

**Form of Agreement for Website Redesign and
Restructure Consultation and Implementation Support**

Between

[COLLEGE]

and

[SUPPLIER]

TABLE OF CONTENTS

SECTION 1 DEFINITIONS AND INTERPRETATION 2

SECTION 2 TERM 4

SECTION 3 DESCRIPTION OF GOODS AND/OR SERVICES 4

SECTION 4 DELIVERY AND ACCEPTANCE..... 5

SECTION 5 WARRANTY, STANDARDS AND POLICIES..... 6

SECTION 6 FEES 8

SECTION 7 REPRESENTATIONS AND WARRANTIES..... 9

SECTION 8 CONFIDENTIALITY AND PRIVACY 11

SECTION 9 OWNERSHIP OF MATERIALS 14

SECTION 10 DEFAULT AND TERMINATION 16

SECTION 11 INSURANCE 18

SECTION 12 INDEMNITY 18

SECTION 13 LIMITATION OF LIABILITY 19

SECTION 14 NOTICES..... 19

SECTION 15 AUDIT RIGHTS 20

SECTION 16 DISPUTE RESOLUTION..... 20

SECTION 17 GENERAL PROVISIONS 21

SCHEDULES

Schedule 1 – Description of Goods and/or Services

Schedule 2 – Insurance Requirements

Schedule 3 – College Policies

THIS AGREEMENT IS MADE as of the 1 day of **September, 2021** (the “**Effective Date**”) between

[INSERT NAME OF COLLEGE] (the “**College**”)

and

[●] (“**Supplier**”).

RECITALS:

1. The Supplier was a successful proponent in a procurement process conducted by the College to provide the Goods and/or Services (as defined below);
2. The College and Supplier wish to enter into this Agreement to establish the terms and conditions pursuant to which Supplier shall provide the Goods and/or Services (as defined below) to the College.

NOW THEREFORE in consideration of the mutual covenants, conditions and agreements herein contained and other good and valuable consideration (the receipt and sufficiency of which are hereby acknowledged by each of the Parties), the Parties covenant and agree as follows.

SECTION 1 DEFINITIONS AND INTERPRETATION

1.1 Definitions

- (1) All capitalized terms used but not defined in this Agreement shall have the following meanings:
- (a) **“Acceptance”** has the meaning ascribed to it in Section 4.4(1).
 - (b) **“Agreement”** means this Agreement, including the Schedules to this Agreement, as it or they may be amended or supplemented from time to time, and the expressions “hereof”, “herein”, “hereto”, “hereunder” and similar expressions refer to this Agreement and not to any particular portion or section of this Agreement.
 - (c) **“AODA”** has the meaning ascribed to it in Section 5.3(2).
 - (d) **“Business Day”** means any day of the week other than Saturday, Sunday or a statutory holiday in the Province of Ontario.
 - (e) **“Canadian Sales Taxes”** has the meaning ascribed to it in Section 6.1(7)
 - (f) **“Change of Control”** has the meaning ascribed to it in Section 17.3(1).
 - (g) **“Claiming Party”** has the meaning ascribed to it in Section 16.2(1).
 - (h) **“College”** has the meaning ascribed to it in the recitals.
 - (i) **“College Intellectual Property”** has the meaning ascribed to it in Section 9.1(3).
 - (j) **“Confidential Information”** has the meaning ascribed to it in Section 8.1(1).
 - (k) **“Control”** means with respect to any Person at any time,
 - (i) holding, whether directly or indirectly, as owner or other beneficiary (other than solely as the beneficiary of an unrealized security interest) securities or ownership interests of that Person carrying votes or ownership interests sufficient to elect or appoint fifty percent or more of the individuals who are responsible for the supervision or management of that Person, or
 - (ii) the exercise of de facto control of that Person, whether direct or indirect and whether through the ownership of securities or ownership interests or by contract, trust or otherwise.
 - (l) **“Defective Goods and/or Services”** has the meaning ascribed to it in Section 5.1(3).
 - (m) **“Dispute”** has the meaning ascribed to it in Section 16.1(1).
 - (n) **“Effective Date”** has the meaning ascribed to it in the recitals.
 - (o) **“Equipment”** has the meaning ascribed to it in Section 5.2(2)(f).
 - (p) **“Fees”** has the meaning ascribed to it in Section 6.
 - (q) **“Goods and/or Services”** has the meaning ascribed to it in Section 3.1.
 - (r) **“Goods”** has the meaning ascribed to it in Section 3.1.
 - (s) **“includes”** and **“including”** means “includes without limitation” and “including without limitation” respectively.

- (t) **“Material Default”** has the meaning ascribed to it in Section 10.1(2).
- (u) **“Notice of Dispute”** has the meaning ascribed to it in Section 16.2(1).
- (v) **“Party”** means either the Supplier or the College and **“Parties”** means both of them collectively.
- (w) **“Permits”** has the meaning ascribed to it in Section 7.1(2)(a).
- (x) **“Person”** means any individual, partnership, limited partnership, joint venture, syndicate, sole proprietorship, company, corporation or body corporate with or without share capital, unincorporated association, trust, trustee, executor, administrator or other legal personal representative, regulatory body or agency, government or governmental agency authority or entity however designated or constituted.
- (y) **“Personal Information”** has the meaning ascribed to it in Section 8.2(1).
- (z) **“Pre-Existing Intellectual Property”** has the meaning ascribed to it in Section 9.1(2).
- (aa) **“Privacy Laws”** means the *Personal Information Protection and Electronic Documents Act* (Canada), as amended or supplemented from time to time, and any other applicable law now in force or that may in the future come into force governing the collection, use, disclosure and protection of personal information applicable to either Party or to any information collected, used or disclosed in the course of providing or receiving the Goods and/or Services.
- (bb) **“Record”** means any recorded information, including any Personal Information, in any form: (i) provided by the College to Supplier, or provided by Supplier to the College, for the purposes of this Agreement; or (ii) created by Supplier in the performance of this Agreement.
- (cc) **“Responding Party”** has the meaning ascribed to it in Section 16.2(1).
- (dd) **“Response to Dispute”** has the meaning ascribed to it in Section 16.2(3).
- (ee) **“Services”** has the meaning ascribed to it in Section 3.1.
- (ff) **“Supplier”** has the meaning ascribed to it in the recitals.
- (gg) **“Warranty Period”** has the meaning ascribed to it in Section 5.1(2).
- (hh) **“Works”** has the meaning ascribed to it in Section 9.1(1).

1.2 Interpretation

- (1) This Agreement shall be read with all changes in gender and number required by the context. The division of this Agreement into Sections and the insertion of headings are for convenience of reference only and shall not affect the construction or interpretation of this Agreement.
- (2) Except as expressly provided for herein, if any payment is required to be made or other action is required to be taken pursuant to this Agreement on a day which is not a Business Day, then such payment or action shall be made or taken on the next Business Day.
- (3) The term “including” means “including, without limitation” and “include” and “includes” shall have corresponding meanings.
- (4) The wording of this Agreement shall be deemed to be mutually chosen by the Parties and no rule of strict construction shall be applied against any Party.

(5) In the event of ambiguities, conflicts or inconsistencies between or among any of the provisions of this Agreement, including any provisions contained in schedules or addendums attached hereto or made a part hereof, the provisions set out in the body of this Agreement shall prevail provided that,

- (a) to the extent a Schedule provides a more specific description of a matter dealt with elsewhere in this Agreement, this Agreement shall be interpreted in a manner so as to give effect to the specification provided in the Schedule; and
- (b) any provision establishing a higher standard of performance or service shall take precedence over a provision establishing a lower standard of performance or service.

1.3 Schedules

(1) The following Schedules whether attached hereto or acknowledged as a separate document shall form a part of this Agreement:

Schedule 1 – Description of Goods and/or Services;

Schedule 2 – Insurance Requirements; and

Schedule 3 – College Policies.

SECTION 2 TERM

2.1 Term

(1) This Agreement shall commence on the Effective Date set forth above and, subject to earlier termination as provided for in this Agreement, continue in effect for a term of the period of time set out in Schedule 1 (the “**Term**”).

SECTION 3 DESCRIPTION OF GOODS AND/OR SERVICES

3.1 Goods and/or Services

(1) During the Term, Supplier shall provide to the College the goods and/or services set out in Schedule 1 attached hereto together with all other services, functions and responsibilities described in this Agreement (the “**Goods**” and the “**Services**” and collectively, the “**Goods and/or Services**”).

(2) In connection with the Goods and/or Services, Supplier shall provide the reports and other deliverables to the College as indicated in Schedule 1 (and within any timelines for such delivery indicated). Any approval by the College or any participation by the College in any deliverable provided by Supplier in connection with the Goods and/or Services shall in no way mitigate, reduce or otherwise limit Supplier’s obligations under this Agreement. In addition to any reporting obligation set out in this Agreement, Supplier shall promptly report to the College any event that may have the potential of materially affecting the delivery of the Goods and/or Services.

(3) Supplier acknowledges and agrees that the Goods and/or Services shall be provided to the College on a non-exclusive basis, and that the College may choose to retain other providers of services similar to the Goods and/or Services during the Term.

(4) Supplier shall not, without the College’s prior written consent, which may be withheld for any or no reason whatsoever, keep anything on College property or use College property for any activity that increases the insurance premium cost or invalidates any insurance policy carried by any person with respect to a College location or any part thereof. All property kept, stored or maintained on College property by or on behalf of Supplier shall be at Supplier’s sole risk.

SECTION 4 DELIVERY AND ACCEPTANCE

4.1 Title and Risk

(1) Notwithstanding the provisions of any applicable sale of goods legislation, including the *Sale of Goods Act* (Ontario), or any similar legislation of any jurisdiction whatsoever applicable to the supply of the Goods, title to the Goods supplied by Supplier to the College shall remain with Supplier until Acceptance by the College. All risk for losses, and all obligations for insurance coverage, shall pass from Supplier to the College only upon transfer of title to the College.

4.2 Delivery

(1) Goods shall be delivered by Supplier to the College at the location specified in Schedule 1 or as otherwise directed by the College by the delivery date set out in Schedule 1. For the purpose of certainty, the Fees shall include, and Supplier shall otherwise bear the responsibility for, all transportation, insurance and other carriage charges. The College shall have no obligation in respect of the loading of Goods upon a carrier at Supplier's facilities or the insurance of Goods during such loading or for transportation of any person providing the Goods and/or Services.

(2) Supplier shall comply with all applicable laws and industry standards respecting the safe and proper handling, packaging, transportation, delivery and use of the Goods. Supplier shall identify hazardous or toxic Goods with warning labels and shall provide the College with written instructions concerning potential hazards in connection with the Goods and recommend procedures for the handling, transportation and maintenance of such Goods. Where applicable, Supplier shall ensure that the Goods are properly classified in accordance with Workplace Hazardous Materials Information System legislation and shall provide health and safety data for such Goods.

4.3 Schedule

(1) Time is of the essence for the shipment and delivery of Goods and the performance of Services. Times and schedules for delivery of Goods and for completion of Services shall be set out in the Schedule 1 or as expressly agreed to by the College and Supplier in writing. The College may from time to time change shipping schedules, or direct temporary suspensions of any scheduled shipments by giving Supplier two Business Days' advance notice.

(2) Without limiting any of the College's other rights hereunder or at law or in equity, the Supplier shall immediately advise the College as to any delays being encountered, the reasons therefore, and the action being taken to recover from such delays.

(3) If delivery of Goods or performance of Services is late by more than 10 Business Days from the delivery date set out in Schedule 1, the College may, at its option, cancel the purchase and delivery with respect to those Goods or cancel the Services, without incurring any charges or other costs and without prejudice to any of its other rights under this Agreement, at law or in equity.

4.4 Inspection and Acceptance

(1) All Goods and Services shall be subject to the College's inspection and final written acceptance ("**Acceptance**"). Without limiting any other rights or remedies of the College under this Agreement or at law or in equity, the College shall have the absolute and unlimited right to reject Goods and/or Services supplied under this Agreement to the extent they do not comply with the Agreement or applicable laws. If any Goods and/or Services are rejected by the College on the basis that they do not comply with the Agreement or applicable laws, all expenses and risks of loss or damage incidental to the return or disposal of such Goods by or on behalf of the College shall be borne and paid for by Supplier and the cost of any re-supply of such Services shall be borne and paid for by Supplier.

SECTION 5 WARRANTY, STANDARDS AND POLICIES

5.1 Warranty

(1) Supplier represents, warrants and covenants to the College that, as of the date of this Agreement and upon each delivery of Goods and completion of the Services:

- (a) the Goods will be of the type and quality specified in the Agreement (including performance criteria) or, if no quality is specified, of the best grade of their respective kinds, conform to the specifications, drawings, samples or other descriptions furnished by the College, and be free from defect;
- (b) if Supplier gave the College a sample of the Goods before College entered into this Agreement, the Goods correspond with the sample;
- (c) the Goods comply with and the Services will be performed in compliance with all Applicable Laws, any relevant government or industry standards and any other standards specified in this Agreement;
- (d) the Goods are fit for the purpose for which Goods of the same kind are commonly supplied and for any other purpose described in this Agreement;
- (e) the Services match the description of the Services in this Agreement;
- (f) the Goods are new and of merchantable quality; and
- (g) the College has the full benefit of any manufacturer's warranties that may be applicable to the Goods (and Supplier must pursue any manufacturer's warranties on the College's behalf if the College so requests).

(2) The warranties set out in Section 5.1(1) expire two years (or such other period set out in Schedule 1) from the date of final Acceptance of the Goods and/or Services by the College and apply only to defects that are evident or the symptoms of which are evident prior to expiration of the warranties (the "**Warranty Period**").

(3) During the Warranty Period, Supplier shall repair or replace any Goods and complete or re-perform any Services which are determined by the College, in its sole discretion acting reasonably, to be in breach of the warranties set forth in Section 5.1(1) ("**Defective Goods and/or Services**") and Supplier shall be solely responsible for paying all costs associated with such repair, replacement or performance or, at the College's option, Supplier will refund in full the price paid for such Defective Goods and/or Services.

(4) Defective Goods and/or Services returned during the Warranty Period for repair, replacement, completion or re-performance shall be repaired, replaced, completed or re-performed by Supplier and returned to the College within a turnaround time of five Business Days or such other time period as may be mutually agreed between the Parties. Supplier shall be solely responsible for paying the associated shipping and packaging costs of any such repair or replacement.

(5) In the event that Supplier is unable to repair or replace or complete or re-perform the Defective Goods and/or Services within such turnaround time, the College may,

- (a) at Supplier's sole cost, return the Goods to Supplier and Supplier shall refund the College in full for the Goods and any other related costs; or
- (b) terminate this Agreement immediately upon notice to the Supplier, and the College shall thereupon be relieved of all liability under this Agreement.

(6) Any repaired or replaced Goods or completed or re-performed Services shall be subject to the acceptance right set out in Section 4.4 and the Warranty Period shall recommence from the date of acceptance of such Goods and/or Services.

(7) The provisions of this Section 5.1 shall survive and remain in full force and effect following any termination or expiry of this Agreement.

5.2 Performance Standards

(1) Without limitation to Section 7 of this Agreement, Supplier covenants and agrees to perform its obligations under this Agreement with the degree of care, skill and diligence consistent with the highest industry standards for Supplier's industry in North America and in compliance with all applicable laws.

(2) Without limiting the generality of the foregoing, Supplier covenants and agrees to

- (a) diligently deliver the Goods and/or Services in a discrete, professional, workmanlike and timely manner and to meet all requirements for the Goods and/or Services as set out in this Agreement including all applicable requirements for the Goods and/or Services described in Schedule 1;
- (b) supply (at its own cost) all labour, materials and equipment required to provide the Goods and/or Services;
- (c) leave all areas where Services were performed in a neat and tidy condition;
- (d) not paint, display, install, erect or affix any sign, advertisement, notice or decoration within or about College property (save and except for temporary safety or warning signs necessary for the performance of the Goods and/or Services);
- (e) perform the Goods and/or Services with minimal disturbance to the College customers and employees;
- (f) ensure that all equipment used by the Supplier in the provision of the Goods and/or Services is maintained in a state of cleanliness and good repair/ maintain, operate and keep all equipment used in connection with the provision of Goods and/or Services under this Agreement (collectively, the "Equipment") in good repair, mechanical condition and appearance. The Equipment shall be suitable for the provision of the Goods and/or Services, having due regard for the nature of the Goods and/or Services;
- (g) provide a sufficient number of duly trained, skilled and licensed (where applicable) personnel to perform the Goods and/or Services in accordance with the terms hereof;
- (h) operate the Equipment at all times in an efficient, economical and lawful manner; and
- (i) take all reasonable precautions in the performance its obligations hereunder to protect the safety and health of the Parties' employees and of members of the public, and shall comply with all applicable safety and health regulations.

5.3 College Policies

(1) Supplier acknowledges and agrees that it shall at all times comply with the commitments set out in all College policies, including with respect to sexual harassment and any policies listed in Schedule 3.

(2) In performing the Goods and/or Services, Supplier shall at all times comply with the *Accessibility for Ontarians with Disabilities Act, 2005*, and all regulations made thereunder ("**AODA**"). Without limiting the generality of the foregoing, Supplier shall have in place all accessibility plans, policies, practices and procedures required by AODA and shall ensure that all personnel of Supplier engaged in providing the Goods and/or Services, including those personnel of Supplier who may deal with members of the public

or other third parties on behalf of the College, have received all training required by AODA. The College shall have the right, upon request, to inspect and obtain copies of the accessibility plans, policies, practices and procedures maintained by Supplier in relation to AODA, as well as reasonable evidence that personnel of Supplier performing the Goods and/or Services have received all training required by AODA. In providing the Goods and/or Services, Supplier shall provide information and communications in accessible formats and with communication supports, upon request by the College, members of the public or other third parties, in accordance with the requirements of AODA.

SECTION 6 FEES

6.1 Fees

(1) In consideration for Goods accepted and/or Services properly performed by Supplier, the College agrees to pay to Supplier the fees that are set out in Schedule 1 (the “**Fees**”). Such Fees shall include payment for the provision of the Goods and/or Services and the preparation and delivery to the College of all deliverables to be provided by Supplier in connection therewith (including the reporting information described in Section 3.1(2)). In addition, the College may reimburse Supplier for reasonable, ordinary and necessary reimbursable expenses incurred by the Supplier directly related to the delivery of the Goods and/or Services in accordance with the Broader Public Sector Expenses Directive and any further requirements related to reimbursable expenses set out in Schedule 1 to the extent such expenses have been approved in advance by the College.

(2) If the fees payable by the College are on a time-and-materials basis, Supplier shall maintain daily time records of all activities undertaken in connection with the Goods and/or Services, in sufficient detail to permit the College to reasonably verify the work performed and the value of the deliverables. In no event shall the hourly rate charged by Supplier for personnel providing the Goods and/or Services be greater than any hourly rates set forth in Schedule 1.

(3) All Fees shall be invoiced monthly in arrears by Supplier within the timeframes set out in Schedule 1 by delivery of an original invoice to the College, to the attention of the College employee named in Schedule 1. Each invoice shall include:

- (a) the purchase order, project or reference number, if applicable;
- (b) the name, address and contact information of the Supplier;
- (c) a breakdown of the specific days on which Supplier provided the Goods and/or Services together with details of the Goods and/or Services being provided;
- (d) a breakdown of the various employees of Supplier performing such Services, the number of hours spent working on such Services in increments no greater than one tenth of an hour (0.1 hour), and each employee’s hourly rates;
- (e) a total of Fees charged to date, including a breakdown of those Fees for Services rendered in Canada and those Fees for Services rendered outside of Canada;
- (f) properly invoiced Taxes;
- (g) to the extent applicable, any portion of the Fees attributable to reimbursable expenses;
- (h) Supplier’s tax identification number;
- (i) any reimbursable amounts, such as subcontractor fees (flow through costs with no mark-up);
- (j) any items subject to a mark-up together with receipts evidencing the cost; and

(k) all other details as the College may from time to time reasonably require by delivery of notice to that effect to Supplier.

(4) All invoices will be paid by the College within the number of days set out in Schedule 1 after receipt; provided that no invoice shall be required to be paid if,

(a) it is not in the form or does not contain the information required by this Section 6; or

(b) it contains errors or deficiencies,

until such time as Supplier corrects same and re-invoices the College, which corrected invoice will be paid by the College within the number of days set out in Schedule 1 after receipt.

(5) The College shall be entitled to set off any monies owing to it by Supplier under this or any other agreement against any monies it may then owe to Supplier.

(6) Any change in the fees payable hereunder must be approved in advance by the College in writing. Except as expressly set forth in this Section 6, Supplier acknowledges and agrees that no charges, fees, costs, expenses or any other amounts shall be payable by the College in connection with the Goods and/or Services, the deliverables or this Agreement.

(7) Supplier will register itself, as required by applicable law, for any Canadian Federal or Provincial sales, goods and services, value added and other similar taxes ("**Canadian Sales Taxes**") applicable from time to time with respect to any payment by the College under this Agreement and will be responsible for ensuring that the College is properly invoiced for such Canadian Sales Taxes as and when due. Supplier will promptly provide evidence of such registration from time to time as may reasonably be required. The College will pay the amount of such Canadian Sales Taxes to Supplier in addition to amounts payable under this Agreement on the date that it is required to make the payment to which such Canadian Sales Taxes apply. In the event that Supplier is not registered to collect and remit applicable Canadian Sales Taxes, the College shall be entitled (but not required) to withhold from the Fees all amounts in respect of applicable Canadian Sales Taxes and remit such withheld Canadian Sales Taxes to the proper taxing authorities. Supplier shall indemnify and hold harmless the College against any claims or assertions, including interest and penalty, by any relevant taxing authority in respect of Canadian Sales Taxes owed in connection with the Goods and/or Services rendered by Supplier pursuant to this Agreement, except with respect to any Canadian Sales Taxes properly invoiced to the College as and when due. The provisions of this Section 6.1(7) shall survive and remain in full force and effect following expiry or termination of this Agreement.

SECTION 7 REPRESENTATIONS AND WARRANTIES

7.1 Supplier Representations and Warranties

(1) Supplier represents and warrants to the College that,

(a) Supplier is a corporation duly incorporated and validly existing under the laws of its jurisdiction of incorporation and has all necessary corporate power, authority and capacity to enter into this Agreement and to carry out its obligations under this Agreement. The execution and delivery of this Agreement and the performance of Supplier's obligations under this Agreement have been duly authorized by all necessary corporate action on the part of Supplier.

(b) Supplier is not a party to, bound or affected by, or subject to, any indenture, mortgage, lease, agreement, collective agreement, obligation, instrument, charter or by-law provision, statute, regulation, order, judgment, decree, licence, permit or law which would be violated, contravened or breached as a result of the execution and delivery of this Agreement, or the performance by Supplier of any of its obligations under this Agreement.

(2) Supplier represents and warrants, which representations and warranties shall remain true and accurate throughout the Term, that Supplier and all subcontractors, employees or other persons retained by it in connection with the Goods and/or Services and/or the performance of its obligations hereunder shall (at Supplier's sole cost and expense):

- (a) procure and maintain all applicable permits, licenses and approvals of any governmental authority relating to the Goods and/or Services and/or business operations of Supplier ("**Permits**") (and provide evidence of same to the College from time to time forthwith upon request). Supplier shall notify the College immediately in writing if any Permit or any portion thereof is suspended, cancelled, terminated, withdrawn, modified or transferred in any way and if requested by the College shall immediately cease to provide Services and shall relinquish control over all equipment or property (tangible or intangible) owned by the College and in its possession and under its control on such date;
- (b) comply with all applicable statutes, regulations and other legal stipulations or guidelines of any governmental authority having jurisdiction over the Goods and/or Services or business operations of Supplier (including Privacy Laws);
- (c) conduct its activities and perform the Goods and/or Services in a safe, ethical and professional manner and in compliance with the *Occupational Health and Safety Act* (Ontario) (as amended or supplemented from time to time) and all equivalent municipal, provincial or federal legislation and all applicable the College policies and procedures, including health and safety policies and security and other rules and regulations (as amended from time to time) while working in or attending at any College location;
- (d) comply with the performance standards as set out in Section 5 and all applicable requirements for the Goods and/or Services described in Schedule 1;
- (e) ensure Supplier's management has sufficient experience and history in Supplier's industry to perform the Goods and/or Services in accordance with the standards set out herein;
- (f) not take any action or make any omission that may injure or damage the College's reputation or business;
- (g) maintain internal information security practices, including using appropriate firewall and anti-virus software; maintaining said countermeasures, operating systems, and other applications with up-to-date current virus definitions and security patches; installing and operation security mechanisms in the manner in which they were intended that are designed to ensure the College will not be impacted nor its operations disrupted; and permitting only authorized users access to systems and applications;
- (h) use up-to-date anti-virus tools to remove known malicious functionalities from any email message or data transmitted to the College that are designed to prevent the transmission of attacks on the College via the network connections between the College and Supplier and to prevent unauthorized access to the College systems or those of the College's third party service providers via Supplier networks and access codes; and
- (i) not disclose, disseminate, provide, make available or use the Personal Information or data (including health, financial, identity, etc.) of the College, as well as its affiliates, branches, representation offices, clients, employees and suppliers with whom it maintains or had a commercial, legal or contractual relationship, or those companies in which the College or the aforementioned companies may have interest or participation, that Supplier might have received or had access to, in a direct or indirect way, due to the existing contractual, legal or commercial relationship.

7.2 Supplier Covenants

- (1) Supplier covenants and agrees that it shall be solely responsible for the control and management of its operations, employment practices and labour relations. For greater certainty, Supplier shall have the sole and exclusive control over its employees, employee relations policies and policies relating to wages, hours of work and working conditions, and the sole and exclusive right to hire, transfer, suspend, lay-off, recall, promote, assign, discipline and discharge its employees.
- (2) Supplier covenants and agrees that it shall be solely responsible for the payment of all compensation, including wages, salary, benefits and expenses, to all of its employees and other persons rendering services to Supplier (including subcontractors retained by Supplier).
- (3) Supplier covenants and agrees that it shall be solely responsible for the payment of all employer payroll, employer health, income, withholding and other taxes, including Canada Pension Plan, employment insurance, and workers' compensation or workplace safety and insurance in respect of each of its employees and other persons rendering services to on behalf of Supplier in connection with the Goods and/or Services in each jurisdiction where the Goods and/or Services are performed.
- (4) Supplier has registered, and covenants and agrees that it shall be solely responsible for registering, itself and all persons engaged for service by it under applicable workers' compensation legislation and has paid and shall pay all applicable workers' compensation premiums and maintain such registrations and workers' compensation coverage throughout the Term in each jurisdiction where the Goods and/or Services are performed. Supplier further agrees to provide the College with evidence thereof in form satisfactory to the College upon request by the College from time to time.
- (5) Supplier covenants and agrees that throughout the Term all persons engaged by it to perform the Goods and/or Services are and shall be at all times legally able to work in the jurisdiction in which the Goods and/or Services are performed in the specific occupation that such person performs. The College may at any time demand from Supplier, and Supplier agrees to provide to the College forthwith, a certification of compliance with applicable immigration and employment laws in such form as the College in its sole discretion may require.
- (6) Supplier covenants and agrees not to permit any construction lien, claim for lien, or other lien to arise and/or be registered against the title to the property upon which the College is located as a direct or indirect result of any work undertaken by it or on its behalf in respect of the Goods and/or Services. In the event that any such lien shall arise, Supplier covenants and agrees to, forthwith following becoming aware of same, take all possible action, including the payment of the monies claimed into court, in order to have such lien removed from the title to the property upon which the College is located within five Business Days thereafter. In the event that Supplier defaults in the aforesaid obligation, the College shall be entitled, if it so chooses, to undertake Supplier's obligations on its behalf and to invoice Supplier for all costs, including legal fees in their entirety, associated with same, which shall be payable by Supplier to the College forthwith upon receipt by Supplier of a written demand therefor from the College. The foregoing remedy of the College is in addition to and not substitution for any other remedies available to the College under this Agreement, at law, or in equity.

SECTION 8 CONFIDENTIALITY AND PRIVACY

8.1 Confidential Information

(1) Supplier acknowledges and agrees that the terms of this Agreement as well as certain information made available to it from time to time by the College or its affiliates, campuses, representation offices, clients, employees and suppliers is confidential in nature. For the purposes of this Agreement, confidential information ("**Confidential Information**") means information received by or made available to Supplier, its agents, subcontractors, or personnel that:

- (a) is not generally known in the industry in which the College is engaged;

- (b) is Personal Information;
- (c) would logically be considered confidential and/or proprietary;
- (d) would do the College harm if divulged; or
- (e) is marked "Confidential" or "Proprietary",

and shall include all reporting documentation provided by Supplier in accordance with this Agreement provided, however, that "Confidential Information" shall not include information that the receiving party can establish:

- (f) was or becomes generally available to the public through no act or failure to act by the receiving party;
- (g) was already known by the receiving party at the time of receipt as evidenced by its competent written records in existence at the time of disclosure;
- (h) was provided to the receiving party by a third party not bound by an obligation of confidentiality, as a matter of right and without restriction on disclosure; or
- (i) was independently developed by the receiving party without access to the disclosing party's Confidential Information, as evidenced by the receiving party's written records in existence at the time of disclosure.

(2) Supplier agrees:

- (a) to hold the Confidential Information in confidence by using the same degree of care to safeguard such Confidential Information as it uses to protect its own information of like character, but in no event less than a reasonable degree of care;
- (b) to limit disclosure of the Confidential Information to its employees, agents or subcontractors having a need to know the Confidential Information for the purposes of this Agreement;
- (c) not to directly or indirectly disclose any Confidential Information to any third party unless and only to the extent required by applicable law (and following reasonable notice of such requirement to the College);
- (d) to use the Confidential Information solely and exclusively in accordance with the terms of this Agreement;
- (e) not remove or obscure proprietary rights notices that appear on Confidential Information and copies thereof; and
- (f) advise the College promptly in writing of any unauthorized disclosure or use of Confidential Information.

Supplier shall cause its agents, subcontractors and employees to whom it may be permitted to disclose or provide any such Confidential Information to comply with the provisions of this Section 8.1. Upon termination of this Agreement, Supplier shall return or destroy all Confidential Information as directed by the College.

(3) The requirements of Section 8.1(2) shall not apply in respect of any Confidential Information that is compelled to be disclosed by an order of a court of competent jurisdiction or alternatively by an order of a governmental authority having jurisdiction, provided that Supplier shall, to the extent it is not legally prohibited, promptly (and prior to any disclosure) provide notice to the College of any request to disclose Confidential Information so that the College has an opportunity to object to the production or disclosure of

the requested information and request a protective order or other appropriate remedy from the relevant governmental authority. If such protective order or other remedy is not obtained or the College does not waive compliance with the provisions hereof, then Supplier agrees to disclose only that portion of the Confidential Information which it is legally required to disclose. Supplier shall provide, in a timely manner, all reasonable cooperation, assistance and information in its possession, custody or control as is necessary for the College to obtain a remedy against disclosure pursuant to any order, process or request described in this Section.

8.2 Personal Information

(1) Supplier acknowledges that in the course of providing the Goods and/or Services contemplated under this Agreement, it may be privy to personal information, which includes factual or subjective information (recorded or not) about an identifiable individual ("**Personal Information**"). Supplier agrees that all right, title and interest to such Personal Information, as between Supplier and the College, is the exclusive property of the College. In handling the Personal Information, Supplier shall:

- (a) adhere to applicable Privacy Laws;
- (b) comply with all policies and procedures of the College relating to privacy and the protection of Personal Information, as provided to Supplier in writing by the College from time to time;
- (c) appoint an individual who will be responsible within Supplier to handle the Personal Information;
- (d) use appropriate security measures to protect the Personal Information from unauthorized access or use;
- (e) limit the use of Personal Information to the purposes specified and necessary to carry out this Agreement or as prescribed by law;
- (f) limit disclosure of Personal Information to what is authorized in writing by the College or required by law;
- (g) promptly refer any persons seeking access to their Personal Information to the College;
- (h) return to the College or, at the College's request, dispose of the Personal Information upon completion or termination of this Agreement;
- (i) give the College access to and the right to audit Supplier's security measures for the Personal Information; and
- (j) notify the College in writing immediately upon becoming aware of any non-compliance with, or breach of, the Supplier's obligations under this Section 8.2 or under Privacy Laws, in which case Supplier shall consult with the College regarding the actions that it intends to take to remedy the breach and shall subsequently implement such actions as may be approved by the College in writing in connection therewith.

8.3 Remedies

(1) It is understood and agreed by the Parties hereto that the College will be irreparably harmed by any breach or threatened breach of Supplier or any of its representatives' obligations under this Section 8, that money damages would not be a sufficient remedy for any such breach or threatened breach of this Section 8, and that in the event of any breach or threatened breach of this Section 8, the College shall be entitled to specific performance, injunctive and/or other equitable relief as a remedy for any such breach, without the necessity of proving actual damages or posting any bond or other security.

8.4 FIPPA

- (1) The Parties acknowledge and agree that FIPPA applies to and governs all Records and may require the disclosure of such Records to third parties. Furthermore, Supplier agrees
- (a) to keep Records secure;
 - (b) to provide Records to the College no later than seven 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 Goods and/or Services;
 - (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 Goods and/or Services and who have been specifically authorized by a College representative to have such access for the purpose of providing the Goods and/or Services;
 - (g) to implement other specific security measures that in the reasonable opinion of the College would improve the adequacy and effectiveness of Supplier's measures to ensure the security and integrity of Personal Information and Records generally; and
 - (h) that any Confidential Information, and the terms of this Agreement, 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 Section 8.4 shall prevail over any inconsistent provisions in this Agreement.

8.5 Survival

- (1) The provisions of this Section 8 shall survive and remain in full force and effect following the expiry or termination of this Agreement.

SECTION 9 OWNERSHIP OF MATERIALS

9.1 Ownership of Materials

- (1) Subject to Section 9.1(2), Supplier acknowledges and agrees that all works commissioned by the College under this Agreement, including the reports to be provided by Supplier and related information and all drawings, plans, computer programs, inventions, creations, works, works-in-progress, deliverables and any other works developed pursuant to, or in association or in conjunction with this Agreement, whether presently existing or to be developed in the future, including all copyrightable subject matter, physical embodiments, shapes, forms, representations, applications, compilations, derivations, compositions, and collections or any part and/or division thereof (collectively, the "**Works**"), shall be considered works made for hire. Supplier acknowledges that all right, title and interest, including all intellectual property rights in the Works, except for the Supplier Intellectual Property (as defined in Section 9.1(2)), shall belong to the College and Supplier hereby assigns and shall assign all its right, title and interest, including all intellectual property rights, therein to the College and shall cause its employees and independent contractors to assign all their right, title and interest, including all intellectual property

rights, therein to the College. Supplier expressly waives any and all moral rights or claims in association with the Works and shall cause any person in its employ or independent contractors used by Supplier to similarly waive all such moral rights that they may have in the Works in favour of the College, and its successors, assigns and licensees. Supplier shall execute any reasonable documents necessary to carry out the intent of this Agreement.

- (2) Supplier owns and shall continue to own
- (a) all intellectual property developed or acquired by Supplier prior to the effective date of this Agreement; and
 - (b) any intellectual property developed or acquired by Supplier outside the scope of this Agreement (the “**Pre-Existing Intellectual Property**”).

Supplier may not incorporate any Pre-Existing Intellectual Property in any Works without the prior written consent of the College. If Supplier fails to obtain such consent, any Pre-Existing Intellectual Property incorporated in the Works shall be deemed not to be Pre-Existing Intellectual Property and shall be subject to the rights and obligations set out in Section 9.1. Where the College consents to such incorporation, any Pre-Existing Intellectual Property incorporated in any Works shall be referred to as the “Supplier Intellectual Property”. Supplier hereby grants and shall grant a non-exclusive, perpetual, irrevocable, royalty-free, fully-paid up licence to the College to use, copy, reproduce, modify and adapt the Supplier Intellectual Property solely in connection with the Works and to sublicense such rights.

- (3) Supplier acknowledges that as between the Parties, the College has the exclusive right, title and interest in
- (a) all trade-marks, copyrights and other intellectual property rights owned by or licensed to the College for use in Canada; and
 - (b) all materials, processes, methodologies, reports, plans and all other works provided or made available to Supplier or its representatives by or on behalf of the College, including all trade-marks, copyrights and other intellectual property rights therein or associated therewith,

(collectively, the “**College Intellectual Property**”), and shall not at any time do or cause to be done, either directly or indirectly, any act or thing contesting any part of such right, title and interest. Supplier shall not in any manner represent that it has any ownership in the College Intellectual Property. As between the Parties, the College owns and shall own all modifications, enhancement and improvements to the College Intellectual Property regardless of whether such modifications, enhancement or improvements are made by Supplier, the College or a third party. Supplier may only use the College Intellectual Property during the Term for the sole purpose of providing the Goods and/or Services in accordance with this Agreement. All rights not expressly granted are hereby reserved by the College.

- (4) Supplier covenants, represents and warrants to the College, which representations and warranties shall remain true and accurate throughout the Term, that:
- (a) Supplier has, or at the time of delivery shall have, good and marketable title to the Works, free and clear of all liens and encumbrances of any kind whatsoever;
 - (b) Supplier has obtained, or shall have obtained prior to the time of delivery to the College, all consents and approvals from third parties necessary to include trade-marks, copyrights, industrial designs or other intellectual property rights or information in any Work provided by Supplier to the College in connection with the Goods and/or Services; and
 - (c) the products, materials and parts incorporated into the Works, including without limitation, the Supplier Intellectual Property, the Works and their use by the College and its

licensees do not infringe on any trade-mark, copyright, industrial design or other intellectual property right of any third party.

(5) Supplier acknowledges and agrees that it either owns all right, title and interest in and with respect to all intellectual property it uses in connection with providing the Goods and/or Services, including the Supplier Intellectual Property (other than the Works and the College Intellectual Property) or has validly licensed or contracted with the legal owner to use such intellectual property. Supplier does not have knowledge of any notice, claim or allegation from any Person for any violation or infringement by Supplier of any rights with respect to any such intellectual property or questioning the right of Supplier to use, possess, or distribute such intellectual property. Supplier's use of the intellectual property used in conjunction with the Goods and/or Services, including the Supplier Intellectual Property has not, does not and will not violate or constitute a material breach of any written contractual obligation by which Supplier is bound or, to the knowledge of Supplier, a violation of any laws, regulations, ordinances codes or statutes applicable to Supplier.

(6) Supplier shall notify the College in a timely manner of any:

- (a) claim of which Supplier becomes aware which seeks to invalidate any Supplier Intellectual Property, the College Intellectual Property or Works; or
- (b) infringement or act of unfair competition on the part of any third party with respect to any Supplier Intellectual Property, College Intellectual Property or the Works which Supplier becomes aware.

(7) Upon termination or expiry of this Agreement and/or from time to time upon request by the College, Supplier shall immediately deliver all Works to the College, and no Works except for the Supplier Intellectual Property shall be retained, displayed, or otherwise used by Supplier without the College's express prior written consent, which may be withheld for any or no reason.

(8) The provisions of this Section 9, except the license to the College Intellectual Property in Section 9.1(3), shall survive and remain in full force and effect following the expiry or termination of this Agreement.

SECTION 10 DEFAULT AND TERMINATION

10.1 Termination for Cause

(1) If a Material Default occurs, the College shall be entitled at any time thereafter to terminate this Agreement by the delivery of written notice to Supplier, and upon the effective date of termination specified by the College in any such written notice this Agreement shall terminate, subject to any other provision contained herein that is expressed to survive termination or expiry of this Agreement. The Parties acknowledge and agree that the occurrence of a Material Default shall be incapable of rectification by Supplier.

(2) For the purposes of this Agreement, a material default ("**Material Default**") means:

- (a) any Change of Control with respect to which prior written consent of the College has not been obtained,
- (b) failure of Supplier to fully comply with its obligations under Sections 7, 8, 9, 11 and 17.2 or breach of any other obligation that is incapable by its nature of rectification;
- (c) if Supplier shall
 - (i) generally not pay its debts as they fall due;
 - (ii) admit in writing its inability to pay its debts generally, or make a general assignment for the benefit of creditors;

- (iii) institute or have instituted against it any proceeding seeking
 - (A) to adjudicate it a bankrupt or insolvent;
 - (B) any liquidation, winding-up, reorganization, arrangement, adjustment, protection, relief or composition of it or its debts under any law relating to bankruptcy, insolvency or re-organization or relief of debtors or otherwise; or
 - (C) the entry of an order for relief or the appointment of a receiver, trustee or other similar official for it or any substantial part of its assets; or
- (iv) take any corporate action to authorize any of the foregoing; or
- (d) the failure of Supplier to fully comply with any obligation under this Agreement, other than the requirement to give notice pursuant to Section 17.3, the result of which, in the College's sole discretion, could have a material adverse effect on the College's operations or reputation.

(3) Without limiting the College's rights under Section 10.1(1), in the event that Supplier shall at any time fail to fully perform or comply with any provision contained in this Agreement, other than one giving rise to a Material Default, and the College shall have delivered written notice to Supplier requiring the rectification of same, such rectification must be made to the satisfaction of the College in its sole discretion, by the date that is 30 days following the date of delivery of such notice to Supplier to the satisfaction of the College in its sole discretion. If such rectification is not made within such 30 day period, the College shall be entitled at any time thereafter to terminate this Agreement by the delivery of written notice to that effect to Supplier. Upon the effective date of termination specified by the College in any such written notice this Agreement shall terminate, subject to any other provision contained herein that is expressed to survive termination or expiry of this Agreement.

(4) Supplier may terminate this Agreement, without penalty, and without limiting any other remedy available to it under this Agreement or at law or equity, if,

- (a) the College is in breach of any provision of this Agreement;
- (b) written notice of such breach is provided to the College by the Supplier; and
- (c) the breach remains uncured for 30 Business Days following the date of the notice of breach.

10.2 Termination for the College's Convenience

(1) Notwithstanding Section 2.1(1), the College shall be unilaterally entitled at any time, for any or no reason, to terminate this Agreement by the delivery of at least 30 days' prior written notice to that effect to Supplier, and upon the effective date of termination specified by the College in any such notice this Agreement shall terminate, subject to any other provision contained herein that is expressed to survive termination or expiry of this Agreement.

10.3 Consequences of Termination and Expiration

(1) If the College terminates this Agreement, Supplier shall immediately cease any work and shall invoice the College for the portion of the Goods and/or Services performed up to the effective date of such termination.

(2) Upon termination or expiry of this Agreement, as the case may be, or otherwise upon request from time to time by the College, Supplier shall,

- (a) return all the College property and equipment in its (or its employees' or representatives') possession, including badges and security identification;
- (b) remove all of its property and equipment (including that of its employees and representatives) from College property and any other location where Services were being provided; and
- (c) co-operate with, and provide such assistance as may be requested by, the College in order to facilitate the orderly termination and/or transition of the Goods and/or Services with the least amount of inconvenience and disruption to the College's business as is reasonable in the circumstances.

(3) Supplier agrees that the College may perform or arrange to be performed any work necessary to remove Supplier's property and equipment from College property and bill Supplier for all expenses incurred. If Supplier does not remove its property and/or equipment from College property within seven calendar days following any such termination or request, the College may (without further notice) retain such property and equipment for its own use and/or sell any such property and equipment and retain the proceeds therefrom.

(4) The rights and remedies in Sections 10.1, 10.2 and 10.2 are cumulative and in addition to any other right or remedy available under this Agreement, at law or equity.

10.4 Eligibility for Future Procurement Processes

(1) Supplier acknowledges that if a Material Default occurs or if Supplier commits a breach of this Agreement and such breach remains uncured for the period set out in Section 10.1(3), without prejudice to any of the College's rights, the College may, in its sole discretion, disqualify the Supplier from participation in any future procurement process, whether or not the College exercises its right to terminate this Agreement for cause in accordance with Section 10.1. Supplier further acknowledges that the College may, in its sole discretion, take into account any disputes or litigation between the Parties in determining the Supplier's eligibility to participate in future procurement processes.

SECTION 11 INSURANCE

(1) Supplier shall, at its sole cost and expense, put in effect and maintain for the Term, with insurers having a secure A.M. best rating of B+ or greater, or the equivalent, all the necessary and appropriate insurance that a prudent person in the business of the Supplier would maintain including the insurance specified in Schedule 2.

(2) On the Effective Date and upon the placement, renewal, amendment or extension or any part of the insurance, Supplier shall provide the College with confirmation of coverage and, if requested, a certificate of insurance certified by an authorized representative of the insurer.

(3) The College does not in any way represent or warrant that the coverage or limits of insurance specified in Schedule 2 are sufficient or adequate to protect Supplier's interests or liabilities.

SECTION 12 INDEMNITY

12.1 Indemnity

(1) Supplier shall indemnify and save the College, its directors, officers, employees and agents, harmless from and against any and all claims, damages, losses, liabilities, demands, judgments, causes of action, legal proceedings, economic loss (including lost profits), penalties or other sanctions and any and all costs and expenses arising in connection therewith (including legal fees and disbursements on a substantial indemnity basis) that may, directly or indirectly, result from, arise out of or be in relation to (a) the performance by Supplier, or by any of its employees, subcontractors or other persons for whom it is responsible, of the Goods and/or Services; (b) any breach, violation or non-performance by Supplier, or by any of its employees, subcontractors or other persons for whom it is responsible, of any term,

condition, representation, warranty or covenant contained in this Agreement; (c) any failure or delay by Supplier to make or maintain any registration, coverage or payments or file any return or information required by any applicable law; (d) any negligent act or omission of Supplier or any of its employees, subcontractors or other persons for whom it is responsible at law or in equity; and/or (e) any claim that the Goods and/or Services or Works, or their use by the College, directly or indirectly, violate or infringe any intellectual property right or other proprietary right of any person.

(2) The provisions of this Section 12 shall survive and remain in full force and effect following any termination or expiry of this Agreement.

SECTION 13 LIMITATION OF LIABILITY

13.1 Limitation on Liability

(1) 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. 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 this Agreement, and agrees that it shall have no remedies, recourse or rights in respect of this Agreement against the Crown in right of Ontario, any Ministry, Minister, agent, agency, servant, employee or representative of the Crown or any director, officer, servant, agent, employee or representative of a Crown agency or a corporation in which the Crown holds a majority of the shares or appoints a majority of the directors or members, other than against the College and its assets.

(2) The College's maximum aggregate liability for any and all claims and damages arising out of or related to this Agreement, whether arising in contract, tort, strict liability, statute or otherwise shall not exceed 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.

(3) In no event shall the College be liable for any indirect, special, punitive or consequential damages related in any way to this agreement and/or the provision of services, regardless of the legal theory upon which any such damage claim is based, even upon the fault, tort (including negligence), breach of contract, statute, regulation, or any other theory of law or breach of warranty by, or strict liability of, the College. This exclusion applies even if the College has been advised of the possibility of such damages in advance and even if any available remedy fails of its essential purpose except to the extent caused by willful misconduct of the College.

(4) The provisions of this Section 13 shall survive and remain in full force and effect following any termination or expiry of this Agreement.

SECTION 14 NOTICES

(1) Any notice to be given by this Agreement shall be in writing and effectively given if (a) delivered personally, (b) sent by prepaid courier service or certified/registered mail with a copy by email to the coordinates of the College and the Supplier set out in Schedule 1 or at such other address as the Party to whom such notice or other communication is to be given shall have advised the Party giving same in the manner provided in this Section 14.

(2) Any notice or other communication delivered personally or by prepaid courier service shall be deemed to have been given and received on the day it is so delivered, provided that if such day is not a Business Day such notice or other communication shall be deemed to have been given and received on the next following Business Day. Any notice or other communication sent by registered mail shall be deemed to have been given and received on the third Business Day following the date of mailing. Regardless of the foregoing, if there is a mail stoppage or labour dispute or threatened labour dispute which has affected or could affect normal mail delivery by the applicable postal service, then no notice or other communication may be delivered by registered mail.

SECTION 15 AUDIT RIGHTS

15.1 Access to Records

(1) Supplier shall make available to the College upon the College's request all relevant documents and records relating to the provision of the Goods and/or Services. Supplier shall allow representatives of the College designated from time to time to visit and inspect Supplier's premises and review any records or books of account relating to the Goods and/or Services on reasonable notice and within normal business hours.

(2) If any such audit or inspection

(a) reveals the Fees paid by the College to be incorrect, so that such error resulted in an overpayment by the College equal to or greater than three percent of Fees required to be paid by the College in accordance with this Agreement; or

(b) reveals any breach, violation or non-performance by Supplier of any term, condition, representation, warranty or covenant contained in this Agreement,

then Supplier shall (in addition to forthwith reimbursing the College for any overpayment) pay all costs incurred by the College with respect to any audit(s) and/or inspection(s) that uncovered such error, including the costs of any internal and external auditors, accountants and associates of the College directly involved with such process.

(3) For purposes of this Section 15.1, Supplier shall retain all relevant documents and records relating to the provision of the Goods and/or Services in a form that is accessible and reproducible for a period of not less than six years or such greater period as may be required by applicable laws.

SECTION 16 DISPUTE RESOLUTION

16.1 Binding Arbitration

(1) Subject to Section 16.1(2), all disputes, disagreements, controversies, questions or claims arising out of or relating to this Agreement, including with respect to this Agreement's formation, execution, validity, application, interpretation, performance, breach, termination or enforcement, or in respect of any legal relationship associated with or arising from this Agreement (collectively and individually, a "**Dispute**"), shall be determined by arbitration in accordance with this Section 16.

(2) Notwithstanding Section 16.1(1), the College shall be entitled to seek, before the courts of the Province of Ontario, specific performance, injunctive and/or other equitable relief for any of the breaches or threatened breaches of this Agreement referenced in Section 8.3(1). For the purposes of this Section 16.1(2), the Parties irrevocably attorn to the jurisdiction of the courts of the Province of Ontario and the Supplier waives any objection to the venue of any proceeding brought by the College in the courts of the Province of Ontario or any objection that such court constitutes an inconvenient forum.

(3) The number of arbitrators shall be one.

(4) The arbitration shall be seated in Toronto, Ontario, Canada, and shall be conducted in the English language.

16.2 Arbitration Procedure

(1) Any Party may deliver to the other Party a written notice commencing arbitration of a Dispute (a "**Notice of Dispute**"). The party commencing the arbitration (the "**Claiming Party**") shall include in its Notice of Dispute the names of three individuals who are acceptable to it to serve as the sole arbitrator. Within 10 days of receipt of the Notice of Dispute, the other Party (the "**Responding Party**") shall give the Claiming Party written notice that it accepts the appointment of one of the three individuals as the sole arbitrator, or shall name three other individuals who are acceptable to it to serve as the sole arbitrator. If

the Parties are unable to agree upon a sole arbitrator within a further 10 days, the appointment of the sole arbitrator shall be made by the ADR Institute of Canada, Inc. in accordance with that institution's rules and procedures.

(2) The sole arbitrator shall be independent of the Parties and shall be a person who, by training and experience, has the qualifications and skills to arbitrate a Dispute.

(3) The Claiming Party shall include in its Notice of Dispute a statement of the matter in Dispute, the remedy it seeks and the material facts upon which it relies. Within 20 days of receipt of the Notice of Dispute, the Responding Party shall deliver to the Claiming Party a written response (a "**Response to Dispute**") that includes its position on the Dispute and the material facts upon which the Responding Party relies. If the Responding Party is seeking its own relief in the arbitration, the Response to Dispute shall include a statement of the matter disputed by the Responding Party, the remedy it seeks and the material facts upon which the Responding Party relies.

(4) Within 30 days of delivery of the Response to Dispute, the Parties shall convene a case conference before the sole arbitrator to address the procedure and timetable for the arbitration. In advance of the case conference, the Parties shall meet and confer on the procedure and timetable, having regard to the monetary amount(s) and the complexity of the matters in issue. In the event the Parties cannot agree on the procedure and timetable, the sole arbitrator shall have jurisdiction to set the procedure and timetable for the arbitration.

(5) The hearing of the arbitration shall be conducted in Toronto, Ontario, Canada, unless the Parties agree otherwise.

(6) Any award or determination of the sole arbitrator shall be final and binding upon the Parties and there shall be no appeal on any ground, including, for greater certainty, any appeal on a question of law, fact or mixed fact and law.

(7) The arbitration shall be kept confidential and the existence of the arbitration proceeding and any element of it (including any pleadings, briefs or other documents submitted and exchanged and testimony or other oral submissions, and any awards made by the sole arbitrator) shall not be disclosed beyond the sole arbitrator, the Parties, their counsel, and any other Person to whom disclosure is reasonably necessary for the conduct of the arbitration, provided that anyone to whom such material is disclosed agrees in advance to keep it confidential and not disclose it for any other purpose. For greater certainty, nothing in this Section 16.2(7) shall preclude a party from disclosing the existence of the arbitration proceeding or any element of it where such disclosure is required by a court, necessary in connection with a judicial challenge to or enforcement of an award made by the sole arbitrator, or otherwise required by law.

(8) The sole arbitrator may apportion costs of the arbitration, including the reasonable fees and disbursements of the Parties, between or among the Parties in such manner as the sole arbitrator considers reasonable, provided that the sole arbitrator shall not award costs on a distributive basis.

(9) Any award for the payment of money may include pre-award and post-award interest.

SECTION 17 GENERAL PROVISIONS

17.1 Entire Agreement

(1) This Agreement constitutes the entire agreement between the Parties regarding the subject matter hereof. It is understood and agreed that there are no agreements, conditions, warranties, terms, representations or arrangements, oral or written, statutory or otherwise, other than those contained herein, and that all prior conversations, understandings, arrangements, statements, communications or agreements, oral or written, with respect to this Agreement are hereby superseded. No change, amendment or supplement to any provision of this Agreement shall be binding unless it is in writing and signed by all of the Parties hereto. The Parties agree that any preprinted terms and conditions on any

Supplier invoice, work order or similar document shall be of no force and effect, even if signed by both Parties.

17.2 No Assignment

(1) Supplier shall not assign or otherwise transfer any part of this Agreement without the prior written consent of the College, which may be withheld for any or no reason. The College shall be entitled to assign this Agreement by delivery of written notice to Supplier. Subject to any restrictions herein contained, this Agreement shall enure to the benefit of and be binding upon the Parties and their respective successors and permitted assigns.

17.3 Change of Control

(1) Supplier shall provide written notice to the College immediately upon the occurrence of:

- (a) an actual or proposed change of Control of the Supplier; or
- (b) a change in circumstances that may materially adversely affect the Supplier in a way which could impair the Supplier's ability to perform its respective obligations under or in connection with this Agreement;

(each such change, a "**Change of Control**").

17.4 Subcontractors

(1) Supplier may not use any subcontractors or agents in connection with the performance of its obligations hereunder without the College's prior written approval. In the event that Supplier performs the Goods and/or Services by use of any subcontractors or agents, Supplier shall be fully responsible for ensuring that such subcontractor and/or agent complies with all of the obligations hereunder. For greater certainty, Supplier shall remain responsible for compliance with all obligations hereunder notwithstanding the use of a subcontractor or agent.

17.5 Joint and Several

(1) Where two or more persons execute this Agreement as the Supplier, the liability under this Agreement of such persons executing this Agreement shall be joint and several.

17.6 Governing Law

(1) This Agreement shall be governed by and construed in accordance with the laws of the Province of Ontario and the laws of Canada applicable therein. The provisions of this Section 17.6 shall survive and remain in full force and effect following any termination or expiry of this Agreement.

17.7 Relationship

(1) This Agreement shall not create or confer upon the Parties hereto, in any way or for any purpose, any relationship except that of contracting parties, and in particular does not create a partnership, a principal and agent, a joint venture or a landlord and tenant relationship between the College and Supplier or an employer-employee relationship between the College and the employees of and other persons rendering services to Supplier. All dealings by Supplier with its clients, creditors, suppliers, workmen, contractors, agents, employees, and other similar persons shall be conducted exclusively in Supplier's name and Supplier shall not in any manner obligate the College on account thereof, and/or suggest to such persons that the College bears any obligation with respect to same.

17.8 No Waiver

(1) No condoning or waiver by the College of any default or breach by Supplier at any time or times in respect of any of the obligations, terms, covenants and conditions contained in this Agreement to be

performed or observed by Supplier shall be deemed or construed to operate as a waiver of the College's rights under this Agreement in respect of any continuing or subsequent default or breach nor so as to defeat or affect in any way the rights and remedies of the College under this Agreement in respect of any such continuing or subsequent default or breach. Unless expressly waived in writing, the failure of the College to insist in any one or more cases upon the strict performance of any of the obligations, terms, covenants and conditions contained in this Agreement to be performed or observed by Supplier shall not be deemed or construed to operate as a waiver for the future strict performance or observance of such agreements, terms, covenants and conditions.

17.9 Severability

(1) If for any reason any term, covenant or condition of this Agreement, or the application thereof to any person or circumstance, is to any extent held or rendered invalid, unenforceable or illegal, then such term, covenant or condition

- (a) shall be deemed to be independent of the remainder of the Agreement and severable and divisible therefrom, and its invalidity, unenforceability or illegality shall not affect, impair or invalidate the remainder of the Agreement or any part thereof; and
- (b) shall continue to be applicable to and enforceable to the fullest extent permitted by law against any person and circumstance other than those to which it has been held or rendered invalid, unenforceable or illegal.

17.10 Cumulative Remedies

(1) The College's rights and remedies under this Agreement are cumulative and are in addition to and not in substitution for any other rights and remedies available at law or in equity or otherwise. No single or partial exercise by a Party of any right or remedy precludes or otherwise affects the exercise of any other right or remedy to which that Party may be entitled.

17.11 Currency

(1) All references herein to currency are to Canadian currency and all payments shall be made in Canadian currency.

17.12 Language

(1) The Parties acknowledge and agree that they have required that this Agreement be prepared in the English language. Les Parties reconnaissent avoir exigé que les présentes soient rédigées en langue anglaise.

17.13 Counterparts

(1) This Agreement may be executed in one or more counterparts, each of which shall be deemed an original and all of which when taken together shall constitute one and the same agreement. Any counterpart signature transmitted by facsimile or by sending a scanned copy by electronic mail or similar electronic transmission shall be deemed an original signature.

17.14 Further Assurances

(1) The Parties hereby agree from time to time to execute such further agreements or other documents (whether under corporate seal or otherwise) and do all such other acts and things as may be necessary or desirable to give effect to the terms of this Agreement and to carry out and effectuate the provisions hereof.

17.15 Third Parties

(1) Except as expressly set forth herein, nothing contained in this Agreement is intended to confer upon any person not a party hereto any rights, benefits or remedies of any kind or character whatsoever, and no such person shall be deemed a third-party beneficiary under this Agreement.

[Signature page to follow]

IN WITNESS WHEREOF the Parties have executed this Agreement as of the date set out above.

[COLLEGE]

Per: _____
Name:
Title:

Per: _____
Name:
Title:

I have authority to bind the College.

[SERVICE PROVIDER]

Per: _____
Name:
Title:

I have authority to bind the corporation.

SCHEDULE 1
DESCRIPTION OF GOODS AND/OR SERVICES

Agreement Terms	
Term of Agreement (Section 2.1)	March 15, 2022
Warranty Period (Section 5.1(2))	Not Applicable
Payment of Fees (Section 6.1(4))	Subject to Section 6.1(4), all invoices will be paid by the College within 30 days after receipt.
Notices (Section 14)	<p>Notice to the College shall be sent to: Northern College Box 3211 Timmins, ON P4N8R6 Attention: John Harrington, Purchasing Officer Email: harringtonj@northern.on.ca</p> <p>Notice to the Supplier shall be sent to: [Insert address] Attention: ● Email: ● [NTD: To be completed prior to execution of the Agreement.]</p>
Goods and/or Services	
Goods and/or Services	<p>The Scope of the project includes provide consultation and implementation resources service for the redesign and restructure following websites:</p> <ul style="list-style-type: none"> • https://www.northernc.on.ca • https://www.mynorthern.ca • noraction.northern.on.ca <p>See Schedule 1A for further information.</p>
Goods Specifications	Not Applicable
Acceptance Criteria	N/A
Service Requirements	TBD
Service Levels	Response to inquiries within 48 hours.
Timetable	See Schedule 1B
Fees and Reimbursable Expenses	
Fees for Goods	[Note: To be inserted from successful Proponent's Proposal.] Schedule 1B
Fees for Services	[Note: To be inserted from successful Proponent's Proposal.] Schedule 1B
Reimbursable Expenses	Travel: N/A Accommodations: N/A

Reporting and Project Management	
Reporting and Project Management	Supplier Project Leader: [●] College Project Leader: [●]

SCHEDULE 2

INSURANCE REQUIREMENTS

Supplier shall, at its sole cost and expense, put in effect and maintain for the Term, with insurers having a secure A.M. best rating of B+ or greater, or the equivalent, the following insurance:

■	Ontario Workplace Safety and Insurance Board coverage or General Employers Liability Insurance as required by law
■	<p>Comprehensive commercial general liability insurance in respect of the Supplier and all obligations and operations of the Supplier as outlined in this Agreement, against claims for bodily injury, including personal injury and death, and property damage or loss, indemnifying and protecting the Supplier, its employees, servants, volunteers, agents and invitees, to the inclusive limit of not less than \$5,000,000 per occurrence and in the aggregate. Such insurance shall specifically state by its wording or by endorsement that:</p> <ul style="list-style-type: none">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 liability arising in the course of performance of Supplier obligations under, or otherwise in connection with, the Agreement;b) the policy includes 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, and employees as additional insured's;c) the policy contains 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; andd) the policy shall contain a waiver of subrogation against the College, its board of governors, trustees, officers, employees, servants and agents.
■	<p>Professional Liability Insurance indemnifying and protecting the Supplier, its respective employees, servants, volunteers, agents and invitees, to the inclusive limit of not less than \$5,000,000. Such insurance shall specifically state by its wording or by endorsement that</p> <ul style="list-style-type: none">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 Agreement;b) the policy contains 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; andc) the policy shall contain a waiver of subrogation against the College, its board of governors, trustees, officers, employees, servants and agents.

<input type="checkbox"/>	<p>Malpractice Liability Insurance indemnifying and protecting the Supplier, its respective employees, servants, volunteers, agents and invitees, to the inclusive limit of not less than \$5,000,000. Such insurance shall specifically state by its wording or by endorsement that</p> <ul style="list-style-type: none">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 Agreement;b) the policy contains 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; andc) the policy shall contain a waiver of subrogation against the College, its board of governors, trustees, officers, employees, servants and agents.
<input type="checkbox"/>	<p>All Risk Property and machinery 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.</p>
<input type="checkbox"/>	<p>Automobile Liability insurance with limits of not less than \$5,000,000 per occurrence. 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.</p>
<input checked="" type="checkbox"/>	<p>Privacy & Security (Cyber) Liability Insurance with a limit of not less than \$5,000,000 per occurrence and in the aggregate. The policy shall include the following:</p> <ul style="list-style-type: none">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 Agreement;b) coverage for notification costs and credit monitoring; andc) 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 this Agreement; andd) 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.

<input type="checkbox"/>	<p>Environmental Liability insurance with limits of not less than \$5,000,000 per occurrence. The policy shall include the following:</p> <ul style="list-style-type: none">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 Agreement;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 Agreement; andc) 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.
--------------------------	---

All such policies of insurance 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 30 days before the effective date thereof.

The Supplier shall be responsible for payment of all amounts within the deductible or self-insured retention under each policy of insurance. All insurance policies required pursuant to this Schedule 2 shall be primary and shall not call into contribution any insurance available to the College.

SCHEDULE 3
COLLEGE POLICIES

N/A