

Standard Terms and Conditions

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;

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

“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;

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

“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; HST to be shown separately as indicated (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 completion of the contract (ii) the date of termination of the Contract in accordance with its terms;

ARTICLE 2 – NATURE OF RELATIONSHIP BETWEEN THE BOARD AND THE SUPPLIER

2.01 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.

2.02 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).

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.

2.03 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.

3.02 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.

2.04 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.

3.03 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.

2.05 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.

3.04 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.

3.05 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.

2.06 Contract Binding

The Contract shall ensure to the benefit of and be binding upon the parties and their successors, executors, administrators and their permitted assigns.

3.06 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

ARTICLE 3 – PERFORMANCE BY SUPPLIER

3.01 Use and Access Restrictions

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.

3.07 **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 4 – CONFIDENTIALITY AND MFIPPA

4.01 **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.

4.02 **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.

4.03 **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.

4.04 **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.

4.05 **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.

4.06 **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.

4.07 **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. Contractor shall retain all Records applicable to this contract for a period of 7 years.

4.08 **Survival**

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

ARTICLE 5 – INTELLECTUAL PROPERTY

5.01 **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.

5.02 **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.

ARTICLE 6 – INDEMNITIES AND INSURANCE

6.01 **Proof of WSIB Coverage**

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") or the *Workplace Safety and Insurance Amendment Act, 2008* ("Bill 119"), 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 and/or the WSIAA, 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 or the WSIAA 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.

6.02 **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.

6.03 **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 7 – CRIMINAL BACKGROUND CHECKS

7.01 **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 cleared by a criminal background check covering convictions, charges and occurrences that would be revealed by the long version vulnerable persons search of the automated criminal records system maintained by the RCMP at the Canadian Police Information Centre ("Criminal Background Check"). Service providers are not authorized to provide their services to schools or attend on Board property unless they have completed a satisfactory Criminal Background Check which the Supplier is to retain in its Records at its head office or principal place of business. If the services provided by the Supplier involve direct and regular contact with students, the Supplier will be required to obtain satisfactory Criminal Background Checks for all such persons who may have direct and regular contact with students.

ARTICLE 8 - EVALUATION

8.01 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.