

Her Majesty the Queen in right of Ontario as represented by the

Minster of Education

Invitation to Quote (ITQ)

for

Guide to Remote Learning for Students with Special Education Needs

ITQ # 115

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| PART 1 - PROCUREMENT DETAILS | |
| --- | --- |
| Definitions | |
| Definitions for capitalized words can be located in Appendix B – Form of Agreement. | |
| Initial Procurement Details | |
| **Subject of procurement:** | The creation of a guide to Remote Learning for Students with Special Education Needs |
| **Procuring entity:** | Ministry of Education |
| **Procuring entity contact:** | Paul Hoskin |
| paul.hoskin@ontario.ca |
| **Bidder eligibility requirements included:** | No |
| Proposed ITQ Schedule | |
| **Issue date of ITQ:** | September 10, 2020 |
| **Bidder's deadline for questions:** | 5:00 p.m. on September 16, 2020 |
| **Deadline for issuing addenda:** | September 18, 2020 |
| **ITQ closing date:** | 5:00 p.m. on September 25, 2020 |
| **Period for which Bids are irrevocable after ITQ closing date:** | 120 days |
| **Bids must be received by the ITQ closing date. This schedule is tentative and may be changed by the Ministry in its sole discretion.** | |
| Proposed Agreement Dates | |
| **Execution of Agreement:** | Within 15 days of notification of selection. |
| **Anticipated start date for contract:** | October 1, 2020 |
| **Term of Agreement:** | 5 Months |
| **Option to extend:** | None |

| PART 2 - CONTENTS OF A COMPLETE BID |
| --- |
| Structure of Bid |
| A complete Bid should be structured into the following three (3) sections. Bidders are to include all of the forms listed below, unless specified otherwise. Where a form is indicated as mandatory, failure to include that form or to meet the mandatory requirements within that form may result in disqualification.  This checklist may be used by Bidders to assist in Bid preparation. It will not be evaluated. |

| The Qualification Response | |
| --- | --- |
|  | Appendix A.1 - Form of Offer |
|  | Appendix A.2 - Mandatory Eligibility Requirements Form (not required) |
|  | Appendix A.3 - Reference Form |
| The Technical Response | |
|  | Appendix A.4 - Rated Requirements Form |
| The Commercial Response | |
|  | Appendix A.5 - Pricing Form (mandatory) |

| Format of Bid |
| --- |
| Bidders should format their Bids in accordance with the sequence of sections set out in Section 2.1 and follow the instructions included in this ITQ. When responding to a specific criterion, your Bid should reference applicable sections set out in this ITQ.  Bids should be specific to the Deliverables of the ITQ and the information requested. Bidders should provide clear, complete and concise responses to ITQ requirements. Brochures or marketing material should not be included and will not be evaluated if received.  Bids are to be emailed to the procuring entity contact identified in Section 1.2.  Please provide the Commercial Response in a separate electronic copy in Microsoft Word format. |

PART 3 - THE DELIVERABLES

This section of the ITQ describes what is being procured.

The contents of this part will be in the final Contract if you are successful and you will be expected to deliver and/or perform all requirements set out in this part for the price you propose in Appendix A.5 - Pricing Form.

3.1 Description of the required services

Procurement of a Remote Learning Framework for Students with Special Education Needs

3.2 Background information

The ministry’s plan for return to school requires school boards to plan to move fluidly between in-person and remote learning in case of a resurgence of COVID-19, or if schools are closed for other reasons.

Stakeholders, parents, students and the education sector have asked for more diverse accessible resources to support students with special needs learn remotely.

There is a need to consolidate, review and analyze promising practices for supporting remote learning for students with special education needs and share them with school boards to promote evidence-informed and consistent approaches as part of the ministry’s preparation for the return to school.

3.3 Objective of the project

To develop a Guide on remote learning of students with special education needs that will reflect experiences of other jurisdictions and selected school boards in Ontario, with a draft version released in late Fall 2020 and the final version available in early 2021.

3.4 Description of deliverables

* The vendor will develop the AODA compliant Guide in both English and French (up to 50 pages long, excluding appendices) that will:
  + Outline ministry expectations on remote learning as it relates to students with special education needs;
  + Present selected effective practices used/developed by school boards in Ontario to support remote learning of children with special education needs, including exceptionality specific approaches;
  + Include relevant examples of effective approaches in remote learning used by other jurisdictions; and
  + Include links to resources to support teachers and families.
* The vendor would be required to establish working relations with school boards to familiarize themselves with boards’ approaches of supporting remote learning and to secure school boards’ approvals to obtain and use the tools and resources developed.
* The vendor will conduct online structured consultations with stakeholders identified by the ministry.
* The Guide will be supported by annexes that will contain various resources developed by school boards and other jurisdictions that school boards may find relevant and useful in supporting remote learning of students with special education needs.

The Guide and the repository will be accessible to boards, community partners, and the public on the EDU website.

3.5 Key milestones and timelines

This section should include timeline requirements for the entire project including tasks, milestones and approximate number of days. This may be placed in a list or a chart format as illustrated in Table 1 below.

|  |  |  |  |  |
| --- | --- | --- | --- | --- |
| **Task** | **Estimated Days** | **October November** | **December - January** | **February** |
| Task 1: Developing of a section of the Guide covering experiences of other jurisdictions | 15 | X |  |  |
| Task 2: Collecting evidence of from school boards | 25 | X |  |  |
| Task 3 Consultations with stakeholders | 10 | X | X | X |
| Task 4 Finalization of the Guide | 15 |  |  | X |
| **Total estimated days** | **65** |  |  |  |

**[End of Part 3]**

| PART 4 - EVALUATIONS | |
| --- | --- |
| Overview of the Evaluation Process | |
| There are three (3) stages in the evaluation process: | |
| Stage 1 - Qualification Response Evaluation  In this stage the Bid will be reviewed to ensure that it contains all of the forms listed in Section 2.1 – Structure of Bid. Where a form is indicated as mandatory, failure to include that form or to meet the mandatory requirements within that form may result in disqualification from the ITQ process. | |
| Stage 2 - Technical Response Evaluation  This stage will consist of scoring each qualified Bid from Stage 1 on the basis of the Technical Response contained in Appendix A.4 - Rated Requirements Form, to determine the total score for Stage 2. | |
| Stage 3 - Commercial Response Evaluation  In this stage the Commercial Response contained in Appendix A.5 - Pricing Form will be evaluated using the relative pricing formula set out below, to determine the total score for Stage 3.  Each eligible Bidder will receive a percentage of the total possible points allocated to price by dividing the lowest Bid price by the Bidder’s Bid price:  (Lowest Bid price / Bidder's Bid price) x Total available points = Pricing Score for Bid  For example, if the lowest Bid price is $120, that Bidder receives 100% of the possible points (120 / 120 = 100%), a Bidder who bids $150 receives 80% of the possible points (120 / 150 = 80%) and a Bidder who bids $240 receives 50% of the possible points  (120 / 240 = 50%). | |
| Cumulative Score and Selection of Highest Scoring Bidder | |
| Once the Commercial Response is evaluated, subject to security screening (if required), satisfactory reference checks (if conducted), and the express and implied rights of the Ministry, the Bidder with the highest scoring, compliant Bid will be selected to enter into the Agreement attached to this ITQ (as Appendix B). The Bidder must provide its Tax Compliance Verification number to the Ministry so that the Ministry can confirm with the Ministry of Finance that Bidder’s Ontario tax obligations, if any, are in good standing at the time of signing the Agreement. | |
| Allocation of Points | |
| The following is an overview of the categories and weighting for the evaluation: | |
| Stage 2 - Technical Response Evaluation | Weighting (Points) |
| Proposal Quality | 15 Points |
| Knowledge | 15 Points |
| Experience | 20 Points |
| Method | 20 Points |
| Communication, Work Plan and Timelines | 5 Points |
| Privacy and Accessibility | 5 Points |
| Stage 3 - Commercial Response Evaluation | 20 Points |
| **Total Points** | **100 Points** |
| Process to Sign the Agreement | |
| The Preferred Bidder will be sent a selection letter along with copies of the Agreement to sign and return within the time limit provided. Other documentation that may be requested at that time:   * proof of insurance as outlined in Appendix B; * proof of W.S.I.A. Coverage as outlined in Appendix B; * proof of security clearance as outlined in Appendix B; * proof of tax compliance as outlined in Appendix A.1 - Form of Offer; and * other documents as outlined in the selection letter. | |

| PART 5 - TERMS AND CONDITIONS |
| --- |
| **General Terms and Conditions** |
| Bidder Representations and Warranties  By submitting a Bid for consideration, the Bidder in each case, agrees, confirms or warrants as follows:   1. to be bound to its Bid; 2. that to its best knowledge and belief, no actual or potential Conflict of Interest exists with respect to the submission of the Bid or performance of the contemplated contract other than those disclosed in the Form of Offer. Where the Ministry discovers a Bidder’s failure to disclose all actual or potential Conflicts of Interest, the Ministry may disqualify the Bidder or terminate any contract awarded to that Bidder pursuant to this procurement process; 3. that it has accepted the provisions of this ITQ and has prepared its Bid with reference to all of the provisions of the ITQ including the attached Form of Agreement and has factored all of those provisions, including the insurance requirements, into its pricing assumptions and calculations and into the proposed costs indicated in the Pricing Form; and 4. that its Bid was arrived at separately and independently, without conspiracy, collusion or fraud. See the [Competition Bureau of Canada](http://www.competitionbureau.gc.ca/eic/site/cb-bc.nsf/eng/home) for further information. |
|  |
| General Instructions and Requirements |
| Bidders to Follow Instructions  Bidders should structure their Bids in accordance with the instructions in this ITQ. Where information is requested in this ITQ, any response made in a Bid should reference the applicable section numbers of this ITQ where that request was made. |
| Conditional Bids May be Disqualified  A Bidder who submits conditions, options, variations or contingent statements to the terms set out in the ITQ including the Form of Offer and Form of Agreement, either as part of its Bid or after receiving notice of selection, may be disqualified. The Ministry acknowledges the need to add transaction-specific particulars to the Form of Agreement but the Ministry will not otherwise make material changes to the Form of Agreement. **Bids in English** All Bids are to be in English only. Any Bids received by the Ministry that are not entirely in the English language may be disqualified. |
| Ministry’s Information in ITQ Only an Estimate  The Ministry and its advisors make no representation, warranty or guarantee as to the accuracy of the information contained in this ITQ or issued by way of addenda. Any quantities shown or data contained in this ITQ or provided by way of addenda are estimates only and are for the sole purpose of indicating to Bidders the general size of the work. |
| Bidders Shall Bear Their Own Costs  The Bidder shall bear all costs associated with or incurred in the preparation and presentation of its Bid including, but not limited to, if applicable, costs incurred for interviews or demonstrations. |
| 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 Bidder. The Agreement executed with the Preferred Bidder 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 ITQ or may obtain the same or similar Deliverables internally. |
| ITQ Terms  All rights and obligations that apply to this procurement process are found only in the ITQ. For greater clarity, no other documents are to be read into this ITQ or used to interpret or understand its terms or establish any rights or obligations related to this procurement. |
| Accessibility Obligations  The Province of Ontario is committed to the highest possible standard for accessibility. Vendor(s) are responsible for complying with the requirements under the Ontario Human Rights Code, the *Ontarians with Disabilities Act*, 2001 and *Accessibility for Ontarians with Disabilities Act*, 2005 (“AODA”) and its regulations. In circumstances where Vendors are providing a service to the public on behalf of the Ministry, they may need to follow Ministry direction to ensure Ministry compliance with the AODA and its regulations (such as the Integrated Accessibility Standards Regulation). The vendor is responsible for applying Integrated Accessibility Standards Regulation and effective dates and timelines as they pertain to the Government of Ontario, as directed by the Ministry. |
| Communication After Issuance of ITQ |
| All New Information to Bidders By Way of Addenda  This ITQ may only be amended by the Ministry 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 ITQ, such information will be communicated to all Bidders through addenda to the ITQ. Each addendum shall form an integral part of this ITQ.  Each addendum may contain important information including significant changes to this ITQ. The onus remains on the Bidder to make any necessary amendments and to re-submit its Bid based on the addenda. The Ministry may also be issuing addenda included in the ITQ as an attachment, which will contain responses to Bidders’ questions. |
| Post-Deadline Addenda and Extension of ITQ Closing Date and Time  The Ministry may, at its discretion, issue addenda after the deadline for issuing addenda and may also then extend the ITQ closing date. |
| Ministry May Verify Information or Seek Clarification and Incorporate Response into Bid  The Ministry reserves the right, but is not obliged, to verify or seek clarification and supplementary information relating to the verification or clarification from Bidders after the ITQ Closing Date and Time including those related to an ambiguity in a Bid or in any statement made subsequently during the evaluation process. The response received by the Ministry from a Bidder shall, if accepted by the Ministry, form an integral part of that Bidder's Bid. However, Bidders are cautioned that any verifications or clarifications sought will not be an opportunity either to correct errors or change their Bids in any substantive manner.  Verifications or clarifications under this subsection may be made by whatever means the Ministry deems appropriate and may include contacting,   1. any person identified in the Bid; and 2. persons or entities other than those identified by any Bidder.   In submitting a Bid, a Bidder is deemed to consent to the Ministry's verification or clarification rights.  In the event that the Ministry receives information at any stage of the evaluation process which results in earlier information provided by the Bidder being deemed by the Ministry to be inaccurate, incomplete or misleading, the Ministry reserves the right to revisit the Bidder’s compliance with the mandatory requirements and/or adjust the scoring of rated requirements. |
| Bid Process Requirements |
| Bids must be submitted on time  Bids must be submitted by the ITQ Closing Date and Time. Bids submitted after this point in time will be deemed late, disqualified and returned to the Bidder. |
| Bid Irrevocable after ITQ Closing Date and Time  Bids shall remain irrevocable in the form submitted by the Bidder for the period set out in Part 1 of this ITQ running from the moment that the ITQ Closing Date and Time has lapsed. |
| Bidders to Review ITQ  Bidders shall promptly examine all of the documents comprising this ITQ and:   1. shall report any errors, omissions or ambiguities; and 2. may direct questions or seek additional information   in writing by e-mail on or before the Bidder’s deadline for questions to the Contact set out at Part 1 of this ITQ. All questions submitted by Bidders by email to the Contact shall be deemed to be received once the e-mail has entered into the Contact’s email inbox. No such communications are to be directed to anyone other than the Contact. The Ministry is under no obligation to provide additional information but may do so at its sole discretion.  It is the responsibility of the Bidder to seek clarification from the Contact on any matter it considers to be unclear. The Ministry shall not be responsible for any misunderstanding on the part of the Bidder concerning this ITQ or its process. |
| No Incorporation by Reference by Bidder  The entire content of the Bid should be submitted in a fixed form and the content of web sites or other external documents referred to in the Bid will not be considered to form part of its Bid. |
| Amending or Withdrawing Bids Prior to ITQ Closing Date and Time  At any time prior to the ITQ Closing Date and Time, a Bidder may amend or withdraw a submitted Bid by sending a notice of amendment or withdrawal to the Contact. The right of Bidders to amend or withdraw includes amendments or withdrawals wholly initiated by Bidders and amendments or withdrawals in response to subsequent information made through an addendum to the ITQ. |
| Bid to be Retained by the Ministry  Except for those Bids submitted past the ITQ Closing Date and Time, the Ministry will not return any Bid or accompanying documentation submitted by a Bidder including amended or withdrawn bids. |
| Execution of Agreement, Notification and Debriefing |
| Selection of Bidder  The Ministry anticipates that it will select a Bidder within the irrevocable period. Notice of selection by the Ministry will be in writing. The Preferred Bidder shall execute the Agreement in the form attached to this ITQ and satisfy any other applicable conditions of this ITQ within the period of time set out to do so in Part 1 of this ITQ. This provision is solely to the benefit of the Ministry and may be waived by the Ministry at its sole discretion.  Bidders are reminded that there is a question and answer period available if they wish to ask questions or seek clarification about the terms and conditions set out in the Form of Agreement. The Ministry will consider such requests for clarification in accordance with its right to do so under this ITQ. |
| Failure to Enter Into Agreement  In addition to all of the Ministry’s other remedies, if a Preferred Bidder fails to execute the Agreement or satisfy any other applicable conditions within the period of time set out to do so in Part 1 of this ITQ following the notice of selection, the Ministry may, in its sole discretion and without incurring any liability, rescind the selection of that Bidder and proceed with the selection of another Bidder. |
| Notification to Other Bidders of Outcome of Procurement Process  Once the Preferred Bidder and the Ministry execute the Agreement, the other Bidders will be notified by the Ministry in writing of the outcome of the procurement process, including the name of the Preferred Bidder, and the award of the contract to the Preferred Bidder. |
| Debriefing  Unsuccessful Bidders may request a debriefing after receipt of a notification of award. All requests must be made to the Contact within sixty (60) days of notification of award. The intent of the debriefing information session is to aid the Bidder in presenting a better Bid in subsequent procurement opportunities. Any debriefing provided is not for the purpose of providing an opportunity to challenge the procurement process. |
| Bid Dispute  Bidders are advised that a formal bid dispute process is available, the details for which are available from the Contact |
| Prohibited Bidder Communications  Bidders shall address all questions and requests for clarification with respect to their Bids, or the ITQ documents or the ITQ process only to the Contact set out at Part 1 of this ITQ.  Bidders shall not contact or make any attempt to contact,   1. any Ontario government employee or representative, other than the Ministry Contact; or, 2. any other Bidder   with respect to a Bid , the ITQ documents, or the ITQ process, at any time during the ITQ process.  Without limiting the generality of the above, Bidders, shall not contact or attempt to contact:   1. any member of the Ministry evaluation team for the ITQ; 2. any expert or advisor assisting the Ministry evaluation team; 3. any staff of the Premier of Ontario’s office or the Ontario Cabinet Office; 4. any Member of the Ontario Provincial Parliament or his or her staff or advisors; or 5. any Member of the Ontario Provincial Cabinet or their staff or advisors,   on matters related to their Bids, the ITQ documents, or the ITQ process at any time during the ITQ process. |
| Bidder Not to Make a Public Statement or Communicate With Media  A Bidder may not at any time directly or indirectly make a public statement or communicate with the media in relation to this ITQ or any contract awarded pursuant to this ITQ without first obtaining the written permission of the Ministry. Where a Bidder makes a communication contrary to this section the Ministry may disclose such information necessary to correct any inaccuracy of information. |
| Confidential Information of Ministry  All information provided by or obtained from the Ministry in any form in connection with this ITQ either before or after the issuance of this ITQ:   1. is the sole property of the Ministry and must be treated as confidential; 2. is not to be used for any purpose other than replying to this ITQ and the performance of any subsequent Contract; 3. must not be disclosed without prior written authorization from the Ministry; and 4. shall be returned by the Bidders to the Ministry immediately upon the request of the Ministry. |
| Freedom of Information and Protection of Privacy Act  The *Freedom of Information and Protection of Privacy Act*, R.S.O. 1990, c.F.31, as amended, applies to information provided to the Ministry by a Bidder. A Bidder should identify any information in its Bid or any accompanying documentation supplied in confidence for which confidentiality is to be maintained by the Ministry. The confidentiality of such information will be maintained by the Ministry, except as otherwise required by law or by order of a court or tribunal. Bidders are advised that their Bids will, as necessary, be disclosed on a confidential basis, to the Ministry’s advisers retained for the purpose of evaluating or participating in the evaluation of their Bids.  By submitting any Personal Information requested in this ITQ, Bidders are agreeing to the use of such information as part of the evaluation process, for any audit of this procurement process and for contract management purposes. Where the Personal Information relates to an individual assigned by the Preferred Bidder to provide the Deliverables, such information may be used by the Ministry to compare the qualifications of such individual with any proposed substitute or replacement. If a Bidder has any questions about the collection and use of Personal Information pursuant to this ITQ, questions are to be submitted to the Contact in accordance with the Bidders to Review ITQ section. |
| Reserved Rights and Governing Law |
| Reserved Rights of the Ministry  The Ministry reserves the right to:   1. make public the names of any or all Bidders; the name of the Preferred Bidder(s); and, the total price for the contract awarded; 2. request written clarification or the submission of supplementary written information in relation to the clarification request from any Bidder and incorporate a Bidder’s response to that request for clarification into the Bidder’s Bid; 3. assess a Bidder’s Bid on the basis of:    1. a financial analysis determining the actual cost of the Bid when considering factors including transition costs arising from the replacement of existing services, practices, methodologies and infrastructure (howsoever originally established);    2. information provided by references;    3. the Bidder’s past performance on previous contracts awarded by the Government of Ontario;    4. the information provided by a Bidder pursuant to the Ministry exercising its clarification rights under this ITQ process; or    5. other relevant information that arises during this ITQ process; 4. waive non-compliance where, in the Ministry's sole discretion, such non-compliance is minor and not of a material nature, or to accept or reject in whole or in part any or all Bids, with or without giving notice.  Such minor non-compliance will be deemed substantial compliance and capable of acceptance.  The Ministry will be the sole judge of whether a Bid is accepted or rejected; 5. verify with any Bidder or with a third party any information set out in a Bid; 6. check references other than those provided by any Bidder; 7. disqualify any Bidder whose Bid contains misrepresentations or any other inaccurate or misleading information; 8. disqualify any bid or rescind any contract award where the bidder either: fails to disclose; or, is determined to have an actual or perceived unfair advantage or Conflict of Interest determined to be material by the Ministry; 9. disqualify any Bidder or the Bid of any Bidder who has engaged in conduct prohibited by this ITQ; 10. make changes, including substantial changes, to this ITQ provided that those changes are issued by way of addenda in the manner set out in this ITQ; 11. select any Bidder other than the Bidder whose Bid reflects the lowest cost to the Ministry or the highest score; 12. cancel this ITQ process at any stage; 13. cancel this ITQ process at any stage and issue a new ITQ for the same or similar Deliverables; 14. accept any Bid in whole or in part; or 15. reject any or all Bids;   and these reserved rights are in addition to any other express rights or any other rights which may be implied in the circumstances and the Ministry shall not be liable for any expenses, costs, losses or any direct or indirect damages incurred or suffered by any Bidder or any third party resulting from the Ministry exercising any of its express or implied rights under this ITQ.  By submitting its Bid, the Bidder authorizes the collection by the Ministry of the information set out under (e) and (f) in the manner contemplated in those subparagraphs. |
| Governing Law of ITQ Process  This ITQ 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.  Supplementary Terms and Conditions  Occupational Health and Safety Requirements  Vendor(s) are required to comply with the Occupational Health and Safety Act (“OHSA”) and regulations and applicable OPS and site-specific health and safety requirements. Vendor(s) are responsible for meeting all of the ‘employer’ obligations under the OHSA and shall ensure that all work is carried out safely. The Vendor shall ensure that all subcontractors (hired by the Vendor) work in accordance with the OHSA and its regulations. |
| Publication of Data and Consent |
| Publication of Data and Consent  It is Ontario’s intention, in accordance with the [Open Data Directive](https://www.ontario.ca/page/ontarios-open-data-directive) and as part of its commitment to open data, to publish and allow the public to use:   * 1. procurement contract data, including the name of the Preferred Bidder and total contract value; and,   2. data created or collected as an output of a contract,   except where Ontario chooses not to publish the data in accordance with the Open Data Directive, such as for privacy, confidentiality, security, legal or commercially-sensitive reasons.  Each Bidder, by submitting a Bid, expressly consents to the above and agrees that, if it becomes the Preferred Bidder, it will not object to the above being incorporated into its contract. |

APPENDIX A.1 - FORM OF OFFER

Bidder Instructions:

1. This Form of Offer must be signed and all pages of the original included with the Bid.
2. Other than inserting the information requested and signing the Form of Offer, a Bidder may not make any changes to or qualify the Form of Offer in its Bid. A Bid that includes conditions, options, variations or contingent statements that are contrary to or inconsistent with the terms set out in the ITQ may be disqualified. Bids containing any change may, subject to the express and implied rights of the Ministry, be disqualified. If a Bid is not disqualified despite such changes or qualifications, the provisions of the Form of Offer as set out in this ITQ, will prevail over any such changes or qualifications in or to the Form of Offer provided in the Bid.

Bidder Instructions for Tax Compliance:

1. Bidders are advised that if they are selected for contract award, their Ontario tax obligations, if any, must be in good standing at the time of entering into an Agreement.   
   The Ministry will rescind the notice of selection of a Bidder for contract award whose Ontario tax obligations are not in good standing within the timeframe for satisfying the preconditions of execution set out in the ITQ.

Bidders are required to follow the following process in order to determine their tax compliance status.

The Ministry of Finance (MOF) has automated the Tax Compliance Verification (TCV) process by creating an online portal (<http://www.etax.fin.gov.on.ca/>) where you can confirm your tax compliance status online and at any time.

**Getting a TCV Number**

Before you can verify your tax compliance status, your business will need to have a **One-key ID (**[**https://www.iaa.gov.on.ca/iaalogin/IAALogin.jsp**](https://www.iaa.gov.on.ca/iaalogin/IAALogin.jsp)**)**. Visit **One-key Account Registration (**[**https://www.appenrol.one-key.gov.on.ca/UserMgmtWebApp/registration.iaa**](https://www.appenrol.one-key.gov.on.ca/UserMgmtWebApp/registration.iaa)**)** to set up an account.

1. To get your TCV number: Register for E-Services (<https://www.etax.fin.gov.on.ca/eServices/eServicesHome/RegisterOneKey?lang=enn>)
2. Select **e-Services** from My Services
3. **Select** or **Add a business** on the e-services page
4. Select **TCV** (you will be redirected to **Bidder Portal (**http://www.etax.fin.gov.on.ca/**)**
5. In the Bidder Portal ([**https://www.etax.fin.gov.on.ca**](https://www.etax.fin.gov.on.ca)), select **Request TCV Number** on the TCV page
6. Attach the Filing and Balance Confirmation (FBC) Letter (if required) and select **Next**
7. Select **View Summary** to review compliance summary
8. Download **TCV Certificate** (optional)
9. Provide your email to receive alerts about your account status

**Where to go for help?**

Please refer to the **frequently asked questions (**[**https://www.doingbusiness.mgs.gov.on.ca/mbs/psb/psb.nsf/English/FAQ-TCTC-Program**](https://www.doingbusiness.mgs.gov.on.ca/mbs/psb/psb.nsf/English/FAQ-TCTC-Program)**)** for more information.

**[End of Instructions to Form of Offer.]**

This Form of Offer must be signed and all pages of the original included with the Bid

**To:** HER MAJESTY THE QUEEN in right of Ontario as represented by Minister of Education:

1. **Bidder’s Information**

|  |  |
| --- | --- |
| Full Legal Name of Bidder | Bidder to click insert response |
| Any other relevant name under which the Bidder carries business | Bidder to click insert response |
| Any other registered business name under which the Bidder carries on business: | Bidder to click insert response |
| The jurisdiction under which the Bidder is formed: | Bidder to click insert response |
| Bidder Mailing Address: | Bidder to click insert response |
| Bidder Telephone: | Bidder to click insert response |
| Bidder Representative Name: | Bidder to click insert response |
| Bidder Representative Title: | Bidder to click insert response |
| Bidder Representative E-mail Address: | Bidder to click insert response |
| Bidder Representative Mailing Address: | Bidder to click insert response |
| Bidder Representative Telephone: | Bidder to click insert response |
| Indicate whether the Bidder is an individual, a sole proprietorship, a corporation or a partnership: | Bidder to click insert response |

1. **Offer**

The Bidder has carefully examined the ITQ documents and has a clear and comprehensive knowledge of the Deliverables required under the ITQ. By submitting the Bid, the Bidder agrees and consents to the terms, conditions and provisions of the ITQ, including the Form of Agreement, and offers to provide the Deliverables in accordance with the rates set out in the Pricing Form.

1. **Mandatory Forms**

The Preferred Bidder will enclose as part of the Bid, the mandatory forms referenced in Section 2.1 -Structure of Bid.

1. **Addenda**

The Bidder has read and accepted all addenda issued by the Ministry to date. We understand that the onus remains on us to have made any necessary amendments to our Bid based on the addenda.

1. **Bid Irrevocable**

The Bidder agrees that its Bid shall be irrevocable for the period of days set out in Section 1.3 following the ITQ Closing Date.

1. **Conflict of Interest**

Prior to completing this portion of the Form of Offer, Bidders should refer to the definition of Conflict of Interest set out in the Form of Agreement, both definition part (a) and part (b).

If the boxes in this section are left blank, the Bidder will be deemed to declare that it has no foreseeable Conflict of Interest (in either definition part (a) or part (b)) in performing the contractual obligations contemplated in the ITQ. Otherwise, if either or both of the following statements apply, check the appropriate box.

|  | Part (a) of definition: The Bidder declares that there is an actual or potential unfair advantage relating to the preparation and submission of its Bid. |
| --- | --- |
|  | Part (b) of definition: The Bidder foresees an actual or potential Conflict of Interest in performing the contractual obligations contemplated in the ITQ. |

If the Bidder declares an actual or potential Conflict of Interest by marking either of the boxes, the Bidder must describe it in the following space provided.

(Bidder to describe Conflict of Interest, if applicable)

In addition to the preceding declarations, the Bidder must indicate if any individuals, as employees, advisors, or in any other capacity (a) participated in the preparation of our Bid; and (b) were employees of the Ontario Public Service ("OPS") and have ceased that employment prior to the ITQ Closing Date, by selecting "Yes" or "No".

If "Yes" is indicated, Bidders must complete the following section which relates to potential Conflict of Interest:

The following individuals, as employees, advisors, or in any other capacity (a) participated in the preparation of our Bid; and (b) were employees of the Ontario Public Service ("OPS") and have ceased that employment prior to the ITQ Closing Date.

Repeat the below for each identified individual.

|  |  |
| --- | --- |
| Name of Individual: | (Bidder to insert response, if applicable) |
| Job Classification (of last position within OPS): | (Bidder to insert response, if applicable) |
| Ministry (where last employed with OPS): | (Bidder to insert response, if applicable) |
| Last Date of Employment with OPS: | (Bidder to insert response, if applicable) |
| Name of Last Supervisor with OPS: | (Bidder to insert response, if applicable) |
| Brief Description of Individual’s Job Functions (at last position with OPS): | (Bidder to insert response, if applicable) |
| Brief Description of Nature of Individual’s Participation in Preparation of Bid: | (Bidder to insert response, if applicable) |

(Repeat for each identified individual)

The Bidder agrees, upon request, to provide the Ministry with additional information from each individual identified in the preceding form prescribed by the Ministry. The Ministry will assess this information and may, at its sole and absolute discretion, conclude that an unfair advantage or Conflict of Interest arises and may, in addition to any other remedies available at law or in equity, disqualify the Bid submitted by the Bidder.

1. **Disclosure of Information**

The Bidder hereby agrees that any information provided in this Bid, even if it is identified as being supplied in confidence, may be disclosed where required by law or if required by order of a court or tribunal. The Bidder hereby consents to the disclosure, on a confidential basis, of this Bid by the Ministry to the Ministry’s advisors retained for the purpose of evaluating or participating in the evaluation of this Bid.

1. **Proof of Insurance**

The Bidder has verified it can, and if selected, it shall obtain insurance coverage in accordance with the Form of Agreement (Appendix B of the ITQ).

1. **Occupational Health and Safety Declaration**
2. The Bidder agrees, to the extent applicable, that it and any proposed Subcontractors each have a written occupational health and safety policy and will maintain a program to implement that policy as required by clause 25(2)(j) of the Occupational Health and Safety Act, R.S.O. 1990, c.0.1 (OHSA) as amended.
3. With respect to the services being offered in this Bid, the Bidder and its proposed Subcontractors acknowledge the responsibility to, and shall:
   1. fulfill all of the “employer” obligations under OHSA and ensure that all work is carried out in accordance with OHSA and its regulations;
   2. appoint and ensure an adequate number of supervisors are provided for the work and that they all satisfy the definition of “competent” as prescribed in OHSA;
   3. identify any hazards associated with the work, assess the risks and develop appropriate control measures to protect worker safety;
   4. provide information and instruction to all employees to ensure they are informed of the hazards inherent to the work and understand the procedures for minimizing the risk of injury or illness;
   5. ensure that workers and supervisors have completed mandatory health and safety awareness training in accordance with O. Reg. 297/13;
   6. notify the Ministry of the occurrence of all work-related health and safety incidents and Ministry of Labour investigations or orders; and
   7. ensure appropriate emergency management procedures and response in the event of an accident or fire, including an emergency evacuation plan that accommodates for persons with disabilities (in accordance with section 27 of the Integrated Accessibility Standard Regulation, Accessibility for Ontarians with Disabilities Act, 2005) and shall cause its proposed Subcontractors to acknowledge such responsibility and comply with the above requirements
4. The Bidder agrees, to the extent applicable, that any and all equipment used in connection with the Deliverables under the Contract is at all times properly and safely maintained by duly qualified personnel and is at all times in good working order.
5. The Bidder agrees, to the extent possible, to take every precaution reasonable in the circumstances for the protection of worker health and safety, as required by the OHSA and shall cause its proposed Subcontractors to do the same.
6. **Tax Compliance**

Bidders are advised that if they are selected for contract award, their Ontario tax obligations, if any, must be in good standing at the time of entering into an Agreement.

The Ontario Government expects all Bidders to meet their Ontario tax obligations on a timely basis.

I\We hereby undertake that (i) the Bidder, if selected for contract award, will be in full compliance with all applicable Ontario tax statutes, whether administered by the Ontario Ministry of Finance (MOF) or by the Canada Revenue Agency (CRA), at the time of entering into an Agreement and that, in particular, all returns required to be filed will have been filed and all taxes due and payable under those statutes will have been paid or satisfactory arrangements for their payment will have been made or maintained and (ii) the Bidder will take all necessary steps prior to entering into an Agreement in order to be in full compliance with all those statutes at the time of entering into the Agreement.

Select “Yes” if you agree

Select “No” if you do not agree (May result in your disqualification)

**Tax Compliance Verification Number**

A Bidder’s TCV number is required by the Ministry to confirm with the MOF that the Bidder’s Ontario tax obligations, if any, are in good standing. If the Bidder does not provide its TCV number with the Form of Offer, it will have to provide the TCV number prior to signing an Agreement, so the Ministry can confirm with the MOF the Bidder’s tax compliance status at the time of signing the Agreement.

By providing the TCV number you are consenting to the Ministry releasing the TCV number to the Ministry of Finance for tax compliance verification.

| Please enter your TCV number**:** | Click to insert TCV Number |
| --- | --- |

The Business Number is a business identifier for the Canadian Revenue Agency (“CRA”). It is a nine (9) digit number. It can be found as the first nine digits of your Harmonized Sales Tax (HST) number.

| Please enter the Bidder's Business Number.**:** | Click to insert business number |
| --- | --- |

1. **Execution of Agreement**

The Bidder understands and agrees that in the event that its Bid is selected by the Ministry, in whole or in part, the Bidder agrees to finalize and execute the Agreement in the form set out in the Form of Agreement (Appendix B), in accordance with the terms of this ITQ.

| Dated at |  | this |  | day of |  | 20 |  |
| --- | --- | --- | --- | --- | --- | --- | --- |

|  |  |  | |
| --- | --- | --- | --- |
| Signature of Authorized Signing Offer |  | Signature of Witness |
| Click here to enter name. |  | Click here to enter name. |
| Print Name |  | Name of Witness |
| Click here to enter title. |  |  |
| Print Title |  |  |

I, the individual indicated above, acknowledge and confirm that (a) I have authority to bind the Bidder, (b) I am submitting this Bid on behalf of the Bidder; (c) the Bidder has read, understood, agrees and consents to be bound by the terms, conditions and provisions of the ITQ, including the Form of Agreement, and (d) the Bidder offers to provide the Deliverables for the Rates set out in the Commercial Response in its Bid.

APPENDIX A.2 - MANDATORY ELIGIBILITY REQUIREMENTS FORM

**Not Required**

APPENDIX A.3 - REFERENCE FORM

**Bidder Instructions:**

Each Bidder is requested to provide three (3) references from clients who have obtained similar services in the last five (5) as those requested in this ITQ. The Ministry reserves the right to consider the provision of references to be a minor formality and to waive or vary that requirement at its sole discretion.

| **Reference #1** | |
| --- | --- |
| **Company Name:** | **(Click to insert Company Name)** |
| **Company Address:** | **(Click to insert Company Address)** |
| **Contact Name:** | **(Click to insert Contact Name)** |
| **Contact Telephone Number:** | **(Click to insert Contact Telephone Number)** |
| **Contact Email:** | **(Click to insert Contact Email)** |
| **Date Work Undertaken:** | **(Click to insert Date Work Undertaken)** |
| **Nature of Assignment:** | **(Click to insert Nature of Assignment)** |

| **Reference #2** | |
| --- | --- |
| **Company Name:** | **(Click to insert Company Name)** |
| **Company Address:** | **(Click to insert Company Address)** |
| **Contact Name:** | **(Click to insert Contact Name)** |
| **Contact Telephone Number:** | **(Click to insert Contact Telephone Number)** |
| **Contact Email:** | **(Click to insert Contact Email)** |
| **Date Work Undertaken:** | **(Click to insert Date Work Undertaken)** |
| **Nature of Assignment:** | **(Click to insert Nature of Assignment)** |

| **Reference #3** | |
| --- | --- |
| **Company Name:** | **(Click to insert Company Name)** |
| **Company Address:** | **(Click to insert Company Address)** |
| **Contact Name:** | **(Click to insert Contact Name)** |
| **Contact Telephone Number:** | **(Click to insert Contact Telephone Number)** |
| **Contact Email:** | **(Click to insert Contact Email)** |
| **Date Work Undertaken:** | **(Click to insert Date Work Undertaken)** |
| **Nature of Assignment:** | **(Click to insert Nature of Assignment)** |

APPENDIX A.4 - RATED REQUIREMENTS FORM

| **Scoring Criteria** | **Total Points** | **Indicators to Consider**  (project specific references) |
| --- | --- | --- |
| 1. PROPOSAL QUALITY | **15** | 1. Profile of project team is included (1 point) 2. Demonstrated overall understanding of the research project questions and deliverables (10 point) 3. Clear work plan and timelines in chart or table form (3 points) 4. Organization and completeness of proposal (1 point) |
| 1. KNOWLEDGE   Current knowledge of understanding of special education content. | **15** | 1. Current knowledge of the Canadian and international research literature and jurisdictional experiences in special education delivery in remote settings (10 points) 2. Understanding of special education in Ontario (5 points) |
| EXPERIENCE | **20** | 1. Experience in and expertise with conducting research in the area of special education (10 points) 2. Experience in producing user-friendly knowledge mobilization resources (5 points) 3. Experience in conducting research and developing resources in French (5) |
| METHOD | **20** | 1. Evidence of the research/evaluation design (2) 2. Explanation of how the research questions will achieve the objectives as set out in the RFS and a rationale why this is the best method (5) 3. Clear demonstration of experience in terms of conducting the research/evaluation method described (3) 4. Description of the data collection plan for qualitative and/or quantitative approaches as proposed including sources of information, sampling and instrumentation (4) 5. Description of the approach to data/evidence analysis (4) 6. Explanation of how the research/evaluation design will address issues related to ethics, privacy and/or confidentiality (2) |
| COMMUNICATION, WORK PLAN & TIMELINES | **5** | 1. Tasks, ministry milestones, and deliverables outlined in the ITQ, dates and number of days to complete the project (1) 2. Team members and their roles in the project (1) 3. Relevant or appropriate experience of team members assigned to the project (1) 4. Number of days staff is assigned to the project (1) 5. Regular updates to the ministry to facilitate quality control (1) |
| PRIVACY & ACCESSIBILITY:  Freedom of Information and Protection of Privacy Act;  Personal Information Protection and Electronic Documents Act;  Accessibility for Ontarians with Disabilities Act. | **5** | Knowledge of:   1. privacy protection principles, regulations and legislation, including FIPPA and PIPEDA; (3) 2. accessibility standards under the AODA (2005) and a description of the vendor’s capacity to accommodate persons with disabilities. (2) |

A.5 - PRICING FORM

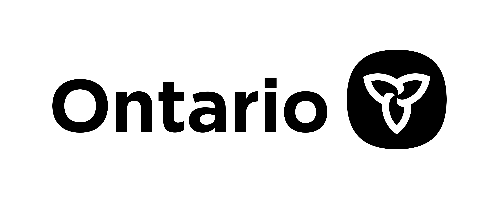
|  |  |  |
| --- | --- | --- |
| **Line** | **Deliverable** | **Cost** |
| 1 | Task 1 – Developing a section of the Guide covering experiences of other jurisdictions | $ |
| 2 | Task 2 – Collecting evidence from school boards | $ |
| 3 | Task 3 – Consultations with stakeholders | $ |
| 4 | Task 4 – Finalization of the Guide | $ |
| **5** | **Subtotal of lines 1 to 4 (For Evaluation Purposes)** | **$** |
| **6** | **HST** | **$** |
| **7** | **Total Cost** | **$** |

**Bidder Instructions:**

1. Pricing shall be provided in Canadian Funds, inclusive of all applicable duties and taxes.
2. For Non-Canadian Bidders contact Canada Revenue Agency at 1-866-453-0452 in regards to applicable Canadian taxes (such as the Ontario Harmonized Sales Tax) and potential withholding tax or at the following website: Canada Revenue Agency (http://www.cra-arc.gc.ca/cntct/gsthstnnrs/menu-eng.html).
3. Pricing quoted by the Bidder shall be all inclusive and shall include all labour and materials, travel and carriage costs, insurance costs and all other overhead including but not limited to any fees or other charges required by law.
4. A Bid that includes conditional, optional, contingent or variable rates that are not expressly requested in the Pricing Form may be disqualified.
5. Bidders may not amend this form in any way other than by providing the requested information.
6. No other fees of charges will be paid for the Deliverables other than those set out in the form.
7. Where no price applies, state “0” or “Nil”. If a space is left blank the Ministry may either deem it to be a zero or may declare the Bid non-compliant and disqualify it at its discretion.
8. Bidders should note that for evaluation purposes only a value of $0.01 will be used in the relative pricing formula in the event that a Bidder has $0 for a particular category in the Pricing Form.

APPENDIX B - FORM OF AGREEMENT

Fields highlighted in green will be completed by the buyer once the successful bidder has been selected.



**Agreement**

Between

Her Majesty the Queen in right of Ontario

as represented by the Minister of Education

and

[insert Legal Name of Vendor]

for the creation of a Guide to Remote Learning for Students with Special Education Needs

Effective Date: [insert start date for the Term]

Agreement No.: 115

**Agreement Index**

**Article 1 - Interpretation and General Provisions**

* 1. Defined Terms
  2. No Indemnities from Ministry
  3. Entire Agreement
  4. Severability
  5. Interpretive Value of Contract Documents
  6. Interpretive Value of Headings
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* 1. Vendor’s Power to Contract
  2. Representatives May Bind Parties
  3. Vendor Not a Partner, Agent or Employee
  4. Responsibility of Vendor
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  6. Duty to Disclose Change of Control
  7. Conflict of Interest
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**Article 3 – Performance by Vendor**

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  2. Default Billing and Payment Process
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**Article 6 - Intellectual Property**

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  2. Newly Created Intellectual Property
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**Article 7 - Indemnity and Insurance**

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**Article 9 - Occupational Health and Safety Requirements**

9.01 Compliance with the Occupational Health and Safety Act

**Article 10 - Publication of Data and Consent**

10.01 Publication of Data and Consent

**Schedule 1 (Mandatory Business and Technical Requirements, Description of Deliverables, Rates and Supplementary Provisions)**

**Agreement**

**This Agreement** (the “**Agreement**”), made in triplicate, for the creation of a Guide to Remote Learning for Students with Special Education Needs is effective as of **[insert start date for the Term]** ("**Effective Date**"),

Between:

**Her Majesty the Queen** in right of Ontario

as represented by the Minister of Education

(referred to as the “**Ministry**”)

And:

**[insert Legal Name of Vendor]**

(referred to as the “**Vendor**”)

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

**Article 1 – Interpretation and General Provisions**

1. **Defined Terms**

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

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

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

"**Business Day**" means any working day, Monday to Friday inclusive, but excluding statutory and other holidays, namely: New Year's Day; Family Day; Good Friday; Easter Monday; Victoria Day; Canada Day; 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;

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

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

1. in relation to the ITQ process, the Bidder has an unfair advantage or engages in conduct, directly or indirectly, that may give it an unfair advantage, including but not limited to (i) having or having access to information in the preparation of its Bid that is confidential to the Crown and not available to other Bidders; (ii) communicating with any person with a view to influencing preferred treatment in the ITQ process including the giving of a benefit of any kind, by or on behalf of the Bidder to anyone employed by, or otherwise connected with, the Ministry; or (iii) engaging in conduct that compromises or could be seen to compromise the integrity of the open and competitive ITQ process and render that process non-competitive and unfair; or
2. in relation to the performance of its contractual obligations in a Crown contract, the Vendor’s other commitments, relationships or financial interests (i) could or could be seen to exercise an improper influence over the objective, unbiased and impartial exercise of its independent judgement; or (ii) could or could be seen to compromise, impair or be incompatible with the effective performance of its contractual obligations.

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

“**Deliverables**" and "**Deliverable**” 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 Vendor or the Vendor’s Personnel, as further defined, but not limited by Schedule 1, including but not limited to any services or any and all Intellectual Property and any and all concepts, techniques, ideas, information, documentation and other materials, however recorded, developed or provided;

**"Direct Deposit"** means the electronic transfer of funds by the Client to the financial institution identified by the Vendor, in accordance with the Direct Deposit Protocols;

**"Direct Deposit Protocols"** means the protocols set out at [Doing Business with Ontario], which may be amended from time to time as required by Ontario;

“**Expiry Date**” means **[insert date];**

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

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

"**Indemnified Parties**" means each of the following and their directors, officers, advisors, agents, appointees and employees: Ontario and the members of the Executive Council of Ontario;

“**Industry Standards**” include, but are not limited to (a) the provision of any and all labour, supplies, equipment and other services that are necessary and can reasonably be understood or inferred to be included within the scope of the Contract or customarily furnished by Persons providing Deliverables of the type provided hereunder in similar situations in Ontario and; (b) adherence to commonly accepted norms of ethical business practices, which shall include the Vendor 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 any intellectual, industrial or other proprietary right of any type in any form protected or protectable under the laws of Canada, any foreign country, or any political subdivision of any country, including, without limitation, any intellectual, industrial or proprietary rights protected or protectable by legislation, by common law or at equity;

“**ITQ**” means the Invitation to Quote dated September 10, 2020 for the creation of a Guide to Remote Learning for Students with Special Education Needs, reference number 115 issued by the Ministry for the Deliverables and any addenda to it;

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

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

**Special Education / Success for All Branch**

**315 Front Street W, Toronto, ON, M7A 0B8**

Ministry Representative: **[Insert]**

Telephone: **[Insert]**

E-mail: **[Insert]**

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

"**Ontario**" means Her Majesty the Queen in right of Ontario;

"**Ontario Public Service**" and "**OPS**" means the ministries and other administrative units of Ontario over which the ministers of Ontario preside and includes agencies, boards and commissions.

“**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 Vendor in connection with the Agreement. For 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 Vendor 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 or otherwise at law; but

(b) not include information that: (i) is or becomes generally available to the public without fault or breach on the part of the Vendor of any duty of confidentiality owed by the Vendor to the OPS or to any third-party; (ii) the Vendor can demonstrate to have been rightfully obtained by the Vendor, without any obligation of confidence, from a third-party who had the right to transfer or disclose it to the Vendor free of any obligation of confidence; (iii) the Vendor can demonstrate to have been rightfully known to or in the possession of the Vendor at the time of disclosure, free of any obligation of confidence when disclosed; or (iv) is independently developed by the Vendor; 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 individuals, firms, partnerships or corporations or any combination thereof;

“**Personal Information**” means recorded information about an identifiable individual or that may identify an individual;

**"Preferred Bidder"** means the Bidder (or Bidders in the case of a multiple vendor opportunity) who has the highest cumulative score at the conclusion of the evaluation process set out in Part 4.

**“Vendor”** means the entity that is selected to provide the Deliverables.

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

"**Purchasing Card**" means the corporate charge card(s) used by the Ministry, as may be changed from time to time;

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

“**Rates**” and "**Rate**" 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 Vendor for the provision of the Deliverables, including but not limited to: (a) all applicable duties and taxes; (b) all labour and material costs; (c) all travel and carriage costs; (d) all permit, licence and approval costs (e) all insurance costs; and (f) all other overhead including any fees or other charges required by law;

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

“**Requirements of Law**” mean all applicable requirements, laws, statutes, codes, acts, ordinances, approvals, 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;

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

“**Vendor Address**” and “**Vendor Representative**” mean:

**[Insert address]**

Vendor Representative: **[Insert]**

Telephone: **[Insert]**

E-mail: **[Insert]**

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

"**Vendor's Personnel**" includes the directors, officers, employees, agents, partners, affiliates volunteers or Subcontractors of the Vendor;

“**Term**” means the period of time from the Effective Date up to and including the earlier of: (i) the Expiry Date or (ii) the date of termination of the Contract in accordance with its terms;

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

1. **No Indemnities from Ministry**

Notwithstanding anything else in the Contract, any express or implied reference in any document (including subcontracts) related to the Deliverables under the Contract, 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, shall be void and of no legal effect.

1. **Entire Agreement**

The Contract embodies the entire Agreement between the parties with regard to the provision of Deliverables and supersedes any prior understanding or Agreement, collateral, oral or otherwise with respect to the provision of the Deliverables, existing between the parties at the date of execution of the Agreement.

1. **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. **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 ITQ and the Bid; and (c) the ITQ shall govern over the Bid.

1. **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. **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 Deliverables. If a party seeks to excuse itself from its obligations under the 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. **Notices by Prescribed Means**

All required notices must be in writing and must be delivered by postage-prepaid envelope, personal delivery, email or facsimile and shall be addressed to, respectively, the Ministry Address to the attention of the Ministry Representative and to the Vendor Address to the attention of the Vendor Representative. Notices will be considered 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, email 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, email 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 section.

1. **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.

1. **Currency**

All references to currency in the Agreement shall be to Canadian dollars.

**Article 2 – Nature of Relationship Between Ministry and Vendor**

1. **Vendor’s Power to Contract**

The Vendor 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 the Contract.

1. **Representatives May Bind Parties**

The parties represent that their respective representatives have the authority to legally bind them to the extent permissible by the Requirements of Law.

1. **Vendor Not a Partner, Agent or Employee**

The Vendor 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 Vendor 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 Vendor (or any of the Vendor's Personnel) or constitute an appointment under the *Public Service of Ontario Act, 2006, S.O. 2006, c. 35*, Schedule A, as amended.

1. **Responsibility of Vendor**

The Vendor agrees that it is liable for its acts and those of the Vendor's Personnel. This section is in addition to any and all of the Vendor’s liabilities under the Contract and under the general application of law. The Vendor shall advise these individuals and entities of their obligations under the Contract and shall ensure their compliance with the applicable terms of the Contract. This section shall survive the termination or expiry of the Contract.

1. **No Subcontracting or Assignment**

The Vendor 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 Vendor’s use of a Subcontractor, every contract entered into by the Vendor with a Subcontractor shall adopt all of the terms and conditions of the 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 the Vendor's Personnel and the Ministry.

1. **Duty to Disclose Change of Control**

In the event that the Vendor undergoes a change in control the Vendor 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.

1. **Conflict of Interest**

The Vendor shall: (a) avoid any Conflict of Interest in the performance of its contractual obligations; (b) disclose to the Ministry 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 immediately terminate the Contract upon giving notice to the Vendor where: (a) the Vendor fails to disclose an actual or potential Conflict of Interest; (b) the Vendor fails to comply with any requirements prescribed by the Ministry to resolve a Conflict of Interest; or (c) the Vendor’s Conflict of Interest cannot be resolved. This section shall survive any termination or expiry of the Contract.

1. **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 Vendor**

* 1. **Commencement of Performance**

The Vendor shall commence performance upon receipt of written instructions from the Ministry.

* 1. **Performance Warranty**

The Vendor 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) Industry Standards; and (c) Requirements of Law. If any of the Deliverables, in the opinion of the Ministry, are inadequately provided or require corrections, the Vendor shall forthwith make the necessary corrections at its own expense as specified by the Ministry in a rectification notice issued pursuant to Section 8.02.

* 1. **Use and Access Restrictions**

The Vendor acknowledges that unless it obtains specific written preauthorization 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 Vendor further acknowledges that the Ministry may monitor the Vendor to ensure compliance with this section. This section is in addition to and shall not limit any other obligation or restriction placed upon the Vendor.

* 1. **Notification by Vendor to Ministry**

During the Term, the Vendor 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.

* 1. **Condonation Not a Waiver**

Occurrences where the Ministry has previously forgiven or condoned the Vendor’s failure to perform any of the terms or conditions of the Contract does not mean that the Ministry has waived its right to require the Vendor to perform the terms and conditions of the Contract, and the obligations of the Vendor with respect to such performance will continue in full force and effect.

* 1. 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.

* 1. **Vendor 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 Vendor 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 Vendor 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.

* 1. **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:

1. include pricing for the particular type of Deliverables contemplated in the change request, the Vendor shall not unreasonably refuse to provide those Deliverables at prices consistent with those Rates; or
2. are silent to the applicable price for the particular Deliverable contemplated in the change request, the price shall be negotiated between the Ministry and the Vendor 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.

* 1. **Non-Exclusive Contract, Work Volumes**

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

* 1. **Performance by Specified Individuals Only**

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

* 1. **Security Clearance**

The Vendor shall, upon request from the Ministry, require those Persons providing Deliverables under the Agreement to submit to security checks and the Vendor may be required to obtain and pay for security clearance. Where such security checks are required the Ministry will provide information on how the Vendor can obtain them.

The Vendor shall provide to the Ministry, upon request, the names, addresses, dates of birth and consents of its Persons for whom security checks are required. The Vendor shall designate a chief security officer as the contact for this purpose. Any Person who is unable to obtain security clearance, or who refuses to consent to such security checks, shall not be permitted to perform Deliverables under the Agreement.

Security clearance may be suspended or revoked if any Person fails to maintain security clearance or security standards required pursuant to the Agreement. The Vendor shall notify the Ministry of any personnel changes, behaviours, or circumstances for which security clearance may require reconsideration.

Security clearance is not awarded in perpetuity. The Ministry may perform, or re-perform, security checks against any Person providing Deliverables under the Agreement at any time, and will notify the Vendor of this requirement.

The Vendor shall be considered in default of the Agreement if it fails to comply with the requirements of this section or if any security clearance results received by the Ministry are found, in the sole discretion of the Ministry, to be incompatible with the proper and impartial provision of the Deliverables in accordance with the terms and conditions of the Agreement.

* 1. **Accessibility Requirements**

The Vendor's delivery of the Deliverables shall comply with all applicable requirements, specifications and standards for accessibility established in accordance with the Ontario Human Rights Code (HRC) R.S.O. 1990, CHAPTER H.19, the *Ontarians with Disabilities Act*, S.O. 2001, CHAPTER 32, and the *Accessibility for Ontarians with Disabilities Act*, 2005, S.O. 2005, c. 11 (Integrated Accessibility Standards), any regulations made thereto and any direction from the Ministry. The Vendor must meet the Government of Ontario’s requirements on the Government of Ontario’s schedule under the Integrated Accessibility Standards Regulation as directed by the Ministry.

* 1. **Ministry Rights and Remedies & Vendor Obligations Not Limited to Contract**

The express rights and remedies of the Ministry and obligations of the Vendor 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 Vendor at law or in equity.

**Article 4 – Payment for Performance and Audit**

* 1. **Payment According to Contract Rates**

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

* 1. **Default Billing and Payment Process**

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

1. the Vendor shall provide the Ministry and Client 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 the Deliverables provided for the relevant month; and (iii) taxes, if payable by the Ministry, identified as separate items; A copy of all relevant Instructions to Vendor will be attached to each monthly billing statement;
2. the Ministry or Client shall approve or reject the billing statement within fifteen (15) Business Days of receipt of the statement and in the event that the Ministry or Client rejects the billing statement, it shall so advise the Vendor promptly in writing and the Vendor shall provide additional information as required by the Ministry to substantiate the billing statement;
3. each billing statement is subject to the approval of the Ministry or Client before any payment is released and payment shall be made within thirty (30) Business Days of such approval; and
4. it is acknowledged and agreed that either the Client or Ministry may require that the Vendor include additional information in the billing statement, upon notice to the Vendor; and
5. the Ministry or Client may, in its discretion, make payments under the Contract by way of the following methods:
   1. Direct Deposit and the Vendor shall accept and process any such payments in accordance with the Direct Deposit Protocols; or,
   2. Procurement Card and the Vendor shall accept and process any such payments in accordance with Procurement Card Protocols.

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

* 1. **Hold Back or Set Off**

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

* 1. **No Expenses or Additional Charges**

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

* 1. **Payment and Collection of Taxes and Duties**

The Vendor shall pay or charge and remit, as required, all applicable taxes, including excise taxes incurred by or on the Vendor's behalf with respect to the Contract.

* 1. **Withholding Tax**

The Ministry or Client shall withhold any applicable withholding tax from amounts due and owing to the Vendor under the Agreement and shall remit it to the appropriate government in accordance with applicable tax laws. This section shall survive any termination or expiry of the Contract.

* 1. **Interest on Late Payment**

If a payment is in arrears through no fault of the Vendor, the interest charged by the Vendor, if any, for any late payment is subject to required approvals under the *Financial Administration Act*, R.S.O. 1990, c. F-12 and shall not exceed the pre-judgment interest rate established under Section 127(2) of the *Courts of Justice Act*, R.S.O. 1990, c. C43, in effect on the date that the payment went into arrears.

* 1. **Document Retention and Audit**

For seven (7) years after the Expiry Date or any date of termination of the Contract, the Vendor 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 Vendor shall permit and assist the Ministry in conducting audits of the operations of the Vendor to verify (a) and (b) above. The Ministry shall provide the Vendor with at least ten (10) Business Days prior notice of its requirement for such audit. The Vendor’s obligations under this section shall survive any termination or expiry of the Contract.

**Article 5 – Confidentiality and FIPPA**

* 1. **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 Vendor in any such publicity or publication. The Vendor shall not make use of its association with the Ministry without the prior written consent of the Ministry. Without limiting the generality of this section, the Vendor 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.

* 1. **OPS Confidential Information**

During and following the Term, the Vendor shall: (a) keep all OPS Confidential Information confidential and secure; (b) limit the disclosure of OPS Confidential Information to only those of the Vendor’s Personnel who have a need to know it for the purpose of providing the Deliverables and who have been specifically authorized to have such disclosure; (c) not directly or indirectly disclose, destroy, exploit or use any 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 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 end of the Term, with no copy or portion kept by the Vendor.

* 1. **Restrictions on Copying**

The Vendor 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 Vendor, the Vendor must reproduce all notices which appear on the original.

* 1. **Injunctive and Other Relief**

The Vendor 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 Vendor 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.

* 1. **Notice and Protective Order**

If the Vendor or any of the Vendor’s Personnel become legally compelled to disclose any OPS Confidential Information, the Vendor 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 Vendor will disclose only that portion of OPS Confidential Information which the Vendor is legally compelled to disclose, only to such Person or Persons to which the Vendor is legally compelled to disclose, and the Vendor 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.

* 1. **FIPPA Records and Compliance**

The Vendor 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 Vendor agrees:

1. to keep Records secure;
2. 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;
3. 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;
4. not to directly or indirectly use, collect, disclose or destroy any Personal Information for any purposes that are not authorized by the Ministry;
5. 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;
6. to restrict access to Personal Information to those of the Vendor’s Personnel who have a need to know it for the purpose of providing the Deliverables and who have been specifically authorized by the Ministry Representative to have such access for the purpose of providing the Deliverables;
7. to implement other specific security measures that in the reasonable opinion of the Ministry would improve the adequacy and effectiveness of the Vendor's measures to ensure the security and integrity of Personal Information and Records generally; and
8. 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 section shall prevail over any inconsistent provisions in the Contract.

* 1. **Survival**

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

**Article 6 – Intellectual Property**

* 1. **Ministry Intellectual Property**

The Vendor agrees that all Ministry 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 Vendor shall remain the sole property of Her Majesty the Queen in right of Ontario at all times.

* 1. **Newly Created Intellectual Property**

The Ministry shall be the sole owner of any Newly Created Intellectual Property. The Vendor 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 and irrevocably waives in favour of the Ministry all rights of integrity and other moral rights to all Newly Created Intellectual Property in the Deliverables, immediately following the creation thereof, for all time.

* 1. **Vendor Intellectual Property**

Subject to Section 6.04, the Ministry 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 Vendor to the Ministry that is not: (i) Ministry Intellectual Property; (ii) Newly Created Intellectual Property or, (iii) Third Party Intellectual Property shall remain the sole property of the Vendor at all times.

* 1. **Presumption Governing Intellectual Property Ownership**

If the Vendor’s Intellectual Property or Third Party Intellectual Property forms any part of the Deliverables, the Vendor shall notify the Ministry of such prior to the delivery of the particular Deliverable containing any such Vendor Intellectual Property or Third Party Intellectual Property. In the absence of any such notice, the presumption governing the Contract shall be that the Ministry is the sole owner of any Intellectual Property in any form contained in any of the Deliverables.

* 1. **Vendor’s Grant of Licence**

To the extent that the Deliverables contain, in whole in part, Vendor Intellectual Property or Third Party Intellectual Property, the Vendor 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, modify, reproduce and distribute, in any form, those Deliverables; and (b) to authorize other Persons, including agents, contractors or sub-contractors, to do any of the former on behalf of the Ministry or a Client, the total consideration for which shall be payment of the Rates to the Vendor by the Ministry.

* 1. **No Restrictive Material in Deliverables**

The Vendor shall not incorporate into any Deliverables anything that would restrict the right of the Ministry or of 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 Vendor for the modification, further development of or other use of the Deliverables.

* 1. **Vendor Representation and Warranty Regarding Third-Party Intellectual Property**

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

* 1. **Assurances Regarding Moral Rights**

At the request of the Ministry, at any time or from time to time, the Vendor shall execute and agrees to cause the Vendor’s Personnel to execute an irrevocable written waiver of any moral rights or other rights of integrity in the applicable Deliverable(s) in favour of the Ministry, such waiver to be in a form acceptable to the Ministry, and which waiver may be invoked without restriction by any person authorized by the Ministry to use the Deliverables. The Vendor shall deliver such written waiver(s) to the Ministry within ten (10) Business Days of the receipt of the request from the Ministry.

* 1. **Copyright Notice**

The Vendor shall place a copyright notice on all recorded Deliverables it provides to the Ministry under the Contract in the following form: “© Queen’s Printer for Ontario, [insert year of publication].”

* 1. **Further Assurances Regarding Copyright**

At the request of the Ministry, at any time or from time to time, the Vendor shall execute and agrees to cause the Vendor’s Personnel to execute a written assignment of copyright in the applicable Deliverable(s) to the Ministry in a form acceptable to the Ministry. The Vendor shall deliver such written assignment(s) to the Ministry within ten (10) Business Days of the receipt of the request from the Ministry. The Vendor shall assist the Ministry in preparing any Canadian copyright registration that the Ministry considers appropriate. The Vendor will obtain or execute any other document reasonably required by the Ministry to protect the Intellectual Property of the Ministry.

* 1. **No Use of Ontario Government Insignia**

The Vendor 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 to do so.

* 1. **Ministry May Prescribe Further Compliance**

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

* 1. **Survival**

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

**Article 7 – Indemnity and Insurance**

* 1. **Vendor Indemnity**

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

* 1. **Vendor’s Insurance**

The Vendor hereby agrees to put in effect and maintain insurance for the Term, at its own cost and expense, with insurers having a secure A.M. Best rating of B + or greater, or the equivalent, all the necessary and appropriate insurance that a prudent person in the business of the Vendor would maintain including, but not limited to, the following:

1. commercial general liability insurance on an occurrence basis for third party bodilyinjury, 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:
2. the Indemnified Parties as additional insureds with respect to liability arising in the course of performance of the Vendor’s obligations under, or otherwise in connection with, the Contract;
3. contractual liability coverage;
4. cross-liability clause;
5. employers liability coverage (or compliance with the section below entitled “Proof of W.S.I.A. Coverage” is required);
6. 30 day written notice of cancellation, termination or material change;
7. tenants legal liability coverage (if applicable and with applicable sub-limits); and,
8. non-owned automobile coverage with blanket contractual coverage for hired automobiles; and,
9. errors & omissions liability insurance, insuring liability for errors and omissions in the performance or failure to perform the Deliverables contemplated in the Contract, in the amount of not less than two million dollars ($2,000,000) per claim and in the annual aggregate.
   1. **Proof of Insurance**

The Vendor shall provide the Ministry with certificates of insurance, or other proof as may be requested by the Ministry, that confirms the insurance coverage as provided for in Section 7.02, 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 Vendor shall ensure that each of its Subcontractors obtains all the necessary and appropriate insurance that a prudent person in the business of the Subcontractor would maintain and that the Indemnified Parties are named as additional insureds with respect to any liability arising in the course of performance of the Subcontractor's obligations under the subcontract for the provision of the Deliverables.

* 1. **Proof of W.S.I.A. Coverage**

If the Vendor is subject to the *Workplace Safety and Insurance Act, 1997,* S.O. 1997, c. 16, Schedule A (“WSIA”), it shall submit a valid clearance certificate of WSIA coverage to the Ministry prior to the execution of the Agreement by the Ministry. In addition, the Vendor shall, from time to time at the request of the Ministry, provide additional WSIA clearance certificates. The Vendor covenants and agrees to pay when due, and to ensure that each of its Subcontractors pays when due, all amounts required to be paid by it/its Subcontractors, from time to time during the Term, under the WSIA, 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 Vendor or its Subcontractors and to deduct such amount from any amount due and owing from time to time to the Vendor pursuant to the Contract together with all costs incurred by the Ministry in connection therewith.

* 1. **Vendor Participation in Proceedings**

The Vendor shall, at its expense, to the extent requested by the Ministry, participate in or conduct the defence of any Proceeding against any Indemnified Parties referred to in this Article and any negotiations for their settlement. The Ministry may elect to participate in or conduct the defence of any such Proceeding by notifying the Vendor in writing of such election without prejudice to any other rights or remedies of the Ministry under the Contract, Agreement, at law or in equity. Each party participating in the defence shall do so by actively participating with the other’s counsel. The Vendor shall not enter into any settlement unless it has obtained the prior written approval of the Ministry. If the Vendor is requested by the Ministry to participate in or conduct the defence of any such Proceeding, the Ministry agrees to co-operate with and assist the Vendor to the fullest extent possible in the Proceedings and any related settlement negotiations. If the Ministry conducts the defence of any such Proceedings, the Vendor agrees to co-operate with and assist the Ministry to the fullest extent possible in the Proceedings and any related settlement negotiations. This section shall survive any termination or expiry of the Contract.

**Article 8 – Termination, Expiry and Extension**

* 1. **Immediate Termination of Contract**

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

1. the Vendor is adjudged bankrupt, makes a general assignment for the benefit of its creditors or a receiver is appointed on account of the Vendor’s insolvency;
2. the Vendor breaches any provision in Article 5 (Confidentiality and FIPPA) of the Agreement;
3. the Vendor breaches the Conflict of Interest paragraph in Article 2 (Nature of Relationship Between Ministry and Vendor) of the Agreement;
4. the Vendor, prior to or after executing the Agreement, makes a material misrepresentation or omission or provides materially inaccurate information to the Ministry;
5. the Vendor undergoes a change in control which adversely affects the Vendor’s ability to satisfy some or all of its obligations under the Contract;
6. the Vendor 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
7. the Vendor’s acts or omissions constitute a substantial failure of performance;

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.

* 1. **Dispute Resolution by Rectification Notice**

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

* 1. **Termination on Notice**

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

* 1. **Termination for Non-Appropriation**

If the Contract extends into a Fiscal Year subsequent to its execution, continuation of the Contract is conditional upon an appropriation of moneys by the Legislature of Ontario (the "Legislature") sufficient to satisfy payments due under the Contract. In the event that such moneys are not available as a result of: (i) non-appropriation by the Legislature for the Fiscal Year in which payment becomes due; and (ii) the payment being neither charged nor chargeable to an appropriation of the Legislature for a previous Fiscal Year, the Ministry may terminate the Contract upon giving notice to the Vendor. Termination shall become effective on the date of the beginning of the first Fiscal Year for which funds have not been appropriated.

* 1. **Vendor’s Obligations on Termination**

On termination of the Contract, the Vendor shall, in addition to its other obligations under the Contract and at law:

1. at the request of the Ministry, provide the Ministry with any completed or partially completed Deliverables;
2. provide the Ministry with a report detailing: (i) the current state of the provision of Deliverables by the Vendor 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;
3. execute such documentation as may be required by the Ministry to give effect to the termination of the Contract; and
4. 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.

This section shall survive any termination of the Contract.

* 1. **Vendor’s Payment Upon Termination**

On termination of the Contract, 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 Vendor 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 Vendor fails to comply with its obligations on termination.

* 1. **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.

* 1. **Expiry and Extension of Contract**

The Contract shall expire on the original Expiry Date, unless the Ministry exercises its option to extend the Contract for a period of up to one additional year, such extension to be upon the same terms (including the Rates in effect at the time of extension), conditions and covenants contained in the Contract, excepting the option to renew. The option shall be exercisable by the Ministry giving notice to the Vendor not less than thirty (30) days prior to the original Expiry Date. The notice shall set forth the precise duration of the extension.

**Article 9 – Occupational Health and Safety Requirements**

**9.01 Compliance with the Occupational Health and Safety Act**

The Vendor must ensure that any subcontractor hired by the Vendor works in accordance with the Occupational Health and Safety Act R.S.O. 1990, CHAPTER O.1 (OHSA) and its regulations and any applicable Ontario Public Service (OPS) and site-specific health and safety requirements. The Vendor acknowledges that it is the Employer of the subcontractor. The Vendor shall include in any of its agreements with its subcontractors, the ability to terminate the subcontractor for non-compliance with OHSA or its regulations, with the rules and policies of the Vendor or for failing to protect the safety of its workers.

The Ministry may stop the work where the Vendor fails to comply with OHSA or its regulations and an immediate danger to worker health and safety is observed. Failure or refusal by the Vendor to correct the observed violation, or willful or repeated non-compliance may, subject to Article 8 – Termination, Expiry and Extension, result in termination of the Contract.

**Article 10 – Open Data**

* 1. **Publication of Data**

It is Ontario’s intention, in accordance with the [Open Data Directive](https://www.ontario.ca/page/ontarios-open-data-directive) and as part of its commitment to open data, to publish and allow the public to use:

1. procurement contract data, including the name of the Vendor and total contract value; and,
2. data created or collected as an output of a contract,

except where Ontario chooses not to publish the data in accordance with the Open Data Directive, such as for privacy, confidentiality, security, legal or commercially-sensitive reasons.

**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 Ontarioas represented by the Minister of Education

Signature:

Name:

Title:

Date of Signature:

Pursuant to delegated authority

**[Insert legal name of Vendor]**

Signature:

Name:

Title:

Date of Signature:

I have authority to bind the Vendor.

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

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

**A. Mandatory Business and Technical Requirements**

**A.1 Objectives**

**A.2 Background and History**

**A.3 Deliverables**

**A.3.1 Quality Standards**

**A.3.2 Performance Measures**

**A.3.3 Service Levels**

**A.3.4 Operating Expectations**

**A.3.5 Required Schedule with Milestones**

**A.3.6 Reporting Requirements**

**A.3.7 Occupational Health and Safety Requirements**

**B. Rates and Reimbursements**

**B.1 Maximum Fee**

Notwithstanding anything else in the Contract, the total amount payable by the Ministry to the Vendor under the Contract shall not exceed a maximum amount of up to [insert maximum contract amount and applicable taxes] $xxx.xx, plus $xxx.xx in applicable taxes (HST).

The total amount payable by the Ministry to the Vendor includes all disbursements (including travel, meal and accommodation expenses) and applicable taxes.

**B.2 Rates**

The Rates for the Deliverables are set out below and shall remain fixed during the Term of the Contract (including the [insert extension option term or terms] extension option):

**B.3 Personnel**

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