



The Chair of Management Board of Cabinet

Request for Tenders

For

Microsoft Exchange Server, Microsoft Outlook Client and

Microsoft Exchange Client Access License Software

Request for Tenders No.: MBS-MS-EXC-001

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Part 1 - INTRODUCTION

1.1 Invitation to Bidders

In January 2003, the Government of Ontario, Management Board of Cabinet, declared that Microsoft Exchange, and future releases (subject to an internal review), be the standard email, calendaring and scheduling system for the Ontario Public Service (OPS). This Request for Tenders ("RFT") is an invitation to prospective bidders to submit tenders for the provision of Microsoft Exchange Server, Microsoft Outlook Client and Microsoft Exchange Client Access License software, as further described in Part 2 - The Deliverables ("the Deliverables"). This RFT is issued by Her Majesty the Queen in right of Ontario as represented by the Chair of Management Board of Cabinet ("the Ministry"). The successful proponent will be required to provide the Deliverables to the following I&T Clusters only:

Human Services Cluster

- Ministry of Community, Family and Children's Services
- Ministry of Health and Long-Term Care

Community Services Cluster

- Ministry of Education
- Ministry of Training, Colleges and Universities
- Ministry of Tourism, Culture and Recreation
- Ministry of Citizenship
- Ministry of Municipal Affairs and Housing

Central Agencies Cluster

- Management Board Secretariat
- Ministry of Finance

Land Resources Cluster

- Ministry of Environment and Energy
- Ministry of Natural Resources
- Ministry of Agriculture Food and Rural Affairs
- Ministry of Northern Development and Mines

1.2 Type of Contract for Deliverables

The selected bidder will be required to enter into a Master Agreement with the Ministry and Agreements with the above mentioned Ministries for the provision of the Deliverables in the form attached as Appendix A of this RFT. The term of the Master Agreement and Agreements will commence upon their execution and will be co-terminus with the expiration of the agreement that established and governs the software licensing arrangements between MBS and Microsoft (Microsoft Select Agreement # 75S75650) or the term of any extensions to that agreement.

1.3 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 successful 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 RFT or may obtain the same or similar Deliverables internally.

1.4 Definitions

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

“Confidential Information”, for the purpose of this RFT, and the Form of Offer, means confidential information of the Crown (other than confidential information which is disclosed to bidders in the normal course of the RFT) where the confidential information is relevant to the Deliverables required by the RFT, their pricing or the RFT evaluation process; and,

“Conflict of Interest” for the purpose of this RFT and the Form of Offer, means:

- (a) an unfair advantage over other bidders during the procurement process, thereby rendering the process non-competitive and unfair (e.g., bidder has Confidential Information not available to other bidders);
- (b) activities, relationships or contracts which render the bidder unable or potentially unable to perform the duties and obligations required of the bidder if awarded the Contract; or
- (c) activities, relationships or contracts which impair or potentially impair the bidder’s judgment in performing the bidder’s duties and obligations under the Contract;

“Days” means calendar days and **“days”** has the same meaning;

PART 2 - THE DELIVERABLES

2.1 Description of Deliverables

In accordance with the terms and conditions of the Agreement, the selected Supplier shall enter into Microsoft Select Enrollments with OPS clients as directed by Management Board Secretariat.

2.2 Description of Products

The scope of products will be limited to software licenses of Microsoft Exchange Server, Microsoft Outlook Client and Microsoft Exchange Client Access software only; the scope also includes considerations for future releases of similar products.

2.3 Description of Value-Add Services

In addition to the Products, and included in the Rates for the Deliverables, the Supplier shall also provide the Ministry with the following Value-Add Services:

- Consolidated and/or individual invoicing
- Software updates in electronic media format (e.g., CD, download) not less than every 45 days
- Current reports, in electronic or hard copy format, for all purchases upon request
- Software asset management assistance
- Audit assistance
- Single point of contact for all business requirements
- Tier one support contact

- Educate through a knowledge base and/or forum for new product alerts, licensing options and other relevant requirements

PART 3 - EVALUATION OF TENDERS

3.1 Stages of Tender Evaluation

The evaluation of tenders will be conducted by the Ministry in the following two (2) stages:

- 3.1.1** Stage I will consist of a review to determine which tenders comply with all of the Mandatory Requirements. Tenders which do not comply with all of the Mandatory Requirements may, subject to the reserved rights of the Ministry, be disqualified and not evaluated further.
- 3.1.2** Stage II will consist of an evaluation of the proposed Rates submitted by each compliant bidder. Subject to satisfactory reference checks and the reserved rights of the Ministry, the bidder bidding the lowest Rates (meaning the greatest Discount Rate from the Benchmark Price) shall be selected to enter into an Agreement in accordance with Part 4.

3.2 Stage I - Mandatory Requirements

3.2.1 Form of Offer (Appendix B)

Each tender must include a Form of Offer (Appendix B) completed and signed by the bidder.

(a) Conflict of Interest

In addition to the other information and representations made by each bidder in the Form of Offer, each bidder will be assessed based upon whether or not it has an actual or potential Conflict of Interest, and if so, whether that conflict prevents the bidder from being awarded the contract.

If the bidder does not disclose any information concerning Conflict of Interest in the Form of Offer, the bidder, by submitting the tender, warrants that to its best knowledge and belief no actual or potential Conflict of Interest exists with respect to the submission of the tender or performance of the contemplated Contract.

The definition section in Part 1 of the RFT should be referred to by bidders while completing the conflict portions in the Form of Offer.

Bidders who, in the sole opinion of the Ministry, are found to have a conflict of interest may be disqualified.

(b) General

The tender of any bidder may be disqualified where the bidder fails to complete the Form of Offer pertaining to Conflict of Interest, or makes misrepresentations or submits inaccurate or incomplete information in the Form of Offer or the tender. Further, the Ministry, in addition to any other remedies it may have in law or in equity, shall have the right to rescind any Contract awarded to a bidder in the event that the Ministry, in its sole discretion, determines that the

bidder made a misrepresentation or submitted any inaccurate or incomplete information in the Form of Offer.

Other than inserting the information requested and signing the Form of Offer a bidder may not make any changes to the Form of Offer or qualify in its tender the acknowledgements contained in the Form of Offer. Tenders containing any such qualifications, whether on the face of the Form of Offer or elsewhere in a tender, may be disqualified. In the event of a discrepancy or inconsistency between the Form of Offer and a bidder's tender, the Form of Offer will prevail.

3.2.2 Rate Bid Form (Appendix C)

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

- (a) Rates bid by bidders shall be provided in Canadian Funds, inclusive of all applicable duties and taxes except for the Provincial Sales Tax and the federal Goods and Services Tax, which shall not be included in the Rates (The Deliverables are required for the use of the Crown in Right of Ontario and are therefore not subject to the federal Goods and Services Tax. Provincial Sales Tax shall be paid by the Ministry in addition to the Rates);
- (b) rates quoted by the bidder shall include all labour and materials, transportation costs, overhead including but not limited to any fees or other charges required by law, and insurance;
- (c) travel, meal and accommodation expenses shall not be included in the rates quoted and shall be billed separately and charged in accordance with the *Management Board Secretariat's Corporate Operating Policy for Travel Management and General Expenses*, as may be amended from time to time. Bidders may contact the Ministry to obtain the applicable Rates. Accommodation arrangements shall be made with those facilities listed in the *OPS Travel Accommodation Directory*, as may be amended from time to time.

3.2.3 Tax Compliance Declaration Form (Appendix D)

Each bidder shall include this form, completed by the bidder according to the instructions contained in the form as well as those instructions set out below:

The Ontario Government will not enter into an Agreement with a bidder who fails to pay its provincial taxes on a timely basis. The Ministry will forward to the Ministry of Finance a copy of the selected bidder's signed Tax Compliance Declaration Form for verification. By signing this form, the bidder is consenting to the release of such information from the Ministry to the Ministry of Finance and from the Ministry of Finance to the Ministry for this purpose.

Bidders may direct all enquiries regarding the Tax Compliance Declaration Form to:

**Ministry of Finance
Collections Branch
6th Floor, 33 King Street
Oshawa, Ontario L1H 8H5
Telephone: (905) 433-6801 or toll free at 1-800-246-4441**

3.2.4 Other Mandatory Requirements

Each tender must include a letter of qualification from Microsoft. The letter must state that the bidder is a qualified reseller for the products and should be signed, on Microsoft company letterhead, by an authorized official.

3.3 Stage II – Evaluation of Pricing

3.3.1 Pricing

In accordance with the Rate Bid Form, each bidder shall submit its Rates as a Discount Rate from the Benchmark Price. Subject to satisfactory reference checks and the reserved rights of the Ministry, the bidder bidding the lowest Rates (meaning the greatest Discount Rate from the Benchmark Price) shall be selected to enter into an Agreement in accordance with Part 4.

PART 4 - TERMS AND CONDITIONS OF THE RFT PROCESS

4.1 General Information and Instructions

4.1.1 Timetable

The following is the schedule for this RFT:

- Issue Date of RFT **March 7, 2003**
- Bidder's Deadline for Questions **10:59:59 am EST March 12, 2003**
- Deadline for Issuing Addenda **10:59:59 am EST March 19, 2003**
- Tender Submission Deadline **10:59:59 am EST March 24, 2003**
- Period for Which Tenders are Irrevocable after Tender Submission Deadline **60 days**

4.1.2 Bidders to Follow Instructions

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

4.1.3 Bidders to Obtain RFT Only Through MERX™

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

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

4.1.4 Tenders in English

All submissions are to be in English only.

4.1.5 Ministry's Information in RFT Only an Estimate

The Ministry and its advisors make no representation, warranty or guarantee as to the accuracy of the information contained in the RFT or issued by way of addenda. Any quantities shown or data contained in this RFT 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.

It is the bidder's responsibility to avail itself of all the necessary information to prepare a tender in response to this RFT.

4.1.6 Bidders Shall Bear Their Own Costs

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

4.2 Communication after Issuance of RFT

4.2.1 Bidders to Review RFT

Bidders shall promptly examine all of the documents comprising this RFT and

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

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

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

4.2.2 All New Information to Bidders by way of Addenda on MERX™

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

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

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

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

4.2.3 Post-Deadline Addenda and Extension of Tender Submission Deadline

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

4.3 Submission of Tenders

4.3.1 Tenders Submitted Only in Prescribed Manner

Tenders must be submitted by the following method:

A bidder must submit one (1) original and four (4) copies of its tender in a sealed package. On the outside of the sealed package, using the Tender Return Label attached at Appendix E, tenders are to be prominently marked with the RFT title and number (see RFT cover), with the full legal name and return address of the bidder, and with the Tender Submission Deadline date and time; and

Tenders must be submitted to the following address and to the attention of the following person:

**Management Board Secretariat
Procurement Policy & IT Procurement Branch
c/o Government Mail and Print Services
Macdonald Block, Room M2B-74, Second Basement
77 Wellesley St. West
Toronto, Ontario M7A 1N3
Jeff Cowling - Technology Procurement Officer**

Tenders submitted in any other manner will be disqualified.

4.3.2 Tenders Must Be Submitted On Time at Prescribed Location

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

4.3.3 Amending or Withdrawing Tenders Prior to Tender Submission Deadline

At any time prior to the Tender Submission Deadline, a bidder may amend or withdraw a submitted tender. 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 provided by addenda.

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

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

4.3.4 Tender Irrevocable after Tender Submission Deadline

Tenders shall remain irrevocable in the form submitted by the bidder for a period of sixty (60) days running from the moment that the Tender Submission Deadline has lapsed.

4.3.5 Ministry May Seek Clarification and Incorporate Response into Tender

The Ministry reserves the right to seek clarification and supplementary information relating to the clarification from bidders after the Tender Submission Deadline. The response received by the Ministry from a bidder shall, if accepted by the Ministry, form an integral part of that bidder's tender. The Ministry reserves the right to interview any or all bidders to obtain information about or clarification of their tenders. 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 Criteria.

4.3.6 RFT Incorporated into Tender

All of the provisions of this RFT are deemed to be accepted by each bidder and incorporated into each bidder's tender.

4.3.7 Tender Property of the Ministry

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

4.4 Execution of Agreement, Notification and Debriefing

4.4.1 Selection of Bidder

The Ministry anticipates that a bidder will be selected by the Ministry within fifteen (15) days of the Tender Submission Deadline. Notice of selection by the Ministry to the selected bidder will be in writing. The selected bidder shall execute the Master Agreement and Agreements in the form attached as Appendix A and satisfy any other applicable conditions of this RFT within fifteen (15) days of notice of selection. This provision is solely to the benefit of the Ministry and may be waived by the Ministry at its sole discretion.

4.4.2 Failure to Enter Into Agreement

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

4.4.3 Notification to Other Bidders of Outcome of Procurement Process

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

4.4.4 Debriefing

If a request for a debriefing is made in writing by a bidder to the Ministry Contact within thirty (30) days of notification of award, the Ministry will provide a debriefing of the Ministry's evaluation of that bidder's tender. The intent of the debriefing information session is to aid the bidder in presenting a better tender in subsequent procurement opportunities. Any debriefing provided is not for the purpose of providing an opportunity to challenge the procurement process.

4.5 Prohibited Communications, Confidential Information and FIPPA

4.5.1 Prohibited Bidder Communications

Any tender received from a bidder who has either itself or through its employees, agents, contractors or representatives attempted to contact any person other than the Ministry Contact with respect to this RFT, may be disqualified. Without limiting the generality of the foregoing, bidders may not:

- (a) with the sole exception of the Ministry Contact, communicate or attempt to communicate in relation to this RFT, directly or indirectly, with: (i) anyone within the Ministry; (ii) any staff of the Premier's Office or Cabinet Office or any members of Cabinet or their staff; (iii) any advisor assisting the Ministry with any part of the RFT process; or, (iv) anyone else with a view to obtaining an unfair advantage in the RFT process;
- (b) use or attempt to use information confidential to the Ministry that is relevant to the pricing or evaluation of the Deliverables and which could give the bidder an unfair advantage over other bidders.

In such event, and without any liability, the Ministry may, in its sole and absolute discretion, in addition to any other remedies available at law, disqualify the tender submitted by the bidder.

4.5.2 Bidder Not to Communicate With Media

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

4.5.3 Confidential Information of Ministry

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

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

4.5.4 Freedom of Information and Protection of Privacy Act

Information provided by a bidder may be released in accordance with the Freedom of Information and Protection of Privacy Act, R.S.O. 1990, c.F.31, as amended. A bidder should identify any information in its tender or any accompanying documentation supplied in confidence for which confidentiality is to be maintained by the Ministry. The confidentiality of such information will be maintained by the Ministry, except where an order by the Information and Privacy Commission or a court requires the Ministry to do otherwise.

4.6 Reserved Rights of Ministry

In addition to any other express rights or any other rights which may be implied in the circumstances, the Ministry reserves the right to

- (a) make public the names of any or all bidders;
- (b) request written clarification or the submission of supplementary written information in relation to the clarification request from any bidder and incorporate a bidder's response to that request for clarification into the bidder's tender;
- (c) adjust a bidder's scoring or reject a bidder's tender on the basis of (i) a financial analysis considering factors including quality, service and price (ii) information provided by references (iii) the bidder's past performance on previous contracts awarded by the Government of Ontario (iv) the information provided by a bidder pursuant to the Ministry exercising its clarification rights under this RFT process (iv) other relevant information that arises during this RFT process;
- (d) waive formalities and accept tenders which substantially comply with the requirements of this RFT;
- (e) verify with any bidder or with a third party any information set out in a tender;
- (f) check references other than those provided by any bidder;
- (g) disqualify any bidder whose tender contains misrepresentations or any other inaccurate or misleading information;
- (h) disqualify any bidder or the tender of any bidder who has engaged in conduct prohibited by this RFT;

- (i) make changes, including substantial changes, to this RFT provided that those changes are issued by way of addenda in the manner set out in this RFT;
- (j) select any bidder other than the bidder whose tender reflects the lowest cost to the Ministry or the highest overall score;
- (k) cancel this RFT process at any stage;
- (l) cancel this RFT process at any stage and issue a new RFT for the same or similar deliverables;
- (m) accept any tender in whole or in part;
- (n) discuss with any bidder different or additional terms to those contemplated in this RFT or in any bidder's tender;
- (o) if a single tender is received, reject the tender of the sole bidder and cancel this RFT process or enter into direct negotiations with the sole bidder; or,
- (p) reject any or all tenders in its absolute discretion,

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 rights under this RFT or exercising any rights which may be implied in the circumstances.

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

4.7 Governing Law of RFT Process

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

[End of Part 4]

Appendix A – Form of Master Agreement and Form of Agreement

Form of Master Agreement

MASTER AGREEMENT

THIS MASTER AGREEMENT (“the Master Agreement”), made in duplicate, for Microsoft Exchange Server, Microsoft Outlook Client and Microsoft Exchange Client Access License software effective as of the
[**insert date here**]

BETWEEN:

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

(referred to as “MBS”)

AND:

[**LEGAL NAME OF SUPPLIER**]

(referred to as the “Supplier”)

Whereas MBS issued an RFT for Microsoft Exchange Server, Microsoft Outlook Client and Microsoft Exchange Client Access License Software and selected the Supplier to provide the Deliverables to the Ministries named in the RFT on a non-exclusive basis, MBS hereby acknowledges that the Supplier may enter into agreements in the form contained in Appendix A of the RFT (“the Agreement(s)”) with those Ministries for the non-exclusive provision of the Deliverables. In consideration of their respective agreements set out below, the parties covenant and agree as follows:

Article 1 – Interpretation and Scope

1.01 Definitions

Unless otherwise indicated below, when used in the Master Agreement, words and expressions shall have the meanings as set out in the Form of Agreement contained in Appendix A of the RFT:

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

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

“**Ministry**” means any Ministry who entered into an Agreement with the Supplier;

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

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

1.02 Work Volumes

The Supplier acknowledges that it is providing the Deliverables to the Ministries on a non-exclusive basis. MBS makes no representation regarding the volume of Deliverables to be provided under the Master Agreement or under any Agreements signed thereunder. MBS and the Ministries reserve the right to contract with other parties for the same or similar Deliverables as those provided by the Supplier and reserves the right to obtain the same or similar Deliverables internally.

1.03 Supplier's Power to Contract

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

1.04 Representatives May Bind the Parties

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

1.05 Supplier Not a Partner, Agent or Employee

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

1.06 Contract Binding

The Master Agreement shall enure to the benefit of and be binding upon the parties and their successors, executors, administrators.

1.07 Governing Law

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

Article 2 - Governance

2.01 Notices by Prescribed Means

Notices shall be in writing and shall be delivered by postage-prepaid envelope, personal delivery or facsimile and shall be addressed to, respectively, the MBS Address to the attention of the MBS Representative and to the Supplier Address to the attention of the Supplier Representative. Furthermore, (a) notices shall be deemed to have been given (i) in the case of postage-prepaid envelope, five (5) Business Days after such notice is mailed; or (ii) in the case of personal delivery or facsimile one (1) Business Day after such notice is received by the other party; (b) in the event of a postal disruption, notices must be given by personal delivery or by facsimile; and (c) unless the parties expressly agree in writing to additional

methods of notice, notices may only be provided by the methods contemplated in this paragraph.

2.02 Confidentiality and Promotion Restrictions

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

2.03 No Subcontracting or Assignment

The Supplier shall not subcontract or assign the whole or any part of the Master Agreement without the prior written consent of MBS. Such consent shall be in the sole discretion of MBS and subject to the terms and conditions that may be imposed by MBS.

2.04 Duty to Disclose Change of Control

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

2.05 Conflict of Interest

The Supplier shall not engage in any activity or provide any goods or services where such activity or the provision of such goods or services creates a conflict of interest (actually or potentially in the sole opinion of MBS) with the provision of Deliverables. The Supplier shall disclose to MBS without delay any actual or potential situation that may be reasonably interpreted as either a conflict of interest or a potential conflict of interest and shall comply with any terms and conditions subsequently prescribed by MBS resulting from the disclosure.

2.06 Reports to MBS

For the duration of the Master Agreement, the Supplier shall, on a monthly basis, in the form prescribed by MBS, provide status reports to the MBS Representative that shall include the Deliverables provided including quantity and dollar value on a Ministry-by-Ministry basis for that time period.

Article 3 - Term and Termination

3.01 Immediate Termination of Contract

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

- (a) the Supplier is adjudged bankrupt, makes a general assignment for the benefit of its creditors or a receiver is appointed on account of the Supplier's insolvency;
- (b) the Supplier breaches its confidentiality obligations under the Master Agreement;

- (c) the Supplier breaches its conflict of interest obligations under the Master Agreement;
- (d) the Supplier, prior to or after executing the Master Agreement, makes a material misrepresentation or omission or provides materially inaccurate information to MBS;
- (e) the Supplier undergoes a change in control which, in the sole opinion of MBS, adversely affects the Supplier's ability to satisfy some or all of its contractual obligations under the Master Agreement or any Contract;
- (f) the Supplier subcontracts for the provision of part or all of the Deliverables or assigns the Master Agreement without first obtaining the written approval of MBS;
- (g) the Supplier supplies products to any Ministry under the Contract that are outside of the scope of the Products originally described in section 2.2 of the RFT;
- (h) the Supplier's acts or omissions constitute a substantial failure of performance as defined in the Master Agreement, at law or in equity; or
- (i) the Supplier's acts or omissions constitute a breach that would allow any Ministry to terminate its Contract with the Supplier;

and such termination, at the option of MBS, shall, as specified at the time by MBS, have the effect of (a) terminating a particular Contract between the Supplier and a specific Ministry; (b) terminating a number of Contracts between the Supplier and specified Ministries; or (c) terminating all of the Contracts between the Supplier and all Ministries; and upon any such termination under this paragraph the Supplier shall not enter into any subsequent Agreements with any Ministries to provide any Deliverables.

3.02 Dispute Resolution by Rectification Notice

Subject to the above paragraph, where the Supplier fails to comply with any of its obligations under the Master Agreement, MBS may issue a rectification notice to the Supplier setting out the manner and time-frame for rectification. Within seven (7) Business Days of receipt of that notice the Supplier shall either (a) comply with that rectification notice; or (b) provide a rectification plan satisfactory to MBS. The Supplier's failure to either comply with that rectification notice or provide a satisfactory rectification plan shall constitute a substantial failure of performance.

3.03 Subsequent Rectification Notice for Relapse

Where the Supplier has been given a rectification notice under the above paragraph, the same type of non-compliance by the Supplier shall constitute a substantial failure of performance.

3.04 Termination on Notice

MBS reserves the right to terminate the Master Agreement, without cause, upon thirty (30) calendar days prior written notice to the Supplier and such termination shall, as specified at the time by MBS, have the effect of (a) terminating a particular Contract between the Supplier and a specific Ministry; (b) terminating a number of Contracts between the Supplier and

specified Ministries; or (c) terminating all of the Contracts between the Supplier and all Ministries; and upon any such termination under this paragraph the Supplier shall not enter into any subsequent Agreements with any Ministries to provide any Deliverables.

3.05 Supplier's Obligations Upon Termination

The Supplier shall, in addition to its other obligations at law, under the Master Agreement or under any particular Contract with a Ministry: (a) provide MBS with a report detailing (i) the current state of the provision of Deliverables by the Supplier at the date of termination; and (ii) any other information requested by MBS pertaining to the provision of the Deliverables and performance of any or all Contracts with a Ministry or Ministries; (b) execute such documentation as may be required by MBS to give effect to the termination of the Master Agreement or any Contract or Contracts; and (c) comply with any other instructions provided by MBS, including but not limited to instructions for facilitating the transfer of its obligations to another Person.

3.06 Supplier's Warranties and Other Responsibilities

Termination shall not relieve the Supplier of its warranties and other responsibilities relating to the Deliverables performed or money paid.

3.07 Termination in Addition to Other Rights

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

3.08 Term Co-Terminus With Microsoft Select Agreement

The term of the Master Agreement, which commences with the execution of the Master Agreement, shall be co-terminus with Microsoft Select Agreement # 75S75650 between MBS and Microsoft and shall expire upon the expiry of the term of that agreement or any extension to that agreement.

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

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

Signature:

Name:

Title:

Date:

Pursuant to the delegated Authority

[Supplier]

Signature

Name:

Title:

Date:

I have authority to bind the Supplier

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AGREEMENT

THIS AGREEMENT (“the Agreement”), made in duplicate, for Microsoft Exchange Server, Microsoft Outlook Client and Microsoft Exchange Client Access License software effective as of the
the
[**insert date here**]

BETWEEN:

HER MAJESTY THE QUEEN
in right of Ontario as represented by

(referred to as “the Ministry”)

AND:

[**LEGAL NAME OF SUPPLIER**]

(referred to as the “Supplier”)

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

ARTICLE 1 – INTERPRETATION AND GENERAL PROVISIONS

1.01 Defined Terms

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

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

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

“**Benchmark Rate**” means the discount rate established in a Master Agreement between Microsoft and MBS.

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

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

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

“Contract” means the aggregate of: (a) the Master Agreement between MBS and the Supplier (b) the Agreement, including Schedule 1 (Schedule of Deliverables, Rates and Supplementary Provisions) and any other schedule attached at the time of execution; (c) the RFT, including any addenda; (d) the Tender; and (e) any amendments executed in accordance with the terms of the Agreement;

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

“Discount Rate” means a percentage discount from the Benchmark Rate for which the Supplier shall provide the Deliverables and which shall be fixed for the Term;

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

“Indemnified Parties” means Her Majesty the Queen in Right of Ontario, her Ministers, appointees and employees;

“Intellectual Property” means intellectual or industrial property of any type in any form, including but not limited to copyright, patent, trademark or right under the law of confidential information.

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

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

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

“OPS Confidential Information” means all information of the Ontario Public Service that is of a proprietary or confidential nature, including all proprietary or confidential information in the custody or control of the OPS, regardless of whether it is identified as proprietary or confidential or not, and whether recorded or not, and however fixed, stored, expressed or embodied, which comes into the knowledge, possession or control of the Supplier in connection with the Agreement, including but not limited to: (a) all new information derived at any time from any such information whether created by the OPS, the Supplier or any third-party; and (b) all information that the OPS is obliged, or has the discretion, not to disclose under provincial or federal legislation. OPS Confidential Information shall not include information that: (a) is or becomes generally available to the public without fault or breach on the part of the Supplier, including without limitation

without breach of any duty of confidentiality owed by the Supplier to the OPS or to any third-party, but only after that information becomes generally available to the public; (b) the Supplier can demonstrate to have been rightfully obtained by the Supplier, without any obligation of confidence of any kind, from a third-party who had the right to transfer or disclose it to the Supplier free of any obligation of confidence; (c) the Supplier can demonstrate to have been rightfully known to or in the possession of the Supplier at the time of disclosure free of any obligation of confidence; or (d) is independently developed by the Supplier without the use of any OPS Confidential Information.

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

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

“Products” means those third-party software products described in the RFT and in Schedule 1 that are to be provided to the Ministry by the Supplier;

“Rates” means the applicable price, in Canadian funds, to be charged for the applicable Deliverables, as further set out in Schedule 1, representing the figure arrived at when the price of applicable Deliverables, which may vary during the term, is reduced by the Discount Rate, which shall be fixed for the Term, representing the full amount chargeable by the Supplier for the provision of the Deliverables, including but not limited to:

- (a) all applicable duties and taxes, except for the Provincial Sales Tax and the federal Goods and Services Tax (Provincial Sales Tax shall be itemized separately and charged by the Supplier in addition to the Rates, Goods and Services Tax shall not be charged by the Supplier since the Deliverables are required for the use of the Crown in right of Ontario and are therefore not subject to the federal Goods and Services Tax;
- (b) all labour and material costs;
- (c) all insurance costs;
- (d) all transportation costs; and
- (e) all other overhead including any fees or other charges required by law; but not including travel, meal & accommodation expenses, which shall be billed separately and charged in accordance with *Management Board Secretariat's Corporate Operating Policy for Travel Management and General Expenses*, as may be amended from time to time, and in accordance with the *OPS Travel Accommodation Directory*, as may be amended from time to time.

“Record”, for the purposes of the Contract, means any recorded information, including any Personal Information, in any form: (a) provided by the Ministry to the Supplier, or

provided by the Supplier to the Ministry, for the purposes of the Contract; or (b) created by the Supplier in the performance of the Contract.

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

“RFT” means the Request for Tenders dated **[**insert date**]** for **[**insert name of RFT**]**, reference number **[**insert reference number**]** issued by the Ministry for the Deliverables and any addenda to it;

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

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

“Tender” means all the documentation submitted by the Supplier in response to the Request for Tenders;

“Term” means the period of time from the date of execution of the Agreement until the later of (a) the expiry date that the Microsoft Select Agreement that established and governs the software licensing arrangements between MBS and **Microsoft** and (b) the expiry date of any extension to that Agreement.

“Third-Party Intellectual Property” means any Intellectual Property owned by a party other than the Ministry or the Supplier.

“Value-Add Services” means those additional services described in the RFT that are to be provided to the Ministry by the Supplier.

1.01 No Indemnities from Ministry

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

1.02 Entire Agreement

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

1.03 Severability

If any term or condition of the Contract, or the application thereof to the parties or to any Persons or circumstances, is to any extent invalid or unenforceable, the remainder of the Contract, and the application of such term or condition to the parties, Persons or

circumstances other than those to which it is held invalid or unenforceable, shall not be affected thereby.

1.04 Interpretive Value of Contract Documents

In the event of a conflict or inconsistency in any provisions in the Contract (a) the main body of the Agreement shall govern over the Schedules to the Agreement; (b) the Agreement (including its Schedules) shall govern over the Request for Tenders and the Tender (c) the Request for Tenders shall govern over the Tender, save and except any qualification in the Tender which the Ministry has expressly accepted in writing (d) the Master Agreement between MBS and the Supplier shall govern over all of the above.

1.05 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.

1.06 Force Majeure

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

1.07 Governing Law

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

ARTICLE 2 – NOTICES

2.02 Notices by Prescribed Means

Notices shall be in writing and shall be delivered by postage-prepaid envelope, personal delivery or facsimile and shall be addressed to, respectively, the Ministry Address to the attention of the Ministry Representative and to the Supplier Address to the attention of the Supplier Representative.

2.03 Effective Date of Notices

Notices shall be deemed to have been given (a) in the case of postage-prepaid envelope, five (5) Business Days after such notice is mailed; or (b) in the case of personal delivery or facsimile one (1) Business Day after such notice is received by the other party.

2.04 Means of Notice if Postal Disruption

In the event of a postal disruption, notices must be given by personal delivery or by facsimile.

2.05 Other Means of Notice by Agreement Only

Unless the parties expressly agree in writing to additional methods of notice, notices may only be provided by the methods contemplated in this Article.

ARTICLE 3 – LEGAL RELATIONSHIP BETWEEN MINISTRY, SUPPLIER AND THIRD-PARTIES

3.01 Supplier's Power to Contract

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

3.02 Representatives May Bind the Parties

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

3.03 Supplier Not a Partner, Agent or Employee

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

3.04 Responsibility of Supplier

The Supplier agrees that it is liable for the acts and omissions of its directors, officers, employees, agents, partners, affiliates, volunteers and subcontractors. This paragraph is in addition to any and all of the Supplier's liabilities under the Contract and under the general application of law. The Supplier shall advise these individuals and entities of its obligations under the Contract and, without limiting the generality of the foregoing, shall take appropriate action to ensure compliance with (a) the Contract generally and (b) with the requirements of Article 6 (Confidentiality) and Article 7 (Freedom of Information and Protection of Privacy Act) of the Agreement. In addition to any other liabilities of the Supplier pursuant to the Agreement or otherwise at law or in equity, the Supplier shall be liable for all damages, costs, expenses, losses, claims or actions arising from any breach of the Contract resulting from the actions of the above mentioned individuals and entities.

3.05 No Subcontracting or Assignment

The Supplier shall not subcontract or assign the whole or any part of the Contract or any monies due under it without the prior written consent of the Ministry. Such consent shall be in the sole discretion of the Ministry and subject to the terms and conditions that may

be imposed by the Ministry. Without limiting the generality of the conditions which the Ministry may require prior to consenting to the Supplier's use of a subcontractor, every contract entered into by the Supplier with a subcontractor shall adopt all of the terms and conditions of this Contract as far as applicable to those parts of the Deliverables provided by the subcontractor. Nothing contained in the Contract shall create a contractual relationship between any subcontractor or its employees and the Ministry.

3.06 Duty to Disclose Change of Control

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

3.07 Conflict of Interest

The Supplier shall not engage in any activity or provide any goods or services where such activity or the provision of such goods or services creates a conflict of interest (actually or potentially in the sole opinion of the Ministry) with the provision of Deliverables pursuant to the Contract. The Supplier shall disclose to the Ministry without delay any actual or potential situation that may be reasonably interpreted as either a conflict of interest or a potential conflict of interest and shall comply with any terms and conditions subsequently prescribed by the Ministry resulting from the disclosure.

3.08 Contract Binding

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

ARTICLE 4 - PERFORMANCE BY SUPPLIER

4.01 Commencement of Performance

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

4.02 Performance Warranty

The Supplier hereby represents and warrants that the Deliverables shall be provided fully and diligently in a professional and competent manner by persons qualified and skilled in their occupations and furthermore that all Deliverables will be provided in accordance with (a) the Contract; and (b) Requirements of Law. The Supplier shall do everything that the Contract requires it to do, including the provision of any and all labour, supplies, equipment and other goods or services that are necessary and can reasonably be understood or inferred to be included within the scope of the Contract. The Supplier shall also supply all labour, supplies, equipment and services as are customarily furnished by Persons providing Deliverables of the type provided hereunder in similar situations in Ontario. If any of the Deliverables, in the opinion of the Ministry, are inadequately provided or require corrections, the Supplier shall forthwith make the necessary corrections at its own expense as specified by the Ministry in a rectification notice.

4.03 Notification by Supplier to Ministry

During the Term, the Supplier shall advise the Ministry promptly of (a) any contradictions, discrepancies or errors found or noted in the Contract; (b) supplementary

details, instructions or directions that do not correspond with those contained in the Contract; and (c) any omissions or other faults that become evident and should be corrected in order to provide the Deliverables in accordance with the Contract and Requirements of Law.

4.04 Condonation Not a Waiver

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

4.05 Changes By Written Amendment Only

Any changes to the Contract shall be by written amendment signed by the parties. No changes shall be effective or shall be carried out in the absence of such an amendment.

4.06 Work Volumes

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

4.07 Ministry Rights and Remedies and Supplier Obligations Not Limited to Contract

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

4.08 Performance by Specified Individuals Only

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

ARTICLE 5 - PAYMENT FOR PERFORMANCE

5.01 Payment According to Contract Rates

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

5.02 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:

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

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

5.03 Hold Back or Set Off

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

5.04 Expenses and Additional Charges

The Ministry is not responsible for any travel, meal & accommodation expenses incurred by the Supplier which are not pre-approved in writing by the Ministry. Other than the Rates and any expenses approved in accordance with this section, there shall be no other charges payable by the Ministry under the Contract to the Supplier.

5.05 Payment of Taxes and Duties

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

5.06 Ministry GST Exempt and PST Separate Charge

The Ministry hereby certifies that the Deliverables are required for the use of the Crown in Right of Ontario and are therefore not subject to the federal Goods and Services Tax. Provincial Sales Tax is not included in the Rates and shall be itemized separately and charged in addition to the Rates.

5.07 Withholding Tax

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

5.08 Interest on Late Payment

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

5.09 Document Retention and Audit

For six (6) years after the expiration of the Term the Supplier shall maintain all necessary records to substantiate (a) all charges and payments under the Contract and (b) that the Deliverables were provided in accordance with the Contract and with Requirements of Law. During the Term, and for six years after the Term, the Supplier shall permit and assist the Ministry in conducting audits of the operations of the Supplier to verify (a) and (b) above. The Ministry shall provide the Supplier with at least ten (10) Business Days prior notice of its requirement for such audit. The Supplier's obligations under this paragraph shall survive any termination or expiry of the Agreement.

ARTICLE 6 - CONFIDENTIALITY

6.01 Confidentiality and Promotion Restrictions

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

6.02 OPS Confidential Information

During and following the term, the Supplier shall keep all OPS Confidential Information confidential. The Supplier agrees to keep all OPS Confidential Information secure and to provide OPS Confidential Information to the Ministry on demand and, in any event, to return all OPS Confidential Information to the Ministry before the termination or expiry of the Agreement, with no copy or portion kept by the Supplier. The Supplier agrees to limit the disclosure of OPS Confidential Information to only those of its employees who have a need to know it and who have been specifically authorized to have such disclosure. The Supplier shall 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: (a) the written consent of the Ministry, and (b) in respect of any OPS Confidential Information about any third-party, the written consent of such third-party.

6.03 Restrictions on Copying

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

6.04 Injunctive and Other Relief

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

or by any third-party) or any other remedy against any actual or potential breach of the provisions of this Article.

6.05 Notice and Protective Order

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

6.06 Conflict with FIPPA

In the event of a conflict or inconsistency between any provision in this Article and Article 7 (Freedom of Information and Protection of Privacy Act) or any other FIPPA provisions in the Agreement (collectively, the "FIPPA Provisions"), the FIPPA Provisions shall govern over this Article.

6.07 Survival

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

ARTICLE 7 – FREEDOM OF INFORMATION AND PROTECTION OF PRIVACY ACT

7.01 FIPPA Records and Compliance

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

- (a) to keep Records secure;
- (b) to provide Records to the Ministry within seven (7) calendar days of being directed to do so by the Ministry for any reason including an access request or privacy issue;
- (c) not to access any Personal Information unless the Ministry determines, in its sole discretion, that access is permitted under FIPPA and is necessary in order to provide the Deliverables;
- (d) not to directly or indirectly use, collect, disclose or destroy any Personal Information for any purposes that are not authorized by the Ministry;
- (e) to ensure the security and integrity of Personal Information and keep it in a physically secure and separate location safe from loss, alteration, destruction or intermingling with other records and databases and to implement, use and maintain the most appropriate products, tools, measures and procedures to do so;

- (f) to restrict access to Personal Information to those of its employees who have a need to know it and who have been specifically authorized to have such access for the purpose of providing the Deliverables;
- (g) to implement other specific security measures that in the reasonable opinion of the Ministry would improve the adequacy and effectiveness of the Supplier's measures to ensure the security and integrity of Personal Information and Records generally; and
- (h) that any confidential information supplied to the Ministry may be disclosed by the Ministry where it is obligated to do so under FIPPA, by an order of a court or tribunal or pursuant to a legal proceeding;

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

ARTICLE 8 – INTELLECTUAL PROPERTY

8.01 Ministry Intellectual Property

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

8.02 No Use of Ontario Government Insignia

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

8.03 Supplier's Grant of License

To the extent that the Deliverables include any Intellectual Property of the Supplier, the Supplier hereby grants the Ministry, including each Client, a royalty-free and fully paid up irrevocable, perpetual and transferable right to use that Intellectual Property of the Supplier in connection with the use of the other Deliverables provided under this Agreement.

8.04 No Restrictive Material in Deliverables

The Supplier 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 Supplier for the modification, further development of or other use of the Deliverables.

8.05 Supplier Representation and Warranty Regarding Third-Party Intellectual Property

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

8.06 Survival

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

ARTICLE 9 – SUPPLIER’S INDEMNITY AND INSURANCE

9.01 Supplier Shall Indemnify Ministry

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

9.02 Supplier’s Insurance

The Supplier hereby agrees to put in effect and maintain for the duration of the Contract, at its own cost and expense, with insurers acceptable to Risk Management & Insurance Services (RMIS) of Shared Services Bureau, all the necessary and appropriate insurance that a prudent person in the business of the Supplier would maintain including, but not limited to, the following:

- (a) commercial general liability insurance on an occurrence basis for third party bodily injury, personal injury and property damage, to an inclusive limit of not less than \$2,000,000 per occurrence, \$2,000,000 products and completed operations aggregate. The policy is to include the following:
 - the Indemnified Parties as additional insureds with respect to liability arising in connection with this Contract
 - contractual liability coverage
 - cross-liability clause
 - employers liability coverage (where WSIB coverage is requested but the Supplier is not under or can opt out of WSIB, Employers Liability Coverage is acceptable. Otherwise, a valid Clearance Certificate is required)
 - 30 day written notice of cancellation, termination or material change
 - tenants legal liability coverage (if applicable and with applicable sub-limits)
 - non-owned automobile coverage with blanket contractual coverage for hired automobiles
- (b) errors & omissions liability insurance, insuring liability for errors and omissions in the performance or failure to perform the services contemplated in this agreement, in the amount not less than \$2,000,000 per claim and in the annual aggregate.

9.03 Deductibles and Self-Insured Retentions

All deductibles and self-insured retentions shall be the responsibility of the Supplier.

9.04 Proof of Insurance

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

9.05 Proof of Workplace Safety and Insurance Act Coverage

If the Supplier does not provide a policy endorsement for Employer's Liability, the Supplier shall submit a valid Workplace Safety and Insurance Board ("WSIB") issued Clearance Certificate to the Ministry prior to the commencement of the Agreement and shall ensure that its *Workplace Safety and Insurance Act*, S.O. 1997, c.16 schedule A, as amended, coverage is maintained for the Term. Prior to utilizing any subcontractor for the provision of the Deliverables, the Supplier shall ensure that the subcontractor provides it a policy endorsement for Employer's Liability or provides it a current Clearance Certificate from WSIB and ensures that the subcontractor maintains its WSIB coverage while providing any of the Deliverables.

9.06 Limitation of Liability

The Supplier agrees that the Ministry will not be liable for any personal injury (including death) or damage to any director, officer, employee, agent or subcontractor of the Supplier, or for any loss or damage to the property of the Supplier or its directors, officers, employees, agents or subcontractors in any manner based upon, occasioned by or in any way attributable to any services performed, purportedly performed or required to be performed by the Supplier under the Agreement except to the extent caused by the negligence or wilful misconduct of a director, officer, employee or agent of the Ministry while acting within the scope of his or her employment.

If circumstances arise where the Ministry is entitled to recover damages from the Supplier or be indemnified by the Supplier, or the Supplier is entitled to recover damages from the Ministry, in each such instance the Supplier or the Ministry, as applicable, is liable to the other for no more than:

- (a) all damages and costs arising from infringement or inducement of infringement of any Intellectual Property right;
- (b) all damages and costs applicable to any breach of the provisions in Article 6 (Confidentiality) or Article 7 (Freedom of Information and Protection of Privacy Act);
- (c) all damages and costs for (i) personal injury (including death); or (ii) physical harm to tangible personal property and real property; to the extent caused by breach of contract, negligence, or wilful misconduct of it or its subcontractors;
- (d) all claims for liens, attachments, charges or other encumbrances resulting from claims against the Supplier or its subcontractors upon or in respect of any

Deliverables furnished to the Ministry;

- (e) all damages and costs arising from situations where the Supplier introduces computer code which is designed to adversely affect or interfere with the operation of (a) the Deliverables or (b) any other computer software, equipment or computer system;
- (g) all other direct damages, including but not limited to (i) all identifiable costs incurred by the Ministry with another supplier to reprocur equivalent Deliverables (ii) all administrative costs of selecting another supplier or re-tendering (iii) all increases in price payable by the Ministry for Deliverables having equivalent functionality, performance and quality (iv) any other losses or damages incurred as a direct result of any breach of the Contract by the Supplier; but such direct damages shall not, in any event, exceed two times the amount paid by the Ministry under the Contract.

and neither party shall be liable for any consequential, indirect, incidental or special damages, including lost profits or lost opportunity costs, suffered by the other party with respect to any claim arising out of or in connection with the Contract, but this limitation shall not in any way restrict or limit those heads of claim identified under subparagraphs (a) through (g) above.

ARTICLE 10 – TERMINATION, EXPIRY AND EXTENSION

10.01 Immediate Termination of Contract

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

- (j) the Supplier is adjudged bankrupt, makes a general assignment for the benefit of its creditors or a receiver is appointed on account of the Supplier's insolvency;
- (k) the Supplier breaches any provision in Article 6 (Confidentiality) or in Article 7 (Freedom of Information and Protection of Privacy Act) of the Agreement;
- (l) the Supplier breaches the Conflict of Interest paragraph in Article 3 (Legal Relationship Between Supplier, Ministry and Third-Parties) of the Agreement;
- (m) the Supplier, prior to or after executing the Agreement, makes a material misrepresentation or omission or provides materially inaccurate information to the Ministry;
- (n) the Supplier undergoes a change in control which, in the sole opinion of the Ministry, adversely affects the Supplier's ability to satisfy some or all of its obligations under the Contract;
- (o) the Supplier subcontracts for the provision of part or all of the Deliverables or assigns the Contract without first obtaining the written approval of the Ministry;

- (p) the Supplier supplies products to any Client under the Contract that are outside of the scope of the Products originally described in section 2.2 of the RFT; or
- (q) the Supplier's acts or omissions constitute a substantial failure of performance.

10.02 Dispute Resolution by Rectification Notice

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

10.03 Subsequent Rectification Notice for Relapse

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

10.04 Termination on Notice

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

10.05 Supplier's Obligations on Termination

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

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

10.06 Supplier's Payment Upon Termination

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

10.07 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.

10.08 Term Co-Terminus With Microsoft Select Agreement

The term of the Agreement, which commences with the execution of the Agreement, shall be co-terminus with Microsoft Select Agreement # 75S75650 between MBS and Microsoft and shall expire upon the expiry of the term of that agreement or any extension to that agreement.

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

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

Signature:

Name:

Title:

Date:

Pursuant to the delegated Authority

[Supplier]

Signature

Name:

Title:

Date:

I have authority to bind the Supplier.

APPENDIX B - Form of Offer

To [insert name of Ministry]:

1. Bidder Information

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

(b) Bidder's address, telephone and facsimile numbers:

(c) Name, address, telephone and facsimile numbers of the contact person(s) for the Bidder:

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

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

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

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

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

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

2. Offer

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

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

3. Mandatory Requirements

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

MANDATORY REQUIREMENT FORMS:	Yes	Page
Form of Offer (Appendix B)		
Rate Bid Form (Appendix C) [including Canadian Content form if applicable]		
Tax Compliance Form (Appendix D)		
Reference Form (Appendix F)		
Each tender must include a letter of qualification from Microsoft. The letter must state that the bidder is a qualified reseller for the products and should be signed, on Microsoft company letterhead, by an authorized official.		
Notice to bidders: There may be Mandatory Requirements in this RFT other than those set out above. See the Mandatory Requirements section of this RFT for a complete listing of Mandatory Requirements.		

4. Rates

I/We have submitted our Rates in accordance with the instructions in the RFT and in the form set out at Appendix C;

5. Tax Compliance

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

6. References

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

7. Addenda

We have received and allowed for Addenda number _____ in preparing my/our tender. (Insert #'s or "NONE")

8. Tender Irrevocable

I/We understand that my/our submitted tender is based upon the acceptance of the tender, in whole or in part, within 60 days of the Tender Submission Deadline and is irrevocable during that period.

9. Conflict of Interest

I/ We hereby confirm that there is not nor was there any actual or perceived Conflict of Interest or any other type of unfair advantage in our submitting the tender or performing or observing the contractual obligations of the Supplier in the Agreement.

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

The following is a list of situations, each of which may be a Conflict of Interest or an instance of unfair advantage, or appears as potentially a conflict of interest or unfair advantage in my/our company submitting the tender or the contractual obligations of the bidder under the Agreement.

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

"Confidential Information" and "Conflict of Interest", for the purpose of this form, are defined in this RFT, Part 1 "Introduction".

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

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

(Repeat above for each identified individual)

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

10. Disclosure of Information to Advisers

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

11. Proof of Insurance

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

12. Execution of Agreement

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

Signature of Witness

Signature of bidder representative:

Name of Witness:

Name and Title:

Date:

I have authority to bind the bidder.

APPENDIX C - Rate Bid Form

Benchmark Reference	Bidder's Discount Rate	Total Discount Rate
Microsoft Select # 75S50560		

Note:

The first column should contain the Master Agreement Number. Qualified bidder's will already have access to the benchmark rate and will only require the Master Agreement Number as a reference. **The benchmark discount established between MBS and a software publisher cannot be disclosed when posting on MERX. Referencing the master agreement number will be sufficient.**

The second column is where the bidder will provide its proposed discount rate.

The third column is where the bidder will total the benchmark rate with their discount rate to provide the Total Rate.

Example: Benchmark (**fictional**) = Level C - 15%
 Bidder's Discount = 15%
 Total Discount Rate = Level C - 30%

Since the price of Deliverables may fluctuate during the term of the Agreement:

- (a) bidders will be evaluated on the basis of their Bidder's Discount Rate and;
- (b) the selected bidder's Bidder Discount Rate shall be fixed for the entire duration of the Agreement.

APPENDIX D - Tax Compliance Declaration Form

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

In order for a company to be considered for a contract award, the bidder must submit the following statement of the company's tax compliance status:

I/WE hereby certify that _____ at the time of submitting this tender,

(legal name of bidder)

is in full compliance with all tax statutes administered by the Ministry of Finance of Ontario and that, in particular, all returns required to be filed under all provincial tax statutes have been filed and all taxes due and payable under those statutes have been paid or satisfactory arrangements for their payment have been made and maintained.

Dated at _____ this _____ day of _____ 20 ____ .

(Signature of bidder or an authorized signing officer who binds the bidder)

(Print Name)

(Title)

(Phone Number)

(Fax Number)

APPENDIX E - Tender Return Label

Affix this label to your submission

**To: Management Board Secretariat
Procurement Policy & IT Procurement Branch
c/o Government Mail and Print Services
Macdonald Block, Room M2B-74, Second Basement
77 Wellesley St. West
Toronto, Ontario M7A 1N3**

**Attention: Jeff Cowling
Technology Procurement Officer**

RFT #: MBS-MS-EXC-001

Tender Submission Deadline

Date: March 24, 2003

Time: 11:59:59 AM EST

Full Legal Name and Address of bidder:

Important Submission Notes

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

SCHEDULE 1 - Deliverables, Rates and Supplementary Provisions

Notwithstanding anything else in the Contract, the total amount payable to the Supplier under the Contract shall not exceed **[\$0.00]**.