

Fleming College



LANGUAGE ADMISSION PATHWAY AGREEMENT

BETWEEN

**THE SIR SANDFORD FLEMING COLLEGE OF APPLIED ARTS AND
TECHNOLOGY
PETERBOROUGH, ONTARIO, CANADA**

AND

**ENGLISH SCHOOL OF CANADA
TORONTO, ONTARIO, CANADA**

JULY 2019

The PARTIES to this Language Admission Pathway Agreement are **The Sir Sandford Fleming College of Applied Arts and Technology** (hereinafter referred to as "FLEMING"), whose address is 599 Brealey Drive, Peterborough, Ontario K9J 7B1, Canada and **English School of Canada** (hereinafter referred to as "ESC"), whose address is 79 St Clair Avenue East, Suite 202, Toronto, Ontario, M4T 1M6, Canada.

For the purpose of this AGREEMENT:

- **"AGREEMENT"** shall mean this Language Admission Pathway Agreement and any of all of its attached Schedules and additional documents incorporated herein by reference.
- **"PARTY"** shall refer to either FLEMING or ESC.
- **"PARTIES"** shall refer to both FLEMING and ESC.
- **"PATHWAY PROGRAM"** shall refer to University College Transfer Program offered at ESC.

ARTICLE 1: PURPOSE

The goal of this AGREEMENT is to provide opportunities for international candidates to be exempt from FLEMING's English language proficiency requirement. This AGREEMENT establishes the principles, guidelines, and procedures governing admission and assessment of selected qualified candidates to enter programs at FLEMING, subsequent to the successful completion of the PATHWAY PROGRAM. If FLEMING determines that any international candidate is exempt from FLEMING's English language proficiency requirement and is selected to enter programs at FLEMING for a specific calendar year, FLEMING shall, subject to the terms hereof including Article 2, pay ESC a commission specified in sequentially numbered Schedules for each program year and attached hereto from time to time. In no event shall the total commissions payable under this AGREEMENT exceed (\$2,999,999.00)

ARTICLE 2: ADMISSION REQUIREMENTS AND PROCEDURES

All applications to all programs of study are subject to assessment according to FLEMING's admissions procedures and criteria, which may be amended from time to time. All FLEMING's programs of study are subject to enrolment limitations. Admission to any program of study will be at the sole discretion of FLEMING, even when a candidate has satisfied all applicable admission and related requirements. Neither PARTY shall bear any responsibility for late, incomplete, or deficient admission applications. Each PARTY acknowledges that the existence of any program description in any promotional material does not constitute a legal undertaking that the program is available.

ARTICLE 3: RECOGNITION OF ENGLISH LANGUAGE

An international candidate must meet FLEMING's English language proficiency requirement and all other academic and non-academic program requirement in order to gain admission to a study program.

The 2019 curriculum of the PATHWAY PROGRAM was reviewed by FLEMING. Subsequent to this review, FLEMING agrees to waive its English language proficiency requirement should a candidate successful satisfy the following requirements:

Option A

- successful completion of the PATHWAY PROGRAM; and
- achieved a minimum overall 70% in the PATHWAY PROGRAM.

Eligible Credentials

- Ontario College Certificate;
- Ontario College Diploma; or
- Ontario College Advanced Diploma.

This option excludes the Ontario College Diploma in Pharmacy Technician program and all Ontario College Graduate Certificate programs.

Option B

- successful completion of the PATHWAY PROGRAM; and
- achieved a minimum overall 80% in the PATHWAY PROGRAM.

Eligible Credentials

- Ontario College Certificate;
- Ontario College Diploma;
- Ontario College Advanced Diploma; or
- Ontario College Graduate Certificate.

ARTICLE 4: IMPLEMENTATION AND REVIEW

This AGREEMENT is subject to review whenever ESC makes curricular changes to the PATHWAY PROGRAM. When a change occurs during the term of this AGREEMENT, ESC will notify FLEMING's Administrative Contact as noted in ARTICLE 10: ADMINISTRATIVE CONTACTS to have the curriculum changes reviewed in accordance with this AGREEMENT and FLEMING's English language proficiency requirements.

The AGREEMENT is subject to review whenever FLEMING makes changes to its English language proficiency requirements. When a change occurs, FLEMING will notify ESC's Administrative Contact as noted in ARTICLE 10: ADMINISTRATIVE CONTACTS.

ARTICLE 5: CONFIDENTIAL INFORMATION

ESC acknowledges that FLEMING is subject to the Freedom of Information and Protection of Privacy Act, RSO. 1990, c. F.31 (Ontario) "FIPPA". The PARTIES shall treat all personal information (as defined by FIPPA) received by it in connection with this AGREEMENT as required by FIPPA.

Each PARTY agrees to maintain in confidence and safeguard all confidential information of the other as well as any personal information disclosed to it by the other.

ARTICLE 6: MARKS, LOGOS AND NAMES

A PARTY shall seek permission from the other before using the other's name, trademark, logo, or other associated mark in any promotional material. Upon the expiration or termination of this AGREEMENT, the PARTIES shall forthwith at their own cost and expense, discontinue the display of the other's name, trademark, logo or other associated mark.

ARTICLE 7: AMENDMENT

No amendment of or to this AGREEMENT shall be effective unless made in writing and signed by the PARTIES.

ARTICLE 8: TERMS AND CONDITIONS OF THE AGREEMENT

- I. This AGREEMENT is effective from 1st day of September, 2019 for three (3) calendar years.
- II. Either PARTY may terminate this AGREEMENT by providing the other PARTY with three (3) months prior written notice. The termination request shall be submitted in writing to the individual(s) noted in ARTICLE 10: ADMINISTRATIVE CONTACTS. In the event the AGREEMENT is terminated every effort will be made to ensure that candidates currently enrolled in the program will not be affected.

ARTICLE 9: LIABILITY, INDEMNIFICATION, AND INDEPENDENT CONTRACTORS

- I. FLEMING shall have no liability for any act or omission of FLEMING or its directors, officers, employees and agents in connection with or related to this AGREEMENT, or any costs, losses, damages or expenses arising from ESC's performance under this AGREEMENT. ESC agrees that it shall not bring any claim or join in any proceeding against FLEMING or the Crown in right of Ontario for any costs, losses, damages or expenses suffered in connection with this AGREEMENT.
- II. In the event that Clause 9(I) is held unenforceable:
 - a. The remedies, recourse or rights of ESC shall be limited to FLEMING and to the right, title and interest owned by FLEMING in and to all of its personal property, whether now existing or hereinafter arising or acquired from time to time;
 - b. ESC unconditionally and irrevocably waives and releases all other claims, remedies, recourse or rights against the Crown in right of Ontario in respect of this AGREEMENT, and agrees that it shall have no remedies, recourse or rights in respect of this AGREEMENT against the Crown in right of Ontario, any Ministry, Minister,

agent, agency, servant, employee or representative of the Crown or any director, officer, servant, agent, employee or representative of a Crown agency or a corporation in which the Crown holds a majority of the shares or appoints a majority of the directors or members, other than against FLEMING and its assets; and

C. FLEMING’s maximum aggregate liability for any and all claims and damages arising out of or related to this AGREEMENT, whether arising in contract, tort, strict liability, statute or otherwise shall not exceed Three Million Canadian Dollars (\$3,000,000.00 CAD). The limits of liability are exclusive as to all remedies and the liability cap shall not be increased under any circumstances. ESC acknowledges and agrees to this limitation.

III. ESC shall indemnify and hold harmless FLEMING and its officers, directors and employees (the “Indemnified Parties”) from all actions, claims, proceedings, losses, costs, expenses, injuries and damages (including legal fees) incurred by or suffered by any of the Indemnified Parties arising directly or indirectly or as a result of any breach, non-performance or negligence of ESC, or any of its employees, agents and representatives, of the terms of this AGREEMENT.

IV. Nothing in this AGREEMENT shall be construed to constitute the PARTIES as a partner, joint venturer, franchisee or franchisor, agent or representative of the other PARTY for any purpose whatsoever. Neither PARTY is authorized to enter into AGREEMENTS for or on behalf of the other PARTY, make representations, or otherwise bind the other PARTY.

ARTICLE 10: ADMINISTRATIVE CONTACTS

Any notice to a PARTY pertaining to this AGREEMENT shall be in writing and delivered by personal delivery or courier to the address for that PARTY as detailed below.

FLEMING	ESC
Drew Van Parys, Executive Director – Marketing & Recruitment 599 Brealey Drive Peterborough Ontario K9J 7B1 drew.vanparys@flemingcollege.ca	SooH Park, Director of Marketing 79 St Clair Avenue East, Suite 202 Toronto Ontario M4T 1M6 spark@esc-toronto.com

ARTICLE 11: ADDITIONAL PROVISIONS

- I. Neither PARTY may assign this AGREEMENT, or change any term of this AGREEMENT, in whole or in part, without the written consent of the other.
- II. This AGREEMENT constitutes the entire AGREEMENT between ESC and FLEMING, and there is no representation, warranty, collateral agreement or condition affecting this AGREEMENT other than expressed here in writing.
- III. This AGREEMENT will be governed by and in accordance with the laws of the Province of Ontario.

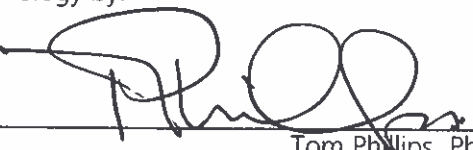
- IV. Time shall be the essence of this AGREEMENT.
- V. If any of the provisions of this AGREEMENT become invalid, illegal or unenforceable in any respects under any applicable law, the validity, legality and enforceability of the remaining provisions shall not in any way be affected or impaired thereby.
- VI. This AGREEMENT shall enure to and be binding upon the PARTIES hereto, and their respective successors and permitted assigns.

[SIGNATURE PAGE FOLLOWS]

SIGNATURES

AUTHORIZED SIGNATORIES. We, the undersigned, being the authorized representatives of the PARTIES, hereby demonstrate our commitment to the full implementation of the terms hereof by signing this AGREEMENT on the date specified below.

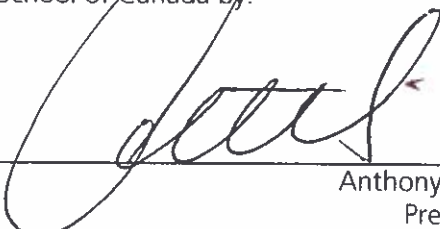
SIGNED for and on behalf of The Sir Sandford Fleming College of Applied Arts and Technology by:



Tom Phillips, PhD
Vice President – Academic Experience

SIGNED THIS 19th DAY OF Sept, 20 19

SIGNED for and on behalf of English School of Canada by:



Anthony Stille,
President

SIGNED THIS 14th DAY OF August, 20 19