

NORTHERN COLLEGE INSTRUCTIONAL DESIGNER AGREEMENT
made as of the 01 day of March 2012

BETWEEN:

NORTHERN COLLEGE

(here in after called the "Client")

OF THE FIRST PART

and

AWARDED CONTRACT BUSINESS NAME

(here in after called " Proponent")

OF THE SECOND PART

WHEREAS The Proponent shall provide Instructional design for Phase (1) one of a multi phase e-learning courseware project and has submitted a proposal (the "**Proposal**") to the Client to provide Instructional design for Phase (1) one of a multi phase e-learning course ware project at the Client's premises, (the "**Premises**") Haileybury campus, located at 640 Latchford Street, Haileybury, Ontario; South Porcupine campus, located at 4715 Highway 101 East, Timmins, Ontario; Kirkland Lake campus located at 140 Government Rd. East, Kirkland Lake, Ontario; Moosonee campus, located at First Ave, Moosonee, Ontario;

AND WHEREAS the Client has accepted the Proposal and wishes to appoint The Proponent to provide Instructional design for Phase (1) one of a multi phase e-learning courseware project and The Proponent has agreed to accept such appointment, all on the terms and conditions herein contained;

WITNESSES that in consideration of their respective promises herein contained, the parties hereto covenant and agree as follows:

1 Appointment and Term.

The Client hereby appoints the Proponent, and the Proponent accepts such appointment, to provide Instructional design for Phase (1) one of a multi phase e-learning courseware project at the Premises effective the 01 day of March 2012 until the 31 day of March 2012, unless terminated as hereinafter provided. Pricing will be fixed as per the proposal submitted either party may at any time terminate this agreement on ninety (30) days' prior written notice.

Upon completion of Phase (1) one, Terms, Services provided and associated fees for Phases (2) two and (3) three will negotiate between the client and the Proponent prior to beginning of next Phase, unless terminated during Phase (1) one.

2 General.

During the execution of this agreement, The Proponent shall advise the Client promptly of:

- I. Any contradiction, discrepancies or errors found or noted in the contract documents.
- II. Supplementary details, instructions or directions that do not correspond with those contained in the contract documents.
- III. Any omissions, or other faults, that become evident which should be corrected in order to execute the work in accordance with good standard practice.

Should The Proponent fail to comply with these requirements, it will be held responsible for any resulting circumstances, conditions, and costs.

3 Services to be provided by The Proponent.

The Proponent shall provide Instructional design for Phase (1) one of e-learning courseware, and shall without limitation, include the following,

In Phase (1) one, the proponent will gain an understanding of what the Clients current online and e-learning course repository contains, and liaise with the appropriate individuals to identify the goals and deliverables for new project initiatives, and provide appropriate timelines and benchmarks. The proponent will effectively research potential course design and / or shells that will effectively meet the Client's long-term distance learning needs.

The proponent will facilitate focus groups composed of the impacted parties across all (4) campuses in person, by telephone and email; internal staff meetings to disseminate and gather information relevant to the course development process.

Haileybury campus, 640 Latchford Street, Haileybury, Ontario;
Kirkland Lake campus 140 Government Rd. East, Kirkland Lake, Ontario;
South Porcupine campus, 4715 Highway 101 East, Timmins, Ontario;
Moosonee campus, First Ave, Moosonee, Ontario;

Based on the consultation during Phase (1) one, the proponent will provide a written report outlining the goals and deliverables for new project initiatives. Included in the report will be the recommendation of the appropriate technology for each of the projects identified during Phase (1) one.

4 Cost to proponent.

The Client will be charged \$ (cost of service), plus 13% HST for Phase (1) one of this multi phase project; this is to include all travel, meals, and accommodation, for the term of this agreement.

5 Canadian Funds.

All prices are to be in Canadian funds. Harmonized sales tax (HST) is applicable. The Proponent may be requested to provide their HST registration number. The Proponent may be required to complete and submit a government of Ontario tax compliance declaration.

6 Terms of Payment.

At negotiated dates, the Proponent shall submit an invoice; Invoices are exclusive of HST, which will be shown as an additional cost on all invoices. Unless otherwise provided herein, The Proponent shall pay all applicable government taxes.

- I. Payment shall be made to the Proponent within thirty (30) days from the date of invoice, or as negotiated.
- II. No changes to the agreement price will be processed until a written change order has been issued by the Proponent to the Client's Purchasing Officer.
- III. The accuracy of the invoices will be verified by the Client before payment is made to the Proponent under the terms and conditions of the agreement.

7 Trade Secrets and Proprietary Information.

During the term of this agreement, the Proponent, or personnel employed/subcontracted by The Proponent, may have access to or become privy to information that the Client regards as sensitive or that is subject to information and privacy legislation or the Client's privacy policies. The Proponent shall not use or disclose any such confidential information directly or indirectly, during or subsequent to the term of this agreement, and shall instruct its employees or subcontracts not to use, disclose, photocopy, or otherwise duplicate and/or remove any material found on the Client's premises.

- I. The Proponent is responsible for any breach of confidentiality or violation of the privacy legislation as it relates to the nature of the environment or private documents that may be seen by personnel.

During the term of this agreement, the Client may have access to or become acquainted with various trade secrets and confidential information of the Proponent. The Client shall not, and shall instruct its employees not to use, disclose, photocopy or otherwise duplicate or remove any such trade secrets or confidential information directly or indirectly during or subsequent to the term of this agreement.

8 Patent Rights and Infringements.

During the term of this agreement the Proponent shall be subject to the following clause: If any action is brought against the Client or its assignee based on a claim that the Client's use of this product infringes a patent or copyright, the Proponent shall defend such action at its expense and pay the cost and damages awarded in any such action and all prior claims relating to such action. In the event that an injunction shall have been obtained against the Client's use of the product because of patent or copyright infringement, or, if such product is likely to become the subject of a claim of infringement, the Proponent shall replace the same, to the satisfaction of the Client, so that it becomes non-infringing, or grant the Client credit for such product, accepts its return and pay all costs of such replacement or return.

9 Exclusivity.

While this agreement is in force the Proponent shall have the exclusive right to provide all Instructional Design for Phases (1) one, Phase (2) two, and Phase (3) three, as outlined in the Proposal.

10 Termination.

Either The Client or the Proponent may terminate the contract for any reason on thirty (30) days notice in writing to the other party.

Should a termination notice be given by either Client or the Proponent then the Proponent shall continue to provide the services as outlined in the contract documents during the thirty (30) day termination period. Failure by The Proponent to comply with these conditions may result in the Client deducting money from The Proponent invoices, and/or billing The Proponent; to ensure that the services as outlined in the contract documents continue to be provided without additional cost to the Client so that the building remains at an acceptable standard.

In case the Proponent defaults or delays in executing the work satisfactorily, the Client shall give notice to The Proponent in writing that the Proponent has made such default. Should the Proponent fail to remedy satisfactorily such defaults without delay, or should The Proponent become insolvent or abandon the work or otherwise fail to observe the provisions of the Contract then in any part of such cases, the Client may immediately take the work or portions thereof out of The Proponent hands and employ person or persons such as he may see fit to complete the work so taken over. In any case, the Proponent shall be chargeable with and remain liable for all loss or damage which may be suffered by the Client by reason of such default, and shall be liable to the Client for the cost of doing any such work over and above contract price thereof.

11 Taking the Work out of The Proponent's Hands.

In any of the following cases, the client may, without any other authorization, take all or any portion of the work out of the Proponent's hand and may employ whatever means are necessary to complete the Services;

- I. Where the Proponent has defaulted or delayed commencing or in executing the work or any portion thereof to the satisfaction of the Client and the Client has given notice thereof to The Proponent and has by such notice required The Proponent to put an end to such default of delay, and such default or delay continues after such notice was communicated;
- II. Where the Proponent has defaulted in the completion of the work, or any portion thereof, with the time limit of such completion required by this agreement;
- III. Where the Proponent has become insolvent;
- IV. Where the Proponent has committed an act of bankruptcy;
- V. Where the Proponent has abandoned the work;
- VI. Where the Proponent has made an assignment of the agreement without the required consent;
- VII. Where the Proponent has allowed unacceptable contract management, staff supervision, or excessive staff turnover to occur;
- VIII. Where the Proponent has otherwise failed to observe or perform any of the material provisions of the agreement

12 Comply with Laws.

During the term of this agreement the Proponent shall comply with all applicable statutes, laws, by-laws, regulations, ordinances, notices and orders whether Federal, Provincial, Municipal or otherwise, at any time in effect during the currency of this contract. If the attention of The Proponent is called to any such violation on the part of the Proponent, or of any person employed or engaged by the Proponent, the Proponent shall immediately desist from and correct such violation.

13 Prohibition Against Gratuities.

The Proponent must certify that no executive or board member of the College, as well as officer, director, agent, or employee of the College has benefited or will benefit financially or materially from this agreement. Any agreement may be terminated by the Client if it is determined that gratuities of any kind were either offered to, or received by any executive or board member of the College as well as officer, director, agent or employee contrary to this policy.

14 Quality and Value.

During the term of this agreement the Proponent shall provide a good standard of service and value to the Client, who shall be the sole judge of the adequacy of such service and value, with power to order such changes as the Client, in its reasonable discretion, may deem desirable.

15 Indemnity.

During the term of this agreement, upon prompt written notice the Proponent agrees to indemnify, defend, and save harmless the Client and their officers, agents, and employees from any third party claims, damages and actions of any kind or nature whether at law or equity, as set forth below.

The Proponent' obligation to indemnify Client shall be limited to those liabilities to the extent arising from the negligence of the Proponent in the performance of its obligations under the agreement. In no event shall The Proponent be responsible for those liabilities arising from the negligence of the Client, its agents or employees.

Notwithstanding any other provision in this Agreement, neither party shall be liable to the other for any consequential, special, indirect or punitive damages, including without limitation any claim for lost revenue or profits.

16 Independent Proponent Status.

The Proponent will be an independent company and this agreement does not create an employment relationship with the Proponent, or with the Proponent' agent, employees or servants.

Notwithstanding the above, the Proponent expressly agrees that the Client has the right but not the obligation to supervise any services performed on its properties for compliance with safety and environmental laws, regulations and guidelines as well as the Clients policies and procedures.

17 Sub-Contracts and Assignments.

No part of the work shall be subcontracted without prior written consent of the Client, or their designate. This agreement shall not be assignable by the Proponent in whole or in part without written consent of the Client.

18 No Implied Obligations.

No implied obligation of any kind by or on behalf of Client shall arise from anything in the contract, and the express covenants and agreements herein contained and made by the Client are and shall be the only covenants and agreements upon which any rights against the Client is to be founded.

19 Rights and Obligations.

The Client, or designate, shall decide whether the work has been performed in accordance with the agreement and whether the labour, materials, tools and equipment used in the execution of the work are adequate for the performance of the work. The Client, may order additional work, dispense with or change any part of the work required by the contract. The Client shall decide whether anything done or not done as a result of directions given under this subsection has increased or decreased the cost of the work to The Proponent and the contract amount will be increased or decreased by an amount as mutually agreed. In reaching a decision the Client may establish and utilize such a system or systems of inspection and rating of the work as it sees fit. The Proponent shall comply with any direction of the Client given under this section

20 Delay, Non-Compliance or Default by The Proponent.

If the Client shall at any time consider the productivity of workmen, quality of tools, equipment or proper materials, respectively employed or provided by the Proponent to be insufficient for the purpose of the said work, the Client may in writing, order The Proponent to employ or provide such additional workmen, tools, and materials as they may consider necessary. In the event that the Proponent does not, within three (3) days, or such longer period as may be fixed by any such order, in all aspects comply therewith, the Client may provide and employ such additional workmen, tools, materials and equipment respectively or employ a Sub-Contractor, and may pay these additional workmen such wages, and for such additional tools, materials, and equipment respectively and to pay the Sub-Proponent such prices as he may think proper; all such amount so paid shall be deducted from the amount of the contract. The Proponent shall be responsible for observation and enforcement of the Clients Rules and Regulations provided to The Proponent in writing as are applicable to his employees.

21 Records.

The Proponent shall during the term of the contract and for the period of one year from the date of completion of the contract maintain and keep full records of estimates of and actual cost of the work together with all proper quotations, contracts, correspondences, invoices, receipts and vouchers relating

thereto, and shall make them available for copy, audit or inspection by any person acting on behalf of the Client.

22 Federal/Provincial/Municipal Legislation.

The Proponent shall make itself fully acquainted with all federal, provincial, municipal legislation relating to the work herein specified. The Proponent shall comply with such laws without extra compensation of any nature. The Proponent shall obtain and pay for all permits required for the execution of the work included in these contract documents, and shall pay for all charges incidental to such permits.

23 Personnel Suspension/Rejection Criteria.

The following conditions will be cause for an immediate request by the Client for the removal of personnel from the site:

- I. use of illicit drugs or alcohol;
- II. behavioural instability;
- III. criminal acts;
- IV. persistent performance problems;
- V. persistent unacceptable appearance and attitude;
- VI. inadequate training or experience.

24 Unforeseen Cost Resulting from Government Legislation.

Should unforeseen cost resulting from changes in Government Legislation occur during the agreement then the Proponent may approach the Client to negotiate an adjustment to the contract. Should a mutually satisfactory agreement not be reached then the agreement would be terminated as per General Conditions Notices, Orders, Etc. section.

25 Notices, Orders, ETC.

Any notice, order, decision, direction or communication given or required to be given by The Client under the contract shall be in writing. It shall be deemed to have been received by The Proponent on the day it was delivered in person to the Proponent the supervisor, or if it was mailed to the Proponent at the address indicated on the Proposal and Acceptance, on the sixth day following the day on which it was mailed.

26 Force Majeure.

Neither The Proponent nor the Client shall incur any liability to the other for failure to comply with the terms of this agreement to the extent that such failure results from things beyond it reasonable control, including, but without limiting the generality of the foregoing, strikes, power or fuel shortages, fire and acts of God.

27 Entire Agreement.

This agreement constitutes the whole and entire agreement between The Proponent and the Client in connection with the subject matter hereof and supersedes the proposal and any prior agreements, undertakings, declarations, commitments, representations, written or oral, in respect thereof, and there are no express or implied terms, conditions, agreements, undertakings, declarations, commitments, representations or warranties between the parties not expressly provided for in this agreement.

28 Amendments.

This agreement may be amended only by written instrument executed by both parties.

29 Time.

Time shall be the essence of this agreement.

30 Enurement.

This agreement shall be binding upon and ensure to the benefit of the parties hereto and their respective successors and permitted assigns.

31 Assignment.

Neither party may assign this agreement without the prior written consent of the other party, which consent shall not be unreasonably withheld or delayed.

IN WITNESS WHEREOF the parties have executed this agreement by their duly authorized officers.

**NORTHERN COLLEGE OF APPLIED ARTS
AND TECHNOLOGY**

BY: _____
Signature Date

THE PROPONENT

BY: _____
Signature Date