

Membership Agreement

**Toronto Transportation Group**

(hereinafter called the “Consortium”)

THIS AGREEMENT is made as of this 21<sup>st</sup> day of September, 2011

BETWEEN:

TORONTO CATHOLIC DISTRICT SCHOOL BOARD  
(Hereinafter called “TCDSB”)

OF THE FIRST PART

And

TORONTO DISTRICT SCHOOL BOARD  
(Hereinafter called “TDSB”)

OF THE SECOND PART

WHEREAS:

- A. The Parties are each School Boards constituted by and under the authority of the *Education Act of Ontario* who operate schools in the City of Toronto;
- B. Each Board currently provides a service for the transportation of its students;
- C. The Parties desire and agreed that they will participate in some shared services for the transportation of its students with each other to reduce the costs of transportation services;
- D. The Parties have agreed that a common administration of student transportation will increase delivery efficiency and the cost effectiveness of the service for each Board;
- E. The Ministry of Education requires the establishment of consortiums involving all coterminous boards.

NOW THEREFORE THIS AGREEMENT WITNESSES that in consideration of the mutual covenants and agreements contained herein, the Parties agree with each other as follows:

## **1. Definitions:**

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

- a. “Boards” means the Boards which are Parties to this Agreement, being TCDSB and TDSB;
- b. “Consortium” means the two Boards acting together through the central administration referred to and to be called “Toronto Transportation Group”, or a variation thereof;
- c. “Operations Committee” means the management team established and constituted by the Boards for the operational management of the Consortium as set out in Schedule ‘B’ of this Agreement;
- d. “Governance Committee” means the individuals that compose the governing body for the Consortium as set out in Schedule ‘C’ of this agreement.
- e. “Schedule of Costs” means the operating costs for each route as allocated by a Board described as its share of the overall fleet as set out on Schedule “A” to this Agreement;
- f. “Services” means the agreement(s) for services for transportation of students;
- g. “Transportation Staff” means the person or persons employed by or contracted to the respective Boards which are Parties to this Agreement.

## **2. Purpose:**

The Boards hereby agree that they will collectively provide a common administration for transportation service for students registered in their respective Boards. For purposes of clarification, the Consortium will manage and administer all home to school transportation (including late buses), school to school transportation, and special needs transportation. Charter transportation for school based activities will not be administered by the Consortium. These activities will be managed by General Manager following the respective Board’s policies and procedures.

- 2.1 The Boards shall sign all such documents and do all such things as may be necessary or desirable to more completely and effectively carry out the terms and intention of this Agreement.
- 2.2 The operation by the Consortium of the transportation service shall be carried on under the name of the Consortium, which shall be “Toronto Transportation Group”, or a variation thereof.
- 2.3 The Boards shall enter into common contracts with transportation service providers.
- 2.4 The Parties agree that ownership of “Toronto Transportation Group”, or a variation thereof” shall remain vested with the two Boards, TCDSB and TDSB.
- 2.5 Governance Committee
  - 2.5.1 The Boards agree and acknowledge that the Consortium Governance Committee will consist of a senior business official from each Board and a trustee from each Board.
  - 2.5.2 The roles and responsibilities of the Governance Committee are contained in Schedule ‘C’ attached to and forming part of this Agreement.
- 2.6 Operations Committee
  - 2.6.1 The Boards agree and acknowledge that the Consortium Operations Committee will consist of the supervisory officer responsible for transportation matters from each Board along with the general manager of the Consortium.
  - 2.6.2 The roles and responsibilities of the Operations Committee are contained in Schedule “B” attached to and forming part of this Agreement.

### **3. Management:**

- 3.1 The Operations Committee of the Consortium shall be governed by the principles enumerated in this Agreement including Schedules “A”, “B”, and “C” attached to and forming part of this Agreement.
- 3.2 The existing Transportation Staff of each Board shall remain employed by their respective Board. The Parties agree that each employee shall maintain all rights and privileges within their respective collective agreements if applicable, and shall perform services for the Consortium under the ultimate direction of the General Manager.

## **4. Human Resources**

- 4.1 The day to day operations of the Consortium shall be overseen by the General Manager who is selected based on criteria set out by the Governance Committee to fulfil the transportation needs of the Boards. The General Manager shall be delegated authority to enter into transportation related contracts on behalf of the Boards.
- 4.2 Along with the position of General Manager, the positions of Operations Manager and Technology & Planning Manager will be created to provide services exclusively to the Consortium. The base salary of these positions will be based on TDSB job evaluations and associated salary rates. Both Boards agree to pay 50% of all the costs associated with the base salary and benefits of these three positions. Other than salary, all terms and conditions of employment for each of these three positions will be consistent with the policies, procedures and practices of the Board with which the employee remains employed.
- 4.3 No additional new positions are to be created at this time and the consortium shall be staffed by current members of the two Transportation Departments from each Board. All positions serving the Consortium shall continue to be held and staffed by employees of their respective Board. Discussions will be held with appropriate union officials when necessary regarding the Consortium organization including reporting structures.
- 4.4 Other than items set out in 4.2 above, each Board will be responsible for all employment costs associated with their staff who will be servicing the Consortium, unless otherwise mutually agreed and described in a separate service agreement. All unionized staff will continue to report to a Board employee serving the consortium on behalf of their respective Board. An organizational chart that outlines the positions and corresponding Board affiliation is attached as Schedule D.
- 4.5 All unionized positions will follow current job posting protocols as per their respective collective agreements.

## **5. Administration of Finances:**

- 5.1 The Boards agree that the administration costs of the operation of the Consortium will be borne by each Board for its respective employees. This will include, but is not limited to, computers, office supplies and furniture, network and phone equipment.

- 5.2 The Board in whose premises the Consortium offices are located agrees to pay all real estate related and facility maintenance costs associated with the operation of the Consortium.
- 5.3 Should the Consortium relocate to a non Board facility, real estate and related and facility maintenance costs associated with the operation of the Consortium will be shared based on the number of students registered in each Board. This value will be calculated on October 31<sup>st</sup> of each year and costs will be invoiced starting November 1<sup>st</sup> of that same year.
- 5.4 All costs associated with transportation staff members who are not part of the Consortium or referenced in a separate service agreement, but are shared between the Boards will have all their costs equally split between the Boards.
- 5.5 Any administrative expenses not detailed in this section or outlined in a separate service agreement will be shared between the Boards based on the number of students registered in each Board.

## **6. Operations:**

- 6.1 The allocation of routes that each Board is responsible to fund is determined through a route optimization. The Boards will route all their students separately first to ascertain the number of vehicles that are required to transport the students of each Board. A second optimization combining the students from each Board will generate a savings that each member Board will equally share. The number of routes to be funded is equal to the number of buses in the original optimization minus the number of shared buses saved in the second optimization. Details of this cost methodology are located in Schedule “A” attached.
- 6.2 The route optimizations will be generated every four years to ensure that any changes to policy or programming are accurately reflected in the allocation of buses for each Board.
- 6.3 During the interim all changes to the number of buses will be attributed to the Board that is determined to have triggered the change. Transportation planning staff will provide their analysis on this change to the Operations Committee and the Operations Committee will determine the distribution of routes for each board.
- 6.4 Each of the Boards shall be responsible for developing and maintaining its own student database and shall provide student database information in a timely fashion to the Consortium.

- 6.5 Each Board agrees that it shall provide its share of the funding for the administration and operating costs of the Consortium in a timely fashion, and as indicated on Schedule “A” attached.

## **7. Existing Board Policies Reserved:**

- 7.1 The respective Boards acknowledge the value of having a common transportation policy, which they agree to work toward where appropriate. The Consortium shall take its direction from existing Board policies in the operation of the management of transportation services.
- 7.2 In the event that either Board shall change its current policies, which may be of significance to the ongoing operations of the Consortium, the Board shall consult with the other Board and shall notify the Operations Committee of the proposed changes providing sufficient notice to implement those changes.
- 7.3 If a change in a member Board’s policy is identified by the Consortium Operations Committee as having adverse financial or operating implications, the Board adopting the policy change shall be solely responsible for the increased costs and liability associated with the change. Similarly, if a change of a Board’s policy decreases the cost of transportation, and that change is the sole reason for the decrease, then that Board will be credited with the savings.
- 7.4 As part of this Agreement, each Board shall provide to the Consortium its current bell times when pupils are allowed to enter the school building for classes and when pupils are expected to leave the school building after the end of classes.

The Consortium will plan its routes based on the most efficient and effective use of resources. Where changes are required for schools for either or both Boards, the Consortium will be required to provide a transportation impact study to be completed by the Consortium. The impact study will include a review of any incremental student supervision costs and savings in transportation costs.

## **8. Insurance**

- 8.1 The Boards shall agree to provide and maintain sufficient liability and all perils coverage as if they were operating separately, and which shall be determined by the present insurance provider, the Ontario School Board Insurance Exchange.

## **9. Term and Early Termination**

- 9.1 This Agreement shall be effective as of the 1st day of December, 2010, and shall continue in full force and effect until the 31st day of August, 2011 (the “Term”),

unless sooner terminated as hereinafter set out. After the 31st day of August, 2011, this Agreement will be renewed on an annual basis unless either Board expresses, in writing, its intent to terminate the Agreement after said anniversary date. Notice of such intent to terminate must be given to the other Board by the Board wishing to terminate at least one hundred and eighty (180) days prior to the next August 31 anniversary date.

- 9.2 The Boards acknowledge and agree that subject to the provisions of Section 11.0 Dispute Resolution and notwithstanding the foregoing, either Board shall be entitled to terminate this Agreement in the event of a breach of any provision of this Agreement by the other Board, which breach is not remedied within thirty (30) days of written notice thereof. In the event of any such termination, an accounting of any outstanding financial transactions shall be affected to the effective date of termination.

## **10. Amalgamation:**

- 10.1 In the event that either of the Boards which are party to this Agreement is by law, policy or are by direction of a competent government authority having jurisdiction, required to amalgamate or combine with the other Board or a board not a Party to this Agreement, the member Boards as presently constituted hereby agree to meet to determine the impact of such change on the continuation of the Consortium. In the absence of unanimous consent, this Agreement shall be deemed to be terminated and shall be of no further force or effect, except for any provisions which are expressly stated to survive termination of this Agreement.

## **11. Dispute Resolution:**

- 11.1 Any disputes concerning the operations of the Consortium will first go to the General Manager to resolve. Should the dispute still not be resolved, the matter will be referred to the Senior Administrators responsible for transportation at their respective Board within the Operations Committee. Should the dispute still not be resolved it will be referred to the Director of Education for each Board.
- 11.2 Should the Parties not be able to resolve the matter, then all differences or disputes which arise between the Parties in relation to the interpretation of this Agreement or to any act or omission of any party to the dispute or to any act which ought to be done by the Parties in dispute or in relation to any other matter whatsoever touching the terms and conditions of this Agreement shall be referred to a mediator jointly selected by the Parties. Such mediation to take place within 30 days of the referral unless such period is extended by consent of both Parties. If such mediation is unsuccessful, the matter will be referred to a single arbitrator to be agreed upon by the Parties to the dispute and in default of agreement to a

single arbitrator appointed by the Court under the provisions of the *Arbitration Act*, 1991, S.O. 1991, c.17. Upon any such irreconcilable difference or dispute arising either party may give notice as provided for herein to the other. The award or determination which shall be made by the above named arbitrator shall be final and binding upon the Parties hereto, their successors and assigns, and there shall be no appeal from such award or determination. The mediator should, as part of the final decision decide, what costs should be attributed to each Board as part of the mediation process.

## **12. Indemnification:**

- 12.1 Each Board shall indemnify, defend and hold harmless the other Board, and its respective directors, officers, Trustees, employees and agents from and against any and all claims, demands, damages, liabilities, costs and expenses, including solicitor's fees and expenses, which may be suffered by, accrued against or charged to the other Board by reason of or arising out of (i) an independent contract for transportation services which was not reviewed by the other Board or the General Manager of the Consortium; or (ii) the breach of this Agreement, material or otherwise, including without limitation, the breach of any of the representations, warranties, or covenants made by Boards in or under this Agreement; (iii) any claim, action or proceeding brought by an employee or former employee of the Board arising out of or based upon any law, regulation, requirement, contract or award relating to the hours of employment, working conditions, wages or compensation of any such employee; (iv) personal injuries, including death sustained by any person or persons (including, without limitation, the Board's employees) caused or occasioned, directly or indirectly, to the services for the Consortium rendered hereunder and/or the acts or omissions of a Board or its servants, agents or employees; or (v) injury or destruction of property caused or occasioned directly or indirectly by any act or omissions of a Board or its servants, agents or employees, provided, however, that in the case of clause (iv) and (v) above, a Board shall not indemnify, defend or hold harmless the other Board from or against any liability, cost or expense where such claim or damage is due to the negligence of the other Board.

- 12.2 The provisions of Section 12.1 shall survive the termination of this Agreement.

## **13. No Partnership:**

- 13.1 Each Board expressly disclaims any intention to create a partnership or joint venture by entering into this Agreement. Nothing in this Agreement shall constitute the Boards as partners or joint venturers. The Boards strictly deny any intention or agreement to be or become agents one for the other or to create a partnership or other relationship whereby either would be held liable for torts,



negligence or contractual or other acts, either of omission or commission, of the other. Neither Board shall have any authority to act for or to assume or to incur any obligations or responsibilities on behalf of the other Board save and except as expressly provided herein. Each Board covenants and agrees to indemnify the other Board from all claims, losses, costs, charges, fees, expenses, or damages that arise out of or are incurred or suffered as a result of a Board acting outside the scope of authority expressly granted pursuant to the provisions of this Agreement.

## **14. Confidentiality**

- 14.1 The Parties acknowledge that through their participation in the Consortium, they may have access to the personal information of staff, students and other individuals of and related to the other Board (the “Personal Information”). The Parties agree to use all reasonable efforts to protect the security of the Personal Information and further agree to comply with all applicable legislation in connection with the collection, use or disclosure of the Personal Information.

## **15. Procurement Policies**

- 15.1 The Consortium shall procure goods and services through the services provided by a lead Board. The lead Board and the consortium shall sign a service agreement that outlines the policies, procedures, and billing practices that are to be followed.
- 15.2 In regards to the Student Transportation Contract specifically these services will be secured through a competitive contracting practice as outlined in the Boards procurement policies.

## **16. Miscellaneous**

- 16.1 Either party may assign this Agreement to a successor Board with the consent of the other Board on the condition that the assignee agrees in writing to comply with all the assignor’s obligations as if the assignee were an original party to this Agreement.
- 16.2 This Agreement contains the entire agreement between the Parties and supersedes any previous Agreement in writing or otherwise made between the Parties hereto with respect to the subject matters hereof. The parties agree that separate service agreements will be executed subsequent to the execution of this Agreement.

- 16.3 This Agreement shall be governed by and construed in accordance with the laws of the Province of Ontario.
- 16.4 If any provision of this Agreement is invalid or unenforceable, it shall be severed from the Agreement without affecting the validity or enforceability of remaining portions of this Agreement.
- 16.5 This Agreement shall inure to the benefit of and be binding upon the respective successors and permitted assigns of the Parties hereto.
- 16.6 This Agreement may be executed in several counterparts, each of which so executed shall be deemed to be an original, and such counterparts together shall constitute one and the same instrument.
- 16.7 Primary data storage will be allocated to the production server for transportation services at a location that the Operations Committee deems suitable. This location may change from time to time. A secondary server that receives a copy of the data will be activated at a facility within the other Board to provide disaster recovery and business continuity.
- 16.8 The Head Office of the Consortium shall be at a location specified from time to time by the Operations Committee of the Consortium.

IN WITNESS WHEREOF, the Parties have executed this Agreement as of the date first written above.

**TORONTO CATHOLIC DISTRICT SCHOOL BOARD**

Signature

Title Ann Perron  
Director of Education

Signature

Title Angela Gauthier  
Associate Director of Education  
Academic Affairs

I / We have the authority to bind the Corporation

**TORONTO DISTRICT SCHOOL BOARD**

Signature

Title

Signature

Title

I / We have the authority to bind the Corporation

# SCHEDULE “A”

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## Schedule of Costs

1. Each Board understands that it is responsible for the processing and payment of transportation costs that are identified as belonging to that Board.
2. Each Board’s allocation is defined as the number of vehicles and/or students that each Board is required to transport. This number is derived from a route optimization using the Consortium’s transportation management software to define the number of buses required to provide service for students. A route optimization of each member Board’s system will be performed first to provide the basic number of buses required for each Board. A second optimization will be run in order to establish the number of vehicles required to provide service for the Consortium. The allocation of costs is the number of buses from the first optimization minus 50% of the savings from the second optimization. These optimizations should take place every four years to address any changes in the transportation population.
3. During interim years, any changes to the number of buses will result in the Board that is determined to have triggered the change to pay for these costs or obtain the savings if a reduction to bussing is implemented.
4. All wheelchair students will continue to be charged on a per head basis while the school bus operators continue to provide this service. Should the routing be performed by Consortium staff then the allocation would follow the same methodology as set out in Section 2. above.
5. Each Board agrees to pay for any buses that are assigned to the Board and are required to be in service as part of the regular transportation schedule if students from the other Board are assigned to it.
6. Each Board agrees to pay for any special arrangement that is required for any student regardless of whose vehicle the student is scheduled on. A special arrangement means but is not limited to a late in, early out, transportation out of hours for exam schedules, or specific transit for transportation home due to sickness.
7. Each Board will pay for any utilization costs on any vehicle assigned to the Board regardless of which Board triggers the cost when the bus route runs over three hours.
8. All other supplies and services will be procured through a lead Board and service agreements signed by all parties will govern aspects of this relationship.

# SCHEDULE “B”

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## Operations Committee

### Purpose

The purpose of the Operations Committee is to provide day to day operation of the Consortium through the actions of the General Manager.

### Composition

The Operations Committee will be composed of the Senior Supervisory Officer from each Board that is responsible for transportation and the General Manager.

### Roles & Responsibilities

The roles and responsibilities of the Operations Committee through the General Manager are as follows:

- Make recommendations concerning the financial planning, annual budgeting, and financial reporting of the Consortium to the Boards.
- Deal with Operator related contract issues including negotiations and dispute resolution.
- Identify and advise on policy and regulation matters.
- Deal with transportation issues including service levels and parent requests for exceptions to policies.
- Communicate and correspond with the various Provincial Ministries regarding policy direction and regulations.
- Deal with staffing and safety issues from the employee unit.

### Meetings

The Operations Committee will meet bimonthly during the course of the active school year between September and June. The General Manager will be responsible for creation and distribution of agendas and minutes. Additional meetings can be called by the General Manager as needed.

### Reporting

The General Manger is responsible for the reporting of Committee meeting minutes and the distribution to the School Boards and electronic posting. The General Manager will attend any Board meeting at the invitation from either Board should a Transportation matter be considered at the Board meeting.

# SCHEDULE “C”

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## Governance Committee

### Purpose

The purpose of the Governance Committee is to provide direction, oversight and advice with respect to transportation within the Consortium.

### Composition

The Governance Committee shall be composed of 4 members. Each Board will appoint a single Trustee to sit on the committee for a period of one year. The Senior Business Officer from each Board or designate will complete the Governance Committee. The chair of the Governance Committee will be elected originally through consensus amongst the members and will rotate yearly. The chair will be responsible for the conduct of meetings, including agendas, information processes, and the oversight of reporting and action items.

### Roles & Responsibilities

The roles and responsibilities of the Governance Committee are as follows:

- On an annual basis review the Governance Committees annual agenda of activities, mandate, and terms of reference.
- Review and report to the Boards any proposed policy changes
- Develop in conjunction with the Operations Committee a method for selecting the General Manager of the Consortium
- Perform an annual performance review of the General Manager position
- Review policies and procedures to ensure they are consistent with the goals and priorities of the Consortium.
- Mediate and resolve any unresolved issues brought forward by the Operations Committee.
- Approve and publish an annual report on the performance and accomplishments of the Consortium.

## Meetings

The Governance Committee will meet quarterly either face to face or through teleconference or video conference. Additional meetings may be called at the request of the Chair.

## Reporting

The Committee will ensure that minutes are taken at each meeting and that they are circulated to the Boards and posted for public review as per Board by-laws.



# Schedule D

Assignment to the Consortium

