

## EMPLOYMENT AGREEMENT

BETWEEN:

KATHERINE WITHEROW, an individual resident in the Province of Ontario  
(the “**Executive**”)

ON THE FIRST PART

- and -

TORONTO DISTRICT SCHOOL BOARD, a school board established  
under the *Education Act* (Ontario),  
(the “**Board**”)

ON THE SECOND PART

WHEREAS:

- a) The Executive is a highly qualified educational leader;
- b) The Executive is currently employed by the Board in the role of Associate Director, Leadership, Learning and School Improvement, pursuant to a fixed term employment agreement dated August 10, 2018 (the “**2018 Employment Agreement**”);
- c) The Board moved a motion on October 6, 2020, that the Executive be appointed on an interim basis as the Director of Education effective October 10, 2020, pursuant to an employment agreement that is consistent with the *Broader Public Sector Executive Compensation Act, 2014*;
- d) The Executive has provided the Board notice of her retirement from the Board effective December 30, 2020;
- e) The Board and the Executive wish to set out in this Agreement, pursuant to the authority given by the Board, the terms and conditions with respect to the Executive’s interim term as Director of Education.

NOW THEREFORE THIS AGREEMENT WITNESSES that in consideration of the promises, the payments and the mutual agreements and covenants herein contained and for other good and valuable consideration, the parties hereto agree as follows:

### 1. Recitals

The parties hereby acknowledge and agree that the provisions in the recitals to this Agreement are true and accurate.

## 2. Definitions

In this Agreement, unless the context expressly or by necessary implication requires otherwise, the following words and phrases shall have the meanings indicated and grammatical variations shall have the corresponding meanings.

- (a) “**Board Operations**”, means the operations and activities conducted from time to time by the Board;
- (b) “**Broader Public Sector Executive Compensation Act, 2014**”, means the *Broader Public Sector Executive Compensation Act, 2014*, SO 2014, c 13, Sch 1 as amended or superseded from the time to time hereafter and the regulations made thereunder from time to time;
- (c) “**Confidential Information**”, shall have the meaning attributed to it in section 9 hereof;
- (d) “**Education Act**”, means the *Education Act*, R.S.O. 1990, c. E.2, as amended or superseded from the time to time hereafter and the regulations made thereunder from time to time;
- (e) “**Effective Date**”, means October 10, 2020;
- (f) “**Municipal Freedom of Information and Protection of Privacy Act**”, means the *Municipal Freedom of Information and Protection of Privacy Act*, R.S.O. 1990, c.M.56 as amended or superseded from the time to time hereafter and the regulations made thereunder from time to time; and
- (g) “**Term**”, means from the Effective Date to December 30, 2020, subject to any extension of the Term as agreed upon in writing between the Executive and the Board in accordance with Section 4 of this Agreement.

## 3. Representation, Warranty and Retainer

- (a) The Executive represents and warrants to the Board (and acknowledges that the Board is relying thereon) that the Executive has the required skills, experience and abilities necessary or desirable to perform her duties hereunder.
- (b) In reliance upon the foregoing representation and warranty, the Board hereby employs the Executive as Director of Education and Secretary-Treasurer of the Board during the Term and the Executive hereby agrees to serve the Board, all upon and subject to the terms and conditions contained in this Agreement and the *Education Act*.
- (c) The Executive acknowledges that the effective performance of her duties hereunder shall require the highest level of integrity and the Board’s complete confidence in this

Executive's relationship with the employees of the Board and with all persons dealt with by the Executive in the course of employment.

#### **4. Term**

- (a) The Executive shall be employed pursuant to the terms of this Agreement during the Term, subject to the parties' rights to terminate this Agreement during the Term in accordance with Section 11 of this Agreement.
- (b) The Executive shall retire and voluntarily terminate her employment with the Board upon the conclusion of the Term. As a result, and in reliance on this representation, Executive's employment with the Board shall automatically terminate upon the conclusion of the Term without any further notice or payments in lieu of such notice, save and except the payment of any accrued but unpaid wages, including any vacation pay as contemplated by Section 7(a) hereof.
- (c) In the event that the Board determines that it wishes to extend this Agreement beyond the Term, it will provide the Executive with at least one (1) month's prior notice in writing of its offer to do so. Such notice shall include the length of the proposed new term and the Board's proposals for changes to the terms and conditions of this Agreement, if any. The Executive shall communicate her acceptance of such offer, if any, no later than one (1) week from the date of the Board's notice. Any such renewal, extension or changes in the terms and conditions of employment shall be confirmed by agreement in writing between the Board and the Executive. Failing any such notice, acceptance and agreement, this Agreement shall expire in accordance with Section 11(d) hereof.

#### **5. Duties and Conditions of Employment**

- (a) On behalf of the Board, the Executive shall:
  - i. perform such duties and exercise such powers related to the offices of Director of Education and Secretary-Treasurer of the Board, in accordance with Board policy and the applicable provisions of the laws of the Province of Ontario and, in particular, the *Education Act*, including pursuant to sections 283 and 283.1 thereof;
  - ii. perform such other duties within the scope of her employment as may be assigned by the Board as determined by resolution of the trustees or the Chair of the Board at any time and from time to time in keeping with her position as Director of Education and Secretary-Treasurer; and
  - iii. diligently and faithfully serve and promote the best interests of the Board and shall conduct herself in accordance with Board policies and in accordance with applicable law and, in particular, the *Education Act*.

- (b) The Executive agrees that she will not apply for the permanent position of Director of Education and Secretary-Treasurer of the Board during the Term.

## 6. **Executive to Work Full Time**

So long as the Executive is employed by the Board pursuant to this Agreement, she hereby agrees that she shall devote her entire working time, effort and attention to her duties under this Agreement. The Executive acknowledges that the hours of work required for her position hereunder will vary and be irregular and may require travel. The Executive further acknowledges that this section constitutes her agreement to work such hours where such agreement is required under the provisions of any applicable statute, law, rule or regulation. The Executive shall not serve as a director or officer of any other firm, corporation or legal entity (except family or personal trusts, corporations and holding companies), without the prior written permission of the Chair of the Board.

## 7. **Compensation**

For her services to be rendered to the Board pursuant to this Agreement, the Executive, so long as she is employed by the Board pursuant to this Agreement, shall be entitled to:

- (a) **Salary:** an annual base salary of \$293,261.00 dollars per annum (the “**Annual Salary**”). The annual salary shall be payable in bi-weekly or other convenient installments and is subject to all usual applicable statutory and other deductions and withholdings;
- (b) **Vacation:** vacation of six (6) weeks (“**Vacation Time**”) per vacation year (September to August), pro-rated for partial vacation years, to be used at such times as are agreed upon by the Executive and the Chair of the Board of Trustees. The Executive may elect to cash out any unused Vacation Time and any vacation accrued by the Executive during her employment with the Board prior to the commencement of this Agreement, upon the conclusion of the Term. Any cashed out or otherwise paid out Vacation Time and accrued vacation shall be paid based on the wage rate in effect for the Executive on the date on which it was earned;
- (c) **Lieu Time:** ten (10) days (“**Lieu Time**”) per school year, prorated for partial years. Lieu Time has no cash value, and thus any unused days cannot be cashed out or carried forward from school year to school year;
- (d) **Group Benefits and Sick Leave:** all the standard Group Benefit Plans and sick leave generally available to Supervisory Officers of the Board and Schedule II employees, as a result of the Provincial benefit trust established for this group of employees including, without limitation, Extended Health Care, Dental Care, group life insurance, long term disability insurance and group accident insurance. The Board’s share of benefit premiums will continue to age 65;
- (e) **Pension Plan:** participation in the Ontario Teachers’ Pension Plan; and

(f) **Other Benefits:**

- (i) ***OPC, CODE, TSOA, TSAA and OPSOA Membership***: enroll as a member of the Ontario Public School Supervisory Association, the Council of Directors of Education, the Toronto Supervisory Officials' Association, the Toronto School Administrators' Association, the Ontario Public Supervisory Officials' Association and other appropriate associations or organizations;
  - (ii) ***Professional Memberships***: become a member of recognized educational and professional associations in Canada and outside Canada;
  - (iii) ***Car Expense***: on account of reimbursement for automobile expenses, a car allowance of One Thousand (\$1,000.00) Dollars per month based upon the Executive's anticipated use of her personal vehicle for Board business, or, at the Executive's election, the Board's determined rate for actual usage of her personal vehicle for the Board's purposes;
  - (iv) ***Professional Development Funds***: attendance at conferences and conventions of recognized educational associations in Canada and outside Canada to permit her to be apprised of developments in education, up to a cumulative annual cost of \$3,500.00;
  - (v) ***Reimbursement of Expenses***: reimbursement for all reasonable out of pocket expenses incurred by her in connection with her duties hereunder, including up to \$167 per month towards incidental expenses, subject to the Executive providing receipts and/or vouchers therefore in accordance with the policies of the Board as determined from time to time; and
  - (vi) ***Supplementary Allowance and Annual Incidentals***: receive an annual supplementary allowance of Six Thousand, Eight Hundred (\$6800) dollars (paid in equal monthly installments and pro-rated for partial years), for benefits not covered by the Board's insurance plans.
- (g) **Compensation Changes**: notwithstanding the above provisions of this Section 7, the compensation set forth herein shall be reconsidered by the Board when it is permissible to do so under the *Broader Public Sector Accountability Act 2010*, the *Broader Public Sector Executive Compensation Act, 2014* or under or with respect to any other legislation concerning the compensation of supervisory officers, in accordance with such applicable legislation.

8. **Business Opportunities**

The Executive hereby agrees that any business opportunity of any kind whatsoever and howsoever arising relating to Board Operations which becomes known to the Executive while she is a party to this Agreement is the property of the Board and shall be disclosed to the Board to be developed and pursued for the benefit of the Board, all in accordance with

any guidelines applicable to the Broader Public Sector in Ontario. The parties acknowledge that the covenant contained in this section is in addition to and is not intended to supplant or replace any other rights and obligations of any kind whatsoever and howsoever arising relating to the subject matter thereof. This shall not preclude the Executive from pursuing publishing opportunities and speaking engagements, provided that such endeavours do not interfere with the Executive's duties and responsibilities for the Board. It is the Executive's responsibility to inform in writing the Chair of the Board of all such endeavours before they are embarked upon and to seek the Chair's advance written approval, which approval shall not be unreasonably withheld.

#### 9. **Confidentiality**

The Executive hereby acknowledges and agrees that the Board has a proprietary interest in, and that the Executive shall not disclose, any and all confidential information concerning the Board including, without limitation, any information with respect to the Board Operations, its employees, students, suppliers, and other information which are not otherwise available in the public domain (collectively "**Confidential Information**"). The Executive hereby acknowledges and agrees that the disclosure of any of the Confidential Information to anyone shall be highly detrimental to the Board. Other than pursuant to any statutory obligation, the Executive further agrees that she shall not, after the date hereof, disclose the Confidential Information to anyone or use the Confidential Information for any purpose whatsoever without the prior written consent of the Board. The parties acknowledge that the covenant contained in this section is in addition to and is not intended to supplant or replace any other rights and obligations of any kind whatsoever and howsoever arising relating to the subject matter hereof.

#### 10. **Inventions and Know-How**

- (a) Any and all inventions and improvements which Executive may conceive or make during the period hereof (whether or not conceived during working hours and whether at the premises of the Board or elsewhere), relating, pertaining or connected in any way whatsoever to or with Board Operations and/or any matters which have been, are or may become the subject of the Board's investigations or in which the Board has been or may become interested shall become from their creation or conception the sole and exclusive property of the Board throughout the universe. The Executive shall, forthwith upon the request of the Board whether during or after the Term, execute and deliver any and all applications, assignments and other instruments which the Board shall deem necessary or desirable in order to apply for and obtain intellectual property protection including, without limitation, letters patent of Canada or any foreign country for the inventions and improvements at the sole expense of the Board.
- (b) The Executive hereby appoints the Board as her agent and attorney in fact to sign in the Executive's name any instruments or other documents which have not been signed by the Executive and received by the Board within ten (10) days following the Board's request therefore, and to make appropriate disposition of them provided they are consistent with the terms of this Agreement.

## 11. Termination

- (a) **Termination by Executive With Notice:** The Executive shall be entitled to terminate her employment with the Board prior to the end of the Term by giving the Board at least one (1) month's prior written notice. The Board may, in its sole discretion, waive such notice in whole or in part, in which case the Executive shall be paid in full by the Board to the end of the notice period.
- (b) **Termination by Board for Incapacity, Breach or Cause:** The Board shall be entitled to immediately terminate the employment of the Executive, at any time during the Term by notice in writing but without any payment, compensation or benefit continuation on account of alleged wrongful dismissal except as explicitly required by statute, upon the occurrence of one or more of the following events, namely:
- i. the incapacity of the Executive by reason of illness, injury, or mental or physical disability, for a period of more than one hundred and eighty (180) continuous calendar days which prevents the Executive from performing her duties hereunder provided that the Executive will continue to be entitled to the disability insurance to which she would otherwise be entitled as provided for in this Agreement or otherwise by the Board; or
  - ii. any reason constituting cause at law including, without limitation, dishonesty, incompetence, persistent absenteeism, the unjustified and repeated refusal or inability to implement or comply with the policies established by the Board or the willful and continued neglect of her duties or responsibilities hereunder provided that cause shall not be limited to cause as provided in section 287 (1) of the *Education Act*.
- (c) **Early Termination by Board for Other Reasons:** The Board shall be entitled to immediately terminate the employment of the Executive at any time during the Term, without cause but for reasons other than those set forth in Section 11(b) hereof, by notice in writing, provided that it pays the Executive all compensation to which she is entitled up to the date of termination, including any accrued but unpaid wages, and a lump sum payment representing the compensation that she would have been entitled to for the balance of the Term, provided that such payments shall not exceed the amount permitted by the *Broader Public Sector Executive Compensation Act, 2014*, as amended. The Executive shall also be entitled to continuation of her participation in the benefit plans to which she is then participating for the duration of the Term. The parties agree that such termination entitlements and benefit continuation fulfill the requirements of the Education Act, Regulation 309, RRO 1990, as amended, and that there will be no obligation on the Board to transfer the Executive to another position, to provide further reasons or information, or to provide any additional compensation to the Executive.

- (d) **Expiry of the Term:** For greater certainty, upon expiry of the Term, the Executive's appointment as Director of Education and Secretary-Treasurer of the Board will automatically terminate and in accordance with the Executive's request, her employment with the Board shall terminate. The Executive understands and agrees that except as provided herein for services rendered up to end of the Term, the Executive will have no claim whatsoever against the Board for further notice of termination or severance, whether under statute or at common law.
- (e) **Deductions and Withholdings:** The payments and entitlements described in this Section 11 are subject to all usual applicable statutory and other deductions and withholdings.
- (f) **Fair and Reasonable:** The parties agree that the termination provisions contained in this Section 11 are fair and reasonable and that in the event of any termination by either party in accordance with the provisions hereof, the other party shall have no cause of action, claim or demand against the party that terminated the Agreement or any other person as a consequence of such termination, other than for breach of contract for any alleged failure to comply with the terms of this Agreement.

12. **Indemnity and Errors and Omission Insurance**

- (a) Subject to the coverage, exclusions and conditions contained in the insurance policies obtained and maintained by the Board from time to time, the Board shall defend, hold harmless and indemnify the Executive, now and following termination of the Executive's employment for any reason, from any and all actions, causes of action, claims, demands, suits or legal proceedings brought against the Executive in respect of any actual or alleged error or misstatement or misleading statement, or act or omission which constitutes neglect of duty or neglect or breach of duty in the performance of her duties for the Board. The Board's obligations in respect of the foregoing shall include payment of fines, costs, charges, expenses of a civil, criminal or administrative action or proceeding.
- (b) The Board shall maintain in full force and effect with reputable insurers an errors and omission insurance policy to provide the Executive with indemnity coverage for all compensatory damages and all reasonable legal expenses for any claims made against the Executive in respect of any matters described in this section.

13. **The Municipal Freedom of Information and Protection of Privacy Act**

This Agreement is subject to the provisions of the *Municipal Freedom of Information and Protection of Privacy Act*. The Executive hereby consents to the public release of the details and sections of this Agreement.



#### 14. Survival of Certain Provisions

For greater certainty, notwithstanding the termination of this Agreement (whether it be terminated by the Executive or the Board), the provisions of Sections 9, 10 and 13, above shall continue in full force and effect indefinitely.

#### 15. Severability

The parties hereto further covenant and agree that if any section paragraph, subparagraph, covenant, proviso, agreement, term and/or condition of this Agreement is determined by a court of competent jurisdiction to be void, voidable, invalid and/or unenforceable, in whole or in part, for whatever reason, such determination shall not affect or impair the validity or enforceability of any other section, paragraph, subparagraph, covenant, proviso, agreement, term and/or condition of this Agreement, nor any part or parts thereof nor that of this Agreement as a whole. Provided that if any section, paragraph, subparagraph, covenant, proviso, agreement, term and/or condition of this Agreement is determined void, voidable, invalid and/or unenforceable, whole or in part, for whatever reason, such section, paragraph, subparagraph, covenant, proviso, agreement, term and/or condition, or the relevant part or parts thereof, shall be deemed null and void to the extent of such invalidity and/or unenforceability, and shall be deemed severed from the other sections, paragraph, subparagraphs, covenants, provisos, agreements, terms and/or conditions contained in this Agreement without any manner affecting the validity or enforceability of this Agreement.

#### 16. General

- (a) This Agreement constitutes and expresses the entire agreement between the parties with respect to the employment of the Executive by the Board and for certainty, supersedes the terms of the 2018 Employment Agreement. There are not and shall not be any verbal statements, representations, warranties, undertakings or agreements between the parties which are not expressly stated herein. This Agreement may not be amended or modified in any respect except by written instrument signed by all of the parties. No waiver of any breach of any provision of this Agreement shall be effective or binding unless made in writing and signed by the part purporting to give the same and, unless otherwise provided in the written waiver, shall be limited to the specific breach waived.
- (b) The parties acknowledge and agree that the terms of the Executive's employment are subject to the provisions of the *Education Act* and in the event of any conflict between this Agreement and the provisions of the *Education Act* or any other legislation, the provisions of the *Education Act* or other legislation shall apply and this Agreement shall be deemed to be amended accordingly.
- (c) Time shall be of the essence in this Agreement.
- (d) This Agreement shall enure to the benefit of and be binding upon the parties hereto and their respective heirs, executors, administrators, successors and assigns.

- (e) This Agreement shall be governed by and construed in accordance with the laws of the Province of Ontario and shall be treated in all respects as an Ontario contract.
- (f) Section headings contained herein are included solely for convenience or reference, are not intended to be full or accurate descriptions of the contents thereof and shall not be considered part of this Agreement.

17. **Notices**

All notices, requests, demands or other instruments or communications required or permitted to be given hereunder or in connection herewith may be hand delivered or sent by registered mail from a Post Office in Canada, postage full prepaid, or sent by telex, telegram, telecopier or other electronic means of written communication tested prior to transmission to the extent such testing is available and addressed to the addressee as follows:

In the case of the Board:

**Strictly Personal and Confidential**

Attention: The Chair  
Toronto District School Board  
5050 Yonge Street  
Toronto ON M5N 5N8

Fax: (416) 397-3678

And in the case of the Executive:

**Strictly Personal and Confidential**

Attention: Katherine Witherow  
291 John Bowser Crescent  
Newmarket, ON L3Y7N9

or at such other addresses as any of the said parties shall by notice direct. All notices, requests, demands, or other instruments or communications shall be deemed to be received (a) on the date of delivery, if delivered on a business day during the usual business hours of the jurisdiction wherein the recipient is situate, or if not a business day or during such usual business hours, on the business day next following the day of discovery, and (b) on the forty-eight (48) hours following the mailing thereof, if mailed. In the event of a mail strike or postal interruption at any time during the currency of this Agreement, all notices, requests, demands or other instruments or communications shall be delivered. All notices, requests, demands or other instruments or communications sent by telex, telegram, telecopier or other electronic means of written communication shall be deemed to be received six (6) hours after transmission if sent during the business hours of the jurisdiction wherein the recipient is

situate or if not sent during such business hours, then at the opening of business on the next business day or such jurisdiction.

**IN WITNESS WHEREOF** this Agreement has been duly executed, seated and delivered by the parties hereto on this \_\_\_\_7th\_\_ day of October, 2020.

**SIGNED, SEALED AND DELIVERED**

**TORONTO DISTRICT SCHOOL BOARD**

**In the presence of:**


Ciara Behan

\_\_\_\_\_  
**Witness**

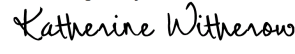
Brian Witherow

\_\_\_\_\_  
**Witness**

**Per:**

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**Katherine Witherow**