



## Tender for

**Project Name:** Varonis Software Support  
and Maintenance

**Number:** PT-2019-ITOP-721

## 1.0 List of Contents

The following documents hereby form part of this Tender Document:

1.0 List of Contents

2.0 Definitions

3.0 Instructions to Bidders

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5.0 Tender Document Forms: Contract Prices

General Conditions

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Reference Documents: Contract Performance Appraisal

Reference Documents: Bidder Q and A Form – Tender No. PT-2019-ITOP-721

Reference Documents: Metrolinx MERX Portal – General Information

## 2.0 Definitions

In this Tender Document,

- 2.1 **"Addenda"/"Addendum"** is the formal release of additions, deletions, revisions, clarifications to this Tender Document that form a part of the Contract.
- 2.2 **"Bidder"** means the legal entity that remits a Submission in response to this Tender Document and who if selected for award shall execute the Contract with Metrolinx for provision of the Work.
- 2.3 **"Closing"** means, the deadline for Metrolinx to receive Submissions as specified in Section 3.4 of "Instructions to Bidders".
- 2.4 **"Conflict of Interest"** means:
- 2.3.1 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:
- (a) having, or having access to, confidential information of Metrolinx in the preparation of its Submission that is not available to other Bidders;
  - (b) 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
  - (c) engaging in conduct that compromises, or could be seen to compromise, the integrity of this Tender Process; or
- 2.3.2 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 interest:
- (a) could, or could be seen to, exercise an improper influence over the objective, unbiased and impartial exercise of its independent judgement: or
  - (b) could, or could be seen to, compromise, impair or be incompatible with the effective performance of its contractual obligations.
- 2.5 **"Contract"** means the contract between the Contractor and Metrolinx pursuant to **Tender No. PT-2019-ITOP-721** including the Purchase Order, the General Conditions, Specifications and Attachments.
- 2.6 **"Contractor"** means the Bidder identified on Page 1 of the Tender Document Forms: Form of Tender and who if selected for award shall execute the Contract with Metrolinx for provision of the Work.

- 2.7 **"EBS"** means Electronic Bid Submission.
- 2.8 **"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.
- 2.9 **"E-Bid Confirmation Number"** is the receipt received by a Bidder from Metrolinx MERX **Portal** indicating that the Submission was uploaded successfully.
- 2.10 **"FIPPA"** shall have the same meaning ascribed in Section 3.19 herein.
- 2.11 **"Metrolinx MERX Portal"** is the electronic bid solicitation and Bidder Submission website ([www.metrolinx.merx.com](http://www.metrolinx.merx.com)) that facilitates Metrolinx and Bidder interaction as it directly relates to the; download by a Bidder of Metrolinx Tender Documents including Addenda from, and upload by a Bidder of a Submission to Metrolinx in response to, this Tender Process.
- 2.12 **"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 Definitions of the Contract.
- 2.13 **"PDF"** means Portable Document Format
- 2.14 **"Parties"** means both of Metrolinx and the Contractor and a **"Party"** means either one of them.
- 2.15 **"Place of the Work"** is the designated location(s) for delivery of the goods and services as per Section 4.2 of Specifications.
- 2.16 **"Procurement Office"** means Metrolinx Procurement Services office located at 277 Front Street West, Toronto, Ontario, M5V 2X4, Canada.
- 2.17 **"Procurement Representative"** means the following individual in the Procurement Services Department:

Wil Wong, Procurement IT Specialist,	
Telephone number	(416) 202-7896
Email	Wil.wong@metrolinx.com

- 2.18 **"Submission"** means all documentation and other materials and information submitted by the Bidder in response to this Tender Document or in respect of this Tender Process.
- 2.19 **"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 as identified in the Submission.

- 2.20 **"Supplier"** means an individual, firm, partnership or corporation having a direct contract with the Contractor or another Subcontractor to provide goods to carry out the Work, as identified in the Submission.
- 2.21 **"Specifications"** describe the detailed requirements of the Work and are to be read in conjunction with any Drawings contained herein.
- 2.22 **"Tender Document"** means this Tender document comprised of all sections identified in Section 1.0 – List of Contents as issued by Metrolinx for the Work to be provided, and any Addenda thereto.
- 2.23 **"Tender Document Forms"** means any sections of this Tender Document which require completion and must be included with the Submission.
- 2.24 **"Tender Process"** means the Tender procurement process set out in the Tender Document herein.
- 2.25 **"Total Contract Price"** is the amount shown under "Total Contract Price" of Tender Document Form: Contract Prices.
- 2.26 **"Work"** means the Supply and Delivery of the Varonis Software Support and Maintenance as more particularly described in this Tender Document.
- 2.27 **"Working Day"** means any day other than: (a) a Saturday or Sunday and (b) any other day on which Metrolinx is not open for business. Each Business Day will end at 4:00 p.m. on that day.
- 2.28 **"VPM"** shall have the meaning ascribed in Section 3.23.1 of Instructions to Bidders.
- 2.29 **"VPR"** shall have the meaning ascribed in Section 3.23.2 of Instructions to Bidders.

### 3.0 Instructions to Bidders

- 3.1 You are invited to remit your Submission for Varonis Software Support and Maintenance of Work as more particularly described in this Tender Document as required by Metrolinx.
- 3.2 The Bidder acknowledges that the Submission shall be a firm and irrevocable offer for a period of one hundred and twenty (120) calendar days.
- 3.3 No plea of ignorance of conditions which exist, or any conditions or difficulties which may be encountered, will be accepted as a reason for failure to complete the Contract or as a basis for claims for additional compensation or extension of time to complete the Work.

#### 3.4 Tender Timetable

Milestone	Date
Issuance of Tender Documents	March 22, 2019
Deadline to Submit Questions	April 03, 2019
Last day for issuance of Addenda	April 09, 2019
Closing	April 12, 2019 3:00 p.m. Toronto Time
Commencement Date of Work	Asap after issuance of the purchase order

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

#### 3.5 Closing

##### 3.5.1 **\*\*\*NOTE: ELECTRONIC BID SUBMISSION**

Your Submission for this opportunity must be made to Metrolinx through the use of **Metrolinx MERX Portal**. Bidders shall be solely responsible for the delivery of their Submission using Metrolinx MERX Portal by the Closing, in accordance with the Submission Instructions herein.

- 3.5.2 Submissions that are received after the Closing shall be deemed non-responsive and the entire Submission shall be disqualified regardless of the reason for lateness.

#### 3.6 Bidder Questions

- 3.6.1 All questions/requests for clarification related to the Tender Documents are to be submitted via e-mail to the attention of the Procurement Representative as specified in Section 2.16 of Definitions using the Question and Answer template which is a fillable file attached separately as:

## Contractor Q and A Form – Tender No. PT-2019-ITOP-721

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

- 3.6.2 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 the Tender Documents 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.

### 3.7 Addenda

- 3.7.1 In the event that Metrolinx determines in its sole discretion, that clarification of, or revisions to the Tender Documents are required, all Bidders who received copies of the Tender Documents shall be advised of such clarifications or revisions during the tendering period by written Addenda. Such Addenda shall become part of the Tender Documents and the contents thereof shall be allowed for in the prices bid for the Work.
- 3.7.2 It is the Bidder's responsibility to ensure that they have received copies of all Addenda, and to ensure that the Addenda have been considered in their Submission. Addenda, if applicable, will be issued through MERX. Bidders are urged to select automatic notification of Addenda issuance when registering on MERX.
- 3.7.3 The Bidder, when ascertaining if copies of all Addenda issued have been received, shall be responsible for allowing sufficient time prior to the Closing to receive any missing Addenda and to review and allow for the contents thereof in the Submission.

### 3.8 Submission of Tenders

- 3.8.1 Bidders remitting a Submission to Metrolinx shall exercise extreme care when completing and submitting all Tender Document Forms.
- 3.8.2 Bidders shall examine carefully the whole of the Tender Documents and any data referred to therein. They shall make the necessary investigations to inform themselves thoroughly as to the character and magnitude of the Work.
- 3.8.3 The Bidder shall not claim at any time after the Closing and/or after notification of acceptance of the Submission that there was any

misunderstanding or uncertainty in regard to the Tender Documents or any of the contents therein.

- 3.8.4 Your Submission shall be completed fully in a clear and comprehensible manner.
- 3.8.5 Submissions shall be remitted electronically through Metrolinx MERX Portal only. Submissions sent in any other manner shall be deemed non-responsive and automatically disqualified.
- 3.8.6 The Submission must not include any qualifying statements.
- 3.8.7 The Submission shall be remitted on the original Tender Document Forms as issued by Metrolinx and except for designated sections where the Bidder is to enter information, the Tender Document shall be not be altered in any way including, but not limited to, strike-outs of the pre-printed provisions or any other qualifying statements.
- 3.8.8 Any Submission which contains such qualifying or conditional statements shall be deemed non responsive and disqualified unless such qualifying or conditional statements are withdrawn in writing upon request by Metrolinx.
- 3.8.9 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 Metrolinx MERX Portal can be added, removed and/or re-submitted as often as required at any time, prior to the Closing.
- 3.8.10 Any Submission documents that are attempted to be uploaded via Metrolinx MERX Portal after the Closing has occurred (as confirmed by the MERX Audit Report) shall be automatically rejected by Metrolinx, regardless of the reason for lateness.
- 3.8.11 All prices shall be firm and quoted in Canadian funds. The prices quoted in the Submission shall represent full payment for all such Work as is necessary for the proper completion of the Contract.
- 3.8.12 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.
- 3.8.13 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.

3.8.14 The Bidder may withdraw a Submission at any time prior to the Closing specified by Metrolinx by logging into [www.metrolinx.merx.com](http://www.metrolinx.merx.com).

### 3.9 Submission Deadline

3.9.1 Submissions must be fully uploaded via Metrolinx MERX Portal by the Closing. Any Submission or portions thereof received after the Closing (as confirmed by MERX Audit Report) shall be deemed non-responsive and the entire Submission shall be disqualified regardless of the reason for lateness. The Bidder shall submit the Submission with 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.

3.9.2 Upon successful completion of the EBS submission, the Bidder will be provided with an E-bid Confirmation Number. This is the receipt that the Submission was uploaded successfully. All reports are kept on the Bidder's MERX account for seven (7) years after the Closing.

3.9.3 Notwithstanding the above, 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.

3.9.4 After the Closing has occurred, all Submissions received will be opened by Metrolinx staff. **There will be no public access to this opening.**

3.9.5 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").

### 3.10 Clarification of Submissions

3.10.1 Metrolinx reserves the right, within one hundred and twenty (120) calendar days following the Closing, to request that any Bidder clarify its Submission and such Bidders shall submit responses to such request within five (5) Working 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 to their Submission. Metrolinx may require Bidders to submit information clarifying any matters contained in their Submission or

Metrolinx may prepare a written interpretation of any aspect of a Submission and seek the respective Bidder's acknowledgement of that interpretation.

3.10.2 Such information accepted by Metrolinx, for purposes of clarification, and written interpretations which have been acknowledged by the relevant Bidder shall be considered to form part of the Submission of those Bidders.

3.10.3 After the Closing, only information specifically requested by Metrolinx for purposes of clarification shall be considered as additions to a Bidders Submission.

3.10.4 Metrolinx is not obliged to seek clarification of any aspect of a Submission.

### 3.11 Award of Contract

3.11.1 Award of the Contract for the Work shall be confirmed to the successful Bidder by way of a standard Metrolinx Purchase Order, referencing this Tender and the General Conditions which will be attached and form part of the Purchase Order.

### 3.12 Rights of Metrolinx

Metrolinx has the right, in its sole discretion:

3.12.1 to cancel this call for Tenders and any acceptance of a Submission for any reason and at any time before the Contract has been executed by Metrolinx, without any obligation whatsoever to a Bidder;

3.12.2 to reject any or all Submissions. The Submission with the lowest price will not necessarily be accepted. Metrolinx's selection shall 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 and determined on the evaluation criteria contained in this Tender Document;

3.12.3 to disqualify any Submission which contains misrepresentations or any other inaccurate or misleading information;

3.12.4 to waive any requirement of the Tender Documents or request amendment where, in the sole opinion of Metrolinx, there is an irregularity or omission in the information provided that is not material to the Submission unless a specific consequence has been identified herein for the commission of such an irregularity or omission;

3.12.5 to waive the requirement to check references;

3.12.6 to not respond to a Bidder's questions;

- 3.12.7 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 performance. Specifically to,
- (a) 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; and
- 3.12.8 make general inquiries of third parties with respect to the qualifications of a Bidder and take the results of these general inquiries into account;
- 3.12.9 to award or not award based on submitted references and/or references independently obtained by Metrolinx;
- 3.12.10 to award or not award based on the Bidder's experiences with Metrolinx or other departments or agencies within the Ontario government, if the Bidder:
- (a) was previously given a "Notification of Award" of contract by a department or agency within the Ontario government and defaulted in proceeding with the work of the contract;
  - (b) 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;
  - (c) had a previous contract with a department or agency within the Ontario government that was terminated for default in the past year; or
  - (d) is an affiliate of or successor to any corporation described in Sections 3.12.10(a) through (c) above, including any firm that is controlled within the meaning of the Ontario Business Corporations Act by the same person or group of persons who so controlled any corporation described in Sections 3.12.10(a) through (c) above.
- 3.12.11 to request a listing of all projects, regardless of scope, complexity or estimated value, completed for or terminated by Metrolinx within the past three (3) years or currently active;
- 3.12.12 to distribute via Addenda, copies of any Bidder questions received and responses provided by Metrolinx, to all Bidders who received the Tender Documents;
- 3.12.13 to postpone the Closing, at which time all Bidders who received Tender Documents shall be advised of the new Closing via written Addenda;
- 3.12.14 within one hundred and twenty (120) days following the Closing, to request that any Bidder clarify its Submission and such Bidders shall submit responses to such request within five (5) Working Days following

receipt of such request or within such shorter time as Metrolinx may require;

3.12.15 to prepare a written interpretation of any aspect of a Submission and require the relevant Bidder's acknowledgement of the accuracy of that interpretation;

3.12.16 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;

3.12.17 to correct arithmetical errors in any or all Submissions where such errors affect the Total Contract Price. Arithmetical corrections will only be made based upon the unit prices submitted by the Bidder. Corrections to extensions, sums, differences or other arithmetical operations based on the unit prices submitted will be identified on the Tender Document by 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 will result in its Submission being deemed non-responsive and disqualified.

### 3.13 Commencement of Work

3.13.1 The Bidder shall not start work before the Contract has been executed by Metrolinx and delivered to the Bidder.

### 3.14 Subcontractors and Suppliers

3.14.1 The Contractor shall complete and submit a list of Subcontractors and Suppliers carrying out any major divisions of work within five (5) Working Days after Contract execution.

3.14.2 The Contractor shall be responsible for the distribution of the Contract thereto to all Subcontractors or Suppliers.

3.14.3 Metrolinx or their representatives shall have no obligation whatsoever to supply any Subcontractor or Supplier with all or part of the Contract thereto, and shall not be liable for any damages suffered by any Subcontractor or Supplier who does not receive or review the Contract. 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 Contract.

### 3.15 Submission Evaluation

3.15.1 Submissions shall undergo several phases of evaluation based on documentation provided and Vendor Performance Rating information contained in the Metrolinx MERX Portal.

3.15.2 Mandatory criteria will be rated pass or fail. All other criteria shall be evaluated in accordance with Section 3.15 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.

1) Administrative mandatory requirements include, but shall not be limited to, completion and submission of Tender Document Forms:

a) Form of Tender; and

b) Contract Prices.

(b) **Phase Two: Vendor Performance Rating (VPR) (Part A) and Pricing (Part B) Evaluation**

(i) Part A - Vendor Performance Rating (VPR) Evaluation

1) The VPR of each Bidder's Submission proceeding to this Phase Two: VPR Evaluation shall be evaluated as follows:

a) For this Tender Process as it relates to evaluation of a Bidder's VPR, "Performance Category" shall be defined as IT Software Licensing and Maintenance.

b) For this Tender Process, the Vendor Performance Rating ("VPR") is the average of a vendor's performance evaluation scores (as assessed by or on behalf of Metrolinx), in the Performance Category, for a thirty-six (36) month period preceding the Closing.

c) If a 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 vendors who have performed services for Metrolinx for a thirty-six (36) month period preceding the Closing, in this Performance Category.

- d) 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.
- e) 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.
- f) 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:
  - i) The following equation shall be applied to determine each Bidder's VPR Score, as follows:
    - A) "Bidder's VPR (Expressed as a %) / 10 = Bidder's VPR Score".

(ii) Part B - Pricing Evaluation

- 1) Tender Document Form: Contract Prices shall be evaluated for compliant Submissions.
- 2) 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 Contract Price of each Submission proceeding to Pricing Evaluation shall be evaluated and scored as follows:

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

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

(iii) Evaluation

- 1) 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)
<b>PHASE ONE: ADMINISTRATIVE EVALUATION (Compliant/Non-Compliant)</b>			
<b>PHASE TWO: VENDOR PERFORMANCE RATING (VPR) EVALUATION</b>			
Bidder's VPR Score	10	5	50
<b>VPR Evaluation Subtotal:</b>			<b>50</b>
<b>PHASE TWO: PRICING EVALUATION</b>			
Tender Document Form: Contract Prices	10	95	950
<b>Pricing Evaluation Subtotal:</b>			
<b>TOTAL OVERALL SCORE</b>		<b>100%</b>	<b>1,000</b>

(iv) Total Overall Score

- 1) 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.

- 2) The VPR Evaluation Subtotal shall be added to the Pricing Evaluation Subtotal to determine the Total Overall Score for the Submission.
  - a) Total Overall Score = VPR Evaluation Subtotal + Pricing Evaluation Subtotal
- 3) 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.

(c) **Phase Three: Technical Evaluation (Pass/ Fail) (hereinafter referred to as "Technical Evaluation")**

- (i) A technical evaluation shall be conducted on the Highest Ranked compliant Submission to confirm the necessary specifications have been satisfied.
- (ii) In the event the Bidder does not demonstrate to the satisfaction of Metrolinx that it satisfies the necessary specifications required for acceptance of its Submission by Metrolinx, the Bidder's Submission shall be found non-compliant and disqualified.
- (iii) If the Highest Ranked compliant Submissions do not meet the requirements of the Technical Evaluation, Metrolinx will carry out a technical evaluation of the Submission next in ranking, and so on until a compliant Submission is found.
- (iv) Notwithstanding Sections 3.15.2(c)(i) through 3.15.2(c)(iii) any information obtained will be factored into this Technical Evaluation as a final pass/fail criteria.

3.15.3 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.

3.15.4 Notification of acceptance shall be issued to the successful Bidder with the highest Total Overall Score that meets the criteria of Section 3.15.2(c) above.

### 3.16 Conflict of Interest

3.16.1 Each Bidder shall disclose to Metrolinx any actual or potential Conflict of Interest that may be relevant to this Tender Process. Conflicts of Interest



arise when the Bidder is in a position that could affect the integrity of this Tender Process or the performance of the Work. Examples of Conflict of Interest include but are not limited to:

- (a) any director, officer, or employee or advisor of Metrolinx has any connection or relationship with, or any pecuniary interest in the 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.

### 3.17 Restriction on Communications Between Bidders – No Collusion

3.17.1 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 connection, 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, employees and representatives.

### 3.18 Disclosure of Information

3.18.1 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.

3.18.2 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.

3.18.3 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 Proponents and the winning bid in accordance with Ontario's Open Data Directive. For more information, see: [www.ontario.ca/page/ontarios-open-data-directive](http://www.ontario.ca/page/ontarios-open-data-directive).

### 3.19 Freedom of Information and Protection of Privacy Act ("FIPPA")

3.19.1 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.

### 3.20 Submission to Be Retained by Metrolinx

3.20.1 Metrolinx shall not return a Submission or any accompanying documentation, with the exception of a Bid Deposit and/or Contract Security (if applicable), submitted by a Bidder.

### 3.21 Confidential Information of Metrolinx

3.21.1 All information provided by or obtained from Metrolinx in any form in connection with the Submission 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.

### 3.22 Bidders Shall Bear Their Own Costs

3.22.1 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.

### 3.23 Vendor Performance Management Program

3.23.1 Vendor Performance Management (“VPM”) Program means Metrolinx policy for monitoring, evaluating and recording vendor performance, as same may be amended or replaced from time to time. The Vendor Performance Management Program establishes a standard methodology for the incorporation of a vendor’s past performance as a criterion in assessing that vendor’s bids or tenders for future work with Metrolinx.

3.23.2 Pursuant to Metrolinx’s VPM Program, Metrolinx may consider a Bidder’s past performance under contracts with Metrolinx in evaluating Submissions received in response to this Tender Document. The Vendor Performance Rating (“VPR”) is the average of a vendor’s performance evaluation scores (as assessed by or on behalf of Metrolinx) for a thirty-six (36) month period preceding the Closing. If a 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 VPRs of all vendors who have performed services for Metrolinx during the prior fiscal year.

3.23.3 If the VPR is being applied as a component of the award evaluation for this Tender Process, the legal name of the Bidder will be used. It is the responsibility of the Bidder to ensure that its proper legal name has been

stated. Metrolinx will not accept any requests from the Bidder to change the legal name provided after the Closing.

3.23.4 For the purposes of this Tender Process, the application of the VPR is set out in "Contract Performance Appraisal" under Reference Documents.

#### 4.0 Tender Document Forms: Form of Tender

TENDER NUMBER: PT-2019-ITOP-721

TENDER DESCRIPTION: Varonis Software Support and Maintenance

Submission By: Click here to enter text.  
(Full Legal Name of Bidder)

#### 4.1 Contact Information

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

[Click here to enter text.](#)

4.1.2 Bidder's address, telephone and facsimile numbers:

[Click here to enter text.](#)

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

[Click here to enter text.](#)

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

[Click here to enter text.](#)

#### 4.2 Total Contract Price

4.2.1 The Bidder, by this Submission, hereby offers to Metrolinx to furnish all necessary labour, superintendence, plant, tools, appliances, equipment, supplies and other accessories, services and facilities necessary to execute the Work described by the Tender Documents, including Addenda, and to perform this Work for the Total Contract Price stated in the Tender Document Forms: Contract Prices.

#### 4.3 Acknowledgements and Declarations

4.3.1 The Tender Document Forms are submitted in accordance with the terms and requirements of the Instructions to Bidders.

4.3.2 The Bidder has informed itself of the conditions relating to the Work to be performed and have inspected and is thoroughly familiar with the Place of Work and Specifications and all terms, conditions and covenants of the Contract.

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

- 4.3.4 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 deemed non-compliant and shall not being considered further.
  - 4.3.5 The Bidder acknowledges that their Submission includes the appropriate Tender Document Forms. Failure to comply may result in the Bidder's Submission being found non-responsive and disqualified at the sole discretion of Metrolinx.
  - 4.3.6 All Addenda, the Tender Document Forms, the General Conditions of the Contract, the Specifications and Reference Documents set out in this Tender Document shall be included in and form part of the Contract. Remitting a Submission constitutes acknowledgement that the Bidder has read and agrees to be bound by such conditions.
  - 4.3.7 This Submission is remitted 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 and the Bidder hereby covenants that it will enter into a Contract with Metrolinx as contemplated by this Tender Document and will perform and execute the Work at the Total Contract Price if it is notified, in writing, by Metrolinx within one hundred and twenty (120) days of the Closing that it is the successful Bidder.
  - 4.3.8 The Bidder hereby declares that no Conflict of Interest exists.
  - 4.3.9 The Bidder hereby declares that no person, firm or corporation (including any agent of Metrolinx), other than the undersigned or Suppliers or Subcontractors identified herein or 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.
  - 4.3.10 The remitting 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.
  - 4.3.11 The Bidder acknowledges that by way of the E-Bid Authorized Signer remitting 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.
- 4.4 Product Make and Model:
- 4.4.1 **Provide make and model of the proposed equipment.**

[Click here to enter text.](#)

4.5 Specifications

4.5.1 State detailed specifications/brochures to substantiate that the specifications of the proposed make and model meet or exceed those identified above (details should be listed below or a copy should be attached to the Submission.)

[Click here to enter text.](#)

4.6 Delivery Information and Contract Term

4.6.1 **Delivery Location(s):** Refer to Section 4.2 under Specifications

4.6.2 **Required Delivery Date:** On or earlier within two (2) weeks of contract award.

4.6.3 Failure to meet any promised delivery date may result in cancellation of any resulting order(s).

4.7 Warranty

**State Warranty details:** (if the Manufacturer’s Warranty applies, details should be listed below or a copy should be attached to Submission.)

[Click here to enter](#)

text. \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

## 5.0 Tender Document Forms: Contract Prices

### 5.1 Contract Prices

5.1.1 The Contract Unit Prices are hereby submitted on the full understanding that they form part of the Bidder's Submission and as such constitute an irrevocable offer by the Bidder for a period of one hundred and twenty (120) calendar days from the Closing and the Bidder hereby covenants that it shall perform and execute the Work in accordance with the Contract Prices quoted herein if it is notified, in writing, by Metrolinx within one hundred and twenty (120) calendar days that it is the successful Bidder.

5.1.2 Payment for services rendered and goods supplied in accordance with the terms and conditions of the Contract shall be based on the following:

- (a) The Contract Unit Prices quoted shall be all inclusive costs associated with performance of the work defined herein.
- (b) The Contract Unit Prices quoted shall include all costs related to the Work including any and all disbursements, travel, mileage, customs duties, supervision, royalties, handling, transportation, equipment, tools, supplies, supervision, overhead, profits and all other charges as required in this Tender Document.
- (c) The Total Contract Price bid shall be firm and quoted in Canadian funds. The Total Contract Price includes all specified cash allowances, contingency allowances (if applicable) and all applicable taxes, except Harmonized Sales Tax (H.S.T.), in force at the date the Submission is remitted.
- (d) The Bidder has informed itself of the conditions relating to the Work to be performed and have inspected and is thoroughly familiar with the Place of Work and the Specifications and all terms, conditions and covenants of the Contract.
- (e) The Total Contract Price quoted shall represent full payment for all the Work necessary for the proper completion of the Contract.

### 5.2 Limitation of Expenditure

5.2.1 It is understood that Metrolinx does not guarantee any minimum or maximum amount of work.

5.2.2 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.

### 5.3 Completion of Pricing Schedules

- 5.3.1 Bidders shall fully complete the Excel file entitled Tender Document Form: Contract Prices and insert a Unit Price into each space provided under the Contract Unit Price column.
- 5.3.2 Tender Document Form: Contract Prices, must be returned as a separate file preferably in Excel format and may not be retyped or recreated. Failure to follow the submission instructions or format requirements may result in the Submission being found non-responsive and disqualified.
- 5.3.3 It is Metrolinx preference that Bidders submit the pricing using the appended Excel file format to facilitate the Metrolinx pricing evaluation process.
- 5.3.4 The Tender Document Form: Contract Prices is numbered, under the "Item No." column to correspond with the following Work:
  - (a) Varonis Software Support and Maintenance
- 5.3.5 If a "0" is entered in any of the spaces where price information is to be provided, it shall be interpreted as meaning the Contractor shall provide the specified service to Metrolinx at no charge.
- 5.3.6 If any space is left blank or an entry of "N/C" or "N/A" or "—" is entered where price information should be entered then the Submission may be found non-responsive and disqualified consistent with the provisions of the Instructions to Bidders.
- 5.3.7 The products must be supplied by an authorized Canadian Reseller.
- 5.3.8 Bidders must be an authorized Varonis Software reseller in Canada.



## GENERAL CONDITIONS

### 1.0 General Conditions

- 1.1 Interpretation "acceptable" or "satisfactory" or words of similar effect means acceptable or satisfactory to Metrolinx.
- 1.1.2 "Claim" shall have the meaning as described in Section 6.1 hereof.
- 1.1.3 "Claims Notice" shall have the meaning as described in Section 6.1 hereof.
- 1.1.4 "Contract" means the agreement to be entered into between the Contractor and Metrolinx upon acceptance by Metrolinx of the Proposal delivered by the Contractor to Metrolinx, of which these General Conditions form an integral part.
- 1.1.5 "Contractor" means the person identified as such on page 1 of the Form of Tender.
- 1.1.6 "Damage" shall have the meaning as described in Section 6.2 hereof.
- 1.1.7 "Events of Default" shall have the meaning as described in Section 5.1 hereof.
- 1.1.8 "Submission" means all documentation and other materials and information submitted (remitted) by the Contractor in response to the Tender Document or in respect of the Tender Process.
- 1.1.9 "Place of Work(s)" means various premises of Metrolinx, which are the subject of this Contract, as more particularly described in the Specifications and Drawings hereto.
- 1.1.10 "Work" means the supply and Varonis Software Support and Maintenance.
- 1.1.11 Enurement

The Contract shall enure to the benefit of and be binding upon the parties hereto and their respective heirs, executors, administrators, personal representatives, successors and permitted assigns.

### 1.2 Assignment

The Contract, and any part thereof, shall not be assigned, delegated or subcontracted by the Contractor without the prior written consent of the Metrolinx.

### 1.3 Notices

Any notices, orders, decisions, directives or communications given by one party to the other (except telephone notices to commence the Work on any particular day) shall be in writing and shall be delivered to (i) the Contractor to the address as set out on page 1 of the Form of Tender, or (ii) Metrolinx, to 277 Front Street West, Toronto, Ontario, Canada and shall be deemed to have been received by the Contractor on the day delivered to the Contractor by hand or by facsimile transmission or other form of recorded transmission or, if mailed, on the sixth day next following the day on which it was mailed.

#### 1.4 Further Assurances

The parties shall, with reasonable diligence, do all things and provide all reasonable assurances as may be required to consummate the transactions contemplated by the Contract, and each party shall provide further documents or instruments required by the other party as may be reasonably necessary or desirable to effect the purpose of this Contract and to carry out its provisions, whether before or after the completion of the transactions contemplated by this Contract.

#### 1.5 Entire Agreement

This Contract constitutes the entire agreement between the parties relating to the subject matter of this Contract and, except as stated in the Contract, contains all the representations, warranties, covenants and agreements of the respective parties relating to the subject matter of this Contract. There are no oral representations, warranties, covenants and agreements by the parties of any kind. This Contract may not be amended or modified in any respect except by written agreement signed by the parties. In the event that circumstances require an amendment to the Contract, the parties will use their best efforts to mutually agree to any required changes.

#### 1.6 Applicable Law

1.6.1 The Contract shall be interpreted in accordance with and be governed by the laws of the Province of Ontario and the federal laws of Canada applicable therein.

1.6.2 Subject to the provisions herein, the *Sale of Goods Act* (Ontario) applies to this Contract insofar as any part of this Contract relates to goods.

1.6.3 In addition to the warranties and conditions implied by the *Sale of Goods Act* (Ontario), the Contractor represents and warrants that there are no patents, trademarks or other rights restricting the use or replacement of the goods furnished or any part thereof and hereby agrees to indemnify and save harmless Metrolinx from and against all claims, demands, losses, costs, damages, actions, suits or other proceedings by whomsoever made, filed or prosecuted in any manner by reason of such use, or replacement of the goods being a violation of any patent, trademark or other right.

#### 1.7 Nature of the Relationship

The parties acknowledge that the Contractor is an independent Contractor and neither it nor any employee hired by it are employees of Metrolinx. The Contractor shall hire such staff as it considers appropriate to perform its obligations under the Contract. Metrolinx does not have the right to hire such employees, to supervise them, to control their work or to discharge them. Metrolinx shall not have any responsibility for determining or paying the compensation of such employees. Metrolinx and the Contractor hereby disclaim the creation hereby of a general agency, limited agency, partnership, joint venture, master/servant relationship or employer/employee relationship. The powers and obligations of Metrolinx and the Contractor are therefore restricted expressly to those provided for in the Contract and Metrolinx and the Contractor agree that no representations will be made or acts undertaken by either of them which could establish or imply any apparent relationship of agency, partnership or employment and neither party shall be bound in any manner whatsoever by any agreements, warranties, representations or actions of the other party to such effect.

#### 1.8 Time

Time is of the essence in the performance of the parties' respective obligations.

#### 1.9 Warranty of Title

Title to all goods furnished under this Contract shall be free and clean of all liens, charges, or other encumbrances.

#### 1.10 Acceptance of Goods

1.10.1 Property and risk on the goods passes upon examination and acceptance of the goods by Metrolinx.

1.11.2 Any goods supplied that are not in accordance with the requirements of this Contract will be returned to the Contractor at the Contractor's expense.

#### 1.11 Title and Risk of Loss

Unless the parties expressly agree to provide for earlier passage of title, title to the goods shall pass to Metrolinx upon examination and acceptance of the goods by Metrolinx. 1.12.2 Risk of loss of or damage to the goods shall remain with the Contractor, and shall pass to Metrolinx upon examination and acceptance of the goods by Metrolinx.

1.12.3 The Contractor shall be liable for all costs up to the full replacement value of the goods prior to passage of title of the goods to Metrolinx. Goods which prior to examination and 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.

- 1.12.4 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.
- 1.12.5 Contractor shall have all goods delivered to the Place of the Work in the Contract, by the dates specified in the Specifications. Metrolinx may, however, at its discretion require that the Contractor delay delivery after the delivery date specified for such items in the Specifications. Contractor shall arrange for the goods and any software or firmware forming part of the goods, to be installed following delivery of same to the Place of the Work. Installation, diagnostic testing and acceptance of the goods shall be performed in accordance with and subject to the terms and conditions set out in the Contract, including the Specifications.
- 1.12.6 All costs connected with the delivery of the Work to the Place of the Work, all charges for insurance while the Work is in transit to the installation site, and all charges for customs or brokerage fees shall be paid by Contractor. Contractor shall be responsible for obtaining all permits or approvals associated with the shipment and delivery of the Work to the Place of the Work.
- 1.12.7 Work must be new and unused and comply with the Specifications, and to the extent such is applicable, shall be CSA approved at the time of installation.
- 1.12.8 Any Work that does not meet the Specifications and/or the Manufacturer's Documentation, notwithstanding tests, inspection or acceptance at any time, or are found to contain equipment defects, will be subject to rejection and shall be returned to Contractor. Contractor shall assume the expenses of handling and transportation in both directions.

#### 1.12 Harmonized Sales Tax ("HST")

HST applies for the purposes of this Contract. In the event that any relevant taxing statute is amended with the effect that HST would not be applicable, the parties shall amend the Contract accordingly.

#### 1.13 Method of Payment

- 1.13.1 Payment for goods and/or services rendered to the satisfaction of Metrolinx shall be made in arrears, within thirty (30) calendar days of receipt of detailed invoices for work completed. Invoices should be submitted monthly. Each deliverable (including H.S.T. for that service) is to be a separate line item.

1.14.2 It is understood that the Contract is based on reimbursement for actual services performed by the Contractor.

1.14.3 The Contractor shall not perform any work under this Contract which would cause the total cost to exceed the Total Contract Price indicated in Tender Document Form: Contract Prices, unless an increase is so authorized by Metrolinx and effected by a written amendment to the Contract.

## 2.0 Representations and Warranties of the Contractor

### 2.1 Status

If the Contractor is a corporation, the Contractor has been duly incorporated and organized, is validly existing under the laws of its jurisdiction of incorporation and has not been dissolved.

### 2.2 Capacity

The Contractor has the capacity and authority to enter into the Contract and to perform the obligations under the Contract.

### 2.3 Authorization

The entering into, execution and delivery of the Contract and the performance by the Contractor of its obligations hereunder has been duly authorized by all necessary proceedings.

### 2.4 Conflict with Other Agreements

The entering into, execution and delivery of the Contract does not and will not result in a breach of and/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 instrument to which the Contractor is a party or by which it is bound.

### 2.5 Insurance

2.5.1 The Contractor shall maintain insurance of such types and in such amounts as is commercially reasonable for the business operated by the Contractor, and for the Work required by this Contract.

2.5.2 The Contractor shall within five (5) Working Days provide evidence of such coverage upon the request of Metrolinx.

### 2.6 Workplace Safety and Insurance

The Contractor is registered as an employer pursuant to the *Workplace Safety and Insurance Act* (Ontario) and has completed all filings and paid all assessments as required pursuant to that Act and the regulations thereunder.

### 3.0 Covenants of the Contractor

#### 3.1 Compliance with Laws

The Contractor will comply with all applicable federal, provincial and municipal laws, regulations, orders, by-laws and ordinances, including without limitation laws relating to workplace safety and insurance, occupational health and safety and employment standards, and shall obtain all necessary licences, permits and authorizations necessary to carry out the Work. Without limiting the generality of the foregoing, the Contractor specifically covenants that it shall comply in all regards 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 covenants to maintain and strictly enforce its health and safety program. Recognizing that Metrolinx may also have obligations as an “employer” pursuant to the *Occupational Health and Safety Act*, the Contractor further covenants to provide such information within such time frames as may be required in order to allow Metrolinx to fulfill its obligations pursuant to the *Occupational Health and Safety Act*, including, without limitation, the obligation to notify the Chief under such act in the event of an accident causing personal injury.

#### 3.2 Supervision

The Contractor shall provide its employees with the supervision required to complete the Work to the satisfaction of Metrolinx. In the event that Metrolinx determines that any employee of the Contractor is causing or is responsible for a situation which affects the lawful or safe operation of the Place of Work, the Contractor shall remove the employee forthwith at the request of Metrolinx.

#### 3.3 Records

The Contractor shall maintain such accurate records relating to the Work, including daily reports describing equipment used, staffing levels and type of work, as may be required to substantiate all invoices submitted to Metrolinx for payment.

#### 3.4 Date-Related Compliance

The Contractor covenants and warrants that all hardware, software and firmware 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, and that all such date-related processing will take into consideration leap year calculations when used in accordance with the documentation provided by the Contractor. Metrolinx may, at no additional cost, require the Contractor to demonstrate compliance and/or compliance techniques and test procedures the Contractor followed in order to comply with all of the obligations contained herein.

### 4.0 Conditions in Favour of Metrolinx

#### 4.1 Additional Payments

The Total Contract Price shall not be increased or decreased by reason of any increase or decrease in the cost of labour, materials, tools or equipment required by the Contractor to complete the Work.

#### 4.2 Contractor Representatives

Prior to the commencement of the Work, the Contractor shall furnish the names and telephone numbers of the Contractor's representative(s).

### 5.0 Default By Contractor

#### 5.1 Events of Default

5.1.1 The Contractor shall be in default under the Contract on the occurrence of any of the following events ("Events of Default"):

- (a) if any representation or warranty made by the Contractor herein is or becomes incorrect or untrue or any statement or other document heretofore or hereinafter furnished by or on behalf of the Contractor pursuant to or in connection with the Contract proves to have been false in any respect at the time as of which the facts therein set forth were stated or certified, or proves to have omitted any substantial material fact; or
- (b) the Contractor does not complete the Work in a timely manner or the Contractor does not observe or perform any of its obligations under the terms of the Contract; or
- (c) the Contractor ceases or threatens to cease to carry on its business; or
- (d) the Contractor becomes insolvent, bankrupt, makes a proposal or files an assignment for the benefit of creditors under the *Bankruptcy and Insolvency Act* (Canada) or similar statute, including without limitation the *Companies Creditors Arrangement Act* (Canada); a petition in bankruptcy is filed against the Contractor; or steps are taken under any legislation by or against the Contractor seeking liquidation, winding-up or dissolution of the Contractor; or
- (e) a receiver, receiver and manager or trustee is appointed in respect of the Contractor; or
- (f) the holder of a security interest takes possession of all or a substantial part of the Contractor's property or undertaking.

#### 5.2 Rights upon Default

If at any time the Contractor fails to complete the Work as required, Metrolinx shall have the right to take such action as to complete the Work in respect of such period. The Contractor shall indemnify Metrolinx for any cost or expense incurred by Metrolinx for the Contractor's failure to comply with its covenants herein, as provided in Article 6 hereof. In addition, Metrolinx may deliver a written notice to the Contractor which describes the Event of Default relied upon, and which further provides that unless such Event of Default is waived by Metrolinx or cured within a five (5) day period, Metrolinx shall have the right to select and appoint a replacement Contractor to complete the Work for the balance of the term of the Contract on such terms and conditions as may be acceptable to Metrolinx or, in its sole discretion, may complete the Work utilizing its own resources.

### 5.3 Other Rights

Upon Default, Metrolinx will have, in addition to the rights specifically provided in the Contract, all rights given to it by statute or by common law. No such right shall be exclusive of or dependent upon any other right and one or more of such rights may be exercised independently or in combination from time to time.

### 5.4 Deficiency

Notwithstanding the exercise of any rights in Section 7.0 hereof, the Contractor will remain liable to Metrolinx for fulfilment of any obligations which are outstanding following any Event of Default.

## 6.0 Indemnification

### 6.1 Indemnification for Claims

6.1.1 The Contractor shall hereby indemnify, hold Metrolinx harmless and, where required by Metrolinx, defend Metrolinx in respect of the amount of any claim, loss, cost, expense, liability, fine, penalty, interest, payment or damage (including reasonable counsel fees) (hereinafter collectively referred to as the "Claim") incurred by or asserted against Metrolinx collectively resulting from or in connection with the breach of any of the representations and warranties made by the Contractor herein or the breach or non-fulfilment of any of the covenants, conditions and agreements made by the Contractor herein, including without limitation any failure by the Contractor to complete the Work as required by the Contract.

6.1.2 If Metrolinx determines that it is entitled to indemnification under this Section 8.0, it shall give the Vendor notice of the Claim (a "Claim Notice") and the provisions of Section 8.0 shall apply.

### 6.2 Damage to Metrolinx Property

The Contractor hereby indemnifies and holds Metrolinx harmless for all loss or damage suffered by Metrolinx to any of its property arising as a result of the



wilful or negligent act or failure to act of the Contractor or any of its employees, servants or agents ("Damage").

### 6.3 Right to Set-off

In the event that there is a Claim under Section 8.0 or Damage under Section 6.2 hereof, Metrolinx shall have the right to set-off the amount of such Claim or loss or damage against any amounts owing to the Contractor by Metrolinx in respect of the Work, provided that Metrolinx shall deliver at Claims Notice in respect of a Claim or Damage at least three (3) days prior to setting-off the amount of the Claim or Damage against any amounts owing to the Contractor.

## 7.0 Termination of Contract

7.1 Metrolinx may, at any time, by giving thirty (30) days written notice to that effect, terminate any portion of the Contract.

7.2 The Contractor will, upon receipt of such notice, cease all Work, as indicated and on the date of termination indicated in the notice.

7.3 Metrolinx's obligation to make payment to the Contractor for the terminated work shall cease when payment up to and including the day set in the notice has been made.

## 8.0 Warranty

### General

8.1 The Contractor represents, warrants and covenants:

(g) That all workmanship shall be in compliance with the requirements of the Contract;

(h) 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.

8.2 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.

8.3 In addition to the warranties and conditions implied by the Sales of Goods Act (Ontario), 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.

8.4 The warranty period shall commence upon acceptance of goods by Metrolinx.

8.5 If, within the warranty period, any goods supplied by Contractor or any part thereof has a defect, then Contractor, upon notification in writing from Metrolinx,

shall forthwith replace the goods, without cost (including without limitation transportation cost) to Metrolinx.

- 8.6 Metrolinx shall provide such reasonable information, access and cooperation as is required to permit Contractor to expeditiously correct any defect identified during the warranty period. During the warranty period, Contractor shall maintain detailed replacement records and shall forward this information to Metrolinx on a monthly basis (unless otherwise agreed by the Parties).
  - 8.7 In the event Contractor fails to proceed promptly with the correction of any identified defect, then, Metrolinx shall have the right to repair, remedy or replace the goods on its own or through a third party, and the cost thereof shall be charged to Contractor.
  - 8.8 Contractor shall cause those warranties that are provided by Subcontractors and suppliers that extend beyond the warranty period, be assigned to Metrolinx. Should there be any claim under the said warranties after the expiration of the 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 Contractor is unable to complete its obligations under the Contract. In any event, Contractor shall make provision in all subcontracts and purchase orders for all warranties to be directly assigned to Metrolinx.
  - 8.9 Warranty support shall be inclusive of all labour, materials, equipment, tools, spare parts, travel and any and all other costs relating to Contractor's correction of a defect.
- 9.0 Subcontractors
- 9.1 Contractors shall furnish within five (5) working days from notification of award, a list of the names of all Subcontractors and, if required elsewhere in the Tender Documents, major equipment Suppliers whose prices they have carried for completion of the Work.
  - 9.2 The Contractor shall be fully responsible to Metrolinx for any acts, omissions or errors of its Subcontractors and of any persons directly or indirectly employed by them.
  - 9.3 The use of any Subcontractor is subject to the approval of Metrolinx. Metrolinx, for reasonable cause, may object to the use of a Subcontractor prior to the execution of the Contract or during the term of the Contract and require the Contractor to replace them.
  - 9.4 The Contractor shall not replace any Subcontractor involved in the performance of the Work of this Contract without the prior written approval of Metrolinx.
  - 9.5 The Contractor shall be responsible for the distribution of all instruments of Contract, including any and all Addenda and Amendments thereto, to all Subcontractors.

## 10.0 Changes in Work

10.1 Metrolinx may, at any time after the execution of the Contract, make changes to the Work of the Contract by written amendment to Contract.

## 11.0 Contractor Work Performance Rating

11.1 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 Total Performance of the Work. Refer to Attachments for a sample Contract Performance Appraisal report. Interim "Contract Performance Appraisal" reports may be issued, as deemed appropriate by Metrolinx's Representative, at any time during the term of the Contract.

11.2 The prior history of the Contractor in performing work for Metrolinx will be considered in the evaluation of future bids from the Contractor.

11.3 Metrolinx reserves the right in future tenders to reject any bid submitted by a company with an unsatisfactory performance history with Metrolinx.

11.4 Non-compliance with Contract requirements will be identified to the Contractor.

11.5 The information contained in the "Contractor's Performance Review" may be provided to other ministries and agencies, and such performance reviews may be relied upon to disqualify a company from providing a bid on future tenders.

SPECIFICATIONS

1.0 Scope of Work

1.1 The Work will involve the Provision of Varonis Software Support and Maintenance.

2.0 Material Specifications

2.1 The following specifications cover PT-2019-ITOP-721 All products must be new and strictly adhere to the specification.

<b>Item No.</b>	<b>Part No.</b>	<b>Detailed Description</b>	<b>Unit</b>	<b>Estimated Quantity</b>
<b>1</b>	DAW-2501-4000MS	Software Subscription and Support for DatAdvantage® IDU for Windows for 3000 Users for the Period of Mar 30, 2019 - Mar 30, 2020	Each	3000.00
<b>2</b>	CL-1-5-MS	Software Subscription and Support for 1 DatAdvantage® Probe 50SL for the Period of Mar 30, 2019 - Mar 30, 2020	Each	1.00
<b>3</b>	CL-1-5-MS	Software Subscription and Support for 1 DatAdvantage® Probe 50SL for the Period of Apr 12, 2019 - Mar 30, 2020	Each	1.00
<b>4</b>	TE--MS	Software Subscription and Support for Test Environment Add-on MS for the Period of Apr 12, 2019 - Mar 30, 2020	Each	1.00
<b>5</b>	SSPDS1-3000L	Software Subscription and Support for DatAdvantage® for Directory Services for 3000 Users for the Period of Mar 30, 2019 - Mar 30, 2020	Each	3000.00
<b>6</b>	SSPEC1-3000L	Software Subscription and Support for DatAdvantage® IDU for Exchange for 3000 Users for the Period of Mar 30, 2019 - Mar 30, 2020	Each	3000.00
<b>7</b>	SSPDLS1-3000L	Software Subscription and Support for DatAlert® Suite for 3000 Users for the Period of Mar 30, 2019 - Mar 30, 2020	Each	3000.00

<b>8</b>	SSPDC1-3000L	Software Subscription and Support for IDU Classification Framework for 3000 Users for the Period of Mar 30, 2019 - Mar 30, 2020	Each	3000.00
<b>9</b>	DADS-751-1000PL	DatAdvantage for Directory Services Perpetual License for 1000 Users	Each	1000.00
<b>10</b>	DAEX-751-1000PL	DatAdvantage for Exchange Perpetual License for 1000 Users	Each	1000.00
<b>11</b>	DAW-751-1000PL	DatAdvantage for Windows Perpetual License for 1000 Users	Each	1000.00
<b>12</b>	DLS-751-1000PL	DatAlert Suite Perpetual License for 1000 Users	Each	1000.00
<b>13</b>	DCF-751-1000PL	DatAlert Suite Perpetual License for 1000 Users	Each	1000.00
<b>14</b>	DADS-751-1000MS	DatAdvantage for Directory Services Software Maintenance and Support for 1000 Users for 12 Months	Each	1000.00
<b>15</b>	DAEX-751-1000MS	DatAdvantage for Exchange Software Maintenance and Support for 1000 Users for 12 Months	Each	1000.00
<b>16</b>	DAW-751-1000MS	DatAdvantage for Windows Software Maintenance and Support for 1000 Users for 12 Months	Each	1000.00
<b>17</b>	DLS-751-1000MS	DatAlert Suite Software Maintenance and Support for 1000 Users for 12 Months	Each	1000.00
<b>18</b>	DCF-751-1000MS	Data Classification Framework for Windows and SharePoint Software Maintenance and Support for 1000 Users for 12 Months	Each	1000.00

### 3.0 Warranty

All products supplied by the Contractor shall be warranted against defects in materials and workmanship for a period of at least ninety (90) days commencing from the date of product installation.

### 4.0 Delivery

- 4.1 The Contractor will be responsible for the delivery of all goods supplied.
- 4.2 Deliveries will be made to the following Metrolinx location:
  - 4.2.1 Metrolinx – 277 Front Street West, Toronto, Ontario
  - 4.2.2 Contact: Faheem Mashadi  
Phone: 416-202-1551  
Email: [Faheem.mashadi@metrolinx.com](mailto:Faheem.mashadi@metrolinx.com)
  - 4.2.3 Metrolinx reserves the right to add or change delivery locations within the Greater Toronto Area without incurring in any additional costs.

## Reference Documents:

The following documents form part of, and are appended to this Tender Document.

<b>ITEM NO.</b>	<b>TITLE</b>	<b>NO. OF PAGES</b>
1.	Contract Performance Appraisal	1
2.	Bidder Q and A Form – Tender No. PT-2019-ITOP-721	1
3.	Metrolinx MERX Portal – General Information	1