

## Standard Terms and Conditions (the “Agreement”)

### ARTICLE 1 – INTERPRETATION

#### 1.01 Defined Terms

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

“**Authority**” means any government authority, agency, body or department, whether federal, provincial or municipal, having or claiming jurisdiction over the Contract; and “**Authorities**” means all such authorities, agencies, bodies and departments.

“**Board Confidential Information**” means all information of the Board that is of a confidential nature, including all confidential information in the custody or control of the Board, 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. For greater certainty, Board Confidential Information shall: (a) include: (i) all new information derived at any time from any such information whether created by the Board, the Supplier or any third-party; (ii) all information (including Personal Information) that the Board is obliged, or has the discretion, not to disclose under provincial or federal legislation or otherwise at law; but (b) not include information that: (i) is or becomes generally available to the public without fault or breach on the part of the Supplier of any duty of confidentiality owed by the Supplier to the Board or to any third-party; (ii) the Supplier can demonstrate to have been rightfully obtained by the Supplier, without any obligation of confidence, from a third-party who had the right to transfer or disclose it to the Supplier free of any obligation of confidence; (iii) the Supplier can demonstrate to have been rightfully known to or in the possession of the Supplier at the time of disclosure, free of any obligation of confidence when disclosed; or (iv) is independently developed by the Supplier; but the exclusions in this subparagraph shall in no way limit the meaning of Personal Information or the obligations attaching thereto under the Contract or at law;

“**Business Day**” means any working day, Monday to Friday inclusive, but excluding statutory and other holidays, namely: New Year’s Day; Family Day; Good Friday; Easter Monday; Victoria Day; Canada Day; Civic Holiday; Labour Day; Thanksgiving Day; Remembrance Day; Christmas Day; Boxing Day and any other day which the Board has elected to be closed for business;

“**Conflict of Interest**” includes, but is not limited to, any situation or circumstance where (a) in relation to the procurement 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 information in the preparation of the Supplier’s Submission that is confidential to the

Board and not available to other proponents; (ii) communicating with any person with a view to influencing preferred treatment in the procurement process; or (iii) engaging in conduct that compromises or could be seen to compromise the integrity of the open and competitive procurement process and render that process non-competitive and unfair; or (b) in relation to the performance of its contractual obligations in a Board contract, 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**” means the aggregate of: (a) the Contract Award Letter; (b) the Standard Terms and Conditions and the General Conditions where applicable (the Agreement); (c) the Schedule A (Deliverables and Key Personnel), Schedule B (Fees and Expenses), and any other schedules attached at the time of execution; (d) the Procurement Document, including any addenda; (e) the Supplier’s Submission; and (f) any amendments executed in accordance with the terms of the Agreement;

“**Supplier’s Submission**” means all the documentation submitted by the Supplier in response to the Procurement Document.

“**Deliverables**” means everything provided to or agreed to be provided to the Board under the Contract by the Supplier or its directors, officers, employees, agents, partners, affiliates, volunteers or subcontractors, as further defined, but not limited by Schedule A, including but not limited to any goods or services or any and all Intellectual Property and any and all concepts, techniques, ideas, information, documentation and other materials, however recorded, developed or provided;

“**Education Act**” means the *Education Act*, R.S.O. 1990, c. E.2, as amended.

“**Expiry Date**” is as set out in the Contract;

“**MFIPPA**” means the *Municipal Freedom of Information and Protection of Privacy Act*, R.S.O. 1990, c. M56, as amended;

“**Indemnified Parties**” means the Peel Board School Board, its trustees, agents, employees, and any other person designated as such by the Board;

“**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 employees or agents from providing or offering gifts or hospitality to any person acting on behalf of or employed by the Board;

“**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;

“**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;

“**Proceeding**” means any action, claim, demand, lawsuit, or other proceeding;

“**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; (b) all labour, materials, equipment, tools, facilities, licenses, permits and approvals 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**”, for the purposes of the Contract, means any recorded information, including any Personal Information, in any form: (a) provided by the Board to the Supplier, or provided by the Supplier to the Board, for the purposes of the Contract; or (b) created by the Supplier in the performance of the Contract;

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

“**Supplier**” means the party who is contracted to supply goods, services or construction to the Board and specifically identified in the Contract Award Letter. A supplier may be a manufacturer, distributor, contractor, tradesman, consultant, or other;

“**Term**” means the period of time from the effective date set out in the Contract 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;

## ARTICLE 2 – GENERAL TERMS

### 2.01 No Indemnities from the Board

Notwithstanding anything else in the Contract, any express or implied reference to the Board 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 Board, whether at the time of execution of the Contract or at any time during the Term, shall be void and of no legal effect.

### 2.02 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, existing between the parties at the date of execution of the Contract.

### 2.03 Severability

If any term or condition of the Contract, or the application thereof to the parties or to any Persons or circumstances, is to any extent invalid or unenforceable, the remainder of the Contract, and the application of such term or condition to the parties, Persons or circumstances other than those to which it is held invalid or unenforceable, shall not be affected thereby.

### 2.04 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.

### 2.05 Notices by Prescribed Means

Notices shall be in writing and shall be delivered by postage-prepaid envelope, personal delivery, email or facsimile and shall be addressed to, respectively, the Board Address to the attention of the Board representative as set out in the Contract Award Letter and to the Supplier Address to the attention of the Supplier Representative as set out in the Supplier’s Submission. 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, email or facsimile one (1) Business Day after such notice is received by the other party. In the event of a postal disruption, notices must be given by personal delivery, email or by facsimile. Unless the parties expressly agree in writing to additional methods of notice, notices may only be provided by the methods contemplated in this paragraph.

### 2.06 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 – NATURE OF RELATIONSHIP BETWEEN THE BOARD AND THE 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 which would in any way interfere with the rights of the Board 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 Board or to assume or create any obligation or responsibility, express or implied, on behalf of the Board. The Supplier shall not hold itself out as an agent, partner or employee of the Board. Nothing in the Contract shall have the effect of creating an employment, partnership or agency relationship between the Board and the Supplier (or any of the Supplier’s directors, officers, employees, agents, partners, affiliates, volunteers or subcontractors).

**3.04 Responsibility of Supplier**

The Supplier agrees that it is liable for the acts and omissions of its directors, officers, employees, agents, partners, affiliates, volunteers and subcontractors. This paragraph is in addition to any and all of the Supplier’s liabilities under the Contract and under the general application of law. The Supplier shall advise these individuals and entities of their obligations under the Contract and shall ensure their compliance with the applicable terms of the Contract. In addition to any other liabilities of the Supplier pursuant to the Contract or otherwise at law or in equity, the Supplier shall be liable for all damages, costs, expenses, losses, claims or actions arising from any breach of the Contract resulting from the actions of the above mentioned individuals and entities. 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 Board. Such consent shall be in the sole discretion of the Board and subject to the terms and conditions that may be imposed by the Board. Without limiting the generality of the conditions which the Board may require prior to consenting to the Supplier’s use of a subcontractor, 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 directors, officers, employees, agents, partners, affiliates or volunteers and the Board.

**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 Board and shall comply with any terms and conditions subsequently prescribed by the Board 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 Board 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 Board to resolve any Conflict of Interest. In addition to all other contractual rights or rights available at law or in equity, the Board 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 Board 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 shall enure to the benefit of and be binding upon the parties and their successors, executors, administrators and permitted assigns.

**ARTICLE 4 – PERFORMANCE BY SUPPLIER**

**4.01 Commencement of Performance**

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

**4.02 Deliverables Warranty**

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

**4.03 Use and Access Restrictions**

The Supplier acknowledges that unless it obtains specific written preauthorization from the Board, any access to or use of the Board property, technology or information that is not necessary for the performance of its contractual obligations with the Board is strictly prohibited. The Supplier further acknowledges that the Board may monitor the Supplier to ensure compliance with this paragraph. This paragraph is in addition to and shall not limit any other obligation or restriction placed upon the Supplier.

**4.04 Notification by Supplier to the Board**

During the Term, the Supplier shall advise the Board 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.

**4.05 Condonation Not a Waiver**

Any failure by the Board 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 Board 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.

**4.06 Changes By Written and Signed Amendment Only**

No changes, deletions, additions or alterations to the Contract whether proposed by the Board or the Supplier shall be effective or binding on either party unless they are written and signed by both parties.

**4.07 Supplier to Comply With Reasonable Change Requests**

The Board 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 Board 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 Board 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.

**4.08 Pricing for Requested Changes**

Where a Board change request includes an increase in the scope of the previously contemplated Deliverables, the Board 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 Board 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.

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

The Supplier acknowledges that it is providing the Deliverables to the Board on a non-exclusive basis. The Board makes no representation regarding the volume of goods and services required under the Contract. The Board 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.

**4.10 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 Board, 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.

**4.11 The Board Rights and Remedies and Supplier Obligations Not Limited to Contract**

The express rights and remedies of the Board 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 Board or any other obligations of the Supplier at law or in equity.

**4.12 Supply to Comply with Tobacco Control Act**

Without limiting the generality of 4.02, the Supplier shall comply with the *Tobacco Control Act*, and ensure that its employees and/or subcontractors do not smoke on and in any of the Board's property, including schools, offices, administrative buildings, warehouses, other Board facilities, and non-Board vehicles on Board property.

**4.13 Supplier to Comply with the Board's Accessibility Requirements**

The Supplier covenants and agrees to ensure that the Deliverables provided hereunder are consistent with the *Ontario Human Rights Code* ("OHRC"), the *Ontarians Disabilities Act, 2001* ("ODA") and the *Accessibility for Ontarians with Disabilities Act, 2005* ("AODA") and their respective regulations in order to achieve accessibility for Ontarians with disabilities. Without limiting the generality of the foregoing, the Supplier covenants and agrees to comply with the Board's accessibility standards, policies, practices and procedures, as same may be in effect during the term of the Agreement and apply to the Deliverables to be provided hereunder by the Supplier.

**4.14 Access to the School Site**

Where the Supplier or any of its employees, subcontractors are required to access school sites during regular hours of school operation must contact the school office upon arrival for further instruction. The Supplier shall ensure that it obtains clearance from the school Principal or designate to gain access during the hours in which the site is occupied with students. The Supplier is prohibited from having vehicular access immediately before or after school, during opening or dismissal periods and during recess or lunch period. Where the Supplier is granted permission to access a site during those particular times in which the

playgrounds and general exterior premises are occupied by students, the vehicle being used by the Supplier or any of its employees or subcontractors must be accompanied by an adult who will walk with the vehicle to its required destination.

#### 4.15 **The Board's Policy #51 – Human Rights**

The Board is committed to hosting a work and educational environment in which everyone is treated with respect, and no one is subject to discrimination. This commitment stems from the Board's own philosophy and the Board's obligations under the Ontario Human Rights Code. During the term of the Contract, the Supplier shall ensure that its employees and subcontractors behave in a manner that is appropriate, respectful, and consistent with the provisions of the Ontario Human Rights Code and comply with the Board's Policy # 51 – Human Rights during the term of the Contract.

Any breach of the Ontario Human Rights Code or the Board's Policy #51 by the Supplier, its employees or subcontractor will result in the removal of that person or persons from the Board's premises. In addition, the breach of these conditions by the Supplier, its employees and subcontractors could result in the termination of the Contract and/or the barring of the Supplier and its subcontractors from entering into subsequent contracts with the Board.

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

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

The Board shall, subject to the Supplier's compliance with the provisions of the Contract and the payment process set out in the Contract, pay the Supplier for the Deliverables provided at the Rates established under the Contract. The Supplier shall provide the Board with the required information to effect such payments by way of direct deposit. The Board's payment terms are net 45 days, or in accordance with the terms and conditions otherwise provided for in the Contract.

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

Provided that the Board has given the requisite notice identified in the Contract, it may hold back payment or set off against payment if, in the opinion of the Board 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 Board 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 Board 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 authority in accordance with applicable tax laws. This paragraph shall survive any termination or expiry of the Contract.

#### 5.06 **Limitation on Payment of Funds.**

Despite section 5.01 and pursuant to the provisions of the *Financial Administration Act* (Ontario), if the Board does not receive the necessary appropriation from the Ontario Legislature for payment under the Contract, the Board is not obligated to make any such payment, and, as a consequence, the Board may terminate the Contract pursuant to section 9.03.

### **ARTICLE 6 – CONFIDENTIALITY AND MFIPPA**

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

Any publicity or publications related to the Contract shall be at the sole discretion of the Board. The Board 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 Board without the prior written consent of the Board. 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 from the Board.

#### 6.02 **Board Confidential Information**

During and following the Term, the Supplier shall: (a) keep all Board Confidential Information confidential and secure; (b) limit the disclosure of Board 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 Board 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 Board and (ii) in respect of any Board Confidential Information about any third-party, the written consent of such third-party; (d) provide Board Confidential Information to the Board on demand; and (e) return all Board Confidential Information to the Board 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 Board 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 that 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 Board or to any third-party to whom the Board owes a duty of confidence, and that the injury to the Board or to any third-party may be difficult to calculate and inadequately compensable in damages. The Supplier agrees that the Board 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 Board Confidential Information, the Supplier will provide the Board with prompt notice to that effect in order to allow the Board to seek one or more protective orders or other appropriate remedies to prevent or limit such disclosure, and it shall co-operate with the Board 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 the Board 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 Board) that such Board 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 Board Confidential Information subject to those terms and conditions.

**6.06 MFIPPA Records and Compliance**

The Supplier and the Board acknowledge and agree that MFIPPA 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 Board within seven (7) calendar days of being directed to do so by the Board for any reason including an access request or privacy issue; (c) not to access any Personal Information unless the Board determines, in its sole discretion, that access is permitted under MFIPPA 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 Board; (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 the Board 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 Board 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 Board may be disclosed by the Board where it is obligated to do so under MFIPPA, 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 Audit**

In addition to any other rights of inspection the Board may have under statute or otherwise, the Board, its authorized representatives or an independent auditor identified by the Board may, at its own expense, during business hours and upon twenty-four hours Notice to the Supplier, enter upon the Supplier's premises, at the Board's discretion, to inspect and copy any of the Records. The Supplier must permit the Board to exercise its rights under this section.

**6.08 Survival**

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

**ARTICLE 7 – INTELLECTUAL PROPERTY**

**7.01 The Board 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 Board to the Supplier shall remain the sole property of the Board at all times.

**7.02 No Use of the Board Insignia**

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

**7.03 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 save harmless the Indemnified Parties from losses, claims, damages, actions, causes of action, costs and expenses that the Indemnified Parties may sustain, incur, suffer or be put to at any time, either before or after this Contract ends, including any claim of infringement of third-party intellectual property rights, where the same or any of them are based upon, arise out of or occur, directly or indirectly, by reason of any act or omission by the Supplier or by any of the Supplier's agents, employees, officers, directors or subcontractors in connection with this Contract, excepting always liability arising 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 Proof of WSIB Coverage**

Without limiting the generality of section 4.02, the Supplier warrants and agrees that it has complied with and will comply with, and ensure that any subcontractors comply with, all applicable occupational health and safety laws and regulations in relation to the performance of the Supplier's obligations under this Contract.

If the Supplier is subject to the Workplace Safety and Insurance Act (“WSIA”), the Supplier shall submit a valid clearance certificate of Workplace Safety and Insurance Board (“WSIB”) coverage to the Board before commencing the performance of the Deliverables. In addition, the Supplier shall, from time to time during the Term and at the request of the Board, provide additional WSIB clearance certificates. 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 by it/its subcontractors, from time to time during the Term, under the WSIA, failing which the Board 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 unpaid by the Supplier or its subcontractors and to deduct such amount from any amount due and owing from time to time to the Supplier pursuant to the Contract together with all costs incurred by the Board in connection therewith.

**8.03 Insurance**

The Supplier must, without limiting the Supplier’s obligation or liabilities and at the Supplier’s own expense, purchase and maintain throughout the Term the following insurances with insurers licensed in Canada in forms and amounts acceptable to the Board:

- a. Commercial General Liability in an amount not less than \$5,000,000.00 inclusive per occurrence against bodily injury, personal injury and property damage and including liability assumed under this Agreement, and this insurance must:
  - i. include the Board as an additional insured;
  - ii. be endorsed to provide the Board with 30 days advance written notice of cancellation or material change;
  - iii. include a cross liability clause;
  - iv. be primary; and
  - v. not require the sharing of any loss by any insurer of the Board.
- b. Non-owned motor vehicles in an amount not less than \$2,000,000.00 inclusive per occurrence for bodily injury and property damage combined.
- c. Owned motor vehicles in an amount not less than \$2,000,000.00 inclusive per occurrence for bodily injury and property damage combined.

**8.04 Evidence of Insurance**

The Supplier must provide the Board with evidence of all required insurance when and as required by the Board. The Board reserves the right to cancel this Contract at any time, without notice, if the

Supplier fails to carry and keep in full force and effect such insurance.

**8.05 Additional Insurance**

The Supplier must obtain, maintain and pay for any additional insurance, which the Supplier is required by law to carry, is required by the Board to carry or which the Supplier considers necessary to cover risks not otherwise covered by insurance specified in this Agreement in the Supplier’s sole discretion.

**ARTICLE 9 – TERMINATION, EXPIRY, AND DISPUTE RESOLUTION**

**9.01 Immediate Termination of Contract**

The Board 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 and MFIPPA) of the Contract; (c) the Supplier breaches the Conflict of Interest paragraph in Article 3 (Nature of Relationship Between the Board and Supplier) of the Contract or the Board’s Policy #51 – Human Rights as set out in section 4.15 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 Board; (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 Board; (g) the Supplier fails to meet its insurance obligations under the Contract; or (h) the Supplier’s acts or omissions constitute a substantial failure of performance and the above rights of termination are in addition to all other rights of termination available at law, or events of termination by operation of law.

**9.02 Rectification Notice**

Subject to the above paragraph, where the Supplier fails to comply with any of its obligations under the Contract, the Board may issue a rectification notice to the Supplier setting out the manner and time-frame 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 Board. If the Supplier fails to either comply with that rectification notice or provide a satisfactory rectification plan, the Board 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 Board to immediately terminate the Contract.

**9.03 Termination on Notice**

In addition to the termination rights set out in section 9.01, the Board 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 Board, provide the Board with any completed or partially completed Deliverables; (b) provide the Board 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 Board pertaining to the provision of the Deliverables and performance of the Contract; (c) execute such documentation as may be required by the Board to give effect to the termination of the Contract; and (d) comply with any other instructions provided by the Board, 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 Board 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 Board 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 Board 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 Board exercises its option to extend the Contract for the period set out in the Contract, 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, excepting the option to renew. The option shall be exercisable by the Board 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.

**9.08 Dispute Resolution Process**

In the event of any dispute between the parties arising out of or in connection with this Contract other than with respect to the termination thereof, the following dispute resolution process will apply unless the parties otherwise agree in writing: (a) the parties must initially attempt to resolve the dispute through collaborative negotiation; and (b) if the dispute cannot be resolved through collaborative negotiation within thirty (30) calendar days of the dispute arising, the parties may between themselves agree to submit the particular matter to mediation in accordance with the laws of Ontario. Unless the parties agree otherwise in writing, the mediation under this section will be held in Ontario; (c) Any dispute between the parties that cannot be resolved by mediation shall be settled and determined by a Court of competent jurisdiction, subject to the Board's right to submit such dispute for settlement

and determination by arbitration pursuant to the *Arbitration Act of Ontario* (the "Act") as same may be amended from time to time, in which case the following provisions shall apply. Either party may at any time give written notice to the other of its desire to submit such dispute to arbitration stating with reasonable particularity the subject matter of such dispute. In the case of the Supplier giving notice to the Board, if the Board does not consent to submitting such matter to arbitration, the Supplier may refer such matter to a court of competent jurisdiction. If the Board generates the notice, or if the notice is generated by the Supplier and consented to by the Board, then the following provision shall apply. Within (5) business days after receipt of such notice, the parties shall appoint a single arbitrator with appropriate experience to determine such dispute. If the parties fail to appoint an arbitrator, either party may apply to a Judge of the Ontario Court General Division to appoint an arbitrator to determine such dispute. The costs of arbitration shall be paid by the party as determined by the arbitrator, which jurisdiction shall include the determination of the costs to be paid by the unsuccessful party. The award of the arbitrator shall be final and binding upon the parties. Judgment upon the award rendered by the arbitrator may be entered in any court.

**9.09 Criminal Background Checks**

School boards in Ontario are required by provincial legislation to ensure that all service providers on contract with the Board or school and other individuals who, potentially, have direct and regular contact with Ontario students, are screened based on a police record check. Service providers are not authorized to provide their services to schools or attend on Board property unless they have completed a satisfactory police record check screening. If the services provided by the Supplier involve direct and regular contact with students, the Supplier will be required to obtain criminal background checks for all such persons having direct and regular contact with students.

**9.10 Supplier Performance Evaluation**

Supplier performance may be evaluated through the completion of a Supplier Performance Evaluation Form at the end of a Contract or a Supplier Occurrence Form that may be issued during the Contract performance period. Poor performance as noted in either of these documents may result in the Supplier being ineligible for future contracts with the Board.