



**Thames Valley**  
District School Board

# **Request for Proposal #670 Student Homestay Program**

**Submission Deadline:** Before 12:00pm Local Time on Friday,  
January 24th, 2025

**Submission Location:** Electronic Submission Only

**Request for Proposal Coordinator:** Jashkaran Singh  
jashkaran.singh@tvdsb.ca

**Date of Issue:** December 20th, 2024

## Table of Contents

Instructions to Proponents..... 3

Schedule A – Scope of Work ..... 14

Schedule B – TVDSB Procurement Web Portal ..... 15

Schedule C – Submission Requirements ..... 166

Schedule D – RFP Submission Form..... 18

Schedule E – Master Services Agreement..... 200

# Request for Proposal 670

## Student Homestay Program

### Instructions to Proponents

#### 1. Introduction

##### 1.1 Invitation

- 1.1.1 The Thames Valley District School Board is one of the largest public school boards in the Province of Ontario and operates over 160 schools within the City of London and counties of Elgin, Middlesex, and Oxford.
- 1.1.2 The TVDSB will consider bids from Proponents who are interested in providing International Student Homestay Program, as more particularly described in this Request for Proposal ("RFP"). Through this RFP TVDSB intends to award a contract to the Successful Proponent, who will execute a 2-year MSA with the option to renew for three additional years.
- 1.1.3 TVDSB's issuance of this RFP, its evaluation of any Proposals, its contract award, or its execution of an MSA with any Proponent are not intended to and shall not obligate TVDSB to issue any Work Orders to any Proponent. There is no guarantee that a Successful Proponent that is awarded a contract and executes an MSA will be required to perform any services or will be issued any Tenders, and TVDSB specifically disclaims any obligation to do so.

##### 1.2 Request For Proposal Overview

- 1.2.1 This Section provides a brief summary of the RFP and is provided solely as a convenience. Proponents are urged to read all of the RFP documents carefully and thoroughly to ensure they fully understand all of the terms and conditions, including all MSA requirements. Failure to fulfil procedural or content requirements that are stipulated in the Documents may have a negative effect on the evaluation of a Proposal or may result in a Proposal being rejected.
- 1.2.2 Proponents are required to deliver a Proposal which must include an RFP Submission. Proponents whose RFP Submissions achieve the highest scoring based upon the criteria identified by the TVDSB will be identified as **"Successful Proponents"**.
- 1.2.3 Each Successful Proponent that is awarded a contract will be required to enter into the MSA, pursuant to which TVDSB may issue Documents.

##### 1.3 Key Information

- 1.3.1 The table below provides a summary of some key information contained in the RFP Documents and is provided solely as a convenience.

RFP Coordinator	The "RFP <b>Coordinator</b> " is Jashkaran Singh, <a href="mailto:jashkaran.singh@tvdsb.ca">jashkaran.singh@tvdsb.ca</a> .
Question Deadline	The deadline for Proponents to submit questions (the "Question Deadline") is BEFORE 12:00pm Local Time on Monday, January 13th, 2025
Submission Deadline	BEFORE 12:00pm Local Time on Friday, January 24th, 2025
Electronic Submission	An electronic bid submission is mandatory. See 1.8.2.

# **Request for Proposal 670**

## **Student Homestay Program**

### **1.4 The Services And / Or Goods**

- 1.4.1 The vendors' services to be performed and/or goods to be provided are described in Schedule A – Scope of Work.
- 1.4.2 TVDSB intends to issue an award to Proponents to provide the goods and/or services more particularly described in Schedule A – Scope of Work.

### **1.5 Previously Awarded Proponents Must Apply**

- 1.5.1 Proponents who have been previously awarded or who are currently working or have worked for TVDSB must respond to this RFP and must deliver a Proposal in order to be awarded a contract.

### **1.6 No Contract A**

- 1.6.1 TVDSB does not intend to create any contractual relations or obligations, including “Contract A” (sometimes referred to as the “bid contract”), with any Proponent or any other person or entity, and none will be created by virtue of TVDSB issuing this RFP or as a result of TVDSB’s receipt or review or evaluation of any Proposals.

### **1.7 The MSA and the Term**

- 1.7.1 TVDSB intends to execute an MSA with each Successful Proponent that is awarded a contract. Provided that the execution of an MSA does not obligate TVDSB to issue any Work Orders or proceed with any projects, and the TVDSB does not guarantee any volume of Services and / or goods that will be required or that will be performed under any MSA.
- 1.7.2 The term of each MSA will be for 2 years with the option to renew the contract for a period of three years in one (1) year increments ending August 31, 2030.
- 1.7.3 The term of this agreement shall be for 2 years, commencing on September 1, 2025, and unless otherwise provided herein, terminating on August 31, 2027

### **1.8 TVDSB Procurement Web Portal**

- 1.8.1 Proponents must use the TVDSB Procurement Web Portal (the “**Portal**”) to access the RFP Documents. Instructions on using the Portal are set out in Schedule B – TVDSB Procurement Web Portal.
- 1.8.2 Proponents must also use the Portal to upload the electronic bid submission.

### **1.9 Proponents’ Expenses**

- 1.9.1 Proponents shall bear all costs and expenses incurred by them in any way related to any aspect of their participation in this RFP including, without limitation, all costs and expenses related to the gathering of information, the preparation and delivery of a Proposal, responding to any questions or clarifications or Requests for Additional Information, or attending or participating in any interviews or meetings.

# Request for Proposal 670

## Student Homestay Program

## 2. DEFINITIONS

Capitalized terms used in this RFP and in the attached Schedules and not otherwise defined shall have the meanings indicated in this Article.

- 2.1.1 **“Conflict of Interest”** has the meaning assigned to such term in paragraph 11.2.1.
- 2.1.2 **“Evaluation Team”** means the team appointed by TVDSB to conduct the evaluation process described in this RFP.
- 2.1.3 **“Local Time”** means the time of receipt recorded by TVDSB’s clock at the Submission Location.
- 2.1.4 **“MFIPPA”** means the *Municipal Freedom of Information and Protection of Privacy Act* (Ontario).
- 2.1.5 **“MSA”** means the written Master Services Agreement, substantially in the form of Schedule E, to be signed between TVDSB and each Successful Proponent.
- 2.1.6 **“Portal”** means the TVDSB Procurement Web Portal accessed at “[www.tvdsb.ca](http://www.tvdsb.ca)”. Instructions for using the Portal are set out in Schedule B – TVDSB Procurement Web Portal.
- 2.1.7 **“Successful Proponent”** has the meaning assigned to such term in paragraph
- 2.1.8 **“Proponent”** means a vendor that participates in this RFP, whether or not it delivers a Proposal.
- 2.1.9 **“Proposal”** means, collectively, a Proponent’s completed RFP Submission.
- 2.1.10 **“Question Deadline”** is the date identified as such in the table in paragraph 1.3.1 and is the last date by which Proponents can submit questions about the RFP.
- 2.1.11 **“Request for Additional Information”** has the meaning assigned to such term in paragraph 7.2.1.
- 2.1.12 **“Request for Proposal” or “RFP”** means the prequalification process described in the RFP Documents.
- 2.1.13 **“RFP Coordinator”** is the person identified as such in the table in paragraph 1.3.1.
- 2.1.14 **“RFP Documents”** has the meaning assigned to such term in paragraph 3.2.1.
- 2.1.15 **“Services”** means the Services described in Schedule A – Scope of Work.
- 2.1.16 **“Goods”** means the Goods described in Schedule A – Scope of Work.
- 2.1.17 **“Submission Deadline”** is the date and time identified as such in the table in paragraph 1.3.1.
- 2.1.18 **“Submission Location”** is the location identified as such in the table in paragraph 1.3.1.
- 2.1.19 **“RFP Requirements”** means Schedule C – RFP Requirements.
- 2.1.20 **“RFP Score”** has the meaning assigned to such term in paragraph 7.3.2.
- 2.1.21 **“RFP Submission”** means, collectively, a Proponent’s completed RFP Submission Form and all other material submitted by a Proponent in response to the RFP Requirements.
- 2.1.22 **“RFP Submission Form”** means Schedule D – RFP Submission Form.
- 2.1.23 **“TVDSB”** means the Thames Valley District School Board and includes its employees, agents, trustees, officers and directors, whether involved with the RFP or not. For certainty **“TVDSB”** includes, as the context requires, the RFP Coordinator.
- 2.1.24 **“Contract Award”** has the meaning assigned to such term in paragraph 1.1.2.

# Request for Proposal 670

## Student Homestay Program

### 3. RFP Documents and Access

#### 3.1 Access to the RFP Documents

- 3.1.1 The RFP Documents will only be made available to Proponents electronically through the Portal. The Portal will include all RFP Documents, addenda and all other relevant notices, information and communications relating to the RFP.
- 3.1.2 Each Proponent is solely responsible to ensure that it:
- (a) obtains access to the Portal;
  - (b) has the appropriate software to access and download the contents from the Portal; and
  - (c) visits and reviews the Portal as frequently as it deems necessary to ensure that it has the most current information and addenda.
- 3.1.3 The Portal will be updated from time to time and Proponents are solely responsible for accessing and checking the Portal for new addenda and other postings and to ensure the information and documents used by Proponents are the most correct and updated information and documents.
- 3.1.4 If there is a conflict or inconsistency between an electronic version of any RFP Document posted on the Portal and any other version of the same document, whether in electronic or paper form, the latest electronic version posted on the Portal shall govern.

#### 3.2 RFP Documents

- 3.2.1 Proponents should ensure they have all of the documents listed below (collectively the “RFP Documents”). A Proposal will be deemed to have been prepared on the basis of all RFP Documents issued before the Submission Deadline, and TVDSB accepts no responsibility for any Proponent lacking any part of the RFP Documents.
- (a) Instructions to Proponents.
  - (b) Schedule A – Scope of Work.
  - (c) Schedule B – TVDSB Procurement Web Portal.
  - (d) Schedule C – RFP Requirements.
  - (e) Schedule D – RFP Submission Form.
  - (f) Schedule E – Master Services Agreement.
  - (g) Schedule F – Additional Forms
  - (h) Addenda, if any, issued before the Submission Deadline.
- 3.2.2 Proponents should inform the RFP Coordinator immediately if any documents are missing or incomplete and/or upon finding any discrepancies or omissions in the RFP Documents.

# **Request for Proposal 670**

## **Student Homestay Program**

#### **4. Communications, Questions and Addenda**

##### **4.1 Communications**

- 4.1.1 Except as provided in the RFP Documents, Proponents are not to communicate with or contact any member of the Evaluation Team or the TVDSB, including any member of the TVDSB board of trustees, regarding this RFP. A Proponent's failure to comply with this paragraph may result in the disqualification of the Proponent.

##### **4.2 Proponents' Questions**

- 4.2.1 All Proponents' questions regarding this RFP are to be in writing and must be sent by e-mail to the RFP Coordinator.
- 4.2.2 Questions received by the Question Deadline will be reviewed and if TVDSB believes that a response is warranted, it will include the question and its answer in an addendum. TVDSB may, in its discretion, consider and respond to questions received after the Question Deadline but is under no obligation to do so. In responding to questions TVDSB may answer similar questions from different Proponents only once, may edit or rephrase the questions, and may ignore questions which, in TVDSB's opinion, do not require a response.

##### **4.3 Addenda**

- 4.3.1 This RFP and the RFP Documents may be amended only by written addendum which will be posted to the Portal and will not be sent to the Proponents. Proponents are solely responsible to access and check the Portal for new addenda and other communications and postings and to ensure the information and documents used by Proponents are the most correct and updated information and documents. Proponents are solely responsible to ensure their Proposal incorporates all addenda issued before the Submission Deadline, and TVDSB will not be responsible if any addenda are not obtained by a Proponent.

#### **5. Proposal Contents, Completion and delivery**

##### **5.1 Proposal Contents**

- 5.1.1 Proponents must include the following in their Proposals, in electronic format: (a) An RFP Submission completed in accordance with Section 5.2

##### **5.2 Instructions for Completing the RFP Submission**

- 5.2.1 Proponents should upload all of the following:
- (a) original completed and signed RFP Submission Form (Schedule D); and
  - (b) all information, documents and materials required by and responding to each of the items set out in the RFP Requirements (Schedule C); and
  - (c) an electronic copy of all of the above, in Adobe PDF readable format, must be uploaded back to using the Portal. In the event of a discrepancy between an original document submitted by a Proponent and an electronic copy, the original shall govern.

# Request for Proposal 670

## Student Homestay Program

5.2.2 The RFP Submission is intended to provide information which will enable the Evaluation Team to determine the Proponent's qualifications and ability to undertake and complete the work and Services and/or Goods required. All information submitted by a Proponent and included as part of its RFP Submission will be deemed to be material representations by a Proponent to TVDSB, and the Proponent will be deemed to have warranted the accuracy of all representations so made.

5.2.3 Proponents will only be considered and evaluated for the Services identified in their RFP Submission Form.

### 5.3 Proposal Delivery

5.3.1 The electronic submission must be uploaded to the Portal before the Submission Deadline. The Portal will close at the Submission Deadline, and upload will no longer be possible at that point.

5.3.2 Late Proposals will not be considered and will be returned unopened. If there is a dispute over the time of submission, the time of receipt recorded by TVDSB at the Submission Location shall govern. Proponents are solely responsible for the method and timing of delivery of their Proposals to the Submission Location and should ensure they take into account internet traffic and other potential delays.

## 6. Opening of Proposals

6.1.1 Only Proposals received at the Submission Location before the Submission Deadline will be opened. All other Proposals will be returned unopened. Proposals will be opened in private.

### 6.2 Role of the RFP Coordinator

6.2.1 The RFP Coordinator will review the opened Proposal to confirm it contains the RFP Submission.

## 7. Evaluation of Proposals

### 7.1 General

7.1.1 Proposals will be evaluated by the Evaluation Team, which may obtain the assistance of such contractors and advisors as the Evaluation Team may deem appropriate.

### 7.2 Requests for Additional Information

7.2.1 TVDSB may contact any one or more Proponents to request clarification of any information or materials submitted as part of a Proposal, or to request supplementary information (collectively, "**Request for Additional Information**"), without any obligation to make the same or any Request for Additional Information of any other Proponent. Notwithstanding the preceding sentence, TVDSB has no obligation to make any Request for Additional Information.

7.2.2 Proponents should answer all Requests for Additional Information within the time and in the manner stipulated in each Request for Additional Information, and any answer received will form an integral part of a Proponent's Proposal. If a Proponent fails to provide an answer to a Request for Additional Information within the time and manner stipulated, its Proposal will be considered and evaluated based solely on the original Proposal contents submitted.



# Request for Proposal 670

## Student Homestay Program

### 7.3 Evaluation of RFP Submissions

7.3.1 The following illustrates some of the activities the Evaluation Team may undertake in the course of evaluating the RFP Submissions, and does not limit the discretion of the Evaluation Team to take steps not expressly described. For greater certainty, the Evaluation Team has no obligation to undertake any such activities, and the fact the Evaluation Team undertakes a particular activity as part of its evaluation of an RFP Submission and/or a Proponent will in no way obligate the Evaluation Team to undertake the same or any activity with any of the other Proponents or any RFP Submissions delivered by any of the other Proponents.

- (a) The Evaluation Team may, in its sole discretion, invite a Proponent to one or more meetings and/or interviews. The nature and length of such meetings and/or interviews, the agenda, and the attendees will be determined by the Evaluation Team.
- (b) The Evaluation Team may contact and/or visit one or more of the Proponent's references and/or clients, and any other person or place as the Evaluation Team deems appropriate, with or without notice to the Proponent.

7.3.2 RFP Submissions will be evaluated by the Evaluation Team and awarded points for the Services and / or Goods subject to this RFP. NOTE: Proponents will only be considered and evaluated for the Services and / or Goods subject to this RFP.

7.3.3 RFP Submissions will be evaluated on a consensus basis based on criteria set out in the table below. If there is a meeting and/or interview with a Proponent, such meeting and/or interview will not be independently scored, however, the Evaluation Team reserves the right to take into consideration and incorporate what it learns from such meeting and/or interview in its evaluation and may adjust the scoring of the Proponent's RFP Submission, regardless of when the meeting and/or interview is held. The points awarded for a Proponent's RFP Submission will be that Proponent's "RFP Score" for the Services and /or Goods subject to the RFP.

Evaluation Criteria	Points Available
<b>Experience/References</b>	
Proponent Profile	90
Services Provided	85
Financial Offering	15
Other	15
<b>Maximum Points Available</b>	<b>205</b>

7.3.4 Under the Building Ontario Businesses Initiative Act, 2022, public sector entities (which follow the Broader Public Sector Procurement Directive, located at <https://files.ontario.ca/tbs-bpspd-en-2023-05-05.pdf>) are required to give preference to Ontario businesses, in accordance with the regulations, when conducting procurement processes for goods and services at contract values which are under the prescribed threshold amounts.

Further, the government of Ontario introduced the Building Ontario Businesses Initiative Act (BOBIA) as part of the "Fewer Fees, Better Services Act", 2022. BOBIA requires public sector entities to give Ontario businesses preference when conducting procurement processes for goods

# **Request for Proposal 670**

## **Student Homestay Program**

and services under a specified threshold, as noted in the act, located at <https://www.ontario.ca/laws/regulation/r23422>.

Accordingly, if a vendor is located outside of Ontario or Canada, weights will be applied per BOBIA.

### **7.4 Award to Successful Proponents**

7.4.1 Subject to TVDSB's discretion and the other rights described in the RFP Documents, the Proponent(s) with the highest Scores will be awarded the contract for the Services and / or Goods.

7.4.2 If there is a tie between the RFP Scores of two or more Proponents, TVDSB will resolve the tie by a draw, notwithstanding paragraphs 1.4.2 and 7.4.1 The names of the tie proponents will be entered into the draw. All parties will have representation when the draw takes place.

### **7.5 Debriefing**

7.5.1 The TVDSB will offer separate debriefings to Proponents but only if requested in accordance with paragraph 7.5.2. Debriefings will be held in person or by telephone conference call, at the TVDSB's discretion, and will be scheduled on a date and time and for a duration to be confirmed by the TVDSB.

7.5.2 If a Proponent desires a debriefing it shall submit a written request to the RFP Coordinator within 60 days after the TVDSB has posted the name(s) of the Successful Proponent(s). Any request that is not timely received will not be considered and no debriefing will be held.

## **8. Signing the MSA and the provision of goods and services**

### **8.1 Signing the MSA**

8.1.1 The TVDSB will issue a notice to each Successful Proponent and will enclose the MSA for execution. Within fifteen (15) business days of receiving such notice and MSA each such Successful Proponent is to sign and deliver the signed MSA to TVDSB.

8.1.2 A Proponent's failure to sign and deliver the MSA in accordance with paragraph 8.1 will result in the removal of that Proponent from the contract award. In this case the next highest scored Proponent will be deemed to be the Successful Proponent.

8.1.3 The execution of a MSA is not intended to and shall not obligate TVDSB to issue or execute any Tenders or otherwise engage any Proponent.

### **8.2 Contracting for Services and / or Goods**

8.2.1 Services and / or goods can only be provided by those proponents who have received contract awards.

## **9. TVDSB'S Discretion**

### **9.1 General**

9.1.1 In addition to any other options or express rights contained in the RFP Documents or any other rights which may be implied in the circumstances, TVDSB may exercise any or all or a combination

# Request for Proposal 670

## Student Homestay Program

of the options described in this Article 9. TVDSB shall not be liable for any costs, expenses, losses or damages incurred or claimed by a Proponent resulting from TVDSB's exercise of its discretion.

- 9.1.2 A Proponent's delivery or TVDSB's evaluation of any Proposal, even where only one Proposal is delivered for a particular Service and / or Goods, will not obligate TVDSB to award a contract to any Proponent, proceed with any projects or tenders, or enter into a MSA with any Proponent.

### 9.2 TVDSB's Options

- 9.2.1 TVDSB may, in its sole discretion, and for any or no reason:

- (a) reject any or all Proposals;
- (b) cancel this RFP at any time;
- (c) cancel this RFP at any time and issue a new procurement process for the same or different RFP.

- 9.2.2 TVDSB may in its sole discretion:

- (a) verify with a third party any information contained in a Proposal;
- (b) check references other than those provided by a Proponent;
- (c) adjust a Proponent's Submission Score or reject a Proposal on the basis of information received in response to a Request for Additional Information, in response to reference checks, during any meetings and/or interviews, or as a result of any other information obtained by the Evaluation Team;
- (d) disqualify and remove from a contract any Proponent whose Proposal contains misrepresentations or any other inaccurate or misleading information relating to matters which TVDSB, in its sole discretion, considers material.

## 10. Removing Successful Proponents from a Contract

- 10.1.1 TVDSB may, in its sole discretion but always acting reasonably, remove a successful Proponent from a contract. Circumstances under which TVDSB may exercise such discretion include, but are not limited to, the following:

- (a) the Proponent would currently fail to successfully be awarded a contract which it was awarded;
- (b) a significant change in the Proponent's operations, structure or control;
- (c) where TVDSB determines, in its sole discretion, that TVDSB's continued dealings with the Proponent would adversely impact TVDSB's reputation;
- (d) the Proponent's performance of the Services and / or provision of the Goods fell below TVDSB expectations and requirements, having regard to the complexity of the Tender and the Proponent's expertise and experience;
- (e) the Proponent has made claims or commenced legal proceedings, whether by litigation or arbitration, against TVDSB;
- (f) any other circumstances where removal from a contract is specifically provided for in the RFP Documents.

# Request for Proposal 670

## Student Homestay Program

### 11. General

#### 11.1 Prohibition on Lobbying and Collusion

11.1.1 Proponents and their directors, officers, employees, consultants, agents, advisors and other representatives are prohibited from engaging in conduct which is or could reasonably be considered as any form of political or other lobbying, or as an attempt to influence the outcome of this RFP. Without limiting the generality of the foregoing, and except as provided in this RFP, no such person shall contact, communicate with or attempt to contact or communicate with, directly or indirectly and in any manner whatsoever, any staff, personnel or representative of the Evaluation Team or the TVDSB, including any member of the TVDSB board of trustees, in connection with this RFP.

11.1.2 A Proponent's failure to comply with this Section may result in the disqualification of the Proponent and its removal from contracts.

#### 11.2 Conflict of Interest

11.2.1 Proponents are required to declare, as part of their Proposal, that the Proponent is not aware of any perceived, potential or actual Conflict of Interest. For the purposes of this RFP, "**Conflict of Interest**" includes:

- (a) any situation or circumstances where, in relation to this RFP, the Proponent's other commitments, relationships or financial interests could or could be perceived to exert an improper influence over the objective, unbiased and impartial exercise of independent judgment by any member or representative of the Evaluation Team or the TVDSB;
- (b) any situation or circumstances where any member of the TVDSB board of trustees or any person employed by the TVDSB in any capacity:
  - (i) has a direct or indirect financial or other interest in any Proponent;
  - (ii) is an employee or a contractor to or under contract to any Proponent;
  - (iii) is negotiating or has an arrangement concerning future employment or contracting with any Proponent;
  - (iv) has an ownership interest in or is an officer or director or partner of any Proponent.
- (c) any situation where:
  - (i) a Proponent owns or controls, or beneficially owns or controls, directly or indirectly, another person, partnership or corporation (such person, partnership or corporation referred to as a "Related Party"); or
  - (ii) a Proponent is owned or controlled, directly or indirectly, by a Related Party, and such Related Party carries on business within one or more Service Categories.

11.2.2 If a Proponent discovers, at any time, any perceived, potential or actual Conflict of Interest, the Proponent shall promptly send a written statement to the RFP Coordinator describing the perceived, potential or actual Conflict of Interest, along with a written proposal that, if implemented, would address the identified perceived, potential or actual Conflict of Interest. The TVDSB will review the Proponent's written statement and proposal and, without limiting the generality of Article 9, the TVDSB may, in its sole discretion:

# Request for Proposal 670

## Student Homestay Program

- (a) disqualify the Proponent from participating in this RFP and/or remove the Proponent from one or more contracts;
  - (b) waive any and all perceived, potential or actual Conflict of Interest upon such terms and conditions, if any, as the TVDSB, in its sole discretion, requires to satisfy itself that the Conflict of Interest has been appropriately managed, mitigated and minimized.
- 11.2.3 The onus is on each Proponent to conduct any and all investigations necessary to confirm and satisfy itself that there is no perceived, potential or actual Conflict of Interest and that the declaration made as part of its Proposal is true and correct. If the TVDSB determines that a Proponent's declaration is not materially true and correct, or if a Proponent otherwise fails to comply with this Section 11.2, the TVDSB may disqualify the Proponent and/or may remove the Proponent from one or more contracts.

### 11.3 Confidentiality, Disclosure and MFIPPA

- 11.3.1 Proponents acknowledge that the contents of their Proposals will be disclosed to the Evaluation Team and others within TVDSB and/or to TVDSB's advisors. The TVDSB will use reasonable efforts to protect sensitive and confidential information provided by Proponents, however, the TVDSB shall not be liable in any way whatsoever if such information is disclosed, even if the TVDSB, its advisors, staff, members of the Evaluation Team, or any other person associated with them may have been negligent with respect to such disclosure. By delivering a Proposal each Proponent agrees to such disclosure and releases the RFP Coordinator, the Evaluation Team, and the TVDSB from any liability for the same.
- 11.3.2 The TVDSB may be required to disclose parts or all of a Proposal pursuant to the provisions of MFIPPA or other legislation. Subject to the provisions of MFIPPA, the TVDSB will use reasonable efforts to safeguard the confidentiality of any information identified by a Proponent as confidential, however, the TVDSB shall not be liable in any way whatsoever if such information is disclosed based on an order or decision made under MFIPPA or any other applicable law. By delivering a Proposal each Proponent agrees to such disclosure and releases the RFP Coordinator, the Evaluation Team, and the TVDSB from any liability for the same.

### 11.4 Award Does Not Constitute Endorsement

- 11.4.1 TVDSB's award of a contract to a Proponent does not constitute a general endorsement of that Proponent's work or services.

### 11.5 Limit of Liability

- 11.5.1 Each Proponent agrees that TVDSB's aggregate liability to any Proponent and the aggregate amount of damages recoverable by a Proponent against TVDSB for any and all claims relating to or arising from this RFP or a Proponent's participation in this RFP, including:
- (a) claims arising from negligence, wilful misconduct or other conduct; and/or
  - (b) claims arising from a breach of any contract or any contractual or other relationship or obligation that may arise as a result of a Proponent's participation in this RFP and/or delivery of a Proposal, shall be limited to the lesser of \$5,000 and the Proponent's reasonable demonstrated costs of preparing its Proposal.

## End of Instructions to Proponents



# Scope of Work

## Schedule A – Scope of Work

### Scope of Work

The Board is seeking an experienced, Canadian homestay company to undertake the homestay placements and supervision (custodianship) of minor students, while they attend TVDSB Elementary and Secondary Schools; both on an individual student and on a group of students' basis. The TVDSB currently hosts international students from twenty-two different countries. Approximately 80 of these students are currently in homestay. The TVDSB currently hosts approximately 250 international students in a variety of homestay living arrangements. Based upon current trends it is possible that TVDSB could be hosting approximately 400 students at the end of five years.

The majority of our international students are expected to be secondary school students. However, there is potential to expand the TVDSB International Student Program to the elementary level in the future. The TVDSB will accept both individual students and groups of students for both long and short-term programs.

The TVDSB may agree to permit other public organizations within Ontario to access any contract(s) that may result from this solicitation. The successful proponent(s) shall allow such access with the understanding that the participating organizations be responsible for their own contract management.

**End of Schedule**

# TVDSB Procurement Web Portal

## Schedule B – TVDSB Procurement Web Portal

This Schedule describes the process for accessing the Portal.

1. Go to “www.tvdsb.ca”
2. Click on “I’D LIKE TO”; and then click on “Go to Purchasing”.
3. Click on “Bids”; and then click on “Proceed to inquiry/download page”.
4. Locate the RFP and click “New” icon. You will be directed to the “TVDSB Client Portal”.
5. Proponents that already have a TVDSB Client Portal account: Click “TVDSB Login” and log in using your TVDSB Client Portal account and password.
6. Proponents that do not already have a TVDSB Client Portal account:
  - (a) Click “Sign up now”;
  - (b) Read the TVDSB Client Portal Disclaimer, scroll to bottom and click “I agree” or “I do not agree”.
  - (c) Proponents that click “I do not agree” will not be able to participate in the RFP.
  - (d) Proponents that click “I agree” will be taken to the “New Account Application” page. Complete the account information and click “Create My Account”; then click “TVDSB Login”.
7. Once logged in, you will be within the Client Portal. Click “Open to Bid” and then click on the “New” icon for the RFP.

To access answers to questions and addenda:

1. Follow the steps outlined in steps 1 to 3 above.
2. Proceed to the RFP and click “Answers to Questions”.

**End of Schedule**

## Schedule C – Submission Requirements

It is important that Proponents present the information required by this RFP so that it can be readily understood and evaluated. A Proponent's RFP Submission should address all of the items set out in this Schedule in the order in which they appear and using the same headings and numbering sequence. A Proponent's failure to follow instructions or failure to provide a full response to this RFP may have an adverse impact on the evaluation of its RFP Submission.

**Proponents should not assume that the TVDSB or any member of the Evaluation Team has any knowledge of the Proponent or its expertise, experience or qualifications, and should ensure that all required information is included and submitted as part of the Proponent's RFP Submission.**

**References to web / internet sites or links are NOT acceptable and will NOT be considered.**

Part 1	Completed and signed RFP Submission Form
Part 2	Proponent information
Part 3	Pricing
Part 4	Requirements

### 1. **Part 1 – Completed and Signed RFP Submission Form**

Submit a completed and signed RFP Submission Form (Schedule D) signed by the Proponent.

### 2. **Part 2 – Proponent Information**

The Proponent must provide the location and address of the Proponent's head office.

The Proponent must provide the number of the Proponent's employees in Ontario.

The Proponent **should** submit resumes of all staff members in a supervisory capacity who would be assigned to the work.

The Proponent **should** submit resumes (Curriculum vitae) for the Project Manager(s) and Site Superintendent(s) proposed for these project(s).

The Proponent **must** submit a listing of personnel and equipment to be assigned to TVDSB projects. Identify if equipment is owned, leased or rented.

The Proponent **should** submit a letter from a surety company licensed to do business in Ontario that your company is bondable for a 50% Performance Bond.

The Proponent **should** submit from its bonding company a letter indicating bonding capabilities and limitations.

The Proponent **should** submit a financial reference completed by a Canadian Bank or Financial Institution stating maximum credit limits and capabilities.

The Proponent **should** submit a letter from an insurance company (licensed to do business in the Province of Ontario) indicating its insurance limits for Comprehensive Commercial General Liability coverage. These limits **should** be in accordance with the current Standard Construction Document 2 (CCDC 2 - 2020), Section GC11.1. A minimum of \$5,000,000.00 for Comprehensive





# RFP Requirements

Commercial General Liability coverage is required. The proponent **must** ensure that all subcontractors are either covered under the proponent's policy(s) or have their own separate coverage similar to the above limits. In the event that the proponent does not have the minimum coverage the insurer should confirm that such coverage can be obtained if the proponent is pre-qualified.

The Proponent **must** state if its own vehicles and/or those vehicles owned by its employees or subcontractors shall operate on the property of the TVDSB

The proponent **should** submit a letter from an insurance company (licenced to do business in the Province of Ontario) indicating its insurance limits for Motor Vehicle Liability coverage). These limits **should** be in accordance with the current Standard Construction Document 2 (CCDC 2 - 2020), Section GC11.1. A minimum of \$2,000,000.00 Automotive Liability Insurance coverage is required for company owned vehicles and a minimum of \$1,000,000.00 for employee owned vehicles. The General Contractor **must** ensure that all subcontractors and any employees operating vehicles on property of the TVDSB are either covered under the proponent's policy(s) or have their own separate coverage similar to the above limits. In the event that the contractor does not have the minimum coverage, the insurer should confirm that such coverage can be obtained if the proponent is pre-qualified.

The successful proponent shall maintain, at its expense, insurance coverage for abuse with a limit of not less than Two Hundred and Fifty Thousand (\$250,000) Dollars for any one occurrence, written on a claim made basis.

The Proponent **should** submit a completed Workplace Injury Summary Report (WISR) document applicable to the Proponent.

The Proponent **should** submit a current Clearance Certificate from the Workplace Safety and Insurance Board.

The Proponent **should** submit a copy of their company's health and safety policy.

Proponents interested in pre-qualifying are advised that it is mandatory they have experience in expediting this type of work.

The Proponent **must** provide a minimum of three references where you have successfully completed projects of a similar nature. The reference **must** contain the following information:

Company Name  
Address  
Contact Name  
Phone Number  
Fax Number  
Email address

## **Part 3: Pricing**

Complete and return all information in Additional Forms

## **Part 4: Requirements**

Complete and return all information in Additional Forms

**End of Schedule**



## Schedule D – RFP Submission Form

Name and Business Address of Proponent:

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Phone: \_\_\_\_\_ Fax: \_\_\_\_\_

Contact name for future correspondence and inquiries:

Name and Title \_\_\_\_\_ Phone: \_\_\_\_\_

E-mail: \_\_\_\_\_

We have read and we fully understand, acknowledge, accept and agree to the terms, conditions and the requirements of the RFP Documents, including all Schedules and all addenda issued, and we hereby submit the forms, documents and other material required by the Submission Requirements. Without limiting the foregoing, we understand, acknowledge, accept and agree that:

- (a) the issuance of the RFP Documents, our preparation and delivery of our Proposal, and the receipt, review and evaluation of our Proposal will not create any contractual relations or obligations, including “Contract A” (sometimes referred to as the “bid contract”), between us and TVDSB;
- (b) notwithstanding that we may be awarded a contract, TVDSB has no obligation to issue any Work Orders;
- (c) if we receive the written notice described in paragraph 8.1 of the Instructions to Proponents we will sign and deliver the signed MSA to TVDSB within 15 business days of our receipt of the same;
- (d) the execution of a MSA does not obligate TVDSB to engage us to perform any projects;
- (e) Work orders, if any, will be issued in accordance with Section 8.2 of the Instructions to Proponents and will otherwise be subject to the other terms of the MSA;

We hereby represent that the documents and other material attached to this RFP Submission Form fully respond to Schedule C – RFP Requirements, are complete and accurate, and that TVDSB may rely on all such documents and material submitted.

Capitalized terms used in this RFP Submission Form and not otherwise defined shall have the meanings assigned to them in the Instructions to Proponents.



# RFP Submission Form

## 1. Conflict of Interest

If the box below is left blank, the Proponent will be deemed to declare that (a) there was no Conflict of Interest in preparing its Proposal; and (b) there is no foreseeable Conflict of Interest in performing the Services and / or delivering the Goods. Otherwise, if the statement below applies, check the box.

- ☐ We declare that there IS an actual or potential Conflict of Interest relating to the preparation of our Proposal, and/or we foresee an actual or potential Conflict of Interest in performing the Services and / or delivering the Goods.

If a Proponent declares an actual or potential Conflict of Interest by marking the box above, the Proponent must provide and attach details of the actual or potential Conflict of Interest as well as the Proponent's proposed steps that, if implemented, would address the identified actual or potential Conflict of Interest.

## 2. Attachments

We have attached all documents and other material required in response to Schedule C – Submission Requirements. Each attachment addresses the items listed in Schedule C in the order in which they appear, using the same headings and numbering sequence.

**Signed and submitted for and on behalf of:**

**Proponent** \_\_\_\_\_

**Date** \_\_\_\_\_

**Signature** \_\_\_\_\_

**Name and Title** \_\_\_\_\_

I have authority to bind the Proponent named above

**End Of Schedule**



# Master Services Agreement

## Schedule E – Master Services Agreement

*Refer to Master Services Agreement, attached separately.*

A Proponent's failure to sign and deliver the MSA in accordance with paragraph 8.1.1 will result in the removal of that Proponent from all VOR Lists on which the Proponent was placed.

It is the Proponent's responsibility to read and review the MSA prior to submission.

# Master Services Agreement General Services

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This Master Services Agreement (“MSA”) is made as of **XXX** (the “Effective Date”)

Between:

**XXXX**

a corporation existing under the laws of the **location**  
(the “Supplier”)

and

**Thames Valley District School Board**  
(the “Board”)

Whereas:

- A. The Board and the Supplier are signing this MSA in order to provide for the terms and conditions that will govern the performance by the Supplier of the Services.
- B. It is the intention of the parties that the terms and conditions of this MSA shall govern the underlying relationship between the Board and the Supplier, and that each signed Work Order, together with the terms and conditions of this MSA, shall constitute a separate Service Contract between the Board and the Supplier.

**Now Therefore**, based on mutual covenants mentioned above, both parties agree to enter into this MSA on the following terms and conditions:

## Article 1 Definitions

### 1.1 Definitions

Unless the context otherwise requires, capitalized terms not otherwise defined in this MSA shall have the meanings specified or referred to below. All references to an “Article” or “paragraph” are references to an Article or paragraph of the main body of this MSA and not to articles or paragraphs of any Appendix or any Work Order.

- (a) **“Applicable Laws”** means any domestic law, rule, statute, legislation, regulation, by-law, order, code, notice or direction issued by any federal, provincial or municipal government or regulatory authority which is or becomes in force after the Effective Date.
- (b) **“Board Representative”** means an inspector, manager, staff member, technician or any other employee or representative of the Board.
- (c) **“Change Order”** has the meaning ascribed to it in paragraph 14.2.
- (d) **“Change Request”** means a written proposed change to a Service Contract.
- (e) **“Claim”** means any actual, threatened or potential civil, criminal, administrative, regulatory, arbitral or investigative demand, allegation,

# Master Services Agreement

## General Services

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- claim, action, charge, suit, investigation or proceeding, or any other claim or demand.
- (f) **“Confidential Information”** has the meaning ascribed to it in paragraph 27.1.
  - (g) **“Consultant” or “consultant”**, if used in a Work Order, shall mean the Supplier.
  - (h) **“Effective Date”** is the date first written above.
  - (i) **“Force Majeure Event”** has the meaning ascribed to it in paragraph 18.1.
  - (j) **“Good Industry Practice”** means, in respect of any aspect of the Services or other actions or obligations contemplated in a Service Contract, in each case, that have been or ought to have been performed by the Supplier, and subject always to the Applicable Laws, the exercise of the degree of skill, diligence, prudence and foresight and practice which could reasonably and ordinarily be expected from a skilled and experienced supplier engaged in: (1) performing the same or similar responsibilities, actions or obligations as contemplated in a Service Contract; or (2) performing responsibilities, whether individually or as a package of responsibilities, which could reasonably be regarded as being comparable to the responsibilities contemplated in a Service Contract; in each case, performing its obligations under the same, reasonably comparable or similar circumstances.
  - (k) **“Indemnitees”** means the Board and its directors, officers, employees, advisors, agents, trustees, volunteers, contractors, consultants, successors and assigns but does not include the Supplier or anyone for whom the Supplier is responsible at law.
  - (l) **“Intellectual Property”** means in connection with a specified subject matter, on a worldwide basis, all registered or unregistered trade-marks, trade names, patents, copyrights, trade secrets, designs, rights of publicity and other industrial or intangible property rights of a similar nature, all grants and registrations worldwide in connection with the foregoing, and all other rights with respect thereto existing other than pursuant to grant or registration.
  - (m) **“Intellectual Property Rights”** means all Intellectual Property in or associated with the Program Data and all Intellectual Property which, or the subject matter of which, is at any time before or after the Effective Date created, brought into existence, acquired, used or intended to be used by the Supplier, or jointly by the Supplier and the Board, for the purpose of performing Services.
  - (n) **“Losses”** means, in respect of any matter, all Claims, losses (including, without limitation, any loss of use, revenue, profit or opportunity and any other commercial or economic loss of any kind), injuries (including, without limitation, injury to property, personal injury, bodily injury and death), damages (including, without limitation, incidental, indirect, special,

# Master Services Agreement

## General Services

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punitive, exemplary or consequential damages), liabilities, penalties, payments, deficiencies, charges, costs and expenses (including, without limitation, all legal and other professional fees, disbursements, interest, penalties and amounts) arising directly or indirectly as a consequence of such matter.

- (o) **“MSA”** means this master services agreement between the Board and the Supplier, including any schedules or appendices attached, any valid amendments or restatements, and any supplementary agreements and succeeding amendments thereto. For greater certainty, **“MSA”** does not include a Service Contract.
- (p) **“OHSA”** means the *Occupational Health and Safety Act* (Ontario) as amended, and all regulations passed under it.
- (q) **“Open Book”** means the interactive process between the Board and the Supplier under which the Supplier makes available to the Board all Records prepared or maintained by the Supplier in respect of each Work Order, each Service Contract, and this MSA. Open Book is an active, co-operative process between the Board and the Supplier and is in addition to and not in substitution of the Board’s rights pursuant to Article 31 (Audit Rights).
- (r) **“Personal Information”** means all personal information, as that term is defined in the *Municipal Freedom of Information and Protection Privacy Act* (Ontario) and the *Personal Information Protection and Electronic Documents Act* (Canada), in the custody or control of the Supplier or its Subcontractors other than personal information of employees of the Supplier or its Subcontractors and other than personal information that is wholly unrelated to this MSA and not derived directly or indirectly from the Board.
- (s) **“Program Data”** means all concepts, techniques, products, processes, drawings (including, without limitation, computer-aided designs and drawings), reports, documents, plans, software, methods, procedures and other data and materials (including images) developed, acquired, brought into existence or used, whether by the Supplier or jointly by the Supplier and the Board, in relation to the Supplier’s supply or performance of Services, including the solution resulting from the performance of any Service Contract by the Supplier, other than Intellectual Property Rights of third parties, such as commercially available and purchased software.
- (t) **“Records”** has the meaning ascribed to it in paragraph 31.1.
- (u) **“Service Contract”** means a contract for the supply of Services between the Board and the Supplier created upon the Board’s issuance of a Work Order and the Supplier’s acknowledgment and acceptance or performance of such Work Order. The terms of each Service Contract shall include and incorporate all of the terms and conditions of such Work

# Master Services Agreement

## General Services

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Order, including any documents attached or referred to in the Work Order, and all terms and conditions of this MSA.

- (v) **“Services”** means any work and/or services described:
- (i) in this MSA including in Appendix A – Statement of Work; and
  - (ii) in any Work Order, including in any schedules and attachments to the Work Order.

Services includes but is not limited to the supply of all staff, labour, services, products, materials, vehicles, equipment and everything else necessary to complete a Service Contract.

- (w) **“Subcontractor”** means a person or entity having a direct contract or agreement with the Supplier to perform a part or parts of a Service Contract, and includes material, equipment or other suppliers.
- (x) **“Term”** has the meaning ascribed to it in paragraph 1.1(t).
- (y) **“Total Completion”** means, in connection with a Service Contract, that:
- (i) the Supplier has completed all Services to the satisfaction of the Board; and
  - (ii) the Services meet all of the Board’s requirements set out in the Service Contract.
- (z) **“Work Order”** means a written request issued to the Supplier that describes the work and/or services required by the Board, and includes a purchase order issued by the Board.
- (aa) **“Work Product”** has the meaning ascribed to it in paragraph 16.1.

### 1.2 Interpretation

In this MSA, except where expressly otherwise provided:

- (a) the singular includes the plural and vice versa and any gender includes any other gender;
- (b) all usage of the word “including,” or the phrases “such as,” “inter alia” and “e.g.,” shall mean “including, without limitation,”;
- (c) the division of this MSA into separate articles, sections, paragraphs and Appendices and the insertion of headings is for convenience of reference only and shall not affect the construction or interpretation of this MSA;
- (d) words or abbreviations not otherwise defined that have well known or trade meanings are used herein in accordance with their recognized meanings;
- (e) all references to currency means lawful money of Canada.

### 1.3 Appendices

The Appendices listed below which are attached to this MSA are incorporated herein by reference and shall be deemed to be an integral part of this MSA:



# Master Services Agreement

## General Services

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- (a) Appendix A – Statement of Work.
- (b) Appendix B – Supplier's Submission, including price list.

### 1.4 Conflicts

If there is a conflict within the documents that comprise a Service Contract, the order of priority of documents, from highest to lowest, shall be:

- (a) this MSA, excluding Appendices;
- (b) the Work Order;
- (c) Appendix A – Statement of Work;
- (d) Appendix B – Supplier's Submission, including price list.

## Article 2

### Term

- 2.1 The term of this MSA shall be for a period of **XXX**, commencing on the Effective Date (the "**Term**").
- 2.2 If the Term ends, either as a result of expiry or termination of this MSA, while the Supplier is performing Services under one or more Service Contracts, the Term shall be automatically extended and this MSA shall continue in effect and in force with respect to such Service Contract(s) until all such Service Contract(s) have been completed or terminated, after which this MSA must immediately and automatically terminate.
- 2.3 Nothing in this Article shall affect or limit the Board's right to otherwise terminate this MSA in accordance with its terms.

## Article 3

### Time is of the Essence

- 3.1 Time is of the essence in the performance by the Supplier of its obligations under this MSA and each Service Contract.

## Article 4

### Criminal Background Check

- 4.1 The Supplier must obtain and provide the Board with a clear criminal background check for each individual performing any part of the Services that involves direct contact with Board students. Additionally, the Board reserves the right to request a clear criminal background check for any individual identified by the Board. The background check must be dated within six (6) months prior to the issuance of a Work Order and must be submitted to the Board upon receipt of the Work Order and before any Services commence. This requirement also applies to subcontractors.

# Master Services Agreement

## General Services

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- 4.2 The Board must have the unfettered and absolute right and discretion to order the Supplier to remove and replace, without cost to the Board, any individual who is unable to comply with paragraph **Error! Reference source not found..** Immediately upon receipt of such order the Supplier must make arrangements for the appointment of a replacement individual acceptable to the Board.

### Article 5

#### Work Order

- 5.1 The Board may, from time to time, issue a Work Order to the Supplier for the supply of Services described therein. Each Work Order will describe the work and/or services to be performed by the Supplier, the schedule for the performance of the Services (if applicable), as well as any additional instructions, directions or other information relevant to the performance of the Services.
- 5.2 The Supplier must review each Work Order and other information provided by the Board in connection with the Services. Should the Supplier discover any errors, omissions or inconsistencies in a Work Order or other information provided by the Board, the Supplier must notify the Board of such errors, omissions or inconsistencies.
- 5.3 The Supplier must acknowledge receipt of each Work Order and must commence performing the Services as and within the time specified in the Work Order. If the Supplier fails to do so, the Board reserves the right to contract with any other person to complete the Services and, in addition, the Board may note the Supplier in default under this MSA.
- 5.4 The parties agree that the signing of this MSA is not intended to and must not obligate the Board to issue any Work Order or otherwise engage the Supplier. The Supplier further understands, acknowledges and agrees that:
- (a) signing this MSA does not guarantee any fees or volume, level, value or quantity of Services and does not authorize or direct the performance of any Services;
  - (b) the Board has made no representations, promises, warranty, guarantee or agreement of any kind with regard to the fees or volume, level, value or number of Work Orders which the Supplier may receive or the Services it may perform under any Service Contract;
  - (c) the Supplier does not have an exclusive right to provide work and/or services to the Board during the Term.

### Article 6

#### Documents to be Submitted Before Commencing Services

- 6.1 Upon receipt of each Work Order and before commencing the performance of the Services under each Service Contract, the Supplier must deliver to the Board Representative, for each Service Contract:

# Master Services Agreement

## General Services

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- (a) a criminal background check in accordance with Article 4 (Criminal Background Check);
- (b) a current WSIB clearance certificate in accordance with paragraph 20.1;
- (c) copies of the certificates of insurance evidencing that the Supplier has in place the insurance policy(ies) required by Article 21 (Insurance);

### **Article 7**

#### **Invoicing and Payment**

- 7.1 Subject to any terms governing invoicing and payment that may be set out in a Work Order, invoicing and payment under each Service Contract will be as provided in this Article 7.
- 7.2 The Board will pay based on the fees and hourly rates set out in the Work Order, or as otherwise provided in Appendix B – Supplier's Submission. Such fees and hourly rates must be in effect and not subject to change for the duration of the Term.
- 7.3 The Supplier shall deliver to the Board a monthly billing statement no later than ten (10) business days after the end of each month based on the actual quantities of Services performed and accepted by the Board, and that billing statement shall include: (i) the Board reference number assigned to each Work Order (including any Board purchase order number) and/or Service Contract pursuant to which the Services were performed; (ii) the name and contact information of the Board Representative for each Service Contract being invoiced; (iii) a brief description of the Services performed; (iv) where payment is based on hourly rates, a breakdown of the Services performed and the number of hours; (v) a current WSIB clearance certificate; (vi) invoicing contact name and address; (vii) applicable taxes, if payable by the Board, identified as separate items, and (viii) such other information as may be required by the Board or Applicable Laws.
- 7.4 All billings and invoices shall be submitted in hardcopy and/or electronic format, as the Board may direct, and shall include all supporting documents and information that the Board may reasonably require.
- 7.5 The Supplier shall provide accurate and timely invoices to the Board and will promptly address billing inaccuracies through system and business process changes in order that the Board consistently receives accurate and timely invoices.
- 7.6 The Board will pay amounts properly owing to the Supplier within 45 days of the date of the Board's receipt of the Supplier's billing statement. Where required by Applicable Laws, payments shall be subject to the deduction of holdback.
- 7.7 If the Board disputes all or any part of an invoice, the Board and the Supplier will use commercially reasonable efforts to resolve the dispute after the Board provides notice to the Supplier of the disputed amount. The Board will have the

# Master Services Agreement

## General Services

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right to withhold payment of any invoiced amounts that are disputed until the parties reach agreement with respect to such disputed amounts, and such withholding of disputed amounts will not be a breach of any Service Contract or this MSA.

- 7.8 No payment by the Board shall constitute an acceptance of any Services which are not in accordance with the requirements of a Service Contract.
- 7.9 The Board may withhold payment of any invoice or part of invoice to the extent required to offset any previous over-payment made to the Supplier or to the extent as may be necessary to protect the Board from loss or damage as a result of:
- (a) Supplier's failure to perform any of its material obligations under a Service Contract or this MSA, or where the Supplier is otherwise in default under any Service Contract and any such default is continuing;
  - (b) Services which are defective or which have not been performed in accordance with a Service Contract or in accordance with Applicable Laws; or
  - (c) the Supplier's failure to apply for payment in compliance with the requirements of a Service Contract.
- 7.10 Where the Board has withheld payment to the Supplier, the Board must be entitled to apply the funds withheld toward the cost of any required remedial services or toward Losses suffered and for which the Board is entitled to compensation.
- 7.11 The Supplier will be responsible for all taxes and amounts eligible on, imposed, in respect of, or relating to amounts received by the Supplier under a Service Contract, including taxes based on its own capital or net income, employment taxes in respect of its own workers, and taxes on any property owned by the Supplier, and will be responsible for arrangements to pay all such taxes in a timely manner when due and payable.

### **Article 8**

#### **Supplier's Performance of the Services**

- 8.1 In performing the Services under each Service Contract the Supplier must protect the image and/or reputation of the Board and must exercise a standard of care, skill, judgment and diligence that would normally be exercised by an experienced, skilled and prudent person supplying similar services. The Supplier acknowledges and agrees that the Supplier's obligations, duties and responsibilities under each Service Contract must be interpreted in accordance with this standard. The Supplier must exercise the same standard of care, skill, judgment and diligence in respect of any Subcontractors, products, materials, personnel or procedures which it may use in relation to the Services.

# Master Services Agreement

## General Services

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- 8.2 The Supplier must provide the expertise and resources, such resources including manpower and equipment, as are necessary to:
- (a) ensure conformity and compliance with all of the requirements of a Service Contract and so as to maintain the progress of the Services in accordance with the requirements, milestones and schedule set out, and so as to achieve Total Completion by the date specified in, each Service Contract; and
  - (b) effectively direct and supervise the Services.

- 8.3 The Supplier must perform and complete the Services under each Service Contract in accordance with:
- (a) the terms and conditions of each Work Order and this MSA;
  - (b) modern practice and all Applicable Laws, and must employ only good workmanship;
  - (c) Good Industry Practice;
  - (d) the milestones and/or schedule and within the time specified in each Work Order, or within such time period which may be agreed between the Board and the Supplier.

Without limiting the generality of the foregoing, the Supplier is responsible for the interconnection of the various parts of the Services under each Service Contract so that no part shall be left in an unfinished or incomplete condition owing to any disagreement between Subcontractors, or between any of the Subcontractors and the Supplier, as to where the services of one begin or end with relation to the services of the other.

- 8.4 The Supplier acknowledges and agrees that all Services which are reasonably inferable as being necessary to complete a Service Contract must be included in and provided by the Supplier as part of the Services to be performed, at no additional cost to the Board. When completed, the Services must meet all of the Board's requirements set out in the Work Order or as may otherwise be reasonably inferable therefrom. If there is any conflict or disagreement in this respect, the Board's interpretation must govern.

- 8.5 The Supplier must submit details of the procedures, arrangements and methods which the Supplier proposes to adopt for its performance of the Services under a Service Contract, including:
- (a) the process and criteria for hiring Subcontractors, if any;
  - (b) the policies and procedures for the backup, storage in safe custody and secured transfer or transmission of all electronic and other data, materials, documents and information.

The Supplier must not make any changes to these arrangements and methods without the Board's prior written consent, such consent not to be unreasonably withheld. If the Board makes any comments on the Supplier's proposed

# Master Services Agreement

## General Services

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- arrangements or methods, the Supplier will incorporate such comments and promptly submit revised details for the Board's review.
- 8.6 The Supplier must ensure the backup, storage in safe custody and secured transfer or transmission of all electronic and other data, materials, documents and information, including Program Data and Personal Information, in accordance with Good Industry Practice. The Supplier must comply and must cause its Subcontractors to comply with all procedures for the backup, storage in safe custody and secured transfer or transmission of such electronic data, materials, documents and information to which the Board has not objected. In the event of any amendments to the foregoing procedures, the Supplier will provide the Board with sixty (60) days' prior notice of the implementation of such amendments.
- 8.7 The Supplier must not suspend the performance of the Services under any Service Contract or any part thereof without the Board's prior written consent, with the exception of situations where safety of persons and/or property may be in jeopardy. The Supplier will notify the Board immediately following suspension of Services pursuant to this paragraph with a written detailed explanation of the reasons for such suspension.
- 8.8 The Board may at any time, and for any reason, instruct the Supplier to suspend progress of part or all of the Services under a Service Contract. Should a suspension last for thirty (30) days or more, the Board may at its option delete the suspended Services from the scope of the Service Contract, without in any way affecting the remainder of the Service Contract.
- 8.9 The Board, under special circumstances, may require the Supplier to perform Services during nights, on weekends and/or on holidays. The Supplier acknowledges that it is the Supplier's responsibility to obtain all required authorizations and approvals from the Board and from authorities having jurisdiction, and to take adequate measures to ensure performance of the Services in accordance with the terms of each Service Contract.
- 8.10 The Supplier must obtain and maintain, at its own cost and expense, all licences, permits, certificates, registrations, approvals and all required authorizations required by any government department, ministry or agency which may be necessary to:
- (a) perform the Services in compliance with all Applicable Laws; and
  - (b) ensure performance of the Services at such time or times as may be required by a Service Contract, including evenings and weekends.
- 8.11 The Supplier must provide and pay for all labour, products, materials, equipment, tools, transportation and all other facilities, services and everything else necessary for the proper performance and completion of the Services.



# Master Services Agreement

## General Services

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- 8.12 The Supplier must monitor the progress of the Services and must advise in writing of any variation from the schedule or any milestone dates, or any slippage in the schedule, within 24 hours of such variation or slippage becoming apparent. If at any time it should appear that the actual progress of the Services is behind schedule or is likely to fall behind schedule, the Supplier must take appropriate steps, including assigning additional resources at no additional cost to the Board, to cause the actual progress of the Services to conform to the schedule and to achieve Total Completion by the date specified in a Service Contract.
- 8.13 The Supplier must:
- (a) ensure that all Supplier personnel and Subcontractors have sufficient abilities, skills, knowledge, training, qualifications and experience to safely perform the Service;
  - (b) ensure that all Supplier personnel and Subcontractors have photo identification;
  - (c) ensure that all Supplier personnel and Subcontractors sign in/out at each Board site visited to perform the Services;
  - (d) ensure that sufficient reserve and replacement personnel, including supervisory personnel, are available to perform the Service at all times;
  - (e) comply with and implement, and must cause all Supplier personnel and Subcontractors to comply with and implement, all of the Board's policies, procedures, rules and guidelines (including security regulations in effect at all of the Board sites) which are applicable to the Services;
  - (f) ensure that all Supplier personnel and Subcontractors:
    - (i) are at all times alert, polite and courteous towards Board staff and students and towards the public; and
    - (ii) maintain the highest standards of courtesy and consideration in all dealings with the Board staff and students and with the public, and wear appropriate attire and use vehicles in good repair; and
    - (iii) at all times protect and promote the image and reputation of the Board.
- 8.14 The Supplier shall make best efforts to ensure continuous improvement in the way the Services are performed having regard to a combination of economy, efficiency and effectiveness. The Supplier may propose changes to improve the economy and efficiency of the Service for the Board's consideration and approval.
- 8.15 The Supplier shall maintain full and complete Records and shall afford the Board Open Book access to the Records at all reasonable times.

# Master Services Agreement

## General Services

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### **Article 9**

#### **The Board**

- 9.1 In no event shall the Board have control over, charge of, or any responsibility for methods, techniques, sequences or procedures in connection with the Services, or for coordinating or supervising any portion of the Services, notwithstanding any of the rights and authority granted to the Board in this MSA or any Service Contract. No comments, suggestions, directions or instructions from the Board are to be relied upon or assumed to reduce or replace the Supplier's obligations or relieve the Supplier of any of its obligations, and the Board shall in no way accept or be deemed to have created any duty, responsibility or liability for errors, inconsistencies or omissions in any Services delivered by the Supplier.
- 9.2 The Board is the prime interpreter of the terms and conditions of this MSA or any Service Contract. No deviations shall be made by the Supplier without the Board's prior written approval.

### **Article 10**

#### **Subcontractors**

- 10.1 The Supplier may only subcontract the performance of the Services or any part thereof with the Board's prior written consent, which may not be unreasonably withheld, and shall cease to so subcontract if the Board withdraws its consent, and the Supplier agrees to employ only those Subcontractors approved by the Board. The Supplier shall not change the approved Subcontractors without the Board's prior written approval.
- 10.2 The Supplier must preserve and protect the rights of the parties under each Service Contract with respect to that part of the Services to be performed under subcontract, and:
- (a) must enter into contracts or agreements with Subcontractors to require them to perform their work as provided in each Service Contract;
  - (b) must incorporate the terms and conditions of the Service Contract (including this MSA) into all contracts or agreements with Subcontractors;
  - (c) must ensure that all Subcontractors are at all times properly and sufficiently trained and instructed in the task or tasks to be performed; and
  - (d) must not be relieved of any responsibilities or obligations under a Service Contract that are performed by a Subcontractor.
- 10.3 The Supplier must be as fully responsible to the Board for acts, omissions, defaults or neglect of any Subcontractor or its agents or persons directly or indirectly employed by the Subcontractor in all respects as if they were the acts, omissions, defaults or neglect of the Supplier.
- 10.4 The Board, acting reasonably, must have the right to order the Supplier to remove a Subcontractor and/or any representative or employee of the Supplier or



# Master Services Agreement

## General Services

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a Subcontractor who, in the Board's opinion, is or is likely to be detrimental to the successful performance and/or completion of a Service Contract.

### **Article 11**

#### **Supplier's Control, Coordination and Supervision Activities**

- 11.1 The Supplier must have total control of the Services and must effectively schedule, coordinate, direct and supervise the Services so as to ensure conformity with all of the requirements of a Service Contract, including maintaining the required schedule for the completion of the Services. The Supplier must be solely responsible for the methods, techniques, sequences and procedures and for coordinating the Services.
- 11.2 Notwithstanding paragraph 11.1, Supplier agrees that it must fully incorporate and comply with all of the Board's policies and procedures which are relevant to any activity to be performed under a Service Contract. Supplier must inquire from the Board if such policies or procedures exist and the Board agrees that it will use reasonable efforts to communicate to Supplier all relevant policies and procedures.
- 11.3 In the event of an emergency threatening health, life or property, the Supplier must take such immediate action as may be reasonably necessary to save lives and protect persons from injury and, this being done, must take steps to protect and preserve property. The Supplier must notify the Board of such emergency as promptly as is practical under the circumstances.
- 11.4 The Supplier must appoint a competent supervisor and necessary assistants who must be in attendance while Services are being performed. The supervisor must not be changed for the duration of a Service Contract except for valid reasons and only after the Supplier has obtained the Board's prior written approval to the change.
- 11.5 The Supplier must provide to the Board (and keep updated) an approved employee list, listing all of the Supplier's personnel, including supervisors, and the job titles of those providing Services to the Board under each Service Contract. The Supplier must notify the Board within three (3) days if an employee is no longer employed and must be removed from the approved employee list.
- 11.6 The Supplier must ensure all employee records, including but not limited to training, licenses and certificates are kept up to date. Copies of such records must be provided to the Board Representative or his/her designate upon request.

### **Article 12**

#### **Supplier on Location**

- 12.1 The Supplier will have full control of all Services.

# Master Services Agreement

## General Services

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- 12.2 The Supplier will perform the Services in an orderly state appropriate to the avoidance of danger to persons, equipment, tools and property. The Supplier must take all reasonable steps at its own cost to protect the environment on and off the site and to avoid damage or nuisance to persons or to property resulting from pollution, noise or other causes arising as a consequence of the Supplier's operations.
- 12.3 The Supplier must protect Board property and any other property from damage which may arise as a result of the Supplier's operations, and must be responsible for such damage. Should the Supplier damage any property, the Supplier must be responsible for rectifying such damage at the Supplier's expense and must make good, at no additional cost to the Board, all surfaces disturbed by the performance of the Services.
- 12.4 The Supplier must perform the Services without interfering with the work of Board employees, other contractors, or the Board's ongoing operations, and must be responsible for all damages to persons or property occurring in connection with the Services until Total Completion and thereafter as may be provided in a Service Contract.

### Article 13

#### Not Used

### Article 14

#### Change Requests and Change Orders

- 14.1 The Board, without invalidating a Service Contract, may make changes to the Service Contract by issuing a written Change Request. The Supplier must promptly submit to the Board a written response setting out a method of adjustment or an amount of adjustment of the fees under the Service Contract, if any, and the adjustment of the schedule, if any, resulting from the change described in the Change Request.
- 14.2 When the parties agree to the adjustment in the fees and schedule, if any, or to the method to be used to determine the adjustment(s), the parties will both sign the Change Request to evidence their agreement (such signed Change Request to be referred to as a "**Change Order**"), which will be effective immediately. All changes described in a Change Order must be performed in accordance with the terms of the Service Contract, except to the extent specifically altered by the Change Order. Provided that, for greater certainty, a Change Order must not be used to amend or vary the terms and conditions of this MSA.
- 14.3 If the Supplier forms the opinion that any work or services requested by the Board during the course of a Service Contract are not part of the Services to be performed under the Service Contract and, if performed, would entitle the Supplier to additional fees and/or an adjustment in the schedule, the Supplier must, prior to performing the requested work or services and, in any event, within three (3) business days of the Board's request, deliver to the Board a written

# Master Services Agreement

## General Services

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notice setting out the Supplier's position on the matter and indicating the requested amount of additional fees and/or the requested adjustment in the schedule. If the Board accepts the Supplier's claim for additional fees and/or an adjustment in the schedule, the Board will issue a Change Request. Except in the event of compelling circumstances, should the Supplier fail to provide timely written notice or should the Supplier undertake the requested work or services without a Change Order, the Supplier may, at the Board's sole option, be disentitled from receiving any additional fees or an adjustment in the schedule for performing the requested work or services.

- 14.4 If the Board does not accept a claim by the Supplier for additional fees or for an adjustment in the schedule made pursuant to paragraph 14.3, or if the Board requires the Supplier to proceed with a change to a Service Contract before the parties have agreed on the corresponding adjustment in the fees and/or schedule as provided in paragraph 14.2, the Board may direct the Supplier to perform the change or the disputed work or services. The Supplier must comply with such direction without prejudice to any right the Supplier may have to assert a Claim for additional fees or an adjustment in the schedule, and the Supplier must maintain detailed Records of the work or services performed and the time spent by the Supplier's and Subcontractors' personnel, and any disbursements incurred to perform the change or the disputed work or services.
- 14.5 Subject to paragraph 14.1, the Supplier must not perform a change to a Service Contract without a Change Order and no bill, invoice, or Claim for payment based on verbal orders will be considered or accepted. Without limiting the generality of the foregoing, under circumstances of urgency, the Supplier may perform a change to a Service Contract or additional work or services without a Change Order where it has received from the Board Representative some form of written or electronic communication directing or agreeing to the change.
- 14.6 The Supplier agrees that changes resulting from coordination including, but not limited to, Subcontractor coordination, are included in the Service Contract fees and must not entitle the Supplier to claim any increase in fees.
- 14.7 The Supplier must not be entitled to maintain a Claim for damages, loss of profit or anticipated profit, or any other Losses at any time due to a Change Order which results in a reduction or deletion of any portion of the Services.

### **Article 15**

#### **Not Used**

### **Article 16**

#### **Ownership of Work Product and Intellectual Property Rights**

- 16.1 Subject to paragraph 14.4, all designs, documents, plans, drawings, reports, processes, technology, techniques, methods and information prepared, conceived of, produced or delivered by the Supplier in the course of this MSA and/or any Service Contract (collectively the "**Work Product**") and all Intellectual

# Master Services Agreement

## General Services

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Property in and/or generated or derived as part of and/or incorporated into the Work Product must become the property of the Board (collectively the **“Board Property”**). All Intellectual Property Rights, together with the electronic data and computer programs created as part of the Work Product and which are necessary for the effective use of the Work Product, are and must become upon creation and must remain Board Property. To the extent the same are not transferable to the Board, the Supplier hereby grants to the Board an exclusive, perpetual and irrevocable license to use the same for such purpose as the Board must desire in its sole discretion. For certainty, the Board’s rights in and to the Board Property include, but are not limited to, the right to use and modify the Work Product without obtaining the consent of or providing notice to the Supplier.

- 16.2 Board Property must not include Intellectual Property of the Supplier or any Subcontractor that was developed prior to or independent of the Services and without reference to or reliance upon Board Confidential Information (collectively, **“Supplier Property”**). To the extent any Supplier Property is incorporated, in whole or in part, into the Services or any Work Product, the Board agrees and its assigns must have a non-exclusive, royalty-free, irrevocable, world-wide, perpetual license and right to use, reproduce, disclose and distribute such Supplier Property including, without limitation, in connection with any operation, modification, maintenance, or replication of the Services and/or the Work Product.
- 16.3 Supplier must, at its own expense, defend, indemnify and hold harmless the Indemnitees from and against all Claims and Losses arising out of or related to any actual or alleged infringement, violation or misappropriation of any Intellectual Property Rights of any Subcontractor or other third party incorporated in the Services, the Work Product or otherwise relating to or arising out of the Services or any part or parts thereof. In addition, Supplier must, at its own expense, promptly take the following actions in the listed order of priority if any Services or part thereof become, or are likely to become, the subject of an infringement, violation or misappropriation claim: (a) secure the right to continue using the Services and any part thereof; or (b) replace or modify the Services or part thereof to make it non-infringing, such that the replacement or modification must not degrade the performance or quality of the affected component of the Services.

### Article 17

#### Privacy and Security Standards for the Collection, Use and Retention of Personal Information

- 17.1 The Supplier acknowledges the importance of maintaining the confidentiality and privacy of Personal Information and that the Records and Personal Information belong exclusively to the Board.

# Master Services Agreement

## General Services

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The Supplier acknowledges that the obligations regarding Personal Information continue to apply, regardless of any changes to a vendor's business name, structure, ownership, or bankruptcy.

- 17.2 The Supplier must, and must require Subcontractors to, only collect, hold, process, use, store and disclose Personal Information with the prior written consent of the Board and only to the extent necessary to perform the Supplier's obligations a Service Contract.
- 17.3 The Supplier must, and must require Subcontractors to, at all times:
- (a) treat Personal Information as strictly confidential and comply with all Applicable Laws related to the collection, transmission, maintenance, right of access, and use of Personal Information;
  - (b) use the Personal Information only for the purpose of and only to the extent necessary to perform Services;
- treat Personal Information as Confidential Information and not disclose Personal Information to any third party (including Supplier's affiliates) without the prior written consent of the Board which may not be unreasonably withheld;
- (d) limit access to Personal Information to those persons with a need-to-know for the purposes of a Service Contract;
  - (e) not collect, create, handle, use, copy, disclose, dispose of or destroy any Personal Information except as necessary to perform the obligations under a Service Contract or when compelled to do so, at which point the Supplier must notify the Board of such an event;
  - (f) use, without limitation, physical, organizational and technological measures to safeguard Personal Information so as to protect Personal Information from loss, theft, unauthorized use, access, disclosure, copying, alteration or destruction. Specific safeguarding methods include, but are not limited to, access controls, encryption or other suitable means as agreed upon by the Board and, when transmitting, providing to or otherwise making Personal Information available to the Board in an electronic form (including data files sent by e-mail), ensuring that such Personal Information is password-protected;
  - (g) retain and destroy the Records as per the agreed upon schedule;
  - (h) maintain, return or destroy, at the direction of and in the manner and at such time as required by the Board, all Personal Information, in whatever form, obtained in relation to a Service Contract and provide a destruction certificate (when applicable);

# Master Services Agreement

## General Services

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- (i) take all such further steps as may be reasonably requested by the Board to ensure compliance with all Applicable Laws related to the collection, maintenance, right of access, and use of Personal Information;
- (j) notify the Board of Personal Information breaches or related security incidents within 24-hours.

### Article 18

#### Force Majeure

- 18.1 If and to the extent that a party's performance of any of its obligations under a Service Contract is prevented, hindered or delayed directly or indirectly by any cause or event beyond such party's reasonable control including but not limited to fire, flood, earthquake, elements of nature or acts of God, acts of war, states of belligerency, acts of the public enemy, power or utility failures that extend beyond one day, labour disputes, strikes, lock-outs, abnormally adverse weather conditions, material changes in laws or regulations, terrorism, riots, or civil disorders (each a "**Force Majeure Event**"), then the nonperforming, hindered or delayed party will be excused from such non-performance, hindrance or delay, as applicable, of those obligations to the extent affected by the Force Majeure Event for as long as such Force Majeure Event continues and such party continues to use efforts consistent with Good Industry Practice to promptly recommence performance, including through the use of alternate sources, workaround plans, or other means. The party whose performance is prevented, hindered or delayed by a Force Majeure Event will promptly notify the other party by telephone (confirmed in writing as soon as possible following the inception of the delay) of the occurrence of the Force Majeure Event, and describing in reasonable detail the nature of the Force Majeure Event, and the parties must engage in good faith negotiations to arrange achievement of the Service Contract's purposes through alternative methods. The party claiming that a Force Majeure Event has occurred will bear the burden of proving the existence of such Force Majeure Event and its consequences.
- 18.2 Neither party must be liable to the other for any delay or non-performance of its obligations under a Service Contract or this MSA in the event and to the extent that such delay or non-performance is due to a Force Majeure Event, and so long as the nonperforming or delayed party continues to use efforts described in paragraph 18.1 to recommence performance.
- 18.3 The party whose performance is prevented, hindered or delayed by a Force Majeure Event may suspend such performance under this MSA and any Service Contract, in whole or in part, for the duration of the Force Majeure Event (save and except for continuing to use efforts described in paragraph 18.1 to recommence performance) and must resume performance of the MSA and any Service Contract once the Force Majeure Event ceases.
- 18.4 If the Supplier's performance under a Service Contract becomes substantially suspended as a result of a Force Majeure Event for a continuous period



# Master Services Agreement

## General Services

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exceeding thirty (30) days, the Board must have the right to modify the unperformed part of the Service Contract. In such case the Supplier may invoice the Board for the value of the Services actually completed for which the Supplier has not yet invoiced. Subject to any right of set off available to the Board, the Board will pay such invoice in accordance with Article 7 (Invoicing and Payment).

### Article 19

#### Termination of a Service Contract and/or the MSA

- 19.1 It is understood and agreed that if this MSA is ends or is terminated while the Supplier is performing Services under one or more Service Contracts, the MSA must continue in force and effect but only with respect to such Service Contract(s) and only until all such Service Contract(s) have been completed or terminated, after which this MSA must immediately and automatically terminate.
- 19.2 If the Supplier should be adjudged bankrupt, or makes a general assignment for the benefit of creditors, or if a receiver is appointed over the Supplier's business or assets, the Board may, without prejudice to any other right or remedy it may have, by giving the Supplier or receiver or trustee in bankruptcy notice in writing, terminate this MSA and any Service Contract.
- 19.3 Either party may terminate an individual Service Contract by giving written notice to the other party if:
- (a) the other party materially breaches the Service Contract and such breach is not cured within ten (10) business days or within such other period of time as may be agreed to between the parties after the other party receives written notice of such material breach; or
  - (b) a Force Majeure Event exists which has a material adverse effect on the affected party's ability to perform its obligations under the Service Contract for a period in excess of thirty (30) days and the parties have been unable to find an equitable solution; or
  - (c) the other party abandons or otherwise plainly demonstrates the intention not to continue performance of its obligations under the Service Contract.
- 19.4 Without prejudice to and without limiting its rights under paragraph **Error! Reference source not found.**, either party may terminate this MSA by giving written notice to the other party if:
- (a) the other party materially breaches this MSA and such breach is not cured within ten (10) business days or within such other period of time as may be agreed to between the parties after the other party receives written notice of such material breach; or
  - (b) a Force Majeure Event exists which has a material adverse effect on the affected party's ability to perform any of its obligations under this MSA for a period in excess of thirty (30) days and the parties have been unable to find an equitable solution; or

# Master Services Agreement

## General Services

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- (c) the other party abandons or otherwise plainly demonstrates the intention not to continue performance of its obligations under this MSA.
- 19.5 The Board may notify the Supplier in writing that the Supplier is in default of its obligations under this MSA and/or a Service Contract if the Supplier:
- (a) refuses or fails to acknowledge receipt of and/or refuses or fails to perform a Work Order;
  - (b) refuses or fails to deliver any of the documents required by Article 6;
  - (c) refuses or fails to perform the Services under a Service Contract when scheduled or to diligently perform the Services or any part thereof; or,
  - (d) refuses or fails to supply sufficient and properly skilled personnel for the scheduled performance of a Service Contract or any Services; or,
  - (e) fails to promptly complete the Services under a Service Contract in accordance with the applicable schedule; or,
  - (f) fails to obtain the Board's consent prior to employing Subcontractors; or,
  - (g) fails to make payments due to Subcontractors or employees; or,
  - (h) fails to comply with its obligations under OHSA, including those described in Article 20; or,
  - (i) neglects, disregards or refuses to perform a Service Contract in accordance with its requirements, or to comply with all Applicable Laws governing a Service Contract; or,
  - (j) assigns a Service Contract or this MSA without the Board's prior written consent; or,
  - (k) otherwise violates the provisions of a Service Contract or this MSA to a substantial degree.
- 19.6 If the Board issues a written notice pursuant to paragraph **Error! Reference source not found.** the Board may, without prejudice to any other right or remedy it may have, instruct the Supplier to correct the default in the five (5) business days immediately following the receipt of such notice. If the correction of the default cannot be completed within the five (5) business days specified, the Supplier must be considered to be in compliance with the Board's instructions if the Supplier:
- (a) commences the correction of the default within the specified time; and,
  - (b) provides the Board with an acceptable schedule for such correction; and,
  - (c) corrects the default in accordance with such schedule.
- 19.7 If the Supplier fails to correct the default in accordance with and within the time specified in paragraph **Error! Reference source not found.**, the Board may, without prejudice to any other right or remedy:



# Master Services Agreement

## General Services

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- (a) arrange for the correction of such default and deduct the costs thereof from any payment then or thereafter due to the Supplier under any Service Contract; and/or
  - (b) terminate the Supplier's right to continue the Services and/or one or more Service Contracts, in whole or in part; and/or
  - (c) terminate this MSA.
- 19.8 The Board may terminate a Service Contract and/or this MSA at any time and for any or no reason. In such event, the Board must pay for all Services performed by the Supplier up to the effective date of termination and for such additional costs, if any, directly flowing from such termination and which are a reasonable consequence of the termination, but excluding the costs of the Supplier's head office personnel and overhead, and excluding all consequential, indirect or special damages, and all Claims for loss of profit or opportunity. The Board must not be liable to the Supplier for any other Claims or Losses whatsoever arising from such termination.

## Article 20

### Workers' Compensation and Safety

#### 20.1 Workers' Compensation

The Supplier must provide and maintain workers' compensation coverage for all Supplier employees engaged to perform the Services. The Supplier must provide proof of this coverage to the Board upon receipt of each Work Order and with each billing statement and invoice.

#### 20.2 Safety

- (a) General.
  - (i) The Supplier must ensure all Services are performed strictly in accordance with the provisions and regulations of OHSA, and the Supplier must at all times comply with all other applicable federal, provincial and municipal legislative requirements, regulations and standards having application to the Services, including all applicable federal, provincial or municipal legislative requirements, regulations and standards relating to occupational health and safety, and all other rules, guides, guidelines and industry best practices having application to the Services.
  - (ii) The Supplier represents and warrants to the Board that appropriate health and construction safety instruction and training have been provided and will be provided to the Supplier's employees and Subcontractors attending a project site at which Services are being performed. No comments, suggestions or instructions from the Board are to be relied upon or assumed to reduce or replace the Supplier's obligations under paragraph 20.2.

# Master Services Agreement

## General Services

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- (iii) The Supplier must comply, and must cause all of its Subcontractors and employees to comply, with the instructions, directions, rules and procedures of the person identified as the “constructor” under OHSA.
- (b) The Supplier must indemnify, defend and save harmless the Indemnitees from and against any and all Claims and Losses and all other consequences arising from any and all safety infractions under a Service Contract, including the payment of legal fees and disbursements on a full indemnity basis, except where, the Supplier having fully complied with its obligations under paragraph 20.2, such safety infractions arise solely from a negligent act of any Indemnitees.

### Article 21 Insurance

- 21.1 The Supplier must maintain and pay for the following insurance policies, each to be underwritten with an insurer acceptable to the Board:
  - (a) Commercial General Liability (CGL) insurance in the amount with limits of coverage of not less than \$5,000,000 per occurrence. A combination of CGL and Umbrella policies is permitted.
  - (b) Automobile Insurance with limits of coverage of not less than \$2,000,000 per occurrence. A combination of Automobile Insurance and Umbrella policies is permitted.
  - (c) Professional Liability Insurance with limits of coverage of not less than \$1,000,000 per claim.
- 21.2 Each policy of insurance (certificates of which will be provided to the Board prior to commencement of Services under any Service Contract) must:
  - (a) be placed with insurers licensed to underwrite insurance in Ontario;
  - (b) include the Board as an additional named insured in respect of all operations performed by or on behalf of the Supplier;
  - (c) must not be altered, cancelled or allowed to expire or lapse without thirty (30) days’ prior written notice to the Board.
- 21.3 Except for policies of automobile insurance, all insurance policies secured and maintained by the Supplier must be primary and must include clauses stating each underwriter and insurer will waive all rights of recovery, under subrogation or otherwise, against any Indemnitees, and will not call into contribution any insurance maintained by the Board.
- 21.4 The Supplier will be entirely responsible for the payment of deductibles under all insurance policies.
- 21.5 The Board’s acceptance of the Supplier’s delivery of any document evidencing the required policies of insurance does not constitute approval or agreement by

# Master Services Agreement

## General Services

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the Board that the insurance requirements have been met or that the insurance policies are in compliance with the requirements of this MSA or any Service Contract. Failure by the Board to identify a deficiency from evidence provided will not be construed as a waiver of the Supplier's obligation to maintain the insurance policies required by this MSA or any Service Contract.

- 21.6 The fact that the Supplier has obtained the insurance required by this MSA or any Service Contract must in no way reduce or otherwise affect the Supplier's obligations or liabilities under this MSA or any Service Contract, and by requiring insurance the Board does not represent that coverage and limits will necessarily be adequate to protect the Supplier.
- 21.7 The insurance effected or procured by the Supplier will not reduce or limit the Supplier's contractual obligation to indemnify and defend any Indemnitees from Claims or Losses which result from or are connected with the performance of this MSA or any Service Contract.

### **Article 22**

#### **Not Used**

### **Article 23**

#### **Indemnification**

- 23.1 The Supplier must be liable for and must defend, indemnify and hold harmless the Indemnitees prior to, during, and after the Term, from and against all Claims and Losses by whomsoever made, brought or prosecuted in any manner relating to, in connection with, arising out of, resulting from or attributable, directly or indirectly, to the Supplier's or any Subcontractor's performance or non-performance or breach of this MSA or any Service Contract, regardless of whether or not caused in part by an Indemnatee. It is expressly understood that the Supplier will save the Indemnitees harmless from all Claims and Losses made by any party other than the Supplier itself relating to the Services performed and furnished by the Supplier or by others under this MSA or any Service Contract.

### **Article 24**

#### **Limit of Liability**

- 24.1 Subject to paragraph 24.2, neither party must be liable for any special, indirect, incidental, consequential or punitive damages.
- 24.2 Paragraph 24.1 will not apply to limit:
- (a) the liability of the Supplier for a breach of Article 27 (Confidentiality);
  - (b) the Supplier's liability or obligations under Article 23 (Indemnification) or any other obligations to indemnify set out elsewhere in this MSA or a Service Contract; or

# Master Services Agreement

## General Services

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- (c) Losses suffered by the Board due to any deliberate and sustained cessation of a material portion of the Services under any Service Contract without a bona fide attempt to remedy such portion of the Services or to remedy the cause of such cessation.
- 24.3 Notwithstanding anything to the contrary, the Supplier must not be entitled to Claim for loss of opportunity or for consequential, indirect, special or punitive damages, including damages for loss of revenue, loss of profit or anticipated profit, or any other commercial loss of any kind, or any other Losses flowing from any delay, change in the Services, Change Request, Change Order, or the Board's breach of this MSA or any Service Contract.

### Article 25

#### Waiver of Claims

- 25.1 As of the date of the Supplier's final invoice or application for final payment relating to a Service Contract, the Supplier expressly waives and releases the Board from all Claims relating to such Service Contract which the Supplier has or reasonably ought to have knowledge of that could be advanced against the Board including, without limitation, those Claims that might arise from the negligence or breach of contract by the Board, except those made in writing prior to the Supplier's final invoice or application for final payment in relation to such Service Contract and still unsettled.

### Article 26

#### Not Used

### Article 27

#### Confidentiality

- 27.1 Each party agrees that it must not disclose, either during the Term or after the expiration or termination of this MSA or any Service Contract, to any third party any proprietary information of the other party including, without limitation, information concerning trade secrets, methods, processes or procedures or any other business or technical information including, for the avoidance of doubt, Personal Information (collectively the "**Confidential Information**"), which it receives at any time after signing this MSA, without the prior written consent of the other party, except to the extent that such Confidential Information: (a) is in the public domain; (b) is independently developed by the receiving party; (c) is already in the possession of such party prior to disclosure by the other party; (d) is rightfully received from a third party not under a confidentiality obligation to the other party; or (e) is legally required to be disclosed by the receiving party. Either party may disclose Confidential Information to its Subcontractors, agents or advisors and affiliates on a need-to-know basis, provided it first obtains an appropriate non-disclosure agreement therefrom.
- 27.2 The Board must retain control over and use of all Board Confidential Information which at all times must remain the property of the Board. The Supplier agrees

# Master Services Agreement

## General Services

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that Board Confidential Information will only be used by the Supplier for the purposes of performing the Services and otherwise fulfilling its obligations under this MSA and any Service Contracts. The Supplier must not collect, create, handle, use, copy, disclose, dispose of or destroy any Board Confidential Information except as necessary to perform its obligations under this MSA and any Service Contracts. The Supplier must use, without limitation, physical, organizational and technological measures to safeguard Board Confidential Information and so as to protect Board Confidential Information from loss, theft, unauthorized use, access, disclosure, copying, alteration or destruction. Specific safeguarding methods include, but are not limited to, physical access controls and safeguards, encryption or other suitable means as agreed upon by the Board.

- 27.3 The Supplier must return to the Board all Board Confidential Information in whatever form (or at the Board's request, destroy such Board Confidential Information) which has been made or obtained in relation to this MSA or any Service Contract, upon the expiration or termination of this MSA or at such other time as the Board may require.
- 27.4 Notwithstanding anything else in this MSA, the Supplier understands, acknowledges and agrees that the Board may be required to disclose parts or all of this MSA or a Service Contract, including Supplier Confidential Information, pursuant to applicable law including the *Municipal Freedom of Information and Protection of Privacy Act* (Ontario). Subject to the provisions of such legislation, the Board will use reasonable efforts to safeguard the confidentiality of any Supplier Confidential Information, however, the Board must not be liable in any way whatsoever if such information is disclosed pursuant to an order, decision or obligation under such applicable law. By signing this MSA the Supplier agrees to such disclosure and releases the Board from any liability for the same.

### Article 28

#### Records Protection

- 28.1 In addition to the Supplier's other obligations under this MSA, the Supplier will maintain, enforce, review and update, and will cause all Subcontractors to maintain, enforce, review and update, internal security and back-up procedures sufficient to ensure compliance by the Supplier with the applicable Board policies and to protect the Records and Board Confidential Information for which the Supplier is responsible.
- 28.2 The Supplier represents and warrants that it currently follows and must, during the Term, continue to follow industry best practices as a means to prevent any compromise of its information systems, computer networks, or data files (collectively "**Systems**") by unauthorized users, viruses, or malicious computer programs which could in turn be propagated via computer networks, e-mail, magnetic media or other means to the Board. In the event any of the Supplier's Systems are breached or compromised in any way which affects or is likely to affect the Board's Systems or the Supplier's ability to timely perform and

# Master Services Agreement

## General Services

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complete the Service, the Supplier must give the Board immediate notice of the nature and scope of the breach or compromise.

- 28.3 The Supplier must apply appropriate internal information security practices including, but not limited to, using appropriate firewall and anti-virus software, maintaining said countermeasures, operating systems, and other applications with up-to-date virus definitions and security patches; installing operation security mechanisms in the manner in which they were intended sufficient to ensure the Board will not be impacted nor operations disrupted; and permitting only authorized users access to the Board Systems.
- 28.4 The Supplier must use up-to-date anti-virus tools to remove known viruses and malware from any e-mail messages or data transmitted to the Board; prevent the transmission of attacks on the Board Systems via network connections with Board; and prevent unauthorized access to Board Systems via the Supplier's network and access codes.
- 28.5 Without limiting the foregoing, the Supplier will protect all Board Confidential Information, Work Product and all Records using security measures appropriate to the sensitivity of such records and information while preserving their integrity and availability as required to perform the Services. Depending on the nature of the records and information and the circumstances, these measures may include physical controls (for example, keeping Confidential Information in locked cabinets), password protection of electronic files, encryption of data, or other measures such as firewalls, anti-virus software and other means to protect the security of systems or file storage areas.
- 28.6 The Supplier will keep all Board Confidential Information, all Work Product and all Records that are stored by the Supplier in tangible form physically segregated from other tangible forms of information, and will keep all Board Confidential Information, all Work Product and all Records that are stored by the Supplier in electronic form logically segregated from any other information of the Supplier, Subcontractors or their respective customers or clients.
- 28.7 The Supplier must not, and must not permit the transfer outside of Canada, of any Records, Work Product or Board Confidential Information without the prior written consent of the Board, which consent may not be unreasonably withheld.
- 28.8 When requested by the Board, the Supplier must provide a copy of its or any Subcontractor's privacy policy, security policy or other similar documents.
- 28.9 Upon the occurrence of any actual or suspected security breach the Supplier will do the following:
- (a) immediately notify the Board by telephone and in writing;
  - (b) take all steps necessary to enforce against any person that is or may be engaging in such unauthorized handling of Confidential Information, Work Product and/or Records any rights that the Supplier has to require such



# Master Services Agreement

## General Services

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person to comply with any obligation of confidence to the Supplier and to cease such unauthorized activities;

- (c) do all things, sign all documents, and give all assistance reasonably required by the Board to enable the Board to enforce against any person that is or may be engaging in such unauthorized handling of Confidential Information any rights that the Board has to require such person to comply
- (d) with any obligation of confidence to the Board and to cease such unauthorized activities; and
- (e) if the security breach involves Board Personal Information, then, if requested by the Board, communicate with the media and affected persons (by press release, telephone, letter, call centre, website or any other method of communication) to explain the occurrence of the security breach and the remedial efforts being undertaken. The content and method of any such communications will be determined by the Board.

28.10 The Supplier acknowledges that any violation of the provisions of this Article may cause irreparable damage or injury to the Board, the exact amount of which may be impossible to ascertain, and that, for such reason, in addition to any other remedies available to the Board, the Board is entitled to proceed immediately to court in order to obtain, and the Supplier will consent to, interim, interlocutory, and final injunctive relief restraining the Supplier from breaching and requiring the Supplier to comply with its obligations under this Article without a requirement that a finding of irreparable harm or other criteria for the awarding of injunctive relief be made. The Supplier acknowledges the importance to the Board of the Supplier's strict compliance with the terms of this Article and acknowledges that the Board's interest in the strict enforcement of this Article will outweigh the balance of convenience or harm that the Supplier may suffer as a result of the strict enforcement of this Article. Nothing in this paragraph will be construed to limit the right of a party to obtain injunctive relief in any other circumstance in which it may be otherwise entitled to such relief.

### Article 29

#### Dispute Resolution

- 29.1 If a dispute arises between the parties concerning this MSA or any Service Contract (each a **"Dispute"**), the parties agree:
- (a) to first make good faith efforts to resolve the Dispute by amicable negotiations conducted by senior representatives of the parties for a period of up to 30 days, having such written and oral communications and meetings as appropriate;
  - (b) if the Dispute is not resolved through negotiations, the parties may jointly agree to refer the Dispute to mediation; provided that there must be no mediation unless both parties jointly agree to mediate and agree on a mediator. The fees and expenses of the mediator and the venue must be shared equally by the parties;



# Master Services Agreement

## General Services

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- (c) if the Dispute has not been resolved through negotiations or mediation, either party may commence proceedings in the Ontario Superior Court of Justice, and both parties agree to attorn to the exclusive jurisdiction of the courts of the Province of Ontario.

### Article 30

#### Warranty

- 30.1 The Supplier expressly warrants that the Services completed under each Service Contract will conform to the standards, descriptions or requirements specified in each Work Order.

### Article 31

#### Audit Rights

- 31.1 The Supplier will maintain, and will cause all Subcontractors to maintain, data, records, reports, documentation and other information relating to all aspects of the Supplier's performance of its obligations under this MSA and the Supplier's and each Subcontractor's performance of their respective obligations under each Service Contract (collectively "**Records**").
- 31.2 During the Term and for seven (7) years after the end of the Term or earlier termination of this MSA, the Board and its representatives will have the right to audit the Supplier's Records and processes and to request verification of the Supplier's compliance with the terms of this MSA and each Service Contract. The Supplier must, upon receipt of the Board's written request, provide the Board and its representatives with reasonable access to the Supplier's Records, personnel and facilities, and must arrange for reasonable access to the Subcontractors' Records, personnel and facilities, for the purpose of reviewing the Supplier's processes and determining the Supplier's compliance with the terms of this MSA and any Service Contract. Such access will occur within five (5) days of the Supplier's receipt of the Board's request, during the Supplier's or Subcontractor's normal hours of operation, and in such a manner as to minimize disruption to the Supplier or its Subcontractors and to protect the Confidential Information of the Supplier. As part of the foregoing audit, the Board:
  - (a) reserves the right to request from the Supplier Records which are specific to a particular Service Contract (including all software and hardware), as well as the Services supplied or to be supplied under this MSA and/or any Service Contract;
  - (b) must have the right to examine and take copies of all or part of the Records which the Board reasonably deems pertinent, including such as may be necessary to verify (i) the quantities and time charged by the Supplier and the accuracy of the Supplier's recording system(s); and (ii) all charges and payments made under a Service Contract and/or this MSA.
- 31.3 If an audit reveals:

# Master Services Agreement

## General Services

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- (a) an overpayment by the Board during the period covered by such audit; or
- (b) a deficiency, failure to comply with Applicable Laws, or any other material breach of a Service Contract or this MSA,

the Supplier will immediately reimburse the Board for:

- (c) such overpayment with added interest at the prime rate established by the Bank of Canada from the date of such overpayment to the date such amounts are reimbursed;
- (d) all documented internal and external costs and expenses reasonably incurred by the Board in connection with such audit; and
- (e) any Losses incurred by the Board as a result of such deficiency, non-compliance or material breach.

### Article 32

#### Supplier's Representations and Warranties

- 32.1 The Supplier represents and warrants to and covenants with the Board as follows, and acknowledges that the Board has relied on such representations, warranties and covenants in entering into this MSA and each Service Contract:
- (a) the Supplier is a legal entity validly subsisting under the laws under which it was formed and has the legal power to enter into this MSA and each Service Contract and to perform its obligations thereunder;
  - (b) the Services to be performed, the use by the Board of any of the Services, and the processes and techniques to be employed in the performance of the Services under each Service Contract will not infringe any Intellectual Property Rights of any third party;
  - (c) the Supplier has and will have and will maintain throughout the Term all skills, qualifications, technology, personnel, systems, resources, equipment, expertise and experience necessary to perform the Services in an efficient and cost-effective manner with a high degree of quality and responsiveness, at all times consistent with Good Industry Practice and otherwise in accordance with this MSA and each Service Contract;
  - (d) the Work Product does not infringe, and is not a misappropriation of, any third party Intellectual Property Rights;
  - (e) the Service to be performed and the processes, techniques and equipment to be employed in the performance of the Services will not infringe any Intellectual Property Rights of any third party;
  - (f) the Supplier will comply with all Applicable Laws in its dealings with the Board and in performing its obligations under this MSA and each Service Contract;
  - (g) the Supplier is in good standing with respect to all permits, licenses and approvals of any governmental or regulatory authority required for the performance of the Services and each Service Contract;

# Master Services Agreement

## General Services

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- (h) the Supplier and all Supplier personnel are in good standing with their respective professional association(s) or governing body(ies), and all required dues and insurance levies have been paid.
- 32.2 The Supplier represents and warrants to and covenants with the Board that the prices and rates charged to the Board under every Service Contract are at the very least as favourable as the fees charged by the Supplier to any other school board in the Province of Ontario for the same or substantially similar services in substantially similar volumes as the Services. The Supplier acknowledges that:
- (a) the Board may request, at its sole discretion, a certificate from a senior officer of the Supplier attesting to Supplier's compliance with this paragraph; and
  - (b) if it is determined that the Supplier has charged lower costs, charges and/or fees to any other school board in the Province of Ontario for the same or substantially similar services in substantially similar volumes as the Services, the prices and rates paid or payable by the Board under any Service Contract will be reduced to the amount payable by such other school board, and any overpayment resulting from such reduction will be refunded to, or credited against, the Board's payment obligations to the Supplier under any Service Contract.
- 32.3 If required, the Supplier represents and warrants to and covenants with the Board that it has arranged for a national criminal record check to be conducted by a nationally or provincially recognized third party in respect of employees and staff employed by the Supplier and every Subcontractor in connection with the supply of Services. In the event that any criminal record check discloses that an employee or staff of the Supplier or any Subcontractor has a criminal record, such employee or staff member must be removed from and must not perform any of the Services. The Supplier must ensure that each employee or staff member of the Supplier and every Subcontractor completes the criminal record check process prior to such employee or staff member performing any Services.

### Article 33

#### Notices

- 33.1 Any notice or other communication required or permitted to be given under this MSA and any Service Contract must be in writing and must be delivered in person, transmitted by fax, or sent by registered mail, charges prepaid, addressed as follows:
- (a) if to the Board: **Thames Valley District School Board**  
**1250 Dundas Street**  
**London, ON. N5W 5P2**  
**Purchasing Department**  
**[purchasing@tvdsb.ca](mailto:purchasing@tvdsb.ca)**

# Master Services Agreement

## General Services

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if to the Supplier: **[NTD: Supplier Location]**

33.2 Notices or other communications must be deemed to have been received:

- (a) if sent by fax, on the date of transmission, provided that where the communication is received after 4:00pm (as recorded by the recipient) or on a day that is not a business day, such communication must be deemed to have been received at 9:00am on the next business day;
- (b) if sent by personal delivery, on the date of receipt;
- (c) if mailed, on the third business day following the date of mailing; provided, however, that if at the time of mailing or within three business days thereafter there is or occurs a labour dispute or other event that might reasonably be expected to disrupt the delivery of documents by mail, any notice or other communication must be delivered or transmitted by fax.

33.3 Either party may at any time change its address for service from time to time by giving notice to the other party in accordance with this Article 33.

### Article 34

#### Public Health Measures

- 34.1 The Supplier is required to comply with the Board's health and safety protocols which are in effect for the duration of the contract and may change at any time.
- 34.2 The Board must have the unfettered and absolute right and discretion to order the Supplier to remove and replace, without cost to the Board, any individual who is unable to comply with the above paragraph. Immediately upon receipt of such order the Supplier must make arrangements for the appointment of a replacement individual acceptable to the Board.

### Article 35

#### Miscellaneous

##### 35.1 Independent Contractor

- (a) Nothing contained in this MSA or any Service Contract must constitute or be deemed to create a partnership, joint venture or principal and agent relationship between the Board and the Supplier, and each is an independent contractor for the purposes of this MSA and any Service Contract.
- (b) The employees, officers, agents and Subcontractors of the Supplier, in the performance of this MSA and any Service Contract, must act only in the capacity of representatives of the Supplier and not as employees, officers, agents or subcontractors of the Board and will not be deemed for any purpose to be employees of the Board. The Supplier assumes full

# Master Services Agreement

## General Services

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responsibility for the actions of its employees, officers, agents and Subcontractors with respect to the obligations under this MSA and any Service Contract and must be solely responsible for their supervision, daily direction and control, payment of invoices, payment of salary (including withholding of income taxes and Canada Pension Plan, employment insurance and any other employment related deductions, withholdings or remittances) workers' compensation, disability benefits and the like.

### 35.2 **Assignment**

- (a) The Supplier may not assign, transfer, convey, or otherwise dispose of this MSA or any Service Contract or its right, title or interest in this MSA or any Service Contract without the Board's prior written consent, which consent may be unreasonably withheld. In the event of the Supplier's assignment the Supplier acknowledges and agrees that at all times it must be jointly and severally liable, as principal obligor and not as a surety, with its assignee.
- (b) The Board may without consent of the Supplier assign this MSA or any Service Contract, in whole or in part, with notice to the Supplier, which notice may be given after the assignment.

### 35.3 **Third Party Beneficiary Rights**

No provision of this MSA or any Service Contract must in any way inure to the benefit of any third person (including the public at large) so as to constitute any such person a third-party beneficiary of this MSA or any Service Contract or any of the terms thereof, or otherwise give rise to any cause of action in any person not a party to this MSA or any Service Contract, except to the extent as may be specifically and expressly provided for in this MSA or in a Service Contract.

### 35.4 **Number, Gender and Persons**

Words importing the singular number only must include the plural and vice versa; words importing gender must include all genders; and words importing persons must include individuals, corporations, partnerships, associations, trusts, unincorporated organizations, governmental bodies and other legal or business entities of any kind whatsoever.

### 35.5 **Entire Agreement**

This MSA and, for each Work Order that is signed by the parties, this MSA together with the terms of such signed Work Order, constitutes the entire agreement between the parties with respect to the subject matter thereof and supersedes all prior agreements, understandings, negotiations and discussions, whether written or oral. There are no conditions, covenants, agreements, representations, warranties or other provisions, express or implied, collateral, statutory or otherwise, relating to the subject matter thereof except as provided in this MSA and such signed Work Order.

# Master Services Agreement

## General Services

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### 35.6 Further Assurances

Each party must at all times sign and deliver all such further documents and instruments and must do such further acts and things as may be reasonably required to give full effect to this MSA and any Service Contract.

### 35.7 Amendments

No alteration or amendment to this MSA or any Service Contract must be binding unless it is in writing and signed by each party.

### 35.8 No Waiver by Conduct

- (a) No waiver by or on behalf of a party of any breach of a provision of this MSA or any Service Contract must be binding upon the party unless it is expressed in writing and duly signed by the party or signed by its fully authorized representatives, and such a waiver must not operate as a waiver of any subsequent breach, whether of a like or different character. No waiver must be inferred from or implied by the conduct of either party.
- (b) Failure to enforce any right or remedy available under this MSA or any Service Contract will not be construed to be a waiver of the right or remedy.

### 35.9 No Contra Proferentem

This MSA has been negotiated and approved by the parties with the assistance of their legal counsel and/or the parties confirm they have had reasonable opportunity to consult with legal counsel. Notwithstanding any rule or maxim of law or construction to the contrary, any ambiguity or uncertainty will not be construed against a party by reason of the authorship of any of the provisions of this MSA.

### 35.10 Publicity and Use of the Board's Name Prohibited

- (a) This MSA and any Service Contract does not and must not be construed to be a license for the Supplier to use the Board name, logos, trademarks, trade names, service marks or other marks of the Board. The Supplier agrees that it must not make any use of the Board name or marks including, without limitation, in connection with any product, promotion, advertising, statement, blog, web page, press release, client list or other publication, electronic or otherwise, without the Board's prior written consent, which consent must be at the Board's absolute discretion.
- (b) The Supplier must not publish, issue or make any statements or news release, electronic or otherwise, concerning this MSA or any Service Contract without the Board's express written consent, which consent must be at the Board's absolute discretion.



# Master Services Agreement

## General Services

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### 35.11 **Survival**

The provisions of this MSA requiring performance or fulfillment after the expiration of the Term or earlier termination of this MSA, including Article 16 (Ownership of Work Product and Intellectual Property Rights), Article 21 (Insurance), Article 23 (Indemnification) and any other obligations to indemnify set out elsewhere in this MSA, Article 24 (Limit of Liability), Article 25 (Waiver of Claims), Article 27 (Confidentiality), Article 28 (Records Protection), Article 29 (Dispute Resolution), Article 30 (Warranty), Article 31 (Audit Rights), Article 32 (Supplier's Representations and Warranties), paragraph 35.10 (Publicity and Use of the Board's Name Prohibited), and this paragraph must survive the expiration or earlier termination of this MSA and any Service Contract, along with:

- (a) such other provisions as are necessary for the interpretation thereof; and
- (b) any other provisions of this MSA, the nature and intent of which is to survive the expiration or termination of this MSA.

### 35.12 **Severability**

Should any provision of this MSA or any Service Contract be held to be void or unenforceable, the remaining provisions must remain in full force and effect, to be read and construed as if the void or unenforceable provisions were originally deleted.

### 35.13 **Governing Law**

This MSA and each Service Contract must be construed, interpreted and enforced in accordance with, and the respective rights and obligations of the parties must be governed by, the laws of the Province of Ontario and the federal laws of Canada applicable therein, and each party irrevocably and unconditionally submits to the exclusive jurisdiction of the courts of the Province of Ontario and all courts competent to hear appeals therefrom.

### 35.14 **Successors and Assigns**

All covenants, promises, undertakings, conditions, representations, agreements, rights and obligations given to or imposed upon the parties under this MSA and each Service Contract must extend to and must bind, apply and inure to the benefit of the respective successors and permitted assigns of each of the parties.

### 35.15 **Counterparts**

This MSA may be signed in counterparts, each of which must be deemed to be an original and each of which when taken together must be deemed to constitute one and the same instrument. This MSA or counterparts may be signed and delivered by fax or in a pdf or other common electronic format by e-mail, and the parties adopt any signatures provided or received by such transmission as original signatures of the applicable party or parties.



# Master Services Agreement General Services

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**In Witness Whereof** the parties hereto have signed this MSA as of the Effective Date.

) **Thames Valley District School Board**  
)  
)  
)  
) Per \_\_\_\_\_  
) :  
)  
) Name:  
)  
) Title:  
  
I have the authority to bind the  
corporation

) **GHD**  
)  
)  
)  
) Per \_\_\_\_\_  
) :  
)  
) Name:  
)  
) Title:  
  
I have the authority to bind the  
corporation

## Appendix A – Statement of Work

**[NTD: Insert Appendix A – Statement of Work]**

## Appendix B – Supplier's Submission

***[NTD: Attach copy of Supplier's Submission, including price list]***