



METROLINX

An agency of the Government of Ontario

Request to Qualify and Quote for Consultant's Assignment

Project Name: Audit Services of Financial
Controls at a Service
Organization (CSAE 3416)

Request Number: RQQ- 2017-AS-176

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1.0 Definitions

In this Request Document,

- 1.1 **"Addenda"/"Addendum"** is the formal release of additions, deletions, revisions, clarifications to this Request Document, via the Metrolinx MERX Portal, that form a part of the Contract as specified in Section 3.1.4 of Instructions to Proponents.
- 1.2 **"Business Day"** shall have the same meaning ascribed in Schedule A – Definitions of Appendix "A" – General Conditions.
- 1.3 **"Closing"** means, the deadline for Metrolinx to receive Submissions as specified in Section 3.1.1 (e).
- 1.4 **"Conflict of Interest"** means:
 - 1.4.1 in relation to this RQQ 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 RQQ Process (including but not limited to the lobbying of decision makers involved in this RQQ Process), or (iii) engaging in conduct that compromises, or could be seen to compromise, the integrity of this RQQ Process; or
 - 1.4.2 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.
- 1.5 **"Consultant"** shall have the same meaning ascribed in Appendix "A" – Definitions of Appendix "A" – General Conditions.
- 1.6 **"Contract"** shall have the same meaning ascribed in Schedule A – Definitions of Appendix "A" – General Conditions.
- 1.7 **"Contract Documents"** shall have the same meaning ascribed in Schedule A – Definitions of Appendix "A" – General Conditions.
- 1.8 **"Corporate Firm"** means any one of the following: a) the Proponent, b) the Proponent and its Subconsultants, or c) the Joint Venture, responding to the Request Document.
- 1.9 **"Deliverables"** shall have the same meaning ascribed in Schedule A – Definitions of the Appendix "A" – General Conditions.
- 1.10 **"EBS"** means Electronic Bid Submission.
- 1.11 **"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 Request Document and any resultant Contract.

- 1.12 **"E-Bid Confirmation Number"** is the receipt received by a Proponent from the Metrolinx MERX Portal indicating that the Submission was uploaded successfully.
- 1.13 **"Evaluation Committee"** means the representatives chosen to evaluate the Submissions based on the Evaluation Criteria outlined in this Request Document.
- 1.14 **"Evaluation Criteria"** means the criteria for scoring the Submission as stated in Section 5.2 – Request Evaluation Criteria, of Request Evaluation Criteria and Selection Process herein.
- 1.15 **"FIPPA"** shall have the same meaning ascribed in Section 3.11 of Instructions to Proponents.
- 1.16 **"Joint Venture"** means a business arrangement of two or more parties proposed for this RQQ Process further described in Section 3.6 of Instructions to Proponents.
- 1.17 **"Key Personnel"** shall have the same meaning ascribed to it in Section 2.7(a) of the General Conditions.
- 1.18 **"Metrolinx"** shall have the same meaning ascribed in Schedule A – Definitions of Appendix "A" – General Conditions.
- 1.19 **"Metrolinx MERX Portal"** is the electronic bid solicitation and Vendor Submission website (www.metrolinx.merx.com) that facilitates Metrolinx and Bidder interaction as it directly relates to the; download by a vendor of Metrolinx Tender Documents including Addenda from, and upload by a proponent of a Submission to Metrolinx in response to, this Tender Process.
- 1.20 **"Option"** means a component of the Services that is to be exercised at the sole discretion of Metrolinx.
- 1.21 **"Participant in Charge"** shall have the same meaning ascribed in Section 3.6.3 of the Instructions to Proponents.
- 1.22 **"Parties"** shall have the same meaning ascribed in Schedule A – Definitions of Appendix "A" – General Conditions.
- 1.23 **"Procurement Office"** means the Metrolinx Procurement Services office located at 277 Front Street W., 4th floor, Toronto, Ontario, Canada, M5V 2X4.
- 1.24 **"Procurement Representative"** means the following individual in the Procurement Services Department:

Kim Stuart, Procurement Officer	
Telephone number	(416) 202-5565
Email	Kim.Stuart@metrolinx.com

- 1.25 **"Project Schedule"** shall have the same meaning ascribed in Schedule A – Definitions of Appendix "A" – General Conditions.
- 1.26 **"Proponent"** means the legal entity that remits a Submission in response to this Request Document and who if selected for award shall execute the Contract with Metrolinx for provision of the Services.

- 1.27 **"Rates"** shall have the same meaning given in Section 1(a) of Schedule C – Financial Terms.
- 1.28 **"Request Document"** means this Request to Qualify and Quote document comprised of sections listed in the Table of Contents, issued by Metrolinx for the Services to be provided, and any Addenda thereto.
- 1.29 **"Request Document Forms"** means any sections of this Request Document which requires completion and must be included with the Submission.
- 1.30 **"RQQ Process"** means the Request to Qualify and Quote procurement process set out in the Request Document herein.
- 1.31 **"Scope of Services"** means the scope of work described in Appendix "B".
- 1.32 **"Services"** shall have the meaning ascribed in Section 2.2 (a) of the Appendix "A" – General Conditions.
- 1.33 **"Subconsultant"** shall have the same meaning ascribed in Schedule A – Definitions of Appendix A – General Conditions.
- 1.34 **"Submission"** means all documentation and other materials and information submitted by the Proponent in response to this Request Document or in respect of this RQQ Process.
- 1.35 **"Technical Submission"** means the Proponent's response to Section 4.3 - Submission Content of Request Submission Requirements herein and any additional information requested by Metrolinx.
- 1.36 **"Vendor Performance Management (VPM)"** shall have the meaning ascribed in Section 3.16.1 of Instructions to Proponents.
- 1.37 **"Vendor Performance Rating (VPR)"** shall have the meaning ascribed in Section 3.16.2 of Instructions to Proponents.

2.0 Introduction

2.1 General

- 2.1.1 Metrolinx is issuing this Request to Qualify and Quote to retain a Proponent to provide the goods and/or services described herein. Metrolinx intends to award a Contract through an open, fair and competitive process.
- 2.1.2 You are invited to submit your submission for Audit Services of Financial Controls at a Service Organization (CSAE 3416).

3.0 Instructions to Proponents

3.1 Submission Instructions

3.1.1 General

- (a) The Request Documents shall be read as a whole. The Schedules, Appendices and Addenda, if any, constitute an integral part of this RQQ Process and are incorporated by reference. The documents included in this Request Document (with the exception of any Addenda that may be issued subsequently) include all documents noted in the Table of Contents.
- (b) *****NOTE: ELECTRONIC BID SUBMISSION**
- Your Submission for this opportunity must be made to Metrolinx through the use of **MERX EBS**. Proponents shall be solely responsible for the delivery of their Submission using MERX EBS by the Closing, in accordance with the Submission Instructions herein.
- (c) Your Submission is to be firm and irrevocable for one hundred and twenty (120) calendar days from the Closing.
- (d) Your Submission will be evaluated in accordance with the Request Evaluation Criteria and Selection Process as outlined in this Request Document.
- (e) RQQ Timetable

Milestone	Date
Issuance of Request Documents	April 18, 2018
Deadline to Submit Questions	April 30, 2018 at 4:00 p.m. Toronto, ON Time
Last day for issuance of Addenda	May 7, 2018
Closing	May 10, 2018 at 3:00 p.m. Toronto, ON Time
Estimated Start of Services	July 20, 2018

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

3.1.2 Request Enquiries

- (a) All written enquiries and other communications prior to full Contract execution are to be directed solely to the Procurement Representative.
- (b) Any questions concerning the Request Documents, the contents herein, or the Services contemplated herein are to be directed, in writing, to Procurement Representative as specified in Section 1.24 prior to the deadline for submitting questions. No questions or requests for clarifications, changes or amendments of Request Documents shall be entertained after this time regardless of the reason.

- (c) All questions/requests for clarification related to the Request Documents are to be submitted via e-mail to the attention of the Procurement Representative using the Question and Answer Template which is a fillable file attached separately as:

Vendor Q_A_RQQ-2017-AS-176

In the above mentioned file, indicate for each question being submitted the page, drawing, section number (as applicable) and details of the specific question/clarification requested. For each set of questions submitted by the Proponent, a new copy of the above referenced Question and Answer Template should be submitted.

- (d) When necessary, revisions to, or clarifications of the Request Documents will be incorporated into a written addendum issued by the person identified herein. Information regarding the Request Documents or the Services, whether provided by the person identified herein, 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.

3.1.3 Mandatory Site/Information Meeting

Not applicable.

3.1.4 Addenda / Changes to the Request Documents

- (a) In the event that Metrolinx determines in its sole discretion, that clarifications or revisions to the Request Documents are required, all Proponents who received copies of the Request Documents shall be advised of such clarifications or revisions during the period by written addenda. Such addenda shall become part of the Request Documents and the contents thereof shall be allowed for in the prices bid for the Services.
- (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. Addenda, if applicable, will be issued through MERX. Information concerning the number of Addenda issued and the date of issue of the most recent Addendum can be found at www.merx.com for this RQQ Process. Proponents are urged to select automatic notification of Addenda issuance when registering on MERX.
- (c) The Proponent, when ascertaining if copies of all Addenda issued have been received, shall be responsible for allowing sufficient time prior to the Closing to receive 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 Request Document Forms as issued via Addenda. Failure to use the most current pages of the Request Document Forms may result in the Submission being found non-compliant and disqualified.

3.1.5 Request Submission

- (a) Proponents remitting a Submission to Metrolinx shall exercise extreme care when completing and submitting all Request Document Forms.

- (b) Proponents shall examine carefully the whole of the Request Documents 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 the Request Documents 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 shall be completed fully in a clear and comprehensible manner.
- (e) Submissions shall be remitted electronically via the Metrolinx MERX Portal only. Submissions sent in any other manner shall be deemed non responsive and automatically disqualified.
- (f) The Submission shall be submitted on the most current Request Document Forms as issued by Metrolinx through the MERX website and except for designated sections where the Proponent is to enter information, the Request Document and Request Document Forms shall not be altered in any way including, but not limited to, write-ins, strike-outs of the pre-printed provisions or any other conditional or qualifying statements.
- (g) Any Submission which contains such conditional and/or qualifying statements shall be deemed non-compliant and disqualified unless such conditional and/or qualifying statements are withdrawn in writing by the Proponent, upon request by Metrolinx.
- (h) 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, documents that have been uploaded to the Metrolinx MERX Portal can be added, removed and/or re-submitted as often as required at any time, prior to Closing.

Any Submission documents that are attempted to be uploaded via the Metrolinx MERX Portal after the Closing has occurred (as confirmed by the MERX Audit Report) shall be automatically rejected by Metrolinx, regardless of the reason for lateness.
- (i) 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.
- (j) Submissions must be remitted on MERX 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 submission process.
 - (ii) The E-Bid Authorized Signer does not have to be either the person placing the order for the Request 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 email 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 remit the Submission.

- (k) Submission must be remitted electronically through the Metrolinx MERX Portal system. For assistance in using the Metrolinx MERX Portal, please watch the online Electronic Bid Submission tutorial at: <http://www.youtube.com/watch?v=To0fqScw3M> . Alternatively, you can contact MERX directly at 1-800-964-MERX (**6379**) or visit the MERX website at www.merx.com for further instruction or assistance regarding EBS and/or E-Bid Authorized Signer registrations.
 - (i) Please review the E-bid checklist on MERX as this will provide some general assistance regarding uploading of documents.
 - (ii) It is the Proponent's sole responsibility to ensure that all required information for their Submission is uploaded to the Metrolinx MERX Portal. Failure of the Proponent to include all required items may result in the Proponent's Submission being deemed non-responsive and disqualified.
 - (iii) The largest individual file size that can be submitted through MERX is 100MB, although there is no limit to the number of files that can be submitted. If any individual file size is over 100MB, the Proponent's submission can be split into multiple parts, and submitted as clearly labelled, multiple files once the submission has been broken up into files of 100MB or smaller.
 - (iv) MERX places no restriction on file format and does not convert or zip files during the upload process.
 - (v) In order to complete the Submission, the on-line authorization of the Proponent's E-Bid Authorized Signer will be required. It is the Proponent's sole responsibility to have an E-Bid Authorized Signer PIN number issued from Merx at least one (1) day prior to Closing. Visit tenders.merx.com/RequestEBSPin to request a PIN for the Proponent's E-bid Submission Authorized Signer.

- (l) Information contained in the most recent Submission remitted 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.

- (m) The Proponent may withdraw a Submission at any time prior to the Closing specified by Metrolinx by logging into MERX on the E-bid Submission screen locating the opportunity and clicking 'Delete' for the opportunity in question. Once deleted, an E-bid is given the status 'Not Submitted'

3.1.6 Submission Deadline

- (a) Submissions 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 deemed non-responsive and the entire Submission shall be disqualified regardless of the reason for lateness. The Proponent shall remit the Submission with sufficient time to ensure its arrival before the Closing.

- (i) It is recommended by MERX to allow at least four (4) hours to remit the Submission via EBS, which shall provide the Proponent with the opportunity to upload all documents and resolve any potential issues that may arise. If you have many large documents or you are not running on high speed internet access you may want to give yourself additional time. If the problem persists, call MERX directly at 1-800-964-MERX (6379). Metrolinx staff will be unable to assist with any EBS related issues.
 - (ii) If the Proponent attempts to remit their Submission, or portions thereof, after the Closing, such documents shall not be accepted by the MERX system.
 - (iii) 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 EBS process, the Proponent shall be provided with an E-bid Confirmation Number. All reports are kept on the Proponent's MERX account for seven (7) years after the Closing.
 - (c) Notwithstanding the above, 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 Submission received will be opened by Metrolinx staff. There shall be no public access to this opening. Upon execution of the final Contract, all Proponents that have remitted 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 website at www.metrolinx.com/tenders under "Bid Award Results" (Request to Qualify and Quote) and/or the MERX website at www.merx.com/metrolinx (search "Metrolinx" or the Request Number and select "Awards").
 - (e) All documentation received by Metrolinx with regards to this RQQ Process will be retained by Metrolinx and will not be returned to the Proponent.

3.1.7 Clarification of Submissions

- (a) Metrolinx reserves the right, within one hundred and twenty (120) 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 to 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.

3.1.8 Proponent Qualifications

- (a) Refer to Request Submission Requirements for the required corporate qualifications and experience pertaining to this Request Document.
- (b) Refer to Schedule B - Consultant Personnel of Appendix A - General Conditions for the required Key Personnel qualifications pertaining to this Request Document.

3.1.9 Insurance

- (a) 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 five (5) 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.
- (b) Liability Insurance
 - (i) As a condition of award of this 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:
 - 1) Commercial General Liability Insurance in an amount of not less than two million dollars (\$2,000,000.00) per occurrence;
 - 2) Errors and Omissions/Professional Liability Insurance in an amount of not less than two million dollars (\$2,000,000.00) per claim; and
 - 3) 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.
 - 4) The Certificate of Commercial General Liability Insurance shall reference the Contract name and number and include the following as additional insureds:
 - a) Metrolinx.
 - 5) 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.

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

3.1.10 Parent Company Indemnity

If requested by Metrolinx, as a condition of award of Contract, a subsidiary company shall be required to submit a 'Guarantee' from its parent company, included and provided for in Appendix "D" – Documents as "Parental Guarantee", or in a form satisfactory to Metrolinx and 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 Services for the warranty period(s) stipulated therein.

3.2 Nature of Agreement

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

3.3 Rights of Metrolinx

Metrolinx reserves the right, in its sole discretion:

- 3.3.1 to cancel this RQQ 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;
- 3.3.2 to reject any or all Submissions. The Submission with the lowest price will not necessarily be accepted. Metrolinx' 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 the Request Document;
- 3.3.3 to disqualify any Submission which contains misrepresentations or any other inaccurate or misleading information;
- 3.3.4 to waive any requirement of the Request Documents 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;
- 3.3.5 to waive the requirement to check references;
- 3.3.6 to not respond to a Proponent's questions;
- 3.3.7 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 performance.
- 3.3.8 to award or not award based on submitted references and/or references independently obtained by Metrolinx;
- 3.3.9 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) has submitted false or misleading information in this Submission;
 - (c) 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;
 - (d) had a previous contract with a department or agency within the Ontario government that was terminated for default in the past year; or
 - (e) is an affiliate of or successor to any corporation described in Sections 3.3.9(a) through (d) above, including any firm that is controlled within the meaning of the Ontario Business Corporations Act by the same person or group of persons who so controlled any corporation described in Sections 3.3.9(a) through (d) above
- 3.3.10 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;
- 3.3.11 to distribute via Addenda, copies of any Proponent's questions received and responses provided by Metrolinx, to all Proponents who received the Request Documents;
- 3.3.12 to postpone the Closing, at which time all Proponents who received Request Documents shall be advised of the new Closing via written Addenda;
- 3.3.13 within one hundred and twenty (120) 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;
- 3.3.14 to prepare a written interpretation of any aspect of a Submission and require the relevant Proponent's acknowledgement of the accuracy of that interpretation;
- 3.3.15 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;
- 3.3.16 to correct arithmetical errors in any or all Submissions where such errors affect extended totals, the Estimated Contract Price, H.S.T. and/or Grand Total. Arithmetical corrections shall only be made based upon the unit prices submitted by the Proponent. Corrections to extension, sums, differences or other arithmetical operations based on the Estimated Contract Price submitted will be identified on the Request 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 deemed non-responsive and disqualified;
- 3.3.17 to, upon failure of the Proponent whose Submission was accepted to fulfill the conditions of Section 3.4.2 herein, cancel award of Contract and consistent with industry practice, notify another Proponent who was determined to be qualified in accordance with the Request Evaluation Criteria stated herein and who submitted a responsive Submission; that its Submission has been accepted and, subsequent to the fulfillment of the

conditions of Section 3.4.2 herein, that Proponent shall be deemed to be the successful Proponent and the Proponent to whom the Contract is awarded;

3.3.18 to proceed with and to enter into a Contract with the Proponent for the provision of Services, as stated in Appendix "B" Consultant's Scope of Services.

3.3.19 after selection of the highest scoring Submission and prior to award of the Contract, to negotiate with the Proponent in question:

- (a) changes, amendments or revisions to any technical aspects of the Submission that do not fully respond to Metrolinx's requirements;
- (b) Schedules including Contract Schedule, Payment Schedule and Work Plan;
- (c) Notification requirements to request services; and
- (d) Confidentiality Requirements;

without offering other Proponents such an opportunity to negotiate such changes, amendments or revisions. Such negotiated changes, amendment or revisions shall become part of the Submission. Failure to successfully complete such negotiations shall result in the Submission not being considered further and Metrolinx shall, in its sole discretion, select another Submission as the preferred Submission, and negotiate with that Proponent any required changes in accordance with this Section 3.3.19.

3.4 Contract to be Executed

3.4.1 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 Documents. Two (2) sets of Contract Documents will be forwarded to the Proponent for review and execution.

3.4.2 It is Metrolinx's intention to establish a Contract with one (1) Proponent to perform the required Services.

3.4.3 The Contract Documents shall be executed by the Proponent and returned to Metrolinx within five (5) Business days of notification to the Proponent that Metrolinx has accepted its Submission. Failure by the Proponent to execute and return the Contract Documents with the required Insurance Certificates and Workplace Safety and Insurance Clearance Certificate, and if requested the Parental Guarantee and any other documents as may be required within the specified time, shall result in the cancellation of the Contract award and the Proponent shall indemnify Metrolinx by paying an amount equal to the difference between the Estimated Contract Price bid by the Proponent and the Estimated Contract Price bid by the Proponent to whom the Contract is ultimately awarded to.

3.4.4 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 Request 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 Request Document, as a condition of award of the Contract, have been delivered to Metrolinx.

3.4.5 Notwithstanding Metrolinx's right to negotiate any changes to the agreement described in Section 3.3.19, Proponent may not require any such changes. If Proponent requires

changes, they shall submit such changes in writing as a question pursuant to Section 3.1.2.

3.5 Conflict of Interest

- 3.5.1 The Conflict of Interest declaration included in the Form of Request shall be completed and provided with the Submission.
- 3.5.2 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 Subconsultant thereof;
 - (b) the Proponent or any Subconsultant 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.
- 3.5.3 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 the Proponent fails to disclose any actual or potential Conflict of Interest, Metrolinx may, at its sole discretion, disqualify the Proponent from the RQQ Process or terminate any agreement entered into with the Proponent pursuant to this RQQ Process.

3.6 Joint Ventures

- 3.6.1 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.
- 3.6.2 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 3.15.
- 3.6.3 One of the Joint Venture participants shall be nominated as being in charge during this RQQ 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.
- 3.6.4 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.
- 3.6.5 All participants of the Joint Venture shall be legally liable, jointly and severally, during this RQQ Process and during the Contract for carrying out the obligations pursuant to the Contract.

3.7 Prohibited Contacts and Lobbying Prohibition

- 3.7.1 A Proponent, Proponent's team members and all of the Proponent's respective Subconsultants, 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 RQQ Process.

- 3.7.2 Without limiting the generality of Section 3.7.1, neither Proponents or Proponent team members or any of their respective Subconsultants, advisors, employees or representatives shall contact or attempt to contact, either directly or indirectly, at any time during the RQQ Process, any directors, officers, employees and advisors of Metrolinx, other than the Procurement Representative, other than to discuss pre-existing work that is being conducted pursuant to a separate contract (where, for greater certainty, only such pre-existing work may be discussed).

3.8 Media Releases, Public Disclosures and Public Announcements

- 3.8.1 A Proponent shall not, and shall ensure that its advisors, employees, or 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 RQQ Process, this Submission or any matters related thereto, without the prior written consent of Metrolinx.
- 3.8.2 A Proponent, Proponent's team members and all of the Proponent's respective advisors, employees and representatives shall 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 the RQQ Process without Metrolinx's prior written consent, which may be withheld in Metrolinx's sole discretion. Notwithstanding this item, the Proponent, Proponent's team members and all of the Proponent's respective advisors, employees and representatives are permitted to state publicly that it/they are participating in the RQQ Process.
- 3.8.3 For greater clarity, this section does not prohibit disclosures necessary to permit the Proponent to discuss the Request Document with prospective subconsultants' participation in this RQQ Process.

3.9 Restriction on Communications Between Proponents – No Collusion

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, employees and representatives.

3.10 Disclosure of Information

- 3.10.1 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.
- 3.10.2 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.
- 3.10.3 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.

3.11 Freedom of Information and Protection of Privacy Act ("FIPPA")

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 Submission pursuant to FIPPA.

3.12 Submission to Be Retained by Metrolinx

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

3.13 Confidential Information of Metrolinx

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

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

3.13.2 shall not be used for any purpose other than replying to the Request Document and the performance of any subsequent agreement; and

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

3.14 Proponents Shall Bear Their Own Costs

The Proponent shall bear all costs associated with or incurred in connection with its participation in this RQQ Process, including, but not limited to, preparation of its Submission and preparation for and participation in presentations and interviews.

3.15 Changes to Proponent Key Personnel, Subconsultants or Joint Venture

3.15.1 If after the Closing, but prior to the execution of the Contract, the Proponent wishes to request a change in a Key Personnel, Subconsultant, 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, Subconsultant 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 RQQ Process.

3.15.2 In response to a request as per Section 3.15.1 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, Subconsultants 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.

3.15.3 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.

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

3.16 Vendor Performance Management Program

3.16.1 Vendor Performance Management (“VPM”) Program means the Metrolinx 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 Metrolinx.

3.16.2 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 Request 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.

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

3.16.4 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.

3.16.5 For the purposes of this RQQ Process, the application of the VPR is set out in the Contract Performance Appraisal as listed in Appendix “D” Documents.

4.0 Request 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 shall result in the Proponent's Submission to be deemed non-compliant and shall not be considered further.
- 4.1.2 The mandatory requirements for this Request Document are as follows:
- (a) The Form of Request must be submitted by the E-Bid Authorized Signer.
 - (b) Pricing information must be completed and submitted using Attachment #1 - Contract Prices.
 - (c) Proponents shall declare any conflicts of interest in Section 6.6 of Form of Request. If Section 6.6 is left blank the provisions of Section 6.6.1 of Form of Request shall apply.

4.2 Submission Format

- 4.2.1 Submissions must be submitted through MERX and should be in the following format:
- (a) Present information in Font Size 11 pt. on 8½ x 11 paper size.
 - (b) Include a table of contents.
 - (c) Organize information into sections which correspond to the Submission Content Requirements in the exact order described below.
 - (d) 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 shall include: a Technical Submission and a Price Submission. The information required in each Submission as well as the prescribed format in which it should be submitted is outlined below.

- 4.3.1 Technical Submission - The Proponent's Technical Submission should be comprised of the following sections in the following order and should contain a Table of Contents.
- (a) **Technical Submission Section 1: Form of Request**
 - (i) Provide a completed Form of Request. The Form of Request shall not be retyped, and entries shall be made directly on the Request Document Forms provided by Metrolinx.

- (ii) If submitting as a Joint Venture, attach a copy of the Joint Venture Agreement electing the Participant-in-Charge.

(b) **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.

Failure of the Proponent to satisfactorily submit the requirements related to Corporate Experience and Qualifications as detailed in this Section 2 in addition to Section 3 below, may result in the Submission being deemed non-responsive and being disqualified from any further consideration or evaluation at the sole discretion of Metrolinx.

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" as set out below. The Proponent understands and agrees that Metrolinx may verify any information provided in any Submission.

(i) **Corporate Summary: Description of Company**

- 1) Provide a description of the Proponent's company, including, but not necessarily limited to: 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 which is applicable to the Services of this Project.

(ii) **Corporate Summary: Corporate Firm**

- 1) Provide a description of the make-up of the Proponent's Corporate Firm;
- 2) Identify the principal business of key Subconsultants, professional advisors and subject matter experts it proposes to use in the performance of the Services, especially for major or critical pieces of the work. For each Subconsultant listed, the Proponent shall provide the following:
 - a) Full corporate name and location of the Subconsultant;
 - b) Which area of the Services the Subconsultant shall be employed for;
 - c) The Subconsultant's experience and qualifications relative to the Services it will be performing;
 - d) Previous instances of the Proponent and Subconsultant working together including:

- i) A description of the project and value;
- ii) The client the services were performed for;
and
- iii) The parts of the services performed by the Subconsultant.

(iii) **Corporate Experience and Qualifications:**

- 1) The Proponent should demonstrate its experience in performing work similar in type, size and complexity as the Services identified in Appendix "B" by including a summary of the Corporate Firms qualifications and experience relevant to the Services being contemplated, including but not limited to:
 - a) The necessary resources to sustain and complete the Services to the satisfaction of Metrolinx;
 - b) Experience with work of similar nature, scope and magnitude of the work contemplated in this request to qualify and quote as well as the physical and financial resources to sustain and complete the work to the satisfaction of Metrolinx. Specifically the auditor must demonstrate that it possess the following experience and qualification:
 - (i) Must be a firm of Chartered Professional Accountants;
 - (ii) Must be licensed under the Public Accounting Act of Ontario;
 - (iii) Experience in auditing third party service centres, information technology infrastructures, financial services organizations and the relevant industry standards; and
 - (iv) Demonstrate knowledge and experience in auditing fare operating systems and open system environments.

(c) **Technical Submission Section 3: Corporate References**

- (i) Reference Projects are intended to demonstrate the Corporate Firm's corporate capacity to perform and manage projects of a similar scope, complexity and estimated value as the Services.
- (ii) Corporate References Related to Current Scope:

1) The Proponent should provide a list of three (3) references, for relevant projects completed within the past three (3) years or currently active, which demonstrate the Corporate Firm's experience and qualifications. The Proponent will include all projects of similar scope, complexity and estimated value that it has completed or is currently completing for Metrolinx as part of the three (3) reference projects provided by the Proponent. Failure of the Proponent to include the aforementioned reference projects completed for Metrolinx will affect the Proponent's score. The Proponent should, using the template provided in Attachment #2 – Corporate References, provide the following information for each corporate reference project:

- a) Name of the company for which the work was performed;
- b) Project title;
- c) Contact person's name, title, telephone number and e mail address; and
- d) Start and completion date.

(iii) Reference Checks: References will be checked using a standard uniform method. Opinions of previous clients regarding budget and schedule experience, dependability, attitudes of employees and/or Subconsultants, concern for efficiency, economy and environment, sensitivity to community, and quality of service among others may be taken into account when evaluating reference projects.

(d) **Technical Submission Section 4: Description of Corporate Projects**

Reference projects are intended to demonstrate the Corporate Firm's corporate capacity to perform and manage projects of a similar scope and complexity as the Services. The Proponent should provide descriptions of each reference project outlined in Technical Submission Section 3: Corporate References above. The descriptions are to be a maximum of two (2) pages of information for each reference project, including but not necessarily limited to the following:

- (i) Name of the company for which the work was performed;
- (ii) Contact person's name, title, telephone number and email address;
- (iii) Project description and project value;
- (iv) Description of Services provided and how they are relevant to Services requested in Appendix "B";

(v) List of any other Key Personnel and their project roles, if applicable.

(e) **Technical Submission Section 5: Team Experience and Qualifications**

(i) **Functional Organization**

1) Organizational Chart – Provide an organizational chart identifying the named Key Personnel assigned including their role and dedicated solely to the project in their respective roles, for completion of the Services.

(ii) **Roles and Responsibilities of Key Personnel – should include:**

1) A brief description identifying the role and responsibilities of each Key Personnel, with respect to the Services requested;

2) A statement describing the experience of the individual Key Personnel in working together on previous relevant projects;

3) A statement indicating whether the Key Personnel is an employee of the Proponent or is a Subconsultant; and

4) A statement of availability of Key Personnel identified for each role indicating that the individual is available for the required Contract Term.

(iii) **Key Personnel**

Key Personnel Experience and Qualifications - For each of the individuals to be employed in the above Key Personnel roles, the Proponent should provide the following:

1) Curriculum Vitae – Provide a curriculum vitae in accordance with Section 9.1 of Attachment #3 – Key Personnel Curriculum Vitae and References using the template provided therein.

2) Key Personnel References – Provide Key Personnel references in accordance with Section 9.2 of Attachment # 3 – Key Personnel Curriculum Vitae and References using the template provided therein.

3) Key Personnel Description of Reference Projects – Provide Key Personnel description of reference projects in accordance with Section 9.3 of Attachment # 3 – Key Personnel Curriculum Vitae and References.

4.4 Price Submission

- 4.4.1 A Submission shall include a Pricing Submission. Pricing information must be completed and submitted using the Excel template provided, entitled Attachment #1 – Contract Prices. The pricing template must be submitted as a separate file preferably in Excel (.xlsx) format.

5.0 Request Evaluation Criteria and Selection Process

5.1 Request 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 Request Evaluation Criteria Section below.
- 5.1.2 Each criterion is evaluated. Critical 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 Evaluated 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 the Mandatory Criteria. Only those Submissions determined in the sole opinion of Metrolinx, to have fulfilled all the mandatory requirements shall be deemed compliant and shall proceed to Phase Two of the evaluation process. Submissions that do not meet administrative requirements shall be deemed non-responsive and shall be disqualified.

- (b) **Phase Two:** Technical Evaluation (75% weighting)

Submissions proceeding to Phase Two shall be evaluated by the Metrolinx Evaluation Committee in accordance with the Request Submission Requirements above and Evaluation Methodology below. Only those Submissions achieving a total minimum score of 70% (525 points out of 750 possible points) as determined by the Metrolinx Evaluation Committee shall be considered further and shall proceed to Phase Three of the evaluation process.

- (c) **Phase Three:** Pricing Evaluation (25% weighting)

- (i) Attachment #1 – Contract Prices shall be evaluated for the Submissions which achieve the minimum score of 70% on Phase Two evaluation.
- (ii) Attachment # 1 - Contract Prices shall not be evaluated for those Proponents whose Submissions do not achieve the specified minimum score requirement to proceed to Pricing Evaluation.
- (iii) Pro-Rated
- 1) An administrative evaluation shall be conducted of Attachment #1 – Contract Prices to determine compliance with the mandatory requirements as

stated therein and in the Instructions to Proponents. The Estimated Contract Price of each Submission proceeding to Pricing Evaluation, shall be evaluated and scored as follows:

- a) The Submission with the lowest Estimated Contract Price shall receive the maximum score of ten (10) points for Pricing Evaluation.
- b) The following equation shall be applied to all other Submissions to determine a score out of ten:

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

The score out of ten for Price shall be multiplied by the weighting factor and added to the total score for Phase Two to determine Total Overall Score for the Submissions.

5.1.4 Total Overall Score

- (a) Total Overall Score = Phase Two: Technical Evaluation + Phase Three: Pricing Evaluation.

5.1.5 Selection of Submissions

- (a) Metrolinx' 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 these Request Documents.
 - (i) Total Overall Score

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

5.2 Request 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 One: ADMINISTRATIVE EVALUATION (Compliant / Non-Compliant)			
Phase Two: TECHNICAL EVALUATION			
Technical Submission Section 1: Form of Request (Compliant / Non-Compliant)			

Evaluated Component	Maximum Score	Weighting Factor	Total (Score x Weight)
Technical Submission Section 2: Corporate Summary			
Corporate Summary	10	5	50
Corporate Experience and Qualifications	10	6	60
Subtotal Corporate Summary:		11	110
Technical Submission Section 3 and 4: Description of Corporate Projects and Corporate References			
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 Description of Corporate Projects and References:		15	150
Technical Submission Section 5: Team Experience and Qualifications			
Organizational Chart	10	3	30
Roles and Responsibilities of Key Personnel	10	8	80
Key Personnel Experience & Qualifications	-----	-----	-----
Engagement Partner	10	10	100
Manager	10	10	100
Senior Associate	10	10	100
Associate	10	8	80
Subtotal Team Experience and Qualifications:		49	490
Subtotal Technical Evaluation:		75	750
SUBTOTAL PHASE TWO:		75	750
Phase Three: PRICING			
Pricing	10	25	250
TOTAL EVALUATED SCORE:		100%	1,000

Technical Submission Scoring Guidance – the Proponents 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	Response substantially meets and exceeds some of the requirements
7 = Good	Response 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 Request

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

Request Number: RQQ-2017-AS-176

Request Description: Audit Services of Financial Controls at a Service Organization (CSAE 3416)

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 remitted 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 Request.	<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. mandatory formats, templates and requirements) as outlined in the Request Documents.	<input type="checkbox"/>
The Proponent's Price Submission has been completed in full and has been included as a separate attachment in the Submission.	<input type="checkbox"/>
The Proponent has read through all the Request Documents including any Addenda that have been issued and these have all been considered in the Proponent's Submission.	<input type="checkbox"/>
The Proponent has reviewed the RQQ Timetable and understands all the dates and timelines associated with the RQQ Process.	<input type="checkbox"/>
The Proponent has not included any qualifying statements in its Submission.	<input type="checkbox"/>
If a Joint Venture, attach a copy of the Joint Venture agreement electing the Participant-in-Charge.	<input type="checkbox"/>

6.1 Contact Information

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

Click here to enter text.

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

Click here to enter text.

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

Click here to enter text.

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

Click here to enter text.

- 6.1.3 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.

- 6.1.4 Name of the person who is primarily responsible for the Submission:

Click here to enter text.

6.2 Proponent Acknowledgments

- 6.2.1 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 furnish all necessary labour, superintendence, plant, tools, appliances, equipment, supplies and other accessories, services and facilities necessary to perform the following services:

FOR THE PROVISION OF AUDIT SERVICES OF FINANCIAL CONTROLS AT A SERVICE ORGANIZATION (CSAE 3416), AS SET OUT IN THE SCOPE OF SERVICES, ATTACHED AS APPENDIX "B".

- 6.2.2 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 Request Documents:

ANY ADDENDA ISSUED HERETO
INSTRUCTIONS TO PROPONENTS
REQUEST SUBMISSION REQUIREMENTS
REQUEST EVALUATION CRITERIA AND SELECTION PROCESS
FORM OF REQUEST
ATTACHMENT #1 – CONTRACT PRICES
ATTACHMENT #2 – CORPORATE REFERENCES
ATTACHMENT #3 – KEY PERSONNEL CURRICULUM VITAE AND REFERENCES

APPENDIX "A" - GENERAL CONDITIONS
APPENDIX "B" - CONSULTANT'S SCOPE OF SERVICES
APPENDIX "C" - METROLINX'S SERVICES
APPENDIX "D" - DOCUMENTS

- 6.2.3 The Proponent acknowledges receipt of any and all Addenda issued hereto and that their Submission has been developed in consideration of the Addenda.
- 6.2.4 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 twenty (120) 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 twenty (120) calendar day period that it is the successful Proponent.
- 6.2.5 The Proponent acknowledges that their Submission should be in the correct format using the appropriate Request Document Forms and instructions as provided herein. Failure to comply may result in the Proponent being found non-responsive and disqualified at the sole discretion of Metrolinx.
- 6.2.6 The Proponent acknowledges that by way of the E-Bid Authorized Signer remitting a Submission, the Proponent is agreeing to be bound to each and every term, condition, article and obligation of the Request Document and any resultant Contract.
- 6.2.7 The Proponent acknowledges that consistent with Section 3.1.9 of Instructions to Proponents, failure by the Proponent, whose Submission was accepted by Metrolinx, to execute and deliver the Contract with the required Insurance Certificates and Workplace Safety and Insurance Clearance Certificate shall result in the cancellation of the Contract award.

6.3 Requirements

- 6.3.1 The Proponent shall provide labour, equipment, supplies and other accessories, services and facilities necessary to provide audit services for the completion of Service Organization Control Report CSAE 3416, in accordance with the Consultant's Scope of Services, attached as APPENDIX "B" (the "Services").
- 6.3.2 The Services are to be provided to the satisfaction of the Manager, Internal Audit, unless otherwise specified.

6.4 Consultant Personnel (Schedule B Template)

The Consultant Personnel roles shall be filled using Schedule B Template in accordance with the Contract requirements as set out in Appendix "B" Scope of Services and Schedule B – Consultant Personnel.

6.5 Conflict of Interest

- 6.5.1 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 Request Document.

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

- (a) 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 Request Document.
- (b) 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:

6.5.2 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, advisors or consultants 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.

6.5.3 (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 Section 11.1(k) of Appendix "A" – General Conditions, the Consultant represents, warrants and covenants to Metrolinx that the Consultant is and shall remain duly registered for the purposes of Part IX of the Excise Tax Act and that the Consultant'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.

6.7 Project Schedule

Milestone	
Year One – Final execution of contract to April 30, 2019	
a. Commencement of Engagement	Upon final execution of the Contract
b. Delivery of Final 2018 CSAE 3416 Report	February 28, 2019
c. Presentation of Final CSAE 2018 Report to Scheme Governance Committee	April 30, 2019
Year Two – May 1, 2019 to April 30, 2020	
d. Commencement of Engagement	May 1, 2019
e. Delivery of Final 2019 CSAE 3416 Report	February 28, 2020
f. Presentation of Final CSAE 2019 Report to Scheme Governance Committee	April 30, 2020
Year Three – May 1, 2020 to April 30, 2021	
g. Commencement of Engagement	May 1, 2020
h. Delivery of Final 2020 CSAE 3416 Report	February 28, 2021
i. Presentation of Final CSAE 2020 Report to Scheme Governance Committee	April 30, 2021
Year Four – May 1, 2021 to April 30, 2022 (Option Exercisable at Metrolinx’s Sole Discretion)	
j. Commencement of Engagement	May 1, 2021
k. Delivery of Final 2021 CSAE 3416 Report	February 28, 2022
l. Presentation of Final CSAE 2021 Report to Scheme Governance Committee	April 30, 2022
Year Five – May 1, 2022 to April 30, 2023 (Option Exercisable at Metrolinx’s Sole Discretion)	
m. Commencement of Engagement	May 1, 2022
n. Delivery of Final 2022 CSAE 3416 Report	February 28, 2023
o. Presentation of Final CSAE 2022 Report to Scheme Governance Committee	April 30, 2023

Metrolinx expects field work to start in September of each Contract Year.

7.0 Attachment # 1 – Contract Prices

7.1 Contract Prices

- 7.1.1 The Contract Prices (“Rates”) are hereby submitted on the full understanding that they form part of the Consultant’s Submission and as such constitute an irrevocable offer by the Consultant for a period of one hundred and twenty (120) calendar days from the Closing and the Consultant hereby covenants that it shall perform and execute the Services in accordance with the Rates quoted herein if it is notified, in writing, by Metrolinx within one hundred and twenty (120) calendar days that it is the successful Consultant.
- 7.1.2 Payment for services rendered and goods supplied in accordance with the terms and conditions of the Contract shall be based on the following:
- (a) The Rates quoted shall be all inclusive costs associated with performance of the Services defined in the Consultant’s Scope of Services attached as Appendix “B”.
 - (b) Cash Allowances shall be used and expended solely for purposes specified and at the sole discretion of Metrolinx. The Consultant cannot proceed with any work to be paid for under the Cash Allowance without prior written approval from Metrolinx.
 - (c) The Rates quoted shall include all costs related to the Services including, but not limited to, Named Key Personnel identified, other technical positions, administrative positions, any Subconsultants and specialized service providers required to complete the Services, any and all disbursements, travel, mileage, supervision, equipment, tools, supplies, General Requirements (as per Appendix “B”) and Management of the Services (as per Appendix “B”) as required in this Request Document.

7.2 Allowances

7.2.1 Cash Allowances

- (a) Cash Allowances are subject to the General Conditions of the Contract.
- (b) Descriptions of each Cash Allowance are listed below and amounts are specified in Attachment #1 - Contract Prices.

7.2.2 Description of Cash Allowances

- (a) Cash Allowance – Additional Reports
 - (i) This Cash Allowance is for the purchase of System Conversion/Migration Report that may be required and are specified in the Detailed Scope of Services and on Attachment #1 - Contract Prices.

7.3 Completion of Pricing Schedules

- 7.3.1 Proponents shall fully complete the Excel file entitled Attachment # 1 – Contract Prices and insert a Unit Price into each space provided under the Contract Unit Price column.
- 7.3.2 Attachment #1 – Contract 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-responsive and disqualified.
- 7.3.3 It is Metrolinx preference that Proponents submit the pricing using the appended Excel file format to facilitate the Metrolinx pricing evaluation process.
- 7.3.4 The Attachment #1 – Contract Prices is numbered, under the “Item No.” column to correspond with the following Phases, Stages and Steps of the Services..
- A. **Year One:** Upon final execution of the Contract to April 30, 2019;
 - B. **Year Two:** May 1 2019 to April 30, 2020;
 - C. **Year Three:** May 1, 2020 to April 30, 2021;
 - D. **Year Four:** May 1, 2021 to April 30, 2022 (optional year at Metrolinx sole discretion)
 - E. **Year Five:** May 1, 2022 to April 30, 2023 (optional year at Metrolinx sole discretion)
- 7.3.5 If a “0” is entered in any of the spaces where price information is to be provided, it shall be interpreted as meaning the Contractor shall provide the specified service to Metrolinx at no charge.
- 7.3.6 If any space is left blank or an entry of “N/C” or “N/A” or “—” is entered where price information should be entered then the Submission may be found non-responsive and disqualified consistent with the provisions of the Instructions to Proponents.

8.0 Attachment # 2 – Corporate References

- 8.1 The Proponent should, using the templates below, provide corporate reference information as indicated in this Attachment #2 – Corporate References. The Proponent shall ensure that all contact information provided for references 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.
- 8.2 Proponents should review the Request Submission Requirements Section to ensure compliance with the submission requirements.

CORPORATE REFERENCES						
Company Name	Project Title	Contact Person's Name/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.
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.
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.

9.0 Attachment # 3 – Key Personnel Curriculum Vitae and References

9.1 Curriculum Vitae

The Proponent should, using the template below, for each proposed Key Personnel provide a Curriculum Vitae of up to three (3) pages for each Key Personnel, including biographical information, which clearly identifies:

- 9.1.1 Name of individual and proposed Key Personnel role;
- 9.1.2 Qualifications that relate to the proposed Key Personnel role, as specified in Schedule B of Appendix "A", relative to the Services being requested;
- 9.1.3 Experience in performing the proposed Key Personnel role, as specified in Schedule B of Appendix A, relative to the Services being requested (include project names and brief project overviews);
- 9.1.4 Number of years in the proposed role on each project as well as the start date and completion date of each project;
- 9.1.5 Responsibilities on each project while performing the proposed role;
- 9.1.6 Details of accomplishments while performing the proposed role;
- 9.1.7 Education; and
- 9.1.8 Professional memberships and affiliations.

9.2 Key Personnel References

- 9.2.1 Immediately following the curriculum vitae for each proposed Key Personnel, the Proponent should use the template below to provide a list of three (3) references and contact information for relevant projects successfully delivered on-time and on-budget within the past three (3) years, while performing work in the same capacity as the proposed Key Personnel role.
- 9.2.2 The Proponent should ensure that all contact information provided for references 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.
- 9.2.3 The list of three (3) references submitted when combined should demonstrate that the named Key Personnel has the required qualifications and experience as stated in Schedule B – Consultant Personnel of Appendix "A" – General Conditions, and for work similar in size, scope and complexity to the Services to be provided herein.
- 9.2.4 Such references shall relate directly to the experience, responsibilities and details of project accomplishments noted above. The information should include:
 - (a) Name of the company for which the work was performed;

- (b) Contact person's name, title, telephone number and e-mail address; and
 - (c) Start and completion date of each reference project.
- 9.3 Key Personnel Description of Reference Projects – For each reference project listed under Section 9.2 above, the Proponent should include up to two (2) additional pages of information which includes but is not limited to:
 - 9.3.1 Name of the company for which the work was performed;
 - 9.3.2 Project description and project value;
 - 9.3.3 Description of Services provided with reference to the applicable Key Personnel role and responsibilities for the work contemplated in this Request Document.
 - 9.3.4 Identification of relevance of project reference to programmatic, strategic, innovation, sustainability or other design challenges the Proponent deems significant in their ability to understand and execute the Scope of Services being requested;
 - 9.3.5 Project start and completion dates;
 - 9.3.6 List of any other Key Personnel that have worked on the same reference project and their project roles, if applicable; and
- 9.4 Proponents should review the Request Submission Requirements section in conjunction with this Attachment # 3 to ensure that all required information is being included as part of the Submission for evaluation purposes.

Key Personnel Role:	Click here to enter text.						
Name:	Click here to enter text.						
Years of Experience in the Role:	Click here to enter text.						
Education:	Click here to enter text.						
Designation(s):	Click here to enter text.						
Summary of Qualifications and Experience:	Click here to enter text.						
References:	Company Name	Project Title	Contact Person's Name / 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.
	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.
	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.

10.0 Attachment # 4 – Not applicable.

Not Applicable.

Appendix "A" – General Conditions

List of Contents

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

Description
Appendix "A" – General Conditions (Section 1 to Section 18.15)
Schedule A – Definitions
Schedule B – Consultant Personnel
Schedule C – Financial Terms
Schedule D – Insurance
Schedule E – Dispute Resolution

General Conditions

1. INTERPRETATION

1.1 Definitions

Capitalized terms used in this Contract shall have the respective meanings ascribed thereto in Schedule A – Definitions.

1.2 Time of the Essence

Time is of the essence in the performance of a Party's respective obligations under this Contract.

1.3 Currency

All prices and sums of money and all payments made under this Contract shall be in Canadian dollars.

1.4 Units of Measure

All dimensions, quantities, performance specifications, calibrations and other quantitative elements used in this Contract shall be expressed in the International System of Units (SI), except where otherwise indicated.

1.5 Language

All communication between Metrolinx and the Consultant and between the Consultant and each of the Subconsultants with regard to the Services shall be in the English language.

1.6 References

- (a) Each reference to a statute in this Contract is deemed to be a reference to that statute and to the regulations made under that statute, all as amended or re-enacted from time to time. Following any and all changes to Applicable Laws, the Consultant shall perform the Services in accordance with the terms of this Contract, including in compliance with Applicable Laws.
- (b) Each reference, whether express or implied, to a Standard of any technical organization or Governmental Authority is deemed to be a reference, to that Standard as amended, supplemented, restated, substituted or replaced.
- (c) Subject to any express definitions contained in this Contract, words and abbreviations which have well known technical or trade meanings are used in this Contract in accordance with such recognized meanings.
- (d) Where used in this Contract, "including" means including without limitation, and the terms "include", "includes", and "included" have similar meanings.
- (e) Each reference to an Article or Section within the Contract or Schedules shall refer to that Article or Section number in the Contract or the Schedule in which the reference occurs unless otherwise specified.

- (f) The division of this Contract into Articles and Sections, the insertion of headings, and the provision of a table of contents are for convenience of reference only and do not affect the construction or interpretation of this Contract.

1.7 Time

- (a) Unless otherwise specified, references to time of day or date mean the local time or date in Toronto, Ontario. When any period of time is referred to in this Contract by days between two dates, it will be calculated by excluding the first and including the last day of such period.
- (b) If, under this Contract, any payment or other event falls due on or as of a day that is not a Business Day, that payment or other event shall fall due instead on the next day that is a Business Day, unless expressly stated otherwise.
- (c) Unless otherwise specified, references to "day" shall mean calendar day.

1.8 Schedules

The following Schedules attached to this Contract shall constitute an integral part of this Contract and all expressions defined in this Contract shall have the same meanings in such Schedules:

Schedule A -	Definitions
Schedule B -	Consultant Personnel
Schedule C -	Financial Terms
Schedule D -	Insurance
Schedule E -	Dispute Resolution

2. PERFORMANCE

2.1 Term of the Contract

(a) Initial Term

This Contract shall take effect on the Effective Date hereof and shall continue in full force and effect, unless terminated in accordance with its term, until February 28th, 2021 (such period of time, the "Initial Term").

(b) Extensions

The Initial Term will automatically extend for up to two (2) subsequent periods of one (1) year each (each, an "Extension") unless Metrolinx provides written notice to the Consultant prior to June 30 during an Extension. If Metrolinx provides such written notice prior to June 30 during an Extension, the Term will end on the date of the notice and Consultant shall not be entitled to fees for the Report during such Extension.

2.2 Performance of the Services

- (a) The Consultant shall carry out and complete those services set forth in Appendix "B" – Consultant's Scope of Services (the "**Services**") to the satisfaction of Metrolinx in accordance with all the terms of this Contract.
- (b) The Consultant shall supply the Services diligently and continuously in accordance with the scheduling requirements set out in the Project Schedule. Without limiting the generality of the foregoing, the Consultant shall perform the Services so as to enable Metrolinx to meet any timelines imposed on it under any Third Party Contracts, provided that such timelines have been identified in the Project Schedule or otherwise expressly communicated to the Consultant.
- (c) The Consultant acknowledges and agrees that each of the Consultant's Personnel shall be available to perform the Services in accordance with the required duration specified in Schedule B – Consultant Personnel. The Consultant further acknowledges and agrees that Metrolinx may, acting in its sole discretion, change the schedule including in respect of the timing of the provision of the Services and availability and number of the Consultant's Personnel. Without limiting the generality of the foregoing, Metrolinx may from time to time, on twenty (20) Business Days' prior written notice to the Consultant, unilaterally extend or reduce the required duration with respect to the availability of any of the Consultant's Personnel or direct the Consultant to increase the number of Consultant's Personnel available. Metrolinx and the Consultant shall meet on a quarterly basis to discuss the progress of the Services and the anticipated scheduling needs with respect to the Consultant's Personnel.
- (d) Not applicable.
- (e) The Consultant shall provide, at the sole cost and expense of the Consultant, save as otherwise provided in this Contract, all necessary equipment, goods, materials, analysis, transportation, accommodation, labour, staff and technical assistance and incidentals required in performing the Services and to undertake, perform and complete its undertakings, obligations and responsibilities provided for in this Contract.
- (f) The Services shall be provided in a professional, timely and economical manner according to the Required Standard of Care. Without limitation, the Consultant shall ensure that the Services are conducted in a manner that will maintain good relations with the general public and property owners.
- (g) The Consultant shall comply with and conform to all Applicable Laws, applicable to the Services to be provided by, and the responsibilities and obligations of, the Consultant under this Contract.
- (h) The Consultant shall not alter any part of a Joint Venture except with the prior written consent of Metrolinx in its sole discretion.

2.3 Subconsultants

- (a) No subconsulting by the Consultant shall relieve the Consultant of any responsibility for the full performance of all obligations of the Consultant under this Contract. Notwithstanding the approval of any Subconsultants by Metrolinx, the Consultant shall be fully responsible for every Subconsultant's activities, works, services and acts or omissions.

- (b) The Consultant shall be solely responsible for the payment of any Subconsultants.
- (c) The Consultant shall co-ordinate the services of all Subconsultants employed, engaged or retained by the Consultant with Metrolinx and, without limiting the generality of any other provision of this Contract, the Consultant shall be liable to Metrolinx for costs or damages arising from errors or omissions of such Subconsultants or any of them. It shall be the Consultant's responsibility to control and review the Services of its own forces and of all its Subconsultants and to ascertain that all Services are performed in accordance with this Contract, all governing regulations and the Required Standard of Care.
- (d) The Consultant warrants and represents that it and any of its permitted Subconsultants and the respective workforce of each are fully qualified to perform the Services and perform this Contract and hold all requisite licenses, rights and other authorizations required by Applicable Laws.
- (e) The Consultant shall only employ, for the purposes of this Contract, such persons as are careful, skilled and experienced in the duties required of them and have the required Domain Expertise, and must ensure that every such person is properly and sufficiently trained and instructed. The Consultant shall ensure that all workers and persons employed by them or under their control or employed by or under the control of its Subconsultants comply with the terms of this Contract and, in particular without limiting the foregoing, the responsibilities of the Consultant with respect to matters concerning safety, compliance with the Applicable Laws and the conduct of the Services.
- (f) The Consultant shall be an independent contractor with respect to the Services to be provided under this Contract and nothing contained in this Contract shall be construed as constituting a joint venture or partnership between the Consultant and Metrolinx. Neither the Consultant nor its Subconsultants shall be deemed to be employees, agents, servants or representatives of Metrolinx in the performance of the Services hereunder.
- (g) The Consultant shall not remove or change any Subconsultants, or materially reduce the responsibilities of any Subconsultants in relation to the provision of the Services except with the prior written consent of Metrolinx in its sole discretion. The proposed replacement Subconsultant shall possess the requisite Domain Expertise and similar qualifications, experience and ability as the outgoing Subconsultant.

2.4 **Consultant Personnel**

- (a) The Consultant shall select and employ a sufficient number of suitably qualified and experienced Consultant Personnel to perform and provide the Services, as determined with reference to the requirements of the Services to be performed by each individual or otherwise as required pursuant to the Contract. All Consultant Personnel shall possess or, where permitted, shall be supervised by persons who possess, the professional accreditation required to complete the services.
- (b) The Consultant shall provide effective and efficient supervision to ensure that the quality of workmanship meets the requirements of the Contract.

- (c) The Consultant shall ensure that the Consultant Personnel assigned to perform the Services shall:
 - (i) act in a proper and professional manner in accordance with the standards generally used recognized by the industry; and
 - (ii) comply with all applicable Metrolinx policies and procedures, provided that Consultant has been made aware of same.

2.5 **Third Party Work**

- (a) The Consultant shall reasonably cooperate with Metrolinx and any Third Party and shall co-ordinate the Services with any and all Third Party Work. Without limiting the generality of the foregoing, the Consultant shall not alter, unreasonably interfere with or make it difficult to access any Third Party Work, except with the express written consent of Metrolinx.
- (b) The Consultant shall make best efforts to coordinate with Metrolinx and all applicable Third Parties in order to minimize:
 - (i) any delays to or interference with any Third Party Work within the rail corridors;
 - (ii) costs resulting from any delays to or interference with Third Party Work; and
 - (iii) impacts on the operations of, or use of the rail corridors by, Third Party Operators, including any delays to rail passenger or freight service on the rail corridors.
- (c) When and as directed by Metrolinx, the Consultant shall participate with Metrolinx employees and any applicable Third Parties in reviewing their respective schedules and cause designated Consultant Personnel to attend such meetings with Third Parties as may be reasonably requested by Metrolinx from time to time.
- (d) In the event that the proper performance of any part of the Services depends upon Third Party Work, the Consultant shall promptly inspect such Third Party Work and provide written notice to Metrolinx of any delays or defects in such Third Party Work that render such Third Party Work unavailable or unsuitable for integration with the Services.
- (e) Claims, disputes and other matters in question between the Consultant and Third Parties shall be dealt with in accordance with Schedule E – Dispute Resolution, provided that the Third Party has reciprocal obligations. The Consultant and Metrolinx shall be deemed to have consented to arbitration of any dispute with any Third Party whose contract with Metrolinx contains a similar dispute resolution provision that includes an agreement to submit to binding arbitration, provided that Metrolinx, at its sole and absolute discretion, shall be entitled to refuse to include any dispute with a Third Party from this Contract.

2.6 **Non-Interference with Operations**

- (a) The Consultant understands and agrees that:

- (i) Metrolinx and Third Party Operators are in the business of moving large volumes of passengers and cargo through rail corridors safely, expeditiously and according to a fixed timetable;
 - (ii) the success of the businesses of Metrolinx and Third Party Operators depends on meeting the above objectives on a daily basis;
 - (iii) Metrolinx has contractual and statutory obligations to ensure the safety of all persons on the rail corridors and the property and facilities adjacent thereto; and
 - (iv) Third Party Operators operating in and through the rail corridors and Third Party Contractors working in the rail corridors have similar restrictions and requirements.
- (b) Notwithstanding any other term or condition set out in this Contract, the safety and non-disruption of all Third Parties operating in the rail corridors is of paramount importance. Consequently, the Consultant acknowledges and agrees that the safety of all trains, passengers, operating and maintenance personnel, goods and other transported cargos, as well as the Consultant Personnel and the public in general will take precedence over all actions or non-actions of the Consultant, whether mandated or not by any other terms and conditions of this Contract.
- (c) The Consultant shall not disrupt the movement of any rail traffic in or through the rail corridors of either Metrolinx or the Third Party Operators except where it has obtained the prior written consent of Metrolinx to such disruption (which consent may be withheld in the sole discretion of Metrolinx).

2.7 Key Personnel

- (a) Schedule B – Consultant Personnel sets out the names and titles of the Consultant Personnel who will be involved in a material way in, and who are critical to, the performance of the Services (the “**Key Personnel**”). All Key Personnel will possess the requisite Domain Expertise.
- (b) The Consultant acknowledges and agrees that each of the Consultant’s Personnel shall be available to perform the Services in accordance with the required duration specified in Schedule B – Consultant Personnel. The Consultant further acknowledges and agrees that Metrolinx may, acting in its sole discretion, change the schedule including in respect of the timing of the provision of the Services and availability and number of the Consultant’s Personnel. Without limiting the generality of the foregoing, Metrolinx may from time to time, on twenty (20) Business Days’ prior written notice to the Consultant, unilaterally extend or reduce the required duration with respect to the availability of any of the Consultant’s Personnel or direct the Consultant to increase the number of Consultant’s Personnel available. Metrolinx and the Consultant shall meet on a quarterly basis to discuss the progress of the Services and the anticipated scheduling needs with respect to the Consultant’s Personnel.
- (c) The Consultant shall not, for the duration of the Term, require or request any Key Personnel to be involved in any other project on behalf of the Consultant or any Subconsultant if, in the opinion of Metrolinx acting reasonably, such involvement would have a material adverse effect on the Services. The Consultant will not remove any Key Personnel from the provision of the Services,

or materially reduce the responsibilities of any Key Personnel in relation to the provision of the Services except with the prior written consent of Metrolinx.

- (d) Notwithstanding Section 2.7(a) but subject to Section 2.7(d), if at any time the Consultant, for reasons beyond its reasonable control, is unable to provide the services of any Key Personnel, the Consultant shall provide a replacement person who possesses similar qualifications, experience and ability and possesses the requisite Domain Expertise; provided, however, that the Consultant shall first provide written notice to Metrolinx of the requirement to replace or substitute that person. For the purposes of this clause, only the following reasons will be considered beyond the reasonable control of the Consultant; death; sickness; maternity and parental leave; compassionate care leave; retirement; resignation; dismissal for cause; or termination of an agreement for default. The notice shall identify: the person being replaced; their role and responsibility in the performance of the Services; the reason why it is necessary to replace that person; and the replacement person's name, *curriculum vitae* in the form set out in Schedule B - Consultant Personnel; and the replacement person's available start date. Metrolinx in its sole and absolute discretion may choose to interview the proposed replacement person in Toronto. The nominated replacement person must be acceptable to Metrolinx. If the replacement person is acceptable to Metrolinx, Metrolinx shall give the Consultant written permission to make the replacement or substitution. In the event the nominated person is not acceptable to Metrolinx, acting reasonably, Metrolinx shall inform the Consultant in writing why that person is not acceptable and the Consultant shall nominate an alternate person pursuant to the process identified in this Section 2.7(c).
- (e) If Metrolinx determines in its sole discretion that it is in the best interests of Metrolinx that any Key Personnel be replaced, either permanently or temporarily, Metrolinx shall notify the Consultant, and, within thirty (30) days of receipt by the Consultant of such notice, the Consultant shall provide Metrolinx with relevant information on the proposed replacement, including the replacement person's name, rates, and *curriculum vitae* in the form set out in Schedule B – Consultant Personnel and the replacement person's available start date. Metrolinx in its sole and absolute discretion may choose to interview the proposed replacement person in Toronto. If the replacement person is acceptable to Metrolinx, Metrolinx shall give the Consultant written permission to make the replacement or substitution. In the event the nominated person is not acceptable to Metrolinx, acting reasonably, Metrolinx shall inform the Consultant in writing why that person is not acceptable and the Consultant shall nominate an alternate person pursuant to the process identified in Section 2.7(d). The Rates for the proposed replacement shall not exceed the approved Rate of the person being replaced.

2.8 **Consultant's Representative**

The Consultant shall assign a Consultant's Representative who will direct the provision of the Services. During the Term, the Consultant's Representative will maintain ongoing contact with Metrolinx to ensure that issues are dealt with in an efficient, effective and timely manner. The Consultant's Representative shall be the primary point of contact for Metrolinx for significant issues including commercial issues and Disputes and shall have overall responsibility for coordinating the performance of the Consultant's obligations under this Contract.

2.9 Metrolinx Responsibilities

- (a) Metrolinx shall:
 - (i) designate an individual to act as its representative (the “**Metrolinx Representative**”) who will transmit instructions to, and receive information from the Consultant;
 - (ii) provide access to and where necessary, make available copies of existing plans, reports, studies, information and correspondence relevant to the Services;
 - (iii) use commercially reasonable efforts to ensure that all agreements between Metrolinx and external agencies relevant to the Consultant’s provision of the Services are executed in a timely manner;
 - (iv) provide the Consultant with contact names of the individual(s) who will be representing the railways, regions, municipalities, government agencies or other jurisdictional bodies; and
 - (v) arrange for necessary services from the applicable railways such as design approvals, inspection and flagging.

2.10 French Language Services

- (a) Insofar as this Contract relates to the provision of services directly to the public on behalf of Metrolinx, the French Language Services Act shall be applicable to the performance of the Services. A service for the purposes of the French Language Services Act refers to any service or procedure provided to the public. Services being provided in French must be equivalent to those offered in English, and must be available within the same timeframe and of the same quality.
- (b) The Consultant shall provide and perform the Services in a manner so as to comply with the requirements set out in the French Language Services Act.
- (c) Without limitation, services and communications which must be provided in French in French Designated Areas may include:
 - (i) Consultations/Public Meetings: Presentation materials, displays, comments cards/feedback mechanism or other materials. Consultant must have at least one bilingual staff or interpreter on hand able to answer questions and discuss technical drawings/documents in French. As applicable, the Consultant shall compile and analyze the views of Francophones separately, as they may have different concerns.
 - (ii) Signage: Construction contracts may from time to time involve erecting temporary signage to redirect or warn the public of hazards. Such signage shall be bilingual.
 - (iii) Communications: Communication plans, customer impact documents, information bulletins, notices of service disruption and public relations information.

2.11 Task Release Process for Services

- (a) Upon request of the Metrolinx Representative, the Consultant shall prepare a work plan (the "**Task Plan**"), clearly defining the work required by a specified Service (the "**Task**"), and setting out the following:
 - (i) description of the work required by the Task, and Task deliverables;
 - (ii) projected milestones and schedule for completion of the Task;
 - (iii) resources required for the completion of the Task;
 - (iv) calculation of fees;
 - (v) proposed list of staff for the Task; and
 - (vi) any other information or documents as required by the Metrolinx Representative.
- (b) The Consultant shall not proceed with the Task unless approved pursuant to Section 2.11(a) in the form of a "**Task Release**" and only to the upset limit or fixed price as indicated therein and the total upset limit price established by the Contract, whichever is less.
- (c) The Consultant shall proceed with the Task and the fee will be established for each Task as agreed upon by the Parties using the rates identified in the Articles of Agreement.
- (d) The Cash Allowance shall be in Canadian funds, not subject to adjustment unless agreed otherwise in writing, and shall be inclusive of all applicable costs.
- (e) Prior to finalizing each Task Plan, Metrolinx and the Consultant will establish either an upset limit on the fee if the Task is to be completed on a Time and Expense basis or a Fixed Fee basis:
 - (i) Time and Expense: The fee shall be calculated on the basis of the work actually performed for a Task based on the rates provided by the Consultant for Consultant Personnel.
 - (ii) Fixed Price: The fee shall be calculated for the completion of a Task based on the rates provided by the Consultant for Consultant Personnel. The Consultant shall submit an itemized cost breakdown of the various parts of the Task with its work plan, which together shall aggregate the total price for that Task.
- (f) Metrolinx reserves the right to withhold payment for any Services performed by the Consultant or its Subconsultants prior to the issuance of an authorized Task Release or outside the scope of a Task Plan approved by a Task Release.

2.12 Consultant Work Performance Rating

- (a) Metrolinx shall during the term of a Contract, maintain a record of the Consultant's performance pursuant to this Contract. This information shall be used to complete a "**Contract Performance Appraisal**" report, a copy of

which will be forwarded to the Consultant upon the termination of this Contract. Interim Contract Performance Appraisal reports may be issued, as deemed appropriate by the Metrolinx Representative, at any time during the term of the Contract.

- (b) The overall history of the Consultant in performing work for Metrolinx, including the Consultant's performance pursuant to this Contract, will be considered in the evaluation of future bids from the Consultant.
- (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 the Consultant.
- (e) The information contained in the Contract Performance Appraisal 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.

3. HEALTH AND SAFETY

3.1 Occupational Health & Safety Act ("OHSA")

- (a) The Consultant shall comply with OHSA, and any obligations of the Consultant as an "employer" thereunder, and with all regulations made under the OHSA.
- (b) The Consultant shall report to Metrolinx any non-compliance by a Subconsultant in the performance of the Services with the regulations under the OHSA if and when brought to the attention of the Consultant.
- (c) The Consultant acknowledges that lack of compliance with applicable provincial or municipal health and safety requirements will be and are intended to be documented and kept on file, and that such lack of compliance may cause:
 - (i) the Consultant's performance of the Services to be suspended; or
 - (ii) this Contract to be cancelled by Metrolinx.
- (d) The Consultant will be under an obligation to cease the Services, or any part thereof, if an authorized representative of Metrolinx so requires orally or in writing on the grounds that there has been any violation of the OHSA or any of the regulations under it, and thereafter the Services or affected part thereof shall not resume until any such violation has been rectified.
- (e) The Consultant shall be responsible for any delay caused by the Consultant in the progress of the Services as a result of any violation of provincial or municipal health and safety requirements by the Consultant, it being understood that such delay shall be not be a Force Majeure for the purposes of extending the time for performance of the Services or entitling the Consultant to additional compensation, and the Consultant shall take all necessary steps to avoid delay in the final completion of the Services without additional cost to Metrolinx, which shall not be responsible for any additional expense or liability resulting from any such delay.

- (f) Nothing in this Section 3.1 shall be taken as making Metrolinx the "employer" (as described in Section 3.1(a)) of any workers employed or engaged by the Consultant for the Services, either instead of or jointly with the Consultant.

3.2 **Safety Requirements**

- (a) Safety of Persons at or near the Place of Work and the public is of paramount concern to Metrolinx. In the performance of the Services, the Consultant shall not in any manner endanger the safety of, or unlawfully interfere with, Persons on or off the Place of Work, including the public.
- (b) The Consultant specifically covenants and agrees that:
 - (i) it shall comply with best industry practice respecting health and safety in a manner that recognizes and minimizes the risk to workers, other individuals, property and the operations of Metrolinx and any railways, to the extent that such practices are not inconsistent with an express instruction set out in this Contract or provided by Metrolinx;
 - (ii) it shall comply, and shall ensure that all Consultant Personnel comply, in all regards with the requirements of OHSa and/or the *Canadian Labour Code*, Part II, as applicable;
 - (iii) it shall comply, and shall ensure that all Consultant Personnel comply, in all regards with the safety requirements set out in the Contract Documents;
 - (iv) it shall maintain, strictly enforce and comply, and ensure that all Consultant Personnel comply, in all regards with the Consultant's own health and safety program, to the extent not inconsistent with this Contract and Metrolinx' health and safety program;
 - (v) it shall comply, and shall ensure that all Consultant Personnel comply, with any and all safety-related directives or instructions issued by Metrolinx;
 - (vi) it shall take all steps reasonable in the circumstances to ensure the health and safety of all workers for which it has responsibility under OHSa; and
 - (vii) it shall make available, at Metrolinx' request, such policies and procedures relating to its occupational health and safety matters as Metrolinx may from time to time request, and hereby covenants that all Consultant Personnel have been properly trained and are knowledgeable with respect to these policies and procedures.

3.3 **Railway Safety**

Intentionally omitted.

3.4 **Workers' Rights**

The Consultant shall at all times pay or cause to be paid any assessments or compensation required to be paid by the Consultant or its Subconsultants pursuant to

any applicable workers' compensation legislation, and upon failure to do so, Metrolinx may pay such assessments or compensation to the Workplace Safety and Insurance Board and may deduct such assessments or compensation from monies due to the Consultant. The Consultant shall comply with all regulations and laws relating to workers' compensation.

4. FINANCIAL TERMS

4.1 Financial Terms

All financial and payment terms applicable to this Contract and the Services are set out in Schedule C – Financial Terms.

5. CONSTRUCTION LIEN ACT

Intentionally omitted.

6. RIGHT OF OWNERSHIP AND USE

6.1 Ownership of Metrolinx IP

- (a) Unless otherwise expressly agreed, Metrolinx is and will be the exclusive owner of, and shall retain all right, title and interest (including Intellectual Property Rights) in and to all of the following Intellectual Property (collectively, the "**Metrolinx IP**"):
 - (i) all Metrolinx Materials;
 - (ii) all Deliverables where an opinion is not provided as part of such Deliverable;
 - (iii) all reports and other information created, generated, output or displayed by the Deliverables described in Section 6.1(a)(ii) above; and
 - (iv) intentionally deleted; and
 - (v) all modifications or enhancements made to the items listed in Sections 6.1(a)(i) to (iii) hereof.
- (b) All right, title and interest, including all Intellectual Property Rights, in Metrolinx IP will vest in Metrolinx, following creation.
- (c) The Consultant will acquire no rights to any Metrolinx IP other than the licence rights expressly granted in Section 6.3.
- (d) The Consultant:
 - (i) hereby assigns and transfers to Metrolinx; and
 - (ii) agrees (to the extent required in the future) to assign and transfer to Metrolinx, as and when created, all right, title and interest, including Intellectual Property Rights, throughout the world in and to all Metrolinx IP (to the extent any right, title, interest or Intellectual Property Right in Metrolinx IP does not automatically and immediately vest in Metrolinx).

- (e) The Consultant shall cause all Consultant Personnel to waive for the benefit of Metrolinx and its respective successors, assigns, licensees and contractors, their respective moral rights (and any similar rights to the extent that such rights exist and may be waived in each and any jurisdiction throughout the world) in and to the Metrolinx IP.

6.2 **Ownership of Consultant Background IP and Deliverables**

- (a) The Consultant is and will be the exclusive owner of, and shall retain all right, title and interest (including Intellectual Property Rights) in and to all Consultant Background IP and Deliverables where an opinion is provided.
- (b) Metrolinx will acquire no rights to the Consultant Background IP and the Deliverables where an opinion is provided other than the licence rights expressly granted in Section 6.4, or otherwise under or in respect of this Contract.

6.3 **Grant of Licences by Metrolinx to Consultant**

- (a) Metrolinx grants to the Consultant, during the Term, a non-exclusive, non-transferable, royalty-free right and licence to:
 - (i) access, use, copy, support, maintain and, to the extent reasonably necessary to provide the Services, modify, the Metrolinx IP solely for the purposes of fulfilling the Consultant's obligations under this Contract;
 - (ii) sublicense the Metrolinx IP to Subconsultants solely to the extent necessary to enable such Subconsultants to fulfill the Consultant's obligations under this Contract.
- (b) Any exercise by the Consultant of the rights granted pursuant to Section 6.3(a) shall be subject to the terms and conditions of this Contract, including always the Consultant's obligations with respect to Confidential Information set out in Article 10.
- (c) If the Consultant desires to use the Metrolinx IP other than as permitted under clause (a) hereof, such use must be set out in a separate license agreement (such licence to require the approval of Metrolinx, which may be withheld at Metrolinx' discretion).

6.4 **Grant of Licences by the Consultant to Metrolinx**

- (a) The Consultant grants to Metrolinx a perpetual, irrevocable, fully paid-up, royalty-free, worldwide, non-exclusive right and licence to access, use, copy, support, maintain, modify, sublicense, assign, distribute or otherwise exploit any Consultant Background IP that is integrated with, embedded in, forms part of or is otherwise required to access, use, copy, support, maintain, modify, sublicense, assign, distribute or otherwise exploit any Metrolinx IP; provided, however, that the foregoing licence does not permit Metrolinx to use the Consultant Background IP in its standalone form or for any purpose other than as part of or in conjunction with the Metrolinx IP it is associated with.
- (b) If the Consultant integrates with or embeds in any Deliverables any Intellectual Property provided by a third party vendor, subcontractor, independent contractor, Subconsultant or other person, the Consultant shall obtain for

Metrolinx the same license rights for Metrolinx in respect of such Third Party IP as set forth in Section 6.4(a) hereof.

- (c) The Consultant grants to Metrolinx a perpetual, irrevocable, fully paid-up, royalty-free, worldwide, non-exclusive right and licence to access, use, copy, or distribute the Deliverables for the purposes intended under the Contract. Access, use, copy or distribution for any other purpose shall only be with the written consent of the Consultant.

7. INSURANCE

7.1 Insurance Requirements

- (a) The Consultant agrees to purchase and maintain in force, at its own expense and for the duration of this Contract, the policies of insurance set forth in Schedule D – Insurance, which policies will be in a form and with an insurer or insurers acceptable to Metrolinx. A certificate of these policies originally signed by the insurer or an authorized agent of the insurer and copies of the policies must be delivered to Metrolinx prior to the commencement of the Services.

8. CHANGES AND CASH ALLOWANCES

8.1 Changes Requested by Metrolinx

Metrolinx may, in writing, request changes or alterations to the Services, or request additional services from the Consultant (any of the foregoing, “Changes”). Subject to this Article 8, the Consultant shall comply with and implement all reasonable Metrolinx Change requests, and the performance of such requests shall be in accordance with this Contract.

8.2 Changes Recommended by the Consultant

The Consultant shall promptly notify Metrolinx in writing if the Consultant considers that any notice, direction, requirement, request, correspondence, or other fact, event, or circumstance comprises, requires, or results in a Change, and seek instructions as to whether or not to proceed to implement such Change.

8.3 Change Management Process

- (a) Where a Change request is initiated by Metrolinx pursuant to Section 8.1, Metrolinx shall set out, in the Change request:
 - (i) the proposed prices for the contemplated changes;
 - (ii) the timing requirements for the implementation of the Change; and
 - (iii) any other information which may reasonably be required.
- (b) The Consultant shall respond to Metrolinx’ Change request in writing within ten (10) Business Days.
- (c) Where a Change is initiated by the Consultant pursuant to Section 8.2, the Consultant shall set out in the Change request, conforming to Section 8.3(a):

- (i) a description of the proposed Change;
 - (ii) the estimated cost of the proposed Change;
 - (iii) any proposals, designs or other details or information which may be reasonably required; and
 - (iv) the reasons for the proposed Change, including the benefits of the proposed Change and any consequences of not proceeding with the Change.
- (d) No Changes shall be implemented and no Change request shall become effective until an amendment or change order documenting the Change has been executed by both Parties, and such executed instrument shall be the final determination of any adjustments to the Contract price, the Project Schedule, or the terms and conditions of the Contract, as applicable, with respect to the Change set out therein.
- (e) Where Metrolinx and the Consultant cannot agree as to whether or not a particular notice, direction, requirement, request, correspondence, or other fact, event, or circumstance comprises, requires, or results in a change to the scope of the Services, then either Party may refer the issue to dispute resolution in accordance with Article 16.

8.4 **Cash Allowance Items and Task Assignment Process**

- (a) The Consultant shall include all Cash Allowance Items in the Project Schedule and perform all Services related thereto within the Project Schedule. Where applicable, the Project Schedule shall take into account the time required to facilitate the Task Assignment Process described in this Section, including the time required to obtain Quotations pursuant to Section 14 of Schedule C – Financial Terms.
- (b) Cash Allowance Items shall be administered and authorized as follows (the "Task Assignment Process"):
- (i) The Metrolinx Representative shall submit to the Consultant a request to proceed with a Cash Allowance Item.
 - (ii) Upon receipt of such request from Metrolinx, the Consultant shall, in respect of the identified Cash Allowance Item, provide to Metrolinx a response setting out:
 - (A) the estimated hours of Services and expected completion date;
 - (B) subject to Section 8.5, the Consultant Personnel, suppliers, Subconsultants or specialized services providers which the Consultant proposes to perform the Services; and
 - (C) any requirements for testing and reporting.
 - (iii) As and if required, the Parties shall meet to review the requirements for the Cash Allowance Item.

- (iv) Subsequent to the review meeting, and based on the results of the review meeting, the Consultant shall make its own determination of the Consultant's work effort and fee cost to provide the Consultant's scope of services for the task.
- (c) No amounts shall be payable in respect of any Cash Allowance Items unless and until Metrolinx has approved such expenditure in writing, and shall be subject to Schedule C – Financial Terms.
- (d) Upon the approval by Metrolinx of any Cash Allowance Item, the Consultant shall be responsible for the completion thereof in accordance with the terms and conditions set out in this Contract. For greater certainty, the Consultant's responsibility for Cash Allowance Items approved by Metrolinx pursuant to this Section are the same as for all other Services.

8.5 **Performance of Changes and Cash Allowance Items**

- (a) Metrolinx shall determine by whom and for what amounts the items included in each Change or Cash Allowance Item will be performed.
- (b) Metrolinx shall have the right, exercisable at its sole discretion, to require the Consultant to use a third party to perform or provide any Cash Allowance Items or any Services related to a Change. Metrolinx may exercise this right generally, by requiring the Consultant to provide the Services through a third party selected by the Consultant, or by requiring the Consultant to utilize a third party identified by Metrolinx.
- (c) The Consultant shall obtain prior approval of Metrolinx before entering into a subcontract, amending an existing subcontract or performing own forces work included in a Change or Cash Allowance.

9. ADDITIONAL RESOURCES

9.1 **Additional Resources**

- (a) In addition to, or in connection with, a request for additional or altered services pursuant to Article 8, at any time during the Term, Metrolinx shall have the right in its discretion to require the Consultant to increase the number of Consultant Personnel upon twenty (20) days' notice.
- (b) Unless otherwise agreed to in writing by Metrolinx, such additional Consultant Personnel shall be available to report for work any Place of Work designated by Metrolinx within twenty (20) days of receipt of a written request from Metrolinx pursuant to Section 9.1(a).
- (c) The hourly rate payable in respect of additional Consultant Personnel shall be as set out in the Articles of Agreement.

10. CONFIDENTIAL INFORMATION AND FIPPA

10.1 **Restrictions on Use of Confidential Information**

The Consultant shall keep all Metrolinx Confidential Information confidential. Without limiting the generality of the foregoing, the Consultant shall:

- (a) not disclose, reveal, publish, or disseminate any Metrolinx Confidential Information to anyone, except as permitted pursuant to this Contract;
- (b) shall use Metrolinx Confidential Information only in connection with this Contract and the performance of the Services;
- (c) shall take all reasonable steps required to prevent any unauthorized reproduction, use, disclosure, publication, or dissemination of the Metrolinx Confidential Information;
- (d) shall not copy, reproduce in any form or store the Metrolinx Confidential Information in a retrieval system or database, without the prior written consent of Metrolinx; and
- (e) shall immediately notify Metrolinx in the event that it becomes aware of any unauthorized disclosure of Metrolinx Confidential Information.

10.2 Permitted Disclosure

Notwithstanding the obligations set out in Section 10.1, the Consultant may disclose Metrolinx' Confidential Information to those of its Subconsultants and Consultant's Personnel who need to know such Confidential Information in connection with this Contract, provided that such Subconsultant or Consultant's Personnel, as applicable, is subject to obligations of confidentiality substantially similar to those contained in this Article 10.

10.3 Exceptions

- (a) The obligations of confidentiality set out in Section 10.1 shall not apply to Metrolinx Confidential Information which:
 - (i) becomes generally available to the public through no fault of the Consultant;
 - (ii) prior to receipt from Metrolinx, was known to the Consultant on a non-confidential basis and is not subject to another obligation of secrecy and non-use, as documented by written records possessed by the Consultant;
 - (iii) was independently developed by the Consultant prior to receipt from Metrolinx, as documented by written records possessed by the Consultant; or
 - (iv) becomes available to the Consultant on a non-confidential basis from a source other than Metrolinx that is not under other obligations of confidence.
- (b) If the Consultant becomes compelled to disclose any Metrolinx Confidential Information pursuant to Applicable Law, the Consultant 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, the Consultant 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 10.

- (c) Without limiting the generality of Section 10.3(a) and notwithstanding Section 10.3(b), the Parties acknowledge and agree that the treatment and disclosure of Confidential Information shall in all cases be subject to the requirements of FIPPA.

10.4 **Damages**

The Consultant acknowledges and agrees that any breach or threatened breach of this Article 10 or the obligations set out herein shall cause immediate and irreparable harm to Metrolinx for which damages alone are not an adequate remedy. The Consultant 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.

10.5 **Return or Destruction of Confidential Information**

- (a) At the request of Metrolinx and subject to Section 10.5(b) and Section 10.6, the Consultant agrees to:
 - (i) promptly return all Metrolinx Confidential Information to Metrolinx; or
 - (ii) promptly destroy the Metrolinx Confidential Information 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 the Consultant certifying such destruction.
- (b) Notwithstanding the foregoing, the Consultant shall have no obligation to return or destroy:
 - (i) Metrolinx Confidential Information that is captured and retained within the Consultant's routine computer systems backup processes, provided that (a) no specific effort is made to retrieve such archived 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
 - (ii) working papers or other documentation which it is required to retain pursuant to Applicable Law or any rules of professional conduct applicable to the Consultant or the Consultant Personnel.

10.6 **FIPPA and Personal Information.**

- (a) Metrolinx and the Consultant acknowledge and agree the collection, use, retention and disclosure of Personal Information is governed by FIPPA. Metrolinx acknowledges that the Consultant 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) The Consultant 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, 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 Services.
- (c) The Consultant shall ensure the security and integrity of any Personal Information collected by the Consultant and shall protect it against loss, unauthorized access, destruction, or alteration, in accordance with the following:
 - (i) The Consultant 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) The Consultant shall ensure that access to Personal Information is restricted to those Consultant Personnel who have a need to know or use such information in the performance of the Services and who have been specifically authorized to have such access for the purposes of performing the Services. Access shall be limited to only that Personal Information which is required for the performance of the Services.
 - (iii) All Personal Information shall be kept in a physically secure location and separate from all other records and databases. The Consultant 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.
- (d) For greater certainty, Metrolinx reserves the right to prescribe the specific manner in which the Consultant shall perform its obligations relating to this Section 10.6.

10.7 **FIPPA and Freedom of Information**

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

- (a) All FIPPA Records (as defined below) are subject to, and the collection, use, storage and treatment thereof is governed by FIPPA. The Consultant agrees to keep all FIPPA Records secure and available, in accordance with the requirements of FIPPA.
- (b) Section 10.5 shall apply to all FIPPA 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) In the event that a request is made under FIPPA for the disclosure of any FIPPA Records, Metrolinx shall provide prompt written notice thereof to the Consultant and the Consultant shall provide any and all relevant FIPPA Records to Metrolinx

on demand for the purposes of responding to an access request under FIPPA. In these circumstances, the Consultant 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 the Consultant'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) For the purposes of this section, "FIPPA Records" means all information, data, records and materials, however recorded, in the custody or control of Metrolinx, including Confidential Information and Personal Information (as defined in FIPPA). For the purposes of this definition, documents held by the Consultant in connection with this Contract are considered to be in the control of Metrolinx.

10.8 **Consultant Compliance**

- (a) The Consultant shall advise its representatives and all Subconsultants of the requirements of this Article 10, and associated requirements set out elsewhere in this Contract, and take appropriate action to ensure compliance by such representatives with the terms of this Article 10. In addition to any other liabilities of the Consultant pursuant to this Contract or otherwise at law or in equity, the Consultant shall be liable for all claims arising from any non-compliance with this Article 10 by the Consultant, Consultant Personnel, Subconsultant and their respective personnel.
- (b) The Consultant warrants that each representative or Subconsultant provided or engaged by the Consultant 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 10.

10.9 **Publicity**

Neither Party may make any disclosure to any other person or any public announcement or press release regarding this Contract or any relationship between the Consultant and Metrolinx, without the other Party's prior written consent.

11. **REPRESENTATIONS, WARRANTIES AND COVENANTS**

11.1 **Representations, Warranties and Covenants of the Consultant**

The Consultant covenants and agrees with and represents and warrants to Metrolinx, and acknowledges and confirms that Metrolinx is relying on such covenants, agreements, representations and warranties, as follows:

- (a) the Consultant is validly existing under the laws of the location of its head office and the Consultant has all necessary power, authority and capacity to enter into this Contract and to perform its obligations hereunder;
- (b) the entering into of this Contract by the Consultant and the performance of its obligations hereunder has been authorized by all necessary corporate action;

- (c) the execution and delivery of this Contract, the consummation of the transactions contemplated herein and compliance with and performance of the provisions of this Contract does not and shall not:
 - (i) result in a breach of or constitute a default under, or create a state of fact, which after notice or lapse of time or both, or otherwise, would constitute a default under any term or provision of the constating documents of the Consultant, the by-laws or resolutions of the Consultant or any agreement or instrument to which the Consultant is a party or by which it is bound, or
 - (ii) require the Consultant to obtain any Approval or action of any other Persons and, if required, any such Approvals have already been obtained as of the date of this Contract;
- (d) this Contract constitutes a legally valid and binding obligation of the Consultant enforceable against it in accordance with its terms, subject only to applicable bankruptcy, insolvency and other similar laws affecting the enforceability of the rights of creditors generally, the principles of equity and that equitable remedies such as specific performance and injunction are available only in the discretion of a court of competent jurisdiction;
- (e) the Consultant has carefully reviewed the whole of this Contract, including all of the Contract Documents, and all other documents made available to the Consultant by Metrolinx, and, to the Consultant's knowledge, nothing contained herein or therein inhibits or prevents the Consultant from performing the Services in accordance with the Required Standard of Care so as to achieve and satisfy the requirements of this Contract;
- (f) the Consultant has engaged and shall engage only Subconsultants and Consultant Personnel that are qualified and competent to perform the portions of the Services they are responsible for and possess the requisite Domain Expertise;
- (g) the Consultant has available the resources and personnel to complete all of its obligations under this Contract in a timely, efficient and professional manner in accordance with the Required Standard of Care;
- (h) the Consultant is not aware of any legal action instituted, threatened or pending against the Consultant that could have a material adverse effect on its ability to perform its obligations under this Contract;
- (i) Except as disclosed in the Submission, the Consultant is free of any actual or potential Conflict of Interest;
- (j) the Consultant 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;
- (k) the Consultant is familiar with the obligations imposed on an "employer" as defined in 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 that *Act*; and
- (l) the Consultant represents, warrants and covenants to Metrolinx that the Consultant is and shall remain duly registered for the purposes of Part IX of the

Excise Tax Act and that the Consultant's registration number is:
_____.

11.2 Continuing Effect of Representations, Warranties and Covenants

The Consultant hereto agrees that its covenants, representations and warranties contained in this Article 11 are continuing covenants, representations and warranties and shall apply and be true and correct at all times during the Term.

12. INDEMNITY

12.1 Indemnification

- (a) The Consultant shall at all times indemnify and save harmless Metrolinx, its officers, directors, employees, members, agents, representatives, successors and assigns (hereinafter the "**Indemnified Parties**"), from and against any and all Losses resulting from:
- (i) any breach, violation or non-performance by or on behalf of the Consultant of any covenant, obligation or agreement of the Consultant contained in this Contract, including any warranty (express or implied);
 - (ii) any negligent acts, errors or omissions or wilful misconduct by or on behalf of the Consultant relating to the Services to be provided under this Contract;
 - (iii) any acts performed or omitted to be performed by or on behalf of the Consultant beyond the authority of the Consultant hereby conferred;
 - (iv) any inaccuracy in or breach of any of the representations or warranties of the Consultant contained in this Contract;
 - (v) any breach of the terms and conditions set out in Article 3 or arising as a result of any illness, injury or death of any employee of the Consultant or any Subconsultant, including:
 - (A) any resulting expenses incurred by Metrolinx as a result of stoppage of the Services on account of failure by the Consultant to meet its obligations under and/or with respect to the OHSA; and
 - (B) any resulting fine(s) levied against Metrolinx as a result of any breach of the responsibilities of the employer for the work, to the extent attributable to the Consultant's failure to fulfil its obligations as described in Section 3.1; and/or
 - (vi) any infringement or alleged infringement of any patent, trade secret, service mark, trade name, copyright, official mark, moral right, trademark, industrial design or other proprietary rights conferred by contract, common law, statute or otherwise in respect to the Services or any matter provided to Metrolinx or performed by the Consultant, or anyone else for whom at law it is responsible.

- (b) The Consultant shall pay all reasonable costs, expenses and legal fees that may be incurred or paid by the Indemnified Parties in connection with any demand, claim, execution, action, suit or proceeding with respect to a matter for which the Consultant is obligated to indemnify the Indemnified Parties pursuant to this Article 12, provided that the indemnity obligations of the Consultant under this Article 12 shall not extend to Loss attributable to the negligence or willful misconduct of any Indemnified Parties to the extent that such Indemnified Parties' negligence or willful misconduct caused the Loss.
- (c) In the event any Loss is asserted in respect to which an Indemnified Party is entitled to indemnification under this Article 12, and without prejudice to any other right or remedy Metrolinx may have, Metrolinx shall be entitled to deduct or withhold a reasonable sum on account of such claim, action, suit, execution or demand, including legal costs, from monies owed or payable by Metrolinx to the Consultant under this Contract pending the final determination or settlement of such claim, action, suit, execution or demand. In the event,
 - (i) the Consultant is, becomes, or is deemed to be bankrupt or an insolvent person pursuant to the *Bankruptcy and Insolvency Act* (Canada);
 - (ii) the Consultant makes a general assignment for the benefit of creditors; or
 - (iii) a receiver or interim-receiver is appointed with respect to some or all of the Consultant's business, assets, or property,

then Metrolinx shall be entitled, without prejudice to any other right or remedy Metrolinx may have, to further deduct or withhold a reasonable sum on account of such Loss, from any monies owed or payable by Metrolinx to the Consultant under any other agreement or account. The provisions of this Section 12.1(c) shall not apply in the event that such Loss is otherwise provided for under any insurance provided by the Consultant to or for the benefit of Metrolinx.

13. LIMITATION OF LIABILITY

13.1 General Intent

It is the intent of the Parties that each Party shall be liable to the other Party for any actual damages incurred by the non-breaching Party as a result of the breaching Party's failure to perform its obligations in the manner required by the Contract.

13.2 Limitations on Liability

- (a) Subject to Section 12.1(c), in no event shall either Party be liable for indirect, consequential, exemplary, punitive or special damages relating to the Contract even if such Party has been advised in advance of the possibility of such damages.
- (b) Subject to Section 12.1(c), each Party's aggregate liability to the other under the Contract for direct damages for all events giving rise to liability hereunder shall be limited to an amount equal to two times the Total Contract Price.
- (c) The limitations of liability set forth in Sections 13.2(a) and 13.2(b) shall not apply with respect to Losses:

- (i) that are the subject of indemnification pursuant to Articles 12.1(a)(ii), (iii), (v) or (vi); or
- (ii) occasioned by a breach of Article 10.
- (d) Metrolinx shall have a duty to mitigate damages for which the Consultant is responsible.

14. TERMINATION

14.1 Termination for Cause by Metrolinx

Metrolinx may, by ten (10) days' written notice to the Consultant, suspend or terminate the whole or any part of the provision of the Services or this Contract for cause in the event that the Consultant is in breach of any of its obligations under this Contract, and thereupon:

- (a) Metrolinx may appoint officials of Metrolinx or any other person or persons in the place and stead of the Consultant to perform the Services or any portion thereof;
- (b) the Consultant shall immediately discontinue the Services on the date and to the extent specified in the notice and place no further orders for materials or services for the terminated portion of the Services;
- (c) nothing contained herein shall limit the rights of Metrolinx to recover damages from the Consultant arising from the failure of the Consultant to perform the Services satisfactorily in accordance with the terms of this Contract.

14.2 Termination for Convenience by Metrolinx

Metrolinx may, by thirty (30) days' written notice to the Consultant, terminate this Contract for convenience, and thereupon Metrolinx shall be liable for payment to the Consultant for those monies attributable to the part of the Services performed to the satisfaction of Metrolinx to the date of termination stipulated in such notice. Metrolinx shall also be liable for any reasonable demobilization costs and the reasonable cost of cancellation of any contracts, but in no event will Metrolinx be liable for any loss of profits, loss of revenue or other consequential damages.

14.3 Termination for Independence Issues by Vendor

The Consultant may, with no less than one (1) year written notice to Metrolinx, terminate this Contract for cause where Metrolinx imposes restrictions on the performance of Services by the Consultant beyond the requirements of the professional standards applicable to the Consultant.

15. FORCE MAJEURE

15.1 Force Majeure

- (a) Neither Party shall be liable for Losses caused by a delay or failure to perform 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 15.1(a) are met) but shall in no event include:
 - (i) shortages or delays relating to supplies or services; or
 - (ii) on the part of the Consultant, lack of financing or inability to perform because of the financial condition of the Consultant.
- (c) A failure by Metrolinx to furnish instructions is not a Force Majeure Event until fourteen (14) days after a demand for such instructions has been made in writing by the Consultant and not then unless such claim is reasonable and justified to Metrolinx.

15.2 **Process**

- (a) If a Party seeks to excuse itself from its obligations under this Contract due to a Force Majeure Event:
 - (i) that Party shall immediately notify the other Party of the delay or non-performance, the reason for such delay or non-performance and the anticipated period thereof; and
 - (ii) the Party giving the notice shall thereupon be excused the performance or punctual performance, as the case may be, of such obligation for the period of time directly attributable to such Force Majeure Event.
- (b) This Section shall not apply or be available to a Party in respect of any event, or resulting delay or failure to perform, occurring more than fourteen (14) days before notice is given to Metrolinx pursuant to Section 15.2(a).
- (c) In the case of a continuing Force Majeure Event, only one notice shall be necessary.

15.3 **Metrolinx Rights**

Without limiting any other rights available to Metrolinx under this Contract, Metrolinx reserves the right to contract any Services from a third party during any period of Force Majeure claimed by the Consultant.

16. **DISPUTE RESOLUTION**

All Disputes shall be resolved in accordance with, and the Parties shall comply with, Schedule E – Dispute Resolution.

17. SET OFF

Metrolinx shall have the right to satisfy any amount from time to time owing by it to the Consultant under the Contract by way of a set-off against any amount from time to time owing by the Consultant to Metrolinx, including but not limited to any amount owing to Metrolinx pursuant to the Consultant's indemnification of Metrolinx in this Contract.

18. GENERAL

18.1 Entire Agreement

This Contract constitutes the entire agreement between the Parties regarding the Services and supersedes any prior understandings, negotiations, representations or agreements, whether written or verbal.

18.2 Governing Law and Jurisdiction

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. The Parties hereby irrevocably and unconditionally attorn and submit to the non-exclusive jurisdiction of the courts of the Province of Ontario and all courts competent to hear appeals therefrom.

18.3 Survival

The obligations set out in Articles 1, 2, 3, 7, 8, 10, 11 and 12 and this Article 18 of this Contract shall continue to bind the Consultant notwithstanding expiration or termination of this Contract for any reason whatsoever or completion of the Services as contemplated hereunder.

18.4 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.

18.5 Assignment

The Consultant shall not be entitled to assign this Contract in whole or in part without the prior written consent of Metrolinx, which consent shall not be unreasonably withheld or delayed.

18.6 Independent Parties

- (a) This Contract does not create and is not intended to create an agency or employment relationship, partnership, joint venture or other similar association between the Parties. The relationship between the Parties is to be considered at all times as that of a purchaser and an independent contractor. Neither Party shall have the right to bind the other to any agreement with any third party or to incur any obligation or liability on behalf of the other Party. Except as expressly provided for in this Contract, neither Party shall represent, directly or indirectly by conduct, to any third party that it is an agent, employee, partner or joint venturer of the other.

- (b) The Consultant Personnel and all other personnel providing the Services are solely the employees of the Consultant and applicable Subconsultants (and not Metrolinx') for all purposes under this Contract, including for all purposes under any Applicable Laws. Accordingly, none of the foregoing personnel is entitled to any benefits respecting any pension or other benefit plan, program or policy of Metrolinx.

18.7 **Third Party Beneficiaries**

- (a) 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. No terms of this Contract shall be deemed to confer upon any other third parties any claim, remedy, reimbursement or other right.
- (b) The Consultant represents and warrants to Metrolinx that the Consultant is entering into this Contract solely on the Consultant's own behalf and not as an agent for any other Person.

18.8 **Joint and Several Liability**

Where the Consultant comprises two or more Persons, each of them shall be jointly and severally liable for the obligations of the Consultant under this Contract.

18.9 **Notice**

- (a) Unless expressly provided elsewhere in the Contract Documents, every notice required or permitted under this Contract must be in writing and may be delivered in person, by courier or by fax to the applicable party at the address or fax number in the Articles of Agreement or to any other address, fax number or individual that a party subsequently designates by notice.
- (b) Any notice under this Contract, if delivered personally or by courier on a Business Day will be deemed to have been given when actually received, if delivered by fax before 3:00 p.m. on a Business Day will be deemed to have been delivered on that Business Day and if delivered by fax after 3:00 p.m. on a Business Day or on a day that is not a Business Day will be deemed to be delivered on the next Business Day. For greater clarity, notice shall not be given by email.

18.10 **Amendments**

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

18.11 **No Waiver**

No provision of this Contract shall be deemed waived, amended or modified by either Party unless such waiver, amendment or modification is in writing and signed by the Party against whom it is sought to enforce the waiver, amendment or modification. 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.

18.12 Severability

If any term or condition of this Contract, or the application thereof to the Parties or circumstances, is to any extent invalid or unenforceable in whole or in part, the remainder of this Contract shall continue in full force and effect, and the application of such term or condition to the Parties or circumstances other than those to which it is held invalid or unenforceable shall not be affected thereby.

18.13 Further Assurances

Each Party agrees that it shall at any time and from time to time, at its own expense, execute and deliver such further documents and do such further acts and things as the other Party may reasonably request for the purpose of giving effect to this Contract or carrying out the intention or facilitating the performance of the terms of this Contract.

18.14 Conflict of Interest Acknowledgement and Agreement

- (a) For the purposes of this Contract, a "**Conflict of Interest**" includes any situation or circumstances where, in relation to the performance of its contractual obligations in this Contract, the Consultant'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 judgment; or
 - (ii) could or could be seen to compromise, impair or be incompatible with the effective performance of its contractual obligations.
- (b) The Consultant acknowledges that participation (directly or indirectly) in any procurement process arising from or related to this Contract (the "Prohibited Procurements") would constitute a Conflict of Interest with this Contract, and the Consultant agrees that it shall not, and shall take reasonable steps (including obtaining covenants substantially similar to those set out in this section) to ensure that its Subconsultants do not participate in or be involved with such Prohibited Procurements either directly or indirectly, including as a bidder or as a subcontractor or advisor to any bidder.
- (c) The Consultant shall:
- (i) avoid all Conflict of Interest in the performance of 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.
- (d) In addition to all other contractual rights or rights available at law or in equity, Metrolinx shall have the right to immediately terminate this Contract, by giving notice in writing to the Consultant, where:

- (i) the Consultant fails to disclose an actual or potential Conflict of Interest;
 - (ii) the Consultant fails to comply with any requirements prescribed by Metrolinx to resolve a Conflict of Interest; or
 - (iii) the Consultant's Conflict of Interest cannot be resolved.
- (e) This section shall survive any termination or expiry of this Contract.

18.15 **Counterparts**

This Contract may be executed in one or more counterparts. Any single counterpart or a set of counterparts executed, in either case, by all Parties shall constitute a full, original and binding agreement for all purposes. Counterparts may be executed either in original or electronic form, provided that the Party providing its signature in electronic form shall promptly forward to the other Party an original signed copy of this Contract which was so sent electronically.

[End of General Conditions]

Schedule A – Definitions

- a)** “Acceptance” or “Acceptable” or “Accepted” means the act of formal notification by Metrolinx of no further objections regarding content, construction or compliance.
- b)** “Applicable Laws” means all applicable laws, statutes, regulations, orders, by-laws, treaties, judgements, decrees and ordinances applicable from time to time and, whether or not having the force of law, all applicable Approvals, Standards, codes, requirements, requests, directives, rules, guidelines, instructions, circulars, manuals, and policies of any Governmental Authority having or purporting to have jurisdiction or authority over a Party, property, transaction or event, including laws relating to workplace safety and insurance, occupational health and safety and employment standards.
- c)** “Approvals” means any permits, licences, consents, approvals, clearances, orders, ordinances, registrations, filings or other authorizations respecting the work undertaken as part of the Services as may be required from any applicable Governmental Authority or otherwise by the Consultant’s contract documents.
- d)** “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. Each Business Day will end at 4:00 p.m. on that day.
- e)** “Cash Allowance” means a sum included in the Estimated Contract Price by Metrolinx as a predetermined allowance to cover the items identified in the Articles of Agreement.
- f)** “Cash Allowance Items” means those items, work and/or services identified in the Articles of Agreement as items to be paid for using the designated Cash Allowance.
- g)** “Changes” has the meaning ascribed to it in Section 8.1 of the General Conditions.
- h)** “Confidential Information” means all information of a confidential nature (as determined with reference to its treatment by Metrolinx) which is provided, disclosed or made available (orally, electronically or in writing or by any other media) by Metrolinx (or its representatives) to the Consultant (including to employees, contractors, or other representatives thereof). For greater certainty, all Metrolinx Materials, construction documents, personal information (as defined in FIPPA), and anything else specifically marked or identified by Metrolinx as confidential or proprietary are deemed to be “Confidential Information” for the purposes of this Contract.
- i)** “Conflict of Interest” has the meaning ascribed to it in Section 18.14 of the General Conditions.
- j)** “Consultant” has the meaning ascribed to it in the Articles of Agreement.
- k)** “Consultant Background IP” means any methodologies, patterns, plans, procedures, Software, algorithms, computer code, documentation, tools, business processes, scripts, interfaces, commands, technical information, know-how, techniques, specifications, technologies and/or other Intellectual Property that is proprietary to the Consultant or which Consultant has the right and licence to use and make available to Metrolinx, in each case that was either: (a) created prior to the Effective Date; or (b) created, developed or produced independently of this Contract and/or the performance of the Services.

- l)** “Consultant Personnel” or “Consultant’s Personnel” means (a) with respect to the Consultant, all of the Consultant’s personnel, employees and independent consultants (including the Key Personnel and the Consultant’s Representative) engaged in the performance of the Services; and (b) with respect to each Subconsultant, all of that Subconsultant’s personnel, employees and independent consultants engaged in the performance of the Services.
- m)** “Consultant Policies” has the meaning ascribed to it in Schedule D – Insurance of Appendix “A” General Conditions.
- n)** “Consultant’s Representative” means the person identified by the Consultant, and Accepted by Metrolinx, as the Consultant’s authorized representative pursuant to Section 2.8 of the General Conditions.
- o)** “Contract” means this contract between the Consultant and Metrolinx pursuant to Request No. RQQ-2017-AS-176 including the Articles of Agreement, the General Conditions and the Schedules thereto and the Contract Documents.
- p)** “Contract Documents” means the Contract and those documents listed in Appendix “B” – Consultant’s Scope of Services and any written amendments thereto as agreed to by the Parties.
- q)** “Contract Performance Appraisal” has the meaning given in Section 2.12(a) of the General Conditions.
- r)** “Deliverables” means the work product created by the Consultant and/or the Consultant Personal in connection with or as a requirement of the Services, including all reports, drawings, plans, designs, processes, tools, standards, registers, logs, updates, files, databases, Software, and documentation.
- s)** “Dispute” means all disputes, controversies, or claims arising out of or relating to: (a) this Contract; (b) the alleged wrongful exercise or failure to exercise by a Party of a discretion or power given to that Party under this Contract; and/or (c) the interpretation, enforceability, performance, application, or administration, breach, termination, or validity of this Contract or any failure to agree where agreement between the Parties is called for. For greater certainty, Dispute shall not include disagreements between the parties over audit results or the content of the auditor’s report, which shall be noted and reflected in the relevant Deliverable (eg. auditor’s report) by way of qualification or denial, and shall not be subject to the process set out in Schedule E – Dispute Resolution.
- t)** “Dispute Notice” has the meaning given in Schedule E – Dispute Resolution.
- u)** “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 Services, gained through a practical application of the knowledge underlying the tasks in an environment substantially similar to that of the Services.
- v)** “Effective Date” means the final date of execution of this Contract by both Parties.
- w)** “Encumbrance” means any mortgage, charge, pledge, hypothecation, Lien, security interest, hypothec, easement, right-of-way, right-of-first refusal, option, encroachment, building or use restriction, conditional sales agreement, personal property lease, licence, restrictive covenant, adverse claim, promissory right or other encumbrance of any nature however arising, or any other security agreement or arrangement creating in favour of

any creditor a right in respect of any property that is prior to the right of any other creditor in respect of such property.

- x)** "Estimated Contract Price" means the amount identified as such in the Articles of Agreement.
- y)** "Extension" has the meaning ascribed to it in Section 2.1 of the General Conditions.
- z)** "FIPPA" means the Freedom of Information and Protection of Privacy Act, R.S.O. 1990, Chapter F.31.
- aa)** "FIPPA Records" has the meaning ascribed to it in Section 10.6 of the General Conditions.
- bb)** "French Designated Area" means an area designated as such in the Schedule to the French Language Services Act. A map and complete listing of French Designated Areas is available at <http://www.ofa.gov.on.ca/en/flsa-mapdesig.html>.
- cc)** "French Language Services Act" means the French Language Services Act, R.S.O. 1990, c.F.32.
- dd)** "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.
- ee)** "Indemnified Parties" has the meaning ascribed to it in Section 12.1 of the General Conditions.
- ff)** "Initial Term" has the meaning ascribed to it in Section 2.1 of the General Conditions.
- gg)** "Intellectual Property" means all intellectual and industrial property, including all Software, 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 all Intellectual Property Rights therein.
- hh)** "Intellectual Property Rights" means any right to Intellectual Property 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.
- ii)** "Joint Venture" is the business arrangement of two or more parties proposed as identified in the Proponent's Submission.
- jj)** "Key Personnel" has the meaning ascribed to it in Section 2.7(a) of the General Conditions.
- kk)** "Key Responsibilities" means the main responsibilities and tasks to be performed by each category of Consultant Personnel, as identified in Schedule B – Consultant Personnel.

- ll)** "Losses" means claims, actions, suits, executions, and demands and all loss, liability, judgments, costs, charges, damages, liens and expenses of any nature whatsoever and howsoever caused.
- mm)** "Metrolinx" means Metrolinx, a provincial crown agency continued under the Metrolinx Act, S.O. 2006, Chapter 16, and its successors and assigns.
- nn)** "Metrolinx IP" has the meaning ascribed to it in Section 6.1 of the General Conditions.
- oo)** "Metrolinx Materials" means: (a) all materials, images, reports, Software, 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 owned by or in the custody or control of Metrolinx), technical information, and any other recorded information, in any form and on any media, that are proprietary to, or controlled or licensed by, Metrolinx and provided to the Consultant; (b) all procurement documents issued by Metrolinx; (c) all documentation or source materials (including source code) related to any of the foregoing; and (d) all copies, translations, improvements, modifications, enhancements, adaptations, or derivations made to the Metrolinx Materials by Metrolinx or any third party not performing work under this Contract.
- pp)** "Metrolinx Representative" or "Metrolinx's Representative" has the meaning ascribed to it in Section 2.9 of the General Conditions.
- qq)** "OHSA" means the Occupational Health and Safety Act, R.S.O. 1990, c. O.1.
- rr)** "Parties" means both of Metrolinx and the Consultant and a "Party" means either one of them.
- ss)** "Person" means any individual, sole proprietorship, partnership, limited partnership, corporation or company (with or without share capital), trust, foundation, joint venture, Governmental Authority or any other incorporated or unincorporated entity or association of any nature.
- tt)** "Place of Work" is the designated site or location of the Services.
- uu)** "Product" means any goods, machinery, equipment, fixtures and Software (including any components of any of the foregoing) forming part of the Deliverables, but does not include machinery and equipment used solely to perform the Services.
- vv)** "Professional Engineer" means an engineer licensed to practice engineering in the Province of Ontario.
- ww)** "Project Schedule" means the scheduling requirements identified in Section 8 of the Form of Request or otherwise provided by Metrolinx to the Consultant from time to time.
- xx)** "Quotation" has the meaning given in Section 15 of Schedule C – Financial Terms.
- yy)** "Rates" has the meaning given in Section 1(a) of Schedule C – Financial Terms.
- zz)** "Required Standard of Care" means: (a) using the Standards, practices, methods and procedures to the highest commercial standards of practice and professionalism as understood in the Province of Ontario; (b) confirming to Applicable Laws and all rules of professional conduct applicable to the Consultant or the Consultant Personnel; (c) exercising that degree of skill and care, diligence, prudence and foresight which would be

expected from a leading Person or professional performing work similar to those called for under this Contract; and (d) using only proper materials and methods as are suited to the function and performance intended.

- aaa)** "Services" has the meaning ascribed to it in Section 2.2(a) of the General Conditions.
- bbb)** "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.
- ccc)** "Standards" means, at a given time, those standards, specifications, manuals, codes, practices, methods and procedures applicable to the Required Standard of Care.
- ddd)** "Statutory Holdback" has the meaning ascribed to it in Section 7 of Schedule C – Financial Terms.
- eee)** "Subconsultant" means an individual, firm, partnership, corporation or design professional having a direct contract with the Consultant or another Subconsultant to perform a part or parts of the Services as identified in the Submission.
- fff)** "Submission" means all documentation and other materials and information submitted by the Proponent in response to Request No. RQQ [].
- ggg)** "Task" has the meaning ascribed to it in Section 2.11(a) of the General Conditions.
- hhh)** "Task Assignment Process" has the meaning ascribed to it in Section 8.4(b) of the General Conditions.
- iii)** "Task Release" has the meaning ascribed to it in Section 2.11(b) of the General Conditions.
- jjj)** "Taxes" means all present and future taxes, surtaxes, duties, levies, imposts, rates, fees, premiums, assessments, withholdings, dues and other charges of any nature imposed by any Governmental Authority (including, income, capital (including large corporations), gross receipts, consumption, sales, use, transfer, goods and services or other Value Added Taxes, excise, customs or other import, anti-dumping, countervail, net worth, alternative or add-on minimum, windfall profits, stamp, registration, franchise, payroll, employment insurance, Canada Pension Plan, worker's compensation, health, education, school, business, property, local improvement, environmental, development and occupation taxes, surtaxes, duties, levies, imposts, rates, fees, premiums, assessments, withholdings, dues and charges) together with all fines, interest and penalties in respect thereof or in lieu of or for non-collection thereof.
- kkk)** "Term" means the Initial Term and all Extensions.
- lll)** "Third Party" or "Third Parties" means any Third Party Contractors or Third Party Operators.
- mmm)** "Third Party Contract" means a contract between Metrolinx and any other Person which is in any way related to, impacts or is impacted by the Services and/or the Consultant's acts or omissions, whether expressly identified to the Consultant or not.

- nnn)** “Third Party Contractors” means contractors, suppliers, service providers, utility owners or any other third party (excluding the Consultant and any Subconsultants and Consultant Personnel) performing work and/or providing products and services in, or in respect of, the rail corridors, where such work, products or services (a) are on behalf and for the benefit of Metrolinx or (b) are being undertaken to enable work, products or services on behalf of and for the benefit of Metrolinx.
- ooo)** “Third Party Operators” means (a) any third party providing products and/or services in the rail corridors on their own behalf, pursuant to rights granted by Metrolinx, including VIA Rail Canada Limited, Canadian Pacific Railway Company and Canadian National Railway Company; and (b) any third party who otherwise has a right to occupy, access, or use property or facilities on or adjacent to the rail corridors.
- ppp)** “Third Party Work” means work and services conducted or provided by Third Parties.
- qqq)** “Value Added Taxes” means such sum as shall be levied upon amounts payable to the Consultant under this Contract by any Governmental Authority that is computed as a percentage of the amounts payable to the Consultant (including all other Taxes but excluding Value Added Taxes), and includes the HST, and any similar tax, the payment or collection of which, by the legislation imposing such tax, is an obligation of the Consultant.

END OF SCHEDULE A

Schedule B – Consultant Personnel

1. Key Personnel

The following Key Personnel roles shall be filled, and they shall perform the following key responsibilities as well as any other responsibilities as requested by Metrolinx, in accordance with the Contract Documents and in accordance with the following requirements in respect of qualifications, experience and minimum years of experience.

1.1 Rate Category:

Role	Key Responsibilities	Experience and Qualifications	Required Duration	Name of Individual
Engagement Partner	<ul style="list-style-type: none"> • The engagement partner shall take responsibility for the overall quality of audit work performed for the entire term of the contract; • Assume responsibility for discussing significant matters arising during the term of the contract with the engagement quality control reviewer; • Assume responsibility that appropriate procedures are being performed; • Present the audit approach and the final report to relevant stakeholders and senior management; • Work with Metrolinx to ensure the audit deliverable meet the contractual obligation to TAs; • Assure the audit is being planned and performed in compliance with professional standards and applicable 	<ul style="list-style-type: none"> • Minimum of ten (10) years experience in auditing CSAE 3416 Type II or equivalent reports; • Minimum of ten (10) years experience in presenting audit plan, progress and final deliverable to senior management; and • Chartered Professional Accountant Designation 	Entire Term of the Contract	Click here to enter text.

Role	Key Responsibilities	Experience and Qualifications	Required Duration	Name of Individual
	<p>legal and regulatory requirements; and</p> <ul style="list-style-type: none"> Assure the audit work is reviewed timely before the issuance date of assurance reports. 			
Manager	<ul style="list-style-type: none"> Lead engagement activities as defined in 'Appendix "B" Consultants Scope of Services'; Guide the engagement team with evidence gathering, analysis, designing of procedures, production of final reports, and delivery of presentations; Participate in the weekly audit update calls with Metrolinx representative; Ensure evidence gathered is relevant to satisfy control the objective; Provide technical, procedural and subject expertise to PRESTO; Provide Metrolinx guidance in determining the right course of action to take in minimizing risk associated with control objective as well as risk in general; Provide audit status update and the audit report to relevant stakeholders and senior management; and Stay abreast of audit standards to enhance the quality of the final deliverable to relevant stakeholders. 	<ul style="list-style-type: none"> Minimum five (5) years experience in auditing CSAE 3416 Type II or equivalent reports; Minimum of five (5) years experience in presenting audit plan, progress and final deliverable to senior management; Chartered Professional Accountant Designation; Have well developed professional auditing techniques and a sound system of control and service of audit work performed; and Demonstrate an understanding Transit Agencies financial reporting system 	Entire Term of the Contract	Click here to enter text.

Role	Key Responsibilities	Experience and Qualifications	Required Duration	Name of Individual
Senior Associate	<ul style="list-style-type: none"> • Participate in engagement activities as defined in 'Appendix "B" Consultants Scope of Services'; • Participate in evidence gathering, analysis and document of evidence obtained; • Lead the weekly audit update calls with Metrolinx representative; • Take the lead in ensuring evidence requested from relevant stakeholders is received in a timely manner; • Participate or lead day to day communication with relevant stakeholders involved in the audit; • Grasp the understanding of business operating model, control objectives and Metrolinx specific risk in an efficient manner; • Oversee the day to day work activities of the associate to ensure discussions and evidence requested are relevant to satisfy control objective; • Demonstrate strong technical knowledge pertaining to risk mitigating strategies; and 	<ul style="list-style-type: none"> • Minimum five (5) years experience in auditing CSAE 3416 Type II or equivalent reports; • Minimum two (2) years experience in presenting audit plan, progress and final deliverable to senior management; and • Chartered Professional Accountant Designation 	Entire Term of the Contract	

Role	Key Responsibilities	Experience and Qualifications	Required Duration	Name of Individual
	<ul style="list-style-type: none"> Stay organized, clear and concise when asking questions to appropriate control owners and Metrolinx representatives. 			
Associate	<ul style="list-style-type: none"> Participate in engagement activities as defined in 'Appendix "B" Consultants Scope of Services'; Participate in evidence gathering, analysis and document of evidence obtained; Participate in the weekly audit update calls with Metrolinx representative; Participate or lead day to day communication with relevant stakeholders involved in the audit; Grasp the understanding of business operating model, control objectives and Metrolinx specific risk in an efficient manner; Stay organized, clear and concise when asking questions to appropriate control owners and Metrolinx representatives. 	<ul style="list-style-type: none"> Post secondary degree from a recognized school; and Chartered Professional Accountant or enrolled in an program to obtain designation; 	Entire Term of the Contract	Click here to enter text.

2. Format of Curriculum Vitae

- (a) The format and layout of each curriculum vitae provided by the Consultant shall be consistent and shall include:
 - (i) Name of individual;
 - (ii) Proposed position;
 - (iii) Qualifications that relate to the proposed position;
 - (iv) Experience in performing the proposed position, include project names and brief project overviews;
 - (v) Number of years in the proposed position on each project as well as start date and completion date of each project;
 - (vi) Responsibilities on each project while performing the proposed position;
 - (vii) Details of accomplishments while performing the proposed position;
 - (viii) Education;
 - (ix) Professional memberships and affiliations; and
 - (x) References and contact information for projects of a similar complexity, successfully delivered on-time and on-budget while performing in the same capacity. Such references shall relate directly to the experience, responsibilities and details of project accomplishments noted above.

Schedule C – Financial Terms

1. Payment

- (a) Metrolinx will pay the Consultant for the Services performed by the Consultant pursuant to this Contract, in the amounts and manner, at the rates set out in the Articles of Agreement (the “Rates”) and at the times, set forth in the Articles of Agreement and this Schedule C – Financial Terms.
- (b) The Consultant shall perform all of the Services notwithstanding that the value of the time spent by the Consultant in performance thereof may exceed the maximum amount payable to the Consultant pursuant to Section 3 of this Schedule C – Financial Terms.

2. Limitation of Expenditure

- (a) It is understood that the Contract is based on a:
 - (i) fixed “all in” cost for the Services outlined in Appendix “B” – Consultant’s Scope of Services (except for the Cash Allowance services as set out in Section 7 of Appendix “B” – Consultant’s Scope of Services) on a per year basis; and
 - (ii) reimbursement for Cash Allowance Items requested by Metrolinx and performed by the Consultant to the satisfaction of Metrolinx on a time and materials basis.
- (b) Metrolinx does not guarantee any minimum or maximum of work under s.2(a)(ii) above. Metrolinx reserves the right to assign no work or assign a selected number of work assignments with an accumulated value up to the awarded total upset limit of the Cash Allowance services portion of the Contract.
- (c) The upset limit amount for Cash Allowance shall be as stated in the Articles of Agreement.
- (d) The Consultant shall not perform any Cash Allowance Items which would cause the total cost to exceed the upset limit of the Cash Allowance of the Contract, unless an increase is so authorized by Metrolinx and effected by a written amendment to the Contract.

3. Estimated Contract Price

- (a) Subject to Sections 8.1, 8.2 and Article 9 – Additional Resources of the General Conditions, Metrolinx and the Consultant acknowledge and agree that Estimated Contract Price set out in the Articles of Agreement is the maximum amount payable in respect the provision of the Services; provided, however, that the foregoing is not an entitlement to, nor a guarantee that the Consultant will be paid the full amount of, the Estimated Contract Price.
- (b) The Estimated Contract Price includes all Cash Allowances identified in this Contract.

4. Rates for Services

- (a) The Consultant acknowledges and agrees that the Rates are inclusive of all labour and materials, insurance costs, disbursements and all other overhead including any fees or other charges required under Applicable Laws. Without limiting the generality of the foregoing, the Rates include costs for the coordination, administration of the provision and management of the Services necessary to achieve compliance with external agencies and Governmental Authorities as required to obtain any Approvals, provided, however, that the specific costs associated with application and permit fees in respect of the Approvals shall be paid directly by Metrolinx.
- (b) Metrolinx shall not reimburse the Consultant for any hospitality, food or incidental expenses incurred. Subject to the prior consent of Metrolinx, Metrolinx shall reimburse the Consultant for reasonable traveling expenses incurred in connection with the performance of the Services, such reimbursement to be made in accordance with the Government of Ontario's Travel, Meal, and Hospitality Expenses Directive.
- (c) As part of the Services, the Consultant shall also be responsible for obtaining and registering all of the Software licenses and long term support agreements, as and if applicable, on behalf of Metrolinx, and any costs incurred by the Consultant in connection thereto shall be included in the Rates set out in the Articles of Agreement.

5. Taxes

- (a) The Estimated Contract Price and all amounts payable under the Contract shall be inclusive of all Taxes (except for HST) in effect as at the date of this Contract. Unless otherwise expressly specified in this Contract or otherwise required by Applicable Law, the Consultant shall be responsible for remittance of any and all Taxes due and payable in respect of the Services.
- (b) Any amount to be levied against Metrolinx in respect of the HST or any similar successor tax levied under the *Excise Tax Act* and applicable to the Services, is to be shown separately on all invoices for Services performed by the Consultant. The Consultant shall remit any HST paid or due to Revenue Canada Customs & Excise in accordance with Applicable Laws, and shall, at the request of Metrolinx, provide evidence of payment of same.
- (c) In the event that Metrolinx is entitled to a rebate under the *Retail Sales Tax Act* (Ontario) or the *Excise Tax Act* in whole or in part, for Value Added Taxes paid under this Contract, the Consultant shall show on each invoice, and in the manner directed by Metrolinx, either the actual Value Added Taxes paid by the Consultant by category or the portion of the Consultant's fees eligible under Applicable Law for the rebate.
- (d) Certain payments to non-resident corporations or individuals may be subject to withholding taxes, under the Income Tax Act. Non-residents can apply in advance to Revenue Canada, Taxation, for a waiver or reduction of the withholding tax requirement. Unless Metrolinx is provided with a copy of the written information as a result of the waiver application to the Tax Services Office of Canada Customs and Revenue Agency, taxes will be withheld as determined under the Income Tax Act. The Consultant shall be responsible for

investigating whether they are subject to the withholding of taxes under the Income Tax Act and obtaining the necessary waiver or reduction as needed.

6. Invoicing and Payment Process

- (a) The Consultant shall submit an invoice for payment for Services completed no less than ten (10) Business Days following the end of the month in respect of which the related Services were rendered. The invoice shall be in form and substance satisfactory to Metrolinx acting reasonably and shall set out with sufficient particularity the Services performed in the previous month and the total time spent by each category of Consultant Personnel multiplied by the applicable Rate.
- (b) The aggregate amount invoiced by the Consultant shall not exceed the Estimated Contract Price, unless such additional amount is agreed by the Parties pursuant to the change management process set out in Article 8 of the General Conditions.
- (c) Unless there is a Dispute with respect to the content of an invoice and subject to the other provisions of this Schedule C, Metrolinx shall make payment to the Consultant no later than thirty (30) Business Days following receipt of the invoice for payment from the Consultant, unless otherwise provided or permitted in the Contract. The Consultant 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.

7. Statutory Holdback

Intentionally omitted.

8. Withholding of Payment

Notwithstanding any other term in the Contract Documents, Metrolinx shall not be obligated to make payment to the Consultant if at the time such payment was otherwise due:

- (a) there is a Lien or other Encumbrance arising from the performance of the Services, whether valid or not and whether preserved or perfected, in relation to, or otherwise affecting, the Services or the Place of Work; or
- (b) written notice of a Lien arising from the performance of the Services has been given to Metrolinx or an owner, mortgagee or other entity with an interest in the Services or a claim for Lien arising from the performance of the Services and otherwise affects the Services.

9. Substantial Performance

Not Applicable.

10. Release of Statutory Holdback Upon Substantial Performance

Not Applicable.

11. No Progressive Release of Holdback

Not Applicable.

12. Final Payment Certificate

Not Applicable.

13. Cost of Changes

- (a) Changes shall be implemented by the Consultant without any additional charge, unless Consultant is able to demonstrate (with supporting documentation) that the Change causes the Consultant to incur additional costs.
- (b) The Consultant shall implement all Changes for a reasonable price in accordance with the same pricing principles and price levels as originally agreed in the Articles of Agreement. Where Rates apply to Consultant Personnel, those same Rates shall apply with reference to the applicable level of experience and/or expertise.
- (c) With respect to any Changes that (in whole or in part) require the services of a third party, Metrolinx (at its sole discretion) shall have the right to require the Consultant to provide three (3) quotes to Metrolinx in respect of such third party services, in accordance with Section 14 of this Schedule C – Financial Terms.
- (d) Metrolinx shall have the right to request such documentation and other supporting information as it reasonably requires to confirm and substantiate the costs associated with any Change request, and the Consultant shall provide same to Metrolinx within five (5) Business Days of the request therefor.

14. Expenditure of Cash Allowance

- (a) Where the expenditure of a Cash Allowance has been approved by Metrolinx, the value of completed or delivered Cash Allowance Items may be claimed as part of the Consultant's monthly application for payment, in accordance with Section 6 of this Schedule C – Financial Terms. Cash Allowance expenditures must not exceed the Estimated Contract Price.
- (b) The Consultant is not entitled to any extra payment on account of a specified Cash Allowance Item and is not entitled to any unexpended Cash Allowance amounts.
- (c) A Cash Allowance is in no way a guarantee of monies and shall only be expended for the portion of the Cash Allowance Items specified in the Articles of Agreement and authorized by Metrolinx pursuant to Section 8.4 of the General Conditions.
- (d) The Cash Allowance shall cover the net cost of performing all Cash Allowance Items, excluding Consultant's overhead and profit which shall be included in the Rates, exclusive of the Cash Allowance. Should the cost of performing the Cash Allowance Items be less than the identified amount of the Cash Allowance, the Consultant shall only be compensated for the actual cost of performing the Services.
- (e) In the event that the Consultant reasonably anticipates that the cost of performing the Services under the Cash Allowance will exceed the amount of the Cash Allowance, the Consultant shall immediately notify Metrolinx and the matter shall be addressed pursuant

to the change management process set out in Article 8 of the General Conditions. The Consultant shall not be compensated for any amount exceeding the Cash Allowance unless and until same has been authorized in writing in accordance with Article 8 of the General Conditions.

- (f) All expenditures by the Consultant under the Cash Allowance must be substantiated with appropriate documentation clearly documenting the amount of the expenditure and the goods and/or services to which it relates. The Consultant shall only be compensated for expenditures under the Cash Allowance that are substantiated.

15. Quotations - Changes and Cash Allowance Items

- (a) With respect to any Changes or Cash Allowance Items (or any part thereof), the Consultant shall, upon request by Metrolinx (at its sole discretion), submit up to three (3) quotes detailing the estimated cost of the applicable Change or Cash Allowance Item (each a "**Quotation**"). Where Metrolinx has not provided the names of third parties from which quotations should be obtained, the Consultant shall have the right to choose which third parties shall provide quotations. Subject to any instruction to the contrary issued by Metrolinx pursuant to Section 8.4 of the General Conditions, where a Cash Allowance Item includes work that the Consultant proposes would be most efficiently performed by the Consultant's own workforces, the Consultant shall include as one of the three (3) quotes the price proposal for having its own workforce perform the work.
- (i) Any and all costs incurred by the Consultant for providing a Quotation or obtaining quotations from third parties, shall be borne by the Consultant.
- (ii) All Quotations shall be prepared on the Consultant's letterhead and in a format agreed to by Metrolinx and the Consultant. The Quotation shall at a minimum contain the following information:
 - a. a description of the work required by the Services;
 - b. Curriculum Vitae for each required position and two (2) references for each individual;
 - c. estimated hours of work for each identified key role;
 - d. any requirement for additional positions other than those listed in Schedule B of Appendix "A";
 - e. required Subconsultants; and specialized service providers;
 - f. any requirements for testing and/or reporting;
 - g. detailed breakdown of costs;
 - h. detailed work schedule which complies with completion date provided by Metrolinx (as required by Metrolinx); and
 - i. any other requirements/instructions.
- (iii) The Consultant shall, upon request, disclose to Metrolinx the originals of all bids, quotations and other price related information received from suppliers or Subconsultants.

- (iv) Metrolinx reserves the right to accept or reject a Quotation, in whole or in part.

16. Metrolinx Property

All tangible property purchased and charged to Metrolinx' account is and shall be deemed and shall remain the property of Metrolinx.

17. Records and Audit

- (a) The Consultant agrees to keep and maintain full and complete records and accounts of all costs in accordance with Metrolinx' requirements. All such records, including timesheets, correspondence, receipts and memoranda pertaining to the Services shall be available for inspection by any authorized employee or agent of Metrolinx at all reasonable times for the purpose of auditing the Consultant' reasonable costs and the Consultant shall provide every reasonable assistance for that purpose including, but not limited to, making the records available for inspection at the Consultant's office during normal business hours and acting reasonable to observations made by Metrolinx or its Consultants. The results of the audit will be maintained as confidential to be used for the purposes of and as contemplated by this Contract or as otherwise required by Applicable Laws. Such records shall be kept for a period of seven (7) years after termination of this Contract.
- (b) During the Term and for a period of seven (7) years thereafter, Metrolinx or any other Person acting on behalf of Metrolinx, shall have the right, upon no less than 24 hours' notice in writing during the Term, and on no less than five (5) Business Days' notice in writing during the seven (7) year period following the Term, to the Consultant and during normal office hours, to inspect and audit, and to have access to, all relevant premises, sites, books, records, payrolls, accounts and documentation of the Consultant relating to this Contract, and to take extracts therefrom. The Consultant shall make available or cause to be made available such reasonable information and material as may be required and shall otherwise reasonably cooperate with Metrolinx and any other Person acting on Metrolinx' behalf. Without limiting the generality of the foregoing, the rights set out in this Section shall extend to any Governmental Authority exercising its right to audit pursuant to Applicable Law or any contract with Metrolinx.

END OF SCHEDULE C

Schedule D – Insurance

1. Consultant Insurance Requirements

The Consultant shall, at its own expense, obtain and maintain for the entire Term minimum insurance coverage as follows:

1.1 Commercial General Liability

The policy shall provide a policy limit of not less than two million (\$2,000,000) per occurrence for all claims arising out of bodily injury (including death), personal injury, damage to property of others. Such policy shall not contain any exclusions that conflict with the Services required to be performed under this Contract. The Consultant shall cause the interest of Metrolinx, and such other Person as Metrolinx may determine at its sole and absolute discretion, to be noted on the Consultant Policies hereof as “Additional Insured”. The policy shall contain a waiver of subrogation, cross liability and severability of interest.

1.2 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 Services. Coverage shall consist of a combined single limit of not less than two million (\$2,000,000) per occurrence. Alternatively, for Services that do not require the use of owned, non-owned, leased or hired automobile, the Consultant shall provide a written confirmation within five (5) business days of contract award, stating same, in place of the insurance coverage.

1.3 Errors and Omissions Insurance

The policy shall provide errors and omissions insurance including coverage for privacy, infringement of trademark and copyright covering the Services rendered by the Consultant, any Subconsultants or any Consultant Personnel, including personnel on loan to the Consultant who perform normal services of the Consultant under this Contract. The policy shall have a limit of liability of not less than two million (\$2,000,000) per occurrence and in the policy aggregate. The policy shall be maintained throughout the Term, plus thirty-six (36) months after the termination or expiration of this Contract.

Any other valid or collectible insurance available to Metrolinx shall not apply to any loss until the coverage and limits available under the insurance policies maintained by the Consultant in accordance with this Contract have been exhausted.

1.4 Additional Coverage

- (a) Without prejudice to any other provisions of this Contract (including Section 1.1 of this Schedule D – Insurance), the Consultant shall, at all relevant times and at its own expense, obtain and maintain, or cause to be obtained and maintained (during the Term plus coverage for an extended reporting period of not less than thirty-six (36) months):
- (b) those insurances that are reasonable for the performance of the type and scope of Services set out by this Contract (including, as applicable, insurance as would typically be required by prudent designers or consultants); and/or

- (c) those insurances that the Consultant is required to obtain and maintain, or cause to be obtained or maintained, by Applicable Law.

1.5 Requirements for Insurance

- (a) All of Consultant's policies of insurance, as required under this Contract (the "**Consultant Policies**"), shall be taken out with insurance companies licensed to transact business in the Province of Ontario with an AM Best rating of no less than A.
- (b) Any deductible or self-insured retention amounts are the responsibility of the Consultant. Notwithstanding the foregoing, such deductibles or self-insured retention must be consistent with standard commercial practice and acceptable to Metrolinx, acting reasonably.
- (c) All Consultant Policies shall be kept in full force and effect during the Term, including any requirements for the period following termination of this Contract.
- (d) In the event that the Consultant fails to obtain and/or maintain in full force and effect any such insurance as aforementioned, then Metrolinx shall have the right as the Consultant's true and lawful attorney to do all things necessary for this purpose. The Consultant shall be responsible, and shall reimburse Metrolinx, all amounts paid by Metrolinx for insurance premiums and any and all costs incurred by Metrolinx in connection with this Contract. Without limitation, any premiums due on any insurance policy under this Schedule D – Insurance, but not paid by the Consultant may be paid directly to the insurer(s) or broker(s) by Metrolinx, which shall be entitled to deduct the amount of same along with its reasonable costs in so doing from any monies otherwise due to the Consultant by Metrolinx either under this Contract or otherwise.
- (e) All Consultant Policies shall be endorsed to provide Metrolinx with not less than thirty (30) days' advance written notice of cancellation.
- (f) Irrespective of the insurance requirements above, the insolvency, bankruptcy, or failure of any such insurance company providing insurance for the Consultant, or the failure of any such insurance company to pay claims that occur will not be held to waive any of the provisions hereof.

1.6 Proof of Insurance

- (a) The Consultant shall, prior to the commencement of the Services and thereafter upon request, provide to Metrolinx original signed certificates of insurance for the Contractor Policies, confirming that the required coverage has been placed and maintained. In addition, at least fifteen (15) days prior to the expiry date of any policy, the Consultant shall provide original signed certificates evidencing renewals or replacements of such policy to Metrolinx, without notice or request by Metrolinx.
- (b) The Consultant shall, upon request, provide evidence to Metrolinx that the premiums associated with the Consultant Policies have been paid; however, receipt by Metrolinx of the above information will in no way constitute confirmation by Metrolinx that the insurance complies with the requirements of this Contract. Responsibility for ensuring that the insurance coverage outlined in this Contract is in place rests solely with the Consultant.

- (c) The Consultant also agrees to provide Metrolinx with proof of errors and omissions insurance maintained by any Subconsultant, where such Subconsultant is under a professional obligation to maintain the same, and with proof of such insurance to be provided to Metrolinx no later than the execution of this Contract by the Consultant and to be in a form and with an insurer acceptable to Metrolinx.

1.7 **Consultant's Liability Preserved**

The provisions of this Contract as they relate to insurance do not diminish, limit or otherwise affect the liability of the Consultant to Metrolinx under or in relation to any other provisions of this Contract.

1.8 **Workplace Safety & Insurance Board Protection**

- (a) With respect to the WSIB coverage as required under the *Workplace Safety and Insurance Act* (Ontario), the Consultant unconditionally guarantees to Metrolinx full compliance with the conditions, regulations and laws relating to workplace safety insurance by itself and by all Subconsultants.
- (b) Without restricting the indemnity obligations of the Consultant in Article 12 of the General Conditions, the Consultant shall produce, at the commencement of this Contract, from time to time as may be required by Metrolinx and prior to issuance of the Final Payment Certificate, a valid Workplace Safety and Insurance Clearance Certificate, issued by the WSIB, for the premium rate class, subclass or group appropriate to the Services.

END OF SCHEDULE D

Schedule E – Dispute Resolution

1. Bona fide efforts to resolve

The Parties shall at all times during the Term make bona fide efforts to resolve any and all Disputes arising between them by amicable negotiations and to have all Disputes resolved at the lowest level of management before engaging the dispute resolution processes described in the balance of this Schedule E – Dispute Resolution.

2. Continuance of the Services During Dispute

Unless expressly directed otherwise by Metrolinx, the Consultant shall not stop or delay the performance of the Services, in whole or in part, on account of a Dispute between the Consultant and Metrolinx or between the Consultant and any other Person. Without limiting the generality of the foregoing, at all times during the course of a Dispute, the Consultant shall:

- (a) continue with the Services in a diligent manner and without delay;
- (b) conform to Metrolinx' decisions and directions; and
- (c) be governed by all applicable provisions of this Contract.

The Parties acknowledge and agree that the Consultant's compliance with this Section 2 shall not operate to waive any claim or contention that the Consultant may have in relation to any Dispute.

3. Tiered-Dispute Resolution

The Parties agree that any Dispute which cannot be resolved to the satisfaction of both Parties by direct discussions between staff members of the Parties, may be referred for negotiation between senior management of both Parties by delivery from one Party to the other Party of notice in writing requesting dispute resolution, which notice shall set out the Dispute in reasonably sufficient detail (a "**Dispute Notice**").

4. Negotiation

- (a) In the event a Party issues a Dispute Notice to the other Party, the Vice President, GO Capital Infrastructure at Metrolinx (or if that position no longer exists at the time the Dispute Notice is issued, the person performing an equivalent function) and an authorized representative of the Consultant, of equivalent seniority and duly appointed to represent the Consultant in this regard, shall meet and make a good faith effort, on a without prejudice basis, to resolve the Dispute as set out in the Dispute Notice in a prompt manner and, for the purpose of same, each Party shall provide its representative with full and timely disclosure of all relevant facts information and documents as may be reasonably required or may be reasonably requested by the other Party, on a without prejudice basis, to facilitate such negotiation.
- (b) Negotiations under this Section 4 shall be commenced within ten (10) Business Days of delivery of a Dispute Notice and shall, unless otherwise agreed by the Parties, be concluded within fifteen (15) Business Days of their commencement. In the event that a resolution satisfactory to all Parties is achieved through such negotiations, the Parties shall issue a joint statement detailing the manner in which the Dispute has been resolved.

5. Mediation

- (a) If a Dispute has not been resolved through high-level negotiation as contemplated in Section 4, either Party may refer the Dispute to be resolved through mediation.
- (b) The Parties shall mutually agree to the appointment of the mediator within thirty (30) Business Days, or within such other time as the Parties may agree, of any Party issuing a supplementary Dispute Notice requesting mediation.
- (c) If the Parties cannot agree on the appointment of a mediator, the appointment of a mediator shall be determined by the Ontario Superior Court of Justice following an application by either Party.
- (d) The mediator shall be independent of and at arm's length to the Parties and shall be a person who by training and experience has the qualifications and the mediation skills to mediate a Dispute.
- (e) Unless the Parties otherwise agree, the mediation shall proceed in accordance with the following procedures:
 - (f) Each Party shall prepare a summary of the issues in dispute, with the Party's position with respect to those issues. The summary shall be delivered to the mediator and the other Parties, at least seven (7) Business Days before the first mediation conference.
 - (g) The goal of the mediation is to reach an agreed upon settlement and, therefore, all individuals with the appropriate authority to agree to the settlement terms and conditions shall be present at the mediation.
 - (h) A Party may be represented at the mediation by counsel or another representative at the sole cost of such Party.
 - (i) The mediator, the Parties and their counsel or representatives shall keep confidential all matters relating to the mediation, except where disclosure of a settlement agreement is necessary to implement or enforce that agreement and except as otherwise required by Applicable Law.
 - (j) In all respects, the mediation is deemed to be a "without prejudice" proceeding.
 - (k) The costs of the mediator shall be apportioned equally between the Parties unless otherwise agreed under any settlement reached under this Section 5.
 - (l) If the Parties achieve a resolution of the Dispute, the mediator shall confirm the resolution in writing, which will be signed by the Parties. If the Parties do not resolve the Dispute, the mediator shall provide a written confirmation that the Parties were unable to resolve the Dispute.
- (m) Both Parties acknowledge and agree that they may not refer a Dispute for resolution by arbitration under Section 6 prior to attempting to resolve such Dispute through mediation pursuant to this Section 5.

6. Arbitration

- (a) Any Party may, within ten (10) Business Days of the delivery of the mediator's confirmation that the Parties were unable to resolve their Dispute, issue a supplementary Dispute Notice requesting arbitration. Subject to Applicable Law, if such a supplementary

Dispute Notice is issued, the Parties shall proceed to arbitration in the manner described below.

- (b) If the Parties agree on the arbitrator, the Parties shall jointly appoint the arbitrator as soon as possible and in any event within ten (10) Business Days of the submission of a Dispute to arbitration under this Section 6. If the Parties are unable to agree on an arbitrator, each Party shall appoint an arbitrator, and the two arbitrators so chosen shall select a third arbitrator acceptable to both of them within ten (10) Business Days of their selection.
- (c) The arbitrator(s) shall be independent of and at arm's length to the Parties and shall be a person who by training and experience has the qualifications and arbitration skills to arbitrate a Dispute.
- (d) The arbitration shall be conducted in accordance with the provisions of the *Arbitration Act, 1991*, S.O. 1991, c. 17, except to the extent they are modified by the express provisions of this Schedule E – Dispute Resolution or unless the Parties otherwise agree.
- (e) If the issue in dispute is particularly time sensitive, the Parties shall, in good faith, take such reasonable steps as may be required to expedite the arbitration process in order that an award may be rendered as soon as practicable by the arbitrator(s), given the nature of the Dispute.
- (f) The arbitrator(s) has the jurisdiction to deal with all matters relating to a Dispute.
- (g) Unless otherwise agreed, the arbitration shall be conducted in the City of Toronto, Province of Ontario at the location determined from time to time by the arbitrators, but the arbitrators may meet in any other place the arbitrators considers necessary for consultation, to hear witnesses, experts or other parties, or for the inspection of documents, goods or other property.
- (h) In addition to the examination of the Parties by each other, the arbitrator(s) may examine, in the ordinary course, the Parties or either of them and the witnesses in the matter referred to the arbitrator(s), and the Parties and witnesses, if examined, shall be examined on oath or affirmation.
- (i) The language of the arbitration shall be English.
- (j) The arbitrator(s) shall, after full consideration of the issues in dispute, the relevant facts and Applicable Law, render a decision as soon as possible and, in any event, shall use all reasonable efforts to render a decision no later than thirty (30) Business Days after argument of the issue to the arbitrator(s), which decision 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 *Arbitration Act, 1991* (Ontario).
- (k) The costs of the arbitration are in the discretion of the arbitrator(s) who, in addition to any jurisdiction and authority under Applicable Law to award costs, has the jurisdiction and authority to make an order for costs on such basis as the arbitrator(s) consider appropriate in the circumstances. The submission to the arbitrator(s), and any award made in pursuance of it, may, at the instance of either of the Parties and without notice to the other of them, be made an Order of the Ontario Court (General Division), pursuant to the *Arbitration Act, 1991* (Ontario) and the *Courts of Justice Act* (Ontario).

END OF SCHEDULE E

Appendix “B” – Consultant’s Scope of Services

1. Definitions

- 1.1 **“Work”** means auditing services for the completion of this Contract.

2. Project Overview

2.1 Introduction

PRESTO is Metrolinx’s response to fulfilling its legislative mandate to “plan, design, develop, acquire ... a unified fare system” for local transit systems within the GTHA and any other transportation system that agrees to participate (Section 7.1 of the Metrolinx Act, 2006).

2.2 PRESTO Card

The PRESTO card provides customers in GTHA and Ottawa with the ability to travel on participating transit agencies by tapping their card on PRESTO devices. Each card contains a secure microchip that allows communication with the PRESTO Central System to prevent misappropriation of card data. All cards also contain onboard memory to store information such as the balance and fare type status (e.g., student or senior).

2.3 The PRESTO System

- (a) The PRESTO System is designed to support the use of one common fare media for fare payment on participating public transit systems. The value on the PRESTO farecard is added by customers and used for fare payment transactions. An electronic device reader scans the passive RFID chip on a customer’s PRESTO farecard as they board a public transit vehicle or enter a station, calculates the correct fare, and deducts the specified dollar amount from their farecard balance. Fare payment transactions are aggregated and processed by the PRESTO Central System and settled individually with each Transit Agency (each such transit agency, a “TA”).
- (b) The PRESTO system has been adopted by Burlington, Oakville, Brampton, Mississauga, Durham, York Region, Hamilton (collectively referred to as 905), Ottawa, UP express, GO Transit and Toronto Transit Commission.
- (c) The Canadian Standard on Assurance Engagement 3416 (CSAE 3416) addresses audit engagements undertaken by a service auditor to report on controls at organizations that provide services to user entities when those controls are likely to be relevant to user entities internal controls over financial reporting. PRESTO’s role is to collect funds from customers when using transportation at the various TA’s and settle these funds to TAs on a daily basis. Therefore, PRESTO is required to provide assurance on its control framework.
- (d) The consultant’s role is to provide a CSAE 3416 SOC I TYPE II, or its equivalent which follows standards outlined in the CPA Canada handbook - Assurance as described in this Appendix B. The report described is to provide assurance from the period January 1 to December 31 of each contract year.

- (e) PRESTO currently has approximately one hundred (100) controls deemed key as part of the control framework. The total number of controls fall under 1) Business Process Controls which includes the following control objectives: Order Management, Customer Management, Card Management, Load Management, Daily Clearing and Settlement, Financial Management and 2) Information Technology General Controls which include the following control objectives: Job Scheduling and Monitoring, Incident & Problem Management, Security Administration, System Development and Software Change Management, Device Integrity and Device Management
- (f) As PRESTO continues to evolve as a business, there will be changes to its controls, both in quantity of controls and the content of individual controls. Consultant's "all in" pricing must take into account the following for the final delivery of the CSAE 3416:
 - (i) The current business model reflected in the CSAE 3416 is the managed services model. In the future, TAs have the option to adopt the acquirer model in which they will assume accountability for their own infrastructure and associated elements which will interact with PRESTO central system to facilitate settlement of fare payments. In addition, certain TAs may purchase additional optional services from PRESTO offerings which may result in a shift in accountability of certain control and complementary user entity controls. The Consultant is responsible for ensuring all variations of the operating models (current and future) are appropriately addressed in the CSAE 3416. The consultant is required to support Metrolinx in meeting its contractual obligation to provide TAs with an industry standard CSAE 3416 report to assist TAs with their financial reporting.
 - (ii) Expansion of key controls to mitigate the appropriate financial reporting risks to TAs.
 - (iii) A shift from a single common report to multiple reports (i.e., unique controls to particular TA may be assessed in a separate deliverable/report) to TAs based on their operating models. The final deliverable needs to meet Metrolinx's contractual obligation to TAs as well as industry standards.

2.4 Content of Report

- (a) Metrolinx has a contractual obligation to provide the Transit Agencies which are part of the PRESTO program with an industry standard service organization control report, CSAE 3416 type II, to support their financial reporting
- (b) The Consultant is to provide an industry standard CSAE 3416 Type II SOC I which includes an opinion on:
 - (i) Description of the PRESTO Fare Payment System for processing user entities' farecard load and fare payment transactions,
 - (ii) the controls related to the control objectives stated in the description were suitably designed, and

- (iii) Operating effectiveness of controls.
- (c) Consultant is responsible for auditing the control framework in its entirety. This includes controls performed by independent service organizations that provide managed services related to specific elements of the technology infrastructure and application and business processing support services to Metrolinx that constitute part of Metrolinx's PRESTO Fare Payment System. This includes reviewing the SOC report produced by the service organization for relevance to PRESTO's control framework.

3. Progress Reports

- (a) At the start of the audit, the Consultant will provide members of PRESTO Audit Assurance Committee or its successor committee as designated by the PRESTO Scheme Governance Committee (such committee, "PAAC") with Consultant's approach on the audit and a high level schedule of the audit which includes the start and finish of; fieldwork, control walkthroughs, description of system, testing, report finalization and report issuance.
- (b) The Consultant (through its Partner Key Personnel) will, as required, provide monthly updates to PAAC on the progress of the audit, including any findings to date from commencement of engagement to completion of engagement. This includes answering any questions posed by TA upon their review of the draft CSAE 3416.
- (c) For the duration of planning and fieldwork, on a weekly basis, the Consultant provide and distribute a progress report summarizing status of walkthroughs for each objective; provide a percentage of work completed; and evidence outstanding. The process report will include a list of scheduled meetings. The information is to be prepared on a business unit level.
- (d) On an annual basis, the Consultant' Partner Key Personnel must present the final report the Scheme Governance Committee in April as required by Metrolinx.
- (e) Meetings initiated by Metrolinx may be held in person or via teleconference. The Consultant will be required to submit any reporting and may be required to present information at these meetings.

4. Location and Hours of Work

- (a) On-site work may occur at one (1) or more of the following locations:
 - (i) Metrolinx - 20 Bay Street, Toronto Ontario, M6J 2N8;
 - (ii) Metrolinx - 130 Adelaide Street, West, Toronto, Ontario, M5H 3P5;
 - (iii) Metrolinx - 3500 Wolfedale Rd, Mississauga, ON L5C 2V6;
 - (iv) Accenture – 3401 Schmon Parkway, Thorold, Ontario, L2V 4Y6; and
 - (v) Accenture – 33 City Centre Dr. Mississauga, Ontario, L5B 2N5.

- (b) Work at the locations specified in Section 5.1 above shall occur between the hours of Monday to Friday from 9:00 a.m. to 5:00 p.m.
- (c) Prior written approval to work outside the hours indicated in Section 5.(b) above must be requested from the Metrolinx Representative.

5. Service Level Agreement

- (a) The Consultant is expected to adhere to the following deliverables with strict time lines in each of the contracted years. In the case, the date falls on the weekend, the Consultant may provide the deliverable on the following business day.
- (b) Metrolinx anticipates that Consultant will need to begin field work at the locations specified in s.2.1 above as of September 1 of each Contract Year in order to meet the timelines below:

(i)

Draft Report to PRESTO	February 2,
Draft Report to PAAC	February 6
Draft Report to PAAC for fatal flaw review	February 23
Issuance of Final Report	February 28

7. Additional Auditing Services

- (a) Consultant agrees to perform additional auditing services for Metrolinx as requested from time to time and as designated by separate Statement of Work. As a task arises, as determined in Metrolinx's sole discretion, the Metrolinx representative may contact the Consultant. Upon notification by Metrolinx of the scope of a given project, the Consultant shall deliver, in writing by email, a signed quote indicating (a) Consultant's availability to perform the work requested, (b) the not-to-exceed price (and basis for same) to perform the work, and (c) the estimated time for performance. If selected to perform the work, a Statement of Work will be executed by Contractor and Metrolinx.
- (b) At the sole discretion of Metrolinx, the Consultant may be engaged to provide additional services beyond the annual CSAE 3416 Type II engagement. These services may include, but are not limited to:
 - (i) Audit of future System Conversion/Migration and/or major Upgrades with a focus on ensuring customer farecard and associated financial data is converted and migrated completely from one system to another and not adversely impact subsequent revenue processing, settlement and apportionment to TAs; and
 - (ii) Implementation and review of system access controls related to new PRESTO initiatives.

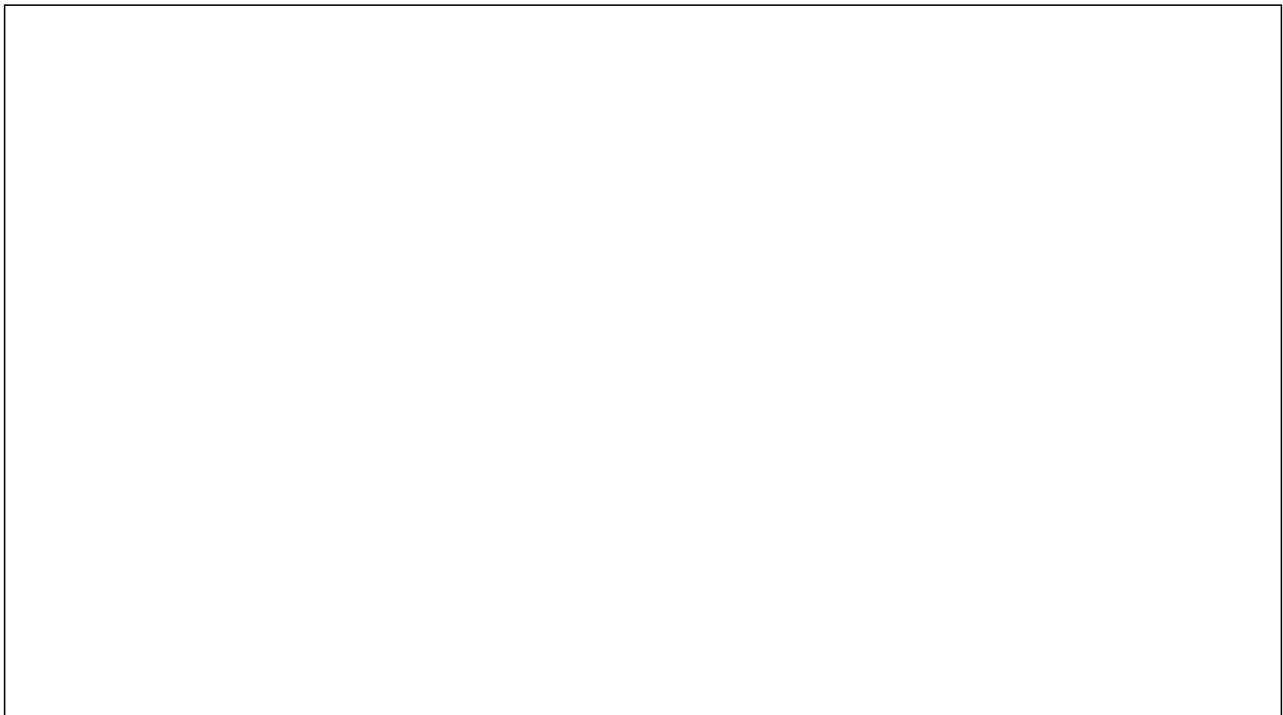
- (c) All additional Services will be paid from the Cash Allowance in accordance with these Contract documents.

END OF SECTION

Appendix “C” – Metrolinx Services

Metrolinx shall:

- (a) provide the Consultant with general direction in the provision of the Services;
- (b) designate an individual to act as its Representative, who shall transmit instructions to, and receive information from the Consultant. The designated Metrolinx Representative will be accountable for all service expenditures;
- (c) provide access to and where necessary, make available copies of existing plans, reports, studies, information and correspondence relevant to the Services;
- (d) use commercially reasonable efforts to ensure that all agreements between Metrolinx and external agencies relevant to the Consultant’s provision of the Services are executed in a timely manner; and
- (e) be responsible for the coordination of any consultation, review or other input which may be required from Metrolinx’s third-party contractors.



Appendix "D" – Documents

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

<u>ITEM NO.</u>	<u>DOCUMENT TITLE</u>
1.	Contractor's Performance Report
2.	Sample Articles of Agreement (below)
3.	Parental Guarantee – Separate Attachment
4.	Metrolinx Merx Portal – General Information – Separate Attachment
5.	Vendor Q and A – RQQ-2017-AS-127 – Separate Attachment
6.	Attachment # 2 Corporate References - Separate Attachment
7.	Attachment # 3 Key Personnel – Separate Attachment for each Key Personnel Role

SAMPLE ARTICLES OF AGREEMENT

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

B E T W E E N

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

- and -

●
(hereinafter the "Consultant")

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 Consultant agree as follows:

1. **Contract**

- (a) The following documents and any amendments relating thereto form the contract between Metrolinx and the Proponent (the "Contract"):
- (i) these Articles of Agreement;
 - (ii) any Addenda issued hereto;
 - (iii) the Form of Request;
 - (iv) Attachment #1 – Contract Prices;
 - (v) the document attached hereto as Appendix "A" and entitled "General Conditions";
 - (vi) the document attached hereto as Appendix "B" and entitled "Consultant's Scope of Services";
 - (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. Date of Completion of Work and Description of Work

The Consultant 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 Consultant shall provide labour, superintendence, plant, tools, appliances, equipment, supplies and other accessories, services and facilities necessary to carry out ●, in accordance with the Consultant's Scope of Services, attached as APPENDIX "B" (the "Work").
- (b) The Work is to be provided to the satisfaction of the ●, unless otherwise specified.

3. Contract Price

- (c) ●

SAMPLE – DO NOT COMPLETE

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

If the Consultant is a corporation:

●(Company's Full Legal Name)

Per: _____

Name:

Title:

Per: _____

Name:

Title:

I/We have authority to bind the Corporation

If the Consultant is a partnership:

(Partnership's Full Legal Name)

by its General
Partner,

(Name of General Partner)

Per: _____

Name:

Title:

Per: _____

Name:

Title:

SAMPLE – DO NOT COMPLETE

If the Consultant is a Joint Venture or a Consortium:

Joint Venture/Consortium
Participant-in-Charge

(Company's Full Legal Name)

Per: _____

Name:
Title:

Joint Venture/Consortium Member

(Company's Full Legal Name)

Per: _____

Name:
Title:

Joint Venture/Consortium Member

(Company's Full Legal Name)

Per: _____

Name:
Title:

If the Consultant is an individual:

)

)

)

)

Witness

)

Name:

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

SAMPLE – DO NOT COMPLETE