

**FACILITY USE AGREEMENT
THE SCHOOL BOARD OF PINELLAS COUNTY, FLORIDA**

THIS AGREEMENT (the "**Facility Use Agreement**") is made the 15th day of January, 2013, between Rogers Blue Jays Baseball Partnership, an Ontario partnership having its primary offices at One Blue Jays Way, Suite 3200, Toronto, Ontario, M5V 1J1, Fax: (416) 341-1427 and also operating offices at 373 Douglas Avenue, Dunedin, Florida, U.S.A., 34698, Fax: (727) 734-7661 (hereinafter referred to as the "**Club**") and The School Board of Pinellas County, Florida, a public corporation of the State of Florida with its offices at 301 Fourth St. SW, Largo, Florida, U.S.A., 33770 U.S.A., Fax: (727) 588-6514 (hereinafter referred to as the "**Company**").

WHEREAS, the Company wishes to use the Dunedin Facilities (as defined below) for the purpose of certain baseball-related activities;

AND WHEREAS, the Club operates the Dunedin Facilities pursuant to a License Agreement with the City of Dunedin;

AND WHEREAS, the Club wishes to obtain certain assurances, releases and indemnities in respect of any use of the Dunedin Facilities by the Company;

AND WHEREAS, the Company wishes to provide the Club with the aforementioned assurances, releases and indemnities;

THEREFORE, the parties agree as follows:

1. **Definitions.** For the purposes of this Facility Use Agreement:

- (a) "**Dunedin Facilities**" means the Complex and Dunedin Stadium;
- (b) "**Complex**" means the property located at 1700 Solon Ave., Dunedin, Florida, 34698 which includes, but is not limited to, baseball diamonds, bleachers, parking lots, concession stands, washrooms and outdoor practice facilities; and
- (c) "**Dunedin Stadium**" means the property located at 373 Douglas Avenue, Dunedin, Florida, 34698 which includes, but is not limited to, the stadium, baseball diamonds, bleachers, parking lots, concession stands, washrooms and outdoor practice facilities.

2. **Consideration.** In addition to the valuable commitments provided by the Company to the Club, below, the Company will pay the Club the sum of USD \$2.00.

3. **Company Events.** Subject to the limitations and restrictions specified in this Facility Use Agreement, the Club hereby agrees to permit the Company to use the following specified Dunedin Facilities for the following specified events (the "**Company Events**") during the Term:

- (a) Use of one (1) field at the Complex, as determined by the Club, for the purpose of Dunedin High School Baseball Team (the "**High School Team**") practices. The practices will be permitted between January 14, 2013 and May 21, 2013 on the following days/times:
 - (i.) Monday to Friday: 4 pm to 7 pm, and
 - (ii.) Saturday: 2 pm to 6 pm.

The Club will be entitled to cancel any High School Team practice(s) due to other reasonable concerns, including concerns related to the state of the playing fields. In addition, the Club and the Company may agree at any time to cancel or reschedule any of the foregoing practices. The Company shall supervise all practices. The Company shall leave the Complex at the end of each practice in the same state as when it arrived (including cleaning up any waste).

(b) Use of Dunedin Stadium and/or the Complex, in the discretion of the Club, for High School Team regular season games (as specified below). The games will be permitted on the following dates/times and at the following locations:

- | | |
|-------------------------|--------------------|
| (i.) February 22, 2013: | 5:30 to 10:30, |
| (ii.) March 1, 2013: | 5:30 to 10:30 |
| (iii.) March 5, 2013: | 5:30 to 10:30, |
| (iv.) March 12, 2013: | 5:30 to 10:30, |
| (v.) April 3, 2013: | 5:30 to 10:30, |
| (vi.) April 5, 2013: | 5:30 to 10:30, |
| (vii.) April 9, 2013: | 5:30 to 10:30, and |
| (viii.) April 12, 2013 | 5:30 to 10:30. |

The Club shall be entitled to cancel any of the foregoing games due to reasonable concerns, including concerns related to the state of the playing field, provided that the Club makes reasonable efforts to try to reschedule any cancelled game. Notwithstanding the foregoing, the Club will not be required to reschedule any game that is cancelled due to weather or other similar events outside of the Club's reasonable control. In addition, the Club and the Company may agree at any time to cancel or reschedule any of the foregoing games. The Company shall:

- Supervise the games,
- Provide all food and/or beverages (no alcohol) for any games played at Dunedin Stadium, and, regardless of game location, all personnel required to sell tickets, check tickets, collect payments and/or distribute/sell food and/or beverages, and
- Leave the Dunedin Facilities following each game in the same state as when it arrived (including cleaning up any waste and any food or beverages that the Company or its designee provides for attendees).

(c) Use of one or more fields at the Complex for the purpose of hosting a maximum of twenty five (25) games as part of the "44th Annual Dunedin High School Spring Classic Baseball Tournament" (the "**Classic Tournament**"). The baseball games of the Classic Tournament are anticipated to take place in accordance with the following schedule of dates/times and to require the use of the specified number of fields:

- (i.) Monday, March 25, 2013: six (6) games:
 - (1) Three (3) games/fields at 5:00 p.m., and
 - (2) Three (3) games/fields at 8.00 p.m.,
- (ii.) Tuesday, March 26, 2013: six (6) games
 - (1) Three (3) games/fields at 5:00 p.m., and
 - (2) Three (3) games/fields at 8.00 p.m.,
- (iii.) Wednesday, March 27, 2013: five (5) games:
 - (1) Either three (3) games/fields at 5:00 p.m. and two (2) games/fields at 8.00 p.m., or
 - (2) Two (2) games/fields at 5:00 p.m. and three (3) games/fields at 8.00 p.m.,
- (iv.) Thursday, March 28, 2013: five (5) games:
 - (1) Either three (3) games/fields at 5:00 p.m. and two (2) games/fields at 8.00 p.m., or
 - (2) Two (2) games/fields at 5:00 p.m. and three (3) games/fields at 8.00 p.m.,
- (v.) Friday, March 29, 2013: three (3) games:
 - (1) Two (2) games/fields at 5:00 p.m., and
 - (2) One (1) game/field at 8.00 p.m., and
- (vi.) Saturday, March 30, 2013, 2013: RAIN DATE.

The Club shall be entitled to cancel any of the foregoing games due to reasonable concerns, including concerns related to the state of the playing field, provided that the Club makes reasonable efforts to try to reschedule any cancelled game. Notwithstanding the foregoing, the Club will not be required to reschedule any game that is cancelled due to weather or other similar events outside of the Club's reasonable control. In addition, the Club and the Company may agree at any time to cancel or reschedule any of the foregoing games. No parking will be available at the Complex for the Classic Tournament. The Company shall:

- Supervise the event,
- Provide all food and/or beverages (no alcohol) if and as required (the Club does not guarantee that the Company will be able to provide food and beverages), and all personnel required to sell tickets, check tickets, collect payments, clean and maintain washrooms and/or distribute/sell food and/or beverages, and
- Leave the Complex following each day of the Classic Tournament in the same state as when it arrived (including cleaning up any waste and any food or beverages that the Company or its designee provides for attendees).

(d) Use of one (1) field at the Complex for the purpose of hosting the 2013 regional high school baseball playoffs, provided that the High School Team is a participant in same. The baseball games of the playoffs are anticipated to take place in accordance with the following schedule of dates/times:

- (i.) Thursday, May 2, 2013: Quarterfinals (time to be determined),
- (ii.) Tuesday, May 7, 2013: Semifinals (time to be determined), and
- (iii.) Friday, May 10, 2013: Finals (time to be determined).

The Club shall be entitled to cancel any of the foregoing games due to reasonable concerns, including concerns related to the state of the playing field, provided that the Club makes reasonable efforts to try to reschedule any cancelled game. Notwithstanding the foregoing, the Club will not be required to reschedule any game that is cancelled due to weather or other similar events outside of the Club's reasonable control. In addition, the Club and the Company may agree at any time to cancel or reschedule any of the foregoing games. The Company shall:

- Supervise the event,
- Provide all food and/or beverages (no alcohol), and all personnel required to sell tickets, check tickets, collect payments, clean and maintain washrooms and/or distribute/sell food and/or beverages, and
- Leave the Complex following each day of the regional high school baseball playoffs in the same state as when it arrived (including cleaning up any waste and any food or beverages that the Company or its designee provides for attendees).

4. Priority of Club Needs. The parties acknowledge that the needs of the Club and its Major and Minor League baseball teams, players and staff take priority over all Company uses herein and that, notwithstanding anything else in this agreement, the Club shall be entitled to cancel or postpone any of the practices, games or events specified in Section 3, above, due to the needs of any of the Club's Major League or Minor League baseball teams. In addition, the Club shall have the right, acting reasonably, to reschedule or otherwise modify the dates and/or times of the practices or games specified in Section 3, above, in order to meet the needs of other persons or entities to whom the Club has granted use of the Dunedin Facilities, including Little League.

5. Fees and Costs. Provided there is no material change in the requirements and responsibilities for the events described in Sections 3(a) and 3(b), the Club agrees not to charge the Company a fee on account of lighting or security staff in respect of same. With respect to the events described in Sections 3(c) and 3(d), above, the Company shall be responsible to pay for the following:

(a) The amount of USD \$17.50 per field per hour, plus applicable taxes, for field lighting. As of the date hereof, the parties estimate that sixty three (63) hours of field lighting will be required, for a total cost of USD \$1,102.50, plus taxes,

- (b) The amount of USD \$115 per day or part thereof, plus applicable taxes, for each security staff member. As of the date hereof, the Club is estimating that there will be five (5) dates for which one (1) security staff member is required, for a total cost of USD \$575, plus taxes,
- (c) The amount of USD \$14.5 per hour, plus applicable taxes, for other staffing. As of the date hereof, the Club is estimating that there will be seventy seven (77) other staff hours required, for a total cost of USD \$1,116.50, plus taxes, and
- (d) The approximate amount of USD \$600, plus applicable taxes, for supplies and materials.

Unless otherwise directed by the Club, (i) payments on account of lighting will be payable to the City of Dunedin and (ii) all other payments will be payable to the Club. With respect to amounts payable to the Club, the Company shall pay the estimated amounts to the Club within five (5) days following the applicable event. If the actual costs are higher than the stated estimates, the Company shall be responsible to promptly pay the additional amounts to the City of Dunedin or the Club, as applicable. In the event that the Club provides any additional services or supplies (including services to repair or restore the fields or other elements at the Dunedin Facilities due to any damage other than ordinary wear and tear), it shall be entitled to charge the Company for same and the Company shall promptly pay those amounts to the Club.

6. Promotional Association. During the Term, the Company shall publicly acknowledge the *Toronto Blue Jays®* as sponsor or supporter of the High School Team. The Club shall have the right to develop and produce a reasonably-sized banner promoting the foregoing. During each practice and game played by the High School Team at the Dunedin Facilities during the Term, the Company shall ensure that the banner or other promotional material is prominently displayed in the vicinity of the High School Team's dugout. Throughout the Classic Tournament, the Company shall ensure that the banner is prominently displayed in a visible location at the tournament site.

7. Term. The term of this Facility Use Agreement will commence on January 14, 2013 and will end on May 21, 2013 (the "**Term**").

8. Termination. The Club will be entitled to terminate this Facility Use Agreement immediately, without any requirement of notice to the Company in the event that:

- (a) the Company, or any of its employees, students, officers, directors, volunteers, agents or representatives or any person attending at or participating in any of the Company Events causes any intentional damage to the Dunedin Facilities or any of the property or personnel of the Club or anyone else, or
- (b) The Company is in breach of the Facility Use Agreement and the breach has not been corrected to the satisfaction of the Club within five (5) days of written notice thereof.

These rights of termination are in addition to any rights available to the applicable party at law or equity.

9. Representations and Warranties. The Company represents and warrants that it has all rights and consents necessary to stage and operate the Company Events. The Company further represents and warrants that it has all rights and consents necessary to make or permit to be made any reproductions thereof and to use all identifying names, trademarks and other properties in connection therewith, including all copyrights, performance, trade-mark and moral rights. The Company shall be solely responsible for, and shall pay all fees in connection with, the use of patented, trademarked, copyright or franchised materials, devices, processes, music, dramatic and other rights used in connection with the Company Events, including all royalties and fees associated with BMI and ASCAP or similar organization(s) or rights holders, and shall indemnify the Club-Related Entities (as defined below) in connection therewith. The Club has not contracted to permit the Company to use any of its equipment. In the event that the Club does permit the use of any of its equipment by the Company, such equipment is provided on "as is, where is" basis at Company's sole risk and peril, and without any express or implied agreement or representation and warranty of any kind whatsoever, whether legal, statutory or conventional, as to the physical condition or fitness for use.

10. **Release.** The Company hereby releases and forever discharges the Club, Major League Baseball, the City of Dunedin and their respective affiliates, and their respective successors, assigns, officers, directors, shareholders, employees, partners, volunteers, contractors, agents and representatives (collectively, the "**Club-Related Entities**"), with respect to any and all liability for injury, disability, death or loss or damage to person or property suffered or incurred by the Company, or any of its employees, students, officers, directors, employees, volunteers, agents and representatives or any person attending at or participating in any of the Company Events (collectively, the "**Company-Related Entities**") whether or not such injury, disability, death or loss or damage to person or property was caused or contributed to by the negligence of any of the Club-Related Entities. For clarity, the foregoing release and discharge does not extend to acts of intentional misconduct by the Club-Related Entities. The Company hereby agrees not to make any claim or to take any actions or proceedings of any type in respect of any matter referred to above against any of the Club-Related Entities or against any other person, corporation, firm or government authority who or which might claim contribution, indemnity or relief from or over the Club-Related Entities or any of them. This section will survive the expiry or early termination of this Facility Use Agreement.

11. **Indemnification.** The Company agrees to indemnify and hold harmless the Club and any of the Club-Related Entities from and against any claims, losses, liabilities, demands, costs or expenses (including legal fees) whatsoever (collectively "**Claims**"), including Claims for injury, disability, death or loss or damage to person or property resulting from or arising directly or indirectly from the acts or omissions of the Company and any of the Company-Related Entities, in whole or in part, from or out of or in connection with any of the Company Events at any of the Dunedin Facilities. The parties expressly agree that the indemnity provision applies not only to acts or omissions by the Company or any of the Company-Related Entities giving rise to Claims, but applies also to any and all Claims based on acts or omissions of the Club or any Club-Related Entities whether said acts or omissions may give rise to a Claim against the Club or any Club-Related Entities based solely and exclusively on the fault or negligence of the Club or any Club-Related Entities or whether the act or omission may result in joint liability with the Club, any Club-Related Entities and/or any other party. IT IS THE CLEAR AND UNEQUIVOCAL INTENT OF THE PARTIES THAT BY THIS INDEMNITY AGREEMENT THE COMPANY AGREES TO INDEMNIFY AND HOLD THE CLUB AND CLUB-RELATED ENTITIES HARMLESS FOR THE CLUB'S AND/OR ANY CLUB-RELATED ENTITIES' OWN ACTS OR OMISSIONS WHICH MAY GIVE RISE TO A CLAIM FOR LIABILITY AS WELL AS FOR ANY ACTS OR OMISSIONS OF THE COMPANY, ANY COMPANY-RELATED ENTITIES OR ANY OTHER PARTY WHICH MAY GIVE RISE TO A CLAIM FOR LIABILITY AGAINST THE CLUB OR ANY CLUB-RELATED ENTITIES ARISING OUT OF THE SCOPE OF ACTIVITIES CONTAINED IN THIS FACILITY USE AGREEMENT. Notwithstanding the foregoing, the Company's indemnification obligation hereunder does not extend to indemnifying the Club in respect of any Claims based solely on the intentional misconduct of the Club. The parties agree that Company's liability and responsibility under this paragraph and under this Agreement are subject to the monetary limitations and defenses imposed by Florida Statute 768.28. Nothing herein is intended to serve as a waiver of sovereign immunity by the Company, nor shall anything herein be construed as consent by either party to be sued by any third party for any cause or matter arising out of or relating to this Agreement. This section will survive the expiry or early termination of this Facility Use Agreement.

12. **Insurance.**

(a) Company shall obtain, and continuously maintain without lapse, at its own expense, the following insurance policies:

(i.) Workers' Compensation in compliance with state statutory laws, including Employers' Liability covering employees, volunteers, temporary workers and leased workers with minimum limits of:

- (1) USD \$1,000,000 Each Accident,
- (2) USD \$1,000,000 Disease - Each Employee,
- (3) USD \$1,000,000 Disease - Policy Limit;

(ii.) An Insurance Services Office occurrence based Commercial General Liability Insurance Policy, for claims of bodily injury (including, but not limited to abuse, molestation and other forms of bodily injury) and death, property damage and personal and advertising injury, including contractual

liability coverage, participant accident and legal liability and spectator accident and legal liability coverage and products/completed operations coverage with minimum limits of:

- (1) USD \$2,000,000 Each Occurrence,
- (2) USD \$5,000,000 General Aggregate,
- (3) USD \$5,000,000 Products/Completed Operations Aggregate; and

(iii.) If applicable, Automobile Liability Insurance, covering owned, leased or hired automobiles, with a minimum combined single limit of \$1,000,000 Each Accident.

Coverage limits for (ii), above, may be satisfied through a combination of primary and umbrella/excess policies. Umbrella/excess policies shall follow form of the underlying coverage. All insurance policies must be issued by an admitted insurance carrier with an A.M. Best rating of A-8 or better. The Club, and each of its subsidiaries or affiliated entities, any entity which, now or in the future, controls, is controlled by, or is under common control with the Club, and its and their directors, officers and employees and the City of Dunedin ("**Additional Insureds**") must be named as Additional Insureds under the Commercial General Liability and Commercial Automobile Liability Policies. All liability insurance policies must contain Cross Liability Endorsements, or their equivalents. Further, coverage for the Additional Insureds shall apply on a primary basis irrespective of any other insurance, whether collectible or not. No policy shall include a self-insured retention, no policy shall include a deductible in excess of USD \$25,000 and Company shall remain solely responsible for payment of any deductibles. All policies shall be endorsed to provide a waiver of subrogation in favor of the "Additional Insureds". All policies shall be endorsed to provide that in the event of cancellation, non-renewal or material modification Club shall receive at least thirty (30) days written notice thereof. Company shall furnish Club with certificates of insurance evidencing compliance with all insurance provisions noted above at least five (5) days prior to the commencement of the use of the Dunedin Facilities.

Notwithstanding any of the foregoing, the Club shall have the absolute right, on the Company's behalf, to obtain event-based insurance coverage to address some or all of the foregoing insurance requirements. In the event that the Club does so, the Club shall have the right to require the Company to either pay the premiums directly to the applicable insurer or to promptly reimburse the Club the costs of such insurance, up to a maximum amount of \$6,500.

The Company (or, if the Club places any insurance policies, the Club) shall ensure that all of the foregoing insurance policies contain an endorsement that specifically waives any right of subrogation that the insurer may have against the Club or any of the Club-Related Entities.

- (b) Company acknowledges that neither Club nor the City of Dunedin insures or protects Company's property and Company shall insure the property of Company, its employees, agents, exhibitors, performers, sub-licensees, personnel, members, and guests while at the Dunedin Facilities. Company waives all claims against Club and the City of Dunedin for loss or damage thereto no matter how caused. Company further agrees to obtain a waiver of subrogation provision in the policies insuring its property.

13. Confidentiality. The parties agree that the details of this Agreement shall be confidential and each shall undertake whatever measures are reasonably necessary to preserve that confidentiality. Any release of information concerning this Agreement shall be approved by both parties prior to being released or published. Notwithstanding the foregoing, either party shall be entitled to make such disclosure concerning it as is required by law and the Club shall be entitled to make such disclosure as may be required by the rules of Major League Baseball or Minor League Baseball or for corporate reporting purposes.

14. Waiver. The waiver by any party of a breach of any provisions of this agreement, which waiver must be in writing to be effective, shall not operate as or be construed as a waiver of any subsequent breach.

15. Entire Agreement. This Facility Use Agreement constitutes the full and complete understanding of the parties hereto and will supersede all prior agreements and understandings, oral or written, with respect to the subject matter hereof. This Facility Use Agreement may not be modified or amended except by an instrument in writing signed by the party against whom or which enforcement may be sought.

16. **Assignment.** The parties agree that this Facility Use Agreement shall not be assignable by the Company without the prior written consent of the Club. The Club may, without consent, assign its rights and obligations under this Facility Use Agreement to a person that directly or indirectly controls, is controlled by or is under common control with the Club, or to a transferee of all or substantially all of the assets of the Club.

17. **Severability.** If one or more of the provisions or paragraphs of the Facility Use Agreement shall be held to be illegal or otherwise void or invalid, the remainder of the Facility Use Agreement shall not be affected and shall remain in full force and effect.

18. **Choice of Law and Jurisdiction.** All issues pertaining to the validity, construction, execution and performance of this Facility Use Agreement will be construed and governed in accordance with the laws of the State of Florida and the laws of the United States of America applicable therein, without giving effect to the conflict or choice of law provisions thereof. The parties hereby attorn to the exclusive jurisdiction of the courts of the State of Florida for the purposes of any action arising out of this Facility Use Agreement.

19. **Independent Legal Advice.** Each party has had the opportunity to receive independent legal advice regarding this Facility Use Agreement and fully understands and agrees to the contents of this Facility Use Agreement.

20. **Counterparts.** This Facility Use Agreement may be executed in one or more counterparts, all of which will be considered one and the same agreement, and will become effective when one or more counterparts will have been signed by each party and delivered to the other party. Delivery of an executed counterpart of this agreement by facsimile or transmitted electronically in either a tagged image format file ("**TIFF**") or portable document format ("**PDF**") shall be equally effective as delivery of a manually executed counterpart of this Agreement.

Accepted and agreed this 15th day of January, 2013 by:

**ROGERS BLUE JAYS BASEBALL
PARTNERSHIP**

By: _____
Name: _____
Title: _____

By: _____
Name: _____
Title: _____

**THE SCHOOL BOARD OF PINELLAS
COUNTY, FLORIDA**

By: _____
Carol J. Cook
Chairperson

ATTEST

By: _____
Michael A. Grego, Ed.D.
Superintendent

Approved as to Form:


Office of School Board Attorney