



**TENDER_22167 for
In-Market Representation in the Federal Republic
of Germany**

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PART 1 – DEFINITIONS

The following definitions are applicable to this RFB.

Unless otherwise specified in this RFB, capitalized words and phrases have the meaning set out in the Form of Agreement (Part 2) to this RFB.

“Accessible” means that which can be easily reached or obtained; a facility that can be easily entered; information that can be easily accessed; posing no obstacles to persons with disabilities.

“Accessibility” means a general term which is used to describe the degree of ease that something (e.g., device, service, and environment) can be used and enjoyed by persons with a disability. The term implies conscious planning, design and/or effort to ensure it is barrier-free to persons with a disability, and by extension, usable and practical for the general population as well.

“Bid” means all documentation submitted by a Bidder in response to the RFB or in respect of the RFB.

“Bidder” means the legal entity that submits a Bid in response to this RFB.

“Commercial Envelope” means Section 3 of the RFB, as set out on the Ontario Tenders Portal eTendering System.

“Commercial Response” means all quoted pricing for the Deliverables as found in the Bidder’s response to the Commercial Envelope and any related attachments.

“Deliverable(s)” means all goods and/or services and work to be provided or performed by the Bidder, pursuant to the Agreement entered into, if any, pursuant to this RFB and includes everything that is necessary to be supplied, done or delivered by the Bidder.

“In-Market Representative” means the entity that is selected to provide goods or services to Destination Ontario.

“OTP” and “Ontario Tenders Portal eTendering System” means the Ontario Tenders Portal electronic tendering system currently hosted by Jaggaer

“Preferred Bidder” means the Bidder (or Bidders in the case of a multiple vendor opportunity) who has the highest cumulative score at the conclusion of the evaluation process set out in the Qualification Envelope.

“Qualification Envelope” means Section 1 of the RFB as set out on the Ontario Tenders Portal eTendering System.

“RFB Closing Date and Time” means the Bid submission date and time as set out in the RFB and as may be amended from time to time in accordance with the terms of the RFB.

“RFB Contact” means the person listed in Section 1.1 – Procurement Details.

“Technical Envelope” means Section 2 of the RFB as set out on the Ontario Tenders Portal eTendering System.

“Technical Response” means the Bidder’s response to the Technical Envelope and any related attachments.

“Vendor” means the entity that is selected to provide goods or services to Destination Ontario.

[End of Definitions]

PART 2 - FORM OF AGREEMENT

THIS AGREEMENT effective as of **[Insert effective date]** ("Effective Date"),

B E T W E E N:

DESTINATION ONTARIO

(**"DO"**)

- and -

[INSERT IN-MARKET REPRESENTATIVE'S FULL LEGAL NAME]

("In-Market Representative")

WHEREAS Destination Ontario desires to obtain the services of the In-Market Representative to provide tourism marketing services in Germany as set out in this Agreement;

AND WHEREAS the In-Market Representative represents that its assigned personnel has the skill and expertise necessary to perform the services set out in this Agreement;

NOW THEREFORE THIS AGREEMENT WITNESSES that in consideration of the mutual covenants and agreements contained in this Agreement and subject to the terms and conditions set out in this Agreement, the parties covenant and agree as follows:

Article 1 – Interpretation

1.01 Definitions. In this Agreement

"Agreement" means this agreement and any schedules and amendments hereto;

"Assigned Personnel" means the employee or agent assigned by the In-Market Representative to perform the Services;

"Authority" means any court (including without limitation any national, federal or international court), arbitrator, council or body of competent jurisdiction or any government or quasi-government, judicial, quasi-judicial or industry regulatory body, agency or other authority, whether federal, provincial or municipal, potentially having jurisdiction over the Contract; and

“Authorities” means all such authorities, agencies, bodies or departments including Authorities in the Territory;

“Bid” means all documentation submitted by a Bidder in response to the RFB or in respect of the RFB;

“Bidder” means a legal entity that submits a Bid in response to the RFB;

“Business Day” means any working day, Monday to Friday inclusive, excluding statutory holidays and any other day on which the Provincial Government of Ontario or the government of the Territory has elected to be closed for business;

“Commencement Date” means [insert date];

“Compensation” and “Monthly Compensation” have the meaning set out in section 6.02 of this Agreement;

“Conflict of Interest” includes, but is not limited to, any situation or circumstances where

- (a) in relation to the RFB process, a Bidder 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 its Bid that is confidential to Ontario and not available to other Bidders; (ii) communicating with any person with a view to influencing preferred treatment in the RFB process including the giving of a benefit of any kind, by or on behalf of a Bidder to anyone employed by, or otherwise connected with, Destination Ontario; or (iii) engaging in conduct that compromises or could be seen to compromise the integrity of the open and competitive RFB process and render that process non-competitive and unfair; or
- (b) in relation to the performance of its contractual obligations in this Agreement, the In-Market Representative's other commitments, relationships or financial interests (i) could or could be seen to exercise an improper influence over the objective, unbiased and impartial exercise of its independent judgement; or (ii) could or could be seen to compromise, impair or be incompatible with the effective performance of its contractual obligations;

“Contract” means the aggregate of: (a) the Agreement, including Schedule 1 (Mandatory Business and Technical Requirements, Description of Deliverables, Rates and Supplementary Provisions), and any other schedule attached at the time of execution; (b) the RFB, including any addenda and attachments; (c) the Bid; and (d) any amendments executed in accordance with the terms of the Agreement;

“Core Deliverable” means ongoing requirements executed throughout the Contract Term

“Deliverables” means any and all deliverables described in Schedule 1 attached hereto, together with all concepts, techniques, ideas, information, documentation and any other materials, however recorded, and all Intellectual Property Rights arising there from developed for or provided to Destination Ontario by the In-Market Representative, or its respective employees, volunteers or agents in the course of performing the Services;

“Expiry Date” means (insert date), or, if the original term is extended, the final date of the extended term;

“Fiscal Year” means the period running from April 1 in one calendar year to, and including, March 31 in the next calendar year;

“FIPPA” means the *Freedom of Information and Protection of Privacy Act*, Revised Statutes of Ontario, 1990, c.F31, as amended;

“HST” means Ontario Harmonized Sales Tax;

“Indemnified Parties” means each of the following and their directors, officers, advisors, agents, appointees and employees: Destination Ontario, Ontario and the members of the Executive Council of Ontario, along with any and all permitted assignees of the Contract;

“Ineligible Expenses” shall include, but shall not be limited to, the following:

- (a) Hospitality (unless pre-approved in writing by Destination Ontario);
- (b) Meals, snacks, beverages (including alcohol) and incidentals during a regular working day while on assignment for Destination Ontario (unless pre-approved in writing by Destination Ontario)
- (c) Gratuities (unless pre-approved in writing by Destination Ontario);
- (d) Laundry or dry cleaning;
- (e) Valet services;
- (f) Dependent care;
- (g) Home management;

- (h) Personal telephone calls;
- (i) Insurance costs, including but not limited to, automobile, business/home office liability, medical/health, travel accident;
- (j) Office overhead costs including any and all Internet service fees and access, telephone charges, office supplies, high speed Internet access;
- (k) Computer equipment;
- (l) All telephone charges, including monthly cellular/landline telephone fees, telephone equipment and local calls;
- (m) Office rental charges;
- (n) Legal fees incurred;
- (o) Fuel, motor vehicle maintenance and licensing; and
- (p) Any toll fees for entry into areas that are considered within local travelling distance;

"In-Market Representative's Personnel" includes the directors, officers, employees, agents, partners, affiliates volunteers or Subcontractors of the In-Market Representative;

"Intellectual Property Rights" means any intellectual or industrial property right including without limitation, any copyright, patent, trademark or trade secret;

"Losses" means liabilities, costs, damages and/or expenses (including legal, expert and consulting fees);

"Maximum Compensation" has the meaning set out in section 6.01;

"Ontario" means His Majesty the King in right of Ontario;

"Option" has the meaning set out in section 2.01 of this Agreement;

"Optional Deliverable" means activities that Destination Ontario may add, pause, or remove based on priorities and budget.

"Destination Ontario Confidential Information" means all information or material of Destination Ontario that is of a proprietary or confidential nature, regardless of whether it is identified as proprietary or confidential or not, and whether recorded or not, and however fixed, stored, expressed or embodied which is communicated to or comes into the possession or control of the In-Market Representative in connection

with the Agreement, but Destination Ontario Confidential Information shall not include information that:

- (a) is or becomes generally available to the public without fault or breach on the part of the In-Market Representative, including without limitation the breach of any duty of confidentiality owed by the In-Market Representative to Destination Ontario or to any third party, but only after that information becomes generally available to the public;
- (b) the In-Market Representative can demonstrate to have been rightfully obtained by the In-Market Representative from a third party who had the right to transfer or disclose it to the In-Market Representative free of any obligation of confidence; or
- (c) the In-Market Representative can demonstrate to have been rightfully known to or be in possession of the In-Market Representative at the time of disclosure free of any obligation of confidence; or is independently developed by the In-Market Representative without use of any Destination Ontario Confidential Information;

“Permitted Expenses” shall mean only those *bona fide* and reasonable expenses incurred by the In-Market Representative in direct connection to the Services delivered hereunder, which are specifically set out as follows:

- (a) Transportation costs (air - economy class; rail; rental cars based on the policies of the Government of Ontario as amended from time to time) when on Destination Ontario assignment with prior approval;
- (b) Mileage on Destination Ontario assignment with prior approval (based on actual miles/kilometres travelled, based on rates paid by the National Joint Council as amended from time to time, only for the In-Market Representative's vehicle, i.e. not a rental)
- (c) Taxi charges as required to deliver Destination Ontario services;
- (d) Parking (when attending meetings/shows only as required to deliver Destination Ontario Services);
- (e) Overnight accommodation at hotel/motel when required to deliver approved Destination Ontario Services and not exceeding amounts permitted by policies of the Government of Ontario as amended from time to time;
- (f) Trade Show admission and booth fees (with the prior written approval of Destination Ontario);
- (g) Courier Charges relating to deliveries made in the conduct of Destination Ontario services;

“Personal Information” has the same definition as in subsection 2 (1) of FIPPA, and includes an individual's name, address, age, date of birth, sex, and religion, whether recorded in printed form, on film, by electronic means or otherwise and disclosed to the In-Market Representative pursuant to this Agreement;

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

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

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

“RFB” means the Request for Bids, which includes the Qualification, Technical, and Commercial Envelopes as set out on the Ontario Tenders Portal eTendering System, as well as any addenda and attachments to it; dated [insert date] for **In-Market Representation in the Federal Republic of Germany** reference number [insert number] issued by Destination Ontario for the Deliverables and Services;

“Services” means the services and Deliverables to be provided by the In-Market Representative pursuant to Schedule 1 of the Contract;

“**Subcontractors**” means in the case of each party, any contractor of that party or any of its subcontractors at any tier of subcontracting;

“Term” means the period of time from the Effective Date 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;

“Territory” shall mean the Federal Republic of Germany.

- 1.01 No Indemnities from Destination Ontario. Notwithstanding anything else in the Contract, any express or implied reference in any document (including subcontracts) related to the Deliverables under the Contract, to Destination Ontario providing an indemnity or any other form of indebtedness or contingent liability that would directly or indirectly increase the indebtedness or contingent liabilities of Destination Ontario or Ontario, whether at the time of execution of the Agreement or at any time during the Term, shall be void and of no legal effect.
- 1.02 Entire Agreement. 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 Agreement.

- 1.03 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.
- 1.04 Interpretive Value of Headings. The headings in the Contract are for convenience of reference only and in no manner modify, interpret or construe the Contract.
- 1.05 Interpretive Value of Contract Documents. In the event of a conflict or inconsistency in any provisions in the Contract: (a) the main body of the Agreement shall govern over the Schedules to the Agreement; (b) the Agreement (including its Schedules) shall govern over the RFB and the Bid; and (c) the RFB shall govern over the Bid.
- 1.06 Use of "Herein" etc. The words "herein", "hereof", and "hereunder" and other words of similar import refer to this Agreement as a whole and not to any particular article, section, paragraph or other subdivision of this Agreement.
- 1.07 Force Majeure. Where the Contract is frustrated, neither party shall be liable to the other for failure to perform its respective obligations where such failure is caused, without fault on its part by any event beyond the reasonable control of such party, including, without limitation, explosion, flooding and civil disorder, but excluding any insolvency, labour disputes, lack of funds or financial causes relating to such party.
- 1.08 Currency. All references to currency throughout this Agreement are to Canadian Dollars.
- 1.10 Schedules. All references to Schedules refer to Schedules of this Agreement, which are part of and form an integral part of this Agreement. The schedules of this Agreement are:
- Schedule 1: Mandatory Business and Technical Requirements, Description of Deliverables, Rates and Supplementary Provisions.
- 1.11 Purchase Requisitions. Any purchase requisition that is issued under this Contract forms part of this Agreement but only to the extent that it does not conflict with any provision of this Agreement.
- 1.12 Language. This Agreement and all documents relating thereto shall be in English.
- 1.13 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. The parties hereto attorn to the jurisdiction of the courts in the Province of Ontario, Canada, save that Destination Ontario shall have the right to commence an action to

enforce any rights it might have hereunder in any jurisdiction in which the In-Market Representative is resident, including but not limited to the Territory.

- 1.14 Counterparts. The Contract may be executed in any number of counterparts, each of which shall be deemed an original and all of which together shall constitute one and the same instrument.
- 1.15 Execution and Transmission. The parties agree that the Contract may be validly executed electronically, and that their respective electronic signature is the legal equivalent of a manual signature. The electronic signature of a party may be evidenced by one of the following means and transmission of the Contract may be as follows:
- (a) a manual signature of an authorized signing representative placed in the respective signature line of the Contract and the Contract scanned as a pdf and delivered by email to the other party;
 - (b) a digital signature, including the name of the authorized signing representative typed in the respective signature line of the Contract, an image of a manual signature, or any other digital signature of an authorized signing representative, placed in the respective signature line of the Contract and the Contract delivered by email to the other party; or
 - (c) any other means with Destination Ontario's prior written consent.

Article 2 - Term and Extension

- 2.01 Term. Subject to Article 12, the initial term of this Agreement means the twenty-four (24) month period commencing from **[insert date] to [insert date]** inclusive. Destination Ontario shall have the option (the "Option"), but not the obligation, to extend the Agreement for **up to two (2) additional up to twelve-month (12) terms each**, upon thirty (30) calendar days' prior written notice to the In-Market Representative. Each such renewal shall be on the same terms and conditions (including the Maximum Compensation), excepting the option to renew during the final extension period. Each notice shall set forth the precise duration of the extension.
- 2.02 Satisfactory Performance. Without in any way restricting or fettering Destination Ontario's absolute discretion in determining whether or not to exercise the Option, a necessary but not a sufficient condition to such extension shall be that the In-Market Representative shall have, in Destination Ontario's sole opinion, satisfactorily performed the Services required hereunder during the previous applicable year.

Article 3 – Relationship between Destination Ontario and In-Market Representative

- 3.01 In-Market Representative's Power to Contract. The In-Market Representative represents and warrants that it has the full right and power to enter into the Contract and there is no agreement with any other Person that would in any way interfere with the rights of Destination Ontario under the 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 In-Market Representative Is Independent Contractor. It is agreed, acknowledged and understood by the parties hereto that this Agreement is a contract for a service and that the In-Market Representative is an independent contractor. Nothing in this Agreement shall have the effect of creating an employment, partnership or agency relationship or creating an appointment under the *Public Service of Ontario Act, 2006*, S.O. 2006, Chapter 35, as amended, and the In-Market Representative shall not hold himself out as an employee, agent or partner of Destination Ontario. The In-Market Representative shall have no power or authority to bind Destination Ontario or Ontario or to assume or create any obligation or responsibility, express or implied, on Destination Ontario's behalf or on behalf of His Majesty the King in right of the Province of Ontario. For greater certainty, the In-Market Representative acknowledges and agrees that:
- (a) the In-Market Representative shall not be entitled to receive any employee benefits, including but not limited to, vacation leave, sick leave or any type of leave whatsoever; and
 - (b) Destination Ontario is not required to and will not be making deductions under the Canada Pension Plan, the *Employment Insurance Act*, and will not be deducting or withholding amounts, or remitting amounts on account of income tax, or analogous types of deductions or remittances in Ontario, Canada or the Territory.
- 3.04 No Subcontracting or Assignment. The In-Market Representative 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 Destination Ontario. Such consent shall be in the sole discretion of Destination Ontario and subject to the terms and conditions that may be imposed by Destination Ontario. Without limiting the generality of the conditions which Destination Ontario may require prior to consenting to the In-Market Representative's use of a subcontractor, every contract entered into by the In-Market Representative 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 Destination Ontario.

3.05 Conflict of Interest.

- (a) The In-Market Representative's Assigned Personnel shall not engage in any activity or provide any services to any third party where such activity or the provision of such services, creates a Conflict of Interest (actually or potentially in the sole opinion of Destination Ontario) with the provision of the Deliverables and Services pursuant to the Contract. The In-Market Representative acknowledges and agrees that it shall be a Conflict of Interest for it to use Destination Ontario Confidential Information or other information of the Crown relevant to the Deliverables and Services where Destination Ontario has not specifically authorized such use.
- (b) The Services of the Assigned Personnel shall be fully dedicated to Destination Ontario and to not do so shall be considered a Conflict of Interest. This provision is not intended to restrict the activities of the In-Market Representative's other employees, consultants or agents in relation to its business with other clients.
- (c) The In-Market Representative shall disclose to Destination Ontario without delay any actual or potential situation that may be reasonably interpreted as either a conflict of interest or a potential conflict of interest.

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

3.07 No Third-Party Rights. A Person who is not a party to the Contract shall not have any rights under or in connection with it.

Article 4 - In-Market Representative's Services

4.01 Performance Warranty. The In-Market Representative hereby represents and warrants that:

- (a) the Services and Deliverables will be provided in accordance with the Contract and the Requirements of Law;
- (b) the In-Market Representative will not receive or participate in any form of remuneration of any kind from any Person for the Services except as provided in the Contract; and
- (c) the In-Market Representative will provide a completely dedicated consumer marketing, travel trade development and media relations service to Destination Ontario.

- 4.02 Services to Be Provided. The In-Market Representative shall provide the Services set out in Schedule 1. The In-Market Representative shall have Assigned Personnel who will devote the necessary hours during the Term to strictly comply with the provision of the Services to Destination Ontario as provided for herein. The In-Market Representative's Assigned Personnel for consumer marketing, travel trade development and media relations service shall not provide those Services to any party other than Destination Ontario while he/she is providing Services to Destination Ontario as provided for in this Agreement. For greater certainty, Assigned Personnel to marketing, travel trade development and media relations service shall not represent other states, nations or provinces or provide travel trade development/promotion related services to third parties on a fee for service basis or for any other form of direct or indirect remuneration or benefit during the Term, and to do so shall be considered a Conflict of Interest.
- 4.03 Non-Exclusivity, Work Volumes. The In-Market Representative does not have the exclusive right to perform and provide to Destination Ontario the Services. Destination Ontario may contract for identical or similar services from any other Person without restriction and the In-Market Representative hereby acknowledges the right of Destination Ontario to do so. Destination Ontario makes no representation regarding the volume of goods, Services and Deliverables required under the Contract.
- 4.04 Notice Required to change Assigned Personnel. The In-Market Representative shall provide Destination Ontario with no less than thirty (30) calendar days' prior written notice before replacing or substituting any named individual with any other individual. Should the In-Market Representative require the substitution or replacement of any of the Assigned Personnel, it is understood and agreed that any proposed replacement must possess similar or greater qualifications than the individual named in the Contract. In addition, where any new In-Market Representative account team member assigned to the account departs within twelve (12) months of their assignment, the In-Market Representative shall, at its sole expense, ensure that the replacement account team member travels to Ontario for full training on Destination Ontario's business and requirements, all in accordance with Destination Ontario's schedule and direction for same. The In-Market Representative shall not claim fees for any replacement individual greater than the Compensation established under the Contract.
- 4.05 Targets. The In-Market Representative shall use its best efforts to meet or exceed the annual targets, as agreed to by both parties in writing. Failure to meet or exceed the annual targets may result in the termination of the Contract at the sole discretion of Destination Ontario.
- 4.06 Reports. On a monthly basis the In-Market Representative shall provide written and electronic summary reports during the Term, not later than seven (7) calendar days following the end of the applicable month. Such reports are to be in a form as prescribed by Destination Ontario. The In-Market Representative shall maintain all

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Destination Ontario-related information in the In-Market Representative's system, in the form of electronic files and paper copies, or as Destination Ontario may require, including Destination Ontario-related reports and accounts for any reporting period up to and including the end of the Term. The In-Market Representative shall provide this information to Destination Ontario at such times as requested by Destination Ontario. Additionally, the In-Market Representative, at its own expense and at the request of Destination Ontario, shall provide, to the persons specified from time to time by Destination Ontario, such other written progress reports as may be requested concerning the services being provided by the In-Market Representative under this Agreement and written reports showing the portion of the services completed. The In-Market Representative's Monthly Compensation will not be paid until the monthly report is received by Destination Ontario.

4.07 Time of Performance. Time is of the essence and the In-Market Representative agrees to complete the Services within the time stipulated herein.

4.08 Standard of Conduct. The In-Market Representative shall conduct itself in a manner that does not bring any disrepute to Destination Ontario or the Province of Ontario, in the sole opinion of Destination Ontario, and shall abide by the business standards of the Province of Ontario, including but not limited to:

- (a) In-Market Representative shall treat all requests and inquiries from any prospective client company with equal consideration and service;
- (b) In-Market Representative shall not benefit from, receive or request from any Person, or offer or promise to pay any Person commissions, discounts, gifts or payments of any kind in connection with the provision of Services by the In-Market Representative or the discharge of the In-Market Representative's obligations under this Contract.

4.09 Changes By Written Amendment Only. Any changes to the Contract shall be by written amendment signed by the parties. No changes shall be effective or shall be carried out in the absence of such an amendment.

4.10 Waiver to Be In Writing. The benefit of any provision of this Agreement may be waived in whole or in part by the party for whose benefit the provision operates and either party may waive any or all of its rights in the event of a breach of any provision of this Agreement by the other party. A waiver is binding on the waiving party only if it is in writing. A waiver may be absolute or may be limited in any way as to duration or scope. All waivers are without prejudice to the rights of the waiving party in the event of:

- (a) a breach by the other party of any provision of this Agreement other than the provision the benefit of which was waived;

(b) a breach by the other party of the provision the benefit of which was waived if the breach is not within the period or scope of the waiver; or

(c) a breach by the other party subsequent to the breach for which the waiving party waived its rights.

Article 5 - Destination Ontario Services

5.01 Destination Ontario Official. When anything is to be done by Destination Ontario under this Agreement, it may be done by anyone who has been designated and authorized by the president of Destination Ontario or his/her authorized delegate to act on Destination Ontario's behalf.

Article 6 - Billing and Payment (Maximum Compensation)

6.01 (a) Maximum Amount Payable. The total, maximum amount payable by Destination Ontario for Services and Deliverables under this Contract is set out in Section B.1 (Maximum Fee) of Schedule 1 to the Agreement ("Maximum Compensation"). All amounts shall be paid by Destination Ontario in accordance with sections 6.03 and 6.04, as applicable. Notwithstanding anything to the contrary, payment by Destination Ontario shall only be made for Services and Deliverables actually rendered and Permitted Expenses actually incurred and paid, supported by acceptable documentation.

(b) Special Disbursements. Destination Ontario recognizes that there may be specific circumstances where other costs may be incurred by the In-Market Representative. For the purposes of this paragraph, "Special Disbursements" shall mean those expenses and/or disbursements, which are incurred, or allocated, on an infrequent, non-recurring basis to certain specific and defined products and /or services.

For greater clarity, no expenses and/or disbursements will be treated as Special Disbursements unless (a) prior to the incursion of such expense and/or disbursement, the In-Market Representative submits a written request to Destination Ontario requesting that such expense and/or disbursement be treated as a Special Disbursement; and (b) Destination Ontario approves of such request and provides written confirmation that such expense and/or disbursements shall be a Special Disbursement, failing which such expenses and/or disbursements will be treated as an ordinary expense/disbursement.

Notwithstanding anything to the contrary set out herein, Special Disbursements shall be calculated in, and counted towards, the Maximum Compensation.

- 6.02 Compensation. Provided the In-Market Representative is in compliance with this Contract (including, without limitation, its obligations with respect to the monthly report set out in section 4.06 (Reports)) and the Contract has not been terminated, the In-Market Representative shall be paid a monthly amount as set out in Schedule 1 to the Agreement for Services (the "Monthly Compensation"), payable in Canadian Dollars, in accordance with section 6.03.
- 6.03 Invoicing Compensation. The In-Market Representative shall invoice Destination Ontario for the applicable Monthly Compensation in the month following (but not before) that month in which the In-Market Representative's Services were rendered which is the subject matter of the invoice. Subject to section 6.05, providing that the In-Market Representative invoices Destination Ontario for the applicable Monthly Compensation by the ninth (9th) day of the month, Destination Ontario will use reasonable efforts to ensure that the In-Market Representative receives payment prior to the last day of that month. For greater certainty, the In-Market Representative shall not invoice Destination Ontario for Services that have not yet been rendered.
- 6.04 Expense Claims. On the last day of each month during the Term, the In-Market Representative shall submit electronically to Destination Ontario an expense claim in respect of Permitted Expenses which have actually been properly paid by the In-Market Representative together with all relevant supporting documentation, such electronic version to be immediately followed by delivery to Destination Ontario of the original expense claim and documentation. Documentation in support of expense claims must include proof of payment including itemized receipts, cashed cheques, etc. Should the expense claim consist, in whole or in part, of charges for goods or services obtained from outside sources, which Destination Ontario has given prior written approval to, the In-Market Representative shall attach to each expense claim, originals of the invoices or other documents issued by the In-Market Representative's contractor in respect of those goods or services. If an original of each invoice or other document issued to the In-Market Representative by a contractor for a service obtained by the In-Market Representative is not attached to the expense claim that includes a charge for that service, Destination Ontario is under no obligation to pay for that service.

Commented [GK4]: This should be on the 9th day of the following month

Monthly expense claims are to be submitted to Destination Ontario in the following format:

- a. In-Market Representative Expenses – see section 1.01 regarding "Permitted Expenses"

All costs for travel and accommodation to and outside Canada will be reimbursed, subject to Destination Ontario's prior approval, at rates based on the policies of the Government of Ontario as amended from time to time, when on Destination Ontario assignment.

- 6.05 Payments for Final Month of Term. Notwithstanding anything to the contrary, the payment of the Monthly Compensation and Permitted Expenses for the last month of the Term, or up to the date of termination in the event that the Contract is terminated pursuant to Article 12, shall not be made by Destination Ontario until all original or scanned copies of invoices and expense claims have been received by Destination Ontario and a reconciliation made by Destination Ontario. Depending on the results of the reconciliation, some or all of the Monthly Compensation and/or the Permitted Expenses for the last month shall be paid to the In-Market Representative or the In-Market Representative shall pay any Overpayments to Destination Ontario, as defined in section 6.08.
- 6.06 Payment of Taxes. The In-Market Representative shall pay all applicable taxes, including excise taxes incurred by or on the In-Market Representative's behalf with respect to the Contract. The In-Market Representative shall be solely responsible to pay all personal, local, state, and federal taxes incurred by the In-Market Representative in the Territory.
- 6.07 Bank Charges. For any remittance of money between Destination Ontario and the In-Market Representative, bank transfer charges and fees shall be borne exclusively by the In-Market Representative.
- 6.08 Overpayments. In the event that Destination Ontario,
- (i) pays to the In-Market Representative or
 - (ii) reimburses the In-Market Representative

for Services or Permitted Expenses that were not provided or incurred at all or not satisfactorily, in Destination Ontario's opinion (all such amounts being "Overpayments"), then such amounts shall be deemed a debt due and owing to Destination Ontario. The In-Market Representative shall be obligated to pay back to Destination Ontario all Overpayments forthwith upon demand by Destination Ontario. In addition, Destination Ontario shall be entitled to hold back and set-off from any amount otherwise owing to the In-Market Representative an amount equal to the Overpayments. For greater clarity and without limiting the generality of the foregoing, upon termination of the Agreement, the In-Market Representative shall forthwith pay back to Destination Ontario any Overpayments made to the In-Market Representative in respect of Permitted Expenses incurred or to be incurred following the date of termination or in respect of Permitted Expenses incurred prior to termination for which proper expense claims have not been rendered to Destination Ontario. This section 6.08 (Overpayments) shall survive any termination or expiry of this Agreement.

- 6.09 Certification of Invoice. Subject to this Agreement, Destination Ontario shall pay the In-Market Representative the amount of each invoice submitted under this Agreement, but only if Destination Ontario accepts the Services and Permitted Expenses for which the invoice is submitted and only if Destination Ontario certifies the invoice.
- 6.10 Purchase Requisition. Before incurring an expense for any of the Services to be performed pursuant to this Agreement, the In-Market Representative shall obtain written authorization from Destination Ontario in the form of a purchase requisition number. The In-Market Representative is entitled to be paid only for Services for which a purchase requisition has been issued and only in an amount not exceeding the amount set out in the purchase requisition. Any alteration in the specifications for Services for which a purchase requisition has been issued must be approved in writing by Destination Ontario and any new phase of those Services for which additional expense will be incurred is not to commence except upon the issuance by Destination Ontario of an amended purchase requisition. Any goods or Services acquired by the In-Market Representative on behalf of Destination Ontario during the Contract Term are to be charged at actual cost, with no markup, surcharge, commission or administrative fee added, and the In-Market Representative shall ensure that all discounts, rebates and credits related to the purchase of any such goods or Services are passed through to Destination Ontario. The total amount of the purchase requisition will reflect the Maximum Compensation.
- 6.11 Holdback. In addition to the rights of Destination Ontario set out in Section 6.08 in respect of Overpayments, a percentage of the monthly fee for the final month of the Agreement (and should the Agreement be extended, the final month of the extension period), will be held back by Destination Ontario as an incentive for the In-Market Representative's achievement of the annual targets. **Fifty percent (50%)** of the monthly fee will be paid by Destination Ontario to the In-Market Representative for such final month, and Destination Ontario will hold back the remaining **fifty percent (50%)**. If the In-Market Representative achieves **two-thirds of the annual targets**, Destination Ontario will release the fifty percent (50%) holdback to the In-Market Representative. If the In-Market Representative does not achieve two-thirds of the annual targets, the fifty percent (50%) holdback will be retained by Destination Ontario. It will be at Destination Ontario's sole discretion to determine whether or not the In-Market Representative has achieved the specified annual targets. Results contributing to the annual targets will be tracked and reported by the In-Market Representative on a monthly basis during the Term of the Contract. Annual target categories and classifications are as further described in Schedule 1.

Article 7 - Document Retention and Audit

- 7.01 Audit. For seven (7) years after the Expiry Date or any date of termination of the Contract, the In-Market Representative shall maintain all records and documents relating to the Services and Deliverables, including billing statements in respect thereof, to substantiate (a) all charges and payments under the Contract and (b) that the Services were performed and the Deliverables were provided in accordance with the Contract and with Requirements of Law. During the Term, and for seven (7) years after the Term, the In-Market Representative shall permit and assist Destination Ontario in conducting audits of the operations of the In-Market Representative to verify (a) and (b) above. Destination Ontario shall provide the In-Market Representative with at least ten (10) Business Days' prior notice of its requirement for such audit. The In-Market Representative's obligations under this section shall survive any termination or expiry of the Contract.

Article 8 – Confidentiality and FIPPA

- 8.01 Confidentiality and Promotion Restrictions. Any publicity or publications related to the Contract shall be at the sole discretion of Destination Ontario. Destination Ontario may, in its sole discretion, acknowledge the Deliverables provided by the In-Market Representative in any such publicity or publication. The In-Market Representative shall not make use of its association with Destination Ontario without the prior written consent of Destination Ontario. Without limiting the generality of this paragraph, the In-Market Representative shall not, among other things, at any time directly or indirectly communicate with the media in relation to the Contract unless it has first obtained the express written authorization to do so by Destination Ontario.
- 8.02 Confidential Information. The In-Market Representative, its employees and agents shall treat as confidential, during and after the Term, Destination Ontario Confidential Information and any information or document concerning the affairs of Destination Ontario or of the Government of Ontario of which the In-Market Representative or any of its employees or agents acquire knowledge or that comes into its or their possession by reason of its or their business with Destination Ontario under this Agreement and shall not disclose either directly or indirectly Destination Ontario Confidential Information to any Person without first obtaining the written permission of Destination Ontario. Without restricting this section, under no circumstances and at no time should the In-Market Representative disclose to any Person any of the secrets, methods or systems used by Destination Ontario in its business. All customer lists, brochures, reports, and such other information of any nature made available to the In-Market Representative by virtue of the In-Market Representative's association with Destination Ontario shall be held in strict confidence during the Term and after the termination or expiry of this Agreement. This section in no way restricts any

disclosure that would be required by law. If the In-Market Representative is given notice that it is required to disclose any Destination Ontario Confidential Information in such circumstances, the In-Market Representative shall provide Destination Ontario with notice of the ordered disclosure to allow Destination Ontario to provide submissions to the ordering Authority, if permitted in accordance with the Requirements of Law.

- 8.03 FIPPA and Data Protection. The In-Market Representative acknowledges that the provisions of FIPPA bind Destination Ontario. The In-Market Representative will respect the spirit of FIPPA and for greater certainty will not directly or indirectly use or disclose any Personal Information provided to it by Destination Ontario pursuant to this Contract. Destination Ontario acknowledges that the In-Market Representative is bound by the EU General Data Protection Regulation (GDPR) and the German Federal Data Protection Act (Bundesdatenschutzgesetz / BDSG), as amended.
- 8.04 Storage of Personal Information. The In-Market Representative will keep separate from all its other records and databases any Personal Information that is provided to it pursuant to the Contract. The In-Market Representative will not place or intermingle nor will it permit any Person to place or intermingle any data or records in any form whatsoever with or into the same database containing Personal Information. The In-Market Representative in a physically secure location will keep personal Information and the In-Market Representative will ensure that the access to such Personal Information is restricted to employees of the In-Market Representative who have been specifically authorized to have such access. The In-Market Representative will implement and maintain measures to ensure the security of the Personal Information by selecting the most appropriate products, tools and procedures. Destination Ontario reserves the right to require the In-Market Representative to institute such other security measures that in the reasonable opinion of Destination Ontario would be adequate and effective to ensure the security and integrity of the Personal Information.
- 8.05 Returning Information. The In-Market Representative shall return all Personal Information and Destination Ontario Confidential Information to Destination Ontario, and shall ensure that all copies of Personal Information and Destination Ontario Confidential Information and any portions thereof are also returned with no copy kept by the In-Market Representative, at the request of Destination Ontario, and in any event prior to the termination or expiry of the Agreement.
- 8.06 Survival. This Article 8 (Confidentiality and FIPPA) shall survive the termination or expiry of this Agreement.

Article 9 - Intellectual Property and Title

- 9.01 Ownership of Deliverables. The Deliverables are the exclusive property of Destination Ontario. The In-Market Representative irrevocably assigns to and in favour of Destination Ontario and Destination Ontario accepts all Intellectual Property Rights in and to the Deliverables for all time. The In-Market Representative irrevocably assigns to and in favour of Destination Ontario and Destination Ontario accepts every right title and interest in and to the Deliverables for all time. To give effect to this section, the In-Market Representative shall obtain assignment of Intellectual Property Rights in the Deliverables from any of its agents or contractors who are involved in the production of the Deliverables. The In-Market Representative shall give the Deliverables to Destination Ontario upon the completion of the Services or any termination or cancellation of this Agreement, or upon request by Destination Ontario. The In-Market Representative shall not, nor may any of its employees, agents or contractors, make public or release for publication any of the Deliverables, or any part thereof, without first obtaining the express written permission of Destination Ontario.
- 9.02 In-Market Representative Grant of Licence. For those parts of the Deliverables that are created with Intellectual Property Rights of the In-Market Representative that existed prior to the Commencement Date, the In-Market Representative grants to Destination Ontario, a perpetual, world wide, non-exclusive, irrevocable, transferable, royalty free, fully paid-up right and licence: (a) to modify, reproduce and distribute, in any form, those Deliverables; and (b) to authorize other Persons, including agents, contractors or sub-contractors, to do any of the former on behalf of Destination Ontario.
- 9.03 Moral Rights. The In-Market Representative shall obtain from its employees, volunteers, agents and contractors, waivers of all rights of integrity and all other moral rights in relation to the Deliverables, which waivers may be invoked without restriction by any person authorized by Destination Ontario to use the Deliverables.
- 9.04 Copyright Notice. The In-Market Representative shall place a copyright notice on all recorded Deliverables conceived of, completed or produced in performing the Services, in the following form:
© King's Printer for Ontario, [insert year].
- 9.05 Further Assurances. The In-Market Representative shall assist Destination Ontario in preparing any Canadian copyright registration that Destination Ontario considers appropriate. The In-Market Representative will obtain and execute any other documents reasonably required by Destination Ontario to protect the Intellectual Property of Destination Ontario.
- 9.06 Intellectual Property of Destination Ontario. The In-Market Representative agrees that all Intellectual Property Rights 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 Destination Ontario to the In-Market Representative shall remain the sole property of the Ontario Government at all times.

- 9.07 Publishing Deliverables. Destination Ontario has the right to publish, or not to publish, any of the Deliverables or any amended or expanded version of any of the Deliverables.
- 9.08 Reimbursed Purchases. The In-Market Representative agrees that all items and materials purchased by the In-Market Representative for which reimbursement is to be made to the In-Market Representative by Destination Ontario under this Agreement are, upon receipt by the In-Market Representative of reimbursement, the property of Destination Ontario. Unless sooner requested by Destination Ontario, such items and materials must be delivered to Destination Ontario at the end of the Term at an address to be designated by Destination Ontario.
- 9.09 Ontario Government Insignia. The In-Market Representative shall not use any Destination Ontario or Ontario Government insignia or logo except where required to perform the Services, and only if it has received the prior written authority of Destination Ontario to do so.
- 9.10 Survival. This Article 9 (Intellectual Property and Title) shall survive the termination or expiry of this Agreement.

Article 10 – Indemnification

- 10.01 Indemnity. The In-Market Representative shall indemnify and hold harmless the Indemnified Parties from and against all Losses and Proceedings, by whomever made, sustained, incurred, brought or prosecuted, arising out of, or in connection with anything done or omitted to be done by the In-Market Representative or the In-Market Representative's Personnel in the course of the performance of the In-Market Representative's obligations under the Contract or otherwise in connection the Contract. The obligations contained in this section shall survive the termination or expiry of the Agreement.

Article 11 – Insurance

- 11.01 In-Market Representative's Insurance. The In-Market Representative hereby agrees to put in effect and maintain insurance for the Term, 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 in the business of the In-Market Representative would maintain including, but not limited to, the following:
- a. 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 **\$2,000,000** per occurrence, **\$2,000,000** products and completed operations aggregate. The policy is to include the following:

- i. the Indemnified Parties as additional insureds with respect to liability arising in the course of performance of the Vendor's obligations under, or otherwise in connection with, the Contract;
 - ii. contractual liability coverage;
 - iii. cross-liability clause;
 - iv. employers' liability coverage (or Proof of W.S.I.A. Coverage" is required);
 - v. 30-day written notice of cancellation, termination or material change;
 - vi. tenants legal liability coverage (if applicable and with applicable sub-limits); and,
 - vii. non-owned automobile coverage with blanket contractual coverage for hired automobiles; and,
- b. errors & omissions liability insurance, insuring liability for errors and omissions in the performance or failure to perform the services contemplated in the Contract, in the amount of not less than **\$2,000,000** per claim and in the annual aggregate. The policy should remain in full force and effect for a period of not less than twelve (12) months following termination or expiry of the Contract.

The obligations contained in this section shall survive the termination or expiry of the Agreement.

11.02 Proof of Insurance. The In-Market Representative shall provide Destination Ontario with proof of the insurance required by this Agreement in the form of valid certificates of insurance that reference this Agreement and confirm the required coverage, before the execution of the Agreement by Destination Ontario, and renewal replacements on or before the expiry of any such insurance. Upon the request of Destination Ontario, a copy of each insurance policy shall be made available to it. The In-Market Representative shall ensure that each of its subcontractors obtains all the necessary and appropriate insurance that a prudent person in the business of the subcontractor would maintain and that the Indemnified Parties are named as additional insureds with respect to any liability arising in the course of performance of the subcontractor's obligations under the subcontract for the provision of the Deliverables.

11.03 In-Market Representative Participation in Proceedings. The In-Market Representative shall, at its expense, to the extent requested by Destination Ontario, participate in or conduct the defence of any Proceeding against any Indemnified Parties referred to in this Article and any negotiations for their settlement. Destination Ontario may elect to participate in or conduct the defence of any such Proceeding by notifying the In-Market Representative in writing of such election without prejudice to any other rights or remedies of Destination Ontario under the Contract, Agreement, at law or in equity. Each party participating in the defence shall do so by actively participating with the other's counsel. The In-Market Representative shall enter into

no settlement unless it has obtained the prior written approval of Destination Ontario. If the In-Market Representative is requested by Destination Ontario to participate in or conduct the defence of any such Proceeding, Destination Ontario agrees to co-operate with and assist the In-Market Representative to the fullest extent possible in the Proceedings and any related settlement negotiations. If Destination Ontario conducts the defence of any such Proceedings, the In-Market Representative agrees to co-operate with and assist Destination Ontario to the fullest extent possible in the Proceedings and any related settlement negotiations. This paragraph shall survive any termination or expiry of the Contract.

Article 12 - Termination

12.01 Termination of Agreement - Immediate - Destination Ontario reserves the right to terminate the Contract immediately upon giving written notice to the In-Market Representative if:

- (a) any step has been taken for the administration or winding up of the In-Market Representative or for the appointment of a receiver or administrative receiver, administrator or liquidator of the In-Market Representative;
- (b) the In-Market Representative uses, destroys, exploits or discloses any Destination Ontario Confidential Information or any Personal Information contrary to this Agreement, or is otherwise in breach of Article 8 (Confidentiality and FIPPA) of this Agreement;
- (c) the In-Market Representative has breached section 3.05 (Conflict of Interest) or section 4.08 (Standard of Conduct) of this Agreement; or
- (d) the In-Market Representative has made a material misrepresentation or has provided materially inaccurate information in its Bid, which Destination Ontario learns about during the Term.

12.02 Termination of the Agreement - Prior Notice – Subject to section 12.01, where the In-Market Representative fails to comply with any of its obligations under the Contract, Destination Ontario may issue a rectification notice to the In-Market Representative setting out the manner and timeframe for rectification. Within (10) Business Days of receipt of that notice, the In-Market Representative shall either:

- (a) comply with that rectification notice; or
- (b) provide a rectification plan satisfactory to Destination Ontario.

If the In-Market Representative fails to either comply with that rectification notice or provide a satisfactory rectification plan, Destination Ontario may immediately terminate the Contract.

- 12.03 Second Notice - If the In-Market Representative has been given one (1) notice under Section 12.02, the giving of the second notice, whether such notice(s) relate to the same default or delay or arise out of separate occurrences, may result in the immediate termination of the Contract at the sole discretion of Destination Ontario.
- 12.04 Termination of the Contract - No Cause – Destination Ontario reserves the right to terminate the Contract, without cause, upon thirty (30) Business Days' prior written notice to the In-Market Representative.
- 12.05 Effect of Termination - Rights of Destination Ontario - Destination Ontario will not, by virtue of any of the above instances of termination, waive any rights or remedies it may have in the Agreement or otherwise at law. Destination Ontario shall only be responsible for the payment for Services and Deliverables completed in connection with the Agreement up to and including the effective date of such termination. Termination shall not relieve the In-Market Representative from the In-Market Representative's warranties and other responsibilities relating to the Services performed, Deliverables provided, or money paid, or any combination, up to and including the date of termination.
- 12.06 Termination - Duties of the In-Market Representative - Upon termination, the In-Market Representative shall, at a minimum, in addition to other provisions in this Agreement:
- (a) provide Destination Ontario with a final report detailing (i) the current state of the provision of Services and Deliverables by the In-Market Representative at the date of termination; and (ii) any other information requested by Destination Ontario pertaining to the provision of the Services and Deliverables and performance of the Agreement;
 - (b) return to Destination Ontario Confidential Information, Personal Information, Deliverables and all other information, including, but not limited to, all signage, brochures, and promotional materials;
 - (c) execute such documentation as may be reasonably required to give effect to the termination of the Agreement; and
 - (d) return to Destination Ontario all documents and records.
- 12.07 Payment of Overpayments. Notwithstanding any termination of this Agreement, the In-Market Representative shall satisfy section 6.08 of this Agreement.
- 12.08 Termination for Non-Appropriation. If the Contract extends into a Fiscal Year subsequent to its execution, continuation of the Contract is conditional upon an appropriation of moneys by the Legislature of Ontario (the "Legislature") sufficient to satisfy payments due under the Contract. In the event that such moneys are not available as a result of: (i) non-appropriation by the Legislature for the Fiscal Year in which payment becomes due; and (ii) the payment being neither charged nor

chargeable to an appropriation of the Legislature for a previous Fiscal Year, Destination Ontario may terminate the Contract upon giving notice to the In-Market Representative. Termination shall become effective on the date of the beginning of the first Fiscal Year for which funds have not been appropriated.

Article 13 – Communications

- 13.01 Communications. The parties agree that all communications between them in respect of this Contract must be conducted through the following personnel, namely:

Destination Ontario's Personnel:

[INSERT Destination Ontario's Personnel name, title, telephone number and e-mail address information here]

In-Market Representative's Personnel:

[INSERT In-Market Representative's Personnel name, title, telephone number and e-mail address information here]

Either party may at any time designate different personnel than those set out above by giving the other party notice, but no notice concerning a designation of different personnel that is given by either party is effective unless it is signed by the signing authority or his/her authorized delegate for the party giving notice.

- 13.02 Notice. Any notice, purchase order, statement, progress report, invoice, statement of disbursements, authorization, certification, certificate, permission, application, information, requirement, release, assignment, approval, delivery, payment, waiver, or other written communication or document given by one party to the other under this Agreement must be delivered or sent by prepaid mail or by means of other service in the nature of a courier service to the other party at the appropriate one of the following addresses:

Destination Ontario:

10 Dundas Street East
Suite 900
Toronto, Ontario M7A 2A1
Canada

In-Market Representative:

[INSERT In-Market Representative full legal name and full business address information here]

Either party may by written notice designate another address in substitution for its address set out above.

13.03 When Notice Received. A notice given under this Contract that is sent by prepaid mail will be deemed to be received by the party to which it is sent seven (7) Business Days after the date on which it is mailed. A notice given under this Agreement that is delivered by means of a service in the nature of a courier service will be deemed to be received by the party to which it is delivered on the date on which it is delivered.

IN WITNESS WHEREOF the parties have executed this Agreement:

	DESTINATION ONTARIO
	Signature: _____ Name: _____ Title: _____ Date: _____
	Signature: _____ Name: _____ Title: _____ Date: _____
	Pursuant to delegated authority
	[INSERT IN-MARKET REPRESENTATIVE'S FULL LEGAL NAME]
	Signature: _____ Name: _____ Title: _____ Date: _____
	Signature: _____ Name: _____ Title: _____ Date: _____
	<i>I/We have the authority to bind the In-Market Representative.</i>

If In-Market Representative is a sole proprietor or partnership:

Witness Signature: _____

Witness Name: _____

**Schedule 1: MANDATORY BUSINESS AND TECHNICAL
REQUIREMENTS, DESCRIPTION OF DELIVERABLES, RATES AND
SUPPLEMENTARY PROVISIONS**

[To be completed after selection of the Preferred Bidder with the information set out in Part
3 – The Deliverables.]

A. Mandatory Business and Technical Requirements

A.3.3 Service Levels

A.3.4 Operating Expectations

A.3.5 Required Schedule with Milestones

A.3.6 Reporting Requirements

A.3.7 Occupational Health and Safety Requirements

B. Rates and Reimbursements

B.1 Maximum Fee

Notwithstanding anything else in the Contract, the total amount payable by Destination Ontario to the In-Market Representative under the Contract for the Core Deliverables and the Optional Deliverables shall not exceed the following over a total of up to forty-eight (48) months (i.e. two-year initial Contract term and the possible up to two (2) up to twelve (12) month extensions each):

Maximum Core Deliverables Fees: \$xxx

Maximum Optional Deliverables Fees and Expenses: \$xxx

Grand Total Maximum Fee: \$xxx

The total amount payable by Destination Ontario to the In-Market Representative includes all disbursements (including travel, meal and accommodation expenses, Permitted Expenses and Special Disbursements) and applicable taxes.

B.2 Rates

The rates for the Deliverables are set out below and shall remain fixed during the Term of the Contract (including the up to two (2) up to one-year each extension options):

B.3 Personnel

The following individuals are responsible for the provision of the Deliverables:

C. Billing Statements

Please refer to Article 6 - Billing and Payment (Maximum Compensation)

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PART 3 – THE DELIVERABLES**

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PART 3 – THE DELIVERABLES

1 THE DELIVERABLES

This section of the RFB describes what is being procured.

The contents of this section will be in the final Contract if you are successful and you will be expected to deliver and/or perform all requirements set out in this section for the price you propose in the Commercial Envelope.

1.1 Objectives

Destination Ontario's In-Market Representative in Germany will deliver business development, consumer marketing, media and public relations, and market intelligence objectives that advance Ontario's position as a preferred destination for high-value German travellers.

A continued, well-resourced presence in Germany is essential to Destination Ontario's strategic priorities, specifically:

- Making strategic investments — evolving brand positioning, strengthening business development and media relations, and leveraging Destination Canada's High Value Guest (HVG) framework and associated traveller segmentation to prioritize higher yield, highly engaged, values-aligned travellers in Destination Ontario's key European markets.
- Aligning outcomes through strategic partnerships — championing Team Ontario with Destination Canada and leveraging strategic opportunities on the world stage.
- Advancing corporate leadership — building strategic engagement with the Ontario tourism industry.

1.2 Background and History

1.2.1 The German Market

Germany has consistently been one of Ontario's priority international markets. In 2019, there was an all-time high of 204,000 tourist visits from Germany to Ontario, with an overall spend of \$295 million (Statistics Canada). German arrivals in Ontario in 2025 increased 7% from 2024, reaching 89% of the pre-pandemic 2019 level.

For the year-to-date (i.e. the first four months of 2026), German arrivals in Ontario were 3% higher than in the same period in 2025. Germany is currently the closest to full recovery among Ontario's priority overseas markets, with arrivals in Ontario reaching 99% of 2019 pre-pandemic levels. Destination Canada's Global Traveller Research Program

(2024) estimates two high-priority High Value Guest segments in Germany: Outdoor Explorers (741,000) and Refined Globetrotters (597,500). German travellers tend to favour nature, outdoor experiences, and road-trip itineraries, and they disperse more widely across the province than visitors from most other markets. This makes Germany strategically important to Ontario's regional tourism operators and Destination Marketing Organization (DMO) partners.

1.2.2 Destination Ontario's Mandate

Destination Ontario is governed by Ontario Regulation 618/98 made under the *Development Corporations Act*. Its mandate, as provided for in the regulation, is:

- (a) to market Ontario as a travel destination;
- (b) to undertake joint marketing initiatives with the tourism industry;
- (c) to support and assist the marketing efforts of the tourism industry; and
- (d) in cooperation with the tourism industry, the Government of Ontario, other governments and other agencies of governments, to promote Ontario as a travel destination.

Destination Ontario has maintained in-market representation in Germany since 2000. In-market representatives serve as the face of Ontario — keeping the destination competitive and relevant in one of the world's most active outbound travel markets.

1.2.3 Role of the In-Market Representative

The In-Market Representative serves as Destination Ontario's primary point of contact in Germany. Their role is to execute country-specific activities that drive tourism visitation and increase visitor spending in Ontario.

Key responsibilities span travel trade business development, earned media and public relations, social media and digital marketing, consumer marketing, and market intelligence. The In-Market Representative also plays a coordination role — working alongside Destination Canada, provincial marketing organizations (PMOs), and destination marketing organizations to align strategies, share intelligence, and amplify Ontario's presence through a Team Canada approach.

As DMO capacity in the market has contracted post-pandemic, the In-Market Representative has become an increasingly important resource not only for Destination Ontario but also for Ontario stakeholders who rely on in-market expertise and relationships.

1.3 Deliverables

Destination Ontario's vision is to position Ontario as a preferred global destination. This will be achieved, in part, by:

- a) Inviting high-value guests to experience Ontario's depth of diverse travel experiences. High-value guests have a large disposable income, an affinity for Canada's travel offering, and are frequent travellers;
- b) Differentiating the Ontario travel brand and igniting visitor advocacy and repeat visits;
- c) Reaching today's world travellers through technology and innovation by creating ground-breaking integrated marketing programs to increase demand for Ontario and Canada through impactful media and public relations; business development; and consumer marketing activities; and
- d) Using an evidence-based approach to provide clear strategic direction, execution, and measurable impact by continually testing and learning to move the needle on Destination Ontario's strategic performance.

Core and Optional Deliverables

Deliverables are divided into **Core** and **Optional** categories. **Core Deliverables** are ongoing requirements executed throughout the Contract Term. **Optional Deliverables** are activities that Destination Ontario may add, pause, or remove based on priorities and budget. Each Optional Deliverable requires a written estimate approved by Destination Ontario before work begins.

Destination Ontario, in its sole discretion, reserves the right to sever one (1) of the Core Deliverables from the Contract. If Destination Ontario elects to do so it will not be liable for any payment of the severed Core Deliverable to the In-Market Representative. Destination Ontario shall also have the sole discretion to determine which Core Deliverable it may sever from the Contract.

1.3.1 Market Representation, Strategic Advice and Account Management

Overview

The In-Market Representative will serve as Destination Ontario's official representative in Germany and act as the primary point of contact for all in-market activity. The In-Market Representative will provide strategic leadership, market intelligence, relationship management, project management, and operational coordination across travel trade, media relations, public relations, consumer marketing, influencer activity, and industry partnerships.

The In-Market Representative is expected to function as an extension of Destination Ontario's international team, ensuring Ontario remains visible, competitive, and well-positioned in the German market.

Core Deliverables

Market Intelligence and Strategic Advice

- Monitor and assess developments in the German travel industry, including consumer travel trends, distribution channels, competitor activity, media trends, travel trade trends, and emerging opportunities.
- Provide ongoing market intelligence and proactive recommendations to support Destination Ontario's decision-making and planning.
- Provide strategic input into Destination Ontario's annual marketing and business planning processes.
- Provide feedback and recommendations on market-specific messaging, campaigns, content, creative assets, partner opportunities, and positioning to ensure relevance and resonance with German audiences.
- Identify market-specific opportunities and risks and recommend appropriate actions.

Account Management and Market Representation

- Serve as Destination Ontario's primary in-market representative.
- Maintain senior-level relationships with key partners across tourism, government, aviation, Destination Canada, and industry stakeholders that support Destination Ontario's objectives in Germany.
- Represent Destination Ontario at meetings, events, industry functions, and stakeholder engagements as directed.
- Coordinate and support in-market visits by Destination Ontario staff, Ontario tourism partners, and government representatives.

Destination Canada Relationship Management

- Serve as Destination Ontario's primary liaison with Destination Canada Germany and relevant European teams.
- Maintain strong working relationships with Destination Canada representatives and remain informed of Destination Canada priorities and initiatives.
- Identify, recommend, coordinate, and manage Destination Ontario's participation in approved Destination Canada programs and partnership opportunities across travel trade, media, consumer marketing, content development, influencer activity, and events, including recommendations regarding investment levels, expected outcomes, and performance measures.

Project Management and Reporting

- Provide project management and coordination for approved initiatives across all lines of business.

- Manage timelines, stakeholder communications, reporting requirements, and project deliverables.
- Prepare monthly activity reports and participate in regular status meetings with Destination Ontario.
- Deliver annual market report and recommendations to support future planning and investment decisions.

Optional Deliverables:

- Assist in the procurement of services such as event planning by identifying potential third-party suppliers and soliciting proposals on behalf of Destination Ontario. In this regard, there will be some third-party contracts that will be signed between the selected third-party supplier and the In-Market Representative (not Destination Ontario), and all of the costs pertaining to such contracts will be included in the Maximum Fee set out in the Agreement. The procurement of all such services and the determination of the signing parties to such third-party contracts will be at the direction and prior written approval of Destination Ontario.

1.3.2 Business Development (Travel Trade)

Overview

The In-Market Representative will strengthen Ontario's position in the German travel trade market by developing strategic industry relationships, increasing product distribution, supporting new product development, delivering training programs, and implementing cooperative marketing initiatives.

Annual Planning Assumptions

For budgeting and resource planning purposes, Bidders should assume:

- Approximately 15 priority trade accounts.
- Minimum of 6 cooperative trade marketing initiatives annually.
- Minimum of 500 travel advisors trained annually.
- Participation in key trade events such as Rendez-vous Canada.
- Approximately 3 travel trade group familiarization opportunities annually.
- 1 in-market sales initiative with Ontario-based suppliers in attendance

Strategic Responsibilities

- Develop and maintain an annual travel trade strategy for the German market.
- Identify priority accounts, distribution opportunities, and growth opportunities.
- Recommend annual investment priorities and partnership opportunities
- Identify opportunities to increase Ontario product availability through existing and new travel distribution channels.
- Provide recommendations regarding market trends, operator needs, and trade program development.

Core Deliverables

- Maintain relationships with key travel trade stakeholders, including tour operators, travel agencies, airlines, and Ontario tourism partners (approximately 15 accounts).
- Develop and maintain a prioritized trade account list and provide regular account updates.
- Identify and pursue product development opportunities with new and existing operators (3 to 5 per year).
- Negotiate and manage approved cooperative marketing programs (6 to 10 per year).
- Deliver travel advisor education and training programs. (minimum of 500 agents per year).
- Ensure Ontario content and product information remain current across trade channels.
- Coordinate and manage travel trade familiarization programs as directed (average of 3 groups per year).
- Organize and support Destination Ontario's participation in travel trade events and one in-market sales initiative with Ontario supplier partners in attendance.
- Implement trade communications activities in accordance with an approved annual communications plan, including outreach through in-market trade publications and trade channels, leveraging the agency's established relationships.

Optional Deliverables — German Market

- Organize and lead additional in-person or virtual business development programs beyond the annual core sales initiative, where budget and opportunity allow.

- Deliver ad hoc trade marketing or training projects for specific Ontario destinations or stakeholders, under separate approved scopes and budgets.

1.3.3 Media and Public Relations

Overview

The In-Market Representative will generate awareness and interest in Ontario through earned media, content development, and strategic engagement with journalists, editors, broadcasters, influencers, and content creators.

Annual Planning Assumptions

For budgeting and resource planning purposes, Bidders should assume:

- Six to twelve press releases or media updates annually.
- Five to ten targeted media pitches per month.
- Approximately three to five individual media visits to Ontario annually.
- One group media familiarization tour to Ontario every two years.
- One to three in-market media events annually.

Strategic Responsibilities

- Develop an annual public relations and media strategy for Destination Ontario that aligns with DO's consumer and business development strategies for a holistic marketing approach.
- Identify media opportunities, editorial calendars, seasonal story angles, and emerging trends to inform effective story pitching and ensure maximum media coverage.
- Recommend priority media targets and creator partnerships.
- Identify opportunities to support Destination Ontario and Destination Canada campaigns through earned media activity.
- Provide recommendations on media positioning, storytelling opportunities, and content development.

Core Deliverables

- Maintain active relationships with journalists, editors, broadcasters, influencers, and content creators.

- Conduct proactive media outreach and pitching.
- Develop story angles, media materials, and supporting content.
- Manage media inquiries and provide editorial support.
- Identify and coordinate sponsored editorial content opportunities
- Plan and coordinate media familiarization tours to Ontario.
- Escort group media fans to Ontario as required.
- Organize and coordinate media events, desk-sides, interviews, and media briefings.
- Support campaign amplification through earned media and creator activity.
- Track, monitor, and report on earned media coverage and results in a monthly monitoring report. The report must capture coverage across traditional (print, broadcast, online) and social channels and include the following key performance indicators: Reach, Advertising Value Equivalency (no multiplier to be applied), and potentially other metrics as requested. Monthly reports are due by the 7th day of each month. Bidders should note that third-party monitoring services, if required, will be contracted and paid for by the In-Market Representative and reimbursed by Destination Ontario.

Optional Deliverables

- Execute ad hoc media and public relations projects or events beyond the core program, as directed.
- Organize additional press trips beyond the annual core program, including all planning, logistics, reporting, and policy compliance.
- Escort media on additional press trips beyond those included in the core program.

1.3.4 Consumer Marketing, Social Media and Influencer Activity

Overview

The In-Market Representative will support Destination Ontario's consumer marketing objectives through strategic partnerships, Destination Canada collaborations, influencer programs, market-specific content opportunities, and consumer-facing marketing initiatives that increase awareness, consideration, and intent to visit Ontario.

Important Scope Note: Destination Ontario does not operate Germany-owned social channels as part of the current core program.

Annual Planning Assumptions

For budgeting and resource planning purposes, Bidders should assume:

- One to three consumer marketing programs annually.
- One to three influencer or creator initiatives annually – which may be part of or separate from the consumer marketing program.
- Localized content and landing page support, including approximately 2–4 content updates annually.
- Participation in Destination Canada cooperative consumer marketing opportunities.
- Individual program budgets generally ranging from approximately \$25,000 to \$250,000, subject to annual budget approvals.

Strategic Responsibilities

- Develop an annual consumer marketing strategy for the German market.
- Identify consumer marketing opportunities aligned with Destination Ontario priorities.
- Recommend partnership opportunities, distribution channels, influencer programs, and media opportunities.
- Identify market-specific content needs and opportunities.
- Recommend social and digital approaches that align with Destination Ontario's global strategies.

Core Deliverables

Consumer Marketing and Partnership Development

Consumer marketing programs may include brand partnerships, media buys and partnerships, airline partnerships, travel platform partnerships, influencer campaigns, contests, experiential activations, and other direct-to-consumer marketing initiatives.

- Identify and present consumer marketing opportunities throughout the year.
- Develop recommendations including rationale, budget estimates, projected outcomes, and performance measures.
- Lead approved consumer programs from planning through execution and reporting (this includes media buying, platform setup, trafficking, optimization and reporting, where applicable). Manage partner relationships and coordinate program delivery.

Influencer and Creator Programs

- Identify and evaluate influencer and creator opportunities.
- Coordinate approved influencer programs, including planning, logistics, stakeholder management, content delivery, and reporting.
- Ensure influencer activity aligns with broader consumer marketing objectives.

Content and Market Support

- Support the development and optimization of Germany-facing content and landing pages.
- Identify market-specific content opportunities and gaps.
- Recommend Ontario products, experiences, and itineraries to feature.
- Support localization, adaptation, proofreading, and content review activities.

Social Media Support

- Provide recommendations regarding social media opportunities in the German market.
- Identify amplification opportunities for global campaigns and content.
- Support social and influencer initiatives associated with approved consumer programs.
- Provide performance reporting and recommendations.

Optional Deliverables

- Management of Germany-specific social media channels.
- Large-scale consumer marketing campaigns with budgets exceeding \$250,000.

1.3.5 Administrative Services and Operational Support

Overview

The In-Market Representative is expected to manage the operational requirements of the Contract with professionalism and minimal administrative burden on Destination Ontario. Proactive communication, reliable reporting, and stable bilingual resourcing by the In-Market Representative throughout the Contract Term are essential to the Deliverables.

Core Deliverables

- Represent Ontario at key industry meetings and events in market, maintaining Destination Ontario's professional standing and relationships.
- Maintain a dedicated, monitored email address for travel trade, media, partner, and stakeholder inquiries throughout the contract term.
- Track and report all trade, consumer marketing, social media, influencer, and media relations activities using Destination Ontario-approved reporting templates. Monthly activity reports are due by the 7th day of each month.
- Develop and maintain up-to-date GDPR-compliant databases for German travel trade, media, influencers, and other relevant stakeholders.
- Provide English-to-German and German-to-English translation, localization, and proofreading support for communications and marketing materials, including website content, media materials, presentations, and stakeholder communications.
- Maintain staff who can communicate effectively in both English and German, verbally and in writing, throughout the Contract Term.
- Attend annual planning, operational, and market review meetings in Ontario or elsewhere in Canada as directed by Destination Ontario.
- Maintain stable staffing and service continuity throughout the Contract Term. Any proposed changes to key account personnel require prior written approval from Destination Ontario.
- Ensure Destination Ontario-provided templates and materials, including media profiles and waivers, are accurately completed, adapted for the market as required, and used in accordance with Destination Ontario's brand and editorial guidelines.

Optional Deliverables

- Additional translation, localization, or proofreading services beyond normal operational requirements.
- Administrative and logistical support for special projects, stakeholder initiatives, or events as directed by Destination Ontario.

1.3.6 Optional Deliverables – France Market Support

Optional Deliverables may be activated, at Destination Ontario's sole discretion and subject to separate written approval and a pre-approved budget, to support market-specific activities in France across Travel Trade, Consumer, and Media Relations.

These Optional Deliverables may also include identification and engagement of a local agency partner, as scoped by Destination Ontario. **These Optional**

Deliverables are not evaluated, scored, or weighted as part of this RFB. Bidder capability in France carries no points at any stage of the RFB evaluation.

1.3.7 Service Levels and Operating Expectations

- The In-Market Representative must be available throughout the year, at an equivalent of a five-day working week, for the duration of the Contract Term.
- The In-Market Representative must be geographically based in Germany, maintain dedicated office space in Germany, and be able to travel easily to all major German cities, as required.
- The In-Market Representative must be available for travel to Ontario, elsewhere in Canada, and internationally as needed to represent Destination Ontario.
- The In-Market Representative must provide appropriately qualified staff, facilities, equipment, and all other resources required to deliver the contracted services.
- The In-Market Representative will represent Destination Ontario professionally at all times and adhere to Destination Ontario's directives, policies, and standards.

Any proposed changes to the account team must be communicated to Destination Ontario at least thirty (30) days in advance and approved by Destination Ontario in writing prior to implementation. Where any new In-Market Representative account team member assigned to the account departs within twelve (12) months of their assignment, the In-Market Representative shall, at its sole expense, ensure that the replacement account team member travels to Ontario for full training on Destination Ontario's business and requirements, all in accordance with Destination Ontario's schedule and direction for same.

1.3.8 Performance Measures

Annual performance targets for the following measures will be established at the start of each fiscal year in collaboration with Destination Ontario. Progress against targets will be tracked and reported monthly.

Travel Trade

- Number of Ontario trade training sessions delivered, and agents trained (in-person or virtual)
- Number of new operator relationships established, or Ontario product expansions secured.
- Number of partnered marketing programs delivered and outcomes achieved.

- Product tour activity: number of trips organized, participants, and post-trip outcomes.

Media and Public Relations

- Earned media reach generated through proactive media relations activity.
- Advertising Value Equivalency (AVE) generated. AVE is measured in Canadian dollars at face value — no multiplier is to be applied.
- Number of press trips organized
- Number of press releases created and distributed to media.
- Volume and relevance of media pitches and resulting coverage.

Consumer Marketing

- Consumer and cooperative marketing programs delivered against approved scope and budget.
- Paid social and influencer program outcomes, including reach, engagement, and traffic to Destination Ontario digital channels.
- Website and content contributions: number of updates or recommendations actioned.

1.3.9 Required Schedule with Milestones

- The In-Market Representative will provide a draft annual work plan for Destination Ontario's approval before the start of each fiscal year, outlining planned activities, timing, expected results, and resource allocation.
- The In-Market Representative may be required to visit Ontario for an annual market and operational meeting as directed by Destination Ontario.
- The work plan will lay out how the In-Market Representative will provide the Deliverables, including the requirements for Destination Ontario's annual marketing plan for the fiscal year.
- Upon written approval, the In-Market Representative will provide the Deliverables in accordance with the work plan.

1.3.10 Reporting Requirements

Core Deliverables

- Provide a draft annual work plan for Destination Ontario approval at the start of each fiscal year, showing activities, timing, and expected results.
- Provide monthly reporting by the 7th day of each month for the previous month, using Destination Ontario templates.
- Report monthly on activities, outputs, outcomes, market intelligence, and progress against targets across trade, media, consumer, social, and influencer work.
- Provide an annual report within 20 calendar days of March 31st each year, summarizing results, performance, partner value, and recommendations for future planning.
- Deliver against annual performance targets agreed with Destination Ontario.

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Performance Areas

- Travel Trade: program delivery, co-op marketing outcomes, such as incremental trips generated, visitor spending influenced, number of agents trained, and new Ontario products developed with trade partners.
- Media Relations: Reach and Advertising Value Equivalency (AVE) resulting from earned and supported coverage, as well as other mutually agreed-upon metrics for the German market.
- Consumer Marketing and Social Activity: program delivery, campaign outcomes, traffic support, creator output, and other agreed measures
- Account Management Deliverables: Ongoing daily/weekly communications as needed

Annual Reporting

The In-Market Representative will provide an annual evaluation of overall performance and analysis to inform future planning within twenty (20) calendar days of March 31st of each year of the Contract.

1.3.11 Transition from Current Supplier

Transition from the current supplier will occur in accordance with a transition plan and a schedule proposed by the In-Market Representative and pre-approved in writing by Destination Ontario.

1.3.12 Transition to New Supplier.

The In-Market Representative will develop a post-Contract transition plan and subject to receipt of prior written approval from Destination Ontario, implement the transition of all relevant materials including content and data, to a new service provider upon the expiry or termination of the Contract. This transition includes, without limitation, any Destination Ontario assets, such as brochures or physical objects.

1.3.13 Invoicing and Expenses

- The In-Market Representative will be required to invoice Destination Ontario for the approved monthly professional fee in the month following (not before) the month in which the Deliverables are rendered.
- For the Optional Deliverables, the In-Market Representative will be expected to generate estimates for individual projects for Destination Ontario's prior approval.
- Fees will be paid in Canadian Dollars.
- Expenses/disbursements are to be invoiced separately from monthly professional fees, upon prior written approval from Destination Ontario.
- Any approved hospitality and travel expenditures shall adhere to The National Joint Council of the Public Service of Canada's travel and hospitality directive.
- **Ineligible Expenses** shall include, but shall not be limited to the following:
 - Hospitality (unless pre-approved in writing by Destination Ontario);
 - Meals, snacks, beverages (including alcohol) and incidentals during a regular working day while on assignment for Destination Ontario (unless pre-approved in writing by Destination Ontario);
 - Gratuities (unless pre-approved in writing by Destination Ontario);
 - Laundry or dry cleaning;
 - Valet services;
 - Dependent care;
 - Home management;

- Personal telephone calls;
- Insurance costs, including but not limited to automobile, business/home office liability, medical/health, travel accident;
- Office overhead costs including any Internet service fees and access, telephone charges, office supplies, high-speed Internet access;
- Computer equipment;
- All telephone charges, including monthly cellular/landline telephone fees, telephone equipment and local calls;
- Office rental charges;
- Legal fees incurred; and
- Fuel, motor vehicle maintenance and licensing.

**RFB #tender_22167
PART 4 - TERMS AND CONDITIONS**

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PART 4 - TERMS AND CONDITIONS

1 TERMS AND CONDITIONS

General Terms and Conditions

1.1 Bidder Representations and Warranties

By submitting a Bid for consideration, the Bidder in each case, agrees, confirms or warrants as follows:

- (i) to be bound to their Bid;
- (ii) that to its best knowledge and belief no actual or potential Conflict of Interest exists with respect to the submission of the Bid or performance of the contemplated contract other than those disclosed in the Form of Offer indicated in the Qualification Envelope.
Where Destination Ontario discovers a Bidder's failure to disclose all actual or potential Conflicts of Interest, Destination Ontario may disqualify the Bidder or terminate any contract awarded to that Bidder pursuant to this procurement process;
- (iii) that it has accepted the provisions of this RFB and has prepared its Bid with reference to all of the provisions of the RFB including the attached Form of Agreement and has factored all of those provisions, including the insurance requirements, into its pricing assumptions and calculations and into the proposed costs indicated in the Commercial Envelope; and
- (iv) that its Bid was arrived at separately and independently, without conspiracy, collusion or fraud. See the [Competition Bureau of Canada](#) for further information.

1.2 General Instructions and Requirements

1.2.1 Bidders to Follow Instructions

Bidders should structure their Bids in accordance with the instructions in this RFB. Where information is requested in this RFB, any response made in a Bid should reference the applicable section numbers of this RFB where that request was made.

1.2.2 Conditional Bids May be Disqualified

A Bidder who submits conditions, options, variations or contingent statements to the terms set out in the RFB, including the Form of Offer and Form of Agreement, either as part of its Bid or after receiving notice of selection, may be disqualified. Destination Ontario acknowledges the need to add transaction-specific particulars to the Form of Agreement,

but Destination Ontario will not otherwise make material changes to the Form of Agreement.

1.2.3 Bids in English

All Bids are to be in English only. Any Bids received by Destination Ontario that are not entirely in the English language may be disqualified.

1.2.4 Destination Ontario's Information in RFB Only an Estimate

Destination Ontario and its advisors make no representation, warranty or guarantee, as to the accuracy of the information contained in this RFB, issued by way of addenda or contained in a modification to the RFB. Any quantities shown or data contained in this RFB or provided by way of a modification or addenda are estimates only and are for the sole purpose of indicating to Bidders the general size of the work.

It is the Bidder's responsibility to avail itself of all information necessary to prepare a Bid in response to this RFB.

1.2.5 Bidders Shall Bear Their Own Costs

The Bidder shall bear all costs associated with or incurred in the preparation and presentation of its Bid including, but not limited to, if applicable, costs incurred for interviews or demonstrations.

1.2.6 No Guarantee of Volume of Work or Exclusivity of Contract

Destination Ontario makes no guarantee of the value or volume of work to be assigned to the successful Bidder. The Agreement executed with the successful Bidder will not be an exclusive contract for the provision of the described Deliverables. Destination Ontario may contract with others for the same or similar Deliverables to those described in this RFB or may obtain the same or similar Deliverables internally.

1.2.7 RFB Terms

All rights and obligations that apply to this procurement process are found only in the RFB. For greater clarity, no other documents are to be read into this RFB or used to interpret or understand its terms or establish any rights or obligations related to this procurement.

1.2.8 Accessibility Obligations

The Province of Ontario is committed to the highest possible standard for accessibility. Vendor(s) are responsible for complying with the requirements under the Ontario Human Rights Code, the Ontarians with Disabilities Act, 2001 and Accessibility for Ontarians with Disabilities Act, 2005 ("AODA") and its regulations. In circumstances where Vendors are providing a service to the public on behalf of Destination Ontario, they may need to follow Destination Ontario direction to ensure Destination Ontario compliance with the AODA and its regulations (such as the Integrated Accessibility Standards Regulation). The vendor is

responsible for applying Integrated Accessibility Standards Regulation and effective dates and timelines as they pertain to the Government of Ontario, as directed by Destination Ontario.

1.2.9 Trade Agreements

Bidders should note that procurements falling within the scope of:

- (a) Chapter 5 - Government Procurement of the Canadian Free Trade Agreement ("CFTA");
- (b) Chapter 9 – Public Procurement of the Trade and Cooperation Agreement between Ontario and Quebec ("OQTCA");
- (c) The World Trade Organization's (WTO) Revised Agreement on Government Procurement between the Government of Canada and the Government of the United States of America ("GPA"); or
- (d) Chapter 19 – Government Procurement of the Canada-European Union Comprehensive Economic and Trade Agreement ("CETA")

are subject, respectively, to that chapter or those agreements. For further reference, please see: (for the CFTA) the [Internal Trade Secretariat](#) website; (for Ontario/Quebec) the [Ontario Ministry of Economic Development, and Job Creation and Trade](#) website; (for the GPA) the [WTO](#) website; and (for CETA) the [Global Affairs Canada](#) website.

Communication after Issuance of RFB

1.2.10 All New Information to Bidders by way of Addenda

This RFB may only be amended by Destination Ontario by an addendum through the Ontario Tenders Portal eTendering System in accordance with this section. If Destination Ontario, for any reason, determines that it is necessary to provide additional information relating to this RFB, such information will be communicated to all Bidders through Addenda to the RFB by way of the Ontario Tenders Portal eTendering System. Each Addendum shall form an integral part of this RFB.

Each Addendum may contain important information including significant changes to this RFB. The onus remains on the Bidder to make any necessary amendments and to re-submit its Bid based on the Addenda. Destination Ontario may also be issuing Addenda included in the RFB as an attachment, which will contain responses to Bidders' questions. Bidders are responsible for obtaining all Addenda issued by Destination Ontario.

If Destination Ontario makes any changes to the RFB after a Bidder has submitted its Bid, the Bid will be invalidated on the Ontario Tenders Portal eTendering System and the Bidder will need to re-submit its Bid. The Bidder will be required to update any new or modified sections of the RFB by way of the Ontario Tenders Portal eTendering System and re-submit its Bid.

1.2.11 Post-Deadline Addenda and Extension of RFB Closing Date and Time

Destination Ontario may, at its discretion, issue Addenda after the Deadline for Issuing Addenda and may also then extend the RFB Closing Date and Time for a reasonable amount of time.

1.2.12 Destination Ontario May Verify Information or Seek Clarification and Incorporate Response into Bid

Destination Ontario reserves the right, but is not obliged, to verify or seek clarification and supplementary information relating to the verification or clarification from Bidders after the RFB Closing Date and Time including those related to an ambiguity in a Bid or in any statement made subsequently during the evaluation process. The response received by Destination Ontario from a Bidder shall, if accepted by Destination Ontario, form an integral part of that Bidder's Bid. However, Bidders are cautioned that any verifications or clarifications sought will not be an opportunity either to correct errors or change their Bids in any substantive manner.

Verifications or clarifications under this subsection may be made by whatever means Destination Ontario deems appropriate and may include contacting,

- (a) any person identified in the Bid; and
- (b) persons or entities other than those identified by any Bidder.

In submitting a Bid, a Bidder is deemed to consent to Destination Ontario's verification or clarification rights.

In the event that Destination Ontario receives information at any stage of the evaluation process, which results in earlier information provided by the Bidder being deemed by Destination Ontario to be inaccurate, incomplete or misleading, Destination Ontario reserves the right to revisit the Bidder's compliance with the mandatory requirements and/or adjust the scoring of rated requirements.

1.3 Bid Process Requirements

1.3.1 Bids must be submitted on time and in the Ontario Tenders Portal eTendering System

Bids must be submitted by the RFB Closing Date and Time through the Ontario Tenders Portal ("OTP") eTendering System. The OTP will not allow a Bidder to submit a Bid after the RFB Closing Date and Time. Any Bid submitted in any other manner will be disqualified and returned to the Bidder, if applicable. For the purpose of calculating time, the OTP electronic time-stamp on the submission shall govern.

Please note: Any Bids (or sections of a Bid) submitted through the OTP online messaging function will not be accepted.

1.3.2 Bid Irrevocable after RFB Closing Date

Bids shall remain irrevocable in the form submitted by the Bidder for the period set out in Section 1.1 - Procurement Details of this RFB running from the moment that the RFB Closing Date and Time has lapsed.

1.3.3 Bidders to Review RFB

Bidders shall promptly examine all of the documents comprising this RFB and:

(a) shall report any errors, omissions or ambiguities; and

(b) may direct questions or seek additional information,

through the Ontario Tenders Portal eTendering System online messaging function on or before the Bidder's Deadline for Questions to the RFB Contact set out at Section 1.1 - Procurement Details of this RFB. The time stamp on questions submitted by Bidder's through the OTP online messaging function shall be used to determine if the question was received on or before the Bidder's Deadline for Questions. No such communications are to be directed to anyone other than the RFB Contact or designate. Destination Ontario is under no obligation to provide additional information but may do so at its sole discretion.

It is the responsibility of the Bidder to seek clarification from the RFB Contact on any matter it considers to be unclear. Destination Ontario shall not be responsible for any misunderstanding on the part of the Bidder concerning this RFB or its process.

1.3.4 No Incorporation by Reference by Bidder

The entire content of a Bid should be submitted in a fixed form and the content of web sites or other external documents referred to in the Bid will not be considered to form part of its Bid.

1.3.5 Amending or Withdrawing Bids Prior to RFB Closing Date and Time

At any time prior to the RFB Closing Date and Time, a Bidder may amend or withdraw a submitted Bid. The right of Bidders to amend or withdraw includes amendments or withdrawals wholly initiated by Bidders and amendments or withdrawals in response to subsequent information made through an addendum to the RFB.

1.3.6 Bid to be Retained by Destination Ontario

Destination Ontario will not return any Bid, sample or accompanying documentation submitted by a Bidder including amended or withdrawn Bids.

1.4 Execution of Agreement, Notification and Debriefing

1.4.1 Selection of Bidder

Destination Ontario anticipates that it will select a Bidder within the irrevocable period. Notice of selection by Destination Ontario will be in writing. The Preferred Bidder shall execute the Agreement in the form attached to this RFB and satisfy any other applicable conditions of this RFB within the period of time set out to do so in Section 1.1 - Procurement Details of this RFB. This provision is solely to the benefit of Destination Ontario and may be waived by Destination Ontario at its sole discretion.

Bidders are reminded that there is a question and answer period available if they wish to ask questions or seek clarification about the terms and conditions set out in the Form of Agreement. Destination Ontario will consider such requests for clarification in accordance with its right to do so under this RFB.

1.4.2 Failure to Enter Into Agreement

In addition to all of Destination Ontario's other remedies, if a selected Bidder fails to execute the Agreement or satisfy any other applicable conditions within the period of time set out to do so in Section 1.1 - Procurement Details of this RFB following the notice of selection, Destination Ontario may, in its sole discretion and without incurring any liability, rescind the selection of that Bidder and proceed with the selection of another Bidder.

1.4.3 Notification to Other Bidders of Outcome of Procurement Process

Once the successful Bidder and Destination Ontario execute the Agreement, the other Bidders will be notified by Destination Ontario in writing of the outcome of the procurement process, including the name of the successful Bidder, and the award of the contract to the successful Bidder.

1.4.4 Debriefing

Unsuccessful Bidders may request a debriefing after receipt of a notification of award. All requests must be in writing to the RFB Contact and must be made within sixty (60) days of notification of award. The intent of the debriefing information session is to aid the Bidder in presenting a better Bid in subsequent procurement opportunities. Any debriefing provided is not for the purpose of providing an opportunity to challenge the procurement process.

1.4.5 Bid Dispute

Bidders are advised that a formal bid dispute process is available, the details for which are available from the RFB Contact.

1.4.6 Prohibited Bidder Communications

Bidders shall address all questions and requests for clarification with respect to their Bids, or the RFB documents or the RFB process only to the RFB Contact set out at Section 1.1 - Procurement Details of this RFB.

Bidders shall not contact or make any attempt to contact:

- (a) any Ontario government employee or representative, other than the RFB Contact; or,
- (b) any other Bidder;

with respect to a Bid, the RFB documents, or the RFB process, at any time during the RFB process.

Without limiting the generality of the above, Bidders, shall not contact or attempt to contact:

- (a) any member of Destination Ontario evaluation team for the RFB;
- (b) any expert or advisor assisting Destination Ontario evaluation team;
- (c) any staff of the Premier of Ontario's office or the Ontario Cabinet Office;
- (d) any Member of the Ontario Provincial Parliament or his or her staff or advisors; or
- (e) any Member of the Ontario Provincial Cabinet or their staff or advisors;

on matters related to their Bids, the RFB documents, or the RFB process at any time during the RFB process.

1.4.7 Bidder Not to Make a Public Statement or Communicate With Media

A Bidder may not at any time directly or indirectly make a public statement or communicate with the media in relation to this RFB or any contract awarded pursuant to this RFB without first obtaining the written permission of Destination Ontario. Where a Bidder makes a communication contrary to this section Destination Ontario may disclose such information necessary to correct any inaccuracy of information.

1.4.8 Confidential Information of Destination Ontario

All information provided by or obtained from Destination Ontario in any form in connection with this RFB either before or after the issuance of this RFB:

- (a) is the sole property of Destination Ontario and must be treated as confidential;
- (b) is not to be used for any purpose other than replying to this RFB and the performance of any subsequent Contract;
- (c) must not be disclosed without prior written authorization from Destination Ontario; and

(d) shall be returned by the Bidders to Destination Ontario immediately upon the request of Destination Ontario.

1.4.9 Freedom of Information and Protection of Privacy Act

The *Freedom of Information and Protection of Privacy Act, R.S.O. 1990, c.F.31*, as amended, applies to information provided to Destination Ontario by a Bidder. A Bidder should identify any information in its Bid or any accompanying documentation supplied in confidence for which confidentiality is to be maintained by Destination Ontario. The confidentiality of such information will be maintained by Destination Ontario, except as otherwise required by law or by order of a court or tribunal. Bidders are advised that their Bids will, as necessary, be disclosed on a confidential basis, to Destination Ontario's advisers retained for the purpose of evaluating or participating in the evaluation of their Bids.

By submitting any Personal Information requested in this RFB, Bidders are agreeing to the use of such information as part of the evaluation process, for any audit of this procurement process and for contract management purposes. Where the Personal Information relates to an individual assigned by the successful Bidder to provide the Deliverables, such information may be used by Destination Ontario to compare the qualifications of such individual with any proposed substitute or replacement. If a Bidder has any questions about the collection and use of Personal Information pursuant to this RFB, questions are to be submitted to the RFB Contact in accordance with the Bidders to Review RFB Section 1.4.3.

1.5 Reserved Rights and Governing Law

1.5.1 Reserved Rights of Destination Ontario

Destination Ontario reserves the right to:

- (a) make public the names of any or all Bidders; the name of the selected Bidder(s); and, the total price for the contract awarded;
- (b) request written clarification or the submission of supplementary written information in relation to the clarification request from any Bidder and incorporate a Bidder's response to that request for clarification into the Bidder's Bid;
- (c) assess a Bidder's Bid on the basis of:
 - (i) a financial analysis determining the actual cost of the Bid when considering factors including transition costs arising from the replacement of existing goods, services, practices, methodologies and infrastructure (howsoever originally established);
 - (ii) information provided by references;
 - (iii) the Bidder's past performance on previous contracts awarded by the Government of Ontario;
 - (iv) the information provided by a Bidder pursuant to Destination Ontario exercising its clarification rights under this RFB process; or
 - (v) other relevant information that arises during this RFB process;

- (d) waive non-compliance where, in Destination Ontario's sole discretion, such non-compliance is minor and not of a material nature, or to accept or reject in whole or in part any or all Bids, with or without giving notice. Such minor non-compliance will be deemed substantial compliance and capable of acceptance. Destination Ontario will be the sole judge of whether a Bid is accepted or rejected;
- (e) verify with any Bidder or with a third party any information set out in a Bid;
- (f) check references other than those provided by any Bidder;
- (g) disqualify any Bidder whose Bid contains misrepresentations or any other inaccurate or misleading information;
- (h) disqualify any Bid or rescind any contract award where the Bidder either: fails to disclose; or, is determined to have an actual or perceived unfair advantage or Conflict of Interest determined to be material by Destination Ontario;
- (i) disqualify any Bidder or the Bid of any Bidder who has engaged in conduct prohibited by this RFB;
- (j) make changes, including substantial changes, to this RFB provided that those changes are issued by way of a modification in the manner set out in this RFB;
- (k) select any Bidder other than the Bidder whose Bid reflects the lowest cost to Destination Ontario or the highest score;
- (l) cancel this RFB process at any stage;
- (m)cancel this RFB process at any stage and issue a new RFB for the same or similar Deliverables;
- (n) accept any Bid in whole or in part; or
- (o) reject any or all Bids;

and these reserved rights are in addition to any other express rights or any other rights which may be implied in the circumstances and Destination Ontario shall not be liable for any expenses, costs, losses or any direct or indirect damages incurred or suffered by any Bidder or any third party resulting from Destination Ontario exercising any of its express or implied rights under this RFB.

By submitting its Bid, the Bidder authorizes the collection by Destination Ontario of the information set out under (e) and (f) in the manner contemplated in those subparagraphs.

1.5.2 Governing Law of RFB Process

This RFB process shall be governed by and construed in accordance with the laws of the Province of Ontario and the federal laws of Canada applicable therein.

1.6 Supplementary Terms and Conditions

1.6.1 Occupational Health and Safety Requirements

Vendor(s) are required to comply with the Occupational Health and Safety Act ("OHSA") and regulations and applicable OPS and site-specific health and safety requirements. Vendor(s) are responsible for meeting all of the 'employer' obligations under the OHSA and shall ensure that all work is carried out safely. The Vendor shall ensure that all subcontractors (hired by the Vendor) work in accordance with the OHSA and its regulations.

1.6.2 Publication of Data

It is Ontario's intention, in accordance with the Ontario Digital and Data Directive 2021 and as part of its commitment to open data, to publish and allow the public to use:

(i) procurement contract data, including the name of the Preferred Bidder and total contract value; and,

(ii) data created or collected as an output of a contract,

except where Ontario chooses not to publish the data, such as for privacy, confidentiality, security, legal or commercially-sensitive reasons.

[End of Terms and Conditions]