



# **Request for Proposal 744 for A Child Care Operator at the New North Woodstock Public School**

**Submission Deadline:** Before 12:00 pm Local Time on  
Friday, April 5th, 2024

**Submission Location:** Electronic Submission Only

**Request for Proposal Coordinator:** Angela McManus  
"angela.mcmanus@tvdsb.ca"

**Date of Issue:** Monday, March 4<sup>th</sup>, 2024



# **Request for Proposal 744 for A Child Care Operator at the New North Woodstock Public School**

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# **Request for Proposal 744 for A Child Care Operator at the New North Woodstock Public School**

## **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 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 operating a Child Care Centre at the New North Woodstock Public School, 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 5-year Childcare Lease Agreement and a Before and After School Licence Agreement renewed annually with the TVDSB.
- 1.1.3 TVDSB's issuance of this RFP, its evaluation of any Proposals, its contract award, or its execution of the Agreements with any Proponent are not intended to and shall not obligate TVDSB to procure any Services from any Proponent. There is no guarantee that a Successful Proponent that is awarded a contract and executes the Agreements 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 Agreements' 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 Agreements, 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.



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RFP Coordinator	The “RFP <b>Coordinator</b> ” is Angela McManus “angela.mcmanus@tvdsb.ca”.
Question Deadline	The deadline for Proponents to submit questions (the “ <b>Question Deadline</b> ”) is <b>March 15<sup>th</sup>, 2024</b>
Submission Deadline	BEFORE 12:00pm Local Time on <b>April 5<sup>th</sup>, 2024</b> (the “ <b>Submission Deadline</b> ”).
Electronic Submission	An electronic bid submission is mandatory. See 1.8.2.

## 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 considered for 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 AGREEMENTS AND THE TERM

- 1.7.1 TVDSB intends to execute the Agreements with each Successful Proponent that is awarded a contract. Provided that the execution of the Agreements does not obligate TVDSB to proceed with any projects, and the TVDSB does not guarantee any volume of Services that will be required or that will be performed under any Agreements.
- 1.7.2 The term of Child Care Lease Agreement will be 5 years. The Before and After School License is completed annually in August.



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## 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.

## 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 **"Agreements"** means the written Lease Agreement and Licencing 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". 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 **Error! Reference source not found.0.1.1**
- 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.



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- 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.

## 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.



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## **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 – Agreements.
  - (g) Schedule F - Plans
  - (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.

## **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.



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## **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.

- 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





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Submission Location and should ensure they take into account internet traffic and other potential delays.

## **6. OPENING OF PROPOSALS AND THE ROLE OF THE PRE-QUALIFICATION COORDINATOR**

### **6.1 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.

### **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.



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- (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 subject to this RFP. NOTE: Proponents will only be considered and evaluated for the Services 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 subject to the RFP.

<b>Evaluation Criteria</b>	<b>Points Available</b>
Financial Commitment	30
Management and Administrative Capacity	26
Community Connection/	10
Collaboration and Program Implementation	39
<b>MAXIMUM POINTS AVAILABLE</b>	<b>105</b>

## **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.



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- 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 AGREEMENTS**

### **8.1 SIGNING THE AGREEMENTS**

- 8.1.1 The TVDSB will issue a notice to each Successful Proponent and will enclose the Agreements for execution. Within fifteen (15) business days of receiving such notice and Agreements each such Successful Proponent is to sign and deliver the signed Agreements to TVDSB.
- 8.1.2 A Proponent's failure to sign and deliver the Agreements in accordance with paragraph 8.1.1 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 the Agreements 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 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, will not obligate TVDSB to award a contract to any Proponent, proceed with any projects or tenders, or enter into the Agreements 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.



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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 fulfill a contract which it was awarded;
- (b) the Proponent has been unable or unwilling to complete a Work Order issued to it on three (3) separate occasions, unless the Proponent has provided, in TVDSB's sole discretion, a valid commercial reason for doing so;
- (c) a significant change in the Proponent's operations, structure or control;
- (d) where TVDSB determines, in its sole discretion, that TVDSB's continued dealings with the Proponent would adversely impact TVDSB's reputation;
- (e) 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;
- (f) the Proponent has made claims or commenced legal proceedings, whether by litigation or arbitration, against TVDSB;
- (g) any other circumstances where removal from a contract is specifically provided for in the RFP Documents.

## **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.



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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:

- (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



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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
<p>TVDSB, with the support of the London Middlesex Consolidated Municipal Service Manager, is constructing a child care centre in the New North Woodstock Public School (the “School”) at the following location:</p> <p>Address</p> <p>717 Knights Lane, Woodstock, ON, N4T 0N8</p>
<p>TVDSB will also be making space available at the school for the operation of Third Party Programs (i.e. before and after school programs).</p> <p>Accordingly, TVDSB is seeking submissions from properly accredited child care licensees (within the meaning of the CCEYA and otherwise hereinafter referred to as “Operators”) to provide child care and before and after school programs at the above noted new school.</p> <p>An eligible child care operator:</p> <ul style="list-style-type: none"> <li>• Has a purchase of service agreement with the CMSM;</li> <li>• Is a licensed child care centre that is eligible to receive fee subsidy payments from the CMSM.</li> <li>• Are willing to include and provide supports for children with special needs.</li> </ul>
<p>Operators must be willing to provide both:</p> <p>(a) child care for the following licensed age groups and licensed capacities (within the meaning and subject to the requirements of the General Regulation of the CCEYA): ten (10) infants; thirty (30) toddlers; and, forty-eight (48) pre-schools; and</p> <p>(b) before and after school care for children in kindergarten through to grade 6 (i.e. 3.8 to 12 years of age) in accordance with the CCEYA licensed capacities and other applicable requirements under the Act and the CCEYA, and as otherwise determined by the needs of the families requiring the before and after school care.</p> <p>Child care is to be provided Monday through Friday, inclusive, on a year-round basis (excluding statutory holidays unless approved through Community Use of Schools), within the hours of 7:00 a.m. to 6:00 p.m.</p> <p>Although before and after care will be determined based on community needs, interested Operators must be willing to offer before and after school programs:</p> <p>(i) on all days on which classes are normally taught at the school, from 7:00 a.m. (local time) to the commencement of classes and from dismissal to 6:00 p.m. (local time); and,</p> <p>(ii) any weekday (i.e. Monday through Friday inclusive) which is not a statutory holiday and on which the school is not normally in session (i.e. a school holiday), within the hours of 7:00 a.m. to 6:00 p.m. (local time).</p> <p>(iii) extended hours beyond 6:00 p.m. may be considered.</p>
<p>In the event TVDSB is successful in identifying and selecting an Operator for a school, TVDSB proposes to enter into:</p> <p>(a) a lease for the premises (substantially in the form attached as Schedule E hereto) which will be used for the operation of the child care centre; and</p> <p>(b) a license agreement (substantially in the form attached as Schedule E hereto) for purposes of the operation of the before and after school programs,</p> <p>with that Operator.</p>

**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**





# SUBMISSION REQUIREMENTS

## 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	Fees

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**

Submitted By:

Operator Full Legal Name:

Registered Office Address:

Corporate:

Year Incorporated:

Jurisdiction of Incorporation:

☐ Provincial ☐ Federal

Officers and Directors:

List the names and titles of all of the directors, officers and executives of the Operator.



# RFP REQUIREMENTS

Name	Title / Position
<hr/>	<hr/>
<hr/>	<hr/>
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An Operator who has made a submission may amend it at any time prior to the Submission Deadline, by submitting an amended, but otherwise complete, submission package. The last submission package received from an Operator with respect to a particular school location will supersede all prior submissions by them with respect to that school location and any such prior submissions will be returned by TVDSB. Amended submissions are to be: made prior to the Submission Deadline; and, complete and address all of the submission requirements specified in this RFP.

An Operator may withdraw its submission at any time prior to the Submission Deadline by a duly signed letter of withdrawal, submitted in the same manner as a submission package is to be submitted.

In addition, before being permitted to undertake any activities in a school location, the chosen Operator must demonstrate, to the satisfaction of TVDSB, that such Operator:

- a. Has a purchase of service agreement with the CMSM;
- b. Is a licensed child care centre that is eligible to receive fee subsidy payments from the CMSM.
- c. is duly licensed for purposes of the operations in question.

It is possible that TVDSB is dissatisfied with the submissions received in response to this RFP and decides, in its discretion, to address some or all of its objectives as contemplated in this RFP in another manner. There is no guarantee that any Operator will be selected based on the submissions received.

Submissions which are incomplete will be rejected.

To the extent that TVDSB selects one (1) or more Operators for the purposes contemplated by this RFP, TVDSB shall have the right to meet with those Operators for purposes of negotiating amendments to the proposed forms of license agreement or lease agreement, as applicable, and for any other purposes TVDSB considers advisable in the circumstances.

A TVDSB representative will be contacting the contact persons identified for the agencies listed by each Operator in its response to section 14 hereto, to discuss those agencies' experience with that Operator. By making its submission to this RFP, the respective Operator is deemed to have consented to TVDSB doing so.

A submission in response to this RFP, must include:

- a. a completed, dated and signed copy of the response to sections 11 – 19 listed below. An Operator's completed response must:

# RFP REQUIREMENTS

- i. not exceed twenty (20) pages in total (8½" x 11", minimum 10pt font);
  - ii. only address the items identified in sections 11 – 19;
  - iii. have numbered pages; and,
  - iv. use the same numbering format provided in sections 11 – 19;
- b. a completed, dated and signed copy of Schedule C – Part 3 to this RFP;
- c. as contemplated in section 2 below, a copy of the Operator's business plan for the child care centre and before and after school programs for which the submission is being made;
- d. an organizational chart for the Operator which details its directors, officers and executives, and all staff positions, together with an explanation of how its organizational structure supports the operation of child care centres and before and after school programs;
- e. copies of the following, as developed by the Operator for the child care operations and before and after school programs currently conducted by it:
  - i. the program statement required by section 46(1) of the General Regulation to the CCEYA;
  - ii. the policies and procedures contemplated by section 38(1)(a) of the General Regulation to the CCEYA; and
  - iii. the procedure contemplated by section 68(1)(a) of the General Regulation to the CCEYA;
- f. a letter of confirmation from the Operator's insurer(s) as contemplated in section 4 below;
- g. a notarial copy of the government issued documents by which the Operator was formed (i.e. the Operator's articles or letters patent, as applicable, including all amendments);
- h. copies of the Operator's audited financial statements for its three (3) most recently completed fiscal years, together with the respective auditors' reports thereon; as well as, a copy of the Operator's unaudited internal financial statements for its most recently completed fiscal quarter.

## 1. Fees

Operators are to complete and submit the fee schedule found in Part 3 – Fees below to indicate the fees (the "Fees") the respective Operator proposes to charge parents in respect of:

- a. the before and after school programs; and
- b. the child care centre,

which are the subject matter of this RFP and which that Operator is interested in providing/operating.

Under no circumstances will TVDSB be responsible for the payment of any fees to any Operator for its operation of before and after school programs or a child care centre.

## 2. Business Plans

On the understanding that:



# RFP REQUIREMENTS

- a. the child care centre at each school location will initially be furnished and equipped by TVDSB to meet applicable licensing standard requirements (except for resources, manipulatives and any consumable items); and that the selected Operator does not amend or change the centre design or the furniture and equipment selected by the TVDSB unless authorized by TVDSB; authorization should not be unreasonably withheld.
- b. in respect of before and after school programs, TVDSB will only be making space available within the school for the operation of said programs; and,
- c. the selected Operator will be responsible for:
  - i. all amounts payable and other liabilities provided for under the respective lease agreement and license agreement it will be required to enter into with TVDSB;
  - ii. the costs of the repair, maintenance and replacement of furniture, equipment and appliances in the child care centre;
  - iii. the costs of the repair and/or replacement of any furniture and/or equipment damaged as a result of its operation of its before and after school programs;
  - iv. the provision of all resources, manipulatives and other consumable items;
  - v. the costs of the insurance it is required to carry under the lease agreement and the license agreement it will be required to enter into; and
  - vi. all other costs associated with the operation of the contemplated programs,
- d. each Operator is required to submit a business plan (as part of its submission), for the child care centre and before and after school programs which the Operator is interested in operating and which is otherwise within the scope of this RFP. Such business plan shall include:
  - i. a brief description of the Operator's operating history and the services it provides;
  - ii. the name and qualifications of the individual which the Operator proposes to have overall management responsibility of the child care centre and before and after school programs which the Operator is interested in operating and which is otherwise within the scope of this RFP;
  - iii. a financial plan which includes salaries and all other operating expenses, as well as projected revenue; and
  - iv. marketing and participant/staff recruitment strategies.

### 3. Workplace Safety and Insurance Act

Any Operator making a submission pursuant to this RFP must include as part of their submission a current dated (i.e. issued not more than sixty (60) days before the Submission Deadline) Certificate of Clearance from the Workplace Safety and Insurance Board as evidence that the Operator has filed all returns and paid all assessments or attestation that the Operator is exempt from Workplace Safety and Insurance.

### 4. Insurance Requirements

Schedule E, entitled "Form of Lease" and "Form of License" detail the types of insurance coverages any Operator who is selected will be required to carry throughout the term of any

# RFP REQUIREMENTS

arrangement on a per-location basis. For purposes of a submission pursuant to this RFP, interested Operators are required to submit a letter from a Canadian licensed insurer indicating that the insurer has reviewed the form of license and/or form of lease and is prepared to issue insurance policies to the proposed Operators which meet the requirements of such agreements for the applicable child care centres and before and after school programs the Operator is interested in operating.

## 5. Financial Statements

Operators are required to submit: their audited financial statements for its three (3) most recently completed fiscal years, together with the auditors' reports thereon; as well as their unaudited internal financial statements for its most recently completed fiscal quarter.

## 6. Litigation

Operators must list:

- a. any and all pending or ongoing legal claims or disputes which could result in the Operator suffering a potential economic loss of more than \$100,000.00 (prior to insurance); and,
- b. any and all legal claims or disputes involving that Operator which have settled or been judicially determined during the three (3) years prior to the issue date of this RFP.

TVDSB may, in its discretion, choose to eliminate from consideration any Operator whose history of legal claims or disputes is such that TVDSB is uncomfortable entering into an arrangement with that Operator. Furthermore, TVDSB may choose to eliminate from consideration any Operator who had or has a legal claim or dispute against TVDSB.

## 7. Municipal Freedom of Information and Protection of Privacy Act

All documentation and information contained in a submission in response to this CFS is subject to potential public disclosure under the Municipal Freedom of Information and Protection of Privacy Act. By making a submission in response to this CFS, that Operator will be deemed to have consented to the disclosure of any and all information contained in its submission, whether pursuant to: a request for disclosure pursuant to the Municipal Freedom of Information and Protection of Privacy Act (and such consent shall be considered a consent given pursuant to Subsection 10(2) of the said Act); any decision by TVDSB to publish same (as TVDSB sees fit even if no request for disclosure has been made); or, otherwise.

## 8. Review of Operators' Licenses

Operators should be aware that as part of the review of each Operator's submission, TVDSB personnel will be reviewing each Operator's existing licenses as posted on the Ministry of Education website. TVDSB reserves the right to disqualify from consideration under this CFS, any Operator who TVDSB determines have "conditions of license" such that TVDSB would prefer not to enter into an arrangement with that Operator.

## 9. Plans

Floor and site plans for the Schools are attached as Schedule F hereto.

## 10. Other



# RFP REQUIREMENTS

TVDSB is a unionized workplace.

Provision of information in response to this RFP does not relieve an Operator from providing the same or additional information in the future or as may otherwise be required by TVDSB. Failure to provide accurate and reliable information in response to this RFP may result in penalties, including, but not limited to, debarment from future arrangements with TVDSB.

## 11. Staff Absences

Please disclose how your organization deals with staff absences, whether in the context of the operation of a before and after school program or a child care centre. If your organization has an actual staff absence procedure, please include it as part of your submission.

## 12. Late Pickup

What are your organization's protocols for dealing with the late "pickup" of children and your rationale for same?

## 13. Integrated Arrangements

The Ministry of Education's vision for the Early Years includes opportunities where families are provided an integrated and seamless experience within the school. Ensuring a smooth transition from child care to Kindergarten, as well as between the before school program to school and from school to the after school program is critical. List the types of integrated arrangements/opportunities your organization would be prepared to explore and undertake to benefit families. This includes but is not limited to communication strategies, collaboration strategies, professional learning opportunities etc.

## 14. Community Connections

Please list the specific connections your organization has to the **Oxford County community**. These can include committees, programs (other than child care and before and after school programs), services etc.

## 15. Sample Arrangements

Provide two (2) examples of external organizations that you have worked with to support families whose children have received your care and provide the name and contact particulars of at least one (1) person within each of the organizations in your examples so that TVDSB can contact those individuals to discuss their experience in working with your organization.

## 16. Professional Development and Training

List all professional development and training opportunities made available to your staff in the twelve (12) month period prior to the issue date of this RFP and detail who in your organization is able to access those opportunities. Indicate the varied methods normally offered (virtual, in-person, self-directed). Please indicate whether release time is provided and / or paid time.

## 17. Wait List

Please provide details of your waiting list procedure, both for child care and before and after school programs. Also, provide strategies your organization uses to support regional child care service needs.



# RFP REQUIREMENTS

## 18. Quality Assurance

Please provide details of your quality assurance protocols and procedures for both child care and before and after school programs (assessing the environment, pedagogical approaches, staff/child relationships, children's growth in learning etc). Please include the metrics and measures used.

## 19. Pedagogical Approach to Early Learning

Pedagogical Approach to Early Learning Explain your organization's pedagogical approach to early learning. Provide examples along with your explanation.

## 20. Licenses

Please list the name of, license number for and location of all: before and after school programs and all child care centres; along with the EarlyON Child and Family Programs currently operated by your organization. Licences cannot show significant supervision or health and safety provisions.

### 3. Part 3 – Fees

Age Grouping	Proposed Sept 2026 Daily Fee (based on Full Time)	Proposed Sept 2027 Daily Fee (based on Full Time)	Proposed Sept 2028 Daily Fee (based on Full Time)	Comments
<i>Infants</i>				
<i>Toddlers</i>				
<i>Preschool</i>				
<i>Kindergarten Before and After School Care</i>				
<i>School Age Before and After School Care</i>				
<i>Kindergarten Full Day Care</i>				
<i>School Age Full Day Care</i>				

**END OF SCHEDULE**



# RFP SUBMISSION FORM

## 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 8.1.1 of the Instructions to Proponents we will sign and deliver the signed Agreements to TVDSB within 15 business days of our receipt of the same;
- (d) the execution of the Agreements 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 Agreements;

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 20response 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**



# AGREEMENTS

## SCHEDULE E – AGREEMENTS

*Refer to Lease Agreement and License Agreement, attached separately.*

## CHILD CARE CENTRE LEASE

THIS LEASE made as of the [ • ] day of [ • ], 20[ • ],

B E T W E E N:

**THAMES VALLEY DISTRICT SCHOOL BOARD**

(hereinafter “**TVDSB**”)

OF THE FIRST PART

- AND -

[ • ] [*Note to draft: Insert full legal name of the Tenant.*]

(hereinafter the “**Tenant**”)

OF THE SECOND PART

WITNESSETH AS FOLLOWS:

### ARTICLE 1 - BASIC TERMS, DEFINITIONS

#### 1.01 Basic terms

- (a) TVDSB: Thames Valley District School Board  
Address: 1250 Dundas Street  
London, Ontario N5W 5P2  
Attention: Executive Assistant, Superintendent of Business
- (b) Tenant: [ • ] [*Note to draft: Insert full legal name of Tenant.*]  
Address: **Number and Street Address**  
**City, Province, Postal Code**  
Attention: [ • ] [*Note to draft: Insert address of Tenant.*]
- (c) Premises: The area designated in red on Schedules A and B hereto of the building located at [ • ]. [*Note to draft: Insert municipal address of property.*]

- (d) Rent: \$[ • ] per year (which amount has been calculated in the manner set forth in Schedule C hereto and is subject to adjustment as provided for in Section 3.05). **[Note to draft: Insert annual rent figure.]**
- (e) Term: Sixty (60) consecutive months. **[align term so contracts end the closest August 31 as this will help align renewing]**
- (f) Commencement Date: September 1, 20[ • ].
- (g) Permitted Use (Section 5.01): Operation of a licensed child care centre for children ages 0 to 3.8 years.
- (h) Hours of Operation (Section 5.03): Monday through Friday, inclusive, on a year-round basis (excluding statutory holidays), within the hours of 7:00 a.m. to 6:00 p.m. (local time).

## 1.02 Definitions

In this Lease, unless there is something in the subject matter or context inconsistent therewith, the following terms have the following respective meanings:

- (a) **“Applicable Laws”** means all statutes, laws, by-laws, regulations, ordinances, orders and requirements of governmental or other public authorities having jurisdiction over TVDSB, the School, the Tenant or any of them, and all amendments thereto, at any time and from time to time, including, without limitation, the *Education Act* (Ontario) and the *Child Care and Early Years Act* (Ontario) (the **“CCEYA”**);
- (b) **“Building”** means the School building as shown on Schedule A hereto;
- (c) **“Building Systems”** means:
  - (i) the heating and ventilation systems and all other systems, services, installations and facilities from time to time installed in or servicing the Premises (or any portion thereof) including, but not limited to, the following systems, services, installations and facilities: mechanical (including plumbing, drainage and sewage), electrical and other utilities, lighting, life safety (including fire prevention, communications, security and surveillance), and refuse removal; and
  - (ii) all machinery, appliances, equipment, apparatus, components, computer software

and appurtenances forming part of or used for or in connection with any of such systems, services, installations and facilities including, but not limited to, boilers, motors, generators, fans, pumps, pipes, conduits, ducts, valves, wiring, meters and controls, and the structures and shafts housing and enclosing any of them;

- (d) **“Commencement Date”** means the date set out in Section 1.01(f);
- (e) **“Entrance”** means the entrance designated on Schedule A hereto;
- (f) **“Event of Default”** has the meaning set out in Section 15.01;
- (g) **“Expiry Date”** has the meaning set out in Section 2.03;
- (h) **“Leasehold Improvements”** means all fixtures, improvements, installations, alterations and additions from time to time made, erected or installed by or on behalf of the Tenant including doors, hardware, partitions (including moveable partitions) and wall-to-wall carpeting, but excluding equipment not in the nature of fixtures;
- (i) **“Playground Areas”** means the playground areas shown on Schedule A hereto as being playground areas for use by the Tenant;
- (j) **“Playground Equipment”** means the playground equipment shown on Schedule D hereto and to be installed by TVDSB in the Playground Areas prior to the commencement on the Term.
- (k) **“Premises”** means the premises identified in Section 1.01(c) and all rights and easements appurtenant thereto;
- (l) **“Principal”** means the principal, from time to time, of the School;
- (m) **“Program”** means the child care program to be operated by the Tenant in the Premises as contemplated by Section 5.01 hereof;
- (n) **“Rent”** means the rent payable by the Tenant pursuant to Section 3.02;
- (o) **“Rental Taxes”** means any and all taxes or duties imposed on TVDSB or the Tenant measured by or based in whole or in part on the Rent payable under the Lease, whether existing at the date of this Lease or hereinafter imposed by any governmental authority,

including, without limitation, goods and services tax, value added tax, business transfer tax, retail sales tax, federal sales tax, excise taxes or duties, or any tax similar to any of the foregoing;

- (p) **“School”** means TVDSB’s school known as [ • ] and located at [ • ]; ***[Note to draft: Insert name and address of school.]***
- (q) **“Supplied Furniture and Equipment”** has the meaning given in Section 9.09;
- (r) **“Term”** means the period specified in Section 2.03 and, where the context requires, any renewal, extension or overholding thereof;
- (s) **“Transfer”** means an assignment of this Lease in whole or in part, a sublease of all or any part of the Premises, any transaction whereby the rights of the Tenant under this Lease or to the Premises are transferred to another person, any transaction by which any right of use or occupancy of all or any part of the Premises is shared with or conferred on any person, any mortgage, charge or encumbrance of this Lease or the Premises or any part thereof, or any transaction or occurrence whatsoever which has changed or will change the identity of the person having lawful use or occupancy of any part of the Premises; and
- (t) **“Transferee”** means any person or entity to whom a Transfer is or is to be made.

## **ARTICLE 2 - DEMISE AND TERM**

### **2.01 Demise**

In consideration of the rents, covenants and agreements hereinafter reserved and contained on the part of the Tenant to be paid, observed and performed, TVDSB demises and leases to the Tenant and the Tenant rents from TVDSB the Premises.

### **2.02 Resolution of Unspecified Matters**

The Principal and the site staff of the Tenant shall, in good faith, endeavour to reach agreement on all matters relating to the Tenants lease of the Premises, to the extent not specified herein.

### **2.03 Term**

The Term is for a period of sixty (60) consecutive months, commencing on the Commencement Date and ending on August 31, 20[ • ] (the **“Expiry Date”**).

## **2.04 Renewal**

Assuming the Tenant is not in breach of any of its obligations hereunder, the parties shall, not less than one hundred and eighty (180) days prior to the expiry of the Term, meet to discuss the terms and conditions upon which the arrangements contemplated hereunder might be renewed.

## **2.05 Holding Over**

If at the expiration of the Term, the Tenant shall hold-over with the consent of TVDSB, the tenancy of the Tenant thereafter shall, in the absence of a written agreement to the contrary, be on a month to month basis, at a monthly rent equal to one-twelfth (1/12) of the annual Rent payable for the year immediately preceding such expiration, payable monthly in advance on the first (1<sup>st</sup>) day of each month and such tenancy shall be subject to all other terms and conditions of this Lease, including, section 3.05 hereof; and, provided that, TVDSB may by notice in writing terminate any such month to month tenancy on sixty (60) days prior written notice to the Tenant.

# **ARTICLE 3 - RENT**

## **3.01 Covenant to Pay, Gross Lease**

The Tenant covenants to pay Rent as provided in this Lease. It is the intention of the parties that the Rent provided to be paid shall be gross to TVDSB and inclusive of all taxes, costs and charges arising from or relating to the Premises, unless otherwise provided for herein and the Tenant covenants with TVDSB accordingly.

## **3.02 Rent and Administration Fee**

- (a) Subject to Section 3.05, the Tenant covenants and agrees to pay, from and after the Commencement Date, to TVDSB at the office of TVDSB, or to such other person or at such other location as TVDSB shall direct by notice in writing, in lawful money of Canada, without any prior demand therefor and without any deduction, abatement or set-off whatsoever, as annual Rent, the sum of \$[ • ] payable in quarterly instalments of \$[ • ], with the first payment due on the Commencement Date and continuing every three (3) months thereafter throughout the Term. All payments of Rent shall be subject to Harmonized Sales Tax, payable by the Tenant at the same time and in the same manner as any Rent is payable.

***[Note to draft: Insert the annual rent payable in the first “[ • ]” and the amount of the quarterly instalments thereof in the second “[ • ]”.]***

- (b) In addition to the forgoing, the Tenant agrees to pay TVDSB, contemporaneously with the execution with the Lease, a one time administration fee of \$[ • ], plus Harmonized Sales Tax. **[Note to draft: Insert applicable administration fee. If no administration is to be charged, insert \$0.00.]**

### **3.03 Taxes**

- (a) The Tenant will pay to TVDSB the Rental Taxes assessed on: (i) the Rent; (ii) TVDSB; and/or (iii) the Tenant pursuant to the laws, rules and regulations governing the administration of the Rental Taxes by the authority having jurisdiction, and as such may be amended from time to time during the Term of this Lease or any extension thereof.
- (b) The Tenant shall pay all taxes, rates, charges and licence fees assessed, levied or imposed in respect of the personal property, business or income of the Tenant as and when the same may become due and payable.

### **3.04 Rent Past Due**

If the Tenant fails to pay any Rent when the same is due and payable, such unpaid amount shall bear interest at the rate of eighteen percent (18%) per annum (calculated monthly at the rate of one and one-half percent (1.5%)), such interest to be calculated from the time such Rent becomes due until paid by the Tenant.

### **3.05 Amendment to Amount of Rent**

- (a) The Tenant acknowledges that, as indicated in Schedule C hereto a portion of the Rent includes charges to the Tenant for custodial wages and benefits, utilities, supplies, maintenance, snow removal, grounds care, etc. and that these charges are based upon the Ministry of Education facility annual operating costs, which are currently \$10.28 per square foot. To the extent that the Ministry of Education facility operating annual costs are amended, at any time during the Term, the amount of Rent to be paid by the Tenant pursuant to the provisions of this Lease, shall be amended accordingly, consistent with the calculations set forth in Schedule C hereto. **[Note to draft: Determine and insert current, per square foot, MOE facility annual operating costs.]**
- (b) The Tenant also acknowledges that, as indicated in Schedule C hereto, a portion of the Rent includes the Tenant's share of TVDSB's capital cost of maintaining the area occupied



by the Tenant and that such cost is based on the Ministry of Education formula for facility renewal which is currently \$1.10 per square foot per annum. To the extent that the Ministry of Education amends its formula for facility renewal, the Rent to be paid by the Tenant pursuant to the provision of this Lease shall be amended accordingly, consistent with the calculations set forth in Schedule C hereto. ***[Note to draft: Determine and insert current square foot per annum MOE facility renewal amount.]***

- (c) TVDSB's approach with respect to the Rent, as outlined above, is consistent with guidance received from the Ministry of Education. Accordingly, and notwithstanding the above provisions of this section 3.05, if during the Term the Ministry of Education releases additional guidance or directives regarding the rent school boards should be charging in circumstances like those contemplated in this Agreement, the parties shall meet to negotiate, in good faith, for purposes of arriving at an approach to the calculation of Rent in a manner which is consistent with any such guidelines or directives.

## **ARTICLE 4 - UTILITIES AND BUILDING SYSTEMS**

### **4.01 Utilities and Other Services**

TVDSB shall be responsible for providing heat, hydro, water, garbage removal, custodial services and supplies (as outlined in Schedule E), snow removal and any other utility which is available in the School generally. Notwithstanding the generality of the foregoing, TVDSB's responsibility to provide custodial services shall extend only to those times that TVDSB has assigned a custodian to the School generally. In the event that the Tenant wishes to operate at the Premises at any time when TVDSB has not assigned a custodian to the School generally, the Tenant shall request that TVDSB provide a custodian during such time and the direct costs of such custodian (actual wages and benefits) shall be the responsibility of the Tenant. TVDSB shall provide an invoice to the Tenant for all such costs incurred by the Tenant. As of the date of this Lease, custodians will not be assigned by TVDSB to schools generally on statutory holidays, Easter Monday, Civic Holiday (August), December 24th and December 31st in each year.

### **4.02 No Overloading**

The Tenant will not install any equipment which would exceed or overload the capacity of the utility facilities in the Premises or the Building or the electrical wiring and service in the Premises or the Building. The Tenant shall ensure that any equipment used by it in the Premises or the

Building shall have and bear the appropriate standard and/or approval of the Canadian Standards Association.

#### **4.03 No Liability**

In no event shall TVDSB be liable for any injury to the Tenant, its employees, agents or invitees, or to the Premises, or to any property of the Tenant or anyone else, for any loss of profits or business interruption, indirect or consequential damages, or for any other costs, losses or damages of whatsoever kind arising from any interruption or failure in the supply of any utility or service to the Premises or the Building.

#### **4.04 Building Systems**

TVDSB shall, throughout the Term, operate, maintain, repair, replace and regulate the Building Systems in such a manner as to maintain reasonable conditions of temperature and humidity within the Premises and so as to maintain the Building Systems in a good and working order.

### **ARTICLE 5 - USE OF PREMISES**

#### **5.01 Use of Premises**

The Tenant acknowledges that the Premises will be used solely for the purpose of providing duly licensed child care, pursuant to the CCEYA and for the following licensed age groups and licensed capacities (within the meaning of and subject to the requirements of General Regulation to the CCEYA): ten (10) infants; thirty (30) toddlers; and, forty-eight (48) preschools.

#### **5.02 Conduct of Operations**

(a) The Tenant shall maintain and conduct its operations in a reasonable and proper manner, so as not to interfere with TVDSB's use of the remainder of the Building. In operating its Program, the Tenant shall comply with all Applicable Laws. Without in any way limiting the generality of the foregoing:

- (i) the *Education Act* (Ontario) and all regulations thereunder;
- (ii) the *Child Care and Early Years Act* (Ontario) (the "**CCEYA**") and all regulations thereunder;
- (iii) the Tenant shall comply with all requirements of Ontario Regulation 562

promulgated pursuant to the *Health Protection and Promotion Act* (Ontario), as the same may be amended, replaced or superseded;

- (iv) the Tenant shall comply with police, fire and health regulations and requirements; and
  - (v) the Tenant shall, prior to the Commencement Date, obtain all required licences and approvals, including, without limitation: (A) required licenses under the CCEYA; and, (B) municipal licences and approvals, for the operation of its Program under this Lease and undertakes to provide TVDSB with evidence of same, from time to time, on request.
- (b) If, during the Term, the Tenant has, through its use or occupancy of the Premises, caused or permitted a release of a contaminant at, from or to the Premises, the Tenant shall immediately: notify the Principal; and, subject to the direction of the Principal, clean up such contaminant from the Premises, and any affected areas, at the Tenant's expense. On the termination of this Lease for any reason, the Tenant shall remove, at its expense, any contaminant or contamination which, through the Tenant's use or occupancy of the Premises, it has brought to or created at the Premises.
- (c) The Tenant, its employees, servants, volunteers, invitees and others under its control or for whom it is otherwise responsible for at law shall comply with all policies, procedures, rules and regulations adopted by TVDSB, from time to time, which relate to the Building and/or the School, including, without limitation, emergency procedures. Without limiting the foregoing, the Tenant acknowledges and agrees that:
- (i) smoking and vaping are prohibited in and on all TVDSB property;
  - (ii) TVDSB sites are equipped with video surveillance cameras. The Tenant agrees to the use of all such surveillance as TVDSB determines appropriate; and
  - (iii) the Tenant will cooperate with all recycling and environmental procedures and initiatives established by TVDSB and under Applicable Laws.
- (d) The Tenant's employees, agents and independent contractors shall: not be considered TVDSB employees; not represent themselves as an agent of TVDSB; nor, be eligible for any of the benefits provided to TVDSB employees. TVDSB reserves the right to demand

the removal of any of the Tenant's employees or representatives from TVDSB school property if, in TVDSB's opinion, such person's conduct has been unacceptable.

- (e) The Tenant shall not use the Premises for purposes fulfilling the operational needs of any other of the Tenant's locations. By way of example, the Tenant is not to prepare food or do laundry on the Premises with the intention or purpose of that food preparation or laundry being undertaken for the benefit, in whole or in part, of another location.

### **5.03 Hours of Operation**

The Tenant shall operate its Program Monday through Friday, inclusive, on a year-round basis (excluding statutory holidays), within the hours of 7:00 a.m. to 6:00 p.m.

### **5.04 Parental Consents**

The Tenant shall ensure that it obtains, in advance, all necessary parental consents for the participation of all minors in its Program.

### **5.05 Tenant Reporting**

The Tenant shall ensure that all of its employees, servants and volunteers are fully knowledgeable of the details of all of TVDSB's Safe Schools Policies and Procedures. Furthermore, the Tenant shall be responsible for ensuring that all of its employees, servants and volunteers fully comply with all of the requirements of such policies and procedures, including, without limitation, complying with all reporting requirements found under such policies and procedures, in the same manner in which TVDSB and its employees, servants and/or volunteers are intended to comply with same. The Tenant shall undertake whatever actions may be necessary under applicable privacy legislation to allow it to comply with such reporting requirements.

### **5.06 Criminal Background Checks**

The Licensee shall be responsible for complying with Ontario Regulation 521/01 in respect of its operation of the Programs as if it were a "board" under Ontario Regulation 521/01 and shall annually (and more frequently at the request of the Board), provide the Board with a written and signed attestation confirming the Licensee's compliance therewith. Without limiting the generality of the foregoing:

- (a) prior to permitting any of the Licensee's employees, servants, volunteers, invitees and others for whom it is responsible for at law to enter the School in connection with the Programs, the Licensee shall obtain criminal background checks (which shall include, in each case, a vulnerable sector check), in respect of all such individuals and otherwise determine that no concerns have been identified;
- (b) if the Licensee proposes to have any other or new employee, volunteer, invitee or other individual for whom the Licensee is responsible for at law enter the School in connection with the Programs, the Licensee shall ensure that prior to such individual being allowed to enter the School, the Licensee shall have obtained a criminal background check (which shall include, in each case, a vulnerable sector check), in respect of such individual and otherwise determine that no concerns have been identified; and
- (c) during the thirty (30) day period prior to any anniversary of the date of this Agreement, the Licensee shall collect and obtain an Offence Declaration for each of the Licensee's employees, volunteers, invitees and other individuals for whom the Licensee is responsible at law and for whom the Licensee has already obtained a criminal background check.

The Licensee shall be responsible, at its own cost, for obtaining the aforementioned criminal background checks and/or Offence Declarations. The Licensee shall ensure that none of its employees, volunteers, invitees or other individuals for whom the Licensee is responsible for at law enter into the School in connection with the Programs, unless the requirements of this section 3(8) have been complied with in respect of the applicable individuals and no concerns in respect of said individuals have been identified.

#### **5.07 Waste, Nuisance, Overloading**

The Tenant shall not do or suffer any waste or damage, disfiguration or injury to the Premises or other portion of the Building permitted to be used by them, nor permit or suffer any overloading of the floors, roof deck, walls or any other part of the Premises or other portion of the Building permitted to be used by them. The Tenant shall not use or permit to be used any part of the Premises for any illegal or unlawful purpose or any dangerous, noxious or offensive trade or business, and shall not cause or permit any nuisance in, at or on the Premises or other portion of the Building permitted to be used by them.

#### **5.08 Interference with Use and Enjoyment**

No portion of the Premises or the School shall be used or occupied by the Tenant in a manner which is likely to damage or injure any person or the School or in a manner which will unreasonably interfere with the use and enjoyment of the School (other than the Premises), by TVDSB and any of its other tenants or invitees. In addition to the foregoing, the Tenant agrees that it shall use the Premises and the other areas of the School it is permitted to use, at all times, in a manner that is compatible with the safe and proper operation of the School.

#### **5.09 Safety**

The Tenant hereby agrees to cooperate with TVDSB and to take any and all steps necessary in order to promote and maintain user safety, including, without limitation, the Tenant agrees that the children in its Program will not be permitted to be in any part of the School unless supervised by the Tenant's officers, agents, employees, servants or volunteers.

#### **5.10 Workplace Safety and Insurance Act**

The Tenant shall (no less than annually) provide the Board with evidence confirming that the Licensee is not required to carry insurance under programs administered by the Workplace Safety and Insurance Board. In addition, all workplace injuries or accidents on TVDSB property involving the Tenant's employees, servants, volunteers or agents, or which the Tenant becomes aware of in the scope of its Program at the School, must be reported by the Tenant to the Principal within twenty-four (24) hours of occurrence.

### **ARTICLE 6 - PARKING AND DROP-OFF ARRANGEMENTS**

#### **6.01 Parking**

The employees, servants, volunteers and invitees of the Tenant shall, during the normal hours of operation of the Premises (as set forth in this Lease) and for a period of up to one (1) hour both before and after same, be entitled to utilize the parking spaces designated for the Tenant's use in the parking, all as shown on Schedule A hereto. The Tenant shall ensure that any of its employees, servants, volunteers and invitees utilizing the aforementioned parking spaces shall access same through the entrance to the parking lot in which said parking spaces are located. The Tenant shall ensure that none of its employees, servants, volunteers and invitees utilize the aforementioned parking spaces at any times other than as specified in this Section 6.01 and shall

further ensure that no such person leaves any debris or other materials, whatsoever, on or near such parking spaces or in the parking lot. No other parking on any School property by the Tenant's employees, servants, volunteers and invitees or other persons associated with the Program (including, any parents of children in the Program), shall be permitted.

## **6.02 Drop-Off**

The Tenant shall ensure that parents of children in the Program utilize only the area shown on Schedule A hereto for purposes of dropping off and picking up their children at and from the Program. The Tenant shall ensure that none of its employees, agents or any other persons associated with the Program (including, any parents of children in the Program), park or leave idling any vehicle in such area or elsewhere on any School property. For purposes of certainty and without limiting the foregoing, the Tenant shall ensure that none of its employees, servants, volunteers, nor invitees, nor any other persons associated with the Program (including, any parents of children in the Program), leave any vehicle unattended in or on, such drop off area or any driveway or roadway on the School property and the Tenant shall take all such actions as are necessary to ensure same does not occur.

## **ARTICLE 7 - ACCESS TO PREMISES**

### **7.01 Access by Tenant**

The Tenant agrees that its employees, servants, volunteers and invitees, as well as the children in its Program, shall access and depart the Premises through the Entrance.

## **ARTICLE 8 - PLAYGROUND EQUIPMENT**

### **8.01 Installation of Playground Equipment**

The Tenant acknowledges that prior to the Commencement Date, TVDSB shall have caused the playground landscape and equipment (the "**Playground Equipment**") identified in Schedule D hereto to have been installed at the Premises, as applicable. On the expiration or earlier termination of this Lease, the Tenant shall ensure that all Playground Landscape and Equipment remains at the Premises and is surrendered to TVDSB.

## **8.02 Use of Playground Equipment**

The Tenant and the children in its Program shall have exclusive use of the Playground Areas and the Playground Equipment during the Tenant's normal hours of operation.

## **8.03 Tenant's Obligations Regarding Playground Equipment**

As contemplated in the CCEYA, the Tenant will be responsible for:

- (a) developing a playground safety policy which reflects the Canadian Standards Association's standard CAN/CSA-Z614-14 (the "**CSA Standard**") and which otherwise indicates the roles and responsibilities of its personnel regarding safety on playgrounds;
- (b) daily, monthly and annual inspections of the Playground Areas and the Playground Equipment in accordance with the requirements of the CSA Standard; and
- (c) working with TVDSB to develop a plan on how issues or problems identified in a playground inspection will be addressed.

## **8.04 TVDSB Obligations Regarding Playground Equipment**

TVDSB shall be responsible for the repair and maintenance of the Playground Areas and Playground Equipment required as a result of normal use, wear and tear.

# **ARTICLE 9 - MAINTENANCE, REPAIRS AND ALTERATIONS OF PREMISES**

## **9.01 Tenant's Obligations**

Except as otherwise specifically contemplated by this Lease, the Tenant shall have no responsibility for any routine maintenance, repairs or replacements to the Premises. The Tenant shall be responsible for the cost of any repairs or replacements which are required other than as a result of normal wear and tear or which are required as a result of the negligence or misconduct of the Tenant, its employees, servants, volunteers, agents or invitees, children in its Program or those for whom the Tenant is responsible at law. The Tenant shall notify TVDSB as soon as it becomes aware of there being need for any maintenance, repairs or replacements to the Premises. Notwithstanding the foregoing, it is understood that should the Tenant request any improvements to the Premises, such improvements will be at the discretion of TVDSB and at the



cost of the Tenant.

## **9.02 TVDSB's Obligations**

TVDSB shall be responsible for all routine maintenance, repairs and replacements to the Premises.

## **9.03 Inspection and Repair on Notice**

TVDSB, its servants, agents and contractors shall be entitled to enter on the Premises at any time, without notice, for the purpose of making emergency repairs, and during normal business hours on reasonable prior written notice, for the purpose of inspecting and making repairs, alterations or improvements to the Premises, or for the purpose of having access to the under floor ducts, or to the access panels to mechanical shafts (which the Tenant agrees not to obstruct). The Tenant shall not be entitled to compensation for any inconvenience, nuisance or discomfort occasioned thereby. TVDSB, its servants, agents and contractors may, at any time and from time to time, on reasonable prior written notice, enter on the Premises to remove any article or remedy any condition which, in the opinion of TVDSB, would likely lead to the cancellation of any policy of insurance. TVDSB will take reasonable precautions and attempt to schedule such work so as not to unreasonably interfere with the operation of the Tenant's business and to minimize interference with the Tenant's use and enjoyment of the Premises.

## **9.04 Damage Caused by Tenant**

The Tenant shall not permit or suffer to be permitted any damage or injury to the Premises, the School or the Supplied Furniture and Equipment (as defined in section 9.09 below). The Tenant shall forthwith report to TVDSB, in writing, any damage or injury to: the Premises or the Supplied Furniture and Equipment regardless as to how it was caused; and, the School caused by the Tenant, its employees, servants, volunteers, invitees or others for whom it is responsible for at law. The repair of any such damage or injury to the Premises, the Supplied Furniture and Equipment or the School shall be completed (to the extent TVDSB elects to) by TVDSB, at the cost of the Tenant and the Tenant confirms its responsibility to, forthwith, pay for and otherwise indemnify TVDSB in respect of all costs associated with the repair of any such damage or injury to the Premises, the Supplied Furniture and Equipment or the School.

## **9.05 Alterations, Improvements, Repairs and Installations**

The Tenant shall not make any alterations, improvements, repairs or installations in or to the Premises without TVDSB's prior written consent (which may be withheld for any reason). Regardless, if consent is so provided, any such alterations, repairs or installations made shall be: (a) at the Tenant's expense; and (b) in compliance with all policies, procedures, rules, regulations and directives of TVDSB relating thereto. Without in any way limiting the generality of the foregoing, the Tenant acknowledges and agrees that TVDSB may require that any such alterations, improvements, repairs or installations be made by and/or under the supervision and direction of TVDSB and that TVDSB shall have complete discretion, authority and direction over and in respect thereof; provided that and regardless of the foregoing, the Tenant shall be responsible for all costs associated with any: alterations, improvements, repairs or installations which are requested to be made by the Tenant; and repairs which are as a result of any damage or injury caused by the Tenant, its employees, servants, volunteers, invitees or others for whom it is responsible for at law.

#### **9.06 Designated Substances**

The Premises and/or the School may contain certain designated substances (within the meaning of Ontario Regulation 490/09), including, without limitation, asbestos, silica and lead. As a result of the foregoing, the Tenant acknowledges and agrees that it shall ensure that none of its employees, servants, volunteers, invitees or others for whom it is responsible for at law: move or disturb any ceiling tiles within the Premises or the School; enter into any space above any ceiling or behind any wall in the Premises or the School; disturb, pierce (by nail, screw or pin), bore or drill any surface within the Premises or the School; apply any adhesive to any surface of the Premises or the School; or, intentionally disturb, chip or otherwise intentionally damage any surface within the Premises or the School. To the extent that the Tenant wishes to undertake any action which might disturb or otherwise damage any surface within the Premises or the School or which would require entry above any ceiling or behind any wall, the Tenant shall not undertake same, but shall notify TVDSB, in writing, of the Tenant's desired undertaking and the provisions of section 9.05 shall apply in respect thereof. A copy of TVDSB's Designated Substance Survey for the School is available to the Tenant, upon written request. It shall be the responsibility of the Tenant to, and the Tenant shall, inform all of its employees, servants, volunteers, invitees and others for whom it is responsible for at law of both the requirements of this section 9.06, as well as the presence of any designated substances identified in TVDSB's Designated Substance Survey for the School to the extent the disclosure of the presence of such designated substances to such persons is required by law.

### **9.07 Signs**

The Tenant shall be permitted to install (at its costs), one (1) non-illuminated fascia sign (to be supplied and paid for by the Tenant), above the Entrance, provided that the sign itself and the proposed manner of installation must be approved by TVDSB prior to its installation.

### **9.08 Removal of Improvements and Fixtures**

- (a) All Leasehold Improvements shall immediately on their placement become TVDSB's property, without compensation to the Tenant. Except as otherwise agreed by TVDSB in writing, no Leasehold Improvements or trade fixtures shall be removed from the Premises by the Tenant, either during or on the expiry or earlier termination of the Term, except that:
  - (i) the Tenant may, during the Term, in the usual course of its business, remove its trade fixtures, provided that the Tenant is not in default under this Lease, and at the end of the Term, the Tenant shall remove its trade fixtures; and
  - (ii) the Tenant shall, at its sole cost, remove such of the Leasehold Improvements as TVDSB shall require to be removed, such removal to be completed on or before the end of the Term.
- (b) TVDSB shall, at the expense of the Tenant, repair any damage caused to the Premises by the Leasehold Improvements or trade fixtures or the removal thereof. In the event that the Tenant fails to remove its trade fixtures prior to the expiry or earlier termination of the Term, such trade fixtures shall, at the option of TVDSB, become the property of TVDSB and may be removed from the Premises and sold or disposed of by TVDSB in such manner as it deems advisable. For greater certainty, the Tenant's trade fixtures shall not include any Building Systems or light fixtures. Notwithstanding anything in this Lease, TVDSB shall be under no obligation to repair or maintain the Tenant's installations.

### **9.09 Furniture and Equipment**

The Tenant acknowledges that prior to the Commencement Date, TVDSB shall have caused the furniture and equipment (the **"Supplied Furniture and Equipment"**) identified in Schedule F hereto to have been placed or installed at the Premises, as applicable. On the expiration or earlier termination of this Lease, the Tenant shall ensure that all Supplied Furniture and Equipment remains at the Premises and is surrendered to TVDSB. The Tenant shall not be responsible for

any reasonable wear of the Supplied Furniture and Equipment caused by normal usage; however, the Tenant shall be responsible for (and shall pay TVDSB forthwith), the costs associated with the repair and/or replacement of any of the Supplied Furniture and Equipment damaged other than through normal usage. Notwithstanding any of the foregoing and for purposes of certainty, TVDSB shall have no obligation to maintain or replace any Supplied Furniture and Equipment. Supplied Furniture and Equipment has been provided on a one-time basis for use for the reasonable lifespan thereof during the Term. TVDSB shall have the right to remove any Supplied Furniture and Equipment in circumstances when it considers it prudent to do so, due to age, wear or tear, and shall have no obligation to replace same; provided, however, that TVDSB shall have no obligation to monitor the condition of any Supplied Furniture and Equipment.

#### **9.10 Surrender of Premises**

At the expiration or earlier termination of this Lease, the Tenant shall peaceably surrender and give up to TVDSB vacant possession of the Premises.

### **ARTICLE 10 - INSURANCE AND INDEMNITY**

#### **10.01 Tenant's Insurance**

- (a) The Tenant shall, at its sole cost and expense, take out and maintain in full force and effect, at all times throughout the Term, the following insurance:
  - (i) "All Risks" insurance on property of every description and kind owned by the Tenant, or for which the Tenant is legally liable, or which is installed by or on behalf of the Tenant, within the Premises including, without limitation, stock-in-trade, furniture, equipment, partitions, trade fixtures and Leasehold Improvements, in an amount not less than the full replacement cost thereof from time to time;
  - (ii) general liability and property damage insurance, including personal liability, contractual liability, tenants' legal liability, non-owned automobile liability, and owners' and contractors' protective insurance coverage with respect to the Premises, which coverage shall include the operations conducted by the Tenant and any other person on the Premises. Such policies shall be written on a comprehensive basis with coverage for any one occurrence or claim of not less than Five Million Dollars (\$5,000,000.00) or such higher limits as TVDSB may reasonably require from time to time. Such insurance shall provide coverage for

all acts and omissions of the Tenant's employees, volunteers and others for whom it is responsible at law and shall not have any exclusions in respect thereof; and

- (iii) such other forms of insurance as may be reasonably required by TVDSB from time to time.
- (b) All such insurance shall be with insurers and shall be on such terms and conditions as TVDSB reasonably approves. The insurance described in Sections 10.01(a)(i) shall name as loss payee TVDSB and anyone else with an interest in the Premises from time to time designated in writing by TVDSB, and shall provide that any proceeds recoverable in the event of damage to Leasehold Improvements shall be payable to TVDSB. The insurance described in Section 10.01(a)(ii) shall name as an additional insured TVDSB and anyone else with an interest in the Premises from time to time designated in writing by TVDSB. TVDSB agrees to make available such proceeds toward repair or replacement of the insured property if this Lease is not terminated pursuant to the terms of this Lease. All public liability insurance shall contain a provision for cross-liability or severability of interest as between TVDSB and the Tenant.
- (c) All of the foregoing property policies shall contain a waiver of any right of subrogation or recourse by the Tenant's insurers against TVDSB, its contractors, agents and employees, whether or not any loss is caused by the act, omission or negligence of TVDSB, its contractors, agents or employees. The Tenant shall obtain from the insurers under such policies undertakings to notify TVDSB in writing at least thirty (30) days prior to any cancellation thereof. The Tenant shall furnish to TVDSB certificates of all such policies. The Tenant agrees that if it fails to take out or to keep in force such insurance or if it fails to provide a certificate of every policy and evidence of continuation of coverage as herein provided, TVDSB shall have the right to take out such insurance and pay the premium therefor and, in such event, the Tenant shall pay to TVDSB the amount paid as premium plus fifteen percent (15%), which payment shall be deemed to be an addition to Additional Rent payable on the first day of the next month following payment by TVDSB.

## **10.02 TVDSB's Insurance**

TVDSB shall provide and maintain insurance on the Premises against loss, damage or destruction caused by fire and extended perils under a standard extended form of fire insurance policy in such amounts and on such terms and conditions as would be carried by a prudent owner of a

similar building, having regard to the size, age and location of the Premises. The amount of insurance to be obtained shall be determined at the sole discretion of TVDSB. TVDSB may maintain such other insurance in respect of the Premises and its operation and management as TVDSB determines, acting reasonably. The Tenant shall not be an insured under the policies with respect to TVDSB's insurance, nor shall it be deemed to have any insurable interest in the property covered by such policies, or any other right or interest in such policies or their proceeds.

### **10.03 Compliance**

The Tenant shall comply promptly with all requirements and recommendations of: the providers of any insurance contemplated hereby and/or now or hereafter in effect and pertaining to or affecting the Tenant, TVDSB, the Premises and/or the Building or any part thereof; and, the Board's insurance providers.

### **10.04 Tenant Indemnity**

The Tenant shall indemnify TVDSB and save it harmless from any and all losses or claims, actions, demands, liabilities and expenses in connection with loss of life, personal injury and/or damage to or loss of property: (a) arising out of any occurrence in or about the Premises; (b) occasioned or caused wholly or in part by any act or omission of the Tenant or anyone for whom it is in law responsible; or (c) arising from any breach by the Tenant of any provision of this Lease.

### **10.05 Indemnity By TVDSB**

TVDSB shall indemnify and hold the Tenant harmless from and against all liability, loss, claims, demands, costs and expenses, including reasonable legal fees, occasioned wholly or in part by any negligence or acts or omissions by TVDSB, its officers, agents, assigns, licensees, employees or those for whom it is responsible at law, arising out of any cause whatsoever through the carrying out of its obligations under this Lease.

### **10.06 Limitation of TVDSB Liability**

- (a) Notwithstanding the foregoing or anything else herein contained, in no event, whether or not the result of the wilful act or the negligence of TVDSB, its agents, officers, employees or others for whom it is legally responsible, and irrespective of any insurance that may or may not be carried or required to be carried, shall TVDSB be liable for:

- (i) damage to property of the Tenant or others located on the Premises;
- (ii) any injury or damage to persons or property resulting from fire, explosion, steam, water, rain, snow or gas which may leak into or issue or flow from any part of the Premises or from the water, steam or drainage pipes or plumbing works of the Premises or from any other place or quarter;
- (iii) any damage caused by or attributable to the condition or arrangement of any electrical or other wiring; or
- (iv) any indirect or consequential damages suffered by the Tenant.

#### **10.07 Workplace Safety and Insurance Board**

The Licensee shall (no less than annually) provide the Board with evidence confirming that the Licensee is not required to carry insurance under programs administered by the Workplace Safety and Insurance Board. All workplace injuries or accidents on the Board's property involving the Licensee's employees, servants, volunteers or agents, or which the Licensee becomes aware of in the scope of its Programs at the School, must be reported by the Licensee to the Principal of the School within twenty-four (24) hours of occurrence.

### **ARTICLE 11 - ASSIGNMENT AND SUBLETTING**

#### **11.01 Assignment, Subletting**

The Tenant shall not effect any Transfer without the prior written consent of TVDSB, which may be unreasonably withheld.

### **ARTICLE 12 - QUIET ENJOYMENT**

#### **12.01 Quiet Enjoyment**

The Tenant, on paying the Rent hereby reserved, and performing and observing the covenants and provisions herein required to be performed and observed on its part, shall peaceably enjoy the Premises for the Term.

### **ARTICLE 13 - TVDSB'S ALTERATIONS**

### **13.01 TVDSB's Alterations to the School**

As long as it does not have a materially negative impact on the Tenant and its use and occupation of the Premises, at any time and from time to time TVDSB may:

- (a) dedicate or convey any portion of the School to any governmental or public authority or other Person and grant easements, rights-of-way, restrictive covenants or other interests in the School; and
- (b) construct in or adjoining the School such improvements as it deems appropriate in its absolute discretion and make alterations or additions to, or expand or reduce any part of the School (but not the Premises) from time to time or permit any such action to be taken.

TVDSB shall make any such improvements as expeditiously as is reasonably possible in the circumstances with a view to minimizing the disruption to the use and enjoyment of the Premises by the Tenant.

### **13.02 No Liability**

Neither the exercise by TVDSB of its rights under this Article 13, nor any noise, dust, vibration or other consequences of construction, alteration, expansion, reduction or reconstruction from time to time of the various parts or components of the School or of improvements on adjoining properties shall entitle the Tenant to any reduction in the Rent payable hereunder, result in any liability of TVDSB to the Tenant, or in any other way affect this Lease or the Tenant's obligations hereunder, provided that TVDSB has acted reasonably and in accordance with the terms and conditions of this Lease.

## **ARTICLE 14 - DAMAGE AND DESTRUCTION**

### **14.01 Damage or Destruction to Premises or the School**

If the Premises or any portion thereof or the School in which the Premises are located or any portion thereof are damaged or destroyed by fire or by other casualty, TVDSB may elect, within thirty days of such damage or destruction, on written notice to the Tenant, to terminate this Lease, and the Tenant shall immediately deliver up vacant possession of the Premises to TVDSB. For greater certainty, TVDSB shall have no obligation to rebuild any part of the Premises or the



School.

## **ARTICLE 15 - DEFAULT**

### **15.01 Default and Right to Re-enter**

Any of the following constitutes an Event of Default under this Lease:

- (a) any Rent due is not paid within five (5) days after notice in writing from TVDSB to the Tenant;
- (b) the Tenant has breached any of its obligations in this Lease and, if such breach is capable of being remedied and is not otherwise listed in this Section 15.01, after notice in writing from TVDSB to the Tenant:
  - (i) the Tenant fails to remedy such breach within ten (10) days (or such shorter period as may be provided in this Lease); or
  - (ii) if such breach cannot reasonably be remedied within ten (10) days (or such shorter period), the Tenant fails to commence to remedy such breach within ten (10) days of such breach, or thereafter fails to proceed diligently to remedy such breach;
- (c) the Tenant becomes bankrupt or insolvent or takes the benefit of any statute for bankrupt or insolvent debtors or makes any proposal, an assignment or arrangement with its creditors, or any steps are taken or proceedings commenced by any person for the dissolution, winding-up or other termination of the Tenant's existence or the liquidation of its assets;
- (d) a trustee, receiver, receiver/manager or a person acting in a similar capacity is appointed with respect to the business or assets of the Tenant;
- (e) this Lease or any of the Tenant's assets are taken under a writ of execution and such writ is not stayed or vacated within fifteen (15) days after the date of such taking;
- (f) the Tenant makes an assignment or sublease, other than in compliance with the provisions of this Lease;
- (g) the Tenant abandons or attempts to abandon the Premises, or the Premises become

vacant or substantially unoccupied for a period of ten (10) consecutive days or more without the consent of TVDSB;

- (h) the Tenant moves or commences, attempts or threatens to move its trade fixtures, chattels and equipment out of the Premises;
- (i) any insurance policy covering any part of the Premises is, or is threatened to be, cancelled or adversely changed (including a substantial premium increase) as a result of any action or omission by the Tenant or any person for whom it is legally responsible;
- (j) any representations and warranties made by the Tenant to TVDSB are determined to be false;
- (k) the Tenant breaches any other agreement it has with TVDSB;
- (l) the Tenant fails to maintain any licensing required for its operation of the Program;
- (m) the Tenant breaches any agreement it may have with the Consolidated Municipal Service Manager (CMSM) to whom it reports; or, it ceases to receive funding from such CMSM;
- (n) the Tenant fails to operate a before and after program at the School for kindergarten to Grade 6 students, inclusive, in the circumstances when TVDSB and the consolidated municipal service manager for the jurisdiction in which the School is located have determined that there is a community need for the operation of such a program within the School.

## **15.02 Default and Remedies**

If and whenever an Event of Default occurs, then, without prejudice to any other rights which it has pursuant to this Lease or at law, TVDSB shall have the following rights and remedies, which are cumulative and not alternative:

- (a) to terminate this Lease by notice to the Tenant or to re-enter the Premises and repossess them and, in either case, enjoy them as of its former estate, and to remove all persons and property from the Premises and store such property at the expense and risk of the Tenant or sell or dispose of such property in such manner as TVDSB sees fit without notice to the Tenant. If TVDSB enters the Premises without notice to the Tenant as to whether it is terminating this Lease under this Section 15.02(a) or proceeding under Section 15.02(b)

or any other provision of this Lease, TVDSB shall be deemed to be proceeding under Section 15.02(b), and the Lease shall not be terminated, nor shall there be any surrender by operation of law, but the Lease shall remain in full force and effect until TVDSB notifies the Tenant that it has elected to terminate this Lease. No entry by TVDSB during the Term shall have the effect of terminating this Lease without notice to that effect to the Tenant;

- (b) to enter the Premises as agent of the Tenant to do any or all of the following:
  - (i) relet the Premises for whatever length and on such terms as TVDSB, in its discretion, may determine, and to receive the rent therefor;
  - (ii) take possession of any property of the Tenant on the Premises, store such property at the expense and risk of the Tenant, or sell or otherwise dispose of such property in such manner as TVDSB sees fit without notice to the Tenant;
  - (iii) make alterations to the Premises to facilitate their reletting; and
  - (iv) apply the proceeds of any such sale or reletting first, to the payment of any expenses incurred by TVDSB with respect to any such reletting or sale, second, to the payment of any indebtedness of the Tenant to TVDSB other than Rent, and third, to the payment of Rent in arrears, with the residue to be held by TVDSB and applied to payment of future Rent as it becomes due and payable, provided that the Tenant shall remain liable for any deficiency to TVDSB;
- (c) to remedy or attempt to remedy any default of the Tenant under this Lease for the account of the Tenant and to enter on the Premises for such purposes. No notice of TVDSB's intention to remedy or attempt to remedy such default need be given to the Tenant unless expressly required by this Lease, and TVDSB shall not be liable to the Tenant for any loss, injury or damages caused by acts of TVDSB in remedying or attempting to remedy such default. The Tenant shall pay to TVDSB all expenses incurred by TVDSB in connection therewith;
- (d) to recover from the Tenant all damages, costs and expenses incurred by TVDSB as a result of any default by the Tenant including, if TVDSB terminates this Lease, any deficiency between those amounts which would have been payable by the Tenant for the portion of the Term following such termination and the net amounts actually received by TVDSB during such period of time with respect to the Premises; and

- (e) to recover from the Tenant the full amount of the current month's Rent together with the next three (3) months' instalments of Rent, all of which shall immediately become due and payable as accelerated rent.

### **15.03 Distress**

Notwithstanding any provision of this Lease or any provision of any applicable legislation, none of the goods and chattels of the Tenant on the Premises at any time during the Term shall be exempt from levy by distress for Rent in arrears, and the Tenant waives any such exemption. If TVDSB makes any claim against the goods and chattels of the Tenant by way of distress, this provision may be pleaded as an estoppel against the Tenant in any action brought to test the right of TVDSB to levy such distress.

### **15.04 Costs**

The Tenant shall pay to TVDSB all damages, costs and expenses (including, without limitation, all legal fees on a solicitor and client basis) incurred by TVDSB in enforcing the terms of this Lease, or with respect to any matter or thing which is the obligation of the Tenant under this Lease, or in respect of which the Tenant has agreed to insure or to indemnify TVDSB.

### **15.05 Remedies Cumulative**

Notwithstanding any other provision of this Lease, TVDSB may from time to time resort to any or all of the rights and remedies available to it in the event of any default hereunder by the Tenant, either by any provision of this Lease, by statute, or common law, all of which rights and remedies are intended to be cumulative and not alternative. The express provisions contained in this Lease as to certain rights and remedies are not to be interpreted as excluding any other or additional rights and remedies available to TVDSB by statute or common law.

## **ARTICLE 16 - ARBITRATION**

### **16.01 Arbitration**

If any dispute arises between the parties with respect to the meaning or effect of any provision of this Lease, or related to the rights and obligations of the parties hereunder, each of the parties shall appoint one representative and such representatives will work diligently and cooperatively to resolve the dispute on a timely and collaborative basis for up to ninety (90) days. In the event

the dispute is not resolved after these 90 days, the question or matter in dispute shall be referred to a single arbitrator if the parties can agree upon one and otherwise to three arbitrators, one to be appointed by each party and the third to be chosen by the two arbitrators chosen by the parties. If either of the parties hereto shall refuse or neglect to appoint an arbitrator within fifteen (15) days after the other party to the reference shall have appointed an arbitrator and shall have served written notice upon the first mentioned party requiring such party to make such appointment, then the arbitrator first appointed shall, at the request of the party so appointing him or her, choose the second arbitrator and the two arbitrators shall then choose the third arbitrator, and the decision which may be made by the arbitrators or the majority of them shall be final and binding upon the parties hereto, their heirs, executors, administrators and assigns. In the event that the first two arbitrators appointed by the parties do not agree upon a third arbitrator within seven (7) days after the appointment of the last of them, then a third arbitrator or an arbitrator to represent the party in default may, upon petition of the party not in default, be appointed by a judge of the Ontario Superior Court of Justice. The cost of arbitration shall be apportioned between the parties as the arbitrators or a majority of them may decide.

## **ARTICLE 17 - GENERAL**

### **17.01 Force Majeure**

Notwithstanding any other provision contained herein, in the event that either TVDSB or the Tenant should be delayed, hindered or prevented from the performance of any act required hereunder by reason of any unavoidable delay, including strikes, lockouts, unavailability of materials, inclement weather, acts of God or any other cause beyond its reasonable care and control, but not including insolvency or lack of funds, then performance of such act shall be postponed for a period of time equivalent to the time lost by reason of such delay. The provisions of this Section 17.01 shall not under any circumstances operate to excuse the Tenant from prompt payment of Rent and/or any other charges payable under this Lease.

### **17.02 Strikes and Lock-out**

Notwithstanding any other provision of this Agreement, in the event of any strike, lock-out or other labour disturbance affecting TVDSB, TVDSB shall have the right to close the School and the Premises and to prohibit entrance thereto by anyone, including the Tenant. In such event, the Tenant's obligation to pay the Rent shall be suspended during that time that the Premises are not available to the Tenant (and the parties agree to make appropriate adjustments, on a proportional

basis, to the Rent otherwise payable for such time as the Premises are not available to the Tenant) but TVDSB shall not otherwise have any obligation or liability to the Tenant in respect of any such closure. In the event of a strike, lock-out or other labour disturbance affecting TVDSB which does not result in TVDSB deciding to restrict access to or close the Premises or any portion of the School which the Tenant is entitled to utilize in accordance with the Terms hereof, the Tenant may continue to use and occupy the Premises and the related areas in accordance with the Terms and conditions of this Lease; however, should the Tenant, in its discretion, decide not to use or occupy the Premises during such strike, lock-out or other labour disturbance, the Tenant's obligation to pay the Rent shall be suspended for the period of time during any such strike or lock-out which the Tenant elects not to utilize the Premises (and the parties agree to make appropriate adjustments, on a proportional basis, to the rent otherwise payable for such time), but TVDSB shall not otherwise have any obligation or liability to the Tenant in respect of any such closure.

#### **17.03 Monitoring of Website**

The Tenant shall monitor TVDSB's website, on a regular basis, for purposes of determining whether the Tenant might not be able to access the Premises as a result of any of the circumstances contemplated in sections 17.01 or 17.02.

#### **17.04 School Closure**

In the event that TVDSB, in its discretion, decides to cease to operate the School, it shall provide the Tenant with not less than six (6) months prior notice of its intention to do so. Upon the expiry of six (6) months from the date upon which any such notice is provided to the Tenant this Lease shall terminate and be at an end, except for the obligation of the Tenant to pay any amounts owing by the Tenant to TVDSB for the period ending on the date of such termination.

#### **17.05 Environmental Matters**

The Tenant shall indemnify TVDSB, its successors and assigns from and against any and all losses, claims, costs, expenses, damages or liabilities (including without limitation all legal fees and disbursements on a solicitor and his client basis) which at any time may be paid or incurred by any of them for, or directly or indirectly arising out of, resulting from or attributable to: the use, generation, storage, escape, seepage, leakage, spillage, release, disposal or presence on or from the Premises of any hazardous substance during the period of occupancy by the Tenant; or, the use, generation, storage, spill, release or disposal of any hazardous substance by the Tenant.

For the purposes of this section, hazardous substance means any substance declared from time to time to be hazardous, dangerous, toxic or similarly described under any applicable federal, provincial or municipal law, by-law, regulation or other enactment. The Tenant shall forthwith notify TVDSB upon receipt of any order, directive, notice or other communication whatsoever from any governmental or other authority relating to the Premises and/or any environmental laws.

#### **17.06 Effect of Waiver or Forbearance**

No waiver by any party of any breach by any other party of any of its covenants, agreements or obligations contained in this Lease shall be or be deemed to be a waiver of any subsequent breach thereof or the breach of any other covenants, agreements or obligations, nor shall any forbearance by any party to seek a remedy for any breach by any other party be a waiver by the party so forbearing of its rights and remedies with respect to such breach or any subsequent breach. The subsequent acceptance of Rent by TVDSB shall not be deemed a waiver of any preceding breach by the Tenant of any term, covenant or condition regardless of TVDSB's knowledge of such preceding breach at the time of the acceptance of such Rent. All Rent and other charges payable by the Tenant to TVDSB hereunder shall be paid without any deduction, set-off or abatement whatsoever, and the Tenant waives the benefit of any statutory or other right in respect of abatement or set-off in its favour at the time hereof or at any future time.

#### **17.07 Notices**

- (a) Any notice, delivery, payment or tender of money or document(s) to the parties hereunder may be delivered personally or sent by prepaid registered or certified mail or prepaid courier to the address for such party as set out in Section 1.01(a) or 1.01(b), as applicable, and any such notice, delivery or payment so delivered or sent shall be deemed to have been given or made and received on delivery of same or on the third business day following the mailing of same, as the case may be. Each party may, by notice in writing to the others from time to time, designate an alternative address in Canada to which notices given more than ten (10) days thereafter shall be addressed.
- (b) Notwithstanding the foregoing, any notice, delivery, payment or tender of money or document(s) to be given or made to any party hereunder during any disruption in the service of Canada Post shall be deemed to have been received only if delivered personally or sent by prepaid courier.

#### **17.08 Registration**

Neither the Tenant nor anyone on the Tenant's behalf or claiming under the Tenant (including any Transferee) shall register this Lease or any Transfer against the Premises. The Tenant may register a notice or caveat of this Lease provided that: (a) a copy of the Lease is not attached; (b) no financial terms are disclosed; (c) TVDSB gives its prior written approval to the notice or caveat; and (d) the Tenant pays TVDSB's reasonable costs on account of the matter. Upon the expiration or earlier termination of the Term, the Tenant shall immediately discharge or otherwise vacate any such notice or caveat.

#### **17.09 Number, Gender, Effect of Headings**

Words importing the singular number only shall include the plural and *vice versa*, words importing the masculine gender shall include the feminine and neuter genders, and words importing persons shall include firms and corporations and *vice versa*. The division of this Lease into Articles and Sections and the insertion of headings are for convenience of reference only, and shall not affect the construction or interpretation of this Lease.

#### **17.10 Severability, Subdivision Control**

If any Article or Section or part or parts of an Article or Section in this Lease is or is held to be illegal or unenforceable, it or they shall be considered separate and severable from the Lease and the remaining provisions of this Lease shall remain in full force and effect and shall be binding on TVDSB and the Tenant as though such Article or Section or part or parts thereof had never been included in this Lease. It is an express condition of this Lease that the subdivision control provisions of the applicable provincial legislation be complied with, if necessary. If such compliance is necessary, the Tenant covenants and agrees to diligently proceed, at its own expense, to obtain the required consent, and TVDSB agrees to cooperate with the Tenant in bringing such application.

#### **17.11 Entire Agreement**

There are no covenants, representations, warranties, agreements or other conditions expressed or implied, collateral or otherwise, forming part of or in any way affecting or relating to this Lease, save as expressly set out or incorporated by reference herein, and this Lease constitutes the entire agreement duly executed by the parties, and no amendment, variation or change to this Lease shall be binding unless the same shall be in writing and signed by the parties.



#### **17.12 Successors and Assigns**

The rights and liabilities of the parties shall ensure to the benefit of their respective heirs, executors, administrators, successors and assigns, subject to any requirement for consent by TVDSB hereunder.

#### **17.13 Confidentiality**

**The contents, terms and conditions of this Lease shall be kept strictly confidential by the Tenant. The Tenant shall not, under any circumstances, discuss or reveal the details of this Lease with any arm's-length parties including, but not limited to, any prospective tenants, real estate agents or others, except the Tenant's legal and financial advisors, any *bona fide* Transferee, and except as may be required by law.**

#### **17.14 Tenants Rules**

The Tenant shall be responsible for establishing its own rules governing its operation of the Program; provided that, there is discussion of same with TVDSB in order to ensure that such rules shall be consistent and compatible with the policies, procedures, rules and regulations of TVDSB.

IN WITNESS WHEREOF the parties have duly executed this Lease.

THAMES VALLEY DISTRICT SCHOOL BOARD

Per: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

(I have authority to bind TVDSB)

[ • ]

Per: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

Per: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

(We have authority to bind the Tenant)

SCHEDULE A

(SITE PLAN)

SCHEDULE B

(FLOOR PLAN)

## SCHEDULE C

### RENT CALCULATION

The Rent has been calculated as follows:

$$A \times (B + C)$$

Where:

A is [ • ], being the number of square feet of the Premises;

B is the Ministry of Education square foot facility annual operating costs, currently \$9.18; and

C is the Ministry of Education formula square foot cost for facility renewal, currently \$1.10

**[Note to draft: The rates for 2023/2024 school year for B are \$9.18 and C are \$1.10.]**

SCHEDULE D

PLAYGROUND EQUIPMENT

## SCHEDULE E

### CUSTODIAL SERVICES

#### CLASSROOMS

***Procedures:***

1. Garbage containers and pencil sharpeners free of dirt/dust, debris and marks.

***Priority: A***

2. Floor free of dust, debris or stains. The floor finish has depth and shine.

***Priority: A***

3. Hand soap and paper dispensers free of dirt/dust, debris and marks and filled with appropriate hand soap and paper products.

***Priority: A***

4. All carpets are free of dirt/dust, debris and stains.

***Priority: A***

5. Where accessible, chalkboards and ledges are dry erased and free of dirt/dust and debris.

***Priority: Boards: B Ledges: A***

6. Desks and flat surfaces are free of dirt/dust, debris and sanitized as required. Desks are to be sanitized on a daily basis if the room is used as a lunchroom.

***Priority: B***

7. All glass and mirrors are free of dirt/dust, debris and marks.

***Priority: B***

8. Walls, doors, electrical switch plates are free of dirt/dust, debris and marks.

***Priority: B***

9. Baseboards are free of dirt/dust, buildups and marks.

***Priority: B***

10. Air diffusers and grates free of dirt/dust, buildups and marks.

***Priority: B***

11. Light fixtures and lenses free of dirt/dust, debris and marks.

***Priority: B***

12. Window coverings are free dirt/dust and marks.

***Priority: B***

13. Sinks free of dirt/dust, debris and marks.

***Priority: B***

14. Computers and related equipment free of dirt/dust debris and marks.

**WASHROOMS, CHANGEROOMS AND SHOWERS**

***Procedures:***

1. Garbage containers free of dirt/dust, debris and marks.

***Priority: A***

2. Floor free of dirt/dust, debris and stains, and sanitized daily. Floor finish has depth of shine.

***Priority: A***

3. Hand soap, feminine hygiene and paper dispensers free of dirt/dust, debris and marks and filled with appropriate hand soap and paper products.

***Priority: A***

4. Tables, chairs and/or benches are free of dirt/dust, debris, marks and stains.

***Priority: A***

5. All glass and mirrors free of dirt/dust and marks.

***Priority: A***

6. Walls, doors and electrical switch plates free of dirt/dust, debris and marks.

***Priority: A***

7. Light fixtures and lenses are free of dirt/dust and operating properly.



***Priority: A***

8. Air diffusers and grates free of dirt/dust, debris and marks.

***Priority: A***

9. Baseboards are free of dirt/dust, debris and buildup.

***Priority: A***

10. Hand basins, partitions, piping, toilets, urinals, floor drains, are free of dirt/dust, debris, stains and sanitized daily.

***Priority: A***

11. Washrooms are spot checked for cleanliness and vandalism and restocked as needed.  
Corrections made as needed after each student break.

**BUILDING OPERATIONS RESPONSIBILITIES**

***Procedures:***

12. Perform all preventative maintenance duties as outlined in the Facility Services Preventative Maintenance Schedules.

***Priority: A***

13. Check heating during opening routine. Remove snow and open building by 07:00 hours.  
Ensure Safe access and egress.

***Priority: A***

14. Visual check to ensure a safe school site. Inspect playground equipment as per Board specifications. Inspect playground for broken glass, catch basin covers, broken exterior lights, etc.

***Priority: A***

15. Garbage generated from programs to be addressed as needed, i.e. Play Days, Track Meets, etc.

***Priority: A***

16. Outside garbage removal – daily.

***Priority: A***

17. Clean Custodial work closets, supply room & equipment.

***Priority: A***

18. Removal of graffiti.

***Priority: A***

19. All walkways, stairs, exits, cleared of snow and ice.

***Priority: A***

20. Outside entranceway, porches and landings to be swept.

***Priority: B***

21. Mechanical Rooms free of dirt/dust and debris.

***Priority: B***

22. Changing burnt out lights in all areas.

***Priority: B***

23. Ground maintenance to include picking up debris, sweeping sidewalks, entranceways, parking lots, trimming and weeding all flower beds.

**ANNUAL CLEANING OBJECTIVES**

***Procedures***

The following cleaning objectives are scheduled to be met once per year, usually during, but not limited to, non-instructional days. These objectives can be worked on as project work anytime during the school year:

- All windows to be cleaned inside and outside semi-annually or as directed.
- All open wall space, ceiling to floor including baseboards, free of dirt/dust, debris, stains, marks, and scrubbed thoroughly annually.
- Hard surface floors stripped and resurfaced if required to maintain depth and shine.
- Resilient floors should be scrubbed, stripped, and resurfaced as required, **minimum** annually or as required to maintain depth and shine.

- All wood, including hardware and composite floors should be screened and resurfaced if required.
- All furniture completely washed inside and out and gum removed. This washing will include legs and glides. All counters, vertical and horizontal surfaces that are accessible to be free of dirt/dust, debris, stains, and marks.
- Lockers cleaned inside and out, and minor repairs completed.
- Ceilings, walls, light fixtures, plumbing fixtures, desks, radiators, etc. shall be cleaned thoroughly. All carpets, including walk off matting, shall be steam extracted by carpet cleaning contractor or by requesting use of the Steamin Deamon.

N.B. All annual cleaning objectives are Priority B.

## SCHEDULE F

### SUPPLIED FURNITURE AND EQUIPMENT

**[Note to draft: List of Supplied Furniture and Equipment to be inserted once approved by the Ministry of Education.]**

**LICENSE AGREEMENT  
FOR BEFORE AND AFTER SCHOOL PROGRAMS**

THIS AGREEMENT made as of the [ • ] day of [ • ], 20[ • ]

BETWEEN:

**THAMES VALLEY DISTRICT SCHOOL BOARD**

(the “**Board**” or “**TVDSB**”)

AND

[ • ] **[Note to draft: fill in full legal name of Licensee.]**

(the “**Licensee**”)

**WHEREAS** the Board is prepared to grant the Licensee a non-exclusive License to use portions of the school building (the “**School**”) identified in Part A of Schedule 1 hereto, for purposes of running the before and after school care programs (the “**Programs**”) described in Part B of Schedule 1 hereto, on the terms and conditions contained herein;

**NOW THEREFORE THIS AGREEMENT** (this “**Agreement**”) **WITNESSES THAT**, for good and valuable consideration (the receipt and sufficiency of which is hereby acknowledged), the Board and Licensee hereby agree as follows:

**1. License**

(1) The Board hereby grants to the Licensee, during the period commencing on September 1, 20[•] and ending on and including August 31, 20[•] (the “**Term**”), the right to access and utilize the areas of the School indicated in Part C of Schedule 1 hereto (the “**Licensed Space**”) for purposes of operating the Programs and at the following times:

- (a) on all weekdays (i.e. Monday through Friday inclusive), on which the School is normally in session, from 7:00 a.m. (local time) to the commencement of classes and from dismissal to 6:00 p.m. (local time);  
and,

- (b) on any weekday which is not a statutory holiday and on which the School is not normally in session (i.e. a school holiday or a professional development day), within the hours of 7:00 a.m. to 6:00 p.m. (local time).
- (2) The Licensee accepts Licensed Space which it is permitted to access and utilize pursuant to this Agreement in an “as is” condition.
- (3) The Licensee’s right to access and use the Licensed Space shall be limited to the hours and days specified in section 1(1) above. The Licensee further acknowledges that it shall not be provided with any keys for access to the School or any Licensed Space.
- (4) Assuming the Licensee is not in breach of any of its obligations hereunder, the parties shall, not less than ninety (90) days prior to the expiry of the Term, meet to discuss the terms and conditions upon which the arrangements contemplated hereunder might be renewed.

## 2. License Fees

- (1) A license fee of \$[●] (the “**Annual License Fee**”), together with Harmonized Sales Tax (“**HST**”) thereon, shall be payable by the Licensee to TVDSB for its use of the Licensed Space. The Annual License Fee will be payable in monthly instalments (equal to 1/10 of the Annual License Fee plus HST), payable, in advance, on the first day of each successive calendar month of the Term, with the first such payment due on September 1, 20[●]. Notwithstanding the foregoing, the parties hereto acknowledge and agree that the Ministry of Education has indicated that it will be providing guidance on amounts charged by school boards for amounts similar to the Annual License Fee. If during the Term, the Ministry of Education provides such guidance and if such guidance unequivocally indicates that the Annual License Fee should be other than as is

contemplated hereunder, the parties shall endeavour to negotiate and settle an amending agreement to this Agreement reasonably consistent with same.

### 3. Licensee's Covenants

(1) The Licensee shall use the Licensed Space only for the purposes of operating the Programs and for no other purpose.

(2) The Licensee shall conduct its operation of the Programs according to reasonable standards acceptable for that type of operation, from time to time.

(3) In operating its Programs, the Licensee shall comply with all applicable statutes, laws, by-laws, regulations, ordinances, orders and requirements of governmental or other public authorities, from time to time or at any time, which have jurisdiction over or relate to or affect the School, the Board, the Licensee or the Programs (all of which are together hereinafter referred to as the “**Applicable Laws**”). Without limiting the foregoing, the Applicable Laws include:

- (a) the *Education Act* (Ontario) and all regulations thereunder;
- (b) the *Child Care and Early Years Act* (Ontario) (the “**CCEYA**”) and all regulations thereunder;
- (c) Ontario Regulation 562 promulgated pursuant to the *Health Protection and Promotion Act* (Ontario);
- (d) The Ministry of Education’s Before and After School Programs – Kindergarten to Grade 6 Policies and Guidelines for School Boards (May 2023 version); and
- (e) All applicable police, fire and health regulations and requirements.

(4) Without in any way limiting the requirements of this section 3, the Licensee acknowledges and agrees that it is guided by and subject to the Ministry of Education's "How Does Learning Happen?: Ontario's Pedagogy for Early Years" in the development of its Programs and that, consistent with same, the Licensee shall provide a minimum of thirty (30) minutes of outdoor time each day in its Programs.

(5) The Licensee shall, prior to the Commencement Date, obtain all required licenses and approvals for its operation of the Programs, including, without limitation: (a) required licenses under the CCEYA; and, (b) municipal licenses and approvals, and provide copies of same to the Board. Throughout the Term, the Licensee shall maintain all of the aforementioned licenses and approvals in good standing and shall provide evidence thereof to TVDSB, from time to time, on request.

(6) The Licensee and all persons under its control is required to comply with all policies, procedures, rules and regulations adopted by the Board, from time to time, and relating to the School and/or the Board's operation of the School, including, without limitation, emergency procedures. All such policies, procedures, rules and regulations shall be deemed to be incorporated into and form part of this Agreement. Without in any way limiting the foregoing, the Licensee acknowledges, covenants and agrees to the following:

- (a) smoking and vaping are prohibited in and on all TVDSB property;
- (b) TVDSB sites are equipped with video surveillance cameras. The Licensee agrees to the use of all such surveillance in such manner as TVDSB determines appropriate;



- (c) the Licensee will cooperate with all recycling and environmental procedures and initiatives established by TVDSB or under Applicable Laws;
  - (d) TVDSB is required to comply with the *Accessibility for Ontarians with Disabilities Act, 2005* and the regulations thereunder. The Licensee will work with and assist TVDSB in complying with such legislation in applicable circumstances;
  - (e) the Licensee will comply with TVDSB's *Learning Support Services Memorandum Regarding Student Privacy and Email Communication*; and
  - (f) the Licensee will comply with TVDSB's *Learning Support Services Memorandum Regarding Mutual Arrangements Meetings with Before and After School Operators in Preparation for September 20[•]*.
  - (g) the Licensee will report an incident involving a child, employee, parent or guardian of the before and after school care program which is deemed to be a Serious Occurrence and/or school staff were involved in response to the incident, to the TVDSB Early Years Advisor immediately.
- (7) The Licensee's employees, agents and independent contractors are not and will not under any circumstances: be considered TVDSB employees; represent themselves as an agent of TVDSB; or, be eligible for any of the benefits provided to TVDSB employees. TVDSB reserves the right to demand the removal of any of the Licensee's employees or representatives from TVDSB school property if, in TVDSB's opinion, such person's conduct has been unacceptable.
- (8) The Licensee shall be responsible for complying with Ontario Regulation 521/01 in respect of its operation of the Programs as if it were a "board" under Ontario

Regulation 521/01 and shall annually (and more frequently at the request of the Board), provide the Board with a written and signed attestation confirming the Licensee's compliance therewith. Without limiting the generality of the foregoing:

- (i) prior to permitting any of the Licensee's employees, servants, volunteers, invitees and others for whom it is responsible for at law to enter the School in connection with the Programs, the Licensee shall obtain criminal background checks (which shall include, in each case, a vulnerable sector check), in respect of all such individuals and otherwise determine that no concerns have been identified;
- (ii) if the Licensee proposes to have any other or new employee, volunteer, invitee or other individual for whom the Licensee is responsible for at law enter the School in connection with the Programs, the Licensee shall ensure that prior to such individual being allowed to enter the School, the Licensee shall have obtained a criminal background check (which shall include, in each case, a vulnerable sector check), in respect of such individual and otherwise determine that no concerns have been identified; and
- (iii) during the thirty (30) day period prior to any anniversary of the date of this Agreement, the Licensee shall collect and obtain an Offence Declaration for each of the Licensee's employees, volunteers, invitees and other individuals for whom the Licensee is responsible at law and for whom the Licensee has already obtained a criminal background check.

The Licensee shall be responsible, at its own cost, for obtaining the aforementioned criminal background checks and/or Offence Declarations. The Licensee shall ensure that none of its employees, volunteers, invitees or other individuals for whom the Licensee is

responsible for at law enter into the School in connection with the Programs, unless the requirements of this section 3(8) have been complied with in respect of the applicable individuals and no concerns in respect of said individuals have been identified.

(9) The Licensee shall ensure that it obtains, in advance, all necessary parental consents for the participation of all minors in its Programs. In addition to the foregoing, the Licensee shall obtain from the parents or guardians, as applicable, of all children in its Program, such consent form as TVDSB may, from time to time, direct and which addresses sharing of information regarding children within the Program between the Licensee and TVDSB. Copies of all consents are provided to the Principal by the Licensee, in September annually.

(10) The Licensee shall (no less than annually) provide the Board with evidence confirming that the Licensee is not required to carry insurance under programs administered by the Workplace Safety and Insurance Board. All workplace injuries or accidents on the Board's property involving the Licensee's employees, servants, volunteers or agents, or which the Licensee becomes aware of in the scope of its Programs at the School, must be reported by the Licensee to the Principal of the School within twenty-four (24) hours of occurrence.

(11) The Licensee shall ensure that all of its employees, servants and volunteers are fully knowledgeable of the details of all of the Board's Safe Schools Policies and Procedures. Furthermore, the Licensee shall be responsible for ensuring that all of its employees, servants, volunteers fully comply with all of the requirements of such policies and procedures, including, without limitation, complying with all reporting requirements found under such policies and procedures, in the same manner in which the Board and its employees, servants and/or volunteers are intended to comply with same. The Licensee shall undertake whatever actions may be necessary under applicable privacy

legislation to allow it to comply with such reporting requirements. In addition, the Licensee shall participate and otherwise engage in such discussions and communications as TVDSB may request regarding the particulars of any of the arrangements contemplated herein.

(12) The Licensee shall not permit or suffer to be permitted any damage or injury to the Licensed Space, the School or the Board's furniture and equipment located therein. The Licensee shall forthwith report to the Board, in writing, any damage or injury to the Licensed Space, the School or the Board's furniture and equipment located therein caused by the Licensee, its employees, servants, volunteers, invitees or others for whom it is responsible for at law. The repair of any damage or injury to the Licensed Space, the School or the Board's furniture and equipment located therein caused by the Licensee, its employees, servants, volunteers, invitees or others for whom it is responsible for at law shall be completed (to the extent the Board elects to) by the Board, at the cost of the Licensee, and the Licensee confirms its responsibility to, forthwith, pay for and otherwise indemnify the Board in respect of all costs associated with the repair of any such damage or injury to the Licensed Space, the School or the Board's furniture and equipment located therein.

(13) Recognizing that the Licensee has not leased dedicated space from the Board for the Licensee's Programs, the Licensee shall not make any alterations, improvements, repairs or installations to the Licensed Space or any part of the School, without the Board's prior written consent (which may be withheld for any reason). Regardless, if consent is so provided, any such alterations, repairs or installations made shall be: (a) at the Licensee's expense; and (b) in compliance with all policies, procedures, rules, regulations and directives of the Board relating thereto. Without in any way limiting the generality of the foregoing, the Licensee acknowledges and agrees that the Board will in most circumstances require that any such alterations, improvements,

repairs or installations be made by and/or under the supervision and direction of the Board.

(14) The Licensed Spaces and/or the Schools may contain certain designated substances (within the meaning of Ontario Regulation 490/09), including, without limitation, asbestos, silica and lead. As a result of the foregoing, the Licensee acknowledges and agrees that it shall ensure that none of its employees, servants, volunteers, invitees or others for whom it is responsible for at law: move or disturb any ceiling tiles within the Licensed Space or the School; enter into any space above any ceiling or behind any wall in the Licensed Space or the School; disturb, pierce (by nail, screw or pin), bore or drill any surface within the Licensed Space or the School; apply any adhesive to any surface within the Licensed Space or the School; or, intentionally disturb, chip or otherwise intentionally damage any surface within the Licensed Space or the School. To the extent that the Licensee wishes to undertake any action which might disturb or otherwise damage any surface within the Licensed Space or the School or which would require entry above any ceiling or behind any wall, the Licensee shall not undertake same, but shall notify the Board, in writing, of the Licensee's desired undertaking and the provisions of section 3(13) shall apply in respect thereof. Copies of the Board's Designated Substance Surveys for the School are available to the Licensee, upon written request. It shall be the responsibility of the Licensee to, and the Licensee shall, inform all of its employees, servants, volunteers, invitees and others for whom it is responsible for at law of both the requirements of this section 3(14), as well as the presence of any designated substances identified in the Board's Designated Substance Survey for the School to the extent the disclosure of the presence of such designated substances to such persons is required by law.

(15) The Licensee will not install any equipment which would exceed or overload the capacity of the utility facilities in any part or the whole of the School or the electrical

wiring and service in any part or the whole of the School. Any equipment used by the Licensee shall have and bear the appropriate standard and/or approval of the Canadian Standards Association. Without in any way limiting the foregoing, the Licensee shall not install or cause to be installed any portable air conditioning device or space heaters within the Licensed Space or the School. Furthermore, the Licensee shall not interfere with or undertake any actions which in any way impact the functioning of the HVAC systems within the Licensed Space or the School.

#### **4. Board's Rights**

(1) Notwithstanding anything contained in this Agreement, the Licensee recognizes and agrees that the School is and shall remain under the exclusive control and management of the Board. Without limiting the foregoing, the Board shall have the right, at any time and from time to time:

- (a) to operate, manage and otherwise deal with the School as determined by the Board in its sole and absolute discretion;
- (b) to make additions to, or subtractions from, or to change, rearrange or relocate any part of the School;
- (c) to grant, modify or terminate easements and other agreements pertaining to the use and maintenance of all or any part of the School; and
- (d) to enter into all parts of the School, including, without limitation, any Licensed Space, at any time to undertake any work or alterations to the School the Board deems necessary.

(2) While recognizing that consistency in the location of the Licensed Space is important to the operations of the Licensee, in the event the Board requires use and

access to the Licensed Space on an ongoing basis due to the reconfiguration of its classrooms or programming, the Board shall have discretion to direct that the Licensee use alternative room(s) within a School from those which the Licensee has otherwise been granted a License to utilize under this Agreement, so long as such room(s) are reasonably similar to those otherwise made available to the Licensee under this Agreement and such room(s) otherwise meet the requirements of the CCEYA in the same manner as the original room(s) did. Any such request shall be without compensation to the Licensee.

(3) It is understood and agreed by the parties that the Board shall have complete and unfettered discretion with respect to the usage of any Licensed Space outside the hours during which the Licensee is permitted to utilize such Licensed Space under this Agreement.

(4) No portion of the Licensed Space or the School shall be used by the Licensee in a manner which is likely to damage or injure any person or the School or in a manner which will unreasonably interfere with the use and enjoyment of the School (other than the Licensed Space during the hours which the Licensee is permitted to use the Licensed Space), by the Board and any of its tenants, other licensees or invitees. In addition to the foregoing, the Licensee agrees that it shall use the Licensed Space and the other areas of the School it is permitted to use, at all times, in a manner that is compatible with the safe and proper operation of the School.

## **5. Services**

(1) The Board agrees to provide the following services to the Licensee in respect of the Licensed Space and during the permitted hours of operation as contemplated herein:

- (a) reasonable access to the Licensed Space;
- (b) heating, air conditioning (if available), lighting and electrical power, as provided generally to the School;
- (c) maintenance, cleaning and security services to the same extent that such are supplied generally to the School;
- (d) use of sanitary facilities as may be determined by the Board; and
- (e) water flushing and testing procedures as the Board normally does in respect of its schools.

(2) In no event shall the Board be liable for: any injury to the Licensee, its employees, agents, invitees or children participating in the Programs; damage to any property of the Licensee or any one else; any loss of profits or business interruption, indirect or consequential damages; or for any other costs, losses or damages of any kind, arising from any interruption or failure in the supply of any utility or service to the School or any part thereof.

(3) The Licensee shall coordinate its parking and drop off and pick up requirements with the Principal of the School. In addition, the Licensee shall coordinate with the Principal of the School the transition arrangements for children in the Programs as they transition between the Programs and classes at the School. For such purposes, the Board shall prepare a "Mutual Arrangements Form", for execution by the Licensee (and which may require amendment from time to time in the discretion of the Principal of the



School). The determination of the Principal in respect of all of the foregoing shall be final. The Licensee agrees to ensure that its employees, invitees and others for whom it is responsible at law abide by and comply with all directives which the Principal of the School may issue, from time to time, with respect to any of the foregoing.

## 6. **Default and Termination**

(1) If:

- (a) the Licensee is in default of any obligation or covenant under this Agreement;
- (b) any part of the Annual License Fee is not paid within thirty (30) days after notice in writing from the Board to the Licensee that same are past due;
- (c) the Licensee becomes bankrupt or insolvent or takes the benefit of any statute for bankrupt or insolvent debtors or makes any proposal, an assignment or arrangement with its creditors, or any steps are taken or proceedings commenced by any person for the dissolution, winding-up or other termination of the Licensee's existence or the liquidation of its assets;
- (d) a trustee, receiver, receiver/manager or a person acting in a similar capacity is appointed with respect to the business or assets of the Licensee;
- (e) this License or any of the Licensee's assets are taken under a writ of execution and such writ is not stayed or vacated within fifteen (15) days after the date of such taking;

- (f) the Licensee attempts to or makes an assignment of this Agreement;
- (g) the Licensee stops providing its Programs for a period of ten (10) consecutive days or more without the consent of the Board;
- (h) any insurance policy required to be maintained by the Board pursuant to this Agreement is, or is threatened to be, cancelled or adversely changed;
- (i) the Board determines that a representation and warranty made by the Licensee to the Board is false or materially incorrect;
- (j) the Licensee breaches any other agreement it has with the Board;
- (k) the Licensee fails to maintain any licenses or other approvals required for its operation of the Programs;
- (l) the Licensee: breaches any agreements it may have with the Consolidated Municipal Service Manager (“**CMSM**”) to whom it reports; or, ceases to receive funding from such CMSM;
- (m) the Licensee ceases, for any reason, to provide child care for children ages 0 to 3.8 years at the School; or
- (n) there occurs any action of or circumstance relating to the Licensee, its employees, servants, volunteers, invitees or others for whom it is responsible for at law which affects the safety of the Board’s students or negatively impacts the reputation of the Board (in the reasonable opinion of the Board),

the Board shall have the right to terminate this Agreement upon giving the Licensee not less than ten (10) days prior written notice of such termination.

(2) In the event of any termination under section 6(1): the Board shall have no further obligations to the Licensee; such termination shall be without compensation to the Licensee; and, the Licensee shall surrender and vacate the Licensed Space, remove all of the Licensee's equipment and trade fixtures (and, at the option of the Board, any alterations made to the Licensed Space on behalf of the Licensee). The Licensee shall be responsible for and indemnify the Board for any of the Board's costs in repairing any damage to the Licensed Space caused by the installation or removal of any equipment or trade fixtures.

## **7. Indemnity and Insurance**

(1) The Licensee shall, at its sole cost and expense, take out and maintain in full force and effect, at all times during the Term, the following insurance:

- (a) "All Risks" insurance on property of every description and kind owned by the Licensee, or for which the Licensee is legally liable, or which is installed by or on behalf of the Licensee, within any of the School including, without limitation, stock-in-trade, furniture, equipment, partitions, trade fixtures and improvements, in an amount not less than the full replacement cost thereof from time to time;
- (b) general liability and property damage insurance, including personal liability, contractual liability, Licensees' legal liability, non-owned automobile liability, and owners' and contractors' protective insurance coverage with respect to the School, which coverage shall include the operations conducted by the Licensee in the School. Such policies shall be written on a comprehensive basis with coverage for any one occurrence or claim of not less than Five Million Dollars (\$5,000,000.00)

or such higher limits as the Board may reasonably require from time to time. Such insurance shall provide coverage for all acts and omissions of the Licensee's employees, volunteers and others for whom it is responsible at law and shall not have any exclusions in respect thereof; and

- (c) such other forms of insurance as may be reasonably required by the Board from time to time.

(2) All such insurance shall be with insurers and shall be on such terms and conditions as the Board reasonably requires. The insurance described in section 7(1)(b) shall name as an additional insured the Board and anyone else with an interest in the School from time to time designated in writing by the Board. The Board agrees to make available to the Board any proceeds from such insurance for purposes of satisfying the Licensee's obligations to indemnify and hold the Board harmless under this Agreement. All public liability insurance shall contain a provision for cross-liability or severability of interest as between the Board and the Licensee.

(3) The Licensee shall obtain from the insurers under such policies undertakings to notify the Board in writing at least thirty (30) days prior to any cancellation thereof. The Licensee shall furnish to the Board certificates of good standing in respect of all such policies prior to the Commencement Date and otherwise as and when requested by the Board. The Licensee agrees that if it fails to take out or to keep in force such insurance or if it fails to provide a certificate of good standing in respect of every policy and evidence of continuation of coverage as herein provided, the Board shall have the right to take out such insurance and pay the premium therefor and, in such event, the Licensee shall pay to the Board the amount paid as premium plus fifteen percent (15%),

which payment shall be payable on the first day of the next month following payment by the Board.

(4) The Licensee shall not be an insured under insurance maintained by the Board, nor shall the Licensee be deemed to have any insurable interest in the property covered by any such insurance, or any other right or interest in such insurance or the proceeds therefrom.

(5) The Licensee shall comply promptly with all requirements and recommendations of: the providers of any insurance contemplated hereby and/or now or hereafter in effect and pertaining to or affecting the Licensee, the Board and/or the School or any part thereof; and, the Board's insurance providers.

(6) The Licensee shall indemnify the Board and save it harmless from any and all losses, claims, actions, demands, fines, penalties, liabilities and expenses occasioned wholly or in part by: (a) the operation of the Licensee's Programs; (b) any act or omission of the Licensee or anyone for whom it is in law responsible; or (c) any breach by the Licensee of any provision of this Agreement.

(7) Notwithstanding the foregoing or anything else herein contained, in no event, whether or not the result of the wilful act or the negligence of the Board, its agents, officers, employees or others for whom it is legally responsible, and irrespective of any insurance that may or may not be carried or required to be carried, shall the Board be liable for:

- (a) damage to property of the Licensee or others located in the School or the Licensed Space;
- (b) any injury or damage to persons or property resulting from fire, explosion, steam, water, rain, snow or gas which may leak into or issue or flow from

any part of the School or from the water, steam or drainage pipes or plumbing works of the School or from any other place or quarter;

- (c) any damage caused by or attributable to the condition or arrangement of any electrical or other wiring; or
- (d) any indirect or consequential damages suffered by the Licensee.

## **8. Notices**

(1) Any notices required or permitted to be provided hereunder shall be in writing and shall be deemed to have been received five (5) business days after the post-marked date thereof if sent by registered mail, the next business day following transmission if sent by e-mail, or at the time of delivery if hand delivered (including prepaid courier), and shall be addressed as follows:

To the Licensee: [ • ]

Attention: [ • ]  
E-mail: [ • ]

To the Board: Thames Valley District School Board  
1250 Dundas Street  
London, ON N5W 5P2  
Attention: Holly Gerrits, Early Years Advisor  
E-mail: [H.Gerrits@tvdsb.on.ca](mailto:H.Gerrits@tvdsb.on.ca)

(2) Either the Licensee or the Board may change its address by notice in writing to the other.

(3) For purposes of this section 8, “business day” means a weekday which is not a professional development day for the Board or a statutory holiday recognized in the Province of Ontario.

## **9. Damage or Destruction to Licensed Space or the Building**

(1) If the School or any portion thereof is damaged or destroyed by fire or by other casualty, the Board may, in its absolute discretion, elect to restrict the Licensee's access to the School or any part thereof for such period of time as the Board may, again in its absolute discretion, determine. In the event that the Board elects to restrict the Licensee's access to the School or a part thereof, the Board shall rebate or provide an abatement to the Licensee of a pro-rated portion of the Annual License Fee attributable to the portion of the Licensed Space for which access is restricted based on the period of time for which access is restricted. The Board shall have no other obligations to the Licensee in this regard. For greater certainty, the Board shall have no obligation to rebuild any part of any Licensed Space or the School or part thereof.

## **10. Miscellaneous**

(1) In the event that either the Board or the Licensee should be delayed, hindered or prevented from the performance of any act required hereunder by reason of any unavoidable delay, including strikes, lockouts, damage to or within the School, failure of any School building services, unavailability of materials, inclement weather, acts of God or any other cause beyond its reasonable care or control, but not including insolvency or lack of funds, then performance of such act shall be postponed for a period of time equivalent to the time lost by reason of such delay. The provisions of this section 10(1) shall not under any circumstances operate to excuse the Licensee from prompt payment of any amounts owing hereunder.

(2) Notwithstanding any other provision of this Agreement, in the event of any strike, lock-out or other labour disturbance affecting the Board, the Board shall have the right to close the School and to prohibit entrance thereto by anyone, including the Licensee. In

the event that the Board so prohibits access to the School for a period exceeding five (5) consecutive days which the Licensee would otherwise have access thereto, the Board shall provide a rebate or abatement of the Annual License Fee payable by the Licensee in respect of the period that the School or any of them are not available to the Licensee on the same basis as contemplated in section 9(1) hereof, *mutatis mutandis*, and the Board shall not otherwise have any obligation or liability to the Licensee in respect of any such closure. In the event of a strike, lock-out or other labour disturbance affecting the Board which does not result in the Board deciding to restrict access to or close the School or any portion thereof which the Licensee is entitled to utilize in accordance with the terms hereof, the Licensee may continue to use same in accordance with the terms and conditions of this Agreement; however, should the Licensee, in its discretion, decide not to use the portions of the School contemplated herein during such strike, lock-out or other labour disturbance, for a period exceeding five (5) consecutive days during which the Licensee would otherwise have access thereto, the Board shall provide a rebate or abatement of the Annual License Fee payable by the Licensee in respect of the period during any such strike or lock-out which the Licensee elects not to utilize same on the same basis as contemplated in section 9(1) hereof, *mutatis mutandis*, and the Board shall not otherwise have any obligation or liability to the Licensee in respect of any such closure.

(3) The Licensee shall monitor the Board's website, on a regular basis, for purposes of determining whether the Licensee might not be able to access the School as a result of any of the circumstances contemplated in sections 10(1) or (2) above.

(4) This Agreement and any Schedules hereto contain the entire understanding between the parties relating to the subject matter hereof. No amendment to this Agreement shall be valid unless in writing and signed by each of the parties hereto.



(5) Every provision of this Agreement is intended to be severable. If all or any part of any term or provision hereof is illegal, invalid or unenforceable for any reason, such illegality, invalidity or unenforceability shall not affect the validity or enforceability of the remainder of this Agreement. Those provisions of this Agreement which, by their nature, are intended to survive the expiry or earlier termination of this Agreement, shall survive the expiry or earlier termination of this Agreement.

(6) The Board and the Licensee acknowledge and agree that the relationship between them is solely that of independent contractors, and nothing herein shall be construed to constitute the parties as employer/employee, partners, joint ventures, co-owners, or otherwise as participants in a joint or common undertaking. Neither party, nor its employees, agents or representatives shall have any right, power or authority to act or create any obligation, express or implied, on behalf of the other.

(7) This Agreement may not be assigned by the Licensee.

(8) This Agreement shall enure to the benefit of and be binding upon each of the parties hereto and their respective successors and permitted assigns.

(9) This Agreement shall be construed in accordance with and governed by the laws, and subject to the jurisdiction of the courts, of the Province of Ontario.

(10) The Licensee agrees that it shall not register this Agreement or any notice or reference in respect of this Agreement against title.

**IN WITNESS WHEREOF** the parties have duly executed this License Agreement.

**THAMES VALLEY DISTRICT SCHOOL BOARD**

Per: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

**[ • ]**

Per: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

Per: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

**SCHEDULE 1**

Part A – School Address

Part B – Description of Programs

Part C – Licensed Space



# PLANS

## SCHEDULE F – PLANS

*Refer to Plans, attached separately.*



