

## Appendix “A” - Terms and Conditions

Below sets out the Terms and Conditions applicable to the process of obtaining one or more Proponents for the opportunity described in the EOI Document.

### **PART 1: THE EOI PROCESS**

#### **1.1 The EOI Process**

The EOI process will include the steps set out in Section 8 of the EOI Document. In addition:

**(a) Metrolinx may host a public information session**

Metrolinx may choose to host an optional public information session for interested parties. Please inform the EOI Contact listed below if you are interested and would like to be included.

**(b) Metrolinx will host one-on-one meetings with Proponents**

Starting on March 8, 2021, Metrolinx will schedule one-on-one meetings with interested Proponents with meetings taking place virtually for those Proponents that wish to have a further discussion regarding the Partnership Opportunity. Proponents participating in the discovery meetings will be asked to sign a Non-Disclosure Agreement and a Conflict of Interest form prior to the beginning of the meeting.

**(c) Communications with Metrolinx**

All questions and communications of any sort with respect to this Partnership Opportunity are to be in writing and directed only to the contact person identified below (the “**EOI Contact**”).

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

Information regarding the Partnership Opportunity, whether provided by the EOI Contact, or from any other source, whether verbally or in writing, shall be considered informal and Metrolinx shall not be bound by, or liable for, any such information unless the information is incorporated into a written addendum.

**(d) First opportunity to submit Term Sheets**

Starting on April 5, 2021, Proponents may submit a Term Sheet (in the form attached at Appendix B) to facilitate negotiations.

**(e) Negotiation with Metrolinx**

Metrolinx intends to negotiate concurrently with Proponents.

**(f) Selection of Proponents and Partnership Agreement(s)**

At any time on or after May 6, 2021, Metrolinx may select one or more proponents and either enter into exclusive negotiations with such Proponent(s) that are exclusive to their category, as defined by Metrolinx, or enter into a Partnership Agreement with each.

There will be no legally binding relationship created between Metrolinx and any Proponent prior to the execution of a written agreement.

## **1.2 Addenda**

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

It is the Proponent's responsibility to obtain all addenda issued. Information concerning the number of addenda issued and the date of issue of the most recent addendum can be obtained by contacting the EOI Contact identified in Section 1.1(c) of these Terms and Conditions.

## **PART 2: TERM SHEET PROPOSALS**

### **2.1 Preparation of Term Sheets**

- (a) Proponents must submit a proposal in the form of a completed term sheet (the "**Term Sheet**"), the form of which will be provided by Metrolinx.
- (b) Term Sheets must include a fully completed Submission Form with a signature of an authorized signatory of the Proponent.

### **2.2 Instructions for Submission of Proposal**

Proposals must be emailed to the EOI Contact at [Rick.Radovski@metrolinx.com](mailto:Rick.Radovski@metrolinx.com).

## **PART 3: SELECTION OF PROPONENTS**

### **3.1 Selection of Proponents**

At any time on or after May 6, 2021, Metrolinx may select one or more proponents and either enter into exclusive negotiations with such Proponent(s) that are exclusive to their category, as defined by Metrolinx, or enter into a Partnership Agreement with each.

Metrolinx will be looking to select one or more Proponents for the opportunities presented in the EOI Document. In selecting Proponents, Metrolinx will look to maximize the financial and strategic impact for Metrolinx, while considering ease of implementation and ensuring that it makes operational sense.

In considering the financial and strategic impact, Metrolinx will consider the factors set out in Section 7 of the EOI Document.

Metrolinx may have a third-party or third-parties (each of which will be subject to confidentiality obligations, as described in Section 4.15 of these Terms and Conditions) review the Term Sheets or any part thereof, to support and advise as necessary.

### **3.2 Timeframe for Negotiations**

Metrolinx intends to conclude negotiations expeditiously. A Proponent invited to enter into direct negotiations should therefore be prepared to provide requested information in a timely fashion and to conduct its negotiations without delay.

## **PART 4 – EOI PROCESS TERMS AND CONDITIONS**

### **4.1 Metrolinx’s Information in EOI Only an Estimate**

Metrolinx and its advisers make no representation, warranty or guarantee as to the accuracy of the information contained in the EOI Documents or issued by way of addenda. Any quantities shown or data contained in the EOI Documents or provided by way of addenda are estimates only and are for the sole purpose of indicating to Proponents the general nature of the opportunity. It is the Proponent’s responsibility to avail itself of all the necessary information to prepare a Proposal in response to the EOI Documents.

### **4.2 Investigation by Proponents**

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

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

### **4.3 Proponents Shall Bear Their Own Costs**

Each Proponent shall bear all costs associated with or incurred in connection with its participation in the EOI process, including, but not limited to, preparation and submission of its Proposal and preparation for and participation in presentations, interviews and negotiations.

### **4.4 Procurement Process Non-binding - No Contract A and No Claims**

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

### **4.5 No Contract until Execution of Written Agreement**

No legal relationship or obligation regarding the potential partnership shall be created between any Proponent and Metrolinx by the EOI process until the execution of a written Partnership Agreement.

### **4.6 Rights of Metrolinx**

Metrolinx may, in its sole discretion and without liability:

- (a) accept or reject any or all Term Sheets received in whole or in part;
- (b) not proceed with all or any part of the Partnership Opportunity;
- (c) cancel or amend the EOI process at any time for any reason and, at its option, issue a new EOI for the same or similar opportunity;
- (d) cancel any acceptance of a Term Sheet or selection of a Proponent prior to the final execution of a written Partnership Agreement by Metrolinx;
- (e) waive any requirement of the Partnership Opportunity;

- (f) check or not check or only check certain of the client references provided by the Proponent with its Term Sheet; and
- (g) select more than one Proponent through the EOI process.

#### **4.7 Illegal or Unethical Conduct**

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

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

#### **4.8 Conflict of Interest**

For the purposes of this Section, "Conflict of Interest" shall have the meaning ascribed to it in the Submission Form.

The Proponent shall carry out such assessments and make such inquiries as they may deem necessary to satisfy themselves that they do not have an actual or potential Conflict of Interest.

The Proponent shall not engage in any Conflict of Interest communications.

If, at the sole determination of Metrolinx, a Proponent is found to be in a Conflict of Interest that cannot be resolved or the Proponent fails to disclose any actual or potential Conflict of Interest Metrolinx may, at its sole discretion, disqualify the Proponent from the EOI process or terminate any agreement entered into with the Proponent pursuant to this EOI process.

#### **4.9 Disqualification for Misrepresentation**

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

#### **4.10 References and Past Performance**

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

#### **4.11 Notification of Outcome**

All Proponents that have submitted a Term Sheet shall be notified in writing of the outcome of the selection process for the Partnership Agreement after the execution of the final Partnership Agreement with the successful Proponent(s).

#### **4.12 Public Disclosure and Lobbying**

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

#### **4.13 Disclosure of Information**

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

#### **4.14 Term Sheet to Be Retained by Metrolinx**

Metrolinx will not return the Term Sheet or any accompanying documentation submitted by a Proponent.

#### **4.15 Confidential Information of Metrolinx**

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

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

#### **4.16 Exclusion of Liability**

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

#### **4.17 Governing Law**

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

## Appendix “B”: Term Sheet

### Metrolinx PRESTO Payment & Related Marketing Partnerships Proposal

This Term Sheet summarizes the proposed terms of a potential partnership between Metrolinx and the interested party identified below in relation to certain assets used by Metrolinx. The terms “partner” or “partnership” as used in this Term Sheet refer to the successful Proponent(s) and the relationship with such Proponent(s) only; they are not intended to refer to a legal “partner” or “partnership” as such terms are used in the *Partnership Act*, R.S.O. 1990, Chapter P.5.

This Term Sheet does not constitute a legally binding agreement, and Metrolinx is under no obligation to enter into an agreement with any interested party in relation to this Partnership Opportunity. Any future legally binding agreement will only be made pursuant to definitive agreements to be negotiated and executed by the parties.

**Instructions:** Each interested party should review the EOI, provided to interested parties before completing this Term Sheet. The Term Sheet below is intended to summarize the key terms of the interested party’s proposal. Before completing, interested parties should read the Term Sheet and the EOI Document in their entirety. Completed Term Sheets must be submitted to Rick Radovski at [Rick.Radovski@metrolinx.com](mailto:Rick.Radovski@metrolinx.com). Any questions on this opportunity or the EOI process should be directed to Rick Radovski at [Rick.Radovski@metrolinx.com](mailto:Rick.Radovski@metrolinx.com).

	<b>Instructions</b>	<b>Proposal</b>
<b>Name of Interested Party</b>	Indicate the full legal name(s) of the interested party(s) completing this proposal.	Click here to enter text.
<b>Type of Company</b>	Describe the type of company (e.g. corporation, partnership, sole proprietor), and if a joint venture, clearly state this and state who the joint venture parties are and identify who is acting the lead.	Click here to enter text.
<b>Contract Term</b>	Indicate the proposed term of the partnership, including requested renewal rights, if any.	Click here to enter text.
<b>Financial Value</b>	<ul style="list-style-type: none"><li>• Indicate the value of cash being offered;</li><li>• Indicate the rights being requested;</li><li>• Outline anticipated direct cost-saving commitment or anticipated indirect cost benefit to Metrolinx (e.g., reduced payment acceptance expense);</li><li>• Outline any financial commitment the partner is willing to invest to support the partnership (e.g., Launch Costs, Loyalty, Customer Incentives, Marketing Commitments, etc.);</li><li>• Outline any value-in-kind (e.g., media buy on non-Metrolinx owned assets, advertising on partner owned or controlled assets, staff support, hardware, software, and or consulting services etc.) the partner is proposing;</li><li>• Outline any additional anticipated financial benefit to Metrolinx;</li></ul>	Click here to enter text..

<p><b>Strategic Value and Alignment</b></p>	<ul style="list-style-type: none"> <li>• Outline the Initiatives or Programs being proposed to increase Regional Ridership: The partnership’s direct impact on regional ridership or PRESTO’s capabilities to enable regional ridership growth (e.g., any accelerated rewards, ridership incentives or sponsored fares. Outline the proposed methodologies, programs, or opportunities to reduce the regional total cost of fare collection across PRESTO clients, through recognizing synergies or improving PRESTO’s ability to enable them. This would include anticipated cost savings benefit to PRESTO clients;</li> <li>• Outline how PRESTO customer satisfaction will be enhanced through this partnership, including any unique offerings that will be provided exclusively to PRESTO customers.</li> <li>• Detail how you preserve or enhance PRESTO’s offering and reach to all transit riders including underserved and under/unbanked customers;</li> <li>• Outline how you will enhance the value of the PRESTO product and service offering to clients (e.g., products, tools and capabilities);</li> <li>• Detail anticipated timelines (e.g. speed to market) and risks;</li> <li>• Outline any additional anticipated areas of strategic benefit to Metrolinx.</li> </ul>	<p>Click here to enter text.</p>
<p><b>Partner Alignment</b></p>	<ul style="list-style-type: none"> <li>• The partner is a well-recognized and respected brand in the area that they operate. Provide support to demonstrate Proponent’s brand perception, community commitment/initiatives &amp; relevance;</li> <li>• Detail any track record with respect to the proposed opportunity in transit and fare payments;</li> <li>• Detail any value-add services, innovative concepts or innovation capabilities that your company can provide that may complement or enhance our requirements;</li> <li>• Provide a summary of current market share, geographic locations, customer demographics, and key insights for target market;</li> </ul>	<p>Click here to enter text.</p>

	<ul style="list-style-type: none"> <li>• Outline evidence of past partnerships that demonstrate meeting the objectives for both entities through collaboration;</li> <li>• List any plans to co-brand your business with Metrolinx marks (e.g. marketing materials or community initiatives);</li> <li>• List any related plans to support the community (e.g. local fundraiser);</li> <li>• Outline any additional details that might showcase partner's fit/alignment with Metrolinx.</li> </ul>	
<b>Other</b>	<ul style="list-style-type: none"> <li>• Please detail any other offerings or commitments that are being proposed with your proposal.</li> </ul>	



## SUBMISSION FORM

### 1. Proponent Contact Information

Please fill out the following form and identify one (1) person to be the Proponent's contact person for the Partnership Opportunity response and for any clarifications or amendments that might be necessary.

Full Legal Name of Proponent:	Click here to enter text.
Street Address:	Click here to enter text.
City, Province/State:	Click here to enter text.
Postal Code:	Click here to enter text.
Office Phone Number:	Click here to enter text.
Name and Title of Contact Person for Proponent:	Click here to enter text.
Contact Person Cell Phone:	Click here to enter text.
Contact Person E-mail:	Click here to enter text.

### 2. Acknowledgment of Non-binding EOI Process

The Proponent acknowledges that the EOI process will be governed by the Terms and Conditions set out in Appendix A above, and that, among other things, the Terms and Conditions confirm that this EOI process does not constitute a formal legally binding bidding process, and that there will be no legal relationship or obligations created until Metrolinx and the selected Proponent have executed a written contract.

### 3. Conflict of Interest

The term "Conflict of Interest" means, in relation to the process set out in the Terms and Conditions and the EOI for PRESTO Payment & Related Marketing Partnerships EOI, the Proponent has an unfair advantage or engages in conduct, directly or indirectly, that may give it an unfair advantage, including but not limited to (i) having, or having access to, confidential information of Metrolinx in the preparation of its Term Sheet (as defined in the Terms and Conditions) that is not available to other Proponents, (ii) communicating with any person with a view to influencing preferred treatment in the process (including but not limited to the lobbying of decision makers involved in the process), or (iii) engaging in conduct that compromises, or could be seen to compromise, the integrity of the process.

As it pertains to Conflict of Interest, the Proponent must select one:

- a.  There was no Conflict of Interest in preparing the Term Sheet, and there is no foreseeable Conflict of Interest in performing the obligations contemplated in the Term Sheet and/or with respect to the EOI for PRESTO Payment & Related Marketing Partnerships.
  
- b.  The Proponent declares that there is an actual or potential Conflict of Interest relating to the preparation of its Term Sheet and/or the EOI for PRESTO Payment & Related Marketing Partnerships, and/or the Proponent foresees an actual or potential Conflict of Interest in performing the obligations contemplated in the Term Sheet and/or the EOI for PRESTO Payment & Related Marketing Partnerships.

If the Proponent declares an actual or potential Conflict of Interest by marking the box in (b) above, the Proponent must set out details of the actual or potential Conflict of Interest below. For clarity, participation in past, present,

and/or future Metrolinx procurements could be a potential Conflict of Interest and such participation must be set out and accounted for in the list below to enable Metrolinx to consider whether an actual Conflict of Interest may exist and/or arise during the process.

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#### 4. Former Metrolinx Employees.

The following individuals, as employees, advisers, or in any other capacity (a) participated in the preparation of our Term Sheet (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 date hereof:

<b>Name of Individual:</b> Click here to enter text.
<b>Job Title at Metrolinx:</b> Click here to enter text.
<b>Department of Metrolinx:</b> Click here to enter text.
<b>Last Date of Employment with Metrolinx:</b> Click here to enter text.
<b>Name of Last Supervisor:</b> Click here to enter text.
<b>Brief Description of Individual's Job Functions:</b> Click here to enter text.
<b>Brief Description of Nature of Individual's Participation in the Preparation of the Proposal:</b> Click here to enter text.

(Repeat above for each identified individual)

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

This Submission Form is executed on behalf of the Proponent this \_\_\_\_ day of \_\_\_\_\_, 2021

Click here to enter text.

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*Legal Name of Proponent submitting Term Sheet, e.g. ABC Corporation*

Click here to enter text.

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*Signature of individual authorized to bind the Proponent submitting the Term Sheet*

Name of Signatory: Click here to enter text.

Title of Signatory: Click here to enter text.