

Request to Qualify and Quote
for
Solution Delivery Business and Technical
Management Consulting Services on an
Emergent Basis

Request Number: RQQ-2017-IT-001

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In this Request Document,

- 1.1 **“Addenda”** is the formal release of additions, deletions, revisions, clarifications to this Request Document that form a part of the Contract.
- 1.2 **“Business Day”** means any day other than: (a) a Saturday or Sunday and (b) any other day on which Metrolinx is not open for business.
- 1.3 **“Closing”** means 3:00 pm Eastern Time (ET), on the date and time on which Submissions must be submitted by Proponents, in accordance with Sections 3.2.5 Submission and 3.2.6 Submission Deadline.
- 1.4 **“Conflict of Interest”** shall have the meaning ascribed in the Form of Request.
- 1.5 **“Contract”** means the contract between the Proponent and Metrolinx pursuant to this Request to Qualify and Quote including the Articles of Agreement, the General Conditions and the Schedules thereto and those documents listed in Section 3.1 Request Document.
- 1.6 **“Corporate Firm”** means any one of the following: a) the Proponent, b) the Proponent and its Subconsultants, or c) the Joint Venture, responding to this Request Document.
- 1.7 **“Domain Expertise”** means the required level of depth and breadth of qualifications and experience in respect of the tasks to be performed in connection with the Services.
- 1.8 **“E-Bid Authorized Signer”** is the designated individual in the Proponent’s organization who has the authority to bind the Proponent to each and every term, condition, article and obligation of this Request Document and any resultant Contract.
- 1.9 **“E-Bid Confirmation Number”** is the receipt received by a Proponent from MERX indicating that the Submission was uploaded successfully.
- 1.10 **“Estimated Contract Price”** means the total set out in Attachment # 1 – Proponent’s Cost.
- 1.11 **“Evaluation Committee”** means the representatives chosen to evaluate the Submissions based on the Evaluation Criteria outlined in this Request Document.
- 1.12 **“Evaluation Criteria”** means the criteria for scoring the Submission as stated in Section 5.2 – Evaluation Criteria.
- 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 this Contract.

- 1.14 **“Joint Venture”** means a business arrangement of two or more parties proposed for this RQQ Process further described in Section 3.8 Joint Venture.
- 1.15 **“Key Personnel”** means Proponent personnel who will be assigned and involved in a material way in, and who are critical to, the performance of the Services. All key personnel will possess the requisite Domain Expertise.
- 1.16 **“Metrolinx”** means Metrolinx, a provincial crown agency continued under the Metrolinx Act, S.O. 2006, Chapter 16, and its successors and assigns.
- 1.17 **“Metrolinx MERX Portal”** is the electronic bid solicitation and Proponent Submission website (www.metrolinx.merx.com) that facilitates Metrolinx and Proponent interaction as it directly relates to the; download by a Proponent of Metrolinx Request Documents including Addenda from, and upload by a Proponent of a Submission to Metrolinx in response to, this RQQ Process.
- 1.18 **“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 same meaning ascribed in Section 3.8.3 Joint Ventures.
- 1.20 **“Parties”** means Metrolinx and Proponent and “Party” means either one of them.
- 1.21 **“Procurement Office”** means the Metrolinx Procurement and Contract Services office located at 277 Front Street West, Toronto, Ontario, Canada, M5V 2X4.
- 1.22 **“Procurement Representative”** means the following individual in the Procurement Services Department:

Name:	Monika Thomason
Title:	Procurement Officer
Telephone Number:	(416) 202-5522
Email:	monika.thomason@metrolinx.com

- 1.23 **“Proponent”** means the legal entity that remits a Submission in response to this Request Document and who if selected for award shall execute the Contract with Metrolinx for provision of the Services.

- 1.24 **“Request Document”** means this Request to Qualify and Quote document comprised of sections listed in the Table of Contents, issued by Metrolinx for the Services to be provided, and any Addenda thereto.
- 1.25 **“Request Document Forms”** means any sections of this Request Document which requires completion and must be included with the Submission.
- 1.26 **“Representative Key Personnel”** shall have the meaning ascribed in Submission Content.
- 1.27 **“RQQ Process”** means the Request to Qualify and Quote procurement process set out in this Request Document.
- 1.28 **“Scope of Services”** means the scope of services described in Appendix “B”.
- 1.29 **“Services”** means the Scope of Services defined above.
- 1.30 **“Subconsultant”** means an individual, firm, partnership, corporation or professional having a direct contract with the Proponent or another Subconsultant to perform a part or parts of the Services as identified in the Submission.
- 1.31 **“Submission”** means all documentation and other materials and information submitted by the Proponent in response to this Request Document or in respect of this RQQ Process.
- 1.32 **“Technical Submission”** means the Proponent’s response to Section 4.3 Submission Content and any additional information requested by Metrolinx.
- 1.33 **“VPM”** shall have the meaning ascribed in Section 3.18.1 of Instructions to Proponents.
- 1.34 **“VPR”** shall have the meaning ascribed in Section 3.18.2 of Instructions to Proponents.

2.0 Introduction

2.1 General

Introduction

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

Scope

The Information & Information Technology ("I&IT") Division at Metrolinx is a shared service for all business units. The division currently consists of six departments: Business Relationship Management, Digitization, IT Planning and Architecture, IT Project Management Office, Solution Delivery and IT Operations. Together these departments are responsible for building, maintaining, and operating information technology (IT) applications and infrastructure to support the Metrolinx business units.

Metrolinx's I&IT Division is expanding to accommodate the growth of the Metrolinx organization. As part of I&IT's divisional plan to support the growing Metrolinx organization, I&IT is developing and updating technical and organizational strategies. Metrolinx Solution Delivery is seeking management consulting services from service providers to help develop and implement these strategies.

The objective of this Request to Qualify and Quote (RQQ) is to solicit proposals from Proponents for the provision of IT business and technical management consulting services on an emergent basis. The scope of services and requirements are more particularly described in Appendix "B" Consultant's Scope of Services of this Request Document.

Metrolinx's intention is to award a contract to one (1) or more than one (1) Proponent(s). The contract will be for a three (3) year term with no extension option.

It is necessary to mention that Services will be required on an as needed emergent basis. Metrolinx makes no guarantee with respect to the value, volume of frequency of work to be assigned to a Proponent. The Contract will not be an exclusive contract for the provision of the Services. Metrolinx may contract with others for the same or similar services to those described in this Request Document or choose to carry out such services itself.

3.0 Instructions to Proponents

3.1 Request Document

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

- (a) Form of Request
- (b) Attachment # 1 – Proponent’s Costs
 - 1) Appended Proponent pricing template entitled Attachment #1 – Proponent’s Costs RQQ-2017-IT-001
- (c) Attachment # 2 – Corporate Reference Projects and References
- (d) Attachment # 3 – Curriculum Vitae and References
- (e) Appendix “A” – General Conditions
- (f) Appendix “B” – Scope of Services
- (g) Appendix “C” – Metrolinx’s Services
- (h) Appendix “D” – Documents
 - Sample Articles of Agreement
 - Contract Performance Appraisal
 - Parental Guarantee
- (i) Appended Proponent questions template entitled Vendor Q and A Template RQQ-2017-IT-001.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 **Metrolinx MERX Portal**. Proponents shall be solely responsible for the delivery of their Submission using **Metrolinx MERX Portal** by the Closing, in accordance with the Submission Instructions herein.

- (b) Your Submission is to be firm and irrevocable for one hundred and twenty (120) calendar days from the Closing.
- (c) Your Submission will be evaluated in accordance with the Evaluation Criteria and Selection Process as outlined in this Request Document.
- (d) RQQ Timetable:

Milestone	Date
Issuance of Request Document	April 24, 2017
Deadline to Submit Questions	May 9, 2017 4:00 pm ET
Last day for issuance of Addenda	May 11, 2017
Closing	May 16, 2017 3:00 pm ET

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

3.2.2 Request Enquiries

- (a) All written enquiries and other communications prior to full Contract execution are to be directed solely to the Procurement Representative.
- (b) Information received from any other sources shall be considered informal and Metrolinx shall not be bound by any information given in such a manner.
- (c) Any questions concerning this Request Document, the contents herein, including Appendix “A” – General Conditions, or the 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 Request Document shall be entertained after this time regardless of the reason. To allow for dialogue on any questions or requests, Metrolinx encourages Proponents to submit their questions or requests early on in the Q and A process. When seeking changes or amendments to any of the terms and conditions of this RQQ Process, including the terms contained in Appendix “A” – General Conditions, the Proponent should provide sufficient detail to provide Metrolinx with an understanding of the rationale

for the change or amendment and, if applicable, the Proponent should propose the language that would address its concern(s).

- (d) All questions/requests for clarification, change or amendment related to this Request Document are to be submitted via e-mail to the attention of the Procurement Representative using the Question and Answer Template which is a fillable Excel file attached separately as:

Vendor Q and A Template RQQ-2017-IT-001.xlsx

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

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

Not applicable.

3.2.4 Addenda / Changes to this Request Document

- (a) In the event that Metrolinx determines in its sole discretion, that clarifications of, or revisions to this Request Document are required, all Proponents who received copies of this Request Document shall be advised of such clarifications or revisions during the period by written addenda. Such addenda shall become part of this Request Document and the contents thereof shall be allowed for in the prices bid for the Services.
- (b) It is the Proponent's responsibility to ensure that they have received copies of all Addenda, and to ensure that the Addenda have been considered in their Submission. Addenda, if applicable, will be issued through **Metrolinx MERX Portal**. Information concerning the number of Addenda issued and the date of issue of the most recent Addendum can be found at www.merx.com for this RQQ

Process. Proponents are urged to select automatic notification of Addenda issuance when registering on **Metrolinx MERX Portal**.

- (c) The Proponent, when ascertaining if copies of all Addenda issued have been received, shall be responsible for allowing sufficient time prior to the Closing to receive any missing Addenda and to review and allow for the contents thereof in the Submission.

3.2.5 Submission

- (a) Proponents remitting a Submission to Metrolinx shall exercise extreme care when completing and submitting all Request Document Forms.
- (b) Proponents shall examine carefully the whole of this Request Document and any data referred to therein. They shall make the necessary investigations to inform themselves thoroughly as to the character and magnitude of the 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 Request Document or any of the contents therein. No plea of ignorance of conditions which exist, or any conditions or difficulties that may be encountered, shall be accepted as a reason for failure to complete the Contract or as a basis for claims for additional compensation or extension of time.
- (d) Your Submission shall be completed fully in a clear and comprehensible manner.
- (e) Submissions shall be remitted electronically through **Metrolinx MERX Portal** only. Submissions sent in any other manner shall be deemed non-responsive and automatically disqualified.
- (f) The Submission shall be remitted on the original Request Document Forms as issued by Metrolinx through the **Metrolinx MERX Portal** website and except for designated sections where the Proponent is to enter information, the Request Document and Request Document Forms shall not be altered in any way including, but not limited to, write-ins, strike-outs of the pre-printed provisions or any other qualifying statements.
- (g) Any Submission which contains such qualifying statements shall be deemed non-responsive and disqualified unless such qualifying 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, documents that have been uploaded to **Metrolinx MERX Portal** can be added, removed and/or re-submitted as often as required at any time, prior to the Closing.
- (i) Any Submission documents that are attempted to be uploaded via **Metrolinx MERX Portal** after the Closing has occurred (as confirmed by the MERX Audit Report) shall be automatically rejected by Metrolinx, regardless of the reason for lateness.
- (j) 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.
- (k) The person(s) executing the Form of Request on behalf of the Proponent, if a corporation, shall indicate their title and confirm that they have authority to bind the corporation. Submissions by individuals shall be witnessed.
- (l) Submissions must be remitted on **Metrolinx MERX Portal** by the Proponent's E-bid Authorized Signer.
 - (i) NOTE: The Proponent can have only one (1) E-Bid Authorized Signer which is to be used for any EBS submission process.
 - (ii) The E-Bid Authorized Signer does not have to be either the person placing the order for the Request Document on MERX, nor do they have to be subscribed to MERX. Once an E-Bid Authorized Signer has been setup, a letter will be sent via email to the E-Bid Authorized Signer.
 - (iii) For the purposes of a Joint Venture, the E-Bid Authorized Signer of the Participant-in-Charge shall remit the Submission.
- (m) Submissions must be remitted electronically through the **Metrolinx MERX Portal**. 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 **Metrolinx MERX Portal** 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 **Metrolinx**

MERX Portal. Failure of the Proponent to include all required items may result in the Proponent's Submission being deemed non-responsive and disqualified.

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

3.2.6 Submission Deadline

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

yourself additional time. If the problem persists, call MERX directly at 1-800-964-MERX (6379). Metrolinx staff will be unable to assist with any EBS related issues.

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

3.2.7 Clarification of Proposals

- (a) Metrolinx reserves the right, within one hundred and twenty (120) calendar days following the Closing, to request that any Proponent clarify its Submission and such Proponents shall submit responses to such request within five (5) Business Days following receipt of such request or within such shorter time as Metrolinx may require. Metrolinx may, in its sole discretion, choose to meet with some or all of the Proponents to discuss aspects to their Submission. Metrolinx may require Proponents to submit information clarifying any matters contained in their Submission or Metrolinx may prepare

a written interpretation of any aspect of a Submission and seek the respective Proponent's acknowledgement of that interpretation.

- (b) Such information accepted by Metrolinx, for purposes of clarification, and written interpretations which have been acknowledged by the relevant Proponent shall be considered to form part of the Submission of those Proponents.
- (c) After the Closing, only information specifically requested by Metrolinx for purposes of clarification shall be considered as additions to a Proponent's Submission.
- (d) Metrolinx is not obliged to seek clarification of any aspect of a Submission.

3.3 Insurance

3.3.1 Workplace Safety and Insurance Clearance

- a) 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 five (5) 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.
- b) If the Proponent is WSIB exempt, then the Proponent shall provide evidence of Employer's Liability or equivalent, to the satisfaction of Metrolinx, in lieu of a Workplace Safety and Insurance Clearance Certificate.

3.3.2 Liability Insurance

As a condition of award of this 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 five million dollars (\$5,000,000.00) per occurrence.
- (ii) Errors and Omissions/Professional Liability Insurance in an amount of not less than two million dollars (\$2,000,000.00) per claim.

The policy shall provide errors and omissions insurance including coverage for infringement of trademark and copyright covering the Services rendered by the Proponent, any Subconsultants or any of their personnel, including personnel on loan to the Proponent who perform normal services of the Proponent under this Contract. The policy shall have a limit of liability of not less than two million dollars (\$2,000,000) per occurrence and in the policy aggregate. The policy shall be maintained throughout the Term, plus coverage for an extended reporting period of not less than thirty-six (36) months.

- (iii) Automobile Liability Insurance for owned and non-owned vehicles in an amount of not less than two million dollars (\$2,000,000.00) per occurrence. If the Proponent does not own any vehicles and non-owned vehicle coverage is provided under a Commercial General Liability Insurance policy the Proponent is not required to provide a certificate for Automobile Liability Insurance so long as at the time it provides the other certificates, it submits an officer's certificate signed by a senior officer of the Proponent stating the same.
- (iv) The Certificate of Commercial General Liability Insurance shall reference the Contract name and number and include the following as additional insureds:

Metrolinx
- (v) All certificates of insurance shall include a provision stating that the insurer will endeavor to provide Metrolinx thirty (30) calendar days' prior written notice of any changes to, or cancellation of the required insurance.
- (vi) 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

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

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. Remitting a Submission constitutes acknowledgement that the Proponent has read and agrees to be bound by such conditions.

3.5 Rights of Metrolinx

Metrolinx reserves the right, in its sole discretion:

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

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

- 3.5.17 to, upon failure of the Proponent whose Submission was accepted to fulfill the conditions of Section 3.6.2, cancel award of Contract and consistent with industry practice, notify another Proponent who was determined to be qualified in accordance with the Evaluation Criteria stated herein and who submitted a responsive Submission; that its Submission has been accepted and, subsequent to the fulfillment of the conditions of Section 3.6.2, that Proponent shall be deemed to be the successful Proponent and the Proponent to whom the Contract is awarded; and
- 3.5.18 to proceed with and to enter into a Contract with the Proponent for the provision of Services, as stated in Appendix “B” - Scope of Services.

3.6 Contract to be Executed

- 3.6.1 Metrolinx shall notify the Proponent in writing of acceptance of its Submission by Metrolinx. Metrolinx will prepare the Articles of Agreement and bind it into the Contract. Two (2) sets of the Contract will be forwarded to the Proponent for review and execution.
- (a) It is Metrolinx’s intention to establish Contract with one (1) or more Proponent(s) to perform the required Services.
 - (b) Metrolinx’s upset limit for the Services is nine million dollars (\$9,000,000.00) over a period of up to three (3) years, excluding H.S.T. In the event that Metrolinx, in its sole discretion, awards more than one (1) contract, the amount stated herein shall be divided between the multiple contracts. The amount allocated to each contract shall be determined by Metrolinx at its sole discretion.
 - (c) No individual work assignment shall have a value greater than two-hundred and fifty thousand dollars (\$250,000.00).
- 3.6.2 The Contract shall be executed by the Proponent and returned to Metrolinx within five (5) Business Days of notification to the Proponent that Metrolinx has accepted its Submission. Failure by the Proponent to execute and return the Contract with the required Insurance Certificates and Workplace Safety and Insurance Clearance Certificate and any other documents as may be required within the specified time, could result in the cancellation of the Contract award.
- 3.6.3 There is no binding contract for the supply of the Services unless and until Metrolinx and the Proponent, whose Submission has been accepted, have executed the written agreements contemplated in this Request Document. The Proponent shall not start the Services before the Contract has been executed by the Proponent and Metrolinx, and all documents required by this Request Document as a condition of award of the Contract, have been delivered to Metrolinx and the Proponent has received an authorized Statement of Work with respect to a specified work assignment.

3.7 Conflict of Interest

- 3.7.1 For the purposes of this section, “Conflict of Interest” shall have the meaning ascribed to it in the Form of Request.
- 3.7.2 Each Proponent shall disclose to Metrolinx any actual or potential Conflict of Interest that may be relevant to this RQQ Process and provide a declaration, in the Form of Request that, except as disclosed, the Proponent is free of any actual or potential Conflict of Interest. Conflicts of Interest arise when the Proponent is in a position that could affect the integrity of this RQQ Process or the performance of the Services. Examples of Conflict of Interest include but are not limited to:
- (a) any director, officer, or employee or advisor of Metrolinx has any connection or relationship with, or any pecuniary interest in the Proponent or any Subconsultant thereof;
 - (b) the Proponent or any Subconsultant thereof is in possession of confidential information relating to the Services; and
 - (c) any director, officer or employee or advisor of Metrolinx who has knowledge of the Services has assisted the Proponent in the preparation of its Submission.
- 3.7.3 The Conflict of Interest declaration included in the Form of Request shall be completed and provided with the Submission.
- 3.7.4 If, at the determination of Metrolinx in its sole discretion, a Proponent is found to be in a Conflict of Interest that cannot be resolved or the Proponent fails to disclose any actual or potential Conflict of Interest, Metrolinx may, at its sole discretion, disqualify the Proponent from this RQQ Process or terminate any agreement entered into with the Proponent pursuant to this RQQ Process.

3.8 Joint Ventures

- 3.8.1 If a Joint Venture is proposed, the Proponent shall state in its Submission the Joint Venture arrangements that form the basis on which the Joint Venture plans to carry out its obligations.
- 3.8.2 The Joint Venture shall not change its Joint Venture arrangement without the prior written approval of Metrolinx in its sole discretion in accordance with the process set out in Section 3.17 Changes to Proponent Key Personnel, Subconsultants or Joint Venture.
- 3.8.3 One of the Joint Venture participants shall be nominated as being in charge during this RQQ Process and, in the event of a successful Submission during finalization of the Contract (the “Participant in Charge”). The Participant in Charge shall be

authorized by the other joint venture participants to incur liabilities and receive instructions for and on behalf of any and all participants of the joint venture.

- 3.8.4 Each Joint Venture participant shall demonstrate its authorization of the Participant in Charge by submitting with their Submissions a power of attorney, or similar document, signed by a legally authorized representative of the Joint Venture participant.
- 3.8.5 All participants of the Joint Venture shall be legally liable, jointly and severally, during this RQQ Process and during the Contract for carrying out the obligations pursuant to the Contract.

3.9 Prohibited Contacts and Lobbying Prohibition

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

3.10 Media Releases, Public Disclosures and Public Announcements

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

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

3.11 Restriction on Communications Between Proponents – No Collusion

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

3.12 Disclosure of Information

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

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

3.13 Freedom of Information and Protection of Privacy Act

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

3.13.2 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.

3.13.3 Disclosure of personal or confidential business information may be avoided if it would be significantly harmful to business interests or would be an unreasonable invasion of personal privacy. Accordingly, Proponents are encouraged to:

- (i) identify those portions of their Submissions which they are supplying in confidence and for which disclosure to others would be significantly harmful to their business, or would be an unreasonable invasion of their personal privacy, as defined in Section 17 of FIPPA; and

- (ii) be prepared to justify that determination if challenged to do so by someone who applies for access to the information.

3.14 Submission to Be Retained by Metrolinx

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

3.15 Confidential Information of Metrolinx

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

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

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

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

3.16 Proponents Shall Bear Their Own Costs

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

3.17 Changes to Proponent Key Personnel, Subconsultants or Joint Venture

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

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

3.17.3 The Proponent shall provide any further documentation as may be required by Metrolinx to assess any proposed substitute or change. If Metrolinx, in its sole discretion, considers the proposed substitute to be acceptable, Metrolinx may

consent to the substitution. Metrolinx's consent to such substitution, however, may be subject to such terms and conditions as Metrolinx may require. If the proposed substitute or change is not acceptable to Metrolinx, the Proponent shall propose an alternate substitute or change for review by Metrolinx in the same manner as the first proposed substitute.

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

3.18 Vendor Performance Management Program

- 3.18.1 Vendor Performance Management ("VPM") Program means the Metrolinx's 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 the 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 Request 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 work for Metrolinx in the three (3) years preceding the Closing, for the purpose of evaluating the Submission, the Proponent will be assigned a VPR which is the straight average of all the VPRs of all vendors 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 RQQ Process, the legal name of the Proponent stated on the Form of Request will be used. It is the responsibility of the Proponent to ensure that its proper legal name has been stated on the Form of Request. 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 RQQ Process, the application of the VPR is set out in the Contract Performance Appraisal as listed in Appendix "D" – Documents.

4.0 Submission Requirements

4.1 Mandatory Criteria

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

The mandatory criteria for this Request Document are as follows:

- 4.1.1 The Form of Request must be completed in full and submitted by the E-Bid Authorized Signer.
- 4.1.2 Pricing information must be completed using the Excel template provided, entitled Attachment # 1 – Proponent's Costs RQQ-2017-IT-001.xlsx. The pricing template must be returned as a separate file preferably in Excel (.xlsx) format.
- 4.1.3 Proponents shall declare any conflicts of interest in Section 6.6 of Form of Request. If Section 6.6 is left blank the provisions of Section 6.6.2 of Form of Request shall apply.

4.2 Submission Format

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

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

4.3 Submission Content

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

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

Technical Submission:

(i) Form of Request

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

(ii) Corporate Capability:

1) Description of Proponent

- a) Provide a description of the Proponent's company, including: 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 business which is applicable to the Services.

2) Description of Corporate Firm

- a) Provide a description of the entities making up the Proponent's Corporate Firm (Note that the Proponent will require Metrolinx's prior written consent to using any subconsultants that is has not identified in its Submission), and;
- b) Identify the Subconsultants it proposes to use in the performance of the Services for major or critical pieces of work. For each Subconsultant listed; the Proponent should provide the following:
 - i) Full corporate name and location of the Subconsultant;
 - ii) Which area of the Services the Subconsultant will be employed for;
 - iii) The Subconsultant's experience and qualifications relative to the Services it will be performing; and
 - iv) Previous instances of the Proponent and the Subconsultant working together, including:
 - A) A description of the project and value;
 - B) The client the services were performed for; and

- C) The parts of the services performed by the Subconsultant.

3) Corporate Experience and Qualifications:

- a) The Proponent should demonstrate its experience in performing work similar in scope, type, size, estimated value and complexity as the Services identified in Appendix “B” – Scope of Services by including a summary of the Corporate Firms qualifications and experience relevant to the Services being contemplated, including but not limited to:
- i) The necessary resources to sustain and complete the Services to the satisfaction of Metrolinx. The resource requirements are listed in Appendix “B” - Scope of Services;
 - ii) In provision of the Services provided to the following client groups in the following industry/sectors: Public, transit, finance and information technology.

(iii) Corporate Reference Projects:

- 1) The Proponent should provide reference projects in accordance with Section 8.1 of Attachment # 2 - Corporate Reference Projects and References using the template provided therein. For each corporate reference project the Proponent should provide a description of the project in accordance with Section 8.4 of Attachment #2 – Corporate Reference Projects and References.
- 2) References may be checked using a standard uniform method. Opinions of previous clients regarding budget and schedule experience, dependability, attitudes of employees and/or the Subconsultant, 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.
- 3) Metrolinx reserves the right to forward the information provided by the Proponent within its Submission in relation to the cited project to the identified client contact person to verify the various elements of the information provided.
- 4) For any discrepancies resulting from the reference check, Metrolinx may re-contact the Proponent in writing for a written clarification. The assessment of the Proponent’s original response to the

evaluation factor will then be finalized taking into account the results of the clarification process described in this Section.

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

(iv) Representative Key Personnel:

- (a) The Proponent should identify by name and title and submit the resume with the Submission for the individual who will be the **Client Manager ("Representative Key Personnel")** for the performance of the Services;
- (b) The Client Manager will serve as Metrolinx's single point of contact with the Proponent and be responsible for the coordination of the assignments, resource management and performance of the Services;
- (c) The Client Manager will have demonstrated experience in performing and managing work in the Services Areas as described in Appendix "B" and supporting clients in the following industry/sectors: public, transit, finance and information technology.
- (d) The Proponent should provide a completed Attachment # 3 - Curriculum Vitae and References for the Client Manager.

4.4 Proponent Presentation

Not applicable

4.5 Price Submission

- 4.5.1 Pricing information must be completed and submitted using the pricing template provided, entitled Attachment # 1 – Proponent Costs RQQ-2017-IT-001.xlsx. The pricing template must be submitted as a separate file preferably in Excel (.xlsx) format.

5.0 Evaluation Criteria and Selection Process

5.1 Evaluation Methodology

- 5.1.1 Submissions shall undergo several phases of evaluation based on the information provided using the criteria and scoring as listed in the Evaluation Criteria section below.
- 5.1.2 Each criteria is evaluated. All Evaluation Criteria stated in Section 5.2 shall be assigned a score out of ten (10). The score is then multiplied by the weight (which indicates the relative importance of the criteria not deemed critical to Metrolinx) to determine the weighted score. The weighted scores are then added to determine the Total Overall Score for the Submission.
- 5.1.3 Submissions shall be evaluated in 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 the Mandatory Criteria in Section 4.1 above. Only those Submissions determined in the sole opinion of Metrolinx, to have fulfilled all the mandatory requirements shall be deemed compliant and shall proceed to Phase Two of the evaluation process. Submissions that do not meet administrative requirements shall be deemed non-responsive and shall be disqualified.
 - (b) Phase Two: Technical Evaluation (75% weighting)

Submissions proceeding to Phase Two shall be evaluated by the Metrolinx Evaluation Committee in accordance with the Submission Requirements above and the Evaluation Methodology below. Only those Submissions achieving a total minimum score of 70% (525 points out of 750 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 (25% weighting)
 - (i) Attachment # 1 – Proponent’s Costs shall be evaluated for the Submissions which achieve the minimum score of 70% on Phase Two.
 - (ii) Attachment # 1 – Proponent’s Costs shall not be evaluated for those Proponents whose Submissions do not achieve the specified minimum score requirement to proceed to Pricing Evaluation.
 - (iii) An administrative evaluation shall be conducted of Attachment # 1 – Proponent’s Costs, to determine compliance with the mandatory

requirements as stated therein and in the Instructions to Proponents. To determine the Estimated Contract Price, the Maximum Hourly Billing Rates for Years One through Three of the Proponents who passed Phase Two proceeding to Phase Three shall be multiplied by an Estimated Number of Hours identified for each position identified in Attachment # 1 – Proponent’s Cost. The Estimated Contract Price of each Submission proceeding to Pricing Evaluation, shall then be evaluated and scored as follows:

- a) The Submission with the lowest Estimated Contract Price shall receive the maximum score of ten (10) points for Pricing Evaluation.
- b) The following equation shall be applied to all other Submissions to determine a score:

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

The score for Price Evaluation shall be multiplied by the weighting factor and added to the total score for Phase Two to determine the Total Overall Score for the Submissions.

5.1.4 Total Overall Score

Total Overall Score = Phase Two: Technical Evaluation + Phase Three: Pricing Evaluation

5.1.5 Selection of Submissions

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

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

5.2 Evaluation Criteria

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

Evaluated Criteria	Maximum Score	Weighting Factor	Total (Score x Weight)
Phase 1: ADMINISTRATIVE EVALUATION (Compliant / Non-Compliant)			
Phase 2: TECHNICAL EVALUATION			
Form of Request (Compliant / Non-Compliant) (Section 4.3.1(i))			
Corporate Capability (Section 4.3.1(ii))			
Description of Proponent	10	5	50
Description of Corporate Firm	10	5	50
Corporate Experience and Qualifications	10	15	150
Corporate References (Section 4.3.1(iii))			
<u>Business Services:</u>			
• Description of Corporate Reference Project 1 and Corresponding Reference	10	8	80
• Description of Corporate Reference Project 2 and Corresponding Reference	10	8	80
<u>Technical Services:</u>			
• Description of Corporate Reference Project 3 and Corresponding Reference	10	8	80
• Description of Corporate Reference Project 4 and Corresponding Reference	10	8	80
<u>Combined Business and Technical</u>			
• Description of Corporate Reference Project 5 and Corresponding Reference	10	8	80
Representative Key Personnel (Section 4.3.1(iv))			
Client Manager • Qualifications and Experience	10	10	100
Subtotal Technical Evaluation:		75	750
SUBTOTAL PHASE 2:		75	750
Phase 3: PRICING			
Price proposal (Section 4.5)	10	25	250

SUBTOTAL PHASE 3:		25	250
Evaluated Criteria	Maximum Score	Weighting Factor	Total (Score x Weight)
TOTAL EVALUATED 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:

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

6.0 Form of Request

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

Request Number: RQQ-2017-IT-001

Request Description: Information Technology Business and Technical Management Consulting Services on an Emergent Basis

6.1 Proponent Submission Checklist

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

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

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

6.2 Contact Information

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

6.2.2 Proponent's address, telephone and facsimile numbers:

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

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

6.3 Proponent Acknowledgments

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

TO PROVIDE SERVICES FOR THE PROVISION OF TEMPORARY STAFFING SERVICES ON AN EMERGENT BASIS AS SET OUT IN THE PROPONENT'S SCOPE OF SERVICES, ATTACHED AS APPENDIX "B".

- 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 Request Document:

ANY ADDENDA ISSUED HERETO
INSTRUCTIONS TO PROPONENTS
REQUEST SUBMISSION REQUIREMENTS
REQUEST EVALUATION CRITERIA AND SELECTION PROCESS
FORM OF REQUEST
ATTACHMENT # 1 – PROPONENT'S COSTS
ATTACHMENT # 2 – CORPORATE REFERENCE PROJECTS AND REFERENCES
ATTACHMENT # 3 – SCOPE OF SERVICES
APPENDIX "A" – GENERAL CONDITIONS
APPENDIX "B" – SCOPE OF SERVICES
APPENDIX "C" – METROLINX'S SERVICES
APPENDIX "D" – DOCUMENTS

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

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

- 6.3.7 The Proponent acknowledges that by way of the E-Bid Authorized Signer remitting a Submission, the Proponent is agreeing to be bound to each and every term, condition, article and obligation of the Request Document and any resultant Contract.
- 6.3.8 The Proponent acknowledges that consistent with Section 3.6.2 of Instructions to Proponents, failure by the Proponent, whose Submission was accepted by Metrolinx, to execute and deliver the Contract with the required Insurance Certificates and Workplace Safety and Insurance Clearance Certificate and any other documents as may be required within the specified time, could result in the cancellation of the Contract award.

6.4 Requirements

- 6.4.1 The Proponent shall provide labour, tools, software, equipment, supplies and other resources, services and facilities necessary to provide the Services on an emergent basis for three (3) years, in accordance with the Scope of Services, attached as Appendix “B”.
- 6.4.2 The Services are to be provided to the satisfaction of the applicable I&IT Director, unless otherwise specified.

6.5 Consultant Staff Positions / Roles “Key Personnel” (Schedule B)

- 6.5.1 The Consultant Staff Positions / Roles shall be retained and filled in accordance with the Contract and in accordance with the requirements in respect of qualifications, experience and minimum years of experience as contained in Schedule B – Consultant Personnel of Appendix “A” - General Conditions.

Role	Classification	Required Duration	Name of Individual
Executive Lead	Consultant Staff Position/Roles	On Emergent Basis	N/A
Senior Project Manager	Consultant Staff Position/Roles	On Emergent Basis	N/A
Enterprise Expert/ Architect/ Functional Specialist	Consultant Staff Position/Roles	On Emergent Basis	N/A
Senior Analyst/ Technical Lead	Consultant Staff Position/Roles	On Emergent Basis	N/A

Solution Architect	Consultant Staff Position/Roles	On Emergent Basis	N/A
Analyst	Consultant Staff Position/Roles	On Emergent Basis	N/A
Client Manager	Consultant Staff Position/Roles	Duration of the Contract	Insert Name

6.6 Conflict of Interest

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

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

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

- (a) ☐ The Proponent declares that there is an actual or potential Conflict of Interest relating to the preparation of its Submission, and/or the Proponent foresees an actual or potential Conflict of Interest in performing the contractual obligations contemplated in the Request Document.
- (b) If the Proponent declares an actual or potential Conflict of Interest by marking the box above, the Proponent must set out below details of the actual or potential Conflict of Interest:

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

Name of Individual:
Job Classification:
Department:
Last Date of Employment with Metrolinx:
Name of Last Supervisor:

Brief Description of Individual's Job Functions:
Brief Description of Nature of Individual's Participation in the Preparation of the Submission:

6.6.4 (Repeat above for each identified individual)

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

6.7 Harmonized Sales Tax

In accordance with Section 10.1(l) 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:_____.

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 Costs

Proponents must complete their pricing in the appended Excel file entitled *Attachment # 1 – Proponent's Costs RQQ-2017-IT-001.xlsx*

This Excel file must be returned as a separate file preferably in Excel (.xlsx) format and may not be retyped or recreated. Failure to follow the submission instructions may result in the Submission being found non-responsive and disqualified.

8.0 Attachment # 2 – Corporate Reference Projects and References

- 8.1 The Proponent should provide a list of five (5) relevant reference projects successfully delivered on time and on budget and completed within the past ten (10) years or currently active, which demonstrate the Corporate Firm's experience, qualifications and capacity to perform and manage projects of similar scope, type, estimated value and complexity, using the template provided below. **References should consist of two (2) for Business Services, two (2) for Technical Services and one (1) for Business and Technical Services.**
- 8.2 The Proponent should include all projects of similar scope, type, size, estimated value and complexity that it has completed or is currently completing for Metrolinx as part of the five (5) reference projects provided by the Proponent. Failure of the Proponent to include the aforementioned reference projects completed for Metrolinx will affect the Proponent's score.
- 8.3 For each corporate reference project the Proponent should, using the template below, provide:
- Name of the company for which the work was performed;
 - Project title;
 - Contact person's name, title, telephone number and email address; and
 - Start and completion date.

CORPORATE REFERENCES						
Company Name	Project Title	Contact Person	Phone Number	E-mail Address	Start Date	Completion Date
Business Services:						
Technical Services:						

Combined Business and Technical Services:						

8.4 For each corporate reference project listed by the Proponent in Section 8.1, the Proponent should provide a description of the project. Each description is to be a maximum of two (2) pages and should contain the following information:

8.4.1 Project background and purpose;

8.4.2 Description of the services provided and how they are relevant to:

- i. Section 1- “Categories of Services” in Appendix “B” – Consultant’s Scope of Services; and
- ii. Section 2 – “Consultant Staff Positions/Roles in Appendix “B” – Consultant’s Scope of Services;

8.4.3 Confirm what roles from Section 2 – “Consultant Staff Positions/Roles” in Appendix “B” – Consultant’s Scope of Services were active project team members in the reference project.

9.0 Attachment # 3 – Curriculum Vitae and References

9.1 Curriculum Vitae for Client Manager only

The Proponent should, using the template below, for the Representative Key Personnel (the Client Manager), provide a Curriculum Vitae of up to three (3) pages, including biographical information, which clearly identifies:

- 9.1.1 Name of individual;
- 9.1.2 Qualifications that relate to the proposed Client Manager role, as specified in Appendix “B”, relative to the Services being requested;
- 9.1.3 Experience in performing the Client Manager role, as specified in Appendix “B”, relative to the Services being requested (include project names and brief project overviews);
- 9.1.4 Number of years in the Client Manager role on each project as well as the start date and completion date of each project;
- 9.1.5 Responsibilities on each project while performing the Client role;
- 9.1.6 Details of accomplishments while performing the Client role;
- 9.1.7 Education; and
- 9.1.8 Professional memberships and affiliations.

9.2 References for Client Manager only

- 9.2.1 Immediately following the curriculum vitae for the Client Manager, the Proponent should use the template below to provide a list of three (3) references and contact information for relevant projects successfully delivered on-time and on-budget within the past five (5) years, while performing work in the same capacity as the Client Manager.
- 9.2.2 The Proponent should ensure that all contact information provided for references is current and accurate in order to enable Metrolinx to obtain all necessary information for evaluation purposes in a timely manner. If Metrolinx is unable to contact any of the references provided in order to verify the Proponent’s qualifications and experience, the Proponent may, in Metrolinx’s sole discretion, receive no score for that reference.
- 9.2.3 Such references shall relate directly to the experience, responsibilities and details of project accomplishments noted above. The information should include:
 - a) Name of the company for which the work was performed;

- b) Project title;
- c) Contact person's name, title, telephone number and e-mail address;
- d) Start and completion date of each reference project.

9.3 For each reference project identified in Section 9.2 above, the Proponent should include one (1) additional page of information which includes but is not limited to the following:

9.3.1 Name of individual;

9.3.2 Description of services provided with reference to the applicable Client Manager's roles and responsibilities for the work described in Appendix "B" – Consultant's Scope of Services.

Key Personnel Role:	CLIENT MANAGER						
Name of Representative Key Personnel:							
Years of Experience in the Role:							
Education:							
Designation(s):							
Summary of Qualifications and Experience:							
References:	Company Name	Project Title	Contact Person	Phone Number	E-mail Address	Start Date	Completion Date

Appendix “A” – General Conditions

List of Contents

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

Item No.	Description
1	Appendix “A” – General Conditions
2	Schedule A – Definitions
3	Schedule B – Contractor Personnel
4	Schedule C – Financial Terms
5	Schedule D – Insurance
6	Schedule E – Dispute Resolution

General Conditions

1. INTERPRETATION

1.1 Definitions

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

1.2 Time of the Essence

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

1.3 Currency

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

1.4 Units of Measure

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

1.5 Language

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

1.6 References

- (a) Each reference to a statute in this Contract is deemed to be a reference to that statute and to the regulations made under that statute, all as amended or re-enacted from time to time. Following any and all changes to Applicable Laws, the Consultant shall perform the Services in accordance with the terms of this Contract, including in compliance with Applicable Laws.
- (b) Each reference, whether express or implied, to a Standard of any technical organization or Governmental Authority is deemed to be a reference, to that Standard as amended, supplemented, restated, substituted or replaced.
- (c) Subject to any express definitions contained in this Contract, words and abbreviations which have well known technical or trade meanings are used in this Contract in accordance with such recognized meanings.

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

1.7 Time

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

1.8 Schedules

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

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

2. PERFORMANCE

2.1 Term of the Contract

This Contract shall take effect on the Effective Date hereof and shall continue in full force and effect until the earlier of: (i) the third anniversary of the Effective

Date; or (ii) the date that this Contract is terminated in accordance with its terms (the “**Term**”).

2.2 Performance of the Services

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

2.3 Subconsultants

- (a) No subconsulting by the Consultant shall relieve the Consultant of any responsibility for the full performance of all obligations of the Consultant under this Contract. Notwithstanding the approval of any Subconsultants by Metrolinx, the Consultant shall be fully responsible for every Subconsultant’s activities, works, services and acts or omissions.
- (b) The Consultant shall be solely responsible for the payment of any Subconsultants.

- (c) The Consultant shall co-ordinate the services of all Subconsultants employed, engaged or retained by the Consultant with Metrolinx and, without limiting the generality of any other provision of this Contract, the Consultant shall be liable to Metrolinx for costs or damages arising from errors or omissions of such Subconsultants or any of them. It shall be the Consultant's responsibility to control and review the Services of its own forces and of all its Subconsultants and to ascertain that all Services are performed in accordance with this Contract, all governing regulations and the Required Standard of Care.
- (d) The Consultant warrants and represents that it and any of its permitted Subconsultants and the respective workforce of each are fully qualified to perform the Services and perform this Contract and hold all requisite Approvals.
- (e) The Consultant shall only employ, for the purposes of this Contract, such persons as are careful, skilled and experienced in the duties required of them and have the required Domain Expertise, and must ensure that every such person is properly and sufficiently trained and instructed. The Consultant shall ensure that all workers and persons employed by them or under their control or employed by or under the control of its Subconsultants comply with the terms of this Contract and, in particular without limiting the foregoing, the responsibilities of the Consultant with respect to matters concerning safety, compliance with the Applicable Laws and the conduct of the Services.
- (f) The Consultant shall be an independent contractor with respect to the Services to be provided under this Contract and nothing contained in this Contract shall be construed as constituting a joint venture or partnership between the Consultant and Metrolinx. Neither the Consultant nor its Subconsultants shall be deemed to be employees, agents, servants or representatives of Metrolinx in the performance of the Services hereunder.
- (g) The Consultant shall not remove or change any Subconsultants, or materially reduce the responsibilities of any Subconsultants in relation to the provision of the Services except with the prior written consent of Metrolinx in its sole discretion. The proposed replacement Subconsultant shall possess the requisite Domain Expertise and similar qualifications, experience and ability as the outgoing Subconsultant.

2.4 Consultant Personnel

- (a) The Consultant shall select and employ a sufficient number of suitably qualified and experienced Consultant Personnel to perform and provide the Services, as determined with reference to the requirements of the Services to be performed by each individual or otherwise as required pursuant to the Contract. All Consultant Personnel shall possess or, where

permitted, shall be supervised by persons who possess, the professional accreditation required to complete the services.

- (b) The Consultant shall provide effective and efficient supervision to ensure that the quality of workmanship meets the requirements of the Contract.
- (c) The Consultant shall ensure that the Consultant Personnel assigned to perform the Services shall:
 - (i) act in a proper and professional manner in accordance with the standards generally used recognized by the industry; and
 - (ii) comply with all applicable Metrolinx policies and procedures, provided that the Consultant has been made aware of same.

2.5 Third Party Agreements

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

2.6 Key Personnel

- (a) The Consultant will not remove the Client Manager from the provision of the Services, or materially reduce the responsibilities of the Client Manager in relation to the provision of the Services except with the prior written consent of Metrolinx (which consent shall not be unreasonably withheld).
- (b) Notwithstanding Section 2.6(a) but subject to Section 2.6(c), if at any time the Consultant, for reasons beyond its reasonable control, is unable to provide the services of the Client Manager, the Consultant shall provide a replacement person who possesses similar qualifications, experience and ability and possesses the requisite Domain Expertise; provided, however, that the Consultant shall first provide written notice to Metrolinx of the requirement to replace or substitute that person. For the purposes of this clause, only the following reasons will be considered beyond the reasonable control of the Consultant; death; sickness; maternity and parental leave; compassionate care leave; retirement; resignation; dismissal for cause; or termination of an agreement for default. The notice shall identify: the reason why it is necessary to replace the Client

Manager; and the replacement person's name, curriculum vitae in the form set out in Attachment # 3 – Curriculum Vitae and References; and the replacement person's available start date. Metrolinx in its sole and absolute discretion may choose to interview the proposed replacement person in Toronto. The nominated replacement person must be acceptable to Metrolinx. If the replacement person is acceptable to Metrolinx, Metrolinx shall give the Consultant written permission to make the replacement or substitution. In the event the nominated person is not acceptable to Metrolinx, acting reasonably, Metrolinx shall inform the Consultant in writing why that person is not acceptable and the Consultant shall nominate an alternate person pursuant to the process identified in this Section 2.6(b).

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

2.7 Consultant's Representative

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

2.8 Metrolinx Responsibilities

Metrolinx shall:

- (i) designate an individual to act as its representative (the "**Metrolinx Representative**") who will transmit instructions to, and receive information from the Consultant;

- (ii) Metrolinx shall perform the covenants contained in Appendix “C” – Metrolinx Services.

2.9 Statement of Work Process for Services

- (a) Metrolinx may, from time to time, provide the Consultant with a description of a specified Service or Deliverable required by Metrolinx (each, an “**Outcome**”). Upon receiving this request, the Consultant shall prepare a detailed statement of work (each, a “**SOW**”). Metrolinx will specify in the Outcome request:
 - i. the amount of time the Consultant has to respond with a SOW, which will be no less than one (1) week; and
 - ii. the lead time available prior to the start of the Outcome.
- (b) Each SOW submitted by the Consultant will set out the following:
 - (i) a description of the work required to achieve the Outcome, and Outcome deliverables;
 - (ii) a detailed work schedule for the completion of the Outcome described in the SOW, which shall include milestones (the “**SOW Schedule**”);
 - (iii) any requirements for testing and/or reporting;
 - (iv) a calculation of the fees for the work to be undertaken pursuant to the SOW;
 - (v) a description of any fee reductions, incentive payments or holdbacks that may be applied;
 - (vi) a payment schedule;
 - (vii) the resources required for the completion of the Outcome;
 - (viii) a proposed list of staff for the SOW, including the names and contact information of the Consultant’s senior project manager and other key personnel for the Outcome;
 - (ix) a Curriculum Vitae (CV) for each proposed staff member engaged in the SOW;
 - (x) roles and responsibilities of the Parties with respect to the SOW and each Deliverable relating to the SOW;
 - (xi) any remedies, in addition, or in the alternative, to those provided for under Articles 11 and 13; and

- (xii) any other information or documents as required by the Metrolinx Representative.
- (c) Prior to finalizing a SOW, Metrolinx and the Consultant will establish either a fixed fee for the Services or an upset limit on the fee if the SOW is to be completed on a Time and Expense basis:
 - (i) Time and Expense: The fee shall be calculated on the basis of the work actually performed for a SOW based on the hourly rates set out in the Articles of Agreement (the “**Rates**”).
 - (ii) Fixed Price: The fee shall be calculated for the completion of a SOW based on the Rates. The Consultant shall submit an itemized cost breakdown of the various parts of the SOW, which together shall aggregate the total price for that SOW.
- (d) The upset limit or fixed fee for each SOW shall not exceed a value greater than two hundred and fifty thousand dollars (\$250,000.00), unless otherwise agreed by Metrolinx, in its sole discretion. The upset limit or fixed fee for each SOW shall be inclusive of all applicable costs.
- (e) The Consultant shall prepare each SOW at no charge to Metrolinx.
- (f) When the total accumulated cost incurred under a SOW reaches 90% of the value of the upset limit for that SOW, the Consultant shall notify the Metrolinx Representative immediately in writing.
- (g) Following the Consultant’s delivery of the SOW to Metrolinx, Metrolinx shall discuss the execution of the Services in such SOW with the Consultant, before entering into discussions with any third party, with a view to reaching an agreement on the terms contained in such SOW, including the fixed fee or upset limit, as applicable, for the Services to be undertaken pursuant to the SOW and the SOW Schedule.
- (h) In the event Metrolinx and the Consultant are able to reach an agreement on the terms of such SOW, Metrolinx shall provide its approval of the SOW in the form of an authorized “Statement of Work”.
- (i) In the event Metrolinx and the Consultant cannot reach agreement on the terms of such SOW, Metrolinx may, at its sole discretion, request another of the successful consultants to provide a SOW for the required Outcome or to quote a price for the SOW prepared by the Consultant. Alternately, Metrolinx may, at its sole discretion, conduct a formal competitive process that the Consultant shall be invited to participate in and respond to for the provision of a particular Service.
- (j) The Consultant shall not proceed with a SOW unless approved pursuant in the form of an authorized “Statement of Work” and only to the upset limit or fixed price as indicated therein notwithstanding the total upset limit price established by the Contract.
- (k) Upon Metrolinx’s delivery of an authorized “Statement of Work” to the

Consultant, the Consultant shall undertake the work based on the requirements, procedures and plans specified in such SOW in such a manner so as to ensure that the Outcome described in the SOW is achieved, in accordance with the SOW Schedule.

- (l) All Services performed under an authorized SOW shall be performed in accordance with the terms and conditions of this Contract. Each authorized SOW shall be incorporated into this Contract by reference. In the event of any conflict or inconsistency between this Contract and any SOW, the terms contained in this Contract shall take precedence. However, where a section of this Contract expressly provides that alternate terms and conditions may be set out in a SOW, the SOW shall take precedence only with respect to the subject matter of the relevant section and only to the extent that such alternate terms and conditions are clearly prescribed.
- (m) Metrolinx reserves the right to withhold payment for any Services performed by the Consultant or any Subconsultant or Consultant Personnel prior to the issuance of an authorized SOW or outside the scope of an authorized SOW.

2.10 Consultant Work Performance Rating

- (a) Metrolinx shall during the term of a Contract, maintain a record of the performance of the Consultant completing Services for Metrolinx. This information shall be used to complete a “**Consultant Performance Review**” report, a copy of which will be forwarded to the Consultant upon the termination or expiration of the Contract. Interim “Consultant Performance Review” reports may be issued, as deemed appropriate by the Metrolinx Representative, at any time during the term of the Contract.
- (b) The prior history of the Consultant in performing work for Metrolinx will be considered in the evaluation of future bids from the Consultant.
- (c) Metrolinx reserves the right in future bid requests to reject any bid submitted by a company with an unsatisfactory performance history with Metrolinx.
- (d) Non-compliance with Contract requirements will be identified to the Consultant.
- (e) The information contained in the “Consultant Performance Review” may be provided to the Ministry of Transportation and other government agencies and such performance reviews may be relied upon to disqualify a company from providing a bid on any further request by such entity.

3. HEALTH AND SAFETY

3.1 Occupational Health & Safety Act

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

3.2 Workers’ Rights

The Consultant shall at all times pay or cause to be paid any assessments or compensation required to be paid by the Consultant or its Subconsultants pursuant to any applicable workers’ compensation legislation, and upon failure to do so, Metrolinx may pay such assessments or compensation to the Workplace Safety

and Insurance Board and may deduct such assessments or compensation from monies due to the Consultant. The Consultant shall comply with all regulations and laws relating to workers' compensation.

4. FINANCIAL TERMS

4.1 Financial Terms

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

5. RIGHT OF OWNERSHIP AND USE

5.1 General.

- (a) The Consultant shall be responsible for procuring for Metrolinx the right to use all Consultant Background IP required in connection with the Services.
- (b) In the event that any third party Intellectual Property (other than the Metrolinx IP) is required in connection with the Services, the Consultant shall, at its own cost, be responsible for entering into and fully maintaining, during the Term, all related and applicable license, and maintenance and support agreements for such third party Intellectual Property.
- (c) If during the Term, third party Intellectual Property (other than Metrolinx IP) used in connection with the Services ceases to be commercially available, then the Consultant shall:
 - (i) promptly provide Metrolinx with notice of such event; and
 - (ii) promptly replace such third party Intellectual Property with an alternative product.

Any increased costs resulting from the foregoing shall be addressed pursuant to the change management process described in Article 7; provided that, in the event such Intellectual Property ceases to be available as a result of any act or omission of the Consultant, the Consultant shall be responsible for all costs associated therewith.

5.2 Ownership of Metrolinx IP

- (a) 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 Metrolinx IP.
- (b) The Consultant will acquire no rights to any Metrolinx IP other than the licence rights expressly granted in Section 5.5.

5.3 Ownership of Consultant Background IP

- (a) The Consultant is and will be the exclusive owner of, and shall retain all right, title and interest (including Intellectual Property Rights) in and to all Consultant Background IP.
- (b) Metrolinx will acquire no rights to the Consultant Background IP other than the licence rights expressly granted in Section 5.6, or otherwise under or in respect of this Contract.

5.4 Custom IP

- (a) Unless otherwise expressly agreed in a SOW, the Consultant shall own all right, title and interest in and to the Custom IP.
- (b) The Consultant grants to Metrolinx a perpetual, irrevocable, fully paid-up, royalty-free, worldwide, non-exclusive, right and licence to access, use, copy, support, maintain, and modify (including create derivative works from) the Custom IP. For avoidance of doubt, Metrolinx shall have the right to make the Custom IP available to third party contractors to use in connection with the provision of services to Metrolinx.
- (c) The Consultant shall cause all Consultant Personnel to waive for the benefit of Metrolinx and its respective successors, assigns, licensees and contractors, their respective moral rights (and any similar rights to the extent that such rights exist and may be waived in each and any jurisdiction throughout the world) in and to the Custom IP, prior to the performance of any work by such individual. The Consultant shall provide copies of such documentation to Metrolinx upon request.

5.5 Grant of Licences by Metrolinx to Consultant

- (a) Metrolinx grants to the Consultant, during the Term, a non-exclusive, non-transferable, royalty-free right and licence to:
 - (i) access, use, copy, support, maintain and, to the extent reasonably necessary to provide the Services, modify, the Metrolinx IP solely for the purposes of fulfilling the Consultant's obligations under this Contract; and
 - (ii) sublicense the Metrolinx IP to Subconsultants solely to the extent necessary to enable such Subconsultants to fulfill the Consultant's obligations under this Contract.
- (b) Any exercise by the Consultant of the rights granted pursuant to Section 5.5(a) shall be subject to the terms and conditions of this Contract, including the Consultant's obligations with respect to Confidential Information set out in Article 9.
- (c) If the Consultant desires to use the Metrolinx IP other than as permitted under clause (a) hereof, such use must be set out in a separate license

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

5.6 Grant of Licences by the Consultant to Metrolinx

- (a) The Consultant grants to Metrolinx a perpetual, irrevocable, fully paid-up, royalty-free, worldwide, non-exclusive right and licence to access, use, copy, support, maintain and modify the Consultant Background IP that is integrated with, embedded in, forms part of or is otherwise required to access, use, copy, support, maintain and modify any Custom IP; provided, however, that the foregoing license does not permit Metrolinx to use the Consultant Background IP in its standalone form or for any purpose other than as part of or in conjunction with the Custom IP it is associated with.
- (b) If the Consultant integrates with or embeds in any Deliverables any Intellectual Property provided by a third party vendor, subconsultant, independent contractor, Subconsultant or other person, the Consultant shall obtain for Metrolinx the same license rights for Metrolinx in respect of such third party Intellectual Property as set forth in Section 5.4(b) and this Section 5.6(a).

6. INSURANCE

6.1 Insurance Requirements

The Consultant agrees to purchase and maintain in force, at its own expense and for the duration of this Contract, the policies of insurance set forth in Schedule D – Insurance, which policies will be in a form and with an insurer acceptable to Metrolinx. A certificate of these policies originally signed by the insurer or an authorized agent of the insurer and must be delivered to Metrolinx prior to the commencement of the Services and within 15 days prior to the renewal or replacement of each insurance policy.

7. CHANGES

7.1 Changes Requested by Metrolinx

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

7.2 Changes Recommended by the Consultant

The Consultant shall promptly notify Metrolinx in writing if the Consultant considers that any notice, direction, requirement, request,

correspondence, or other fact, event, or circumstance comprises, requires, or results in a Change, and seek instructions as to whether or not to proceed to implement such Change.

7.3 Change Management Process

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

8. ADDITIONAL RESOURCES

8.1 Additional Resources

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

9. CONFIDENTIAL INFORMATION AND FIPPA

9.1 Restrictions on Use of Confidential Information

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

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

9.2 Permitted Disclosure

Notwithstanding the obligations set out in Section 9.1, the Consultant may disclose Metrolinx Confidential Information to those of its Subconsultants and Consultant's Personnel who need to know such Confidential Information in connection with this Contract, provided that such Subconsultant or Consultant's Personnel, as applicable, is subject to obligations of confidentiality substantially similar to those contained in this Article 9.

9.3 Exceptions

- (a) The obligations of confidentiality set out in Section 9.1 shall not apply to

Metrolinx Confidential Information which:

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

9.4 Damages

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

9.5 Return or Destruction of Confidential Information

- (a) At the request of Metrolinx and subject to Section 9.5(b) and Section 9.6, the Consultant agrees to:

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

9.6 FIPPA and Personal Information.

- (a) Metrolinx and the Consultant acknowledge and agree the collection, use, retention and disclosure of Personal Information is governed by FIPPA. Metrolinx acknowledges that the Consultant may also be subject to the requirements of PIPEDA. In the event of a conflict between the requirements of FIPPA and the requirements of PIPEDA or any other legislation governing the treatment of Personal Information, the more onerous provision shall apply.
- (b) The Consultant shall ensure that all collection, access, use, retention and disclosure of Personal Information under this Contract, whether through the performance of the Work or otherwise, complies with Applicable Laws including FIPPA, PIPEDA, Standards, and applicable requirements to collect, record and retain relevant consents pertaining to the collection, access, use, retention and disclosure of Personal Information in respect of the Services.
- (c) The Consultant shall ensure the security and integrity of any Personal Information collected by the Consultant and shall protect it against loss, unauthorized access, destruction, or alteration, in accordance with the following:
 - (i) The Consultant shall not directly or indirectly collect, use, disclose, store or destroy any Personal Information, or give, exchange,

disclose, provide, or sell Personal Information to any third party, except as expressly permitted, and for a purpose(s) authorized, under this Contract or otherwise agreed to in writing by Metrolinx.

- (ii) The Consultant shall ensure that access to Personal Information is restricted to those Consultant Personnel who have a need to know or use such information in the performance of the Services and who have been specifically authorized to have such access for the purposes of performing the Services. Access shall be limited to only that Personal Information which is required for the performance of the Services.
- (iii) All Personal Information shall be kept in a physically secure location and separate from all other records and databases. The Consultant shall not place, input, match, insert or intermingle, nor shall it permit any Person to place, input, match or intermingle, any data or records in any form whatsoever into or with any records or database containing such Personal Information.
- (d) For greater certainty, Metrolinx reserves the right to prescribe the specific manner in which the Consultant shall perform its obligations relating to this Section 9.6.

9.7 FIPPA and Freedom of Information

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

- (a) All FIPPA Records (as defined below) are subject to, and the collection, use, storage and treatment thereof is governed by FIPPA. The Consultant agrees to keep all FIPPA Records secure and available, in accordance with the requirements of FIPPA. The Consultant acknowledges that all information, data, records and materials, however recorded, that are held by the Consultant and/or created by the Consultant in the course of performing the Services are considered to be FIPPA Records and subject to FIPPA.
- (b) Section 9.5 shall apply to all FIPPA Records (other than the Contract Records), which shall be returned and/or destroyed in accordance with that section.
- (c) In the event of a conflict between the requirements of this Contract and the requirements of FIPPA, the requirements of FIPPA shall take precedence.
- (d) In the event that a request is made under FIPPA for the disclosure of any FIPPA Records, Metrolinx shall provide prompt written notice thereof to the Consultant and the Consultant shall provide any and all relevant FIPPA Records to Metrolinx on demand for the purposes of responding to an access request under FIPPA. In these circumstances, the Consultant shall provide all FIPPA Records requested to Metrolinx's Freedom of Information Coordinator (or equivalent) within seven (7) business days of receipt of the request from Metrolinx. Notwithstanding anything to the contrary in this Agreement and subject to the Consultant's rights of appeal

pursuant to Section 28(9) of FIPPA, Metrolinx shall determine what FIPPA Records will be disclosed in connection with any such request, in accordance with the requirements of FIPPA (including, without limitation, the requirements with respect to affected persons set out in Section 28 thereof).

For the purposes of this section, “**FIPPA Records**” means all information, data, records and materials, however recorded, in the custody or control of Metrolinx, including Confidential Information, Personal Information and Contract Records. For the purposes of this definition, documents held by the Consultant in connection with this Contract are considered to be in the control of Metrolinx.

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

9.8 Consultant Compliance

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

9.9 Publicity

Neither Party may make any disclosure to any other person or any public announcement or press release regarding this Contract or any relationship between the Consultant and Metrolinx, without the other Party’s prior written consent.

10. REPRESENTATIONS, WARRANTIES AND COVENANTS

10.1 Representations, Warranties and Covenants of the Consultant

The Consultant covenants and agrees with and represents and warrants to Metrolinx, and acknowledges and confirms that Metrolinx is relying on such covenants, agreements, representations and warranties, as follows:

- (a) the Consultant is validly existing under the laws of the location of its head office and the Consultant has all necessary corporate power, authority and capacity to enter into this Contract and to perform its obligations hereunder;
- (b) the entering into of this Contract by the Consultant and the performance of its obligations hereunder has been authorized by all necessary corporate action;
- (c) the execution and delivery of this Contract, the consummation of the transactions contemplated herein and compliance with and performance of the provisions of this Contract does not and shall not:
 - (i) result in a breach of or constitute a default under, or create a state of fact, which after notice or lapse of time or both, or otherwise, would constitute a default under any term or provision of the constating documents of the Consultant, the by-laws or resolutions of the Consultant or any agreement or instrument to which the Consultant is a party or by which it is bound, or
 - (ii) require the Consultant to obtain any Approval or action of any other Persons and, if required, any such Approvals have already been obtained as of the date of this Contract;
- (d) this Contract constitutes a legally valid and binding obligation of the Consultant enforceable against it in accordance with its terms, subject only to applicable bankruptcy, insolvency and other similar laws affecting the enforceability of the rights of creditors generally, the principles of equity and that equitable remedies such as specific performance and injunction are available only in the discretion of a court of competent jurisdiction;
- (e) the Consultant has carefully reviewed the whole of this Contract, including all of the Contract Documents, and all other documents made available to the Consultant by Metrolinx, and, to the Consultant's knowledge, nothing contained herein or therein inhibits or prevents the Consultant from performing the Services in accordance with the Required Standard of Care so as to achieve and satisfy the requirements of this Contract;
- (f) the Consultant has engaged and shall engage only Subconsultants and Consultant Personnel that are qualified and competent to perform the portions of the Services they are responsible for and possess the requisite Domain Expertise;
- (g) the Consultant has available the resources and personnel to complete all of its obligations under this Contract in a timely, efficient and professional manner in accordance with the Required Standard of Care;
- (h) the Consultant is not aware of any legal action instituted, threatened or pending against the Consultant that could have a material adverse effect

on its ability to perform its obligations under this Contract;

- (i) Except as disclosed in the Submission, the Consultant is free of any actual or potential RQQ Conflict of Interest;
- (j) Unless the Consultant is WSIB exempt, the Consultant is registered as an employer pursuant to the Workplace Safety and Insurance Act (Ontario) and has completed all filings and paid all assessments as required pursuant to that Act and the regulations thereunder;
- (k) the Consultant is familiar with the obligations imposed on an “employer” as defined in OHSA, and that it has in place a health and safety program to ensure that it takes all steps reasonable in the circumstances to ensure the health and safety of all workers for which it has responsibility under that Act; and
- (l) the Consultant represents, warrants and covenants to Metrolinx that the Consultant is and shall remain duly registered for the purposes of Part IX of the Excise Tax Act and that the Consultant’s registration number is:
_____.

10.2 Continuing Effect of Representations, Warranties and Covenants

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

11. INDEMNITY

11.1 Indemnification

- (a) The Consultant shall at all times indemnify and save harmless Metrolinx, its officers, directors, employees, members, agents, representatives, successors and assigns (hereinafter the “**Indemnified Parties**”), from and against any and all Losses resulting from:
 - (i) any breach, violation or non-performance by or on behalf of the Consultant of any covenant, obligation or agreement of the Consultant contained in this Contract, including any warranty;
 - (ii) any negligent acts, errors or omissions or wilful misconduct by or on behalf of the Consultant relating to the Services to be provided under this Contract;
 - (iii) any acts performed or omitted to be performed by or on behalf of the Consultant beyond the authority of the Consultant hereby conferred;
 - (iv) any inaccuracy in or breach of any of the representations or warranties of the Consultant contained in this Contract;

- (v) any breach of the terms and conditions set out in Article 3 or arising as a result of any illness, injury or death of any employee of the Consultant or any Subconsultant, including:
 - (A) any resulting expenses incurred by Metrolinx as a result of stoppage of the Services on account of failure by the Consultant to meet its obligations under and/or with respect to the OHSA; and
 - (B) any resulting fine(s) levied against Metrolinx as a result of any breach of the responsibilities of the employer for the work, to the extent attributable to the Consultant's failure to fulfil its obligations as described in Section 3.1; and/or
- (vi) any infringement or alleged infringement of any patent, trade secret, service mark, trade name, copyright, official mark, moral right, trade-mark, industrial design or other proprietary rights conferred by contract, common law, statute or otherwise in respect to the Services or any matter provided to Metrolinx or performed by the Consultant, or anyone else for whom at law it is responsible; provided, however, the Consultant shall not be required to indemnify the Indemnified Parties pursuant to this section if (x) the infringement or alleged infringement was caused by the modification of a Deliverable by any person other than the Consultant, (y) the Deliverable was based upon designs provided by Metrolinx, or (z) the Services and/or Deliverables relating to the infringement or alleged infringement were used in a manner not permitted by the Contract.
- (b) The Consultant shall pay all reasonable costs, expenses and legal fees that may be incurred or paid by the Indemnified Parties in connection with any demand, claim, execution, action, suit or proceeding with respect to a matter for which the Consultant is obligated to indemnify the Indemnified Parties pursuant to this Article 11, provided that the indemnity obligations of the Consultant under this Article 11 shall not extend to Loss attributable to the negligence or willful misconduct of any Indemnified Parties to the extent that such Indemnified Parties' negligence or wilful misconduct caused the Loss.
- (c) In the event any Loss is asserted in respect to which an Indemnified Party is entitled to indemnification under this Article 11, and without prejudice to any other right or remedy Metrolinx may have, Metrolinx shall be entitled to deduct or withhold a reasonable sum on account of such claim, action, suit, execution or demand, including legal costs, from monies owed or payable by Metrolinx to the Consultant under this Contract pending the final determination or settlement of such claim, action, suit, execution or demand. In the event,
 - (i) the Consultant is, becomes, or is deemed to be bankrupt or an insolvent person pursuant to the Bankruptcy and Insolvency

Act (Canada);

- (ii) the Consultant makes a general assignment for the benefit of creditors; or
- (iii) a receiver or interim-receiver is appointed with respect to some or all of the Consultant's business, assets, or property,

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

12. LIMITATION OF LIABILITY

12.1 General Intent

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

12.2 Limitations on Liability

- (a) Subject to Section 12.2(c), in no event shall either Party be liable for indirect, consequential, exemplary, punitive or special damages relating to the Contract even if such Party has been advised in advance of the possibility of such damages.
- (b) Subject to Section 12.2(c), each Party's aggregate liability to the other under the Contract for direct damages for all events giving rise to liability hereunder shall be limited to an amount equal to two times the total sum paid or payable by Metrolinx to the Consultant under every authorized SOW.
- (c) The limitations of liability set forth in Sections 12.2(a) and 12.2(b) shall not apply with respect to Losses:
 - (i) that are the subject of indemnification pursuant to Articles 11.1(a)(ii), (iii), (v) or (vi); or
 - (ii) occasioned by a breach of Article 9.
- (d) Each party shall have a duty to mitigate damages for which the Consultant is responsible.

13. TERMINATION

13.1 Termination for Cause by Metrolinx

Metrolinx may, by ten (10) days' written notice to the Consultant, suspend or terminate this Contract and/or any authorized SOW for cause in the event that the Consultant is in breach of any of its obligations under this Contract, and it fails to cure such breach (which breach must be curable) within thirty (30) days of being notified thereof, and thereupon:

- (a) Metrolinx may appoint officials of Metrolinx or any other person or persons in the place and stead of the Consultant to perform the Services or any portion thereof;
- (b) the Consultant shall immediately discontinue the Services on the date and to the extent specified in the notice and place no further orders for materials or services for the terminated portion of the Services;
- (c) nothing contained herein shall limit the rights of Metrolinx to recover damages from the Consultant arising from the failure of the Consultant to perform the Services satisfactorily in accordance with the terms of this Contract.

13.2 Termination for Convenience by Metrolinx

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

14. FORCE MAJEURE

14.1 Force Majeure

- (a) Neither Party shall be liable for Losses caused by a delay or failure to perform its obligations under this Contract where such delay or failure is caused by an event beyond its reasonable control (a "**Force Majeure Event**"). The Parties agree that an event shall not be considered beyond one's reasonable control if a reasonable business person applying due diligence in the same or similar circumstances under the same or similar obligations as the provisions of this Contract would have put in place contingency plans to either materially mitigate or negate the effects of such event.
- (b) Without limiting the generality of the foregoing, the Parties agree that Force Majeure Events may include acts of God, natural disasters, acts of war, war-like operations, civil war, acts of foreign enemy, plagues,

epidemics, insurrection and terrorism (provided that the conditions of Section 14.1(a) are met) but shall in no event include:

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

14.2 Process

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

14.3 Metrolinx Rights

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

15. DISPUTE RESOLUTION

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

16. SET OFF

Metrolinx shall have the right to satisfy any amount from time to time owing by it to the Consultant under the Contract by way of a set-off against any amount from time to time

owing by the Consultant to Metrolinx under the Contract, including but not limited to any amount owing to Metrolinx pursuant to the Consultant's indemnification of Metrolinx in this Contract.

17. GENERAL

17.1 Entire Agreement

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

17.2 Governing Law and Jurisdiction

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

17.3 Survival

The obligations set out in Articles 1, 2, 3, 5, 6, 9, 10, 11, 12, 15 and this Article 17 of this Contract shall continue to bind the Consultant notwithstanding expiration or termination of this Contract for any reason whatsoever or completion of the Services as contemplated hereunder.

17.4 Enurement

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

17.5 Assignment

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

17.6 Independent Parties

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

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

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

17.7 Third Party Beneficiaries

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

17.8 Joint and Several Liability

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

17.9 Notice

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

17.10 Amendments

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

17.11 No Waiver

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

17.12 Severability

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

17.13 Further Assurances

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

17.14 Conflict of Interest Acknowledgement and Agreement

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

this Contract, and the Consultant agrees that it shall not, and shall take reasonable steps (including obtaining covenants substantially similar to those set out in this section) to ensure that its Subconsultants do not participate in or be involved with such Prohibited Procurements either directly or indirectly, including as a bidder or as a subconsultant or advisor to any bidder.

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

17.15 Counterparts

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

[End of General Conditions]

Schedule A – Definitions

“Applicable Laws” means all applicable laws, statutes, regulations, orders, by-laws, treaties, judgements, decrees and ordinances applicable from time to time and, whether or not having the force of law, all applicable Approvals, Standards, codes, requirements, requests, directives, rules, guidelines, instructions, circulars, manuals, and policies of any Governmental Authority having or purporting to have jurisdiction or authority over a Party, property, transaction or event, including laws relating to workplace safety and insurance, occupational health and safety and employment standards.

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

“Business Day” means any day other than: (a) a Saturday or Sunday and (b) any other day on which Metrolinx is not open for business.

“Changes” has the meaning ascribed to it in Section 7.1 of the General Conditions.

“Client Manager” means the person identified as the client manager in the Submission or any person who has replaced such person pursuant to Section 2.6.

“Confidential Information” means all information of a confidential nature (as determined with reference to its treatment by Metrolinx) which is provided, disclosed or made available (orally, electronically or in writing or by any other media) by Metrolinx (or its representatives) to the Consultant (including to employees, contractors, or other representatives thereof) and includes any copies or reproductions thereof. For greater certainty, Personal Information, Contract Records and anything else specifically marked or identified by Metrolinx as confidential or proprietary are deemed to be “Confidential Information” for the purposes of this Contract.

“Conflict of Interest” has the meaning ascribed to it in Section 17.14 of the General Conditions.

“Consultant” means the successful consultant of the RQQ.

“Consultant Background IP” means any methodologies, patterns, plans, procedures, Software, algorithms, computer code, documentation, tools, business processes, scripts, interfaces, commands, technical information, know-how, techniques, specifications, technologies and/or other Intellectual Property that is proprietary to the Consultant or which Consultant has the right and licence to use and make available to Metrolinx, in each case that was either: (a) created prior to the Effective Date; or (b) created, developed or produced independently of this Contract and/or the performance of the Services or (c) all copies, translations, improvements, modifications, enhancements, adaptations, or derivations made to the Consultant Background IP by the Consultant and/or any third

party not performing work under this Contract; provided, however, that Consultant Background IP does not include any Custom IP.

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

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

“Consultant’s Representative” means the Client Manager.

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

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

“Contract Records” has the meaning ascribed to it in Schedule C – Insurance of Appendix “A” General Conditions.

“Custom IP” means any Intellectual Property created or developed by the Consultant, any Consultant Personnel or any Subconsultant pursuant to this Contract and/or the performance of the Services, and all Intellectual Property Rights therein.

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

“Dispute” means all disputes, controversies, or claims arising out of or relating to: (a) this Contract; (b) the alleged wrongful exercise or failure to exercise by a Party of a discretion or power given to that Party under this Contract; and/or (c) the interpretation, enforceability, performance, application, or administration, breach, termination, or validity of this Contract or any failure to agree where agreement between the Parties is called for.

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

“Domain Expertise” means the required level of depth and breadth of qualifications and experience in respect of the tasks to be performed in connection with the Services, gained

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

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

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

“FIPPA Records” has the meaning ascribed to it in Section 9.6 of the General Conditions.

“Governmental Authority” means any domestic government, including any federal, provincial, territorial, municipal, regional or other local government, and any government established court, agency, tribunal, commission or other authority exercising or purporting to exercise executive, legislative, judicial, regulatory or administrative functions respecting government; provided, however, **“Governmental Authority”** does not include Metrolinx.

“Indemnified Parties” has the meaning ascribed to it in Section 11.1 of the General Conditions.

“Intellectual Property” means all intellectual and industrial property, including all Software, patents, patent application rights, rights to file patents, inventions, trade-marks (whether registered or not), trade-mark applications, rights to file trade-marks, trade names, copyrights (whether registered or not), design registrations, trade secrets, confidential information, industrial and similar designs, rights to file for industrial and similar designs, processes, methodologies, techniques and know-how, and all Intellectual Property Rights therein.

“Intellectual Property Rights” means any right to Intellectual Property recognized by law, including any Intellectual Property right protected by legislation or arising from protection of information as a trade secret or as confidential information.

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

“Key Personnel” means those individuals who are filling the roles specified in Schedule B – Consultant Personnel.

“Losses” means claims, actions, suits, executions, and demands and all loss, liability, judgments, costs, charges, damages, liens and expenses of any nature whatsoever and howsoever caused.

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

“Metrolinx IP” means: (a) all Intellectual Property that is proprietary to, or controlled or licensed by, Metrolinx and provided to the Consultant; (b) all trademarks, service marks, trade names, logos or other commercial or product designations owned or licensed by Metrolinx; (c) all procurement documents issued by Metrolinx; (d) all documentation or source materials (including source code) related to any of the foregoing; and (e) all copies, translations, improvements, modifications, enhancements, adaptations, or derivations made to the Metrolinx IP by Metrolinx and/or any third party not performing work under this Contract.

“Metrolinx Representative” or **“Metrolinx’s Representative”** has the meaning ascribed to it in Section 2.8 of the General Conditions.

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

“Outcome” has the meaning ascribed to it in Section 2.9 of the General Conditions.

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

“Person” means any individual, sole proprietorship, partnership, limited partnership, corporation or company (with or without share capital), trust, foundation, joint venture, Governmental Authority or any other incorporated or unincorporated entity or association of any nature.

“Personal Information” has the meaning ascribed to it in FIPPA.

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

“Prohibited Procurements” has the meaning ascribed to it in Section 17.14 of the General Conditions.

“Rates” has the meaning ascribed to it in Section 2.9 of the General Conditions.

“Required Standard of Care” means: (a) using the Standards, practices, methods and procedures to the highest commercial standards of practice and professionalism as understood in the Province of Ontario; (b) confirming to Applicable Laws and all rules of professional conduct applicable to the Consultant or the Consultant Personnel; (c) exercising that degree of skill and care, diligence, prudence and foresight which would be expected from a leading Person or professional performing work similar to those called for under this Contract; and (d) using only proper materials and methods as are suited to the function and performance intended.

“RQQ Conflict of Interest” means the Consultant had an unfair advantage or engaged in conduct, directly or indirectly, that gave it an unfair advantage, including but not limited to (i) having, or having had access to, confidential information of Metrolinx in the preparation of its submission during the RQQ process that was not available to other proponents, (ii) communicating with any person with a view to influencing preferred treatment in the RFP process (including but not limited to the lobbying of decision

makers involved in the RFP process), or (iii) engaging in conduct that compromises, or could be seen to compromise, the integrity of the RFP process.

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

“Software” means any set of machine-readable instructions that directs the performance of specific operations, including computer programs, computer code, software programs (whether executable or not executable), system software, application software, embedded software, databases, data, middleware, GUI’s, objects, firmware, components and modules and related documentation.

“SOW” has the meaning ascribed to it in Section 2.9 of the General Conditions.

“SOW Schedule” has the meaning ascribed to it in Section 2.9 of the General Conditions.

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

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

“Submission” means all documentation and other materials and information submitted by the Proponent in response to Request RQQ-2017-IT-001.

“Taxes” means all present and future taxes, surtaxes, duties, levies, imposts, rates, fees, premiums, assessments, withholdings, dues and other charges of any nature imposed by any Governmental Authority (including, income, capital (including large corporations), gross receipts, consumption, sales, use, transfer, goods and services or other Value Added Taxes, excise, customs or other import, anti-dumping, countervail, net worth, alternative or add-on minimum, windfall profits, stamp, registration, franchise, payroll, employment insurance, Canada Pension Plan, worker’s compensation, health, education, school, business, property, local improvement, environmental, development and occupation taxes, surtaxes, duties, levies, imposts, rates, fees, premiums, assessments, withholdings, dues and charges) together with all fines, interest and penalties in respect thereof or in lieu of or for non-collection thereof.

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

“Value Added Taxes” means such sum as shall be levied upon amounts payable to the Consultant under this Contract by any Governmental Authority that is computed as a percentage of the amounts payable to the Consultant (including all other Taxes but excluding Value Added Taxes), and includes the HST, and any similar tax, the payment or collection of which, by the legislation imposing such tax, is an obligation of the Consultant.

END OF SCHEDULE A

Schedule B – Consultant Personnel

1. Consultant Staff Positions/Roles “Key Personnel”

The following Staff Positions/Roles shall be retained and filled, and they shall perform the following key responsibilities as well as any other responsibilities as requested by Metrolinx. All Positions / Roles are on an emergent basis, except for the Client Manager, in accordance with the Contract Documents and in accordance with the following requirements in respect of qualifications, experience and minimum years of experience.

(a) Rate Category: Managers

Role	Key Responsibilities	Qualifications and Experience	Required Duration	Name of Individual
Client Manager	Refer to Appendix “B”	Refer to Appendix “B”	Duration of the Contract	<<Insert name of Individual>>
Executive Lead	Refer to Appendix “B”	Refer to Appendix “B”	On an Emergent Basis	N/A
Senior Project Manager	Refer to Appendix “B”	Refer to Appendix “B”	On an Emergent Basis	N/A

(b) Rate Category: Technical Specialists

Role	Key Responsibilities	Qualifications and Experience	Required Duration	Name of Individual
Enterprise Expert/Architect/Functional Specialist	Refer to Appendix “B”	Refer to Appendix “B”	On an Emergent Basis	N/A
Senior Analyst/ Technical Lead	Refer to Appendix “B”	Refer to Appendix “B”	On an Emergent Basis	N/A
Analyst	Refer to Appendix “B”	Refer to Appendix “B”	On an Emergent Basis	N/A
Solution Architect	Refer to Appendix “B”	Refer to Appendix “B”	On an Emergent Basis	N/A

Schedule C – Financial Terms

1. Payment

- (a) Metrolinx will pay the Consultant for the Services performed by the Consultant pursuant to a SOW, the amount agreed in such SOW and in accordance with the payment schedule set out in such SOW, upon completion and Metrolinx acceptance, where applicable, of the applicable milestone.
- (b) In certain circumstances and subject to mutual agreement, fee reductions, incentive payments or holdbacks may be applied. The amount of the fee reduction, incentive payment or holdback, if any, shall be identified in the SOW.

2. Limitation of Expenditure

- (a) It is understood that the Contract is based on reimbursement for actual Services requested by Metrolinx and performed by the Consultant.
- (b) Metrolinx does not guarantee any minimum or maximum of work it will assign the Consultant under the Contract. Metrolinx reserves the right to assign no work or assign a selected number of work assignments with an accumulated value up to the awarded total upset limit of the Contract.

3. Upset Limit

- (a) Subject to Articles 7 and 8 of the General Conditions, Metrolinx and the Consultant acknowledge and agree that upset limit set out in the Articles of Agreement is the maximum amount payable in respect the provision of the Services, excluding HST; provided, however, that the foregoing is not an entitlement to, nor a guarantee that the Consultant will be paid the full amount of, the upset limit.
- (b) The Consultant shall not perform any work under this Agreement which would cause the total cost to exceed the upset limit amount set out in the Articles of Agreement, unless an increase is so authorized by Metrolinx and effected by an amendment or change order that has been executed by both Parties.

4. Rates for Services

- (a) The Consultant acknowledges and agrees that the Rates are inclusive of all labour and materials, insurance costs, disbursements and all other overhead including any fees or other charges required under Applicable Laws. Without limiting the generality of the foregoing, the Rates include costs for the coordination, administration of the provision and management of the Services necessary to achieve compliance with

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

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

5. Taxes

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

shall be responsible for investigating whether they are subject to the withholding of taxes under the Income Tax Act and obtaining the necessary waiver or reduction as needed.

6. Invoicing and Payment Process

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

7. Cost of Changes

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

8. Metrolinx Property

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

9. Records and Audit

- (a) During the Term and for a period of seven (7) years thereafter, the Consultant shall, at its cost and expense, retain and maintain, in an organized, accurate and accessible mode and manner, all financial and other books, records and documentation relating or pertaining to the Contract and the performance of the Services, including (i) original invoices and accounts, along with related records showing costs and expenses incurred, including but not limited to the cost to the Consultant of the Services and of all expenditures or commitments made by the Consultant in connection therewith; (ii) correspondence, e-mails, tenders, minutes of meetings, notes, reports, timesheets, memoranda and other documents associated with the Contract; (iii) records relating to any service level agreements and key performance indicators included in the Contract, and (iv) records related to matters of security and privacy (collectively, the “**Contract Records**”).
- (b) The Contract Records shall be retained and maintained in accordance with all generally acceptable accounting principles and Applicable Laws and Standards, or as otherwise may be required to substantiate compliance with this Contract and/or any payment to be made to the Consultant under this Contract.
- (c) During the Term and for a period of seven (7) years thereafter, Metrolinx or any third party acting on behalf of Metrolinx, shall have the right, upon no less than twenty-four (24) hours’ notice in writing to the Consultant and during normal office hours, to inspect and audit, and to have access to, all Contract Records whether maintained by the Consultant or a Subconsultant, reasonably required to confirm the Consultant’s compliance with the terms of this Contract and Applicable Laws, and to make copies thereof. The Consultant shall make available or cause to be made available the Contract Records that are requested by Metrolinx or that may be required given the scope of the audit (provided such scope is disclosed to the Consultant), and shall otherwise reasonably cooperate with Metrolinx and any third party acting on Metrolinx’s behalf, including by providing reasonable access to all of the Consultant’s premises and to the Consultant’s employees. Where access is needed to a Subconsultant’s employees or to Contract Records that are maintained by a Subconsultant, the Consultant shall use reasonable efforts to arrange for such access on a timely basis. Without limiting the generality of the foregoing, the rights set out in this Section 9 shall extend to any Governmental Authority exercising its right to audit pursuant to Applicable Law or any contract with Metrolinx. When selecting a third party to inspect and audit the Contract Records, Metrolinx shall consult with Contractor and shall take into consideration any reasonable objections Contractor may have.
- (d) The Consultant shall maintain a competent and independent audit function to assess the internal controls over its environment and its compliance

with Applicable Laws and Standards. The Consultant shall provide Metrolinx, upon request, the results of all internal controls and security audits performed by the Consultant's auditors.

- (e) The Consultant shall upon advance written request, provided by e-mail or otherwise, provide Metrolinx with reasonable access to all premises that may reasonably be required to enable Metrolinx and/or Metrolinx's agents to monitor the progress of the Services. Any such monitoring or verifications shall be without prejudice to any other rights of Metrolinx under this Contract and shall not relieve the Consultant from any of its obligations under this Contract nor shall such verification be used by the Consultant as evidence of effective control of quality.
- (f) The Consultant and Metrolinx shall meet to review each audit report promptly after the issuance thereof and to mutually agree upon the appropriate manner, if any, in which to respond to the changes suggested or issued identified by the audit report. Without limiting any remedies which may be available to Metrolinx, the Consultant shall promptly remedy any violations of this Contract of which it becomes aware, pursuant to any audit or otherwise.

END OF SCHEDULE C

Schedule D – Insurance

1. Consultant Insurance Requirements

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

1.1 Commercial General Liability

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

1.2 Automobile Liability Insurance

If required, the policy shall provide coverage for liability arising out of the use of owned, non-owned, leased or hired automobiles in connection with the performance of the Services. Coverage shall consist of a combined single limit of not less than \$2,000,000 per occurrence.

1.3 Errors and Omissions Insurance

The policy shall provide errors and omissions insurance including coverage for infringement of trademark and copyright covering the Services rendered by the Consultant, any Subconsultants or any Consultant Personnel, including personnel on loan to the Consultant who perform normal services of the Consultant under this Contract. The policy shall have a limit of liability of not less than \$2,000,000 per occurrence and in the policy aggregate. The policy shall be maintained throughout the Term, plus coverage for an extended reporting period of not less than thirty-six (36) months.

1.4 Additional Coverage

- (a) Without prejudice to any other provisions of this Contract (including Section 1.1 of this Schedule D – Insurance), the Consultant shall, at all relevant times and at its own expense, obtain and maintain, or cause to be obtained and maintained (during the Term plus coverage for an extended reporting period of not less than thirty-six (36) months):
 - (i) those insurances that are reasonable for the performance of the type and scope of Services set out by this Contract (including, as applicable, insurance as would typically be required by prudent designers or consultants); and/or

- (ii) those insurances that the Consultant is required to obtain and maintain, or cause to be obtained or maintained, by Applicable Law.

1.5 Requirements for Insurance

- (a) All of Consultant's policies of insurance, as required under this Contract (the "**Consultant Policies**"), shall be taken out with insurance companies licensed to transact business in the Province of Ontario with an AM Best rating of no less than A, or equivalent.
- (b) Any deductible or self-insured retention amounts are the responsibility of the Consultant. Notwithstanding the foregoing, such deductibles or self-insured retention must be consistent with standard commercial practice and acceptable to Metrolinx, acting reasonably.
- (c) All Consultant Policies shall be kept in full force and effect during the Term, including any requirements for the period following the Term.
- (d) In the event that the Consultant fails to obtain and/or maintain in full force and effect any such insurance as aforementioned, then Metrolinx shall have the right as the Consultant's true and lawful attorney to do all things necessary for this purpose. The Consultant shall be responsible, and shall reimburse Metrolinx, all amounts paid by Metrolinx for insurance premiums and any and all costs incurred by Metrolinx in connection with this Contract. Without limitation, any premiums due on any insurance policy under this Schedule D – Insurance, but not paid by the Consultant may be paid directly to the insurer(s) or broker(s) by Metrolinx, which shall be entitled to deduct the amount of same along with its reasonable costs in so doing from any monies otherwise due to the Consultant by Metrolinx either under this Contract or otherwise.
- (e) All Consultant Policies shall be endorsed to endeavor to provide Metrolinx with not less than thirty (30) days' advance written notice of cancellation.
- (f) Irrespective of the insurance requirements above, the insolvency, bankruptcy, or failure of any such insurance company providing insurance for the Consultant, or the failure of any such insurance company to pay claims that occur will not be held to waive any of the provisions hereof.

1.6 Proof of Insurance

- (a) The Consultant shall, prior to the commencement of the Services, provide to Metrolinx original signed certificates of insurance for the Consultant Policies, confirming that the required coverage has been placed and maintained. In addition, at least fifteen (15) days prior to the expiry date or replacement of any policy, the Consultant shall provide original signed certificates evidencing renewals or replacements of such policy to Metrolinx, without notice or request by Metrolinx.

- (b) The Consultant shall, upon request, provide evidence to Metrolinx that the premiums associated with the Consultant Policies have been paid; however, receipt by Metrolinx of the above information will in no way constitute confirmation by Metrolinx that the insurance complies with the requirements of this Contract. Responsibility for ensuring that the insurance coverage outlined in this Contract is in place rests solely with the Consultant.
- (c) The Consultant also agrees to provide Metrolinx with proof of errors and omissions insurance maintained by any Subconsultant, where such Subconsultant is under a professional obligation to maintain the same, and with proof of such insurance to be provided to Metrolinx no later than the execution of this Contract by the Consultant and to be in a form and with an insurer acceptable to Metrolinx.

1.7 Consultant's Liability Preserved

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

1.8 Workplace Safety & Insurance Board Protection

Unless the Consultant is WSIB exempt, the following provisions will apply:

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

END OF SCHEDULE D

Schedule E – Dispute Resolution

1. Bona fide efforts to resolve

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

2. Continuance of the Services During Dispute

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

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

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

3. Tiered-Dispute Resolution

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

4. Negotiation

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

a without prejudice basis, to facilitate such negotiation.

- (b) Negotiations under this Section 4 shall be commenced within ten (10) Business Days of delivery of a Dispute Notice and shall, unless otherwise agreed by the Parties, be concluded within fifteen (15) Business Days of their commencement. In the event that a resolution satisfactory to all Parties is achieved through such negotiations, the Parties shall issue a joint statement detailing the manner in which the Dispute has been resolved.

5. Mediation

- (a) If a Dispute has not been resolved through high-level negotiation as contemplated in Section 4, either Party may refer the Dispute to be resolved through mediation.
- (b) The Parties shall mutually agree to the appointment of the mediator within thirty (30) Business Days, or within such other time as the Parties may agree, of any Party issuing a supplementary Dispute Notice requesting mediation.
- (c) If the Parties cannot agree on the appointment of a mediator, the appointment of a mediator shall be determined by the Ontario Superior Court of Justice following an application by either Party.
- (d) The mediator shall be independent of and at arm's length to the Parties and shall be a person who by training and experience has the qualifications and the mediation skills to mediate a Dispute.
- (e) Unless the Parties otherwise agree, the mediation shall proceed in accordance with the following procedures:
 - (i) Each Party shall prepare a summary of the issues in dispute, with the Party's position with respect to those issues. The summary shall be delivered to the mediator and the other Parties, at least seven (7) Business Days before the first mediation conference.
 - (ii) The goal of the mediation is to reach an agreed upon settlement and, therefore, all individuals with the appropriate authority to agree to the settlement terms and conditions shall be present at the mediation.
 - (iii) A Party may be represented at the mediation by counsel or another representative at the sole cost of such Party.
 - (iv) The mediator, the Parties and their counsel or representatives shall keep confidential all matters relating to the mediation, except where disclosure of a settlement agreement is necessary to implement or enforce that agreement and except as otherwise required by Applicable Law.
 - (v) In all respects, the mediation is deemed to be a "without prejudice" proceeding.

- (f) The costs of the mediator shall be apportioned equally between the Parties unless otherwise agreed under any settlement reached under this Section 5.
- (g) If the Parties achieve a resolution of the Dispute, the mediator shall confirm the resolution in writing, which will be signed by the Parties. If the Parties do not resolve the Dispute, the mediator shall provide a written confirmation that the Parties were unable to resolve the Dispute.
- (h) Both Parties acknowledge and agree that they may not refer a Dispute for resolution by arbitration under Section 6 prior to attempting to resolve such Dispute through mediation pursuant to this Section 5.

6. Arbitration

- (a) Any Party may, within ten (10) Business Days of the delivery of the mediator's confirmation that the Parties were unable to resolve their Dispute, issue a supplementary Dispute Notice requesting arbitration. Subject to Applicable Law, if such a supplementary Dispute Notice is issued, the Parties shall proceed to arbitration in the manner described below.
- (b) If the Parties agree on the arbitrator, the Parties shall jointly appoint the arbitrator as soon as possible and in any event within ten (10) Business Days of the submission of a Dispute to arbitration under this Section 6. If the Parties are unable to agree on an arbitrator, each Party shall appoint an arbitrator, and the two arbitrators so chosen shall select a third arbitrator acceptable to both of them within ten (10) Business Days of their selection.
- (c) The arbitrator(s) shall be independent of and at arm's length to the Parties and shall be a person who by training and experience has the qualifications and arbitration skills to arbitrate a Dispute.
- (d) The arbitration shall be conducted in accordance with the provisions of the *Arbitration Act, 1991*, S.O. 1991, c. 17, except to the extent they are modified by the express provisions of this Schedule E – Dispute Resolution or unless the Parties otherwise agree.
- (e) If the issue in dispute is particularly time sensitive, the Parties shall, in good faith, take such reasonable steps as may be required to expedite the arbitration process in order that an award may be rendered as soon as practicable by the arbitrator(s), given the nature of the Dispute.
- (f) The arbitrator(s) has the jurisdiction to deal with all matters relating to a Dispute.
- (g) Unless otherwise agreed, the arbitration shall be conducted in the City of Toronto, Province of Ontario at the location determined from time to time by the arbitrators, but the arbitrators may meet in any other place the

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

- (h) In addition to the examination of the Parties by each other, the arbitrator(s) may examine, in the ordinary course, the Parties or either of them and the witnesses in the matter referred to the arbitrator(s), and the Parties and witnesses, if examined, shall be examined on oath or affirmation.
- (i) The language of the arbitration shall be English.
- (j) The arbitrator(s) shall, after full consideration of the issues in dispute, the relevant facts and Applicable Law, render a decision as soon as possible and, in any event, shall use all reasonable efforts to render a decision no later than thirty (30) Business Days after argument of the issue to the arbitrator(s), which decision shall be final and binding on the Parties and not subject to appeal or challenge, except such limited relief provided under Section 45(1) (appeal on a question of law, with leave) or Section 46 (setting aside award) of the *Arbitration Act, 1991* (Ontario). Nothing herein shall preclude a party from commencing litigation proceedings.
- (k) The costs of the arbitration are in the discretion of the arbitrator(s) who, in addition to any jurisdiction and authority under Applicable Law to award costs, has the jurisdiction and authority to make an order for costs on such basis as the arbitrator(s) consider appropriate in the circumstances. The submission to the arbitrator(s), and any award made in pursuance of it, may, at the instance of either of the Parties and without notice to the other of them, be made an Order of the Ontario Court (General Division), pursuant to the *Arbitration Act, 1991* (Ontario) and the *Courts of Justice Act* (Ontario).

END OF SCHEDULE D

Appendix “B” – Scope of Services

List of Contents

The following documents hereby form part of and are appended to this Request Document as the Appendix “B” – Consultant’s Scope of Services

<u>ITEM NO.</u>	<u>SECTION TITLE</u>
1.	Categories of Services
2.	Consultant Staff Positions/Roles
3.	Assignment of Projects
4.	Management of Services

1. **Categories of Services**

The Consultant shall, on an as required basis, perform Business and/or Technical Management Consulting Services in the following defined Service Areas.

(a) **Business: Service Areas**

(i) **Business Process Re-engineering**

Business process re-engineering refers to the analysis, identification of areas of improvements and the implementation of those improvements to the processes that drive the business. These activities may be initiated by legislative changes, the introduction of new services or simply as a management approach to elevating the efficiency and effectiveness of the processes that exist within and across the organization.

(ii) **Operational Readiness**

Operational readiness is a defining concept vital to understanding the health of the organization similar to taking a pulse and assessing the well-being of the human body. In this Service Area the Consultant will be required to identify indicators of organizational and business operations health, monitor those indicators and identify and report on areas that require attention. The Consultant will also be expected to provide recommendations in terms of actions, investments, etc. that should be taken to address the identified issues.

(iii) **Benchmarking Business Operations**

Benchmarking is the process of determining who is the very best, who sets the standard, and what that standard is. In business who has the best sales organization? The most responsive customer service department? The leanest manufacturing operation? And how do we quantify that standard? In this Service Area the Consultant will be expected to provide individuals or teams with the business knowledge and benchmarking experience appropriate to the requirement. Benchmarking is usually part of a larger effort, a process re-engineering or quality improvement initiative.

(iv) **Advisory and Facilitation**

In this Service Area the Consultant will provide advisory services of both a strategic and tactical nature. These services will tend to answer the questions of How? When? Who? In what time frame? How much? Is it scalable? What is it worth? What if? Once the answers to these questions have been identified, facilitation will be required to ensure stakeholder buy-in to the decision. The Consultant will be expected to assist stakeholders engage in dialogue and get something done through applying skills such as teambuilding, creating a win-win situation, identifying personal and group values.

(v) **Organizational Design**

This Service Area includes the analysis of the organizational structure and recommendations of changes to that structure. Typically these organizational changes are

intended to accommodate changes in the organization's responsibilities, business process re-engineering initiatives or to introduce improvements in such things as efficiency and governance. In some cases the Consultant will not only contribute to the new organizational design but also its implementation.

(vi) **Client and Employee Surveys**

The development, implementation and analysis of survey results. These surveys will touch on many areas of the organization and will be designed to measure the health of a particular area of the business. For example: measuring employee and client satisfaction, identification of improvements in the services provided, etc.

(b) **Technical: Service Areas**

(i) **Quality Assurance/Control**

The types of services found in this Service Area would include:

- (A) Development of quality assurance policies, strategies, procedures, metrics, forms and tools;
- (B) Development of software development standards;
- (C) Providing expertise in the application of quality planning assurance techniques and procedures to all stages of the system and software development life cycle; and
- (D) Identifying areas where conduct is not to standards, reporting these findings and their potential impacts and recommending corrective actions.

(ii) **Risk Review and Mitigation**

The services provided in the Service Area focus on the identification and management of risk. This risk may be associated with a product, project or process but the identification of those risks and their management remain fairly consistent. Typically these services include the identification of risk, the prioritization of the risk, and risk avoidance, reduction, retention and transference. This service includes the creation of a risk management plan and its implementation.

(iii) **Verification/Validation**

In this Service Area services relevant to system verification and validation apply. The Consultant should be prepared to establish system goals and identify system functions then translate those goals and functions into use cases and work with the use cases until the logical system design is developed. Types of outputs would be the system specifications, trade-off analysis, a primary Verification Plan and Verification Traceability Matrix.

(iv) **Operations Planning Assessment**

This Service Area is focused on IT Operations Planning and Assessment. The specific services related to this area include the forecasting of IT capability requirements based on future business growth and initiatives, the translation of this forecast into resources, assets and processes all of which must fall within the standards established by the organization. The Consultant must also be capable of identifying and measuring key operational criteria identifying any operational deficiencies. These deficiencies must be reported and communicated to various levels of management.

(v) Systems Audit and Performance

The Systems Audit and Performance Service Area include services such as:

- (A) Conducting systems under development reviews by reviewing project documentation, conducting interviews, assessing work completed and, based on findings, reporting on compliance with policy, standards, procedures and progress against plan.
- (B) Conducting reviews of systems recently implemented and reporting:
 - (I) Benefits actually achieved versus projected benefits;
 - (II) Features actually delivered versus stated requirements;
 - (III) The adequacy of controls and system security features;
 - (IV) User satisfaction based on surveys or interviews; and
 - (V) System performance and reliability.
- (C) Reviewing systems that have been in production status for some time and reporting on issues and deficiencies.
- (D) Reviewing organizational IT policy, standards and procedures and providing advice on their adequacy.

(vi) Product and Technology Direction

The purpose of this Service Area is to provide the client with access to information that will allow the enterprise to become and remain ahead of the product and technology curve. The Consultant should be prepared to provide individuals intimately familiar with the product and technology road map in various product and technology spaces. The service provided will include:

- (A) Understanding the organization's business direction and standards;
- (B) Relating the imposed business requirements to specific products and technologies;
- (C) Apprising senior management of products and technology that are at the beginning of their life cycle; and
- (D) Creating a risk analysis associated with the proposed solution.

(vii) Feasibility and Solution Analysis

- (A) Conducting a feasibility study or solution analysis at the beginning of a project or solution development requires that the Consultant answer and consider questions such as the following:
- (I) What are the general design and technical requirements;
 - (II) Compare the design and expected performance with existing operations;
and
 - (III) Estimated costs.
- (B) Once all elements of the study have been evaluated then the results of the study and recommendations are presented to the responsible management.

(viii) Life Cycle Support

The support of a product or solution refers to the ongoing maintenance of that product from leading edge through to obsolescence. The Consultant shall need to invest in its capabilities to ensure the expertise necessary to provide this support is available until the time other products and solutions are available.

(ix) Project Health Check

This Service Area refers to the provision of services designed to identify and address project deficiencies. These services include the identification of issues such as schedule aggressiveness, poor management, scope creep and inappropriate staffing. Additionally these services require the reporting of project risks associated with the deficiency and recommendations on risk avoidance.

(x) Performance Measurement/Development of Metrics

This Service Area involves the provision by the Consultant of an individual or team skilled in the identification of the Key Performance Indicators (KPI) of the technology area under consideration. The KPIs may include incidents, processing time, processing costs, etc. In any event the service includes the identification of the KPI (or development of the KPI) monitoring it, comparing it to specifications or best in class performance and reporting on the findings.

2. **Consultant Staff Positions/Roles**

- (a) The minimum experience and qualifications that must be possessed by the **Client Manager** are as follows:
- (A) Minimum years of related experience: Fifteen (15) years account management experience.
 - (B) Minimum years of specific experience in one or more of the Service Areas: Ten (10) years.
 - (C) Qualifications and Experience:
 - (I) A university degree or equivalent industry experience (20 years minimum);
 - (II) Client references;
 - (III) Experienced in the management of the Consultant's in Service Areas under Categories of Services and for the following client groups:
 - i. Public Sector;
 - ii. Transit / Transportation;
 - iii. Financial; and
 - iv. Information Technology
 - (D) Responsibilities:

May include, but are not necessarily limited to:

 - (I) The Client Manager shall serve as Metrolinx's single point of contact with the Consultant and be responsible for the coordination of the assignments, resource management and performance of the Services.
- (b) The Consultant shall retain and provide as required the following staff positions/roles for the provision of the Services:
- (a) Executive Lead;
 - (b) Enterprise Expert/Architect/Functional Specialist;
 - (c) Senior Analyst/Technical Lead;
 - (d) Senior Project Manager;
 - (e) Analyst; and
 - (f) Solution Architect.

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

(a) **Executive Lead**

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

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

(C) Qualifications and Experience:

(I) A university degree or equivalent industry experience (20 years minimum);

(II) Client references;

(III) Member of key industry associations related to the applicable Service Area; and

(IV) Experienced in the management of the Consultant's Service Area and project related methodologies and tools.

(D) Responsibilities:

May include, but are not necessarily limited to:

(I) Management of several senior project managers, each responsible for an individual project;

(II) Management of the project during the development, implementation and operations start-up ensuring that resources are made available and that the project is developed and is fully operational within previously agreed time, cost and performance parameters;

(III) Formulates statements of problems, establishes procedures for the development and implementation of significant, new or modified project elements to solve these problems, and obtains approval thereof;

(IV) Defines and documents the objectives for the project, determines budgetary requirements, the composition, roles and responsibilities and terms of reference for the project team;

(V) Reports progress of the project on an ongoing basis and at scheduled points in the life cycle;

- (VI) Regularly meets with and is a member of the executive team in the Service Area under consideration;
- (VII) Provides strategic advice to the executive team in the Service Area under consideration;
- (VIII) Meets in conference with stakeholders and other project managers and states problems in a form capable of being solved;
- (IX) Prepares plans, charts, tables and diagrams to assist in analyzing or displaying problems, works with a variety of project management tools; and
- (X) Responsible for project sign-off.

(b) **Enterprise Expert/Architect/Functional Specialist**

- (A) Minimum years of related experience: Fifteen (15) years.
- (B) Minimum years of specific experience in the applicable Service Areas: Eight (8) years.
- (C) Qualifications and Experience:
 - (I) Recognized as an expert by peers within the industry;
 - (II) A university degree;
 - (III) Client references;
 - (IV) Has authored publications related to the Service Area;
 - (V) Member of key industry associations related
 - (VI) to the applicable Service Area; and
 - (VII) Experienced in the management of the Consultant's Service Area and project related methodologies and tools.
- (D) Responsibilities:

May include, but are not necessarily limited to:

 - (I) Service Area specific organizational, operational and performance analysis;
 - (II) Advising management;
 - (III) Strategic planning;
 - (IV) Formulating statements of problems, establishing procedures for the development and implementation of

to solve these problems, and obtaining approval thereof;

- (V) Defining and documenting the objectives, budgetary requirements, the composition, roles and responsibilities and terms of reference for project teams; and
- (VI) Meeting in conference with stakeholders and other project managers and states problems in a form capable of being solved.

(c) **Senior Analyst/Technical Lead**

- (A) Minimum years of related experience: Ten (10) years.
- (B) Minimum years specific experience in the applicable Service Areas:
Four (4) years
- (C) Qualifications and Experience:
 - (I) A university degree;
 - (II) Client references; and
 - (III) Experienced in the management of the Consultant's Service Area and project related methodologies and tools.
- (D) Responsibilities:

May include, but are not necessarily limited to:

 - (I) Providing expert advice on the key initiatives that enable enterprises to deploy high-impact Service Area processes that are focused, accountable and measurable;
 - (II) Displaying principles of leadership governance, principles of operational competencies and principles of technology;
 - (III) Providing expert advice in defining new requirements and opportunities for applying efficient and effective solutions, identifying and providing preliminary costs of potential options;
 - (IV) Providing expert advice in developing and integrating Service Area processes and information models between business processes to eliminate information and process redundancies;
 - (V) Identifying candidate Service Area processes for re-design, prototypes, potential solutions, providing trade-off information and suggesting a recommended course of action (including modifications to the automated processes);

- (VI) Analyzing Service Area functional requirements to identify information, procedures and decision flows;
- (VII) Identifying and recommending new processes and organizational structures; and
- (VIII) Identifying and recommending new capability requirements and solution options using business modeling software tools.

(d) Senior Project Manager

- (A) Minimum years of related experience: Ten (10) years in Project Management.
- (B) Minimum years of specific experience in the applicable Service Areas: Five (5) years.
- (C) Qualifications and Experience:
 - (I) A university degree or equivalent;
 - (II) Client references;
 - (III) Project Management Professional (PMP) Certification; and
 - (IV) Experienced in the management of the Proponent's Service Area and project related methodologies and tools.
- (D) Responsibilities:

May include, but are not necessarily limited to:

- (I) Manages several Project Managers, each responsible for an element of the project and its associated project team;
- (II) Manages the project during the development, implementation and operations start-up by ensuring that resources are made available and that the project is developed and is fully operational within previously agreed time, cost and performance parameters;
- (III) Formulates statements of problems; establishes procedures for the development and implementation of significant, new or modified project elements to solve these problems, and obtains approval thereof;
- (IV) Defines and documents the objectives for the project, determines budgetary requirements, the composition, roles and responsibilities and terms of reference for the project team;

- (V) Reports progress of the project on an ongoing basis and at scheduled points in the life cycle;
- (VI) Meets in conference with stakeholders and other project managers and states problems in a form capable of being solved;
- (VII) Prepares plans, charts, tables and diagrams to assist in analyzing or displaying problems, works with a variety of project management tools; and
- (VIII) Project sign-off.

(e) **Analyst**

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

May include, but are not necessarily limited to:

- (I) Providing advice on the key initiatives that enable enterprises to deploy high-impact Service Area processes that are focused, accountable and measurable;
- (II) Providing advice in defining new requirements and opportunities for applying efficient and effective solutions including identifying and providing high level preliminary costs of potential options;
- (III) Providing advice in developing and integrating Service Area processes and information models between business processes to eliminate information and process redundancies;
- (IV) Identifying candidate Service Area processes for re-design, prototype potential solutions, providing trade-off information and suggesting a recommended course of action (including identifying the modifications to the automated processes);

- (V) Analyzing Service Area functional requirements to identify information, procedures and decision flows;
- (VI) Identifying and recommending new processes and organizational structures; and
- (VII) Identifying and recommending new capability requirements and solution options using business modeling software tools.

(f) Solution Architect

- (A) Minimum years of related experience: Ten (10) years.
- (B) Minimum years of specific experience in the applicable Service Areas: Five (5) years.
- (C) Qualifications and Experience:
 - (I) Knowledge of computer technology normally attained through completion of a university degree program, or equivalent combination of education, training and experience, plus relevant IT certifications in such disciplines as Enterprise Architecture Framework (Open Group or Zachman)
 - (II) Client references.
- (D) Responsibilities: May include, but are not necessarily limited to:
 - (I) Knowledge of integrated networking technologies, mainframe, midrange server, enterprise storage and SAN, and personal computer system technologies, related best practices, OPS directory/messaging standards, standard facilities infrastructure/architecture management, facility service delivery processes, infrastructures policies, procedures and direction, cost models and procurement processes,
 - (II) How to gather client business requirements; corporate I&IT information mandates, client information technology strategic plan, environment and standards to participate in the development of solutions; and provide advice on short/long term solution service development activities.
 - (III) Undertakes the design of hosting technology solutions based on the client's service specifications, standards, policies, best practices and cost models, in order to meet client application business requirement and project/initiative deliverables.
 - (IV) Knowledge of leading edge technologies design criteria, security and recovery procedures, preparation of technical specifications for installation, testing and performance of integrated, multi-services systems; assess performance and capacity of existing system making recommendations for improving performance and develop technical documentation.

(V) Knowledge of technology developments, trends and new products to evaluated application to client short and long term technology requirements.

(VI) Basic knowledge of project management methodology (e.g. PMBOK), analytical tools and processes.

(VII) Conceptual and analytical skills to assess and evaluated client needs and cost/benefit analysis for new technology requirements in planning and designing solutions.

(VIII) Experience with systems evaluation to assess condition, technical performance and capacity of existing systems and determine need and feasibility of expansion, renovation or replacement.

3. **Assignment of Projects**

See Section 2.9 of General Conditions for the assignment of projects.

4. **Management of Services**

(a) Coordination of Services

The Consultant shall:

- (a) Assign a Client Manager who will direct the provision of the Services. The Client Manager will maintain ongoing contact with Metrolinx and/or the Project Manager to ensure that issues arising during the provisions of the Services are dealt with in an efficient, effective and timely manner.
- (b) Maintain communications contact as may be necessary to keep Metrolinx properly informed and up to date on the progress of each assignment.
- (c) Provide to Metrolinx a list identifying the Consultant's and all subconsultants' employees assigned to each assignment.
- (d) Be responsible for coordinating and interfacing with other disciplines it retains to perform work under each assignment.
- (e) Coordinate the design with Metrolinx, external agencies and authorities having jurisdiction.
- (f) Arrange, coordinate and chair in a number of meetings with Metrolinx and/or external authorities in connection with the Services as required.
- (g) Arrange, coordinate, chair meetings and liaise with subconsultants and support services as required.
- (h) The Consultant's cost for each of the assignments as stated in the Statement of Work for an individual assignment shall not be exceeded without written authorization from Metrolinx. The Consultant must

monitor its work effort and related cost thereof and manage the provision of each of the assigned Services. Request for adjustment of costs and schedules must be submitted in writing for consideration by Metrolinx.

- (i) Maintain a system to identify and report changes in the scope of the Services to be provided and immediately notify Metrolinx in writing of any proposed changes that will affect the schedule or costs regardless, if the changes are initiated by the Consultant, Metrolinx or third parties. Only changes approved in writing by Metrolinx will be reflected in the schedule and the cost for the Service.

(b) Progress Reports and Minutes of Meetings

- (a) On an as required basis, chair, record, prepare and distribute, within five (5) business days of the meeting date, minutes of all meetings associated with an individual assignment.
- (b) Prepare and submit to Metrolinx an updated "Consultant's Monthly Status Report" within seven (7) business days after the reported month. The report shall include a summary of the progress of the assignments, identification of unresolved issues, design inputs by others, information required, schedule and cost status.
- (c) The Consultant shall prepare and submit on a monthly basis the appropriate cost/budget control reports for the Services provided including the project cash flow.

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 for each assignment of work, who shall transmit instructions to, and receive information from the Contractor. The designate Metrolinx individual will be accountable for the specific assignment of work expenditures; and
- (c) provide access and resources where necessary, make available information and instructions relevant to the Services.

Appendix “D” – Documents

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

- Sample Articles of Agreement
- Contract Performance Appraisal
- Sample Parental Guarantee

SAMPLE ARTICLES OF AGREEMENT

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

B E T W E E N

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

- and -

●

(hereinafter the “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:

1. Contract

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

2. 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 labour, superintendence, plant, tools, appliances, equipment, supplies and other accessories, services and facilities necessary to carry out ●, in accordance with the Contractor's Scope of Services, attached as APPENDIX "B" (the "Work").
- (b) The Work is to be provided in accordance with this Agreement.

3. Contract Price

- (a) ●

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

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:

If the Contractor is a Joint Venture or a Consortium:

Joint Venture/Consortium
Participant-in-Charge

(Company's Full Legal Name)

Per: _____

Name:

Title:

Joint Venture/Consortium Member

(Company's Full Legal Name)

Per: _____

Name:

Title:

Joint Venture/Consortium Member

(Company's Full Legal Name)

Per: _____

Name:

Title:

If the Contractor is an individual:

)

)

)

)

Witness

)

Name:

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

SAMPLE PARENTAL GUARANTEE

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

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

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

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

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

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

PARENT COMPANY: _____

(SEAL)

Per: _____
(Signature)

(Print Name)

(Title)

I / We have authority to bind the Corporation