

THE AGREEMENT effective as of [@MTCU_ETD_Agreement_Effective_Date@].

B E T W E E N:

**HER MAJESTY THE QUEEN IN RIGHT OF
ONTARIO as represented by the Minister
of Training, Colleges and Universities**

(the “**Ministry**”)

- and -

[@Supplier Name@]

(the “**Recipient**”)

Background:

This Agreement defines the terms and conditions of Funds to be used by the Recipient to carry out the Program.

Consideration:

In consideration of the mutual covenants and agreements contained herein and for other good and valuable consideration, the receipt and sufficiency of which are expressly acknowledged, the Parties agree as follows:

**ARTICLE 1
INTERPRETATION AND DEFINITIONS**

1.1 **Interpretation.** For the purposes of interpretation:

- (a) words in the singular include the plural and vice-versa;
- (b) words in one gender include all genders;
- (c) the background and the headings do not form part of the Agreement; they are for reference only and shall not affect the interpretation of the Agreement;
- (d) any reference to dollars or currency shall be to Canadian dollars and currency; and
- (e) “include”, “includes” and “including” shall not denote an exhaustive list.

1.2 **Definitions.** In the Agreement, the following terms shall have the following meanings:

“Agreement” means this agreement entered into between the Ministry and the Recipient and includes all of the schedules listed in section 26.1, the Audit Requirements and the Guidelines.

“Audit and Accountability Requirements” means the Literacy and Basic Skills Audit and Accountability Requirements for Support Organizations. Despite section 28.2 of the Agreement, these requirements may be amended from time to time at the sole discretion of the Ministry and such amendment shall become effective when the Ministry gives Notice to the Recipient. These requirements are available on the LBS-IMS system as well as the Employment Ontario Partners’ Gateway at: <http://www.tcu.gov.on.ca/eng/eopg/programs/training.html>

“Budget” means the budget attached to the Agreement as Schedule “B”.

“Effective Date” means the date set out at the top of the Agreement.

“Event of Default” has the meaning ascribed to it in section 14.1.

“FIPPA” means the *Freedom of Information and Protection of Privacy Act*, R.S.O. 1990, c. F.31, as amended.

“Funding Year” means:

- (a) in the case of the first Funding Year, the period commencing on the Effective Date and ending on the following March 31; and
- (b) in the case of Funding Years subsequent to the first Funding Year, the period commencing on April 1 following the end of the previous Funding Year and ending on the following March 31.

“Funds” means the money the Ministry provides to the Recipient pursuant to the Agreement.

“Guidelines” means the Literacy and Basic Skills Program Guidelines. These Guidelines are available on the Employment Ontario Partners’ Gateway at: <http://www.tcu.gov.on.ca/eng/eopg/programs/training.html>. In the event of any inconsistency between the Guidelines and any other provision in the Agreement, the other provision in the Agreement shall prevail.

“Indemnified Parties” means her Majesty the Queen in right of Ontario, her Ministers, agents, appointees and employees.

“**LBS**” means Literacy and Basic Skills.

“**Literacy and Basic Skills Information Management System**” or “**LBS-IMS**” means the password protected data base to be used by the Recipient for the purpose of sharing data and information between the Ministry and the Recipient.

“**MFIPPA**” means the *Municipal Freedom of Information and Protection of Privacy Act*, R.S.O. 1990, c. M.56, as amended.

“**Maximum Funds**” means the sum of \$ [@MTCU_ETD_Total_Contract_Value@] will provide the Recipient under the Agreement] in Funding Year 2011-2012 plus the total maximum budget for Funding Year 2012-2013 determined in accordance with section 4.10.

“**Notice**” means any communication given or required to be given under the Agreement.

“**Parties**” means the Ministry and the Recipient.

“**Party**” means either the Ministry or the Recipient.

“**PIPEDA**” means the *Personal Information Protection and Electronic Documents Act*, S.C. 2000, c. 5, as amended.

“**Program**” means the Literacy and Basic Skills Program described in Schedule “A”.

“**Reports**” means the reports described in Schedule “D”.

“**Revised Schedule “B”**” means the Budget and Performance Commitments attached to the Agreement as Schedule “B” that have been revised in accordance with section 4.10.

“**Wind Down Costs**” means the Recipient’s reasonable costs to wind down the Program.

ARTICLE 2 REPRESENTATIONS, WARRANTIES AND COVENANTS

2.1 **General.** The Recipient represents, warrants and covenants that:

- (a) it is, and shall continue to be for the term of the Agreement, a validly existing legal entity with full power to fulfill its obligations under the Agreement;

- (b) it has, and shall continue to have for the term of the Agreement, the experience and expertise necessary to carry out the Program;
- (c) any information the Recipient provided to the Ministry in support of its request for funds (including information relating to any eligibility requirements) was true and complete at the time the Recipient provided it and shall continue to be true and complete for the term of the Agreement;
- (d) any person involved in carrying out the Program has received training on the relevant responsibilities of the Recipient set out in the Agreement; and
- (e) it shall take all reasonable actions to minimize and reduce the costs related to the Program that may be incurred as a result of the termination or expiry of the Agreement including negotiating all contracts related to the Program such as employment contracts on terms that will enable the Recipient to cancel them upon terms and conditions which will minimize their cancellation costs in the event of termination or expiry of the Agreement.

2.2 Execution of Agreement. The Recipient represents and warrants that:

- (a) it has the full power and authority to enter into the Agreement; and
- (b) it has taken all necessary actions to authorize the execution of the Agreement including if the Recipient is a band as defined under the *Indian Act* (Canada), it has passed a band resolution authorizing the Recipient to enter into the Agreement with the Ministry, or if the Recipient is a municipality it has passed a municipal by-law authorizing the Recipient to enter into the Agreement with the Ministry.

2.3 Governance. The Recipient represents, warrants and covenants that it has, and shall maintain for the period during which the Agreement is in effect, by-laws or other legally necessary instruments to:

- (a) establish an expected code of conduct and ethical responsibilities including a policy on protection of privacy in accordance with FIPPA, MFIPPA or PIPEDA, if applicable, or that complies with the Canadian Standards Association Code for the Protection of Personal Information and that is publicly available and a policy on conflict of interest, at all levels of the Recipient's organization;
- (b) establish procedures to ensure the ongoing effective functioning of the Recipient;
- (c) establish decision-making mechanisms;

- (d) provide for the prudent and effective management of the Funds;
- (e) establish procedures to enable the successful completion of the Program;
- (f) establish procedures to enable the timely identification of risks to the completion of the Program and strategies to address the identified risks;
- (g) establish procedures to enable the preparation and delivery of all Reports required pursuant to Article 7; and
- (h) deal with such other matters as the Recipient considers necessary to ensure that the Recipient carries out its obligations under the Agreement.

2.4 **Supporting Documentation.** Upon request, the Recipient shall provide the Ministry with proof of the matters referred to in this Article 2.

ARTICLE 3 TERM OF THE AGREEMENT

3.1 **Term.** The term of the Agreement shall commence on the Effective Date and shall expire on [@MTCU_ETD_Agreement_End_Date @] unless terminated earlier pursuant to Article 12, Article 13 or Article 14.

ARTICLE 4 FUNDS AND CARRYING OUT THE PROGRAM

4.1 **Funds Provided.** The Ministry shall:

- (a) provide the Recipient up to the Maximum Funds for the purpose of carrying out the Program;
- (b) provide the Funds to the Recipient in accordance with the payment schedule attached to the Agreement as Schedule "C".

4.2 **Funds Deposited.** The Funds shall be deposited into an account designated by the Recipient as an account that resides at a Canadian financial institution and is in the name of the Recipient:

- (a) by the Ministry where Funds are deposited by electronic transfer; or
- (b) by the Recipient where Funds are not deposited by electronic transfer.

4.3 **Limitation on Payment of Funds.** Despite section 4.1, the Ministry:

- (a) shall not provide any Funds to the Recipient until the Recipient provides the insurance certificate or other documents provided for in section 11.2;
- (b) is not obligated to provide instalments of Funds until it is satisfied with the progress of the Program;
- (c) may adjust the amount of Funds it provides to the Recipient in any Funding Year based upon the Ministry's assessment of the information provided by the Recipient pursuant to section 7.1; and
- (d) pursuant to the provisions of the *Financial Administration Act* (Ontario), if the Ministry does not receive the necessary appropriation from the Ontario Legislature for any payment the Ministry is obligated to make under the Agreement, the Ministry shall not be obligated to make any payment, and:
 - (i) may reduce the amount of the Funds and, in consultation with the Recipient, change the Program; or
 - (ii) the Ministry may terminate the Agreement pursuant to section 13.1.

4.4 Use of Funding and Program. The Recipient shall:

- (a) carry out the Program:
 - (i) in accordance with the terms and conditions of the Agreement; and
 - (ii) in compliance with all federal and provincial laws and regulations, all municipal by-laws, and any other orders, rules and by-laws related to any aspect of the Program;
- (b) use the Funds only for the purpose of carrying out the Program; and
- (c) spend the Funds only in accordance with the Budget.

4.5 No Changes. The Recipient shall:

- (a) not make any changes to the Program and/or the Budget without the prior written consent of the Ministry; and
- (b) abide by the terms and conditions the Ministry may require pursuant to any consent.

4.6 Interest Bearing Account. If the Ministry provides Funds to the Recipient prior to the Recipient's immediate need for the Funds, the Recipient shall place the Funds in an interest bearing account in the name of the Recipient at a Canadian financial institution.

- 4.7 **Interest.** If the Recipient earns any interest on the Funds:
- (a) the Ministry may deduct an amount equal to the interest from any further instalments of Funds; or
 - (b) the Recipient shall pay an amount equal to the interest to the Ministry as directed by the Ministry.
- 4.8 **Maximum Funds.** The Recipient acknowledges that the Funds available to it pursuant to the Agreement shall not exceed the Maximum Funds.
- 4.9 **Rebates, Credits and Refunds.** The Recipient shall not use the Funds for any costs, including taxes, for which it has received, will receive, or is eligible to receive, a rebate, credit or refund.
- 4.10 **Annual Budget and Performance Commitments.** In each Funding Year subsequent to the first Funding Year, the Ministry and the Recipient shall establish a budget and set performance commitments for that Funding Year, according to the following process.
- (a) The Recipient shall submit a proposed business plan for a Funding Year in a form and within the timelines to be specified by the Ministry.
 - (b) Upon receipt of the proposed business plan, the Ministry shall review the proposed business plan and:
 - (i) promptly advise the Recipient of any concerns with the contents of the proposed business plan and set a timeline for the submission of a revised business plan; or
 - (ii) approve the proposed business plan.
 - (c) If and when the Ministry approves the proposed business plan for a Funding Year, it shall provide the Recipient with a Revised Schedule “B” establishing a budget and setting performance commitments for that Funding Year. The Revised Schedule “B” shall be deemed to replace the previous Schedule “B” and form part of the Agreement.

ARTICLE 5

ACQUISITION OF GOODS AND SERVICES AND DISPOSAL OF ASSETS

- 5.1 **Acquisition of Goods and Services.** If the Recipient acquires supplies, equipment or services with the Funds, it shall do so through a fair and transparent process that promotes the best value for money.

- 5.2 **Disposal.** The Recipient shall not, without the Ministry's prior written consent, sell, lease or otherwise dispose of any asset purchased with the Funds or for which Funds were provided, the cost of which exceeded **\$1,000** at the time of purchase.

ARTICLE 6 CONFLICT OF INTEREST

- 6.1 **No Conflict of Interest.** The Recipient shall carry out the Program and use the Funds without an actual, potential or perceived conflict of interest.
- 6.2 **Conflict of Interest Includes.** For the purposes of this Article, a conflict of interest includes any circumstances where:
- (a) the Recipient; or
 - (b) any person who has the capacity to influence the Recipient's decisions,
- has outside commitments, relationships or financial interests that could, or could be seen to, interfere with the Recipient's objective, unbiased and impartial judgment relating to the Program and the use of the Funds.
- 6.3 **Disclosure to Ministry.** The Recipient shall:
- (a) disclose to the Ministry, without delay, any situation that a reasonable person would interpret as either an actual, potential or perceived conflict of interest; and
 - (b) comply with any terms and conditions that the Ministry may reasonably prescribe as a result of the disclosure.

ARTICLE 7 REPORTING, ACCOUNTING AND REVIEW

- 7.1 **Preparation and Submission.** The Recipient shall:
- (a) submit to the Ministry at the address provided in section 18.1, or in a manner set out in Schedule "D", all Reports in accordance with the timelines and content requirements set out in Schedule "D", or in a form as specified by the Ministry from time to time;
 - (b) submit to the Ministry at the address provided in section 18.1, or in a manner specified by the Ministry, any other reports requested by the

Ministry in accordance with the timelines and content requirements specified by the Ministry;

- (c) ensure that all Reports and other reports are completed to the satisfaction of the Ministry; and
- (d) ensure that all Reports and other reports are signed on behalf of the Recipient by an authorized signing officer.

7.2 **Record Maintenance.** The Recipient shall keep and maintain, both during the term of this Agreement and for a period of seven (7) years after:

- (a) all financial records (including invoices) relating to the Funds or otherwise to the Program in a manner consistent with generally accepted accounting principles; and
- (b) all non-financial documents and records relating to the Funds or otherwise to the Program, including but not limited to, records and documents containing personal information within the meaning of FIPPA, MFIPPA and PIPEDA.

7.3 **Inspection.** The Ministry, its authorized representatives or an independent auditor identified by the Ministry may, at its own expense, upon twenty-four hours' Notice to the Recipient and during normal business hours, enter upon the Recipient's premises to review the progress of the Program, the compliance with the Agreement and the Recipient's expenditure of the Funds and, for these purposes, the Ministry, its authorized representatives or an independent auditor identified by the Ministry may:

- (a) inspect and copy the records and documents referred to in section 7.2; and
- (b) conduct an audit or investigation of the Recipient in respect of the expenditure of the Funds and/or Program.

7.4 **Disclosure.** To assist in respect of the rights set out in section 7.3, the Recipient shall disclose any information reasonably requested by the Ministry, its authorized representatives or an independent auditor identified by the Ministry, and shall do so in a form reasonably requested by the Ministry, its authorized representatives or an independent auditor identified by the Ministry, as the case may be.

7.5 **No control of Records.** No provision of the Agreement shall be construed so as to give the Ministry any control whatsoever over the Recipient's records.

- 7.6 **Auditor General.** For greater certainty, the Ministry's rights under this Article are in addition to any rights provided to the Auditor General pursuant to section 9.(1) of the *Auditor General Act* (Ontario).

ARTICLE 8 ACKNOWLEDGEMENT

- 8.1 **Acknowledge Support.** Unless otherwise directed by the Ministry, the Recipient shall, in a form approved by the Ministry, acknowledge the support of the Ministry in any publication of any kind, written or oral, relating to the Agreement or the Program, including but not limited to any report, announcement, advertisement, brochure, audio-visual material, design, website or other public communication.
- 8.2 **Publication.** If the Recipient publishes any material of any kind relating to the Program, the Recipient shall indicate in the material that the views expressed in the material are the views of the Recipient and do not necessarily reflect those of the Ministry.
- 8.3 **EO Visibility Guidelines.** The Recipient shall comply with the Employment Ontario Visibility Guidelines, which may be amended from time to time at the sole discretion of the Ministry, available on the Employment Ontario Partners' Gateway web site at <http://www.eopg.ca>.

ARTICLE 9 ACCESS TO INFORMATION AND PROTECTION OF PRIVACY

- 9.1 **Access to Information.** The Recipient acknowledges that the Ministry is bound by FIPPA and undertakes to perform its obligations under the Agreement in a manner that ensures that the Ministry is not in breach of its obligations under FIPPA.
- 9.2 **Disclosure.** The Recipient acknowledges that any information provided to the Ministry in connection with the Program or otherwise in connection with the Agreement is subject to disclosure in accordance with FIPPA.
- 9.3 **Protection of Privacy.** The Recipient represents and warrants that it shall protect privacy in accordance with FIPPA, MFIPPA or PIPEDA, if applicable, and its protection of privacy policy described in section 2.3(a). Without limitation, the Recipient shall:
- a) designate an official who shall be responsible for ensuring the Recipient's compliance with the privacy protection provisions of the Agreement;

- b) implement appropriate privacy protection training of employees and contractors who have access to personal information to carry out the Program;
- c) only collect, use and disclose personal information if necessary to carry out the Program and comply with its obligations under the Agreement;
- d) not use personal information that was collected for use in carrying out the Program for any other purpose without the informed and voluntary written consent of the individual;
- e) limit access to personal information to employees and contractors who need the personal information to carry out the Program and ensure the Recipient's compliance with its obligations under the Agreement;
- f) before disclosing personal information to employees and contractors, enter into an agreement with them requiring them to be bound by the Recipient's protection of privacy policy and the privacy protection provisions of the Agreement;
- g) ensure the security and integrity of any personal information collected by implementing, using and maintaining the most appropriate products, tools, measures and procedures to prevent the unauthorized or inadvertent collection, use, disclosure, loss, alteration or destruction;
- h) ensure that all personal information collected to carry out the Program will be stored in, remain in and be accessible only within Canada;
- i) provide clients with access to their own personal information in accordance with FIPPA, MFIPPA or PIPEDA, if applicable, and the Recipient's protection of privacy policy;
- j) ensure the secure and irreversible destruction of paper records containing personal information when they are no longer needed to carry out the Program or to comply with the obligations under the Agreement;
- k) ensure that electronic records containing personal information that are no longer needed to carry out the Program or to comply with the obligations under the Agreement are not accessible until secure and irreversible destruction is possible;
- l) notify the Ministry as soon as the Recipient becomes aware of a potential or actual breach of any of the privacy protection provisions of the Agreement;
- m) cooperate with the Ministry and its contractors and auditors in any audit of or investigation into a breach of the privacy protection provisions of the Agreement; and
- n) implement, use and maintain other specific privacy or security measures that in the reasonable opinion of the Ministry would improve the adequacy and effectiveness of the Recipient's measures to ensure the privacy and security of the records collected, created, used and disclosed to carry out the Program and to comply with the obligations under the Agreement.

ARTICLE 10 INDEMNITY

- 10.1 **Indemnification.** The Recipient hereby agrees to indemnify and hold harmless the Indemnified Parties from and against any and all liability, loss, costs, damages and expenses (including legal, expert and consultant fees), causes of action, actions, claims, demands, lawsuits or other proceedings, by whomever made, sustained, incurred, brought or prosecuted, in any way arising out of or in connection with the Program or otherwise in connection with the Agreement, unless solely caused by the negligence or wilful misconduct of the Ministry.

ARTICLE 11 INSURANCE

- 11.1 **Recipient's Insurance.** The Recipient represents and warrants that it has, and shall maintain for the term of the Agreement, at its own cost and expense, with insurers having a secure A.M. Best rating of B+ or greater, or the equivalent, all the necessary and appropriate insurance that a prudent person carrying out a program similar to the Program would maintain, including commercial general liability insurance on an occurrence basis for third party bodily injury, personal injury and property damage, to an inclusive limit of not less than two million dollars (\$2,000,000) per occurrence. The policy shall include the following:
- (a) the Indemnified Parties as additional insureds with respect to liability arising in the course of performance of the Recipient's obligations under, or otherwise in connection with, the Agreement;
 - (b) a cross-liability clause;
 - (c) contractual liability coverage; and
 - (d) a 30 day written notice of cancellation, termination or material change.
- 11.2 **Proof of Insurance.** The Recipient shall provide the Ministry with certificates of insurance, and renewal replacements on or before the expiry of any such insurance, or other proof as may be requested by the Ministry, that confirms the insurance coverage as provided for in section 11.1. Upon the request of the Ministry, the Recipient shall make available to the Ministry a copy of each insurance policy.

**ARTICLE 12
TERMINATION ON NOTICE**

- 12.1 **Termination on Notice.** The Ministry may terminate the Agreement at any time upon giving at least six (6) months Notice to the Recipient.
- 12.2 **Consequences of Termination.** If the Ministry terminates the Agreement pursuant to section 12.1, the Ministry may:
- (a) cancel all further instalments of Funds;
 - (b) demand the repayment of any Funds remaining in the possession or under the control of the Recipient; and/or
 - (c) determine the Wind Down Costs, and:
 - (i) permit the Recipient to offset the Wind Down Costs against the amount the Recipient owes pursuant to section 12.2(b); and/or
 - (ii) subject to section 4.8, provide Funds to the Recipient to cover the Wind Down Costs.

**ARTICLE 13
TERMINATION WHERE NO APPROPRIATION**

- 13.1 **Termination Where No Appropriation.** If, as provided for in section 4.3(d), the Ministry does not receive the necessary appropriation from the Ontario Legislature for any payment the Ministry is obligated to make under the Agreement, the Ministry may terminate the Agreement immediately by giving Notice to the Recipient.
- 13.2 **Consequences of Termination.** If the Ministry terminates the Agreement pursuant to section 13.1, the Ministry may:
- (a) cancel all further instalments of Funds;
 - (b) demand the repayment of any Funds remaining in the possession or under the control of the Recipient; and/or
 - (c) determine the Wind Down Costs and permit the Recipient to offset such Wind Down Costs against the amount owing pursuant to section 13.2(b).

- 13.3 **No Additional Funds.** For purposes of clarity, if the Wind Down Costs exceed the Funds remaining in the possession or under the control of the Recipient, the Ministry shall not be required to provide additional Funds to the Recipient.

ARTICLE 14
EVENT OF DEFAULT, ACTION UPON DEFAULT AND TERMINATION FOR
DEFAULT

- 14.1 **Events of Default.** Each of the following events shall constitute an “Event of Default”:
- (a) in the opinion of the Ministry, the Recipient has knowingly provided false or misleading information regarding its request for funds or in any other communication with the Ministry;
 - (b) in the opinion of the Ministry, the Recipient breaches any material requirement of the Agreement, including failing to do any of the following in accordance with the terms and conditions of the Agreement:
 - (i) carry out the Program;
 - (ii) use or spend Funds; and/or
 - (iii) provide Reports or such other reports as may have been requested pursuant to section 7.1(b), completed to the satisfaction of the Ministry;
 - (c) the nature of the Recipient’s operations, or its corporate status, changes so that it no longer meets one or more of the applicable eligibility requirements of the program under which the Ministry provides the Funds;
 - (d) the Recipient makes an assignment, proposal, compromise, or arrangement for the benefit of creditors, or is petitioned into bankruptcy, or files for the appointment of a receiver; and
 - (e) the Recipient ceases to operate.
- 14.2 **Action upon Default.** If an Event of Default occurs, the Ministry may, at any time, take one or more of the following actions:
- (a) initiate any action the Ministry considers necessary in order to facilitate the successful continuation or completion of the Program;
 - (b) suspend the payment of Funds for such period as the Ministry determines

appropriate;

- (c) reduce the amount of the Funds;
- (d) cancel all further instalments of Funds;
- (e) demand the repayment of any Funds remaining in the possession or under the control of the Recipient;
- (f) demand the repayment of an amount equal to any Funds the Recipient used for purposes not agreed upon by the Ministry;
- (g) demand the repayment of an amount equal to any Funds the Ministry provided to the Recipient; and/or
- (h) terminate the Agreement immediately upon giving Notice to the Recipient.

14.3 **Opportunity to Remedy.** In addition to its rights provided for in section 14.2, the Ministry may provide the Recipient an opportunity to remedy the Event of Default by providing Notice to the Recipient:

- (a) of the particulars of the Event of Default; and
- (b) of the period of time within which the Recipient is required to remedy the Event of Default.

14.4 **Recipient not Remediating.** If the Ministry has provided the Recipient with an opportunity to remedy the Event of Default pursuant to section 14.3 and:

- (a) the Recipient does not remedy the Event of Default within the time period specified in the Notice;
- (b) it becomes apparent to the Ministry that the Recipient cannot completely remedy the Event of Default within the time period specified in the Notice or such further period of time as the Ministry considers reasonable; or
- (c) the Recipient is not proceeding to remedy the Event of Default in a way that is satisfactory to the Ministry,

the Ministry may initiate any one or more of the actions provided for in sections 14.2 (d), (e), (f) and (g).

14.5 **Effective Date.** The effective date of any termination under this Article shall be the last day of the Notice period, the last day of any subsequent Notice period or immediately, whichever applies.

**ARTICLE 15
FUNDS AT THE END OF A FUNDING YEAR**

- 15.1 **Funds at the End of a Funding Year.** Without limiting any rights of the Ministry under Article 14, if the Recipient has not spent all of the Funds allocated for the Funding Year, the Ministry may:
- (a) demand the return of the unspent Funds; or
 - (b) adjust the amount of any further instalments of Funds accordingly.

**ARTICLE 16
FUNDS UPON EXPIRY**

- 16.1 **Funds Upon Expiry.** Without limiting any rights of the Ministry under Article 14, the Recipient shall, upon expiry of the Agreement, return to the Ministry any Funds remaining in its possession or under its control.

**ARTICLE 17
REPAYMENT**

- 17.1 **Debt Due.** If the Recipient owes any monies, including any Funds, to the Ministry, whether or not their return or repayment has been demanded by the Ministry, such monies shall be deemed to be a debt due and owing to the Ministry by the Recipient and the Recipient shall pay or return the amount to the Ministry immediately unless the Ministry directs otherwise.
- 17.2 **Interest Rate.** The Ministry may charge the Recipient interest on any monies owing by the Recipient at the then current interest rate charged by the Province of Ontario on accounts receivable.
- 17.3 **Payment of Monies to Ministry.** The Recipient shall pay any monies owing to the Ministry by certified cheque or bank draft payable to the "Ontario Minister of Finance" and mailed to the Ministry at the address provided in section 18.1.

**ARTICLE 18
NOTICE**

- 18.1 **Notice in Writing and Addressed.** Notice shall be in writing and shall be delivered by postage-prepaid mail, personal delivery or facsimile, and shall be addressed to the Ministry and the Recipient respectively as set out below:

To the Ministry:

To the Recipient:

Ministry of Training, Colleges and
Universities

[@Supplier_Name@]
[@Supplier_Address_Line1@]
[@Supplier_City@], ON

Attention:

[@MTCU_Contract_Contact_Name@]

Fax: [@MTCU_Contract_Contact_Fax@]

Attention:

[@MTCU_Contract_SP_Contact_Name@]

[@MTCU_Contract_SP_Contact@]

[@MTCU_Contract_SP_Contact_Title@]

Fax: [@MTCU_Contract_SP_Contact_Fax@]

A Party may designate new contacts for Notice by providing Notice to the other Party of the new information in accordance with this Article.

18.2 **Notice Given.** Notice shall be deemed to have been received:

- (a) in the case of postage-prepaid mail, seven days after such Notice is mailed; or
- (b) in the case of personal delivery or facsimile, on the day such Notice is received by the other Party.

18.3 **Postal Disruption.** Despite section 18.2(a), in the event of a postal disruption:

- (a) Notice by postage-prepaid mail shall not be deemed to be received; and
- (b) the Party giving Notice shall provide Notice by personal delivery or by facsimile.

ARTICLE 19 SEVERABILITY OF PROVISIONS

19.1 **Invalidity or Unenforceability of Any Provision.** The invalidity or unenforceability of any provision of the Agreement shall not affect the validity or enforceability of any other provision of the Agreement. Any invalid or unenforceable provision shall be deemed to be severed.

ARTICLE 20 WAIVER

20.1 **Waivers in Writing.** If a Party fails to comply with any term of the Agreement,

that Party may only rely on a waiver of the other Party if the other Party has provided a written waiver in accordance with the Notice provisions in Article 18. Any waiver must refer to a specific failure to comply and shall not have the effect of waiving any subsequent failures to comply.

ARTICLE 21 INDEPENDENT PARTIES

- 21.1 **Parties Independent.** The Recipient acknowledges that it is not an agent, joint venturer, partner or employee of the Ministry and the Recipient shall not take any actions that could establish or imply such a relationship.

ARTICLE 22 ASSIGNMENT OF AGREEMENT OR FUNDS

- 22.1 **No Assignment.** The Recipient shall not assign any part of the Agreement or the Funds without the prior written consent of the Ministry.
- 22.2 **Enurement.** The Agreement shall enure to the benefit of and be binding upon the Parties and their respective heirs, executors, administrators, successors and permitted assigns.

ARTICLE 23 GOVERNING LAW

- 23.1 **Governing Law.** The Agreement and the rights, obligations and relations of the Parties shall be governed by and construed in accordance with the laws of the Province of Ontario and the applicable federal laws of Canada. Any actions or proceedings arising in connection with the Agreement shall be conducted in Ontario.

ARTICLE 24 FURTHER ASSURANCES

- 24.1 **Agreement into Effect.** The Parties shall do or cause to be done all acts or things necessary to implement and carry into effect the terms and conditions of the Agreement to its full extent.

ARTICLE 25 SURVIVAL

25.1 **Survival.** The provisions in Article 1, sections 4.7(b), 5.2, 7.1 (to the extent that the Recipient has not provided the Reports or other reports), 7.2, 7.3, 7.4, 7.5, 7.6, Articles 8, 9 and 10, sections 12.2, 13.2, 13.3, 14.1, 14.2(c), (d), (e), (f) and (g), Articles 16, 17, 18, 19, 23, 25, 26 and 28, and all applicable Definitions, cross-referenced provisions and schedules shall continue in full force and effect for a period of seven years from the date of expiry or termination of the Agreement.

ARTICLE 26 SCHEDULES

26.1 **Schedules.** The Agreement includes the following schedules:

- (a) Schedule “A” – Program Description
- (b) Schedule “B” – Budget and Performance Commitments;
- (c) Schedule “C” – Payment Schedule; and
- (d) Schedule “D” – Reports.

ARTICLE 27 COUNTERPARTS

27.1 **Counterparts.** The Agreement may be executed in any number of counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument.

ARTICLE 28 ENTIRE AGREEMENT

28.1 **Entire Agreement.** The Agreement constitutes the entire agreement between the Parties with respect to the subject matter contained in the Agreement and supersedes all prior oral or written representations and agreements.

28.2 **Modification of Agreement.** At any time prior to its expiry, the Agreement may be amended by a document in writing, dated and signed by the Parties.

The Parties have executed the Agreement on the dates set out below.

HER MAJESTY THE QUEEN IN RIGHT OF ONTARIO
as represented by the Minister of **Training, Colleges and**

Universities

Name:[@MTCU_ETD_Contract_MTCU_Signatory_Name@]

Date

Title: [@MTCU_ETD_Contract_MTCU_Signatory_Title@]

[@Supplier Name@]

Name:
Position:

Date

Name:
Position:

Date

I/We have authority to bind the Recipient.

SCHEDULE “A”

Attached to and forming part of an Agreement between Her Majesty the Queen in right of Ontario, as represented by the Minister of Training, Colleges and Universities (the “Ministry”) and [@Supplier_Name@] (the “Recipient”), made effective as of [@MTCU_ETD_Agreement_Effective_Date@].

1. Background

The Ontario Literacy and Basic Skills (LBS) Program includes both lower level literacy training and academic upgrading to form a comprehensive and integrated adult learning service. Organizations provide literacy services that assist learners in moving toward their training, education, employability, and independence goals.

The Ministry enters into agreements under the LBS Program with:

1. Support Organizations
2. Service Delivery Organizations

Service delivery is the primary focus of the Program. It encompasses a number of specific services that are provided directly to learners. These services range from outreach to adults who want to upgrade their literacy and basic skills, to training that is tailored to learners' needs and level, through post-training follow-up to measure the impact of participation in the Program on learners' progress toward their individual goals.

Service development includes activities that support and improve delivery organizations' ability to provide quality literacy services. On-going assistance from support organizations help the service delivery organizations to continuously upgrade their capacity to provide the services learners need. These services help ensure that the Program is innovative and relevant to learners and communities, as well as cost-effective.

The Recipient is a Support Organization.

2. Guidelines

The Recipient shall carry out the Program in accordance with the Guidelines, as applicable to Support Organizations.

3. Find a Service

The Recipient shall promptly update the “Find a Service” on the Employment Ontario website <http://www.tcu.gov.on.ca/eng/search.html> with any changes to their organization contact information as follows:

- Use the link to search for their organization;
- Click on their organization's record;
- On the map, click **More info**;

- Click **Update** for instructions to update their information.

SCHEDULE "B"

Attached to and forming part of an Agreement between Her Majesty the Queen in right of Ontario, as represented by the Minister of Training, Colleges and Universities (the "Ministry") and [@Supplier Name@] (the "Recipient"), made effective as of [@MTCU_ETD_Agreement_Effective_Date@].

BUDGET AND PERFORMANCE COMMITMENTS

Total Maximum Budget for Funding Year 2011-2012
\$[@MTCU_ETD_Total_Maximum_Budget_2011_2012@]

Old LBS Agency Number: [@MTCU_ETD_Old_LBS_Agency_Number@]

EOIS Site Number: [@MTCU_ETD_SDS_Number@]

Local Board Number: [@MTCU_ETD_SDS_Local_Board_Number@]

2011 - [@MTCU_ETD_Fiscal_Yr@]

Budget

Funding Categories	
Operating Funds	\$[@MTCU_ETD_B_Operating@]
Other Funding 1	\$[@MTCU_ETD_B_Other_Funding_1@]
Other Funding 2	\$[@MTCU_ETD_B_Other_Funding_2@]
Other Funding 3	\$[@MTCU_ETD_B_Other_Funding_3@]
Other Funding 4	\$[@MTCU_ETD_B_Other_Funding_4@]
Other Funding 5	\$[@MTCU_ETD_B_Other_Funding_5@]
Other Funding 6	\$[@MTCU_ETD_B_Other_Funding_6@]
TOTAL Budget	\$[@MTCU_ETD_Budget_Line_Total@]

Site Schedule Number: [@MTCU_ETD_Site_Schedule_Number@]

PERFORMANCE COMMITMENTS

Core Activities		
Activity #	Description	End Date
Activity 1	[@MTCU_ETD_T_Activity_1@]	
Activity 2	[@MTCU_ETD_T_Activity_2@]	
Activity 3	[@MTCU_ETD_T_Activity_3@]	
Activity 4	[@MTCU_ETD_T_Activity_4@]	
Activity 5	[@MTCU_ETD_T_Activity_5@]	
Activity 6	[@MTCU_ETD_T_Activity_6@]	
Activity 7	[@MTCU_ETD_T_Activity_7@]	
Activity 8	[@MTCU_ETD_T_Activity_8@]	
Activity 9	[@MTCU_ETD_T_Activity_9@]	
Activity 10	[@MTCU_ETD_T_Activity_10@]	
Activity 11	[@MTCU_ETD_T_Activity_11@]	
Activity 12	[@MTCU_ETD_T_Activity_12@]	
Activity 13	[@MTCU_ETD_T_Activity_13@]	
Activity 14	[@MTCU_ETD_T_Activity_14@]	

SCHEDULE "C"

Attached to and forming part of an Agreement between Her Majesty the Queen in right of Ontario, as represented by the Minister of Training, Colleges and Universities (the "Ministry") and [@Supplier Name@] (the "Recipient"), made effective as of [@MTCU_ETD_Agreement_Effective_Date@].

PAYMENT SCHEDULE

2011-2012

PAYMENT DATE	AMOUNT
<p>If the total Maximum Budget for Funding Year 2011-2012 is \$100,000 or more:</p> <p>April 2011</p> <p>Monthly from July 2011 to March 2012</p>	<p>25% of the total Maximum Budget for Funding Year 2011-2012 as set out in Schedule "B".</p> <p>1/9th of the remaining 75% of the total Maximum Budget for Funding Year 2011-2012 as set out in Schedule "B".</p>
<p>If the total Maximum Budget for Funding Year 2011-2012 is less than \$100,000:</p> <p>April 2011</p> <p>July 2011</p> <p>October 2011</p> <p>January 2012</p>	<p>35% of the total Maximum Budget for Funding Year 2011-2012 as set out in Schedule "B".</p> <p>15% of the total Maximum Budget for Funding Year 2011-2012 as set out in Schedule "B".</p> <p>25% of the total Maximum Budget for Funding Year 2011-2012 as set out in Schedule "B".</p> <p>25% of the total Maximum Budget for Funding Year 2011-2012 as set out in Schedule "B".</p>

2012-2013

PAYMENT DATE	AMOUNT
<p>If the total Maximum Budget for Funding Year 2012-2013 is \$100,000 or more:</p> <p>April 2012</p> <p>Monthly from July 2012 to March 2013</p>	<p>25% of the total Maximum Budget for Funding Year 2012-2013 as set out in the Revised Schedule "B".</p> <p>1/9th of the remaining 75% of the total Maximum Budget for Funding Year 2012-2013 as set out in the Revised Schedule "B".</p>
<p>If the total Maximum Budget for Funding Year 2012-2013 is less than \$100,000:</p> <p>April 2012</p> <p>July 2012</p> <p>October 2012</p> <p>January 2013</p>	<p>35% of the total Maximum Budget for Funding Year 2012-2013 as set out in the Revised Schedule "B".</p> <p>15% of the total Maximum Budget for Funding Year 2012-2013 as set out in the Revised Schedule "B".</p> <p>25% of the total Maximum Budget for Funding Year 2012-2013 as set out in the Revised Schedule "B".</p> <p>25% of the total Maximum Budget for Funding Year 2012-2013 as set out in the Revised Schedule "B".</p>

SCHEDULE "D"

Attached to and forming part of an Agreement between Her Majesty the Queen in right of Ontario, as represented by the Minister of Training, Colleges and Universities (the "Ministry") and [@Supplier Name@] (the "Recipient"), made effective as of [@MTCU_ETD_Agreement_Effective_Date@].

REPORTS

NAME OF REPORT	DUE DATE
1. Estimate of Expenditure Report	As specified in the Audit and Accountability Requirements
2. Statement of Revenue and Expenditure Report	
3. Auditor's Report	
4. Reports specified from time to time	On a date or dates specified by the Ministry