before-school or after-school facility license agreement

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| **School Name:** |  |
| **School Address:** |  |
| **Operator Name:** |  |
| **Operator Address:** |  |
| **Operator On-Site Manager:** |  |
| **Term:** | **From:** | **To:** |
|  |  |

This Agreement is entered into as of \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ (the “Effective Date”) by and between \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ (“School”) located at \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ (the “Premises”) and \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ (“Operator”).

1. **Description of Licensed Space.** Subject to the terms and provisions of this Agreement, School hereby licenses to Operator, and Operator hereby licenses from School, the licensed space on the Premises defined and depicted on the attached Exhibit A (the “Licensed Space”) for the Term during the Hours of Operation (as defined below).
2. **Use of Common Areas by Operator.** Operator shall also have the non-exclusive right to use the common areas of the Premises listed on the attached Exhibit A (the “Common Areas”), in their “as-is” condition and subject to the terms of this Agreement and such rules and regulations as School may from time to time promulgate for the use of such areas, in connection with the Program and during the Hours of Operation.
3. **License Fee.** Operator shall pay to School a license fee for use of the Licensed Space in the amount of \_\_\_\_\_\_ per month (the “License Fee”) for the entire Term of this Agreement, which shall cover all expenses for utility services School provides to the Licensed Space during the Hours of Operation. The License Fee shall be delivered to School’s office before the end of the school day on the fifth day of each month during the Term.
4. **Permitted Use**. Operator shall use the Licensed Space solely for the operation of a before-school or after-school program for the exclusive benefit of students currently enrolled at the School and for the sole purpose of furthering the School’s mission of forming the faith and intellectual development illumined by Gospel message to students of the School (the “Program”).
5. **Licensing and Regulatory Requirements.** Operator represents to School that, as of the Effective Date, Operator has obtained a license to operate the Program within the Licensed Space, and that such license shall at all times be valid and in good standing throughout the Term. In addition to any requirement that Operator’s license be posted within the Licensed Space, Operator shall provide School with a current copy of each license and renewal it obtains for the Program during the Term. If a state or local regulatory authority revokes, suspends, or imposes any restriction on Operator’s license for the Program, Operator must immediately provide actual notice to School of each such restriction as set forth herein, at which time School may, at its sole discretion, immediately suspend the license granted by this Agreement without further obligation to Operator. Operator represents, warrants, and agrees that, at all times during the Term and in connection with the Program, it will comply with all applicable statutory, regulatory, administrative, and other legal requirements.
6. **Hours of Operation.** Operator shallhave access to and use of the Licensed Space and Common Areas only during the Hours of Operation for the Program identified on the attached Exhibit B.
7. **Inspection, Condition, and School Use of Licensed Space.** Operator hereby accepts the Licensed Space in its “as-is” condition for all purposes, including the suitability of the Licensed Space for the Program. Operator represents and agrees that it has inspected the Licensed Space and Common Areas and has determined that, as of the Effective Date, such areas meet all applicable statutory and regulatory requirements, are suitable for the safe operation of the Program, and are free of obvious or hidden dangers. If the condition of the Licensed Space or Common Areas described in the preceding sentence changes after the Effective Date and during the Term, Operator shall immediately take such steps as are necessary to ensure the safety of any children participating in the Program and shall immediately notify School. Operator’s license to use the Licensed Space for the Program is non-exclusive in that School retains the right to use the Licensed Space for any School-related activities at all times other than during the Hours of Operation. No lease of the Licensed Space is made or intended by this Agreement. Operator shall not make any alterations or improvements to the Licensed Space or Common Areas without School’s prior written consent.
8. **Maintenance.** School shall generally maintain the Licensed Space as part of its normal maintenance program. In addition, during the Hours of Operation, Operator shall be responsible for keeping the Licensed Space in a condition consistent with the safe operation of the Program and any and all requirements imposed by law and/or regulation; at the end of the Hours of Operation each day, leaving the Licensed Space in a neat and clean condition which allows the School to use the Licensed Space outside the Hours of Operation; and returning the Common Areas to their prior condition after use by Operator.
9. **Safe Environment.** Operator is solely and exclusively responsible for implementing any and all necessary safeguards, training, and/or safety programs to protect the safety and wellbeing of minor children while in the Licensed Space, participating in the Program, or on the Premises in Operator’s care. Operator is solely and exclusively responsible for the manner, method, and means of any and all activities relating to the Program or engaged in by Operator’s agents, employees, representatives, or volunteers while on the Premises. At minimum, because of the proximity of the Licensed Space to other School activities, ensure that Operator must not permit any person who (1) has been convicted of, (2) has received deferred adjudication as a result of, or (3) has presently pending any criminal charge for any Disqualifying Offense listed on Exhibit C, to serve as an employee, representative, volunteer, or agent of Operator within the Licensed Space or otherwise on the Premises.
10. **On-Site Manager.** Operator designates the employee listed on the first page of this Agreement as its On-Site Manager. Operator represents and agrees that the On-Site Manager is an employee of Operator and shall supervise the operation of the Program during the Hours of Operation in the course and scope of his or her employment with Operator. Operator further represents that the On-Site Manager has sufficient authority to supervise and direct the activities of all employees, agents, and representatives of Operator while they are on the Premises in connection with the Program. The On-Site Manager shall work collaboratively with School’s Principal as needed to ensure that School operations are not negatively impacted by the Program and that the Program is of value to School’s students and their families. Nothing in this Agreement is intended to create an employee/employer relationship between School and any person, and any such alleged relationship is hereby disclaimed.
11. **Students.** Operator acknowledges and agrees that enrollment in the Program is limited to students who are currently enrolled at School (“Students”). At the beginning of each school year, on a date to be agreed upon between Operator and School but before the Program begins for the school year, Operator shall verify that all children registered for the Program for the upcoming year are Students. Before accepting a child for participation in the Program during the school year, Operator shall verify that the child is a Student. If a Student ceases to be enrolled at School during the school year, the Student’s eligibility to participate in the Program shall end contemporaneously. Operator agrees that it will have sole custody and care of Students from the time each Student enters the Licensed Space until Operator releases Student to a parent or other authorized adult. At no time shall School have custody of, care for, or any responsibility whatsoever for any Student after the Student enters the Licensed Space for the Program.
12. **Enrollment.** In addition to Operator’s own enrollment requirements, Operator shall require a parent or other adult who is legally responsible for a Student to execute the release of School attached hereto and incorporated herein as Exhibit D before the Student is accepted into the Program.
13. **Student Fees.** If Operator charges Students a fee for participating in the Program, Operator understands and agrees that collection of such fees is solely the responsibility of Operator, and under no circumstances shall School be liable for any fees related to the Program. No compensation shall be owed by School to Operator or its employees, agents, or contractors in connection with the Program.
14. **Right to Relocate.** School shall have the right at any time during the Term to relocate the Licensed Space to other space on the Premises of comparable size, suitability for the Program, and condition (*e.g.*, alternative classrooms).
15. **Insurance.** Operator shall maintain at its expense and at all times while this Agreement is in effect the following insurance coverage, and shall provide certificates of insurance evidencing such coverage to School at the beginning of the Term and once each year thereafter while the Agreement is in effect and upon School’s reasonable request:
	1. Business personal property insurance against loss or damage by fire, theft, and other risks in the amount of the full replacement cost of all of Operator’s property in the Licensed Space;
	2. Commercial general liability insurance (including contractual liability) with coverage of at least $1,000,000.00 per occurrence against claims of bodily injury, death, or property damage occurring on, in, or about the Licensed Space, Common Areas, and Premises, or as a result of Operator’s use of or access to the Licensed Space, Common Areas, or Premises;
	3. Misconduct liability insurance coverage of at least $300,000.00 per occurrence; and
	4. Automobile liability insurance coverage of $100,000.00 per occurrence for bodily injury and $300,000.00 per occurrence for property damage **if** Operator regularly uses a vehicle in connection with the Program. If Operator does not regularly use a vehicle in connection with the Program, Operator is not required to obtain automobile liability insurance as a condition of this Agreement.

The insurance certificates reflecting each coverage listed above shall indicate an endorsement to the each insurance policy 1) naming the Roman Catholic Diocese of Dallas (the “Diocese”), School, and the parish with which School is affiliated, if any (the “Parish”) (collectively, the “School Releasees”), as additional insureds under the policy and 2) confirming that the coverage available to the School Releasees under the policy is primary over any other coverage available to the School Releasees. To ensure that School is adequately protected against claims which may arise as a result of Operator’s use of the Licensed Space, Operator’s insurance policies must be in a form and issued by companies which are reasonably acceptable to School. School agrees to carry and maintain property insurance covering the Premises in an amount no less than the full replacement cost thereof.

1. **Waiver of Claims.** Subject to the indemnification obligation set forth in section 17 below, each party waives each claim or loss that may arise in its favor against the other party or the other party’s employees, owners, officers, or agents arising out of damage to or destruction of the waiving party’s property, to the extent (but only to the extent) that the waiving party either (a) is compensated by insurance or (b) would be covered by insurance had such party satisfied the insurance requirements of this Agreement. The waivers in this paragraph will apply EVEN IF THE RELEASED PARTY IS NEGLIGENT OR WOULD OTHERWISE BE STRICTLY LIABLE UNDER APPLICABLE LAW.

UNLESS CAUSED BY THE GROSS NEGLIGENCE OR WILLFUL MISCONDUCT OF SCHOOL OR THE DIOCESE, NEITHER THE SCHOOL RELEASEES NOR THEIR RESPECTIVE AGENTS, EMPLOYEES, REPRESENTATIVES, OR VOLUNTEERS SHALL BE LIABLE FOR, AND OPERATOR WAIVES AND RELEASES FOR ITSELF AND FOR ITS AGENTS, REPRESENTATIVES, EMPLOYEES, ASSIGNS, AND INSURANCE CARRIERS, TO THE FULLEST EXTENT ALLOWED BY LAW, ALL CLAIMS, CAUSES OF ACTION, SUITS, AND DEMANDS FOR DAMAGE TO PERSONS OR PROPERTY SUSTAINED BY OPERATOR OR ANY PARTY WHO CLAIMS TO HAVE SUFFERED DAMAGE, INJURY, OR LOSS AS A RESULT OF OR IN CONNECTION WITH OPERATOR’S USE OF THE LICENSED SPACE OR THE PREMISES.

1. **Indemnification.** Operator agrees to pay and to indemnify, defend, and hold harmless the School Releasees and their respective agents, employees, representatives, and volunteers from and against any and all liabilities, losses, damages, costs, expenses (including all attorney’s fees and related expenses), causes of action, suits, claims, demands, or judgments of any nature whatsoever, arising from or in connection with (a) any injury to or the death of any person, or any damage to property, in any manner growing out of or connected with the use, non-use, or occupation of the Premises, Licensed Space, or any part thereof by or through Operator; (b) failure to timely perform any term of this Agreement; or (c) violation or alleged violation by Operator of any contract, agreement, restriction, statute, law, ordinance, code, regulation, or administrative rule affecting or relating to Operator’s use, non-use, condition, or occupation of the Premises, Licensed Space, or any portion thereof.
2. **Events of Default.** Any one or more of the following occurrences or acts (“Events of Default”) shall constitute an event of default under this Agreement:
	1. Operator’s failure to make any payment required by this Agreement to School within 10 days of the due date; or
	2. Operator’s failure to remove or repair, within five days after notice from School, any hazardous condition which Operator has created or suffered in violation of law or this Agreement; or
	3. The presence in the Licensed Space because of Operator’s use thereof of any condition which poses an unreasonable risk of harm to any minor child, including the discovery of credible evidence which indicates that physical or sexual abuse of a minor child has occurred on the Premises as a result of any act or omission of Operator or any of its agents, representatives, or employees; or
	4. Operator’s failure to obtain and maintain any and all licensing, certifications, and/or government or regulatory approval required for Operator to engage in the Program within the Licensed Space; or
	5. Operator’s failure to operate the Program within the Licensed Space as scheduled on three occasions within a 14-day period; or
	6. Operator’s breach of any duty imposed by this Agreement and, if said breach is ongoing and capable of being cured by Operator, failure to cure that breach within 10 days of receiving a demand from School to do so.

If an Event of Default occurs, School shall have the right to immediately terminate this Agreement with no notice other than any notice required by items (a) through (f) above. School may then repossess the Licensed Space and recover all losses and damages School may suffer as a result of the Event of Default, in addition to all remedies and rights it has at law or in equity. School may also choose to perform one or more of Operator’s obligations under this Agreement and the parties agree that School need not afford Operator any cure period prior to doing so. School will not be liable for any damages resulting to Operator from such action, and Operator shall reimburse School upon demand for all costs reasonably incurred in performing any such obligations of Operator.

1. **Limitations on Use**. Any contrary term of this Agreement notwithstanding, Operator shall not engage in any of the following uses or activities in or from the Licensed Space:
	1. Any practice inconsistent with or contrary to any teaching, the Code of Canon Law, principle, doctrine, law, or custom of the Roman Catholic Church as determined in the sole discretion of the then-sitting Bishop of the Diocese;
	2. Any use that will cause a cancellation of, or an increase in, the existing rates for fire, liability, or other insurance policies covering the Premises or any improvements on them, or insuring School or Parish for any liability in connection with the Premises;
	3. Any use that is forbidden by or in violation of any law, ordinance or governmental or municipal regulation, order, or certificate of occupancy, or which may be dangerous to life, limb or property;
	4. Any use that constitutes a public or private nuisance, or that may disturb the occupancy or enjoyment of any other space on the Premises by School or any other user or occupant; or
	5. Any use that interferes with the orderly administration of School’s operations, damages School’s reputation in the community including the School community, interferes with School’s ordinary use of the Premises, or calls into question School’s tax-exempt status.
2. **Additional Terms.**
	1. No Tenancy Relationship. Notwithstanding anything to the contrary contained in this Agreement, no tenancy relationship exists between Operator and School, Parish, or the Diocese.
	2. Attorney’s Fees. In the event of any legal action or proceeding arising out of this Agreement, the School Releasees shall be entitled to recover reasonable attorneys’ fees and costs incurred in such action if Operator is found to be at fault or otherwise in violation of this Agreement, and such amount shall be included in any judgment rendered in such proceeding.
	3. Entire Agreement. This Agreement contains all of the agreements of the Parties hereto with respect to the Licensed Space and any matter covered or mentioned in this Agreement, and no prior or other agreement, understanding, or representation pertaining to such matter shall be effective for any purpose. No provision of this Agreement may be amended or added to except by an agreement signed by the parties hereto or their respective successors in interest.
	4. Services to the Licensed Space. School agrees, during the term of this Agreement, to furnish and provide to the Licensed Space: (a) water (hot and cold) at those points of supply provided for general use of occupants of the Premises; (b) heat and air conditioning in season, as determined by School, during the Hours of Operation and at such temperatures as are considered by School to be standard for the Premises; and (c) electrical service for normal lighting and other usage typical for the Premises. Notwithstanding the foregoing, School shall not be liable to Operator for any direct, consequential, or other damages for any failure to provide any of the foregoing services during the term of this Agreement.
	5. Entry by School. School and its employees and agents shall have the right to enter the Licensed Space at any time in order to inspect, repair, maintain, or show such space, or as otherwise permitted by this Agreement.
	6. Governing Law. This Agreement shall be construed and enforced in accordance with the laws of the State of Texas.
	7. Notices. All notices required or permitted hereunder shall be in writing and shall be deemed delivered upon the earlier to occur of actual receipt thereof or three business days following deposit in a regularly maintained receptacle for the United States mail, registered or certified mail, return receipt requested, postage prepaid, addressed to the intended recipient at the address listed on the first page of this License Agreement. Either party may change its address for notices by providing at least five days prior written notice of such change to the other party hereto in the manner prescribed above.
	8. Assignment. Operator shall not assign this Agreement or sublet all or any portion of the Licensed Space without the prior written consent of School, which consent may be withheld in School’s sole and absolute discretion.
	9. Casualty and Condemnation. Operator will immediately notify School of any damage to the Licensed Space caused by fire or other casualty. If the Licensed Space or the Premises is partially or totally destroyed, either School or Operator may terminate this Agreement. If any part of the Licensed Space is taken, condemned, or sold in lieu of condemnation, School or Operator may terminate this Agreement. If this Agreement is terminated in connection with a casualty or condemnation pursuant to this paragraph, then School will refund to Operator the pre-paid License Fee attributable to the remainder of the term of this Agreement, as prorated on a straight line basis.
	10. Early Termination. This Agreement shall remain in effect for the duration of the Term unless earlier terminated pursuant to this paragraph or section 19 above. In addition to the early termination rights afforded School by section 19 above, Operator may terminate this Agreement before the end of the Term by delivering a written notice of termination to School at least 90 days in advance (the “Notice Period”). If Operator pre-pays any License Fees due under this Agreement, said fees shall not be refunded upon Operator early termination of the Agreement unless Operator and School agree otherwise in writing.
	11. Return of Keys. At the expiration or earlier termination of this Agreement, Operator will deliver any and all keys for the Licensed Space to School and will surrender the Licensed Space to School in a condition that is at least as good as the condition of the Licensed Space on the Beginning Date, except for ordinary wear and tear.
	12. Severability. If any term of this Agreement shall be held to be unenforceable, void, invalid, or voidable, said unenforceability, voidability, or invalidity shall not affect the remaining terms of this Agreement each of which shall remain in full force and effect.

In witness whereof, School and Operator have caused this Agreement to be duly executed as of the Effective Date:

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| **SCHOOL:** |
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| By: |  |
|  |  |
| Name: |  |
|  |  |
| Title: | Principal |
|  |  |
| **OPERATOR:** |
| By: |  |
|  |  |
| Name: |  |
|  |  |
| Title: |  |

EXHIBIT A

LICENSED SPACE

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| --- | --- |
| Licensed Space:  | The Licensed Space consists of approximately \_\_\_\_\_ square feet of interior space at the Premises. As depicted more specifically as the shaded area of the diagram on the following page of this Exhibit A, the Licensed Space consist of [list number and type of classrooms, restrooms, etc…]:  |
| Common Areas:  | *[Insert list of common areas, such as outside building entrances and exits, foyers, hallways, restrooms, playgrounds, and parking areas Operator may use]* |

**[attach diagram or floorplan of Licensed Space with shading to indicate Licensed Space]**

EXHIBIT B

|  |  |
| --- | --- |
| **Day** | **Hours of Operation** |
| **Monday** |  |
| **Tuesday** |  |
| **Wednesday** |  |
| **Thursday** |  |
| **Friday** |  |
| **Saturday** |  |

The Program will be closed on the holidays listed below, which are excluded from the Hours of Operation:

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| **Holidays excluded from Hours of Operation** |
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EXHIBIT C

Disqualifying Offenses include:

1. A felony or misdemeanor classified as an offense against the person or family or which involves an offense against the person or family. Examples: Offenses against a person include, but are not limited to, murder, assault, sexual assault, and abandoning or endangering a child or vulnerable adult. Offenses against the family include, but are not limited to, bigamy, incest, interference with child custody, enticing a child, and harboring a runaway child.
2. A felony or misdemeanor classified as an offense against public order, safety, or decency. Examples include, but are not limited to, prostitution, obscenity, sexual performance by a child, and possession or promotion of child pornography.
3. A felony violation of any law intended to control the possession or distribution of any substance included as a controlled substance in the Texas Controlled Substance Act.
4. A felony or misdemeanor classified as an offense against property, to the extent that those offenses are related to threats or risk of harm or violence. Examples include, but are not limited to, robbery, burglary of a habitation, and arson. Other offenses, such as theft by check or fraud are not ordinarily Disqualifying Offenses.
5. A felony computer crime of online solicitation of a minor.
6. A felony or misdemeanor offense against public health, safety, and morals involving illegal possession or use of weapons. Examples include, but are not limited to, unlawful weapons charges, including the illegal possession of weapons or bombs.

The foregoing list of offenses describes categories from the Texas Penal Code. Federal law and the laws of other states may define or classify disqualifying offenses in a slightly different manner. The foregoing list is intended to include any offense, regardless of level or classification, which would negatively impact health and/or safety.

exhibit d

consent to participate, acknowledgement of responsibility, release, and indemnity agreement

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| **Student Name:** |  |
| **Student Grade Level:** |  |
| **Parent/Guardian Name:**  |  |
| **Relationship to Student:** |  |
| **School Name:** |  |
| **Before- or After-School****Program Name:** |  |
|  |  |

By signing this form, I represent to School that I am the parent or other adult who is legally authorized to consent to Student’s participation in the Program named above. I understand that, while the Program will take place on the School’s premises, the Program is not operated by the School, is not staffed by School employees, and is not supervised by the School. I also represent to School that I have done whatever I believed was necessary to satisfy myself that the Program is appropriate for Student, taking into account Student’s needs and the Program’s capabilities, planned activities, and operator.

I hereby give School permission to release Student to the Program at the end of the school day, and I understand and agree that, once Student enters the area of the School designated for the Program following the end of the School day, the Program will have sole care and control of Student until s/he is picked up. I understand that no School employees or other personnel will provide any supervision whatsoever during the Program, and that the Program is solely responsible for ensuring the safety of Student while s/he participates in the Program. I also understand that Student is only permitted to participate in the Program while s/he is enrolled at School, and that if Student leaves the School, voluntarily or involuntarily, s/he will immediately become ineligible to participate in the Program.

Because School does not operate the Program, I understand that I am responsible for paying any fees related to the Program directly to the Program and that no tuition or fees paid to School will be credited towards any fees owed for Student’s participation in the Program. If I believe a refund or credit is owed relating to fees or expenses paid for Student to participate in the Program, I agree that I will look solely to Program for the fee or credit and will not assert any such claim against the School.

**Finally, for good and valuable consideration, I hereby release and agree to indemnify, defend, and hold harmless School, the parish for which School is organized, and the Roman Catholic Diocese of Dallas, together with their respective employees, agents, representatives, and volunteers from and against any and all claims, causes of action, damages, costs, expenses (including attorney’s fees) arising in any way out of or in connection with Student’s participation in the Program. This release and indemnity agreement is intended to bind me, Student, and any person claiming by or through Student to the fullest extent allowed by law.**

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| Parent/Guardian Signature | Date |