

# Northeast Raleigh Chartered Academy (D/B/A) Torchlight Academy SERVICES AGREEMENT

This Services Agreement ("Agreement") by and between Torchlight Academy Schools, LLC., a North Carolina corporation ("TAS"), and Northeast Raleigh Chartered Academy (D/B/A) Torchlight Academy, a North Carolina non-profit corporation (the "School") is effective this the 1st day of July 2015 (the "Effective Date"). For purposes of this Agreement, "TAS" and the "School" shall be referred to collectively as the "Parties."

## RECITALS

WHEREAS, the School was issued a Charter Contract by the North Carolina State Board of Education (the "Authorizer") to operate a public charter school pursuant to N.C. Gen. Stat. 115C-238.29 et seq. (the "Authorizing Law"); and

WHEREAS, the Parties desire to work together to promote educational excellence and innovation based on TAS's school design, comprehensive educational program and management principles; and

WHEREAS, the Parties desire to set forth the terms and conditions of such a relationship in this Agreement;

NOW, THEREFORE, for good and valuable consideration, including the mutual promise and benefits contained in this Agreement, the receipt and sufficiency of which are hereby acknowledged, the Parties agree as follows:

## ARTICLE 1 CONTRACTING RELATIONSHIP

- A. Services. Subject to the terms and conditions of this Agreement, and as permitted by applicable law, the School hereby contracts with TAS for the provision of certain educational, business administration, facility, and management services, including without limitation, all labor, equipment, and materials necessary for the provision of the same, as set forth herein (collectively, the "Services").
- B. Charter. This Agreement shall: (i) be subject to and comply with the terms and conditions of the Charter Contract and the School's Charter Application (collectively, the "Charter"); and (ii) not be construed to interfere with the constitutional, statutory, or fiduciary duties of the School's Board of Directors (the "Board"). In the event of a conflict between any term or condition of this Agreement and any term or condition of the Charter, the term or condition of the Charter shall govern.
- C. Independent Contractor. TAS shall provide the Services as an independent contractor, and not as an employee, partner, agent, or associate of the School. This independent contractor relationship shall extend to the officers, directors, employees, and representatives of TAS. Consistent with the status of an independent contractor, TAS reserves to itself the right to designate the means and methods of accomplishing the objectives and purposes of this Agreement consistent with Authorizing Law and the Charter. The relationship between the Parties is based solely on the terms and conditions of this Agreement, and the terms and conditions of any other written agreement between the Parties.
- D. Designations and Appointments.
1. TAS, including its directors, officers, and employees are hereby designated as "other School Officials having a legitimate educational interest in education records" for purposes of the Family Educational Right and Privacy Act, 20 U.S.C. 1232g et seq. (FERPA).

2. TAS, its directors, officers, and employees may be designated by the School for other purposes by a written resolution of the Board.

## ARTICLE II TERM & TERMINATION

### A. Term.

This Agreement shall commence on the Effective Date, and unless terminated as set forth herein, shall continue until the termination or expiration of the Charter currently in effect, inclusive of any Charter re-authorization or renewal periods thereof (the "Term"). The parties acknowledge that the Authorizer, as part of any reauthorization or renewal, may require that the School and TAS submit an amended or restated Agreement for review by the Authorizer. The first school year of this Agreement shall commence July 1, 2015 to June 30, 2016, and each school year thereafter shall commence on July 1 and end on June 30 of the following year.

### B. Termination

1. By the School. The School may terminate this Agreement prior to the end of the Term if TAS fails to remedy a material breach of this Agreement within (30) days after receiving notice from the School of such breach. Notwithstanding the foregoing, the School through its Board may only terminate the Agreement with TAS subject to the approval of the State Board of Education. For purposes of this Subsection, a material breach includes, but is not limited to: (i) TAS's failure to account for expenditures or pay operating costs pursuant to the Budget (as defined below); (ii) TAS's failure to follow policies, procedures, rules, regulations or curriculum adopted by the Board, provide they do not violate the Charter, applicable law, or this Agreement; (iii) a receipt by the Board of an unsatisfactory report from an independent education consultant retained by the Board regarding the Services or the School's performance, provided the unsatisfactory performance cannot be adequately corrected or explained; (iv) a determination that this Agreement or its implementations would serve as grounds for suspension, revocation, or non-renewal of the Charter; (v) a determination that this Agreement or its implementation would jeopardize material tax exemptions of the School or its non-profit status; or (vi) any action or inaction by TAS that places the Charter in jeopardy of termination, suspension or revocation.

2. By TAS. TAS may terminate this Agreement prior to the end of the Term if the Board fails to remedy a material breach of this Agreement within thirty (30) days after receiving a notice from TAS of such breach. For purposes of this Subsection, a material breach (which for the sake of the clarity is a default hereunder) includes, but is not limited to: (i) TAS's failure to timely receive any compensation or reimbursement required by this Agreement; or (ii) a suspension, revocation, or non-renewal of the Charter

3. By Either Party. Either party may terminate this Agreement prior to the end of the Term, with or without cause, by providing the other party with at least ninety (90) days prior written notice.

4. If this Agreement is terminated prior to the end of the Term, and unless otherwise agreed by the Parties, such termination will not become effective until the end of the then-current school year.

A. Effect of Termination. Upon the effective date of termination or expiration of this Agreement:

1. TAS shall have the right to remove from the School any equipment or other assets owned or leased by TAS;

2. The School shall pay or reimburse TAS THROUGH THE Fee (as defined below) for the prepaid portion of any expenses or liabilities incurred by TAS pursuant to the Budget as of the date of such termination or expiration, provided TAS supplies the School with documentation of all such expenses and liabilities;

3. TAS may agree, in its sole discretion, to assist the School for a reasonable amount of time, not to exceed ninety (90) days, and for a reasonable fee, with the School's transition to another administrative, managerial, or services arrangement;
4. TAS shall, if applicable, reasonably assist the School in the execution of a closure and dissolution plan and cooperate in the closure and dissolution process, including without limitation, in any audits and court or other proceedings related thereto; and
5. The party to whom Confidential Information (as defined below) has been disclosed shall, upon request and at the direction of the disclosing party: (i) return such Confidential Information within thirty (30) days, including any copies thereof, and cease its use; or (ii) destroy such Confidential Information and certify such destruction to the disclosing party, except for a single copy thereof which may be retained for the sole purpose of determining the scope of any obligations incurred under this Agreement, and except where disclosure or retention is required by applicable law.

### ARTICLE III OBLIGATIONS OF TAS

- A. Manager at Risk. TAS shall be responsible and accountable to the Board for providing the Services. During the Term, TAS shall provide the Services regardless of whether actual revenue meets the level projected in the Budget, and TAS hereby assumes the risk of funding shortfalls during the Term. Notwithstanding the foregoing, TAS shall not be required to expend funds on Services in excess of the amount set forth in the Budget but may do so at its discretion.
- B. TAS Educational Program. The School has determined to adopt the TAS educational and academic programs and goals. Subject to the oversight of the Board, TAS shall implement and administer the TAS Educational Program. In the event that TAS reasonably determines that it is necessary or advisable to make material changes to the Educational Program, TAS shall inform the Board of the proposed changes and obtain the Board's approval before making such changes, as well as the Authorizer's approval if required by the Charter or applicable law. The Parties acknowledge and agree that an essential part of the TAS Education Program is its capacity to change in the interest of continuous improvement and efficiency. Not less than annually or as reasonably request by the Board, TAS shall provide the Board with a report detailing progress made on each of the educational goals set forth in the TAS Educational Program. The school year calendar and the school day schedule shall be approved by the Board as required under the Charter.
- C. All Children Welcome. TAS shall ensure that all students are welcome regardless of race, ethnicity, religion, gender and economic backgrounds.
- D. Services to Students with Disabilities. TAS welcomes students with disabilities at the School. TAS shall provide special education and related services, in conformity with the requirements of applicable law, to students who attend the School.
- E. Educational and Administrative Services. Subject to the oversight of the Board, TAS shall implement operational practices and procedures that are consistent with Board policy, the Charter and applicable law. Such practices and procedures shall include, but are not limited to:
  1. Student recruitment and student admissions.
  2. Student assessments, including testing, promotion, and retention.

3. The acquisition of instructional materials, equipment and supplies, and the administration of any and all extra-curricular and co-curricular activities and programs included in the Budget.
  4. The placement of appropriate personnel for employment by the Board and/or TAS at the School and the management and oversight of all personnel functions, as set forth herein.
  5. All aspects of the School's business administration.
  6. All aspects of the School's accounting operation, including general ledger management, financial and audit reporting, payroll, employee benefits, payroll, and tax compliance.
  7. All aspects of food services.
  8. All aspects of facilities acquisition, administration and maintenance.
  9. Student behavior management and discipline.
- F. Location of Services. Other than instruction, and unless prohibited by the Charter or applicable law, TAS may provide the Services, including but not limited to, purchasing, professional development and administrative services, off-site.
- G. Subcontracts. TAS reserves the right to subcontract any and all aspects of the Services. TAS shall not subcontract the oversight of the Educational Program, except as specifically permitted in this Agreement or with prior written approval of the Board. Notwithstanding the foregoing, the Board specifically acknowledges and agrees that from time to time TAS may use third parties or independent contractors to assist in the creation and development of Educational Materials (as defined below) that may be used as a part of the TAS Educational Program.
- H. Pupil Performance Standards and Evaluation. TAS shall implement pupil performance evaluations that permit evaluation of the academic progress of each student. TAS shall utilize assessment strategies required by the Charter and applicable law. The Board and TAS shall cooperate in good faith to identify academic goals and methods to assess such academic performance. TAS shall provide the Board with timely reports regarding student performance.
- I. Unusual Events. TAS shall timely notify the Board and the Administrator (as defined below) of any anticipated or known material: (i) health or safety issues, including all mandatory reporting required by applicable law; (ii) labor, employee or funding issues; or (iii) other issues that may reasonably and adversely impact the School's ability to comply with the Charter, applicable law or this Agreement.
- J. School Records. The financial and education records pertaining to the School (collectively, the "School Records"), are property of the School. Except as may be prohibited or limited by the Charter or applicable law, the School Records shall be available to the Board and the Authorizer for their review, and are subject to inspection and copying to the same extent that records of public schools are subject to inspection and copying pursuant to applicable law. All School Records shall be physically or electronically available upon request at the School's physical facility. TAS agrees to comply with the terms pursuant to the Charter regarding information to be made available to the School.
- K. Facility. TAS shall use reasonable efforts to secure a facility to be leased or otherwise provided to the School on terms mutually agreeable to TAS and the Board. Obligations of the Board created under the terms of such lease are to be fulfilled by TAS unless otherwise agreed to in writing by TAS and the Board. The facility shall comply with the requirements of the Charter and applicable law. TAS shall also use reasonable efforts to cause the facility to be furnished with equipment and technology as is reasonably necessary to implement the Educational Program.

- L. Legal Compliance. TAS will implement and enforce rules, regulations and procedures applicable to the School that are consistent with adopted Board a policy, if any, and the TAS Educational Program in accordance with the Charter and applicable law, including without limitation, rules, regulations, and policies regarding non-discrimination, discipline, special education, confidentiality and access to records.
- M. Rules and Procedures. TAS will recommend to the Board reasonable rules, regulations, policies and/or procedures applicable to the School. The Board hereby authorizes and directs TAS to enforce such rules, regulations and procedures consistent with Board policy.
- N. Assistance to the Board. TAS shall cooperate with the Board and, to the extent consistent with applicable law, timely furnish the Board with all documents and information necessary for the Board to properly perform its responsibilities under this Agreement, the Charter and all applicable laws.

**ARTICLE IV  
OBLIGATIONS OF THE BOARD**

- A. Board Policies. The Board shall be responsible for the fiscal and academic policies of the School. The Board shall exercise good faith in considering the recommendations of TAS, including but not limited to, TAS's recommendations regarding policies, rules, regulations and the Budget (as defined below).
- B. Assistance to TAS. The Board shall cooperate with TAS and, to the extent consistent with applicable law, timely furnish TAS all documents and information necessary for TAS to properly perform it responsibilities under this Agreement.
- C. Unusual Events. The Board shall timely notify TAS of any anticipated or known material: (i) health or safety issues; (ii) labor, employee or funding issues; or (iii) other issues that may reasonably and adversely impact TAS's ability to comply with the Charter, applicable law, or this Agreement.
- D. Retained Authority. The Board shall retain the authority to adopt reasonable policies in accordance with applicable law relative to anything necessary for the proper establishment, maintenance, management, and operation of the School.

**ARTICLE V  
INTELLECTUAL PROPERTY**

- A. Definitions.
  - 1. **"Educational Materials"** means all curriculum, print and electronic textbooks, instructional materials, lesson plans, teacher guides, workbooks, tests, and other curriculum-related materials licensed, developed or otherwise owned by the School or TAS.
  - 2. **"Confidential Information"** means any confidential and non-public trade, technical or business knowledge, information and materials regarding the School or TAS (or their respective affiliates), which is given by one party to the other, or any of their respective representatives, in any form, whether printed, written, oral, visual, electronic or in any other media or manner. Confidential Information includes, but is not limited to, research, operations and procedures, financial projections, pricing, sales, expansion plans and strategies, services, data, trade secrets and other intellectual property, or the results of any mediation or private adjudication, as well as information with

respect to each party's or its affiliates' plan for market expansion, except for information which a party can show by contemporaneous written records was developed or formulated independently of work or services performed for, or in connection with performance of, this Agreement. Notwithstanding the foregoing, the disclosure of the other party's Confidential Information as required to be disclosed by law, rule or regulation or by reason of subpoena, court order or government action shall not constitute a breach of this Agreement; however, in such event the party required to disclose such information will reasonably cooperate with the party whose information is required to be disclosed in order to obtain a protective order applicable to such disclosure. All Confidential Information will remain the sole property of the party disclosing such information or data.

- A. Assignment. Each party shall, and hereby does assign to the other, with full title guarantee and without additional compensation, such right, title and interest in and to any intellectual property as is necessary to fully affect the ownership provisions set out herein, and any accrued rights of action in respect thereof. Each party shall, if so requested by the other, execute all such documents and do all such other acts and things as may be reasonably required to comply with this Agreement to vest in the appropriate party all rights in the relevant intellectual property and shall procure execution by any named inventor of all such documents as may reasonably be required by the other party in connection with any related patent application.

#### **ARTICLE VI SOLICITATION AND USE OF PRIVATE FUNDS**

TAS shall seek the Board's approval prior to soliciting any non-governmental grants, donations or contributions on behalf of the School. Any such funds received shall be used solely in accordance with the purpose for which they were solicited, applicable donor restrictions, or as otherwise approved by the Board. Subject to applicable donor restrictions, the Board shall determine the allocation of any such funds subject to this Article that remain unexpended following completion of the project or purpose for which they were originally designated.

#### **ARTICLE VII FINANCIAL ARRANGEMENTS**

- A. Revenues. Except as provided herein, all monies received by the School shall be deposited in the School's depository account within three (3) business days with a financial institution acceptable to the Board; provided, however, that upon receipt of a notice from TAS, the School shall pay all such funds owing under this Agreement directly to the account or party specified in such notice. The signatories on the School depository account shall solely be Board members or properly designated Board agents (if any). Interest income earned on the School's depository account shall accrue to the School. Except as specifically excluded by this Agreement, the term "Revenues" shall include all funds received by or on behalf of the School including but not limited to:
1. Funding for public school students enrolled at the School.
  2. Special education funding provided by the federal and/or state government that is directly allocable to special education students enrolled at the School.
  3. Gifted and talented funding provided by the federal and/or state government that is directly allocable to gifted and talented students enrolled at the School.

4. At-risk funding provided by the federal and/or state government that is directly allocable to at-risk students enrolled at the School.
5. Funding provided by the federal and/or state government that is directly allocable to students enrolled at the School with limited English proficiency.
6. All other federal and/or state grant sources, including, but not limited to, Title I and any start-up funding allocable to the School.
7. All other grants and donations received by the School to support or carry programs at the School (except to the extent TAS is not required or involved in soliciting, administering or managing the contribution and/or donation, in which case such funds shall be deposited in the Board Spending Account (as defined below)).
8. Fees charged to students as permitted by law for extra services provided by TAS as approved by the Board.

The expenditure of any Revenues received from governmental entities shall be consistent with all applicable regulations and policies. The expenditure of any Revenue received from non-governmental grants, contributions and donations shall be made consistent with provisions of Article VI.

- B. Budget. TAS shall provide the Board with an annual proposed Budget prepared and maintained in accordance with the Charter and applicable law (the "Budget"). The Budget shall be submitted to the Board prior to June 1 for the next school year.
- C. Review and Approval of Budget. The Board shall be responsible for reviewing and approving the Budget in accordance with the Charter and applicable law. At the direction of either TAS or the Board, with the approval of the Board, the Budget shall be amended from time to time as necessary.
- D. Board Spending Account. Notwithstanding any other provision of this Agreement to the contrary, each school year during the Term, TAS shall allocate to an account controlled by the Board an amount equal to the lesser of (i) 2% of state per pupil aid reflected in the Budget for that respective year, or (ii) \$25,000 (the "Board Spending Account"). The aforesaid amount shall be deposited by TAS into the Board Spending Account pro-rata during the course of the School's school year as Revenues are received. All funds in the Board Spending Account are the property of the School and may be used by the School at the discretion of the Board. Funds in the Board Spending Account that are not spent by the School during the school year shall carryover annually.
- E. Fee. TAS shall receive all Revenues as its services fee (the "Fee"), from which it shall pay all operating costs of the School as detailed in the Budget. TAS and the Board acknowledge that operating costs may include an administrative fee payable to the Authorizer as set forth in the Charter. Payment of the Fee shall be made on the same frequency that the School receives its Revenues. TAS shall be entitled to

retain as compensation for the Services the difference, if any, between the Fee and the amount actually expended by TAS in operation and/or management of the School during the School's fiscal year.

- F. Other Schools. The School acknowledges that TAS may enter into similar services agreements with other schools. TAS shall maintain separate accounts for expenses incurred in the operation of the School and other schools assisted by TAS, and shall reflect in the School's financial records only those expenses incurred in the operation of the School.
- G. Financial Reporting. TAS shall provide the Board with:
1. At least annually, the Budget as required by this Agreement.
  2. Monthly financial statement. These financial statements will include a Balance Sheet, Statement of Revenues, Expenditures and Changes in Fund Balance at object level detail with a comparison of budget to actual revenue and expenditures and explanations of variances and other details as the Board may require from time to time.
  3. Quarterly, or as reasonably requested by the Board, a report on School operations and student performance.
  4. As reasonably requested, other information to enable the Board to: (i) evaluate the quality of the Services; and (ii) timely provide all reports and information that are required by the Charter and applicable law.
- H. Access to Financial Records. TAS shall keep accurate financial records pertaining to its operation of the School, together with all School financial records prepared by or in possession of TAS, and shall retain all of the afore referenced records according to the Charter and applicable law to which such books, accounts, and records relate. TAS and the Board shall maintain the proper confidentiality of personnel, students, and other records as required by law. All records shall be kept in accordance with applicable state and federal requirements.
- I. Accounting Standards: Annual Audit.
1. The School shall at all times comply with generally accepted public sector accounting principles and applicable law.
  2. The Board shall select and retain an independent auditor to conduct an annual audit of the School's financial matters in accordance with the Charter and applicable law.
  3. Subject to applicable law, all records in the possession or control of TAS that are related to the School, including but not limited to, financial records, shall be made available to the School and the School's independent auditor. The expense of the annual audit shall be included in the Budget.

## ARTICLE VIII



## PERSONNEL & TRAINING

- A. Qualified Personnel. TAS shall select and hire qualified personnel to perform the Services, TAS shall have the responsibility and authority, subject to this Article, to select, hire, evaluate, assign, discipline, transfer, and terminate personnel consistent with the Budget, the Charter and applicable law. With the exception of teachers, as set forth below, and unless otherwise agreed by the written consent of the Parties, all School personnel shall be employees or independent contractors of TAS. The compensation of all employees or contractors working at the School shall be included in the Budget. Upon Board request, TAS shall disclose to the Board the level of compensation and fringe benefits provided by TAS to TAS employees working at the School. A criminal background check and unprofessional conduct search in compliance with applicable law shall be conditions for the hiring of or services provided by any person who will or may be reasonably expected to have unsupervised access to and the care, custody or control of, any School student(s).
- B. School Administrator. The School administrator (the "**Administrator**") shall be an employee of TAS. The duties and term of the Administrator's employment shall be determined by TAS. The Administrator shall work with TAS in the operation and management of the School.
- C. Teachers. The Administrator shall recommend to the Board for its consideration and approval, teachers who are qualified in the grade level and subjects required by the School to operate in accordance with the terms of the Charter. All teachers shall be jointly employed by the School and TAS for such purposes as inclusion in the compensation and employee benefit plans of TAS, payroll administration and other employment policies and practices; provided however, in all circumstances, the Board shall ultimately control the hiring and discharge decisions with respect to jointly employed teachers at the School in accordance with N.C. Gen. Stat. 115C-238.29(f)(E)(1). Teachers assigned to and retained by the School may hold a valid teaching certificate issued by the State Board of Education to the extent required by N.C. Gen. Stat. 115C-238.29(f)(E)(1).
- D. Support Staff. TAS shall, consistent with this Article, provide the School with qualified support staff as needed to operate the School in an efficient manner. The support staff may, at the discretion of TAS, work at the School on a full or part time basis.
- E. Training. TAS shall provide or procure training in its methods, curriculum, program, and technology to all teaching personnel on a regular basis. Instructional personnel shall be required to obtain at least the minimum hours of professional development as required by applicable law.
- F. Background Checks and Qualifications. TAS shall comply with applicable law regarding background checks, unprofessional conduct searches and certification/licensure, as applicable, for all persons working in the School.

## ARTICLE IX INDEMINIFICATION

Indemnification of Parties. To the extent not prohibited by the Charter or applicable law, the Parties hereby agree to indemnify, defend, and hold the other (the "**Indemnified Party**"), harmless from and against any and all third-party claims, actions, damages, expenses, losses or awards which arise out of (i) the gross negligence or intentional misconduct of the indemnifying party, (ii) any action taken or not taken by the indemnifying party, or (iii) any noncompliance or breach by the indemnifying party of any of the terms, conditions, warranties, representations, or undertakings contained in or made pursuant to this Agreement. As used herein, Indemnified Party shall include the party's trustees, directors, officers, employees, agents, representatives and attorneys. The Parties may purchase general liability, property, or other insurance policies. Notwithstanding anything in this Agreement to the contrary, the Board shall not be precluded by the terms of this Agreement from asserting or declining to assert a claim of governmental immunity.

It is understood, agreed, and hereby acknowledged by Torchlight Academy Schools LLC that "no indebtedness of any kind incurred or created by the charter school shall constitute an indebtedness of the State or its political subdivisions, and no indebtedness of the charter school shall involve or be secured by the faith, credit, or taxing power of the State or its political subdivisions."

#### **ARTICLE X INSURANCE**

- A. Insurance Coverage. TAS shall maintain such policies of insurance as required by the Charter and applicable law. Each party shall, upon request, present evidence to the other that it maintains the requisite insurance in compliance with the provisions of this Article. Each party shall comply with any information or reporting requirements required by the other party's insurer(s), to the extent reasonably practicable.
- B. Workers' Compensation Insurance. TAS shall maintain workers' compensation insurance as required by law, covering their respective employees.

#### **ARTICLE XI REPRESENTATIONS & WARRANTIES**

- A. Board and School. The Board represents and warrants, for itself and on behalf of the School, that: (i) it is legally vested with all power and authority necessary to operate a charter school under the Authorizing Law; (ii) it is legally vested with all power and authority necessary to execute, deliver and perform this Agreement, including without limitation, the power and authority to contract with a private entity for the provision of educational, business administration and management services; (iii) its actions have been duly and validly authorized and it has adopted any and all resolutions or expenditure approvals required for the execution of this Agreement; and (iv) there are no pending actions, claims, suits or proceedings, or, to its knowledge, threatened or reasonably anticipated against or affecting either the Board or the School, which if adversely determined, would have a material adverse effect on its ability to perform under this Agreement.
- B. TAS. TAS represents and warrants that: (i) it is a corporation in good standing and is authorized to conduct business in the State of North Carolina; (ii) it is legally vested with all power and authority necessary to execute, deliver and perform this Agreement; (iii) there are no pending actions, claims, suites or proceedings, or, to its knowledge threatened or reasonably anticipated against or affecting TAS, which if adversely determined, would have a material adverse effect on its ability to perform its

obligations under this Agreement; and (iv) it will comply with all registration and licensing requirements relating to conducting business under this Agreement, which the Board agrees to assist TAS in applying for such licenses and permits and in obtaining such approvals and consents.

**ARTICLE XII  
MISCELLANEOUS**

- A. Entire Agreement. This Agreement and any attachments hereto shall constitute the entire agreement of the Parties on the subject matter set forth herein. This Agreement supersedes and replaces any and all prior agreements and understandings regarding the subject matter set forth herein between the School and TAS.
- B. Force Majeure. Except for payment obligations, and notwithstanding any other provisions of this Agreement, neither party shall be liable for any delay in performance or inability to perform due to acts of God, war, riot, embargo, fire, explosion, sabotage, flood, accident, labor strike, or other acts beyond its reasonable control; provided either party may terminate this Agreement in accordance with provisions contained herein if sufficient grounds exists as provided in the Article governing termination.
- C. State Governing Law: Waiver of Jury Trial. This Agreement shall be construed, interpreted, governed and enforced pursuant to the laws of the State of North Carolina, without regard to its conflict-of-laws principles. The Parties hereby waive the right to a jury trial in any action, proceeding or counterclaim brought by either TAS or the School against the other.
- D. Notices. All notices and other communications required by this Agreement shall be in writing and sent to the Parties at the facsimile number or address set forth below. Notice may be given by: (i) facsimile with written evidence of confirmed receipt by the receiving party of the entire notice; (ii) certified or registered mail, postage prepaid, return receipt requested; or (iii) personal delivery. Notice shall be deemed to have been given on the date of transmittal if given by facsimile, upon the date of postmark if sent by certified or registered mail, or upon the date of delivery if given by personal delivery. For purposes of the foregoing, "**personal delivery**" shall include delivery by nationally recognized overnight courier (such as FedEx), if signed for by the recipient or a delegate thereof. Notices to the School shall be sent to the current address of the then current Board Chair, with a copy to the then current Board attorney. The addresses of the Parties for the purposes aforesaid, including the address of the initial Board Chair, are as follows:

The School:

Northeast Raleigh Charter Academy (dba) Torchlight  
Academy  
Attn: Board of Directors  
2664 Timber Dr. Garner, NC 27529

Telephone: (919) 818 - 2731  
Facsimile:

TAS:

TORCHLIGHT ACADEMY SCHOOLS LLC  
Attn: Chief Executive Officer  
P.O. Box 19191  
Raleigh, NC 27619  
Telephone: (919) 538 - 8060  
Facsimile: (919) 850 - 9961

- E. Amendment. This Agreement shall not be altered, amended, modified or supplemented except by memorandum approved by the Board and signed by both an authorized officer of the School and TAS and in manner consistent with the Authorizer's policies.
- F. Waiver. No waiver of any provision of this Agreement shall be deemed or shall constitute a waiver of any other provision. Nor shall such waiver constitute a continuing waiver unless otherwise expressly stated.
- G. Severability. If any term or provision of this Agreement is held by a court of competent jurisdiction to be invalid, void or unenforceable, the remainder of the terms and provisions set forth herein shall remain in full force and effect and shall in no way be affected, impaired or invalidated, and the Parties shall use their best efforts to find and employ an alternative means to achieve the same or substantially the same results as that contemplated by such term or provision.
- H. Delegation of Authority. Nothing in this Agreement shall be construed as delegating to TAS powers or authority of the Board which are not subject to delegation by the Board under the Charter or applicable law.
- I. Compliance with Law. Each party will comply with the Charter and laws applicable to the performance of such party's obligations hereunder.
- J. Time of Essence. The Parties understand and agree that time is of the essence in performing their perspective responsibilities under this Agreement.

IN WITNESS WHEREOF, the undersigned have executed this Agreement as of the

Effective Date: July 1, 2015.

SCHOOL:

By: *Pamela Banks-Lee*

Print PAMELA BANKS-LEE

Its: Board Chair

TAS

Torchlight Academy Schools LLC  
a North Carolina corporation

By: Don McQueen

Print DANNIE M<sup>C</sup> QUEEN

Its: Chief Executive Officer

I certify that the following persons personally appeared before me this day each acknowledging to me that he or she voluntarily signed the foregoing document for the purpose stated therein and in the capacity indicated

Notary Signature Melodee Marshall Notary Printed  
name Melodee Marshall

My Commission Expires November 11, 2018

