

TORONTO DISTRICT SCHOOL BOARD
EXCURSION VENDOR DIRECTORY
TERMS AND CONDITIONS CONTRACT
(THE “CONTRACT”)

1. PURPOSE

1.1 These terms and conditions set out the conditions under which the Approved Excursion Vendor (the “**Vendor**”) will be listed in the Excursion Vendor Directory (the “**Directory**”) of the Toronto District School Board (“**TDSB**”), and the terms governing the relationship between TDSB and the Vendor.

2. PAYMENT

2.1 Fees payable by the Vendor shall depend on the package option selected by the Vendor. TDSB shall notify the Vendor of the rates and fee payable by the Vendor in writing. The fees payable shall be effective for the entire one or two year Term selected by the Vendor. If approved, the Vendor will be added to TDSB’s Directory upon receipt of payment, such payment being made by a cheque payable to:

“Toronto District School Board”
Manager, Insurance and Risk Management,
Toronto District School Board,
3-5050 Yonge Street,
Toronto ON, M2N 5N8.

2.2 All fees paid by the Vendor to be listed on TDSB’s Directory shall be **non-refundable**.

3. TERM AND RENEWAL

3.1 The Term for the Vendor listing on TDSB’s Directory shall be from the date on which full payment and completed forms referred to in subsection 2.1 are received by TDSB until **June 30, 2021** or **June 30, 2022** (the “**Term**”). Individual Terms are 12 months (July 1 to June 30).

3.2 In order to remain on TDSB’s Directory after expiration of the Term, the Vendor must renew its Directory Application and pay any applicable fees stipulated by TDSB at the time of renewal. Fees are established each year and are subject to change from year to year.

3.3 In the event that the Vendor decides to renew its Directory listing, this Contract shall remain in effect and apply to the renewed term, subject to changes made by TDSB to the Terms and Conditions.

4. DIRECTORY ENCLOSURES

- 4.1 The Vendor shall provide TDSB with all required enclosures. These requirements are subject to change, including changes due to education merit requirements and to industry regulations and practices.
- 4.2 The Vendor shall submit all enclosures to the following email address: schoolactivities@tdsb.on.ca
- 4.3 All promotional materials submitted by the Vendor, including its logo shall be subject to review in accordance with all applicable TDSB policies and procedures.

5. TERMS OF AGREEMENT/ ROLE OF PARTIES

- 5.1 In consideration of the fees paid and the Vendor's compliance with the Terms and Conditions set out in this Contract, TDSB shall list the Vendor in its Directory for the stipulated Term.
- 5.2 The Vendor warrants that it shall provide the facilities, equipment, and services (generally referred to as "**Services**") as described in the Directory with the highest regard for the safety and well-being of TDSB attendees and participants, and shall use care, skill and diligence that meets or exceeds applicable industry standards.
- 5.3 The Vendor shall ensure that its venue for providing the Services listed in the Directory is safe at all times and in compliance with any and all industry and inspection standards as well as all applicable Laws, Regulations and Municipal By-laws that may be in force from time to time.
- 5.4 The Vendor shall ensure that its staff, volunteers, agents and all other persons involved in the provision of Services listed in the Directory have produced satisfactory criminal background checks, including, where applicable, "vulnerable" background checks.
- 5.5 The Vendor shall ensure that all information and applicable documentation including insurance certificates, association memberships, Technical Standards and Safety Authority (TSSA) certifications, submitted to TDSB are accurate and up-to-date.
- 5.6 In the event of a Material Change in circumstances or information, the Vendor shall ensure that TDSB is apprised of any updated, renewed, or revised documentation and information. The Vendor shall provide TDSB with such updates in writing to schoolactivities@tdsb.on.ca. For the purposes of this section, a Material Change shall include:
 - 5.6.1 a change in the activities and Services offered by the Vendor for which they were approved during the initial application process;
 - 5.6.2 a change in the Vendor's service levels including but not limited to site, supervision, licensing, and insurance.

- 5.7 The Vendor agrees that being approved for the TDSB Directory shall not constitute permission on the part of TDSB for the Vendor to use TDSB's name or logo in any of the Vendor's promotional materials without first seeking and receiving the written consent of TDSB.
- 5.8 By submitting its logo, the Vendor grants TDSB a non-exclusive, revocable, non-transferable, royalty-free licence to use the Vendor's:
- 5.8.1 intellectual property, including without limitation, trademarks, trade names, service marks, logos and messages included in the Directory and;
- 5.8.2 If applicable, the trademarks, trade names, service marks, logos and messages of any third party that are incorporated into the Directory (collectively referred to as "Marks"), in each case solely for the purpose of publishing and distributing the Directory.
- 5.9 The Vendor represents and warrants to TDSB that it has sufficient rights to the intellectual property to grant the licence referred to in subsection 5.8
- 5.10 The Vendor and TDSB understand that the intellectual property remains owned by the Vendor, or the applicable third party owner.
- 5.11 TDSB acknowledges that on the expiry of the Term (or any renewal thereof) any and all rights or privileges to use the Vendor's intellectual property will thereafter cease, it being understood that unless expressly requested in writing, TDSB shall not be required to remove the published Vendor and Information from the Directory materials that have already been published.
- 5.12 **Duty to Report Child Abuse and Neglect.** The Vendor acknowledges that the Vendor, its affiliates, employees, directors, trustees, officers, agents, partners, members, volunteers and appointees understand their responsibilities under the *Child, Youth and Family Services Act, 2017, S.O. 2017, c. 14, Sched. 1* (the "CYFSA"). All employees, volunteers, affiliates, employees, directors, trustees, officers, agents, partners, members, volunteers and appointees of the Vendor must remain vigilant about child neglect and abuse. In the event that an employee, volunteer or any other duly authorized officer of the Vendor reasonably suspects that abuse or neglect of a child has occurred or is likely to occur, the employee, volunteer or any other duly authorized officer of the Vendor shall forthwith report their suspicions to a Children's Aid Society pursuant to section 125 of the CYFSA, the TDSB Principal and TDSB Superintendent.
- 5.13 **Duty to Report TDSB staff and volunteers.** The Vendor shall report to the TDSB Principal and /or their TDSB Superintendent (if a Principal is involved) any use of alcohol, cannabis, or other substances as well as any inappropriate actions the Vendor believes is outside the scope of the expectations of TDSB staff and volunteers, including, failure to adhere to the Vendor's rules and instructions, regulations, and legislation.
- 5.14 **Criminal Background Checks.** All school boards in Ontario are required by provincial legislation to ensure that all service providers and vendors on contract or agreement with the board or school and other individuals who, potentially, have direct and regular contact with Ontario students, are screened based on a police record check. Service providers and vendors are not authorized to provide their services to schools or attend on school board

property unless they have completed a satisfactory police record check screening. If the services provided by the Vendor involve direct and regular contact with students, the Vendor, its staff, employees, contractors, subcontractors, agents and volunteers shall obtain criminal background checks.

6. PURCHASING PROCEDURE

- 6.1 The Vendor shall comply with TDSB's Purchase Order process in force from time to time, which Purchase Order shall be emailed to the Vendor by the relevant school within TDSB. Following the completion of Services rendered to the relevant school, the relevant school shall release a "goods receipt" on SAP.
- 6.2 The Vendor shall submit a detailed invoice to apinvoices@tdsb.on.ca showing the Purchase Order number. The Purchase Order shall be the Vendor's guarantee of payment by TDSB, and no deposits shall be paid going forward.
- 6.3 TDSB shall deposit payment directly into the Vendor's bank account upon receiving the electronic funds transfer details of the Vendor. Alternatively TDSB will issue a cheque to the Vendor at the end of each month.

7. TERMINATION

- 7.1 TDSB, acting reasonably and at its sole discretion, reserves the right to remove the Vendor from the Directory at any time if the Vendor:
 - 7.1.1 provides false or misleading information to TDSB;
 - 7.1.2 changes its insurance coverage in such a way that such change exposes or negatively impacts TDSB;
 - 7.1.3 experiences a material change in circumstances (e.g. business sold);
 - 7.1.4 fails to comply with industry standards including safety standards as well as laws and regulations;
 - 7.1.5 is in violation of any applicable TDSB policies and/or procedures including those relating to Excursion, Privacy and Conflict of Interest. The Vendor agrees to visit the TDSB external website in order to familiarise itself with and identify other TDSB policies/procedures that are applicable.
 - 7.1.6 changes the purpose for which its venue was originally approved, for example, educational merit no longer appropriate;
 - 7.1.7 fails to comply with any of the terms in this document;
 - 7.1.8 is reckless or negligent in the performance of its Services;

7.1.9 provides Services to TDSB students that are in the opinion of TDSB, incompatible with the secular nature of a public district school board or with TDSB or Ontario Ministry of Education policies on Human Rights, Equity, and Diversity.

7.1.10 violates any applicable regulations and laws of the Province of Ontario and Canada.

TDSB will notify the Vendor of the Vendor's breach of any of the above conditions and, except in urgent circumstances affecting the safety of students/staff, or the reputation of TDSB, shall provide the Vendor with ten (10) business days to rectify the breach to the satisfaction of the Director of Education (or designated Associate Director) of TDSB. Failing such rectification, the Directory Listing shall be terminated, without limiting any other rights of TDSB to seek a remedy or damages for the breach.

8. CONFIDENTIALITY

8.1 Neither the Vendor nor TDSB shall use, copy, adapt, alter or part with possession of any information of the other which is disclosed or otherwise comes into its possession under or in relation to the provision of Services in the Directory or under this Contract and which is of a confidential nature. This obligation will not apply to information which the recipient can prove was in its possession at the date it was received or obtained or which the recipient obtains from some other person with good legal title to it or which is in or comes into the public domain otherwise than through the default or negligence of the recipient or which is independently developed by or for the recipient.

8.2 TDSB and the Vendor understand and agree that they shall comply with all applicable privacy laws in force and as may be amended from time to time, including in the case of TDSB, the *Municipal Freedom of Information and Protection of Privacy Act*, R.S.O. 1990, Chapter M.56 (the "MFIPPA"). It is agreed that confidentiality of student information will be maintained in accordance with the requirements of the MFIPPA, CYFSA, the *Personal Health Information Protection Act*, 2004, S.O. 2004, Chapter 3, Schedule A, and the *Education Act*, R.S.O. 1990, Chapter E.2 (the "*Education Act*").

8.3 The parties shall treat all the contents of this Contract as being confidential, and shall not disseminate such information for any reason without the express written permission of the other party, with the exception of material that is required to be disclosed by law. TDSB is subject to the provisions of the MFIPPA and will keep the Vendor informed of any request for access to information under that Act that pertains to this Contract.

8.4 Where the Vendor acquires, uses or has access to any personal information from performance of its Services under this Contract, the Vendor shall ensure that it fully complies with all privacy laws including MFIPPA and only deals with the personal information acquired to fulfil its obligations under this Contract.

8.5 The Vendor shall indemnify TDSB for any breach of any applicable privacy laws which renders TDSB liable for any costs, claims or expenses.

8.6 Notwithstanding the foregoing, the parties to this Contract acknowledge and agree that TDSB is subject to the MFIPPA and associated regulations and may be required or choose to disclose information relating to this Contract pursuant to that legislation.

8.7 TDSB acknowledges and agrees that Vendor is subject to the *Access to Information Act* (R.S.C., 1985, c.A-1) and the *Privacy Act* (R.S.C., 1985, c. P-21) and that information provided to the Vendor in connection with this Contract may be subject to the provisions of these Acts.

8.8 This section 8 shall survive the termination and expiry of this Contract.

9. LIABILITY AND INDEMNITY

9.1 The Vendor agrees to indemnify, defend and save harmless TDSB, its affiliates, employees, directors, trustees, officers, agents, partners, members, volunteers and appointees from and against any and all actions, proceedings, claims, demands, losses, debts, costs, damages and expenses (including reasonable legal, expert and consultant fees and expenses) by whomever made, sustained, incurred, or brought, including for third party bodily injury (including death), personal injury and property damage that may be brought against or suffered by TDSB or that it may sustain, pay or incur, that are attributable to:

9.1.1 the negligent performance or non-performance of Services under this Contract by the Vendor, its employees, affiliates, agents, subcontractors, volunteers, partners, directors, officers, or independent contractors;

9.1.2 the negligence or wilful acts or omissions of the Vendor, its employees, affiliates, agents, subcontractors, volunteers, partners, directors, officers, or independent contractors

except to the extent that such actions, proceedings, claims, demands, losses, debts, costs, damages or expenses are the result of negligence or wilful misconduct by TDSB or its affiliates, employees, directors, trustees, officers, agents, partners, members, volunteers and appointees.

9.2 Upon request by TDSB, the Vendor (if permitted by its insurer) agrees to share all reports of incidents involving TDSB students, volunteers and staff with TDSB and a parent/guardian, whether recorded by the Vendor on hard copy or in an online system.

9.3 This section 9 shall survive the termination and expiry of this Contract.

10. INSURANCE

10.1 The Vendor agrees to obtain and maintain in full force and effect throughout the period of its listing on the Directory, at its own cost, insurance to cover the Vendor's operations satisfactory to TDSB, acting reasonably, the Vendor shall be responsible for payment of all amounts within the deductible or self-insured retention under each policy of insurance. All insurance policies required pursuant to this section shall be primary and shall not call into contribution any insurance available to TDSB.

10.2 The Vendor shall carry Commercial General Liability Insurance against claims for bodily injury, including personal injury and death, and property damage or loss, indemnifying and protecting the Vendor, their respective directors, officers, employees, volunteers, successors, and assigns, to the inclusive limit of not less than five million (\$5,000,000) dollars (CAD).

Unless otherwise specified by TDSB, such insurance shall specifically state by its wording or by endorsement that:

- 10.2.1 TDSB, its directors, trustees, officers, employees, volunteers, consultants, contractors, successors and assigns, and agents are included as an **additional insured** under the policy with respect to the operations and obligations of the Vendor as outlined in these Terms and Condition;
- 10.2.2 the policy includes contractual liability, products and completed operations coverage, advertising injury liability, contingent employer's liability, non-owned auto, a cross-liability clause and thirty (30) calendar days' notice of cancellation clause.
- 10.3 TDSB will identify other such coverages recommended by a professional insurance broker and consistent with the operations of a vendor operating in the Vendor's industry sector, including higher limits of insurance, required during TDSB's approval process and prior to signing these Terms and Conditions. Such coverage may include:
 - 10.3.1 Abuse and Molestation liability insurance
 - 10.3.2 Professional liability/malpractice liability insurance
 - 10.3.3 Automobile insurance
 - 10.3.4 Passenger Vessel liability insurance
 - 10.3.5 Cyber/privacy insurance
 - 10.3.6 Unmanned aerial vehicle liability insurance
 - 10.3.7 Saddle Animal/Horseback liability insurance
- 10.4 The Vendor shall deliver to TDSB, a Certificate of Insurance as required under this section. In the event that the Vendor's insurance expires during the Term of this Contract, the Vendor undertakes to provide TDSB with a renewed insurance certificate under this section no later than fourteen (14) business days following the expiration of the current insurance policy.

11. RELATIONSHIP OF PARTIES

- 11.1 TDSB and the Vendor acknowledge and agree that the Services performed by the Vendor, its employees, agents, or subcontractors shall be as an independent contractor and that nothing in this Contract shall be deemed to constitute a partnership, joint venture, agency relationship or otherwise between the Vendor and TDSB.
- 11.2 Unless otherwise specified, any decisions of TDSB in respect of this Contract shall be made by an authorized employee of TDSB of behalf of the board. TDSB is a statutory corporation established by the *Education Act*.

12. NO INCENTIVE

- 12.1 The Vendor agrees that special offers of free products or similar incentives will not be permitted during the Term of this Contract. The Vendor's failure to comply may result in the termination of this Contract.

13. ENTIRE AGREEMENT

13.1 This Contract contains the entire understanding between the Vendor and TDSB relating to the Vendor's listing on the Directory and the Services provided by the Vendor and supersedes all prior oral and written understandings, arrangements and agreements relating thereto. Any amendment to this Contract must be in writing and signed by TDSB and the Vendor.

14. SURVIVAL

14.1 Any sections of this Contract which expressly provide for, or by their nature require, survival after the expiration or termination of this Contract, shall survive.

15. VARIATION

15.1 Any variation, alteration or waiver of any of the rights or obligations of TDSB or the Vendor under this Contract must be in writing and signed by TDSB or the Vendor as the case may be, or by their respective authorized delegate or representative appointed as such by written notice or by this Contract.

16. CANADA'S ANTI-SPAM LEGISLATION (CASL)

16.1 The Vendor agrees that it will not send any commercial electronic messages as defined under Canada's Anti-Spam legislation (the "CASL") to TDSB employees, school council members or parents unless the employees, school council members or parents have provided their express consent to the Vendor to receive such communications. Approved Fundraising Vendor agrees to indemnify TDSB as per section 9 of this Contract for any commercial electronic messages it sends to TDSB employees under this program.

17. NOTICE

17.1 Any demand or notice to be given pursuant to this Contract shall be duly and properly made in writing and delivered to the party for whom it is intended (i) by delivery in person (ii) by a nationally recognized next day courier service, (iii) by first class, registered or certified mail, postage prepaid, (iv) by facsimile or (v) by electronic mail to the address of the party specified in this Contract or such other address as either party may specify in writing.

a. In the case of TDSB:

**Manager, Insurance and Risk
Toronto District School Board
3 - 5050 Yonge Street
Toronto, ON M2N 5N8
schoolactivities@tdsb.on.ca
Tel: 416-395-9780**

b. In the case of the Vendor:

Name: _____
Job Title: _____
Organization/Corporate (Registered) Name: _____
Address: _____
City: _____
Province, Postal Code: _____
Tel: _____
Email: _____

17.2 All notices shall be effective upon (i) receipt by the party to which notice is given, or (ii) on the fifth (5th) calendar day following mailing, whichever occurs first. Where either party to this Contract has notified the parties in writing of a change of address, the address set out in the latest such notice of change of address shall replace and supersede any prior address of the notifying party for such purposes.

18. REPRESENTATIONS AND WARRANTIES

18.1 TDSB makes no warranties or representations regarding any use, revenue or profit by any person, entity or organization resulting from the Vendor’s participation in the Directory. Inclusion on the Directory is non-exclusive and does not prohibit TDSB from agreeing to list other organizations providing the same or similar services.

18.2 The Vendor represents and warrants that the information and documentation provided to TDSB for the purposes of the Directory shall not infringe or violate any intellectual property rights or other rights of any third party.

18.3 No guarantees. TDSB makes no guarantee of the number of schools that will participate in the Services.

19. WAIVER

19.1 The waiver by any party of strict observance or performance of any of the terms contained in this Contract or of any breach of it on the part of the other party shall not be held or deemed to be a waiver of any subsequent failure to observe or perform the same or any other term of this Contract or of any breach thereof on the part of such party.

20. SEVERABILITY

20.1 The determination that any provision of this Contract is invalid or unenforceable shall not invalidate the entire Contract, all of said provisions being inserted conditionally on their being considered legally valid, and this document shall be construed and performed in all respects as if any invalid or unenforceable provisions are omitted provided the primary

purpose of this Contract is not thereby impeded, to the maximum extent permitted by applicable law.

21. ASSIGNMENT

21.1 Any rights or obligations of this Contract are non-assignable by the Vendor without the prior written permission of TDSB, such permission not to be unreasonably withheld.

22. GOVERNING LAW

22.1 This Contract shall be governed by and interpreted according to the laws in force from time to time in the Province of Ontario and any applicable federal laws of Canada and TDSB and the Vendor attorn to the jurisdiction of the courts of the Province of Ontario.

23. CONFLICT OF INTEREST

23.1 The Vendor represents as follows:

23.1.1 **No Current or Prior Conflict of Interest.** That the Vendor has no business, professional, personal, or other interest, including, but not limited to, the representation of other clients, that would conflict in any manner or degree with the performance of its obligations under this Contract.

23.1.2 **Notice of Potential Conflict.** If any such actual or potential conflict of interest arises under this Contract, Vendor shall immediately inform TDSB in writing of such conflict.

23.1.3 **Termination for Conflict.** If, in the reasonable judgment of TDSB, such conflict poses a material conflict to and with the performance of the Vendor's obligations under this Contract, then TDSB may terminate this Contract immediately upon written notice to the Vendor; such termination shall be effective upon the receipt of such notice by the Vendor.

24. INCONSISTENCY

24.1 In the event of any inconsistency between the terms of this Contract and any other document executed in connection herewith, including but not limited to the Vendor's supplementary agreements, contracts, waivers, releases, consents, booking forms, plans, programs, guidelines, policies and other documents, the terms of this Contract shall prevail and shall control to the extent necessary to resolve such inconsistency.

25. NO SUPPLEMENTARY AGREEMENTS FROM VENDOR

25.1 No supplementary agreement or document of the Vendor shall be valid to the extent that it conflicts with the terms of this Contract. No supplementary agreement or document shall be binding upon TDSB until the supplementary agreement or document has been approved by TDSB and has been fully and properly executed by TDSB prior to the start date of the supplemental agreement or document.

26. AUTHORITY

26.1 Each party represents and warrants to the other that it is duly organized, validly existing and in good standing under the laws of the jurisdiction of its organization, legally operate its business under its name, an additional name or names and has the requisite power and authority to execute and deliver, and to perform its obligations and Services under this Contract. Each party represents and warrants to the other that this Contract has been duly authorized, executed and delivered by such party and constitutes a valid and binding obligation of such party enforceable against such party according to its terms.

27. FORCE MAJEURE

27.1 Neither party shall be liable for damages caused by delay or failure to perform its obligations under this Contract where such delay or failure is caused by an event beyond its reasonable control. The parties agree that an event shall not be considered beyond one's reasonable control if a reasonable business person applying due diligence in the same or similar circumstances under the same or similar obligations as those contained in this Contract would have put in place contingency plans to either materially mitigate or negate the effects of such event. Without limiting the generality of the foregoing, the parties agree that force majeure events shall include natural disasters, acts of war, insurrection, terrorism, pandemic, epidemic, quarantine, public health emergency, outbreak or disease, labour strike or dispute, but shall not include shortages or delays relating to supplies or services. If a party seeks to excuse itself from its obligations under this Contract or from performing the Services due to a force majeure event, that party shall immediately notify the other party of the delay or non-performance, the reason for such delay or non-performance and the anticipated period of delay or non-performance. If the anticipated or actual delay or non-performance exceeds ten (10) calendar days, the other party may immediately terminate the Services by giving notice of termination and such termination shall be in addition to the other rights and remedies of the terminating party under this Contract, at law or in equity.

28. EXECUTION AND DELIVERY

28.1 This Contract may be executed and delivered in any number of counterparts, each of which so executed and delivered shall be deemed to be an original and all of which shall constitute one and the same instrument. Facsimile, documents executed, scanned and transmitted electronically and electronic signatures shall be deemed original signatures for purposes of this Contract and all matters related thereto, with such facsimile, scanned and electronic signatures having the same legal effect as original signatures.

[SIGNATURE PAGE FOLLOWS]

By signing this Contract, it is understood that it has been read in its entirety, and that the Vendor, having had the chance to seek and obtain independent legal advice shall comply with all of the Terms and Conditions contained herein.

_____ Vendor Registered Business Name	_____ Authorized Contact Name
_____ Email	_____ Authorized Contact Position
_____ Phone	_____ Authorized Contact Signature
	_____ Date

_____ TDSB Authorized Contact Name	_____ TDSB Authorized Contact Signature
_____ TDSB Authorized Contact Position	_____ Date