in this Agreement, except as provided in Article VII, provided such costs are consistent with the Academy budget approved by

the Academy Board. Such costs include, but are not limited to, advertising, typing, printing, duplicating, postage, application fees, curriculum materials, textbooks, library books, furniture and equipment, computers, supplies, and related expenses of TRG employees assigned to the Academy to provide goods and services to the Academy, building payments, maintenance, capital improvements. TRG shall not seek or be reimbursed or paid for its corporate expenses and overhead; compensation for all such expenses and overhead are included in the capitation fee. Corporate expenses and overhead include, but are not limited to, TRG's rent, utilities, equipment, supplies, central office staff, corporate payroll, vehicles, corporate travel, and other such costs incurred as a result of its operation in servicing the Academy. To the extent TRG procures any goods or services the cost for which the Academy is responsible there shall be no markup of the cost of those goods and services by TRG. Salaries of TRG staff not assigned to the Academy shall be the sole responsibility of TRG.

D. Approved Costs. The Academy Board may pay or reimburse TRG for additional costs incurred by TRG ("Approved Costs") upon properly presented documentation and approval by the Academy Board, or the Academy Board may advance funds to TRG for such Approved Costs provided that documentation for the fees and expenses are provided for Academy Board ratification. Only those subcontractor fees for services outside the scope of TRG's services and specifically approved by the Academy Board may be included as Approved Costs.

E. Time and Priority of Payments. The fee due to TRG shall be calculated for each school year at the same time as the State of Michigan calculates the SSA, and adjustments to such calculation shall occur at the same time as the State of Michigan makes adjustments

to the SSA. TRG shall receive its fee as calculated pursuant to the preceding sentence in eleven (11) installments beginning in October of each year and ending in August of the subsequent year. Such installment amounts shall be due and payable within five (5) days of receipt by the Academy of its monthly SSA. Payments due and owing to TRG shall be made by the Academy to TRG on or before the last day of each month.

F. Other Revenue Sources. In order to supplement and enhance the school aid payments received from the State of Michigan, and improve the quality of education, the Academy and TRG shall endeavor to obtain revenue from other sources. In this regard:

- (1) The Academy and/or TRG shall solicit and receive grants and donations consistent with the mission of the Academy.
- (2) Academy and/or TRG may apply for and receive grant money, in the name of the Academy subject to the prior approval of the Board.
- (3) To the extent permitted under the Code and approved by the Academy Board, TRG may charge fees to students for extra services such as summer and after school programs, athletics, etc., and charge non-Academy students who participate in such programs. TRG and the Academy will document such undertaking by separate agreement that complies with applicable law.

G. Other Institutions. The Academy acknowledges that TRG may enter into similar management agreements with other public or private educational schools or institutions ("Institutions"). TRG shall maintain separate accounts for reimbursable expenses incurred on behalf of the Academy and other Institutions, and only charge the Academy for expenses incurred on behalf of the Academy. If TRG incurs authorized reimbursable expenses on behalf of Academy and other Institutions which are incapable of precise

allocation between the Academy and such Institutions, then TRG, to the extent permitted under applicable law, shall allocate such expenses among all such Institutions, and the Academy, on a pro-rata basis based upon the number of students enrolled at the Academy and the Institutions, or upon such other equitable basis as is acceptable to the parties. All grants or donations received by the Academy or by TRG for the specific benefit of the Academy, shall be used solely for the Academy. Marketing and development costs paid by or charged to the Academy shall be limited to those costs specific to the Academy program, and shall not include any costs for the marketing and development of TRG.

H. Reporting. TRG shall provide the Academy with:

- (1) All information the Academy's auditors reasonably request.
- (2) Reports on Academy operations, finances, and student performance, upon request of the Academy, the University Board or the State of Michigan.
- (3) Level of compensation and fringe benefits of employees assigned to the Academy.
- (4) Other information on a periodic basis to enable the Academy to monitor TRG's educational performance and the efficiency of its operations of the Academy.

I. Access to Records. TRG shall keep accurate records pertaining to its operation of the Academy, together with all Academy records prepared by or in the possession of TRG, and all of said records shall be retained for the longer of (a) five years or (b) the length of time required by applicable state, local or federal records retention guidelines. All financial, educational and student records pertaining to the Academy are Academy property. Such records are subject to the Michigan Freedom of Information Act and shall be physically stored at the Academy's physical facilities or directly accessible at the Academy facility and shall be maintained in accordance with the policies of the Michigan

Department of Education. All records pertaining to teacher and administrator certification, criminal background and unprofessional conduct checks, as well as a copy of the employee handbook shall be maintained physically on site or directly accessible at the Academy facility. TRG and the Academy shall maintain the proper confidentiality of personnel, student and other records as required by law. TRG shall make all information available to the Academy as deemed necessary by the Academy Board to fully satisfy its obligation under the Contract and at least the information that a school district is required to disclose under MCLA 388.1618 for the most recent fiscal year for which information is available, and shall collect, maintain and supply to the Academy all information listed in MCLA 380.503(6)(m).

- J. **Review of Budget.** The Academy Board shall be responsible for reviewing, revising, and approving the annual budget of the Academy.
- K. **Annual Audit.** The Academy Board shall select, retain, and pay for an annual financial audit in accordance with the Contract and applicable state law. TRG shall cooperate with said auditor and will make sure that all Academy's financial records and TRG records related to the Academy will be made available to the independent auditor.
- L. **Payment of Academy Funds.** TRG shall not be a signatory on any Academy Board account. All interest earned on Academy depository accounts shall accrue to the Academy.

ARTICLE VI

PERSONNEL & TRAINING

- A. **Personnel Responsibility.** Subject to the Contract, and Academy Board policies, TRG shall undertake all employment functions of staff. TRG shall establish staffing levels,

and select, evaluate, assign, discipline and transfer personnel, consistent with state and federal law, and consistent with the parameters adopted and included within the Contract. The Academy and TRG agree that TRG has all the rights, discretion and authority required by law to constitute an “employer” as defined in 29 U.S.C. §152(2) of the National Labor Relations Act. TRG acknowledges that the Academy’s evaluation of TRG’s performance is an ongoing process and that the performance of TRG’s staff is a significant factor in that process. The Academy agrees to inform TRG of any board concerns that could negatively impact TRG’s evaluation. TRG shall not have contracts with staff assigned to the Academy (including by way of example and not limitation, teachers, administrators, counselors and the like) which contain non-compete agreements of any nature.

- B. **Principal.** Because the accountability of TRG to the Academy is an essential foundation of this partnership, and because the responsibility of a principal (“Principal”) is critical to its success, the Principal will be an employee of TRG and TRG will have the authority, consistent with state law, to select and supervise the Principal and to hold him or her accountable for the success of the Academy. The employment contract with the Principal, and the duties and compensation of the Principal shall be determined by TRG with the consent of the Academy Board. The Principal and TRG, in turn, will have similar authority to select and hold accountable the teachers in the Academy. The principal shall hold all applicable certifications.
- C. **Teachers.** Subject to the Contract and Academy Board policies, and from time to time thereafter, TRG shall recommend to the Academy Board the number of teachers, and the applicable grade levels and subjects, required for the operation of the Academy.

Thereafter, the Academy Board shall determine the number and applicable grade levels and subjects of the Academy. TRG shall provide the Academy with such teachers, qualified in the grade levels and subjects required, as are required by the Academy Board and the Contract. The curriculum taught by such teachers shall be the curriculum prescribed by the Academy and set forth by the Contract. Such teachers may, in the discretion of TRG, work at the Academy on a full or part time basis, provided that if teachers work at the Academy on a part time basis, such teachers' salaries and benefits shall be pro-rated in the Academy's budget. If assigned to the Academy on a part time basis, such teachers may also work at other schools managed or operated by TRG. Each teacher assigned or retained to the Academy shall be appropriately certified and "highly qualified" under NCLB and shall hold a valid teaching certificate issued by the State Board of Education under the Code and shall have undergone a criminal background and record check and unprofessional conduct check, as required under the Code for teachers who are employees of the Academy.

- D. **Support Staff.** TRG understands that the Academy Board reserves the right through its independent budgeting authority to reimburse TRG, pursuant to Article V, for a number and level of support staff in accordance with the Academy Board approved budget. The parties anticipate that such support staff may include clerical staff, administrative assistants to the Principal, a bookkeeping staff, maintenance personnel, and the like.
- E. **Employer of Personnel.** Except as specified in this Agreement, all staff performing services at the Academy shall be employees of TRG. Compensation of all employees of TRG shall be paid by TRG. For purposes of this Agreement, "Compensation" shall include salary, fringe benefits, and state and federal tax withholdings. TRG shall be

responsible for paying social security, unemployment, and any other taxes required by law to be paid on behalf of its employees. Unless required by applicable statute, court or administrative decision, or Attorney General's opinion, TRG shall not make payments to the Michigan Public School Employees' Retirement System or any other public retirement system on behalf of its employees. TRG shall be responsible for conducting criminal background checks and unprofessional conduct checks on its employees as if it were a public school academy under the Code and evidence of the same shall be stored, in physical form, at the Academy or directly accessible at the Academy facility. Teachers employed by TRG shall not be considered teachers for purposes of continuing tenure under MCLA § 38.71 *et seq.* No staff member assigned to the Academy shall be compensated by TRG in excess of one (1) full-time equivalent position.

- F. **Training.** TRG shall provide training in its methods, curriculum, program, and technology to all teaching personnel on a regular and continuous basis. Such methodology shall at a minimum utilize TRG's teaching staff to utilize their own professional abilities to provide in-service training to each other. Instructional personnel will receive at least the minimum number of professional development hours as required under the Michigan Code. Non-instructional personnel shall receive such training as TRG determines as reasonable and necessary under the circumstances.

ARTICLE VII

ADDITIONAL PROGRAMS

- A. **Additional Programs.** The services provided by TRG to the Academy under this Agreement consist of the Education Program during the school year and school day as set forth in the Contract. With prior approval of the Academy Board, TRG may provide

additional programs including, but not limited to, adult and community education, summer school, and other special programs. In such cases where TRG is responsible for the cost of providing such additional programs, TRG and the Academy will split, in a proportion agreed upon by the parties in advance of TRG conducting such programs, with the Academy all revenues collected, less expenses to the Academy caused by such programs.

- B. **Food Service and Transportation.** TRG will not initially provide transportation services to students at the Academy. If approved by the Academy Board, the students will be provided a catered lunch program under the normal school lunch program.

ARTICLE VIII

TERMINATION OF AGREEMENT

- A. **Termination By TRG.** TRG may terminate the Agreement with cause prior to the end of the term specified in Article I in the event the Academy fails to remedy a material breach with sixty (60) days after notice from TRG. A material breach may include, but is not limited to, failure to make payments to TRG as required by this Agreement.
- B. **Termination by the Academy.** The Academy may terminate this Agreement with cause prior to the end of the term in the event that TRG should fail to remedy a material breach within sixty (60) days after notice from the Academy. Material breach may include, but is not limited to, violation of this Agreement, violation of Academy's Contract with the University Board, failure to account for its expenditures or to pay operating costs (providing funds are available to do so), or unreasonable failure to meet performance standards as set forth in the Contract.
- C. **Change in Law.** If any federal, state, or local law or regulation, or court decision has a

material adverse impact on the ability of either party to carry out its obligations under this Agreement, then either party, upon written notice, may request renegotiating of the Agreement; and if the parties are unable or unwilling to renegotiate the terms within thirty (30) days after the notice, the party requiring the renegotiation may terminate this Agreement on thirty (30) days further written notice.

- D. **Effective Date of Termination.** In the event that this Agreement is terminated by either party prior to the end of the term specified in Article I, absent unusual and compelling circumstances, the termination will become effective at the end of the current fiscal year following the notice of termination.
- E. **Expiration.** Upon expiration of this Agreement at the completion of the Contract term and where there is no renewal, or upon the termination of this agreement, whether with or without cause, TRG shall have the right to (a) subject to Article III(B), reclaim any usable property or equipment (e.g., copy machines, personal computers) it provided to the Academy at TRG's expense and not paid for by the Academy, or (b) to make payment for any such property, at the sole option of the Academy. If the Academy chooses to purchase such property, the purchase price shall be the fair market value of such property determined as of the effective date of the termination. Fixtures and building alterations shall become the property of the building owner.
- F. **Transition and Termination.** Upon termination, TRG shall work for a period up to ninety (90) days if deemed necessary by the Academy to transition to a new Educational Service Provider. The fee shall be in accordance with the compensation stated herein. However, upon termination, TRG shall, without charge (i) close the books on the then-current fiscal quarter; (ii) organize and prepare the Academy's records for transition to

the new ESP or the Academy; (iii) organize and prepare student records for transition to the new ESP or the Academy; and (iv) provide for the orderly transition of employee compensation and benefits to the new ESP or the Academy without disruption to staffing.

- G. No Penalty Early Termination.** In the event the University Board elects to exercise its prerogative to reconstitute the Academy this Agreement may be terminated or amended with no cost or penalty to the Academy, and no recourse to the Saginaw Valley State University (the “University”) or any third party affiliated with or engaged by the University, by TRG or any subcontracted person or entity of TRG. In the event the University Board terminates the Academy’s Charter, this Agreement shall immediately terminate with no cost or penalty to the Academy, and no recourse to the Saginaw Valley State University (the “University”) or any third party affiliated with or engaged by the University, by TRG or any subcontracted person or entity of TRG.

ARTICLE IX

PROPRIETARY INFORMATION

- A. Proprietary Information.** The Academy owns all proprietary rights to curriculum or educational materials that: (i) are both directly developed and paid for by the Academy; or (ii) were developed by TRG at the direction of the Academy Board with Academy funds dedicated to the purpose of developing such curriculum or materials. TRG owns all proprietary rights to curriculum and educational materials previously developed or copyrighted by TRG, curriculum and educational materials developed by TRG not using funds from the Academy, and curriculum and educational materials not dedicated to the specific purpose of developing Academy curriculum or educational materials. TRG and the Academy shall each have the sole and exclusive right to license materials for which

they own proprietary rights for use by other school districts, public schools and customers or to modify and/or sell material to other schools and customers. The Academy and TRG each shall use reasonable efforts to ensure that its personnel and agents refrain from disclosing, publishing, copying, transmitting, modifying, altering or utilizing proprietary information owned by the other party. TRG's educational materials and teaching techniques used by the Academy are subject to disclosure under the Revised School Code and the Freedom of Information Act.

- B. Required Disclosure.** The Academy Administrator shall be permitted to report any new teaching techniques or methods of revisions to known teaching techniques or methods to the Academy Board and to the State Board of Education, which techniques or methods may thereafter be made available to the public, as provided in Sections 505(3) of the Code, notwithstanding anything contained in this Article IX to the contrary.

ARTICLE X

INDEMNIFICATION

- A. Indemnification.** To the extent permitted by law, the Academy shall indemnify and save and hold TRG and all if its employees, officers, directors, subcontractors, and agents (collectively "TRG Employees," and each individually a "TRG Employee") harmless against any and all claims, demands, suits, or other forms of liability that may arise out of, or by reason of, any action taken or not taken, while acting within the scope of their respective duties and in acting or not acting in a manner that would cause such TRG Employee to be immune pursuant to the Governmental Tort Liability Act, 1964 PA 170, MCL 691.1401 *et seq.* if such TRG Employee were an officer or employee of a governmental agency, by TRG or any of its TRG Employees in the event of any claim

that this Agreement or any part thereof is in violation of law; any noncompliance by the Academy with any agreements, covenants, warranties, or undertakings of the Academy contained in or made pursuant to this Agreement; and any misrepresentation or breach of the representations and warranties of the Board contained in or made pursuant to this Agreement. In addition, the Academy shall reimburse TRG for any and all legal expenses and costs associated with the defense of any such claim, demand, or suit.

TRG shall indemnify and save and hold the Academy and all if its directors, in their individual and official capacities, employees, officers, volunteers, students, subcontractors, and agents (collectively “Academy Releasees”) harmless against any and all claims, demands, suits, or other forms of liability that may arise out of, or by reason of, any action taken or not taken by the Academy or any of its Academy Releasees in the event of any claim that this Agreement or any part thereof is in violation of law; any noncompliance by TRG with any agreements, covenants, warranties, or undertakings of TRG contained in or made pursuant to this Agreement; and any misrepresentation or breach of the representations and warranties of the Board contained in or made pursuant to this Agreement. In addition, TRG shall reimburse the Academy for any and all legal expenses and costs associated with the defense of any such claim, demand, or suit.

- B. Indemnification of the University.** In consideration for the grant of this Contract to the Academy, which is of material value to TRG, the parties hereby promise to indemnify and hold harmless the University Board, the University and its Board 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, including, 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 the University, which arise out of or are in any manner connected with the University' approval of the Application, the University Board's consideration of or issuance of a Contract, the Academy's preparation for and operation of a public school, or which are incurred as a result of the reliance by the University and its Board members, officers, employees, agents or representatives upon information supplied by the Academy or the Education Service Provider, or which arise out of the failure of the Academy to perform its obligations under the Contract issued to the Academy by the University Board. TRG expressly acknowledges and agrees that the University and its Board members, officers, employees, agents or representatives may commence legal action against TRG to enforce its rights as set forth in this Agreement.

ARTICLE XI

INSURANCE

TRG shall secure and maintain insurance coverage as required by Michigan University Self Insurance Corporation (MUSIC) and the Contract. The Academy shall maintain insurance coverages in the amounts required by the Contract. The Academy shall also maintain such insurance as shall be necessary to indemnify TRG as provided in this Agreement. Each party shall, upon request, present evidence to the other that it maintains the requisite insurance in compliance with the provisions of this paragraph. TRG shall comply with any information or reporting requirements applicable to the Academy under the Academy's policy with its insurer(s), to the extent practicable. TRG also shall maintain EPLI coverage that does not exclude sexual molestation or abuse at levels acceptable to the Academy and the University

Board and will list the Academy and the University as additional named insureds and such coverage shall not be changed, revoked or modified absent (i) thirty (30) days' notice to the University President and the Academy and (ii) approval of same. In the event the University President modifies the level, type, scope or other aspects of such coverage, then TRG shall undertake like and similar modifications within thirty (30) days of being notified of such change.

ARTICLE XII

WARRANTIES AND REPRESENTATIONS

The Academy and TRG each represent that it has the authority under law to execute, deliver, and perform this Agreement, and to incur the obligations provided for under this Agreement, that its actions have been duly and validly authorized, and that it will take all steps reasonably required to implement this Agreement. The Academy and TRG mutually warrant to the other that there are no pending actions, claims, suits, or proceedings, to its knowledge, threatened or reasonably anticipated against or affecting it, which if adversely determined, would have a material adverse effect on its ability to perform its obligations under this Agreement.

ARTICLE XIII

MISCELLANEOUS

- A. **Sole Agreement.** This Agreement supersedes and replaces any and all prior agreements and understanding between the Academy and TRG.
- B. **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 part's control, and which cannot be overcome by reasonable diligence and without unusual expense.

- C. **Notices.** All notices, demands, requests, and consents under this Agreement shall be in writing, shall be delivered to each party, and shall be effective when received by the parties or mailed to the parties at their respective addresses set forth below, or at such other address as may be furnished by a party to the other party:

With a copy to:

Merritt Academy
58900 Haven Ridge Rd
New Haven, MI 48448
Attn. President, Board of Directors

George P. Butler III
Dickinson Wright PLLC
500 Woodward Ave., Ste. 4000
Detroit, MI 48226

The Romine Group, Inc.
Corporate Headquarters
7877 Stead Street
Utica, Michigan 48317
Attention: Paul C. Romine

Davis Burket Savage Listman Brennan
10 N. Main Street
Suite 401
Mt. Clemens, MI 48043
Attention: John L. Burket

- D. **Severability.** The invalidity of any of the covenants, phases, or clauses in this Agreement shall not affect the remaining portions of this Agreement, and this Agreement shall be construed as if such invalid covenant, phase, or clause had not been contained in this Agreement.
- E. **Successors and Assigns.** This Agreement shall be binding upon, and inure to the benefit of the parties and their respective successors and assigns.
- F. **Entire Agreement.** This Agreement is the entire agreement between the parties relating to the services provided, and the compensation for such services. The Academy Board and TRG may not substantially amend this Agreement without notification to the University President. Said amendment shall not be contrary to this Section and it must be accompanied by a Legal Opinion. The Academy is responsible for submitting any and all amendments to the University President within ten (10) days after such amendment.
- G. **Non-Waiver.** No failure of either party in exercising any right, power, or privilege under this Agreement shall affect such right, power, or privileges, nor shall any single or partial exercise thereof preclude any further exercise thereof or the exercise of any other right, power, or privilege. The rights and remedies of the parties under this Agreement are cumulative and not exclusive of any rights or remedies which any of them may otherwise have.
- H. **Assignment.** This Agreement shall not be assigned by either party without the prior

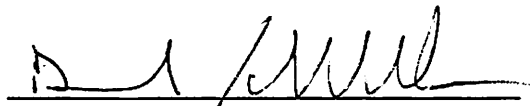
written consent of the other party.

- I. **Survival of Termination.** All representations, warranties, and indemnities made herein shall survive termination of this Agreement.
- J. **Governing Law.** This Agreement shall be governed by and enforced in accordance with the law of the State of Michigan.
- K. **University Non-Disapproval.** The parties acknowledge this Agreement is subject to the review of the University Board and it shall not become effective until the Academy is notified by the University Board that it does not disapprove of same.

The parties have executed this Agreement as of the day and year first above written.

THE ROMINE GROUP, INC.

MERRITT ACADEMY

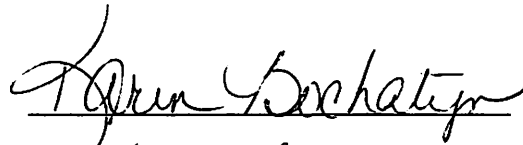


BY: Daniel Schluckebier

ITS: TRG Representative

DATE: 5-28-15

DETROIT 27491-1 1347467v5



BY: KAREN BOCHARYN

ITS: President

DATE: 5-28-15