



## Request to Qualify and Quote for

Request Description: Oracle ERP Staff  
Augmentation on an  
Emergent Basis

Request Number: RQQ-2018-ITIN-242

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## 1.0 Definitions

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In this Request Document,

- 1.1 **“Addenda”** is the formal release of additions, deletions, revisions, clarifications to this Request Document that form a part of the Contract.
- 1.2 **“Business Day”** means any day other than: (a) a Saturday or Sunday and (b) any other day on which Metrolinx is not open for business. Each Business Day will end at 4:00 p.m. on that day.
- 1.3 **“Closing”** means the date and time on which Submissions must be submitted by Proponents, in accordance with Sections 3.2.1(d).
- 1.4 **“Conflict of Interest”** shall have the meaning ascribed in the Form of Request.
- 1.5 **“Contract”** means the contract between the Proponent and Metrolinx pursuant to this Request to Qualify and Quote reference # RQQ-2018-ITIN-242 including the Articles of Agreement, the General Conditions and the Schedules thereto and those documents listed in Section 3.1 Request Document.
- 1.6 **“Corporate Firm”** means any one of the following: a) the Proponent, b) the Proponent and its Subvendors, or c) the Joint Venture, responding to this Request Document.
- 1.7 **“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.
- 1.8 **“EBS”** means Electronic Bid Submission.
- 1.9 **“ERP”** means Enterprise Resource Planning software which in this particular situation refers to Oracle E-Business Suite, Fusion or Cloud products.
- 1.10 **“E-Bid Authorized Signer”** is the designated individual in the Proponent’s organization who has the authority to bind the Proponent to each and every term, condition, article and obligation of this Request Document and any resultant Contract.
- 1.11 **“E-Bid Confirmation Number”** is the receipt received by a Proponent from MERX indicating that the Submission was uploaded successfully.
- 1.12 **“Evaluation Committee”** means the representatives chosen to evaluate the Submissions based on the Evaluation Criteria outlined in this Request Document.
- 1.13 **“Evaluation Criteria”** means the criteria for scoring the Submission as stated in Section 5.2 – Evaluation Criteria.

- 1.14 **“FIPPA”** means the Freedom of Information and Protection of Privacy Act, and any amendments or successor legislation. FIPPA is Provincial legislation regulating the collection, retention, access, use and disclosure of Personal Information by or on behalf of Metrolinx, and shall be applicable to the Contract including all Work provided pursuant to this Contract.
- 1.15 **“Joint Venture”** means a business arrangement of two or more parties proposed for this RQQ Process further described in Section 3.8 Joint Venture.
- 1.16 **“Key Personnel”** means Proponent personnel who will be assigned and involved in a material way in, and who are critical to, the performance of the Work. All key personnel will possess the requisite Domain Expertise.
- 1.17 **“Metrolinx”** means Metrolinx, a provincial crown agency continued under the Metrolinx Act, S.O. 2006, Chapter 16, and its successors and assigns.
- 1.18 **“Metrolinx MERX Portal”** is the electronic bid solicitation and Proponent Submission website ([www.metrolinx.merx.com](http://www.metrolinx.merx.com)) that facilitates Metrolinx and Proponent interaction as it directly relates to the; download by a Proponent of Metrolinx Request Documents including Addenda from, and upload by a Proponent of a Submission to Metrolinx in response to, this RQQ Process.
- 1.19 **“OBIEE/OBIA”** is a business intelligence server developed by Oracle. It includes advanced business intelligence tools built upon a unified architecture. The server provides centralized data access to all business related information in a corporate entity. It integrates data from multiple sources.
- 1.20 **“Participant in Charge”** shall have the same meaning ascribed in Section 3.8.3 Joint Ventures.
- 1.21 **“Parties”** means Metrolinx and Proponent and “Party” means either one of them.
- 1.22 **“Place of the Work”** is the designated site or location of the Work.
- 1.23 **“Procurement Representative”** means the following individual in the Procurement Services Department:

Name:	Wil Wong
Title:	Procurement Specialist, Information Technology and Managed Services
Telephone Number:	(416) 202-7896
Email:	wil.wong@metrolinx.com

- 1.24 **“Proponent”** means the legal entity that remits a Submission in response to this Request Document and who if selected for award shall execute the Contract with Metrolinx for provision of the Work.
- 1.25 **“Request Document”** means this Request to Qualify and Quote document comprised of sections listed in the Table of Contents, issued by Metrolinx for the Work to be provided, and any Addenda thereto.
- 1.26 **“Request Document Forms”** means any sections of this Request Document which requires completion and must be included with the Submission.
- 1.27 **“RQQ Process”** means the Request to Qualify and Quote procurement process set out in this Request Document.
- 1.28 **“Scope of Work”** means the scope of work described in Appendix “B”.
- 1.29 **“Subvendor”** means an individual, firm, partnership, corporation or professional having a direct contract with the Proponent or another Subvendor to perform a part or parts of the Work as identified in the Submission.
- 1.30 **“Submission”** means all documentation and other materials and information submitted by the Proponent in response to this Request Document or in respect of this RQQ Process.
- 1.31 **“Technical Submission”** means the Proponent’s response to Section 4.3 Submission Content and any additional information requested by Metrolinx.
- 1.32 **“Total Evaluated Price”** means the price set out in Attachment # 1 – Proponent’s Prices.
- 1.33 **“Vendor Performance Management (VPM)”** shall have the meaning ascribed in Section 3.18 of Instructions to Proponents.
- 1.34 **“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 Proponent has not completed any work for Metrolinx in the three (3) years preceding the Closing, for the purpose of evaluating the Submission, the Proponent 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 Work for Metrolinx during the prior fiscal year.
- 1.35 **“Work”** means the Scope of Work defined above.

## 2.0 Introduction

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### 2.1 General

#### **Introduction**

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

In early 2015, a multi-year Oracle Enterprise Resource Planning program named Integrate Metrolinx was conceived, with the goal of providing Metrolinx with best-in-class business processes and enabling technologies. Its initial scope included several smaller scale 'readiness' projects laying the groundwork for the overall program and realizing some quick wins. On February 8th, 2016, Metrolinx initiated a larger project to fully realize our Finance, HR and Procurement transformation objectives. In January 2018-19, Metrolinx will expand this program to include the delivery of Oracle Unifier, Oracle Primavera Portfolio Management, Oracle Fusion Human Capital Management and Oracle Business Intelligence Suite.

#### **Scope**

The Information & Information Technology (I&IT) division at Metrolinx is a shared service for all business units within the agency. I&IT is organized into five (5) divisions, each headed by a Director reporting to the Chief Information Officer (CIO): Planning and Architecture, Project Management Office, Solution Delivery, CyberSecurity and Operations. In addition there is a Business Relationship Management function reporting to the CIO which includes business analysts and business relationship managers. Together these divisions are responsible for developing and executing an I&IT strategy to deliver and operate business solutions to meet the business needs identified in the Metrolinx overall business strategy. The approach adopted by Metrolinx I&IT is to utilize a combination of permanent full time and contract resources to deliver these solutions.

The objective of this Request to Qualify and Quote (RQQ) is to solicit proposals from Proponents for the provision of temporary Oracle ERP resources on an emergent basis.

## 3.0 Instructions to Proponents

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### 3.1 Request Document

This Request Document shall be read as a whole. The Schedules, Appendices and Addenda, if any, constitute an integral part of this RQQ Process and are incorporated by reference. The documents included in this Request Document (with the exception of any Addenda that may be issued subsequently) are:

- (a) Form of Request
- (b) Attachment # 1 – Proponent’s Prices
- (c) Attachment # 2 – Mandatory Technical Requirements
- (d) Attachment # 3 – Proponent’s Reference Projects
- (e) Appendix “A” – General Conditions
- (f) Appendix “B” – Scope of Work
- (g) Appendix “C” – Metrolinx’s Services
- (h) Appendix “D” – Documents
  - Sample Articles of Agreement
  - Contract Performance Appraisal
  - Parental Guarantee
- (i) Appended Proponent questions template entitled Proponent Q and A Template RQQ-2018-ITIN-242

### 3.2 Submission Instructions

#### 3.2.1 General

- (a) **\*\*\*NOTE: ELECTRONIC BID SUBMISSION**  
Your Submission for this opportunity must be made to Metrolinx through the use of the Metrolinx MERX Portal. Proponents shall be solely responsible for the delivery of their Submission using the Metrolinx MERX Portal by the Closing, in accordance with the Submission Instructions herein.
- (b) Your Submission is to be firm and irrevocable for one hundred and twenty (120) calendar days from the Closing.



- (c) Your Submission will be evaluated in accordance with the Evaluation Criteria and Selection Process as outlined in this Request Document.

- (d) RQQ Timetable:

<b>Milestone</b>	<b>Date</b>
Issuance of Request Document	Tuesday August 28, 2018.
Deadline to Submit Questions	September 12, 2018. 4:00 pm E.T.
Last day for issuance of Addenda	September 18, 2018.
Closing	September 24, 2018. 3:00 pm E.T.

Metrolinx may, without liability, cost or penalty and in its sole discretion amend the RQQ Timetable. In the event that Metrolinx extends the Closing, all requirements applicable to Proponents will thereafter be subject to the extended deadline.

### 3.2.2 Request Enquiries

- (a) All written enquiries and other communications prior to full Contract execution are to be directed solely to the Procurement Representative.
- (b) Information received from any other sources shall be considered informal and Metrolinx shall not be bound by any information given in such a manner.
- (c) Any questions concerning this Request Document, the contents herein, including Appendix “A” – General Conditions, or the Work contemplated herein are to be directed, in writing, to the Procurement Representative prior to the deadline for submitting questions. No questions or requests for clarifications, changes or amendments of this Request Document shall be entertained after this time regardless of the reason. To allow for dialogue on any questions or requests, Metrolinx encourages Proponents to submit their questions or requests early on in the Q and A process. When seeking changes or amendments to any of the terms and conditions of this RQQ Process, including the terms contained in Appendix “A” – General Conditions, the Proponent should provide sufficient detail to provide Metrolinx with an understanding of the rationale for the change or amendment and, if applicable, the Proponent should propose the language that would address its concern(s).
- (d) All questions/requests for clarification, change or amendment related to this Request Document are to be submitted via e-mail to the attention of the Procurement Representative using the Question and

Answer Template which is a fillable Excel file attached separately as:

Proponent Q and A Template RQQ-2018-ITIN-242.xlsx

In the "Questions" tab, use the drop down list to indicate the document section related to each question being submitted as well as page, drawing, section number and details of the specific question/clarification request. For each set of questions submitted by the Proponent, a new copy of the above referenced Question and Answer Template should be submitted.

- (e) When necessary, revisions to, or clarifications of this Request Document will be incorporated into a written addendum issued by the Procurement Representative. Information regarding this Request Document or the Work, whether provided by the Procurement Representative, 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.

### 3.2.3 Mandatory Site / Information Meeting

Not applicable.

### 3.2.4 Addenda / Changes to this Request Document

- (a) In the event that Metrolinx determines in its sole discretion, that clarifications of, or revisions to this Request Document are required, all Proponents who received copies of this Request Document shall be advised of such clarifications or revisions during the period by written addenda. Such addenda shall become part of this Request Document and the contents thereof shall be allowed for in the prices bid for the Work.
- (b) It is the Proponent's responsibility to ensure that they have received copies of all Addenda, and to ensure that the Addenda have been considered in their Submission. Addenda, if applicable, will be issued through the Metrolinx MERX Portal. Information concerning the number of Addenda issued and the date of issue of the most recent Addendum can be found at [www.merx.com](http://www.merx.com) for this RQQ Process. Proponents are urged to select automatic notification of Addenda issuance when registering on the Metrolinx MERX Portal.
- (c) The Proponent, when ascertaining if copies of all Addenda issued have been received, shall be responsible for allowing sufficient time prior to the Closing to receive any missing Addenda and to review and allow for the contents thereof in the Submission.

### 3.2.5 Submission

- (a) Proponents remitting a Submission to Metrolinx shall exercise extreme care when completing and submitting all Request Document Forms.
- (b) Proponents shall examine carefully the whole of this Request Document and any data referred to therein. They shall make the necessary investigations to inform themselves thoroughly as to the character and magnitude of the Work.
- (c) The Proponent shall not claim at any time after the Closing and/or after notification of award of the Contract that there was any misunderstanding or uncertainty in regard to this Request Document or any of the contents therein. No plea of ignorance of conditions which exist, or any conditions or difficulties that may be encountered, shall be accepted as a reason for failure to complete the Contract or as a basis for claims for additional compensation or extension of time.
- (d) Your Submission shall be completed fully in a clear and comprehensible manner.
- (e) Submissions shall be remitted electronically through the Metrolinx MERX Portal only. Submissions sent in any other manner shall be deemed non-responsive and automatically disqualified.
- (f) The Submission shall be remitted on the original Request Document Forms as issued by Metrolinx through the Metrolinx MERX Portal and except for designated sections where the Proponent is to enter information, the Request Document and Request Document Forms shall not be altered in any way including, but not limited to, write-ins, strike-outs of the pre-printed provisions or any other qualifying statements.
- (g) The Submission must not include any qualifying statements.
- (h) Any Submission which contains such qualifying statements shall be deemed non-responsive and disqualified unless such qualifying statements are withdrawn in writing by the Proponent upon request by Metrolinx. Metrolinx at its sole discretion will determine what constitutes a qualifying statement.
- (i) If during the preparation of their Submission, the Proponent desires to make a change which requires correction, alteration or erasure to any information previously entered in a designated section of the Submission by the Proponent, documents that have been uploaded to the Metrolinx MERX Portal can be added, removed and/or re-submitted as often as required at any time, prior to the Closing.

- (j) Any Submission documents that are attempted to be uploaded via the Metrolinx MERX Portal after the Closing has occurred (as confirmed by the MERX Audit Report) shall be automatically rejected by Metrolinx, regardless of the reason for lateness.
- (k) 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.
- (l) The person(s) executing the Form of Request on behalf of the Proponent, if a corporation, shall indicate their title and confirm that they have authority to bind the corporation. Submissions by individuals shall be witnessed.
- (m) Submissions must be remitted on the Metrolinx MERX Portal by the Proponent's E-bid Authorized Signer.
  - (i) NOTE: The Proponent can have only one (1) E-Bid Authorized Signer which is to be used for any EBS submission process.
  - (ii) The E-Bid Authorized Signer does not have to be either the person placing the order for the Request Document on MERX, nor do they have to be subscribed to MERX. Once an E-Bid Authorized Signer has been setup, a letter will be sent via email to the E-Bid Authorized Signer.
  - (iii) For the purposes of a Joint Venture, the E-Bid Authorized Signer of the Participant-in-Charge shall remit the Submission.
- (n) Submissions must be remitted electronically through the Metrolinx MERX Portal. For assistance in using the Metrolinx MERX Portal, please watch the online Electronic Bid Submission tutorial at: <http://www.youtube.com/watch?v=To0fqScw3M>. Alternatively, you can contact MERX directly at 1-800-964-MERX (**6379**) or visit the MERX website at [www.merx.com](http://www.merx.com) for further instruction or assistance regarding EBS and/or E-Bid Authorized Signer registrations.
  - (i) Please review the E-bid checklist on MERX as this will provide some general assistance regarding uploading of documents.
  - (ii) It is the Proponent's sole responsibility to ensure that all required information for their Submission is uploaded to the Metrolinx MERX Portal. Failure of the Proponent to include all required items may result in the Proponent's Submission being deemed non-responsive and disqualified.

- (iii) The largest individual file size that can be submitted through MERX is 100MB, although there is no limit to the number of files that can be submitted. If any individual file size is over 100MB, the Proponent's submission can be split into multiple parts, and submitted as clearly labelled, multiple files once the submission has been broken up into files of 100MB or smaller.
- (iv) MERX places no restriction on file format and does not convert or zip files during the upload process.
- (v) In order to complete the Submission, the on-line authorization of the Proponent's E-Bid Authorized Signer will be required. It is the Proponent's sole responsibility to have an E-Bid Authorized Signer PIN number issued from Merx at least one (1) day prior to Closing. Visit [tenders.merx.com/RequestEBSPin](https://tenders.merx.com/RequestEBSPin) to request a PIN for the Proponent's E-bid Submission Authorized Signer.
- (o) Information contained in the most recent Submission remitted via the Metrolinx MERX Portal and received prior to the Closing will take precedence over the information contained in previously received Submissions from the Proponent.
- (p) The Proponent may withdraw a Submission at any time prior to the Closing specified by Metrolinx by logging into MERX on the E-bid Submission screen locating the opportunity and clicking 'Delete' for the opportunity in question. Once deleted, an E-bid is given the status 'Not Submitted'.

### 3.2.6 Submission Deadline

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

- (ii) If the Proponent attempts to remit their Submission, or portions thereof, after the Closing, such documents shall not be accepted by the Metrolinx MERX Portal system.
- (iii) In the event that the Metrolinx MERX Portal system allows late Submissions, this will not supersede any stipulations herein regarding late submissions.
- (b) Upon successful completion of the EBS process, the Proponent shall be provided with an E-bid Confirmation Number. All reports are kept on the Proponent's MERX account for seven (7) years after the Closing.
- (c) Notwithstanding the above, Metrolinx reserves the right to postpone the Closing at which time all potential Proponents shall be advised of the new Closing by way of Addenda.
- (d) After the Closing has occurred, all Submission received will be opened by Metrolinx staff. There shall be no public access to this opening. Upon execution of the final Contract, all Proponents that have remitted a Submission shall be notified in writing of the results of the award to the successful Proponent. Results of the award to the successful Proponent shall also be posted on the Metrolinx website at [www.metrolinx.com/tenders](http://www.metrolinx.com/tenders) under "Bid Award Results" (Request to Qualify and Quote) and/or the MERX website at [www.merx.com/metrolinx](http://www.merx.com/metrolinx) (search "Metrolinx" or the Request Number and select "Awards").
- (e) All documentation received by Metrolinx with regards to this RQQ Process will be retained by Metrolinx and will not be returned to the Proponent.

### 3.2.7 Clarification of Proposals

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

acknowledged by the relevant Proponent shall be considered to form part of the Submission of those Proponents.

- (c) After the Closing, only information specifically requested by Metrolinx for purposes of clarification shall be considered as additions to a Proponent's Submission.
- (d) Metrolinx is not obliged to seek clarification of any aspect of a Submission.

### 3.3 Insurance

#### 3.3.1 Workplace Safety and Insurance Clearance Certificate

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

#### 3.3.2 Insurance

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

#### 3.3.3 Parent Company Indemnity

If requested by Metrolinx, as a condition of award of Contract, a subsidiary company shall be required to submit a 'Guarantee' from its parent company, in the form of the Parental Guarantee as provided for in Appendix "D" – Documents, or otherwise in a form satisfactory to Metrolinx, whereby the parent company agrees to provide all the necessary financial and technical support for the proper completion of the said Contract, guarantees 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.

### 3.4 Nature of Agreement

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

### 3.5 Rights of Metrolinx

Metrolinx reserves the right, in its sole discretion:

- 3.5.1 to cancel this RQQ Process and/or any acceptance of a Submission prior to final execution of the Contract by Metrolinx, for any reason, without any obligation or any reimbursement to the Proponent;
- 3.5.2 to reject any or all Submissions. The Submission with the lowest price will not necessarily be accepted. Metrolinx’s selection shall be based on which Proponent has provided a Submission which Metrolinx determines, to provide the greatest value based on the Evaluation Criteria contained in this Request Document;
- 3.5.3 to disqualify any Submission which contains misrepresentations or any other inaccurate or misleading information;
- 3.5.4 to waive any requirement of this Request Document or request amendment where, in the sole opinion of Metrolinx, there is an irregularity or omission in the information provided, that is not material to the Submission unless a specific consequence has been identified herein for the commission of such an irregularity or omission;
- 3.5.5 to waive the requirement to check references;
- 3.5.6 to not respond to a Proponent’s questions;
- 3.5.7 to use its own experiences, and the experiences of any other third party, with the Proponent in previous contracts in order to evaluate the Proponent’s Submission.
- 3.5.8 to award or not award based on submitted references and/or references independently obtained by Metrolinx;
- 3.5.9 to award or not award based on the Proponent’s experiences with Metrolinx or other departments or agencies within the Ontario government, if the Proponent:
  - (a) was previously given a “Notification of Award” of contract by a department or agency within the Ontario government and defaulted in proceeding with the work of the contract;
  - (b) has submitted false or misleading information in this Submission;



- (c) 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;
  - (d) had a previous contract with a department or agency within the Ontario government that was terminated for default in the past year; or
  - (e) is an affiliate of or successor to any corporation described in Sections 3.5.9(a) through (d) above, including any firm that is controlled within the meaning of the Ontario Business Corporations Act by the same person or group of persons who so controlled any corporation described in Sections 3.5.9(a) through (d) above;
- 3.5.10 to request a listing of all projects, regardless of scope, complexity or estimated value, completed for or terminated by Metrolinx within the past three (3) years or currently active;
- 3.5.11 to distribute via Addenda, copies of any Proponent's questions received and responses provided by Metrolinx, to all Proponents who received this Request Document;
- 3.5.12 to postpone the Closing, at which time all Proponents who received this Request Document shall be advised of the new Closing via written Addenda;
- 3.5.13 within one hundred and twenty (120) days following the Closing, to request that any Proponent clarify its Submission and such Proponents shall submit responses to such request within five (5) Business Days following receipt of such request or within such shorter time as Metrolinx may require;
- 3.5.14 to prepare a written interpretation of any aspect of a Submission and require the relevant Proponent's acknowledgement of the accuracy of that interpretation;
- 3.5.15 to request that a Proponent voluntarily withdraw its Submission without penalty where in the opinion of Metrolinx the Submission is substantially below internal budget estimates and therefore the Work would not be satisfactorily completed;
- 3.5.16 to correct arithmetical errors in any or all Submissions where such errors affect extended totals. Arithmetical corrections shall only be made based upon the unit prices submitted by the Proponent. Corrections to extension, sums, differences or other arithmetical operations based on the Estimated Contract Price submitted will be identified on the Request Document Forms (submitted by the Proponent) by Metrolinx and acknowledged in each instance by the initials of the Proponent's and Metrolinx's authorized signatories. Such corrections will become part of the Proponent's

Submission. Failure of the Proponent to acknowledge such corrections shall result in its Submission being deemed non-responsive and disqualified;

3.5.17 to, upon failure of the Proponent whose Submission was accepted to fulfill the conditions of Section 3.6.2, cancel award of Contract and consistent with industry practice, notify another Proponent who was determined to be qualified in accordance with the Evaluation Criteria stated herein and who submitted a responsive Submission; that its Submission has been accepted and, subsequent to the fulfillment of the conditions of Section 3.6.2, that Proponent shall be deemed to be the successful Proponent and the Proponent to whom the Contract is awarded; and

3.5.18 to proceed with and to enter into a Contract with the Proponent for the provision of Work, as stated in Appendix “B” - Scope of Work.

### 3.6 Contract to be Executed

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

(a) It is Metrolinx’s intention to establish Contract with one (1) or more Proponent(s) to perform the required Work.

(b) Metrolinx’s upset limit for the Work is fifteen million dollars (\$15,000,000.00) over a period of up to three years, excluding H.S.T. In the event that Metrolinx, in its sole discretion, awards more than one (1) contract, the amount stated herein shall be divided between the multiple contracts. The amount allocated to each contract shall be determined by Metrolinx at its sole discretion.

(c) No individual work assignment shall have a value greater than two-hundred and fifty thousand dollars (\$250,000.00).

3.6.2 The Contract shall be executed by the Proponent and returned to Metrolinx within ten (10) Business Days of notification to the Proponent that Metrolinx has accepted its Submission. Failure by the Proponent to execute and return the Contract with the required Insurance Certificates and Workplace Safety and Insurance Clearance Certificate and any other documents as may be required within the specified time, could result in the cancellation of the Contract award.

3.6.3 There is no binding contract for the supply of the Work unless and until Metrolinx and the Proponent, whose Submission has been accepted, have executed the written agreements contemplated in this Request Document. The Proponent shall not start the Work before the Contract has been executed by the Proponent and Metrolinx, and all documents required by

this Request Document as a condition of award of the Contract, have been delivered to Metrolinx.

### 3.7 Conflict of Interest

3.7.1 For the purposes of this section, “Conflict of Interest” shall have the meaning ascribed to it in the Form of Request.

3.7.2 Each Proponent shall disclose to Metrolinx any actual or potential Conflict of Interest that may be relevant to this RQQ Process and provide a declaration, in the Form of Request that, except as disclosed, the Proponent is free of any actual or potential Conflict of Interest. Conflicts of Interest arise when the Proponent is in a position that could affect the integrity of this RQQ Process or the performance of the Work. Examples of Conflict of Interest include but are not limited to:

- (a) any director, officer, or employee or advisor of Metrolinx has any connection or relationship with, or any pecuniary interest in the Proponent or any Subvendor thereof;
- (b) the Proponent 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 Proponent in the preparation of its Submission.

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

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

### 3.8 Joint Ventures

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

3.8.2 The Joint Venture shall not change its Joint Venture arrangement without the prior written approval of Metrolinx in its sole discretion in accordance with the process set out in Section 3.17 Changes to Proponent Key Personnel, Subvendors or Joint Venture.

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

### 3.9 Prohibited Contacts and Lobbying Prohibition

- 3.9.1 A Proponent, Proponent’s team members and all of the Proponent’s respective Subvendors, advisors, employees and representatives are prohibited from engaging in any form of political or other lobbying, of any kind whatsoever, to influence the outcome of this RQQ Process.
- 3.9.2 Without limiting the generality of Section 3.9.1, neither Proponents or Proponent team members or any of their respective Subvendors, advisors, employees or representatives shall contact or attempt to contact, either directly or indirectly, at any time during this RQQ Process, any directors, officers, employees and advisors of Metrolinx, other than the Procurement Representative, other than to discuss pre-existing work that is being conducted pursuant to a separate contract.

### 3.10 Media Releases, Public Disclosures and Public Announcements

- 3.10.1 A Proponent shall not, and shall ensure that its advisors, employees, or representatives do not, issue or disseminate any media release, public announcement or public disclosure (whether for publication in the press on the radio, television, internet, or any other medium) that relates to this RQQ Process, this Submission or any matters related thereto, without the prior written consent of Metrolinx.
- 3.10.2 A Proponent, Proponent’s team members and all of the Proponent’s respective advisors, employees and representatives shall not make any public comment, respond to questions in a public forum, or carry out any activities to either criticize another Proponent or Submission or to publicly promote or advertise its own qualifications, interest in or participation in this RQQ Process without Metrolinx’s prior written consent, which may be withheld in Metrolinx’s sole discretion. Notwithstanding this item, the Proponent, Proponent’s team members and all of the Proponent’s

respective advisors, employees and representatives are permitted to state publicly that it/they are participating in this RQQ Process.

3.10.3 For greater clarity, this section does not prohibit disclosures necessary to permit the Proponent to discuss this Request Document with prospective subvendors' participation in this RQQ Process.

3.11 Restriction on Communications Between Proponents – No Collusion

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

3.12 Disclosure of Information

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

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

3.13 Freedom of Information and Protection of Privacy Act

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

Under Ontario's Open Data Directive, Metrolinx is required to publish certain procurement information. Accordingly, the Proponent acknowledges that, subject to any applicable FIPPA exemptions, Metrolinx may publish procurement data including but not limited to the names of the Proponents and the winning bid in accordance with Ontario's Open Data Directive. For more information, see: [www.ontario.ca/page/ontarios-open-data-directive](http://www.ontario.ca/page/ontarios-open-data-directive).

3.14 Submission to Be Retained by Metrolinx

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

3.15 Confidential Information of Metrolinx

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

3.15.1 is the sole property of Metrolinx and shall be treated as confidential;

3.15.2 shall not be used for any purpose other than replying to this Request Document and the performance of any subsequent agreement; and

3.15.3 shall not be disclosed without prior written authorization from Metrolinx.

3.16 Proponents Shall Bear Their Own Costs

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

3.17 Changes to Proponent Key Personnel, Subvendors or Joint Venture

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

3.17.2 In response to a request as per Section 3.17.1 above, Metrolinx may, in its sole discretion provide the Proponent with instructions as to the type of information required by Metrolinx to consider the proposed change to the Proponent's Key Personnel, Subvendors or Joint Venture arrangements as well as the deadlines for submission of information that the Proponent must meet in order to have its request considered by Metrolinx.

3.17.3 The Proponent shall provide any further documentation as may be required by Metrolinx to assess any proposed substitute or change. If Metrolinx, in its sole discretion, considers the proposed substitute to be acceptable, Metrolinx may consent to the substitution. Metrolinx's consent to such substitution, however, may be subject to such terms and conditions as Metrolinx may require. If the proposed substitute or change is not acceptable to Metrolinx, the Proponent shall propose an alternate substitute or change for review by Metrolinx in the same manner as the first proposed substitute.

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

### 3.18 Vendor Performance Management Program

- 3.18.1 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.
- 3.18.2 Pursuant to Metrolinx’s VPM Program, Metrolinx will be considering the Proponent’s past performance under contracts with Metrolinx, in a particular category, in evaluating Submissions received in response to this Proposal Document.
- 3.18.3 The VPR is being applied as a component of evaluation for this RFP Process in accordance with Proposal Evaluation Criteria and Selection Process.
- 3.18.4 A Proponent may access their VPR through an annual subscription on the Metrolinx MERX Portal. If a Proponent has questions regarding their VPR, they should contact the Procurement Representative in accordance with Section 3.2.2 of Instructions to Proponents.
- 3.18.5 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).
- 3.18.6 The "Contract Performance Appraisal" applicable to any Contract resulting from this RQQ Process, can be found under Appendix “D” – Documents.

## 4.0 Submission Requirements

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### 4.1 Mandatory Criteria

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

The mandatory criteria for this Request Document are as follows:

- 4.1.1 The Form of Request must be completed in full and submitted by the E-Bid Authorized Signer.
- 4.1.2 Proponents shall declare any conflicts of interest in Section 6.5 of Form of Request. If Section 6.5 is left blank the provisions of Section 6.5.2 of Form of Request shall apply.
- 4.1.3 Pricing information must be completed using the Excel template provided, entitled Attachment # 1 – Proponent's Prices RQQ-2018-ITIN-242.xlsx. The pricing template must be returned as a separate file preferably in Excel (.xlsx) format.
- 4.1.4 Attachment # 2 – Mandatory Technical Requirements must be completed in full and submitted.

### 4.2 Submission Format

The Proponent's Submission should be remitted in electronic form in the following format:

- 4.2.1 Present information in Font Size 11 pt. on 8½ x 11 paper size.
- 4.2.2 Include a table of contents.
- 4.2.3 Organize information into sections which correspond to the Submission Content Requirements in the exact order described below.
- 4.2.4 The entire content of the Proponent's Submission shall be submitted in writing, and the content of web sites or other external documents referred to in the Proponent's Submission will not be considered for evaluation unless submitted in their entirety as part of the Submission.

### 4.3 Submission Content

The Proponent's Submission should include the following documents and information as listed.



- 4.3.1 Technical Submission – The Proponent’s Technical Submission should be comprised of the following sections in the following order and should contain a Table of Contents.

Technical Submission:

(i) Form of Request

- (a) The Form of Request should be included as the first section within the Proponent’s Technical Submission.
- (b) The Form of Request must be completed in full and submitted by the E-Bid Authorized Signer. The Form of Request must not be retyped, and entries must be made directly on the Request Document Forms provided by Metrolinx.

(ii) Corporate Capability:

1) Corporate Summary:

The Proponent should provide a corporate overview of its structure, capabilities, qualifications and experience relevant to the Work, as follows:

a) Description of Company

A description of the Proponent’s company, including, but not necessarily limited to:

- I. A description of the Proponent’s corporate and ownership structure; and
- II. A brief corporate history including number of years in business.

b) Breadth of Services

A description of the Proponent’s principle business and breadth of services offered including the location of offices and number of employees by location.

c) Proponent must provide the Work to Metrolinx from an office located in the Greater Toronto Area

- I. Provide the GTA address

2) Corporate Experience and Qualifications:

- a) Demonstrate the Proponent has been providing IT resources for 10 years.

- b) Describe the process and methodology followed to source the resources described in Appendix “B” – Scope of Work.
- c) Functional organization
  - i) Proponent should provide the location of the office out of which the Work will be provided to Metrolinx;
  - ii) Proponent should provide a local corporate organization chart, identifying roles that are relevant for the provision of resources, client support, billing, and escalation; and
  - iii) Proponent should provide details of the account team who will be assigned to Metrolinx for the provision of the Work.
- d) The Proponent should demonstrate the breadth of its experience in providing resources similar in type as the Work identified in Appendix “B” – Scope of Work by including a summary of the Corporate Firms qualifications and experience relevant to the Work being contemplated, including but not limited to:
  - i) The necessary resources to sustain and complete the Work to the satisfaction of Metrolinx. The resource requirements are listed in Appendix “B” - Scope of Work;
  - ii) In provision of the Work provided to the following client groups:
    - a) Public Sector; and
    - b) Information Technology.
- e) Proponent must be able to supply candidates for all of the positions and roles identified in Section 6.0 of Appendix “B” – Scope of Work.
  - i) Describe the process to fulfill these requirements.
- f) Proponent shall supply to Metrolinx only those candidates that have a clear Criminal Reference Check status.
  - i) Provide the process for Criminal Reference status and the process to communicate to Metrolinx prior to job offer stage.

(iii) Corporate Reference Projects:

- 1) The Proponent should, using the template provided in Attachment # 3 - Proponent's Reference Projects, provide a list of **four (4) corporate reference projects**, which relative to the defined Scope of Work in Appendix "B", were performed within the past five (5) years. The reference project should represent and highlight the overall Contract where resources were fulfilled and successes that were attributed to the high caliber resources assigned as part of the Contract. Each corporate reference should include:
  - i) Name of the company for which the work was performed;
  - ii) Project title;
  - iii) Contact person's name, title, telephone number and email address; and
  - iv) Start and completion date.
- 2) The Proponent should attach a maximum of two (2) additional pages of information for each reference project including but not necessarily limited to the following:
  - a) Project background and purpose;
  - b) The services provided relative to the Work described in Appendix "B";
  - c) Value of work performed;
  - d) Start and end date;
  - e) Specific details related to the resources that were provided for a specific Contract detailing specific activities successfully performed; and
  - f) The roles and positions employed as per the job descriptions set out in Appendix "B".
- 3) Reference Checks: References may be checked using a standard uniform method. Opinions of previous clients regarding budget and schedule experience, dependability, attitudes of employees and/or Subvendors, concern for efficiency, economy and environment, sensitivity to community, and quality of service among others may be taken into account when evaluating reference projects.
- 4) For any discrepancies resulting from the reference check, Metrolinx may re-contact the Proponent in writing for a written clarification. The assessment of the Proponent's original response to the evaluation factor will then be

finalized taking into account the results of the clarification process described in this Section.

- 5) For greater clarity, Metrolinx reserves the right to validate and adjust (increase or decrease) any of the Proponent's Phase 2 Technical Evaluation Score (as described in Section 5.0) based on feedback obtained from these reference checks.

#### 4.4 Proponent Presentation

Not applicable

#### 4.5 Price Submission

- 4.5.1 Pricing information must be completed and submitted using the pricing template provided, entitled Attachment 1 – Proponent's Prices RQQ-2018-ITIN-242.xlsx. The pricing template must be submitted as a separate file preferably in Excel (.xlsx) format.

## 5.0 Evaluation Criteria and Selection Process

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### 5.1 Evaluation Methodology

5.1.1 Submissions shall undergo several phases of evaluation based on the information provided using the criteria and scoring as listed in the Evaluation Criteria section below.

5.1.2 Each criteria is evaluated. All Evaluation Criteria stated in Section 5.2 shall be assigned a score out of ten (10). The score is then multiplied by the weight (which indicates the relative importance of the criteria not deemed critical to Metrolinx) to determine the weighted score. The weighted scores are then added to determine the Total Overall Score for the Submission.

5.1.3 Submissions shall be evaluated in four (4) phases, as follows:

(a) Phase 1: Administrative Evaluation (Compliant/Non-Compliant)

Submissions shall undergo an administrative evaluation to determine compliance with the mandatory requirements as stated in the Mandatory Criteria in Section 4.1 above. Only those Submissions determined in the sole opinion of Metrolinx, to have fulfilled all the mandatory requirements shall be deemed compliant and shall proceed to Phase 2 of the evaluation process. Submissions that do not meet administrative requirements shall be deemed non-responsive and shall be disqualified.

(b) Phase 2: Technical Evaluation (70% weighting)

Submissions proceeding to Phase 2 shall be evaluated by the Metrolinx Evaluation Committee in accordance with the Submission Requirements above and the Evaluation Methodology below. Only those Submissions achieving a total minimum score of 75% as determined by the Evaluation Committee shall be considered further and shall proceed to Phase 3 of the evaluation process.

(c) Phase 3: Vendor Performance Rating (VPR) Evaluation (5% weighting)

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

- 1) achieve the minimum score of 75 % on Phase 2: Technical Evaluation.

(ii) Submissions proceeding to this Phase 3, in accordance with Section 5.1.3(c)(i) above shall be evaluated by Metrolinx as follows:

- 1) For this RQQ Process, “Performance Category” shall be defined as the Professional and Consulting Services (non-Engineering) category.
- 2) For this RQQ Process, the Vendor Performance Rating (“VPR”) is the average of a vendor’s performance evaluation scores (as assessed by or on behalf of Metrolinx), in the Performance Category, for a thirty-six (36) month period preceding the Closing.
- 3) If a Proponent has not completed any work for Metrolinx for a thirty-six (36) month period preceding the Closing, for the purpose of evaluating the Submission, the Proponent will be assigned a VPR in the Performance Category, which is the straight average of all the VPR’s of all vendors who have performed Work for Metrolinx for a thirty-six month period preceding the Closing, in this Performance Category.
- 4) The legal name of the Proponent stated on the Form of Request will be used for determining the Proponent’s VPR score in the Performance Category. It is the responsibility of the Proponent to ensure that its proper legal name has been stated on the Form of Request and matches the legal name used by the Proponent in setting up its legal profile in the Metrolinx MERX Portal. Metrolinx will not accept any requests from the Proponent, after the Closing, to change the legal name provided.
- 5) 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.
- 6) If any member of the Joint Venture has not completed work for Metrolinx within a thirty-six (36) month period preceding the Closing, Section 5.1.3(c)(ii)(3) above shall apply for that member.
- 7) The Proponent’s VPR, at the time of evaluating this Phase 3, shall be the VPR used for evaluation purposes. The Proponent’s VPR used in the evaluation of this Phase 3 can be obtained from the Procurement Representative at the conclusion of this RQQ Process.

8) Once VPR scores in the Performance Category are determined for each Submission proceeding to this Phase 3 evaluation, each Proponent's VPR shall be evaluated and scored as follows:

a) The following equation shall be applied to determine a score out of ten:

i) "Proponent's VPR Score (Expressed as a %) / 10 = score out of ten"

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

(d) Phase 4: Pricing Evaluation (25% weighting)

(i) Attachment 1 – Proponent's Prices shall be evaluated for the Submissions which achieve the minimum score of 75% on Phase 2.

(ii) Attachment 1 – Proponent's Prices shall not be evaluated for those Proponents whose Submissions do not achieve the specified minimum score requirement to proceed to Pricing Evaluation.

(iii) An administrative evaluation shall be conducted of Attachment 1 – Proponent's Prices RQQ-2018-ITIN-242, to determine compliance with the mandatory requirements as stated therein and in the Instructions to Proponents. To determine a Total Evaluated Price, the Maximum Hourly Billing Rates for one year of the Proponents who passed Phase 2 shall be multiplied by an Estimated Number of Hours identified for each position identified in Attachment 1 – Proponent's Prices. The Total Evaluated Price of each Submission proceeding to Pricing Evaluation, shall then be evaluated and scored as follows:

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

b) The following equation shall be applied to all other Submissions to determine a score:

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

The score for Price Evaluation shall be multiplied by the weighting factor and added to the total score for

Phase 2 and Phase 3 to determine the Total Overall Score for the Submissions.

#### 5.1.4 Total Overall Score

Total Overall Score = Phase 2: Technical Evaluation + Phase 3: Vendor Performance Rating Evaluation + Phase 4: Pricing Evaluation

#### 5.1.5 Selection of Submissions

Metrolinx's selection shall be based on which Proponent has provided a Submission which Metrolinx determines in its sole discretion to provide the greatest value to Metrolinx based on the Evaluation Criteria contained in this Request Document.

The award of the Contract(s) shall be made to the Submission(s) which has/have achieved the highest Total Overall Score.

### 5.2 Evaluation Criteria

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

Evaluated Criteria	Maximum Score	Weighting Factor	Total (Score x Weight)
<b>Phase 1: ADMINISTRATIVE EVALUATION</b>			
Form of Request (Section 4.1.1), Pricing Submission (Section 4.1.2) and Attachment # 2 Mandatory Technical Requirements (Section 4.1.3) (Compliant / Non-Compliant)			
<b>Phase 2: TECHNICAL EVALUATION</b>			
<b>Corporate Capability (Section 4.3.1(ii))</b>			
Corporate Summary	10	5	50
Corporate Experience and Qualifications	10	29	290
<b>Corporate Reference Projects (Section 4.3.1(iii))</b>			
Description of Corporate Reference Project 1 and Corresponding Reference	10	9	90
Description of Corporate Reference Project 2 and Corresponding Reference	10	9	90



<b>Evaluated Criteria</b>	<b>Maximum Score</b>	<b>Weighting Factor</b>	<b>Total (Score x Weight)</b>
Description of Corporate Reference Project 3 and Corresponding Reference	10	9	90
Description of Corporate Reference Project 4 and Corresponding Reference	10	9	90
<b>Subtotal Technical Evaluation:</b>		<b>70</b>	<b>700</b>
<b>SUBTOTAL PHASE 2:</b>		<b>70</b>	<b>700</b>
<b>Phase 3: Vendor Performance Rating (VPR) Evaluation</b>			
Proponent's VPR Score	10	5	50
<b>SUBTOTAL PHASE 3:</b>		<b>5</b>	<b>50</b>
<b>Phase 4: PRICING</b>			
Price Submission (Section 4.5)	10	25	250
<b>SUBTOTAL PHASE 4:</b>		<b>25</b>	<b>250</b>
<b>TOTAL OVERALL SCORE:</b>		<b>100</b>	<b>1,000</b>

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

<i><b>Score</b></i>	<i><b>Description</b></i>
10 = Excellent	Response is excellent and exceeds the requirements.
8-9 = Very Good	Response substantially meets and exceeds some of the requirements.
7 = Good	Response meets the basic requirements.
5-6 = Satisfactory	Response is satisfactory and meets most of the requirements.
3-4 = Fair	Response is fair and meets some requirements.
1-2 = Poor	Response is poor. Information provided is too vague and does not clearly explain how requirements will be met.
0 = Non-relevant	No relevant response or simple statement of compliance with no substantiation.

## 6.0 Form of Request

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The following Form of Request is to be included as the first section within the Proponent's Technical Submission. The Form of Request must be completed in full. The Form of Request shall not be retyped, and entries shall be made directly on the form provided by Metrolinx.

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Request Number: RQQ-2018-ITIN-242

Request Description: Oracle ERP Staff Augmentation on an Emergent Basis

### 6.1 Proponent Submission Checklist

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

<b>Requirement</b>	<b>Confirmation (left click with your mouse in the box to select)</b>
The Form of Request has been completed in full and submitted by the E-Bid Authorized Signer.	<input type="checkbox"/>
Contact information for the individual responsible for the Submission has been included in the Form of Request.	<input type="checkbox"/>
The Proponent understands the requirements for Electronic Bid Submission and will comply with this Submission requirement.	<input type="checkbox"/>
The Proponent's Technical Submission has been prepared in accordance with the Instructions to Proponents (i.e. mandatory formats, templates and requirements) as outlined in the Request Document.	<input type="checkbox"/>
The Proponent's Price Submission has been completed in full and has been included as a separate attachment in the Submission.	<input type="checkbox"/>
The Proponent has read through all the Request Document including any Addenda that have been issued and these have all been considered in your Submission.	<input type="checkbox"/>
The Proponent has reviewed the mandatory criteria and acknowledges that it meets all mandatory requirements in order for their Submission to be considered further.	<input type="checkbox"/>

Requirement	Confirmation (left click with your mouse in the box to select)
The Proponent has reviewed the RQQ Timetable and understands all the dates and timelines associated with the RQQ Process.	<input type="checkbox"/>
The Proponent has not included any qualifying statements in its Submission.	<input type="checkbox"/>

## 6.2 Contact Information

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

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6.2.2 Proponent's address, telephone and facsimile numbers:

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

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

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## 6.3 Proponent Acknowledgments

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

TO PROVIDE SERVICES FOR THE PROVISION OF TEMPORARY STAFFING SERVICES ON AN EMERGENT BASIS AS SET OUT IN THE SCOPE OF WORK, ATTACHED AS APPENDIX “B”.

- 6.3.2 The Proponent hereby undertakes to perform the Work in strict accordance with the full intent of the terms, conditions and requirements set forth in the following documents which form the Request Document:

ANY ADDENDA ISSUED HERETO  
INSTRUCTIONS TO PROPONENTS  
REQUEST SUBMISSION REQUIREMENTS  
REQUEST EVALUATION CRITERIA AND SELECTION PROCESS  
FORM OF REQUEST  
ATTACHMENT # 1 – PROPONENT’S PRICES RQQ-2018-ITIN-242  
ATTACHMENT # 2 – MANDATORY TECHNICAL REQUIREMENTS  
ATTACHMENT # 3 - PROPONENT’S REFERENCE PROJECTS  
APPENDIX “A” – GENERAL CONDITIONS  
APPENDIX “B” – SCOPE OF WORK  
APPENDIX “C” – METROLINX’S SERVICES  
APPENDIX “D” – DOCUMENTS

- SAMPLE ARTICLES OF AGREEMENT
- CONTRACT PERFORMANCE APPRAISAL
- PARENTAL GUARANTEE

- 6.3.3 The Proponent acknowledges receipt of any and all Addenda issued hereto and that their Submission has been developed in consideration of the Addenda.
- 6.3.4 The Proponent’s Submission is hereby submitted on the full understanding that it is an irrevocable offer by the Proponent for a period of one hundred and twenty (120) calendar days from the Closing. The Proponent hereby covenants that it shall perform and execute the Work, in accordance with the Contract prices quoted herein if it is notified in writing by Metrolinx within the one hundred and twenty (120) calendar day period that it is the successful Proponent.
- 6.3.5 The Proponent acknowledges that it meets all mandatory requirements in order for their Submission to be considered further. Failure of a Proponent to meet all of the mandatory requirements shall result in the Proponent’s Submission to be deemed non-compliant and shall not being considered further.
- 6.3.6 The Proponent acknowledges that their Submission should be in the correct format using the appropriate Request Document Forms and instructions as provided herein. Failure to comply may result in the Proponent being found non-responsive and disqualified at the sole discretion of Metrolinx.

6.3.7 The Proponent acknowledges that by way of the E-Bid Authorized Signer remitting a Submission, the Proponent is agreeing to be bound to each and every term, condition, article and obligation of the Request Document and any resultant Contract.

6.3.8 The Proponent acknowledges that consistent with Section 3.6.2 of Instructions to Proponents, failure by the Proponent, whose Submission was accepted by Metrolinx, to execute and deliver the Contract with the required Insurance Certificates and Workplace Safety and Insurance Clearance Certificate and any other documents as may be required within the specified time, could result in the cancellation of the Contract award.

#### 6.4 Requirements

6.4.1 The Proponent shall provide labour, tools, software, equipment, supplies and other resources, services and facilities necessary to provide the Work on an emergent basis for three (3) years in accordance with the Scope of Work, attached as Appendix “B”.

6.4.2 The Work is to be provided to the satisfaction of the applicable I&IT Director, unless otherwise specified.

#### 6.5 Conflict of Interest

6.5.1 “Conflict of Interest” has the meaning ascribed in Section 17.14 of Appendix “A” – General Conditions.

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

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

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

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

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- 6.5.3 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:
Job Classification:
Department:
Last Date of Employment with Metrolinx:
Name of Last Supervisor:
Brief Description of Individual's Job Functions:
Brief Description of Nature of Individual's Participation in the Preparation of the Submission:

- 6.5.4 (Repeat above for each identified individual)

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

## 6.6 Harmonized Sales Tax

In accordance with Appendix "A" – General Conditions, the Proponent represents, warrants and covenants to Metrolinx that the Proponent is and shall remain duly registered for the purposes of Part IX of the Excise Tax Act and that the Proponent's registration number is:\_\_\_\_\_.

A non-resident Proponent 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 Proponent acknowledges that failure to comply with this requirement may result in the Contract being declared VOID.

## 7.0 Attachment 1 – Proponent’s Prices

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### 7.1 Proponent’s Prices

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

### 7.2 Completion of Pricing Schedules

7.2.1 Proponents shall fully complete the Excel file entitled Attachment 1 – Proponent’s Prices and insert a Unit Price into each space provided under the Fixed Maximum Hourly Billing Rate (FMHBR) column.

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

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

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

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



## 8.0 Attachment 2 - Mandatory Technical Requirements

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- 8.1 Proponents shall complete the mandatory technical requirements compliance checklist below, and send this Attachment # 2 with their Submission. Failure of a Proponent to complete and submit this Attachment # 2 may result in the Proponent's Submission being found non-responsive and disqualified.
- 8.2 Proponent must meet all mandatory requirements stated below in order for their Submissions to be considered further. Failure of a Proponent to meet all of the mandatory requirements listed below shall result in the Proponent's Submission being considered non-responsive and disqualified
- 8.3 Proponents must complete all items in the table below:

Item #	Mandatory Requirements	Compliance (Check ("X") either Yes or No)
1.	Proponent must have a minimum of ten (10) years prior experience placing IT professionals in mid to large corporations or public sector organizations.	YES <input type="checkbox"/> NO <input type="checkbox"/>
2.	Proponent must provide the Work to Metrolinx from an office located in the Greater Toronto Area.	YES <input type="checkbox"/> NO <input type="checkbox"/>
3.	Proponent must be able to supply candidates for all of the positions and roles identified in Section 6.0 of Appendix "B" – Scope of Work.	YES <input type="checkbox"/> NO <input type="checkbox"/>

- 8.4 This Attachment 2 must be completed and submitted and may not be retyped or recreated. Failure to follow the submission instructions or format requirements may result in the Submission being found non-responsive and disqualified.

## 9.0 Attachment 3 – Proponent’s Reference Projects

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- 9.1 The Proponent should, using the templates below, provide corporate reference information as indicated in this Attachment 3 – Proponent’s Reference Projects. The Proponent should ensure that all contact information provided for references is current and accurate in order to enable Metrolinx to obtain all necessary information for evaluation purposes in a timely manner. If Metrolinx is unable to contact any of the references provided in order to verify the Proponent’s qualifications and experience, the Proponent may, in Metrolinx’s sole discretion, receive no score for that reference.
- 9.2 Proponents should review the Submission Requirements Section to ensure compliance with the submission requirements.

CORPORATE REFERENCE PROJECTS						
Company Name	Project Title	Contact Person, Title	Phone Number	E-mail Address	Start Date	Completion Date

## Appendix “A” – General Conditions

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### List of Contents

The following documents hereby form part of and are appended to this Request Document as Appendix “A” – General Conditions.

<b>Item No.</b>	<b>Description</b>
1	Appendix “A” – General Conditions
2	Schedule A – Definitions
3	Schedule B – Financial Terms
4	Schedule C – Insurance
5	Schedule D – Dispute Resolution

## **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. All communication between Metrolinx and a Placed Person with regard to an Assignment shall be in the English language.

### **1.6 References**

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

- (d) Subject to any express definitions contained in this Contract, words and abbreviations which have well known technical or trade meanings are used in this Contract in accordance with such recognized meanings.
- (e) Where used in this Contract, “including” means including without limitation, and the terms “include”, “includes”, and “included” have similar meanings.
- (f) Whenever the context may require, any pronoun shall include the corresponding masculine, feminine and neuter forms.
- (g) 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.
- (h) 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

## **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) Third 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, in accordance with all the terms of this Contract.
- (b) 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.
- (c) The Work shall be provided in a diligent, professional, timely and economical manner according to the Required Standard of Care.
- (d) 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.
- (e) The Vendor shall not alter any part of a Joint Venture except with the prior written consent of Metrolinx in its sole discretion. Where the Vendor is not part of a Joint Venture, this Section 2.2(e) shall be deemed to be deleted.

### **2.3 Placed Persons**

- (a) The Vendor shall be solely responsible for the payment of each Placed Person.
- (b) The Vendor shall ensure that each Placed Person shall:
  - (i) act in a proper and professional manner in accordance with the standards generally used by the information technology industry;
  - (ii) comply with all applicable Metrolinx policies and procedures, provided that the Vendor has been made aware of same; and

- (iii) turn over to Metrolinx all computer hardware and equipment provided by Metrolinx, all Metrolinx Materials within her possession, all Deliverables, documentation, reports, materials and work-in-progress relating to and generated during the performance of the Assignment, and any other item(s) specifically identified by Metrolinx, such as security access cards, in all cases, on or before the date the Placed Person's assignment with Metrolinx ceases, for any reason.
- (c) The Vendor shall enter into a written agreement with each Placed Person wherein the Placed Person acknowledges and agrees to the following:
  - (i) that she is not entitled to any compensation from Metrolinx, and that Metrolinx is not liable to her for any failure of the Vendor to pay any amounts owed to her;
  - (ii) that she is an independent contractor with respect to the Assignment, that she shall not be deemed to be an employee, agent, servant or representative of Metrolinx in the performance of the Assignment, and that she is not entitled to any benefits respecting any pension or other benefit plan, program or policy of Metrolinx;
  - (iii) that she shall comply with the obligations contained in Article 9;
  - (iv) that she shall comply with and conform to all Applicable Laws and all Metrolinx policies and procedures, provided that she has been made aware of same;
  - (v) that Metrolinx owns and shall own all right, title and interest in and to any Intellectual Property created or developed by her pursuant to the performance of any Assignments, and all Intellectual Property Rights therein (the "Assignment Intellectual Property"); and
  - (vi) that she irrevocably assigns to Metrolinx all right, title and interest in and to all Assignment Intellectual Property, and that she waives any moral or similar rights she now has, or in the future may have, in any Assignment Intellectual Property.

The Vendor shall provide a copy of such agreement to Metrolinx upon request; provided, however, if the provision of such agreement would result in a breach of the agreement or the Vendor's policy, the Vendor shall provide an officer's certificate signed by a senior officer of the Vendor, in form and content satisfactory to Metrolinx, acting reasonably, confirming that each of the clauses contained in this Section 2.3(c) is contained within such agreement.

- (d) The Placed Persons shall not be deemed to be employees, agents, servants or representatives of Metrolinx in the performance of an Assignment.
- (e) Metrolinx may, at any time, on one (1) days' written notice to the Vendor, terminate a Placed Person's assignment, and thereupon Metrolinx shall be liable for payment to the Vendor for those monies attributable to the part of the services performed in accordance with all the terms of this Contract to the date of termination.

#### 2.4 Subvendors

- (a) Other than the Subvendors identified in the Submission, the Vendor shall not subcontract the Work to any Person without the prior written consent of the Metrolinx Director, I&IT Project Management Office or the Manager, I&IT Vendor Management Office. No subcontracting by the Vendor shall relieve the Vendor of any responsibility for the full performance of all obligations of the Vendor under this Contract. Notwithstanding the approval of any Subvendors by Metrolinx, the Vendor shall be fully responsible for every Subvendor's activities, works, services and acts or omissions.
- (b) The Vendor shall be solely responsible for the payment of any Subvendors.
- (c) The Vendor shall co-ordinate the services of all Subvendors employed, engaged or retained by the Vendor with Metrolinx and, without limiting the generality of any other provision of this Contract, the Vendor shall be liable to Metrolinx for costs or damages arising from errors or omissions of such Subvendors or any of them. It shall be the Vendor's responsibility to control and review the Work of its own forces and of all its Subvendors and to ascertain that all Work are performed in accordance with this Contract, all governing regulations and the Required Standard of Care.
- (d) In any subcontract, the Vendor shall ensure that the Subvendor is bound by conditions compatible with, and no less favorable to Metrolinx than, the conditions of this Contract.
- (e) The Vendor warrants and represents that it and any of its permitted Subvendors and the respective workforce of each are fully qualified to perform the Work and perform this Contract and hold all requisite Approvals.
- (f) The Vendor shall only employ, for the purposes of this Contract, such persons as are careful, skilled and experienced in the duties required of them and have the required Domain Expertise, and must ensure that every such person is properly and sufficiently trained and instructed. The Vendor shall ensure that all workers and persons



employed by them or under their control or employed by or under the control of its Subvendors comply with the terms of this Contract and, in particular without limiting the foregoing, the responsibilities of the Vendor with respect to matters concerning safety, compliance with the Applicable Laws and the conduct of the Work.

- (g) The Vendor shall be an independent contractor with respect to the Work to be provided under this Contract and nothing contained in this Contract shall be construed as constituting a joint venture or partnership between the Vendor and Metrolinx. Neither the Vendor nor its Subvendors shall be deemed to be employees, agents, servants or representatives of Metrolinx in the performance of the Work hereunder.
- (h) The Vendor shall not remove or change any Subvendors, or materially reduce the responsibilities of any Subvendors in relation to the provision of the Work except with the prior written consent of Metrolinx in its sole discretion. The proposed replacement Subvendor shall possess the requisite Domain Expertise and similar qualifications, experience and ability as the outgoing Subvendor.

## 2.5 Vendor Personnel

- (a) The Vendor shall select and employ a sufficient number of suitably qualified and experienced Vendor Personnel to perform and provide the Work, as determined with reference to the requirements of the Work to be performed by each individual or otherwise as required pursuant to the Contract. All Vendor Personnel shall possess or, where permitted, shall be supervised by persons who possess, the professional accreditation required to complete the Work.
- (b) The Vendor shall provide effective and efficient supervision to ensure that the quality of workmanship meets the requirements of the Contract.
- (c) The Vendor shall ensure that the Vendor Personnel assigned to perform the Work shall:
  - (i) act in a proper and professional manner in accordance with the standards generally used recognized by the industry; and
  - (ii) comply with all applicable Metrolinx policies and procedures, provided that the Vendor has been made aware of same.

## 2.6 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, issues with the performance of a Placed Person and Disputes and shall have overall responsibility for coordinating the performance of the Vendor's obligations under this Contract.

## 2.7 Metrolinx Responsibilities

- (a) Metrolinx shall designate an individual to act as its representative (the "Metrolinx Representative") who will transmit instructions to, and receive information from the Vendor.
- (b) Metrolinx shall:
  - (i) provide the Vendor with general direction in the provision of the Work;
  - (ii) provide access and resources where necessary, make available information and instructions relevant to the Work; and
  - (iii) provide reasonable assistance to Placed Persons in respect of any Metrolinx policies and procedures the Placed Person is required to comply with.

## 2.8 Vendor's Task Assignment Process

- (a) The process for obtaining a Placed Person is specified in Scope of Work.

## 2.9 Vendor Work Performance Rating

- (a) Metrolinx shall during the term of a Contract, maintain a record of the Vendor's performance pursuant to this Contract. This information shall be used to complete a "Contract Performance Appraisal" report, a copy of which will be forwarded to the Vendor upon the termination or expiration of the Contract. Interim Contract Performance Appraisal reports may be issued, as deemed appropriate by the Metrolinx Representative, at any time during the term of the Contract.
- (b) The prior history of the Vendor in performing work for Metrolinx, including the Vendor's performance pursuant to this Contract, will be considered in the evaluation of future bids from the Vendor.
- (c) Metrolinx reserves the right in future bid requests to reject any bid submitted by a company with an unsatisfactory performance history with Metrolinx.

- (d) Non-compliance with Contract requirements will be identified to the Vendor.
- (e) The information contained in the Contract Performance Appraisal may be provided to other ministries and agencies and such performance reviews may be relied upon by other ministries and agencies to reject the Vendor on any bid submitted on any future requests.

### **3.0 Health and Safety**

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

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

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

### 3.2 Safety Requirements

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

hereby covenants that all Vendor Personnel and Placed Persons have been properly trained and are knowledgeable with respect to these policies and procedures.

### 3.3 Workers' Rights

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

## 4.0 Financial Terms

### 4.1 Financial Terms

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

## 5.0 Right of Ownership and Use

### 5.1 Ownership of Metrolinx IP

- (a) Unless otherwise expressly agreed, Metrolinx is and will be the exclusive owner of, and shall retain all right, title and interest (including Intellectual Property Rights) in and to all of the following Intellectual Property (collectively, the "**Metrolinx IP**"):
  - (i) all Metrolinx Materials;
  - (ii) all Deliverables;
  - (iii) all reports and other information created, generated, output or displayed by the Deliverables or as a result of the performance of receipt of the Work; and
  - (iv) all modifications or enhancements made to the items listed in Sections 5.1(a)(i) to (iii) hereof.
- (b) All right, title and interest, including all Intellectual Property Rights, in Metrolinx IP will vest in Metrolinx, following creation.
- (c) The Vendor will acquire no rights to any Metrolinx IP other than the licence rights expressly granted in Section 5.3.
- (d) The Vendor:

- (i) hereby assigns and transfers to Metrolinx; and
  - (ii) agrees (to the extent required in the future) to assign and transfer to Metrolinx, as and when created, all right, title and interest, including Intellectual Property Rights, throughout the world in and to all Metrolinx IP (to the extent any right, title, interest or Intellectual Property Right in Metrolinx IP does not automatically and immediately vest in Metrolinx).
- (e) The Vendor shall obtain from each Vendor Personnel and Placed Person an assignment of any rights they have to the Metrolinx IP and a waiver, for the benefit of Metrolinx and its respective successors, assigns, licensees and contractors, of their respective moral rights (and any similar rights to the extent that such rights exist and may be waived in each and any jurisdiction throughout the world) in and to the Metrolinx IP. The Vendor shall provide copies of such documentation to Metrolinx upon request.

## 5.2 Ownership of Vendor Background IP

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

## 5.3 Grant of Licences by Metrolinx to Vendor

- (a) Metrolinx grants to the Vendor, during the Term, a non-exclusive, non-transferable, royalty-free right and licence to:
  - (i) access, use, copy, support, maintain and, to the extent reasonably necessary to provide the Work, modify, the Metrolinx IP solely for the purposes of fulfilling the Vendor's obligations under this Contract; and
  - (ii) sublicense the Metrolinx IP to Subvendors solely to the extent necessary to enable such Subvendors to fulfill the Vendor's obligations under this Contract.
- (b) Any exercise by the Vendor of the rights granted pursuant to Section 5.3(a) shall be subject to the terms and conditions of this Contract, including always the Vendor's obligations with respect to Confidential Information set out in Article 9.
- (c) If the Vendor desires to use the Metrolinx IP other than as permitted under clause (a) hereof, such use must be set out in a separate

license agreement (such licence to require the approval of Metrolinx, which may be withheld at Metrolinx' discretion).

#### **5.4 Grant of Licences by the Vendor to Metrolinx**

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

### **6.0 Insurance**

#### **6.1 Insurance Requirements**

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

### **7.0 Changes**

#### **7.1 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 7, the Vendor shall comply with and implement all reasonable Metrolinx Change requests, and the performance of such requests shall be in accordance with this Contract.

#### **7.2 Changes Recommended by the Vendor**

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

### 7.3 Change Management Process

- (a) Where a Change request is initiated by Metrolinx pursuant to Section 7.1, Metrolinx shall set out, in the Change request:
  - (i) the proposed prices for the contemplated changes;
  - (ii) the timing requirements for the implementation of the Change; and
  - (iii) any other information which may reasonably be required.
- (b) The Vendor shall respond to Metrolinx' Change request in writing within ten (10) Business Days.
- (c) Where a Change is initiated by the Vendor pursuant to Section 7.2, the Vendor shall set out in the Change request, conforming to Section 7.3(a):
  - (i) a description of the proposed Change;
  - (ii) the estimated cost of the proposed Change;
  - (iii) any proposals, designs or other details or information which may be reasonably required; and
  - (iv) the reasons for the proposed Change, including the benefits of the proposed Change and any consequences of not proceeding with the Change.
- (d) No Changes shall be implemented and no Change request shall become effective until an amendment or change order documenting the Change has been executed by both Parties, and such executed instrument shall be the final determination of any adjustments to the Work, the Contract price, or the terms and conditions of the Contract, as applicable, with respect to the Change set out therein.
- (e) Where Metrolinx and the Vendor cannot agree as to whether or not a particular notice, direction, requirement, request, correspondence, or other fact, event, or circumstance comprises, requires, or results in a change to the scope of the Work, then either Party may refer the issue to dispute resolution in accordance with Article 15.



## **8.0 Intentionally Deleted**

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

### **9.1 Confidential Information**

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

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

### **9.2 Permitted Disclosure**

- (a) Notwithstanding the obligations set out in Section 9.1, the Vendor may disclose Metrolinx' Confidential Information to those of its Subvendors and Vendor's Personnel who need to know such Confidential Information in connection with this Contract and to third party service providers who need to know such Confidential Information for regulatory compliance purposes, provided that such persons are subject to obligations of confidentiality substantially similar to those contained in this Article 9. For the avoidance of doubt, a Placed Person shall not be permitted to disclose Confidential Information to the Vendor, a Subvendor or any Vendor Personnel.

### **9.3 Exceptions**

- (a) The obligations of confidentiality set out in Section 9.1 shall not apply to Confidential Information which:
  - (i) becomes generally available to the public through no fault of the Vendor;

- (ii) prior to receipt from Metrolinx, was known to the Vendor on a non-confidential basis and is not subject to another obligation of secrecy and non-use, as documented by written records possessed by the Vendor;
  - (iii) was independently developed by the Vendor prior to receipt from Metrolinx, as documented by written records possessed by the Vendor; or
  - (iv) becomes available to the Vendor on a non-confidential basis from a source other than Metrolinx that is not under other obligations of confidence.
- (b) If the Vendor becomes compelled to disclose any Confidential Information pursuant to Applicable Law, the Vendor shall, to the extent permitted by law, provide Metrolinx with prompt written notice of any such requirement and shall cooperate with Metrolinx in seeking to obtain any protective order or other arrangement pursuant to which the confidentiality of the relevant Confidential Information is preserved. If such an order or arrangement is not obtained, the Vendor shall disclose only that portion of the Confidential Information as is required pursuant to Applicable Law. Any such required disclosure shall not, in and of itself, change the status of the disclosed information as Confidential Information under the terms of this Article 9.
- (c) Without limiting the generality of Section 9.3(a) and notwithstanding Section 9.3(b), the Parties acknowledge and agree that the treatment and disclosure of Confidential Information shall in all cases be subject to the requirements of FIPPA.

#### 9.4 Security Measures

- (a) The Vendor shall select, implement (prior to the commencement of the Work), use and maintain the most appropriate products, tools, measures and procedures to ensure the security of all Confidential Information, as determined with reference to and generally in compliance with Applicable Laws, Industry Standards, the security requirements specified in “Scope of Work” and best practices, or as otherwise prescribed by Metrolinx during the Term. Without limiting the generality of the foregoing, such practices shall include:
- (i) privacy due diligence safeguards; and
  - (ii) physical and electronic security measures and confidentiality enhancing technologies to guard against unauthorized disclosures, access and use, such as firewalls, encryption, the use of user identification and passwords, software or other automated systems to control and track the addition and

deletion of users, and software or other automated systems to control and track user access to areas and features of information systems.

- (b) For greater certainty, Metrolinx reserves the right to prescribe the specific manner in which Vendor shall perform its obligations relating to this Section 9.4.

#### 9.5 Intellectual Property Rights

- (a) Metrolinx, its vendors, 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.

#### 9.6 Return or Destruction of Confidential Information

- (a) Immediately upon expiration or termination of this Contract or at any other time upon the request of Metrolinx, and subject to Section 9.9, the Vendor agrees to:
  - (i) promptly return all Confidential Information (other than the Contract Records) to Metrolinx; or
  - (ii) promptly delete or destroy the Confidential Information (other than the Contract Records) and all copies thereof in any form whatsoever under its power or control and provide Metrolinx with a destruction certificate signed by an appropriate officer of the Vendor certifying such destruction.
- (b) Notwithstanding the foregoing, the Vendor shall have no obligation to return or destroy:
  - (i) Confidential Information that is captured and retained within the Vendor's routine computer systems backup processes, provided that (a) no specific effort is made to retrieve such archived Confidential Information for purposes that would violate the confidentiality obligations under this Contract and (b) the confidentiality obligations of under this Contract shall continue to apply to such archived Confidential Information for so long as such information is retained;
  - (ii) Confidential Information that is captured and retained within Metrolinx's computer systems, in the case of Confidential Information that a Placed Person has access to; and
  - (iii) working papers or other documentation which it is required to retain pursuant to Applicable Law or any rules of professional conduct applicable to the Vendor or the Vendor Personnel.

## 9.7 FIPPA and Personal Information

- (a) Metrolinx and the Vendor acknowledge and agree the collection, use, retention and disclosure of Personal Information is governed by FIPPA. Metrolinx acknowledges that the Vendor may also be subject to the requirements of PIPEDA. In the event of a conflict between the requirements of FIPPA and the requirements of PIPEDA or any other legislation governing the treatment of Personal Information, the more onerous provision shall apply.
- (b) The Vendor shall ensure that all collection, access, use, retention and disclosure of Personal Information under this Contract, whether through the performance of the Work, an Assignment 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 and each Assignment.
- (c) The Vendor shall ensure the security and integrity of any Personal Information collected by the Vendor and shall protect it against loss, unauthorized access, destruction, or alteration, in accordance with the following:
  - (i) The Vendor shall not directly or indirectly collect, use, disclose, store or destroy any Personal Information, or give, exchange, disclose, provide, or sell Personal Information to any third party, except as expressly permitted, and for a purpose(s) authorized, under this Contract or otherwise agreed to in writing by Metrolinx.
  - (ii) The Vendor shall ensure that access to Personal Information is restricted to those Vendor Personnel who have a need to know or use such information in the performance of the Work and who have been specifically authorized to have such access for the purposes of performing the Work. Access shall be limited to only that Personal Information which is required for the performance of the Work.
  - (iii) All Personal Information shall be kept in a physically secure location and separate from all other records and databases. The Vendor shall not place, input, match, insert or intermingle, nor shall it permit any Person to place, input, match or intermingle, any data or records in any form whatsoever into or with any records or database containing such Personal Information.

- (d) For greater certainty, Metrolinx reserves the right to prescribe the specific manner in which the Vendor shall perform its obligations relating to this Section 9.7.

## 9.8 FIPPA and Freedom of Information

- (a) The Vendor acknowledges that Metrolinx is a provincial crown agency subject to FIPPA, and acknowledges and agrees as follows:
  - (i) All FIPPA Records are subject to, and the collection, use, storage and treatment thereof is governed by FIPPA. The Vendor agrees to keep all FIPPA Records secure and available, in accordance with the requirements of FIPPA. The Vendor acknowledges that all information, data, records and materials, however recorded, that are held by the Vendor and/or created by the Vendor or a Placed Person in the course of performing the Work or an Assignment are considered to be FIPPA Records and subject to FIPPA.
  - (ii) Section 9.6 shall apply to all FIPPA Records (other than the Contract Records), which shall be returned and/or destroyed in accordance with that section.
  - (iii) In the event of a conflict between the requirements of this Contract and the requirements of FIPPA, the requirements of FIPPA shall take precedence.
  - (iv) In the event that a request is made under FIPPA for the disclosure of any FIPPA Records, Metrolinx shall provide prompt written notice thereof to the Vendor and the Vendor shall provide any and all relevant FIPPA Records to Metrolinx on demand for the purposes of responding to an access request under FIPPA. In these circumstances, the Vendor shall provide all FIPPA Records requested to Metrolinx's Freedom of Information Coordinator (or equivalent) within seven (7) Business Days of receipt of the request from Metrolinx. Notwithstanding anything to the contrary in this Contract and subject to the Vendor's rights of appeal pursuant to Section 28(9) of FIPPA, Metrolinx shall determine what FIPPA Records will be disclosed in connection with any such request, in accordance with the requirements of FIPPA (including, without limitation, the requirements with respect to affected persons set out in Section 28 thereof).
  - (v) Storage of FIPPA Records (including the Contract Records) at a location outside Canada shall only be permitted with Metrolinx's express written consent.

## 9.9 Audit Rights

- (a) During the Term and for a period of seven (7) years thereafter, the Vendor shall, at its cost and expense, retain and maintain, in an organized, accurate and accessible mode and manner, all financial and other books, records and documentation relating or pertaining to the Contract and the performance of the Work, including (i) original invoices and accounts, along with related records showing charges and expenses incurred, including but not limited to the rates and hours for all Vendor Personnel and Placed Persons and all expenditures and 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 otherwise reasonably cooperate with Metrolinx and any third party acting on Metrolinx's behalf, including by providing reasonable access to all of the Vendor's premises and to the Vendor's employees. Any such access shall be subject to the Vendor's reasonable documented security policies and documented professional and confidentiality obligations to its other clients; such documentation shall be provided to Metrolinx upon request. Where access is needed to a Vendor Personnel's employees or to Contract Records that are maintained by a Vendor Personnel, the Vendor shall use reasonable efforts to arrange for such access on a timely basis. Without limiting the generality of the foregoing, the rights set out in this Section 9.9 shall extend to any Governmental Authority exercising its right to audit pursuant to Applicable Law or any contract with Metrolinx. When selecting a third party to inspect and audit the Contract Records, Metrolinx shall consult with the

Vendor and shall take into consideration any reasonable objections the Vendor may have. For the avoidance of doubt, Metrolinx shall have sole discretion in selecting the third party. The Vendor may require Metrolinx and/or any third party selected by Metrolinx to inspect and audit the Contract Records, to enter into a confidentiality agreement, containing reasonable terms and conditions, with the Vendor, before the disclosure of any Contract Records is made.

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

#### 9.10 Vendor Compliance

- (a) The Vendor shall advise all of its Vendor Personnel, all of its Subvendors, all of its Subvendor's Vendor Personnel and all Placed Persons of the requirements of this Article 9, and associated requirements set out elsewhere in this Contract, and take appropriate action to ensure compliance by such persons with the terms of this Article 9. In addition to any other liabilities of the Vendor pursuant to this Contract or otherwise at law or in equity, the Vendor shall be liable for all claims arising from any non-compliance with this Article 9 by the Vendor, any of its Vendor Personnel, any Subvendor, any of its Subvendor's Vendor Personnel, and any Placed Person.

- (b) The Vendor warrants that each of its Vendor Personnel, each of its Subvendors, each of its Subvendor's Vendor Personnel and each Placed Person engaged by the Vendor to provide the services pursuant to this Contract is under a written obligation to the Vendor requiring such person to comply with the terms of this Article 9.

#### 9.11 Publicity

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

#### 9.12 Damages

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

### 10.0 Representations, Warranties and Covenants

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

- (a) The Vendor covenants and agrees with and represents and warrants to Metrolinx, and acknowledges and confirms that Metrolinx is relying on such covenants, agreements, representations and warranties, as follows:
  - (i) the Vendor is validly existing under the laws of the location of its head office and the Vendor has all necessary corporate power, authority and capacity to enter into this Contract and to perform its obligations hereunder;
  - (ii) the entering into of this Contract by the Vendor and the performance of its obligations hereunder has been authorized by all necessary corporate action;
  - (iii) the execution and delivery of this Contract, the consummation of the transactions contemplated herein and compliance with and performance of the provisions of this Contract does not and shall not:



- (A) result in a breach of or constitute a default under, or create a state of fact, which after notice or lapse of time or both, or otherwise, would constitute a default under any term or provision of the constating documents of the Vendor, the by-laws or resolutions of the Vendor or any agreement or instrument to which the Vendor is a party or by which it is bound, or
  - (B) require the Vendor to obtain any Approval or action of any other Persons and, if required, any such Approvals have already been obtained as of the date of this Contract;
- (iv) this Contract constitutes a legally valid and binding obligation of the Vendor enforceable against it in accordance with its terms, subject only to applicable bankruptcy, insolvency and other similar laws affecting the enforceability of the rights of creditors generally, the principles of equity and that equitable remedies such as specific performance and injunction are available only in the discretion of a court of competent jurisdiction;
- (v) the Vendor has carefully reviewed the whole of this Contract, including all of the Contract Documents, and all other documents made available to the Vendor by Metrolinx, and, to the Vendor's knowledge, nothing contained herein or therein inhibits or prevents the Vendor from performing the Work in accordance with the Required Standard of Care so as to achieve and satisfy the requirements of this Contract;
- (vi) the Vendor has engaged and shall engage only Subvendors and Vendor Personnel that are qualified and competent to perform the portions of the Work they are responsible for and possess the requisite Domain Expertise;
- (vii) the Vendor has available the resources and personnel to complete all of its obligations under this Contract in a timely, efficient and professional manner in accordance with the Required Standard of Care;
- (viii) each Placed Person has the minimum experience, qualifications, professional accreditations, and designations for the applicable job position; all of which are specified in the Scope of Work, as the same may be supplemented from time to time;
- (ix) the Vendor has obtained for each Placed Person a "Clearance Letter" from the Toronto Police Service or any other policing agency in the Province of Ontario, dated not more than sixty

days prior to the commencement of an Assignment by such Placed Person;

- (x) 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;
- (xi) except as disclosed in the Submission, the Vendor is free of any actual or potential Request Conflict of Interest;
- (xii) unless the Vendor is WSIB exempt, the Vendor is registered as an employer pursuant to the Workplace Safety and Insurance Act (Ontario) and has completed all filings and paid all assessments as required pursuant to that Act and the regulations thereunder;
- (xiii) 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
- (xiv) the Vendor represents, warrants and covenants to Metrolinx that the Vendor is and shall remain duly registered for the purposes of Part IX of the Excise Tax Act.

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

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

#### 10.3 Disclaimer

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

### 11.0 Indemnity

#### 11.1 Indemnification

- (a) The Vendor shall at all times indemnify and save harmless Metrolinx, its officers, directors, employees, members, agents, representatives, successors and assigns (hereinafter the “Indemnified Parties”), from and against any and all Losses resulting from:
- (i) the death of or bodily injury to any agent, employee, customer, business invitee, business visitor or other person, to the extent caused by the negligence or willful misconduct of the Vendor, any Vendor Personnel or any Placed Person;
  - (ii) the damage, loss or destruction of any real or tangible personal property (excluding data), to the extent caused by the negligence or willful misconduct of the Vendor, any Vendor Personnel or any Placed Person;
  - (iii) the unauthorized disclosure by the Vendor, any Vendor Personnel or any Placed Person of any Confidential Information and/or Personal Information;
  - (iv) any breach by a Placed Person of (x) Applicable Laws and/or (y) a Metrolinx policy or procedure, provided that the Vendor has been made aware of same;
  - (v) any acts performed by or on behalf of the Vendor or a Placed Person beyond the authority of the Vendor or Placed Person conferred;
  - (vi) 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
  - (vii) any infringement or alleged infringement of any patent, trade secret, service mark, trade name, copyright, official mark, moral right, trade-mark, industrial design or other proprietary rights conferred by contract, common law, statute or otherwise in respect to the Work, an Assignment or any matter provided to Metrolinx or performed by the Vendor, a Placed Person, or anyone else for whom at law the Vendor is responsible;

provided, however, the Vendor shall not be required to indemnify the Indemnified Parties pursuant to this subsection if (x) the infringement or alleged infringement was caused by the modification of a Deliverable by any person other than the Vendor, a Vendor Personnel or a Placed Person or by the use of the Deliverable in combination with intellectual property not supplied by the Vendor, Vendor Personnel or a Placed Person, but only if the claim would not have arisen without such modification or combination, (y) the Deliverable was based upon, or incorporates, designs provided by Metrolinx, or (z) the Deliverable relating to the infringement or alleged infringement were used in a manner not permitted by this Contract.

- (A) If the Vendor is required to indemnify Metrolinx pursuant to this Section 11.1(a)(vii), or if, in the Vendor's judgment, Metrolinx' use of the intellectual property is likely to be infringing, the Vendor may, at its option: (i) secure the right to continue using such intellectual property, or (ii) replace or modify the such intellectual property to make it non-infringing, provided that any such replacement or modification will not degrade the performance or quality of the affected component of the Work in any material way. If neither course of action described in clauses (i) or (ii) is available to the Vendor, the Vendor will remove such intellectual property from the Work and equitably adjust the Vendor's charges to adequately reflect such removal.
- (b) The Vendor shall pay all reasonable costs, expenses and legal fees that may be incurred or paid by the Indemnified Parties in connection with any demand, claim, execution, action, suit or proceeding with respect to a matter for which the Vendor is obligated to indemnify the Indemnified Parties pursuant to this Article 11, provided that the indemnity obligations of the Vendor under this Article 11 shall not extend to Loss attributable to the negligence or willful misconduct of any Indemnified Parties to the extent that such Indemnified Parties' negligence or willful misconduct caused the Loss.
- (c) In the event any Loss is asserted in respect to which an Indemnified Party is entitled to indemnification under this Article 11, and without prejudice to any other right or remedy Metrolinx may have, Metrolinx shall be entitled to deduct or withhold a reasonable sum on account of such claim, action, suit, execution or demand, including legal costs, from monies owed or payable by Metrolinx to the Vendor under this Contract pending the final determination or

settlement of such claim, action, suit, execution or demand. In the event,

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

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

## **12.0 Limitation of Liability**

### **12.1 General Intent**

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

### **12.2 Limitations on Liability**

- (a) Subject to Section 12.2(c), in no event shall either Party be liable for indirect, consequential, exemplary, punitive or special damages relating to the Contract even if such Party has been advised in advance of the possibility of such damages. The Vendor acknowledges and agrees that any damages awarded by a court of competent jurisdiction against Metrolinx as a result of a third party claim is to be considered direct damages.
- (b) Subject to Section 12.2(d), each Party's aggregate liability to the other under the Contract for direct damages for all events giving rise to liability hereunder shall be limited to two million dollars (\$2,000,000).
- (c) The limitations of liability set forth in Section 12.2(a) shall not apply with respect to:

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

### **13.0 Termination**

#### **13.1 Termination for Cause by Metrolinx**

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

Contract will be equitably adjusted to reflect that Work that is terminated.

### 13.2 Termination for Convenience by Metrolinx

- (a) Metrolinx may, by thirty (30) days' written notice to the Vendor, terminate this Contract, in whole or in part, for convenience, and thereupon Metrolinx shall be liable for payment to the Vendor for those monies attributable to the part of the Work performed in accordance with all the terms of this Contract to the date of termination stipulated in such notice. Metrolinx shall also be liable for any reasonable documented demobilization costs and the reasonable cost of cancellation of any contracts, but in no event will Metrolinx be liable for any loss of profits, loss of revenue or other consequential damages.
- (b) Metrolinx may, by five (5) days' written notice to the Vendor, terminate an Assignment for convenience, and thereupon Metrolinx shall be liable for payment to the Vendor for those monies attributable to the part of the services performed in accordance with all the terms of this Contract to the date of termination stipulated in such notice.
- (c) In no event will Metrolinx be liable for any loss of profits, loss of revenue or other consequential damages as a result of the termination of this Contract or an Assignment or the termination of a Placed Person's assignment.

## 14.0 Force Majeure

### 14.1 Force Majeure

- (a) Neither Party shall be liable for Losses caused by a delay or failure to perform its obligations under this Contract where such delay or failure is caused by an event beyond its reasonable control (a "Force Majeure Event"). The Parties agree that an event shall not be considered beyond one's reasonable control if a reasonable business person applying due diligence in the same or similar circumstances under the same or similar obligations as the provisions of this Contract would have put in place contingency plans to either materially mitigate or negate the effects of such event.
- (b) Without limiting the generality of the foregoing, the Parties agree that Force Majeure Events may include acts of God, natural disasters, acts of war, war-like operations, civil war, acts of foreign enemy, plagues, epidemics, insurrection and terrorism (provided that the conditions of Section 14.1(a) are met) but shall in no event include:

- (i) shortages or delays relating to supplies or services; or
  - (ii) on the part of the Vendor, lack of financing or inability to perform because of the financial condition of the Vendor.
- (c) A failure by Metrolinx to furnish instructions is not a Force Majeure Event until fourteen (14) days after a demand for such instructions has been made in writing by the Vendor and not then unless such claim is reasonable and justified to Metrolinx.

#### 14.2 Process

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

#### 14.3 Metrolinx Rights

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

### 15.0 Dispute Resolution

- (a) All Disputes shall be resolved in accordance with, and the Parties shall comply with, Schedule D - Dispute Resolution.
- (b) The process set out in Schedule D – Dispute Resolution shall not be construed to prevent a Party from instituting, and a Party is authorized to institute, litigation earlier, but only if required to avoid the expiration of any applicable limitations period or to preserve a superior position with respect to other creditors, or where a Party



makes a good faith determination that a breach of the terms of this Contract by the other Party is such that the damages to such Party resulting from the breach shall be so immediate, so large or severe, and so incapable of adequate redress after the fact that a temporary restraining order or other immediate injunctive relief is the only adequate remedy.

## **16.0 Set Off**

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

## **17.0 General**

### **17.1 Entire Agreement**

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

### **17.2 Governing Law and Jurisdiction**

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

### **17.3 Survival**

- (a) The obligations set out in Articles 1, 3, 4, 5, 6, 9, 10, 11, 12, 13, 15 and this Article 17, and Section 2.9 of this Contract shall continue to bind the Vendor notwithstanding expiration or termination of this Contract for any reason whatsoever or completion of the Work as contemplated hereunder.

### **17.4 Enurement**

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

#### 17.5 Assignment

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

#### 17.6 Independent Parties

- (a) This Contract does not create and is not intended to create an agency or employment relationship, partnership, joint venture or other similar association between the Parties. The relationship between the Parties is to be considered at all times as that of a purchaser and an independent contractor. Neither Party shall have the right to bind the other to any agreement with any third party or to incur any obligation or liability on behalf of the other Party. Except as expressly provided for in this Contract, neither Party shall represent, directly or indirectly by conduct, to any third party that it is an agent, employee, partner or joint venturer of the other.
- (b) The Vendor Personnel and all other personnel providing the Work are solely the employees of the Vendor and applicable Subvendors (and not Metrolinx') for all purposes under this Contract, including for all purposes under any Applicable Laws. Each Placed Person is an independent contractor in relation to Metrolinx for all purposes under any Applicable Laws. None of the foregoing personnel is entitled to any benefits respecting any pension or other benefit plan, program or policy of Metrolinx.

#### 17.7 Third Party Beneficiaries

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

#### 17.8 Joint and Several Liability

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

#### 17.9 Notice

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

#### 17.10 Amendments

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

#### 17.11 No Waiver

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

#### 17.12 Severability

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

#### 17.13 Further Assurances

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

#### 17.14 Conflict of Interest Acknowledgement and Agreement

- (a) For the purposes of this Contract, a “Conflict of Interest” includes any situation or circumstances where, in relation to the performance of its contractual obligations in this Contract, the Vendor’s other commitments, relationships or financial interests:
  - (i) could or could be seen to exercise an improper influence over the objective, unbiased and impartial exercise of its independent judgment; or
  - (ii) could or could be seen to compromise, impair or be incompatible with the effective performance of its contractual obligations.
- (b) The Vendor acknowledges that participation (directly or indirectly) in any procurement process arising from or related to this Contract (the “Prohibited Procurements”) would constitute a Conflict of Interest with this Contract, and the Vendor agrees that it shall not, and shall take reasonable steps (including obtaining covenants substantially similar to those set out in this section) to ensure that its Subvendors do not participate in or be involved with such Prohibited Procurements either directly or indirectly, including as a bidder or as a subvendor, subcontractor or advisor to any bidder.
- (c) The Vendor shall:
  - (i) avoid all Conflict of Interest in the performance of its contractual obligations;
  - (ii) disclose to Metrolinx without delay any actual or potential Conflict of Interest that arises during the performance of its contractual obligations; and
  - (iii) comply with any requirements prescribed by Metrolinx to resolve any Conflict of Interest.
- (d) In addition to all other contractual rights or rights available at law or in equity, Metrolinx shall have the right to immediately terminate this Contract, by giving notice in writing to the Vendor, where:

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

#### 17.15 Counterparts

- (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.

END OF SECTION

## **SCHEDULE A - DEFINITIONS**

### **1.0 In this Contract Document,**

- 1.1 “Applicable Laws” means all applicable laws, statutes, regulations, orders, by-laws, treaties, judgements, decrees and ordinances applicable from time to time and, whether or not having the force of law, all applicable Approvals, Standards, codes, requirements, requests, directives, rules, guidelines, instructions, circulars, manuals, and policies of any Governmental Authority having or purporting to have jurisdiction or authority over a Party, property, transaction or event, including laws relating to workplace safety and insurance, occupational health and safety and employment standards.
- 1.2 “Approvals” means any permits, licences, consents, approvals, clearances, orders, ordinances, registrations, filings or other authorizations respecting the work undertaken as part of the Work as may be required from any applicable Governmental Authority or otherwise by the Vendor’s contract documents.
- 1.3 “Arbitration Act” means the Arbitration Act, 1991, S.O. 1991, Chapter 17.
- 1.4 “Assignment” includes all of the tangible and intangible activities, services, and things required by Metrolinx to be done, delivered or performed by a Placed Person.
- 1.5 “Assignment Intellectual Property” has the meaning ascribed to it in Section 2.3(c) of the General Conditions
- 1.6 “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.
- 1.7 “Changes” has the meaning ascribed to it in Section 7.1 of the General Conditions.
- 1.8 “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) or a Placed Person and includes any copies or reproductions thereof. For greater certainty, all Metrolinx Materials, Personal Information, Contract Records, and anything else specifically marked or identified by Metrolinx as confidential or proprietary are deemed to be “Confidential Information” for the purposes of this Contract.

- 1.9 “Conflict of Interest” has the meaning ascribed to it in Section 17.14 of the General Conditions.
- 1.10 “Contract” means this contract between the Vendor and Metrolinx pursuant to Request No. RQQ-2018-ITIN-242 including the Articles of Agreement, the General Conditions and the Schedules thereto and the Contract Documents.
- 1.11 “Contract Documents” means the Contract and those documents listed in “Scope of Work” and any written amendments thereto as agreed to by the Parties.
- 1.12 “Contract Performance Appraisal” has the meaning ascribed to it in Section 2.9(a) of the General Conditions.
- 1.13 “Contract Records” has the meaning ascribed to it in Section 9.9(a) of the General Conditions.
- 1.14 “Deliverables” means the work product created by the Vendor, a Vendor Personnel and/or a Placed Person in connection with or as a requirement of the Work or an Assignment, including all reports, drawings, plans, designs, processes, tools, standards, registers, logs, updates, files, databases, Software, and documentation.
- 1.15 “Dispute” means all disputes, controversies, or claims arising out of or relating to: (a) this Contract; (b) the alleged wrongful exercise or failure to exercise by a Party of a discretion or power given to that Party under this Contract; and/or (c) the interpretation, enforceability, performance, application, or administration, breach, termination, or validity of this Contract or any failure to agree where agreement between the Parties is called for.
- 1.16 “Dispute Notice” has the meaning given in Schedule D - Dispute Resolution of General Conditions.
- 1.17 “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.
- 1.18 “Effective Date” means the final date of execution of this Contract by both Parties.
- 1.19 “Excise Tax Act” means the Excise Tax Act, R.S.C. 1985, Chapter E-15.
- 1.20 “FIPPA” means the Freedom of Information and Protection of Privacy Act, R.S.O. 1990, Chapter F.31.

- 1.21 “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.
- 1.22 “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.
- 1.23 “Income Tax Act” means the Income Tax Act, R.S.C. 1985, Chapter 1 (5th Supp.).
- 1.24 “Indemnified Parties” has the meaning ascribed to it in Section 11.1 of the General Conditions.
- 1.25 “Intellectual Property” means all intellectual and industrial property, including all Software, patents, patent application rights, rights to file patents, inventions, trade-marks (whether registered or not), trade-mark applications, rights to file trade-marks, trade names, copyrights (whether registered or not), design registrations, trade secrets, confidential information, industrial and similar designs, rights to file for industrial and similar designs, processes, methodologies, techniques and know-how, and all Intellectual Property Rights therein.
- 1.26 “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.
- 1.27 “Joint Venture” is the business arrangement of two or more parties proposed as identified in the Submission.
- 1.28 “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.
- 1.29 “Metrolinx” means Metrolinx, a provincial crown agency continued under the Metrolinx Act, S.O. 2006, Chapter 16, and its successors and assigns.
- 1.30 “Metrolinx IP” has the meaning ascribed to it in Section 5.1 of the General Conditions.



- 1.31 “Metrolinx Materials” means: (a) all materials, images, reports, Software, audio or video recordings, specifications, performance requirements, software development tools, technologies, content, data (including all information whether or not contained in or on any database or electronic information storage system or media owned by or in the custody or control of Metrolinx), technical information, and any other recorded information, in any form and on any media, that are proprietary to, or controlled or licensed by, Metrolinx and provided to the Vendor; (b) all procurement documents issued by Metrolinx; (c) all documentation or source materials (including source code) related to any of the foregoing; and (d) all copies, translations, improvements, modifications, enhancements, adaptations, or derivations made to the Metrolinx Materials by Metrolinx or any third party not performing work under, or in connection with, this Contract.
- 1.32 “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.
- 1.33 “Metrolinx Representative” or “Metrolinx’s Representative” has the meaning ascribed to it in Section 2.7 of the General Conditions.
- 1.34 “OHSA” means the Occupational Health and Safety Act, R.S.O. 1990, Chapter O.1.
- 1.35 “Parties” means both of Metrolinx and the Vendor and a “Party” means either one of them.
- 1.36 “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.
- 1.37 “Personal Information” has the meaning ascribed to it in FIPPA.
- 1.38 “PIPEDA” means the Personal Information Protection and Electronic Documents Act, S.C. 2000, Chapter 5.
- 1.39 “Place of Work” is the designated site or location of the Work.
- 1.40 “Placed Person” means a natural person assigned, supplied or provided by the Vendor in response to a Metrolinx request to the Vendor for a specific resource; notwithstanding the fact that the agreement with the Vendor may be entered into by a corporation or other entity, in which the natural person has a direct or indirect ownership interest in.
- 1.41 “Prohibited Procurements” has the meaning ascribed to it in Section 17.14 of the General Conditions.

- 1.42 “Rates” has the meaning ascribed to it in Section 1.1 of Schedule B - Financial Terms of General Conditions.
- 1.43 “Request Conflict of Interest” means the Vendor had an unfair advantage or engaged in conduct, directly or indirectly, that gave it an unfair advantage, including but not limited to (i) having, or having had access to, confidential information of Metrolinx in the preparation of its submission during the RQQ Process that was not available to other bidders, (ii) communicating with any person with a view to influencing preferred treatment in the RQQ Process (including but not limited to the lobbying of decision makers involved in the RQQ Process), or (iii) engaging in conduct that compromises, or could be seen to compromise, the integrity of the RQQ Process.
- 1.44 “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.
- 1.45 “RQQ Process” means the Request to Qualify and Quote process set out in Request No. RQQ-2018-ITIN-242.
- 1.46 “Scope of Work” describes the general and detailed requirements of the Work.
- 1.47 “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.
- 1.48 “Standards” means, at a given time, those standards, specifications, manuals, codes, practices, methods and procedures applicable to the Required Standard of Care.
- 1.49 “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.

- 1.50 “Submission” means all documentation and other materials and information submitted by the Proponent in response to Request No. RQQ-2018-ITIN-242.
- 1.51 “Taxes” means all present and future taxes, surtaxes, duties, levies, imposts, rates, fees, premiums, assessments, withholdings, dues and other charges of any nature imposed by any Governmental Authority (including, income, capital (including large corporations), gross receipts, consumption, sales, use, transfer, goods and services or other Value Added Taxes, excise, customs or other import, anti-dumping, countervail, net worth, alternative or add-on minimum, windfall profits, stamp, registration, franchise, payroll, employment insurance, Canada Pension Plan, worker’s compensation, health, education, school, business, property, local improvement, environmental, development and occupation taxes, surtaxes, duties, levies, imposts, rates, fees, premiums, assessments, withholdings, dues and charges) together with all fines, interest and penalties in respect thereof or in lieu of or for non-collection thereof.
- 1.52 “Term” has the meaning ascribed to it in Section 2.1 of the General Conditions.
- 1.53 “Total Contract Price” means the upset limit amount established as the total contract price for the Contract by Metrolinx, which shall form which shall form part of the Articles of Agreement.
- 1.54 “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.
- 1.55 “Vendor” means [TO BE COMPLETED AT SIGNING].
- 1.56 “Vendor Background IP” means any methodologies, patterns, plans, procedures, Software, algorithms, computer code, documentation, tools, business processes, scripts, interfaces, commands, technical information, know-how, techniques, specifications, technologies and/or other Intellectual Property that is proprietary to the Vendor or which Vendor has the right and licence to use and make available to Metrolinx, and all documentation related to any of the foregoing, in each case that was either: (a) created prior to the Effective Date; or (b) created, developed or produced independently of this Contract and/or the performance of the Work.
- 1.57 “Vendor Indemnified Parties” means the Vendor, its affiliates and each of their respective officers, directors, employees, agents, successors, and assigns.

- 1.58 “Vendor Personnel” or “Vendor’s Personnel” means (a) with respect to the Vendor, all of the Vendor’s personnel, employees and independent contractors (including the Vendor’s Representative) engaged in the performance of the Work; and (b) with respect to each Subvendor, all of that Subvendor’s personnel, employees and independent contractors engaged in the performance of the Work; provided, however, for purposes of this Contract, a Placed Person shall be deemed not to be a Vendor Personnel.
- 1.59 “Vendor Policies” has the meaning ascribed to it in Schedule C - Insurance of General Conditions.
- 1.60 “Vendor’s Representative” means the person identified by the Vendor, and Accepted by Metrolinx, as the Vendor’s authorized representative pursuant to Section 2.6 of the General Conditions.
- 1.61 “Work” means all the activities, services, goods, equipment, matters and things required to be done, delivered or performed by the Vendor under this Contract, including all of the work, labour, services, goods, equipment, if applicable, described in the Scope of Work.

END OF SECTION

## **SCHEDULE B – FINANCIAL TERMS**

### **1.0 Payment**

- 1.1 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.
- 1.2 The Vendor shall perform all of the Work notwithstanding that the value of the time spent by the Vendor in performance thereof may exceed the maximum amount payable to the Vendor pursuant to Section 3.0 of this Schedule B - Financial Terms.

### **2.0 Limitation of Expenditure**

- 2.1 It is understood that the Contract is based on reimbursement for actual Work requested by Metrolinx and performed by Placed Persons for Metrolinx in accordance with all the terms of this Contract.
- 2.2 Metrolinx does not guarantee any minimum or maximum of work.

### **3.0 Total Contract Price**

- 3.1 Subject to Sections 7.1 and 7.2 of the General Conditions, Metrolinx and the Vendor acknowledge and agree that the Total Contract Price is the maximum amount payable in respect of the provision of the Work, excluding HST; provided, however, that the foregoing is not an entitlement to, nor a guarantee that the Vendor will be paid the full amount of, the Total Contract Price.
- 3.2 The Vendor shall not perform any work under this Agreement which would cause the total cost to exceed the Total Contract Price, unless an increase is so authorized by Metrolinx and effected by an amendment or change order that has been executed by both Parties.
- 3.3 The upset limit for each Assignment shall not exceed a value greater than two-hundred and fifty thousand dollars (\$250,000.00), unless otherwise agreed by Metrolinx, in its sole discretion. The upset limit for each Assignment shall be inclusive of all applicable costs.

### **4.0 Rates for Work**

- 4.1 The Vendor acknowledges and agrees that the Rates are inclusive of all labour and materials, insurance costs, disbursements and all other overhead including any fees or other charges required under Applicable Laws.

- 4.2 Metrolinx shall not reimburse the Vendor or any Placed Person for any hospitality, food or incidental expenses incurred. Metrolinx shall not reimburse the Vendor or any Placed Person for any travel expenses incurred, including mileage for vehicle travel between Metrolinx offices/sites.

## **5.0 Taxes**

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

## **6.0 Invoicing and Payment Process**

- 6.1 Unless otherwise specified in the Articles of Agreement, 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 Placed Person multiplied by the applicable Rate.

- 6.2 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 7 of the General Conditions.
- 6.3 Unless there is a Dispute with respect to the content of an invoice and subject to the other provisions of this Schedule B, Metrolinx shall make payment to the Vendor no later than thirty (30) Business Days following receipt of the invoice for payment from the Vendor, unless otherwise provided or permitted in the Contract. The Vendor shall accept any payments made by Metrolinx by way of Electronic Funds Transfer, and shall, if requested by Metrolinx, provide the account information required to complete an Electronic Funds Transfer.

## **7.0 Cost of Changes**

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

## **8.0 Metrolinx Property**

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

END OF SECTION

## **SCHEDULE C - INSURANCE**

### **1.0 Vendor Insurance Requirements**

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

(a) Commercial General Liability

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

(b) Automobile Liability Insurance

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

(c) Errors and Omissions Insurance

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

(d) Crime/Employee Theft Insurance



- (i) Crime/Employee Theft and Dishonesty Insurance, inclusive of client coverage, in the amount of not less than two-hundred and fifty thousand (\$250,000) per occurrence.
- (e) Cyber Liability Insurance
  - (i) Cyber Liability Insurance, with limits not less than \$2,000,000 per occurrence or claim, \$2,000,000 aggregate. Coverage shall be sufficiently broad to respond to the duties and obligations as is undertaken by Vendor in this agreement and shall include, but not be limited to, claims involving infringement of intellectual property, including but not limited to infringement of copyright, trademark, trade dress, invasion of privacy violations, information theft, damage to or destruction of electronic information, release of private information, alteration of electronic information, extortion and network security. The policy shall provide coverage for breach response costs as well as regulatory fines and penalties as well as credit monitoring expenses with limits sufficient to respond to these obligations.
- (f) 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):
  - (i) those insurances that are reasonable for the performance of the type and scope of Work set out by this Contract (including, as applicable, insurance as would typically be required by prudent designers or consultants); and/or
  - (ii) those insurances that the Vendor is required to obtain and maintain, or cause to be obtained or maintained, by Applicable Law.

## 1.3 Requirements for Insurance

- (a) All of Vendor's policies of insurance, as required under this Contract (the "Vendor Policies"), shall be taken out with insurance companies licensed to transact business in the Province of Ontario

with an AM Best rating of no less than A or the equivalent rating of another industry-recognized rating company.

- (b) Any deductible or self-insured retention amounts are the responsibility of the Vendor. Notwithstanding the foregoing, such deductibles or self-insured retention must be consistent with standard commercial practice and acceptable to Metrolinx, acting reasonably.
- (c) All Vendor Policies shall be kept in full force and effect during the Term, including any requirements for the period following the Term.
- (d) In the event that the Vendor fails to obtain and/or maintain in full force and effect any such insurance as aforementioned, then Metrolinx shall have the right as the Vendor's true and lawful attorney to do all things necessary for this purpose. The Vendor shall be responsible, and shall reimburse Metrolinx, all amounts paid by Metrolinx for insurance premiums and any and all costs incurred by Metrolinx in connection with this Contract. Without limitation, any premiums due on any insurance policy under this Schedule C - Insurance, but not paid by the Vendor may be paid directly to the insurer(s) or broker(s) by Metrolinx, which shall be entitled to deduct the amount of same along with its reasonable costs in so doing from any monies otherwise due to the Vendor by Metrolinx either under this Contract or otherwise.
- (e) Irrespective of the insurance requirements above, the insolvency, bankruptcy, or failure of any such insurance company providing insurance for the Vendor, or the failure of any such insurance company to pay claims that occur will not be held to waive any of the provisions hereof.

#### 1.4 Proof of Insurance

- (a) The Vendor shall, prior to the commencement of the Work and thereafter upon request, provide to Metrolinx original signed certificates of insurance for the Vendor Policies, confirming that the required coverage has been placed and maintained. In addition, at least fifteen (15) days prior to the expiry date or replacement of any policy, the Vendor shall provide original signed certificates evidencing renewals or replacements of such policy to Metrolinx, without notice or request by Metrolinx.
- (b) The Vendor shall, upon request, provide evidence to Metrolinx that the premiums associated with the Vendor Policies have been paid; however, receipt by Metrolinx of the above information will in no way constitute confirmation by Metrolinx that the insurance complies with the requirements of this Contract. Responsibility for

ensuring that the insurance coverage outlined in this Contract is in place rests solely with the Vendor.

- (c) The Vendor also agrees to provide Metrolinx with proof of errors and omissions insurance maintained by any Subvendor, where such Subvendor is under a professional obligation to maintain the same, and with proof of such insurance to be provided to Metrolinx no later than the execution of this Contract by the Vendor and to be in a form and with an insurer acceptable to Metrolinx.

#### 1.5 Vendor's Liability Preserved

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

#### 1.6 Certificates of Insurance shall include:

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

### 2.0 Workplace Safety & Insurance Board Protection

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

- 2.3 If the Vendor is WSIB exempt, it shall provide evidence of Employer's Liability or equivalent, to the satisfaction of Metrolinx, in lieu of a Workplace Safety and Insurance Clearance Certificate.

END OF SECTION

## **SCHEDULE D – DISPUTE RESOLUTION**

### **1.0 Bona fide efforts to resolve**

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

### **2.0 Continuance of the Work During Dispute**

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

### **3.0 Tiered-Dispute Resolution**

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

### **4.0 Negotiation**

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

or may be reasonably requested by the other Party, on a without prejudice basis, to facilitate such negotiation.

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

## **5.0 Mediation**

- 5.1 If a Dispute has not been resolved through high-level negotiation as contemplated in Section 4.0, either Party may refer the Dispute to be resolved through mediation.
- 5.2 The Parties shall mutually agree to the appointment of the mediator within thirty (30) Business Days, or within such other time as the Parties may agree, of any Party issuing a supplementary Dispute Notice requesting mediation.
- 5.3 If the Parties cannot agree on the appointment of a mediator, the appointment of a mediator shall be determined by the Ontario Superior Court of Justice following an application by either Party.
- 5.4 The mediator shall be independent of and at arm's length to the Parties and shall be a person who by training and experience has the qualifications and the mediation skills to mediate a Dispute.
- 5.5 Unless the Parties otherwise agree, the mediation shall proceed in accordance with the following procedures:
- (a) Each Party shall prepare a summary of the issues in dispute, with the Party's position with respect to those issues. The summary shall be delivered to the mediator and the other Parties, at least seven (7) Business Days before the first mediation conference.
  - (b) The goal of the mediation is to reach an agreed upon settlement and, therefore, all individuals with the appropriate authority to agree to the settlement terms and conditions shall be present at the mediation.
  - (c) A Party may be represented at the mediation by counsel or another representative at the sole cost of such Party.
  - (d) The mediator, the Parties and their counsel or representatives shall keep confidential all matters relating to the mediation, except where disclosure of a settlement agreement is necessary to implement or enforce that agreement and except as otherwise required by Applicable Law.

- (e) In all respects, the mediation is deemed to be a “without prejudice” proceeding.
- 5.6 The costs of the mediator shall be apportioned equally between the Parties unless otherwise agreed under any settlement reached under this Section 5.0.
- 5.7 If the Parties achieve a resolution of the Dispute, the mediator shall confirm the resolution in writing, which will be signed by the Parties. If the Parties do not resolve the Dispute, the mediator shall provide a written confirmation that the Parties were unable to resolve the Dispute.
- 5.8 Both Parties acknowledge and agree that they may not refer a Dispute for resolution by arbitration under Section 6.0 herein prior to attempting to resolve such Dispute through mediation pursuant to this Section 5.0.

## **6.0 Arbitration**

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

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

END OF SECTION



## Appendix “B” – Scope of Work

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### List of Contents

The following sections hereby form part of and are appended to this Request Document as the Appendix “B” – Scope of Work

<b><u>ITEM NO.</u></b>	<b><u>SECTION TITLE</u></b>
1.0	Scope of Work
2.0	Hours of Work
3.0	Place of Work/Travel Expenses
4.0	Assignment of Work
5.0	Management of Work
6.0	Job Descriptions
7.0	General Safety Requirements

### 1.0 Scope of Work

- 1.1 The Vendor shall provide, as required at Metrolinx’s request, temporary information technology technical resources on an emergent basis, with minimum experience and qualifications specified, for varying periods of time to perform various assignments in support of the Metrolinx Oracle ERP program.
- 1.2 Job Descriptions for resources are provided for in Section 6.0 below.
- 1.3 In certain circumstances, Metrolinx may need to staff other positions not specified in the Job Descriptions herewith. On these occasions Metrolinx and the Vendor shall mutually agree in writing to the hourly rate for the position.
- 1.4 The Vendor shall provide to Metrolinx only those candidates with a “clear” Criminal Reference Check status for work assignment. The Criminal Reference Check shall be less than 12 months old from the commencement of the work assignment.
- 1.5 Prior to the commencement of any work assignments, the Vendor will provide the Placed Person with the Metrolinx onboarding materials for orientation purposes.

### 2.0 Hours of Work

- 2.1 Resources are required to work Monday to Friday during normal office hours which are defined as a seven (7) hour and fifteen (15) minute workday, with a one (1) hour unpaid lunch. Saturdays, Sundays and Statutory Holidays are off days.

### 3.0 Place of Work / Travel Expenses

- 3.1 Work will take place in the Greater Toronto Area and may require travel to any Metrolinx office, bus or rail location in the Greater Toronto and Hamilton Area.

### 4.0 Assignment of Work

- 4.1 For each assignment Metrolinx will provide the Vendor(s) with a request for a specific resource(s) and the estimated length of time for the assignment.
- 4.2 After performing their screening process, the Vendor(s) will, in response, submit resumes of their top three (3) candidates, along with a candidate evaluation summary.
- 4.3 Metrolinx will upon receipt and review of the Vendor's response, at their sole discretion, either:
- 4.3.1 Accept a candidate;
  - 4.3.2 Request the Vendor provide additional resumes for the required position(s); or
  - 4.3.3 Decline the resumes provided by the Vendor for the required position, at which time Metrolinx may, at its sole discretion, request another Vendor to provide resumes for the required position(s).
- 4.4 Interviews will be conducted in person by Metrolinx managers.
- 4.5 Price shall be based on the maximum hourly billing rate for the identified position specified in the Articles of Agreement.

### 5.0 Management of Work

- 5.1 The Vendor shall assign a Vendor Representative who will direct the provision of the Work and maintain ongoing contact with Metrolinx's representative to ensure that issues arising during the provisions of the Work are dealt within an efficient, effective and timely manner.
- 5.2 The Vendor Representative shall provide an assignment confirmation to Metrolinx indicating the following information of the assignment:
- Metrolinx RQQ Number:
  - Contract / Purchase Order Number under RQQ:
  - Vendor Company Name:
  - Placed Person's Full Legal Name:
  - Placed Person's Preferred Name (if different):
  - CONTRACT ROLE:

- Job ID (IRAP #):
- Metrolinx I&IT Resource Manager:
- Metrolinx I&IT Group/Team:
- Metrolinx I&IT Primary Office Location:
- New Hire or Contract Extension:
- Date Criminal Reference Check was completed by Vendor (must be less than 12 months old from the commencement of the work assignment):
- Original Contract Start Date (mmm-dd-yyyy):
- Original Contract End Date (mmm-dd-yyyy):
- Vendor's Original Billing Hourly Rate (excluding HST):
- Vendor's Hourly Billing Rate for this Contract Extension where applicable (excl. HST):
- Start Date for this Contract Extension (where applicable):
- End Date for this Contract Extension (where applicable):
- SPECIAL NOTES (e.g., Change of role, rate, dates, etc.):
- Name of Vendor Representative Confirming Acceptance by Placed Person and Vendor:
- Confirmation Date (mmm-dd-yyyy):
- Confirmation that the Placed Person has received Metrolinx' onboarding materials:
- Confirmation that the Vendor has entered into a written agreement per General Conditions section 2.3(c):

5.3 The Vendor Representative shall provide a monthly tracking report for all Placed Persons with Metrolinx as of the end of each month indicating the start date of the assignment, end date of the assignment, hourly rate, and position title. The report should also include the forecasted billing for the each Placed Person along with the financial position of the Contract.

## 6.0 Job Descriptions

Item No.	Job Position Title
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<u>Item No.</u>	<u>Job Position Title</u>
1.	Executive Lead
2.	Oracle Project Manager
3.	Oracle Enterprise Architect
4.	Oracle Solution Architect
5.	Oracle Functional Analyst
6.	Oracle Technical Analyst
7.	Oracle Technical/Functional Lead
8.	Oracle Business Analyst
9.	Oracle Unifier Functional Analyst
10.	Oracle BI Technical/Functional Analyst
11.	Oracle People Change Manager
12.	Oracle Training Lead
13.	Oracle Training Specialist
14.	Oracle Communications Specialist
15.	Oracle QA Lead
16.	Project Coordinator
17.	Project Control Officer

The minimum experience and qualifications that must be possessed by the individuals employed in each of these positions/roles and the description of the responsibilities of each of these positions/roles are as follows:

(i) **Executive Lead**

- (A) Minimum years of related experience: Fifteen ( 15) y e a r s of Oracle management consulting experience.
- (B) Minimum years of specific experience in the applicable Service Areas: Eight (8) years and experience of managing oracle deployments
- (C) Qualifications and Experience:
  - (I) A university degree or equivalent industry experience (15 years minimum);
  - (II) Client references;
  - (III) Member of key industry associations related to the applicable Service Area; and
  - (IV) Experienced in the management of the Consultant's Service Area and project related methodologies and tools.
- (D) Responsibilities:

May include, but are not necessarily limited to:

  - (I) Management of several senior project managers, each responsible for an individual project;
  - (II) Management of the project during the development, implementation and operations start-up ensuring that resources are made available and that the project is developed and is fully operational within previously agreed time, cost and performance parameters;
  - (III) Formulates statements of problems, establishes procedures for the development and implementation of significant, new or modified project elements to solve these problems, and obtains approval thereof;
  - (IV) Defines and documents the objectives for the project, determines budgetary requirements, the composition, roles and responsibilities and terms of reference for the project team;
  - (V) Reports progress of the project on an ongoing basis and at scheduled points in the life cycle;
  - (VI) Regularly meets with and is a member of the executive team in the Service Area under consideration;
  - (VII) Provides strategic advice to the executive team in the Service Area under consideration;
  - (VIII) Meets in conference with stakeholders and other project managers and states problems in a form capable of being solved;
  - (IX) Prepares plans, charts, tables and diagrams to assist in

analyzing or displaying problems, works with a variety of project management tools; and

(X) Responsible for project sign-off.

(ii) **Oracle Project Manager**

(A) Minimum years of related experience: Ten (10) years in Project Management.

(B) Minimum years of specific experience in the applicable Service Areas: Five (5) years.

(C) Qualifications and Experience:

- (I) A university degree or equivalent;
- (II) Client references;
- (III) Project Management Professional (PMP) Certification; and
- (IV) Experienced in the management of large scale Oracle E-Business Suite or associated Oracle product projects.

(D) Responsibilities:

May include, but are not necessarily limited to:

- (I) Manages several Project Managers, each responsible for an element of the project and its associated project team;
- (II) Manages the project during the development, implementation and operations start-up by ensuring that resources are made available and that the project is developed and is fully operational within previously agreed time, cost and performance parameters;
- (III) Formulates statements of problems; establishes procedures for the development and implementation of significant, new or modified project elements to solve these problems, and obtains approval thereof;
- (IV) Defines and documents the objectives for the project, determines budgetary requirements, the composition, roles and responsibilities and terms of reference for the project team;
- (V) Reports progress of the project on an ongoing basis and at scheduled points in the life cycle;
- (VI) Meets in conference with stakeholders and other project managers and states problems in a form capable of being solved; and
- (VII) Prepares plans, charts, tables and diagrams to assist in analyzing or displaying problems, works with a variety of project management tools.

(iii) **Oracle Enterprise Architect**

- (A) Minimum years of related experience: Fifteen (15) years.
- (B) Minimum years of specific experience in the applicable Service Areas: Eight (8) years.
- (C) Qualifications and Experience:
  - (I) Recognized as an expert by peers within the industry;
  - (II) A university degree;
  - (III) Client references;
  - (IV) Member of key industry associations related to the applicable Service Area; and
  - (V) Experienced in Oracle Enterprise Architecture specific to E-Business Integration with Cloud Offerings, Business Intelligence and Oracle Unifier Version 16.1.
- (D) Responsibilities:

May include, but are not necessarily limited to:

  - (I) Alignment of IT strategy and planning with company's business goals;
  - (II) Optimization of Information Management through an understanding of evolving business needs and technology capabilities;
  - (III) Strategic guidance to senior management on best practices;
  - (IV) Provide direction to solution architects to ensure overall solution is scalable, adaptable and synchronized with business needs;
  - (V) Direct or indirect involvement in the development of policies, standards and guidelines that direct the selection, development, implementation and use of Information Technology within the enterprise; and
  - (VI) Build employee knowledge and skills in specific areas of expertise.

(iv) **Oracle Solution Architect**

- (A) Minimum years of related experience: Fifteen (15) years.
- (B) Minimum years of specific experience in the applicable Service Areas: Eight (8) years.
- (C) Qualifications and Experience:
  - (I) Recognized as an expert by peers within the industry;
  - (II) A university degree;
  - (III) Client references;
  - (IV) Member of key industry associations related to the applicable Service Area; and
  - (V) Experienced in Oracle Solution Architecture specific to

E-Business Integration with Cloud Offerings, Business Intelligence and/or Oracle Unifier Version 16.1.

(D) Responsibilities:

May include, but are not necessarily limited to:

- (I) Capturing business needs, providing advice, managing risks and communicating to stakeholders;
- (II) Partnering with Business Analyst and other key project stakeholder to define technical requirement, principles models that assist in the overall solution design;
- (III) Analyzing and translating business requirements and technical requirements into architectural artifact that outline solutions and integrations across applications, systems and platforms to achieve required outcomes; and
- (IV) Development of roadmaps that provide a landscape of how solutions will be structured.

(v) **Oracle Functional Analyst**

(A) Minimum years of related experience: Fifteen (15) years.

(B) Minimum years of specific experience in the applicable Service Areas: Eight (8) years.

(C) Qualifications and Experience:

- (I) Recognized as an expert by peers within the industry;
- (II) A university degree;
- (III) Client references;
- (IV) Member of key industry associations related to the applicable Service Area; and
- (V) Experienced in Oracle Architecture specific to E-Business Integration with Cloud Offerings, Business Intelligence and/or Oracle Unifier Version 16.1.

(D) Responsibilities:

May include, but are not necessarily limited to:

- (I) Meeting with key stakeholder to analyze existing functional and system process to highlight areas of optimization;
- (II) Translating business requirements for functional areas and common I&IT requirements, into systems design and specifications;
- (III) Analyzing and recommending alternatives and options for solutions;
- (IV) Developing technical specifications for systems development, design and implementation; and
- (V) Completing required system configurations within Oracle Suite of Products.



(vi) **Oracle Technical Analyst**

- (A) Minimum years of related experience: Ten (10) years.
- (B) Minimum years specific experience in the applicable Service Areas:  
Four (5) years
- (C) Qualifications and Experience:
  - (I) A university degree;
  - (II) Client references; and
  - (III) Experienced in Oracle technical design and development specific to E-Business Suite Integration with Cloud Offerings, Business Intelligence and/or Oracle Unifier Version 16.1.
- (D) Responsibilities:  
May include, but are not necessarily limited to:
  - (I) Developing and assisting with business and functional requirements, project scope, estimates of effort and duration;
  - (II) Translating functional and business requirements for functional areas and common I&IT requirements into technical requirements;
  - (III) Developing and/or managing technical aspects of application software, user interfaces, and third-party components;
  - (IV) Conducting, assisting with, and/or manage unit and system tests; and
  - (V) Establishing technical standards for the technical framework.

(vii) **Oracle Technical/ Functional Lead**

- (A) Minimum years of related experience: Twenty (20) years.
- (B) Minimum years specific experience in the applicable Service Areas: Fifteen (15) years
- (C) Qualifications and Experience:
  - (I) A university degree;
  - (II) Client references;
  - (III) Experienced in the management of the Consultant's Service Area and project related methodologies and tools; and
  - (IV) Experienced in managing functional and technical deliverables specific to E-Business Integration with Cloud Offerings, Business Intelligence and/or Oracle Unifier version 16.1 projects.
- (D) Responsibilities:

May include, but are not necessarily limited to:

- (I) Providing expert advice on the key initiatives that enable enterprises to deploy high-impact Service Area processes that are focused, accountable and measurable;
- (II) Providing expert advice in defining new requirements and opportunities for applying efficient and effective solutions, identifying and providing preliminary costs of potential options;
- (III) Providing expert advice in developing and integrating Service Area processes and information models between business processes to eliminate information and process redundancies;
- (IV) Identifying candidate Service Area processes for re-design, prototypes, potential solutions, providing trade-off information and suggesting a recommended course of action (including modifications to the automated processes); and
- (V) Completing required system configurations and technical development within Oracle E-Business Suite, OBIEE/OBIA and/or Unifier.

(viii) **Oracle Business Analyst**

- (A) Minimum years of related experience: Five (5) years.
- (B) Minimum years of specific experience in the applicable Service Areas: One (1) year.
- (C) Qualifications and Experience:
  - (I) A community college or university degree or equivalent, preferably in the applicable Services Area;
  - (II) Client references; and
  - (III) Experienced in the management of the Consultant's Service Area and project related methodologies and tools.
- (D) Responsibilities:

May include, but are not necessarily limited to:

- (I) Providing advice on the key initiatives that enable enterprises to deploy high-impact Service Area processes that are focused, accountable and measurable;
- (II) Providing advice in defining new requirements and opportunities for applying efficient and effective solutions including identifying and providing high level preliminary costs of potential options;
- (III) Providing advice in developing and integrating Service Area processes and information models between business processes to eliminate information

- and process redundancies;
- (IV) Identifying candidate Service Area processes for re-design, prototype potential solutions, providing trade-off information and suggesting a recommended course of action (including identifying the modifications to the automated processes); and
- (V) Analyzing Service Area functional requirements to identify information, procedures and decision flows.

(ix) **Oracle Unifier Functional Analyst**

- (A) Minimum years of related experience: Five (5) years.
- (B) Minimum years of specific experience in the applicable Service Areas: Five (5) years.
- (C) Qualifications and Experience:
  - (I) University degree or equivalent, preferably in the applicable Services Area;
  - (II) Client references; and
  - (III) Experienced in the design and configuration of Oracle Unifier Version 16.1.
- (D) Responsibilities:

May include, but are not necessarily limited to:

  - (I) Meeting with key stakeholder to analyze existing functional and system process to highlight areas of optimization;
  - (II) Translating business requirements for functional areas and common I&IT requirements, into systems design and specifications;
  - (III) Analyzing and recommending alternatives and options for solutions;
  - (IV) Developing technical specifications for systems development, design and implementation; and
  - (V) Completing required system configurations within Oracle Unifier with integrations to Oracle E-Business Suite.

(x) **Oracle BI Technical /Functional Analyst**

- (A) Minimum years of related experience: Fifteen (15) years.
- (B) Minimum years of specific experience in the applicable Service Areas: Eight (8) years.
- (C) Qualifications and Experience:
  - (I) A community college or university degree or equivalent, preferably in the applicable Services Area;
  - (II) Client references; and
  - (III) Experienced in the management of the Consultant's Service Area and project related methodologies and tools.
- (D) Responsibilities:

May include, but are not necessarily limited to:

  - (I) Meeting with key stakeholder to analyze existing functional and system process to highlight areas of optimization;
  - (II) Translating business requirements for functional areas and common I&IT requirements, into systems design and specifications;
  - (III) Analyzing and recommending alternatives and options for solutions;
  - (IV) Developing technical specifications for systems development, design and implementation; and
  - (V) Completing required system configurations and technical development within OBIEE/OBIA with integrations to Oracle E-Business Suite.

(xi) **Oracle People Change Manager**

- (A) Minimum years of related experience: Ten (10) years.
- (B) Minimum years of specific experience in the applicable Service Areas: Five (5) years.
- (C) Qualifications and Experience:
  - (I) A community college or university degree or equivalent, preferably in the applicable Services Area;
  - (II) Client references;
  - (III) Experienced in the management of the Consultant's Service Area and project related methodologies and tools; and
  - (IV) PROSCI certification.
- (D) Responsibilities:

May include, but are not necessarily limited to:

  - (I) Developing change management plans;
  - (II) Managing organizational change as a result of process,

- software or people changes; and
- (III) Communicating and managing change related to processes, system, technology, job roles and organization structure (as required).

(xii) **Oracle Training Lead**

- (A) Minimum years of related experience: Ten (10) years.
- (B) Minimum years of specific experience in the applicable Service Areas: Five (5) years.
- (C) Qualifications and Experience:
  - (I) A community college or university degree or equivalent, preferably in the applicable Services Area;
  - (II) Client references; and
  - (III) PROSCI certification.
- (D) Responsibilities:

May include, but are not necessarily limited to:

  - (I) Identify and assessing current and future training needs for this project;
  - (II) Development of training plans;
  - (III) Conducting effective induction and orientation sessions;
  - (IV) Development of training materials utilizing Oracle UPK software;
  - (V) Delivery of process and system training to end user community; and
  - (VI) Building training schedule to aligned with the overall project timelines.

(xiii) **Oracle Training Specialist**

- (A) Minimum years of related experience: Five (5) years.
- (B) Minimum years of specific experience in the applicable Service Areas: Five (5) years.
- (C) Qualifications and Experience:
  - (I) A community college or university degree or equivalent, preferably in the applicable Services Area;
  - (II) Client references;
  - (III) Experienced in the management of the Consultant's Service Area and project related methodologies and tools; and
  - (IV) PROSCI certification.
- (D) Responsibilities:

May include, but are not necessarily limited to:

  - (I) Translate requirements into training materials;
  - (II) Development of training materials utilizing Oracle UPK

software; and

- (III) Delivery of process and system training to end user community.

(xiv)

**Oracle Communications Specialist**

- (A) Minimum years of related experience: Five (5) years.
- (B) Minimum years of specific experience in the applicable Service Areas: Five (5) years.
- (C) Qualifications and Experience:
  - (I) A community college or university degree or equivalent, preferably in the applicable Services Area;
  - (II) Client references; and
  - (III) Experienced in the management of the Consultant's Service Area and project related methodologies and tools.
- (D) Responsibilities:

May include, but are not necessarily limited to:

  - (I) Liaise with project and business stakeholders to determine content for project communications; and
  - (II) Develop key project communications to align with the overall change management strategy.

(xv)

**Oracle QA Analyst**

- (A) Minimum years of related experience: Five (5) years.
- (B) Minimum years of specific experience in the applicable Service Areas: Three (3) years.
- (C) Qualifications and Experience:
  - (I) A community college or university degree or equivalent, preferably in the applicable Services Area;
  - (II) Experience in HPALM related to test automation and performance test execution;
  - (III) Client references; and
  - (IV) Experienced in the management of the Consultant's Service Area and project related methodologies and tools.
- (D) Responsibilities:

May include, but are not necessarily limited to:

  - (I) Leading development of test plans, scripts (manual or automated and data;
  - (II) Participating in functional and technical design reviews, performing integration/functional and system testing, and verifying test results;
  - (III) Identifying and documenting software defects using

- HPALM software;
- (IV) Participating with other project resources to resolve defects; and
- (V) Performing regression testing of software applications.

(xvi)

**Project Coordinator**

- (A) Minimum years of related experience: Five (3) years of management consulting experience.
- (B) Minimum years of specific experience in the applicable Service Areas: Five (5) years.
- (C) Qualifications and Experience:
  - (I) A university degree or equivalent industry experience (3 years minimum); and
  - (II) Client references.
- (D) Responsibilities:

May include, but are not necessarily limited to:

  - (I) Facilitates planning and scheduling activities under guidance of Project Manager;
  - (II) Ensure business and assignment risks are identified, monitored and managed to achieve minimal disruption to delivery and success;
  - (III) Provide regular status reporting to project management team;
  - (IV) Participate in Project Management community activities;
  - (V) Escalate issues and inquiries as appropriate;
  - (VI) Assist in various ad hoc tasks and program related coordination activities (scheduling meetings, collecting and distributing of Agenda items, end-to-end onboarding/off boarding of vendors/consultants, equipment, set up, etc.);
  - (VII) Demonstrate flexibility and initiation with urgent preparation and sign off of contracts/SOWs/Deliverables to meet tight deadlines; and
  - (VIII) Co-ordinate collection of inputs from various work streams for executive level Steering committee, consolidate and collate inputs into the required format for bi-weekly and monthly review (slide decks, spreadsheets, Dashboards, etc.).

(xvii)

**Project Control Officer**

- (A) Minimum years of related experience: Five (4) years of management consulting experience.
- (B) Minimum years of specific experience in the applicable Service Areas: Five (8) years.
- (C) Qualifications and Experience
  - (I) A university degree or equivalent industry experience (4 years minimum); and

- (II) Client references.
- (D) Responsibilities:
  - May include, but are not necessarily limited to:
    - (I) Deliver required controls, including communication plans, quality plans, issue and action logs, risk management plans, and change control plans Participate in Project Management community activities;
    - (II) Provide regular status reporting to Project Management Office;
    - (III) Perform a broad range of Project Management related tasks;
    - (IV) Contribute to professional community through production and reusable contents from other Projects and lessons learned;
    - (V) Manage Program Forecast;
    - (VI) Facilitates planning and scheduling activities under guidance of Program or Project Manager; and
    - (VII) Complies with standard policies and procedures and works across practices to share lessons learned and best practices.



## 7.0 General Safety Requirements

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### 7.1 Safety Measures

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

### 7.2 Project Responsibilities

- 7.2.1 The Vendor and the Vendor's representative shall ensure that:
- (a) All measures and procedures prescribed by the following Acts and Regulations (applicable Provincial) are carried out at the Place of Work;
  - (b) The *Occupational Health and Safety Act*;
  - (c) The Regulations for Industrial Establishments;
  - (d) The Canada Labour Code Part II;
  - (e) The Environmental Protection Act and Regulations;
  - (f) WHMIS Regulations;
  - (g) *Smoke-Free Ontario Act*;
  - (h) All other legislation, regulations and standards as applicable; and
  - (i) Metrolinx's "Safety Guidelines For Contractors, Consultants and Project Coordinators".
- 7.2.2 Every employer and every worker performing work at the Place of Work complies with all of the requirements referred to in Section 7.2.1 above; and

- 7.2.3 The health and safety of workers and the general public are protected in relation to the work performed on site. In addition to compliance with all occupational health and safety legislation, every employer and every worker performing Work at the Place of Work is required to demonstrate a willingness to participate in occupational health and safety program(s).
- 7.2.4 The Vendor shall perform a hazard and risk analysis of the work and list the top five (5) most hazardous health and safety concerns.

### 7.3 Due Diligence

- 7.3.1 The Vendor acknowledges that it has read and understands the measures and procedures relating to occupational health and safety as prescribed in Article 7.2 above. The Vendor acknowledges and understands its duties as therein set out and hereby expressly undertakes and agrees to comply with all such requirements and standards in their entirety and at the Vendor's expense.
- 7.3.2 The Vendor further agrees to fully cooperate with all health and safety requirements, rules, regulations, standards and criteria set out in the Contract Documents, which agreement is in furtherance of the Vendor's duties and responsibilities under occupational health and safety legislation.
- 7.3.3 The Vendor agrees that if, in the opinion of Metrolinx, the health and safety of a person or persons is endangered or the effective operation of the system put in place to ensure the health and safety of workers on the Place of Work is not being implemented, Metrolinx may take such action as it deems necessary and appropriate in the circumstances, including, without limitation, the following:
  - (a) Require the Vendor to correct the condition forthwith at no expense to Metrolinx;
  - (b) Require that the Place of Work be shut down in whole or in part until such time as the condition has been corrected. Metrolinx will not reimburse the Vendor for any costs caused by such a delay nor will Metrolinx extend the time to complete the Work of the Contract because of such a delay;
  - (c) Correct the problem and deduct the cost thereof from any payment then or thereafter due the Vendor; and/or
  - (d) Terminate the Contract in whole or in part.

### 7.4 Alcohol and Drug Abuse Prevention

- 7.4.1 The following rules shall apply to all persons while at the Place of Work and/or on Metrolinx's property:

- (a) The use, possession, distribution and/or sale of illegal drugs or drug paraphernalia is prohibited;
- (b) The use, possession, distribution and/or sale of any any form of alcohol, including alcoholic beverages;
- (c) Workers must know and understand the possible effects of drugs, medication or mood altering agents, including those prescribed by a doctor, which will adversely affect, in any way and to any extent, their ability to work safely;
- (d) Individuals shall ensure that prescribed or over-the-counter medications are used responsibility and in accordance with the applicable instructions. Persons taking prescription drugs shall advise their supervisor if there is potential for performance to be negatively affected;
- (e) No distribution, offering or sale of prescription medications is permitted; and
- (f) Individuals must report for duty, free of the negative effects of alcohol and other drugs, including the effects of such use, and remain so during the entire period of duty.

7.4.2 Where a worker is suspected of being intoxicated, the following procedures must be followed:

- (a) The worker will be escorted to a safe location away from the work area, and asked to remain there pending further action;
- (b) The worker's supervision, worker health and safety representative (if applicable), union steward (if applicable) and the designated Metrolinx Contract representative will be requested to attend;
- (c) The group present will determine an appropriate course of action and a means of transport to a suitable safe location;
- (d) Where there are differences of opinion with respect to the worker's fitness for duty, the dispute will be resolved with a view to ensuring safety, and the worker will be transported home, or required to remain in a safe location until this can be arranged; and
- (e) The local police may be called if the worker was operating any motorized vehicle requiring a valid driver's license.

7.4.3 Metrolinx will maintain a position of zero tolerance to any violations of these rules. At the sole discretion of Metrolinx, rule contraventions may result in:

- (a) Verbal and written reporting to the person's supervisor/employer;
- (b) Issuance of a written warning, and recording of same;
- (c) Reporting to the appropriate police department for investigation and subject to criminal prosecution;
- (d) An order to leave the project site temporarily or permanently; or
- (e) Remedies as may be specified in the Contract Documents.

## 7.5 Smoking in the Workplace

7.5.1 The Vendor shall comply with, and enforce, all the provisions of the *Smoke Free Ontario Act* at all times while on Metrolinx's property.

7.5.2 A designated smoking area may be created at the Place of Work providing Metrolinx and the Vendor can mutually agree that one can be provided within the provisions of the *Smoke Free Ontario Act*. The Vendor shall be responsible for providing any and all signage required for the designated smoking area in the event a designated smoking area is created.

## 7.6 Workplace Hazardous Materials Information System (WHMIS)

7.6.1 Be familiar with and comply to WHMIS Regulations:

7.6.2 Properly label controlled products.

7.6.3 Provide proper warning labels and training at the site.

7.6.4 Provide copies of the material safety data sheets (MSDS) for any controlled product at the Place of Work before the product is delivered to the site.

7.6.5 Be responsible for all applicable requirements of the regulations.

7.6.6 Before commencing any work at the Place of Work, attend a meeting in a location to be determined by Metrolinx and provide a proposal as to how hazardous materials will be stored and dispensed at the Place of Work. Also, present a proposal as to how hazardous and contaminated materials will be removed from the Place of Work. The disposal of hazardous materials shall comply with all legislative and municipal requirements.

7.6.7 Provide a list and proper handling procedures for all hazardous materials.

## 7.7 Metrolinx Safety Manual

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

## 7.8 Site Safety Personnel

- 7.8.1 In the event Metrolinx deems it necessary, because of the Work and/or Safety Performance, the Vendor shall assign to the Place of Work a full time "Safety Officer" to assist the Vendor's representative in the discharging of safety responsibility on site, at no additional costs.
- 7.8.2 The Safety Officer shall have the training, experience and credentials to ensure compliance to the *Occupational Health and Safety Act* at the Place of Work.

## 7.9 Site Security

- 7.9.1 The Vendor shall ensure all personnel employed at the Place of Work, whether its own employees or a Subvendor's, wear an identification badge. At Metrolinx locations where access is restricted Metrolinx shall supply the identification badges. At all other locations it shall be the Vendor's responsibility to provide the identification badges.
- 7.9.2 A daily site log shall be maintained of all persons granted access to the "Place of Work" under the control and custody of the Vendor.
- 7.9.3 The Vendor shall ensure that all required documentation is available upon request by Metrolinx.
- 7.9.4 The Vendor shall not allow "Unauthorized" persons to access the "Place of Work".

END OF SECTION

## Appendix “C” - Metrolinx Services

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Metrolinx shall:

- (a) provide the Vendor with general direction in the provision of the Work;
- (b) designate an individual to act as its representative for each assignment of work, who shall transmit instructions to, and receive information from the Vendor. The designate Metrolinx individual will be accountable for the specific assignment of work expenditures;
- (c) provide access and resources where necessary, make available information and instructions relevant to the Work; and
- (d) provide the Vendor with the Metrolinx onboarding materials for the training of the Placed Persons.

## Appendix “D” – Documents

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

<b><u>ITEM NO.</u></b>	<b><u>DOCUMENT TITLE</u></b>
1.	Sample Articles of Agreement
2.	Contract Performance Appraisal
3.	Sample Parental Guarantee

## SAMPLE ARTICLES OF AGREEMENT

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

B E T W E E N

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

- and -

●  
(hereinafter the “Vendor”)

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

### **1. Contract**

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



**2. Date of Completion of Work and Description of Work**

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

- (a) The Vendor shall provide labour, superintendence, plant, tools, appliances, equipment, supplies and other accessories, services and facilities necessary to carry out ●, in accordance with the Scope of Work, attached as APPENDIX “B” (the “Work”).
- (b) The Work are to be provided in accordance with this Agreement.

**3. Contract Price**

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

- (a) ●

**If the Vendor is a corporation:**

●(Company's Full Legal Name)

Per: \_\_\_\_\_

Name:

Title:

Per: \_\_\_\_\_

Name:

Title:

I/We have authority to bind the Corporation

**If the Vendor is a partnership:**

\_\_\_\_\_  
(Partnership's Full Legal Name)

by its General Partner, \_\_\_\_\_  
(Name of General Partner)

Per: \_\_\_\_\_

Name:

Title:

Per: \_\_\_\_\_

Name:

Title:

**If the Vendor is a Joint Venture or a Consortium:**

Joint Venture/Consortium  
Participant-in-Charge

\_\_\_\_\_  
(Company's Full Legal Name)

Per: \_\_\_\_\_

Name:  
Title:

Joint Venture/Consortium Member

\_\_\_\_\_  
(Company's Full Legal Name)

Per: \_\_\_\_\_

Name:  
Title:

Joint Venture/Consortium Member

\_\_\_\_\_  
(Company's Full Legal Name)

Per: \_\_\_\_\_

Name:  
Title:

**If the Vendor is an individual:**

)  
)  
)  
)  
)  
)

\_\_\_\_\_  
Witness

\_\_\_\_\_  
Name:

In witness whereof, the above signed has executed this agreement, this \_\_\_\_ day  
of \_\_\_\_\_, 20\_\_\_\_.

## SAMPLE PARENTAL GUARANTEE

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

**AND WHEREAS** Metrolinx is desirous of entering into Contract No. \_\_\_\_\_ for with \_\_\_\_\_.

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

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

**This agreement shall** be attached to and form part of Contract No. \_\_\_\_\_ between \_\_\_\_\_ and Metrolinx.

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

PARENT COMPANY: \_\_\_\_\_

(SEAL)

Per: \_\_\_\_\_  
(Signature)

\_\_\_\_\_  
(Print Name)

\_\_\_\_\_  
(Title)

I / We have authority to bind the Corporation