

Tender for Consultant's Assignment

Project Name: Consultant Assignment for the
Huronario LRT Design
Excellence Compliance Review
Panel

Tender Number: ITC-2017-RTI-001



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1.0 Definitions

In this Tender Document,

- 1.1 **"Addenda"** is the formal release of additions, deletions, revisions, clarifications to this Tender Document that form a part of the Contract.
- 1.2 **"Bidder"** means the legal entity that remits a Submission in response to this Tender Document and who if selected for award shall execute the Contract with Metrolinx for provision of the Services.
- 1.3 **"Business Day"** shall have the same meaning ascribed in Schedule A – Definitions of Appendix "A" – General Conditions.
- 1.4 **"Closing"** means, the deadline for Metrolinx to receive Submissions as specified in Section 3.1.5 of Instructions to Bidders.
- 1.5 **"Conflict of Interest"** means:
 - 1.5.1 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
 - 1.5.2 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.
- 1.6 **"Consultant"** shall have the same meaning ascribed in Appendix "A" – Definitions of Appendix "A" – General Conditions.
- 1.7 **"Consultant Personnel"** shall have the same meaning ascribed in Schedule A of Appendix "A" – General Conditions.
- 1.8 **"Contract"** shall have the same meaning ascribed in Schedule A – Definitions of Appendix "A" – General Conditions.
- 1.9 **"Contract Documents"** shall have the same meaning ascribed in Schedule A – Definitions of Appendix "A" – General Conditions.

- 1.10 **“Corporate Firm”** means any one of the following: a) the Bidder, b) the Bidder and its Subconsultants, or c) the Joint Venture, responding to the Tender Document.
- 1.11 **“Deliverables”** shall have the same meaning ascribed in Schedule A – Definitions of the Appendix “A” – General Conditions.
- 1.12 **“EBS”** means Electronic Bid Submission.
- 1.13 **“E-Bid Authorized Signer”** is the designated individual in the Bidder’s organization who has the authority to bind the Bidder to each and every term, condition, article and obligation of the Tender Document and any resultant Contract.
- 1.14 **“E-Bid Confirmation Number”** is the receipt received by a Bidder from MERX indicating that the Submission was uploaded successfully.
- 1.15 **“Evaluation Criteria”** means the criteria for evaluating the Submission as stated in Section 3.17 – Submission Evaluation of Instructions to Bidders herein.
- 1.16 **“FIPPA”** shall have the same meaning ascribed in Section 3.24 of Instructions to Bidders.
- 1.17 **“Joint Venture”** means a business arrangement of two or more parties proposed for this Tender Process further described in Section 3.19 of Instructions to Bidders.
- 1.18 **“Key Personnel”** has the meaning ascribed to it in Section 2.7(a) of the General Conditions.
- 1.19 **“Metrolinx”** shall have the same meaning ascribed in Schedule A – Definitions of Appendix “A” – General Conditions.
- 1.20 **“Option”** means a component of the Services that is to be exercised at the sole discretion of Metrolinx.
- 1.21 **“Participant in Charge”** shall have the same meaning ascribed in Section 3.19.3 of the Instructions to Bidders.
- 1.22 **“Parties”** shall have the same meaning ascribed in Schedule A – Definitions of Appendix “A” – General Conditions.
- 1.23 **“Procurement Office”** means the Metrolinx Procurement Services office located at 277 Front Street West, Toronto, Ontario, Canada, M5V 2X4.
- 1.24 **“Procurement Representative”** means the following individual in the Procurement Services Department:

Robert Cava, Procurement Officer	
Telephone number	(416) 202-5849

Email	Robert.Cava@metrolinx.com
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- 1.25 **“Project Schedule”** shall have the same meaning ascribed in Schedule A – Definitions of Appendix “A” – General Conditions.
- 1.26 **“Rates”** shall have the same meaning ascribed in Schedule A – Definitions of Appendix “A” – General Conditions.
- 1.27 **“Scope of Services”** means the scope of work described in Appendix “B”.
- 1.28 **“Services”** has the meaning ascribed to it in Section 2.2 (a) of the General Conditions.
- 1.29 **“Subconsultant”** shall have the same meaning ascribed in Schedule A – Definitions of Appendix A – General Conditions.
- 1.30 **“Submission”** means all documentation and other materials and information submitted by the Bidder in response to this Tender Document or in respect of this Tender Process.
- 1.31 **Tender Document”** means this Tender Document comprised of sections listed in the Table of Contents, issued by Metrolinx for the Services to be provided, and any Addenda thereto.
- 1.32 **“Tender Document Forms”** means any sections of this Tender Document which requires completion and must be included with the Submission.
- 1.33 **“Tender Process”** means the tendering procurement process set out in the Tender Document herein.
- 1.34 **“VPM”** shall have the meaning ascribed in Section 3.29.1 of Instructions to Proponents.
- 1.35 **“VPR”** shall have the meaning ascribed in Section 3.29.2 of Instructions to Proponents.

2.0 Introduction

2.1 General

- 2.1.1 Metrolinx is issuing this Tender Document to retain a Bidder to provide the goods and/or services described herein. Metrolinx intends to award a Contract through an open, fair and competitive process.

- 2.1.2 You are invited to submit your Submission for the Hurontario Light Rail Transit (HuLRT) Design Excellence Compliance Review Panel. The Panel is an embodiment of the importance that Metrolinx has put on design excellence. Design carries a disproportionate weight of importance as a primary driver of enhanced customer experience, being the tangible expression and touch point citizens will engage with daily as they move through the GTHA region. Using the “HuLRT Design Excellence Principles and Requirements” (DXP+R) document as the primary document of reference, the Panel will review and assess the drawings and presentations of the Proponents and give feedback regarding compliance with the Principles of Design Excellence, as more particularly described in this Tender Document as required by Metrolinx, which Services relates to the Hurontario LRT Design Excellence Compliance Review Panel.

3.0 Instructions to Bidders

3.1 General

3.1.1 The Tender Documents shall be read as a whole. The Schedules, Appendices and Addenda, if any, constitute an integral part of this Tender Process and are incorporated by reference. The documents included in this Tender Document (with the exception of any Addenda that may be issued subsequently) include all documents noted in the Table of Contents.

3.1.2 *****NOTE: ELECTRONIC BID SUBMISSION**

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

3.1.3 Your Submission is to be firm and irrevocable for one hundred and twenty (120) calendar days from the Closing.

3.1.4 Your Submission will be evaluated in accordance with Section 3.17 – Submission Evaluation of Instructions to Bidders.

3.1.5 Tender Timetable

Milestone	Date
Issuance of Tender Documents	Wednesday, July 12, 2017
Deadline to Submit Questions	Wednesday, July 19, 2017
Last day for issuance of Addenda	Monday, July 24, 2017
Closing	Thursday, July 27, 2017; 3:00pm Toronto, ON time
Commencement Date of Services	Tuesday, August 29, 2017

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

3.2 Tender Enquiries

3.2.1 All written enquiries and other communications prior to full Contract execution are to be directed solely to the Procurement Representative as listed in Section 1.24.

- 3.2.2 Any questions concerning the Tender Documents, the contents herein, or the Services 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 Tender Documents shall be entertained after this time regardless of the reason.
- 3.2.3 All questions/requests for clarification related to the Tender Documents are to be submitted via e-mail to the attention of the Procurement Representative using the question and answer template which is a fillable Excel file attached separately as:

Q and A Template_TENDER ITC-2017-RTI-001.xlsx

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

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

3.3 Mandatory Site / Information Meeting

Not Applicable

3.4 Addenda / Changes to the Tender Documents

- 3.4.1 In the event that Metrolinx determines in its sole discretion, that clarifications of, or revisions to the Tender Documents are required, all Bidders who received copies of the Tender Documents shall be advised of such clarifications or revisions during the tendering period by written Addenda. Such Addenda shall become part of the Tender Documents and the contents thereof shall be allowed for in the prices bid for the Services.
- 3.4.2 It is the Bidder's responsibility to ensure that they have received copies of all Addenda, and to ensure that the Addenda have been considered in their Submission. Addenda, if applicable, will be issued through MERX. Information concerning the number of Addenda issued and the date of issue of the most recent Addendum can be found at www.merx.com for this Tender Process. Bidders are urged to select automatic notification of Addenda issuance when registering on MERX.

- 3.4.3 The Bidder, when ascertaining if copies of all Addenda issued have been received, shall be responsible for allowing sufficient time prior to the Closing to receive any missing Addenda and to review and allow for the contents thereof in the Submission.
- 3.4.4 The Bidder shall submit the Submission using the most current Tender Document Forms as issued via Addenda. Failure to use the most current pages of the Tender Document Forms may result in the Submission being found non-compliant and disqualified.

3.5 Tender Submission

- 3.5.1 Bidders remitting a Submission to Metrolinx shall exercise extreme care when completing and submitting all Tender Document Forms.
- 3.5.2 Bidders shall examine carefully the whole of the Tender Documents and any data referred to therein. They shall make the necessary investigations to inform themselves thoroughly as to the character and magnitude of the Services.
- 3.5.3 The Bidder shall not claim at any time after the Closing and/or after notification of award of the Contract that there was any misunderstanding or uncertainty in regard to the Tender Documents 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.
- 3.5.4 Your Submission should be completed fully in a clear and comprehensible manner.
- 3.5.5 Submissions shall be remitted electronically through MERX EBS only. Submissions remitted in any other manner shall be deemed non-responsive and automatically disqualified.
- 3.5.6 The Submission shall be submitted on the original Tender Document Forms as issued by Metrolinx through the MERX website and except for designated sections where the Bidder is to enter information, the Tender Document and Tender Document Forms shall not be altered in any way including, but not limited to, write-ins, strike-outs of the pre-printed provisions or any other conditional or qualifying statements.
- 3.5.7 Any Submission which contains conditional and/or qualifying statements shall be deemed non-compliant and disqualified unless such conditional and/or qualifying statements are withdrawn in writing by the Bidder, upon request by Metrolinx.
- 3.5.8 If during the preparation of their Submission, the Bidder desires to make a change which requires correction, alteration or erasure to any information previously entered in a designated section of the Submission by the Bidder, documents that have been uploaded to MERX using EBS

can be added, removed and/or re-submitted as often as required at any time, prior to Closing.

3.5.9 Any Submission documents that are attempted to be uploaded via MERX EBS after the Closing has occurred (as confirmed by the MERX Audit Report) shall be automatically rejected by Metrolinx, regardless of the reason for lateness.

3.5.10 All prices shall be firm and quoted in Canadian funds. The prices quoted in the Submission shall represent full payment for all Services necessary for the proper completion of the Contract.

3.5.11 Submissions shall be remitted on MERX by the Bidder's E-bid Authorized Signer.

(a) NOTE: The Bidder can have only one (1) E-Bid Authorized Signer which is to be used for any EBS submission process.

(b) The E-Bid Authorized Signer does not have to be either the person placing the order for the Tender Document on MERX, nor do they have to be subscribed to MERX. Once an E-Bid Authorized Signer has been setup, a letter from MERX will be sent via email to the E-Bid Authorized Signer.

(c) For the purposes of a Joint Venture, the E-Bid Authorized Signer of the Participant-in-Charge shall remit the Submission.

3.5.12 Submissions must be remitted electronically through the MERX EBS system. For assistance in using MERX EBS, please watch the online Electronic Bid Submission tutorial at: <http://www.youtube.com/watch?v=To0fqScCW3M>. Alternatively, you can contact MERX directly at 1-800-964-MERX (**6379**) or visit the MERX website at www.merx.com for further instruction or assistance regarding EBS and/or E-Bid Authorized Signer registrations.

(a) Please review the E-bid checklist on MERX as this will provide some general assistance regarding uploading of documents.

(b) It is the Bidder's sole responsibility to ensure that all required information for their Submission is uploaded to MERX via EBS. Failure of the Bidder to include all required items may result in the Bidder's Submission being deemed non-responsive and disqualified.

(c) The largest individual file size that can be submitted through MERX is 100MB, although there is no limit to the number of files that can be submitted. If any individual file size is over 100MB, the Bidder's Submission can be split into multiple parts, and submitted as clearly labelled,

multiple files once the Submission has been broken up into files of 100MB or smaller.

- (d) MERX places no restriction on file format and does not convert or zip files during the upload process.
- (e) In order to complete the Submission, the on-line authorization of the Bidder's E-Bid Authorized Signer will be required. It is the Bidder's sole responsibility to have an E-Bid Authorized Signer PIN number issued from Merx at least one (1) day prior to Closing. Visit tenders.merx.com/RequestEBSPin to request a PIN for the Bidder's E-bid Submission Authorized Signer.

3.5.13 Information contained in the most recent Submission remitted via MERX EBS and received prior to the Closing will take precedence over the information contained in previously received Submissions from the Bidder.

3.5.14 The Bidder may withdraw a Submission at any time prior to the Closing specified by Metrolinx by logging into MERX on the E-bid Submission screen locating the opportunity and clicking 'Delete' for the opportunity in question. Once deleted, an E-bid is given the status 'Not Submitted'

3.5.15 Submission Deadline

- (a) Submissions must be fully uploaded via MERX EBS by the Closing. Any Submission or portions thereof received after the Closing (as confirmed by MERX Audit Report) shall be deemed non-responsive and the entire Submission shall be disqualified regardless of the reason for lateness. The Bidder shall remit the Submission with sufficient time to ensure its arrival before the Closing.
- (b) It is recommended by MERX to allow at least four (4) hours to remit the Submission via EBS, which shall provide the Bidder with the opportunity to upload all documents and resolve any potential issues that may arise. If you have many large documents or you are not running on high speed internet access you may want to give yourself additional time. If the problem persists, call MERX directly at 1-800-964-MERX (6379). Metrolinx staff will be unable to assist with any EBS related issues.
- (c) If the Bidder attempts to remit their Submission, or portions thereof, after the Closing, such documents shall not be accepted by the MERX system.
- (d) In the event that the MERX system allows late Submissions, this will not supersede any stipulations herein regarding late submissions.

- (e) Upon successful completion of the EBS process , the Bidder shall be provided with an E-bid Confirmation Number from MERX. All reports are kept on the Bidder's MERX account for seven (7) years after the Closing.
- (f) Notwithstanding the above, Metrolinx reserves the right to postpone the Closing at which time all potential Bidders shall be advised of the new Closing by way of Addenda.
- (g) 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 Tender opening will be made public within approximately 24-hours on the MERX website at www.merx.com/metrolinx (search "Metrolinx" or the Tender Number and select "Bid Results").
- (h) Upon execution of the final Contract, all Bidders that have remitted a Submission shall be notified in writing of the results of the award to the successful Bidder. Results of the award to the successful Bidder shall also be posted on the Metrolinx website at www.metrolinx.com/tenders under "Bid Award Results" (Tender) and/or the MERX website at www.merx.com/metrolinx (search "Metrolinx" or the Tender Number and select "Awards").
- (i) All documentation received by Metrolinx with regards to this Tender Process will be retained by Metrolinx and will not be returned to the Bidder.

3.6 Clarification of Submissions

- 3.6.1 Metrolinx reserves the right, within one hundred and twenty (120) calendar days following the Closing, to request that any Bidder clarify its Submission and such Bidders shall submit responses to such request within five (5) Business Days following receipt of such request or within such shorter time as Metrolinx may require. Metrolinx may, in its sole discretion, choose to meet with some or all of the Bidders to discuss aspects to their Submission. Metrolinx may require Bidders to submit information clarifying any matters contained in their Submission or Metrolinx may prepare a written interpretation of any aspect of a Submission and seek the respective Bidder's acknowledgement of that interpretation.
- 3.6.2 Such information accepted by Metrolinx, for purposes of clarification, and written interpretations which have been acknowledged by the relevant Bidder shall be considered to form part of the Submission of those Bidders.

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

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

3.7 Bidder Qualifications

3.7.1 Corporate Experience and Qualifications

Only qualified Bidders will be considered for award of this Contract. In order to be considered qualified, the Bidder shall demonstrate to the satisfaction of Metrolinx it has:

- (a) satisfactorily completed in the sole opinion of Metrolinx, a contract for work similar in scope and nature as “the Services of this Contract”;
- (b) has fifteen (15) or more years of experience in the design and implementation of high quality, high profile, civic institutions and/or infrastructure, with an emphasis on experience and knowledge of design excellence;
- (c) as an effective designer has substantial demonstrated experience with successful, integrated and collaborative team design;
- (d) has demonstrated substantial experience in playing a significant role (e.g. partner-in-charge, lead designer, project manager, or a substantial contributor to the design) in at least one architectural, landscape architectural, urban design, or industrial design award-winning civic Project. Applicable design awards include those awards which are peer reviewed and awarded competitively by design related organizations, professional associations, academic and government bodies, and publications;
- (e) has demonstrated experience designing in complex urban and transitioning suburban, public realm environments that actively connect with adjacent buildings, streets, and parks;
- (f) portfolio of work demonstrates mandate of design excellence with particular attention to elevating the user, and ideally transit passenger experience;
- (g) other design excellence qualifications and experience (e.g. other awards in addition to those already listed; publications; academic research/lecturing; policy

writing/design standards; experience on design review panels, competition juries, industry panels, etc.); and

- (h) the physical and financial resources to sustain and complete the Services.

3.7.2 With respect to the experience requirements set out in Subsection 3.7.1, each Bidder is solely responsible to provide, in Attachment #2A:

- (a) a detailed description of the completed relevant work, starting with the most recent, that the Bidder has performed and that the Bidder is representing to Metrolinx it meets the requirements of Subsection 3.7.1 ; and
- (b) the names and coordinates of an owner's representative and a consultant's representative (for each project) that are prepared to speak to Metrolinx with respect to the Bidder's performance on each project described in Attachment #2A.

3.7.3 In respect of the owner representatives provided by Bidders in Attachment #2A, Metrolinx may, in its sole discretion, decline to contact the owner representatives provided by any Bidder and rely on the detailed descriptions provided by the Bidder in Attachment #2A.

3.7.4 The Bidder is permitted to list work completed under a Metrolinx contract to meet the requirements of Subsection 3.7.1 and, if it does so, Metrolinx will contact the owner representatives named in accordance with Subsection 3.7.3 herein in the same manner as it would for projects listed in Attachment #2A that are completed or carried out for a third party.

3.7.5 In its determination of whether a Bidder meets the requirements of Section 3.7.1 herein, Metrolinx may, in its sole discretion:

- (a) take into account the experience of Metrolinx itself in dealing with the Bidder in circumstances where the Bidder has carried out (or is carrying out) a project for Metrolinx (whether or not the Bidder has listed such a project in Attachment #2A); and
- (b) make general inquiries of third parties with respect to the qualifications of a Bidder and take the results of these general inquiries into account (whether or not the Bidder has listed the third party or the applicable project in Attachment #2A).

3.7.6 Consultant Personnel Experience and Qualifications

- (a) Consultant Personnel experience and qualifications shall be as stated in Schedule B of Appendix "A" – General Conditions.

- 3.7.7 Before any Submission is accepted, any Bidder may be required to demonstrate to the satisfaction of Metrolinx, that it is capable of performing the Services. 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 Bidder is qualified to perform the Services.
- 3.7.8 In the event the Bidder does not demonstrate to the satisfaction of Metrolinx that it possesses the necessary qualifications and experience to be considered for award of the Contract its Submission shall be found non-responsive and disqualified.

3.8 Insurance

- 3.8.1 As a condition of award of this Contract, in accordance with and subject to the provisions of Schedule D– Insurance, of Appendix “A” - General Conditions, the Bidder shall provide to Metrolinx certificates for the following types of insurance in the amounts specified within five (5) Business Days of notification of acceptance of its Submission.
- (a) General Liability Insurance
 - (i) The policy shall be in an amount of not less than two million dollars (\$2,000,000.00) per occurrence.
 - (b) Automobile Liability Insurance
 - (i) The policy shall be in an amount of not less than two million dollars (\$2,000,000.00) per occurrence.
 - (c) Errors and Omissions/ Professional Liability Insurance
 - (i) The policy shall be in an amount of not less than two million dollars (\$2,000,000.00) per claim.
- 3.8.2 Certificates of Insurance shall include:
- (a) The Contract name and number;
 - (b) Additional insureds as identified in Schedule D – Insurance of Appendix “A” – General Conditions; and
 - (c) Confirmation that the policy includes a waiver of subrogation against Metrolinx as required in Schedule D – Insurance of Appendix “A” – General Conditions.
- 3.8.3 All Certificates of Insurance shall include a provision requiring the insurer to give Metrolinx thirty (30) days prior written notice of any changes to, or cancellation of, the required insurance policies.

3.8.4 Failure by the Bidder to comply with these requirements shall result in the award of the Contract being declared void.

3.9 Workplace Safety and Insurance Clearance Certificate

3.9.1 The Bidder shall remit as part of its Submission a valid Workplace Safety and Insurance Clearance Certificate for the premium rate class, subclass or group as appropriate for the Services of this Contract, as issued by the Workplace Safety and Insurance Board. Failure to comply with this requirement may cause the Submission to be deemed non-responsive and disqualified.

3.9.2 In addition, the Bidder to whom this Contract is awarded shall furnish a valid Workplace Safety and Insurance Clearance Certificate for the premium rate class, subclass or group as appropriate for the Services 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 Bidder to comply with this requirement shall result in the Contract award being declared void.

3.10 Parent Company Indemnity

If requested by Metrolinx, as a condition of award of Contract, a subsidiary company shall be required to submit a 'Guarantee' from its parent company, included and provided for in Appendix "C" – Documents, or in a form satisfactory to Metrolinx and agrees to provide all the necessary financial and technical support for the proper completion of the said Contract and shall guarantee the performance of the said Contract in accordance with the terms and conditions, including timely completion thereof, and agrees to guarantee the Services for the warranty period(s) stipulated therein.

3.11 Mandatory Requirements

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

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

- (a) The Form of Tender must be submitted by the E-Bid Authorized Signer.
- (b) Pricing information must be completed and submitted on using the Attachment #1 – Contract Prices provided.
- (c) Bidders shall declare any conflicts of interest in Section 4.6 of Form of Tender. If Section 4.6 is left blank the provisions of Section 4.6.1 of Form of Tender shall apply.

3.12 Rights of Metrolinx

3.12.1 Metrolinx has the right, in its sole discretion:

- (a) to cancel this call for Tenders and any acceptance of a Submission for any reason and at any time before the Agreement between Metrolinx and Consultant has been executed and delivered by both parties, without any obligation whatsoever to a Bidder;
- (b) to reject any or all Submissions. The Submission with the lowest price will not necessarily be accepted. Metrolinx's selection shall be based on which Bidder has provided a Submission which Metrolinx determines, in its sole discretion, to provide the greatest value based on quality, service and price and determined on the evaluation criteria contained in this Tender Document;
- (c) to disqualify any Submission which contains misrepresentations or any other inaccurate or misleading information;
- (d) to waive any requirement of the Tender Documents or request amendment where, in the sole opinion of Metrolinx, there is an irregularity or omission in the information provided that is not material to the Submission unless a specific consequence has been identified herein for the commission of such an irregularity or omission;
- (e) to waive the requirement to check references;
- (f) to not respond to a Bidder's question(s);
- (g) to use its own experiences, and the experiences of any other third party, with the Bidder in previous contracts in order to evaluate the Bidder's performance. Specifically to,
 - (i) take into account the experience of Metrolinx itself in dealing with the Bidder in circumstances where the Bidder has carried out (or is carrying out) a project for Metrolinx (whether or not the Bidder has listed such project on Attachment #2A of Form of Tender; and
 - (ii) make general inquiries of third parties with respect to the qualifications of a Bidder and take the results of these general inquiries into account (whether or not the Bidder has listed the third party or the applicable project in Attachment # 2A of Form of Tender.

- (h) to award or not award based on submitted references and/or references independently obtained by Metrolinx;
- (i) to award or not award based on the Bidder's experiences with Metrolinx or other departments or agencies within the Ontario government, if the Bidder:
 - (i) was previously given a "Notification of Award" of contract by a department or agency within the Ontario government and defaulted in proceeding with the work of the contract;
 - (ii) failed or refused to comply with any applicable federal, provincial or municipal law governing a bid or a prior contract with a department or agency within the Ontario government;
 - (iii) had a previous contract with a department or agency within the Ontario government that was terminated for default in the past year; or
 - (iv) is an affiliate of or successor to any corporation described in Sections 3.12.1(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 3.12.1(i)(i) through (iii) above.
- (j) before any Submission is accepted 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 Bidder is qualified to perform the Services.
- (k) to request a listing of all projects, regardless of scope, complexity or estimated value, completed for or terminated by Metrolinx within the past three (3) years or currently active;
- (l) to distribute via Addenda, copies of any Bidder's questions received and responses provided by Metrolinx, to all Bidders who received the Tender Documents;
- (m) to postpone the Closing, at which time all Bidders who received Tender Documents shall be advised of the new Closing via written Addenda;
- (n) within one hundred and twenty (120) days following the Closing, to request that any Bidder clarify its Submission and such Bidders shall submit responses to such request within five (5) Business Days following receipt of such

request or within such shorter time as Metrolinx may require;

- (o) to prepare a written interpretation of any aspect of a Submission and require the relevant Bidder's acknowledgement of the accuracy of that interpretation;
- (p) to request that a Bidder voluntarily withdraw its Submission without penalty where in the opinion of Metrolinx the Submission is substantially below internal budget estimates and therefore the Services would not be satisfactorily completed;
- (q) to correct arithmetical errors in any or all Submissions where such errors affect the Estimated Contract Price. Arithmetical corrections will only be made based upon the unit prices submitted by the Bidder. Corrections to extensions, sums, differences or other arithmetical operations based on the unit prices submitted will be identified on the Tender Document by Metrolinx and acknowledged in each instance by the initials of the Bidder's and Metrolinx's authorized signatories. Such corrections will become part of the Bidder's Submission. Failure of the Bidder to acknowledge such corrections will result in its Submission being deemed non-responsive and disqualified.
- (r) to, upon failure of the Bidder whose Submission was accepted to fulfil the conditions of Section 3.13 herein, cancel award of Contract and consistent with industry practice award to another qualified Bidder; and
- (s) to proceed with and to enter into a Contract with the Bidder for the provision of Services, as stated in Appendix "B" Consultant's Scope of Services.

3.13 Contract To Be Executed

3.13.1 Metrolinx shall notify the Bidder in writing of acceptance of its Submission by Metrolinx. Metrolinx will prepare the Articles of Agreement and bind it into the Contract Documents. Two (2) sets of Contract Documents will be forwarded to the Bidder for review and execution.

3.13.2 Metrolinx's intention is to award a contract to one or more than one (1) Proponent(s). The amount allocated to each Contract shall be determined by Metrolinx at its sole discretion.

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

with the required Insurance Certificates and Workplace Safety and Insurance Clearance Certificate as well as any other stated requirements, shall result in the cancellation of the Contract award.

3.13.4 Upon failure of the Bidder, whose Submission was accepted, to fulfil the conditions of Section 3.13.2 herein, Metrolinx may, at its sole discretion, award the Contract. Consistent with industry practice, Metrolinx may notify another Bidder who was determined to be qualified in accordance with the evaluation criteria stated herein and who submitted a responsive Submission that its Submission has been accepted and, subsequent to the fulfillment of the conditions of Section 3.13.2 herein, that Bidder shall be deemed to be the successful Bidder and the Bidder to whom the Contract is awarded.

3.13.5 There is no binding contract for the supply of the Services unless and until Metrolinx and the Bidder whose Submission has been accepted have executed the written agreements contemplated in the Tender Document.

3.13.6 The Bidder shall not start the Services before the Contract Documents have been executed by the Bidder and Metrolinx and all documents required by the Tender Document, as a condition of award of the Contract, have been delivered to Metrolinx.

3.14 Commencement and Completion

The dates for commencement and completion of the Services are set out in the Form of Tender.

3.15 Subconsultants

Bidders shall be responsible for the distribution of all Addenda issued in relation to this Tender Document, to their Subconsultants.

3.16 Allowances

The Estimated Contract Price bid must include any and all Cash Allowances as stated in the Form of Tender.

3.17 Submission Evaluation

3.17.1 Subject always to the "Rights of Metrolinx" set out herein and without creating any obligations whatsoever to any Bidder, Metrolinx advises that it shall evaluate Submissions using the following criteria:

- (a) Estimated Contract Price;
- (b) Bidder's Qualifications;
- (c) Proper Completion of Tender Documents and Tender Document Forms;

- (d) Compliance to Tender Document Requirements; and
- (e) Submission of all Mandatory Requirements.

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

3.18 Conflict of Interest

3.18.1 The Conflict of Interest declaration included in the Form of Tender shall be completed and provided with the Submission.

3.18.2 Examples of Conflict of Interest include but are not limited to:

- (a) any director, officer or employee or advisor of Metrolinx has any connection or relationship with, or any pecuniary interest in the Proponent or any Subconsultant thereof;
- (b) the Bidder or any Subconsultant thereof is in possession of confidential information relating to the Services; and
- (c) any director, officer or employee or advisor of Metrolinx who has knowledge of the Services has assisted the Bidder in the preparation of its Submission.

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

3.19 Joint Ventures

3.19.1 If a Joint Venture is proposed, the Bidder shall state in its Submission the Joint Venture arrangements that form the basis on which the Joint Venture plans to carry out its obligations.

3.19.2 The Joint Venture shall not change its Joint Venture arrangement without the prior written approval of Metrolinx in its sole discretion in accordance with the process set out in Section 3.28.

3.19.3 One of the Joint Venture participants shall be nominated as being in charge during this Tender Process and, in the event of a successful Submission during finalization of the Contract (the "Participant in Charge"). The Participant in Charge shall be authorized by the other joint venture participants to incur liabilities and receive instructions for and on behalf of any and all participants of the joint venture.

3.19.4 Each Joint Venture participant shall demonstrate its authorization of the Participant in Charge by submitting with their Submissions a power of attorney, or similar document, signed by a legally authorized representative of the Joint Venture participant.

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

3.20 Prohibited Contacts and Lobbying Prohibition

3.20.1 A Bidder and all of the Bidder's respective Subconsultants, advisors, employees and representatives are prohibited from engaging in any form of political or other lobbying, of any kind whatsoever, to influence the outcome of this Tender Process.

3.20.2 Without limiting the generality of Section 3.20.1, neither Bidders nor any of their respective Subconsultants, advisors, employees or representatives shall contact or attempt to contact, either directly or indirectly, at any time during the Tender Process, any directors, officers, employees and advisors of Metrolinx, other than the Procurement Representative.

3.21 Media Releases, Public Disclosures and Public Announcements

3.21.1 A Bidder shall not, and shall ensure that its advisors, employees or representatives do not, issue or disseminate any media release, public announcement or public disclosure (whether for publication in the press on the radio, television, internet, or any other medium) that relates to this Tender Process, this Submission or any matters related thereto, without the prior written consent of Metrolinx.

3.21.2 A Bidder and all of the Bidder's respective advisors, employees and representatives shall not make any public comment, respond to questions in a public forum, or carry out any activities to either criticize another Bidder or Submission or to publicly promote or advertise its own qualifications, interest in or participation in the Tender Process without the prior written consent of Metrolinx, which may be withheld in the sole discretion of Metrolinx. Notwithstanding this item, the Bidder, Bidder's team members and all of the Bidder's respective advisors, employees and representatives are permitted to state publicly that it/they are participating in the Tender Process.

3.21.3 For greater clarity, this section does not prohibit disclosures necessary to permit the Bidder to discuss the Tender Document with prospective Subconsultants' participation in this Tender Process.

3.22 Restriction on Communications Between Bidders – No Collusion

A Bidder shall not discuss or communicate, directly or indirectly, with any other Bidder, any information whatsoever regarding the preparation of its own Submission or the Submissions of other Bidders. Bidders shall prepare and

submit Submissions independently and without any connection, knowledge, comparison of information or arrangements, direct or indirect, with any other Bidder. This obligation extends to all team members of a Bidder and all of the Bidder's respective advisors, employees and representatives.

3.23 Disclosure of Information

3.23.1 The Bidder hereby agrees that any information provided in its Submission, even where it is identified as being supplied in confidence, may be disclosed by Metrolinx where required by law, order of a court, or tribunal.

3.23.2 The Bidder hereby consents to the disclosure, on a confidential basis, of its Submission by Metrolinx to Metrolinx's advisors retained for the purpose of evaluating or participating in the evaluation of the Submissions.

3.23.3 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.

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

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

3.25 Submission to Be Retained by Metrolinx

Metrolinx shall not return a Submission or any accompanying documentation submitted by a Bidder.

3.26 Confidential Information of Metrolinx

3.26.1 All information provided by or obtained from Metrolinx in any form in connection with the Submission process;

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

3.27 Bidders Shall Bear Their Own Costs

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

3.28 Changes to Proponent Key Personnel, Subconsultants or Joint Venture

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

3.28.2 In response to a request as per Section 3.15.1 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, Subconsultants 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.

3.28.3 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.

3.28.4 Metrolinx may, in its sole discretion, disallow any actual or proposed change.

3.29 Vendor Performance Management Program

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

3.29.2 Pursuant to Metrolinx's VPM Program, Metrolinx may consider a Bidder's past performance under contracts with Metrolinx in evaluating

Submissions received in response to this Tender Document. The Vendor Performance Rating (“VPR”) is the average of a vendor’s performance evaluation scores (as assessed by or on behalf of Metrolinx) for a thirty-six (36) month period preceding the Closing. If a Bidder has not completed any work for Metrolinx in the three (3) years preceding the Closing, for the purpose of evaluating the Submission, the Bidder will be assigned a VPR which is the straight average of all the VPRs of all vendors who have performed services for Metrolinx during the prior fiscal year.

- 3.29.3 If the VPR is being applied as a component of the award evaluation for this Tender Process, the legal name of the Bidder stated on the Form of Tender will be used. It is the responsibility of the Bidder to ensure that its proper legal name has been stated on the Form of Tender. Metrolinx will not accept any requests from the Bidder to change the legal name provided after the Closing.
- 3.29.4 In case of a Joint Venture where multiple parties will sign the Contract, the VPR of each participant will be added and the average will be applied.
- 3.29.5 For the purposes of this Tender Process, the application of the VPR is set out in Contract Performance Appraisal included in Appendix “C” – Documents.

3.30 Nature of Agreement

The General Conditions set out in Appendix “A” and the Consultant’s Scope of Services set out in Appendix “B” attached hereto shall be included in and form part of the Contract. Remitting a Submission constitutes acknowledgement that the Bidder has read and agrees to be bound by such conditions.

END OF SECTION

4.0 Form of Tender

The following Form of Tender is to be included as the first section within the Bidder's Submission. The Form of Tender must be remitted by the E-Bid Authorized Signer. The Form of Tender shall not be retyped, and entries shall be made directly on the form provided by Metrolinx.

Tender Number: ITC-2017-RTI-001

Tender Description: Consultant's Assignment for Hurontario LRT Design Excellence Compliance Review Panel

4.1 Bidder Submission Checklist

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

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

4.2 Contact Information

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

[Click here to enter text.](#)

- (a) If a Joint Venture, enter the registered legal business name of the Participant-in-Charge:

[Click here to enter text.](#)

- (b) If a Joint Venture, enter the registered legal business name of the other Joint Venture members:

[Click here to enter text.](#)

- 4.2.2 Bidder's (if Joint Venture, insert Participant-in-Charge information) address, telephone and facsimile numbers:

[Click here to enter text.](#)

- 4.2.3 Name, title, address, telephone, e-mail and facsimile numbers of the contact person(s) for the Bidder (if a Joint Venture, insert Participant-in-Charge information)

[Click here to enter text.](#)

- 4.2.4 Name of the person who is primarily responsible for the Submission:

[Click here to enter text.](#)

4.3 Bidder Acknowledgments

- 4.3.1 In consideration of the mutual premises and agreements contained herein and for other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the undersigned Bidder hereby offers to Metrolinx to furnish all necessary labour, superintendence, plant, tools, appliances, equipment, supplies and other accessories, services and facilities necessary to perform the following services:

TO PROVIDE CONSULTANT'S ASSIGNMENT FOR THE HURONTARIO LIGHT RAIL TRANSIT (HULRT) DESIGN EXCELLENCE COMPLIANCE REVIEW PANEL. THE PANEL IS AN EMBODIMENT OF THE IMPORTANCE THAT METROLINX HAS PUT ON DESIGN EXCELLENCE. DESIGN CARRIES A DISPROPORTIONATE WEIGHT OF IMPORTANCE AS A PRIMARY DRIVER OF ENHANCED CUSTOMER EXPERIENCE, BEING THE TANGIBLE EXPRESSION AND TOUCH POINT CITIZENS WILL ENGAGE WITH DAILY AS THEY MOVE THROUGH THE GTHA REGION. USING THE "HULRT DESIGN EXCELLENCE PRINCIPLES AND REQUIREMENTS" (DXP+R)

DOCUMENT AS THE PRIMARY DOCUMENT OF REFERENCE, THE PANEL WILL REVIEW AND ASSESS THE DRAWINGS AND PRESENTATIONS OF THE PROPONENTS AND GIVE FEEDBACK REGARDING COMPLIANCE WITH THE PRINCIPLES OF DESIGN EXCELLENCE, AS SET OUT IN THE CONSULTANT'S SCOPE OF SERVICES, ATTACHED AS APPENDIX "B".

- 4.3.2 The Bidder hereby undertakes to perform the Services in strict accordance with the full intent of the terms, conditions and requirements set forth in the following documents which form the Tender Documents:

ANY ADDENDA ISSUED HERETO
INSTRUCTIONS TO BIDDERS
FORM OF REQUEST
ATTACHMENT #1 – CONTRACT PRICES
ATTACHMENT #2A – SUPPORTING DOCUMENTATION: CORPORATE EXPERIENCE AND QUALIFICATIONS
ATTACHMENT #2B – SUPPORTING DOCUMENTATION: KEY PERSONNEL CURRICULUM VITAE AND PROJECT REFERENCES
APPENDIX "A" - GENERAL CONDITIONS
APPENDIX "B" - CONSULTANT'S SCOPE OF SERVICES
APPENDIX "C" - DOCUMENTS

- 4.3.3 The Bidder acknowledges receipt of any and all Addenda issued hereto and that their Submission has been developed in consideration of the Addenda.
- 4.3.4 The Bidder's Submission is hereby submitted on the full understanding that it is an irrevocable offer by the Bidder for a period of one hundred and twenty (120) calendar days from the Closing. The Bidder hereby covenants that it shall perform and execute the Services, in accordance with the Contract Prices quoted herein if it is notified in writing by Metrolinx within the one hundred and twenty (120) calendar day period that it is the successful Bidder.
- 4.3.5 The Bidder acknowledges that it meets all mandatory requirements in order for their Submission to be considered further. Failure of a Bidder to meet all of the mandatory requirements shall result in the Bidder's Submission to be deemed non-compliant and shall not be considered further.
- 4.3.6 The Bidder acknowledges that their Submission should be in the correct format using the appropriate Tender Document Forms and instructions as provided herein. Failure to comply may result in the Bidder being found non-responsive and disqualified at the sole discretion of Metrolinx.
- 4.3.7 The Bidder acknowledges that by way of the E-Bid Authorized Signer remitting a Submission, the Bidder is agreeing to be bound to each and every term, condition, article and obligation of the Tender Document and any resultant Contract.

- 4.3.8 The Bidder acknowledges that consistent with Section 3.13.2 of Instructions to Bidders, failure by the Bidder, whose Submission was accepted by Metrolinx, to execute and deliver the Contract with the required Insurance Certificates and Workplace Safety and Insurance Clearance Certificate shall result in the cancellation of the Contract award.

4.4 Requirements

- 4.4.1 The Bidder shall provide labour, superintendence, plant, tools, appliances, equipment, supplies and other accessories, services and facilities necessary to provide engineering services for the Hurontario Light Rail Transit (HuLRT) Design Excellence Compliance Review Panel. The Panel is an embodiment of the importance that Metrolinx has put on design excellence. Design carries a disproportionate weight of importance as a primary driver of enhanced customer experience, being the tangible expression and touch point citizens will engage with daily as they move through the GTHA region. Using the "HuLRT Design Excellence Principles and Requirements" (DXP+R) document as the primary document of reference, the Panel will review and assess the drawings and presentations of the proponents and give feedback regarding compliance with the principles of design excellence for the Hurontario LRT project, in accordance with the Consultant's Scope of Services, attached as APPENDIX "B" (the "Services").
- 4.4.2 The Services are to be provided to the satisfaction of the Director, RT – Hurontario LRT, unless otherwise specified.

4.5 Consultant Personnel (Schedule B Template)

The Consultant Personnel roles shall be filled using Schedule B Template in accordance with the Contract Documents and in accordance with the requirements in respect of qualifications, experience and minimum years of experience as contained in Schedule B – Consultant Personnel of Appendix "A" - General Conditions.

4.6 Conflict of Interest

- 4.6.1 If the box below is left blank, the Bidder will be deemed to declare that (a) there was no Conflict of Interest in preparing its Submission; and (b) there is no foreseeable Conflict of Interest in performing the contractual obligations contemplated in the Tender Document.

Otherwise, if the statement below applies, check ("X") the box.

- (a) The Bidder declares that there is an actual or potential Conflict of Interest relating to the preparation of its Submission, and/or the Bidder foresees an actual or

potential Conflict of Interest in performing the contractual obligations contemplated in the Tender Document.

- (b) If the Bidder declares an actual or potential Conflict of Interest by marking the box above, the Bidder must set out below details of the actual or potential Conflict of Interest:

4.6.2 The following individuals, as employees, advisers, or in any other capacity;

- (a) participated in the preparation of our Submission (whether as employees, advisors, or in any other capacity); and
- (b) were employees, advisors or consultants of Metrolinx at any time within the twelve (12) months prior to the Closing:

Name of Individual: Click here to enter text.
Job Classification: Click here to enter text.
Department: Click here to enter text.
Last Date of Employment with Metrolinx: Click here to enter text.
Name of Last Supervisor: Click here to enter text.
Brief Description of Individual's Job Functions: Click here to enter text.
Brief Description of Nature of Individual's Participation in the Preparation of the Submission: Click here to enter text.

4.6.3 (Repeat above for each identified individual)

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

4.7 Harmonized Sales Tax

In accordance with Section 11.1(i) of Appendix "A" – General Conditions, the Consultant represents, warrants and covenants to Metrolinx that the Consultant is and shall remain duly registered for the purposes of Part IX of the Excise Tax Act and that the Consultant's registration number is: [Click here to enter text.](#)

A non-resident Bidder unable to provide a H.S.T. Registration Number at the time of Submission shall be required to provide a H.S.T. Registration Number within five (5) Business Days of acceptance of its Submission by Metrolinx.

Failure to comply with this requirement may result in the Contract being declared VOID.

4.8 Project Schedule

Milestone	Date
a. Stage One – Pre-DPM IO Briefing	TBD
b. Stage Two – Site Visit	TBD
c. Stage Three – Design Presentation Meetings	August 29-31, 2017 (DPM 1) October 10-12, 2017 (DPM 2) December 5-8, 2017 (DPM 3)
d. Stage Four – Final Evaluation	TBD
e. Stage Five – Design Development Milestones	Click here to enter text.
(i) Design Development Document Review – 30%	TBD
(ii) Design Development Document Review – 60%	TBD
(iii) Design Development Document Review – 90%	TBD

END OF SECTION

5.0 Attachment #1 – Contract Prices

5.1 Contract Prices

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

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

- (a) The Rates quoted shall be all inclusive costs associated with performance of the Services defined in the Consultant’s Scope of Services attached as Appendix “B”.
- (b) The Rates quoted shall include all costs related to the Services including, but not limited to, Named Key Personnel identified, other technical positions, administrative positions, any Subconsultants and specialized service providers required to complete the Services, any and all disbursements, travel, mileage, supervision, equipment, tools, supplies, General Requirements (as per Appendix “B”) and Management of the Services (as per Appendix “B”) as required in this Tender Document.
- (c) The Consultant shall participate in:
 - (i) A: Stage 1 - one (1) Design Presentation Meeting (DPM) briefing and training session by Infrastructure Ontario (IO) lasting four (4) hours before the start of DPMs;
 - (ii) B: Stage 2 - one (1) site visit lasting eight (8) hours after the DPM briefing by IO;
 - (iii) C: Stage 3 - three (3) sets of DPMs: DPM 1, DPM 2, and DPM 3. Each set consists of three (3) individual DPMs, one (1) for each proponent, with each meeting lasting eight hours. In total, seventy two (72) hours of work will be dedicated to the nine (9) DPMs. Each DPM will be preceded by a phone briefing lasting one (1) hour each. Nine (9) phone briefings will occur in total lasting nine (9) hours. Lastly, a consensus report will be written

after each DPM. Four hours per consensus report or thirty six (36) hours for nine (9) consensus reports will be done in total;

- (iv) D: Stage 4 - Three (3) final evaluations lasting twelve (12) hours each, or thirty (36) hours in total;
- (v) E: Stage 5 - After the Preferred Proponent has been selected, the panel will resume with three (3) sets of meetings, with one meeting at each key milestone (30%, 60%, 90%), during Project Co's Design Development submissions. Each meeting will last a total of eight hours. Before each meeting, Consultants will have between four and eight hours allocated to conduct document reviews.

5.1.3 Bidders shall fully complete the Excel file entitled Attachment # 1 – Contract Prices and insert a Unit Price into each space provided under the Contract Unit Price column.

5.1.4 Attachment #1 – Contract Prices, must be returned as a separate file preferably in Excel format and may not be retyped or recreated. Failure to follow the submission instructions or format requirements may result in the Submission being found non-responsive and disqualified.

5.1.5 It is Metrolinx preference that Bidders submit the pricing using the appended Excel file format to facilitate the Metrolinx pricing evaluation process.

5.1.6 The Attachment # 1 – Contract Prices is numbered, under the "Item No." column to correspond with the following Phases, Stages and Steps of the Services:

- (a) A: Stage 1 – Pre-DPM IO Briefing
- (b) B: Stage 2 – Site Visit
- (c) C: Stage 3 – Design Presentation Meetings
- (d) D: Stage 4 – Final Evaluation
- (e) E: Stage 5 – Design Development Milestones (30%, 60%, 90%)

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

- 5.1.8 If any space is left blank or an entry of "N/C" or "N/A" or "—" is entered where price information should be entered then the Submission may be found non-responsive and disqualified consistent with the provisions of the Instructions to Bidders.

6.0 Intentionally omitted

7.0 Attachment #2A – Supporting Documentation: Corporate Experience and Qualifications

- 7.1 The Bidder shall, using this Attachment #2A, provide as part of its Submission corporate reference information to substantiate compliance with the Key Personnel Requirements as well as the requirements of Section 3.7 of Instructions to Bidders.
- 7.2 The Bidder 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. If Metrolinx is unable to contact any of the references provided in order to verify the Bidder's qualifications and experience, the Bidder may, in Metrolinx's sole discretion, receive no score for that reference.
- 7.3 Failure of the Bidder to satisfactorily submit the requirements related to Corporate Experience and Qualifications as detailed below, shall result in the Submission being deemed non-responsive and being disqualified from any further consideration or evaluation at the sole discretion of Metrolinx.
- 7.4 The Bidder shall demonstrate its previous experience in satisfactorily and competently performing services similar in type, size, estimated value and complexity as the Services identified in Appendix "B" as set out below. The Bidder understands and agrees that Metrolinx may verify any information provided in any Submission.
- 7.5 Corporate References Related to Current Scope: The Bidder shall provide a list of five (5) relevant reference projects completed within the past five (5) years which demonstrate the Bidder's experience and qualifications. The Bidder will include all projects of similar scope, complexity and estimated value that it has completed for Metrolinx as part of the five (5) reference projects provided by the Bidder. The Bidder shall, using this Attachment #2A – Corporate References, provide the following information for each corporate reference project:

7.5.1 Corporate References Summary Chart

CORPORATE REFERENCES						
Company Name	Project Title	Contact Person's Name/Title	Phone Number	E-mail Address	Start Date	Completion Date
Click here to enter text.	Click here to enter text.	Click here to enter text.	Click here to enter text.	Click here to enter text.	Click here to enter text.	Click here to enter text.
Click here to enter text.	Click here to enter text.	Click here to enter text.	Click here to enter text.	Click here to enter text.	Click here to enter text.	Click here to enter text.
Click here to enter text.	Click here to enter text.	Click here to enter text.	Click here to enter text.	Click here to enter text.	Click here to enter text.	Click here to enter text.

CORPORATE REFERENCES						
Company Name	Project Title	Contact Person's Name/Title	Phone Number	E-mail Address	Start Date	Completion Date
Click here to enter text.	Click here to enter text.	Click here to enter text.	Click here to enter text.	Click here to enter text.	Click here to enter text.	Click here to enter text.
Click here to enter text.	Click here to enter text.	Click here to enter text.	Click here to enter text.	Click here to enter text.	Click here to enter text.	Click here to enter text.

7.6 References Projects

The Bidder shall complete Sections 7.6.1 through 7.6.5 below for each of the five (5) relevant reference projects submitted in Section 7.5.1 above.

7.6.1 Reference Project # 1

Name of company for which the work was performed	Click here to enter text.
Contact person's name, title, telephone number and email address;	Click here to enter text.
Project value	Click here to enter text.
Was project completed in the past (5) years? List project start date and completion date.	YES <input type="checkbox"/> NO <input type="checkbox"/> Start Date Click here to enter text. Completion Date Click here to enter text.
The Bidder shall demonstrate its experience in performing work similar in type, size and complexity as the Services identified in Appendix "B" by including a detailed description of the reference project and qualifications and experience relevant to the Services being contemplated including the Bidder's responsibilities on the reference project.	
Click here to enter text.	

7.6.2 Reference Project # 2

Name of company for which the work was performed	Click here to enter text.
Contact person's name, title, telephone number and email address;	Click here to enter text.

Project value	Click here to enter text.
Was project completed in the past (5) years? List project start date and completion date.	YES <input type="checkbox"/> NO <input type="checkbox"/> Start Date Click here to enter text. Completion Date Click here to enter text.
<p>The Bidder shall demonstrate its experience in performing work similar in type, size and complexity as the Services identified in Appendix "B" by including a detailed description of the reference project and qualifications and experience relevant to the Services being contemplated including the Bidder's responsibilities on the reference project.</p>	
Click here to enter text.	

7.6.3 Reference Project # 3

Name of company for which the work was performed	Click here to enter text.
Contact person's name, title, telephone number and email address;	Click here to enter text.
Project value	Click here to enter text.
Was project completed in the past (5) years? List project start date and completion date.	YES <input type="checkbox"/> NO <input type="checkbox"/> Start Date Click here to enter text. Completion Date Click here to enter text.
<p>The Bidder shall demonstrate its experience in performing work similar in type, size and complexity as the Services identified in Appendix "B" by including a detailed description of the reference project and qualifications and experience relevant to the Services being contemplated including the Bidder's responsibilities on the reference project.</p>	
Click here to enter text.	

7.6.4 Reference Project # 4

Name of company for which the work was performed	Click here to enter text.
Contact person's name, title, telephone number and email address;	Click here to enter text.

Project value	Click here to enter text.
Was project completed in the past (5) years? List project start date and completion date.	YES <input type="checkbox"/> NO <input type="checkbox"/> Start Date Click here to enter text. Completion Date Click here to enter text.
<p>The Bidder shall demonstrate its experience in performing work similar in type, size and complexity as the Services identified in Appendix "B" by including a detailed description of the reference project and qualifications and experience relevant to the Services being contemplated including the Bidder's responsibilities on the reference project.</p>	
Click here to enter text.	

7.6.5 Reference Project #5

Name of company for which the work was performed	Click here to enter text.
Contact person's name, title, telephone number and email address;	Click here to enter text.
Project value	Click here to enter text.
Was project completed in the past (5) years? List project start date and completion date.	YES <input type="checkbox"/> NO <input type="checkbox"/> Start Date Click here to enter text. Completion Date Click here to enter text.
<p>The Bidder shall demonstrate its experience in performing work similar in type, size and complexity as the Services identified in Appendix "B" by including a detailed description of the reference project and qualifications and experience relevant to the Services being contemplated including the Bidder's responsibilities on the reference project.</p>	
Click here to enter text.	

8.0 Attachment # 2B – Supporting Documentation: Key Personnel Curriculum Vitae and Project References

8.1 Curriculum Vitae

The Bidder shall, using the template below, 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:

- 8.1.1 Name of individual and proposed Key Personnel role;
- 8.1.2 Qualifications that relate to the proposed Key Personnel role, as specified in Schedule B of Appendix "A", relative to the Services being requested;
- 8.1.3 Experience in performing the proposed Key Personnel role, as specified in Schedule B of Appendix A, relative to the Services being requested (include project names and brief project overviews);
- 8.1.4 Number of years in the proposed role on each project as well as the start date and completion date of each project;
- 8.1.5 Responsibilities on each project while performing the proposed role;
- 8.1.6 Details of accomplishments while performing the proposed role;
- 8.1.7 Education; and
- 8.1.8 Professional memberships and affiliations.

8.2 Key Personnel References

- 8.2.1 Immediately following the curriculum vitae for each proposed Key Personnel, the Bidder shall use the template below to 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.
- 8.2.2 The Bidder 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. If Metrolinx is unable to contact any of the references provided in order to verify the Bidder's qualifications and experience, the Bidder may, in Metrolinx's sole discretion, receive no score for that reference.
- 8.2.3 The list of three (3) references submitted when combined shall demonstrate that the named Key Personnel has the required qualifications and experience:

- (a) as stated in Schedule B – Consultant Personnel of Appendix “A” – General Conditions; and
 - (b) for work similar in size, scope and complexity to the Services to be provided herein.
- 8.2.4 Such references shall relate directly to the experience, responsibilities and details of project accomplishments noted above. The information shall include:
 - (a) Name of the company for which the work was performed;
 - (b) Contact person’s name, title, telephone number and e-mail address; and
 - (c) Start and completion date of each reference project.
- 8.3 Key Personnel Description of Reference Projects – For each reference project listed under Section 8.2 above, the Bidder shall include up to two (2) additional pages of information which includes but is not limited to:
 - 8.3.1 Name of the company for which the work was performed;
 - 8.3.2 Project description and project value;
 - 8.3.3 Description of Services provided with reference to the applicable Key Personnel role and responsibilities for the work contemplated in this Tender Document.
 - 8.3.4 Project start and completion dates;
 - 8.3.5 List of any other Named Key Personnel that have worked on the same reference project and their project roles, if applicable; and
- 8.4 Bidders shall review Section 3.7 of Instructions to Bidders in conjunction with this Attachment # 2B to ensure that all required information is being included as part of the Submission.

Key Personnel Role:	Click here to enter text.						
Name:	Click here to enter text.						
Years of Experience in the Role:	Click here to enter text.						
Education:	Click here to enter text.						
Designation(s):	Click here to enter text.						
Summary of Qualifications and Experience:	Click here to enter text.						
References:	Company Name	Project Title	Contact Person's Name/Title	Phone Number	E-mail Address	Start Date	Completion Date
	Click here to enter text.	Click here to enter text.	Click here to enter text.	Click here to enter text.	Click here to enter text.	Click here to enter text.	Click here to enter text.
	Click here to enter text.	Click here to enter text.	Click here to enter text.	Click here to enter text.	Click here to enter text.	Click here to enter text.	Click here to enter text.
	Click here to enter text.	Click here to enter text.	Click here to enter text.	Click here to enter text.	Click here to enter text.	Click here to enter text.	Click here to enter text.

Appendix "A" – General Conditions (Consulting Services)

List of Contents

The following documents hereby form part of and are appended to the Tender Document as Appendix "A" – General Conditions.

Description	Respective Sections
Appendix "A" – General Conditions	Section 1 to Section 18.15
Schedule A – Definitions	Section a) to Section qqq)
Schedule B – Consultant Personnel	Section 1 to Section 2
Schedule C – Financial Terms	Section 1 to Section 17
Schedule D – Insurance	Section 1 to Section 1.8
Schedule E – Dispute Resolution	Section 1 to Section 6(k)

General Conditions

1. INTERPRETATION

1.1 Definitions

Capitalized terms used in this Contract shall have the respective meanings ascribed thereto in Schedule A – Definitions.

1.2 Time of the Essence

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

1.3 Currency

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

1.4 Units of Measure

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

All communication between Metrolinx and the Consultant and between the Consultant and each of the Subconsultants with regard to the Services 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 Consultant shall perform the Services in accordance with the terms of this Contract, including in compliance with Applicable Laws.
- (b) 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.
- (c) 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.

- (d) Where used in this Contract, “including” means including without limitation, and the terms “include”, “includes”, and “included” have similar meanings.
- (e) 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.
- (f) 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

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:

Schedule A -	Definitions
Schedule B -	Consultant Personnel
Schedule C -	Financial Terms
Schedule D -	Insurance
Schedule E -	Dispute Resolution

2. PERFORMANCE

2.1 Term of the Contract

This Contract shall take effect on the Effective Date hereof and shall continue in full force and effect until the earlier of: (i) Contract Closeout; or (ii) the date that this Contract is terminated in accordance with its terms (the “Term”).

2.2 Performance of the Services

- (a) The Consultant shall carry out and complete those services set forth in Appendix "B" – Consultant's Scope of Services (the "**Services**") to the satisfaction of Metrolinx in accordance with all the terms of this Contract.
- (b) The Consultant shall supply the Services diligently and continuously in accordance with the scheduling requirements set out in the Project Schedule. Without limiting the generality of the foregoing, the Consultant shall perform the Services so as to enable Metrolinx to meet any timelines imposed on it under any Third Party Contracts, provided that such timelines have been identified in the Project Schedule or otherwise expressly communicated to the Consultant.
- (c) The Consultant acknowledges and agrees that each of the Consultant's Personnel shall be available to perform the Services in accordance with the required duration specified in Schedule B – Consultant Personnel. The Consultant further acknowledges and agrees that Metrolinx may, acting in its sole discretion, change the schedule including in respect of the timing of the provision of the Services and availability and number of the Consultant's Personnel. Without limiting the generality of the foregoing, Metrolinx may from time to time, on prior written notice to the Consultant twenty (20) Business Days', unilaterally extend or reduce the required duration with respect to the availability of any of the Consultant's Personnel or direct the Consultant to increase the number of Consultant's Personnel available. Metrolinx and the Consultant shall meet on a quarterly basis to discuss the progress of the Services and the anticipated scheduling needs with respect to the Consultant's Personnel.
- (d) Metrolinx may, from time to time, in its sole discretion, but is not required to, direct the Consultant to cause specific Consultant Personnel to perform certain tasks or activities that form part of the Services in accordance with the scheduling requirements provided by Metrolinx. Any such instructions shall be provided by Metrolinx in writing to the Consultant no less than five (5) Business Days before the specified tasks or activities are required to be performed by the Consultant Personnel.
- (e) The Consultant shall provide, at the sole cost and expense of the Consultant, 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 Services and to undertake, perform and complete its undertakings, obligations and responsibilities provided for in this Contract.
- (f) The Services shall be provided in a professional, timely and economical manner according to the Required Standard of Care. Without limitation, the Consultant shall ensure that the Services are conducted in a manner that will maintain good relations with the general public and property owners.

- (g) The Consultant shall comply with and conform to all Applicable Laws, applicable to the Services to be provided by, and the responsibilities and obligations of, the Consultant under this Contract.
- (h) The Consultant shall not alter any part of a Joint Venture except with the prior written consent of Metrolinx in its sole discretion.

2.3 **Subconsultants**

- (a) No subconsulting by the Consultant shall relieve the Consultant of any responsibility for the full performance of all obligations of the Consultant under this Contract. Notwithstanding the approval of any Subconsultants by Metrolinx, the Consultant shall be fully responsible for every Subconsultant's activities, works, services and acts or omissions.
- (b) The Consultant shall be solely responsible for the payment of any Subconsultants.
- (c) The Consultant shall co-ordinate the services of all Subconsultants employed, engaged or retained by the Consultant with Metrolinx and, without limiting the generality of any other provision of this Contract, the Consultant shall be liable to Metrolinx for costs or damages arising from errors or omissions of such Subconsultants or any of them. It shall be the Consultant's responsibility to control and review the Services of its own forces and of all its Subconsultants and to ascertain that all Services are performed in accordance with this Contract, all governing regulations and the Required Standard of Care.
- (d) The Consultant warrants and represents that it and any of its permitted Subconsultants and the respective workforce of each are fully qualified to perform the Services and perform this Contract and hold all requisite licenses, rights and other authorizations required by Applicable Laws.
- (e) The Consultant 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 Consultant shall ensure that all workers and persons employed by them or under their control or employed by or under the control of its Subconsultants comply with the terms of this Contract and, in particular without limiting the foregoing, the responsibilities of the Consultant with respect to matters concerning safety, compliance with the Applicable Laws and the conduct of the Services.
- (f) The Consultant shall be an independent contractor with respect to the Services to be provided under this Contract and nothing contained in this Contract shall be construed as constituting a joint venture or partnership between the Consultant and Metrolinx. Neither the Consultant nor its Subconsultants shall be deemed to be employees, agents, servants or

representatives of Metrolinx in the performance of the Services hereunder.

- (g) The Consultant shall not remove or change any Subconsultants, or materially reduce the responsibilities of any Subconsultants in relation to the provision of the Services except with the prior written consent of Metrolinx in its sole discretion. The proposed replacement Subconsultant shall possess the requisite Domain Expertise and similar qualifications, experience and ability as the outgoing Subconsultant.

2.4 **Consultant Personnel**

- (a) The Consultant shall select and employ a sufficient number of suitably qualified and experienced Consultant Personnel to perform and provide the Services, as determined with reference to the requirements of the Services to be performed by each individual or otherwise as required pursuant to the Contract. All Consultant Personnel shall possess or, where permitted, shall be supervised by persons who possess, the professional accreditation required to complete the services.
- (b) The Consultant shall provide effective and efficient supervision to ensure that the quality of workmanship meets the requirements of the Contract.
- (c) The Consultant shall ensure that the Consultant Personnel assigned to perform the Services 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 Consultant has been made aware of same.

2.5 **Third Party Work**

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

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

2.6 **Non-Interference with Operations**

Not Applicable

2.7 **Key Personnel**

- (a) Schedule B – Consultant Personnel sets out the names and titles of the Consultant Personnel who will be involved in a material way in, and who are critical to, the performance of the Services (the “**Key Personnel**”). All Key Personnel will possess the requisite Domain Expertise.
- (b) The Consultant shall not, for the duration of the Term, require or request any Key Personnel to be involved in any other project on behalf of the Consultant or any Subconsultant if, in the opinion of Metrolinx acting reasonably, such involvement would have a material adverse effect on the Services. The Consultant will not remove any Key Personnel from the provision of the Services, or materially reduce the responsibilities of any Key Personnel in relation to the provision of the Services except with the prior written consent of Metrolinx (which consent shall not be unreasonably withheld).
- (c) Notwithstanding Section 2.7(a) but subject to Section 2.7(d), if at any time the Consultant, for reasons beyond its reasonable control, is unable to provide the services of any Key Personnel, the Consultant shall provide a replacement person who possesses similar qualifications, experience and ability and possesses the requisite Domain Expertise; provided, however, that the Consultant 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 Consultant; 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 person being replaced; their role and responsibility in the performance of the Services; the reason why it is necessary to replace that person; and the replacement person's name, *curriculum vitae* in the form set out in Schedule B - Consultant 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 Consultant 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 Consultant in writing why that person is not acceptable and the Consultant shall nominate an alternate person pursuant to the process identified in this Section 2.7(c).

- (d) If Metrolinx determines in its sole discretion that it is in the best interests of Metrolinx that any Key Personnel be replaced, either permanently or temporarily, Metrolinx shall notify the Consultant, and, within thirty (30) days of receipt by the Consultant of such notice, the Consultant 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 B – Consultant 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 Consultant 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 Consultant in writing why that person is not acceptable and the Consultant shall nominate an alternate person pursuant to the process identified in Section 2.7(d). The Rates for the proposed replacement shall not exceed the approved Rate of the person being replaced.

2.8 **Consultant's Representative**

- (a) The Consultant shall assign a Consultant's Representative who will direct the provision of the Services. During the Term, the Consultant's Representative will maintain ongoing contact with Metrolinx to ensure that issues are dealt with in an efficient, effective and timely manner. The Consultant'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 Consultant's obligations under this Contract.

2.9 Metrolinx Responsibilities

- (a) Metrolinx shall, if applicable:
 - (i) designate an individual to act as its representative (the “**Metrolinx Representative**”) who will transmit instructions to, and receive information from the Consultant;
 - (ii) provide access to and where necessary, make available copies of existing reports, information and correspondence relevant to the Services;
 - (iii) use commercially reasonable efforts to ensure that all agreements between Metrolinx and external agencies relevant to the Consultant’s provision of the Services are executed in a timely manner;
 - (iv) provide the Consultant with contact names of the individual(s) who will be representing the regions, municipalities, government agencies or other jurisdictional bodies; and
 - (v) arrange for necessary services from the applicable railways such as design approvals, inspection and flagging.

2.10 French Language Services

- (a) Insofar as this Contract relates to the provision of services directly to the public on behalf of Metrolinx, the French Language Services Act shall be applicable to the performance of the Services. A service for the purposes of the French Language Services Act refers to any service or procedure provided to the public. Services being provided in French must be equivalent to those offered in English, and must be available within the same timeframe and of the same quality.
- (b) The Consultant shall provide and perform the Services in a manner so as to comply with the requirements set out in the French Language Services Act.
- (c) Without limitation, services and communications which must be provided in French in French Designated Areas may include:
 - (i) Consultations/Public Meetings: Presentation materials, displays, comments cards/feedback mechanism or other materials. Consultant must have at least one bilingual staff or interpreter on hand able to answer questions and discuss technical drawings/documents in French. As applicable, the Consultant shall compile and analyze the views of Francophones separately, as they may have different concerns.

- (ii) Signage: Construction contracts may from time to time involve erecting temporary signage to redirect or warn the public of hazards. Such signage shall be bilingual.
- (iii) Communications: Communication plans, customer impact documents, information bulletins, notices of service disruption and public relations information.

2.11 Task Release Process for Emergent Services

- (a) Upon request of the Metrolinx Representative, the Consultant shall prepare a work plan (the "**Task Plan**"), clearly defining the work required by a specified Service (the "**Task**"), and setting out the following:
 - (i) description of the work required by the Task, and Task deliverables;
 - (ii) projected milestones and schedule for completion of the Task;
 - (iii) resources required for the completion of the Task;
 - (iv) calculation of fees;
 - (v) proposed list of staff for the Task; and
 - (vi) any other information or documents as required by the Metrolinx Representative.
- (b) The Consultant shall not proceed with the Task unless approved pursuant to Section 2.11(a) in the form of a "**Task Release**" and only to the upset limit or fixed price as indicated therein notwithstanding the total upset limit price established by the Contract.
- (c) The Consultant shall proceed with the Task and the fee will be established for each Task as agreed upon by the Parties using the Rates identified in the Articles of Agreement.
- (d) The upset limit or fixed fee for each Task shall be in Canadian funds, not subject to adjustment unless agreed otherwise in writing, and shall be inclusive of all applicable costs.
- (e) Prior to finalizing each Task Plan, Metrolinx and the Consultant will establish either an upset limit on the fee if the Task is to be completed on a Time and Expense basis or a Fixed Fee basis:
 - (i) Time and Expense: The fee shall be calculated on the basis of the work actually performed for a Task based on the rates provided by the Consultant for Consultant Personnel.

- (ii) Fixed Price: The fee shall be calculated for the completion of a Task based on the rates provided by the Consultant for Consultant Personnel. The Consultant shall submit an itemized cost breakdown of the various parts of the Task with its work plan, which together shall aggregate the total price for that Task.
- (f) Metrolinx reserves the right to withhold payment for any Services performed by the Consultant or its Subconsultants prior to the issuance of an authorized Task Release or outside the scope of a Task Plan approved by a Task Release.

2.12 Consultant Work Performance Rating

- (a) Metrolinx shall during the term of a Contract, maintain a record of the Consultant'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 Consultant upon Contract Closeout. Interim Contract Performance Appraisal reports may be issued, as deemed appropriate by the Metrolinx Representative, at any time during the term of the Contract.
- (b) The overall history of the Consultant in performing work for Metrolinx, including the Consultant's performance pursuant to this Contract, will be considered in the evaluation of future bids from the Consultant.
- (c) Metrolinx reserves the right in future bid requests to reject any bid submitted by a company with an unsatisfactory performance history with Metrolinx.
- (d) Non-compliance with Contract requirements will be identified to the Consultant.
- (e) The information contained in the Contract Performance Appraisal may be provided to other ministries and agencies and such performance reviews may be relied upon by other ministries and agencies to reject a company any bid submitted on any further requests.

3. HEALTH AND SAFETY

3.1 Occupational Health & Safety Act ("OHSA")

- (a) The Consultant shall comply with OHSA, and any obligations of the Consultant as an "employer" thereunder, and with all regulations made under the OHSA.
- (b) The Consultant shall report to Metrolinx any non-compliance by a Subconsultant in the performance of the Services with the regulations under the OHSA if and when brought to the attention of the Consultant.
- (c) The Consultant 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 Consultant's performance of the Services to be suspended; or
 - (ii) this Contract to be cancelled by Metrolinx.
- (d) The Consultant will be under an obligation to cease the Services, 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 OHS Act or any of the regulations under it, and thereafter the Services or affected part thereof shall not resume until any such violation has been rectified.
- (e) The Consultant shall be responsible for any delay caused by the Consultant in the progress of the Services as a result of any violation of provincial or municipal health and safety requirements by the Consultant, it being understood that such delay shall be not be a Force Majeure for the purposes of extending the time for performance of the Services or entitling the Consultant to additional compensation, and the Consultant shall take all necessary steps to avoid delay in the final completion of the Services 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 Consultant for the Services, either instead of or jointly with the Consultant.

3.2 **Safety Requirements**

- (a) Safety of Persons at or near the Place of Work and the public is of paramount concern to Metrolinx. In the performance of the Services, the Consultant 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 Consultant specifically covenants and agrees that:
- (i) it shall comply with best industry practice 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 Consultant Personnel comply, in all regards with the requirements of OHS Act and/or the *Canadian Labour Code*, Part II, as applicable;

- (iii) it shall comply, and shall ensure that all Consultant 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 Consultant Personnel comply, in all regards with the Consultant'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 Consultant 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 Consultant Personnel have been properly trained and are knowledgeable with respect to these policies and procedures.

3.3 **Railway Safety**

- (a) If applicable, The Consultant acknowledges and agrees that:
 - (i) access to the rail corridors by the Consultant and any Consultant Personnel, shall at all times be subject to the direction of Metrolinx and/or the Maintenance Provider as to rail safety matters and any applicable railway operating rules; and
 - (ii) any and all questions, matters or disputes which may arise affecting the safety of railway operations or the maintenance of the railways shall be referred to Metrolinx which shall in its discretion decide all such questions, matters and disputes.
- (b) The Consultant shall perform the Services, and shall ensure that all Consultant Personnel perform the Services, in accordance with the Canadian Rail Operating Rules from time to time approved by the Minister of Transport under the authority of the *Railway Safety Act* (Canada), the Standards, and all other applicable Transport Canada guidelines, railway standards, and practices.
- (c) In the event that the Services are the subject of an audit or inspection by any Governmental Authority, the Consultant shall at its own expense:
 - (i) provide notice of such audit or inspection to Metrolinx;

- (ii) make available or cause to be made available such reasonable information and material as may be required and shall otherwise reasonably cooperate with Transport Canada officials;
- (iii) provide Metrolinx with a copy of any audit or inspection report or
- (iv) other results or recommendations issued by Transport Canada, as soon as practicable but in any event within five (5) Business Days of receipt thereof by the Consultant; and
- (v) take all steps necessary to rectify, in consultation with and as directed by Metrolinx, any issues identified by Transport Canada.

3.4 **Workers' Rights**

The Consultant shall at all times pay or cause to be paid any assessments or compensation required to be paid by the Consultant or its Subconsultants 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 Consultant. The Consultant shall comply with all regulations and laws relating to workers' compensation.

4. **FINANCIAL TERMS**

4.1 **Financial Terms**

All financial and payment terms applicable to this Contract and the Services are set out in Schedule C – Financial Terms.

5. **CONSTRUCTION LIEN ACT**

Not Applicable

6. **RIGHT OF OWNERSHIP AND USE**

6.1 **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;
 - (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 Services; and

- (iv) all modifications or enhancements made to the items listed in Sections 6.1(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 Consultant will acquire no rights to any Metrolinx IP other than the licence rights expressly granted in Section 6.3.
- (d) The Consultant:
 - (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 Consultant shall cause all Consultant Personnel to waive for the benefit of Metrolinx and its respective successors, assigns, licensees and contractors, 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.

6.2 **Ownership of Consultant Background IP**

- (a) The Consultant is and will be the exclusive owner of, and shall retain all right, title and interest (including Intellectual Property Rights) in and to all Consultant Background IP.
- (b) Metrolinx will acquire no rights to the Consultant Background IP other than the licence rights expressly granted in Section 6.4, or otherwise under or in respect of this Contract.

6.3 **Grant of Licences by Metrolinx to Consultant**

- (a) Metrolinx grants to the Consultant, 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 Services, modify, the Metrolinx IP solely for the purposes of fulfilling the Consultant's obligations under this Contract;
 - (ii) sublicense the Metrolinx IP to Subconsultants solely to the extent necessary to enable such Subconsultants to fulfill the Consultant's obligations under this Contract.

- (b) Any exercise by the Consultant of the rights granted pursuant to Section 6.3(a) shall be subject to the terms and conditions of this Contract, including always the Consultant's obligations with respect to Confidential Information set out in Article 10.
- (c) If the Consultant 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).

6.4 **Grant of Licences by the Consultant to Metrolinx**

- (a) The Consultant 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 Consultant 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 Consultant 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 Consultant integrates with or embeds in any Deliverables any Intellectual Property provided by a third party vendor, subcontractor, independent contractor, Subconsultant or other person, the Consultant shall obtain for Metrolinx the same license rights for Metrolinx in respect of such Third Party IP as set forth in Section 6.4(a) hereof.

7. **INSURANCE**

7.1 **Insurance Requirements**

The Consultant 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 D – Insurance, which policies will be in a form and with an insurer acceptable to Metrolinx. A certificate of these policies originally signed by the insurer or an authorized agent of the insurer and copies of the policies must be delivered to Metrolinx prior to the commencement of the Services.

8. **CHANGES AND CASH ALLOWANCES**

8.1 **Changes Requested by Metrolinx**

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

8.2 Changes Recommended by the Consultant

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

8.3 Change Management Process

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

8.4 Cash Allowance Items and Task Assignment Process

- (a) The Consultant shall include all Cash Allowance Items in the Project Schedule and perform all Services related thereto within the Project Schedule. Where applicable, the Project Schedule shall take into account the time required to facilitate the Task Assignment Process described in this Section, including the time required to obtain Quotations pursuant to Section 14 of Schedule C – Financial Terms.
- (b) Cash Allowance Items shall be administered and authorized as follows (the “Task Assignment Process”):
 - (i) The Metrolinx Representative shall submit to the Consultant a request to proceed with a Cash Allowance Item.
 - (ii) Upon receipt of such request from Metrolinx, the Consultant shall, in respect of the identified Cash Allowance Item, provide to Metrolinx a response setting out:
 - (A) the estimated hours of Services and expected completion date;
 - (B) subject to Section 8.5, the Consultant Personnel, suppliers, Subconsultants or specialized services providers which the Consultant proposes to perform the Services; and
 - (C) any requirements for testing and reporting.
 - (iii) As and if required, the Parties shall meet to review the requirements for the Cash Allowance Item.
 - (iv) Subsequent to the review meeting, and based on the results of the review meeting the Consultant shall make its own determination of the Consultant's work effort and fee cost to provide the Consultant's scope of services for the task.
- (c) No amounts shall be payable in respect of any Cash Allowance Items unless and until Metrolinx has approved such expenditure in writing, and shall be subject to Schedule C – Financial Terms.
- (d) Upon the approval by Metrolinx of any Cash Allowance Item, the Consultant shall be responsible for the completion thereof in accordance with the terms and conditions set out in this Contract. For greater certainty, the Consultant's responsibility for Cash Allowance Items approved by Metrolinx pursuant to this Section are the same as for all other Services.

8.5 Performance of Changes and Cash Allowance Items

- (a) Metrolinx shall determine by whom and for what amounts the items included in each Change or Cash Allowance Item will be performed.

- (b) Metrolinx shall have the right, exercisable at its sole discretion, to require the Consultant to use a third party to perform or provide any Cash Allowance Items or any Services related to a Change. Metrolinx may exercise this right generally, by requiring the Consultant to provide the Services through a third party selected by the Consultant, or by requiring the Consultant to utilize a third party identified by Metrolinx.
- (c) The Consultant shall obtain prior approval of Metrolinx before entering into a subcontract, amending an existing subcontract or performing own forces work included in a Change or Cash Allowance.

9. ADDITIONAL RESOURCES

9.1 Additional Resources

- (a) In addition to, or in connection with, a request for additional or altered services pursuant to Article 8, at any time during the Term, Metrolinx shall have the right in its discretion to require the Consultant to increase the number of Consultant Personnel upon twenty (20) days' notice.
- (b) Unless otherwise agreed to in writing by Metrolinx, such additional Consultant Personnel shall be available to report for work any Place of Work designated by Metrolinx within twenty (20) days of receipt of a written request from Metrolinx pursuant to Section 9.1(a).
- (c) The hourly rate payable in respect of additional Consultant Personnel shall be as set out in the Articles of Agreement.

10. CONFIDENTIAL INFORMATION AND FIPPA

10.1 Restrictions on Use of Confidential Information

- (a) The Consultant shall keep all Metrolinx Confidential Information confidential. Without limiting the generality of the foregoing, the Consultant shall:
 - (i) not disclose, reveal, publish, or disseminate any Metrolinx Confidential Information to anyone, except as permitted pursuant to this Contract;
 - (ii) shall use Metrolinx Confidential Information only in connection with this Contract and the performance of the Services;
 - (iii) shall take all reasonable steps required to prevent any unauthorized reproduction, use, disclosure, publication, or dissemination of the Metrolinx Confidential Information;
 - (iv) shall not copy, reproduce in any form or store the Metrolinx Confidential Information in a retrieval system or database, without the prior written consent of Metrolinx; and

- (v) shall immediately notify Metrolinx in the event that it becomes aware of any unauthorized disclosure of Metrolinx Confidential Information.

10.2 Permitted Disclosure

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

10.3 Exceptions

- (a) The obligations of confidentiality set out in Section 10.1 shall not apply to Metrolinx Confidential Information which:
 - (i) becomes generally available to the public through no fault of the Consultant;
 - (ii) prior to receipt from Metrolinx, was known to the Consultant 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 Consultant;
 - (iii) was independently developed by the Consultant prior to receipt from Metrolinx, as documented by written records possessed by the Consultant; or
 - (iv) becomes available to the Consultant on a non-confidential basis from a source other than Metrolinx that is not under other obligations of confidence.
- (b) If the Consultant becomes compelled to disclose any Metrolinx Confidential Information pursuant to Applicable Law, the Consultant shall provide Metrolinx with prompt written notice of any such requirement and shall cooperate with Metrolinx in seeking to obtain any protective order or other arrangement pursuant to which the confidentiality of the relevant Confidential Information is preserved. If such an order or arrangement is not obtained, the Consultant shall disclose only that portion of the Confidential Information as is required pursuant to Applicable Law. Any such required disclosure shall not, in and of itself, change the status of the disclosed information as Confidential Information under the terms of this Article 10.
- (c) Without limiting the generality of Section 10.3(a) and notwithstanding Section 10.3(b), the Parties acknowledge and agree that the treatment and disclosure of Confidential Information shall in all cases be subject to the requirements of FIPPA.

10.4 Damages

The Consultant acknowledges and agrees that any breach or threatened breach of this Article 10 or the obligations set out herein shall cause immediate and irreparable harm to Metrolinx for which damages alone are not an adequate remedy. The Consultant 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.

10.5 Return or Destruction of Confidential Information

- (a) At the request of Metrolinx and subject to Section 10.5(b) and Section 10.6, the Consultant agrees to:
 - (i) promptly return all Metrolinx Confidential Information to Metrolinx; or
 - (ii) promptly destroy the Metrolinx Confidential Information 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 Consultant certifying such destruction.
- (b) Notwithstanding the foregoing, the Consultant shall have no obligation to return or destroy:
 - (i) Metrolinx Confidential Information that is captured and retained within the Consultant'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 Consultant or the Consultant Personnel.

10.6 FIPPA and Freedom of Information

The Consultant acknowledges that Metrolinx is a provincial crown agency subject to FIPPA, and acknowledges and agrees as follows:

- (a) All FIPPA Records (as defined below) are subject to, and the collection, use, storage and treatment thereof is governed by FIPPA. The Consultant agrees to keep all FIPPA Records secure and available, in accordance with the requirements of FIPPA.

- (b) Section 10.5 shall apply to all FIPPA Records, which shall be returned and/or destroyed in accordance with that section.
- (c) In the event of a conflict between the requirements of this Contract and the requirements of FIPPA, the requirements of FIPPA shall take precedence.
- (d) 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 Consultant and the Consultant 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 Consultant 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 Agreement and subject to the Consultant'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).
- (e) For the purposes of this section, "FIPPA Records" means all information, data, records and materials, however recorded, in the custody or control of Metrolinx, including Confidential Information and Personal Information (as defined in FIPPA). For the purposes of this definition, documents held by the Consultant in connection with this Contract are considered to be in the control of Metrolinx.

10.7 **Consultant Compliance**

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

10.8 **Publicity**

Neither Party may make any disclosure to any other person or any public announcement or press release regarding this Contract or any relationship

between the Consultant and Metrolinx, without the other Party's prior written consent.

11. REPRESENTATIONS, WARRANTIES AND COVENANTS

11.1 Representations, Warranties and Covenants of the Consultant

- (a) The Consultant 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 Consultant is validly existing under the laws of the location of its head office and the Consultant has all necessary power, authority and capacity to enter into this Contract and to perform its obligations hereunder;
 - (ii) the entering into of this Contract by the Consultant 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 Consultant, the by-laws or resolutions of the Consultant or any agreement or instrument to which the Consultant is a party or by which it is bound, or
 - (B) require the Consultant 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;
- (b) this Contract constitutes a legally valid and binding obligation of the Consultant 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;
- (c) the Consultant has carefully reviewed the whole of this Contract, including all of the Contract Documents, and all other documents made available to the Consultant by Metrolinx, and, to the Consultant's knowledge, nothing contained herein or therein inhibits or prevents the Consultant from performing the Services in accordance with the Required

Standard of Care so as to achieve and satisfy the requirements of this Contract;

- (d) the Consultant has engaged and shall engage only Subconsultants and Consultant Personnel that are qualified and competent to perform the portions of the Services they are responsible for and possess the requisite Domain Expertise;
- (e) the Consultant 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;
- (f) the Consultant is not aware of any legal action instituted, threatened or pending against the Consultant that could have a material adverse effect on its ability to perform its obligations under this Contract;
- (g) the Consultant 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;
- (h) the Consultant 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
- (i) the Consultant represents, warrants and covenants to Metrolinx that the Consultant is and shall remain duly registered for the purposes of Part IX of the Excise Tax Act and that the Consultant's registration number is:
_____.

11.2 Continuing Effect of Representations, Warranties and Covenants

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

12. INDEMNITY

12.1 Indemnification

- (a) The Consultant shall at all times indemnify and save harmless Metrolinx, its officers, directors, employees, members, agents, representatives, successors and assigns (hereinafter the "**Indemnified Parties**"), from and against any and all Losses resulting from:
 - (i) any breach, violation or non-performance by or on behalf of the Consultant of any covenant, obligation or agreement of the Consultant contained in this Contract, including any warranty (express or implied);

- (ii) any negligent acts, errors or omissions or wilful misconduct by or on behalf of the Consultant relating to the Services to be provided under this Contract;
 - (iii) any acts performed or omitted to be performed by or on behalf of the Consultant beyond the authority of the Consultant hereby conferred;
 - (iv) any inaccuracy in or breach of any of the representations or warranties of the Consultant contained in this Contract;
 - (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 Consultant or any Subconsultant, including:
 - (A) any resulting expenses incurred by Metrolinx as a result of stoppage of the Services on account of failure by the Consultant to meet its obligations under and/or with respect to the OHS Act; and
 - (B) any resulting fine(s) levied against Metrolinx as a result of any breach of the responsibilities of the employer for the work, to the extent attributable to the Consultant'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 Services or any matter provided to Metrolinx or performed by the Consultant, or anyone else for whom at law it is responsible.
- (b) The Consultant 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 Consultant is obligated to indemnify the Indemnified Parties pursuant to this Article 12, provided that the indemnity obligations of the Consultant under this Article 12 shall not extend to Loss attributable to the negligence or willful misconduct of any Indemnified Parties to the extent that such Indemnified Parties' negligence or willful misconduct caused the Loss.
- (c) In the event any Loss is asserted in respect to which an Indemnified Party is entitled to indemnification under this Article 12, and without prejudice to any other right or remedy Metrolinx may have, Metrolinx shall be entitled to deduct or withhold a reasonable sum on account of such claim, action, suit, execution or demand, including legal costs, from monies owed or payable by Metrolinx to the Consultant under this

Contract pending the final determination or settlement of such claim, action, suit, execution or demand. In the event,

- (i) the Consultant is, becomes, or is deemed to be bankrupt or an insolvent person pursuant to the *Bankruptcy and Insolvency Act* (Canada);
- (ii) the Consultant 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 Consultant'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 Consultant under any other agreement or account. The provisions of this Section 12.1(c) shall not apply in the event that such Loss is otherwise provided for under any insurance provided by the Consultant to or for the benefit of Metrolinx.

13. LIMITATION OF LIABILITY

13.1 General Intent

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.

13.2 Limitations on Liability

- (a) Subject to Section 12.1(c), in no event shall either Party be liable for indirect, consequential, exemplary, punitive or special damages relating to the Contract even if such Party has been advised in advance of the possibility of such damages.
- (b) Subject to Section 12.1(c), each Party's aggregate liability to the other under the Contract for direct damages for all events giving rise to liability hereunder shall be limited to an amount equal to two times the Estimated Contract Price.
- (c) The limitations of liability set forth in Sections 13.2(a) and 13.2(b) shall not apply with respect to Losses:
 - (i) that are the subject of indemnification pursuant to Articles 12.1(a)(ii), (iii), (v) or (vi); or
 - (ii) occasioned by a breach of Article 10.

- (d) Metrolinx shall have a duty to mitigate damages for which the Consultant is responsible.

14. TERMINATION

14.1 Termination for Cause by Metrolinx

Metrolinx may, by ten (10) days' written notice to the Consultant, suspend or terminate the whole or any part of the provision of the Services or this Contract for cause in the event that the Consultant is in breach of any of its obligations under this Contract, and thereupon:

- (a) Metrolinx may appoint officials of Metrolinx or any other person or persons in the place and stead of the Consultant to perform the Services or any portion thereof;
- (b) the Consultant shall immediately discontinue the Services 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 Services;
- (c) nothing contained herein shall limit the rights of Metrolinx to recover damages from the Consultant arising from the failure of the Consultant to perform the Services satisfactorily in accordance with the terms of this Contract.

14.2 Termination for Convenience by Metrolinx

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

15. FORCE MAJEURE

15.1 Force Majeure

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

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

15.2 Process

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

15.3 Metrolinx Rights

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

16. DISPUTE RESOLUTION

All Disputes shall be resolved in accordance with, and the Parties shall comply with, Schedule E – Dispute Resolution.

17. SET OFF

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

18. GENERAL

18.1 Entire Agreement

This Contract constitutes the entire agreement between the Parties regarding the Services and supersedes any prior understandings, negotiations, representations or agreements, whether written or verbal.

18.2 Governing Law and Jurisdiction

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

18.3 Survival

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

18.4 Enurement

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

18.5 Assignment

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

18.6 Independent Parties

(a) This Contract does not create and is not intended to create an agency or employment relationship, partnership, joint venture or other similar association between the Parties. The relationship between the Parties is to be considered at all times as that of a purchaser and an independent contractor. Neither Party shall have the right to bind the other to any agreement with any third party or to incur any obligation or liability on

behalf of the other Party. Except as expressly provided for in this Contract, neither Party shall represent, directly or indirectly by conduct, to any third party that it is an agent, employee, partner or joint venturer of the other.

- (b) The Consultant Personnel and all other personnel providing the Services are solely the employees of the Consultant and applicable Subconsultants (and not Metrolinx') for all purposes under this Contract, including for all purposes under any Applicable Laws. Accordingly, none of the foregoing personnel is entitled to any benefits respecting any pension or other benefit plan, program or policy of Metrolinx.

18.7 **Third Party Beneficiaries**

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

18.8 **Joint and Several Liability**

Where the Consultant comprises two or more Persons, each of them shall be jointly and severally liable for the obligations of the Consultant under this Contract.

18.9 **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.

18.10 Amendments

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

18.11 No Waiver

No provision of this Contract shall be deemed waived, amended or modified by either Party unless such waiver, amendment or modification is in writing and signed by the Party against whom it is sought to enforce the waiver, amendment or modification. The failure by a Party to exercise any of its rights, powers or remedies hereunder or its delay to do so does not constitute a waiver of those rights, powers or remedies. No waiver made with respect to any instance involving the exercise of any such right is to be deemed to be a waiver with respect to any other instance involving the exercise of the right or with respect to any other such right.

18.12 Severability

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

18.13 Further Assurances

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

18.14 Conflict of Interest Acknowledgement and Agreement

- (a) For the purposes of this Contract, a **“Conflict of Interest”** includes any situation or circumstances where, in relation to the performance of its contractual obligations in this Contract, the Consultant’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 Consultant 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 Consultant 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 Subconsultants do not participate in or be involved with such Prohibited Procurements either directly or indirectly, including as a bidder or as a subcontractor or advisor to any bidder.

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

18.15 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 GENERAL CONDITIONS

Schedule A – Definitions

“Acceptance” or **“Acceptable”** or **“Accepted”** means the act of formal notification by Metrolinx of no further objections regarding content, construction or compliance.

“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.

“Approvals” means any permits, licences, consents, approvals, clearances, orders, ordinances, registrations, filings or other authorizations respecting the work undertaken as part of the Services as may be required from any applicable Governmental Authority or otherwise by the Consultant’s contract documents.

“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.

“Cash Allowance” means a sum included in the Estimated Contract Price by Metrolinx as a predetermined allowance to cover the items identified in the Articles of Agreement.

“Cash Allowance Items” means those items, work and/or services identified in the Articles of Agreement as items to be paid for using the designated Cash Allowance.

“Changes” has the meaning ascribed to it in Section 8.1 of the General Conditions.

“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 Consultant (including to employees, contractors, or other representatives thereof). For greater certainty, all Metrolinx Materials, construction documents, personal information (as defined in FIPPA), 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.

“Conflict of Interest” has the meaning ascribed to it in Section 18.14 of the General Conditions.

“Consultant” has the meaning ascribed to it in the Articles of Agreement.

“Consultant 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 Consultant or which Consultant has the right and licence to use and make available to Metrolinx, 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 Services.

“Consultant Personnel” or “Consultant’s Personnel” means (a) with respect to the Consultant, all of the Consultant’s personnel, employees and independent consultants (including the Key Personnel and the Consultant’s Representative) engaged in the performance of the Services; and (b) with respect to each Subconsultant, all of that Subconsultant’s personnel, employees and independent consultants engaged in the performance of the Services.

“Consultant Policies” has the meaning ascribed to it in Schedule D – Insurance of Appendix “A” General Conditions.

“Consultant’s Representative” means the person identified by the Consultant, and Accepted by Metrolinx, as the Consultant’s authorized representative pursuant to Section 2.8 of the General Conditions.

“Contract” means this contract between the Consultant and Metrolinx pursuant to **Tender No. ITC-2017-RTI-001** including the Articles of Agreement, the General Conditions and the Schedules thereto and the Contract Documents.

“Contract Closeout” means the date that the services are complete as per the schedule of work outlined in the Articles of Agreement.

“Contract Documents” means the Contract and those documents listed in Appendix “B” – Consultant’s Scope of Services and any written amendments thereto as agreed to by the Parties.

“Contract Performance Appraisal” has the meaning given in Section 2.12(a) of the General Conditions.

“Deliverables” means the work product created by the Consultant and/or the Consultant Personal in connection with or as a requirement of the Services, including all reports, drawings, plans, designs, processes, tools, standards, registers, logs, updates, files, databases, Software, and documentation.

“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.

“Dispute Notice” has the meaning given in Schedule E – Dispute Resolution.

“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 Services, gained through a practical application of the knowledge underlying the tasks in an environment substantially similar to that of the Services.

“Effective Date” means the final date of execution of this Contract by both Parties.

“Encumbrance” means any mortgage, charge, pledge, hypothecation, Lien, security interest, hypothec, easement, right-of-way, right-of-first refusal, option, encroachment, building or use restriction, conditional sales agreement, personal property lease, licence, restrictive covenant, adverse claim, promissory right or other encumbrance of any nature however arising, or any other security agreement or arrangement creating in favour of any creditor a right in respect of any property that is prior to the right of any other creditor in respect of such property.

“Estimated Contract Price” means the amount identified as such in the Articles of Agreement.

“FIPPA” means the Freedom of Information and Protection of Privacy Act, R.S.O. 1990, Chapter F.31.

“FIPPA Records” has the meaning ascribed to it in Section 10.6 of the General Conditions.

“French Designated Area” means an area designated as such in the Schedule to the French Language Services Act. A map and complete listing of French Designated Areas is available at <http://www.ofa.gov.on.ca/en/flsa-mapdesig.html>.

“French Language Services Act” means the *French Language Services Act*, R.S.O. 1990, c.F.32.

“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.

“Indemnified Parties” has the meaning ascribed to it in Section 12.1 of the General Conditions.

“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.

“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.

“Joint Venture” is the business arrangement of two or more parties proposed as identified in the Bidder’s Submission.

“Key Personnel” has the meaning ascribed to it in Section 2.7(a) of the General Conditions.

“Key Responsibilities” means the main responsibilities and tasks to be performed by each category of Consultant Personnel, as identified in Schedule B – Consultant Personnel.

“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.

“Metrolinx” means Metrolinx, a provincial crown agency continued under the *Metrolinx Act*, S.O. 2006, Chapter 16, and its successors and assigns.

“Metrolinx IP” has the meaning ascribed to it in Section 6.1 of the General Conditions.

“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 Consultant; (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.

“Metrolinx Representative” or **“Metrolinx’s Representative”** has the meaning ascribed to it in Section 2.9 of the General Conditions.

“OHSA” means the *Occupational Health and Safety Act*, R.S.O. 1990, c. O.1.

“Parties” means both of Metrolinx and the Consultant and a **“Party”** means either one of them.

“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.

“Place of Work” is the designated site or location of the Services.

“Product” means any goods, machinery, equipment, fixtures and Software (including any components of any of the foregoing) forming part of the Deliverables, but does not include machinery and equipment used solely to perform the Services.

“Professional Engineer” means an engineer licensed to practice engineering in the Province of Ontario.

“Project Schedule” means the scheduling requirements identified in Section 3 of the Form of Tender or otherwise provided by Metrolinx to the Consultant from time to time.

“Quotation” has the meaning given in Section 15 of Schedule C – Financial Terms.

“Rates” has the meaning given in Section 1(a) of Schedule C – Financial Terms.

“Required Standard of Care” means: (a) using the Standards, practices, methods and procedures to the highest commercial standards of practice and professionalism as understood in the Province of Ontario; (b) confirming to Applicable Laws and all rules of professional conduct applicable to the Consultant or the Consultant 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.

“Services” has the meaning ascribed to it in Section 2.2(a) of the General Conditions.

“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.

“Standards” means, at a given time, those standards, specifications, manuals, codes, practices, methods and procedures applicable to the Required Standard of Care.

“Statutory Holdback” has the meaning ascribed to it in Section 7 of Schedule C – Financial Terms.

“Subconsultant” means an individual, firm, partnership, corporation or design professional having a direct contract with the Consultant or another Subconsultant to perform a part or parts of the Services as identified in the Submission.

“Submission” means all documentation and other materials and information submitted by the Bidder in response to Tender No. **ITC-2017-RTI-001**.

“Task” has the meaning ascribed to it in Section 2.11(a) of the General Conditions.

“Task Assignment Process” has the meaning ascribed to it in Section 8.4(b) of the General Conditions.

“Task Release” has the meaning ascribed to it in Section 2.11(b) of the General Conditions.

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

“Term” has the meaning ascribed to it in Section 2.1 of the General Conditions.

“Third Party” or **“Third Parties”** means any Third Party Consultants or Third Party Operators.

“Third Party Contract” means a contract between Metrolinx and any other Person which is in any way related to, impacts or is impacted by the Services and/or the Consultant’s acts or omissions, whether expressly identified to the Consultant or not.

“Third Party Work” means work and services conducted or provided by Third Parties.

“Value Added Taxes” means such sum as shall be levied upon amounts payable to the Consultant under this Contract by any Governmental Authority that is computed as a percentage of the amounts payable to the Consultant (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 Consultant.

END OF SCHEDULE A

Schedule B – Consultant Personnel

1. Key Personnel

The following Key Personnel roles shall be filled, and they shall perform the following key responsibilities as well as any other responsibilities as requested by Metrolinx, in accordance with the Contract Documents and in accordance with the following requirements in respect of qualifications, experience and minimum years of experience.

1.1 Rate Category: Managers

Role	Key Responsibilities	Qualifications and Experience	Required Duration	Name of Individual
Design Practitioner	Refer to Appendix "B"	<ul style="list-style-type: none"> • Has 15 years of experience in the design and implementation of high quality, high profile, civic institutions and/or infrastructure, with an emphasis on experience and knowledge of design excellence; • As an effective designer has substantial demonstrated experience with successful, integrated and collaborative team design; • Has demonstrated substantial experience in playing a significant role (e.g. partner-in-charge, lead designer, project manager, or a substantial contributor to the design) in at least one architectural, landscape architectural, urban design, or industrial design award-winning civic Project. Applicable design awards include those awards which are peer reviewed and awarded competitively by design related organizations, professional associations, academic and government bodies, and publications; 	Entire Term of the Contract	Click here to enter text.

Role	Key Responsibilities	Qualifications and Experience	Required Duration	Name of Individual
		<ul style="list-style-type: none"> • Has demonstrated experience designing in complex urban and transitioning suburban, public realm environments that actively connect with adjacent buildings, streets, and parks; • Portfolio of work demonstrates mandate of design excellence with particular attention to elevating the user, and ideally transit passenger experience; • Other design excellence qualifications and experience (e.g. other awards in addition to those already listed; publications; academic research/lecturing; policy writing/design standards; experience on design review panels, competition juries, industry panels, etc.) 		

2. Format of Curriculum Vitae

- (a) The format and layout of each curriculum vitae provided by the Consultant shall be consistent and shall include:
- (i) Name of individual;
 - (ii) Proposed position;
 - (iii) Qualifications that relate to the proposed position;
 - (iv) Experience in performing the proposed position, include project names and brief project overviews;
 - (v) Number of years in the proposed position on each project as well as start date and completion date of each project;
 - (vi) Responsibilities on each project while performing the proposed position;
 - (vii) Details of accomplishments while performing the proposed position;
 - (viii) Education;
 - (ix) Professional memberships and affiliations; and
 - (x) References and contact information for projects of a similar complexity, successfully delivered on-time and on-budget while performing in the same capacity. Such references shall relate directly to the experience, responsibilities and details of project accomplishments noted above.

END OF SCHEDULE B

Schedule C – Financial Terms

1. Payment

- (a) Metrolinx will pay the Consultant for the Services performed by the Consultant pursuant to this Contract, in the amounts and manner, at the rates set out in the Articles of Agreement (the “Rates”) and at the times, set forth in the Articles of Agreement and this Schedule C – Financial Terms.
- (b) The Consultant shall perform all of the Services notwithstanding that the value of the time spent by the Consultant in performance thereof may exceed the maximum amount payable to the Consultant pursuant to Section 3 of this Schedule C – Financial Terms.

2. Limitation of Expenditure

- (a) It is understood that the Contract is based on reimbursement for actual Services requested by Metrolinx and performed by the Consultant, to the satisfaction of Metrolinx.
- (b) Metrolinx does not guarantee any minimum or maximum of work.

3. Estimated Contract Price

- (a) Subject to Sections 8.1, 8.2 and Article 9 – Additional Resources of the General Conditions, Metrolinx and the Consultant acknowledge and agree that Estimated Contract Price set out in the Articles of Agreement is the maximum amount payable in respect the provision of the Services; provided, however, that the foregoing is not an entitlement to, nor a guarantee that the Consultant will be paid the full amount of, the Estimated Contract Price.
- (b) The Estimated Contract Price includes all Cash Allowances identified in this Contract.

4. Rates for Services

- (a) The Consultant 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 and management of the Services 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.

- (b) Metrolinx shall not reimburse the Consultant for any hospitality, food or incidental expenses incurred. Subject to the prior consent of Metrolinx, Metrolinx shall reimburse the Consultant for reasonable traveling expenses incurred in connection with the performance of the Services, such reimbursement to be made in accordance with the Government of Ontario's Travel, Meal, and Hospitality Expenses Directive.
- (c) As part of the Services, the Consultant 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 Consultant in connection thereto shall be included in the Rates set out in the Articles of Agreement.

5. Taxes

- (a) The Estimated 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 Consultant shall be responsible for remittance of any and all Taxes due and payable in respect of the Services.
- (b) 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 Services, is to be shown separately on all invoices for Services performed by the Consultant. The Consultant shall remit any HST paid or due to Revenue Canada Customs & Excise in accordance with Applicable Laws, and shall, at the request of Metrolinx, provide evidence of payment of same.
- (c) 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 Consultant shall show on each invoice, and in the manner directed by Metrolinx, either the actual Value Added Taxes paid by the Consultant by category or the portion of the Consultant's fees eligible under Applicable Law for the rebate.
- (d) Certain payments to non-resident corporations or individuals may be subject to withholding taxes, under the Income Tax Act. Non-residents can apply in advance to Revenue Canada, Taxation, for a waiver or reduction of the withholding tax requirement. Unless Metrolinx is provided with a copy of the written information as a result of the waiver application to the Tax Services Office of Canada Customs and Revenue Agency, taxes will be withheld as determined under the Income Tax Act. The Consultant 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.

6. Invoicing and Payment Process

- (a) The Consultant shall submit an invoice for payment for Services completed no less than ten (10) Business Days following the end of the month in respect of which the related Services were rendered. The invoice shall be in form and substance satisfactory to Metrolinx acting reasonably and shall set out with sufficient particularity the Services performed in the previous month and the total time spent by each category of Consultant Personnel multiplied by the applicable Rate.
- (b) The aggregate amount invoiced by the Consultant shall not exceed the Estimated Contract Price, unless such additional amount is agreed by the Parties pursuant to the change management process set out in Article 8 of the General Conditions.
- (c) Unless there is a Dispute with respect to the content of an invoice and subject to the other provisions of this Schedule C, Metrolinx shall make payment to the Consultant no later than thirty (30) Business Days following receipt of the invoice for payment from the Consultant, unless otherwise provided or permitted in the Contract.

7. Statutory Holdback

Not Applicable

8. Withholding of Payment

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

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

9. Substantial Performance

Not Applicable

10. Release of Statutory Holdback Upon Substantial Performance

Not Applicable

11. No Progressive Release of Holdback

Not Applicable

12. Final Payment Certificate

Metrolinx shall review the record of the Services performed to verify the validity, or otherwise, of the application after the receipt of the Consultant's application for final payment. Metrolinx shall review the record of Services performed within ten (10) Business Days of receipt of the Consultant's application and shall issue, no later than seven (7) Business Days after reviewing the record of Services, a final payment certificate in the amount applied for or a regular certificate for payment in such other amount as Metrolinx determines to be properly due. If Metrolinx amends the application, Metrolinx shall promptly notify the Consultant in writing giving reasons for the amendment.

13. Cost of Changes

- (a) Changes shall be implemented by the Consultant without any additional charge, unless Consultant is able to demonstrate (with supporting documentation) that the Change causes the Consultant to incur additional costs.
- (b) The Consultant 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 Consultant Personnel, those same Rates shall apply with reference to the applicable level of experience and/or expertise.
- (c) With respect to any Changes that (in whole or in part) require the services of a third party, Metrolinx (at its sole discretion) shall have the right to require the Consultant to provide three (3) quotes to Metrolinx in respect of such third party services, in accordance with Section 14 of this Schedule C – Financial Terms.
- (d) 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 Consultant shall provide same to Metrolinx within five (5) Business Days of the request therefor.

14. Expenditure of Cash Allowance

- (a) Where the expenditure of a Cash Allowance has been approved by Metrolinx, the value of completed or delivered Cash Allowance Items may be claimed as part of the Consultant's monthly application for payment, in accordance with Section 6 of this Schedule C – Financial Terms. Cash Allowance expenditures must not exceed the Estimated Contract Price.
- (b) The Consultant is not entitled to any extra payment on account of a specified Cash Allowance Item and is not entitled to any unexpended Cash Allowance amounts.
- (c) A Cash Allowance is in no way a guarantee of monies and shall only be expended for the portion of the Cash Allowance Items specified in the

Articles of Agreement and authorized by Metrolinx pursuant to Section 8.4 of the General Conditions.

- (i) The Cash Allowance shall cover the net cost of performing all Cash Allowance Items, excluding Consultant's overhead and profit which shall be included in the Rates, exclusive of the Cash Allowance. Should the cost of performing the Cash Allowance Items be less than the identified amount of the Cash Allowance, the Consultant shall only be compensated for the actual cost of performing the Services.
- (ii) In the event that the Consultant reasonably anticipates that the cost of performing the Services under the Cash Allowance will exceed the amount of the Cash Allowance, the Consultant shall immediately notify Metrolinx and the matter shall be addressed pursuant to the change management process set out in Article 8 of the General Conditions. The Consultant shall not be compensated for any amount exceeding the Cash Allowance unless and until same has been authorized in writing in accordance with Article 8 of the General Conditions.
- (iii) All expenditures by the Consultant under the Cash Allowance must be substantiated with appropriate documentation clearly documenting the amount of the expenditure and the goods and/or services to which it relates. The Consultant shall only be compensated for expenditures under the Cash Allowance that are substantiated.

15. Quotations - Changes and Cash Allowance Items

- (a) With respect to any Changes or Cash Allowance Items (or any part thereof), the Consultant shall, upon request by Metrolinx (at its sole discretion), submit up to three (3) quotes detailing the estimated cost of the applicable Change or Cash Allowance Item (each a "**Quotation**"). Where Metrolinx has not provided the names of third parties from which quotations should be obtained, the Consultant shall have the right to choose which third parties shall provide quotations. Subject to any instruction to the contrary issued by Metrolinx pursuant to Section 8.5 of the General Conditions, where a Cash Allowance Item includes work that the Consultant proposes would be most efficiently performed by the Consultant's own workforces, the Consultant shall include as one of the three (3) quotes the price proposal for having its own workforce perform the work.
 - (i) Any and all costs incurred by the Consultant for providing a Quotation or obtaining quotations from third parties, shall be borne by the Consultant.

- (ii) All Quotations shall be prepared on the Consultant's letterhead and in a format agreed to by Metrolinx and the Consultant. The Quotation shall at a minimum contain the following information:
- (iii) a description of the work required by the Services;
- (iv) Curriculum Vitae for each required position and two (2) references for each individual;
- (v) estimated hours of work for each identified key role;
- (vi) any requirement for additional positions other than those listed in Schedule B of Appendix "A";
- (vii) required Subconsultants; and specialized service providers;
- (viii) any requirements for testing and/or reporting;
- (ix) detailed breakdown of costs;
- (x) detailed work schedule which complies with completion date provided by Metrolinx (as required by Metrolinx); and
- (xi) any other requirements/instructions.
- (xii) The Consultant shall, upon request, disclose to Metrolinx the originals of all bids, quotations and other price related information received from suppliers or Subconsultants.
- (xiii) Metrolinx reserves the right to accept or reject a Quotation, in whole or in part.

16. Metrolinx Property

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

17. Records and Audit

- (a) The Consultant agrees to keep and maintain full and complete records and accounts of all costs in accordance with Metrolinx' requirements. All such records, including timesheets, correspondence, receipts and memoranda pertaining to the Services shall be available for inspection by any authorized employee or agent of Metrolinx at all reasonable times for the purpose of auditing the Consultant' reasonable costs and the Consultant shall provide every reasonable assistance for that purpose including, but not limited to, making the records available for inspection at the Consultant's office during normal business hours and acting reasonable to observations made by Metrolinx or its auditors. The results of the audit will be maintained as confidential to be used for the purposes of and as contemplated by this Contract or as otherwise required by

Applicable Laws. Such records shall be kept for a period of seven (7) years after termination of this Contract.

- (b) During the Term and for a period of seven (7) years thereafter, Metrolinx or any other Person acting on behalf of Metrolinx, shall have the right, upon no less than 24 hours' notice in writing during the Term, and on no less than five (5) Business Days' notice in writing during the seven (7) year period following the Term, to the Consultant and during normal office hours, to inspect and audit, and to have access to, all relevant premises, sites, books, records, payrolls, accounts and documentation of the Consultant relating to this Contract, and to take extracts therefrom. The Consultant shall make available or cause to be made available such reasonable information and material as may be required and shall otherwise reasonably cooperate with Metrolinx and any other Person acting on Metrolinx' behalf. Without limiting the generality of the foregoing, the rights set out in this Section shall extend to any Governmental Authority exercising its right to audit pursuant to Applicable Law or any contract with Metrolinx.

END OF SCHEDULE C

Schedule D – Insurance

1. Consultant Insurance Requirements

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

1.1 Commercial General Liability

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, damage to property of others. Such policy shall not contain any exclusions that conflict with the Services required to be performed under this Contract. The Consultant 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 Consultant Policies hereof as “Additional Insured”. In addition the Consultant shall include the following as Additional Insured:

The policy shall contain a waiver of subrogation.

1.2 Automobile Liability Insurance

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 Services. Coverage shall consist of a combined single limit of not less than two million dollars (\$2,000,000) per occurrence. Alternatively, for Services that do not require the use of owned, non-owned, leased or hired automobile, the Consultant shall provide a written confirmation within five (5) business days of contract award, stating same, in place of the insurance coverage.

1.3 Errors and Omissions Insurance

The policy shall provide errors and omissions insurance including coverage for infringement of trademark and copyright covering the Services rendered by the Consultant, any Subconsultants or any Consultant Personnel, including personnel on loan to the Consultant who perform normal services of the Consultant 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 coverage for an extended reporting period of not less than thirty-six (36) months.

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 Consultant in accordance with this Contract have been exhausted.

1.4 Additional Coverage

(a) Without prejudice to any other provisions of this Contract (including Section 1.1 of this Schedule D – Insurance), the Consultant shall, at all relevant times and at its own expense, obtain and maintain, or cause to

be obtained and maintained (during the Term plus coverage for an extended reporting period of not less than thirty-six (36) months):

- (b) those insurances that are reasonable for the performance of the type and scope of Services set out by this Contract (including, as applicable, insurance as would typically be required by prudent designers or consultants); and/or
- (c) those insurances that the Consultant is required to obtain and maintain, or cause to be obtained or maintained, by Applicable Law.

1.5 Requirements for Insurance

- (a) All of Consultant's policies of insurance, as required under this Contract (the "**Consultant 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 any approved equivalent
- (b) Any deductible or self-insured retention amounts are the responsibility of the Consultant. Notwithstanding the foregoing, such deductibles or self-insured retention must be consistent with standard commercial practice and acceptable to Metrolinx, acting reasonably.
- (c) All Consultant Policies shall be kept in full force and effect during the Term, including any requirements for the period following Contract Closeout.
- (d) In the event that the Consultant fails to obtain and/or maintain in full force and effect any such insurance as aforementioned, then Metrolinx shall have the right as the Consultant's true and lawful attorney to do all things necessary for this purpose. The Consultant 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 D – Insurance, but not paid by the Consultant 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 Consultant by Metrolinx either under this Contract or otherwise.
- (e) All Consultant Policies shall be endorsed to provide Metrolinx with not less than thirty (30) days' advance written notice of cancellation.
- (f) Irrespective of the insurance requirements above, the insolvency, bankruptcy, or failure of any such insurance company providing insurance for the Consultant, or the failure of any such insurance company to pay claims that occur will not be held to waive any of the provisions hereof.

1.6 Proof of Insurance

- (a) The Consultant shall, prior to the commencement of the Services and thereafter upon request, provide to Metrolinx original signed certificates of insurance for the Consultant Policies, confirming that the required coverage has been placed and maintained. In addition, at least fifteen (15) days prior to the expiry date of any policy, the Consultant shall provide original signed certificates evidencing renewals or replacements of such policy to Metrolinx, without notice or request by Metrolinx.
- (b) The Consultant shall, upon request, provide evidence to Metrolinx that the premiums associated with the Consultant 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 Consultant.
- (c) The Consultant also agrees to provide Metrolinx with proof of errors and omissions insurance maintained by any Subconsultant, where such Subconsultant 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 Consultant and to be in a form and with an insurer acceptable to Metrolinx.

1.7 Consultant's Liability Preserved

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

1.8 Workplace Safety & Insurance Board Protection

- (a) With respect to the WSIB coverage as required under the *Workplace Safety and Insurance Act* (Ontario), the Consultant unconditionally guarantees to Metrolinx full compliance with the conditions, regulations and laws relating to workplace safety insurance by itself and by all Subconsultants.
- (b) Without restricting the indemnity obligations of the Consultant in Article 12 of the General Conditions, the Consultant shall produce, at the commencement of this Contract, from time to time as may be required by Metrolinx and prior to issuance of the Final Payment Certificate, a valid Workplace Safety and Insurance Clearance Certificate, issued by the WSIB, for the premium rate class, subclass or group appropriate to the Services.

END OF SCHEDULE D

Schedule E – Dispute Resolution

1. Bona fide efforts to resolve

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 E – Dispute Resolution.

2. Continuance of the Services During Dispute

Unless expressly directed otherwise by Metrolinx, the Consultant shall not stop or delay the performance of the Services, in whole or in part, on account of a Dispute between the Consultant and Metrolinx or between the Consultant and any other Person. Without limiting the generality of the foregoing, at all times during the course of a Dispute, the Consultant shall:

- (a) continue with the Services in a diligent manner and without delay;
- (b) conform to Metrolinx' decisions and directions; and
- (c) be governed by all applicable provisions of this Contract.

The Parties acknowledge and agree that the Consultant's compliance with this Section 2 shall not operate to waive any claim or contention that the Consultant may have in relation to any Dispute.

3. Tiered-Dispute Resolution

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. Negotiation

- (a) In the event a Party issues a Dispute Notice to the other Party, the Vice President, GO Capital Infrastructure 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 Consultant, of equivalent seniority and duly appointed to represent the Consultant 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.

- (b) Negotiations under this Section 4 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. Mediation

- (a) If a Dispute has not been resolved through high-level negotiation as contemplated in Section 4, either Party may refer the Dispute to be resolved through mediation.
- (b) 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.
- (c) 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.
- (d) 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.
- (e) Unless the Parties otherwise agree, the mediation shall proceed in accordance with the following procedures:
 - (i) 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.
 - (ii) 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.
 - (iii) A Party may be represented at the mediation by counsel or another representative at the sole cost of such Party.
 - (iv) 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.
 - (v) In all respects, the mediation is deemed to be a "without prejudice" proceeding.

- (f) The costs of the mediator shall be apportioned equally between the Parties unless otherwise agreed under any settlement reached under this Section 5.
- (g) 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.
- (h) Both Parties acknowledge and agree that they may not refer a Dispute for resolution by arbitration under Section 6 prior to attempting to resolve such Dispute through mediation pursuant to this Section 5.

6. Arbitration

- (a) 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.
- (b) 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. 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.
- (c) 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.
- (d) The arbitration shall be conducted in accordance with the provisions of the *Arbitration Act, 1991*, S.O. 1991, c. 17, except to the extent they are modified by the express provisions of this Schedule E – Dispute Resolution or unless the Parties otherwise agree.
- (e) 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.
- (f) The arbitrator(s) has the jurisdiction to deal with all matters relating to a Dispute.
- (g) Unless otherwise agreed, the arbitration shall be conducted in the City of Toronto, Province of Ontario at the location determined from time to time by the arbitrators, but the arbitrators may meet in any other place the arbitrators considers necessary for consultation, to hear witnesses,

experts or other parties, or for the inspection of documents, goods or other property.

- (h) 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.
- (i) The language of the arbitration shall be English.
- (j) 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, 1991* (Ontario).
- (k) 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, 1991* (Ontario) and the *Courts of Justice Act* (Ontario).

END OF SCHEDULE E

Appendix "B" – Consultant's Scope of Services

List of Contents

The following documents hereby form part of and are appended to this Tender Document as the Appendix "B" – Consultant's Scope of Services

<u>ITEM NO.</u>	<u>DOCUMENT TITLE</u>
1.	Abbreviations and Definitions
2.	Project Overview
3.	General Requirements
4.	Management of the Services
5.	Scope of Services

1. Background

- 1.1 The HuLRT project is a \$1.4 billion (\$2014), 20-kilometre, 22-Stop, light rail transit line that will run along the surface of Hurontario Street from the Gateway Terminal at Steeles Avenue West in Brampton to Port Credit GO Station in Mississauga, including a service loop around downtown Mississauga. It will provide rapid transit to and from the City of Brampton and the City of Mississauga. The in-service date is estimated to begin late 2022.
- 1.2 The Hurontario Light Rail Transit (HuLRT) Compliance Review Panel (referred to as the Panel) will consist of six members, whose main purpose is to review and provide feedback on the drawings presented by the Proponents during the In-Market period of the RFP. Feedback will focus on compliance with the criteria set out in the Design Excellence Principles and Requirements Document.
- 1.3 The *Hurontario LRT Design Excellence Principles and Requirements* document (referred to as the HuLRT DXP+R) was created, building on the earlier ECLRT DXP+R and FWLRT DXP+R, to develop clear architectural, landscape, and urban design guidelines for the HuLRT project. The HuLRT DXP+R aims to achieve enduring value and a richness and quality of experience for passengers, putting an emphasis on design excellence, universal access, and sustainability to be seamlessly integrated into every aspect of the project.

2. Purpose

- 2.1 The procurement's objective is to acquire the two Consultants, Design Practitioners, (referred to as the Consultants) as members of the Panel. Using the HuLRT DXP+R as its basis, the Panel is to review and assess the drawings and presentations of the Proponents and to give feedback regarding compliance with the Principles of Design Excellence outlined in the DXP+R. In summary the principles are:
 - (a) A strong conceptual design narrative across the system.
 - (b) Design that elevates the quality of the passenger experience.
 - (c) Civic scale, materiality, and quality.
 - (d) Clarity and simplicity of architectural expression through integrated design of all systems and elements.
 - (e) Responsiveness to contextual, local, and future conditions.

3. Panel Composition

- 3.1 The Panel will consist of six members in total: The Chair (Metrolinx Design Excellence Project Lead), one Administrative Assistant (Metrolinx), a City of Brampton and a City of Mississauga representative (City Planners nominated by respective cities and not procured or reimbursed by MX), and two hired Design

Practitioner Consultants. These two (2) Consultants will be engaged by way of this procurement.

4. Scope of Work

- 4.1 It is estimated that each Consultant will need to spend a base of 205 hours with 24 discretionary hours to be activated by the Chair on an if and as-needed basis. The base hours include a four hour Design Presentation Meeting (DPM) briefing and training session led by Infrastructure Ontario (IO), as mandated by IO. In addition, at a separate scheduled time a site visit will occur lasting eight hours. A date and a day plan will be determined at least ten days prior to the site visit. The briefing, training session, and site visit will occur prior to the start of the DPMs.
- 4.2 The bulk of the work for the Panel will occur around the three sets of DPMs with each set of DPMs lasting eight hours for each of three proponents. The DPMs are organized and chaired by IO and provides a forum for each Proponent to address specific parts of their design responses to a wide range of reviewers, including the Metrolinx Project Management Delivery team, the project's Technical Advisor, key stakeholders, and the Design Excellence Compliance Review Panel.
- 4.3 During the DPMs, the Panel will attend the meetings, listen to and view each Proponent's presentation, including viewing confidential drawings, renderings, listening to narratives and explanations. As part of each DPM the Panel will then, immediately review and discuss the materials and presentations and before the conclusion of the day's meetings, render a tentative assessment as to the presented design's compliance with the DXP+R.
- 4.4 The drawings submitted are the Proponents interpretation of the vision set by Metrolinx for the HuLRT project as stated in the HuLRT Design document. Each DPM will consist of a confidential proponent presentation, panel review, and feedback session. For each DPM, the Panel will use a checklist to evaluate Design Excellence compliance and to record comments.
- 4.5 Within seven to eight business days of each DPM, the Panel will meet again to further discuss, consider and confirm or amend the original assessment. A consensus report will be created to summarize the Panel's assessment as to the presented design's compliance with the DXP+R. Before each DPM, a telephone briefing amongst the Panel members will occur.
- 4.6 There will be three sets of DPMs in total. Each set of DPMs will take three days, one for each Proponent.
 - (a) DPM 1 will occur between August 29, 2017 and August 31, 2017 and will address "TBD"
 - (b) DPM 2 will occur between October 10, 2017 and October 12, 2017 and will address "TBD"

- (c) DPM 3 will occur between December 05, 2017 and December 07, 2017 and will address "TBD"
- 4.7 Each DPM will last a full day for each Proponent, starting from 8:00am and ending at 4:00pm. The meeting will begin with a sponsor debrief from 8:00am to 9:00am. Then proponent presentations will occur from 9:00am to 12:30pm. The Panel will then review and assess the presentation material in camera from 12:30pm to 2:30pm. A verbal feedback by the Panel will be given to the Proponents from 2:30pm to 3:30pm. Lastly, a question and answer session with the proponents will last 30 minutes from 3:30pm to 4:00pm. Time slots are subject to adjustment by IO.
- 4.8 After the DPMS, a final evaluation for each Proponents final submissions will occur lasting up to 12 hours each. The final evaluation period and the consensus period have yet to be determined, but specific schedule details will be issued by IO closer to the final evaluation period. Required attendees include the two Consultant members.
- 4.9 Depending on the progress of the schedule or other unforeseen events, an additional 24 hours has been allocated to give flexibility to the review process. The Chair (Metrolinx) will determine whether the 24 hours will be needed and to what extent.
- 4.10 It is mandatory for the Consultants hired to attend all the engagements as specified in the Scope of Work. In addition, all meeting invites will be sent out by IO.
- 4.11 After the project has been awarded, the Panel review will resume on an individual basis to provide further feedback and direction at key junctions during the design development phase. Tentatively, design reviews will encompass the following elements: Terminus Station, Stops, ancillary structures, guideways and portals, and the maintenance and storage facility. These elements will be reviewed upon receiving ProjectCo's 30%, 60% and 90% submissions.
- 4.12 Each review has been estimated to take a total of 12 to 16 hours, with 4 to 8 hours allocated for consultants to conduct a document review followed by an 8 hour review meeting. Further to the review meetings, a consensus report will be created to consolidate and summarize the Panel's assessment and then given to ProjectCo. Time frames for the submission of milestone reviews are developed by ProjectCo.

5. Project Requirements

5.1 Staff Requirements

The Consultant shall employ staff for the following position to perform the Services contemplated herein who possess the minimum years of experience and qualifications specified as follows:

- (a) Position – Design Practitioner

- (b) Required Qualifications and Experience:
- (i) 15 years of experience in the design and implementation of high quality, high profile, civic institutions and/or infrastructure, with an emphasis on experience and knowledge of design excellence;
 - (ii) As an effective designer has substantial demonstrated experience with successful, integrated and collaborative team design;
 - (iii) Has demonstrated substantial experience in playing a significant role (e.g. partner-in-charge, lead designer, project manager, or a substantial contributor to the design) in at least one architectural, landscape architectural, urban design, or industrial design award-winning civic Project. Applicable design awards include those awards which are peer reviewed and awarded competitively by design related organizations, professional associations, academic and government bodies, and publications;
 - (iv) Has demonstrated experience designing in complex urban and transitioning suburban, public realm environments that actively connect with adjacent buildings, streets, and parks;
 - (v) Portfolio of work demonstrates mandate of design excellence with particular attention to elevating the user, and ideally transit passenger experience;
 - (vi) Other design excellence qualifications and experience (e.g. other awards in addition to those already listed; publications; academic research/lecturing; policy writing/design standards; experience on design review panels, competition juries, industry panels, etc.)

Appendix "C" – Documents

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

ITEM NO.	DOCUMENT TITLE
1.	Metrolinx Safety Guidelines For Consultants, Consultants and Project Coordinators
2.	Fillable Forms
3.	Contract Performance Appraisal
4.	Sample Parental Guarantee

SAMPLE ARTICLES OF AGREEMENT

These Articles of Agreement are made as of the ● day of ●, 20●

B E T W E E N

METROLINX, a corporation established pursuant to the Metrolinx Act, 2006

- and -

●
(hereinafter the “Consultant”)

In consideration of the mutual covenants and agreements contained herein, and other good and valuable consideration, the receipt and sufficiency of which are mutually acknowledged, Metrolinx and the Consultant agree as follows:

1. Contract

- (a) The following documents and any amendments relating thereto form the contract between Metrolinx and the Bidder (the “Contract”):
- (i) these Articles of Agreement;
 - (ii) any Addenda issued hereto;
 - (iii) the Form of Tender;
 - (iv) Attachment #1 – Contract Prices;
 - (v) the document attached hereto as Appendix “A” and entitled “General Conditions”;
 - (vi) the document attached hereto as Appendix “B” and entitled “Consultant’s Scope of Services”;
 - (vii) the document attached hereto as Appendix “C” and entitled “Documents”.
- (b) In the event of discrepancies, inconsistencies or ambiguities of the wording of these documents, the wording of the document that first appears on the above list shall prevail over the wording of a document subsequently appearing on the list.

SAMPLE – DO NOT COMPLETE

2. Date of Completion of Services and Description of Services

The Consultant shall, between the date of these Articles of Agreement and the ● day of ●, perform and complete with care, skill, diligence and efficiency the work that is further described as follows:

- (a) The Consultant shall provide labour, superintendence, plant, tools, appliances, equipment, supplies and other accessories, services and facilities necessary to carry out ●, in accordance with the Consultant's Scope of Services, attached as APPENDIX "B" (the "Services").
- (b) The Services is to be provided to the satisfaction of the ●, unless otherwise specified.

3. Contract Price

- (c) ●

SAMPLE – DO NOT COMPLETE

Subject to the terms and conditions of the Contract and in consideration for the Services, Metrolinx shall pay to the Bidder:

If the Consultant is a corporation:

●(Company's Full Legal Name)

Per: _____

Name:

Title:

Per: _____

Name:

Title:

I/We have authority to bind the Corporation

If the Consultant is a partnership:

(Partnership's Full Legal Name)

by its General
Partner,

(Name of General Partner)

Per: _____

Name:

Title:

Per: _____

Name:

Title:

SAMPLE – DO NOT COMPLETE

If the Consultant is a Joint Venture or a Consortium:

Joint Venture/Consortium
Participant-in-Charge

(Company's Full Legal Name)

Per: _____

Name:
Title:

Joint Venture/Consortium Member

(Company's Full Legal Name)

Per: _____

Name:
Title:

Joint Venture/Consortium Member

(Company's Full Legal Name)

Per: _____

Name:
Title:

If the Consultant is an individual:

)

)

)

)

Witness

)

Name:

In witness whereof, the above signed has executed this agreement, this _____ day of _____, 20____.

SAMPLE – DO NOT COMPLETE

SAMPLE PARENTAL GUARANTEE

Contract [_____]

WHEREAS _____, a company incorporated under the laws of _____ (Province/Country) is a subsidiary of _____ (parent company's name)

AND WHEREAS Metrolinx is desirous of entering into Contract No. _____ for _____ with _____.

NOW THIS AGREEMENT WITNESSES that in consideration of the premises and the award of Contract No. _____ by Metrolinx to _____, that _____ (parent company) agrees to provide all the necessary financial and technical support for the proper completion of the said Contract and shall guarantee the performance of the said Contract in accordance with the terms and conditions, including timely completion thereof, and agrees to guarantee the Work (as defined in Contract No: _____) for the warranty period(s) stipulated therein.

IT IS UNDERSTOOD AND AGREED that this Contract of guarantee will be interpreted in accordance with the laws of the Province of Ontario, and _____ (parent company) hereby attorns to the jurisdiction of the Courts of the Province of Ontario.

This agreement shall be attached to and form part of Contract No. _____ between _____ and Metrolinx.

IN WITNESS WHEREOF _____ (parent company) has hereunto affixed its corporate seal under the hands of its duly authorized officers in that behalf, this _____ day of _____, 201_.

PARENT COMPANY: _____

Per:

(Signature)

(SEAL)

(Print Name)

(Title)

I/We have authority to bind the Corporation