

SERVICE AGREEMENT

This Service Agreement (the "**Agreement**") is made and entered into as of the 20th day of January, 2019, by and between **The Optima Foundation, Inc.**, a Florida non-profit corporation (the "**Service Provider**"), and **Treasure Coast Classical Academy, Inc.**, a Florida non-profit corporation (the "**School**").

RECITALS

- A. School has submitted a Charter Application to the Martin County School District (the "Sponsor") to operate a charter school pursuant to a Charter School Contract ("Charter Contract") in accordance with the Florida Statutes Section 1002.33 et. seq. and other laws applicable to Florida Charter Schools ("Applicable Laws" or "Charter School Law") in Martin County, Florida, under the name of "Treasure Coast Classical Academy" ("Charter School").
- B. After conducting all appropriate due diligence, including review of the experience of Service Provider's staff, verification that the Fee for Services is reasonable and consistent with the market for such services, and review of the need for business and operational administrative services, the School agrees that it is in the best interest of School to enter into this Agreement with Service Provider.
- C. The School and Service Provider desire to create an enduring educational alliance, whereby the School and Service Provider will work together to replicate the Hillsdale College Barney Charter School Initiative model.
- D. Service Provider is a nonprofit organization formed for the purpose of supporting public charter schools such as the School, with the mission to provide professional business administration services which will allow instructional personnel, including the School Principal, maximum time and resources to meet the needs of students
- E. Service Provider desires to establish certain best practices and procedures for charter schools within its network in order to qualify for system accreditation with AdvancEd, and School has determined it is in its best interest to join such network to attain such accreditation.
- F. In order to facilitate the organization and opening of the School; including acquisition, equipping and construction of a charter school facility ("Facility"); and to implement an exceptional educational program at the School, the parties desire to establish this arrangement for Service Provider to act in the role similar to an Executive Director of the School, overseeing the non-instructional and operational aspects of the School.

Therefore, for good and valuable consideration, the receipt of which is hereby acknowledged, it is mutually agreed as follows:

ARTICLE I

CONTRACTING RELATIONSHIP

- A. **Recitals.** The foregoing recitals are true and correct and incorporated herein by reference.
- B. **Authority and Compliance with Charter Contract and Applicable Laws.** The Charter School represents that it is authorized by law to contract with Service Provider and for Service Provider to provide business and operational administrative services to the Charter School. The parties acknowledge that all such services must be provided in accordance with the Charter Contract and all State and Federal laws governing public charter schools (referred to collectively herein as “Applicable Laws”). In the event the Sponsor expresses concerns regarding any of the provisions in this Agreement, the Parties agree to work together and with the Sponsor to resolve such concerns.
- C. **Agreement.** Service Provider’s obligations to the Charter School and rights with respect to the business and operational administrative services provided to the Charter School shall be only as expressly set forth in this Agreement. Duties required to be carried out by the Charter School which are not expressly set forth herein as being Service Provider’s responsibility shall remain the sole responsibility of the Charter School’s Governing Board. Notwithstanding the foregoing, Service Provider acknowledges that it shall be engaged by the Board to perform the services set forth in this Agreement on the basis of the knowledge and expertise of the Service Provider. Each party represents and warrants to the other that it has disclosed all matters relevant to the services Service Provider might provide to the Charter School.
- D. **Designation of Agents.** The Board designates the employees of Service Provider as agents of the Charter School having a legitimate educational interest such that they are entitled to access to educational records under 20 U.S.C. §1232g, the Family Rights and Privacy Act ("FERPA") and other applicable law. The Board hereby authorizes Service Provider to communicate with and negotiate on the Board's behalf with all Federal, state and local government agencies and the Sponsor unless specifically instructed otherwise by the Charter School. Service Provider shall communicate with the Charter School prior to its communication and negotiation with any Federal, state and local governmental agency on behalf of the Board to ensure no duplication of efforts.
- E. **Background Screening.** Service Provider agrees that each of its owners, board members, officers, employees, and agents who will be accessing Charter School grounds when students are present or who have direct contact with students, will undergo and meet Level 2 screening and fingerprint requirements as described in Fla. Stat. §§ 1012.32 and 435.04 and as conducted by the Charter School or Sponsor. Service Provider also agrees that any of its employees or contractors handling funds or finances of the Charter School will be subjected to the screening and fingerprinting requirements required by law for such positions.

- F. **Status of the Parties.** Service Provider is a non-profit Florida corporation qualified to do business in Florida, and is not a division or a part of the School. The School is a non-profit Florida corporation authorized by the Charter Contract and Sponsor to operate a charter school, and is not a division or part of Service Provider. The parties to this Agreement intend that the relationship created by this Agreement is that of an independent contractor and not employer - employee. Except as expressly provided in this Agreement, no agent or employee of Service Provider shall be deemed to be the agent or employee of the School. Service Provider shall be solely responsible for its acts and the acts of its agents, employees and subcontractors. The relationship between Service Provider and the School is based solely on the terms of this Agreement, and the terms of any other written agreements between Service Provider and the School.
- G. **No Related Parties or Common Control.** Service Provider will not have any role or relationship with School that, in effect, substantially limits School's ability to exercise its rights, including termination rights, under this Agreement. School and Service Provider will not be members of the same control group, as defined in Section 1.150-1(e) of the Treasury Regulations under the Internal Revenue Code of 1986, as amended from time to time (collectively, the "1986 Applicable Laws"), or related persons, as defined in Section 144(a)(3) of the 1986 Applicable Laws.
- H. **No Disparagement.** The parties agree that a good working relationship involves mutual respect and decorum. Therefore, during the Term of this Agreement, no party will make (or cause or encourage anyone else to make) any disparaging, untrue, or misleading written or oral statements about or relating to the other party or about or relating to any officer, director, shareholder, agent, employee, or other person acting on such party's behalf. This provision is not intended to prevent or curtail truthful and factual statements made in order to redress issues related to performance of duties under this Agreement by either party.
- I. **Intellectual Property Rights.** Except as otherwise required by Hillsdale College pursuant to its arrangements contained in any Agreement between it and the School, the School will own all proprietary rights to materials that (i) are both directly developed and paid for by the School; or (ii) were developed by Service Provider at the direction of the Board with School funds dedicated for the specific purpose of developing such materials (the "**School Materials**"). Service Provider shall own all proprietary rights to, and the School's proprietary interest shall not include, materials that are or were developed or copyrighted or similarly protected by Service Provider. Service Provider shall also own all intellectual property rights, including, without limitation, any copyright rights in and to any non-curriculum materials created or provided by Service Provider, including all corrections, modifications and derivatives thereof (collectively all of the foregoing shall be referred to as the "**Service Provider Materials**"). The parties acknowledge that to the extent the School's Materials are derivative of Service Provider Materials, the School's intellectual property ownership rights extend only to the new, original aspects of such works and not to any underlying or pre-existing material.

Service Provider hereby grants to the School the non-exclusive, non-transferable license

to use the Service Provider Materials in furtherance of its programs during the term of this Agreement or any renewal thereof, including without limitation, the right to reproduce, publicly display, distribute, and create derivatives of same, in hard copy format, or electronically via the School's intranet. To the extent any part of the School Materials may be derivative of Service Provider Materials, the School shall have the non-exclusive, non-transferable right to use such Service Provider Materials, as same may have been previously embodied or incorporated in the School Materials, beyond the termination or expiration of this Agreement solely in connection with the operation of the School and in the ordinary course of such operations. The School represents and warrants that during the term of this Agreement, or following the expiration or termination of this Agreement, the School will not exploit, or assist any third party in exploiting, the School Materials or any Service Provider Materials for commercial purposes. The School hereby grants Service Provider the non-exclusive, irrevocable, worldwide, assignable right to use, distribute, modify and display the School Materials solely for education purposes in any and all media now known or hereafter developed.

Service Provider hereby grants the School the non-exclusive, non-transferable license to use Service Provider's trade name and any trademark(s) (collectively, the "Service Provider Trademarks"), as they now exist or in the future, to promote and advertise the School. No other use of Service Provider Trademarks is permitted without Service Provider's prior written permission. The School shall acquire no rights in the Service Provider trademarks, and all goodwill of the Service Provider Trademarks shall inure to the benefit of and remain with Service Provider. Service Provider shall have pre-approval rights for each form and manner of public display of the Service Provider Trademarks.

ARTICLE II

TERM

- A. **Term.** This Agreement will be effective on the date hereof and shall remain in effect through the last day of the Charter Contract, as that term may be amended from time to time (the "Term"). This Agreement may be terminated by the School prior to the expiration of the term as set forth in this Agreement.
- B. **Renewal.** The Term of this Agreement will be renewed upon renewal of the Charter Contract and extend through the length of such renewed Charter Contract, unless, (i) written notice of intent to terminate or renegotiate is given by either party not less than 180 days prior to the expiration of the Term, or (ii) this Agreement is earlier terminated.

ARTICLE III

FUNCTIONS OF SERVICE PROVIDER

- A. **Attendance of Governing Board Meetings and Communication with Governing Board.** A representative of Service Provider shall attend all meetings of the Board. The Service Provider will coordinate with the chairperson of the Board and Charter School Principal as to items that need to be placed on the Agenda. The Service Provider will also coordinate with the Board as to its schedule and arrange for proper notice of Board meetings as such notice is required by the Charter Contract and Applicable Laws. The Service Provider will provide monthly financial reports to the Board, as described herein. The Service Provider will also provide back-up items to the Board a sufficient number of days prior to each Board Meeting to allow for review by Board Members to be prepared for the Board Meeting.
- B. **Administrative Services.** For the Term of this Agreement, subject to the Charter School Contract and the approval of the Board of Directors of School (the "Board"), Service Provider will provide to School for the Charter School the following administrative services (the "Administrative Services"):
- a. **Personnel Management: Non-instructional Personnel.** - Management and professional development of all personnel providing Administrative Services in accordance with this Agreement. Service Provider will identify, recommend for hire, train, evaluate, discipline and recommend for termination all non-instructional personnel. All Charter School personnel shall be employees of School and the final hiring and termination decisions will be made by the Board. The Board will not unreasonably reject Service Provider's recommendations regarding non-instructional personnel.
 - b. **Personnel Assistance: Instructional Personnel.** - Service Provider will assist the School Board and School Principal in identifying, hiring, training, and evaluation of all instructional personnel. Instructional personnel will be accountable to the School Principal, who will have the authority to hire, evaluate, discipline, and terminate such personnel. Service Provider will make recommendations regarding firing and disciplinary decisions, but responsibility for final decisions on such matters shall be for the School Principal or School Board, as appropriate.
 - c. **Facility Operation and Maintenance.** Coordination with entities with which Service Provider contracts on behalf of School for the provision of operation and maintenance services for the Charter School's facility (the "Facility") to the extent consistent with any and all documents pertaining to the Facility, together with the management and assessment of the services provided under such contracts and/or the supervision of employees involved in providing such services.
 - d. **Business Administration.** Administration of all business aspects of School operation, including by way of example and not limitation, financial management, compliance management (including compliance with state accountability

requirements), legal/corporate upkeep, books and records maintenance, and management of equipment/furniture/property. Recommend, manage, oversee and coordinate with human resource service provider and other vendors. Administration of business by Service Provider will only be conducted as allowed by the Charter Contract.

- e. **Government Relations.** Coordination and assistance with any and all government relations efforts, including maintaining positive relationships with local and state elected officials and staff.
- f. **Public Relations.** Coordination and assistance with any and all advertising, media and public relations efforts, including outreach programs. All public relations will be subject to the mutual approval by School and Service Provider, which approval may not be unreasonably withheld.
- g. **Budgeting, Budgeting Process, Financial and Other Reporting.** Preparation of a proposed annual budget (the "Charter School Budget") for each Fiscal Year, in coordination with the Board and Principal, subject to the reasonable approval of the Board acting in its fiduciary capacity. For purposes of this Agreement, the term "Fiscal Year" shall have the meaning as provided in the Charter Contract. The projected Charter School Budget will include, but not be limited to, the financial details relating to the Administrative Services to be provided pursuant to this Agreement, any proposed capital expenditures with respect to the Facility, each disposition of property with respect to the Facility, and any rates or fees charged for use of the Facility.
 - i. Service Provider shall deliver a draft of the Charter School Budget for each Fiscal Year to the Board not less than forty-five (45) days prior to the date on which the Charter School Budget for any Fiscal Year must be submitted to Sponsor and/or any State governmental agency. The Board shall review the Charter School Budget within ten (10) business days following the receipt thereof (the "Budget Review Period") which review may include an independent evaluation of the Charter School Budget by such accountants, attorneys, and other financial advisors that the Board deems necessary or desirable. The Board shall deliver any comments or objections to the Charter School Budget prior to the expiration of the Budget Review Period. Within five (5) business days following the expiration of the Budget Review Period, the President of School and the Chief Executive Officer of Service Provider shall reconcile any comments or objections made by the Board during the Budget Review Period. Service Provider and School shall agree to a final Charter School Budget for each such year not later than two (2) business days prior to the date on which the Charter School Budget must be submitted to the Sponsor and/or any other State governmental agency.
 - ii. Working in cooperation with the Board, Service Provider shall prepare, for Board approval, modifications or amendments to the Charter School Budget which may be necessitated by changes in projections or circumstances or

the occurrence of unexpected events, which impact projected revenue and/or expense items contained in the approved Charter School Budget.

- iii. Service Provider shall provide the Board with an enrollment report stating the number of actual students enrolled at the Charter School (an “Enrollment Report”). If an Enrollment Report indicates that enrollment is lower than that which was projected in the Charter School Budget and such lower enrollment number shall materially adversely impact the Charter School Budget for such Fiscal Year, Service Provider shall propose a plan to remediate the shortfall, including but not limited to: student recruitment efforts to restore the enrollment level to the projected enrollment; cost-cutting measures; or borrowing recommendations.
 - h. The preparation of detailed statements of all revenues received, from whatever source, with respect to the Charter School, and detailed statements of all expenses, including an accounting of all expenditures for services rendered to, or on behalf of, the Charter School by Service Provider, whether incurred on-site or off-site.
 - i. The preparation of other financial statements as required by and in compliance with the Charter School Contract, the Applicable Laws and other applicable laws and regulations, including such documentation as may be reasonably required by the independent certified public accountants retained by the Board to perform annual audits of School’s financial statements. The cost for preparation of the annual financial statements and independent financial audits will be responsibility of School and will be provided for in the Charter School Budget.
 - j. The preparation of such other reports on a periodic basis, relative to the finances and operation of School, as the same may be requested or required by the Florida Department of Education or the Sponsor to ensure compliance with the terms of the Charter School Contract and applicable law.
 - k. Other information on a periodic basis reasonably necessary to enable School to monitor Service Provider's performance under this and related agreements including the effectiveness and efficiency of its operations at School.
- C. **Maintenance of Financial and Student Records.** Service Provider will maintain accurate financial and student records pertaining to operation of School, together with all School financial records prepared by Service Provider. Such records will be the property of School. Such records shall be maintained by Service Provider at School in physical or electronic form and will be made available to the Sponsor and the School Governing Board’s Auditor within no more than 48 hours of a request. Such records shall otherwise be made available and retained in accordance with Florida’s Public Records Act.
- a. Service Provider will maintain accurate student records pertaining to the students enrolled at the Charter School as is required and in the manner provided by the Charter School Contract, the Applicable Laws and regulations and retain such records permanently on behalf of School or until this Agreement or its successor (if

any) is terminated, at which time such records will be transferred to School and become the sole responsibility of the Board. Service Provider and School will maintain the proper confidentiality of personnel, students and other records as required by law and the Charter Contract.

- b. School shall be entitled at any time upon reasonable written notice to Service Provider to audit the books and records of Service Provider pertaining to its operation of the Charter School pursuant to this Agreement (including, without limitation, the financial records relating thereto), provided that any such audit shall be at the sole expense of School.
- D. **Additional Administrative Services.** Any other services reasonably necessary or expedient for the effective administration of School as agreed to, in writing, from time to time by Service Provider and the Board.
- E. **Provision of Administrative Services.** The Administrative Services will be provided in a manner consistent with the Applicable Laws and the Charter School Contract with the Sponsor.
- F. **Modification of Administrative Services.** Subject to this Agreement, the Charter School Contract, Sponsor oversight and approval, as applicable, and the Applicable Laws, Service Provider may modify the methods, means and manner by which such Administrative Services are provided at any time, provided that School will have the right to approve all material changes.
- G. **Budgeting for Administrative Services.** Service Provider will be responsible and accountable to the Board for the provision of all Administrative Services, provided that such obligations, duties and responsibilities are expressly limited by the Charter School Budget. Service Provider will not be required to expend funds on such services in excess of the amounts set forth in such Charter School Budget.
- H. **Provision of Services during Planning Years.** The parties acknowledge that the 2018-19 School Year will be a Planning Year for the School. The School intends for its first year of operation to be the 2019-20 School Year, but the Board is entitled to also take the 2019-20 School Year as a Planning Year and open for the 2020-21 School Year. During any Planning Year, Service Provider will provide assistance to the School including, without limitation, school site location and development, purchases, recruiting and marketing, development of recommended policies and procedures, any other non-academic actions necessary for School start-up and will work with the School to provide reporting that may be due during the Planning Year and after the effective date of the Charter Contract.
- I. **Place of Performance; Subcontracting.** Service Provider may provide Administrative Services either at the Charter School Facility or elsewhere, or through subcontracts at its own expense and with Board approval, unless prohibited by the Charter School Contract, the Applicable Laws and other applicable laws and regulations.

- J. **Student Recruitment.** Service Provider and the Board shall be jointly responsible for the recruitment of students. Students shall be selected in accordance with the procedures set forth in the Charter Contract and in compliance with the Charter School Law and other Applicable Laws.
- K. **Rules and Procedures.** Service Provider shall recommend to the Board reasonable rules, regulations and procedures applicable to the School, and Service Provider is authorized and directed by the Board to enforce the rules, regulations and procedures adopted by the Board.
- L. **School Year and School Day.** The school year and the school day schedule shall be approved by the Board.

**ARTICLE IV
PERSONNEL & TRAINING**

- A. **Personnel Responsibility.** Subject to the limitations of this Agreement, the Charter School Contract, the Applicable Laws and other applicable laws and regulations, Service Provider will assist the Board in determining staffing levels necessary to carry out the services provided under this Agreement, all within the financial constraints of the Charter School Budget approved by the Board. Service Provider shall identify and propose for employment by or on behalf of School qualified principals, teachers, paraprofessionals, administrators, and other staff members and education professionals for positions in the School.
- B. **Principal.** School and Service Provider acknowledge and agree that the accountability of Service Provider to School is an essential foundation of this Agreement, and the responsibility of the administrator of School (the “Principal”) is critical to the success of School. The Board and Service Provider will work together to select and supervise the Principal and hold the Principal accountable for the success of School. Service Provider will recommend the employment contract with the Principal to the School’s Governing Board for its approval, including the proposed duties and compensation of the Principal. Service Provider will conduct an annual evaluation of the Principal for presentation to the Board.
- C. **Support Staff.** Service Provider will propose for employment by or on behalf of School support staff/non-instructional personnel for employment by School. Such support staff may include, among others, clerical staff and administrative assistants, bookkeepers and maintenance personnel. Such support staff may work at School on a full or part time basis. The Principal will not make any hiring offers or terminate any support staff/non-instructional personnel. Service Provider will consult the School Principal on all evaluations of such staff.
- D. **Training.** Service Provider will provide or arrange for training (i) in the instructional methods and curriculum, which comprise the Educational Program set forth in the

Charter Application and in cooperation with the Principal, and (ii) with regard to support technology to the teachers and other instructional personnel on a regular and continuous basis, as stated in the Charter School Contract and in cooperation with the Principal. Service Provider shall arrange, at the School's expense, or provide training for non-instructional personnel at a frequency that Service Provider determines reasonable and necessary under the circumstances.

- E. **Employee Benefits.** Service Provider will develop a package of employee benefits that will be provided to School Employees.
- F. **Limitations on Discretion.** All decisions made by Service Provider, and any discretion exercised by Service Provider, in its selection, evaluation, assignment, discipline, and transfer of personnel shall be consistent with the Budget, the Charter Contract and state and federal law.

ARTICLE V

OBLIGATIONS OF THE BOARD

- A. **Good Faith Obligation.** The Board shall be responsible for its fiscal and academic policy. The Board shall exercise good faith in considering the recommendations of Service Provider, including but not limited to, Service Provider's recommendations concerning policies, rules, regulations and budgets. The Board remains ultimately responsible for fiduciary oversight and management for the operation of the Charter School.
- B. **Assistance to Service Provider.** The Board shall cooperate with Service Provider and shall furnish Service Provider with all documents, records and information necessary for Service Provider to properly perform its responsibilities under this Agreement, including but not limited to, timely notice of all Board meetings. The Board will provide to Service Provider access to all account information for Charter School, as well as all information related to revenues received by the Charter School from any source.
- C. **Unusual Events and Potential Charter Violations.** The Board agrees to timely notify Service Provider of any anticipated or known: (i) material health or safety issues, (ii) labor, employee or funding problems, or (iii) problems of any other type that could adversely affect Service Provider's ability to comply with its responsibilities hereunder or compliance with the Charter Contract.
- D. **Service Provider Office Space.** The Board upon request shall provide Service Provider with suitable space at the School for Service Provider personnel and subcontractors. The space shall be provided without additional cost to Service Provider and shall be used by Service Provider only for Service Provider activities related to the School.
- E. **Retained Authority.** The Board shall retain the authority to make reasonable regulations relative to anything necessary for the proper establishment, maintenance,

management, and operation of the School including, without limitation, regulations relative to the conduct of pupils while in attendance at the School or en route to and from the School. The Board shall further retain the responsibility to adopt written policies governing the procurement of supplies, materials and equipment.

- F. **Annual Review and Feedback to Service Provider.** The Board will annually review the Service Provider’s performance and provide feedback on such performance to Service Provider at a publicly noticed meeting. Notwithstanding the foregoing, the parties recognize the importance of ongoing communication of expectations and feedback is critical to a successful working relationship. The Board will strive to communicate any concerns it may have throughout the year rather than reserve such comments for the Annual Review.

- G. **Compliance with the School’s Agreement with Hillsdale College.** In order to maintain the consistency and integrity of the School’s mission and vision, the School and Service Provider will at all times during the term of this Agreement remain in compliance with the obligations of the School’s Agreement with Hillsdale College.

ARTICLE VI

FINANCIAL ARRANGEMENTS

- A. **Revenues.** Except as hereinafter provided, all monies received by the Board shall be deposited in the School’s depository account within three (3) business days with a financial institution acceptable to the Board. Interest income earned on School depository accounts shall accrue to the School. Except as specifically excluded by the terms of this Agreement, the term “**Revenues**” shall include all funds received by or on behalf of the School, including but not limited to:
 - a. Funding for public school students enrolled at the School.
 - b. Special education funding provided by federal and state government which is directly allocable to special education students enrolled at the School.
 - c. Gifted and talented funding provided by federal and state governments that is directly allocable to gifted and talented students enrolled at the School.
 - d. At-Risk funding provided by federal and state governments that is directly allocable to at-risk students enrolled at the School.
 - e. Funding provided by federal and state governments that is directly allocable to students enrolled at the School with limited English proficiency.
 - f. All other federal and state funding sources, including but not limited to Title I and any start-up funding, allocable to the School, to extent allowable by law.
 - g. All other funding, contributions and donations, public and private, received by the School (except to the extent Service Provider is not required or involved in soliciting, administering, or managing the contribution and/or donation).

(All of the above are hereinafter collectively referred to as the “**Revenues**”).

- B. **Fee.** For the Term of this Agreement, School will pay Service Provider an annual fee equal to ten percent (10%) of School's Gross Revenue for each School Year ("Fee"), payable in twelve monthly installments. The monthly payments shall be adjusted throughout the year to reflect actual Gross Revenue. For purposes of this Agreement the term "Gross Revenue" shall mean the School's Revenues excluding any proceeds from borrowings undertaken by School.
- C. **Reasonable Compensation and Ownership of Funds.** The Fee under this Agreement is reasonable compensation for services rendered. Service Provider's compensation under this Agreement will not be based, in whole or in part, on a share of net surplus or profits from the operation of the Charter School. Any funds received by School, and not spent on its behalf, belong to School, and not to Service Provider. Any funds advanced to Service Provider for payments on behalf of School belong to School until the point that they are legally expended by Service Provider on behalf of School.
- D. **Order of Payment of Expenses and Fee Deferral.** Expenses of the Charter School shall be paid each month in accordance with the approved Budget and in the following order of priority: (1) School's obligations under any agreement or other financing document relating to the issuance of bonds, notes or related debt to finance the Facility, (2) Salaries and Benefits, (3) payments on any outstanding notes; (4) other operating expenses, and (5) monthly prorated Fee. In the event there are insufficient funds to pay Fees in a month to pay the monthly prorated Fee, such Fees will be deferred and accrue as an account payable until such time as there are sufficient funds to make payment. In the event that there are insufficient funds at the end of any Fiscal Year of the Charter School to pay the monthly or deferred Fees, such outstanding Fees shall be payable (together with reasonable interest charges or late payment fees) no later than the end of five years after the original due date of payment. Payment of the Fee shall be subordinate to payment any outstanding obligations under any agreement or other financing document relating to the issuance of bonds, notes or related debt to finance the Facility
- E. **Reimbursements.** In addition to the Management Fee, School will reimburse Service Provider for all commercially reasonable costs incurred and paid by Service Provider in providing the Administrative Services to School for the Charter School. Service Provider will not add any fees or charges to the costs of equipment, services, materials, or supplies that Service Provider purchases with School funds, on behalf of School or as School's agent, from a third-party vendor.
- F. **Payments to Service Provider.** Service Provider will receive the monthly installment of its Management Fee on or before the fifteenth (15th) day of each month (but in no event later than the date that School receives payments from the State of Florida through the Sponsor).
- G. **No Transfer of Assets.** No Charter School assets will be transferred to the Service Provider except for payment of the Fee for services set forth herein, reimbursement of expenses as allowed by this Agreement and other assets transferred upon approval of Charter School Board and Service Provider and payment by Service Provider to Charter

School of a fair market value for such assets.

- H. **Other Revenue Sources.** School and Service Provider may, together or independently, solicit and receive grants and donations from public and private sources consistent with the mission of the School and in the name of the School; provided, however, that (i) any solicitation of such grants by Service Provider that are in excess of One Hundred Thousand Dollars (\$100,000) shall be subject to the prior approval of the Board, (ii) all such funds received by Service Provider or School from such other revenue sources shall be deemed to be School funds, and (iii) Service Provider shall not be required to administer any grants that are not specifically approved, in writing, by Service Provider, in advance.
- I. **Availability of Funds.** Service Provider shall only be required to perform its responsibilities under this Agreement to the extent that there are sufficient Revenues to make payments in accordance with the terms of the Budget.
- J. **Other Schools.** The School acknowledges that Service Provider may enter into similar agreements with other public schools. Service Provider shall maintain separate accounting records for expenses incurred by and on behalf of the School and other schools, and shall reflect in the School's financial records only expenses incurred by or on behalf of the School. If Service Provider incurs authorized expenses on behalf of the School and other schools which are incapable of precise allocation, then to the extent permitted by law, Service Provider shall allocate such expenses among all applicable schools, including the School, on a prorated basis based upon the number of students enrolled at the applicable schools, or upon such other equitable basis as is acceptable to the parties.
- K. **Annual Audit.** The Board shall select and retain an independent auditor to conduct an annual audit of the School in accordance with the School's Charter Contract and the Charter School Laws. Subject to applicable law, all records in the possession or control of Service Provider that relate to the School, including but not limited to financial records, shall be made available to the School's independent auditor.
- L. **Other Financing.** The Board may apply to Service Provider for financing or other financial assistance from time to time. Financing or financing assistance extended by Service Provider to the School shall be separately documented.

ARTICLE VII

TERMINATION OF AGREEMENT

- A. **Termination for Cause.** This Agreement may be terminated for cause by either party at any time upon the occurrence of the any of the reasons for Default, following the requisite

notice and time period for opportunity for cure, if applicable, as set forth in this Agreement, and provision of written notice of such termination of same to the other party.

B. Default. In addition to the events of default ("Material Default") described above, the following shall be the only other events of Material Default under this Agreement:

- a. The School fails to make any payment due hereunder to the Service Provider within ten (10) days after the date such payment was due.
- b. The School materially breaches any of its other obligations under this Agreement and fails to cure such material breach within thirty (30) days after receipt of written notice of such breach.
- c. Service Provider or School commence any case or proceeding, or file any petition in bankruptcy, or for reorganization, liquidation or dissolution, or be adjudicated, insolvent or bankrupt, or apply to any tribunal for a receiver, intervener, conservator or trustee for itself or for any substantial part of its property; or if there shall be commenced against it any such action and the same shall remain un-dismissed for more than sixty (60) days.
- d. Service Provider is found by an administrative or judicial body to have made fraudulent use of funds, or if an administrative or judicial body has revoked any license which is required for Service Provider to carry on its business and perform its obligations and functions under this Agreement.
- e. Service Provider materially breaches this Agreement, which Material Breach would include, without limitation: (i) failure to account for the Service Provider's or School's expenditures or pay the School's operating costs (provided funds are available to do so), (ii) failure to follow policies, procedures or rules duly adopted by the Board which are not in violation of this Agreement or Applicable Laws, (iii) receipt by the Board of unsatisfactory reports concerning Service Provider's performance or the performance of the staff which are not adequately corrected or explained to the satisfaction of the Board, (iv) failure of Service Provider to perform its duties and obligations under this Agreement as set forth in an Annual Review or as determined, in the discretion of the Board, including but not limited to Service Provider's failure to adequately advise the Board of its obligations to operate the Charter School, or (v) there is a going concern finding in an independent financial audit of the School. In the event of a Material Breach, Service Provider shall have thirty (30) days after receipt of written notice from School to remedy said breach, unless the School approves a longer time to cure such breach.

C. Termination or Non-Renewal of Charter-If the Sponsor cancels, non-renews or otherwise revokes the Charter for the Charter School, Service Provider and School agree that such cancellation, non-renewal or revocation shall result in termination of this Agreement.

D. **Transition.** In the event of termination of this Agreement for any reason by either party prior to the end of the Agreement's term, Service Provider may, for a fee reasonably acceptable to Service Provider, provide the School reasonable assistance for up to 90 days to assist in the transition to another administrative or structural arrangement (although Service Provider need not provide any assistance to another service provider).

E. **Termination/Expiration.**

- a. **Effective Date of Termination.** In the event this Agreement is terminated by either party prior to the end of the term specified in Article II, absent a material breach or unusual and compelling circumstances, the termination will not become effective until the end of the then current Fiscal Year in which the notice of termination is issued.
- b. **Removal of personal property.** Upon termination or expiration of this Agreement, Service Provider shall have the right to remove equipment and other assets owned or leased by Service Provider. Equipment and other assets owned by the School or leased by the School from third parties shall remain the property of the School.
- c. **Advances/Out-of-Pocket Expenses/Deferred Fees.** Except as otherwise provided in this Agreement, upon termination or expiration of this Agreement for any reason, all advances or out-of-pocket expenses paid by Service Provider in accordance with the Budget, as well as any Deferred Fees, shall be immediately repaid by the School unless otherwise agreed in writing by Service Provider.

F. **Change in Law.** If any federal, State or local law or regulation, court or administrative decision or Attorney General's opinion, including any change in law or appropriations relating to charter schools (a "Change in Law") has a materially adverse effect on the ability of either party to carry out its obligations under this Agreement, such party, upon written notice, may request renegotiation of this Agreement. Such renegotiation will be undertaken in good faith and may include the use of a third-party mediator for voluntary mediation, under the terms set forth in this Agreement. If the parties are unable to renegotiate the terms within 90 days after such notice and good faith negotiations, the party requesting the renegotiation may terminate this Agreement on 120 days' further written notice or at the end of a Fiscal Year, whichever is earlier.

ARTICLE VIII

INDEMNIFICATION AND INSURANCE

A. **Indemnification.** To the extent permitted by applicable law, and as to the School, to the extent of the limits set forth in § 768.28, Florida Statutes, each party to this Agreement (the "Indemnifying Party") does hereby agree to indemnify and hold the other party (collectively the "Indemnified Party"), harmless from and against any and all claims, actions, damages, expenses, losses or awards which arise out of (i) the negligence 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 in this subsection, “Indemnified Party” shall include the party's trustees, directors, officers, employees, agents, representatives and attorneys. Such indemnification may be achieved by the joint purchase of general liability and property insurance policies, or by such other means as the parties may mutually agree. Such indemnification by the School is not intended as a waiver of sovereign immunity.

- B. **Insurance Coverage.** Each party shall maintain general liability insurance, including errors and omissions and crime coverage, in the amount of One Million Dollars (\$1,000,000.00) per occurrence (or such greater amount if required by the terms of the Charter Contract or applicable law), with the other party listed as an additional insured. In addition, the School shall maintain an umbrella liability policy of two million dollars (\$2,000,000.00) (or such greater amount if required by the terms of the Charter Contract or applicable law), with Service Provider listed as an additional insured. The School shall maintain insurance on the facility and related capital items as required by the terms of its Charter Contract, Real Estate Lease or financing documents, whichever is greater. Each party shall, upon request, present evidence to the other that it maintains the requisite insurance in compliance with the provisions of this paragraph. Each party shall comply with any information or reporting requirements required by the other party’s insurer(s), to the extent reasonably practicable.
- C. **Workers' Compensation Insurance.** Each party shall maintain workers' compensation insurance as required by law, covering their respective employees.

ARTICLE IX

WARRANTIES AND REPRESENTATIONS

- A. **School Warranties and Representations.** The Board represents that, on behalf of and in the name of the School, it has the authority under law to execute, deliver and perform this Agreement and to incur the obligations provided for under this Agreement. The Board warrants that its actions have been duly and validly authorized, and that it will adopt any and all resolutions or expenditure approvals required for execution of this Agreement.
- B. **Service Provider Warranties and Representations.** Service Provider warrants and represents that it is a non-profit corporation in good standing and is authorized to conduct business in the State of Florida. Service Provider will comply with all registration and licensing requirements relating to conducting business under this Agreement. The Board agrees to assist Service Provider in applying for such licenses and permits and in obtaining such approvals and consents.
- C. **Mutual Warranties.** The School and Service Provider 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 X

MISCELLANEOUS

- A. **Sole Agreement.** This Agreement supersedes and replaces any and all prior agreements and understandings between the School and Service Provider.
- B. **Force Majeure.** Notwithstanding any other sections of this Agreement, neither party shall be liable for any delay in performance or inability to perform due to acts of God or due to 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 the termination provisions contained in this Agreement if sufficient grounds exist as provided in the Article governing termination.
- C. **State Governing Law/Venue/Waiver of Jury Trial.** The rights of all parties hereto shall be subject to the jurisdiction of and be construed according to the laws of the State of Florida, with venue in Collier County, Florida. Service Provider and the School hereby waive the right to a jury trial in any action, proceeding or counterclaim brought by either Service Provider or the School against the other.
- D. **Agreement in Entirety.** This Agreement supersedes and replaces any and all prior agreements and understandings between School and Service Provider regarding the Charter School.
- E. **Official Notices.** All notices and other communications required by the terms of this Agreement shall be in writing and sent to the parties hereto at the email or address set forth below. Notice may be given by (i) by electronic mail with evidence of confirmed receipt by the receiving party, (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, date of delivery if given by personal delivery, or upon the date of postmark if sent by certified or registered mail. Notices to the School shall be sent to the current address of the then current Board President, with a copy to the then current Board attorney. The address of the parties hereto for the purposes aforesaid, inclusive of the address of the initial Board President and Board, are as follows:

The School:
Treasure Coast Classical Academy, Inc.
Attention: Lynda Daniel, Chair
3340 SE Federal Hwy #233
Stuart, FL 34997
ldaniel@treasurecoastclassical.org

The Service Provider:
The Optima Foundation, Inc.
Attention: Erika Donalds, CEO
15275 Collier Blvd #201-299
Naples, FL 34119
erika@OptimaEd.org

- F. **Assignment.** Service Provider may assign this Agreement with the prior written consent of the Board.
- G. **Amendment.** This Agreement shall not be altered, amended, modified or supplemented except in writing approved by the Board and signed by an authorized officer of Service Provider and the Board.
- H. **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.
- I. **Dispute Resolution; Costs and Attorneys' Fees.** In the event of any dispute between the parties hereto, the parties shall first attempt to settle the dispute through direct negotiation or informal mediation. The parties may agree to voluntary mediation, with the cost of the mediator shared between the parties and each party paying the cost of its own attorney(s). If the parties are unable to settle a dispute through direct negotiation or informal or formal voluntary mediation, the parties will be permitted to pursue their remedies in a court of competent jurisdiction. If any party commences an action against another party as a result of a breach or alleged breach of this Agreement, the prevailing party shall be entitled to have and recover from the losing party reasonable attorneys' fees and costs of suit.
- J. **Delegation of Authority.** Nothing in this Agreement shall be construed as delegating to Service Provider powers or authority of the Board which are not subject to delegation by the Board under Florida law.
- K. **Compliance with Law.** The parties to this Agreement agree to comply with all applicable laws and regulations.
- L. **Compliance with Charter Contract.** The parties to this Agreement agree to comply with the terms and conditions set forth in the Charter Contract.
- M. **Survival of Termination.** All representations, warranties and indemnities made in this Agreement will survive termination of this Agreement.
- N. **Binding Effect; Counterparts.** This Agreement shall be binding upon and inure to the benefit of the parties hereto and their respective successors and assigns. This Agreement may be executed in any number of counterparts, each of which shall be deemed an original and all of which together shall be deemed one and the same instrument.
- O. **Compliance with Florida's Public Records Act ("Act").** In accordance with Section 119.0701, Florida Statutes, Service Provider will comply with the requirements and the Act (Chapter 119, Florida Statutes) with respect to any records maintained by the Service Provider relating to the School and any other records maintained by Service Provider

which are subject to such Act.

- P. **No Third-Party Rights.** This Agreement is made for the sole benefit of School and Service Provider, and their respective successors and assigns. Except as otherwise expressly provided, nothing in this Agreement will create or be deemed to create a relationship between the parties to this Agreement, or either of them, and any third person, including a relationship in the nature of a third-party beneficiary or fiduciary.
- Q. **No Inconsistent Tax Position.** Service Provider agrees that it is not entitled to and will not take any tax position that is inconsistent with being a service provider to the School with respect to the Facility, including but not limited to claiming any depreciation or amortization deduction, investment tax credit, or deduction for any payment as rent with respect to the Facility.


IN WITNESS WHEREOF, the undersigned have executed this Agreement as of the date and year first above written.

“SCHOOL”

“Service Provider”

TREASURE COAST CLASSICAL
ACADEMY, INC.

THE OPTIMA FOUNDATION, INC.

By: 

By: 

Printed Name: Lynda Daniel

Printed Name: Erika Donalds

Its: Board Chair/President

Its: President & CEO

Date: 1/21/2019

Date: 1/21/2019