

Request to Qualify and Quote for Consultant's Services on an Emergent Basis

Project Name: Enterprise Documents and
Records Management System
Foundation

Request Number: RQQ-2017-IT-038



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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 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 **“Contract”** shall have the same meaning ascribed in Schedule A – Definitions of Appendix “A” – General Conditions.
- 1.6 **“Contract Documents”** shall have the same meaning ascribed in Schedule A – Definitions of Appendix “A” – General Conditions.
- 1.7 **“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.
- 1.8 **“Deliverables”** shall have the same meaning ascribed in Schedule A – Definitions of the Appendix “A” – General Conditions.

- 1.9 “**EBS**” means Electronic Bid Submission.
- 1.10 “**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.
- 1.11 “**E-Bid Confirmation Number**” is the receipt received by a Proponent from MERX indicating that the Submission was uploaded successfully.
- 1.12 “**Evaluation Committee**” means the representatives chosen to evaluate the Submissions based on the Evaluation Criteria outlined in this Request Document.
- 1.13 “**Evaluation Criteria**” means the criteria for scoring the Submission as stated in Section 5.2 – Evaluation Criteria, of Evaluation Criteria and Selection Process herein.
- 1.14 “**FIPPA**” shall have the same meaning ascribed in Section 3.11 of Instructions to Proponents.
- 1.15 “**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.
- 1.16 “**Key Personnel**” shall have the same meaning ascribed to it in Section 2.7(a) of the General Conditions.
- 1.17 “**Metrolinx**” means Metrolinx, a provincial crown agency continued under the *Metrolinx Act*, S.O. 2006, Chapter 16, and its successors and assigns.
- 1.18 “**Metrolinx MERX Portal**” is the electronic bid solicitation and Proponent Submission website (www.metrolinx.merx.com) that facilitates Metrolinx and Proponent interaction as it directly relates to the; download by a Proponent of Metrolinx Request Document including Addenda from, and upload by a Proponent of a Submission to Metrolinx in response to, this RQQ Process
- 1.19 “**Option**” means a component of the Services that is to be exercised at the sole discretion of Metrolinx.
- 1.20 “**Participant in Charge**” shall have the same meaning ascribed in Section 3.6.3 of the Instructions to Proponents.
- 1.21 “**Parties**” shall have the same meaning ascribed in Schedule A – Definitions of Appendix “A” – General Conditions.
- 1.22 “**Procurement Representative**” means the following individual in the Procurement Services Department:

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

- 1.23 **“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.
- 1.24 **“Rates”** shall have the same meaning given in Section 1(a) of Schedule C – Financial Terms.
- 1.25 **“Representative Key Personnel”** shall have the same meaning ascribed in Section 4.3.1(a)(v) of the Instructions to Proponents.
- 1.26 **“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.
- 1.27 **“Request Document Forms”** means any sections of this Request Document which requires completion and must be included with the Submission.
- 1.28 **“RQQ Process”** means the Request to Qualify and Quote procurement process set out in the Request Document herein.
- 1.29 **“Scope of Services”** means the scope of work described in Appendix “B”.
- 1.30 **“Services”** shall have the meaning ascribed in Section 2.2(a) of the Appendix “A” – General Conditions.
- 1.31 **“Subconsultant”** shall have the same meaning ascribed in Schedule A – Definitions of Appendix A – General Conditions.
- 1.32 **“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.
- 1.33 **“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.
- 1.34 **“VPM”** shall have the meaning ascribed in Section 3.16.1 of Instructions to Proponents.
- 1.35 **“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 RQQ-2017-IT-038, as more particularly described in this Request Document as required by Metrolinx, which Services relates to Enterprise Documents and Records Management System Foundation.

3.0 Instructions to Proponents

3.1 Submission Instructions

3.1.1 General

- (a) This Request Document 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 **Metrolinx MERX Portal**. Proponents shall be solely responsible for the delivery of their Submission using Metrolinx MERX Portal 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	July 21, 2017
Deadline to Submit Questions	August 4, 2017 4:00 p.m. Eastern Time
Last day for issuance of Addenda	August 10, 2017
Closing	August 17, 2017 3:00 p.m. Eastern Time

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 this Request Document, the contents herein, or the Services contemplated herein are to be directed, in writing, to Procurement Representative as specified in Section 1.23 prior to the deadline for submitting questions. No questions or requests for clarifications, changes or amendments of Request Document shall be entertained after this time regardless of the reason.
- (c) All questions/requests for clarification related to this Request Document 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:

Proponent Q and A Template_RQQ-2017-IT-038

- (d) 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. 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 Document 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

- (a) Not Applicable

3.1.4 Addenda / Changes to the Request Document

- (a) In the event that Metrolinx determines in its sole discretion, that clarifications of, or revisions to the Request Document are required, all Proponents who received copies of the Request Document shall be advised of such clarifications or revisions during the period by written addenda. Such addenda shall become part of

the Request Document 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 Metrolinx MERX Portal. Information concerning the number of Addenda issued and the date of issue of the most recent Addendum can be found at www.metrolinx.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 this Request Document and any data referred to therein. They shall make the necessary investigations to inform themselves thoroughly as to the character and magnitude of the Services.
- (c) The Proponent shall not claim at any time after the Closing and/or after notification of award of the Contract that there was any misunderstanding or uncertainty in regard to this Request Document or any of the contents therein. No plea of ignorance of conditions which exist, or any conditions or difficulties that may be encountered, shall be accepted as a reason for failure to complete the Contract or as a basis for claims for additional compensation or extension of time.
- (d) Your Submission shall be completed fully in a clear and comprehensible manner.

- (e) Submissions shall be remitted electronically through 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 original Request Document Forms as issued by Metrolinx through the Metrolinx MERX Portal 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 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 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 Metrolinx MERX Portal by the Proponent's E-bid Authorized Signer.
 - (i) NOTE: The Proponent can have only one (1) E-Bid Authorized Signer which is to be used for any EBS 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. For assistance in using Metrolinx MERX Portal, please contact MERX directly at 1-800-964-MERX (6379) or visit the MERX website at www.metrolinx.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 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) MERX places no restriction on file format and does not convert or zip files during the upload process.
 - (iv) 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 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 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 Metrolinx MERX Portal.
 - (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.metrolinx.merx.com (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 E – 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.

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

(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. If the Proponent does not own any vehicles and non-owned vehicle coverage is provided under a Commercial General Liability Insurance policy the Proponent is not required to provide a certificate for Automobile Liability Insurance so long as at the time it provides the other certificates, it submits an officer's certificate signed by a senior officer of the Proponent stating the same.
- 4) The Certificate of Commercial General Liability Insurance shall reference the Contract name and number and include the following as additional insureds:

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 as Item No – Parental Guarantee, and provided for in Appendix "D" – Documents, 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 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 this Request Document or request amendment where, in the sole opinion of Metrolinx, there is an irregularity or omission in the information provided, that is not material to the Submission unless a specific consequence has been identified herein for the commission of such an irregularity or omission;
- 3.3.5 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 this Request Document;
- 3.3.12 to postpone the Closing, at which time all Proponents who received this Request Document 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 Evaluated 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 award one (1) or more Contracts for provision of the Services;
- 3.3.18 to, upon failure of the Proponent whose Submission was accepted to fulfil 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; and

3.3.19 to proceed with and to enter into a Contract with the Proponent for the provision of Services, as stated in Appendix “B” - Scope of Services.

3.4 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.

(a) It is Metrolinx’s intention to establish Contracts with one (1) or more Consultant(s) to perform the required Services.

(b) Metrolinx’s upset limit for the Services is nine million dollars (\$9,000,000.00) over a period of up to three (3) years, excluding taxes. In the event that Metrolinx, in its sole discretion, awards more than one (1) Contract, the amount stated herein shall be divided between the multiple Contracts. The amount allocated to each Contract shall be determined by Metrolinx at its sole discretion.

(c) No individual work assignment shall have a value greater than two hundred and fifty thousand dollars (\$250,000.00).

3.4.2 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 any other documents as may be required within the specified time, shall result in the cancellation of the Contract award.

3.4.3 There shall be no binding contract for the supply of the Services unless and until Metrolinx and the Proponent, whose Submission has been accepted, have executed the written agreements contemplated in this 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.

3.5 Conflict of Interest

3.5.1 For the purposes of this section, “Conflict of Interest” shall have the meaning ascribed to it in the Form of Request.

- 3.5.2 The Conflict of Interest declaration included in the Form of Request shall be completed and provided with the 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.

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 this 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.

3.11 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.

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.

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

3.16.2 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 – Proponent's 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:
- 4.2.2 Present information in Font Size 11 pt. on 8½ x 11 paper size.
- 4.2.3 Include a table of contents.
- 4.2.4 Organize information into sections which correspond to the Submission Content Requirements in the exact order described below.
- 4.2.5 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:**

- (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) Each of the service areas listed in Appendix “B” – Scope of Services – Categories of Service
- c) Ten (10) years of experience in delivery of services provided to clients in the following industry/sectors: public, transit, finance and information technology;
- d) Experience in delivering services, including any in-flight initiatives.en (10) years demonstrated experience with construction projects undertaken on a facility which continues to operate during construction.

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

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.

(i) Corporate References Related to Current Scope:

- 1) The Proponent should provide a list of five (5) references, for relevant projects completed within the past five (5) years or currently active, which demonstrate the Corporate Firm’s experience and qualifications. **References should consist of two (2) for Business Services, two (2) for Technical Services and one (1) for Business and Technical Services.** The Proponent will include all projects of similar scope, complexity and estimated value that it has completed or is currently completing as part of the five (5) 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.
 - (ii) 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 Representative Key Personnel (as defined below) and their project roles, if applicable; and
- (e) **Technical Submission Section 5: Representative Key Personnel Experience and Qualifications**

- (i) Functional Organization
 - 1) Organizational Chart – Provide an organizational chart identifying the number of personnel on staff that can fill each of the required Key Personnel positions.

(ii) Representative Key Personnel

Key Personnel Experience and Qualifications – The Proponent should demonstrate that it can provide Key Personnel with the required experience and qualifications indicated in Group A - Schedule E of Appendix A by providing the information of representative individuals for the Key Personnel roles (the “Representative Key Personnel”), as follows:

- 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) Representative Key Personnel Description of Reference Projects – Provide Representative 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 – Proponent’s Prices. The pricing template must be submitted as a separate file preferably in Excel (.xlsx) format.

5.0 Evaluation Criteria and Selection Process

5.1 Evaluation Methodology

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

5.1.2 Each criteria is evaluated. Mandatory criteria will be rated pass or fail. All other Evaluation Criteria shall be assigned a score out of ten (10). The score is then multiplied by the weight (which indicates the relative importance of the criteria not deemed critical to Metrolinx) to determine the weighted score. The weighted scores are then added to determine the Total 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 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 – Proponent’s Prices shall be evaluated for the Submissions which achieve the minimum score of 70% on Phase Two evaluation.

(ii) Attachment 1 – Proponent’s Prices shall not be evaluated for those Proponents whose Submissions do not achieve

the specified minimum score requirement to proceed to Pricing Evaluation.

(iii) An administrative evaluation shall be conducted of Attachment 1 – Proponent’s Prices, to determine compliance with the mandatory requirements as stated therein and in the Instructions to Proponents. To determine an Evaluated Price, the Maximum Hourly Billing Rates for Years One through three of the Consultants who passed Phase Two proceeding to Phase Three shall be multiplied by an Estimated Number of Hours identified for each Key Personnel position. The Evaluated Price of each Submission proceeding to Pricing Evaluation, shall then be evaluated and scored as follows:

- a) The Submission with the lowest Evaluated 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:

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

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

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

5.1.5 Selection of Submissions

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 this Request Document.

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

5.2 Evaluation Criteria

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

Evaluated Component	Maximum Score	Weighting Factor	Total (Score x Weight)
Phase One: ADMINISTRATIVE EVALUATION (Compliant / Non-Compliant)			
Phase Two: TECHNICAL EVALUATION			
Technical Submission Section 1: Form of Request (Compliant / Non Compliant)			
Technical Submission Section 2: Corporate Summary			
Corporate Summary	10	5	50
Corporate Experience and Qualifications	10	10	100
Subtotal Corporate Summary:		15	150
Technical Submission Section 3 and 4: Corporate References and Description of Corporate Projects and Corporate References			
Description of Corporate Reference Project 1 and Corresponding Reference	10	10	100
Description of Corporate Reference Project 2 and Corresponding Reference	10	10	100
Description of Corporate Reference Project 3 and Corresponding Reference	10	10	100
Description of Corporate Reference Project 4 and Corresponding Reference	10	10	100
Subtotal Corporate References and Description of Corporate Reference Projects:		40	400
Technical Submission Section 5: Team Experience and Qualifications			
Key Personnel Experience & Qualifications			
Client Manager	10	8	80
Executive Lead	10	3	30
Project Manager	10	3	30
Migration Specialist	10	3	30
Technical / Functional Lead	10	3	30

Evaluated Component	Maximum Score	Weighting Factor	Total (Score x Weight)
Subtotal Team Experience and Qualifications:		20	200
Subtotal Technical Evaluation:		75%	750
Phase Three: PRICING			
Pricing	10	25	250
SUBTOTAL PHASE FOUR:		25%	250
TOTAL OVERALL 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-IT-038

Request Description: Consultant Services for Enterprise Documents and Records Management System Foundation

6.1 Proponent Submission Checklist

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

Requirement	Confirmation (left click with your mouse in the box to select)
The Submission has been 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 your Submission.	<input type="checkbox"/>
The Proponent has reviewed the mandatory criteria and acknowledges that it meets all mandatory requirements in order for their Submission to be considered further.	<input type="checkbox"/>

Requirement	Confirmation (left click with your mouse in the box to select)
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"/>

6.2 Contact Information

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

[Click here to enter text.](#)

(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.](#)

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

[Click here to enter text.](#)

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

[Click here to enter text.](#)

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

[Click here to enter text.](#)

6.3 Proponent Acknowledgments

6.3.1 In consideration of the mutual premises and agreements contained herein and for other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the undersigned Proponent hereby offers to Metrolinx to furnish all necessary labour, superintendence, plant, tools, appliances, equipment, supplies and other accessories, services and facilities necessary to perform the following services:

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

ANY ADDENDA ISSUED HERETO
INSTRUCTIONS TO PROPONENTS
REQUEST SUBMISSION REQUIREMENTS
EVALUATION CRITERIA AND SELECTION PROCESS
FORM OF REQUEST
ATTACHMENT 1 – PROPONENT’S PRICES
ATTACHMENT 2 – CORPORATE REFERENCES
ATTACHMENT 3 – KEY PERSONNEL CURRICULUM VITAE AND REFERENCES
APPENDIX “A” – GENERAL CONDITIONS
APPENDIX “B” – SCOPE OF SERVICES
APPENDIX “C” – METROLINX’S SERVICES
APPENDIX “D” – DOCUMENTS

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

6.3.4 The Proponent’s Submission is hereby submitted on the full understanding that it is an irrevocable offer by the Proponent for a period of one hundred and 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.

6.3.5 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.

6.3.6 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.

6.3.7 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.

6.4 Requirements

6.4.1 The Proponent shall provide equipment, supplies and other accessories, services and facilities necessary to provide the services on an emergent basis for three (3) years, in accordance with the Scope of Services, attached as APPENDIX “B” (the “Services”).

6.4.2 The Services are to be provided in accordance with the terms of the Contract, unless otherwise specified.

6.5 Vendor Personnel (Schedule E Template)

The Vendor Personnel roles shall be filled using Schedule E Template in accordance with the Contract Documents and in accordance with the requirements in respect of qualifications, experience and minimum years of experience as contained in Schedule E – Consultant Personnel of Appendix “A” - General Conditions.

6.6 Conflict of Interest

6.6.1 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:

- 6.6.2 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, advisers 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.

- 6.6.3 (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.

6.7 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:_____.

A non-resident Proponent unable to provide a H.S.T. Registration Number at the time of Submission shall be required to provide a H.S.T. Registration Number within five (5) Business Days of acceptance of its Submission by Metrolinx.

Failure to comply with this requirement may result in the Contract being declared VOID.

7.0 Attachment 1 – Proponent’s Prices

7.1 Proponent’s Prices

7.1.1 The Proponent’s 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 Scope of Services attached as Appendix “B”.

(b) The Rates quoted shall include all costs related to the Services including, but not limited to, Key Personnel identified, other technical positions, administrative positions, any Subconsultants and specialized service providers required to complete the Services, any and all disbursements, travel, supervision, equipment, tools, supplies, as per the Consultant’s Scope of Services in Appendix “B” as required in this Request Document.

(c) Maximum Hourly Billing Rates for Key Personnel

(i) The Maximum Hourly Billing Rate as quoted by the Consultant represents an all-inclusive maximum rate at which the Consultant will invoice Metrolinx, on a time basis with disbursements included and H.S.T. excluded, for services rendered by each classification of employee listed.

(ii) The Maximum Hourly Billing Rates for the Key Team Members shall be the sum of any and all costs that are attributable to the employee in question including, but not limited to, the following: basic hourly rate, fringe benefits, payroll burden, mark-up, overhead, profit, disbursements, travel, mileage and any and all other costs associated with the Work.

7.2 Completion of Pricing Schedules

- 7.2.1 Proponents shall fully complete the Excel file entitled Attachment 1 – Proponent’s Prices and insert a Unit Price into each space provided under the Fixed Maximum Hourly Billing Rate (FMHBR) column.
- 7.2.2 Attachment 1 – Proponent’s 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.
- 7.2.3 It is Metrolinx preference that Proponents submit the pricing using the appended Excel file format to facilitate the Metrolinx pricing evaluation process.
- 7.2.4 If a “0” is entered in any of the spaces where price information is to be provided, it shall be interpreted as meaning the Proponent shall provide the specified service to Metrolinx at no charge.
- 7.2.5 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 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.
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 Representative 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 Appendix “B”, relative to the Services being requested;
- 9.1.3 Experience in performing the proposed Key Personnel role, as specified in Appendix “B”, 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 Representative 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 five (5) 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 Representative Key Personnel has the

required qualifications and experience as stated in Appendix “B” – Scope of Services, 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 Representative Key Personnel that have worked on the same reference project and their project roles, if applicable; and

9.3.7 Images and illustrations of the project.

9.4 Proponents should review the 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 of Representative Key Personnel:	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.

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.

Item No.	Description
1	Appendix “A” – General Conditions
2	Schedule A – Definitions
3	Schedule B – Financial Terms
4	Schedule C – Insurance
5	Schedule D – Dispute Resolution
6	Schedule E – Vendor Personnel

General Conditions

1.0 Interpretation

1.1 Definitions

- (a) Capitalized terms used in this Contract shall have the respective meanings ascribed thereto in Schedule A - Definitions.

1.2 Time of the Essence

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

1.3 Currency

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

1.4 Units of Measure

- (a) 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

- (a) All communication between Metrolinx and the Vendor and between the Vendor and each of the Subvendors with regard to the Work 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 Vendor shall perform the Work in accordance with the terms of this Contract, including in compliance with Applicable Laws.
- (b) Any provision establishing a higher standard of safety, reliability, performance or service shall take precedence over a provision establishing a lower standard of safety, reliability, durability, performance or service.
- (c) 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.

- (d) 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.
- (e) Where used in this Contract, “including” means including without limitation, and the terms “include”, “includes”, and “included” have similar meanings.
- (f) 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.
- (g) 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

- (a) 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:
 - (i) Schedule A - Definitions
 - (ii) Schedule B - Financial Terms
 - (iii) Schedule C - Insurance
 - (iv) Schedule D - Dispute Resolution
 - (v) Schedule E - Vendor Personnel

2.0 Performance

2.1 Term of the Contract

- (a) This Contract shall take effect on the Effective Date hereof and shall continue in full force and effect until the earlier of: (i) third anniversary of the Effective Date; or (ii) the date that this Contract is terminated in accordance with its terms (the “Term”).

2.2 Performance of the Work

- (a) The Vendor shall carry out and complete the Work, which is requested by Metrolinx and documented by an authorized SOW, in accordance with all the terms of this Contract.
- (b) The Vendor shall supply the Work diligently and continuously in accordance with the scheduling requirements set out in set out in each SOW Schedule.
- (c) Metrolinx may, from time to time, in its sole discretion, but is not required to, direct the Vendor to cause specific Vendor Personnel to perform certain tasks or activities that form part of the Work in accordance with the scheduling requirements provided by Metrolinx. Any such instructions shall be provided by Metrolinx in writing to the Vendor no less than five (5) Business Days before the specified tasks or activities are required to be performed by the Vendor Personnel.
- (d) The Vendor shall provide, at the sole cost and expense of the Vendor, 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 Work and to undertake, perform and complete its undertakings, obligations and responsibilities provided for in this Contract.
- (e) The Work shall be provided in a professional, timely and economical manner according to the Required Standard of Care.
- (f) The Vendor shall comply with and conform to all Applicable Laws, applicable to the Work to be provided by, and the responsibilities and obligations of, the Vendor under this Contract.
- (g) The Vendor shall not alter any part of a Joint Venture except with the prior written consent of Metrolinx in its sole discretion. Where the Vendor is not part of a Joint Venture, this Section 2.2(g) shall be deemed to be deleted.

2.3 Subvendors

- (a) Other than the Subvendors identified in the Submission, the Vendor shall not subcontract the Work to any Person without the prior written consent of Metrolinx. No subcontracting by the Vendor shall relieve the Vendor of any responsibility for the full performance of all obligations of the Vendor under this Contract. Notwithstanding the approval of any Subvendors by Metrolinx, the Vendor shall be fully responsible for every Subvendor's activities, works, services and acts or omissions.
- (b) The Vendor shall be solely responsible for the payment of any Subvendors.
- (c) The Vendor shall co-ordinate the services of all Subvendors employed, engaged or retained by the Vendor with Metrolinx and, without limiting the generality of any other provision of this Contract, the Vendor shall be liable to Metrolinx for costs or damages arising from errors or omissions of such Subvendors or any of them. It shall be the Vendor's responsibility to control and review the Work of its own forces and of all its Subvendors and to ascertain that all Work are performed in accordance with this Contract, all governing regulations and the Required Standard of Care.
- (d) In any subcontract, the Vendor shall ensure that the Subvendor is bound by conditions compatible with, and no less favorable to Metrolinx than, the conditions of this Contract.
- (e) The Vendor warrants and represents that it and any of its permitted Subvendors and the respective workforce of each are fully qualified to perform the Work and perform this Contract and hold all requisite Approvals.
- (f) The Vendor 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 Vendor shall ensure that all workers and persons employed by them or under their control or employed by or under the control of its Subvendors comply with the terms of this Contract and, in particular without limiting the foregoing, the responsibilities of the Vendor with respect to matters concerning safety, compliance with the Applicable Laws and the conduct of the Work.
- (g) The Vendor shall be an independent contractor with respect to the Work to be provided under this Contract and nothing contained in this Contract shall be construed as constituting a joint venture or partnership between the Vendor and Metrolinx. Neither the Vendor nor its Subvendors shall be deemed to be employees, agents, servants or representatives of Metrolinx in the performance of the Work hereunder.
- (h) The Vendor shall not remove or change any Subvendors, or materially reduce the responsibilities of any Subvendors in relation to the provision of the Work except with the prior written consent of Metrolinx in its sole

discretion. The proposed replacement Subvendor shall possess the requisite Domain Expertise and similar qualifications, experience and ability as the outgoing Subvendor.

2.4 Vendor Personnel

- (a) The Vendor shall select and employ a sufficient number of suitably qualified and experienced Vendor Personnel to perform and provide the Work, as determined with reference to the requirements of the Work to be performed by each individual or otherwise as required pursuant to the Contract. All Vendor Personnel shall possess or, where permitted, shall be supervised by persons who possess, the professional accreditation required to complete the Work.
- (b) If a role is described in Schedule E - Vendor Personnel, the Vendor shall fill that role with a person who meets the qualifications, experience and minimum years of experience requirements that are contained in Schedule E - Vendor Personnel.
- (c) The Vendor shall provide effective and efficient supervision to ensure that the quality of workmanship meets the requirements of the Contract.
- (d) The Vendor shall ensure that the Vendor Personnel assigned to perform the Work 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 the Vendor has been made aware of same.

2.5 Third Party Agreements

- (a) The Vendor acknowledges and agrees that Metrolinx is a party to, and may during the Term enter into, agreements with various third parties which may intersect with the Work. The Vendor shall reasonably cooperate with all such third parties and shall provide to them any reasonably requested information; provided, however, that Metrolinx acknowledges that such third parties may be required to enter into a non-disclosure agreement prior to the disclosure thereof. Cooperation with any such third parties in respect of any aspects of the Services shall not result in any increase in any associated costs or fees unless an amendment or change order documenting the Change has been executed by both Parties.

2.6 Key Personnel

- (a) All Key Personnel will possess the requisite Domain Expertise.

- (b) The Vendor will not remove the Client Manager from the provision of the Work, or materially reduce the responsibilities of the Client Manager in relation to the provision of the Work except with the prior written consent of Metrolinx (which consent shall not be unreasonably withheld).

- (c) Notwithstanding Section 2.6(b) but subject to Section 2.6(d), if at any time the Vendor, for reasons beyond its reasonable control, is unable to provide the services of the Client Manager, the Vendor shall provide a replacement person who possesses similar qualifications, experience and ability and possesses the requisite Domain Expertise; provided, however, that the Vendor 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 Vendor; 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 reason why it is necessary to replace the Client Manager; and the replacement person's name, curriculum vitae in the form set out in Schedule E - Vendor 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 Vendor 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 Vendor in writing why that person is not acceptable and the Vendor shall nominate an alternate person pursuant to the process identified in this Section 2.6(c).

- (d) 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 Vendor, and, within thirty (30) days of receipt by the Vendor of such notice, the Vendor 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 E - Vendor 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 Vendor 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 Vendor in writing why that person is not acceptable and the Vendor shall nominate an alternate person pursuant to the process identified in this Section 2.6(d). The rates for the proposed replacement shall not exceed the approved Rate of the person being replaced.

2.7 Vendor's Representative

- (a) The Vendor shall assign a Vendor's Representative who will direct the provision of the Work. During the Term, the Vendor's Representative will maintain ongoing contact with Metrolinx to ensure that issues are dealt with in an efficient, effective and timely manner. The Vendor'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 Vendor's obligations under this Contract.

2.8 Metrolinx Responsibilities

- (a) Metrolinx shall designate an individual to act as its representative (the "Metrolinx Representative") who will transmit instructions to, and receive information from the Vendor.
- (b) Metrolinx shall:
 - (i) provide the Vendor with general direction in the provision of the Work; and
 - (ii) provide access and resources where necessary, make available information and instructions relevant to the Work.

2.9 Statement of Work Process for Work

- (a) Metrolinx may, from time to time, provide the Vendor with a description of specified Work or a specified Deliverable required by Metrolinx (each, an "Outcome"). Upon receiving this request, the Vendor shall prepare a detailed statement of work (each, a "SOW"). Metrolinx will specify in the Outcome request:
 - (i) the amount of time the Vendor has to respond with a SOW, which will be no less than one (1) week; and
 - (ii) the lead time available prior to the start of the Outcome.
- (b) Each SOW submitted by the Vendor will set out the following:
 - (i) a detailed description of the work required to achieve the Outcome, and Outcome deliverables;
 - (ii) a detailed work schedule for the completion of the Outcome described in the SOW, which shall include milestones (the "SOW Schedule");
 - (iii) any requirements for testing and/or reporting;

- (iv) a detailed calculation of the fees for the work to be undertaken pursuant to the SOW;
 - (v) a description of any fee reductions, incentive payments or holdbacks that may be applied;
 - (vi) a payment schedule;
 - (vii) the resources required for the completion of the Outcome;
 - (viii) a proposed list of staff for the SOW, including the names and contact information of the Vendors' senior project manager and other key personnel for the Outcome;
 - (ix) proposed Subvendors;
 - (x) any requirement for additional positions than those listed in Schedule E – Vendor Personnel;
 - (xi) a Curriculum Vitae (CV) for each proposed staff member engaged in the SOW;
 - (xii) roles and responsibilities of the Parties with respect to the SOW and each Deliverable relating to the SOW;
 - (xiii) any remedies, in addition, or in the alternative, to those provided for under Articles 11 and 13; and
 - (xiv) any other information or documents as required by the Metrolinx Representative.
- (c) Prior to finalizing a SOW, Metrolinx and the Vendor will establish either a fixed fee for the Work or an upset limit on the fee if the SOW is to be completed on a Time and Expense basis:
- (i) Time and Expense: The fee shall be calculated on the basis of the work actually performed for a SOW based on the hourly rates set out in the Articles of Agreement (the “Rates”).
 - (ii) Fixed Price: The fee shall be calculated for the completion of a SOW based on the Rates. The Vendor shall submit an itemized cost breakdown of the various parts of the SOW, which together shall aggregate the total price for that SOW.
- (d) The upset limit or fixed fee for each SOW shall not exceed a value greater than two hundred and fifty thousand dollars (\$250,000.00), unless otherwise agreed by Metrolinx, in its sole discretion. The upset limit or fixed fee for each SOW shall be inclusive of all applicable costs.

- (e) The Vendor shall prepare each SOW at no charge to Metrolinx.
- (f) When the total accumulated cost incurred under a SOW reaches 90% of the value of the upset limit for that SOW, the Vendor shall notify the Metrolinx Representative immediately in writing.
- (g) Following the Vendor's delivery of the SOW to Metrolinx, Metrolinx shall discuss the execution of the Services in such SOW with the Vendor, before entering into discussions with any third party, with a view to reaching an agreement on the terms contained in such SOW, including the fixed fee or upset limit, as applicable, for the Services to be undertaken pursuant to the SOW and the SOW Schedule.
- (h) In the event Metrolinx and the Vendor are able to reach an agreement on the terms of such SOW, Metrolinx shall provide its approval of the SOW in the form of an authorized "Statement of Work".
- (i) In the event Metrolinx and the Vendor cannot reach agreement on the terms of such SOW, Metrolinx may, at its sole discretion, request another of the successful vendor to provide a SOW for the required Outcome or to quote a price for the SOW prepared by the Vendor. Alternately, Metrolinx may, at its sole discretion, conduct a formal competitive process that the Vendor shall be invited to participate in and respond to for the provision of the particular Work.
- (j) The Vendor shall not proceed with a SOW unless approved pursuant in the form of an authorized "Statement of Work" and only to the upset limit or fixed price as indicated therein notwithstanding the total upset limit price established by this Contract.
- (k) Upon Metrolinx's delivery of an authorized "Statement of Work" to the Vendor, the Vendor shall undertake the work based on the requirements, procedures and plans specified in such SOW in such a manner so as to ensure that the Outcome described in the SOW is achieved, in accordance with the SOW Schedule.
- (l) All Work performed under an authorized SOW shall be performed in accordance with the terms and conditions of this Contract. Each authorized SOW shall be incorporated into this Contract by reference. In the event of any conflict or inconsistency between this Contract and any SOW, the terms contained in this Contract shall take precedence. However, where a section of this Contract expressly provides that alternate terms and conditions may be set out in a SOW, the SOW shall take precedence only with respect to the subject matter of the relevant section and only to the extent that such alternate terms and conditions are clearly prescribed.

- (m) Metrolinx reserves the right to withhold payment for any Services performed by the Vendor or any Subvendor or Vendor Personnel prior to the issuance of an authorized SOW or outside the scope of an authorized SOW.

2.10 Vendor Work Performance Rating

- (a) Metrolinx shall during the term of a Contract, maintain a record of the Vendor'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 Vendor upon the termination or expiration of the 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 prior history of the Vendor in performing work for Metrolinx, including the Vendor's performance pursuant to this Contract, will be considered in the evaluation of future bids from the Vendor.
- (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 Vendor.
- (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 the Vendor on any bid submitted on any future requests.

3.0 Health and Safety

3.1 Occupational Health & Safety Act

- (a) The Vendor shall comply with OHSA, and any obligations of the Vendor as an "employer" thereunder, and with all regulations made under the OHSA.
- (b) The Vendor shall report to Metrolinx any non-compliance by a Subvendor in the performance of the Work with the regulations under the OHSA if and when brought to the attention of the Vendor.
- (c) The Vendor 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 Vendor's performance of the Work to be suspended; or

- (ii) this Contract to be cancelled by Metrolinx.
- (d) The Vendor will be under an obligation to cease the Work, 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 Work or affected part thereof shall not resume until any such violation has been rectified.
- (e) The Vendor shall be responsible for any delay caused by the Vendor in the progress of the Work as a result of any violation of provincial or municipal health and safety requirements by the Vendor, it being understood that such delay shall be not be a Force Majeure for the purposes of extending the time for performance of the Work or entitling the Vendor to additional compensation, and the Vendor shall take all necessary steps to avoid delay in the final completion of the Work 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 Vendor for the Work, either instead of or jointly with the Vendor.

3.2 Safety Requirements

- (a) The Vendor shall comply with the “Safety Requirements” sections of the Scope of Work. Safety of Persons at or near a Place of Work and the public is of paramount concern to Metrolinx. In the performance of the Work, the Vendor 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 Vendor specifically covenants and agrees that:
 - (i) it shall comply with best industry practice in Ontario 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 Vendor 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 Vendor 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 Vendor Personnel comply, in all regards with the Vendor'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 Vendor 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 OHSAA; 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 Vendor Personnel have been properly trained and are knowledgeable with respect to these policies and procedures.

3.3 Workers' Rights

- (a) The Vendor shall at all times pay or cause to be paid any assessments or compensation required to be paid by the Vendor or its Subvendors 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 Vendor. The Vendor shall comply with all regulations and laws relating to workers' compensation.

4.0 Financial Terms

4.1 Financial Terms

- (a) All financial and payment terms applicable to this Contract and the Work are set out in Schedule B - Financial Terms.

5.0 Right of Ownership and Use

5.1 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, unless otherwise expressly agreed in an SOW;

- (iii) all reports and other information created, generated, output or displayed by the Deliverables or as a result of the performance of receipt of the Work; and
 - (iv) all modifications or enhancements made to the items listed in Sections 5.1(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 Vendor will acquire no rights to any Metrolinx IP other than the licence rights expressly granted in Section 5.3.
- (d) The Vendor:
 - (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 Vendor shall obtain from each Vendor Personnel an assignment of any rights they have to the Metrolinx IP and a waiver, for the benefit of Metrolinx and its respective successors, assigns, licensees and contractors, of 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. The Vendor shall provide copies of such documentation to Metrolinx upon request.
- (f) Metrolinx agrees that prior to providing any Deliverables to a third party, Metrolinx shall obtain from such third party a “non-reliance” letter addressed to the Vendor in which such third party will agree that (i) any Deliverable that is provided, or made available, to it was prepared for the sole benefit of Metrolinx and is not be relied upon by it and (ii) the Vendor accepts no responsibility or liability in respect of any advice, recommendations or other information contained in any such Deliverable. Metrolinx shall provide any such non-reliance letter to the Vendor promptly after its receipt.
- (g) For certainty, the Vendor shall not be precluded from independently developing for itself, or for others, materials which are competitive with the Deliverables, irrespective of their similarity to the Deliverables and the Vendor shall be free to use, without restriction, any Vendor Background IP and its general knowledge, skills and experience, and any ideas, concepts, know-how, and techniques within the scope of its business that are used or

acquired in the course of providing the Work, so long as the Vendor does not disclose or use any Confidential Information, work product or proprietary information without Metrolinx's express written consent.

- (h) Nothing in this Contract shall prevent the Vendor from providing similar services to other parties.

5.2 Ownership of Vendor Background IP

- (a) The Vendor is and will be the exclusive owner of, and shall retain all right, title and interest (including Intellectual Property Rights) in and to all Vendor Background IP.
- (b) Metrolinx will acquire no rights to the Vendor Background IP other than the licence rights expressly granted in Section 5.4, or otherwise under or in respect of this Contract.

5.3 Grant of Licences by Metrolinx to Vendor

- (a) Metrolinx grants to the Vendor, 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 Work, modify, the Metrolinx IP solely for the purposes of fulfilling the Vendor's obligations under this Contract; and
 - (ii) sublicense the Metrolinx IP to Subvendors solely to the extent necessary to enable such Subvendors to fulfill the Vendor's obligations under this Contract.
- (b) Any exercise by the Vendor of the rights granted pursuant to Section 5.3(a) shall be subject to the terms and conditions of this Contract, including always the Vendor's obligations with respect to Confidential Information set out in Article 9.
- (c) If the Vendor 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).

5.4 Grant of Licences by the Vendor to Metrolinx

- (a) The Vendor 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 Vendor 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 Vendor 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 Vendor integrates with or embeds in any Deliverables any Intellectual Property provided by a third party vendor, subcontractor, independent contractor, Subvendor or other person, the Vendor shall obtain for Metrolinx the same license rights for Metrolinx in respect of such Third Party IP as set forth in Section 5.4(a) hereof.

6.0 Insurance

6.1 Insurance Requirements

- (a) The Vendor 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 C - 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 Work.

7.0 Changes

7.1 Changes Requested by Metrolinx

- (a) Metrolinx may, in writing, request changes or alterations to the Work or an authorized SOW, or request additional services from the Vendor (any of the foregoing, "Changes"). Subject to this Article 7, the Vendor shall comply with and implement all reasonable Metrolinx Change requests, and the performance of such requests shall be in accordance with this Contract.

7.2 Changes Recommended by the Vendor

- (a) The Vendor shall promptly notify Metrolinx in writing if the Vendor 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.

7.3 Change Management Process

- (a) Where a Change request is initiated by Metrolinx pursuant to Section 7.1, 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 Vendor shall respond to Metrolinx' Change request in writing within ten (10) Business Days.
- (c) Where a Change is initiated by the Vendor pursuant to Section 7.2, the Vendor shall set out in the Change request, conforming to Section 7.3(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 Work, the Contract price, a SOW, or the terms and conditions of the Contract, as applicable, with respect to the Change set out therein.
- (e) Where Metrolinx and the Vendor 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 Work, then either Party may refer the issue to dispute resolution in accordance with Article 15.

8.0 Additional Resources

8.1 Additional Resources

- (a) In addition to, or in connection with, a request for additional or altered services pursuant to Article 7, at any time during the Term, Metrolinx shall have the right in its discretion to require the Vendor to increase the number of Vendor Personnel upon twenty (20) days' notice.
- (b) Unless otherwise agreed to in writing by Metrolinx, such additional Vendor Personnel shall be available to report for work at any Place of Work designated by Metrolinx within twenty (20) days of receipt of a written request from Metrolinx pursuant to Section 8.1(a).

- (c) The hourly rate payable in respect of additional Vendor Personnel shall be as set out in the Articles of Agreement.

9.0 Confidential Information, Personal Information, Freedom of Information, Access and Audit Rights

9.1 Confidential Information

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

- (a) not disclose, reveal, publish, or disseminate any Confidential Information to anyone, except as permitted pursuant to this Contract;
- (b) use Confidential Information only in connection with this Contract and the performance of the Work;
- (c) take all reasonable steps required to prevent any unauthorized reproduction, use, disclosure, publication, or dissemination of the Confidential Information; and
- (d) immediately notify Metrolinx in the event that it becomes aware of any unauthorized disclosure of Confidential Information.

9.2 Permitted Disclosure

- (a) Notwithstanding the obligations set out in Section 9.1, the Vendor may disclose Metrolinx' Confidential Information to those of its Subvendors and Vendor's Personnel who need to know such Confidential Information in connection with this Contract and to third party service providers who need to know such Confidential Information for regulatory compliance purposes, provided that such persons are subject to obligations of confidentiality substantially similar to those contained in this Article 9.

9.3 Exceptions

- (a) The obligations of confidentiality set out in Section 9.1 shall not apply to Confidential Information which:
 - (i) becomes generally available to the public through no fault of the Vendor;
 - (ii) prior to receipt from Metrolinx, was known to the Vendor 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 Vendor;

- (iii) was independently developed by the Vendor prior to receipt from Metrolinx, as documented by written records possessed by the Vendor; or
 - (iv) becomes available to the Vendor on a non-confidential basis from a source other than Metrolinx that is not under other obligations of confidence.
- (b) If the Vendor becomes compelled to disclose any Confidential Information pursuant to Applicable Law, the Vendor shall, to the extent permitted by law, 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 Vendor 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 9.
- (c) Without limiting the generality of Section 9.3(a) and notwithstanding Section 9.3(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.

9.4 Security Measures

- (a) The Vendor shall select, implement (prior to the commencement of the Work), use and maintain the most appropriate products, tools, measures and procedures to ensure the security of all Confidential Information, as determined with reference to and generally in compliance with Applicable Laws, Industry Standards, the security requirements specified in “Scope of Work” and best practices, or as otherwise prescribed by Metrolinx during the Term. Without limiting the generality of the foregoing, such practices shall include:
- (i) privacy due diligence safeguards; and
 - (ii) physical and electronic security measures and confidentiality enhancing technologies to guard against unauthorized disclosures, access and use, such as firewalls, encryption, the use of user identification and passwords, software or other automated systems to control and track the addition and deletion of users, and software or other automated systems to control and track user access to areas and features of information systems.
- (b) For greater certainty, Metrolinx reserves the right to prescribe the specific manner in which Vendor shall perform its obligations relating to this Section 9.4.

9.5 Intellectual Property Rights

- (a) Metrolinx, its vendors, subvendors, consultants, advisors, agents, strategic business partners, and affiliates shall retain all right, title and interest, including all Intellectual Property Rights, in and to its Confidential Information.

9.6 Return or Destruction of Confidential Information

- (a) Immediately upon expiration or termination of this Contract or at any other time upon the request of Metrolinx, and subject to Section 9.10, the Vendor agrees to:
 - (i) promptly return all Confidential Information (other than the Contract Records) to Metrolinx; or
 - (ii) promptly delete or destroy the Confidential Information (other than the Contract Records) and all copies thereof in any form whatsoever under its power or control and provide Metrolinx with a destruction certificate signed by an appropriate officer of the Vendor certifying such destruction.
- (b) Notwithstanding the foregoing, the Vendor shall have no obligation to return or destroy:
 - (i) Confidential Information that is captured and retained within the Vendor'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 Vendor or the Vendor Personnel.

9.7 FIPPA and Personal Information

- (a) Metrolinx and the Vendor acknowledge and agree the collection, use, retention and disclosure of Personal Information is governed by FIPPA. Metrolinx acknowledges that the Vendor 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 Vendor 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 Work.
- (c) At Metrolinx's request at any time during the Term, the Vendor shall fully participate in a Privacy Impact Assessment with respect to the performance of the Work. The Privacy Impact Assessment may be conducted by Metrolinx or external third party advisors to Metrolinx at various times throughout the Term. The Vendor and all Vendor Personnel shall cooperate with Metrolinx and/or its third party advisors to provide the resources required to facilitate and fulfill this assessment. The Vendor shall implement any recommendations resulting from the Privacy Impact Assessment process.
- (d) The Vendor shall ensure the security and integrity of any Personal Information collected by the Vendor and shall protect it against loss, unauthorized access, destruction, or alteration, in accordance with the following:
 - (i) The Vendor 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 Vendor shall ensure that access to Personal Information is restricted to those Vendor Personnel who have a need to know or use such information in the performance of the Work and who have been specifically authorized to have such access for the purposes of performing the Work. Access shall be limited to only that Personal Information which is required for the performance of the Work.
 - (iii) All Personal Information shall be kept in a physically secure location and separate from all other records and databases. The Vendor shall not place, input, match, insert or intermingle, nor shall it permit any Person to place, input, match or intermingle, any data or records in any form whatsoever into or with any records or database containing such Personal Information.
- (e) For greater certainty, Metrolinx reserves the right to prescribe the specific manner in which the Vendor shall perform its obligations relating to this Section 9.7.

- (a) The Vendor acknowledges that Metrolinx is a provincial crown agency subject to FIPPA, and acknowledges and agrees as follows:
- (i) All FIPPA Records are subject to, and the collection, use, storage and treatment thereof is governed by FIPPA. The Vendor agrees to keep all FIPPA Records secure and available, in accordance with the requirements of FIPPA. The Vendor acknowledges that all information, data, records and materials, however recorded, that are held by the Vendor and/or created by the Vendor in the course of performing the Work are considered to be FIPPA Records and subject to FIPPA.
 - (ii) Section 9.6 shall apply to all FIPPA Records (other than the Contract Records), which shall be returned and/or destroyed in accordance with that section.
 - (iii) In the event of a conflict between the requirements of this Contract and the requirements of FIPPA, the requirements of FIPPA shall take precedence.
 - (iv) 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 Vendor and the Vendor 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 Vendor 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 Contract and subject to the Vendor'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).
 - (v) Storage of FIPPA Records (including the Contract Records) at a location outside Canada shall only be permitted with Metrolinx's express written consent.

9.9 Access

- (a) The Vendor shall provide to Metrolinx the network access requirements and access level that will be required by the Vendor to perform the Work. All requests to access Metrolinx's network will be subject to Metrolinx's written approval.

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

9.10 Audit Rights

- (a) During the Term and for a period of seven (7) years thereafter, the Vendor shall, at its cost and expense, retain and maintain, in an organized, accurate and accessible mode and manner, all financial and other books, records and documentation relating or pertaining to the Contract and the performance of the Work, including (i) original invoices and accounts, along with related records showing charges and expenses incurred, including but not limited to the rates and hours for all Vendor Personnel and all expenditures and commitments made by the Vendor in connection therewith; (ii) correspondence, e-mails, tenders, minutes of meetings, notes, reports, timesheets, memoranda and other documents associated with the Contract; (iii) records relating to any service level agreements and key performance indicators included in the Contract, and (iv) records related to matters of security and privacy (collectively, the "Contract Records").
- (b) The Contract Records shall be retained and maintained in accordance with all generally acceptable accounting principles and Applicable Laws and Industry Standards, or as otherwise may be required to substantiate compliance with this Contract and/or any payment to be made to the Vendor under this Contract.
- (c) During the Term and for a period of seven (7) years thereafter, Metrolinx or any third party acting on behalf of Metrolinx, shall have the right, upon no less than twenty-four (24) hours' notice in writing to the Vendor and during normal office hours, to inspect and audit, and to have access to, all Contract Records whether maintained by the Vendor or a Vendor Personnel, reasonably required to confirm the Vendor's compliance with the terms of this Contract and Applicable Laws, and to make copies thereof. The Vendor

shall make available or cause to be made available the Corporate Records that are requested by Metrolinx or that may be required given the scope of the audit (provided such scope is disclosed to the Vendor), and shall otherwise reasonably cooperate with Metrolinx and any third party acting on Metrolinx's behalf, including by providing reasonable access to all of the Vendor's premises and to the Vendor's employees. Any such access shall be subject to the Vendor's reasonable documented security policies and documented professional and confidentiality obligations to its other clients; such documentation shall be provided to Metrolinx upon request. Where access is needed to a Vendor Personnel's employees or to Contract Records that are maintained by a Vendor Personnel, the Vendor shall use reasonable efforts to arrange for such access on a timely basis. Without limiting the generality of the foregoing, the rights set out in this Section 9.10 shall extend to any Governmental Authority exercising its right to audit pursuant to Applicable Law or any contract with Metrolinx. When selecting a third party to inspect and audit the Contract Records, Metrolinx shall consult with the Vendor and shall take into consideration any reasonable objections the Vendor may have. For the avoidance of doubt, Metrolinx shall have sole discretion in selecting the third party. The Vendor may require Metrolinx and/or any third party selected by Metrolinx to inspect and audit the Contract Records, to enter into a confidentiality agreement, containing reasonable terms and conditions, with the Vendor, before the disclosure of any Contract Records is made.

- (d) The Vendor shall maintain a competent and independent audit function to assess the internal controls over its environment and its compliance with Applicable Laws and Standards. The Vendor shall provide Metrolinx, upon request, the results of all internal controls and security audits performed by the Vendor's auditors.
- (e) The Vendor shall upon advance written request, provided by e-mail or otherwise, provide Metrolinx with reasonable access to all premises that may reasonably be required to enable Metrolinx and/or Metrolinx's agents to monitor the progress of the Work. Any such access shall be subject to the Vendor's reasonable documented security policies and documented professional and confidentiality obligations to its other clients; such documentation shall be provided to Metrolinx upon request. Any such monitoring or verifications shall be without prejudice to any other rights of Metrolinx under this Contract and shall not relieve the Vendor from any of its obligations under this Contract nor shall such verification be used by the Vendor as evidence of effective control of quality.
- (f) The Vendor and Metrolinx shall meet to review each audit report promptly after the issuance thereof and to mutually agree upon the appropriate manner, if any, in which to respond to the changes suggested or issued identified by the audit report. Without limiting any remedies which may be

available to Metrolinx, the Vendor shall promptly remedy any violations of this Contract of which it becomes aware, pursuant to any audit or otherwise.

9.11 Vendor Compliance

- (a) The Vendor shall advise all of its Vendor Personnel, all of its Subvendors, and all of its Subvendor's Vendor Personnel of the requirements of this Article 9, and associated requirements set out elsewhere in this Contract, and take appropriate action to ensure compliance by such persons with the terms of this Article 9. In addition to any other liabilities of the Vendor pursuant to this Contract or otherwise at law or in equity, the Vendor shall be liable for all claims arising from any non-compliance with this Article 9 by the Vendor, any of its Vendor Personnel, any Subvendor and of its Subvendor's Vendor Personnel.
- (b) The Vendor warrants that each of its Vendor Personnel, each of its Subvendors and each of its Subvendor's Vendor Personnel engaged by the Vendor to provide the services pursuant to this Contract is under a written obligation to the Vendor requiring such person to comply with the terms of this Article 9.

9.12 Publicity

- (a) Neither Party may make any public announcement or press release regarding this Contract or any relationship between the Vendor and Metrolinx, without the other Party's prior written consent.

9.13 Damages

- (a) The Vendor acknowledges and agrees that any breach or threatened breach of this Article 9 or the obligations set out herein shall cause immediate and irreparable harm to Metrolinx for which damages alone are not an adequate remedy. The Vendor 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.

10.0 Representations, Warranties and Covenants

10.1 Representations, Warranties and Covenants of the Vendor

- (a) The Vendor 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:

- (i) the Vendor is validly existing under the laws of the location of its head office and the Vendor has all necessary corporate power, authority and capacity to enter into this Contract and to perform its obligations hereunder;
- (ii) the entering into of this Contract by the Vendor and the performance of its obligations hereunder has been authorized by all necessary corporate action;
- (iii) 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:
 - (A) 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 Vendor, the by-laws or resolutions of the Vendor or any agreement or instrument to which the Vendor is a party or by which it is bound, or
 - (B) require the Vendor 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;
- (iv) this Contract constitutes a legally valid and binding obligation of the Vendor 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;
- (v) the Vendor has carefully reviewed the whole of this Contract, including all of the Contract Documents, and all other documents made available to the Vendor by Metrolinx, and, to the Vendor's knowledge, nothing contained herein or therein inhibits or prevents the Vendor from performing the Work in accordance with the Required Standard of Care so as to achieve and satisfy the requirements of this Contract;
- (vi) the Vendor has engaged and shall engage only Subvendors and Vendor Personnel that are qualified and competent to perform the portions of the Work they are responsible for and possess the requisite Domain Expertise;
- (vii) the Vendor 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;

- (viii) the Vendor is not aware of any legal action instituted, threatened or pending against the Vendor that could have a material adverse effect on its ability to perform its obligations under this Contract;
- (ix) except as disclosed in the Submission, the Vendor is free of any actual or potential Request Conflict of Interest;
- (x) unless the Vendor is WSIB exempt, the Vendor 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;
- (xi) the Vendor 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
- (xii) the Vendor represents, warrants and covenants to Metrolinx that the Vendor is and shall remain duly registered for the purposes of Part IX of the Excise Tax Act.

10.2 Continuing Effect of Representations, Warranties and Covenants

The Vendor hereto agrees that its covenants, representations and warranties contained in this Article 10 are continuing covenants, representations and warranties and shall apply and be true and correct at all times during the Term.

10.3 Disclaimer

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

11.0 Indemnity

11.1 Indemnification

- (a) The Vendor 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) the death of or bodily injury to any agent, employee, customer, business invitee, business visitor or other person, to the extent caused by the negligence or willful misconduct of the Vendor or any Vendor Personnel;
- (ii) the damage, loss or destruction of any real or tangible personal property (excluding data), to the extent caused by the negligence or willful misconduct of the Vendor or any Vendor Personnel;
- (iii) the unauthorized disclosure by the Vendor or any Vendor Personnel of any Confidential Information and/or Personal Information;
- (iv) any acts performed by or on behalf of the Vendor beyond the authority of the Vendor hereby conferred;
- (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 Vendor or any Subvendor, including:
 - (A) any resulting expenses incurred by Metrolinx as a result of stoppage of the Work on account of failure by the Vendor 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 Vendor’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 Work or any matter provided to Metrolinx or performed by the Vendor, or anyone else for whom at law the Vendor is responsible; provided, however, the Vendor shall not be required to indemnify the Indemnified Parties pursuant to this subsection if (x) the infringement or alleged infringement was caused by the modification of a Deliverable by any person other than the Vendor or a Vendor Personnel or by the use of the Deliverable in combination with intellectual property not supplied by the Vendor, but only if the claim would not have arisen without such modification or combination, (y) the Deliverable was based upon, or incorporates, designs provided by Metrolinx, or (z) the Deliverable relating to the infringement or alleged infringement were used in a manner not permitted by this Contract.

- (A) If the Vendor is required to indemnify Metrolinx pursuant to this Section 11.1(a)(vi), or if, in the Vendor's judgment, Metrolinx' use of the intellectual property is likely to be infringing, the Vendor may, at its option: (i) secure the right to continue using such intellectual property, or (ii) replace or modify the such intellectual property to make it non-infringing, provided that any such replacement or modification will not degrade the performance or quality of the affected component of the Work in any material way. If neither course of action described in clauses (i) or (ii) is available to the Vendor, the Vendor will remove such intellectual property from the Work and equitably adjust the Vendor's charges to adequately reflect such removal.
- (b) The Vendor 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 Vendor is obligated to indemnify the Indemnified Parties pursuant to this Article 11, provided that the indemnity obligations of the Vendor under this Article 11 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 11, 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 Vendor under this Contract pending the final determination or settlement of such claim, action, suit, execution or demand. In the event,
- (i) the Vendor is, becomes, or is deemed to be bankrupt or an insolvent person pursuant to the Bankruptcy and Insolvency Act (Canada);
 - (ii) the Vendor 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 Vendor'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 Vendor under any other agreement or account. The provisions of this Section 11.1(c) shall not apply in the event that such Loss is otherwise provided for under any insurance provided by the Vendor to or for the benefit of Metrolinx.

11.2 Metrolinx shall at all times indemnify and save harmless the Vendor Indemnified Parties from and against any and all third party Losses that are awarded by a court of competent jurisdiction resulting from Metrolinx's breach of Section 5.1(f), except to the extent finally determined to have resulted from the Vendor's gross negligence or intentional misconduct relating to the Deliverables.

12.0 Limitation of Liability

12.1 General Intent

- (a) 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.

12.2 Limitations on Liability

- (a) Subject to Section 12.2(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. The Vendor acknowledges and agrees that any damages awarded by a court of competent jurisdiction against Metrolinx as a result of a third party claim is to be considered direct damages.
- (b) Subject to Section 12.2(d), 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 sum paid or payable by Metrolinx to the Vendor under every authorized SOW.
- (c) The limitations of liability set forth in Section 12.2(a) shall not apply with respect to:
 - (i) damages occasioned by the willful misconduct or gross negligence of the Vendor or any Vendor Personnel; or
 - (ii) claims that are the subject of indemnification pursuant to Section 11.1(a)(iii)[*Unauthorized Disclosure*] or Section 11.1(a)(vi)[*IP Infringement*].
- (d) The limitations of liability set forth in Section 12.2(b) shall not apply with respect to:
 - (i) damages occasioned by the willful misconduct or gross negligence of the Vendor or any Vendor Personnel; or
 - (ii) claims that are the subject of indemnification pursuant to Section 11.1(a).

- (e) Each party shall have a duty to mitigate damages for which the Vendor is responsible.

13.0 Termination

13.1 Termination for Cause by Metrolinx

- (a) Metrolinx may, by ten (10) days' written notice to the Vendor, suspend or terminate the whole or any part of the provision of the Work, an authorized SOW or this Contract for cause in the event that the Vendor is in breach of any of its obligations under this Contract, and it fails to cure such breach (which breach must be curable) within thirty (30) days of being notified thereof, and thereupon:
 - (i) Metrolinx may appoint officials of Metrolinx or any other person or persons in the place and stead of the Vendor to perform the Work or any portion thereof;
 - (ii) the Vendor shall immediately discontinue the Work 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 Work; and
 - (iii) nothing contained herein shall limit the rights of Metrolinx to recover damages from the Vendor arising from the failure of the Vendor to perform the Work satisfactorily in accordance with the terms of this Contract.
- (b) If Metrolinx chooses to terminate this Contract or any authorized SOW in part under Section 13.1 or 13.2, a Change order or amendment will be prepared to reflect the partial termination and the charges payable under this Contract or the SOW will be equitably adjusted to reflect that Work that is terminated.

13.2 Termination for Convenience by Metrolinx

- (a) Metrolinx may, by thirty (30) days' written notice to the Vendor, terminate this Contract and/or any authorized SOW, in whole or in part, for convenience, and thereupon Metrolinx shall be liable for payment to the Vendor for those monies attributable to the part of the Work performed in accordance with all the terms of this Contract to the date of termination stipulated in such notice. Metrolinx shall also be liable for any reasonable documented 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.

14.0 Force Majeure

14.1 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 14.1(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 Vendor, lack of financing or inability to perform because of the financial condition of the Vendor.
- (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 Vendor and not then unless such claim is reasonable and justified to Metrolinx.

14.2 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 14.2(a).
- (c) In the case of a continuing Force Majeure Event, only one notice shall be necessary.

14.3 Metrolinx Rights

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

15.0 Dispute Resolution

- (a) All Disputes shall be resolved in accordance with, and the Parties shall comply with, Schedule D - Dispute Resolution.
- (b) The process set out in Schedule D – Dispute Resolution shall not be construed to prevent a Party from instituting, and a Party is authorized to institute, litigation earlier, but only if required to avoid the expiration of any applicable limitations period or to preserve a superior position with respect to other creditors, or where a Party makes a good faith determination that a breach of the terms of this Contract by the other Party is such that the damages to such Party resulting from the breach shall be so immediate, so large or severe, and so incapable of adequate redress after the fact that a temporary restraining order or other immediate injunctive relief is the only adequate remedy.

16.0 Set Off

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

17.0 General

17.1 Entire Agreement

- (a) This Contract constitutes the entire agreement between the Parties regarding the Work and supersedes any prior understandings, negotiations, representations or agreements, whether written or verbal.

17.2 Governing Law and Jurisdiction

- (a) 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 attend and submit to the non-exclusive jurisdiction of the courts of the Province of Ontario and all courts competent to hear appeals therefrom.

17.3 Survival

- (a) The obligations set out in Articles 1, 3, 4, 5, 6, 9, 10, 11, 12, 13, 15 and this Article 17, and Section 2.10 of this Contract shall continue to bind the Vendor notwithstanding expiration or termination of this Contract for any reason whatsoever or completion of the Work as contemplated hereunder.

17.4 Enurement

- (a) 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.

17.5 Assignment

- (a) The Vendor shall not assign this Contract in whole or in part without the prior written consent of Metrolinx, which consent shall not be unreasonably withheld or delayed. Metrolinx shall have the right to assign this Contract without consent, but on not less than ten (10) days' notice to the Vendor.

17.6 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 Vendor Personnel and all other personnel providing the Work are solely the employees of the Vendor and applicable Subvendors (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.

17.7 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 Vendor represents and warrants to Metrolinx that the Vendor is entering into this Contract solely on the Vendor's own behalf and not as an agent for any other Person.

17.8 Joint and Several Liability

- (a) Where the Vendor comprises two or more Persons, each of them shall be jointly and severally liable for the obligations of the Vendor under this Contract. Where the Vendor does not comprise two or more Persons, this Section 17.8 shall be deemed to be deleted.

17.9 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.

17.10 Amendments

- (a) 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.

17.11 No Waiver

- (a) 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.

17.12 Severability

- (a) 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.

17.13 Further Assurances

- (a) 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.

17.14 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 Vendor’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 Vendor 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 Vendor 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 Subvendors do not participate in or be involved with such Prohibited Procurements either directly or indirectly, including as a bidder or as a subvendor, subcontractor or advisor to any bidder.
- (c) The Vendor 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 Vendor, where:
 - (i) the Vendor fails to disclose an actual or potential Conflict of Interest;
 - (ii) the Vendor fails to comply with any requirements prescribed by Metrolinx to resolve a Conflict of Interest; or
 - (iii) the Vendor's Conflict of Interest cannot be resolved.
- (e) This section shall survive any termination or expiry of this Contract.

17.15 Counterparts

- (a) 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 SECTION

SCHEDULE A - DEFINITIONS

1.0 In this Contract Document,

- 1.1 “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.
- 1.2 “Approvals” means any permits, licences, consents, approvals, clearances, orders, ordinances, registrations, filings or other authorizations respecting the work undertaken as part of the Work as may be required from any applicable Governmental Authority or otherwise by the Vendor’s contract documents.
- 1.3 “Arbitration Act” means the Arbitration Act, 1991, S.O. 1991, Chapter 17.
- 1.4 “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.
- 1.5 “Changes” has the meaning ascribed to it in Section 7.1 of the General Conditions.
- 1.6 “Client Manager” means the person identified as the client manager in the Submission or any person who has replaced such person pursuant to Section 2.6.
- 1.7 “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 Vendor (including to employees, vendors, contractors or other representatives thereof) and includes any copies or reproductions thereof. For greater certainty, all Metrolinx Materials, Personal Information, Contract Records, 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.
- 1.8 “Conflict of Interest” has the meaning ascribed to it in Section 17.14 of the General Conditions.
- 1.9 “Contract” means this contract between the Vendor and Metrolinx pursuant to Request No. RQQ-2017-IT-038 including the Articles of Agreement, the General Conditions and the Schedules thereto and the Contract Documents.

- 1.10 “Contract Documents” means the Contract and those documents listed in “Scope of Work” and any written amendments thereto as agreed to by the Parties.
- 1.11 “Contract Performance Appraisal” has the meaning ascribed to it in Section 2.10(a) of the General Conditions.
- 1.12 “Contract Records” has the meaning ascribed to it in Section 9.10(a) of the General Conditions.
- 1.13 “Deliverables” means the work product created by the Vendor and/or the Vendor Personnel in connection with or as a requirement of the Work or that is specified in an authorized SOW, including all reports, drawings, plans, designs, processes, tools, standards, registers, logs, updates, files, databases, Software, and documentation.
- 1.14 “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.
- 1.15 “Dispute Notice” has the meaning given in Schedule D - Dispute Resolution of General Conditions.
- 1.16 “Domain Expertise” means the required level of depth and breadth of qualifications and experience in respect of the tasks to be performed in connection with the Work, gained through a practical application of the knowledge underlying the tasks in an environment substantially similar to that of the Work.
- 1.17 “Effective Date” means the final date of execution of this Contract by both Parties.
- 1.18 “Excise Tax Act” means the Excise Tax Act, R.S.C. 1985, Chapter E-15.
- 1.19 “FIPPA” means the Freedom of Information and Protection of Privacy Act, R.S.O. 1990, Chapter F.31.
- 1.20 “FIPPA Records” means all information, data, records and materials, however recorded, in the custody or control of Metrolinx, including Confidential Information, Personal Information and Contract Records. For the purposes of this definition, documents held by the Vendor in connection with this Contract are considered to be in the control of Metrolinx.
- 1.21 “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.

- 1.22 “Income Tax Act” means the Income Tax Act, R.S.C. 1985, Chapter 1 (5th Supp.).
- 1.23 “Indemnified Parties” has the meaning ascribed to it in Section 11.1 of the General Conditions.
- 1.24 “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.
- 1.25 “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.
- 1.26 “Joint Venture” is the business arrangement of two or more parties proposed as identified in the Submission.
- 1.27 “Key Personnel” means the people identified by name in Section 1.1(a) of Schedule E - Vendor Personnel.
- 1.28 “Key Responsibilities” means the main responsibilities and tasks to be performed by each category of Vendor Personnel, as identified in Schedule E: Vendor Personnel.
- 1.29 “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.
- 1.30 “Metrolinx” means Metrolinx, a provincial crown agency continued under the Metrolinx Act, S.O. 2006, Chapter 16, and its successors and assigns.
- 1.31 “Metrolinx IP” has the meaning ascribed to it in Section 5.1 of the General Conditions.
- 1.32 “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 Vendor;

(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.

- 1.33 “Metrolinx Marks” means any trademarks, service marks, trade names, logos or other commercial or product designations owned or licensed by Metrolinx, whether registered or not.
- 1.34 “Metrolinx Representative” or “Metrolinx’s Representative” has the meaning ascribed to it in Section 2.8 of the General Conditions.
- 1.35 “OHSA” means the Occupational Health and Safety Act, R.S.O. 1990, Chapter O.1.
- 1.36 “Outcome” has the meaning ascribed to it in Section 2.9 of the General Conditions.
- 1.37 “Parties” means both of Metrolinx and the Vendor and a “Party” means either one of them.
- 1.38 “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.
- 1.39 “Personal Information” has the meaning ascribed to it in FIPPA.
- 1.40 “PIPEDA” means the Personal Information Protection and Electronic Documents Act, S.C. 2000, Chapter 5.
- 1.41 “Place of Work” is the designated site or location of the Work.
- 1.42 “Privacy Impact Assessment” refers to a systematic and consistent method of analysis to identify and analyze privacy risks in a program, technology or service.
- 1.43 “Prohibited Procurements” has the meaning ascribed to it in Section 17.14 of the General Conditions.
- 1.44 “Rates” has the meaning ascribed to it in Section 2.9 of General Conditions.
- 1.45 “Request Conflict of Interest” means the Vendor had an unfair advantage or engaged in conduct, directly or indirectly, that gave it an unfair advantage, including but not limited to (i) having, or having had access to, confidential information of Metrolinx in the preparation of its submission during the RQQ Process that was not available to other bidders, (ii) communicating with any person with a view to influencing preferred treatment in the RQQ Process

(including but not limited to the lobbying of decision makers involved in the RQQ Process), or (iii) engaging in conduct that compromises, or could be seen to compromise, the integrity of the RQQ Process.

- 1.46 “Required Standard of Care” means: (a) using the Standards, practices, methods and procedures among the highest commercial standards of practice and professionalism as understood in the Province of Ontario; (b) confirming to Applicable Laws and all rules of professional conduct applicable to the Vendor or the Vendor 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.
- 1.47 “RQQ Process” means the Request to Qualify and Quote process set out in Request Number RQQ-2017-IT-038.
- 1.48 “Scope of Work” describes the general and detailed requirements of the Work.
- 1.49 “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.
- 1.50 “SOW” has the meaning ascribed to it in Section 2.9 of the General Conditions.
- 1.51 “SOW Schedule” has the meaning ascribed to it in Section 2.9 of the General Conditions.
- 1.52 “Standards” means, at a given time, those standards, specifications, manuals, codes, practices, methods and procedures applicable to the Required Standard of Care.
- 1.53 “Subvendor” means an individual, firm, partnership, corporation or design professional having a direct contract with the Vendor or another Subvendor to perform a part or parts of the Work as identified in the Submission or as otherwise identified in a request to add a new subvendor.
- 1.54 “Submission” means all documentation and other materials and information submitted by the Proponent in response to Request No RQQ-2017-IT-038.
- 1.55 “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.

- 1.56 "Term" has the meaning ascribed to it in Section 2.1 of the General Conditions.
- 1.57 "Total Contract Price" means the upset limit amount established as the total contract price for the Contract by Metrolinx, which shall form which shall form part of the Articles of Agreement.
- 1.58 "Value Added Taxes" means such sum as shall be levied upon amounts payable to the Vendor under this Contract by any Governmental Authority that is computed as a percentage of the amounts payable to the Vendor (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 Vendor.
- 1.59 "Vendor" means [TO BE COMPLETED AT SIGNING].
- 1.60 "Vendor 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 Vendor or which Vendor has the right and licence to use and make available to Metrolinx, and all documentation related to any of the foregoing, 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 Work.
- 1.61 "Vendor Indemnified Parties" means the Vendor, its affiliates and each of their respective officers, directors, employees, agents, successors, and assigns.
- 1.62 "Vendor Personnel" or "Vendor's Personnel" means (a) with respect to the Vendor, all of the Vendor's personnel, employees and independent contractors (including the Key Personnel and the Vendor's Representative) engaged in the performance of the Work; and (b) with respect to each Subvendor, all of that Subvendor's personnel, employees and independent contractors engaged in the performance of the Work.
- 1.63 "Vendor Policies" has the meaning ascribed to it in Schedule C - Insurance of General Conditions.
- 1.64 "Vendor's Representative" means the person identified by the Vendor, and Accepted by Metrolinx, as the Vendor's authorized representative pursuant to Section 2.7 of the General Conditions.

- 1.65 “Work” means all the activities, services, goods, equipment, matters and things required to be done, delivered or performed by the Vendor under this Contract, including all of the work, labour, services, goods, equipment, if applicable, described in the Scope of Work.

END OF SECTION

SCHEDULE B – Financial Terms

1.0 Payment

- 1.1 Metrolinx will pay the Vendor for the Work performed by the Vendor pursuant to a SOW, the amount agreed in such SOW and in accordance with the payment schedule set out in such SOW, upon completion and Metrolinx acceptance, where applicable, of the applicable milestone.
- 1.2 The Vendor shall perform all of the Work notwithstanding that the value of the time spent by the Vendor in performance thereof may exceed the maximum amount payable to the Vendor pursuant to Section 3.0 of this Schedule B - Financial Terms.
- 1.3 In certain circumstances and subject to mutual agreement, fee reductions, incentive payments or holdbacks may be applied. The amount of the fee reduction, incentive payment or holdback, if any, shall be identified in the SOW.

2.0 Limitation of Expenditure

- 2.1 It is understood that the Contract is based on reimbursement for actual Work requested by Metrolinx and performed by the Vendor in accordance with all the terms of this Contract.
- 2.2 Metrolinx does not guarantee any minimum or maximum of work it will assign the Vendor under the Contract. 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 Contract.

3.0 Total Contract Price

- 3.1 Subject to Sections 7.1, 7.2 and Article 8 - Additional Resources of the General Conditions, Metrolinx and the Vendor acknowledge and agree that the Total Contract Price is the maximum amount payable in respect of the provision of the Work, excluding HST; provided, however, that the foregoing is not an entitlement to, nor a guarantee that the Vendor will be paid the full amount of, the Total Contract Price.
- 3.2 The Vendor shall not perform any work under this Agreement which would cause the total cost to exceed the Total Contract Price, unless an increase is so authorized by Metrolinx and effected by an amendment or change order that has been executed by both Parties.

4.0 Rates for Work

- 4.1 The Vendor 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 Work 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.

- 4.2 Metrolinx shall not reimburse the Vendor for any hospitality, food or incidental expenses incurred. Subject to the prior consent of Metrolinx, Metrolinx shall reimburse the Vendor for reasonable traveling expenses incurred in connection with the performance of the Work, such reimbursement to be made in accordance with the Government of Ontario's Travel, Meal, and Hospitality Expenses Directive.
- 4.3 As part of the Work, the Vendor 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 Vendor in connection thereto shall be included in the Rates set out in the Articles of Agreement.

5.0 Taxes

- 5.1 The Total 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 Vendor shall be responsible for remittance of any and all Taxes due and payable in respect of the Work.
- 5.2 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 Work, is to be shown separately on all invoices for Work performed by the Vendor. The Vendor shall remit any HST paid or due to the Canada Revenue Agency in accordance with Applicable Laws, and shall, at the request of Metrolinx, provide evidence of payment of same.
- 5.3 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 Vendor shall show on each invoice, and in the manner directed by Metrolinx, either the actual Value Added Taxes paid by the Vendor by category or the portion of the Vendor's fees eligible under Applicable Law for the rebate.
- 5.4 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 the Canada

Revenue Agency, taxes will be withheld as determined under the Income Tax Act. The Vendor 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.

6.0 Invoicing and Payment Process

- 6.1 The Vendor shall submit an invoice for payment for Work in accordance with the payment schedule set out in the authorized SOW. The invoice shall be in form and substance satisfactory to Metrolinx acting reasonably and shall set out with sufficient particularity the Work performed in the period for which the invoice relates and, if the Work was performed on a Time and Expense basis, the total time spent by each category of Vendor Personnel multiplied by the applicable Rate.
- 6.2 The aggregate amount invoiced by the Vendor with respect to a SOW shall not exceed the fixed price or upset limit of such SOW, unless such additional amount is agreed by the Parties pursuant to the change management process set out in Article 7 of the General Conditions.
- 6.3 Unless there is a Dispute with respect to the content of an invoice and subject to the other provisions of this Schedule B, Metrolinx shall make payment to the Vendor no later than thirty (30) Business Days following receipt of the invoice for payment from the Vendor, unless otherwise provided or permitted in the Contract or a SOW. The Vendor 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.

7.0 Cost of Changes

- 7.1 Changes shall be implemented by the Vendor without any additional charge, unless the Vendor is able to demonstrate (with supporting documentation) that the Change causes the Vendor to incur additional costs.
- 7.2 The Vendor 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 Vendor Personnel, those same Rates shall apply with reference to the applicable level of experience and/or expertise.
- 7.3 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 Vendor shall provide same to Metrolinx within five (5) Business Days of the request therefor.

8.0 Metrolinx Property

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

END OF SECTION

SCHEDULE C – Insurance

1.0 Vendor Insurance Requirements

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

(a) **Commercial General Liability**

- (i) The policy shall provide a policy limit of not less than two million dollars (\$2,000,000) per occurrence for all claims arising out of bodily injury (including death), personal injury, and damage to property of others. Such policy shall not contain any exclusion that conflict with the Work required to be performed under this Contract. The Vendor 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 Vendor Policies hereof as “Additional Insured”. The policy shall contain a cross liability and severability of interest.

(b) **Automobile Liability Insurance**

- (i) Subject to the following sentence, the policy shall provide coverage for liability arising out of the use of owned, non-owned, leased or hired automobiles in connection with the performance of the Work. Coverage shall consist of a combined single limit of not less than two million dollars (\$2,000,000) per occurrence. If the Vendor does not own any vehicles and non-owned vehicle coverage is provided under a Commercial General Liability Insurance policy, the Vendor is not required to provide a certificate for Automobile Liability Insurance so long as at the time it provides the other certificates, it submits an officer’s certificate signed by an officer of the Vendor stating the same.

(c) **Errors and Omissions Insurance**

- (i) The policy shall provide errors and omissions insurance including coverage for network security, privacy, infringement of trademark and copyright covering the Work rendered by the Vendor, any Subvendors or any Vendor Personnel, including personnel on loan to the Vendor who perform normal services of the Vendor under this Contract. The policy shall have a limit of liability of not less than two million dollars (\$2,000,000) per claim 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.

(d) **Crime/Employee Theft Insurance**

- (i) Crime/Employee Theft and Dishonesty Insurance, inclusive of client coverage, in the amount of not less than two-hundred and fifty thousand (\$250,000) per occurrence.
- (e) 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 Vendor in accordance with this Contract have been exhausted.

1.2 Additional Coverage

- (a) Without prejudice to any other provisions of this Contract (including Section 1.1 of this Schedule C - Insurance), the Vendor shall, at all relevant times and at its own expense, obtain and maintain, or cause to be obtained and maintained (during the Term plus thirty-six (36) months after termination or expiration of this Contract):
 - (i) those insurances that are reasonable for the performance of the type and scope of Work set out by this Contract (including, as applicable, insurance as would typically be required by prudent designers or consultants); and/or
 - (ii) those insurances that the Vendor is required to obtain and maintain, or cause to be obtained or maintained, by Applicable Law.

1.3 Requirements for Insurance

- (a) All of Vendor's policies of insurance, as required under this Contract (the "Vendor 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 or the equivalent rating of another industry-recognized rating company.
- (b) Any deductible or self-insured retention amounts are the responsibility of the Vendor. Notwithstanding the foregoing, such deductibles or self-insured retention must be consistent with standard commercial practice and acceptable to Metrolinx, acting reasonably.
- (c) All Vendor Policies shall be kept in full force and effect during the Term, including any requirements for the period following the Term.
- (d) In the event that the Vendor fails to obtain and/or maintain in full force and effect any such insurance as aforementioned, then Metrolinx shall have the right as the Vendor's true and lawful attorney to do all things necessary for this purpose. The Vendor 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 C - Insurance, but not paid by the Vendor 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 Vendor by Metrolinx either under this Contract or otherwise.

- (e) Irrespective of the insurance requirements above, the insolvency, bankruptcy, or failure of any such insurance company providing insurance for the Vendor, or the failure of any such insurance company to pay claims that occur will not be held to waive any of the provisions hereof.

1.4 Proof of Insurance

- (a) The Vendor shall, prior to the commencement of the Work and thereafter upon request, provide to Metrolinx original signed certificates of insurance for the Vendor Policies, confirming that the required coverage has been placed and maintained. In addition, at least fifteen (15) days prior to the expiry date or replacement of any policy, the Vendor shall provide original signed certificates evidencing renewals or replacements of such policy to Metrolinx, without notice or request by Metrolinx.
- (b) The Vendor shall, upon request, provide evidence to Metrolinx that the premiums associated with the Vendor 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 Vendor.
- (c) The Vendor also agrees to provide Metrolinx with proof of errors and omissions insurance maintained by any Subvendor, where such Subvendor 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 Vendor and to be in a form and with an insurer acceptable to Metrolinx.

1.5 Vendor's Liability Preserved

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

1.6 Certificates of Insurance shall include:

- (a) A reference to the Project description and Contract number;
- (b) Additional insureds as follows:

- (i) The Certificate of Commercial General Liability Insurance shall include the following as additional insureds:

Metrolinx.

- (c) A provision requiring the insurer to endeavor to give Metrolinx thirty (30) calendar days' prior written notice of any cancellation of the required insurance policies.

2.0 Workplace Safety & Insurance Board Protection

- 2.1 With respect to the WSIB coverage as required under the Workplace Safety and Insurance Act (Ontario), the Vendor unconditionally guarantees to Metrolinx full compliance with the conditions, regulations and laws relating to workplace safety insurance by itself and by all Subvendors.
- 2.2 Without restricting the indemnity obligations of the Vendor in Article 11 of the General Conditions, unless the Vendor is WSIB exempt, the Vendor shall produce, at the commencement of this Contract, from time to time as may be required by Metrolinx, a valid Workplace Safety and Insurance Clearance Certificate, issued by the WSIB, for the premium rate class, subclass or group appropriate to the Work.
- 2.3 If the Vendor is WSIB exempt, it shall provide evidence of Employer's Liability or equivalent, to the satisfaction of Metrolinx, in lieu of a Workplace Safety and Insurance Clearance Certificate.

END OF SECTION

SCHEDULE D – Dispute Resolution

1.0 Bona fide efforts to resolve

1.1 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 D - Dispute Resolution.

2.0 Continuance of the Work During Dispute

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

- (a) continue with the Work 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.

2.2 The Parties acknowledge and agree that the Vendor's compliance with this Section 2.0 shall not operate to waive any claim or contention that the Vendor may have in relation to any Dispute.

3.0 Tiered-Dispute Resolution

3.1 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").

4.0 Negotiation

4.1 In the event a Party issues a Dispute Notice to the other Party, a Director in the Information & Information Technology department 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 Vendor, of equivalent seniority and duly appointed to represent the Vendor 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.

- 4.2 Negotiations under this Section 4.0 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.

5.0 Mediation

- 5.1 If a Dispute has not been resolved through high-level negotiation as contemplated in Section 4.0, either Party may refer the Dispute to be resolved through mediation.
- 5.2 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.
- 5.3 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.
- 5.4 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.
- 5.5 Unless the Parties otherwise agree, the mediation shall proceed in accordance with the following procedures:
- (a) 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.
 - (b) 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.
 - (c) A Party may be represented at the mediation by counsel or another representative at the sole cost of such Party.
 - (d) 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.

- (e) In all respects, the mediation is deemed to be a “without prejudice” proceeding.
- 5.6 The costs of the mediator shall be apportioned equally between the Parties unless otherwise agreed under any settlement reached under this Section 5.0.
- 5.7 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.
- 5.8 Both Parties acknowledge and agree that they may not refer a Dispute for resolution by arbitration under Section 6.0 herein prior to attempting to resolve such Dispute through mediation pursuant to this Section 5.0.

6.0 Arbitration

- 6.1 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.
- 6.2 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 6.0. 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.
- 6.3 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.
- 6.4 The arbitration shall be conducted in accordance with the provisions of the Arbitration Act, except to the extent they are modified by the express provisions of this Schedule D - Dispute Resolution or unless the Parties otherwise agree.
- 6.5 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.
- 6.6 The arbitrator(s) has the jurisdiction to deal with all matters relating to a Dispute.
- 6.7 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 consider

necessary for consultation, to hear witnesses, experts or other parties, or for the inspection of documents, goods or other property.

- 6.8 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.
- 6.9 The language of the arbitration shall be English.
- 6.10 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.
- 6.11 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 and the Courts of Justice Act (Ontario).

END OF SECTION

SCHEDULE D – Vendor Personnel

1.0 Vendor Personnel

1.1 The following are roles that shall be filled by the Vendor in accordance with the following requirements in respect of qualifications, experience and minimum years of experience. Each individual performing one of the roles below shall perform the Key Responsibilities listed below as well as any other responsibilities as requested by Metrolinx, in accordance with the Contract, for the duration specified in the table below.

(a) Group A – Key Personnel

Role	Key Responsibilities	Qualifications and Experience	Required Duration
Client Manager	Refer to Appendix “B”	Refer to Appendix “B”	Duration of the Contract
Executive Lead	Refer to Appendix “B”	Refer to Appendix “B”	<u>On an Emergent Basis</u>
Project Manager	Refer to Appendix “B”	Refer to Appendix “B”	<u>On an Emergent Basis</u>
Migration Specialist	Refer to Appendix “B”	Refer to Appendix “B”	<u>On an Emergent Basis</u>
Technical / Functional Lead	Refer to Appendix “B”	Refer to Appendix “B”	<u>On an Emergent Basis</u>
Training Specialist	Refer to Appendix “B”	Refer to Appendix “B”	<u>On an Emergent Basis</u>

(b) Group B - Non-Key Personnel

Role	Key Responsibilities	Qualifications and Experience	Required Duration
Functional Analyst	Refer to Appendix “B”	Refer to Appendix “B”	<u>On an Emergent Basis</u>
Technical Analyst	Refer to Appendix “B”	Refer to Appendix “B”	<u>On an Emergent Basis</u>
Business Analyst	Refer to Appendix “B”	Refer to Appendix “B”	<u>On an Emergent Basis</u>
Quality Assurance Analyst	Refer to Appendix “B”	Refer to Appendix “B”	<u>On an Emergent Basis</u>

Note to Vendor: This table shall be populated using “Request Document Form – Technical Submission Section 3 – Key Personnel Experience, Qualifications and Reference Projects” upon notification of acceptance of the Proponent’s Submission.

2.0 Replacement of Key Personnel

2.1 Where the Vendor is proposing the replacement of Key Personnel, the Vendor shall provide the following documentation to the designated Metrolinx representative for review and approval:

(a) Curriculum Vitae

(i) The Vendor should, 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:

- (A) Name of individual and proposed Key Personnel role;
- (B) Qualifications that relate to the proposed Key Personnel role, as specified in this Schedule E, relative to the Work being requested;
- (C) Experience in performing the proposed Key Personnel role, as specified in this Schedule E herein, relative to the Work being requested (include project names and brief project overviews);
- (D) Number of years in the proposed role on each project as well as the start date and completion date of each project;
- (E) Responsibilities on each project while performing the proposed role;
- (F) Details of accomplishments while performing the proposed role;
- (G) Education; and
- (H) Professional memberships and affiliations.

(b) Key Personnel References

- (i) Immediately following the curriculum vitae for each proposed Key Personnel, the Vendor shall provide a list of three (3) references and contact information for relevant projects successfully delivered on-time and on-budget within the past five (5) years, while performing work in the same capacity as the proposed Key Personnel role.
- (ii) The Vendor 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.

- (iii) 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 this Schedule E herein, and for work similar in size, scope and complexity to the Work to be provided herein.
- (iv) 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.

END OF SECTION

Appendix “B” – Scope of Services

List of Contents

The following documents hereby form part of and are appended to this Request Document as the Appendix “B” – Scope of Services

<u>ITEM NO.</u>	<u>DOCUMENT TITLE</u>
1.	Introduction
2.	Project Overview
3.	Scope of Services
4.	Categories of Services
5.	Consultant Staff Positions
6.	Assignment of Projects
7.	Management of the Services

1. Introduction

Metrolinx is a crown agency of the Government of Ontario under the Metrolinx Act, 2006, reporting to the Ministry of Transportation. It was created to improve the coordination and integration of all modes of transportation in the Greater Toronto and Hamilton Area (GTHA). Metrolinx’s mandate includes delivering the best possible transportation services today while leading the way to an even better, more convenient service tomorrow; making the best possible use of public transportation investment dollars; and measurably improving the quality of life in the region.

2. Project Overview

Metrolinx has conducted an Enterprise Information Management (EIM) Strategy which includes Enterprise Content Management, Enterprise Data Management and Business Intelligence & Analytics using OpenText software to improve the management of unstructured information assets, facilitate enhanced capture, classification, access, retrieval, storage, retention and disposition across the organization and enabling compliance with regulatory obligations.

3. Scope of Services

The Information and Information Technology (“I&IT”) Division at Metrolinx is a shared service for all business units. The division currently consists of six departments: Business Relationship Management, Digitization, IT Planning and Architecture, IT Project Management Office, Solution Delivery and IT Operations. Together these

departments are responsible for building, maintaining, and operating information technology (IT) applications and infrastructure to support the Metrolinx business units

Metrolinx's I&IT Division is expanding to accommodate the growth of the Metrolinx organization. As part of I&IT's divisional plan to support the growing Metrolinx organization, I&IT is developing and updating technical and organizational strategies.

The objective of this Request to Qualify and Quote (RQQ) is to solicit proposals from Proponents for the provision of IT business and technical support services specific to the Enterprise Document and Records Management System on the OpenText Suite of Products and associated process. The scope of services and requirements are more particularly described in Appendix "B" - Scope of Services of this Request Document.

4. Categories of Services

The Consultant shall, on an as required basis, perform Business and/or Technical Management Consulting Services in the following defined Service Areas.

(a) **Business: Service Areas**

(i) **Business Process Re-engineering**

Business process re-engineering refers to the analysis, identification of areas of improvements and the implementation of those improvements to the processes that drive the business. These activities may be initiated by legislative changes, the introduction of new services or simply as a management approach to elevating the efficiency and effectiveness of the processes that exist within and across the organization.

(ii) **Strategic Planning**

Strategic planning is an organization's process of defining its strategy, or direction, and making decisions on allocating its resources to pursue this strategy, including its capital and people. The typical service required in the Service Area is the involvement of individuals classified as specialists in the business and in strategic planning to evaluate the opportunities through methods such as a SWOT analysis and define the strategic plan in terms of actions, resources and cost.

(iii) **Operational Readiness**

Operational readiness is a defining concept vital to understanding the health of the organization similar to taking a pulse and assessing the well-being of the human body. In this Service Area the Consultant will be required to identify indicators of

organizational and business operations health, monitor those indicators and identify and report on areas that require attention. The Consultant will also be expected to provide recommendations in terms of actions, investments, etc. that should be taken to address the identified issues.

(iv) Benchmarking Business Operations

Benchmarking is the process of determining who is the very best, who sets the standard, and what that standard is. In business who has the best sales organization? The most responsive customer service department? The leanest manufacturing operation? And how do we quantify that standard? In this Service Area the Consultant will be expected to provide individuals or teams with the business knowledge and benchmarking experience appropriate to the requirement. Benchmarking is usually part of a larger effort, a process re-engineering or quality improvement initiative.

(v) Advisory and Facilitation

In this Service Area the Consultant will provide advisory services of both a strategic and tactical nature. These services will tend to answer the questions of How? When? Who? In what time frame? How much? Is it scalable? What is it worth? What if? Once the answers to these questions have been identified, facilitation will be required to ensure stakeholder buy-in to the decision. The Consultant will be expected to assist stakeholders engage in dialogue and get something done through applying skills such as teambuilding, creating a win-win situation, identifying personal and group values.

(vi) Organizational Design

This Service Area includes the analysis of the organizational structure and recommendations of changes to that structure. Typically these organizational changes are intended to accommodate changes in the organization's responsibilities, business process re-engineering initiatives or to introduce improvements in such things as efficiency and governance. In some cases the Consultant will not only contribute to the new organizational design but also its implementation.

(vii) Strategic Communications

Develop strategies and plans, design and/or deliver messages of a strategic nature to stakeholders; including management, employees and the public. These communications are typically designed to strengthen or preserve opinions favourable to the achievement of the organizations goals. The Consultant will be engaged to plan, structure and develop these types of communications and in

some cases, through the organization's communications channels, execute the message.

(viii) Business Continuity Planning

Business Continuity Planning is working out how to stay in business in the event of disaster. Disasters could include local incidents like building fires, regional incidents like earthquakes, or national incidents like pandemic illnesses. The actual service required is the identification of potential disasters, the development of plans that will allow the business to function during such a disaster and the regular and frequent testing of those plans.

(ix) Client and Employee Surveys

The development, implementation and analysis of survey results. These surveys will touch on many areas of the organization and will be designed to measure the health of a particular area of the business. For example: measuring employee and client satisfaction, identification of improvements in the services provided, etc.

(b) Technical: Service Areas

(i) Project Management Office (PMO)

Operation of a PMO or provision of support to the PMO. This service includes the design, implementation and/or providing ongoing support to the PMO in all of the typical PMO functions: planning, scheduling, reporting, document management, issue and risk management, deliverable quality assurance, validation and verification, resource planning and allocation, costing, performance management and governance.

(ii) Quality Assurance

The types of services found in this Service Area would include:

- (A) Development of quality assurance policies, strategies, procedures, metrics, forms and tools;
- (B) Execution of quality assurance activities including, test planning, monitoring and control
- (C) Development of software development standards;
- (D) Providing expertise in the application of quality planning assurance techniques and procedures to all stages of the system and software

development life cycle; and

- (E) Identifying areas where conduct is not to standards, reporting these findings and their potential impacts and recommending corrective actions.
- (F) Detailing software test scenarios to support full business process test execution
- (G) Design and development of regression and performance testing activities utilizing software tools.
- (iii) Risk Review and Mitigation

The services provided in the Service Area focus on the identification and management of risk. This risk may be associated with a product, project or process but the identification of those risks and their management remain fairly consistent. Typically these services include the identification of risk, the prioritization of the risk, and risk avoidance, reduction, retention and transference. This service includes the creation of a risk management plan and its implementation.

(iv) Verification/Validation

In this Service Area services relevant to system verification and validation apply. The Consultant should be prepared to establish system goals and identify system functions then translate those goals and functions into use cases and work with the use cases until the logical system design is developed. Types of outputs would be the system specifications, trade-off analysis, a primary Verification Plan and Verification Traceability Matrix.

(v) Operations Planning Assessment

This Service Area is focused on IT Operations Planning and Assessment. The specific services related to this area include the forecasting of IT capability requirements based on future business growth and initiatives, the translation of this forecast into resources, assets and processes all of which must fall within the standards established by the organization. The Consultant must also be capable of identifying and measuring key operational criteria identifying any operational deficiencies. These deficiencies must be reported and communicated to various levels of management.

(vi) Systems Audit and Performance

The Systems Audit and Performance Service Area include services such as:

- (A) Conducting systems under development reviews by reviewing project documentation, conducting interviews, assessing work completed and, based on findings, reporting on compliance with policy, standards, procedures and progress against plan.
- (B) Conducting reviews of systems recently implemented and reporting:
 - (I) Benefits actually achieved versus projected benefits;
 - (II) Features actually delivered versus stated requirements;
 - (III) The adequacy of controls and system security features;
 - (IV) User satisfaction based on surveys or interviews; and
 - (V) System performance and reliability.
- (C) Reviewing systems that have been in production status for some time and reporting on issues and deficiencies.
- (D) Reviewing organizational IT policy, standards and procedures and providing advice on their adequacy.
- (vii) Product and Technology Direction

The purpose of this Service Area is to provide the client with access to information that will allow the enterprise to become and remain ahead of the product and technology curve. The Consultant should be prepared to provide individuals intimately familiar with the product and technology road map in various product and technology spaces. The service provided will include:

- (A) Understanding the organization's business direction and standards;
- (B) Relating the imposed business requirements to specific products and technologies;
- (C) Apprising senior management of products and technology that are at the beginning of their life cycle; and
- (D) Creating a risk analysis associated with the proposed solution.
- (viii) Feasibility and Solution Analysis
 - (A) Conducting a feasibility study or solution analysis at the beginning of a

project or solution development requires that the Consultant answer and consider questions such as the following:

- (I) What are the general design and technical requirements;
 - (II) Compare the design and expected performance with existing operations; and
 - (III) Estimated costs.
- (B) Once all elements of the study have been evaluated then the results of the study and recommendations are presented to the responsible management.

(ix) Life Cycle Support

The support of a product or solution refers to the ongoing maintenance of that product from leading edge through to obsolescence. The Consultant shall need to invest in its capabilities to ensure the expertise necessary to provide this support is available until the time other products and solutions are available.

(x) Project Health Check

This Service Area refers to the provision of services designed to identify and address project deficiencies. These services include the identification of issues such as schedule aggressiveness, poor management, scope creep and inappropriate staffing. Additionally these services require the reporting of project risks associated with the deficiency and recommendations on risk avoidance.

(xi) Performance Measurement/Development of Metrics

This Service Area involves the provision by the Consultant of an individual or team skilled in the identification of the Key Performance Indicators (KPI) of the technology area under consideration. The KPIs may include incidents, processing time, processing costs, etc. In any event the service includes the identification of the KPI (or development of the KPI) monitoring it, comparing it to specifications or best in class performance and reporting on the findings.

(xii) Software Design and Proof of Concept Development

This Service Area involves the provision by the Consultant of an individual or team skilled in the design, configuration and development of modules within the OpenText products. This may include delivery of system enhancements, resolution

of software defects and/or the prototype/proof of concept delivery of new functionality.

5. Consultant Staff Positions/Roles

a) The minimum experience and qualifications that must be possessed by the **Client Manager** are as follows:

(A) Minimum years of related experience: Fifteen (15) years account management experience.

(B) Minimum years of specific experience in one or more of the Service Areas: Ten (10) years.

(C) Qualifications and Experience:

(I) A university degree or equivalent industry experience (20 years minimum);

(II) Client references;

(III) Experienced in the management of the Consultant's in Service Areas under Categories of Services and for the following client groups:

- i. Public Sector;
- ii. Transit / Transportation;
- iii. Financial; and
- iv. Information Technology

(D) Responsibilities:

May include, but are not necessarily limited to:

(I) The Client Manager shall serve as Metrolinx's single point of contact with the Consultant and be responsible for the coordination of the assignments, resource management and performance of the Services.

(b) The Consultant shall retain and provide as required the following staff positions/roles for the provision of the Services:

(A) Group A

- 1) Executive Lead;
- 2) Project Manager;
- 3) Migration Specialist;
- 4) Technical / Functional Lead; and
- 5) Training Specialist

(B) Group B

- 6) Functional Analyst;
- 7) Technical Analyst
- 8) Business Analyst; and
- 9) Quality Assurance analyst

b. The minimum experience and qualifications that must be possessed by the individuals employed in each of these positions/roles and the description of the responsibilities of each of these positions/roles are as follows:

1) Executive Lead

1. Minimum years of related experience: Fifteen (15) years of management consulting experience.
2. Minimum years of specific experience in the applicable Service Areas: Eight (8) years.
3. Qualifications and Experience:
 - a. A university degree or equivalent industry experience (20 years minimum);
 - b. Client references;
 - c. Member of key industry associations related to the applicable Service Area; and
 - d. Experienced in the management of the Consultant's Service Area and project related methodologies and tools.

4. Responsibilities:

May include, but are not necessarily limited to:

- a. Management of several senior project managers, each responsible for an individual project;
- b. Management of the project during the development, implementation and operations start-up ensuring that resources are made available and that the project is developed and is fully operational within previously agreed time, cost and performance parameters;
- c. Formulates statements of problems, establishes procedures for the development and implementation of significant, new or modified project elements to solve these problems, and obtains approval thereof;
- d. Defines and documents the objectives for the project, determines budgetary requirements, the composition, roles and responsibilities and terms of reference for the project team;

- e. Reports progress of the project on an ongoing basis and at scheduled points in the life cycle;
- f. Regularly meets with and is a member of the executive team in the Service Area under consideration;
- g. Provides strategic advice to the executive team in the Service Area under consideration;
- h. Meets in conference with stakeholders and other project managers and states problems in a form capable of being solved;
- i. Prepares plans, charts, tables and diagrams to assist in analyzing or displaying problems, works with a variety of project management tools; and
- j. Responsible for project sign-off.

2) Project Manager

- 1. Minimum years of related experience: Ten (10) years in Project Management.
- 2. Minimum years of specific experience in the applicable Service Areas: Five (5) years.
- 3. Qualifications and Experience:
 - a. A university degree or equivalent;
 - b. Client references;
 - c. Project Management Professional (PMP) Certification; and
 - d. Experienced in the management of large scale product projects

4. Responsibilities:

May include, but are not necessarily limited to:

- a. Manages several Project Managers, each responsible for an element of the project and its associated project team;
- b. Manages the project during the development, implementation and operations start-up by ensuring that resources are made available and that the project is developed and is fully operational within previously agreed time, cost and performance parameters;

(III) Formulates statements of problems; establishes procedures

for the development and implementation of significant, new or modified project elements to solve these problems, and obtains approval thereof;

- (IV) Defines and documents the objectives for the project, determines budgetary requirements, the composition, roles and responsibilities and terms of reference for the project team;
- (V) Reports progress of the project on an ongoing basis and at scheduled points in the life cycle;
- (VI) Meets in conference with stakeholders and other project managers and states problems in a form capable of being solved; and
- (VII) Prepares plans, charts, tables and diagrams to assist in analyzing or displaying problems, works with a variety of project management tools

3) **Migration Specialist**

1. Minimum years of related experience: Ten (10) years.
2. Minimum years specific experience in the applicable Service Areas:
Four (5) years
3. Qualifications and Experience:
 - a. A university degree; and
 - b. Client references
4. Responsibilities:

May include, but are not necessarily limited to:

 - a. Developing and assisting with migration process definition with business and technical resources;
 - b. Providing written recommendations on migration approach based on best-practices;
 - c. Developing migration related documentation;
 - d. Conducting and assisting with migration-related testing in all technical environments;
 - e. Establishing technical standards for the technical framework

4) **Technical/Functional Lead**

1. Minimum years of related experience: Ten (10) years.
2. Minimum years specific experience in the applicable Service Areas:
Four (4) years
3. Qualifications and Experience:
 - a. A university degree;
 - b. Client references;
 - c. Experienced in the management of the Consultant's Service Area and project related methodologies and tools; and
 - d. Experienced in managing functional and technical deliverables specific to document and records management systems
4. Responsibilities:

May include, but are not necessarily limited to:

 - a. Providing expert advice on the key initiatives that enable enterprises to deploy high-impact Service Area processes that are focused, accountable and measurable;
 - b. Providing expert advice in defining new requirements and opportunities for applying efficient and effective solutions, identifying and providing preliminary costs of potential options;
 - c. Providing expert advice in developing and integrating Service Area processes and information models between business processes to eliminate information and process redundancies;
 - d. Identifying candidate Service Area processes for re-design, prototypes, potential solutions, providing trade-off information and suggesting a recommended course of action (including modifications to the automated processes);
 - e. Completing required system configurations and technical development

5) **Training Specialist**

1. Minimum years of related experience: Five (5) years.
2. Minimum years of specific experience in the applicable Service Areas: Five (5) years.
3. Qualifications and Experience:

- a. A community college or university degree or equivalent, preferably in the applicable Services Area;
 - b. Client references;
 - c. Experienced in the management of the Consultant's Service Area and project related methodologies and tools; and
 - d. PROSCI certification
4. Responsibilities:
- May include, but are not necessarily limited to:
- a. Translate requirements into training materials;
 - b. Development of training materials utilizing selected software; and
 - c. Delivery of process and system training to end user community

6) Functional Analyst

1. Minimum years of related experience: Fifteen (15) years.
 2. Minimum years of specific experience in the applicable Service Areas: Eight (8) years.
 3. Qualifications and Experience:
 - a. Recognized as an expert by peers within the industry;
 - b. A university degree;
 - c. Client references; and
 - d. Member of key industry associations related to the applicable Service Area
 4. Responsibilities:
- May include, but are not necessarily limited to:
- a. Meeting with key stakeholder to analyze existing functional and system process to highlight areas of optimization;
 - b. Translating business requirements for functional areas and common I&IT requirements, into systems design and specifications;

- c. Analyzing and recommending alternatives and options for solutions;
- d. Developing technical specifications for systems development, design and implementation; and
- e. Completing required system configurations within OpenText environments.

7) **Technical Analyst**

1. Minimum years of related experience: Ten (10) years.
2. Minimum years specific experience in the applicable Service Areas:
Four (5) years
3. Qualifications and Experience:
 - a. A university degree; and
 - b. Client references
4. Responsibilities:

May include, but are not necessarily limited to:

 - a. Developing and assisting with business and functional requirements, project scope, estimates of effort and duration;
 - b. Translating functional and business requirements for functional areas and common I&IT requirements into technical requirements;
 - c. Developing and/or managing technical aspects of application software, user interfaces, and third-party components;
 - d. Conducting, assisting with, and/or manage unit and system tests; and

Establishing technical standards for the technical framework

8) **Business Analyst**

1. Minimum years of related experience: Five (5) years.
2. Minimum years of specific experience in the applicable Service Areas: One (1) year.
3. Qualifications and Experience:

- a. A community college or university degree or equivalent, preferably in the applicable Services Area;
- b. Client references; and
- c. Experienced in the management of the Consultant's Service Area and project related methodologies and tools.

4. Responsibilities:

May include, but are not necessarily limited to:

- a. Providing advice on the key initiatives that enable enterprises to deploy high-impact Service Area processes that are focused, accountable and measurable;
- b. Providing advice in defining new requirements and opportunities for applying efficient and effective solutions including identifying and providing high level preliminary costs of potential options;
- c. Providing advice in developing and integrating Service Area processes and information models between business processes to eliminate information and process redundancies;
- d. Identifying candidate Service Area processes for re-design, prototype potential solutions, providing trade-off information and suggesting a recommended course of action (including identifying the modifications to the automated processes);
- e. Analyzing Service Area functional requirements to identify information, procedures and decision flows;

9) QA Analyst

1. Minimum years of related experience: Five (5) years.
2. Minimum years of specific experience in the applicable Service Areas: Three (3) years.
3. Qualifications and Experience:
 - a. A community college or university degree or equivalent, preferably in the applicable Services Area;
 - b. Experience in related to test automation and performance test execution;
 - c. Client references; and
 - d. Experienced in the management of the Consultant's Service Area and project related methodologies and tools.

4. Responsibilities:

May include, but are not necessarily limited to:

- a. Leading development of test plans, scripts (manual or automated and data;
- b. Participating in functional and technical design reviews, performing integration/functional and system testing, and verifying test results;
- c. Identifying and documenting software defects using software;
- d. Participating with other project resources to resolve defects; and
- e. Performing regression testing of software applications.

6. Assignment of Projects

See Section 2.11 of Appendix "A" General Conditions for the assignment of projects.

7. Management of Services

(a) Coordination of Services

The Consultant shall:

- 1) Assign a Client Manager who will direct the provision of the Services. The Client Manager will maintain ongoing contact with Metrolinx and/or the Project Manager to ensure that issues arising during the provisions of the Services are dealt with in an efficient, effective and timely manner.
- 2) Maintain communications contact as may be necessary to keep Metrolinx properly informed and up to date on the progress of each assignment.
- 3) Provide to Metrolinx a list identifying the Consultant's and all subconsultants' employees assigned to each assignment.
- 4) Be responsible for coordinating and interfacing with other disciplines it retains to perform work under each assignment.
- 5) Coordinate the design with Metrolinx, external agencies and authorities having jurisdiction.
- 6) Arrange, coordinate and chair in a number of meetings with Metrolinx and/or external authorities in connection with the Services as required.
- 7) Arrange, coordinate, chair meetings and liaise with subconsultants and support services as required.

- 8) The Consultant's cost for each of the assignments as stated in the Statement of Work for an individual assignment shall not be exceeded without written authorization from Metrolinx. The Consultant must monitor its work effort and related cost thereof and manage the provision of each of the assigned Services. Request for adjustment of costs and schedules must be submitted in writing for consideration by Metrolinx.
- 9) Maintain a system to identify and report changes in the scope of the Services to be provided and immediately notify Metrolinx in writing of any proposed changes that will affect the schedule or costs regardless, if the changes are initiated by the Consultant, Metrolinx or third parties. Only changes approved in writing by Metrolinx will be reflected in the schedule and the cost for the Service.

(b) Progress Reports and Minutes of Meetings

- 1) On an as required basis, chair, record, prepare and distribute, within five (5) business days of the meeting date, minutes of all meetings associated with an individual assignment.
- 2) Prepare and submit to Metrolinx an updated "Consultant's Monthly Status Report" within seven (7) business days after the reported month. The report shall include a summary of the progress of the assignments, identification of unresolved issues, design inputs by others, information required, schedule and cost status.
- 3) The Consultant shall prepare and submit on a monthly basis the appropriate cost/budget control reports for the Services provided including the project cash flow.

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 project relative activities;
- (c) provide access to and where necessary, make available copies of existing plans, reports, studies, information and correspondence relevant to the Project.

Appendix "D" – Documents

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

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

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 document attached hereto as Appendix “A” and entitled “General Conditions”;
 - (iv) the Form of Request;
 - (v) Attachment #1 – Contract Prices;
 - (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.

2. Date of Completion of Services and Description of Services

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 Scope of Services, attached as APPENDIX “B” (the “Services”).
- (b) The Services are to be provided in accordance with the terms of the Contract, unless otherwise specified.

3. Contract Price

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

- (a) ●

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:

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__.