

## LICENSE AND SERVICES AGREEMENT

THIS LICENSE AND SERVICES AGREEMENT ("Agreement") is made and entered into effective as of \_\_\_\_\_, 2018 ("Effective Date") by and between Lemman Educational Services, Inc., an Arizona nonprofit corporation ("Licensor"), and Lemman Classical School, a Colorado nonprofit corporation and charter school d/b/a Lemman Academy of Excellence ("Licensee"). Licensor and Licensee are collectively referred to as the "Parties" and individually referred to as "Party."

### RECITALS

- A. Licensee has received approval (the "Approval") from the Board of Education of the Douglas County School District RE-1 (the "District") to begin operations as a district charter school (the "School") for the school year beginning on July 1, 2018 and ending on January 31, 2019.
- B. Licensor has experience with respect to forming and operating charter schools and possesses intellectual property useful in the formation and operation of charter schools.
- C. In connection with the Approval, and pursuant to the terms of this Agreement, Licensee desires to engage Licensor, and Licensor desires to accept such engagement, to license certain intellectual property to Licensee and to provide certain consulting services to Licensee in connection with Licensee's operation of a district charter school.

### AGREEMENT

For good and valuable consideration the receipt and sufficiency of which are hereby acknowledged, the Parties hereby agree as follows:

#### Section 1 - Definitions

For purposes of this Agreement, the following terms shall have the meanings set forth below:

1.1 "Confidential Information" of a party hereto means all confidential and proprietary information of such party (and marked or otherwise designated in writing as "Confidential"), not generally known to the public regarding such party's products and business that are disclosed by such party (the "Disclosing Party") to the other party (the "Non-Disclosing Party") under this Agreement including, but not limited to, the Disclosing Party's Intellectual Property. Confidential Information does not include information (i) in the public domain at the time of delivery, (ii) subsequently published or otherwise made part of the public domain through no fault of the Non-Disclosing Party or of its representatives, (iii) in the Non-Disclosing Party's possession at the time of disclosure and not acquired by the Non-Disclosing party directly or indirectly from such Disclosing Party or its representatives on a confidential basis, or (iv) which becomes available to the Non-Disclosing Party on a non-confidential basis from a source that, to the best of the Non-Disclosing Party's knowledge at the time of disclosure by the Non-Disclosing Party, is not under an obligation to the Disclosing Party.

1.2 "Intellectual Property" shall mean and include any and all of Licensor's inventions, patents and patent applications, trade secrets, works of authorship, copyrights, documentation, Marks, and other intellectual property and proprietary rights, anywhere in the world, and all applications and registrations therefor, including without limitation, the names "Leman" and "Leman Academy of Excellence."

1.3 "Marks" shall mean and include Licensor's trademarks, service marks, trade names, domain names, trade dress, logos and similar designations, whether registered or unregistered, and all applications and registrations therefor, including without limitation, the names "Leman" and "Leman

Academy of Excellence.”

1.4 “Person” shall mean and include any individual, corporation, trust, estate, partnership, joint venture, company, association, governmental bureau or agency, or any other entity regardless of the type or nature thereof.

1.5 “Territory” shall mean the geographic area of the District.

1.6 “Services” shall have the meaning set forth in Sub-section 3.1.

## Section 2 - License

2.1 Grant of License. Licensor hereby grants to Licensee a limited, non-exclusive, non-sublicenseable, non-transferable license in the Territory to use the Intellectual Property of Licensor to form and operate the School (the “License”).

2.2 Ownership. Licensee hereby acknowledges that Licensor is the owner of all rights, title and interest in and to, or authorized licensee of, the Intellectual Property and that Licensor shall acquire no rights whatsoever in or to any of the Intellectual Property. Licensee shall not take any action that may adversely affect or impair Licensor’s (or its licensors’) rights, title and interest in or to the Intellectual Property. Without limiting the generality of the foregoing, Licensor and its licensors will retain all right, title and interest in and to the Intellectual Property underlying the Services, and each element thereof, including any enhancements, modifications and derivative works of or to such materials, and any documentation or component relating to the Services, and any localized version of the Marks developed for use within the Territory. Licensee hereby agrees to assign and does hereby assign to Licensor any and all rights it may have to the foregoing.

2.3 No Reverse Engineering. Licensee agrees not to reverse engineer, decompile, disassemble or otherwise attempt to derive or reproduce the elements of the Intellectual Property or the Services, or assist any third party to do any of the foregoing.

2.4 Notices, Marks, Legends and Name. Except as specifically authorized by Licensor, Licensee shall not alter, deface or add to any patent notice, copyright notice, Mark, serial number, model number or brand name which Licensor or its licensors may attach or affix to the Intellectual Property or Services or any related electronic or printed documentation for the Services.

2.5 Trademarks and Trade Names. The Parties acknowledge that Licensee may, during the term of this Agreement, use the Marks owned or licensed by Licensor in connection with the formation and operation of the School. Such use is expressly limited to the formation and the operation of the School and any other similar activities deemed by Licensor necessary for the performance of Licensor’s obligations under this Agreement. Licensee hereby acknowledges and agrees that all trademark goodwill generated by the use of the Marks hereunder shall inure to the benefit of Licensor.

## Section 3 – Services

3.1 Consulting Services. Licensor will provide consulting services to Licensee in a professional, timely and competent manner to the reasonable satisfaction of Licensee. Licensor will provide consulting services to Licensee in the following areas: recruitment, training and professional development of administrators, teachers, and other staff; curriculum development; establishment and modification of school systems and procedures; marketing efforts; compliance with applicable laws, rules and regulations; school site selection; such other matters as Licensor and Licensee shall mutually agree upon from time to time (the “Services”).

3.2 Acknowledgement of Outside Activities. Licensee acknowledges that Licensor may

devote substantial time in connection with endeavors outside of the scope of this Agreement. Notwithstanding the foregoing, such outside endeavors shall not prevent Licensor from timely completing the Services for Licensee pursuant to this Agreement.

#### Section 4 – Fee

4.1 Initial Term Fee. As consideration for the License and the Services during the Initial Term, Licensee will pay to Licensor a fee equal to \$1,000.00.

4.2 Renewal Term Fees.

(a) As consideration for the License and the Services during each Renewal Term, Licensee will pay to Licensor a fee equal \$100 multiplied by the School's FTE enrollment as determined by its annual October 1 count.

(b) Commencing on July 31 of each Renewal Term and on the last day of each month thereafter, Licensee shall pay to Licensor one-twelfth of the fee for the then-applicable Renewal Term. The payments for July through November shall be based on the School's enrollment projections submitted to the District in accordance with the School's annual budgeting process. Funding for December and subsequent months of each fiscal year shall be adjusted in accordance with paragraph 4.2(c).

(c) The monthly payment of the fee for each Renewal Term shall be adjusted as follows: In December of each year, funding for the School is revised based on the number of FTE pupils actually enrolled at the School as determined at the October 1 count and included in the official membership count. Beginning with the December payment each fiscal year, the monthly payment of the fee shall be adjusted so that the total payment by the end of the fiscal year shall be equal to the amount set forth in paragraph 4.2(a) above.

(d) The Parties agree to negotiate in good faith with respect to any modifications to the fee for each Renewal Term. If there is no mutual agreement with regard to an adjustment of the fee, the fee shall remain the same as the last Renewal Term.

#### Section 5 – Term and Termination

5.1 Term. The initial term of this Agreement shall be one fiscal year, commencing on July 1, 2018 and ending on January 31, 2019 (the "Initial Term"). Upon the expiration of the Initial Term, the Agreement will thereafter automatically renew for successive terms of one fiscal year (each a "Renewal Term").

5.2 Termination for Breach. In the event that a Party (the "Breaching Party") shall commit any material breach or default of its obligations under this Agreement, the other Party (the "Non-Breaching Party") may give the Breaching Party written notice thereof and demand that such breach or default be cured promptly. If the Breaching Party fails to cure such breach or default within 30 calendar days after the date of the Non-Breaching Party's written notice hereunder, the Non-Breaching Party may terminate this Agreement immediately upon giving written notice of termination hereof to the Breaching Party. Termination of this Agreement in accordance with this Sub-section 5.2 shall not adversely affect or impair the Non-Breaching Party's right to pursue any legal remedy, including the right to recover damages for all harm suffered as a result of the Breaching Party's breach or default hereof.

5.3 Termination for Insolvency. To the extent permitted by applicable law, either Party may terminate this Agreement immediately upon written notice of termination to the other Party if the other Party goes into bankruptcy or voluntary or involuntary dissolution, is declared insolvent, fails to pay its debts as they come due, makes an assignment for the benefit of creditors, becomes subject to proceedings

under any bankruptcy or insolvency law, or suffers the appointment of a receiver or trustee over all or substantially all of its assets or properties.

5.4 Termination For Convenience. Any other provision of this Agreement to the contrary notwithstanding, either Party may terminate this Agreement for any reason whatsoever, as determined in its sole and absolute discretion, upon 30 calendar days' written notice of termination to the other Party. This Agreement may also be terminated at any time by written mutual agreement between the Parties.

5.5 Rights and Obligations Upon Termination. Termination of this Agreement for any reason whatsoever shall extinguish all rights and obligations of the Parties, except for those rights and obligations accrued prior to termination, as specified under this Section 5. Upon termination of this Agreement for any reason whatsoever, Licensee shall (a) immediately cease all use of the Intellectual Property and Services, and (b) return to Licensor (or provide Licensor with certification of destruction of) all documents and other materials which contain or embody any Confidential Information and which are in Licensee's possession.

5.6 Status of Annual Fee Upon Termination. Upon termination of this Agreement, Licensor shall be entitled to that pro rata portion of the Renewal Fee that has accrued, but remains unpaid, prior to the date of termination.

5.7 Survival. In the event of termination of this Agreement for any reason whatsoever, Sub-sections 2.2 through 2.5, Sections 6 and 7, and Sub-section 9.1, hereof shall survive for as long as necessary to effectuate their purposes, and shall bind the Parties and their respective representatives, successors and assigns.

5.8 Tail Period. In connection with any termination for convenience by Licensor pursuant to Sub-section 5.4 hereof, Licensee, at its sole discretion, may request that Licensor continue to provide the License and/or any of the Services through the remainder of the then-current Initial Term or Renewal Term in accordance with the terms and conditions of this Agreement. Licensor will not unreasonably withhold, condition or delay its approval of such request by Licensee.

## Section 6 - Confidential Information

6.1 Nondisclosure Obligations. Each Party hereby agrees that all Confidential Information will be used by a Non-Disclosing Party solely to carry out the purposes of and perform its obligations under this Agreement, and will not be used by the Non-Disclosing Party for any other purpose. Such Confidential Information will be kept strictly confidential by each Non-Disclosing Party and its directors, officers, employees, agents, consultants, attorneys and advisors (collectively referred to as the "Representatives") and will not be disclosed to any person other than the Non-Disclosing Party and its Representatives with a need to know to whom disclosure is made for the purposes hereunder. The Parties understand and agree that these Representatives will be informed of the confidential nature of the Confidential Information and will have an existing fiduciary, contractual or other duty to maintain the confidentiality of information in a manner substantially similar to this Agreement. In any event, each of the Parties shall be responsible for any breach of the terms of this Agreement by any of its Representatives to the extent any such terms of this Agreement apply to its Representatives and each of the Parties agrees, at its sole expense, to take all reasonable measures (including but not limited to court proceedings) to restrain its Representatives from prohibited or unauthorized disclosure or use of the Confidential Information.

6.2 Ownership of Materials. Each Non-Disclosing Party expressly acknowledges and agrees that all documents and materials that contain or embody any Confidential Information are and shall remain the sole property of the Disclosing Party. Such materials shall be promptly returned to Disclosing Party or destroyed (a) upon Disclosing Party's reasonable request, or (b) in accordance with Sub-section 5.5 hereof, upon expiration or termination of this Agreement.

6.3 Exception. If the Non-Disclosing Party or any of its Representatives becomes legally obligated or compelled (by deposition, interrogatory, request for documents, subpoena, civil investigative demand, other demand or request by governmental agency or the application of statutes, rules and regulations under the federal securities laws or similar process) to disclose any of the Confidential Information, it shall, where legally permissible, provide the Disclosing Party with prompt written notice of such requirement before such disclosure and shall cooperate with the Disclosing Party's reasonable efforts to obtain confidential treatment of the Confidential Information. If a protective order or other confidential treatment is not obtained, or if the Disclosing Party waives compliance with the provisions hereof, the Non-Disclosing Party agrees to furnish only so much of the Confidential Information that it is legally required to furnish and, where appropriate, to exercise its reasonable efforts to obtain written assurances that confidential treatment will be accorded to such Confidential Information.

#### Section 7 - Indemnification

7.1 Indemnification by Licensee. To the extent permitted by law, Licensee shall indemnify, defend and hold Licensor and its directors, officers, employees and other agents harmless for, from and against any and all claims, suits, actions, demands, proceedings, losses, damages, liabilities, costs and expenses, including, without limitation, interest and reasonable attorneys' fees (collectively, "Losses"), arising out of, relating to, or resulting from (a) Licensee's formation or operation of the School, (b) a breach of any of Licensee's representations, warranties, agreements or covenants set forth in this Agreement, or (c) Licensee's gross negligence or willful misconduct. Licensee's indemnification obligation is subject to the conditions that (i) Licensor promptly notifies Licensee of any such claim (provided, however, that no delay in providing such notice shall affect Licensor's rights hereunder, unless (and then only to the extent that) Licensee is materially prejudiced thereby), and (ii) Licensor shall have the right to consent to the settlement of any claim settled at Licensee's expense, which consent shall not be unreasonably withheld or delayed. Nothing in this Agreement shall be construed to be a waiver of any provision of the Colorado Governmental Immunity Act, C.R.S. §§ 24-10-101, *et seq.*

7.2 Indemnification by Licensor. Licensor shall indemnify, defend and hold Licensee and its directors, officers, employees and other agents harmless for, from and against any and all Losses, arising out of, relating to, or resulting from (a) a claim that Licensee's authorized and proper use of the Intellectual Property pursuant to this Agreement infringes any United States patent, trademark or copyright, (b) a breach of any of Licensor's representations, warranties, agreements or covenants set forth in this Agreement, or (c) Licensor's gross negligence or willful misconduct. Licensor's indemnification obligation is subject to the conditions that (i) Licensee promptly notifies Licensor of any such claim (provided, however, that no delay in providing such notice shall affect Licensee's rights hereunder, unless (and then only to the extent that) Licensor is materially prejudiced thereby), and (ii) Licensee shall have the right to consent to the settlement of any claim settled at Licensor's expense, which consent shall not be unreasonably withheld or delayed.

#### Section 8 – Representations and Warranties

Each Party represents and warrants that (a) its execution and performance of the Agreement will not violate any applicable laws, ordinances, covenants or the provisions of any other agreements binding on such Party; (b) it has all corporate power and authority to enter into, execute, and deliver this Agreement, and to carry out its obligations pursuant to this Agreement; and (c) during the term of this Agreement, it will be in compliance with all applicable laws.

#### Section 9 – No Special Damages; Disclaimer of Warranties

9.1 No Special Damages. EXCEPT AS TO THE PARTIES' INDEMNIFICATION AND CONFIDENTIALITY OBLIGATIONS, IN NO EVENT WILL EITHER PARTY BE LIABLE FOR ANY INDIRECT, PUNITIVE, SPECIAL, INCIDENTAL OR CONSEQUENTIAL DAMAGES IN

CONNECTION WITH OR ARISING OUT OF THIS AGREEMENT (INCLUDING, WITHOUT LIMITATION, LOSS OF BUSINESS, REVENUE, PROFITS, GOODWILL, USE, OR OTHER ECONOMIC ADVANTAGE), HOWEVER THEY ARISE, WHETHER IN BREACH OF CONTRACT, BREACH OF WARRANTY OR IN TORT, INCLUDING NEGLIGENCE, AND EVEN IF THAT PARTY HAS PREVIOUSLY BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES, AND WHETHER OR NOT SUCH DAMAGES ARE FORESEEABLE.

9.2 Disclaimer of Warranties. EXCEPT AS EXPRESSLY SET FORTH IN THIS AGREEMENT, NO WARRANTIES, EXPRESS OR IMPLIED, ARE MADE BY EITHER PARTY, AND EACH PARTY EXPRESSLY DISCLAIMS ALL OTHER WARRANTIES, INCLUDING WITHOUT LIMITATION ANY IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, NON-INFRINGEMENT OR ARISING FROM A COURSE OF DEALING, USAGE OR TRADE PRACTICE.

#### Section 10 – General Provisions

10.1 Governing Law. This Agreement, and any disputes arising out of or in connection with this Agreement, shall be governed by and construed in accordance with the laws of the State of Arizona, notwithstanding any choice of law rules.

10.2 TABOR Provision. Notwithstanding any other provision, term or condition of this Agreement, Licensee's financial obligations in future fiscal years (July 1 through June 30) are subject to annual fiscal year appropriations by and at its option. The obligation of Licensee to make any payments pursuant to this Agreement shall terminate in the event Licensee for any reason does not appropriate moneys to make such payments during its next ensuing fiscal year. The parties acknowledge and agree that any payments by Licensee described in this Agreement shall constitute current expenditures of Licensee payable in the fiscal years for which funds are appropriated by Licensee for the payment thereof. Licensee's obligations hereunder shall be from year to year only (July 1 through June 30) and shall not constitute a multiple-fiscal year direct or indirect debt or other financial obligation of Licensee or an obligation of Licensee payable in any fiscal year beyond the fiscal year for which it appropriated funds for the payment thereof.

10.3 Licensors agree and understands that it is entering into the contract solely and exclusively with Licensee, that Licensee has no authority to extend the faith and/or credit of the District to any third party or entity, that Licensee has no authority to enter into any contract that would bind the District, and that the District has no obligation or liability whatsoever under or in any way connected with this Agreement. Licensors further agree and understands that its rights and remedies under this Agreement may only be enforced with respect to Licensee and that it has no rights or remedies directly or indirectly under this Agreement with respect to the District.

10.4 Assignment. Neither this Agreement nor any of the rights, interests or obligations under this Agreement may be assigned, transferred or delegated, in whole or in part, by operation of law or otherwise by any Party hereto without the prior written consent of the other Party, and any such assignment without such prior written consent shall be null and void. Notwithstanding the foregoing, Licensors may assign this Agreement to (a) any of Licensors's affiliates without the prior consent of Licensee, or (b) any Person who acquires substantially all of the assets of Licensors, including this Agreement. Subject to the preceding sentences of this Sub-section, this Agreement shall be binding upon, inure to the benefit of, and be enforceable by, the Parties hereto and their respective successors and assigns.

10.5 No Waiver. The failure of either Party to assert any of its rights under this Agreement shall not be deemed to constitute a waiver of that Party's right thereafter to enforce each and every provision of this Agreement in accordance with its terms.

10.6 Subject Headings. The subject headings of this Agreement are included for purposes of convenience only and shall not affect the construction or interpretation of any of its provisions.

10.7 Severability. In the event that any provision hereof is found invalid or unenforceable pursuant to a final judicial decree or decision, the remainder of this Agreement will remain valid and enforceable according to its terms. In the event of such partial invalidity, the Parties shall seek in good faith to agree on replacing any such legally invalid provision with a provision which, in effect, will most nearly and fairly approach the effect of the invalid provision.

10.8 Counterparts. This Agreement may be executed in two or more counterparts, each of which will be deemed an original, but all of which together constitute one and the same instrument. The exchange of a fully executed Agreement (in counterparts or otherwise) by facsimile or by electronic delivery in .pdf format shall be sufficient to bind the Parties to the terms and conditions of this Agreement, as an original.

10.9 Entire Agreement; No Third Party Beneficiaries; and Amendments. This Agreement constitutes the entire agreement between the Parties, and supersedes all prior agreements, understandings and communications between the Parties with respect to the subject matter hereof. This Agreement is not intended to confer, and shall not be construed as conferring, upon any Person other than the Parties hereto any rights or remedies hereunder (except that Section 7 is intended to benefit the parties indemnified thereunder). No modification or amendment to this Agreement shall be effective unless in writing and executed by the duly authorized representative of each of the Parties.

[Signature Page Follows]

The Parties have caused this Agreement to be executed by their duly authorized representatives effective as of the Effective Date.

<b>Leman Educational Services, Inc.</b>	<b>Leman Classical School dba Leman Academy of Excellence</b>
Signature:	Signature:
Printed:	Printed:
Title:	Title:
Date: _____, 2018	Date: _____, 2018