

NOTICE TO CONSULTANTS

It is highly recommended that a thorough review of the Proposal Document be completed upon purchase. Metrolinx has revised several sections of the Definitions, Instructions to Proponents, Proposal Document Forms, General Conditions of the Contract and Scope of Work.

Specifically, changes have been made to how Bid Deposits and Agreement to Bonds or alternatives are to be submitted.

Failure to read and comply with the current Proposal Document requirements may result in your Submission being declared non-compliant and disqualified.



Request to Qualify and Quote for

Request Description: Natural Heritage
Consulting Services on
an Emergent Basis

Request Number: RQQ-2018-ECDV-248

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RQQ-2018-ECDV-248

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ADDENDA (IF APPLICABLE)

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Any Addenda/Addendum issued hereto shall form part of this Request Document and any resultant Contract(s) for the Work.

PROPONENT'S SUBMISSION CHECKLIST

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1.0 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 submitting the Submission to ensure compliance.

Requirement	Confirmation (left click with your mouse in the box to select)
The Submission has been submitted by the E-Bid Authorized Signer.	<input type="checkbox"/>
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 requirements and acknowledges that it meets all mandatory requirements in order for their Submission to be considered further.	<input type="checkbox"/>
The Proponent has reviewed the RQQ Timetable and understands all the dates and timelines associated with this RQQ Process	<input type="checkbox"/>
Contact information for the individual responsible for the Submission has been included in "Request Document Form: Form of Request".	<input type="checkbox"/>
The Proponent understands the requirements for Electronic Bid Submission and shall comply with the Submission requirements.	<input type="checkbox"/>
The Proponent's 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 included with the Submission.	<input type="checkbox"/>
The Proponent has attended the Mandatory Site / Information Meeting, if applicable.	<input type="checkbox"/>
The Proponent has not included any qualifying statements in its Submission.	<input type="checkbox"/>
If a Joint Venture, a copy of the Joint Venture agreement electing the Participant-in-Charge is attached.	<input type="checkbox"/>
The Proponent has completed and included all Request Document Forms with this Submission.	<input type="checkbox"/>

INTRODUCTION

1.0 General

- 1.1 Metrolinx is issuing this Request to Qualify and Quote to retain the services of a Consultant to provide the goods and/or services described herein. Metrolinx intends to notify a Proponent of acceptance of its Submission and enter into a Contract through an open, fair and competitive process.

You are invited to submit your Submission for Request No.RQQ-2018-ECDV-248, as more particularly described in this Request Document as required by Metrolinx for the Natural Heritage Consulting Services on an emergent Basis.

DEFINITIONS

1.0 Definitions

In this Request Document,

- 1.1 **“Addenda”/“Addendum”** is the formal written release of additions, deletions, revisions, clarifications to this Request Document, via the Metrolinx MERX Portal, that form a part of the Request Document and subsequently the Contract as specified in Section 4.0 of Instructions to Proponents.
- 1.2 **“Business Day”** means any day other than: (a) a Saturday or Sunday and (b) any other day on which Metrolinx is not open for business. Each Business Day will end at 4:00 p.m. on that day.
- 1.3 **“Closing”** means the deadline for Metrolinx to receive Submissions as specified in “Closing” of Section 1.2, RQQ Timetable, of Instructions to Proponents.
- 1.4 **“Conflict of Interest”** means:
 - (a) 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
 - (b) 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”** means this contract between the Consultant and Metrolinx pursuant to this Request No. RQQ-2018-ECDV-248 including the Articles of Agreement, Addenda, the General Conditions of the Contract, the Contract Documents, and any and all other documents referenced therein.
- 1.6 **“Contract Documents”** means the Contract and those documents listed in List of Contents and any written amendments thereto as agreed to by the Parties.

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- 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 this Request Document.
- 1.8 “**Drawings**” if applicable to this Request Document, describe the detailed technical requirements of the Work and form part of the Scope of Work contained herein.
- 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 the Metrolinx MERX Portal indicating that the Submission was uploaded successfully.
- 1.12 “**Evaluation Committee**” means the individual chosen by Metrolinx 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 1.1 of Evaluation Criteria and Selection Process.
- 1.14 “**FIPPA**” means the Freedom of Information and Protection of Privacy Act, and any amendments or successor legislation. FIPPA is Provincial legislation regulating the collection, retention, access, use and disclosure of “Personal Information” by or on behalf of Metrolinx, and shall be applicable to the Contract including all Work provided pursuant to the Contract.
- 1.15 “**Joint Venture**” means a business arrangement of two or more parties proposed for this RQQ Process further described in Section 16.0 of Instructions to Proponents.
- 1.16 “**Key Personnel**” means the individual identified by name in “Request Document Form -Technical Submission Section 3: Consultant Personnel”.
- 1.17 “**Metrolinx**” is a provincial crown agency continued under Metrolinx Act, S.O. 2006, Chapter 16, and its successors and assigns and shall have the same meaning ascribed to “Metrolinx” in Schedule A - Definitions of General Conditions of the Contract.

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- 1.18 “**Metrolinx MERX Portal**” is the electronic bid solicitation and Consultant Submission website (www.metrolinx.merx.com) that facilitates Metrolinx and Proponent interaction as it directly relates to the; download by a Consultant of Metrolinx Request Documents including Addenda from, and upload by a Consultant of a Submission to Metrolinx in response to, this RQQ Process.
- 1.19 “**Option**” means a component of the Work that is to be exercised at the sole discretion of Metrolinx.
- 1.20 “**PDF**” means Portable Document Format.
- 1.21 “**Participant in Charge**” shall have the same meaning ascribed in Section 16.2 of Instructions to Proponents.
- 1.22 “**Parties**” means both of Metrolinx and the Consultant and a “**Party**” means either one of them.
- 1.23 “**Place of the Work**” is the designated site or location of the Work.
- 1.24 “**Pricing Submission**” means the Proponent's response to Submission Requirements” and any additional information requested by Metrolinx relating thereto.
- 1.25 “**Procurement Office**” means Metrolinx Procurement Services office located at 277 Front Street West, 4th Floor, Mail Room, Toronto, Ontario, Canada, M5V 2X4.
- 1.26 “**Procurement Representative**” means the following individual in the Procurement Services Department:

Dan Doyle, Procurement Officer	
Telephone number	(416) 202- 7851
Email	Dan.Doyle@metrolinx.com

- 1.27 “**Proponent**” means the entity, identified on Page 1 of the “Request Document: Form of Request” that submits a Submission in response to this Request Document and who, if notified of acceptance of its Submission by Metrolinx, shall execute the Contract with Metrolinx for provision of the Work.
- 1.28 “**Request Document**” means this Request document comprised of sections listed in the List of Contents, issued by Metrolinx for the Work to be provided, and any Addenda thereto.

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- 1.29 “**Request Document Form(s)**” means any sections of this Request Document which require completion and must be included with the Submission.
- 1.30 “**RQQ Process**” means the procurement process for this Request as set out in the Request Document herein.
- 1.31 “**Scope of Work**” describes the general and detailed requirements of the Work and is to be read in conjunction with any Drawings contained herein, if applicable.
- 1.32 “**Submission**” means all documentation which the Proponent shall be bound to and other materials and information submitted electronically by the Proponent’s E-Bid Authorized Signer through the Metrolinx MERX Portal in response to this Request Document or in respect of this RQQ Process.
- 1.33 “**Sub-Consultant**” means an individual, firm, partnership or corporation having a direct contract with the Consultant or another Sub-Consultant to perform a part or parts of the Work.
- 1.34 “**Supplier**” means an individual, firm, partnership or corporation having a direct contract with the Consultant or another Sub-Consultant to provide goods and services required to carry out the Work.
- 1.35 “**Technical Submission**” means the Proponent’s response to Section 3.0 of Submission Requirements and any additional information requested by Metrolinx relating thereto.
- 1.36 “**Total Contract Price**” means the upset limit amount established as the total contract price for the Contract by Metrolinx, in accordance with Sections **Error! Reference source not found.** through **Error! Reference source not found.** of Instructions to Proponents.
- 1.37 “**Total Evaluated Price**” means the total amount set out in Request Document Form: Contract Prices.
- 1.38 “**Consultant Performance Management (VPM)**” shall have the meaning ascribed in Section 26.0 of Instructions to Proponents.
- 1.39 “**Consultant Performance Rating (VPR)**” is the average of a Consultant's performance evaluation scores in a particular category (as assessed by or on behalf of Metrolinx) for a thirty-six (36) month period preceding the Closing. If a Bidder has not completed any work for Metrolinx in the three (3) years preceding the Closing, for the purpose of evaluating the Submission, the Bidder will be assigned a VPR which is the straight average of all the VPR’s of all Consultants

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in a particular category who have performed services for Metrolinx during the prior fiscal year.

- 1.40 “**Work**” means all activities, services, goods, equipment, matters and things required to be done under the Contract, including all of the work, labour, services, goods, equipment, if applicable, described in the Scope of Work and Drawings.
- 1.41 “**Working 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 commence at 08:00 am end at 5:30 p.m. on that day.

INSTRUCTIONS TO PROPONENTS

1.0 General

1.1 The Proponent's Submission will be evaluated in accordance with "Submission Requirements" and "Evaluation Criteria and Selection Process" sections.

1.2 RQQ Timetable

Milestone	Date
Issuance of Request Document	Friday, Oct. 12, 2018
Deadline to Submit Questions	Tuesday, Oct. 23, 2018
Last day for issuance of Addenda	Friday, Oct. 26, 2018
Closing	Monday, Nov. 5, 2018@ 3:00 p.m. Toronto, Ontario time
Estimated Commencement Date of Work	November 30, 2018

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

2.0 Request Enquiries and Requests for Clarifications, Changes or Revisions

2.1 All written enquiries and other communications prior to full Contract execution

2.2 Information communicated to anyone else shall be considered informal and Metrolinx shall not be bound by any information given in such a manner.

2.3 Any questions concerning this Request Document, the contents herein, including General Conditions of the Contract, or the Work contemplated herein are to be directed, in writing, to the Procurement Representative prior to the deadline for submitting questions. No questions or requests for clarifications, changes or amendments of this Request Document, including the General Conditions of the Contract, shall be entertained after this time regardless of the reason. To allow for dialogue on any questions or requests, Metrolinx encourages Proponents to submit their questions or requests early in the question and answer (referred to as "Q and A") process. When seeking changes or amendments to any of the terms and conditions of this RQQ Process, including the terms contained in General Conditions of the Contract, the Proponent should provide sufficient detail to provide Metrolinx with an understanding of the rationale for the change or amendment and, if applicable, the Proponent should propose the language that would address its concern(s).

2.4 All questions/requests for clarification, change or amendment related to this Request Document are to be submitted via e-mail to the attention of the

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Procurement Representative using the question and answer form attached separately as:

“Q and A Form RQQ-2018-ECDV-248“

In the table provided in the Q and A Form, indicate the document section related to each question being submitted as well as page, document title, drawing no., section number and details of the specific question/request. For each set of questions submitted by the Proponent, a new copy of the above referenced Q and A Form should be submitted.

- 2.5 When necessary, revisions to, or clarifications of the Request Documents will be incorporated into a written Addendum issued by the Procurement Representative identified herein. Information regarding this Request Document or the Work, whether provided by the Procurement Representative 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.

3.0 Mandatory Site/Information Meeting

- 3.1 Not Applicable

4.0 Addenda / Changes to the Request Documents

- 4.1 In the event that Metrolinx determines in its sole discretion that clarifications and/or revisions to this Request Document are required, Metrolinx shall issue an Addendum. Information concerning Addenda can be found through the Metrolinx MERX Portal for this RQQ Process. Proponents are urged to select automatic notification of Addenda issuance when registering on the Metrolinx MERX Portal.
- 4.2 It is the Proponent’s responsibility to ensure that they have obtained copies of all Addenda, and to ensure that the Addenda have been considered in their Submission. Addenda/Addendum shall become part of this Request Document and the contents thereof shall be allowed for in the prices bid for the Work.
- 4.3 The Proponent, when ascertaining if copies of all Addenda issued have been obtained, shall be responsible for allowing sufficient time prior to the Closing to obtain any missing Addenda and to review and allow for the contents thereof in its Submission.
- 4.4 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.

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5.0 Request Submission

- 5.1 Submissions shall only be accepted electronically via the Metrolinx MERX Portal. Submissions submitted in any other manner shall be found non-compliant and disqualified.
- 5.2 It is the Proponents sole responsibility when submitting a Submission to Metrolinx to exercise extreme care when completing and submitting all required documents and/or information. Failure of the Proponent to include all required documents and/or information may result in the Proponent's Submission being found non-compliant and disqualified.
- 5.3 Proponents shall examine carefully the whole of the 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 Work.
- 5.4 The Proponent shall not claim at any time after the Closing and/or after notification of acceptance of its Submission that there was any misunderstanding or uncertainty in regard to the 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.
- 5.5 Submissions should be completed fully in a clear and comprehensible manner.
- 5.6 The Submission shall be submitted on the most current Request Document Forms issued by Metrolinx 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.
- 5.7 The Submission must not include any qualifying statements.
- 5.8 Any Submission which contains such conditional and/or qualifying statements may be found non-compliant and disqualified unless such conditional and/or qualifying statements are withdrawn in writing by the Proponent, upon request by Metrolinx. Metrolinx at its sole discretion will determine what constitutes a qualifying statement.
- 5.9 If during the preparation of its Submission, the Proponent desires to make a change which requires correction, alteration or erasure to any information previously entered in a designated section of the Submission by the Proponent, documents that have been uploaded to the Metrolinx MERX Portal may be added, removed and/or re-submitted as often as required at any time, prior to Closing.

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- 5.10 For assistance with registration and login credentials, subscription information, fees, and general use of the Metrolinx MERX Portal, please watch the online Electronic Bid Submission tutorial at: <https://www.youtube.com/watch?v=To0fqSccw3M>. Alternatively, you can contact MERX directly at 1-800-964-MERX (6379). For additional Metrolinx MERX Portal guidelines, refer to the document entitled “Metrolinx MERX Portal - General Information” under “Attachments” in this Request Document.
- 5.11 Information contained in the most recent Submission submitted via the Metrolinx MERX Portal and received prior to the Closing will take precedence over the information contained in previously received Submissions from the Proponent.
- 5.12 The Proponent may withdraw a Submission at any time prior to the Closing specified by Metrolinx by logging into www.metrolinx.merx.com.

6.0 Submission Deadline

- 6.1 Submissions must be electronically uploaded via the Metrolinx MERX Portal by the Closing. Any Submission or portions thereof received after the Closing (as confirmed by MERX Audit Report if submitted via the Metrolinx MERX Portal) shall be found non-compliant and the entire Submission shall be disqualified regardless of the reason for lateness. The Proponent shall submit the Submission within sufficient time to ensure its arrival before the Closing.
- (a) If the Proponent attempts to submit their Submission, or portions thereof, after the Closing, such documents shall not be accepted by the MERX system.
- (b) In the event that the MERX system allows late Submissions, this will not supersede any stipulations herein regarding late submissions.
- 6.2 Upon successful completion of the electronic submission process, the Proponent shall be provided with an E-bid Confirmation Number indicating that the Submission was uploaded successfully.
- 6.3 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.
- 6.4 After the Closing has occurred, all Submission received will be opened by Metrolinx staff. There shall be no public access to this opening. Results of the opening of Submissions will be made public within approximately 24 hours on the Metrolinx MERX Portal (search the Request Number and select “Bid Results”).
- 6.5 Upon execution of the final Contract, all Proponents that have submitted a Submission shall be notified in writing of the results of the award to the

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successful Proponent. Results of the award to the successful Proponent shall also be posted on the Metrolinx MERX Portal. (search the Request Number and select “Awards”).

7.0 Clarification of Submissions

- 7.1 Metrolinx reserves the right, within one hundred and eighty (180) calendar days following the Closing, to request that any Proponent clarify its Submission or provide the required supporting documentation specified in “Request Document Form: Mandatory Corporate, Personnel and Technical Requirements”, and such Proponents shall submit responses to such request within five (5) Business Days following receipt of such request or within such shorter time as Metrolinx may require. Metrolinx may, in its sole discretion, choose to meet with some or all of the Proponents to discuss aspects of their Submission. Metrolinx may require Proponents to submit additional information clarifying any matters contained in its Submission, provide confirmation of any matters contained in their Submission or prepare a written interpretation of any aspect of a Submission for the respective Proponent’s acknowledgement of that interpretation. Any unsolicited information shall not be considered.
- 7.2 Such information accepted by Metrolinx and written interpretations which have been acknowledged by the relevant Proponent shall be considered to form part of the Submission of those Proponents.
- 7.3 After the Closing, only information specifically requested by Metrolinx for purposes of clarification or to substantiate compliance with a mandatory requirement, shall be considered as additions to a Proponent’s Submission.
- 7.4 Metrolinx is not obliged to seek clarification of any aspect of a Submission.

8.0 Corporate Firm and Team Qualifications and Experience

- 8.1 Only the Submissions of qualified Proponents will be considered for acceptance by Metrolinx, in accordance with Evaluation Criteria and Selection Process.
- 8.2 Refer to Submission Requirements for the required corporate and key personnel qualifications and experience pertaining to this Request Document.
- 8.3 Metrolinx may, in its sole discretion, waive the requirement to contact references provided by any Proponent and rely on the detailed descriptions provided by the Proponent in the “Request Document Forms”.
- 8.4 When completing Request Document Forms related to experience and qualifications, the Proponent should list relevant work that has been completed or that is ongoing under a Metrolinx contract. In its determination of whether a Proponent meets the requirements of Sections 8.1 through 8.3 herein, Metrolinx

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may, in its sole discretion exercise its rights under Section 12.1(g) of Rights of Metrolinx herein.

8.5 Before any Submission is accepted, any Proponent may be required to demonstrate to the satisfaction of Metrolinx, that it is capable of performing the Work. Metrolinx reserves the right to make any and all further investigations it deems, in its sole opinion, necessary, prior to the acceptance of any Submission, to determine if a Proponent is qualified to perform the Work.

8.6 In the event the Proponent does not demonstrate to the satisfaction of Metrolinx that it possesses the necessary qualifications and experience required for acceptance of its Submission by Metrolinx, the Proponent's Submission shall be found non-compliant and disqualified.

9.0 Insurance

9.1 The Proponent shall, in accordance with the General Conditions of the Contract, provide a valid certificate of insurance in the types and amounts specified, within five (5) Business Days of notification of acceptance of its Submission by Metrolinx. This requirement is a pre-condition of execution of the Contract. Failure by the successful Proponent to comply with this requirement shall result in acceptance of the Proponent's Submission to be declared void.

10.0 Workplace Safety and Insurance Clearance Certificate

10.1 The Proponent shall, in accordance with Schedule C: Insurance, of General Conditions of the Contract, provide a valid Workplace Safety and Insurance Clearance Certificate for the premium rate class, subclass or group as appropriate for the Work 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 successful Proponent to comply with this requirement shall result in acceptance of the Proponent's Submission to be declared void.

11.0 Parent Company Indemnity

11.1 Solely upon Metrolinx request, within five (5) Business Days of notification of acceptance of its Submission by Metrolinx, as a pre-condition to execution of the Contract, the Proponent may be required to submit a 'Guarantee' from its parent company, if there is one, included as "Parental Guarantee" and provided under Attachments, or in a form satisfactory to Metrolinx and indicating that the Parent company agrees to provide all the necessary financial and technical support for the proper completion of the said Contract and shall guarantee the performance of the said Contract in accordance with the General Conditions, including timely completion thereof, and agrees to guarantee the Work for the warranty period(s) stipulated therein. This requirement shall be exercised by Metrolinx based on

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Metrolinx's assessment, in its sole discretion, of the Proponent's financial capacity, corporate structure (i.e. if it is a subsidiary), scale and value of the Work and other risk factors.

- 11.2 Failure by the successful Proponent to comply with this requirement shall result in acceptance of the Proponent's Submission to be declared void.

12.0 Rights of Metrolinx

12.1 Metrolinx reserves the right, in its sole discretion:

- (a) to cancel this call for Requests and any acceptance of a Submission for any reason and at any time prior to final execution of the Contract by Metrolinx, for any reason, without any obligation or any reimbursement to the Proponent;
- (b) to reject any or all Submissions. The Submission with the lowest price will not necessarily be accepted. Metrolinx's selection will be based on which Proponent has provided a Submission which Metrolinx determines, in its sole discretion, to provide the greatest value based on quality, service and price based on the evaluation criteria contained in this Request Document;
- (c) to disqualify any Submission which contains misrepresentations or any other inaccurate or misleading information;
- (d) to waive any requirement of this Request Document or request amendment of a Submission by the Proponent 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;
- (e) to waive the requirement to check references;
- (f) to not respond to a Proponent's questions;
- (g) to use its own experiences, and the experiences of any other third party, with the Proponent in previous contracts in order to evaluate the Proponent's Submission. Specifically to,
 - (i) take into account the experience of Metrolinx itself in dealing with the Proponent in circumstances where the Proponent has carried out (or is carrying out) a project for Metrolinx (whether or not the Proponent has listed such project in the applicable Request Document Forms); and
 - (ii) make general inquiries of third parties with respect to the qualifications of a Proponent and take the results of these general

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inquiries into account (whether or not the Proponent has listed the third party or the applicable project in the applicable Request Document Forms.

- (h) to issue or not to issue a notification of acceptance of a Proponent's Submission based on submitted references and/or references independently obtained by Metrolinx;
- (i) to issue or not to issue a notification of acceptance of a Proponent's Submission based on the Corporate Firm's experiences with Metrolinx or other departments or agencies within the Ontario government, if the Corporate Firm:
 - (i) was/were 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;
 - (ii) 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;
 - (iii) had a previous contract with a department or agency within the Ontario government that was terminated for default in the past year; or
 - (iv) is an affiliate of or successor to any corporation described in Sections 12.1(i)(i) through (iii) 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 12.1(i)(i) through (iii) above.
- (j) to reject any Proponent's Submission during this RQQ Process and any proponent submission from a procurement process, due to unsatisfactory performance history with Metrolinx;
- (k) 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;
- (l) to distribute via Addenda, copies of any Proponent's questions received and responses provided by Metrolinx, to all Proponents who received this Request Document;
- (m) to request that a Proponent voluntarily withdraw its Submission without penalty, where in the opinion of Metrolinx the Submission is substantially

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below internal budget estimates and therefore the Work would not be satisfactorily completed;

- (n) to request that a Proponent voluntarily withdraw from its Submission, without penalty, any conditional and/or qualifying statements, as determined by Metrolinx in its sole discretion;
- (o) to disqualify any Submission where the Proponent does not voluntarily withdraw parts of, or all of, its Submission, as requested by Metrolinx under sections 12.1(m) or 12.1(n);
- (p) to postpone the Closing, at which time all Proponents who received Request Documents shall be advised of the new Closing via written Addenda;
- (q) to within one hundred and eighty (180) days following Closing, exercise any rights under Section 7.1 of Instructions to Proponents;
- (r) to correct calculations and/or carry forward errors in any or all Submissions where such errors affect extended totals, the Total Evaluated Price, H.S.T. and/or Grand Total. Calculation corrections shall only be made based upon the unit prices submitted by the Proponent. Corrections to extensions, sums, differences, carry forward errors or other arithmetical operations based on the unit prices submitted will be identified on the Request Document 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 found non-compliant and disqualified;
- (s) to, upon failure of the Proponent whose Submission was accepted to fulfill the conditions of Section 13.2 of Instructions to Proponents, cancel acceptance of the Proponent's Submission by Metrolinx and consistent with industry practice, notify another Proponent who was determined to be qualified in accordance with the Submission Evaluation Criteria stated herein and who submitted a compliant Submission, that its Submission has been accepted and, subsequent to the fulfillment of the conditions of Section 13.2 of Instructions to Proponents, and for Metrolinx to issue a notification of acceptance of the Submission to that Proponent.

13.0 Contract To Be Executed

- 13.1 Metrolinx shall notify the Proponent in writing of acceptance of its Submission. . Metrolinx will prepare the Articles of Agreement and bind it into the Contract. Two (2) copies of the Contract will be forwarded to the Proponent for review and execution.

INSTRUCTIONS TO PROPONENTS

- (a) It is the intention of Metrolinx to establish Contracts with one (1) or more Proponents.
 - (b) Metrolinx's upset limit for this Work is one million five hundred thousand dollars (\$1,500,000), excluding H.S.T. over a period of three (3) years with a possibility of two (2) option years.
 - (c) In the event that Metrolinx, in its sole discretion, awards more than one (1) Contract the upset limit for each contract shall be one million and five hundred thousand dollars (\$1,500,000) excluding H.S.T. over a period of three (3) years with a possibility of two (2) option years. The total Metrolinx spend across all contracts awarded pursuant to this RQQ-2018-ECDV-248 shall not exceed one million five hundred thousand dollars (\$1,500,000) excluding H.S.T.
 - (i) As a result, the Total Contract Price for Contract(s) shall be one million five hundred thousand dollars (\$1,500,000). There is no guarantee that a Proponent awarded a Contract pursuant to this RQQ-2018-ECDV-248 will be awarded any Work through the second stage competitive processes.
- 13.2 The Contract shall be executed by the Proponent and delivered 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 deliver the Contract with the required Insurance Certificates, Workplace Safety and Insurance Clearance Certificate, and if requested the Parental Guarantee and any other documents as may be required within the specified time, could result in the cancellation of the acceptance of the Proponent's Submission.
- 13.3 Upon failure of the Proponent, whose Submission was accepted, to fulfil the conditions of Section 13.2 herein, Metrolinx may, at its sole discretion, cancel acceptance of the Proponent's Submission consistent with Section 12.1(s) of Instructions to Proponents.
- 13.4 There shall be no binding contract for the supply of the Work unless and until Metrolinx and the Proponent who's Submission has been accepted have executed the written agreements contemplated in the Request Document.
- 13.5 The Proponent shall not start the Work before the Contract has been executed by the Proponent and Metrolinx and all documents required by the Request Document, as a condition of acceptance, have been delivered to Metrolinx.

14.0 SubConsultants

- 14.1 Proponents shall be responsible for the distribution of all the instruments of the Request Document and Addenda/Addendum thereto to all SubConsultants.

INSTRUCTIONS TO PROPONENTS

- 14.2 Metrolinx or its representatives will have no obligation whatsoever to supply any SubConsultant with all or part of the Request Document and Addenda thereto, and shall not be liable for any damages suffered by any Proponent who's SubConsultant does not receive or review the Request Document or Addenda/Addendum. No claims for payment or for a change order will be entertained because of the failure of any SubConsultant to receive or review the Request Document or Addenda/Addendum which have been supplied to the Proponents prior to Closing.

15.0 Conflict of Interest

- 15.1 Conflict of Interest shall be as defined in "Definitions" of this Request Document. The Conflict of Interest declaration included in "Request Document Form: Conflict of Interest" shall be completed and provided with the Submission.
- 15.2 Examples of Conflict of Interest include but are not limited to:
- (a) any director, officer, employee or advisor of Metrolinx who has any connection or relationship with, or any pecuniary interest in the Proponent or any SubConsultant thereof;
 - (b) the Proponent or any SubConsultant being in possession of confidential information relating to the Work; and
 - (c) any director, officer or employee or advisor of Metrolinx who has knowledge of the Work has assisted the Proponent in the preparation of its Submission.
- 15.3 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.

16.0 Joint Ventures

- 16.1 If a Joint Venture is proposed, the Proponent shall state in its Submission the Joint Venture agreement that forms the basis on which the Joint Venture plans to carry out its obligations. Proponent
- 16.2 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.

INSTRUCTIONS TO PROPONENTS

- 16.3 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 or a copy of the Joint Venture agreement electing the Participant-in-Charge.
- 16.4 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.

17.0 Prohibited Contacts and Lobbying Prohibition

- 17.1 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.
- 17.2 Without limiting the generality of Section 18.1 above, neither the Proponent nor the Proponent's team members nor any of their respective SubConsultants, advisors, employees or representatives shall contact or attempt to contact, either directly or indirectly, at any time during this RQQ Process, any directors, officers, employees and advisors of Metrolinx, other than the Procurement Representative, other than to discuss pre-existing work that is being conducted pursuant to a separate contract.

18.0 Media Releases, Public Disclosures and Public Announcements

- 18.1 A Proponent shall not, and shall ensure that its team members, advisors, SubConsultants, 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, its Submission or any matters related thereto, without the prior written consent of Metrolinx.
- 18.2 A Proponent shall not, and shall ensure that its team members, advisors, SubConsultants, employees and representatives do not make any public comment, respond to questions in a public forum, or carry out any activities to either criticize another Proponent or Submission or to publicly promote or advertise its own qualifications, interest in or participation in the RQQ Process without the prior written consent of Metrolinx, which may be withheld in the sole discretion of Metrolinx. Notwithstanding this item, the Proponent, Proponent's team members and all of the Proponent's respective advisors, SubConsultants, employees and representatives are permitted to state publicly that it/they are participating in this RQQ Process.

INSTRUCTIONS TO PROPONENTS

- 18.3 For greater clarity, this section does not prohibit disclosures necessary to permit the Proponent to discuss this Request Document with prospective SubConsultants regarding their participation in this RQQ Process.

19.0 Restriction on Communications Between Proponents – No Collusion

- 19.1 A Proponent shall not discuss or communicate, directly or indirectly, with any other Proponent, any information whatsoever regarding the preparation of its own Submission or the Submissions of other Proponents. Proponents shall prepare and submit Submissions independently and without any 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, SubConsultants, employees and representatives.

20.0 Disclosure of Information

- 20.1 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.
- 20.2 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.
- 20.3 Under Ontario's Open Data Directive, Metrolinx is required to publish certain procurement information. Accordingly, the Proponent acknowledges that, subject to any applicable FIPPA exemptions, Metrolinx may publish procurement data including but not limited to the names of the Proponents and the winning bid in accordance with Ontario's Open Data Directive. For more information, see: www.ontario.ca/page/ontarios-open-data-directive.
- 20.4 Disclosure of personal or confidential business information may be avoided if it would be significantly harmful to business interests or would be an unreasonable invasion of personal privacy. Accordingly, Proponents are encouraged to:
- (a) identify those portions of their Submissions which they are supplying in confidence and for which disclosure to others would be significantly harmful to their business, or would be an unreasonable invasion of their personal privacy, as defined in Section 17 of FIPPA; and
 - (b) be prepared to justify that determination if challenged to do so by someone who applies for access to the information.

INSTRUCTIONS TO PROPONENTS

21.0 Freedom of Information and Protection of Privacy Act (“FIPPA”)

21.1 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.

22.0 Submission to Be Retained by Metrolinx

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

23.0 Confidential Information of Metrolinx

23.1 All information provided by or obtained from Metrolinx in any form in connection with this RQQ Process;

- (a) is the sole property of Metrolinx and shall be treated as confidential;
- (b) shall not be used for any purpose other than replying to the Request Document and the performance of any subsequent agreement; and
- (c) shall not be disclosed without prior written authorization from Metrolinx.

24.0 Proponents Shall Bear Their Own Costs

24.1 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.

25.0 Changes to Key Personnel or Joint Venture

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

25.2 In response to a request as per Section 25.1 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 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.

INSTRUCTIONS TO PROPONENTS

25.3 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.

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

26.0 Consultant Performance Management Program

26.1 Consultant Performance Management ("VPM") Program means the Metrolinx system for monitoring, evaluating and recording Consultant performance, as same may be amended or replaced from time to time. The Consultant Performance Management Program establishes a standard methodology for the incorporation of a Consultant's past performance in a particular category as a criterion in assessing that Consultant's submission for future work with Metrolinx.

26.2 Pursuant to Metrolinx's VPM Program, Metrolinx will be considering the Proponent's past performance under contracts with Metrolinx, in a particular category, in evaluating Submissions received in response to this Request Document.

26.3 The VPR is being applied as a component of evaluation for this RQQ Process in accordance with Evaluation Criteria and Selection Process.

26.4 A Proponent may access their VPR through an annual subscription on the Metrolinx MERX Portal. If a Proponent has questions regarding their VPR, they should contact the Procurement Representative in accordance with Section 2.0 of Instructions to Proponents.

26.5 Information regarding Metrolinx Consultant Performance Management System and how a Consultant Performance Rating is calculated can be found in the Metrolinx "Consultant Relationship Management Procedures and Guidelines v1,1 dated November 7, 2016", or most current version, accessed through the following link:
http://www.metrolinx.com/tenders/en/ConsultantRelationshipManagement_Guidelines.pdf.

26.6 The "Contract Performance Appraisal" applicable to any Contract resulting from this RQQ Process, can be found under "Attachments".

INSTRUCTIONS TO PROPONENTS

27.0 Debriefing

- 27.1 Any Proponent having passed Phase One: Administrative Evaluation, as noted under Section 1.0 – Evaluation Methodology of “Evaluation Criteria and Selection Process”, may request a debriefing after receipt of a notification letter advising of the outcome of the RQQ Process (“Notification Letter”). All requests must be sent via email to the Procurement Representative and must be made within sixty (60) calendar days after receipt of a Notification Letter.
- 27.2 The intent of the debriefing is to aid the Proponent in presenting a better Submission in subsequent procurement opportunities. Any debriefing provided is not for the purpose of providing an opportunity to challenge the RQQ Process.
- 27.3 All debriefings are for informational purposes only and shall be strictly limited in scope to the Proponent’s Submission forming the subject of the debriefing request. There will be no discussion of the successful Proponent’s Submission, the awarded Contract, the Submissions of other Proponents, or previous or future procurements.

END OF SECTION

SUBMISSION REQUIREMENTS

**Natural Heritage Consulting Services on an Emergent Basis
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1.0 Submission Format

- 1.1 Submissions must be submitted through MERX and should be in the following format:
- (a) Present information in Font Size 11 pt. on 8½ x 11 paper size.
 - (b) Include a table of contents.
 - (c) Organize information into sections which correspond to the Submission Content requirements in the exact order described below.
 - (d) The entire content of a Submission shall be submitted in writing, and the content of web sites or other external documents referred to in a Submission will not be considered for evaluation unless submitted in their entirety as part of the Submission.

2.0 Mandatory Requirements

- 2.1 A Proponent must meet all mandatory requirements in order for its 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 found non-compliant and will not be considered further.
- 2.2 The mandatory requirements for this Request Document are as follows:
- (a) The Submission shall be submitted by the Proponent's E-Bid Authorized Signer. For the purposes of a Joint Venture, the E-Bid Authorized Signer of the Participant-in-Charge shall submit the Submission.
 - (b) Pricing information must be completed and submitted with the Submission using "Contract Prices.
 - (c) The Proponent shall declare any conflicts of interest in Section 1.1(b) of "Conflict of Interest". If Section 1.1(b) is left blank or is not returned with the Submission, the provisions of Section 1.1(a) of "Conflict of Interest" shall apply.
 - (d) The Proponent must meet all of the mandatory requirements stated in "Mandatory Corporate, Personnel and Technical Requirements".
 - (e) The Proponent shall provide the information requested in "Consultant Personnel" with the Submission.

SUBMISSION REQUIREMENTS

3.0 Technical Submission

A Submission should include a Technical Submission. The information required in the Technical Submission as well as the prescribed format in which it should be submitted is outlined below. The Proponent's Technical Submission should be comprised of the following sections in the following order and should contain a Table of Contents.

3.1 Technical Submission Section 1: Corporate Summary

The Proponent should provide a corporate overview of the Corporate Firm's structure, capabilities, qualifications and experience relevant to the Work, as outlined below.

- (a) Corporate Summary: Description of Proponent's Company
 - (i) 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 Work of this Project.

- (b) Corporate Summary: Description of Corporate Firm
 - (i) Provide a description of the structure of the Proponent's Corporate Firm;
 - (ii) Identify the principal business of key Sub-Consultants, professional advisors and subject matter experts it proposes to use in the performance of the Work, especially for major or critical pieces of the work. For each Sub-Consultants listed, the Proponent should provide the following:
 - (A) Full corporate name and location of the Sub-Consultants;
 - (B) Which area of the Work the Sub-Consultants shall be employed for;
 - (C) The Sub-Consultant's experience and qualifications relative to the Work it will be performing;
 - (D) Previous instances of the Proponent and Sub-Consultants working together including:
 - I) A description of the project and value;

SUBMISSION REQUIREMENTS

- II) The client the services were performed for; and
 - III) The parts of the services performed by the Sub-Consultants.
- (c) Provide a description of the resources intended for use in order to sustain and complete the Work to the satisfaction of Metrolinx;

3.2 **Technical Submission Section 2: Corporate Firm Experience, Qualifications and Reference Projects**

The Proponent should provide a detailed description of the Corporate Firm's experience and qualifications relevant to the Work, as follows:

- (a) Corporate Firm Experience and Qualifications
 - (i) The Proponent should demonstrate ten (10) years' experience in performing work similar in scope, magnitude and complexity as the Scope of Work stated in this Request Document, by including a detailed description of the Corporate Firms qualifications and experience including but not limited to:
 - (A) The necessary resources to sustain and complete the Services to the satisfaction of Metrolinx. The resource requirements are listed in the Scope of Work;
 - (b) In provision of the Services provided to the following client groups in the following industry/sectors: Natural Heritage services as described in the Scope of Work. Corporate Firm References:

Reference Projects are intended to demonstrate the Corporate Firm's corporate capacity to perform and manage projects of a similar scope, magnitude and complexity as the Work of this Request Document.

The Proponent should demonstrate its experience in performing work similar in scope, magnitude and complexity as the Scope of Work stated in this Request Document, by including five (5) reference projects, for relevant work completed within the past five (5) years or currently active, as follows:

- (i) Corporate Firm References Related to Current Scope:
 - (A) The Proponent must include all projects of similar scope, magnitude and complexity as the Scope of Work stated in this Request Document that it has completed or is currently

SUBMISSION REQUIREMENTS

completing for Metrolinx 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 Request Document Form: Corporate References, provide the following information for each corporate reference project:

- I) Name of the company for which the work was performed;
- II) Project title;
- III) Contact person's name, title, telephone number and e mail address; and
- IV) Start and completion date.
- V) The Proponent can attach up to an additional two (2) pages of information related to each reference project.

3.3 Technical Submission Section 3: Key Personnel

The Proponent should provide a detailed description of the functional organization, roles and responsibilities of each Key Personnel and relevant experience and qualifications similar in scope, magnitude and complexity as the Work of this Request Document for each Key Personnel, as follows:

(a) Functional Organization

- (i) Provide an organizational chart identifying the named Key Personnel assigned and dedicated solely to the project in their respective roles, for completion of the Work.

(b) Roles and Responsibilities of Key Personnel

The Proponent should provide the following:

- (i) A brief description identifying the role and responsibilities of each Key Personnel, with respect to the Work requested;
- (ii) A statement describing the experience of the individual Key Personnel in working together on previous relevant projects;
- (iii) A statement indicating whether the Key Personnel is an employee of the Proponent or is a Sub-Consultant; and

SUBMISSION REQUIREMENTS

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

(c) Key Personnel Experience, Qualifications and Reference Projects

For each individual the Proponent is proposing for a Key Personnel role identified in Request Document Form: Key Personnel, the Proponent should provide:

(i) A completed Request Document Form: Technical Submission Section 3 – Key Personnel Experience and Qualifications for each named individual identified for a Key Personnel position.

(ii) A completed Request Document Form: Technical Submission Section 3 – Key Personnel Reference Projects for each named individual identified for a Key Personnel position.

4.0 Proponent Presentation

4.1 Not Applicable

5.0 Price Submission

The Proponent's Pricing Submission should be comprised of the following:

5.1 The Proponent shall provide a completed Request Document Form: Contract Prices (Excel file), per the instructions specified therein.

END OF SECTION

EVALUATION CRITERIA AND SELECTION PROCESS

1.0 Evaluation Methodology

- 1.1 Submissions shall undergo several phases of evaluation based on documentation provided and Consultant Performance Rating information contained in the MetroInx MERX Portal.
- 1.2 Mandatory criteria will be rated pass or fail. All other criteria shall be evaluated in accordance with Section 1.0 herein. Evaluation shall occur in Four (4) phases, as follows:
 - (a) Phase One: Administrative Evaluation (Compliant/Non-Compliant)
 - (i) Submissions shall undergo an administrative evaluation to determine compliance with the mandatory requirements.. Only those Submissions determined in the sole opinion of MetroInx, to have fulfilled all the administrative mandatory requirements shall proceed to Phase Two of the evaluation process. Submissions that do not meet the mandatory requirements are non-compliant and shall be disqualified.
 - (ii) Administrative mandatory requirements include, but shall not be limited to:
 - (A) Proper completion of Tender Document Forms;
 - (B) Compliance to Tender Document requirements;
 - (C) Attendance at mandatory Site visit, if any.
 - (b) Phase Two: Technical Evaluation (70% weighting)
 - (i) Submissions proceeding to Phase Two shall be evaluated by the Evaluation Committee in accordance with the Submission Requirements above and the Evaluation Methodology. Only those Submissions achieving a total minimum score of 70% (490 points out of 700 possible points) on Phase Two, as determined by the Evaluation Committee, shall proceed to Phase Three: VPR Evaluation and Phase Four: Pricing Evaluation of the evaluation process.
 - (c) Intentionally omitted.
 - (d) Phase Three: Consultant Performance Rating (VPR) Evaluation (5% weighting)
 - (i) VPR shall be evaluated for compliant Submissions which:

EVALUATION CRITERIA AND SELECTION PROCESS

- (A) achieve the minimum score of 70 % on Phase Two: Technical Evaluation; and
- (ii) Submissions proceeding to this Phase Three, in accordance with Section 1.3(d)(i) above shall be evaluated by Metrolinx as follows:
 - (A) For this RQQ Process, “Performance Category” shall be defined as the Professional and Consulting services (Non-Engineering) category.
 - (B) For this RQQ Process, the Consultant Performance Rating (“VPR”) is the average of a Consultant’s performance evaluation scores (as assessed by or on behalf of Metrolinx), in the Performance Category, for a thirty-six (36) month period preceding the Closing.
 - (C) If a Proponent has not completed any work for Metrolinx for a thirty-six (36) month period preceding the Closing, for the purpose of evaluating the Submission, the Proponent will be assigned a VPR in the Performance Category, which is the straight average of all the VPR’s of all Consultants who have performed services for Metrolinx for a thirty-six month period preceding the Closing, in this Performance Category.
 - (D) The legal name of the Proponent stated on the Form of Request will be used for determining the Proponent’s VPR score in the Performance Category. It is the responsibility of the Proponent to ensure that its proper legal name has been stated on the Form of Request and matches the legal name used by the Proponent in setting up its legal profile in the Metrolinx MERX Portal. Metrolinx will not accept any requests from the Proponent, after the Closing, to change the legal name provided.
 - (E) In the case of a Joint Venture where multiple parties will sign the Contract, the VPR under the Performance Category, of each Joint Venture participant, will be added and the average will be applied as the VPR score.
 - (F) If any member of the Joint Venture has not completed work for Metrolinx within a thirty-six (36) month period preceding the Closing, Section 1.3(d)(ii)(C) above shall apply for that member.
 - (G) The Proponent’s VPR, at the time of evaluating this Phase Three, shall be the VPR used for evaluation purposes. The Proponent’s VPR used in the evaluation of this Phase Three

EVALUATION CRITERIA AND SELECTION PROCESS

can be obtained from the Procurement Representative at the conclusion of this RQQ Process.

(H) Once VPR scores in the Performance Category are determined for each Submission proceeding to this Phase Three evaluation, each Proponent's VPR shall be evaluated and scored as follows:

I) The following equation shall be applied to determine a score out of ten:

- 1) "Proponent's VPR Score (Expressed as a %) / 10 = score out of ten"
- 2) The score out of ten for VPR shall be multiplied by the weighting factor to determine the assigned score for VPR Evaluation.

(e) Phase Four: Pricing Evaluation (25% weighting)

(i) Contract Prices shall be evaluated for compliant Submissions which:

(A) achieve the minimum score of 70% on Phase Two: Technical Evaluation; and

(ii) An administrative evaluation shall be conducted of Request Document Form: - Contract Prices to determine compliance with the mandatory requirements as stated therein and in the Instructions to Proponents. The Total Evaluated Price of each Submission proceeding to Pricing Evaluation shall be evaluated and scored as follows:

(A) The Submission with the lowest Total Evaluated Price shall receive the maximum score of ten (10) points for Pricing Evaluation.

(B) The following equation shall be applied to the other Submissions to determine a score out of ten (10):

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

(C) The score out of ten (10) for Pricing Evaluation shall be multiplied by the weighting factor and added to the total score for Phase Two and Phase Three to determine the Total Overall Score for the Submission.

EVALUATION CRITERIA AND SELECTION PROCESS

1.3 Total Overall Score

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

1.4 Selection of Submissions

- (a) Metrolinx’s selection shall be based on which Proponent has provided a Submission which Metrolinx determines in its sole discretion to provide the greatest value to Metrolinx based on the Evaluation Criteria contained in this Request Document.
- (b) The award of the Contract shall be made to the Submission which has achieved the highest Total Overall Score, subject to Rights of Metrolinx, under Instructions to Proponents.

2.0 Evaluation Criteria

- 2.1 The Evaluation Criteria to be used for evaluation of a 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: Corporate Summary			
Corporate Summary: Description of Proponent’s Company	10	1	10
Corporate Summary: Description of Corporate Firm	10	1	10
Corporate Resources	10	3	30
Subtotal - Corporate Summary:		5	50
Technical Submission Section 2: Corporate Firm’s Experience, Qualifications and Reference Projects			
Description of Corporate Firm’s Experience and Qualifications	10	10	100
Description of Corporate	10	4	40

EVALUATION CRITERIA AND SELECTION PROCESS

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Evaluated Component	Maximum Score	Weighting Factor	Total (Score x Weight)
Reference Project #1 and Corresponding Reference			
Description of Corporate Reference Project #2 and Corresponding Reference	10	4	40
Description of Corporate Reference Project #3 and Corresponding Reference	10	4	40
Description of Corporate Reference Project #4 and Corresponding Reference	10	4	40
Description of Corporate Reference Project #5 and Corresponding Reference	10	4	40
Subtotal - Corporate Firm's Experience, Qualifications and Reference Projects:		30	300
Technical Submission Section 3: Key Personnel			
Organizational Chart	105	1	10
Roles and Responsibilities of Representative Key Personnel	10	4	50
Key Personnel Experience, Qualifications and Reference Projects (Reference Projects include written description and corresponding reference check feedback (if applicable))	---	---	---
Contract Manager	10	5	40
Wildlife Biologist	10	3	30
Terrestrial Ecologist/Biologist	10	3	30

EVALUATION CRITERIA AND SELECTION PROCESS

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Evaluated Component	Maximum Score	Weighting Factor	Total (Score x Weight)
Aquatic/Fisheries Specialist	10	3	30
Fluvial Geomorphologist	10	3	30
Wetland Specialist	10	3	30
Subtotal - Key Personnel:		25	250
Technical Submission Section 4: Project Methodology			
Understanding of Project Requirements	10	4	40
Work Plan and Schedule	10	3	30
Quality Assurance/Control	10	3	30
Subtotal – Project Methodology:		10	100
SUBTOTAL PHASES TWO:		70	700
PHASE THREE: CONSULTANT PERFORMANCE RATING (VPR) EVALUATION			
Proponent’s VPR Score	10	5	50
Subtotal VPR Evaluation:		5	50
PHASE FOUR: PRICING EVALUATION			
Pricing Submission	10	25	250
TOTAL EVALUATED SCORE		100%	1,000

EVALUATION CRITERIA AND SELECTION PROCESS

Natural Heritage Consulting Services on an Emergent Basis RQQ-2018-ECDV-248

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

Score	Description
10	Excellent – Response exceeds requirements.
8 – 9	Very Good – Response meets all requirements and exceeds some requirements.
7	Good and Satisfactory – Response meets all requirements.
5 – 6	Less than Satisfactory – Response meets many of the requirements but not all requirements.
3 – 4	Poor – Response meets some requirements.
1 – 2	Very Poor – Information provided is too vague and does not clearly explain the ability to meet requirements.
0	Non-relevant response or no response.

REQUEST DOCUMENT FORMS

1.0 The Request Document Forms, comprised of the documents listed below, form part of the Request Document and are included herein. Request Document Forms are also included as separate fillable forms as follows:

Document Title	Attached as a Separate File as Follows
Request Document Form: Contract Prices	MS Word file entitled Request Document Forms - Request RQQ-2018-ECDV-248, or as amended via Addenda, if applicable MS Excel fillable file entitled Request Document Form - Contract Prices – Request RQQ-2018-ECDV-248, or as amended via Addenda, if applicable
Request Document Form: Form of Request	MS Word fillable file entitled Request Document Forms – Request RQQ-2018-ECDV-248, or as amended via Addenda, if applicable
Request Document Form: Conflict of Interest	
Request Document Form: Technical Submission Section 1 – Corporate Firm Summary	
Request Document Form: Technical Submission 2 – Corporate Firm Experience and Qualifications	
Request Document Form: Technical Submission 2 – Corporate Firm Reference Projects	
Request Document Form: Technical Submission Section 3 – Key Personnel Experience, Qualifications and Reference Projects	

REQUEST DOCUMENT FORMS

FORM OF REQUEST

Natural Heritage Consulting Services on an Emergent Basis
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Click here to enter text.

Submission By:

(Full Legal Name of Proponent)

1.0 Contact Information

The Proponent submitting a Submission is as follows:

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

Click here to enter text.

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

Click here to enter text.

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

Click here to enter text.

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

Click here to enter text.

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

Click here to enter text.

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

(i) Click here to enter text.

- 1.5 New Consultant Information

- (a) If you haven't previously done business with Metrolinx, or have and continue to do business with Metrolinx, and are submitting a Submission for the first time or have in the past, please fully complete and provide with

REQUEST DOCUMENT FORMS

FORM OF REQUEST

Natural Heritage Consulting Services on an Emergent Basis
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the Submission the “New/Update Consultant Form” under “Attachments” and submit the additional documentation as indicated, including:

- (i) Consultant Registration (articles of Incorporation, Sole Proprietorship Registration, Partnership Agreements, etc);
- (ii) Canada Revenue Agency Registration (Business Number);
- (iii) Void Cheque (for Electronic Funds Transfer setup); and
- (iv) Sample Invoice.

2.0 Acknowledgements and Declarations

- 2.1 The Proponent acknowledges that its Submission includes the appropriate Request Document Forms submitted in accordance with the terms and requirements of the Instructions to Proponents. Failure to comply may result in the Proponent's Submission being found non-compliant and disqualified at the sole discretion of Metrolinx.
- 2.2 The Proponent has informed itself of the conditions relating to the Work to be performed and have inspected and is thoroughly familiar with the location of the Work and the plans, specifications, drawings and all terms, conditions and covenants of the Contract.
- 2.3 The Proponent acknowledges receipt of any and all Addenda/Addendum issued hereto and that its Submission has been developed in consideration of the Addenda/Addendum.
- 2.4 The Proponent acknowledges that it meets all mandatory requirements in order for their Submission to be considered further. Failure of a Proponent to meet all of the mandatory requirements shall result in the Proponent's Submission to be non-compliant and disqualified.
- 2.5 All Addenda, Request Document Forms, the General Conditions of the Contract, the Scope of Work and Attachments set out in this Request Document shall be included in and form part of the Contract. Submitting a Submission constitutes acknowledgement that the Proponent has read and agrees to be bound by such conditions.
- 2.6 The Submission is hereby submitted on the condition and with the full understanding that it is an irrevocable offer by the Proponent for a period of one hundred and eighty (180) calendar days from the Closing. The Proponent hereby covenants that it enter into Contract with Metrolinx as contemplated by the Request Documents by executing the Contract and will perform and execute the

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Work at the Total Contract Price if it is notified, in writing, by Metrolinx within one hundred and eighty (180) days of the Closing that it is the successful Proponent.

- 2.7 The Proponent hereby declares that it has the physical and financial resources to sustain and complete the Work.
- 2.8 The Proponent hereby declares that no Conflict of Interest exists in accordance with “Request Document Form: Conflict of Interest”.
- 2.9 The Proponent hereby declares that no person, firm or corporation (including any agent of Metrolinx), other than the undersigned or Suppliers or SubConsultants engaged in the ordinary course of business, has any interest in this call for Proposals or the proposed Contract for which the Submission is made.
- 2.10 The Proponent acknowledges that by way of the E-Bid Authorized Signer submitting a Submission, the Proponent is agreeing to be bound to each and every term, condition, article and obligation of the Request Document and any resultant Contract.
- 2.11 The Proponent acknowledges that consistent with Section 13.2 of Instructions to Proponents, failure by the Proponent, whose Submission was accepted by Metrolinx, to execute and deliver executed Contract with the required Insurance Certificates, Workplace Safety and Insurance Clearance Certificate or any other required documentation (as applicable to this RQQ Process) shall result in the cancellation of acceptance of the Proponent’s Submission by Metrolinx.
- 2.12 The submitting of a Submission by a Proponent shall be considered prima facie evidence that the above requirements have been met. Failure to have complied with said requirements shall not relieve the Proponent of its obligation to enter into the Contract and to carry out the Work for the terms and conditions set forth in the Request Documents.

3.0 Consultant Personnel

- 3.1 The Consultant Personnel roles shall be filled in accordance with the Request Document and in accordance with the requirements in respect of qualifications, experience and minimum years of experience as contained in General Requirements: Key Personnel Qualifications and Experience Requirements.

4.0 Requirement

- 4.1 The Consultant shall provide all labour, superintendence, plant, tools, appliances, equipment, supplies and other accessories, services and facilities necessary to complete the work, as further described in this Request Document.

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4.2 The Work is to be performed to the satisfaction of Environmental Programs and Assessment, Metrolinx unless otherwise specified up to a period of five (5) years as follows:

(i). Period One (1): November 30, 2018 to November 29, 2019;

(ii) Period Two (2): November 30, 2019 to November 29, 2020;

(iii) Period Three (3): November 30, 2020 to November 29, 2021

(iv) Period Four (4): November 30, 2021 to November 29, 2022
(an option to be exercised at Metrolinx's sole discretion)

(v) Period Five (5): November 30, 2022 to November 29, 2023
(an option to be exercised at Metrolinx's sole discretion)

5.0 Assignments

5.1 Work shall be assigned and quoted by the Consultant in accordance with General Conditions of the Contract.

6.0 Total Contract Price

6.1 The Proponent, by submitting this Submission, hereby offers to Metrolinx to provide all goods and services necessary to execute the Work described by the Request Documents, including Addenda, and to perform the Work for the Rates quoted in "Request Document Form: Contract Prices" up to the established Total Contract Price amount.

6.2 The Total Contract Price shall be determined as per Sections 13.1(a) through 13.1(d) of Instructions to Proponents.

7.0 Harmonized Sales Tax

7.1 The Proponent acknowledges it has read and agrees to be bound by the General Conditions of the Contract as it relates to Harmonized Sales Tax.

7.2 The Proponent declares that the H.S.T. registration number, as stated in the Excel spreadsheet of "Request Document Form: Contract Prices", is registered to the Proponent providing this Submission.

7.3 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. The

REQUEST DOCUMENT FORMS

FORM OF REQUEST

Natural Heritage Consulting Services on an Emergent Basis
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Proponent acknowledges that failure to comply with this requirement may result in the Contract being declared VOID.

8.0 Options

8.1 Option Years

- (a) Option Year is defined as a specified timeframe, in accordance with Section 5.0 below, in which the Work shall be carried out in accordance with the Contract requirements at the fixed all-inclusive prices quoted in “Request Document Form – Contract Prices” (which shall form part of the Purchase Order) solely if Metrolinx exercises its option to proceed with an Option Year in accordance with Sections 8.1(b) and 8.1(c) below.
- (b) It is understood that Option Year Four, and Option Year Five are options exercisable at the sole discretion of Metrolinx. In the event Metrolinx does not exercise its option, the Contract shall be considered complete upon expiration of the current year.

Each Option Year shall be automatically exercised unless Metrolinx informs the Consultant with sixty (60) days written notice prior to the end of the current year that Metrolinx will not be exercising such Option Year.

REQUEST DOCUMENT FORMS

CONTRACT PRICES

Natural Heritage Consulting Services on an Emergent Basis
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1.0 Contract Unit Prices

Contract Unit Prices are subject to “Request Document Form: Form of Request” in addition to this “Request Document Form: Contract Prices”.

1.1 Payment for services rendered and goods supplied in accordance with the terms and conditions of the Contract shall be based on the requirements of the "Request Document Form: Form of Request" in addition to the following:

- (a) The Total Evaluated Price bid shall be firm and quoted in Canadian funds.
- (b) The Rates shall include all applicable taxes, except Harmonized Sales Tax (H.S.T.), in force at the date the Submission is submitted.
- (c) The Rates quoted shall be fixed all-inclusive prices, for performance of the Work.
- (d) The Rates include all labour, superintendence, plant, tools, appliances, equipment, supplies and other accessories, services and facilities customs, duties, royalties, handling, transportation, travel, mileage, overhead, profit and all other charges.
- (e) Estimated Quantities
 - (i) The estimated quantities listed in the attached Excel file are arbitrary numbers for a hypothetical project and are to be used for the purpose of assisting in evaluating Submissions.
 - (ii) Metrolinx reserves the right to purchase quantities other than those stated for each year of the Contract at the Rates quoted.
 - (iii) Maximum Hourly Billing Rates for Team Members
 - (A) The Maximum Hourly Billing Rate as quoted by the Proponent represents an all-inclusive maximum rate at which the Proponent will invoice Metrolinx, on a time basis with disbursements included and H.S.T. excluded, for services rendered by each classification of employee listed.
 - (B) The Maximum Hourly Billing Rates for the 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 Services.

REQUEST DOCUMENT FORMS

CONTRACT PRICES

Natural Heritage Consulting Services on an Emergent Basis RQQ-2018-ECDV-248

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(C) The Maximum Hourly Billing Rates for Key Personnel represent resources working onsite at a Metrolinx location in Toronto.

(f) Work shall be assigned and quoted by the Consultant in accordance with Section 8.4, Task Assignment Process, of General Conditions of the Contract.

2.0 Limitation of Expenditures

- 2.1 It is understood that Section 2.0, Limitation of Expenditure, of Schedule B – Financial Terms of General Conditions of the Contract applies.
- 2.2 The upset limit for the Work to be provided under this Contract is stated in Section 13.1(b) of Instructions to Bidders.
- 2.3 No individual Assignment shall have a value greater than one hundred and fifty thousand dollars (\$150,000.00).
- 2.4 The Contractor shall not perform any Work under this Contract which would result in an increase to the Total Contract Price, unless an increase is so authorized by Metrolinx and affected by a written amendment to the Contract.

3.0 Options

- 3.1 The Unit Prices as stated in Request Document Form: Options shall be for completed Work "in place" and shall be inclusive of all costs related thereto, including all overhead, profit and applicable taxes, except H.S.T., unless otherwise specified by Metrolinx.

4.0 Completion of Pricing Schedules

- 4.1 Proponents shall fully complete the Excel file entitled "Request Document Form: Contract Prices" and insert a Unit Price into each space provided under the Contract Unit Price column.
- 4.2 Proponents should fully complete the Excel file entitled "Request Document Form: Options" and insert a Unit Price into each space provided under the Contract Unit Price column.
- 4.3 "Request Document Form: Contract Prices" and "Request Document Form: Options" must each be submitted as a separate file preferably in Excel format to facilitate the pricing evaluation process, and may not be retyped or recreated. Failure to follow the submission instructions or format requirements may result in the Submission being found non-compliant and disqualified.

REQUEST DOCUMENT FORMS

CONTRACT PRICES

Natural Heritage Consulting Services on an Emergent Basis
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- 4.4 If a "0" is entered in any of the spaces where price information is to be provided, it shall be interpreted as meaning the Consultant shall provide the specified service to Metrolinx at no charge.
- 4.5 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-compliant and disqualified consistent with the provisions of the Instructions to Proponents.

**REQUEST DOCUMENT FORM
CONFLICT OF INTEREST**

**Natural Heritage Consulting Services on an Emergent Basis
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1.0 Conflict of Interest

As it pertains to Conflict of Interest:

1.1 If the box below is left blank or if this “Request Document Form: Conflict of Interest” is not included as part of the Submission, the Proponent shall be deemed to declare that:

(a) there was no Conflict of Interest in preparing its Submission; and

there is no foreseeable Conflict of Interest in performing the contractual obligations contemplated in the Request Document. Otherwise, if the statement in Section 1.1(b) below applies, check (“X”) the box.

(b) 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.

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

Click here to enter text.

1.3 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	Click here to enter text.

**REQUEST DOCUMENT FORM
CONFLICT OF INTEREST**

**Natural Heritage Consulting Services on an Emergent Basis
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preparation of the Submission:	
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(Repeat above for each identified individual)

- 1.4 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.

REQUEST DOCUMENT FORM
MANDATORY CORPORATE, PERSONNEL AND TECHNICAL REQUIREMENTS

Natural Heritage Consulting Services on an Emergent Basis
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- 1.1 Proponents must meet all mandatory requirements stated below in order for their Submission to be considered further. Failure of a Proponent to meet all of the mandatory requirements listed below shall result in the Proponent's Submission being found non-compliant. Non-compliant Submissions shall not be considered further and shall be disqualified.

- 1.2 Proponents shall provide supporting documentation to substantiate compliance to each of the listed mandatory requirements. If the Proponent has not provided the supporting documentation specified for that mandatory requirement, Metrolinx has the right but not the obligation, following the Closing, to request that the Proponent provide such supporting documentation or to request that the Proponent identify where in its Submission this information has been provided. Failure of a Proponent to provide information required to substantiate compliance to a mandatory requirement may result in the Proponent's Submission being found non-compliant and disqualified.

- 1.3 Metrolinx has the right but not the obligation, to carry out further investigations to ensure the Proponent can meet the mandatory corporate, personnel and technical requirements to the satisfaction of Metrolinx in its sole discretion.

REQUEST DOCUMENT FORM
MANDATORY CORPORATE, PERSONNEL AND TECHNICAL REQUIREMENTS

Natural Heritage Consulting Services on an Emergent Basis
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Mandatory Corporate, Personnel and Technical Requirements	Supporting Documentation Required to Substantiate Compliance
Mandatory Corporate Requirements	
<p>The Proponent shall have successfully completed two (2) reference projects similar in scope, magnitude and complexity and as the Work stated in this Request Document.</p>	<ul style="list-style-type: none"> • The Proponent shall provide two (2) reference projects which demonstrate this requirement.
<p>The Proponent, or its designated Sub-Consultant, shall have satisfactorily completed two (2) projects of similar value, size and complexity to the Work of this Contract.</p> <p>Is the Proponent proposing a Sub-Consultant? Yes <input type="checkbox"/> No <input type="checkbox"/></p> <p>If yes, please provide the name of the SubConsultant below for which references are being submitted:</p> <p>Click here to enter text.</p> <hr style="width: 30%; margin-left: 0;"/>	<ul style="list-style-type: none"> • The Proponent shall provide a completed Request Document Form - Proponents Qualifications with the Submission. • The Proponent must provide valid references which substantiate the mandatory requirement. • If a Sub-Consultant is carrying out the work, the Proponent shall provide completed reference projects, for the identified SubConsultant, with the Submission.
<p>The Proponent has a valid Workplace Safety and Insurance Clearance Certificate for the premium rate class, subclass or group as appropriate for the Work of this Contract, as issued by the Workplace Safety and Insurance Board.</p>	<ul style="list-style-type: none"> • No supporting documentation required with the Submission.

**REQUEST DOCUMENT FORM:
TECHNICAL SUBMISSION SECTION 2
CORPORATE FIRM REFERENCE PROJECTS**

**Natural Heritage Consulting Services on an Emergent Basis
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1.0 Qualifications

1.1 Metrolinx will use the information submitted by the Proponent in this “Request Document Form: Corporate Firm’s Reference Projects” to determine if the Corporate Firm meets and can demonstrate that the Corporate Firm has successfully completed contracts for work that meets the criteria set out in “Submission Requirements”.

2.0 Reference Checks

2.1 References will be checked using a standard uniform method. Opinions of previous customers regarding budget and schedule experience, dependability, attitudes of employees and/or Sub-Consultants concern for efficiency, safety, economy and environment, sensitivity to community, and quality of service among others may be taken into account when evaluating the reference projects.

2.2 The Proponent should ensure that contact information provided for each reference project 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 validate a reference project through the customer contact person provided by the Proponent, Metrolinx may, at its sole discretion consider the reference project invalid.

2.3 Metrolinx reserves the right to forward the information provided by the Proponent within its Submission in relation to the cited project to the identified customer contact person to verify the various elements of the information provided.

2.4 In order to provide the sought after information in relation to a reference project, the named customer contact person identified as a reference for a cited reference project shall have held a position within the reference organization, directly involved in the referenced project, and in a position to verify that the work was carried out by the Proponent in relation to the reference project in question.

2.5 For any discrepancies resulting from the reference check, Metrolinx may, at its sole discretion, re-contact the Proponent in writing for a written clarification or validation of information provided. Section 12.1(c) - under the Rights of Metrolinx, of Instructions to Proponents shall apply for any misrepresentations, inaccurate or misleading information provided in Request Document Form: Corporate Firm’s Qualifications.

2.6 The assessment of the Proponent's original response to the evaluation factor will then be finalized taking into account the results of the clarification process described in this Section 2.5 above.

**REQUEST DOCUMENT FORM:
TECHNICAL SUBMISSION SECTION 2
CORPORATE FIRM REFERENCE PROJECTS**

**Natural Heritage Consulting Services on an Emergent Basis
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- 2.7 For greater clarity, Metrolinx reserves the right to validate and adjust (increase or decrease) any of the Proponent's Phase Two Technical Evaluation scores, based on feedback obtained from reference checks, for applicable evaluation criteria.

3.0 Reference Projects

- 3.1 The Proponent should complete the following charts using relevant projects as per the requirements of "Submission Requirements". The Proponent should submit descriptions of relevant projects, in Section 3.3 below, for work that meets the criteria stated in Request Document Form: Technical Submission Section 2 – Corporate Firm Experience and Qualifications.
- (a) Reference projects submitted must be for work completed by the Proponent providing the Submission, and not for a Sub-Consultant or individual, unless indicated otherwise by Metrolinx.
 - (b) Where a Proponent has completed similar relevant work for Metrolinx in the past five (5) years, the Proponent shall be required to identify and list such projects as part of its reference projects to be submitted.
- 3.2 The Proponent should complete the following chart for each project that the Proponent is describing to demonstrate that the Proponent meets the Corporate Firm's Qualifications. Proponents are required to start with the most recent project and to use additional pages if required.
- (a) The Proponent has the option of foregoing use of the charts below in lieu of providing the information related to each reference project in their own format as part of the Proponent's Submission. Information contained in the charts below should be provided for each reference project provided.
 - (b) The Proponent may attach two (2) additional pages of information for each reference project submitted below.
- 3.3 Reference projects must demonstrate the Corporate Firm's experience and qualifications in the following areas of the Work:
- (a) Provide five (5) satisfactorily completed relevant reference projects which demonstrate that the Corporate Firm has carried out Work similar in scope, Magnitude and complexity, as the Work of this Request Document:

**REQUEST DOCUMENT FORM:
TECHNICAL SUBMISSION SECTION 2
CORPORATE FIRM REFERENCE PROJECTS**

Natural Heritage Consulting Services on an Emergent Basis
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(i) Reference Project #1 of 5

Project Name and Location:	Click here to enter text.		
Role of Proponent:	Click here to enter text.		
Customer Name:	Click here to enter text.		
Customer Contact Person:	Click here to enter text.	Phone No.	Click here to enter text.
Customer Contact Email Address:	Click here to enter text.		
Contract Value (Estimated)	\$Click here to enter text.	Contract Value (Actual)	\$Click here to enter text.
Reasons for variances in contract value:			
Click here to enter text.			
Completion Date (Estimated)	Click here to enter text.	Completion Date (Actual)	Click here to enter text.
Reasons for schedule variances:			
Click here to enter text.			
Project Description (Provide a detailed description of the reference project and the Proponent's responsibilities for the reference project. The Proponent should specifically list below similarities between this reference project and the Work specified herein)			
Click here to enter text.			
Provide an overview of the scope of work:	Click here to enter text.		
List the major components of the work:	Click here to enter text.		

**REQUEST DOCUMENT FORM:
TECHNICAL SUBMISSION SECTION 2
CORPORATE FIRM REFERENCE PROJECTS**

Natural Heritage Consulting Services on an Emergent Basis
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(ii) Reference Project #2 of 5

Project Name and Location:	Click here to enter text.		
Role of Proponent:	Click here to enter text.		
Customer Name:	Click here to enter text.		
Customer Contact Person:	Click here to enter text.	Phone No.	Click here to enter text.
Customer Contact Email Address:	Click here to enter text.		
Contract Value (Estimated)	\$Click here to enter text.	Contract Value (Actual)	\$Click here to enter text.
Reasons for variances in contract value:			
Click here to enter text.			
Completion Date (Estimated)	Click here to enter text.	Completion Date (Actual)	Click here to enter text.
Reasons for schedule variances:			
Click here to enter text.			
Project Description (Provide a detailed description of the reference project and the Proponent's responsibilities for the reference project. The Proponent should specifically list below similarities between this reference project and the Work specified herein)			
Click here to enter text.			
Provide an overview of the scope of work:	Click here to enter text.		
List the major components of the work:	Click here to enter text.		

**REQUEST DOCUMENT FORM:
TECHNICAL SUBMISSION SECTION 2
CORPORATE FIRM REFERENCE PROJECTS**

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(iii) Reference Project #3 of 5

Project Name and Location:	Click here to enter text.		
Role of Proponent:	Click here to enter text.		
Customer Name:	Click here to enter text.		
Customer Contact Person:	Click here to enter text.	Phone No.	Click here to enter text.
Customer Contact Email Address:	Click here to enter text.		
Contract Value (Estimated)	\$Click here to enter text.	Contract Value (Actual)	\$Click here to enter text.
Reasons for variances in contract value:			
Click here to enter text.			
Completion Date (Estimated)	Click here to enter text.	Completion Date (Actual)	Click here to enter text.
Reasons for schedule variances:			
Click here to enter text.			
Project Description (Provide a detailed description of the reference project and the Proponent's responsibilities for the reference project. The Proponent should specifically list below similarities between this reference project and the Work specified herein)			
Click here to enter text.			
Provide an overview of the scope of work:	Click here to enter text.		
List the major components of the work:	Click here to enter text.		

**REQUEST DOCUMENT FORM:
TECHNICAL SUBMISSION SECTION 2
CORPORATE FIRM REFERENCE PROJECTS**

Natural Heritage Consulting Services on an Emergent Basis
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(iv) Reference Project # 4 of 5

Project Name and Location:	Click here to enter text.		
Role of Proponent:	Click here to enter text.		
Customer Name:	Click here to enter text.		
Customer Contact Person:	Click here to enter text.	Phone No.	Click here to enter text.
Customer Contact Email Address:	Click here to enter text.		
Contract Value (Estimated)	\$Click here to enter text.	Contract Value (Actual)	\$Click here to enter text.
Reasons for variances in contract value:			
Click here to enter text.			
Completion Date (Estimated)	Click here to enter text.	Completion Date (Actual)	Click here to enter text.
Reasons for schedule variances:			
Click here to enter text.			
Project Description (Provide a detailed description of the reference project and the Proponent's responsibilities for the reference project. The Proponent should specifically list below similarities between this reference project and the Work specified herein)			
Click here to enter text.			
Provide an overview of the scope of work:	Click here to enter text.		
List the major components of the work:	Click here to enter text.		

**REQUEST DOCUMENT FORM:
TECHNICAL SUBMISSION SECTION 2
CORPORATE FIRM REFERENCE PROJECTS**

Natural Heritage Consulting Services on an Emergent Basis
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(v) Reference Project #5 of 5

Project Name and Location:	Click here to enter text.		
Role of Proponent:	Click here to enter text.		
Customer Name:	Click here to enter text.		
Customer Contact Person:	Click here to enter text.	Phone No.	Click here to enter text.
Customer Contact Email Address:	Click here to enter text.		
Contract Value (Estimated)	\$Click here to enter text.	Contract Value (Actual)	\$Click here to enter text.
Reasons for variances in contract value:			
Click here to enter text.			
Completion Date (Estimated)	Click here to enter text.	Completion Date (Actual)	Click here to enter text.
Reasons for schedule variances:			
Click here to enter text.			
Project Description (Provide a detailed description of the reference project and the Proponent's responsibilities for the reference project. The Proponent should specifically list below similarities between this reference project and the Work specified herein)			
Click here to enter text.			
Provide an overview of the scope of work:	Click here to enter text.		
List the major components of the work:	Click here to enter text.		

**REQUEST DOCUMENT FORM:
TECHNICAL SUBMISSION SECTION 3
REPRESENTATIVE KEY PERSONNEL EXPERIENCE,
QUALIFICATIONS AND REFERENCE PROJECTS**

Natural Heritage Consulting Services on an Emergent Basis
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1.0 Named Key Personnel

1.1 The Proponent has designated the following named individuals for each Key Personnel role:

Role and Required Experience and Qualifications	Name of Individual	Actual Years of Experience
Project Manager	Click here to enter text.	Click here to enter text.
Wildlife Biologist	Click here to enter text.	Click here to enter text.
Terrestrial Ecologist/Biologist	Click here to enter text.	Click here to enter text.
Aquatic/Fisheries Specialist	Click here to enter text.	Click here to enter text.
Fluvial Geomorphologist	Click here to enter text.	Click here to enter text.
Wetland Specialist	Click here to enter text.	Click here to enter text.

2.0 Key Personnel Qualifications

2.1 The Proponent should, using the template below, provide up to three (3) pages of information for each of the named Key Personnel named in Section 1.0 above, including biographical information, which clearly identifies:

- (a) Name of individual and proposed Key Personnel role;
- (b) Qualifications and experience that relate to the proposed Key Personnel role as specified in this Request Document Form: Technical Submission Section 3 – Key Personnel Experience and Qualifications, relative to the Work being requested;
- (c) Experience in performing the proposed Key Personnel role 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;

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- (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.

3.0 Key Personnel References

- 3.1 Immediately following the curriculum vitae for each proposed Key Personnel, the Proponent should use the template below to provide a list of three (3) references and contact information for relevant projects successfully delivered on-time and on-budget within the past five (5) years, while performing work in the same capacity as the proposed Key Personnel role.
- 3.2 References shall be evaluated in accordance with “Submission Requirements”.
- 3.3 The list of three (3) references submitted when combined should demonstrate that the named Key Personnel has the required qualifications and experience as stated in Request Document Form: Technical Submission Section 3 – Key Personnel Experience and Qualifications for work similar in size, scope and complexity to the Work to be provided herein.
- 3.4 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) Customer contact person’s name, title, telephone number and e-mail address; and
 - (c) Start and completion date of each reference project.
- 3.5 Key Personnel Description of Reference Projects – For each reference project listed under Section 3.7 below, the Proponent should include up to two (2) additional pages of information which includes but is not limited to:
 - (a) Name of the company for which the work was performed;
 - (b) Project description and project value;

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- (c) Description of Work provided with reference to the applicable Key Personnel role and responsibilities for the work contemplated in this Request Document;
 - (d) 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 Work being requested;
 - (e) Project start and completion dates;
 - (f) List of any other Key Personnel that have worked on the same reference project and their project roles, if applicable; and
 - (g) Images and illustrations of the project.
- 3.6 Proponents should review the Submission Requirements section in conjunction with this Request Document Form to ensure that all required information is being included as part of the Submission for evaluation purposes.
- 3.7 Reference projects will be evaluated in accordance with Section 2.0 of Request Document Form: Technical Submission Section 2: Corporate Firm Reference Projects.
- 3.8 The Proponent shall provide the following information for each identified individual filling a Key Personnel role:

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Key Personnel Role:	Contract Manager					
Name:	Click here to enter text.					
Years of Experience in the Role:	Click here to enter text.					
Education:	Click here to enter text.					
Designation(s):	Click here to enter text.					
Summary of Qualifications and Experience:	Click here to enter text.					
References:						
Company Name	Project Title	Contact Person's Name/Title	Phone Number	E-mail Address	Start Date	Completion Date
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Key Personnel Role:		Wildlife Biologist				
Name:		Click here to enter text.				
Years of Experience in the Role:		Click here to enter text.				
Education:		Click here to enter text.				
Designation(s):		Click here to enter text.				
Summary of Qualifications and Experience:		Click here to enter text.				
References:						
Company Name	Project Title	Contact Person's Name/Title	Phone Number	E-mail Address	Start Date	Completion Date
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Key Personnel Role:		Terrestrial Ecologist/Biologist				
Name:		Click here to enter text.				
Years of Experience in the Role:		Click here to enter text.				
Education:		Click here to enter text.				
Designation(s):		Click here to enter text.				
Summary of Qualifications and Experience:		Click here to enter text.				
References:						
Company Name	Project Title	Contact Person's Name/Title	Phone Number	E-mail Address	Start Date	Completion Date
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Key Personnel Role:		Aquatic/Fisheries Specialist				
Name:		Click here to enter text.				
Years of Experience in the Role:		Click here to enter text.				
Education:		Click here to enter text.				
Designation(s):		Click here to enter text.				
Summary of Qualifications and Experience:		Click here to enter text.				
References:						
Company Name	Project Title	Contact Person's Name/Title	Phone Number	E-mail Address	Start Date	Completion Date
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Key Personnel Role:		Fluvial Geomorphologist				
Name:		Click here to enter text.				
Years of Experience in the Role:		Click here to enter text.				
Education:		Click here to enter text.				
Designation(s):		Click here to enter text.				
Summary of Qualifications and Experience:		Click here to enter text.				
References:						
Company Name	Project Title	Contact Person's Name/Title	Phone Number	E-mail Address	Start Date	Completion Date
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Key Personnel Role:		Wetland Specialist				
Name:		Click here to enter text.				
Years of Experience in the Role:		Click here to enter text.				
Education:		Click here to enter text.				
Designation(s):		Click here to enter text.				
Summary of Qualifications and Experience:		Click here to enter text.				
References:						
Company Name	Project Title	Contact Person's Name/Title	Phone Number	E-mail Address	Start Date	Completion Date
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The documents, as stated under “General Conditions” of List of Contents, hereby form part of the General Conditions of the Contract

GENERAL CONDITIONS OF THE CONTRACT

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 Consultant and between the Consultant and each of the SubConsultants 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 Consultant 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.

GENERAL CONDITIONS OF THE CONTRACT

- (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 - Consultant Personnel

GENERAL CONDITIONS OF THE CONTRACT

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) Fifth 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 Consultant shall carry out and complete the Work, in accordance with all the terms of this Contract.
- (b) The Consultant shall supply the Work diligently and continuously in accordance with the scheduling requirements set out in the Scope of Work.
- (c) The Consultant acknowledges and agrees that each of the Consultant’s Personnel shall be available to perform the Work in accordance with the required duration specified in Schedule E - Consultant Personnel. The Consultant further acknowledges and agrees that Metrolinx may, acting in its sole discretion, change the schedule including in respect of the timing of the provision of the Work and availability and number of the Consultant’s Personnel. Without limiting the generality of the foregoing, Metrolinx may from time to time, on prior written notice to the Consultant twenty (20) Business Days’, unilaterally extend or reduce the required duration with respect to the availability of any of the Consultant’s Personnel or direct the Consultant to increase the number of Consultant’s Personnel available. Metrolinx and the Consultant shall meet at a minimum, on a quarterly basis to discuss the progress of the Work and the anticipated scheduling needs with respect to the Consultant’s Personnel.
- (d) Metrolinx may, from time to time, in its sole discretion, but is not required to, direct the Consultant to cause specific Consultant 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 Consultant no less than five (5) Business Days before the specified tasks or activities are required to be performed by the Consultant Personnel.
- (e) The Consultant shall provide, at the sole cost and expense of the Consultant, save as otherwise provided in this Contract, all necessary equipment, goods, materials, analysis, transportation, accommodation, labour, staff and technical assistance and incidentals required in performing the Work and to undertake, perform and complete its undertakings, obligations and responsibilities provided for in this Contract.

GENERAL CONDITIONS OF THE CONTRACT

- (f) The Work shall be provided in a professional, timely and economical manner according to the Required Standard of Care.
- (g) The Consultant shall comply with and conform to all Applicable Laws, applicable to the Work to be provided by, and the responsibilities and obligations of, the Consultant under this Contract.
- (h) The Consultant shall not alter any part of a Joint Venture except with the prior written consent of Metrolinx in its sole discretion. Where the Consultant is not part of a Joint Venture, this Section 2.2(h) shall be deemed to be deleted.

2.3 SubConsultants

- (a) Other than the SubConsultants identified in the Submission, the Consultant shall not subcontract the Work to any Person without the prior written consent of Metrolinx. No subcontracting by the Consultant shall relieve the Consultant of any responsibility for the full performance of all obligations of the Consultant under this Contract. Notwithstanding the approval of any SubConsultants by Metrolinx, the Consultant shall be fully responsible for every SubConsultant's activities, works, services and acts or omissions.
- (b) The Consultant shall be solely responsible for the payment of any SubConsultants.
- (c) The Consultant shall co-ordinate the services of all SubConsultants employed, engaged or retained by the Consultant with Metrolinx and, without limiting the generality of any other provision of this Contract, the Consultant shall be liable to Metrolinx for costs or damages arising from errors or omissions of such SubConsultants or any of them. It shall be the Consultant's responsibility to control and review the Work of its own forces and of all its SubConsultants 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 Consultant shall ensure that the SubConsultant is bound by conditions compatible with, and no less favorable to Metrolinx than, the conditions of this Contract.
- (e) The Consultant warrants and represents that it and any of its permitted SubConsultants and the respective workforce of each are fully qualified to perform the Work and perform this Contract and hold all requisite Approvals.
- (f) The Consultant shall only employ, for the purposes of this Contract, such persons as are careful, skilled and experienced in the duties required of

GENERAL CONDITIONS OF THE CONTRACT

them and have the required Domain Expertise, and must ensure that every such person is properly and sufficiently trained and instructed. The Consultant shall ensure that all workers and persons employed by them or under their control or employed by or under the control of its SubConsultants comply with the terms of this Contract and, in particular without limiting the foregoing, the responsibilities of the Consultant with respect to matters concerning safety, compliance with the Applicable Laws and the conduct of the Work.

- (g) The Consultant 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 Consultant and Metrolinx. Neither the Consultant nor its SubConsultants shall be deemed to be employees, agents, servants or representatives of Metrolinx in the performance of the Work hereunder.
- (h) The Consultant shall not remove or change any SubConsultants, or materially reduce the responsibilities of any SubConsultants in relation to the provision of the Work except with the prior written consent of Metrolinx in its sole discretion. The proposed replacement SubConsultant shall possess the requisite Domain Expertise and similar qualifications, experience and ability as the outgoing SubConsultant.

2.4 Consultant Personnel

- (a) The Consultant shall select and employ a sufficient number of suitably qualified and experienced Consultant Personnel to perform and provide the 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 Consultant 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 - Consultant Personnel, the Consultant shall fill that role with a person who meets the qualifications, experience and minimum years of experience requirements that are contained in Schedule E - Consultant Personnel.
- (c) The Consultant shall provide effective and efficient supervision to ensure that the quality of workmanship meets the requirements of the Contract.
- (d) The Consultant shall ensure that the Consultant 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

GENERAL CONDITIONS OF THE CONTRACT

- (ii) comply with all applicable Metrolinx policies and procedures, provided that the Consultant has been made aware of same.

2.5 Third Party Agreements

- (a) The Consultant 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 Consultant 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 Consultant shall not, for the duration specified in Schedule E - Consultant Personnel, require or request any Key Personnel to be involved in any other project on behalf of the Consultant or any SubConsultant if, in the opinion of Metrolinx acting reasonably, such involvement would have a material adverse effect on the Work. The Consultant will not remove any Key Personnel from the provision of the Work, or materially reduce the responsibilities of any Key Personnel 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 Consultant, for reasons beyond its reasonable control, is unable to provide the services of any Key Personnel, the Consultant shall provide a replacement person who possesses similar qualifications, experience and ability and possesses the requisite Domain Expertise; provided, however, that the Consultant shall first provide written notice to Metrolinx of the requirement to replace or substitute that person. For the purposes of this clause, only the following reasons will be considered beyond the reasonable control of the Consultant; death; sickness; maternity and parental leave; compassionate care leave; retirement; resignation; dismissal for cause; or termination of an agreement for default. The notice shall identify: the person being replaced; their role and responsibility in the performance of the Work; the reason why it is necessary to replace that person; and the replacement person's name, curriculum vitae in the form set out in Schedule E - Consultant Personnel and the replacement person's available start date. Metrolinx in its sole and absolute discretion may choose to interview the

GENERAL CONDITIONS OF THE CONTRACT

proposed replacement person in Toronto. The nominated replacement person must be acceptable to Metrolinx. If the replacement person is acceptable to Metrolinx, Metrolinx shall give the Consultant written permission to make the replacement or substitution. In the event the nominated person is not acceptable to Metrolinx, acting reasonably, Metrolinx shall inform the Consultant in writing why that person is not acceptable and the Consultant shall nominate an alternate person pursuant to the process identified in this Section 2.6(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 Consultant, and, within thirty (30) days of receipt by the Consultant of such notice, the Consultant shall provide Metrolinx with relevant information on the proposed replacement, including the replacement person's name, rates, and curriculum vitae in the form set out in Schedule E - Consultant Personnel and the replacement person's available start date. Metrolinx in its sole and absolute discretion may choose to interview the proposed replacement person in Toronto. If the replacement person is acceptable to Metrolinx, Metrolinx shall give the Consultant written permission to make the replacement or substitution. In the event the nominated person is not acceptable to Metrolinx, acting reasonably, Metrolinx shall inform the Consultant in writing why that person is not acceptable and the Consultant shall nominate an alternate person pursuant to the process identified in this Section 2.6(d). The rates for the proposed replacement shall not exceed the approved Rate of the person being replaced.

2.7 Consultant's Representative

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

2.8 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 Consultant.
- (b) Metrolinx shall:

GENERAL CONDITIONS OF THE CONTRACT

- (i) provide the Consultant 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 Consultant Work Performance Rating

- (a) Metrolinx shall during the Term of this Contract, maintain a record of the Consultant's performance pursuant to this Contract. This information shall be used to complete a "Contract Performance Appraisal" report, a copy of which will be forwarded to the Consultant upon the termination 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. A copy of the Contract Performance Appraisal template can be found under "Attachments".
- (b) The prior history of the Consultant in performing work for Metrolinx, including the Consultant's performance pursuant to this Contract, will be considered in the evaluation of future submissions from the Consultant for Metrolinx procurement processes.
- (c) Metrolinx reserves the right, during any procurement process, to reject any submission by the Consultant due to unsatisfactory performance history with Metrolinx.
- (d) Non-compliance with Contract requirements will be identified to the Consultant.
- (e) The information contained in Contract Performance Appraisal reports may be provided to other ministries and agencies and such performance reviews may be relied upon by other ministries and agencies to reject the Consultant's submissions on any procurement processes.

3.0 Health and Safety

3.1 Occupational Health & Safety Act

- (a) The Consultant shall comply with OHSA, and any obligations of the Consultant as an "employer" thereunder, and with all regulations made under the OHSA.
- (b) The Consultant shall report to Metrolinx any non-compliance by a SubConsultant in the performance of the Work with the regulations under the OHSA if and when brought to the attention of the Consultant.

GENERAL CONDITIONS OF THE CONTRACT

- (c) The Consultant acknowledges that lack of compliance with applicable provincial or municipal health and safety requirements will be and are intended to be documented and kept on file, and that such lack of compliance may cause:
 - (i) the Consultant's performance of the Work to be suspended; or
 - (ii) this Contract to be cancelled by Metrolinx.
- (d) The Consultant 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 Consultant shall be responsible for any delay caused by the Consultant in the progress of the Work as a result of any violation of provincial or municipal health and safety requirements by the Consultant, it being understood that such delay shall be not be a Force Majeure for the purposes of extending the time for performance of the Work or entitling the Consultant to additional compensation, and the Consultant 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 Consultant for the Work, either instead of or jointly with the Consultant.

3.2 Safety Requirements

- (a) The Consultant 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 Consultant shall not in any manner endanger the safety of, or unlawfully interfere with, Persons on or off the Place of Work, including the public.
- (b) The Consultant specifically covenants and agrees that:
 - (i) it shall comply with best industry practice 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;

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- (ii) it shall comply, and shall ensure that all Consultant Personnel comply, in all regards with the requirements of OHSA and/or the Canadian Labour Code, Part II, as applicable;
- (iii) it shall comply, and shall ensure that all Consultant Personnel comply, in all regards with the safety requirements set out in the Contract Documents;
- (iv) it shall maintain, strictly enforce and comply, and ensure that all Consultant Personnel comply, in all regards with the Consultant's own health and safety program, to the extent not inconsistent with this Contract and Metrolinx' health and safety program;
- (v) it shall comply, and shall ensure that all Consultant Personnel comply, with any and all safety-related directives or instructions issued by Metrolinx;
- (vi) it shall take all steps reasonable in the circumstances to ensure the health and safety of all workers for which it has responsibility under OHSA; and
- (vii) it shall make available, at Metrolinx' request, such policies and procedures relating to its occupational health and safety matters as Metrolinx may from time to time request, and hereby covenants that all Consultant Personnel have been properly trained and are knowledgeable with respect to these policies and procedures.

3.3 Workers' Rights

- (a) The Consultant shall at all times pay or cause to be paid any assessments or compensation required to be paid by the Consultant or its SubConsultants pursuant to any applicable workers' compensation legislation, and upon failure to do so, Metrolinx may pay such assessments or compensation to the Workplace Safety and Insurance Board and may deduct such assessments or compensation from monies due to the Consultant. The Consultant shall comply with all regulations and laws relating to workers' compensation.

4.0 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.

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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;
 - (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 Consultant will acquire no rights to any Metrolinx IP other than the licence rights expressly granted in Section 5.3.
- (d) The Consultant:
 - (i) hereby assigns and transfers to Metrolinx; and
 - (ii) agrees (to the extent required in the future) to assign and transfer to Metrolinx, as and when created, all right, title and interest, including Intellectual Property Rights, throughout the world in and to all Metrolinx IP (to the extent any right, title, interest or Intellectual Property Right in Metrolinx IP does not automatically and immediately vest in Metrolinx).
- (e) The Consultant shall obtain from each Consultant 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 Consultant 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

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addressed to the Consultant 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 Consultant 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 Consultant promptly after its receipt.

- (g) For certainty, the Consultant 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 Consultant shall be free to use, without restriction, any Consultant 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 Consultant 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 Consultant from providing similar services to other parties.

5.2 Ownership of Consultant Background IP

- (a) The Consultant is and will be the exclusive owner of, and shall retain all right, title and interest (including Intellectual Property Rights) in and to all Consultant Background IP.
- (b) Metrolinx will acquire no rights to the Consultant 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 Consultant

- (a) Metrolinx grants to the Consultant, during the Term, a non-exclusive, non-transferable, royalty-free right and licence to:
 - (i) access, use, copy, support, maintain and, to the extent reasonably necessary to provide the Work, modify, the Metrolinx IP solely for the purposes of fulfilling the Consultant's obligations under this Contract; and
 - (ii) sublicense the Metrolinx IP to SubConsultants solely to the extent necessary to enable such SubConsultants to fulfill the Consultant's obligations under this Contract.

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- (b) Any exercise by the Consultant of the rights granted pursuant to Section 5.3(a) shall be subject to the terms and conditions of this Contract, including always the Consultant's obligations with respect to Confidential Information set out in Article 9.
- (c) If the Consultant desires to use the Metrolinx IP other than as permitted under clause (a) hereof, such use must be set out in a separate license agreement (such licence to require the approval of Metrolinx, which may be withheld at Metrolinx' discretion).

5.4 Grant of Licences by the Consultant to Metrolinx

- (a) The Consultant grants to Metrolinx a perpetual, irrevocable, fully paid-up, royalty-free, worldwide, non-exclusive right and licence to access, use, copy, support, maintain, modify, sublicense, assign, distribute or otherwise exploit any Consultant Background IP that is integrated with, embedded in, forms part of or is otherwise required to access, use, copy, support, maintain, modify, sublicense, assign, distribute or otherwise exploit any Metrolinx IP; provided, however, that the foregoing licence does not permit Metrolinx to use the Consultant Background IP in its standalone form or for any purpose other than as part of or in conjunction with the Metrolinx IP it is associated with.
- (b) If the Consultant integrates with or embeds in any Deliverables any Intellectual Property provided by a third party Consultant, subcontractor, independent contractor, SubConsultant or other person, the Consultant shall obtain for Metrolinx the same license rights for Metrolinx in respect of such Third Party IP as set forth in Section 5.4(a) hereof.

6.0 Insurance

6.1 Insurance Requirements

- (a) The Consultant agrees to purchase and maintain in force, at its own expense and for the duration of this Contract, the policies of insurance set forth in Schedule 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

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

7.2 Changes Recommended by the Consultant

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

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 Consultant shall respond to Metrolinx’ Change request in writing within ten (10) Business Days.
- (c) Where a Change is initiated by the Consultant pursuant to Section 7.2, the Consultant 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, the

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schedule, or the terms and conditions of the Contract, as applicable, with respect to the Change set out therein.

- (e) Where Metrolinx and the Consultant cannot agree as to whether or not a particular notice, direction, requirement, request, correspondence, or other fact, event, or circumstance comprises, requires, or results in a change to the scope of the 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 Consultant to increase the number of Consultant Personnel upon twenty (20) days' notice.
- (b) Unless otherwise agreed to in writing by Metrolinx, such additional Consultant Personnel shall be available to report for work 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 Consultant 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 Consultant shall keep all Confidential Information confidential. Without limiting the generality of the foregoing, the Consultant 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.

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9.2 Permitted Disclosure

- (a) Notwithstanding the obligations set out in Section 9.1, the Consultant may disclose Metrolinx' Confidential Information to those of its SubConsultants and Consultant's Personnel who need to know such Confidential Information in connection with this Contract, 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 Consultant;
 - (ii) prior to receipt from Metrolinx, was known to the Consultant on a non-confidential basis and is not subject to another obligation of secrecy and non-use, as documented by written records possessed by the Consultant;
 - (iii) was independently developed by the Consultant prior to receipt from Metrolinx, as documented by written records possessed by the Consultant; or
 - (iv) becomes available to the Consultant on a non-confidential basis from a source other than Metrolinx that is not under other obligations of confidence.
- (b) If the Consultant becomes compelled to disclose any Confidential Information pursuant to Applicable Law, the Consultant 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 Consultant shall disclose only that portion of the Confidential Information as is required pursuant to Applicable Law. Any such required disclosure shall not, in and of itself, change the status of the disclosed information as Confidential Information under the terms of this Article 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

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disclosure of Confidential Information shall in all cases be subject to the requirements of FIPPA.

9.4 Security Measures

- (a) The Consultant 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 Consultant shall perform its obligations relating to this Section 9.4.

9.5 Intellectual Property Rights

- (a) Metrolinx, its Consultants, SubConsultants, 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 Consultant 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

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under its power or control and provide Metrolinx with a destruction certificate signed by an appropriate officer of the Consultant certifying such destruction.

- (b) Notwithstanding the foregoing, the Consultant shall have no obligation to return or destroy:
 - (i) Confidential Information that is captured and retained within the Consultant's routine computer systems backup processes, provided that (a) no specific effort is made to retrieve such archived Confidential Information for purposes that would violate the confidentiality obligations under this Contract and (b) the confidentiality obligations of under this Contract shall continue to apply to such archived Confidential Information for so long as such information is retained; and
 - (ii) working papers or other documentation which it is required to retain pursuant to Applicable Law or any rules of professional conduct applicable to the Consultant or the Consultant Personnel.

9.7 FIPPA and Personal Information

- (a) Metrolinx and the Consultant acknowledge and agree the collection, use, retention and disclosure of Personal Information is governed by FIPPA. Metrolinx acknowledges that the Consultant may also be subject to the requirements of PIPEDA. In the event of a conflict between the requirements of FIPPA and the requirements of PIPEDA or any other legislation governing the treatment of Personal Information, the more onerous provision shall apply.
- (b) The Consultant shall ensure that all collection, access, use, retention and disclosure of Personal Information under this Contract, whether through the performance of the Work or otherwise, complies with Applicable Laws including FIPPA, PIPEDA, Standards, and applicable requirements to collect, record and retain relevant consents pertaining to the collection, access, use, retention and disclosure of Personal Information in respect of the Work.
- (c) At Metrolinx's request at any time during the Term, the Consultant 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 Consultant and all Consultant Personnel shall cooperate with Metrolinx and/or its third party advisors to provide the resources required to facilitate and fulfill this assessment. The

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Consultant shall implement any recommendations resulting from the Privacy Impact Assessment process.

- (d) The Consultant shall ensure the security and integrity of any Personal Information collected by the Consultant and shall protect it against loss, unauthorized access, destruction, or alteration, in accordance with the following:
 - (i) The Consultant shall not directly or indirectly collect, use, disclose, store or destroy any Personal Information, or give, exchange, disclose, provide, or sell Personal Information to any third party, except as expressly permitted, and for a purpose(s) authorized, under this Contract or otherwise agreed to in writing by Metrolinx.
 - (ii) The Consultant shall ensure that access to Personal Information is restricted to those Consultant Personnel who have a need to know or use such information in the performance of the 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 Consultant shall not place, input, match, insert or intermingle, nor shall it permit any Person to place, input, match or intermingle, any data or records in any form whatsoever into or with any records or database containing such Personal Information.
- (e) For greater certainty, Metrolinx reserves the right to prescribe the specific manner in which the Consultant shall perform its obligations relating to this Section 9.7.

9.8 FIPPA and Freedom of Information

- (a) The Consultant 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 Consultant agrees to keep all FIPPA Records secure and available, in accordance with the requirements of FIPPA. The Consultant acknowledges that all information, data, records and materials, however recorded, that are held by the Consultant and/or created by the Consultant in the course of performing the Work are considered to be FIPPA Records and subject to FIPPA.

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- (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 Consultant and the Consultant shall provide any and all relevant FIPPA Records to Metrolinx on demand for the purposes of responding to an access request under FIPPA. In these circumstances, the Consultant shall provide all FIPPA Records requested to Metrolinx's Freedom of Information Coordinator (or equivalent) within seven (7) Business Days of receipt of the request from Metrolinx. Notwithstanding anything to the contrary in this Contract and subject to the Consultant's rights of appeal pursuant to Section 28(9) of FIPPA, Metrolinx shall determine what FIPPA Records will be disclosed in connection with any such request, in accordance with the requirements of FIPPA (including, without limitation, the requirements with respect to affected persons set out in Section 28 thereof).
- (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 Consultant shall provide to Metrolinx the network access requirements and access level that will be required by the Consultant to perform the Work. All requests to access Metrolinx's network will be subject to Metrolinx's written approval.
- (b) The Consultant 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 Consultant 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 Consultant shall immediately report such incident to Metrolinx, describe in detail any accessed Metrolinx data, and return to Metrolinx any copied or removed Metrolinx data.

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- (d) The Consultant is responsible for ensuring that Consultant Personnel do not access, or allow access, to any Metrolinx data to which they are not permitted access under this Contract. The Consultant 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 Consultant 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 Consultant Personnel and all expenditures and commitments made by the Consultant 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 Consultant 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 Consultant and during normal office hours, to inspect and audit, and to have access to, all Contract Records whether maintained by the Consultant or a Consultant Personnel, reasonably required to confirm the Consultant's compliance with the terms of this Contract and Applicable Laws, and to make copies thereof. The Consultant 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 Consultant), 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 Consultant's premises and to the Consultant's employees. Any such access shall be subject to the Consultant's reasonable documented security policies and documented professional and

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confidentiality obligations to its other clients; such documentation shall be provided to Metrolinx upon request. Where access is needed to a Consultant Personnel's employees or to Contract Records that are maintained by a Consultant Personnel, the Consultant 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 Consultant and shall take into consideration any reasonable objections the Consultant may have. For the avoidance of doubt, Metrolinx shall have sole discretion in selecting the third party. The Consultant 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 Consultant, before the disclosure of any Contract Records is made.

- (d) The Consultant 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 Consultant shall provide Metrolinx, upon request, the results of all internal controls and security audits performed by the Consultant's auditors.
- (e) The Consultant 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 Consultant'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 Consultant from any of its obligations under this Contract nor shall such verification be used by the Consultant as evidence of effective control of quality.
- (f) The Consultant 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 Consultant shall promptly remedy any violations of this Contract of which it becomes aware, pursuant to any audit or otherwise.

9.11 Consultant Compliance

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- (a) The Consultant shall advise all of its Consultant Personnel, all of its SubConsultants, and all of its SubConsultant's Consultant 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 Consultant pursuant to this Contract or otherwise at law or in equity, the Consultant shall be liable for all claims arising from any non-compliance with this Article 9 by the Consultant, any of its Consultant Personnel, any SubConsultant and of its SubConsultant's Consultant Personnel.
- (b) The Consultant warrants that each of its Consultant Personnel, each of its SubConsultants and each of its SubConsultant's Consultant Personnel engaged by the Consultant to provide the services pursuant to this Contract is under a written obligation to the Consultant requiring such person to comply with the terms of this Article 9.

9.12 Publicity

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

9.13 Damages

- (a) The Consultant 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 Consultant hereby acknowledges and agrees that Metrolinx shall be entitled to seek, in addition to any other legal remedies which may be available to it, such equitable relief as may be necessary and available to protect Metrolinx against such breach or threatened breach. No failure or delay by Metrolinx in exercising any right hereunder shall operate as a waiver hereof, or shall estop Metrolinx from obtaining permanent injunctive relief.

10.0 Representations, Warranties and Covenants

10.1 Representations, Warranties and Covenants of the Consultant

- (a) The Consultant covenants and agrees with and represents and warrants to Metrolinx, and acknowledges and confirms that Metrolinx is relying on such covenants, agreements, representations and warranties, as follows:
 - (i) the Consultant is validly existing under the laws of the location of its head office and the Consultant has all necessary corporate power,

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authority and capacity to enter into this Contract and to perform its obligations hereunder;

- (ii) the entering into of this Contract by the Consultant 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 Consultant, the by-laws or resolutions of the Consultant or any agreement or instrument to which the Consultant is a party or by which it is bound, or
 - (B) require the Consultant to obtain any Approval or action of any other Persons and, if required, any such Approvals have already been obtained as of the date of this Contract;
- (iv) this Contract constitutes a legally valid and binding obligation of the Consultant enforceable against it in accordance with its terms, subject only to applicable bankruptcy, insolvency and other similar laws affecting the enforceability of the rights of creditors generally, the principles of equity and that equitable remedies such as specific performance and injunction are available only in the discretion of a court of competent jurisdiction;
- (v) the Consultant has carefully reviewed the whole of this Contract, including all of the Contract Documents, and all other documents made available to the Consultant by Metrolinx, and, to the Consultant's knowledge, nothing contained herein or therein inhibits or prevents the Consultant from performing the Work in accordance with the Required Standard of Care so as to achieve and satisfy the requirements of this Contract;
- (vi) the Consultant has engaged and shall engage only SubConsultants and Consultant 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 Consultant has available the resources and personnel to complete all of its obligations under this Contract in a timely, efficient and

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professional manner in accordance with the Required Standard of Care;

- (viii) the Consultant is not aware of any legal action instituted, threatened or pending against the Consultant that could have a material adverse effect on its ability to perform its obligations under this Contract;
- (ix) except as disclosed in the Submission, the Consultant is free of any actual or potential Request Conflict of Interest;
- (x) unless the Consultant is WSIB exempt, the Consultant is registered as an employer pursuant to the Workplace Safety and Insurance Act (Ontario) and has completed all filings and paid all assessments as required pursuant to that Act and the regulations thereunder;
- (xi) the Consultant is familiar with the obligations imposed on an “employer” as defined in OHSA, and that it has in place a health and safety program to ensure that it takes all steps reasonable in the circumstances to ensure the health and safety of all workers for which it has responsibility under that Act; and
- (xii) 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.

10.2 Continuing Effect of Representations, Warranties and Covenants

The Consultant 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 CONSULTANT 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 Consultant shall at all times indemnify and save harmless Metrolinx, its officers, directors, employees, members, agents, representatives, successors

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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 Consultant or any Consultant 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 Consultant or any Consultant Personnel;
- (iii) the unauthorized disclosure by the Consultant or any Consultant Personnel of any Confidential Information and/or Personal Information;
- (iv) any acts performed by or on behalf of the Consultant beyond the authority of the Consultant 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 Consultant or any SubConsultant, including:
 - (A) any resulting expenses incurred by Metrolinx as a result of stoppage of the Work on account of failure by the Consultant to meet its obligations under and/or with respect to the OHSA; and
 - (B) any resulting fine(s) levied against Metrolinx as a result of any breach of the responsibilities of the employer for the work, to the extent attributable to the Consultant’s failure to fulfil its obligations as described in Section 3.1; and/or
- (vi) any infringement or alleged infringement of any patent, trade secret, service mark, trade name, copyright, official mark, moral right, trademark, industrial design or other proprietary rights conferred by contract, common law, statute or otherwise in respect to the Work or any matter provided to Metrolinx or performed by the Consultant, or anyone else for whom at law the Consultant is responsible; provided, however, the Consultant 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 Consultant or a Consultant Personnel or by the use of the Deliverable in combination with intellectual property not supplied by the Consultant, but only if the claim would not have arisen without such modification or combination, (y) the Deliverable was based upon, or incorporates,

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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 Consultant is required to indemnify Metrolinx pursuant to this Section 11.1(a)(vi), or if, in the Consultant's judgment, Metrolinx' use of the intellectual property is likely to be infringing, the Consultant 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 Consultant, the Consultant will remove such intellectual property from the Work and equitably adjust the Consultant's charges to adequately reflect such removal.
- (b) The Consultant shall pay all reasonable costs, expenses and legal fees that may be incurred or paid by the Indemnified Parties in connection with any demand, claim, execution, action, suit or proceeding with respect to a matter for which the Consultant is obligated to indemnify the Indemnified Parties pursuant to this Article 11, provided that the indemnity obligations of the Consultant 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 Consultant under this Contract pending the final determination or settlement of such claim, action, suit, execution or demand. In the event,
- (i) the Consultant is, becomes, or is deemed to be bankrupt or an insolvent person pursuant to the Bankruptcy and Insolvency Act (Canada);
 - (ii) the Consultant makes a general assignment for the benefit of creditors; or
 - (iii) a receiver or interim-receiver is appointed with respect to some or all of the Consultant's business, assets, or property,

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then Metrolinx shall be entitled, without prejudice to any other right or remedy Metrolinx may have, to further deduct or withhold a reasonable sum on account of such Loss, from any monies owed or payable by Metrolinx to the Consultant under any other agreement or account. The provisions of this Section 11.1(c) shall not apply in the event that such Loss is otherwise provided for under any insurance provided by the Consultant to or for the benefit of Metrolinx.

11.2 Metrolinx shall at all times indemnify and save harmless the Consultant 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 Consultant'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 Consultant 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 Estimated Contract Price.
- (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 Consultant or any Consultant Personnel; or

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- (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 Consultant or any Consultant 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 Consultant is responsible.

13.0 Termination

13.1 Termination for Cause by Metrolinx

- (a) Metrolinx may, by ten (10) days' written notice to the Consultant, suspend or terminate the whole or any part of the provision of the Work or this Contract for cause in the event that the Consultant 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 Consultant to perform the Work or any portion thereof;
 - (ii) the Consultant 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 Consultant arising from the failure of the Consultant to perform the Work satisfactorily in accordance with the terms of this Contract.
- (b) If Metrolinx chooses to terminate this Contract 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 will be equitably adjusted to reflect that Work that is terminated.

13.2 Termination for Convenience by Metrolinx

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- (a) Metrolinx may, by thirty (30) days' written notice to the Consultant, terminate this Contract, in whole or in part, for convenience, and thereupon Metrolinx shall be liable for payment to the Consultant 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 Consultant, lack of financing or inability to perform because of the financial condition of the Consultant.
- (c) A failure by Metrolinx to furnish instructions is not a Force Majeure Event until fourteen (14) days after a demand for such instructions has been made in writing by the Consultant and not then unless such claim is reasonable and justified to Metrolinx.

14.2 Process

- (a) If a Party seeks to excuse itself from its obligations under this Contract due to a Force Majeure Event:

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- (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 Consultant.

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

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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 attorn 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 2.9 of this Contract shall continue to bind the Consultant 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 Consultant 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 Consultant.

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,

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neither Party shall represent, directly or indirectly by conduct, to any third party that it is an agent, employee, partner or joint venturer of the other.

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

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

17.8 Joint and Several Liability

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

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- (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 Consultant’s other commitments, relationships or financial interests:
 - (i) could or could be seen to exercise an improper influence over the objective, unbiased and impartial exercise of its independent judgment; or
 - (ii) could or could be seen to compromise, impair or be incompatible with the effective performance of its contractual obligations.

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- (b) The Consultant acknowledges that participation (directly or indirectly) in any procurement process arising from or related to this Contract (the “Prohibited Procurements”) would constitute a Conflict of Interest with this Contract, and the Consultant agrees that it shall not, and shall take reasonable steps (including obtaining covenants substantially similar to those set out in this section) to ensure that its SubConsultants do not participate in or be involved with such Prohibited Procurements either directly or indirectly, including as a bidder or as a SubConsultant, subcontractor or advisor to any bidder.
- (c) The Consultant shall:
 - (i) avoid all Conflict of Interest in the performance of its contractual obligations;
 - (ii) disclose to Metrolinx without delay any actual or potential Conflict of Interest that arises during the performance of its contractual obligations; and
 - (iii) comply with any requirements prescribed by Metrolinx to resolve any Conflict of Interest.
- (d) In addition to all other contractual rights or rights available at law or in equity, Metrolinx shall have the right to immediately terminate this Contract, by giving notice in writing to the Consultant, where:
 - (i) the Consultant fails to disclose an actual or potential Conflict of Interest;
 - (ii) the Consultant fails to comply with any requirements prescribed by Metrolinx to resolve a Conflict of Interest; or
 - (iii) the Consultant’s Conflict of Interest cannot be resolved.
- (e) This section shall survive any termination or expiry of this Contract.

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.

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END OF SECTION

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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 Consultant’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 **Error! Reference source not found.**
- 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 Consultant (including to employees, Consultants, 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 Consultant and Metrolinx pursuant to Request No. [.] including the Articles of Agreement, the General Conditions and the Schedules thereto and the Contract Documents.

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- 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 2.9(a) of 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 Consultant and/or the Consultant 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 Consultant in connection with this Contract are considered to be in the control of Metrolinx.

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- 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 General Conditions of the Contract: Schedule E - Consultant Personnel.
- 1.28 “Key Responsibilities” means the main responsibilities and tasks to be performed by each category of Consultant Personnel, as identified in General Requirements: General Conditions of the Contract: Schedule E: Consultant 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.

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- 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 Consultant; (b) all procurement documents issued by Metrolinx; (c) all documentation or source materials (including source code) related to any of the foregoing; and (d) all copies, translations, improvements, modifications, enhancements, adaptations, or derivations made to the Metrolinx Materials by Metrolinx or any third party not performing work under this Contract.
- 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(a) of the General Conditions.
- 1.37 “Parties” means both of Metrolinx and the Consultant 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.

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- 1.43 “Prohibited Procurements” has the meaning ascribed to it in Section 17.14(b) of the General Conditions.
- 1.44 “Quotation” has the meaning given in Section **Error! Reference source not found.** of Schedule B - Financial Terms of General Conditions.
- 1.45 “Rates” has the meaning ascribed to it in Section 2.9 of General Conditions.
- 1.46 “Request Conflict of Interest” means the Consultant 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.
- 1.47 “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 Consultant or the Consultant Personnel; (c) exercising that degree of skill and care, diligence, prudence and foresight which would be expected from a leading Person or professional performing work similar to those called for under this Contract; and (d) using only proper materials and methods as are suited to the function and performance intended.
- 1.48 “RQQ Process” means the Request to Qualify and Quote process set out in Request No RQQ-2018-ECDV-248.
- 1.49 “Scope of Work” describes the general and detailed requirements of the Work.
- 1.50 “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.
- 1.51 “SOW” has the meaning ascribed to it in Section 2.9 of the General Conditions.
- 1.52 “SOW Schedule” has the meaning ascribed to it in Section 2.9(b) of the General Conditions.

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- 1.53 “Standards” means, at a given time, those standards, specifications, manuals, codes, practices, methods and procedures applicable to the Required Standard of Care.
- 1.54 “SubConsultant” means an individual, firm, partnership, corporation or design professional having a direct contract with the Consultant or another SubConsultant to perform a part or parts of the Work as identified in the Submission or as otherwise identified in a request to add a new SubConsultant.
- 1.55 “Submission” means all documentation and other materials and information submitted by the Proponent in response to Request RQQ-2018-ECDV-248.
- 1.56 “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.
- 1.57 “Term” has the meaning ascribed to it in Section 2.1 of the General Conditions.
- 1.58 “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.
- 1.59 “Value Added Taxes” means such sum as shall be levied upon amounts payable to the Consultant under this Contract by any Governmental Authority that is computed as a percentage of the amounts payable to the Consultant (including all other Taxes but excluding Value Added Taxes), and includes the HST, and any similar tax, the payment or collection of which, by the legislation imposing such tax, is an obligation of the Consultant.
- 1.60 “Consultant” means [TO BE COMPLETED AT SIGNING].
- 1.61 “Consultant Background IP” means any methodologies, patterns, plans, procedures, Software, algorithms, computer code, documentation, tools, business processes, scripts, interfaces, commands, technical information, know-how, techniques, specifications, technologies and/or other Intellectual Property that is proprietary to the Consultant or which Consultant has the right and licence to use

GENERAL CONDITIONS OF THE CONTRACT
SCHEDULE A - DEFINITIONS

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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.

- 1.62 “Consultant Indemnified Parties” means the Consultant, its affiliates and each of their respective officers, directors, employees, agents, successors, and assigns.
- 1.63 “Consultant Personnel” or “Consultant’s Personnel” means (a) with respect to the Consultant, all of the Consultant’s personnel, employees and independent contractors (including the Key Personnel and the Consultant’s Representative) engaged in the performance of the Work; and (b) with respect to each SubConsultant, all of that SubConsultant’s personnel, employees and independent contractors engaged in the performance of the Work.
- 1.64 “Consultant Policies” has the meaning ascribed to it in Schedule C - Insurance of General Conditions.
- 1.65 “Consultant’s Representative” means the person identified by the Consultant, and Accepted by Metrolinx, as the Consultant’s authorized representative pursuant to Section 7 of the General Conditions.
- 1.66 “Work” means all the activities, services, goods, equipment, matters and things required to be done, delivered or performed by the Consultant under this Contract, including all of the work, labour, services, goods, equipment, if applicable, described in the Scope of Work.

END OF SECTION

GENERAL CONDITIONS OF THE CONTRACT
SCHEDULE B – FINANCIAL TERMS

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1.0 Payment

- Metrolinx will pay the Consultant for the Work performed by the Consultant 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.
- 1.1 The Consultant shall perform all of the Work notwithstanding that the value of the time spent by the Consultant in performance thereof may exceed the maximum amount payable to the Consultant pursuant to Section 3.0 of this Schedule B - Financial Terms.
- 1.2 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 Consultant 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 Consultant 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 of the Contract, Metrolinx and the Consultant acknowledge and agree that the Total Contract Price is the maximum amount payable in respect to the provision of the Work; excluding HST; provided, however, that the foregoing is not an entitlement to, nor a guarantee that the Consultant will be paid the full amount of, the Total Contract Price.
- 3.2 The Consultant 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 Consultant acknowledges and agrees that the Rates are inclusive of all labour and materials, insurance costs, disbursements and all other overhead including

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SCHEDULE B – FINANCIAL TERMS

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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 Consultant for any hospitality, food or incidental expenses incurred. Subject to the prior consent of Metrolinx, Metrolinx shall reimburse the Consultant for reasonable traveling expenses incurred in connection with the performance of the 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 Consultant shall also be responsible for obtaining and registering all of the Software licenses and long term support agreements, as and if applicable, on behalf of Metrolinx, and any costs incurred by the Consultant in connection thereto shall be included in the Rates set out in the Articles of Agreement.

5.0 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 Consultant 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 Consultant. The Consultant 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 Consultant shall show on each invoice, and in the manner directed by Metrolinx, either the actual Value Added Taxes paid by the Consultant by category or the portion of the Consultant's fees eligible under Applicable Law for the rebate.
- 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

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SCHEDULE B – FINANCIAL TERMS

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

6.0 Invoicing and Payment Process

- 6.1 The Consultant 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 Consultant Personnel multiplied by the applicable Rate.
- 6.2 The aggregate amount invoiced by the Consultant 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 Consultant no later than thirty (30) Business Days following receipt of the invoice for payment from the Consultant, unless otherwise provided or permitted in the Contract or a SOW. The Consultant shall accept any payments made by Metrolinx by way of Electronic Funds Transfer, and shall, if requested by Metrolinx, provide the account information required to complete an Electronic Funds Transfer.

7.0 Cost of Changes

- 7.1 Changes shall be implemented by the Consultant without any additional charge, unless the Consultant is able to demonstrate (with supporting documentation) that the Change causes the Consultant to incur additional costs.
- 7.2 The Consultant shall implement all Changes for a reasonable price in accordance with the same pricing principles and price levels as originally agreed in the Articles of Agreement. Where Rates apply to Consultant Personnel, those same Rates shall apply with reference to the applicable level of experience and/or expertise.

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- 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 Consultant 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

GENERAL CONDITIONS OF THE CONTRACT
SCHEDULE C – INSURANCE

Natural Heritage Consulting Services on an Emergent Basis
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1. Consultant Insurance Requirements

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

Commercial General Liability

(i) The policy shall provide a policy limit of not less than Five million dollars (\$5,000,000) per occurrence for all claims arising out of bodily injury (including death), personal injury, and damage to property of others. Such policy shall not contain any exclusion that conflict with the Work required to be performed under this Contract. The Consultant shall cause the interest of Metrolinx, and such other Person as Metrolinx may determine at its sole and absolute discretion, to be noted on the Consultant Policies hereof as “Additional Insured”. The policy shall contain a 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 Five million dollars (\$5,000,000) per occurrence. Alternatively, for Work that do not require the use of owned, non-owned, leased or hired automobile, the Consultant shall provide a written confirmation within five (5) Business Days of contract award, stating same, in place of the insurance coverage.

(c) Errors and Omissions Insurance

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

(d) Any other valid or collectible insurance available to Metrolinx shall not apply to any loss until the coverage and limits available under the insurance

GENERAL CONDITIONS OF THE CONTRACT
SCHEDULE C – INSURANCE

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policies maintained by the Consultant in accordance with this Contract have been exhausted.

8.3 Additional Coverage

- (a) Without prejudice to any other provisions of this Contract (including Section 1.1 of this Schedule C - Insurance), the Consultant shall, at all relevant times and at its own expense, obtain and maintain, or cause to be obtained and maintained (during the Term plus 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 Consultant is required to obtain and maintain, or cause to be obtained or maintained, by Applicable Law.

8.4 Requirements for Insurance

- (a) All of Consultant's policies of insurance, as required under this Contract (the "Consultant Policies"), shall be taken out with insurance companies licensed to transact business in the Province of Ontario with an AM Best rating of no less than A or the equivalent rating of another industry-recognized rating company.
- (b) Any deductible or self-insured retention amounts are the responsibility of the Consultant. Notwithstanding the foregoing, such deductibles or self-insured retention must be consistent with standard commercial practice and acceptable to Metrolinx, acting reasonably.
- (c) All Consultant Policies shall be kept in full force and effect during the Term, including any requirements for the period following the Term.
- (d) In the event that the Consultant fails to obtain and/or maintain in full force and effect any such insurance as aforementioned, then Metrolinx shall have the right as the Consultant's true and lawful attorney to do all things necessary for this purpose. The Consultant shall be responsible, and shall reimburse Metrolinx, all amounts paid by Metrolinx for insurance premiums and any and all costs incurred by Metrolinx in connection with this Contract. Without limitation, any premiums due on any insurance policy under this Schedule C - Insurance, but not paid by the Consultant may be paid directly to the insurer(s) or broker(s) by Metrolinx, which shall be entitled to deduct the amount of same along with its reasonable costs in

GENERAL CONDITIONS OF THE CONTRACT
SCHEDULE C – INSURANCE

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so doing from any monies otherwise due to the Consultant 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 Consultant, or the failure of any such insurance company to pay claims that occur will not be held to waive any of the provisions hereof.

8.5 Proof of Insurance

- (a) The Consultant shall, prior to the commencement of the Work and thereafter upon request, provide to Metrolinx original signed certificates of insurance for the Consultant 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 Consultant shall provide original signed certificates evidencing renewals or replacements of such policy to Metrolinx, without notice or request by Metrolinx.
- (b) The Consultant shall, upon request, provide evidence to Metrolinx that the premiums associated with the Consultant Policies have been paid; however, receipt by Metrolinx of the above information will in no way constitute confirmation by Metrolinx that the insurance complies with the requirements of this Contract. Responsibility for ensuring that the insurance coverage outlined in this Contract is in place rests solely with the Consultant.
- (c) The Consultant also agrees to provide Metrolinx with proof of errors and omissions insurance maintained by any SubConsultant, where such SubConsultant is under a professional obligation to maintain the same, and with proof of such insurance to be provided to Metrolinx no later than the execution of this Contract by the Consultant and to be in a form and with an insurer acceptable to Metrolinx.

8.6 Consultant'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 Consultant to Metrolinx under or in relation to any other provisions of this Contract.

8.7 Certificates of Insurance shall include:

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

GENERAL CONDITIONS OF THE CONTRACT
SCHEDULE C – INSURANCE

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

9.0 Workplace Safety & Insurance Board Protection

- 9.1 With respect to the Workplace Safety & Insurance Board (WSIB) coverage as required under the Workplace Safety and Insurance Act (Ontario), the Consultant unconditionally guarantees to Metrolinx full compliance with the conditions, regulations and laws relating to workplace safety insurance by itself and by all SubConsultants.
- 9.2 Without restricting the indemnity obligations of the Consultant in Article 11 of the General Conditions, unless the Consultant is WSIB exempt, the Consultant 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.
- 9.3 If the Consultant 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

GENERAL CONDITIONS OF THE CONTRACT
SCHEDULE D – DISPUTE RESOLUTION

Natural Heritage Consulting Services on an Emergent Basis
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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 Consultant shall not stop or delay the performance of the Work, in whole or in part, on account of a Dispute between the Consultant and Metrolinx or between the Consultant and any other Person. Without limiting the generality of the foregoing, at all times during the course of a Dispute, the Consultant shall:

- (a) continue with the 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 Consultant's compliance with this Section 2.0 shall not operate to waive any claim or contention that the Consultant 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 Consultant, of equivalent seniority and duly appointed to represent the Consultant in this regard, shall meet and make a good faith effort, on a without prejudice basis, to resolve the Dispute as set out in the Dispute Notice in a prompt manner and, for the purpose of same, each Party shall provide its representative with full

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SCHEDULE D – DISPUTE RESOLUTION

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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.

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SCHEDULE D – DISPUTE RESOLUTION

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- (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

GENERAL CONDITIONS OF THE CONTRACT
SCHEDULE D – DISPUTE RESOLUTION

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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

**GENERAL CONDITIONS OF THE CONTRACT
SCHEDULE E – CONSULTANT PERSONNEL**

**Natural Heritage Consulting Services on an Emergent Basis
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7.0 Consultant Personnel

7.1 The following are roles that shall be filled by the Consultant 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) Key Personnel

Role	Key Responsibilities	Qualifications and Experience	Required Duration
Contract Manager	The Contract Manager will be the single point of contact for the Consulting agreement and will appoint a Project Manager, from the appropriate discipline, for each emergent assignment. The Project Manager shall be appointed from the approved Key Team members. The Contract Manager and/or the Project Manager will maintain ongoing contact with the Metrolinx Project Manager to ensure that issues arising during the terms of the Contract are dealt with in an efficient, effective and timely manner.	Shall have ten (10) years of experience as a Project Manager. See as further described under Scope of Work – Project Overview, Section 4.2.	Entire Term of the contract
Wildlife Biologist	Provide technical expertise, where needed on any of the deliverables listed in the Detailed Scope of Work.	Shall have eight (8) years of experience as a Wildlife Biologist. See as further described under Scope of Work – Project Overview, Section 4.3.	Entire Term of the contract
Terrestrial Ecologist/Biologist	Provide technical expertise, where needed on any of the deliverables listed in the Detailed Scope of Work.	Shall have eight (8) years of experience as a Terrestrial Ecologist/Biologist. See as further described under Scope	Entire Term of the contract

**GENERAL CONDITIONS OF THE CONTRACT
SCHEDULE E – CONSULTANT PERSONNEL**

**Natural Heritage Consulting Services on an Emergent Basis
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		of Work – Project Overview, Section 4.4.	
Aquatic/ Fisheries Specialist	Provide technical expertise, where needed on any of the deliverables listed in the Detailed Scope of Work.	Shall have eight (8) years of experience as an Aquatic/Fisheries Specialist. See as further described under Scope of Work – Project Overview, Section 4.5.	Entire Term of the contract
Fluvial Geomorphologist	Provide technical expertise, where needed on any of the deliverables listed in the Detailed Scope of Work.	Shall have eight (8) years of experience as a Fluvial Geomorphologist. See as further described under Scope of Work – Project Overview, Section 4.6.	Entire Term of the contract
Wetland Specialist	Provide technical expertise, where needed on any of the deliverables listed in the Detailed Scope of Work.	Shall have eight (8) years of experience as a Wetland Specialist. See as further described under Scope of Work – Project Overview, Section 4.7.	Entire Term of the contract

(b) Non-Key Personnel

Role	Key Responsibilities	Qualifications and Experience	Required Duration
Hydrologist	Provide technical expertise, where needed on any of the deliverables listed in the Detailed Scope of Work.	Shall have five (5) years of experience as a Hydrologist. See as further described under Scope of Work - Project Overview, Section 5.2..	Entire Term of the contract
Environmental/Land Use Planner	Provide technical expertise, where needed on any of the deliverables listed in the Detailed Scope of Work.	Shall have five (5) years of experience as an Environmental Land Use Planner. See as further described under Scope of Work - Project Overview, Section 5.3.	Entire Term of the contract

Note to Consultant: 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.

GENERAL CONDITIONS OF THE CONTRACT
SCHEDULE E – CONSULTANT PERSONNEL

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8.0 Replacement of Key Personnel

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

(a) Curriculum Vitae

(i) The Consultant 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 Consultant 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 Consultant shall ensure that all contact information provided for references is current and accurate in order to enable Metrolinx to

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SCHEDULE E – CONSULTANT PERSONNEL

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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

SCOPE OF WORK

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The Scope of Work is comprised of those documents listed under “Scope of Work” of List of Contents.

SCOPE OF WORK

DEFINITIONS

1.0 In this “Scope of Work” document

- 1.1 "AREMA" means American Railway Engineering Maintenance of Way Association;
- 1.2 "CAD" means computer aided design;
- 1.3 "CCDC" means Canadian Construction Document Committee;
- 1.4 "CCTV" means closed circuit television;
- 1.5 "CN" means Canadian National Railway Company;
- 1.6 "CP" means Canadian Pacific Railway Company;
- 1.7 "CPTED" means Crime Prevention through Environmental Design;
- 1.8 "Consultant" means the company awarded the contract for the Project;
- 1.9 "DRM" means Metrolinx' s Design Requirements Manual;
- 1.10 "ELC" means Ecological Land Classification;
- 1.11 "ESA" means Environmental Site Assessment;
- 1.12 "HVAC" means heating , ventilation and air conditioning;
- 1.13 "Hot Work Authority" is defined in SS-0501-08, Corporate Safety Procedures, Hot Work Permit of Metrolinx' System Safety Program Plan Manual, provided for in Appendix "D" – Documents;
- 1.14 "IT" means Metrolinx's Information Technology department;
- 1.15 "LEED" means Leadership in Energy and Environmental Design;
- 1.16 "OBC" means Ontario Building Code;
- 1.17 "OEM" means original equipment manufacturer;
- 1.18 "OHSA" means Occupational Health and Safety Act;
- 1.19 "OLS" means Ontario Legal Surveyors;
- 1.20 "OPSD" means Ontario Provincial Standard Drawings;

SCOPE OF WORK

DEFINITIONS

- 1.21 "OPSS" means Ontario Provincial Standard Specification;
- 1.22 "ORM" means Oak Ridges Moraine;
- 1.23 "OWES" means Ontario Wetland Evaluation System;
- 1.24 "POP" means point of purchase;
- 1.25 " **Project**" means an Emergent Natural Heritage Services project;
- 1.26 "**Project Manager**" means the Consultant's main contact with Environmental Programs and Assessments;
- 1.27 "**PSW**" means Provincially Significant Wetland;
- 1.28 "**PA System**" means public address system;
- 1.29 "**RGC**" means registered graphic consultant;
- 1.30 "**SAR** " means Species at Risk;
- 1.31 "**Site**" means parcel of land within the area of study;
- 1.32 "**Third Party Services**" means any service invoiced by a third party to the Consultant under this Contract. Third Party Services include, but are not limited to, drilling, equipment rentals, vehicle rentals (including fuel), machine rentals, field supplies, utility locators, laboratory services and specialized contractors, and any other expense which Metrolinx deems acceptable under this Contract;
- 1.33 "**TSSA** " means Technical Safety Standards Association.

SCOPE OF WORK PROJECT OVERVIEW

1.0 Project Overview

1.1 Overview of Work

- (a) Throughout the fiscal year, work emerges that has not been specifically identified in the Metrolinx capital program. This type of work is classified as Emergent.
- (b) Metrolinx is seeking one or more Consultants with Ten (10) years of experience providing Natural Heritage Services in the Southern Ontario region to provide emergent consultation services and technical advice regarding sensitive Natural Heritage features. Sub-consultants are not precluded from filling key team member roles.

1.2 Background

- (a) Metrolinx is currently undertaking major infrastructure and service expansions resulting in numerous construction projects. In many instances, unforeseen environmental issues arise on these construction projects requiring consulting services and technical advice regarding sensitive Natural Heritage features (endangered species, wetlands etc.).
- (b) Natural Heritage services may be required in advance of, during, or after the design stages of construction projects in order to determine, evaluate, and mitigate potential liability or risk to Metrolinx.

2.0 Project Scope to be Designed

2.1 The characteristic of emergent work, while not limited to, may be any of the following in that they:

- (a) have not been specifically planned for;
- (b) are generally limited in scope;
- (c) may be safety related;
- (d) may be a response to an emergency;
- (e) may be a response to an urgent operational need;
- (f) may be a required task resulting from previous and/or ongoing projects;
- (g) require an immediate technical response on a time basis; and,
- (h) meet regulatory requirements.

SCOPE OF WORK PROJECT OVERVIEW

3.0 Consultant Responsibilities

- 3.1 An experienced consulting firm, herein referred to as the Consultant, shall provide professional Natural Heritage services for the emergent work on an as required basis. The professional Natural Heritage services may include, but not be limited to any of the following:
- a) Evaluation of key Natural Heritage features (Areas of Natural and Scientific Interest (ANSI), Provincially Significant Wetlands; (PSWs), etc.);
 - b) Species surveys, habitat inventories and assessments (including Species at Risk);
 - c) Hydrological Evaluation;
 - d) Channel restoration and design;
 - e) Vegetation community mapping according to Ecological Land Classification (ELC) system for Southern Ontario (Lee et al, 1998);
 - f) Wetland creation and restoration plans;
 - g) Habitat management plans for Species at Risk;
 - h) Species and habitat compensation plans;
 - i) Post-construction monitoring of Natural Heritage features;
 - j) Terrestrial Health Assessments;
 - k) General advice and interpretation of key regulations;
 - l) Environmental Impact Assessments/Studies;
 - m) Technical advice for terms of reference documents.
- 3.2 The Consultant shall perform the emergent work under individual Assignments. All Assignments will be initiated by the Environmental Programs and Assessments Office, Metrolinx.

4.0 Staffing Requirements

4.1 Key Project Team Staff

- (a) The Consultant shall employ only skilled staff with experience and qualifications relevant to the proposed Work, under the supervision of a senior staff member to perform the Work contemplated under this Contract.
- (b) Sub-Consultants are not precluded from filling key team member roles. If sub-consultants are listed as key team members, the Consultant shall provide a contract management and communications plan to ensure a single point of contact with Metrolinx for all coordination and invoicing. The Contract Manager shall act as this single point of contact.

**SCOPE OF WORK
PROJECT OVERVIEW**

- (c) In the event that a key team member needs to be substituted, the Consultant will provide Metrolinx with a staff substitution letter demonstrating qualifications which meet or exceed those of the original key team member.
- (d) The Consultant shall employ staff for the following positions to perform the Work contemplated herein who possess the minimum years' experience and qualifications specified as follows:

4.2 Position: Contract Manager

- (a) Years' Experience: Ten (10) performing work as a Contract Manager.
- (b) Required Qualification and demonstrated Experience:
 - (i) Bachelor Degree in related discipline applicable to the Work of this Request;
 - (ii) Direct experience in the function of managing workload distribution and execution of the work;
 - (iii) Possess comprehensive knowledge of general corporate business practices, government and commercial contracting regulations and principles, subcontracting practices, and accounting and finance principles.

4.3 Position: Wildlife Biologist

- (a) Years' Experience: Eight (8) performing work as a Wildlife Biologist.
- (b) Required Qualifications and demonstrated Experience:
 - (i) Degree in related discipline applicable to the Work of this Request (e.g. Environmental Science, Zoology, Biology, Ecology, Animal Science etc.);
 - (ii) Experience and knowledge of provincial and federal legislation, specifically Endangered Species Act, Species at Risk Act, Migratory Birds Convention Act, and the Fisheries Act;
 - (iii) Experience in successfully obtaining approvals from regulatory agencies, including Conservation Authorities, Ministry of Natural Resources and Forestry, Ministry of Environment, Conservation and Parks, Fisheries and Oceans Canada and Environment Canada;

**SCOPE OF WORK
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- (iv) Practical experience in wildlife and habitat inventory, study design, environmental impact assessments, and terrestrial health assessments;
- (v) Previous experience working with environmental assessments, as well as birds, bat, amphibian and reptile surveys.

4.4 Position: Terrestrial Ecologist/Biologist

- (a) Years' Experience: Eight (8) performing work as a Terrestrial Ecologist/Biologist.
- (b) Required Qualifications and demonstrated Experience:
 - (i) Degree in related discipline applicable to the Work of this Request; (e.g. Environmental Science, Zoology, Biology, Ecology or Botany)
 - (ii) Experience with vegetation species (including Species at Risk) as well, knowledgeable of the Ecological Land Classification (“ELC”) system;
 - (iii) Experience and knowledge of provincial and federal legislation, specifically Endangered Species Act, Species at Risk Act, Migratory Birds Convention Act;
 - (iv) Experience in successfully obtaining approvals from regulatory agencies, including Conservation Authorities, Ministry of Natural Resources and Forestry, Ministry of Environment, Conservation and Parks, Fisheries and Oceans Canada and Environment Canada;
 - (v) Botanical and vegetation inventory survey experience including taxonomy and species identification.

4.5 Position: Aquatic/Fisheries Specialist

- (a) Years' Experience: Eight (8) performing work as an Aquatic/Fisheries Specialist.
- (b) Required Qualifications and demonstrated Experience:
 - (i) Degree in related discipline applicable to the Work of this Request;
 - (ii) Experience conducting fish surveys and habitat assessments;

**SCOPE OF WORK
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- (iii) Experience with obtaining successful approvals from various regulatory agencies, including Conservation Authorities, Ministry of Natural Resources and Forestry, Ministry of Environment, Conservation and Parks, Fisheries and Oceans Canada and Environment Canada;
- (iv) Experience in developing, managing and conducting aquatic/fisheries studies including habitat compensation and management plans for various Species at Risk and areas defined under current legislation.

4.6 Position: Fluvial Geomorphologist

- (a) Years' Experience: Eight (8) performing work as a Fluvial Geomorphologist.
- (b) Required Qualifications and demonstrated Experience:
 - (i) Degree in Geomorphology or River engineering;
 - (ii) Membership in the Association of Professional Geoscientists of Ontario or in the Association of Professional Engineers of Ontario;
 - (iii) Experience in geomorphic fieldwork and assessments;
 - (iv) Knowledge and understanding of channel processes, functions, hydraulics and mechanics.

4.7 Position: Wetland Specialist

- (a) Years' Experience: Eight (8) performing working as a Wetland Specialist.
- (b) Required Qualifications and demonstrated Experience:
 - (i) Degree in related discipline applicable to the Work of this Request;
 - (ii) Experience in riparian delineations and mitigation planning;
 - (iii) Knowledge and experience applying the Ontario Wetland Evaluation System (OWES) and as well knowledgeable of the ELC system;

**SCOPE OF WORK
PROJECT OVERVIEW**

- (iv) Strong knowledge of wetland delineation procedures, setback guidelines, documentation procedures, and mitigation and compensation guidelines;
- (v) Experience and established relationship with local regulatory agency staff and understanding key provincial regulations and legislation (Oak Ridge Moraine Legislation and Plan, The Greenbelt Act, Provincial Policy Statement, Niagara Escarpment Planning and Development Act, etc.).

5.0 Additional Staffing Requirements

- (a) The Consultant shall employ only skilled staff with experience and qualifications relevant to the proposed Work, under the supervision of a senior staff member to perform the Work contemplated under this Contract.
- (b) Sub-consultants are not precluded from filling key team member roles. If key team members are from outside firms, the Consultant shall provide a description of contract management and communications plan.
- (c) The Consultant shall employ staff for the following positions to perform the Work contemplated herein who possess the minimum years' experience and qualifications specified as follows:

5.2 Position: Hydrologist

- (a) Years' Experience: Five (5) performing work as a Hydrologist.
- (b) Required Qualifications and demonstrated Experience:
 - (i) Degree in Engineering or Geosciences with related water resources and hydrology experience;
 - (ii) Membership in the Association of Professional Geoscientists of Ontario or in the Association of Professional Engineers of Ontario;
 - (iii) Practical experience and knowledge of hydrologic methods & techniques, including field collection of hydrological data, data management, hydrologic modelling and statistical flood frequency analyses;
 - (iv) Strong knowledge of provincial and federal regulations and procedures.

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5.3 Position: **Environmental/Land Use Planner**

- (a) Years' Experience: Five (5) performing work as an Environmental/Land Use Planner.
- (b) Required Qualifications and demonstrated Experience:
 - (i) Degree in Urban Planning/Environmental Planning or a related field of study applicable to the Work of this Request;
 - (ii) Knowledge of the principles and practices of environmental land use planning including applicable land use and development regulations and requirements;
 - (iii) Experience in reviewing land use and development plans and providing recommendations.

5.4 Position- **Administrative Assistant**

- (a) Years' Experience: Two (2) years or less.
- (b) Required qualifications and experience:
 - (i) Experience in conducting the services that are outlined in Scope of Services.

6.0 Consultant's General Requirements

6.1 Drawings, Diagrams and Documents

- (a) Metrolinx with "record" construction drawings both on hard copy and respective computer (CAD) files, as specified herein;
- (b) All drawings are to be produced and submitted on a CAD system;
- (c) Computer CAD files shall be encoded with the Consultant's stamp and signature;
- (d) Hard copy of 'record' construction drawings shall bear the Consultant's stamp and signature;
- (e) Hard copy documents shall be forwarded in an appropriate size format and with black text on white background, such that they readily reproduce a clear, sharp and readable image on standard recycled photocopy stock using standard photocopy equipment;

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7.0 Site Hazards

7.1 Hazard Locations

- (a) Construction may take place at various Metrolinx operating locations. Some of the unique hazards include, but are not limited to:
 - (i) At station platform and heavy track level there can be safety and signal hazards. Under no circumstances shall any person associated with the Project access track level unless prior approval in writing is obtained from Metrolinx and the affected railway company.
 - (ii) At Metrolinx GO rail stations, bus terminals, bus garages, train maintenance and shop facilities, vehicles, buses, and trains enter and exit the station terminals and Metrolinx facilities at any time.

7.2 System Safety Requirements

- (a) The Consultant shall:
 - (i) utilize safe-by-design engineering principles, Crime Prevention through Environmental Design (CPTED) for public passenger transportation use and its integration with other systems;
 - (ii) take reasonable steps to ensure that the design minimizes any person's exposure to hazards during the life cycle of the Project at commissioning, operation, future maintenance and decommissioning, thereafter;
 - (iii) identify specific construction methods that will require a written plan to be submitted prior to commencing the work of the Project as per regulatory requirements; and
 - (iv) ensure applicable railway specific requirements are considered and implemented as required in the process.
- (b) Metrolinx reserves the right to classify a risk level to the Project and will thereby require the Consultant to provide written plans to educate and mitigate those risks, as required.

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7.3 Work Site Safety

- (a) Under the provisions of the Ontario Health & Safety Association (OHSA) and subsequent regulations, the Consultant shall act as a representative to Metrolinx. The primary role is to monitor on-site safety and report observations and/or findings to the Metrolinx Project Manager in a timely manner.
- (b) The Consultant shall be equipped with all appropriate safety wear while on Site for inspections and/or any Site meeting(s). Failure to comply with this requirement shall result in the Consultant's removal from the Site until such time as the proper equipment is obtained.
- (c) Ensure all employees are compliant to the occupational health and safety requirements as set out in the appropriate codes, regulations, Metrolinx's safety guidelines and the Consultant's own safety program developed for the Project.
- (d) Take appropriate and immediate action to bring observed and/or reported unsafe acts and/or conditions to the attention of Metrolinx. These could range from: providing a corrective action plan in writing and reporting above findings to Metrolinx, to immediately notifying the Project Manager of any serious unsafe acts and/or conditions observed by, or reported to, the Consultant.
- (e) The Consultant is to notify the Project Manager of above findings and actions within three (3) business days based on the severity of infraction.
- (f) Provide copies of all safety related correspondence as per Section 8.3 of the "Metrolinx Safety Guidelines for Contractors, Consultants and Project Coordinators" (provided for in Appendix "D" - Documents).
- (g) One copy of the Consultant's construction safety document shall be maintained on Site for review, at any time, by Metrolinx or others.

7.4 Rail Right-Of-Way (ROW) Requirements

- (a) ROW requirements are mandatory when Project work is on or adjacent to any Metrolinx ROW, including rail station platforms and track infrastructure. The Consultant shall:
 - (i) adhere and comply to all applicable municipal, provincial, federal safety acts, regulations, laws, codes and requirements including,

**SCOPE OF WORK
PROJECT OVERVIEW**

the OHSA, the Canada Labour Code, Part II, and the subsequent regulations to each;

- (ii) comply with the most current requirements of any Metrolinx safety documents;
- (iii) comply with the requirements of Metrolinx's contractor safety package;
- (iv) ensure that all persons on or adjacent to any Metrolinx or railway company rail right-of-way property, shall arrange to have their companies and their employees who will be entering upon Metrolinx property registered as to having taken the course "Contractor Safety/Security Awareness Course" available at www.contractororientation.com;
- (v) have a CN issued "Safety Guidelines for Contractor's" sticker affixed to their hardhats, carry on their person the "Safety Guidelines For Contractors" wallet card.

7.5 Flagging Rule Book Training

- (a) Flag person will be furnished by Metrolinx at no cost to the Consultant.
- (b) It is the responsibility of the Consultant to ensure that all persons performing the Work at track level within Metrolinx and affected railway company property attend and successfully meet the requirements of Metrolinx and the affected railway company training program prior to the commencement of such Work.
- (c) Workers shall adhere to the affected railway flagging rules when working at track level. Failure to abide by the affected railway flagging rule requirements may endanger a worker's life and the lives of others, could result in damage to property, and will be cause for summary removal from or refusal of access to track level, which will not be cause for a claim from the Consultant for additional costs due to any delay related to such removal or refusal of access.
- (d) The Consultant shall provide Metrolinx and the affected railway company representatives with at least two weeks' notice of the requirement for training or retraining and the identity of persons requiring training or retraining.

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- (e) The Consultant shall be responsible for their cost of training and retraining related to their staff. Metrolinx will not charge the Consultant for training services.

8.0 Consultant's Management of the Services

8.1 Emergent Project Values:

- (i) Assignments may not have a value greater than **\$150,000.00** for any individual Assignment;

8.2 Consultant Duties

- (a) When performing an Assignment, the Consultant shall exercise due care in cost control on its approved cost estimates. A monthly expense report, broken down by Work Assignment, shall be submitted. The Consultant Monthly Status Report form is provided for in Appendix "D"-Documents. When the total accumulated cost incurred reaches 90% of the value of the cost estimate for an individual Work Assignment, the Consultant shall notify the Project Manager immediately in writing.
- (b) The Consultant may be responsible to provide three (3) Consultant quotations each time that Third Party Services are engaged under the Contract. Metrolinx will advise the Consultant as to which quotation, if any, is acceptable prior to the Consultant engaging these Services as required.
- (c) The Consultant must ensure that all reports name Metrolinx and provide Metrolinx with full reliance on the report. The Consultant must also provide full reliance to other third parties as requested by Metrolinx, including but not limited to Consultants, purchasers, financiers, etc. associated with a specific transaction or task.

8.3 Contract Manager's Duties

- (a) Assign a Contract Manager who will direct the provision of the Work. The Contract Manager will be the single point of contact for the Consulting agreement and will appoint a Project Manager, from the appropriate discipline, for each emergent assignment. The Project Manager shall be appointed from the approved Key Team members. The Contract Manager and/or the Project Manager will maintain ongoing contact with the Metrolinx Project Manager to ensure that issues arising during the terms of the Contract are dealt with in an efficient, effective and timely manner.

**SCOPE OF WORK
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- (b) Maintain communications contact as may be necessary to keep Metrolinx properly informed and up to date on the progress of the Project.
- (c) Provide to Metrolinx a list identifying the Consultant's and all SubConsultants' employees assigned to the Project.
- (d) Be responsible for coordinating and interfacing with other disciplines it retains to perform the Work under the Project.
- (e) Coordinate work with Metrolinx, external agencies and authorities having jurisdiction including local utilities .
- (f) Arrange, coordinate and chair in a number of meetings with Metrolinx and/or external authorities in connection with the Project, as required.
- (g) Arrange, coordinate, chair meetings and liaise with sub consultants and support services as required.
- (h) The Consultant's cost for each phase of the Services as stated in the "Articles of Agreement" for this Contract 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 phase of the Services. Request for adjustment of costs and schedules must be submitted in writing for consideration by Metrolinx.
- (i) Maintain a system to identify and report changes in the project scope of the Services to be provided and immediately notify Metrolinx in writing of any proposed changes that will affect the design 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 design, schedule and Project cost for this Contract.
- (j) Progress Reports and Minutes of Meetings:
 - (i) Chair, record, prepare and distribute, within five (5) working days of the meeting date, minutes (of all meetings associated with the Project).
 - (ii) Prepare and submit to Metrolinx an updated "Consultant's Monthly Status Report" (provided for in Appendix "D" within seven (7) days after the reported month.

**SCOPE OF WORK
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- (iii) The report shall include a summary of the Project progress, identification of unresolved issues, design inputs by others, information required, schedule and cost status.
- (iv) The Consultant shall prepare and submit on a monthly basis the appropriate cost/budget control reports for the consult activities including the overall Project cash flow requirements.

8.4 Services and Costs Related to External Agencies and Authorities

- (a) The Consultant's scope of Services shall include the coordination and the administration of the provision of Services necessary to achieve compliance with external agencies and authorities having jurisdiction as required to obtain approvals for the Project.
- (b) The Consultant's fee for the Services shall include costs for the coordination, administration of the provision and management of the Services outlined in S(1)(i) above. The Consultant's fee for the Services outlined in S(1)(i) above shall not include the specific costs for approval application, permits fees or charges of the external agencies and/or authorities having jurisdiction, which shall be paid for directly by Metrolinx, unless otherwise agreed upon by Metrolinx and the Consultant.

8.5 Permits and Approvals

- (a) Arrange and attend meetings with appropriate authorities necessary and assist Metrolinx and/or the applicable railway authority for permit application and approvals related to the Project.
- (b) Submit necessary drawings and documentation for review to the authorities having jurisdiction, including associated town, to a level of satisfactory to obtain their approval.
- (c) Metrolinx, as a Provincial Crown Agency, is not subject to either the Municipal Act, 2001, the City of Toronto Act, 2006 (with the exception of sections pertaining to smoking by-laws), the Planning Act or the Development Charges Act. The services and infrastructure Metrolinx developed however, has been in partnership with local municipalities. When developing plans for new or expanded infrastructure, Metrolinx will keep the affected municipality informed of progress and cooperate with municipal staff to ensure infrastructure is constructed to meet municipal requirements to the greatest extent possible.

**SCOPE OF WORK
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- (d) Submissions relating to building permits and Site plan approvals for Metrolinx Projects are made in the spirit of co-operation and to provide the Municipality with an opportunity to comment. Metrolinx will compensate the Municipality for any direct cost of their review of the submissions.
- (e) Prepare the required specifications and drawings associated with all work elements. Drawings shall be sealed and signed by the appropriate discipline (Engineer/Architect or appropriate) and completed for construction and building permit/site plan application if necessary.
- (f) The Consultant shall include the services required to assist Metrolinx in obtaining the necessary approvals required for the Project. Services shall include meetings with external authorities and preparation of submittals for approval.

END OF SECTION

**SCOPE OF WORK
DETAILED SCOPE OF WORK**

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1.0 Consultant's Scope of Services

1.1 Emergent Work

- (a) On occasion, throughout Metrolinx' fiscal year, Natural Heritage consulting services are required that have not been specifically identified. This type of work is classified as Emergent Work.
- (b) The Emergent Work, yet to be identified, is defined as the Project for the purposes of this contract
- (c) .The Consultant will assist Metrolinx to provide Natural Heritage consulting services through various Assignments, as required, for the Program.

1.2 Consultant's Deliverables

- (a) The specific Assignments will vary in type, scope and responsibility and will be required on an emergent basis.
- (b) The Services will generally include, but are not limited to:
 - (i) Evaluation of key Natural Heritage features Areas of Natural and Scientific Interest (ANSI), Provincially Significant Wetlands (PSWs), etc.)
 - (ii) Species surveys in accordance with appropriate guidelines and Best Management Practices, habitat inventories and assessments (including Species at Risk) for:
 - (A) amphibians;
 - (B) reptiles;
 - (C) birds;
 - (D) vegetation;
 - (E) aquatic species;
 - (F) bats.
- (c) Hydrological Evaluation;
- (d) Channel restoration and design;

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DETAILED SCOPE OF WORK**

- (e) Vegetation community mapping according to ELC system for Southern Ontario (Lee et al, 1998);
- (f) Wetland creation and restoration plans;
- (g) Habitat management plans for Species at Risk;
- (h) Species and Habitat Compensation Plans;
- (i) Post-construction monitoring of Natural Heritage features;
- (j) Terrestrial Health Assessments;
- (k) General advice and interpretation of key regulations; (land use, etc.)
- (l) Environmental Impact Assessments/Studies;
- (m) Technical advice for terms of reference documents.

1.3 Post Project Report

- (a) At the conclusion of each Assignment, the Consultant shall prepare and submit an electronic copy of a Post Project Report for
- (b) Metrolinx' s review and comment.
- (c) The Post Project Report shall include a brief summary of the following:
 - (i) a detailed description or letter report of the Project or assignment;
 - (ii) a detailed description of the Consultant's Scope of Services provided under the Project;
 - (iii) a detailed description of the processes and methodologies used by the Consultant during the Project; and
 - (iv) a narrative on the key issues which impacted in a positive and/or negative way the provision of, and scheduling of Consultant services.
- (d) Post-construction monitoring and reporting may be required on a project-by-project basis. Detailed descriptions will be provided per specific assignment.

**SCOPE OF WORK
DETAILED SCOPE OF WORK**

1.4 Project Considerations and Schedule

- (a) The Consultant shall work with Metrolinx staff to determine how the Work shall be phased, if required. Phasing may include but not be limited to completion of research or field work, field reports, preliminary reports, draft reports, final reports, recommendations letters, etc.
- (b) Estimates are to include appropriate contingency depending on the assignment type and complexity.
- (c) Estimates should include all elements to deliver the intended design including, but not limited to:
 - (i) Working in the ROW;
 - (ii) Winter construction, if required;
 - (iii) Existing site conditions, relocations and removals; and,
 - (iv) Temporary/phasing requirements, if any.
- (d) It may be required that a third party be used in order to obtain cost estimates for external work verification of project estimates to be part of the Project team.
- (e) The Consultant shall make its own determination of the actual scope and magnitude of the Project to be undertaken. The Services shall be completed in all respects, and shall ensure that the proposed project work is completed in a safe, cost effective and efficient manner.

END OF SECTION

**SCOPE OF WORK
GENERAL SAFETY REQUIREMENTS**

**Natural Heritage Consulting Services on an Emergent Basis
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1.0 Safety Measures

- 1.1 The Consultant's representative shall be responsible for ensuring that the provisions of statutes, regulations and by-laws pertaining to safe performance of the work and the work of other Consultants/SubConsultants at the Place of Work are observed and that the methods of performing the work do not endanger the personnel employed thereon, the general public, and are in accordance with best safety practices and the latest edition of the OHSA and applicable Regulations. The Consultant shall include representatives of other Consultants/SubConsultants working on site on the Joint Health and Safety Committee (JHSC) as required.
- 1.2 Prior to the Consultant's representative being absent from the Place of Work, the Consultant's representative will name another person, in writing to Metrolinx, who is competent to assume these responsibilities as the Consultant's representative.

2.0 Project Responsibilities

- 2.1 The Consultant and the Consultant's representative shall ensure that:
- (a) All measures and procedures prescribed by the following Acts and Regulations (applicable Provincial) are carried out at the Place of Work;
 - (b) *The Occupational Health and Safety Act*;
 - (c) The Regulations for Industrial Establishments;
 - (d) The Canada Labour Code Part II;
 - (e) The Environmental Protection Act and Regulations;
 - (f) WHMIS Regulations;
 - (g) *Smoke-Free Ontario Act*;
 - (h) All other legislation, regulations and standards as applicable; and
 - (i) Metrolinx's "Safety Guidelines For Contractors, Consultants and Project Coordinators".
- 2.2 Every employer and every worker performing work at the Place of Work complies with all of the requirements referred to in Section 2.1 above; and

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- 2.3 The health and safety of workers and the general public are protected in relation to the work performed on site. In addition to compliance with all occupational health and safety legislation, every employer and every worker performing Work at the Place of Work is required to demonstrate a willingness to participate in occupational health and safety program(s).
- 2.4 The Consultant shall perform a hazard and risk analysis of the work and list the top five (5) most hazardous health and safety concerns.

3.0 Due Diligence

- 3.1 The Consultant acknowledges that it has read and understands the measures and procedures relating to occupational health and safety as prescribed in Article 2 above. The Consultant acknowledges and understands its duties as therein set out and hereby expressly undertakes and agrees to comply with all such requirements and standards in their entirety and at the Consultant's expense.
- 3.2 The Consultant further agrees to fully cooperate with all health and safety requirements, rules, regulations, standards and criteria set out in the Contract Documents, which agreement is in furtherance of the Consultant's duties and responsibilities under occupational health and safety legislation.
- 3.3 The Consultant agrees that if, in the opinion of Metrolinx, the health and safety of a person or persons is endangered or the effective operation of the system put in place to ensure the health and safety of workers on the Place of Work is not being implemented, Metrolinx may take such action as it deems necessary and appropriate in the circumstances, including, without limitation, the following:
 - (a) Require the Consultant to correct the condition forthwith at no expense to Metrolinx;
 - (b) Require that the Place of Work be shut down in whole or in part until such time as the condition has been corrected. Metrolinx will not reimburse the Consultant for any costs caused by such a delay nor will Metrolinx extend the time to complete the Work of the Contract because of such a delay;
 - (c) Correct the problem and deduct the cost thereof from any payment then or thereafter due the Consultant; and/or
 - (d) Terminate the Contract in whole or in part.

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4.0 Alcohol and Drug Abuse Prevention

4.1 The following rules shall apply to all persons while at the Place of Work and/or on MetroInx's property:

- (a) The use, possession, distribution and/or sale of illegal drugs or drug paraphernalia is prohibited;
- (b) The use, possession, distribution and/or sale of any form of alcohol, including alcoholic beverages;
- (c) Workers must know and understand the possible effects of drugs, medication or mood altering agents, including those prescribed by a doctor, which will adversely affect, in any way and to any extent, their ability to work safely;
- (d) Individuals shall ensure that prescribed or over-the-counter medications are used responsibly and in accordance with the applicable instructions. Persons taking prescription drugs shall advise their supervisor if there is potential for performance to be negatively affected;
- (e) No distribution, offering or sale of prescription medications is permitted; and
- (f) Individuals must report for duty, free of the negative effects of alcohol and other drugs, including the effects of such use, and remain so during the entire period of duty.

4.2 Where a worker is suspected of being intoxicated, the following procedures must be followed:

- (a) The worker will be escorted to a safe location away from the work area, and asked to remain there pending further action;
- (b) The worker's supervisor, worker health and safety representative (if applicable), union steward (if applicable) and the designated MetroInx Contract representative will be requested to attend;
- (c) The group present will determine an appropriate course of action and a means of transport to a suitable safe location;
- (d) Where there are differences of opinion with respect to the worker's fitness for duty, the dispute will be resolved with a view to ensuring safety, and the

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worker will be transported home, or required to remain in a safe location until this can be arranged; and

- (e) The local police may be called if the worker was operating any motorized vehicle requiring a valid driver's license.

4.3 Metrolinx will maintain a position of zero tolerance to any violations of these rules. At the sole discretion of Metrolinx, rule contraventions may result in:

- (a) Verbal and written reporting to the person's supervisor/employer;
- (b) Issuance of a written warning, and recording of same;
- (c) Reporting to the appropriate police department for investigation and subject to criminal prosecution;
- (d) An order to leave the project site temporarily or permanently; or
- (e) Remedies as may be specified in the Contract Documents.

5.0 Smoking in the Workplace

5.1 The Consultant shall comply with, and enforce, all the provisions of the *Smoke Free Ontario Act* at all times while on Metrolinx's property.

5.2 A designated smoking area may be created at the Place of Work providing Metrolinx and the Consultant can mutually agree that one can be provided within the provisions of the *Smoke Free Ontario Act*. The Consultant shall be responsible for providing any and all signage required for the designated smoking area in the event a designated smoking area is created.

6.0 Workplace Hazardous Materials Information System (WHMIS)

6.1 Be familiar with and comply to WHMIS Regulations:

6.2 Properly label controlled products.

6.3 Provide proper warning labels and training at the site.

6.4 Provide copies of the material safety data sheets (MSDS) for any controlled product at the Place of Work before the product is delivered to the site.

6.5 Be responsible for all applicable requirements of the regulations.

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6.6 Before commencing any work at the Place of Work, attend a meeting in a location to be determined by Metrolinx and provide a proposal as to how hazardous materials will be stored and dispensed at the Place of Work. Also, present a proposal as to how hazardous and contaminated materials will be removed from the Place of Work. The disposal of hazardous materials shall comply with all legislative and municipal requirements.

6.7 Provide a list and proper handling procedures for all hazardous materials.

7.0 Metrolinx Safety Manual

7.1 Metrolinx will issue an appropriate number of copies of its "Safety Guidelines For Contractors, Consultants and Project Coordinators" to the Consultant at the start-up meeting.

7.2 Consultants are responsible for familiarizing themselves and their employees with the contents of this manual.

7.3 Consultants shall distribute copies of this manual to their SubConsultants and shall ensure that they, and their employees, are familiar with its content.

7.4 Consultants shall ensure that all persons given a copy of the "Safety Guidelines For Contractors, Consultants and Project Coordinators" complete the acknowledgement on the second page of the manual and return it to Metrolinx.

7.5 The requirements of this manual shall apply to the Work and the Place of the Work.

8.0 Site Safety Personnel

8.1 In the event Metrolinx deems it necessary, because of the Work and/or Safety Performance, the Consultant shall assign to the Place of Work a full time "Safety Officer" to assist the Consultant's representative in the discharging of safety responsibility on site, at no additional costs.

8.2 The Safety Officer shall have the training, experience and credentials to ensure compliance to the *Occupational Health and Safety Act* at the Place of Work.

9.0 Site Security

9.1 The Consultant shall ensure all personnel employed at the Place of Work, whether its own employees or a SubConsultant's, wear an identification badge. At Metrolinx locations where access is restricted Metrolinx shall supply the

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identification badges. At all other locations it shall be the Consultant's responsibility to provide the identification badges.

- 9.2 A daily site log shall be maintained of all persons granted access to the "Place of Work" under the control and custody of the Consultant.
- 9.3 The Consultant shall ensure that all required documentation is available upon request by Metrolinx.
- 9.4 The Consultant shall not allow "Unauthorized" persons to access the "Place of Work".

END OF SECTION

ATTACHMENTS

Attachments are comprised of those documents listed under “Attachments” of List of Contents.

ITEM NO.	ATTACHMENT TITLE
1.	Trap Guide
2.	Consultant's Monthly Status Report
3.	Q and A Form RQQ-2018-ECDV-248
4.	Form of Tender_RQQ-2018-ECDV-248
5.	Contract Prices
6.	Safety Guidelines for Contractors Consultants and Project Coordinators
7.	Metrolix MERX Portal – General Information
8.	Sample Articles of Agreement
9.	Sample Parental Guarantee
10.	Sample Letter of Credit
11.	Sample Corporate Reference Check Questionnaire
12.	New / Update Existing Consultant Form
13.	Contractor Occupational Health & Safety Performance Report