

PURCHASE ORDER TERMS

ARTICLE 1 – INTERPRETATION

1.01 Defined Terms

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

“College” means The Sir Sandford Fleming College of Applied Arts and Technology;

“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 obligations under the Contract;

“Contract” shall have the meaning set out in paragraph 2.02 of these Purchase Order Terms;

“Deliverables” means the goods and/or services to be provided by the Supplier, as described in the Contract;

“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, its Board of Governors, trustees, directors, officers, agents, employees, and volunteers;

“Industry Standards” include, but are not limited to: (a) the provision of 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 parties providing goods or services similar to the Deliverables in similar situations and; (b) adherence to commonly accepted norms of ethical business practices;

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

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

“Rates” means the price, in Canadian funds, to be charged for the 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; (b) all labour and material costs; (c) all travel costs; (d) all costs associated with insuring, transporting and delivering the Deliverables to the College at its address specified on the order; (e) all insurance costs; and (f) all other overhead, including any fees or other charges required by law;

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

“Requirements of Law” means 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; and

“Supplier” means the supplier identified on the face of this order.

ARTICLE 2– GENERAL TERMS

2.01 Purchasing Services Authorization

The College is responsible only for Purchase Orders issued by the Purchasing Department. Shipment, delivery or performance of any Deliverables by the Supplier constitutes acceptance of these Purchase Order Terms in their entirety.

2.02 Contract Documents

If the College and the Supplier have entered into a signed written agreement in respect of the Deliverables (the “Agreement”), the “Contract” consists of that Agreement and the Purchase Order for the Deliverables, including these Purchase Order Terms.

In the event of any ambiguity, conflict or inconsistency between the terms and conditions of the Agreement and these Purchase Order Terms, the terms and conditions of the Agreement shall take precedence and prevail over these Purchase Order Terms.

If the College and the Supplier have not entered into a signed written agreement in respect of the Deliverables, the “Contract” means the Purchase Order for the Deliverables, including these Purchase Order Terms and any Supplementary Terms and Conditions indicated in the Purchase Order or included in the solicitation document issued for the procurement of the Deliverables.

In the event of any ambiguity, conflict or inconsistency between these Purchase Order Terms and the Supplementary Terms and Conditions, the Supplementary Terms and Conditions shall take precedence and prevail over these Purchase Order Terms.

The Contract embodies the entire agreement between the College and the Suppliers 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.

2.03 Changes by Written Amendment Only

Changes to the Contract shall be only by written amendment signed by the parties.

2.04 Notices

Notices shall be in writing and shall be delivered by mail, personal delivery or email and shall be addressed to the contact identified on the face of the Purchase Order.

2.05 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.

2.06 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.

2.07 No Indemnities from College

Nothing in the Contract, whether express or implied, will directly or indirectly increase the indebtedness or contingent liabilities of the College beyond the obligation to pay the Rates in respect of Deliverables accepted by the College.

The College’s maximum aggregate liability for any and all claims and damages arising out of or related to this Contract, whether arising in contract, tort, strict liability, statute or otherwise shall not exceed the

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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.

2.08 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.

2.09 Survival

This paragraph and paragraphs 2.05, 2.06, 2.07, 2.08, 3.02, 3.03, 4.01, 4.08, 4.09, 6.3 shall survive the termination or expiry of the Contract.

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 party that would in any way interfere with the rights of the College under this Contract.

3.02 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.

3.03 Responsibility of Supplier

The Supplier agrees that it is liable for the acts and omissions 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.

3.04 No Subcontracting or Assignment

The Supplier shall not subcontract or assign the whole or any part of the Contract without the prior written consent of the College.

3.05 Conflict of Interest

The Supplier shall: (a) avoid any Conflict of Interest in the performance of its contractual obligations; (b) give notice to the College without delay of 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.

3.06 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 Deliverables Warranty

The Supplier represents and warrants that the Deliverables (i) shall be provided diligently in a professional and competent manner by persons qualified and skilled in their occupation in accordance with: (a) the Contract; (b) Industry Standards; and (c) the Requirements of Law; (ii) shall be free from defects in material, workmanship and design, suitable for the purposes intended, in compliance with all applicable specifications and free from liens or encumbrance on title; and (iii) shall not infringe any third party's intellectual property rights. The Deliverables are subject to the College's inspection and acceptance within a reasonable period of time after delivery. If any of the Deliverables, in the opinion of the College, are inadequately provided or require corrections, the Supplier shall make the necessary corrections at its own expense as specified by the College in a rectification notice.

4.02 Packaging and Risk

The Deliverables will be suitably packed in such a manner as will ensure their safe transportation undamaged to their destination. The Deliverables will remain at the risk of the Supplier until the Deliverables are received by the College.

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 and Supplier Code of Conduct

The Supplier shall comply, and shall ensure that its Related Entities comply, with the Fleming College Supplier Code of Conduct, as amended from time to time. The Supplier is solely responsible for ensuring that its Related Entities are aware of and comply with the requirements of the Supplier Code of Conduct.

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:

- the Sexual Violence Prevention Policy and the Harassment and Discrimination Prevention Policy available at <https://department.flemingcollege.ca/policies-procedures/human-resources/>; and
- 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 Fleming College Supplier Code of Conduct is accessible at <https://department.flemingcollege.ca/pafc/attachment/349/download>

The Supplier is solely responsible for making inquiries regarding the relevant College policies and procedures and the Supplier Code of Conduct. Breach of this clause may result in penalties, cancellation, termination, or other sanctions.

The Supplier shall communicate the requirements of the Supplier Code of Conduct to all subcontractors engaged in the performance of the Contract.

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4.05 Criminal Background Check

If providing the Deliverables may involve having direct contact with students on a regular basis or access to student information, the Supplier will be required to obtain a criminal background check for any individual that will have direct contact with students on a regular basis or access to student information, and will not be permitted to engage any individual that 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 agrees to consult with the College about the application of this requirement and follow the College's instructions regarding this requirement, if applicable.

4.06 Confidentiality and Privacy

The Supplier shall not publicize the fact the parties are doing business without the prior written consent of the College. Each party shall treat information disclosed to it by the other party as confidential and only use such information as required for performance of the Contract, except for (a) information that is in the public domain; (b) was already in the possession of recipient at time of disclosure free of any obligations of confidentiality; (c) is lawfully disclosed to recipient by a third party without any obligation of confidentiality. All information distributed and collected with respect to the Contract is subject to Ontario's Freedom of Information and Protection of Privacy Act and may need to be disclosed at law. Notwithstanding any term to the contrary, the College will comply with any legal disclosure requirements under applicable laws. The Supplier agrees (a) 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; (b) not to directly or indirectly access, use, collect, disclose or destroy any Personal Information for any purposes that are not authorized by the College; and (c) to implement other specific security measures as directed by the College to ensure the security and integrity of Personal Information.

4.07 Intellectual Property

All College property, including intellectual property, provided to the Supplier will (a) remain the property of the College and (b) be used solely for the purpose of providing the Deliverables and for no other purpose. The College is assigned all intellectual property rights in the Deliverables, except to the extent the Deliverables include proprietary materials that existed prior to the commencement of the Contract ("Pre-Existing Materials"). 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, any Pre-Existing Materials forming part of the Deliverables; and (b) to authorize other persons, including agents, contractors or sub-contractors, to do any of the former on behalf of the College.

4.08 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 and 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 DELIVERABLES

5.01 Payment According to Contract Rates

(a) The College shall pay the Supplier for the Deliverables in accordance with the Rates within thirty (30) days of receipt by the College of a satisfactory invoice from the Supplier requesting payment for Deliverables that have been received and accepted by the College; 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@flemingcollege.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 No Expenses or Additional Charges

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The Supplier shall pay all applicable taxes and duties, including excise taxes, incurred by or on the Supplier's behalf with respect to the Contract. There shall be no charges payable by the College to the Supplier other than the Rates.

ARTICLE 6 – INSURANCE AND INDEMNIFICATION

6.01 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:

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- (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.

6.02 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 6.01 Insurance prior to the commencement of performance of the Contract, and renewal replacements on or before the expiry of any such insurance.

6.03 Supplier Indemnity

The Supplier agrees to indemnify and save harmless the Indemnified Parties from all losses, claims, damages, actions, causes of action, costs and expenses that the Indemnified Parties may sustain, incur, suffer or be put to at any time, either before or after this Contract ends, including any claim of infringement of third-party intellectual property rights, bodily injury (including death), personal injury, or property damage, arising or occurring, directly or indirectly, by reason of any act or omission of the Supplier or its Related Entities, except to the extent that such liability arises out of the independent acts or omissions of the Indemnified Parties.

ARTICLE 7 – TERMINATION

7.01 Immediate Termination of Contract

The College may immediately terminate the Contract upon giving notice to the Supplier for any reason, whether or not the Supplier is or may be in default under the Contract, and in such event the College shall be liable to the Supplier only for the payment of the Rates in respect of Deliverables accepted by the College up to the date of termination. 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.