

NOTICE TO CONTRACTORS

It is highly recommended that a thorough review of the Tender Document be completed upon purchase. Metrolinx has revised several sections of the Definitions, Instructions to Bidders, Tender 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 Tender Document requirements may result in your Submission being declared non-compliant and disqualified.



Tender For

Tender Description: Emergent Signals
Contractor for
Metrolinx Signals &
Communications
CPG Works

Tender Number: IT-2018-NETI-292

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Metrolinx Signals & Communications CPG Works
Contract No. IT-2018-NETI-292**

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BIDDER'S SUBMISSION CHECKLIST

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1.0 Submission Checklist

The following checklist provides the Bidder with a consolidated listing of the requirements for the Submission. Bidders 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 Bidder has read through all the Tender Documents including any Addenda that have been issued and these have all been considered in your Submission.	<input type="checkbox"/>
The Bidder 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 Bidder has reviewed the Tender Timetable and understands all the dates and timelines associated with this Tender Process	<input type="checkbox"/>
Contact information for the individual responsible for the Submission has been included in "Tender Document Form: Form of Tender".	<input type="checkbox"/>
The Bidder understands the requirements for Electronic Bid Submission and shall comply with the Submission requirements.	<input type="checkbox"/>
The Bidder's Submission has been prepared in accordance with the Instructions to Bidders (i.e. mandatory formats, templates and requirements) as outlined in the Tender Documents.	<input type="checkbox"/>
The Bidder's Price Submission has been completed in full and included with the Submission.	<input type="checkbox"/>
The Bidder has attended the Mandatory Site / Information Meeting, if applicable.	<input type="checkbox"/>
The Bidder 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 Bidder has completed and included all Tender Document Forms with its Submission.	<input type="checkbox"/>

INTRODUCTION

1.0 General

- 1.1 Metrolinx is issuing this call for Tenders to retain the services of Contractors to provide the goods and/or services described herein. Metrolinx intends to notify multiple Bidders of their acceptance of their Submission and enter into a stage one Contract for minor works as well as be put into a list to be invited to bid on a second stage process for additional works as stated below.
- 1.2 You are invited to submit your Submission for an Emergent Signals Contractor for Tender No IT-2018-NETI-292 as more particularly described in this Tender Document as required by Metrolinx Signal and Communications CPG Works.
- 1.3 Metrolinx shall conduct a competitive second stage process to determine the assignment of defined parts of work arising out of the Work (the “SOW”) to a Contractor. For each SOW, every Contractor that (i) has been awarded an emergent contract for the Work as part of IT-2018-NETI-292, will be invited to respond as part of the competitive second stage process for the SOW. Notwithstanding the foregoing, Metrolinx reserves the right to assign Work directly to a Contractor, by-passing the second stage process if the expected value of the Work, as determined by Metrolinx, is less than \$25,000 (refer to Section 8.5 Task Assignment of the General Conditions of the Contract).

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1.0 In this Tender Document,

- 1.1 “**Addenda**”/”**Addendum**” is the formal written release of additions, deletions, revisions, clarifications to this Tender Document, via the Metrolinx MERX Portal, that form a part of the Tender Document and subsequently the Contract as specified in Section 4.0 of Instructions to Bidders.
- 1.2 “**Bidder**” means the entity that submits a Submission in response to this Tender Document and who, if notified of acceptance of its Submission by Metrolinx, shall execute the Contract with Metrolinx for provision of the Work.
- 1.3 “**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.
- 1.4 “**Closing**” means the deadline for Metrolinx to receive Submissions as specified in “Closing” of Section 1.2, Tender Timetable, of Instructions to Bidders.
- 1.5 “**Conflict of Interest**” means:
- (a) in relation to this Tender Process, the Bidder 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 Bidders, (ii) communicating with any person with a view to influencing preferred treatment in this Tender Process (including but not limited to the lobbying of decision makers involved in this Tender Process), or (iii) engaging in conduct that compromises, or could be seen to compromise, the integrity of this Tender Process; or
 - (b) in relation to the performance of its contractual obligations contemplated in the Contract that is the subject of this procurement, the Bidder’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.
- 1.6 “**Contract**” means this contract between the Contractor and Metrolinx pursuant to this Tender No. IT-2018-NETI-292 including the Articles of Agreement, Addenda, the General Conditions of the Contract, the Contract Documents, and any and all other documents referenced therein.

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- 1.7 **"Contractor"** means the Bidder identified on Page 1 of "Tender Document Form: Form of Tender" and who, if notified of acceptance of its Submission by Metrolinx, shall execute the Contract with Metrolinx for provision of the Work.
- 1.8 **"Contract Documents"** means the Contract and those documents listed in List of Contents and any written amendments thereto as agreed to by the Parties.
- 1.9 **"Drawings"**, if applicable to this Tender Document, describe the detailed technical requirements of the Work and form part of the Scope of Work contained herein.
- 1.10 **"EBS"** means Electronic Bid Submission.
- 1.11 **"E-Bid Authorized Signer"** is the designated individual in the Bidder's organization who has the authority to bind the Bidder to each and every term, condition, article and obligation of the Tender Document and any resultant Contract.
- 1.12 **"E-Bid Confirmation Number"** is the receipt received by a Bidder from the Metrolinx MERX Portal indicating that the Submission was uploaded successfully.
- 1.13 **"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.
- 1.14 **"Joint Venture"** means a business arrangement of two or more parties proposed for this Tender Process further described in Section 20.0 of Instructions to Bidders.
- 1.15 **"Key Personnel"** means the individual identified by name in "Tender Document Form: Contractor Personnel".
- 1.16 **"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.
- 1.17 **"Metrolinx MERX Portal"** is the electronic bid solicitation and Contractor Submission website (www.metrolinx.merx.com) that facilitates Metrolinx and Bidder interaction as it directly relates to the; download by a Contractor of

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Metrolinx Tender Documents including Addenda from, and upload by a Contractor of a Submission to Metrolinx in response to, this Tender Process.

- 1.18 **"Option"** means a component of the Work that is to be exercised at the sole discretion of Metrolinx.
- 1.19 **"PDF"** means Portable Document Format.
- 1.20 **"Participant in Charge"** shall have the same meaning ascribed in Section 21.3 of Instructions to Bidders.
- 1.21 **"Parties"** means both of Metrolinx and the Contractor and a "Party" means either one of them.
- 1.22 **"Place of the Work"** is the designated site or location of the Work.
- 1.23 **"Procurement Office"** means Metrolinx Procurement Services office located at 277 Front Street West, 4th Floor, Mail Room, Toronto, Ontario, Canada, M5V 2X4.
- 1.24 **"Procurement Representative"** means the following individual in the Procurement Services Department:

Nicole Latimer, Procurement Officer – Construction Division	
Telephone number	416-202-5630
Email	Nicole.Latimer@metrolinx.com

- 1.25 **"Submission"** means all documentation which the Bidder shall be bound to and other materials and information submitted electronically by the Bidder's E-Bid Authorized Signer through the Metrolinx MERX Portal in response to this Tender Document or in respect of this Tender Process.
- 1.26 **"SubContractor"** means an individual, firm, partnership or corporation having a direct contract with the Contractor or another SubContractor to perform a part or parts of the Work.
- 1.27 **"Supplier"** means an individual, firm, partnership or corporation having a direct contract with the Contractor or another SubContractor to provide goods and services required to carry out the Work.

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- 1.28 "**Scope of Work**" describes the general and detailed requirements of the Work and are to be read in conjunction with any Drawings contained herein, if applicable.
- 1.29 "**Tender Document**" means this Tender document comprised of sections listed in the List of Contents, issued by Metrolinx for the Work to be provided, and any Addenda thereto.
- 1.30 "**Tender Document Form(s)**" means any sections of this Tender Document which require completion and must be included with the Submission.
- 1.31 "**Tender Process**" means the procurement process for this Tender as set out in the Tender Document herein.
- 1.32 "**Total Contract Price**" means the price of the second stage SOW/ Task Assignment procurement, as applicable.
- 1.33 "**Total Evaluated Price**" means the total amount set out in Tender Document Form: Contract Prices.
- 1.34 "**Vendor Performance Management (VPM)**" shall have the meaning ascribed in Section 30.0 of Instructions to Bidders.
- 1.35 "**Vendor Performance Rating (VPR)**" is the average of a Contractor'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 Contractors in a particular category who have performed services for Metrolinx during the prior fiscal year.
- 1.36 "**Vendor of Record (VOR)**" means the Contractor(s) under Contract at the conclusion of this Tender Process. The Contractor(s) would be authorized to proceed with Task and would be pre-qualified to bid on Work, as needed, through invitational competitive second-stage procurement process(es).
- 1.37 "**Work**" means Emergent Signals Work and any activities 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.

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1.0 General

1.1 The Bidder's Submission will be evaluated in accordance with the "Submission Evaluation and Selection Process" section of this Tender Document.

1.2 Tender Timetable

Milestone	Date
Issuance of Tender Document	January 4, 2019
Deadline To Propose Alternate Products and Materials	January 15, 2019
Deadline to Submit Questions	January 17, 2019
Last day for issuance of Addenda	January 21, 2019
Closing	Friday January 25, 2019@ 3:00 p.m. Toronto, Ontario time
Deadline to Submit Bid Deposit	Wednesday January 30, 2019@ 3:00 p.m. Toronto, Ontario time
Commencement Date of Work	Upon Execution of the Contract

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

2.0 Tender Enquiries and Requests for Clarifications, Changes or Revisions

2.1 All written enquiries and other communications prior to full Contract execution are to be directed solely to the Procurement Representative.

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 Tender 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 Tender 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 Bidders to submit their questions or requests early in the question and answer (referred to as "Q and

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A”) process. When seeking changes or amendments to any of the terms and conditions of this Tender Process, including the terms contained in General Conditions of the Contract, the Bidder should provide sufficient detail to provide Metrolinx with an understanding of the rationale for the change or amendment and, if applicable, the Bidder should propose the language that would address its concern(s).

- 2.4 All questions/requests for clarification, change or amendment related to this Tender Document are to be submitted via e-mail to the attention of the Procurement Representative using the question and answer form attached separately as:

“Q and A Form IT-2018-NETI-292”

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 Bidder, a new copy of the above referenced Q and A Form should be submitted.

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

- 4.1 In the event that Metrolinx determines in its sole discretion that clarifications and/or revisions to this Tender Document are required, Metrolinx shall issue an Addendum. Information concerning Addenda can be found through the Metrolinx MERX Portal for this Tender Process. Bidders are urged to select automatic notification of Addenda issuance when registering on the Metrolinx MERX Portal.
- 4.2 It is the Bidder's responsibility to ensure that they have obtained copies of all Addenda, and to ensure that the Addenda have been considered in their

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Submission. Addenda/Addendum shall become part of this Tender Document and the contents thereof shall be allowed for in the prices bid for the Work.

- 4.3 The Bidder, 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 Bidder shall submit the Submission using the most current Tender Document Forms as issued via Addenda. Failure to use the most current pages of the Tender Document Forms may result in the Submission being found non-compliant and disqualified.

5.0 Tender 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 Bidders 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 Bidder to include all required documents and/or information may result in the Bidder's Submission being found non-compliant and disqualified.
- 5.3 Bidders shall examine carefully the whole of the Tender 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 Bidder 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 Tender 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 Tender Document Forms issued by Metrolinx and except for designated sections where the Bidder is to enter information, the Tender Document and Tender 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.

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- 5.7 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 Bidder, upon request by Metrolinx.
- 5.8 If during the preparation of their Submission, the Bidder 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 Bidder, 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.
- 5.9 All prices shall be firm and quoted in Canadian funds.
- 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 Tender 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 Bidder.
- 5.12 The Bidder 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 Bidder shall submit the Submission within sufficient time to ensure its arrival before the Closing.
- (a) If the Bidder 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.

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- 6.2 Upon successful completion of the electronic submission process, the Bidder 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 Bidders 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.
- 6.5 Upon execution of the final Contract, all Bidders that have submitted a Submission shall be notified in writing of the results of the award to the successful Bidder. Results of the award to the successful Bidder shall also be posted on the Metrolinx MERX Portal. (search the Tender Number and select "Awards").

7.0 Clarification of Submissions

- 7.1 Metrolinx reserves the right, within one hundred and twenty (120) calendar days following the Closing, to request that any Bidder clarify its Submission or provide the required supporting documentation specified in "Tender Document Form: Mandatory Corporate, Personnel and Technical Requirements", and such Bidders 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 Bidders to discuss aspects of their Submission. Metrolinx may require Bidders to submit additional information clarifying any matters contained in their Submission, provide confirmation of any matters contained in their Submission or prepare a written interpretation of any aspect of a Submission for the respective Bidder'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 Bidder shall be considered to form part of the Submission of those Bidders.
- 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 Bidder's Submission.
- 7.4 Metrolinx is not obliged to seek clarification of any aspect of a Submission.

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8.0 Bidder Qualifications

- 8.1 Only qualified Contractors will be considered for award of this Contract. In order to be considered qualified; the Contractor shall have been successfully pre-qualified under Metrolinx Signals Contractor Prequalification No. SQ-2015-TS-003 & SQ-2016-NTA-009.
- 8.2 The Bidder shall also demonstrate to the satisfaction of Metrolinx in the sole discretion of Metrolinx, that the Bidder has:
- (a) achieved at least one (1) of the following safety requirements:
 - (i) CORTM Certified status with the Infrastructure Health and Safety Association (IHSA); or
 - (ii) OHSAS 18001 certification; or
 - (iii) Out-of-Province CORTM Reciprocity (for bidding purposes only) through IHSA.

9.0 Insurance

- 9.1 The Bidder 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 Bidder to comply with this requirement shall result in acceptance of the Bidder's Submission to be declared void.

10.0 Workplace Safety and Insurance Clearance Certificate

- 10.1 The Bidder 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 Bidder to comply with this requirement shall result in acceptance of the Bidder's Submission to be declared void and forfeiture of the Bidder's Bid Deposit to Metrolinx.

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

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Contract, the Bidder 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 terms and 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 Metrolinx's assessment, in its sole discretion, of the Bidder'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 Bidder to comply with this requirement shall result in acceptance of the Bidder's Submission to be declared void and forfeiture of the Bidder's Bid Deposit to Metrolinx (if a Bid Deposit is applicable).

12.0 Bid Deposit

- 12.1 The Bidder shall comply with "Tender Document Form: Mandatory Corporate, Personnel and Technical Requirements" as it relates to the Bid Deposit requirement. Failure to comply with the aforementioned requirement shall result in the Submission being found non-compliant and disqualified.
- 12.2 The Bidder shall submit the required original Bid Deposit to Metrolinx Procurement Office no later than the deadline indicated in Section 1.2, Tender Timetable of Instructions to Bidders.
- (a) If hand delivering the Bid Deposit to the Procurement Office, the Bidder must present government issued photo identification to the security desk representative(s) upon arrival. Inform the security representative that an envelope is being delivered to the Metrolinx mail room on the 4th floor. The Bidder will not be provided with a receipt upon drop off of any documentation, envelopes or packages. The envelope should be clearly labelled as follows:
- (i) "URGENT: Agreement to Bond/Bid Deposit
Attention: Nicole Latimer
Procurement Services
Tender No. IT-2018-NETI-292
Hand Delivered on: [Insert Date and Time the package was delivered]"

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- (ii) The Bidder should send an email to the Procurement Representative indicating that the Bid Deposit has been delivered to the Procurement Office.
- 12.3 The Bid Deposit shall be in the form of a original bid bond from a recognized Canadian Surety or an original certified cheque or bank draft or letter of credit drawn upon a recognized Canadian Financial institution, payable to "Metrolinx" in the amount of **\$200,000.00** (the "Bid Deposit"). The bid bond shall be duly executed by the Surety and signed by the Bidder. Certified Cheques, Bank Drafts or Letters of Credit shall be duly executed by the financial institution. All signatures and seals (if required) shall be originals.
 - (a) Failure by a Bidder to provide their original Bid Deposit by the deadline stated in Section 1.2 shall result in the Bidder's Submission being found non-compliant and disqualified. It is the responsibility of the Bidder to properly arrange for the delivery of the original Bid Deposit to the Procurement Office to ensure that Metrolinx receives such original Bid Deposit within the timeframe specified in this Section 12.0, Bid Deposit.
- 12.4 The Bid Deposit should include the Contract name and number.
- 12.5 Certified cheques and bank drafts shall not be deposited and interest shall therefore not be paid.
- 12.6 The original Bid Deposit will be retained until all Submissions received have been reviewed and evaluated by Metrolinx. The Bid Deposits, with the exception of those belonging to the two (2) lowest priced responsive Submissions received, may be returned to Bidders upon request, ten (10) Business Days after the Closing. Otherwise the Bid Deposits, with the exception of a bid bond, shall be returned after a Contract for the Work has been executed.
- 12.7 The Bidder acknowledges and agrees that its Bid Deposit will be forfeited to Metrolinx as liquidated damages upon the occurrence of any of the following events:
 - (a) Withdrawal of the Submission by the Bidder after the Closing where such withdrawal has not been requested by Metrolinx; or
 - (b) Failure by the Bidder to execute the Contract; or
 - (c) Failure by the Bidder to provide any of the documents required by the Tender Documents as a condition of entering into the Contract, including, but not necessarily limited to, the Contract Security, Insurance Certificates

INSTRUCTIONS TO BIDDERS

or Workplace Safety and Insurance Clearance Certificate within the timeframes specified in this Tender Document.

13.0 Contract Security

13.1 Not applicable.

14.0 Alternate Products and Materials

14.1 Bidders wishing to propose alternate products or materials, other than those specified in the Tender Documents, for use in the Work shall, no later than the date specified in Section 1.2, Tender Timetable, of Instructions to Bidders, submit a request in writing to the Procurement Representative seeking approval for the proposed alternate. The request must include supporting documentation to establish the proposed alternate's equivalence to the product or material specified.

14.2 Metrolinx shall, prior to Closing, respond to such requests as follows:

- (a) Should Metrolinx, in its sole discretion, approve the proposed alternate, it will issue an Addendum identifying the alternate and stating it is approved for use as part of the Work; or
- (b) Should Metrolinx, in its sole discretion, not approve the proposed alternate, it shall only inform the Bidder who proposed the alternate of its decision.

14.3 Metrolinx is under no obligation to accept or reject any proposed alternate. Metrolinx shall accept or reject any proposed alternate at its sole discretion. Metrolinx is under no obligation to disclose the reason, or reasons, to any Bidder for the acceptance or rejection of any proposed alternate.

15.0 Mandatory Requirements

15.1 The Bidders must meet all mandatory requirements in order for their Submission to be considered further. Failure of a Bidder to meet all of the mandatory requirements listed below shall result in the Bidder's Submission to be found non-compliant and will not be considered further.

15.2 The mandatory requirements for this Tender Document are as follows:

- (a) The Submission shall be submitted by the Bidder'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.

INSTRUCTIONS TO BIDDERS

- (b) Pricing information must be completed and submitted with the Submission using "Tender Document Form: Contract Prices".
- (c) The Bidder shall declare any conflicts of interest in Section 1.1(b) of "Tender Document Form: 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 "Tender Document Form: Conflict of Interest" shall apply.
- (d) The Bidder must meet all of the mandatory requirements stated in "Tender Document Form: Mandatory Corporate, Personnel and Technical Requirements".
- (e) The Bidder shall provide the information requested in "Tender Document Form: Contractor Personnel" with the Submission.

16.0 Rights of Metrolinx

16.1 Metrolinx reserves the right, in its sole discretion:

- (a) to cancel this call for Tenders 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 Bidder except the obligation to return the Bid Deposit;
- (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 Bidder 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 Tender Document;
- (c) to disqualify any Submission which contains misrepresentations or any other inaccurate or misleading information;
- (d) to waive any requirement of this Tender Document or request amendment of a Submission by the Bidder 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 Bidder's questions;

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- (g) to use its own experiences, and the experiences of any other third party, with the Bidder in previous contracts in order to evaluate the Bidder's Submission. Specifically to,
 - (i) take into account the experience of Metrolinx itself in dealing with the Bidder in circumstances where the Bidder has carried out (or is carrying out) a project for Metrolinx (whether or not the Bidder has listed such project in "Tender Document Form: Bidder's Qualifications"; and
 - (ii) make general inquiries of third parties with respect to the qualifications of a Bidder and take the results of these general inquiries into account (whether or not the Bidder has listed the third party or the applicable project in "Tender Document Form: Bidder's Qualifications".
- (h) to issue or not to issue a notification of acceptance of a Bidder'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 Bidder's Submission based on the Bidder's, or its SubContractor(s), experiences with Metrolinx or other departments or agencies within the Ontario government, if the Bidder or its SubContractor(s):
 - (i) was/were previously given a "Notification of Submission Acceptance" 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 16.1(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 16.1(i)(i) through (iii) above.

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- (j) to reject any Bidder's Submission during this Tender Process and any bidder's submission from any 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) to five (5) years or currently active;
- (l) to suspend a Bidder's bidding rights for a period of twelve (12) months after Closing, for failure of the Bidder to provide the Agreement to Bond or specified alternative (if applicable) by the deadline stated in Section 1.2, Tender Timetable of Instructions to Bidders;
- (m) to distribute via Addenda, copies of any Bidder's questions received and responses provided by Metrolinx, to all Bidders who received this Tender Document;
- (n) to request that a Bidder voluntarily withdraw its Submission without penalty, where in the opinion of Metrolinx the Submission is substantially below internal budget estimates and therefore the Work would not be satisfactorily completed;
- (o) to request that a Bidder voluntarily withdraw from its Submission, without penalty, any conditional and/or qualifying statements, as determined by Metrolinx in its sole discretion;
- (p) to disqualify any Submission where the Bidder does not voluntarily withdraw parts of, or all of, its Submission, as requested by Metrolinx under Rights of Metrolinx, sections 16.1(n) or 16.1(o);
- (q) to postpone the Closing, at which time all Bidders who received Tender Documents shall be advised of the new Closing via written Addenda;
- (r) to within one hundred and twenty (120) days following Closing, exercise any rights under Section 7.1 under Clarification of Submissions of Instructions to Bidders;
- (s) to correct arithmetical 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. Arithmetical corrections shall only be made based upon the unit prices submitted by the Bidder. Corrections to extensions, sums, differences, carry forward errors or other arithmetical operations based on the unit prices submitted will be identified on the Tender Document by

INSTRUCTIONS TO BIDDERS

Metrolinx and acknowledged in each instance by the initials of the Bidder's and Metrolinx's authorized signatories. Such corrections will become part of the Bidder's Submission. Failure of the Bidder to acknowledge such corrections shall result in its Submission being found non-compliant and disqualified.

- (t) to, upon failure of the Bidder whose Submission was accepted to fulfill the conditions of Section 17.2 under Contract to be Executed of Instructions to Bidders, cancel acceptance of the Bidder's Submission by Metrolinx and consistent with industry practice, notify another Bidder who was determined to be qualified in accordance with the "Submission Evaluation and Selection Process" section of this Tender Document and who submitted a compliant Submission, that its Submission has been accepted and, subsequent to the fulfillment of the conditions of Section 17.2 under Contract to be Executed of Instructions to Bidders, and for Metrolinx to issue a notification of acceptance of the Submission to that Bidder.

17.0 Contract To Be Executed

17.1 Metrolinx shall notify the Bidder 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 Bidder for review and execution.

- (a) It is the intention of Metrolinx to establish Contracts with three (3) or more Contractors.
- (b) Metrolinx's upset limit for this Work is two and a half million dollars (\$2,500,000), excluding H.S.T. over a period of two (2) fiscal years.
- (c) Metrolinx, in its sole discretion, will award more than one (1) Contract, the amount stated in Section 17.1(b) above shall be divided between multiple Contracts.
 - (i) Metrolinx will exert reasonable efforts to maintain evenly the shares/volumes, however, actual shares/volumes may vary depending on the actual competitive SOW process or Task Assignments required throughout the duration of the Contract, as well as a Contractor's ability to accept and perform Work.

17.2 The Contract shall be executed by the Bidder and delivered to Metrolinx within five (5) Business Days of notification to the Bidder that Metrolinx has accepted its Submission. Failure by the Bidder to execute and deliver the Contract with the

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required Insurance Certificates, Workplace Safety and Insurance Clearance Certificate and the Performance and Labour and Materials Payment Bonds, or specified alternative (if applicable), 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 Bidder's Submission and forfeiture of the Bidder's Bid Deposit.

- 17.3 Upon failure of the Bidder, whose Submission was accepted, to fulfil the conditions of Section 17.2 herein, Metrolinx may, at its sole discretion, cancel acceptance of the Bidder's Submission consistent with Section 16.1(t), under Rights of Metrolinx, of Instructions to Bidders
- 17.4 There shall be no binding contract for the supply of the Work unless and until Metrolinx and the Bidder who's Submission has been accepted have executed the written agreements contemplated in the Tender Document.
- 17.5 The Bidder shall not start the Work before the SOW/ Task Assignment has been executed by the Bidder and Metrolinx and all documents required by the Document, as a condition of acceptance, have been delivered to Metrolinx.

18.0 SubContractors and Suppliers

- 18.1 Bidders shall be responsible for the distribution of all the instruments of the Tender Document and Addenda/Addendum thereto to all SubContractors or Suppliers.
- 18.2 Metrolinx or its representatives will have no obligation whatsoever to supply any SubContractor or Supplier with all or part of the Tender Document and Addenda thereto, and shall not be liable for any damages suffered by any Bidder, SubContractor or Supplier who does not receive or review the Tender Document or Addenda/Addendum. No claims for payment or for a change order will be entertained because of the failure of any SubContractor or Supplier to receive or review the Tender Document or Addenda/Addendum which have been supplied to the Bidders prior to Closing.

19.0 Submission Evaluation

- 19.1 Subject always to the "Rights of Metrolinx" set out herein and without creating any obligations whatsoever to any Bidder, Metrolinx advises that it shall evaluate Submissions using criteria stated under the "Submission Evaluation and Selection Process" section of this Tender Document.

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20.0 Conflict of Interest

- 20.1 Conflict of Interest shall be as defined in "Definitions" of this Tender Document. The Conflict of Interest declaration included in "Tender Document Form: Conflict of Interest" shall be completed and provided with the Submission.
- 20.2 Examples of Conflict of Interest include but are not limited to:
- (a) any director, officer, or employee or advisor of Metrolinx who has any connection or relationship with, or any pecuniary interest in the Bidder or any SubContractor thereof;
 - (b) the Bidder or any SubContractor thereof is 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 Bidder in the preparation of its Submission.
- 20.3 If, at the determination of Metrolinx in its sole discretion, a Bidder is found to be in a Conflict of Interest that cannot be resolved or the Bidder fails to disclose any actual or potential Conflict of Interest, Metrolinx may, at its sole discretion, disqualify the Bidder from the Tender Process or terminate any agreement entered into with the Bidder pursuant to this Tender Process.

21.0 Joint Ventures

- 21.1 If a Joint Venture is proposed, the Bidder shall state in its Submission the Joint Venture agreement that forms the basis on which the Joint Venture plans to carry out its obligations.
- 21.2 The Joint Venture shall not change its Joint Venture arrangement.
- 21.3 One of the Joint Venture participants shall be nominated as being in charge during this Tender 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.
- 21.4 Each Joint Venture participant shall demonstrate its authorization of the Participant in Charge by submitting with their Submissions a power of attorney, or similar document, signed by a legally authorized representative of the Joint

INSTRUCTIONS TO BIDDERS

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

- 21.5 All participants of the Joint Venture shall be legally liable, jointly and severally, during this Tender Process and during the Contract for carrying out the obligations pursuant to the Contract.

22.0 Prohibited Contacts and Lobbying Prohibition

- 22.1 A Bidder, Bidder's team members and all of the Bidder's respective SubContractors, advisors, employees and representatives are prohibited from engaging in any form of political or other lobbying, of any kind whatsoever, to influence the outcome of this Tender Process.
- 22.2 Without limiting the generality of Section 22.1 above, neither the Bidder nor the Bidder's team members nor any of their respective SubContractors, advisors, employees or representatives shall contact or attempt to contact, either directly or indirectly, at any time during this Tender 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.

23.0 Media Releases, Public Disclosures and Public Announcements

- 23.1 A Bidder shall not, and shall ensure that its team members, advisors, SubContractors, 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 Tender Process, its Submission or any matters related thereto, without the prior written consent of Metrolinx.
- 23.2 A Bidder shall not, and shall ensure that its team members, advisors, SubContractors, 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 Bidder or Submission or to publicly promote or advertise its own qualifications, interest in or participation in the Tender Process without the prior written consent of Metrolinx, which may be withheld in the sole discretion of Metrolinx. Notwithstanding this item, the Bidder, Bidder's team members and all of the Bidder's respective advisors, SubContractors, employees and representatives are permitted to state publicly that it/they are participating in this Tender Process.

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- 23.3 For greater clarity, this section does not prohibit disclosures necessary to permit the Bidder to discuss this Tender Document with prospective SubContractors regarding their participation in this Tender Process.

24.0 Restriction on Communications Between Bidders - No Collusion

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

25.0 Disclosure of Information

- 25.1 The Bidder 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.
- 25.2 The Bidder 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.
- 25.3 Under Ontario's Open Data Directive, Metrolinx is required to publish certain procurement information. Accordingly, the Bidder acknowledges that, subject to any applicable FIPPA exemptions, Metrolinx may publish procurement data including but not limited to the names of the Bidders and the winning bid in accordance with Ontario's Open Data Directive. For more information, see: www.ontario.ca/page/ontarios-open-data-directive.
- 25.4 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, Bidders 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.

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

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

27.0 Submission to Be Retained by Metrolinx

27.1 Metrolinx shall not return a Submission or any accompanying documentation submitted, with the exception of a Bid Deposit and/or Agreement to Bond or specified alternatives (if applicable), submitted by a Bidder.

28.0 Confidential Information of Metrolinx

28.1 All information provided by or obtained from Metrolinx in any form in connection with this Tender 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 Tender Document and the performance of any subsequent agreement; and
- (c) shall not be disclosed without prior written authorization from Metrolinx.

29.0 Bidders Shall Bear Their Own Costs

29.1 The Bidder shall bear all costs associated with or incurred in connection with its participation in this Tender Process, including, but not limited to, preparation of its Submission.

30.0 Changes to Key Personnel

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

30.2 In response to a request as per Section 30.1 above, Metrolinx may, in its sole discretion provide the Bidder with instructions as to the type of information required by Metrolinx to consider the proposed change to the Bidder's Key Personnel as well as the deadlines for submission of information that the Bidder must meet in order to have its request considered by Metrolinx.

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- 30.3 The Bidder 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 Bidder shall propose an alternate substitute or change for review by Metrolinx in the same manner as the first proposed substitute.
- 30.4 Metrolinx may, in its sole discretion, disallow any actual or proposed change.

31.0 Vendor Performance Management Program

- 31.1 Vendor Performance Management (“VPM”) Program means the Metrolinx system for monitoring, evaluating and recording vendor performance, as same may be amended or replaced from time to time. The Vendor Performance Management Program establishes a standard methodology for the incorporation of a vendor’s past performance in a particular category as a criterion in assessing that vendor’s submission for future work with Metrolinx.
- 31.2 Pursuant to Metrolinx’s VPM Program, Metrolinx will be considering the Bidder’s past performance under contracts with Metrolinx, in a particular category, in evaluating Submissions received in response to this Tender Document.
- 31.3 The VPR is being applied as a component of evaluation for this Tender Process in accordance with the “Submission Evaluation and Selection Process” section of this Tender Document.
- 31.4 A Bidder may access their VPR through an annual subscription on the Metrolinx MERX Portal. If a Bidder has questions regarding their VPR, they should contact the Procurement Representative in accordance with Section 2.0 of Instructions to Bidders.
- 31.5 Metrolinx shall not be held liable for any administrative delays in updating VPR scores, which could result in a Vendor being bypassed for award in this Tender Process.
- 31.6 Information regarding Metrolinx Vendor Performance Management System and how a Vendor Performance Rating is calculated can be found in the Metrolinx “Vendor Relationship Management Procedures and Guidelines v1.1 dated November 7, 2016”, or most current version, accessed through the following link:

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http://www.metrolinx.com/tenders/en/VendorRelationshipManagement_Guidelines.pdf.

- 31.7 The "Contract Performance Appraisal" applicable to any Contract resulting from this Tender Process, can be found under "Attachments".

END OF SECTION

SUBMISSION EVALUATION AND SELECTION PROCESS

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1.0 Evaluation

- 1.1 Submissions shall undergo several phases of evaluation based on documentation provided and Contractor Performance Rating information contained in the Metrolinx 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 two (2) phases, as follows:
 - (a) Phase One: Administrative Evaluation (Compliant/Non-Compliant)
 - (i) Submissions shall undergo an administrative evaluation to determine compliance with the administrative mandatory requirements. Only those Submissions determined in the sole opinion of Metrolinx, to have fulfilled all the administrative mandatory requirements shall proceed to Phase Two of the evaluation process. Submissions that do not meet the administrative mandatory requirements shall be considered 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: Contractor Performance Rating (VPR) (Part A) and Pricing (Part B) Evaluation
 - (i) Part A - Contractor Performance Rating (VPR) Evaluation
 - (A) The VPR of each Bidder's Submission proceeding to this Phase Two: VPR Evaluation shall be evaluated as follows:
 - I) For this Tender Process as it relates to evaluation of a Bidder's VPR, "Performance Category" shall be defined as the Construction Services category.

SUBMISSION EVALUATION AND SELECTION PROCESS

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- 1) In the event of a discrepancy, the Performance Category stated in the Contract Performance Appraisal (CPA) shall take precedence over the Performance Category stated in Section 1.2(b)(i)(A)(I) above, and shall be used as the basis for evaluating VPR.
- II) For this Tender Process, the Contractor Performance Rating (“VPR”) is the average of a Contractor’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.
- III) If a Bidder 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 Bidder will be assigned a VPR in the Performance Category, which is the straight average of all the VPR’s of all Contractors who have performed services for Metrolinx for a thirty-six (36) month period preceding the Closing, in this Performance Category.
- IV) The legal name of the Bidder stated on the Form of Tender will be used for determining the Bidder’s VPR score in the Performance Category. It is the responsibility of the Bidder to ensure that its proper legal name has been stated on the Form of Tender and matches the legal name used by the Bidder in setting up its legal profile in the Metrolinx MERX Portal. Metrolinx will not accept any requests from the Bidder, after the Closing, to change the legal name provided.
- V) 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.
- VI) If any member of the Joint Venture has not completed work for Metrolinx within a thirty-six (36) month period preceding the Closing, Section 1.2(b)(i)(A)III) above shall apply for that member.

SUBMISSION EVALUATION AND SELECTION PROCESS

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VII) The Bidder's VPR, at the time of evaluating this Phase Two, shall be the VPR used for evaluation purposes. The Bidder's VPR used in the evaluation of this Phase Two can be obtained from the Procurement Representative at the conclusion of this Tender Process.

VIII) Once VPR scores in the Performance Category are determined for each Submission proceeding to this Phase Two evaluation, each Bidder's VPR shall be evaluated as follows:

IX) The following equation shall be applied to determine each Bidder's VPR Score, as follows:

1) " Bidder's VPR (Expressed as a %) / 10 = Bidder's VPR Score"

(ii) Part B - Pricing Evaluation

(A) Tender Document Form: - Contract Prices shall be evaluated for compliant Submissions.

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

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

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

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

(iii) Evaluation

SUBMISSION EVALUATION AND SELECTION PROCESS

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- (A) The following weightings shall be applied to determine each Bidder's Phase Two Total Overall Score, as follows:

Evaluated Component	Maximum Score	Weighting Factor	Total (Score x Weight)
PHASE ONE: ADMINISTRATIVE EVALUATION (Compliant/Non-Compliant)			
PHASE TWO: VENDOR PERFORMANCE RATING (VPR) EVALUATION			
Bidder's VPR Score	10	5	50
VPR Evaluation Subtotal:			
PHASE TWO: PRICING EVALUATION			
Tender Document Form: Contract Prices	10	95	950
Pricing Evaluation Subtotal:			
TOTAL OVERALL SCORE		100%	1,000

(iv) Total Overall Score

- (A) Evaluation Criteria shall be assigned a score out of ten (10). The score is then multiplied by the weight to determine the weighted score (i.e. VPR Evaluation Subtotal, Pricing Evaluation Subtotal). The weighted scores are then added to determine the Total Overall Score for the Submission.
- (B) The VPR Evaluation Subtotal shall be added to the Pricing Evaluation Subtotal to determine the Total Overall Score for the Submission.
- D) Total Overall Score = VPR Evaluation Subtotal + Pricing Evaluation Subtotal
- (C) The compliant Submissions evaluated during this Phase Two process, will be ranked from highest to lowest Total Overall Score. The top three Highest Ranked Submissions (first, second and third highest Total Overall Score = "Highest Ranked") shall proceed to Phase Three: Technical Evaluation.

SUBMISSION EVALUATION AND SELECTION PROCESS

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2.0 Selection of Submissions

- 2.1 Notification of acceptance shall be issued to the compliant Bidder with the highest Total Overall Score that meets the criteria of Section 1.2(b)(iv) above.

**TENDER DOCUMENT FORM(S)
FORM OF TENDER**

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1.0 The Tender Document Forms, comprised of the documents listed below, form part of the Tender Document and are included as fillable forms as follows:

Document Title	Attached as a Separate File as Follows
Tender Document Form: Contract Prices	Word file entitled Tender Document Forms - Tender IT-2018-NETI-292 or as amended via Addenda, if applicable Excel fillable file entitled Tender Document Form - Contract Prices - Tender IT-2018-NETI-292 or as amended via Addenda, if applicable
Tender Document Form: Form of Tender	Word fillable file entitled Tender Document Forms - Tender IT-2018-NETI-292 or as amended via Addenda, if applicable
Tender Document Form: Bidder's Qualifications	
Tender Document Form: Conflict of Interest	
Tender Document Form: Mandatory Technical/Personnel Requirements	
Tender Document Form: Contractor Personnel	

**TENDER DOCUMENT FORM(S)
FORM OF TENDER**

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Submission By:

[Click here to enter text.](#)

(Full Legal Name of Bidder)

1.0 Contact Information

The Bidder submitting a Submission is as follows:

1.1 Metrolinx's selection of the successful Submission will be based on which Bidder has provided a Submission which Metrolinx determines in its sole discretion, to be most beneficial to Metrolinx.

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

[Click here to enter text.](#)

1.3 The Bidder's address, telephone and facsimile numbers:

[Click here to enter text.](#)

1.4 Name, title, address, telephone, e-mail and facsimile numbers of the contact person(s) for the Bidder

[Click here to enter text.](#)

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

[Click here to enter text.](#)

1.6 New Contractor Information

(a) All Contractors must complete and provide the "New/Update Contractor Information Form" under "Attachments" and submit the additional documentation as indicated, including:

(i) Contractor Registration (Articles of Incorporation, Sole Proprietorship Registration, and Partnership Agreements, etc.);

(ii) Canada Revenue Agency Registration (Business Number);

(iii) Void Cheque (for Electronic Transfer setup); and

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(iv) Sample Invoice.

2.0 Acknowledgements and Declarations

- 2.1 The Bidder acknowledges that its Submission includes the appropriate Tender Document Forms submitted in accordance with the terms and requirements of the Instructions to Bidders. Failure to comply may result in the Bidder's Submission being found non-compliant and disqualified at the sole discretion of Metrolinx.
- 2.2 The Bidder 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 Bidder 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 Bidder acknowledges that it meets all mandatory requirements in order for their Submission to be considered further. Failure of a Bidder to meet all of the mandatory requirements shall result in the Bidder's Submission to be non-compliant and disqualified.
- 2.5 All Addenda, Tender Document Forms, the General Conditions of the Contract, specifications and attachments set out in this Tender Document shall be included in and form part of the Contract. Submitting a Submission constitutes acknowledgement that the Bidder 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 Bidder for a period of one hundred and twenty (120) calendar days from the Closing. The Bidder hereby covenants that it enter into the Contract with Metrolinx as contemplated by the Tender Documents by executing the Contract and will perform and execute the Work at the Rates quoted up to the established Total Evaluated Price amount if it is notified, in writing, by Metrolinx within one hundred and twenty (120) days of the Closing that it is the successful Bidder.
- 2.7 The Bidder hereby declares that it has the physical and financial resources to sustain and complete the Work.

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- 2.8 The Bidder hereby declares that no Conflict of Interest exists in accordance with “Tender Document Form: Conflict of Interest”.
- 2.9 The Bidder hereby declares that no person, firm or corporation (including any agent of Metrolinx), other than the undersigned or Suppliers or SubContractors engaged in the ordinary course of business, has any interest in this call for Tenders or the proposed Contract for which the Submission is made.
- 2.10 The Bidder acknowledges that by way of the E-Bid Authorized Signer submitting a Submission, the Bidder is agreeing to be bound to each and every term, condition, article and obligation of the Tender Document and any resultant Contract.
- 2.11 The Bidder acknowledges that consistent with Section 17.2 under Contract to be Executed of Instructions to Bidders, failure by the Bidder, whose Submission was accepted by Metrolinx, to execute and deliver executed Contract with the required Insurance Certificates, Workplace Safety and Insurance Clearance Certificate and the Performance and Labour and Materials Payment Bonds, or specified alternatives (if applicable), or any other required documentation (as applicable to this Tender Process) shall result in the cancellation of acceptance of the Bidder’s Submission by Metrolinx and forfeiture of the Bidder’s Bid Deposit (if applicable).
- 2.12 The submitting of a Submission by a Bidder shall be considered prima facie evidence that the above requirements have been met. Failure to have complied with said requirements shall not relieve the Bidder of its obligation to enter into the Contract and to carry out the Work for the terms and conditions set forth in the Tender Documents.

3.0 Requirement

- 3.1 The Bidder shall provide all labour, superintendence, plant, tools, appliances, equipment, supplies and other accessories, services and facilities necessary for emergent signal works as further described in this Tender Document.
- 3.2 The Work is to be performed to the satisfaction of Senior Manager RER Signals & Communication, unless otherwise specified.

4.0 Assignment of Work

- 4.1 Work shall be assigned and quoted by the Contractor in accordance with General Conditions of the Contract.

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5.0 Rates

5.1 The Bidder, by submitting this Submission, hereby offers to Metrolinx to provide all goods and services necessary to execute the Work described by the Tender Documents, including Addenda, and to perform the Work for the Rates quoted in "Tender Document Form: Contract Prices".

6.0 Harmonized Sales Tax

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

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

6.3 A non-resident Bidder 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 Bidder acknowledges that failure to comply with this requirement may result in the Contract being declared VOID.

7.0 Options

7.1 Option Years

(a) Not Applicable.

8.0 Project Schedule

8.1 Year One: Contract Execution to March 31, 2019

8.2 Year Two: April 1, 2019 – Mach 31, 2020

**TENDER DOCUMENT FORM
CONTRACT PRICES**

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1.0 Contract Unit Prices

Contract Unit Prices are subject to "Tender Document Form: Form of Tender" in addition to this "Tender 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 "Tender Document Form: Form of Tender" 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, quoted in Canadian funds, 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.
- (f) Work shall be assigned and quoted by the Contractor in accordance with the General Conditions of the Contract.
- (g) Work shall be either assigned through a Task Release process or awarded via a Second-Stage SOW process to the Contractor in accordance with the 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.

**TENDER DOCUMENT FORM
CONTRACT PRICES**

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3.0 Allowances

3.1 Not Applicable.

4.0 Completion of Pricing Schedules

4.1 Bidders shall fully complete the Excel file entitled "Contract Prices" and insert a Unit Price into each space provided under the Contract Unit Price column.

4.2 "Tender Document Form: Contract Prices" must 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.

4.3 If a "0" is entered in any of the spaces where price information is to be provided, it shall be interpreted as meaning the Contractor shall provide the specified service to Metrolinx at no charge.

4.4 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 Bidders.

**TENDER DOCUMENT FORM
BIDDER'S QUALIFICATIONS**

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1.0 Qualifications

1.1 Not Applicable.

**TENDER DOCUMENT FORM
CONFLICT OF INTEREST**

**Emergent Signals Contractor
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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 “Tender Document Form: Conflict of Interest” is not included as part of the Submission, the Bidder 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 Tender Document. Otherwise, if the statement in Section 1.1(b) below applies, check (“X”) the box.

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

1.2 If the Bidder declares an actual or potential Conflict of Interest by marking the box above, the Bidder 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 Preparation of the	Click here to enter text.

**TENDER DOCUMENT FORM
CONFLICT OF INTEREST**

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Submission:	
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(Repeat above for each identified individual)

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

TENDER DOCUMENT FORM
MANDATORY CORPORATE, PERSONNEL AND TECHNICAL REQUIREMENTS

Emergent Signals Contractor
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1.0 Mandatory Corporate, Personnel and Technical Requirements

- 1.1 Bidders must meet all mandatory requirements stated below in order for their Submission to be considered further. Failure of a Bidder to meet all of the mandatory requirements listed below shall result in the Bidder’s Submission being found non-compliant. Non-compliant Submissions shall not be considered further and shall be disqualified.
- 1.2 Bidders shall provide supporting documentation to substantiate compliance to each of the listed mandatory requirements. If the Bidder 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 Bidder provide such supporting documentation or to request that the Bidder identify where in its Submission this information has been provided. Failure of a Bidder to provide information required to substantiate compliance to a mandatory requirement may result in the Bidder’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 Bidder can meet the mandatory corporate, personnel and technical requirements to the satisfaction of Metrolinx in its sole discretion.

Mandatory Corporate, Personnel and Technical Requirements	Supporting Documentation Required to Substantiate Compliance
Mandatory Corporate Requirements	
The Bidder has obtained a Bid Deposit for this Tender Process in accordance with Section 12.0 of Instructions to Bidders and shall provide the original Bid Deposit to Metrolinx, within three (3) Business Days after Closing.	<ul style="list-style-type: none"> Original Bid Deposit to Metrolinx in accordance Section 12.0 of Instructions to Bidders of this Tender Document.
The Bidder 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.	<ul style="list-style-type: none"> No supporting documentation required with the Submission. Metrolinx reserves the right to request a valid Workplace Safety and Insurance Clearance Certificate for the premium rate class, subclass or group as appropriate for the Work of this Tender Document, as issued by the Workplace Safety and Insurance Board, at any time after Closing.
The Bidder has achieved one of the following: COR™ Certified Status with IHSA; or	A screen shot demonstrating the Bidder has achieved “Certified” status in Ontario, with IHSA, as it pertains to COR™.

TENDER DOCUMENT FORM
MANDATORY CORPORATE, PERSONNEL AND TECHNICAL REQUIREMENTS

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Mandatory Corporate, Personnel and Technical Requirements	Supporting Documentation Required to Substantiate Compliance
<p>OHSAS 18001 certification; or</p> <ol style="list-style-type: none">1. Out-of-Province COR™ certification and intends to apply for Out-of-Province COR™ Reciprocity (for bidding purposes only) through IHSA. Bidders applying for Out-of-Province Reciprocity must submit the request directly to the Procurement Representative, for approval by Metrolinx, prior to reaching out to their COR™ associations for a reciprocity letter. Out-of-Province COR™ Reciprocity shall be approved on a case by case basis until such time Metrolinx issues a definitive list.	<p>A copy of the Bidder's OHSAS 18001 certificate or a screen shot demonstrating that the Bidder is certified in OHSAS 18001.</p> <p>Upon receipt of Metrolinx approval, a letter from IHSA approving the Bidder's request for Out-of-Province COR™ Reciprocity."</p>

**TENDER DOCUMENT FORM
CONTRACTOR PERSONNEL**

**Emergent Signals Contractor
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- 1.1 The following are roles that shall be filled by the Bidder in accordance with the following requirements in respect of qualifications, experience and minimum years of experience as per the Prequalification Document. 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 SOW/ Task Assignment, for the duration specified in the table below.
- 1.2 Only those roles for which Metrolinx requires the Bidder to provide the name of the individual who will fill the role shall be considered a "Key Personnel role" for purposes of the Submission and the resulting SOW/ Task Assignment. The requirement to provide the name of an individual will be evidenced by the inclusion of the text "Click here to enter text" under the "Name of Individual" and "Actual Years of Experience" columns in the table below.
- 1.3 If the Bidder has not completed this "Tender Document Form: Contractor Personnel", Metrolinx has the right but not the obligation, following the Closing, to request that the Bidder identify where in its Submission this information has been provided. Failure of a Bidder to provide a name for a Key Personnel role and the actual years of experience held by such person in the Bidder's Submission shall result in the Bidder's Submission being non-compliant. Non-compliant Submissions shall not be considered further and shall be disqualified.
- 1.4 Notwithstanding the language contained in the "Qualifications and Experience" column, for purposes of the evaluation process, the only mandatory requirements with respect to a Key Personnel role are those contained in "Tender Document Form: Mandatory Corporate, Personnel and Technical Requirements".
- 1.5 This "Tender Document Form: Contractor Personnel" shall be incorporated the name(s) of individual(s) and actual years of experience for identified Roles into Schedule E: Contractor Personnel of General Conditions of the Contract.

Role	Name of Individual	Actual Years of Experience
Project Engineer	Click here to enter text.	Click here to enter text.
Project Manager	Click here to enter text.	Click here to enter text.
Signal Installation Manager / Supervisor	Click here to enter text.	Click here to enter text.
Signal Testing Manager	Click here to enter text.	Click here to enter text.

GENERAL CONDITIONS OF THE CONTRACT

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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 and are appended to this Tender Document.

GENERAL CONDITIONS OF THE CONTRACT

**Emergent Signals Contractor
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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 Contractor and between the Contractor and each of the SubContractors 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 Contractor 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

GENERAL CONDITIONS OF THE CONTRACT

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(v) Schedule E - Contractor Personnel

1.9 Order of Precedence

- (a) In the event of discrepancies, inconsistencies or ambiguities of the wording of the documents noted in the List of Contents, the wording of the document that first appears in the List of Contents shall prevail over the wording of a document subsequently appearing in the List of Contents.

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: the date that this Contract is terminated in accordance with its terms (the "Term").

2.2 Performance of the Work

- (a) The Contractor shall carry out and complete the work set forth in "Scope of Work" (the "Work") to the satisfaction of Metrolinx in accordance with all the terms of this Contract.
- (b) The Contractor shall supply the Work diligently and continuously in accordance with the scheduling requirements set out in the Project Schedule. Without limiting the generality of the foregoing, the Contractor shall perform the Work so as to enable Metrolinx to meet any timelines imposed on it under any Third Party Contracts, provided that such timelines have been identified in the Project Schedule or otherwise expressly communicated to the Contractor.
- (c) The Contractor acknowledges and agrees that each of the Contractor's Personnel shall be available to perform the Work in accordance with the required duration specified in Schedule E - Contractor Personnel. The Contractor 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 Contractor's Personnel. Without limiting the generality of the foregoing, Metrolinx may from time to time, on prior written notice to the Contractor twenty (20) Business Days', unilaterally extend or reduce the required duration with respect to the availability of any of the Contractor's Personnel or direct the Contractor to increase the number of Contractor's Personnel available. Metrolinx and the Contractor shall meet at a minimum, on a quarterly basis

GENERAL CONDITIONS OF THE CONTRACT

to discuss the progress of the Work and the anticipated scheduling needs with respect to the Contractor's Personnel.

- (d) Metrolinx may, from time to time, in its sole discretion, but is not required to, direct the Contractor to cause specific Contractor 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 Contractor no less than five (5) Business Days before the specified tasks or activities are required to be performed by the Contractor Personnel.
- (e) The Contractor shall provide, at the sole cost and expense of the Contractor, 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.
- (f) The Work shall be provided in a professional, timely and economical manner according to the Required Standard of Care. Without limitation, the Contractor shall ensure that the Work are conducted in a manner that will maintain good relations with the general public and Metrolinx.
- (g) The Contractor shall comply with and conform to all Applicable Laws, applicable to the Work to be provided by, and the responsibilities and obligations of, the Contractor under this Contract.
- (h) The Contractor shall not alter any part of a Joint Venture except with the prior written consent of Metrolinx in its sole discretion.

2.3 SubContractors

- (a) Other than the SubContractors identified in the Submission, the Contractor shall not subcontract the Work to any Person without the prior written consent of Metrolinx. No subcontracting by the Contractor shall relieve the Contractor of any responsibility for the full performance of all obligations of the Contractor under this Contract. Notwithstanding the approval of any SubContractors by Metrolinx, the Contractor shall be fully responsible for every SubContractor's activities, works, services and acts or omissions.
- (b) The Contractor shall be solely responsible for the payment of any SubContractors.

GENERAL CONDITIONS OF THE CONTRACT

- (c) The Contractor shall co-ordinate the services of all SubContractors employed, engaged or retained by the Contractor with Metrolinx and, without limiting the generality of any other provision of this Contract, the Contractor shall be liable to Metrolinx for costs or damages arising from errors or omissions of such SubContractors or any of them. It shall be the Contractor's responsibility to control and review the Work of its own forces and of all its SubContractors 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 Contractor shall ensure that the SubContractor is bound by conditions compatible with, and no less favorable to Metrolinx than, the conditions of this Contract.
- (e) The Contractor warrants and represents that it and any of its permitted SubContractors and the respective workforce of each are fully qualified to perform the Work and perform this Contract and hold all requisite Approvals.
- (f) The Contractor shall only employ, for the purposes of this Contract, such persons as are careful, skilled and experienced in the duties required of them and have the required Domain Expertise, and must ensure that every such person is properly and sufficiently trained and instructed. The Contractor shall ensure that all workers and persons employed by them or under their control or employed by or under the control of its SubContractors comply with the terms of this Contract and, in particular without limiting the foregoing, the responsibilities of the Contractor with respect to matters concerning safety, compliance with the Applicable Laws and the conduct of the Work.
- (g) The Contractor 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 Contractor and Metrolinx. Neither the Contractor nor its SubContractors shall be deemed to be employees, agents, servants or representatives of Metrolinx in the performance of the Work hereunder.
- (h) The Contractor shall not remove or change any SubContractors, or materially reduce the responsibilities of any SubContractors in relation to the provision of the Work except with the prior written consent of Metrolinx in its sole discretion. The proposed replacement SubContractor shall possess the requisite Domain Expertise and similar qualifications, experience and ability as the outgoing SubContractor.

GENERAL CONDITIONS OF THE CONTRACT

2.4 Contractor Personnel

- (a) The Contractor shall select and employ a sufficient number of suitably qualified and experienced Contractor 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 Contractor 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 - Contractor Personnel, the Contractor shall fill that role with a person who meets the qualifications, experience and minimum years of experience requirements that are contained in Schedule E - Contractor Personnel.
- (c) The Contractor shall provide effective and efficient supervision to ensure that the quality of workmanship meets the requirements of the Contract.
- (d) The Contractor shall ensure that the Contractor Personnel assigned to perform the Work shall:
 - (i) act in a proper and professional manner in accordance with the standards generally used recognized by the industry; and
 - (ii) comply with all applicable Metrolinx policies and procedures, provided that the Contractor has been made aware of same.

2.5 Third Party Work

- (a) The Contractor shall reasonably cooperate with Metrolinx and any Third Party and shall co-ordinate the Work with any and all Third Party Work. Without limiting the generality of the foregoing, the Contractor shall not alter, unreasonably interfere with or make it difficult to access any Third Party Work, except with the express written consent of Metrolinx.
- (b) The Contractor shall make best efforts to coordinate with Metrolinx and all applicable Third Parties in order to minimize:
 - (i) any delays to or interference with any Third Party Work within the rail corridors;
 - (ii) costs resulting from any delays to or interference with Third Party Work; and

GENERAL CONDITIONS OF THE CONTRACT

- (iii) impacts on the operations of, or use of the rail corridors by, Third Party Operators, including any delays to rail passenger or freight service on the rail corridors.
- (c) When and as directed by Metrolinx, the Contractor shall participate with Metrolinx employees and any applicable Third Parties in reviewing their respective schedules and cause designated Contractor Personnel to attend such meetings with Third Parties as may be reasonably requested by Metrolinx from time to time.
- (d) In the event that the proper performance of any part of the Work depends upon Third Party Work, the Contractor shall promptly inspect such Third Party Work and provide written notice to Metrolinx of any delays or defects in such Third Party Work that render such Third Party Work unavailable or unsuitable for integration with the Work.
- (e) Claims, disputes and other matters in question between the Contractor and Third Parties shall be dealt with in accordance with Schedule D - Dispute Resolution, provided that the Third Party has reciprocal obligations. The Contractor and Metrolinx shall be deemed to have consented to arbitration of any dispute with any Third Party whose contract with Metrolinx contains a similar dispute resolution provision that includes an agreement to submit to binding arbitration, provided that Metrolinx, at its sole and absolute discretion, shall be entitled to refuse to include any dispute with a Third Party from this Contract.

2.6 Non-Interference with Operations

- (a) The Contractor understands and agrees that:
 - (i) Metrolinx and Third Party Operators are in the business of moving large volumes of passengers and cargo through rail corridors safely, expeditiously and according to a fixed timetable;
 - (ii) the success of the businesses of Metrolinx and Third Party Operators depends on meeting the above objectives on a daily basis;
 - (iii) Metrolinx has contractual and statutory obligations to ensure the safety of all persons on the rail corridors and the property and facilities adjacent thereto; and

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- (iv) Third Party Operators operating in and through the rail corridors and Third Party Contractors working in the rail corridors have similar restrictions and requirements.
- (b) Notwithstanding any other term or condition set out in this Contract, the safety and non-disruption of all Third Parties operating in the rail corridors is of paramount importance. Consequently, the Contractor acknowledges and agrees that the safety of all trains, passengers, operating and maintenance personnel, goods and other transported cargos, as well as the Contractor Personnel and the public in general will take precedence over all actions or non-actions of the Contractor, whether mandated or not by any other terms and conditions of this Contract.
- (c) The Contractor shall not disrupt the movement of any rail traffic in or through the rail corridors of either Metrolinx or the Third Party Operators except where it has obtained the prior written consent of Metrolinx to such disruption (which consent may be withheld in the sole discretion of Metrolinx).

2.7 Key Personnel

- (a) All Key Personnel will possess the requisite Domain Expertise.
- (b) The Contractor shall not, for the duration specified in Schedule E - Contractor Personnel, require or request any Key Personnel to be involved in any other project on behalf of the Contractor or any SubContractor if, in the opinion of Metrolinx acting reasonably, such involvement would have a material adverse effect on the Work. The Contractor 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 2.7(b) but subject to Section 2.7(d), if at any time the Contractor, for reasons beyond its reasonable control, is unable to provide the services of any Key Personnel, the Contractor shall provide a replacement person who possesses similar qualifications, experience and ability and possesses the requisite Domain Expertise; provided, however, that the Contractor 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 Contractor; death; sickness; maternity and parental leave; compassionate care leave; retirement; resignation; dismissal for cause; or

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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 - Contractor Personnel and the replacement person's available start date. Metrolinx in its sole and absolute discretion may choose to interview the proposed replacement person in Toronto. The nominated replacement person must be acceptable to Metrolinx. If the replacement person is acceptable to Metrolinx, Metrolinx shall give the Contractor 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 Contractor in writing why that person is not acceptable and the Contractor shall nominate an alternate person pursuant to the process identified in this Section 2.7(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 Contractor, and, within thirty (30) days of receipt by the Contractor of such notice, the Contractor 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 - Contractor 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 Contractor 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 Contractor in writing why that person is not acceptable and the Contractor shall nominate an alternate person pursuant to the process identified in this Section 2.7(d). The rates for the proposed replacement shall not exceed the approved Rate of the person being replaced.

2.8 Contractor's Representative

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

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overall responsibility for coordinating the performance of the Contractor's obligations under this Contract.

2.9 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 Contractor. The Metrolinx Representative will be accountable for all project expenditures relative to design, procurement and construction activities.

2.10 French Language Services

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

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2.11 Contractor Work Performance Rating

- (a) Metrolinx shall during the term of the Contract, maintain a record of the performance of the Contractor completing Work for Metrolinx. This information shall be used to complete a “Contract Performance Appraisal” report, a copy of which will be forwarded to the Contractor upon completion of the Work. Interim “Contractor Performance Appraisal” reports may be issued, as deemed appropriate by Metrolinx, 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 Contractor in performing work for Metrolinx, including the Contractor’s performance pursuant to this Contract, will be considered in the evaluation of future submissions from the Contractor for Metrolinx procurement processes.
- (c) Metrolinx shall not be held liable for any administrative delays in updating VPR scores, which could result in a Contractor being bypassed for award on any procurement processes.
- (d) Metrolinx reserves the right in future procurements, during any procurement process, to reject any submissions by the Contractor due to unsatisfactory performance history with Metrolinx.
- (e) Non-compliance with Contract requirements will be identified to the Contractor.
- (f) The performance category on the Contract Performance Appraisal may be revised by Metrolinx subject to change Orders or Amendments. In such instances, the Contractor shall be notified via written communication of the change.
- (g) The information contained in the “Contract Performance Appraisal” may be provided to the Ministry of Transportation, other ministries and other government agencies. Such performance reviews may be relied upon to reject the Contractor’s submission and disqualify a company from providing a bid on future procurements. This section shall survive any termination or expiry of this Contract.

3.0 Health and Safety

3.1 Occupational Health & Safety Act

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- (a) The Contractor shall comply with OHSA, and any obligations of the Contractor as an "employer" thereunder, and with all regulations made under the OHSA.
- (b) The Contractor shall report to Metrolinx any non-compliance by a SubContractor in the performance of the Work with the regulations under the OHSA if and when brought to the attention of the Contractor.
- (c) The Contractor 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 Contractor's performance of the Work to be suspended; or
 - (ii) this Contract to be cancelled by Metrolinx.
- (d) The Contractor 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 Contractor shall be responsible for any delay caused by the Contractor in the progress of the Work as a result of any violation of provincial or municipal health and safety requirements by the Contractor, 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 Contractor to additional compensation, and the Contractor 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 Contractor for the Work, either instead of or jointly with the Contractor.

3.2 Safety Requirements

- (a) The Contractor shall comply with the "Safety Requirements" and "Environmental Protection" (if applicable) sections of the Scope of Work. Safety of Persons at or near a Place of Work and the public is of paramount

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concern to Metrolinx. In the performance of the Work, the Contractor 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 Contractor specifically covenants and agrees that:
- (i) it shall comply with best industry practice in Ontario respecting health and safety in a manner that recognizes and minimizes the risk to workers, other individuals, property and the operations of Metrolinx and any railways, to the extent that such practices are not inconsistent with an express instruction set out in this Contract or provided by Metrolinx;
 - (ii) it shall comply, and shall ensure that all Contractor 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 Contractor 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 Contractor Personnel comply, in all regards with the Contractor'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 Contractor 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 Contractor Personnel have been properly trained and are knowledgeable with respect to these policies and procedures.

3.3 Railway Safety

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- (a) If applicable, the Contractor shall comply with "Railway Safety Requirements" of Scope of Work and acknowledges and agrees that:
 - (i) access to the rail corridors by the Contractor and any Contractor Personnel, shall at all times be subject to the direction of Metrolinx and/or a third party designated by Metrolinx as to rail safety matters and any applicable railway operating rules; and
 - (ii) any and all questions, matters or disputes which may arise affecting the safety of railway operations or the maintenance of the railways shall be referred to Metrolinx which shall in its discretion decide all such questions, matters and disputes.
- (b) The Contractor shall perform the Work, and shall ensure that all Contractor Personnel perform the Work, in accordance with the Canadian Rail Operating Rules from time to time approved by the Minister of Transport under the authority of the Railway Safety Act (Canada), the Standards, and all other applicable Transport Canada guidelines, railway standards, and practices.
- (c) In the event that the Work is the subject of an audit or inspection by any Governmental Authority, the Contractor shall at its own expense:
 - (i) provide notice of such audit or inspection to Metrolinx;
 - (ii) make available or cause to be made available such reasonable information and material as may be required and shall otherwise reasonably cooperate with Transport Canada officials;
 - (iii) provide Metrolinx with a copy of any audit or inspection report or other results or recommendations issued by Transport Canada, as soon as practicable but in any event within five (5) Business Days of receipt thereof by the Contractor; and
 - (iv) take all steps necessary to rectify, in consultation with and as directed by Metrolinx, any issues identified by Transport Canada.

3.4 Workers' Rights

- (a) The Contractor shall at all times pay or cause to be paid any assessments or compensation required to be paid by the Contractor or its SubContractors pursuant to any applicable workers' compensation legislation, and upon failure to do so, Metrolinx may pay such assessments or compensation to

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the Workplace Safety and Insurance Board and may deduct such assessments or compensation from monies due to the Contractor. The Contractor shall comply with all regulations and laws relating to workers' compensation.

3.5 Delays

- (a) Without limiting the obligations of the Contractor described in Section 3.6 – Construction Safety, Metrolinx may, by Notice in Writing, direct the Contractor to stop the Work or stop parts of the Work where Metrolinx determines that there is an imminent risk to the safety of persons or property at the Place of the Work. In the event that the Contractor receives such notice, it shall immediately stop the Work, secure the Place of the Work, rectify the safety issue to the satisfaction of Metrolinx, and make up any lost time due to the safety issue, all at the Contractor's cost. The Contractor shall not be entitled to an extension of the agreed to time and cost, per Task Assignment.

3.6 Construction Safety

- (a) The Contractor shall be solely responsible for construction safety at the Place of the Work and for compliance with the rules, regulations and practices required by the applicable construction health and safety legislation and shall be responsible for initiating, maintaining and supervising all safety precautions and programs, in connection with the performance of the Work.
- (b) The Contractor shall assume the role of contractor, constructor, prime contractor, or principal contractor as may apply in accordance with applicable Occupational Health and Safety Legislation at the Place of the Work and provide to Metrolinx copies of the related Health and Safety notices and documents.”
- (c) The Contractor shall be the “Constructor” for the Work as defined in and in accordance with OHSA. As Constructor, the Contractor shall file the “Notice of Project” with the Ontario Ministry of Labour. The Contractor further covenants and agrees to promptly provide such information and do such things as may be required to enable Metrolinx to fulfill its obligations pursuant to OHSA.
- (d) Without limiting the generality of the foregoing, the Contractor shall:

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- (i) immediately provide written notice to Metrolinx of any accident at the Place of the Work causing personal or possible personal injury to any individual, and to immediately provide such details to Metrolinx, including the identity of the personnel, the nature of such injuries which were suffered or may have been suffered and any other information as Metrolinx may require or request; and
 - (ii) participate in or provide to its personnel such health and safety training, as Metrolinx may reasonably require, prior to the Commencement of the Work for each Task Assignment, and from time to time.
- (e) The Contractor represents and warrants that it is familiar with the obligations imposed on an “employer” as defined in the Occupational Health and Safety Act (Ontario), and that it has in place a health and safety program to ensure the health and safety of all workers for which it has responsibility under the said Act.”
- (f) The Contractor shall comply in all respects with the requirements of the Occupational Health and Safety Act (Ontario) and its own health and safety program to take all steps reasonable in the circumstances to ensure the health and safety of all workers for which it has responsibility under the said Act. The Contractor shall maintain and strictly enforce its health and safety program. The Contractor shall also provide such information within such timeframes as may be required in order to allow Metrolinx to fulfill its obligations pursuant to the Occupational Health and Safety Act (Ontario), including, without limitation, the obligation to notify the Director under such Act in the event of an accident causing personal injury.”
- (g) The Contractor shall comply with all requirements of the Workplace Hazardous Materials System (WHMIS) regarding the use, handling and storage of controlled products.”
- (h) Prior to commencing the Work, of each Task Assignment, the Contractor shall:
- (i) ensure that all prescribed posting requirements are posted on site for all workers to view;
 - (ii) provide a copy of the Contractor’s Health & Safety Policy to Metrolinx;

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- (iii) prepare and submit to Metrolinx a Site Specific Work Plan Submittal (this includes: site-specific hazardous assessment plans as applicable pertaining to but not limited to: live power work, lock out/tag out/shut down/switch covers, confined space entry, cranes and crane lifts, and other hazardous assessment plans as required); and
- (iv) review and comply with facility specific hazard, safety and orientation requirements as applicable.
- (i) The Contractor shall indemnify and save harmless Metrolinx, its agents, officers, directors, employees, consultants, successors and assigns from and against the consequences of any and all safety infractions committed by the Contractor or any of its SubContractors or their subcontractors under the construction health and safety legislation applicable to the Place of the Work, including but not limited to, payment of legal fees and disbursements on a full indemnity basis.
- (j) Metrolinx shall have the right, from time to time during the performance of the Work, to perform or cause to be performed, an on-site safety audit of the Work at the Place of the Work. Metrolinx may identify specific safety issues or Safety Incidents as set out in Section 20.0 – Liquidated Damages of Schedule B, and the Contractor shall address such issues or Safety Incidents promptly to the satisfaction of Metrolinx, at the Contractor’s cost, and provide Metrolinx with sufficient evidence of correction. No act or omission of Metrolinx during the audit shall constitute a transfer of liability from the Contractor to Metrolinx. The Contractor remains responsible for ensuring safety of the Work and the Place of the Work.”

4.0 Financial Terms

4.1 Financial Terms

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

5.0 Construction Act

5.1 Construction Act

- (a) If applicable, Metrolinx shall retain an amount equal to the amount required to be held back Pursuant to the Construction Act from each sum otherwise payable to the Contractor under this Contract that is not a release of any monies so retained.

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- (b) Subject to Section 5.1(c) any holdbacks retained pursuant to Section 5.1(a) shall not be due and payable until after the expiry of any applicable period for preservation of liens under the Construction Act, and provided that no liens are preserved by persons supplying services or materials to the Contractor.
- (c) Notwithstanding any provision of this Contract,
 - (i) The Contractor shall cause any and all construction liens and certificates of action relating to the Work registered or preserved by any SubContractor, supplier, Contractor's employees, or any other party to whom the Contractor is or may be responsible at law, to be discharged or vacated, or cause to be discharged or vacated, immediately but in any case no later than five (5) Business Days of the date of registration or reservation, all at the Contractor's sole expense. The Contractor shall not be entitled to receive any payment from Metrolinx until all such claims for lien and certificates of action have been vacated or discharged.
 - (ii) The Contractor shall cause any and all written notices of lien relating to the Work given to any person, including, but not limited to, Metrolinx by any SubContractor, supplier, Contractor's employees, or any party to whom the Contractor is or may be responsible at law, to be withdrawn or vacated, and the Contractor shall do so immediately but in any case no later than ten (10) Business Days of the written notice of lien having been given, all at the Contractor's sole expense.
 - (iii) If the Contractor fails to discharge or vacate any such lien or certificate of action within five (5) Business Days, or to have any such written notice of lien withdrawn or vacated, within ten (10) Business Days, then Metrolinx may, at its sole option, do so and set off and deduct from any amount owing to the Contractor, all costs and expenses of so doing, and of defending any related action, including without limitation, the costs of borrowing the appropriate cash, letter of credit or bond as security, and legal fees and disbursements on a full indemnity basis. If there is no amount owing by Metrolinx to the Contractor, then the Contractor shall reimburse Metrolinx for all of the said costs and expenses of so doing.

6.0 Right of Ownership and Use

6.1 General

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- (a) The Contractor shall be responsible for procuring for Metrolinx the right to use all Contractor Intellectual Property required in connection with the Work.
- (b) In the event that any third party Intellectual Property (other than the Metrolinx Intellectual Property) is required in connection with the Work, the Contractor shall, at its own cost, be responsible for entering into and fully maintaining, during the Term, all related and applicable license, and maintenance and support agreements for such third party Intellectual Property.
- (c) If during the Term, third party Intellectual Property (other than Metrolinx Intellectual Property) used in connection with the Work ceases to be commercially available, then the Contractor shall:
 - (i) promptly provide Metrolinx with notice of such event; and
 - (ii) promptly replace such third party Intellectual Property with an alternative product.
- (d) Any increased costs resulting from the foregoing shall be addressed pursuant to the change management process described in Article 8; provided that, in the event such Intellectual Property ceases to be available as a result of any act or omission of the Contractor, the Contractor shall be responsible for all costs associated therewith.

6.2 Ownership of Metrolinx Intellectual Property

- (a) As between Metrolinx and the Contractor, Metrolinx owns and shall own all right, title and interest in and to the Metrolinx Intellectual Property. To the extent that the Contractor requires the use of any Metrolinx Intellectual Property in connection with this Contract or the Work, Metrolinx hereby grants to the Contractor, during the Term, a non-exclusive, non-transferable, non-sublicenseable, fully paid-up, royalty-free right and license for the Contractor and the Contractor Personnel to access, use, copy, support, maintain and, to the extent reasonably necessary to provide the Work, modify, the Metrolinx Intellectual Property solely for the purposes of fulfilling the Contractor's obligations under this SOW/ Task Assignment, subject to compliance with the confidentiality obligations set out in this SOW/ Task Assignment.
- (b) Metrolinx grants no rights other than explicitly granted herein, and the Contractor shall not exceed the scope of this license. Except for the limited

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right to use such Metrolinx Intellectual Property as set forth in this section, the Contractor shall not have or acquire any rights in or to the Metrolinx Intellectual Property.

6.3 Ownership of Contractor Intellectual Property

- (a) As between Metrolinx and the Contractor, the Contractor owns all right, title and interest in and to the Contractor Intellectual Property. The Contractor hereby grants to Metrolinx a non-exclusive, irrevocable, perpetual, fully paid-up, royalty-free and worldwide right and license to access, use, copy, support, maintain, modify (including create derivative works from), sublicense (through multiple tiers), assign, distribute or otherwise exploit any Contractor Intellectual Property that is integrated with, embedded in, forms part of or is otherwise required to access, use, copy, support, maintain, modify (including create derivative works from), sublicense, assign, distribute or otherwise exploit any Custom Intellectual Property; provided, however, that the foregoing license does not permit Metrolinx to use the Contractor Intellectual Property in its standalone form or for any purpose other than as part of or in conjunction with the Custom Intellectual Property it is associated with. The Contractor grants no rights other than explicitly granted herein, and Metrolinx shall not exceed the scope of this license.
- (b) If the Contractor integrates with or embeds in any Deliverables any Intellectual Property provided by a third party Contractor, SubContractor, independent Contractor, SubContractor or other Person, the Contractor shall obtain for Metrolinx the same license rights for Metrolinx has set forth in Section 6.3(a)

6.4 Ownership of Custom Intellectual Property

- (a) Metrolinx owns and shall own all right, title and interest in and to the Custom Intellectual Property. The Contractor hereby irrevocably assigns and transfers to Metrolinx all right, title and interest, throughout the world in and to all Custom Intellectual Property produced pursuant to this Contract including all applicable Intellectual Property Rights thereto. If the Contractor has any rights to Custom Intellectual Property that cannot, or which the Parties agree will not, be assigned to Metrolinx, the Contractor hereby grants to Metrolinx a non-exclusive, irrevocable, perpetual, fully paid-up, royalty-free and worldwide right and license to access, use, copy, support, maintain, modify (including create derivative works from), sublicense (through multiple tiers), assign, distribute or otherwise exploit the Custom Intellectual Property.

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6.5 Employee and SubContractor Contracts

- (a) The Contractor shall obtain from each of the Contract Personnel an assignment of rights to the Custom Intellectual Property and a waiver of any 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 Custom Intellectual Property, for the benefit of Metrolinx and its respective successors, assigns, licensees and Contractors, prior to the performance of any Work by each such individual. The Contractor shall provide copies of such documentation to Metrolinx upon request.

6.6 Title and Risk of Loss

- (a) Risk of loss of or damage to the goods shall remain with the Contractor, and shall pass to Metrolinx upon acceptance of the goods at the designated Place of Work.
- (b) The Contractor shall be liable for all costs up to the full replacement value of any good(s) prior to passage of title of the goods to Metrolinx. Any goods, which prior to acceptance by Metrolinx shall become damaged from any cause whatsoever, shall be made good at the expense of the Contractor, except that, in the event that and to the extent that negligence on the part of Metrolinx or its employees or representatives causes the above-mentioned damage, Metrolinx shall accept responsibility and reimburse the Contractor for the price of necessary repairs. In either event the time for delivery shall be adjusted accordingly.
- (c) Risk of loss of or damage to spare parts, capital spares, diagnostic tools and other deliverables covered by the Contract shall remain with the Contractor until, and shall pass to Metrolinx upon, delivery and acceptance of the good by Metrolinx at the designated Place of Work.
- (d) The Contractor shall be liable for all costs up to the full replacement value of any spare parts, capital spares, diagnostic tools and other deliverables covered by this Contract prior to acceptance by Metrolinx.
- (e) Upon any payment being made to the Contractor for or on account of materials, parts, Work-in-process, or finished Work, either by way of progress payments or accountable advances or otherwise, title in and to all materials, parts, Work-in-process and finished Work so paid for by such progress payments or accountable advances or otherwise shall vest and remain in Metrolinx unless already so vested under any provision of the Contract and the Contractor shall be responsible therefor in accordance with

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the provisions of Section 6.6 herein, it being understood and agreed that such vesting of title in Metrolinx shall not constitute acceptance by Metrolinx of such materials, parts, work-in-progress and finished work and shall not relieve the Contractor of its obligations to perform the Work in conformity with the requirements of the Contract.

- (f) The Contractor shall take reasonable and proper care of all property, title to which is vested in Metrolinx, while the same is in, on or about the plant and premises of the Contractor or otherwise in his possession or subject to his control and shall be responsible for any loss or damage resulting from his failure to do so other than loss or damage caused by ordinary wear and tear.

7.0 Insurance

7.1 Insurance Requirements

- (a) The Contractor 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.

8.0 Changes, Second-Stage SOW and Task Assignment Process

8.1 Changes Requested by Metrolinx

- (a) Metrolinx may, in writing, request changes or alterations to the Work, or an authorized SOW, or request additional services from the Contractor (any of the foregoing, "Changes"). Subject to this Article 8, the Contractor shall comply with and implement all reasonable Metrolinx Change requests, and the performance of such requests shall be in accordance with this Contract.

8.2 Changes Recommended by the Contractor

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

8.3 Change Management Process

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- (a) Where a Change request is initiated by Metrolinx pursuant to Section 8.1, Metrolinx shall set out, in the Change request:
 - (i) the proposed prices for the contemplated changes;
 - (ii) the timing requirements for the implementation of the Change; and
 - (iii) any other information which may reasonably be required.
- (b) The Contractor shall respond to Metrolinx' Change request in writing within ten (10) Business Days.
- (c) Where a Change is initiated by the Contractor pursuant to Section 8.2, the Contractor shall set out in the Change request, conforming to Section 8.3(a):
 - (i) a description of the proposed Change;
 - (ii) the estimated cost of the proposed Change;
 - (iii) any proposals, designs or other details or information which may be reasonably required; and
 - (iv) the reasons for the proposed Change, including the benefits of the proposed Change and any consequences of not proceeding with the Change.
- (d) No Changes shall be implemented and no Change request shall become effective until an amendment or change order documenting the Change has been executed by both Parties, and such executed instrument shall be the final determination of any adjustments to the Contract price, the Project Schedule, or the terms and conditions of the Contract, as applicable, with respect to the Change set out therein.
- (e) Where Metrolinx and the Contractor 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 16.

8.4 Second- Stage SOW Process

- (a) Metrolinx shall conduct a competitive second stage process to determine the assignment of defined parts of work arising out of the Work (the "SOW") to a Contractor. For each SOW, every Contractor that (i) has been awarded an

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emergent contract for the Work as part of IT-2018-NETI-292, will be invited to respond as part of the competitive second stage process for the SOW. Notwithstanding the foregoing, Metrolinx reserves the right to assign Work directly to a Contractor, by-passing the second stage process if the expected value of the Work, as determined by Metrolinx, is less than \$25,000 (refer to Section 8.5 Task Assignment of the General Conditions of the Contract).

- (b) The second stage process documents shall include a description of specified work or a specified deliverable required by Metrolinx as well as the expected timeframe for the completion of the Work (the “SOW Schedule”)
- (c) Upon issuance by the Metrolinx Representative of the second stage process documents, the Contractor shall respond with a submission that includes, but is not necessarily limited to:
 - (i) the fixed price to complete the SOW;
 - (ii) the Contractor Personnel who will be engaged to conduct the Work specified in the SOW, with curriculum vitae demonstrating ability to carry out the SOW in accordance with the requirements of this Contract; and
 - (iii) a response to any other requirements set out in the second stage process document. (i.e. Contract security will be required if the second stage value is \$500,000 or more).
- (d) The fixed fee calculated for the completion of a SOW shall be based on the Rates. The fixed fee for each SOW shall be in Canadian funds, not subject to adjustment unless agreed otherwise in writing, and shall be inclusive of all applicable costs.
- (e) Metrolinx shall evaluate the submission in accordance with the second stage process document, and assign the SOW to the Contractor that provides the best value to Metrolinx, as determined by criteria set out in the second stage process.
- (f) In the event the Contractor is the successful Contractor of the second stage process, Metrolinx shall provide the Contractor with an authorized “Statement of Work”, which may be documented by a purchase order.
- (g) The Contractor shall not proceed with a SOW unless approved in the form of an authorized “Statement of Work”, and only to fixed price as indicated

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therein notwithstanding the upset limit set out in Section 17.1(c) of the Form of Tender.

- (h) Upon Metrolinx's delivery of an authorized "Statement of Work" to the Contractor, the Contractor shall undertake the work based on the requirements, procedures, and plans specified in such SOW, and in such a manner so as to ensure that the requirements described in the SOW are achieved, in accordance with the SOW Schedule.
- (i) All Work performed under an authorized SOW shall be performed in accordance with the terms and conditions of this Contract. Each authorized SOW shall be incorporated into this Contract by reference. In the event of any conflict or inconsistency between this Contract and any SOW, the terms contained in this Contract shall take precedence. However, where a section of this Contract expressly provides that alternate terms and conditions may be set out in a SOW, to the extent of such conflict or inconsistency.
- (j) Metrolinx reserves the right to withhold payment for any Work performed by the Vendor or any Subvendor or Vendor Personnel prior to the issuance of an authorized SOW or outside the scope of an authorized SOW.

8.5 Task Assignment Process (Under \$25,000)

- (a) The Contractor shall be responsible for facilitating the Task Assignment Process described in this Section, including the time required to review scope of work and schedule prior to submitting a Quotation to Metrolinx, pursuant to Sections 14.0 and 15.0 of Schedule B - Financial Terms.
- (b) The Task Assignment Process shall be administered and authorized as follows (the "Task Assignment Process"):
 - (i) The Metrolinx Representative shall submit to the Contractor a request for a quotation related to a specific Task Assignment if the estimated value is less than \$25,000;
 - (ii) Upon receipt of such request from Metrolinx, the Contractor shall, in respect of the identified Task Assignment, provide to Metrolinx a response in the form of a Quotation, as per Section 15.0 of Schedule B - Financial Terms.
- (c) As and if required, the Parties shall meet to review the requirements for the Task Assignment.

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- (d) Subsequent to the review meeting, and based on the results of the review meeting, the Contractor shall make its own determination of the Contractor's work effort and fee cost to provide the Contractor's scope of services for the task.
- (e) No amounts shall be payable in respect of any Task Assignment unless and until Metrolinx has approved such expenditure in writing, which shall be subject to Schedule B - Financial Terms.
- (f) Upon the approval by Metrolinx of any Quotation, the Contractor shall be responsible for the completion of the Work related to the Task Assignment thereof in accordance with the terms and conditions set out in this Contract.

8.6 Performance of Changes

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

9.0 Additional Resources

9.1 Additional Resources

- (a) In addition to, or in connection with, a request for additional or altered services pursuant to Article 8, at any time during the Term, Metrolinx shall have the right in its discretion to require the Contractor to increase the number of Contractor Personnel upon twenty (20) days' notice.
- (b) Unless otherwise agreed to in writing by Metrolinx, such additional Contractor 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 9.1(a).

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

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

10.1 Confidential Information

- (a) The Contractor shall keep all Confidential Information confidential. Without limiting the generality of the foregoing, the Contractor shall:
 - (b) not disclose, reveal, publish, or disseminate any Confidential Information to anyone, except as permitted pursuant to this Contract;
 - (c) shall use Confidential Information only in connection with this Contract and the performance of the Work;
 - (d) shall take all reasonable steps required to prevent any unauthorized reproduction, use, disclosure, publication, or dissemination of the Confidential Information; and
 - (e) shall immediately notify Metrolinx in the event that it becomes aware of any unauthorized disclosure of Confidential Information.

10.2 Permitted Disclosure

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

10.3 Exceptions

- (a) The obligations of confidentiality set out in Section 10.1 shall not apply to Confidential Information which:
 - (i) becomes generally available to the public through no fault of the Contractor;
 - (ii) prior to receipt from Metrolinx, was known to the Contractor on a non-confidential basis and is not subject to another obligation of

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secrecy and non-use, as documented by written records possessed by the Contractor;

(iii) was independently developed by the Contractor prior to receipt from Metrolinx, as documented by written records possessed by the Contractor; or

(iv) becomes available to the Contractor on a non-confidential basis from a source other than Metrolinx that is not under other obligations of confidence.

(b) If the Contractor becomes compelled to disclose any Confidential Information pursuant to Applicable Law, the Contractor shall provide Metrolinx with prompt written notice of any such requirement and shall cooperate with Metrolinx in seeking to obtain any protective order or other arrangement pursuant to which the confidentiality of the relevant Confidential Information is preserved. If such an order or arrangement is not obtained, the Contractor shall disclose only that portion of the Confidential Information as is required pursuant to Applicable Law. Any such required disclosure shall not, in and of itself, change the status of the disclosed information as Confidential Information under the terms of this Article 10.

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

10.4 Security Measures

(a) The Contractor shall select, implement (prior to the commencement of the Work), use and maintain the most appropriate products, tools, measures and procedures to ensure the security of all Confidential Information, as determined with reference to and generally in compliance with Applicable Laws, Industry Standards, the security requirements specified in "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,

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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 Contractor shall perform its obligations relating to this Section 10.4.

10.5 Intellectual Property Rights

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

10.6 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 10.10, the Contractor agrees to:
 - (i) promptly return all Confidential Information (other than the Contract Records) to Metrolinx; or
 - (ii) promptly delete or destroy the Confidential Information (other than the Contract Records) and all copies thereof in any form whatsoever under its power or control and provide Metrolinx with a destruction certificate signed by an appropriate officer of the Contractor certifying such destruction.
- (b) Notwithstanding the foregoing, the Contractor shall have no obligation to return or destroy:
 - (i) Confidential Information that is captured and retained within the Contractor'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

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- (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 Contractor or the Contractor Personnel.

10.7 FIPPA and Personal Information

- (a) Metrolinx and the Contractor acknowledge and agree the collection, use, retention and disclosure of Personal Information is governed by FIPPA. Metrolinx acknowledges that the Contractor may also be subject to the requirements of PIPEDA. In the event of a conflict between the requirements of FIPPA and the requirements of PIPEDA or any other legislation governing the treatment of Personal Information, the more onerous provision shall apply.
- (b) The Contractor shall ensure that all collection, access, use, retention and disclosure of Personal Information under this Contract, whether through the performance of the Work or otherwise, complies with Applicable Laws including FIPPA, PIPEDA, 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 Contractor 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 Contractor and all Contractor Personnel shall cooperate with Metrolinx and/or its third party advisors to provide the resources required to facilitate and fulfill this assessment. The Contractor shall implement any recommendations resulting from the Privacy Impact Assessment process.
- (d) The Contractor shall ensure the security and integrity of any Personal Information collected by the Contractor and shall protect it against loss, unauthorized access, destruction, or alteration, in accordance with the following:
 - (i) The Contractor shall not directly or indirectly collect, use, disclose, store or destroy any Personal Information, or give, exchange, disclose, provide, or sell Personal Information to any third party, except as expressly permitted, and for a purpose(s) authorized, under this Contract or otherwise agreed to in writing by Metrolinx.

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- (ii) The Contractor shall ensure that access to Personal Information is restricted to those Contractor 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 Contractor shall not place, input, match, insert or intermingle, nor shall it permit any Person to place, input, match or intermingle, any data or records in any form whatsoever into or with any records or database containing such Personal Information.
- (e) For greater certainty, Metrolinx reserves the right to prescribe the specific manner in which the Contractor shall perform its obligations relating to this Section 10.7.

10.8 FIPPA and Freedom of Information

- (a) The Contractor 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 Contractor agrees to keep all FIPPA Records secure and available, in accordance with the requirements of FIPPA. The Contractor acknowledges that all information, data, records and materials, however recorded, that are held by the Contractor and/or created by the Contractor in the course of performing the Work are considered to be FIPPA Records and subject to FIPPA.
 - (ii) Section 10.5 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 Contractor and the Contractor shall provide any and all

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relevant FIPPA Records to Metrolinx on demand for the purposes of responding to an access request under FIPPA. In these circumstances, the Contractor shall provide all FIPPA Records requested to Metrolinx's Freedom of Information Coordinator (or equivalent) within seven (7) Business Days of receipt of the request from Metrolinx. Notwithstanding anything to the contrary in this Contract and subject to the Contractor's rights of appeal pursuant to Section 28(9) of FIPPA, Metrolinx shall determine what FIPPA Records will be disclosed in connection with any such request, in accordance with the requirements of FIPPA (including, without limitation, the requirements with respect to affected persons set out in Section 28 thereof).

- (v) Storage of FIPPA Records (including the Contract Records) at a location outside Canada shall only be permitted with Metrolinx's express written consent.

10.9 Access

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

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10.10 Audit Rights

- (a) During the Term and for a period of seven (7) years thereafter, the Contractor shall, at its cost and expense, retain and maintain, in an organized, accurate and accessible mode and manner, all financial and other books, records and documentation relating or pertaining to the Contract and the performance of the Work, including (i) original invoices and accounts, along with related records showing costs and expenses incurred, including but not limited to the cost to the Contractor of the Work and of all expenditures or commitments made by the Contractor in connection therewith; (ii) correspondence, e-mails, tenders, minutes of meetings, notes, reports, timesheets, memoranda and other documents associated with the Contract; (iii) records relating to any service level agreements and key performance indicators included in the Contract, and (iv) records related to matters of security and privacy (collectively, the "Contract Records").
- (b) The Contract Records shall be retained and maintained in accordance with all generally acceptable accounting principles and Applicable Laws and Industry Standards, or as otherwise may be required to substantiate compliance with this Contract and/or any payment to be made to the Contractor under this Contract.
- (c) During the Term and for a period of seven (7) years thereafter, Metrolinx or any third party acting on behalf of Metrolinx, shall have the right, upon no less than twenty-four (24) hours' notice in writing to the Contractor and during normal office hours, to inspect and audit, and to have access to, all Contract Records whether maintained by the Contractor or a Contractor Personnel, reasonably required to confirm the Contractor's compliance with the terms of this Contract and Applicable Laws, and to make copies thereof. The Contractor 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 Contractor), and shall otherwise reasonably cooperate with Metrolinx and any third party acting on Metrolinx's behalf, including by providing reasonable access to all of the Contractor's premises and to the Contractor's employees. Where access is needed to a Contractor Personnel's employees or to Contract Records that are maintained by a Contractor Personnel, the Contractor shall use reasonable efforts to arrange for such access on a timely basis. Without limiting the generality of the foregoing, the rights set out in this Section 10.10 shall extend to any Governmental Authority exercising its right to audit pursuant to Applicable Law or any contract with Metrolinx.

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

10.11 Contractor Compliance

- (a) The Contractor shall advise all of its Contractor Personnel, all of its SubContractors, and all of its SubContractor's Contractor Personnel of the requirements of this Article 10, and associated requirements set out elsewhere in this Contract, and take appropriate action to ensure compliance by such persons with the terms of this Article 10. In addition to any other liabilities of the Contractor pursuant to this Contract or otherwise at law or in equity, the Contractor shall be liable for all claims arising from any non-compliance with this Article 10 by the Contractor, any of its Contractor Personnel, any SubContractor and of its SubContractor's Contractor Personnel.
- (b) The Contractor warrants that each of its Contractor Personnel, each of its SubContractors and each of its SubContractor's Contractor Personnel engaged by the Contractor to provide the services pursuant to this Contract is under a written obligation to the Contractor requiring such person to comply with the terms of this Article 10.

10.12 Publicity

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

10.13 Damages

- (a) The Contractor acknowledges and agrees that any breach or threatened breach of this Article 10 or the obligations set out herein shall cause immediate and irreparable harm to Metrolinx for which damages alone are not an adequate remedy. The Contractor hereby acknowledges and agrees that Metrolinx shall be entitled to seek, in addition to any other legal remedies which may be available to it, such equitable relief as may be necessary and available to protect Metrolinx against such breach or threatened breach. No failure or delay by Metrolinx in exercising any right hereunder shall operate as a waiver hereof, or shall estop Metrolinx from obtaining permanent injunctive relief.

11.0 Representations, Warranties and Covenants

11.1 Representations, Warranties and Covenants of the Contractor

- (a) The Contractor 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 Contractor is validly existing under the laws of the location of its head office and the Contractor has all necessary corporate power, authority and capacity to enter into this Contract and to perform its obligations hereunder;
 - (ii) the entering into of this Contract by the Contractor 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 Contractor, the by-laws or resolutions of the Contractor or any agreement or

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instrument to which the Contractor is a party or by which it is bound, or

- (B) require the Contractor 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 Contractor 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 Contractor has carefully reviewed the whole of this Contract, including all of the Contract Documents, and all other documents made available to the Contractor by Metrolinx, and, to the Contractor's knowledge, nothing contained herein or therein inhibits or prevents the Contractor 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 Contractor has engaged and shall engage only SubContractors and Contractor 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 Contractor has available the resources and personnel to complete all of its obligations under this Contract in a timely, efficient and professional manner in accordance with the Required Standard of Care;
- (viii) the Contractor is not aware of any legal action instituted, threatened or pending against the Contractor 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 Contractor is free of any actual or potential Tender Conflict of Interest;
- (x) the Contractor is registered as an employer pursuant to the Workplace Safety and Insurance Act (Ontario) and has completed all filings and

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paid all assessments as required pursuant to that Act and the regulations thereunder;

- (xi) the Contractor 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 Contractor represents, warrants and covenants to Metrolinx that the Contractor is and shall remain duly registered for the purposes of Part IX of the Excise Tax Act.

11.2 Continuing Effect of Representations, Warranties and Covenants

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

12.0 Indemnity

12.1 Indemnification

- (a) The Contractor shall at all times indemnify and save harmless Metrolinx, its officers, directors, employees, members, agents, representatives, successors and assigns (hereinafter the "Indemnified Parties"), from and against any and all Losses resulting from:
 - (i) any breach, violation or non-performance by or on behalf of the Contractor of any covenant, obligation or agreement of the Contractor contained in this Contract, including any warranty;
 - (ii) any negligent acts, errors or omissions or wilful misconduct by or on behalf of the Contractor relating to the Work to be provided under this Contract;
 - (iii) any acts performed by or on behalf of the Contractor beyond the authority of the Contractor hereby conferred;
 - (iv) any inaccuracy in or breach of any of the representations or warranties of the Contractor contained in this Contract;

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- (v) any preserved or perfected lien under the Construction Act filed or made on account of the Work performed hereunder, provided that the liens herein referenced are not the direct result of the default in payment by Metrolinx to the Contractor of amounts properly due under this Contract. The Contractor shall cause any such lien or claim which may be filed or made to be released, vacated or otherwise discharged within five (5) days of obtaining notice of the lien or claim or from receipt by the Contractor of written notice from Metrolinx. If the Contractor fails to release, vacate or discharge any such lien or claim, then Metrolinx may, but without obligation to do so, discharge or release the lien or claim or otherwise deal with the lien or claim, and the Contractor shall pay any and all reasonable costs and expenses, including but not limited to reasonable legal fees incurred by Metrolinx in so releasing, discharging, or otherwise dealing with such lien or claim;
- (vi) 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 Contractor or any SubContractor, including:
 - (A) any resulting expenses incurred by Metrolinx as a result of stoppage of the Work on account of failure by the Contractor 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 Contractor's failure to fulfil its obligations as described in Section 3.1; and/or
- (vii) any infringement or alleged infringement of any patent, trade secret, service mark, trade name, copyright, official mark, moral right, trade-mark, 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 Contractor, or anyone else for whom at law the Contractor is responsible provided, however, the Contractor shall not be required to indemnify the Indemnified Parties pursuant to this subsection if (i) the infringement or alleged infringement was caused by the modification of a deliverable or work product prepared pursuant to this Contract by any person other than the Contractor or a Contractor Personnel, (ii) the deliverable or work product was based upon designs provided by Metrolinx, or (iii) the Work relating to the infringement or alleged infringement were used in a manner not permitted by the Contract.

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

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

13.0 Limitation of Liability

13.1 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

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the breaching Party's failure to perform its obligations in the manner required by the Contract.

13.2 Limitations on Liability

- (a) Subject to Section 13.2(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.
- (b) Subject to Section 13.2(c) each Party's aggregate liability to the other under the Contract for direct damages for all events giving rise to liability hereunder shall be limited to an amount equal to two times the total sum paid or payable by Metrolinx to the Contractor under every authorized SOW /Task Assignment.
- (c) The limitations of liability set forth in Sections 13.2(a) and 13.2(b) shall not apply with respect to Losses:
 - (i) that are the subject of indemnification pursuant to Articles 12.1(a)(ii), (iii), (v), (vi) or (vii); or
 - (ii) occasioned by a breach of Article 10.
- (d) Each party shall have a duty to mitigate damages for which the Contractor is responsible.

14.0 Termination

14.1 Termination for Cause by Metrolinx

- (a) Metrolinx may, by ten (10) days' written notice to the Contractor, suspend or terminate the whole or any part of the provision of the Work or this Contract for cause in the event that the Contractor 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:
- (b) Metrolinx may appoint officials of Metrolinx or any other person or persons in the place and stead of the Contractor to perform the Work or any portion thereof;

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- (c) the Contractor 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;
- (d) nothing contained herein shall limit the rights of Metrolinx to recover damages from the Contractor arising from the failure of the Contractor to perform the Work satisfactorily in accordance with the terms of this Contract.

14.2 Termination for Convenience by Metrolinx

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

14.3 Publication of a Notice of Termination

- (a) Notwithstanding any other provision in the Contract, Metrolinx shall not be liable to the Contractor for any actual or alleged damages of any kind whatsoever (including without limitation, indirect incidental, special, consequential or other damages, including claims for loss of profits, loss of opportunity or loss of reputation) on account of the publication of a Notice of Termination pursuant to the Construction Act, and the Contractor waives any claim against Metrolinx related to or arising from the publication.

15.0 Force Majeure

15.1 Force Majeure

- (a) Neither Party shall be liable for Losses caused by a delay or failure to perform its obligations under this Contract where such delay or failure is caused by an event beyond its reasonable control (a "Force Majeure Event"). The Parties agree that an event shall not be considered beyond one's reasonable control if a reasonable business person applying due diligence in the same or similar circumstances under the same or similar obligations as the provisions of this Contract would have put in place contingency plans to either materially mitigate or negate the effects of such event.

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- (b) Without limiting the generality of the foregoing, the Parties agree that Force Majeure Events may include acts of God, natural disasters, acts of war, war-like operations, civil war, acts of foreign enemy, plagues, epidemics, insurrection and terrorism (provided that the conditions of Section 15.1(a) are met) but shall in no event include:
 - (i) shortages or delays relating to supplies or services; or
 - (ii) on the part of the Contractor, lack of financing or inability to perform because of the financial condition of the Contractor.
- (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 Contractor and not then unless such claim is reasonable and justified to Metrolinx.

15.2 Process

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

15.3 Metrolinx Rights

- (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 Contractor.

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16.0 Dispute Resolution

16.1 All Disputes shall be resolved in accordance with, and the Parties shall comply with, Schedule D - Dispute Resolution.

17.0 Set Off

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

18.0 General

18.1 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.

18.2 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.

18.3 Survival

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

18.4 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.

18.5 Assignment

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

18.6 Independent Parties

- (a) This Contract does not create and is not intended to create an agency or employment relationship, partnership, joint venture or other similar association between the Parties. The relationship between the Parties is to be considered at all times as that of a purchaser and an independent Contractor. Neither Party shall have the right to bind the other to any agreement with any third party or to incur any obligation or liability on behalf of the other Party. Except as expressly provided for in this Contract, neither Party shall represent, directly or indirectly by conduct, to any third party that it is an agent, employee, partner or joint venturer of the other.
- (b) The Contractor Personnel and all other personnel providing the Work are solely the employees of the Contractor and applicable SubContractors (and not Metrolinx') for all purposes under this Contract, including for all purposes under any Applicable Laws. Accordingly, none of the foregoing personnel is entitled to any benefits respecting any pension or other benefit plan, program or policy of Metrolinx.

18.7 Third Party Beneficiaries

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

18.8 Joint and Several Liability

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

18.9 Notice

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

18.10 Amendments

- (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.

18.11 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.

18.12 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.

18.13 Further Assurances

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- (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.

18.14 Conflict of Interest Acknowledgement and Agreement

- (a) For the purposes of this Contract, a "Conflict of Interest" includes any situation or circumstances where, in relation to the performance of its contractual obligations in this Contract, the Contractor's other commitments, relationships or financial interests:
 - (i) could or could be seen to exercise an improper influence over the objective, unbiased and impartial exercise of its independent judgment; or
 - (ii) could or could be seen to compromise, impair or be incompatible with the effective performance of its contractual obligations.
- (b) The Contractor 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 Contractor 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 SubContractors do not participate in or be involved with such Prohibited Procurements either directly or indirectly, including as a bidder or as a SubContractor, Contractor or advisor to any bidder.
- (c) The Contractor 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.

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

18.15 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.

19.0 Warranty

19.1 General

- (a) The Contractor represents, warrants and covenants:
 - (i) That all workmanship shall be in compliance with the requirements of the Contract;
 - (ii) That all goods shall be in compliance with the requirements of the Contract and be free from defects in design, material, workmanship, manufacture, fabrication, packaging, shipment and delivery.
- (b) The express warranties contained herein are in addition to all other warranties and conditions, express or implied, including all legal and statutory warranties, all warranties arising at law, warranties of merchantability and fitness for a particular purpose, and warranties of the Contractor.

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- (c) The warranty period, per Task Assignment, shall commence on the date of substantial performance of the Work.

19.2 Warranty Conditions

- (a) If, within twenty-four (24) months, the Work supplied by the Contractor or any part thereof, as it relates to each Task Assignment, becomes defective or fails due to any default by the Contractor in fulfilling the requirements of the Contract including, without limitation, improper, faulty or defective design, materials, workmanship, manufacture, fabrication, packaging, shipment or delivery, then the Contractor, upon notification in writing from Metrolinx, shall forthwith repair or remedy every such defect or failure, or replace the goods, without cost (including without limitation transportation cost) to Metrolinx.
- (b) All labour cost incurred by Metrolinx in respect of the repair or remedy of defects or failures, and of the replacement of goods during the warranty period, shall be reimbursed to Metrolinx by the Contractor in accordance with the agreed to hourly rates to be negotiated.
- (c) Metrolinx shall provide the Contractor with reasonable access to the Place of Work for the purpose of performing warranty work when practical.
- (d) The Contractor shall prepare and furnish data and reports pertaining to any repairs, replacements and remedies pursuant to the Warranty, including, but not limited to, revisions and updating of contract drawings, data and contract deliverables.
- (e) In the event the Contractor fails to fulfil any obligation stipulated in this Warranty, Metrolinx shall have the right to repair, remedy or replace the goods at the Contractor's expense.
- (f) The Contractor shall cause those warranties that are provided by SubContractors and suppliers that extend beyond the Contractor's warranty period, be assigned to Metrolinx. Should there be any claim under the said warranties after the expiration of the Contractor's warranty period, such claim shall be made and processed directly by Metrolinx with the relevant SubContractors or suppliers. SubContractors' and suppliers' warranties shall also pass to Metrolinx in the event that the Contractor is unable to complete its obligations under the Contract. In any event, the Contractor shall make provision in all subcontracts and purchase orders for all warranties to be directly assigned to Metrolinx.

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- (g) Any product that does not meet the Contract Scope of Work, notwithstanding tests, inspection or acceptance at any time or location, are found to contain deficiencies, will be subject to rejection and shall be returned to the Contractor. The Contractor shall be entitled to a joint inspection of the defective component at the premises of Metrolinx. The Contractor shall assume the expenses of handling and transportation in both directions.

19.3 Intellectual Property

- (a) In addition to the warranties and conditions implied by the Sales of Goods Act (Ontario), the Contractor represents and warrants that there are no patents, trademarks, copyrights or other rights restricting the use, repair or replacement of the goods, or any part thereof, furnished under this Contract.

20.0 Custom Duties and Import Charges

20.1 The Contractor shall be responsible for all costs, including administrative costs, relating to delivery of the goods and shall acquire and pay for all necessary permits and licences required for the importation and delivery of goods to the Place of Work.

20.2 The Contractor shall be responsible for freight, insurance, importation taxes and duties, custom broker and/or clearance fees and container packing (direct labour and packing material) costs for delivery of goods, components, diagnostic tools, equipment and spare parts and shall pay for such costs. The Contractor shall use commercially reasonable efforts to minimize freight, duty and other delivery costs reimbursed to the Contractor by Metrolinx and incurred under the Contract during the Term. The Contractor shall provide to Metrolinx on a semi-annual basis during the Term of the Contract evidence of the costs in this Section 20.2 incurred under the Contract and any actions taken to minimize these costs. Reductions in freight, insurance, importation taxes and duties, custom broker and/or clearance fees and container packing (direct labour and packing material) costs shall inure to the benefit of Metrolinx.

20.3 Customs Clearance Services

- (a) The Contractor shall be the importer of record for this Contract. The Contractor shall provide and shall arrange for customs brokerage services and other services required to comply with all requirements imposed or administered by Canada Border Services Agency regarding the import of the goods into Canada. All communications with customs authorities or customs brokers shall be handled by the Contractor. In the event that a

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document or thing is required from Metrolinx as the ultimate Metrolinx of the goods, the Contractor shall prepare such document or thing for review by Metrolinx prior to submission of such document or thing to the Party requiring same. All costs for these services are included in the Rates.

END OF SECTION

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1.0 In this Contract Document,

- 1.1 "Acceptance" or "Acceptable" or "Accepted" means the act of formal notification by Metrolinx of no further objections regarding content, construction or compliance.
- 1.2 "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.
- 1.3 "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 Contractor's contract documents.
- 1.4 "Arbitration Act" means the Arbitration Act, 1991, S.O. 1991, Chapter 17.
- 1.5 "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.
- 1.6 Intentionally Omitted.
- 1.7 "Changes" has the meaning ascribed to it in Section 8.1 of General Conditions of the Contract.
- 1.8 "Construction Act", if applicable, means the Construction Act, R.S.O. 1990, Chapter C.30.
- 1.9 "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 Contractor (including to employees, Contractors, Contractors or other representatives thereof) and includes any copies or reproductions thereof. For greater certainty, all Personal Information, Contract Records, construction documents, personal information, and anything else specifically marked or identified by Metrolinx as confidential or

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- proprietary are deemed to be "Confidential Information" for the purposes of this Contract.
- 1.10 "Conflict of Interest" has the meaning ascribed to it in Section 18.14 of General Conditions of the Contract.
- 1.11 Intentionally deleted.
- 1.12 "Contract Closeout" means the date that the services are complete as per the Construction Act.
- 1.13 "Contract Documents" means the Contract and those documents listed in "Scope of Work" and any written amendments thereto as agreed to by the Parties.
- 1.14 "Contract Performance Appraisal" has the meaning ascribed to it in Section 2.11(a) of General Conditions of the Contract.
- 1.15 "Contract Records" has the meaning ascribed to it in Section 10.8 of General Conditions of the Contract.
- 1.16 "Custom Intellectual Property" means any Intellectual Property created, developed or produced by the Contractor or any Contractor Personnel under this Contract specifically for use in connection with the performance of the Work, all documentation and media related thereto, and all Intellectual Property Rights therein.
- 1.17 "Deliverables" means the work product created by the Contractor and/or the Contractor Personnel in connection with or as a requirement of the Work, including all reports, drawings, plans, designs, processes, tools, standards, registers, logs, updates, files, databases, Software, and documentation.
- 1.18 "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.
- 1.19 "Dispute Notice" has the meaning given in Schedule D - Dispute Resolution of General Conditions.

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- 1.20 "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.
- 1.21 "Drawings" describe the detailed technical requirements of the Work and form part of the Scope of Work.
- 1.22 "Effective Date" means the final date of execution of this Contract by both Parties.
- 1.23 "Encumbrance" means any mortgage, charge, pledge, hypothecation, Lien, security interest, hypothec, easement, right-of-way, right-of-first refusal, option, encroachment, building or use restriction, conditional sales agreement, personal property lease, licence, restrictive covenant, adverse claim, promissory right or other encumbrance of any nature however arising, or any other security agreement or arrangement creating in favour of any creditor a right in respect of any property that is prior to the right of any other creditor in respect of such property.
- 1.24 "Excise Tax Act" means the Excise Tax Act, R.S.C. 1985, Chapter E-15.
- 1.25 "FIPPA" means the Freedom of Information and Protection of Privacy Act, R.S.O. 1990, Chapter F.31.
- 1.26 "FIPPA Records" means all information, data, records and materials, however recorded, in the custody or control of Metrolinx, including Confidential Information, Personal Information and Contract Records. For the purposes of this definition, documents held by the Contractor in connection with this Contract are considered to be in the control of Metrolinx.
- 1.27 "French Designated Area" means an area designated as such in the Schedule to the French Language Services Act. A map and complete listing of French Designated Areas is available at <http://www.ofa.gov.on.ca/en/flsa-mapdesig.html>.
- 1.28 "French Language Services Act" means the French Language Services Act, R.S.O. 1990, Chapter F.32.
- 1.29 "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

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administrative functions respecting government; provided, however, "Governmental Authority" does not include Metrolinx.

- 1.30 "Income Tax Act" means the Income Tax Act, R.S.C. 1985, Chapter 1 (5th Supp.).
- 1.31 "Indemnified Parties" has the meaning ascribed to it in Section 12.1 of General Conditions of the Contract.
- 1.32 "Insurance Act (Ontario)" means the Insurance Act, R.S.O. 1990, Chapter 1.8
- 1.33 "Intellectual Property" means all intellectual and industrial property, including: (a) materials, images, reports, Software, applications, audio or video recordings, specifications, performance requirements, software development tools, technologies, content, data (including all information whether or not contained in or on any database or electronic information storage system or media owned by or in the custody or control of Metrolinx), technical information, interfaces, web portals, components, services, information, databases, and documentation; (b) patents, patent application rights, rights to file patents, inventions, trade-marks (whether registered or not), trade-mark applications, rights to file trade-marks, trade names, copyrights (whether registered or not), design registrations, trade secrets, confidential information, industrial and similar designs, rights to file for industrial and similar designs, processes, methodologies, techniques and know-how; and (c) all Intellectual Property Rights therein.
- 1.34 "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.
- 1.35 "Joint Venture" is the business arrangement of two or more parties proposed as identified in the Submission.
- 1.36 "Key Personnel" means the people identified by name in Section 1.1(a) of Schedule E - Contractor Personnel.
- 1.37 "Key Responsibilities" means the main responsibilities and tasks to be performed by each category of Contractor Personnel, as identified in Schedule E: Contractor Personnel.
- 1.38 "Lien" means any statutory lien, or claim, in relation to this Contract and constituting a charge against the statutory holdback and any other amounts, all as defined in the Construction Act.

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- 1.39 "List of Contents" shall mean the section of the Contract Document entitled "List of Contents".
- 1.40 "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.
- 1.41 "Metrolinx" means Metrolinx, a provincial crown agency continued under the Metrolinx Act, S.O. 2006, Chapter 16, and its successors and assigns.
- 1.42 "Metrolinx Intellectual Property" means: (a) all Intellectual Property that is proprietary to, or controlled or licensed by, Metrolinx and provided to the Contractor; (b) all Metrolinx Marks; (c) all procurement documents issued by Metrolinx; (d) all documentation or source materials (including source code) related to any of the foregoing; and (e) all copies, translations, improvements, modifications, enhancements, adaptations, or derivations made to the Metrolinx Intellectual Property by Metrolinx and/or any third party not performing work under this Contract.
- 1.43 "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.
- 1.44 "Metrolinx Representative" or "Metrolinx's Representative" has the meaning ascribed to it in Section 2.9 of General Conditions of the Contract.
- 1.45 "OHSA" means the Occupational Health and Safety Act, R.S.O. 1990, Chapter O.1.
- 1.46 "Parties" means both of Metrolinx and the Contractor and a "Party" means either one of them.
- 1.47 "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.
- 1.48 "Personal Information" has the meaning ascribed to it in FIPPA.
- 1.49 "PIPEDA" means the Personal Information Protection and Electronic Documents Act, S.C. 2000, Chapter 5.

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- 1.50 "Place of Work" is the designated site or location of the Work.
- 1.51 "Privacy Impact Assessment" refers to a systematic and consistent method of analysis to identify and analyze privacy risks in a program, technology or service.
- 1.52 "Prohibited Procurements" has the meaning ascribed to it in Section 18.14 of General Conditions of the Contract.
- 1.53 "Product" means any goods, machinery, equipment, fixtures and Software (including any components of any of the foregoing) forming part of the Deliverables, but does not include machinery and equipment used solely to perform the Work.
- 1.54 "Professional Engineer" means an engineer licensed to practice engineering in the Province of Ontario.
- 1.55 "Project Schedule" means the schedule of work identified in Tender Document Form: Form of Tender, which shall form part of the Contract and may be amended at the sole discretion of Metrolinx.
- 1.56 "Quotation" has the meaning given in Section 15.0 of Schedule B - Financial Terms of General Conditions.
- 1.57 "Rates" has the meaning ascribed to it in Section 1.1 of Schedule B - Financial Terms of General Conditions.
- 1.58 "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 Contractor or the Contractor 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.
- 1.59 "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.

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- 1.60 "SOW" if applicable, means the second stage contract between the Contractor and Metrolinx pursuant to Tender No. IT-2018-NETI-292 including the Articles of Agreement, General Conditions of the Contract and the Schedules thereto and the Contract Documents.
- 1.61 "Standards" means, at a given time, those standards, specifications, manuals, codes, practices, methods and procedures applicable to the Required Standard of Care.
- 1.62 "Statutory Holdback" has the meaning ascribed to it in Section 7.1 of Schedule B - Financial Terms of General Conditions.
- 1.63 "SubContractor" means an individual, firm, partnership, corporation or design professional having a direct contract with the Contractor or another SubContractor 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 SubContractor.
- 1.64 "Submission" means all documentation and other materials and information submitted by the Bidder in response to Tender No. IT-2018-NETI-292.
- 1.65 "Supplier" means an individual, firm, partnership or corporation having a direct contract with the Contractor or another SubContractor to provide goods and/or services required to carry out the Work of the Contract.
- 1.66 "Scope of Work" describe the general and detailed requirements of the Work and are to be read in conjunction with any Drawings, if applicable, contained herein.
- 1.67 "Task Assignment Items", if applicable, means those items, work and/or services identified in the "Tender Document Form: Contract Prices" which shall form part of Articles of Agreement as items to be paid for under the each Task Assignment.
- 1.68 "Task Assignment Process" has the meaning ascribed to it in Section 8.5 of General Conditions of the Contract.
- 1.69 "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,

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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.

- 1.70 "Tender Conflict of Interest" means the Contractor had an unfair advantage or engaged in conduct, directly or indirectly, that gave it an unfair advantage, including but not limited to (i) having, or having had access to, confidential information of Metrolinx in the preparation of its submission during the Tender process that was not available to other bidders, (ii) communicating with any person with a view to influencing preferred treatment in the Tender process (including but not limited to the lobbying of decision makers involved in the Tender process), or (iii) engaging in conduct that compromises, or could be seen to compromise, the integrity of the Tender process.
- 1.71 "Term" has the meaning ascribed to it in Section 2.1 of General Conditions of the Contract.
- 1.72 "Third Party" or "Third Parties" means any Third Party Contractors or Third Party Operators.
- 1.73 "Third Party Contract" means a contract between Metrolinx and any other Person which is in any way related to, impacts or is impacted by the Work and/or the Contractor's acts or omissions, whether expressly identified to the Contractor or not.
- 1.74 "Third Party Contractors" means Contractors, suppliers, service providers, utility owners or any other third party (excluding the Contractor and any SubContractors and Contractor Personnel) performing work and/or providing products and services in, or in respect of, the rail corridors, where such work, products or services (a) are on behalf and for the benefit of Metrolinx or (b) are being undertaken to enable work, products or services on behalf of and for the benefit of Metrolinx.
- 1.75 "Third Party Operators" means (a) any third party providing products and/or services in the rail corridors on their own behalf, pursuant to rights granted by Metrolinx, including VIA Rail Canada Limited, Canadian Pacific Railway Company and Canadian National Railway Company; and (b) any third party who otherwise has a right to occupy, access, or use property or facilities on or adjacent to the rail corridors.

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- 1.76 "Third Party Work" means work and services conducted or provided by Third Parties.
- 1.77 Intentionally Omitted
- 1.78 "Value Added Taxes" means such sum as shall be levied upon amounts payable to the Contractor under this Contract by any Governmental Authority that is computed as a percentage of the amounts payable to the Contractor (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 Contractor.
- 1.79 "Contractor" means the company identified as such in the Articles of Agreement.
- 1.80 "Contractor Intellectual Property" means any Intellectual Property which (a) the Contractor has already created, developed or produced prior to the Effective Date; (b) which the Contractor creates, develops or produces independently of this Contract and/or the performance of the Work; (c) which the Contractor licenses from a third party; (d) all documentation or source materials (including source code) related to any of the foregoing; and (e) all copies, translations, improvements, modifications, enhancements, adaptations, or derivations made to the Contractor Intellectual Property by the Contractor and/or any third party not performing work under this Contract; provided, however, that Contractor Intellectual Property does not include Custom Intellectual Property.
- 1.81 "Contractor Personnel" or "Contractor's Personnel" means (a) with respect to the Contractor, all of the Contractor's personnel, employees and independent contractors (including the Key Personnel and the Contractor's Representative) engaged in the performance of the Work; and (b) with respect to each SubContractor, all of that SubContractor's personnel, employees and independent contractors engaged in the performance of the Work.
- 1.82 "Contractor Policies" has the meaning ascribed to it in Schedule C - Insurance of General Conditions.
- 1.83 "Contractor's Representative" means the person identified by the Contractor, and Accepted by Metrolinx, as the Contractor's authorized representative pursuant to Section 2.8 of General Conditions of the Contract.
- 1.84 "Work" means all activities, services, goods, equipment, matters and things required to be done, including all of the work, labour, services, goods, equipment,

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if applicable, described in the Scope of Work and Drawings and is further described in Section 2.2(a) of General Conditions.

- 1.85 "Working Day" means any day other than: (a) a Saturday or Sunday and (b) any other day on which the *Owner's* Head Office at 97 Front Street West, Toronto, Ontario, is not open for business. Each *Working Day* will end at 4:00 p.m. on that day."

END OF SECTION

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1.0 Payment

- 1.1 Metrolinx will pay the Contractor for the Work performed by the Contractor pursuant to this Contract, in the amounts and manner, at the rates set out in the Articles of Agreement (the "Rates") and at the times, set forth in the Articles of Agreement and this Schedule B - Financial Terms.
- 1.2 Metrolinx will pay the Contractor for the Work performed by the Contractor pursuant to a SOW or Task Assignment, in the amounts agreed in such SOW or Task Assignment and in accordance with the payment schedule set out in such SOW, upon completion and Metrolinx acceptance.
- 1.3 The Contractor shall perform all of the Work notwithstanding that the value of the time spent by the Contractor in performance thereof may exceed the maximum amount payable to the Contractor pursuant to Section 3.0 of this Schedule B - Financial Terms.

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 Contractor, to the satisfaction of Metrolinx.
- 2.2 Metrolinx does not guarantee any minimum or maximum of work.

3.0 Total Contract Price

- 3.1 Not Applicable.

4.0 Rates for Work

- 4.1 The Contractor acknowledges and agrees that the Rates are inclusive of all labour and materials, insurance costs, disbursements and all other overhead including any fees or other charges required under Applicable Laws and noted in the Articles of Agreement. 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.

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- 4.2 Metrolinx shall not reimburse the Contractor for any hospitality, food or incidental expenses incurred. Subject to the prior consent of Metrolinx, Metrolinx shall reimburse the Contractor 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 Contractor 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 Contractor in connection thereto shall be included in the Rates set out in the Articles of Agreement.

5.0 Taxes

- 5.1 The Rates and all amounts payable under the SOW or Task Assignment shall be inclusive of all Taxes (except for HST) in effect as at the date of this Contract. Unless otherwise expressly specified in this SOW or Task Assignment, or otherwise required by Applicable Law, the Contractor 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 Contractor. The Contractor 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 Contractor shall show on each invoice, and in the manner directed by Metrolinx, either the actual Value Added Taxes paid by the Contractor by category or the portion of the Contractor's fees eligible under Applicable Law for the rebate.
- 5.4 Certain payments to non-resident corporations or individuals may be subject to withholding taxes, under the Income Tax Act. Non-residents can apply in advance to Revenue Canada, Taxation, for a waiver or reduction of the withholding tax requirement. Unless Metrolinx is provided with a copy of the written information as a result of the waiver application to the Tax Services Office of Canada Customs and Revenue Agency, taxes will be withheld as determined under the Income Tax Act. The Contractor shall be responsible for investigating whether

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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 Unless otherwise specified in the Articles of Agreement or in a Task Plan, the Contractor shall submit an invoice for payment for Work completed no less than ten (10) Business Days following the end of the month in respect of which the related Work were rendered. 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 previous month and the total time spent by each category of Contractor Personnel multiplied by the applicable Rate.
- 6.2 The aggregate amount invoiced by the Contractor with respect to a SOW shall not exceed the fixed price of such SOW or Task Assignment, unless such additional amount is agreed by the Parties pursuant to the change management process set out in Article 8 of General Conditions of the Contract.
- 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 Contractor no later than thirty (30) Business Days following receipt of the invoice for payment from the Contractor, unless otherwise provided or permitted in the Contract. The Contractor shall accept any payments made by Metrolinx by way of Electronic Funds Transfer, and shall, if requested by Metrolinx, provide the account information required to complete an Electronic Funds Transfer.

7.0 Statutory Holdback

- 7.1 Subject to the provisions of the Construction Act, Metrolinx shall hold back, from each payment to the Contractor, ten percent (10%) of the amount of the payment or such greater amount as may be required under the Construction Act (the "Statutory Holdback"), and any Statutory Holdback shall only be released in accordance with the provisions of the Construction Act.

8.0 Withholding of Payment

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

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

9.0 Substantial Performance

- 9.1 When the Contractor considers the Contract to be substantially performed, as defined by the Construction Act, and prior to submission of the application for substantial performance, the Contractor shall prepare and submit to Metrolinx a comprehensive list of activities or service items to be completed or corrected and shall apply for a review of the list by Metrolinx. Failure to include an item on the list does not alter the responsibility of the Contractor to complete the item or the Work.
- 9.2 Within seven (7) Business Days of receipt of the Contractor's application for substantial performance, Metrolinx shall satisfy itself as to whether or not the Contract has been substantially performed as required by the Construction Act and the Contract Documents. Then:
 - (a) if Metrolinx determines that the Contract has been substantially performed as required by the Construction Act, Metrolinx shall issue a certificate of substantial performance which shall state the date of substantial performance; or
 - (b) if Metrolinx determines that the Contract has not been substantially performed as required by the Construction Act, Metrolinx shall advise the Contractor in writing of the reasons for which such a certificate is not being issued.
- 9.3 Immediately following the issuance of a certificate of substantial performance, the Contractor, in consultation with Metrolinx, shall establish a reasonable date for expeditiously finishing the Work.

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10.0 Release of Statutory Holdback Upon Substantial Performance

10.1 After the issuance of the certificate of substantial performance in accordance with Section 9.0 of this Schedule B - Financial Terms and the Construction Act, the Contractor shall:

- (a) satisfy the requirements of the Construction Act with respect to publication of a copy of the certificate of substantial performance;
- (b) submit an application for payment of the Statutory Holdback amount;
- (c) submit documentary proof of compliance with Section 10.1(a) of this Schedule B - Financial Terms; and
- (d) submit a sworn statement that all accounts for indebtedness which may have been incurred by the Contractor in connection with the performance of the Work and for which Metrolinx might in any way be held responsible have been paid in full, except for amounts properly retained as a holdback.

10.2 After receipt of an application for payment of the Statutory Holdback amount from the Contractor and the other documents required to be provided under this Contract, Metrolinx shall issue a certificate for payment for the Statutory Holdback amount.

10.3 Provided that the Contractor has satisfied the requirements of Section 10.1 of this Schedule B - Financial Terms, the Statutory Holdback amount authorized for payment under the certificate for payment of the Statutory Holdback amount is due and payable on the day following the expiration of the holdback period stipulated in the Construction Act.

- (a) Notwithstanding the foregoing, Metrolinx may retain out of the Statutory Holdback amount any sums required by law to satisfy any Liens against the Work or, if permitted by the Construction Act, such other third party monetary claims against the Contractor which are enforceable against Metrolinx or any other claims by Metrolinx against the Contractor.

11.0 No Progressive Release of Holdback

11.1 There will be no release of holdback prior to substantial performance of the Contract.

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12.0 Final Payment Certificate

- 12.1 When the Contractor considers that the performance of the Work is completed as defined in the Construction Act, the Contractor shall submit an application for final payment.
- 12.2 Metrolinx shall review the record of the Work performed to verify the validity, or otherwise, of the application after the receipt of the Contractor's application for final payment. Metrolinx shall review the record of Work performed within ten (10) Business Days of receipt of the Contractor's application and shall issue, no later than seven (7) Business Days after reviewing the record of Work, a final payment certificate in the amount applied for or a regular certificate for payment in such other amount as Metrolinx determines to be properly due. If Metrolinx amends the application, Metrolinx shall promptly notify the Contractor in writing giving reasons for the amendment.
- 12.3 Subject to the provisions of this Contract and the Construction Act, Metrolinx shall make payment to the Contractor on account no later than thirty (30) days following the receipt of a final payment certificate issued by the Metrolinx pursuant to Section 2.2 of this Schedule B - Financial Terms, provided that:
- (a) the Contractor has provided Metrolinx, in a form acceptable to Metrolinx, a sworn statement that all accounts for indebtedness which may have been incurred by the Contractor in connection with this Contract and for which Metrolinx might in any way be held responsible have been paid in full, except for amounts properly retained as a holdback;
 - (b) the Contractor has provided the documents required to demonstrate compliance with applicable workers compensation legislation; and
 - (c) the Contractor has satisfied all requirements set out in this Contract.
- 12.4 Subject to the same conditions as listed in Section 10.1 of this Schedule B - Financial Terms, Metrolinx shall make the final release of Statutory Holdback retained on payments made after the date of substantial performance, on the day following the expiration of the holdback period stipulated in the Construction Act.

13.0 Cost of Changes

- 13.1 Changes shall be implemented by the Contractor without any additional charge, unless the Contractor is able to demonstrate (with supporting documentation) that the Change causes the Contractor to incur additional costs.

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- 13.2 The Contractor 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 Contractor Personnel, those same Rates shall apply with reference to the applicable level of experience and/or expertise.
- 13.3 With respect to any Changes that (in whole or in part) require the services of a third party, Metrolinx (at its sole discretion) shall have the right to require the Contractor to provide three (3) quotes to Metrolinx in respect of such third party services, in accordance with Section 4.0 of this Schedule B - Financial Terms.
- 13.4 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 Contractor shall provide same to Metrolinx within five (5) Business Days of the request therefor.

14.0 Expenditure of Task Assignment Items

- 14.1 Where the expenditure of a Task Assignment has been approved by Metrolinx, the value of completed or delivered Task Assignment Items may be claimed as part of the Contractor's monthly application for payment, in accordance with Section 6.0 of this Schedule B - Financial Terms (above). Task Assignment expenditures must not exceed the Task Assignment value noted in each respective Quotation approved by Metrolinx.
- 14.2 A Task Assignment value, approved by Metrolinx, is in no way a guarantee of monies and shall only be expended for the portion of the Task Assignment Items delivered and/or performed by the Contractor and accepted by Metrolinx.

15.0 Quotations - Task Assignment Process and Changes

- 15.1 With respect to any Changes or Task Assignments (or any part thereof), the Contractor shall, upon request by Metrolinx (at its sole discretion), submit a quotation detailing the estimated cost of the applicable Change or Task Assignment (each a "Quotation"). Where Metrolinx has not provided the names of third parties from which quotations should be obtained, the Contractor shall have the right to choose which third parties shall provide quotations. Subject to any instruction to the contrary issued by Metrolinx pursuant to Section 8.5 of General Conditions of the Contract, where a Task Assignment includes work that the Contractor proposes would be most efficiently performed by the Contractor's own workforces, the Contractor shall include as one of the three (3) quotes the price proposal for having its own workforce perform the work.

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- 15.2 Any and all costs incurred by the Contractor for providing a Quotation or obtaining quotations from third parties, shall be borne by the Contractor.
- 15.3 All Quotations shall be prepared on the Contractor's letterhead and in a format agreed to by Metrolinx and the Contractor. The Quotation shall at a minimum contain the following information:
- (a) a detailed description of the work required;
 - (b) Curriculum Vitae for the individual named for Site Superintendent role;
 - (c) required SubContractors and specialized service providers;
 - (d) any requirements for testing and/or reporting;
 - (e) detailed breakdown of costs;
 - (f) detailed work schedule which complies with completion date provided by Metrolinx (as required by Metrolinx);
 - (g) a completed Site Specific Work Plan Submittal (template provided under Attachments); and
 - (h) any other requirements/instructions.
- 15.4 Metrolinx reserves the right to accept or reject a Quotation, in whole or in part.
- 15.5 The Contractor shall not perform any Work under a SOW or Task Assignment which would result in an increase to the SOW or Task Assignment, unless an increase is so authorized by Metrolinx and effected by a written amendment to the Contract.

16.0 Metrolinx Property

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

17.0 Payment Schedule and Advance Payment Security

17.1 Payment Schedule

- (a) Not applicable

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17.2 Advance Payment Security

- (a) Not applicable

18.0 SOW Contract Security

18.1 Within five (5) Business Days of receipt of Metrolinx acceptance of an individual SOW valued at five hundred thousand dollars (\$500,000) or more, the Contractor shall provide Metrolinx with a Performance Bond and a Labour and Material Payment Bond each equal to fifty percent (50%) of the SOW value. In lieu of a Performance Bond and Labour and Materials Payment Bond, the Contractor shall provide a Letter of Credit, Bank Draft or Certified Cheque equal to twenty-five percent (25%) of the SOW value ("SOW Contract Security"), in favour of Metrolinx. All signatures and seals (if applicable) shall be original.

18.2 The Letter of Credit, if used as SOW Contract Security, shall be from a bank acceptable to Metrolinx and shall expressly state that it may be drawn on by Metrolinx at the bank's counter(s) in Toronto, Ontario, Canada upon the delivery of a certificate from the President and CEO of Metrolinx confirming that the Contractor has defaulted in the performance of its obligations under the Contract. No other documentary evidence is required to be provided by Metrolinx. The Letter of Credit shall state that Metrolinx is the named beneficiary and include the Contract name and number.

18.3 The Contractor shall maintain the SOW Contract Security in good standing during the entire term of the SOW. The SOW Contract Security shall remain in effect from the time of acceptance until the expiry of all Option Years plus any Warranty period.

19.0 Bonus for Early Completion

19.1 Not Applicable.

20.0 Liquidated Damages

20.1 LIQUIDATED DAMAGES FOR TRAIN DELAYS AND CANCELLATIONS

- (a) The Contractor acknowledges and agrees that the Owner will suffer harm in the event of a train delay or cancellation caused by such delay. In the event of, and for each and every occurrence of, an in-service Metrolinx or VIA Rail passenger train or Canadian Pacific or CN freight train, being delayed

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or cancelled by any act or omission of the Contractor contrary to the terms of the SOW/ Task Assignment, the Contractor shall pay to the Owner as liquidated damages, and not as a penalty, the following:

- (i) The sum of five thousand dollars (\$5,000) as liquidated damages for the first five (5) minutes of each and every delay;
- (ii) In addition, the sum of three thousand dollars (\$3,000) as liquidated damages for each subsequent ten (10) minute interval of each and every delay; and
- (iii) The lump sum amount of fifty thousand dollars (\$50,000) for each train delay that lasts fifteen (15) minutes or more. If a train is cancelled due to an anticipated train delay, the anticipated train delay that resulted in the cancellation shall be deemed to be a train delay that lasts for fifteen (15) minutes.
- (iv) For the purpose of calculating the liquidated damages payable by the Contractor in accordance with this GC 20.1, the timing of any delay and cancellation (including commencement, duration and cessation), shall be based on the train schedule and train data that is established and maintained by the GO Transit Control Centre.
- (v) The maximum amount in the aggregate assessed for liquidated damages pertaining to GC 20.1 shall not be more than one hundred thousand dollars (\$100,000).

20.2 LIQUIDATED DAMAGES FOR TRACK CLOSURES

- (a) The Contractor acknowledges and agrees that the Owner will suffer harm in the event of the Contractor failing to complete specified Work during the scheduled track closure, or the Contractor cancelling the scheduled closure without at least three (3) weeks' notice prior to the closure. Should the Contractor fail to complete the specified Work during the scheduled track closure, resulting in the need to schedule another track closure, or if the Contractor cancels the scheduled closure without at least three (3) weeks' notice prior to the closure, the Contractor shall pay to the Owner the following:
 - (i) The lump sum amount of fifty thousand dollars (\$50,000) for each failure to complete specified Work during the scheduled track closure;
or

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- (ii) The lump sum amount of fifty thousand dollars (\$50,000) for each failure to provide at least three (3) weeks' notice of cancellation prior to the track closure.

20.3 Liquidated Damages for Safety Incidents

- (a) The Contractor acknowledges and agrees that Metrolinx will suffer harm in the event of any breach, act or omission of the Contractor that does or can reasonably be expected to create a threat to the health, safety or security of any person or user at or near the Place of Work, including other members of the public (each, a "Safety Incident").
- (b) Whether a Safety Incident has occurred, and the categorization of it as Major Safety Incident or Minor Safety Incident, shall be determined in accordance with this provision by Metrolinx in its sole discretion.
- (c) Minor Safety Incidents
 - (i) A Minor Safety Incident is an incident giving rise to health, safety or security concerns, but not a Major Safety Incident, and may include, but is not limited to: failure to notify Metrolinx of a safety issue or incident, or a failure to wear personal protective equipment. The occurrence of any of the following events shall constitute a Minor Safety Incident:
 - (A) The Contractor fails to notify Metrolinx in a timely manner of any event or happening that occurs for which notification is required under this Contract.
 - (B) The Contractor or any Contractor Personnel are present at the Place of Work and are not wearing personal protective equipment as required under CSMP in the circumstances.
 - (C) The Contractor or any Contractor Personnel fail to comply with CSMP standards at any time while acting in furtherance of any obligations under the Contract.
 - (D) A failure by the Contractor to punctually submit safety reports as required periodically by the Contract.
 - (ii) For each and every Minor Safety Incident that occurs, the Contractor shall pay Metrolinx liquidated damages in the amount of One

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Thousand dollars (\$1000.00) for administrative costs incurred by Metrolinx to review and, if necessary, address, rectify or cause to be rectified any or all failures which caused or contributed to the Minor Safety Incident and prevent the recurrence of same.

(d) Major Safety Incidents

(i) A Major Safety Incident is a a material breach or threat to the health, safety or security of any person or user of the Place of Work, and may include, but is not limited to: work proceeding without an approved work plan, incident causing injury to a person, risk to public safety, or incident giving rise to a report to, or charge or stop work order by the Ministry of Labour. The occurrence of any of the following events shall constitute a Major Safety Incident:

(A) The Contractor or any Contractor Personnel proceed with the Work without appropriate approval pursuant to Contract requirements.

(B) The Contractor or any Contractor Personnel perform any portion of the Work without the track protection required for that portion of the Work, as the case may be.

(C) An injury occurs at the Place of Work which is reportable to the Ministry of Labour, including without limitation fatal injuries.

(D) An incident occurs at the Place of Work which gives rise to a report to, charge or stop work order by the Ministry of Labour.

(ii) For each and every Major Safety Incident that occurs, the Contractor shall pay Metrolinx liquidated damages in the amount of Fifteen Thousand dollars (\$15,000.00) for administrative costs incurred by the Metrolinx to interface with the Ministry of Labour, if necessary, in regard to the Major Safety Incident and to review, address and rectify, or cause to be rectified, as the case may be, the failures which caused or contributed to the Major Safety Incident and to prevent the recurrence of same.

(iii) To ensure clarity, the liquidated damages in this Section 20.3 concern only and are limited to direct administrative costs incurred by Metrolinx for the administration of safety compliance and related due diligence conducted in accordance with and in furtherance of the

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Metrolinx's legal and professional obligations to be informed of, monitor and understand workplace safety risks and to reduce, limit and, where possible, prevent potential or actual risks to safety at the Place of Work. The liquidated damages in this Section 20.3 in no way apply to or limit damages available to Metrolinx in respect of property damage sustained by Metrolinx or otherwise limit the scope of any indemnity in this Contract regarding claims that may be made against Metrolinx as a result of or related to any Safety Incident.

- (iv) The Contractor acknowledges and agrees that the liquidated damages in this Section 20.3 constitute a genuine estimate of the administrative costs that Metrolinx will incur, as described in Section 20.3(e)(i)(A)(iii), upon the occurrence of a Minor Safety Incident or a Major Safety Incident, as the case may be, and further acknowledges and agrees that submitting a Submission indicates an unequivocal acceptance by the Contractor that the costs calculus in this Section 20.3 represents bona fide liquidated damages and not a penalty.
 - (v) Metrolinx shall have the right to set-off any amount owed by the Contractor to Metrolinx for liquidated damages pursuant to this Section 20.3.
 - (vi) Nothing in this Section 20.3 shall limit the rights of Metrolinx to place the Contractor in default for any Safety Incident, nor limit the legal rights of Metrolinx in respect of claims against the Contractor for damages resulting from any Safety Incident or default, whether related to a Safety Incident or otherwise.
- (e) The Contractor acknowledges and agrees that any amounts payable pursuant to this Section 20.0 - Liquidated Damages shall not be construed as a penalty imposed on the Contractor by Metrolinx. The Contractor agrees that it is, and shall be, estopped from alleging that any liquidated damages set out in this Section 20.0 are a penalty and not liquidated damages, or are otherwise unenforceable for any reason, including that such damages were not incurred. The Contractor acknowledges and agrees that all liquidated damages pursuant to Section 20.0 shall be payable whether or not Metrolinx incurs or mitigates these damages, and that Metrolinx shall have no obligation to mitigate these damages.
- (f) Metrolinx shall have the right to deduct the amount of any and all liquidated damages assessed against the Contractor under this Section 20.0 – Liquidated Damages from any amount due to the Contractor at any time.

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SCHEDULE B – FINANCIAL TERMS

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- (g) Except as expressly provided herein, nothing in this Section 20.0 shall restrict, limit, prejudice or in any other way impair the rights or remedies of Metrolinx under any other provision of the Contract.”
- (h) This Section 20.0 shall not limit the Metrolinx’s rights in respect of any other default of the Contractor, or any other express rights of the Metrolinx in the Contract Documents.

21.0 Contract Security

- 21.1 “Not Applicable” – language relates to where the Total Contract Price is \$500,000 or greater. If the second stage SOW is estimated at \$500,000 or more Contract Security will be applicable.

22.0 Substituting Forms of Statutory Holdback

- 22.1 The Contractor may, at any time, submit an application in writing to Metrolinx requesting that all or any Statutory Holdback being retained by Metrolinx in the form of funds be replaced with one or more of the following forms of holdback: a letter of credit (in the form prescribed by the Construction Act), a demand-worded holdback repayment bond (in the form prescribed by the Construction Act) or any other form of holdback prescribed by the Construction Act.
- 22.2 If Metrolinx agrees to a request made by the Contractor under Section 22.1 of this Schedule C – Financial Terms, Metrolinx shall notify the Contractor that it agrees to the Contractor’s request and the Contractor shall then proceed to obtain and provide to Metrolinx the agreed upon substitute form(s) of holdback. Once the Contractor has provided the agreed upon substitute form(s) of holdback to Metrolinx and Metrolinx has satisfied itself that the substitute form(s) of holdback are in the appropriate form and are consistent with the form agreed upon by the Parties, Metrolinx shall release to the Contractor the Statutory Holdback funds retained.
- 22.3 Notwithstanding any other provision in the Contract, Metrolinx is under no obligation whatsoever to agree to any request made by the Contractor under Section 22.1 of this Schedule C – Financial Terms. For greater certainty, Metrolinx has sole, absolute and unfettered discretion in determining whether or not to accept or reject a request made by the Contractor under Section 22.1 of this Schedule C – Financial Terms.

END OF SECTION

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SCHEDULE C – INSURANCE

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1.0 Contractor Insurance Requirements

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

- (a) Wrap-Up Liability Insurance (Metrolinx Provided)
 - (i) The Owner shall, at its own expense, obtain and maintain project-specific Wrap-Up General Liability Insurance (the “Policy”) with a combined single limit of liability of not less than One Hundred Million (\$100,000,000.00) dollars per occurrence and in the aggregate with respect to Products and Completed Operations Liability, against claims for bodily injury (including death), personal injury, property damage (including loss of use), and Products and Completed Operations for a period of not less than twenty-four (24) months from the date of Substantial Performance of the Work. Such policy shall include as additional insureds the Contractor and Subcontractors of any tier and including Suppliers who perform the Work at the Place of Work and also includes consultants, sub-consultants, engineers and architects (but not for Professional Liability purposes). The policy is subject to special limits, endorsements, extensions, restrictions and exclusions which shall include but not necessarily be limited to:
 - (A) Products and Completed Operations liability for a period of twenty-four (24) months from the date of Substantial Performance of the Work;
 - (B) Owners and Contractors Liability;
 - (C) Contingent Employer’s Liability;
 - (D) Non-owned Automobile Liability including Legal Liability for Damage to Hired Autos (SEF #94) - \$50,000 Limit, \$1,000 deductible;
 - (E) Cross Liability/Severability of Interests;
 - (F) No XCU Exclusion (explosion, collapse and underground);
 - (G) Contingent Medical Malpractice;
 - (H) Broad Form Property Damage;
 - (I) Property Damage to Metrolinx’ existing property (but not any property which is subject to coverage under a Course of Construction/Builder’s Risk Policy);

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- (J) Silent on Terrorism;
- (K) Sudden & Accidental Pollution;
- (L) Tenants Legal Liability \$5,000,000;
- (M) Medical Payments \$50,000 per person, \$100,000 each accident;
- (N) Employees as Additional Insured;
- (O) Defence Costs in Addition to Limits of Liability;
- (P) Asbestos Exclusion;
- (Q) Employment Practices Exclusions;
- (R) Automobile Exclusion:
- (S) Security Firm Exclusion;
- (T) Nuclear Exclusion;
- (U) Fungus, Mildew and Mould Exclusion;
- (V) Excludes Errors and Omissions (Professional Services);
- (W) Excludes property damage to contractor and sub-contractor's plant and equipment;
- (X) Excludes US Employers Liability; and
- (Y) Excludes damage to property either forming part of, or to form part of the Work.

If any Named Insured or other Insured under this insurance policy has any other insurance against loss covered by this Policy, except for insurance which is written specifically to cover in respect of the Project insured, this Policy shall be primary insurance and such other insurance shall be excess of the limits stated in this Policy. Where any Named Insured or other Insured has or places buy down insurance and/or any other insurance specifically covering work in respect of the Project insured or to provide coverage for the deductibles under this Policy, such insurance shall be primary and the

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insurance provided by this policy shall be excess of the limits stated in such purchased Policy.

- (b) **Wrap-Up Liability Deductible:**
 - (i) The Policy carries a deductible of One Hundred Thousand (\$100,000.00) dollars per occurrence inclusive of all legal fees and associated expenses incurred in the investigation, defence, settlement, arbitration or litigation of claims.

- (c) **Contractor's Responsibility for Wrap-Up Liability Deductible:**
 - (i) The Contractor shall, at its own expense, be responsible and liable for one hundred percent (100%) of the deductibles under the policy on each and every claim. Deductibles are inclusive of all legal fees, and associated expenses incurred in the investigation, defense, settlement arbitration or litigation of Claims.

 - (ii) Upon notification of a claim being made, the Owner shall, at its sole direction, be entitled to retain the amount of the deductible in whole or in part from payment to the Contractor. Such amount will be applied by the Owner in satisfaction of that claim and excess amounts, if any, will be paid to the Contractor in the event and at such time as the claim is settled, dismissed or withdrawn. Notwithstanding the foregoing, the Owner may, at its sole discretion, issue an invoice to the Contractor for the actual amount of the claim settlement up to the amount of the deductible, and if the invoice is not paid within thirty (30) days, The Owner shall deduct such amount from a future payment due to the Contractor.

- (d) **Cooperation with Wrap-Up Insurer's Consultant:**
 - (i) If an insurer or an insurer's appointed consultant, for underwriting purposes or as a term of the Wrap-Up Liability Policy, needs to review any part of the performance of this Contract, then the Contractor shall, cooperate with the insurer and its consultant, including providing them with such information and documentation as they may reasonably require.

- (e) **Claims Reporting:**
 - (i) The Contractor shall provide the Owner with written notice and all reasonable particulars and documents related to any damages, losses, incidents, claims and potential claims relating to the Policy as soon as possible after the damage, loss, incident or claim has been discovered. The Contractor shall also cooperate with the Owner's insurers in their investigation of any claim which is in excess of the deductible.

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- (f) Wrap-Up Liability Policy Term:
 - (i) The Owner provided wrap-up liability insurance policy shall be effective from the date of the Commencement of the Work until the date of Substantial Performance of the Work as certified by the Consultant.

- (g) “All Risk” Property/Course of Construction Insurance (Owner Provided):
 - (i) The Owner shall, at its own expense, obtain and maintain “All Risks” Property/Course of Construction Insurance covering the Work for direct physical loss or damage to property in course of construction whilst at the location of the Work and forming part of or to form part of the Work. The limit shall be equal to the replacement value of the Work, or at the discretion of the Owner, a limit of loss equal to the estimated Maximum Foreseeable Loss calculation as promulgated by insurers or brokerage consultants. Such policy is subject to aggregates, sub-limits, endorsements, extensions, restrictions and exclusions, including but not necessarily limited to the following:
 - (A) personal property excluded;
 - (B) construction tools, equipment and machinery excluded;
 - (C) asbestos contamination excluded;
 - (D) terrorism excluded;
 - (E) delay in start-up & soft costs excluded;
 - (F) faulty material, workmanship and design excluded;
 - (G) electronic data excluded,
 - (H) mold excluded;
 - (I) debris removal \$2,500,000 – maximum 25% of the amount of loss;
 - (J) off site storage at an unnamed location \$2,000,000;
 - (K) inland transit \$2,000,000;
 - (L) ingress/egress \$5,000,000 – maximum 30 days;
 - (M) DE4 approved;

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- (N) testing & commissioning – 4 weeks – restricted to new equipment only;
 - (O) firefighting charges \$2,000,000;
 - (P) pollution clean-up \$250,000;
 - (Q) arson/crime reward \$50,000;
 - (R) dewatering \$2,500,000;
 - (S) professional fees (excluding public adjuster); and
 - (T) testing & commissioning – 4 weeks – restricted to new equipment only.
- (h) “All Risk” Property/Course of Construction Insurance Deductible:
- (i) The Contractor shall, at its own expense be responsible and liable for one hundred percent (100%) of the following deductibles under this policy for each and every loss:
 - (A) \$50,000 all losses except
 - (B) \$50,000 Flood
 - (C) \$250,000 collapse and subsidence to construction of tunnels and sub-surface structures and installations
 - (D) 3% of Total Insurable Values (Subject to a minimum of \$100,000 per occurrence) Earthquake
 - (E) 48 Hours Waiting Period – Off Premises Service Interruption – property damage.

Upon notification of a claim being made the Owner shall, at its sole direction, be entitled to retain the amount of the deductible in whole or in part from payment to the Contractor. Such amount will be applied by the Owner in satisfaction of that claim and excess amounts, if any, will be paid to the Contractor in the event and at such time as the claim is settled, dismissed or withdrawn. Notwithstanding the foregoing, the Owner may, at its sole discretion, issue an invoice to the Contractor for the actual amount of the claim settlement up to the amount of the deductible, and if the invoice is not paid within

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thirty (30) days, The Owner shall deduct such amount from a future payment due to the Contractor.

- (i) Cooperation with “All Risk” Course of Construction Consultant:
 - (i) If an insurer or an insurer’s appointed consultant, for underwriting purposes or as a term of the Builders’ “All Risk” Course of Construction Policy, needs to review any part of the performance of this Contract, then the Contractor shall, cooperate with the insurer and its consultant, including providing them with such information and documentation as they may reasonably require.

- (j) Claims Reporting:
 - (i) The Contractor shall provide the Owner with written notice and all reasonable particulars and documents related to any damages, losses, incidents, claims and potential claims relating to the Policy as soon as possible after the damage, loss, incident or claim has been discovered. The Contractor shall also cooperate with the Owner’s insurers in their investigation of any claim which is in excess of the deductible.

- (k) “All Risk” Property/Course of Construction Policy Term:
 - (i) The Owner provided Builders’ “All Risk” Course of Construction insurance policy shall be effective from the date of the Commencement of the Work until the date of Substantial Performance of the Work as certified by the Consultant.

- (l) Contractors’ Pollution Liability (Owner Provided):
 - (i) The Owner shall, at its own expense, obtain and maintain project-specific Contractors’ Pollution Liability Insurance with a limit of liability of not less than ten million (\$10,000,000) per pollution condition and in the aggregate, including 24 months completed operations coverage, against claims for on-site clean-up of new pollutant conditions, third party claims for on-site bodily injury and property damage, and off-site clean up caused by a pollution or contamination incident resulting from covered operations. Emergency remediation expense limit five hundred thousand (\$500,000) and in the aggregate. Such policy is subject to aggregates, sub-limits, endorsements, extensions, restrictions and exclusions.

- (m) Contractors’ Pollution Liability Insurance Deductible:

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- (i) The Contractor shall, at its own expense be responsible and liable for one hundred percent (100%) of the fifty thousand (\$50,000) dollar deductible under this policy for each and every loss.
 - (ii) Upon notification of a claim being made the Owner shall, at its sole direction, be entitled to retain the amount of the deductible in whole or in part from payment to the Contractor. Such amount will be applied by the Owner in satisfaction of that claim and excess amounts, if any, will be paid to the Contractor in the event and at such time as the claim is settled, dismissed or withdrawn. Notwithstanding the foregoing, the Owner may, at its sole discretion, issue an invoice to the Contractor for the actual amount of the claim settlement up to the amount of the deductible, and if the invoice is not paid within thirty (30) days, The Owner shall deduct such amount from a future payment due to the Contractor.
- (n) Cooperation with Contractors' Pollution Liability Insurance Consultant:
- (i) If an insurer or an insurer's appointed consultant, for underwriting purposes or as a term of the Contractors' Pollution Liability Policy, needs to review any part of the performance of this Contract, then the Contractor shall, cooperate with the insurer and its consultant, including providing them with such information and documentation as they may reasonably require.
- (o) Claims Reporting:
- (i) The Contractor shall provide the Owner with written notice and all reasonable particulars and documents related to any damages, losses, incidents, claims and potential claims relating to the Policy as soon as possible after the damage, loss, incident or claim has been discovered. The Contractor shall also cooperate with the Owner's insurers in their investigation of any claim which is in excess of the deductible.
- (p) Contractors' Pollution Liability Policy Term:
- (i) The Owner provided Contractors' Pollution Liability insurance policy shall be effective from the date of the Commencement of the Work until the date of Substantial Performance of the Work as certified by the Consultant.
- (q) General Liability Insurance (Contractor Provided):
- (i) The Contractor shall, at its own expense, obtain and maintain General Liability Insurance for all off-site activities from commencement of the contract and any on-site activities following substantial completion when such on-site activities are not covered under the Owners Wrap-Up Liability completed operations. Such General Liability Insurance shall have a

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combined single liability limit of not less than Five Million (\$5,000,000) dollars per occurrence and in the aggregate, against claims for bodily injury (including death), personal injury, property damage (including loss of use), and Products and Completed Operations. Such policy shall be endorsed to include Metrolinx as an Additional Insured. The policy shall include but not necessarily be limited to:

- (A) Extended products and completed operations liability for a period of not less than 24 months beyond the Owner Wrap-Up Liability completed operations expiry date;
- (B) Blanket written contractual liability;
- (C) Contingent Employer's Liability;
- (D) Employer's liability (as applicable);
- (E) Non-owned Automobile Liability including Legal Liability for Damage to Hired Autos(SEF #94);
- (F) Contractual Liability (SEF #96);
- (G) Cross Liability/Severability of Interests;
- (H) No XCU Exclusion (explosion, collapse and underground);
- (I) Incidental Medical Malpractice;
- (J) Broad Form Property Damage;
- (K) Sudden & Accidental Pollution subject to a minimum scope equal to IBC 2313,Time Element Pollution;
- (L) Tenants Legal Liability;
- (M) Medical Payments;
- (N) Employees as Insureds;
- (O) Defence Costs in Addition to Limits of Liability; and
- (P) Waiver of Subrogation in favour of Owner.

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(r) Automobile Liability Insurance (Contractor Provided):

- (i) The Contractor shall, at its own expense, obtain and maintain at all times during the term of the contract insurance covering for bodily injury, death, damage to property and statutory accident benefits coverage with respect to all vehicles owned, licensed or leased by the Contractor. The policy shall have limits of not less than Five Million (\$5,000,000) dollars inclusive per occurrence. If the policy is issued pursuant to a government-operated automobile insurance system, the Contractor shall provide the Owner with confirmation of automobile insurance coverage for all automobiles registered in the name of the Contractor.

(s) Equipment Insurance (Contractor Provided):

- (i) The Contractor shall, at its own expense, obtain and maintain at all times during the term of the contract insurance covering construction machinery and equipment used by the Contractor for the performance of the Work, including boiler insurance on temporary boilers and pressure vessels. The policy shall be in a form acceptable to the Owner and shall not allow subrogation claims by the insurer against the Owner.
- (ii) Subject to satisfactory proof of financial capability by the Contractor for self-insurance, the Owner agrees to waive the equipment insurance requirement. In so doing, the Contractor waives all right of claim against the Owner in respect to loss or damage to such equipment as if it was otherwise insured and subject to a Waiver of Subrogation rights from the insurer.

1.2 Additional Coverage

- (a) Without prejudice to any other provisions of this Contract (including Section 1.1 of this Schedule C - Insurance), the Contractor 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 Contractor is required to obtain and maintain, or cause to be obtained or maintained, by Applicable Law.

1.3 Requirements for Insurance

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- (a) All of Contractor's policies of insurance, as required under this Contract (the "Contractor Policies"), shall be taken out with insurance companies licensed to transact business in the Province of Ontario with an AM Best rating of no less than A.
- (b) Any deductible or self-insured retention amounts are the responsibility of the Contractor. Notwithstanding the foregoing, such deductibles or self-insured retention must be consistent with standard commercial practice and acceptable to Metrolinx, acting reasonably.
- (c) All Contractor 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 Contractor fails to obtain and/or maintain in full force and effect any such insurance as aforementioned, then Metrolinx shall have the right as the Contractor's true and lawful attorney to do all things necessary for this purpose. The Contractor 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 Contractor may be paid directly to the insurer(s) or broker(s) by Metrolinx, which shall be entitled to deduct the amount of same along with its reasonable costs in so doing from any monies otherwise due to the Contractor by Metrolinx either under this Contract or otherwise.
- (e) All Contractor Policies shall be endorsed to provide Metrolinx with not less than thirty (30) days' advance written notice of cancellation.
- (f) Irrespective of the insurance requirements above, the insolvency, bankruptcy, or failure of any such insurance company providing insurance for the Contractor, or the failure of any such insurance company to pay claims that occur will not be held to waive any of the provisions hereof.

1.4 Proof of Insurance

- (a) The Contractor shall, prior to the commencement of the Work and thereafter upon request, provide to Metrolinx original signed certificates of insurance for the Contractor Policies, confirming that the required coverage has been placed and maintained. In addition, at least fifteen (15) days prior to the expiry date or replacement of any policy, the Contractor shall provide original signed certificates evidencing renewals or replacements of such policy to Metrolinx, without notice or request by Metrolinx.
- (b) The Contractor shall, upon request, provide evidence to Metrolinx that the premiums associated with the Contractor Policies have been paid; however, receipt

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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 Contractor.

- (c) The Contractor also agrees to provide Metrolinx with proof of errors and omissions insurance maintained by any Subcontractor, where such Subcontractor 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 Contractor and to be in a form and with an insurer acceptable to Metrolinx.

1.5 Contractor'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 Contractor to Metrolinx under or in relation to any other provisions of this Contract.

1.6 Certificates of Insurance shall include:

- (a) A reference to the Project description and Contract number;
- (b) Additional insureds as follows:
 - (i) The Certificate of Commercial General Liability Insurance shall include the following as additional insureds:
 - (A) Metrolinx;
 - (B) Canadian National Railway Company Limited; and
 - (C) Canadian Pacific Railway Company Limited.
- (c) Confirmation the policy includes a waiver of subrogation against Metrolinx as required by General Conditions of the Contract.
- (d) A provision requiring the insurer to give Metrolinx thirty (30) calendar days prior written notice of any changes to, or cancellation of, the required insurance policies.

2.0 Workplace Safety & Insurance Board Protection

- 2.1 With respect to the WSIB coverage as required under the Workplace Safety and Insurance Act (Ontario), the Contractor unconditionally guarantees to Metrolinx

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full compliance with the conditions, regulations and laws relating to workplace safety insurance by itself and by all SubContractors.

- 2.2 Without restricting the indemnity obligations of the Contractor in Article 12 of the General Conditions, unless the Contractor is WSIB exempt, the Contractor shall produce, at the commencement of this Contract, from time to time as may be required by Metrolinx and prior to issuance of the Final Payment Certificate, a valid Workplace Safety and Insurance Clearance Certificate, issued by the WSIB, for the premium rate class, subclass or group appropriate to the Work.
- 2.3 If the Contractor 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

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SCHEDULE D – DISPUTE RESOLUTION

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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 Contractor shall not stop or delay the performance of the Work, in whole or in part, on account of a Dispute between the Contractor and Metrolinx or between the Contractor and any other Person. Without limiting the generality of the foregoing, at all times during the course of a Dispute, the Contractor 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 Contractor's compliance with this Section 2.0 shall not operate to waive any claim or contention that the Contractor 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, the Vice President, Engineering & Asset Management 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 Contractor, of equivalent seniority and duly appointed to represent the Contractor in this regard,

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shall meet and make a good faith effort, on a without prejudice basis, to resolve the Dispute as set out in the Dispute Notice in a prompt manner and, for the purpose of same, each Party shall provide its representative with full and timely disclosure of all relevant facts information and documents as may be reasonably required or may be reasonably requested by the other Party, on a without prejudice basis, to facilitate such negotiation.

- 4.2 Negotiations under this Section 4.0 shall be commenced within ten (10) Business Days of delivery of a Dispute Notice and shall, unless otherwise agreed by the Parties, be concluded within fifteen (15) Business Days of their commencement. In the event that a resolution satisfactory to all Parties is achieved through such negotiations, the Parties shall issue a joint statement detailing the manner in which the Dispute has been resolved.

5.0 Mediation

- 5.1 If a Dispute has not been resolved through high-level negotiation as contemplated in Section 4.0, either Party may refer the Dispute to be resolved through mediation.
- 5.2 The Parties shall mutually agree to the appointment of the mediator within thirty (30) Business Days, or within such other time as the Parties may agree, of any Party issuing a supplementary Dispute Notice requesting mediation.
- 5.3 If the Parties cannot agree on the appointment of a mediator, the appointment of a mediator shall be determined by the Ontario Superior Court of Justice following an application by either Party.
- 5.4 The mediator shall be independent of and at arm's length to the Parties and shall be a person who by training and experience has the qualifications and the mediation skills to mediate a Dispute.
- 5.5 Unless the Parties otherwise agree, the mediation shall proceed in accordance with the following procedures:
- (a) Each Party shall prepare a summary of the issues in dispute, with the Party's position with respect to those issues. The summary shall be delivered to the mediator and the other Parties, at least seven (7) Business Days before the first mediation conference.

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SCHEDULE D – DISPUTE RESOLUTION

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- (b) The goal of the mediation is to reach an agreed upon settlement and, therefore, all individuals with the appropriate authority to agree to the settlement terms and conditions shall be present at the mediation.
 - (c) A Party may be represented at the mediation by counsel or another representative at the sole cost of such Party.
 - (d) The mediator, the Parties and their counsel or representatives shall keep confidential all matters relating to the mediation, except where disclosure of a settlement agreement is necessary to implement or enforce that agreement and except as otherwise required by Applicable Law.
 - (e) In all respects, the mediation is deemed to be a "without prejudice" proceeding.
- 5.6 The costs of the mediator shall be apportioned equally between the Parties unless otherwise agreed under any settlement reached under this Section 5.0.
- 5.7 If the Parties achieve a resolution of the Dispute, the mediator shall confirm the resolution in writing, which will be signed by the Parties. If the Parties do not resolve the Dispute, the mediator shall provide a written confirmation that the Parties were unable to resolve the Dispute.
- 5.8 Both Parties acknowledge and agree that they may not refer a Dispute for resolution by arbitration under Section 6.0 herein prior to attempting to resolve such Dispute through mediation pursuant to this Section 5.0.

6.0 Arbitration

- 6.1 Any Party may, within ten (10) Business Days of the delivery of the mediator's confirmation that the Parties were unable to resolve their Dispute, issue a supplementary Dispute Notice requesting arbitration. Subject to Applicable Law, if such a supplementary Dispute Notice is issued, the Parties shall proceed to arbitration in the manner described below.
- 6.2 If the Parties agree on the arbitrator, the Parties shall jointly appoint the arbitrator as soon as possible and in any event within ten (10) Business Days of the submission of a Dispute to arbitration under this Section 6.0. If the Parties are unable to agree on an arbitrator, each Party shall appoint an arbitrator, and the two arbitrators so chosen shall select a third arbitrator acceptable to both of them within ten (10) Business Days of their selection.

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- 6.3 The arbitrator(s) shall be independent of and at arm's length to the Parties and shall be a person who by training and experience has the qualifications and arbitration skills to arbitrate a Dispute.
- 6.4 The arbitration shall be conducted in accordance with the provisions of the Arbitration Act, except to the extent they are modified by the express provisions of this Schedule D - Dispute Resolution or unless the Parties otherwise agree.
- 6.5 If the issue in dispute is particularly time sensitive, the Parties shall, in good faith, take such reasonable steps as may be required to expedite the arbitration process in order that an award may be rendered as soon as practicable by the arbitrator(s), given the nature of the Dispute.
- 6.6 The arbitrator(s) has the jurisdiction to deal with all matters relating to a Dispute.
- 6.7 Unless otherwise agreed, the arbitration shall be conducted in the City of Toronto, Province of Ontario at the location determined from time to time by the arbitrators, but the arbitrators may meet in any other place the arbitrators considers 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

**GENERAL CONDITIONS OF THE CONTRACT
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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 –CONTRACTOR PERSONNEL**

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1.0 Contractor Personnel

1.1 The following are roles that shall be filled by the Contractor 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	Name of Individual	Actual Years of Experience
Project Engineer	As per the prequalification	As per the prequalification	Duration of Contract		
Project Manager	As per the prequalification	As per the prequalification	Duration of Contract		
Signal Installation Manager / Supervisor	As per the prequalification	As per the prequalification	Duration of Contract		
Signal Testing Manager	As per the prequalification	As per the prequalification	Duration of Contract		

2.0 Replacement of Key Personnel

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

(a) Curriculum Vitae

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- (i) The Contractor 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 Contractor 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 Contractor shall ensure that all contact information provided for references is current and accurate in order to enable Metrolinx to obtain all necessary information for evaluation purposes in a timely manner.

 - (iii) The list of three (3) references submitted when combined should demonstrate that the named Key Personnel has the required qualifications and experience as stated in this Schedule E herein, and

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SCHEDULE E –CONTRACTOR PERSONNEL**

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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” in List of Contents.

**SCOPE OF WORK
GENERAL INSTRUCTIONS**

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1.0 Documents Required

1.1 Maintain at the Place of Work, one (1) copy of following:

- (a) Contract Document;
- (b) Amendments to Contract/Change Orders;
- (c) other modifications to Contract;
- (d) Contractor's Occupational Health and Safety Policy, the program to implement the Occupational Health and Safety Policy and the site safety plan;
- (e) any other documentation required to be posted as per the OHSA and any subsequent regulations;
- (f) the completed and approved Site Specific Work Plan Submittal; and
- (g) any other documentation required to carry out the Work.

2.0 Work Schedule

2.1 Interim reviews of Work progress based on the schedule submitted by Contractor will be conducted. Update Contractor's schedule and cash flow chart when requested by Metrolinx.

3.0 Location and Hours of Work

3.1 Location(s) of Work

- (a) The Work shall be carried out at the following location(s): All locations within the GO Transit system with exception to Union Station Railway Corridor (USRC).

3.2 Hours of Work

- (a) The Contractor's hours of work for this Contract are 7:00 a.m. to 7:00 p.m., Monday to Friday, statutory holidays excluded.

**SCOPE OF WORK
GENERAL INSTRUCTIONS**

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4.0 SubContractors and Suppliers

- 4.1 The Contractor shall submit within five (5) Working Days of execution of the Contract a complete list of SubContractors and Suppliers that shall include the names of all SubContractors and Suppliers that will be employed to perform or supply specific divisions of the Work.
- 4.2 The Contractor shall not change the identified SubContractors or Suppliers listed without written consent of Metrolinx.

5.0 Contractor's Use of Site

- 5.1 Perform Work, and schedule deliveries, in a manner that will interfere as little as possible with Metrolinx's operations.

6.0 Codes and Standards

- 6.1 Perform Work in accordance with applicable acts administered by other authorities having jurisdiction.
- 6.2 Work to meet or exceed requirements of specified standards, codes and referenced documents.
- 6.3 Codes, specification standards, manuals and installation, application and maintenance instructions, referred to in the Contract shall be of latest published editions at date of Closing.

7.0 Project Meetings

- 7.1 Hold project meetings at times and locations approved by Metrolinx.
- 7.2 Designated parties shall take required action on decisions made at meeting. Metrolinx will record minutes of meetings and distribute to parties prior to next meeting.

8.0 Final Cleaning

- 8.1 Products
 - (a) Use only cleaning materials recommended by manufacturer of surface to be cleaned, and as recommended by cleaning material manufacturer.
- 8.2 Cleaning

**SCOPE OF WORK
GENERAL INSTRUCTIONS**

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- (a) Ensure that the Place of Work is kept clean and tidy at all times throughout the term of the Contract. Remove all rubbish and debris promptly as it accumulates. Ensure that all sub-trades conform similarly.
- (b) Promptly remove from the Place of Work and dispose of surplus materials.
- (c) Do not accumulate scrap piles at any time. Fires will not be permitted at the Place of Work.
- (d) Remove dust and soil from all surfaces affected by Work by vacuuming, damp mopping, washing or scrubbing, as required.

9.0 Systems Demonstration

- 9.1 Prior to final inspection, demonstrate operation of each system to Metrolinx.
- 9.2 Instruct personnel in operation, adjustment, and maintenance of equipment and systems, using provided operation and maintenance data as basis for instruction.

10.0 Operations and Maintenance Data

- 10.1 On completion of project, submit to Metrolinx one (1) soft copy and four (4) hard copies of Operations Data and Maintenance Manual, made up as follows:
 - (a) bind data in vinyl, hard covered, three ring, loose leaf binder for 215 x 280mm sized paper;
 - (b) enclose title sheet, labelled "Operation Data and Maintenance Manual", project name, date and list of contents; and
 - (c) organize contents into applicable sections of work. Mark each section by labelled tabs protected with celluloid covers fastened to hard paper dividing sheets.
- 10.2 Include following information plus data specified:
 - (a) description operation and maintenance instructions for equipment and systems, including a complete list of equipment and parts list. Indicate nameplate information such as make, size, capacity, serial number;
 - (b) names, addresses and phone numbers of SubContractors and suppliers;
 - (c) guarantees, warranties and bonds showing:

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GENERAL INSTRUCTIONS**

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- (i) name and address of projects;
 - (ii) guarantee commencement date (date of Final Certificate of Completion);
 - (iii) duration of guarantee;
 - (iv) clear indication of what is being guaranteed and what remedial action will be taken under guarantee; and
 - (v) signature and seal of Contractor; and
- (d) additional material used in project listed under various sections showing name of manufacturer and source supply.

10.3 Neatly type lists and notes. Use clear Drawings, diagrams or manufacturer's literature.

11.0 Date-Related Compliance

11.1 All materials, equipment, systems and components thereof used in connection with the provision of the Work, individually or in combination as the case may be, shall accurately and automatically process any and all date and date-related data including, but not limited to calculating, comparing and sequencing when used in accordance with the documentation provided by the Contractor.

11.2 Metrolinx may, at no additional cost to itself, require the Contractor to demonstrate date-related compliance as specified in Section 11.1 above and/or compliance techniques and test procedures the Contractor followed in order to comply with these requirements.

END OF SECTION

SCOPE OF WORK QUALITY CONTROL

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1.0 Inspection

- 1.1 The materials furnished by the Contractor shall be inspected by Metrolinx at the time of delivery and at such other times as Metrolinx may elect.
- 1.2 Metrolinx shall have access to the work. If parts of the work are in preparation at locations other than the Place of the Work, access shall be given to such work whenever it is in progress.
- 1.3 Metrolinx may order any part of the work to be examined to ensure compliance with the Contract. If, upon examination such work is found not in accordance with the Contract, correct such work and pay the cost of examination and correction.
- 1.4 The review of the information covering materials and equipment by Metrolinx shall in no way release the Contractor from his responsibility for the proper design, installation and performance of any material, equipment or arrangement or from the liability to replace same should it prove defective or deficient.

2.0 Independent Inspection Agencies

- 2.1 Independent Inspection/Testing Agencies may be engaged by Metrolinx for inspecting and/or testing portions of work.
- 2.2 Cost of such services will be borne by the Contractor and paid for by Metrolinx under each SOW or Task Assignment.
- 2.3 Provide samples and/or assistance required for inspection and testing by the appointed agencies.
- 2.4 Employment of Inspection/Testing Agencies does not remove the responsibility to perform Work in accordance with the Contract.
- 2.5 If defects are revealed during inspection and/or testing, the appointed agency will request additional inspection and/or testing to ascertain full degree of defect. Correct defects and irregularities as advised by Metrolinx at no cost to Metrolinx. Pay costs for retesting and re-inspection.

3.0 Procedures

- 3.1 Notify the appropriate agency and Metrolinx a minimum of two (2) Working Days in advance of the requirement for tests, in order that arrangements can be made with the testing company.

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- 3.2 Submit samples and/or materials required for testing, as specifically requested in Scope of Work. Submit with reasonable promptness and in an orderly sequence so as not to cause delay in the Work.
- 3.3 Provide labour and equipment to obtain and handle samples and materials at the Place of Work.

4.0 Rejected Work

- 4.1 If, in the opinion of Metrolinx, it is not expedient to correct defective work, or work not performed in accordance with the SOW or Task Assignment, Metrolinx may deduct from the SOW or Task Assignment, the difference in value between the work performed and that called for by the SOW or Task Assignment, the amount of which shall be determined by Metrolinx.

5.0 Reports

- 5.1 Reports on materials testing as arranged by Metrolinx shall contain the following information:
 - (a) Date and time of inspection or test.
 - (b) Weather conditions and ambient air temperatures during the inspection.
 - (c) Testing method employed by proper standard reference and specific paragraph or other detailed information as applicable.
 - (d) Inspection description and detailed and other relevant information.
 - (e) Test results in detail, complete with applicable graphs and other clarifying documents and information.
 - (f) Printed name and signature of person having conducted inspection or test, and name, title and signature of Supervisor having verified the report.
- 5.2 Inspection and Testing Agency shall provide a written report for each inspection and test made, three copies to Metrolinx; three copies to the Contractor direct, who shall forward one copy to the SubContractor, supplier or manufacturer concerned.

END OF SECTION

**SCOPE OF WORK
RAILWAY SAFETY REQUIREMENTS**

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1.0 Railway Safety, Orientation and Permits

- 1.1 The Contractor shall ensure that all persons employed or hired by the Contractor who are granted access to **CN/CPR/Metrolinx** right-of-way are trained and current in one of the following railway safety training courses:
- (a) GO-Safe Railway Orientation (available at www.gotransitcontractor.com)
 - (b) or Metrolinx approved Canadian Railway Operating Rules and GO Transit
 - (c) Track worker Safety Instructions; and
 - (d) Any other railway safety training as applicable to Metrolinx property.
- 1.2 The Contractor shall maintain an up-to-date list of all such trained employees on site and ensure all such trained employees wear the sticker, issued upon successful completion of the course on a readily visible location on their hardhats, or carry the wallet card issued upon successful completion of the course, at all times when within the railway right-of-way. Authority to commence construction will only be given when this requirement has been fulfilled.
- 1.3 The Contractor shall ensure that appropriate railway entry/access permits are completed and on site prior to starting Work in the railway corridor.

2.0 Track Protection

- 2.1 Work within the Railway corridor will be subject to the limitations stipulated within Canadian Rail Operating Rules (CROR). Track Protection by means of flagging protection will be required in accordance with CROR and Metrolinx Track Worker Safety Instructions (TWSI).
- 2.2 Flag persons/flag persons in training will be furnished by **A&B** at no cost to the Contractor, up to the date specified for the Total Performance of the Work. After this date, the Contractor will, at the sole discretion of Metrolinx be required to pay all additional flagging costs, which will be automatically deducted from the amounts due to the Contractor in the progress payments.
- 2.3 Installation of railway-approved temporary barriers, enclosures or platforms to separate off track equipment and workers from live track, eliminate equipment from entering the track clearance envelope or debris from falling to the track, will require a task specific risk assessment subject to approval by Metrolinx, and may

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RAILWAY SAFETY REQUIREMENTS**

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- reduce or eliminate the need for a flag person, or reduce the type of flagging protection required.
- 2.4 The Contractor will be responsible for ensuring that construction operations are carried out without interfering with the continued safe movement of rail traffic.
- 2.5 The Contractor shall ensure that a flag person is present at all times when work is executed within the Railway Corridor or within 10 meters of the nearest rail or above the track(s) where the work, in the opinion of Metrolinx, may be exposed to or interfere with the operation of trains. The Contractor shall arrange for a site meeting with Metrolinx no earlier than four weeks prior to flagging to confirm flagging protection requirements.
- 2.6 Equipment operators on track must be CROR/TWSI trained.
- 2.7 The Contractor shall submit the requests for flagging protection weekly with three (3) week forecast to ensure the most up-to-date information is being relayed for the scheduling of track protection. A minimum of 48 hours' notice shall be given for any cancellations of the scheduled or approved flagging protections.
- 2.8 Cancellation requested received less than 48hrs notice prior to scheduled start time shall result in costs incurred being applied to the Contractor.
- 2.9 The Contractor shall advise Metrolinx of work to be performed, using task specific method statements, in order to schedule flagging protection. Subject to Metrolinx approval of the method statement, the Contractor shall advise Metrolinx of the scheduled flagging times on the corridor at least three weeks in advance for Metrolinx's planning and coordination purposes. Metrolinx reserves the right to make adjustments to flagging as required.
- 2.10 Ensure that a responsible person is present at all times to whom the Railway personnel will issue orders regarding work near the tracks. Comply immediately with such orders and instructions.
- 2.11 The colour red shall not be used for safety vests or survey markers on railway right-of-way in order to avoid conflict with Railway Operational Practice. Other highly visible colours such as orange are acceptable provided they comply with the CSA Class 2 requirements for outer garments Dark coloured outer wear with high visibility striping is not acceptable for use within Metrolinx railway corridors.
- 2.12 At no time shall idling equipment be left unattended by the operator.

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RAILWAY SAFETY REQUIREMENTS**

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- 2.13 The Contractor shall ensure that both rails of the same track are never connected with any conductor of electricity such as steel measuring tapes or metal traction equipment.
- 2.14 All accidents/incidents that have the potential to impact worker safety, the safe operation of trains, or damage to railway property must be reported immediately to the railway flag person. The appropriate railway authority and the GO Transit Control Center shall be advised immediately of any violations of the Canadian Railway Operating Rules.

3.0 Protection of Infrastructure

- 3.1 Ensure protection of the rails, ties and ballast from falling materials (i.e. trees, rocks, debris, etc.) by use of timber mats or equivalent material. Prevent excavated material from contaminating ballast and sub-ballast.
- 3.2 The Contractor shall restore any track structure that is disturbed during construction activities as follows:
 - 3.3 the track shall be mechanically lined, tamped, surfaced, compacted and stabilized with the appropriate equipment to ensure that the track structure is safe for train traffic at a minimum speed of 30 mph prior to the end of the closure;
 - 3.4 after the required tonnage has travelled over the affected area, the track shall be in such a state so as to allow for the authorized track speed as per GO Track Standards.

4.0 Restrictions on Construction Operations

In order to ensure the continued safe movement of rail traffic, certain restrictions shall be imposed on the construction operations. Without in any way limiting the generality of the foregoing statement, the following are some of the limitations or restrictions that shall be imposed.

- 4.1 The Contractor shall acknowledge that the Works within the Rail Corridor will be carried out on or adjacent to operating railway tracks and that the productive hours of work are affected by the passage of trains and associated stoppages of work are required to ensure railway safety. The safe uninterrupted passage of trains shall take priority over the construction of the Works.
- 4.2 The Contractor shall comply fully with Metrolinx in planning, scheduling and control of the work within the Rail Corridor.

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RAILWAY SAFETY REQUIREMENTS**

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- 4.3 The Contractor shall acknowledge and agree to provide continued safe movement of rail traffic by following the restrictions that shall be imposed on the construction operations including the following limitations or restrictions included in the GO Track Standards.
- 4.4 All workers and equipment within ten (10) meters or thirty (30) feet from the nearest rail must stop working on the approach of a train and remain stopped until permission has been given to resume work by the flag person.
- 4.5 Do not work closer than four (4) meters or thirteen (13) feet from the nearest rail without the prior consent of Metrolinx and only during such times as there is track protection provided by the Railway.
- 4.6 The Contractor shall secure all scaffolding, formwork and other protective coverings to be used on the project in such a manner that they will not come loose by the movement of passing trains.
- 4.7 Prior to undertaking any work, the Contractor shall delineate the work outside of the Rail Corridor from work within the Rail Corridor with construction fences. The Contractor shall coordinate the exact location and placement of the fencing with Metrolinx.
- 4.8 In the event of an incident that may impact rail operations, the Contractor shall notify the flag person immediately for an assessment and action.

5.0 Crossing Tracks

- 5.1 Do not cross tracks of the Railway Company with scrapers, bulldozers, trucks, barrows or other mechanical equipment at grade nor place crossing planks except by authority of Metrolinx, at locations designated by him.
- 5.2 The Contractor shall not cross the track with any equipment or vehicles without prior approval from Metrolinx. If the Contractor's schedule of operations requires construction equipment to cross the track, the Contractor shall make a request to Metrolinx for a Temporary Construction Crossing.
- 5.3 Each rail of the track shall be protected by use of rubber mats or tires, before any crawler mounted equipment is allowed to cross the track affected.
- 5.4 Construction equipment shall not cross the track except at an approved Construction Crossing designated by the Metrolinx. Crossings shall only be used by equipment when flagging protection has been provided. Refer to RC-0506-02

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RAILWAY SAFETY REQUIREMENTS**

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TRK GO Transit Track Standards, Section 13.6 Construction/Temporary Crossings.

- 5.5 If necessary, the Contractor shall be responsible for constructing and maintaining the crossing, the manually operated rising barriers and the approaches to the crossing to a standard acceptable to GO Transit Track Standards. Refer to RC-0506-02 TRK GO Transit Track Standards, Section 13.6 Construction/Temporary Crossings
- 5.6 The Contractor shall install the temporary manually operated rising barriers, approved by Metrolinx, to prevent use of the crossings by unauthorized personnel and keep gates locked when crossings are not in use. Metrolinx reserves the right to open the locks and use the gates at any time in order to access Metrolinx Lands.
- 5.7 Upon completion of all construction requiring use of the temporary crossings, the Contractor shall remove the crossing planking, the manually operated rising barriers, and the approaches and restore the track ballast section in accordance with the GO Transit Track Standards.

6.0 Site Material Storage

- 6.1 Due to the area of the work and the possibility of vandalism, all materials must be physically removed from the site or placed in secure bins or areas on a daily basis. No loose material will be allowed on site.
- 6.2 The Contractor shall be held accountable for all damages to Metrolinx operations or property, railway operations or property, and all persons or their property, that is found to be a result of improper materials storage practices by the Contractor or their SubContractors.
- 6.3 The Contractor shall not store materials or equipment on the Rail Corridor. The Rail Corridor must remain clear for railway use at all times. Equipment shall not be positioned to block the railway access road, track area or any part of the Rail Corridor without prior Metrolinx approval.

END OF SECTION

**SCOPE OF WORK
ENVIRONMENTAL PROTECTION**

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1.0 Fires

1.1 Fire and burnings of rubbish at the Place of Work will not be permitted.

2.0 Disposal of Wastes

2.1 Do not bury rubbish and waste materials at the Place of Work.

2.2 Do not dispose of waste or volatile materials, such as mineral spirits, oil or paint thinner into waterways, storm or sanitary sewers.

2.3 Except as indicated otherwise, surplus materials shall become the property of the Contractor and shall be removed from the premises promptly as they become surplus, at the cost of the Contractor.

3.0 Drainage

3.1 Where applicable, do not pump water containing suspended materials into waterways, sewer or drainage systems.

3.2 If Section 3.1 herein is applicable, provide pumping units of sufficient number to comply with the above requirements and keep a minimum of one (1) unit in operating condition as a spare at the Place of Work.

4.0 Pollution Control

4.1 Operations generating smoke, fumes, gases, dusts, vapours and odours shall be exhausted at source to the outdoor atmosphere or utilize smoke extraction devices in a manner approved by Metrolinx.

4.2 Take precautions necessary to keep dust, smoke, fumes, dirt and vibration to an acceptable level as determined by Metrolinx.

4.3 Prevent extraneous materials from contaminating the environment immediately to and beyond the application area, by providing temporary enclosures or other appropriate preventative measures.

4.4 Spill containment devices and spill kits shall be required at the Place of Work where there is the potential for any hazardous products to accumulate or enter the environment.

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5.0 Noise

- 5.1 Prevent excessive noise which will be disturbing to the occupant of building. Machine tools which are set up in fixed locations shall be so located to minimize noise and suitable sound deflectors shall be used if directed by Metrolinx.
- 5.2 Use air compressors and pneumatic hammers only with the expressed authorization of Metrolinx.
- 5.3 The Contractor shall take all measures reasonably necessary to protect workers from hazardous sound levels in compliance with the OHSA O.Reg 318/15:Noise

6.0 Spills

- 6.1 The Contractor shall provide Metrolinx with a written program for spills response and reporting. Copies of training records shall also be provided.
- 6.2 All spills shall immediately be reported to the GO Transit Communications Center, (416) 601-2174, or as directed by Metrolinx.

7.0 Dust Control

- 7.1 The Contractor shall take any and all steps necessary to prevent a dust nuisance from occurring as a result of performance of the Work. This may include the need for additional exhausting methods and air quality monitoring as determined by Metrolinx.
- 7.2 Where the Work requires the sawing or grinding of concrete, which produces silica, wet type blades and grinders shall be used together with sufficient water to prevent the occurrence of dust. Cost of all such preventative measures and clean-up of all residual contaminants shall be borne by the Contractor.

END OF SECTION

**SCOPE OF WORK
SAFETY REQUIREMENT**

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1.0 Construction Safety Measures

- 1.1 For the purposes of the Contract, the term “Constructor”, as defined in Ontario’s *Occupational Health and Safety Act* (OHSA), shall mean the entity that shall be responsible for ensuring that the provisions of the statutes, regulations and by-laws pertaining to the safe performance of the Work are to be observed. The “Constructor” shall submit the Notice of Project to the Ministry of Labour, if required by the Work as defined by the Construction Projects Regulation. The Contractor shall be listed as the Constructor and Metrolinx listed as Metrolinx owner.
- 1.2 The Contractor’s Site Supervisor shall be defined as and perform all the functions of the “Supervisor” of the “Constructor” for the “Project”, where these terms have the same meanings as defined in Section 1 of the OHSA. The "Supervisor" shall also be deemed to be the "Supervisor" designated by "Metrolinx" should Metrolinx also fit the definition of a "Constructor" under OHSA. The supervisor shall not be changed except for valid reason.
- 1.3 The Contractor’s Site Supervisor shall be present at the Place of Work during the performance of the Work. In the case of the Contractor’s Site Supervisor’s absence, the Contractor will name another person, in writing to Metrolinx, who is competent to assume these responsibilities as the Contractor’s Site Supervisor.

2.0 Project Responsibilities

- 2.1 The Contractor and the Contractor’s representative shall ensure that:
- (a) All measures and procedures prescribed by the most recent version of the following documents are carried out at the Place of Work;
 - (i) The *Occupational Health and Safety Act* and applicable Regulations made thereunder;
 - (ii) The *Rail Safety Act* and applicable Regulations made thereunder;
 - (iii) The *Environmental Protection Act* and applicable Regulations made thereunder;
 - (iv) The *Smoke-Free Ontario Act* and Regulation;
 - (v) Metrolinx’s Construction Safety Management Program (CSMP), Project Owner Stream; and

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- (vi) Any other legislation, regulations and standards as applicable.
- 2.2 The Contractor shall ensure that every employer and every worker performing work at the Place of Work shall comply with all measures and procedures prescribed by the latest versions of the following Acts, Regulations and Metrolinx documents referred to in Section 2.1 above.
- 2.3 The Contractor shall ensure that the health and safety of workers and the general public are protected in relation to the work performed on site. The Contractor shall comply with, or cause to be complied, all occupational health and safety legislation, including every employer and every worker performing Work at the Place of Work, who shall demonstrate a willingness to participate in occupational health and safety program(s).

3.0 Deliverables

- 3.1 The Contractor shall, within five (5) Working Days of execution of the Contract, submit the following to Metrolinx for review:
 - (a) A copy of the Contractor's Occupational Health and Safety Policy and Program, which shall comply with all applicable legislation. Contractor
- 3.2 The Contractor shall, within five (5) Working Days of receipt of Metrolinx approval to proceed with a Task Assignment, submit the following to Metrolinx for its review:
 - (a) A copy of the Contractor's Site Specific Safety Plan Submittal that includes site-specific hazard and risk assessment plans that will effectively prevent and control incidents and/or accidents.
 - (b) Written confirmation that the Contractor has ensured all Contractor Personnel, at the Place of Work, have reviewed and familiarized themselves with the approved Site Specific Work Plan Submittal.
- 3.3 Work shall not commence at Place of Work until Metrolinx has received the above-referenced documents. The Contractor shall not be entitled to claim for any extension to the Contract Time or the Contract Price as a result of the Contractor's failure to submit an Occupational Health and Safety plan and program and a Site Specific Work Plan Submittal per Task Assignment, that are acceptable to Metrolinx.

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- (a) The Contractor shall provide a copy of its Fit-For-Duty Policy and Program five (5) Business Days after final execution of the Contract.
- 3.4 The Contractor shall, within five (5) Working Days of the date of final execution of the Contract, deliver to Metrolinx copies of all training records for Occupational Health and Safety related courses taken by a “competent person” as defined by the *Occupational Health and Safety Act*, and designated as the Contractor’s Site Supervisor as per OHSA Section 25(2)(c). Relevant course subjects may, without limitation, include or be similar to the following:
- (a) Certified Joint Health and Safety Committee Member Training;
 - (b) Basics of Supervising;
 - (c) Construction Health and Safety Representative;
 - (d) Occupational Health and Safety legislation;
 - (e) Due Diligence;
 - (f) Accident Investigation and Reporting; and
 - (g) Any other courses that relate directly to the *Occupational Health and Safety Act*.
- 3.5 The Contractor shall deliver to Metrolinx as required:
- (a) A copy of all weekly inspection reports made by the Contractor in compliance with the Constructor’s responsibility under O.Reg.213/91, the Construction Projects Regulation.
 - (b) A copy of all safety information pertaining to the Contract made and furnished by the Contractor’s own “Safety Officer” or outside consultants/advisers engaged for the purpose of inspecting the workplace for occupational health and safety.
 - (c) A copy of the Contractor’s Emergency and Evacuation Plans for review by Metrolinx.
 - (d) A copy of Access / Traffic Control Plans for review by Metrolinx.
 - (e) A copy of the Contractor’s risk assessment documents.

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- (f) Where requested, copies of all injury and accident reports for occurrences on site. This shall include copies of all remedial measures taken to prevent recurrence.
- (g) Copies of all weekly safety talks shall be maintained on file for review by Metrolinx upon request.
- (h) Statistical information for the purpose of determining injury frequency and severity rates (hours worked, first-aid injuries, medical aid/reportable injuries, lost time injuries, restricted workday injuries, incident/accident and significant occurrence data), in a timely manner on a monthly basis or as required by Metrolinx.
- (i) The immediate reporting to CMO of all instances that are defined in the *Occupational Health and Safety Act* as “Notices of Injuries” and “Occurrences” under Sections 51, 52 and 53 and any other incidents as prescribed by applicable Metrolinx Construction Safety documents.
- (j) Metrolinx reserves the right to require additional or amended deliverables pertaining to safety during the duration of the Work at no additional cost to Metrolinx.

4.0 Due Diligence

- 4.1 The Contractor acknowledges that it has read and understands the measures and procedures relating to occupational health and safety as prescribed in Article 2 above. The Contractor 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 Contractor’s expense.
- 4.2 The Contractor 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 Contractor’s duties and responsibilities under occupational health and safety legislation.
- 4.3 The Contractor 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:

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- (a) Require the Contractor 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 Contractor 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 Contractor; and/or
- (d) Terminate the Contract in whole or in part.

5.0 Barricades

- 5.1 Observe all necessary precautions and provide, erect and maintain suitable signs, barricades and lights to protect all persons from injury and all vehicles from damage during the progress of the work, in accordance with the Construction Safety Management Program (CSMP) to the approval of Metrolinx, or any authority having jurisdiction at this location.
- 5.2 Provide all means necessary to prevent the entrance of unauthorized personnel onto the work site and from using access roads.
- 5.3 Protect the work in conformity with the Contract.

6.0 Fit-For-Duty Requirements

- 6.1 The following rules shall apply to all persons while at the Place of Work and/or on the Owner's property while carrying out all aspects of the Work:
 - (a) The use, possession, offering, distribution and/or sale of illegal drugs, prescription and over-the-counter medications, mood altering substances, chemicals which has the potential to change or adversely affect the way a person thinks, feels or acts and/or may inhibit the ability to perform work safely and productively, is prohibited;
 - (b) The use, possession, distribution and/or sale of drug paraphernalia (property associated with the use of any drug for recreational or illicit purposes), is prohibited.
 - (c) The use, possession, distribution and/or sale of any form of alcohol, including alcoholic beverages, is prohibited;

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- (d) The Contractor's Personnel 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;
 - (e) The Contractor's Personnel 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;
 - (f) The Contractor's Personnel must report for duty free of extreme fatigue which would adversely affect, in any way and to any extent, their ability to work safely;
 - (g) The Contractor's Personnel 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.
- 6.2 Where any Contractor's Personnel is suspected of being intoxicated, the following procedures must be followed:
- (a) Such Contractor Personnel will be escorted to a safe location away from the work area, and asked to remain there pending further action;
 - (b) The Contractor shall be required to attend a meeting with the Owner and Consultant (hereinafter referred to as a Fit For Duty (FFD) Meeting);
 - (c) The FFD meeting members will determine an appropriate course of action and a means of transport to a suitable safe location for the Contractor Personnel in question;
 - (d) Where there are differences of opinion between the Owner and Contractor with respect to the Contractor Personnel's fitness for duty, the dispute will be resolved with a view to ensuring safety, and the Contractor's Personnel will be transported home, or will be required to remain in a safe location until transportation can be arranged; and
 - (e) The local police may be called if the Contractor's Personnel was operating any motorized vehicle requiring a valid driver's license.
- 6.3 The Owner maintains a position of zero tolerance to any violations of Sections 6.1 and 6.2 above. At the sole discretion of the Owner, non-compliance may result in:

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- (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

6.4 Contractor's Fit For Duty Policy

- (a) The Contractor is required to ensure all Contractor Personnel at the Place of Work have read and understand the Contractor's fit for duty policy requirements in addition to the Metrolinx fit for duty requirements stated in this Section 6.0.
- (b) The Contractor shall provide a copy of its Fit-For-Duty Policy and Program within thirty (30) Business Days after final execution of the Contract. (The Metrolinx Fit For Duty Policy is attached solely as an example, for reference purposes.)

7.0 Vehicle Traffic Protection

- 7.1 Provide qualified signal persons to protect vehicular and pedestrian traffic during the operations, at any time when Contractor's Personnel or equipment could endanger such traffic, all to the complete satisfaction of Metrolinx and any other authority having jurisdiction at this location.
- 7.2 Accept responsibility for any damage to vehicles and damage and injury to pedestrians or occupants of vehicles resulting from the operations or the operating of equipment by others. Provide adequate protection to the satisfaction of Metrolinx.
- 7.3 Wherever the Place of Work is intersected by public or private roads, provide convenient openings to pass and maintain all crossings in a condition so they can be used safely and without any just grounds for complaint during the progress of the work; all to the satisfaction of Metrolinx and respective Road Authority.
- 7.4 Shall submit any permits as requested by Metrolinx or Road Authority.

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8.0 Hot Work Permit

8.1 Where hot work will be performed within an existing operational facility or adjacent to one such that operations or passengers may be negatively affected, the Contractor shall not undertake any Hot Work or otherwise cause a source of ignition to be created at the Place of Work without being issued a Hot Work Permit by Metrolinx and ensuring all measures have been implemented to prevent a fire from starting.

9.0 Working at Heights

9.1 The Contractor shall comply with the following instructions for scaffold installations:

- (a) Obtain authorization from Metrolinx before erecting scaffolds on existing Metrolinx structures or new structures under construction.
- (b) Scaffolds must be positioned so that minimum clearance for road or other traffic including operating construction equipment is always provided.

9.2 All horizontal lifelines used for fall protection shall be designed and installed in accordance with the following CSA Standards:

- (a) CAN/CSA Z259.13-04 Flexible horizontal lifeline systems
- (b) CAN/CSA Z259.16-04 Design of active fall protection systems

9.3 The Contractor shall comply with the following instructions for fall protection system installations:

- (a) Obtain written authorization from Metrolinx before suspending, attaching or erecting fall protection devices on existing Metrolinx structures or new Metrolinx structures under construction.
- (b) Components attached to structures must be placed on neoprene pads to prevent damage to the structures as directed by Metrolinx.
- (c) Fall protection systems shall be positioned so that minimum clearance for road and other traffic including operating construction equipment is always provided.

9.4 Rescue Equipment and Training

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- (a) Before considering the Fire Department (911) as a primary means for rescuing an employee, the Contractor shall:
 - (i) Ensure a complete risk assessment of the fall protection system, or confined space, has been carried out by a competent person; and
 - (ii) Ensure the risk assessment and rescue plan have been reviewed and signed off by the appropriate municipal authority indicating they have:
 - (A) An appropriate response time; and
 - (B) The necessary rescue equipment; and
 - (C) The specialized rescue training required.
 - (iii) Ensure all documentation has been submitted to Metrolinx, System Safety, for final review and approval prior to project start-up.
- (b) If it has been determined that the Fire Department (911) cannot adequately respond to the emergency, and specialty rescue equipment and/or training is required, the Contractor shall ensure that:
 - (i) Specific rescue equipment for Confined Space Rescue or Fall Protection Rescue is on site as required and in readiness at all times; and
 - (ii) A sufficient number of employees are fully qualified as “rescuers” and are on site in order to carry out an efficient and effective rescue of a co-worker.

10.0 Metrolinx Construction Safety – Project Owner Stream

- 10.1 Metrolinx will issue an appropriate number of copies of its Construction Safety Management Program (CSMP) to the Contractor at the pre-construction meeting.
- 10.2 Contractors are responsible for familiarizing themselves and their employees with the contents of this manual, Project Owner Stream.
- 10.3 Contractors shall distribute copies of the CSMP to their Subcontractors and shall ensure that they, and their employees, are familiar with its content.

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10.4 The requirements of the CSMP shall apply to the Work and the Place of the Work.

11.0 Site Safety Personnel

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

11.2 The Contractor shall ensure that the Safety Officer has the training, experience and credentials to ensure compliance to the *Occupational Health and Safety Act* at the Place of Work.

12.0 Site Security

12.1 The Contractor shall ensure all personnel employed at the Place of Work, whether its own employees or a SubContractor’s, wear an identification badge. At Metrolinx locations where access is restricted Metrolinx shall supply the identification badges. At all other locations it shall be the Contractor’s responsibility to provide the identification badges.

12.2 The Contractor shall maintain a daily site log of all persons granted access to the “Place of Work” under the control and custody of the Contractor.

12.3 The Contractor shall ensure that all required documentation is available upon request by Metrolinx.

12.4 The Contractor shall not allow “Unauthorized” persons to access the “Place of Work”.

13.0 Site Requirements

13.1 For night work activities, the Contractor shall supply and maintain adequate temporary lighting and associated generators at the Site such that all the work in these areas can be carried out safely and in a workmanlike manner. The Contractor shall use quiet available generators to minimize noise levels. At no time shall the Contractor direct the lights in such a manner that will impede or deter the safe passage of rail traffic or affect any adjacent properties.

END OF SECTION

**SCOPE OF WORK
MATERIALS AND EQUIPMENT**

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1.0 General

- 1.1 Provide material and equipment of specified design and quality, performing to published ratings and for which replacement parts are readily available.
- 1.2 Use products of one manufacturer for equipment or material of same type or classification unless otherwise specified.

2.0 Manufacturer's Instructions

- 2.1 Unless otherwise specified, comply with manufacturer's latest printed instructions for materials and installation methods.
- 2.2 Notify Metrolinx in writing of any conflict between this Scope of Work and manufacturer's instructions. Metrolinx will designate which document is to be followed.

3.0 Fastenings

- 3.1 Provide metal fastenings and accessories in same texture, colour and finish as base metal in which they occur. Prevent electrolytic action between dissimilar metals. Use non-corrosive fasteners, anchors and spacers for securing exterior work.
- 3.2 Space anchors within limits of load bearing or shear capacity and ensure that they provide positive permanent anchorage. Wood plugs are not acceptable.
- 3.3 Keep exposed fastenings to minimum, space evenly and lay out neatly.
- 3.4 Fastenings which cause spalling or cracking of material to which anchorage is made are not acceptable.
- 3.5 Do not use explosive actuated fastening devices.

4.0 Fastening Equipment

- 4.1 Use fastenings of standard commercial sizes and patterns with material and finish suitable for service.
- 4.2 Use heavy hexagon heads, semi-finished unless otherwise specified.
- 4.3 Bolts may not project more than one diameter beyond nuts.

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- 4.4 Use plain type washers on equipment, sheet metal and shaft gasket lock type washers where vibrations occur. Use resilient washers with stainless steel.

5.0 Delivery and Storage

- 5.1 Deliver, store and maintain packaged material and equipment with manufacturer's seals and labels intact.
- 5.2 Prevent damage, adulteration and soiling of material and equipment during delivery, handling and storage. Immediately remove rejected material and equipment from the Place of Work.
- 5.3 Store material and equipment in accordance with suppliers' instructions.
- 5.4 Touch-up damaged factory finished surfaces to the satisfaction of Metrolinx. Use primer or enamel to match original. Do not paint over name plates.

6.0 Origin of Materials

- 6.1 Materials, plant and equipment supplied for Work shall be as far as possible and unless otherwise specified, of Canadian manufacture.

7.0 Ownership of Materials

- 7.1 Unless otherwise specified, materials existing at the Place of Work at time of signing Contract shall remain the property of Metrolinx.
- 7.2 Equipment and materials delivered to the Place of Work to form part of Work shall be property of Metrolinx.
- 7.3 Contractor shall remove surplus or rejected materials from the Place of Work notified by Metrolinx as required by site conditions.

8.0 Specified Material and Equipment

- 8.1 Materials and equipment shall be as specified.

9.0 Substitutions After Award of Contract

- 9.1 Request for substitutions of specified materials and equipment other than alternatives accepted prior to Contract execution will not be considered unless request is accompanied by a written statement from Contractor giving reasons

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why specified item cannot or should not be used, evidence of quality of substitution and amount of change in SOW.

- 9.2 Written statement shall include full details, stating clearly name of manufacturer or supplier, together with a detailed description of substitutions, and stating reduction from or addition to contract price, if any for the use of alternative material or equipment.
- 9.3 Metrolinx reserves right to accept or reject substitution(s) at its sole discretion and also to claim financial benefit of substitution if accepted. Rejection by Metrolinx of proposed alternative material or equipment is final and Metrolinx is not obligated to give any reason for rejection of a substitution(s).
- 9.4 Approved equipment substitutions must not exceed space requirements allocated on Drawings. Be responsible for additional cost resulting from acceptance of a substitute piece of equipment.
- 9.5 Substitutions shall not be considered accepted unless authorized in writing by Metrolinx.

END OF SECTION

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DRAWINGS**

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The Drawings are comprised of those documents listed under "Drawings" in List of Contents.

ATTACHMENTS

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