

Request for Proposal

Project Name: Retail Support Services
(RSS) Provider -
Technical Support
Services for PRESTO
Retailers

Request Number: RFP-2017-VM-027



Table of Contents

1.0	Definitions.....	4
2.0	Introduction.....	7
2.1	General	7
3.0	Instructions to Proponents	8
3.1	Proposal Documents.....	8
3.2	Submission Instructions.....	8
3.3	Insurance.....	13
3.4	Nature of Agreement	15
3.5	Rights of Metrolinx	15
3.6	Contract to be Executed.....	17
3.7	Conflict of Interest.....	18
3.8	Joint Ventures.....	19
3.9	Prohibited Contacts and Lobbying Prohibition.....	19
3.10	Media Releases, Public Disclosures and Public Announcements.....	19
3.11	Restriction on Communications Between Proponents - No Collusion.....	20
3.12	Disclosure of Information	20
3.13	Freedom of Information and Protection of Privacy Act.....	20
3.14	Submission to Be Retained by Metrolinx	21
3.15	Confidential Information of Metrolinx	21
3.16	Proponents Shall Bear Their Own Costs.....	21
3.17	Changes to Proponent Key Personnel or Subcontractors.....	21
4.0	Proposal Submission Requirements.....	23
4.1	Mandatory Requirements	23
4.2	Submission Format	23
4.3	Submission Content.....	24
4.4	Proponent Presentation	27
4.5	Price Submission.....	27
5.0	Evaluation Criteria and Selection Process.....	28
5.1	Evaluation Methodology	28
5.2	Evaluation Criteria.....	31
6.0	Form of Proposal	33
6.1	Proponent Submission Checklist	33
6.2	Contact Information	34
6.3	Proponent Acknowledgments	35
6.4	Requirements	36
6.5	Conflict of Interest	36
6.6	Harmonized Sales Tax	38

7.0	Attachment 1 - Proponent Prices	39
8.0	Attachment 2 - Corporate References	40
9.0	Attachment 3 - Mandatory Technical Checklist	41
	Appendix "A" - General Conditions	42
	Appendix "B" - Scope of Services	83
1	What is PRESTO and How does it work?	83
2	Scope of Services	85
3	Appendix "B-1" - Technical Requirements	86
	Appendix "C" - Metrolinx Services	87
	Appendix "D" - Documents	88

1.0 Definitions

In this Proposal Document,

- 1.1 **"Addenda"** is the formal release of additions, deletions, revisions, clarifications to this Proposal Document that form a part of the Contract.
- 1.2 **"Business Day"** means any day other than: (a) a Saturday or Sunday and (b) any other day on which Metrolinx is not open for business.
- 1.3 **"Closing"** means the deadline for Metrolinx to receive Submissions as specified in Section 3.2.1 (d) of Instructions to Proponents.
- 1.4 **"Conflict of Interest"** shall have the meaning ascribed in the Form of Proposal Section 6.5 Conflict of Interest.
- 1.5 **"Contract"** means the contract between the Proponent and Metrolinx pursuant to this Request for Proposal reference # RFP-2017-VM-027, including the Articles of Agreement and all documents referenced therein.
- 1.6 **"Corporate Firm"** means any one of the following: a) the Proponent, b) the Proponent and its Subcontractors, or c) the Joint Venture, responding to the Proposal Document.
- 1.7 **"EBS"** means Electronic Bid Submission.
- 1.8 **"E-Bid Authorized Signer"** is the designated individual in the Proponent's organization who has the authority to bind the Proponent to each and every term, condition, article and obligation of the Proposal Document and any resultant Contract.
- 1.9 **"Evaluation Committee"** means the persons chosen by Metrolinx to evaluate the Submissions based on the Evaluation Criteria outlined in this Proposal Document.
- 1.10 **"Evaluation Criteria"** means the criteria for scoring the Submission as stated in Section 5.2 of Evaluation Criteria and Selection Process.
- 1.11 **"FIPPA"** means the Freedom of Information and Protection of Privacy Act, and any amendments or successor legislation. FIPPA is Provincial legislation regulating the collection, retention, access, use and disclosure of "Personal Information" by or on behalf of Metrolinx, and shall be applicable to the Contract including all Services provided pursuant to the Contract.
- 1.12 **"Joint Venture"** means a business arrangement of two or more parties proposed for this RFP Process, as further described in Section 3.8 of Instructions to Proponents.
- 1.13 **"Metrolinx"** means Metrolinx, a provincial crown agency continued under the Metrolinx Act, 5.0.2006, Chapter 16 and its successors and assigns.

- 1.14 **“Metrolinx MERX Portal”** is the electronic bid solicitation and Proponent Submission website (www.metrolinx.merx.com) that facilitates Metrolinx and Proponent interaction as it directly relates to the download by a Proponent of Metrolinx Proposal Document including Addenda from, and upload by a Proponent of a Submission to Metrolinx in response to, this RFP Process.
- 1.15 **“Metrolinx PRESTO Retailers”** means a third party with whom Metrolinx has entered a contractual arrangement to allow the third party to sell and load PRESTO cards.
- 1.16 **“Participant in Charge”** shall have the meaning ascribed in Section 3.8.3 of Instructions to Proponents.
- 1.17 **“Parties”** means Metrolinx and Proponent and “Party” means either of them.
- 1.18 **“Procurement Representative”** means the following individual in the Procurement Services Department:

Eva Chow	
Procurement Specialist, Information Technology and Managed Services	
Telephone number	(416) 202-5846
Email	Eva.chow@metrolinx.com

- 1.19 **“Proponent”** means the legal entity that submits a Submission in response to this Proposal Document and who if selected for award shall execute the Contract with Metrolinx for provision of the Services.
- 1.20 **“Proposal Document”** means this Request for Proposal document composed of the sections listed in the Table of Contents, issued by Metrolinx for the Services to be provided, and any Addenda thereto.
- 1.21 **“Proposal Document Forms”** means any sections of this Proposal Document which requires completion and must be included with the Submission.
- 1.22 **“RFP Process”** means the Request for Proposal procurement process set out in this Proposal Document.
- 1.23 **“Scope of Services”** means all the tangible and intangible activities, services, goods, equipment, matters and things required to be done, including all of the work, labour, services, goods, equipment, if applicable, described in Appendix “B” and Appendix “B-1” of this Proposal Document.
- 1.24 **“Services”** means the Scope of Services defined above.
- 1.25 **“Subcontractor”** means an individual, firm, partnership, corporation or design professional having a direct contract with the Proponent or another Subcontractor to perform a part or parts of the Services as identified in the Submission.

- 1.26 **"Submission"** means all documentation and other materials and information submitted by the Proponent in response to this Proposal Document or in respect of this RFP Process.
- 1.27 **"Technical Submission"** means the Proponent's response to Section 4.3 of Proposal Submission Requirements and any additional information requested by Metrolinx relating thereto.
- 1.28 **"Total Evaluated Price"** means the price set out in Attachment 1 - Proponent Prices.
- 1.29 **"VPM"** shall have the meaning ascribed in Section 3.18.1 of Instructions to Proponents.
- 1.30 **"VPR"** shall have the meaning ascribed in Section 3.18.2 of Instructions to Proponents.

2.0 Introduction

2.1 General

- 2.1.1 Metrolinx is issuing this Request for Proposal to retain a Proponent to provide the services described herein. Metrolinx intends to award a Contract through an open, fair and competitive process.
- 2.1.2 The objective of this Request for Proposals is to establish a contract for providing remote and field-support services (Retail Support Services [RSS] Provider) for retailers that will be selling the PRESTO fare card and loading value or fare products (monthly passes, etc.) on the cards. This includes oversight, remote and on-site technical support, coordination with other Metrolinx vendors / suppliers, logistics management and reporting. The scope of services is more particularly described in Appendix "B" - Scope of Services of this Proposal Document.
- 2.1.3 Metrolinx intends to award the Contract to one (1) Proponent. The term of contract is for five (5) years with options to renew for up to an additional five (5) one year terms, as determined by Metrolinx in its sole discretion.

3.0 Instructions to Proponents

3.1 Proposal Document

This Proposal Document shall be read as a whole. The Schedules, Appendices and Addenda, if any, constitute an integral part of this RFP Process and are incorporated by reference.

3.1.1 The documents included in this Proposal Document (with the exception of any Addenda that may be issued subsequently) include:

- (a) Attachment 1 - Proponent Prices
- (b) Attachment 2 - Corporate References
- (c) Attachment 3 - Mandatory Technical Checklist
- (d) Appendix "A" - General Conditions
- (e) Appendix "B" - Scope of Services
 - (i) Appended Appendix "B-1" - Technical Requirements
- (f) Appendix "C" - Metrolinx Services
- (g) Appendix "D" - Documents; including:
 - (i) Sample Articles of Agreement
 - (ii) Form of Parental Guarantee
 - (iii) Contract Performance Appraisal
- (h) Appended Proponent questions template entitled Proponent Q and A Template_RFP-2017-VM-027.xlsx

3.2 Submission Instructions

3.2.1 General

- (a) The Proponent shall be solely responsible for the delivery of their Submission by Closing, in accordance with these Instructions to Proponents.
- (b) Your Submission is to be firm and irrevocable for one hundred and eighty (180) calendar days from the Closing.
- (c) Your Submission will be evaluated in accordance with the Proposal Evaluation Criteria and Selection Process as outlined in this Proposal Document.

(d) RFP Timetable

Milestone	Date
Issuance of Proposal Documents	July 28, 2017
Deadline to Submit Questions	August 15, 2017 4:00 pm Eastern Time
Last day for issuance of Addenda	August 21, 2017
Closing	August 29, 2017 3:00 pm Eastern time

Metrolinx may, without liability, cost or penalty and in its sole discretion amend the RFP Timetable.

3.2.2 Proposal Enquiries

- (a) All written enquiries and other communications prior to full Contract execution are to be directed solely to the Procurement Representative.
- (b) Information communicated to anyone else shall be considered informal and Metrolinx shall not be bound by any information given in such a manner.
- (c) Any questions concerning this Proposal Document, the contents herein, including Appendix "A" - General Conditions, or the Services contemplated herein are to be directed, in writing, to the Procurement Representative prior to the deadline for submitting questions. No questions or requests for clarifications, changes or amendments of this Proposal Document shall be entertained after this time regardless of the reason. To allow for dialogue on any questions or requests, Metrolinx encourages Proponents to submit their questions or requests early in the Q and A process. When seeking changes or amendments to any of the terms and conditions of this RFP Process, including the terms contained in Appendix "A" - General Conditions, the Proponent should provide sufficient detail to provide Metrolinx with an understanding of the rationale for the change or amendment and, if applicable, the Proponent should propose the language that would address its concern(s).
- (d) All questions/requests for clarification, change or amendment related to this Proposal Document are to be submitted via e-mail to the attention of the Procurement Representative using the question and answer template which is a Excel file attached separately as:

Q and A Template_RFP-2017-VM-027.xlsx

Indicate the document section related to each question being submitted as well as page, section number and details of the specific question/request. For each set of questions submitted by the Proponent, a new copy of the above referenced Q and A Template should be submitted.

- (e) When necessary, revisions to, or clarifications of this Proposal Document will be incorporated into a written addendum issued by the Procurement Representative. Information regarding this Proposal Document or the Services, whether provided by the Procurement Representative, or from any other source, whether verbally or in writing, shall be considered informal and Metrolinx shall not be bound by, or liable for, any such information unless incorporated into a written addendum.

3.2.3 Addenda / Changes to the Proposal Document

- (a) In the event that Metrolinx determines in its sole discretion, that clarifications of, or revisions to this Proposal Document are required, Metrolinx shall issue an Addenda through MERX. Information concerning Addenda can be found through the Metrolinx MERX Portal for this RFP Process. Bidders are urged to select automatic notification of Addenda issuance when registering on the Metrolinx MERX Portal.
- (b) It is the Proponent's responsibility to ensure that they have received copies of all Addenda, and to ensure that the Addenda have been considered in their Submission. Each Addendum shall become part of this Proposal Document and the contents thereof shall be allowed for in the prices bid for the Services.
- (c) The Proponent, when ascertaining if copies of all Addenda issued have been obtained, shall be responsible for allowing sufficient time prior to the Closing to obtain any missing Addenda and to review and allow for the contents thereof in the Submission.
- (d) The Proponent shall submit the Submission using the most current revised Proposal Document Forms as issued via Addenda. Failure to use the most current pages of the Proposal Document Forms may result in the Proponent's Submission being found non-compliant and disqualified from the RFP Process.

3.2.4 Proposal Submission

- (a) Proponents submitting a Submission to Metrolinx shall exercise extreme care when completing and submitting all Proposal Document Forms.
- (b) Proponents shall examine carefully the whole of this Proposal Document and any data referred to therein. They shall make the

necessary investigations to inform themselves thoroughly as to the character and magnitude of the Services.

- (c) The Proponent shall not claim at any time after the Closing and/or after notification of award of the Contract that there was any misunderstanding or uncertainty in regard to this Proposal Document or any of the contents therein. No plea of ignorance of conditions which exist, or any conditions or difficulties that may be encountered, shall be accepted as a reason for failure to complete the Contract or as a basis for claims for additional compensation or extension of time.
- (d) Your Submission should be completed fully in a clear and comprehensible manner.
- (e) Submissions (except for oral presentations, if applicable) must be submitted electronically via the Metrolinx MERX Portal. Submissions sent in any other manner shall be non-compliant and disqualified.
- (f) It is the Proponent's sole responsibility to ensure that all required information for its Submission is uploaded via the Metrolinx MERX Portal.
- (g) The Submission (except for oral presentations, if applicable) must be submitted on the original Proposal Document Forms as issued by Metrolinx via the Metrolinx MERX Portal and except for designated sections where the Proponent is to enter information, this Proposal Document and the Proposal Document Forms shall not be altered in any way including, write-ins, strike-outs of the pre-printed provisions or any other qualifying statements.
- (h) The Submission must not include any qualifying statements.
- (i) Any Submission which contains qualifying or conditional statements shall be deemed non-responsive and disqualified unless such qualifying or conditional statements are withdrawn in writing upon request by Metrolinx.
- (j) If during the preparation of their Submission, the Proponent desires to make a change which requires correction, alteration or erasure to any information previously entered in a designated section of the Submission by the Proponent can be added, removed and/or re-submitted as often as required at any time, prior to Closing.
- (k) All prices shall be firm and quoted in Canadian funds. The prices quoted in the Submission shall represent full payment for all such Services as is necessary for the proper completion of the Contract.

- (l) Submissions (except for oral presentations, if applicable) must be submitted via the Metrolinx MERX Portal by the Proponent's E-bid Authorized Signer.
 - (i) NOTE: The Proponent can have only one (1) E-Bid Authorized Signer which is to be used for any EBS process.
 - (ii) The E-Bid Authorized Signer does not have to be either the person placing the order for the Proposal Document on MERX nor do they have to be subscribed to MERX. Once an E-Bid Authorized Signer has been setup, a letter will be sent via e-mail to the E-Bid Authorized Signer.
 - (iii) For the purposes of a Joint Venture, the E-Bid Authorized Signer of the Participant-in-Charge shall submit the Submission.
- (m) For assistance with registration and login credentials, subscription information, fees, and general use of the Metrolinx MERX Portal, please watch the online Electronic Bid Submission tutorial at: <https://www.youtube.com/watch?v=To0fqScw3M>. Alternatively, you can contact MERX directly at 1-800-964-MERX (6379).
- (n) Information contained in the most recent Submission submitted via the Metrolinx MERX Portal and received prior to the Closing will take precedence over the information contained in previously received Submissions from the Proponent.
- (o) The Proponent may withdraw a Submission at any time prior to the Closing specified by Metrolinx by logging into www.metrolinx.merx.com.

3.2.5 Submission Deadline

- (a) Submissions (except for oral presentations, if applicable) must be fully uploaded via the Metrolinx MERX Portal by the Closing. Any Submission or portions thereof received after the Closing (as confirmed by MERX Audit Report) shall be non-compliant and the entire Submission shall be disqualified regardless of the reason for lateness. The Proponent shall submit the Submission with sufficient time to ensure its arrival before the Closing.
 - (i) If the Proponent attempts to submit its Submission, or portions thereof, after the Closing, such documents shall not be accepted by the MERX system.
 - (ii) In the event that the MERX system allows late Submissions, this will not supersede any stipulations herein regarding late submissions.

- (b) Upon successful completion of the electronic submission process, the Proponent shall be provided with an E-bid Confirmation Number indicating that the Submission was uploaded successfully.
- (c) Metrolinx reserves the right to postpone the Closing at which time all potential Proponents shall be advised of the new Closing by way of Addenda.
- (d) After the Closing has occurred, all Submissions received prior to the Closing will be opened by Metrolinx staff. There shall be no public access to this opening.
- (e) Upon execution of the final Contract, all Proponents that submitted a Submission shall be notified in writing of the results of the award to the successful Proponent. Results of the award to the successful Proponent shall also be posted on the Metrolinx MERX Portal (search the RFP Number and select "Awards").

3.2.6 Clarification of Proposals

- (a) Metrolinx reserves the right, within one hundred and eighty (180) calendar days following the Closing, to request that any Proponent clarify its Submission and such Proponents shall submit responses to such request within five (5) Business Days following receipt of such request or within such shorter time as Metrolinx may require. Metrolinx may, in its sole discretion, choose to meet with some or all of the Proponents to discuss aspects of their Submission. Metrolinx may require Proponents to submit information clarifying any matters contained in their Submission or Metrolinx may prepare a written interpretation of any aspect of a Submission and seek the respective Proponent's acknowledgement of that interpretation.
- (b) Such information accepted by Metrolinx, for purposes of clarification, and written interpretations which have been acknowledged by the relevant Proponent shall be considered to form part of the Submission of those Proponents.
- (c) After the Closing, only information specifically requested by Metrolinx for purposes of clarification shall be considered as additions to a Proponent's Submission.
- (d) Metrolinx is not obliged to seek clarification of any aspect of a Submission.

3.3 Insurance

- 3.3.1 Workplace Safety and Insurance Clearance Certificate - The Proponent to whom this Contract is awarded must furnish a valid Workplace Safety

and Insurance Clearance Certificate for the premium rate class, subclass or group as appropriate for the Services of this Contract, as issued by the Workplace Safety and Insurance Board, within ten (10) Business Days, of notification of acceptance of its Submission by Metrolinx. Failure by the Proponent to comply with this requirement shall result in the Contract award being declared VOID.

3.3.2 If the Proponent is WSIB exempt, then the Proponent shall provide evidence of Employer's Liability or equivalent, to the satisfaction of Metrolinx, in lieu of a Workplace Safety and Insurance Clearance Certificate.

3.3.3 Liability Insurance

(a) As a condition of award of the Contract the Proponent shall provide to Metrolinx certificates for the following types of insurance in the amounts specified within five (5) Business Days of notification of acceptance of its Submission by Metrolinx:

- (i) Commercial General Liability Insurance in an amount of not less than five million dollars (\$5,000,000.00) per occurrence;
- (ii) Errors and Omissions/Professional Liability Insurance including Network Security & Privacy Coverage, which may be provided under various insurance policies (i.e. "Cyber Liability", "Network Liability", "Technology Errors and Omissions", etc.) with a limit of not less than two million dollars (\$2,000,000.00) per claim and in the aggregate; and
- (iii) Automobile Liability Insurance for owned and non-owned vehicles in an amount 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 Proponent shall provide a written confirmation within ten (10) Business Days of contract award, stating same, in place of the insurance coverage.
- (iv) The Certificate of Commercial General Liability Insurance shall reference the Contract name and number and include the following as an additional insureds:

Metrolinx

- (v) All certificates of insurance shall include a provision requiring the insurer to give Metrolinx thirty (30) calendar days' prior written notice of any changes to, or

cancellation of the required insurance policies and confirmation that all policies with the exception of Errors and Omissions, include a waiver of subrogation against Metrolinx.

- (vi) Failure by the Proponent to comply with these requirements shall result in the award of the Contract being declared VOID.

3.3.4 Parent Company Indemnity

If requested by Metrolinx, as a condition of award of Contract, a subsidiary company shall be required to submit a 'Parental Guarantee' from its parent company, in the form provided for in Appendix "D" - Documents, or otherwise in a form satisfactory to Metrolinx, whereby the parent company agrees to provide all the necessary financial and technical support for the proper completion of the Contract, guarantees the performance of the Contract in accordance with the terms and conditions, including timely completion thereof, and agrees to guarantee the Services for the warranty period(s) stipulated therein, if any.

3.4 Nature of Agreement

The General Conditions set out in Appendix "A" and the Scope of Services set out in Appendix "B" and Appendix "B-1" attached hereto shall be included in and form part of the Contract. Submitting a Submission constitutes acknowledgement that the Proponent has read and agrees to be bound by such terms and conditions.

3.5 Rights of Metrolinx

Metrolinx reserves the right, in its sole discretion:

- 3.5.1 to cancel this RFP Process and/or any acceptance of a Submission prior to final execution of the Contract by Metrolinx, for any reason, without any obligation or any reimbursement to the Proponent;
- 3.5.2 to reject any or all Submissions. The Submission with the lowest price will not necessarily be accepted. Metrolinx's selection shall be based on which Proponent has provided a Submission which Metrolinx determines, to provide the greatest value based on the Evaluation Criteria contained in this Proposal Document;
- 3.5.3 to disqualify any Submission which contains misrepresentations or any other inaccurate or misleading information;
- 3.5.4 to waive any requirement of this Proposal Document or request amendment where, in the sole opinion of Metrolinx, there is an irregularity or omission in the information provided, that is not material

to the Submission unless a specific consequence has been identified herein for the commission of such an irregularity or omission;

- 3.5.5 to waive the requirement to check references;
- 3.5.6 to not respond to a Proponent's questions;
- 3.5.7 to use its own experiences, and the experiences of any other third party, with the Proponent in previous contracts in order to evaluate the Proponent's Submission;
- 3.5.8 to award or not award based on submitted references and/or references independently obtained by Metrolinx;
- 3.5.9 to award or not award based on the Proponent's experiences with Metrolinx or other departments or agencies within the Ontario government, if the Proponent:
 - (a) was previously given a "Notification of Award" of contract by a department or agency within the Ontario government and defaulted in proceeding with the work of the contract;
 - (b) failed or refused to comply with any applicable federal, provincial or municipal law governing a bid or a prior contract with a department or agency within the Ontario government;
 - (c) had a previous contract with a department or agency within the Ontario government that was terminated for default in the past year; or
 - (d) is an affiliate of or successor to any corporation described in Sections 3.5.9(a) through (c) above, including any firm that is controlled within the meaning of the Business Corporations Act (Ontario) by the same person or group of persons who so controlled any corporation described in Sections 3.5.9(a) through (d) above.
- 3.5.10 to request a listing of all projects, regardless of scope, complexity or estimated value, completed for or terminated by Metrolinx within the past three (3) years or currently active;
- 3.5.11 to distribute via Addenda, copies of any Proponent's questions received and responses provided by Metrolinx, to all Proponents who obtained this Proposal Document;
- 3.5.12 to request that a Proponent voluntarily withdraw its Submission without penalty where in the opinion of Metrolinx the Submission is substantially below internal budget estimates and therefore the Services would not be satisfactorily completed;

- 3.5.13 to correct arithmetical errors in any or all Submissions where such errors affect extended totals. Arithmetical corrections shall only be made based upon the unit prices submitted by the Proponent. Corrections to extension, sums, differences or other arithmetical will be identified on the Proposal Document Forms (submitted by the Proponent) by Metrolinx and acknowledged in each instance by the initials of the Proponent's and Metrolinx's authorized signatories. Such corrections will become part of the Proponent's Submission. Failure of the Proponent to acknowledge such corrections shall result in its Submission being non-compliant and disqualified;
- 3.5.14 to, upon failure of the Proponent whose Submission was accepted to fulfill the conditions of Section 3.6.2 of Instructions to Proponents, cancel award of the Contract and notify another Proponent who was determined to be qualified in accordance with the Proposal Evaluation Criteria stated herein and who submitted a compliant Submission that its Submission has been accepted and, subsequent to the fulfillment of the conditions of Section 3.6.3 of Instructions to Proponents, that Proponent shall be deemed to be the successful Proponent and the Proponent to whom the Contract is awarded;
- 3.5.15 after the selection of a preferred Proponent and prior to notification to the Proponent that Metrolinx has accepted its Submission, to negotiate the following with the Proponent:
- (a) contract schedule, work plan and payment schedule; and
 - (b) changes, amendments or revisions to Appendix "B" - Scope of Services.
- Such negotiated changes, amendments, or revisions shall form part of the Submission. Failure to successfully complete such negotiations shall result in the Submission not being considered further;
- 3.5.16 to select another Proponent to enter into negotiations with should negotiations with the preferred Proponent be unsuccessful; and
- 3.5.17 to proceed with and to enter into a Contract with the Proponent for the provision of Services, as stated in Appendix "B" - Scope of Services.

3.6 Contract to be Executed

- 3.6.1 Metrolinx shall notify the Proponent in writing of acceptance of its Submission by Metrolinx. Metrolinx will prepare the Articles of Agreement and bind it into the Contract. Two (2) sets of the Contract will be forwarded to the Proponent for review and execution.
- 3.6.2 The Contract shall be executed by the Proponent and returned to Metrolinx within ten (10) Business Days of notification to the Proponent that Metrolinx has accepted its Submission. Failure by the Proponent to

execute and return the Contract with the required Insurance Certificates and Workplace Safety and Insurance Clearance Certificate and any other documents as may be required within the specified time, could result in the cancellation of the Contract award.

- 3.6.3 There shall be no binding contract for the supply of the Services unless and until Metrolinx and the Proponent, whose Submission has been accepted, have executed the written agreements contemplated in this Proposal Document. The Proponent shall not start the Services before the Contract has been executed by the Proponent and Metrolinx and all documents required by this Proposal Document, as a condition of award of the Contract, have been delivered to Metrolinx.

3.7 Conflict of Interest

- 3.7.1 For the purposes of this section, "Conflict of Interest" shall have the meaning ascribed to it in Form of Proposal Section 6.5 Conflict of Interest.
- 3.7.2 Each Proponent shall disclose to Metrolinx any actual or potential Conflict of Interest that may be relevant to this RFP Process and provide a declaration, using the Form of Proposal Section 6.5 Conflict of Interest that, except as disclosed, the Proponent is free of any actual or potential Conflict of Interest. Conflicts of Interest arise when the Proponent is in a position that could affect the integrity of this RFP Process or the performance of the Services. Examples of Conflict of Interest include but are not limited to:
- (a) any director, officer, or employee or advisor of Metrolinx has any connection or relationship with, or any pecuniary interest in the Proponent or any Subcontractor thereof;
 - (b) the Proponent or any Subcontractor thereof is in possession of confidential information relating to the Services; and
 - (c) any director, officer or employee or advisor of Metrolinx who has knowledge of the Services has assisted the Proponent in the preparation of its Submission.
- 3.7.3 The Conflict of Interest declaration included as Form of Proposal Section 6.5 shall be completed and provided with the Submission.
- 3.7.4 If, at the determination of Metrolinx in its sole discretion, a Proponent is found to be in a Conflict of Interest that cannot be resolved or a Proponent fails to disclose any actual or potential Conflict of Interest, Metrolinx may, at its sole discretion, disqualify the Proponent from the RFP Process or terminate any agreement entered into with the Proponent pursuant to this RFP Process.

3.8 Joint Ventures

- 3.8.1 If a Joint Venture is proposed, the Proponent shall state in its Submission the Joint Venture arrangements that form the basis on which the Joint Venture plans to carry out its obligations.
- 3.8.2 The Joint Venture shall not change its Joint Venture arrangement without the prior written approval of Metrolinx in its sole discretion in accordance with the process set out in Section 3.17 of Instructions to Proponents.
- 3.8.3 One of the Joint Venture participants shall be nominated as being in charge during this RFP Process and, in the event of a successful Submission during finalization of the Contract (the "**Participant in Charge**"). The Participant in Charge shall be authorized by the other joint venture participants to incur liabilities and receive instructions for and on behalf of any and all participants of the Joint Venture.
- 3.8.4 Each Joint Venture participant shall demonstrate its authorization of the Participant in Charge by submitting with their Submissions a power of attorney, or similar document, signed by a legally authorized representative of the Joint Venture participant.
- 3.8.5 All participants of the Joint Venture shall be legally liable, jointly and severally, during this RFP Process and during the Contract for carrying out the obligations pursuant to the Contract.

3.9 Prohibited Contacts and Lobbying Prohibition

- 3.9.1 A Proponent, Proponent's team members and all of the Proponent's respective Subcontractors, advisors, employees and representatives are prohibited from engaging in any form of political or other lobbying, of any kind whatsoever, to influence the outcome of this RFP Process.
- 3.9.2 Without limiting the generality of Section 3.9.1, neither Proponents or Proponent team members or any of their respective Subcontractors, advisors, employees or representatives shall contact or attempt to contact, either directly or indirectly, at any time during the RFP Process, any directors, officers, employees and advisors of Metrolinx other than the Procurement Representative as identified herein.

3.10 Media Releases, Public Disclosures and Public Announcements

- 3.10.1 A Proponent shall not, and shall ensure that its team members, Subcontractors, advisors, employees, and representatives do not, issue or disseminate any media release, public announcement or public disclosure (whether for publication in the press on the radio, television, internet, or any other medium) that relates to this RFP Process, this Submission or any matters related thereto, without the prior written consent of Metrolinx.

3.10.2 A Proponent shall not, and shall ensure that its team members, Subcontractors, advisors, employees and representation do not, make any public comment, respond to questions in a public forum, or carry out any activities to either criticize another Proponent or Submission or to publicly promote or advertise its own qualifications, interest in or participation in this RFP Process without Metrolinx's prior written consent. Notwithstanding this item, the Proponent, Proponent's team members and all of the Proponent's respective advisors, Subcontractors, employees and representatives are permitted to state publicly that it/they are participating in this RFP Process.

3.10.3 For greater clarity, this section does not prohibit disclosures necessary to permit the Proponent to discuss this Proposal Document with prospective subcontractors regarding their participation in this RFP Process.

3.11 Restriction on Communications Between Proponents - No Collusion

3.11.1 A Proponent shall not discuss or communicate, directly or indirectly, with any other Proponent, any information whatsoever regarding the preparation of its own Submission or the Submissions of other Proponents. Proponents shall prepare and submit Submissions independently and without any connection, knowledge, comparison of information or arrangements, direct or indirect, with any other Proponent. This obligation extends to all team members of a Proponent and all of the Proponent's respective advisors, Subcontractors, employees and representatives.

3.12 Disclosure of Information

3.12.1 The Proponent hereby agrees that any information provided in its Submission, even where it is identified as being supplied in confidence, may be disclosed by Metrolinx where required by law, order of a court, or tribunal.

3.12.2 The Proponent hereby consents to the disclosure, on a confidential basis, of its Submission by Metrolinx to Metrolinx's advisors retained for the purpose of evaluating or participating in the evaluation of the Submissions.

3.13 Freedom of Information and Protection of Privacy Act

Proponents are advised that Metrolinx may be required to disclose all, a part, or parts of a Proponent's Submission and a part or parts of any other Submission pursuant to FIPPA.

Under Ontario's Open Data Directive, Metrolinx is required to publish certain procurement information. Accordingly, the Proponent acknowledges that, subject to any applicable FIPPA exemptions, Metrolinx may publish procurement data including but not limited to the names of the Proponents

and the winning bid in accordance with Ontario's Open Data Directive. For more information, see: www.ontario.ca/page/ontarios-open-data-directive.

3.14 Submission to Be Retained by Metrolinx

Metrolinx shall not return a Submission or any accompanying documentation submitted by a Proponent.

3.15 Confidential Information of Metrolinx

All confidential information provided by or obtained from Metrolinx in any form in connection with the Submission process:

3.15.1 is the sole property of Metrolinx and shall be treated as confidential;

3.15.2 shall not be used for any purpose other than replying to this Proposal Document and the performance of any subsequent agreement; and

3.15.3 shall not be disclosed without prior written authorization from Metrolinx.

3.16 Proponents Shall Bear Their Own Costs

The Proponent shall bear all costs associated with or incurred in connection with its participation in this RFP Process, including, preparation of its Submission and preparation for and participation in presentations and interviews.

3.17 Changes to Proponent Key Personnel or Subcontractors

3.17.1 If after the Closing, but prior to the execution of the Contract, the Proponent wishes to request a change in a Key Personnel, Subcontractor or Joint Venture, the Proponent shall notify the Procurement Representative as soon as possible and the notification shall identify the proposed change in Key Personnel, Subcontractor or Joint Venture and the proposed substitute, if applicable, and include sufficient documentation that the proposed substitute would have met or exceeded any applicable criteria applied during this RFP Process.

3.17.2 In response to a request as per Section 3.17.1 above, Metrolinx may, in its sole discretion provide the Proponent with instructions as to the type of information required by Metrolinx to consider the proposed change to the Proponent's Key Personnel, Subcontractors or Joint Venture arrangements as well as the deadlines for submission of information that the Proponent must meet in order to have its request considered by Metrolinx.

3.17.3 The Proponent shall provide any further documentation as may be required by Metrolinx to assess any proposed substitute or change. If Metrolinx, in its sole discretion, considers the proposed substitute to be

acceptable, Metrolinx may consent to the substitution. Metrolinx's consent to such substitution, however, may be subject to such terms and conditions as Metrolinx may require. If the proposed substitute or change is not acceptable to Metrolinx, the Proponent shall propose an alternate substitute or change for review by Metrolinx in the same manner as the first proposed substitute.

3.17.4 Metrolinx may, in its sole discretion, disallow any actual or proposed change.

3.18 Vendor Performance Management Program

3.18.1 Vendor Performance Management (VPM) Program means Metrolinx's policy for monitoring, evaluating and recording vendor performance, as same may be amended or replaced from time to time. The Vendor Performance Management Program establishes a standard methodology for the incorporation of a vendor's past performance as a criterion in assessing that vendor's bids or proposals for future work with the Metrolinx.

3.18.2 Pursuant to Metrolinx's VPM Program, Metrolinx may consider Proponent's past performance under contracts with Metrolinx in evaluating Submissions received in response to this Proposal Document. The Vendor Performance Rating ("VPR") is the average of a vendor's performance evaluation scores (as assessed by or on behalf of Metrolinx) for a thirty-six (36) month period preceding the Closing. If a Proponent has not completed any work for Metrolinx in the three (3) years preceding the Closing, for the purpose of evaluating the Submission, the Proponent will be assigned a VPR which is the straight average of all the VPRs of all vendors who have performed services for Metrolinx during the prior fiscal year.

3.18.3 If the VPR is being applied as a component of the award evaluation for this RFP Process, the legal name of the Proponent stated on the Form of Proposal will be used. It is the responsibility of the Proponent to ensure that its proper legal name has been stated on the Form of Proposal. Metrolinx will not accept any requests from the Proponent to change the legal name provided after the Closing.

3.18.4 In case of a Joint Venture where multiple parties will sign the Contract, the VPR of each participant will be added and the average will be applied.

3.18.5 For the purposes of this RFP Process, the application of the VPR is set out in the Contract Performance Appraisal as listed in Appendix "D" - Documents.

4.0 Proposal Submission Requirements

4.1 Mandatory Requirements

- 4.1.1 Proponents must meet all mandatory requirements in order for their Submission to be considered further. Failure of a Proponent to meet all of the mandatory requirements listed below will result in the Proponent's Submission being deemed non-compliant and therefore not be considered further.
- 4.1.2 The mandatory requirements for this Proposal Document are as follows:
- i. The Form of Proposal must be completed in full and submitted by the E-Bid Authorized Signer.
 - ii. Proponents shall declare any conflicts of interest in the Form of Proposal Section 6.5 Conflict of Interest. If the Form of Proposal Section 6.5 is left blank the provisions of Section 6.5.3 of Form of Proposal shall apply.
 - iii. Pricing information must be completed and submitted on the Proposal Document Forms provided in Attachment 1 - Proponent Prices. The pricing template should be returned in .xlsx format not in pdf nor any alternative format.
 - iv. Proponents shall provide a completed Attachment 3 - Mandatory Technical Checklist with their Submission.

4.2 Submission Format

The Proponent's Submission must be submitted in electronic form and should be in the following format:

Present information in Font Size 11 pt. on 8½ x 11 paper size.

- 4.2.1 Present information in Font Size 11 pt. on 8½ x 11 paper size.
- 4.2.2 Include a table of contents.
- 4.2.3 Organize information into sections which correspond to the Submission Content Requirements in the exact order described below.
- 4.2.4 The entire content of the Proponent's Submission shall be submitted in writing, and the content of web sites or other external documents referred to in the Proponent's Submission will not be considered for evaluation unless submitted in their entirety as part of the Submission.

4.3 Submission Content

The Proponent's Submission should include: a Technical Submission and shall include a Price Submission. The information required in each Submission as well as the prescribed format in which it should be submitted is outlined below.

Technical Submission - The Proponent's Technical Submission should be composed of the following sections in the following order and should contain a Table of Contents.

(i) Technical Submission Section 1:

Form of Proposal - This is to be included as the first section within the Proponent's Technical Submission.

- a) The Form of Proposal must be completed in full and submitted by the E-Bid Authorized Signer. The Form of Proposal shall not be retyped, and entries shall be made directly on the Proposal Document Form provided by Metrolinx.

(ii) Technical Submission Section 2: Corporate Summary

The Proponent should provide a corporate overview of its structure, capabilities, qualifications and experience relevant to the Services, as outlined below.

The Proponent should demonstrate its Corporate Firm's previous experience in satisfactorily and competently performing services similar in type, size, estimated value and complexity as the Services identified in Appendix "B" - Scope of Services. The Proponent understands and agrees that Metrolinx may verify any information provided in its Submission.

1. Corporate Summary: Description of Company

- a) A description of the Proponent's company, including: a description of the Proponent's corporate and ownership structure; a brief corporate history including number of years in business; location of offices (both head office and other) and a description of the Proponent's core business as it applies to the Services.

2. Corporate Summary: Corporate Firm

- a) Provide a description of the structure of the Proponent's Corporate Firm;

- b) Identify the Subcontractors it proposes to use in the performance of the Services. For each Subcontractor listed the Proponent should provide the following:
 - i) Full corporate name and location of the Subcontractor;
 - ii) Which area of the Services the Subcontractor will be employed for;
 - iii) The Subcontractor's experience and qualifications relative to the Services it will be performing; and
 - iv) Previous instances of the Proponent and the Subcontractor working together, including:
 - A) A description of the project and value;
 - B) The client the services were performed for; and
 - C) The parts of the services performed by the Subcontractor.
3. Corporate Experience, Qualifications and Capabilities
- a) The Proponent should demonstrate its capabilities and experience in performing work similar in type, size, estimated value and complexity as the Services identified in Appendix "B" - Scope of Services by including a summary of the Proponent's company's qualifications and experience relevant to the Services, including:
 - i) Its ability to establish, train, manage and sustain the resources necessary to provide the Services to the satisfaction of Metrolinx;
 - ii) Its experience in delivering IT end-user training to clients;
 - iii) Its ability to provide field support services throughout the Greater Toronto, Hamilton and Ottawa areas in compliance with required service levels;

- iv) Its project management capabilities with respect to overseeing a field force and equipment servicing;
 - v) Its operational capabilities with respect to supporting a regionally dispersed client base, including providing both on-site and remote technical support in English and (optionally) in French;
 - vi) Its ability to provide a service desk for client inquiries and support requests related to equipment in the field;
 - vii) Its capabilities and experience with respect to managing equipment inventory and related logistics for delivering such equipment to field locations, as needed; and
 - viii) Its processes and technologies (including for self-service, service management, etc.) for ensuring the efficiency and effectiveness of the Services.
- (iii) Technical Submission Section 3: Description of Corporate Projects and References

1. Corporate References Related to Scope of Services

- a) The Proponent should provide a list of three (3) references, for relevant projects completed within the past ten (10) years or currently active, which demonstrate the Corporate Firm's experience, qualifications and its capacity to perform and manage projects of similar scope, complexity and estimated value. Any projects of similar type, size, estimated value and complexity as the Services that have been completed for Metrolinx must be included as part of the three (3) reference projects provided by the Proponent. The Proponent should, using the template provided in Attachment 2 - Corporate References, in this section provide the following information for each corporate reference project:
 - i) Name of the company / organization for which the work was performed;
 - ii) Project title;

- iii) Contact person's name, title, telephone number and e-mail address; and
 - iv) Start and completion date.
2. Reference Checks: References will be verified using a standard uniform method. Opinions of previous clients regarding budget and schedule experience, dependability, attitudes of employees and/or the Subcontractor, concern for efficiency, economy and environment, sensitivity to community, and quality of service among others may be taken into account when evaluating the reference projects.
3. The Proponent should provide a description of each reference project. Each description is to be a maximum of two (2) pages and should contain the following:
- i. Project description and project value;
 - ii. Description of services provided and how they are relevant to Services being requested ;
 - iii. List of any Key Personnel that were engaged on the project and their project roles, if applicable; and
- (iv) Technical Submission Section 4: Approach
- 1. **Statement of Compliance:** Provide a statement of compliance with the Technical Requirements in Appendix "B-1".
 - 2. **Approach:** The Proponent should describe its overall approach to setting-up and providing the scope of services required to support Metrolinx PRESTO Retailers, including people, locations, processes, and technologies / tools.

4.4 Proponent Presentation

Not applicable.

4.5 Price Submission

- 4.5.1 Pricing information must be completed and submitted using the Excel template provided, entitled Attachment 1 - Proponent Prices. The pricing template should be returned in .xlsx format.

5.0 Evaluation Criteria and Selection Process

5.1 Evaluation Methodology

5.1.1 Submissions shall undergo several phases of evaluation based on the information provided using the criteria and scoring as listed in the Evaluation Criteria Section below.

5.1.2 Each criteria is evaluated. Mandatory criteria will be rated pass or fail. All other Evaluation Criteria shall be assigned a score out of ten (10). The score is then multiplied by the weight (which indicates the relative importance of the criteria not deemed critical to Metrolinx) to determine the weighted score. The weighted scores are then added to determine the Total Overall Score for the Submission.

5.1.3 Submissions shall be evaluated in three (3) phases, as follows:

- (a) Phase One: Administrative Evaluation (Compliant/Non-Compliant)

Submissions shall undergo an administrative evaluation to determine compliance with the mandatory requirements as stated in Section 4.1 of Instructions to Proponents. Only those Submissions determined in the sole opinion of Metrolinx, to have fulfilled all the mandatory requirements shall proceed to Phase Two of the evaluation process. Submissions that do not meet administrative requirements are non-compliant and shall be disqualified.

- (b) Phase Two: Technical Evaluation (60% weighting)

Submissions proceeding to Phase Two shall be evaluated by the Evaluation Committee in accordance with the Proposal Submission Requirements above and Evaluation Methodology below. Only those Submissions achieving a total minimum score of 70% (420 points out of 600 possible points) as determined by the Evaluation Committee shall be considered further and shall proceed to Phase Three of the evaluation process.

- (c) Phase Three: Pricing Evaluation (40% weighting)

- (i) Attachment 1 - Proponent Prices shall be evaluated for the Submissions which achieve the minimum scores of the Phase Two evaluation.
- (ii) Attachment 1 - Proponent Prices shall not be evaluated for those Proponents whose Submissions do not achieve the specified minimum score requirement to proceed to this Phase Three evaluation.

(iii) An administrative evaluation shall be conducted of Attachment 1 - Proponent's Prices to determine compliance with the mandatory requirements as stated in the Instructions to Proponents. The pricing of each Submission proceeding to Pricing Evaluation shall be evaluated and scored as follows:

a) Part A of Attachment 1 - Proponent Prices

- i) The Submission with the lowest Part A price shall receive the maximum score of ten (10) points for this portion of the Pricing Evaluation.
- ii) The following equation shall be applied to Part A of all other Submissions to determine a score out of ten:

$$\frac{\text{Lowest Part A Price}}{\text{Proponent's Part A Price}} \times 10 = \text{score out of ten}$$

The score out of ten for Part A shall be multiplied by the weighting factor of twenty (20) to result in a score out of 200 points.

b) Part B of Attachment 1 - Proponent Prices

- i) The Submission with the lowest Part B price shall receive the maximum score of ten (10) points for this portion of the Pricing Evaluation.
- ii) The following equation shall be applied to Part B of all other Submissions to determine a score out of ten:

$$\frac{\text{Lowest Part B Price}}{\text{Proponent's Part B Price}} \times 10 = \text{score out of ten}$$

The score out of ten for Part B shall be multiplied by the weighting factor of ten (10) to result in a score out of 100 points.

c) Part C of Attachment 1 - Proponent Prices

- i) The Submission with the lowest Part C price shall receive the maximum score of ten (10) points for this portion of the Pricing Evaluation.

- ii) The following equation shall be applied to Part C of all other Submissions to determine a score out of ten:

$$\frac{\text{Lowest Part C Price}}{\text{Proponent's Part C Price}} \times 10 = \text{score out of ten}$$

The score out of ten for Part C shall be multiplied by the weighting factor of ten (10) to result in a score out of 100 points.

- d) The Part A weighted score (out of 200 points) will be combined with the Part B weighted score (out of 100 points) and the Part C weighted score (out of 100 points) to result in a Pricing Evaluation score (out of 400 points).
- e) The score out of ten for Price shall be multiplied by the weighting factor and added to the total score for Phase Two and Phase Three to determine Total Overall Score for the Submissions.

5.1.4 Total Overall Score = Phase Two: Technical Evaluation + Phase Three: Pricing Evaluation.

5.1.5 Selection of Submissions

- (a) Metrolinx's selection shall be based on which Proponent has provided a Submission which Metrolinx determines in its sole discretion to provide the greatest value to Metrolinx based on the Evaluation Criteria contained in this Proposal Document.

Total Overall Score: The award of the Contract shall be made to the Submission which has achieved the highest Total Overall Score.

5.2 Evaluation Criteria

The Evaluation Criteria to be used for evaluation of the Proponent's Submission and the weighting assigned to each criterion are as follows:

Evaluated Component	Maximum Score	Weighting Factor	Total (Score x Weight)
Phase 1: ADMINISTRATIVE EVALUATION (Compliant / Non-Compliant)			
Phase 2: TECHNICAL EVALUATION			
Technical Submission Section 1: Form of Proposal and Attachment 3 - Mandatory Technical Checklist (Compliant / Non-Compliant)			
Technical Submission Section 2: Corporate Summary			
Corporate Firm	10	10	100
Experience and Qualifications	10	20	200
Subtotal Corporate Summary:		30	300
Technical Submission Section 3: Corporate References and Description of Corporate Projects			
Description of Corporate Reference Project 1 and Corresponding Reference	10	5	50
Description of Corporate Reference Project 2 and Corresponding Reference	10	5	50
Description of Corporate Reference Project 3 and Corresponding Reference	10	5	50
Subtotal Corporate References and Description of Corporate Projects:		15	150
Technical Submission Section 4: Approach			
Approach	10	15	150
Subtotal Approach:		15	150
SUBTOTAL PHASES 2:		60	600
Phase 3: PRICING EVALUATION			
Part A -Support Services	10	20	200
Part B - Training	10	10	100
Part C - Additional Services	10	10	100
Subtotal Pricing Evaluation		40	400
TOTAL OVERALL SCORE:		100%	1,000

Technical Submission Scoring Guidance - the Proponent's Technical Submission will be evaluated using the above noted approach. The following outlines some guidance on how each line item will be scored:

Score	Description
10 = Excellent	Response is excellent and exceeds the requirements.
8-9 = Very Good	Substantially meets and exceeds some of the requirements
7 = Good	Meets the basic requirements.
5-6 = Satisfactory	Response is satisfactory and meets most of the requirements.
3-4 = Fair	Response is fair and meets some requirements.
1-2 = Poor	Response is poor. Information provided is too vague and does not clearly explain how requirements will be met.
0 = Non-relevant	No relevant response or simple statement of compliance with no substantiation.

6.0 Form of Proposal

The following Form of Proposal is to be included as the first section within the Proponent's Technical Submission. The Form of Proposal must be submitted by the E-Bid Authorized Signer. The Form of Proposal shall not be retyped, and entries shall be made directly on the form provided by Metrolinx.

Proposal Number: RFP-2017-VM-027

Proposal Description: Retail Support Services (RSS) Provider -Technical Support Services for PRESTO Retailers

6.1 Proponent Submission Checklist

The following checklist provides the Proponent with a consolidated listing of the requirements for the Submission. Proponents should review the checklist prior to Submission to ensure compliance.

Requirement	Confirmation (left click with your mouse in the box to select)
The Submission has been submitted by the E-Bid Authorized Signer.	<input type="checkbox"/>
Contact information for the individual responsible for the Submission has been included in the Form of Proposal.	<input type="checkbox"/>
The Proponent understands the requirements for Electronic Bid Submission and will comply with this Submission requirement.	<input type="checkbox"/>
The Proponent's Technical Submission has been prepared in accordance with the Instructions to Proponents (i.e. formats, templates and requirements) as outlined in the Proposal Document.	<input type="checkbox"/>
The Proponent's Price Submission has been completed in full and in Excel format and has been included as a separate attachment in the Submission.	<input type="checkbox"/>
The Proponent has read through all the Proposal Documents including any Addenda that have been issued and these have all been considered in the Proponent's Submission.	<input type="checkbox"/>

Requirement	Confirmation (left click with your mouse in the box to select)
The Proponent has reviewed the mandatory criteria and acknowledges that it meets all mandatory requirements in order for its Submission to be considered further.	<input type="checkbox"/>
The Proponent has reviewed the RFP Timetable and understands all the dates and timelines associated with the RFP Process.	<input type="checkbox"/>
The Proponent has not included any qualifying statements in its Submission.	<input type="checkbox"/>

6.2 Contact Information

- 6.2.1 Proponent's registered legal business name (or individual) and any other name under which it carries on business:

[Click here to enter text.](#)

- (i) If a Joint Venture, enter the registered legal business name of the Participant-in-Charge:

[Click here to enter text.](#)

- (ii) If a Joint Venture, enter the registered legal business name of the other Joint Venture members:

[Click here to enter text.](#)

- 6.2.2 Proponent's (if a Joint Venture, insert Participant-in-Charge information) address, telephone and facsimile numbers:

[Click here to enter text.](#)

- 6.2.3 Name, title, address, telephone, e-mail and facsimile numbers of the contact person(s) for the Proponent (if a Joint Venture, insert Participant-in-Charge information):

[Click here to enter text.](#)

6.2.4 Name of the person who is primarily responsible for the Submission:

[Click here to enter text.](#)

6.3 Proponent Acknowledgments

6.3.1 In consideration of the mutual premises and agreements contained herein and for other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the undersigned Proponent hereby offers to Metrolinx to perform all necessary work to complete the assignment described in Appendix "B" - Scope of Services.

6.3.2 The Proponent hereby undertakes to perform the Services in strict accordance with the full intent of the terms, conditions and requirements set forth in the following documents which form the Proposal Document:

ANY ADDENDA ISSUED HERETO
INSTRUCTIONS TO PROPONENTS
PROPOSAL SUBMISSION REQUIREMENTS
PROPOSAL EVALUATION CRITERIA AND SELECTION PROCESS
FORM OF PROPOSAL
ATTACHMENT 1 - PROPONENT PRICES
ATTACHMENT 2 - CORPORATE REFERENCES
ATTACHMENT 3 - MANDATORY TECHNICAL CHECKLIST
APPENDIX "A" - GENERAL CONDITIONS
APPENDIX "B" - SCOPE OF SERVICES

- Appended APPENDIX "B-1" - TECHNICAL REQUIREMENTS

APPENDIX "C" - METROLINX'S SERVICES
APPENDIX "D" - DOCUMENTS

6.3.3 The Proponent acknowledges receipt of any and all Addenda issued hereto and that its Submission has been developed in consideration of the Addenda.

6.3.4 The Proponent's Submission is hereby submitted on the full understanding that it is an irrevocable offer by the Proponent for a period of one hundred and eighty (180) calendar days from the Closing. The Proponent hereby covenants that it shall perform and execute the Services, in accordance with the Contract prices quoted herein if it is notified in writing by Metrolinx within the one hundred and eighty (180) calendar day period that it is the successful Proponent.

6.3.5 The Proponent acknowledges that it must meet all the mandatory requirements identified in Attachment 3 - Mandatory Technical Checklist in order for its Submission to be considered further. Failure of a Proponent to meet all of the mandatory requirements shall result in

the Proponent's Submission being non-compliant and therefore not considered further.

- 6.3.6 The Proponent acknowledges that its Submission should be in the correct format using the appropriate Proposal Document Forms and instructions as provided herein. Failure to comply may result in the Proponent being found non-compliant and disqualified at the sole discretion of Metrolinx.
- 6.3.7 The Proponent acknowledges that by way of the E-Bid Authorized Signer submitting a Submission the Proponent is agreeing to be bound to each and every term, condition, article and obligation of the Proposal Document and any resultant Contract.
- 6.3.8 The Proponent acknowledges that consistent with Section 3.6.3 of Instructions to Proponents, failure by the Proponent, whose Submission was accepted by Metrolinx, to execute and return the Contract with any other documents as may be required within the specified time, could result in the cancellation of the Contract.

6.4 Requirements

- 6.4.1 The Proponent shall provide personnel and resources to perform the Services in accordance with the Scope of Services, attached as Appendix "B";
- 6.4.2 The Services are to be provided in accordance with the terms of the Contract, unless otherwise specified.

6.5 Conflict of Interest

"Conflict of Interest" means

- 6.5.1 in relation to this RFP Process, the Proponent has an unfair advantage or engages in conduct, directly or indirectly, that may give it an unfair advantage, including but not limited to (i) having, or having access to, confidential information of Metrolinx in the preparation of its Submission that is not available to other Proponents, (ii) communicating with any person with a view to influencing preferred treatment in this RFP Process (including but not limited to the lobbying of decision makers involved in this RFP Process), or (iii) engaging in conduct that compromises, or could be seen to compromise, the integrity of this RFP Process; or
- 6.5.2 in relation to the performance of its contractual obligations contemplated in the Contract that is the subject of this procurement, the Proponent's other commitments, relationships or financial interests (i) could, or could be seen to, exercise an improper influence over the objective, unbiased and impartial exercise of its independent judgement, or (ii) could, or could be seen to, compromise, impair or be

incompatible with the effective performance of its contractual obligations.

6.5.3 If the box below is left blank, the Proponent will be deemed to declare that (a) there was no Conflict of Interest in preparing its Submission; and (b) there is no foreseeable Conflict of Interest in performing the contractual obligations contemplated in the Proposal Document.

Otherwise, if the statement below applies, check ("X") the box.

The Proponent declares that there is an actual or potential Conflict of Interest relating to the preparation of its Submission, and/or the Proponent foresees an actual or potential Conflict of Interest in performing the contractual obligations contemplated in the Proposal Document.

If the Proponent declares an actual or potential Conflict of Interest by marking the box above, the Proponent must set out below details of the actual or potential Conflict of Interest:

[Click here to enter text.](#)

The following individuals, as employees, advisers, or in any other capacity (a) participated in the preparation of our Submission (whether as employees, advisers, or in any other capacity); AND (b) were employees, advisers or Proponents of Metrolinx at any time within the twelve (12) months prior to the Closing:

Name of Individual: Click here to enter text.
Job Classification: Click here to enter text.
Department: Click here to enter text.
Last Date of Employment with Metrolinx: Click here to enter text.
Name of Last Supervisor: Click here to enter text.
Brief Description of Individual's Job Functions: Click here to enter text.
Brief Description of Nature of Individual's Participation in the Preparation of the Submission: Click here to enter text.

(Repeat above for each identified individual)

The Proponent agrees that, upon request, the Proponent shall provide Metrolinx with additional information from each individual identified above in the form prescribed by Metrolinx.

6.6 Harmonized Sales Tax

In accordance with Appendix "A" - General Conditions, the Proponent represents, warrants and covenants to Metrolinx that the Proponent is and shall remain duly registered for the purposes of Part IX of the Excise Tax Act and that the Proponent's registration number is: [Click here to enter text.](#)

A non-resident Proponent unable to provide a H.S.T. Registration Number at the time of Submission shall be required to provide a H.S.T. Registration Number within five (5) Business Days of acceptance of its Submission by Metrolinx. Failure to comply with this requirement may result in the Contract being declared VOID.

7.0 Attachment 1 - Proponent Prices

- 7.1 Proponents shall fully complete the appended Excel file entitled Attachment 1 - Proponent Prices and insert the information required.
- 7.2 Attachment 1 - Proponent Prices, must be returned as a separate file preferably in Excel format and may not be retyped or recreated. Failure to follow the submission instructions or format requirements may result in the Submission being found non-compliant and disqualified.
- 7.3 It is Metrolinx's preference that Proponents submit their pricing using the appended Excel file format to facilitate the Metrolinx pricing evaluation process.
- 7.4 The Proponent Prices are to remain fixed for the full term of this Contract (with the exception of an annual increase of 2% per year beginning in the second year of the Contract term) and shall be the basis on which pricing will be determined for any renewals resulting from the agreement.

8.0 Attachment 2 - Corporate References

The Proponent should, using the template below, provide corporate reference information as indicated in this Attachment 2 - Corporate References. The Proponent should ensure that all contact information provided for each reference is current and accurate in order to enable Metrolinx to obtain all necessary information for evaluation purposes in a timely manner. If Metrolinx is unable to contact any of the references provided in order to verify the Proponent’s qualifications and experience, the Proponent may, in Metrolinx’s sole discretion, receive no score for that reference project.

Proponents should review the Proposal Submission Requirements section to ensure compliance with the submission requirements.

CORPORATE REFERENCES						
Company Name	Project Title	Contact Person Name and Title	Phone Number	E-mail Address	Start Date	Completion Date
Click here to enter text.	Click here to enter text.	Click here to enter text.	Click here to enter text.	Click here to enter text.	Click here to enter text.	Click here to enter text.
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9.0 Attachment 3 - Mandatory Technical Checklist

- 9.1 Proponents shall complete the mandatory technical checklist below, and submit this Attachment 3 with their Submission. Failure of a Proponent to complete and submit this Attachment 3 shall result in the Proponent's Submission being found non-compliant and disqualified.
- 9.2 Proponents must meet all mandatory requirements stated below in order for their Submission to be considered further. Failure of a Proponent to meet all of the mandatory requirements listed below shall result in the Proponent's Submission being considered non-responsive. Non-responsive Submissions shall not be considered further and shall be disqualified.
- 9.3 Proponents shall provide supporting documentation to substantiate compliance to each of the listed mandatory requirements. Failure of a Proponent to provide information required to substantiate compliance to a mandatory requirement may result in the Proponent's Submission being found non-compliant and disqualified.
- 9.4 Metrolinx has the right but not the obligation, to carry out further investigations to ensure the Proponent and/or designated Subcontractor can meet the mandatory requirements to the satisfaction of Metrolinx in its sole discretion.

Reference Section	Mandatory Technical Requirements	Compliance (Check ("X") either Yes or No)	
Appendix "B" - Scope of Services subsection "B-1"	Statement of Compliance with the requirements as specified in Appendix "B-1"	YES <input type="checkbox"/> NO <input type="checkbox"/>	Include a statement of compliance in Proponent's proposal as required in Section 4.3(iv)(1)

Appendix "A" - General Conditions

List of Contents

The following documents hereby form part of and are appended to this Proposal Document as Appendix "A" - General Conditions.

Item No.	Description
1	INTERPRETATION
2	GENERAL CONTRACTOR OBLIGATIONS
3	REQUIREMENTS FOR PERFORMANCE OF THE WORK
4	CONTRACTOR RESPONSIBILITY FOR CONTRACT PERSONNEL
5	CHANGE MANAGEMENT
6	GENERAL FINANCIAL TERMS AND CONDITIONS
7	OWNERSHIP OF IP
8	CONFIDENTIAL INFORMATION, PERSONAL INFORMATION, FREEDOM OF INFORMATION, ACCESS AND AUDIT RIGHTS
9	REPRESENTATIONS, WARRANTIES AND COVENANTS
10	INSURANCE
11	REMEDIES
12	LIMITATIONS ON LIABILITY
13	DISPUTE RESOLUTION
14	GENERAL
SCHEDULE "1"	<u>DEPLOYMENT</u> AND IMPLEMENTATION SERVICES
SCHEDULE "2"	TRAINING

ARTICLE 1

INTERPRETATION

1.1 Application of General Conditions.

Unless otherwise expressly provided herein, these General Conditions shall apply to all Work performed under this Contract.

1.2 Certain Definitions.

As used in this Contract, unless otherwise defined, the following words and expressions shall bear the following meanings:

"Applicable Laws" means: (a) applicable federal, provincial or municipal laws, whether in Canada or any other jurisdiction that may be applicable to this Contract and the Work, including orders-in-council, by-laws, codes, rules, policies, regulations or statutes; (b) applicable orders, decisions, judgments, injunctions, decrees, awards or writs of any court, tribunal, arbitrator, governmental authority or other person having jurisdiction; and (c) any requirements under or prescribed by applicable common law, in all cases as any of the foregoing maybe in effect or amended from time to time.

"Articles of Agreement" means the formal executable documents of this Contract.

"Business Day" means any day other than: (a) a Saturday or Sunday; and (b) any other day on which Metrolinx is not open for business.

"Change" has the meaning ascribed to it in Section 5.1(a).

"Change Order" has the meaning ascribed to it in Section 5.2(a).

"Change Order Agreement" has the meaning ascribed to it in Section 5.2(c).

"Confidential Information" means all confidential and propriety information directly or indirectly provided, disclosed or made available (orally, electronically or in writing or by any other media) to Contractor or any Contract Personnel, whether by Metrolinx or otherwise in connection with this Agreement or the Work performed hereunder, including all data, materials, products, employee or customer information, technology, technical or test data, drawings, computer programs, specifications, manuals, business plans, Software, marketing plans, financial information, all Personal Information and all Contract Records, regardless of whether the information is specifically identified or marked as "Confidential" or "Proprietary".

"Conflict of Interest" includes, but is not limited to, any situation or circumstance where in relation to the performance of its contractual obligations in this Contract, Contractor's other commitments, relationships or financial interests could or could be seen to: (i) exercise an improper influence over the objective, unbiased and impartial exercise of its

independent judgement; or (ii) compromise, impair or be incompatible with the effective performance of its contractual obligations.

"Contract" has the meaning ascribed to it in the Articles of Agreement, and any change notices or amendments to any of the documents that form the contract.

"Contract Records" has the meaning ascribed to it in 8.5(a).

"Contract Year" means any consecutive twelve-month period commencing on the Effective Date or any anniversary thereof during the Term.

"Contractor" means [TO BE COMPLETED AT SIGNING].

"Contractor Contact" has the meaning ascribed to it in Section 2.5(a).

"Contract Personnel" means any of Contractor's employees, agents, independent contractors and subcontractors.

"Contractor Intellectual Property" means any Intellectual Property which (a) Contractor has already developed prior to the Effective Date; (b) which Contractor develops independently of this Contract; (c) which Contractor licenses from a third party; (d) all documentation related to any of the foregoing; and (e) all copies, translations, improvements, modifications, enhancements, adaptations, or derivations made to the Contractor Intellectual Property by Contractor and/or any third party not performing work under this Contract; provided, however, that Contractor Intellectual Property does not include Custom Intellectual Property.

"Custom Intellectual Property" means any Intellectual Property created or developed by Contractor or any Contract Personnel under this Contract specifically for use in connection with the Work, all documentation and media related thereto, and all Intellectual Property Rights therein.

"Deliverables" means any deliverable or work product prepared pursuant to this Contract or required for the development, deployment, or implementation of the Contract.

"Deployment and Implementation Services" means all deployment, configuration, planning, strategy, programming, implementation, integration, configuration, installation, testing, transition and other work to be performed and completed to provide the Deliverables.

"Domain Expertise" means the required level of depth and breadth of qualifications and experience in respect of the tasks to be performed in connection with the Work, gained through a practical application of the knowledge underlying the tasks in an environment substantially similar to that of the Work.

“Effective Date” means the date first specified on the first page of the Articles of Agreement.

“FIPPA” means the *Freedom of Information and Protection of Privacy Act, 1990* (Ontario) and any amendments or successor legislation. FIPPA is Provincial legislation regulating the collection, retention, access, use and disclosure of Personal Information by or on behalf of Metrolinx, and shall be applicable to this Contract including all Work provided hereunder.

“FIPPA Records” means all information, data, records and materials, however recorded, in the custody or control of Metrolinx, including Confidential Information, Personal Information and Contract Records. For the purposes of this definition, documents held by the Contractor in connection with this Contract are considered to be in the control of Metrolinx.

“Force Majeure Event” has the meaning ascribed to it in Section 12.2(a).

“Governmental Authority” means any domestic government, including any federal, provincial, territorial, municipal, regional or other local government, and any government established court, agency, tribunal, commission or other authority exercising or purporting to exercise executive, legislative, judicial, regulatory or administrative functions respecting government; provided, however, **“Governmental Authority”** does not include Metrolinx.

“HST” has the meaning ascribed to it in Section 6.4(c).

“Indemnified Parties” has the meaning ascribed to it in Section 11.1(a).

“Industry Standards” means those standards, specifications, practices, methods, procedures, manuals, codes typically applied, or which the industry in Canada expects or requires to be applied to the performance of work, services or tasks similar in any way to the Work or any part thereof, including those specifically identified in the Specifications, in all cases as any of the foregoing may be in effect or amended from time to time.

“Initial Term” has the meaning ascribed to it in Section 2.1.

“Intellectual Property” means all intellectual and industrial property, including: (a) materials, images, reports, Software, applications, audio or video recordings, specifications, performance requirements, software development tools, technologies, content, data (including all information whether or not contained in or on any database or electronic information storage system or media), technical information, interfaces, web portals, components, computer programs, services, information, databases, and documentation; (b) patents, patent application rights, rights to file patents, inventions, trade-marks (whether registered or not), trade-mark applications, rights to file trade-marks, trade names, copyrights (whether registered or not), design registrations, trade secrets, confidential information, industrial and similar designs, rights to file for industrial

and similar designs, processes, methodologies, techniques and know-how; and (c) all Intellectual Property Rights therein.

"Intellectual Property Rights" means any Intellectual Property right recognized by law, including any Intellectual Property right protected by legislation or arising from protection of information as a trade secret or as confidential information.

"Losses" means all losses, liabilities, damages and claims, and all related costs and expenses (including reasonable legal fees and disbursements and costs of investigation, litigation, settlement, judgment, interest and penalties).

"Maintenance and Support Services" means the provision of maintenance and support as more specifically defined in the Specifications.

"Metrolinx" means Metrolinx, a corporation established pursuant to the *Metrolinx Act, 2006* (Ontario) and its successors and assigns.

"Metrolinx Contact" has the meaning ascribed to it in Section 2.6(a).

"Metrolinx Intellectual Property" means: (a) all Intellectual Property that is proprietary to, or controlled or licensed by, Metrolinx and provided to Contractor to enable Contractor to perform the Work; (b) all data and information collected within the System or generated by the System; (c) all Metrolinx Marks; (d) all procurement documents issued by Metrolinx; (e) all documentation related to any of the foregoing; and (f) all copies, translations, improvements, modifications, enhancements, adaptations, or derivations made to the Metrolinx Intellectual Property by Metrolinx and/or any third party not performing work under this Contract.

"Metrolinx Marks" means any trademarks, service marks, trade names, logos or other commercial or product designations owned or licensed by Metrolinx and to be used in connection with the Work and any part thereof, whether registered or not.

"OHSA" means the *Occupational Health and Safety Act* (Ontario).

"Parties" means Metrolinx and Contractor and **"Party"** means either one of them.

"Person" includes any individuals, firms, partnerships or corporations or any combination thereof.

"Personal Information" means information about an identifiable individual, as further defined in FIPPA, and clarified through applicable Provincial rules, decisions, policies and directives, including the decisions of the Information and Privacy Commissioner of Ontario.

"PIPEDA" means the *Personal Information Protection and Electronic Documents Act*, and any amendments or successor legislation. PIPEDA is a Canadian federal statute setting

out requirements for the collection and use of Personal Information, among other things. PIPEDA governs how private-sector organizations collect, use and disclose personal information in the course of commercial business in Canada, and shall be applicable to the Work.

"PRESTO" means the division of Metrolinx and also the name of an automated fare collection system that allows customers, using a single contactless fare card, to access eleven (11) transit systems in the Greater Toronto, Hamilton and Ottawa areas that provide multiple modes of transit;

"PRESTO Card" means the contactless fare card employed by Metrolinx' PRESTO division that allows customers access to certain transit systems;

"Privacy Impact Assessment" refers to a systematic and consistent method of analysis to identify and analyze privacy risks in a program, technology or service.

"Proposal" means Contractor's proposal received by Metrolinx in response to the RFP, as referenced in the Articles of Agreement and attached to this Contract.

"Renewal Term" has the meaning ascribed to it in Section 2.1.

"RFP" means the Request for Proposal procurement process set out in the Request for Proposal Document reference # RFP-2017-VM-027.

"RFP Conflict of Interest" means Contractor had an unfair advantage or engaged in conduct, directly or indirectly, that gave it an unfair advantage, including but not limited to (i) having, or having had access to, confidential information of Metrolinx in the preparation of its submission during the RFP process that was not available to other proponents, (ii) communicating with any person with a view to influencing preferred treatment in the RFP process (including but not limited to the lobbying of decision makers involved in the RFP process), or (iii) engaging in conduct that compromises, or could be seen to compromise, the integrity of the RFP process.

"Service Level Agreement" has the meaning ascribed to it in Section 2.2(e).

"Service Levels" has the meaning ascribed to it in Section 2.2(f).

"Service Level Credit" has the meaning ascribed to it in Schedule "1" - Deployment and Implementation Services, section (g).

"Software" means any set of machine readable instructions that directs the performance of specific operations, including computer programs, computer code, software programs (whether executable or not executable), system software, application software, embedded software, databases, data, middleware, GUI's, objects, firmware, components and modules and related documentation.

"Specifications" means the description of the operational, technical, functional and business requirements for the Work, the Deliverables, and the System set out in this Contract, including: (a) the scope of services requirements set out in APPENDIX "B-1" - TECHNICAL REQUIREMENTS, and (b) the Proposal, in each case subject to the order of precedence set out in this Contract.

"Term" means the Initial Term and any Renewal Terms.

"Total Contract Price" means the total price of this Contract specified in the Articles of Agreement.

"Training Services" means the training on the use and operation of the System to be provided by Contractor in accordance with Schedule "2" - Training.

"Work" includes all of the tangible and intangible activities, services, goods, equipment, matters and things required to be done, delivered or performed by Contractor under this Contract, including all of the work, labour, services, goods, and requirements described in the Specifications and all the Deployment and Implementation Services and the Training Services.

Capitalized terms not otherwise defined herein shall bear the meaning associated with such term as set out in the relevant Contract document.

1.3 Interpretation.

In this Contract, unless there is something in the subject matter or context inconsistent therewith:

- (a) words in the singular number include the plural and such words shall be construed to include the plural;
- (b) words in the plural include the singular and such words shall be construed to include the singular;
- (c) words importing the use of any gender shall include all genders where the context or party referred to so requires, and the rest of the sentence shall be construed as if the necessary grammatical and terminological changes had been made;
- (d) use of the word "including" shall in all cases mean "including without limitation";
- (e) all sums of money to be paid or calculated pursuant to this Contract shall be calculated and paid in Canadian currency; and
- (f) any reference to a statute is to such a statute and to the regulations made pursuant to such statute as such statute and regulations may at any time be amended or modified and in effect, and to any statute or regulations that may

be passed that has the effect supplementing or superseding such original statute or regulations.

1.4 Time of Essence.

Time shall be deemed to be of the essence in this Contract.

ARTICLE 2 GENERAL CONTRACTOR OBLIGATIONS

2.1 Term.

This Contract shall take effect on the Effective Date hereof and, subject to the provisions of Section 11.3 and Section 14.3 shall continue in full force and effect for five (5) years from the Effective Date (the "**Initial Term**"). This Contract may be renewed, at Metrolinx's sole option, by written notice given by Metrolinx, not less than thirty (30) days prior to the end of the Initial Term for up to five (5) further terms of one (1) year each (each, a "**Renewal Term**"). Such renewal shall be on the same terms and conditions as provided herein, unless the Parties agree otherwise in writing.

2.2 Performance of the Work.

- (a) Contractor shall perform the Work in accordance with and subject to the terms and conditions of this Contract (including in conformance to the Specifications), Applicable Laws, Industry Standards and the security requirements specified in APPENDIX "B-1" - TECHNICAL REQUIREMENTS.
- (b) Schedule "1" - Deployment and Implementation Services sets out additional terms and conditions that shall apply specifically to the Deployment and Implementation Services.
- (c) Schedule "2" - Training Services sets out additional terms and conditions that shall apply specifically to the Training Services.
- (d) Performance Requirements
 - (i) In the performance of the Work, Contractor shall at all times meet or exceed the quantitative and qualitative requirements, performance metrics and service levels set out in the Specifications or any Service Level Agreement (collectively, "**Service Levels**").
 - (ii) If Contractor fails to meet any Service Level, Contractor promptly shall, at no additional charge to Metrolinx:
 - (A) investigate, assemble and preserve pertinent information with respect to, and report on, the causes of the problem, including performing a root cause analysis of the problem;
 - (B) advise Metrolinx, as and to the extent reasonably requested by Metrolinx, of the status of remedial efforts being undertaken with respect to such problems;

- (C) use reasonable efforts to minimize the impact of and correct the problem, and begin meeting the Service Level as soon as practicable; and
 - (D) take appropriate preventive measures to avoid recurrence of the problem.
- (e) Service Level Agreement
 - (i) The Parties may, at any time after the Effective Date, develop and execute a service level agreement (once executed, the "**Service Level Agreement**") to more specifically define, among other things:
 - (A) the Service Level requirements applicable to the performance of the Work, including service level targets and exceptions, if any;
 - (B) criteria for the occurrence of a service level default;
 - (C) a detailed problem escalation process, including any requirements for improvement plans;
 - (D) remedies, such as service level credits, applicable in the event of a service level default; and
 - (E) any earn -backs or similar provisions and/or cap on service level credits.
 - (ii) Once executed by both Parties, the Service Level Agreement shall take precedence only in respect of the specific performance requirements and remedies identified therein and this Contract shall otherwise continue to apply to the performance of the Work.
- (f) Service Level Measurement and Reporting
 - (i) Contractor shall measure and report its performance to Metrolinx against the Service Levels, on a monthly basis, with such detail as reasonably requested by Metrolinx.
- (g) Periodic Review
 - (i) Within three (3) months after the expiration of the first Contract Year and at least annually thereafter, Metrolinx and Contractor shall review the Service Levels and shall make adjustments to them as appropriate to reflect improved performance capabilities associated with advances in the technology and methods used to perform the Work. The Parties expect and understand that the Service Levels will become more favorable to Metrolinx over time.

2.3 Third Party Agreements.

Contractor acknowledges and agrees that Metrolinx is a party to, and may during the Term enter into, agreements with various third parties which may intersect with the Work. Contractor shall reasonably cooperate with all such third parties and shall provide to them any reasonably requested information; provided, however, that Metrolinx acknowledges

that such third parties may be required to enter into a non-disclosure agreement prior to the disclosure thereof. Cooperation with any such third parties in respect of any aspects of the Work shall not result in any increase in any associated costs or fees unless a Change Order Agreement has been completed and executed by both Parties.

2.4 Conflict of Interest.

- (a) Contractor shall:
 - (i) avoid any Conflict of Interest in its contractual obligations;
 - (ii) disclose to Metrolinx without delay any actual or potential Conflict of Interest that arises during the performance of its contractual obligations; and
 - (iii) comply with any requirements prescribed by Metrolinx to resolve any Conflict of Interest.
- (b) In addition to all other contractual rights or rights available at law or in equity, Metrolinx may immediately terminate this Contract upon giving notice to Contractor where:
 - (i) Contractor fails to disclose an actual or potential Conflict of Interest;
 - (ii) Contractor fails to comply with any requirements prescribed by Metrolinx to resolve a Conflict of Interest; or
 - (iii) Contractor's Conflict of Interest cannot be resolved.

2.5 Contractor Contact and Reporting.

- (a) Prior to the commencement of the Work, Contractor shall designate one individual to communicate directly with Metrolinx and to whom all Metrolinx communications concerning this Contract may be addressed (such individual, the "**Contractor Contact**").
- (b) Prior to the commencement of the Maintenance and Support Services, the Contractor Contact shall maintain reasonable, ongoing contact with Metrolinx to ensure that issues are dealt with in an efficient, effective and timely manner. Contact is defined as all reasonable effort to inform all parties of plans, decisions, proposed approaches, implementation, and results of work, to ensure that the work is progressing well and in accordance with expectations.
- (c) Prior to the commencement of the Maintenance and Support Services, the Contractor Contact must report to Metrolinx on a weekly basis (or as required by Metrolinx) on the status of activities for which Contractor is responsible, including an identification to any risks, issues or obstacles to meeting the scheduled timelines encountered and any corrective actions taken.

2.6 Metrolinx Obligations.

- (a) Prior to the commencement of the Work, Metrolinx shall designate one individual to communicate directly with Contractor and to whom all Contractor

communications concerning this Contract may be addressed (such individual, the “**Metrolinx Contact**”).

- (b) Metrolinx shall perform the covenants contained in APPENDIX “C” - METROLINX SERVICES.

ARTICLE 3 REQUIREMENTS FOR PERFORMANCE OF THE WORK

3.1 Contractor Responsibility for Compliance with Applicable Laws and Industry Standards.

Contractor shall comply with all Applicable Laws and Industry Standards in the performance of the Work.

3.2 OHSA.

Without limiting the generality of Section 3.1, Contractor specifically covenants that it shall comply in all regards with the applicable requirements of the OHSA and its own health and safety program to take all steps reasonable in the circumstances to ensure the health and safety of all workers for which it has responsibility under the said act. Contractor covenants to maintain and strictly enforce its health and safety program. Recognizing that Metrolinx may also have obligations as an “employer” pursuant to the OHSA, Contractor further covenants to provide such information within such time frames as may be required in order to allow Metrolinx to fulfill its obligations pursuant to the OHSA, including the obligation to notify the Director under such Act in the event of an accident causing personal injury.

3.3 Workplace Safety and Insurance Clearance Certificates.

At the commencement of this Contract and at any other time upon request by Metrolinx, Contractor shall provide a valid Workplace Safety and Insurance Clearance Certificate for the premium rate class, sub-class or group as appropriate for the Work of this Contract, issued by the Workplace Safety and Insurance Board, confirming that all assessments due and required to be made by Contractor are complete and Contractor is a registered employer in good standing.

ARTICLE 4 CONTRACTOR RESPONSIBILITY FOR CONTRACT PERSONNEL

4.1 Contract Personnel.

- (a) Contractor shall select and employ a sufficient number of suitably qualified and experienced people to perform the Work, and shall provide effective and efficient supervision to ensure that the quality of workmanship meets the requirements of this Contract. Contractor shall ensure that all Contract Personnel comply with the terms of this Contract and, without limiting the

foregoing, the responsibilities of Contractor with respect to matters concerning safety and compliance with Applicable Laws.

- (b) Contractor shall be solely responsible for the payment of the Contract Personnel.
- (c) Contractor shall, and shall ensure that the Contract Personnel assigned to perform the Work:
 - (i) act in a proper and professional manner in accordance with Industry Standards;
 - (ii) in respect of any work performed at locations owned or controlled by Metrolinx, comply with all applicable Metrolinx policies and procedures, provided that Contractor has been made aware of same; and
 - (iii) receive appropriate privacy and security training and, in the event that such personnel will have access to Personal Information, receive (prior to any such access) appropriate security clearances and screenings that Metrolinx reasonably requests or requires.
- (d) Contractor shall, without unreasonable delay and at no cost to Metrolinx, replace any of the Contract Personnel whom Metrolinx, acting reasonably, considers lacking the necessary competence or finds it manifestly difficult to collaborate. Contractor shall also remove from the performance of the Work any Contract Personnel who commits a breach of any applicable human rights or safety legislation (including the OHSA). In addition to the foregoing, in the event that Metrolinx determines that any Contract Personnel are causing or responsible for a situation which violates Applicable Law, affects the security of any Personal Information or any Confidential Information, the safety of any person or property, or could result in material financial loss, Contractor shall remove that Contract Personnel from further performance of the Work forthwith at the request of Metrolinx. In such events, Contractor shall be responsible for transferring knowledge and providing training to the proposed replacement person with no impact to the provision of the Work and at no cost to Metrolinx.
- (e) Contractor shall maintain records of all Contract Personnel who are engaged to perform the Work.
- (f) Contractor shall implement and maintain background checking processes and reliability checks consistent with Industry Standards for all Contract Personnel who are engaged to perform the Work.

4.2 Subcontracting.

- (a) Contractor shall not subcontract or permit the subcontracting of any part of the Work without the prior written consent of Metrolinx. A subcontract includes a contract entered into by any subcontract at any tier to perform any part of the Work. Notwithstanding the foregoing, Contractor is not required to obtain consent for subcontracts specifically identified in the Proposal or otherwise

authorized in this Contract, provided that the Work to be completed and the subcontractor to be utilized remain the same.

- (b) In any subcontract, Contractor shall ensure that the subcontractor is bound by conditions compatible with, and no less favorable to Metrolinx than, the conditions of this Contract.
- (c) No subcontracting by Contractor (including subcontractor to which Metrolinx has consented) shall relieve Contractor of any responsibility for the full performance of all obligations of Contractor under this Contract. Notwithstanding the approval of any subcontractors by Metrolinx, Contractor shall be fully responsible for every subcontractor's activities, works, services and acts or omissions, and it shall be Contractor's responsibility to control and check the work of its own personnel and of all its subcontractors and to ascertain that all Work is performed in accordance with this Contract, all Applicable Laws, Industry Standards and the security requirements specified in APPENDIX "B-1" - TECHNICAL REQUIREMENTS. Contractor shall be liable to Metrolinx for costs or damages arising from errors or omissions of any subcontractors.

ARTICLE 5 CHANGE MANAGEMENT

5.1 Changes Initiated by Metrolinx.

- (a) Pursuant to the process set out in Section 5.2, either party may request changes to the Work, including changes to the Specifications, any Deliverables, or delivery arrangements (each a "**Change**") at any time during the Term.
- (b) Changes shall be implemented by Contractor without any additional charge, unless Contractor is able to demonstrate that the Change causes additional costs for Contractor. Where an additional charge is demonstrated to Metrolinx's satisfaction (acting reasonably), Contractor shall implement the Change for a reasonable price in accordance with the same pricing principles and price levels as originally agreed in the Articles of Agreement and in the Proposal. Where a Change requires the deletion or reduction of Work, Contractor shall adjust its fees in accordance with the foregoing and credit such adjustment to the benefit of Metrolinx.
- (c) Contractor shall maintain a detailed process for requesting, controlling, approving and managing technical and operational Changes.

5.2 Change Order Process.

- (a) Where a Change is proposed or required, the requesting party shall provide a request in writing, in the form agreed by the Parties (a "**Change Order**") to the other Party describing in reasonable detail the proposed Change.
- (b) Contractor shall prepare and provide to Metrolinx either with its Change Order (where the request is initiated by Contractor) or otherwise within ten (10)

Business Days of receipt of a Change Order (or such longer time period as Metrolinx may otherwise agree, acting reasonably), in writing and in a form acceptable to Metrolinx:

- (i) a detailed breakdown of the estimated costs (if any) including any savings or other cost adjustments of the proposed or required Change;
 - (ii) any adjustment to the Project Schedule or timing of the Work, as applicable, resulting from the proposed Change;
 - (iii) any proposals, designs or other details or information which Metrolinx has reasonably requested; and
 - (iv) where a Change Order is initiated by Contractor, the reasons for the proposed Change, including the benefits of the proposed Change and any consequences of not proceeding with the Change.
- (c) All Change Order requests approved by the Parties shall be signed by both Parties and, thereafter, shall constitute an amendment to this Contract (a "**Change Order Agreement**"). No Changes shall be implemented until a Change Order has been approved by Metrolinx and the Change Order has been executed by both Parties. The Change Order Agreement shall be the final determination of any adjustments to the Specifications, or any of the Work required under the Contract, as applicable, with respect to the Change set out therein.

ARTICLE 6

GENERAL FINANCIAL TERMS AND CONDITIONS

6.1 General Payment Terms.

- (a) Metrolinx does not guarantee any minimum amount of work.
- (b) Unless otherwise agreed by the Parties pursuant to the change management process set out in ARTICLE 5 or Section 14.8, the aggregate amount paid to and/or retained by Contractor in respect of the Work shall in no event exceed the Total Contract Price. The Total Contract Price shall not be increased or decreased by reason of any increase or decrease in the cost of labor, materials, tools or equipment required by Contractor to complete the Work.
- (c) Contractor represents and warrants that, except as otherwise expressly identified in this Contract, the fees (including fixed fees, hourly rates and per diem rates) set out in the Articles of Agreement are inclusive of:
 - (i) all labour and materials, insurance costs, licensing fees, disbursements, out-of-pocket expenses, overhead and other amounts incurred in connection with the performance of the Work; and
 - (ii) all costs for the coordination, administration and management of the Work necessary to achieve compliance with Applicable Laws and Industry Standards.

- (d) Metrolinx shall not reimburse Contractor for any costs related to travel, meals or hospitality, food or incidental expenses incurred, except where such cost or expense has been pre-approved in writing by Metrolinx (which pre-approval Metrolinx may decline to provide in its sole discretion) and is required to be incurred directly in connection with the performance of the Work. Any such reimbursement shall be made in accordance with and subject to the Government of Ontario's Travel, Meal and Hospitality Expenses Directive (as amended from time to time), upon receipt of documentation (including original receipts and other proof of payment) suitable to Metrolinx.
- (e) Contractor shall accept any payments made by Metrolinx by way of Electronic Funds Transfer, and shall, if requested by Metrolinx, provide the account information required to complete an Electronic Funds Transfer.
- (f) Notwithstanding anything in this Contract to the contrary, it is understood that this Contract is based on reimbursement for actual services performed by Contractor and accepted by Metrolinx in accordance with this Contract.

6.2 Fees for Deployment and Implementation Services and Training Services.

- (a) In respect of the Deployment and Implementation Services and the Training Services, Metrolinx agrees to pay Contractor the amount set out in the Articles of Agreement subject to the deduction of any Service Level Credit.
- (b) Contractor shall be paid for the Work:
 - (i) in accordance with the payment schedule set out in the Articles of Agreement attached to this Contract upon completion and Metrolinx acceptance, where applicable, of the applicable milestone; and
 - (ii) upon submitting an invoice and other supporting documentation which may be reasonably required by Metrolinx.
- (c) Metrolinx shall pay Contractor within thirty (30) days of receipt of an invoice, provided the requirements of Section 6.2(b) have been met.

6.3 Fees for Maintenance and Support Services.

- (a) In respect of the Maintenance and Support Services, Metrolinx agrees to pay Contractor the amount set out in the Articles of Agreement, subject to the deduction of any Service Level Credit.
- (b) Contractor shall be paid for the Work:
 - (i) in accordance with the payment schedule set out in the Articles of Agreement attached to this Contract upon completion and Metrolinx acceptance, where applicable, of the applicable milestone; and
 - (ii) upon submitting an invoice and other supporting documentation which may be reasonably required by Metrolinx.
- (c) Metrolinx shall pay Contractor within thirty (30) days of receipt of an invoice, provided the requirements of Section 6.3(b) have been met.

6.4 Taxes.

- (a) Contractor represents, warrants and covenants that Contractor is and shall remain duly registered for the purposes of Part IX of the Excise Tax Act and that Contractor's registration number is **[TO BE INSERTED PRIOR TO EXECUTION]**.
- (b) All amounts payable hereunder are exclusive of applicable taxes.
- (c) Any amount to be levied against Metrolinx in respect of the harmonized sales tax or similar successor tax levied under the *Excise Tax Act* and applicable to the Work ("**HST**") is to be shown separately on all invoices for goods or services supplied. Contractor shall remit any HST paid or due in accordance with Applicable Law, and shall, at the request of Metrolinx, provide evidence of payment of same.

6.5 General Right of Set Off/Credits.

- (a) Metrolinx may set off any amount payable or owing to Metrolinx by Contractor under this Contract (including pursuant to any indemnity) from any amount otherwise payable by Metrolinx to Contractor under this Contract.
- (b) Any amounts or credits owing by Contractor to Metrolinx as a result of a Change or other Metrolinx-approved adjustment of Contractor's Work shall be applied to the benefit of Metrolinx during the Term. If no further invoice(s) are issuable to Metrolinx by Contractor hereunder then any such amounts shall be paid by Contractor to Metrolinx via certified funds within thirty (30) days of such Metrolinx-approved Change or adjustment of Work.

ARTICLE 7 OWNERSHIP OF IP

7.1 General.

- (a) Contractor shall be responsible for procuring for Metrolinx the right to use all Contractor Intellectual Property required in connection with the Work in accordance with the Contract.
- (b) In the event that any third party Intellectual Property (other than the Metrolinx Intellectual Property) is required in connection with the Work, Contractor shall, at its own cost, be responsible for entering into and fully maintaining, during the Term, all related and applicable license, and maintenance and support agreements for such third party Intellectual Property.
- (c) If during the Term, third party Intellectual Property (other than Metrolinx Intellectual Property) used in connection with the Work ceases to be commercially available, then Contractor shall:
 - (i) promptly provide Metrolinx with notice of such event; and
 - (ii) promptly replace such third party Intellectual Property with an alternative product.

Any increased costs resulting from the foregoing shall be addressed pursuant to the change management process described in ARTICLE 5; provided that, in

the event such Intellectual Property ceases to be available as a result of any act or omission of Contractor, Contractor shall be responsible for all costs associated therewith.

7.2 Metrolinx Intellectual Property.

As between Metrolinx and Contractor, Metrolinx owns and shall own all right, title and interest in and to the Metrolinx Intellectual Property. To the extent that Contractor requires the use of any Metrolinx Intellectual Property in connection with this Contract or the Work, Metrolinx hereby grants to Contractor a limited, non-exclusive, non-sublicenseable, royalty-free right and license for Contractor and the Contract Personnel to use the Metrolinx Intellectual Property during the Term solely in connection with the Work, subject to compliance with the confidentiality obligations set out in this Contract. Metrolinx grants no rights other than explicitly granted herein, and Contractor shall not exceed the scope of this license. Except for the limited right to use such Metrolinx Intellectual Property as set forth in this section, Contractor shall not have or acquire any rights in or to the Metrolinx Intellectual Property.

7.3 Contractor Intellectual Property.

As between Metrolinx and Contractor, Contractor owns all right, title and interest in and to the Contractor Intellectual Property. To the extent that Metrolinx requires the use of any Contractor Intellectual Property in connection with this Contract, the Work or any Custom Intellectual Property, Contractor hereby grants to Metrolinx a limited, non-exclusive, irrevocable, perpetual, royalty-free right and license to use the Contractor Intellectual Property for Metrolinx's internal business purposes. Contractor grants no rights other than explicitly granted herein, and Metrolinx shall not exceed the scope of this license.

7.4 Custom Intellectual Property.

Contractor shall own all right, title and interest in and to any Custom Intellectual Property. Contractor hereby grants to Metrolinx a non-exclusive, irrevocable, perpetual, fully paid-up, royalty-free and worldwide right and license to access, use, copy, support, maintain and modify (including create derivative works from) the Custom Intellectual Property.

7.5 Employee and Subcontractor Contracts.

Contractor shall obtain from each of the Contract Personnel an assignment of rights to the Custom Intellectual Property and waiver of any moral or similar rights, prior to the performance of any Work by each such individual. Contractor shall provide copies of such documentation to Metrolinx upon request.

ARTICLE 8 CONFIDENTIAL INFORMATION, PERSONAL INFORMATION, FREEDOM OF INFORMATION, ACCESS AND AUDIT RIGHTS

8.1 Confidential Information.

- (a) Restrictions on Use of Confidential Information. Contractor shall keep all Confidential Information confidential. Without limiting the generality of the foregoing, Contractor shall:
- (i) not disclose, reveal, publish, or disseminate any Confidential Information to anyone, except as permitted pursuant to this Contract;
 - (ii) shall use Confidential Information only in connection with this Contract and the performance of the Work;
 - (iii) shall take all reasonable steps required to prevent any unauthorized reproduction, use, disclosure, publication, or dissemination of the Confidential Information;
 - (iv) shall not copy, reproduce in any form or store the Confidential Information in a retrieval system or database without the prior written consent of Metrolinx; and
 - (v) shall immediately notify Metrolinx in the event that it becomes aware of any unauthorized disclosure of Confidential Information, including any actual or attempted unauthorized collection, access, use or disclosure of Personal Information.
- (b) Permitted Disclosure. Notwithstanding the obligations set out in Section 8.1(a), Contractor may disclose Confidential Information to those of its Contract Personnel who need to know such Confidential Information in connection with this Contract, provided that such Contract Personnel is subject to obligations of confidentiality substantially similar to those contained in this ARTICLE 8 .
- (c) Exceptions.
- (i) The obligations of confidentiality set out in Section 8.1(a) shall not apply to Confidential Information (other than Personal Information) which:
 - (A) becomes generally available to the public through no fault of Contractor;
 - (B) prior to receipt from Metrolinx, was known to Contractor on a non-confidential basis and is not subject to another obligation of secrecy and non-use, as documented by written records possessed by Contractor;
 - (C) was independently developed by Contractor prior to receipt from Metrolinx, as documented by written records possessed by Contractor; or
 - (D) becomes available to Contractor on a non-confidential basis from a source other than Metrolinx that is not under other obligations of confidence.
 - (ii) If Contractor receives a request for the disclosure of any Confidential Information or becomes compelled to disclose any Confidential Information pursuant to Applicable Law, Contractor shall provide Metrolinx with prompt written notice of any such requirement and shall

cooperate with Metrolinx in seeking to obtain any protective order or other arrangement pursuant to which the confidentiality of the relevant Confidential Information is preserved. If such an order or arrangement is not obtained, Contractor shall disclose only that portion of the Confidential Information as is required pursuant to Applicable Law. Any such required disclosure shall not, in and of itself, change the status of the disclosed information as Confidential Information under the terms of this ARTICLE 8 and the provisions of this ARTICLE 8 shall continue to apply to the Confidential Information.

- (iii) Without limiting the generality of Section 8.1(c)(i) and notwithstanding Section 8.1(c)(ii), the Parties acknowledge and agree that the treatment and disclosure of Confidential Information shall in all cases be subject to the requirements of FIPPA.
- (d) Security Measures. Contractor shall select, implement (prior to the commencement of the Work), use and maintain the most appropriate products, tools, measures and procedures to ensure the security of all Confidential Information, as determined with reference to and generally in compliance with Applicable Laws, Industry Standards, the security requirements specified in APPENDIX "B-1" - TECHNICAL REQUIREMENTS, and best practices, or as otherwise prescribed by Metrolinx during the Term. Without limiting the generality of the foregoing, such practices shall include:
 - (i) privacy due diligence safeguards; and
 - (ii) physical and electronic security measures and confidentiality enhancing technologies to guard against unauthorized disclosures, access and use, such as firewalls, encryption, the use of user identification and passwords, software or other automated systems to control and track the addition and deletion of users, and software or other automated systems to control and track user access to areas and features of information systems.

For greater certainty, Metrolinx reserves the right to prescribe the specific manner in which Contractor shall perform its obligations relating to this Section 8.1(d).

- (e) Intellectual Property Rights. Metrolinx, its contractors, subcontractors, consultants, advisors, agents, strategic business partners, and affiliates shall retain all right, title and interest, including all Intellectual Property Rights, in and to its Confidential Information.
- (f) Return or Destruction of Confidential Information. Immediately upon expiration or termination of this Contract or at any other time upon the request of Metrolinx, and subject to Section 8.5, Contractor agrees to:
 - (i) promptly return all Confidential Information (other than the Contract Records) to Metrolinx; or

- (ii) promptly delete or destroy the Confidential Information (other than the Contract Records) and all copies thereof in any form whatsoever under its power or control and provide Metrolinx with a destruction certificate signed by an appropriate officer of Contractor certifying such destruction.
- (iii) Notwithstanding Section 8.1(f)(i), Contractor shall have no obligation to return or destroy:
 - (A) Confidential Information that is captured and retained within Contractor's routine computer systems backup processes, provided that (a) no specific effort is made to retrieve such Confidential Information for purposes that would violate the confidentiality obligations under this Contract and (b) the confidentiality obligations of under this Contract shall continue to apply to such archived Confidential Information for so long as such information is retained; and
 - (B) working papers or other documentation which it is required to retain pursuant to Applicable Law or any rules of professional conduct applicable to Contractor or the Contract Personnel.

8.2 FIPPA and Personal Information.

- (a) Metrolinx and Contractor acknowledge and agree the collection, use, retention and disclosure of Personal Information is governed by FIPPA. Metrolinx acknowledges that Contractor may also be subject to the requirements of PIPEDA. In the event of a conflict between the requirements of FIPPA and the requirements of PIPEDA or any other legislation governing the treatment of Personal Information, the more onerous provision shall apply.
- (b) Contractor shall ensure that all collection, access, use, retention and disclosure of Personal Information under this Contract, whether through the performance of the Work or otherwise, complies with Applicable Laws including FIPPA, PIPEDA, Industry Standards, and applicable requirements to collect, record and retain relevant consents pertaining to the collection, access, use, retention and disclosure of Personal Information in respect of the Work.
- (c) At Metrolinx's request at any time during the Term, Contractor shall fully participate in a Privacy Impact Assessment with respect to the System and the performance of the Development and Implementation Services. The Privacy Impact Assessment may be conducted by Metrolinx or external third party advisors to Metrolinx at various times throughout the Term. Contractor and all Contract Personnel shall cooperate with Metrolinx and/or its third party advisors to provide the resources required to facilitate and fulfill this assessment. Contractor shall implement any recommendations resulting from the Privacy Impact Assessment process, whether such requirements relate to the design and operation of the System or otherwise to any of the Work hereunder.

- (d) Contractor shall ensure the security and integrity of any Personal Information collected by Contractor and shall protect it against loss, unauthorized access, destruction, or alteration, in accordance with the following:
 - (i) Contractor shall not directly or indirectly collect, use, disclose, store or destroy any Personal Information, or give, exchange, disclose, provide, or sell Personal Information to any third party, except as expressly permitted, and for a purpose(s) authorized, under this Contract or otherwise agreed to in writing by Metrolinx.
 - (ii) Contractor shall ensure that access to Personal Information is restricted to those Contract Personnel who have a need to know or use such information in the performance of the Work and who have been specifically authorized to have such access for the purposes of performing the Work. Access shall be limited to only that Personal Information which is required for the performance of the Work.
 - (iii) Contractor shall ensure that access to Personal Information is restricted to those Contract Personnel who permanently reside in Canada or who are physically present at a Metrolinx facility.
 - (iv) All Personal Information shall be kept in a physically secure location and separate from all other records and databases. Contractor shall not place, input, match, insert or intermingle, nor shall it permit any Person to place, input, match or intermingle, any data or records in any form whatsoever into or with any records or database containing such Personal Information.
- (e) For greater certainty, Metrolinx reserves the right to prescribe the specific manner in which Contractor shall perform its obligations relating to this Section 8.2.

8.3 FIPPA and Freedom of Information.

Contractor acknowledges that Metrolinx is a provincial crown agency subject to FIPPA, and acknowledges and agrees as follows:

- (a) All FIPPA Records are subject to, and the collection, use, retention and treatment thereof is governed by FIPPA. Contractor agrees to keep all FIPPA Records secure and available, in accordance with the requirements of FIPPA. Contractor acknowledges that all information, data, records and materials, however recorded, that are held by Contractor and/or created by Contractor in the course of performing the Work are considered to be FIPPA Records and subject to FIPPA.
- (b) Section 8.1(f) shall apply to all FIPPA Records (other than the Contract Records), which shall be returned and/or destroyed in accordance with that section.
- (c) In the event of a conflict between the requirements of this Contract and the requirements of FIPPA, the requirements of FIPPA shall take precedence.

- (d) Contractor shall provide any and all FIPPA Records on demand for the purposes of responding to an access request under FIPPA or if a privacy issue arises. In these circumstances, Contractor shall provide all FIPPA Records requested to Metrolinx's Freedom of Information Coordinator (or equivalent) within seven (7) Business Days of receipt of the request from Metrolinx. Notwithstanding anything to the contrary in this Agreement and subject to Contractor's rights of appeal pursuant to Section 28(9) of FIPPA, Metrolinx shall determine what FIPPA Records will be disclosed in connection with any such request, in accordance with the requirements of FIPPA (including, without limitation, the requirements with respect to affected persons set out in Section 28 thereof).
- (e) Storage of FIPPA Records (including the Contract Records) at a location outside Canada shall only be permitted with Metrolinx's express written consent.

8.4 Access.

- (a) Contractor shall provide to Metrolinx the network access requirements and access level that will be required by Contractor to perform the Work. All requests to access Metrolinx's network will be subject to Metrolinx's written approval.
- (b) Contractor shall aggregate all access into a central network access point before network access is granted to Metrolinx's information systems. The network controls used to facilitate access between Contractor and Metrolinx will be subject to Metrolinx's written approval.
- (c) Contract Personnel shall not attempt to access, or allow access to, any Metrolinx data to which they are not permitted access under this Contract. If such access is attained, Contractor shall immediately report such incident to Metrolinx, describe in detail any accessed Metrolinx data, and return to Metrolinx any copied or removed Metrolinx data.
- (d) Contractor is responsible for ensuring that Contract Personnel do not access, or allow access, to any Metrolinx data to which they are not permitted access under this Contract. Contractor shall utilize commercially reasonable efforts, including through the use of rigorous systems security measures, to guard against, identify and promptly terminate the unauthorized access, alteration or destruction of software and Metrolinx data.

8.5 Audit Rights.

- (a) During the Term and for a period of seven (7) years thereafter, Contractor shall, at its cost and expense, retain and maintain, in an organized, accurate and accessible mode and manner, all financial and other books, records and documentation relating or pertaining to the Contract and the performance of the Work, including (i) ~~original invoices and accounts, along with related records showing costs and expenses incurred, including but not limited to the cost to Contractor of the Work and of all expenditures or commitments made by Contractor in connection therewith~~ original or scanned invoices and

accounts, along with related records showing charges and expenses incurred, including but not limited to all expenditures or commitments made by Contractor in connection therewith; (ii) correspondence, e-mails, tenders, minutes of meetings, notes, reports, timesheets, memoranda and other documents associated with the Contract; (iii) records relating to any service level agreements and key performance indicators included in the Contract, and (iv) records related to matters of security and privacy (collectively, the "**Contract Records**").

(b) The Contract Records shall be retained and maintained in accordance with all generally acceptable accounting principles and Applicable Laws and Industry Standards, or as otherwise may be required to substantiate compliance with this Contract and/or any payment to be made to Contractor under this Contract.

(c) During the Term and for a period of seven (7) years thereafter, Metrolinx or any third party acting on behalf of Metrolinx, shall have the right, upon no less than twenty-four (24) hours' notice in writing to Contractor and during normal office hours, to inspect and audit, and to have access to, all Contract Records whether maintained by Contractor or a Contract Personnel, reasonably required to confirm Contractor's compliance with the terms of this Contract and Applicable Laws, and to make copies thereof. Contractor shall make available or cause to be made available the Contract Records that are requested by Metrolinx or that may be required given the scope of the audit (provided such scope is disclosed to Contractor), and shall otherwise reasonably cooperate with Metrolinx and any third party acting on Metrolinx's behalf, including by providing reasonable access to all of Contractor's premises and to Contractor's employees. Where access is needed to a Contract Personnel's employees or to Contract Records that are maintained by a Contract Personnel, Contractor shall use reasonable efforts to arrange for such access on a timely basis. Without limiting the generality of the foregoing, the rights set out in this Section 8.5 shall extend to any Governmental Authority exercising its right to audit pursuant to Applicable Law or any contract with Metrolinx.

When selecting a third party to inspect and audit the Contract Records, Metrolinx shall consult with Contractor and shall take into consideration any reasonable objections Contractor may have.

~~(c)~~(d) Contractor shall maintain a competent and independent audit function to assess the internal controls over its environment and its compliance with Applicable Laws and Industry Standards. Contractor shall provide Metrolinx, upon request, the results of all internal controls and security audits performed by Contractor's auditors.

~~(d)~~(e) Contractor shall upon advance written request, provided by e-mail or otherwise, provide Metrolinx with reasonable access to all premises that may reasonably be required to enable Metrolinx and/or Metrolinx's agents to monitor the progress of the Work. Any such monitoring or verifications shall be

without prejudice to any other rights of Metrolinx under this Contract and shall not relieve Contractor from any of its obligations under this Contract nor shall such verification be used by Contractor as evidence of effective control of quality.

~~(e)~~(f) Contractor and Metrolinx shall meet to review each audit report promptly after the issuance thereof and to mutually agree upon the appropriate manner, if any, in which to respond to the changes suggested or issued identified by the audit report. Without limiting any remedies which may be available to Metrolinx, Contractor shall promptly remedy any violations of this Contract of which it becomes aware, pursuant to any audit or otherwise.

8.6 Contractor Compliance.

- (a) Contractor shall advise all of its Contract Personnel of the requirements of this ARTICLE 8 , and associated requirements set out elsewhere in this Contract, and take appropriate action to ensure compliance by such persons with the terms of this ARTICLE 8 . In addition to any other liabilities of Contractor pursuant to this Contract or otherwise at law or in equity, Contractor shall be liable for all claims arising from any non-compliance with this ARTICLE 8 by Contractor or any of its Contract Personnel.
- (b) Contractor warrants that each of its Contract Personnel engaged by Contractor to provide the services pursuant to this Contract is under a written obligation to the Consultant requiring such person to comply with the terms of this ARTICLE 8 .

8.7 Damages.

Contractor acknowledges and agrees that any breach or threatened breach of this ARTICLE 8 or the obligations set out herein shall cause immediate and irreparable harm to Metrolinx for which damages alone are not an adequate remedy. Contractor hereby acknowledges and agrees that Metrolinx shall be entitled to seek, in addition to any other legal remedies which may be available to it, such equitable relief as may be necessary and available to protect Metrolinx against such breach or threatened breach. No failure or delay by Metrolinx in exercising any right hereunder shall operate as a waiver hereof, or shall estop Metrolinx from obtaining permanent injunctive relief.

ARTICLE 9 REPRESENTATIONS, WARRANTIES AND COVENANTS

9.1 General.

Contractor represents, warrants and covenants as follows:

- (a) Contractor has been duly incorporated and organized, is validly existing under the laws of its jurisdiction of incorporation and has not been dissolved.
- (b) There is no claim, or any litigation, proceeding, arbitration, investigation or material controversy pending to which Contractor or any of its affiliates, agents, or representatives is a party, relating to the provision of the Work

offered by Contractor, or which would have a material adverse effect on Contractor's ability to enter into this Contract and perform its obligations thereunder and, to the best of Contractor's knowledge, no such claim, litigation, proceeding, arbitration, investigation or material controversy has been threatened or is contemplated.

- (c) Except as disclosed in the Form of Proposal Section 6.5 - Conflict of Interest of the Proposal, Contractor is free of any actual or potential RFP Conflict of Interest.
- (d) Contractor is registered as an employer pursuant to the *Workplace Safety and Insurance Act* (Ontario) and has completed all filings and paid all assessments as required pursuant to that Act and the regulations thereunder.
- (e) Contractor is familiar with the obligations imposed on an "employer" as defined in the OHSA, and that it has in place a health and safety program to ensure that it takes all steps reasonable in the circumstances to ensure the health and safety of all workers for which it has responsibility under the said act.
- (f) Contractor is and shall remain duly registered for the purposes of Part IX of the Excise Tax Act and that Contractor's registration number is: **[TO BE INSERTED PRIOR TO EXECUTION]**.

9.2 Conduct of the Work.

Contractor represents, warrants and covenants as follows:

- (a) The Work will be performed with promptness and diligence and will be executed in a good and workmanlike manner, in accordance with the practices and professional standards used in well-managed operations performing services similar to the Work.
- (b) Contractor is competent to perform the Work and Contractor has the necessary qualifications, including knowledge, skill, know-how and experience and the ability to use them effectively to perform the Work. Subject to those items and information to be provided by Metrolinx or a Third Party as outlined in this Contract or the Specifications, Contractor has everything necessary to perform the Work, including the resources, facilities, labor, technology, equipment and materials, and, except as otherwise provided in this Contract, Contractor shall supply everything necessary to perform the Work.
- (c) Each of the Contract Personnel has the necessary qualifications, including knowledge, skill, know-how and experience, to perform the Work, is fully qualified to perform the Work to which he/she is assigned and holds all requisite licences, rights and other authorizations required by Applicable Laws or Industry Standards.

- (d) Contractor shall perform the Work diligently and efficiently, in accordance with Applicable Laws and Industry Standards.

9.3 Intellectual Property and Technology.

Contractor represents, warrants and covenants that the Work, the Deliverables, the Custom Intellectual Property, the Contractor Intellectual Property and the performance of the Work do not and shall not violate, infringe or breach any patent, trade-mark, copyright, industrial design, trade secret or any other Intellectual Property Rights of any third party and Metrolinx shall have no obligation to pay royalties of any kind to anyone in connection with the Work except as expressly identified in this Contract and included in the Total Contract Price.

9.4 Disclaimer.

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

ARTICLE 10 INSURANCE

10.1 General Liability Insurance.

During the term of this Contract, Contractor shall obtain and maintain the following insurance:

(a) Commercial General Liability Insurance

The policy shall provide a policy limit of not less than five million dollars (\$5,000,000) per occurrence for all claims arising out of bodily injury (including death), personal injury and damage to property of others. Such policy shall contain a waiver of subrogation and no exclusions in conflict with the Work required to be performed under this Contract.

(b) Errors and Omissions/Professional Liability Coverage

Errors and Omissions/Professional Liability Insurance including Network Security & Privacy Coverage, which may be provided under various insurance policies (i.e. "Cyber Liability", "Network Liability", "Technology Errors and Omissions", etc.) with a limit of not less than two million dollars (\$2,000,000) per claim and in the aggregate.

Coverage shall be primary without right of contribution of any insurance carried by Metrolinx. ~~The policy shall provide a waiver of subrogation against Metrolinx and its directors, officers, employees and agents who should be included as additional insureds with respect to liability arising out of the activities performed by or on behalf of Contractor.~~ A run-off policy shall be maintained for not less than three years following the termination of this Contract.

The policy shall include but not be limited to coverage for:

- (i) Data security and privacy liability arising out of actual or alleged acts, errors or omissions committed by Contractor, its agents or employees;
- (ii) Intentional, fraudulent or criminal acts of Contractor, its agents or employees;
- (iii) Liability arising from unauthorized, theft, dissemination and/or use of Confidential Information and/or Personal Information stored or transmitted in any form;
- (iv) Network security liability and/or cyber liability arising from the unauthorized access to, use of, or tampering with computer systems, including hacker attacks or inability of an authorized third party to gain access to Contractor's services, including denial of service, unless caused by a mechanical or electrical failure;
- (v) Liability arising from the introduction of a computer virus into, or otherwise causing damage to, an end users computer system, network or similar computer related property and the data, software and programs thereon;
- (vi) Defense of any regulatory action involving breach of privacy; and
- (vii) Failure to protect Confidential Information and Personal Information from disclosure.

(c) Automobile Liability Insurance

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 Work. Coverage will consist of a combined single limit of not less than two million dollars (\$2,000,000) per occurrence.

- (d) All risk property insurance providing full replacement cost coverage on the equipment to be provided and installed under this Contract, including coverage during transit and installation of such equipment.
- (e) Contractor shall be responsible for all claims expenses and loss payment within each policy deductible or self-insurance retention. If any of the aforementioned policies is subject to an aggregate limit, replacement insurance will be required if it is likely such aggregate will be exceeded. Such insurance shall be subject to the terms and conditions and exclusions that are usual and customary for this type of insurance.
- (f) The Certificate of Commercial General Liability Insurance and Cyber Liability shall reference the Contract name and number and include Metrolinx as an additional insured.
- (g) ~~All certificates of insurance shall include a provision requiring the insurer to give Metrolinx thirty (30) days' prior written notice of any cancellation or non-renewal of the required insurance policies. All certificates of insurance shall include a provision requiring the insurer to endeavour to give Metrolinx thirty~~

(30) days' prior written notice of any cancellation or non-renewal of the required insurance policies.

ARTICLE 11 REMEDIES

11.1 Infringement Indemnity.

- (a) Contractor shall indemnify, defend and hold harmless Metrolinx, its affiliates and each of their respective officers, directors, employees, agents, successors, and assigns (the "**Indemnified Parties**") from and against any and all Losses and threatened Losses which they or any of them may at any time incur or suffer as a result or arising out of or in connection with any claim or proceeding that the Work, the Deliverables, the Custom Intellectual Property and the Contractor Intellectual Property, or any other element of or item used to perform the Work, infringe or misappropriate the Intellectual Property Rights of any third party; provided, however, Contractor shall not be required to indemnify the Indemnified Parties pursuant to this section if (i) the violation, infringement, breach or misappropriation was caused by the modification of a Deliverable or work product prepared pursuant to this Contract by any person other than Contractor or a Contract Personnel or by the use of the Deliverable, Outcome or work product in combination with items not supplied by the Contractor, but only if the claim would not have arisen without such modification or combination, (ii) the Deliverable or work product was based upon, or incorporates, designs provided by Metrolinx that infringe the Intellectual Property Rights of any third party, or (iii) the Deliverables or work product prepared pursuant to this Contract relating to the infringement or misappropriation were used in a manner not permitted by this Contract.
- (b) In addition to the other rights Metrolinx may have under this Contract, Contractor will promptly notify Metrolinx of such claim or proceeding and shall promptly at Contractor's expense take the following actions in the following priority order:
- (i) secure the right to continue using the item;
 - (ii) replace or modify the item to make it non-infringing, provided that any such replacement or modification will not degrade the performance or quality of the affected component of the Work in any material way; or
 - (iii) if neither the course of action described Section 11.1(b)(i) or Section 11.1(b)(ii) is available to Contractor, Contractor will remove the item from the Work and equitably adjust Contractor's charges to adequately reflect such removal.

11.2 General Indemnity.

Contractor agrees to indemnify, defend and hold harmless the Indemnified Parties from and against any and all Losses resulting or arising from or in connection with any of the following:

- (a) the death of or bodily injury to any agent, employee, customer, business invitee, business visitor or other person, to the extent caused by the negligence or willful misconduct of Contractor or any Contract Personnel;
- (b) the damage, loss or destruction of any real or tangible personal property, to the extent caused by the negligence or willful misconduct of Contractor or any Contract Personnel;
- (c) the unauthorized disclosure of any Confidential Information and/or Personal Information;
- (d) ~~deleted a material breach of any of the terms or conditions of this Contract by Contractor or any Contract Personnel;~~
- (e) ~~deleted any failure to provide the Deployment and Implementation Services in accordance with the Specifications. For greater certainty, the foregoing remedy shall not apply in circumstances where a Service Level Credit will be provided pursuant to Section (g) of Schedule "1" – Deployment and Implementation Services, and~~
- (f) ~~deleted any failure to provide the Maintenance and Support Services in accordance with the Specifications, including any Service Level requirements identified therein. For greater certainty, the foregoing remedy shall not apply where an alternate remedy (including service level credits) has been agreed by the Parties and set out in a Service Level Agreement. In the event of a conflict or inconsistency between the terms of any Service Level Agreement and this Section 11.2(e), the provisions of the Service Level Agreement shall take precedence.~~

11.3 Termination.

- (a) Termination by Metrolinx for Cause. In the event that:
 - (i) any representation or warranty made by Contractor herein is or becomes incorrect or untrue or any statement or other document heretofore or hereinafter furnished by or on behalf of Contractor pursuant to or in connection with this Contract proves to have been false in any respect at the time as of which the facts therein set forth were stated or certified, or proves to have omitted any substantial material fact;
 - (ii) Contractor does not complete the Work in a timely manner or breaches in any material respect any of its duties or obligations under this Contract, and fails to cure such breach within thirty (30) days of being notified thereof;
 - (iii) Contractor repeatedly breaches one (1) or more of its obligations under this Contract, whether or not any particular breach has been cured or independently constitutes a material breach, provided that:
 - (A) such repeated breaches have a material impact on Contractor's performance of the Work;

- (B) Metrolinx has made Contractor aware of each such breach upon its occurrence, as documented in writing; and
- (C) Contractor has been given the opportunity to cure each such breach upon its occurrence;
- (iv) Metrolinx is entitled to a Service Level Credit pursuant to Schedule "1" - Deployment and Implementation Services in three (3) consecutive calendar months; or
- (v) Contractor ceases to carry on business in the normal course, makes a general assignment for the benefit of creditors, or becomes subject to any proceeding for liquidation, insolvency or the appointment of a receiver,

then Metrolinx may, by giving further notice in writing to Contractor, terminate this Contract, in whole or in part, as of a date specified in the notice of termination. If Metrolinx chooses to terminate this Contract in part, a Change Order will be prepared to reflect the partial termination and the charges payable under this Contract will be equitably adjusted to reflect that Work that is terminated.

- (b) Post-Termination. If this Contract and/or a Work Order is terminated pursuant to this Section 11.3 or Section 14.3, Metrolinx shall be liable to Contractor only for payment for Work properly performed up to and including the effective date of the termination. Termination shall not relieve Contractor of its warranties and other responsibilities relating to Work performed or completed by Contractor, or accepted by Metrolinx.
- (c) Contractor shall, on or before the date of termination, turn over to Metrolinx all Deliverables, documentation, reports, materials and work in progress relating to and generated during the performance of this Contract or the Work Order, as the case may be.
- (d) Following the termination of this Contract for any reason, Contractor shall support an orderly termination and migration to another contractor after termination, regardless of the reason for termination, provided that Metrolinx shall pay to Contractor fair and reasonable compensation for these services. These services may include, at Metrolinx's request, data formatting, data transfer, preparation and transfer, knowledge transfer, preparation of transition plan, assistance in preparing a request for proposal, support of third contractor access for due diligence and transition, data back up and record retention.

ARTICLE 12 LIMITATIONS ON LIABILITY

12.1 Limitations on Liability.

- (a) SUBJECT TO SECTION 12.1(c), IN NO EVENT SHALL A PARTY BE LIABLE FOR INDIRECT OR CONSEQUENTIAL, EXEMPLARY, PUNITIVE OR SPECIAL

DAMAGES RELATING TO THE AGREEMENT EVEN IF SUCH PARTY HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES IN ADVANCE.

- (b) Subject to Section 12.1(c), Contractor's aggregate liability to Metrolinx under this Contract for direct damages for all events giving rise to liability hereunder shall be limited to an amount equal to two (2) times the Total Contract Price.
- (c) The limitations set forth in Sections 12.1(a) and 12.1(b) shall not apply with respect to:
 - (i) damages occasioned by the willful misconduct or gross negligence of Contractor; or
 - (ii) claims that are the subject of indemnification pursuant to Section 11.1 or Sections 11.2(a), (b) or (c).
- (d) Each Party shall have a duty to mitigate damages for which the other Party is responsible.

12.2 Force Majeure.

- (a) Neither Party shall be liable for any default or delay in the performance of its obligations under this Contract where such delay or failure is caused by an event beyond its reasonable control (a "**Force Majeure Event**"). The Parties agree that an event shall not be considered beyond one's reasonable control if a reasonable business person applying due diligence in the same or similar circumstances under the same or similar obligations as the provisions of this Contract would have put in place contingency plans to either materially mitigate or negate the effects of such event.
- (b) Without limiting the generality of the foregoing, the Parties agree that Force Majeure Events may include acts of God, natural disasters, acts of war, war-like operations, civil war, acts of foreign enemy, plagues, epidemics, insurrection and terrorism (provided that the conditions of Section 12.2(a) are met) but shall in no event include:
 - (i) shortages or delays relating to supplies or services; or
 - (ii) on the part of Contractor, lack of financing or inability to perform because of the financial condition of Contractor.
- (c) For any Force Majeure Event, the non-performing Party shall be excused from further performance or observance of the obligation(s) so affected for as long as such Force Majeure Event prevails and such Party continues to use its best efforts to recommence performance or observance whenever and to whatever extent possible without delay. Any Party so delayed in its performance shall immediately notify the Party to whom performance is due by telephone (to be confirmed in writing within two (2) days of the inception of such delay) and describe at a reasonable level of detail the circumstances causing such delay.
- (d) If any Force Majeure Event substantially prevents, hinders, or delays performance of the Work necessary for the performance of the Work for more than thirty (30) days, then Metrolinx, at its sole discretion, may undertake to

procure such Work from an alternate source, and may involve Contractor in the procurement effort to the extent that, in Metrolinx's judgment, it would be productive in securing an alternative source. Contractor shall be liable for payment for such Work from the alternate source for so long as the prevention, hindrance or delay in performance shall continue. If Contractor is unable to resume performance of the Work within sixty (60) days, then Metrolinx, in its sole discretion, (i) may terminate any portion of this Contract so affected and the charges payable hereunder shall be equitably adjusted to reflect the terminated Work or (ii) may terminate this Contract without liability as of a date specified by Metrolinx in a written notice of termination to Contractor. Contractor shall not have the right to any additional payments from Metrolinx as a result of any Force Majeure Event.

ARTICLE 13 DISPUTE RESOLUTION

Any dispute between the Parties arising out of or relating to this Contract, including with respect to the interpretation of any provision of this Contract and with respect to the performance by Contractor or Metrolinx, shall be resolved as provided in this ARTICLE 13 .

13.1 Dispute Resolution Process.

- (a) Prior to the initiation of litigation, upon the written request of a Party, Contractor Contact and the Metrolinx Contact shall meet to discuss and resolve the dispute.
- (b) If such individuals do not resolve the dispute within ten (10) Business Days after such written notice, the Parties shall further attempt to resolve their dispute informally, as follows:
 - (i) Upon the written request of a Party, each Party shall, within ten (10) Business Days, appoint a designated representative who does not devote substantially all of his or her time to performance under this Contract, whose task it shall be to meet for the purpose of endeavoring to resolve such dispute.
 - (ii) The designated representatives shall meet as often as the Parties reasonably deem necessary in order to gather and furnish to the other all information with respect to the matter in issue which the Parties believe to be appropriate and germane in connection with its resolution. The representatives shall discuss the problem and negotiate in good faith in an effort to resolve the dispute without the necessity of any formal proceeding.
 - (iii) During the course of such discussions, all reasonable requests made by one Party to the other for non-privileged information, reasonably related to the issue in dispute under this Contract, shall be honored in

order that each of the Parties may be fully advised of the other's position.

- (iv) The specific format for the discussions shall be left to the discretion of the designated representatives, but may include the preparation of agreed-upon statements of fact or written statements of position.
- (c) If the dispute cannot be resolved by the designated representatives appointed by the Parties pursuant to Section 13.1(b), the matter shall be submitted to mediation.
- (d) Subject to Section 13.1(e), upon the earlier to occur of the following:
 - (i) the Parties conclude in good faith that amicable resolution through continued mediation of the matter does not appear likely; or
 - (ii) sixty (60) days have elapsed from the initial submission of the dispute to mediation pursuant to Subsection 13.1(b) (this period shall be deemed to run notwithstanding any claim that the process described in this Section was not followed or completed),

any dispute that remains unresolved shall be submitted to arbitration conducted in accordance with the *Arbitration Act 1991* (Ontario) in the City of Toronto by a single arbitrator with suitable expertise, to be agreed upon by the Parties. The decision of the arbitrator shall be final and binding on the Parties and not subject to appeal or challenge, except such limited relief provided under Section 45(1) (appeal on a question of law, with leave) or Section 46 (setting aside award) of the Act.

- (e) This Section 13.1 shall not be construed to prevent a Party from instituting, and a Party is authorized to institute, litigation earlier, but only if required to avoid the expiration of any applicable limitations period or to preserve a superior position with respect to other creditors, or where a Party makes a good faith determination that a breach of the terms of this Contract by the other Party is such that the damages to such Party resulting from the breach shall be so immediate, so large or severe, and so incapable of adequate redress after the fact that a temporary restraining order or other immediate injunctive relief is the only adequate remedy.

13.2 Continued Performance.

Each Party agrees to continue performing its obligations under this Contract while any dispute is being resolved unless and until such obligations are terminated by the termination or expiration of this Contract.

13.3 Jurisdiction.

The Parties consent to venue in the City of Toronto, Ontario and to the exclusive jurisdiction of the Ontario Court of Justice (General Division) and all courts competent to hear appeals therefrom, for all litigation which may be brought, subject to the requirement for arbitration hereunder, with respect to the terms of, and the transactions

and relationships contemplated by, this Contract. The Parties further consent to the jurisdiction of any provincial superior court located within a province which encompasses assets of a Party against which a judgment has been rendered for the enforcement of such judgment or award against the assets of such Party.

ARTICLE 14 GENERAL

14.1 Entire Agreement.

This Contract constitutes the entire agreement between the Parties with respect to the Work and, except as expressly stated herein, contains all the representations, warranties, covenants and agreements of the respective Parties relating to the subject matter hereof. There are no oral representations, warranties, covenants and agreements by the Parties of any kind.

14.2 Governing Law.

This Contract shall be governed by and interpreted in accordance with the laws of the Province of Ontario and the federal laws applicable therein, without regard to principles of conflicts of law that would impose the law of another jurisdiction. Without limiting the generality of the foregoing, this Contract shall be subject to Section 28 of the *Financial Administration Act, 1990* (Ontario).

14.3 Termination for Convenience.

Metrolinx may terminate this Contract for convenience and without cause at any time by giving Contractor at least thirty (30) days prior written notice designating the termination date. In the event that a purported termination for cause by Metrolinx is determined by a competent authority not to be properly a termination for cause, then such termination by Metrolinx shall be deemed to be a termination for convenience under this Section 14.3.

Metrolinx shall be liable to Contractor for payment for Work properly performed up to and including the effective date of the termination.

14.4 Cumulative Remedies.

Except as otherwise expressly provided in this Contract, all remedies provided for in this Contract shall be cumulative, in addition to and not in lieu of any other remedies available to either Party at law, in equity or otherwise.

14.5 Enurement.

This Contract shall enure to the benefit of, and be binding upon the Parties and their respective heirs, executors, administrators, personal representatives, successors and permitted assigns.

14.6 Assignment.

Contractor shall not assign this Contract in whole or in part without the prior written consent of Metrolinx in Metrolinx's sole discretion. Metrolinx shall have the right to assign this Contract without consent.

14.7 Independent Parties.

The Parties acknowledge and agree that Contractor is an independent contractor and neither it nor any employee hired by it are employees of Metrolinx. Contractor shall hire such staff as it considers appropriate to perform its obligations under this Contract. Metrolinx does not have the right to hire such employees, to supervise them, to control their work or to discharge them. Metrolinx shall not have any responsibility for determining or paying the compensation of such employees. Metrolinx and Contractor hereby disclaim the creation hereby of a general agency, limited agency, partnership, joint venture, master/servant relationship or employer/employee relationship. The powers and obligations of Metrolinx and Contractor are therefore restricted expressly to those provided for in this Contract and Metrolinx and Contractor agree that no representations will be made or acts undertaken by either of them which could establish or imply any apparent relationship of agency, partnership or employment and neither party shall be bound in any manner whatsoever by any agreements, warranties, representations or actions of the other party to such effect.

14.8 Amendments.

Except as expressly provided in this Agreement, no amendment, supplement, restatement or termination of any provision of this Agreement is binding unless it is in writing and signed by both Parties.

14.9 Waiver.

Neither Party shall be deemed to have waived the exercise of any right that it holds under this Agreement unless such waiver is made in writing, and the failure by a Party to exercise any of its rights, powers or remedies hereunder or its delay to do so does not constitute a waiver of those rights, powers or remedies. No waiver made with respect to any instance involving the exercise of any such right is to be deemed to be a waiver with respect to any other instance involving the exercise of the right or with respect to any other such right.

14.10 Severability.

If any provision of this Contract is determined by a court of competent jurisdiction to be invalid or unenforceable in whole or in part, such invalidity or unenforceability attaches only to such provision and everything else in this Agreement continues in full force and effect.

14.11 Further Assurances.

The Parties shall, with reasonable diligence, do all things and provide all reasonable assurances as may be required to consummate the transactions contemplated by this Contract, and each Party shall provide further documents or instruments required by the other Party as may be reasonably necessary or desirable to effect the purpose of this Contract and to carry out its provisions, whether before or after the completion of the transactions contemplated by this Contract.

14.12 Consents and Approval.

Except where expressly provided as being in the discretion of a Party, where agreement, approval, acceptance, consent, or similar action by either Party is required under this Contract, such action shall not be unreasonably delayed or withheld. An approval or consent given by a Party under this Contract shall not relieve the other Party from responsibility for complying with the requirements of this Contract, nor shall it be construed as a waiver of any rights under this Contract, except as and to the extent otherwise expressly provided in such approval or consent. Each Party shall, at the request of the other Party, perform those actions, including executing additional documents and instruments, reasonably necessary to give full effect to the terms of this Contract.

14.13 Public Disclosures.

All media releases, public announcements, and public disclosures by either Party relating to this Contract or the subject matter of this Contract, including promotional or marketing material, but not including announcements intended solely for internal distribution or disclosures to the extent required to meet legal or regulatory requirements beyond the reasonable control of the disclosing Party, shall be coordinated with and approved in writing by the other Party prior to release. Notwithstanding the foregoing, Contractor may list Metrolinx as a customer, Metrolinx may list Contractor as a services provider, and each Party may describe in general terms the services provided by Contractor under this Contract in proposals and other marketing materials, each without the prior written consent of the other Party.

14.14 Third Party Beneficiaries.

This Contract is made solely for the benefit of the Parties and, to the extent expressly and specifically stated, any other Parties made beneficiaries of this Contract. This Contract shall not be deemed to create any rights in third parties, including suppliers and customers of a Party, or to create any obligations of a Party to any such third parties, whether directly or indirectly. To the extent that Metrolinx permits any related entity other than Metrolinx to receive services under this Contract, only Metrolinx may enforce the terms of this Contract, including enforcement of any of Contractor' obligations to perform Work under this Contract.

14.15 Contractor Work Performance Rating Process.

- (a) Metrolinx shall during the term of a Contract, maintain a record of Contractor's performance pursuant to this Contract. This information shall be used to

complete a "Contractor Performance Review" report, a copy of which will be forwarded to Contractor upon completion of this Contract. Interim "Contractor Performance Review" reports may be issued, as deemed appropriate by the Metrolinx Representative, at any time during the term of this Contract.

- (b) The overall history of Contractor in performing work for Metrolinx, including Contractor's performance pursuant to this Contract, will be considered in the evaluation of future bids from Contractor.
- (c) Metrolinx reserves the right in future bid requests to reject any bid submitted by a company with an unsatisfactory performance history with Metrolinx.
- (d) Non-compliance with Contract requirements will be identified to Contractor.
- (e) The information contained in the Contractor Performance Review may be provided to other ministries and agencies and such performance reviews may be relied upon by other ministries and agencies to reject a company any bid submitted on any further requests.

14.16 Survival.

The provisions of ARTICLES 1, 3, 6, 7, 8, 9, 11, 12, 13, 14, and Section 4.2(c) and any other provision of this Contract which contemplates performance or observance subsequent to any termination or expiration of this Contract (in whole or in part) shall survive any termination or expiration of this Contract (in whole or in part, as applicable) and continue in full force and effect.

SCHEDULE "1"

DEPLOYMENT AND IMPLEMENTATION SERVICES

(a) Definitions

In addition to the Definitions contained in the General Conditions, the following terms shall have the corresponding meaning:

"Devices" means the point of sale device provided to Contractor from the Device Vendor, and may include the Device mount and tether depending on the circumstances;

"Device Vendor" means the vendor of point-of-sale devices as identified by Metrolinx. At the entering of this Contract, the current device vendor is OCR Canada Ltd.;

"Installation Checklist" means the list of procedures prepared by Metrolinx, that a Retailer must perform in order to complete installation of the Device;

"Retailer" means a third party with whom Metrolinx has entered a contractual arrangement to allow the third party to sell and load PRESTO cards;

"Return Merchandise Authorization" means the process through which the device vendor will receive returned Devices;

"Storage Location" means a location for the storage of decommissioned Devices as identified by Metrolinx;

(b) Performance of the Deployment and Implementation Services

Contractor shall perform the Deployment and Implementation Services in accordance with the terms and conditions of this Contract, including the Specifications.

(c) Minimum Requirements for all Device Deployment and Implementation

As part of the Deployment and Implementation Services, Contractor shall:

- (i) manage, organize, and coordinate the delivery of Devices by liaising with Metrolinx, the Device Vendor and Retailer, as necessary;
- (ii) deliver Devices to Retailer locations and tether solutions to Retailer;
- (iii) provide Retailer with at least twelve (12) weeks' notice prior to the first delivery of Devices to a Retailer location unless otherwise agreed;
- (iv) provide technical support to Retailer during initial Device Installation;
- (v) provide, assist with, and confirm that Retailer has followed and completed the Device installation process provided by Metrolinx, including the Installation Checklist;
- (vi) record and receive sign-off from Retailer for all Devices delivered to Retailer;
- (vii) record and receive sign-off from Device Vendor for each Device delivered to Retailer;

- (viii) for each Device, maintain a record of:
 - (A) the Device asset identification number;
 - (B) the Retailer's outlet location; and
 - (C) the reason for installation.

Collectively, these obligations form the "**Minimum Requirements for Device Deployment and Implementation**".

(d) Device Replacement and Decommissioning

As part of the Deployment and Implementation Services, Contractor shall:

- (i) receive, record, organize, and coordinate Return Merchandise Authorization request(s) from Retailer;
- (ii) receive Return Merchandise Authorization ("**RMA**") request(s) from Retailer and initiate Return Merchandise Authorization with the Device Vendor;
- (iii) retrieve Device(s) from Retailer that was subject to the RMA request(s) and return to the Device Vendor;
- (iv) deliver replacement Device(s) to Retailer and complete the Minimum Requirements for Device Deployment and Implementation;
- (v) for each Device subject to a RMA request record:
 - (A) the Device asset identification number;
 - (B) the Retailer's outlet location; and
 - (C) the reason for return.
- (vi) for Device's identified as decommissioned by Metrolinx and at Metrolinx' direction, deliver Device(s) to the Storage Location; and
- (vii) for Devices identified by Metrolinx as having reached end-of-life (decommissioned), perform the obligations (iii) - (vi) above.

(e) Risk of Loss

- (i) Risk of loss or damage to a Device shall pass to Contractor when such Device is received by Contractor.
- (ii) Contractor shall be relieved of risk of loss or damage to a Device when either, as applicable in the circumstances:
 - (A) the Device is received by Retailer and Retailer completes sign-off; or
 - (B) the Device is received by Device Vendor and Device Vendor completes sign-off.
- (iii) Title to the Device shall not pass to Contractor and shall be retained by Metrolinx.

(f) Maintenance of Records

Contractor shall maintain the records identified and required above in such a manner as to allow Contractor and/or Metrolinx to manipulate the records in order for Contractor and/or Metrolinx to analyze the records and identify trends.

(g) Service Level Credits

Contractor shall ensure that each Device is installed at the Retailer outlet location for which that Device is designated. Metrolinx shall be eligible to the service level credit set-out in the following table associated with the level of accuracy achieved by Contractor for each calendar month ("Service Level Credit").

<u>SERVICE LEVEL CREDITS</u>	
Percentage accuracy per calendar month	Service Level Credit
98% or greater	0%
96% or greater but less than 98%	10%
94% or greater but less than 96%	15%
90% or greater but less than 94%	20%
Less than 90%	50%

For each calendar month, Metrolinx shall be entitled to the associated Service Level Credit which shall be deducted from the fees owing to Contractor with respect to the Deployment and Implementation Services for that calendar month.

(h) Review of Service Level Credits

- (i) Within three (3) months after the expiration of the first Contract Year and at least annually thereafter, Metrolinx and Contractor shall review the Service Level Credits table. The Parties expect and understand that the Service Level Credits will become more favorable to Metrolinx over time.
- (ii) Without limiting and in addition to paragraph (h)(i), Metrolinx and Contractor shall review the Service Level Credits table where the number of Retailer outlets exceeds five hundred (500). The Parties expect and understand that the Service Level Credits will become more favorable to Metrolinx over time.

SCHEDULE "2" TRAINING

(a) General

Unless otherwise provided, the terms and conditions set out in this Schedule "2" - Training Services shall apply to the performance of the Training Services. The terms and conditions set out in this Schedule "2" - Training Services shall also apply in the event that any additional training is required during the Term, subject to the completion of a Change Order setting out the specifics thereof.

(b) Trainers

Contractor shall ensure that its trainers are appropriately qualified and, among other things, possess good communication skills.

(c) Scheduling and attendance at Metrolinx Training

Contractor shall coordinate with Metrolinx for sessions to be conducted in order for Contractor's trainers to be trained according to Metrolinx defined standards.

(d) Training Retailer employees

- (i) Contractor shall deliver training to Retailer employees at Retailer locations within the Greater Toronto Hamilton Area and Ottawa in accordance with Metrolinx defined standards.
- (ii) Contractor shall coordinate training dates, duration of training sessions and number of Retailer employees to be trained with Retailer. Contractor shall provide Retailer a minimum of ten (10) Business Days' notice of all scheduled training sessions, to be coordinated with Retailer.
- (iii) For each training session, Contractor shall ensure that Contractor trainer(s) has the requisite number of training Devices, PRESTO Cards and other supporting material necessary or as directed by Metrolinx.
- (iv) Contractor shall ensure that each trainer has an iPad, Android tablet or equivalent to store Metrolinx training materials and online evaluation surveys.

(e) Training Evaluation and Reporting

- (i) Contractor shall develop, in collaboration with Metrolinx, a training evaluation survey to track participant satisfaction with the training.
- (ii) Contractor shall ensure that each trainer administers the training evaluation survey to each participant of the training session.
- (iii) Contractor shall provide a monthly report to Retailer and Metrolinx detailing the number of Retailer locations visited, Retailer employees trained, and such other matters agreed to between Contractor and Metrolinx.

[END OF GENERAL CONDITIONS]

Appendix "B" – Scope of Services

1 What is PRESTO and How does it work?

PRESTO is both a division of Metrolinx and the regional electronic farecard and management system that allows customers, using a single contactless fare card, to access eleven (11) transit systems in the Greater Toronto, Hamilton and Ottawa areas that provide multiple modes of transit (e.g. buses, subways, trains). PRESTO is intended to increase transit ridership and operational efficiency, improve the customer experience, and support the increasing demand for intra and inter regional transit integration through the use of a single fare medium.

Full PRESTO rollout began in 2009 with the installation of payment devices at select GO stations and on municipal transit buses. As the rollout continued, passengers increasingly adopted PRESTO cards, and devices were installed across the networks of all the participating transit agencies. In 2016 PRESTO implementation was completed on TTC buses streetcars and subway stations, with enhancements to PRESTO software and devices ongoing for the foreseeable future.

PRESTO allows customers to use a single, seamless, integrated fare payment method across participating transit systems across the region, including bus, train and subway routes. This technology can be adopted by a variety of municipal transit partners serving large city populations, mid-sized urban centres or burgeoning suburban communities.

Electronic readers scan the transit user's PRESTO farecard (which contains a passive RFID chip within the farecard) as they board their public transit vehicle or enter a station and deduct the appropriate fare or validate period passes - all within one-third of a second.

HOW PRESTO WORKS

PAY FOR MULTIPLE TRANSIT SYSTEMS USING JUST ONE CARD. TAP YOUR CARD AND HOP ON!

HOW TO USE

1 GET A CARD

PICK UP OR **ONLINE**

AT YOUR TRANSIT PROVIDER AT PRESTOCARD.CA

2 LOAD YOUR CARD



BY PHONE
1-8-PRESTO-123



ONLINE
PRESTOCARD.CA



IN PERSON
OUTLET OR KIOSK



AUTOLOAD
TO RELOAD

3 USE YOUR CARD

START →

TAP ON

→

RIDE

→

FINISH

TRAVEL BY BUS, SUBWAY, & TRAIN

- DURHAM REGION TRANSIT
- BURLINGTON TRANSIT
- YORK REGION TRANSIT/VIVA
- BRAMPTON TRANSIT
- HAMILTON STREET RAILWAY
- OAKVILLE TRANSIT
- MIWAY
- GO TRANSIT
- TTC
- OC TRANSP

HOW IT WORKS

EACH CARD HAS A **SECURE RFID CHIP** TO PAY YOUR FARE

YOU CAN REGISTER

REGISTER YOUR CARD TO **PROTECT IT**, SEE YOUR **BALANCE & AUTOLOAD** @ PRESTOCARD.CA

WE CAN HELP

ASK FOR HELP BY PHONE OR SEARCH **PRESTOCARD** ON TWITTER & FACEBOOK

WE'RE GROWING

8,000+ PRESTO DEVICES THROUGHOUT THE GTHA & OTTAWA

PRESTO CENTRAL

OVERSEES DAY-TO-DAY TASKS SUCH AS CARD MANAGEMENT & POLICY, FINANCIAL SETTLEMENTS, ASSET & INFORMATION MANAGEMENT & INFRASTRUCTURE

SYSTEM PERFORMANCE

CONTROLS SYSTEM HEALTH INCLUDING MANAGEMENT, MONITORING & REPAIRS



PRESTOCARD.CA

Figure 1: How PRESTO Works

2 Scope of Services

In 2017/18, Metrolinx will be completing the final phase of PRESTO implementation for the TTC, which is expected to significantly increase the number of PRESTO users, particularly in the Greater Toronto Area.

As part of its plan to increase PRESTO adoption and support users throughout the region (and potentially in other regions such as Ottawa in the future), Metrolinx is in the process of establishing a partnership with retailers to provide PRESTO card sales and related services, including loading value and fare products onto PRESTO cards. They will do so using Mobile Point-of-Sale PRESTO devices (MPOS) and software that will be supplied by PRESTO.

The MPOS devices will be off-the-shelf ruggedized Android tablets appropriately secured through tethering and mounting.

The retail network is expected to include up to 500 retailers in the Greater Toronto, Hamilton and Ottawa areas when it is fully implemented, although at the beginning there will only be 70 to 100 retail locations, each with 2 on-site MPOS devices.

In order to provide technical support for this retail network, Metrolinx is seeking to establish a contract with a "Retail Support Services" (RSS) provider to provide remote and on-site technical support services in the Greater Toronto, Hamilton and Ottawa areas, including MPOS unit replacement, training, troubleshooting and logistics management, as well as coordination with Metrolinx PRESTO's other vendors including the supplier of the MPOS devices and the systems integrator / MPOS software developer.

Detailed requirements are included in Appendix "B-1" - Requirements.

3 Appendix "B-1" - Technical Requirements

The appended Excel file entitled Appendix "B-1" - Technical Requirements.

Appendix "C" - Metrolinx Services

Metrolinx shall:

- (a) provide the Contractor with general direction in the provision of the Work;
- (b) designate an individual to act as its Representative, who shall transmit instructions to, and receive information from the Contractor. The designated Metrolinx Representative will be accountable for all project expenditures related to the project activities;
- (c) provide access to and where necessary, make available copies of existing plans, reports, studies, information and correspondence relevant to the project.

Appendix "D" - Documents

The following Documents form part of, and are appended to this Proposal Document.

<u>ITEM NO.</u>	<u>DOCUMENT TITLE</u>
1.	Sample Articles of Agreement
2.	Parental Guarantee
3.	Contract Performance Appraisal

SAMPLE ARTICLES OF AGREEMENT

These Articles of Agreement are made as of the ● day of ●, 20●

BETWEEN

METROLINX, a corporation established pursuant to the Metrolinx Act, 2006

- and -

●
(hereinafter the "Contractor")

In consideration of the mutual covenants and agreements contained herein, and other good and valuable consideration, the receipt and sufficiency of which are mutually acknowledged, Metrolinx and the Contractor agree as follows:

1. Contract

- (a) The following documents and any amendments relating thereto form the contract between Metrolinx and the Contractor (the "Contract"):
- (i) these Articles of Agreement;
 - (ii) any Addenda issued hereto;
 - (iii) the document attached hereto as Appendix "A" and entitled "General Conditions";
 - (iv) the Form of Proposal;
 - (v) Attachment 1 - Proponent's Prices;
 - (vi) the document attached hereto as Appendix "B" and entitled "Scope of Services" and the document attached hereto as Appendix "B-1" and entitled "Technical Requirements";
 - (vii) the document attached hereto as Appendix "C" and entitled "Metrolinx Services"; and
 - (viii) the document attached hereto as Appendix "D" and entitled "Documents".
- (b) In the event of discrepancies, inconsistencies or ambiguities of the wording of these documents, the wording of the document that first appears on the above list shall prevail over the wording of a document subsequently appearing on the list.

SAMPLE – DO NOT COMPLETE

2. **Description of Work**

The Contractor shall, between the date of these Articles of Agreement and the ● day of ●, perform and complete with care, skill, diligence and efficiency the work that is further described as follows:

- (a) The Contractor shall provide personnel, methodology and resources necessary to carry out the services, in accordance with the Scope of Services, attached as APPENDIX "B" (the "Work").
- (b) The Work is to be provided in accordance with the terms of the Contract, unless otherwise specified.

3. **Contract Price**

Subject to the terms and conditions of the Contract and in consideration for the Work, Metrolinx shall pay to the Contractor:

- (a) ●

SAMPLE – DO NOT COMPLETE

SAMPLE – DO NOT COMPLETE

If the Contractor is a corporation:

●(Company's Full Legal Name)

Per: _____

Name:

Title:

Per: _____

Name:

Title:

I/We have authority to bind the Corporation

If the Contractor is a partnership:

●(Partnership's Full Legal Name)

By its General Partner,

(Name of General Partner)

Per: _____

Name:

Title:

Per: _____

Name:

Title:

If the Contractor is an individual:)

)

)

Witness

) _____
Name:

METROLINX

Per: _____

Authorized Signing Officer

In witness whereof, the above signed has executed this agreement, this ____ day
of _____, 20__.

SAMPLE – DO NOT COMPLETE

SAMPLE PARENTAL GUARANTEE

Contract [_____]

WHEREAS _____, a company incorporated under the laws of _____ (Province/Country) is a subsidiary of _____ (parent company's name)

AND WHEREAS Metrolinx is desirous of entering into Contract No. _____ for _____ with _____.

NOW THIS AGREEMENT WITNESSES that in consideration of the premises and the award of Contract No. _____ by Metrolinx to _____, that _____ (parent company) agrees to provide all the necessary financial and technical support for the proper completion of the said Contract and shall guarantee the performance of the said Contract in accordance with the terms and conditions, including timely completion thereof, and agrees to guarantee the Work (as defined in Contract No: _____) for the warranty period(s) stipulated therein.

IT IS UNDERSTOOD AND AGREED that this Contract of guarantee will be interpreted in accordance with the laws of the Province of Ontario, and _____ (parent company) hereby attorns to the jurisdiction of the Courts of the Province of Ontario.

This agreement shall be attached to and form part of Contract No. _____ between _____ and Metrolinx.

IN WITNESS WHEREOF _____ (parent company) has hereunto affixed its corporate seal under the hands of its duly authorized officers in that behalf, this _____ day of _____, 201_.

PARENT COMPANY: _____

Per: _____
(Signature)

(SEAL) _____
(Print Name)

(Title)

I/We have authority to bind the Corporation