

## PROGRAM ACCESS AGREEMENT

THIS AGREEMENT made as of the \_\_\_\_\_ day of \_\_\_\_\_, 2012

BETWEEN:

### THAMES VALLEY DISTRICT SCHOOL BOARD

(the “**Board**”)

AND

### MIDDLESEX-LONDON HEALTH UNIT

(the “**Health Unit**”)

**WHEREAS** the Health Unit wishes to operate the programs (the “**Programs**”) described in Section 1 of Schedule A hereto at the Board’s facilities (the “**Facilities**”) enumerated in Section 2 of Schedule A hereto;

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

#### 1. Access and Term

(1) The Board hereby confirms its agreement to allow the Health Unit access to the Facilities on the basis described and subject to the terms and conditions contained in Section 3 of Schedule A hereto and otherwise pursuant to the terms and conditions of this Agreement, for purposes of the Health Unit carrying out the Programs,

(2) Unless terminated earlier in accordance with the provisions of this Agreement, the term (the “**Term**”) of this Agreement shall be for a period of one (1) year, commencing on September 1 2012. This Agreement may be renewed for such additional period of time and on such additional terms and conditions as the parties may agree, in writing, not less than ninety (90) days prior to the end of the Term. Notwithstanding the foregoing, either party may terminate this Agreement on fifteen (15) days prior written notice to the other. If the Health Unit is in default of any obligation or covenant under this Agreement, the Board shall have the right to terminate this Agreement upon giving the Health Unit five (5) days prior written notice of such termination. Furthermore if a breach of this Agreement or any action of or circumstance relating to the Health Unit, its employees, servants, volunteers, invitees or others for whom it is responsible for at law 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 be entitled to terminate this Agreement with immediate effect. In the event of any termination under this section 1(2): the Board shall have no further obligations to the Health Unit; and, such termination shall be without compensation to the Health Unit.

## 2. Fees

(1) The parties have determined that, for the initial Term, no fee shall be payable by the Health Unit to the Board in connection with the access by the Health unit to the Facilities. Nonetheless, such determination does not prevent the Board from determining that it may charge access fees for purposes of the Programs after the initial Term.

## 3. Health Unit's Covenants

(1) The Health Unit shall limit its activities within the Facilities to providing the Programs, and shall not carry out any other activities or provide any other programs or services, without the express written consent of the Board, which consent may be withheld by the Board for any reason.

(2) The Health Unit's right to access and use the Facilities shall be limited to the hours of 8:00 a.m. to 4:00 p.m., Monday to Friday, inclusive, during the Board's traditional school year, and excluding civic and statutory holidays in the Province of Ontario. The Health Unit acknowledges that it shall not be provided with any keys for access to the Facilities.

(3) The Health Unit shall conduct its Programs in a reasonable and proper manner and so as not to interfere with the Board's operations and activities. The Health Unit shall, at all times, comply with all statutes, laws, by-laws, regulations, ordinances and orders from time to time, or at any time, which have jurisdiction over or relate to or effect the Health Unit, the Board, the operation of the Program or the condition, maintenance, use or occupation of the Facilities (together, the "**Applicable Laws**") and shall, upon request, provide the Board with a written explanation of the Applicable Laws which affect the Health Unit's operations and Programs and the manner in which the Health Unit is complying with the same. Without in any way limiting the generality of the foregoing: to the extent that any aspect of the Health Unit's undertaking within any of the facilities includes the storage, preparation, handling and/or service of food, the Health Unit 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; the Health Unit shall obtain and hold all required licences and approvals, including, without limitation, municipal licences and approvals for the operation of its Program under this Agreement and undertakes to provide the Board with evidence of same, from time to time, on request. Notwithstanding the foregoing, the Board shall have no responsibility whatsoever for monitoring or ensuring that the Health Unit is operating its Programs or any other activities in accordance with Applicable Laws.

(4) Prior to commencing any activities in the Facilities, the Health Unit shall obtain and provide to the Board criminal background checks (which shall include, in each case, a vulnerable sector check), in respect of all of the Health Unit's employees, servants, volunteers, invitees and others for whom it is responsible for at law and who will be entering any of the Facilities in connection with the Programs. If the Health Unit proposes to have any new employee, volunteer, invitee or other individual for whom the Health Unit is responsible for at law enter any of the Facilities in connection with the Programs, the Health Unit shall ensure that prior to such individual being allowed to enter any of the Facilities, the Health Unit shall have provided the Board with a criminal

background check (which shall include, in each case, a vulnerable sector check), in respect of such individual. Based on the content of any criminal background check provided to it, the Board shall be entitled to request that any particular individual not be allowed to enter any of the Facilities and the Health Unit shall ensure that such request is complied with. The Health Unit shall be responsible, at its own cost, for obtaining such criminal background checks and providing same to the Board, in accordance with Applicable Laws, including, without limitation, applicable privacy legislation.

(5) Once the Health Unit has provided the required criminal background check (inclusive of a vulnerable sector check) to the Board with respect to those of its employees who will be providing any of the services contemplated by a Program, the Health Unit shall obtain and provide to the Board an offence declaration in respect of each such employee, prior to September 1 of each subsequent year for which this Agreement may be renewed.

(6) The Health Unit shall ensure that it obtains, in advance, all necessary parental consents for the participation of all minors in its Program.

(7) The Health Unit shall ensure that all of its employees, servants and volunteers are fully knowledgeable of and comply with the Board's Safe Schools policies and procedures, including, without limitation, complying with all reporting requirements found under such policies and procedures in the same way that the Board must comply with reporting requirements for its employees, servants and volunteers. The Health Unit shall undertake whatever actions may be necessary under applicable privacy legislation to allow it to comply with such reporting requirements.

(8) The Health Unit shall not permit or suffer to be permitted any damage or injury to any of the Facilities. The Health Unit shall forthwith report to the Licencor, in writing, any damage or injury to the Facilities caused by the Health Unit, its employees, servants, volunteers, invitees or others for whom it is responsible for at law. The repair of any damage or injury to any of the Facilities caused by the Health Unit, 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 Health Unit, and the Health Unit 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 any of the Facilities.

(9) The Health Unit shall not make any alterations, improvements, repairs or installations in any of the Facilities, 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 Health Unit'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 Health Unit acknowledges and agrees that the Board may require that any such alterations, improvements, repairs or installations be made by and/or under the supervision and direction of the Board and that the Board shall have complete discretion, authority and direction over and in respect thereof; provided that and regardless of the foregoing, the Health Unit shall be responsible for all costs associated with: any such alterations, improvements, repairs or installations which are requested to be made by the Health Unit; and, repairs which are as a result of any damage or injury caused by the Health Unit, its employees, servants, volunteers, invitees or others for whom it is responsible for at law.

(10) The Facilities 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 Health Unit 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 any Facility; enter into any space above any ceiling or behind any wall in any Facility; disturb, pierce (by nail, screw or pin), bore or drill any surface within any Facility; apply any adhesive to any surface in any Facility; or, intentionally disturb, chip or otherwise intentionally damage any surface within any Facility. To the extent that the Health Unit wishes to undertake any action which might disturb or otherwise damage any surface within any Facility or which would require entry above any ceiling or behind any wall in any Facility, the Health Unit shall not undertake same, but shall notify the Board, in writing, of the Health Unit's desired undertaking and the provisions of section 3(8) shall apply in respect thereof. Copies of the Board's Designated Substance Surveys for the Facilities are available to the Health Unit, upon written request.

(11) The Health Unit will not operate any equipment which would exceed or overload the capacity of any utilities in the Facilities or any part thereof. Furthermore, the Health Unit will not operate any equipment in the Facilities which the Board requests the Health Unit not to operate, in the Board's discretion. Any equipment used by the Health Unit shall have and bear the appropriate standard and/or approval of the Canadian Standards Association.

(12) The Health Unit and all persons for whom it is responsible at law shall comply with all policies, procedures, rules, regulations, and amendments thereto, adopted by the Board, from time to time, including, without limitation, emergency procedures (together "**Rules**"), and all such Rules and shall be deemed to be incorporated into and form part of this Agreement.

#### **4. Personal Information**

(1) Each of the parties recognize the application of and responsibilities under the *Municipal Freedom of Information and Protection of Privacy Act*, R.S.O., 1990, c.M-56 ("**MFIPPA**") and the regulations thereunder, as amended from time to time, with respect to the collection, use and disclosure of personal information in the custody or under the control of the respective party. Each of the parties agrees to comply with all provisions of MFIPPA and its regulations with respect to the collection, use and disclosure of personal information.

#### **5. Board's Rights**

(1) Notwithstanding anything contained in this Agreement, the Facilities shall be under the exclusive control and management of the Board. Without limitation, the Board shall have the right, at any time and from time to time:

- (a) to operate, manage and otherwise deal with the Facilities 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 Facilities; and
- (c) to grant, modify or terminate easements and other agreements pertaining to the use and maintenance of all or any part of the Facilities.

(2) In no event shall the Board be liable for any injury to the Health Unit, its employees, agents, invitees or any one 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 failure, for any reason, to allow the Health Unit access to the Facilities as provided for herein or from any interruption or failure in the supply of any utility or service to the Facilities.

## **6. Indemnity and Insurance**

(1) The Health Unit shall indemnify the Board 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 Facilities occasioned or caused wholly or in part by any act or omission of the Health unit or anyone for whom it is in law responsible; or, (b) arising from any breach by the Health Unit of any provision of this Agreement.

(2) The Health Unit 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:

- (a) "All Risks" insurance on property of every description and kind owned by the Health Unit, or for which the Health Unit is legally liable, or which is used by the Health Unit;
- (b) general liability, including, property damage, bodily injury and personal injury liability, contractual liability, tenant's legal liability, non-owned automobile liability, and owners' and contractors' protective insurance coverage with respect to the Facilities, which coverage shall include the operations conducted by the Health Unit in the Facilities. Such policies shall be written on an Occurrence Form basis with coverage for any one occurrence or claim of not less than Two Million Dollars (\$2,000,000.00) or such higher limits as the Board may reasonably require, from time to time; and
- (c) such other forms of insurance as may be reasonably required by the Board, from time to time.

(3) All such insurance shall be with insurers and shall be on such terms and conditions as the Board reasonably requires. The insurance described in Sections 6(2)(b) shall name as an additional insured the Board. All public liability insurance shall contain a provision for cross-liability or severability of interest as between the Board and the Health Unit.

(4) The Health Unit 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 Health Unit shall furnish to the Board certificates of all such policies. The Health Unit 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, the Board shall have the right to take out such insurance and pay the premium therefor and, in such event, the Health Unit 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.

(5) The Health Unit shall comply promptly with all requirements and recommendations of: the Insurer's Advisory Organization of Canada (or any successor thereof); or, of any insurer, in respect of any insurance contemplated hereby and/or now or hereafter in effect and pertaining to or affecting the Health Unit, the Board, the Program, the Health Unit's operations, the Facilities or the Board's operations.

(6) Notwithstanding anything 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 Health Unit or others located in the Facilities;
- (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 Facilities or from the water, steam or drainage pipes or plumbing works of the Facilities 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 Health Unit,

it being the intention of the parties that the Health Unit's insurance shall cover all such losses or damages.

## 7. Notices

(1) Any notices required or permitted to be provided hereunder shall be in writing and shall be deemed to have been received three (3) business days after the post-marked date thereof if sent by registered mail, the next business day following transmission if sent by fax, or at the time of delivery if hand delivered (including prepaid courier), and shall be addressed as follows:

To the Health Unit: Middlesex London Health Unit  
50 King Street  
London, ON N6A 5L7  
Attention: Dr. Graham Pollett, Executive Director  
*(This info to be replaced as appropriate for other health units.)*

To the Board: Thames Valley District School Board  
1250 Dundas Street  
London, ON N6A 5L1  
Attention: Laura Elliott, Executive Superintendent of Program Services

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

## 8. Damage or Destruction of Facilities

(1) If any of the Facilities or any portion thereof is/are damaged or destroyed by fire or by other casualty, the Board may elect, on written notice to the Health Unit, to terminate this Agreement or its application to any of the Facilities in question.

## 9. Miscellaneous

(1) In the event of any: strike; lock-out or other labour disturbance; inclement weather; damage to the Facilities; act of God; riot; or, other event beyond its reasonable control affecting the Board (an “**Event**”), the Board shall have the right to close one or more of the Facilities and to prohibit entrance thereto by anyone, including the Health Unit, and the parties agree to make appropriate adjustments to the Access Fee otherwise payable for such time as the Facilities are is not available to the Health Unit, but the Board shall not otherwise have any obligation or liability to the Health Unit in respect of any such closure. If on the occurrence or continuation of an Event the Board decides not to restrict access to or close the Facilities or any portion thereof which the Health Unit is entitled to access in accordance with the terms hereof, the Health Unit may continue to use the Facilities in accordance with the terms and conditions of this Agreement; provided however, that should the Health Unit, in its discretion, decide not to access the Facilities during such Event the parties agree to make appropriate adjustments to the Access Fee otherwise payable for such time, but the Board shall not otherwise have any obligation or liability to the Health Unit.

(2) The Health Unit shall monitor the Board’s website, on a regular basis, for purposes of determining whether the Health Unit might not be able to access the Facilities as a result of any of the circumstances contemplated in section 9(1).

(3) This Agreement and Schedule A 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.

(4) 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.

(5) The Board and the Health Unit 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.

(6) This Agreement may not be assigned by the Health Unit without the prior written consent of the Board, which consent may be arbitrarily or unreasonably withheld.

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

(8) 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.

(9) The Health Unit 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 Agreement.

**THAMES VALLEY DISTRICT SCHOOL BOARD**

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

**MIDDLESEX-LONDON HEALTH UNIT**

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

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



## SCHEDULE A

1. Programs
2. Facilities
3. Special Provisions

**[Note to draft: Scheduled are under review**