PART I – PURPOSE AND SCOPE

1.1. The purpose of the Standard on Procurement Exceptions (the “Standard”) is to establish criteria, and rules of interpretation for assessing and determining whether a situation may be exempt from the commitment to a competitive tendering process provided for within the applicable regulatory framework.

1.2. The Standard is to be read in conjunction with the Sustainable Procurement Policy (the “Policy”). The expressions used in the Policy, as well as the Policy’s scope, governance hierarchy, governing principles, strategy and description of responsibilities, fully apply to the Standard.

PART II – CONTENT

2.1. To be eligible for exemption from the competitive tendering process, the contemplated acquisition must meet one or more of the criteria below and the determination of whether such criteria are fulfilled must be reached exclusively by McGill University Procurement Services:

2.1.1. The goods, services or construction works will be acquired at no cost (i.e., “free of charge”, with a straight invoice cost of zero dollars);

2.1.2. The goods or services being acquired fall within a category and financial threshold that are authorized by the University’s Pcard Directive;

2.1.3. The goods or services will be acquired from another institution (higher education or healthcare organization, municipality, etc.). The determination of an entity’s institutional character shall be achieved by way of an assessment of the organization’s mission and statutes, and is not limited to its name;

2.1.4. The goods, services or construction works are currently being acquired under a contract that is expiring and the disruption caused by a contractor change would be significantly detrimental to the University’s triple bottom line total acquisition cost goals. The disruption cannot be the result of a lack of planning or delayed execution of the steps of the procurement cycle;
2.1.5. A single potential contractor has been identified for the provision of the goods, services or construction works being acquired and following a serious and rigorous market research exercise, the University deems that competition is not possible, due to one of the following reasons:

a) The potential contractor is the exclusive holder of the legal rights required to fulfill the needs of the University, or provides the University with a compatible solution, without the University needing to make unreasonable compromises. In such a case, it will be necessary for the potential contractor to demonstrate (with third party supporting documentation, where appropriate) that it is the holder of the exclusive licence, patent, moral rights or any other right to legally deliver the required goods, services or construction works to the University, as the case may be.

b) The potential contractor is the sole party able to meet the contract requirements. Such contract requirements may include, but are not limited to, technical specifications, service levels, magnitude, quantity, pace or circumstances of execution. In such a case, the contract requirements must reflect characteristics that are strictly necessary for the University’s needs to be met without the University making unreasonable compromises.

c) The goods, services or construction works being acquired are of a confidential nature, to a degree which prevents the dissemination of information typically necessary to conduct a competitive tendering process.

d) The potential contractor is able to provide exceptional conditions which benefit the University’s triple bottom line total acquisition cost goals to a level which competition cannot reasonably be expected to replicate.

2.1.6. Following a competitive tendering process which yielded no results, a potential contractor has been identified based on a previously conducted serious and rigorous market research exercise (as well as on the potential contractor’s corroborating performance as a participant in the competitive tendering process, as the case may be). In such a case, there must be no evidence or reasonable expectation that a new competitive tendering process would deliver improved results, and the contract by mutual agreement must be entered into within a timeframe that does not affect this premise.

2.1.7. The goods, services or construction works being acquired are required in order to manage an unforeseen emergency situation where the safety of people or property is at stake and the University requires such goods, services or construction works in order to maintain its delivery of teaching and research services.

2.1.8. The goods or services being acquired are subject to the terms and conditions of a framework agreement put in place by the government and approved for contracts by mutual agreement. Such framework agreement includes a list of predetermined potential contractors and are approved by way of regulation or government decree.

2.1.9. The main object and purpose of the contemplated transaction is the acquisition or rental of land, existing buildings or other immovable property or the rights thereon.

2.2. For the avoidance of doubt, the procurement process applies to all acquisitions eligible for exemption from the commitment to a competitive tendering process, with appropriate adaptations to be determined and implemented by Procurement Services.