



Request for Proposals
For
General Contracting Services for the Renovation of the Executive Offices

Request for Proposals No.: **PRD23-22**

Issued: **Friday, July 28, 2023**

Submission Deadline: **Tuesday, August 22, 2023 – no later than 2:00:00 PM ET**

TABLE OF CONTENTS

PART 1 – INVITATION AND SUBMISSION INSTRUCTIONS	3
1.1 Invitation to Proponents	3
1.2 RFP Contact.....	3
1.3 Contract for Deliverables.....	4
1.4 RFP Timetable	4
1.5 Submission Instructions	5
PART 2 – EVALUATION, NEGOTIATION AND AWARD	7
2.1 Stages of Evaluation and Negotiation	7
2.2 Stage I – Mandatory Submission Requirements.....	7
2.3 Stage II – Evaluation	7
2.4 Stage III – Pricing.....	7
2.5 Stage IV – Ranking and Contract Negotiations.....	8
PART 3 – TERMS AND CONDITIONS OF THE RFP PROCESS	9
3.1 General Information and Instructions	9
3.2 Communication after Issuance of RFP	10
3.3 Notification and Debriefing	10
3.4 Conflict of Interest and Prohibited Conduct.....	11
3.5 Confidential Information	13
3.6 Procurement Process Non-Binding.....	14
3.7 Governing Law and Interpretation.....	14
APPENDIX A – FORM OF AGREEMENT	16
Article 1 – INTERPRETATION	16
APPENDIX B – RFP PARTICULARS	37
A. THE DELIVERABLES	37
A.1 BACKGROUND	37
A.2 SCOPE OF WORK	37
A.3 DOCUMENT PACKAGE	37
A.4 TIMELINE.....	37
B. MATERIAL DISCLOSURES	37
C. MANDATORY SUBMISSION REQUIREMENTS	38
D. MANDATORY TECHNICAL REQUIREMENTS.....	38
E. PRE-CONDITIONS OF AWARD	38
F. EVALUATION CRITERIA.....	39
G. PRICE EVALUATION METHOD	40
APPENDIX C – SUBMISSION FORM.....	42
APPENDIX D – PRICING FORM	45

PART 1 – INVITATION AND SUBMISSION INSTRUCTIONS

1.1 Invitation to Proponents

1.1.1 Invitation

This Request for Proposals (the “RFP”) is an invitation by The Sir Sandford Fleming College of Applied Arts and Technology (“the College”) to prospective proponents to submit proposals for **General Contracting Services for the Renovation of the Executive Offices**, as further described in Section A of the RFP Particulars (Appendix B) (the “Deliverables”).

Located in the heart of Central Ontario, Fleming College serves students and local communities at its campus locations in Peterborough, Lindsay, Haliburton and Cobourg. The College offers a range of study areas with more than 100 full-time programs in Arts and Heritage, Business, Environmental and Natural Resource Sciences, General Arts and Sciences, Health and Wellness, Justice and Community Development, Trades and Technology, and Continuing Education. Currently, Fleming has more than 6,500 full-time students, which includes about 2,000 international students from more than 30 countries. An additional 10,000 students take part-time studies.

Fleming College aspires to create prosperity and transform communities through education and innovation. By empowering students – giving them opportunities for innovative education, research and real-world experiences – they can build better lives, better communities, and a better world. Fleming further strives to ensure all students and staff feel supported and included within its campus communities. Regarded as a leader in sustainability among North American post-secondary institutions, Fleming’s academic areas of specialization include environmental and natural resource sciences, trades and technology, and art, heritage, and design studies.

1.1.2 Proponent must be Single Entity

The proponent must be a single legal entity that, if selected, intends to negotiate and enter into the contract with the College. If the proposal is being submitted jointly by two (2) or more separate entities, the proposal must identify only one of those entities as the “proponent”. The proponent will be responsible for the performance of the Deliverables.

1.1.3 Bidding System Registration

All proponents must have a vendor account with the College’s electronic bidding system at: <https://ssfc.bonfirehub.ca> and must be registered as a plan taker for this opportunity. This will enable the proponent to download the solicitation document, to ask questions, to receive addenda email notifications, download addenda, and submit their proposal electronically through the bidding system.

1.2 RFP Contact

To contact the College in relation to this RFP, proponents must initiate the communication electronically through the bidding system. The College will not accept any proponent’s communications by any other means, except as specifically stated in this RFP.

For the purposes of this procurement process, the “RFP Contact” will be:

Todd Harris, Senior Purchasing Officer, todd.harris@flemingcollege.ca

Proponents should only contact the RFP Contact where specifically instructed to in this RFP. All other communication in relation to this RFP, up to and including the submission of the proposal, must be through the bidding system, as described above.

Proponents and their representatives are not permitted to contact any employees, officers, agents, elected or appointed officials, or other representatives of the College, other than the RFP Contact, concerning matters regarding this RFP. Failure to adhere to this rule may result in the disqualification of the proponent and the rejection of the proponent's proposal.

1.3 Contract for Deliverables

1.3.1 Type of Contract

The selected proponent will be requested to enter into direct contract negotiations to finalize an agreement with the College for the provision of the Deliverables. The terms and conditions found in the Form of Agreement (Appendix A) are to form the basis for commencing negotiations between the College and the selected proponent.

1.3.2 Term of Contract

The term of the Agreement will be in effect until the completion of the Deliverables.

1.4 RFP Timetable

1.4.1 Key Dates

Issue Date of RFP	Friday, July 28, 2023
Mandatory Site Visit	Thursday, August 3, 2023 at 10:00 AM ET
Deadline for Questions	Wednesday, August 9, 2023 – no later than 4:00:00 PM ET
Deadline for Issuing Addenda	Tuesday, August 15, 2023 by 4:00 PM ET
Submission Deadline	Tuesday, August 22, 2023 – no later than 2:00:00 PM ET
Rectification Period	Two (2) business days
Anticipated Ranking of Proponents	August 29, 2023
Contract Negotiation Period	Three (3) calendar days
Anticipated Execution of Agreement	On or around September 5, 2023

The RFP timetable is tentative only and may be changed by the College at any time. For greater clarity, business days means all days that the College is open for business.

1.4.2 Mandatory Site Visit / Pre-Bid Meeting (if applicable)

A **mandatory site visit** will be held **Thursday, August 3, 2023 at 10:00 AM ET** at Fleming College – Sutherland Campus in Peterborough. **The address is 599 Brealey Drive, Peterborough, Ontario, K9J 7B1.** The site visit will start in the lobby at the main entrance to the Sutherland Campus. It will be led by the **Manager, Capital Projects, Facilities Services and Support**, or their designate. Contractors will be required to sign an attendance sheet. Responses from Contractors who did not sign the attendance sheet will not be considered. Contractors will

be deemed to have carefully examined all conditions affecting the site and work to be done thereon. They shall accept sole responsibility for any error or neglect on their part in this respect.

1.5 Submission Instructions

1.5.1 Submission of Proposals

Proposals must be submitted electronically through the bidding system at:

<https://ssfc.bonfirehub.ca/opportunities/69561>

Submissions by other methods will not be accepted.

In the event of any technical issues, proponents should contact the bidding system's technical support.

1.5.2 Proposals to be Submitted on Time

Proposals must be finalized and fully uploaded in the bidding system on or before the Submission Deadline. The time of receipt of proposals shall be determined by the bidding system web clock. Late submissions will not be accepted by the bidding system and will be disqualified as late.

Proponents are cautioned that the timing of submission is based on when the proposal is received by the bidding system, not when a proposal is submitted by a proponent. As transmission can be delayed due to file transfer size, transmission speed or other technical factors, proponents should plan to submit proposals well in advance of the Submission Deadline to avoid submitting late due to technical issues. Proponents submitting near the Submission Deadline do so at their own risk.

The bidding system will send a confirmation email to the proponent advising when the proposal was submitted successfully. If you do not receive a confirmation email, contact the bidding system's technical support immediately.

1.5.3 Proposals to be Submitted in Prescribed Format

Proposal materials should be prepared and submitted in accordance with the instructions in the bidding system, including any maximum upload file size.

Documents should not be embedded within uploaded files, as the embedded files may not be accessible or evaluated.

1.5.4 Amendment of Proposals

Proponents may amend their proposals prior to the Submission Deadline. However, the proponent is solely responsible for ensuring that the amended proposal is received by the bidding system by the Submission Deadline.

1.5.5 Withdrawal of Proposals

At any time throughout the RFP process until the execution of a written agreement for provision of the Deliverables, a proponent may withdraw a submitted proposal. Prior to the Submission Deadline, proponents may withdraw a submitted proposal through the bidding system. To

withdraw a proposal after the Submission Deadline, a notice of withdrawal must be sent to the RFP Contact and must be signed by an authorized representative of the proponent.

[End of Part 1]

PART 2 – EVALUATION, NEGOTIATION AND AWARD

2.1 Stages of Evaluation and Negotiation

The College will conduct the evaluation of proposals and negotiations in the following stages:

2.2 Stage I – Mandatory Submission Requirements

Stage I will consist of a review to determine which proposals comply with all of the mandatory submission requirements. If a proposal fails to satisfy all of the mandatory submission requirements, the College will issue the proponent a rectification notice identifying the deficiencies and providing the proponent an opportunity to rectify the deficiencies. If the proponent fails to satisfy the mandatory submission requirements within the Rectification Period, its proposal will be rejected. The Rectification Period will begin to run from the date and time that the College issues a rectification notice to the proponent. The mandatory submission requirements are set out in Section C of the RFP Particulars (Appendix B).

2.3 Stage II – Evaluation

Stage II will consist of the following two sub-stages:

2.3.1 Mandatory Technical Requirements

The College will review the proposals to determine whether the mandatory technical requirements as set out in Section D of the RFP Particulars (Appendix B) have been met. If a proposal fails to satisfy all of the mandatory technical requirements, the College will issue the proponent a rectification notice identifying the deficiencies and providing the proponent an opportunity to rectify the deficiencies. The rectification process for these requirements may occur after any rectification process for mandatory submission requirements. Proposals that do not satisfy the mandatory technical requirements within the Rectification Period will be rejected.

2.3.2 Non-Price Rated Criteria

The College will evaluate each qualified proposal on the basis of the non-price rated criteria as set out under Evaluation Criteria in Section F of the RFP Particulars (Appendix B).

2.4 Stage III – Pricing

Stage III will consist of a scoring of the submitted pricing of each qualified proposal in accordance with the price evaluation method set out in Section G of the RFP Particulars (Appendix B). The evaluation of price will be undertaken after the evaluation of mandatory requirements and rated criteria has been completed.

In the event that a proponent's pricing appears to be abnormally low in relation to the Deliverables, the College may require the proponent to provide a detailed explanation of the pricing information to account for the low level of price and confirm that all requirements in respect of the Deliverables have been taken into account. If the proponent is unable to satisfactorily account for the abnormally low pricing, the College may reject the proposal. The College may also reject any proposal that contains unbalanced pricing. Pricing may be considered unbalanced where nominal or significantly understated prices are proposed for some elements of the Deliverables and inflated prices are proposed for other elements of the Deliverables. Unbalanced pricing includes,

but is not limited to, “front-loaded” pricing which contains inflated pricing for Deliverables to be provided or completed at the beginning of the contract, offset by understated pricing for Deliverables to be provided or completed later in the contract.

2.5 Stage IV – Ranking and Contract Negotiations

2.5.1 Ranking of Proponents

After the completion of Stage III, all scores from Stage II and Stage III will be added together and the proponents will be ranked based on their total scores. The top-ranked proponent will receive a written invitation to enter into direct contract negotiations to finalize the agreement with the College. In the event of a tie, the selected proponent will be the proponent with the highest score on the non-price rated criteria.

2.5.2 Contract Negotiation Process

Any negotiations will be subject to the process rules contained in the Terms and Conditions of the RFP Process (Part 3) and will not constitute a legally binding offer to enter into a contract on the part of the College or the proponent, and there will be no legally binding relationship created with any proponent prior to the execution of a written agreement. The terms and conditions found in the Form of Agreement (Appendix A) are to form the basis for commencing negotiations between the College and the selected proponent. Negotiations may include requests by the College for supplementary information from the proponent to verify, clarify, or supplement the information provided in its proposal or to confirm the conclusions reached in the evaluation, and may include requests by the College for improved pricing or performance terms from the proponent.

2.5.3 Time Period for Negotiations

The College intends to conclude negotiations and finalize the agreement with the top-ranked proponent during the Contract Negotiation Period, commencing from the date the College invites the top-ranked proponent to enter negotiations. A proponent invited to enter into direct contract negotiations should therefore be prepared to satisfy the pre-conditions of award listed in Section E of the RFP Particulars (Appendix B), provide requested information in a timely fashion and conduct its negotiations expeditiously.

2.5.4 Failure to Enter into Agreement

If the pre-conditions of award listed in Section E of the RFP Particulars (Appendix B) are not satisfied or if the parties cannot conclude negotiations and finalize the agreement for the Deliverables within the Contract Negotiation Period, the College may discontinue negotiations with the top-ranked proponent and may invite the next-best-ranked proponent to enter into negotiations. This process will continue until an agreement is finalized, until there are no more proponents remaining that are eligible for negotiations, or until the College elects to cancel the RFP process.

2.5.5 Notification of Negotiation Status

Other proponents that may become eligible for contract negotiations may be notified at the commencement of the negotiation process with the top-ranked proponent.

[End of Part 2]

PART 3 – TERMS AND CONDITIONS OF THE RFP PROCESS

3.1 General Information and Instructions

3.1.1 Proponents to Follow Instructions

Proponents should structure their proposals in accordance with the instructions in this RFP. Where information is requested in this RFP, any response made in a proposal should reference the applicable section numbers of this RFP.

A proponent who submits conditions, options, variations, or contingent statements either as part of its proposal or after receiving notice of selection, may be disqualified.

3.1.2 Proposals in English

All proposals are to be in English only.

3.1.3 No Incorporation by Reference

The entire content of the proponent's proposal should be submitted in a fixed format, and the content of websites or other external documents referred to in the proponent's proposal but not attached will not be considered to form part of its proposal.

3.1.4 Past Performance

In the evaluation process, the College may consider the proponent's past performance or conduct on previous contracts with the College or other institutions.

3.1.5 Information in RFP Only an Estimate

The College and its advisers make no representation, warranty, or guarantee as to the accuracy of the information contained in this RFP or issued by way of addenda. Any quantities shown or data contained in this RFP or provided by way of addenda are estimates only, and are for the sole purpose of indicating to proponents the general scale and scope of the Deliverables. It is the proponent's responsibility to obtain all the information necessary to prepare a proposal in response to this RFP.

3.1.6 Proponents to Bear Their Own Costs

The proponent will bear all costs associated with or incurred in the preparation and presentation of its proposal, including, if applicable, costs incurred for interviews or demonstrations.

3.1.7 Proposal to be Retained by the College

The College will not return the proposal or any accompanying documentation submitted by a proponent.

3.1.8 No Guarantee of Volume of Work or Exclusivity of Contract

The College makes no guarantee of the value or volume of work to be assigned to the successful proponent. The agreement to be negotiated with the selected proponent will not be an exclusive

contract for the provision of the described Deliverables. The College may contract with others for goods and services the same as or similar to the Deliverables or may obtain such goods and services internally.

3.2 Communication after Issuance of RFP

3.2.1 Proponents to Review RFP

Proponents should promptly examine all of the documents comprising this RFP and may direct questions or seek additional information in writing through the bidding system on or before the Deadline for Questions. No such communications are to be sent or initiated through any other means. The College is under no obligation to provide additional information, and the College is not responsible for any information provided by or obtained from any source other than the RFP Contact or the bidding system. It is the responsibility of the proponent to seek clarification on any matter it considers to be unclear. The College is not responsible for any misunderstanding on the part of the proponent concerning this RFP or its process.

3.2.2 All New Information to Proponents by Way of Addenda

This RFP may be amended only by addendum in accordance with this section. If the College, for any reason, determines that it is necessary to provide additional information relating to this RFP, such information will be communicated to all proponents by addendum posted in the bidding system. Each addendum forms an integral part of this RFP and may contain important information, including significant changes to this RFP. Proponents are responsible for obtaining all addenda issued by the College.

3.2.3 Post-Deadline Addenda and Extension of Submission Deadline

If the College determines that it is necessary to issue an addendum after the Deadline for Issuing Addenda, the College may extend the Submission Deadline for a reasonable period of time.

3.2.4 Verify, Clarify, and Supplement

When evaluating proposals, the College may request further information from the proponent or third parties in order to verify, clarify or supplement the information provided in the proponent's proposal. The College may revisit, re-evaluate, and rescore the proponent's response or ranking on the basis of any such information.

3.3 Notification and Debriefing

3.3.1 Notification to Other Proponents

Once an agreement is executed by the College and a proponent, the other proponents may be notified directly in writing and will be notified by public posting of the outcome of the procurement process.

3.3.2 Debriefing

Proponents may request a debriefing after receipt of a notification of the outcome of the procurement process. All requests must be in writing to the RFP Contact and must be made within sixty (60) days of such notification. The RFP Contact will contact the proponent's representative

to schedule the debriefing. Debriefings may occur in person at the College's location or by way of conference call or other remote meeting format as prescribed by the College.

3.3.3 Procurement Protest Procedure

Any proponent with concerns about the RFP process is required to attend a debriefing prior to proceeding with a protest.

If, after attending a debriefing, the proponent wishes to challenge the RFP process, it should provide written notice to the RFP Contact in accordance with applicable procurement protest procedures. The written notice must contain:

- (a) a clear statement as to which procurement the proponent wishes to challenge;
- (b) a clear explanation of the proponent's concerns with the procurement, including specifics as to why it disagrees with the procurement process or its outcome; and
- (c) the proponent's contact details, including name, telephone number and email address.

The College will send an initial response to acknowledge receipt of the proponent's notice and indicate the date by which the College will provide the proponent with a formal response.

3.4 Conflict of Interest and Prohibited Conduct

3.4.1 Conflict of Interest

For the purposes of this RFP, the term "Conflict of Interest" includes, but is not limited to, any situation or circumstance where:

- (a) in relation to the RFP process, the proponent has an unfair advantage or engages in conduct, directly or indirectly, that may give it an unfair advantage, including but not limited to:
 - (i) having or having access to confidential information of the College in the preparation of its proposal that is not available to other proponents;
 - (ii) having been involved in the development of the RFP, including having provided advice or assistance in the development of the RFP;
 - (iii) receiving advice or assistance in the preparation of its response from any individual or entity that was involved in the development of the RFP;
 - (iv) communicating with any person with a view to influencing preferred treatment in the RFP process (including but not limited to the lobbying of decision makers involved in the RFP process); or
 - (v) engaging in conduct that compromises, or could be seen to compromise, the integrity of the open and competitive RFP process or render that process non-competitive or unfair;
- (b) in relation to the performance of its contractual obligations under a contract for the Deliverables, the proponent's other commitments, relationships, or financial interests:

- (i) could, or could be seen to, exercise an improper influence over the objective, unbiased, and impartial exercise of its independent judgement; or
- (ii) could, or could be seen to, compromise, impair, or be incompatible with the effective performance of its contractual obligations.

3.4.2 Disqualification for Conflict of Interest

The College may disqualify a proponent for any conduct, situation, or circumstances, determined by the College, in its sole and absolute discretion, to constitute a Conflict of Interest as defined above.

An existing supplier of the College may be precluded from participating in the RFP process in instances where the College has determined that the supplier has a competitive advantage that cannot be adequately addressed to mitigate against unfair advantage. This may include, without limitation, situations in which an existing supplier is in a position to create unnecessary barriers to competition through the manner in which it performs its existing contracts, or situations where the incumbent fails to provide the information within its control or otherwise engages in conduct obstructive to a fair competitive process.

3.4.3 Disqualification for Prohibited Conduct

The College may disqualify a proponent, rescind an invitation to negotiate, or terminate a contract subsequently entered into if the College determines that the proponent has engaged in any conduct prohibited by this RFP.

3.4.4 Prohibited Proponent Communications

Proponents must not engage in any communications that could constitute a Conflict of Interest and should take note of the Conflict of Interest declaration set out in the Submission Form (Appendix C).

3.4.5 Proponent Not to Communicate with Media

Proponents must not at any time directly or indirectly communicate with the media in relation to this RFP or any agreement entered into pursuant to this RFP without first obtaining the written permission of the RFP Contact.

3.4.6 No Lobbying

Proponents must not, in relation to this RFP or the evaluation and selection process, engage directly or indirectly in any form of political or other lobbying whatsoever to influence the selection of the successful proponent(s).

3.4.7 Illegal or Unethical Conduct

Proponents must not engage in any illegal business practices, including activities such as bid-rigging, price-fixing, bribery, fraud, coercion, or collusion. Proponents must not engage in any unethical conduct, including lobbying, as described above, or other inappropriate communications; offering gifts to any employees, officers, agents, elected or appointed officials,

or other representatives of the College; deceitfulness; submitting proposals containing misrepresentations or other misleading or inaccurate information; or any other conduct that compromises or may be seen to compromise the competitive process provided for in this RFP.

3.4.8 Supplier Suspension

The College may suspend a supplier from participating in its procurement processes for prescribed time periods based on past performance or based on inappropriate conduct, including but not limited to the following:

- (a) illegal or unethical conduct as described above;
- (b) the refusal of the supplier to honour its submitted pricing or other commitments;
- (c) engaging in litigious conduct, bringing frivolous or vexatious claims in connection with the Client's procurement processes or contracts, or engaging in conduct obstructive to a fair competitive process;
- (d) any conduct, situation, or circumstance determined by the College, in its sole and absolute discretion, to have constituted an undisclosed Conflict of Interest;
- (e) the existence of any current or previous litigation within the past five (5) years from the Submission Deadline between the College and the proponent.

In advance of a decision to suspend a supplier, the College will notify the supplier of the grounds for the suspension and the supplier will have an opportunity to respond within a timeframe stated in the notice. Any response received from the supplier within that timeframe will be considered by the College in making its final decision.

3.5 Confidential Information

3.5.1 Confidential Information of the College

All information provided by or obtained from the College in any form in connection with this RFP either before or after the issuance of this RFP

- (a) is the sole property of the College and must be treated as confidential;
- (b) is not to be used for any purpose other than replying to this RFP and the performance of any subsequent contract for the Deliverables;
- (c) must not be disclosed without prior written authorization from the College; and
- (d) must be returned by the proponent to the College immediately upon the request of the College.

3.5.2 Confidential Information of Proponent

Proponents are advised that the disclosure of information received in response to or in connection with the RFP will be in accordance with the provisions of all applicable access to information and privacy legislation including, primarily, Ontario's *Freedom of Information and Protection of Privacy*

Act (“FIPPA”). Proponents are advised to consult with their own legal advisors regarding the appropriate way to identify such information.

A proponent should identify any information in its proposal or any accompanying documentation supplied in confidence for which confidentiality is to be maintained by the College. The confidentiality of such information will be maintained by the College, except as otherwise required by law or by order of a court or tribunal. Proponents are advised that their proposals will, as necessary, be disclosed, on a confidential basis, to advisers retained by the College to advise or assist with the RFP process, including the evaluation of proposals. If a proponent has any questions about the collection and use of personal information pursuant to this RFP, questions are to be submitted to the RFP Contact.

3.6 Procurement Process Non-Binding

3.6.1 No Contract A and No Claims

This procurement process is not intended to create and will not create a formal, legally binding bidding process and will instead be governed by the law applicable to direct commercial negotiations. For greater certainty and without limitation:

- (a) this RFP will not give rise to any Contract A–based tendering law duties or any other legal obligations arising out of any process contract or collateral contract; and
- (b) neither the proponent nor the College will have the right to make any claims (in contract, tort, or otherwise) against the other with respect to the award of a contract, failure to award a contract or failure to honour a proposal submitted in response to this RFP.

3.6.2 No Contract until Execution of Written Agreement

This RFP process is intended to identify prospective suppliers for the purposes of negotiating potential agreements. No legal relationship or obligation regarding the procurement of any good or service will be created between the proponent and the College by this RFP process until the successful negotiation and execution of a written agreement for the acquisition of such goods and/or services.

3.6.3 Non-Binding Price Estimates

While the pricing information provided in proposals will be non-binding prior to the execution of a written agreement, such information will be assessed during the evaluation of the proposals and the ranking of the proponents. Any inaccurate, misleading, or incomplete information, including withdrawn or altered pricing, could adversely impact any such evaluation or ranking or the decision of the College to enter into an agreement for the Deliverables.

3.6.4 Cancellation

The College may cancel or amend the RFP process without liability at any time.

3.7 Governing Law and Interpretation

These Terms and Conditions of the RFP Process (Part 3):

- (a) are intended to be interpreted broadly and independently (with no particular provision intended to limit the scope of any other provision);
- (b) are non-exhaustive and will not be construed as intending to limit the pre-existing rights of the parties to engage in pre-contractual discussions in accordance with the common law governing direct commercial negotiations; and
- (c) are to be governed by and construed in accordance with the laws of the province of Ontario and the federal laws of Canada applicable therein.

[End of Part 3]

APPENDIX A – FORM OF AGREEMENT

Schedule 1

General Terms and Conditions

ARTICLE 1 – INTERPRETATION

1.01 Defined Terms

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

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

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

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

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

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

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

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

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

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

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

“Indemnified Parties” means the College and the College’s Board of Governors, trustees, directors, officers, agents, employees, and volunteers;

“Industry Standards” include, but are not limited to (a) the provision of any and all labour, supplies, equipment and other goods or services that are necessary and can reasonably be understood or inferred to be included within the scope of the Contract or customarily furnished by Persons providing Deliverables of the type provided hereunder in similar situations in Ontario and; (b) adherence to commonly accepted norms of ethical business practices, which shall include the Supplier establishing, and ensuring adherence to, precautions to prevent its Related Entities from providing or offering gifts or hospitality of greater than nominal value to any person acting on behalf of or employed by the College;

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

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

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

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

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

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

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

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

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

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

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

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

ARTICLE 2 – GENERAL TERMS

2.01 No Indemnities from the College

Notwithstanding anything else in the Contract, any express or implied reference to the College providing an indemnity or any other form of indebtedness or contingent liability that would directly or indirectly increase the indebtedness or contingent liabilities of the College, whether at the time of execution of the Contract or at any time during the Term, shall be void and of no legal effect.

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

2.02 No Claims or Recourse against the Crown

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

The Supplier unconditionally and irrevocably waives and releases all other claims, remedies, recourse or rights against the Crown in right of Ontario in respect of the Contract, and agrees that it shall have no remedies, recourse or rights in respect of the Contract against the Crown in right of Ontario, any Ministry, Minister, agent, agency, servant, employee or representative of the Crown or any director, officer, servant, agent, employee or representative of a Crown agency or a corporation in which the Crown holds a majority of the shares or appoints a majority of the directors or members, other than against the College and its assets.

2.03 Entire Contract

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

2.04 Severability

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

2.05 Force Majeure

Neither party shall be liable for damages caused by delay or failure to perform its obligations under the Contract where such delay or failure is caused by an event beyond its reasonable control. The parties agree that an event shall not be considered beyond one’s reasonable control if a reasonable business person applying due diligence in the same or similar circumstances under the same or similar obligations as those contained in the Contract would have put in place contingency plans to either materially mitigate or negate the effects of such event. Without limiting the generality of the foregoing, the parties agree that force majeure events shall include natural disasters and acts of

war, insurrection and terrorism but shall not include shortages or delays relating to supplies or services. If a party seeks to excuse itself from its obligations under this Contract due to a force majeure event, that party shall immediately notify the other party of the delay or non-performance, the reason for such delay or non-performance and the anticipated period of delay or non-performance. If the anticipated or actual delay or non-performance exceeds fifteen (15) Business Days, the other party may immediately terminate the Contract by giving notice of termination and such termination shall be in addition to the other rights and remedies of the terminating party under the Contract, at law or in equity.

2.06 Notices by Prescribed Means

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

2.07 Governing Law

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

ARTICLE 3 – RELATIONSHIP BETWEEN COLLEGE AND SUPPLIER

3.01 Supplier's Power to Contract

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

3.02 Representatives May Bind the Parties

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

3.03 Supplier Not a Partner, Agent or Employee

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

3.04 Responsibility of Supplier

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

3.05 No Subcontracting or Assignment

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

3.06 Duty to Disclose Change of Control

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

3.07 Conflict of Interest

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

3.08 Contract Binding

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

ARTICLE 4 – PERFORMANCE BY SUPPLIER

4.01 Commencement of Performance

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

4.02 Deliverables Warranty

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

4.03 **AODA**

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

4.04 **College Policies**

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

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

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

4.05 **Criminal Background Check**

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

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

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

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

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

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

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

4.06 Use and Access Restrictions

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

4.07 Notification by Supplier to the College

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

4.08 Failure to Enforce Not a Waiver

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

4.09 Changes by Written Amendment Only

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

4.10 Supplier to Comply with Reasonable Change Requests

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

4.11 Pricing for Requested Changes

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

4.12 Non-Exclusive Contract, Work Volumes

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

4.13 Performance by Specified Individuals Only

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

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

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

4.15 Health Emergency

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

- (a) restrict or limit access of the Supplier and its Related Entities to any part of the College Property, including any Building located on the College Property, and to any Off-site Location where work is being performed on behalf of the College.
- (b) require the Supplier to operate with reduced staffing levels which shall be determined by the College in its absolute discretion for work that is completed on College Property or on behalf of the College at an Off-site Location.
- (c) require all occupants to comply with reasonable measures imposed in respect thereof by the College, including but not limited to health screening, the use of hand washing and other

sanitation products directly related to the management of the health threat, attendance at mandatory training sessions, and the use of additional protective clothing by all Supplier's personnel such as protective barriers, gloves and masks.

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

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

ARTICLE 5 – PAYMENT FOR PERFORMANCE AND AUDIT

5.01 Payment According to Contract Rates

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

5.02 Hold Back or Set Off

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

5.03 No Expenses or Additional Charges

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

5.04 Payment of Taxes and Duties

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

5.05 Withholding Tax

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

5.06 Interest on Late Payment

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

5.07 Document Retention and Audit

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

ARTICLE 6 – CONFIDENTIALITY

6.01 Confidentiality and Promotion Restrictions

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

6.02 College Confidential Information

During and following the Term, the Supplier shall: (a) keep all College Confidential Information confidential and secure; (b) limit the disclosure of College Confidential Information to only those of its directors, officers, employees, agents, partners, affiliates, volunteers or subcontractors who have a need to know it for the purpose of providing the Deliverables and who have been specifically authorized to have such disclosure; (c) not directly or indirectly disclose, destroy, exploit or use any College Confidential Information (except for the purpose of providing the Deliverables, or except if required by order of a court or tribunal), without first obtaining: (i) the written consent of the College and (ii) in respect of any College Confidential Information about any third-party, the written consent of such third-party; (d) provide College Confidential Information to the College on demand; and (e)

return all College Confidential Information to the College before the end of the Term, with no copy or portion kept by the Supplier.

6.03 Restrictions on Copying

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

6.04 Injunctive and Other Relief

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

6.05 Notice and Protective Order

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

6.06 FIPPA Records and Compliance

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

or tribunal or pursuant to a legal proceeding and the provisions of this paragraph shall prevail over any inconsistent provisions in the Contract.

6.07 Survival

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

ARTICLE 7 – INTELLECTUAL PROPERTY

7.01 College Intellectual Property

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

7.02 No Use of the College Insignia

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

7.03 Ownership of Newly Created Intellectual Property

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

7.04 Supplier's Grant of License

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

7.05 No Restrictive Material in Deliverables

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

7.06 Supplier Representation and Warranty Regarding Third-Party Intellectual Property

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

7.07 Survival

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

ARTICLE 8 – INDEMNITIES AND INSURANCE

8.01 Supplier Indemnity

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

8.02 Insurance

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

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

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

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

- (c) A cross-liability clause which shall have the effect of insuring each person, firm or corporation named in the policy as an insured in the same manner and to the same extent as if a separate policy had been issued to each; and
- (d) A waiver of subrogation against the College, its board of governors, trustees, officers, employees, servants and agents.

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

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

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

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

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

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

If the Deliverables include performing medical services:

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

If the Deliverables include performing professional services in information technology:

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

occurrence and in the aggregate as those limits available under the professional liability insuring agreement];

- (c) be maintained for an additional 3-year period after expiration or termination of the Contract by way of annual policy renewal, or purchase of extended reporting period coverage.

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

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

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

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

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

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

8.03 **Proof of Insurance**

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

8.04 **Subcontractor Insurance**

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

8.05 Proof of WSIB Coverage

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

ARTICLE 9 – TERMINATION, EXPIRY AND EXTENSION

9.01 Immediate Termination of Contract

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

9.02 Dispute Resolution by Rectification Notice

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

9.03 Termination on Notice

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

9.04 Supplier's Obligations on Termination

On termination of the Contract, the Supplier shall, in addition to its other obligations under the Contract and at law (a) at the request of the College, provide the College with any completed or partially completed Deliverables; (b) provide the College with a report detailing: (i) the current state of the provision of Deliverables by the Supplier at the date of termination; and (ii) any other

information requested by the College pertaining to the provision of the Deliverables and performance of the Contract; (c) execute such documentation as may be required by the College to give effect to the termination of the Contract; and (d) comply with any other instructions provided by the College, including but not limited to instructions for facilitating the transfer of its obligations to another Person. This paragraph shall survive any termination of the Contract.

9.05 Supplier's Payment Upon Termination

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

9.06 Termination in Addition to Other Rights

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

9.07 Expiry and Extension of Contract

The Contract shall expire on the original Expiry Date, unless the College exercises its option to extend the Contract as set out in the Contract Letter, such extension to be upon the same terms (including the Rates in effect at the time of extension), conditions and covenants contained in the Contract. The option shall be exercisable by the College giving notice to the Supplier not less than thirty (30) days prior to the original Expiry Date. The notice shall set forth the precise duration of the extension.

Schedule 2

Supplementary General Conditions – Minor Construction Work

The following Supplementary General Conditions—Minor Construction Work are hereby added to the *General Terms and Conditions* of Fleming College (the “College”):

S.1. Definitions

“Contractor” means the Supplier as further defined in the Contract.

S.2. Occupational Health and Safety Act

The Contractor shall:

- (a) be the designated "constructor", as defined in the *Occupational Health and Safety Act* (“OHSA”), for the work site and shall fulfill the responsibilities of the position under the OHSA, related statutes and regulations;

- (b) comply with the OHSA and ensure that the persons assigned to provide the Deliverables under the Contract adhere to the OHSA and all applicable statutes and regulations; and
- (c) give immediate notice by telephone or personal communication to the College as to any damage or injury, or threat of damage or injury, to persons or property during the performance of the services contemplated by this contract.

The Contractor's failure to comply with any of the above requirements shall be cause for either immediate termination or suspension of the Contract until the deficiency, in the opinion of the College and/or Workplace Safety and Insurance Board ("WSIB") is rectified at no cost to the College.

S.3. Supervisor and Subcontractors

Prior to commencing the work, the Contractor shall identify to the College the designated work site supervisor, the designated health and safety representative, any subcontractors, and any additional personnel representing the Contractor, along with their respective roles and responsibilities in the performance of the Deliverables.

S.4. Protection of the Work and the College's Property

The Contractor shall observe all of the College's procedures with regard to the security of the facility where the Deliverables contemplated by this Contract are performed and shall adequately protect the work, property, and premises of the College. The Contractor shall be responsible for any damages due to any negligent act of the Contractor's employees, agents, contractors, subcontractors and those others for whom the Contractor is responsible.

S.5. Licenses and Permits

The Contractor shall obtain and hold throughout the term of the Contract any and all permits, approvals, and licenses required by any municipal, provincial, or federal government or authority having jurisdiction over the whole, or any part of, the Deliverables to be performed by the Contractor pursuant to the Contract. The Contractor shall provide the College with copies upon request.

S.6. WSIB Assessments

The Contractor shall, at all times, pay, or cause to be paid, any assessment or compensation required to be paid pursuant to *the Workplace Safety and Insurance Act*. Upon failure to do so, the College may withhold an amount equal to any unpaid assessment or compensation from monies due, or to become due, to the Contractor. The College shall not release such withheld funds until the Contractor provides it a statutory declaration that all assessments and any compensation payable to the WSIB have been paid.

S.7. Contractor's Lawful Obligations to its Subcontractors

The Contractor shall comply with the *Construction Act* and other applicable statute and regulation, and discharge its lawful obligations to its sub-contractors. The Contractor shall

satisfy any claims against the Contractor or the College by its sub-contractors. The issuance of the final payment shall not be construed as a representation that the College has made any examination to ascertain:

- (i) how and for what purpose the Contractor has used the monies paid to the Contractor in accordance with the terms of the Contract; or
- (ii) whether the Contractor has discharged the obligations imposed on the Contractor by the *Construction Act*, the *Occupational Health and Safety Act*, or other applicable statute or regulation, noncompliance with which may render the College personally liable for the Contractor's default.

S.8. Co-operation of the Contractor

The College may perform, or retain or permit others to perform other work on or near the work site and may permit public utility companies and others to do work on or near the work site during the Contractor's performance of the Deliverables. The Contractor shall conduct and schedule the performance of the Deliverables and co-operate with those other parties so as to cause as little interference as possible with any such other work being carried out.

S.9. Commencement of the Work

The Contractor may not commence the performance of the Deliverables until the Contractor has:

- (a) received the Contract Award Letter from the College;
- (b) delivered to the College
 - (i) the Contract, duly executed by the Contractor,
 - (ii) the required Contract securities as set out in procurement solicitation document,
 - (iii) the certificate(s) of insurance coverage, covering all required policies and endorsements, complying with the form and amounts specified in procurement solicitation document; and
 - (iv) the performance and labour bonds, complying with the form and amounts specified in the procurement solicitation document; and
 - (v) the construction schedule for the Deliverables; and
- (c) obtained written authorization in the form of a purchase order to commence work on the site from the College.

S.10. Risk and Indemnity

The Contractor shall bear all risk of loss or damage from any cause, which may occur to any part or portion of the Deliverables, until the Deliverables have been completely accepted by the College in writing.

If any loss or damage occurs to the Deliverables before the College accepts the Deliverables in writing, the Contractor shall immediately repair or re-execute any damaged part of the Deliverables at the Contractor's expense.

S.11. Specifications and Materials

The Contractor shall carefully study and compare all specifications, drawings, and other instructions relating to the performance of the Deliverables and comply with the requirements of the Contract. The Contractor shall not substitute any supplies or materials where a specific brand or model has been specified in the Contract without first obtaining written approval from the College.

S.12. Condition of Site

The Contractor shall confine all work to the site. The Contractor shall keep the site free from accumulations of waste material or rubbish caused by the Contractor's activities during the performance of the Deliverables and shall remove all rubbish from the site and the vicinity upon the completion of the work.

S.13. Inspections and Warranty

- a. The Contractor shall complete all of the Deliverables to the satisfaction of the College and in accordance with timelines set out in the Contract. The Contractor shall permit the College Representative and all others authorized by the College, from time to time, at all times to have access to the work for the purposes of inspecting the work. The Contractor shall uncover any work for examination as required by the College at the Contractor's expense when the work has been previously covered up without prior approval or consent from the College.
- b. The Contractor shall rectify any defective or deficient work at the Contractor's own expense to the satisfaction of the College from the date on which the Contractor commences the work pursuant to the Contract to the completion date and for a warranty period of one (1) year after the completion date. An inspection by the College Representative does not relieve the Contractor of responsibility for the quality of the work, or from any obligation to perform the work in accordance with the requirements of this Contract.

S.14. Payment Terms

The Contractor shall submit an invoice monthly for Deliverables completed to date in accordance with the payment schedule set out in the Contract.

The College may adjust any invoice to reflect the College Representative's estimate of the work completed satisfactorily as of the invoice date. Notwithstanding any other provision of the Contract, the Contractor shall not receive any payment from the College for any unacceptable work, unauthorized work, economic loss or loss of profits.

All payments under this Contract shall be subject to the holdback and other provisions of the *Construction Act*.

The Contractor acknowledges that payments do not represent a final evaluation or acceptance of the work by the College.

S.15. Completion of the Deliverables

Completion of the Deliverables occurs when the College Representative determines that the Deliverables have been completed in accordance with this Contract and the College accepts the Deliverables in writing. The College shall not accept the Deliverables in writing unless and until the Contractor;

- (a) has cleaned up and restored the work site to the satisfaction of the College; and
- (b) has rectified any defects as identified in writing by the College.

S.16. Extension of the Completion Date

If the Contractor fails to complete the Deliverables in accordance with the timelines set out in the Contract, the College may elect to do the following:

- (a) extend the completion date by a written notice to the Contractor; or
- (b) terminate the Contract as set out in section 9.01(g) of the College's General Terms and Conditions.

S.17. Construction Act Holdback

The release of the holdback shall be in accordance with the requirements of the *Construction Act*.

Prior to release of the holdback the Contractor shall submit to the College the following documents:

- (a) WSIB Certificate of Clearance dated after the commencement of the 60-day lien period;
- (b) a Standard Statutory Declaration; and
- (c) proof of publication of certification of substantial performance under Section 32 of the *Construction Act*.

Subject to the *Construction Act*, upon expiration of the 60-day lien period and confirmation that the Contract is free of liens or unsettled claims, the lien holdback shall be released.

APPENDIX B – RFP PARTICULARS

A. THE DELIVERABLES

For the purposes of this RFP, a General Contractor is the contractor with main responsibility for the construction, improvement, or renovation project under contract, and is the party signing the prime construction contract for the project. The General Contractor is the person or entity who hires all of the subcontractors and suppliers for a project. It is an individual, partnership, corporation, or other business entity that is capable of performing construction work as a contractor with overall responsibility for the satisfactory completion of a project using its own forces to perform or supervise part of the work.

A.1 BACKGROUND

The office space being renovated is for the Office of the President, the senior leadership team, and associated staff of the College. Quality workmanship and on-time delivery is a necessity.

Demolition and Abatement of all Asbestos Containing Materials (ACM) will have already been completed before the site is turned over to the General Contractor.

A.2 SCOPE OF WORK

The intent of this project is to reconstruct approximately 380 m2 of office, and meeting rooms into the new Executive Suite offices, consisting of 16 offices, 2 meeting rooms, and a kitchenette. The full Scope of Work is included in the accompanying Scope of Work document.

The scope of the work includes but is not limited to electrical, data, HVAC and Architectural trades.

A.3 DOCUMENT PACKAGE

The following documents make up the full Request for Proposal package:

- NRFP# PRD23-22 – General Contracting Services for the Renovation of the Executive Offices – Rev A
- PRD23-22 - Scope of Work - Executive Offices
- PRD23-22 - Master Format Specification
- PRD23-22 - P00580 - Executive Suite - Final Set - 23-07-20
- PRD23-22 - Cut Sheet- Set

A.4 TIMELINE

Work on the project is to be fully completed by November 30, 2023.

A.5 ACCESSIBILITY FOR ONTARIANS WITH DISABILITIES (AODA)

AODA requirements, where applicable, have been incorporated into the drawings and specifications. Refer to the complete drawing and specification package for the full extent of work.

B. MATERIAL DISCLOSURES

- The award of any contract will be subject to budget approval.

- The work will take place at the Sutherland Campus at 599 Brealey Drive, Peterborough, Ontario.
- Respondents to this RFP must be licensed to work as a General Contractor within Ontario.
- The successful proponent will only get access to the site after the demolition and abatement of the ACM has been successfully completed.

C. MANDATORY SUBMISSION REQUIREMENTS

1. Submission Form (Appendix C)

Proponents should refer to the instructions attached to the solicitation for the Appendix C – Submission Form requirements and provide all required information in accordance with the instructions provided in the bidding system.

2. Pricing Form (Appendix D)

Each proposal must include pricing information that complies with the instructions set out in Appendix D – Pricing Form.

3. Other Mandatory Submission Requirements

- Each proposal must include a letter of “Agreement to Bond” stating provision of a 50% Performance Bond and a 50% Labour and Material Payment Bond, each issued by a Surety licensed to issue bonds in Ontario. Where the Surety’s bonding certificates provides for a signature or multiple signatures, including a witness signature, the proponent shall ensure that all such signatures are affixed. No other form of endorsement or attestation will be accepted.

D. MANDATORY TECHNICAL REQUIREMENTS

N/A

E. PRE-CONDITIONS OF AWARD

- Certificate of Insurance and WSIB Clearance Certificate meeting the type of coverage and coverage amounts stated in Appendix A – Form of Agreement.
- Performance Bond & Labour and Materials Payment Bond - The successful proponent shall provide a Performance Bond and Labour and Materials Payment Bond each for 50% of the Contract Price, the cost of which shall be included in the Contract Price, within 5 business days of notification of award.
- In the event that either the Project Manager and/or Site Supervisor identified in the pre-qualification stage are not available to perform the work at the time of the award of contract, the College may, in its sole and absolute discretion, either approve the General Contractor’s proposed replacement(s) or disqualify the General Contractor’s proposal, as applicable.
- The successful proponent shall provide evidence that they are licenced to work as a General Contractor within Ontario.

F. EVALUATION CRITERIA

The following sets out the categories, weightings, and descriptions of the rated criteria of the RFP. Proponents who do not meet a minimum threshold score for a category will not proceed to the next stage of the evaluation process.

Proposal Content for Non-Price Criteria

The response to each rated requirement should:

- Be complete (bullet point format is acceptable);
- Be concise and factual; and
- Demonstrate the Proponent's understanding of the College's business needs by providing answers validating its capabilities.

Rated Criteria Category		Weighting (Points)	Minimum Threshold
1.0	COMPANY PROFILE, EXPERIENCE AND QUALIFICATIONS	20	
1.01	Provide a brief description of the proponent, including but not limited to, organization structure, number of employees, and number of years in operation.	5	N/A
1.02	Provide a completed CCDC 11 - 2019 Contractors Qualification Statement signed by the proponent which demonstrates the Proponents previous experience with projects which are similar in value, size and complexity to the one contemplated by the College.	15	N/A
2.0	KEY PERSONNEL	20	
2.01	Identify the Key Personnel that would be assigned to perform cores aspects of the Work and explain how the Key Personnel are sufficiently qualified and experienced to deliver the Work. Include a CV for each Key Personnel.	20	N/A
3.0	WORK SCHEDULE	10	
3.01	Provide a schedule for performance of the services, including dates for commencement, key events, deliverables, and completion. Provide details on how the Proponent will manage the schedule to ensure project completion by November 30, 2023.	10	N/A
4.0	QUALITY CONTROL	10	

4.01	Describe the quality assurance plan that will be used to ensure that the Work will meet the expectations of the College. Reference and expand upon the relevant steps in the Work Schedule.	10	N/A
5.0	ENVIRONMENTAL / SUSTAINABILITY	5	
5.01	Describe your organizations efforts in deploying initiatives that generate a positive impact on your environmental footprint/overall energy consumption, including any related certifications if applicable.	5	N/A
6.0	HEALTH & SAFETY	0	
6.01	Provide a copy of the Proponents Health and Safety policy.	Pass/Fail	N/A
7.0	PRICING (see Appendix D for details)	35	
TOTAL POINTS:		100	
8.0	References	Pass/Fail	
8.01	Each proponent is requested to provide three (3) references from clients who have obtained goods or services similar to those requested in this RFP from the proponent in the last five (5) years. References will only be checked on the highest ranked proponent, on a pass/fail basis. If the highest ranked proponent fails the Reference Check process the College will move to the next highest ranked proponent. Proponents who do not successfully pass the Reference Check process will not be considered for award, and the College will have no further obligations to any proponent that does not successfully pass the Reference Check process.	Pass/Fail	Pass

G. PRICE EVALUATION METHOD

Pricing is worth 35 points of the total score.

Pricing will be scored based on a relative pricing formula using the rates set out in the pricing form. Each proponent will receive a percentage of the total possible points allocated to price, which will be calculated in accordance with the following formula:

$$\text{lowest price} \div \text{proponent's price} \times \text{weighting} = \text{proponent's pricing points}$$

APPENDIX C – SUBMISSION FORM

1. Proponent Information

Please fill out the following form, naming one person to be the proponent's contact for the RFP process and for any clarifications or communication that might be necessary.	
Full Legal Name of Proponent:	
Any Other Relevant Name under which Proponent Carries on Business:	
Street Address:	
City, Province/State:	
Postal Code:	
Phone Number:	
Company Website (if any):	
Proponent Contact Name and Title:	
Proponent Contact Phone:	
Proponent Contact Email:	

2. Acknowledgment of Non-Binding Procurement Process

The proponent acknowledges that the RFP process will be governed by the terms and conditions of the RFP, and that, among other things, such terms and conditions confirm that this procurement process does not constitute a formal, legally binding bidding process (and for greater certainty, does not give rise to a Contract A bidding process contract), and that no legal relationship or obligation regarding the procurement of any good or service will be created between the College and the proponent unless and until the College and the proponent execute a written agreement for the Deliverables.

3. Ability to Provide Deliverables

The proponent has carefully examined the RFP documents and has a clear and comprehensive knowledge of the Deliverables required. The proponent represents and warrants its ability to provide the Deliverables in accordance with the requirements of the RFP for the rates set out in its proposal.

4. Non-Binding Pricing

The proponent has submitted its pricing in accordance with the instructions in the RFP. The proponent confirms that the pricing information provided is accurate. The proponent acknowledges that any inaccurate, misleading, or incomplete information, including withdrawn or altered pricing, could adversely impact the acceptance of its proposal or its eligibility for future work.

5. Addenda

The proponent is deemed to have read and taken into account all addenda issued by the College prior to the Deadline for Issuing Addenda.

6. Communication with Competitors

For the purposes of this RFP, the word "competitor" includes any individual or organization, other than the proponent, whether or not related to or affiliated with the proponent, who could potentially submit a response to this RFP.

Unless specifically disclosed below under Disclosure of Communications with Competitors, the proponent declares that:

- (a) it has prepared its proposal independently from, and without consultation, communication, agreement or arrangement with any competitor, including, but not limited to, consultation, communication, agreement or arrangement regarding:
 - (i) prices;
 - (ii) methods, factors or formulas used to calculate prices;
 - (iii) the quality, quantity, specifications or delivery particulars of the Deliverables;
 - (iv) the intention or decision to submit, or not to submit, a proposal; or
 - (v) the submission of a proposal which does not meet the mandatory technical requirements or specifications of the RFP; and
- (b) it has not disclosed details of its proposal to any competitor and it will not disclose details of its proposal to any competitor prior to the notification of the outcome of the procurement process.

Disclosure of Communications with Competitors

If the proponent has communicated or intends to communicate with one or more competitors about this RFP or its proposal, the proponent discloses below the names of those competitors and the nature of, and reasons for, such communications:

7. No Prohibited Conduct

The proponent declares that it has not engaged in any conduct prohibited by this RFP.

8. Conflict of Interest

The proponent must declare all potential Conflicts of Interest, as defined in section 3.4.1 of the RFP. This includes disclosing the names and all pertinent details of all individuals (employees, advisers, or individuals acting in any other capacity) who (a) participated in the preparation of the proposal; **AND** (b) were employees of the College within twelve (12) months prior to the Submission Deadline.

If the box below is left blank, the proponent will be deemed to declare that (a) there was no Conflict of Interest in preparing its proposal; and (b) there is no foreseeable Conflict of Interest in performing the contractual obligations contemplated in the RFP.

Otherwise, if the statement below applies, check the box.

- ☐ The proponent declares that there is an actual or potential Conflict of Interest relating to the preparation of its proposal, and/or the proponent foresees an actual or potential Conflict of Interest in performing the contractual obligations contemplated in the RFP.

If the proponent declares an actual or potential Conflict of Interest by marking the box above, the proponent must set out below details of the actual or potential Conflict of Interest:

9. Disclosure of Information

The proponent hereby agrees that any information provided in this proposal, even if it is identified as being supplied in confidence, may be disclosed where required by law or by order of a court or tribunal. The proponent hereby consents to the disclosure, on a confidential basis, of this proposal by the College to the advisers retained by the College to advise or assist with the RFP process, including with respect to the evaluation of this proposal.

Signature of Proponent Representative

Name of Proponent Representative

Title of Proponent Representative

Date

I have the authority to bind the proponent.

APPENDIX D – PRICING FORM

1. Instructions on How to Provide Pricing

- (a) Proponents should submit their pricing information by completing this pricing form and including it in their bid.
- (b) Rates must be provided in Canadian funds, inclusive of all applicable duties and taxes except for HST, which should be itemized separately.
- (c) Unless otherwise indicated in the requested pricing information, rates quoted by the proponent must be all-inclusive and must include all labour and material costs, all travel and carriage costs, all insurance costs, all costs of delivery, all costs of installation and set-up, including any pre-delivery inspection charges, and all other overhead, including any fees or other charges required by law.

2. Evaluation of Pricing

Pricing will be evaluated in accordance with the evaluation method set out in Section G of the RFP Particulars (Appendix B).

3. Required Pricing Information

Proponent (Supplier) Name: _____

Firm Fixed Price for the Deliverables: _____

HST: _____

Total: _____