

Appendix "A": Terms and Conditions

This Appendix "A" sets out the terms and conditions applicable to the Metrolinx Station Naming Rights Opportunity ("SNRO") Process (the "Terms and Conditions"), as outlined below.

1.1 Overview of the SNRO Process

The SNRO process will include the following steps:

A. SNRO Issued on MERX and Metrolinx.com Commercial Opportunities (<http://www.metrolinx.com/en/aboutus/commercialopportunities/default.aspx>)

The SNRO will be posted on MERX and the website on August 1, 2019.

B. Metrolinx will host one to one information sessions and site visits regarding SNRO

Potential applicants are invited to request one to one information session and site visits to GO Stations that will clarify details on the Station Naming Rights Opportunity that Metrolinx is seeking. Interested parties (each, a "Proponent") participating in the one to one information sessions will be asked to sign a Non-Disclosure Agreement and, if required by Metrolinx, a Conflict of Interest form after the first one to one information session and prior to any subsequent session.

C. Additional information to be provided

Metrolinx will provide additional information regarding specific station(s) to Proponents who have signed Metrolinx's non-disclosure agreement and, if required, conflict of interest form.

D. Proposals

Metrolinx will not accept or provide proposals received within the first sixty (60) business days following the initial posting on August 1, 2019. Proposals must be submitted in accordance with the instructions set out in Part 2 of these Terms and Conditions. Proposals may not be submitted earlier than October 28, 2019. Additionally, Metrolinx may prepare and provide proposals to Proponents for negotiation.

E. Exclusive and Non-Exclusive Negotiations

Metrolinx will continue to negotiate with all interested Proponents until an agreement is signed with one to move to exclusive negotiations. After an agreement for an exclusive negotiating period (the "Exclusive Agreement") is signed with a Proponent with respect to a station, Metrolinx will be in exclusive negotiations with such Proponent for such station unless and until a Station Naming Rights Agreement is entered into, such exclusive negotiations have concluded unsuccessfully, or the terms of the Exclusive Agreement determine that negotiations will no longer be exclusive.

F. Selection of Proponents

On or after November 28, 2019, if Metrolinx believes that it has a proposal that provides the best value and is the most aligned to Metrolinx objectives, Metrolinx may invite the Proponent who provided or accepted that proposal to enter into exclusive negotiations with respect to a particular station by entering into an Exclusive Agreement .

G. Execution of Station Naming Rights Agreement

If Metrolinx and a selected Proponent agree on all terms, they may enter into a station naming rights agreement(s) (the **"Station Naming Rights Agreement"**).

1.2 Questions and Communications

All questions and communications of any sort with respect to this SNRO are to be in writing and directed only to the **"SNRO Contact"** identified below:

Rick Radovski	
E-mail:	rick.radovski@metrolinx.com

Information regarding the SNRO, whether provided by the SNRO Contact, 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 the information is incorporated into a written addendum to the SNRO.

1.3 Addenda

In the event that Metrolinx determines, in its sole discretion, that clarifications of or revisions to the SNRO or SNRO process are required, all such clarifications or revisions shall be communicated to all Proponents by way of written addenda. Each addendum shall become part of the SNRO. Any such addenda may contain important information, including significant changes to the SNRO or the SNRO process.

It is the Proponent’s responsibility to obtain all addenda issued. Information concerning the number of addenda issued and the date of issue of the most recent addendum can be obtained by contacting the SNRO Contact identified in Section 1.2 of these Terms and Conditions. When ascertaining if copies of all addenda issued have been received, the Proponent shall be responsible for allowing sufficient time to receive any missing addenda and to review and allow for the contents thereof to be submitted in the Proposal, as the case may be.

PART 2: PROPOSALS

2.1 Submission or Receipt of Proposals

The Proponent's proposal must be submitted in writing, and any external content referred to in the Proposal but not included may not be considered by Metrolinx. Metrolinx may prepare and submit a proposal to a Proponent for negotiation.

Proposals that are submitted to Metrolinx must be emailed to the SNRO Contact at rick.radovski@metrolinx.com no earlier than October 28, 2019. There is no fixed closing date for submissions for a given station, instead Metrolinx will not accept proposals for such station after an Exclusive Agreement or a Station Naming Rights Agreement has been signed for such station.

PART 3: SELECTION

3.1 Assistance in Selecting

Metrolinx reserves the right to have a third party or third parties (each of which will be subject to confidentiality obligations, as described in Section 4.14 of these Terms and Conditions) review Proposals or any part thereof, to support and advise Metrolinx as necessary.

3.2 Selection of Proponent(s) for Negotiating

After receiving a proposal or providing a proposal to a Proponent, Metrolinx may invite such Proponent to enter into negotiations with Metrolinx for the SNRO with respect to a station. These negotiations will be non-exclusive.

Selection of Proponent(s) to enter into negotiations will not constitute a legally binding offer to enter into a contract on the part of Metrolinx or the Proponent(s).

3.3 Exclusivity of Negotiation of Naming Rights Agreement

On or after November 28, 2019, if Metrolinx believes that it has a proposal that provides the best value and is the most aligned to Metrolinx objectives, Metrolinx may invite the Proponent who provided or accepted that proposal to enter into exclusive negotiations with respect to a particular station by entering into an Exclusive Agreement. For greater certainty, an Exclusive Agreement need not be a separate agreement so long as the parties have agreed, in writing, to an exclusive negotiating period.

Metrolinx's negotiations will only be exclusive with respect to a station after an Exclusive Agreement has been signed with respect to such station and only on the terms set out in such Exclusive Agreement. Written notice will be provided to all parties interested in such station that negotiations will now be exclusive with a single Proponent for that station.

Selection of a Proponent to enter into exclusive negotiations will not constitute a legally binding offer to enter into a contract on the part of Metrolinx or the Proponent.

3.4 Timeframe for Negotiations

Metrolinx intends to conclude negotiations with the selected Proponent(s) quickly. A Proponent invited to enter into negotiations should therefore be prepared to provide requested information in a timely fashion and to conduct its negotiations expeditiously.

3.5 Failure to Enter Into Agreement

With a view to expediting contract negotiations, if the parties cannot execute a Station Naming Rights Agreement within the allotted timeframe of sixty (60) business days or such other timeframe as may be set out in the Exclusive Agreement, Metrolinx may discontinue exclusive negotiations for such station with such Proponent.

If Metrolinx discontinues exclusive negotiations for a station with a Proponent, it may continue to have non-exclusive negotiations with such Proponent and/or invite other Proponent(s) to enter into concurrent or replacement negotiations. As described above, Metrolinx may subsequently enter into exclusive negotiations for such station with the same proponent or a different proponent. This process shall continue for a given station until the earlier of the following: (i) a Station Naming Rights Agreement is executed for such station, (ii) there are no more Proponents remaining that are interested in such station that are eligible for negotiations, or (iii) Metrolinx elects to cancel the SNRO process with respect to such station.

PART 4 - SNRO PROCESS TERMS AND CONDITIONS

4.1 Station Naming Rights Opportunity Documents

All references to the "SNRO" means this Station Naming Rights Opportunity comprised of all Parts, Schedules and Appendices, and any Addenda thereto.

4.2 Metrolinx's Information in SNRO Only an Estimate

Metrolinx and its advisers make no representation, warranty or guarantee as to the accuracy of the information contained in the SNRO including all issued addenda. Any and all data that is provided is for the sole purpose of indicating to Proponents the general nature of the opportunity. It is the Proponent's responsibility to avail itself of all the necessary information and determine its reliability and value by performing its own due diligence in order to prepare a Proposal in response to the SNRO.

4.3 Investigation By Proponents

The Proponents shall examine carefully all documents comprising the SNRO and shall make all investigations necessary to inform themselves thoroughly as to the character and magnitude of the opportunity.

It is the sole responsibility of each Proponent to seek clarification from the SNRO Contact on any matter it considers to be unclear. Metrolinx shall not be responsible for any misunderstanding on the part of any Proponent concerning the SNRO or its process.

4.4 Proponents Shall Bear Their Own Costs

Each Proponent shall bear all costs associated with or incurred in connection with its participation in the SNRO process, including, but not limited to, preparation and submission or acceptance of its proposal and preparation for and participation in presentations, interviews, site visits, due diligence, investigation, etc. and negotiations.

4.5 No Procurement Process - Non-binding Process - No Contract A and No Claims

The SNRO process is not intended to create and shall not create a formal legally binding bidding process. For greater certainty and without limitation: (a) the SNRO shall not give rise to any Contract A-based tendering duties or any other legal obligations arising out of any process contract or collateral contract; and (b) neither the Proponent nor Metrolinx shall have the right to make any claims (in contract, tort, or otherwise) against the other with respect to the SNRO or the SNRO process.

The SNRO process is intended to identify a prospective partner for the purposes of negotiating a potential Station Naming Rights Agreement. **No legal relationship or obligation regarding the potential partnership shall be created between the Proponent and Metrolinx by the SNRO process** except: (i) with respect to the negotiating process as detailed in an executed Exclusive Agreement, or (ii) with respect to the SNRO as detailed in an executed Station Naming Rights Agreement.

The terms "partner" or "partnership" refer to the successful Proponent and the relationship with such Proponent only; they are not intended to refer to a legal "partner" or "partnership" as such terms are used in the *Partnership Act*, R.S.O. 1990, Chapter P.5.

4.6 Rights of Metrolinx

Metrolinx may, in its sole and absolute discretion and without liability:

- (a) accept or reject any or all proposals received or issued, in whole or in part;
- (b) not proceed with all or any part of the SNRO;
- (c) cancel or amend the SNRO process at any time for any reason and, at its option, issue a new SNRO for the same or similar services;
- (d) cancel any acceptance of a proposal or selection of a Proponent prior to the final execution of an Exclusive Agreement and/or the written Station Naming Rights Agreement by Metrolinx;
- (e) waive any requirement of the SNRO;
- (f) check or not check or only check certain of the client references provided by the Proponent; and
- (g) select more than one Proponent through the SNRO process.

4.7 Illegal or Unethical Conduct

Proponents shall not engage in any illegal bidding practices, including such activities as bid-rigging, price-fixing, bribery, fraud or collusion. Proponents shall not engage in any unethical conduct, including lobbying or other inappropriate communications, offers of gifts to Metrolinx employees, officers or board members, deceitfulness, submitting bids containing misrepresentations or other misleading or inaccurate information, or any other conduct that compromises or may be seen to compromise the SNRO process.

Metrolinx may disqualify the Proponent from this SNRO process and/or prohibit the Proponent from participating in any future Metrolinx opportunity or procurement process based on illegal or unethical conduct in this SNRO process or any prior opportunity or procurement process conducted by Metrolinx.

4.9 Conflict of Interest

For the purposes of this Section, "Conflict of Interest" shall have the meaning ascribed to it in the conflict of interest form.

The Proponents shall carry out such assessments and make such inquiries as necessary in order to complete the conflict of interest form fully, accurately, and honestly.

The Proponents shall not engage in any acts which create a Conflict of Interest.

If, at the sole determination of Metrolinx, 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 SNRO process or unilaterally terminate any agreement entered into with the Proponent pursuant to this SNRO process.

4.10 Disqualification for Misrepresentation

Metrolinx may disqualify the Proponent or rescind a contract subsequently entered into if the Proponent's response contains misrepresentations or any other inaccurate, misleading or incomplete information.

4.11 References and Past Performance

Metrolinx's assessment may include information provided by the Proponent's references and may also consider the Proponent's past performance on previous contracts with Metrolinx.

4.12 Notification of Outcome

All Proponents that have submitted or accepted a proposal for a station shall be notified in writing of the outcome of the selection process for the partnership opportunity for such station after the execution of the final Station Naming Rights Agreement with the successful Proponent.

4.13 Public Disclosure and Lobbying

Each Proponent responding to this SNRO shall avoid making any public comment, responding to questions in a public forum or carrying out activities to publicly promote or advertise their qualifications or interest in the Station Naming Rights Partnership opportunity, except with the prior written consent of Metrolinx in each instance. All Proponents must comply with all applicable federal and provincial legislation regarding lobbying.

4.14 Disclosure of Information

Proponents should clearly identify any information in their Proposals supplied in confidence, for which confidentiality is to be maintained by Metrolinx and is advised to consult with their own legal advisors regarding the appropriate way to identify such information. Confidential information does not include information that: (i) is or becomes generally available to the public through no fault of Metrolinx, (ii) prior to receipt from the Proponent, was known to Metrolinx on a non-confidential basis, as documented by records possessed by Metrolinx, (iii) was, or is, independently developed by Metrolinx without reference to the confidential information disclosed by the Proponent, as documented by records possessed by Metrolinx, or (iv) is available to Metrolinx on a non-confidential basis from a source other than the Proponent. Metrolinx will make reasonable efforts to safeguard the Proponent's confidential information, subject to its disclosure requirements under the *Freedom of Information and Protection of Privacy Act*, R.S.O. 1990, c. F.31 ("**FIPPA**") or any disclosure requirements imposed by law or by order of a court or tribunal. Proponents are advised that their proposals may be disclosed, on a confidential basis, to the Government of Ontario, the Ministry of Transportation, or to advisers retained by Metrolinx to advise or assist with the Station Naming Rights Opportunity, including the assessment of proposals. By submitting a proposal, the Proponent consents to: (i) the disclosure of such proposal, on a confidential basis, by Metrolinx to the Government of Ontario, the Ministry of Transportation, or to the advisers that it has retained to advise or assist with Station Naming Rights Opportunity; and (ii) the disclosure of such proposal in accordance with FIPPA or otherwise as may be required by law or by a court or tribunal. Metrolinx reserves the right to disclose the identity of any and all Proponents responding to this SNRO and to disclose the identity of the successful Proponent for that enters into a Station Naming Rights Agreement.

4.15 Term Sheet to Be Retained by Metrolinx

Metrolinx will not return the proposal or any documentation submitted by a Proponent.

4.16 Confidential Information of Metrolinx

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

- (a) is the sole property of Metrolinx and must be treated as confidential;

(b) is not to be used for any purpose other than replying to the SNRO and the performance of any subsequent agreement; and

(c) must not be disclosed without prior written authorization from Metrolinx.

4.17 Exclusion of Liability

By engaging in the SNRO process, the Proponent agrees that it will not assert any right of action or make any claim whatsoever against Metrolinx, whether arising under contract, tort (including, but not limited to negligence), breach of contract, unconscionability or any theory of liability at law or in equity, which relates in any way to the Proponent's proposal, the process by which Metrolinx selects or rejects any proposal or enters into a Station Naming Rights Agreement with any Proponent, and expressly waives and releases all such rights of action and claims.

4.18 Governing Law

The terms and conditions in this SNRO Process Terms and Conditions (a) are included for greater certainty and are intended to be interpreted broadly and separately (with no particular provision intended to limit the scope of any other provision); (b) are non-exhaustive (and shall not be construed as intending to limit the pre-existing rights of the parties to engage in pre-contractual discussions in accordance with the common law governing direct commercial negotiations); and (c) are to be governed by and construed in accordance with the laws of the province of Ontario and the federal laws of Canada applicable therein.