

Request for Proposals

Project Name: Supply of PRESTO MiFare
Ultralight C based Limited
Use Media & Related
Services

Request Number: RFP-2017-VM-017



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1.0 Definitions

In this Proposal Document,

- 1.1 **"Addenda"** is the formal release of additions, deletions, revisions, clarifications to this Proposal Document that form a part of the Contract.
- 1.2 **"Business Day"** means any other than a Saturday, Sunday, statutory or civic holiday in Toronto, Ontario, Canada.
- 1.3 **"Closing"** means the deadline for Metrolinx to receive Submissions as specified in Section 3.2.1 (d) of Instructions to Proponents.
- 1.4 **"Conflict of Interest"** shall have the meaning ascribed in Attachment #3 – Conflict of Interest.
- 1.5 **"Contract"** means the contract between the Proponent and Metrolinx pursuant to this Request for Proposals reference # RFP-2017-VM-017 including the Articles of Agreement and all documents referenced therein.
- 1.6 **"Corporate Firm"** means any one of the following: a) the Proponent, b) the Proponent and its Subcontractors, or c) the Joint Venture, responding to the Proposal Document.
- 1.7 **"CPM Program"** shall have the meaning ascribed in Section 3.18.1 of Instructions to Proponents.
- 1.8 **"EBS"** means Electronic Bid Submission.
- 1.9 **"E-Bid Authorized Signer"** is the designated individual in the Proponent's organization who has the authority to bind the Proponent to each and every term, condition, article and obligation of the Proposal Document and any resultant Contract.
- 1.10 **"Evaluation Committee"** means the persons chosen by Metrolinx to evaluate the Submissions based on the Evaluation Criteria outlined in this Proposal Document.
- 1.11 **"Estimated Contract Price"** means the price set out in Attachment #1 - Proponent's Price.
- 1.12 **"Evaluation Criteria"** means the criteria for scoring the Submission as stated in Section 5.2 of Proposal Evaluation Criteria and Selection Process.
- 1.13 **"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 Services provided pursuant to the Contract.

- 1.14 **“Joint Venture”** means a business arrangement of two or more parties proposed for this RFP Process, as further described in Section 3.8 of Instructions to Proponents.
- 1.15 **“Local Labour Laws”** means local laws governing labour and working conditions in any jurisdiction where the Services are performed, in whole or in part.
- 1.16 **“LUM” or “Limited Use Media”** MiFare Ultralight C based limited use media.
- 1.17 **“Metrolinx”** means Metrolinx, a provincial crown agency continued under the Metrolinx Act, S.O.2006, c.16.
- 1.18 **“Option”** means a component of the Services that is to be exercised at the sole discretion of Metrolinx.
- 1.19 **“Participant in Charge”** shall have the meaning ascribed in Section 3.8.3 of Instructions to Proponents.
- 1.20 **“Parties”** means Metrolinx and Proponent and “Party” means either of them.
- 1.21 **“Procurement Representative”** means the following individual in the Procurement Services Department:

Rachael Yiu, Procurement Officer	
Telephone number	(416) 202-5551
Email	Rachael.Yiu@metrolinx.com

- 1.22 **“Proponent”** means the legal entity that submits a Submission in response to this Proposal Document and who if selected for award shall execute the Contract with Metrolinx for provision of the Services.
- 1.23 **“Proposal Document”** means this Request for Proposals document comprised of the sections listed in the Table of Contents, issued by Metrolinx for the Services to be provided, and any Addenda thereto.
- 1.24 **“Proposal Document Forms”** means any sections of this Proposal Document which requires completion and must be included with the Submission.
- 1.25 **“RFP Process”** means the Request for Proposals procurement process set out in this Proposal Document.
- 1.26 **“Scope of Services”** means all the tangible and intangible activities, services, goods, equipment, matters and things required to be done, including all of the work, labour, services, goods, and equipment (if applicable) described in Appendix “B” – Scope of Services.
- 1.27 **“Services”** means the whole of the work to be performed and good, services and equipment (as applicable) to be provided pursuant to the Contract.

- 1.28 **"Subcontractor"** means an individual, firm, partnership, corporation or design professional having a direct contract with the Proponent or another Subcontractor to perform a part or parts of the Services, as identified in the Submission.
- 1.29 **"Submission"** means all documentation and other materials and information submitted by the Proponent in response to this Proposal Document or in respect of this RFP Process.
- 1.30 **"Technical Submission"** means the Proponent's response to Section 4.3 of Proposal Submission Requirements and any additional information requested by Metrolinx relating thereto.
- 1.31 **"Total Evaluated Price"** means the price set out in Attachment #1 – Proponent's Price.
- 1.32 **"VPM"** shall have the meaning ascribed in Section 3.18.1 of Instructions to Proponents.
- 1.33 **"VPR"** shall have the meaning ascribed in Section 3.18.2 of Instructions to Proponents.

2.0 Introduction

2.1 General

- 2.1.1 Metrolinx is issuing this Request for Proposals to retain a Proponent to provide the goods and/or services described herein. Metrolinx intends to award a Contract through an open, fair and competitive process.
- 2.1.2 You are invited to submit your Submission for RFP-2017-VM-017, as more particularly described in this Proposal Document as required by Metrolinx, which Services relates to supply of PRESTO MiFare Ultralight C based Limited Use Media & Related Services.
- 2.1.3 Metrolinx is an 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.
- 2.1.4 The objective of this Request for Proposals is to establish an agreement for the manufacture and supply of MiFare Ultralight C based Limited Use Media for the PRESTO fare management system, as well as to provide related order management, manufacturing, logistics/shipping and support services.

3.0 Instructions to Proponents

3.1 Proposal Documents

The Proposal Document shall be read as a whole. The Schedules, Appendices and Addenda, if any, constitute an integral part of this RFP Process and are incorporated by reference.

3.1.1 The documents included in this Proposal Document (with the exception of any Addenda that may be issued subsequently) include:

- (a) Attachment # 1 – Proponent’s Price

Appended Proponent pricing template entitled Attachment #1 – Proponent’s Price RFP-2017-VM-017.xlsx
- (b) Attachment # 2 - Corporate References
- (c) Attachment # 3 - Conflict of Interest
- (d) Attachment # 4 - Personnel and Technical Mandatory Requirements
- (e) Attachment # 5 - Technical Requirement for Social and Environmental Sustainability Considerations
- (f) Appendix “A” - General Conditions
- (g) Appendix “B” - Scope of Services
- (h) Appendix “C” - Metrolinx Services
- (i) Appendix “D” - Documents; including:
 - (i) Sample Articles of Agreement
 - (ii) Form of Parental Guarantee
 - (iii) Contract Performance Appraisal
- (j) Appended Proponent questions template entitled Proponent Q and A Template_RFP-2017-VM-017.xlsx

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 **MERX EBS**. Proponents shall be solely responsible for the delivery of their Submission using MERX EBS by the Closing, in accordance with the Submission Instructions herein.

- (b) Your Submission is to be firm and irrevocable for one hundred and eighty (180) calendar days from the Closing.
- (c) Your Submission will be evaluated in accordance with the Proposal Evaluation Criteria and Selection Process as outlined in this Proposal Document.
- (d) RFP Timetable

Milestone	Date
Issuance of Proposal Documents	August 3, 2017
Deadline to Submit Questions	August 23, 2017
Last day for issuance of Addenda	August 28, 2017
Closing	September 12, 2017 @ 3:00 pm Toronto time
Proponent Presentation	To Be Determined
Estimated Start of Services	December 18, 2017

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

3.2.2 Proposal Enquiries

- (a) All written enquiries and other communications prior to full Contract execution are to be directed solely to the Procurement Representative.
- (b) Information communicated to anyone else shall be considered informal and Metrolinx shall not be bound by any information given in such a manner.
- (c) Any questions concerning this Proposal Document, the contents herein, including Appendix "A" – General Conditions, or the Services contemplated herein are to be directed, in writing, to the Procurement Representative prior to the deadline for submitting questions. No questions or requests for clarifications, changes or amendments of this Proposal 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 in the Q and A process. When seeking changes or amendments to any of the

terms and conditions of this RFP 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 Proposal Document are to be submitted via e-mail to the attention of the Procurement Representative using the question and answer template which is a Word file attached separately as:

Q and A Template_RFP-2017-VM-017.xlsx

Indicate the document section related to each question being submitted as well as page, section number and details of the specific question/request. For each set of questions submitted by the Proponent, a new copy of the above referenced Q and A Template should be submitted.

- (e) When necessary, revisions to, or clarifications of this Proposal Document will be incorporated into a written addendum issued by the Procurement Representative. Information regarding this Proposal Document or the Services, 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 Addenda / Changes to the Proposal Documents

- (a) In the event that Metrolinx determines in its sole discretion, that clarifications of, or revisions to this Proposal Document are required, Metrolinx shall issue an Addenda through MERX. Information concerning the number of Addenda issued and the date of issue of the most recent Addendum can be found at www.merx.com for this RFP Process. Proponents are urged to select automatic notification of Addenda issuance when registering on MERX.
- (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. Each Addenda shall become part of this Proposal Document and the contents thereof shall be allowed for in the prices bid for the Services.
- (c) The Proponent, when ascertaining if copies of all Addenda issued have been obtained, shall be responsible for allowing sufficient time prior to the Closing to obtain any missing Addenda and to review and allow for the contents thereof in the Submission.

- (d) The Proponent shall submit the Submission using the most current revised Proposal Document Forms as issued via Addenda. Failure to use the most current pages of the Proposal Document Forms may result in the Proponent's Submission being found non-compliant and disqualified from the RFP Process.

3.2.4 Proposal Submission

- (a) Proponents submitting a Submission to Metrolinx shall exercise extreme care when completing and submitting all Proposal Document Forms.
- (b) Proponents shall examine carefully the whole of this Proposal 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 Services.
- (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 Proposal 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 should be completed fully in a clear and comprehensible manner.
- (e) Submissions must be submitted electronically through MERX EBS only. Submissions sent in any other manner shall be non-compliant and disqualified.
- (f) The Submission must be submitted on the original Proposal Document Forms as issued by Metrolinx through MERX EBS and except for designated sections where the Proponent is to enter information, this Proposal Document and the Proposal Document Forms shall not be altered in any way including, write-ins, strike-outs of the pre-printed provisions or any other qualifying statements.
 - (i) Request for changes to Appendix "A" – General Conditions must be submitted to the Procurement Representative by the deadline to submit questions as stated in Section 3.2.1(d), RFP Timetable herein.
- (g) Any Submission which contains qualifying or conditional statements shall be deemed non-responsive and disqualified unless such qualifying or conditional statements are withdrawn in writing upon request by Metrolinx.

- (h) 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 can be added, removed and/or re-submitted as often as required at any time, prior to Closing.
- (i) All prices shall be firm and quoted in Canadian funds. The prices quoted in the Submission shall represent full payment for all such Services as is necessary for the proper completion of the Contract.
- (j) Submissions must be submitted on MERX 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 process.
 - (ii) The E-Bid Authorized Signer does not have to be either the person placing the order for the Proposal 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 e-mail 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 submit the Submission.
- (k) For assistance in using MERX EBS, please watch the online Electronic Bid Submission tutorial at: <http://www.youtube.com/watch?v=To0fgSccw3M> . Alternatively, you can contact MERX directly at 1-800-964-MERX (**6379**) or visit the MERX website at www.merx.com for further instruction or assistance regarding EBS and/or E-Bid Authorized Signer registrations.
 - (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 MERX via EBS.
 - (iii) The largest individual file size that can be submitted through MERX EBS 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 the Closing. Visit tenders.merx.com/RequestEBSPin to request a PIN for the Proponent's E-bid Submission Authorized Signer.
- (l) Information contained in the most recent Submission submitted via MERX EBS and received prior to the Closing will take precedence over the information contained in previously received Submissions from the Proponent.
- (m) 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'.

3.2.5 Submission Deadline

- (a) Submissions must be fully uploaded via MERX EBS by the Closing. Any Submission or portions thereof received after the Closing (as confirmed by MERX Audit Report) shall be non-compliant and the entire Submission shall be disqualified regardless of the reason for lateness. The Proponent shall submit 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 submit the Submission via EBS, which should 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 EBS related issues.
 - (ii) If the Proponent attempts to submit their Submission, or portions thereof, after the Closing, such documents shall not be accepted by the MERX system.
 - (iii) In the event that the MERX 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 a receipt from MERX indicating that the Submission was

uploaded successfully. 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 Submissions 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 submitted a Submission shall be notified in writing of the results of the award to the successful Proponent. Results of the award to the successful Proponent shall also be posted on the Metrolinx website at www.metrolinx.com/tenders under "Bid Award Results" (Request for Proposals) and/or the MERX website at www.merx.com/metrolinx (search "Metrolinx" or the Proposal Number and select "Awards").

3.2.6 Clarification of Proposals

- (a) Metrolinx reserves the right, within one hundred and eighty (180) calendar days following the Closing, to request that any Proponent clarify its Submission and such Proponent(s) shall submit responses to such request within five (5) Business Days following receipt of such request or within such shorter time as Metrolinx may require. Metrolinx may, in its sole discretion, choose to meet with some or all of the Proponents to discuss aspects of their Submission. Metrolinx may require Proponents to submit 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 to whom this Contract is awarded must furnish a valid Workplace Safety and Insurance Clearance Certificate for the premium rate class, subclass or group as

appropriate for the Services of this Contract, as issued by the Workplace Safety and Insurance Board, within ten (10) Business Days, of notification of acceptance of its Submission by Metrolinx. Failure by the Proponent to comply with this requirement shall result in the Contract award being declared VOID.

3.3.2 Liability Insurance

- (a) As a condition of award of the Contract the Proponent shall provide to Metrolinx certificates for the following types of insurance in the amounts specified within five (5) Business Days of notification of acceptance of its Submission by Metrolinx:
- (i) Commercial General Liability Insurance in an amount of not less than ten million dollars (\$10,000,000.00) per occurrence;
 - (ii) Errors and Omissions/Professional Liability Insurance including Network Security & Privacy Coverage, which may be provided under various insurance policies (i.e. "Cyber Liability", "Network Liability", "Technology Errors and Omissions", etc.) with a limit of not less than five million dollars (\$5,000,000.00) per occurrence and in the aggregate; and
 - (iii) All Risk Property Insurance. All Risks Property Insurance shall be in the joint names of the Contractor and Metrolinx. The insurance provided shall have limits of not less than the sum of the amount of the Estimated Contract Price and the applicable Taxes. The policy shall have a deductible of no more than ten thousand dollars (\$10,000.00). The policy shall include a waiver of subrogation against the Owner.
 - (iv) Automobile Liability Insurance for owned and non-owned vehicles in an amount of not less than five million dollars (\$5,000,000.00) per occurrence. Alternatively, for Services that do not require the use of owned, non-owned, leased or hired automobile, the Proponent shall provide a written confirmation within ten (10) Business Days of contract award, stating same, in place of the insurance coverage.
 - (v) The Certificate of Commercial General Liability Insurance shall reference the Contract name and number and include the following as an additional insured:
 - 1. Metrolinx.
 - (vi) All certificates of insurance shall include a provision requiring the insurer to give Metrolinx thirty (30) calendar days' prior written notice of any changes to, or cancellation of the required insurance policies and confirmation that all policies with the

exception of Errors and Omissions, include a waiver of subrogation against Metrolinx.

- (vii) Failure by the Proponent to comply with these requirements shall result in the award of the Contract being declared VOID.

3.3.3 Parent Company Indemnity

- (a) If requested by Metrolinx, as a condition of award of Contract, a subsidiary company shall be required to submit a 'Parental Guarantee' from its parent company, in the form 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 Contract, guarantees the performance of the Contract in accordance with the terms and conditions, including timely completion thereof, and agrees to guarantee the Services for the warranty period(s) stipulated therein, if any.

3.4 Nature of Agreement

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

3.5 Rights of Metrolinx

Metrolinx reserves the right, in its sole discretion:

- 3.5.1 to cancel this RFP 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 Proposal 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 Proposal 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) 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;
 - (c) had a previous contract with a department or agency within the Ontario government that was terminated for default in the past year; or
 - (d) is an affiliate of or successor to any corporation described in Sections 3.5.9(a) through (c) above, including any firm that is controlled within the meaning of the Business Corporations Act (Ontario) 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 obtained this Proposal Document;
- 3.5.12 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 Services would not be satisfactorily completed;
- 3.5.13 to correct arithmetical errors in any or all Submissions where such errors affect extended totals, Sub-Totals, H.S.T and/or Grand Total. Arithmetical corrections shall only be made based upon the unit prices submitted by the Proponent. Corrections to extension, sums, differences or other arithmetical will be identified on the Proposal 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 non-compliant and disqualified;

3.5.14 to, upon failure of the Proponent whose Submission was accepted to fulfill the conditions of Section 3.6.2 of Instructions to Proponents, cancel award of the Contract and notify another Proponent who was determined to be qualified in accordance with the Proposal Evaluation Criteria stated herein and who submitted a compliant Submission that its Submission has been accepted and, subsequent to the fulfillment of the conditions of Section 3.6.3 of Instructions to Proponents, that Proponent shall be deemed to be the successful Proponent and the Proponent to whom the Contract is awarded;

3.5.15 After selection of the highest scoring Submission and prior to award of the Contract, to negotiate with the Proponent in question:

- (a) contract schedule, work plan and payment schedule;
- (b) changes, amendments or revisions to Appendix "A" - General Conditions including Service Levels; and
- (c) non-material changes to Appendix "B" - Scope of Services.

without offering other Proponents such an opportunity to negotiate such changes, amendments or revisions. Such negotiated changes, amendment or revisions shall become part of the Submission. Failure to successfully complete such negotiations by sixty (60) calendar days after notification to the Proponent to enter negotiations shall result in the Submission not being considered further and Metrolinx shall, in its sole discretion, select another Submission as the preferred Submission, and negotiate with that Proponent any required changes in accordance with this Section 3.5.15;

3.5.16 to select another Proponent to enter into negotiations with should negotiations with the preferred Proponent be unsuccessful; and

3.5.17 to proceed with and to enter into a Contract with the Proponent for the provision of Services, as stated in Appendix "B" - Scope of Services, with the exception of Services listed as options to be exercised at the sole discretion of Metrolinx.

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.

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 shall be no binding contract for the supply of the Services unless and until Metrolinx and the Proponent, whose Submission has been accepted, have executed the written agreements contemplated in this Proposal Document. The Proponent shall not start the Services before the Contract has been executed by the Proponent and Metrolinx and all documents required by this Proposal 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 Attachment # 3 – Conflict of Interest.
- 3.7.2 The Conflict of Interest declaration included at Attachment #3 – Conflict of Interest shall be completed and provided with the Submission.
- 3.7.3 If, at the determination of Metrolinx in its sole discretion, a Proponent is found to be in a Conflict of Interest that cannot be resolved or a Proponent fails to disclose any actual or potential Conflict of Interest, Metrolinx may, at its sole discretion, disqualify the Proponent from the RFP Process or terminate any agreement entered into with the Proponent pursuant to this RFP 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 of Instructions to Proponents.
- 3.8.3 One of the Joint Venture participants shall be nominated as being in charge during this RFP 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 RFP 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 Subcontractors, 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 RFP Process.
- 3.9.2 Without limiting the generality of Section 3.9.1, neither Proponents or Proponent team members or any of their respective Subcontractors, advisors, employees or representatives shall contact or attempt to contact, either directly or indirectly, at any time during the RFP Process, any directors, officers, employees and advisors of Metrolinx, other than the Procurement Representative.

3.10 Media Releases, Public Disclosures and Public Announcements

- 3.10.1 A Proponent shall not, and shall ensure that its team members, Subcontractors, advisors, employees, and 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 RFP Process, this Submission or any matters related thereto, without the prior written consent of Metrolinx.
- 3.10.2 A Proponent shall not, and shall ensure that its team members, Subcontractors, advisors, employees and representation do not, make any public comment, respond to questions in a public forum, or carry out any activities to either criticize another Proponent or Submission or to publicly promote or advertise its own qualifications, interest in or participation in this RFP Process without Metrolinx's prior written consent. Notwithstanding this item, the Proponent, Proponent's team members and all of the Proponent's respective advisors, Subcontractors, employees and representatives are permitted to state publicly that it/they are participating in this RFP Process.
- 3.10.3 For greater clarity, this section does not prohibit disclosures necessary to permit the Proponent to discuss this Proposal Document with prospective subcontractors regarding their participation in this RFP 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, Subcontractors, 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.
- 3.12.3 Under Ontario's Open Data Directive, Metrolinx is required to publish certain procurement information. Accordingly, the Proponent acknowledges that, subject to any applicable FIPPA exemptions, Metrolinx may publish procurement data including but not limited to the names of the Proponents and the winning bid in accordance with Ontario's Open Data Directive. For more information, see: www.ontario.ca/page/ontarios-open-data-directive.

3.13 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.

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 Proposal 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 RFP Process, including, preparation of its Submission and preparation for and participation in presentations and interviews.

3.17 Changes to Proponent Key Personnel or Subcontractors

- 3.17.1 If, after the Closing but prior to the execution of the Contract, the Proponent wishes to request a change in a Key Personnel, Subcontractor or Joint Venture, the Proponent shall notify the Procurement Representative as soon as possible and the notification shall identify the proposed change in Key Personnel, Subcontractor 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 RFP 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, Subcontractors 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 Contractor Performance Management Program

- 3.18.1 Vendor Performance Management ("VPM") Program means the Metrolinx policy for monitoring, evaluating and recording vendor performance, as same may be amended or replaced from time to time. The Vendor Performance Management Program establishes a standard methodology for the incorporation of a vendor's past performance as a criterion in assessing that vendor's bids or proposals for future work with Metrolinx.
- 3.18.2 Pursuant to Metrolinx's VPM Program, Metrolinx may consider Proponent's past performance under contracts with Metrolinx in evaluating Submissions received in response to this Proposal Document. The Vendor Performance Rating ("VPR") is the average of a vendor's performance evaluation scores (as assessed by or on behalf of Metrolinx) for a thirty-six (36) month period preceding the Closing. If a Proponent has not completed any Services for Metrolinx in the three (3) years preceding the Closing, for the purpose of evaluating the Submission, the Respondent will be assigned a VPR which is the straight average of all the VPRs of all consultants who have performed services for Metrolinx during the prior fiscal year.

- 3.18.3 If the VPR is being applied as a component of the award evaluation for this RFP Process, the legal name of the Proponent stated on the Form of Proposal will be used. It is the responsibility of the Proponent to ensure that its proper legal name has been stated on the Form of Proposal. Metrolinx will not accept any requests from the Proponent to change the legal name provided after the Closing.
- 3.18.4 In case of a Joint Venture where multiple parties will sign the Contract, the VPR of each participant will be added and the average will be applied.
- 3.18.5 For the purposes of this RFP Process, the application of the VPR is set out in the Contract Performance Appraisal as listed in Appendix "D" - Documents.

3.19 Ethical Procurement Requirements

- 3.19.1 Metrolinx is committed to purchasing goods and services from responsible producers that supply quality products at competitive prices while abiding by ethical standards and norms.
- 3.19.2 In keeping with its commitment to respect internationally recognized workers' rights and labour standards, Metrolinx requires that the Proponent confirm that, to the best of its knowledge, the Proponent and any Subcontractors comply with and will continue to comply with throughout the duration of any Contract:
- (a) all Local Labour Laws governing labour and working conditions in the jurisdiction where the Services are performed or manufactured; and
 - (b) the code of conduct set out in Schedule "3.7" – CODE OF CONDUCT of Appendix "A" – General Conditions (the "Code of Conduct").
 - (c) Where Local Labour Laws differ from the Code of Conduct, the law or standards that provides the greater right, benefit or protection to the worker shall apply.
- 3.19.3 In order to ensure that the Services are aligned with Metrolinx' values and to ensure that workplaces producing the goods to be provided hereunder respect human and worker's rights, the Proponent shall complete Attachment #4 –Ethical Procurement Requirements which requires the Proponent to provide the name and address, of all factories and production facilities used in the manufacture and assembly of the LUMs and related products.

4.0 Proposal Submission Requirements

4.1 Mandatory Requirements

- 4.1.1 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 shall result in the Proponent's Submission being deemed non-compliant and therefore not considered further.
- 4.1.2 The mandatory requirements for this Proposal Document are as follows:
- (a) The Form of Proposal must be completed in full and submitted by the E-Bid Authorized Signer.
 - (b) Pricing information must be completed and submitted on the Proposal Document Forms provided in Attachment #1 – Proponent's Price. The pricing template should be returned in .xlsx format not in pdf nor any alternative format.
 - (c) Proponents shall declare any conflicts of interest in Attachment #3 – Conflict of Interest. If Attachment #3 – Conflict of Interest is left blank the provisions of Section 10.1.3 of Attachment #3 – Conflict of Interest shall apply.
 - (d) Proponents shall provide a completed Attachment #4 –Ethical Procurement Requirements as well as a completed Officer's Attestation (Item #7 of Appendix "D" – Documents) with their Submission.

4.2 Submission Format

- 4.2.1 The Proponent's Submission must be submitted through MERX and should be in the following format:
- (a) Present information in Font Size 11 pt. on 8½ x 11 paper size.
 - (b) Include a table of contents.
 - (c) Organize information into sections which correspond to the Submission Content Requirements in the exact order described below.
 - (d) The entire content of 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: a Technical Submission, a Price Submission (in the form of Attachment #1), as well as Attachments #2, #3 and #4

(and related documentation). The information required in each Submission as well as the prescribed format in which it should be submitted is outlined below.

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.

(a) **Technical Submission Section 1: Form of Proposal**

This is to be included as the first section within the Proponent's Technical Submission.

- (i) Provide a completed Form of Proposal. The Form of Proposal must be completed in full and submitted by the E-Bid Authorized Signer. The Form of Proposal shall not be retyped, and entries shall be made directly on the Proposal Document Form provided by Metrolinx.
- (ii) If submitting as a Joint Venture, attach a copy of the Joint Venture Agreement electing the Participant-in-Charge.
- (iii) The Proponent should provide samples of its LUM product based on the following requirements:
 - 1. Provide samples of both roll stock and die cut LUM must be provided as part of the Proponent's proposal (50 die cut LUM and 1,000 LUM on roll stock).
 - 2. Ensure that the samples conform to the dimensions stated in the requirements and also comply with the specifications included in Attachment B-1.
 - 3. Submit the Proponent's own inspection and test results to ensure conformity to the physical and electrical characteristics as specified in Attachment B-1.
 - 4. Proponents may be considered non-responsive if the samples and inspection test results are not submitted with the bid or if the provided samples do not match the specifications in Appendix "B" – Scope of Services.

(b) **Technical Submission Section 2: Corporate Summary**

The Proponent should provide a corporate overview of its structure, capabilities, qualifications and experience relevant to the Services, as outlined below.

The Proponent should demonstrate its Corporate Firm's previous experience in satisfactorily and competently performing services similar in

type, size, estimated value and complexity as the Services identified in Appendix "B" - Scope of Services. The Proponent understands and agrees that Metrolinx may verify any information provided in its Submission.

(i) Corporate Summary: Description of Company

1. Provide a description of the Proponent's company, including, but not necessarily limited to: a description of the Proponent's corporate and ownership structure; a brief corporate history including number of years in business; location of offices (both head office and other) and a description of the Proponent's core business as it applies to the Services.

(ii) Corporate Summary: Corporate Firm

1. Provide a description of the structure of the Proponent's Corporate Firm;
2. Identify the principal business of key Subcontractors, professional advisors and subject matter experts it proposes to use in the performance of the Services, especially for major or critical pieces of the Services. For each Subcontractor listed, the Proponent shall provide the following:
 - a) Full corporate name and location of the Subcontractor;
 - b) Which area of the Services the Subcontractor will be employed for;
 - c) The Subcontractor's experience and qualifications relative to the Services it will be performing; and
 - d) Previous instances of the Proponent and the Subcontractor working together, including:
 - i) A description of the project and value;
 - ii) The client the services were performed for; and
 - iii) The parts of the services performed by the Subcontractor.

(iii) Corporate Experience and Qualifications

1. The Proponent should demonstrate its experience in performing Work similar in type, size and complexity as the Work identified in Appendix "B" by including a summary of the Corporate Firm's qualifications and experience relevant to the Work being contemplated, including but not limited to:
 - a) **Statement of Compliance with Requirements:** A statement declaring its compliance with the requirements in Appendix B – Scope of Services.
 - b) **Resources:** The necessary resources (manufacturing capacity, supply chain, technology, processes, etc.) to sustain and complete the Work to the satisfaction of Metrolinx;
 - c) **Payment-related Experience:** Experience supplying Limited Use Media with embedded NXP MIFARE chips for use in transit fare payment and other payment-related applications
 - d) **Capacity:** Discuss minimum manufacturing batch sizes (for regular LUMs and limited edition runs with additional graphics, such as for special events) and total current annual capacity to manufacture, store and distribute LUM supporting the Mifare® DESFire™ Ultralight C chips
 - e) **Customer Base:** Number of distinct customers for whom the Proponent currently supplies fare LUM with the Mifare® DESFire™ Ultralight C and EV1 chips and total annual volume of cards shipped;
 - f) **New Technologies:** Plans and/or commitments to support future iterations of the MiFare Ultralight C Standard and description of ability to support fast time-to-market for new and emerging technologies (citing specific examples, if available);
 - g) **Standards Support:** Support for relevant industry standards, including PCI DSS, ISO 9000-2008, ANSI, etc.;
 - h) **Finishes & Options:** Alternative finishes and other options supported (e.g., paper stock, test cards, branding, variable date printing, surprinting support, etc.). Include a description of any

constraints, special equipment or requirements for such alternatives;

- i) **Form Factors:** Describe the Proponent's ability to offer diverse form factor options (embossing, notches, etc.) that would comply with Ontario's AODA requirements.

(c) **Technical Submission Section 3: Processes & Tools**

- (i) The Proponent should describe its policies, processes and technologies used to support the following activities:

1. **Client Relationship Management:** including understanding requirements, monitoring client satisfaction and governance, and addressing issues and disputes;
2. **Order Management:** including through both manual and electronic channels and providing Metrolinx with information on order status, history, etc. through a web portal or similar means.

Describe processes for identifying client requirements and integrating with existing client order management systems and processes.

Indicate typical lead times between ordering and fulfillment for both standard and special-order LUM (e.g., with event-specific graphics and text);

3. **Forecasting, Planning and Supply Chain Management:** Forecasting, planning, capacity and inventory management and supply chain management to ensure uninterrupted access to raw materials and ensure an adequate supply of pre-encoded and un-encoded LUM cards to meet Metrolinx needs;
4. **Quality Management:** Quality control and continual process improvement during and after manufacturing (including during storage), including procedures to monitor, document, remedy and report on any deficiencies in the quality of materials and workmanship whether performed by the Proponent's own employees, Subcontractors or any other third party
5. **Card Encoding :** Installing client applications and encoding fare products onto cards;

6. **Security:** Ensuring physical and digital security during order processing, manufacturing, storage and shipping;
7. **Shipping:** Shipping, tracking and return management (including within Ontario), including receiving defective cards, performing root cause analysis, communicating findings to client and resolving issues;
8. **Reporting:** Reporting on orders, inventory, returns/recalls, defects and providing additional information to support client's reconciliation and billing processes;
9. **Support:** Working with clients to support specific incidents and problems; and
10. **Retail Channel Support:** Ability to work directly with Metrolinx retailer partners or retailer support services provider to receive and fulfill orders, including shipping, accepting payment, managing returns, providing related support and reporting to Metrolinx. Describe the role that your organization can play in supporting this new sales channel for PRESTO Limited Use Media. Discuss both the ability to ship directly to retail stores and to central warehouses.

(d) **Technical Submission Section 4: Service Levels**

- (i) **Service Levels:** The Proponent should describe its ability to support the following service levels, including references to related processes and tools for monitoring, reporting on and remedying service level failures. For each of the service levels identified below, the Proponent should provide its standard service level commitment and mention any additional service levels that it supports:
 1. Shipping orders within a pre-defined timeframe following the receipt of an order, including:
 - a) Orders below a certain threshold (e.g., 100,000 LUM);
 - b) Orders above a certain threshold (e.g., > 100,000 LUM);
 - c) Maintaining a low incidence of defective cards (e.g., < 99.5% of any orders over 100 will have defects); and

- d) Providing notification to PRESTO for any incidents related to PRESTO LUM orders or inventory: Notify PRESTO within pre-determine time (e.g., 1 hour for priority 1 incidents, 4 hours for priority 2 incidents, 1 business day for priority 3 incidents, etc.).

(e) **Technical Submission Section 5: Social and Environmental Sustainability**

(i) **Social and Environmental Sustainability Considerations**

The Proponent is to submit with their submission Attachment #5 – Social and Environmental Sustainability Considerations. Information provided as part of Attachment #5 is a new requirement and will not be scored. Metrolinx is interested in gauging the Proponents level of preparedness as it relates to Social and Environmental Sustainability Considerations. There are a number of different policies or management systems included in this section. Each is described below.

Please indicate which policy you have in place by responding Yes or No on Attachment #5. If you answer Yes, please provide a copy of the policy.

1. Environmental and social policies and management systems:
 - a) Proponents are to identify whether they or their Subcontractors have an environmental management system, including ISO 140001, RC 140001, EMAS, which covers the main manufacturer(s) of the LUM product, whether that is the Contractor or a Subcontractor.
 - b) Proponents are to provide their published annual sustainability or corporate social responsibility report if they have one, that provides disclosure on resources consumption (e.g. energy, water, chemical, natural resources, etc.), emissions to air, land and water, hazardous waste management and plans and targets for continuous improvement.
 - c) Proponents are to provide a list of any infractions of or finding of non-compliance with any applicable environmental laws or regulations in the past five (5) years, including any fines or

penalties assessed against the Proponent or any of its Subcontractors as a result thereof.

- d) Proponents are to provide their published conflict minerals policy and an overview of targets and programs intended to eradicate conflict minerals from the supply chain.

2. Minimizing the lifecycle impact of the LUM items

- a) The Proponent should describe its ability to support environmental sustainability, including through the use of Forest Stewardship Council (FSC) certified paper for LUM and compliance with the RoHS (Restriction on Use of Hazardous Substances in Electrical and Electronic Equipment) standard, where applicable.
- b) Proponents should describe whether they have the ability to produce a conveniently recyclable LUM or any future plans to do so.
- c) Proponents are to provide any other environmental performance features of note including but not limited to, recycled content of LUM, durability, toxic chemical reduction, or other policies for recycling and processing of all waste materials and chemicals.

3. Steps to influence Subcontractors to adopt more progressive environmental practices:

- a) The Proponent is to provide any environmental requirements/expectations that are included in contractual agreements with Subcontractors including examples of excerpts from contracts/agreements, applicable codes of conduct; and
- b) The Proponent is to provide their process for auditing and verifying conformance of Subcontractors to their applicable codes of conduct and or any other environmental or social criteria if they have them.

(f) Technical Submission Section 6: Description of Corporate Projects and References

(i) **Corporate References Related to Scope of Services**

1. The Proponent should provide a list of three (3) references, for relevant projects completed within the past five (5) years or currently active, which demonstrate the Corporate Firm's experience, qualifications and its capacity to perform and manage projects of similar scope, complexity and estimated value. Any projects of similar type, size, estimated value and complexity as the Services that have been completed for Metrolinx must be included as part of the three (3) reference projects provided by the Proponent. The Proponent should, using the template provided in Attachment #2 – Corporate References, in this section provide the following information for each corporate reference project:
 - a) Name of the company for which the work was performed;
 - b) Project title;
 - c) Contact person's name, title, telephone number and e-mail address; and
 - d) Start and completion date.

(ii) Reference Checks: References will be verified using a standard uniform method. Opinions of previous clients regarding budget and schedule experience, dependability, attitudes of employees and/or the Subcontractor, concern for efficiency, economy and environment, sensitivity to community, and quality of service among others may be taken into account when evaluating the reference projects.

(iii) The Proponent should provide a description of each **reference project**. Each description is to be a maximum of two (2) pages and should contain the following:

1. Project description and project value;
2. Description of services provided and how they are relevant to Services being requested ;
3. Identification of project's relevance to the Services being requested;

4. List of any Key Personnel that were engaged on the project and their project roles, if applicable; and

(g) **Technical Submission Section 7 - Proposal Organization**

- (i) The Proponent should submit their Submission in accordance with Section 4.2 – Submission Format.

4.4 Price Submission

- 4.4.1 A Submission shall include a Pricing Submission. Pricing information must be completed and submitted using the Excel template provided, entitled Attachment #1 – Proponent’s Price. The pricing template must be submitted as a separate file preferably in Excel (.xlsx) format.

5.0 Proposal Evaluation Criteria and Selection Process

5.1 Proposal 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 Proposal Evaluation Criteria Section below.
- 5.1.2 Each criterion is evaluated. Mandatory criteria will be rated pass or fail. All other Evaluation Criteria 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 three (3) phases, as follows:

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

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

- (b) Phase Two: Technical Evaluation (60% weighting)

Submissions proceeding to Phase Two shall be evaluated by the Evaluation Committee in accordance with the Proposal Submission Requirements above and Evaluation Methodology below. Only those Submissions achieving a total minimum score of 60% (360 points out of 600 possible points) as determined by the Evaluation Committee shall be considered further and shall proceed to Phase Three of the evaluation process.

- (c) Phase Three: Pricing Evaluation (40% weighting)

- (i) Attachment #1 – Proponent’s Price shall be evaluated for the Submissions which achieve the minimum scores on each of the Phase Two of the evaluation.
- (ii) Attachment #1 - Proponent's Price shall not be evaluated for those Proponents whose Submissions do not achieve the specified minimum score requirement to proceed to Pricing Evaluation.
- (iii) Pro-Rated

An administrative evaluation shall be conducted of Attachment #1 – Proponent’s Price to determine compliance with the mandatory requirements as stated in the Instructions to Proponents. The pricing of each Submission proceeding to Pricing Evaluation shall be evaluated and scored as follows:

1. Part A of Attachment #1 – Proponent’s Price (90% weighting)

- a) The Submission with the lowest Part A price shall receive the maximum score of ten (10) points for this portion of the Pricing Evaluation.

- b) The following equation shall be applied to Part A of all other Submissions to determine a score out of ten:

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

The score out of ten for Part A shall be multiplied by the weighting factor of thirty-six (36) to result in a score out of three hundred and sixty (360) points.

2. Part B of Attachment #1 – Proponent’s Price (10% weighting)

- a) The Submission with the lowest Part B price shall receive the maximum score of ten (10) points for this portion of the Pricing Evaluation.

- b) The following equation shall be applied to Part B of all other Submissions to determine a score out of ten:

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

The score out of ten for Part B shall be multiplied by the weighting factor of four (4) to result in a score out of forty (40) points.

3. The aggregate of the weighted scores for Part A and will result in a Pricing Evaluation score (out of 400 points).

5.1.4 The score out of four hundred (400) points for Pricing Evaluation shall be added to the total score for Phase Two and Phase Three to determine the Total Overall Score for the Submission to determine the Total Overall Score for the Submission
Total Overall Score

- (a) Total Overall Score = Phase Two: Technical Evaluation + Phase Three: Pricing Evaluation

5.1.5 Selection of Submissions

- (a) Metrolinx's selection shall be based on which Proponent has provided a Submission which Metrolinx determines in its sole discretion to provide the greatest value to Metrolinx based on the Evaluation Criteria contained in this Proposal Document.
- (b) Total Overall Score: Subject to Section 3.5.15, the award of the Contract shall be made to the Submission which has achieved the highest Total Overall Score.

5.2 Proposal 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 Component	Maximum Score	Weighting Factor	Total (Score x Weight)
Phase One: ADMINISTRATIVE EVALUATION (Compliant / Non-Compliant)			
Phase Two: TECHNICAL EVALUATION			
Technical Submission Section 1: Form of Proposal and LUM Samples (Compliant / Non-Compliant)			
Technical Submission Sections 2, 3, 4 & 5: Corporate Summary, Policies, Processes, Technologies, Service Levels and Social and Environmental Sustainability			
Description of Company	10	5	50
Corporate Firm	10	10	100
Corporate Experience & Qualifications	10	10	100
Policies, Processes and Technologies	10	10	100
Service Levels	10	10	100
Subtotal Corporate Summary, Policies, Processes and Technologies, Service Levels:		45	450

Evaluated Component	Maximum Score	Weighting Factor	Total (Score x Weight)
Technical Submission Section 6: Description of Corporate Projects and References			
Description of Corporate Reference Project 1 and Corresponding Reference	10	5	50
Description of Corporate Reference Project 2 and Corresponding Reference	10	5	50
Description of Corporate Reference Project 3 and Corresponding Reference	10	5	50
Subtotal Description of Corporate Projects and References:		15	150
SUBTOTAL PHASE TWO:		60	600
Phase THREE: PRICING EVALUATION			
Pricing for Part A		36	360
Pricing for Part B		4	40
SUBTOTAL PHASE THREE:		40	400
TOTAL OVERALL SCORE:		100%	1,000

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:

Score	Description
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 Proposal

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

Proposal Number: RFP-2017-VM-017

Proposal Description: Supply of PRESTO MiFare Ultralight C based Limited Use Media & Related Services

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.

Requirement	Confirmation (left click with your mouse in the box to select)
The Submission has been submitted by the E-Bid Authorized Signer.	<input type="checkbox"/>
Contact information for the individual responsible for the Submission has been included in the Form of Proposal.	<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. formats, templates and requirements) as outlined in the Proposal Document.	<input type="checkbox"/>
The Proponent's Price Submission (Attachment #1 – Proponent's Price) 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 Proposal Documents including any Addenda that have been issued and these have all been considered in the Proponent's Submission.	<input type="checkbox"/>
The Proponent has reviewed the mandatory requirements and acknowledges that it meets all mandatory requirements in order for its Submission to be	<input type="checkbox"/>

Requirement	Confirmation (left click with your mouse in the box to select)
considered further.	
The Proponent has reviewed the RFP Timetable and understands all the dates and timelines associated with the RFP Process.	<input type="checkbox"/>
If a Joint Venture, attach a copy of the Joint Venture agreement electing the Participant-in-Charge.	<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:

[Click here to enter text.](#)

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

[Click here to enter text.](#)

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

[Click here to enter text.](#)

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

[Click here to enter text.](#)

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

[Click here to enter text.](#)

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

[Click here to enter text.](#)

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 perform all necessary work to complete the assignment described in Appendix "B" - Scope of Services.

6.3.2 The Proponent hereby undertakes to perform the Services in strict accordance with the full intent of the terms, conditions and requirements set forth in the following documents which form the Proposal Documents:

ANY ADDENDA ISSUED HERETO
INSTRUCTIONS TO PROPONENTS
PROPOSAL SUBMISSION REQUIREMENTS
PROPOSAL EVALUATION CRITERIA AND SELECTION PROCESS
FORM OF PROPOSAL
ATTACHMENT #1 - PROPONENT'S PRICE
ATTACHMENT #2 - CORPORATE REFERENCES
ATTACHMENT # 3- CONFLICT OF INTEREST
ATTACHMENT # 4 - PERSONNEL AND TECHNICAL MANDATORY REQUIREMENTS
ATTACHMENT #5 - Social and Environmental Sustainability Considerations
APPENDIX "A" - GENERAL CONDITIONS
APPENDIX "B" - SCOPE OF SERVICES
APPENDIX "C" - METROLINX'S SERVICES
APPENDIX "D" - DOCUMENTS

6.3.3 The Proponent acknowledges receipt of any and all Addenda issued hereto and that its 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 eighty (180) calendar days from the Closing. The Proponent hereby covenants that it shall perform and execute the Services, in accordance with the Contract prices quoted herein if it is notified in writing by Metrolinx within the one hundred and eighty (180) calendar day period that it is the successful Proponent.

6.3.5 The Proponent acknowledges that it must meet all the mandatory requirements identified in Attachment # 4 – Personnel and Technical Mandatory Requirements in order for its Submission to be considered further. Failure of a Proponent to meet all of the mandatory requirements shall result in the Proponent's Submission being non-compliant and therefore not considered further.

6.3.6 The Proponent acknowledges that its Submission should be in the correct format using the appropriate Proposal Document Forms and instructions as provided herein. Failure to comply may result in the Proponent being found non-compliant and disqualified at the sole discretion of Metrolinx.

- 6.3.7 The Proponent acknowledges that by way of the E-Bid Authorized Signer submitting a Submission the Proponent is agreeing to be bound to each and every term, condition, article and obligation of the Proposal Document and any resultant Contract.
- 6.3.8 The Proponent acknowledges that consistent with Section 3.6.3 of Instructions to Proponents, failure by the Proponent, whose Submission was accepted by Metrolinx, to execute and return the Contract with any other documents as may be required within the specified time, could result in the cancellation of the Contract.

6.4 Requirements

- 6.4.1 The Proponent shall provide personnel and resources to perform the Services in accordance with the Scope of Services, attached as Appendix "B";
- 6.4.2 The Services are to be provided to the satisfaction and acceptance by Metrolinx, unless otherwise specified.

6.5 Harmonized Sales Tax

In accordance with Section 9.1(f) of 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: [Click here to enter text.](#)

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

7.0 Attachment #1 – Proponent’s Price

- 7.1 Proponents shall fully complete the appended Excel file entitled Attachment #1 – Proponent’s Price RFP-2017-VM-017 and insert a Unit Price into each space provided under the Unit Price column.
- 7.2 Attachment #1 – Proponent’s Price, 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-compliant and disqualified.
- 7.3 It is Metrolinx’s preference that Proponents submit their pricing using the appended Excel file format to facilitate the Metrolinx pricing evaluation process.
- 7.4 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.
- 7.5 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 – Corporate References

The Proponent should, using the template below, provide corporate reference information as indicated in this Attachment #2 – Corporate References. The Proponent should ensure that all contact information provided for each reference 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 project.

Proponents should review the Proposal Submission Requirements section to ensure compliance with the submission requirements.

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

9.0 Attachment #3 – Conflict of Interest

9.1 Conflict of Interest

“Conflict of Interest” means

- 9.1.1 in relation to this RFP Process, the Proponent has an unfair advantage or engages in conduct, directly or indirectly, that may give it an unfair advantage, including but not limited to (i) having, or having access to, confidential information of Metrolinx in the preparation of its Submission that is not available to other Proponents, (ii) communicating with any person with a view to influencing preferred treatment in this RFP Process (including but not limited to the lobbying of decision makers involved in this RFP Process), or (iii) engaging in conduct that compromises, or could be seen to compromise, the integrity of this RFP Process; or
- 9.1.2 in relation to the performance of its contractual obligations contemplated in the Contract that is the subject of this procurement, the Proponent’s other commitments, relationships or financial interests (i) could, or could be seen to, exercise an improper influence over the objective, unbiased and impartial exercise of its independent judgement, or (ii) could, or could be seen to, compromise, impair or be incompatible with the effective performance of its contractual obligations.
- 9.1.3 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 Proposal 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 Proposal 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:

Click here to enter text.

- 9.1.4 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, advisors or

Proponents of Metrolinx at any time within the twelve (12) months prior to the Closing:

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

9.1.5 (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.

10.0 Attachment #4 –Ethical Procurement Requirements

- 10.1 Proponents shall complete the mandatory requirements compliance checklist below, and include this Attachment #4 as well as a completed Officer’s Attestation (found as Item #7 in Appendix “D”) with their Submission. Failure of a Proponent to complete and submit these requirements and this Attachment #4 may result in the Proponent’s Submission being found non-compliant and disqualified.
- 10.2 Proponents must complete all mandatory requirements stated below in order for their Submission to be considered further. Failure of a Proponent to include with their Submission all of the mandatory requirements listed below shall result in the Proponent’s Submission being considered non-responsive. Non-responsive Submissions shall not be considered further and shall be disqualified.
- 10.3 Proponents shall provide supporting documentation to substantiate compliance to each of the listed mandatory requirements. Failure of a Proponent to provide information required to substantiate compliance to a mandatory requirement may result in the Proponent’s Submission being found non-compliant and disqualified.
- 10.4 Metrolinx has the right but not the obligation, to carry out further investigations to ensure the Proponent and/or designated Subcontractor can meet the mandatory requirements to the satisfaction of Metrolinx in its sole discretion.
- 10.5 By submitting this Proposal the Proponent agrees, to the best of its knowledge, the Proponent and any Subcontractors for the Services comply with all Local Labour Laws governing labour and working conditions and the Schedule “3.7” – CODE OF CONDUCT (as included in Appendix “A” - General Conditions).

Mandatory Technical Requirements			
Reference	Mandatory Requirements	Compliance (Check “X”) either Yes or No)	Supporting Documentation Required to Substantiate Compliance
Instruction to Proponents	The Proponent’s confirmation of compliance with the ethical procurement requirements set out in Section 3.19 of the Instructions to Proponents.	YES <input type="checkbox"/> NO <input type="checkbox"/>	Completed and signed statement of compliance with the ethical procurement requirements set out in Section 3.19 of the Instructions to Proponents, in the form set out in Appendix “D” – Documents, Item #7.

Mandatory Technical Requirements			
Reference	Mandatory Requirements	Compliance (Check ("X") either Yes or No)	Supporting Documentation Required to Substantiate Compliance
Instruction to Proponents	The Proponent shall provide the name(s) and address(s) of all the factories and production facilities used in the manufacture and assembly of the LUM products.	YES <input type="checkbox"/> NO <input type="checkbox"/>	Provide, along with this Attachment #4, the name(s) and address(s) of all factories and production facilities used in the manufacture and assembly of the LUM products.
Section 4.3.1(a)(iii) – Technical Submission Section 1	Provide samples of Limited Use Media that comply with specifications in Appendix "D"- Document, Item No. 6 - Ticket MiFare Ultralight Spec.	YES <input type="checkbox"/> NO <input type="checkbox"/>	Samples included with Proponent's Submission

11.0 Attachment #5 – Social and Environmental Sustainability Considerations

11.1 Proponents shall check the box for each of the listed items below and provide supporting documentation. Information in this section is not mandatory and will not be scored. See Section 4.3.1(e) for more information on the intend associated with this Attachment.

Reference Section	Items	Compliance (Check "X" either Yes or No)	Supporting Documentation Required to Substantiate the Requirement
Reference: Proponent Submission Requirements 4.3.1(e)(1)(a)	Does the Proponent and/or its Subcontractors have an environmental management system, including ISO 140001, RC 140001 or EMAS, which covers the main manufacturer of the LUM product, whether that is the Contractor or the Subcontractor?	YES <input type="checkbox"/> NO <input type="checkbox"/>	Provide with Attachment #5 the environmental management system for main manufacturer of the apparel
Reference: Proponent Submission Requirements 4.3.1(e)(1)(b)	Does the Proponent have any published annual sustainability or corporate social responsibility reports that provide disclosure on (any or all of) resources consumption, emissions to air, land and water, hazardous waste management and plans and targets for continuous improvement?	YES <input type="checkbox"/> NO <input type="checkbox"/>	Provide with Attachment #5 any applicable reports.
Reference: Proponent Submission Requirements 4.3.1(e)(1)(c)	Has the Proponent or any of its Subcontractors had any infractions of or findings of non-compliance with any applicable environmental laws or regulations in the past five (5) years?	YES <input type="checkbox"/> NO <input type="checkbox"/>	If yes, please provide, in a separate document, with Attachment #5, details setting out the infraction or non-compliance and the fine or penalty.
Reference: Proponent Submission Requirements 4.3.1(e)(1)(d)1.b)i)	Does the Proponent have a published conflicts minerals policy and/or targets and programs in place to eradicate conflict minerals from the supply chain?	YES <input type="checkbox"/> NO <input type="checkbox"/>	Provide with Attachment #5 a copy of the policy, as well as an overview of applicable targets and programs.
Reference: Proponent Submission	Does the Proponent have the ability to support environmental sustainability, including through the use of Forest Stewardship Council (FSC)	YES <input type="checkbox"/>	Provide with Attachment #5 the use of Forest

Reference Section	Items	Compliance (Check ("X") either Yes or No)	Supporting Documentation Required to Substantiate the Requirement
Requirements 4.3.1(e)(2)(a)	certified paper for LUM and compliance with the RoHS (Restriction on Use of Hazardous Substances in Electrical and Electronic Equipment) standard, where applicable.	NO <input type="checkbox"/>	Stewardship Council (FSC) certified paper for LUM and compliance with the RoHS standard.
Reference: Proponent Submission Requirements 4.3.1(e)(2)(b)	Does the Proponent have the ability to produce a conveniently recyclable LUM or any future plans to do so?	YES <input type="checkbox"/> NO <input type="checkbox"/>	Provide with Attachment #5 details on the Proponent's ability to produce a conveniently recyclable LUM, or any future plans (as and if applicable).
Reference: Proponent Submission Requirements 4.3.1(e)(2)(c)	Does the Proponent have any other environmental performance features of note including but not limited to recycled content, recyclable product, sustainable packaging, durability, toxic chemical reduction.	YES <input type="checkbox"/> NO <input type="checkbox"/>	Provide details with Attachment #5.
Reference: Proponent Submission Requirements 4.3.1(e)(3)(a)	Does the Proponent have any environmental requirements/expectations that are included in contractual agreements with Subcontractors.	YES <input type="checkbox"/> NO <input type="checkbox"/>	Provide examples (including excerpts of contracts, codes of conduct or similar) with Attachment #5
Reference: Proponent Submission Requirements 4.3.1(e)(3)(b)	Does the Proponent have a process for auditing and verifying conformance of Subcontractors to their applicable code of conduct and or any other environmental or social criteria.	YES <input type="checkbox"/> NO <input type="checkbox"/>	Provide details of the Proponent's process with Attachment #5.

Appendix "A" – General Conditions

List of Contents

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

Item No.	Description
Article 1	DEFINITIONS
Article 2	SCOPE OF CONTRACT
Article 3	GENERAL OBLIGATIONS
Article 4	PRODUCTION REQUIREMENTS AND ORDER MANAGEMENT
Article 5	TIMELINES, SERVICE LEVELS AND QUALITY ASSURANCE
Article 6	METROLINX RIGHTS AND OBLIGATIONS
Article 7	GENERAL FINANCIAL TERMS AND CONDITIONS
Article 8	CHANGE MANAGEMENT
Article 9	CONFIDENTIALITY
Article 10	INTELLECTUAL PROPERTY RIGHTS
Article 11	REPRESENTATIONS AND WARRANTIES
Article 12	REMEDIES
Article 13	LIMITATION OF LIABILITY
Article 14	DEFAULT AND TERMINATION
Article 15	INSURANCE
Article 16	DISPUTE RESOLUTION
Article 17	GENERAL PROVISIONS
SCHEDULE "3.2"	GOVERNANCE
SCHEDULE "3.7"	CODE OF CONDUCT
SCHEDULE "3.9"	SECURITY REQUIREMENTS
SCHEDULE "5.2"	SERVICE LEVELS
SCHEDULE "9.1"	FORM OF SECURITY STATEMENT
SCHEDULE "16.2"	DISPUTE RESOLUTION

GENERAL CONDITIONS

ARTICLE 1 INTERPRETATION

1.1 **Definitions**

Capitalized terms used in this Contract shall have the meanings ascribed to them as follows:

- (a) "**Affiliate**" has the meaning ascribed to it at the date hereof in subsections 2(2) through 2(5) of the *Canada Business Corporations Act*.
- (b) "**Annual Forecast**" is defined in Section 4.5(a).
- (c) "**Applicable Laws**" means any statute, law (including the common law), ordinance, rule, regulation, restriction, regulatory policy or guideline, by law (zoning or otherwise), or order, or any consent, exemption, approval or licence of any Governmental Authority, in each case applicable to either of the Parties or the performance of the Services.
- (d) "**Arbitration Act**" means the *Arbitration Act, 1991*, S.O. 1991, c. 17.
- (e) "**Articles of Agreement**" means the articles of agreement executed by the Parties to which this Contract are attached.
- (f) "**Audit**" is defined in Section 6.2(b).
- (g) "**Audit Period**" is defined in Section 6.2(b).
- (h) "**Auditor**" is defined in Section 6.2(b).
- (i) "**Base Inventory**" is defined in Section 4.5(b).
- (j) "**Business Day**" means any day other than a Saturday, Sunday, statutory or civic holiday in Toronto, Ontario, Canada.
- (k) "**Business Hour**" means any hour between 8:00 P.M. and 5:00 P.M EST on a Business Day.
- (l) "**Card Media**" means cards, made out of paper or plastic (OVC, PET, polycarbonate, etc.) or similar material, with printed graphics and/or text and/or embossing, and embedded Near Field Communications chips (including the NXP MiFARE® Ultralight C chip , for use in electronic payment applications.
- (m) "**Card Packaging**" means cardboard boxes, shrink wrap, sleeves and/or any other materials used to package, store, display or hold, or intended to accompany, Products.
- (n) "**Change of Control**" shall have occurred where any Person other than an Affiliate of Contractor gains control (whether by way of share or asset purchase or otherwise) of the

managed or outsourced services business of Contractor, and “control” with respect to a share purchase means ownership of security or interests in an entity to which twenty percent (20%) or more of the votes exercisable are attached.

- (o) “**Change Order**” is defined in Section 8.2(a).
- (p) “**Change Order Agreement**” is defined in Section 8.2(c).
- (q) “**Change Order Process**” means the process set out in Article 8.
- (r) “**Change**” is defined in Section 8.1(a).
- (s) “**Claim**” is defined in Section 12.5(a).
- (t) “**Client Interface**” is defined in Section 4.2(b).
- (u) “**Completed**” is defined in Section 7.2
- (v) “**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) to Contractor (including to employees, contractors, or other representatives thereof). For greater certainty, all Metrolinx Technology, personal information (as defined in FIPPA), and anything else specifically marked or identified as confidential or proprietary are agreed to be “**Confidential Information**” for the purposes of this Contract.
- (w) “**Contract**” has the meaning set out in the Articles of Agreement, and for greater certainty includes all schedules, attachments and instruments supplemental or ancillary hereto or thereto in amendment or confirmation, and hereof or thereof, and “hereof”, “hereto”, “hereunder” and similar expressions refer to the foregoing in general and not to any particular Section or subdivision thereof.
- (x) “**Contract Authority**” has the meaning ascribed to it in the Governance Schedule.
- (y) “**Contract Year**” means each 12-month period beginning on the Effective Date and on each subsequent anniversary thereof during the Term.
- (z) “**Contractor 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 Contractor or which Contractor has the right and licence to use and make available to Metrolinx, in each case that was either: (a) created prior to the Effective Date; or (b) created, developed or produced independently of this Contract and/or the performance of the Services.

- (aa) "**Contractor Facility**" means any location owned or leased by Contractor and used to perform the Services (or any part thereof), including the manufacture or assembly of the Products.
- (bb) "**Contractor Indemnitee**" means Contractor and its Affiliates and their respective officers, directors, employees, agents, successors and assigns.
- (cc) "**Contractor Performance Review**" is defined in Section 6.3(a).
- (dd) "**Contractor Representative**" is defined in Section 3.2(b).
- (ee) "**Contractor's Submission**" means all documentation and other materials and information submitted by the Contractor in response to or in respect of the RFP process relating to RFP# 2016-VM-037.
- (ff) "**Deliverables**" means any and all documentation, scripts, improvements, tools, software, structures, techniques, inventions, developments, processes, discoveries and any other work product created or developed by or on behalf of Contractor in connection with the performance of the Services (and includes any and all Intellectual Property Rights in or to the foregoing provided that such rights are subject to Section 10.2), but excluding the Products and the Contractor Background IP.
- (gg) "**Direct Claim**" is defined in Section 12.5(a)
- (hh) "**Disabling Device**" is defined in Section 4.3(c).
- (ii) "**Dispute**" is defined in Section 16.1.
- (jj) "**Domain Expertise**" means: (a) the required level of depth and breadth of qualifications and experience in respect of the tasks to be performed in connection with the Services, gained through a practical application of the knowledge underlying the tasks in an environment substantially similar to that of the Services; and (b) the possession of all requisite licences, rights and other authorizations required by Applicable Laws.
- (kk) "**Effective Date**" means the date first set out in the Articles of Agreement.
- (ll) "**Electronic Transmission**" is defined in Section 17.3(c).
- (mm) "**Excusable Delay**" is defined in Section 5.1(c).
- (nn) "**Fees**" is defined in Section 7.2(a).
- (oo) "**FIPPA**" means the *Freedom of Information and Protection of Privacy Act* (Ontario).
- (pp) "**Force Majeure Event**" is defined in Section 13.4(a).

- (qq) "**Governance Schedule**" is defined in Section 3.2(a).
- (rr) "**Governmental Authority**" means any government, regulatory authority, governmental department, agency, commission, official, minister, court, tribunal, or dispute settlement panel or other law, rule, or regulation-making organization or entity having or purporting to have jurisdiction over, or exercising, or entitled or purporting to exercise any administrative, executive, judicial, legislative, policy, regulatory, or taxing authority or power over, either of the Parties or the Services; provided, however, for the purposes of this Contract, "**Governmental Authority**" does not include Metrolinx.
- (ss) "**Import Charges**" means any taxes, tariffs, fees, duties or other charges payable on goods imported or exported from one country to another, including all customs and import duties, brokerage fees, handling fees, filing or clearance fees, handling fees, agent fees, inspection charges, demurrage, detention or storage charges, and penalties.
- (tt) "**Indemnified Party**" is defined in Section 12.5(a).
- (uu) "**Indemnifying Party**" is defined in Section 12.5(a).
- (vv) "**Index**" means the Statistics Canada index currently known as the Consumer Price Index for Canada, or if such index is not available for any reason, a comparable index which is agreed by the Parties or, failing agreement, determined by dispute resolution pursuant to Article 16.
- (ww) "**Index Adjuster**" means the 12-month percentage change to the Index, as published in the month of [TO BE INSERTED BASED ON EFFECTIVE DATE] of the calendar year in which the adjustment to the Fees is to take effect.
- (xx) "**Initial Term**" is defined in Section 2.2(a).
- (yy) "**Intellectual Property Rights**" includes any proprietary right provided under (a) patent law, (b) copyright law, (c) trade-mark law, (d) design patent or industrial design law, (e) semi-conductor chip or mask work law, and (f) any other statutory provision or common law principle applicable to the Services or Deliverables which may provide a right in either (x) ideas, formulae, algorithms, concepts, inventions or know-how generally including trade secret law, or (y) the expression of such ideas, formulae, algorithms, concepts, inventions or know-how.
- (zz) "**Invoice**" is defined in Section 7.2(c).
- (aaa) "**Landlord**" is defined in Section 4.4(d).
- (bbb) "**Local Labour Laws**" is defined in Section 3.7(a).

- (ccc) "**Losses**" means all losses, liabilities, fines, damages and costs (including taxes) and related costs and expenses, including reasonable legal fees and disbursements and costs of investigation, litigation and settlement, together with interest and penalties.
- (ddd) "**Maximum Contract Price**" means the total contract price set out in the Articles of Agreement, or otherwise as amended pursuant to the Change Order Process.
- (eee) "**Maximum Defect Rate**" is defined in Section 5.4.
- (fff) "**Metrolinx Location**" means the location identified on the Order Form as the location for delivery of any Order.
- (ggg) "**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 Contractor; (b) all procurement documents issued by Metrolinx; (c) all documentation or source materials (including source code) related to any of the foregoing; and (d) all copies, translations, improvements, modifications, enhancements, adaptations, or derivations made to the Metrolinx Materials by Metrolinx or any third party not performing work under this Contract.
- (hhh) "**Metrolinx Indemnitee**" has the meaning ascribed to it in Section 12.2.
- (iii) "**Metrolinx IP**" is defined in Section 10.1(a).
- (jjj) "**Metrolinx Technology**" means the Security Keys and the Metrolinx Materials.
- (kkk) "**Metrolinx Client**" means a transit service provided to which Metrolinx provides PRESTO and/or related services, which, as of the date hereof, include GO Transit, UP Express, Brampton Transit, Burlington Transit, Durham Region Transit, Hamilton Street Railway, Mississauga Transit, Oakville Transit, York Region Transit, OC Transpo, and the Toronto Transit Commission."
- (lll) "**New Services**" is defined in Section 2.1(b).
- (mmm) "**Order**" means an order for any number of Products submitted to Contractor under this Contract.
- (nnn) "**Order Form**" is defined in Section 4.2(c).
- (ooo) "**Party**" means either Contractor or Metrolinx and "**Parties**" means both of them.

- (ppp) "**Person**" means any individual, company, corporation, partnership, government or government agency, authority or entity howsoever designated or constituted.
- (qqq) "**Personnel**" means any employees, contractors, independent contractors, officers, agents and/or representatives of Contractor or its Subcontractors who are assigned by Contractor or its Subcontractors to perform, or who are otherwise involved with, Contractor's obligations under this Contract.
- (rrr) "**Production Requirements**" is defined in Section 4.2(a).
- (sss) "**Products**" means all Card Media, all Card Packaging and any other goods provided under this Contract.
- (ttt) "**Recall**" is defined in Section 5.4.
- (uuu) "**Recoverable Taxes**" is defined in Section 7.2(e).
- (vvv) "**Renewal Term**" is defined in Section 2.2(b).
- (www) "**Secure Storage Facility**" is defined in Section 4.4(a).
- (xxx) "**Security Keys**" means cryptographic keys used to ensure the security, confidentiality and integrity of the data stored on the Card Media.
- (yyy) "**Service Levels**" is defined in Section 5.2(b).
- (zzz) "**Service Level Credits**" means the credits to be provided to Metrolinx by Contractor for Contractor's failure to meet any Performance Requirement and which are more fully described in the Service Level Agreement.
- (aaaa) "**Services**" means the whole of the work to be performed and goods and services to be provided pursuant to this Contract.
- (bbbb) "**Subcontractor**" means an individual, firm, partnership, corporation or design professional having a direct contract with the Contractor or another Subcontractor to perform a part of parts of the Services.
- (cccc) "**Taxes**" is defined in Section 7.3(a).
- (dddd) "**Term**" means the Initial Term and any Renewal Term(s).
- (eeee) "**Third Party Claim**" is defined in Section 12.5(a).

1.2 Language

All communication between Metrolinx and Contractor and between Contractor and each of the Subcontractors with regard to the Services shall be in the English language.

1.3 References

- (a) All prices and sums of money and all payments made under this Contract shall be in Canadian dollars.
- (b) Each reference in this Contract to a statute or other instrument is deemed to be a reference to that statute or instrument and to all regulations made thereunder, all as amended, restated and/or re-enacted from time to time. Following any amendment to, or restatement or re-enactment of, any Applicable Law, Contractor shall perform the Services in accordance with such Applicable Law as amended, re-stated and/or re-enacted.
- (c) Subject to any express definitions contained in this Contract, words and abbreviations which have well known technical or trade meanings are used in this Contract in accordance with such recognized meanings.
- (d) 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.
- (e) Where used in this Contract, "including" means including without limitation, and the terms "include", "includes", and "included" have similar meanings.
- (f) Each reference to an Article or Section within the Contract or Schedules shall refer to that Article or Section number in the Contract or the Schedule in which the reference occurs unless otherwise specified.
- (g) The division of this Contract into Articles and Sections, the insertion of headings, and the provision of a table of contents are for convenience of reference only and do not affect the construction or interpretation of this Contract.

1.4 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.

1.5 Schedules

The following Schedules attached to this Contract shall constitute an integral part of this Contract and all expressions defined in this Contract shall have the same meanings in such Schedules:

Schedule "3.2"	-	GOVERNANCE
Schedule "3.7"	-	CODE OF CONDUCT
Schedule "3.9"	-	SECURITY REQUIREMENTS
Schedule "9.1"	-	FORM OF SECURITY STATEMENT
Schedule "16.2"	-	DISPUTE RESOLUTION

1.6 Time of the Essence

The Parties recognize and agree that time is of the essence for successful completion of the Services, including the delivery of all Orders.

ARTICLE 2 SCOPE OF CONTRACT

2.1 Services

- (a) Metrolinx hereby engages the services of Contractor, and Contractor hereby agrees to provide and perform all work, services and materials to complete the Services in their entirety in accordance with and subject to the terms and conditions of this Contract.
- (b) In addition to the Services, Metrolinx shall from time to time have the right (but not the obligation) to request the provision of additional services not currently included in the scope of this Contract (a "**New Services**"). Any such request shall be dealt with pursuant to the Change Order Process.

2.2 Term

- (a) Initial Term. This Contract shall commence on the Effective Date and shall continue for an initial term of five (5) years ("**Initial Term**") unless otherwise terminated in accordance with its provisions.
- (b) Renewal Term.
 - (i) Metrolinx (at its sole discretion) shall have the option to renew this Contract for one (1) or more additional terms (each a "**Renewal Term**") of between one (1) and five (5) years each, as determined by Metrolinx in its sole discretion, up to a maximum total of five (5) additional years. Metrolinx may exercise this renewal option by providing Contractor with notice in writing of its election to renew the Contract, and the term of the renewal, no less than ninety (90) days' prior to the end of the Initial Term or any Renewal Term (as applicable).
 - (ii) Unless otherwise agreed by the Parties, in the event of renewal pursuant to Section 2.2(b)(i), pricing for each additional Contract Year shall be determined by applying the Index Adjuster to the Fees for the immediately prior Contract Year.

2.3 No Exclusivity

Contractor acknowledges and agrees that:

- (a) the work and services described in this Contract are intended to be provided by Contractor on a non-exclusive basis;
- (b) this Contract is in no way intended to grant to Contractor any exclusive right to, or guaranteed volume of, work;
- (c) nothing in this Contract shall prevent Metrolinx at any time from entering into any agreement or business arrangement (including any joint venture, strategic partnership, alliance or other commercial arrangement) with any other party, whether or not the agreement or business arrangement would compete with Contractor's business that relates to the work Contractor is to carry out under this Contract or any other aspect of Contractor's business; and
- (d) Metrolinx has and shall have the right to procure, obtain or enter into an agreement with respect to or provide using its own forces work or services the same or substantially similar to the Services.

2.4 Enhancements or Improvements

Metrolinx expects that during the Term, enhancements or improved replacements for the technology used for the Products may become available. Contractor shall use all reasonable efforts to provide written notice to Metrolinx of any such enhancements or improvements, describing the new or improved Products technology. Metrolinx may, at its discretion, direct Contractor to develop, procure, deliver and install such enhanced or improved Products technology. All changes pursuant to this Section 2.4 shall be implemented in accordance with the Change Order Process.

ARTICLE 3 GENERAL OBLIGATIONS

3.1 Performance Requirements

- (a) Contractor shall perform and complete the Services in accordance with the terms and conditions set out in this Contract, including Section 5.1, Appendix "B" – SCOPE OF SERVICES and/or the Service Levels.
- (b) Contractor shall allocate, commit and utilize an appropriate amount of resources and devote an appropriate amount of time and effort to perform its obligations in accordance with the provisions of this Contract.
- (c) Except for the Metrolinx Technology or otherwise expressly provided in this Contract:
 - (i) Contractor shall be solely responsible for the means, methods, or shall be solely responsible for the means, methods, techniques, sequences and procedures used to provide the Services, and for ensuring that the Services and the Products comply with the terms and conditions set out in this Contract; and
 - (ii) Contractor shall be responsible for the acquisition, setup, integration, operation, maintenance, support and problem resolution of and for all information technology and infrastructure components (including equipment, hardware, software, utilities, management tools, monitoring tools, etc.) that may be required to enable Contractor to perform the Services.
- (d) At no additional cost to Metrolinx, Contractor shall comply with all Metrolinx document control processes and procedures as they are communicated to Contractor from time to time in writing.

- (e) Contractor shall not at any time sell, transfer, deliver, or give away, or permit or cause to be sold, transferred, delivered or given away, any Products to any third party, except as expressly authorized by Metrolinx. The foregoing restriction includes any Products that are returned or rejected by Metrolinx.

3.2 Governance

- (a) The Parties shall put in place the structure, including to establish the roles and to form the committees, described in this Section 3.2 and in Schedule "3.2" - GOVERNANCE (the "**Governance Schedule**") to facilitate communications between them, as well as the management of the Parties' responsibilities and obligations under this Contract. Each such committee shall hold such meetings as are called for in the Governance Schedule and otherwise in this Contract. The tasks of each such committee shall include those corresponding tasks listed in the Governance Schedule and the membership of such committees shall be as set out in the Governance Schedule.
- (b) Contractor shall designate an individual (the "**Contractor Representative**") to act as its representative, and who have authority to communicate instructions to, and receive information from, Metrolinx. Contractor Representative shall be the primary point of contact for Metrolinx for significant issues including commercial issues and Disputes and shall have overall responsibility for coordinating the performance of Contractor's obligations under this Contract. Contractor shall, prior to appointing an individual to fill a key role in the governance structure set out in the Governance Schedule, provide Metrolinx with a summary of this person's work history and experience, and all such other information as Metrolinx may reasonably request.
- (c) The Parties shall participate in the meetings described in the Governance Schedule and otherwise in this Contract. Except as otherwise specified, each of the Parties shall assume its own costs and expenses in respect of all meetings held.

3.3 Applicable Laws and Metrolinx Standards

- (a) Contractor shall perform and provide, and shall ensure that all Subcontractors and Personnel perform and provide, the Services in full compliance with and adherence to all Applicable Laws and, to the extent not inconsistent with Applicable Laws, any applicable Metrolinx standards, policies, and procedures provided to Contractor in writing from time to time.
- (b) Metrolinx shall in no event be responsible or liable for any failure by Contractor (or any of its Subcontractors or Personnel) to comply with any Applicable Laws.

3.4 Subcontractors

- (a) Metrolinx shall have the right to approve all Subcontractors used by Contractor in the performance of the Services; provided, however, that Subcontractors identified in Contractor's Proposal shall be deemed to have been approved by Metrolinx unless otherwise provided herein.
- (b) Contractor shall not, without the prior written consent of Metrolinx:
 - (i) change any Subcontractor identified in Contractor's Proposal or otherwise previously approved by Metrolinx; or
 - (ii) materially change the work to be performed by any Subcontractor.
- (c) No subcontracting by Contractor shall relieve Contractor of any responsibility for the full performance of all obligations of Contractor under this Contract. Notwithstanding the

approval of any Subcontractor(s) by Metrolinx, Contractor shall be fully responsible for every Subcontractor's activities, works, Services and acts or omissions.

- (d) Contractor shall be solely responsible for the payment of any Subcontractors.
- (e) Contractor shall co-ordinate the Services of all Subcontractors employed, engaged or retained by Contractor with Metrolinx and, without limiting the generality of any other provision of this Contract, Contractor shall be liable to Metrolinx for costs or damages arising from errors or omissions of such Subcontractors or any of them. For the avoidance of doubt, Contractor shall be responsible to ensure that each Subcontractor complies with the terms and conditions set out in this Contract.

3.5 Contacting Responsibility for Personnel

- (a) Contractor shall select and employ a sufficient number of suitably qualified and experienced Personnel to perform and provide the Services, as determined with reference to the requirements of the work to be performed by each individual or otherwise as required pursuant the Contract. Contractor shall provide effective and efficient supervision to ensure that the quality of workmanship meets the requirements of this Contract.
- (b) Contractor 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. All Personnel shall possess or, where permitted, shall be supervised by persons who possess, the Domain Expertise required to complete the Services.
- (c) Contractor shall ensure that the Personnel assigned to perform the Services:
 - (i) comply with the terms of this Contract;
 - (ii) are properly and sufficiently trained and instructed;
 - (iii) act in a proper and professional manner, and perform the work in a manner consistent with applicable industry standards; and
 - (iv) comply with all Contractor policies and procedures, including those with respect to security.
- (d) It shall be Contractor's responsibility to control and check the work of all Personnel, including its own forces and of all its Subcontractors, and to ascertain that all work is performed in accordance with this Contract, all Applicable Laws and the general standards of good commercial practice and professionalism (as understood in Ontario), assuring only first class workmanship, and using only proper materials and methods as are suited to the function and performance intended.
- (e) Contractor shall be responsible for the Personnel assigned to provide Services under this Contract, and Contractor (directly or through any Subcontractor) shall have the sole right and obligation to direct and control the management of such Personnel. Except as otherwise stated herein, Contractor and, in respect of Personnel who work for Subcontractors, its Subcontractors shall: (a) determine and pay all wages and salaries; (b) provide employee benefits, as it deems necessary or desirable; (c) comply with Applicable Laws, including income tax and employment tax withholding laws, workers' compensation insurance coverage; and (d) file all applicable reports with Governmental Authorities as required by law. During the Term, Contractor shall, upon request, provide Metrolinx with certificates of clearance from the Workers' Compensation Board in each of the provinces in which Contractor will be carrying out its obligations under this Contract.

- (f) Contractor acknowledges and agrees that continuity of the Personnel is important to the success of the Services. Accordingly, Contractor shall, where possible, make the same individuals available for the performance of the Services throughout the Term.
- (g) Workers' Rights. Contractor shall make all payments required under the *Workplace Safety and Insurance Act* (Ontario), and under similar legislation in other jurisdictions, and shall indemnify and hold harmless the Indemnitees from any failure to comply. Contractor shall annually provide Metrolinx with a certificate confirming that Contractor is in good standing under the relevant workers' compensation legislation.

3.6 Workplace Safety

Without limiting the generality of Section 3.3 or Section 3.5(g), Contractor shall:

- (a) maintain safe workplaces or work sites in accordance with safe work practices and housekeeping;
- (b) comply with the *Occupational Health and Safety Act* (Ontario) and all of its regulations pertaining to the type of work being performed;
- (c) have actual knowledge of, and comply with Metrolinx's safety policies and appropriate safe work procedures provided that Metrolinx provides Contractor with such policies and procedures in writing;
- (d) provide the necessary protective equipment, devices, or related safety item(s) in connection with the Services as required by the *Occupational Health and Safety Act* (Ontario) and all of its regulations, as well as Metrolinx's and any applicable Metrolinx Client's safety policies, and ensure that such equipment, devices, and items are used in the performance of the Services; and
- (e) if requested, provide Metrolinx with a copy of Contractor's written health and safety policy and program to implement policy as required by the *Occupational Health and Safety Act* (Ontario).

3.7 Worker's Rights and Fair Labour

- (a) Contractor represents and warrants that all Products shall be manufactured under safe and healthy conditions and, at a minimum, in accordance with (i) Applicable Laws as may be enacted, amended or restated from time to time which, for greater certainty, shall include local laws governing labour and working conditions in any jurisdiction where the Products are manufactured ("**Local Labour Laws**"); and (ii) those conventions of the International Labour Organization set out in the Code of Conduct attached hereto as Schedule "3.7" – CODE OF CONDUCT. Where Local Labour Laws and the conventions set out in Schedule "3.7" – CODE OF CONDUCT differ, the higher standard shall prevail.
- (b) At any time during the Term, Metrolinx reserves the right to require Contractor to provide documentation that demonstrates compliance with Section 3.7(a). Such documentation may include an attestation from a senior officer of the Contractor having knowledge of the working conditions in the manufacturing facilities where the Products are manufactured or assembled.
- (c) Contractor shall promptly advise Metrolinx of any orders, fines, or other similar notices of non-compliance that it or any Contractor Facility receives, where such order, fine or notice relates to a breach of Applicable Laws governing labour and working conditions.
- (d) If Metrolinx suspects non-compliance with Section 3.7(a), it shall notify Contractor of the suspected non-compliance. Contractor shall, at its sole cost and expense, investigate the

suspected non-compliance by employing an independent third party investigation firm or by such other means deemed acceptable to Metrolinx. Within thirty (30) calendar days from the date on which Contractor receives the notice of suspected non-compliance from Metrolinx, Contractor shall provide Metrolinx with a report containing information of the verification efforts undertaken. The information shall include the name of the third party verifier, the findings of the investigation, and the corrective action taken, if and as applicable.

- (e) Contractor shall provide written notice to Metrolinx of any changes with respect to the manufacturing process, including any change in name or address of any Contractor Facilities. To the extent that such notice relates to a change in the location of any Contractor Facilities used to manufacture or assemble the Products, Contractor notice shall provide such notice to Metrolinx at least thirty (30) calendar days before any Products are produced at such facility.

3.8 Environmental Considerations

- (a) Contractor shall make available to Metrolinx any policies and procedures relating to its environmental management, including with respect to sustainable development and environmental stewardship.
- (b) Where Contractor has submitted any environmental certifications as part of its Proposal, Contractor covenants that it shall, at all times during the Term, use commercially reasonable efforts to keep such certifications (or equivalent documents) current and provide evidence of such continued certification to Metrolinx upon request.

3.9 Security Requirements

- (a) Contractor shall implement and, during the term, comply with the security requirements set out in Schedule "3.9" - SECURITY REQUIREMENTS. For the avoidance of doubt, such Security Requirements shall apply with respect to all work performed by Contractor, including at all Contractor Facilities and all Secure Storage Facilities.
- (b) Subject to its obligations of confidentiality under this Contract (at law or in equity or in any pre-existing agreement) and without limiting the generality of the audit rights set out in Section 6.4, Contractor shall provide to Metrolinx access to and copies of such documents and records, including, without limitation, those involving contractual arrangements between Contractor and any third party, as may be reasonably necessary to enable Metrolinx to confirm that Contractor has implemented and is maintaining the security standards, procedures and systems that it is required to implement and maintain pursuant to this Contract. Contractor agrees, upon the request of Metrolinx, to allow Metrolinx or its representatives to meet with Contractor's manager(s) of system and physical security for the purpose of discussing Contractor's security standards, procedures and systems insofar as they relate to the Services or this Contract. Such review shall include, without limitation, the procedures and means used by Contractor to deal with matters such as document retention and destruction, disclosure of Confidential Information to unauthorized Persons, hacking and other attacks on any systems of Contractor, similar risks, and audit techniques in each case solely in respect of the Services and Production Requirements required pursuant to this Contract. For the avoidance of doubt, Contractor will not be required to provide any access to any confidential documentation or records of any other customers of Contractor, or any other matters not directly pertaining to this Contract or the Services.

3.10 Risk and Title

- (a) Subject to Article 10, title to all Products shall pass to Metrolinx upon delivery to the applicable Metrolinx Location. Contractor shall be the legal and beneficial owner of the Products until such time as title thereto passes to Metrolinx.
- (b) All Products shall be transferred to Metrolinx free and clear of all liens, security interests, claims, charges and encumbrances.
- (c) Subject to Section 6.1, all risks of loss or damage to each unit of Products shall be assumed by Contractor until delivery of such unit of Products to the applicable Metrolinx Location.
- (d) In addition to its obligations under Article 15, Contractor shall procure and maintain, at its own expense, replacement cost insurance covering any loss or damage to each unit of Products until title and risk of loss of such Products passes to Metrolinx.

3.11 No Liens

Contractor shall do all things necessary to ensure that no lien is registered against any property of Metrolinx or any third party in connection with this Contract (including obtaining a waiver of lien from any of its Subcontractors and Personnel), and that no liens, security interests, claims, charges and/or encumbrances are made, filed or registered against the all or any of the Products. If any lien, security interest, claims, charge or encumbrance is made, filed, or registered, Contractor shall discharge it or cause it to be discharged forthwith, at Contractor's sole expense.

ARTICLE 4 PRODUCTION REQUIREMENTS AND ORDER MANAGEMENT

4.1 General

For the avoidance of doubt, the requirements set out in this Article 4 are without limitation to Contractor's general obligation to perform and provided the Services.

4.2 Production Requirements

- (a) For the purposes of this Agreement, "**Production Requirements**" means those infrastructure and other requirements which are required and must be implemented in order to facilitate processing of Orders, as described in **[INSERT SECTION REFERENCES ONCE FINALIZED]**, and including the Client Interface and the Order Form. Contractor acknowledges and agrees that Contractor is responsible for performing and completing all activities, including testing and commissioning activities, as may reasonably be required to ensure that the Production Requirements are in place and fully functional, and that the Contractor is able to receive and fulfill Orders, in all cases in accordance with the timelines the date specified in Section 5.1 and/or the Service Levels.
- (b) Contractor shall develop an interface (the "**Client Interface**") to integrate with the PRESTO System, as more specifically described in Appendix "B" – SCOPE OF SERVICES. The Contractor shall be responsible for the development and implementation of the Client Interface, in accordance with this Contract and Appendix "B" – SCOPE OF SERVICES, including the setup, installation, configuration, testing, implementation and operation of all any infrastructure, equipment, software and components required in connection therewith.
- (c) Order Form

- (i) In accordance with the timing set out in Section 5.1 and/or the Service Levels, Contractor shall (in consultation with Metrolinx) develop and document detailed processes and procedures for the provision of the order management services contemplated herein, including processes for the secure placement of Orders, transmission of data (including photos), management of inventory and fulfilment of Orders. All such processes and procedures shall:
 - (A) comply with the requirements set out in Appendix "B" – SCOPE OF SERVICES, unless otherwise mutually agreed by the Parties; and
 - (B) be approved by Metrolinx prior to their implementation.
- (ii) Without limiting the generality of the foregoing, Contractor shall implement and utilize an order form setting out all information required to process Orders for Metrolinx, including the information identified in Appendix "B" – SCOPE OF SERVICES (the "**Order Form**"). The Order Form shall be compatible with the platform identified in Section 3.00 of Appendix "B" – SCOPE OF SERVICES. Metrolinx shall have the right to approve the Order Form prior to its rollout.

4.3 Products

- (a) All Products shall be manufactured and produced in a manner which complies with the operational, functional, technical and legal/regulatory requirements set out in Appendix "B" – SCOPE OF SERVICES.
- (b) All Products shall be new and unused, unless agreed to in writing by the Parties. All Products shall have received all required approvals of, and shall comply with, all Applicable Laws, whether referred to in this Contract or otherwise required from time to time by any Governmental Authority.
- (c) Viruses and Disabling Devices. Contractor shall implement and use industry best practices at all times during the Term to identify, screen, and prevent, and shall not itself install, any Disabling Device in resources utilized by Contractor, Metrolinx, or any third party, in connection with the Work. Contractor shall ensure that all Card Media are free of Disabling Devices. A "**Disabling Device**" means any virus, timer, clock, counter, time lock, time bomb, Trojan horse, worm, file injector, boot sector injector, or other limiting, disabling or debilitating design, instruction, or routine that could, if triggered, erase data or programming or cause the resources to become inoperable, impaired or compromised in functionality or performance, or otherwise incapable of being used in the full manner for which such resources were intended to be used. Contractor shall be responsible to promptly reduce or eliminate the effects of any Disabling Device discovered in such resources, without causing a loss of operating efficiency or data or interruption in the provision of the Work in accordance with the Performance Requirements. Contractor shall install industry leading anti-virus and malware protection on all equipment used to connect to the Metrolinx environment. If requested by Metrolinx, Contractor shall also install any Metrolinx-provided anti-virus and/or malware protection on infrastructure elements dedicated to Metrolinx.

4.4 Secure Storage Facility

- (a) For the duration of the Term, Contractor shall, at its own cost provide, manage and maintain one or more secure storage facilities, for the purposes of storing and facilitating the shipment of the Products (the "**Secure Storage Facilities**"). All Secure Storage Facilities shall be located in the Greater Toronto and Hamilton Area, provided that the

- specific location of any Secure Storage Facility shall subject to the approval of Metrolinx in its sole discretion.
- (b) The Secure Storage Facility(ies) shall (collectively) provide sufficient space for storage of the Base Inventory, shall be accessible on a 24-hour, seven-days-a-week basis, and shall accommodate all Personnel required to process and ship Orders, as required.
- (c) Each Secure Storage Facility shall:
- (i) meet the requirements set out in Appendix B-1;
 - (ii) without limiting the generality of Article 3, comply fully with the accessibility standards under the *Accessibility for Ontarians with Disabilities Act, 2005* and any other Applicable Laws;
 - (iii) provide suitable loading docks to facilitate shipment;
 - (iv) have appropriate IT networks to allow all Personnel to connect with and use the Client Interface;
- (d) Where a Secure Storage Facility is leased or licensed from a third party (each a "**Landlord**"), Contractor shall cause the lease in respect of that Secure Storage Facility to include a right to assign Contractor's rights under the lease to Metrolinx or a replacement contractor designated by Metrolinx without the prior consent of the landlord in the event this Contract is terminated. Such assignment shall be at the sole discretion of Metrolinx. Contractor shall also cause the lease to contain a term that provides that any indemnity provision in favour of the landlord shall become void. In the event that Metrolinx exercises its right of assignment of such Secure Storage Facility under this Section, Contractor shall also cause any furniture or equipment obtained in respect thereof to be made available to Metrolinx, at the sole discretion of Metrolinx, at Metrolinx's election. In the event that this Contract is terminated by Metrolinx pursuant to Section X and Metrolinx does not exercise its right of assignment of pursuant to this Section, any fees that become payable under the Secure Storage Facility lease (and any contracts in respect of furniture and/or equipment) as a result of its early termination shall be solely payable by Contractor. In addition, Contractor shall immediately notify Metrolinx in the event that it receives any notice of receivership, bankruptcy, insolvency or change of control of any third party from which it leases or licenses, or with whom it contracts for the provision of, any Secure Storage Facility and, in such event:
- (i) Contractor shall take all steps necessary to ensure that the Products and any Base Inventory in the impacted location(s) is secured and continues to be available to Metrolinx in accordance with this Agreement; and
 - (ii) Metrolinx shall have the right to immediately take possession of any Products and/or require the Contractor to relocate any Products from any Secure Storage Facility.
- (e) In addition to any other rights or remedies that Metrolinx may have under this Contract or otherwise at law, Metrolinx shall have the right to take possession of any Products and/or require Contractor to relocate any Products from any Secure Storage Facility, at Contractor's expense, in the event of any breach of this Agreement by Contractor, its Subcontractors or any Contract Personnel, or in the event that Contractor any Landlord (a) makes any general assignment for the benefit of creditors or otherwise enters into any composition or arrangement with its creditors; (b) has a receiver and/or manager appointed over its assets or makes an application to do so; (c) becomes bankrupt, insolvent or commits an act of bankruptcy or attempts to take advantage of any law or

statute for the relief of bankrupt or insolvent debtors; (d) has a resolution or a petition filed or an order made for its winding up; or (e) ceases to carry on business.

4.5 Forecasts and Base Inventory

(a) Forecasts.

- (i) On the Effective Date and annually thereafter, Metrolinx shall provide to Contractor an estimate setting out the anticipated volume (in number of units) of Products required for the upcoming Contract Year (each an "**Annual Forecast**"). If, at the end of a given Contract Year, the actual volume of Products purchased (collectively) by Metrolinx and Metrolinx Clients is less than the Annual Forecast for that Contract Year, Metrolinx will commit to purchase the balance during the first six (6) months of the subsequent Contract Year.
- (ii) Notwithstanding the submission of any Annual Forecast, or the estimated volume set out therein, Contractor shall fulfill all Orders placed by Metrolinx provided that all Order requirements, including notice requirements (as set out in Section 4.6(d)), have been met.

(b) Base Inventory.

- (i) Without limiting Contractor's obligations as set out in Sections 4.5, during the Term Contractor shall at all times (subject to Section 4.5(b)(ii)) have available and maintain at the Secure Storage Facility an inventory of no less than [**6 million units**] of Products (the "**Base Inventory**"). The Base Inventory shall be maintained at the Secure Storage Location.
- (ii) At any time during the Term, upon sixty (60) days' written notice, Metrolinx shall have the right to require Contractor to increase or decrease the amount of the Base Inventory by any amount. This right may be exercised in connection with or independently of any other right of Metrolinx set out herein. For the avoidance of doubt, in the even of an increase to the Base Inventory, such change shall be implemented no later than sixty (60) days from the date of written notice or such other date as may be indicated therein by Metrolinx.

4.6 Order Fulfillment

- (a) Each Order, whether written, faxed, emailed or sent in any other form to Contractor and which is accepted by Contractor, shall form a binding agreement between Contractor and Metrolinx, which agreement shall contain and incorporate by reference the terms and conditions set out in this Contract.
- (b) Contractor shall not ship to any Products without an Order.
- (c) Any Order shall be deemed accepted by Contractor if any shipment of the Products described in the Order is made by or on behalf of Contractor. The addition or modification of any terms of an Order by Contractor shall be void and of no effect, and shall not affect the acceptance of any Order, unless specifically agreed to by Metrolinx in writing.
- (d) Contractor shall process all Orders received from Metrolinx and/or any Metrolinx Client in accordance with the requirements of this Contract, including Appendix "B" – SCOPE OF SERVICES and the instructions included on the Order Form. Provided that Metrolinx and/or any Metrolinx Client submits a completed Order Form no less than [**seven (7) months**] prior to the required date of delivery, Contractor shall fulfill the Order by the requested date(s). For Order Forms submitted with less than the required notice,

Contractor shall use commercially reasonable efforts to fulfill the Order in accordance with the request, and shall consult with Metrolinx and/or the applicable Metrolinx Client to determine any appropriate workarounds which may be implemented to provide delivery by the requested date.

(e) Shipping and Handling.

- (i) Contractor shall deliver Products only when and where indicated by Metrolinx and in such amounts specified in an Order.
- (ii) Contractor shall deliver the Products to the Metrolinx Location(s) and using the form of delivery specified on the Order Form, in accordance with the shipping requirements (to the extent applicable to that form of delivery) set out in Appendix "B" – SCOPE OF SERVICES. For the avoidance of doubt, Orders submitted by Metrolinx shall be shipped to a Metrolinx Client if so indicated on the Order Form.
- (iii) All costs for shipping and handling of the Products from the Secure Storage Facility to the Metrolinx Location(s) shall be reimbursed to Contractor pursuant to Article 7. Contractor shall ensure that all Products are shipped to the applicable Metrolinx Location in a manner that does not result in any charge payable by Metrolinx or any Metrolinx Clients on delivery.
- (iv) Subject to Section 5.2, where a delivery date or schedule of delivery is specified on the Order Form, Contractor shall ensure that the Products ordered are delivered on or before the dates specified therein.
- (v) Provided that Metrolinx provides reasonable notice to Contractor, Metrolinx may from time to time change delivery dates or temporarily suspend scheduled deliveries.
- (vi) Contractor shall be fully responsible for the shipment and delivery of all Products to the Secure Storage Facility, including all arrangements and documentation related to or arising from the import and export of the Products (or any component thereof) from one jurisdiction to another, including into Canada. Contractor shall be fully responsible for determining all requirements and Applicable Laws respecting the import and export of the Products or any component thereof, and for ensuring compliance with same.

(f) Inspection upon Delivery

- (i) Products shall be subject to inspection and approval by Metrolinx (or any third party designated by Metrolinx, as applicable) in any and all cases. In addition to its other rights pursuant to this Contract and at law, Metrolinx may cancel any Order, reject, refuse to receive, or return all or part of any shipment of Products at Contractor's sole cost and expense (including transportation, handling and storage charges), if in Metrolinx's reasonable opinion:
 - (A) Contractor fails to comply with any of the terms or conditions of this Contract or an Order;
 - (B) the Products or any part thereof fails to comply with the warranties set out in Section 12.1;
 - (C) the Products is shipped contrary to the instructions set out in the Order or not in compliance with the terms of this Contract or an Order;

- (D) delivery of the Products does not comply with the receiving procedures of Metrolinx, its agents or any third parties accepting delivery;
 - (E) the Products received is less than or in excess of the quantity provided for in an Order;
 - (F) the Products are received before or after the delivery date or time specified in the Order;
 - (G) a claim or demand is made that the sale or offer of the Products or the use of the Products by Metrolinx infringes or would infringe the Intellectual Property Rights of any third party; or
 - (H) in the event that Industry Canada or other Governmental Authority issued an order pursuant to any consumer protection legislation requiring either Metrolinx or Contractor to recall, replace, repair or make refunds with respect to all or part of the Products.
- (ii) All Products are that returned or rejected by Metrolinx (or its third party designate) shall be appropriately disposed by Contractor and/or Metrolinx at Contractor's cost and expense.
 - (iii) Acceptance by Metrolinx, its agents or any third party of the delivery of the Products, or any part thereof, shall not bind Metrolinx to accept further deliveries. Acceptance in any circumstance shall not be construed as a waiver of Metrolinx's right to recover for Contractor's non-compliance with the terms and conditions set out in this Contract Metrolinx retains its right to pursue a claim with Contractor for non-compliance with the terms and conditions of this Contract. In addition, notwithstanding the absence of an exception notation on a freight receipt or any other term set forth in a freight receipt, bill of lading or other shipping document that may be signed upon receipt of any Products, Metrolinx expressly retains its right to pursue a claim (including a warranty claim or indemnification) with Contractor for shortage, damage or other defect of delivered Products that comes to Metrolinx's attention following delivery of such Products.
 - (iv) The conduct (or failure to conduct) any inspection, acceptance of delivery, the payment by Metrolinx for any Products, or return of any Products shall in no way relieve Contractor from liability for any breach of this Contract or with respect to any representations, warranties or covenants, or affect Metrolinx's right to:
 - (A) make a warranty claim pursuant to Section 12.1; and/or
 - (B) otherwise affect its right to avail itself of any other remedy to which it may be entitled.

Failure of Metrolinx to state a particular defect or procedural violation upon rejection of any Products shall not preclude Metrolinx from relying on unstated defects or procedural violations to justify rejection or establish breach.

ARTICLE 5

TIMELINES, SERVICE LEVELS AND QUALITY ASSURANCE

5.1 Timelines

- (a) Subject to Section 5.1(f) and Article 13, and without limiting any general obligation to perform the Services, Contractor shall perform and complete the Services in accordance with the timelines set out in this Section.
- (b) Contractor shall ensure that the Production Requirements are in place and fully functional, and that the Contractor is able to receive and fulfill Orders, no later than thirty (30) days following the Effective Date.
- (c) With respect to the production of the Base Inventory, the Contractor shall ensure that the Base Inventory is implemented and maintained as follows:
 - (A) **[TO BE NEGOTIATED]**
- (d) With respect to the fulfillment of Orders and the distribution and delivery of the Fard Products, Contractor shall ensure that all Orders are processed and delivery completed:
 - (A) in accordance with all applicable service levels, as more specifically described in the Service Level Agreement; and
 - (B) in accordance with the schedule for fulfillment and by the dates specified in the applicable Order Form or, if not specified in the Order Form, in the Service Level Agreement
- (e) With respect to all other Services, the Contractor shall complete and perform such Services in accordance with any prescribed timelines set out in this Contract or otherwise agreed by the Parties.
- (f) Delays.
 - (i) For the purposes of this Contract, an "Excusable Delay" is a delay in the completion of any Services by Contractor that meets all of the following criteria:
 - (A) is beyond the reasonable control of Contractor;
 - (B) could not have been reasonably foreseen;
 - (C) could not reasonably have been prevented by means reasonably available to Contractor; and
 - (D) occurred without the fault or neglect of Contractor.
 - (ii) Contractor shall advise Metrolinx of any delay, or any anticipated delay, as soon as Contractor becomes aware of it; provided, however, that advising Metrolinx of any anticipated delays shall not relieve Contractor from any liability for such delay. Contractor must also advise Metrolinx of all circumstances relating to the delay and provide to Metrolinx, for approval, a clear work around plan explaining in detail the steps that Contractor proposes to take to minimize the impact of the event causing the delay. Unless otherwise specified in this Contract, any delivery date, milestone or other date that is directly affected by an Excusable Delay will be postponed for a reasonable time that will not exceed the duration of the Excusable Delay. Unless Metrolinx has caused the delay by failing to meet an obligation under this Contract, Metrolinx will not be responsible for any costs incurred by Contractor, any Subcontractor or any Personnel as a result of an Excusable Delay, including any costs incurred in expediting shipping.

- (iii) In the event of any delays or deviations from the timelines identified in any Order Form, for any reason including as a result of an Excusable Delay, Contractor shall take all reasonable steps (within its control) as may be required to remediate any causes of the delay, get the schedule back on track, implement workarounds, and complete the Services as soon as possible. In respect of delays of more than ten (10) Business Days, Contractor shall prepare and provide to Metrolinx, for its review and approval, a remediation plan documenting the steps to be taken to complete the Services, and the timelines therefor.
- (iv) In the event of a delay or deviation from the timelines identified in any Order Form which exceeds sixty (60) Business Days, for any reason including as a result of an Excusable Delay, Metrolinx shall have the right, at its sole option, to cancel the impacted Order, at no additional cost to Metrolinx.

5.2 Service Levels

Schedule "5.2" – SERVICE LEVELS sets out the specific quantitative and qualitative service levels, performance metrics and requirements that shall apply to the performance of the Services (the "Service Levels"). Contractor shall at all times meet or exceed the Service Levels, in accordance with and subject to Schedule "5.2" – SERVICE LEVELS and this Contract.

5.3 Quality Assurance

- (a) Contractor shall have in place a sufficiently tested, suitable and reliable product safety and quality assurance program, including a process to effectively and efficiently address Recalls.
- (b) Contractor shall conduct all quality control testing necessary to ensure the quality of the Products and the Services, and shall further ensure that the Products comply with the requirements of this Contract. Without limitation, Contractor shall maintain the ISO standards specified in Appendix "B" – SCOPE OF SERVICES.
- (c) Quality Management
 - (i) Contractor shall be responsible for the quality of Services, including all Products, provided hereunder.
 - (ii) Contractor acknowledges and agrees that it is Contractor's responsibility to ensure, prior to commencing the Services, that it fully understands Metrolinx's requirements for the Services. Without limiting the generality of the preceding sentence, Contractor shall ensure that it has in place and maintains:
 - (A) a monitoring process to ensure that all aspects of the Services are carried out in accordance with Metrolinx's requirements; and
 - (B) a corrective action process for remedying errors and deviations.
 - (iii) Contractor shall, prior to commencing the provision of Services to Metrolinx hereunder:
 - (A) appoint a management representative with the responsibility and authority to resolve all quality matters hereunder and provide the contact information for such individual to Metrolinx; and
 - (B) have documented procedures in place for the control of nonconforming Services and corrective and preventive action, in accordance with current ISO standards or equivalent for the Services provided hereunder.

- (iv) Contractor shall, within thirty (30) days of the start of the implementation of the quality plan, submit written certification that the quality plan has been fully implemented and is effective.
- (v) Contractor shall maintain the quality plan and shall provide copies of any updates to the quality plan and copies of all process control and inspection and test procedures that are referenced in that plan to Metrolinx for as long as Contractor has outstanding obligations hereunder.

5.4 **Recalls**

If any Products or component thereof is the subject of any order or requirement pursuant to any law requiring either Metrolinx or Contractor to recall, replace, repair or otherwise take back all or any part of the Products or if Metrolinx or Contractor reasonably determines that it is necessary to effect a voluntary recall (in either case, a "**Recall**"), Contractor shall in all cases be responsible for all costs, expenses and other losses associated with or resulting from any such action. Either Party may initiate a voluntary recall in the event that the defect rate for the Products falls above **[TO BE INSERTED]** within **[TIME FRAME TO BE INSERTED]** (the "**Maximum Defect Rate**").

ARTICLE 6 METROLINX RIGHTS AND OBLIGATIONS

6.1 **Audit Rights**

- (a) Right to Inspect Contractor Facilities and Secure Storage Facilities. Provided that Metrolinx complies with the confidentiality obligations set out in this Contract, and provided that Metrolinx complies with Contractor's safety and site policies made known to Metrolinx, Metrolinx shall be entitled to inspect any and all Contractor Facilities and all Secure Storage Facilities in use from time to time (including manufacturing facilities, IT assets and infrastructure and software applications), upon forty-eight (48) hours' notice, for the purposes of confirming Contractor's compliance with this Contract. For the avoidance of doubt, the conduct or the failure to conduct any such inspection shall in no way affect or impair Metrolinx's rights or remedies provided hereunder, at law or in equity.
- (b) Audit (General).
 - (i) During the Term and for seven (7) years following the termination or expiry of this Contract (the "**Audit Period**"), Contractor shall (and shall ensure that its Subcontractors shall) retain and provide Metrolinx, any Metrolinx Client, Her Majesty The Queen In Right of Ontario, any Governmental Authority or any third party designated by any of the foregoing (in any case, an "**Auditor**") with reasonable and timely access to, all information relating to this Contract (including the books, records and data of Contractor and its Subcontractors that are relevant to the performance of the Services and the relationship between Contractor and its Subcontractors, and the premises where such books, records and data are located and from where the Services are provided) to assist Metrolinx in meeting all of its audit and other requirements and to enable appropriate reviews, audits, inspections, examinations and monitoring of the operations of Contractor and Subcontractors relating to this Contract to verify, among other matters, compliance with this Contract (including the requirements for control and security measures relating to the Security Keys and the

- Confidential Information) and to verify any Fees and other amounts paid or payable hereunder (including to confirm the accuracy of Contractor's invoices and any Fee adjustment computations) (collectively, an "Audit").
- (ii) Contractor shall provide full co-operation and assistance to the Auditor in conducting each Audit.
 - (iii) Contractor shall keep such proper and accurate records and financial accounts relating to this Contract for the duration of the Audit Period.
 - (iv) Audits may be performed up to twice each calendar year, or as otherwise required by a Governmental Authority; provided, that up to two additional Audits may be performed if Metrolinx or an affected Metrolinx Client reasonably suspects fraud or a breach of the Contract.
 - (v) Contractor shall, and shall ensure that all Personnel, provide full co-operation and assistance to the Auditor in conducting each Audit. Each Audit shall be scheduled to the extent reasonable, so as to minimize disruption to Contractor's business operations.
- (c) In addition to any specific requirements in the scope of work Contractor shall maintain internal controls over its environment and activities to ensure its compliance with Applicable Laws and Industry Standards, and shall perform such tests of these internal controls as may be required to confirm the effectiveness thereof. Contractor shall:
- (i) upon request, provide confirmation in writing that such controls are in place; and
 - (ii) provide immediate notice to Metrolinx of any material deficiencies of which Contractor becomes aware (as a result of any tests, audits or otherwise), which notice shall detail:
 - (A) the actions being taken to correct the identified deficiencies; the timelines for such corrective actions; and
 - (B) any risks or impacts to Metrolinx' operations which may flow from the identified deficiencies or Metrolinx's continued use of Contractor's services.
- (d) External Metrolinx Audit. Contractor shall fully cooperate with Metrolinx in connection with any external audit of Metrolinx or its operations, including a third party audit of Metrolinx's compliance with payment card industry requirements or standards by a third party.
- (e) Costs. Subject to Section 6.1(f), Metrolinx shall pay for all of its own costs and expenses incurred in connection with an Audit.
- (f) Audit Discrepancies.
- (i) Notwithstanding Section 6.4(e), where an Audit reveals (A) one (1) or more material failures to satisfy any requirements under this Contract, and/or (B) an aggregate variance of at least \$10,000 (to the disadvantage of Metrolinx), Contractor shall pay for all costs and expenses of such Audit incurred by both Parties, including reasonable internal labour costs and expenses associated with time spent by Metrolinx personnel in connection with such Audit.
 - (ii) Contractor shall ensure that any and all Audit findings concerning all failures (whether by Contractor directly or by its Subcontractors or agents) are promptly corrected by Contractor.

6.2 Contractor Services Performance Rating

- (a) Metrolinx shall during the Term, maintain a record of Contractor's performance pursuant to this Contract. This information shall be used to complete a "**Contractor Performance Review**" report, a copy of which will be forwarded to Contractor upon expiration or termination of this Contract. Interim Contractor Performance Review reports may be issued, as deemed appropriate by Metrolinx's Representative, at any time during the term of the Contract.
- (b) The overall history of Contractor in performing work for Metrolinx, including Contractor's performance pursuant to this Contract, will be considered in the evaluation of future bids from Contractor.
- (c) Metrolinx reserved 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 Contractor.
- (e) The information contained in Contractor Performance Review may be provided to other ministries and agencies and such performance reviews may be relied upon by other ministries and agencies to disqualify a company from providing a bid on any further request.

ARTICLE 7 GENERAL FINANCIAL TERMS AND CONDITIONS

7.1 General Payment Terms

- (a) Unless otherwise agreed by the Parties pursuant to the Change Order Process, the aggregate amount paid to and/or retained by Contractor in respect of the Services shall in no event exceed the Maximum Contract Price. For the avoidance of doubt, the Maximum Contract Price constitutes an upset limit on the amount payable by Metrolinx under this Contract, subject to Section 18.8 and the Change Order Process, and is not, and shall not be construed as, a minimum or guaranteed payment or a commitment to pay such full amount to Contractor.
- (b) Subject to the terms and conditions of this Contract, Metrolinx shall pay the Contractor for Services completed by the Contractor pursuant to this Contract, at the rates (including fixed fees, unit prices, hourly rates and per diem rates, as and if applicable) (the "**Fees**") set forth in the Articles of Agreement and at the times set forth in this Article 7.
- (c) Contractor represents and warrants that, except as otherwise expressly identified in this Contract, the Fees are inclusive of:
 - (i) all labour and materials, insurance costs, licensing fees, disbursements, out-of-pocket expenses, overhead and other amounts incurred in connection with the performance of the Services;
 - (ii) all costs incurred in connection with Production Readiness, including samples, rejected initial productions, packaging design, artwork, labels, inserts and other printed materials;
 - (iii) all costs of delivery to the Secure Storage Facility, including Import Duties;

- (iv) all costs for the coordination, administration and management of the Services necessary to achieve compliance with this Contract.

The Fees shall not be increased or decreased by reason of any increase or decrease in the cost of labor, materials, tools or equipment required by Contractor to complete the Services. The cost of delivery from the Secure Storage Facility to the Metrolinx Location is not included in the Fees.

- (d) Without limiting the generality of Section 7.1(b), and except as otherwise provided in Section 7.2(b), Metrolinx shall not reimburse the Contractor or any Subcontractor for any out-of-pocket expenses (including costs related to travel, meals or hospitality, food or incidental expenses) unless such expenses:
 - (i) have been specifically approved by the Metrolinx in writing and in advance (and which pre-approval Metrolinx may decline in its sole discretion);
 - (ii) such costs are incurred directly in connection with the performance of the Services; and
 - (iii) same are in compliance with Metrolinx's policies governing the reimbursement of such out-of-pocket expenses.

Any approved reimbursement of costs shall be made in accordance with and subject to Metrolinx's policies governing reimbursement of out-of-pocket expenses (including any policy on travel, meals and hospitality), upon receipt of documentation (including original receipts and other proof of payment) suitable to Metrolinx.

- (e) Notwithstanding anything in this Contract to the contrary, it is understood that this Contract is based on reimbursement for actual Services performed by Contractor and accepted by Metrolinx in accordance with this Contract.

7.2 Fees

- (a) This Contract is based on reimbursement for actual Products ordered by Metrolinx and delivered by the Contractor.
- (b) Payment for Products order by Metrolinx and delivered to a Metrolinx Location (in accordance with and subject to the terms and conditions of this Contract) shall be made in arrears at the applicable unit price(s) set out in the Articles of Agreement, in accordance with the invoicing process set out in Section 7.2(c),
- (c) In addition to the Fees, Metrolinx shall reimburse Contractor for all reasonable, direct costs of shipping Products from any Secure Storage Location to the Metrolinx Location (the "**Local Shipping Charges**"). Contractor shall identify Local Shipping Charges as one or more separate line items on the applicable Invoice, and shall provide to Metrolinx such documentation as may reasonably be required to verify the amount thereof. Local Shipping Charges shall be reimbursed "at cost" and in no event shall Contractor be entitled to charge any overhead, profit, administrative fees or charges or other markup on such Local Shipping Charges. Contractor shall ensure that all Local Shipping Charges are reasonable and consistent with industry standards.
- (d) Invoicing.
 - (i) For the purposes of this Section, "Completed" means full completion and shipment of all Products identified on an Order Form to the applicable Metrolinx Location, but

does not include Orders which have been cancelled, rejected, refused or returned pursuant to Section 4.6(f).

- (ii) All amounts payable by Metrolinx hereunder shall be subject to receipt by Metrolinx of a reasonably detailed invoice in a form agreed to by Metrolinx ("**Invoice**").
 - (iii) The Parties agree that Invoices shall be completed and submitted on a monthly basis. Invoices shall be submitted to Metrolinx within ten (10) Business days of the end of each calendar month and shall include all Orders Completed in such month. For the avoidance of doubt, irrespective of the number of Orders and/or shipments Metrolinx places or receives in any given month, the Contractor shall prepare and remit to Metrolinx a single monthly invoice for Completed Orders.
 - (iv) Each Invoice shall be in a form acceptable to Metrolinx, acting reasonably. Without limiting the generality of the foregoing, each Invoice shall set out the number of units of all applicable Products, the total amount payable therefor, the shipping costs incurred, and any other information which may be reasonably required.
- (e) Tiered Pricing and Reconciliation.
- (i) The amount payable for Products purchased in a Contract Year shall be based on the cumulative volume of Products as at the end of that Contract Year. In respect of each Invoice, the Fee reflected on that Invoice shall be based on the total units of Products ordered as at the date of the Invoice, provided that the total amount payable by Metrolinx in a Contract Year shall be subject to reconciliation pursuant to Section 7.2(e)(ii).
 - (ii) Following the end of each Contract Year, the Parties shall conduct a reconciliation by calculating (A) the total number of Products purchased in that Contract Year multiplied by the unit price applicable to that volume of Products; and (B) the total amount paid by Metrolinx (including all Fees but excluding Local Shipping Charges, Taxes and any approved out-of-pocket expenses) in that Contract Year. In the event that A exceed B, the difference shall be due and payable to Metrolinx either by reimbursement to Metrolinx and/or as a set-off from or credit applied to amounts payable by Metrolinx in the next Contract Year.
- (f) Unless there is a Dispute with respect to the content of an invoice and subject to the other provisions of Article 15, Metrolinx shall make payment to Contractor no later than thirty (30) days' following receipt of the Invoice for payment from the Consultant, unless otherwise provided or permitted in this Contract. The Contractor shall immediately correct any errors in the invoice as identified by Metrolinx. If the Supplier disagrees with calculation of the proper amount of the invoice, the matter shall be resolved pursuant to the dispute resolution process contained in Article 15.
- (g) The aggregate amount invoiced by Contractor shall not exceed the Maximum Contract Price, unless such additional amount is agreed by the Parties pursuant to the Change Order Process.

7.3 Taxes

- (a) The Fees are exclusive of all federal, provincial, harmonized or other sales, goods and services, use, excise, ad valorem, property, or value added taxes and other similar charges ("**Taxes**") payable by Metrolinx in connection with the receipt of such Services, but are inclusive of all Import Duties.
- (b) Contractor shall collect Taxes from Metrolinx in the same manner it collects such tax from other customers of Contractor in the ordinary course of its business and shall be solely responsible for remitting such Taxes to the relevant taxing authority.
- (c) The Parties agree to fully co-operate with each other to enable each to more accurately determine its own tax liability and to minimize such liability to the extent legally permissible.
- (d) All Invoices provided by Contractor with respect to Fees and expenses to be paid by Metrolinx will separately state the amount of any Taxes Contractor is collecting. Metrolinx shall provide to Contractor on or before the due date for the related payment, in the applicable Invoice, the applicable particulars described in the Input Tax Credit (GST/HST) Regulations for any tax, reimbursement or similar amount collectible by Contractor from Metrolinx.
- (e) For greater certainty, the amounts charged by Contractor to Metrolinx for the Fees and expenses shall not include any Recoverable Taxes charged to, payable by, or paid by Contractor, where "**Recoverable Taxes**" means HST, GST, QST and any other taxes (including provincial sales tax) to the extent that such taxes may be refunded to or otherwise recovered by the payor or for which the payor may otherwise obtain a credit or offset.
- (f) The Maximum Contract Price and all amounts payable hereunder are exclusive of Taxes.
- (g) Any amount to be levied against Metrolinx in respect of the harmonized sales tax or similar successor tax levied under the *Excise Tax Act* and applicable to the Services ("**HST**") is to be shown separately on all invoices for goods or services supplied. Contractor shall remit any HST paid or due in accordance with Applicable Law, and shall, at the request of Metrolinx, provide evidence of payment of same.

7.4 General Right of Set Off/Credits.

- (a) Metrolinx may set off any amount payable or owing to Metrolinx by Contractor under this Contract (including pursuant to Section 7.3 and/or any indemnity) from any amount otherwise payable by Metrolinx to Contractor under this Contract.
- (b) Any amounts or credits owing by Contractor to Metrolinx as a result of a Change or other Metrolinx-approved adjustment of the Services shall be applied to the benefit of Metrolinx during the Term. If no further invoice(s) are issuable to Metrolinx by Contractor hereunder then any such amounts shall be paid by Contractor to Metrolinx via certified funds within thirty (30) days of such Metrolinx-approved Change or adjustment of Services.

ARTICLE 8 CHANGE MANAGEMENT

8.1 Changes

- (a) Pursuant to the process set out in Section 8.2, either party may request changes to the Services at any time during the Term, including changes to Appendix "B" – SCOPE OF SERVICES (each a "**Change**").
- (b) For greater certainty, Changes may include the development, integration, configuration and/or implementation of new functionality, features or requirements.
- (c) Changes shall be implemented by Contractor without any additional charge, unless Contractor is able to demonstrate that the Change causes additional costs for Contractor. Where an additional charge is demonstrated to Metrolinx's satisfaction (acting reasonably), Contractor shall implement the Change for a reasonable price in accordance with the same pricing principles and price levels as originally agreed in the Articles of Agreement and in the Proposal. Where a Change requires the deletion or reduction of Services, Contractor shall adjust its fees in accordance with the foregoing and credit such adjustment to the benefit of Metrolinx.
- (d) Contractor shall maintain a detailed process for requesting, controlling, approving and managing technical and operational Changes.

8.2 Change Order Process

- (a) Where a Change is proposed or required, the requesting party shall provide a request in writing, in the form agreed by the Parties (a "**Change Order**") to the other Party describing in reasonable detail the proposed Change.
- (b) Contractor shall prepare and provide to Metrolinx either with its Change Order (where the request is initiated by Contractor) or otherwise within ten (10) Business Days of receipt of a Change Order (or such longer time period as Metrolinx may otherwise agree, acting reasonably), in writing and in a form acceptable to Metrolinx:
 - (i) a detailed breakdown of the estimated costs (if any) including any savings or other cost adjustments of the proposed or required Change;
 - (ii) any adjustment to a delivery date or timing of the Services, as applicable, resulting from the proposed Change;
 - (iii) any proposals, designs or other details or information which Metrolinx has reasonably requested; and
 - (iv) where a Change Order is initiated by Contractor, the reasons for the proposed Change, including the benefits of the proposed Change and any consequences of not proceeding with the Change.
- (c) All Change Order requests approved by the Parties shall be signed by both Parties and, thereafter, shall constitute an amendment to this Contract (a "**Change Order Agreement**"). No Changes shall be implemented until a Change Order has been approved by Metrolinx and the Change Order has been executed by both Parties. Contractor acknowledges that any Services performed by Contractor to implement a Change prior to such Change being approved by Metrolinx through an executed Change Order Agreement will not be paid for. The Change Order Agreement shall be the final determination of any adjustments to Appendix "B" – SCOPE OF SERVICES or any of the Services required under the, as applicable, with respect to the Change set out therein.

ARTICLE 9 CONFIDENTIALITY

9.1 Confidential Information

- (a) Restrictions on Use of Confidential Information. Contractor shall keep all Confidential Information confidential. Without limiting the generality of the foregoing, Contractor shall:
- (i) not disclose, reveal, publish, or disseminate any Confidential Information to anyone, except as permitted pursuant to this Contract;
 - (ii) shall use Confidential Information only in connection with this Contract and the performance of the Services;
 - (iii) shall take all reasonable steps required to prevent any unauthorized reproduction, use, disclosure, publication, or dissemination of the Confidential Information;
 - (iv) shall not copy, reproduce in any form or store the Confidential Information in a retrieval system or database, without the prior written consent of Metrolinx; and
 - (v) shall immediately notify Metrolinx in the event that it becomes aware of any unauthorized disclosure of Confidential Information, including any actual or attempted unauthorized collection, access, use or disclosure of Personal Information.
- (b) Permitted Disclosure. Notwithstanding the obligations set out in Section 9.1, Contractor may disclose Confidential Information only to those of its Personnel who: (i) need to know such Confidential Information in connection with this Contract; (ii) are bound by a written contract to keep the Confidential Information confidential at least to the same extent as set forth in this Contract; (iii) are provided with reasonable instructions by Contractor of the confidential nature of the Confidential Information; and (iv) have executed and are bound by a Security Statement in the form attached hereto as Schedule "9.1" – SECURITY STATEMENT.
- (c) Exceptions.
- (i) Subject to Section 9.1(c)(iv), the obligations of confidentiality set out in Section 9.1 shall not apply to Confidential Information which:
 - (A) becomes generally available to the public through no fault of Contractor;
 - (B) prior to receipt from Metrolinx, was known to Contractor on a non-confidential basis and is not subject to another obligation of secrecy and non-use, as documented by written records possessed by Contractor;
 - (C) was independently developed by Contractor prior to receipt from Metrolinx, as documented by written records possessed by Contractor; or
 - (D) becomes available to Contractor on a non-confidential basis from a source other than Metrolinx that is not under other obligations of confidence.
 - (ii) If Contractor receives a request for the disclosure of any Confidential Information or becomes compelled to disclose any Confidential Information pursuant to Applicable Law, Contractor shall provide Metrolinx with prompt written notice of

any such requirement and shall cooperate with Metrolinx in seeking to obtain any protective order or other arrangement pursuant to which the confidentiality of the relevant Confidential Information is preserved. If such an order or arrangement is not obtained, Contractor 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 and the provisions of this Section 9.1 shall continue to apply to the Confidential Information.

- (iii) Without limiting the generality of Section 9.1(c) and notwithstanding Section 9.1(c)(i)(D), the Parties acknowledge and agree that the treatment and disclosure of Confidential Information shall in all cases be subject to the requirements of FIPPA.
- (iv) No exception or exclusion specified in this Section shall apply to Personal Information.
- (d) Security Measures. Contractor shall select, implement (prior to the commencement of the Services), 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, the security requirements specified in Appendix "B" – SCOPE OF SERVICES, and best practices, or as otherwise prescribed by Metrolinx during the Term. Without limiting the generality of the foregoing, such practices shall include:
 - (i) implementing data masking practices using commercially acceptable products for the masking of data for all data sets, including development, user acceptance testing and production;
 - (ii) privacy due diligence safeguards; and
 - (iii) 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.
- (e) Intellectual Property Rights. Metrolinx, its contractors, subcontractors, 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.
- (f) Return or Destruction of Confidential Information.
 - (i) Immediately upon expiration or termination of this Contract or at any other time upon the request of Metrolinx, and subject to Section 9.2, Contractor agrees to:
 - (A) promptly return all Confidential Information (other than the Contract Records) to Metrolinx; or
 - (B) 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 Contractor certifying such destruction.

- (ii) Notwithstanding Section 9.1(f)(i), Contractor shall have no obligation to return or destroy:
 - (A) Confidential Information that is captured and retained within Contractor's routine computer systems backup processes, provided that (a) no specific effort is made to retrieve such Confidential Information for purposes that would violate the confidentiality obligations under this Contract and (b) the confidentiality obligations of under this Contract shall continue to apply to such archived Confidential Information for so long as such information is retained; and
 - (B) working papers or other documentation which it is required to retain pursuant to Applicable Law or any rules of professional conduct applicable to Contractor or the Contract Personnel.

9.2 FIPPA

- (a) Contractor 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, retention and treatment thereof is governed by FIPPA. Contractor agrees to keep all FIPPA Records secure and available, in accordance with the requirements of FIPPA. Contractor acknowledges that all information, data, records and materials, however recorded, that are held by Contractor and/or created by Contractor in the course of performing the Services is considered to be FIPPA Records and subject to FIPPA.
 - (ii) Section 9.1(e) shall apply to all FIPPA Records (other than the Contract Records), which shall be returned and/or destroyed in accordance with that section.
- (b) In the event of a conflict between the requirements of this Contract and the requirements of FIPPA, the requirements of FIPPA shall take precedence.
- (c) Contractor shall provide any and all FIPPA Records on demand for the purposes of responding to an access request under FIPPA or if a privacy issue arises. In these circumstances, Contractor shall provide all FIPPA Records requested to Metrolinx's Freedom of Information Coordinator (or equivalent) within seven (7) Business Days of receipt of the request from Metrolinx. Notwithstanding anything to the contrary in this Agreement and subject to Contractor'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).
- (d) Storage of FIPPA Records (including the Contract Records) at a location outside Canada shall only be permitted with Metrolinx's express written consent.

9.3 Access

- (a) Contractor shall provide to Metrolinx the network access requirements and access level that will be required by Contractor to perform the Services. All requests to access Metrolinx's network will be subject to Metrolinx's written approval.
- (b) Contractor shall aggregate all access into a central network access point before network access is granted to Metrolinx's information systems. The network controls used to

facilitate access between Contractor and Metrolinx will be subject to Metrolinx's written approval.

- (c) Personnel shall not attempt to access, or allow access to, any Metrolinx data to which they are not permitted access under this Contract. If such access is attained, Contractor shall immediately report such incident to Metrolinx, describe in detail any accessed Metrolinx data, and return to Metrolinx any copied or removed Metrolinx data.
- (d) Contractor is responsible for ensuring that Personnel do not access, or allow access, to any Metrolinx data to which they are not permitted access under this Contract. Contractor shall utilize commercially reasonable efforts, including through the use of rigorous systems security measures, to guard against, identify and promptly terminate the unauthorized access, alteration or destruction of software and Metrolinx data.

9.4 Damages

Contractor 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. Contractor 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.

ARTICLE 10 INTELLECTUAL PROPERTY RIGHTS

10.1 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 Technology;
 - (ii) all Deliverables;
 - (iii) all reports and other information created, generated, output or displayed by the Deliverables or as a result of the performance of receipt of the Services; and
 - (iv) all modifications or enhancements made to the items listed in Sections 10.1(a)(i) to (iii) hereof.
- (b) All right, title and interest, including all Intellectual Property Rights, in the Metrolinx IP will vest in Metrolinx, following creation.
- (c) Contractor will acquire no rights to any Metrolinx IP other than the licence rights expressly granted in Section 10.3.
- (d) Contractor:
 - (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) Contractor shall cause all Personnel and Subcontractors to waive for the benefit of Metrolinx and its respective successors, assigns, licensees and contractors, their respective moral rights (and any similar rights to the extent that such rights exist and may be waived in each and any jurisdiction throughout the world) in and to the Metrolinx IP.

10.2 Ownership of Contractor Background IP

- (a) Contractor is and will be the exclusive owner of, and shall retain all right, title and interest (including Intellectual Property Rights) in and to all Contractor Background IP.
- (b) Metrolinx will acquire no rights to Contractor Background IP other than the licence rights expressly granted in Section 10.4, or otherwise under or in respect of this Contract.

10.3 Grant of Licences by Metrolinx to Contractor

- (a) Metrolinx grants to Contractor, during the Term, a non-exclusive, non-transferable, royalty-free right and licence to:
 - (i) access, use, copy, support, maintain and, to the extent reasonably necessary to provide the Services, modify, the Metrolinx IP solely for the purposes of fulfilling Contractor's obligations under this Contract;
 - (ii) sublicense the Metrolinx IP to subcontractors solely to the extent necessary to enable such subContractors to fulfill Contractor's obligations under this Contract.
- (b) Any exercise by Contractor of the rights granted pursuant to Section 10.3(a) shall be subject to the terms and conditions of this Contract, including always Contractor's obligations with respect to Confidential Information set out in Article 9.
- (c) If Contractor 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).

10.4 Grant of Licences by Contractor to Metrolinx

- (a) Contractor grants to Metrolinx a perpetual, irrevocable, fully paid-up, royalty-free, non-exclusive right and licence to access, use, copy, support, maintain, modify, sublicense, assign, distribute or otherwise exploit any Contractor 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 Contractor 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 Contractor integrates with or embeds in any Deliverables any Intellectual Property provided by a third party vendor, subcontractor, independent contractor, sub-contractor or other person, Contractor shall obtain for Metrolinx the same license rights for Metrolinx in respect of such Third Party IP as set forth in Section 10.4(a) hereof.

10.5 Metrolinx's Trade-marks, Logos

- (a) Except as otherwise specified in Subsection 10.5(b), Contractor acknowledges that nothing in this Contract shall be interpreted as granting any license to Contractor to use

any of Metrolinx's trade-marks or logos and any such use by Contractor is expressly prohibited.

- (b) If Contractor is required under this Contract, or if Metrolinx otherwise gives Contractor written instructions requiring Contractor, to incorporate any of Metrolinx's logos or other trade-marks into an item being produced by Contractor, Contractor shall use Metrolinx's logos or trade-marks for that limited purpose only and shall incorporate Metrolinx's logos or trade-marks only as directed and approved by Metrolinx.

ARTICLE 11 REPRESENTATIONS AND WARRANTIES

11.1 General Representations and Warranties

Contractor represents, warrants and covenants, and acknowledges that Metrolinx is relying thereon, as follows:

- (a) Organization. Contractor is a corporation duly organized and validly existing under the laws of **[TO BE INSERTED]**.
- (b) Authorization. Contractor has full corporate power and authority to execute and deliver this Contract and to perform its obligations hereunder and carry out the transactions contemplated hereby. The execution, delivery and performance by Contractor of this Contract has been duly authorized and no additional corporate authorization or action on its part is required in connection with the execution, delivery and performance by Contractor of this Contract or the consummation by Contractor of the transactions contemplated hereby.
- (c) Enforceability. The Contract constitutes a valid and binding obligation of Contractor, enforceable against Contractor in accordance with its terms subject to Applicable Law, including, without limiting the generality of the foregoing, the *Financial Administration Act* (Ontario), and the following qualifications:
- (i) specific performance, injunction and other equitable remedies are discretionary and, in particular, may not be available where damages are considered an adequate remedy; and
- (ii) enforcement may be limited by bankruptcy, insolvency, liquidation, reorganization, reconstruction and other similar laws generally affecting the enforceability of creditors' rights.
- (d) Applicable Laws, Etc.
- (i) The execution and performance of this Contract by Contractor shall not violate any Applicable Laws and shall not breach any agreement, covenant, court order, judgment, or decree to which Contractor is a party or by which it is bound.
- (ii) The Fare Product, including its development, manufacture, production and sale has been, is and will be compliant with all Applicable Laws including those relating to or governing: (A) environmental protection, health and safety; (B) product and package labeling; (C) employment standards; and (D) language and bilingual requirements.
- (e) Governmental Authority. Contractor has, and promises that it shall maintain in good standing, all licenses, registrations, permits and other governmental authorizations

necessary to provide the Products and perform the Services and to otherwise operate its business.

- (f) Conflicting Agreements. Contractor is free of any contractual obligation that would prevent it from entering into this Contract or prevent or hinder it in any way from fulfilling its obligations hereunder.
- (g) Third Party Rights and Licenses. Contractor has obtained from all applicable third parties all rights and licenses required to provide the Products and perform the Services.
- (h) Information Provided. All information furnished by Contractor to Metrolinx in connection with the award of this Contract, including the RFP Response, fairly and accurately represents, as applicable, the business, properties, financial condition, and results of operations of Contractor and the ability of Contractor to provide the Products and perform the Services.
- (i) Litigation. To Contractor's knowledge, after reasonable inquiry, there is no actual, pending or anticipated civil or criminal litigation in any judicial forum that involves Contractor or any of its Affiliates or Subcontractors that may adversely affect Contractor's ability to perform its obligations under this Contract.
- (j) No Conflict, Interest. Neither Contractor or any of its Affiliates, nor any Personnel, has, shall have, or shall acquire, any contractual, financial, business, or other interest, direct or indirect, that would conflict in any manner or degree with Contractor's performance of its duties and responsibilities to Metrolinx under this Contract or otherwise create an appearance of impropriety with respect to the award or performance of this Contract; and Contractor shall promptly inform Metrolinx of any such interest or potential interest that may be incompatible with the interests of Metrolinx. If Metrolinx determines that Contractor is in a conflict of interest position, or in a potential conflict of interest position, Metrolinx, after consultation with Contractor respecting the matter, may request Contractor to withdraw its services from the arrangement that is causing, or may potentially cause, the conflict. If Contractor does not comply forthwith with such request, Metrolinx may deem such non-compliance to be a material breach of this Contract and may deem same to be an event giving rise to a right of termination pursuant to Subsection 14.1(a).
- (k) No Improper Payments, etc. Contractor has not been, and will not be involved, either directly or indirectly, in giving, offering or agreeing to give or offer, any loan, reward, advantage or benefit of any kind to an elected representative, a government official, an employee of any government or ministry, state corporation or public international organization (or to any relative or other person connected with such an individual) in exchange for, or in order to induce, favourable business treatment or to affect any decision. Any breach of the preceding sentence shall be deemed to be a material breach of this Contract incapable of remedy. Without limiting the generality of the foregoing, Contractor has not been, and will not be, involved, either directly or indirectly, in giving, offering or agreeing to give or offer, any loan, reward, advantage or benefit of any kind to any employee, officer or director of Metrolinx (or to any relative or other person connected with such an individual) with respect to any matter under this Contract or related in any way to this Contract, including the award of this Contract or any extension or other amendment to this Contract.
- (l) Infringement. The Fare Product, including its design, manufacture, production, use, supply or offering for sale or distribution, including any Card Packaging (including labeling), does not and will not infringe upon any Intellectual Property Right, nor make

use of any misappropriated trade secrets. There are no restrictions on Contractor's ability to manufacture, produce, sell or delivery the Product.

- (m) Qualifications. Contractor has the necessary knowledge, skill, expertise, experience, qualifications, competence, rights and resources to fulfil its obligations under this Contract, and agrees that the Services performed by it hereunder shall be performed in a diligent, efficient, competent and workmanlike manner, in accordance with the provisions of this Contract and all legal and regulatory requirements.
- (n) No Encumbrances. The Fare Products shall be free from any lien, claim, encumbrance or security interest of any kind and not rights of any third parties are necessary to market, sell or distribute the Product.

11.2 Survival

The representations and warranties made by the Parties in Sections 11.1 and Section 6.1 shall be deemed to be made continuously throughout the Term (and, to the extent that any are relevant to obligations hereunder that survive the Term, shall survive for the duration of such obligations. No investigations made by or on behalf of either Party at any time shall waive, diminish the scope of or otherwise affect any representation or warranty made by the Parties in this Contract.

ARTICLE 12 REMEDIES

12.1 Contractor's Limited Warranty

- (a) Contractor represents and warrants to Metrolinx, and acknowledges that Metrolinx is relying thereon, that for a period of twelve (12) months from the date of delivery of each unit of Card Media to the applicable Metrolinx Location, that Card Media shall:
 - (i) conform to and operate in accordance with the applicable specifications, samples, and descriptions set out in this Contract and the Order Form; and
 - (ii) be in good operating condition and free of defects in design, workmanship, and material.
- (b) Contractor represents and warrants to Metrolinx, and acknowledges that Metrolinx is relying thereon, that the Card Packaging shall, upon delivery, conform to the applicable specifications and descriptions set out in this Contract and the Order Form, and shall be free of defects in design, workmanship, and material.
- (c) In the event that the Card Media or Card Packaging fails to comply with the limited warranty set out in Section 12.1(a) or Section 12.1(b), respectively, and without limiting any other right under this Contract or in law, Contractor shall promptly:
 - (i) replace all non-conforming, broken or defective Products with the same number of fully-functioning Products;
 - (ii) replace all non-conforming Card Packaging with the same of number of conforming Card Packaging; and
 - (iii) correct all defects and non-conformances (including latent defects),
in a timely and efficient manner and at Contractor's expense.
- (d) Notwithstanding the expiration of any warranty period described in this Section, Contractor's warranty obligations shall extend to correcting any defects or non-

conformances of which Metrolinx has provided notice prior to the expiration of the applicable warranty period.

- (e) Contractor shall be responsible, at its own expense, for the return and destruction of any rejected Products and/or Card Packaging. Metrolinx shall return such rejected Products and/or Card Packaging to Contractor using the form of delivery originally specified on the Order Form pertaining thereto.
- (f) Warranty and Indemnity Pass-through. To the extent that any Products, or components thereof, are provided or any Services is performed by a third party, Contractor shall make available to Metrolinx the benefit of any warranties or indemnities provided by such third party.
- (g) Root-Cause Analysis and Resolution. In connection with any warranty claim by Metrolinx, Metrolinx may (acting reasonably) and at Contractor's expenses, require the Contractor to:
 - (i) conduct a root cause analysis; and/or
 - (ii) prepare a draft remedial plan (in a form reasonably acceptable to Metrolinx) setting out the steps to be taken to prevent any future non-compliance with the requirements of Section 12.1(a).

Contractor shall work with Metrolinx to finalize a remedial plan acceptable to Metrolinx, with a view to preventing future warranty claims, and shall subsequently implement such plan to ensure continued compliance by Contractor for the duration of the Term.

- (h) Contractor shall have the right to confirm the existence of any defects or non-conformance via its own independent means prior to taking any of the steps contemplated in this Section 12.1; provided, however, that the provisions of this Section shall apply notwithstanding the results of any tests or verification process carried out by Contractor under this Section.
- (i) Nothing in this Section 12.1 shall operate or be construed to restrict, lessen or derogate from, in any way, Contractor's obligations to comply with the service levels as set out in Service Level Agreement.

12.2 Indemnity by Contractor

Contractor shall at all times indemnify, defend and hold harmless Metrolinx and Metrolinx Clients and their respective officers, directors, employees, agents, successors and permitted assigns (each, a "**Metrolinx Indemnitee**") from and against any and all Losses resulting from:

- (a) Intentionally Deleted;
- (b) any negligent acts, errors or omissions or wilful misconduct by or on behalf of Contractor relating to the Services to be provided under this Contract;
- (c) any seizure by a public authority or Governmental Authority or any alleged or actual violation of Applicable Law by Contractor or any Subcontractor in connection with the manufacture, shipment, sale, and/or distribution of the Product;
- (d) any activities of any Personnel while on any Metrolinx property that causes bodily injury, death of any person or damage, loss or destruction to real or tangible, personal property; and/or
- (e) any acts performed or omitted to be performed by or on behalf of Contractor beyond the authority of Contractor hereby conferred.

12.3 Proprietary Rights Indemnification

- (a) **Contractor Indemnity.** Contractor shall indemnify, defend and hold harmless the Metrolinx Indemnitees from and against any and all Losses sustained by them arising out of or in connection with any Claim of misappropriation or infringement of any proprietary right, including Intellectual Property Rights, in the case of a third party claim, to the extent that such Claim or action arises from Contractor's use of any systems, software or other resources in connection with its performance of the Services, or from Metrolinx's utilization of the Products, Services or Deliverables for their intended purposes (including the use of systems, software or other resources provided by Contractor as part of, or for use in connection with the Products, Services or Deliverables). Such indemnification shall not, however, extend to any Claim or action to the extent arising directly and substantively from any Metrolinx Indemnitee's use or combination of the Services or Deliverables provided by Contractor with services, systems or equipment not provided by Contractor, where Such indemnification shall not, however, extend to any Claim or action to the extent arising directly and substantively from (i) any Metrolinx Indemnitee's use or combination of the Services or Deliverables provided by Contractor with services, systems or equipment not provided by Contractor, where such use or combination was not approved by Contractor or contemplated by this Contract, (ii) any modifications or changes made to the Deliverables by any person other than Contractor or Personnel, or (iii) any Deliverables that were based upon designs provided by Metrolinx."
- (b) **Knowledge of Claims.** Contractor represents and warrants that, as of the Effective Date, Contractor is not aware of any actual, pending or threatened claims or actions of the kind described in this Section.
- (c) **Contractor Options.** If any Products, Services or Deliverables are held by a court of competent jurisdiction to misappropriate or infringe a proprietary right of any third party, or are likely to do so, Contractor shall take one of the following steps, in consultation with Metrolinx and at Contractor's expense and without any adverse effect to the Products, Services or Deliverables: (i) replace such Products, Services or Deliverables with other equivalent equipment, services or deliverables free of infringement; (ii) modify such Products, Services or Deliverables so that they shall be free of the infringement; (iii) procure for Metrolinx a license or other right to use such Products, Services or Deliverables; and/or (iv) upon Metrolinx's prior written approval discontinue the portion of the Products, Services or Deliverables which are infringing, and adjust the applicable Fees in accordance with the process set out in this Contract and which is otherwise acceptable to Metrolinx. To the extent that such replacement or modification will have a material impact on the functionality, utility or availability of the Products, Services or Deliverables, Contractor must obtain the written consent of Metrolinx prior to replacing or modifying such infringing product.
- (d) Section 12.3(c) sets forth the entire liability and obligation of Contractor and the sole and exclusive remedy for Metrolinx for any losses covered by Section 12.3".

12.4 General Provisions

Contractor 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 Contractor is obligated to indemnify the Indemnified Parties pursuant to this Article 12, provided that the indemnity obligations of Contractor under this Article 12 shall not extend to Loss attributable to the negligence or wilful

misconduct of any Indemnified Parties to the extent that such Indemnified Parties' negligence or willful misconduct caused the Loss.

12.5 Indemnification Procedures

- (a) Notice. In the event that Metrolinx becomes aware of any claim in respect of which it is to be indemnified pursuant to this Contract ("**Claim**"), Metrolinx (the "**Indemnified Party**") shall promptly give written notice thereof to Contractor (the "**Indemnifying Party**"). Such notice shall specify whether the Claim arises as a result of a Claim by a third party against the Indemnified Party (a "**Third Party Claim**") or whether the Claim does not so arise (a "**Direct Claim**"), and shall also specify with reasonable particularity (to the extent that the information is available): (i) the factual basis for the Claim; and (ii) the amount of the Claim, if known. Any failure or delay in giving, or deficiency in the content of, such notice shall not constitute a breach and shall not excuse the obligation under this Article 12 except to the extent, if any, that the Indemnifying Party is prejudiced by such failure or delay.
- (b) Third Party Claims. In respect of any Third Party Claim, the Indemnifying Party shall be entitled to elect by written notice addressed to the Indemnified Party, within fifteen (15) days after its receipt of such notice, to assume control over the investigation, defence, negotiation and settlement of such Third Party Claim at its own cost, risk and expense. If the Indemnifying Party elects to assume such control, the Indemnified Party shall have the right to participate in the investigation, defence, negotiation and settlement of such Third Party Claim at the cost of the Indemnifying Party and to retain counsel to act on its behalf provided that the fees and disbursements of such counsel shall be paid by the Indemnified Party (unless the Indemnifying Party consents to the retention of such counsel or unless the named parties to any action or proceeding include both the Indemnifying Party and the Indemnified Party and the representation of both the Indemnifying Party and the Indemnified Party by the same counsel would be inappropriate due to the actual or reasonably potential differing interests between them (such as the availability of different defences), in which case the fees and disbursements of such counsel shall be paid by the Indemnifying Party. The Indemnifying Party shall not settle any Claim without the prior written consent of the Indemnified Party unless such settlement requires only the payment of financial consideration by the Indemnifying Party and the Indemnifying Party receives a full and final release from in form and substance satisfactory to the Indemnified Party.
- (c) Control of Third Party Claims. If the Indemnifying Party does not elect to assume control of the investigation, defence, negotiation and settlement of the Third Party Claim, or if the Indemnifying Party, having elected to assume such control thereafter fails to diligently defend the Third Party Claim, the Indemnified Party shall have the right to assume such control in such reasonable manner as it may deem appropriate, at the cost, risk and expense of the Indemnifying Party, and the Indemnifying Party shall be bound by the results obtained by the Indemnified Party with respect to such Third Party Claim. The Indemnifying Party shall have the right to participate in such defence at its own cost and expense.
- (d) Co-operation in Third Party Claims. Each Party, at its own cost and expense, agrees to provide reasonable co-operation and assistance to the other Party in the investigation, defence, negotiation and settlement of any Claim, including providing reasonable access to relevant information and employees.
- (e) Advanced Payments in Third Party Claims. If any Third Party Claim is of a nature such that the Indemnified Party is required by Applicable Laws or the order of any court,

tribunal or regulatory body having jurisdiction to make a payment to a third party with respect to the Third Party Claim before the completion of settlement negotiations or related legal proceedings, as the case may be, the Indemnified Party may make such payment and the Indemnifying Party shall, forthwith after demand by the Indemnified Party, reimburse the Indemnified Party for such payment. For greater certainty, if such payment, by resulting in settlement of the Third Party Claim, precludes a final determination of the merits of the Third Party Claim and the Indemnified Party and the Indemnifying Party are unable to agree whether such payment was reasonable in the circumstances having regard to the amount and merits of the Third Party Claim, such dispute shall be dealt with pursuant to the dispute resolution process referred to in this Contract.

- (f) Direct Claims. Disputes resulting in or from a Direct Claim shall be resolved pursuant to the dispute resolution process set out in this Contract.
- (g) Set-off and Subrogation. The indemnity obligations hereunder shall be enforceable without right of counterclaim as against the Indemnified Party. The Indemnifying Party shall, upon payment of an indemnity in full, be subrogated to all rights of the Indemnified Party with respect to the claims and defences to which such indemnification relates.

12.6 Agency for Representatives

The Indemnified Party agrees that (a) it accepts each indemnity, and (b) it may enforce each indemnity, in favour of the Indemnified Party's related indemnified parties hereunder as agent and trustee of such indemnitee.

ARTICLE 13 LIMITATION OF LIABILITY

13.1 Exclusion of Warranties

Other than the express warranties set out in this Contract, there are no warranties or conditions, express or implied, statutory or otherwise, including the implied warranties or conditions of merchantability or fitness for a purpose.

13.2 General Intent

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

13.3 Limitations on Liability

- (a) SUBJECT TO SUBSECTION 13.3(c), IN NO EVENT SHALL EITHER PARTY BE LIABLE FOR INDIRECT, CONSEQUENTIAL, EXEMPLARY, PUNITIVE OR SPECIAL DAMAGES RELATING TO THE AGREEMENT EVEN IF SUCH PARTY HAS BEEN ADVISED IN ADVANCE OF THE POSSIBILITY OF SUCH DAMAGES.
- (b) Subject to Section 13.3(c), each Party's aggregate liability to the other under the Contract for direct damages for all events giving rise to liability hereunder shall be limited to an amount equal to the Maximum Contract Price.
- (c) The limitations of liability set forth in Sections 13.3.(a) and 13.3.(b) shall not apply with respect to Losses:

- (i) that are the subject of indemnification pursuant to Section 12.2(b) or Section 12.3; and/or
- (ii) that are occasioned by a breach of Article 9.
- (d) Each Party shall have a duty to mitigate damages for which the other Party is responsible.
- (e) Nature of Claim. The provisions of this section 13.3 shall apply regardless of the nature or form of the claim, whether breach of contract, tort (including negligence) or otherwise.

13.4 Force Majeure Event

- (a) For the purposes of this Contract, a "**Force Majeure Event**" means any of the following events or circumstances that directly causes either Party to be unable to perform all or a material part of its obligations under this Contract and is beyond the reasonable control of the impacted Party: war, civil war, armed conflict, terrorism, hostilities, or acts of foreign enemies; riot, civil disturbance or insurrection; epidemic or pandemic; floods, storms or other extreme weather; blockades or embargoes; fire, explosion, power failure or other similar events; or labour disputes, strikes or other labour action. The Parties agree that an event shall not be considered beyond a Party'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) Process.
 - (i) If a Party seeks to excuse itself from its obligations under this Contract due to a Force Majeure Event:
 - (A) 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
 - (B) 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.
 - (ii) 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 X.
 - (iii) In the case of a continuing Force Majeure Event, only one notice shall be necessary.
- (c) Metrolinx Rights. Without limiting any other rights available to Metrolinx under this Contract, Metrolinx reserves the right to contract any Services from a third party during any period of Force Majeure claimed by Contractor.

ARTICLE 14 DEFAULT AND TERMINATION

14.1 Termination for Cause

In addition to any other rights or remedies hereunder and without intending to waive, remove, limit or in any way restrict any legal or equitable remedy otherwise available to Metrolinx, Metrolinx may terminate this Contract for cause at any time by providing notice in writing:

- (a) if Contractor breaches any of its obligations or covenants hereunder with respect to safety (including worker or workplace safety), security or confidentiality;
- (b) if Contractor breaches any representation or warranty given hereunder or fails to observe or perform any other obligation or covenant required to be observed or performed by it under this Contract and to the extent curable, such failure continues for a period of (i) ten (10) Business Days after delivery of written notice requiring Contractor to cure such failure; or (ii) such other period as Metrolinx may allow in writing, provided that Contractor has commenced to cure the failure within 10 Business Days after delivery of written notice requiring Contractor to cure such failure;
- (c) if Contractor breaches the same representation or warranty given hereunder or fails to observe or perform any other obligation or covenant required to be observed or performed by it under this Contract more than once (provided that Metrolinx has previously notified Contractor of such prior breach);
- (d) if Contractor repeatedly breaches one (1) or more of its obligations under this Contract, whether or not any particular breach has been cured or independently constitutes a material breach, provided that:
 - (i) such repeated breaches have a material impact on Contractor's performance of the Services;
 - (ii) Metrolinx has made Contractor aware of each such breach upon its occurrence, as documented in writing; and
 - (iii) Contractor has been given the opportunity to cure each such breach upon its occurrence;
- (e) if Contractor fails to meet the applicable Minimum Service Level for three (3) or more Enumerated Service Levels for three (3) consecutive calendar month, or if a right of termination arises pursuant to any Service Level Agreement;
- (f) in the event of a notice in the event of a Change of Control, or an agreement that will result in a Change of Control, of Contractor, provided that Metrolinx gives Contractor not less than sixty (60) days' prior written notice; and/or
- (g) in the event Contractor makes a sale of all, or substantially all, of its assets used in performing the Services, or an agreement that will result in a sale of all, or substantially all, of its assets used in performing the Services, provided that Metrolinx gives Contractor not less than sixty (60) days' prior written notice.

Contractor agrees that if Metrolinx terminates this Contract for cause, Metrolinx shall not be liable to Contractor in any way as a result of such termination.

14.2 Termination Without Cause

- (a) Metrolinx shall have the right to terminate this Contract, any part of the Services and/or any Order, without cause at any time, upon not less than **[180 days']** prior written

notice to Contractor. In the event of termination of this Contract pursuant to this Section, Metrolinx shall pay Contractor for all Products and Services delivered in accordance with this Contract up to the date of termination and which, at such date, remain unpaid. In the event of termination of part of the Services, Metrolinx's liability to Contractor in respect of such terminated Services shall be limited to payment for all such Services delivered in accordance with this Contract up to the date of termination and which, at such date, remain unpaid.

- (b) Contractor agrees that if Metrolinx terminates this Contract, or part of the Services, under Section 14.2(a) and pays Contractor in accordance with that Section, then Contractor shall:
 - (i) accept the amount paid under Section 14.2(a) as full and final settlement and satisfaction of all claims of every nature and kind whatsoever arising from the termination; and
 - (ii) release Metrolinx from any further liability in connection with this Contract or the terminated Services, as applicable.
- (c) Contractor acknowledges and agrees that the sole liability of Metrolinx with respect to termination without cause will be as stated above in this Section. For greater certainty, the payments contemplated by Section 14.2(a) shall not be payable in the event of any termination of this Contract or any part of the Services pursuant to Sections 14.1, or 14.3.

14.3 Termination for Insolvency

In addition to any other rights or remedies hereunder, either Party may terminate this Contract forthwith by giving written notice to the other Party where that other Party: (a) makes any general assignment for the benefit of creditors or otherwise enters into any composition or arrangement with its creditors; (b) has a receiver and/or manager appointed over its assets or makes an application to do so; (c) becomes bankrupt or insolvent or commits an act of bankruptcy or takes or attempts to take advantage of any law or statute for the relief of bankrupt or insolvent debtors; (d) has a resolution or a petition filed or an order made for its winding up; or (e) ceases to carry on business. Notwithstanding the foregoing, neither Party shall be entitled to terminate this Contract under this Section if the other Party, or its creditors, or some other party makes suitable provisions for the performance of its obligations hereunder during any event referred to in this Section 14.3.

14.4 Termination for Force Majeure

If, as a result of a Force Majeure Event, a Party is prevented from performing, in whole or in part, any of its obligations under this Agreement for a period of time greater than **[sixty (60) days]**, either Party may terminate this Agreement immediately on written notice and neither Party shall be responsible for any damages, costs or expenses as a result of such termination.

14.5 Orderly Termination

In connection with the termination of all or any part of the Services for any reason, Contractor shall comply with Metrolinx's reasonable directions to effect the orderly transition and migration to Metrolinx, or a third party designated by Metrolinx, from Contractor of all such terminated Services then being performed by Contractor or which Contractor is then responsible for performing under this Contract, so as to ensure no disruption to Metrolinx's business activities (the "**Termination Transition**"). Metrolinx and its employees and agents shall cooperate in good faith with Contractor in connection with Contractor's obligations under this Section and each

Party shall perform its obligations under the Transition-Out Plan. Contractor's obligations under this Section shall consist of, at a minimum, the following, as well as such other obligations as may be contained in the Transition-Out Plan, or be otherwise agreed upon by Contractor and Metrolinx.

ARTICLE 15 INSURANCE

15.1 Insurance

- (a) The Contractor shall obtain and maintain, at its sole expense, insurance of such types and in such amounts as is commercially reasonable for the business operated by the Contractor and for the performance of the type of Services required by this Contract, including without limitation:
- (i) General Liability Insurance. The policy shall be in the name of the Contractor, with limits of not less than ten million dollars (\$10,000,000) per occurrence and with a property damage deductible of not more than five thousand dollars (\$5000). Umbrella or excess liability insurance may be used to achieve the desired limit. The policy shall include a waiver of subrogation against Metrolinx. Any general liability policy provided by Contractor hereunder shall name Metrolinx, and their respective officers, agents, and employees, individually and collectively, as loss payee and as additional insureds but only with respect to liability arising out of the operations of the insured performed under the Contract. Contractor shall notify Metrolinx of any significant changes in its insurance coverage.
 - (ii) Error and Omissions / Professional Liability Insurance including Network Security & Privacy Coverage. The policy may be provided under various insurance policies (ie., "Cyber Liability", "Network Liability", "Technology Errors and Omissions", etc.) with a limit of not less than five million dollars (\$5,000,000) per occurrence and in the aggregate.
 - (iii) All Risk Property Insurance. The policy shall be in the joint names of the Contractor and Metrolinx, with limits of not less than the sum of the amount of the Maximum Contract Price and all applicable Taxes. The policy shall have a deductible of no more than ten thousand dollars (\$10,000) and shall include a waiver of subrogation against Metrolinx.
 - (iv) Automobile Liability Insurance. The policy covers bodily injury, death and damage to property with respect to all license vehicles owned or leased by the Contractor. The policy shall have limits of not less than five million (\$5,000,000) inclusive per occurrence.
- (b) Proof of Insurance Coverage

- (i) Prior to the commencement of the Services and upon the placement, renewal, amendment or extension of all or any part of the policies listed in Section 15.1(a), the Contractor shall provide Metrolinx with documentation evidencing the coverage required in this Article 15 upon request. Such documentation shall reference the Contract name and number.

- (c) If the Contractor fails to provide or maintain insurance as required pursuant to this Contract, Metrolinx shall have the right to provide and maintain such insurance. The Contractor shall pay the cost thereof to Metrolinx on demand or Metrolinx may deduct the amount which is due or may become due from any amount payable to the Contractor pursuant to this Contract.

- (d) All required insurance policies shall be placed with insurers licensed to underwrite insurance in the jurisdiction in which the Services are being performed.

- (e) All required insurance policies shall be endorsed to provide Metrolinx with not less than thirty (30) days' notice in writing in advance of any cancellation and/or material amendment or change restricting coverage.

- (f) Contractor is responsible for determining whether additional insurance coverage is necessary or advisable in order to ensure that Contractor can satisfy its obligations under this Contract and Applicable Laws and shall obtain and maintain, for as long as this Contract is in effect, at its sole expense, all such insurance in addition to the insurance required pursuant to this Article 15.

- (g) The fact that Contractor has obtained, or not obtained, the insurance required pursuant to this Section 15.1 shall in no manner lessen nor otherwise affect Contractor's other obligations or liabilities set forth in this Contract.

ARTICLE 16 DISPUTE RESOLUTION

16.1 General

Any dispute or disagreement between the Parties arising out of or relating to this Contract, including with respect to the interpretation of any provision of this Contract, amounts due hereunder and/or the performance of either Contractor or Metrolinx (a "**Dispute**"), shall be resolved as provided in this Article 16.

16.2 Dispute Resolution Process

- (a) Prior to the initiation of litigation, upon the written request of a Party, Contractor Representative and the Metrolinx Representative shall meet to discuss and resolve the dispute.

- (b) If such individuals do not resolve the dispute within ten (10) Business Days after such written notice, the Parties shall further attempt to resolve their dispute informally, as follows:

- (i) Upon the written request of a Party, each Party shall, within ten (10) Business Days, appoint a designated representative who does not devote substantially all of his or her time to performance under this Contract, whose task it shall be to meet for the purpose of endeavoring to resolve such dispute.
 - (ii) The designated representatives shall meet as often as the Parties reasonably deem necessary in order to gather and furnish to the other all information with respect to the matter in issue which the Parties believe to be appropriate and germane in connection with its resolution. The representatives shall discuss the problem and negotiate in good faith in an effort to resolve the dispute without the necessity of any formal proceeding.
 - (iii) During the course of such discussions, all reasonable requests made by one Party to the other for non-privileged information, reasonably related to the issue in dispute under this Contract, shall be honored in order that each of the Parties may be fully advised of the other's position.
 - (iv) The specific format for the discussions shall be left to the discretion of the designated representatives, but may include the preparation of agreed-upon statements of fact or written statements of position.
- (c) If the dispute cannot be resolved by the designated representatives appointed by the Parties pursuant to Section 16.2(a), the matter shall be submitted to mediation.
- (d) Subject to Section 16.2(e), upon the earlier to occur of the following:
- (i) the Parties conclude in good faith that amicable resolution through continued mediation of the matter does not appear likely; or
 - (ii) forty-five (45) Business Days have elapsed from the initial submission of the dispute to mediation pursuant to Subsection 16.2(a) (this period shall be deemed to run notwithstanding any claim that the process described in this Section was not followed or completed),
- any dispute that remains unresolved shall be submitted to arbitration. Any such arbitration shall be conducted in accordance with the terms set out in Schedule "16.2" – DISPUTE RESOLUTION.
- (e) This Section 16.2 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.

16.3 Jurisdiction

The Parties consent to venue in the City of Toronto, Ontario and to the exclusive jurisdiction of the Ontario Court of Justice (General Division) and all courts competent to hear appeals therefrom, for all litigation which may be brought, subject to the requirement for arbitration hereunder, with respect to the terms of, and the transactions and relationships contemplated by, this Contract. The Parties further consent to the jurisdiction of any provincial superior court

located within a province which encompasses assets of a Party against which a judgment has been rendered for the enforcement of such judgment or award against the assets of such Party.

16.4 No Termination or Suspension of Services

Notwithstanding anything to the contrary contained herein, and even if any Dispute arises between the Parties and regardless of whether or not it requires at any time the use of the dispute resolution procedures described above, in no event nor for any reason shall Contractor interrupt the provision of Products or Services to Metrolinx or any obligations related to Termination Transition, disable any equipment or software used to provide Services, or perform any other action that prevents, impedes or reduces in any way the provision of Services or Metrolinx's ability to conduct its activities, unless: (a) authority to do so is expressly granted in writing by Metrolinx or conferred by a court of competent jurisdiction; or (b) this Contract has been terminated or has expired pursuant to Article 15 hereof and a Termination Transition satisfactory to Metrolinx has been completed.

ARTICLE 17 GENERAL PROVISIONS

17.1 Entire Agreement

This Contract and the Service Level Agreement constitute the entire agreement between the Parties pertaining to the subject matter hereof and supersedes all prior agreements, understandings, negotiations and discussions, whether oral or written, of the Parties and there are no representations, warranties, conditions or other agreements between the Parties in connection with the subject matter hereof except as specifically set forth herein or therein.

17.2 Governing Law

This Contract shall be governed by and construed in accordance with the laws of the Province of Ontario and the laws of Canada applicable therein. Subject to Article 14, each Party irrevocably attorns to and submits to the non-exclusive jurisdiction of the courts of the Province of Ontario with respect to any matter arising hereunder or related hereto.

17.3 Notice

All notices, requests (including requests for approval, acceptance and amendments to this Contract), demands or other communication (in this Section, a "**notice**") required or permitted to be given or made hereunder shall be, unless otherwise specifically provided for in this Contract, in writing and shall be sufficiently given or made if:

- (a) delivered in person and left with a receptionist or other responsible employee of the relevant Party at the applicable address set forth below;
- (b) sent by prepaid registered post; or
- (c) sent by any electronic means of sending messages, including facsimile transmission, which produces a paper record (in this Section Article 17 an "**Electronic Transmission**") during Business Hours charges prepaid and confirmed by prepaid registered post;

in the case of a notice to Contractor, to:

[TO BE INSERTED]

Attention:

Fax:

Email:

and, in the case of a notice to Metrolinx, to:

Metrolinx

[CONFIRM WHICH METROLINX ADDRESS]

Attention: Robert Hollis, Executive Vice President, PRESTO

Fax: 647 789 0321

Email: robert.hollis@prestocard.ca

Each notice sent in accordance with this Section shall be deemed to have been received:

1. on the day it was delivered or on the first Business Day thereafter if it was delivered after 5:00 p.m. or if the day on which it was delivered was not a Business Day;
2. on the fifth mail delivery day following the day on which it was posted; or
3. on the first Business Day after it was sent by Electronic Transmission.

Either Party may change its address for notice by giving notice to the other Party (as provided in this Section). All addresses for notice must be addresses to which notices can be personally delivered.

17.4 Further Assurances

Each Party shall do such acts and shall execute such further documents, and shall cause the doing of such acts and shall cause the execution of such further documents as are within its power, as the other Party may in writing at any time and from time to time reasonably request be done and or executed, in order to give full effect to the provisions of this Contract, such acts and executions of documents not to be unreasonably delayed or withheld.

17.5 Remedies

All rights and remedies of Metrolinx set out in this Contract shall, whether expressly so stated or otherwise, be deemed to be in addition to any other rights or remedies hereunder and shall not waive, remove, limit or in any way restrict any legal or equitable right or remedy that is otherwise available to Metrolinx, except as otherwise limited or disclaimed in this Contract.

17.6 Public Announcements

Contractor shall submit to Metrolinx all advertising, promotions, marketing, media releases, public announcements, public disclosures and other publicity matters relating to this Contract in which Metrolinx, or the subject matter hereof, are mentioned or language from which the connection of same may be inferred or implied, and shall not publish or use any such communications without the prior written approval of Metrolinx. The foregoing restriction shall not apply to: (i) any announcement intended solely for internal distribution at Contractor; or (ii) any disclosure required by legal, accounting or regulatory requirements beyond the reasonable control of Contractor, which shall be treated as set out in Article 9.

17.7 Invalidity

If any of the provisions or part thereof contained in this Contract is found by a court of competent jurisdiction to be invalid, illegal or unenforceable in any respect, the validity, legality or enforceability of the remaining provisions or parts thereof contained herein shall not be in any way affected or impaired thereby.

17.8 Amendment in Writing

Except as otherwise expressly provided in this Contract, no supplement, modification, amendment or termination of this Contract shall be binding unless executed in writing by the Party to be bound thereby, and in the case of Metrolinx, by the Contract Authority.

17.9 No Waiver

No waiver of or consent to depart from the requirements of any provision of this Contract shall be binding against either Party unless it is in writing and is signed by the Party giving it. Such waiver or consent shall be effective only in the specific instance and for the specific purpose for which it has been given and shall not be deemed or constitute a waiver of any other provisions (whether or not similar) nor shall such waiver constitute a continuing waiver unless otherwise expressly provided. No failure on the part of either Party to exercise, and no delay in exercising, any right under this Contract shall operate as a waiver of such right. No single or partial exercise of any such right shall preclude any other or further exercise of such right or the exercise of any other right.

17.10 Assignment

Contractor shall not assign (including by operation of law) any of its rights or obligations under this Contract without the prior written consent of Metrolinx, such consent not to be unreasonably withheld. Metrolinx may assign the benefit of this Contract or make any arrangements that would result in the performance, in whole or in part, of the obligations of Metrolinx under this Contract by a person other than Metrolinx. Such notice to Contractor may be given either prior to or after the execution of such an assignment or the making of such arrangements by Metrolinx.

17.11 Change of Control

Contractor shall notify Metrolinx promptly upon the occurrence of any prospective Change of Control or sale of all or substantially all of Contractor's assets used in performing the Services, including where Contractor has entered into negotiations regarding a letter of intent, memorandum of understanding or other similar document.

17.12 Enurement

This Contract shall enure to the benefit of and be binding upon each of the Parties and their respective successors (including by amalgamation or statutory arrangement) and permitted assigns.

17.13 Survival

All provisions hereof that by their nature or wording contemplate the taking of action or refraining from certain actions after the termination of this Contract shall survive its termination, including the following provisions of this Contract: **[TO BE INSERTED]**. Such provisions shall remain in effect after the termination of this Contract, until such time as the Parties mutually agree to the release of the obligations contained therein. No termination of this Contract by any Party shall affect the rights and obligations of any Party which have accrued as of the date of such termination.

17.14 Independence of Contractor

Contractor is, and shall be, an independent contractor, and nothing herein contained shall be construed so as to create an agency relationship, an employment relationship, a partnership or a joint venture between Contractor and Metrolinx, or between Metrolinx and any Personnel. Neither Party shall have the right to bind the other to any agreement with a third party or to incur any obligation or liability on behalf of the other Party.

17.15 Counterparts

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

17.16 Language

The Parties acknowledge that they have required this Contract to be written in English. Les Parties aux présentes reconnaissent qu'elles ont exigé que la présente entente soit rédigée en anglais.

SCHEDULE "3.2"

GOVERNANCE

1. Definitions

In this Schedule, the following definitions will apply:

- (a) **"Contract Authority"** means Executive Vice-President, PRESTO;
- (b) **"IVOF"** means the Individual Vendor Operational Forums;
- (c) **"JVOF"** means the Joint Vendor Operational Forum;
- (d) **"JVSF"** means the Joint Vendor Strategic Forum; and
- (e) **"SVC"** means the applicable Special Vendor Committees.

2. Joint Vendor Strategic Forum

- (a) Mandate

The mandate of the JVSF is to, among other things, address the resolution of escalated cross-vendor issues.

- (b) Role

- (i) Cross-vendor strategic issues, including joint-initiatives, upcoming milestones / events;
- (ii) Resolution of escalated cross-vendor issues; and
- (iii) Cross-vendor relationship building / terms of engagement, as needed.

- (c) Composition

- (i) PRESTO Managing Director & EVP (Chair);
- (ii) PRESTO Vice-presidents (Chief Technology Officer, Vice-presidents of Operations & Deployment, Solutions, and Finance);
- (iii) PRESTO Director, Vendor Management;
- (iv) Senior Account Executives of Contractor and other vendors; and
- (v) Other participants as designated by the Chair.

- (d) Meeting Guidelines

- (i) Frequency

- (A) The JVSF will meet on a quarterly basis, or as otherwise agreed.

- (ii) Meeting Format

- (A) In-person or via teleconference; half-day meeting of all members

- (iii) Inputs

- (A) Metrolinx (PRESTO) and Contractor / other vendor data, analysis, reports

- (iv) Agenda Items

- (A) Agenda items and respective guests or representatives will be identified to the Chair as required.
- (B) The Chair or its delegate will publish the agenda five business days prior to next meeting.
- (v) Additional Guidelines
 - (A) A quorum for the JVSF will consist of 50% of the total JVSF members.
 - (B) Decisions will be made by consensus of meeting attendees.
 - (C) If there is an urgent matter at hand and the JVSF cannot be convened in time to resolve the Chair will consult with other applicable members, all decisions will be documented and shared with the JVSF.
 - (D) JVSF members are bound to the decisions made by the JVSF regardless of whether they or their proxies or substitutes were in attendance.
 - (E) Key senior project members or subject matter experts may participate in JVSF meetings as required and according to agenda items, provided that advance notice is given to the Chair no less than 48 hours prior to the meeting.

3. Joint Vendor Operational Forum

(a) Mandate

The mandate of the JVOF is to, among other things, address the resolution of cross-vendor operational issues.

(b) Role

- (i) Cross-vendor system and service integration;
- (ii) Cross-vendor operational issue resolution;
- (iii) Cross-vendor relationship issues;
- (iv) Cross-vendor performance management / operating level agreements; and
- (v) Review / approval of major cross-vendor operational changes.

(c) Composition

- (i) PRESTO Director, Vendor Management (Chair);
- (ii) PRESTO Vice-presidents of Solutions, Operations;
- (iii) PRESTO Director, Major Projects (as required);
- (iv) Senior operational executives of Contractor;
- (v) Metrolinx Clients' Operations Managers (as necessary and by invitation of the Chair); and
- (vi) Other participants as designated by the Chair.

(d) **Meeting Guidelines**

(i) Frequency

(A) The JVOF will meet on a bi-monthly basis, or as otherwise agreed.

(ii) Meeting Format

(A) In-person or via teleconference; half-day meeting of all members.

(iii) Inputs

(A) Operational data from Contractor / other vendors, Metrolinx and Metrolinx Clients, as well as related analysis and reports.

(iv) Agenda Items

(A) Agenda items and respective guests or representatives will be identified to the Chair as required.

(B) The Chair or its delegate will publish the agenda five business days prior to next meeting.

(v) Additional Guidelines

(A) A quorum for the JVOF will consist of 50% of the total JVOF members.

(B) Decisions will be made by consensus of meeting attendees.

(C) If there is an urgent matter at hand and the JVOF cannot be convened in time to resolve the Chair will consult with other applicable members, all decisions will be documented and shared with the JVOF.

(D) JVOF members are bound to the decisions made by the JVOF regardless of whether they or their proxies or substitutes were in attendance.

(E) Key senior project members or subject matter experts may participate in JVOF meetings as required and according to agenda items, provided that advance notice is given to the Chair no less than 48 hours prior to the meeting.

4. **Individual Vendor Operational Forums**

(a) **Mandate**

The mandate of the IVOF is to, among other things, address the resolution of Vendor-specific operational issues.

(b) **Role**

(i) Vendor-specific operational initiative discussion;

(ii) Vendor-specific operational issue resolution;

(iii) Vendor performance;

(iv) Vendor relationship;

(v) Contract-related issues; and

(vi) Review / approval of major vendor-specific operational changes.

(c) **Composition**

- (i) Metrolinx Manager, Vendor Performance Management (Chair);
- (ii) Metrolinx Directors / Managers of Solutions, Operations;
- (iii) Metrolinx Project Managers, Major Projects (as required);
- (iv) Contractor's Operational Manager(s); and
- (v) Other participants as designated by the Chair.

(d) **Meeting Guidelines**

(i) Frequency

- (A) The IVOF will meet on a monthly basis, or as otherwise agreed.

(ii) Meeting Format

- (A) In-person or via teleconference; half-day meeting of all members.

(iii) Inputs

- (A) Operational data from Contractor, Metrolinx and Metrolinx Clients, as applicable, as well as related analysis and reports.

(iv) Agenda Items

- (A) Agenda items and respective guests or representatives will be identified to the Chair as required.
- (B) The Chair or its delegate will publish the agenda five business days prior to next meeting.

(v) Additional Guidelines

- (A) A quorum for the IVOF will consist of 50% of the total IVOF members.
- (B) Decisions will be made by consensus of meeting attendees.
- (C) If there is an urgent matter at hand and the IVOF cannot be convened in time to resolve the Chair will consult with other applicable members, all decisions will be documented and shared with the IVOF.
- (D) IVOF members are bound to the decisions made by the IVOF regardless of whether they or their proxies or substitutes were in attendance.
- (E) Key senior project members or subject matter experts may participate in JVSF meetings as required and according to agenda items, provided that advance notice is given to the Chair no less than 48 hours prior to the meeting.

5. Special Vendor Committees

(a) **Mandate**

The mandate of the SVCs is to address specific initiatives relating to Contractor.

(b) **Role**

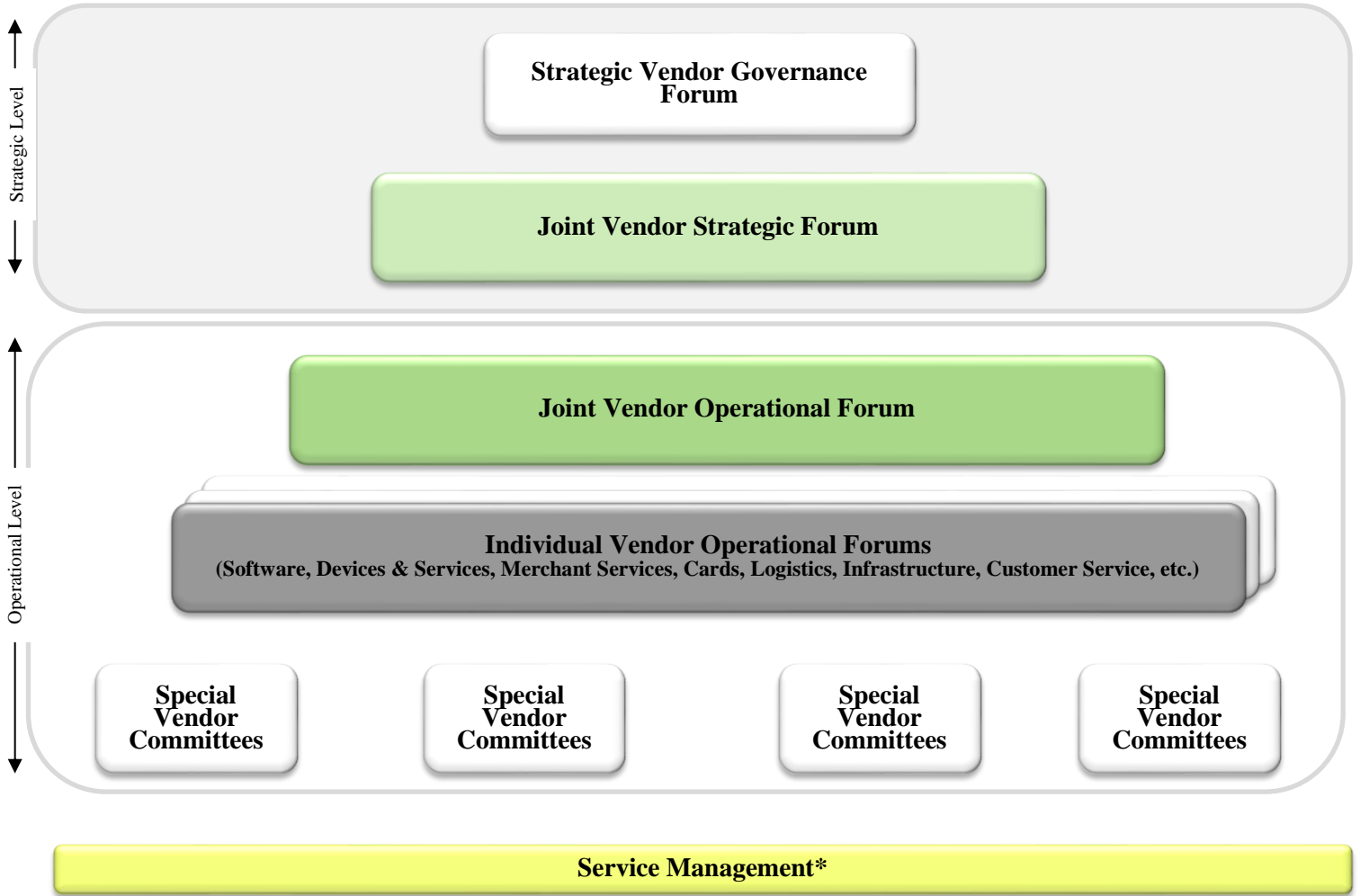
- (i) Address vendor-specific initiatives or concerns.

(c) **Composition**

- (i) Metrolinx operational-level staff;
 - (ii) Contractor's operational managers and staff; and
 - (iii) Other participants as designated by the Chair.
- (d) **Meeting Guidelines**
- (i) Frequency
 - (A) The SVC will meet on an ad hoc basis, or as otherwise agreed by Metrolinx and Contractor.
 - (ii) Meeting Format
 - (A) The meeting of the SVC will be structured as agreed by the parties.
 - (iii) Inputs
 - (A) Specific data, analysis and reports germane to the mandate of the committee and produced by Metrolinx, Contractor or Metrolinx Clients.
 - (iv) Agenda Items
 - (A) Agenda items and respective guests or representatives will be identified to the Chair as required.
 - (B) The Chair or its delegate will publish the agenda five business days prior to next meeting.
 - (v) Additional Guidelines
 - (A) A quorum for the SVC will consist of 50% of the total SVC members.
 - (B) Decisions will be made by consensus of meeting attendees.

Exhibit 1 to Schedule 3.2

Governance organizational chart



SCHEDULE "3.7" **CODE OF CONDUCT**

The goal of the Code of Conduct is to ensure safe and healthy workplaces for the people who make and deliver goods to Metrolinx. The standards set out in the chart, below, are based on a set of 'core' International Labour Organization (ILO) conventions that directly support the Universal Declaration of Human Rights.

Labour Standards

Child Labour

Definitions

No child labour will be used in any stage of the manufacture of products supplied to Metrolinx. The term "child" refers to any person under the age of 15 (or 14 where the law of the country of manufacture allows). Workers under the age of 18 shall not be exposed to situations in the workplace that are hazardous, unsafe or unhealthy. For greater certainty, the use of legitimate workplace apprenticeship programs, which comply with all Applicable Laws, is permitted.

Forced Labour

No forced labour will be used in the manufacture of products supplied to Metrolinx. Forced labour includes involuntary prison labour, indentured labour, bonded labour or otherwise. Workers shall not be required to lodge financial deposits or their original identity papers with their employer.

Harassment and Abuse

Workers involved in the manufacture of products supplied to Metrolinx will not be subject to physical, sexual, psychological abuse or harassment, verbal abuse, or any other form of abuse, including corporal punishment.

Discrimination

Workers involved in the manufacture of products supplied to Metrolinx will not be discriminated against. The Contractor and its employees shall not engage in discrimination based on race, colour, age, gender, sexual orientation, ethnicity, disability, place of origin, ancestry, source of income, pregnancy, religion, political affiliation, union membership, family status or marital status in hiring and employment practices such as promotions, rewards and access to training. No worker shall be subject to the forced use of contraceptives or pregnancy testing.

Hours of Work

Workers involved in the manufacture of products supplied to Metrolinx will not be forced to work in excess of 48 hours per week. Employers will provide each of its workers with at least one day off for every seven-day period. If a worker is requested to work overtime, such overtime shall not exceed 12 hours per week. Overtime will only be requested in exceptional and short-term circumstances, be voluntary, with workers compensated either according to law, or where the law is silent at a premium rate.

Wages and Compensation

The Contractor shall recognize that wages are essential to meeting employee's basic needs. Employers shall pay employees, as a floor, at least the minimum wage and benefits required by any Employment Standards legislation applicable to the Contractor or its Subcontractors. In all cases, workers shall receive wages that meet

basic needs by local standards.

Health and Safety

The employer shall provide its workers with a safe and healthy workplace in compliance with country and local health and safety laws and regulations, including access to clean toilet facilities and potable water. If accommodations are provided, such accommodations shall be clean, safe, and meet the basic needs of the workers. Adequate steps shall be taken to prevent accidents and injury to health by minimizing the causes of hazards inherent in the working environment.

**Freedom of Association
and the Right to Collective
Bargaining**

Workers involved in the manufacture of products supplied to Metrolinx will not be denied the freedom of association and the right to collective bargaining. Workers shall have the right to join or form trade unions of their own choosing and to bargain collectively. Workers' representative shall not be discriminated against and shall have access to carry out their representation functions in the workplace. Where the right to freedom of association and collective bargaining is restricted under law, the employer will not hinder the development of parallel means for independent and free association and bargaining.

SCHEDULE "3.9"
SECURITY REQUIREMENTS

1. Access to Premises

Contractor shall implement industry best practices to appropriately restrict physical access at Contractor's premises and/or manufacturing facilities and any other premises (other than any Metrolinx premises) where equipment, software, networks and data (including Security Keys) utilized in connection with the provision of the Services are located.

2. Personnel and Subcontractors

Contractor shall ensure that all Personnel and Subcontractors are:

- (a) pre-screened for security clearance; and
- (b) trained on vendor security practices and policies, including those identified in Section 5.

3. Access to Systems.

- (a) Contractor shall implement industry best practices to appropriately restrict electronic access to any equipment, software, networks and data relating to the Services at Contractor premises and any other premises (other than any Metrolinx premises), including at a minimum, those described in the security requirements set out in Appendix B-1.
- (b) For certainty this Section 3 shall apply in respect of all Security Keys and all equipment, software and networks utilized for the storage, processing and/or installation of Security Keys.

4. Loss, Damage and Destruction.

Contractor shall implement industry best practices to prevent any loss, damage or destruction of or to any of the premises, equipment, software, networks and data referenced in this Schedule "3.9" – SECURITY REQUIREMENTS.

5. Security Policies

- (a) Without limiting Contractor's obligations as set out in this Schedule "3.9" – SECURITY REQUIREMENTS, and prior to the commencement of the Services, Contractor shall have in place and, during the Term, maintain internal security and back-up policies that:
 - (i) are acceptable to Metrolinx (acting reasonably); and
 - (ii) sufficient to protect the ongoing delivery of the Services, and all Confidential Information which is provided to or collected by Contractor or any applicable Subcontractors; and
 - (iii) incorporate industry best practice risk analysis and threat assessment policies.
- (b) Without limiting the generality of Section 5(a), Contractor's policies shall include the following content:
 - (i) Physical Security – This policy shall limit and restrict physical access of areas, control panels, devices, cabling, the control rooms and other locations to authorized personnel. The policy shall also provide protocols for escorting and tracking all visitors.
 - (ii) Network Security – This policy shall include requirements for network infrastructure, such as firewalls with intrusion detection and intrusion prevention systems (IDS/IPS), and integrated protection of networking equipment such as switches and routers.

- (iii) Data Security – This policy shall set out protocols to ensure safe/secure storage of data/information (encryption, vaults etc.) and secure destruction of data.
 - (iv) Application Security – This policy shall set out processes for the authentication, authorization and audit of software.
 - (v) Computer Hardening - This policy shall set out specific requirements for patch management and antivirus software as well as removal of unused applications, protocols and services.
 - (vi) Device Hardening- This policy shall include protocols for handling change management and restricting access.
- (c) Contractor shall, from time to time upon request, provide to Metrolinx or any Metrolinx Client copies of any policy or policies that Contractor is required to maintain pursuant to this Section.
 - (d) Contractor shall review and update (each in the normal course), and maintain and enforce, and will cause all applicable Subcontractors to review and update (each in the normal course), and maintain and enforce, the policies identified in this Section 5.
 - (e) The Contractor shall, and shall ensure that each applicable Subcontractor shall, comply with the requirements of this Schedule "3.9" – SECURITY REQUIREMENTS and the policies identified in this Section 5 of this Schedule.

6. Protection Tools

Contractor shall use protection tools commensurate with industry best practices to monitor and test all software and related system, and components thereof, used to provide the Services.

7. Security Audits

Contractor will, at its cost, conduct, and will cause all applicable Subcontractors, at no cost to Metrolinx, to conduct, security audits of or pertaining to the Services in such manner and at such times as is best practice in the financial industry (including payment card industry standards) and, in any event, with no less frequency than is contemplated in Contractor's internal policies. Forthwith upon the completion of any such audits, Contractor will, or will cause all applicable Subcontractors to, provide written results of such audits to Metrolinx.

8. General

Contractor acknowledges that nothing in this Schedule will be construed to relieve Contractor from any of its obligations to perform the Services in accordance with this Contract, as applicable, or from any liability for failure to perform such obligations, which will continue to apply whether or not Contractor has complied with the obligations set forth in Subsection 15 of this Schedule.

9. Metrolinx Technology

- (a) Location of Metrolinx Technology. Contractor shall retain and only use and transmit, and shall ensure, including by appropriate written contractual means, that all Subcontractors shall retain and only use and transmit, all Security Keys within Canada, except with the prior written approval of Metrolinx.
- (b) Segregation of Metrolinx Data. Contractor shall logically segregate the Metrolinx Data, including the Security Keys, from the data of any other customer of Contractor at all times, including under adverse conditions.
- (c) Loss, Damage and Destruction. Contractor shall be fully responsible for any loss, damage or destruction of or to any Metrolinx Data in its care, custody or control. If any Metrolinx Data is lost, damaged or destroyed, Contractor shall, at no additional cost to Metrolinx,

promptly: (i) provide written notice of such loss, destruction or damage to Metrolinx; and (ii) restore such Metrolinx Data as required by Metrolinx.

- (d) Storage, Retrieval and Destruction. At no time will any of the computer files containing Metrolinx Technology in the possession or control of Contractor be stored or held in a form or manner not approved by or accessible to Metrolinx. Immediately upon the earlier of (i) any expiration or termination of the later of the Term (including any Transition-Out Period), (ii) such date(s) for data transfer as are set out in the Transition-Out Plan (to the extent specified therein) and (iii) the request of Metrolinx, Contractor shall: (A) provide to Metrolinx all copies of any Metrolinx Technology in Contractor's control, including all applicable equipment and software keys and such information as to format encryption (if any) and any other specification or information reasonably necessary for Metrolinx to retrieve, read, revise, use and/or maintain such Metrolinx Technology; and (B) subsequently, as directed by Metrolinx, permanently delete or destroy all copies of such Metrolinx Technology files in Contractor's control. Upon the request of Metrolinx, an officer of Contractor will certify Contractor's compliance with this Section 9(d).

SCHEDULE "5.2"
SERVICE LEVELS

1. Interpretation. Capitalized terms used in this Schedule shall have the meanings set out in this Section. Capitalized terms used herein but not otherwise defined shall have the respective meanings set out in Article 1 of the Contract.
 - (a) **[To be inserted following negotiation.]**

2. Failure to Meet Performance Requirements

If Contractor fails to meet any service level set out in this Schedule (the "**Performance Requirements**"), Contractor shall promptly, at no additional charge to Metrolinx:

 - (a) investigate, assemble and preserve pertinent information with respect to, and report on, the causes of the problem, including performing a root cause analysis of the problem;
 - (b) advise Metrolinx, as and to the extent reasonably requested by Metrolinx, of the status of remedial efforts being undertaken with respect to such problem(s);
 - (c) use reasonable efforts to minimize the impact of and correct the problem, and begin meeting the Service Level as soon as practicable; and
 - (d) take appropriate preventive measures to avoid recurrence of the problem.

3. Service Level Measurement and Reporting
 - (a) Contractor shall measure and report its performance to Metrolinx against the Performance Requirements (including the Minimum Service Levels) with such frequency and in such form as is **[agreed by the Parties / set out in Schedule "A" attached hereto]** (the "**Performance Monitoring Report**"). In addition to the requirement in the prior sentence, Contractor shall generate and provide Metrolinx with such reports within five (5) Business Days of Metrolinx's written request.
 - (b) Contractor shall ensure that that each Performance Monitoring Report sets out all failures of the Performance Requirements regardless of whether or not Metrolinx is aware of such failure.
 - (c) Upon request by Metrolinx, Contractor shall provide Metrolinx with copies of the underlying source data upon which the Performance Monitoring Reports were prepared, sufficient to enable Metrolinx to confirm the accuracy and completeness of such reports and to verify Contractor's performance of the applicable Services in relation to the Performance Requirements.

4. Service Level Credits
 - (a) Except as otherwise provided in this Schedule, a Service Level Credit shall be provided if Contractor's level of performance for an Enumerated Performance Requirement (as specified in the table below) fails to meet the applicable Minimum Service Level (as specified in Table 1 below) in respect of a specific Order (a "**Service Level Failure**").

Table 1 (For the purposes of this Schedule, these are examples only)

Enumerated Performance Requirement	Minimum Service Level

- (b) If a Service Level Failure occurs, Contractor shall provide Metrolinx credits as set out in Table 2 below of this Schedule "F" (the "**Service Level Credits**").

Table 2

Number of Service Level Failures per Order	Service Level Credit

- (c) In the event a Service Level Failure with respect to the same Enumerated Performance Requirement occurs more than **[once in any three (3) consecutive calendar month period]**, the Initial Service Level Credit Amount shall be increased to **[NOTE TO DRAFT: TO BE DISCUSSED.]** of the monthly fees invoiced by Contractor, and the Initial Service Level Credit Amount (as increased pursuant to this Section) shall be the Initial Service Level Credit Amount for the duration of the Term.
- (d) In no event shall the amount of Service Level Credits credited to Metrolinx with respect to all Service Level Failures occurring **[in a single calendar month exceed • (the "At-Risk Amount")]**.
- (e) The total amount of Service Level Credits with respect to Service Level Failures occurring in respect of a specific Order shall be either:
- (i) reflected on the Invoice for, and deducted from the Fees payable in respect of the Order to which the Service Level Failures are attributable; or
 - (ii) reflected on the Invoice for, and deducted from the amount payable in respect of, the next following Order (or Orders, if required), and deducted from the Fees payable in respect of that Order(s); or
 - (iii) set off from any other amount payable by Metrolinx to Contractor.
- (f) The Parties agree that the Service Level Credits determined in accordance with this Schedule reflect a genuine estimate of the diminution in the value of the Services that will result from the Service Level Failures, and that the Service Level Credits do not constitute, nor shall they be construed or interpreted as being, penalties.

5. Annual Review

- (a) Within three (3) months after the expiration of the first Contract Year and at least annually thereafter, Metrolinx and Contractor shall review the Performance Requirements (including the Minimum Service Levels), and the form of the performance monitoring report, in light of any improved performance capabilities associated with advances in the technology and methods used to perform the Services. The Parties expect and understand that the Performance Requirements will become more favorable to Metrolinx over time.
- (b) Metrolinx and Contractor shall act reasonably and diligently in carrying out this review.
- (c) Metrolinx and Contractor may in respect of each matter which is the subject of the review either:
- (i) agree that the status of the relevant matter shall continue to apply unchanged in the Contract Year immediately following the review; or

- (ii) agree that adjustments to the relevant matter will take effect thirty (30) days immediately following the review, unless otherwise agreed to by the Parties.
- (d) If the Parties cannot agree to an adjustment, either Party may invoke the dispute resolution process set out in Article 16 of the Agreement.

SCHEDULE "9.1"
FORM OF SECURITY STATEMENT

Individual's Name: Click here to enter text.

Firm: Click here to enter text.

Position #: Click here to enter text.

WHEREAS Metrolinx has entered into a contract with **[INSERT CONTRACTOR NAME]** ("**Contractor**") pursuant to which the undersigned may have access to premises, computer systems, data, and other materials, software, network facility, systems, including email and internet, telephones, facsimile and other equipment, and confidential and/or personal information of Metrolinx as well as of transit and municipal entities in the Province of Ontario participating in the PRESTO Project ("**Metrolinx Clients**") (collectively, the "**Systems**" and "**Information**", respectively);

AND WHEREAS Contractor and Metrolinx are committed to protecting the Systems and Information from unauthorized access, use or disclosure;

NOW THEREFORE in consideration of the premises and mutual agreements contained in this Security Statement and other good and valuable consideration, the sufficiency of which is hereby acknowledged, the undersigned agrees to comply with the following terms and conditions with respect to access to and usage of the Systems and Information:

1. The undersigned shall, both during and following the term of the aforementioned contract with Contractor, maintain confidential and secure all Information that is the property of Metrolinx, the Ontario Government and Metrolinx Clients that comes into his/her possession or under his/her control. The undersigned shall not disclose any Information he/she has accessed to anyone.
2. Where the undersigned is permitted access under the contract to Systems and Information, the undersigned shall comply with Ontario Government and Metrolinx information technology policies, standards and procedures, including as described in any Metrolinx security policies and in Corporate Management Directives such as the Information and Information Technology Security Directive; Information and Information Technology: Operating Procedure on Usage of I.T. Resources; and Information and Information Technology: Operating Procedure on Internet, Intranets and Extranets ("**Directives**"). Copies of these policies, standards and procedures, and Directives are available upon the undersigned's request. The undersigned shall also comply with any relevant technology policies, standards and procedures specified by Metrolinx Clients in respect of Systems and Information pertaining to Metrolinx Clients.
3. The undersigned shall use the Systems and Information only for the purpose of performing his/her duties and obligations to Contractor and the undersigned shall not use the Systems and Information for any other purpose without the prior written consent of Metrolinx. No Systems and Information shall be used for any unauthorized purposes or for personal use e.g., sending, receiving or downloading non-work related information and materials, accessing information about another person including address information.
4. Without limiting the generality of the foregoing, no Systems or Information shall be used for any illegal or unacceptable activity as described in the Directives, policies, standards and/or procedures or used in any manner that would be detrimental to Metrolinx's or a Service Provider's commercial, financial, operational or legal interests.

5. In addition, without limiting the generality of the foregoing, the undersigned shall not use the Systems to access any personal e-mail accounts or internet service providers or other alternate service providers, except for Metrolinx business purposes.
6. The undersigned acknowledges and agrees that the Systems and Information are the property of Metrolinx and the Metrolinx Clients, and are highly valuable, confidential and material to the interests, business and affairs of Metrolinx and the Metrolinx Clients and that disclosure or improper use thereof will be detrimental to the interests, business, affairs and obligations of Metrolinx and/or the Metrolinx Clients.
7. The undersigned shall take reasonable precautions to maintain the secrecy of any passwords he/she may be given to access the Systems and Information. Reasonable precautions include, but are not limited to: not telling others his/her password or knowingly allowing them to observe while he/she enters it at a terminal; and frequently changing his/her password (and, if he/she suspects his/her password has been used by someone else, changing it immediately and notifying Contractor); and selecting random passwords that are not easy for others to guess.
8. The undersigned shall take reasonable precautions to protect against unauthorized access to the Systems and Information, whether such access is by electronic or any other means. Reasonable precautions include, but are not limited to: not leaving Systems unattended; use of password protected screen saver, not having simultaneous modem and network connections, reporting any suspicious circumstances or unauthorized individuals observed in the work area to Contractor.
9. The undersigned shall not remove, from Metrolinx or Metrolinx Client premises, any property which belong to Metrolinx, any Metrolinx Clients, or third party property that is in the possession of Metrolinx or Metrolinx Clients, without ensuring compliance with all Metrolinx and Metrolinx Client's conditions for such removal. If the undersigned is permitted to remove any item of equipment, the undersigned shall comply with all Metrolinx and Metrolinx Client's security requirements to ensure the security and integrity of the equipment and Information while the equipment is out of Metrolinx's or any Metrolinx Client's premises.
10. This Security Statement shall be governed by the laws of the Province of Ontario and the laws of Canada applicable in that Province.
11. If any provision of this Security Statement is invalid, unenforceable or illegal, such provision shall be deemed to be severed without affecting any other provision.
12. The undersigned agrees to do such further acts and things and execute such further documents as may be requested, from time to time, to more fully implement and give effect to the intents and purposes of this document.

I have read and I understand the security policies stated above, and will comply with them and any other security policies issued in the future by Contractor, Metrolinx, the Ontario Government or Metrolinx Clients. I understand that failure to comply with these policies may result in disciplinary action by Contractor and/or civil or criminal prosecution in accordance with applicable statutes.

Date: [Click here to enter text.](#)

[Click here to enter text.](#)

[Name: Click here to enter text.](#)

[Title: Click here to enter text.](#)

SCHEDULE "16.2"

DISPUTE RESOLUTION

The following rules and procedures shall apply with respect to any matter to be arbitrated between the Parties under the terms of the Contract.

1. Initiation of Arbitration Proceedings

- (a) If either Party wishes to have any matter arbitrated in accordance with the provisions of this Contract, (the "**Claimant**") it shall give notice (an "**Arbitration Notice**") to the other Party (the "**Respondent**") specifying particulars of the matter or matters in Dispute and proposing the name of the individual it wishes to be the single arbitrator. Within 20 Business Days after receipt of the Arbitration Notice, the Respondent shall give notice to the Claimant advising whether it accepts the arbitrator proposed by the Claimant. If such notice is not given by the Respondent within such 20 Business Day period, the Respondent shall be deemed to have accepted the arbitrator proposed by the Claimant. If the Parties do not agree upon a single arbitrator within such 20 Business Day period, any Party may apply to a judge of the Ontario Superior Court of Justice under the *Arbitration Act, 1991*, S.O. 1991, chap. 17, (the "**Arbitration Act**") for the appointment of a single arbitrator (the "**Arbitrator**").
- (b) The individual selected as Arbitrator shall be qualified by education and experience to decide the Dispute. The Arbitrator shall be at arm's length from the Parties and shall not be a member of the audit or legal firm or firms, who advise any Party, nor shall the Arbitrator be an individual who is, or is a member of a Person, otherwise regularly retained by any of the Parties.

2. Submission of Written Statements

- (a) Within 30 Business Days of the appointment of the Arbitrator, the Claimant shall send the Respondent a statement of claim ("**Statement of Claim**") setting out in sufficient detail the facts and any contentions of law on which it relies, and the relief that it claims.
- (b) Within 30 Business Days of the receipt of the Statement of Claim, the Respondent shall send the Claimant a statement of defence ("**Statement of Defence**") stating in sufficient detail which of the facts and contentions of law in the Statement of Claim that the Respondent admits or denies, on what grounds, and on what other facts and contentions of law the Respondent relies.
- (c) Within 15 Business Days of receipt of the Statement of Defence, the Claimant may send the Respondent a statement of reply ("**Statement of Reply**").
- (d) All Statements of Claim, Defence and Reply shall be accompanied by copies, or, if they are especially voluminous, lists, of all essential documents on which the Party concerned relies and which have not previously been submitted by any Party, and (where practicable) by any relevant samples.
- (e) After submission of all of the Statement of Claim, Statement of Defence and Statement of Reply, the Arbitrator will give directions for the further conduct of the arbitration.

3. Meetings and Hearings

- (a) Any arbitration herein shall be held in the City of Toronto unless the Parties otherwise agree. The arbitration shall be conducted in English unless otherwise agreed by the Parties and the Arbitrator. Subject to any adjournments which the Arbitrator allows, the final hearing will be continued on successive Business Days until it is concluded.
- (b) All meetings and hearings will be in private unless the Parties otherwise agree.
- (c) Any Party may be represented at any meetings or hearings by legal counsel.

- (d) Each Party may conduct an examination-in-chief and re-examine its own witnesses and cross-examine the opposing Party's witnesses at the arbitration.

4. The Decision

- (a) The Arbitrator will make a decision in writing and, unless the Parties otherwise agree, will set out written reasons for his decision.
- (b) The Arbitrator will send the decision to the Parties as soon as practicable after the conclusion of the final hearing, but in any event no later than 45 Business Days thereafter, unless that time period is extended for a fixed period by the Arbitrator on written notice to each Party because of illness or other cause beyond the Arbitrator's control.
- (c) Subject to the court's jurisdiction to set aside an award pursuant to Section 46 of the Arbitration Act, an award by the Arbitrator shall be final and binding upon the Parties and there shall be no appeal from the award of the Arbitrator on a question of law or on any other question.

5. Jurisdiction and Powers of the Arbitrator

- (a) By submitting to arbitration under the Arbitration Rules, the Parties shall be taken to have conferred on the Arbitrator the following jurisdiction and powers, to be exercised at the Arbitrator's discretion subject only to the Arbitration Rules and the relevant law, with the object of ensuring the just, expeditious, economical and final determination of the Dispute referred to arbitration.
- (b) Without limiting the jurisdiction of the Arbitrator at law, the Parties agree that the Arbitrator shall have jurisdiction to:
 - (i) determine any question of law arising in the arbitration;
 - (ii) determine any question as to the Arbitrator's jurisdiction;
 - (iii) determine any question of good faith arising in the Dispute;
 - (iv) make such procedural rules as the Arbitrator determines are appropriate with respect to the conduct of the proceedings;
 - (v) determine the nature and extent of discovery, if any;
 - (vi) proceed in the arbitration notwithstanding the failure or refusal of any Party to comply with the Arbitration Rules or with the Arbitrator's orders or directions, or to attend any meeting or hearing, but only after giving that Party written notice that the Arbitrator intends to do so;
 - (vii) order any Party to furnish further details of that Party's case, in fact or in law;
 - (viii) receive and take into account such written or oral evidence tendered by the Parties as the Arbitrator determines is relevant, whether or not strictly admissible in law;
 - (ix) hold meetings and hearings, and make a decision (including a final decision) in Toronto, Ontario or elsewhere with the concurrence of the Parties thereto;
 - (x) order the Parties to produce to the Arbitrator, and to each other for inspection, and to supply copies of, any documents or classes of documents in their possession or power which the Arbitrator determines to be relevant;
 - (xi) order the preservation, storage, sale or other disposal of any property or thing under the control of any of the Parties;

- (xii) make one or more interim awards;
- (xiii) to make an award of interest in respect of any amount determined to be owing;
- (xiv) make an award as to costs of the arbitration; and
- (xv) make interim orders to secure all or part of any amount in dispute in the arbitration.

6. Costs of Arbitration

Pending determination by the Arbitrator, the Parties to an arbitration shall share equally and be responsible for their respective shares of all costs relating to the Arbitrator and the arbitration. However, the Arbitrator may make an award of costs upon the conclusion of the arbitration making one or more Parties to the Dispute liable to pay a part or all of the costs of another Party to the Dispute. When the Arbitrator has rendered a decision on the Dispute, a Party who has made a settlement offer that was not accepted, may advise the Arbitrator of the time, nature and amount of the settlement offer. In awarding costs the Arbitrator may take into account the making of such settlement offer.

[End of General Conditions]

Appendix "B" – SCOPE OF SERVICES

List of Contents

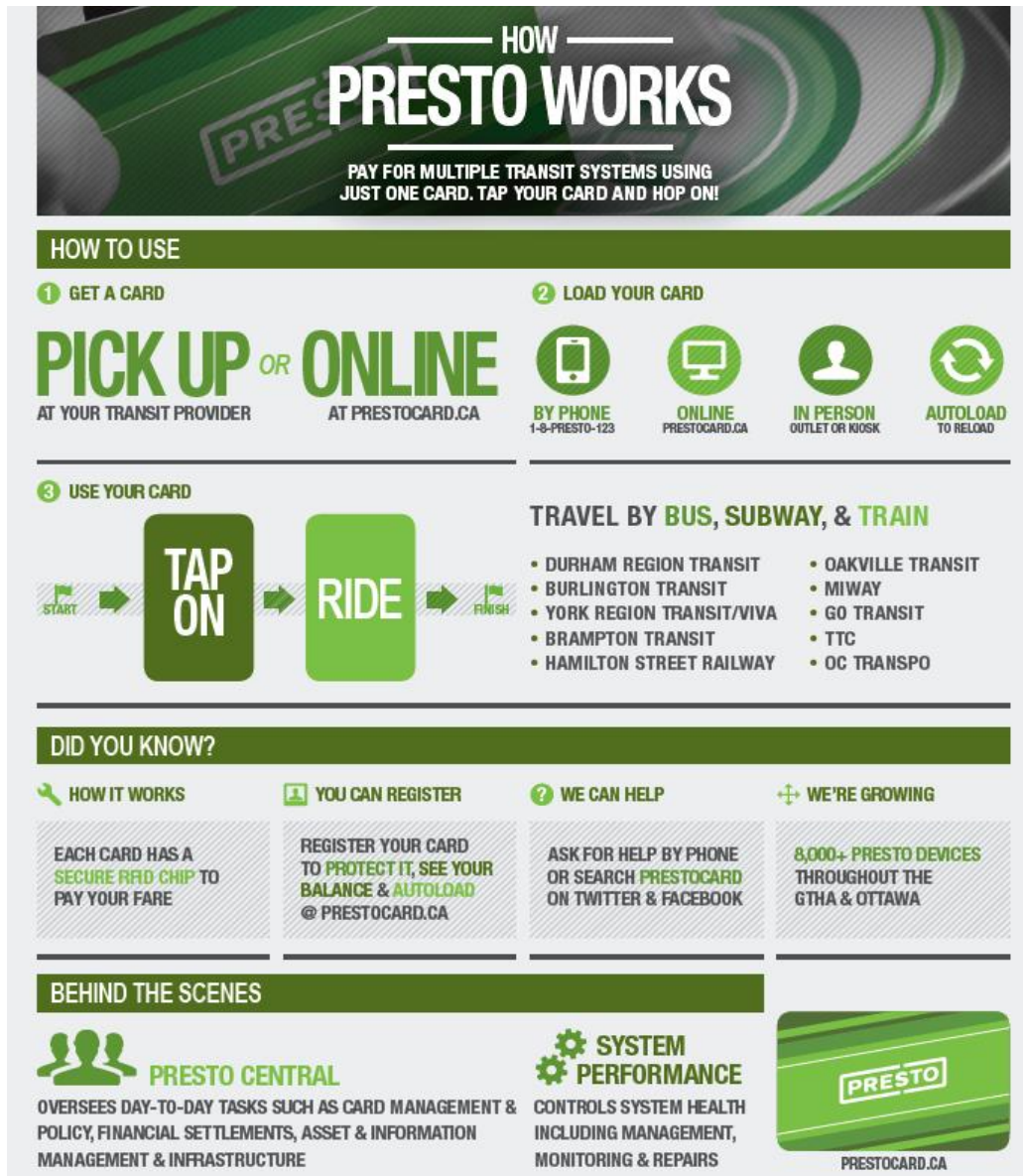
The following documents hereby form part of and are appended to this Proposal Document as Appendix "B" – Scope of Services.

<u>ITEM NO.</u>	<u>DOCUMENT TITLE</u>
1.	Background & Scope
2.	Scope of Services

1. **Background**

(ffff) What is PRESTO and How does it work?

- (i) PRESTO is both a division of Metrolinx and the regional electronic farecard and management system. Full PRESTO rollout began in 2009 with the installation of payment devices at select GO stations and on select municipal transit buses. As the rollout continued, passengers increasingly adopted PRESTO cards, and devices were installed across the networks of all the participating transit agencies. In 2016 PRESTO implementation was completed on TTC buses streetcars and subway stations, with enhancements to PRESTO software and devices ongoing for the foreseeable future.
- (ii) PRESTO allows customers to use a single, seamless, integrated fare payment method across participating transit systems across the region, including bus, train and subway routes. This technology can be adopted by a variety of municipal transit partners serving large city populations, mid-sized urban centres or burgeoning suburban communities.
- (iii) Electronic readers scan the transit user's PRESTO farecard (which contains a passive RFID chip within the farecard) as they board their public transit vehicle or enter a station and deduct the appropriate fare or validate period passes - all within one-third of a second.
- (iv) The current long-term use PRESTO cards are based on Mifare Desfire technology. PRESTO's core reconciliation systems are based on a proprietary Microsoft Dynamics solution developed by Accenture. Devices from a number of fare system vendors connect to PRESTO's core systems using an interface specification developed and maintained by PRESTO. Currently, PRESTO operates under a store-and-forward model. Consequently, the card is considered the book of record for account balances. This will change to an account-based model over time, once PRESTO has fully transitioned to using devices that are continuously online.



HOW PRESTO WORKS

PAY FOR MULTIPLE TRANSIT SYSTEMS USING JUST ONE CARD. TAP YOUR CARD AND HOP ON!

HOW TO USE

- GET A CARD**

PICK UP AT YOUR TRANSIT PROVIDER **OR** **ONLINE** AT PRESTOCARD.CA

 - BY PHONE** 1-8-PRESTO-123
 - ONLINE** PRESTOCARD.CA
 - IN PERSON** OUTLET OR KIOSK
 - AUTOLOAD** TO RELOAD
- LOAD YOUR CARD**
- USE YOUR CARD**

TAP ON → **RIDE**

TRAVEL BY BUS, SUBWAY, & TRAIN

 - DURHAM REGION TRANSIT
 - BURLINGTON TRANSIT
 - YORK REGION TRANSIT/VIVA
 - BRAMPTON TRANSIT
 - HAMILTON STREET RAILWAY
 - OAKVILLE TRANSIT
 - MIWAY
 - GO TRANSIT
 - TTC
 - OC TRANSP0

DID YOU KNOW?

- HOW IT WORKS**: EACH CARD HAS A SECURE RFID CHIP TO PAY YOUR FARE
- YOU CAN REGISTER**: REGISTER YOUR CARD TO PROTECT IT, SEE YOUR BALANCE & AUTOLOAD @ PRESTOCARD.CA
- WE CAN HELP**: ASK FOR HELP BY PHONE OR SEARCH PRESTOCARD ON TWITTER & FACEBOOK
- WE'RE GROWING**: 8,000+ PRESTO DEVICES THROUGHOUT THE GTHA & OTTAWA

BEHIND THE SCENES

- PRESTO CENTRAL**: OVERSEES DAY-TO-DAY TASKS SUCH AS CARD MANAGEMENT & POLICY, FINANCIAL SETTLEMENTS, ASSET & INFORMATION MANAGEMENT & INFRASTRUCTURE
- SYSTEM PERFORMANCE**: CONTROLS SYSTEM HEALTH INCLUDING MANAGEMENT, MONITORING & REPAIRS

PRESTO
PRESTOCARD.CA

Figure 1: How PRESTO Works

2. Scope of Services

- In 2017/18, Metrolinx will be completing the final phase of PRESTO implementation for the TTC, which is expected to significantly increase the number of PRESTO transactions performed with a variety of media.
- In order to support both the PRESTO implementation on the TTC and the needs of other PRESTO-enabled transit agencies, Metrolinx is seeking a supplier of “limited-use media” (LUM) cards supporting the Mifare® Ultralight C chip. The supplier will be responsible for:

- (i) Order Management: electronically receiving and processing LUM orders from Metrolinx, its clients and partners;
 - (ii) Manufacturing: manufacturing, quality control, printing, activating and—where applicable—pre-loading/encoding the LUM with monetary value or fare products;
 - 1. providing the LUM in both die cut, roll stock and other formats; and
 - 2. securely storing and shipping cards to Metrolinx, its clients and partners.
 - (iii) Logistics & Shipping: Managing logistics associated with maintaining adequate inventory and shipping cards to recipients as specified by Metrolinx - PRESTO
 - (iv) Product Support: Provide ongoing account management and product support, including responding to service and support requests and meeting agreed-to service levels
- (c) Overall, 15 to 25 million LUM tickets are expected to be sold annually. Of these, up to 5 million are expected to be pre-encoded/loaded die cut LUM tickets for use by social agencies, schools, etc. Metrolinx anticipates the majority (~66%) of LUM to be sold / dispensed through automatic fare media vending machines (i.e., roll stock format), with the remainder (die cut format) being sold by individual retailers.
- (d) **Detailed requirements for the LUM and related technology, processes and service levels are included in Appendix "B-1" – Requirements.** Note that work has already begun on building the software capabilities to support the LUM, with the aim of having LUM available to TTC customers by April 2018. Integration testing with the successful Proponent's order management system is expected to begin soon after a contract is awarded, in Fall 2017.
- (e) Metrolinx intends to award the contract to one (1) or more Proponents. The term of contract is for five (5) years with options to renew for one (1) or more additional terms of between one (1) and five (5) years, as determined by Metrolinx in its sole discretion.

Appendix "C" – Metrolinx Services

Metrolinx shall:

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

Appendix "D" – Documents

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

ITEM NO.	DOCUMENT TITLE
1.	Vendor Q and A Template_ RFP-2017-VM-017
2.	Parental Guarantee
3.	Contract Performance Review
4.	Metrolinx Safety Guidelines for Contractors, Consultants and Project Coordinators
5.	Appendix "B-1" – Requirements
6.	Ticket MiFare Ultralight Spec
7.	Contractor's Officer's Attestation - Section 3.19

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 "Contractor")

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 Contractor agree as follows:

3. Contract

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

SAMPLE – DO NOT COMPLETE

4. Date of Completion of Work and Description of Work

The Contractor 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 Contractor shall provide personnel, methodology and resources necessary to carry out ●, in accordance with the Scope of Services, attached as APPENDIX "B" (the "Work").
- (b) The Work is to be provided to the satisfaction of the ●, unless otherwise specified.

5. Contract Price

- (a) ●

SAMPLE – DO NOT COMPLETE

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

If the Contractor is a corporation:

●(Company's Full Legal Name)

Per: _____

Name:

Title:

Per: _____

Name:

Title:

I/We have authority to bind the Corporation

If the Contractor is a partnership:

●(Partnership's Full Legal Name)

By its General Partner,

(Name of General Partner)

Per: _____

Name:

Title:

Per: _____

Name:

Title:

SAMPLE – DO NOT COMPLETE

If the Contractor is an individual:)

)

)

Witness

)

Name:

METROLINX

Per: _____

Authorized Signing Officer

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

SAMPLE – DO NOT COMPLETE