



## **NOTICE TO VENDORS**

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

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

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



## Tender For

Tender Description:	Supply and Delivery of Kit - Desiccant Air Dryer Bendix AD-IP to Various Bus Facilities
Tender Number:	PT-2018-BUSF-646 (2019 – 2021)

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

Addenda, if applicable, are as follows:

<b>Addendum No.</b>	<b>Date Issued</b>	<b>No. of Pages</b>

## BIDDER'S SUBMISSION CHECKLIST

**Supply and Delivery of Kit - Desiccant Air Dryer Bendix AD-IP  
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### 1.0 Submission Checklist

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

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

## INTRODUCTION

**Supply and Delivery of Kit - Desiccant Air Dryer Bendix AD-IP  
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### **1.0 General**

- 1.1 Metrolinx is issuing this call for Tenders to retain the services of a Vendor to provide the goods and/or services described herein. Metrolinx intends to notify a Bidder of acceptance of its Submission and enter into a Contract through an open, fair and competitive process.
- 1.2 You are invited to submit your Submission for PT-2018-BUSF-646 for the Supply and Delivery of Kit - Desiccant Air Dryer Bendix AD-IP to Various Bus Facilities, as more particularly described in this Tender Document as required by Metrolinx.

## DEFINITIONS

### 1.0 In this Tender Document,

- 1.1 “**Addenda**”/”**Addendum**” is the formal written release of additions, deletions, revisions, clarifications to this Tender Document, via the Metrolinx MERX Portal, that form a part of the Tender Document and subsequently the Contract as specified in Section 4.0 of Instructions to Bidders.
- 1.2 “**Bidder**” means the entity that submits a Submission in response to this Tender Document and who, if notified of acceptance of its Submission by Metrolinx, shall execute the Contract with Metrolinx for provision of the Work.
- 1.3 “**Business Day**” means any day other than: (a) a Saturday or Sunday and (b) any other day on which Metrolinx is not open for business. Each Business Day will end at 4:00 p.m. on that day.
- 1.4 “**Closing**” means the deadline for Metrolinx to receive Submissions as specified in “Closing” of Section 1.2, Tender Timetable, of Instructions to Bidders.
- 1.5 “**Conflict of Interest**” means:
- (a) in relation to this Tender Process, the Bidder has an unfair advantage or engages in conduct, directly or indirectly, that may give it an unfair advantage, including but not limited to (i) having, or having access to, confidential information of Metrolinx in the preparation of its Submission that is not available to other Bidders, (ii) communicating with any person with a view to influencing preferred treatment in this Tender Process (including but not limited to the lobbying of decision makers involved in this Tender Process), or (iii) engaging in conduct that compromises, or could be seen to compromise, the integrity of this Tender Process; or
  - (b) in relation to the performance of its contractual obligations contemplated in the Contract that is the subject of this procurement, the Bidder’s other commitments, relationships or financial interests (i) could, or could be seen to, exercise an improper influence over the objective, unbiased and impartial exercise of its independent judgement, or (ii) could, or could be seen to, compromise, impair or be incompatible with the effective performance of its contractual obligations.
- 1.6 “**Contract**” means this contract between the Vendor and Metrolinx pursuant to this Tender No. PT-2018-BUSF-646 including the Articles of Agreement, Addenda, the General Conditions of the Contract, the Contract Documents, and any and all other documents referenced therein.



## DEFINITIONS

- 1.7 **"Contract Documents"** means the Contract and those documents listed in List of Contents and any written amendments thereto as agreed to by the Parties.
- 1.8 **"Drawings"**, if applicable to this Tender Document, describe the detailed technical requirements of the Work and form part of the Scope of Work contained herein.
- 1.9 **"EBS"** means Electronic Bid Submission.
- 1.10 **"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.
- 1.11 **"E-Bid Confirmation Number"** is the receipt received by a Bidder from the Metrolinx MERX Portal indicating that the Submission was uploaded successfully.
- 1.12 **"FIPPA"** means the Freedom of Information and Protection of Privacy Act, and any amendments or successor legislation. FIPPA is Provincial legislation regulating the collection, retention, access, use and disclosure of "Personal Information" by or on behalf of Metrolinx, and shall be applicable to the Contract including all Work provided pursuant to the Contract.
- 1.13 **"Joint Venture"** means a business arrangement of two or more parties proposed for this Tender Process further described in Section 21.0 of Instructions to Bidders.
- 1.14 **"Key Personnel"** means the individual identified by name in "Tender Document Form: Vendor Personnel".
- 1.15 **"Metrolinx"** is a provincial crown agency continued under Metrolinx Act, S.O. 2006, Chapter 16, and its successors and assigns and shall have the same meaning ascribed to "Metrolinx" in Schedule A - Definitions of General Conditions of the Contract.
- 1.16 **"Metrolinx MERX Portal"** is the electronic bid solicitation and Vendor Submission website ([www.metrolinx.merx.com](http://www.metrolinx.merx.com)) that facilitates Metrolinx and Bidder interaction as it directly relates to the; download by a Vendor of Metrolinx Tender Documents including Addenda from, and upload by a Vendor of a Submission to Metrolinx in response to, this Tender Process.

## DEFINITIONS

- 1.17 "**Option**" means a component of the Work that is to be exercised at the sole discretion of Metrolinx.
- 1.18 "**PDF**" means Portable Document Format.
- 1.19 "**Participant in Charge**" shall have the same meaning ascribed in Section 21.2 of Instructions to Bidders.
- 1.20 "**Parties**" means both of Metrolinx and the Vendor and a "Party" means either one of them.
- 1.21 "**Place of the Work**" is the designated site or location of the Work.
- 1.22 "**Procurement Office**" means Metrolinx Procurement Services office located at 277 Front Street West, 4th Floor, Mail Room, Toronto, Ontario, Canada, M5V 2X4.
- 1.23 "**Procurement Representative**" means the following individual in the Procurement Services Department:

Josie Canzona, Procurement Officer	
Telephone number	(416) 202-5645
Email	Josie.Canzona@metrolinx.com

- 1.24 "**Submission**" means all documentation which the Bidder shall be bound to and other materials and information submitted electronically by the Bidder's E-Bid Authorized Signer through the Metrolinx MERX Portal in response to this Tender Document or in respect of this Tender Process.
- 1.25 "**Subvendor**" means an individual, firm, partnership or corporation having a direct contract with the Vendor or another Subvendor to perform a part or parts of the Work.
- 1.26 "**Supplier**" means an individual, firm, partnership or corporation having a direct contract with the Vendor or another Subvendor to provide goods and services required to carry out the Work.
- 1.27 "**Scope of Work**" describes the general and detailed requirements of the Work and are to be read in conjunction with any Drawings contained herein, if applicable.

## DEFINITIONS

- 1.28 "**Tender Document**" means this Tender document comprised of sections listed in the List of Contents, issued by Metrolinx for the Work to be provided, and any Addenda thereto.
- 1.29 "**Tender Document Form(s)**" means any sections of this Tender Document which require completion and must be included with the Submission.
- 1.30 "**Tender Process**" means the procurement process for this Tender as set out in the Tender Document herein.
- 1.31 "**Total Contract Price**" means the total contract price set out in Tender Document Form: Contract Prices.
- 1.32 "**Vendor Performance Management (VPM)**" shall have the meaning ascribed in Section 31.0 of Instructions to Bidders.
- 1.33 "**Vendor Performance Rating (VPR)**" is the average of a vendor's performance evaluation scores in a particular category (as assessed by or on behalf of Metrolinx) for a thirty-six (36) month period preceding the Closing. If a Bidder has not completed any work for Metrolinx in the three (3) years preceding the Closing, for the purpose of evaluating the Submission, the Bidder will be assigned a VPR which is the straight average of all the VPR's of all vendors in a particular category who have performed services for Metrolinx during the prior fiscal year. "**Vendor**" means the Bidder identified on Page 1 of "Tender Document Form: Form of Tender" and who, if notified of acceptance of its Submission by Metrolinx, shall execute the Contract with Metrolinx for provision of the Work.
- 1.34 "**Work**" means all activities, services, goods, equipment, matters and things required to be done under the Contract for Supply and Delivery of Kit – Desiccant Air Dryer Bendix AD-IP to Various Bus Facilities, including all of the work, labour, services, goods, equipment, if applicable, described in the Scope of Work and Drawings.
- 1.35 "**Working Day**" means any day other than: (a) a Saturday or Sunday and (b) any other day on which Metrolinx is not open for business.

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### 1.0 General

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

#### 1.2 Tender Timetable

<b>Milestone</b>	<b>Date</b>
Issuance of Tender Document	December 20, 2018
Deadline to Submit Questions	January 7, 2018
Last day for issuance of Addenda	January 10, 2018
Closing	January 15, 2019 @ 3:00 p.m. Toronto, Ontario time
Commencement Date of Work	Upon Award of Contract

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

### 2.0 Tender Enquiries and Requests for Clarifications, Changes or Revisions

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

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

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

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

“Q and A Form PT-2018-BUSF-646”

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

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

### **3.0 Mandatory Site/Information Meeting**

- 3.1 Not Applicable.

### **4.0 Addenda / Changes to the Tender Documents**

- 4.1 In the event that Metrolinx determines in its sole discretion that clarifications and/or revisions to this Tender Document are required, Metrolinx shall issue an Addendum. Information concerning Addenda can be found through the Metrolinx MERX Portal for this Tender Process. Bidders are urged to select automatic notification of Addenda issuance when registering on the Metrolinx MERX Portal.
- 4.2 It is the Bidder's responsibility to ensure that they have obtained copies of all Addenda, and to ensure that the Addenda have been considered in their Submission. Addenda/Addendum shall become part of this Tender Document and the contents thereof shall be allowed for in the prices bid for the Work.
- 4.3 The Bidder, when ascertaining if copies of all Addenda issued have been obtained, shall be responsible for allowing sufficient time prior to the Closing to obtain any missing Addenda and to review and allow for the contents thereof in its Submission.

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

### **5.0 Tender Submission**

- 5.1 Submissions shall only be accepted electronically via the Metrolinx MERX Portal. Submissions submitted in any other manner shall be found non-compliant and disqualified.
- 5.2 It is the Bidders sole responsibility when submitting a Submission to Metrolinx to exercise extreme care when completing and submitting all required documents and/or information. Failure of the Bidder to include all required documents and/or information may result in the Bidder's Submission being found non-compliant and disqualified.
- 5.3 Bidders shall examine carefully the whole of the Tender Document and any data referred to therein. They shall make the necessary investigations to inform themselves thoroughly as to the character and magnitude of the Work.
- 5.4 The Bidder shall not claim at any time after the Closing and/or after notification of acceptance of its Submission that there was any misunderstanding or uncertainty in regard to the Tender Document or any of the contents therein. No plea of ignorance of conditions which exist, or any conditions or difficulties that may be encountered, shall be accepted as a reason for failure to complete the Contract or as a basis for claims for additional compensation or extension of time.
- 5.5 Submissions should be completed fully in a clear and comprehensible manner.
- 5.6 The Submission shall be submitted on the most current Tender Document Forms issued by Metrolinx and except for designated sections where the Bidder is to enter information, the Tender Document and Tender Document Forms shall not be altered in any way including, but not limited to, write-ins, strike-outs of the pre-printed provisions or any other conditional or qualifying statements.
- 5.7 Any Submission which contains such conditional and/or qualifying statements may be found non-compliant and disqualified unless such conditional and/or qualifying statements are withdrawn in writing by the Bidder, upon request by Metrolinx.
- 5.8 If during the preparation of their Submission, the Bidder desires to make a change which requires correction, alteration or erasure to any information previously

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entered in a designated section of the Submission by the Bidder, documents that have been uploaded to the Metrolinx MERX Portal may be added, removed and/or re-submitted as often as required at any time, prior to Closing.

- 5.9 All prices shall be firm and quoted in Canadian funds. The prices quoted in the Submission shall represent full payment for all such Work as is necessary for the proper completion of the Contract.
- 5.10 For assistance with registration and login credentials, subscription information, fees, and general use of the Metrolinx MERX Portal, please watch the online Electronic Bid Submission tutorial at: <https://www.youtube.com/watch?v=To0fqSccw3M>. Alternatively, you can contact MERX directly at 1-800-964-MERX (6379). For additional Metrolinx MERX Portal guidelines, refer to the document entitled "Metrolinx MERX Portal - General Information" under "Attachments" in this Tender Document.
- 5.11 Information contained in the most recent Submission submitted via the Metrolinx MERX Portal and received prior to the Closing will take precedence over the information contained in previously received Submissions from the Bidder.
- 5.12 The Bidder may withdraw a Submission at any time prior to the Closing specified by Metrolinx by logging into [www.metrolinx.merx.com](http://www.metrolinx.merx.com).

### **6.0 Submission Deadline**

- 6.1 Submissions must be electronically uploaded via the Metrolinx MERX Portal by the Closing. Any Submission or portions thereof received after the Closing (as confirmed by MERX Audit Report if submitted via the Metrolinx MERX Portal) shall be found non-compliant and the entire Submission shall be disqualified regardless of the reason for lateness. The Bidder shall submit the Submission within sufficient time to ensure its arrival before the Closing.
- (a) If the Bidder attempts to submit their Submission, or portions thereof, after the Closing, such documents shall not be accepted by the MERX system.
- (b) In the event that the MERX system allows late Submissions, this will not supersede any stipulations herein regarding late submissions.
- 6.2 Upon successful completion of the electronic submission process, the Bidder shall be provided with an E-bid Confirmation Number indicating that the Submission was uploaded successfully.

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- 6.3 Metrolinx reserves the right to postpone the Closing at which time all potential Bidders shall be advised of the new Closing by way of Addenda.
- 6.4 After the Closing has occurred, all Submission received will be opened by Metrolinx staff. There shall be no public access to this opening. Results of the opening of Submissions will be made public within approximately 24 hours on the Metrolinx MERX Portal (search the Tender Number and select "Bid Results").
- 6.5 Upon execution of the final Contract, all Bidders that have submitted a Submission shall be notified in writing of the results of the award to the successful Bidder. Results of the award to the successful Bidder shall also be posted on the Metrolinx MERX Portal. (search the Tender Number and select "Awards").

### **7.0 Clarification of Submissions**

- 7.1 Metrolinx reserves the right, within one hundred and twenty (120) calendar days following the Closing, to request that any Bidder clarify its Submission or provide the required supporting documentation specified in "Tender Document Form: Mandatory Corporate, Vendor Personnel and Technical Requirements", and such Bidders shall submit responses to such request within five (5) Business Days following receipt of such request or within such shorter time as Metrolinx may require. Metrolinx may, in its sole discretion, choose to meet with some or all of the Bidders to discuss aspects of their Submission. Metrolinx may require Bidders to submit additional information clarifying any matters contained in their Submission, provide confirmation of any matters contained in their Submission or prepare a written interpretation of any aspect of a Submission for the respective Bidder's acknowledgement of that interpretation. Any unsolicited information shall not be considered.
- 7.2 Such information accepted by Metrolinx and written interpretations which have been acknowledged by the relevant Bidder shall be considered to form part of the Submission of those Bidders.
- 7.3 After the Closing, only information specifically requested by Metrolinx for purposes of clarification or to substantiate compliance with a mandatory requirement, shall be considered as additions to a Bidder's Submission.
- 7.4 Metrolinx is not obliged to seek clarification of any aspect of a Submission.



## INSTRUCTIONS TO BIDDERS

### **8.0 Bidder Qualifications**

- 8.1 Only the Submissions of qualified Bidders will be considered for acceptance by Metrolinx. In order to be considered qualified, the Bidder shall demonstrate to the satisfaction of Metrolinx it has:
- (a) satisfactorily completed or is satisfactorily performing in the sole opinion of Metrolinx, a contract for work similar in scope, magnitude and complexity as "the Work of this Contract";
- 8.2 With respect to the experience requirements set out in Subsection 8.1 above, each Bidder is solely responsible to provide:
- (a) in "Tender Document Form: Bidder's Qualifications", a detailed description of reference projects starting with the most recent, whether completed, that the Bidder has performed and that the Bidder is representing to Metrolinx meets the requirements of Subsection 8.1 herein;
  - (b) in "Tender Document Form: Bidder's Qualifications", a client contact person for each reference project, that are prepared to speak to Metrolinx with respect to the Bidder's performance on each project described;
  - (c) in "Tender Document Form: Bidder's Occupational Health and Safety Record" include Occupational Health and Safety information for the past three (3) years as indicated therein;
  - (d) in "Tender Document Form: Description of Bidder's Workforce, Facilities and Equipment", list details of workforce, facilities and equipment that will be used in performing the Work.
- 8.3 Metrolinx may, in its sole discretion, waive the requirement to contact references provided by any Bidder and rely on the detailed descriptions provided by the Bidder in "Tender Document Form: Bidder's Qualifications".
- 8.4 When completing "Tender Document Form - Bidder's Qualifications", the Bidder should list relevant work that has been completed or that is ongoing under a Metrolinx contract. In its determination of whether a Bidder meets the requirements of Section 8.1 herein, Metrolinx may, in its sole discretion:
- (a) take into account the experience of Metrolinx itself in dealing with the Bidder or its Subvendor(s) in circumstances where the Bidder or its Subvendor(s) has carried out (or is carrying out) a project for Metrolinx (whether or not the Bidder has listed such a project as a reference); and

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- (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 as a reference).

8.5 In the event the Bidder does not demonstrate to the satisfaction of Metrolinx that it possesses the necessary qualifications and experience required for acceptance of its Submission by Metrolinx, the Bidder's Submission shall be found non-compliant and disqualified.

### **9.0 Insurance**

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

### **10.0 Workplace Safety and Insurance Clearance Certificate**

10.1 The Bidder shall, in accordance with Schedule C: Insurance, of General Conditions of the Contract, provide a valid Workplace Safety and Insurance Clearance Certificate for the premium rate class, subclass or group as appropriate for the Work of this Contract, as issued by the Workplace Safety and Insurance Board, within five (5) Business Days of notification of acceptance of its Submission by Metrolinx. Failure by the successful Bidder to comply with this requirement shall result in acceptance of the Bidder's Submission to be declared void and forfeiture of the Bidder's Bid Deposit to Metrolinx.

### **11.0 Parent Company Indemnity**

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

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corporate structure (i.e. if it is a subsidiary), scale and value of the Work and other risk factors.

- 11.2 Failure by the successful Bidder to comply with this requirement shall result in acceptance of the Bidder's Submission to be declared void and forfeiture of the Bidder's Bid Deposit to Metrolinx (if a Bid Deposit is applicable).

#### **12.0 Bid Deposit**

- 12.1 Not Applicable.

#### **13.0 Contract Security**

- 13.1 Not Applicable.

#### **14.0 Alternate Products and Materials**

- 14.1 Not Applicable.

#### **15.0 Mandatory Requirements**

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

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

- (a) The Submission shall be submitted by the Bidder's E-Bid Authorized Signer. For the purposes of a Joint Venture, the E-Bid Authorized Signer of the Participant-in-Charge shall submit the Submission.
- (b) Pricing information must be completed and submitted with the Submission using "Tender Document Form: Contract Prices".
- (c) The Bidder shall declare any conflicts of interest in Section 1.1(b) of "Tender Document Form: Conflict of Interest". If Section 1.1(b) is left blank or is not returned with the Submission, the provisions of Section 1.1(a) of "Tender Document Form: Conflict of Interest" shall apply.
- (d) The Bidder must meet all of the mandatory requirements stated in "Tender Document Form: Mandatory Corporate, Vendor Personnel and Technical Requirements".

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### **16.0 Rights of Metrolinx**

16.1 Metrolinx reserves the right, in its sole discretion:

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

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- (h) to issue or not to issue a notification of acceptance of a Bidder's Submission based on submitted references and/or references independently obtained by Metrolinx;
- (i) to issue or not to issue a notification of acceptance of a Bidder's Submission based on the Bidder's, or its Subvendor(s), experiences with Metrolinx or other departments or agencies within the Ontario government, if the Bidder or its Subvendor(s):
  - (i) was/were previously given a "Notification of Submission Acceptance" of contract by a department or agency within the Ontario government and defaulted in proceeding with the work of the contract;
  - (ii) failed or refused to comply with any applicable federal, provincial or municipal law governing a bid or a prior contract with a department or agency within the Ontario government;
  - (iii) had a previous contract with a department or agency within the Ontario government that was terminated for default in the past year; or
  - (iv) is an affiliate of or successor to any corporation described in Sections 16.1(i)(i) through (iii) above, including any firm that is controlled within the meaning of the Ontario Business Corporations Act by the same person or group of persons who so controlled any corporation described in Sections 16.1(i)(i) through (iii) above.
- (j) to reject any Bidder's Submission during this Tender Process and any bidder's submission from any procurement process, due to unsatisfactory performance history with Metrolinx;
- (k) to request a listing of all projects, regardless of scope, complexity or estimated value, completed for or terminated by Metrolinx within the past three (3) to five (5) years or currently active;
- (l) to suspend a Bidder's bidding rights for a period of twelve (12) months after Closing, for failure of the Bidder to provide the Agreement to Bond or specified alternative by the deadline stated in Section 1.2, Tender Timetable of Instructions to Bidders;

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- (m) to distribute via Addenda, copies of any Bidder's questions received and responses provided by Metrolinx, to all Bidders who received this Tender Document;
- (n) to request that a Bidder voluntarily withdraw its Submission without penalty, where in the opinion of Metrolinx the Submission is substantially below internal budget estimates and therefore the Work would not be satisfactorily completed;
- (o) to request that a Bidder voluntarily withdraw from its Submission, without penalty, any conditional and/or qualifying statements, as determined by Metrolinx in its sole discretion;
- (p) to disqualify any Submission where the Bidder does not voluntarily withdraw parts of, or all of, its Submission, as requested by Metrolinx under sections 16.1(n) or 16.1(o);
- (q) to postpone the Closing, at which time all Bidders who received Tender Documents shall be advised of the new Closing via written Addenda;
- (r) to within one hundred and twenty (120) days following Closing, exercise any rights under Section 7.1 of Instructions to Bidders;
- (s) to correct arithmetical and/or carry forward errors in any or all Submissions where such errors affect extended totals, the Total Contract Price, H.S.T. and/or Grand Total. Arithmetical corrections shall only be made based upon the unit prices submitted by the Bidder. Corrections to extensions, sums, differences, carry forward errors or other arithmetical operations based on the unit prices submitted will be identified on the Tender Document by Metrolinx and acknowledged in each instance by the initials of the Bidder's and Metrolinx's authorized signatories. Such corrections will become part of the Bidder's Submission. Failure of the Bidder to acknowledge such corrections shall result in its Submission being found non-compliant and disqualified.
- (t) to, upon failure of the Bidder whose Submission was accepted to fulfill the conditions of Section 17.2 of Instructions to Bidders, cancel acceptance of the Bidder's Submission by Metrolinx and consistent with industry practice, notify another Bidder who was determined to be qualified in accordance with the "Submission Evaluation and Selection Process" section of this Tender Document and who submitted a compliant Submission, that its Submission has been accepted and, subsequent to the fulfillment of the

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conditions of Section 17.2 of Instructions to Bidders, and for Metrolinx to issue a notification of acceptance of the Submission to that Bidder.

### **17.0 Contract To Be Executed**

- 17.1 Metrolinx shall notify the Bidder in writing of acceptance of its Submission. Metrolinx will prepare the Articles of Agreement and bind it into the Contract. Two (2) copies of the Contract will be forwarded to the Bidder for review and execution.
- 17.2 The Contract shall be executed by the Bidder and delivered to Metrolinx within five (5) Business Days of notification to the Bidder that Metrolinx has accepted its Submission. Failure by the Bidder to execute and deliver the Contract with the required Insurance Certificates, Workplace Safety and Insurance Clearance Certificate and the Performance and Labour and Materials Payment Bonds, or specified alternative (if applicable), and if requested the Parental Guarantee and any other documents as may be required within the specified time, could result in the cancellation of the acceptance of the Bidder's Submission and forfeiture of the Bidder's Bid Deposit.
- 17.3 Upon failure of the Bidder, whose Submission was accepted, to fulfil the conditions of Section 17.2 herein, Metrolinx may, at its sole discretion, cancel acceptance of the Bidder's Submission consistent with Section 16.1(t) of Instructions to Bidders
- 17.4 There shall be no binding contract for the supply of the Work unless and until Metrolinx and the Bidder whose Submission has been accepted have executed the written agreements contemplated in the Tender Document.
- 17.5 The Bidder shall not start the Work before the Contract has been executed by the Bidder and Metrolinx and all documents required by the Tender Document, as a condition of acceptance, have been delivered to Metrolinx.

### **18.0 Subvendors and Suppliers**

- 18.1 Bidders shall be responsible for the distribution of all the instruments of the Tender Document and Addenda/Addendum thereto to all Subvendors or Suppliers.
- 18.2 Metrolinx or its representatives will have no obligation whatsoever to supply any Subvendor or Supplier with all or part of the Tender Document and Addenda thereto, and shall not be liable for any damages suffered by any Bidder, Subvendor or Supplier who does not receive or review the Tender Document or

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Addenda/Addendum. No claims for payment or for a change order will be entertained because of the failure of any Subvendor or Supplier to receive or review the Tender Document or Addenda/Addendum which have been supplied to the Bidders prior to Closing.

### **19.0 Submission Evaluation**

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

### **20.0 Conflict of Interest**

20.1 Conflict of Interest shall be as defined in "Definitions" of this Tender Document. The Conflict of Interest declaration included in "Tender Document Form: Conflict of Interest" shall be completed and provided with the Submission.

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

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

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

### **21.0 Joint Ventures**

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

21.2 The Joint Venture shall not change its Joint Venture arrangement.



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- 21.3 One of the Joint Venture participants shall be nominated as being in charge during this Tender Process and, in the event of a successful Submission during finalization of the Contract (the "Participant in Charge"). The Participant in Charge shall be authorized by the other joint venture participants to incur liabilities and receive instructions for and on behalf of any and all participants of the Joint Venture.
- 21.4 Each Joint Venture participant shall demonstrate its authorization of the Participant in Charge by submitting with their Submissions a power of attorney, or similar document, signed by a legally authorized representative of the Joint Venture participant or a copy of the Joint Venture agreement electing the Participant-in-Charge.
- 21.5 All participants of the Joint Venture shall be legally liable, jointly and severally, during this Tender Process and during the Contract for carrying out the obligations pursuant to the Contract.

#### **22.0 Prohibited Contacts and Lobbying Prohibition**

- 22.1 A Bidder, Bidder's team members and all of the Bidder's respective Subvendors, advisors, employees and representatives are prohibited from engaging in any form of political or other lobbying, of any kind whatsoever, to influence the outcome of this Tender Process.
- 22.2 Without limiting the generality of Section 22.1 above, neither the Bidder nor the Bidder's team members nor any of their respective Subvendors, advisors, employees or representatives shall contact or attempt to contact, either directly or indirectly, at any time during this Tender Process, any directors, officers, employees and advisors of Metrolinx, other than the Procurement Representative, other than to discuss pre-existing work that is being conducted pursuant to a separate contract.

#### **23.0 Media Releases, Public Disclosures and Public Announcements**

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

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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, Subvendors, employees and representatives are permitted to state publicly that it/they are participating in this Tender Process.

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

### **24.0 Restriction on Communications Between Bidders - No Collusion**

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

### **25.0 Disclosure of Information**

- 25.1 The Bidder hereby agrees that any information provided in its Submission, even where it is identified as being supplied in confidence, may be disclosed by Metrolinx where required by law, order of a court, or tribunal.
- 25.2 The Bidder hereby consents to the disclosure, on a confidential basis, of its Submission by Metrolinx to Metrolinx's advisors retained for the purpose of evaluating or participating in the evaluation of the Submissions.
- 25.3 Under Ontario's Open Data Directive, Metrolinx is required to publish certain procurement information. Accordingly, the Bidder acknowledges that, subject to any applicable FIPPA exemptions, Metrolinx may publish procurement data including but not limited to the names of the Bidders and the winning bid in accordance with Ontario's Open Data Directive. For more information, see: [www.ontario.ca/page/ontarios-open-data-directive](http://www.ontario.ca/page/ontarios-open-data-directive).
- 25.4 Disclosure of personal or confidential business information may be avoided if it would be significantly harmful to business interests or would be an unreasonable invasion of personal privacy. Accordingly, Bidders are encouraged to:

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- (a) identify those portions of their Submissions which they are supplying in confidence and for which disclosure to others would be significantly harmful to their business, or would be an unreasonable invasion of their personal privacy, as defined in Section 17 of FIPPA; and
- (b) be prepared to justify that determination if challenged to do so by someone who applies for access to the information.

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

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

### **27.0 Submission to Be Retained by Metrolinx**

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

### **28.0 Confidential Information of Metrolinx**

28.1 All information provided by or obtained from Metrolinx in any form in connection with this Tender Process;

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

### **29.0 Bidders Shall Bear Their Own Costs**

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

### **30.0 Changes to Key Personnel**

30.1 Not Applicable.

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### **31.0 Vendor Performance Management Program**

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

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### **1.0 Evaluation**

- 1.1 Submissions shall undergo several phases of evaluation based on documentation provided and Vendor Performance Rating information contained in the Metrolinx MERX Portal.
- 1.2 Mandatory criteria will be rated pass or fail. All other criteria shall be evaluated in accordance with Section 1.0 herein. Evaluation shall occur in two (2) phases, as follows:
  - (a) Phase One: Administrative Evaluation (Compliant/Non-Compliant)
    - (i) Submissions shall undergo an administrative evaluation to determine compliance with the administrative mandatory requirements. Only those Submissions determined in the sole opinion of Metrolinx, to have fulfilled all the administrative mandatory requirements shall proceed to Phase Two of the evaluation process. Submissions that do not meet the administrative mandatory requirements shall be considered non-compliant and shall be disqualified.
    - (ii) Administrative mandatory requirements include, but shall not be limited to:
      - (A) Proper completion of Tender Document Forms;
      - (B) Compliance to Tender Document requirements;
      - (C) Attendance at mandatory Site visit, if any.
  - (b) Phase Two: Vendor Performance Rating (VPR) (Part A) and Pricing (Part B) Evaluation
    - (i) Part A - Vendor Performance Rating (VPR) Evaluation
      - (A) The VPR of each Bidder's Submission proceeding to this Phase Two: VPR Evaluation shall be evaluated as follows:
        - I) For this Tender Process, "General Goods and Equipment (Non-I&IT)" shall be as set forth in the Contract Performance Appraisal Form.
        - II) For this Tender Process, the Vendor Performance Rating ("VPR") is the average of a vendor's performance evaluation scores (as assessed by or on behalf of

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Metrolinx), in the Performance Category, for a thirty-six (36) month period preceding the Closing.

- III) If a Bidder has not completed any work for Metrolinx for a thirty-six (36) month period preceding the Closing, for the purpose of evaluating the Submission, the Bidder will be assigned a VPR in the Performance Category, which is the straight average of all the VPR's of all vendors who have performed services for Metrolinx for a thirty-six (36) month period preceding the Closing, in this Performance Category.
- IV) The legal name of the Bidder stated on the Form of Tender will be used for determining the Bidder's VPR score in the Performance Category. It is the responsibility of the Bidder to ensure that its proper legal name has been stated on the Form of Tender and matches the legal name used by the Bidder in setting up its legal profile in the Metrolinx MERX Portal. Metrolinx will not accept any requests from the Bidder, after the Closing, to change the legal name provided.
- V) In the case of a Joint Venture where multiple parties will sign the Contract, the VPR under the Performance Category, of each Joint Venture participant, will be added and the average will be applied as the VPR score.
- VI) If any member of the Joint Venture has not completed work for Metrolinx within a thirty-six (36) month period preceding the Closing, Section 1.2(b)(i)(A)III) above shall apply for that member.
- VII) The Bidder's VPR, at the time of evaluating this Phase Two, shall be the VPR used for evaluation purposes. The Bidder's VPR used in the evaluation of this Phase Two can be obtained from the Procurement Representative at the conclusion of this Tender Process.
- VIII) Once VPR scores in the Performance Category are determined for each Submission proceeding to this Phase Two evaluation, each Bidder's VPR shall be evaluated as follows:

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

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

(ii) Part B - Pricing Evaluation

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

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

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

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

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

(iii) Evaluation

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

Evaluated Component	Maximum Score	Weighting Factor	Total (Score x Weight)
<b>PHASE ONE: ADMINISTRATIVE EVALUATION (Compliant/Non-Compliant)</b>			
<b>PHASE TWO (Part A): VENDOR PERFORMANCE RATING (VPR) EVALUATION</b>			
Bidder's VPR Score	10	5	50

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Evaluated Component	Maximum Score	Weighting Factor	Total (Score x Weight)
<b>PHASE TWO (Part B): PRICING EVALUATION</b>			
Tender Document Form: Contract Prices	10	95	950
<b>TOTAL OVERALL SCORE</b>		<b>100%</b>	<b>1,000</b>

(iv) Total Overall Score

(A) Evaluation Criteria shall be assigned a score out of ten (10). The score is then multiplied by the weight to determine the weighted score (i.e. VPR Evaluation Subtotal, Pricing Evaluation Subtotal). The weighted scores are then added to determine the Total Overall Score for the Submission.

(B) The VPR Evaluation Subtotal shall be added to the Pricing Evaluation Subtotal to determine the Total Overall Score for the Submission.

D) Total Overall Score = VPR Evaluation Subtotal + Pricing Evaluation Subtotal

(C) The compliant Submissions evaluated during this Phase Two process, will be ranked from highest to lowest Total Overall Score. The top three Highest Ranked Submissions (first, second and third highest Total Overall Score = “Highest Ranked”) shall proceed to Phase Three: Technical Evaluation.

(c) Phase Three: Technical Evaluation (Pass/ Fail)  
(hereinafter referred to as “Technical Evaluation”)

(i) A technical evaluation shall be conducted of the Highest Ranked compliant Submissions. Bidder’s qualifications in accordance with Section 8.0, Bidder’s Qualifications of Instructions to Bidders as well as Tender Document Form: Bidder’s Qualifications and Mandatory Corporate, Personnel and Technical Requirements shall form the basis of this evaluation.

(ii) Only the Submissions of qualified Bidders will be considered for acceptance by Metrolinx.



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- (iii) In the event the Bidder does not demonstrate to the satisfaction of Metrolinx that it possesses the necessary qualifications and experience required for acceptance of its Submission by Metrolinx, the Bidder's Submission shall be found non-compliant and disqualified.
- (iv) If the Highest Ranked compliant Submissions do not meet the requirements of the Technical Evaluation, Metrolinx will carry out a technical evaluation of the Submission next in ranking, and so on until a compliant Submission is found.
- (v) Notwithstanding Sections 1.2(c)(i) through 1.2(c)(iv) above, Metrolinx may exercise its rights under Sections 16.1(g) through 16.1(k), under Rights of Metrolinx in Instructions to Bidders, and in doing so, any information obtained will be factored into this Technical Evaluation as a final pass/fail criteria.

### **2.0 Selection of Submissions**

- 2.1 Metrolinx's selection of the successful Submission will be based on which Bidder has provided a Submission which Metrolinx determines in its sole discretion, to be most beneficial to Metrolinx.
- 2.2 Notification of acceptance shall be issued to the compliant Bidder with the highest Total Overall Score that meets the criteria of Section 1.2(c) above.

END OF SECTION

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

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

<b>Document Title</b>	<b>Attached as a Separate File as Follows</b>
Tender Document Form: Form of Tender	Word fillable file entitled Tender fillable PT-2018-BUSF-646, or as amended via Addenda, if applicable
Tender Document Form: Contract Prices	Word file entitled Tender PT-2018-BUSF-646, or as amended via Addenda, if applicable  Excel fillable file entitled Attachment 1 - Contract Prices - or as amended via Addenda, if applicable
Tender Document Form: Bidder's Qualifications	
Tender Document Form: Conflict of Interest	
Tender Document Form: Bidder's Occupational Health and Safety Record	
Tender Document Form: Description of Bidder's Workforce, Facilities and Equipment	

**TENDER DOCUMENT FORM  
FORM OF TENDER**

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**1.0 Contact Information**

The Bidder submitting a Submission is as follows:

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

Click here to enter text.

- (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.

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

Click here to enter text.

- 1.3 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.

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

Click here to enter text.

**1.5 New Vendor Information**

- (a) **All vendors submitting a Submission must complete and provide with the Submission the “New/Update Vendor Form” under “Attachments” and submit the additional documentation as indicated, including:**

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- (i) **Vendor Registration (Articles of Incorporation, Sole Proprietorship Registration, Partnership Agreements, etc.).**
- (ii) **Canada Revenue Agency Registration (Business Number)**
- (iii) **Void Cheque (for Electronic Funds Transfer setup)**
- (iv) **Sample Invoice**

**2.0 Acknowledgements and Declarations**

- 2.1 The Bidder acknowledges that its Submission includes the appropriate Tender Document Forms submitted in accordance with the terms and requirements of the Instructions to Bidders. Failure to comply may result in the Bidder's Submission being found non-compliant and disqualified at the sole discretion of Metrolinx.
- 2.2 The Bidder has informed itself of the conditions relating to the Work to be performed and have inspected and is thoroughly familiar with the location of the Work and the plans, specifications, drawings and all terms, conditions and covenants of the Contract.
- 2.3 The Bidder acknowledges receipt of any and all Addenda/Addendum issued hereto and that its Submission has been developed in consideration of the Addenda/Addendum.
- 2.4 The Bidder acknowledges that it meets all mandatory requirements in order for their Submission to be considered further. Failure of a Bidder to meet all of the mandatory requirements shall result in the Bidder's Submission to be non-compliant and disqualified.
- 2.5 All Addenda, Tender Document Forms, the General Conditions of the Contract, specifications and attachments set out in this Tender Document shall be included in and form part of the Contract. Submitting a Submission constitutes acknowledgement that the Bidder has read and agrees to be bound by such conditions.
- 2.6 The Submission is hereby submitted on the condition and with the full understanding that it is an irrevocable offer by the Bidder for a period of one hundred and twenty (120) calendar days from the Closing. The Bidder hereby covenants that it enter into the Contract with Metrolinx as contemplated by the Tender Documents by executing the Contract and will perform and execute the

**TENDER DOCUMENT FORM  
FORM OF TENDER**

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Various Bus Facilities  
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Work at the Total Contract Price if it is notified, in writing, by Metrolinx within one hundred and twenty (120) days of the Closing that it is the successful Bidder.

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

**3.0 Requirement**

- 3.1 The Bidder shall provide all labour, superintendence, plant, tools, appliances, equipment, supplies and other accessories, services and facilities necessary for the Supply and Delivery of Kit-Desiccant Air Dryer Bendix AD-IP to Various Bus Facilities, as further described in this Tender Document.

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3.2 The Work is to be performed to the satisfaction of Director, Bus and Rapid Transit Services, unless otherwise specified.

**4.0 Total Contract Price**

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

**5.0 Harmonized Sales Tax**

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

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

5.3 A non-resident Bidder unable to provide a H.S.T. Registration Number at the time of Submission shall be required to provide a H.S.T. Registration Number within five (5) Business Days of acceptance of its Submission by Metrolinx. The Bidder acknowledges that failure to comply with this requirement may result in the Contract being declared VOID.

**6.0 Options**

6.1 Not Applicable.

**7.0 Project Schedule**

7.1 Year One: Award of Contract to January 31<sup>st</sup>, 2020; and

7.2 Year Two: February 1<sup>st</sup>, 2020 to January 31<sup>st</sup>, 2021  
(Option Year Two to be exercised at the sole discretion of Metrolinx)

**TENDER DOCUMENT FORM  
CONTRACT PRICES**

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**1.0 Contract Unit Prices**

The Contract Unit Prices are subject to "Tender Document Form: Form of Tender" in addition to this "Tender Document Form: Contract Prices".

1.1 Payment for services rendered and goods supplied in accordance with the terms and conditions of the Contract shall be based on the requirements of the "Tender Document Form: Form of Tender" in addition to the following:

- (a) The Total Contract Price bid shall be firm and quoted in Canadian funds.
- (b) The Total Contract Price includes all specified cash allowances, contingency allowances (if applicable) and all applicable taxes, except Harmonized Sales Tax (H.S.T.), in force at the date the Submission is submitted.
- (c) The Total Contract Price quoted shall represent full payment for all the Work necessary for the proper completion of the Contract.
- (d) The Total Contract Price includes all labour, superintendence, plant, tools, appliances, equipment, supplies and other accessories, services and facilities customs, duties, royalties, handling, transportation, travel, mileage, overhead, profit and all other charges.

**2.0 Allowances**

2.1 Cash Allowances

- (a) Cash Allowances are subject to the General Conditions of the Contract.
- (b) Descriptions of each Cash Allowance are listed below and amounts are specified in the attached Excel spreadsheet.

2.2 Description of Cash Allowances

- (a) Cash Allowance – for unreturned or unusable Dessicant Cartridge Cores
  - (i) This Cash Allowance is to be used solely for unreturned or unusable Dessicant Cartridge Cores at the end of the contract.

2.3 Contingency Allowances

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CONTRACT PRICES**

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- (a) Contingency Allowances are subject to the General Conditions of the Contract.

**3.0 Completion of Pricing Schedules**

- 3.1 Bidders shall fully complete the Excel file entitled "Contract Prices" and insert a Unit Price into each space provided under the Contract Unit Price column.
- 3.2 "Tender Document Form: Contract Prices" must be submitted as a separate file preferably in Excel format to facilitate the pricing evaluation process, and may not be retyped or recreated. Failure to follow the submission instructions or format requirements may result in the Submission being found non-compliant and disqualified.
- 3.3 If a "0" is entered in any of the spaces where price information is to be provided, it shall be interpreted as meaning the Vendor shall provide the specified service to Metrolinx at no charge.
- 3.4 If any space is left blank or an entry of "N/C" or "N/A" or "-" is entered where price information should be entered then the Submission may be found non-compliant and disqualified consistent with the provisions of the Instructions to Bidders.



**TENDER DOCUMENT FORM:  
BIDDER'S QUALIFICATIONS**

**Various Bus Facilities  
Supply and Delivery of Kit - Desiccant Air Dryer Bendix AD-IP  
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**1.0 Qualifications**

- 1.1 Metrolinx will use the information submitted by the Bidder in this “Tender Document Form: Bidder’s Qualifications” to determine if the Bidder meets the Bidder’s Qualifications set out in Section 8.1 of Instructions to Bidders. Projects listed by the Bidder in this “Tender Document Form: Bidder’s Qualifications” must demonstrate that the Bidder has successfully completed contracts for work that meets the criteria as set out in Section 8.1 of Instructions to Bidders.
- 1.2 The Bidder should complete the following:
- (a) Approximate annual value of similar work performed in Canada for the past five (5) years, if applicable.
    - (i) 2017 [Click here to enter text.](#)
    - (ii) 2016 [Click here to enter text.](#)
    - (iii) 2015 [Click here to enter text.](#)
    - (iv) 2014 [Click here to enter text.](#)
    - (v) 2013 [Click here to enter text.](#)

**2.0 Reference Checks**

- 2.1 References will be checked using a standard uniform method. Opinions of previous customers regarding budget and schedule experience, dependability, attitudes of employees and/or Subvendors concern for efficiency, safety, economy and environment, sensitivity to community, and quality of service among others may be taken into account when evaluating the reference projects.
- 2.2 The Bidder shall ensure that contact information provided for each reference project 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 validate a reference project through the customer contact person provided by the Bidder, Metrolinx may, at its sole discretion consider the reference project invalid.
- 2.3 Metrolinx reserves the right to forward the information provided by the Bidder within its Submission in relation to the cited project to the identified customer contact person to verify the various elements of the information provided.

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BIDDER'S QUALIFICATIONS**

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- 2.4 In order to provide the sought after information in relation to a reference project, the named customer contact person identified as a reference for a cited reference project shall have held a position within the reference organization, directly involved in the referenced project, and in a position to verify that the work was carried out by the Bidder in relation to the reference project in question.
- 2.5 For any discrepancies resulting from the reference check, Metrolinx may, at its sole discretion, re-contact the Bidder in writing for a written clarification or validation of information provided. Section 16.1(c) shall apply for any misrepresentations, inaccurate or misleading information provided in Tender Document Form: Bidder's Qualifications.

**3.0 Reference Projects**

- 3.1 The Bidder shall complete the following charts using relevant projects as per the requirements of Section 8.0 of Instructions to Bidders. The Bidder must submit descriptions of relevant projects below, for work that meets the criteria stated in Section 8.0 of Instructions to Bidders.
- (a) Reference projects submitted shall be for work completed by the Bidder providing the Submission, and not for a Subvendor or individual, unless indicated otherwise by Metrolinx.
  - (b) Where a Bidder has completed similar relevant work for Metrolinx in the past five (5) years, the Bidder shall be required to identify and list such projects as part of its reference projects to be submitted.
- 3.2 The Bidder should complete the following chart for each project that the Bidder is describing to demonstrate that the Bidder meets the Bidder's Qualifications. Bidders are required to start with the most recent project and to use additional pages if required.
- (a) The Bidder may attach two (2) additional pages of information for each reference project submitted below.
- 3.3 Reference projects must demonstrate the Bidder's experience and qualifications in the following areas of the Work:
- (a) Provide five (5) satisfactorily completed relevant reference projects which demonstrate that the Bidder has carried out Work similar in scope, magnitude and complexity, as the Work of this Tender Document:

**TENDER DOCUMENT FORM:  
 BIDDER'S QUALIFICATIONS**

**Various Bus Facilities  
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(i) Reference Project #1 of 3

<b>Project Name and Location:</b>	Click here to enter text.		
<b>Role of Bidder:</b>	Click here to enter text.		
<b>Customer Name:</b>	Click here to enter text.		
<b>Customer Contact Person:</b>	Click here to enter text.	<b>Phone No.</b>	Click here to enter text.
<b>Customer Contact Email Address:</b>	Click here to enter text.		
<b>Contract Value (Estimated)</b>	\$Click here to enter text.	<b>Contract Value (Actual)</b>	\$Click here to enter text.
<b>Reasons for variances in contract value:</b>			
Click here to enter text.			
<b>Completion Date (Estimated)</b>	Click here to enter text.	<b>Completion Date (Actual)</b>	Click here to enter text.
<b>Reasons for schedule variances:</b>			
Click here to enter text.			
<b>Project Description (Provide a detailed description of the reference project and the Bidder's responsibilities for the reference project. The Bidder should specifically list below similarities between this reference project and the Work specified herein)</b>			
Click here to enter text.			
<b>Provide an overview of the scope of work:</b>	Click here to enter text.		
<b>List the major components of the work:</b>	Click here to enter text.		

**TENDER DOCUMENT FORM:  
 BIDDER'S QUALIFICATIONS**

**Various Bus Facilities  
 Supply and Delivery of Kit - Desiccant Air Dryer Bendix AD-IP  
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(ii) Reference Project #2 of 3

<b>Project Name and Location:</b>	Click here to enter text.		
<b>Role of Bidder:</b>	Click here to enter text.		
<b>Customer Name:</b>	Click here to enter text.		
<b>Customer Contact Person:</b>	Click here to enter text.	<b>Phone No.</b>	Click here to enter text.
<b>Customer Contact Email Address:</b>	Click here to enter text.		
<b>Contract Value (Estimated)</b>	\$Click here to enter text.	<b>Contract Value (Actual)</b>	\$Click here to enter text.
<b>Reasons for variances in contract value:</b>			
Click here to enter text.			
<b>Completion Date (Estimated)</b>	Click here to enter text.	<b>Completion Date (Actual)</b>	Click here to enter text.
<b>Reasons for schedule variances:</b>			
Click here to enter text.			
<b>Project Description (Provide a detailed description of the reference project and the Bidder's responsibilities for the reference project. The Bidder should specifically list below similarities between this reference project and the Work specified herein)</b>			
Click here to enter text.			
<b>Provide an overview of the scope of work:</b>	Click here to enter text.		
<b>List the major components of the work:</b>	Click here to enter text.		

**TENDER DOCUMENT FORM:  
BIDDER'S QUALIFICATIONS**

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(iii) Reference Project #3 of 3

<b>Project Name and Location:</b>	Click here to enter text.		
<b>Role of Bidder:</b>	Click here to enter text.		
<b>Customer Name:</b>	Click here to enter text.		
<b>Customer Contact Person:</b>	Click here to enter text.	<b>Phone No.</b>	Click here to enter text.
<b>Customer Contact Email Address:</b>	Click here to enter text.		
<b>Contract Value (Estimated)</b>	\$Click here to enter text.	<b>Contract Value (Actual)</b>	\$Click here to enter text.
<b>Reasons for variances in contract value:</b>			
Click here to enter text.			
<b>Completion Date (Estimated)</b>	Click here to enter text.	<b>Completion Date (Actual)</b>	Click here to enter text.
<b>Reasons for schedule variances:</b>			
Click here to enter text.			
<b>Project Description (Provide a detailed description of the reference project and the Bidder's responsibilities for the reference project. The Bidder should specifically list below similarities between this reference project and the Work specified herein)</b>			
Click here to enter text.			
<b>Provide an overview of the scope of work:</b>	Click here to enter text.		
<b>List the major components of the work:</b>	Click here to enter text.		

**TENDER DOCUMENT FORM  
CONFLICT OF INTEREST**

**Supply and Delivery of Kit - Desiccant Air Dryer Bendix AD-IP  
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**1.0 Conflict of Interest**

As it pertains to Conflict of Interest:

1.1 If the box below is left blank or if this “Tender Document Form: Conflict of Interest” is not included as part of the Submission, the Bidder shall be deemed to declare that:

(a) there was no Conflict of Interest in preparing its Submission; and

there is no foreseeable Conflict of Interest in performing the contractual obligations contemplated in the Tender Document. Otherwise, if the statement in Section 1.1(b) below applies, check (“X”) the box.

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

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

Click here to enter text.

1.3 The following individuals, as employees, advisers, or in any other capacity (a) participated in the preparation of our Submission (whether as employees, advisers, or in any other capacity); AND (b) were employees, advisers or consultants of Metrolinx at any time within the twelve (12) months prior to the Closing:

Name of Individual:	Click here to enter text.
Job Classification:	Click here to enter text.
Department:	Click here to enter text.
Last Date of Employment with Metrolinx:	Click here to enter text.
Name of Last Supervisor:	Click here to enter text.
Brief Description of Individual’s Job Functions:	Click here to enter text.
Brief Description of Nature of Individual’s	Click here to enter text.

**TENDER DOCUMENT FORM  
CONFLICT OF INTEREST**

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Participation in the Preparation of the Submission:	Click here to enter text.
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(Repeat above for each identified individual)

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

**TENDER DOCUMENT FORM**  
**MANDATORY CORPORATE, PERSONNEL AND TECHNICAL REQUIREMENTS**

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**1.0 Mandatory Corporate, Personnel and Technical Requirements**

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

<b>Mandatory Corporate, Vendor Personnel and Technical Requirements</b>	<b>Supporting Documentation Required to Substantiate Compliance</b>
<b>Mandatory Corporate Requirements</b>	
The Bidder shall have successfully completed three (3) reference projects similar in value, complexity and magnitude as the Work stated in this Tender Document.	<ul style="list-style-type: none"> <li>• Three (3) reference projects which demonstrate this requirement.</li> </ul>
The Bidder has a valid Workplace Safety and Insurance Clearance Certificate for the premium rate class, subclass or group as appropriate for the Work of this Contract, as issued by the Workplace Safety and Insurance Board.	<ul style="list-style-type: none"> <li>• No supporting documentation required with the Submission. Metrolinx reserves the right to request a valid Workplace Safety and Insurance Clearance Certificate for the premium rate class, subclass or group as appropriate for the Work of this Tender Document, as issued by the Workplace Safety and Insurance Board, at any time after Closing.</li> </ul>



**TENDER DOCUMENT FORM  
 BIDDER'S OCCUPATIONAL HEALTH  
 AND SAFETY PERFORMANCE RECORD**

**Supply and Delivery of Kit - Desiccant Air Dryer Bendix AD-IP  
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1.1 Bidders should provide the information requested in this form as it relates to projects completed and ongoing. Failure of the Bidder to satisfy this requirement may render its Submission technically non-compliant resulting in disqualification.

	<b>2017</b>	<b>2016</b>	<b>2017</b>
Number of fatalities	Click here to enter a date.	Click here to enter a date.	Click here to enter a date.
Number of lost time incidents	Click here to enter a date.	Click here to enter text.	Click here to enter text.
Number of medical aid injuries	Click here to enter a date.	Click here to enter text.	Click here to enter text.
Was a modified work program available?	Click here to enter a date.	Click here to enter text.	Click here to enter text.

	<b>2017</b>	<b>2016</b>	<b>2015</b>
What was your recordable injury incident rate determined in accordance with the following formula? # of Lost Time Accidents x 2,000,000 Total Employee Hours (Yearly)	Click here to enter a date.	Click here to enter a date.	Click here to enter a date.

	<b>2017</b>	<b>2016</b>	<b>2015</b>
Number of hours worked by employees in the past three (3) years.	Click here to enter a date.	Click here to enter a date.	Click here to enter a date.

	<b>2017</b>	<b>2016</b>	<b>2015</b>
List your overall Workplace Safety and Insurance Board rating for the past three (3) years, and attach your WSIB summary.	Click here to enter a date.	Click here to enter a date.	Click here to enter a date.

**TENDER DOCUMENT FORM  
BIDDER'S FACILITIES, EQUIPMENT AND WORKFORCE**

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- 1.1 Bidders should provide the information requested in this form as it relates to workforce, facilities and equipment necessary for the performance of the Work. Failure of the Bidder to satisfy this requirement may render its Submission technically non-compliant resulting in disqualification. Additional pages may be attached if required.
  
- 1.2 Metrolinx reserves the right, before acceptance of a Bidder's Submission,, to inspect the proposed facilities and/or equipment of any or all Bidders.

<b>WORKFORCE</b>
Click here to enter text.

<b>FACILITIES</b>
Click here to enter text.

<b>EQUIPMENT</b>
Click here to enter text.

## **GENERAL CONDITIONS OF THE CONTRACT**

**Supply and Delivery of Kit - Desiccant Air Dryer Bendix AD-IP  
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The documents, as stated under “General Conditions” of List of Contents, hereby form part of the General Conditions of the Contract and are appended to this Tender Document.

## GENERAL CONDITIONS OF THE CONTRACT

**Supply and Delivery of Kit - Desiccant Air Dryer Bendix AD-IP  
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### **1.0 Interpretation**

#### 1.1 Definitions

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

#### 1.2 Time of the Essence

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

#### 1.3 Currency

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

#### 1.4 Units of Measure

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

#### 1.5 Language

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

#### 1.6 References

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

## GENERAL CONDITIONS OF THE CONTRACT

**Supply and Delivery of Kit - Desiccant Air Dryer Bendix AD-IP  
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- (d) Subject to any express definitions contained in this Contract, words and abbreviations which have well known technical or trade meanings are used in this Contract in accordance with such recognized meanings.
- (e) Where used in this Contract, "including" means including without limitation, and the terms "include", "includes", and "included" have similar meanings.
- (f) Each reference to an Article or Section within the Contract or Schedules shall refer to that Article or Section number in the Contract or the Schedule in which the reference occurs unless otherwise specified.
- (g) The division of this Contract into Articles and Sections, the insertion of headings, and the provision of a table of contents are for convenience of reference only and do not affect the construction or interpretation of this Contract.

### 1.7 Time

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

### 1.8 Schedules

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

## GENERAL CONDITIONS OF THE CONTRACT

**Supply and Delivery of Kit - Desiccant Air Dryer Bendix AD-IP  
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### 2.0 Performance

#### 2.1 Term of the Contract

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

#### 2.2 Performance of the Work

- (a) The Vendor shall carry out and complete the work set forth in "Scope of Work" (the "Work") to the satisfaction of Metrolinx in accordance with all the terms of this Contract.
- (b) The Vendor shall supply the Work diligently and continuously in accordance with the scheduling requirements set out in the Project Schedule. Without limiting the generality of the foregoing, the Vendor shall perform the Work so as to enable Metrolinx to meet any timelines imposed on it under any Third Party Contracts, provided that such timelines have been identified in the Project Schedule or otherwise expressly communicated to the Vendor.
- (c) The Vendor shall provide, at the sole cost and expense of the Vendor, save as otherwise provided in this Contract, all necessary equipment, goods, materials, analysis, transportation, accommodation, labour, staff and technical assistance and incidentals required in performing the Work and to undertake, perform and complete its undertakings, obligations and responsibilities provided for in this Contract.
- (d) The Work shall be provided in a professional, timely and economical manner according to the Required Standard of Care. Without limitation, the Vendor shall ensure that the Work are conducted in a manner that will maintain good relations with the general public and property owners.
- (e) The Vendor shall comply with and conform to all Applicable Laws, applicable to the Work to be provided by, and the responsibilities and obligations of, the Vendor under this Contract.
- (f) The Vendor shall not alter any part of a Joint Venture except with the prior written consent of Metrolinx in its sole discretion.

#### 2.3 Subvendors

## GENERAL CONDITIONS OF THE CONTRACT

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- (a) Other than the Subvendors identified in the Submission, the Vendor shall not subcontract the Work to any Person without the prior written consent of Metrolinx. No subcontracting by the Vendor shall relieve the Vendor of any responsibility for the full performance of all obligations of the Vendor under this Contract. Notwithstanding the approval of any Subvendors by Metrolinx, the Vendor shall be fully responsible for every Subvendor's activities, works, services and acts or omissions.
- (b) The Vendor shall be solely responsible for the payment of any Subvendors.
- (c) The Vendor shall co-ordinate the services of all Subvendors employed, engaged or retained by the Vendor with Metrolinx and, without limiting the generality of any other provision of this Contract, the Vendor shall be liable to Metrolinx for costs or damages arising from errors or omissions of such Subvendors or any of them. It shall be the Vendor's responsibility to control and review the Work of its own forces and of all its Subvendors and to ascertain that all Work are performed in accordance with this Contract, all governing regulations and the Required Standard of Care.
- (d) In any subcontract, the Vendor shall ensure that the Subvendor is bound by conditions compatible with, and no less favorable to Metrolinx than, the conditions of this Contract.
- (e) The Vendor warrants and represents that it and any of its permitted Subvendors and the respective workforce of each are fully qualified to perform the Work and perform this Contract and hold all requisite Approvals.
- (f) The Vendor shall only employ, for the purposes of this Contract, such persons as are careful, skilled and experienced in the duties required of them and have the required Domain Expertise, and must ensure that every such person is properly and sufficiently trained and instructed. The Vendor shall ensure that all workers and persons employed by them or under their control or employed by or under the control of its Subvendors comply with the terms of this Contract and, in particular without limiting the foregoing, the responsibilities of the Vendor with respect to matters concerning safety, compliance with the Applicable Laws and the conduct of the Work.
- (g) The Vendor shall be an independent vendor with respect to the Work to be provided under this Contract and nothing contained in this Contract shall be construed as constituting a joint venture or partnership between the Vendor and Metrolinx. Neither the Vendor nor its Subvendors shall be deemed to be

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employees, agents, servants or representatives of Metrolinx in the performance of the Work hereunder.

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

### 2.4 Vendor Personnel

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

### 2.5 Third Party Work

- (a) The Vendor shall reasonably cooperate with Metrolinx and any Third Party and shall co-ordinate the Work with any and all Third Party Work. Without limiting the generality of the foregoing, the Vendor 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 Vendor 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
  - (iii) impacts on the operations of, or use of the rail corridors by, Third Party Operators, including any delays to rail passenger or freight service on the rail corridors.



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

### 2.6 Non-Interference with Operations

- (a) The Vendor understands and agrees that:
  - (i) Metrolinx and Third Party Operators are in the business of moving large volumes of passengers and cargo through rail corridors safely, expeditiously and according to a fixed timetable;
  - (ii) the success of the businesses of Metrolinx and Third Party Operators depends on meeting the above objectives on a daily basis;
  - (iii) Metrolinx has contractual and statutory obligations to ensure the safety of all persons on the rail corridors and the property and facilities adjacent thereto; and
  - (iv) Third Party Operators operating in and through the rail corridors and Third Party Vendors working in the rail corridors have similar restrictions and requirements.
- (b) Notwithstanding any other term or condition set out in this Contract, the safety and non-disruption of all Third Parties operating in the rail corridors is of paramount importance. Consequently, the Vendor acknowledges and agrees that the safety of all trains, passengers, operating and maintenance

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Vendor Personnel, goods and other transported cargos, as well as the Vendor Personnel and the public in general will take precedence over all actions or non-actions of the Vendor, whether mandated or not by any other terms and conditions of this Contract.

- (c) The Vendor shall not disrupt the movement of any rail traffic in or through the rail corridors of either Metrolinx or the Third Party Operators except where it has obtained the prior written consent of Metrolinx to such disruption (which consent may be withheld in the sole discretion of Metrolinx).

### 2.7 Key Vendor Personnel

- (a) Not Applicable

### 2.8 Vendor's Representative

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

### 2.9 Metrolinx Responsibilities

- (a) Metrolinx shall designate an individual to act as its representative (the "Metrolinx Representative") who will transmit instructions to, and receive information from the Vendor. The Metrolinx Representative will be accountable for all project expenditures relative to design, procurement and construction activities.

### 2.10 French Language Services

- (a) Insofar as this Contract relates to the provision of services directly to the public on behalf of Metrolinx, the French Language Services Act shall be applicable to the performance of the Work. A service for the purposes of the French Language Services Act refers to any service or procedure provided to the public. Services being provided in French must be equivalent to those offered in English, and must be available within the same timeframe and of the same quality.

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- (b) The Vendor shall provide and perform the Work in a manner so as to comply with the requirements set out in the French Language Services Act.
- (c) Without limitation, services and communications which must be provided in French in French Designated Areas may include:
  - (i) Consultations/Public Meetings: Presentation materials, displays, comments cards/feedback mechanism or other materials. Vendor 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 Vendor 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 Vendor Work Performance Rating

- (a) Metrolinx shall during the term of the Contract, maintain a record of the performance of the Vendor completing Work for Metrolinx. This information shall be used to complete a "Contract Performance Appraisal" report, a copy of which will be forwarded to the Vendor upon completion of the Work. Interim "Contractor Performance Appraisal" reports may be issued, as deemed appropriate by Metrolinx, at any time during the Term of the Contract. A copy of the Contract Performance Appraisal template can be found under "Attachments".
- (b) The overall history of the Vendor in performing work for Metrolinx, including the Vendor's performance pursuant to this Contract, will be considered in the evaluation of future submissions from the Vendor.
- (c) Metrolinx reserves the right in future procurements, during any procurement process, to reject any submissions by the Vendor due to unsatisfactory performance history with Metrolinx.
- (d) Non-compliance with Contract requirements will be identified to the Vendor.

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- (e) The information contained in the “Contract Performance Appraisal” may be provided to the Ministry of Transportation, other ministries and other government agencies. Such performance reviews may be relied upon to reject the Vendor’s submission on any procurement processes.
- (f) The performance category on the Contract Performance Appraisal may be revised by Metrolinx subject to Change Orders or Amendments. In such instances, the Vendor shall be notified via written communication of the change.

### **3.0 Health and Safety**

#### **3.1 Occupational Health & Safety Act**

- (a) The Vendor shall comply with OHSA, and any obligations of the Vendor as an "employer" thereunder, and with all regulations made under the OHSA.
- (b) The Vendor shall report to Metrolinx any non-compliance by a Subvendor in the performance of the Work with the regulations under the OHSA if and when brought to the attention of the Vendor.
- (c) The Vendor acknowledges that lack of compliance with applicable provincial or municipal health and safety requirements will be and are intended to be documented and kept on file, and that such lack of compliance may cause:
  - (i) the Vendor's performance of the Work to be suspended; or
  - (ii) this Contract to be cancelled by Metrolinx.
- (d) The Vendor will be under an obligation to cease the Work, or any part thereof, if an authorized representative of Metrolinx so requires orally or in writing on the grounds that there has been any violation of the OHSA or any of the regulations under it, and thereafter the Work or affected part thereof shall not resume until any such violation has been rectified.
- (e) The Vendor shall be responsible for any delay caused by the Vendor in the progress of the Work as a result of any violation of provincial or municipal health and safety requirements by the Vendor, it being understood that such delay shall be not be a Force Majeure for the purposes of extending the time for performance of the Work or entitling the Vendor to additional compensation, and the Vendor shall take all necessary steps to avoid delay in the final completion of the Work without additional cost to Metrolinx,

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which shall not be responsible for any additional expense or liability resulting from any such delay.

- (f) Nothing in this Section 3.1 shall be taken as making Metrolinx the "employer" (as described in Section 3.1(a) of any workers employed or engaged by the Vendor for the Work, either instead of or jointly with the Vendor.

### 3.2 Safety Requirements

- (a) The Vendor shall comply with the "Safety Requirements" and "Environmental Protection" (if applicable) sections of the of Scope of Work. Safety of Persons at or near a Place of Work and the public is of paramount concern to Metrolinx. In the performance of the Work, the Vendor shall not in any manner endanger the safety of, or unlawfully interfere with, Persons on or off the Place of Work, including the public.
- (b) The Vendor specifically covenants and agrees that:
  - (i) it shall comply with best industry practice in Ontario respecting health and safety in a manner that recognizes and minimizes the risk to workers, other individuals, property and the operations of Metrolinx and any railways, to the extent that such practices are not inconsistent with an express instruction set out in this Contract or provided by Metrolinx;
  - (ii) it shall comply, and shall ensure that all Vendor Personnel Vendor Personnel comply, in all regards with the requirements of OHSA and/or the Canadian Labour Code, Part II, as applicable;
  - (iii) it shall comply, and shall ensure that all Vendor Personnel Vendor Personnel comply, in all regards with the safety requirements set out in the Contract Documents;
  - (iv) it shall maintain, strictly enforce and comply, and ensure that all Vendor Personnel Vendor Personnel comply, in all regards with the Vendor's own health and safety program, to the extent not inconsistent with this Contract and Metrolinx' health and safety program;
  - (v) it shall comply, and shall ensure that all Vendor Personnel comply, with any and all safety-related directives or instructions issued by Metrolinx;

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- (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 OSHA; and
- (vii) it shall make available, at Metrolinx' request, such policies and procedures relating to its occupational health and safety matters as Metrolinx may from time to time request, and hereby covenants that all Vendor Personnel have been properly trained and are knowledgeable with respect to these policies and procedures.

### 3.3 Railway Safety

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

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soon as practicable but in any event within five (5) Business Days of receipt thereof by the Vendor; and

- (iv) take all steps necessary to rectify, in consultation with and as directed by Metrolinx, any issues identified by Transport Canada.

### 3.4 Workers' Rights

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

## 4.0 Financial Terms

### 4.1 Financial Terms

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

## 5.0 Construction Act

### 5.1 Not Applicable

## 6.0 Right of Ownership and Use

### 6.1 General

- (a) The Vendor shall be responsible for procuring for Metrolinx the right to use all Vendor Intellectual Property required in connection with the Work.
- (b) In the event that any third party Intellectual Property (other than the Metrolinx Intellectual Property) is required in connection with the Work, the Vendor shall, at its own cost, be responsible for entering into and fully maintaining, during the Term, all related and applicable license, and maintenance and support agreements for such third party Intellectual Property.
- (c) If during the Term, third party Intellectual Property (other than Metrolinx Intellectual Property) used in connection with the Work ceases to be commercially available, then the Vendor shall:

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- (i) promptly provide Metrolinx with notice of such event; and
  - (ii) promptly replace such third party Intellectual Property with an alternative product.
- (d) Any increased costs resulting from the foregoing shall be addressed pursuant to the change management process described in Article 8; provided that, in the event such Intellectual Property ceases to be available as a result of any act or omission of the Vendor, the Vendor shall be responsible for all costs associated therewith.

### 6.2 Ownership of Metrolinx Intellectual Property

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

### 6.3 Ownership of Vendor Intellectual Property

- (a) As between Metrolinx and the Vendor, the Vendor owns all right, title and interest in and to the Vendor Intellectual Property. The Vendor hereby grants to Metrolinx a non-exclusive, irrevocable, perpetual, fully paid-up, royalty-free and worldwide right and license to access, use, copy, support, maintain, modify (including create derivative works from), sublicense (through multiple tiers), assign, distribute or otherwise exploit any Vendor Intellectual Property that is integrated with, embedded in, forms part of or is otherwise required to access, use, copy, support, maintain, modify (including create derivative works from), sublicense, assign, distribute or otherwise exploit any Custom Intellectual Property; provided, however, that



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the foregoing license does not permit Metrolinx to use the Vendor Intellectual Property in its standalone form or for any purpose other than as part of or in conjunction with the Custom Intellectual Property it is associated with. The Vendor grants no rights other than explicitly granted herein, and Metrolinx shall not exceed the scope of this license.

- (b) If the Vendor integrates with or embeds in any Deliverables any Intellectual Property provided by a third party vendor, Subvendor, independent vendor, Subvendor or other Person, the Vendor shall obtain for Metrolinx the same license rights for Metrolinx has set forth in Section 6.3(a).

### 6.4 Ownership of Custom Intellectual Property

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

### 6.5 Employee and Subvendor Contracts

- (a) The Vendor shall obtain from each of the Contract Vendor Personnel an assignment of rights to the Custom Intellectual Property and a waiver of any moral rights (and any similar rights to the extent that such rights exist and may be waived in each and any jurisdiction throughout the world) in and to the Custom Intellectual Property, for the benefit of Metrolinx and its respective successors, assigns, licensees and vendors, prior to the performance of any Work by each such individual. The Vendor shall provide copies of such documentation to Metrolinx upon request.

### 6.6 Title and Risk of Loss

- (a) Risk of loss of or damage to the goods shall remain with the Vendor, and shall pass to Metrolinx upon acceptance of the goods at the designated Place of Work.

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- (b) The Vendor shall be liable for all costs up to the full replacement value of any good(s) prior to passage of title of the goods to Metrolinx. Any goods, which prior to acceptance by Metrolinx shall become damaged from any cause whatsoever, shall be made good at the expense of the Vendor, except that, in the event that and to the extent that negligence on the part of Metrolinx or its employees or representatives causes the above-mentioned damage, Metrolinx shall accept responsibility and reimburse the Vendor for the price of necessary repairs. In either event the time for delivery shall be adjusted accordingly.
- (c) Risk of loss of or damage to spare parts, capital spares, diagnostic tools and other deliverables covered by the Contract shall remain with the Vendor until, and shall pass to Metrolinx upon, delivery and acceptance of the good by Metrolinx at the designated Place of Work.
- (d) The Vendor shall be liable for all costs up to the full replacement value of any spare parts, capital spares, diagnostic tools and other deliverables covered by this Contract prior to acceptance by Metrolinx.
- (e) Upon any payment being made to the Vendor for or on account of materials, parts, Work-in-process, or finished Work, either by way of progress payments or accountable advances or otherwise, title in and to all materials, parts, Work-in-process and finished Work so paid for by such progress payments or accountable advances or otherwise shall vest and remain in Metrolinx unless already so vested under any provision of the Contract and the Vendor shall be responsible therefor in accordance with the provisions of Section 6.6 herein, it being understood and agreed that such vesting of title in Metrolinx shall not constitute acceptance by Metrolinx of such materials, parts, work-in-progress and finished work and shall not relieve the Vendor of its obligations to perform the Work in conformity with the requirements of the Contract.
- (f) The Vendor shall take reasonable and proper care of all property, title to which is vested in Metrolinx, while the same is in, on or about the plant and premises of the Vendor or otherwise in his possession or subject to his control and shall be responsible for any loss or damage resulting from his failure to do so other than loss or damage caused by ordinary wear and tear.

### **7.0 Insurance**

#### **7.1 Insurance Requirements**

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

### **8.0 Changes and Task Assignment Process**

#### **8.1 Changes Requested by Metrolinx**

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

#### **8.2 Changes Recommended by the Vendor**

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

#### **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 Vendor shall respond to Metrolinx' Change request in writing within ten (10) Business Days.
- (c) Where a Change is initiated by the Vendor pursuant to Section 8.2, the Vendor shall set out in the Change request, conforming to Section 8.3(a):
  - (i) a description of the proposed Change;

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- (ii) the estimated cost of the proposed Change;
  - (iii) any proposals, designs or other details or information which may be reasonably required; and
  - (iv) the reasons for the proposed Change, including the benefits of the proposed Change and any consequences of not proceeding with the Change.
- (d) No Changes shall be implemented and no Change request shall become effective until an amendment or change order documenting the Change has been executed by both Parties, and such executed instrument shall be the final determination of any adjustments to the Contract price, the Project Schedule, or the terms and conditions of the Contract, as applicable, with respect to the Change set out therein.
- (e) Where Metrolinx and the Vendor cannot agree as to whether or not a particular notice, direction, requirement, request, correspondence, or other fact, event, or circumstance comprises, requires, or results in a change to the scope of the Work, then either Party may refer the issue to dispute resolution in accordance with Article 16.

### 8.4 Cash Allowance Items and Task Assignment Process

- (a) The Vendor shall include all Cash Allowance Items in the Project Schedule and perform all Work 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 14.0 of Schedule B - 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 Vendor a request to proceed with a Cash Allowance Item.
  - (ii) Upon receipt of such request from Metrolinx, the Vendor shall, in respect of the identified Cash Allowance Item, provide to Metrolinx a response setting out:
    - (iii) the estimated hours of Work and expected completion date;

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- (iv) subject to Section 8.5, the Vendor Personnel, suppliers, Subvendors or specialized services providers which the Vendor proposes to perform the Work; and
- (v) any requirements for testing and reporting.
- (c) As and if required, the Parties shall meet to review the requirements for the Cash Allowance Item.
- (d) Subsequent to the review meeting, and based on the results of the review meeting, the Vendor shall make its own determination of the Vendor's work effort and fee cost to provide the Vendor's scope of services for the task.
- (e) 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 B - Financial Terms.
- (f) Upon the approval by Metrolinx of any Cash Allowance Item, the Vendor shall be responsible for the completion thereof in accordance with the terms and conditions set out in this Contract. For greater certainty, the Vendor's responsibilities for Cash Allowance Items approved by Metrolinx pursuant to this Section are the same as for all other Work.

### 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 Vendor to use a third party to perform or provide any Cash Allowance Items or any Work related to a Change. Metrolinx may exercise this right generally, by requiring the Vendor to provide the Work through a third party selected by the Vendor, or by requiring the Vendor to utilize a third party identified by Metrolinx.
- (c) The Vendor 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.

## 9.0 Additional Resources

### 9.1 Additional Resources

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- (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 Vendor to increase the number of Vendor Personnel upon twenty (20) days' notice.
- (b) Unless otherwise agreed to in writing by Metrolinx, such additional Vendor Personnel shall be available to report for work at any Place of Work designated by Metrolinx within twenty (20) days of receipt of a written request from Metrolinx pursuant to Section 9.1(a).
- (c) The hourly rate payable in respect of additional Vendor Personnel, if applicable, shall be as set out in the Articles of Agreement.

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

#### 10.1 Confidential Information

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

#### 10.2 Permitted Disclosure

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

#### 10.3 Exceptions

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- (a) The obligations of confidentiality set out in Section 10.1 shall not apply to Confidential Information which:
  - (i) becomes generally available to the public through no fault of the Vendor;
  - (ii) prior to receipt from Metrolinx, was known to the Vendor on a non-confidential basis and is not subject to another obligation of secrecy and non-use, as documented by written records possessed by the Vendor;
  - (iii) was independently developed by the Vendor prior to receipt from Metrolinx, as documented by written records possessed by the Vendor; or
  - (iv) becomes available to the Vendor on a non-confidential basis from a source other than Metrolinx that is not under other obligations of confidence.
- (b) If the Vendor becomes compelled to disclose any Confidential Information pursuant to Applicable Law, the Vendor shall provide Metrolinx with prompt written notice of any such requirement and shall cooperate with Metrolinx in seeking to obtain any protective order or other arrangement pursuant to which the confidentiality of the relevant Confidential Information is preserved. If such an order or arrangement is not obtained, the Vendor shall disclose only that portion of the Confidential Information as is required pursuant to Applicable Law. Any such required disclosure shall not, in and of itself, change the status of the disclosed information as Confidential Information under the terms of this Article 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 Security Measures

- (a) The Vendor shall select, implement (prior to the commencement of the Work), use and maintain the most appropriate products, tools, measures and procedures to ensure the security of all Confidential Information, as determined with reference to and generally in compliance with Applicable Laws, Industry Standards, the security requirements specified in "Scope of Work" and best practices, or as otherwise prescribed by Metrolinx during

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the Term. Without limiting the generality of the foregoing, such practices shall include:

- (i) privacy due diligence safeguards; and
  - (ii) physical and electronic security measures and confidentiality enhancing technologies to guard against unauthorized disclosures, access and use, such as firewalls, encryption, the use of user identification and passwords, software or other automated systems to control and track the addition and deletion of users, and software or other automated systems to control and track user access to areas and features of information systems.
- (b) For greater certainty, Metrolinx reserves the right to prescribe the specific manner in which Vendor shall perform its obligations relating to this Section 10.4.

### 10.5 Intellectual Property Rights

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

### 10.6 Return or Destruction of Confidential Information

- (a) Immediately upon expiration or termination of this Contract or at any other time upon the request of Metrolinx, and subject to Section 10.10, the Vendor agrees to:
- (i) promptly return all Confidential Information (other than the Contract Records) to Metrolinx; or
  - (ii) promptly delete or destroy the Confidential Information (other than the Contract Records) and all copies thereof in any form whatsoever under its power or control and provide Metrolinx with a destruction certificate signed by an appropriate officer of the Vendor certifying such destruction.
- (b) Notwithstanding the foregoing, the Vendor shall have no obligation to return or destroy:



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- (i) Confidential Information that is captured and retained within the Vendor's routine computer systems backup processes, provided that (a) no specific effort is made to retrieve such archived Confidential Information for purposes that would violate the confidentiality obligations under this Contract and (b) the confidentiality obligations of under this Contract shall continue to apply to such archived Confidential Information for so long as such information is retained; and
- (ii) working papers or other documentation which it is required to retain pursuant to Applicable Law or any rules of professional conduct applicable to the Vendor or the Vendor Personnel.

### 10.7 FIPPA and Personal Information

- (a) Metrolinx and the Vendor acknowledge and agree the collection, use, retention and disclosure of Personal Information is governed by FIPPA. Metrolinx acknowledges that the Vendor may also be subject to the requirements of PIPEDA. In the event of a conflict between the requirements of FIPPA and the requirements of PIPEDA or any other legislation governing the treatment of Personal Information, the more onerous provision shall apply.
- (b) The Vendor shall ensure that all collection, access, use, retention and disclosure of Personal Information under this Contract, whether through the performance of the Work or otherwise, complies with Applicable Laws including FIPPA, PIPEDA, Standards, and applicable requirements to collect, record and retain relevant consents pertaining to the collection, access, use, retention and disclosure of Personal Information in respect of the Work.
- (c) At Metrolinx's request at any time during the Term, the Vendor shall fully participate in a Privacy Impact Assessment with respect to the performance of the Work. The Privacy Impact Assessment may be conducted by Metrolinx or external third party advisors to Metrolinx at various times throughout the Term. The Vendor and all Vendor Personnel shall cooperate with Metrolinx and/or its third party advisors to provide the resources required to facilitate and fulfill this assessment. The Vendor shall implement any recommendations resulting from the Privacy Impact Assessment process.
- (d) The Vendor shall ensure the security and integrity of any Personal Information collected by the Vendor and shall protect it against loss,

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unauthorized access, destruction, or alteration, in accordance with the following:

- (i) The Vendor shall not directly or indirectly collect, use, disclose, store or destroy any Personal Information, or give, exchange, disclose, provide, or sell Personal Information to any third party, except as expressly permitted, and for a purpose(s) authorized, under this Contract or otherwise agreed to in writing by Metrolinx.
  - (ii) The Vendor shall ensure that access to Personal Information is restricted to those Vendor Personnel who have a need to know or use such information in the performance of the Work and who have been specifically authorized to have such access for the purposes of performing the Work. Access shall be limited to only that Personal Information which is required for the performance of the Work.
  - (iii) All Personal Information shall be kept in a physically secure location and separate from all other records and databases. The Vendor shall not place, input, match, insert or intermingle, nor shall it permit any Person to place, input, match or intermingle, any data or records in any form whatsoever into or with any records or database containing such Personal Information.
- (e) For greater certainty, Metrolinx reserves the right to prescribe the specific manner in which the Vendor shall perform its obligations relating to this Section 10.7.

### 10.8 FIPPA and Freedom of Information

- (a) The Vendor acknowledges that Metrolinx is a provincial crown agency subject to FIPPA, and acknowledges and agrees as follows:
  - (i) All FIPPA Records are subject to, and the collection, use, storage and treatment thereof is governed by FIPPA. The Vendor agrees to keep all FIPPA Records secure and available, in accordance with the requirements of FIPPA. The Vendor acknowledges that all information, data, records and materials, however recorded, that are held by the Vendor and/or created by the Vendor in the course of performing the Work are considered to be FIPPA Records and subject to FIPPA.

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- (ii) Section 10.5 shall apply to all FIPPA Records (other than the Contract Records), which shall be returned and/or destroyed in accordance with that section.
- (iii) In the event of a conflict between the requirements of this Contract and the requirements of FIPPA, the requirements of FIPPA shall take precedence.
- (iv) In the event that a request is made under FIPPA for the disclosure of any FIPPA Records, Metrolinx shall provide prompt written notice thereof to the Vendor and the Vendor shall provide any and all relevant FIPPA Records to Metrolinx on demand for the purposes of responding to an access request under FIPPA. In these circumstances, the Vendor shall provide all FIPPA Records requested to Metrolinx's Freedom of Information Coordinator (or equivalent) within seven (7) Business Days of receipt of the request from Metrolinx. Notwithstanding anything to the contrary in this Contract and subject to the Vendor's rights of appeal pursuant to Section 28(9) of FIPPA, Metrolinx shall determine what FIPPA Records will be disclosed in connection with any such request, in accordance with the requirements of FIPPA (including, without limitation, the requirements with respect to affected persons set out in Section 28 thereof).
- (v) Storage of FIPPA Records (including the Contract Records) at a location outside Canada shall only be permitted with Metrolinx's express written consent.

### 10.9 Access

- (a) The Vendor shall provide to Metrolinx the network access requirements and access level that will be required by the Vendor to perform the Work. All requests to access Metrolinx's network will be subject to Metrolinx's written approval.
- (b) The Vendor shall aggregate all access into a central network access point before network access is granted to Metrolinx's information systems. The network controls used to facilitate access between the Vendor and Metrolinx will be subject to Metrolinx's written approval.
- (c) Contract Vendor Personnel shall not attempt to access, or allow access to, any Metrolinx data to which they are not permitted access under this Contract. If such access is attained, the Vendor shall immediately report

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such incident to Metrolinx, describe in detail any accessed Metrolinx data, and return to Metrolinx any copied or removed Metrolinx data.

- (d) The Vendor is responsible for ensuring that Vendor Personnel do not access, or allow access, to any Metrolinx data to which they are not permitted access under this Contract. The Vendor shall utilize commercially reasonable efforts, including through the use of rigorous systems security measures, to guard against, identify and promptly terminate the unauthorized access, alteration or destruction of software and Metrolinx data.

### 10.10 Audit Rights

- (a) During the Term and for a period of seven (7) years thereafter, the Vendor shall, at its cost and expense, retain and maintain, in an organized, accurate and accessible mode and manner, all financial and other books, records and documentation relating or pertaining to the Contract and the performance of the Work, including (i) original invoices and accounts, along with related records showing costs and expenses incurred, including but not limited to the cost to the Vendor of the Work and of all expenditures or commitments made by the Vendor in connection therewith; (ii) correspondence, e-mails, tenders, minutes of meetings, notes, reports, timesheets, memoranda and other documents associated with the Contract; (iii) records relating to any service level agreements and key performance indicators included in the Contract, and (iv) records related to matters of security and privacy (collectively, the "Contract Records").
- (b) The Contract Records shall be retained and maintained in accordance with all generally acceptable accounting principles and Applicable Laws and Industry Standards, or as otherwise may be required to substantiate compliance with this Contract and/or any payment to be made to the Vendor under this Contract.
- (c) During the Term and for a period of seven (7) years thereafter, Metrolinx or any third party acting on behalf of Metrolinx, shall have the right, upon no less than twenty-four (24) hours' notice in writing to the Vendor and during normal office hours, to inspect and audit, and to have access to, all Contract Records whether maintained by the Vendor or a Vendor Personnel, reasonably required to confirm the Vendor's compliance with the terms of this Contract and Applicable Laws, and to make copies thereof. The Vendor shall make available or cause to be made available the Corporate Records that are requested by Metrolinx or that may be required given the scope of the audit (provided such scope is disclosed to the Vendor), and shall

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otherwise reasonably cooperate with Metrolinx and any third party acting on Metrolinx's behalf, including by providing reasonable access to all of the Vendor's premises and to the Vendor's employees. Where access is needed to a Vendor Personnel employees or to Contract Records that are maintained by a Vendor Personnel, the Vendor shall use reasonable efforts to arrange for such access on a timely basis. Without limiting the generality of the foregoing, the rights set out in this Section 10.10 shall extend to any Governmental Authority exercising its right to audit pursuant to Applicable Law or any contract with Metrolinx.

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

### 10.11 Vendor Compliance

- (a) The Vendor shall advise all of its Vendor Personnel, all of its Subvendors, and all of its Subvendor's Vendor Personnel of the requirements of this Article 10, and associated requirements set out elsewhere in this Contract, and take appropriate action to ensure compliance by such persons with the terms of this Article 10. In addition to any other liabilities of the Vendor pursuant to this Contract or otherwise at law or in equity, the Vendor shall be liable for all claims arising from any non-compliance with this Article 10 by the Vendor, any of its Vendor Personnel, any Subvendor and of its Subvendor's Vendor Personnel.

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- (b) The Vendor warrants that each of its Vendor Personnel, each of its Subvendors and each of its Subvendor's Vendor Personnel engaged by the Vendor to provide the services pursuant to this Contract is under a written obligation to the Vendor requiring such person to comply with the terms of this Article 10.

### 10.12 Publicity

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

### 10.13 Damages

- (a) The Vendor 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 Vendor hereby acknowledges and agrees that Metrolinx shall be entitled to seek, in addition to any other legal remedies which may be available to it, such equitable relief as may be necessary and available to protect Metrolinx against such breach or threatened breach. No failure or delay by Metrolinx in exercising any right hereunder shall operate as a waiver hereof, or shall estop Metrolinx from obtaining permanent injunctive relief.

## 11.0 Representations, Warranties and Covenants

### 11.1 Representations, Warranties and Covenants of the Vendor

- (a) The Vendor covenants and agrees with and represents and warrants to Metrolinx, and acknowledges and confirms that Metrolinx is relying on such covenants, agreements, representations and warranties, as follows:
  - (i) the Vendor is validly existing under the laws of the location of its head office and the Vendor has all necessary corporate power, authority and capacity to enter into this Contract and to perform its obligations hereunder;
  - (ii) the entering into of this Contract by the Vendor and the performance of its obligations hereunder has been authorized by all necessary corporate action;

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- (iii) the execution and delivery of this Contract, the consummation of the transactions contemplated herein and compliance with and performance of the provisions of this Contract does not and shall not:
  - (A) result in a breach of or constitute a default under, or create a state of fact, which after notice or lapse of time or both, or otherwise, would constitute a default under any term or provision of the constating documents of the Vendor, the by-laws or resolutions of the Vendor or any agreement or instrument to which the Vendor is a party or by which it is bound, or
  - (B) require the Vendor to obtain any Approval or action of any other Persons and, if required, any such Approvals have already been obtained as of the date of this Contract;
- (iv) this Contract constitutes a legally valid and binding obligation of the Vendor enforceable against it in accordance with its terms, subject only to applicable bankruptcy, insolvency and other similar laws affecting the enforceability of the rights of creditors generally, the principles of equity and that equitable remedies such as specific performance and injunction are available only in the discretion of a court of competent jurisdiction;
- (v) the Vendor has carefully reviewed the whole of this Contract, including all of the Contract Documents, and all other documents made available to the Vendor by Metrolinx, and, to the Vendor's knowledge, nothing contained herein or therein inhibits or prevents the Vendor from performing the Work in accordance with the Required Standard of Care so as to achieve and satisfy the requirements of this Contract;
- (vi) the Vendor has engaged and shall engage only Subvendors and Vendor Personnel that are qualified and competent to perform the portions of the Work they are responsible for and possess the requisite Domain Expertise;
- (vii) the Vendor has available the resources and Vendor 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;

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- (viii) the Vendor is not aware of any legal action instituted, threatened or pending against the Vendor that could have a material adverse effect on its ability to perform its obligations under this Contract;
- (ix) Except as disclosed in the Submission, the Vendor is free of any actual or potential Tender Conflict of Interest;
- (x) the Vendor is registered as an employer pursuant to the Workplace Safety and Insurance Act (Ontario) and has completed all filings and paid all assessments as required pursuant to that Act and the regulations thereunder;
- (xi) the Vendor is familiar with the obligations imposed on an "employer" as defined in OHSA, and that it has in place a health and safety program to ensure that it takes all steps reasonable in the circumstances to ensure the health and safety of all workers for which it has responsibility under that Act; and
- (xii) the Vendor represents, warrants and covenants to Metrolinx that the Vendor is and shall remain duly registered for the purposes of Part IX of the Excise Tax Act.

### 11.2 Continuing Effect of Representations, Warranties and Covenants

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

## 12.0 Indemnity

### 12.1 Indemnification

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



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- (ii) any negligent acts, errors or omissions or wilful misconduct by or on behalf of the Vendor relating to the Work to be provided under this Contract;
  - (iii) any acts performed by or on behalf of the Vendor beyond the authority of the Vendor hereby conferred;
  - (iv) any inaccuracy in or breach of any of the representations or warranties of the Vendor 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 Vendor or any Subvendor, including:
    - (A) any resulting expenses incurred by Metrolinx as a result of stoppage of the Work on account of failure by the Vendor to meet its obligations under and/or with respect to the OHSA; and
    - (B) any resulting fine(s) levied against Metrolinx as a result of any breach of the responsibilities of the employer for the work, to the extent attributable to the Vendor's failure to fulfil its obligations as described in Section 3.1; and/or
  - (vi) any infringement or alleged infringement of any patent, trade secret, service mark, trade name, copyright, official mark, moral right, trademark, industrial design or other proprietary rights conferred by contract, common law, statute or otherwise in respect to the Work or any matter provided to Metrolinx or performed by the Vendor, or anyone else for whom at law the Vendor is responsible provided, however, the Vendor shall not be required to indemnify the Indemnified Parties pursuant to this subsection if (i) the infringement or alleged infringement was caused by the modification of a deliverable or work product prepared pursuant to this Contract by any person other than the Vendor or a Vendor Personnel, (ii) the deliverable or work product was based upon designs provided by Metrolinx, or (iii) the Work relating to the infringement or alleged infringement were used in a manner not permitted by the Contract.
- (b) The Vendor shall pay all reasonable costs, expenses and legal fees that may be incurred or paid by the Indemnified Parties in connection with any demand, claim, execution, action, suit or proceeding with respect to a matter for which the Vendor is obligated to indemnify the Indemnified Parties pursuant to this Article 12, provided that the indemnity obligations of the

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Vendor 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 Vendor under this Contract pending the final determination or settlement of such claim, action, suit, execution or demand. In the event,
- (i) the Vendor is, becomes, or is deemed to be bankrupt or an insolvent person pursuant to the Bankruptcy and Insolvency Act (Canada);
  - (ii) the Vendor makes a general assignment for the benefit of creditors; or
  - (iii) a receiver or interim-receiver is appointed with respect to some or all of the Vendor's business, assets, or property,

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

### **13.0 Limitation of Liability**

#### 13.1 General Intent

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

#### 13.2 Limitations on Liability

- (a) Subject to Section 13.2(c), in no event shall either Party be liable for indirect, consequential, exemplary, punitive or special damages relating to

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the Contract even if such Party has been advised in advance of the possibility of such damages.

- (b) Subject to Section 13.2(c), each Party's aggregate liability to the other under the Contract for direct damages for all events giving rise to liability hereunder shall be limited to an amount equal to two (2) times the Total Contract Price.
- (c) The limitations of liability set forth in Sections 13.2(c) and 13.2(b) shall not apply with respect to Losses:
  - (i) that are the subject of indemnification pursuant to Articles 12.1(a)(ii), (iii), (v), (vi) or (vii); or
  - (ii) occasioned by a breach of Article 10.
- (d) Each party shall have a duty to mitigate damages for which the Vendor is responsible.

### **14.0 Termination**

#### **14.1 Termination for Cause by Metrolinx**

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

#### **14.2 Termination for Convenience by Metrolinx**

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

### **15.0 Force Majeure**

#### 15.1 Force Majeure

- (a) Neither Party shall be liable for Losses caused by a delay or failure to perform its obligations under this Contract where such delay or failure is caused by an event beyond its reasonable control (a "Force Majeure Event"). The Parties agree that an event shall not be considered beyond one's reasonable control if a reasonable business person applying due diligence in the same or similar circumstances under the same or similar obligations as the provisions of this Contract would have put in place contingency plans to either materially mitigate or negate the effects of such event.
- (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 Vendor, lack of financing or inability to perform because of the financial condition of the Vendor.
- (c) A failure by Metrolinx to furnish instructions is not a Force Majeure Event until fourteen (14) days after a demand for such instructions has been made in writing by the Vendor and not then unless such claim is reasonable and justified to Metrolinx.

#### 15.2 Process

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

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- (i) that Party shall immediately notify the other Party of the delay or non-performance, the reason for such delay or non-performance and the anticipated period thereof; and
- (ii) the Party giving the notice shall thereupon be excused the performance or punctual performance, as the case may be, of such obligation for the period of time directly attributable to such Force Majeure Event.

- (b) This Section shall not apply or be available to a Party in respect of any event, or resulting delay or failure to perform, occurring more than fourteen (14) days before notice is given to Metrolinx pursuant to Section 15.2(a).
- (c) In the case of a continuing Force Majeure Event, only one notice shall be necessary.

### 15.3 Metrolinx Rights

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

## 16.0 Dispute Resolution

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

## 17.0 Set Off

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

## 18.0 General

### 18.1 Entire Agreement

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

### 18.2 Governing Law and Jurisdiction

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

### 18.3 Survival

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

### 18.4 Enurement

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

### 18.5 Assignment

- (a) The Vendor 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) All the Vendor Personnel providing the Work are solely the employees of the Vendor and applicable Subvendors (and not Metrolinx') for all purposes under this Contract, including for all purposes under any Applicable Laws. Accordingly, none of the foregoing Vendor Personnel is entitled to any

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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 Vendor represents and warrants to Metrolinx that the Vendor is entering into this Contract solely on the Vendor's own behalf and not as an agent for any other Person.

### 18.8 Joint and Several Liability

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

### 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

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

### 18.11 No Waiver

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

### 18.12 Severability

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

### 18.13 Further Assurances

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

### 18.14 Conflict of Interest Acknowledgement and Agreement

- (a) For the purposes of this Contract, a "Conflict of Interest" includes any situation or circumstances where, in relation to the performance of its contractual obligations in this Contract, the Vendor's other commitments, relationships or financial interests:
  - (i) could or could be seen to exercise an improper influence over the objective, unbiased and impartial exercise of its independent judgment; or
  - (ii) could or could be seen to compromise, impair or be incompatible with the effective performance of its contractual obligations.
- (b) The Vendor acknowledges that participation (directly or indirectly) in any procurement process arising from or related to this Contract (the "Prohibited



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Procurements") would constitute a Conflict of Interest with this Contract, and the Vendor agrees that it shall not, and shall take reasonable steps (including obtaining covenants substantially similar to those set out in this section) to ensure that its Subvendors do not participate in or be involved with such Prohibited Procurements either directly or indirectly, including as a bidder or as a subvendor, contractor or advisor to any bidder.

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

### 18.15 Counterparts

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

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### 19.0 Warranty

#### 19.1 General

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

#### 19.2 Warranty Conditions

- (a) If, within twenty-four (24) months, the goods supplied by the Vendor or any part thereof become defective or fails due to any default by the Vendor in fulfilling the requirements of the Contract including, without limitation, improper, faulty or defective design, materials, workmanship, manufacture, fabrication, packaging, shipment or delivery, then the Vendor, upon notification in writing from Metrolinx, shall forthwith repair or remedy every such defect or failure, or replace the goods, without cost (including without limitation transportation cost) to Metrolinx.
- (b) All labour cost incurred by Metrolinx in respect of the repair or remedy of defects or failures, and of the replacement of goods during the warranty period, shall be reimbursed to Metrolinx by the Vendor in accordance with the agreed to hourly rates to be negotiated.
- (c) Metrolinx shall provide the Vendor with reasonable access to the Place of Work for the purpose of performing warranty work when practical.
- (d) The Vendor shall prepare and furnish data and reports pertaining to any repairs, replacements and remedies pursuant to the Warranty, including, but

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not limited to, revisions and updating of contract drawings, data and contract deliverables.

- (e) In the event the Vendor fails to fulfil any obligation stipulated in this Warranty, Metrolinx shall have the right to repair, remedy or replace the goods at the Vendor's expense.
- (f) The Vendor shall cause those warranties that are provided by Subvendors and suppliers that extend beyond the Vendor's warranty period, be assigned to Metrolinx. Should there be any claim under the said warranties after the expiration of the Vendor's warranty period, such claim shall be made and processed directly by Metrolinx with the relevant Subvendors or suppliers. Subvendors' and suppliers' warranties shall also pass to Metrolinx in the event that the Vendor is unable to complete its obligations under the Contract. In any event, the Vendor shall make provision in all subcontracts and purchase orders for all warranties to be directly assigned to Metrolinx.
- (g) Any product that does not meet the Contract Scope of Work, notwithstanding tests, inspection or acceptance at any time or location, are found to contain deficiencies, will be subject to rejection and shall be returned to the Vendor. The Vendor shall be entitled to a joint inspection of the defective component at the premises of Metrolinx. The Vendor shall assume the expenses of handling and transportation in both directions.

### 19.3 Intellectual Property

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

## 20.0 Custom Duties and Import Charges

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

20.2 The Vendor shall be responsible for freight, insurance, importation taxes and duties, custom broker and/or clearance fees and container packing (direct labour and packing material) costs for delivery of goods, components, diagnostic tools, equipment and spare parts and shall pay for such costs. The Vendor shall use commercially reasonable efforts to minimize freight, duty and other delivery costs

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reimbursed to the Vendor by Metrolinx and incurred under the Contract during the Term. The Vendor shall provide to Metrolinx on a semi-annual basis during the Term of the Contract evidence of the costs in this Section 20.2 incurred under the Contract and any actions taken to minimize these costs. Reductions in freight, insurance, importation taxes and duties, custom broker and/or clearance fees and container packing (direct labour and packing material) costs shall inure to the benefit of Metrolinx.

### 20.3 Customs Clearance Services

- (a) The Vendor shall be the importer of record for this Contract. The Vendor shall provide and shall arrange for customs brokerage services and other services required to comply with all requirements imposed or administered by Canada Border Services Agency regarding the import of the goods into Canada. All communications with customs authorities or customs brokers shall be handled by the Vendor. In the event that a document or thing is required from Metrolinx as the ultimate owner of the goods, the Vendor shall prepare such document or thing for review by Metrolinx prior to submission of such document or thing to the Party requiring same. All costs for these services are included in the Total Contract Price.

END OF SECTION

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**1.0 In this Contract Document,**

- 1.1 "Acceptance" or "Acceptable" or "Accepted" means the act of formal notification by Metrolinx of no further objections regarding content, construction or compliance.
- 1.2 "Applicable Laws" means all applicable laws, statutes, regulations, orders, by-laws, treaties, judgements, decrees and ordinances applicable from time to time and, whether or not having the force of law, all applicable Approvals, Standards, codes, requirements, requests, directives, rules, guidelines, instructions, circulars, manuals, and policies of any Governmental Authority having or purporting to have jurisdiction or authority over a Party, property, transaction or event, including laws relating to workplace safety and insurance, occupational health and safety and employment standards.
- 1.3 "Approvals" means any permits, licences, consents, approvals, clearances, orders, ordinances, registrations, filings or other authorizations respecting the work undertaken as part of the Work as may be required from any applicable Governmental Authority or otherwise by the Vendor's contract documents.
- 1.4 "Arbitration Act" means the Arbitration Act, 1991, S.O. 1991, Chapter 17.
- 1.5 "Business Day" means any day other than: (a) a Saturday or Sunday and (b) any other day on which Metrolinx is not open for business. Each Business Day will end at 4:00 p.m. on that day.
- 1.6 "Cash Allowance", if applicable, means a sum included in the Total Contract Price by Metrolinx as a predetermined allowance to cover the items identified in "Tender Document Form: Contract Prices" which shall form part of the Articles of Agreement.
- 1.7 "Cash Allowance Items", if applicable, means those items, work and/or services identified in the "Tender Document Form: Contract Prices" which shall form part of Articles of Agreement as items to be paid for using the designated Cash Allowance.
- 1.8 "Changes" has the meaning ascribed to it in Section 8.1 of General Conditions of the Contract.
- 1.9 "Construction Lien Act", if applicable, means the Construction Lien Act, R.S.O. 1990, Chapter C.30.

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- 1.10 "Confidential Information" means all information of a confidential nature (as determined with reference to its treatment by Metrolinx) which is provided, disclosed or made available (orally, electronically or in writing or by any other media) by Metrolinx (or its representatives) to the Vendor (including to employees, vendors, contractors or other representatives thereof) and includes any copies or reproductions thereof. For greater certainty, all Personal Information, Contract Records, construction documents, personal information, and anything else specifically marked or identified by Metrolinx as confidential or proprietary are deemed to be "Confidential Information" for the purposes of this Contract.
- 1.11 "Conflict of Interest" has the meaning ascribed to it in Section 18.14 of General Conditions of the Contract.
- 1.12 "Contract" means this contract between the Vendor and Metrolinx pursuant to Tender No. [.] including the Articles of Agreement, General Conditions of the Contract and the Schedules thereto and the Contract Documents.
- 1.13 "Contract Documents" means the Contract and those documents listed in "Scope of Work" and any written amendments thereto as agreed to by the Parties.
- 1.14 "Contract Performance Appraisal" has the meaning ascribed to it in Section 2.11(a) of General Conditions of the Contract.
- 1.15 "Contract Records" has the meaning ascribed to it in Section 10.8 of General Conditions of the Contract.
- 1.16 "Custom Intellectual Property" means any Intellectual Property created, developed or produced by the Vendor or any Vendor Personnel under this Contract specifically for use in connection with the performance of the Work, all documentation and media related thereto, and all Intellectual Property Rights therein.
- 1.17 "Deliverables" means the work product created by the Vendor and/or the Vendor Personnel in connection with or as a requirement of the Work, including all reports, drawings, plans, designs, processes, tools, standards, registers, logs, updates, files, databases, Software, and documentation.
- 1.18 "Dispute" means all disputes, controversies, or claims arising out of or relating to: (a) this Contract; (b) the alleged wrongful exercise or failure to exercise by a Party of a discretion or power given to that Party under this Contract; and/or (c) the interpretation, enforceability, performance, application, or administration,

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breach, termination, or validity of this Contract or any failure to agree where agreement between the Parties is called for.

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

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- 1.29 "Governmental Authority" means any domestic government, including any federal, provincial, territorial, municipal, regional or other local government, and any government established court, agency, tribunal, commission or other authority exercising or purporting to exercise executive, legislative, judicial, regulatory or administrative functions respecting government; provided, however, "Governmental Authority" does not include Metrolinx.
- 1.30 "Income Tax Act" means the Income Tax Act, R.S.C. 1985, Chapter 1 (5th Supp.).
- 1.31 "Indemnified Parties" has the meaning ascribed to it in Section 12.1 of General Conditions of the Contract.
- 1.32 "Intellectual Property" means all intellectual and industrial property, including: (a) materials, images, reports, Software, applications, audio or video recordings, specifications, performance requirements, software development tools, technologies, content, data (including all information whether or not contained in or on any database or electronic information storage system or media owned by or in the custody or control of Metrolinx), technical information, interfaces, web portals, components, services, information, databases, and documentation; (b) patents, patent application rights, rights to file patents, inventions, trade-marks (whether registered or not), trade-mark applications, rights to file trade-marks, trade names, copyrights (whether registered or not), design registrations, trade secrets, confidential information, industrial and similar designs, rights to file for industrial and similar designs, processes, methodologies, techniques and know-how; and (c) all Intellectual Property Rights therein.
- 1.33 "Intellectual Property Rights" means any right to Intellectual Property recognized by law, including any Intellectual Property right protected by legislation or arising from protection of information as a trade secret or as confidential information.
- 1.34 "Joint Venture" is the business arrangement of two or more parties proposed as identified in the Submission.
- 1.35 "Key Personnel" means the people identified by name in Section 1.1(a) of Schedule E – Vendor Personnel.
- 1.36 "Key Responsibilities" means the main responsibilities and tasks to be performed by each category of Vendor Personnel, as identified in Schedule E: Vendor Personnel.



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- 1.37 "List of Contents" shall mean the section of the Contract Document entitled "List of Contents".
- 1.38 "Losses" means claims, actions, suits, executions, and demands and all loss, liability, judgments, costs, charges, damages, liens and expenses of any nature whatsoever and howsoever caused.
- 1.39 "Metrolinx" means Metrolinx, a provincial crown agency continued under the Metrolinx Act, S.O. 2006, Chapter 16, and its successors and assigns.
- 1.40 "Metrolinx Intellectual Property" means: (a) all Intellectual Property that is proprietary to, or controlled or licensed by, Metrolinx and provided to the Vendor; (b) all Metrolinx Marks; (c) all procurement documents issued by Metrolinx; (d) all documentation or source materials (including source code) related to any of the foregoing; and (e) all copies, translations, improvements, modifications, enhancements, adaptations, or derivations made to the Metrolinx Intellectual Property by Metrolinx and/or any third party not performing work under this Contract.
- 1.41 "Metrolinx Marks" means any trademarks, service marks, trade names, logos or other commercial or product designations owned or licensed by Metrolinx, whether registered or not.
- 1.42 "Metrolinx Representative" or "Metrolinx's Representative" has the meaning ascribed to it in Section 2.9 of General Conditions of the Contract.
- 1.43 "OHSA" means the Occupational Health and Safety Act, R.S.O. 1990, Chapter O.1.
- 1.44 "Parties" means both of Metrolinx and the Vendor and a "Party" means either one of them.
- 1.45 "Person" means any individual, sole proprietorship, partnership, limited partnership, corporation or company (with or without share capital), trust, foundation, joint venture, Governmental Authority or any other incorporated or unincorporated entity or association of any nature.
- 1.46 "Personal Information" has the meaning ascribed to it in FIPPA.
- 1.47 "PIPEDA" means the Personal Information Protection and Electronic Documents Act, S.C. 2000, Chapter 5.

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- 1.48 "Place of Work" is the designated site or location of the Work.
- 1.49 "Privacy Impact Assessment" refers to a systematic and consistent method of analysis to identify and analyze privacy risks in a program, technology or service.
- 1.50 "Prohibited Procurements" has the meaning ascribed to it in Section 18.14 of General Conditions of the Contract.
- 1.51 "Product" means any goods, machinery, equipment, fixtures and Software (including any components of any of the foregoing) forming part of the Deliverables, but does not include machinery and equipment used solely to perform the Work.
- 1.52 "Professional Engineer" means an engineer licensed to practice engineering in the Province of Ontario.
- 1.53 "Project Schedule" means the schedule of work identified in Tender Document Form: Form of Tender, which shall form part of the Contract and may be amended at the sole discretion of Metrolinx.
- 1.54 "Quotation" has the meaning given in Section 15.0 of Schedule B - Financial Terms of General Conditions.
- 1.55 "Railway(s)" means one or more of the Canadian National Railway Company (CN), Canadian Pacifica Railway Company (CP), Metrolinx or the Toronto Terminals Railway Company (TTR) owning or operating the Railway Right-of-Way on which all or part of the Work may be performed.
- 1.56 "Rates" has the meaning ascribed to it in Section 1.1 of Schedule B - Financial Terms of General Conditions.
- 1.57 "Required Standard of Care" means: (a) using the Standards, practices, methods and procedures among the highest commercial standards of practice and professionalism as understood in the Province of Ontario; (b) confirming to Applicable Laws and all rules of professional conduct applicable to the Vendor or the Vendor Personnel; (c) exercising that degree of skill and care, diligence, prudence and foresight which would be expected from a leading Person or professional performing work similar to those called for under this Contract; and (d) using only proper materials and methods as are suited to the function and performance intended.

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- 1.58 "Software" means any set of machine readable instructions that directs the performance of specific operations, including computer programs, computer code, software programs (whether executable or not executable), system software, application software, embedded software, databases, data, middleware, GUI's, objects, firmware, components and modules and related documentation.
- 1.59 "Standards" means, at a given time, those standards, specifications, manuals, codes, practices, methods and procedures applicable to the Required Standard of Care.
- 1.60 "Subvendor" means an individual, firm, partnership, corporation or design professional having a direct contract with the Vendor or another Subvendor to perform a part or parts of the Work as identified in the Submission or as otherwise identified in a request to add a new Subvendor.
- 1.61 "Submission" means all documentation and other materials and information submitted by the Bidder in response to Tender No. PT-2018-BUSF-646.
- 1.62 "Supplier" means an individual, firm, partnership or corporation having a direct contract with the Vendor or another Subvendor to provide goods and/or services required to carry out the Work of the Contract.
- 1.63 "Scope of Work" describes the general and detailed requirements of the Work and are to be read in conjunction with any Drawings, if applicable, contained herein.
- 1.64 "Task Assignment Items", if applicable, means those items, work and/or services identified in the "Tender Document Form: Contract Prices" which shall form part of Articles of Agreement as items to be paid for under the Total Contract Price.
- 1.65 "Task Assignment Process" has the meaning ascribed to it in Section 8.4 of General Conditions of the Contract.
- 1.66 "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,

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

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

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- 1.75 "Value Added Taxes" means such sum as shall be levied upon amounts payable to the Vendor under this Contract by any Governmental Authority that is computed as a percentage of the amounts payable to the Vendor (including all other Taxes but excluding Value Added Taxes), and includes the HST, and any similar tax, the payment or collection of which, by the legislation imposing such tax, is an obligation of the Vendor.
- 1.76 "Vendor" means the company identified as such in the Articles of Agreement.
- 1.77 "Vendor Intellectual Property" means any Intellectual Property which (a) the Vendor has already created, developed or produced prior to the Effective Date; (b) which the Vendor creates, develops or produces independently of this Contract and/or the performance of the Work; (c) which the Vendor licenses from a third party; (d) all documentation or source materials (including source code) related to any of the foregoing; and (e) all copies, translations, improvements, modifications, enhancements, adaptations, or derivations made to the Vendor Intellectual Property by the Vendor and/or any third party not performing work under this Contract; provided, however, that Vendor Intellectual Property does not include Custom Intellectual Property.
- 1.78 "Vendor Personnel" or "Vendor's Vendor Personnel" means (a) with respect to the Vendor, all of the Vendor's Vendor Personnel, employees and independent contractors (including the Key Vendor Personnel and the Vendor's Representative) engaged in the performance of the Work; and (b) with respect to each Subvendor, all of that Subvendor's Vendor Personnel, employees and independent contractors engaged in the performance of the Work.
- 1.79 "Vendor Policies" has the meaning ascribed to it in Schedule C - Insurance of General Conditions.
- 1.80 "Vendor's Representative" means the person identified by the Vendor, and Accepted by Metrolinx, as the Vendor's authorized representative pursuant to Section 2.8 of General Conditions of the Contract.
- 1.81 "Work" means all activities, services, goods, equipment, matters and things required to be done, including all of the work, labour, services, goods, equipment, if applicable, described in the Scope of Work and Drawings and is further described in Section 2.2(a) of General Conditions.
- 1.82 "Working Day" means any day other than: (a) a Saturday or Sunday and (b) any other day on which Metrolinx is not open for business.

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**2.0 Payment**

- 2.1 Metrolinx will pay the Vendor for the Work performed by the Vendor pursuant to this Contract, in the amounts and manner, at the rates set out in the Articles of Agreement (the "Rates") and at the times, set forth in the Articles of Agreement and this Schedule B - Financial Terms.
- 2.2 The Vendor shall perform all of the Work notwithstanding that the value of the time spent by the Vendor in performance thereof may exceed the maximum amount payable to the Vendor pursuant to Section 4.0 of this Schedule B - Financial Terms.

**3.0 Limitation of Expenditure**

- 3.1 It is understood that the Contract is based on reimbursement for actual Work requested by Metrolinx and performed by the Vendor, to the satisfaction of Metrolinx.
- 3.2 Metrolinx does not guarantee any minimum or maximum of work.

**4.0 Total Contract Price**

- 4.1 Subject to Sections 8.1, 8.2 and Article 9 - Additional Resources of General Conditions of the Contract, Metrolinx and the Vendor acknowledge and agree that the Total Contract Price set out in the Articles of Agreement is the maximum amount payable in respect to the provision of the Work provided, however, that the foregoing is not an entitlement to, nor a guarantee that the Vendor will be paid the full amount of the Total Contract Price. The Total Contract Price includes all Cash Allowances identified in this Contract1.

**5.0 Rates for Work**

- 5.1 Not Applicable.

**6.0 Taxes**

- 6.1 The Total Contract Price and all amounts payable under the Contract shall be inclusive of all Taxes (except for HST) in effect as at the date of this Contract. Unless otherwise expressly specified in this Contract or otherwise required by Applicable Law, the Vendor shall be responsible for remittance of any and all Taxes due and payable in respect of the Work.

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

**7.0 Invoicing and Payment Process**

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



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payment from the Vendor, unless otherwise provided or permitted in the Contract. The Vendor shall accept any payments made by Metrolinx by way of Electronic Funds Transfer, and shall, if requested by Metrolinx, provide the account information required to complete an Electronic Funds Transfer.

**8.0 Cost of Changes**

- 8.1 Changes shall be implemented by the Vendor without any additional charge, unless the Vendor is able to demonstrate (with supporting documentation) that the Change causes the Vendor to incur additional costs.
- 8.2 The Vendor shall implement all Changes for a reasonable price in accordance with the same pricing principles and price levels as originally agreed in the Articles of Agreement. Where Rates apply to Vendor Personnel, those same Rates shall apply with reference to the applicable level of experience and/or expertise.
- 8.3 With respect to any Changes that (in whole or in part) require the services of a third party, Metrolinx (at its sole discretion) shall have the right to require the Vendor to provide three (3) quotes to Metrolinx in respect of such third party services, in accordance with Section 9.0 of this Schedule B - Financial Terms.
- 8.4 Metrolinx shall have the right to request such documentation and other supporting information as it reasonably requires to confirm and substantiate the costs associated with any Change request, and the Vendor shall provide same to Metrolinx within five (5) Business Days of the request therefor.

**9.0 Expenditure of Cash Allowance**

- 9.1 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 Vendor's monthly application for payment, in accordance with Section 6.0 of this Schedule B - Financial Terms. Cash Allowance expenditures must not exceed the Total Contract Price.
- 9.2 The Vendor 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.
- 9.3 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.

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- (a) The Cash Allowance shall cover the net cost of performing all Cash Allowance Items, excluding Vendor'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 Vendor shall only be compensated for the actual cost of performing the Work.
- (b) In the event that the Vendor reasonably anticipates that the cost of performing the Work under the Cash Allowance will exceed the amount of the Cash Allowance, the Vendor 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 Vendor 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.
- (c) All expenditures by the Vendor 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 Vendor shall only be compensated for expenditures under the Cash Allowance that are substantiated.

**10.0 Quotations - Changes and Cash Allowance Items**

10.1 With respect to any Changes or Cash Allowance Items (or any part thereof), the Vendor 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 Vendor 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 Vendor proposes would be most efficiently performed by the Vendor's own workforces, the Vendor shall include as one of the three (3) quotes the price proposal for having its own workforce perform the work.

- (a) Any and all costs incurred by the Vendor for providing a Quotation or obtaining quotations from third parties, shall be borne by the Vendor.
- (b) All Quotations shall be prepared on the Vendor's letterhead and in a format agreed to by Metrolinx and the Vendor. The Quotation shall at a minimum contain the following information:

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- (c) a description of the work required by the Work;
- (d) Curriculum Vitae for each required position and two (2) references for each individual;
- (e) estimated hours of work for each identified key role;
- (f) any requirement for additional positions other than those listed in Schedule E - Vendor Personnel;
- (g) required Subvendors; and specialized service providers;
- (h) any requirements for testing and/or reporting;
- (i) detailed breakdown of costs;
- (j) detailed work schedule which complies with completion date provided by Metrolinx (as required by Metrolinx); and
- (k) any other requirements/instructions.
- (l) The Vendor shall, upon request, disclose to Metrolinx the originals of all bids, quotations and other price related information received from suppliers or Subvendors.

10.2 Metrolinx reserves the right to accept or reject a Quotation, in whole or in part.

**11.0 Metrolinx Property**

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

**12.0 Payment Schedule and Advance Payment Security**

12.1 Not Applicable.

END OF SECTION

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

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**1.0 Vendor Insurance Requirements**

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

(a) Commercial General Liability

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

(b) Automobile Liability Insurance

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

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

1.2 Additional Coverage

(a) Without prejudice to any other provisions of this Contract (including Section 1.1 of this Schedule C - Insurance), the Vendor shall, at all relevant times and at its own expense, obtain and maintain, or cause to be obtained and maintained (during the Term plus thirty-six (36) months after termination or expiration of this Contract):

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

**1.3 Requirements for Insurance**

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

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for the Vendor, or the failure of any such insurance company to pay claims that occur will not be held to waive any of the provisions hereof.

1.4 Proof of Insurance

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

1.5 Vendor's Liability Preserved

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

1.6 Certificates of Insurance shall include:

- (a) A reference to the Project description and Contract number;
- (b) Additional insureds as follows:
  - (i) The Certificate of Commercial General Liability Insurance shall include the following as additional insureds:

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- (A) Metrolinx;
- (c) Confirmation the policy includes a waiver of subrogation against Metrolinx as required by General Conditions of the Contract.
- (d) A provision requiring the insurer to give Metrolinx thirty (30) calendar days prior written notice of any changes to, or cancellation of, the required insurance policies.

**2.0 Workplace Safety & Insurance Board Protection**

- 2.1 With respect to the WSIB coverage as required under the Workplace Safety and Insurance Act (Ontario), the Vendor unconditionally guarantees to Metrolinx full compliance with the conditions, regulations and laws relating to workplace safety insurance by itself and by all Subvendors.
- 2.2 Without restricting the indemnity obligations of the Vendor in Article 12 of the General Conditions, unless the Vendor is WSIB exempt, the Vendor shall produce, at the commencement of this Contract, from time to time as may be required by Metrolinx and prior to issuance of the Final Payment Certificate, a valid Workplace Safety and Insurance Clearance Certificate, issued by the WSIB, for the premium rate class, subclass or group appropriate to the Work.
- 2.3 If the Vendor is WSIB exempt, it shall provide evidence of Employer's Liability or equivalent, to the satisfaction of Metrolinx, in lieu of a Workplace Safety and Insurance Clearance Certificate.

END OF SECTION

**GENERAL CONDITIONS OF THE CONTRACT**  
**SCHEDULE D – DISPUTE RESOLUTION**

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**1.0 Bona fide efforts to resolve**

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

**2.0 Continuance of the Work During Dispute**

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

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

2.2 The Parties acknowledge and agree that the Vendor's compliance with this Section 2.0 shall not operate to waive any claim or contention that the Vendor may have in relation to any Dispute.

**3.0 Tiered-Dispute Resolution**

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

**4.0 Negotiation**

4.1 In the event a Party issues a Dispute Notice to the other Party, 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 Vendor, of equivalent seniority and duly appointed to represent the Vendor in this regard, shall meet and make a good faith



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

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

**5.0 Mediation**

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

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

**6.0 Arbitration**

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

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- 6.3 The arbitrator(s) shall be independent of and at arm's length to the Parties and shall be a person who by training and experience has the qualifications and arbitration skills to arbitrate a Dispute.
- 6.4 The arbitration shall be conducted in accordance with the provisions of the Arbitration Act, except to the extent they are modified by the express provisions of this Schedule D - Dispute Resolution or unless the Parties otherwise agree.
- 6.5 If the issue in dispute is particularly time sensitive, the Parties shall, in good faith, take such reasonable steps as may be required to expedite the arbitration process in order that an award may be rendered as soon as practicable by the arbitrator(s), given the nature of the Dispute.
- 6.6 The arbitrator(s) has the jurisdiction to deal with all matters relating to a Dispute.
- 6.7 Unless otherwise agreed, the arbitration shall be conducted in the City of Toronto, Province of Ontario at the location determined from time to time by the arbitrators, but the arbitrators may meet in any other place the arbitrators considers necessary for consultation, to hear witnesses, experts or other parties, or for the inspection of documents, goods or other property.
- 6.8 In addition to the examination of the Parties by each other, the arbitrator(s) may examine, in the ordinary course, the Parties or either of them and the witnesses in the matter referred to the arbitrator(s), and the Parties and witnesses, if examined, shall be examined on oath or affirmation.
- 6.9 The language of the arbitration shall be English.
- 6.10 The arbitrator(s) shall, after full consideration of the issues in dispute, the relevant facts and Applicable Law, render a decision as soon as possible and, in any event, shall use all reasonable efforts to render a decision no later than thirty (30) Business Days after argument of the issue to the arbitrator(s), which decision shall be final and binding on the Parties and not subject to appeal or challenge, except such limited relief provided under Section 45(1) (appeal on a question of law, with leave) or Section 46 (setting aside award) of the Arbitration Act.
- 6.11 The costs of the arbitration are in the discretion of the arbitrator(s) who, in addition to any jurisdiction and authority under Applicable Law to award costs, has the jurisdiction and authority to make an order for costs on such basis as the arbitrator(s) consider appropriate in the circumstances. The submission to the arbitrator(s), and any award made in pursuance of it, may, at the instance of either of the Parties and without notice to the other of them, be made an Order of the

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Ontario Court (General Division), pursuant to the Arbitration Act and the Courts of Justice Act (Ontario).

END OF SECTION

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SCHEDULE E – VENDOR PERSONNEL**

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Not Applicable.

## **SCOPE OF WORK**

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

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GENERAL INSTRUCTIONS**

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Not Applicable.

END OF SECTION

**SCOPE OF WORK  
QUALITY CONTROL**

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**1.0 Inspection**

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

**2.0 Independent Inspection Agencies**

- 2.1 Not Applicable.

**3.0 Procedures**

- 3.1 Notify the appropriate agency and Metrolinx a minimum of two (2) Working Days in advance of the requirement for tests, in order that arrangements can be made with the testing company.
- 3.2 Submit samples and/or materials required for testing, as specifically requested in Scope of Work. Submit with reasonable promptness and in an orderly sequence so as not to cause delay in the Work.
- 3.3 Provide labour and equipment to obtain and handle samples and materials at the Place of Work.

**4.0 Rejected Work**

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



**SCOPE OF WORK  
QUALITY CONTROL**

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**5.0 Reports**

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

END OF SECTION

**SCOPE OF WORK  
DETAILED SCOPE OF WORK**

**Supply and Delivery of Kit - Desiccant Air Dryer Bendix AD-IP  
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**1.0 Scope of Work**

The Work will involve the supply and delivery of Desiccant Kits for Bendix AD-IP Air Dryers to be used in Metrolinx's fleet of heavy duty coaches operating in suburban and highway service.

**2.0 Material Specifications**

**2.1 General**

- (a) The following specifications cover ORIGINAL Desiccant Kits for Bendix AD-IP Air Dryers from Bendix CVS only. The specifications must be met; no substitutions will be permitted:
  - (i) Bendix® PuraGuard® Oil Coalescing Cartridge PART# 065624PG (NEW) **or** PART# 109493PGX (REMANUFACTURED). The Vendor can supply both parts indistinctly.

**3.0 Delivery**

- 3.1 The Vendor will be responsible for the delivery of all goods supplied.
- 3.2 The Vendor will deliver all goods of the type and quantity ordered on an as-is or when required basis, to the location specified within five (5) calendar days of being notified, in writing, of the requirements by Metrolinx's designated representative.
- 3.3 Deliveries will be made to the following Metrolinx locations:
  - (a) Steepprock Bus Maintenance Facility  
Stores – Shipping and Receiving  
200 Steepprock Drive  
Downsview, Ontario M3J 2T4  
Attn: Steve Yong
  - (b) Streetsville Bus Maintenance Facility  
Stores – Shipping and Receiving  
6190 Mississauga Road  
Streetsville, Ontario L5N 1A7  
Attn: Max Budiman
  - (c) Oshawa Bus Maintenance Facility  
Stores – Shipping and Receiving

**SCOPE OF WORK  
DETAILED SCOPE OF WORK**

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1002 Thornton Road South  
Oshawa, Ontario L1J 7E2  
Attn: Steve Yong

- 3.4 Regular deliveries must be made between the hours of 8:00 a.m. and 3:00 p.m., Monday to Friday, (Statutory Holidays excluded). Extraordinary deliveries may be allowed by Metrolinx with prior coordination.

**4.0 Cores**

- 4.1 The Vendor shall pick up the dessicant cartridge cores from Metrolinx premises during regular delivery hours (indicated on 3.4 above) within five (5) calendar days' of being notified, in writing, of the requirements by Metrolinx's designated representative.
- 4.2 Cores shall be considered as returned by Metrolinx five (5) calendar days after written notification of availability is provided to the Vendor. Metrolinx shall not be required to store the cores beyond the five (5) calendar days' period.
- 4.3 The Vendor shall Invoice Metrolinx for any unreturned cores by June 30<sup>th</sup>, 2021.
- 4.4 The allowance included in this contract for the cores is considered an estimate and shall only be used to cover the cost of the outstanding cores at the rate indicated in the Contract Prices after the closing of business on June 30<sup>th</sup>, 2021.
- 4.5 Claims for unreturned cores under this Contract shall not be accepted after July 31<sup>st</sup>, 2021.

**5.0 Warranty**

- 5.1 12 months (1 year) - 160,000 Km or 3,600 hours of operation is the standard manufacturer warranty.

**SCOPE OF WORK  
DRAWINGS**

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

## ATTACHMENTS

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

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