

THIS AGREEMENT dated as of this 1st day of May, 2018

BETWEEN:

**UPPER GRAND DISTRICT SCHOOL BOARD**

a school board incorporated under the laws of the Province of Ontario  
(hereinafter referred to as the "Board")

OF THE FIRST PART

- and -

**The Corporation of the Town of Minto**

(hereinafter referred to as the "Operator")

OF THE SECOND PART

WHEREAS:

- A. The Board is the registered owner of the land and building(s) situated at 530 Prospect Street in the town of Palmerston, Ontario upon which is situated Palmerston Public School, (the "School");
- B. The Board wishes to engage the services of the Operator to provide After School Authorized Recreational Programs, ("the Program") at the School;
- C. The Board issued an RFP # LH-0118 for Before and/or After School Programs (Extended Day and School Age-Licensed) or Authorized Recreational Program);
- D. The Operator is a non-for-profit corporation;
- E. It is the policy of the Board to pursue facility arrangements which benefit students, the community and the Board, but which present no additional costs to the Board.
- F. It will be of benefit to both the Board and the Operator to establish a Program at the School, subject to the terms and conditions hereinafter set out.

NOW THEREFORE THIS AGREEMENT WITNESSES that in consideration of the mutual covenants and agreements contained herein, the parties hereto agree as follows.

**ARTICLE 1 -- LICENSED SPACE**

- 1.1 The Board will provide the Premises ("Premises") for the Program. "Premises" means the space(s) licensed by the Operator in the school to be used while providing the Program. The Premises will normally be used by the school for school purposes during the regular school day. The Premises will be determined by the Board in collaboration with the Operator. The Operator shall peaceably and quietly have access to and use of the Premises on a non-exclusive basis, subject to the terms of this Agreement and so long as the Operator is not in default beyond any applicable grace or cure period.
- 1.2 The area of the Program has been agreed upon by the parties. The Board and the Operator shall identify the shared assigned space that will most frequently be used for the Program. Alternate space(s) shall also be identified. The Board and the Operator may also wish to identify some other space(s) to be licensed. The alternate and other spaces will mitigate the impact of potential change in access to rooms, including renovations, Program growth, parent meetings etc.

1.3 It is acknowledged and agreed that the Operator shall occupy the Premises as a Licensee only, and subject to the terms and conditions of this Agreement. This Agreement does not create any interest in favour of the Operator in respect of the Board's lands and buildings or any part thereof. The Operator may not register this Agreement or any notice of this Agreement on title to the School, or permit anyone acting on the Operator's behalf to register it on title to the School.

1.4 The Board shall provide access to the Premises for children and their parents and/or guardians in accordance with this Agreement.

## ARTICLE 2 -- TERM and EXTENSION

### 2.1 Term:

This Agreement shall become effective on the first day of school September 1, 2018 and shall expire on August 31, 2021 (the "Term"), unless it is terminated early in accordance with the provisions of this Agreement. The Term of this Agreement is subject to any and all rights of either party to terminate this Agreement pursuant to the terms hereof, or otherwise available to either party at law or in equity.

### 2.2 Extension:

This Agreement may be renewed, subject to satisfactory negotiation, for up to six (6) additional one year or three (3) additional two year terms at the Board's sole discretion.

## ARTICLE 3 -- FEES

3.1 The Operator will be required to pay a fee of \$6.00 (the "Fee") per hour for each occupied, assigned, licensed room. The Board reserves the right to adjust such charges at its discretion. All amounts payable by the Operator to the Board hereunder shall be exclusive of any harmonized tax ("HST"), and the Operator shall pay HST in addition to the Fees to the Board.

3.2 The Board will invoice the Operator on a monthly basis. All invoices are to be paid to the Board via cheque or direct withdrawal from the Operators bank. The Extended Day Manager will e-mail "billing hours" to the Operator each month. The Operator must review, approve and return to the Extended Day Manager within one week of receipt.

## ARTICLE 4 -- COVENANTS OF THE OPERATOR

### 4.1 Approvals and Licences:

The Operator agrees to obtain, at its own expense, the approvals and licences required to operate the Program from the appropriate government authorities having jurisdiction over such facilities. It further agrees to operate the Program in accordance with the Child Care and Early Years Act, 2014 and Regulations thereto, as same may be amended from time to time, and any other applicable legislation. The Operator shall forthwith provide the Board with copies of all such licenses and permits.

### 4.2 County Service Agreement:

#### Authorized Recreational Programs

Where required, the Operator agrees to maintain a Purchase of Service Fee Subsidy Agreement (the "Service Agreement") with the County of Wellington and to operate the Program in accordance with the requirements outlined therein. It further agrees to notify the Board in a timely manner of any changes to

the requirements or the cancellation of the Service Agreement. It is understood that a termination of the Service Agreement with the County of Wellington will constitute a breach of this Agreement and the Board will have the right to terminate this Agreement pursuant to the provisions of Article 7 hereof.

#### 4.3 **Costs of the Program:**

The Operator shall assume full financial responsibility for all costs of the day-to-day operations and establishment of the Program including, without limitation, set up costs, the cost of staffing, benefits, furnishings, appliances, activity consumables, toys, classroom resources, outdoor play area, program supplies, food, telephone services (other than utilities and maintenance and custodial services provided by the Board), internet services, data drops, provision of equipment, repairs and replacement of equipment, and other matters necessary to operate as a first class Program with properly trained and licensed personnel, so as to provide a safe, comfortable and stimulating environment for the children utilizing same.

#### 4.4 **Insurance:**

The Operator will obtain a comprehensive policy of public liability insurance with liability limits of not less than \$5,000,000.00 per occurrence. General liability coverage shall include (but is not limited to) coverage for:

- (a) Sexual abuse and incidental malpractice;
- (b) Non-owned automobile (\$2,000,000 per occurrence);
- (c) Tenant's legal liability and contractual liability.

4.4.1 The Board shall be an additional insured on such policy and coverage shall not be terminated without 30 days prior written notice.

4.4.2 The Operator shall also carry:

- (a) Automobile Insurance (minimum \$2,000,000 per occurrence);
- (b) WSIB Insurance or, alternatively, Employer's Liability Insurance;
- (c) Business Interruption Insurance; and
- (d) Professional Liability Insurance/Errors and Omissions (minimum \$2,000,000.00 per occurrence)

4.4.3 The Operator agrees to provide evidence of adequate fire and theft insurance to cover its supplies and property, including money, which at any time may be on the Board's premises.

4.4.4 Without limiting the generality of this document, the Operator shall hold harmless and indemnify the Board against claims from injury to persons or damage to or loss of property resulting from the Operator's acts or omissions for which it is legally liable.

4.4.5 Unless otherwise stated in this document, within seven (7) working days of being notified, the Operator will provide the Board, Purchasing Department with a Certificate of Insurance indicating the coverage's above.

4.4.5 The Operator shall be liable for any loss or damage to any of the Board owned equipment, which loss, damage or injury is or may be caused by or arise out of, either wholly or in part, the negligence of the Operator and/or its officers, employees or agents.

4.4.6 The Operator agrees to indemnify, hold harmless and defend, the Board from and against any and all liability for loss, damage, and expense, which the Board may suffer or for which the Board may be held liable by reason of injury (including death) or damage to any property arising out of negligence on the part of the Operator or any of its representatives or employees. It is the responsibility of the Operator to advise the Board of any property, or other, damages within twenty-four (24) hours of the occurrence of same.

#### 4.5 Compliance with Governmental and Other Regulations:

The Operator shall be responsible for complying with all laws, regulations, bylaws, codes and policies of any competent government authority relating to the operation of the Program including the Ministry of Education Before and After School Programs Kindergarten – Grade 6, Policies and Guidelines for school Boards.

The Operator shall observe and conform to all relevant policies, procedures and guidelines of the Board and school located at <https://www.ugdsb.ca/board/policy/>. The Operator shall be responsible for establishing the codes of conduct, rules, policies and procedures governing the day-to-day operations of the Program provided there is discussion of same to the extent they affect or require interaction with the Board and that the said codes of conduct, rules, policies and procedures as established shall be consistent and compatible with the codes of conduct, rules, and policies and procedures of the Board governing the day-to-day operations and use of the School.

- 4.5.1 The Operator shall provide the Board with an annual copy of the Ministry Licensing Inspection Report (requirements and recommendations) and license renewal.
- 4.5.2 For Authorized Recreational Programs, where required by the County, the Operator will provide the Board verification of their Purchase of Service Fee Subsidy Agreement on an annual basis. The Operator grants the Consolidated Municipal Service Manager at the County permission to discuss with the Board the standing of the Purchase of Service Fee Subsidy Agreement.
- 4.5.3 The Operator shall provide the Board with an annual copy of the Operating Criteria Report (percentages chart) or Raising the Bar Certificate results from the County inspection.
- 4.5.4 The Operator shall provide any additional criteria that the Board may deem necessary at any time.
- 4.5.5 The Board reserves the right to demand the removal of any of the Operator's employees from the Program, if in the Board's opinion, such employees conduct has been of an unacceptable nature.
- 4.5.6 The Operator shall forthwith notify the Board in writing upon the occurrence of any of the following:
- Any violation by or order or directive against the Operator pursuant to the Occupational Health and Safety Act (Ontario) or its associated regulations affecting the Operator, the Operator's employees, or agents of the Operator providing services;
  - Any organizing drive, voluntary recognition, or proceedings before the Ontario Labour Relations Board for certification of any labour union or employee association relating to or affecting the Operator's employees; and
  - Information relating to pending strikes, slow-downs or other work stoppages affecting the Operator's employees.

#### **4.6 Alterations, Additions, Changes:**

The Operator must obtain the Board's written consent prior to effecting any alterations, decorations, changes, additions or improvements to the Premises. A request for approval, on a Board approved form, shall be submitted to the Board and shall be accompanied by an adequate description of the contemplated work and where appropriate, working drawings and specifications.

All alterations, decorations, additions and improvements made by the Operator shall immediately become the property of the Board without payment therefor. Such alterations, decoration, additions and improvements shall not be removed from the Premises either during or at the expiration of this Agreement, provided that the Operator shall, at its own cost, remove same if required by the Board making good all damage occasioned thereby. At the expiration or sooner termination of this Agreement, the Operator shall return to the Board the Premises in the same condition in which it was received, except for approved alterations, decorations, additions or improvements, ordinary wear and tear, and except for any loss or damage caused by fire, flood or unavoidable occurrence to the Premises.

In the event that the Operator wishes to install playground equipment or other equipment, prior written consent must be obtained from the Board. Such playground or other equipment shall remain and become the property of the Board at the end of the term or any renewal term.

#### **4.7 Keys and Access:**

The Operator agrees that it will use the Board's system of keyed entry and security access to the Premises.

The Operator will be provided with two sets of keys for the Premises. It will be the responsibility of the Operator to maintain a record of the keys and key numbers that are distributed to their staff. If new keys are needed, the Operator will reimburse the Board for the cost of the keys and any key locks which are required. If the Operator loses keys and new locksets are required, the Operator will reimburse the Board for the keys and locksets.

All keys, locksets shall be returned to the Board upon expiration or sooner termination of this Agreement for any and all reasons.

In some circumstances the Operator may be given a security code to access the building. The Operator will be responsible to keep the code confidential and ensure the Premises is secure at all times.

#### **4.8 Community Use and Access to School:**

The Operator agrees that its use or occupancy of the Premises does not entitle it to access to all areas of the School. Access to or use of any portion of the School, not a part of the Premises provided by the Board must be applied for through an Application for Community Use of School Facilities. Prevailing fees will apply.

#### **4.9 Program Publicity and Signs:**

All Operator publicity shall clearly indicate that Programs are not Board operated. Use of the Board or school logo will not be permitted.

The Operator shall not erect any signs on any Board facility or property without prior, written approval of the Board.

#### 4.10 Ontarians with Disabilities Act:

The Operator must be capable of recommending and delivering an accessible and inclusive Program consistent with the Ontario Human Rights Code (“OHRC”), the Ontarians with Disabilities Act, 2001 (“ODA”), and the Accessibility for Ontarians with Disabilities Act, 2005 (“AODA”) and its regulations, in order to achieve accessibility for Ontarians with disabilities. In accordance with Ontario Regulation 429/07 made under the AODA, Accessibility Standards for Customer Service, the Board has established policies, practices and procedures governing the provision of its goods and services to persons with disabilities. These policies, practices and procedures are available for review at <http://www.ugdsb.ca/board/accessibility-at-the-ugdsb/>. The Operator is required to comply with the Board’s accessibility standards, policies, practices and procedures, as same may be in effect during the Term of this Agreement and apply to the Program services provided by the Operator. The Operator must ensure that its employees have completed the requisite training identified by the Ministry responsible for the AODA prior to providing the Program hereunder. The Operator is to ensure that training records are maintained, including dates when training is provided, the number of employees who received training, and individual training records. The Operator is to ensure that this information is available to the Board during the Term of this Agreement.

#### 4.11 Health and Safety:

The Operator shall:

- 4.11.1 Ensure that equipment, including playground equipment brought onto the premises/school is in a good state of repair and conforms to all applicable standards including CSA standards as amended from time to time;
- 4.11.2 maintain a safe workplace or work site in accordance with the safe work practices and housekeeping;
- 4.11.3 comply with the Occupational Health and Safety Act (Ontario) and all of its regulations pertaining to the operation of the Child Care Program;
- 4.11.4 have actual knowledge of and comply with the Board’s safety policies and appropriate safe work procedures;
- 4.11.5 provide the necessary protective equipment, devices, or related safety item(s) as required by the Occupational Health and Safety Act (Ontario) and all of its regulations, as well as the Board’s safety policies, and ensure that such equipment, devices and items are used in the performance of the requirements of this Agreement;
- 4.11.6 if requested, provide the Board with a copy of the Operator’s written health and safety policy as required by the Occupational Health and Safety Act (Ontario);
- 4.11.7 ensure that employees or permitted sub-contractors of the Operator who become aware that a pupil of the Board may have engaged in an unsafe activity, report to the Principal of the school about the matter, as soon as reasonably possible; and
- 4.11.8 The Board will arrange for inspections of playground equipment on an annual basis as required by the Ministry of Education. The Operator shall promptly affect any repairs to the equipment installed by the Operator as recommended in the playground equipment inspection report obtained by the Board. Inspections arranged by the Board do not include drop tests; these must be arranged and paid for by the Operator in collaboration with the Board.

## ARTICLE 5 -- COVENANTS OF THE BOARD

- 5.1 The Board shall provide and pay for all maintenance and utilities to the Premises, including snow removal, sanding, salting, lawn maintenance, security and custodial services subject to sections 5.2, 5.3 and 5.4 below.
- 5.2 Custodial services will be provided by the Board on instructional days. At any time the custodian is not present in the school, the Operator will be responsible for cleaning the Premises and garbage removal.
- 5.3 It is the Operator's responsibility to clean/disinfect any equipment. Custodial services shall not include cleaning of any furniture and equipment belonging to the Operator.
- 5.4 The Operator will only provide the service on instructional days.

## ARTICLE 6 -- OPERATIONAL ISSUES

- 6.1 The Program must be led by an individual with a diploma/degree in Child and Youth or Recreation and Leisure or Social Work or Psychology or Sociology or Kinesiology all with a focus on children aged 6 to 12 years (for Authorized Recreational Programs);
- 6.2 The Operator shall operate the Program commencing with the first day of school in of September of one year to and inclusive of June 30<sup>th</sup> of the following year between the hours of 7:00 a.m. and 6:00 p.m., Monday to Friday inclusive on all days except Labour Day, Thanksgiving Monday, Christmas Day through to and including New Year's Day (both inclusive), Family Day, Good Friday, Easter Monday, Victoria Day and any future holidays legislated or shut down periods as may be determined by the Board in its sole and unfettered discretion.
- 6.3 The Operator shall deliver the Program for kindergarten to grade 6 students consistent with the Ministry's applicable programs and requirements.
- 6.4 Students from other schools may be considered in consultation with the Board.
- 6.5 The Program must be provided at the very least on each instructional day. This term must appear on the Operator's licence.
- 6.6 On instructional days when School is closed to students (inclement weather or emergency) the Operator will not operate. On instructional days when School is closed or buses are cancelled midway through the day, the Operator will follow Board instructions. On instructional days when School is closed to students for any other reason, alternate arrangements may be made in consultation with the Board.
- 6.7 When service is deemed viable the Operator will make every effort to accommodate the Program on non-instructional days such as professional development days, school breaks and during the summer. This term must appear on the Operator's licence. Dates of additional services are to be determined in consultation with the Board. This does not apply to Authorized Recreational Programs, After School, which can only offer care for up to three hours of care once a day. See the Ministry of Education Before and After School Policies and Guidelines.
- 6.8 Authorized Recreational Programs may run no longer than three hours after the end of the school day (bell time) and may end no later than 6:00 p.m.

6.9 The Operator shall operate the Program for a minimum of one school year. Any subsequent cancellation of the Program by the Operator will be effective June 30 of each applicable year by giving the Board 90 days prior written notice.

6.10 Both parties agree to collaborate and provide up to ten (10) working days of vacancy per year during the summer (if applicable) to allow for major cleaning and building maintenance of the Board. Any agreement for work completed outside of normal working hours will be completed at the expense of the Operator and will reflect the overtime cost incurred.

6.11 The parties agree that they shall meet at least twice per year in order to review operational information and issues.

6.12 The use of additional equipment belonging to the Operator requires prior, written approval of the Board.

6.13 The Operator agrees that the Program will be available to all children, including children with challenging needs, and in accordance with the Board's commitment to inclusive community.

**6.14 Furniture and Materials:**

Furniture, equipment and classroom resources owned by the Board that may be used by the Operator will be determined in collaboration with the Board and the Operator. Any materials that are borrowed must be returned to the proper location at the end of each day. Any items that are damaged/missing during the Program must be replaced by the Operator;

**6.15 Program Information:**

The Operator shall provide the Board with updated Program information, including but not limited to, current and/or proposed fee schedules, hours of operation, by the 1st of April of each year of the Agreement along with the Operator's confirmation that the Operator will continue to run a Program in the following year. In addition the Operator shall provide the Board with Program information within ten (10) days of receiving such a request throughout the Term of the Agreement.

**6.16 Reporting and Meetings:**

The Operator must provide reports to the Board on an annual basis detailing information relative to the provision of the Program including but not limited to updated business plan, curriculum, number of children enrolled, wait list, special needs children, withdrawals etc.

The Operator is required to meet with the Board's Extended Day Manager for a startup meeting and semi-annual meeting.

**6.17 Program Philosophy and Local Community Needs:**

The Operator confirms that the Program is supportive of and compatible with the Program and philosophy of early childhood education as outlined in the Ontario Ministry of Education and the Board's policy documents. That services offered, will be considered within the context of the specific needs of the local community.

**6.18 Co-operative Education Programs:**

The Operator agrees that the Program will be available for work placements for secondary school students participating in the Co-operative Education Program operating within the Board. The work



placements may include participation from alternative modes of Program delivery in our system such as work experience for the secondary school students under the Board's jurisdiction. All students participating may be required to complete a police records and Family and Children Services check in accordance with the policy of the Board and the Operator.

**6.19 Emergency Evacuation Plan:**

The Operator shall share with the School principal the Program emergency evacuation plan and any subsequent updates.

**6.20 School Fire Drills:**

The Operator shall participate in the School fire drills.

**6.21 Contact Person:**

Both the Operator and the Board shall designate a contact person to ease liaison and planning between the parties.

Board Contact:

Denise Knapp, Extended Day Manager

Denise.knapp@ugdsb.on.ca

Operator Contact:

Matthew Lubbers

matt@town.minto.on.ca

6.22 The Operator is encouraged to sponsor, foster and create a parent advisory committee, whose responsibility shall be to assist and advise the Operator in the operation of the Program to be operated by the Operator. The parent advisory committee shall consist of the parents and/or guardians of the children enrolled from time to time in the Program, together with the Principal of the School, or such Principals nominee, as a member.

## **ARTICLE 7 -- TERMINATION**

7.1 Subject to the provisions of section 7.1.4 hereof, either party (the "Non-Defaulting Party") shall have the right to forthwith terminate this Agreement without prejudice to any other rights which it may have in this Agreement, in law or in equity, upon the occurrence of any one or more of the following events (hereinafter called a "Default") by the other party (the "Defaulting Party"):

7.1.1 the Defaulting Party defaults in the performance of any of its obligations provided for in this Agreement or in the Schedules attached hereto;

7.1.2 the Defaulting Party fails to conform to any relevant federal, provincial, or municipal law, regulation, by-law or other requirement including, without limitation, any applicable health and safety act or regulation; or

7.1.3 the Defaulting Party is unable to pay its debts when due, makes an assignment for the benefit of creditors, files any petition under the bankruptcy or insolvency laws of any jurisdiction, has a receiver or trustee to be appointed for its business or partners, or is adjudicated to be bankrupt or insolvent; and

- 7.1.4 in the event of a Default pursuant to section 7.1.1 or 7.1.2 of this Agreement, the Non-Defaulting Party must serve written notice of such default or contravention to the Defaulting Party. If, within ten (10) days of the receipt of such notification, the Defaulting Party fails to rectify the default or cease the contravention, the Non-Defaulting Party may terminate this Agreement by providing the Defaulting Party with twenty (20) days' notice of termination.
- 7.2 The Board may terminate this Agreement without cause on June 30th of any year, provided it gives the Operator at least ninety (90) days' prior written notice of termination.
- 7.3 The Operator may terminate this Agreement without cause effective June 30th of any year, provided it gives the Board at least ninety (90) days' prior written notice of termination;
- 7.4 Following notice of termination given by the Operator, the Operator shall continue to operate the Program until termination in an appropriate manner within the terms of this Agreement. The Operator will cooperate fully in familiarizing any replacement provider of supervision of the Program so that the person can assume the operation of same with a minimum of disruption to the children utilizing the Program.
- 7.5 Upon termination of this Agreement for any reason, all leasehold improvements and trade fixtures installed in the Licensed Space shall become the property of the Board provided, however, the Board shall be entitled, at its option, to require the Operator to remove any trade fixture or leasehold improvement installed therein, making good all damage occasioned by any such removal.

#### **ARTICLE 8 -- CRIMINAL BACKGROUND CHECKS**

- 8.1 The Operator is required to comply with the requirements of the Child Care and Early Years Act, 2014 including the requirements related to Criminal Background Check and Vulnerable Persons search.
- 8.2 The Operator covenants and agrees that it will not engage any employee who may come into direct contact with children or students on a regular basis or who may have access to child or student information, to provide services hereunder, where such employee has been charged with or convicted of an offence, the nature of which may be construed as jeopardizing the safety and well-being of the children or the students of the Board
- 8.3 The Operator covenants and agrees to retain on file at its head office a criminal background check covering convictions, charges and occurrences under the Criminal Code, the Narcotics Control Act, and any other convictions, charges and occurrences which would be revealed by the long version Vulnerable Persons search of the automated Criminal Records Retrieval system maintained by the RCMP at the Canadian Police Information Operator ("Criminal Background Check"), together with an Offence Declaration for every employee of the Operator who may come into direct contact with children or students on a regular basis, or who may have access to child or student information prior to the occurrence of such possible direct contact or prior to having access to child or student information and on or before September 1st each year thereafter with respect to Offence Declarations.
- 8.4 The Operator agrees to indemnify and save harmless the Board from all claims, liabilities, expenses and penalties to which it may be subjected on account of: the Operator engaging an employee in contravention of section 8.1 above; or the Operator's failure to retain a Criminal Background Check or an Offence Declaration on file, as aforesaid. This indemnity shall survive the expiration or sooner termination of this Agreement. In addition to and notwithstanding anything elsewhere herein contained, if the Operator engages an employee in contravention of section 8.1, or fails to retain a Criminal Background Check and an Offence Declaration for any employee of the Operator who may come into direct contact

with children or students on a regular basis, or who may otherwise have access to child or student information prior to the occurrence of such possible direct contact, or prior to having access to child or student information and on or before September 1st in each year thereafter with respect to Offence Declarations, then the Board will have the right to immediately terminate this Agreement without prejudice to any other rights which it may have in this Agreement, in law or in equity.

8.5 The Board shall be entitled, on forty-eight (48) hours' prior written notice, to attend at the head office of the Operator for the purposes of reviewing the Criminal Background Checks and Offence Declaration. The parties acknowledge and agree that it is contemplated that the Board will attend to such reviews at least twice per annum during the Term, and any renewal thereof.

## ARTICLE 9 -- CONFIDENTIALITY

9.1 For the purposes of this Article, the following terms have the meanings indicated below.

9.1.1 "MFIPPA" means the Municipal Freedom of Information and Protection of Privacy Act (Ontario);

9.1.2 "Personal Information" means recorded information about an identifiable individual or that may identify an individual; and

9.1.3 "Record", for the purposes of this Agreement, means any recorded information in the custody or control of the Board, including any Personal Information, in any form:

(a) provided by the Board to the Operator, or provided by the Operator to the Board, for the purposes of this Agreement; or

(b) created by the Operator in the performance of this Agreement.

9.2 The parties agree that any information concerning the business or affairs of the other party or its directors, officers, agents, employees, clients and trustees, as applicable, about which the other party becomes aware of in the course of the Operator providing the services shall:

9.2.1 be treated as confidential;

9.2.2 not be disclosed to any third party or to the Operator's personnel or the Board's staff, except as may be required under this Agreement; and

9.2.3 not be used for any purpose other than that contemplated by this Agreement and for the benefit of the other party.

The parties agree that any combination of information which includes such information shall be treated as confidential even if individual parts thereof are not confidential. The parties shall use all reasonable efforts to keep such information confidential, using a standard of care no less than the degree of care that the recipient would be reasonably expected to employ for its own confidential information. The parties shall ensure that all recipients of the said information, including the Operator's personnel or the Board's staff, assume obligations identical in principle with those which the parties assume under this Section. In the event a party is required by any applicable law to make disclosure of any such information, the party required to make disclosure shall consult with the other party in advance to the extent reasonably practicable as to the contents and timing of such disclosure.

9.3 While neither party shall disclose any confidential information of the other, it shall not constitute a breach of the obligations hereto if such confidential information was:

- 9.3.1 already lawfully in the public domain or becomes known within the public domain from no breach of such party;
  - 9.3.2 already known to such party at the time of disclosure;
  - 9.3.3 independently developed by the party without reference to or use of the information;
  - 9.3.4 lawfully received by the party from a third party; or
  - 9.3.5 made public with the prior consent in writing of the other party.
- 9.4 The Operator and the Board acknowledge and agree that MFIPPA applies to and governs all Records and may require the disclosure of such Records to third parties. Furthermore, the Operator agrees:
- 9.4.1 to keep Records secure;
  - 9.4.2 to provide Records to the Board within seven (7) days of being directed to do so by the Board for any reason, including an access request or privacy issue;
  - 9.4.3 not to access any Personal Information unless the Board determines, in its sole discretion, that access is permitted under MFIPPA and is necessary in order to provide the services;
  - 9.4.4 not to directly or indirectly use, collect, disclose or destroy any Personal Information for any purposes that are not authorized by the Board;
  - 9.4.5 to ensure the security and integrity of Personal Information and keep it in a physically secure and separate location safe from loss, alteration, destruction or intermingling with other records and databases, and to implement, use and maintain the most appropriate products, tools, measures and procedures to do so;
  - 9.4.6 to restrict access to Personal Information to those of its directors, officers, governors, employees, agents, partners, affiliates and volunteers who have a need to know it for the purpose of providing the services and who have been specifically authorized by the Board to have such access for the purpose of providing the services;
  - 9.4.7 to implement other specific security measures that, in the reasonable opinion of the Board, would improve the adequacy and effectiveness of the Operator's measures to ensure the security and integrity of Personal Information and Records generally; and
  - 9.4.8 that any confidential information supplied to the Board may be disclosed by the Board where it is obligated to do so under MFIPPA, by an order of a court or tribunal, or pursuant to a legal proceeding.

The provisions of this paragraph shall prevail over any inconsistent provisions in the Agreement.

## ARTICLE 10 -- GENERAL

### 10.1 Governing Law

This Agreement shall be governed by and interpreted in accordance with the laws of the Province of Ontario and the laws of Canada applicable therein.

### 10.2 Labour Matters:

The Operator covenants, represents and warrants to the best of its knowledge as follows, and it acknowledges that the Board is relying upon such covenants, representations and warranties in connection with entering into this Agreement with the Operator:

There is no:

- collective agreement existing between the Operator and a Labour Union;
- unfair labour practice complaint under the Ontario Labour Relations Act against the Operator pending before a provincial labour tribunal or any similar agency or body having jurisdiction therefore;
- labour strike threatened against or involving the Operator;
- certification application outstanding respecting the Operator's employees;
- pending or threatened grievance, arbitration proceeding or governmental proceeding relating to the Operator's employees, which might have a material adverse effect on the Operator or on the conduct of the Operator's business; or
- Collective bargaining agreement currently being negotiated by the Operator.

### **10.3 Dispute Resolution:**

In the event of any dispute or claim arising between the Board and the Operator as to their respective rights and obligations under this Agreement, either party may give the other written notice of such dispute or claim. The notification of dispute or claim shall be made to the Purchasing Manager within ten (10) days of the dispute or cause of action arising.

The parties agree that they will first work together in good faith to resolve the matter internally by escalating it to higher levels of management. If the dispute or claim cannot be resolved through negotiation to the satisfaction of both parties, the parties may between themselves agree to submit the particular matter to arbitration in accordance with the laws of Ontario. If no agreement is made for arbitration then either party may submit the dispute to such judicial tribunal as the circumstances may require.

### **10.4 Delay in Performance:**

In the event that either party hereto shall be delayed or hindered in or prevented from the performance of any act required hereunder by reason of strikes, lockouts, labour troubles, inability to procure materials, failure of power, restrictive governmental laws or regulations, riots, insurrection, war or other reason of a like nature not the fault of the party delayed in performing work or doing acts required under the terms of this Agreement, then performance of such act shall be excused for the period of the delay, and the period for the performance of such act shall be extended for a period equivalent to the period of such delay.

10.5 Each of the parties hereto agrees to sign such further agreements, papers and documents,, and provide such assurances and generally do and perform or cause to be done and performed such further and other acts and things that may be necessary or desirable from time to time in order to give full effect to this Agreement and every part thereof.

### **10.6 Relationship of the Board and the Operator:**

This Agreement is intended to and creates only the relationship of independent contractor between the Board and the Operator, and does not establish between them any relationship as partners or co-venturers, employee and employer, or principal and agent. In furtherance of this understanding, the parties agree as follows:

- 10.6.1 the Operator shall have no authority hereunder or otherwise to represent that it is an agent of the Board except as an independent contractor, to enter into any contract or agreement, to make any representations or warranties of any sort, or to assume or create any obligation, express or implied, on behalf of or binding upon, or purportedly binding upon the Board;
- 10.6.2 the Operator shall not be entitled to receive from the Board any benefits whatsoever, and the Board will not be required to make contributions for unemployment insurance, Canada Pension, Worker's Compensation, and other similar levies with respect to any persons employed by the Operator;
- 10.6.3 except as otherwise expressly provided in this Agreement, the Operator shall at all times be free from the control of the Board as to the manner in which it shall conduct its business; and
- 10.6.4 any person whom the Operator may engage as an agent, employee or otherwise, to act in connection with the Operator's activities as such or otherwise, shall act solely on behalf of the Operator and not the Board, shall be the Operator's employee or agent and not that of the Board, and shall be paid solely by the Operator.

#### **10.7 Enurement:**

This Agreement shall be binding upon and shall enure to the benefit of the parties hereto and their respective heirs, personal representatives, successors, and permitted assigns.

#### **10.8 Indemnification**

- 10.8.1 The Operator shall indemnify and save harmless the Board, its directors, officers, trustees, agents and employees, against and from all actions, causes of action, interest, claims, demands, costs, damages, expenses or losses the Board may bear, suffer, incur, become liable for or be put to by reason of any damage to property or injury or death to person(s) by reason of, arising out of or in consequences of a breach, violation of non-performance by the Operator of any provision of this or any other related agreement, or by reason of or arising out of any act, neglect or default or omission by the successful vendor or of any of its agents, employees or any other person(s), in, on, or about the School and for whom the Operator may be responsible in law.
- 10.8.2 The Board shall indemnify and save harmless the Operator, its directors, officers, agents and employees, against and from all actions, causes of action, interest, claims, demands, costs, damages, expenses or loss the Operator may bear, suffer, incur, become liable for or be put to by reason of any damage to property or injury or death to person(s) by reason of, arising out of or in consequences of a breach, violation of non-performance by the Board of any provision of this or any other related agreement, or by reason of or arising out of any act, neglect or default or omission by the Board or of any of its agents or employees.

These indemnities shall survive the termination or expiry of this Agreement.

#### **10.9 Assignment and Subcontracting:**

This Agreement shall not be assigned or sublicensed by the Operator without the prior written consent of the Board. If the Operator is incorporated, the transfer or issuance of shares of the Operator sufficient to give control of the Operator to anyone other than the present shareholder or shareholders shall, for the purpose of this Agreement, be deemed to be an assignment of this Agreement, requiring the consent of the Board. The Operator shall, at the request of the Board, from time to time, provide the Board with a

statutory declaration in a form satisfactory to the Board, acting reasonably, wherein an officer of the Operator discloses whether or not there has been any change of control. The Operator shall not use subcontractors to perform any of its obligations hereunder without the prior written consent of the Board. In the event that such consent is granted, the Operator agrees to remain primarily liable for compliance with all provisions hereof. Except as provided in this section, none of the rights or obligations hereunder shall be assignable or transferable by the Board without the prior written consent of the Operator. The Board shall be entitled, upon giving notice to the Operator, to assign this Agreement to another board of education (the "Permitted Assignee") and, upon such assignment and assumption of this Agreement by the Permitted Assignee and notice thereof being given to the Operator, the Board shall be relieved of any and all liability hereunder.

10.10 This Agreement, together with any Request for Proposal issued by the Board in connection therewith, constitutes the entire understanding of the parties with respect to the matters described herein, and may only be amended by written instrument signed by both parties.

**10.11 Severability:**

The clauses, sentences and paragraphs of this Agreement are severable. If any word, sentence, paragraph or portion hereof is declared illegal or unenforceable, the remainder of this Agreement shall remain in full force and effect and be binding upon both parties.

**10.12 Waiver:**

No waiver of any breach of any covenant, term or provision of this Agreement shall be construed as a waiver of any subsequent breach of the same covenant, term or provision or of any portion of this Agreement.

**10.13 Notice:**

Any written notice required hereunder shall be sufficient if given by personal delivery, prepaid registered post, facsimile transmission, electronic mail, or other similar form of electronic communication, addressed to the Board a:

Upper Grand District School Board  
500 Victoria Road North  
Guelph, Ontario N1E 6k2  
Attn: Finance Department

or to the Operator at:

Corporation of the Town of Minto  
5941 Highway 89  
Harriston, Ontario N0G 1Z0  
Attn: Mr. Matthew Lubbers

or such other address as either party may give the other by written notice.

Any such notice shall be deemed to have been effectively given if sent by facsimile transmission, electronic mail, or other similar form of electronic communication, on the next business day following such transmission, or if delivered personally, on the day of actual delivery thereof, and if made or given by registered mail, on the fifth (5<sup>th</sup>) day, other than a Saturday, Sunday, or Statutory Holiday in Ontario,

following the deposit thereof in the mail. If the party giving any notice knows or ought to reasonably know of any difficulties with the postal system which might affect the delivery of the mail, any such notice will not be mailed, but will be made or given by personal delivery.

**10.14 Counterparts:**

This Agreement may be executed by the parties hereto in separate Counterparts, each of which, when executed and delivered, shall be an original, but all such Counterparts shall constitute one and the same instrument.

IN WITNESS WHEREOF the parties hereto have executed this Agreement as of the date first written above.

**UPPER GRAND DISTRICT SCHOOL BOARD**

Per:

.....

Name: Martha Rogers

Title: Director of Education

I have the authority to bind the Board.

Date: \_\_\_\_\_

**Corporation of the Town of Minto**

Per:

.....

Name:

Title:

I have the authority to bind the Operator.

Date: \_\_\_\_\_