



NOTICE TO VENDORS

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

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

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



Request to Qualify and Quote (RQQ):

LEADERSHIP TRAINING

Request Number:

RQQ-2018-BUSF-285

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ADDENDA (IF APPLICABLE)

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

PROPONENT'S SUBMISSION CHECKLIST

1.0 Submission Checklist

The following checklist provides the Proponent with a consolidated listing of the requirements for the Submission. Proponents should review the checklist prior to submitting the Submission to ensure compliance.

Requirement	Confirmation (left click with your mouse in the box to select)
The Submission has been submitted by the E-Bid Authorized Signer.	<input type="checkbox"/>
The Proponent has read through all the Request Documents including any Addenda that have been issued and these have all been considered in your Submission.	<input type="checkbox"/>
The Proponent has reviewed the mandatory requirements and acknowledges that it meets all mandatory requirements in order for their Submission to be considered further.	<input type="checkbox"/>
The Proponent has reviewed the RQQ Timetable and understands all the dates and timelines associated with this RQQ Process	<input type="checkbox"/>
Contact information for the individual responsible for the Submission has been included in "Request Document Form: Form of Request".	<input type="checkbox"/>
The Proponent understands the requirements for Electronic Bid Submission and shall comply with the Submission requirements.	<input type="checkbox"/>
The Proponent's Submission has been prepared in accordance with the Instructions to Proponents (i.e. mandatory formats, templates and requirements) as outlined in the Request Documents.	<input type="checkbox"/>
The Proponent's Price Submission has been completed in full and included with the Submission.	<input type="checkbox"/>
The Proponent has not included any qualifying statements in its Submission.	<input type="checkbox"/>
If a Joint Venture, a copy of the Joint Venture agreement electing the Participant-in-Charge is attached.	<input type="checkbox"/>
The Proponent has completed and included all Request Document Forms with this Submission.	<input type="checkbox"/>

INTRODUCTION

1.0 General

- 1.1 Metrolinx is issuing this Request to Qualify and Quote to retain the services of a Vendor to provide the goods and/or services described herein. Metrolinx intends to notify a Proponent of acceptance of its Submission and enter into a Contract through an open, fair and competitive process.
- 1.2 You are invited to submit your Submission for Request No. RQQ-2018-BUSF-285, as more particularly described in this Request Document as required by Metrolinx.

2.0 Introduction

- 2.1 Metrolinx is a crown agency of the Government of Ontario under the Metrolinx Act, 2006, reporting to the Ministry of Transportation. It was created to improve the coordination and integration of all modes of transportation in the Greater Toronto and Hamilton Area (GTHA). The Metrolinx mandate includes delivering the best possible transportation services today while leading the way to an even better, more convenient service tomorrow; making the best possible use of public transportation investment dollars; and measurably improving the quality of life in the region.

3.0 Objective

- 3.1 The objective of this Request to Qualify and Quote (RQQ) is to solicit proposals from Proponents for the provision of “Leadership Training” over two (2) months period. The requirements are more particularly described in Scope of Work of this Request Document.

DEFINITIONS

1.0 In this Request Document,

- 1.1 **“Addenda”/“Addendum”** is the formal written release of additions, deletions, revisions, clarifications to this Request Document, via the Metrolinx MERX Portal, that form a part of the Request Document and subsequently the Contract as specified in Section 4.0 of Instructions to Proponents.
- 1.2 **“Business Day”** means any day other than: (a) a Saturday or Sunday and (b) any other day on which Metrolinx is not open for business. Each Business Day will end at 4:00 p.m. on that day.
- 1.3 **“Closing”** means the deadline for Metrolinx to receive Submissions as specified in “Closing” of Section 1.2, RQQ Timetable, of Instructions to Proponents.
- 1.4 **“Conflict of Interest”** means:
- (a) in relation to this RQQ Process, the Proponent has an unfair advantage or engages in conduct, directly or indirectly, that may give it an unfair advantage, including but not limited to (i) having, or having access to, confidential information of Metrolinx in the preparation of its Submission that is not available to other Proponents, (ii) communicating with any person with a view to influencing preferred treatment in this RQQ Process (including but not limited to the lobbying of decision makers involved in this RQQ Process), or (iii) engaging in conduct that compromises, or could be seen to compromise, the integrity of this RQQ Process; or
 - (b) in relation to the performance of its contractual obligations contemplated in the Contract that is the subject of this procurement, the Proponent’s other commitments, relationships or financial interests (i) could, or could be seen to, exercise an improper influence over the objective, unbiased and impartial exercise of its independent judgement, or (ii) could, or could be seen to, compromise, impair or be incompatible with the effective performance of its contractual obligations.
- 1.5 **“Contract”** means this contract between the Vendor and Metrolinx pursuant to this Request No. RQQ-2018-BUSF-285 including the Articles of Agreement, Addenda, the General Conditions of the Contract, the Contract Documents, and any and all other documents referenced therein.
- 1.6 **“Contract Documents”** means the Contract and those documents listed in List of Contents and any written amendments thereto as agreed to by the Parties.
- 1.7 **“Corporate Firm”** means any one of the following: a) the Proponent, b) the Proponent and its Subvendors, or c) the Joint Venture, responding to this Request Document.
- 1.8 **“Drawings”** if applicable to this Request Document, describe the detailed technical requirements of the Work and form part of the Scope of Work contained herein.

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- 1.9 “**EBS**” means Electronic Bid Submission.
- 1.10 “**E-Bid Authorized Signer**” is the designated individual in the Proponent’s organization who has the authority to bind the Proponent to each and every term, condition, article and obligation of the Request Document and any resultant Contract.
- 1.11 “**E-Bid Confirmation Number**” is the receipt received by a Proponent from the Metrolinx MERX Portal indicating that the Submission was uploaded successfully.
- 1.12 “**Evaluation Committee**” means the individual chosen by Metrolinx to evaluate the Submissions based on the Evaluation Criteria outlined in this Request Document.
- 1.13 “**Evaluation Criteria**” means the criteria for scoring the Submission as stated in Section 1.1 of Evaluation Criteria and Selection Process.
- 1.14 “**FIPPA**” means the Freedom of Information and Protection of Privacy Act, and any amendments or successor legislation. FIPPA is Provincial legislation regulating the collection, retention, access, use and disclosure of “Personal Information” by or on behalf of Metrolinx, and shall be applicable to the Contract including all Work provided pursuant to the Contract.
- 1.15 “**Joint Venture**” means a business arrangement of two or more parties proposed for this RQQ Process further described in Section 16.0 of Instructions to Proponents.
- 1.16 “**Key Personnel**” means the individual identified by name in “Request Document Form - Technical Submission Section 3: Vendor Personnel”.
- 1.17 “**Metrolinx**” is a provincial crown agency continued under Metrolinx Act, S.O. 2006, Chapter 16, and its successors and assigns and shall have the same meaning ascribed to “Metrolinx” in Schedule A - Definitions of General Conditions of the Contract.
- 1.18 “**Must**” refers to a mandatory requirement. Failure on the part of the Proponent to provide the information or demonstrate it meets a requirement expressed by “must” may be asked to clarify their Submission. A Proponent’s Submission will be deemed non-compliant and given no further consideration if the Submission is not clarified within the specified period of time.
- 1.19 “**Metrolinx MERX Portal**” is the electronic bid solicitation and Vendor Submission website (www.metrolinx.merx.com) that facilitates Metrolinx and Proponent interaction as it directly relates to the; download by a Vendor of Metrolinx Request Documents including Addenda from, and upload by a Vendor of a Submission to Metrolinx in response to, this RQQ Process.
- 1.20 “**Option**” means a component of the Work that is to be exercised at the sole discretion of Metrolinx.
- 1.21 “**PDF**” means Portable Document Format.

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- 1.22 **“Participant in Charge”** shall have the same meaning ascribed in Section 16.2 of Instructions to Proponents.
- 1.23 **“Parties”** means both of Metrolinx and the Vendor and a **“Party”** means either one of them.
- 1.24 **“Place of the Work”** is the designated site or location of the Work.
- 1.25 **“Pricing Submission”** means the Proponent's response to Section 5 of **“Submission Requirements”** and any additional information requested by Metrolinx relating thereto.
- 1.26 **“Procurement Office”** means Metrolinx Procurement Services office located at 277 Front Street West, 4th Floor, Mail Room, Toronto, Ontario, Canada, M5V 2X4.
- 1.27 **“Procurement Representative”** means the following individual in the Procurement Services Department:

Nikhil Chakarvarty, Procurement Officer	
Telephone Number	(416) 202-7812
Email	Nikhil.Chakarvarty@metrolinx.com

- 1.28 **“Proponent”** means the entity, identified on Page 1 of the **“Request Document: Form of Request”** that submits a Submission in response to this Request Document and who, if notified of acceptance of its Submission by Metrolinx, shall execute the Contract with Metrolinx for provision of the Work.
- 1.29 **“Request Document”** means this Request document comprised of sections listed in the List of Contents, issued by Metrolinx for the Work to be provided, and any Addenda thereto.
- 1.30 **“Request Document Form(s)”** means any sections of this Request Document which require completion and must be included with the Submission.
- 1.31 **“RQQ Process”** means the procurement process for this Request as set out in the Request Document herein.
- 1.32 **“Scope of Work”** describes the general and detailed requirements of the Work and is to be read in conjunction with any Drawings contained herein, if applicable.
- 1.33 **“Shall”** refers to an obligation either on the part of all Proponents in submitting their submissions to this RQQ or, as applicable to the Section of the RQQ in which the term **“shall”** appears.
- 1.34 **“Should”** refers to a desired element. Failure on the part of the Proponent to provide the information requested by **“should”** within its Submission or to demonstrate that it meets the element expressed by **“should”** may result in the

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Proponent receiving less than a score of seven (7) (“meets basic requirements”) on any point-rated Evaluation Criteria score. Proponents are encouraged to address all elements expressed by “should” and to provide additional evidence demonstrating their further qualifications or experience which they propose may exceed the stated requirements (as applicable to each Evaluation Criterion).

- 1.35 “**Submission**” means all documentation which the Proponent shall be bound to and other materials and information submitted electronically by the Proponent’s E-Bid Authorized Signer through the Metrolinx MERX Portal in response to this Request Document or in respect of this RQQ Process.
- 1.36 “**Subvendor**” means an individual, firm, partnership or corporation having a direct contract with the Vendor or another Subvendor to perform a part or parts of the Work.
- 1.37 “**Supplier**” means an individual, firm, partnership or corporation having a direct contract with the Vendor or another Subvendor to provide goods and services required to carry out the Work.
- 1.38 “**Technical Submission**” means the Proponent’s response to Section 3.0 of Submission Requirements and any additional information requested by Metrolinx relating thereto.
- 1.39 “**Total Contract Price**” means the upset limit amount established as the total contract price for the Contract by Metrolinx, in accordance with Sections 13.1(a) through 13.1(c) of Instructions to Proponents.
- 1.40 “**Total Estimated Contract Price**” means the total amount set out in “*Request Document Form - Contract Prices*”.
- 1.41 “**Vendor Performance Management (VPM)**” shall have the meaning ascribed in Section 26.0 of Instructions to Proponents.
- 1.42 “**Vendor Performance Rating (VPR)**” is the average of a vendor's performance evaluation scores in a particular category (as assessed by or on behalf of Metrolinx) for a thirty-six (36) month period preceding the Closing. If a Bidder has not completed any work for Metrolinx in the three (3) years preceding the Closing, for the purpose of evaluating the Submission, the Bidder will be assigned a VPR which is the straight average of all the VPR’s of all vendors in a particular category who have performed services for Metrolinx during the prior fiscal year.
- 1.43 “**Work**” means all activities, services, goods, equipment, matters and things required to be done under the Contract, including all of the work, labour, services, goods, equipment, if applicable, described in the Scope of Work and Drawings.
- 1.44 “**Working Day**” means any day other than: (a) a Saturday or Sunday and (b) any other day on which Metrolinx is not open for business. Each Business Day will commence at 8:00 am and end at 4:00 p.m. on that day.

INSTRUCTIONS TO PROPONENTS

1.0 General

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

1.2 RQQ Timetable

Milestone	Date
Issuance of Request Document	February 15, 2019
Deadline to Submit Questions	February 21, 2019
Last day for issuance of Addenda	February 27, 2019
Closing	March 1, 2019 @ 3:00 p.m. Toronto, Ontario time

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

2.0 Request Enquiries and Requests for Clarifications, Changes or Revisions

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

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

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

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

"Q and A Form RQQ-2018-BUSF-285"

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

- 2.5 When necessary, revisions to, or clarifications of the Request Documents will be incorporated into a written Addendum issued by the Procurement Representative identified herein. Information regarding this Request Document or the Work, whether provided by the Procurement Representative identified herein, or from any other source, whether verbally or in writing, shall be considered informal and Metrolinx shall not be bound by, or liable for, any such information unless incorporated into a written Addendum.

3.0 Mandatory Site/Information Meeting

- 3.1 Not Applicable

4.0 Addenda / Changes to the Request Documents

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

5.0 Request Submission

- 5.1 Submissions shall only be accepted electronically via the Metrolinx MERX Portal. Submissions submitted in any other manner shall be found non-compliant and disqualified.
- 5.2 It is the Proponents sole responsibility when submitting a Submission to Metrolinx to exercise extreme care when completing and submitting all required documents and/or

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information. Failure of the Proponent to include all required documents and/or information may result in the Proponent's Submission being found non-compliant and disqualified.

- 5.3 Proponents shall examine carefully the whole of the Request Document and any data referred to therein. They shall make the necessary investigations to inform themselves thoroughly as to the character and magnitude of the Work.
- 5.4 The Proponent shall not claim at any time after the Closing and/or after notification of acceptance of its Submission that there was any misunderstanding or uncertainty in regard to the Request Document or any of the contents therein. No plea of ignorance of conditions which exist, or any conditions or difficulties that may be encountered, shall be accepted as a reason for failure to complete the Contract or as a basis for claims for additional compensation or extension of time.
- 5.5 Submissions should be completed fully in a clear and comprehensible manner.
- 5.6 The Submission shall be submitted on the most current Request Document Forms issued by Metrolinx and except for designated sections where the Proponent is to enter information, the Request Document and Request Document Forms shall not be altered in any way including, but not limited to, write-ins, strike-outs of the pre-printed provisions or any other conditional or qualifying statements.
- 5.7 The Submission must not include any qualifying statements.
- 5.8 Any Submission which contains such conditional and/or qualifying statements may be found non-compliant and disqualified unless such conditional and/or qualifying statements are withdrawn in writing by the Proponent, upon request by Metrolinx. Metrolinx at its sole discretion will determine what constitutes a qualifying statement.
- 5.9 If during the preparation of its Submission, the Proponent desires to make a change which requires correction, alteration or erasure to any information previously entered in a designated section of the Submission by the Proponent, documents that have been uploaded to the Metrolinx MERX Portal may be added, removed and/or re-submitted as often as required at any time, prior to Closing.
- 5.10 All prices shall be firm and quoted in Canadian funds.
- 5.11 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=To0fqScw3M>. Alternatively, you can contact MERX directly at 1-800-964-MERX (6379). For additional Metrolinx MERX Portal guidelines, refer to the document entitled "Metrolinx MERX Portal - General Information" under "Attachments" in this Request Document.

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- 5.12 Information contained in the most recent Submission submitted via the Metrolinx MERX Portal and received prior to the Closing will take precedence over the information contained in previously received Submissions from the Proponent.
- 5.13 The Proponent may withdraw a Submission at any time prior to the Closing specified by Metrolinx by logging into www.metrolinx.merx.com.

6.0 Submission Deadline

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

7.0 Clarification of Submissions

- 7.1 Metrolinx reserves the right, within one hundred and eighty (180) calendar days following the Closing, to request that any Proponent clarify its Submission or provide the required supporting documentation specified in "Request Document Form: Mandatory Corporate, Personnel and Technical Requirements", and such Proponents shall submit responses to such request within five (5) Business Days following receipt of such request or within such shorter time as Metrolinx may require. Metrolinx may, in its sole discretion, choose to meet with some or all of the Proponents to discuss aspects of

their Submission. Metrolinx may require Proponents to submit additional information clarifying any matters contained in its Submission, provide confirmation of any matters contained in their Submission or prepare a written interpretation of any aspect of a Submission for the respective Proponent's acknowledgement of that interpretation. Any unsolicited information shall not be considered.

- 7.2 Such information accepted by Metrolinx and written interpretations which have been acknowledged by the relevant Proponent shall be considered to form part of the Submission of those Proponents.
- 7.3 After the Closing, only information specifically requested by Metrolinx for purposes of clarification or to substantiate compliance with a mandatory requirement, shall be considered as additions to a Proponent's Submission.
- 7.4 Metrolinx is not obliged to seek clarification of any aspect of a Submission.

8.0 Corporate Firm and Team Qualifications and Experience

- 8.1 Only the Submissions of qualified Proponents will be considered for acceptance by Metrolinx, in accordance with Evaluation Criteria and Selection Process.
- 8.2 Refer to Submission Requirements for the required corporate and key personnel qualifications and experience pertaining to this Request Document.
- 8.3 Metrolinx may, in its sole discretion, waive the requirement to contact references provided by any Proponent and rely on the detailed descriptions provided by the Proponent in the "Request Document Forms".
- 8.4 When completing Request Document Forms related to experience and qualifications, the Proponent should list relevant work that has been completed or that is ongoing under a Metrolinx contract. In its determination of whether a Proponent meets the requirements of Sections 8.1 through 8.3 herein, Metrolinx may, in its sole discretion exercise its rights under Section 12.1(g) of Rights of Metrolinx herein.
- 8.5 Before any Submission is accepted, any Proponent may be required to demonstrate to the satisfaction of Metrolinx, that it is capable of performing the Work. Metrolinx reserves the right to make any and all further investigations it deems, in its sole opinion, necessary, prior to the acceptance of any Submission, to determine if a Proponent is qualified to perform the Work.
- 8.6 In the event the Proponent does not demonstrate to the satisfaction of Metrolinx that it possesses the necessary qualifications and experience required for acceptance of its Submission by Metrolinx, the Proponent's Submission shall be found non-compliant and disqualified.

9.0 Insurance

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

10.0 Workplace Safety and Insurance Clearance Certificate

10.1 The Proponent shall, in accordance with Schedule C: Insurance, of General Conditions of the Contract, provide a valid Workplace Safety and Insurance Clearance Certificate for the premium rate class, subclass or group as appropriate for the Work of this Contract, as issued by the Workplace Safety and Insurance Board, within five (5) Business Days of notification of acceptance of its Submission by Metrolinx. Failure by the successful Proponent to comply with this requirement shall result in acceptance of the Proponent's Submission to be declared void. If the Proponent is WSIB exempt, it shall provide evidence of Employer's Liability or equivalent, to the satisfaction of Metrolinx, in lieu of a Workplace Safety and Insurance Clearance Certificate.

11.0 Parent Company Indemnity

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

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

12.0 Rights of Metrolinx

12.1 Metrolinx reserves the right, in its sole discretion:

- (a) to cancel this call for Requests and any acceptance of a Submission for any reason and at any time prior to final execution of the Contract by Metrolinx, without any obligation or any reimbursement to the Proponent;

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- (b) to reject any or all Submissions. The Submission with the lowest price will not necessarily be accepted. Metrolinx's selection will be based on which Proponent has provided a Submission which Metrolinx determines, in its sole discretion, to provide the greatest value based on the evaluation criteria contained in this Request Document;
- (c) to disqualify any Submission which contains misrepresentations or any other inaccurate or misleading information;
- (d) to waive any requirement of this Request Document or request amendment of the Submission by the Proponent where, in the sole opinion of Metrolinx, there is an irregularity or omission in the information provided that is not material to the Submission unless a specific consequence has been identified herein for the commission of such an irregularity or omission;
- (e) to waive the requirement to check references;
- (f) to not respond to a Proponent's questions;
- (g) to use its own experiences, and the experiences of any other third party, with the Proponent in previous contracts in order to evaluate the Proponent's Submission. Specifically to,
 - (i) make general inquiries of third parties with respect to the qualifications of a Proponent and take the results of these general inquiries into account (whether or not the Proponent has listed the third party or the applicable project in the applicable Request Document Forms).
- (h) to issue or not to issue a notification of acceptance of a Proponent's Submission based on submitted references and/or references independently obtained by Metrolinx;
- (i) to issue or not to issue a notification of acceptance of a Proponent's Submission based on the Corporate Firm's experiences with Metrolinx or other departments or agencies within the Ontario government, if the Corporate Firm:
 - (i) was/were previously given a "Notification of Award" of contract by a department or agency within the Ontario government and defaulted in proceeding with the work of the contract;
 - (ii) failed or refused to comply with any applicable federal, provincial or municipal law governing a bid or a prior contract with a department or agency within the Ontario government;
 - (iii) had a previous contract with a department or agency within the Ontario government that was terminated for default in the past year; or

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- (iv) is an affiliate of or successor to any corporation described in Sections 12.1(i)(i) through (iii) above, including any firm that is controlled within the meaning of the Ontario Business Corporations Act by the same person or group of persons who so controlled any corporation described in Sections 12.1(i)(i) through (iii) above.
- (j) to 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;
- (k) to distribute via Addenda, copies of any Proponent's questions received and responses provided by Metrolinx, to all Proponents who received this Request Document;
- (l) to request that a Proponent 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;
- (m) to postpone the Closing, at which time all Proponents who received Request Documents shall be advised of the new Closing via written Addenda;
- (n) to within one hundred and eighty (180) days following Closing, exercise any rights under Section 7.1 of Instructions to Proponents;
- (o) to correct arithmetical and/or carry forward errors in any or all Submissions where such errors affect extended totals, the Rates, H.S.T. and/or Grand Total. Arithmetical corrections shall only be made based upon the unit prices submitted by the Proponent. Corrections to extensions, sums, differences, carry forward errors or other arithmetical operations based on the unit prices submitted will be identified on the Request Document by Metrolinx and acknowledged in each instance by the initials of the Proponent's and Metrolinx's authorized signatories. Such corrections will become part of the Proponent's Submission. Failure of the Proponent to acknowledge such corrections shall result in its Submission being found non-compliant and disqualified;
- (p) to, upon failure of the Proponent whose Submission was accepted to fulfill the conditions of Section 13.2 of Instructions to Proponents, cancel acceptance of the Proponent's Submission by Metrolinx and consistent with industry practice, notify another Proponent who was determined to be qualified in accordance with the Submission Evaluation Criteria stated herein and who submitted a compliant Submission, that its Submission has been accepted and, subsequent to the fulfillment of the conditions of Section 13.2 of Instructions to Proponents, and for Metrolinx to issue a notification of acceptance of the Submission to that Proponent; and
- (q) Metrolinx reserves the right, in its sole discretion to contact a Proponent who has failed to meet mandatory requirements (other than the mandatory requirement

INSTRUCTIONS TO PROPONENTS

to complete and submit Attachment #1 Pricing Submission) and request Proponent to remedy the error or omission to Metrolinx's satisfaction within two (2) Business Days from the time Proponent receives a written request identifying the error or omission from Metrolinx.

13.0 Contract To Be Executed

- 13.1 Metrolinx shall notify the Proponent in writing of acceptance of its Submission. Metrolinx will prepare the Articles of Agreement and bind it into the Contract. Two (2) copies of the Contract will be forwarded to the Proponent for review and execution.
- 13.2 The Contract shall be executed by the Proponent and delivered to Metrolinx within five (5) Business Days of notification to the Proponent that Metrolinx has accepted its Submission. Failure by the Proponent to execute and deliver the Contract with the required Insurance Certificates, Workplace Safety and Insurance Clearance Certificate, and if requested the Parental Guarantee and any other documents as may be required within the specified time, could result in the cancellation of the acceptance of the Proponent's Submission.
- 13.3 Upon failure of the Proponent, whose Submission was accepted, to fulfil the conditions of Section 13.2 herein, Metrolinx may, at its sole discretion, cancel acceptance of the Proponent's Submission consistent with Section 12.1(p) of Instructions to Proponents.
- 13.4 There shall be no binding contract for the supply of the Work unless and until Metrolinx and the Proponent whose Submission has been accepted have executed the written agreements contemplated in the Request Document.
- 13.5 The Proponent shall not start the Work before the Contract has been executed by the Proponent and Metrolinx and all documents required by the Request Document, as a condition of acceptance, have been delivered to Metrolinx.

14.0 Subvendors

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

15.0 Conflict of Interest

- 15.1 Conflict of Interest shall be as defined in “Definitions” of this Request Document. The Conflict of Interest declaration included in “Request Document Form: Conflict of Interest” shall be completed and provided with the Submission.
- 15.2 Examples of Conflict of Interest include but are not limited to:
- (a) any director, officer, employee or advisor of Metrolinx who has any connection or relationship with, or any pecuniary interest in the Proponent or any Subvendor thereof;
 - (b) the Proponent or any Subvendor being in possession of confidential information relating to the Work; and
 - (c) any director, officer or employee or advisor of Metrolinx who has knowledge of the Work has assisted the Proponent in the preparation of its Submission.
- 15.3 If, at the determination of Metrolinx in its sole discretion, a Proponent is found to be in a Conflict of Interest that cannot be resolved or the Proponent fails to disclose any actual or potential Conflict of Interest, Metrolinx may, at its sole discretion, disqualify the Proponent from the RQQ Process or terminate any agreement entered into with the Proponent pursuant to this RQQ Process.

16.0 Joint Ventures

- 16.1 If a Joint Venture is proposed, the Proponent shall state in its Submission the Joint Venture agreement that forms the basis on which the Joint Venture plans to carry out its obligations. Proponent
- 16.2 One of the Joint Venture participants shall be nominated as being in charge during this RQQ Process and, in the event of a successful Submission during finalization of the Contract (the “Participant in Charge”). The Participant in Charge shall be authorized by the other joint venture participants to incur liabilities and receive instructions for and on behalf of any and all participants of the Joint Venture.
- 16.3 Each Joint Venture participant shall demonstrate its authorization of the Participant in Charge by submitting with their Submissions a power of attorney, or similar document, signed by a legally authorized representative of the Joint Venture participant or a copy of the Joint Venture agreement electing the Participant-in-Charge.
- 16.4 All participants of the Joint Venture shall be legally liable, jointly and severally, during this RQQ Process and during the Contract for carrying out the obligations pursuant to the Contract.

17.0 Prohibited Contacts and Lobbying Prohibition

- 17.1 A Proponent, Proponent's team members and all of the Proponent's respective Subvendors, advisors, employees and representatives are prohibited from engaging in any form of political or other lobbying, of any kind whatsoever, to influence the outcome of this RQQ Process.
- 17.2 Without limiting the generality of Section 18.1 above, neither the Proponent nor the Proponent's team members nor any of their respective Subvendors, advisors, employees or representatives shall contact or attempt to contact, either directly or indirectly, at any time during this RQQ Process, any directors, officers, employees and advisors of Metrolinx, other than the Procurement Representative, other than to discuss pre-existing work that is being conducted pursuant to a separate contract.

18.0 Media Releases, Public Disclosures and Public Announcements

- 18.1 A Proponent shall not, and shall ensure that its team members, advisors, Subvendors, employees or representatives do not, issue or disseminate any media release, public announcement or public disclosure (whether for publication in the press on the radio, television, internet, or any other medium) that relates to this RQQ Process, its Submission or any matters related thereto, without the prior written consent of Metrolinx.
- 18.2 A Proponent shall not, and shall ensure that its team members, advisors, Subvendors, employees and representatives do not make any public comment, respond to questions in a public forum, or carry out any activities to either criticize another Proponent or Submission or to publicly promote or advertise its own qualifications, interest in or participation in the RQQ Process without the prior written consent of Metrolinx, which may be withheld in the sole discretion of Metrolinx. Notwithstanding this item, the Proponent, Proponent's team members and all of the Proponent's respective advisors, Subvendors, employees and representatives are permitted to state publicly that it/they are participating in this RQQ Process.
- 18.3 For greater clarity, this section does not prohibit disclosures necessary to permit the Proponent to discuss this Request Document with prospective Subvendors regarding their participation in this RQQ Process.

19.0 Restriction on Communications Between Proponents – No Collusion

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

20.0 Disclosure of Information

- 20.1 The Proponent hereby agrees that any information provided in its Submission, even where it is identified as being supplied in confidence, may be disclosed by Metrolinx where required by law, order of a court, or tribunal.
- 20.2 The Proponent hereby consents to the disclosure, on a confidential basis, of its Submission by Metrolinx to Metrolinx’s advisors retained for the purpose of evaluating or participating in the evaluation of the Submissions.
- 20.3 Under Ontario’s Open Data Directive, Metrolinx is required to publish certain procurement information. Accordingly, the Proponent acknowledges that, subject to any applicable FIPPA exemptions, Metrolinx may publish procurement data including but not limited to the names of the Proponents and the winning bid in accordance with Ontario’s Open Data Directive. For more information, see: www.ontario.ca/page/ontarios-open-data-directive.

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

- 21.1 Proponents are advised that Metrolinx may be required to disclose all, a part, or parts of a Proponent’s Submission and a part or parts of any Submission pursuant to FIPPA.

22.0 Submission to Be Retained by Metrolinx

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

23.0 Confidential Information of Metrolinx

- 23.1 All information provided by or obtained from Metrolinx in any form in connection with this RQQ Process;
- (a) is the sole property of Metrolinx and shall be treated as confidential;
 - (b) shall not be used for any purpose other than replying to the Request Document and the performance of any subsequent agreement; and
 - (c) shall not be disclosed without prior written authorization from Metrolinx.

24.0 Proponents Shall Bear Their Own Costs

- 24.1 The Proponent shall bear all costs associated with or incurred in connection with its participation in this RQQ Process, including, but not limited to, preparation of its Submission.

25.0 Changes to Key Personnel or Joint Venture

- 25.1 If after the Closing, but prior to the execution of the Contract, the Proponent wishes to request a change in a Key Personnel or Joint Venture participant, the Proponent shall notify the Procurement Representative as soon as possible and the notification shall identify the proposed change in Key Personnel or Joint Venture participants and the proposed substitute, if applicable, and include sufficient documentation that demonstrates the proposed substitute would have met or exceeded any applicable criteria applied during this RQQ Process.
- 25.2 In response to a request as per Section 25.1 above, Metrolinx may, in its sole discretion provide the Proponent with instructions as to the type of information required by Metrolinx to consider the proposed change to the Proponent's Key Personnel or Joint Venture arrangements as well as the deadlines for submission of information that the Proponent must meet in order to have its request considered by Metrolinx.
- 25.3 The Proponent shall provide any further documentation as may be required by Metrolinx to assess any proposed substitute or change. If Metrolinx, in its sole discretion, considers the proposed substitute to be acceptable, Metrolinx may consent to the substitution. Metrolinx's consent to such substitution, however, may be subject to such terms and conditions as Metrolinx may require. If the proposed substitute or change is not acceptable to Metrolinx, the Proponent shall propose an alternate substitute or change for review by Metrolinx in the same manner as the first proposed substitute.
- 25.4 Metrolinx may, in its sole discretion, disallow any actual or proposed change.

26.0 Vendor Performance Management Program

- 26.1 Vendor Performance Management ("VPM") Program means the Metrolinx system for monitoring, evaluating and recording vendor performance, as same may be amended or replaced from time to time. The Vendor Performance Management Program establishes a standard methodology for the incorporation of a vendor's past performance in a particular category as a criterion in assessing that vendor's submission for future work with Metrolinx.
- 26.2 Pursuant to Metrolinx's VPM Program, Metrolinx will be considering the Proponent's past performance under contracts with Metrolinx, in a particular category, in evaluating Submissions received in response to this Request Document.
- 26.3 The VPR is being applied as a component of evaluation for this RQQ Process in accordance with Evaluation Criteria and Selection Process.
- 26.4 A Proponent may access their VPR through an annual subscription on the Metrolinx MERX Portal. If a Proponent has questions regarding their VPR, they should contact the Procurement Representative in accordance with Section 2.0 of Instructions to Proponents.

INSTRUCTIONS TO PROPONENTS

- 26.5 Metrolinx shall not be held liable for any reasonable administrative delays in updating VPR scores, which could result in a Proponent being bypassed for award on this RQQ Process.
- 26.6 Information regarding Metrolinx Vendor Performance Management System and how a Vendor Performance Rating is calculated can be found in the Metrolinx “Vendor Relationship Management Procedures and Guidelines v1.1 dated November 7, 2016”, or most current version, accessed through the following link: http://www.metrolinx.com/tenders/en/VendorRelationshipManagement_Guidelines.pdf.
- 26.7 The “Contract Performance Appraisal” applicable to any Contract resulting from this RQQ Process, can be found under “Attachments”.

27.0 Debriefing

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

END OF SECTION

SUBMISSION REQUIREMENTS

1.0 Submission Format

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

2.0 Mandatory Requirements

- 2.1 Proponents must meet all mandatory requirements in order for their Submission to be considered further. An error or omission in meeting the mandatory requirements (other than the mandatory requirement to complete and submit Proposal Document Form – Contract Pricing Submission) will not result in the Submission being automatically deemed non-compliant and given no further consideration, if, upon request by Metrolinx, the Proponent remedies the error or omission to Metrolinx's satisfaction within two (2) Business Days from the time the Proponent receives a written request identifying the error or omission from Metrolinx. If the Proponent fails to remedy the error or omission to Metrolinx's satisfaction in that time period the Proponent's Submission will be non-compliant and it shall not be considered further in the evaluation process.
- 2.2 The mandatory requirements for this Request Document are as follows:
- (a) The Submission shall be submitted by the Proponent's E-Bid Authorized Signer. For the purposes of a Joint Venture, the E-Bid Authorized Signer of the Participant-in-Charge shall submit the Submission.
 - (b) Pricing information must be completed and submitted with the Submission using MS Excel document titled "*Request Document Form - Contract Prices*".
 - (c) The Proponent shall declare any conflicts of interest in Section 1.1(b) of "*Conflict of Interest*" part of separate MS Word Document titled "*Request Document Forms RQQ-2018-BUSF-285 Fillable*". If Section 1.1(b) is left blank or is not returned with the Submission, the provisions of Section 1.1(a) of "*Conflict of Interest*" shall apply.
 - (d) The Proponent must meet all of the mandatory requirements stated in "*Request Document Form: Mandatory Corporate Requirements*" part of separate MS Word document titled "*Request Document Forms RQQ-2018-BUSF-285 Fillable*".

SUBMISSION REQUIREMENTS

- (e) The Proponent shall provide the information requested in *“Request Document Form: Technical Submission Section 3 – Key Personnel Experience and Qualifications”* part of separate MS Word document titled *“Request Document Forms RQQ-2018-BUSF-285 Fillable”*.

3.0 Technical Submission

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

3.1 Technical Submission Section 1: Corporate Summary

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

- (a) Corporate Summary: Description of Proponent’s Company
 - (i) Provide a description of the Proponent’s company, including, but not necessarily limited to: a description of the Proponent’s ownership structure; a brief corporate history including number of years in business; location of offices (both head office and other) and a description of the Proponent’s core business which is applicable to the Work of this Project.
- (b) Corporate Summary: Description of Corporate Firm
 - (i) Identify the principal business of key Subvendors, professional advisors and subject matter experts it proposes to use in the performance of the Work, especially for major or critical pieces of the work. For each Subvendors listed, the Proponent should provide the following:
 - (A) Full corporate name and location of the Subvendors;
 - (B) Which area of the Work the Subvendors shall be employed for;
 - (C) The Subvendor’s experience and qualifications relative to the Work it will be performing;
 - (D) Previous instances of the Proponent and Subvendors working together including:
 - I) A description of the project and value;
 - II) The client the services were performed for; and
 - III) The parts of the services performed by the Subvendors.

SUBMISSION REQUIREMENTS

- (c) Provide a description of the resources intended for use in order to sustain and complete the Work to the satisfaction of Metrolinx. The intention is to understand how the Proponent will sustain the necessary resources for the duration of the Contract, whether the Proponent is viable in terms of resources and the timing of availability to support Metrolinx needs.

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

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

- (a) Corporate Firm Experience and Qualifications
 - (i) The Proponent should demonstrate ten (10) years' experience in performing work similar in scope, magnitude and complexity as the Scope of Work stated in this Request Document, by including a detailed description of the Corporate Firms qualifications and experience including but not limited to:
 - (A) In provision of the Services provided to the following client groups in the following industry/sectors: Public sector or not-for-profit organizations, transit and manufacturing industry.

- (b) Corporate Firm References:

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

The Proponent shall demonstrate its experience in performing work similar in scope, magnitude and complexity as the Scope of Work stated in this Request Document, by including three (3) reference projects, for relevant work completed within the past three (3) years or currently active, as follows:

- (i) Corporate Firm References Related to Current Scope:
 - (A) The Proponent must include all projects of similar scope, magnitude and complexity as the Scope of Work stated in this Request Document that it has completed or is currently completing for Metrolinx as part of the three (3) reference projects provided by the Proponent. Failure of the Proponent to include the aforementioned reference projects completed for Metrolinx will affect the Proponent's score. The Proponent should, using the template provided in "Request Document Form: Section 2 - Corporate Firm Reference Projects" part of separate MS Word document titled

SUBMISSION REQUIREMENTS

“Request Document Forms RQQ-2018-BUSF-285 Fillable”, provide the following information for each corporate reference project:

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

3.3 **Technical Submission Section 3: Key Personnel**

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

- (a) Functional Organization
 - (i) Provide an organizational chart identifying the named Key Personnel assigned and dedicated solely to the project in their respective roles, for completion of the Work.
- (b) Key Personnel Experience, Qualifications and Reference Projects:

Following is the list of Key Personnel that will be required for Work, as below:

- (i) Lead Instructor-Trainer

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

- (i) A completed *“Request Document Form: Technical Submission Section 3 – Key Personnel Experience and Qualifications”* part of separate MS Word Document titled *“Request Document Forms RQQ-2018-BUSF-285 Fillable”* for each named individual identified for a Key Personnel position. For Key Personnel, one person can hold multiple positions.

4.0 **Proponent Presentation**

Not Applicable.

SUBMISSION REQUIREMENTS

5.0 Price Submission

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

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

END OF SECTION

1.0 Evaluation Methodology

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

1.2 Mandatory criteria will be rated pass or fail. All other criteria shall be evaluated in accordance with Section 1.0 herein. Evaluation shall occur in four (4) phases, as follows:

(a) Phase One (I): Administrative Evaluation (Compliant/Non-Compliant)

(i) Submissions shall undergo an administrative evaluation to determine compliance with the mandatory requirements. Only those Submissions determined in the sole opinion of Metrolinx, to have fulfilled all the administrative mandatory requirements shall proceed to Phase Two of the evaluation process. Submissions that do not meet the mandatory requirements are non-compliant and shall be disqualified.

(ii) Administrative mandatory requirements include, but shall not be limited to:

(A) Proper completion of Tender Document Forms;

(B) Compliance to Tender Document requirements;

(b) Phase Two (II): Technical Evaluation (65% weighting)

(i) Submissions proceeding to Phase Two (II) shall be evaluated by the Evaluation Committee in accordance with the Submission Requirements above and the Evaluation Methodology. Only those Submissions achieving a total minimum score of 70% (455 points out of 650 possible points) on Phase Two (II), as determined by the Evaluation Committee, shall proceed to Phase Three (III): VPR Evaluation and Phase Four (IV): Pricing Evaluation of the evaluation process.

(c) Phase Three (III): Vendor Performance Rating (VPR) Evaluation (5% weighting)

(i) VPR shall be evaluated for compliant Submissions which:

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

(ii) Submissions proceeding to this Phase Three (III), in accordance with Section 1.2(c)(i) above shall be evaluated by Metrolinx as follows:

(A) For this RQQ Process, "Performance Category" shall be defined as the *Professional and Consulting Services (Non-Engineering)* category.

EVALUATION CRITERIA AND SELECTION PROCESS

- (B) For this RQQ 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 Proponent has not completed any work for Metrolinx for a thirty-six (36) month period preceding the Closing, for the purpose of evaluating the Submission, the Proponent will be assigned a VPR in the Performance Category, which is the straight average of all the VPR’s of all vendors who have performed services for Metrolinx for a thirty-six month period preceding the Closing, in this Performance Category.
- (D) The legal name of the Proponent stated on the Form of Request will be used for determining the Proponent’s VPR score in the Performance Category. It is the responsibility of the Proponent to ensure that its proper legal name has been stated on the Form of Request and matches the legal name used by the Proponent in setting up its legal profile in the Metrolinx MERX Portal. Metrolinx will not accept any requests from the Proponent, after the Closing, to change the legal name provided.
- (E) In the case of a Joint Venture where multiple parties will sign the Contract, the VPR under the Performance Category, of each Joint Venture participant, will be added and the average will be applied as the VPR score.
- (F) If any member of the Joint Venture has not completed work for Metrolinx within a thirty-six (36) month period preceding the Closing, Section 1.3(d)(ii)(C) above shall apply for that member.
- (G) The Proponent’s VPR, at the time of evaluating this Phase Three (III), shall be the VPR used for evaluation purposes. The Proponent’s VPR used in the evaluation of this Phase Three (III) can be obtained from the Procurement Representative at the conclusion of this RQQ Process.
- (H) Once VPR scores in the Performance Category are determined for each Submission proceeding to this Phase Three (III) evaluation, each Proponent’s VPR shall be evaluated and scored as follows:
 - I) The following equation shall be applied to determine a score out of ten:
 - 1) "Proponent's VPR Score (Expressed as a %) / 10 = score out of ten".

EVALUATION CRITERIA AND SELECTION PROCESS

- 2) The score out of ten for VPR shall be multiplied by the weighting factor to determine the assigned score for VPR Evaluation.

(d) **Phase Four (IV): Pricing Evaluation (30% weighting)**

- (i) Contract Prices shall be evaluated for compliant Submissions which:
 - (A) achieve the minimum score of 70% on Phase Two (II): Technical Evaluation.
- (ii) An administrative evaluation shall be conducted of *“Request Document Form - Contract Prices”*. to determine compliance with the mandatory requirements as stated therein and in the Instructions to Proponents. The Estimated Contract Price of each Submission proceeding to pricing evaluation shall be evaluated and scored as follows:
 - (A) The Submission with the lowest Estimated Contract Price shall receive the maximum score of ten (10) points for Pricing Evaluation.
 - (B) The following equation shall be applied to the other Submissions to determine a score out of ten (10):

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

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

1.3 Total Overall Score

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

1.4 Selection of Submissions

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

EVALUATION CRITERIA AND SELECTION PROCESS

2.0 Evaluation Criteria

2.1 The Evaluation Criteria to be used for evaluation of a Submission and the weighting assigned to each criterion are as follows:

Evaluated Component	Maximum Score	Weighting Factor	Total (Score x Weight)
PHASE ONE (I): ADMINISTRATIVE EVALUATION (Compliant/Non-Compliant)			
PHASE TWO (II): TECHNICAL EVALUATION			
Technical Submission Section 1: Corporate Summary			
Corporate Summary: Description of Proponent’s Company	10	2	20
Corporate Summary: Description of Corporate Firm	10	2	20
Corporate Resources	10	3	30
Subtotal - Corporate Summary:		7	70
Technical Submission Section 2: Corporate Firm Experience, Qualifications and Reference Projects			
Corporate Firm Experience and Qualifications	10	2	20
Description of Corporate Reference Project# 1 and Corresponding Reference	10	8	80
Description of Corporate Reference Project# 2 and Corresponding Reference	10	8	80
Description of Corporate Reference Project# 3 and Corresponding Reference	10	8	80
Subtotal - Corporate Firm’s Experience, Qualifications and Reference Projects:		26	260
Technical Submission Section 3: Key Personnel			
Organization Chart	10	2	20
Qualifications, Experiences for Key Personnel	-----	-----	-----
Lead Instructor-Trainer	10	30	300
Subtotal - Key Personnel:		32	320
Subtotal Technical Evaluation		65	650

EVALUATION CRITERIA AND SELECTION PROCESS

Evaluated Component	Maximum Score	Weighting Factor	Total (Score x Weight)
PHASE THREE (III): VENDOR PERFORMANCE RATING (VPR) EVALUATION			
Proponent's VPR Score	10	5	50
PHASE FOUR (IV): PRICING EVALUATION			
Pricing	10	30	300
TOTAL EVALUATED SCORE		100%	1,000

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

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

**REQUEST DOCUMENT FORMS:
ATTACHMENT LIST**

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

Document Title	Attached as a Separate File as Follows
Request Document Form: Contract Prices	MS Word file entitled <i>“Request Document Forms - RQQ-2018-BUSF-285 Fillable”</i> , or as amended via Addenda, if applicable MS Excel fillable file entitled <i>“Request Document Form - Contract Prices”</i> , or as amended via Addenda, if applicable
Request Document Form: Form of Request	MS Word fillable file entitled <i>“Request Document RQQ-2018-BUSF-285 Fillable”</i> , or as amended via Addenda, if applicable
Request Document Form: Conflict of Interest	
Request Document Form: Mandatory Corporate Requirements	
Request Document Form: Technical Submission: Section 2 – Corporate Firm Experience and Qualifications	
Request Document Form: Technical Submission: Section 3 – Key Personnel Experience, Qualifications and Reference Projects	

GENERAL CONDITIONS OF THE CONTRACT

Leadership Training
RQQ-2018-BUSF-285

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The documents, as stated under “General Conditions” of List of Contents, hereby form part of the General Conditions of the Contract and are appended to this Request Document.

1.0 Interpretation

1.1 Definitions

- (a) Capitalized terms used in this Contract shall have the respective meanings ascribed thereto in Schedule A - Definitions.

1.2 Time of the Essence

- (a) Time is of the essence in the performance of a Party's respective obligations under this Contract.

1.3 Currency

- (a) All prices and sums of money and all payments made under this Contract shall be in Canadian dollars.

1.4 Units of Measure

- (a) All dimensions, quantities, performance specifications, calibrations and other quantitative elements used in this Contract shall be expressed in the International System of Units (SI), except where otherwise indicated.

1.5 Language

- (a) All communication between Metrolinx and the Vendor and between the Vendor and each of the Subvendors with regard to the Work shall be in the English language.

1.6 References

- (a) Each reference to a statute in this Contract is deemed to be a reference to that statute and to the regulations made under that statute, all as amended or re-enacted from time to time. Following any and all changes to Applicable Laws, the Vendor shall perform the Work in accordance with the terms of this Contract, including in compliance with Applicable Laws.
- (b) Any provision establishing a higher standard of safety, reliability, performance or service shall take precedence over a provision establishing a lower standard of safety, reliability, durability, performance or service.
- (c) Each reference, whether express or implied, to a Standard of any technical organization or Governmental Authority is deemed to be a reference, to that Standard as amended, supplemented, restated, substituted or replaced.
- (d) Subject to any express definitions contained in this Contract, words and abbreviations which have well known technical or trade meanings are used in this Contract in accordance with such recognized meanings.

- (e) Where used in this Contract, “including” means including without limitation, and the terms “include”, “includes”, and “included” have similar meanings.
- (f) Each reference to an Article or Section within the Contract or Schedules shall refer to that Article or Section number in the Contract or the Schedule in which the reference occurs unless otherwise specified.
- (g) The division of this Contract into Articles and Sections, the insertion of headings, and the provision of a table of contents are for convenience of reference only and do not affect the construction or interpretation of this Contract.

1.7 Time

- (a) Unless otherwise specified, references to time of day or date mean the local time or date in Toronto, Ontario. When any period of time is referred to in this Contract by days between two dates, it will be calculated by excluding the first and including the last day of such period.
- (b) If, under this Contract, any payment or other event falls due on or as of a day that is not a Business Day, that payment or other event shall fall due instead on the next day that is a Business Day, unless expressly stated otherwise.
- (c) Unless otherwise specified, references to “day” shall mean calendar day.

1.8 Schedules

- (a) The following Schedules attached to this Contract shall constitute an integral part of this Contract and all expressions defined in this Contract shall have the same meanings in such Schedules:
 - (i) Schedule A - Definitions
 - (ii) Schedule B - Financial Terms
 - (iii) Schedule C - Insurance
 - (iv) Schedule D - Dispute Resolution
 - (v) Schedule E - Vendor Personnel

2.0 Performance

2.1 Term of the Contract

- (a) This Contract shall take effect on the Effective Date hereof and shall continue in full force and effect until June 30, 2019

2.2 Performance of the Work

- (a) The Vendor shall carry out and complete the Work set forth in “Scope of Work” in accordance with all the terms of this Contract.
- (b) The Vendor shall supply the Work diligently and continuously in accordance with the scheduling requirements set out in set out in each SOW Schedule.
- (c) Metrolinx may, from time to time, in its sole discretion, but is not required to, direct the Vendor to cause specific Vendor Personnel to perform certain tasks or activities that form part of the Work in accordance with the scheduling requirements provided by Metrolinx. Any such instructions shall be provided by Metrolinx in writing to the Vendor no less than five (5) Business Days before the specified tasks or activities are required to be performed by the Vendor Personnel.
- (d) The Vendor shall provide, at the sole cost and expense of the Vendor, save as otherwise provided in this Contract, all necessary equipment, goods, materials, analysis, transportation, accommodation, labour, staff and technical assistance and incidentals required in performing the Work and to undertake, perform and complete its undertakings, obligations and responsibilities provided for in this Contract.
- (e) The Work shall be provided in a professional, timely and economical manner according to the Required Standard of Care.
- (f) The Vendor shall comply with and conform to all Applicable Laws, applicable to the Work to be provided by, and the responsibilities and obligations of, the Vendor under this Contract.
- (g) The Vendor shall not alter any part of a Joint Venture except with the prior written consent of Metrolinx in its sole discretion. Where the Vendor is not part of a Joint Venture, this Section 2.2 (g) shall be deemed to be deleted.

2.3 Subvendors

- (a) Other than the Subvendors identified in the Submission, the Vendor shall not subcontract the Work to any Person without the prior written consent of Metrolinx. No subcontracting by the Vendor shall relieve the Vendor of any responsibility for the full performance of all obligations of the Vendor under this Contract. Notwithstanding the approval of any Subvendors by Metrolinx, the Vendor shall be fully responsible for every Subvendor’s activities, works, services and acts or omissions.
- (b) The Vendor shall be solely responsible for the payment of any Subvendors.
- (c) The Vendor shall co-ordinate the services of all Subvendors employed, engaged or retained by the Vendor with Metrolinx and, without limiting the generality of

any other provision of this Contract, the Vendor shall be liable to Metrolinx for costs or damages arising from errors or omissions of such Subvendors or any of them. It shall be the Vendor's responsibility to control and review the Work of its own forces and of all its Subvendors and to ascertain that all Work are performed in accordance with this Contract, all governing regulations and the Required Standard of Care.

- (d) In any subcontract, the Vendor shall ensure that the Subvendor is bound by conditions compatible with, and no less favorable to Metrolinx than, the conditions of this Contract.
- (e) The Vendor warrants and represents that it and any of its permitted Subvendors and the respective workforce of each are fully qualified to perform the Work and perform this Contract and hold all requisite Approvals.
- (f) The Vendor shall only employ, for the purposes of this Contract, such persons as are careful, skilled and experienced in the duties required of them and have the required Domain Expertise, and must ensure that every such person is properly and sufficiently trained and instructed. The Vendor shall ensure that all workers and persons employed by them or under their control or employed by or under the control of its Subvendors comply with the terms of this Contract and, in particular without limiting the foregoing, the responsibilities of the Vendor with respect to matters concerning safety, compliance with the Applicable Laws and the conduct of the Work.
- (g) The Vendor shall be an independent contractor with respect to the Work to be provided under this Contract and nothing contained in this Contract shall be construed as constituting a joint venture or partnership between the Vendor and Metrolinx. Neither the Vendor nor its Subvendors shall be deemed to be employees, agents, servants or representatives of Metrolinx in the performance of the Work hereunder.
- (h) The Vendor shall not remove or change any Subvendors, or materially reduce the responsibilities of any Subvendors in relation to the provision of the Work except with the prior written consent of Metrolinx in its sole discretion. The proposed replacement Subvendor shall possess the requisite Domain Expertise and similar qualifications, experience and ability as the outgoing Subvendor.

2.4 Vendor Personnel

- (a) The Vendor shall select and employ a sufficient number of suitably qualified and experienced Vendor Personnel to perform and provide the Work, as determined with reference to the requirements of the Work to be performed by each individual or otherwise as required pursuant to the Contract. All Vendor Personnel shall possess or, where permitted, shall be supervised by persons who possess, the professional accreditation required to complete the Work.

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

2.5 Third Party Agreements

- (a) The Vendor acknowledges and agrees that Metrolinx is a party to, and may during the Term enter into, agreements with various third parties which may intersect with the Work. The Vendor shall reasonably cooperate with all such third parties and shall provide to them any reasonably requested information; provided, however, that Metrolinx acknowledges that such third parties may be required to enter into a non-disclosure agreement prior to the disclosure thereof. Cooperation with any such third parties in respect of any aspects of the Services shall not result in any increase in any associated costs or fees unless an amendment or change order documenting the Change has been executed by both Parties.

2.6 Key Personnel

- (a) All Key Personnel will possess the requisite Domain Expertise.
- (b) The Vendor will not remove the Client Manager from the provision of the Work, or materially reduce the responsibilities of the Client Manager in relation to the provision of the Work except with the prior written consent of Metrolinx (which consent shall not be unreasonably withheld).
- (c) Notwithstanding Section 2.6(b) but subject to Section 2.6(d), if at any time the Vendor, for reasons beyond its reasonable control, is unable to provide the services of the Client Manager, the Vendor shall provide a replacement person who possesses similar qualifications, experience and ability and possesses the requisite Domain Expertise; provided, however, that the Vendor shall first provide written notice to Metrolinx of the requirement to replace or substitute that person. For the purposes of this clause, only the following reasons will be considered beyond the reasonable control of the Vendor; death; sickness;

maternity and parental leave; compassionate care leave; retirement; resignation; dismissal for cause; or termination of an agreement for default. The notice shall identify the reason why it is necessary to replace the Client Manager; and the replacement person's name, curriculum vitae in the form set out in Schedule E - Vendor Personnel and the replacement person's available start date. Metrolinx in its sole and absolute discretion may choose to interview the proposed replacement person in Toronto. The nominated replacement person must be acceptable to Metrolinx. If the replacement person is acceptable to Metrolinx, Metrolinx shall give the Vendor written permission to make the replacement or substitution. In the event the nominated person is not acceptable to Metrolinx, acting reasonably, Metrolinx shall inform the Vendor in writing why that person is not acceptable and the Vendor shall nominate an alternate person pursuant to the process identified in this Section 2.6 (c).

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

2.7 Vendor's Representative

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

2.8 Metrolinx Responsibilities

- (a) Metrolinx shall designate an individual to act as its representative (the "Metrolinx Representative") who will transmit instructions to, and receive information from the Vendor.
- (b) Metrolinx shall:
 - (i) provide the Vendor with general direction in the provision of the Work; and
 - (ii) provide access and resources where necessary, make available information and instructions relevant to the Work.

2.9 *Intentionally Omitted*

2.10 Vendor Work Performance Rating

- (a) Metrolinx shall during the Term of this Contract, maintain a record of the Vendor's performance pursuant to this Contract. This information shall be used to complete a "Contract Performance Appraisal" report, a copy of which will be forwarded to the Vendor upon the termination or expiration of the Contract. Interim Contract Performance Appraisal reports may be issued, as deemed appropriate by the Metrolinx Representative, at any time during the Term of the Contract. A copy of the Contract Performance Appraisal template can be found under "Attachments".
- (b) The prior history of the Vendor in performing work for Metrolinx, including the Vendor's performance pursuant to this Contract, will be considered in the evaluation of future submissions from the Vendor for Metrolinx procurement processes.
- (c) Metrolinx shall not be held liable for any reasonable administrative delays in updating VPR scores, which could result in a Vendor being bypassed for award on any procurement processes.
- (d) Metrolinx reserves the right, during any procurement process, to reject any submission by the Vendor due to unsatisfactory performance history with Metrolinx.
- (e) Non-compliance with Contract requirements will be identified to the Vendor.
- (f) The performance category on the Contract Performance Appraisal may be revised by Metrolinx subject to Change Orders or Amendments. In such instances, the Vendor shall be notified via written communication of the change.

- (g) The information contained in the Contract Performance Appraisal reports may be provided to the Ministry of Transportation, other ministries and other government agencies and such performance reviews may be relied upon by other ministries and agencies to reject the Vendor's submissions on any procurement processes. This section shall survive any termination or expiry of this contract.

3.0 Health and Safety

3.1 Occupational Health & Safety Act

- (a) The Vendor shall comply with OHSA, and any obligations of the Vendor as an "employer" thereunder, and with all regulations made under the OHSA.
- (b) The Vendor shall report to Metrolinx any non-compliance by a Subvendor in the performance of the Work with the regulations under the OHSA if and when brought to the attention of the Vendor.
- (c) The Vendor acknowledges that lack of compliance with applicable provincial or municipal health and safety requirements will be and are intended to be documented and kept on file, and that such lack of compliance may cause:
 - (i) the Vendor's performance of the Work to be suspended; or
 - (ii) this Contract to be cancelled by Metrolinx.
- (d) The Vendor will be under an obligation to cease the Work, or any part thereof, if an authorized representative of Metrolinx so requires orally or in writing on the grounds that there has been any violation of the OHSA or any of the regulations under it, and thereafter the Work or affected part thereof shall not resume until any such violation has been rectified.
- (e) The Vendor shall be responsible for any delay caused by the Vendor in the progress of the Work as a result of any violation of provincial or municipal health and safety requirements by the Vendor, it being understood that such delay shall be not be a Force Majeure for the purposes of extending the time for performance of the Work or entitling the Vendor to additional compensation, and the Vendor shall take all necessary steps to avoid delay in the final completion of the Work without additional cost to Metrolinx, which shall not be responsible for any additional expense or liability resulting from any such delay.
- (f) Nothing in this Section 3.1 shall be taken as making Metrolinx the "employer" (as described in Section 3.1(a) of any workers employed or engaged by the Vendor for the Work, either instead of or jointly with the Vendor.

3.2 Safety Requirements

- (a) The Vendor shall comply with the “Safety Requirements” sections of the Scope of Work. Safety of Persons at or near a Place of Work and the public is of paramount concern to Metrolinx. In the performance of the Work, the Vendor shall not in any manner endanger the safety of, or unlawfully interfere with, Persons on or off the Place of Work, including the public.
- (b) The Vendor specifically covenants and agrees that:
 - (i) it shall comply with best industry practice in Ontario respecting health and safety in a manner that recognizes and minimizes the risk to workers, other individuals, property and the operations of Metrolinx and any railways, to the extent that such practices are not inconsistent with an express instruction set out in this Contract or provided by Metrolinx;
 - (ii) it shall comply, and shall ensure that all Vendor Personnel comply, in all regards with the requirements of OHSA and/or the Canadian Labour Code, Part II, as applicable;
 - (iii) it shall comply, and shall ensure that all Vendor Personnel comply, in all regards with the safety requirements set out in the Contract Documents;
 - (iv) it shall maintain, strictly enforce and comply, and ensure that all Vendor Personnel comply, in all regards with the Vendor’s own health and safety program, to the extent not inconsistent with this Contract and Metrolinx’ health and safety program;
 - (v) it shall comply, and shall ensure that all Vendor Personnel comply, with any and all safety-related directives or instructions issued by Metrolinx;
 - (vi) it shall take all steps reasonable in the circumstances to ensure the health and safety of all workers for which it has responsibility under OHSA; and
 - (vii) it shall make available, at Metrolinx’ request, such policies and procedures relating to its occupational health and safety matters as Metrolinx may from time to time request, and hereby covenants that all Vendor Personnel have been properly trained and are knowledgeable with respect to these policies and procedures.

3.3 Workers’ Rights

- (a) The Vendor shall at all times pay or cause to be paid any assessments or compensation required to be paid by the Vendor or its Subvendors pursuant to any applicable workers’ compensation legislation, and upon failure to do so, Metrolinx may pay such assessments or compensation to the Workplace Safety and Insurance Board and may deduct such assessments or compensation from

monies due to the Vendor. The Vendor shall comply with all regulations and laws relating to workers' compensation.

4.0 Financial Terms

4.1 Financial Terms

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

5.0 Right of Ownership and Use

5.1 Ownership of Metrolinx IP

- (a) Unless otherwise expressly agreed, Metrolinx is and will be the exclusive owner of, and shall retain all right, title and interest (including Intellectual Property Rights) in and to all of the following Intellectual Property (collectively, the "**Metrolinx IP**"):
 - (i) all Metrolinx Materials;
 - (ii) all Deliverables; unless otherwise expressly agreed in an SOW;
 - (iii) all reports and other information created, generated, output or displayed by the Deliverables or as a result of the performance of receipt of the Work; and
 - (iv) all modifications or enhancements made to the items listed in Sections 5.1(a)(i) to (iii) hereof.
- (b) All right, title and interest, including all Intellectual Property Rights, in Metrolinx IP will vest in Metrolinx, following creation.
- (c) The Vendor will acquire no rights to any Metrolinx IP other than the licence rights expressly granted in Section 5.3.
- (d) The Vendor:
 - (i) hereby assigns and transfers to Metrolinx; and
 - (ii) agrees (to the extent required in the future) to assign and transfer to Metrolinx, as and when created, all right, title and interest, including Intellectual Property Rights, throughout the world in and to all Metrolinx IP (to the extent any right, title, interest or Intellectual Property Right in Metrolinx IP does not automatically and immediately vest in Metrolinx).
- (e) The Vendor shall obtain from each Vendor Personnel an assignment of any rights they have to the Metrolinx IP and a waiver, for the benefit of Metrolinx

and its respective successors, assigns, licensees and contractors, of their respective moral rights (and any similar rights to the extent that such rights exist and may be waived in each and any jurisdiction throughout the world) in and to the Metrolinx IP. The Vendor shall provide copies of such documentation to Metrolinx upon request.

- (f) Metrolinx agrees that prior to providing any Deliverables to a third party, Metrolinx shall obtain from such third party a “non-reliance” letter addressed to the Vendor in which such third party will agree that (i) any Deliverable that is provided, or made available, to it was prepared for the sole benefit of Metrolinx and is not be relied upon by it and (ii) the Vendor accepts no responsibility or liability in respect of any advice, recommendations or other information contained in any such Deliverable. Metrolinx shall provide any such non-reliance letter to the Vendor promptly after its receipt.
- (g) For certainty, the Vendor shall not be precluded from independently developing for itself, or for others, materials which are competitive with the Deliverables, irrespective of their similarity to the Deliverables and the Vendor shall be free to use, without restriction, any Vendor Background IP and its general knowledge, skills and experience, and any ideas, concepts, know-how, and techniques within the scope of its business that are used or acquired in the course of providing the Work, so long as the Vendor does not disclose or use any Confidential Information, work product or proprietary information without Metrolinx’s express written consent.
- (h) Nothing in this Contract shall prevent the Vendor from providing similar services to other parties.

5.2 Ownership of Vendor Background IP

- (a) The Vendor is and will be the exclusive owner of, and shall retain all right, title and interest (including Intellectual Property Rights) in and to all Vendor Background IP.
- (b) Metrolinx will acquire no rights to the Vendor Background IP other than the licence rights expressly granted in Section 5.4, or otherwise under or in respect of this Contract.

5.3 Grant of Licences by Metrolinx to Vendor

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

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

5.4 Grant of Licences by the Vendor to Metrolinx

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

6.0 Insurance

6.1 Insurance Requirements

- (a) The Vendor agrees to purchase and maintain in force, at its own expense and for the duration of this Contract, the policies of insurance set forth in Schedule C - Insurance, which policies will be in a form and with an insurer or insurers acceptable to Metrolinx. A certificate of these policies originally signed by the insurer or an authorized agent of the insurer must be delivered to Metrolinx prior to the commencement of the Work.

7.0 Changes

7.1 Changes Requested by Metrolinx

GENERAL CONDITIONS OF THE CONTRACT

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

7.2 Changes Recommended by the Vendor

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

7.3 Change Management Process

- (a) Where a Change request is initiated by Metrolinx pursuant to Section 7.1, Metrolinx shall set out, in the Change request:
 - (i) the proposed prices for the contemplated changes;
 - (ii) the timing requirements for the implementation of the Change; and
 - (iii) any other information which may reasonably be required.
- (b) The Vendor shall respond to Metrolinx' Change request in writing within ten (10) Business Days.
- (c) Where a Change is initiated by the Vendor pursuant to Section 7.2, the Vendor shall set out in the Change request, conforming to Section 7.3(a):
 - (i) a description of the proposed Change;
 - (ii) the estimated cost of the proposed Change;
 - (iii) any proposals, designs or other details or information which may be reasonably required; and
 - (iv) the reasons for the proposed Change, including the benefits of the proposed Change and any consequences of not proceeding with the Change.
- (d) No Changes shall be implemented and no Change request shall become effective until an amendment or change order documenting the Change has been executed by both Parties, and such executed instrument shall be the final determination of any adjustments to the Work, Contract price, SOW, the Project Schedule, or the terms and conditions of the Contract, as applicable, with respect to the Change set out therein.

- (e) Where Metrolinx and the Vendor cannot agree as to whether or not a particular notice, direction, requirement, request, correspondence, or other fact, event, or circumstance comprises, requires, or results in a change to the scope of the Work, then either Party may refer the issue to dispute resolution in accordance with Article 15.

8.0 Additional Resources

8.1 Additional Resources

- (a) In addition to, or in connection with, a request for additional or altered services pursuant to Article 7, at any time during the Term, Metrolinx shall have the right in its discretion to require the Vendor to increase the number of Vendor Personnel upon twenty (20) days' notice.
- (b) Unless otherwise agreed to in writing by Metrolinx, such additional Vendor Personnel shall be available to report for work at any Place of Work designated by Metrolinx within twenty (20) days of receipt of a written request from Metrolinx pursuant to Section 8.1(a).
- (c) The hourly rate payable in respect of additional Vendor Personnel shall be as set out in the Articles of Agreement.

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

9.1 Confidential Information

The Vendor shall keep all Confidential Information confidential. Without limiting the generality of the foregoing, the Vendor shall:

- (a) not disclose, reveal, publish, or disseminate any Confidential Information to anyone, except as permitted pursuant to this Contract;
- (b) shall use Confidential Information only in connection with this Contract and the performance of the Work;
- (c) take all reasonable steps required to prevent any unauthorized reproduction, use, disclosure, publication, or dissemination of the Confidential Information; and
- (d) immediately notify Metrolinx in the event that it becomes aware of any unauthorized disclosure of Confidential Information.

9.2 Permitted Disclosure

- (a) Notwithstanding the obligations set out in Section 9.1, the Vendor may disclose Metrolinx' Confidential Information to those of its Subvendors and Vendor's

Personnel who need to know such Confidential Information in connection with this Contract, and to third party service providers who need to know such Confidential Information for regulatory compliance purposes, provided that such persons are subject to obligations of confidentiality substantially similar to those contained in this Article 9.

9.3 Exceptions

- (a) The obligations of confidentiality set out in Section 9.1 shall not apply to Confidential Information which:
 - (i) becomes generally available to the public through no fault of the Vendor;
 - (ii) prior to receipt from Metrolinx, was known to the Vendor on a non-confidential basis and is not subject to another obligation of secrecy and non-use, as documented by written records possessed by the Vendor;
 - (iii) was independently developed by the Vendor prior to receipt from Metrolinx, as documented by written records possessed by the Vendor;
or
 - (iv) becomes available to the Vendor on a non-confidential basis from a source other than Metrolinx that is not under other obligations of confidence.
- (b) If the Vendor becomes compelled to disclose any Confidential Information pursuant to Applicable Law, the Vendor shall to the extent permitted by law; provide Metrolinx with prompt written notice of any such requirement and shall cooperate with Metrolinx in seeking to obtain any protective order or other arrangement pursuant to which the confidentiality of the relevant Confidential Information is preserved. If such an order or arrangement is not obtained, the Vendor shall disclose only that portion of the Confidential Information as is required pursuant to Applicable Law. Any such required disclosure shall not, in and of itself, change the status of the disclosed information as Confidential Information under the terms of this Article 9.
- (c) Without limiting the generality of Section 9.3(a) and notwithstanding Section 9.3(b), the Parties acknowledge and agree that the treatment and disclosure of Confidential Information shall in all cases be subject to the requirements of FIPPA.

9.4 Security Measures

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

Standards, the security requirements specified in “Scope of Work” and best practices, or as otherwise prescribed by Metrolinx during the Term. Without limiting the generality of the foregoing, such practices shall include:

- (i) privacy due diligence safeguards; and
 - (ii) physical and electronic security measures and confidentiality enhancing technologies to guard against unauthorized disclosures, access and use, such as firewalls, encryption, the use of user identification and passwords, software or other automated systems to control and track the addition and deletion of users, and software or other automated systems to control and track user access to areas and features of information systems.
- (b) For greater certainty, Metrolinx reserves the right to prescribe the specific manner in which Vendor shall perform its obligations relating to this Section 9.4.

9.5 Intellectual Property Rights

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

9.6 Return or Destruction of Confidential Information

- (a) Immediately upon expiration or termination of this Contract or at any other time upon the request of Metrolinx, and subject to Section 9.10, the Vendor agrees to:
- (i) promptly return all Confidential Information (other than the Contract Records) to Metrolinx; or
 - (ii) promptly delete or destroy the Confidential Information (other than the Contract Records) and all copies thereof in any form whatsoever under its power or control and provide Metrolinx with a destruction certificate signed by an appropriate officer of the Vendor certifying such destruction.
- (b) Notwithstanding the foregoing, the Vendor shall have no obligation to return or destroy:
- (i) Confidential Information that is captured and retained within the Vendor’s routine computer systems backup processes, provided that (a) no specific effort is made to retrieve such archived Confidential Information for purposes that would violate the confidentiality obligations under this Contract and (b) the confidentiality obligations of

under this Contract shall continue to apply to such archived Confidential Information for so long as such information is retained; and

- (ii) working papers or other documentation which it is required to retain pursuant to Applicable Law or any rules of professional conduct applicable to the Vendor or the Vendor Personnel.

9.7 FIPPA and Personal Information

- (a) Metrolinx and the Vendor acknowledge and agree the collection, use, retention and disclosure of Personal Information is governed by FIPPA. Metrolinx acknowledges that the Vendor may also be subject to the requirements of PIPEDA. In the event of a conflict between the requirements of FIPPA and the requirements of PIPEDA or any other legislation governing the treatment of Personal Information, the more onerous provision shall apply.
- (b) The Vendor shall ensure that all collection, access, use, retention and disclosure of Personal Information under this Contract, whether through the performance of the Work or otherwise, complies with Applicable Laws including FIPPA, PIPEDA, Standards, and applicable requirements to collect, record and retain relevant consents pertaining to the collection, access, use, retention and disclosure of Personal Information in respect of the Work.
- (c) At Metrolinx's request at any time during the Term, the Vendor shall fully participate in a Privacy Impact Assessment with respect to the performance of the Work. The Privacy Impact Assessment may be conducted by Metrolinx or external third party advisors to Metrolinx at various times throughout the Term. The Vendor may require any third party selected by Metrolinx to conduct a Privacy Impact Assessment, to enter into a confidentiality agreement, containing reasonable terms and conditions, with the Vendor. The Vendor and all Vendor Personnel shall cooperate with Metrolinx and/or its third party advisors to provide the resources required to facilitate and fulfill this assessment. The Vendor shall implement any recommendations resulting from the Privacy Impact Assessment process.
- (d) The Vendor shall ensure the security and integrity of any Personal Information collected by the Vendor and shall protect it against loss, unauthorized access, destruction, or alteration, in accordance with the following:
 - (i) The Vendor shall not directly or indirectly collect, use, disclose, store or destroy any Personal Information, or give, exchange, disclose, provide, or sell Personal Information to any third party, except as expressly permitted, and for a purpose(s) authorized, under this Contract or otherwise agreed to in writing by Metrolinx.
 - (ii) The Vendor shall ensure that access to Personal Information is restricted to those Vendor Personnel who have a need to know or use such

information in the performance of the Work and who have been specifically authorized to have such access for the purposes of performing the Work. Access shall be limited to only that Personal Information which is required for the performance of the Work.

- (iii) All Personal Information shall be kept in a physically secure location and separate from all other records and databases. The Vendor shall not place, input, match, insert or intermingle, nor shall it permit any Person to place, input, match or intermingle, any data or records in any form whatsoever into or with any records or database containing such Personal Information.
- (e) For greater certainty, Metrolinx reserves the right to prescribe the specific manner in which the Vendor shall perform its obligations relating to this Section 9.7.

9.8 FIPPA and Freedom of Information

- (a) The Vendor acknowledges that Metrolinx is a provincial crown agency subject to FIPPA, and acknowledges and agrees as follows:
 - (i) All FIPPA Records are subject to, and the collection, use, storage and treatment thereof is governed by FIPPA. The Vendor agrees to keep all FIPPA Records secure and available, in accordance with the requirements of FIPPA. The Vendor acknowledges that all information, data, records and materials, however recorded, that are held by the Vendor and/or created by the Vendor in the course of performing the Work are considered to be FIPPA Records and subject to FIPPA.
 - (ii) Section 9.6 shall apply to all FIPPA Records (other than the Contract Records), which shall be returned and/or destroyed in accordance with that section.
 - (iii) In the event of a conflict between the requirements of this Contract and the requirements of FIPPA, the requirements of FIPPA shall take precedence.
 - (iv) In the event that a request is made under FIPPA for the disclosure of any FIPPA Records, Metrolinx shall provide prompt written notice thereof to the Vendor and the Vendor shall provide any and all relevant FIPPA Records to Metrolinx on demand for the purposes of responding to an access request under FIPPA. In these circumstances, the Vendor shall provide all FIPPA Records requested to Metrolinx's Freedom of Information Coordinator (or equivalent) within seven (7) Business Days of receipt of the request from Metrolinx. Notwithstanding anything to the contrary in this Contract and subject to the Vendor's rights of appeal pursuant to Section 28(9) of FIPPA, Metrolinx shall determine what FIPPA

Records will be disclosed in connection with any such request, in accordance with the requirements of FIPPA (including, without limitation, the requirements with respect to affected persons set out in Section 28 thereof).

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

9.9 Access

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

9.10 Audit Rights

- (a) During the Term and for a period of seven (7) years thereafter, the Vendor shall, at its cost and expense, retain and maintain, in an organized, accurate and accessible mode and manner, all financial and other books, records and documentation relating or pertaining to the Contract and the performance of the Work, including: (i) original invoices and accounts, along with related records showing charges and expenses incurred, including but not limited to the rates and hours for all Vendor Personnel and all expenditures and/or commitments made by the Vendor in connection therewith; (ii) correspondence, e-mails, tenders, minutes of meetings, notes, reports, timesheets, memoranda and other documents associated with the Contract; (iii) records relating to any service level agreements and key performance

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indicators included in the Contract, and (iv) records related to matters of security and privacy (collectively, the "Contract Records").

- (b) The Contract Records shall be retained and maintained in accordance with all generally acceptable accounting principles and Applicable Laws and Industry Standards, or as otherwise may be required to substantiate compliance with this Contract and/or any payment to be made to the Vendor under this Contract.
- (c) During the Term and for a period of seven (7) years thereafter, Metrolinx or any third party acting on behalf of Metrolinx, shall have the right, upon no less than seven (7) days' notice in writing to the Vendor and during normal office hours, to inspect and audit, and to have access to, all Contract Records whether maintained by the Vendor or a Vendor Personnel, reasonably required to confirm the Vendor's compliance with the terms of this Contract and Applicable Laws, and to make copies thereof. The Vendor shall make available or cause to be made available the Contract Records that are requested by Metrolinx or that may be required given the scope of the audit (provided such scope is disclosed to the Vendor), and shall otherwise reasonably cooperate with Metrolinx and any third party acting on Metrolinx's behalf, including by providing reasonable access to all of the Vendor's premises and to the Vendor's employees. Any such access shall be subject to the Vendor's reasonable documented security policies and documented professional and confidentiality obligations to its other clients; such documentation shall be provided to Metrolinx upon request. Where access is needed to a Vendor Personnel's employees or to Contract Records that are maintained by a Vendor Personnel, the Vendor shall use reasonable efforts to arrange for such access on a timely basis. Without limiting the generality of the foregoing, the rights set out in this Section 9.10 shall extend to any Governmental Authority exercising its right to audit pursuant to Applicable Law or any contract with Metrolinx. When selecting a third party to inspect and audit the Contract Records, Metrolinx shall consult with the Vendor and shall take into consideration any reasonable objections the Vendor may have. For the avoidance of doubt, Metrolinx shall have sole discretion in selecting the third party. The Vendor may require Metrolinx and/or any third party selected by Metrolinx to inspect and audit the Contract Records, to enter into a confidentiality agreement, containing reasonable terms and conditions, with the Vendor, before the disclosure of any Contract Records is made.
- (d) The Vendor shall maintain a competent and independent audit function to assess the internal controls over its environment and its compliance with Applicable Laws and Standards. The Vendor shall provide Metrolinx, upon request, a high-level summary of the results of all internal controls and security audits performed by the Vendor's auditors.
- (e) The Vendor shall upon advance written request, provided by e-mail or otherwise, provide Metrolinx with reasonable access to all premises that may reasonably be required to enable Metrolinx and/or Metrolinx's agents to

monitor the progress of the Work. Any such access shall be subject to the Vendor's reasonable documented security policies and documented professional and confidentiality obligations to its clients, such documentation shall be provided to Metrolinx upon request. Any such monitoring or verifications shall be without prejudice to any other rights of Metrolinx under this Contract and shall not relieve the Vendor from any of its obligations under this Contract nor shall such verification be used by the Vendor as evidence of effective control of quality.

- (f) The Vendor and Metrolinx shall meet to review each audit report promptly after the issuance thereof and to mutually agree upon the appropriate manner, if any, in which to respond to the changes suggested or issued identified by the audit report. Without limiting any remedies which may be available to Metrolinx, the Vendor shall promptly remedy any violations of this Contract of which it becomes aware, pursuant to any audit or otherwise.

9.11 Vendor Compliance

- (a) The Vendor shall advise all of its Vendor Personnel, all of its Subvendors, and all of its Subvendor's Vendor Personnel of the requirements of this Article 9, and associated requirements set out elsewhere in this Contract, and take appropriate action to ensure compliance by such persons with the terms of this Article 9. In addition to any other liabilities of the Vendor pursuant to this Contract or otherwise at law or in equity, the Vendor shall be liable for all claims arising from any non-compliance with this Article 9 by the Vendor, any of its Vendor Personnel, any Subvendor and of its Subvendor's Vendor Personnel.
- (b) The Vendor warrants that each of its Vendor Personnel, each of its Subvendors and each of its Subvendor's Vendor Personnel engaged by the Vendor to provide the services pursuant to this Contract is under a written obligation to the Vendor requiring such person to comply with the terms of this Article 9.

9.12 Publicity

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

9.13 Damages

- (a) The Vendor acknowledges and agrees that any breach or threatened breach of this Article 9 or the obligations set out herein shall cause immediate and irreparable harm to Metrolinx for which damages alone are not an adequate remedy. The Vendor hereby acknowledges and agrees that Metrolinx shall be entitled to seek, in addition to any other legal remedies which may be available to it, such equitable relief as may be necessary and available to protect Metrolinx against such breach or threatened breach. No failure or delay by Metrolinx in exercising any right hereunder shall operate as a waiver hereof, or shall estop Metrolinx from obtaining permanent injunctive relief.

10.0 Representations, Warranties and Covenants

10.1 Representations, Warranties and Covenants of the Vendor

- (a) The Vendor covenants and agrees with and represents and warrants to Metrolinx, and acknowledges and confirms that Metrolinx is relying on such covenants, agreements, representations and warranties, as follows:
 - (i) the Vendor is validly existing under the laws of the location of its head office and the Vendor has all necessary corporate power, authority and capacity to enter into this Contract and to perform its obligations hereunder;
 - (ii) the entering into of this Contract by the Vendor and the performance of its obligations hereunder has been authorized by all necessary corporate action;
 - (iii) the execution and delivery of this Contract, the consummation of the transactions contemplated herein and compliance with and performance of the provisions of this Contract does not and shall not:
 - (A) result in a breach of or constitute a default under, or create a state of fact, which after notice or lapse of time or both, or otherwise, would constitute a default under any term or provision of the constating documents of the Vendor, the by-laws or resolutions of the Vendor or any agreement or instrument to which the Vendor is a party or by which it is bound, or

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- (B) require the Vendor to obtain any Approval or action of any other Persons and, if required, any such Approvals have already been obtained as of the date of this Contract;
- (iv) this Contract constitutes a legally valid and binding obligation of the Vendor enforceable against it in accordance with its terms, subject only to applicable bankruptcy, insolvency and other similar laws affecting the enforceability of the rights of creditors generally, the principles of equity and that equitable remedies such as specific performance and injunction are available only in the discretion of a court of competent jurisdiction;
- (v) the Vendor has carefully reviewed the whole of this Contract, including all of the Contract Documents, and all other documents made available to the Vendor by Metrolinx, and, to the Vendor's knowledge, nothing contained herein or therein inhibits or prevents the Vendor from performing the Work in accordance with the Required Standard of Care so as to achieve and satisfy the requirements of this Contract;
- (vi) the Vendor has engaged and shall engage only Subvendors and Vendor Personnel that are qualified and competent to perform the portions of the Work they are responsible for and possess the requisite Domain Expertise;
- (vii) the Vendor has available the resources and personnel to complete all of its obligations under this Contract in a timely, efficient and professional manner in accordance with the Required Standard of Care;
- (viii) the Vendor is not aware of any legal action instituted, threatened or pending against the Vendor that could have a material adverse effect on its ability to perform its obligations under this Contract;
- (ix) except as disclosed in the Submission, the Vendor is free of any actual or potential Request Conflict of Interest;
- (x) unless the Vendor is WSIB exempt, the Vendor is registered as an employer pursuant to the Workplace Safety and Insurance Act (Ontario) and has completed all filings and paid all assessments as required pursuant to that Act and the regulations thereunder;
- (xi) the Vendor is familiar with the obligations imposed on an "employer" as defined in OHSA, and that it has in place a health and safety program to ensure that it takes all steps reasonable in the circumstances to ensure the health and safety of all workers for which it has responsibility under that Act; and

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

10.2 Continuing Effect of Representations, Warranties and Covenants

The Vendor hereto agrees that its covenants, representations and warranties contained in this Article 10 are continuing covenants, representations and warranties and shall apply and be true and correct at all times during the Term.

10.3 Disclaimer

THE PARTIES AGREE THAT, EXCEPT AS EXPRESSLY PROVIDED IN THIS CONTRACT, THERE ARE NO OTHER WARRANTIES (EXPRESS OR IMPLIED) PROVIDED BY THE VENDOR WITH RESPECT TO THE PERFORMANCE OF THE SERVICES, INCLUDING THE IMPLIED WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE.

11.0 Indemnity

11.1 Indemnification

- (a) The Vendor shall at all times indemnify and save harmless Metrolinx, its officers, directors, employees, members, agents, representatives, successors and assigns (hereinafter the "Indemnified Parties"), from and against any and all Losses resulting from:
 - (i) the death of or bodily injury to any agent, employee, customer, business invitee, business visitor or other person, to the extent caused by the negligence or willful misconduct of the Vendor or any Vendor Personnel;
 - (ii) the damage, loss or destruction of any real or tangible personal property (excluding data), to the extent caused by the negligence or willful misconduct of the Vendor or any Vendor Personnel;
 - (iii) the unauthorized disclosure by the Vendor or any Vendor Personnel of any Confidential Information and/or Personal Information;
 - (iv) *intentionally deleted*;
 - (v) any breach of the terms and conditions set out in Article 3 or arising as a result of any illness, injury or death of any employee of the Vendor or any Subvendor, including:
 - (A) any resulting expenses incurred by Metrolinx as a result of stoppage of the Work on account of failure by the Vendor to meet its obligations under and/or with respect to the OHSA; and

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- (B) any resulting fine(s) levied against Metrolinx as a result of any breach of the responsibilities of the employer for the work, to the extent attributable to the Vendor's failure to fulfil its obligations as described in Section 3.1; and/or
- (vi) any infringement or alleged infringement of any patent, trade secret, service mark, trade name, copyright, official mark, moral right, trade-mark, industrial design or other proprietary rights conferred by contract, common law, statute or otherwise in respect to the Work or any matter provided to Metrolinx or performed by the Vendor, or anyone else for whom at law the Vendor is responsible; provided, however, the Vendor shall not be required to indemnify the Indemnified Parties pursuant to this subsection if (x) the infringement or alleged infringement was caused by the modification of a Deliverable by any person other than the Vendor or a Vendor Personnel or by the use of the Deliverable in combination with intellectual property not supplied by the Vendor, but only if the claim would not have arisen without such modification or combination, (y) the Deliverable was based upon, or incorporates, designs provided by Metrolinx, or (z) the Deliverable relating to the infringement or alleged infringement were used in a manner not permitted by this Contract.
- (A) If the Vendor is required to indemnify Metrolinx pursuant to this Section 11.1(a)(vi), or if, in the Vendor's judgment, Metrolinx' use of the intellectual property is likely to be infringing, the Vendor may, at its option: (i) secure the right to continue using such intellectual property, or (ii) replace or modify the such intellectual property to make it non-infringing, provided that any such replacement or modification will not degrade the performance or quality of the affected component of the Work in any material way. If neither course of action described in clauses (i) or (ii) is available to the Vendor, the Vendor will remove such intellectual property from the Work and equitably adjust the Vendor's charges to adequately reflect such removal.
- (b) The Vendor shall pay all reasonable costs, expenses and legal fees that may be incurred or paid by the Indemnified Parties in connection with any demand, claim, execution, action, suit or proceeding with respect to a matter for which the Vendor is obligated to indemnify the Indemnified Parties pursuant to this Article 11, provided that the indemnity obligations of the Vendor under this Article 11 shall not extend to Loss attributable to the negligence or willful misconduct of any Indemnified Parties to the extent that such Indemnified Parties' negligence or willful misconduct caused the Loss.
- (c) In the event any Loss is asserted in respect to which an Indemnified Party is entitled to indemnification under this Article 11, and without prejudice to any other right or remedy Metrolinx may have, Metrolinx shall be entitled to deduct or withhold a reasonable sum on account of such claim, action, suit, execution

or demand, including legal costs, from monies owed or payable by Metrolinx to the Vendor under this Contract pending the final determination or settlement of such claim, action, suit, execution or demand. In the event,

- (i) the Vendor is, becomes, or is deemed to be bankrupt or an insolvent person pursuant to the Bankruptcy and Insolvency Act (Canada);
- (ii) the Vendor makes a general assignment for the benefit of creditors; or
- (iii) a receiver or interim-receiver is appointed with respect to some or all of the Vendor's business, assets, or property,

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

- 11.2 Metrolinx shall at all times indemnify and save harmless the Vendor Indemnified Parties from and against any and all third party Losses that are awarded by a court of competent jurisdiction resulting from Metrolinx's breach of Section 5.1(f), except to the extent finally determined to have resulted from the Vendor's gross negligence or intentional misconduct relating to the Deliverables.

12.0 Limitation of Liability

12.1 General Intent

- (a) It is the intent of the Parties that each Party shall be liable to the other Party for any actual damages incurred by the non-breaching Party as a result of the breaching Party's failure to perform its obligations in the manner required by the Contract.

12.2 Limitations on Liability

- (a) Subject to Section 12.2(c), in no event shall either Party be liable for indirect, consequential, exemplary, punitive or special damages relating to the Contract even if such Party has been advised in advance of the possibility of such damages. The Vendor acknowledges and agrees that any damages awarded by a court of competent jurisdiction against Metrolinx as a result of a third party claim is to be considered direct damages.
- (b) Subject to Section 12.2(d) each Party's aggregate liability to the other under the Contract for direct damages for all events giving rise to liability hereunder shall be limited to an amount equal to two times the total sum paid or payable by Metrolinx to the Vendor under every authorized SOW.

- (c) The limitations of liability set forth in Section 12.2(a) shall not apply with respect to:
 - (i) damages occasioned by the willful misconduct or gross negligence of the Vendor or any Vendor Personnel; or
 - (ii) claims that are the subject of indemnification pursuant to Section 11.1(a)(iii)[*Unauthorized Disclosure*] or Section 11.1(a)(vi)[*IP Infringement*].
- (d) The limitations of liability set forth in Section 12.2(b) shall not apply with respect to:
 - (i) damages occasioned by the willful misconduct or gross negligence of the Vendor or any Vendor Personnel; or
 - (ii) claims that are the subject of indemnification pursuant to Section 11.1(a).
- (e) Each party shall have a duty to mitigate damages for which the Vendor is responsible.

13.0 Termination

13.1 Termination for Cause by Metrolinx

- (a) Metrolinx may, by ten (10) days' written notice to the Vendor, suspend or terminate the whole or any part of the provision of the Work, an authorised SOW, or this Contract for cause in the event that the Vendor is in breach of any of its obligations under this Contract, and it fails to cure such breach (which breach must be curable) within thirty (30) days of being notified thereof, and thereupon:
 - (i) Metrolinx may appoint officials of Metrolinx or any other person or persons in the place and stead of the Vendor to perform the Work or any portion thereof;
 - (ii) the Vendor shall immediately discontinue the Work on the date and to the extent specified in the notice and place no further orders for materials or services for the terminated portion of the Work; and
 - (iii) nothing contained herein shall limit the rights of Metrolinx to recover damages from the Vendor arising from the failure of the Vendor to perform the Work satisfactorily in accordance with the terms of this Contract.
- (b) If Metrolinx chooses to terminate this Contract or any authorized SOW in part under Section 13.1 or 13.2 or a Change order or amendment will be prepared

to reflect the partial termination and the charges payable under this Contract or the SOW will be equitably adjusted to reflect that Work that is terminated.

13.2 Termination for Convenience by Metrolinx

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

14.0 Force Majeure

14.1 Force Majeure

- (a) Neither Party shall be liable for Losses caused by a delay or failure to perform its obligations under this Contract where such delay or failure is caused by an event beyond its reasonable control (a "Force Majeure Event"). The Parties agree that an event shall not be considered beyond one's reasonable control if a reasonable business person applying due diligence in the same or similar circumstances under the same or similar obligations as the provisions of this Contract would have put in place contingency plans to either materially mitigate or negate the effects of such event.
- (b) Without limiting the generality of the foregoing, the Parties agree that Force Majeure Events may include acts of God, natural disasters, acts of war, war-like operations, civil war, acts of foreign enemy, plagues, epidemics, insurrection and terrorism (provided that the conditions of Section 14.1(a) are met) but shall in no event include:
 - (i) shortages or delays relating to supplies or services; or
 - (ii) on the part of the Vendor, lack of financing or inability to perform because of the financial condition of the Vendor.
- (c) A failure by Metrolinx to furnish instructions is not a Force Majeure Event until fourteen (14) days after a demand for such instructions has been made in writing by the Vendor and not then unless such claim is reasonable and justified to Metrolinx.

14.2 Process

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

- (i) that Party shall immediately notify the other Party of the delay or non-performance, the reason for such delay or non-performance and the anticipated period thereof; and
 - (ii) the Party giving the notice shall thereupon be excused the performance or punctual performance, as the case may be, of such obligation for the period of time directly attributable to such Force Majeure Event.
- (b) This Section shall not apply or be available to a Party in respect of any event, or resulting delay or failure to perform, occurring more than fourteen (14) days before notice is given to Metrolinx pursuant to Section 14.2(a).
 - (c) In the case of a continuing Force Majeure Event, only one notice shall be necessary.

14.3 Metrolinx Rights

- (a) Without limiting any other rights available to Metrolinx under this Contract, Metrolinx reserves the right to contract any Work from a third party during any period of Force Majeure claimed by the Vendor.

15.0 Dispute Resolution

- (a) All Disputes shall be resolved in accordance with, and the Parties shall comply with, Schedule D - Dispute Resolution.
- (b) The process set out in Schedule D – Dispute Resolution shall not be construed to prevent a Party from instituting, and a Party is authorized to institute, litigation earlier, but only if required to avoid the expiration of any applicable limitations period or to preserve a superior position with respect to other creditors, or where a Party makes a good faith determination that a breach of the terms of this Contract by the other Party is such that the damages to such Party resulting from the breach shall be so immediate, so large or severe, and so incapable of adequate redress after the fact that a temporary restraining order or other immediate injunctive relief is the only adequate remedy.

16.0 Set Off

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

17.0 General

17.1 Entire Agreement

- (a) This Contract constitutes the entire agreement between the Parties regarding the Work and supersedes any prior understandings, negotiations, representations or agreements, whether written or verbal.

17.2 Governing Law and Jurisdiction

- (a) This Contract shall be governed by and interpreted in accordance with the laws of the Province of Ontario and the federal laws applicable therein, without regard to principles of conflicts of law that would impose the law of another jurisdiction. The Parties hereby irrevocably and unconditionally attorn and submit to the non-exclusive jurisdiction of the courts of the Province of Ontario and all courts competent to hear appeals therefrom.

17.3 Survival

- (a) The obligations set out in Articles 1, 3, 4, 5, 6, 9, 10, 11, 12, 13, 15 and this Article 17 and Section 2.10 of this Contract shall continue to bind the Vendor notwithstanding expiration or termination of this Contract for any reason whatsoever or completion of the Work as contemplated hereunder.

17.4 Enurement

- (a) This Contract shall enure to the benefit of, and be binding upon the Parties and their respective heirs, executors, administrators, personal representatives, successors and permitted assigns.

17.5 Assignment

- (a) The Vendor shall not assign this Contract in whole or in part without the prior written consent of Metrolinx, which consent shall not be unreasonably withheld or delayed. Metrolinx shall have the right to assign this Contract without consent, but on not less than ten (10) days' notice to the Vendor.

17.6 Independent Parties

- (a) This Contract does not create and is not intended to create an agency or employment relationship, partnership, joint venture or other similar association between the Parties. The relationship between the Parties is to be considered at all times as that of a purchaser and an independent contractor. Neither Party shall have the right to bind the other to any agreement with any third party or to incur any obligation or liability on behalf of the other Party. Except as expressly provided for in this Contract, neither Party shall represent, directly or indirectly by conduct, to any third party that it is an agent, employee, partner or joint venturer of the other.
- (b) The Vendor Personnel and all other personnel providing the Work are solely the employees of the Vendor and applicable Subvendors (and not Metrolinx') for all purposes under this Contract, including for all purposes under any Applicable

Laws. Accordingly, none of the foregoing personnel is entitled to any benefits respecting any pension or other benefit plan, program or policy of Metrolinx.

17.7 Third Party Beneficiaries

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

17.8 Joint and Several Liability

- (a) Where the Vendor comprises two or more Persons, each of them shall be jointly and severally liable for the obligations of the Vendor under this Contract. Where the Vendor does not comprise two or more Persons, this Section 17.8 shall be deemed to be deleted.

17.9 Notice

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

17.10 Amendments

- (a) Except as expressly provided in this Contract, no amendment, supplement or restatement of any provision of this Contract is binding unless it is in writing and signed by both Parties.

17.11 No Waiver

- (a) No provision of this Contract shall be deemed waived, amended or modified by either Party unless such waiver, amendment or modification is in writing and signed by the Party against whom it is sought to enforce the waiver,

amendment or modification. The failure by a Party to exercise any of its rights, powers or remedies hereunder or its delay to do so does not constitute a waiver of those rights, powers or remedies. No waiver made with respect to any instance involving the exercise of any such right is to be deemed to be a waiver with respect to any other instance involving the exercise of the right or with respect to any other such right.

17.12 Severability

- (a) If any term or condition of this Contract, or the application thereof to the Parties or circumstances, is to any extent invalid or unenforceable in whole or in part, the remainder of this Contract shall continue in full force and effect, and the application of such term or condition to the Parties or circumstances other than those to which it is held invalid or unenforceable shall not be affected thereby.

17.13 Further Assurances

- (a) Each Party agrees that it shall at any time and from time to time, at its own expense, execute and deliver such further documents and do such further acts and things as the other Party may reasonably request for the purpose of giving effect to this Contract or carrying out the intention or facilitating the performance of the terms of this Contract.

17.14 Conflict of Interest Acknowledgement and Agreement

- (a) For the purposes of this Contract, a "Conflict of Interest" includes any situation or circumstances where, in relation to the performance of its contractual obligations in this Contract, the Vendor's other commitments, relationships or financial interests:
 - (i) could or could be seen to exercise an improper influence over the objective, unbiased and impartial exercise of its independent judgment; or
 - (ii) could or could be seen to compromise, impair or be incompatible with the effective performance of its contractual obligations.
- (b) The Vendor acknowledges that participation (directly or indirectly) in any procurement process arising from or related to this Contract (the "Prohibited Procurements") would constitute a Conflict of Interest with this Contract, and the Vendor agrees that it shall not, and shall take reasonable steps (including obtaining covenants substantially similar to those set out in this section) to ensure that its Subvendors do not participate in or be involved with such Prohibited Procurements either directly or indirectly, including as a bidder or as a subvendor, subcontractor or advisor to any bidder.

- (c) The Vendor shall:
 - (i) avoid all Conflict of Interest in the performance of its contractual obligations;
 - (ii) disclose to Metrolinx without delay any actual or potential Conflict of Interest that arises during the performance of its contractual obligations; and
 - (iii) comply with any requirements prescribed by Metrolinx to resolve any Conflict of Interest.
- (d) In addition to all other contractual rights or rights available at law or in equity, Metrolinx shall have the right to immediately terminate this Contract, by giving notice in writing to the Vendor, where:
 - (i) the Vendor fails to disclose an actual or potential Conflict of Interest;
 - (ii) the Vendor fails to comply with any requirements prescribed by Metrolinx to resolve a Conflict of Interest; or
 - (iii) the Vendor's Conflict of Interest cannot be resolved.
- (e) This section shall survive any termination or expiry of this Contract.

17.15 Counterparts

This Contract may be executed in one or more counterparts. Any single counterpart or a set of counterparts executed, in either case, by all Parties shall constitute a full, original and binding agreement for all purposes. Counterparts may be executed either in original or electronic form, provided that the Party providing its signature in electronic form shall promptly forward to the other Party an original signed copy of this Contract which was so sent electronically.

END OF SECTION

GENERAL CONDITIONS OF THE CONTRACT
SCHEDULE A - DEFINITIONS

1.0 In this Contract Document,

- 1.1 **“Applicable Laws”** means all applicable laws, statutes, regulations, orders, by-laws, treaties, judgements, decrees and ordinances applicable from time to time and, whether or not having the force of law, all applicable Approvals, Standards, codes, requirements, requests, directives, rules, guidelines, instructions, circulars, manuals, and policies of any Governmental Authority having or purporting to have jurisdiction or authority over a Party, property, transaction or event, including laws relating to workplace safety and insurance, occupational health and safety and employment standards.
- 1.2 **“Approvals”** means any permits, licences, consents, approvals, clearances, orders, ordinances, registrations, filings or other authorizations respecting the work undertaken as part of the Work as may be required from any applicable Governmental Authority or otherwise by the Vendor’s contract documents.
- 1.3 **“Arbitration Act”** means the Arbitration Act, 1991, S.O. 1991, Chapter 17.
- 1.4 **“Business Day”** means any day other than: (a) a Saturday or Sunday and (b) any other day on which Metrolinx is not open for business. Each Business Day will end at 4:00 p.m. on that day.
- 1.5 **“Changes”** has the meaning ascribed to it in Section 7.1 of the General Conditions.
- 1.6 **“Client Manager”** means the person identified as the client manager in the Submission or any person who has replaced such person pursuant to Section 2.6
- 1.7 **“Confidential Information”** means all information of a confidential nature (as determined with reference to its treatment by Metrolinx) which is provided, disclosed or made available (orally, electronically or in writing or by any other media) by Metrolinx (or its representatives) to the Vendor (including to employees, vendors, contractors or other representatives thereof) and includes any copies or reproductions thereof. For greater certainty, all Metrolinx Materials, Personal Information, Contract Records, and anything else specifically marked or identified by Metrolinx as confidential or proprietary are deemed to be “Confidential Information” for the purposes of this Contract.
- 1.8 **“Conflict of Interest”** has the meaning ascribed to it in Section 17.14 of the General Conditions.
- 1.9 **“Contract”** means this contract between the Vendor and Metrolinx pursuant to Request No. RQQ-2018-BUSF-285 including the Articles of Agreement, the General Conditions and the Schedules thereto and the Contract Documents.
- 1.10 **“Contract Documents”** means the Contract and those documents listed in “Scope of Work” and any written amendments thereto as agreed to by the Parties.

GENERAL CONDITIONS OF THE CONTRACT
SCHEDULE A - DEFINITIONS

- 1.11 **“Contract Performance Appraisal”** has the meaning ascribed to it in Section 2.10(a) of General Conditions.
- 1.12 **“Contract Records”** has the meaning ascribed to it in Section 9.10(a) of the General Conditions.
- 1.13 **“Deliverables”** means the work product created by the Vendor and/or the Vendor Personnel in connection with or as a requirement of the Work or that is specified in an authorized SOW, including all reports, drawings, plans, designs, processes, tools, standards, registers, logs, updates, files, databases, Software, and documentation.
- 1.14 **“Dispute”** means all disputes, controversies, or claims arising out of or relating to: (a) this Contract; (b) the alleged wrongful exercise or failure to exercise by a Party of a discretion or power given to that Party under this Contract; and/or (c) the interpretation, enforceability, performance, application, or administration, breach, termination, or validity of this Contract or any failure to agree where agreement between the Parties is called for.
- 1.15 **“Dispute Notice”** has the meaning given in Schedule D - Dispute Resolution of General Conditions.
- 1.16 **“Domain Expertise”** means the required level of depth and breadth of qualifications and experience in respect of the tasks to be performed in connection with the Work, gained through a practical application of the knowledge underlying the tasks in an environment substantially similar to that of the Work.
- 1.17 **“Effective Date”** means the final date of execution of this Contract by both Parties.
- 1.18 **“Excise Tax Act”** means the Excise Tax Act, R.S.C. 1985, Chapter E-15.
- 1.19 **“FIPPA”** means the Freedom of Information and Protection of Privacy Act, R.S.O. 1990, Chapter F.31.
- 1.20 **“FIPPA Records”** means all information, data, records and materials, however recorded, in the custody or control of Metrolinx, including Confidential Information, Personal Information and Contract Records. For the purposes of this definition, documents held by the Vendor in connection with this Contract are considered to be in the control of Metrolinx.
- 1.21 **“Governmental Authority”** means any domestic government, including any federal, provincial, territorial, municipal, regional or other local government, and any government established court, agency, tribunal, commission or other authority exercising or purporting to exercise executive, legislative, judicial, regulatory or administrative functions respecting government; provided, however, “Governmental Authority” does not include Metrolinx.
- 1.22 **“Income Tax Act”** means the Income Tax Act, R.S.C. 1985, Chapter 1 (5th Supp.).

GENERAL CONDITIONS OF THE CONTRACT
SCHEDULE A - DEFINITIONS

- 1.23 **“Indemnified Parties”** has the meaning ascribed to it in Section 11.1 of the General Conditions.
- 1.24 **“Intellectual Property”** means all intellectual and industrial property, including all Software, patents, patent application rights, rights to file patents, inventions, trade-marks (whether registered or not), trade-mark applications, rights to file trade-marks, trade names, copyrights (whether registered or not), design registrations, trade secrets, confidential information, industrial and similar designs, rights to file for industrial and similar designs, processes, methodologies, techniques and know-how, and all Intellectual Property Rights therein.
- 1.25 **“Intellectual Property Rights”** means any right to Intellectual Property recognized by law, including any Intellectual Property right protected by legislation or arising from protection of information as a trade secret or as confidential information.
- 1.26 **“Joint Venture”** is the business arrangement of two or more parties proposed as identified in the Submission.
- 1.27 **“Key Personnel”** means the people identified by name in Section 1.1(a) of General Conditions of the Contract: Schedule E - Vendor Personnel.
- 1.28 **“Key Responsibilities”** means the main responsibilities and tasks to be performed by each category of Vendor Personnel, as identified in General Requirements: General Conditions of the Contract: Schedule E: Vendor Personnel.
- 1.29 **“Losses”** means claims, actions, suits, executions, and demands and all loss, liability, judgments, costs, charges, damages, liens and expenses of any nature whatsoever and howsoever caused.
- 1.30 **“Metrolinx”** means Metrolinx, a provincial crown agency continued under the Metrolinx Act, S.O. 2006, Chapter 16, and its successors and assigns.
- 1.31 **“Metrolinx IP”** has the meaning ascribed to it in Section 5.1 of the General Conditions.
- 1.32 **“Metrolinx Materials”** means: (a) all materials, images, reports, Software, audio or video recordings, specifications, performance requirements, software development tools, technologies, content, data (including all information whether or not contained in or on any database or electronic information storage system or media owned by or in the custody or control of Metrolinx), technical information, and any other recorded information, in any form and on any media, that are proprietary to, or controlled or licensed by, Metrolinx and provided to the Vendor; (b) all procurement documents issued by Metrolinx; (c) all documentation or source materials (including source code) related to any of the foregoing; and (d) all copies, translations, improvements, modifications, enhancements, adaptations, or derivations made to the Metrolinx Materials by Metrolinx or any third party not performing work under this Contract.

GENERAL CONDITIONS OF THE CONTRACT
SCHEDULE A - DEFINITIONS

- 1.33 **“Metrolinx Marks”** means any trademarks, service marks, trade names, logos or other commercial or product designations owned or licensed by Metrolinx, whether registered or not.
- 1.34 **“Metrolinx Representative”** or **“Metrolinx’s Representative”** has the meaning ascribed to it in Section 2.8 of the General Conditions.
- 1.35 **“OHSA”** means the Occupational Health and Safety Act, R.S.O. 1990, Chapter O.1.
- 1.36 **“Outcome”** has the meaning ascribed to it in Section 2.9(a) of the General Conditions.
- 1.37 **“Parties”** means both of Metrolinx and the Vendor and a **“Party”** means either one of them.
- 1.38 **“Person”** means any individual, sole proprietorship, partnership, limited partnership, corporation or company (with or without share capital), trust, foundation, joint venture, Governmental Authority or any other incorporated or unincorporated entity or association of any nature.
- 1.39 **“Personal Information”** has the meaning ascribed to it in FIPPA.
- 1.40 **“PIPEDA”** means the Personal Information Protection and Electronic Documents Act, S.C. 2000, Chapter 5.
- 1.41 **“Place of Work”** is the designated site or location of the Work.
- 1.42 **“Privacy Impact Assessment”** refers to a systematic and consistent method of analysis to identify and analyze privacy risks in a program, technology or service.
- 1.43 **“Prohibited Procurements”** has the meaning ascribed to it in Section 17.14(b) of the General Conditions.
- 1.44 **“Quotation”** has the meaning given in Section 1.0 of Schedule B - Financial Terms of General Conditions.
- 1.45 **“Rates”** has the meaning ascribed to it in Section 2.9 of General Conditions.
- 1.46 **“Request Conflict of Interest”** means the Vendor had an unfair advantage or engaged in conduct, directly or indirectly, that gave it an unfair advantage, including but not limited to (i) having, or having had access to, confidential information of Metrolinx in the preparation of its submission during the RQQ Process that was not available to other bidders, (ii) communicating with any person with a view to influencing preferred treatment in the RQQ Process (including but not limited to the lobbying of decision makers involved in the RQQ Process), or (iii) engaging in conduct that compromises, or could be seen to compromise, the integrity of the RQQ Process.

GENERAL CONDITIONS OF THE CONTRACT
SCHEDULE A - DEFINITIONS

- 1.47 **“Required Standard of Care”** means: (a) using the Standards, practices, methods and procedures among the highest commercial standards of practice and professionalism as understood in the Province of Ontario; (b) conforming to Applicable Laws and all rules of professional conduct applicable to the Vendor or the Vendor Personnel; (c) exercising that degree of skill and care, diligence, prudence and foresight which would be expected from a leading Person or professional performing work similar to those called for under this Contract; and (d) using only proper materials and methods as are suited to the function and performance intended.
- 1.48 **“RQQ Process”** means the Request to Qualify and Quote process set out in Request No. RQQ-2018-BUSF-285.
- 1.49 **“Scope of Work”** describes the general and detailed requirements of the Work.
- 1.50 **“Software”** means any set of machine readable instructions that directs the performance of specific operations, including computer programs, computer code, software programs (whether executable or not executable), system software, application software, embedded software, databases, data, middleware, GUI’s, objects, firmware, components and modules and related documentation.
- 1.51 **“SOW”** has the meaning ascribed to it in Section 2.9 of the General Conditions.
- 1.52 **“SOW Schedule”** has the meaning ascribed to it in Section 2.9(b) of the General Conditions.
- 1.53 **“Standards”** means, at a given time, those standards, specifications, manuals, codes, practices, methods and procedures applicable to the Required Standard of Care.
- 1.54 **“Sub-vendor”** means an individual, firm, partnership, corporation or design professional having a direct contract with the Vendor or another Subvendor to perform a part or parts of the Work as identified in the Submission or as otherwise identified in a request to add a new sub-vendor.
- 1.55 **“Submission”** means all documentation and other materials and information submitted by the Proponent in response to Request No. RQQ-2017-VM-181
- 1.56 **“Taxes”** means all present and future taxes, surtaxes, duties, levies, imposts, rates, fees, premiums, assessments, withholdings, dues and other charges of any nature imposed by any Governmental Authority (including, income, capital (including large corporations), gross receipts, consumption, sales, use, transfer, goods and services or other Value Added Taxes, excise, customs or other import, anti-dumping, countervail, net worth, alternative or add-on minimum, windfall profits, stamp, registration, franchise, payroll, employment insurance, Canada Pension Plan, worker’s compensation, health, education, school, business, property, local improvement, environmental, development and occupation taxes, surtaxes, duties, levies, imposts, rates, fees, premiums,

GENERAL CONDITIONS OF THE CONTRACT
SCHEDULE A - DEFINITIONS

assessments, withholdings, dues and charges) together with all fines, interest and penalties in respect thereof or in lieu of or for non-collection thereof.

- 1.57 **“Term”** has the meaning ascribed to it in Section 2.1 of the General Conditions.
- 1.58 **“Total Contract Price”** means the upset limit amount established as the total contract price for the Contract by Metrolinx, which shall form which shall form part of the Articles of Agreement.
- 1.59 **“Value Added Taxes”** means such sum as shall be levied upon amounts payable to the Vendor under this Contract by any Governmental Authority that is computed as a percentage of the amounts payable to the Vendor (including all other Taxes but excluding Value Added Taxes), and includes the HST, and any similar tax, the payment or collection of which, by the legislation imposing such tax, is an obligation of the Vendor.
- 1.60 **“Vendor”** means [TO BE COMPLETED AT SIGNING].
- 1.61 **“Vendor Background IP”** means any methodologies, patterns, plans, procedures, Software, algorithms, computer code, documentation, tools, business processes, scripts, interfaces, commands, technical information, know-how, techniques, specifications, technologies and/or other Intellectual Property that is proprietary to the Vendor or which Vendor has the right and licence to use and make available to Metrolinx, and all documentation related to any of the foregoing, in each case that was either: (a) created prior to the Effective Date; or (b) created, developed or produced independently of this Contract and/or the performance of the Work.
- 1.62 **“Vendor Indemnified Parties”** means the Vendor, its affiliates and each of their respective officers, directors, employees, agents, successors, and assigns.
- 1.63 **“Vendor Personnel”** or **“Vendor’s Personnel”** means (a) with respect to the Vendor, all of the Vendor’s personnel, employees and independent contractors (including the Key Personnel and the Vendor’s Representative) engaged in the performance of the Work; and (b) with respect to each Subvendor, all of that Subvendor’s personnel, employees and independent contractors engaged in the performance of the Work.
- 1.64 **“Vendor Policies”** has the meaning ascribed to it in Schedule C - Insurance of General Conditions.
- 1.65 **“Vendor’s Representative”** means the person identified by the Vendor, and Accepted by Metrolinx, as the Vendor’s authorized representative pursuant to Section 7 of the General Conditions.

**GENERAL CONDITIONS OF THE CONTRACT
SCHEDULE A - DEFINITIONS**

- 1.66 **“Work”** means all the activities, services, goods, equipment, matters and things required to be done, delivered or performed by the Vendor under this Contract, including all of the work, labour, services, goods, equipment, if applicable, described in the Scope of Work.

END OF SECTION

GENERAL CONDITIONS OF THE CONTRACT
SCHEDULE B – FINANCIAL TERMS

1.0 Payment

- 1.1 Metrolinx will pay the Vendor for the Work performed by the Vendor pursuant to a SOW, the amount agreed in such SOW and in accordance with the payment schedule set out in such SOW, upon completion and Metrolinx acceptance, where applicable, of the applicable milestone.
- 1.2 The Vendor shall perform all of the Work notwithstanding that the value of the time spent by the Vendor in performance thereof may exceed the maximum amount payable to the Vendor pursuant to Section 3.0 of this Schedule B - Financial Terms.
- 1.3 In certain circumstances and subject to mutual agreement, fee reductions, incentive payments or holdbacks may be applied. The amount of the fee reduction, incentive payment or holdback, if any, shall be identified in the SOW.

2.0 Limitation of Expenditure

- 2.1 It is understood that the Contract is based on reimbursement for actual Work requested by Metrolinx and performed by the Vendor in accordance with all the terms of this Contract.
- 2.2 Metrolinx does not guarantee any minimum or maximum of work it will assign the Vendor under the Contract. Metrolinx reserves the right to assign no work or assign a selected number of work assignments with an accumulated value up to the awarded total upset limit of the Contract.

3.0 Total Contract Price

- 3.1 Subject to Sections 7.1, 7.2 and Article 8 - Additional Resources of the General Conditions of the Contract, Metrolinx and the Vendor acknowledge and agree that the Total Contract Price is the maximum amount payable in respect to the provision of the Work; excluding HST; provided, however, that the foregoing is not an entitlement to, nor a guarantee that the Vendor will be paid the full amount of, the Total Contract Price.
- 3.2 The Vendor shall not perform any work under this Agreement which would cause the total cost to exceed the Total Contract Price, unless an increase is so authorized by Metrolinx and effected by an amendment or change order that has been executed by both parties.

4.0 Rates for Work

- 4.1 The Vendor acknowledges and agrees that the Rates are inclusive of all labour and materials, insurance costs, disbursements and all other overhead including any fees or other charges required under Applicable Laws. Without limiting the generality of the foregoing, the Rates include costs for the coordination, administration of the provision

GENERAL CONDITIONS OF THE CONTRACT
SCHEDULE B – FINANCIAL TERMS

and management of the Work necessary to achieve compliance with external agencies and Governmental Authorities as required to obtain any Approvals, provided, however, that the specific costs associated with application and permit fees in respect of the Approvals shall be paid directly by Metrolinx.

- 4.2 Metrolinx shall not reimburse the Vendor for any hospitality, food or incidental expenses incurred. Subject to the prior consent of Metrolinx, Metrolinx shall reimburse the Vendor for reasonable traveling expenses incurred in connection with the performance of the Work, such reimbursement to be made in accordance with the Government of Ontario's Travel, Meal, and Hospitality Expenses Directive.
- 4.3 As part of the Work, the Vendor shall also be responsible for obtaining and registering all of the Software licenses and long term support agreements, as and if applicable, on behalf of Metrolinx, and any costs incurred by the Vendor in connection thereto shall be included in the Rates set out in the Articles of Agreement.

5.0 Taxes

- 5.1 The Total Contract Price and all amounts payable under the Contract shall be inclusive of all Taxes (except for HST) in effect as at the date of this Contract. Unless otherwise expressly specified in this Contract or otherwise required by Applicable Law, the Vendor shall be responsible for remittance of any and all Taxes due and payable in respect of the Work.
- 5.2 Any amount to be levied against Metrolinx in respect of the HST or any similar successor tax levied under the Excise Tax Act and applicable to the Work, is to be shown separately on all invoices for Work performed by the Vendor. The Vendor shall remit any HST paid or due to the Canada Revenue Agency in accordance with Applicable Laws, and shall, at the request of Metrolinx, provide evidence of payment of same.
- 5.3 In the event that Metrolinx is entitled to a rebate under the Retail Sales Tax Act (Ontario) or the Excise Tax Act in whole or in part, for Value Added Taxes paid under this Contract, the Vendor shall show on each invoice, and in the manner directed by Metrolinx, either the actual Value Added Taxes paid by the Vendor by category or the portion of the Vendor's fees eligible under Applicable Law for the rebate.
- 5.4 Certain payments to non-resident corporations or individuals may be subject to withholding taxes, under the Income Tax Act. Non-residents can apply in advance to Revenue Canada, Taxation, for a waiver or reduction of the withholding tax requirement. Unless Metrolinx is provided with a copy of the written information as a result of the waiver application to the Tax Services Office of the Canada Revenue Agency, taxes will be withheld as determined under the Income Tax Act. The Vendor shall be responsible for investigating whether they are subject to the withholding of taxes under the Income Tax Act and obtaining the necessary waiver or reduction as needed.

GENERAL CONDITIONS OF THE CONTRACT
SCHEDULE B – FINANCIAL TERMS

6.0 Invoicing and Payment Process

- 6.1 The Vendor shall submit an invoice for payment for Work in accordance with the payment schedule set out in the authorized SOW. The invoice shall be in form and substance satisfactory to Metrolinx acting reasonably and shall set out with sufficient particularity the Work performed in the period for which the invoice relates and, if the Work was performed on a Time and Expense basis, the total time spent by each category of Vendor Personnel multiplied by the applicable Rate.
- 6.2 The aggregate amount invoiced by the Vendor with respect to a SOW shall not exceed the fixed price or upset limit of such SOW, unless such additional amount is agreed by the Parties pursuant to the change management process set out in Article 7 of the General Conditions.
- 6.3 Unless there is a Dispute with respect to the content of an invoice and subject to the other provisions of this Schedule B, Metrolinx shall make payment to the Vendor no later than thirty (30) Business Days following receipt of the invoice for payment from the Vendor, unless otherwise provided or permitted in the Contract or a SOW. The Vendor shall accept any payments made by Metrolinx by way of Electronic Funds Transfer, and shall, if requested by Metrolinx, provide the account information required to complete an Electronic Funds Transfer.

7.0 Cost of Changes

- 7.1 Changes shall be implemented by the Vendor without any additional charge, unless the Vendor is able to demonstrate (with supporting documentation) that the Change causes the Vendor to incur additional costs.
- 7.2 The Vendor shall implement all Changes for a reasonable price in accordance with the same pricing principles and price levels as originally agreed in the Articles of Agreement. Where Rates apply to Vendor Personnel, those same Rates shall apply with reference to the applicable level of experience and/or expertise.
- 7.3 Metrolinx shall have the right to request such documentation and other supporting information as it reasonably requires to confirm and substantiate the costs associated with any Change request, and the Vendor shall provide same to Metrolinx within five (5) Business Days of the request therefor.

8.0 Metrolinx Property

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

END OF SECTION

GENERAL CONDITIONS OF THE CONTRACT
SCHEDULE C – INSURANCE

1.0 Vendor Insurance Requirements

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

(a) Commercial General Liability

(i) The policy shall provide a policy limit of not less than two million dollars (\$2,000,000) per occurrence for all claims arising out of bodily injury (including death), personal injury, and damage to property of others. Such policy shall not contain any exclusion that conflict with the Work required to be performed under this Contract. The Vendor shall cause the interest of Metrolinx, and such other Person as Metrolinx may determine at its sole and absolute discretion, to be noted on the Vendor Policies hereof as "Additional Insured". The policy shall contain a cross liability and severability of interest.

(b) Automobile Liability Insurance

(i) Subject to the following sentence, the policy shall provide coverage for liability arising out of the use of owned, non-owned, leased or hired automobiles in connection with the performance of the Work. Coverage shall consist of a combined single limit of not less than two million dollars (\$2,000,000) per occurrence. Alternatively, for Work that do not require the use of owned, non-owned, leased or hired automobile, the Vendor shall provide a written confirmation within five (5) Business Days of contract award, stating same, in place of the insurance coverage.

(c) Errors and Omissions Insurance

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

(d) Any other valid or collectible insurance available to Metrolinx shall not apply to any loss until the coverage and limits available under the insurance policies maintained by the Vendor in accordance with this Contract have been exhausted.

1.2 Additional Coverage

GENERAL CONDITIONS OF THE CONTRACT
SCHEDULE C – INSURANCE

- (a) Without prejudice to any other provisions of this Contract (including Section 1.1 of this Schedule C - Insurance), the Vendor shall, at all relevant times and at its own expense, obtain and maintain, or cause to be obtained and maintained (during the Term plus thirty-six (36) months after termination or expiration of this Contract):
 - (i) those insurances that are reasonable for the performance of the type and scope of Work set out by this Contract (including, as applicable, insurance as would typically be required by prudent designers or consultants); and/or
 - (ii) those insurances that the Vendor is required to obtain and maintain, or cause to be obtained or maintained, by Applicable Law.

1.3 Requirements for Insurance

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

GENERAL CONDITIONS OF THE CONTRACT
SCHEDULE C – INSURANCE

1.4 Proof of Insurance

- (a) The Vendor shall, prior to the commencement of the Work and thereafter upon request, provide to Metrolinx or a designated Metrolinx third party representative original signed certificates of insurance for the Vendor Policies, confirming that the required coverage has been placed and maintained. In addition, at least fifteen (15) days prior to the expiry date or replacement of any policy, the Vendor shall provide original signed certificates evidencing renewals or replacements of such policy to Metrolinx, without notice or request by Metrolinx.
- (b) The Vendor shall, upon request, provide evidence to Metrolinx that the premiums associated with the Vendor Policies have been paid; however, receipt by Metrolinx of the above information will in no way constitute confirmation by Metrolinx that the insurance complies with the requirements of this Contract. Responsibility for ensuring that the insurance coverage outlined in this Contract is in place rests solely with the Vendor.
- (c) The Vendor also agrees to provide Metrolinx with proof of errors and omissions insurance maintained by any Subvendor, where such Subvendor is under a professional obligation to maintain the same, and with proof of such insurance to be provided to Metrolinx no later than the execution of this Contract by the Vendor and to be in a form and with an insurer acceptable to Metrolinx.

1.5 Vendor's Liability Preserved

- (a) The provisions of this Contract as they relate to insurance do not diminish, limit or otherwise affect the liability of the Vendor to Metrolinx under or in relation to any other provisions of this Contract.

1.6 Certificates of Insurance shall include:

- (a) A reference to the Project description and Contract number;
- (b) Additional insureds as follows:
 - (i) The Certificate of Commercial General Liability Insurance shall include the following as additional insureds:
 - (A) Metrolinx.
- (c) A provision requiring the insurer to endeavor to give Metrolinx thirty (30) calendar days' prior written notice of any cancellation of the required insurance policies.

GENERAL CONDITIONS OF THE CONTRACT
SCHEDULE C – INSURANCE

2.0 Workplace Safety & Insurance Board Protection

- 2.1 With respect to the WSIB coverage as required under the Workplace Safety and Insurance Act (Ontario), the Vendor unconditionally guarantees to Metrolinx full compliance with the conditions, regulations and laws relating to workplace safety insurance by itself and by all Subvendors.
- 2.2 Without restricting the indemnity obligations of the Vendor in Article 11 of the General Conditions, unless the Vendor is WSIB exempt, the Vendor shall produce, at the commencement of this Contract, from time to time as may be required by Metrolinx, a valid Workplace Safety and Insurance Clearance Certificate, issued by the WSIB, for the premium rate class, subclass or group appropriate to the Work.
- 2.3 If the Vendor is WSIB exempt, it shall provide evidence of Employer's Liability or equivalent, to the satisfaction of Metrolinx, in lieu of a Workplace Safety and Insurance Clearance Certificate.

END OF SECTION

GENERAL CONDITIONS OF THE CONTRACT
SCHEDULE D – DISPUTE RESOLUTION

1.0 Bona fide efforts to resolve

- 1.1 The Parties shall at all times during the Term make bona fide efforts to resolve any and all Disputes arising between them by amicable negotiations and to have all Disputes resolved at the lowest level of management before engaging the dispute resolution processes described in the balance of this Schedule D - Dispute Resolution.

2.0 Continuance of the Work During Dispute

- 2.1 Unless expressly directed otherwise by Metrolinx, the Vendor shall not stop or delay the performance of the Work, in whole or in part, on account of a Dispute between the Vendor and Metrolinx or between the Vendor and any other Person. Without limiting the generality of the foregoing, at all times during the course of a Dispute, the Vendor shall:
- (a) continue with the Work in a diligent manner and without delay;
 - (b) conform to Metrolinx' decisions and directions with respect to the Work; and
 - (c) be governed by all applicable provisions of this Contract.
- 2.2 The Parties acknowledge and agree that the Vendor's compliance with this Section 2.0 shall not operate to waive any claim or contention that the Vendor may have in relation to any Dispute.

3.0 Tiered-Dispute Resolution

- 3.1 The Parties agree that any Dispute which cannot be resolved to the satisfaction of both Parties by direct discussions between staff members of the Parties, may be referred for negotiation between senior management of both Parties by delivery from one Party to the other Party of notice in writing requesting dispute resolution, which notice shall set out the Dispute in reasonably sufficient detail (a "Dispute Notice").

4.0 Negotiation

- 4.1 In the event a Party issues a Dispute Notice to the other Party, a Director in the Information & Information Technology department at Metrolinx (or if that position no longer exists at the time the Dispute Notice is issued, the person performing an equivalent function) and an authorized representative of the Vendor, of equivalent seniority and duly appointed to represent the Vendor in this regard, shall meet and make a good faith effort, on a without prejudice basis, to resolve the Dispute as set out in the Dispute Notice in a prompt manner and, for the purpose of same, each Party shall provide its representative with full and timely disclosure of all relevant facts information and documents as may be reasonably required or may be reasonably requested by the other Party, on a without prejudice basis, to facilitate such negotiation.

GENERAL CONDITIONS OF THE CONTRACT
SCHEDULE D – DISPUTE RESOLUTION

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

5.0 Mediation

- 5.1 If a Dispute has not been resolved through high-level negotiation as contemplated in Section 4.0, either Party may refer the Dispute to be resolved through mediation.
- 5.2 The Parties shall mutually agree to the appointment of the mediator within thirty (30) Business Days, or within such other time as the Parties may agree, of any Party issuing a supplementary Dispute Notice requesting mediation.
- 5.3 If the Parties cannot agree on the appointment of a mediator, the appointment of a mediator shall be determined by the Ontario Superior Court of Justice following an application by either Party.
- 5.4 The mediator shall be independent of and at arm's length to the Parties and shall be a person who by training and experience has the qualifications and the mediation skills to mediate a Dispute.
- 5.5 Unless the Parties otherwise agree, the mediation shall proceed in accordance with the following procedures:
- (a) Each Party shall prepare a summary of the issues in dispute, with the Party's position with respect to those issues. The summary shall be delivered to the mediator and the other Parties, at least seven (7) Business Days before the first mediation conference.
 - (b) The goal of the mediation is to reach an agreed upon settlement and, therefore, all individuals with the appropriate authority to agree to the settlement terms and conditions shall be present at the mediation.
 - (c) A Party may be represented at the mediation by counsel or another representative at the sole cost of such Party.
 - (d) The mediator, the Parties and their counsel or representatives shall keep confidential all matters relating to the mediation, except where disclosure of a settlement agreement is necessary to implement or enforce that agreement and except as otherwise required by Applicable Law.
 - (e) In all respects, the mediation is deemed to be a "without prejudice" proceeding.

GENERAL CONDITIONS OF THE CONTRACT
SCHEDULE D – DISPUTE RESOLUTION

- 5.6 The costs of the mediator shall be apportioned equally between the Parties unless otherwise agreed under any settlement reached under this Section 5.0.
- 5.7 If the Parties achieve a resolution of the Dispute, the mediator shall confirm the resolution in writing, which will be signed by the Parties. If the Parties do not resolve the Dispute, the mediator shall provide a written confirmation that the Parties were unable to resolve the Dispute.
- 5.8 Both Parties acknowledge and agree that they may not refer a Dispute for resolution by arbitration under Section 6.0 herein prior to attempting to resolve such Dispute through mediation pursuant to this Section 5.0.

6.0 Arbitration

- 6.1 Any Party may, within ten (10) Business Days of the delivery of the mediator's confirmation that the Parties were unable to resolve their Dispute, issue a supplementary Dispute Notice requesting arbitration. Subject to Applicable Law, if such a supplementary Dispute Notice is issued, the Parties shall proceed to arbitration in the manner described below.
- 6.2 If the Parties agree on the arbitrator, the Parties shall jointly appoint the arbitrator as soon as possible and in any event within ten (10) Business Days of the submission of a Dispute to arbitration under this Section 6.0. If the Parties are unable to agree on an arbitrator, each Party shall appoint an arbitrator, and the two arbitrators so chosen shall select a third arbitrator acceptable to both of them within ten (10) Business Days of their selection.
- 6.3 The arbitrator(s) shall be independent of and at arm's length to the Parties and shall be a person who by training and experience has the qualifications and arbitration skills to arbitrate a Dispute.
- 6.4 The arbitration shall be conducted in accordance with the provisions of the Arbitration Act, except to the extent they are modified by the express provisions of this Schedule D - Dispute Resolution or unless the Parties otherwise agree.
- 6.5 If the issue in dispute is particularly time sensitive, the Parties shall, in good faith, take such reasonable steps as may be required to expedite the arbitration process in order that an award may be rendered as soon as practicable by the arbitrator(s), given the nature of the Dispute.
- 6.6 The arbitrator(s) has the jurisdiction to deal with all matters relating to a Dispute.
- 6.7 Unless otherwise agreed, the arbitration shall be conducted in the City of Toronto, Province of Ontario at the location determined from time to time by the arbitrators, but the arbitrators may meet in any other place the arbitrators consider necessary for

GENERAL CONDITIONS OF THE CONTRACT
SCHEDULE D – DISPUTE RESOLUTION

consultation, to hear witnesses, experts or other parties, or for the inspection of documents, goods or other property.

- 6.8 In addition to the examination of the Parties by each other, the arbitrator(s) may examine, in the ordinary course, the Parties or either of them and the witnesses in the matter referred to the arbitrator(s), and the Parties and witnesses, if examined, shall be examined on oath or affirmation.
- 6.9 The language of the arbitration shall be English.
- 6.10 The arbitrator(s) shall, after full consideration of the issues in dispute, the relevant facts and Applicable Law, render a decision as soon as possible and, in any event, shall use all reasonable efforts to render a decision no later than thirty (30) Business Days after argument of the issue to the arbitrator(s), which decision shall be final and binding on the Parties and not subject to appeal or challenge, except such limited relief provided under Section 45(1) (appeal on a question of law, with leave) or Section 46 (setting aside award) of the Arbitration Act.
- 6.11 The costs of the arbitration are in the discretion of the arbitrator(s) who, in addition to any jurisdiction and authority under Applicable Law to award costs, has the jurisdiction and authority to make an order for costs on such basis as the arbitrator(s) consider appropriate in the circumstances. The submission to the arbitrator(s), and any award made in pursuance of it, may, at the instance of either of the Parties and without notice to the other of them, be made an Order of the Ontario Court (General Division), pursuant to the Arbitration Act and the Courts of Justice Act (Ontario).

END OF SECTION

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

1.0 Vendor Personnel

1.1 The following are roles that shall be filled by the Vendor in accordance with the following requirements in respect of qualifications, experience and minimum years of experience. Each individual performing one of the roles below shall perform the key responsibilities listed below as well as any other responsibilities as requested by Metrolinx, in accordance with the Contract, for the duration specified in the table below.

(a) Key Personnel

Role	Qualifications and Experience	Required Duration
Lead Instructor / Trainer	<p><u>Experience:</u></p> <ul style="list-style-type: none">• Minimum ten (10) years of relevant experience. <p><u>Qualifications:</u></p> <ul style="list-style-type: none">• A university degree in Business and related disciplines an asset.• Recent experience in Leadership/Management Training for projects of similar scope and size;• Demonstrated experience on Management Consulting/Advice;• Demonstrated experience on developing and/or delivering training programs to improve Management Skills, Supervisory Skills, Communications and Interpersonal Skills and Leadership;• Demonstrated experience in Public Sector and unionized environment training programs.	Entire Term of the Contract

(b) Non-Key Personnel

Not Applicable.

2.0 Replacement of Key Personnel

2.1 The Proponent shall collaborate with Metrolinx to manage the transition/knowledge transfer of knowledge processes, at minimum of 3 week prior to the completion of each Assignment. Proponent proposed transition plan to be provided and approved by Metrolinx. Where the Vendor is proposing the replacement of Key Personnel, the Vendor shall provide the following documentation to the designated Metrolinx representative for review and approval:

(a) Curriculum Vitae

GENERAL CONDITIONS OF THE CONTRACT
SCHEDULE E – VENDOR PERSONNEL

- (i) The Vendor should, for each proposed Key Personnel, provide a Curriculum Vitae of up to three (3) pages for each Key Personnel, including biographical information, which clearly identifies:
 - (A) Name of individual and proposed Key Personnel role;
 - (B) Qualifications that relate to the proposed Key Personnel role, as specified in this Schedule E, relative to the Work being requested;
 - (C) Experience in performing the proposed Key Personnel role, as specified in this Schedule E herein, relative to the Work being requested (include project names and brief project overviews);
 - (D) Number of years in the proposed role on each project as well as the start date and completion date of each project;
 - (E) Responsibilities on each project while performing the proposed role;
 - (F) Details of accomplishments while performing the proposed role;
 - (G) Education; and
 - (H) Professional memberships and affiliations.

- (b) Key Personnel References
 - (i) Immediately following the curriculum vitae for each proposed Key Personnel, the Vendor shall provide a list of three (3) references and contact information for relevant projects successfully delivered on-time and on-budget within the past five (5) years, while performing work in the same capacity as the proposed Key Personnel role.
 - (ii) The Vendor shall ensure that all contact information provided for references is current and accurate in order to enable Metrolinx to obtain all necessary information for evaluation purposes in a timely manner.
 - (iii) The list of three (3) references submitted when combined should demonstrate that the named Key Personnel has the required qualifications and experience as stated in this Schedule E herein, and for work similar in size, scope and complexity to the Work to be provided herein.
 - (iv) Such references shall relate directly to the experience, responsibilities and details of project accomplishments noted above. The information should include:
 - (A) Name of the company for which the work was performed;

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

- (B) Contact person's name, title, telephone number and e-mail address;
and
- (C) Start and completion date of each reference project.

END OF SECTION

SCOPE OF WORK

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

LIST OF CONTENTS

The following documents hereby form part of and are appended to this Request Document as the Vendor’s Scope of Work:

ITEM #	DOCUMENT TITLE
1.	Background
2.	General Requirements
3.	Detailed Scope of Work
4.	General Safety Requirements

SCOPE OF WORK BACKGROUND

1.0 Background

1.1 Metrolinx is an Agency of the Province of Ontario. Metrolinx works with federal, provincial and municipal partners, the private sector and other stakeholders to create an integrated transportation system that would support a higher quality of life, a more prosperous economy and healthier environment. Metrolinx operates GO Transit, the Union Pearson Express, Presto, and manages several large scale transit expansion projects.

GO Transit is an inter-regional public transit system in Southern Ontario primarily serving the Greater Toronto and Hamilton Area (GTHA), with operations extending to several communities in the Greater Golden Horseshoe. GO Transit runs seven train lines as well as an extensive network of bus routes.

Within GO Transit, Bus and Rapid Transit employees approximately 1300 employees including Bus Drivers, Fleet and Facility Maintenance, Supervisory and Managerial staff.

In 2018, Bus and Rapid Transit undertook a Culture Audit after concerns relating to discrimination and workplace culture were brought forward. The Culture Assessment was conducted by Human Resources and in partnership with GO senior leaders, recommendations were made to address themes of respect in the workplace, values based behaviour/leadership, unconscious bias and diversity, giving and receiving feedback, and general leadership training for managers and supervisors.

Metrolinx employees also participate in an annual engagement survey and themes were consistent the survey results and other inputs (e.g. grievances). Some training can be delivered in-house through existing programs, but other training would be more suitable as vendor-led to leverage additional capabilities and experience.

END OF SECTION

**SCOPE OF WORK
GENERAL REQUIREMENTS**

1.0 Metrolinx Services

Metrolinx shall:

- (a) provide the Vendor with general direction in the provision of the Services;
- (b) designate an individual to act as its Representative, who shall transmit instructions to, and receive information from the Vendor. The designated Metrolinx Representative shall be accountable for all project expenditures; and
- (c) provide access to and where necessary, make available copies of existing plans, reports, studies, information and correspondence relevant to the Project.

END OF SECTION

**SCOPE OF WORK
DETAILED SCOPE OF WORK**

1.0 Purpose

- 1.1 GO Transit, Bus and Rapid Transit requires in-class training for approximately 70 managers and supervisors. These individuals oversee Bus Drivers, Planning and Administrative Staff, Maintenance and Facility Staff.
- 1.2 The training sessions shall address leadership and management skills to improve values based behaviour and workplace culture.
- 1.3 An off-the-shelf program (or combination of programs) with some customization for scenarios and group exercises. The sessions shall also incorporate Metrolinx values of ethical behaviour.

2.0 Vendor Scope of Services

- 2.1 The awarded vendor(s) shall provide In-class training for approximately 70 managers and supervisors.
- 2.2 We anticipate this would be delivered to 7 cohorts (10-11 trainees each) as a 2-day program, delivered over time, and not over consecutive days.
- 2.3 An optional session at the end of the cycle may provide an opportunity to those who missed any of the regular scheduled sessions.
- 2.4 An off-the-shelf program (or combination of programs) with some customization for scenarios and group exercises would be ideal, and also to incorporate the Metrolinx values.
- 2.5 The program should be modular and interactive with opportunities for partner or group work, scenarios, activities, role plays, etc. Bus and Rapid Transit is looking to complete this training over a 2 months period.

3.0 Training Objectives:

- 3.1 Build leadership accountability and demonstrate values based behaviours
 - (a) What is a leader/manager? What makes a good manager?
 - (b) What does values based leadership look like when done well, and what does this look like when not done well
- 3.2 Develop Leadership awareness and presence
 - (a) Understanding of one's leadership style, how it shows up and how other might perceive one's style

**SCOPE OF WORK
DETAILED SCOPE OF WORK**

- (b) Could include an assessment (preference would be DISC to align with broader organization)
- 3.3 Build leadership capacity to identify, listen to and address workplace concerns.
 - (a) having difficult conversations
 - (b) giving feedback from a performance lens and/or coaching lens
 - (c) engaging and motivating staff
 - (d) addressing and resolving conflicts
- 3.4 Develop Effective Communication Skills
 - (a) Listening and active listening
 - (b) Understanding “personality Styles” in the workplace
 - (c) Best communication method depending on the situation
 - (d) Influence
 - (e) Getting conversations that are derailed back on track
- 3.5 Build personal capacity to Implement Change
 - (a) Understanding people change management and best practices for managing during times of change
 - (b) Implementing changes, new processes
 - (c) Building resiliency to operate in an environment that keeps making adjustments

4.0 Locations

- 4.1 These sessions shall be delivered at the following GO Transit facilities.
 - (a) 6190 Mississauga Road, Mississauga. Ontario L5N 1A7
 - (b) 200 Steeprock Drive, Toronto. Ontario M3J 2T4
 - (c) 1002 Thornton Road South, Oshawa. Ontario L1J 7E2

END OF SECTION

**SCOPE OF WORK
GENERAL SAFETY REQUIREMENTS**

1.0 Safety Measures

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

2.0 Project Responsibilities

- 2.1 The Vendor and the Vendor's representative shall ensure that:
 - (a) All measures and procedures prescribed by the following Acts and Regulations (applicable Provincial) are carried out at the Place of Work;
 - (b) The *Occupational Health and Safety Act*;
 - (c) The Regulations for Industrial Establishments;
 - (d) The Canada Labour Code Part II;
 - (e) The Environmental Protection Act and Regulations;
 - (f) *Smoke-Free Ontario Act*;
 - (g) All other legislation, regulations and standards as applicable; and
 - (h) Metrolinx's "Safety Guidelines for Contractors, Consultants and Project Coordinators".
- 2.2 Every employer and every worker performing work at the Place of Work complies with all of the requirements referred to in Section 2.1 above; and
- 2.3 The health and safety of workers and the general public are protected in relation to the work performed on site. In addition to compliance with all occupational health and safety legislation, every employer and every worker performing Work at the Place of Work is required to demonstrate a willingness to participate in occupational health and safety program(s).

**SCOPE OF WORK
GENERAL SAFETY REQUIREMENTS**

- 2.4 The Vendor shall perform a hazard and risk analysis of the work and list the top five (5) most hazardous health and safety concerns.

3.0 Due Diligence

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

4.0 Fit-For-Duty Requirements

- 4.1 The following rules shall apply to all persons while at the Place of Work and/or on Metrolinx property while carrying out all aspects of the Work:
- (a) The use, possession, offering, distribution and/or sale of illegal drugs, prescription and over-the-counter medications, mood altering substances, chemicals which has the potential to change or adversely affect the way a person thinks, feels or acts and/or may inhibit the ability to perform work safely and productively, is prohibited;

**SCOPE OF WORK
GENERAL SAFETY REQUIREMENTS**

- (b) The use, possession, distribution and/or sale of drug paraphernalia (property associated with the use of any drug for recreational or illicit purposes), is prohibited.
 - (c) The use, possession, distribution and/or sale of any form of alcohol, including alcoholic beverages, is prohibited;
 - (d) The Vendor's Personnel must know and understand the possible effects of drugs, medication or mood altering agents, including those prescribed by a doctor, which will adversely affect, in any way and to any extent, their ability to work safely;
 - (e) The Vendor's Personnel shall ensure that prescribed or over-the-counter medications are used responsibly and in accordance with the applicable instructions. Persons taking prescription drugs shall advise their supervisor if there is potential for performance to be negatively affected;
 - (f) The Vendor's Personnel must report for duty free of extreme fatigue which would adversely affect, in any way and to any extent, their ability to work safely;
 - (g) The Vendor's Personnel must report for duty, free of the negative effects of alcohol and other drugs, including the effects of such use, and remain so during the entire period of duty.
- 4.2 Where any Vendor's Personnel is suspected of being unfit for duty, the following procedures must be followed:
- (a) Such Vendor Personnel will be escorted to a safe location away from the work area, and asked to remain there pending further action;
 - (b) The Vendor shall be required to attend a meeting with Metrolinx and Consultant, if applicable, (hereinafter referred to as a Fit For Duty (FFD) Meeting);
 - (c) The FFD meeting members will determine an appropriate course of action and a means of transport to a suitable safe location for the Vendor Personnel in question;
 - (d) Where there are differences of opinion between Metrolinx and the Vendor with respect to the Vendor Personnel's fitness for duty, the dispute will be resolved with a view to ensuring safety, and the Vendor's Personnel in question will be transported home, or will be required to remain in a safe location until transportation can be arranged; and
 - (e) The local police may be called if the Vendor's Personnel was operating any motorized vehicle requiring a valid driver's license.

**SCOPE OF WORK
GENERAL SAFETY REQUIREMENTS**

- 4.3 Metrolinx maintains a position of zero tolerance to any violations of Sections 4.1 and 4.2 above. At the sole discretion of Metrolinx, non-compliance may result in:
- (a) Verbal and written reporting to the person's supervisor/employer;
 - (b) Issuance of a written warning, and recording of same;
 - (c) Reporting to the appropriate police department for investigation and subject to criminal prosecution;
 - (d) An order to leave the project site temporarily or permanently; or
 - (e) Remedies as may be specified in the Contract
- 4.4 Vendor's Fit For Duty Policy
- (a) The Vendor is required to ensure all Vendor Personnel at the Place of Work have read and understand the Vendor's fit for duty policy requirements in addition to the Metrolinx fit for duty requirements stated in this Section 4.0.
 - (b) The Vendor shall provide a copy of its Fit-For-Duty Policy and Program to Metrolinx within thirty (30) Business Days after final execution of the Contract. (The Metrolinx Fit-For-Duty Policy can be provided to the Vendor upon request, solely as an example for reference purposes.)

5.0 Metrolinx Safety Manual

- 5.1 Metrolinx will issue an appropriate number of copies of its "Safety Guidelines for Contractors, Consultants and Project Coordinators" to the Vendor at the start-up meeting.
- 5.2 Vendors are responsible for familiarizing themselves and their employees with the contents of this manual.
- 5.3 Vendors shall distribute copies of this manual to their Subvendors and shall ensure that they, and their employees, are familiar with its content.
- 5.4 Vendors shall ensure that all persons given a copy of the "Safety Guidelines for Contractors, Consultants and Project Coordinators" complete the acknowledgement on the second page of the manual and return it to Metrolinx.
- 5.5 The requirements of this manual shall apply to the Work and the Place of the Work.

END OF SECTION

ATTACHMENTS

The following Attachments form part of, and are appended to this Request Document.

ITEM NO.	ATTACHMENT TITLE
1.	Request Document Forms RQQ-2018-BUSF-285 Fillable
2.	Request Document Form – Contract Prices
3.	Q and A Form RQQ-2018-BUSF-285
4.	Contractor Performance Appraisal - RQQ-2018-BUSF-285
5.	Metrolinx MERX Portal – General Information
6.	Sample Articles of Agreement
7.	Sample Parental Guarantee
8.	Sample Corporate Reference Check Questionnaire
9.	New / Update Existing Vendor Form
10.	Safety Guidelines for Contractors, Consultants and Project Coordinators