



**Management Board of Cabinet  
by its agent the Shared Services Bureau**

**Request for Proposals**

**For**

**The Establishment of a Vendor of Record List**

**For**

**Learning and Training Services**

**Request for Proposal No.: SSB-044304**

**Issued: Friday June 13, 2003**

**Proposal Submission Deadline: Monday July 14, 2003**

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## **1. INTRODUCTION**

### **1.1. Invitation to Proponents**

This Request for Proposal (the "RFP") is an invitation to prospective Proponents to submit proposals for the provision of Learning and Training Services as further described in Part 2 – The Deliverables ("the Deliverables"). This RFP is issued by Her Majesty, the Queen in Right of Ontario as represented by the Chair of the Management Board of Cabinet ("MBS") on behalf of Ministries, Agencies classified as Schedule IV Agencies as of February 1, 2000, and all agencies that are defined as members of the Broader Public Sector (BPS) of the Province of Ontario (individually called a "Client" and collectively referred to as "Clients"). The listings of Ministries and Agencies can be found on the website of Procurement Policy & Information Technology Procurement Branch (PPITPB) of MBS at <http://www.ppitpb.gov.on.ca>.

### **1.2. Type of Contract For Deliverables**

The selected Proponents will be required to enter into an Agreement with the Ministry for the provision of the Deliverables in the form attached as Appendix A of this RFP. The term of the Agreement is to be for a period of three (3) years commencing upon the execution of the Agreement with an option in favour of the Ministry to extend the Agreement on the same terms and conditions for an additional term of up to one (1) year, subject to the provisions of Sections 1.3 pertaining to the Refresh Window methodology. It is anticipated that the Agreement will be executed on or around September 2003.

The selected Proponents will be required to perform Assignments for Services in response to requests from any of the Clients through the execution of a Service Level Agreement (the "Service Level Agreement"). The Services will be required to meet the quality standards and service requirements set out in the Contract documents to the satisfaction of the Client.

Successful Proponents will be listed on the Vendor of Record list (the GT Training and Learning Services VOR) and may be selected by a Client in accordance with the requirements of the applicable procurement directives. The description of the required Services, terms, deliverables, time frames, milestones, etc., shall be detailed in the Service Level Agreement, which shall be in accordance with the Contract.

### **1.3. Refresh Window Methodology**

This VOR arrangement will be subject to a single "Refresh" opportunity to allow new suppliers to enter into a similar VOR arrangement and give the Suppliers selected through this RFP the option of revising their prices or of being considered for Services for which they were not selected as a result of this RFP.

The refresh methodology shall provide Suppliers one Refresh opportunity **18 months** after the effective date of the contract as established as a result of this RFP.

The Refresh Window Methodology is further described in Section 3.4.5.

#### 1.4 **Service Level Agreement**

When a Supplier is selected by a Client to deliver an Assignment, the Supplier must execute a Service Level Agreement, Schedule 4 (the "Service Level Agreement") with the Client. The Deliverables must meet the quality standards and service requirements set out in the Master Agreement document to the satisfaction of the Client. The description of the required Deliverables, time frames, milestones etc., shall be detailed in the Service Level Agreement, which shall be in accordance with the Master Agreement.

#### 1.5 **No Guarantee of Volume of Work or Exclusivity of Contract**

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

#### 1.6 **Agreement on Internal Trade**

Suppliers should note that procurements falling within the scope of Chapter 5 of the Agreement on Internal Trade are subject to that chapter but that the rights and obligations of the parties shall be governed by the specific terms of each particular tender call. For further reference please see the Internal Trade Secretariat website at [www.intrasec.mb.ca/](http://www.intrasec.mb.ca/).

#### 1.7 **Definitions**

Unless otherwise specified in this RFP, capitalized words and phrases have the meaning set out in the Form of Agreement.

**"Broader Public Sector"** or **"BPS"** or **"BPS Client"** means the municipalities, academic institutions, school boards, health care providers and major transfer payment recipients, in Ontario, as are more fully described and defined at the following Ontario government Internet site <http://www.ppitpb.gov.on.ca/mbs/psb/psb.nsf>

**"Client"** means any entity falling within the Ontario Public Service that has entered into a Service Level Agreement.

**"Closing Date"** means 11:00:00 a.m. Monday July 14, 2003 Toronto time

**"Confidential Information"**, for the purpose of this RFP, and the Form of Offer, means confidential information of the Crown (other than confidential information which is disclosed to Proponents in the normal course of the RFP) where the confidential information is relevant to the Deliverables required by the RFP, their pricing or the RFP evaluation process.

**"Conflict of Interest"** has the same meaning as defined in the RFP Appendix A – Form of Agreement.

**"Day"** means calendar days and **"days"** has the same meaning.

**"Form of Agreement"** means the Agreement as defined in the RFP Appendix A that will be executed by the Ministry and the successful Proponents who have been selected to be on the Vendor of Record list.

“**MBS**” means Management Board of Cabinet.

“**MERX**” means the Ontario government’s electronic tendering service provider, which is the distributor of Ontario government tenders and this RFP.

“**Ministry**”, for the purposes of this RFP, refers to the Chair of Management Board of Cabinet.

“**Ministry Contact**” means Brian Cassidy, A/Team Lead  
Facsimile Number: 807-473-2112

“**Must**” and “**Shall**” indicate a requirement that must in the view of MBS be substantially completed for a Proposal not to be rejected.

“**Ontario Public Service**” means the ministries and other administrative units of the Government of Ontario over which Ministers of the Crown preside, and for the purposes of the Agreement includes the Agencies, and “**OPS**” has the same meaning.

“**Per Diem**” means the rate quoted by a Proponent based on a minimum of 7.25 hours per day.

“**Purchasing Card**” means the charge card issued to an authorized employee of an OPS Client, for purchasing business related goods and services. Currently the service provider to the Ontario government is Bank of Montreal MasterCard. The Purchasing Card has the word “Purchasing” marked on it, along with employee’s name, ministry name (or acronym), expiry date and a GST exempt reference number.

“**Proponent**”, for the purpose of this RFP means the company or organization proposing to offer the Deliverables outlined in the RFP, and who is responsible for the proposal submission. Where the proposal is successful, the Proponent is responsible for signing the Contract.

“**Proposal**” means all documentation submitted by the Proponent in response to the Request for Proposal or in respect of the RFP.

“**RFP**” means the Request for Proposal issued by MBS for the Services, and any addenda thereto.

“**SSB**” means the Shared Services Bureau.

“**Sub-contract**” means any person, firm or corporation having a contract with the Training Consultant for the execution of a part or parts of the service.

“**Training Consultant**”, or a pronoun in place thereof, means the person, firm, individual or corporation that has undertaken to carry out Services as required.

“**Vendor of Record**” or “**VOR**” means a Proponent selected by MBS in accordance with this RFP for the provision of a particular Service.

[End of Part 1]

## 2. THE DELIVERABLES

### 2.1. BACKGROUND

#### **Strategic HR Directions for the OPS**

The OPS Human Resource Strategy for Renewal and Revitalization is a set of dynamic public service renewal initiatives that will ensure the OPS remains a competitive employer that attracts, retains and develops the talent to ensure the long-term capacity to provide excellence in public service. The business outcomes of the Strategy are:

- greater focus on core business
- increased efficiency and effectiveness
- clearer accountability
- increased integration of policy, planning and service delivery
- increased customer satisfaction and
- smaller government

The key renewal and revitalization outcome is to develop dynamic and innovative people delivering quality public service. This means supporting:

- pride in quality public service;
- dynamic leadership;
- a learning organization;
- a motivating and flexible work environment; and
- a capable and innovative workforce.

#### **2.1.1. OPS Context for Training**

Training requirements in the OPS are identified, planned and delivered through a variety of sources.

MBS Human Resources Strategies Branch (HRSB) sets HR policy for the OPS. They also fund and develop high priority training and learning programs to support HR policy.

The Centre for Leadership is the corporate body responsible for setting policy for executive development. They also plan, design and deliver training and learning opportunities for the Senior Management Group in the OPS.

Ministries focus primarily on their own business requirements. This includes ministry specific technical training and training which a ministry would regard as high priority to assure that staff members are capable of delivering service.

IFIS and WIN are two high priority corporate projects which affect the entire OPS and for which a great deal of training is planned and delivered. IFIS stands for the Integrated Financial Information System. It is a complex project whose main goal is to develop one OPS financial system to replace the many that have evolved. WIN stands for Workforce Information Network. It is an HR management system based on People Soft software.

Modern Controllershship, of the Ministry of Finance, supports ministries by providing training in government accounting, ethical behaviour, risk management, accountability, stewardship of resources, and financial reporting.

OPS Occupation-based and/or Cross-Ministry Functional Communities are other groups which require training. Training for these groups is accessed through a variety of means. These groups are discussed further in Section 2.3.3.

Shared Services Bureau – Generic Training (GT) has a mandate to provide a range of training services to increase the competencies and effectiveness of OPS employees in meeting the challenges of a changing public service. SSB-GT implements and delivers programs sponsored by HRSB. Generic Training is intended to be financially self-sufficient, has no annual budget allocation and operates on a fee-for-service basis.

### **2.1.2. Generic Training Services**

GT will be a major user of the VOR resulting from the RFP. Through past VOR lists GT offers a comprehensive range of OPS-customized offerings in professional effectiveness, business management, leadership, policy and government, health and safety, desktop IT and much more through three major business lines – *Scheduled Courses*, *Dedicated Training* and *Special Initiatives*. Generic Training is moving forward to respond to the changing workplace and OPS staff time availability by delivering “e-learning” solutions as well as classroom training.

#### Scheduled Courses

Catalogue courses offered in specific locations, at pre-scheduled times. Information available in a published catalogue and in an intranet website that contains comprehensive course details as well as an updated course schedule produced twice yearly.

#### Dedicated Training

Courses provided to a group when and where required. Generic Training can arrange for a workshop to be delivered in a quick turn-around time. Clients contact GT to discuss their requirements and select from over 1500 courses in the database.

#### Special Initiatives

Special Initiatives services range from research and assessment of training needs, curriculum/course design, development of audience-specific examples and case studies to e-learning or distance delivery solutions. Internationally recognized suppliers can be contracted to help implement a client's Special Initiative training solution that will allow them to meet specific learning objectives.

The core business of GT is to support clients in fulfilling their business objectives by:

- Identifying and planning training and learning priorities
- Designing and develop a curriculum or course through external suppliers
- Delivering training specific to an identified need
- Coordinating logistics and administration
- Reporting on training activities

In 2002-03, there were approximately 25,000 OPS managers and employees who attended Generic Training sessions, an increase of almost 50% over the 2001-02 attendance of 17,000. These sessions, as well as other GT services, are delivered in all regions of the province, with about two thirds provided in the GTA, the other one third dispersed throughout the Northern, Eastern and Southwestern regions of Ontario.

The GT team is a group of experienced and innovative professionals who are dedicated to delivering the best in public service training. Generic Training operates with a staff of approximately 25 people located in a corporate office in Toronto and 5 regional offices (GTA-Toronto, GTA-Oshawa, London, Sudbury and Kingston).

GT has its own Learning Consultants on staff who design, develop and deliver some of GT's training requirements. Currently, GT relies extensively on Vendor of Record services accessed exclusively by GT on behalf of OPS clients. The existing VOR for professional development services provided training needs assessment, design/development of courses and the delivery of sessions. GT supports these activities for clients with contract management and administrative services (e.g. scheduling, logistics, registration, account reconciliation, invoicing, etc.).

### **2.1.3. Generic Training is Shifting Emphasis to OPS-Specific Training**

The VOR resulting from this RFP will offer one Stream of Services that can be procured and contracted directly with successful Proponents by all the groups mentioned in Section 2.3.3. Another Stream of Services from this VOR will be available to OPS clients exclusively through GT. This is further explained in Section 2.3.

Unlike the current name implies, GT is shifting its emphasis to ensure that any service or product delivered by GT will be specific to the OPS work environment. GT will focus its efforts on aligning all services and products with OPS corporate initiatives as well as ministry and functional communities' business objectives.

Work to achieve this alignment will be undertaken with the input of internal OPS stakeholder groups. This will require a period of transition to ensure that OPS policies, practices, tools and examples are fully integrated into relevant programs and materials. GT will work closely with companies from the VOR list to achieve this objective.

During the term of the VOR, any successful Proponent providing services to the OPS using materials or references specific to the OPS, ministry or functional communities, must be contracted through GT. This will reduce duplication of effort, facilitate updating courseware, as well as increase consistency of messaging and materials.

## **2.2. SCOPE**

The objective of this RFP is to pre-qualify a number of firms and individuals capable of performing specific assignments in one or more training and learning services in locations across the Province at a fixed price for the period of the Agreement. This pre-qualification streamlines the process of selecting suppliers for various assignments that arise, and will allow GT and ministries to acquire the services of external consultants on a timely basis. The demand for these services will be intermittent. A Request for Resources may be issued by an individual ministry for a ministry-specific assignment or by SSB GT for an OPS-wide or client-specific assignment.

## 2.3. DESCRIPTION OF THE SERVICES REQUIRED

SSB requires Proponents to provide the services described below. These services are described in two (2) streams according to how the services will be accessed. Proponents may bid on any or all services listed in either or both streams.

<b>STREAM 1</b> <b><u>SSB GT-Based Services</u></b> <b>(GT contracts with VOR)</b>	<b>STREAM 2</b> <b><u>OPS-Wide Services</u></b> <b>(Ministries contract with VOR)</b>
<p>(Integrates OPS policies, practices, tools and aligns with Corporate Initiatives, functional groups, ministry business objectives, etc.)</p> <ul style="list-style-type: none"> <li>• Consulting: Learning Projects               <ul style="list-style-type: none"> <li>- interpret business plans/strategic directions</li> <li>- diagnosis, needs assessment, strategy</li> <li>- training evaluation methodology</li> </ul> </li> <li>• Design &amp; development of curriculum, programs and courses</li> <li>• Delivery of OPS-oriented courses</li> </ul>	<ul style="list-style-type: none"> <li>• Delivery of off-the-shelf courses</li> <li>• Facilitation services</li> <li>• Individual coaching services, eg, employment transition, management/professional development</li> <li>• Trainers</li> </ul>

**Stream 1 – SSB GT Based Services** - are services that will be available from successful Proponents exclusively through GT. GT will procure these services from successful Proponents.

Successful Proponents for this service will be able to demonstrate the knowledge, qualifications and experience obtained by working with the OPS.

GT will be the contractor for any significant customization or modification of a successful Proponent’s course(s).

**Stream 2 – OPS Wide Services** are services, which can be procured from successful Proponents directly by all program areas in the OPS.

At the Clients’ request, GT may be invited to provide supporting administrative services to Clients, e.g. logistical support and registration.

### 2.3.1. STREAM 1 - SSB GT Based Services. These services will be:

#### a) Consulting: Learning Projects which Improve Business Performance

This service includes work, which will result in analysis and recommendations to improve business performance, and organizational effectiveness where there is a significant learning/training element. The consulting activities may include some or all of: strategic planning, research/ analysis/diagnosis, needs assessment, ‘translating’ learning plans into implementation plans. Training evaluation and return on investment assignments are included in this service.

**b) Design and Development: Creating Learning Solutions**

This service includes work required to design and/or develop learning/training programs and courses. Train-the-trainer components may be included in this service. The content and learning outcomes will reflect OPS policies, corporate messaging, common approaches, practices, procedures, tools, references, examples and case studies identifiable as OPS-specific. This is training that will support performance and career development because it incorporates requirements and standards consistently used within the OPS, ministries, functional clusters and/or occupation-based groups.

**c) Courses: Delivery of OPS-Oriented Courses**

This service comprises delivery of courses that teach skills, knowledge and behaviours that are specific to the OPS environment. The content and learning outcomes will reflect OPS policies, corporate messaging, common approaches, practices, procedures, tools, references, examples and case studies identifiable as OPS-specific. This is training that will support performance and career development because it incorporates requirements and standards consistently used within the OPS, ministries, functional clusters and/or occupation-based groups.

Many of the required courses currently exist but may need to be updated. Others will need to be designed and developed.

Courses offered by a Proponent that are deemed to fit within this service will be identified in the successful Proponent's Vendor of Record Agreement.

**2.3.2. STREAM 2 – OPS Wide Services.** These services will be:

**a) Courses: Off-the-Shelf**

This service comprises programs and courses which are owned or licensed by the Proponent. Included are courses that have been developed, piloted and delivered with excellent evaluation results to any organization, private or public

**b) Facilitation Services**

This service requires individuals qualified and experienced in a recognized facilitation method to guide group discussions, lead problem-solving sessions, assist in-group decision-making meetings.

**c) Individual Coaching Services**

This service requires dedicated professionals qualified and experienced in providing individualized coaching services to assist the client to discover, clarify and align what it is they want to achieve. This assistance includes encouraging client-generated solutions and strategies to support employment transition or development.

**d) Trainers**

This service requires qualified and experienced trainers to be trained, in a train-the-trainer scenario, to deliver programs that a ministry has developed and/or owns and/or has licences to deliver.

### 2.3.3. Target User Groups

The target user groups of this RFP are approximately 65,000 OPS employees across the province. For your information, following is a table that identifies some of these groups.

<ul style="list-style-type: none"> <li>• Generic Training</li> <li>• Ontario Ministries and Agencies, Boards and Commissions</li> <li>• OPS Occupation-based and/or Cross-Ministry Functional Communities such as;             <ul style="list-style-type: none"> <li>- Managers, Supervisors and Management Development Group</li> <li>- Policy</li> <li>- Human Resources</li> <li>- Administration Professionals</li> <li>- Communications</li> <li>- Investigations, Inspections &amp; Enforcement</li> <li>- Project Management</li> <li>- Quality Management</li> <li>- Health &amp; Safety</li> <li>- Economic Development</li> </ul> </li> </ul>
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For the above target user groups all services described above may be required. In regard to courses the following categories and sample course titles reflect some of the training programs that have been required in the past and may be required in the future. This list is not comprehensive and is meant to demonstrate the breadth and depth of current topics. Some program specific requirements are included based on client requests. Proponents are encouraged to present additional courses or titles that they offer and deem appropriate.

CATEGORIES	SAMPLE TITLES
<b>Management, Supervisory &amp; Leadership</b>	Labour Relations, Management Skills, Managing Performance (Learning Plans), Supervisory Leadership, Harnessing Conflict Resolution, Recruitment, etc.
<b>Business Management</b>	Business Planning, Performance Measurement, Organizational Design, Internal Consulting/Partnership Skills, Target Market Analysis, Program Evaluation, Knowledge Management, Negotiations, Procurement, Process Improvement, etc.
<b>Professional and Administrative Effectiveness</b>	Developing Learning Plans, Effective Meetings, Time Management, Working in Teams, Situational Leadership, Freedom of Information, Workplace Administration, etc.
<b>Policy &amp; Government</b>	Policy Development, Understanding Government, Policy Writing, Governance Issues,
<b>Communications</b>	Effective Writing, Advanced Business Writing, Writing A Business Case, Effective Presentations, Briefing Notes, etc.
<b>Inspections, Investigations &amp; Enforcement (II&amp;E)</b>	Compliance Foundations, Investigative Skills, Inspections Skills, Search & Seizure, Tactical Communications, Inspector Self-protection, Note-Taking, Courtroom Demeanour, Surviving Cross-examination, etc.
<b>Project Management (PM)</b>	Introduction to PM, Advanced PM, PM Certification, PM Tools, PM Processes, etc.

CATEGORIES	SAMPLE TITLES
<b>Well-being, Health &amp; Safety, i.e., Industrial, Construction &amp; Mining</b>	WHMIS, Balancing Work & Personal Life, Ontario Workplace-Specific Hazard Certification Training, CPR, Health Care & Residential Facilities Regulation, Crane Hazard Awareness, Traffic Control, Diving Regulation, Electrical Awareness & Code, Dangerous Situations, etc.
<b>Workplace Dynamics</b>	Workplace Discrimination & Harassment Program for Mgrs and/or Employees, Difficult Client Interactions, Challenging Workplace Interactions, Conflict in the Workplace, etc.
<b>Career Management</b>	Career Planning & Self-Assessment, Developing Learning Plans, Interview Skills, Retirement Planning, Financial Planning, Employment Transition (Coaching), Management Development (Coaching), etc.

#### 2.3.4. OPS Competencies

The OPS has been working on a key competency model for some time. These competencies are a work in progress and changes will be made. A draft list is shown here. In addition to the courses listed in the table in Section 2.3.3 other courses and services may be required from the successful Proponents, to enhance these competencies.

<ul style="list-style-type: none"> <li>• Business Acumen</li> <li>• Change Management</li> <li>• Communicating Effectively</li> <li>• Concern for Image Impact</li> <li>• Concern for Quality and Standards</li> <li>• Coaching</li> <li>• Customer Service Orientation</li> <li>• Drive to Deliver Results</li> <li>• Flexibility</li> <li>• Holding People Accountable</li> </ul>	<ul style="list-style-type: none"> <li>• Impact and Influence</li> <li>• Initiative</li> <li>• Innovation</li> <li>• Integrity</li> <li>• Knowledge Seeking and Sharing</li> <li>• Leadership</li> <li>• Learning from Experience</li> <li>• Networking</li> <li>• Partnership Building</li> </ul>	<ul style="list-style-type: none"> <li>• Planning, Organizing and Coordination</li> <li>• Political Acuity</li> <li>• Problem Solving</li> <li>• Professional Judgment</li> <li>• Public Service Values</li> <li>• Self-confidence</li> <li>• Self-control</li> <li>• Steady Focus</li> <li>• Strategic Thinking</li> <li>• Teamwork</li> </ul>
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#### 2.3.5. Materials

Training materials required in courses owned and provided by a Supplier shall be provided to the Client as a master copy at no additional cost (cost of master copy shall be incorporated within the Proponent's per diem rate). Clients will then have the appropriate number of copies printed at their own cost.

Where the Supplier will not provide a master copy at no additional charge, and a rate per manual will apply, Proponents shall indicate the average cost of their manuals as instructed on the Rate Bid form (Appendix C). See Section 3.4.1 for additional information.

### 2.3.6. Geographic Regions

Services described within the RFP are required within the following geographic regions. The distribution of OPS Employees by Geographical Regions has also been provided for information purposes. Note that the employee distribution numbers are approximations only and do not represent any commitments by MBS.

The Proponent may be required to provide Services in one or more Regions across the Province including but not limited to the cities of Toronto, Windsor, London, Guelph, St. Catharines, Thunder Bay, Kenora, North Bay, Sudbury, Sault Ste. Marie, Timmins/South Porcupine, Dryden, Ottawa, Kingston, Peterborough, Orillia and Huntsville.

Provision of information about the locations where the Proponent is willing to deliver Services will be regarded as a willingness to provide Services as described in this RFP and will not be evaluated. The information about location provided by Proponents who are successful in this RFP will be used to identify Training Consultants who are available for assignments in specific locations across the Province

<b>REGION</b>	<b>GEOGRAPHIC REGIONS</b>	<b>Approximate # of Employees</b>
<b>Region 1</b>	<b>Central (C)</b> Simcoe, Haliburton, Peterborough, Parry Sound, Muskoka, Northumberland, Victoria	6,500
<b>Region 2</b>	<b>North (N)</b> Rainy River, Thunder Bay, Kenora, Nipissing	5,650
<b>Region 3</b>	<b>Eastern (E)</b> Prescott & Russell, Lanark, Lennox & Addington, Renfrew, Ottawa-Carleton, Stormont Dundas & Glengarry, Frontenac, Hastings, Prince Edward, Leeds & Grenville	8,600
<b>Region 4</b>	<b>Northeastern (NE)</b> Cochrane, Temiskaming	1,200
<b>Region 5</b>	<b>Northwestern (NW)</b> Algoma, Sudbury, Manitoulin	3,150
<b>Region 6</b>	<b>Southwestern (SW)</b> Hamilton-Wentworth, Essex, Wellington, Elgin, Waterloo, Kent, Brant, Norfolk, Grey, Huron, Lambton, Middlesex, Niagara, Haldimand-Norfolk Bruce, Oxford, Perth, Dufferin	13,700
<b>Region 7</b>	<b>Greater Toronto Area (GTA)</b> Durham, York, Peel, Halton, Etobicoke, Metropolitan Toronto	26,950
	Approximate Totals	65,750

### **2.3.7. Collection of Administrative Fees**

SSB is currently assessing alternatives regarding the collection of administrative fees from Clients. In this regard and as part of the Services, the Proponent may be required to collect such a fee from its Clients and remit to SSB in accordance with a schedule to be established at such time. The Supplier will be required to submit a report detailing the fees collected in accordance with standards established during the implementation of this requirement. Should this become a requirement during the life of the Agreement, the Proponent acknowledges and agrees that it will comply.

### **2.3.8. Target Audience**

The training services are targeted at all Ontario Public Service employees (OPS), its Agencies, Boards and Commissions, and the Broader Public Sector (BPS) including frontline staff and management but not focusing on the development needs of Senior Management Group employees as these are defined by the Ministry.

The VOR list awarded as a result of this RFP may be accessed by any Ontario Ministries, agencies scheduled as a Schedule I Agency as of February 1, 2000 on a mandatory use basis. All provisions contained in the VOR will apply to all Ministries and Agencies which use the VOR.

### **2.3.9. Provision of Services**

Services shall be provided in a professional manner at the highest industry recognised standards.

### **2.3.10. Assignments**

The scope, timing and duration of Assignments will be determined by Clients who will require that the Supplier execute a Service Level Agreement (SLA) as further defined in Appendix A, Schedule 4. The SLA will be Assignment-specific and will detail the scope of the Assignment, the deliverables, the anticipated time frame and the fees.

If selected by a Client to enter into a Service Level Agreement, the Supplier shall furnish a Certificate of Insurance meeting the insurance requirements set out in the Contract, or as modified by the Service Level Agreement, prior to commencing performance under the Service Level Agreement.

### **2.3.11. Monthly Reporting**

The Proponent acknowledges and agrees that it must provide to MBS a "Monthly Supplier Activity Report" on a monthly basis for the term of the Agreement. Each report shall reflect the learning training activity of all Clients undertaken by the Supplier. Specific data fields shall include information such as: Supplier name; time period; a detailed report of the Ministry location; Ministry contact name; date of services provided; description of services; number of participants per location; cost of assignment; and cost year to date as a minimum. The Proponent may be required to supply additional reports from time to time that will assist MBS in evaluating and administering the Deliverables of this RFP.

It is imperative that all data for reporting purposes be input in a uniform and consistent manner to ensure that resulting reports are useable to MBS in terms of efficient sorting and compiling data (e.g. names or acronyms of Ministry locations, name or model or product number of the Deliverables etc.).

Reports shall be submitted, via e-mail attachment (or diskette or CD), as a MS Excel file or as a MS Access in the form as identified in Schedule 4. The preparation of the report file and the input of all data shall be the responsibility of the successful Proponent.

### **2.3.12. Purchasing Card**

Ministry locations use the Ontario government Purchasing Card ("Purchasing Card"), which is the preferred method of acquisition and payment for low dollar value of goods and services. The Purchasing Card is used for a significant portion of all orders. The Purchasing Card is the preferred but not the only method of payment being used. Individual invoices and in some cases consolidated invoices are being issued to Ministries and may be required by Clients. Preference will be given to Proponents who accept the Ontario Government Purchasing Card.

### **2.3.13. Move to e-Commerce**

The Ontario government is intending to implement business-to-government (B2G) e-Commerce solutions to facilitate the ordering of goods and services via Internet technologies through its employee portal. These B2G e-Commerce tools will be based on Business to Business (B2B) e-Commerce models and will provide Clients with administrative efficiencies and savings when acquiring the Deliverables needed to carry out their respective business mandates. It is expected that these B2G e-Commerce tools will provide additional reporting and tracking functions to assist in effectively managing the Agreement.

Should an e-Commerce solution be implemented during the Term of the Agreement, the Supplier shall cooperate fully with the Ministry in providing any information required and in adapting existing processes to reflect the changes resulting from the implementation of e-Commerce solutions. The Supplier will comply with all reasonable Ministry change requests in this regard and will adhere to any guidelines and processes established as part of the Per Diem rates as provided in Appendix C to this RFP.

### **2.3.14. Electronic Services Catalogue and Online Ordering**

The Proponent should express its willingness, within a time to be determined by MBS of the commencement date of the Agreement, to develop an electronic file in a format specified by MBS that will outline the Deliverables available to Clients. The Supplier will make any required modifications to the contents of the file, from time to time, as instructed by MBS. As a minimum and in order to facilitate an e-Commerce solution, the Proponent must be able to access the Internet via a web browser and be able to receive e-mail in order to accommodate Internet ordering.

### **2.3.15. Green Procurement**

The Ontario government is continuing its effort to improve the quality of Ontario's environment. In dealing with this multifaceted challenge, MBS is prepared to consider the benefits to the environment from products being made available under the principles of "Green Procurement". MBS will therefore be considering innovative Deliverables as offered by Proponents, which are proved to function as intended, yet are less harmful to the environment.

### **2.3.16. Security Clearance**

The Client reserves the right to conduct a security clearance on all parties performing Services on this contract.

Any individual who in the opinion of the Client constitutes a security risk shall be prohibited from providing Services under this contract.

It will be the responsibility of the Proponent to provide a suitable alternative employee to provide service under this contract.

### **2.3.17. Access to the Services**

A Client Guide to the Agreement for Learning and Training Services will reside on SSB's Intranet site. The Client Guide will provide a list and brief description of the Services available from the Agreement along with associated unit prices and Supplier contact information. Access to the Client Guide is available to Clients including those BPS entities that have received access authorisation from MBS.

For every assignment Clients will establish a Service Level Agreement (SLA) with the successful Supplier once the appropriate procurement process has been finalized.

[End of Part 2]

### **3. EVALUATION OF PROPOSALS**

#### **3.1. Stages of Proposal Evaluation**

The evaluation of proposals will be conducted by the Ministry in the following three (3) stages:

##### **3.1.1. Stage I**

will consist of a review to determine which proposals comply with all of the Mandatory Requirements. Proposals which do not comply with all of the Mandatory Requirements may, subject to the reserved rights of the Ministry be disqualified and not evaluated further.

##### **3.1.2. Stage II**

will consist of a scoring by the Ministry of each qualified proposal on the basis of the Rated Criteria.

##### **3.1.3. Stage III**

will consist of a scoring of the pricing submitted. The evaluation of price/cost shall be undertaken after the evaluation of mandatory requirements and any rated requirements has been completed.

##### **3.1.4. At the conclusion of Stage III**

all scores from Stage II and Stage III will be cumulated and, subject to satisfactory reference checks and the express and implied reserved rights of the Ministry, Proponents who score 65% or more of the total points will be selected to enter into an Agreement for that Service Type in accordance with Part 4.

#### **3.2. Stage I - Mandatory Requirements**

##### **3.2.1. Form of Offer (Appendix B)**

Each proposal **must** include a Form of Offer (Appendix B) completed and signed by the Proponent.

##### **a) Conflict of Interest**

In addition to the other information and representations made by each Proponent in the Form of Offer, each Proponent must declare whether it has an actual or potential Conflict of Interest.

If, at the sole and absolute discretion of the Ministry, the Proponent is found to be in a Conflict of Interest, the Ministry may, in addition to any other remedies available at law or in equity, disqualify the proposal submitted by the Proponent.

The Proponent, by submitting the proposal, warrants that to its best knowledge and belief no actual or potential Conflict of Interest exists with respect to the submission of the proposal or performance of the contemplated contract other than those disclosed in the Form of Offer. Where the Ministry discovers a Proponent's failure to disclose all actual or potential Conflicts of Interest, the Ministry may disqualify the Proponent or terminate any contract awarded to that Proponent pursuant to this procurement process.

**b) General**

The Ministry, in addition to any other remedies it may have in law or in equity, shall have the right to rescind any Contract awarded to a Proponent in the event that the Ministry, in its sole discretion, determines that the Proponent made a misrepresentation or submitted any inaccurate or incomplete information in the Form of Offer.

Other than inserting the information requested and signing the Form of Offer, a Proponent may not make any changes to the Form of Offer or qualify in its proposal the acknowledgements contained in the Form of Offer. Proposals containing any such qualifications, whether on the face of the Form of Offer or elsewhere in a proposal, may be disqualified. In instances where the proposal is not disqualified notwithstanding a discrepancy or inconsistency between the Form of Offer and a Proponent's proposal, the Form of Offer will prevail.

**3.2.2. Rate Bid Form (Appendix C)**

Each Proponent must include this form completed according to the instructions contained in the form as well as those instructions set out below:

- a) rates shall be provided in Canadian Funds, inclusive of all applicable duties and taxes (with PST itemized separately) and exclusive of Goods and Services Tax (the Deliverables are required for the use of the Crown in Right of Ontario and are therefore not subject to the federal Goods and Services Tax). Unless Clients have otherwise notified the Proponent in its accounting arrangement, GST is not applicable to the charges for the relevant Deliverables.
- b) rates quoted by the Proponent shall include all labour and materials, transportation costs, overhead including but not limited to any fees or other charges required by law, and insurance.
- c) rates must be provided per Service Type per Stream for the Services as requested in the RFP.
- d) rates per Service Type shall remain consistent in all geographical regions.
- e) rates must reflect all costs associated with work being done by the successful Proponent. No additional administration costs, project management costs or charges for travel time will be accepted on invoices.
- f) rates must be firm for the period of the Contract, subject to any pricing changes resulting from the Refresh Window process. Should Suppliers not wish to revise rates at the Refresh Window these rates will remain as they are set out in the Master Agreement.
- g) All Rates quoted by Proponents will be used for (1) evaluation purposes; and (ii) as a maximum charge for any Assignment subject to reduction by a Proponent when quoting on specific assignments.

### **3.2.3. Tax Compliance Declaration Form (Appendix D)**

The Ontario Government expects all suppliers to pay their provincial taxes on a timely basis. In this regard, Proponents are advised that any contract with the Ontario Government will require a declaration from the successful Proponent that the Proponent's provincial taxes are in good standing.

Each Proponent must include a Tax Compliance Declaration Form, completed by the Proponent according to the instructions contained in that form.

The Ministry will forward to the Ministry of Finance a copy of the selected Proponent's signed Tax Compliance Declaration Form for verification. By signing this form, the Proponent is consenting to the release of such information from the Ministry to the Ministry of Finance and from the Ministry of Finance to the Ministry for this purpose.

Proponents may direct all enquiries regarding the Tax Compliance Declaration Form to the Ministry Contact.

### **3.2.4. References Form (Appendix F)**

Each proposal must include a Reference Form completed by the Proponent according to the instructions contained in that form. The references should be from persons for whom the Proponent has successfully provided similar goods and services to those described under Deliverables within the past three (3) years. The name and telephone number of a contact person for each reference and a brief outline of the nature of the services provided should be included.

Using the Reference Form format (Appendix F), each proposal must include at least three (3) references and must be submitted with the Proponent's proposal.

The Ministry, in its sole discretion, may confirm the Proponent's experience and/or ability to provide the Deliverables required and described in its proposal by checking the Proponent's references.

### **3.2.5. ADDITIONAL MANDATORY REQUIREMENTS**

#### **3.2.5.1. Sample Course Material**

Proponents shall provide **one (1) hard copy each** of courses designed and developed as indicated under Section 3.3.1 (#2 Design and Development Capabilities and #3&4 Proponent's Courses/Workshops (SSB-GT Based as well as OPS-Wide)) under the Evaluation of Rated Criteria – Service Description Requirements and the Quality and Experience Evaluation of Descriptions.

**3.2.6.** Proposals meeting all of the mandatory criteria and submission requirements will move on to Stage II.

### **3.3. STAGE II - EVALUATION OF RATED CRITERIA**

Stage II will consist of scoring by the Ministry of each qualified Proposal by Service Type on the basis of the Rated Criteria.

### 3.3.1. Service Types

Proponents may submit Proposals for any, some or all of the Service Types (see list below). The evaluation committee will evaluate Rated Criteria by Service Type.

The 7 Service Types are:

#### **Stream 1 Service Types (SSB GT – Based Services)**

1. Consulting: Learning Projects which Improve Business Performance
2. Design and Development of Learning Solutions
3. Delivery of OPS – Oriented Courses

#### **Stream 2 Service Types (OPS – Wide Services)**

4. Delivery of non-customized Courses
5. Facilitation
6. Individual Coaching
7. Trainer

Each Service Type in this stage of the process will be evaluated independently based on the material requested in the Mandatory Submissions Requirements, the information included in Proponents' proposals, sample course materials, and references. Each Service Type will be worth 50 points.

### 3.3.2. Rated Criteria

The following is an overview of the categories and weighting for the Rated Criteria of the RFP for each Service Type:

### 3.3.3. Experience and Qualifications

**Total of 50 Points**

In order to be evaluated, the Proponent shall provide a description of the Services being offered for each Service Type the Proponent is proposing in its Proposal. The Full Service Description shall include the following:

- (A) A brief description of the Proponent's services; and
- (B) Specific examples or inventories

It is a requirement that each Full Service Description (A) and (B) above, be provided in **hard copy and diskette or CD ROM**, in the submission document. The specific samples or inventories of offerings (B) above must also be provided in both a **hard copy** and in an electronic version on **diskette or CD ROM in MS Excel** in the format provided under each Service outlined in 3.3.3.1.

The descriptions and examples (A and B) will also be used to populate a database that will be used for reference purposes by SSB, i.e. Supplier Services and Supplier Information. Each of the descriptions, on diskette or CD ROM, should be in a separate, clearly named "file" corresponding to the Service Type. Please see Section 4.3.1 for additional electronic submission requirements.

Each description will be specific to each Service Type. Each Service Type that a Proponent bids on will be evaluated separately for quality and experience by the evaluation teams based on the evaluation criteria provided under each Service Type below.

Proponents must achieve a minimum of 37.5 points (75%) or more of the 50 in a proposed Service Type to qualify for further consideration in Stage III (Cost) for that Service. For example, if a Proponent bids on 3 services e.g. Facilitation, Coaching and Training, and they score 40 points (80%) in Facilitation, 30 points (60%) in Coaching and 22.5 points (45%) in Training, then that Proponent would only qualify in the Facilitation Service as this is the only Service for which the Proponent scored the minimum required 75% score.

### 3.3.3.1. Service Description Requirements and the Quality and Experience Evaluation of Descriptions

#### 1) Consulting: Learning Projects which Improve Business Performance

- A. Provide a brief description of the Proponent's service
- B. Using the table depicted below, provide descriptions of no more than six (6) learning projects, reasonably different in scope, which demonstrate relevant experience. Each description should be no more than one (1) page and shall consist of a **hard copy and an electronic version on diskette or CD ROM in MS Excel** as described above.
  - o Proponents' description will be weighed (50 points) against the following evaluation criteria:
    - Understanding the Client's requirements and expectations
    - Preparing and adhering to the project plan
    - Describing project methodology
    - Developing optional solutions and recommendations, including pros and cons
    - Developing implementation plan
    - Government/Corporate experience

<b>Consulting: <i>Insert project title</i></b>	
<b>Item</b>	<b>Description/Examples</b>
Target Audience	Executive, Senior Management, Mid-Management, Operational, Front-line, or describe other
Project Description	Strategic Planning, Needs Assessment, Implementation Plans, Evaluation or describe other
Methodology or Models Used	Pictorial or description
Subject Matter Expertise	Change Management, Human Resources, Organizational Design, or describe other
Size of Project	Size of the participant group and or size of anticipated group affected by outcomes (e.g., perhaps interviewed 20 people in determining outcomes affecting 500 employees)
Roles	Role of consultant, role of client, role of participants, or describe other.

## 2) Design and Development Capabilities

- A) Provide a brief description of the Proponent's service
- B) Using the table depicted here, provide descriptions of no more than six (6) design projects, reasonably different in scope, which demonstrate relevant experience. Each description should be no more than one (1) page and shall consist of a **hard copy and an electronic version on diskette or CD ROM in MS Excel** as described above.
- Proponents' descriptions will be weighed (50 points) against the following evaluation criteria.
    - Conducting detailed training needs/design analysis
    - Determining performance/learning objectives
    - Designing program, using adult learning principles to meet objectives
    - Developing pilot, including learning and promotional materials, and evaluate
    - Finalizing and maintaining program and evaluating organizational impact
    - Government/Corporate experience
  - As a submission requirement document, provide one hardcopy (not required on disk) of a course that you have designed and developed. Copy should be clearly marked "Designed and Developed Program".

<b>Design and Development: <i>Insert project/course title</i></b>	
<b>Item</b>	<b>Description/Examples</b>
Target Audience	Executive, Senior Management, Mid-Management, Operational, Front-line, or describe other <ul style="list-style-type: none"> <li>• Size of total audience and class size</li> </ul>
Purpose of the Course	Brief description
Course Outline	Point form description including <ul style="list-style-type: none"> <li>• Key learning objectives</li> <li>• Content</li> </ul>
Duration	1-day, 2-day, modular format, etc.

## 3) Facilitation

- A) Provide a brief description of the Proponent's service
- B) Using the table depicted here, provide descriptions of no more than six (6) facilitation assignments, reasonably different in scope, which demonstrate relevant experience. Each description should be no more than one (1) page and shall consist of a **hard copy and an electronic version on diskette or CD ROM in MS Excel** as described above.
- Proponents' descriptions will be weighed (50 points) against the following evaluation criteria:
    - Understanding client's requirements and expectations

- Designing session(s) based on the needs
- Understanding group process and objectively engaging individuals
- Creating and maintaining a productive and outcome-focused environment
- Meeting desired outcomes
- Government/Corporate experience

<b>Facilitation: <i>Insert assignment title</i></b>	
<b>Item</b>	<b>Description/Examples</b>
Target Audience	Executive, Senior Management, Mid-Management, Operational, Front-line, or describe other <ul style="list-style-type: none"> <li>• Size of audience</li> </ul>
Purpose of the Facilitation	Brief description
Methodology used	e.g. open space, nominal group technique, etc.
Duration	1-day, 2-day, modular format, etc.

#### 4) Trainers

- A) Provide a brief description of the Proponent's service
- B) Using the table depicted here, provide descriptions of no more than six (6) training assignments, reasonably different in scope, which demonstrate relevant experience. Each description should be no more than one (1) page and shall consist of a **hard copy and an electronic version on diskette or CD ROM in MS Excel** as described above.
- Proponents' descriptions will be weighed (50 points) against the following evaluation criteria:
    - Expertise in adult learning principles
    - Understanding group process and objectively engaging individuals
    - Adapting to individual learning styles
    - Use of current A/V technology and other teaching aids
    - Government/Corporate experience

<b>Training: <i>Insert assignment/course title</i></b>	
<b>Item</b>	<b>Description/Examples</b>
Target Audience	Executive, Senior Management, Mid-Management, Operational, Front-line, or describe other <ul style="list-style-type: none"> <li>• Size of audience</li> </ul>
Subject Matter Expertise	Labour Relations, Management Development, Project Management, Administration, Program/Budget Planning, etc.
Purpose of the Training	Brief description
Content of the Training	Brief description
Duration	1-day, 2-day, modular format, etc.

**5) Proponent's Courses/Workshops (2 Service Types. SSB-GT Based AND OPS-Wide)**

- A) Provide a brief description of the Proponent's service
- B) Using the table depicted here, provide descriptions of workshops/courses, that you would like considered. Each description should be no more than one (1) page and shall consist of a **hard copy and an electronic version on diskette or CD ROM in MS Excel** as described above
- Proponents' descriptions will be weighed (50 Points) against the following evaluation criteria:
    - Identifying clear course objectives for the intended audience
    - Showing that the design meets course objectives
    - Utilizing adult learning principles
    - Producing effective, well-formatted, current training courseware and materials
    - Government/Corporate experience
  - As a submission requirement document, provide one hardcopy (not required on disk) of a course participant manual that you own or have licensed to use in your organization.

<b>Workshop Title: <i>Insert title</i></b>	
<b>Item</b>	<b>Description/Examples</b>
Target Audience	Executive, Senior Management, Mid-Management, Operational, Front-line, or describe other <ul style="list-style-type: none"> <li>• Recommended class size</li> </ul>
Purpose of the Course	Brief description
Course Outline	Point form description including <ul style="list-style-type: none"> <li>• Key learning objectives</li> <li>• Content</li> </ul>
Duration	1-day, 2-day, modular format, etc.

**6) Coaching**

- A) Provide a brief description of the Proponent's service
- B) Using the table depicted here, provide descriptions of no more than six (6) coaching assignments, reasonably different in scope, which demonstrate relevant experience. Each description should be no more than one (1) page and shall consist of a **hard copy and an electronic version on diskette or CD ROM in MS Excel** as described above.
- Proponents' descriptions will be weighed (50 points) against the following evaluation criteria.
    - Understanding individual coaching as a practice
    - Ability in assisting the client in discovering, clarifying and aligning what it is they want to achieve (objectives)
    - Encouraging client-generated solutions and strategies

- Holding client responsible and accountable for achieving his or her own goals
- Government/Corporate experience

<b>Coaching: <i>Insert assignment title</i></b>	
<b>Item</b>	<b>Description/Examples</b>
Target Audience	Executive, Senior Management, Mid-Management, Operational, Front-line, or describe other
Subject Matter Expertise	Management Development, Employment/Career Transition, Financial Management, Professional Development, Project Management, Conflict Resolution, etc.
Purpose of Assignment	Brief description
Methodology Used	Brief description
Duration	Hours, days, months, etc.

### 3.4. STAGE III - EVALUATION OF PRICING

#### 3.4.1. Pricing Evaluation

**Total of 50 Points**

Those Proponents whose proposals successfully pass through the evaluation in Stages I and II will have their pricing submissions evaluated and allocated a score to a maximum of 50 points. Proponents must follow the costing details outlined in Appendix C Rate Bid Form. For the purpose of allocating points, the cost quoted by a Proponent in the Rate Bid Form will be the cost to be scored (“Proponent Evaluated Rate”). Subject to the note below, the proposal with the lowest Evaluated Rate will receive the maximum available points. The remainder of the proposals will be scored in accordance with the formula below.

An average of the three different lowest proposed rates in a specific Service Type will be used to determine the rate against which all other rates will be measured. The average rate will be divided by each individual Proponent’s per diem rate and multiplied by 50 percent representing the points scored by a Proponent for that specific Service Type.

The average of three different lowest bid per diem rates per Service Type ÷ by each individual bid per diem rate x 50% = assigned points.

In the event that a Proponent does not choose to give a master copy for printing purposes for courses they provide at no additional cost, the cost of manuals will be included in the per diem. In this regard the average cost of manuals based on **20 participants** will be added to the Proponent’s per diem rate. The sum of the per diem rate quoted plus the total cost of manuals will then become the working “per diem” rate for evaluation purposes. Refer to Section 3.4.3 for additional information. For these purposes Proponents must include the average cost of their manuals on the rate bid form.

Any per diem bid rate greater than 500% of the average of the three different lowest per diem rates per Service Type will receive 0 of the available 50 points.

Note: The basis for awarding points will be an average of the three lowest bids received: as an example  $\$200 + \$300 + 400 = \$900$ , divided by three (3) =  $\$300$ . The average rate will be divided by each individual Proponent's rate and multiplied by 50%. Each Proponent's bid is awarded points in proportion to the bid's relationship to the average (in this case  $\$300$ ).

Scoring example to illustrate the various stages and possible outcomes of the process:

Proponents	Stage 2 Scoring for rated criteria 75% or 37.5/50 require to pass	Stage 3 Scoring of Pricing	Stage 4 Total Score
Proponent A	32.5 Not qualified	Will not be evaluated further	
Proponent B	40	50 ( $\$300$ )	90
Proponent C	45	0 $(\$300/(305+(\$100 \times 20)) \times 50\%)$	45 Not qualified will not proceed
Proponent D	39	26 ( $\$300/\$560 \times 50\%$ )	65
Proponent E	50	19 ( $\$300/\$770 \times 50\%$ )	69
Proponent F	48	10 ( $\$300/\$1500 \times 50\%$ )	58 Not qualified will not proceed
Proponent G	42	0 ( $\$300/\$1825 \times 50\%$ )	42 Not qualified will not proceed

### 3.4.2. Pricing Submission

- a) Rates proposed on the Rate Bid Form shall be for an 18 months period starting upon the effective date of the Contract. Should a supplier not wish to revise its rates at the Refresh Window, its rates will be maintained for the full duration of the Agreement.
- b) Proponents shall indicate on the Rate Bid Form their per manual cost, if applicable.
- c) Proponents per diem rate per Service Type shall be the same in all geographical regions.
- d) Rates must be provided in Canadian funds, including all applicable taxes (refer to Section 3.2.2).
- e) Where there is no bid for a Service Type, Proponents must indicate "no bid".
- f) Proponents' per Service Type rate must include all costs, including student classroom material, instructional time, post-course support, administration costs, project management cost, etc.
- g) Proponents must submit an electronic version on disk or CD ROM using the Rate Bid Form in an Excel format of all per diem rates and per manual costs.

### 3.4.3. Cumulative Score and Selection of Preferred Proponent

At the conclusion of Stage III, all scores from Stage II and Stage III will be cumulated and, subject to satisfactory reference checks and the express and implied reserved rights of the Ministry, Proponents who score a minimum of 65% or more of the total points will be deemed successful for the Service Type/geographic region.

#### **3.4.4. Hard Copy and Electronic Copy Inconsistencies**

In the event of any discrepancies or inconsistencies between the Proponent's original hard copy of the RFP submission and the electronic MS Excel diskette version, the Proponent's original hard copy submission will supersede the electronic MS Excel diskette version.

#### **3.4.5. Evaluation at the Refresh Windows**

##### **3.4.5.1. New Proponents**

At the Refresh Window, a modified version of the RFP (Services to remain the same, only the Term shall be changed to reflect the remaining year(s) of the Term) will be posted on MERX (or whichever electronic posting service MBS is using at the relevant time) and new Proponents will be given an opportunity to submit proposals. The full evaluation process (stages I to III) will apply to these proposals.

##### **3.4.5.2. Suppliers of this VOR List**

For Service Types which they have been qualified to provide through this RFP, Suppliers will have a choice of either continuing with the Contract's per diem rates for the term that is subject to the Refresh Window Methodology or resubmitting revised per diem rates for the Service Type. If a Supplier chooses to not change the Contract per diem rates, then evaluation will not be necessary and that Supplier shall remain on the VOR list for the particular Learning and Training Service Types for which they were originally selected as part of this RFP.

Should a Supplier propose:

- (i) to be considered for Services for which they were not selected through this RFP or the subsequent Refresh Window (as the case may be), these Suppliers will be required to submit information on Experience and Qualifications, References and Pricing, for stages II and III evaluation. If the score for a particular Service is 37.5 or more out of the available 50 points, the Supplier will be qualified for that particular Service Type and will be ranked accordingly;
- (ii) to submit a revised per diem rate for a Service Type in which they were selected as part of the original RFP or subsequent Refresh Window (as the case may be), Suppliers will be required to submit information regarding their pricing only for such Service Types. It is noted that any per diem rate over 500% of the lowest per diem rate calculated at Refresh will receive a score of zero out of the 50 points available for pricing and will not be qualified for further evaluation. If the total of a Proponent's score (stage II from previous evaluation plus stage III evaluation for the new pricing) for a particular Service Type is less than 65%, the Supplier will no longer be a VOR for that particular Service Type, and the Agreement shall be amended accordingly and shall become effective upon signing by the Ministry of the amended Agreement.

New Suppliers' per diem rates and existing Suppliers' revised per diem rates will take effect on the second anniversary date of the Commencement Date.

#### **3.4.6. Selection of a Supplier from the Vendor of Record**

Potential Clients seeking learning and training services from the Vendor of Record list will have access to information from proposals submitted by successful Proponents such as rates and qualifications. Selection of a Supplier from the Vendor of Record list will be based on a competitive process in accordance with procurement threshold limits and on criteria specific to the learning and training needs of potential Clients such as experience, suitability, availability and price. At minimum, the competitive process will involve a request by a potential Client to three suppliers from the Vendors of Record list to provide an estimate of the total fee for the Deliverables (estimate of number of days multiplied by the applicable Rates). Where price is the only information requested by a Client from Suppliers, selection will be based on the lowest cost to the potential Client. A Service Level Agreement (SLA) will be signed between the Client and the successful Supplier in accordance with the Agreement.

[End of Part 3]

## **4. TERMS AND CONDITIONS OF THE RFP PROCESS**

### **4.1. GENERAL INFORMATION AND INSTRUCTIONS**

#### **4.1.1. Timetable**

The following is the tentative schedule for this RFP:

- Issue Date of RFP - Friday June 13, 2003
- Proponent's Deadline for Questions - 4:00 p.m. EDT Tuesday June 24, 2003
- Deadline for Issuing Addenda – Monday July 7, 2003
- Proposal Submission Deadline - 11:00:00 a.m. EDT Monday July 14, 2003

Period for Which Proposals are Irrevocable  
after Proposal Submission Deadline

**180 days**

At any time prior to the Proposal Submission Deadline, the RFP timetable is tentative only and may be changed by the Ministry in its sole discretion.

#### **4.1.2. Proponents to Follow Instructions**

Each Proponent should structure its proposal in accordance with the instructions in this RFP. Where information is requested in this RFP, any response made in a proposal should reference the applicable section numbers of the RFP where that request was made.

#### **4.1.3. Proponents to Obtain RFP Only Through MERX™**

This RFP is available only through MERX™, the electronic tendering system used by the Province of Ontario. For further information about MERX™, call 1-800-964-MERX™ or visit the MERX™ website at *www.merx.com*.

A Proponent who has not obtained this RFP through MERX™ may have its proposal disqualified unless a third party has requested this RFP from MERX™ on that Proponent's behalf and that Proponent has identified the third party on the Proposal Return Label for its proposal. Failure to identify the third party in this manner may result in disqualification of a proposal.

#### **4.1.4. Proposals in English**

All submissions are to be in English only.

#### **4.1.5. Ministry's Information in RFP Only an Estimate**

The Ministry and its advisors make no representation, warranty or guarantee as to the accuracy of the information contained in the RFP or issued by way of addenda. Any quantities shown or data contained in this RFP or provided by way of addenda are estimates only and are for the sole purpose of indicating to Proponents the general size of the work.

It is the Proponent's responsibility to avail itself of all the necessary information to prepare a proposal in response to this RFP.

**4.1.6. Proponent Shall Bear Its Own Costs**

The Proponent shall bear all costs associated with or incurred in the preparation and presentation of its proposal including, if applicable, costs incurred for interviews or demonstrations.

**4.1.7. Proof of Insurance**

Each Proponent shall provide with its proposal evidence of its ability to meet the insurance requirements set out in the Agreement, Article 9. Evidence of a commitment to provide said insurance shall be provided in the form of a Certificate of Insurance or a letter of intent from the Supplier's insurance agent or broker and signed by an insurance company which meets the approval of Risk Management & Insurance Services at Shared Services Bureau, Management Board Secretariat, confirming the Supplier's ability to obtain the insurance required.

If selected by a Client to enter into a Service Level Agreement (SLA), the Supplier shall furnish a Certificate of Insurance meeting the insurance requirements set out in the Agreement or as modified by the SLA, prior to commencing performance under the SLA.

**4.1.8. Proof of Workplace Safety and Insurance Act**

Each Proponent, if subject to the Workplace Safety and Insurance Act (WSIA), shall provide with its proposal evidence of its ability to meet the Workplace Safety and Insurance Act requirements set out in the Agreement, Article 7.04. Evidence of a commitment to provide the said insurance shall be provided in the form of a Clearance Certificate or a written confirmation from an insurance company on or before the commencement date of the Agreement that Employers Liability and Voluntary Compensation Coverage as required by the Agreement will be in place prior to the Commencement Date of a Service Level Agreement

If selected by a Client to enter into a Service Level Agreement (SLA), the Supplier shall furnish a valid Clearance Certificate of WSIB meeting the requirements set out in the Agreement or as modified by the SLA, prior to commencing performance under the SLA.

**4.2. COMMUNICATION AFTER ISSUANCE OF RFP**

**4.2.1. Proponents to Review RFP**

Proponents shall promptly examine all of the documents comprising this RFP and

- (a) shall report any errors, omissions or ambiguities; and
- (b) may direct questions or seek additional information

in writing by fax on or before the Deadline for Questions by Proponents to the Ministry Contact. No such communications are to be directed to anyone other than the Ministry Contact. The Ministry is under no obligation to provide additional information but may do so at its sole discretion.

It the responsibility of the Proponent to seek clarification from the Ministry Contact on any matter it considers to be unclear. The Ministry shall not be responsible for any misunderstanding on the part of the Proponent concerning the RFP or its process.

#### **4.2.2. All New Information to Proponents by way of Addenda on MERX™**

This RFP may only be amended by an addendum, in accordance with this section. If the Ministry, for any reason, determines that it is necessary to provide additional information relating to this RFP, such information will be communicated to all Proponents by addenda by way of MERX™. Each addendum shall form an integral part of this RFP.

Such addenda may contain important information including significant changes to this RFP. Proponents are responsible for obtaining all addenda issued by the Ministry. In the space provided in the Form of Offer, Proponents shall confirm their receipt of all addenda by setting out the number of each addendum in the space provided in the Form of Offer.

Proponents who intend to respond to this RFP are requested to not cancel the receipt of addenda or amendments option provided by MERX™, since they must obtain through MERX™ all of the information documents that are issued through MERX™.

In the event that a Proponent chooses to cancel the receipt of addenda or amendments its proposal may be rejected.

#### **4.2.3. Post-Deadline Addenda and Extension of Proposal Submission Deadline**

If any addendum is issued after the Deadline for Issuing Addenda, the Ministry may at its discretion extend the Proposal Submission Deadline for a reasonable amount of time.

### **4.3. SUBMISSION OF PROPOSALS**

#### **4.3.1. Proposals Submitted Only in Prescribed Manner**

Proposals must be submitted by the following method:

a) A Proponent must submit:

- **One (1) original version prominently marked “Original”;**
- **Four (4) copies of its proposal;**
- **One (1) diskette containing Rate Bid Form, Appendix C, in Microsoft Excel format. The electronic Rate Bid Form submission MUST be in the same format as provided in the RFP. The format provided must not be altered; and**
- **One (1) diskette, containing the Service Description Requirements (Section 3.3.3), in Microsoft Excel format;**

Proposals must also include an **electronic version in MS Excel on diskette and backup** diskette. Content of the diskette must be done in **Microsoft Excel** (Rate Bid Form, Service Description Requirements and Reference Form). This information will be used to populate a database of the successful Proponents' information. The disk must include the following:

- A label indicating: Company Name, Address, Contact Person, Telephone Number, Email Address, Website (if applicable). This information **must** also be included in a file on the disk.

- Separate files of the service(s) that the Proponent is bidding on, each file containing:
  - Description of the Proponent's service; and
  - Tables as depicted in the "Service Description Requirements" including Reference Chart.

The Proponent's proposal submission (including the electronic version on diskette) and mandatory requirements must be submitted in a sealed package. On the outside of the sealed package, using the Proposal Return Label attached at Appendix E, proposals are to be prominently marked with the RFP title and number (see RFP cover), with the full legal name and return address of the Proponent, and with the Proposal Submission Deadline date and time;

- b) Proposals must be submitted to the following address and to the attention of the following person:

**Management Board Secretariat  
Shared Services Bureau, Strategic Procurement Branch  
6<sup>th</sup> floor, 700 University Avenue  
Toronto, ON M7A 2S4**

**Attention: Heinz Belzer**

Proposals submitted in any other manner or to any other location will be disqualified.

#### **4.3.2. Proposals Must Be Submitted On Time at Prescribed Location**

Proposals must be submitted at the location set out above on or before the Proposal Submission Deadline. Proposals submitted after this time will be deemed to be late, will be disqualified and returned to the Proponent. For the purpose of calculating time, the Ministry clock at the prescribed location for submission shall govern.

#### **4.3.3. Amending or Withdrawing Proposals Prior to Proposal Submission Deadline**

At any time prior to the Proposal Submission Deadline, a Proponent may amend or withdraw a submitted proposal. The right of a Proponent to amend or withdraw includes amendments or withdrawals wholly initiated by a Proponent and amendments or withdrawals in response to subsequent information provided by addenda.

Any amendment should clearly indicate what part of the proposal the amendment is intending to replace.

Any amendment or notice of withdrawal must be submitted in the same manner as prescribed in this RFP for the submission of proposals. Any amendment or notice of withdrawal submitted by any other method will not be accepted.

#### **4.3.4. Proposal Irrevocable after Proposal Submission Deadline**

Proposals shall remain irrevocable in the form submitted by the Proponent for a period of one hundred and eighty (180) days running from the moment that the Proposal Submission Deadline has lapsed.

#### **4.3.5. Ministry May Seek Clarification and Incorporate Response into Proposal**

The Ministry reserves the right to seek clarification and supplementary information relating to the clarification from Proponents after the Proposal Submission Deadline. The response received by the Ministry from a Proponent shall, if accepted by the Ministry, form an integral part of that Proponent's proposal. The Ministry reserves the right to interview any or all Proponents to obtain information about or clarification of their proposals. In the event that the Ministry receives information at any stage of the evaluation process which results in earlier information provided by the Proponent being deemed by the Ministry to be inaccurate, incomplete or misleading, the Ministry reserves the right to revisit the Proponents compliance with the Mandatory Requirements and/or adjust the scoring of Rated Criteria.

#### **4.3.6. RFP Incorporated into Proposal**

All of the provisions of this RFP are deemed to be accepted by each Proponent and incorporated into each Proponent's proposal.

#### **4.3.7. No Incorporation by Reference by Proponent**

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

#### **4.3.8. Proposal Property of the Ministry**

Except where expressly set out to the contrary in this RFP or in the Proponent's proposal, the proposal and any accompanying documentation submitted by a Proponent shall become the property of the Ministry and shall not be returned.

### **4.4. EXECUTION OF AGREEMENT, NOTIFICATION AND DEBRIEFING**

#### **4.4.1. Selection of Proponent**

The Ministry anticipates that Proponents will be selected by the Ministry within one hundred and twenty (120) days of the Proposal Submission Deadline. Notice of selection by the Ministry to the selected Proponents will be in writing. The selected Proponents shall execute the Agreement in the form attached as Appendix A and satisfy any other applicable conditions of this RFP within fifteen (15) days of notice of selection. This provision is solely to the benefit of the Ministry and may be waived by the Ministry at its sole discretion.

#### **4.4.2. Failure to Enter Into Agreement**

In addition to all of the Ministry's other remedies, if a selected Proponent fails to execute the Agreement or satisfy any other applicable conditions within fifteen (15) days of notice of selection, the Ministry may, in its sole and absolute discretion and without incurring any liability, rescind the selection of that Proponent.

#### **4.4.3. Notification to Other Proponents of Outcome of Procurement Process**

Once an Agreement is executed by the successful Proponents and the Ministry, the other Proponents will be notified by the Ministry in writing of the outcome of the procurement process and the award of the Agreement to the successful Proponents.

#### **4.4.4. Debriefing**

Proponents may request a debriefing after receipt of a notification of award. All requests must be in writing to the Ministry Contact and must be made within thirty (30) days of notification of award. The intent of the debriefing information session is to aid the Proponent in presenting a better proposal in subsequent procurement opportunities. Any debriefing provided is not for the purpose of providing an opportunity to challenge the procurement process.

### **4.5. PROHIBITED COMMUNICATIONS, CONFIDENTIAL INFORMATION AND FIPPA**

#### **4.5.1. Prohibited Proponent Communications**

The Proponent shall not engage in any Conflict of Interest communications and should take note of the Conflict of Interest declaration requirements in the RFP.

#### **4.5.2. Proponent Not to Communicate With Media**

A Proponent may not at any time directly or indirectly communicate with the media in relation to this RFP or any contract awarded pursuant to this RFP without first obtaining the written permission of the Ministry Contact.

#### **4.5.3. Confidential Information of Ministry**

All information provided by or obtained from the Ministry in any form in connection with this RFP either before and after the issuance of this RFP

- (a) is the sole property of the Ministry and must be treated as confidential;
- (b) is not to be used for any purpose other than replying to this RFP and the performance of any subsequent Contract;
- (c) must not be disclosed without prior written authorization from the Ministry; and
- (d) shall be returned by the Proponents to the Ministry immediately upon the request of the Ministry.

#### **4.5.4. Freedom of Information and Protection of Privacy Act**

Information provided by a Proponent may be released in accordance with the Freedom of Information and Protection of Privacy Act, R.S.O. 1990, c.F.31, as amended. A Proponent should identify any information in its proposal or any accompanying documentation supplied in confidence for which confidentiality is to be maintained by the Ministry. The confidentiality of such information will be maintained by the Ministry, except where an order by the Information and Privacy Commission or a court requires the Ministry to do otherwise. Proponents are advised that their proposals will, as necessary, be disclosed on a confidential basis, to the Ministry's advisers retained for the purpose of evaluating or participating in the evaluation of this proposal.

### **4.6. Reserved Rights and Governing Law**

#### **4.6.1. Reserved Rights of the Ministry**

The Ministry reserves the right to:

- (a) make public the names of any or all Proponents;

- (b) request written clarification or the submission of supplementary written information in relation to the clarification request from any Proponent and incorporate a Proponent's response to that request for clarification into the Proponent's proposal;
- (c) adjust a Proponent's scoring or reject a Proponent's proposal on the basis of
  - i. a financial analysis determining the actual cost of the proposal when considering factors including quality, service, price and transition costs arising from the replacement of existing goods, services, practices, methodologies and infrastructure (howsoever originally established);
  - ii. information provided by references;
  - iii. the Proponent's past performance on previous contracts awarded by the Government of Ontario;
  - iv. the information provided by a Proponent pursuant to the Ministry exercising its clarification rights under this RFP process;
  - v. other relevant information that arises during this RFP process;
- (d) waive formalities and accept proposals which substantially comply with the requirements of this RFP;
- (e) verify with any Proponent or with a third party any information set out in a proposal;
- (f) check references other than those provided by any Proponent;
- (g) disqualify any Proponent whose proposal contains misrepresentations or any other inaccurate or misleading information;
- (h) disqualify any Proponent or the proposal of any Proponent who has engaged in conduct prohibited by this RFP;
- (i) make changes, including substantial changes, to this RFP provided that those changes are issued by way of addenda in the manner set out in this RFP;
- (j) select any Proponent other than the Proponent whose proposal reflects the lowest cost to the Ministry or the highest overall score;
- (k) cancel this RFP process at any stage;
- (l) cancel this RFP process at any stage and issue a new RFP for the same or similar deliverables;
- (m) accept any proposal in whole or in part;
- (n) discuss with any Proponent different or additional terms to those contemplated in this RFP or in any Proponent's proposal;
- (o) if a single proposal is received, reject the proposal of the sole Proponent and cancel this RFP process or enter into direct negotiations with the sole Proponent; or

(p) reject any or all proposals in its absolute discretion,

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

By submitting its proposal, the Proponent authorizes the collection by the Ministry of the information set out under (e) and (f) in the manner contemplated in those subparagraphs.

#### **4.7. Governing Law of RFP Process**

This RFP 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.

[End of Part 4]

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## AGREEMENT

THIS AGREEMENT (“the Agreement”), made in duplicate, for **Learning and Training Services** effective as of the [**\*\*insert start date for the Term\*\***]

**BETWEEN:**

**HER MAJESTY THE QUEEN**  
in right of Ontario as represented by  
**the Chair of Management Board of Cabinet**

(referred to as “the Ministry”)

**AND:**

[**\*LEGAL NAME OF SUPPLIER\***]

(referred to as the “Supplier”)

In consideration of their respective agreements set out below, the parties covenant and agree as follows:

### ARTICLE 1 – INTERPRETATION AND GENERAL PROVISIONS

#### 1.01 Defined Terms

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

“**Agencies**” means all advisory, adjudicative, trusts, regulatory (including those with governing boards), and operational service agencies of the Province of Ontario.

“**Assignment**” means any assignment for Deliverables requested in writing by a Client from the Supplier;

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

“**Broader Public Sector**” means the municipalities, academic institutions, school boards, health care providers and major transfer payment recipients, in Ontario, as are more fully described and defined at the following Ontario government Internet site  
<http://www.ppitpb.gov.on.ca/mbs/psb/psb.nsf>

and “**BPS**” and “**BPS Client**” have the same meaning.

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

“**Business Hours**” mean 8:00 a.m. to 5:00 p.m. of any Business Day;

“**Client**” means any entity falling within the Ontario Public Service;

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

- a) in relation to the RFP process, the Proponent has an unfair advantage or engages in conduct, directly or indirectly, that may give it an unfair advantage, including but not limited to (i) having or having access to information in the preparation of its proposal that is confidential to the Crown and not available to other Proponents; (ii) communicating with any person with a view of influencing preferred treatment in the RFP process; or (iii) engaging in conduct that compromises or could be seen to compromise the integrity of the open and competitive RFP process and render that process non-competitive and unfair; or;
- b) in relation to the performance of its contractual obligations in a Crown contract, the supplier's other commitments, relationships or financial interest (i) could or could be seen to exercise an improper influence over the objective, unbiased and impartial exercise of its independent judgment; or (ii) could or could be seen to compromise, impair or be incompatible with the effective performance of its contractual obligations;

**“Contract”** means the aggregate of: (a) the Agreement, including Schedule 1 (Schedule of Deliverables, Rates and Supplementary Provisions), Schedule 2 (Schedule of Forms), and any other schedule attached at the time of execution; (b) the RFP, including any addenda; (c) the Proposal; and (d) any amendments executed in accordance with the terms of the Agreement;

**“Deliverables”** means everything developed for or provided to the Ministry in the course of performing under the Contract or agreed to be provided to the Ministry under the Contract, by the Supplier or its employees, volunteers, agents or subcontractors, as further defined, but not limited by Schedule 1 to the Agreement, including but not limited to any goods or services or any and all Intellectual Property and any and all concepts, techniques, ideas, information, documentation and other materials, however recorded, developed or provided;

**“Derivative Work”** means a work based on the Supplier's Intellectual Property including, without limitation, an adaptation, modification, translation, expansion, condensation or transformation, that if prepared without authorization, would constitute copyright infringement or infringement of any other Intellectual Property right;

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

**“Geographic Region”** means the applicable geographical area within which the Services shall be provided within the Province of Ontario

**“Industry Standards”** include, but are not limited to (a) the provision of any and all labour, supplies, equipment and other goods or services that are necessary and can reasonably be understood or inferred to be included with the scope of the Contract or customarily furnished by Persons providing Deliverables of the type provided hereunder in similar situations in Ontario and; (b) adherence to commonly accepted norms of ethical business practices, which shall include the Supplier establishing, and ensuring adherence to, precautions to prevent its employees or agents from providing or offering gifts or hospitality of greater than nominal value to any person acting on behalf of or employed by Her Majesty the Queen in right of Ontario.

**“Intellectual Property”** means intellectual, industrial or other proprietary right of any type in any form protected or protectable under the laws of Canada, any foreign country, or any political subdivision of any country, including, without limitation, any intellectual, industrial or proprietary rights protected or protectable by legislation, by common law or at equity;

**“Ministry Address”** and **“Ministry Representative,”** mean:

[\*\*insert address and insert name, title, telephone and facsimile number for Ministry Representative, as well as same information for back-up person if available\*\* ];

**“Newly Created Intellectual Property”** means any Intellectual Property created by the Supplier in the course of performance of its obligations under the Contract;

**“Ontario Public Service”** (or **“OPS”**) means the ministries and other administrative units of the Government of Ontario over which Ministers of the Crown preside, and for the purposes of the Agreement includes the Agencies, and **“OPS”** has the same meaning;

**“OPS Confidential Information”** means all information of the Ontario Public Service that is of a confidential nature, including all confidential information in the custody or control of the OPS, regardless of whether it is identified as confidential or not, and whether recorded or not, and however fixed, stored, expressed or embodied, which comes into the knowledge, possession or control of the Supplier in connection with the Agreement. For the purposes or greater certainty, OPS Confidential Information shall:

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

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

**“Personal Information”** has the same definition as in subsection 2(1) of FIPPA, that is, recorded information about an identifiable individual or that may identify an individual and includes all such information obtained by the Supplier from the Ministry or created by the Supplier pursuant to the Contract;

**“Procurement Card”** means the corporate credit card(s) used by the Ministry, as may be changed from time to time;

**“Procurement Card Protocols”** means the manner in which the Supplier is required to process any payment under the Contract that the Ministry elects to make by way of Procurement Card, which shall include the requirement to (a) collect the authorized employee’s name, the abbreviated Ministry name, the expiry date, the GST exemption number and the employee’s authorization; (b) contact the financial institution identified on the Procurement Card each time the Procurement Card is used for payment; (c) receive payment from the financial institution named on the Procurement Card once that institution authorizes payment; and (d) bear the cost of any and all charges relating to the use of the Procurement Card, including the financial institution’s charges for payment through the Procurement Card;

**“Proposal”** means all the documentation submitted by the Supplier in response to the Request for Proposal;

**“Rates”** means the applicable price, in Canadian funds, to be charged for the applicable Deliverables, as set out in Schedule 1, representing the full amount chargeable by the Supplier for the provision of the Deliverables, including but not limited to (a) all applicable duties and taxes, excluding Goods and Services Tax; (b) all labour and material costs; (c) all travel and carriage costs, (d) all insurance costs; and (e) all other overhead including any fees or other charges required by law;

**“Record”**, for the purposes of the Contract, means any recorded information, including any Personal Information, in any form: (a) provided by the Ministry to the Supplier, or provided by the Supplier to the Ministry, for the purposes of the Contract; or (b) created by the Supplier in the performance of the Contract; and shall include or exclude any information specifically described in Schedule 1;

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

**“RFP”** means the Request for Proposals dated **[\*insert date\*]** for **Learning and Training Services**, reference number **SSB-044304** issued by the Ministry for the Deliverables and any addenda to it;

**“Service Level Agreement”** or **“SLA”** means any Service Level Agreement entered into between a Supplier and a Client pursuant to the Contract.

**“Supplier Address”** and **“Supplier Representative,”** mean:

**[\*insert Supplier’s mailing address \*\*]**

**[\*insert name and title, telephone and facsimile number for Supplier representative, as well as same information for back -up person if available\*\*]**

**“Supplier’s Intellectual Property”** means Intellectual Property owned by the Supplier prior to its performance under the Contract or created by the Supplier during the Term of the Contract independently of the performance of its obligations under the Contract;

**“Term”** means the period of time from the effective date first above written up to and including the later of (a) **[insert expiry date]**; or (b) the expiry date of any extension to the Contract;

**“Third-Party Intellectual Property”** means any Intellectual Property owned by a party other than Her Majesty the Queen in right of Ontario or the Supplier.

#### 1.02 **No Indemnities from Ministry**

Notwithstanding anything else in the Contract, any express or implied reference to the Ministry providing an indemnity or any other form of indebtedness or contingent liability that would directly or indirectly increase the indebtedness or contingent liabilities of Ontario, whether at the time of execution of the Agreement or at any time during the Term of the Contract, shall be void and of no legal effect.

1.03 **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, existing between the parties at the date of execution of the Agreement. Where a Service Level Agreement has been entered into pursuant to this Agreement with the Supplier, the terms and conditions of the Service Level Agreement shall apply except where there is a conflict with any of the provisions of the Service Level Agreement and the provisions in this Agreement, the respective provision(s) of this Agreement shall govern (unless otherwise specified).

1.04 **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.

1.05 **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 Request for Proposal and the Proposal (c) the Request for Proposal shall govern over the Proposal.

1.06 **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.

1.07 **Force Majeure**

Neither party shall be liable for damages caused by delay or failure to perform its obligations under the Contract where such delay or failure is caused by an event beyond its reasonable control. The parties agree that an event shall not be considered beyond one's reasonable control if a reasonable business person applying due diligence in the same or similar circumstances under the same or similar obligations as those contained in the Contract would have put in place contingency plans to either materially mitigate or negate the effects of such event. Without limiting the generality of the foregoing, the parties agree that force majeure events shall include natural disasters and acts of war, insurrection and terrorism but shall not include shortages or delays relating to supplies or services. If a party seeks to excuse itself from its obligations under this Contract due to a force majeure event, that party shall immediately notify the other party of the delay or non-performance, the reason for such delay or non-performance and the anticipated period of delay or non-performance. If the anticipated or actual delay or non-performance exceeds fifteen (15) Business Days, the other party may immediately terminate the Contract by giving notice of termination and such termination shall be in addition to the other rights and remedies of the terminating party under the Contract, at law or in equity.

1.08 **Notices by Prescribed Means**

Notices shall be in writing and shall be delivered by postage-prepaid envelope, personal delivery or facsimile and shall be addressed to, respectively, the Ministry Address to the attention of the Ministry Representative and to the Supplier Address to the attention of the Supplier Representative. Notices shall be deemed to have been given (a) in the case of postage-prepaid envelope, five (5) Business Days after such notice is mailed; or (b) in the case of personal delivery or facsimile one (1) Business Day after such notice is received by the other party. In the event of a postal disruption, notices must be given by personal delivery or by facsimile. Unless the parties expressly agree in writing to additional methods of notice, notices may only be provided by the methods contemplated in this paragraph.

1.09 **Governing Law**

The Contract shall be governed by and construed in accordance with the laws of the Province of Ontario and the federal laws of Canada applicable therein.

## **ARTICLE 2 – LEGAL RELATIONSHIP BETWEEN MINISTRY, SUPPLIER AND THIRD-PARTIES**

### **2.01 Supplier's Power to Contract**

The Supplier represents and warrants that it has the full right and power to enter into the Contract and there is no agreement with any other Person, which would in any way interfere with the rights of the Ministry under this Contract.

### **2.02 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.

### **2.03 Supplier Not a Partner, Agent or Employee**

The Supplier shall have no power or authority to bind the Ministry or to assume or create any obligation or responsibility, express or implied, on behalf of the Ministry. The Supplier shall not hold itself out as an agent, partner or employee of the Ministry. Nothing in the Contract shall have the effect of creating an employment, partnership or agency relationship between the Ministry and the Supplier (or any of the Supplier's directors, officers, employees, agents, partners, affiliates, volunteers or subcontractors) or constitute an appointment under the *Public Service Act*, R.S.O. 1990, c. P.47, as amended.

### **2.04 Responsibility of Supplier**

The Supplier agrees that it is liable for the acts and omissions of its directors, officers, employees, agents, partners, affiliates, volunteers and subcontractors. This paragraph is in addition to any and all of the Supplier's liabilities under the Contract, and under the general application of law. The Supplier shall advise these individuals and entities of its obligations under the Contract, and, without limiting the generality of the foregoing, shall take appropriate action to ensure compliance with (a) the Contract generally and (b) with the requirements of Article 5 (Confidentiality and FIPPA) of the Agreement. In addition to any other liabilities of the Supplier pursuant to the Agreement, or otherwise at law or in equity, the Supplier shall be liable for all damages, costs, expenses, losses, claims or actions arising from any breach of the Contract resulting from the actions of the above mentioned individuals and entities.

### **2.05 No Subcontracting or Assignment**

The Supplier shall not subcontract or assign the whole or any part of the Contract or any monies due under it without the prior written consent of the Ministry. Such consent shall be in the sole discretion of the Ministry and subject to the terms and conditions that may be imposed by the Ministry. Without limiting the generality of the conditions which the Ministry may require prior to consenting to the Supplier's use of a subcontractor, every contract entered into by the Supplier with a subcontractor shall adopt all of the terms and conditions of this Contract as far as applicable to those parts of the Deliverables provided by the subcontractor. Nothing contained in the Contract shall create a contractual relationship between any subcontractor or its employees and the Ministry.

### **2.06 Duty to Disclose Change of Control**

In the event that the Supplier undergoes a change in control the Supplier shall immediately disclose such change in control to the Ministry and shall comply with any terms and conditions subsequently prescribed by the Ministry resulting from the disclosure.

2.07 **Conflict of Interest**

The Supplier shall (a) avoid any Conflict of Interest in the performance of its contractual obligations; (b) disclose without delay any actual or potential Conflict of Interest that arises during the performance of its contractual obligations; and (c) comply with any requirements prescribed by the Ministry to resolve any Conflict of Interest. In addition to all other contractual rights or rights available at law or in equity, the Ministry may, at its sole and absolute discretion, immediately terminate the Contract upon giving notice to the Supplier where (a) the Supplier fails to disclose an actual or potential Conflict of Interest; (b) the Supplier fails to comply with any requirements prescribed by the Ministry to resolve a Conflict of Interest; or (c) the Supplier's Conflict of Interest cannot be resolved. This paragraph shall survive any termination or expiry of the Contract.

2.08 **Contract Binding**

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

### **ARTICLE 3 - PERFORMANCE BY SUPPLIER**

3.01 **Commencement of Performance**

The Supplier shall commence performance upon written instructions from the Ministry.

3.02 **Assignment**

A Client may request that a Supplier provide the Deliverables by issuing a notice of Assignment in writing to the Supplier, setting out a brief description of the Deliverables, the timeframes, the Rates and any other requirements of the Client for the Assignment. The Client may request that the Supplier review a specified project for the purpose of the Supplier providing the Client with a description of the skill sets required and the estimated duration of each position required to achieve completion of the proposed Assignment within the time frame specified by the Client. An estimate, if requested by the Client, shall be prepared by the Supplier in the manner requested by the Client and at no cost to the Client. Should the Supplier be unable to comply with the Assignment, the Supplier shall immediately notify the Client and return any documents and materials provided by the Client within two (2) Business Days of receipt thereof.

3.03 **Rates**

The estimate of the quantity of position days required by the proposed Assignment shall be multiplied by the applicable Rates and will become the maximum amount that the Supplier may charge the Client for completing the Assignment.

3.04 **Service Level Agreement**

The Supplier and Client shall enter into a Service Level Agreement (Schedule 4) for the Assignment. The Supplier shall only be authorized to commence performance of a particular Assignment upon the execution of a Service Level Agreement by the Supplier and Client.

3.05 **Performance Warranty**

The Supplier hereby represents and warrants that the Deliverables shall be provided fully and diligently in a professional and competent manner by persons qualified and skilled in their occupations and furthermore that all Deliverables will be provided in accordance with (a) the Contract; (b) the Service Level Agreement; (c) Industry Standards; and (d) Requirements of Law. If any of the Deliverables, in the opinion of the Ministry, are inadequately provided or required corrections, the Supplier shall forthwith make the necessary corrections at its own expense as specified by the Ministry in a rectification notice.

3.06 **Use and Access Restrictions**

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

3.07 **Notification by Supplier to Ministry**

During the Term, the Supplier shall advise the Ministry promptly of (a) any contradictions, discrepancies or errors found or noted in the Contract; (b) supplementary details, instructions or directions that do not correspond with those contained in the Contract; and (c) any omissions or other faults that become evident and should be corrected in order to provide the Deliverables in accordance with the Contract, and Requirements of Law.

3.08 **Condonation Not a Waiver**

Any failure by the Ministry to insist in one or more instances upon strict performance by the Supplier of any of the terms or conditions of the Contract shall not be construed as a waiver by the Ministry of its right to require strict performance of any such terms or conditions, and the obligations of the Supplier with respect to such performance shall continue in full force and effect.

3.09 **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.

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

The Ministry may, in writing, request changes to the Contract, which may include altering, adding to, or deleting any of the Deliverables. The Supplier shall comply with all reasonable Ministry change requests and the performance of such request shall be in accordance with the terms and conditions of the Contract. If the Supplier is unable to comply with the change request, it shall promptly notify the Ministry and provide reasons for such non-compliance. In any event, any such change request shall not be effective until a written amendment reflecting the change has been executed by the parties.

3.11 **Pricing for Requested Changes**

Where a Ministry change request includes an increase in the scope of the previously contemplated Deliverables, the Ministry shall set out, in its change request, the proposed prices for the contemplated changes. Where the Rates in effect at the time of the change request:

- (a) include pricing for the particular type of goods or services contemplated in the change request, the Supplier shall not unreasonably refuse to provide those goods or services at prices consistent with those Rates; or
- (b) are silent to the applicable price for the particular goods or services contemplated in the change request, the price shall be negotiated between the Ministry and the Supplier within a reasonable period of time;

and in any event, such change request shall not become effective until a written amendment reflecting the change has been executed by the parties.

3.12 **Work Volumes**

The Supplier acknowledges that it is providing the Deliverables to the Ministry on a non-exclusive basis. The Ministry makes no representation regarding the volume of goods and services required under the Contract. The Ministry reserves the right to contract with other parties for the same or similar goods and services as those provided by the Supplier and reserves the right to obtain the same or similar goods and services internally.

3.13 **Performance By Specified Individuals Only**

The Supplier agrees that to the extent that specific individuals are named in Schedule 1 as being responsible for the provision of the Deliverables, only those individuals shall provide the Deliverables under the Contract. The Supplier shall not replace or substitute any of the individuals named in Schedule 1 without the prior written approval of the Ministry, which may not arbitrarily or unreasonably be withheld. Should the Supplier require the substitution or replacement of any of the individuals named in Schedule 1, it is understood and agreed that any proposed replacement must possess similar or greater qualifications than the individual named in Schedule 1. The Supplier shall not claim fees for any replacement individual greater than the Rates established under Schedule 1.

3.14 **Ministry Rights and Remedies and Supplier Obligations Not Limited to Contract**

The express rights and remedies of the Ministry and Clients and obligations of the Supplier set out in the Contract are in addition to and shall not limit any other rights and remedies available to the Ministry or any other obligations of the Supplier at law or in equity.

**ARTICLE 4 - PAYMENT FOR PERFORMANCE**

4.01 **Payment According to Contract Rates**

The Ministry shall, subject to the Supplier's compliance with the provisions of the Contract, pay the Supplier for the Deliverables provided at the Rates established under the Contract.

4.02 **Default Billing and Payment Process**

*Unless the parties expressly set out an alternative billing and payment process in Schedule 1 of the Service Level Agreement, the following process shall govern:*

- (a) the Supplier shall provide the Ministry with a monthly billing statement no later than ten (10) Business Days after the end of each month and that billing statement shall include (i) the reference number assigned to the Contract by the Ministry (ii) a brief description of Deliverables provided for the relevant month; and (iii) taxes, if payable by the Ministry, identified as separate items;
- (b) the Ministry shall approve or reject the billing statement within fifteen (15) Business Days and in the event that the Ministry rejects the billing statement, it shall so advise the Supplier promptly in writing and the Supplier shall provide additional information as required by the Ministry to substantiate the billing statement;
- (c) each billing statement must be approved by the Ministry before any payment is released and payment shall be made within thirty (30) Business Days of such approval; and
- (d) the Ministry may make payments under the Contract by way of Procurement Card and the Supplier shall accept and process any such payments in accordance with Procurement Card Protocols;

and any subparagraph set out above that is not expressly replaced in Schedule 1 with an alternative provision shall remain in full force and effect.

4.03 **Hold Back or Set Off**

The Ministry may hold back payment or set off against payment if, in the opinion of the Ministry acting reasonably, the Supplier has failed to comply with any requirements of the Contract.

4.04 **No Expenses and Additional Charges**

There shall be no other charges payable by the Ministry under the Contract to the Supplier other than the Rates established under the Contract.

4.05 **Payment of Taxes and Duties**

Unless otherwise stated, the Supplier shall pay all applicable taxes, including excise taxes incurred by or on the Supplier's behalf with respect to the Contract.

4.06 **Ministry GST Exempt**

The Ministry hereby certifies that the Deliverables are required for the use of the Crown in Right of Ontario and are therefore not subject to the federal Goods and Services Tax.

Most Clients are not required to pay GST. Unless the Client has otherwise notified the Supplier in its accounting arrangement, GST is not applicable to the charges for the relevant Goods and Services under the Contract

4.07 **Withholding Tax**

The Ministry shall withhold any applicable withholding tax from amounts due and owing to the Supplier under the Agreement and shall remit it to the appropriate government in accordance with applicable tax laws.

4.08 **Interest on Late Payment**

The Ministry shall pay interest on any late payment providing that such late payment was through no fault of the Supplier. The interest rate for such late payment shall be the general rate of interest on overpayment of taxes set pursuant to the *Financial Administration Act* in effect on the date that the payment went into arrears.

4.09 **Document Retention and Audit**

For seven (7) years after the expiration of the Term the Supplier shall maintain all necessary records to substantiate (a) all charges and payments under the Contract and (b) that 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 Supplier shall permit and assist the Ministry in conducting audits of the operations of the Supplier to verify (a) and (b) above. The Ministry shall provide the Supplier with at least ten (10) Business Days prior notice of its requirement for such audit. The Supplier's obligations under this paragraph shall survive any termination or expiry of the Agreement.

4.10 **Administrative Fees**

The Supplier agrees that should during the life of the Agreement the collection and remittance of administrative fees become a requirement, it will comply with such requirements as deemed necessary by the Ministry.

## **ARTICLE 5 - CONFIDENTIALITY AND FIPPA**

5.01 **Confidentiality and Promotion Restrictions**

Any publicity or publications related to the Contract shall be at the sole discretion of the Ministry. The Ministry may, in its sole discretion, acknowledge the Deliverables provided by the Supplier in any such publicity or publication. The Supplier shall not make use of its association with the Ministry without the prior written consent of the Ministry. Without limiting the generality of this paragraph, the Supplier shall not, among other things, at any time directly or indirectly communicate with the media in relation to the Contract unless it has first obtained the express written authorization to do so by the Ministry.

5.02 **OPS Confidential Information**

During and following the term, the Supplier shall (a) keep all OPS Confidential Information confidential and secure; (b) limit the disclosure of OPS Confidential Information to only those of its employees who have a need to know it and who have been specifically authorized to have such disclosure; (c) not directly or indirectly disclose, destroy, exploit or use any OPS Confidential Information (except for the purpose of providing the Deliverables, or except if required by order of a court or tribunal), without first obtaining: (i) the written consent of the Ministry or and (ii) in respect of any OPS Confidential Information about any third-party, the written consent of such third-party; (d) provide OPS Confidential Information to the Ministry on demand; and (e) return all OPS Confidential Information to the Ministry before the termination or expiry of the Term, with no copy or portion kept by the Supplier.

5.03 **Restrictions on Copying**

The Supplier shall not copy any OPS Confidential Information, in whole or in part, unless copying is essential for the provision of the Deliverables. On each copy made by the Supplier, the Supplier must reproduce all notices which appear on the original.

5.04 **Injunctive and Other Relief**

The Supplier acknowledges that breach of any provisions of this Article may cause irreparable harm to the Ministry or to any third-party to whom the Ministry owes a duty of confidence, and that the injury to the Ministry or to any third-party may be difficult to calculate and inadequately compensable in damages. The Supplier agrees that the Ministry is entitled to obtain injunctive relief (without proving any damage sustained by it or by any third-party) or any other remedy against any actual or potential breach of the provisions of this Article.

5.05 **Notice and Protective Order**

If the Supplier or any of its directors, officers, employees, agents, representatives or advisors become legally compelled to disclose any OPS Confidential Information, the Supplier will provide the Ministry with prompt notice to that effect in order to allow the Ministry to seek one or more protective orders or other appropriate remedies to prevent or limit such disclosure, and it shall co-operate with the Ministry and its legal counsel to the fullest extent. If such protective orders or other remedies are not obtained, the Supplier will disclose only that portion of OPS Confidential Information which the Supplier is legally compelled to disclose, only to such person or persons to which the Supplier is legally compelled to disclose, and the Supplier shall provide notice to each such recipient (in co-operation with legal counsel for the Ministry) that such OPS Confidential Information is confidential and subject to non-disclosure on terms and conditions equal to those contained in the Agreement and, if possible, shall obtain each recipient's written agreement to receive and use such OPS Confidential Information subject to those terms and conditions.

5.06 **FIPPA Records and Compliance**

The Supplier and the Ministry acknowledge and agree that FIPPA applies to and governs all Records and may require the disclosure of such Records to third parties. Furthermore, the Supplier agrees:

- a) to keep Records secure;
- b) to provide Records to the Ministry within seven (7) calendar days of being directed to do so by the Ministry for any reason including an access request or privacy issue;
- c) not to access any Personal Information unless the Ministry determines, in its sole discretion, that access is permitted under FIPPA and is necessary in order to provide the Deliverables;
- d) not to directly or indirectly use, collect, disclose or destroy any Personal Information for any purposes that are not authorized by the Ministry;

- e) to ensure the security and integrity of Personal Information and keep it in a physically secure and separate location safe from loss, alteration, destruction or intermingling with other records and databases and to implement, use and maintain the most appropriate products, tools, measures and procedures to do so;
- f) to restrict access to Personal Information to those of its employees who have a need to know it and who have been specifically authorized to have such access for the purpose of providing the Deliverables;
- g) to implement other specific security measures that in the reasonable opinion of the Ministry would improve the adequacy and effectiveness of the Supplier's measures to ensure the security and integrity of Personal Information and Records generally; and
- h) that any confidential information supplied to the Ministry may be disclosed by the Ministry where it is obligated to do so under FIPPA, by an order of a court or tribunal or pursuant to a legal proceeding;

and the provisions of this paragraph shall survive any termination or expiry of the Contract and shall prevail over any inconsistent provisions in the Contract.

#### 5.07 **Survival**

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

### **ARTICLE 6 – INTELLECTUAL PROPERTY**

#### 6.01 **Ministry Intellectual Property**

The Supplier agrees that all Intellectual Property and every other right, title and interest in and to all concepts, techniques, ideas, information and materials, however recorded, (including images and data) provided by the Ministry to the Supplier shall remain the sole property of Her Majesty the Queen in right of Ontario at all times.

#### 6.02 **No Use of Ontario Government Insignia**

The Supplier shall not use any insignia or logo of Her Majesty the Queen in right of Ontario except where required to provide the Deliverables, and only if it has received the prior written permission of the Ministry do so.

#### 6.03 **Ownership of Intellectual Property**

The Ministry shall be the sole owner of any Newly Created Intellectual Property. The Supplier irrevocably assigns to and in favour of the Ministry and the Ministry accepts every right, title and interest in and to all Newly Created Intellectual Property in the Deliverables, immediately following the creation thereof, for all time. To the extent that any of the Deliverables include, in whole or in part, the Supplier's Intellectual Property, the Supplier grants to the Ministry a licence to use that Supplier Intellectual Property in the manner contemplated in this Article, the total consideration for which shall be payment of the Rates to the Supplier by the Ministry. The Supplier shall provide the Deliverables to the Ministry: (a) at the point of completion of its obligations under the Contract; or (b) upon termination of the Agreement; or (c) at any time upon the request of the Ministry.

#### 6.04 **Presumption Governing Ownership**

The presumption governing the Contract shall be that the Ministry shall be the sole owner of any Intellectual Property in any form contained in any of the Deliverables. If the Supplier's Intellectual Property forms any part of the Deliverables, the Supplier shall notify the Ministry as such prior to the delivery of the particular Deliverable containing any such Supplier Intellectual Property. In the absence of any such notice the presumption shall remain that the Ministry is the sole owner of any Intellectual Property contained in the Deliverables.

6.05 **Supplier's Grant of Licence**

For those parts of the Deliverables that are Supplier Intellectual Property, the Supplier grants to the Ministry, including each Client, a perpetual, world-wide, non-exclusive, irrevocable, transferable, royalty-free, fully paid-up right and licence: (a) to use, execute, display, distribute (internally and other Clients), perform and reproduce, in any form, copies of those Deliverables and to practice and have practised any process or method (or both) associated with such Deliverables; and (b) to use, execute, make, have made, have used, display, distribute (internally and to other Clients), perform, reproduce and prepare, in any form, Derivative Work based on those Deliverables and to practise and have practised any process or method (or both) associated with such Derivative Works; and (c) authorize other Persons including agents, contractors or sub-contractors to do any of the former on behalf of the Ministry or a Client.

6.06 **No Restrictive Material in Deliverables**

The Supplier shall not incorporate into any Deliverables anything that would restrict the right of the Ministry or any Client to modify, further develop or otherwise use the Deliverables in any way that the Ministry or the Client deems necessary, or that would prevent the Ministry or any Client from entering into any contract with any contractor other than the Supplier for the modification, further development of or other use of the Deliverables.

6.07 **Supplier Representation and Warranty Regarding Third-Party Intellectual Property**

The Supplier represents and warrants that the provision of the Deliverables shall not infringe or induce the infringement of any Third-Party Intellectual Property rights. The Supplier further represents and warrants that it has obtained assurances with respect to any Third-Party Intellectual Property that any rights of integrity or any other moral rights associated therewith have been waived.

6.08 **Moral Rights**

The Supplier shall obtain waivers of all rights of integrity and any other moral rights in relation to the Deliverables from its employees, volunteers, agents and subcontractors and from any other party in the position to assert such rights in relation to any of the Deliverables, which waivers may be invoked without restriction by any person authorized by the Ministry to use the Deliverables.

6.09 **Copyright Notice**

The Supplier shall place a copyright notice on all recorded Deliverables it provides to the Ministry under the Contact in the following form:

*"© Queen's Printer for Ontario, [insert year of publication]."*

6.10 **Further Assurances Regarding Copyright**

At the request of the Ministry, at any time or from time to time, the Supplier shall execute and agrees to cause anyone in the position to assert rights of integrity or any other moral right (including its employees, volunteers, agents and subcontractors) to execute a written assignment of copyright and waiver of moral rights in the applicable Deliverable to the Ministry in the forms set out in Schedule 2. The Supplier shall assist the Ministry in preparing any Canadian copyright registration that the Ministry considers appropriate. The Supplier will obtain or execute any other document reasonably required by the Ministry to protect the Intellectual Property of the Ministry.

6.11 **Ministry May Prescribe Further Compliance**

The Ministry reserves the right to prescribe the specific manner in which the Supplier shall perform its obligations relating to this Article.

6.12 **Survival**

The obligations contained in this Article shall survive the termination or expiry of the Contract.

## ARTICLE 7 –INDEMNITY AND INSURANCE

### 7.01 **Supplier Indemnity**

The Supplier hereby agrees to indemnify and hold harmless the Indemnified Parties from and against any and all liability, loss, costs, damages and expenses (including legal, expert and consultant fees), causes of action, actions, claims, demands, lawsuits or other proceedings, (collectively, "Claims), by whomever made, sustained, brought or prosecuted, including for third party bodily injury (including death), personal injury and property damage, in any way based upon, occasioned by or attributable to anything done or omitted to be done by the Supplier, its subcontractors or their respective directors, officers, agents, employees or independent contractors in the course of performance of the Supplier's obligations under, or otherwise in connection with, the Contract. The Supplier further agrees to indemnify and hold harmless the Indemnified Parties for any incidental, indirect, special or consequential damages, or any loss of use, revenue or profit, by any person, entity or organization, including, without limitation, the Ministry, claimed or resulting from such Claims. The obligations contained in this paragraph shall survive the termination or expiry of the Contract.

### 7.02 **Supplier's Insurance**

The Supplier hereby agrees to put in effect and maintain for the duration of the Contract, at its own cost and expense, with insurers acceptable to the Risk Management & Insurance Services (RMIS) of Shared Services Bureau, all the necessary and appropriate insurance that a prudent person in the business of the Supplier 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 **two million dollars (\$2,000,000)** per occurrence, **two million dollars (\$2,000,000)** products and completed operations aggregate. The policy is to include the following:
  - the Indemnified Parties as a additional insureds with respect to liability arising in the course of performance of the Supplier's obligations under, or otherwise in connection with, the Contract
  - contractual liability coverage
  - cross liability clause
  - employers liability coverage (or compliance with the paragraph below entitled "Proof of W.S.I.A. Coverage" is required
  - 30 day written notice of cancellation, termination or material change
  - tenants legal liability coverage (if applicable and with applicable sub-limits)
  - non-owned automobile coverage with blanket contractual coverage for hired automobiles
- b) errors & omissions liability insurance, insuring liability for errors and omissions in the performance or failure to perform the services contemplated in this agreement, in the amount not less than **two million dollars (\$2,000,000)**, per claim and in the annual aggregate.

### 7.03 **Proof of Insurance**

The Supplier shall provide the Ministry 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, on or before the commencement of this Agreement, and renewal replacements on or before the expiry of any such insurance. Upon the request of the Ministry, a copy of each insurance policy shall be made available to it. The Supplier shall ensure that each of its subcontractors complies with the insurance requirements set out in this Agreement by obtaining similar types of insurance and providing the Supplier with proof of the acquisition and maintenance of such insurance.

#### 7.04 **Proof of W.S.I.A Coverage**

If the Supplier is subject to the Workplace Safety and Insurance Act (WSIA), it shall submit a valid clearance certificate of WSIA coverage to the Ministry prior to the commencement date of the Agreement. In addition, the Supplier shall, from time to time at the request of the Ministry, provide additional WSIA clearance certificates. The Supplier covenants and agrees to pay when due, and to ensure that each of its subcontractors pays when due, all amounts required to be paid by it/its subcontractors, from time to time during the Term of the Contract, under the WSIA, failing which the Ministry shall have the right, in addition to and not in substitution for any other right it may have pursuant to the Contract or otherwise at law or in equity, to pay to the Workplace Safety and Insurance Board any amount due pursuant to the WSIA and unpaid by the Supplier or its subcontractors and to deduct such amount from any amount due and owing from time to time to the Supplier pursuant to the Contract together with all costs incurred by the Ministry in connection therewith.

### **ARTICLE 8 – TERMINATION, EXPIRY AND EXTENSION**

#### 8.01 **Immediate Termination of Contract**

The Ministry may immediately terminate the Contract upon giving notice to the Supplier where:

- (a) the Supplier is adjudged bankrupt, makes a general assignment for the benefit of its creditors or a receiver is appointed on account of the Supplier's insolvency;
- (b) the Supplier breaches any provision in Article 5 (Confidentiality and FIPPA) of the Agreement;
- (c) the Supplier breaches the Conflict of Interest paragraph in Article 2 (Legal Relationship Between Supplier, Ministry and Third-Parties) of the Agreement;
- (d) the Supplier, prior to or after executing the Agreement, makes a material misrepresentation or omission or provides materially inaccurate information to the Ministry;
- (e) the Supplier undergoes a change in control which, in the sole opinion of the Ministry, adversely affects the Supplier's ability to satisfy some or all of its obligations under the Contract;
- (f) the Supplier subcontracts for the provision of part or all of the Deliverables or assigns the Contract without first obtaining the written approval of the Ministry; or
- (g) the Supplier's acts or omissions constitute a substantial failure of performance.
- (h) and the above rights of termination are in addition to all other rights of termination available at law, or events of termination by operation of law.

#### 8.02 **Dispute Resolution by Rectification Notice**

Subject to the above paragraph, where the Supplier fails to comply with any of its obligations under the Contract, the Ministry may issue a rectification notice to the Supplier setting out the manner and time-frame for rectification. Within seven (7) Business Days of receipt of that notice the Supplier shall either (a) comply with that rectification notice; or (b) provide a rectification plan satisfactory to the Ministry. If the Supplier fails to either comply with that rectification notice or provide a satisfactory rectification plan, the Ministry may immediately terminate the Contract. Where the Supplier has been given a prior rectification notice, the same subsequent type of non-compliance by the Supplier shall allow the Ministry to immediately terminate the Contract.

8.03 **Termination on Notice**

The Ministry reserves the right to terminate the Contract, without cause, upon thirty (30) calendar days prior written notice to the Supplier.

8.04 **Supplier's Obligations on Termination**

The Supplier shall, in addition to its other obligations under the Contract and at law:

- (a) provide the Ministry with a report detailing (i) the current state of the provision of Deliverables by the Supplier at the date of termination; and (ii) any other information requested by the Ministry pertaining to the provision of the Deliverables and performance of the Contract;
- (b) execute such documentation as may be required by the Ministry to give effect to the termination of the Contract; and
- (c) comply with any other instructions provided by the Ministry, including but not limited to instructions for facilitating the transfer of its obligations to another Person.

8.05 **Supplier's Payment Upon Termination**

The Ministry shall only be responsible for the payment of the Deliverables provided under the Contract up to and including the effective date of any termination. Termination shall not relieve the Supplier of its warranties and other responsibilities relating to the Deliverables performed or money paid. In addition to its other rights of hold back or set off, the Ministry may hold back payment or set off against any payments owed **if the Supplier fails** to comply with its obligations on termination.

8.06 **Termination in Addition to Other Rights**

The express rights of termination in the Agreement are in addition to and shall in no way limit any rights or remedies of the Ministry under the Contract, at law or in equity.

8.07 **Expiry and Extension of Contract Refresh Model**

The Contract shall expire at the end of the Term of the Agreement. The Ministry shall have the option to extend the Contract for one further term of a duration of up to the duration of the original Term, such extension to be upon the same terms (including the Rates), conditions and covenants contained in the Contract, excepting the option to renew. The option shall be exercisable by the Ministry upon thirty (30) calendar days prior written notice to the Supplier, setting forth the precise duration of the extension.

**Article 9 - REPORTS**

- 9.01 The Supplier shall provide a report, in accordance with the form and content set out at Schedule 3 to this Agreement, to the Ministry monthly, commencing [\*INSERT DATE], throughout the Term.
- 9.02 The Ministry may vary the form and content of the report at its sole discretion.
- 9.03 The Supplier shall be solely responsible for and all costs associated with establishing, preparing, supporting and producing activity reports.
- 9.04 The Supplier shall provide the Ministry's Representative from time to time with any other documentation the Ministry's Representative requests or which is required by this Agreement.

**IN WITNESS WHEREOF** the parties hereto have executed the Agreement effective as of the date first above written.

**Her Majesty the Queen in right of Ontario  
as represented by the  
Chair of Management Board of Cabinet**

Signature: \_\_\_\_\_  
Name: Kathryn A. Bouey  
Title: Deputy Minister  
Date: \_\_\_\_\_

**[Supplier]**

Signature: \_\_\_\_\_  
Name (Print): \_\_\_\_\_  
Title: \_\_\_\_\_  
Date: \_\_\_\_\_

I have authority to bind the Supplier.

**Schedule 1 - Schedule of Deliverables, Rates and Supplementary Provisions**

Notwithstanding anything else in the Contract, the total amount payable to the Supplier under the Contract shall not exceed \$[ .00]

**FIPPA Included and Excluded Records:**

<b>Items Included and Excluded from Definition of "Records"</b>
The following shall be included in the definition of Records under the Contract:
The following shall not be included in the definition of Records under the Contract:

**Schedule 2 – Schedule Forms**

*Pursuant to the Article of the Agreement entitled Intellectual Property, these forms shall be executed by the Supplier in the manner contemplated by the Agreement where the Deliverables include Intellectual Property.*

**ASSIGNMENT OF COPYRIGHT**

**THIS ASSIGNMENT** made in duplicate as of **[\*insert date]**.

In consideration of the Ministry entering into an agreement **[\*\*insert name and date of agreement\*\*]** the undersigned agreed to assign and now does assign and transfer unto the Ministry all of its right, title and interest in and to the copyright in Canada and internationally of the original work(s) entitled **[\*\*at the time of execution of assignment, specific Deliverable to be inserted]** for the remainder of the unexpired term of the copyright.

IN WITNESS WHEREOF THE UNDERSIGNED HAS EXECUTED THIS ASSIGNMENT.

**[Supplier]**

Signature: \_\_\_\_\_  
Name: \_\_\_\_\_  
Date: \_\_\_\_\_

I have authority to bind the Supplier.

**WAIVER OF MORAL RIGHTS**

I, **[Instructions: insert legal name of the individual]**, an author of any or all of the Deliverables, as those terms are defined in the **[Instructions: identify name of the Agreement]**, dated **[Instructions: insert date]** between **[Instructions: insert legal name of the Supplier]** and Her Majesty the Queen in right of Ontario, hereby expressly, irrevocably and without restriction, waive in favour of Her Majesty the queen in right of Ontario and all sublicensees and assignees all my Moral Rights with respect to all Deliverables.

In this Waiver of Moral Rights, "Moral Rights" has the same meaning as in the *Copyright Act*, R.S.C. 1985, c. C-42, as amended or replaced from time to time and includes comparable rights in applicable jurisdictions.

IN WITNESS WHEREOF I have executed this Waiver of Moral Rights.

**[Instructions: Insert name of individual]**

Signature: \_\_\_\_\_  
Name: \_\_\_\_\_  
Date: \_\_\_\_\_

**SCHEDULE 3 – Monthly Supplier Activity Report      SSB-044304 Vendor of Record List for Learning and Training Services**

Statement of Services supplied for the period of \_\_\_\_\_, 20\_\_\_\_

Supplier's Name:  
Address:

Complete monthly and forward to:

Xxx,xxxx@mbs.gov.on.ca

Client Ministry/ Agency/BPS Organization	Branch/Section	Client Contact Name	Assignment Timeframe		Assignment Description	Number of Participants	Number of Days	Dollar Value per diem x days
			Start Date	End Date				

Total \$ to Date: \_\_\_\_\_  
(from contract start)

\*Note: Suppliers must complete and submit reports on a monthly basis, using an electronic format as specified by the Ministry Representative to the address specified above. **If there have been no Assignments, Supplier must submit a NIL report.**

## SCHEDULE 4

### SERVICE LEVEL AGREEMENT

THIS SERVICE LEVEL AGREEMENT made in duplicate on the \_\_\_\_\_ day of \_\_\_\_\_, **[\*Year]**

BETWEEN:

**HER MAJESTY THE QUEEN IN RIGHT OF ONTARIO  
AS REPRESENTED BY THE  
[\*MINISTER] OF [\*Ministry/Agency]**  
(The "Client")

AND:

**[\*Supplier's Name]**  
(The "Supplier")

IN CONSIDERATION of the following mutual promises, and subject to the terms and conditions hereof, the Client and the Supplier have agreed as follows:

#### Section 1.0 Definitions

- 1.1 Unless otherwise specified in this Service Level Agreement ("SLA"), capitalised words and phrases have the meaning set out in the Management Board VOR Agreement [\*Insert no.].
- 1.2 In this Service Level Agreement, the following words and phrases have the following meanings:

**[\*Client may add Terms and Definitions pertinent to the assignment]**

#### Section 2.0 The VOR Agreement

- 2.1 This Service Level Agreement is entered into pursuant to, incorporates by reference and is governed by the Management Board VOR Agreement [\*Insert no.]# (the "Management Board VOR Agreement").
- 2.2 In the event of a conflict between this Service Level Agreement and the Management Board VOR Master Agreement, the latter shall govern (unless otherwise specified).

#### Section 3.0 Term of Service Level Agreement

- 3.1 **[\*To be completed by Client - Insert start- and end-dates of assignment]**

#### Section 4.0 Assignment

- 4.1 The Supplier agrees to provide **[\*brief description of Deliverables]** to the Client as described in and in accordance with the Management Board VOR Master Agreement and as more particularly specified in Schedule "A" (Assignment).
- 4.2 The Supplier shall adhere to the timelines set out in the Schedule "A" (Assignment).
- 4.3 The Client hereby consents to the use by the Supplier of the Subcontractors and personnel named in Schedule "A" (Assignment).

- 4.4 The Client may request changes to the particular Assignment, which may include altering, adding to, or deleting any of the Deliverables by issuing a change request. The Supplier shall comply with all reasonable Client change requests and the performance of such request shall be in accordance with the terms and conditions of the Contract and SLA. No changes shall be considered in effect or carried out unless the change request has been authorized in writing and signed by the Client and accepted by the Supplier. If the Supplier is unable to comply with the change request, it shall promptly notify the Client and provide reasons for such non-compliance.
- 4.5 Where the Client change request includes an increase in the scope of the previously contemplated Deliverables, the Client shall set out, in its change request, the proposed prices for the contemplated changes. Where the Rates in effect at the time of the change request:
- (a) include pricing for the particular type of goods or services contemplated in the change request, the Supplier shall not unreasonably refuse to provide those goods or services at prices consistent with those Rates; or
  - (b) are silent to the applicable price for the particular goods or services contemplated in the change request, the price shall be negotiated between the Client and the Supplier within a reasonable period of time;

and in any event, such change request shall not become effective until a written amendment reflecting the change has been executed by the parties.

#### **Section 5.0 Contacts and Notices**

- 5.1 Supplier Representative  
[\*INSERT Supplier's Contact name, phone, facsimile and E-mail numbers.]
- 5.2 Client Representative  
[\*INSERT Client's Contact name, phone, facsimile and E-mail numbers.]
- 5.3 **Notices by Prescribed Means**  
Notices shall be in writing and shall be delivered by postage-prepaid envelope, personal delivery or facsimile and shall be addressed to, respectively, the Client address to the attention of the Client Representative and to the Supplier address to the attention of the Supplier Representative.
- 5.4 **Effective Date of Notices**  
Notices shall be deemed to have been given (a) in the case of postage-prepaid envelope, five (5) Business Days after such notice is mailed; or (b) in the case of personal delivery or facsimile one (1) Business Day after such notice is received by the other party.
- 5.5 **Means of Notice if Postal Disruption**  
In the event of a postal disruption, notices must be given by personal delivery or by facsimile.
- 5.6 **Other Means of Notice by Agreement Only**  
Unless the parties expressly agree in writing to additional methods of notice, notices may only be provided by the methods contemplated in this Article.

#### **Section 6.0 Rates**

- 6.1 Provided that the Services are satisfactory to the Client and subject to any reduction of the maximum Rates quoted at the point of any Assignment, the Client shall pay the Supplier in accordance with the prices provided in the Supplier's Proposal which forms part of the Management Board VOR Master Agreement. For convenience, the applicable Rates for this Assignment are set out [\*in Schedule "B" (Rates) of this Agreement] or [\*below]:

The Supplier shall invoice the Client for Services in accordance with Article 5 of the Management Board VOR Master Agreement, unless otherwise set out in Schedule "B" (Rates) to this SLA.

## **Section 7.0 Settlement of Disputes**

7.1 In the event of any dispute or claim arising between the Client and the Supplier as to their respective rights and obligations under the SLA, either party hereto may give the other written notification of such dispute or claim. The notification of dispute or claim shall be made within fourteen (14) days of the dispute or cause of action arising. If there is an unresolved dispute, the parties will promptly discuss alternatives for dispute resolution, including the consideration of referral to arbitration or non-binding mediation, prior to commencing any action in the courts of Ontario.

## **Section 8.0 Client's Right to Terminate Service Level Agreement**

### **8.1 Immediate Termination of Contract**

In addition to all other rights of termination available at law, or events of termination by operation of law, the Client may immediately terminate the SLA upon giving notice to the Supplier where:

- (a) the Supplier is adjudged bankrupt, makes a general assignment for the benefit of its creditors or a receiver is appointed on account of the Supplier's insolvency;
- (b) the Supplier breaches any provision in Article 6 (Confidentiality) or in Article 7 (Freedom of Information and Protection of Privacy Act) of the Management Board VOR Agreement;
- (c) the Supplier breaches the Conflict of Interest paragraph in Article 10 of this SLA;
- (d) the Supplier, prior to or after executing the Management Board VOR Agreement or this SLA, makes a material misrepresentation or omission or provides materially inaccurate information to the Client or Ministry;
- (e) the Supplier undergoes a change in control which, in the sole opinion of the Ministry or Client, adversely affects the Supplier's ability to satisfy some or all of its obligations under the Contract or SLA;
- (f) the Supplier subcontracts for the provision of part or all of the Deliverables or assigns the SLA without first obtaining the written approval of the Client; or
- (g) the Supplier's acts or omissions constitute a substantial failure of performance.

### **8.2 Termination upon Seven Days Notice**

The Client may terminate this Service Level Agreement upon giving seven (7) days written notice to the Supplier, if the Supplier:

- (a) neglects or fails to carry out the Services properly or diligently and in accordance with this Service Level Agreement; or
- (b) fails to observe any of its obligations required by the Management Board VOR Maser Agreement, in addition to the performance of the Deliverables; or
- (c) refuses or fails to supply an adequate number of properly skilled personnel or replacement personnel; and
- (d) the Supplier fails to rectify or correct any such default or delay as required by the said notice within the time so specified.

**8.3 Rectification Notice**

Subject to the above paragraph, where the Supplier fails to comply with any of its obligations under the Service Level Agreement, the Client may issue a rectification notice to the Supplier setting out the manner and timeframe for rectification. Within seven (7) Business Days of receipt of that notice the Supplier shall either (a) comply with that rectification notice; or (b) provide a rectification plan satisfactory to the Client. If the Supplier fails to either comply with that rectification notice or provide a satisfactory rectification plan, the Client may immediately terminate the Contract

**8.4 Subsequent Rectification Notice for Relapse**

Where the Supplier has been given a rectification notice under the above paragraph, the same type of non-compliance by the Supplier shall allow the Client to immediately terminate the Service Level Agreement by giving the Supplier a second rectification notice.

**8.5 Termination on Notice**

The Client reserves the right to terminate the Service Level Agreement, without cause, upon thirty (30) calendar days prior written notice to the Supplier.

**8.6 Supplier's Obligations on Termination**

The Supplier shall, in addition to its other obligations under the Contract and at law:

(a) provide the Client with a report detailing (i) the current state of the provision of Deliverables by the Supplier at the date of termination; and (ii) any other information requested by the Client pertaining to the provision of the Deliverables and performance of the Service Level Agreement;

(b) execute such documentation as may be required by the Client to give effect to the termination of the Service Level Agreement; and

(c) comply with any other instructions provided by the Client, including but not limited to instructions for facilitating the transfer of its obligations to another Person.

**8.7 Supplier's Payment Upon Termination**

A Client shall only be responsible for the payment of the Deliverables received by the effective date of any termination of the Service Level Agreement. Termination shall not relieve the Supplier of its warranties and other responsibilities relating to the Deliverables performed or money paid. In addition to its other rights of hold back or set off, the Client may hold back payment or set off against any payments owed if the Supplier fails to comply with its obligations on termination.

**8.8 Termination in Addition to Other Rights**

The express rights of termination in the SLA are in addition to and shall in no way limit any rights or remedies of the Client under the SLA, at law or in equity.

**8.9 Survival upon Termination**

In the event that the Ministry terminates the Management Board VOR Agreement with the Supplier prior to the termination or expiry of this SLA, the terms of the Management Board VOR Agreement shall survive and continue to apply to this SLA.

**Section 9 – Intentionally Left Blank**

## **Section 10.0 Conflict of Interest**

- 10.1 The Supplier, any of the Sub-Contractors and any of their respective advisors, partners, directors, officers, employees, agents and volunteers shall not engage in any activity or provide any services to the Client where such activity or the provision of such services creates a conflict of interest (actually or potentially in the sole opinion of the Client) with the provision of Services pursuant to the Management Board VOR Agreement or this SLA. The Supplier acknowledges and agrees that it shall be a conflict of interest for it to use confidential information of the Client relevant to the Services where the Client or THE MINISTRY has not specifically authorized such use.
- 10.2 The Supplier shall disclose to the Client without delay any actual or potential situation that may be reasonably interpreted as either a conflict of interest or a potential conflict of interest.
- 10.3 A breach of any of the conflict of interest clauses by the Supplier shall entitle the Client to terminate the SLA or the Ministry to terminate the Management Board VOR Agreement.

## **Section 11.0 – Intentionally Left Blank**

## **Section 12.0 Insurance**

- 12.1 The Supplier shall furnish a Certificate of Insurance to the Client in accordance with the insurance requirements set out in Article 9 of the Management Board VOR Agreement [\*OR set out Client-specific terms, for example coverage of \$2 million dollars] prior to commencing performance under the SLA.
- 12.2 The Supplier shall ensure that the Client is named as an additional insured party under the Supplier's insurance policy put in effect and maintained pursuant to Article 9.02 of the Management Board VOR Master Agreement.

## **Section 13.0 Publicity**

- 13.1 Any publicity or publications related to this Service Level Agreement or the Services shall be at the sole discretion of the Client. The Client may, in its sole discretion, acknowledge the Services of the Supplier in any such publicity or publication. The Supplier shall not make use of its association with the Client without the prior written consent of the Client.

## **Section 14.0 Legal Relationship between Client, Supplier and Third-Parties**

### **14.1 Supplier's Power to Contract**

The Supplier represents and warrants that it has the full right and power to enter into the SLA and there is no agreement with any other Person, which would in any way interfere with the rights of the Client under this SLA.

### **14.2 Representatives May Bind the Parties**

The parties represent that their respective representatives have the authority to legally bind them.

### **14.3 Independent Contractor**

This Service Level Agreement is for a particular and non-exclusive service. The Supplier shall have no power or authority to bind the Client or to assume or create any obligation or responsibility, express or implied, on the Client's behalf, or to hold itself out as an agent, employee or partner of the Client. Nothing in the SLA shall have the effect of creating an employment, partnership or agency relationship between the Client and the Supplier or constitute an appointment under the Public Service Act, R.S.O. 1990, c. P.47, as amended. For the purposes of this paragraph, the Supplier includes any of its directors, officers, employees, agents, partners, affiliates, volunteers or subcontractors.

**14.4 No Subcontracting or Assignment**

The Supplier shall not subcontract or assign the whole or any part of the SLA or any monies due under it without the prior written consent of the Client. Such consent shall be in the sole discretion of the Client and subject to the terms and conditions that may be imposed by the Client. Without limiting the generality of the conditions which the Client may require prior to consenting to the Supplier's use of a subcontractor, every contract entered into by the Supplier with a subcontractor shall adopt all of the terms and conditions of the Contract and SLA as far as applicable to those parts of the Deliverables provided by the subcontractor. Nothing contained in the Contract or SLA shall create a contractual relationship between any subcontractor or its employees and the Client.

**14.5 Duty to Disclose Change of Control**

In the event that the Supplier undergoes a change in control the Supplier shall immediately disclose such change in control to the Client and shall comply with any terms and conditions subsequently prescribed by the Client resulting from the disclosure.

**Section 15 – General**

**15.1 Severability**

If any term or condition of the SLA, or the application thereof to the parties or to any Persons or circumstances, is to any extent invalid or unenforceable, the remainder of the SLA, 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.

**15.2 Force Majeure**

Neither party shall be liable for damages caused by delay or failure to perform its obligations under the Service Level Agreement where such delay or failure is caused by an event beyond its reasonable control. The parties agree that an event shall not be considered beyond one's reasonable control if a reasonable business person applying due diligence in the same or similar circumstances under the same or similar obligations as those contained in the Service Level Agreement would have put in place contingency plans to either materially mitigate or negate the effects of such event. Without limiting the generality of the foregoing, the parties agree that force majeure events shall include natural disasters and acts of war, insurrection and terrorism but shall not include shortages or delays relating to supplies or services. If a party seeks to excuse itself from its obligations under this Service Level Agreement due to a force majeure event, that party shall immediately notify the other party of the delay or non-performance, the reason for such delay or non-performance and the anticipated period of delay or non-performance. If the anticipated or actual delay or non-performance exceeds fifteen (15) Business Days, the other party may immediately terminate the Service Level Agreement by giving notice of termination and such termination shall be in addition to the other rights and remedies of the terminating party under the Service Level Agreement, at law or in equity.

**15.3 Changes By Written Amendment Only**

Any changes to the SLA 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.

15.4 **Governing Law**

The SLA shall be governed by and construed in accordance with the laws of the Province of Ontario and the federal laws of Canada applicable therein.

IN WITNESS WHEREOF the parties hereto have executed this Service Level Agreement as of the date first above written.

**HER MAJESTY THE QUEEN IN RIGHT OF ONTARIO  
AS REPRESENTED BY THE MINISTER OF  
[\*MINISTRY]**

Signature: \_\_\_\_\_

Print Name: \_\_\_\_\_

Title: \_\_\_\_\_

Date: \_\_\_\_\_

**[\*Supplier's name]**

Signature: \_\_\_\_\_

Print Name: \_\_\_\_\_

Title: \_\_\_\_\_

Date: \_\_\_\_\_

I have authority to bind the Supplier.

## **SCHEDULE “A”**

Attached to and forming part of the Service Level Agreement for **[\*Name of Agreement]** entered into between Her Majesty the Queen in Right of Ontario as represented by the Minister of **[\*Ministry]** and **[\*Supplier]**

### **WORK ASSIGNMENT**

Include:

- detailed description of Deliverables
- identify personnel to be used by the Supplier, including any Subcontractors, and process for approving the replacement of personnel
- time lines required
- reporting requirements

## **SCHEDULE “B”**

Attached to and forming part of the Service Level Agreement for **[\*Name of Agreement]** entered into between Her Majesty the Queen in Right of Ontario as represented by the Minister of **[\*Ministry]** and **[\*Supplier]**.

### **RATES**

- Rates as per the Supplier's Proposal which forms part of the Management Board VOR Master Agreement
- Payment of disbursements incurred, subject to Client's approval.
- Invoicing procedures
- Payment schedule

**APPENDIX B – FORM OF OFFER**

To **Management Board of Cabinet:**

**1. Proponent Information**

(a) Proponent's registered legal business name and any other name under which it carries on business:

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(b) Proponent's address, website if available, telephone and facsimile numbers:

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(c) Name, address, e-mail address, telephone and facsimile numbers of the contact person(s) for the Proponent:

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(d) Name of the person who is primarily responsible for the Proposal:

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(e) Name of the person who will be managing the operation of the proposed deliverables:

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(f) Whether the Proponent is an individual, a sole proprietorship, a corporation, a partnership, a joint venture, an incorporated consortium or a consortium that is a partnership or other legally recognized entity:

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(g) Name(s) of the proprietor, where the Proponent is a sole proprietor; each of the directors and officers where the Proponent is a corporation; each of the partners where the Proponent is a partnership and applicable combinations of these when the Proponent is a joint venture or consortium, whichever applies:

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- (h) Whether the Proponent intends at any time during the term of an agreement arising out of this RFP, to use the services of another Person, in connection with the management of the deliverables to be provided pursuant to this agreement. If so, attach full details:

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- (i) Whether the Proponent is a partner, director, officer, shareholder of, or a contributor of capital to another individual, sole proprietorship, corporation, partnership, joint venture, or a consortium that has as its principal business the provision of deliverables similar to the deliverables required pursuant to this RFP. If so, provide full details by way of attachment.

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## 2. Offer

I/We hereby offer to provide the Deliverables as indicated in the RFP document in consideration of the Ministry paying me/us in accordance with the Rate Bid Form (Appendix C) and the terms, conditions and provisions outlined in the RFP.

I/We have carefully examined the RFP documents and have a clear and comprehensive knowledge of the Deliverables required under the RFP. By submitting the proposal, we agree and consent to the terms, conditions and provisions of the RFP.

## 3. Mandatory Requirements

I/We enclose herewith as part of the proposal, responses to all mandatory submission requirements, as set out below:

<b>MANDATORY REQUIREMENT FORMS:</b>	<b>Yes</b>	<b>Page</b>
Form of Offer (Appendix B)		
Rate Bid Form (Appendix C)		
Tax Compliance Form (Appendix D)		
Reference Form (Appendix F)		

<b>ADDITIONAL MANDATORY REQUIREMENTS:</b>	<b>Yes</b>	<b>Page</b>
Sample Course Material as described in Section 3.2.5.3 and Section 3.3.2.1 (2) and (5)		
Notice to Proponents: There may be Mandatory Requirements in this RFP other than those set out above. See the Mandatory Requirements section of this RFP for a complete listing of Mandatory Requirements.		

**4. Rates**

I/We have submitted our Rates in accordance with the instructions in the RFP and in the form set out at Appendix C – Rate Bid Form;

**5. Tax Compliance**

I/We hereby certify that \_\_\_\_\_

**(Registered Legal Business Name of Proponent)**

in submitting this proposal with accompanying Tax Compliance Form (Appendix D), is in full compliance with all tax statutes administered by the Ministry of Finance for Ontario and that, in particular, all returns required to be filed under all provincial tax statutes have been paid or satisfactory arrangements for their payment have been made and maintained.

**6. References**

I/We have included the number and type of references require by the RFP (Appendix F) and consent to the Ministry performing checks with those references and with any other relevant references.

**7. Addenda**

We have received and allowed for Addenda number \_\_\_\_\_ in preparing my/our proposal.  
**(Insert #'s or "NONE")**

**8. Bid Irrevocable**

I/We understand that my/our submitted proposal is based upon the acceptance of the proposal, in whole or in part, within 180 days of the Proposal Submission Deadline and is irrevocable during that period.

**9. Conflict of Interest**

The definition section of the RFP should be referred to by Proponents while completing this portion of the Form of Offer.

I/ We hereby confirm that there is not nor was there any actual or perceived Conflict of Interest relating to the preparation of our submission nor do we forsee any actual or potential Conflict of Interest in performing the contractual obligations contemplated in the RFP.

**[or if applicable, strike out the above and include the following:]**

The following is a list of actual or potential Conflict of Interest relating to the preparation of our submission or the performance of the contractual obligations contemplated in the RFP.

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In submitting the proposal, I/we have/have no **[strike out the inapplicable portion]** knowledge of or ability to avail ourselves of Confidential Information of the Crown (other than confidential information which may have been disclosed by the Ministry to the Proponents in the normal course of the RFP) and the confidential information was relevant to the work, its pricing or the RFP evaluation process.

The following individuals, as employees, advisors, or in any other capacity (a) participated in the preparation of our proposal; AND (b) were employees of the Ontario Public Service (“OPS”) AND (c) have ceased that employment since April 23, 1997:

<b>Name of Individual:</b>
<b>Job Classification (of last position with OPS):</b>
<b>Ministry/Agency (where last employed with OPS):</b>
<b>Last Date of Employment with OPS:</b>
<b>Name of Last Supervisor with OPS:</b>
<b>Brief Description of Individual’s Job Functions (at last position with OPS):</b>
<b>Brief Description of Nature of Individual’s Participation in Preparation of Proposal:</b>

**(Repeat above for each identified individual)**

I/we agree that, upon request, I/we shall provide the Ministry a Conflict of Interest Declaration from each individual identified above in the form prescribed by the Ministry.

**10. Disclosure of Information to Advisers**

I/We hereby consent, pursuant to subsection 17 (3) of the *Freedom of Information and Protection of Privacy Act*, to the disclosure, on a confidential basis, of this proposal by the Ministry to the Ministry's advisers retained for the purpose of evaluating or participating in the evaluation of this proposal.

**11. Proof of Insurance**

By signing the Form of Offer, each Proponent acknowledges its willingness, if selected, to provide proof of insurance coverage as required in the Agreement. If selected, the selected Proponent must provide proof of insurance coverage in the form of a valid certificate of insurance prior to the execution of the Agreement by the Ministry.

**12. Execution of Agreement**

I/We understand that in the event my/our proposal is selected by the Ministry, in whole or in part, I/we agree to finalize and execute the Agreement in accordance with the RFP.

\_\_\_\_\_  
Signature of Witness

\_\_\_\_\_  
Signature of Proponent representative:

\_\_\_\_\_  
Name of Witness:

\_\_\_\_\_  
Name and Title:

Date:

I have authority to bind the Proponent.

**APPENDIX C – RATE BID FORM**

Proponents are to check the type of learning and training services they are able to provide and in which geographical regions.

Types of Learning and Training Services <i>(see Section 2.3)</i>	Regions Served <i>(see Section 2.3.3 for description)</i>							Maximum – Per Diem Rate <i>(based on minimum 7.25 hr/day)</i>
	C	N	E	NE	NW	SW	GTA	
<b>Stream 1</b>								
Learning Consulting								\$
Design and Development								\$
Delivery of OPS Courses								\$
<b>Stream 2</b>								
Delivery of Non Customized Courses								\$
Training Services								\$
Facilitation Services								\$
Coaching Services								\$

**Average Cost of Manuals (including ORST): \$ \_\_\_\_\_**

- Per diem rates must reflect all costs associated with work being done by the successful Supplier. Therefore, no additional administration costs, project management costs or charges for travel time will be accepted on invoices.
- Proponents not offering a master copy of materials required for training programs must include the average cost of their manuals per Sections 2.3.5 and 3.4.1 for further information.
- Proponents shall provide an **electronic version in an Excel format** with their RFP submission. The electronic version shall be identical to the RFP Rate Bid Format.
- Rates shown must be applicable for Business Hours during any Business Day.
- GST is not applicable for OPS Clients.
- Ranges not acceptable.
- The Per Diem rate will be used for evaluation purposes.
- Rates shown do not include travel, meals, and accommodation costs
- All Rates quoted by Proponents will be used for (i) evaluation purposes; and (ii) as a maximum charge to any Assignment subject to reduction by a Proponent when quoting on specific Assignments.

**SIGNATURE:** \_\_\_\_\_

**Date:** \_\_\_\_\_

**Print NAME AND TITLE:** \_\_\_\_\_

**I have authority to bind the Proponent**

**APPENDIX D - TAX COMPLIANCE DECLARATION FORM**

The Ontario Government expects all suppliers to pay their provincial taxes on a timely basis. In this regard, Proponents are advised that any contract with the Ontario Government will require a declaration from the successful Proponent that the Proponent's provincial taxes are in good standing.

In order to be considered for a contract award, the Proponent must submit the following tax compliance status statement and the following consent to disclosure:

I/WE hereby certify that \_\_\_\_\_ at the time of submitting this proposal,  
**(legal name of Proponent)**  
is in full compliance with all tax statutes administered by the Ministry of Finance for Ontario and that, in particular, all returns required to be filed under all provincial tax statutes have been filed and all taxes due and payable under those statutes have been paid or satisfactory arrangements for their payment have been made and maintained.

**Consent to Disclosure**  
I/We consent to the Ministry of Finance releasing the taxpayer information described in this Declaration to the Ministry issuing the RFP as necessary for the purpose of verifying that I/we am/are in full compliance with all statutes administered by the Ministry of Finance.

Dated at \_\_\_\_\_ this \_\_\_\_\_ day of \_\_\_\_\_ 2003

\_\_\_\_\_  
(An authorized signing officer)

\_\_\_\_\_  
(Print Name)

\_\_\_\_\_  
(Title)

(Phone Number)

(Fax Number)

**APPENDIX E - Proposal Return Label**

**Affix this label to your submission**



**To: Management Board Secretariat  
Shared Services Bureau  
Strategic Procurement Branch  
6<sup>th</sup> Floor, 700 University Avenue  
Toronto, Ontario  
M7A 2S4**

RFP Name: Learning and Training Services

RFP #: SSB-044304

**Proposal Submission Deadline**

**Date: Monday July 14, 2003**

**Time: 11:00:00 a.m. EDT**

**Important Submission Notice**

1. Submissions must be sealed with this label affixed to the outside. Failure to comply with these requirements may result in disqualification.
2. Onus and responsibility rests solely with the Proponent to deliver its proposal to the exact location (including floor if applicable) indicated in the RFP on or before the Proposal Submission Deadline. The Shared Services Bureau/ Ministry does not accept any responsibility for submissions delivered to any other location by the Proponent or its delivery agents. Proponents are advised to make submissions well before the deadline. Proponents making submissions near the deadline do so at their own risk.

**APPENDIX F**

**Reference Form**

Each Proponent shall provide the reference information as requested in the RFP Section 3.2.4

**Reference #1**

<b>Company Name:</b>
<b>Company Address:</b>
<b>Contact Name and Title:</b>
<b>Contact Telephone Number:</b>
<b>Date Work Undertaken:</b>
<b>Nature of Assignment:</b>

**Reference #2**

<b>Company Name:</b>
<b>Company Address:</b>
<b>Contact Name and Title:</b>
<b>Contact Telephone Number:</b>
<b>Date Work Undertaken:</b>
<b>Nature of Assignment:</b>

**Reference #3**

<b>Company Name:</b>
<b>Company Address:</b>
<b>Contact Name and Title:</b>
<b>Contact Telephone Number:</b>
<b>Date Work Undertaken:</b>
<b>Nature of Assignment:</b>