

## Schedule 1

### General Terms and Conditions

#### Article 1 – INTERPRETATION

##### 1.01 Defined Terms

When used in the Contract, the following words or expressions have the following meanings:

**"Business Day"** means any working day, Monday to Friday inclusive, but excluding statutory holidays and other days on which the College has elected to be closed for business;

**"Claims and Costs"** means any and all claims, actions, lawsuits, damages, losses, costs and expenses (including legal, expert and consultant fees)

**"College Confidential Information"** means all information of the College that is of a confidential nature, including all confidential information in the custody or control of the College, regardless of whether it is identified as confidential or not, and whether recorded or not, and however fixed, stored, expressed or embodied, which comes into the knowledge, possession or control of the Supplier in connection with the Contract;

**"Conflict of Interest"** includes, but is not limited to, any situation or circumstance where the Supplier's other commitments, relationships or financial interests (i) could or could be seen to exercise an improper influence over the objective, unbiased and impartial exercise of its independent judgment; or (ii) could or could be seen to compromise, impair or be incompatible with the effective performance of its contractual obligations;

**"Contract"** shall have the definition set out in the Contract Letter;

**"Contract Letter"** means the letter sent to the Supplier by the College notifying the Supplier that they have been awarded the Contract to provide the Deliverables;

**"Deliverables"** means everything developed for or provided to the College in the course of performing under the Contract or agreed to be provided to the College under the Contract by the Supplier or its Related Entities, including but not limited to any goods or services, any and all Intellectual Property and any and all concepts, techniques, ideas, information, documentation and other materials, however recorded, developed or provided;

**"Expiry Date"** is as set out in the Contract Letter;

**"FIPPA"** means the *Freedom of Information and Protection of Privacy Act*, Revised Statutes of Ontario 1990, Chapter F.31, as amended;

**"Health Emergency"** means a situation in which the College determines, based on advice from a medical professional, or a directive, bulletin, notice or other form of communication from a public health authority or other governmental authority that occupants, students, faculty, invitees and/or contractors in or on any part of the College property are or may be exposed to imminent danger from a disease, virus or other biological or physical agents that may be detrimental to human health, including pandemics, epidemics and outbreaks of dangerous contagions;

**"Indemnified Parties"** means the College and the College's Board of Governors, trustees, directors, officers, agents, employees, and volunteers;

**"Industry Standards"** include, but are not limited to (a) the provision of any and all labour, supplies, equipment and other goods or services that are necessary and can reasonably be understood or inferred to be included within the scope of the Contract or customarily furnished by Persons providing

Deliverables of the type provided hereunder in similar situations in Ontario and; (b) adherence to commonly accepted norms of ethical business practices, which shall include the Supplier establishing, and ensuring adherence to, precautions to prevent its Related Entities from providing or offering gifts or hospitality of greater than nominal value to any person acting on behalf of or employed by the College;

**“Intellectual Property”** means any intellectual, industrial or other proprietary right of any type in any form protected or protectable under the laws of Canada, any foreign country, or any political subdivision of any country, including, without limitation, any intellectual, industrial or proprietary rights protected or protectable by legislation, by common law or at equity;

**“Newly Created Intellectual Property”** means any Intellectual Property created by the Supplier in the course of performance of its obligations under the Contract;

**“Off-site”** or **“Off-site Location”** means areas beyond or outside of the property boundaries of the College;

**“Person”** if the context allows, includes any individuals, persons, firms, partnerships or corporations or any combination thereof;

**“Personal Information”** means recorded information about an identifiable individual or that may identify an individual;

**“Rates”** means the applicable price, in Canadian funds, to be charged for the applicable Deliverables, as set out in the Contract, representing the full amount chargeable by the Supplier for the provision of the Deliverables, including but not limited to: (a) all applicable duties and taxes (except applicable sales tax, which should be itemized separately); (b) all labour and material costs; (c) all travel and carriage costs; (d) all insurance costs; and (e) all other overhead including any fees or other charges required by law;

**“Record”** means any recorded information, including any Personal Information, in any form: (a) provided by the College to the Supplier, or provided by the Supplier to the College, for the purposes of the Contract; or (b) created by the Supplier in the performance of the Contract;

**“Related Entities”** include directors, officers, employees, agents, partners, affiliates, volunteers, and subcontractors;

**“Requirements of Law”** mean all applicable requirements, laws, statutes, codes, acts, ordinances, orders, decrees, injunctions, by-laws, rules, regulations, official plans, permits, licenses, authorizations and directions that now or at any time hereafter may be applicable to either the Contract or the Deliverables or any part of them;

**“Supplier’s Intellectual Property”** means Intellectual Property owned by the Supplier prior to its performance under the Contract or created by the Supplier independently of the performance of its obligations under the Contract;

**“Term”** means the period of time from the effective date set out in the Contract Letter up to and including the earlier of: (i) the Expiry Date or (ii) the date of termination of the Contract in accordance with its terms;

**“Third-Party Intellectual Property”** means any Intellectual Property owned by a party other than the College or the Supplier;

## **ARTICLE 2 – GENERAL TERMS**

### **2.01 No Indemnities from the College**

Notwithstanding anything else in the Contract, any express or implied reference to the College providing an indemnity or any other form of indebtedness or contingent liability that would directly or

indirectly increase the indebtedness or contingent liabilities of the College, whether at the time of execution of the Contract or at any time during the Term, shall be void and of no legal effect.

The College's maximum aggregate liability for Claims and Costs arising out of or related to this Contract, whether arising in contract, tort, strict liability, statute or otherwise shall not exceed the total contract value. The limits of liability are exclusive as to all remedies and the liability cap shall not be increased under any circumstances. The Supplier acknowledges and agrees to this limitation and will arrange for such additional insurance coverage as it may deem necessary.

**2.02 No Claims or Recourse against the Crown**

The remedies, recourse or rights of the Supplier shall be limited to the College and to the right, title and interest owned by the College in and to all of its personal property, whether now existing or hereinafter arising or acquired from time to time; and

The Supplier unconditionally and irrevocably waives and releases all other claims, remedies, recourse or rights against the Crown in right of Ontario in respect of the Contract, and agrees that it shall have no remedies, recourse or rights in respect of the Contract 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 the College and its assets.

**2.03 Entire Contract**

The Contract embodies the entire agreement between the parties with regard to the provision of Deliverables and supersedes any prior understanding or agreement, collateral, oral or otherwise with respect to the provision of the Deliverables.

**2.04 Severability**

If any term or condition of the Contract, or the application thereof, is to any extent invalid or unenforceable, the remainder of the Contract, and the application of such term or condition, except to the extent to which it is held invalid or unenforceable, shall not be affected.

**2.05 Force Majeure**

Neither party shall be liable for damages caused by delay or failure to perform its obligations under the Contract where such delay or failure is caused by an event beyond its reasonable control. The parties agree that an event shall not be considered beyond one's reasonable control if a reasonable business person applying due diligence in the same or similar circumstances under the same or similar obligations as those contained in the Contract would have put in place contingency plans to either materially mitigate or negate the effects of such event. Without limiting the generality of the foregoing, the parties agree that force majeure events shall include natural disasters and acts of war, insurrection and terrorism but shall not include shortages or delays relating to supplies or services. If a party seeks to excuse itself from its obligations under this Contract due to a force majeure event, that party shall immediately notify the other party of the delay or non-performance, the reason for such delay or non-performance and the anticipated period of delay or non-performance. If the anticipated or actual delay or non-performance exceeds fifteen (15) Business Days, the other party may immediately terminate the Contract by giving notice of termination and such termination shall be in addition to the other rights and remedies of the terminating party under the Contract, at law or in equity.

**2.06 Notices by Prescribed Means**

Notices shall be in writing and shall be delivered by postage-prepaid envelope, personal delivery or email to the College representative and the Supplier representative, as respectively set out in the Contract Letter. Notices shall be deemed to have been given: (a) in the case of postage-prepaid envelope, five (5) Business Days after such notice is mailed; or (b) in the case of personal delivery or email one (1) Business Day after such notice is delivered to the other party. In the event of a postal disruption, notices must be given by personal delivery or by email.

2.07 **Governing Law**

The Contract shall be governed by and construed in accordance with the laws of the Province of Ontario and the federal laws of Canada applicable therein.

**ARTICLE 3 – RELATIONSHIP BETWEEN COLLEGE AND SUPPLIER**

3.01 **Supplier's Power to Contract**

The Supplier represents and warrants that it has the full right and power to enter into the Contract and there is no agreement with any other Person that would in any way interfere with the rights of the College under this Contract.

3.02 **Representatives May Bind the Parties**

The parties represent that their respective representatives have the authority to legally bind them to the extent permissible by the Requirements of Law.

3.03 **Supplier Not a Partner, Agent or Employee**

The Supplier shall have no power or authority to bind the College or to assume or create any obligation or responsibility, express or implied, on behalf of the College. The Supplier shall not hold itself out as an agent, partner or employee of the College. Nothing in the Contract shall have the effect of creating an employment, partnership or agency relationship between the College and the Supplier or any of the Supplier's Related Entities.

3.04 **Responsibility of Supplier**

The Supplier agrees that it is liable for the acts and omissions of its Related Entities and for all damages, costs, expenses, losses, claims or actions arising from the actions of its Related Entities. The Supplier shall advise its Related Entities of their obligations under the Contract and shall ensure their compliance with the applicable terms of the Contract. This paragraph shall survive the termination or expiry of this Contract.

3.05 **No Subcontracting or Assignment**

The Supplier shall not subcontract or assign the whole or any part of the Contract or any monies due under it without the prior written consent of the College. Such consent shall be in the sole discretion of the College and subject to any conditions imposed by the College. Without limiting the generality of such conditions, every contract entered into by the Supplier with a subcontractor shall adopt all of the terms and conditions of this Contract as far as applicable to those parts of the Deliverables provided by the subcontractor. Nothing contained in the Contract shall create a contractual relationship between any subcontractor or its Related Entities and the College.

3.06 **Duty to Disclose Change of Control**

In the event that the Supplier undergoes a change in control the Supplier shall immediately disclose such change in control to the College and shall comply with any terms and conditions subsequently prescribed by the College resulting from the disclosure.

3.07 **Conflict of Interest**

The Supplier shall: (a) avoid any Conflict of Interest in the performance of its contractual obligations; (b) disclose to the College without delay any actual or potential Conflict of Interest that arises during the performance of its contractual obligations; and (c) comply with any requirements prescribed by the College to resolve any Conflict of Interest. In addition to all other contractual rights or rights available at law or in equity, the College may immediately terminate the Contract upon giving notice to the Supplier where: (a) the Supplier fails to disclose an actual or potential Conflict of Interest; (b) the Supplier fails to comply with any requirements prescribed by the College to resolve a Conflict of Interest; or (c) the Supplier's Conflict of Interest cannot be resolved. This paragraph shall survive any termination or expiry of the Contract.

3.08 **Contract Binding**

The Contract can be enforced by and is binding upon the parties and their successors, executors, administrators and their permitted assigns.

## ARTICLE 4 – PERFORMANCE BY SUPPLIER

### 4.01 Commencement of Performance

The Supplier shall commence performance upon receipt of written instructions from the College.

### 4.02 Deliverables Warranty

The Supplier hereby represents and warrants that the Deliverables shall be (i) provided fully and diligently in a professional and competent manner by persons qualified and skilled in their occupations; (ii) free from defects in material, workmanship and design (iii) suitable for the purposes intended; (iv) free from liens or encumbrance on title; and (v) provided in accordance with: (a) the Contract, including all applicable specifications; (b) Industry Standards; and (c) Requirements of Law. If any of the Deliverables, in the opinion of the College, are inadequately provided or require corrections, the Supplier shall forthwith make the necessary corrections at its own expense as specified by the College in a rectification notice.

### 4.03 AODA

The Supplier shall comply with the Ontario Regulation 429/07, Accessibility for Customer Services, and Ontario Regulation 191/11 as provided for under the Accessibility for Ontarians with Disabilities Act (AODA).

### 4.04 College Policies

When performing work on College campuses or facilities operated by the College, the Supplier shall comply and shall ensure that its Related Entities comply with all relevant College policies and procedures, including but not limited to:

- (a) the Sexual Violence Prevention Policy and the Harassment and Discrimination Prevention Policy available at <https://department.flemingcollege.ca/policies-procedures/human-resources/>; and
- (b) the Cannabis Possession and Use Policy available at <https://department.flemingcollege.ca/policies-procedures/finance-and-facilities/>.

All College policies and procedures are accessible at <https://department.flemingcollege.ca/policies-procedures/>. The Supplier is solely responsible for making inquiries regarding the relevant College policies and procedures. Breach of this clause may result in penalties, cancellation, or other sanctions.

### 4.05 Criminal Background Check

The Supplier shall not engage any employee or other person to perform services under the Contract that may involve having direct contact with students on a regular basis, or access to student information, where such employee or other person has been charged with or convicted of an offence which the College determines, in its sole and unfettered discretion, may be construed as jeopardizing the safety and well-being of students.

The Supplier covenants and agrees to retain on file at its head office a criminal background check covering convictions, charges and occurrences under the Criminal Code, the *Controlled Drugs and Substances Act*, and any other convictions, charges and occurrences which would be revealed by the long version Vulnerable Persons search of the automated Criminal Records Retrieval System maintained by the Royal Canadian Mounted Police (“Criminal Background Check”), together with an Offence Declaration in a College approved form for every employee of the Supplier or other person who will perform services for the Supplier who may come into direct contact with students on a regular basis or who may have access to student information, prior to the occurrence of such possible direct contact or prior to having access to student information and on or before September 1<sup>st</sup> each year thereafter with respect to Offence Declarations.

The Supplier will use a third-party to conduct the criminal background checks required under the Contract and will provide thirty (30) days written notice to the College should the third-party provider be changed to another provider.

The College shall be entitled, on forty-eight (48) hours prior written notice to attend at the head office of the Supplier for the purposes of reviewing the Criminal Background Checks and Offence Declarations. The parties acknowledge and agree that it is contemplated that the College may attend to such reviews at least twice per year during the Term, and any renewal thereof.

In the event that an individual's Criminal Background Check or an Offence Declaration reveals a charge or a criminal conviction which is not acceptable to the College in its sole and unfettered discretion, the College will have the right to require the Supplier to prohibit the individual from providing services to the College hereunder, without prejudice to any other rights which the College may have in the Contract, at law or in equity.

The Supplier agrees to indemnify and save harmless the College from all claims, liabilities, expenses and penalties to which it may be subjected on account of: the Supplier engaging an employee or other person to perform services in contravention of this paragraph; or the Supplier's failure to retain a Criminal Background Check or an Offence Declaration on file, as aforesaid. This indemnity shall survive the expiration or sooner termination of the Contract.

In addition to all other contractual rights or rights available at law or in equity, the College may immediately terminate the Contract if the Supplier engages an employee or other person to perform services in contravention of this paragraph, or fails to retain a Criminal Background Check and an Offence Declaration in contravention of this paragraph.

**4.06 Use and Access Restrictions**

The Supplier acknowledges that unless it obtains specific written preauthorization from the College, any access to or use of the College property, technology or information that is not necessary for the performance of its contractual obligations with the College is strictly prohibited.

**4.07 Notification by Supplier to the College**

During the Term, the Supplier shall advise the College promptly of: (a) any contradictions, discrepancies or errors found or noted in the Contract; (b) supplementary details, instructions or directions that do not correspond with those contained in the Contract; and (c) any omissions or other faults that become evident and should be corrected in order to provide the Deliverables in accordance with the Contract and Requirements of Law.

**4.08 Failure to Enforce Not a Waiver**

Any failure by the College to insist in one or more instances upon strict performance by the Supplier of any of the terms or conditions of the Contract shall not be construed as a waiver by the College of its right to require strict performance of any such terms or conditions, and the obligations of the Supplier with respect to such performance shall continue in full force and effect.

**4.09 Changes by Written Amendment Only**

Any changes to the Contract shall be by written amendment signed by the parties. No changes shall be effective or shall be carried out in the absence of such an amendment. Any such written changes shall be included in the definition of Contract.

**4.10 Supplier to Comply with Reasonable Change Requests**

The College may, in writing, request changes to the Contract, which may include altering, adding to, or deleting any of the Deliverables. The Supplier shall comply with all reasonable College change requests and the performance of such request shall be in accordance with the terms and conditions of the Contract. If the Supplier is unable to comply with the change request, it shall promptly notify the College and provide reasons for such non-compliance. In any event, any such change request shall not be effective until a written amendment reflecting the change has been executed by the parties.

**4.11 Pricing for Requested Changes**

Where a College change request includes an increase in the scope of the previously contemplated Deliverables, the College shall set out, in its change request, the proposed prices for the

contemplated changes. Where the Rates in effect at the time of the change request (a) include pricing for the particular type of goods or services contemplated in the change request, the Supplier shall not unreasonably refuse to provide those goods or services at prices consistent with those Rates; or (b) are silent to the applicable price for the particular goods or services contemplated in the change request, the price shall be negotiated between the College and the Supplier within a reasonable period of time and in any event, such change request shall not become effective until a written amendment reflecting the change has been executed by the parties.

**4.12 Non-Exclusive Contract, Work Volumes**

The Supplier acknowledges that it is providing the Deliverables to the College on a non-exclusive basis. The College makes no representation regarding the volume of goods and services required under the Contract. The College reserves the right to contract with other parties for the same or similar goods and services as those provided by the Supplier and reserves the right to obtain the same or similar goods and services internally.

**4.13 Performance by Specified Individuals Only**

The Supplier agrees that to the extent that specific individuals are named in the Contract as being responsible for the provision of the Deliverables, only those individuals shall provide the Deliverables under the Contract. The Supplier shall not replace or substitute any of the individuals named in the Contract without the prior written approval of the College, which may not arbitrarily or unreasonably be withheld. Should the Supplier require the substitution or replacement of any of the individuals named in the Contract, it is understood and agreed that any proposed replacement must possess similar or greater qualifications than the individual named in the Contract. The Supplier shall not claim fees for any replacement individual greater than the Rates established under the Contract.

**4.14 College Rights and Remedies and Supplier Obligations Not Limited to Contract**

The express rights and remedies of the College and obligations of the Supplier set out in the Contract are in addition to and shall not limit any other rights and remedies available to the College or any other obligations of the Supplier at law or in equity.

**4.15 Health Emergency**

Notwithstanding anything contained in the Contract to the contrary, if a Health Emergency exists, the College may amend, supplement or otherwise enforce any term of this Contract accordingly for the duration of the Health Emergency and may impose additional rules, regulations, and restrictions to mitigate or minimize the effects of the Health Emergency. During a Health Emergency, without limiting the generality of the foregoing, the College shall be entitled to:

- (a) restrict or limit access of the Supplier and its Related Entities to any part of the College Property, including any Building located on the College Property, and to any Off-site Location where work is being performed on behalf of the College.
- (b) require the Supplier to operate with reduced staffing levels which shall be determined by the College in its absolute discretion for work that is completed on College Property or on behalf of the College at an Off-site Location.
- (c) require all occupants to comply with reasonable measures imposed in respect thereof by the College, including but not limited to health screening, the use of hand washing and other sanitation products directly related to the management of the health threat, attendance at mandatory training sessions, and the use of additional protective clothing by all Supplier's personnel such as protective barriers, gloves and masks.

Where the Supplier and any of its Related Entities are acting as a representative of the College at an Off-site Location, they shall comply with the measures imposed by the College for Off-site work including but not limited to those detailed above, and any and all measures imposed by the management of the Off-site Location. If during a Health Emergency, the measures of the College and an Off-site Location conflict, it shall be determined by the College in its absolute discretion if the Off-site Location's measures are acceptable, and if work shall begin or continue.

It is the Supplier's sole responsibility to inquire about any and all Health Emergency measures prior to beginning work on College Property or at an Off-site Location. The Supplier shall comply with all measures imposed by the College in response to the Health Emergency and shall observe all additional rules, regulations and/or restrictions which the College may adopt in response to the Health Emergency. It is the Supplier's sole responsibility to ensure compliance with the measures by its Related Entities.

## **ARTICLE 5 – PAYMENT FOR PERFORMANCE AND AUDIT**

### **5.01 Payment According to Contract Rates**

- (a) The College shall, subject to the Supplier's compliance with the provisions of the Contract, pay the Supplier for the Deliverables provided and accepted by the College at the Rates established under the Contract within thirty (30) days of receipt by the College of a satisfactory invoice; or for Deliverables subject to the Construction Act, payment will be made within twenty-eight (28) days subject to the provisions of the Construction Act.
- (b) All invoices submitted by the Supplier must include: (1) the Supplier's name and address; (2) the date of the invoice and the period during which the Deliverables were supplied; (3) the Purchase Order number; (4) a description, including quantity where appropriate, of the Deliverables that were supplied; (5) the amount payable for the Deliverables that were supplied, exclusive of HST, and the amount of HST shown separately; (6) the payment terms; (7) the name, title, telephone and mailing address of the person to whom payment is to be sent; (8) any other information that may be prescribed in the Contract.
- (c) Invoices should be addressed to the College's Account Payable Department and sent electronically to [accountspayable@flamingcollege.ca](mailto:accountspayable@flamingcollege.ca).
- (d) The Supplier will, at the discretion of the College, accept payment from the College by Electronic Funds Transfer ("EFT") or Purchasing Card at no additional cost. The Supplier will, upon request, provide the College with the necessary banking information to enable EFT for any related invoice payments, including a void cheque; financial institution's name, transit number and account number; and, an email address for notification purposes.

### **5.02 Hold Back or Set Off**

The College may hold back payment or set off against payment if, in the opinion of the College acting reasonably, the Supplier has failed to comply with any requirements of the Contract.

### **5.03 No Expenses or Additional Charges**

There shall be no other charges payable by the College under the Contract to the Supplier other than the Rates established under the Contract.

### **5.04 Payment of Taxes and Duties**

Unless otherwise stated, the Supplier shall pay all applicable taxes, including excise taxes incurred by or on the Supplier's behalf with respect to the Contract.

### **5.05 Withholding Tax**

The College shall withhold any applicable withholding tax from amounts due and owing to the Supplier under the Contract and shall remit it to the appropriate government in accordance with applicable tax laws. This paragraph shall survive any termination or expiry of the Contract.

### **5.06 Interest on Late Payment**

If a payment is in arrears through no fault of the Supplier, the interest charged by the Supplier, if any, for any late payment shall not exceed the Bank of Canada's prime rate, in effect on the date that the payment went into arrears.



#### 5.07 **Document Retention and Audit**

For seven (7) years after the Expiry Date or any date of termination of the Contract, the Supplier shall maintain all necessary records to substantiate (a) all charges and payments under the Contract and (b) that the Deliverables were provided in accordance with the Contract and with Requirements of Law. During the Term, and for seven (7) years after the Term, the Supplier shall permit and assist the College in conducting audits of the operations of the Supplier to verify (a) and (b) above. The College shall provide the Supplier with at least ten (10) Business Days prior notice of its requirement for such audit. The Supplier's obligations under this paragraph shall survive any termination or expiry of the Contract.

### **ARTICLE 6 – CONFIDENTIALITY**

#### 6.01 **Confidentiality and Promotion Restrictions**

Any publicity or publications related to the Contract shall be at the sole discretion of the College. The College may, in its sole discretion, acknowledge the Deliverables provided by the Supplier in any such publicity or publication. The Supplier shall not make use of its association with the College without the prior written consent of the College. Without limiting the generality of this paragraph, the Supplier shall not, among other things, at any time directly or indirectly communicate with the media in relation to the Contract unless it has first obtained the express written authorization to do so by the College.

#### 6.02 **College Confidential Information**

During and following the Term, the Supplier shall: (a) keep all College Confidential Information confidential and secure; (b) limit the disclosure of College Confidential Information to only those of its directors, officers, employees, agents, partners, affiliates, volunteers or subcontractors who have a need to know it for the purpose of providing the Deliverables and who have been specifically authorized to have such disclosure; (c) not directly or indirectly disclose, destroy, exploit or use any College Confidential Information (except for the purpose of providing the Deliverables, or except if required by order of a court or tribunal), without first obtaining: (i) the written consent of the College and (ii) in respect of any College Confidential Information about any third-party, the written consent of such third-party; (d) provide College Confidential Information to the College on demand; and (e) return all College Confidential Information to the College before the end of the Term, with no copy or portion kept by the Supplier.

#### 6.03 **Restrictions on Copying**

The Supplier shall not copy any College Confidential Information, in whole or in part, unless copying is essential for the provision of the Deliverables. On each copy made by the Supplier, the Supplier must reproduce all notices which appear on the original.

#### 6.04 **Injunctive and Other Relief**

The Supplier acknowledges that breach of any provisions of this Article may cause irreparable harm to the College or to any third-party to whom the College owes a duty of confidence, and that the injury to the College or to any third-party may be difficult to calculate and inadequately compensable in damages. The Supplier agrees that the College is entitled to obtain injunctive relief (without proving any damage sustained by it or by any third-party) or any other remedy against any actual or potential breach of the provisions of this Article.

#### 6.05 **Notice and Protective Order**

If the Supplier or any of its directors, officers, employees, agents, partners, affiliates, volunteers or subcontractors become legally compelled to disclose any College Confidential Information, the Supplier will provide the College with prompt notice to that effect in order to allow the College to seek one or more protective orders or other appropriate remedies to prevent or limit such disclosure, and it shall co-operate with the College and its legal counsel to the fullest extent. If such protective orders or other remedies are not obtained, the Supplier will disclose only that portion of College Confidential Information which the Supplier is legally compelled to disclose, only to such person or persons to which the Supplier is legally compelled to disclose, and the Supplier shall provide notice to each such recipient (in co-operation with legal counsel for the College) that such College Confidential Information is confidential and subject to non-disclosure on terms and conditions equal to those

contained in the Contract and, if possible, shall obtain each recipient's written agreement to receive and use such College Confidential Information subject to those terms and conditions.

**6.06 FIPPA Records and Compliance**

The Supplier and the College acknowledge and agree that FIPPA applies to and governs all Records and may require the disclosure of such Records to third parties. Furthermore, the Supplier agrees (a) to keep Records secure; (b) to provide Records to the College within seven (7) calendar days of being directed to do so by the College for any reason including an access request or privacy issue; (c) not to access any Personal Information unless the College determines, in its sole discretion, that access is permitted under FIPPA and is necessary in order to provide the Deliverables; (d) not to directly or indirectly use, collect, disclose or destroy any Personal Information for any purposes that are not authorized by the College; (e) to ensure the security and integrity of Personal Information and keep it in a physically secure and separate location safe from loss, alteration, destruction or intermingling with other records and databases and to implement, use and maintain the most appropriate products, tools, measures and procedures to do so; (f) to restrict access to Personal Information to those of its directors, officers, employees, agents, partners, affiliates, volunteers or subcontractors who have a need to know it for the purpose of providing the Deliverables and who have been specifically authorized by a College representative to have such access for the purpose of providing the Deliverables; (g) to implement other specific security measures that in the reasonable opinion of the College would improve the adequacy and effectiveness of the Supplier's measures to ensure the security and integrity of Personal Information and Records generally; and (h) that any confidential information supplied to the College may be disclosed by the College where it is obligated to do so under FIPPA, by an order of a court or tribunal or pursuant to a legal proceeding and the provisions of this paragraph shall prevail over any inconsistent provisions in the Contract.

**6.07 Survival**

The provisions of this Article shall survive any termination or expiry of the Contract.

**ARTICLE 7 – INTELLECTUAL PROPERTY**

**7.01 College Intellectual Property**

The Supplier agrees that all Intellectual Property and every other right, title and interest in and to all concepts, techniques, ideas, information and materials, however recorded, (including images and data) provided by the College to the Supplier shall remain the sole property of the College at all times.

**7.02 No Use of the College Insignia**

The Supplier shall not use any insignia or logo of the College except where required to provide the Deliverables, and only if it has received the prior written permission of the College to do so.

**7.03 Ownership of Newly Created Intellectual Property**

The College shall be the sole owner of any Newly Created Intellectual Property. The Supplier irrevocably assigns to and in favour of the College and the College accepts every right, title and interest in and to all Newly Created Intellectual Property in the Deliverables, immediately following the creation thereof, for all time and irrevocably waives in favour of the College all rights of integrity and other moral rights to all Newly Created Intellectual Property in the Deliverables, immediately following the creation thereof, for all time.

**7.04 Supplier's Grant of License**

To the extent that any of the Deliverables include, in whole or in part, the Supplier's Intellectual Property, the Supplier grants to the College a perpetual, world-wide, non-exclusive, irrevocable, transferable, royalty free, fully paid up right and license: (a) to use, modify, reproduce and distribute, in any form, those Deliverables; and (b) to authorize other Persons, including agents, contractors or sub-contractors, to do any of the former on behalf of the College.

**7.05 No Restrictive Material in Deliverables**

The Supplier shall not incorporate into any Deliverables anything that would restrict the right of the College to modify, further develop or otherwise use the Deliverables in any way that the College deems necessary, or that would prevent the College from entering into any contract with any

contractor other than the Supplier for the modification, further development of or other use of the Deliverables.

7.06 **Supplier Representation and Warranty Regarding Third-Party Intellectual Property**

The Supplier represents and warrants that the provision of the Deliverables shall not infringe or induce the infringement of any Third-Party Intellectual Property rights. The Supplier further represents and warrants that it has obtained assurances with respect to any Supplier Intellectual Property and Third-Party Intellectual Property that any rights of integrity or any other moral rights associated therewith have been waived.

7.07 **Survival**

The obligations contained in this Article shall survive the termination or expiry of the Contract.

**ARTICLE 8 – INDEMNITIES AND INSURANCE**

8.01 **Supplier Indemnity**

The Supplier hereby agrees to indemnify and hold harmless the Indemnified Parties from and against Claims and Costs by whomever made, sustained, incurred, brought or prosecuted, including for breach of confidentiality, infringement of Third-Party Intellectual Property rights, bodily injury (including death), personal injury and property damage, in any way based upon, occasioned by or attributable to anything done or omitted to be done by the Supplier or its Related Entities in the course of performance of the Supplier's obligations under, or otherwise in connection with, the Contract, except to the extent that such Claims and Costs arise out of the independent acts or omissions of the Indemnified Parties. The obligations contained in this paragraph shall survive the termination or expiry of the Contract.

8.02 **Insurance**

The Supplier hereby covenants and agrees to obtain, no later than 15 calendar days prior to the commencement of performance of the Contract, and maintain in full force and effect throughout the Term, insurance satisfactory to the College with financially sound and reputable insurance companies licensed to underwrite insurance in the Province of Ontario. The Supplier shall be responsible for the cost of all required insurance and the payment of all amounts within the deductible or self-insured retention under each policy of insurance. All insurance policies required pursuant to this clause shall be primary and shall not call into contribution any insurance available to the College.

The required insurance policies shall include but not be limited to:

*If the Supplier or its Related Entities will be performing work on College property, sites, or at College events:*

- (1) Ontario Workplace Safety and Insurance Board coverage or General Employers Liability Insurance, as required by law; and
- (2) **Commercial General Liability** insurance in respect of the Supplier and all obligations and operations of the Supplier as outlined in this Contract, against claims for bodily injury, including personal injury and death, and property damage or loss, indemnifying and protecting the Supplier, their respective employees, servants, volunteers, agents and invitees, to the inclusive per occurrence limit of not less than **Five Million (\$5,000,000.00) Dollars** with a minimum **Ten Million (\$10,000,000.00) Dollars annual aggregate**. The policy shall include the following:
  - (a) The College, its board of governors, trustees, officers, employees, servants and agents are included as an additional insured under the policy with respect to the operations and obligations of the Supplier as outlined in this Contract;
  - (b) Tenant's legal liability (if the Supplier will be leasing premises from the College), contractual liability, SPF. 6 Non-Owned Automobile Liability and SEF. 94 Legal Liability for Damage to Hired Automobiles coverage, products and completed operations coverage, advertising injury liability, contingent employer's liability, Host Liquor Liability (if the Supplier will be service alcohol), Abuse Liability (if the Supplier will be close "one on one" contact with minors or students), and employees as additional insured;
  - (c) A cross-liability clause which shall have the effect of insuring each person, firm or corporation

named in the policy as an insured in the same manner and to the same extent as if a separate policy had been issued to each; and

- (d) A waiver of subrogation against the College, its board of governors, trustees, officers, employees, servants and agents.

*If the Deliverables include the use of the Supplier's own automobiles:*

- (3) **Automobile Liability** insurance with limits of not less than **Five Million (\$5,000,000.00) Dollars** per occurrence (minimum **Ten Million (\$10,000,000.00) Dollars** limit of liability in the event the Supplier is a transportation service company). The policy must provide Coverage for bodily injury or property damage arising out of the ownership, use or operation of all automobiles owned and/leased by the Supplier.

*If the Deliverables include the use of the Supplier's own property or College property:*

- (4) **All Risk Property** insurance coverage on a replacement cost basis to adequately cover the Supplier's equipment and other such property in the care, custody and control of the Supplier. The policy shall contain a waiver of rights of subrogation against the College, its board of governors, trustees, officers, employees, servants and agents.

*If the Deliverables include performing professional services such as engineering, architecture or legal services:*

- (5) **Professional Liability** indemnifying and protecting the Supplier and its Related Entities to the inclusive per claim limit of not less than **Five Million (\$5,000,000.00) Dollars** with a minimum **Ten Million (\$10,000,000.00) Dollars annual aggregate**.

*If the Deliverables include performing medical services:*

- (6) **Medical Malpractice Liability** indemnifying and protecting the Supplier and its Related Entities to the inclusive per claim limit of not less than **Five Million (\$5,000,000.00) Dollars** with a minimum **Ten Million (\$10,000,000.00) Dollars annual aggregate**. The policy shall include the following:
  - (a) The College, its board of governors, trustees, officers, employees, servants and agents are included as an additional insured under the policy with respect to the operations and obligations of the Supplier as outlined in this Contract;
  - (b) A cross-liability clause which shall have the effect of insuring each person, firm or corporation named in the policy as an insured in the same manner and to the same extent as if a separate policy had been issued to each; and
  - (c) A waiver of subrogation against the College, its board of governors, trustees, officers, employees, servants and agents.

*If the Deliverables include performing professional services in information technology:*

- (7) **Technology Professional Liability** insurance for financial loss arising out of an error, omission or negligent act in the rendering of Services in an amount not less than **Five Million (\$5,000,000.00) Dollars** per claim and in the aggregate. The policy shall:
  - (a) be on a claims made basis and provide coverage for damages and defense costs;
  - (b) include an insuring agreement for cyber or network security and privacy liability insurance, covering loss arising out of the transmission of malicious code, actual or potential unauthorized access, unauthorized use, and a failure to protect confidential information, including but not limited to personal and corporate information, which results in the loss or misappropriation of such information in both electronic and non-electronic format (both first party and third party coverage) [limits applicable to this coverage should be the same per occurrence and in the aggregate as those limits available under the professional liability insuring agreement];
  - (c) be maintained for an additional 3-year period after expiration or termination of the Contract by way of annual policy renewal, or purchase of extended reporting period coverage.

If the Deliverables provided by the Supplier could result in (1) a data breach or release of Personal Information caused by software that is to be used in performance of the Contract and/or (2) the College is providing the Supplier with personal or sensitive information which could be misappropriated in some form or fashion:

(8) **Privacy & Security (Cyber) Liability** insurance with a limit of not less than **Five Million (\$5,000,000.00) Dollars** per occurrence and in the aggregate. The policy shall include the following:

- (a) Coverage for notification costs and credit monitoring;
- (b) Coverage for defense and indemnity in the event of regulatory and/or legal actions brought due to a data breach or release of personally identifiable information alleged to have been caused by the Supplier or by software that is to be used in the performance of the agreed upon services; and

If the Deliverables provided by the Supplier will be providing services which could result in an environmental liability claim or pollution/contamination related event:

(9) **Environmental Liability** insurance with limits of not less than **Five Million (\$5,000,000.00) Dollars** per occurrence and in the aggregate. The policy shall include the following:

- (a) The College, its board of governors, trustees, officers, employees, servants and agents named as an additional insured with respect to the operations and obligations of the Supplier as outlined in this Contract;
- (b) Coverage for bodily injury or property damage arising out of the release of pollutants or contaminants (solid, liquid, gaseous or thermal pollutant, irritant or contaminant including but not limited to smoke, vapours, odors, soot, fumes, acids, alkalis, toxic chemicals, hazardous substances, waste materials, including medical, infectious and pathological wastes, electromagnetic fields, low-level radioactive waste/material and mould matter) caused in the performance of this Contract; and
- (c) A cross-liability clause which shall have the effect of insuring each person, firm or corporation named in the policy as an insured in the same manner and to the same extent as if a separate policy had been issued to each.

### 8.03 **Proof of Insurance**

The Supplier shall provide the College with proof of the insurance required by this Contract in the form of valid certificates of insurance that confirm the required coverage as noted above in section 8.02 Insurance prior to the commencement of performance of the Contract, and renewal replacements on or before the expiry of any such insurance.

### 8.04 **Subcontractor Insurance**

The Supplier shall ensure that each of its subcontractors adhere to the insurance requirements set forth within section 8.2 above and obtains all the necessary and appropriate insurance that a prudent person in the business of the subcontractor would maintain and that the College and Indemnified Parties are named as additional insured with respect to any liability arising in the course of performance of the subcontractor's obligations under the subcontract for the provision of the Deliverables. Such policies shall not be terminated, cancelled or materially altered unless written notice of such termination, cancellation or material change is given by the insurers to the College at least thirty (30) days before the effective date thereof.

### 8.05 **Proof of WSIB Coverage**

If the Supplier is subject to the Workplace Safety and Insurance Act ("WSIA"), it shall submit a valid clearance certificate of WSIB coverage to the College prior to the commencement of performance of the Contract. In addition, the Supplier shall, from time to time at the request of the College, provide additional WSIB clearance certificates. Throughout the Term, the Supplier covenants and agrees to pay when due, and to ensure that each of its subcontractors pays when due, all amounts required to be paid under the WSIA, failing which the College shall have the right, in addition to and not in substitution for any other right it may have pursuant to the Contract or otherwise at law or in equity, to pay to the WSIB any amount due pursuant to the WSIA by the Supplier or its subcontractors and

to deduct such amounts from any amount due and owing to the Supplier pursuant to the Contract, together with all costs incurred by the College in connection therewith.

## **ARTICLE 9 – TERMINATION, EXPIRY AND EXTENSION**

### **9.01 Immediate Termination of Contract**

The College may immediately terminate the Contract upon giving notice to the Supplier where (a) the Supplier is adjudged bankrupt, makes a general assignment for the benefit of its creditors or a receiver is appointed on account of the Supplier's insolvency; (b) the Supplier breaches any provision in Article 6 (Confidentiality) of the Contract; (c) the Supplier breaches the Conflict of Interest paragraph in Article 3 (Nature of Relationship Between College and Supplier) of the Contract; (d) the Supplier, prior to or after executing the Contract, makes a material misrepresentation or omission or provides materially inaccurate information to the College; (e) the Supplier undergoes a change in control which adversely affects the Supplier's ability to satisfy some or all of its obligations under the Contract; (f) the Supplier subcontracts for the provision of part or all of the Deliverables or assigns the Contract without first obtaining the written approval of the College; or (g) the Supplier's acts or omissions constitute a substantial failure of performance.

### **9.02 Dispute Resolution by Rectification Notice**

Subject to the above paragraph, where the Supplier fails to comply with any of its obligations under the Contract, the College may issue a rectification notice to the Supplier setting out the manner and timeframe for rectification. Within seven (7) Business Days of receipt of that notice, the Supplier shall either: (a) comply with that rectification notice; or (b) provide a rectification plan satisfactory to the College. If the Supplier fails to either comply with that rectification notice or provide a satisfactory rectification plan, the College may immediately terminate the Contract. Where the Supplier has been given a prior rectification notice, the same subsequent type of non-compliance by the Supplier shall allow the College to immediately terminate the Contract.

### **9.03 Termination on Notice**

The College reserves the right to terminate the Contract, without cause, upon thirty (30) calendar days prior notice to the Supplier.

### **9.04 Supplier's Obligations on Termination**

On termination of the Contract, the Supplier shall, in addition to its other obligations under the Contract and at law (a) at the request of the College, provide the College with any completed or partially completed Deliverables; (b) provide the College with a report detailing: (i) the current state of the provision of Deliverables by the Supplier at the date of termination; and (ii) any other information requested by the College pertaining to the provision of the Deliverables and performance of the Contract; (c) execute such documentation as may be required by the College to give effect to the termination of the Contract; and (d) comply with any other instructions provided by the College, including but not limited to instructions for facilitating the transfer of its obligations to another Person. This paragraph shall survive any termination of the Contract.

### **9.05 Supplier's Payment Upon Termination**

On termination of the Contract, the College shall only be responsible for the payment of the Deliverables provided under the Contract up to and including the effective date of any termination. Termination shall not relieve the Supplier of its warranties and other responsibilities relating to the Deliverables performed or money paid. In addition to its other rights of hold back or set off, the College may hold back payment or set off against any payments owed if the Supplier fails to comply with its obligations on termination.

### **9.06 Termination in Addition to Other Rights**

The express rights of termination in the Contract are in addition to and shall in no way limit any rights or remedies of the College under the Contract, at law or in equity.

### **9.07 Expiry and Extension of Contract**

The Contract shall expire on the original Expiry Date, unless the College exercises its option to extend the Contract as set out in the Contract Letter, such extension to be upon the same terms (including

the Rates in effect at the time of extension), conditions and covenants contained in the Contract. The option shall be exercisable by the College giving notice to the Supplier not less than thirty (30) days prior to the original Expiry Date. The notice shall set forth the precise duration of the extension.