

## **Attachment 5 - Yonge Dundas Square Board of Management /Outfront Term Sheet**

**Contract Term:** 10-years

**Targeted Commencement date:** February 01, 2017 (pending Council Approval)

### **Parties to the Agreement:**

- Yonge Dundas Square Board of Management ("YDS-Board") and
- Outfront Media Canada LP through its general partner Outfront Media Canada GP Co. ("Outfront")

### **YDS-BOARD OBLIGATIONS**

The YDS-Board to undertake reasonable efforts to obtain the required modifications to Chapter 694, to allow issuance of permits for the installation and display at Yonge Dundas Square of the Signs ("Required Amendment").

The YDS-Board, subject to obtaining the Required Amendment shall provide an entitlement for Outfront to utilize, on a sole and exclusive basis, the sign faces displaying electronic moving copy on the Advertising Signs for the display of third party sign copy.

The YDS-Board shall make payment of any municipal taxes, which may be imposed on Outfront as a result of the operation of the Signs. (Terms establishing the procedure for Outfront to provide the YDS-Board with such invoices, and the YDS-Board to make payment of such municipal taxes to the City to be determined)

### **OUTFRONT OBLIGATIONS:**

#### **Construction of Signs:**

Outfront shall at its sole expense, construct and install, the following 7 signs within Yonge Dundas Square (the "Signs") along with all related structural additions, alterations and improvements within Yonge Dundas Square, to the satisfaction of the YDS, in accordance with a construction schedule approved by the YDS-Board.

Sign A - One Electronic Ground Sign containing 4 sign faces each displaying electronic moving copy, and 2 sign faces displaying static copy to be located at the location of, and to replace, the existing electronic ground sign with 2 sign faces displaying electronic moving copy in the northwest corner of the Square, in general accordance with the particulars contained in Outfront's response to RFI No. 9119-15-7159.

Sign B - One Electronic Roof Sign located on the centre portion of the Square's existing large canopy containing 1 sign face orientated to face into the Square, displaying

electronic moving copy, in general accordance with the particulars contained in Outfront's response to RFI No. 9119-15-7159.

Sign C - One Electronic Roof Sign containing 1 sign face displaying electronic moving copy and 1 sign face displaying static copy, to be located in the northeast corner of the Square on the existing large canopy; in general accordance with the particulars contained in Outfront's response to RFI No. 9119-15-7159.

Sign D - An Electronic Ground Sign each containing one sign face displaying electronic moving copy, located on an existing lighting mast approximately within the South-East corner of the premises in general accordance with the particulars contained in Outfront's response to RFI No. 9119-15-7159.

Sign E - One electronic ground sign containing 1 sign face orientated to face into the Square, displaying electronic moving copy, in general accordance with the particulars contained in Outfront's response to RFI No. 9119-15-7159.

Sign F - An Electronic Ground Sign each containing one sign face displaying electronic moving copy, located on an existing lighting mast along the Square's Southerly property frontage in general accordance with the particulars contained in Outfront's response to RFI No. 9119-15-7159.

Sign G - An Electronic Ground Sign containing one sign face displaying electronic moving copy, located on an existing lighting mast within the South-West corner of the premises in general accordance with the particulars contained in Outfront's response to RFI No. 9119-15-7159.

Outfront shall construct these signs and any modifications to the structures within Yonge Dundas Square in accordance with the construction schedule approved by the YDS-Board.

**Additional Construction Elements:**

Outfront shall construct these signs and any modifications to the structures within Yonge Dundas Square in accordance with the construction schedule approved by the YDS-Board.

Outfront shall at its sole expense, construct to the satisfaction of the YDS-Board, enhanced accent lighting to Yonge Dundas Square in general accordance with the particulars contained in Outfront's response to RFI No. 9119-15-7159., in accordance with a construction schedule approved by the YDS-Board.

Outfront shall at its sole expense, construct and provide to the satisfaction of the YDS-Board, provide control system hardware and cabling on site in general accordance with the particulars contained in Outfront's response to RFI No. 9119-15-7159., in accordance with a construction schedule approved by the YDS-Board.

Outfront agrees to require that all electrical work for the signs and lighting enhancements is to be completed by an electrical contractor approved by the YDS-Board.

### **Services to be provided by Outfront:**

Outfront to provide control system software in general accordance with the requirements of RFI No. 9119-15-7159, including specifically Appendix I of RFI No. 9119-15-7159, issued on September 9th 2016 and particulars contained in Outfront's response to RFI No. 9119-15-7159.

Outfront to provide all services to YDS-Board including maintenance as may be required for the display, and operation of Signs B, D, E, F and G by the YDS-Board.

Outfront to provide sole and exclusive usage of Signs B, D, E, F and G to the YDS-Board.

Outfront to provide 24-hour support and maintenance through their Network Operations Centre for all of the Signs to avoid down time and ensure event support. Outfront to provide a public Wi-Fi network within Yonge Dundas Square with no charge to the public, or to the YDS-Board, in a manner and method approved by the YDS-Board.

Outfront is to provide payment or supply of hydro.

Outfront will provide administrative services to YDS including but not limited to scheduling and content management, YDS training and site inspections, shared revenue forecast reports, proof of performance reports, equipment and systems warranties, maintenance and cleaning, software applications and licenses related to the Signs.

Outfront shall provide creative and production services in relation to content to be displayed on Signs A, B, C, D and E. Potential incremental YDS costs e.g., video production-copyright fees and creative fee charged at pre-set hourly rate, with respect to Clients of YDS to be as addressed, requested by YDS clients will flow through with an incremental handling fee at YDS option. Outfront shall provide creative and production services to Clients of YDS which are not for profit organizations, and for YDS promotion content without charge.

### **Financial Payment Obligations of Outfront**

Outfront shall provide a Letter of credit, renewable each year in the amount of \$150K  
Outfront shall provide \$50,000 to the YDS-Board for the YDS-Board's use in payment of Waterford consultancy development & project costs for RFI # 9119-15-7159.

Outfront shall provide \$35,000 payment of architectural and/or branding design consultation expenses related to RFI # 9119-15-7159, and the work and services provided under the agreement.

### **Payments for Use of Two of the Signs as Dedicated Advertising Signs**

Outfront shall make payment to the YDS-Board for provision of the use by Outfront of Signs F and G (the "Advertising Signs") as Dedicated Advertising Signs.

Outfront shall make payment of a Minimum Annual Guarantee (MAG) to the YDS-Board. The MAG paid by Outfront to the YDS-Board to be in amount of \$400,000 for each of the first 5 years, subject to prorating for the first year and \$500,000 for each of the final 5 years. The first year will be prorated to commence with the commencement of operation of either of the two dedicated Advertising signs. In addition, the Outfront shall pay to the YDS-Board 30% of Annual Gross Revenues, as defined in Outfront's response to RFI No. 9119-15-7159. Payments of the MAG to be made in monthly installments; within 60 days of the subsequent fiscal year the incremental

### **Insurance & Liability**

Outfront agrees to purchase and maintain in force, at its own expense and for the duration of the services, the following policies of insurance, which policies shall be in a form and with an insurer acceptable to the YDS-Board. A certificate evidencing these policies signed by the insurer or an authorized agent of the insurer must be delivered to the YDS-Board prior to the commencement of services or work as required under the Agreement. (Provisions concerning the specific insurance requirements to be determined.)

### **Termination**

Failure of Outfront to perform its obligations under the Agreement shall entitle the YDS-Board to terminate the Agreement upon one hundred and twenty (120) calendar days' written notice to Outfront if a breach which is remediable is not rectified in that time. In the event of such termination, the YDS-Board and /or the City shall not incur any liability to Outfront.

Failure of the YDS-Board to secure the Required Amendment shall entitle the Parties to terminate the Agreement upon one hundred and twenty (30) calendar days' written notice to the other party. In the event of such termination, the YDS-Board and /or the City shall not incur any liability to Outfront.

All rights and remedies of the YDS-Board for any breach of Outfront's obligations under the Agreement shall be cumulative and not exclusive or mutually exclusive alternatives and may be exercised singularly, jointly or in combination and shall not be deemed to be in exclusion of any other rights or remedies available to the City under the Agreement or otherwise at law.

No delay or omission by the YDS-Board in exercising any right or remedy shall operate as a waiver of them or of any other right or remedy, and no single or partial exercise of a right or remedy shall preclude any other or further exercise of them or the exercise of any other right or remedy.

Upon termination, all originals and copies of data, plans, specifications, reports, forecasts, summaries, photographs, and other media client documents that have been accumulated and/or prepared by Outfront in performance of the Agreement shall be delivered to the YDS-Board in a clean and readable format.

Additional Terms to be finalized concerning default remedies letter of credit or other surety drawdowns and other conditions including the YDS YDS-Board 's right to termination, and process concerning transition of operations arising from termination.

## **Additional General Terms**

### **Compliance with Laws**

Outfront will be required to comply, at its sole expense, with all federal, provincial and municipal laws, rules and regulations, which may apply to Outfront (including, without limitation, if applicable the City's Fair Wage and other policies or by-laws applicable to the City's Licensees, the Ontario Fire Code, the Ontario Employment Standards Act, the Ontario Human Rights Code, the Ontario Labour Relations Act, the Workplace Safety and Insurance Act, the Income Tax Act and Occupational Health and Safety requirements) in relation to the provision of any Services, including the obtaining of all necessary permits and licences, and shall submit proof of such compliance to the City, upon request, and Outfront shall indemnify and save the City harmless from any liability or cost suffered by it as a result of Outfront's failure to comply with this provision.

### **Confidentiality and Conflict of Interest**

Outfront shall treat as confidential all information of any kind which comes to the attention of Outfront in the course of carrying out the Services and shall not disseminate such information for any reason without the express written permission of the YDS-Board or otherwise in accordance with MFIPPA or other applicable privacy law. Outfront may be required to enter into a detailed confidentiality and conflict of interest agreement in a form satisfactory to the YDS-Board.

### **Indemnities**

Outfront shall indemnify and save harmless the YDS-Board, City of Toronto, its Mayor, Members of Council, officers, employees, and agents from and against any losses, liens, charges, claims, demands, suits, proceedings, recoveries and judgements (including legal fees and costs) arising from or related to a) any architectural and/or branding design consultation related to RFI No. 9119-15-7159 or b) the current amended CCO agreement related to Outfront's activities or non-activities under this Agreement or c) any of Outfront's performance or non-performance of its obligations, including payment obligations to its approved subcontractors and suppliers and others, and including breach of any confidentiality obligations under this Agreement.

Upon assuming the defence of any action covered under this section Outfront shall keep City of Toronto reasonably informed of the status of the matter, and Outfront shall make no admission of liability or fault on City of Toronto's part without City of Toronto's written permission.

Outfront shall indemnify and save harmless the YDS-Board, City of Toronto, its Mayor, Members of Council, officers, employees, and agents from and against any losses, liens, charges, claims, demands, suits, proceedings, recoveries and judgements (including legal fees and costs) arising from infringement, actual or alleged, by the Proposal, its use or misuse, or by any of the deliverables developed or provided or supplied under or used in connection with the Services (including the provision of the Services themselves), of any Canadian, American or other copyright, moral right, trade-mark, patent, trade secret or other thing with respect to which a right in the nature of intellectual/industrial property exists.

#### Employment & WSIB Indemnity

Nothing under this Agreement shall render the YDS-Board and/or the City responsible for any employment, benefit or termination liability (including those under or in connection with the Workplace Safety and Insurance Act, 1997 or any successor legislation ("WSIA"), whether statutorily required, at common law or otherwise, resulting from Services supplied under this Agreement by persons employed or otherwise engaged by Outfront. In the event that employment related costs, or other related responsibility falls to the YDS-Board and/or the City for any reason whatsoever, Outfront agrees to indemnify the YDS-Board and/or the City for such costs.

#### No Assignment

Outfront shall not assign any part of the project that may be awarded to it under the Agreement without the prior written consent of the YDS-Board, which consent shall not be unreasonably withheld. However, such written consent shall not under any circumstances relieve Outfront of its liabilities and obligations under this Phase 2 Submission Process and the Agreement.

#### Subcontractors

Outfront shall be solely responsible for the payment of every subcontractor employed, engaged, or retained by it for the purpose of assisting it in the performance of its obligations under the Agreement. Outfront shall coordinate the services of its subcontractors in a manner acceptable to the YDS-Board, and ensure that they comply with all the relevant requirements of the Agreement.

Outfront shall be liable to the YDS-Board for all costs or damages arising from acts, omissions, negligence or wilful misconduct of its subcontractors.

#### Personnel and Performance

Outfront shall make available appropriately skilled workers, consultants or subcontractors, as appropriate, and must be able to provide the necessary materials, tools, machinery and supplies to carry out the project.

Outfront shall be responsible for its own staff resources and for the staff resources of any subcontractors and third-party service providers.

Outfront shall ensure that its personnel (including those of approved sub-contractors), when using any City buildings, premises, equipment, hardware or software shall comply with all security policies, regulations or directives relating to those buildings, premises, equipment, hardware or software.

Personnel assigned by Outfront to perform or produce the Services or any part of it, (including those of approved subcontractors) may, in the sole discretion of the YDS-Board, be required to sign non-disclosure Agreement(s) satisfactory to the YDS-Board before being permitted to perform such services.

#### Independent Contractor

Outfront and the YDS-Board agree and acknowledge that the relationship between the YDS-Board and Outfront is one of owner and independent contractor and not one of employer-employee. Neither is there any intention to create a partnership, joint venture or joint enterprise between Outfront and the YDS-Board and/or the City.

#### Warranties and Covenants

Outfront represents, warrants and covenants to the YDS-Board and acknowledges that the YDS-Board is relying thereon) that any deliverable resulting from or to be supplied or developed under the Agreement will be in accordance with the YDS-Board requirements (as set out in the Phase 2 Submission) and, if applicable, will function or otherwise perform in accordance with such requirements.

#### Third Party Software

Where the YDS-Board is in possession of software containing or constituting confidential proprietary information belonging to third parties, Outfront shall not, except in the usual incidental manner genuinely necessary for the intended use of such software on the equipment of the YDS-Board, a) analyze, copy, decompile, disassemble, translate, convert, reverse engineer or duplicate any physical embodiment or part thereof, or permit any person to do so; or b) divulge to any unauthorized person the ideas, concepts or techniques, or make any other improper use, of such software.

Outfront shall fully defend, save harmless and indemnify the YDS-Board and/or the City from and against any loss or damages suffered by the YDS-Board and/or the City as a

result of any failure by Outfront, its officers, directors, partners, contract personnel, agents and employees or any of them to comply with the provisions hereof.

Should Outfront include third party components within the Services/Solution, Outfront must secure the rights to use and repackage third party components and pass on those rights to the YDS-Board and/or the City without additional charges.

#### Ownership of Intellectual Property and Deliverables

The YDS-Board will own all intellectual property rights, including (without limitation) copyright, in and to all deliverables provided by Outfront and its subcontractors. All information, data, plans, specifications, reports, estimates, summaries, photographs and all other documentation prepared by Outfront in the performance of the Services/Solution under the Agreement, whether they be in draft or final format, shall be the exclusive property of the YDS-Board.

#### Information Management

The Parties acknowledge and agree that the YDS-Board Records include all records that are under the custody or control of the YDS-Board, as those terms have been interpreted for purposes of Municipal Freedom of Information and Protection of Privacy Act, ("MFIPPA"), and "records of the City" for purposes of the City of Toronto Act, 2006 ("YDS-Board Records "). References to YDS-Board Records will include any information or data contained therein.

The Parties agree that MFIPPA applies to and governs the YDS-Board Records and may require the disclosure of such records to third parties.

Outfront agrees: to keep the YDS-Board Records provided to Outfront secure in accordance with this Agreement, as may be required for the YDS-Board to ensure compliance with legislative requirements, including but not limited to MFIPPA, and City of Toronto Act, 2006; to make available the YDS-Board Records held by Outfront to the YDS-Board as soon as practicable following a request for such YDS-Board Records from the YDS-Board; not to access any YDS-Board Records except as required to carry out the purposes of this Agreement; not to directly or indirectly use, collect, or disclose any YDS-Board Records held by Outfront in relation to the provision of Services under this Agreement, except in accordance with this Agreement; not to directly or indirectly destroy any YDS-Board Records, except in accordance with this Agreement; to provide for the security and integrity of YDS-Board Records, held by Outfront in relation to provision of the Services under this Agreement, including Personal Information and keep it in a physically secure location safe from loss, alteration, destruction or intermingling with other records and databases and to implement, use and maintain appropriate products, tools, measures and procedures to do so, in each instance in accordance with the terms of this Agreement; and, to restrict access to YDS-Board Records to those of its directors, officers, personnel, agents, partners, affiliates, volunteers or Subcontractors who have a

need to know it for the purpose of carrying out Outfront's obligations under this Agreement;

Outfront will provide the YDS-Board with information, cooperation and assistance, as reasonably requested by the YDS-Board from time to time, in order to enable the YDS-Board to comply with any and all requirements to which the YDS-Board is subject under any laws (including regulations and common law) pertaining to the privacy protection of YDS-Board Records or access to information.

While on the YDS-Board's premises, infrastructure or systems, Outfront will comply with all of the YDS-Board's rules, procedures, policies and directives relating to confidentiality, privacy or security including those set out in the Agreement, provided to Outfront in writing or posted on site. The YDS-Board reserves the right to prohibit any of Outfront's directors, officers, personnel, agents, partners, affiliates, volunteers or Subcontractors who do not comply with such rules, procedures and policies from obtaining any physical or electronic access to the YDS-Board's premises, infrastructure or systems.

Extraterritorial Measures. - Outfront will ensure that all the YDS-Board Records provided to Outfront or to which Outfront obtains access in the course of this Agreement remains in the Province of Ontario unless otherwise prior written approval provided by the YDS-Board.

#### Right to Audit

The YDS-Board may audit all media client invoices, financial and related records associated with the terms of the Agreement including media client records, timesheets, reimbursable out of pocket expenses, materials, goods, and equipment claimed by Outfront. Outfront shall at all times during the term of the contract, and for a period of seven (7) years following completion of the Agreement, keep and maintain records of the Services performed pursuant to this Agreement. This shall include proper records of invoices, vouchers, timesheets, warranties and other operating documents that support actions taken by Outfront. Outfront shall at its own expense make such records available for inspection and audit by the YDS-Board at all reasonable times.