

## AGENDA ITEM EXECUTIVE SUMMARY: Compliance Matters – Desert Star Academy, Inc.

### Issue

Desert Star Academy, Inc. (“Charter Holder”) failed to meet the minimum operational performance expectations set forth in Arizona Administrative Code (“A.A.C.”) R7-5-403 and the Board’s operational performance framework when the Charter Holder received an overall rating for fiscal year 2018 of “Does Not Meet the Board’s Operational Performance Standard” due to six of the operational performance framework’s nine measures being rated “Does Not Meet Standard”. Pursuant to A.A.C. R7-5-403(F), the Charter Holder has been placed on the agenda for Board’s consideration.

### Background – Operational Performance Framework

The Board shall annually assign a charter holder an overall operational performance rating based on measures specified in the operational performance framework, which reflect the degree to which the charter holder achieved the minimum operational performance expectations [A.A.C. R7-5-403(B)]. The Board shall determine a charter holder meets the minimum operational performance standard if the charter holder receives no measure rated “Falls Far Below Standard” and no more than five measures rated “Does Not Meet Standard” for the evaluated year [A.A.C. R7-5-403(C)].

### Charter Holder Profile

The Charter Holder was granted a new charter in 2014. The Charter Holder operates one school, Desert Star Academy, serving grades K-8 in Fort Mohave. For fiscal year 2019, the Charter Holder is reporting an estimated count of 408 as of August 15, 2018. For additional information on the Charter Holder, see *Appendix A: Charter Holder Profile*.

### 401k Contributions and Health Insurance Premiums

Employee Retirement Security Act of 1974 (ERISA) regulations require that an employee’s 401k retirement saving plan (“plan”) contributions be deposited in the plan no later than the 7th business day after withholding by the employer. [29 C.F.R. § 2510.3-102]

ERISA imposes a fiduciary duty upon the Charter Holder to timely remit premiums it withheld from its employees’ paychecks for employee and dependent health coverage. [29 U.S.C. § 1002(21)(A)]

On September 25, 2017, the Board received a complaint alleging that the Charter Holder deducted amounts from employees’ paychecks, but did not remit these amounts, and in certain cases the Charter Holder’s portion, to the health insurance or 401k providers at various times beginning in fiscal year 2016. Board staff’s investigation found the Charter Holder failed to timely deposit contributions and remit premiums for health coverage for certain paychecks in fiscal year 2016, 2017, and 2018.

The Charter Holder scored a “Does Not Meet Standard” for the operational performance framework measure that determines compliance with all other obligations not specifically identified in the Board’s operational performance framework.

Through the complaint investigation process, the Charter Holder submitted evidence to the Board that:

- All employee and employer Plan contributions, including lost earnings, as applicable, were deposited by the Charter Holder in the Plan for fiscal year 2016, fiscal year 2017, and fiscal year 2018 through the March 5, 2018 paycheck.
- Premiums for employees’ and dependents’ health coverage were remitted by the Charter Holder for fiscal year 2018 through March 1, 2018.



Subsequently, the Charter Holder submitted evidence of timely deposits of employee and employer plan contributions through the August 20, 2018 paycheck and timely remitted premiums for employees' and dependents' health coverage through September 1, 2018.

### Fingerprint Clearance Card

A.R.S. § 15-183(C)(5) requires all persons engaged in instructional work directly as a classroom, laboratory or other teacher have a valid fingerprint clearance card ("FCC") issued by the Arizona Department of Public Safety ("Department").

On March 6, 2018, Board staff conducted a site visit to Desert Star Academy ("School"), and found that one teacher had an expired FCC as of February 28, 2018 and one substitute teacher had an expired FCC as of November 27, 2015.

The Charter Holder scored a "Does Not Meet Standard" for the operational performance framework measure that determines compliance with maintaining a safe environment consistent with state and local requirements.

Subsequently, the Charter Holder submitted evidence to the Board that the teacher and substitute teacher had each been issued a valid FCC by the Department in March 2018.

### Services to Students with Disabilities

Federal regulations that implement the Individuals with Disabilities Education Act require each child's individualized education program ("IEP") to include, among other things, "a statement of the special education and related services and supplementary aids and services...to be provided to the child...to advance appropriately toward attaining the annual goals, [and] to be involved in and make progress in the general education curriculum." [34 C.F.R. § 300.320(a)(4)]

On August 15, 2017, the Arizona Department of Education/Dispute Resolution ("ADE/DR") identified as a complaint written allegations submitted to ADE/DR regarding the Charter Holder's failure to ensure eligible students with disabilities were provided speech-language therapy, occupational therapy and/or physical therapy in conformity with their IEPs. ADE/DR's investigation substantiated the complaint, finding the Charter Holder in noncompliance for failing to make speech-language therapy and/or occupational therapy services available for portions of fiscal year 2017 and fiscal year 2018.

The Charter Holder scored a "Does Not Meet Standard" for the operational performance framework measure that determines adherence to applicable education requirements defined in state and federal law.

On May 11, 2018, ADE/DR sent the Charter Holder a letter of completion, stating the final corrective action documentation related to the complaint was received on April 19, 2018.

### Student Attendance Reporting

State law requires kindergarten students to be five years of age and first grade students to be six years of age before September 1 of the current school year. Children who have not reached this required age may be admitted if a determination is made that it is in the best interest of the child and the child reaches the required age by January 1 of the current school year. [A.R.S. § 15-821]

State law requires the Charter Holder to maintain and preserve all records reasonably necessary or appropriate to maintain an accurate knowledge of its official activities which are supported by state monies. [A.R.S. § 39-121.01] The Charter Operator is required to retain student attendance records in accordance with the General Records Retention Schedules for Education K-12 published by the Arizona State Library, Archives and Public Records.

On January 25, 2018, the Arizona Department of Education Audit Unit ("ADE/Audit Unit") issued its report of the audit conducted by ADE/Audit Unit auditors of the Charter Holder's average daily membership ("ADM") for fiscal ASBCS, September 10, 2018



years 2015, 2016 and 2017. According to the audit report, ADE/Audit Unit auditors determined that (a) some students reported by the Charter Holder to the state for funding were not old enough to be enrolled and (b) some students were reported but did not attend the school, which combined resulted in an overstatement of 17.27 ADM, which occurred primarily in fiscal year 2015 and fiscal year 2016, and an overfunding of \$115,526.42.

The Charter Holder scored a “Does Not Meet Standard” for the operational performance framework measure that determines appropriate administration of student admission and attendance.

In February 2018, the Charter Holder notified the ADE/Audit Unit that it would appeal the audit report findings and required reimbursement and, subsequently, requested an informal settlement conference. In April 2018, the Charter Holder and the Arizona Department of Education agreed to a settlement under which the Charter Holder would repay \$85,000 to the Arizona Department of Education in equal withholdings from the Charter Holder’s state equalization assistance starting in August 2018 and continuing through June 2020.

### Consent Agreement

In July 2018, Board staff sent a draft proposed consent agreement to the Charter Holder’s charter representative. Today’s meeting materials include the final proposed consent agreement developed by Board staff and the Charter Holder’s charter representative (see *Appendix B: Proposed Consent Agreement*). Should the Board vote today to proceed with the consent agreement, the Charter Holder’s board will consider the consent agreement at its September 25, 2018 meeting.



**Appendix A**  
**Charter Holder Profile**



## Governance

Corporate Board Members
Margie Montgomery
Timothy Montgomery

School Governing Body Members	Type
Julia Goodwin	Community
Lisa Harker	Parents
Maureen Krueger	Community
Kylee Melcher	School Staff
Margie Montgomery	Charter Organization
David Rubio	Community

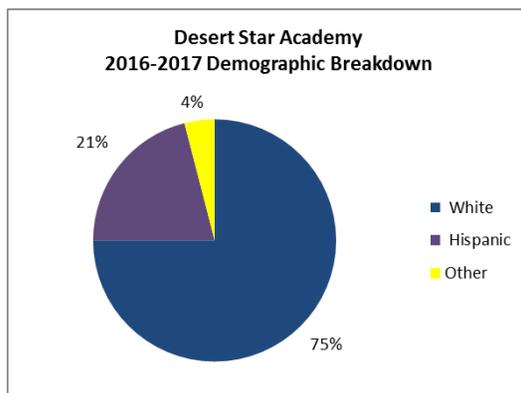
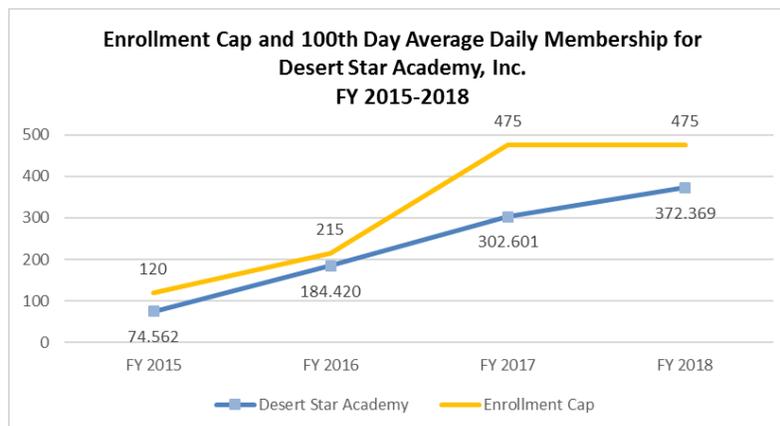
## School Profile and Academic Performance

School Name	Desert Star Academy		
Date Open	August 2014		
Location	Fort Mohave		
Grades Served	K-8		
FY 17 Letter Grade	C		
	FY 16	FY 17	FY 18
ELA AzMERIT (41%+)	46%	43%	52%
Math AzMERIT (41%+)	37%	46%	47%
Science AIMS (52%+)	50%	63%	68%

\*FY 18 State Average Passing

## Enrollment and Demographic Data

100th Day Average Daily Membership for FY 2015–FY 2018.



2016-2017 Subgroup Data	
Free and Reduced Lunch	56%
English Language Learners	5%
Special Education	14%

### Additional School Choices Serving Grades K-8 within 5 Miles of Desert Star Academy

Total Schools	FY 17 Letter Grade	Total Charter Schools	FY 18 State Assessment Data Greater than State Average			Subgroups within (±5%) of Charter Holder's Subgroup Data		
			ELA (>41%)	Math (>41%)	Science (>52%)	FRL (±5%)	ELL (±5%)	SPED (±5%)
2	<b>B</b>	0	1	0	1	*	*	2
1	<b>C</b>	1	1	0	1	1	1	1
1	<b>NR**</b>	0	*	*	*	*	*	1

\*If the percentage of students is 0% or 100%, or the group includes less than 10 students, the percentage for that group is redacted.

\*\*This school only serves grades K-2.

### Comparison of Nearby Schools to Desert Star Academy

Total Schools	FY 17 Letter Grade	Total Charter Schools	FY 18 State Assessment Data Greater than Desert Star Academy		
			AzMERIT ELA (>52%)	AzMERIT Math (>47%)	AIMS Science (>68%)
2	<b>B</b>	0	0	0	0
1	<b>C</b>	1	0	0	0
1	<b>NR**</b>	0	*	*	*
<b>Total Number of Schools Performing Better than Desert Star Academy (Percentage of Total)</b>					
4		1 (25%)	1 (25%)	0 (0%)	0 (0%)

\*If the percentage of students is 0% or 100%, or the group includes less than 10 students, the percentage for that group is redacted.

\*\*This school only serves grades K-2.

### Academic Performance

#### Charter Holder Academic Performance

FY 2017 Desert Star Academy, Inc.

School	Type	Grades Served	Overall Rating
Desert Star Academy	Traditional	K-8	Meets Standard

MEETS THE BOARD'S ACADEMIC PERFORMANCE EXPECTATIONS

#### Academic Performance

NO PERMISSION TO EDIT

Desert Star Academy

FY 2017 Traditional Elementary K-8		
Measure	Rating	
1a. A-F Letter Grade	C	Meets
1b. School Improvement	No	Meets
<b>OVERALL RATING</b>	Meets Standard	



# Financial Performance

## Financial Performance

Desert Star Academy, Inc.

## Interpreting the Financial Performance Dashboard

	Fiscal Year 2016		Fiscal Year 2017			
<b>Near-Term Measures</b>						
Going Concern	Yes	Falls Far Below	No	Meets		
Unrestricted Days Liquidity <30, but ≥15: Does Not Meet <15: Falls Far Below	9.76	Falls Far Below	23.36	Does Not Meet		
Default	No	Meets	No	Meets		
<b>Sustainability Measures*</b>						
Net Income ≤0: Does Not Meet	(\$68,319)	Does Not Meet	\$29,349	Meets		
Fixed Charge Coverage Ratio <1.10: Does Not Meet	0.47	Does Not Meet	1.26	Meets		
Cash Flow (3-Year Cumulative) Negative: Does Not Meet**	\$48,739	Meets	\$156,410	Meets		
Cash Flow Detail by FY	FY 2016	FY 2015	FY 2014	FY 2017	FY 2016	FY 2015
	\$40,672	\$8,067	–	\$107,671	\$40,672	\$8,067

### Meets Board's Financial Performance Expectations

\* Negative numbers indicated by parentheses.  
\*\* Target effective beginning with FY16 audits.

# Operational Performance

## Operational Performance Dashboard

Click on any of the measures below to see more information.

### Effective July 1, 2017 and going forward:

An "\*" means the noncompliance has been addressed under AAC R7-5-505(F), a complete corrective action plan has been received and implementation is required under AAC R7-5-510(C)(1), the charter holder is complying with the terms of an agreement with the Board, or no further action is required at this time.

A "\*\*\*" means a corrective action plan has been assigned by another entity, the appeal window for action taken by another entity has not closed, appeal of an action taken by another entity is pending, or is an issue of noncompliance in which another entity oversees.

Measure	2015	2016	2017	2018	2019
1.a. Does the delivery of the education program and operation reflect the essential terms of the educational program as described in the charter contract?	Meets	Meets	Meets	Meets	--
1.b. Does the charter holder adhere with applicable education requirements defined in state and federal law?	Meets	Meets	Meets	Does Not Meet	--
2.a. Do the charter holder's annual audit reporting packages reflect sound operations?	Not Applicable	Meets	Does Not Meet	Meets	--
2.b. Is the charter holder administering student admission and attendance appropriately?	Meets	Meets	Meets	Does Not Meet	--
2.c. Is the charter holder maintaining a safe environment consistent with state and local requirements?	Meets	Meets	Meets	Does Not Meet	--
2.d. Is the charter holder transparent in its operations?	Does Not Meet	Meets	Meets	Does Not Meet	--
2.e. Is the charter holder complying with its obligations to the Board?	Does Not Meet	Meets	Meets	Does Not Meet	--
2.f. Is the charter holder complying with reporting requirements of other entities to which the charter holder is accountable?	Meets	Does Not Meet	Does Not Meet	Meets	--
3. Is the charter holder complying with all other obligations?	Meets	Meets	Meets	Does Not Meet	--
<b>OVERALL RATING</b>	Meets Operational Standard	Meets Operational Standard	Meets Operational Standard	Does Not Meet Operational Standard	--
<b>BOARD EXPECTATIONS</b>	--	--	Meets Operational Expectations	Does Not Meet Operational Expectations	Does Not Meet Operational Expectations

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## Operational Performance Dashboard

Click on any of the measures below to see more information.

**Effective July 1, 2017 and going forward:**

An “\*\*” means the noncompliance has been addressed under AAC R7-5-505(F), a complete corrective action plan has been received and implementation is required under AAC R7-5-510(C)(1), the charter holder is complying with the terms of an agreement with the Board, or no further action is required at this time.

A “\*\*\*” means a corrective action plan has been assigned by another entity, the appeal window for action taken by another entity has not closed, appeal of an action taken by another entity is pending, or is an issue of noncompliance in which another entity oversees.

Measure	2015	2016	2017	2018	2019
1.a. Does the delivery of the education program and operation reflect the essential terms of the educational program as described in the charter contract?	Meets	Meets	Meets	Meets	--
Educational Program - Essential Terms	No issue identified	No issue identified	No issue identified	No issue identified	--
1.b. Does the charter holder adhere with applicable education requirements defined in state and federal law?	Meets	Meets	Meets	Does Not Meet	--
Services to Student with Disabilities	No issue identified	No issue identified	No issue identified	Substantiated Complaint - ADE** <a href="#">(more info)</a>	--
Instructional Days/Hours	No issue identified	No issue identified	No issue identified	No issue identified	--
Data for Achievement Profile	No issue identified	No issue identified	No issue identified	No issue identified	--
Mandated Programming (State/Federal Grants)	No issue identified	No issue identified	No issue identified	No issue identified	--
2.a. Do the charter holder’s annual audit reporting packages reflect sound operations?	Not Applicable	Meets	Does Not Meet	Meets	--
Timely Submission	Not Applicable	Yes	Yes	Yes	--
Audit Opinion	Not Applicable	Unqualified	Unqualified	Unqualified	--
Completed 1st Time CAPs	Not Applicable	No issue identified	No issue identified	No issue identified	--
Second-Time/Repeat CAP	Not Applicable	No issue identified	Federal Payroll Taxes State Payroll Taxes	No issue identified	--
Serious Impact Findings	Not Applicable	No issue identified	No issue identified	No issue identified	--
Minimal Impact Findings (3+ Years)	Not Applicable	No issue identified	No issue identified	No issue identified	--
2.b. Is the charter holder administering student admission and attendance appropriately?	Meets	Meets	Meets	Does Not Meet	--
Estimated Count/Attendance Reporting	No issue identified	No issue identified	No issue identified	ADE ADM Audit** <a href="#">(more info)</a>	--
Tuition and Fees	No issue identified	No issue identified	No issue identified	No issue identified	--
Public School Tax Credits	No issue identified	No issue identified	No issue identified	No issue identified	--
Attendance Records	No issue identified	No issue identified	No issue identified	No issue identified	--
Enrollment Processes	No issue identified	No issue identified	No issue identified	No issue identified	--
2.c. Is the charter holder maintaining a safe environment consistent with state and local requirements?	Meets	Meets	Meets	Does Not Meet	--
Facility/Insurance Documentation	No issue identified	No issue identified	No issue identified	No issue identified	--



Fingerprinting	No issue identified	No issue identified	No issue identified	Fingerprinting - Staff* (more info)	--
2.d. Is the charter holder transparent in its operations?	Does Not Meet	Meets	Meets	Does Not Meet	--
Academic Performance Notifications	No issue identified	No issue identified	No issue identified	No issue identified	--
Teacher Resumes	No issue identified	No issue identified	No issue identified	No issue identified	--
Open Meeting Law	No issue identified	No issue identified	No issue identified	Minutes (Contract Amendment)* Minutes (Contract Amendment - 2nd Time)* (more info)	--
Board Alignment	Inconsistency in Reporting (more info)	No issue identified	No issue identified	No issue identified	--
2.e. Is the charter holder complying with its obligations to the Board?	Does Not Meet	Meets	Meets	Does Not Meet	--
Timely Submissions	Charter Governance Amendment School Governing Body Amendment (more info)	No issue identified	No issue identified	Complaint Response* School Governing Body Amendment* (more info)	--
Limited Substantiated Complaints	No issue identified	No issue identified	No issue identified	No issue identified	--
Favorable Board Actions	No issue identified	No issue identified	No issue identified	10% Withholding* (more info)	--
2.f. Is the charter holder complying with reporting requirements of other entities to which the charter holder is accountable?	Meets	Does Not Meet	Does Not Meet	Meets	--
Arizona Corporation Commission	No issue identified	No issue identified	No issue identified	No issue identified	--
Arizona Department of Economic Security	No issue identified	No issue identified	No issue identified	No issue identified	--
Arizona Department of Education	No issue identified	No issue identified	No issue identified	No issue identified	Substantiated Complaint- A.R.S. §15-977* (more info)
Arizona Department of Revenue	No issue identified	Audit CAP (more info)	Audit CAP (Second Time) (more info)	No issue identified	--
Arizona State Retirement System	No issue identified	No issue identified	No issue identified	No issue identified	--
Equal Employment Opportunity Commission	No issue identified	No issue identified	No issue identified	No issue identified	--
Industrial Commission of Arizona	No issue identified	No issue identified	No issue identified	No issue identified	--
Internal Revenue Service	No issue identified	Audit CAP (more info)	Audit CAP (Second Time) (more info)	No issue identified	--



U.S. Department of Education	No issue identified	No issue identified	No issue identified	No issue identified	--
3. Is the charter holder complying with all other obligations?	Meets	Meets	Meets	Does Not Meet	--
Judgments/Court Orders	No issue identified	No issue identified	No issue identified	No issue identified	--
Other Obligations	No issue identified	No issue identified	No issue identified	Substantiated Complaint-401k* Substantiated Complaint-Health Premiums* (more info)	--
OVERALL RATING	Meets Operational Standard	Meets Operational Standard	Meets Operational Standard	Does Not Meet Operational Standard	--
BOARD EXPECTATIONS	--	--	Meets Operational Expectations	Does Not Meet Operational Expectations	Does Not Meet Operational Expectations

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## Appendix B

### Proposed Consent Agreement



## **CONSENT AGREEMENT**

This Consent Agreement (“Agreement”) is made by and between Desert Star Academy, Inc. (“Charter Operator”), a nonprofit corporation organized under the laws of the state of Arizona and operating Desert Star Academy, a charter school, and the Arizona State Board for Charter Schools (“Board”) collectively referred to herein as the “Parties”.

### **JURISDICTION**

The Board is charged by Arizona Revised Statutes (“A.R.S.”) §§ 15-182(E)(1) and (2) and 15-183(R) with granting charter status to qualifying applicants for charter schools and exercising general supervision over the charter schools it sponsors. A charter is effective for fifteen years. A.R.S. § 15-183(I). The charter may be renewed for successive periods of twenty years. A.R.S. § 15-183(J). In implementing its oversight and administrative responsibility for the charter schools that it sponsors, the sponsor must ground its actions in evidence of the charter holder’s performance in accordance with the performance framework adopted by the sponsor. A.R.S. § 15-183(R). The Board may revoke a charter of a school it sponsors at any time if the charter school breaches one or more provisions of its charter or if the Board determines that the charter holder has failed to meet the operational performance expectations set forth in the performance framework or any improvement plans or has failed to comply with charter school statutes or any provision of law from which the charter school is not exempt. A.R.S. § 15-183(I)(3). The final determination of whether to revoke the charter shall be made at a public hearing called for such purpose. A.R.S. § 15-183(I)(5).

### **RECITALS**

1. The Charter Operator operates Desert Star Academy (“the School”), a charter school, pursuant to a charter contract (“Charter”) executed on April 7, 2014 between the Charter

Operator and the Board.

2. Pursuant to A.R.S. § 15-183 and the Charter, the Board sponsors the Charter Operator to operate one school site to serve students in grades kindergarten through eight.

3. Margie Montgomery is the Charter Representative and person authorized to execute documents on behalf of the Charter Operator.

4. The Charter of the Charter Operator and the Board requires that the Charter Operator comply with all state, federal and local laws applicable to the operation of a charter school.

5. The Charter of the Charter Operator and the Board permits the Board to revoke or not renew the Charter for any material breach of the Charter and/or violation of state, federal or local laws, ordinances or rules or regulations; for conditions which threaten the health, safety, or welfare of the students or staff of the school or of the general public; or as provided by law.

6. The Charter Operator failed to meet the minimum operational performance expectations set forth in Arizona Administrative Code R7-5-403 and the Board's operational performance framework when the Charter Operator received an overall rating for fiscal year 2018 of "Does Not Meet the Board's Operational Performance Standard" due to six of the operational performance framework's nine measures being rated "Does Not Meet Standard", including measures related to the Charter Operator complying with the law, maintaining a safe environment, adhering to applicable statutory education requirements, administering student admission and attendance appropriately and complying with its obligations to the Board.

7. Employment Retirement Security Act of 1974 ("ERISA") regulations require that the Charter Operator deposit employees' 401k retirement saving plan ("Plan") contributions in the Plan no later than the seventh business day after withholding by the Charter Operator (in the

case of a Plan with fewer than 100 participants at the beginning of the Plan year). 29 C.F.R. § 2510.3-102.

8. ERISA imposes a fiduciary duty upon the Charter Operator to timely remit premiums it withheld from its employees' paychecks for employee and dependent health coverage. *See* 29 U.S.C. § 1002(21)(A).

9. On September 25, 2017, the Board received a complaint filed against the Charter Operator alleging that at various times beginning in fiscal year 2016 the Charter Operator was withholding money from employees' paychecks, but (a) was not depositing the employees' Plan contributions or the Charter Operator's match into the Plan and (b) was not paying premiums for the employees' and dependents' health coverage ("Complaint").

10. Board staff's investigation substantiated the Complaint, finding the Charter Operator failed to timely deposit employee and employer Plan contributions in the Plan for certain paychecks in fiscal years 2016, 2017 and 2018.

11. Board staff's investigation substantiated the Complaint, finding the Charter Operator failed to timely remit premiums for employees' and dependents' health coverage for certain paychecks in fiscal years 2016, 2017 and 2018. In two instances, these untimely payments resulted in health coverage termination notices being sent to employees in fiscal year 2016.

12. Based on the substantiated Complaint, pursuant to the Procedures for Reviewing Complaints, the Charter Operator scored a "Does Not Meet Standard" for the measure that determines if the Charter Operator is complying with all other obligations not specifically identified in the Board's operational performance framework.

13. The Charter Operator breached its Charter and federal law when it failed to timely

deposit employee and employer Plan contributions in the Plan for fiscal years 2016, 2017 and 2018 as identified through the Complaint investigation.

14. The Charter Operator breached its Charter and its fiduciary duty under federal law when it failed to timely remit premiums for employees' and dependents' health coverage for fiscal years 2016, 2017 and 2018 as identified through the Complaint investigation.

15. Through the Complaint investigation process, the Charter Operator submitted evidence to the Board that the following had occurred:

- a. All employee and employer Plan contributions, including lost earnings, as applicable, had been deposited by the Charter Operator in the Plan for fiscal year 2016, fiscal year 2017 and fiscal year 2018 through the March 5, 2018 paycheck.
- b. Premiums for employees' and dependents' health coverage had been remitted by the Charter Operator for fiscal year 2018 through March 1, 2018.

16. Subsequently, the Charter Operator submitted evidence to the Board that the Charter Operator timely deposited employee and employer Plan contributions through the August 20, 2018 paycheck and timely remitted premiums for employees' and dependents' health coverage through September 1, 2018.

17. State law and the Charter of the Charter Operator require the Charter Operator to properly fingerprint its personnel. This includes ensuring all persons engaged in instructional work directly as a classroom, laboratory or other teacher have a valid fingerprint clearance card ("FCC") issued by the Arizona Department of Public Safety ("Department"). A.R.S. § 15-183(C)(5).

18. On March 6, 2018, Board staff conducted a site visit to the School. During the

visit, the School was unable to provide evidence that one teacher and one substitute teacher had been properly fingerprinted.

- a. For the teacher, who Board staff observed in the classroom during the site visit, the School provided a FCC that had expired on February 28, 2018.
- b. For the substitute teacher, who was not observed during the site visit, but who had substituted at the School for one day in February 2018, the School was unable to provide evidence of the individual's FCC. The School indicated the individual had provided the FCC to another school and did not have the FCC available. Subsequently, Board staff learned that the substitute teacher's FCC had expired on November 27, 2015.

19. Based on the noncompliance identified during the site visit, the Charter Operator scored a "Does Not Meet Standard" for the operational performance framework measure that determines if the Charter Operator is maintaining a safe environment consistent with state and local requirements.

20. The Charter Operator breached its Charter and state law when it failed to properly fingerprint its personnel.

21. During the site visit, the Charter Operator (a) provided evidence to Board staff that the Department had received FCC applications for the teacher and substitute teacher and (b) removed the teacher from the classroom and brought in a substitute teacher with a valid FCC.

22. In March 2018, the Board received information demonstrating that the teacher and substitute teacher had each been issued a valid FCC by the Department.

23. Federal regulations that implement the Individuals with Disabilities Education Act require each child's individualized education program ("IEP") to include, among other

things, “a statement of the special education and related services and supplementary aids and services ... to be provided to the child ... to advance appropriately toward attaining the annual goals, [and] to be involved in and make progress in the general education curriculum.”<sup>1</sup> 34 C.F.R. § 300.320(a)(4).

24. On August 15, 2017, the Arizona Department of Education/Dispute Resolution (“ADE/DR”) identified as a complaint written allegations submitted to ADE/DR regarding the Charter Operator’s failure to ensure eligible students with disabilities were provided speech-language therapy, occupational therapy and/or physical therapy in conformity with their IEPs (“Special Education Complaint”).

25. ADE/DR’s investigation substantiated the Special Education Complaint, finding the Charter Operator in noncompliance for failing to make speech-language therapy and/or occupational therapy services available for portions of fiscal year 2017 and fiscal year 2018.

26. Based on the substantiated Special Education Complaint, the Charter Operator scored a “Does Not Meet Standard” for the measure that determines if the Charter Operator is adhering with applicable education requirements defined in state and federal law.

27. The Charter Operator breached its Charter and federal law when it failed to ensure eligible students with disabilities were provided speech-language therapy and occupational therapy services in conformity with the IEPs.

28. In a letter dated December 15, 2017, ADE/DR outlined actions necessary for the Charter Operator to correct noncompliance identified in the substantiated Special Education Complaint and established multiple deadlines for the Charter Operator between January 2018 and August 2018.

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<sup>1</sup> “Related services” means transportation and such developmental, corrective and other supportive services as are required to assist a child with a disability to benefit from special education, and includes, among other things, speech therapy, physical and occupational therapy, and counseling. 34 C.F.R. § 300.34(a).

29. On May 11, 2018, ADE/DR sent the Charter Operator a letter of completion, stating the final corrective action documentation related to the Special Education Complaint was received on April 19, 2018.

30. State law requires kindergarten students to be five years of age and first grade students to be six years of age before September 1 of the current school year. Children who have not reached this required age may be admitted if a determination is made that it is in the best interest of the child and the child reaches the required age by January 1 of the current school year. A.R.S. § 15-821.

31. State law requires the Charter Operator to maintain and preserve all records reasonably necessary or appropriate to maintain an accurate knowledge of its official activities which are supported by state monies. A.R.S. § 39-121.01.

32. The Charter Operator is required to retain student attendance records in accordance with the General Records Retention Schedules for Education K-12 (000-11-53) published by the Arizona State Library, Archives and Public Records.

33. On January 25, 2018, the Arizona Department of Education Audit Unit (“ADE/Audit Unit”) issued its report of the audit conducted by ADE/Audit Unit auditors of the Charter Operator’s average daily membership (“ADM”) for fiscal year 2015, 2016 and 2017 (“ADM Audit Report”). According to the ADM Audit Report, ADE/Audit Unit auditors determined that (a) some students reported by the Charter Operator to the state for funding were not old enough to be enrolled and (b) some students were reported but did not attend the School, which combined resulted in an overstatement of 17.27 ADM and an overfunding of \$115,526.42.

34. Based on the noncompliance identified through the ADM Audit Report, the Charter Operator scored a “Does Not Meet Standard” for the measure that determines if the

Charter Operator is administering student admission and attendance appropriately.

35. The Charter Operator breached its Charter and state law when it failed to properly report its student attendance.

36. On or about February 14, 2018, the Charter Operator notified ADE/Audit Unit that it would appeal the ADM Audit Report findings and required reimbursement and, subsequently, requested an informal settlement conference.

37. In April 2018, the Charter Operator and the Arizona Department of Education agreed to a settlement under which the Charter Operator would repay \$85,000 to the Arizona Department of Education in equal withholdings from the Charter Operator's state equalization assistance starting August 2018 and continuing through June 2020.

38. At its public meeting held on September 10, 2018, the Board determined that it has a sufficient basis to issue a Notice of Intent to Revoke the Charter of the Charter Operator on the basis of the Charter Operator's failure to meet the operational performance expectations set forth in the Board's operational performance framework and violation of its Charter and state and federal law. The Board's motion provided for the Parties to work toward entering into a consent agreement in lieu of a revocation proceeding and hearing.

#### **AGREEMENT TERMS AND CONDITIONS**

The Parties agree as follows:

39. Because of the Board's determination that the Charter Operator failed to meet the minimum operational performance expectations set forth in A.A.C. R7-5-403 and the Board's operational performance framework and violated its Charter and state and federal law, the Charter Operator is subject to the revocation and termination of its Charter.

40. A.R.S. §§ 15-183(Q) and 41-1092.07(F)(5) provide that informal disposition of this

matter may be made by stipulation, agreed settlement, consent order or default.

41. In consideration of the Parties foregoing their option to proceed with the charter revocation proceedings and hearing under A.R.S. § 15-183(Q), it is in the best interests of the Board and the Charter Operator to mutually resolve this matter.

The Charter Operator agrees as follows:

42. The Charter Operator waives its right to a charter revocation hearing under A.R.S. § 15-183(Q) and to provide its defense, except as set forth herein, on the Recitals set forth in this Agreement.

43. By entering into this Agreement, the Charter Operator agrees to the Recitals set forth in this Agreement and understands that it cannot contest any of the Recitals in the future.

44. This Agreement does not limit other actions the Board may take under the law if it determines that the Charter Operator is not in compliance with its Charter or with state or federal law.

45. The Charter Operator shall meet the Board's minimum operational performance standard in fiscal year 2019 and in fiscal year 2020.<sup>2</sup>

46. The Charter Operator shall remain current in the deposit of employee and employer Plan contributions in the Plan for all paychecks issued between August 21, 2018 and June 30, 2020.

Compliance with this provision shall be demonstrated as follows:

a. On the date that the Charter Operator provides a signed copy of the Agreement to the Board, the Charter Operator shall submit to the Board a list identifying the paycheck dates for the period of August 21, 2018 through June 30, 2020.

b. On the date that the Charter Operator provides a signed copy of the Agreement to

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<sup>2</sup> Pursuant to A.A.C. R7-5-403(C), a charter holder meets the minimum operational performance standard if the charter holder receives no measure rated "falls far below standard" and no more than five measures rated "does not meet standard" for the evaluated year.

the Board, the Charter Operator shall submit to the Board evidence that the full employee and employer contribution amounts have been deposited in the Plan for paycheck dates that occurred between August 21, 2018 and the Agreement's effective date.

- c. Within 5 business days of the seventh business day after each paycheck date, beginning with the first paycheck issued after the Agreement's effective date and continuing through June 30, 2020, the Charter Operator shall submit to the Board evidence that the full employee and employer contribution amounts have been deposited in the Plan.
- d. For each paycheck, the evidence required under paragraphs 46(b) and 46(c) means payroll records detailing the contribution amount withheld from each employee's paycheck and the employer's contribution match and a report from the Plan provider showing that contributions in the full amount have been deposited into each employee's Plan account.

47. The Charter Operator shall remain current in the remittance of premiums for employees' and dependents' health coverage for the period of October 1, 2018 through June 30, 2020. Compliance with this provision shall be demonstrated as follows:

- a. On the date that the Charter Operator provides a signed copy of the Agreement to the Board, the Charter Operator shall submit to the Board evidence that the Charter Operator timely remitted premiums for employees' and dependents' health coverage for October 2018.
- b. Within 5 business days of the first day of each month, beginning in November 2018 and continuing through June 2020, the Charter Operator shall submit to the

Board evidence that the Charter Operator timely remitted the current month's premiums for employees' and dependents' health coverage.

- c. For each month, the evidence required under paragraphs 47(a) and 47(b) means a copy of the bill received from the health insurance provider and bank statements showing an electronic fund transfer or a copy of the canceled check for the full amount.

48. The Charter Operator shall ensure School personnel have been properly fingerprinted pursuant to A.R.S. § 15-183(C) and documentation supporting such is maintained. Compliance with this provision shall be demonstrated by no substantiated issues of fingerprinting noncompliance involving School personnel being brought to the Board's attention for the period of the Agreement's effective date through June 30, 2020.

49. The Charter Operator shall comply with all federal and state laws relating to the education of children with disabilities. Compliance with this provision shall be demonstrated as follows:

- a. From the Agreement's effective date through June 30, 2020, as applicable, for any subsequent complaints substantiated by ADE/DR, the Charter Operator shall comply with all requirements and deadlines identified by ADE/DR.
- b. From the Agreement's effective date through June 30, 2020, the Charter Operator shall have no repeated substantiated complaints for an issue first substantiated by the ADE/DR after July 1, 2017.

50. The Charter Operator shall timely meet the requirements outlined in the ADM Audit Report settlement referenced in paragraph 37.

The Parties agree as follows:

51. If the Charter Operator fails to comply with the terms and conditions of this Agreement, the Board may, on no less than thirty (30) calendar days' notice, hold a hearing at which time the Board will receive information to determine whether evidence exists that the Charter Operator failed to comply with the terms and conditions of this Agreement. The Charter Operator shall be entitled to present all relevant evidence at this hearing. If the Board determines that a breach of this Agreement has occurred, the Board may revoke the Charter Operator's Charter to operate the School and terminate its Charter for breach of this Agreement and of its Charter and the state laws identified in the Recitals.

52. The Parties agree that this Agreement shall not preclude the Charter Operator from submitting an expansion request to the Board so long as the Charter Operator meets the Board's eligibility requirements and is in compliance with this Agreement's terms and conditions at the time of submission and Board consideration of the expansion request.

53. This Agreement is not binding on either party until both the Board and the Charter Operator's governing board accept it by the number of votes necessary to pass a measure at a public meeting. This Agreement is effective immediately upon its approval and execution by the authorized representatives of the Charter Operator and the Board.

54. If either party rejects this Agreement or any part of it, then this Agreement is null and void, and not binding on the Parties and the Board may proceed with the charter revocation hearing.

55. The Charter Operator has the legal right to consult with an attorney prior to entering into this Agreement.

56. The Parties shall be responsible for their own attorneys' fees and costs, if any, in this matter.

ARIZONA STATE BOARD FOR CHARTER SCHOOLS

\_\_\_\_\_  
By: Kathy Senseman  
President, Arizona State Board for Charter Schools  
Date: \_\_\_\_\_

DESERT STAR ACADEMY, INC.

\_\_\_\_\_  
By: Margie Montgomery  
Charter Representative, Desert Star Academy, Inc.  
Date: \_\_\_\_\_

COPY emailed this  
\_\_\_\_\_ day of \_\_\_\_\_, 20\_\_ to:

Margie Montgomery, Charter Representative  
Desert Star Academy, Inc.  
[mmontgomery629@gmail.com](mailto:mmontgomery629@gmail.com)

By \_\_\_\_\_