

**THIS AGREEMENT** made in duplicate as of the \_\_\_\_ day of August, 2021.

**BETWEEN:**

**THE CITY OF FREDERICTON**, a local government under and by virtue of the *Local Governance Act*, SNB 2017, c.18, located at 397 Queen Street, Fredericton, New Brunswick (hereinafter called the "Local Government")

**OF THE FIRST PART**

**AND**

**DESTINATION THINK! PROFESSIONAL SERVICES INC.**, incorporated under the laws of British Columbia, with offices at Suite 600, 1285 West Broadway, Vancouver, British Columbia V6H 3X8 (hereinafter called the "Supplier")

**OF THE SECOND PART**

(each a "Party", collectively the "Parties")

**WHEREAS** the Local Government issued a Request for Proposal P21-8, Agency of Record, dated March 4, 2021, with a closing date of April 6, 2021; (the "RFP"), inviting submission of proposals to provide the Services, as hereinafter defined;

**AND WHEREAS** the Supplier provides marketing services, including strategic consulting service, brand development, public relations, promotional programs, campaign development, content generation (digital/social media) and submitted a proposal to the Local Government dated April 6, 2021, (the "Proposal") in response to the RFP;

**AND WHEREAS** the Local Government adopted a resolution on August 9, 2021, authorizing the award of the RFP to the Supplier and authorized and approved this Agreement between the Parties;

**AND WHEREAS** the Parties wish to enter into this Agreement pursuant to the RFP, the RFP Response, and the terms and conditions set forth herein;

**NOW THEREFORE** in consideration of the terms and conditions and mutual covenants and agreements set out herein, the receipt and sufficiency of which are hereby acknowledged by each of the Parties, the Supplier and the Local Government agree as follows:

**1. SERVICES AND TERM**

- 1.1. The Supplier shall provide and deliver the services/scope of work and/or products and perform the work (collectively the "Services") described in Schedule A hereto, in accordance with the terms and conditions of this Agreement, notwithstanding the date signed, for a period of three (3) years commencing on August 1, 2021 and expiring on July 31, 2024 (the "Term"), unless extended in accordance with Section 1.2 or terminated earlier in accordance with this Agreement.

- 1.2. At the sole discretion and option of the Local Government, the Term may be extended for two (2), one (1) year extensions solely with respect to A.1(b) Services, as described in Schedule A, (each being a "Term Extension") provided the Local Government provides the Supplier written notice of its exercise of this option at least thirty (30) calendar days prior to the end of the Term or Term Extension. The Parties acknowledge and agree that the terms and conditions of this Agreement will continue to apply without modification during a subsequent Term Extension.
- 1.3. Any additional services to be provided by the Supplier under this Agreement, other than the Services, must be approved in writing in advance by both Parties in a Statement of Work before the Supplier may perform such services. In the event that any such additional services are performed by the Supplier without written agreement by the Parties, the City shall not be required to pay the Supplier any fees or other amounts in respect thereof and Supplier will not be obligated to continue to perform such additional services.
- 1.4. The preparation of the Statement of Work Proposal will be undertaken and performed by the Supplier at its own expense.
- 1.5. All rights and obligations of the Parties under this Agreement shall be deemed to apply to such Statement of Work as if fully set forth therein.
- 1.6. The Supplier shall provide the Services and discharge its duties to the Local Government in a competent, professional and timely manner to the standard of care ordinarily exercised by other members of its profession under similar circumstances, and shall assign only duly qualified, competent and skilled personnel to carry out its obligations to the Local Government under this Agreement.
- 1.7. The Supplier shall deliver the Services on time and in accordance with the delivery schedule outlined in Schedule A and as agreed to by the Local Government and conform in all respects with the Local Government's requirements. The Services shall not be deemed to be completed to the satisfaction of the Local Government or accepted by the Local Government until all requirements have been met by the Supplier in accordance with the terms and conditions of this Agreement.
- 1.8. Nothing in this Agreement shall constitute or be deemed to constitute any assurance or representation by the Local Government to the Supplier that this Agreement will be renewed or extended.

## **2. PRICE AND PAYMENT**

- 2.1 The total amount payable to the Supplier under this Agreement for the Services outlined under Schedule A.1(a), including out of pocket expenses, shall not exceed One Hundred and Fifty Thousand Dollars (\$150,000.00) (exclusive of applicable taxes) without prior written authorization from the Local Government. The Supplier shall not be entitled to receive payment for any Services it provides hereunder that exceed this amount ("Excess Services") unless the Local Government has given prior written authorization to the Supplier to undertake the performance of any Excess Services.
- 2.2 Subject to the terms and conditions of this Agreement, in consideration for the Services requested by and performed to the satisfaction of the Local Government, the Local Government shall pay the Supplier a fixed fee and/or a fee based on time-based rates for

personnel employed or engaged by the Supplier, in accordance with Schedule B (Fee Schedule). The RFP Project Manager is the authorized representative of the Local Government for accepting and signing Statements of Work with respect to A.1(b) Services.

- 2.3 Each invoice submitted by the Supplier for payment shall contain a detailed description of the Services in respect of which it is being remitted, and all such other information as specified by the Local Government from time to time for inclusion therein. Subject to verification by the Local Government, invoices will be paid thirty (30) days following receipt. Payments will be administered through the Local Government's electronic payment process. Following the execution of this Agreement, the Supplier shall send Proper Invoices in proportion to the progress made with each phase of the Services, if applicable, electronically to [invoices@fredericton.ca](mailto:invoices@fredericton.ca), unless the Local Government advises otherwise. Invoices received after 4:30 p.m. (AST) will be considered to be received on the next business day.

"Proper Invoices" mean a written bill or other request for payment for services or materials made pursuant to this Agreement and shall contain the following information, and any other requirements that this Agreement specifies: (a) Supplier's name, telephone number, mailing address and shipping address (if different than the mailing address); (b) the Supplier's invoice number; (c) the date and the period during which the Services or materials were supplied; (d) a description, including quantity (itemized list of services being invoiced for, time spent by each employee and expenses incurred on the project in the billing period, where appropriate), of the Services or materials supplied; (e) the amount payable for the services or materials that were supplied including a total showing how much money has been billed previously and a total billed to date, (i.e. current plus previous invoices) as applicable and the payment terms; (f) the name, title, telephone number and mailing address of the person to whom payment is to be sent; (g) the name or title of the project; (h) HST must also be shown as a separate line item; and (i) any other information that the Local Government may require.

- 2.4 The Parties acknowledge and agree that the Local Government shall not be considered to be in default if the payment process for a Proper Invoice is delayed due to the Supplier's failure to complete with the requirements of Section 2.
- 2.5 No payment by the Local Government to the Supplier hereunder shall be or construed to be an acceptance or approval by the Local Government of incomplete, defective or improper performance by the Supplier of any of its obligations under this Agreement or operate to relieve the Supplier from the performance of any of its obligations hereunder that have not been performed in accordance with the requirements set out in this Agreement.
- 2.6 The Supplier is responsible for paying its own costs and expenses incurred in connection with its performance of the Services. For greater certainty, such costs may include but are not limited to telephone, copying, courier, travel, parking, fuel surcharge and pandemic costs shall not be reimbursed by the Local Government.
- 2.7 The Local Government may set-off any amount due or owing to the Supplier, or any subcontractor, pursuant to this Agreement against any amounts the Supplier owes to the Local Government.

### **3 SUSPENSION AND TERMINATION OF AGREEMENT**

- 3.1 The Local Government shall be entitled to immediately suspend and/or terminate this

Agreement for cause, upon the occurrence of any of the following events, each of which shall constitute an "Event of Default":

- (a) The Supplier breaches or fails to comply with any of the terms and conditions of this Agreement, and such breach or failure is not remedied by the Supplier to the reasonable satisfaction of the Local Government within ten (10) days after written notice from the Local Government to remedy the breach or failure;
  - (b) The Supplier becomes insolvent, commits an act of bankruptcy, makes an assignment for the benefit of creditors, or otherwise acknowledges its insolvency, or a receiver or receiver manager is appointed for any property of the Supplier; or
  - (c) Any statement, representation or warranty made by the Supplier (in its Proposal) or in this Agreement is untrue or incorrect.
- 3.2 If this Agreement is suspended or terminated for cause pursuant to Section 3.1 as a result of an Event of Default, the Supplier shall be responsible for and shall reimburse the Local Government for all loss, costs and damages incurred by the Local Government as a result of or arising from the Event of Default, including any costs incurred by the Local Government to correct any defects or deficiencies in any of the Services, and any costs incurred by the Local Government to procure the Services or any part thereof from another provider.
- 3.3 Notwithstanding Section 3.1, the Local Government may, at its sole discretion, at no cost, terminate this Agreement without cause at any time prior to the expiration of the Term, upon giving thirty (30) days prior written notice of termination to the Supplier. In such an event, the Supplier shall be entitled to receive payment for the Services it has satisfactorily performed up to the date of termination, and where applicable, to the payment of any holdback which the Local Government is then holding at such time. Payments to the Supplier of the foregoing amounts shall constitute full and final satisfaction of the Local Government's obligations to the Supplier under this Agreement. In the event this Agreement is terminated by the Local Government pursuant to this Section 3.3, the Supplier shall not be reimbursed for any profits that may have been anticipated but not earned up to the termination date, and the Supplier shall not have any claim or entitlement to any additional compensation or damages arising from such termination.
- 3.4 Neither the expiration nor the earlier suspension or termination of this Agreement shall relieve, or be deemed to relieve, the Supplier from any duties, obligations or liabilities hereunder that accrued prior to such expiration or termination, or which by their nature are intended to survive the expiration or earlier termination of this Agreement, including but not limited to all warranties given by the Supplier in respect of the Services, and those duties and obligations of the Supplier set out in Section 4 (Confidentiality), Section 5 (Material Rights), Section 8 (Insurance, Liability and Indemnity) and Section 15 (Accounts and Audit).

#### **4 CONFIDENTIALITY**

- 4.1 The Supplier acknowledges and confirms that all information provided to it by the Local Government hereunder or to which the Supplier has access as a result of providing the Services to the Local Government is confidential information ("Confidential Information"). Unless required by law or an order of a court of competent jurisdiction, such Confidential Information shall not, either during the Term or at any time thereafter, be disclosed by the Supplier, to any third party or to any employees of the Supplier, other than its employees who are directly

involved in providing the Services, without the prior written consent of the Local Government.

- 4.2 The Supplier shall implement and maintain security standards and procedures for the safeguarding of the Local Government's Confidential Information to prevent unauthorized access thereto and to ensure compliance with applicable legislation. The Supplier agrees to promptly notify the Local Government in writing upon becoming aware of a breach of either the Supplier's security standards and procedures or any unauthorized disclosure of information that the Supplier is required to keep confidential under applicable law. The Supplier shall take immediate steps to mitigate any breach or unauthorized disclosure described in this Section 4.
- 4.3 The Supplier acknowledges that the Local Government is subject to the *Right to Information and Protection of Privacy Act*, SNB 2009, c. R-10.6 ("RTIPPA"), as amended, with respect to the personal information, as defined thereunder, in its custody and control. The Supplier agrees that the Local Government may disclose this Agreement or portions thereof as may be required pursuant to RTIPPA or a City Council approval process, if required, and that no such disclosure constitutes a breach of confidentiality.
- 4.4 The Supplier represents, warrants and undertakes to the Local Government that it shall comply with the RTIPPA, the terms and conditions contained in the Privacy Protection Schedule, attached as Schedule C to this Agreement, and protect personal information collected by the Local Government as if it were a public body under RTIPPA.

## **5 MATERIAL RIGHTS**

- 5.1 All findings, data, surveys, research, working papers, drawings, spreadsheets, evaluations, databases and documents, regardless of storage format or whether in draft or final form that are collected, created or produced by the Supplier in the performance of this Agreement (collectively the "Materials") are the exclusive property of the Local Government. All intellectual property rights, including patents, copyrights, trademark and industrial design in the Materials, with the exception of any pre-existing intellectual property rights of the Supplier therein, are the sole property of the Local Government, are hereby irrevocably assigned by the Supplier to the Local Government and the Supplier herewith waives all moral rights in those Materials.
- 5.2 All research reports, surveys, findings, data and other information comprising the Materials are Confidential Information of the Local Government and are subject to the provisions of Section 4 of this Agreement.
- 5.3 Local Government reserves the right, in its sole discretion, to publish or release, in whole or in part, or to refrain from publishing or releasing, any research, reports, information, audio visual materials, information or data produced by the Supplier in the performance of the Services under this Agreement.
- 5.4 The Supplier shall ensure that the Local Government has all licences that are needed for any software that the Local Government will require to lawfully continue using all deliverables that the Supplier has agreed to provide as part of the Services.
- 5.5 The Supplier hereby grants to the Local Government a perpetual non-exclusive licence to use any computer software or designs of a generic nature to which the Supplier holds copyright, and that may be included in any work product comprising any part of the Services

delivered to the Local Government under this Agreement.

- 5.6 If the Local Government requests, the Supplier shall provide or return to the Local Government all Materials in its possession and/or destroy all copies thereof, and no such Materials shall thereafter be retained in any form by the Supplier.
- 5.7 The Parties acknowledge and agree that the Local Government shall not incur any costs, charges or fees with respect to Section 5.

## **6 INDEPENDENT CONTRACTOR**

- 6.1 This Agreement is a contract for the performance of the Services. The Supplier is engaged by the Local Government hereunder as an independent contractor and shall not at any time hold itself out as an employee, servant or agent of the Local Government. No partnership, joint venture, agency or other legal relationship is created or deemed to be created by this Agreement or any actions of the Parties hereunder. The Supplier shall not have authority under this Agreement to bind the Local Government, or to commit the Local Government to the payment of money to any third party.

## **7 COMPLIANCE WITH LAWS**

- 7.1 The Supplier shall comply with all applicable laws governing the conduct of its business and the provision of the Services to the Local Government.
- 7.2 Without limiting the generality of Section 7.1, the Supplier shall comply with the requirements of the *Official Languages Act*, SNB 2002, c O-0.5, as amended, that pertain to the Local Government in the provision and delivery of the Services as they relate to communications and services prescribed by Regulation 2002-63, as amended, in both official languages, including but not limited to:
- (a) Consultations/Public Meetings: presentation materials, displays, comment cards/feedback mechanism or other materials. The Supplier or the Local Government shall have at least one bilingual staff or interpreter present to answer questions and discuss technical drawings and/or documents;
  - (b) Signage: building, facility, traffic and construction signs; and
  - (c) Communications: public notices, information bulletins, advertisements, public education material.

Notwithstanding the provisions of this Section 7.2, the Local Government shall be responsible for translation of all documents, video and other public notices and information required by the Supplier in the provision of the Services. The Supplier giving written notice to the Local Government of the date that any and all translation must be received by the Supplier to meet its timelines.

- 7.3 The Supplier agrees to maintain in good standing all licences, permits, registrations or authorizations it is required to obtain in order to lawfully provide the Services in the Province of New Brunswick. Without limiting the foregoing, professional personnel performing any part of the Services on behalf of the Supplier shall be required to comply with all applicable professional registration or licensing requirements in effect in the Province of New

Brunswick at the time such Services are being performed.

- 7.4 Neither the execution of this Agreement by the Local Government or the acceptance of the Supplier's Proposal shall be or deemed to be approval or authorization by the Local Government to anything related to the business or operations of the Supplier or the provision of the Services that requires any permit or licence or approval pursuant to federal, provincial or municipal legislation, regulations or by-laws.
- 7.5 The Supplier shall promptly provide to the Local Government, upon request (unless specified otherwise in the tender or request for proposal), copies of all permits, licences, authorizations and registrations that it is required to obtain in order to provide the Services, as well as evidence of the Supplier's compliance with laws applicable to the performance of the Services.

## **8 INSURANCE, LIABILITY AND INDEMNITY**

8.1 The Supplier shall, at its own expense obtain and maintain for the Term and for an additional period of two (2) years thereafter the following insurance coverage:

(a) Commercial General Liability

- (i) The policy shall provide a policy limit of not less than Five Million Dollars (\$5,000,000.00) per occurrence for all claims arising out of bodily injury (including death), personal injury, and damage to property of others. Such policy shall not contain any exclusion that conflict with the Services required to be delivered or performed under this Agreement. The Supplier shall list the Local Government and any other party required by the Local Government as an additional insured. The policy shall also contain cross liability and severability of interest.

(b) Automobile Liability Insurance

- (i) The policy shall provide coverage for liability arising out of the use of owned, non-owned, leased or hired automobiles in connection with the performance of the Services. Coverage shall consist of a combined single limit of not less than Two Million Dollars (\$2,000,000.00) per occurrence. Alternatively, for Services that do not require the use of owned, non-owned, leased or hired automobile, the Supplier shall provide written confirmation stating same within five (5) Business Days of the execution of the Agreement instead of the required insurance coverage.

(c) Cyber Liability Insurance

- (i) The policy shall provide a policy limit of not less than Two Million Dollars (\$2,000,000.00) per occurrence. Coverage shall be sufficiently broad to respond to the duties and obligations of the Supplier and shall include, but not be limited to, claims involving infringement of intellectual property, including but not limited to infringement of copyright, trademark, trade dress, invasion of privacy violations, information theft, damage to or destruction of electronic information, release of private or personal information, alteration of electronic information, extortion and network security. The policy shall provide coverage

for breach response costs, regulatory fines and penalties as well as credit monitoring expenses with limits sufficient to respond to these obligations.

- 8.2 Each of the aforementioned policies shall have policy limits not less than five million dollars (\$5,000,000.00) per claim or occurrence, aggregate limits not less than five million dollars (\$5,000,000.00) within any policy year.
- 8.3 The insurance to be maintained by the Supplier hereunder shall:
- (a) be issued by financially sound insurers acceptable to the Local Government and licensed to carry on business in the Province of New Brunswick or Canada;
  - (b) require the insurer to provide the Local Government with at least thirty (30) days' prior written notice of a material change in the policy or termination or cancellation of the policy;
  - (c) provide coverage for liability arising out of property damage, loss, personal injury (including death), or any other damage resulting from any act or omission of the Supplier, its officers, directors, employees, servants, and agents; and
  - (d) be primary insurance without right of contribution of any other insurance carried by the Supplier or by the Local Government.
- 8.4 Prior to the award of any contract for service or the signing of this Agreement, the Supplier shall deliver to the Local Government certificates of insurance evidencing the insurance required under this Agreement is in effect. Thereafter and throughout the Term or Term Extension of this Agreement, the Supplier shall, provide the Local Government any and all renewal certificates of insurance evidencing that the insurance required under this Agreement continues in effect. The Supplier shall also provide a certificate of insurance upon request of the Local Government.
- 8.5 The Supplier shall provide the Local Government with a certificate of renewal for each insurance policy no later than fifteen (15) days prior to the expiry date of the applicable policy.
- 8.6 When requested by the Local Government, the Supplier shall provide copies of its insurance policies to the Local Government for their review and inspection during the Term of this Agreement or prior to the Parties signing this Agreement.
- 8.7 The Parties acknowledge and agree that any other valid or collectible insurance that may be available to the Local Government shall not apply to any loss until the coverage and limits available under the insurance policies maintained by the Supplier in accordance with this Agreement have been exhausted.
- 8.8 The Supplier shall at all times indemnify and save harmless the Local Government, its officers, directors, employees, councillors, agents, representatives, officials, successors and assigns (hereinafter the "Indemnified Parties"), from and against any and all claims, actions, suits, executions, demands, or other proceedings of any kind or nature, and all loss, liability, judgments, costs, charges, damages, liens and expenses of any nature whatsoever and howsoever caused ("Losses") resulting from:
- (a) an Event of Default;



- (b) any act, omission or negligence of the Supplier, or any of its employees, servants, agents, or subcontractors, in the performance of this Agreement, including without limitation, any injury or death to persons, or loss of or damage to property;
  - (c) the death of or bodily injury to any employee, customer, agent, business invitee, visitor or other person, to the extent caused by the negligence or willful misconduct of the Supplier or any Supplier personnel or Supplier affiliate;
  - (d) the damage, loss or destruction of any real or tangible personal property (excluding data) to the extent caused by the negligence or willful misconduct of the Supplier or any Supplier personnel;
  - (e) the unauthorized disclosure or breach by the Supplier or any Supplier personnel of any Confidential Information and/or personal information;
  - (f) any acts performed by or on behalf of the Supplier beyond the authority of the Supplier under the terms of this Agreement;
  - (g) any illness, injury or death of any employee of the Supplier;
  - (h) any breach or resulting expenses incurred by the Supplier attributable to the Supplier's responsibilities pursuant to applicable health and safety legislation;
  - (i) any infringement or alleged infringement of any patent, trade secret, service mark, trade name, copyright, official mark, moral right, trade-mark, industrial design or other propriety rights conferred by contract, common law, statute or otherwise in respect to the Services or any matter provided to the Local Government or performed by the Supplier, or anyone else for whom at law the Supplier is responsible, except to the extent any such alleged infringement is attributable to the actions or omissions of the Indemnified Parties; or
  - (j) a security breach caused by or attributable to the negligence, actions, omissions or delays in the performance of this Agreement by the Supplier.
- 8.9 The Local Government shall not be liable for any damages or injury (including death) to any person or to any property of the Supplier as a result of or arising out of this Agreement or the provision of the Services by the Supplier under this Agreement, unless such damages are direct damages and are caused solely and directly by or as a result of the negligence of the Local Government. In no event shall the Local Government be liable for any indirect or consequential damages that are sustained by the Supplier, howsoever caused, as a result of or arising out of this Agreement or the provision by the Supplier of any Services hereunder.
- 8.10 If the Supplier or its workers are employed in an industry prescribed by legislation where coverage is required under the *Worker's Compensation Act* (New Brunswick) the Supplier shall verify prior to signing this Agreement that they are registered and in good standing by obtaining a clearance certificate from WorkSafe NB. The Supplier shall also provide a copy of the clearance certificate to the Local Government prior to the Parties signing the Agreement.

- 8.11 If at any time during the Term of this Agreement the Supplier's WorkSafe NB coverage lapses, the Supplier, upon receipt of an invoice, shall pay the Local Government for any charges that the Local Government incurs.

## **9 RESOURCES**

- 9.1 In the event that the Supplier requires access to equipment or office space of the Local Government in order to carry out any part of the Services, the Supplier shall comply with all applicable safety and security legislation and all policies and directives of the Local Government relating to any buildings, premises, equipment or software to which the Supplier is given access.
- 9.2 The Supplier shall assign a sufficient number of qualified, competent and skilled personnel to carry out its obligations under this Agreement. In the event that the Supplier's Proposal included the names or titles of specific personnel or any proposed subcontractor to provide the Services, or any part thereof, the Supplier's personnel and any subcontractors so indicated in the Proposal shall be required to provide the Services and no substitutions shall be permitted without the prior written consent of the Local Government. If the Local Government, in its sole discretion, considers a proposed substitute to be acceptable, the Local Government may consent to the substitution, provided however that such consent may be subject to such terms and conditions as the Local Government designates in writing to the Supplier. Notwithstanding the foregoing, the Local Government shall have the right at any time, in its sole discretion, to require that the Supplier replace, at no cost or expense to the Local Government, any Supplier personnel or subcontractor involved in providing the Services whom the Local Government determines to be unsuitable, and in such event, the Supplier shall immediately appoint a duly qualified, competent and skilled replacement to fill the position vacated.

## **10 TITLE AND ACCEPTANCE**

- 10.1 Unless otherwise expressly provided in this Agreement, title to all deliverables, or any part thereof, comprising the Services to be provided by the Supplier shall vest in the Local Government on delivery and acceptance by the Local Government. Upon payment being made by the Local Government on account of materials, parts, work in process, or finished work, title therein shall vest in and remain with the Local Government, provided however that the risk of any loss or damage thereto shall remain with the Supplier until their acceptance by the Local Government. Vesting of title in the Local Government as a result of payments made by the Local Government to the Supplier shall not constitute acceptance, or be deemed to constitute acceptance, by the Local Government of any such materials, parts, work in progress or finished work, and shall not relieve the Supplier of its obligations to perform the Services in accordance with the requirements of this Agreement.
- 10.2 The Supplier shall promptly pay for all labour, services and materials that it requires to provide the Services. The Supplier agrees that it shall not do or permit anything to be done that would result in any liens, charges or encumbrances being placed on or attaching to any materials, parts, work in process, finished work or deliverables comprising the Services to be provided to the Local Government under this Agreement.

## **11 FORCE MAJEURE**

- 11.1 The Supplier shall not be liable for a failure or delay in performing any of its obligations hereunder that occurs without the fault or negligence of the Supplier and is attributable solely to a cause beyond its reasonable control (“Force Majeure Event”). For the purposes of this Agreement, the following shall be considered to be a Force Majeure Event: flood, fire, explosion, power failure, acts of God, war, terrorism, civil commotion, the enactment of any law, order, regulation or by-law, labour strikes or disputes, slowdowns, picketing, boycotts, stop-work order, injunction or other causes beyond their reasonable control excluding a non-performing Party’s lack of or insufficient financial resources to discharge its duties, liabilities or obligations hereunder.
- 11.2 Where the Supplier claims that a Force Majeure Event has occurred, the Supplier shall be required to give immediate written notice thereof to the Local Government, which notice shall describe the Force Majeure Event, its cause, the probable duration of the delay resulting therefrom, and the steps being taken by the Supplier to mitigate the impact of the Force Majeure Event on the performance of the Supplier’s obligations hereunder.
- 11.3 Notwithstanding the foregoing provisions of this Section 11, if a delay or failure arising from a Force Majeure Event continues for ten (10) consecutive days, the Local Government may, in its sole discretion, terminate this Agreement upon three (3) days prior written notice to the Supplier. In the case of termination by the Local Government pursuant to this Section 11.3, the Supplier shall be entitled to receive payment only for the Services provided prior to the termination date which have met the requirements of this Agreement, and such payment shall constitute full and final satisfaction of the Local Government’s obligations to the Supplier hereunder.

## **12 REPRESENTATIONS AND WARRANTIES**

- 12.1 The Supplier represents and warrants to the Local Government, with the intention and knowledge that the Local Government is relying on each such representation and warranty in entering into this Agreement, that:
- (a) All statements contained in the Supplier’s Proposal, and any certificate or other document delivered to the Local Government as part negotiations between the Parties or under this Agreement or in connection with the Services to be provided hereunder are true and correct;
  - (b) The Supplier has no knowledge of any fact that may materially adversely affect the Supplier’s business or operations or its financial condition, or its ability to fulfill its obligations to the Local Government under this Agreement;
  - (c) The Supplier has the personnel, experience, qualifications and other resources to provide the Services in accordance with the requirements of this Agreement in a timely, efficient and professional manner in accordance with the Required Standard of Care.

“Required Standard of Care” means: (a) using the Standards, practices, methods and procedures among the highest commercial standards of practice and professionalism as understood in the Province of New Brunswick; (b) conforming to applicable laws and all rules of professional conduct applicable to the Supplier or the

Supplier personnel; (c) exercising the degree of skill and care, diligence, prudence and foresight which would be expected from a leading person or professional performing work similar to those called for under this Agreement and (d) using only proper materials and methods as are suited to the function and performance intended;

“Standards” means, at a given time, those specifications, manuals, codes, practices, methods and procedures applicable to the Required Standard of Care;

- (d) The Supplier is validly existing under the laws of the location of its head office and the Supplier has all necessary corporate power, authority and capacity to enter into, meet and perform its obligations under this Agreement;
- (e) The entering into of this Agreement by the Supplier and the performance of its obligations hereunder has been authorized by all necessary corporate action;
- (f) The Supplier is not aware of any legal action instituted, threatened or pending against the Supplier that could have a material adverse effect on its ability to perform its obligations under this Agreement;
- (g) This Agreement has been duly authorized, executed and delivered by the Supplier and constitutes a valid and binding obligation of the Supplier enforceable against it in accordance with its terms, subject only to applicable bankruptcy, insolvency and other similar laws affecting the enforceability of the rights of creditors generally; and
- (h) The Supplier can perform the Services, and the Local Government shall be entitled to utilize the Services, in accordance with the requirements of this Agreement without infringing any trade secret, patent, copyright, industrial design or other intellectual property right enforceable in Canada, and the Supplier has obtained, and will maintain, at its own expense, all requisite and appropriate authorizations and permissions, including those concerning any licenses, assignments, copyrights, patents and other intellectual property rights that are required by the Supplier to meet its obligations to the Local Government hereunder.

12.2 THE PARTIES AGREE THAT, EXCEPT AS EXPRESSLY PROVIDED IN THIS AGREEMENT, THERE ARE NO OTHER WARRANTIES (EXPRESS OR IMPLIED) PROVIDED BY THE SUPPLIER WITH RESPECT TO THE PERFORMANCE OF THE SERVICES, INCLUDING THE IMPLIED WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE.

### **13 CONFLICT OF INTEREST**

13.1 The Supplier shall not permit an actual or potential conflict of interest to arise between its obligations to the Local Government under this Agreement and its obligations to any third party. The Supplier shall immediately notify the Local Government in writing if any such potential or actual conflict of interest should arise at any time during the Term.

### **14 ASSIGNMENT AND SUBCONTRACTING**

14.1 The Supplier shall not assign this Agreement or any of its rights or obligations hereunder or subcontract the performance of any of the Services without the prior written consent of the

Local Government, which consent may be withheld by the Local Government in its sole discretion. Any purported assignment or subcontracting by the Supplier without such consent shall be of no force or effect.

14.2 The Local Government's consent to an assignment of this Agreement or the subcontracting of the performance of any of the Services to be provided by the Supplier hereunder, shall not relieve the Supplier from any of its obligations under this Agreement and the Supplier shall, notwithstanding any such consent by the Local Government, remain responsible for the performance of the Services and all other obligations of the Supplier set out herein.

14.3 Subject to Section 14.1, the Supplier shall only engage subcontractors or personnel that are qualified and competent to perform the Services under this Agreement in a timely, efficient and professional manner.

## 15 ACCOUNTS AND AUDIT

15.1 The Supplier shall keep proper and accurate books and records, including all invoices, receipts and vouchers, relating to the Services and all expenditures and commitments made in connection therewith. The Supplier shall make such books and records available to the Local Government for review or audit within ten (10) days following receipt of a request from the Local Government to do so. The Supplier agrees that it shall retain all such books and records and make them available for review or audit by the Local Government for a period of three (3) years after the date of final payment by the Local Government hereunder. Any review or audit by the Local Government pursuant to this Section 15.1 shall be carried out by the Local Government at the Local Government's expense.

## 16 GENERAL

16.1 **Local Government's Representative:** All references in this Agreement to the Local Government, include any person duly authorized to act on behalf of the Local Government thereunder.

16.2 **Sections, Headings and Interpretation:** The division of this Agreement into sections and the insertion of headings are for convenience of reference only and do not affect its interpretation. Except where the context requires otherwise, references to the terms "herein," "hereof," "hereunder" and similar expressions refer to this Agreement as a whole, and not to any specific Section or Schedule.

16.3 **Time of the Essence:** Time shall be of the essence in this Agreement.

16.4 **Currency:** All dollar amounts referred to in this Agreement are Canadian dollars, unless expressly provided or stated otherwise.

16.5 **Severability / Partial Invalidity:** If any term or provision of this Agreement is held by a court of competent jurisdiction to be illegal, invalid or unenforceable, it shall be deemed to be severed from this Agreement, and the remaining terms and conditions shall nevertheless remain in full force and effect.

16.6 **Agreement and Amendments:** This Agreement constitutes the entire agreement and understanding between the Supplier and the Local Government with respect to the Services, and supersedes all prior negotiations, communications and other agreements, whether

written or oral, relating to the subject matter hereof. Any amendment or modification to this Agreement shall have no force or effect unless it is in writing and signed by duly authorized representatives of each of the Local Government and the Supplier.

The following documents form part of this Agreement:

- (a) this Agreement and
- (b) the attached Schedules.

- 16.7 **Waiver:** No term or provision of this Agreement, and no breach of this Agreement by the Supplier, shall be deemed to be waived or excused by the Local Government unless such waiver is in writing and signed by the Local Government. The waiver by the Local Government of any breach of a term or provision of this Agreement shall not be or be deemed to be a waiver of any continuing or subsequent breach by the Supplier of the same or any other term or provision of this Agreement.
- 16.8 **Remedies Cumulative:** The rights and remedies of the Local Government set out in this Agreement are cumulative and are in addition to and not in substitution for any other rights or remedies available to the Local Government at law or in equity.
- 16.9 **Disputes:** If a dispute arises between the Local Government and the Supplier arising out of or relating to this Agreement, or the subject matter hereof, the Local Government and the Supplier agree that they shall each make all reasonable efforts to resolve any such dispute on a timely basis through amicable negotiations. Disputes shall promptly be referred by each Party to their respective senior management representatives who have the authority to resolve and settle any such disputes on their behalf. In the event that such representatives cannot resolve the dispute within ten (10) days or such longer period as the Parties may agree in writing, either Party may elect, upon giving prior written notice to the other Party, to resolve the matter through mediation or arbitration by a mutually acceptable mediator or arbitrator in accordance with the *Arbitration Act*, SNB, 2014, c. 100, as amended or litigation proceedings in the courts of the Province of New Brunswick. Notwithstanding the foregoing, nothing in this Section 16.9 shall prevent the Local Government from exercising its rights of termination set out under this Agreement in the circumstances described therein. It is further agreed by the Parties that they shall pay their own costs of any mediation, arbitration or litigation.
- 16.10 **Enurement:** This Agreement shall enure to the benefit of and be binding on the Local Government and on the successors and permitted assigns of the Supplier.
- 16.11 **Notices:** Any notice to be given under this Agreement by the Local Government or the Supplier shall be in writing and delivered by hand, by email transmission or by registered mail, to the other Party at the address and to the attention of the contact individual indicated below:

**To the Local Government:**  
The Office of the  
City Clerk  
397 Queen Street  
Fredericton, NB E3B 1B5  
cityclerk@fredericton.ca

**To the Supplier:**  
600-1285 West Broadway  
Vancouver, BC V6H 3X8  
rodney@destinationthink.com

A notice shall be deemed to be duly given and received upon delivery, if delivered by hand;

upon receipt of the email transmission, if the transmission is received by the intended recipient prior to the recipient's close of business (and otherwise on the next business day of the recipient); or three (3) business days after posting, if sent by registered mail with a return receipt. Either Party may change its address or contact for receipt of notices, provided that such Party gives notice thereof in accordance with this Section 16.11 and confirms the effective date of the change in such notice.

- 16.12 **Counterparts:** This Agreement may be signed by the Local Government and the Supplier in one or more counterparts (in original or electronic form), each of which when signed and delivered will be deemed an original, but all of which together will constitute one and the same instrument; however, this Agreement will be of no force or effect until executed by all Parties. Executed signature pages delivered by facsimile or electronic mail will be deemed for all purposes to be original counterparts of this Agreement.
- 16.13 **Further Assurances:** The Supplier and the Local Government agree to execute and deliver all such further documents and instruments, and do or cause to be done all such acts and things, as either Party may reasonably consider necessary to evidence the intent and meaning of this Agreement.
- 16.14 **Words in the Singular:** Where the context so requires in this Agreement, words in the singular include the plural and vice versa.
- 16.15 **Contra Proferentem Rule Not Applicable:** Should any provision of this Agreement require judicial interpretation, mediation or arbitration, it is agreed that the court, mediator or arbitrator interpreting or construing the same shall not apply a presumption that the terms thereof shall be more strictly construed against one Party by reason of the rule of construction that a document is to be construed more strictly against the Party who itself or through its agent prepared the same, it is agreed that both Parties, directly or through their agents, have participated in the preparation hereof.
- 16.16 **Costs:** It is acknowledged that each Party shall pay his own costs, charges and expenses of and incidental to the preparation of this Agreement.
- 16.17 **Governing Law:** The Parties acknowledge and agree this Agreement shall be governed by, construed, interpreted and enforced in accordance with the laws of New Brunswick and any federal laws of Canada applicable therein. The Parties submit to the exclusive jurisdiction of the courts of the Province of New Brunswick, that is, any claim or dispute with respect to or in relation to this Agreement shall be determined by a court of competent jurisdiction within the Province of New Brunswick.
- 16.18 **Public Announcements:** Neither Party shall make any public announcement, statement or press release regarding this Agreement or any relationship between the Supplier and the Local Government, without the prior written consent of the other Party.
- 16.19 **Survival:** Any provision of this Agreement which expressly or by implication from its nature is intended to survive the termination or completion of the Agreement will continue in full force and effect after any termination, expiry or completion of the Agreement. More specifically, neither the expiry nor the earlier termination of this Agreement shall relieve or be deemed to relieve, a Party from any duties, obligations or liabilities hereunder that accrued prior to such expiration or termination, including but not limited to those duties and obligations set out in Section 3 (Suspension and Termination of Agreement), Section 4





## **SCHEDULE A SERVICES**

This Schedule A incorporates the following documents:

**(1) Schedule A.1** Request for Proposal, as attached hereto and forming a part hereof.

RFP P-21 Agency of Record issued by the Local Government on March 4, 2021, which describes the Services to be delivered by the Supplier to the Local Government.

As outlined in RFP P-21, the Services include the following:

A.1(a) Create a Compelling Brand for Fredericton Tourism; and

A.1(b) Become the Agency of Record for Fredericton Tourism

Further particulars with respect to A.1(a) include:

### **“CREATE A COMPELLING BRAND FOR FREDERICTON TOURISM”**

Create a brand for Fredericton Tourism, it's partners and tourism industry to differentiate the city from the competition and to grow tourism revenue. The goal is to make Fredericton the most sought after/top urban destination in Atlantic Canada.

### **MANDATORY REQUIREMENTS**

1. The new brand must complement and recognize the current city brand ...
2. The new brand will be multi-purpose and will be integrated into all tourism sectors (leisure, meetings and conventions, sport, travel media, and travel trade).
3. The brand **MUST** work in both official languages.
4. The new brand must include consultation with various tourism industry groups. At a minimum the following meetings will be scheduled:
  - a. Initial meeting with the Steering Committee following award of the Project.
  - b. Public / Stakeholder meetings (as required):
    - Fredericton Hotel Association
    - Industry Advisory Group
    - Community Engagement
    - Key industry stakeholders identified by Fredericton Tourism & Events
  - c. Steering Committee Meetings – Once per month, to brief the Steering Committee on work completed to date and to discuss specific issues; and
  - d. City Council, staff and the public – one meeting to present the completed brand to Council.
  - e. Tourism Accommodation Levy (TAL) Management Committee – one meeting to present the completed brand to the TAL Committee.

It is expected that, in addition to the scheduled meetings, the Agency will inform and work with the City's prime contact person (Project Manager Holly Kirkpatrick) throughout the process. The Agency may request a meeting of the Steering Committee at any time.

**Deliverables Would Include:**

- Identification of key audiences, their motivators, and how Fredericton can differentiate from competitors.
- Brand Personality Essence
- Brand Promise and Overview
- Brand Tagline and Secondary Messaging
- Strategic vision for the future Voice, Tone and Personality of Fredericton
- Brand Guidelines
- Putting Brand Voice into Practice
- Stylistic Approach
- Color Palette (primary, secondary, tertiary)
- Typography
- Icon Visuals
- Photography & Videography Standards
- Execution Examples and/or Design Templates (including those for industry partners)
- Fredericton Tourism logo variations (if deemed necessary)
- Other (Please list any other elements you feel should be included) ”

**Delivery schedule / completion date for A.1(a) shall be on or before February 14, 2022.**

Further particulars with respect to A.1(b) include:

**“BECOME THE AGENCY OF RECORD FOR FREDERICTON TOURISM**

Fredericton Tourism is looking for an Agency of Record to fulfill some or all, of the following services, but not limited to:

**Creative Development and Services:**

- Provide effective, creative, innovative, and fully integrated marketing campaigns based on the overall brand strategy developed
- Assist in the development of a COVID-19 tourism strategy & recovery plan
- Provide research, strategy, media planning, reporting and innovative tactic recommendations as required.
- Creation of critical paths for creative development, aligned with deadlines for creative delivery
- Provide multi-channel paid media, including display, social media, mobile, television, print, radio and out-of-home. *It is important to note that Fredericton Tourism places a high level of emphasis on advertising in the digital space.*
- Production management of creative content and assets for online, website, television, print, footage, video, still photography, audio and music.
- Campaign website integration
- Email marketing
- Graphic design work
- Presentations
- Content creation for website and other applications as required.
- Copywriting (English and French)
- Adaptation of English to French, or French to English
- Printing
- Collateral materials (example: Visitor Guide, special purpose brochures, signage, banners, merchandise, and displays/exhibits)

- Consumer show presence
- PR and non-paid media concepts / in-market experiential initiatives / brand activations (special event ideas)

**Paid Media and Digital Assets:**

*(It is important to note that Fredericton Tourism will continue to handle all organic social media in-house.)*

- Media buying and all related services
- Regular updates on media trends
- Buying media within cooperative programs on behalf of partners, if necessary
- Financial accreditation/qualifications to place larger volumes of advertising on credit
- Obtaining value-add advertising opportunities
- Production management including trafficking all creative online to appropriate media with scheduling instructions
- Quality control for content, accuracy, and production
- Casting, negotiation, and payment of talent contracts, including music

**Research:**

- Provide a full analysis of Fredericton Tourism including consumer insight, target markets, new market potential and opportunities for growth.
- Assist in identification of opportunities and shortcomings in product offerings to re-enforce/support the new brand
- Market research and consumer habits when requested
- Concept testing

**Reporting and Analytics:**

- Ongoing monitoring and reporting throughout campaigns as well as a post-buy analysis
- Provide timely reporting to measure effectiveness of marketing tactics in relation to Fredericton Tourism's marketing objectives
- Website analytics, social media and online advertising results and reporting, congruent with defined objectives

**Note:** All reporting to be developed, tracked, and assessed based on defined objectives by program.”

**Delivery schedule / completion date for A.1(b) shall be outlined in separate statements of work prepared by the Parties.**

The form of statements of work to be used by the Parties (for A.1(b) Services) is attached hereto as Schedule D.

**(2) Schedule A.2** Supplier's Proposal dated April 6, 2021 as attached hereto and forming a part hereof.

## SCHEDULE B

### FEE SCHEDULE

#### **Schedule B.1 – Fees for A.1(a) Services [Create a Compelling Brand for Fredericton Tourism]**

The table below provides a description of the services involved in each deliverable. The budget column outlines the cost of each step for a total cost of \$150,000.00. The notes column describes the additional scope of work that the Supplier is recommending to the Local Government.

DELIVERABLES	DESCRIPTION OF SCOPE	BUDGET	NOTES
Project planning and account management	Detailed project plan created for your approval to guide the project, risk assessment, resource planning and management, and general internal and external communication.	10,000	
Project status meetings	Bi-weekly client work in progress (WIP) meetings and weekly internal WIPs and status reporting on budget use, timeline and project completion.	7,500	No change.
Discovery and background research	Desktop research and review of all relevant background documentation and extensive desk research.	8,500	
Place DNA®	Resident survey, two (2) half-day workshops and observational research. This includes time to research, prepare, deliver and debrief from the workshops. Two facilitators will be present at workshops.	20,500	Given the importance of resident engagement, we recommend the addition of two (2) workshops, including the time to prepare and analyse results.

Perceived analysis	Desk research to understand current perceptions. Includes review of forums (TripAdvisor) and social platforms to see current conversations about Fredericton. Findings will be summarized in the final Place DNA® report.	14,000	We strongly recommend custom online sentiment analysis research to understand current perceptions. This process is a lot more robust than desk research.
Projected analysis	Review and analysis of existing communications from five (5) organizations that are central to and/or responsible for communicating the Fredericton brand. The deliverable forms 30-40 slides in the final report. While this step arguably can be omitted, analyzing the projected brand allows us to complete a robust gap analysis.	6,400	
Place DNA® and gap analysis report	200+ page report that distills analysis of resident survey, workshops and perceived analysis. Includes up to two presentations to team and stakeholders. This provides a foundational piece for a multi-year engagement (brand, destination development, economic development, etc).	25,000	Additional analysis, due to increases in scope noted above, required to develop (draft, proof, design) the final report.
Brand strategy (inc workshop)	Development of brand strategy includes key touchpoint and validation sessions for feedback and input. This includes development of a brand promise, essence, story, personality and key attributes. The brand strategy is the foundation for creating a differentiated communication strategy from the DMO and aligns stakeholders' communications and experience delivery.	20,000	In order to hit a 125k budget we have reduced the budget to the bare minimum. Ideally we'd like to be able to avoid cutting corners on developing a brand strategy.

Visual identity	Creation and presentation of three (3) tag lines. Creation and presentation of three (3) visual identities.	30,000	Creation of an additional tag line and visual identity. Three options gives your decision making team more options to consider and is what we typically recommend.
Brand guidelines	Development of brand guidelines that outlines how to use the approved identity. Guidelines are designed with stakeholders in mind, so they can leverage brand assets. Two revisions of each and execution of one approved concept* Includes sample executions.	18,000	No change.
Brand launch presentation	Creation and delivery of a brand launch presentation of the new brand to relevant stakeholders and community; one event for industry and one for residents and other stakeholders, including brand story video.	8,000	No change.
<b>TOTAL</b>		167,900 <u>-17,900</u> <b>150,000</b>	Applied Supplier discount \$17,900.

**Schedule B.2 – Fees for A.1(b) Services [Act as the Agency of Record for Fredericton Tourism]**

**The fees for A.1(b) Services shall be outlined in separate statements of work prepared by the Parties.**

The form of statements of work to be used by the Parties is attached hereto as Schedule D.

## SCHEDULE C

### PRIVACY PROTECTION SCHEDULE

#### **Purpose**

1. The purpose of this Schedule is to:
  - (a) enable the Local Government to comply with the Local Government's statutory obligations under the RTIPPA with respect to personal information that is collected, retained, used, or disclosed as a result of the provision of the Services;
  - (b) ensure that, as a service provider, the Supplier is aware of the obligations under the applicable legislation with respect to personal information that is collected, retained, used or disclosed as a result of the provision of the Services; and
  - (c) "personal information" has the meaning given in the RTIPPA (SNB 2009, c. R-10.6)

#### **Collection of personal information**

2. Unless the Agreement otherwise specifies or the Local Government otherwise directs in writing, the Supplier may only collect or create personal information that is necessary for the performance of the Supplier's obligations or the exercise of the Supplier's rights, under the Agreement.
3. Unless the Agreement otherwise specifies, or the Local Government otherwise directs in writing, the Supplier must collect personal information directly from the individual the information is about.
4. Unless the Agreement otherwise specifies or the Local Government otherwise directs in writing, the Services must make provision to inform an individual from whom personal information is collected:
  - (a) the purpose for collecting it;
  - (b) the legal authority for collecting it; and
  - (c) the title, business address and business telephone number of the person designated by the Local Government to answer questions about the collection of personal information.

#### **Integrity of personal information**

5. The Supplier must make every reasonable effort to ensure the integrity and completeness of any personal information that comes within the custody or control of the Supplier as a result of the provision of the Services where that personal information is to be used by the Supplier or the Local Government to make a decision that directly affects the individual the information is about.

#### **Requests for access to personal information**

6. If the Supplier receives a request for access to personal information from a person other than the Local Government, the Supplier must promptly advise the person to make the request to the Local Government unless the Agreement expressly requires the Supplier to provide such access and, if the Local Government has advised the Supplier of the name

or title and contact information of an official of the Local Government to whom such requests are to be made, the Supplier must also promptly provide that official's name or title and contact information to the person making the request.

#### **Correction of personal information**

7. Within five (5) business days of receiving a written direction from the Local Government to correct or annotate any personal information, the Supplier must annotate or correct the information in accordance with the direction.
8. When issuing a written direction under Section 7, the Local Government must advise the Supplier the date the correction request to which the direction relates was received by the Local Government in order that the Supplier may comply with Section 10.
9. Within five (5) business days of correcting or annotating any personal information under Section 8, the Supplier must provide the corrected or annotated information to any party to whom, within one year prior to the date the correction request was made to the Local Government, the Supplier disclosed the information being corrected or annotated.
10. If the Supplier receives a request for correction of personal information from a person other than the Local Government, the Supplier must promptly advise the person to make the request to the Local Government and, if the Local Government has advised the Supplier of the name or title and contact information of an official of the Local Government to whom such requests are to be made, the Supplier must also promptly provide that official's name or title and contact information to the person making the request.

#### **Protection of personal information**

11. The Supplier must protect personal information by making reasonable security arrangements against such risks as unauthorized access, collection, use, disclosure or disposal, including any expressly set out in the Agreement.

#### **Storage and access to personal information**

12. Unless the Local Government otherwise directs in writing, the Supplier must not store personal information outside Canada or permit access to personal information from outside Canada.

#### **Retention of personal information**

13. Unless the Agreement otherwise specifies or unless the Local Government directs otherwise in writing, the Supplier must retain personal information for at least one year following the date of its use and securely dispose of personal information no later than three years after its use.

#### **Use of personal information**

14. Unless the Local Government otherwise directs in writing, the Supplier may only use personal information if that use is required for the performance of the Services.

#### **Disclosure of personal information**

15. Unless the Local Government otherwise directs in writing, the Supplier may only disclose personal information inside Canada to any person other than the Local Government if the disclosure is for the performance of the Supplier's obligations or the exercise of the Supplier's rights, under the Agreement.



16. Unless the Agreement otherwise specifies or the Local Government otherwise directs in writing, the Supplier must not disclose personal information outside Canada.

#### **Notice of unauthorized disclosure**

17. If the Supplier knows that there has been an unauthorized disclosure of personal information in the custody or under the control of the Supplier, the Supplier must immediately notify the Local Government and take all necessary steps to mitigate and remediate. If the Supplier becomes aware of a security breach or any other event that compromises the security, confidentiality or integrity of any personal information (an "Incident"), the Supplier shall take appropriate actions to contain, investigate and mitigate the Incident. The Supplier shall also notify the City and any individual of each and every Incident as soon as reasonably possible.

#### **Inspection of personal information**

18. In addition to any other rights of inspection the Local Government may have under the Agreement or under statute, the Local Government may, at any reasonable time during normal business hours and on reasonable notice to the Supplier, enter on the Supplier's premises to inspect any personal information in the custody or control of the Supplier as a result of its provision of the Services, and any of the Supplier's information management policies or practices relevant to the Supplier's management of personal information in connection with the Services or the Supplier's compliance with this Schedule, and the Supplier must permit, and provide reasonable assistance to, any such inspection. The inspection will be conducted in a manner as not to interfere unreasonably with Supplier's business operations, and is subject to Supplier's reasonable confidentiality and security policies, procedures and requirements.

#### **Compliance with the applicable legislation and directions**

19. The Supplier must in relation to personal information comply with the requirements of the applicable legislation, including any applicable order under the applicable legislation and any direction given by the Local Government that is permitted or required to be given under this Agreement or pursuant to legislation.
20. The Supplier acknowledges that it is familiar with the requirements of the applicable legislation governing personal information that are applicable to it.

#### **Notice of non-compliance**

21. If for any reason the Supplier does not comply, or anticipates that it will be unable to comply, with a provision in this Schedule in any respect, the Supplier must promptly notify the Local Government of the particulars of the non-compliance or anticipated non-compliance and what steps it proposes to take to address, or prevent recurrence of, the non-compliance or anticipated non-compliance.

#### **Termination of Agreement**

22. In addition to any other rights or remedies which the Local Government may have under the Agreement or otherwise at law, the Local Government may, upon any failure of the Supplier to comply with this Schedule in a material respect, declare such non-compliance to be an Event of Default and terminate the Services, or a component thereof, and/or the Agreement, in accordance with Section 3 of the Agreement.

#### **Interpretation**

23. In this Schedule, references to sections by number are to sections of this Schedule unless otherwise specified in this Schedule.

24. Any reference to the “Supplier” in this Schedule includes any subcontractor or agent retained by the Supplier to perform obligations under the Agreement and the Supplier must ensure that any such subcontractors and agents comply with this Schedule.
25. The obligations of the Supplier in this Schedule will survive the termination of the Agreement and will only expire when the Supplier no longer has any personal information generated as a result of the Services in its custody or control.
26. If a provision of the Agreement (including any direction given by the Local Government under this Schedule) conflicts with a requirement of the applicable legislation or an applicable order under the applicable legislation, the conflicting provision of the Agreement (or direction) will be inoperative to the extent of the conflict.
27. The Supplier must comply with the provisions of this Schedule despite any conflicting provision of this Agreement or, subject to Section 28, the law of any jurisdiction outside Canada.
28. Nothing in this Schedule requires the Supplier to contravene the law of any jurisdiction outside Canada unless such contravention is required to comply with the applicable legislation.

## SCHEDULE D

### STATEMENT OF WORK FORM

This Statement of Work is governed under the Agreement between THE CITY OF FREDERICTON and DESTINATION THINK! PROFESSIONAL SERVICES INC. dated August \_\_\_\_, 2021 (the "Agreement") and is fully incorporated therein. All terms used in this Statement of Work and not otherwise defined herein will have the same meaning as in the Agreement.

Pursuant to the Agreement, the Supplier has agreed to provide and deliver A.1(b) Services in accordance with the Agreement and future statements of work entered into by the Parties.

**Statement of Work Number:** \_\_\_\_\_

**Project name:** P21-8, Agency of Record – the City of Fredericton

**The Parties hereby agree as follows:**

**1. Effective Date:** This Statement of Work is effective as of \_\_\_\_\_, 20\_\_.

**2. Background:**

*Provide a general description of the work, what is expected to be accomplished and highlight objectives.*

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**3. Overview**

(a) Services/tasks to be provided by the Supplier:

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(b) Target audience:

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(c) Timeline/deadline for completion:

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**4. Fees**

*Detail the fixed fee in total or a fee based on time-based rates of personnel employed or engaged by the Supplier.*

(a) The Supplier will charge the following fees for the provision of the services outlined in this Statement of Work:

---

\_\_\_\_\_

(b) Payment schedule:

\_\_\_\_\_  
\_\_\_\_\_

**5. Acceptance**

*Identify individual for Supplier and Local Government that has responsibility for review and approval of deliverables.*

Supplier: \_\_\_\_\_

Local Government: \_\_\_\_\_

**6. Special requirements**

\_\_\_\_\_  
\_\_\_\_\_

**7. Other**

\_\_\_\_\_  
\_\_\_\_\_

**8. Amendments**

Any amendment or modification of this Statement of Work shall have no force or effect unless it is in writing and signed by the authorized representative of each of the Parties.

IN WITNESS THEREOF the Parties hereto have caused this Statement of Work to be executed by their authorized representatives.

**THE CITY OF FREDERICTON**

**DESTINATIONTHINK!  
PROFESSIONAL SERVICES INC.**

By: \_\_\_\_\_

By: \_\_\_\_\_

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

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

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

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

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

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

**PROVINCE OF NEW BRUNSWICK**

**COUNTY OF YORK**

**AFFIDAVIT OF CORPORATE EXECUTION**

I, Jennifer Lawson, of the City of Fredericton, in the County of York and Province of New Brunswick, **MAKE OATH AND SAY AS FOLLOWS:**

1. THAT I am the City Clerk of the City of Fredericton, one of the parties named in the foregoing instrument and as such I have personal knowledge of the matters herein deposed to.
2. THAT the seal affixed to the foregoing instrument purporting to be the seal of the City of Fredericton is the Corporate Seal of the City of Fredericton and was so affixed by order of the City Council.
3. THAT the signature "Kate Rogers" subscribed to the foregoing instrument is the signature of Kate Rogers, the Mayor of the City of Fredericton, and the signature "Jennifer Lawson" subscribed thereto is my signature.
4. THAT the Mayor and City Clerk are officers of the City of Fredericton duly authorized to execute the foregoing instrument.

**SWORN TO BEFORE ME** at the )  
 City of Fredericton, in the County )  
 of York and Province of New )  
 Brunswick, this \_\_\_\_ day of )  
 August, 2021. )

\_\_\_\_\_)  
 A Commissioner of Oaths )  
 Being a Solicitor )

\_\_\_\_\_)  
 Jennifer Lawson