

**QUALIFICATIONS BASED SELECTION**  
**FOR**  
**TECHNICAL AND PROFESSIONAL SERVICES**  
**RELATING TO ENGINEERING, DESIGN AND ENVIRONMENTAL**  
**ASSESSMENT**

**FOR**

**GO RAIL CORRIDOR ELECTRIFICATION**

**QBS NO. QBS-2014-IEP-002**

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In this QBS Document,

**“Addenda”** is the formal release of additions, deletions, revisions, clarifications to this QBS Document that form a part of the Contract.

**“Business Day”** means any other day other than: (a) a Saturday or Sunday and (b) a day on which Metrolinx is not open for business. Each Business Day shall end at 4:00 P.M. on that day.

**“Closing”** means the date and time by which QBS Submissions must be submitted by Proponents and received by Metrolinx, as identified in Section 1(d) – QBS Timetable, in the Instructions to Proponents.

**“Conflict of Interest”** shall have the same meaning ascribed in Attachment #3 – Conflict of Interest.

**“Consultant”** means the Party identified as such in the Articles of Agreement.

**“Contract”** shall have the same meaning ascribed in Schedule A – Definitions of Appendix “A” – General Conditions.

**“Contract Documents”** shall have the same meaning ascribed in Schedule A – Definitions of Appendix “A” – General Conditions.

**“Corporate Firm”** means any one of the following: a) the Proponent, b) the Proponent and its Subconsultants or c) Joint Venture.

**“Deliverables”** shall have the same meaning ascribed in Schedule A – Definitions of the Appendix “A” – General Conditions.

**“EBS”** means Electronic Bid Submission.

**“E-Bid Authorized Signer”** is the designated individual in the Proponent’s organization who has the authority to bind the Proponent to each and every term, condition, article and obligation of the QBS Document and any resultant Contract.

**“E-Bid Confirmation Number”** is the receipt received by a Proponent from MERX indicating that the QBS Submission was uploaded successfully.

**“Evaluation Committee”** means the representatives chosen to evaluate the QBS Submissions based on the Evaluation Criteria outlined in this QBS Document.

**“Evaluation Criteria”** means the criteria for scoring the QBS Submission as stated in Section 2 – Evaluation Criteria, of the QBS Evaluation Criteria and Selection Process.

**“FIPPA”** shall have the same meaning ascribed in Section 22 of Instructions to Proponents.

**“Joint Venture”** means a business arrangement of two or more parties proposed for this QBS Process further described in Section 17 of Instruction to Proponents.

**“Key Personnel”** shall have the same meaning ascribed in Schedule A – Definition of Appendix “A” – General Conditions.

**“Metrolinx”** shall have the same meaning ascribed in Schedule A – Definitions of Appendix “A” – General Conditions.

**“Option”** means a component of the Services that is not required as part of the solution and that is considered as an extra.

**“Participant in Charge”** shall have the same meaning ascribed in Section 17(c) of the Instructions to Proponents.

**“Party”** shall have the same meaning ascribed in Schedule A – Definitions of Appendix “A” – General Conditions.

**“Procurement Office”** means the Metrolinx Procurement and Contract Services office, located at 20 Bay Street, Suite 600, Toronto, Ontario, Canada, M5J 2W3.

**“Procurement Representative”** means the person identified in Section 4(a) of the Instructions to Proponents.

**“Program”** shall have the same meaning ascribed in Schedule A – Definitions of Appendix “A” - General Conditions.

**“Program Schedule”** shall have the same meaning ascribed in Schedule A – Definitions of Appendix “A” - General Conditions.

**“Proponent”** means the entity that remits a QBS Submission in response to this QBS Document and who, if selected for award by Metrolinx in its sole discretion, shall execute the Contract with Metrolinx for provision of the Services.

**“Rates”** shall have the same meaning ascribed in Schedule A – Definitions of Appendix “A” – General Conditions.

**“QBS Document”** means this Qualifications Based Selection document comprised of sections listed in the List of Contents, issued by Metrolinx for the Services to be provided, and any Addenda thereto.

**“QBS Forms”** means any sections of this QBS Document which requires completion and must be included with the QBS Submission.

**“QBS Process”** means the Qualifications Based Selections procurement process set out in the QBS Document herein.

**“QBS Submission”** means all documentation and other materials and information submitted by the Proponent in response to this QBS Document or in respect of this QBS Process.

**“QBS Timetable”** means the timetable in Section 1(d) of Instructions to Proponents in this QBS Document, and any amendments made thereto.

**“Scope of Services”** means the scope of services described in Appendix “B” – Consultant’s Scope of Services.

**“Services”** shall have the same meaning ascribed in Schedule A – Definitions, of Appendix “A” – General Conditions.

**“Subconsultant”** shall have the same meaning ascribed in Schedule A – Definitions, of Appendix “A” – General Conditions.

**“Technical Submission”** means the Proponent’s response to Article 2 of QBS Submission Requirements herein and any additional information requested by Metrolinx.

**“Term”** shall have the same meaning ascribed to it in Schedule A – Definitions of Appendix “A” – General Conditions.

**“Third Party”** shall have the same meaning ascribed to it in Schedule A – Definitions of Appendix “A” – General Conditions.

**“Work Plan”** shall have the same meaning ascribed to it in Schedule A – Definitions of Appendix “A” – General Conditions.

## 1. General

- (a) You are invited to submit your qualifications for the provision of professional and technical engineering and design services for the provision of a review of existing Metrolinx documentation, third party risk assessment services, property services, utility services, development and administration of utility enabling works contracts, system integration services, requirements management services, Program controls and document management, testing and commissioning services, coordination of training, quality assurance services, safety assessor services, an environmental assessment and owner's representatives services, throughout the Term of the Contract, as per Appendix "B" – Consultant's Scope of Services, as more particularly described in the attached documents as required by Metrolinx, which relates to electrification of rail corridors.
- (b) GO Transit, a division of Metrolinx, is one of the largest transit operators in North America. It runs an extensive network of bus and commuter rail lines in the expansive and fast-growing Greater Toronto and Hamilton Area. The rail lines are an essential part of this network, providing service to over 200,000 commuters on seven corridors throughout the region using conventional diesel locomotives and non-powered bi-level coaches in a push-pull configuration. GO Transit has experienced a 50% ridership increase over the past decade, and it continues to grow. It was recently honoured with the 2013 APTA Award for Outstanding Large Public Transit System in North America.

Metrolinx's vision for Regional Express Rail is poised to bring a new standard of service to GO Transit's rail network. It will create new travel choices for commuters and transform how people move throughout the GTHA by providing electrified service on Metrolinx-owned corridors, 15-minute service in core areas, service in both directions throughout weekdays, in evenings and on weekends, and a mix of all-stop and limited stop service. This large and complex electrification project is intended to be implemented over the next 10 years and is expected to contribute to enhanced knowledge and expertise in the field of rail electrification. The new electrified system is envisioned to be similar to successful systems serving other leading global cities such as Paris and Stockholm.

- (c) Refer to Appendix "B" – Consultant's Scope of Services for further specifications.

1. **General**

- (a) **\*\*\*NOTE: ELECTRONIC BID SUBMISSION**  
QBS Submissions made in response to this QBS Document must be submitted to Metrolinx through **MERX EBS**. Proponents shall be solely responsible for the delivery of its QBS Submission using MERX EBS, in accordance with Section 6 – Remitting a QBS Submission, by the Closing.
- (b) Your QBS Submission is to be firm and irrevocable for one hundred and eighty (180) calendar days from the Closing.
- (c) QBS Submissions shall be evaluated in accordance with the QBS Evaluation Criteria and Selection Process outlined in this QBS Document.
- (d) **QBS Timetable**
  - (i) Metrolinx may, without liability, cost or penalty and in its sole discretion, amend the following QBS Timetable at any time. In the event that Metrolinx extends the Closing, all requirements applicable to Proponents will thereafter be subject to the extended deadline.
  - (ii) Unless otherwise specified, references to time of day or date mean the local time or date in Toronto, Ontario, Canada.

<b>Milestone</b>	<b>Date</b>
Issue date of QBS Document	December 15, 2014
Information Meeting on site and via Web Conference (further instructions below)	Friday, December 19, 2014 at 12:00 P.M.
Deadline to submit questions	January 15, 2015 at 4 P.M.
Deadline for issuance of Addenda	January 22, 2015
Closing	January 29, 2015, at 3:00 P.M.
Completion date of Phase One through Phase Three evaluation (anticipated date)	February 24, 2015
Proponent Presentations (anticipated date)	February 24 to March 6, 2015
Notification of selected Consultant (anticipated date)	April 24, 2015
Finalization and Execution of Contract (anticipated date)	May 12, 2015

2. **Mandatory Information Meeting**

- (a) A mandatory information meeting will be held in accordance with the QBS Timetable at 97 Front Street, 4<sup>th</sup> Floor, Toronto, ON, M5J 1E6, Canada and via a

web conference. All necessary details on the information meeting shall be sent to all Proponents through MERX one (1) day prior to the meeting.

- (b) All information provided verbally by Metrolinx's representative(s) at the information meeting is not binding, and may not be relied upon by Proponents, unless such information is issued in the form of an Addendum. Metrolinx will undertake to issue all significant information in an Addendum after the information meeting and before the Closing.

### 3. **Completion**

- (a) Proponents remitting a QBS Submission to Metrolinx shall exercise care when completing and submitting a QBS Submission, including all QBS Forms.
- (b) Proponents shall carefully examine the whole of the QBS Documents and any data referred to therein. They shall make the necessary investigations to inform themselves thoroughly as to the character and magnitude of the Services.
- (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 the QBS 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) QBS Submissions shall be completed fully in a clear and comprehensible manner.
- (e) QBS Submissions shall be remitted electronically through MERX EBS only. QBS Submissions remitted in any other manner shall be deemed non-responsive and automatically disqualified.
- (f) The QBS Submission shall be remitted on the original QBS Forms as issued by Metrolinx through the MERX website and except for designated sections where the Proponent is to enter information, the QBS Document and QBS 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. For greater clarity, any request for changes to Appendix "A" – General Conditions and/or Schedules included in this QBS Document must be submitted in accordance with Section 4 – Proponent Questions.
- (g) Any QBS 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 in its sole discretion.
- (h) Any documents that are attempted to be uploaded via MERX EBS after the Closing has occurred (as confirmed by the MERX Audit Report) shall be automatically rejected by Metrolinx, regardless of the reason for lateness.



- (i) The person(s) executing the Form of QBS Agreement on behalf of the Proponent, if a corporation, shall indicate their title and confirm that they have authority to bind the corporation. QBS Submissions by a partnership shall be signed by an individual in the capacity of a general partner. QBS Submissions by individuals shall be witnessed.
- (j) Submissions shall be remitted on MERX by the Proponent's E-Bid Authorized Signer.
  - (i) Note: the Proponent can have **only one (1)** E-Bid Authorized Signer which is to be used for any EBS submission process.
  - (ii) The E-Bid Authorized Signer does not have to be either the person placing the order for QBS Documents on MERX, signing the Form of QBS Agreement (as per Section 3(i) above) 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 execute the Form of QBS Agreement. In addition, a scanned copy of the Form of QBS Agreement containing signatures of all companies forming part of the Joint Venture shall be included with the QBS Submission.

#### 4. Proponent Questions

- (a) All written enquiries and other communications prior to final Contract execution shall be directed **only** to the following Procurement Representative:

Rachael Yiu, Contract Tendering Officer, Procurement & Contract Services  
Telephone No.: (416) 202-5551  
E-mail: Rachael.Yiu@metrolinx.com
- (b) Information received from any other source shall be considered informal and Metrolinx shall not be bound by any information given in such a manner.
- (c) Any questions concerning the QBS Documents, the contents herein, or the Services contemplated herein are to be directed, in writing, to the Procurement Representative prior to the deadline for submitting questions, as specified in the QBS Timetable. No questions or requests for clarifications, changes or amendments of QBS Documents shall be entertained after this time regardless of the reason. For greater clarity, any request for changes to Appendix "A" – General Conditions and/or Schedules included in this QBS Document must be submitted in accordance with this section.
- (d) Proponent Q & A Template

- (i) All questions/requests for clarification related to the QBS Documents are to be submitted via e-mail to the attention of the Procurement Representative using the Proponent Question and Answer Template which is a fillable Excel file attached separately as:
  - (A) Proponent Q and A Template-QBS-2014-IEP-002.xlsx
- (ii) In the "Questions" tab, use the drop down list to indicate the document section related to each question being submitted as well as page, section number and details of the specific question/clarification requested. 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 the QBS Documents shall be incorporated into a written Addenda issued by the Procurement Representative in accordance with Section 5 – Addenda. Information regarding the QBS Documents 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 such written Addenda.

## 5. **Addenda**

- (a) In the event that Metrolinx determines in its sole discretion that clarifications of, or revisions to the QBS Document are required, all Proponents who received copies of the QBS Document shall be advised of such clarifications or revisions prior to Closing by written Addenda. Such Addenda shall form part of the QBS Document.
- (b) It is the responsibility of the Proponent to ensure that they have received copies of all Addenda issued. Addenda, if applicable, will be issued through MERX. Information concerning the number of Addenda issued and the date of issue of the most recent Addendum can be found at <http://www.merx.com> for this QBS Process. Proponents are urged to select automatic notification of Addenda issuance when registering on MERX.
- (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 QBS Submission.

## 6. **Remitting a QBS Submission**

- (a) QBS Submissions shall be remitted electronically through the MERX EBS system. For assistance in using MERX EBS, watch the online Electronic Bid Submission tutorial at: <http://www.youtube.com/watch?v=To0fqSccw3M>.

- (i) Alternatively, contact MERX directly at 1-800-964-MERX (**6379**) or visit the MERX website at [www.merx.com](http://www.merx.com) for further instruction or assistance regarding EBS and/or E-Bid Authorized Signer registrations.
- (b) Proponents shall upload all information of their QBS Submission pertaining to the QBS Submission Requirements and all other QBS Forms to MERX as outlined in this QBS Document.
  - (i) Review the E-Bid Checklist on MERX as this will provide some general assistance regarding uploading of documents.
- (c) It is the sole responsibility of the Proponent to ensure that all required information for its QBS Submission is uploaded to MERX. Failure of the Proponent to include all required items may result in the Proponent's QBS Submission being deemed non-responsive and disqualified.
- (d) The largest individual file size that can be submitted through MERX is 100MB, although there is no limit to the number of files that can be submitted.
  - (i) 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.
  - (ii) MERX places no restriction on file format and does not convert or zip files during the upload process.
- (e) In order to complete the QBS Submission, the on-line authorization of the Proponent's E-Bid Authorized Signer will be required. It is the Proponent's sole responsibility to have an E-Bid Authorized Signer PIN number issued from MERX at least one (1) day prior to the Closing.
  - (i) Visit [tenders.merx.com/RequestEBSPin](http://tenders.merx.com/RequestEBSPin) to request a PIN for the Proponent's E-bid Submission Authorized Signer.

7. **Revisions to QBS Submissions**

- (a) If during the preparation of the QBS 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 QBS Forms by the Proponent, documents that have been uploaded to MERX using EBS can be added, removed and/or re-submitted as often as required at any time, prior to the Closing.
- (b) All documents that have been uploaded to MERX using EBS can be added and removed at any time prior to the Closing. As long as the Closing has not occurred, Proponents can make any changes required to their QBS Submission and re-submit as often as they choose.

- (c) Information contained in the most recent QBS Submission remitted to Metrolinx via MERX EBS and received prior to the Closing will take precedence over the information contained in previously received QBS Submissions from the Proponent.

**8. Withdrawal of QBS Submissions**

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

**9. Closing**

- (a) QBS Submissions shall be uploaded via MERX EBS (as confirmed by the MERX Audit Report) by the Closing, as identified in the QBS Timetable. Any QBS Submissions or portions thereof received after the Closing, as confirmed by MERX Audit Report, shall be deemed non-responsive and the entire QBS Submission shall be disqualified regardless of the reason for lateness. The Proponent shall submit the QBS Submission with sufficient time to ensure its arrival before the Closing.
  - (i) It is recommended by MERX to allow at least four (4) hours to submit the QBS Submission via EBS, which shall provide the Proponent 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 will be unable to assist with any EBS related issues.
  - (ii) If the Proponent attempts to submit QBS Submissions or portions thereof after the Closing, such documents will not be accepted by the MERX system. In the event that the MERX system allows QBS Submissions to be submitted late after the Closing, 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 QBS Submissions received shall be opened by Metrolinx staff. There shall be no public access to this opening. Upon execution

of the Contract, all Proponents that have remitted a QBS Submission shall be notified in writing of the results of the award to the successful Proponent. Results of the award to the successful Proponent will also be posted on the Metrolinx website at: <http://www.metrolinx.com/tenders> under “Bid Award Results” and/or the MERX website at <http://www.merx.com/metrolinx> (search “Metrolinx” or the QBS Number and select “Awards”).

- (e) All documentation received by Metrolinx with regards to this QBS Process shall be retained by Metrolinx and shall not be returned to the Proponent.

10. **Clarification of QBS Submissions**

- (a) Metrolinx reserves the right, within one hundred and eighty (180) calendar days following the Closing, to request that any Proponent clarify its QBS Submission. Proponents shall submit responses to such requests 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 QBS Submissions. Metrolinx may require Proponents to submit information clarifying any matters contained in their QBS Submissions or Metrolinx may prepare a written interpretation of any aspect of a QBS 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 QBS Submission of those Proponents.
- (c) After the Closing, only information specifically requested by Metrolinx for the purposes of clarification shall be considered as additions to a QBS Submission.
- (d) Metrolinx is not obliged to seek clarification on any aspect of a QBS Submission.

11. **Proponent Qualifications**

- (a) Refer to QBS Submission Requirements for the required corporate qualifications and experience pertaining to this QBS Document.
- (b) Refer to Schedule B – Consultant’s Personnel of Appendix “A” – General Conditions for the required qualifications pertaining to this QBS Document.

12. **Nature of Agreement**

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

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13. **Rights of Metrolinx**

Metrolinx reserves the right, in its sole discretion:

- (a) to cancel this QBS Process and/or any acceptance of a QBS Submission prior to final execution of the Contract by Metrolinx, for any reason, without any obligation or any reimbursement to the Proponent;
- (b) to reject any or all QBS Submissions. Metrolinx's selection shall be based on which Proponent has provided a QBS Submission which Metrolinx determines, to provide the greatest value based on the Evaluation Criteria contained in the QBS Document;
- (c) to disqualify any QBS Submission which contains misrepresentations or any other inaccurate or misleading information;
- (d) to waive any requirement of the QBS Document or to request an amendment where, there is an irregularity or omission in the information provided by the Proponent in its QBS Submission, that is not material unless a specific consequence has been identified herein for the commission of such an irregularity or omission;
- (e) to waive the requirement to check references;
- (f) to not respond to a Proponent's questions;
- (g) to distribute via Addenda, copies of any Proponent's questions received and responses provided by Metrolinx, to all Proponents who received the QBS Documents;
- (h) to request that a Proponent voluntarily withdraw its QBS Submission where in the opinion of Metrolinx, the QBS Submission is substantially below internal budget estimates and therefore the Services would not be satisfactorily completed;
- (i) to postpone the Closing, at which time all Proponents who received QBS Documents will be advised of the new Closing via written Addenda;
- (j) to prepare a written interpretation of any aspect of a QBS Submission and require that the relevant Proponent acknowledge the accuracy of that interpretation;
- (k) after the selection of a preferred Proponent and prior to award of the Contract, to negotiate the following with the Proponent:
  - (i) pricing;
  - (ii) scheduling;
  - (iii) the Work Plan; and

- (iii) changes, amendments or revisions to Appendix “B” – Consultant’s Scope of Services.

Such negotiated changes, amendments, or revisions shall form part of the QBS Submission. Failure to successfully complete such negotiations shall result in the QBS Submission not being considered further.

- (l) to select and enter into negotiations with another Proponent should negotiations with the preferred Proponent be unsuccessful;
- (m) to award or not award based on submitted references and/or references independently obtained by Metrolinx; and
- (n) 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:
  - (i) was previously given a “Notification of Award” of a Contract by a department or agency within the Ontario government and defaulted in proceeding with the work of the contract;
  - (ii) has submitted any false or misleading information in this QBS Submission;
  - (iii) 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;
  - (iv) had a previous contract with a department or agency within the Ontario government that was terminated for default in the past year; or
  - (v) is an affiliate of or successor to any corporation described in Sections 13(n)(i) through 13(n)(iv), including any consultant 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 13(n)(i) through 13(n)(iv) above 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.

14. **Contract Type**

- (a) **General**
  - (i) It is the intention of Metrolinx to award one (1) Contract to the Proponent with the highest Total Overall Score, that successfully completes Phase Five and Phase Six Negotiations as per the QBS Evaluation Criteria and Selection Process.
- (b) **Work Plan**

- (i) The successful Proponent shall be expected to execute the Contract based on a Work Plan, which shall be negotiated annually with the successful Proponent.

(c) Price

- (i) It is anticipated that the successful Proponent shall be compensated for the Contract based on the all-inclusive hourly Rates provided in the Articles of Agreement and in accordance with Schedule C – Financial Terms of Appendix “A” – General Conditions.
- (ii) Rates for the first year of the Contract shall be negotiated during the QBS Process. These Rates shall be specified in the Articles of Agreement and form part of the Contract.
- (iii) Rates for the second year and each year thereafter shall be subject to an escalation formula negotiated by the Parties and incorporated into the Articles of Agreement and form part of the Contract.

(d) Contract General Conditions

- (i) The successful Proponent shall be expected to execute a Contract based on Appendix “A” – General Conditions as stated in this QBS Document, and any amendments issued hereto, via Addenda.

(e) Scope of Services

- (i) The scope of Services for this Contract shall be based on the Appendix “B” – Consultant’s Scope of Services and any amendments negotiated as a result of the QBS Process.
- (ii) The Services are to be carried out in various stages, however, only the scope for the first year of the Contract shall be negotiated and finalized during the QBS Process. The scope of Services for the first year of the Contract, including amendments negotiated during the QBS Process, shall form part of Appendix “B” – Consultant’s Scope of Services.
- (iii) Scope of Services for each year thereafter shall be negotiated and agreed upon by the Parties for incorporation into Appendix “B” of the Contract.
- (iv) The scope of Services negotiated and agreed upon by the Parties for the first year and each year thereafter during the Term of the Contract shall set out the general guidelines and plan for the Services for the respective years but does not guarantee a minimum or maximum of work, volume or frequency of work or any specific work. Any work required by Metrolinx pursuant to the respective scope of Services shall be performed pursuant to the Task Release Process for Services outlined in Section 2.11 of Appendix “A” – General Conditions.



- (v) Metrolinx reserves the right to perform any part of the Services itself or to contract any part of the Services from a Third Party.

15. **Contract to be Executed**

- (a) The Contract to be executed shall be negotiated and finalized with the successful Proponent. Any request for changes to Appendix “A” – General Conditions and/or the Schedules included in this QBS Document should have been submitted in accordance with Section 4 – Proponent Questions prior to the deadline specified therein; Metrolinx shall not entertain any requests for negotiations of or changes to Appendix “A” – General Conditions and/or the Schedules past the deadline specified in Section 4 – Proponent Questions.
- (b) Upon successful completion of negotiations, Metrolinx shall notify the Proponent in writing of acceptance of its QBS Submission by Metrolinx. Items negotiated and agreed to between both Parties shall form part of the final Contract.
- (c) Metrolinx shall prepare the Articles of Agreement and bind it into the Contract Documents. Two (2) sets of Contract Documents shall be forwarded to the Proponent for review and execution.
- (d) The Contract Document shall be executed by the Proponent and returned to the Metrolinx Procurement Office within five (5) Business Days of notification that Metrolinx has accepted its QBS Submission. As a condition of acceptance, the Proponent shall also provide the following documents along with the Contract Document:
  - (i) Insurance
    - (A) Workplace Safety and Insurance Clearance Certificate
      - (I) The Proponent to whom this Contract is awarded shall furnish a valid Workplace Safety and Insurance Clearance Certificate for the premium rate class, subclass or group as appropriate for the Services of this Contract, as issued by the Workplace Safety and Insurance Board, within five (5) business days, of notification of acceptance of its QBS Submission by Metrolinx. Failure by the Proponent to comply with this requirement shall result in the Contract award being declared void.
    - (B) Liability Insurance
      - (I) 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 QBS Submission by Metrolinx:

- (i) Commercial General Liability Insurance in an amount of not less than two million dollars (\$2,000,000.00) 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; and
  - (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.
- (II) The Certificate of Commercial General Liability Insurance shall reference the Contract Name and Number and include the following as additional insureds:
- (i) Metrolinx.
- (C) All certificates of insurance shall include a provision requiring the insurer to give Metrolinx thirty (30) calendar days prior written notice of any changes to, or cancellation of the required insurance policies and confirmation that the policies include a waiver of subrogation against Metrolinx.
- (ii) Parent Company Indemnity
- (A) Parental Guarantee
- (I) If requested by Metrolinx, as a condition of award of Contract, a subsidiary company shall be required to submit a 'Guarantee' from its parent company, included as Attachment #1 – Parental Guarantee, included in Appendix "D" – Documents, or in a form satisfactory to Metrolinx and agrees to provide all the necessary financial and technical support for the proper completion of the said Contract and shall guarantee the performance of the said Contract in accordance with the terms and conditions, including timely completion thereof, and agrees to guarantee the Services for the warranty period(s) stipulated therein.
- (e) Failure by the Proponent to comply with these requirements shall result in the award of the Contract being declared void.

- (f) Failure by the Proponent to execute and return the Contract Documents with the required Insurance Certificates and Workplace Safety and Insurance Clearance Certificate and any other documents as may be required within the specified time, shall result in the cancellation of the Contract award.
- (g) Upon failure of the Proponent, whose QBS Submission was accepted, to fulfil the conditions herein, Metrolinx may, at its sole discretion, cancel award of Contract and notify another Proponent who was determined to be qualified in accordance with the QBS Submission Evaluation Criteria and Selection Process herein to commence negotiations. Subsequent to the fulfillment of the conditions of Section 15 – Contract to be Executed and the successful completion of the negotiation of the Contract, that Proponent shall be deemed to be the successful Proponent and to whom the Contract is awarded.
- (h) There is no binding contract for the Services unless and until Metrolinx and the Proponent whose QBS Submission has been accepted, have executed the written agreements contemplated in the QBS Documents. The Proponent shall not start the Services before the Contract Documents have been executed by the Proponent and Metrolinx and all documents required by the QBS Documents, as a condition of award of the Contract, have been delivered to Metrolinx.

16. **Conflict of Interest**

- (a) For the purposes of this Section, “Conflict of Interest” shall have the meaning ascribed to it in Attachment #3 – Conflict of Interest.
- (b) Each Proponent shall disclose to Metrolinx any actual or potential Conflict of Interest that may be relevant to this QBS Process and provide a declaration, using the form included in Attachment #3 – Conflict of Interest 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 QBS Process or the performance of the Services. Examples of Conflict of Interest include but are not limited to:
  - (i) 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;
  - (ii) the Proponent or any Subconsultant thereof is in possession of confidential information relating to the Services; and
  - (iii) any director, officer or employee or advisor of Metrolinx who has knowledge of the Services has assisted the Proponent in the preparation of its QBS Submission.
- (c) The Conflict of Interest declaration included as Attachment #3 shall be completed and submitted with the QBS Submissions.

- (d) 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 the QBS Process or terminate any agreement entered into with the Proponent pursuant to this QBS Process.

17. **Joint Ventures**

- (a) If a Joint Venture is proposed, the Proponent shall state in its QBS Submission the business arrangements that form the basis on which the Joint Venture plans to carry out its obligations.
- (b) The Joint Venture shall not change its Joint Venture arrangement without the prior written approval of Metrolinx, in accordance with Section 26 – Changes to Proponent Key Personnel, Subconsultant or Joint Venture.
- (c) One of the Joint Venture participants shall be nominated as being in charge during this QBS Process and, in the event of a successful QBS Submission during the 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.
- (d) Each Joint Venture participant shall demonstrate its authorization of the Participant in Charge by submitting with their QBS Submissions a power of attorney, or similar document, signed by a legally authorized representative of the Joint Venture participant.
- (e) All participants of the Joint Venture shall be legally liable, jointly and severally, during this QBS Process and during the Contract for carrying out the obligations pursuant to the Contract.

18. **Prohibited Contacts and Lobbying Prohibition**

- (a) A Proponent, Proponent’s team members and all of the Proponent’s respective 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 QBS Process.
- (b) Without limiting the generality of the foregoing, neither Proponents or Proponent team members or any of their respective advisors, employees or representatives shall contact or attempt to contact, either directly or indirectly, at any time during the QBS Process, any directors, officers, employees and advisors of Metrolinx, other than the Procurement Representative.

**19. Media Releases, Public Disclosures and Public Announcements**

- (a) 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 QBS Process, this QBS Submission or any matters related thereto, without the prior written consent of Metrolinx.
- (b) 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 QBS Submission or to publicly promote or advertise its own qualifications, interest in or participation in the QBS (procurement) 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 the QBS process.
- (c) For greater clarity, this section does not prohibit disclosures necessary to permit the Proponent to discuss the QBS with prospective subcontractors' participation in the QBS.

**20. Restriction on Communications Between Proponents – No Collusion**

- (a) A Proponent shall not discuss or communicate, directly or indirectly, with any other Proponent, any information whatsoever regarding the preparation of its own QBS Submission or the QBS Submissions of other Proponents. Proponents shall prepare and submit QBS 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.

**21. Disclosure of Information**

- (a) The Proponent hereby agrees that any information provided in its QBS-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.
- (b) The Proponent hereby consents to the disclosure, on a confidential basis, of its QBS Submission by Metrolinx to Metrolinx's advisors retained for the purpose of evaluating or participating in the evaluation of the QBS Submissions.

22. **Freedom of Information and Protection of Privacy Act (“FIPPA”)**

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

23. **QBS Submission to be retained by Metrolinx**

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

24. **Confidential Information of Metrolinx**

- (a) All information provided by or obtained from Metrolinx in any form in connection with the QBS Submission process;
- (i) is the sole property of Metrolinx and shall be treated as confidential;
  - (ii) shall not be used for any purpose other than replying to the QBS Document and the performance of any subsequent agreement; and
  - (iii) shall not be disclosed without prior written authorization from Metrolinx.

25. **Proponents Shall Bear Their Own Costs**

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

26. **Changes to Proponent Key Personnel, Subconsultant or Joint Venture**

- (a) If after the submission deadline, but prior to the execution of the Contract, the Proponent wishes to request a change in a Key Personnel, Subconsultant or the Joint Venture, the Proponent shall notify the Procurement Representative as soon as possible and the notification shall identify the proposed substitute for or change in Key Personnel, Subconsultant or Joint Venture and include sufficient documentation that the proposed substitute would have met or exceeded any applicable criteria applied during this QBS Process.
- (b) In response to a request as per the foregoing, Metrolinx may, in its sole discretion, provide the Proponent with instructions as to the type of information required by Metrolinx to consider the proposed change to the Proponent’s Key Personnel or Subconsultants or Joint Venture, as well as the deadlines for submission of

information that the Proponent must meet in order to have its request considered by Metrolinx.

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

The Proponent's QBS Submission shall include the following documents and information as listed, in addition to items required elsewhere by this QBS Document.

1. **Submission Format**

- (a) The QBS Submission should be provided in electronic form, formatted:
  - (i) in font size 11 pt. on 8½ x 11 paper size;
  - (ii) with a table of contents; and
  - (iii) organized into sections which correspond to Section 2 – Submission Content requirements in the order described below.
- (b) Proponents should provide five (5) Corporate Reference Projects and three (3) Reference Projects for each Key Personnel. In the event that a Proponent provides more than the required number of reference projects, only the first five (5) Corporate Reference Projects and the first three (3) Key Personnel Reference Projects provided shall be considered.
  - (i) Note: failure to provide the number of references specified in Section 1(b) may negatively impact the Proponent's score.
- (c) The entire content of the Proponent's QBS Submission shall be submitted in writing, and the content of websites or other external documents referred to in the Proponent's QBS Submission shall not be considered for evaluation unless submitted in their entirety as part of the QBS Submission.

2. **Submission Content**

(a) **Phase One through Phase Six of the Evaluation Process**

The Proponent shall submit:

- (i) **Phase One: Administrative Evaluation** (Compliant/Non-Compliant)
  - (A) Form of QBS Agreement;
    - (I) A completed Form of QBS Agreement with original signatures in all locations as indicated. Note that due to the use of EBS, scanned or digitized signatures received shall be deemed to be original for the purposes of this requirement.
  - (i) The Form of QBS Agreement shall not be retyped, and entries shall be made directly on QBS Forms provided by Metrolinx.



- (B) completed Attachment # 1 – Proponent’s References;
  - (C) completed Attachment #2 – Key Personnel Mandatory Requirements Compliance Checklist;
  - (D) completed Attachment #3 – Conflict of Interest, with additional pages attached as necessary;
  - (E) completed Attachment #4 – Schedule B Template;
  - (F) completed Attachment #5 – Estimated Hourly Rates; and
  - (G) all Addenda.
- (ii) Phase Two: Key Personnel Mandatory Requirements (Compliant/Non-Compliant)
- (A) A completed Attachment #2 – Key Personnel Mandatory Requirements Compliance Checklist.
    - (I) Failure of a Proponent to meet all of the Key Personnel requirements, or to provide information requested to substantiate the Key Personnel requirements, shall result in the QBS Submission not being considered further.

(iii) Phase Three: Technical Evaluation

Proponents should make every effort to ensure they have provided all requested information below. Where the information provided is lacking details or missing information, this shall negatively impact the scoring of the applicable Evaluation Criteria.

(A) Corporate Capability

(I) Corporate Summary

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

1) Description of Company

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

- (i) a description of the Proponent’s corporate and ownership structure;

- (ii) a brief corporate history including number of years in business;
- (iii) location of office(s) (including address of head office and location of other offices);
- (iv) the make-up of the Proponent's Corporate Firm;
- (v) a description of the principal business of key Subconsultants;
- (vi) the professional advisors and subject matter experts that the Consultant and the Subconsultant proposes to use in the performance of the Services, especially for major or critical pieces of the Program.
- (vii) For each Subconsultant listed, the Proponent shall provide the following:
  - (1) Full corporate name and location of the Subconsultant
  - (2) Which area of the Services the Subconsultant shall be employed for;
  - (3) The Subconsultant's experience and qualifications relative to the Services it will be performing;
  - (4) Previous instances of the Proponent and 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.

(II) Corporate Experience and Qualifications

Failure of the Proponent to satisfactorily submit the requirements related to Corporate Experience and

Qualifications as detailed below may result in the QBS Submission being deemed non-responsive and being disqualified from any further consideration or evaluation at the sole discretion of Metrolinx.

The Proponent shall demonstrate its Corporate Firm's previous experience in satisfactorily and competently performing services similar in type, size, estimated value and complexity as the Services identified in Appendix "B" as set out below. The Proponent shall demonstrate its physical and financial resources to provide and complete the Services to the satisfaction of Metrolinx. The Proponent understands and agrees that Metrolinx may verify any information provided in any QBS Submission.

The Proponent shall demonstrate its Corporate Firm's experience in performing services similar in type, size and complexity as the Services identified in Appendix "B" as follows:

1) Experience and Qualifications

- a) A summary of the Corporate Firm's qualifications and experience relevant to the Services being contemplated.
- b) The Proponent's Corporate Firm shall demonstrate a combination of experience performing services of a similar nature, scope and magnitude as the Services specified in the Appendix "B" – Consultant's Scope of Services including, but not limited to:
  - i) demonstrated expertise in the engineering and implementation of electrification projects on complex rail networks;
  - ii) demonstrated expertise in providing engineering consultant services for complex, large construction and technology projects.; and
  - iii) the necessary resources to sustain and complete the Services to the satisfaction of Metrolinx.

**(III) Reference Projects**

- 1) Reference projects are intended to demonstrate the Corporate Firm's capacity to design and manage projects of a similar size, type and complexity as the Services to be carried out in Appendix "B".
- 2) The Proponent should provide descriptions of five (5) relevant reference projects completed within the past ten (10) years which collectively demonstrate the experience and qualifications of a Proponent's Corporate Firm, as follows:
  - a) The Proponent shall, using Attachment #1 – References in addition to providing two (2) additional pages of information for each reference project, provide the following information:
    - i) name of the company for which the work was performed;
    - ii) contact person's name, title, telephone number and email address;
    - iii) project description and construction value;
    - iv) description of services provided and how they are relevant to Services requested in Appendix "B"; and
    - v) start and completion date of reference project.
- 3) References will be checked using a standard uniform method. Opinions of previous clients, regarding budget and schedule experience, dependability, attitudes of employees and/or Subconsultants, concern for efficiency, economy and environment, sensitivity to community, and quality of service among others may be taken into account when evaluating Reference Projects.

**(B) Proponent Key Personnel Experience and Qualifications****(I) Key Personnel**

- 1) The Proponent shall provide Key Personnel for each role identified below as per Schedule B – Consultant Personnel of Appendix “A” – General Conditions. The Key Personnel roles to be evaluated are as follows:
  - a) Program Manager;
  - b) Environmental Assessment Lead;
  - c) Lead Signal Engineer;
  - d) Lead Structural Engineer;
  - e) Lead Electrification Construction Specialist;
  - f) Lead Traction Power Specialist;
  - g) Lead OCS Design Engineer;
  - h) Lead Systems & Integration Engineer; and
  - i) Electrification Operation & Maintenance Specialist.
  
- 2) For the purposes of evaluation, “Minimum Years Experience” shall be defined as relevant years of experience of the Key Personnel named as employed in the respective role, whether solely in the employment of the Proponent or in the combined employment of the Proponent and/or other consultants. Key Personnel shall meet the Minimum Years Experience requirement stated for the specified key role. For example, where Metrolinx has stated a Minimum 10 Years Experience for the role of Program Manager, the Key Personnel named shall have a minimum ten (10) years of experience providing services as a Program Manager.

(C) Functional Organization

(I) Organizational Chart

- 1) The Proponent should provide an organizational chart identifying the Key Personnel assigned to the Program in their respective roles, for completion of the Services.

**(II) Roles and Responsibilities of Key Personnel**

The Proponent should provide the following:

- 1) a brief description identifying the role and responsibilities of each Key Personnel in a key role, with respect to the Services being requested;
- 2) a statement describing the experience of Key Personnel in working together on previous relevant projects;
- 3) a statement indicating whether the Key Personnel is an employee of the Proponent or is a Subconsultant;
- 4) a statement of availability of the Key Personnel for each role indicating that the individual is available for the required duration as specified in Schedule “B” – Consultant Personnel of Appendix “A” – General Conditions.

**(III) Experience and Qualifications**

For each named Key Personnel in a key role as identified in Schedule B – Consultant Personnel of Appendix “A” – General Conditions, the Proponent should provide in addition to completing Attachment # 1 – References:

**1) Curriculum Vitae**

A curriculum vitae, of up to three (3) pages for each named Key Personnel, including biographical information, which clearly identifies:

- a) name of individual;
- b) proposed Key Personnel position;
- c) qualifications that relate to the proposed position;
- d) experience in performing the proposed position, include project names and brief project overviews;
- e) number of years in the proposed position on each project;

- f) responsibilities on each project while performing the proposed position;
- g) details of accomplishments while performing the proposed position;
- h) education; and
- i) professional memberships and affiliations.

2) Reference Projects

Immediately following each curriculum vitae, the Proponent should provide descriptions of three (3) reference projects, for the Key Personnel, completed within the past ten (10) years or currently under way. The descriptions are to be up to two (2) pages of information for each reference project, including but not necessarily limited to the following:

- a) name of the company for which the work was performed;
- b) project description and construction value where applicable;
- c) description of services provided with reference to the applicable Key Personnel in a specified role, and responsibilities for the Services contemplated in this QBS Document;
- d) identification of project's relevance to programmatic, strategic, innovation, sustainability or other design challenges the Proponent deems significant in their ability to understand and execute the Services requested;
- e) project start and completion dates; and
- f) list of any other Key Personnel that have worked on the same reference project and their project roles, if applicable.

3) Mandatory Requirements for Lead Electrification Construction Specialist, Lead Traction Power Specialist and Lead OCS Design Engineer.

Key Personnel positions where Minimum Years Experience and professional designations are listed as mandatory as per Attachment #2 – Key Personnel Mandatory Requirements Compliance Checklist, shall be deemed compliant once Metrolinx confirms the mandatory requirements have been met and shall only be evaluated on areas of Minimum Years Experience and professional designations that exceed the minimum mandatory requirements stated in Attachment #2.

(D) Program Comprehension and Methodologies

(I) Program comprehension

The Proponent shall provide a comprehensive narrative that demonstrates the Proponent's appreciation and understanding of the required Service. The Proponent shall address the following:

- 1) a description, based upon the Proponent's work on previous similar projects, of possible constraints or issues that may arise during the performance of the Services and the measures that the Proponent would undertake to address such constraints or issues;
- 2) a proposal and discussion of the creative and/or value-added service that the Consultant could provide with respect to managing and/or providing the Services;
- 3) a description of the magnitude of the undertaking and demonstrate his ability to plan resources and anticipate potential Program's growth; and
- 4) a description that demonstrates the Proponent's understanding of the technical stakeholder issues and demonstrate their ability and experience in stakeholder management.

(II) Program methodologies

The Program contemplates a ten (10) year implementation for the electrification of the GO Transit rail network. The Consultant will need to manage the overall ten (10) year Program while negotiating an annual Work Plan with Metrolinx. The Proponent shall provide the following:



- 1) Ten (10) year Program:
  - a) a description of how the Proponent shall incorporate the key Program elements as outlined in Appendix B;
  - b) a breakdown of the Scope of Services required to implement the ten (10) year Program;
  - c) a draft ten (10) year Program Schedule;
  - d) an explanation of how all of the required disciplines will be coordinated to optimize design, lead time and quality of the Services;
  - e) a description that identifies those additional services that will be necessary to support the design (surveys, geotechnical, soil resistivity, utility locates etc);
  - f) recommended phasing plan; and
  - g) any other information the Proponent deems relevant to the successful completion of the Program.

- 2) Work Plan:

The Proponent shall provide a Work Plan that describes the approach for performing the required Services, outlining the activities that would be undertaken in the performance of the various tasks and which position or member of the Consultant's Program team would be responsible for performing them. The Work Plan should include the following:

- a) a draft Work Plan schedule;
- b) an example of a Task Plan with related deliverables;
- c) a draft Work Plan budget; and
- d) any other information the Proponent deems relevant in the successful completion of the Work Plan.

- (A) Only the top three (3) of those QBS Submissions achieving the minimum score requirement for Phase Three – Technical Evaluation, in accordance with Article 2 of QBS Evaluation Criteria and Selection Process, will proceed to Phase Four – Presentation/Interview, where the Proponent will be contacted to conduct a thirty (30) minute presentation followed by a ten (10) minute break, and forty-five (45) minute interview session.
  - (I) The presentation should provide Metrolinx with a strong and clear understanding of the ability of the Program Manager and key staff to articulate and present a comprehensive strategy, approach, Work Plan and methodologies to complete the Scope of Services as described in Appendix B.
  - (II) A predetermined list of interview questions will be asked by the Metrolinx Evaluation Committee to all Proponents proceeding to Phase Four – Presentation/Interview of the evaluation.
  
- (v) Phase Five: Negotiation

No material required for QBS Submission.
  
- (vi) Phase Six: Negotiating Specific Fees or Fee Guidance/Protocol
  - (A) Provide a completed Attachment #5 – Estimated Hourly Rates with your QBS Submission.
    - (I) Attachment #5 shall not be evaluated and shall only be used as a basis for negotiating fees or fee guidance/protocol as part of Phase Six negotiations.

# QBS EVALUATION CRITERIA AND SELECTION PROCESS

## 1. QBS Evaluation Methodology

- (a) QBS Submissions will undergo several phases of evaluation based on the information provided, using the criteria and scoring as listed in Section 2 – Evaluation Criteria herein.
- (b) Each criteria is evaluated. Critical criteria will be rated compliant or non-compliant. All other Evaluation Criteria will be assessed and assigned a score out of ten (10). The score is then multiplied by the weight (which indicates the relative importance of criteria not deemed categorized as critical to Metrolinx) to determine the weighted score. The weighted scores are then added to determine the Total Overall Score for the QBS Submission.
- (c) QBS Submissions will be evaluated in six (6) phases, as follows:
  - (i) Phase One: Administrative Evaluation
    - (A) QBS Submissions shall undergo an administrative evaluation to determine compliance with the mandatory requirements as stated in the Instructions to Proponents.
    - (B) Only those QBS Submissions determined, in the sole opinion of Metrolinx, to have fulfilled all the mandatory administrative requirements shall be deemed compliant and shall proceed to Phase Two of the evaluation process. QBS Submissions that do not meet administrative requirements will be deemed non-responsive and will be disqualified.
  - (ii) Phase Two: Key Personnel Requirements Compliance
    - (A) QBS Submissions deemed to be compliant as a result of Phase One evaluation, shall undergo a mandatory Key Personnel compliance evaluation. Failure of a QBS Submissions to meet all of the mandatory Key Personnel requirements listed in Attachment # 2 of QBS Submission Requirements shall result in the QBS Submission not being considered further. Only those QBS Submissions receiving a “Compliant” in all mandatory personnel requirements shall proceed to Phase Three: Technical Evaluation.
  - (iii) Phase Three: Technical Evaluation
    - (A) QBS Submissions proceeding to Phase Three shall be evaluated by members of the Metrolinx Evaluation Committee in accordance with Section 2 – Evaluation Criteria below.
    - (B) Those QBS Submissions achieving a minimum score of seventy percent (70%) (1,120 points out of a possible 1,600 points), ranked

## QBS EVALUATION CRITERIA AND SELECTION PROCESS

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in the order of points, as determined by the Metrolinx Evaluation Committee, will pass the Technical Evaluation.

(iv) Phase Four: Presentation/Interview

- (A) Only the top three (3) of those QBS Submissions achieving a minimum score of seventy percent (70%) in the Technical Evaluation (1,120 points out of a possible 1,600 points), ranked in the order of points, as determined by the Metrolinx Evaluation Committee, will proceed to Phase Four: Presentation/Interview.
- (B) The Proponent shall be contacted and requested to attend a presentation and interview with its Key Personnel in attendance. The presentation/interview shall be held with the Metrolinx Evaluation Committee. Individuals shall be asked a series of technical and non-technical questions and shall be scored on their responses.

(iv) Phase Five: Negotiations

- (A) As soon as possible after completion of Phase Four evaluations, Metrolinx shall contact the Proponent with the highest Total Overall Score to advise of Metrolinx' intent to enter into negotiations.
- (B) Entering into Phase Five does not guarantee that Metrolinx will award and enter into Contract with the Proponent for provision of the Services.
- (C) The Proponent and Metrolinx shall jointly develop a detailed scope of services for the first year of the Contract. Based on this detailed scope of services, the Proponent will propose a Work Plan for the first year of the Contract that includes the availability of Key Personnel, areas of responsibility to be assumed by the Proponent's Key Personnel and Subconsultants (if applicable) and any other contractual considerations. Upon agreement of the scope of services and the Work Plan for the first year of the Contract, negotiations will proceed to Phase Six of the selection process.
- (D) If an agreement on Scope of Services cannot be reached with the top-ranked firm(s), Metrolinx reserves the right to formally terminate negotiations and invite the Proponent with the second highest Total Overall Score to participate in discussions with Metrolinx and submit a comprehensive proposal.

(v) Phase Six: Negotiating Specific Fees or Fee Guidance/Protocol

## QBS EVALUATION CRITERIA AND SELECTION PROCESS

- (A) Upon finalization of Phase Five, the Proponent shall submit to Metrolinx its proposal for compensation or proposed fee guidance/protocols. Negotiations should consider adjustments to the Scope of Services in relation to the proposed fee for Services performed, based on the Rates provided.
  - (B) If an agreement on fees cannot be reached, Metrolinx reserves the right to formally terminate negotiations and invite the Proponent with the second highest Total Overall Score to enter into Phase Five negotiations with Metrolinx.
- (d) Selection of QBS Submissions
- (i) Metrolinx' selection shall be based on which Proponent has provided a QBS Submission which Metrolinx determines in its sole discretion to provide the greatest value to Metrolinx based on the Evaluation Criteria contained in this QBS Document.
  - (ii) Invitation to enter into Phase Five Negotiations shall be made to the Proponent with the highest Total Overall Score at the outcome of Phase Four.
  - (iii) Total Overall Score shall be determined as follows:
    - (I) Phase Three: Technical Evaluation + Phase Four: Presentation/Interview Process = Total Overall Score
  - (iv) The award of the Contract shall be made to the compliant Proponent with the highest Total Overall Score who successfully completes Phase Six negotiations with Metrolinx.

**DO NOT WRITE IN THIS SPACE**

**QBS EVALUATION CRITERIA  
AND SELECTION PROCESS**

2. **Evaluation Criteria**

- (a) The criteria to be used for evaluation of the Proponent’s QBS Submission and the weighting assigned to each criteria are as follows:

<b>PHASE ONE: ADMINISTRATIVE EVALUATION (COMPLIANT/NON-COMPLIANT)</b>			
<b>PHASE TWO: KEY PERSONNEL MANDATORY REQUIREMENTS (COMPLIANT/NON-COMPLIANT)</b>			
<b>PHASE THREE: TECHNICAL EVALUATION</b>			
<b>Criteria</b>	<b>Maximum Score</b>	<b>Weighting Factor</b>	<b>Total (Score x Weight)</b>
<b>A. CORPORATE CAPABILITY</b>			
<i>Corporate Summary</i>			
Description of Company	10	4	40
Experience and Qualifications	10	4	40
Reference Projects	10	4	40
<b>B. KEY PERSONNEL AND QUALIFICATIONS</b>			
<i>Consultant Key Personnel</i>			
Program Manager	10	7	70
Environmental Assessment Lead	10	5	50
Lead Signal Engineer	10	3	30
Lead Structural Engineer	10	3	30
Lead Electrification Construction Specialist	10	5	50
Lead Traction Power Specialist	10	5	50
Lead OCS Design Engineer	10	5	50
Lead Systems & Integration Engineer	10	4	40
Electrification Operation & Maintenance Specialist	10	3	30
<b>C. FUNCTIONAL ORGANIZATION</b>			
Organizational Chart	10	4	40
Experience and Qualifications	10	4	40
<b>D. COMPREHENSION AND METHODOLOGIES</b>			
Program comprehension	10	35	350
Proposed methodologies	10	65	650

**QBS EVALUATION CRITERIA  
AND SELECTION PROCESS**

<b><i>SUBTOTAL PHASE THREE</i></b>		<b>160</b>	<b>1,600</b>
<b>PHASE FOUR: PRESENTATION/INTERVIEW PROCESS</b>			
Ability to articulate and communicate a clear understanding of the Program, to identify its critical aspects and mitigate the associated risks	10	10	100
Ability to clarify and explain in greater detail the approach, methodology and strategy	10	10	100
Ability to demonstrate how the Proponent will define, sequence and prioritize tasks and plan resources	10	10	100
Ability to respond to questions and to propose adequate solutions	10	10	100
<b><i>SUBTOTAL PHASE FOUR</i></b>		<b>40</b>	<b>400</b>
<b><i>TOTAL EVALUATED SCORE</i></b>		<b>200</b>	<b>2,000</b>

**NOTE:**

The Form of QBS Agreement is a fillable MS Word document which is to be completed and submitted by the Proponent as part of its QBS Submission. It is attached as a separate MS Word fillable document entitled:

“Form of QBS Agreement – QBS-2014- IEP-002.docx”



**ATTACHMENT #1**  
**PROPONENT'S REFERENCES**

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**NOTE:**

Attachment #1 – Proponent’s References is a fillable MS Word document which is to be completed and submitted by the Proponent as part of its QBS Submission. It is attached as a separate MS Word fillable document entitled:

“Attachments #1 through 4 – QBS-2014- IEP-002.docx”

**ATTACHMENT #2**  
**KEY PERSONNEL MANDATORY**  
**COMPLIANCE CHECKLIST**

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Page 1 of 1

**NOTE:**

Attachment #2 – Key Personnel Mandatory Compliance Checklist is a fillable MS Word document which is to be completed and submitted by the Proponent as part of its QBS Submission. It is attached as a separate MS Word fillable document entitled:

“Attachments #1 through #4 – QBS-2014- IEP-002.docx”

**ATTACHMENT #3  
CONFLICT OF INTEREST**

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Page 1 of 1

**NOTE:**

Attachment #3 – Conflict of Interest is a fillable MS Word document which is to be completed and submitted by the Proponent as part of its QBS Submission. It is attached as a separate MS Word fillable document entitled:

“Attachments #1 through #4 – QBS-2014-IEP-002.docx”

**ATTACHMENT #4**  
**SCHEDULE B TEMPLATE**

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**NOTE:**

Attachment #4 – Schedule B Template is a fillable MS Word document which is to be completed and submitted by the Proponent as part of its QBS Submission. It is attached as a separate MS Word fillable document entitled:

“Attachments #1 through #4 – QBS-2014-IEP-002.docx”

**ATTACHMENT #5  
ESTIMATED HOURLY RATES**

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Page 1 of 1

**NOTE:**

Attachment #5 –Estimated Hourly Rates is a fillable MS Word document which is to be completed and submitted by the Proponent as part of its QBS Submission. It is attached as a separate MS Word fillable document entitled:

“Attachment #5 – QBS-2014-IEP-002.docx”

**APPENDIX “A” – GENERAL CONDITIONS  
LIST OF CONTENTS**

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The following documents hereby form part of and are appended to the QBS Document as the Appendix “A” – General Conditions:

<b><u>ITEM NO.</u></b>	<b><u>TITLE</u></b>	<b><u>NO. OF PAGES</u></b>
<b>1</b>	Appendix “A” – General Conditions .....	35
<b>2</b>	Schedule A – Definitions .....	7
<b>3</b>	Schedule B – Consultant Personnel .....	8
<b>4</b>	Schedule C – Financial Terms .....	9
<b>5</b>	Schedule D – Insurance .....	4
<b>6</b>	Schedule E – Dispute Resolution .....	4

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**GENERAL CONDITIONS****ARTICLE 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 organisation 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:

- (a) Schedule A – Definitions;
- (b) Schedule B – Consultant Personnel;
- (c) Schedule C – Financial Terms;
- (d) Schedule D – Insurance; and
- (e) Schedule E – Dispute Resolution.

## **ARTICLE 2 PERFORMANCE**

### **2.1 Term of the Contract**

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



## 2.2 Performance of the Services

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

- (g) The Consultant shall comply with and conform to Applicable Laws, applicable to the Services to be provided by, and the responsibilities and obligations of, the Consultant under this Contract.
- (h) The Consultant shall not alter or change any part of a Joint Venture except with the prior written consent of Metrolinx in its sole discretion.
- (i) Metrolinx reserves the right to perform any part of the Services itself or to contract any part of the Services from a Third Party.

### **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 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, Applicable Laws 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 licences, rights and other authorizations required by Applicable Laws.
- (e) The Consultant shall only employ, for the purposes of this Contract, such persons as are careful, skilled and experienced in the duties required of them and have the required Domain Expertise, and shall 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 the Services meets the requirements of the Contract.
- (c) The Consultant shall ensure that the Consultant Personnel assigned to perform the Services:
  - (i) act in a professional, timely and economical manner according to the Required Standard of Care; and
  - (ii) comply with all applicable Metrolinx policies and procedures, provided that Contractor has been made aware of same.

#### **2.5 Third Party Work**

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

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

## 2.6 Joint Program Office

- (a) For the duration of the Term, the Consultant shall, if requested by Metrolinx, at its own cost, provide, manage and maintain office facilities (the “**Joint Program Office**”).

## 2.7 Non-Interference with Operations

- (a) The Consultant acknowledges and agrees that:
  - (i) Metrolinx and Third Party Operators are in the business of moving large volumes of passengers and cargo through rail corridors safely, expeditiously and according to a fixed timetable;
  - (ii) the success of the businesses of Metrolinx and Third Party Operators depends on meeting the above objectives on a daily basis;
  - (iii) Metrolinx has contractual and statutory obligations to ensure the safety of all persons on the rail corridors and the property and facilities adjacent thereto; and

- (iv) Third Party Operators operating in and through the rail corridors and Third Party Contractors working in the rail corridors have similar restrictions and requirements.
- (b) Notwithstanding any other term or condition set out in this Contract, the safety and non-disruption of all Third Parties operating in the rail corridors is of paramount importance. Consequently, the Consultant acknowledges and agrees that the safety of all trains, passengers, operating and maintenance personnel, goods and other transported cargos, as well as the Consultant Personnel and the public in general will take precedence over all actions or non-actions of the Consultant, whether mandated or not by any other terms and conditions of this Contract.
- (c) The Consultant shall not disrupt the movement of any rail traffic in or through the rail corridors of either Metrolinx or the Third Party Operators except where it has obtained the prior written consent of Metrolinx to such disruption (which consent may be withheld in the sole discretion of Metrolinx).

## 2.8 Key Personnel

- (a) The names and titles of individuals who are critical to the performance of the Services are set out in Schedule B – Consultant Personnel which may be amended or revised to include individuals identified as Key Personnel in Work Plans (collectively, the “**Key Personnel**”). All Key Personnel shall possess the requisite Domain Expertise and meet the criteria set out by Metrolinx.
- (b) The Consultant shall not, for the duration of the Term, require or request any Key Personnel to be involved in any other project on behalf of the Consultant or any Subconsultant if, in the opinion of Metrolinx acting reasonably, such involvement would have a material adverse effect on the Services.
- (c) Changes to Key Personnel by the Consultant

The Consultant shall ensure the Key Personnel originally identified in Schedule B – Consultant Personnel for the Work Plan shall be delivered for the Services for the period of the Work Plan. The Consultant shall not replace any Key Personnel, remove any Key Personnel from the provision of the Services, or materially reduce the responsibilities of any Key Personnel in relation to the provision of the Services except with the prior written consent of Metrolinx (which consent may be withheld in the sole discretion of Metrolinx) and shall be based on the following requirements:

- (i) the Consultant shall provide three (3) months’ written notice which shall identify: the person being replaced, the Key Personnel role and responsibility in the performance of the Services, reasons for the replacement; the name, curriculum vitae in the form set out in Schedule B – Consultant Personnel and any other supporting documentation of the

proposed replacement Key Personnel and the proposed replacement Key Personnel’s available start date;

- (ii) the proposed replacement Key Personnel shall possess the requisite Domain Expertise, attend an interview in Toronto with Metrolinx if Metrolinx deems one to be necessary, and possess similar qualifications, experience and ability as the outgoing Key Personnel, the determination of which will be in the sole discretion of Metrolinx;
  - (iii) the Consultant shall be responsible for transferring knowledge and providing training to the proposed replacement Key Personnel with no impact to the provision of Services at no cost to Metrolinx; and
  - (iv) the Consultant shall ensure that there is an overlap of three (3) months for the proposed replacement Key Personnel and outgoing Key Personnel.
- (d) Changes to the Key Personnel by the Consultant for reasons beyond its reasonable control

Notwithstanding Section 2.8(c), if at any time the Consultant for reasons beyond its reasonable control, is unable to provide the services of any Key Personnel, the Consultant shall propose a replacement Key Personnel 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. The notice shall identify: the person being replaced, their Key Personnel role and responsibility in the performance of the Services, reasons for the replacement; the name, curriculum vitae in the form set out in Schedule B – Consultant Personnel and any other supporting documentation of the proposed replacement Key Personnel and the proposed replacement Key Personnel’s available start date. 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 acceptance of a proposed replacement Key Personnel shall be subject to the requirements of Section 2.8(c)(ii) and (iii).

- (e) Any replacement Key Personnel proposed pursuant to Sections 2.8(c) and 2.8(d) must be acceptable to Metrolinx in its sole discretion. If the proposed replacement Key Personnel is acceptable to Metrolinx, Metrolinx shall give the Consultant written consent to make the replacement or substitution. In the event the proposed replacement Key Personnel is not acceptable to Metrolinx, Metrolinx shall inform the Consultant in writing why that person is not acceptable and the Consultant shall nominate an alternate person pursuant to the processes and requirements identified in this Section 2.8(c) or Section 2.8(d).
- (f) Changes to the Key Personnel by Metrolinx

If Metrolinx determines in its sole discretion that it is in the best interests of Metrolinx that any Key Personnel be replaced, either permanently or temporarily, Metrolinx shall notify the Consultant, and, within thirty (30) days of receipt by the Consultant of such notice, the Consultant shall provide Metrolinx with relevant information on the proposed replacement, including the replacement person’s name, rates, and *curriculum vitae* in the form set out in Schedule B – Consultant Personnel and the replacement person’s available start date. Metrolinx in its sole and absolute discretion may choose to interview the proposed replacement person in Toronto. If the replacement person is acceptable to Metrolinx, Metrolinx shall give the Consultant written permission to make the replacement or substitution. In the event the nominated person is not acceptable to Metrolinx, acting reasonably, Metrolinx shall inform the Consultant in writing why that person is not acceptable and the Consultant shall nominate an alternate person pursuant to the process identified in Section 2.8(d). The rates for the proposed replacement shall not exceed the approved rate of the person being replaced.

(g) Liquidated Damages

- (i) In the event, and for each subsequent occasion, that the Consultant fails to ensure the Key Personnel originally identified in Schedule B – Consultant Personnel for the Work Plan is delivered for the Services for the period of the Work Plan, the Consultant shall pay Metrolinx the amount set out in the table set out in Schedule B – Consultant Personnel as liquidated damages and the Consultant acknowledges and agrees that such liquidated damages constitute a genuine pre-estimate of the administrative costs incurred by Metrolinx and the loss of efficiency in the performance of the Services resulting from a requirement to replace such Key Personnel.
  - (ii) In the event, and for each subsequent occasion, that the Consultant removes or replaces any of the Key Personnel or materially reduces such Key Personnel’s responsibilities in relation to the provision of the Services except in accordance with Sections 2.8(e) or 2.8(f) in Metrolinx’s sole discretion, the Consultant shall pay Metrolinx the amount set out in the table set out in Schedule B – Consultant Personnel as liquidated damages and the Consultant acknowledges and agrees that such liquidated damages constitute a genuine pre-estimate of the administrative costs incurred by Metrolinx and the loss of efficiency in the performance of the Services resulting from a requirement to replace such Key Personnel.
- (h) Liquidated damages paid by the Consultant pursuant to Section 2.8(g) shall be the sole remedy in respect of failure by the Consultant to provide the Key Personnel, but shall not be the sole remedy of Metrolinx with respect to damages that may otherwise be incurred by Metrolinx with respect to the delay caused by the Consultant by such failure.

## 2.9 Consultant Representative

The Consultant shall assign a Consultant Representative who shall direct the provision of the Services. During the Term, the Consultant Representative shall maintain ongoing contact with Metrolinx to ensure that issues are dealt with in an efficient, effective and timely manner. The Consultant 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.

## 2.10 French Language Services

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

## 2.11 Task Release Process for Services

- (a) All work required by the Services shall be subject to a “**Task Release Process for Services**” where upon the written request of the Metrolinx Representative setting out the work required by a specified Service (the “**Task**”), the Consultant shall prepare a plan (the “**Task Plan**”) with the following:



- (i) description of the work required by the Task and Task deliverables;
  - (ii) projected milestones and schedule for the completion of the Task;
  - (iii) resources required for the completion of the Task;
  - (iv) calculation of fees based on the Rates and the upset limit or fixed price for the Task;
  - (xi) proposed list of staff for the Task; and
  - (xii) any other information or documents as requested by the Metrolinx Representative.
- (b) The Consultant shall not proceed with any work unless the Task is approved in writing by the Metrolinx Representative, in its sole discretion, in the form of a “**Task Release**” and only to the upset limit or fixed price as indicated therein. The upset limit or fixed fee for each Task shall be in Canadian funds, not subject to adjustment unless agreed otherwise in writing, and shall be inclusive of all applicable costs.
- (c) Metrolinx reserves the right to withhold payment for any work performed by the Consultant or its Subconsultants pursuant to the Services prior to the issuance of a Task Release or outside the scope of a Task Plan approved by a Task Release.

## **2.12 Consultant Work Performance Rating**

- (a) During the Term of this Contract, Metrolinx shall maintain a record of the Consultant’s performance pursuant to this Contract. This information shall be used to complete a “Contractor Performance Review” report, a copy of which will be forwarded to the Consultant upon Contract Closeout. Interim Contractor Performance Review reports may be issued, as deemed appropriate by the Metrolinx Representative, at any time during the Term of the Contract.
- (b) The overall history of the Consultant in performing work for Metrolinx, including the Consultant’s performance pursuant to this Contract, shall be considered by Metrolinx 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 shall be identified to the Consultant.
- (e) The information contained in the Contractor Performance Review may be provided to other ministries and agencies and such performance reviews may be relied upon by other ministries and agencies to reject a company any bid submitted on any further requests.

## **ARTICLE 3 HEALTH AND SAFETY**

**3.1 Occupational Health & Safety Act (“OHSA”)**

- (a) The Consultant shall comply with OHSA, and any obligations of the Consultant as an "employer" thereunder, and with all regulations made under the OHSA.
- (b) The Consultant shall report to Metrolinx any non-compliance by a Subconsultant in the performance of the Services with the regulations under the OHSA if and when brought to the attention of the Consultant.
- (c) The Consultant acknowledges that lack of compliance with applicable provincial or municipal health and safety requirements will be and are intended to be documented and kept on file, and that such lack of compliance may cause:
  - (i) the Consultant's performance of the Services to be suspended; or
  - (ii) this Contract to be cancelled by Metrolinx.
- (d) The Consultant will be under an obligation to cease the Services, or any part thereof, if an authorized representative of Metrolinx so requires orally or in writing on the grounds that there has been any violation of the 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" of any workers employed or engaged by the Consultant for the Services, either instead of or jointly with the Consultant.

**3.2 Constructor**

- (a) Metrolinx or another party identified by Metrolinx, including but not limited to the Consultant, shall be the “Constructor” as defined in and in accordance with OHSA, for all or part of the Services.
- (b) Where the Consultant has been identified by Metrolinx as the Constructor, the Consultant shall perform all of the obligations of the Constructor under OHSA for that part or for all of the Services.
- (c) Where the Consultant has not been identified by Metrolinx as the Constructor, the Consultant covenants and agrees to promptly provide such information as may be

requested by the Constructor and do such things as may be required to enable the Constructor to fulfill its obligations pursuant to OHSA. Without limiting the generality of the foregoing, the Consultant shall immediately provide written notice to Metrolinx and the Constructor of any accident on the Place of Work causing personal or possible personal injury to any individual, and to immediately provide such details to Metrolinx and the Constructor, including the identity of the personnel, the nature of the injuries which were suffered or may have been suffered and any other information as Metrolinx, the Constructor or any Governmental Authority may require or request.

### 3.3 Safety Requirements

- (a) Safety of Persons at or near the Place of Work and the public is of paramount concern to Metrolinx. In the performance of the Services, the Consultant shall not in any manner endanger the safety of, or unlawfully interfere with, Persons on or off the Place of Work, including the public.
- (b) The Consultant specifically covenants and agrees that the Consultant:
  - (i) shall comply with best industry practice respecting health and safety in a manner that recognizes and minimizes the risk to workers, other individuals, property and the operations of Metrolinx and any railways, to the extent that such practices are not inconsistent with an express instruction set out in this Contract or provided by Metrolinx;
  - (ii) shall comply, and shall ensure that all Consultant Personnel comply, in all regards with the requirements of OHSA and/or the *Canadian Labour Code*, Part II, as applicable;
  - (iii) shall comply, and shall ensure that all Consultant Personnel comply, in all regards with the safety requirements set out in the Contract Documents;
  - (iv) shall maintain, strictly enforce and comply, and ensure that all Consultant Personnel comply, in all regards with the Consultant’s own health and safety program, to the extent not inconsistent with this Contract and Metrolinx’ health and safety program;
  - (v) shall comply, and shall ensure that all Consultant Personnel comply, with any and all safety-related directives or instructions issued by Metrolinx;
  - (vi) shall take all steps reasonable in the circumstances to ensure the health and safety of all workers for which it has responsibility under OHSA; and
  - (v) shall make available, at Metrolinx’ request, such policies and procedures relating to its occupational health and safety matters as Metrolinx may from time to time request, and hereby covenants that all Consultant Personnel have been properly trained and are knowledgeable with respect to these policies and procedures.

### 3.4 Railway Safety

- (a) The Consultant acknowledges and agrees that:
  - (i) access to the rail corridors by the Consultant and any Consultant Personnel, shall at all times be subject to the direction of Metrolinx and/or the Maintenance Provider as to rail safety matters and any applicable railway operating rules; and
  - (ii) any and all questions, matters or disputes which may arise affecting the safety of railway operations or the maintenance of the railways shall be referred to Metrolinx which shall in its discretion decide all such questions, matters and disputes.
- (b) The Consultant shall perform the Services, and shall ensure that all Consultant Personnel perform the Services, in accordance with the Canadian Rail Operating Rules from time to time approved by the Minister of Transport under the authority of the *Railway Safety Act* (Canada), the Standards, and all other applicable Transport Canada guidelines, railway standards, and practices.
- (c) In the event that the Services are the subject of an audit or inspection by any Governmental Authority, the Consultant shall at its own expense:
  - (i) provide notice of such audit or inspection to Metrolinx;
  - (ii) make available or cause to be made available such reasonable information and material as may be required and shall otherwise reasonably cooperate with Transport Canada officials;
  - (iii) provide Metrolinx with a copy of any audit or inspection report or other results or recommendations issued by Transport Canada, as soon as practicable but in any event within five (5) Business Days of receipt thereof by the Consultant; and
  - (iv) take all steps necessary to rectify, in consultation with and as directed by Metrolinx, any issues identified by Transport Canada.

### 3.5 Workers' Rights

- (a) 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.

**ARTICLE 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.

**ARTICLE 5  
CONSTRUCTION LIEN ACT**

**5.1 Construction Lien Act**

- (a) Subject to Section 7 of Schedule C – Financial Terms, Metrolinx shall retain an amount equal to the amount required to be held back pursuant to the Construction Lien Act from each sum otherwise payable to the Consultant under this Contract that is not a release of any monies so retained.
- (b) Subject to Section 5.1(c), any holdbacks retained pursuant to Section 5.1(a) shall not be due and payable until after the expiry of the applicable period for preservation of liens under the Construction Lien Act, and provided that no liens are preserved by persons supplying services or materials to the Consultant.
- (c) Notwithstanding any provision of this Contract,
  - (i) no sum shall be payable by Metrolinx to the Consultant pursuant to this Contract if, at the time such sum would otherwise be payable, there is outstanding and unsatisfied any claim for lien which has been preserved pursuant to the Construction Lien Act by any person for goods and/or services provided directly or indirectly to the Consultant to enable performance of any part(s) of the Services or Metrolinx has received a notice of lien; and
  - (ii) where any sum which would otherwise be payable by Metrolinx to the Consultant is not so payable because a claim for lien has been preserved pursuant to the Construction Lien Act, or Metrolinx has received notice of a lien, such sum shall be payable to the Consultant only at such time when all liens which may be claimed against that sum have expired or been satisfied, discharged or vacated by an order made pursuant to a payment into court in accordance with the Construction Lien Act.

**ARTICLE 6  
RIGHT OF OWNERSHIP AND USE**

**6.1 Ownership of Metrolinx IP**

- (a) Unless otherwise expressly agreed, Metrolinx is and will be the exclusive owner of, and shall retain all right, title and interest (including Intellectual Property

Rights) in and to all of the following Intellectual Property (collectively, the “**Metrolinx IP**”):

- (i) all Metrolinx Materials;
  - (ii) all Deliverables;
  - (iii) all reports and other information created, generated, output or displayed by the Deliverables or as a result of the performance of receipt of the Services; and
  - (iv) all modifications or enhancements made to the items listed in Sections 6.1(a)(i) to (iii) hereof.
- (b) All right, title and interest, including all Intellectual Property Rights, in Metrolinx IP will vest in Metrolinx, following creation.
- (c) The Consultant will acquire no rights to any Metrolinx IP other than the licence rights expressly granted in Section 6.3.
- (d) The Consultant:
- (i) hereby assigns and transfers to Metrolinx; and
  - (ii) agrees (to the extent required in the future) to assign and transfer to Metrolinx,

as and when created, all right, title and interest, including Intellectual Property Rights, throughout the world in and to all Metrolinx IP (to the extent any right, title, interest or Intellectual Property Right in Metrolinx IP does not automatically and immediately vest in Metrolinx).

- (e) The Consultant shall cause all Consultant Personnel to waive for the benefit of Metrolinx and its respective successors, assigns, licensees and contractors, their respective moral rights (and any similar rights to the extent that such rights exist and may be waived in each and any jurisdiction throughout the world) in and to the Metrolinx IP.

## **6.2 Ownership of Consultant Background IP**

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

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

- (a) Metrolinx grants to the Consultant, during the Term, a non-exclusive, non-transferable, royalty-free right and licence to:
  - (i) access, use, copy, support, maintain and, to the extent reasonably necessary to provide the Services, modify, the Metrolinx IP solely for the purposes of fulfilling the Consultant’s obligations under this Contract;
  - (ii) sublicense the Metrolinx IP to Subconsultants solely to the extent necessary to enable such Subconsultants to fulfill the Consultant’s obligations under this Contract.
- (b) Any exercise by the Consultant of the rights granted pursuant to Section 6.3(a) shall be subject to the terms and conditions of this Contract, including always the Consultant’s obligations with respect to Confidential Information set out in Article 10.
- (c) If the Consultant desires to use the Metrolinx IP other than as permitted under clause (a) hereof, such use must be set out in a separate license agreement (such licence to require the approval of Metrolinx, which may be withheld at Metrolinx’ discretion).

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

- (a) The Consultant grants to Metrolinx a perpetual, irrevocable, fully paid-up, royalty-free, worldwide, non-exclusive right and licence to access, use, copy, support, maintain, modify, sublicense, assign, distribute or otherwise exploit any Consultant Background IP that is integrated with, embedded in, forms part of or is otherwise required to access, use, copy, support, maintain, modify, sublicense, assign, distribute or otherwise exploit any Metrolinx IP; provided, however, that the foregoing licence does not permit Metrolinx to use the Consultant Background IP in its standalone form or for any purpose other than as part of or in conjunction with the Metrolinx IP it is associated with.
- (b) If the Consultant integrates with or embeds in any Deliverables any Intellectual Property provided by a third party vendor, subcontractor, independent contractor, Subconsultant or other person, the Consultant shall obtain for Metrolinx the same license rights for Metrolinx in respect of such Third Party IP as set forth in Section 6.4(a) hereof.

## **ARTICLE 7 INSURANCE**

### **7.1 Insurance Requirements**

- (a) The Consultant agrees to purchase and maintain in force, at its own expense and for the duration of this Contract, the policies of insurance set forth in Schedule D

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

## **ARTICLE 8 CHANGES**

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

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

### **8.2 Changes Recommended by the Consultant**

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

### **8.3 Change Management Process**

- (a) Where a Change request is initiated by Metrolinx pursuant to Section 8.1, Metrolinx shall set out, in the Change request:
  - (i) the proposed prices for the contemplated changes;
  - (ii) the timing requirements for the implementation of the Change; and
  - (iii) any other information which may reasonably be required.
- (b) The Consultant shall respond to Metrolinx’ Change request in writing within ten (10) Business Days.
- (c) Where a Change is initiated by the Consultant pursuant to Section 8.2, the Consultant shall set out in the Change request, conforming to Section 8.3(a):
  - (i) a description of the proposed Change;
  - (ii) the estimated cost of the proposed Change;
  - (iii) any proposals, designs or other details or information which may be reasonably required; and



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

#### **8.4 Performance of Changes**

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

### **ARTICLE 9 ADDITIONAL RESOURCES**

#### **9.1 Additional Resources**

- (a) In addition to, or in connection with, a request for additional or altered services pursuant to Article 8 – Changes, 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 and report for work at the Joint Program Office or any other Place of Work designated by Metrolinx within twenty (20) days of receipt of a written request from Metrolinx pursuant to Section 9.1(a).

- (c) The hourly Rate payable in respect of additional Consultant Personnel shall be as set out in the Articles of Agreement.

## **ARTICLE 10 CONFIDENTIAL INFORMATION AND FIPPA**

### **10.1 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;
- (d) shall not copy, reproduce in any form or store the Metrolinx Confidential Information in a retrieval system or database, without the prior written consent of Metrolinx; and
- (e) shall immediately notify Metrolinx in the event that it becomes aware of any unauthorized disclosure of Metrolinx Confidential Information.

### **10.2 Permitted Disclosure**

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

### **10.3 Exceptions**

- (a) The obligations of confidentiality set out in Section 10.1 shall not apply to Metrolinx Confidential Information which:
  - (i) becomes generally available to the public through no fault of the Consultant;
  - (ii) prior to receipt from Metrolinx, was known to the Consultant on a non-confidential basis and is not subject to another obligation of secrecy and non-use, as documented by written records possessed by the Consultant;

- (iii) was independently developed by the Consultant prior to receipt from Metrolinx, as documented by written records possessed by the Consultant; or
  - (iv) becomes available to the Consultant on a non-confidential basis from a source other than Metrolinx that is not under other obligations of confidence.
- (b) If the Consultant becomes compelled to disclose any Metrolinx Confidential Information pursuant to Applicable Law, the Consultant shall provide Metrolinx with prompt written notice of any such requirement and shall cooperate with Metrolinx in seeking to obtain any protective order or other arrangement pursuant to which the confidentiality of the relevant Confidential Information is preserved. If such an order or arrangement is not obtained, the Consultant shall disclose only that portion of the Confidential Information as is required pursuant to Applicable Law. Any such required disclosure shall not, in and of itself, change the status of the disclosed information as Confidential Information under the terms of this Article 10.
- (c) Without limiting the generality of Section 10.3(a) and notwithstanding Section 10.3(b), the Parties acknowledge and agree that the treatment and disclosure of Confidential Information shall in all cases be subject to the requirements of FIPPA and the Construction Lien Act.

#### **10.4 Damages**

The Consultant acknowledges and agrees that any breach or threatened breach of this Article 10 – Confidentiality and FIPPA or the obligations set out herein shall cause immediate and irreparable harm to Metrolinx for which damages alone are not an adequate remedy. The Consultant hereby acknowledges and agrees that Metrolinx shall be entitled to seek, in addition to any other legal remedies which may be available to it, such equitable relief as may be necessary and available to protect Metrolinx against such breach or threatened breach. No failure or delay by Metrolinx in exercising any right hereunder shall operate as a waiver hereof, or shall estop Metrolinx from obtaining permanent injunctive relief.

#### **10.5 Return or Destruction of Confidential Information**

- (a) At the request of Metrolinx and subject to Section 10.5(b) and Section 10.6, the Consultant agrees to:
  - (i) promptly return all Metrolinx Confidential Information to Metrolinx; or
  - (ii) promptly destroy the Metrolinx Confidential Information and all copies thereof in any form whatsoever under its power or control and provide Metrolinx with a destruction certificate signed by an appropriate officer of the Consultant certifying such destruction.

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

### 10.6 FIPPA and Freedom of Information

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

- (a) All FIPPA Records (as defined below) are subject to, and the collection, use, storage and treatment thereof is governed by FIPPA. The Consultant agrees to keep all FIPPA Records secure and available, in accordance with the requirements of FIPPA.
- (b) Section 10.5 shall apply to all FIPPA Records, which shall be returned and/or destroyed in accordance with that section.
- (c) In the event of a conflict between the requirements of this Contract and the requirements of FIPPA, the requirements of FIPPA shall take precedence.
- (d) In the event that a request is made under FIPPA for the disclosure of any FIPPA Records, Metrolinx shall provide prompt written notice thereof to the Consultant and the Consultant shall provide any and all relevant FIPPA Records to Metrolinx on demand for the purposes of responding to an access request under FIPPA. In these circumstances, the Consultant shall provide all FIPPA Records requested to Metrolinx’s Freedom of Information Coordinator (or equivalent) within seven (7) business days of receipt of the request from Metrolinx. Notwithstanding anything to the contrary in this Agreement and subject to the Consultant’s rights of appeal pursuant to Section 28(9) of FIPPA, Metrolinx shall determine what FIPPA Records will be disclosed in connection with any such request, in accordance with the requirements of FIPPA (including, without limitation, the requirements with respect to affected persons set out in Section 28 thereof).

For the purposes of this section, “**FIPPA Records**” means all information, data, records and materials, however recorded, in the custody or control of Metrolinx, including Confidential Information and Personal Information (as defined in FIPPA). For the

purposes of this definition, documents held by the Contractor in connection with this Contract are considered to be in the control of Metrolinx.

### **10.7 Consultant Compliance**

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

### **10.8 Publicity**

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

## **ARTICLE 11 REPRESENTATIONS, WARRANTIES AND COVENANTS**

### **11.1 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) 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;
- (j) 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
- (k) the Consultant represents, warrants and covenants to Metrolinx that the Consultant is and shall remain duly registered for the purposes of Part IX of the Excise Tax Act and that the Consultant’s registration number is:  
\_\_\_\_\_.

## 11.2 Continuing Effect of Representations, Warranties and Covenants

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

## ARTICLE 12 INDEMNITY

### 12.1 Indemnification

- (a) The Consultant shall at all times indemnify and save harmless Metrolinx, its officers, directors, employees, members, agents, representatives, successors and assigns (hereinafter the "**Indemnified Parties**"), from and against any and all Losses resulting from:
- (i) any breach, violation or non-performance by or on behalf of the Consultant of any covenant, obligation or agreement of the Consultant contained in this Contract, including any warranty (express or implied);
  - (ii) any negligent acts, errors or omissions or wilful misconduct by or on behalf of the Consultant relating to the Services to be provided under this Contract;
  - (iii) any acts performed or omitted to be performed by or on behalf of the Consultant beyond the authority of the Consultant hereby conferred;
  - (iv) any inaccuracy in or breach of any of the representations or warranties of the Consultant contained in this Contract;
  - (v) any preserved or perfected lien under the Construction Lien Act filed or made on account of the Services performed hereunder, provided that the liens herein referenced are not the direct result of the default in payment by Metrolinx to the Consultant of amounts properly due under this Contract. The Consultant shall cause any such lien or claim which may be filed or made to be released, vacated or otherwise discharged within five (5) days of obtaining notice of the lien or claim or from receipt by the Consultant of written notice from Metrolinx. If the Consultant fails to release, vacate or discharge any such lien or claim, then Metrolinx may, but without obligation to do so, discharge or release the lien or claim or otherwise deal with the lien or claim, and the Consultant shall pay any and all reasonable costs and expenses, including but not limited to reasonable legal fees incurred by Metrolinx in so releasing, discharging, or otherwise dealing with such lien or claim;
  - (vi) any breach of the terms and conditions set out in Article 3 or arising as a result of any illness, injury or death of any employee of the 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
  - (vii) any infringement or alleged infringement of any patent, trade secret, service mark, trade name, copyright, official mark, moral right, trademark, industrial design or other proprietary rights conferred by contract, common law, statute or otherwise in respect to the Services or any matter provided to Metrolinx or performed by the Consultant, or anyone else for whom at law it is responsible.
- (b) The Consultant shall pay all reasonable costs, expenses and legal fees that may be incurred or paid by the Indemnified Parties in connection with any demand, claim, execution, action, suit or proceeding with respect to a matter for which the Consultant is obligated to indemnify the Indemnified Parties pursuant to this Article 12, provided that the indemnity obligations of the Consultant under this Article 12 shall not extend to Loss attributable to the negligence or willful misconduct of any Indemnified Parties to the extent that such Indemnified Parties' negligence or 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 12, and without prejudice to any other right or remedy Metrolinx may have, Metrolinx shall be entitled to deduct or withhold a reasonable sum on account of such claim, action, suit, execution or demand, including legal costs, from monies owed or payable by Metrolinx to the Consultant under this Contract pending the final determination or settlement of such claim, action, suit, execution or demand. In the event,
- (i) the Consultant is, becomes, or is deemed to be bankrupt or an insolvent person pursuant to the *Bankruptcy and Insolvency Act* (Canada);
  - (ii) the Consultant makes a general assignment for the benefit of creditors; or
  - (iii) a receiver or interim-receiver is appointed with respect to some or all of the Consultant's business, assets, or property,

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



**12.2 Parent Company Indemnity**

As a condition of award of Contract, the Consultant’s guarantor shall submit a “Parental Guarantee” in a form satisfactory to Metrolinx and agrees to provide all the necessary financial and technical support for the proper completion of the Contract and shall unconditionally and irrevocably guarantee performance of the Contract in accordance with the terms and conditions, including timely completion thereof, and agrees to guarantee the Services for the warranty period(s) stipulated therein.

**ARTICLE 13  
LIMITATION OF LIABILITY****13.1 General Intent**

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

**13.2 Limitations on Liability**

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

**ARTICLE 14  
TERMINATION AND SUSPENSION**

**14.1 Termination for Cause by Metrolinx**

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

- (a) Metrolinx may appoint officials of Metrolinx or any other person or persons in the place and stead of the Consultant to perform the Services or any portion thereof;
- (b) the Consultant shall immediately discontinue the Services on the date and to the extent specified in the notice and place no further orders for materials or services for the terminated portion of the Services;
- (c) in addition to Metrolinx’ rights as set out in Section 2.6, Metrolinx shall continue to have unrestricted access to the Joint Program Office from the date of written notice given under this Section 14.1 until ten (10) days after termination; and
- (d) nothing contained herein shall limit the rights of Metrolinx to recover damages from the Consultant arising from the failure of the Consultant to perform the Services satisfactorily in accordance with the terms of this Contract.

**14.2 Termination for Convenience by Metrolinx**

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

**14.3 Suspension for Convenience by Metrolinx**

- (a) Metrolinx may at any time and for any reason within its sole discretion issue a written order to the Consultant suspending, delaying or interrupting all or any part of the Services for a specified period of time up to a maximum of one hundred eighty (180) days per suspension.
- (b) The Consultant shall comply immediately with any such written order and take all reasonable steps to minimize costs allocable to the Services covered by the suspension during the period of work stoppage. The Consultant shall continue the work that is not included in the suspension and shall continue such ancillary activities as are not suspended. The Consultant shall resume performance of the suspended work upon the earlier of expiration of the notice of suspension, or upon written direction from Metrolinx. Any suspension exceeding such one hundred eighty (180) days shall be subject to termination for convenience in accordance with Section 14.2.

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**ARTICLE 15**  
**FORCE MAJEURE**

**15.1 Force Majeure**

- (a) Neither Party shall be liable for Losses caused by a delay or failure to perform its obligations under this Contract where such delay or failure is caused by an event beyond its reasonable control (a “**Force Majeure Event**”). The Parties agree that an event shall not be considered beyond one’s reasonable control if a reasonable business person applying due diligence in the same or similar circumstances under the same or similar obligations as the provisions of this Contract would have put in place contingency plans to either materially mitigate or negate the effects of such event.
- (b) Without limiting the generality of the foregoing, the Parties agree that Force Majeure Events may include acts of God, natural disasters, acts of war, war-like operations, civil war, acts of foreign enemy, plagues, epidemics, insurrection and terrorism (provided that the conditions of Section 15.1(a) are met) but shall in no event include:
  - (i) shortages or delays relating to supplies or services; or
  - (ii) on the part of the Consultant, lack of financing or inability to perform because of the financial condition of the Consultant.
- (c) A failure by Metrolinx to furnish instructions will not be a Force Majeure Event until fourteen (14) days after a demand for such instructions has been made in writing by the Consultant and not then unless such claim is reasonable and justified to Metrolinx.

**15.2 Process**

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

**15.3 Metrolinx Rights**

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

**ARTICLE 16  
DISPUTE RESOLUTION**

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

**ARTICLE 17  
SET OFF**

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

**ARTICLE 18  
GENERAL****18.1 Entire Agreement**

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

**18.2 Governing Law and Jurisdiction**

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

**18.3 Survival**

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

**18.4 Enurement**

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

**18.5 Assignment**

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

**18.6 Independent Parties**

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

**18.7 Third Party Beneficiaries**

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

**18.8 Joint and Several Liability**

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

**18.9 Notice**

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

**18.10 Amendments**

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

**18.11 No Waiver**

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

**18.12 Severability**

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

**18.13 Further Assurances**

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

**18.14 Conflict of Interest Acknowledgement and Agreement**

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

### **18.15 Metrolinx Assignment**

- (a) Metrolinx may assign, transfer, dispose of or otherwise alienate any interest in this Contract to:

- (i) a Crown agency having the legal capacity, power, authority and ability to become a party to and to perform the obligations of Metrolinx under this Contract, provided that such person confirms in writing to the Consultant that it will perform all of Metrolinx’ obligations hereunder; or
  - (ii) a person to whom any such assignment, transfer, disposition or other alienation is made has the capacity to perform, and confirms in writing to the Consultant that it will perform all the obligations of Metrolinx hereunder.
- (b) Metrolinx shall be released of all of their obligations under this Contract upon an assignment, transfer, disposition or other alienation of its interest in this Contract in accordance with Section 18.15(a).

**18.16 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**

1. **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 other day other than: (a) a Saturday or Sunday and (b) a day on which Metrolinx is not open for business. Each Business Day shall end at 4:00 P.M. on that day.

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

“**Construction Lien Act**” means the *Construction Lien Act*, R.S.O. 1990, c. C.30.

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

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

“**Consultant**” means the Party identified as such in the Articles of Agreement.

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

“**Consultant Personnel**” or “**Consultant’s Personnel**” means (a) with respect to the Consultant, all of the Consultant’s personnel, employees and independent consultants (including

**APPENDIX “A” – GENERAL CONDITIONS**  
**SCHEDULE A – DEFINITIONS**

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the Key Personnel and the Consultant 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 Representative”** means the person identified by the Consultant, and accepted by Metrolinx, as the Consultant’s authorized representative pursuant to Section 2.9 of Appendix “A” – General Conditions.

**“Contract”** means this contract between the Consultant and Metrolinx pursuant to **QBS-2014-IEP-002** including the Articles of Agreement, the General Conditions and the Schedules thereto and the Contract Documents.

**“Contract Closeout”** means the date that the Services are complete as per the Construction Lien Act.

**“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.

**“Contractor”** means the company awarded the design-build construction or construction contract for the Program.

**“Contractor Performance Review”** has the meaning given in Section 2.12 of Appendix “A” – General Conditions.

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

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

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

**“Domain Expertise”** means the required level of depth and breadth of qualifications and experience in respect of the tasks to be performed in connection with the Services, gained through a practical application of the knowledge underlying the tasks in an environment substantially similar to that of the Services.

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

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**SCHEDULE A – DEFINITIONS**

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

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

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

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

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

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

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

**“Indemnified Parties”** has the meaning ascribed to it in Section 12.1 of Appendix “A” – 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 Program Office”** has the meaning ascribed to it in Section 2.6 of Appendix “A” – General Conditions.

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

**APPENDIX “A” – GENERAL CONDITIONS**  
**SCHEDULE A – DEFINITIONS**

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“**Key Personnel**” has the meaning ascribed to it in Section 2.8(a) of Appendix “A” – General Conditions.

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

“**Lien**” means any statutory lien, or claim, in relation to this Contract and constituting a charge against the statutory holdback and any other amounts, all as defined in the Construction Lien Act.

“**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.

“**Maintenance Provider**” means the organisational body or bodies responsible for the provision of maintenance services for all signalling, electrical, communications and track systems within a defined area.

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

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

“**Metrolinx Materials**” means: (a) all materials, images, reports, Software, audio or video recordings, specifications, performance requirements, software development tools, technologies, content, data (including all information whether or not contained in or on any database or electronic information storage system or media owned by or in the custody or control of Metrolinx), technical information, and any other recorded information, in any form and on any media, that are proprietary to, or controlled or licensed by, Metrolinx and provided to the Consultant; (b) all procurement documents issued by Metrolinx; (c) all documentation or source materials (including source code) related to any of the foregoing; and (d) all copies, translations, improvements, modifications, enhancements, adaptations, or derivations made to the Metrolinx Materials by Metrolinx or any third party not performing work under this Contract.

“**Metrolinx Representative**” or “**Metrolinx’s Representative**” has the meaning ascribed to it in Appendix “C” – Metrolinx Services.

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

“**Participant in Charge**” is the Person identified as such in the QBS Submissions of the Consultant.

“**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), Party, trust, foundation, Joint Venture, Governmental Authority or any other incorporated or unincorporated entity or association of any nature.

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

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

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

**“Program”** has the meaning given in Section 4(b) of Appendix “B” – Consultant Scope of Services.

**“Program Schedule”** means the overall ten-year schedule to deliver the Program.

**“Quotation”** has the meaning given in Section 13 of Schedule C – Financial Terms.

**“QBS Submission”** means all documentation and other materials and information submitted by the Consultant in response to **QBS-2014-IEP-002**.

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

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

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

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

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

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

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

**APPENDIX “A” – GENERAL CONDITIONS**  
**SCHEDULE A – DEFINITIONS**

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

“**Task Plan**” has the meaning ascribed to it in Section 2.11(a) of Appendix “A” – General Conditions.

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

“**Task Release Process for Services**” has the same meaning ascribed in Section 2.11 of Appendix “A” – General Conditions.

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

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

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

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

“**Third Party Contractors**” means contractors, suppliers, service providers, utility owners or any other third party (excluding the Consultant and any Subconsultants and Consultant Personnel) performing work and/or providing products and services in, or in respect of, the rail corridors, where such work, products or services (a) are on behalf and for the benefit of Metrolinx or (b) are being undertaken to enable work, products or services on behalf of and for the benefit of Metrolinx.

“**Third Party Operators**” means (a) any third party providing products and/or services in the rail corridors on their own behalf, pursuant to rights granted by Metrolinx, including VIA Rail Canada Limited, Canadian Pacific Railway Company and Canadian National Railway Company; and (b) any third party who otherwise has a right to occupy, access, or use property or facilities on or adjacent to the rail corridors.

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

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

**APPENDIX “A” – GENERAL CONDITIONS**  
**SCHEDULE A – DEFINITIONS**

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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.

**“Work Plan”** means the approved annual scope of work for all key tasks and deliverables as amended or revised.

**[END OF SCHEDULE A]**

**APPENDIX “A” – GENERAL CONDITIONS  
SCHEDULE B – CONSULTANT’S PERSONNEL**

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**SCHEDULE B  
CONSULTANT PERSONNEL**

1. **Key Personnel**

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

Role	Key Responsibilities	Qualifications and Experience	Name of Individual
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**APPENDIX “A” – GENERAL CONDITIONS  
SCHEDULE B – CONSULTANT’S PERSONNEL**

<p>Program Manager</p>	<p>Refer to Appendix “B”</p>	<ul style="list-style-type: none"> <li>• Years Experience: 15</li> <li>• Experience in managing, designing and coordinating engineering projects related to Electrified Railways Corridors, or on mixed use corridors (commuter-electric, commuter non electric, freight).</li> <li>• Experience in managing and coordinating engineering services for multi-discipline projects including track and signals, structural, civil, architectural, electrical, mechanical, communication.</li> <li>• Experience in overseeing projects, and arranging for the Consultant’s key staff and Subconsultants to complete their work as scheduled by Metrolinx for the duration of the Project.</li> <li>• Experience with similar size, scope and magnitude of relevant type of work being requested.</li> </ul>	
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**APPENDIX “A” – GENERAL CONDITIONS  
SCHEDULE B – CONSULTANT’S PERSONNEL**

<p>Environmental Assessment Lead</p>	<p>Refer to Appendix “B”</p>	<ul style="list-style-type: none"> <li>• Years Experience: 10</li> <li>• Professional experience working on Environmental Assessments related to electrification projects or transmission lines, and large scale transportation infrastructure projects, such as major bridge, train layover facilities, and civil projects.</li> <li>• Must demonstrate experience on at least three (3) similar type projects in the last 5 (five) years.</li> <li>• Extensive knowledge in air quality, noise and vibration, natural environments, cultural environments with the ability to develop mitigation and monitoring plans.</li> <li>• Experience on projects of similar size, scope and magnitude, relevant to type of work being performed.</li> <li>• Experience managing complex stakeholder engagement and consultation.</li> </ul>	
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**APPENDIX “A” – GENERAL CONDITIONS  
SCHEDULE B – CONSULTANT’S PERSONNEL**

Lead Signal Engineer	Refer to Appendix “B”	<ul style="list-style-type: none"> <li>• Years Experience: 10</li> <li>• P. Eng. Licenced to practice in the Province of Ontario. Or eligible for licencing with the PEO.</li> <li>• Previous relevant professional experience in Signal Design related to electrification projects, design review and commissioning, of projects of similar nature and magnitude.</li> <li>• Previous relevant experience using Supervisory Control and Data Acquisition Systems, as well as Electrification signalling and design.</li> </ul>	
Lead Structural Engineer	Refer to Appendix “B”	<ul style="list-style-type: none"> <li>• Years Experience: 15</li> <li>• P. Eng. Licenced to practice in the Province of Ontario. Or eligible for licencing with the PEO.</li> <li>• Previous relevant professional experience in structural design, design review and commissioning, of projects of a similar nature and magnitude.</li> <li>• Experienced in design and construction services of large railway infrastructure projects requiring new bridges or extensions / widening of</li> </ul>	

**APPENDIX “A” – GENERAL CONDITIONS  
SCHEDULE B – CONSULTANT’S PERSONNEL**

		existing bridges, culverts, retaining structures, pedestrian tunnel extensions, and pedestrian overpasses.	
Lead Electrification Construction Specialist	Refer to Appendix “B”	<ul style="list-style-type: none"> <li>• Years Experience: 15</li> <li>• Previous relevant construction experience in electrified railways projects of a similar nature and magnitude.</li> <li>• Demonstrated construction experience building components related to electrified rail systems.</li> </ul>	
Lead Traction Power Specialist	Refer to Appendix “B”	<ul style="list-style-type: none"> <li>• Years Experience: 15</li> <li>• Previous relevant experience in designing and construction of traction power systems for a 25 kV electrified railway, and or a projects of a similar nature and magnitude.</li> </ul>	
Lead OCS Design Engineer	Refer to Appendix “B”	<ul style="list-style-type: none"> <li>• Years Experience: 15</li> <li>• Previous relevant experience in designing and constructing the Overhead Contact System (OCS) for a 25 kV electrified railway, and or a projects of a similar nature and magnitude.</li> </ul>	

**APPENDIX “A” – GENERAL CONDITIONS  
SCHEDULE B – CONSULTANT’S PERSONNEL**

		<ul style="list-style-type: none"> <li>• Demonstrated design and construction experience with modifying existing structures (i.e. bridges, station canopies etc.) to allow for installation of OCS.</li> </ul>	
Lead Systems and Integration Engineer	Refer to Appendix ‘B’	<ul style="list-style-type: none"> <li>• Years Experience: 15</li> <li>• Previous relevant professional experience in performing rail system designs and systems integration of the projects of a similar nature and magnitude.</li> <li>• Experienced in the design, integration and implementation of electrified railway systems, including all supporting systems, within a Systems Engineering lifecycle model.</li> </ul>	
Electrification Operations & Maintenance Specialist	Refer to Appendix ‘B’	<ul style="list-style-type: none"> <li>• Years Experience: 15</li> <li>• Previous relevant professional experience in operations, maintenance, and rehabilitation of electrification infrastructure on projects of a similar nature and magnitude.</li> </ul>	

2. **Format of Curriculum Vitae**

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

3. **Key Personnel Reimbursement to Metrolinx**

- (a) The following is a listing of the Amount of Reimbursement to Metrolinx:

<b>Position/Function of Key Personnel</b>	<b>Amount of Reimbursement to Metrolinx</b>
Program Manager	\$200,000
Environmental Assessment Lead	\$100,000
Lead Signal Engineer	\$100,000
Lead Structural Engineer	\$100,000
Lead Electrification Construction Specialist	\$100,000
Lead Traction Power Specialist	\$100,000

**APPENDIX “A” – GENERAL CONDITIONS  
SCHEDULE B – CONSULTANT’S PERSONNEL**

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Lead OCS Design Engineer	\$100,000
Lead Systems & Integration Engineer	\$100,000
Electrification Operation & Maintenance Specialist	\$100,000

- (b) Amount of Reimbursement to Metrolinx is the amount of liquidated damages that the Consultant shall pay to Metrolinx in accordance with Section 2.8(g) of the General Conditions.

**[END OF SCHEDULE B]**

**SCHEDULE C  
FINANCIAL TERMS**

**1. Payment**

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

**2. Limitation of Expenditure**

- (a) It is understood that the Contract is based on reimbursement for actual Services requested by Metrolinx and performed by the Consultant in the form of Tasks pursuant to the Task Release Process for Services identified in Section 2.11 of Appendix “A” – General Conditions, to the satisfaction of Metrolinx.
- (b) Metrolinx does not guarantee any specific Task, a minimum or maximum of work, or volume and frequency of Tasks under this Contract.

**3. Estimated Contract Price**

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

**4. Rates for Services**

- (a) The Consultant acknowledges and agrees that the Rates are inclusive of all labour and materials, insurance costs, disbursements and all other overhead including any fees or other charges required under Applicable Laws. Without limiting the generality of the foregoing, the Rates include costs for the coordination, administration of the provision and management of the Services necessary to achieve compliance with external agencies and Governmental Authorities as required to obtain any Approvals, provided, however, that the specific costs associated with application and permit fees in respect of the Approvals shall be paid directly by Metrolinx.



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

5. **Taxes**

- (a) The Estimated Contract Price and all amounts payable under the Contract shall be inclusive of all Taxes (except for H.S.T.) 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 H.S.T. 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 H.S.T. 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 Tasks completed pursuant to milestones agreed upon by the Parties pursuant to Section 2.11 of Appendix “A” – General Conditions, no less than ten (10) Business Days following the end of the month in respect of which the related Tasks were rendered. The invoice shall be in form and substance satisfactory to Metrolinx acting reasonably, and shall include the following information:
  - (i) summary of the work required by the Task;
  - (ii) total time spent by each category of Consultant Personnel multiplied by the applicable Rate;
  - (iii) breakdown of Subconsultant costs; and
  - (ii) any other information as required by Metrolinx, acting reasonably.
- (b) Metrolinx reserves the right to audit any invoices submitted by the Consultant, including Subconsultant invoices.
- (c) The aggregate amount invoiced by the Consultant shall not exceed the Estimated Contract Price, unless such additional amount is agreed by the Parties pursuant to the change management process set out in Article 8 of the General Conditions.
- (d) Unless there is a Dispute with respect to the content of an invoice and subject to the other provisions of this Schedule C, Metrolinx shall make payment to the Consultant no later than thirty (30) Business Days following receipt of the invoice for payment from the Consultant, unless otherwise provided or permitted in the Contract.

**7. Statutory Holdback**

- (a) Metrolinx in its sole discretion shall determine whether the services required by a Task are subject to the Construction Lien Act.
- (b) If the services required by a Task are subject to the Construction Lien Act, Metrolinx shall hold back, from each payment to the Consultant, ten percent (10%) of the amount of the holdback as may be required by the Construction Lien Act (the “Statutory Holdback”), and any Statutory Holdback shall only be released in accordance with the provisions of the Construction Lien Act.
- (c) For greater clarity, release of the Statutory Holdback under Section 7(b) shall include payment where a subcontract is certified as 100% complete, in accordance with the process set forth in Section 7(d), subject to any other conditions required by Metrolinx in its sole discretion. Metrolinx reserves the right to recover any payments released if the Consultant fails to comply with the required conditions.

- (d) The Consultant shall make application by written request for a review to determine the date of completion of the subcontract and shall submit such supporting material as Metrolinx may in its sole discretion require, and may include statutory declarations from such persons and dealing with such matters as Metrolinx requires. Such material may in any event include:
- (i) a description of the scope of work included in the subcontract;
  - (ii) a Declaration of Last Supply by the subcontractor as prescribed in subsection 31(5) of the Construction Lien Act (Form 5);
  - (iii) a Certificate of Completion of Subcontract as prescribed in subsection 33(1) of the Construction Lien Act (Form 7);
  - (iv) a Workplace Safety & Insurance Board clearance certificate for the Consultant, the subcontractor concerned, and any other subcontractors and suppliers who have provided any services to the subcontractor;
  - (v) Consultant’s written acknowledgment to Metrolinx that the requirements of the Contract Documents will not be altered by early release of the holdback of the completed subcontracts; and
  - (vi) Any other materials required by Metrolinx.

8. **Withholding of Payment**

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

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

9. **Substantial Performance**

- (a) When the Consultant considers the Contract to be substantially performed, as defined by the Construction Lien Act, and prior to submission of the application for substantial performance, the Consultant shall prepare and submit to Metrolinx a comprehensive list of activities or service items to be completed or corrected and shall apply for a review of the list by Metrolinx. Failure to include an item on

the list does not alter the responsibility of the Consultant to complete the item or the Services.

- (b) Within seven (7) Business Days of receipt of the Consultant’s application for substantial performance, Metrolinx shall satisfy itself as to whether or not the Contract has been substantially performed as required by the Construction Lien Act and the Contract Documents. Then:
  - (i) if Metrolinx determines that the Contract has been substantially performed as required by the Construction Lien Act, Metrolinx shall issue a certificate of substantial performance which shall state the date of substantial performance; or
  - (ii) if Metrolinx determines that the Contract has not been substantially performed as required by the Construction Lien Act, Metrolinx shall advise the Consultant in writing of the reasons for which such a certificate is not being issued.
- (c) Immediately following the issuance of a certificate of substantial performance, the Consultant, in consultation with Metrolinx, shall establish a reasonable date for expeditiously finishing the Services.

10. **Release of Statutory Holdback Upon Substantial Performance**

- (a) After the issuance of the certificate of substantial performance in accordance with Section 9 of this Schedule C – Financial Terms and the Construction Lien Act, the Consultant shall:
  - (i) satisfy the requirements of the Construction Lien Act with respect to publication of a copy of the certificate of substantial performance;
  - (ii) submit an application for payment of the Statutory Holdback amount;
  - (iii) submit documentary proof of compliance with Section 9(a) of this Schedule C – Financial Terms; and
  - (iv) submit a sworn statement that all accounts for indebtedness which may have been incurred by the Consultant in connection with the performance of the Services and for which Metrolinx might in any way be held responsible have been paid in full, except for amounts properly retained as a holdback.
- (b) After receipt of an application for payment of the Statutory Holdback amount from the Consultant and the other documents required to be provided under this Contract, Metrolinx shall issue a certificate for payment for the Statutory Holdback amount.

- (c) Provided that the Consultant has satisfied the requirements of Section 9(a) of this Schedule C – Financial Terms, the Statutory Holdback amount authorized for payment under the certificate for payment of the Statutory Holdback amount is due and payable on the day following the expiration of the holdback period stipulated in the Construction Lien Act.
- (d) Notwithstanding the foregoing, Metrolinx may retain out of the Statutory Holdback amount any sums required by law to satisfy any Liens against the Services or, if permitted by the Construction Lien Act, such other third party monetary claims against the Consultant which are enforceable against Metrolinx or any other claims by Metrolinx against the Consultant.

11. **Final Payment Certificate**

- (a) When the Consultant considers that the performance of the Services is completed as defined in the Construction Lien Act, the Consultant shall submit an application for final payment.
- (b) Metrolinx shall review the record of the Services performed to verify the validity, or otherwise, of the application after the receipt of the Consultant’s application for final payment. Metrolinx shall review the record of Services performed within ten (10) Business Days of receipt of the Consultant’s application and shall issue, no later than seven (7) Business Days after reviewing the record of Services, a final payment certificate in the amount applied for or a regular certificate for payment in such other amount as Metrolinx determines to be properly due. If Metrolinx amends the application, Metrolinx shall promptly notify the Consultant in writing giving reasons for the amendment.
- (c) Subject to the provisions of this Contract and the Construction Lien Act, Metrolinx shall make payment to the Consultant on account no later than thirty (30) days following the receipt of a final payment certificate issued by the Metrolinx pursuant to Section 12(b) of this Schedule C – Financial Terms, provided that:
  - (i) the Consultant has provided Metrolinx, in a form acceptable to Metrolinx, a sworn statement that all accounts for indebtedness which may have been incurred by the Consultant in connection with this Contract and for which Metrolinx might in any way be held responsible have been paid in full, except for amounts properly retained as a holdback;
  - (ii) the Consultant has provided the documents required to demonstrate compliance with applicable workers compensation legislation; and
  - (iii) the Consultant has satisfied all requirements set out in this Contract.
- (d) Subject to the same conditions as listed in Section 9(a) of this Schedule C – Financial Terms, Metrolinx shall make the final release of Statutory Holdback

retained on payments made after the date of substantial performance, on the day following the expiration of the holdback period stipulated in the Construction Lien Act.

12. **Cost of Changes**

- (a) Changes shall be implemented by the Consultant without any additional charge, unless Consultant is able to demonstrate (with supporting documentation) that the Change causes the Consultant to incur additional costs.
- (b) The Consultant shall implement all Changes for a reasonable price in accordance with the same pricing principles and price levels as originally agreed in the Articles of Agreement. Where Rates apply to Consultant Personnel, those same Rates shall apply with reference to the applicable level of experience and/or expertise.
- (c) With respect to any Changes that (in whole or in part) require the services of a third party, Metrolinx (at its sole discretion) shall have the right to require the Consultant to provide three (3) quotes to Metrolinx in respect of such third party services, in accordance with Section 13 of this Schedule C – Financial Terms.
- (d) Metrolinx shall have the right to request such documentation and other supporting information as it reasonably requires to confirm and substantiate the costs associated with any Change request, and the Consultant shall provide same to Metrolinx within five (5) Business Days of the request therefor.

13. **Quotations – Changes**

- (a) With respect to any Changes (or any part thereof), the Consultant shall, upon request by Metrolinx (at its sole discretion), submit up to three (3) quotes detailing the estimated cost of the applicable Change (each a “**Quotation**”). Where Metrolinx has not provided the names of third parties from which quotations should be obtained, the Consultant shall have the right to choose which third parties shall provide quotations. Subject to any instruction to the contrary issued by Metrolinx pursuant to Section 8.4 of the General Conditions, where a Change includes work that the Consultant proposes would be most efficiently performed by the Consultant’s own workforces, the Consultant shall include as one of the three (3) quotes the price proposal for having its own workforce perform the work.
- (b) Any and all costs incurred by the Consultant for providing a Quotation or obtaining Quotations from third parties, shall be borne by the Consultant.
- (c) All Quotations shall be prepared on the Consultant’s letterhead and in a format agreed to by Metrolinx and the Consultant. The Quotation shall at a minimum contain the following information:

- (i) a description of the work required by the Services;
  - (ii) Curriculum Vitae for each required position and two (2) references for each individual;
  - (iii) estimated hours of work for each identified key role;
  - (iv) any requirement for additional positions other than those listed in Schedule B of Appendix “A”;
  - (v) required Subconsultants; and specialized service providers;
  - (vi) any requirements for testing and/or reporting;
  - (vii) detailed breakdown of costs;
  - (viii) detailed work schedule which complies with completion date provided by Metrolinx (as required by Metrolinx); and
  - (ix) any other requirements/instructions.
- (d) The Consultant shall, upon request, disclose to Metrolinx the originals of all bids, quotations and other price related information received from suppliers or Subconsultants.
- (e) Metrolinx reserves the right to accept or reject a Quotation, in whole or in part.

14. **Metrolinx Property**

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

15. **Records and Audit**

- (a) The Consultant agrees to keep and maintain full and complete records and accounts of all costs in accordance with Metrolinx’ requirements. All such records, including timesheets, correspondence, receipts and memoranda pertaining to the Services shall be available for inspection by any authorized employee or agent of Metrolinx at all reasonable times for the purpose of auditing the Consultant’ reasonable costs and the Consultant shall provide every reasonable assistance for that purpose including, but not limited to, making the records available for inspection at the Consultant’s office during normal business hours and acting reasonable to observations made by Metrolinx or its auditors. The results of the audit will be maintained as confidential to be used for the purposes of and as contemplated by this Contract or as otherwise required by Applicable Laws. Such records shall be kept for a period of seven (7) years after termination of this Contract.



**APPENDIX “A” – GENERAL CONDITIONS  
SCHEDULE C – FINANCIAL TERMS**

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

**[END OF SCHEDULE C]**



**SCHEDULE D  
INSURANCE**

**1. Consultant Insurance Requirements**

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

(a) 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”. The policy shall contain a waiver of subrogation.

(b) Automobile Liability Insurance

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

(c) 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.

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

(d) Property Insurance

The Consultant shall procure all risks property insurance covering property of every kind and description including but not limited to owned, rented or leased office furniture, fixtures, equipment, tenant improvements and Metrolinx

**APPENDIX “A” – GENERAL CONDITIONS**  
**SCHEDULE D – INSURANCE**

Materials. The policy deductible shall not exceed \$5,000 any one loss and also contain coverage extensions for extra expense, valuable papers and to the extent exposure exists, standard comprehensive boiler and machinery insurance. Such coverage shall incept upon execution of an agreement to secure premises for the Joint Program Office for the duration of the premises occupancy and be written in the joint names of the Consultant and Metrolinx. The policy shall preclude subrogation against any Insured.

2. **Additional Coverage**

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):

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

3. **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.
- (b) Any deductible or self-insured retention amounts are the responsibility of the Consultant. Notwithstanding the foregoing, such deductibles or self-insured retention must be consistent with standard commercial practice and acceptable to Metrolinx, acting reasonably.
- (c) All Consultant Policies shall be kept in full force and effect during the Term, including any requirements for the period following Contract Closeout.
- (d) In the event that the Consultant fails to obtain and/or maintain in full force and effect any such insurance as aforementioned, then Metrolinx shall have the right as the Consultant’s true and lawful attorney to do all things necessary for this purpose. The Consultant shall be responsible, and shall reimburse Metrolinx, all amounts paid by Metrolinx for insurance premiums and any and all costs incurred by Metrolinx in connection with this Contract. Without limitation, any premiums due on any insurance policy under this Schedule D – Insurance, but not paid by the Consultant may be paid directly to the insurer(s) or broker(s) by Metrolinx,

which shall be entitled to deduct the amount of same along with its reasonable costs in so doing from any monies otherwise due to the Consultant by Metrolinx either under this Contract or otherwise.

- (e) All Consultant Policies shall be endorsed to provide Metrolinx with not less than sixty (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.

4. **Proof of Insurance**

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

5. **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.

6. **Workplace Safety & Insurance Board Protection**

- (a) With respect to the WSIB coverage as required under the *Workplace Safety and Insurance Act* (Ontario), the Consultant unconditionally guarantees to Metrolinx

**APPENDIX “A” – GENERAL CONDITIONS  
SCHEDULE D – INSURANCE**

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full compliance with the conditions, regulations and laws relating to workplace safety insurance by itself and by all Subconsultants.

- (a) Without restricting the indemnity obligations of the Consultant in Article 12 of the General Conditions, the Consultant shall produce, at the commencement of this Contract, from time to time as may be required by Metrolinx and prior to issuance of the Final Payment Certificate, a valid Workplace Safety and Insurance Clearance Certificate, issued by the WSIB, for the premium rate class, subclass or group appropriate to the Services.

**[END OF SCHEDULE D]**

**SCHEDULE E  
DISPUTE RESOLUTION**

**1. Bona fide efforts to resolve**

The Parties shall at all times 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**

(a) 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:

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

(b) The Parties acknowledge and agree that the Consultant's compliance with this Section 2 – Continuance of the Services During Dispute shall not operate to waive any claim or contention that the Consultant may have in relation to any Dispute.

**3. Tiered-Dispute Resolution**

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

**4. Negotiation**

(a) In the event a Party issues a Dispute Notice to the other Party, the Vice President, GO Capital Infrastructure at Metrolinx (or if that position no longer exists at the time the Dispute Notice is issued, the person performing an equivalent function) or an authorized representative of the Vice President, GO Capital Infrastructure 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 – Negotiation 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(s) 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

**APPENDIX “A” – GENERAL CONDITIONS**  
**SCHEDULE E – DISPUTE RESOLUTION**

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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 arbitrator(s) may meet in any other place the arbitrator(s) considers necessary for consultation, to hear witnesses, experts or other parties, or for the inspection of documents, goods or other property.
- (h) In addition to the examination of the Parties by each other, the arbitrator(s) may examine, in the ordinary course, the Parties or either of them and the witnesses in the matter referred to the arbitrator(s), and the Parties and witnesses, if examined, shall be examined on oath or affirmation.
- (i) The language of the arbitration shall be English.
- (j) The arbitrator(s) shall, after full consideration of the issues in dispute, the relevant facts and Applicable Law, render a decision as soon as possible and, in any event, shall use all reasonable efforts to render a decision no later than thirty (30) Business Days after argument of the issue to the arbitrator(s), which decision shall be final and binding on the Parties and not subject to appeal or challenge, except such limited relief provided under Section 45(1) (appeal on a question of law, with leave) or Section 46 (setting aside award) of the *Arbitration Act, 1991* (Ontario).
- (k) The costs of the arbitration are in the discretion of the arbitrator(s) who, in addition to any jurisdiction and authority under Applicable Law to award costs, has the jurisdiction and authority to make an order for costs on such basis as the arbitrator(s) consider appropriate in the circumstances.
- (l) The submission to the arbitrator(s), and any award made in pursuance of it, may, at the instance of either of the Parties and without notice to the other of them, be made an Order of the Ontario Court (General Division), pursuant to the *Arbitration Act, 1991* (Ontario) and the *Courts of Justice Act* (Ontario).

**[END OF SCHEDULE E]**



# APPENDIX “B” – CONSULTANT’S SCOPE OF SERVICES

## 1. Abbreviations

(a)	AFP	Alternative Financing Procurement
(b)	AREMA	American Railway Engineering Maintenance of Way Association
(c)	CAD	Computer Aided Design
(d)	CCDC	Canadian Construction Document Committee
(e)	CN	Canadian National Railway Company
(f)	CP	Canadian Pacific Railway Company
(g)	DBFM	Design Build Finance and Maintain
(h)	DRM	Metrolinx’s Design Requirements Manual
(i)	EA	Environmental Assessment
(j)	EMI	Electromagnetic
(k)	EMC	Electromagnetic Compatibility
(l)	EMF	Electromagnetic Frequency
(m)	GTHA	Greater Toronto and Hamilton Area
(n)	ICD	Interface Control Documents
(o)	MOECC	Ontario Ministry of Environment and Climate Change
(p)	OCS	Overhead Contact System
(q)	PEO	Professional Engineers of Ontario
(r)	P.Eng	Professional Engineer
(s)	RER	Regional Express Rail
(t)	RTP	Regional Transportation Plan
(u)	SCADA	Supervisory Control and Data Acquisition
(v)	TPAP	Transit Project Assessment Process as defined in Ontario Regulation 231/08
(w)	UAT	User Acceptance Test
(x)	UP	Union Pearson Express
(y)	USRC	Union Station Rail Corridor

## 2. Definitions

Unless otherwise defined herein, capitalized terms in this Appendix “B” – Consultant Scope of Services, shall have the meanings given to them in Schedule A – Definitions of Appendix “A” – General Conditions.

## APPENDIX “B” – CONSULTANT’S SCOPE OF SERVICES

### 3. Background

- (a) Metrolinx, an agency of the Province of Ontario, Canada, was established through legislation in 2006 as the regional transportation authority for the GTHA. Metrolinx is responsible for developing the Regional Transportation Plan (RTP). The current RTP, known as “The Big Move”, was approved in 2008. Metrolinx owns and operates transit services including GO Transit (a regional public transit service) and UP Express (a service linking downtown Toronto to Pearson International Airport, starting in 2015), as well as a farecard service, PRESTO (in use in the GTHA and Ottawa, Ontario).
- (b) The Province of Ontario has made a 10-year commitment for transportation, which includes a proposal to electrify the GO Transit rail network and increase the frequency of service in their recent provincial budget. This service is known as Regional Express Rail (RER). To support the RER, Metrolinx needs to upgrade the physical capacity of the rail corridors.
- (c) Metrolinx is in the early stages of undergoing a major expansion of rail corridor infrastructure to support the RER initiative. RER is defined as an electrified service with 15-minute frequencies in core areas, with service in both directions, throughout weekdays, in evenings and on weekends. It also includes a mix of all-stop and limited stop service, to meet demand and reduce travel times. It is Metrolinx’s intent that this Program will be performed over the next 10 years.
- (d) In 2010 Metrolinx completed an Electrification study that included a conceptual assessment for the electrification of the entire network including the location of traction power facilities. The facilities required to support the entire network included 7 substations, 17 paralleling stations and 4 switching stations. Building on this Metrolinx initiated an Environmental Assessment (EA) for Electrification for the Union Pearson Express (UP Express).
- (e) In 2014, the UP Express electrification EA was completed. The purpose of the EA was to convert the UP Express service from diesel powered to electric powered trains. The power supply components (i.e., Traction Power Substation) are also subject to a separate EA approval in accordance with the Class EA for Minor Transmission Facilities.
- (f) The studies that have been completed to date by Metrolinx can be found on the GO Transit website at [www.go transit.com/electrification](http://www.go transit.com/electrification). These studies include:
  - (i) UP Express Electrification EA Environmental Project Report;
  - (ii) the Conceptual Design for Kitchener/Lakeshore; and
  - (iii) the Performance Specifications for Electrification.
- (g) GO Transit currently operates rail service on eight corridors. Approximately 80% of the rail network is owned by Metrolinx. The other 20% is owned by freight

## APPENDIX “B” – CONSULTANT’S SCOPE OF SERVICES

railroads. On rail corridors such as Lakeshore West, Kitchener and Richmond Hill, GO/Metrolinx owns a portion of the rail corridor while Canadian National (CN) retains the remainder of the ownership. Canadian Pacific owns the majority of the Milton corridor. The Consultant will be required work with the aforementioned applicable railway companies as part of the Program where necessary.

- (h) Metrolinx currently operates using diesel electric push pull locomotives that are maintained at the Willowbrook Maintenance Facility. There are currently plans to build an East Rail Maintenance Facility. The type of train and maintenance of the trains and electrification infrastructure will need to be determined as part of the strategy for electrifications. This will be required for both the GO trains and UP Express trains.
- (i) Eight corridors in the GO Transit rail network may undergo electrification:
  - (i) Union Station Rail Corridor (USRC);
  - (ii) Lakeshore East (LSE);
  - (iii) Lakeshore West (LSW);
  - (iv) Kitchener/UP Express;
  - (v) Barrie;
  - (vi) Stouffville;
  - (vii) Richmond Hill; and
  - (viii) Milton.
- (j) Metrolinx is in the early stages of undergoing a major expansion of rail corridor infrastructure to support the new Regional Express Rail (RER). Aligning these ongoing expansions of the various corridors with the introduction of electrification on the GO Transit rail network requires a specialized technical team, which will facilitate a successful and seamless transition from diesel to electric propulsion while corridor expansions are underway. The Consultant will be required to coordinate with the other consultants/contractors that will be working on the various RER Programs. It is Metrolinx’s intent that this Program will be performed over the next 10 years.
- (k) It will be a challenge to ensure that the existing infrastructure of rail, signal system, structures, stations, workers, passengers, local residents, etc., are not impacted in a material way during the introduction of an electrified system onto the current network. The Consultant must ensure that a safe and reliable electrification system is developed and implemented.

## APPENDIX “B” – CONSULTANT’S SCOPE OF SERVICES

### 4. Program Overview

- (a) The Consultant and Metrolinx shall develop a comprehensive Program Schedule and Work Plan on an annual basis to identify the portions of the Scope of Services required annually.
  - (i) The Consultant may also be required to deliver discrete independent Tasks, which may be outside of the Work Plan. These specific Tasks will be subject to a Task Plan as defined in Section 2.11 (a) of Appendix “A” – General Conditions.
- (b) The Consultant will be retained to provide direction, support and coordination on a broad range of engineering, environmental and technical services for delivery of a 2x25kV (60 hz) ac system with a 1x25kV (60 hz) spur line delivering power to trains by means of an overhead contact system (OCS), for the ten-year Metrolinx Electrification Program on the GO Transit rail network (the “Program”).
- (c) GO Transit/ Metrolinx requires support and guidance in all aspects of the Program from the retained Consultant. The Consultant will need to have a team that is capable of providing expertise and advice to Metrolinx on such things as procurement strategies, electrification standards/specifications, electrification and railway signal design (preliminary or detailed), environmental assessments, traction power supply/distribution systems, gantries, overhead contact system (OCS), supervisory control and data acquisition (SCADA) systems, grounding and bonding, electromagnetic compatibility (EMC), electromagnetic frequency (EMF), electromagnetic interference (EMI) signal system compatibility, system integration, operations and maintenance, property/real estate, third party coordination, etc.
- (d) The Consultant’s roles in the Program can be divided into the following categories, which are provided for guidance purposes only and not to be taken as a comprehensive list:
  - (i) Program Management  
Refer to Section 5 for more details.
  - (ii) Electrification Design and Engineering Services  
Refer to Section 6 for more details.  
This will include work related to:
    - (A) a peer review of electrification work completed to date;
    - (B) system-wide design standards for electrification;
    - (C) traction power supply (including substations/paralleling stations and switching stations);

## APPENDIX “B” – CONSULTANT’S SCOPE OF SERVICES

- (D) traction power distribution: Overhead Contact System (OCS) design;
  - (E) bridges and/or related civil infrastructure;
  - (F) grounding and bonding;
  - (G) railway signalling systems;
  - (H) SCADA;
  - (I) EMC/interference; and
  - (J) operating & maintenance.
- (iii) EA Approval (including stakeholder relations)
- Refer to Section 7 for more details.
- (A) If necessary, the Consultant will be required to complete a TPAP for the entire GO Transit rail network.
- (iv) Third Party Coordination
- Refer to Section 8 for more details.
- This will be in relation to the following third parties:
- (A) utilities;
  - (B) other rail operators;
  - (C) city/municipalities/regions;
  - (D) Hydro One;
  - (E) GTAA;
  - (F) third party property owners;
  - (G) general public; and
  - (H) other stakeholders.
- (v) Procurement Advice
- Refer to Section 9 for more details.
- The Consultant shall:
- (A) advise on the preferred method;
  - (B) develop terms of reference;
  - (C) evaluate proposals;
  - (D) assist on selecting a preferred constructor; and
  - (E) take into consideration:
    - (I) rolling stock;

## APPENDIX “B” – CONSULTANT’S SCOPE OF SERVICES

- (II) operations & maintenance;
  - (III) maintenance facility;
  - (IV) system safety;
  - (V) budget; and
  - (VI) scheduling.
- (vi) Site Specific / Program Construction Management  
Refer to Section 10 for more details.

### Program Management

#### 5. **The Consultant shall:**

- (a) provide engineering and technical expertise with an experienced and accomplished multidisciplinary team, with extensive knowledge of detailed design and construction related directly to Electrified Railways. Including but not limited to electrical, hydro sub/paralleling stations, OCS, traction power, grounding and bonding, civil, rail, signal systems, structural, mechanical, geotechnical, survey, property, architecture, heritage etc;
- (b) assign a full time Program Manager who will manage the provision of the Services on an ongoing basis. The Program Manager will report directly to Metrolinx and will not be assigned to other consulting projects;
- (c) maintain communications as may be necessary to keep Metrolinx properly informed and up-to-date on the progress of the Services to ensure that issues are addressed in an efficient, effective and timely manner as they arise;
- (d) participate as a leading member of the procurement team, developing and refining the design, and providing the technical components (output specifications, design criteria, reference standards, and Program safety standards) for the procurement documents and the process;
- (e) be responsible for coordinating and interfacing with other disciplines within its own organization and within the Metrolinx organization to perform the Services required for this Program;
- (f) coordinate Design Reviews and technical discussions with Metrolinx, external agencies and authorities and other stakeholders having jurisdiction, including local utilities to obtain compliance;
- (g) arrange, coordinate and chair meetings with Metrolinx, and external authorities in connection with the Program, as required;

## APPENDIX “B” – CONSULTANT’S SCOPE OF SERVICES

- (h) arrange, coordinate, chair meetings and liaise with the GO Maintenance Contractor and/or other contractors working on Metrolinx property and support services as required;
- (i) confirm that the anticipated work can be constructed within the right-of-way and within the time available in a safe and cost-effective manner, and develop strategies to mitigate risk;
- (j) establish processes, tools and Standards required for the management of the Program;
- (k) provide on-going Program status reports;
- (l) provide to Metrolinx a list identifying all the personnel of the Consultant and all Subconsultants assigned to the Program or who are expected to be performing part of the Services; and
- (m) at the discretion of Metrolinx, the Consultant shall provide, manage and maintain office facilities that are to be used as a Joint Program Office for Metrolinx and Consultant staff and will be subject to payment by Metrolinx. Location, cost and other features shall be negotiated between the Consultant and Metrolinx. Acceptance will be at the sole discretion of Metrolinx.
- (n) Work Plan:
  - (i) The Consultant will meet with Metrolinx on an annual basis to negotiate a Work Plan. The Work Plan shall include, but is not limited to:
    - (A) a breakdown of key Tasks and deliverables related to the Services as required by Metrolinx;
    - (B) a schedule which shall provide a timeline of key deliverables and milestones (i.e. progress meetings, public consultation, draft submission for all individual studies, and the final EPR etc.). The schedule shall be provided in hard copy and Microsoft Project soft copy. If any changes related to the schedule occur, the Consultant shall submit an updated schedule to Metrolinx;
    - (C) the Program team, and the roles they will play;
    - (D) risk management procedures and protocols;
    - (E) quality management; and
    - (F) a communications and consultation plan and strategy in accordance with the protocol provided by Metrolinx to the Consultant.
- (o) Program Controls and Document Management
  - (i) The Consultant shall provide Program controls services including:

## APPENDIX “B” – CONSULTANT’S SCOPE OF SERVICES

- (A) produce and maintain a combined schedule for the Program;
  - (B) produce regular consolidated reports, including Work Plan, milestone summary, key issues, assumptions list, risks, benefits, summary of costs incurred;
  - (C) establish and provide ongoing maintenance of the Program Risk Register;
  - (D) assess and quantify delay claims;
  - (E) manage Changes;
  - (F) establish standards, tools and procedures for the management of the Program;
  - (G) provide, manage and maintain appropriate Program management tools including software;
  - (H) review Program processes for compliance with procedures and standards;
  - (I) manage data security, software and license control;
  - (J) supply and maintain electronic web-based documentation management software (Aconex) suitable for the storage, revision control and review of submittals, documentation and correspondence;
  - (K) manage receipt, storage and distribution of all submittals including documentation and product samples in Aconex; and
  - (L) manage the process for review of submittals and product samples in Aconex.
- (b) Coordination of Training
- (i) The Consultant shall provide training coordination services including:
    - (A) co-ordinate with the Contractor to provided training to ensure all operating and maintenance personnel are adequately trained prior to systems being brought into service;
    - (B) oversee the training schedules and availability of training equipment, suitable classrooms, trainers and students; and
    - (C) ensure all internal subsequent training needs have been provided.
- (c) Quality Assurance Services
- (i) The Consultant shall provide quality assurance services including:
    - (A) develop a quality assurance plan for the Program;



## APPENDIX “B” – CONSULTANT’S SCOPE OF SERVICES

- (B) audit and review the Contractor’s quality assurance and following up corrective actions;
  - (C) identify, collect, monitor, and report quality assurance metrics;
  - (D) conduct and participate in the execution of quality assurance activities such as walkthroughs, peer reviews, etc.;
  - (E) implement administrative and procedural activities in a quality system so that requirements and goals for a product, service or activity will be fulfilled;
  - (F) establish a means for systematic measurement and monitoring of processes and an associated feedback loop that confers error prevention; and
  - (G) review the quality control of raw materials, assemblies, products and components, services related to production, and management, production and inspection processes.
- (d) System Integration Services
- (i) The Consultant shall provide System Integration services including:
    - (A) ensure that all mitigation processes are in place to ensure the introduction of the electrification system does not impact the existing train signal system;
    - (B) oversee and support the implementation of the Contractor’s System Engineering Management Plan, System Integration Plan and the Requirements Management Plan;
    - (C) generate regular reports on integration progress and interface resolution issues and risk mitigation;
    - (D) manage production of Interface Control Documents (ICD), produce System level draft and ensure input from the Contractor and third parties as necessary; and
    - (E) identify and propose mitigations for integration risks.
- (e) Safety Assessor Services
- (i) The Consultant shall provide safety assessor services including:
    - (A) provide an independent safety assessment of the entire safety documentation package submitted by the Contractor; and
    - (B) The assessment shall be undertaken at all levels of the system architecture, from system, through subsystem and product to individual software modules and hardware devices and documented.

## APPENDIX “B” – CONSULTANT’S SCOPE OF SERVICES

- (f) Progress Reports and Minutes of Meetings
  - (i) The Consultant shall:
    - (A) chair, record, prepare and distribute, within five Business Days of the meeting date, minutes of all meetings associated with the Services;
    - (B) prepare and submit to Metrolinx an updated “Consultant’s Monthly Status Report” within five Business Days after the reported month. The report shall include a summary of the progress of the Services, identification of unresolved issues, Changes, information required, schedule and cost status; and
    - (C) prepare and submit on a monthly basis the appropriate cost/budget control reports for the Services provided.
- (g) Services and Costs related to External Agencies and Authorities
  - (i) The Consultant shall:
    - (A) provide coordination and administration of the provision of Services necessary to achieve compliance with external agencies and authorities having jurisdiction as required to obtain Approvals for the Program; and
    - (B) obtain and register all applicable licenses and long term support agreements on behalf of Metrolinx.
- (h) Permits and Approvals
  - (i) The Consultant shall:
    - (A) arrange and attend meetings with appropriate authorities necessary and assist Metrolinx and/or the applicable railway authority with permit application and Approvals related to the Program; and
    - (B) assist Metrolinx in obtaining the necessary permits and approvals required for the Program. Services shall include meetings with external authorities and preparation of submittals for approval.
- (i) Key Personnel
  - (i) The Consultant shall employ only skilled staff with experience and qualifications relevant to the proposed Services, under the supervision of a senior staff member to perform the Services contemplated under this Contract.
  - (ii) No Key Personnel on the Consultant’s project team shall be permitted to perform multiple Key Personnel roles.

## APPENDIX “B” – CONSULTANT’S SCOPE OF SERVICES

- (iii) The Consultant shall employ staff for the positions identified in Schedule B of Appendix “A” to perform the Services contemplated herein who possess the experience and qualifications specified.
- (j) Drawings, Diagrams and Documents
  - (i) Any drawings, diagrams and documents provided by the Consultant shall meet the following requirements:
    - (A) Metrolinx’ requirements for design drawings, as contained within the DRM;
    - (B) “Record” design drawings shall be provided on both hard copy and respective computer (CAD) files, as specified herein;
    - (C) all drawings are to be produced and submitted on a CAD system;
    - (D) computer CAD files shall be encoded with the Consultant’s stamp and signature (Storage Media: CD ROM);
    - (E) one (1) hard copy of ‘record’ design drawings shall bear the Consultant’s stamp and signature and be on 11x17 bond paper; and
    - (F) hard copy documents shall be supplied in an appropriate size format and with black text on white background, such that they readily reproduce a clear, sharp and readable image on standard recycled photocopy stock using standard photocopy equipment.
      - 1) Operating System: Windows XP
      - 2) Software Program: MS Office for Windows
      - 3) Font: Times New Roman, 12pt font size
      - 4) Storage Media: CD ROM
- (k) Design Guidelines
  - (i) The Consultant shall:
    - (A) where required, design according to the guidelines are prescribed in the DRM, which has a combination of performance requirements, as well as detailed specifications and standard drawings, for specialty item. Metrolinx may also provide other standard drawings which are not within the DRM;
    - (B) present and work with the Metrolinx Design Review Panel;
    - (C) Web address: [http://www.gosite.ca/engineering\\_public/](http://www.gosite.ca/engineering_public/)
      - (I) User name: engineer
      - (II) Current password: tkzqhzjo

## APPENDIX “B” – CONSULTANT’S SCOPE OF SERVICES

- (D) ensure all designs shall incorporate Metrolinx guiding principles, operational considerations, and customer needs;
  - (E) be familiar with the DRM and any other Standards as required;
  - (F) review specific Site and work conditions to determine potential areas of incompatibility with the Standards set out in the DRM and highlight a need for variance approval from Metrolinx;
  - (G) review the AREMA Manual for Railway Engineering, all applicable CN and CP standards as well as codes, Standards and specifications of authorities having jurisdiction; and
  - (H) verify existing Site conditions by physically visiting the Site and be aware of any obstructions or design considerations which need to be implemented into any design for the Program.
- (I) Work Site Safety
- (i) The Consultant shall be equipped with all appropriate safety wear while on Site for inspections and/or any Site meeting(s). Failure to comply with this requirement shall result in the Consultant’s removal from the Site until the proper equipment is obtained.

### 6. **Electrification Design and Engineering Services.**

The Consultant shall:

- (a) conduct a peer review of all electrification work completed to date;
  - (i) The Consultant’s peer review shall not constitute a Conflict of Interest.
- (b) review and recommend revisions, where necessary, to existing Metrolinx electrification performance specifications, develop new electrification design standards for the network wide system;
- (c) finalize system wide design standards;
- (d) review or complete applicable studies, including but not limited to:
  - (i) System Wide or Corridor Specific Load Flow Analysis/Simulation (Traction Power Supply) based on the RER service plan;
  - (ii) Soil Resistivity; and
  - (iii) EMI, EMF, EMC.

## APPENDIX “B” – CONSULTANT’S SCOPE OF SERVICES

- (e) work with Hydro One (or local power supply source) to determine system power demands and location of substations;
- (f) where required, develop a preliminary design for electrification (including power supply), for all corridors, which will be one of the inputs into the TPAP;
- (g) if required, develop the preliminary electrification design into a detailed design;
- (h) complete a detailed railway signal system design for all corridors to identify upgrades and modifications required to ensure the current signal system will not be impacted in any way with the introduction of the electrification system;
- (i) provide engineering services including the following:
  - (i) technical advice to Metrolinx as required for the following, but not limited to:
    - (A) traction power supply and distribution;
      - (I) Substation
      - (II) Switching Station
      - (III) Paralleling Station
      - (IV) Gantries
    - (B) OCS;
    - (C) Grounding and Bonding;
    - (D) SCADA systems;
    - (E) Railway Track and Signal systems compatibility;
    - (F) EMC; and
    - (G) Infrastructure associated with or affected by electrification.
  - (ii) provide recommendations, as required, on proposed parameters and reviews on the suitability of optional implementation strategies;
  - (iii) prepare Independent Electricity System Operator (IESO) connection application documents, and support Metrolinx negotiation to obtain the necessary approvals;

## APPENDIX “B” – CONSULTANT’S SCOPE OF SERVICES

- (iv) assist in the development standard operating and maintenance practices and procedures for an electrified railway; and
  - (v) ensure at all times that quality assurance, system integration and safety assessor services are considered during any engineering design process.
- (a) System Safety Requirements
- (i) The Consultant shall review and ensure that the Consultant:
    - (A) utilizes safe-by-design engineering principles;
    - (B) takes reasonable steps to ensure that the design minimizes any Person’s exposure to hazards during the life cycle of the Program, at commissioning; during operation, future maintenance and decommissioning, thereafter; and
    - (C) considers and implements applicable railway specific requirements and Standards as required.

7. EA Approval (including stakeholder relations)

The Consultant shall:

- (a) Review relevant existing documentation (Previous EA’s, studies, designs, etc).
- (b) Complete a system wide TPAP for Electrification of the current GO Transit rail network.
- (c) TPAP Requirements
  - (i) The Consultant shall undertake a system wide Environmental Assessment (EA) in accordance with the Transit Project Assessment Process (TPAP; Ontario Regulation 231/08 – Transit Projects and Metrolinx Undertakings) for electrification of all corridors that Metrolinx/GO Transit owns and/or operates on. The system wide Electrification EA would apply to the following corridors:
    - (I) Union Station Rail Corridor (USRC);
    - (II) Lakeshore East;
    - (III) Lakeshore West;
    - (IV) Kitchener/UP Express;
    - (V) Barrie;
    - (VI) Stouffville;

## APPENDIX “B” – CONSULTANT’S SCOPE OF SERVICES

- (VII) Richmond Hill; and
- (VIII) Milton.
- (ii) The TPAP shall be prepared such that it will be eligible to acquire environmental approval for the proposed undertaking an electrified GO Transit rail network.
- (iii) The TPAP shall be prepared such that it will not preclude or contradict work carried out, or completed as part of a Class EA for Minor Transmission Facilities (in accordance with O.Reg. 116/01) for Hydro One Network Incorporated (HONI) projects.
- (iv) With respect to the TPAP, the Consultant shall perform the Services in the categories noted below unless otherwise directed by Metrolinx:
  - (A) The Consultant shall make its own determination of the actual scope and magnitude of the EA to be undertaken for the system wide electrification.
  - (B) The Consultant shall ensure that the Services shall be complete in all respects, and shall ensure that Metrolinx has the ability to continue to the next Phase (design, construction and implementation of an electrified GO rail service) in the process or the project.
  - (C) In accordance with the requirement for a TPAP (or at the discretion of Metrolinx) the Consultant (or Subconsultant) may be required to initiate on any rail corridor one or all of the following studies, but not limited to:
    - (I) Air Quality Study;
    - (II) Noise and Vibration Impact Assessment;
    - (III) Cultural Heritage Reporting;
    - (IV) Archaeology Assessment Reporting;
    - (V) Tree Inventory Plan;
    - (VI) Natural Environment Report;
    - (VII) EMI/EMF/EMC Study or Report;
    - (VIII) Environmental Site Assessment Report(s);
    - (IX) Socio-Economic and Land Use Characteristics; and

## APPENDIX “B” – CONSULTANT’S SCOPE OF SERVICES

- (X) Traffic Impact Analysis.
- (E) The Metrolinx Guideline/standards for each study in the aforementioned list as set forth by Metrolinx will be provided to the winning Consultant.
- (F) All costs associated with the environmental studies, including necessary investigations and analysis for any TPAP related component, shall be borne by the Consultant.
- (v) The system wide electrification EA and all related studies shall evaluate and consider, but not be limited to, the following:
  - (A) Any infrastructure required to electrify the corridors listed above, including the impacts of that infrastructure implementation to Metrolinx/CN/CP/VIA or other rail operator or user and stakeholders. This includes but is not limited to infrastructure or elements such as:
    - (I) Traction Power Facilities and related infrastructure;
    - (II) Overhead Contact System (Catenary system);
    - (III) Gantry Locations;
    - (IV) Duct Banks / Cable Conduit;
    - (V) Road bridge modifications;
    - (VI) Rail bridge modifications;
    - (VII) Rail corridor modifications;
    - (VIII) Utilities, both buried and above grade:
      - 1) includes hydro lines passing over the tracks
      - 2) includes fiber optic passing over the tracks
      - 3) includes utilities running parallel to the tracks
    - (IX) Hydro pole/tower & transmission lines; and
    - (X) EMI/EMF impact assessment.
  - (B) Electrification Performance specifications are online at:
    - 1) <http://www.gotransit.com/electrification/en/default.aspx>
  - (C) Assessing the impacts (aesthetic, social, natural, physical, cultural etc.) associated with the expansion of electrified rail service and the related infrastructure.



## APPENDIX “B” – CONSULTANT’S SCOPE OF SERVICES

- (D) Identification and assessment of the requirements and impacts on the existing and future GO Stations as they relate to electrified rail service.
- (E) Identification of the requirements and impacts on existing and future layovers/maintenance and storage facilities as they relate to electrified rail service.
- (vi) Consultant General Requirements – TPAP:
  - (A) The Consultant shall:
    - (I) Deploy a highly qualified, competent, experienced and accomplished multidisciplinary team capable of undertaking stakeholder engagement and negotiations in collaboration with designated Metrolinx communications staff. A copy of the Standard Communications Protocol will be provided for in Appendix D. The Consultant must adhere to the protocol outlined therein.
    - (II) Review and confirm the accuracy of any relevant documents provided by Metrolinx, The consultant may be subsequently asked to report all discrepancies to Metrolinx. Metrolinx will provide further information and direction necessary to resolve any reported discrepancy.
    - (III) Ensure that the system wide Electrification EA commitments do not contradict the commitments outlined in any previous EAs completed by Metrolinx/GO Transit.
    - (IV) Where necessary, the Consultant shall orient themselves with existing site conditions on the Corridor, and confirm surveys, environmental and geotechnical information and any other information deemed necessary by Metrolinx.
    - (V) Meet with Metrolinx staff, as directed by the Metrolinx Program Manager, to become familiarized with relevant design requirements and operating procedures.
    - (VI) Arrange and meet with external agencies and authorities having jurisdiction and incorporate their requirements into the design, and identify property requirements.
    - (VII) Determine any potential environmental impacts by proceeding with the Program and address any requirements for the mitigation measures in the design phase and

## APPENDIX “B” – CONSULTANT’S SCOPE OF SERVICES

construction tender documents. The Consultant shall incorporate comments and requirements of external agencies and authorities having jurisdiction for environmental mitigation measures.

- (VIII) Ensure that any individual studies required for the EA or for the Environmental Project Report (EPR) are in final draft form before the Notice of Commencement is issued, unless otherwise directed by Metrolinx.
- (IX) Ensure that the Final EPR includes drawings and renderings that best represents the proposed Project and shall be provided in two digital copies and 10 hard copies (on 11 x 17) and shall at a minimum include but not be limited to:
  - 1) The EPR will address all comments provided by the Metrolinx review team.
  - 2) The EPR will have a description of all studies carried out, including a summary of all data collected or reviewed and a summary of all results and conclusions.
  - 3) The EPR will provide a final description of the transit project, including a description of the preferred electrification design method of carrying out the transit project, and a description of the other design methods that were considered.
  - 4) The Consultant will produce copies of the EPR for key stakeholders and for public viewing.
  - 5) Provide a summary report of all actions taken to mitigate any environmental issues that arise during the design and construction stages. These documents shall be submitted to Metrolinx as part of the Contract Close Out.

### **8. Third Party Coordination**

- (a) The Consultant shall support the Metrolinx management team to provide third party coordination services including but not limited to:

## APPENDIX “B” – CONSULTANT’S SCOPE OF SERVICES

- (i) assist in the management of stakeholders during all processes of this Program.
  - (ii) identify any immediate or critical third party challenges that impact the procurement and/or delivery of the Program, including but not limited to GTAA and Hydro One etc.
  - (iii) identify scope of third-party permits, approvals, and agreements required for the Program;
  - (iv) provide immediate and ongoing technical support in developing and implementing a comprehensive strategy for third-party permits, approvals and agreements and assure third-party permits, approvals, and agreements are secured on time to allow construction activities to proceed on schedule;
  - (v) track all and coordinate all applicable third party requirements for the Program (i.e., various municipalities, Conservation Authorities, railways, GTAA, Hydro One, private property etc.).
  - (vi) attend all relevant meetings and provide ongoing support as required to Metrolinx on all third-party strategy or tactics; and
  - (vii) identify and propose mitigations for third party risks.
- (b) Property Services
- (i) The Consultant shall provide property services including:
    - (A) identify any immediate or critical property challenges that impact the procurement and/or delivery of the Electrification Program; and
    - (B) provide immediate and ongoing leadership and support in developing and implementing a comprehensive strategy for property acquisition and to assure that properties are secured on time to allow construction activities to proceed on schedule.
- (c) Utility Services
- (i) The Consultant shall provide utility services including:
    - (A) identify all immediate and/or critical utility risks that impact the procurement and/or delivery of the Electrification Program. Recommend a risk mitigation strategy for these interim risks, and as required, work with the Metrolinx Program Management team

## APPENDIX “B” – CONSULTANT’S SCOPE OF SERVICES

to initiate and coordinate the implementation of the identified strategy.

- (B) provide immediate and ongoing leadership and support in developing and implementing a comprehensive strategy for utilities to assure that utility agreements are secured on time to allow construction activities to proceed on schedule.
  - (C) classify utilities to determine whether major or minor utility relocation are required. In consultation with Metrolinx, meet with identified utility companies to obtain as-built information, including updates and information on future work.
- (d) Develop and Administer Utility Enabling Works Contract(s) (as required)
- (vi) Developing a services and utility work plan, including early enabling works if required;
  - (vii) The Consultant, if required shall provide utility enabling works contract services including:
    - (A) obtain approval from Metrolinx and applicable stakeholders to proceed with recommended utility enabling works, including utility relocation and/or associated field investigation; and
    - (B) develop enabling works contract documents in collaboration with the Metrolinx Program Management team and applicable stakeholders and support administration of the enabling works contract, including but not limited to detailed design, management of contracts, progress monitoring and reporting, risk identification and mitigation.

### 9. Procurement Advice

The Consultant shall:

- (a) Provide advice and recommendations on various procurement methods for the Electrification Program.
- (b) In consultation with Metrolinx develop the scope of work and the necessary procurement documents for one of the following processes:
  - (i) a traditional Design Bid Build (DBB);
  - (ii) Design Build (DB) delivery model; or

## APPENDIX “B” – CONSULTANT’S SCOPE OF SERVICES

- (iii) Alternative Financing and Procurement (AFP) delivery model:
  - (I) Design Build Finance (DBF)
  - (II) Design Build Finance Maintain (DBFM).
- (c) Participate as a leading member of the procurement team, developing and refining the design, and providing the technical components (output specifications, design criteria, reference standards, and Program safety standards) for the procurement documents and the process.
- (d) Developing terms of reference or the output specifications for the Procurement Process.
- (e) Support Metrolinx with the evaluation of proposals.
- (f) Assist Metrolinx with the selection of the preferred contractor.
- (g) The Consultant shall consider, among other items, during the procurement process:
  - (i) the type of rolling stock - coordinate with and assist the GO Rail Fleet and facilities group for equipment procurement of electric multiple units (EMU) or electric locomotives;
  - (ii) operations and maintenance strategies for the electrification infrastructure;
  - (iii) placement and construction of maintenance facilities;
  - (iv) overall system safety;
  - (v) impacts to budget; and
  - (vi) Program Schedule.

### 10. **Site Specific / Program Construction Management**

The Consultant shall:

- (a) Act as an Owner’s representative for construction services, including contract administration.
- (b) Develop and implement a quality assurance program through to and including construction.
- (c) **Testing and Commissioning Services**

## APPENDIX “B” – CONSULTANT’S SCOPE OF SERVICES

- (i) The Consultant shall provide testing and commissioning services including:
  - (A) overseeing the Contractor’s testing and commissioning activities;
  - (B) review and recommend for acceptance all testing and commissioning submittals;
  - (C) witness environmental qualification, FAT, UAT and SAT;
  - (D) attend Contractor’s premises (and their Suppliers’/Subcontractors’ premises) as necessary to complete witnessing of testing activities;
  - (E) oversee the Contractor(s) planning of on-site testing activities ensuring that it meets schedule needs and accommodates other Metrolinx work and minimizes disruption to operational service;
  - (F) ensure track access arrangements are in place for commissioning to take place;
  - (G) ensure safety certification in place and is appropriately signed; and
  - (H) oversee the Operational Performance Testing.
- (d) Customer Service Sensitivity and Considerations
  - (i) The Consultant shall:
    - (A) Ensure that submittals provided by the Contractor reflect Metrolinx’ operational requirements and that Metrolinx services remain fully protected during the Construction period. The Construction shall be staged in order to minimize disruptions to Metrolinx passenger service and other railway activities. Familiarize themselves with the Metrolinx operations by means of on-site visits during various operational conditions.
- (e) Owner’s Representative Services
  - (i) The Consultant shall provide the following Owner’s Representative services:
    - (A) Administer the construction contract including providing monthly status reports, invoices, and managing Subconsultants.
    - (B) Supervise, coordinate, and direct the staff with respect to the administration of this Contract. Coordinate with and report to the

## APPENDIX “B” – CONSULTANT’S SCOPE OF SERVICES

Metrolinx Program Manager. Assure appropriately qualified staff is available in support of the Program, as requested.

- (C) As requested, assist Metrolinx Program Management in the planning and scheduling of Program partnering between Metrolinx design consultants, municipal representatives and officials, Provincial representatives, transit agencies, community groups, private developers, and other stakeholders.
- (D) Perform other tasks as requested by the Metrolinx Program Management team.
- (E) Manage all day-to-day construction activities and be the primary representative to the Contractor. Respond to all Contractor correspondence with assistance from the engineering and Metrolinx staff as necessary.
- (F) Conduct all construction progress meetings and all other contract related meetings. Prepare and distribute minutes for same.
- (G) Resolve day-to-day construction disputes, and assist in claims analysis, mitigation, and resolution.
- (H) Assign inspectors to cover the work of Third Party Contractors. Assure performance and documentation of inspections.
- (I) Monitor the Contractor’s compliance with its own safety program. Ensure that the Contractor is complying with all of the appropriate safety requirements.
- (J) Identify potential change issues and coordinate with the Metrolinx Program Management, assist in the development and track change notices, change orders, negotiate same.
- (K) Review and approve the daily inspection reports of the Contractor, documenting inspection, testing, and job-site activities.
- (L) Approve, modify, or reject progress payment invoices for completed work after quantity checks have been made. Prepare correspondence explaining payment decisions.
- (M) Review and approval of the Contractor’s initial and final detailed baseline construction schedules, and schedule of values, and all monthly updates. Negotiate the same, as required.

## APPENDIX “B” – CONSULTANT’S SCOPE OF SERVICES

- (N) Determine substantial completion and oversee production of contract punch lists and sign-off on work as it is being completed in accordance with the Contract documents.
- (O) Provide weekly and monthly construction progress reports to Metrolinx.
- (P) Complete other Metrolinx required contract close out procedures as required.
- (Q) Ensure that the response to RFIs, submittals, and design changes are fully coordinated and in accordance with the contract.
- (R) Know and apply all plans, specifications, contract documents, submittals, RFI’s, and applicable codes and design standards.
- (S) Inspect all onsite and off-site construction activities for conformance with contract documents.
- (T) Provide input to RFI responses and design interpretations when applicable. Ensure timely responses from the design team on RFI’s and submittals by facilitating communication between the contractor and the design team.
- (U) Complete Inspector’s Daily Reports.
- (V) Identify any work that is not in conformance with the contract documents. Establish and maintain documentation of non-conforming work. Track all corrective measures to resolve any and all nonconforming work.
- (W) Attend and participate in weekly safety tool box meetings conducted by the contractor. Document all issues discussed in these meetings.
- (X) Witness and observe all quality control testing activities conducted by the Contractor. Coordinate the conducting all quality assurance testing.
- (Y) Track and inspect all materials deliveries, storage and protection.
- (Z) Report all unsafe working conditions, and ensure that corrective action is taken.
- (AA) Manage the production of the overall Safety Certification and Safety Case documentation in relation to the Program;



## APPENDIX “B” – CONSULTANT’S SCOPE OF SERVICES

- (BB) Monitor and track all delays and extra work.
- (CC) Take and log construction photos (digital, video, and regular).
- (DD) Perform other inspection services as requested.
- (EE) Maintain as-built drawings, and check the Contractor’s as-built drawings monthly. Provide a line item status on as-built progress in the Program monthly report.
- (FF) Assist in claims analysis and estimates.
- (GG) Perform and coordinate with Metrolinx Program Management on cost-benefit analyses of proposed accelerations, schedule workarounds, and claim mitigation
- (HH) Ensure that all contract issues raised by the contractor are addressed and resolved.
- (II) Conducting System Assurance and Independent Safety Assessment;
- (JJ) Coordinating training of Metrolinx operating and maintenance personnel;

1. Metrolinx Services

Metrolinx shall:

- (a) provide the Consultant with general direction in the provision of the Services;
- (b) designate an individual to act as its Representative (the “**Metrolinx Representative**”), who shall transmit instructions to, and receive information from the Consultant. The Metrolinx Representative will be accountable for all Program expenditures relative to design, procurement and construction activities;
- (c) provide access to and where necessary, make available copies of existing plans, reports, studies, information and correspondence relevant to the Program;
- (d) make available registered land plans, legal documents and surveys, if available, defining the property limits of land affected by the Program, following acquisition. (Note that the Consultant is to determine requirements for initial and additional surveys);
- (e) negotiate and purchase the necessary additional property if required for the Program;
- (f) provide the Consultant with a copy of the Metrolinx Environmental Assessment Class Document and any guidelines and/or assistance regarding the application of the Class Document as it relates to the Program;
- (g) establish Metrolinx Engineering Standards for architectural, civil, mechanical as well as specimen contract documents for the guidance of the Consultant in the design of the Program;
- (h) attend with the Consultant at public presentations and information centres and at liaison meetings with Metrolinx in-house Offices, CN and CP Rail, all affected external, federal, provincial, municipal, utilities and other governing agencies as required to obtain concurrence with design;
- (i) arrange and chair pre-design meeting with Metrolinx architectural, mechanical, electrical and communications engineering disciplines to establish design input and liaison requirements throughout the Program;
- (j) arrange and chair a separate pre-design meeting with the Metrolinx User Group(s) to define operational requirements as related to facility design;
- (k) provide a preliminary Program Schedule outlining required major milestones of the work;
- (l) ensure that all Agreements between Metrolinx and external agencies are executed in a timely manner;

- (m) provide the Consultant with contact names of the individual(s) who shall be representing the railways, regions, municipalities, government agencies or other jurisdictional bodies;
- (n) facilitate arrangements and provisions for the Consultant’s entry to property (public and private) as well as the site of the Program, as necessary to enable it to perform its Services;
- (o) review final contract package prior to Request to ensure that the drawings and specifications have addressed Metrolinx engineering, operational and procedural requirements;
- (p) arrange for public advertisement:
  - (i) for notification of public meeting, E.A. submissions, etc.; and
  - (ii) for Request or request for Request in accordance with Metrolinx’s Procurement & Contract Services Policies and Procedures.
- (q) attend meetings with the Design-Builder as required;
- (r) arrange for necessary services from the applicable railways such as design approvals, inspection and flagging;
- (s) arrange for the necessary information bulletins to inform the public of any potential service disruptions or inconvenience that will occur as a result of the Program;
- (t) ensure that valid change to the contract receive approvals in a timely manner. Final analysis of change(s), based on Consultant’s justification including cost benefit, will be undertaken by Metrolinx prior to approval;
- (u) receive and approve all invoices and payment certificates, submitted by the Consultant or by the Design-Builder through the Consultant; and
- (v) arrange and participate in information and training sessions for Metrolinx Plant Management and applicable user group staff prior to occupancy of the facility.

**DO NOT WRITE IN THIS SPACE**

# APPENDIX “D” – DOCUMENTS

The following documents hereby form part of and are appended to the QBS Document as Appendix “D” – Documents:

<b><u>ITEM NO.</u></b>	<b><u>TITLE</u></b>	<b><u>NO. OF PAGES</u></b>
1	Consultant’s Monthly Status Report .....	1
2	Contractor’s Performance Report .....	3
3	Metrolinx’ Safety Guidelines for Contractors, Consultants and Project Coordinators .....	38
4	Proponent Question And Answer Template .....	2
5	Sample Articles of Agreement .....	5
6	Attachment #1 – Parental Guarantee .....	2

**APPENDIX “D” – DOCUMENTS**  
**CONSULTANT’S MONTHLY STATUS REPORT**

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Page 1 of 1

**NOTE:**

Item No.1 – Consultant’s Monthly Status Report is attached as a separate PDF document entitled:

“Consultant's Monthly Status Report”

**APPENDIX “D” – DOCUMENTS  
CONTRACTOR’S PERFORMANCE REPORT**

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Page 1 of 1

**NOTE:**

Item No. 2 – Contractor’s Performance Report is attached as a separate PDF document entitled:

“Contractor's Performance Report (rev Oct 2011)1”

**APPENDIX “D” – DOCUMENTS  
METROLINX’ SAFETY GUIDELINES FOR  
CONTRACTORS, CONSULTANTS AND  
PROJECT COORDINATORS**

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Page 1 of 1

**NOTE:**

Item No. 3 – Metrolinx’ Safety Guidelines For Contractors, Consultants And Project Coordinators is attached as a separate PDF document entitled:

“Metrolinx’ Safety Guidelines for Contractors, Consultants and Project Coordinators”

**APPENDIX “D” – DOCUMENTS  
PROPONENT QUESTION AND ANSWER  
TEMPLATE**

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Page 1 of 1

**NOTE:**

Item No. 4 – Proponent Question and Answer Template is attached as a separate Excel document entitled:

“Proponent Question and Answer Template”



**APPENDIX “D” – DOCUMENTS  
SAMPLE ARTICLES OF AGREEMENT**

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

B E T W E E N

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

- and -

●

(hereinafter the “Consultant”)

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

1. **Contract**

- (a) The following documents and any amendments relating thereto form the contract between Metrolinx and the Consultant (the “Contract”):
  - (i) these Articles of Agreement;
  - (ii) any Addenda issued hereto;
  - (iii) the Form of QBS;
  - (iv) Attachment #1 – Consultant’s Costs (Fees);
  - (v) the document attached hereto as Appendix “A” and entitled “General Conditions”;
  - (vi) the document attached hereto as Appendix “B” and entitled “Consultant’s Scope of Services”;
  - (vii) the document attached hereto as Appendix “C” and entitled “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 the Services and Description of the Services**

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

- (a) The Consultant shall provide the Services in accordance with Appendix “B” – Consultant’s Scope of Services.
- (b) The Services are to be provided to the satisfaction of the ●, unless otherwise specified.

3. **Estimated Contract Price**

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

- (a) ●

**APPENDIX "D" – DOCUMENTS  
SAMPLE ARTICLES OF AGREEMENT**

**If the Consultant is a corporation:**

||

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

Per: ||

\_\_\_\_\_  
Name:  
Title: |

Per: ||

\_\_\_\_\_  
Name:  
Title: |

I/We have authority to bind the Corporation

**If the Consultant is a partnership:**

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

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

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

Name:  
Title:

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

\_\_\_\_\_  
Name:  
Title: |

**If the Consultant is an individual:**

) ||

**APPENDIX "D" – DOCUMENTS  
SAMPLE ARTICLES OF AGREEMENT**

\_\_\_\_\_ )    |    |  
                  )    |    |  
[Witness ]    ) |    |    |    |  
[            ) |    |    |    |

**If the Consultant is a Joint Venture:**

Joint Venture Participant-in-Charge    |    |  
\_\_\_\_\_  
(Company's Full Legal Name)

Per:    |    |  
\_\_\_\_\_  
Name:    |  
Title:   |

Joint Venture Member    |    |  
\_\_\_\_\_  
(Company's Full Legal Name)

Per:    |    |  
\_\_\_\_\_  
Name:    |  
Title:   |

Joint Venture Member    |    |  
\_\_\_\_\_  
(Company's Full Legal Name)

Per:    |    |  
\_\_\_\_\_  
Name:    |  
Title:   |

**APPENDIX “D” – DOCUMENTS  
SAMPLE ARTICLES OF AGREEMENT**

---

Joint Venture Member

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

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

Name:

Title:

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

**APPENDIX "D" – DOCUMENTS**  
**ATTACHMENT #1**  
**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. QBS-2014- IEP-002 \_\_\_\_\_ 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 Services 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. QBS-2014-IEP-002 \_\_\_\_\_ 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\_.

**APPENDIX "D"**  
**ATTACHMENT # 1**  
**PARENTAL GUARANTEE**

---

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

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

(Signature)

(SEAL)

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

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

I / We have authority to bind the Corporation.