



TORONTO TRANSIT COMMISSION

Request for Supplier Qualification

For Community Relations and Communications Services

PCM REFERENCE NO.: R54AD22456

PROGRAM R54AD22456

August, 2022

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Section 1 – GENERAL

1.1 Introduction

- .1 This Request for Supplier Qualifications (“RFSQ”) is issued by the Toronto Transit Commission (“TTC”). The process set out in this RFSQ (the “RFSQ Process”) will begin with the issuance of this RFSQ and will end, with the identification of the Prequalified Proponents (the “Prequalified Proponents”) that will be eligible to execute a Master Service Agreement for the R54AD22456 Program.
- .2 In this RFSQ, all parties interested in participating in the RFSQ Process are referred to collectively as the “Proponent”. Each Proponent’s submission is referred to as a “Prequalification Submission” or “Submission”. For ease of reference, both prospective Proponents (prior to submission) and Proponents that submit a Prequalification Submission are referred to as “Proponents”.
- .3 It is anticipated that Proponents may form joint ventures in order to submit a Prequalification Submission. Proponents that submit a Prequalification Submission as a joint venture shall be represented by a Proponent Designate for the purpose of this RFSQ Process.
- .4 This RFSQ requires each Proponent to submit the information described in Section 4.9.2.
- .5 The Program to which this RFSQ applies (the “R54AD22456 Program”) is described in Section 2.
- .6 This RFSQ is not a bid or an offer or a request for bids.

1.2 Communications and Consultation Services

- .1 The Toronto Transit Commission is the third largest public transit system in North America servicing some 4.5 million people in the Greater Toronto Area, with a network of subways, streetcars, buses, and specialized paratransit services.
- .2 In order to provide excellent communications and community relations in support of transit construction projects and other initiatives to improve transit across the city, the TTC is seeking to retain a roster of qualified and experienced companies to provide advice, support, development and implementation of public communications and community relations programs on an as required basis through a prequalification process.
- .3 Examples of the type of services required are listed but not limited to sub-item 2.1 below. Services vary in nature and is broken up into 2 categories: Category 1: Community Relations Services and Category 2: Communication Services.
- .4 The TTC is seeking to build a Roster of Vendors, where Vendors can include corporate entities or independent consultants, who have demonstrated capability to undertake communication and consultation requirements on an as needed basis on a variety of projects.
- .5 Proponents may submit a response to one or multiple Roster Scope Areas as defined in Section 2.2. Note, each response **MUST BE SUBMITTED SEPARATELY** to each Scope Area the proponent is submitting a response for.

- .6 Companies on the roster may, at times, be requested to provide services for only one category or both.

Section 2 – THE PROGRAM

2.1 Summary

- .1 “Program” means a variety of Request for Services (RFS) open only to Vendors prequalified under this RFSQ for the R54AD22456 Program, subject to the terms and conditions of those RFSs, which RFSs may consist of single or multi-staff members required to perform duties related to the Work and each RFS may include but is not limited to the requirements detailed in section 2.2 Roster Scope Areas.
- .2 The requirements associated with the communication and consultation services will be communicated and evaluated as part of the respective RFS, including the proposed cost of services.
- .3 Additional prequalified Proponents may be added to the Program, through a similar qualification process, on an annual basis or at any other time as determined by the TTC in its sole discretion.
- .4 In addition to the requirements identified in General Conditions, RFSs issued under the R54AD22456 Program may include, but are not limited to, the provision of the following additional terms, conditions or requirements:
- (a) additional insurance requirements
 - (b) terms and conditions regarding project particular payment terms and retainage,
 - (c) supplementary conditions,
 - (d) terms and conditions regarding key Consultant staff required to be assigned for the duration of specific Contracts.
- .5 It is expected that RFSs may have varying durations under the Program
- .6 Notwithstanding anything contained herein, the TTC has no obligation to issue an RFS under the Program.
- .7 The Vendor has no obligation to submit a bid on a RFS under the Program. While Vendors are not required to submit a bid, in the event TTC does not receive a response to the RFS within the timeframe allotted, it will be TTC’s interpretation that the Vendor (or Vendors) have chosen not to bid for that specific requirement.

2.2 Roster Scope Areas

- .1 The Roster Scope Areas outlined are to include all current and potential projects undertaken by the TTC. For each Roster Scope Area, the Vendor will provide services utilizing and adhering to all processes, procedures and policies under the Contract terms.
- .2 CATEGORY 1 – COMMUNITY RELATIONS SERVICES
- (a) Preparation of communications plans and products to support public consultations.

- (i) Designing and implementing a public consultation plan
- (b) Consultation facilitation (designing and implementing a public consultation program)
- (c) Facilitating individual consultation events (online and in person as required)
- (d) Preparing consultation reports: includes summarizing events, issues raised, questions/answers, recommendations to TTC proposed from Consultant, etc.
- (e) Statistically valid surveying: TTC will advise on the intent for the survey and the Consultant will responsible for employing the necessary tools/techniques, in accordance with industry best practice, to conduct collection of data and perform statistical analysis.
- (f) Online surveys/questionnaires
- (g) Preparing print materials (newsletters, postcards, advertisements, backgrounders, etc.): The Consultant may be asked to collaborate with TTC staff in the development of content and design. The Consultant's main responsibility is the printing of materials.
- (h) Website design – TTC may require the Consultant to create a website for a community relation service related project (e.g. hosting an online survey/poll).

.3 CATEGORY 2 – COMMUNICATION SERVICES

- (a) Translation and interpretation services., including American Sign Language
- (b) Video production (including 3D modeling)
- (c) Statistically valid surveying. TTC will advise on the intent for the survey and the Consultant will responsible for employing the necessary tools/techniques, in accordance with industry best practice, to conduct collection of data and perform statistical analysis.
- (d) Online surveys/questionnaires
- (e) Website design: TTC may require the Consultant to create a website for a community relation service related project (e.g. hosting an online survey/poll).

2.3 Resource Roles and Requirements

- .1 It is anticipated that Work for a defined Roster Scope Area, a team comprising an experienced Project Manager, Strategic Communication Specialist, Public Stakeholder Consultation as well as Engagement Specialist, Public Affairs Specialist, Media Relations and Issues Management Specialist and Internal and Corporate Communications Specialist will undertake the work using the appropriate policies, procedures and processes provided by the TTC.
- .2 Depending on the scope of the future RFS project being reviewed, there may be the need for additional Vendor resources. The specific resource requirements for the Work will be communicated in each respective RFS. TTC may require the use of all Vendor resources or a combination of some to perform the required Work.
- .3 As stipulated in 2.3.12, for the purposes of the evaluation one individual for each requested Consultant Staff position per Category will be evaluated. All additional resource requirements that may be required will be evaluated as part of the respective RFS.
- .4 The Project Manager will be responsible for managing the Consultant's team for all tasks of the project including:
 - Demonstrates approximately 10 years relevant experience;

- Responsibility for managing the Consultant's team for all tasks of the project including;
- Responsibility for the Consultant's performance including the quality of deliverables, cost and schedule;
- Responsibility for communication between the Consultant and the TTC;
- Negotiations and commitments with respect to the Consultant's contractual issues with the TTC and billings;
- Attends meetings with TTC staff as required.

.5 Strategic Communication Specialist:

- Demonstrates approximately three years' relevant experience;
- Researching, verifying, writing and editing information related to assigned projects;
- Develop and produce communications materials such as: briefing decks, news releases, presentations, key messages, employee notices, social media and website content, online mapping, signage, graphics and brochures, videos, 3D animation.

.6 Public and Stakeholder Consultation as well as Engagement Specialist:

- Demonstrates approximately three years' relevant experience;
- Implementing and maintaining programs for effective, proactive communication and outreach with affected stakeholders on major construction projects with significant community impacts;
- Conducting background research and other information gathering;
- Demonstrated experience consulting equity seeking communities, including but not limited to anti-racism initiatives;
- Working with engineering teams to explain technical information in clear language via public presentations, various written/graphic materials, video, surveys, 3D graphics
- Facilitating in person and virtual public meetings;
- Identifying and mitigating issues related to construction through specific recommendations to engineering and construction personnel.

.7 Public Affairs Specialist:

- Demonstrates approximately three years' relevant experience;
- Comprehensive understanding of communication and public affairs principles;
- Experience developing and executing marketing and branding campaigns.

.8 Media Relations and Issues Management Specialist:

- Demonstrates approximately three years' relevant experience;
- Strong knowledge of communications, journalism and public relations concepts, principles and techniques.

.9 Internal and Corporate Communications Specialist:

- Demonstrates approximately three years' relevant experience;
- Require a high level of knowledge related to communications in a corporate environment, specifically in a heavily unionized environment in the public sector.

.10 Further, at the discretion of TTC, multiple Vendors may be required to work together on a single project.

- .11 Proponents are encouraged to submit a Proposal to one or multiple Roster Scope Areas. Proponents can submit the same Individuals to multiple Roster Scope Areas if they have the relevant experience and meet the requirements for the specific Roster Scope Area. It is recommended that Proponent responses demonstrate the appropriate qualifications, experience and competencies required when responding to the relevant Roster Scope Areas.
- .12 For the purposes of the evaluation, Proponents should only propose one individual for each requested Consultant Staff position. Proponents should not include additional staff members with their Proposal submission.
- .13 The TTC will review all individuals proposed and select those who meet the requirements and criteria for the specific Roster Scope Area.
- .14 The Vendor must have the resources or the capability to obtain sufficient staff that are subject matter experts in related fields for the services required that are able to perform similar tasks as the positions identified above.
- .15 TTC reserves the right to request the Vendor to replace a staff working on a project in the event TTC considers the performance not meeting expectations. The replacement staff must possess equivalent or better qualifications, experience and capabilities as previously accepted/approved Consultant Staff, subject to TTC approval.

2.4 Scope of Work

- .1 The anticipated, typical Work requirements for all Roster Scope Areas are as defined in 2.2
- .2 Approach and Deliberables
 - (a) The Consultant will work under the direction of the Chief of Corporate Affairs, TTC.
 - (b) The Consultant may be required to present to TTC's senior management and other groups as appropriate.
 - (c) The Consultant will provide a report at the conclusion of each Work Assignment detailing the work conducted, the findings, conclusions and recommendations.
- .3 TTC Services
 - (a) The TTC will provide the information, services, and forms for use by the Consultant on an as required basis. All information to be supplied by the TTC shall be provided on a mutually agreed upon schedule.
- .4 Project Review Meetings
 - (a) The Consultant will attend progress review meetings as required with the TTC's Representative.
 - (b) Within five business days after each meeting the Consultant shall submit a copy of draft meeting minutes for review and comment by the TTC. Following the incorporation of the TTC's comments submit an electronic copy of the final meeting notes and distribute to all applicable parties.
- .5 Term of Contract

- (a) The term of the the MSA agreement shall be up to three (3) years after the Notification of Award.
- (b) The term/duration of each project per the RFS process will not exceed a maximum of three (3) years.

Section 3 – PROCUREMENT PROCESS AND IMPLEMENTATION OVERVIEW

3.1 Overview

The procurement of the RFSQ will take place in the following stages:

(a) Stage 1 – Prequalification Stage

The prequalification stage (the “Prequalification Stage”) is intended to identify the Prequalified Proponents that meet the requirements of this RFSQ and will be eligible to join the roster of prequalified Vendors and bid on future RFS under the R54AD22456 Program. The Prequalification Stage is a stand-alone and independent stage that is complete once the Prequalified Proponents are identified by the TTC.

(b) Stage 2 – Master Service Agreement Execution and Insurance Approval Process

During the master service agreement execution and insurance approval process stage, the TTC will notify the Prequalified Proponents and issue a copy of Appendix G - Master Service Agreement to be executed. Upon execution of the Master Service Agreement, Prequalified Proponents must submit evidence of insurance in accordance with Section 5 of Appendix G - Master Service Agreement and Supplementary Conditions for review & approval by the TTC. TTC reserves the right to, and the Prequalified Proponents expressly agree that TTC may, commence or complete Stage 2 for any Prequalified Proponent before, after or concurrently with commencing or completing Stage 2 for any other Prequalified Proponent.

(c) Stage 3 – RFS Issuance and Submission

During the RFS stage (the “RFS Stage”), the TTC may issue Requests for Services to the roster of prequalified Vendors for the performance of work in accordance with the terms and conditions of such RFS and the Master Service Agreement. TTC will award a R54AD22456 Agreement to the successful Vendor through the issuance of a purchase order.

3.2 Timetable for RFSQ Process

- .1 The timetable for the RFSQ Process is set out below (the “Timetable”). Additional dates subsequent to the completion of the RFSQ Process have also been set out in the Timetable for the convenience and information of Proponents. All dates set out in the Timetable relating to the period and activities following the RFSQ Process are approximate and subject to change.

Activity	Timeline
RFSQ Submission Deadline	As identified in Section 4.3.2
Notification of Prequalified Consultants	Tentatively Q4 2022

Section 4 – INSTRUCTIONS TO PROPONENTS

4.1 Obtaining the RFSQ Documents

- .1 This RFSQ is available through Bonfire, the electronic tendering system. For further information or questions concerning submitting through Bonfire should be addressed to Support@GoBonfire.com for technical questions related to the submission. Proponents can also visit the help forum at <https://bonfirehub.zendesk.com/hc>.
- .2 A Proponent who has not obtained this RFSQ through Bonfire may have its RFSQ disqualified unless a third party has requested this RFSQ from Bonfire on that Proponent's behalf and has identified to Bonfire and the Senior Sourcing Specialist, that it is a third party obtaining the RFSQ Documents on behalf of a named potential Proponent.
- .3 It is the responsibility of each Proponent to carefully examine the RFSQ Documents and all issued communications from Bonfire and the TTC and to seek clarification from the Senior Procurement Specialist or their designate on any matter it considers to be unclear. The TTC shall not be responsible for any misunderstanding on the part of a Proponent concerning the RFSQ, the RFSQ Documents or the RFSQ Process to be followed by the TTC. Each Proponent is requested to report any errors, omissions or ambiguities in the RFSQ documents to the TTC. If a Proponent has a question or wishes to seek clarification, the Proponent shall direct questions or seek additional information or clarifications from the Senior Procurement Specialist or their designate in accordance with Section 4.4.2.
- .4 The TTC may add, delete or amend the documents posted to Bonfire at any time during the RFSQ Process in accordance with Section 4.6.
- .5 The TTC shall not be responsible for any technical malfunction or other problems of or affecting any communications network or service, computer systems, servers or providers, or computer equipment.

4.2 RFSQ Documents

- .1 The RFSQ Documents consist of the following documents:
 - (a) This Request for Pre-Qualifications;
 - (b) Appendix A – Declaration Form;
 - (c) Appendix B – Joint Ventures;
 - (d) Appendix C – Corporate Summary Form;
 - (e) Appendix D – Proposed Project Key Staff Summary Form;
 - (f) Appendix E – Unit Rates by Position;
 - (g) Appendix F – Reference Check Questionnaire;

- (h) Appendix G – Master Service Agreement;
 - (i) Schedule A – General Conditions
 - (ii) Schedule B – Supplementary Conditions
 - (i) Addenda, if any,
- together, the “RFSQ Documents”.

4.3 RFSQ Submission Deadline and Late Submissions

- .1 The Proponent is solely responsible for ensuring that its Prequalification Submission is complete and correct and for ensuring that it is received by the TTC no later than the date and time set out below (the “RFSQ Submission Deadline”). Proponents shall submit their Prequalification Submissions through the use of TTC’s Bonfire Public Portal to the address set out below (the “Bonfire Public Portal”) on or prior to the RFSQ Submission Deadline. Failure to complete the documents fully or to provide all required documents and other information may result in a submission being rejected or in the Proponent being considered non-compliant.
- .2 Prequalification Submissions will be received by the TTC through the use of TTC’s Bonfire Public Portal below:

RFSQ Submission Deadline	September 20, 2022 at 2:00:00 pm (Toronto Time)
Bonfire Public Portal	https://ttc.bonfirehub.ca/opportunities/56673

- .3 The TTC will not accept Prequalification Submissions sent by facsimile, electronic mail, telex or other telegraphic means.
- .4 It is the sole responsibility of each Proponent to make sure that its Prequalification Submission is delivered to the Bonfire Public Portal on or prior to the RFSQ Submission Deadline.
- .5 Proponents should note the type and the number of files allowed for submission. The maximum upload file size is 1000MB (1GB) per file. Uploading large documents may take significant time, depending on the file size and internet connection speed. It is strongly recommended that Proponents allow sufficient time before the submission deadline to upload documents and finalize their submissions. The documents should not be embedded within the uploaded files, as they will not be accessible or evaluated.
- .6 Questions concerning submitting through Bonfire should be addressed to Support@GoBonfire.com for technical questions related to the submission. Proponents can also visit the help forum at <https://bonfirehub.zendesk.com/hc>.

4.4 Senior Procurement Specialist

- .1 For the purpose of this RFSQ Process, Proponents are permitted to contact only Robert Leonardis or his designate (the “Senior Procurement Specialist”) in respect of this RFSQ Process.

- .2 All inquiries or requests for additional information during the RFSQ Process must be directed to the Senior Procurement Specialist by e-mail at Jonathan.Cheng@ttc.ca or any other person designated as the Senior Procurement Specialist from time to time.

4.5 Inquiries

- .1 Proponents shall submit all inquiries or requests for additional information with respect to the RFSQ, the RFSQ Process, (each an "Inquiry") to the Senior Procurement Specialist, by e-mail. The TTC intends to provide all Inquiries and the associated responses (without identifying the Proponent that submitted the Inquiry) to all prospective Proponents through Bonfire.
- .2 Any Proponent that has questions or concerns as to the meaning of any part of this RFSQ or who believes that the RFSQ contains any error, inconsistency or omission, must submit its questions or concerns, in writing as an Inquiry, to the Senior Procurement Specialist in accordance with Section 4.5.1.
- .3 The TTC shall attempt to respond to all Inquiries received no less than five (5) Business Days prior to the RFSQ Submission Deadline. No assurances are given by the TTC that responses will be made to Inquiries received after that time. If a Proponent does not receive an acknowledgement of an Inquiry, the Proponent should resubmit the Inquiry.
- .4 This RFSQ shall only be amended by Addendum issued in accordance with Section 4.6. Any oral or written response provided by the TTC in connection with this RFSQ will neither be binding on the TTC nor will it change, modify, amend or waive the requirements of this RFSQ in any way.
- .5 The TTC will acknowledge receipt of all Inquiries, but may, in its discretion, decide not to respond to any Inquiry. The TTC will endeavour to respond to Request for Information in a timely manner and will notify a Proponent if it does not intend to respond.
- .6 The following provisions shall apply to any communications with the Senior Procurement Specialist, or the delivery of documents to the Senior Procurement Specialist, by email where such email communications or delivery is permitted by the terms of this RFSQ. The TTC does not assume any risk or responsibility or liability whatsoever to any Proponent:
- (a) for ensuring that any electronic email system being operated for the TTC is in good working order, able to receive emails, or not engaged in receiving other emails such that a Proponent's email cannot be received; and/or
 - (b) if a permitted email communication or delivery is not received by the Senior Procurement Specialist, or received in less than its entirety, within any time limit specified by this RFSQ.
- .7 All permitted email communications with, or delivery of documents to, the Senior Procurement Specialist will be deemed as having been received by the Senior Procurement Specialist on the dates and times indicated on the Senior Procurement Specialist's electronic equipment or by the clock used by the Senior Procurement Specialist for that purpose.

4.6 Addenda

- .1 During the RFSQ period, any changes to the RFSQ Documents will be made by the issuance of an Addendum which will be posted electronically on the Bonfire website (<https://ttc.bonfirehub.ca/opportunities/56673>) or by other appropriate means such as email,

facsimile or courier. The onus is on the Proponent to ensure it has received all Addenda related to this RFSQ.

- .2 No statement, whether oral or written, made by the TTC or its Representatives (whether orally or in writing) shall be deemed or construed to add to, subtract from or otherwise amend the RFSQ Documents unless issued as an Addendum in accordance with this Section 4.6.
- .3 A written Addendum will be issued in the form of complete replacement pages, which are to be inserted in the RFSQ Documents, discarding the replaced pages. Each affected page is marked at the bottom with the Addendum number. Revisions for modified or added text are indicated by highlighting that text by the use of bold italicized attributes. If spill-over to the next page occurs as a result of added text, the pages affected will be issued in the form of complete replacement pages and the latest Addendum number will be marked on the bottom of the affected page(s). Revisions for deleting the text of an entire Section or Article or an entire Part, Paragraph and/or Subparagraph are indicated by inserting the bracketed word “(Deleted)” in bold italicized attributes adjacent to the Article, Paragraph and/or Subparagraph number or at the beginning of the deleted Article, Paragraph and/or Subparagraph. Deleted words in a sentence will be indicated by highlighting the entire revised sentence in bold italicized attributes and deleted sentences in a Paragraph/Subparagraph will be indicated by highlighting of the entire revised Paragraph and/or Subparagraph in bold italicized attributes. If a subsequent Addendum affects a page that has previously been revised, the bold and italicizing attributes will be removed from the previously changed text and only the modified text of the latest Addendum will be highlighted by the use of bold italicized attributes and only the latest Addendum number will be marked on the bottom of the affected page(s). A new added Section will be marked by the word “NEW” in the centre of the Section header and the header will be in bold italicized attributes.

4.7 Process for Revising Prequalification Submissions

- .1 At any time prior to the RFSQ Submission Deadline, a Proponent may withdraw or revise their Prequalification Submission following the steps described under the help forum at <https://bonfirehub.zendesk.com/hc>.
- .2 A Proponent wishing to amend its Prequalification Submission after it has been submitted is permitted to do so only prior to the RFSQ Submission Deadline. To carry out such an amendment to its Prequalification Submission, a Proponent shall:
 - (a) Withdraw its Prequalification Submission by deleting its entire Prequalification Submission on Bonfire prior to the RFSQ Submission Deadline; or
 - (b) Submit a revised Prequalification Submission prior to the RFSQ Submission Deadline in the same manner specified in Section 4.3.2.
- .3 Subject to Section 4.7.2, a Prequalification Submission may not be otherwise withdrawn or amended. No Prequalification Submission may be withdrawn after RFSQ Submission Deadline.
- .4 Any Prequalification Submission submitted later than the RFSQ Submission Deadline shall not be accepted by Bonfire.

4.8 Prequalification Submission Property of the TTC

- .1 All Prequalification Submissions will become the property of the TTC once submitted and will not be returned to the Proponents.

4.9 Prequalification Submission Instructions and Contents

- .1 Proponents should not submit any information other than what is specifically identified in Section 4.9.2. Proponents should not submit resumes or promotional materials as part of their Prequalification Submission.
- .2 Proponents shall prepare their Prequalification Submissions in English. Proponents are requested to structure their Prequalification Submission as follows:
 - (a) Appendix A – Declaration Form;
 - (b) Appendix B – Joint Ventures (if applicable);
 - (i) each joint venture member shall demonstrate its authorization of the Proponent Designate by submitting a power of attorney, or similar document, signed by a legally authorized representative of the Proponent Designate and each joint venture member stating that the Proponent Designate is authorized by the joint venture member to incur liabilities and receive instructions for and on behalf of the joint venture member;
 - (c) Appendix C – Corporate Summary Form
 - (d) Appendix D – Proposed Project Key Staff Summary Form
 - (e) Appendix E – Unit Rates, by Position

4.10 Intellectual Property

- .1 By submitting a Prequalification Submission, Proponents will represent and warrant that they have the sole and unrestricted right, title and interest or good and sufficient power, authority and right to use any intellectual property they require for performance of their obligations pursuant to this RFSQ and will pay all applicable fees associated with the use of such intellectual property including any required licence fees and royalties.

Section 5 – RFSQ EVALUATION PROCESS

5.1 Evaluation Process

- .1 The TTC reserves the right, at its sole discretion, to refuse to consider or evaluate any Prequalification Submissions where a Proponent currently has an unsatisfactory “Contractor Performance Review” rating for any previous or on-going contracts with TTC, the City of Toronto or any of the City of Toronto's Agencies, Boards, Corporations where restrictions for submitting bids or proposals have been identified.
- .2 TTC reserves the right to, and the Proponents expressly agree that TTC may, evaluate the Prequalification Submissions in any order or sequence it determines, in its sole discretion, including, but not limited to:
 - (a) evaluation of any Step of Section 5.1.3 stated below of any Proponent's Prequalification Submission before, after or concurrently with evaluation of any Step of Section 5.1.3 below of any other Proponent's Prequalification Submission.
- .3 The TTC will evaluate the Prequalification Submissions in accordance with the following steps:

(a) Step 1 - Mandatory Requirements

The Prequalification Submissions will be reviewed to determine whether they comply with the Mandatory Requirements. The Mandatory Requirements for this RFSQ are the receipt of completed:

(i) Appendix A - Declaration Form, signed by the Proponent or the Proponent Designate (if applicable); and

(ii) Appendix B – Joint Ventures, if applicable;

1 each joint venture member shall demonstrate its authorization of the Proponent Designate by submitting a power of attorney, or similar document, signed by a legally authorized representative of the Proponent Designate and each joint venture member stating that the Proponent Designate is authorized by the joint venture member to incur liabilities and receive instructions for and on behalf of the joint venture member;

(iii) Appendix C – Corporate Summary Form

1 As defined in 5.1.3 (c) (ii)

(iv) Appendix D – Proposed Project Key Staff Summary Form

1 As defined in 5.1.3 (c) (iii)

(v) Appendix E – Unit Rates, by Position

(b) Step 2 - Rectification Period

(i) The TTC reserves the right to give Proponents an opportunity to rectify deficiencies, including but not limited to, their Mandatory Submissions, Appendix A – Declaration Form, Appendix B – Joint Ventures, if applicable, Appendix C – Corporate Summary Form, Appendix D – Proposed Project Key Staff Summary Form, and in order to fill any gaps such as, including but not limited to, missing signatures on Mandatory Requirements, failure to include any Mandatory Requirements with the Prequalification Submission, or failure to include information required for the evaluation of a Prequalification Submission in accordance with Step 1 above.

(ii) As part of Step 2 – Rectification Period, the TTC reserves the right to schedule meetings with Proponents to discuss the rectification process outlined in the rectification notice. The minutes of the meeting will be available to all Proponents via Bonfire or by other appropriate means such as email, facsimile or courier.

(iii) The Rectification Period will be identified in the TTC's rectification notice and will begin to run from the date and time that the TTC issues its rectification notice to the Proponent(s).

(iv) A Prequalification Submission that does not meet the Mandatory Requirements at the end of the Rectification Period will not be evaluated any further. Proponents are encouraged to provide all other information requested within the Rectification Period identified in the TTC's notice, as failure to provide the information as requested will affect the Proponent's overall rating.

(c) Step 3 – Review of Proponents Corporate and Staff Experience and Qualifications

- (i) Only Proponents that are deemed compliant with Stage 1 will qualify to be evaluated further.
- (ii) Proponents are required to provide responses, which shall be limited to a maximum of sixteen pages in length to the criteria defined in Appendix C – Corporate Summary Form for Category 1 and/or Category 2 including;
 - 1 Background and Capabilities;
 - a) Describe the Proponent’s experience related to the required Work; include examples of past/current projects of similar nature to scope of work that demonstrate capabilities
 - 2 Number of Years in Business;
 - 3 Depth of Available Relevant Resources at Proponent’s Office;
 - a) e.g. List of people and/or positions years of experience at the Proponent’s office who will make up the resource pool assigned to this contract to work on as required basis, in accordance with Section 2 – The Program.
 - 4 Relevant Corporate Experience by Project
 - a) Proponent to provide information within the last ten years and is strongly encouraged to describe up to a maximum of five projects of a similar size and nature as described in Section 2 – The Program, including the following
 - i) Project/Contract Name and Location
 - ii) Client Reference
 - iii) Project/Contract Person-Hours
 - iv) Project/Contract Duration
 - v) Description of the Project/Contract
 - vi) Description of Services Provided
 - vii) Contractor Fees CDN\$
- (iii) Proponents are required to provide responses, which shall be limited to a maximum of eight pages in length for each position listed, found within Appendix D – Proposed Project Key Staff Summary Form for Category 1 and/or Category 2 including;
 - 1 Project Manager
 - a) Number of Years of Related Working Experience
 - b) Number of Years of Direct [i.e. project mgmt] Experience

- c) Technical Qualifications: Describe and explain experience and qualification in meeting expectations with fulfilling the roles and responsibilities as described in Section 2.2 to 2.4.
 - d) Relevant Corporate Experience by Project: Proponent to provide information within the last ten years and is strongly encouraged to describe up to a maximum of three projects of a similar size and nature as described in Section 2.2 to 2.4.
- 2 Strategic Communication Specialist
- a) Number of Years of Related Working Experience
 - b) Number of Years of Direct [i.e. Strategic Communication] Experience
 - c) Technical Qualifications: Describe and explain experience and qualification in meeting expectations with fulfilling the roles and responsibilities as described in Section 2.2 to 2.4.
 - d) Relevant Corporate Experience by Project: Proponent to provide information within the last ten years and is strongly encouraged to describe up to a maximum of three projects of a similar size and nature as described in Section 2.2 to 2.4.
- 3 Public and Stakeholder Consultation as well as Engagement Specialist
- a) Number of Years of Related Working Experience
 - b) Number of Years of Direct [i.e. Consultation and Engagement] Experience
 - c) Technical Qualifications: Describe and explain experience and qualification in meeting expectations with fulfilling the roles and responsibilities as described in Section 2.2 to 2.4.
 - d) Relevant Corporate Experience by Project: Proponent to provide information within the last ten years and is strongly encouraged to describe up to a maximum of three projects of a similar size and nature as described in Section 2.2 to 2.4.
- 4 Public Affairs Specialist
- a) Number of Years of Related Working Experience
 - b) Number of Years of Direct [i.e. Public Affairs] Experience

- c) Technical Qualifications: Describe and explain experience and qualification in meeting expectations with fulfilling the roles and responsibilities as described in Section 2.2 to 2.4.
 - d) Relevant Corporate Experience by Project: Proponent to provide information within the last ten years and is strongly encouraged to describe up to a maximum of three projects of a similar size and nature as described in Section 2.2 to 2.4.
 - 5 Media Relations and Issues Management Specialist
 - a) Number of Years of Related Working Experience
 - b) Number of Years of Direct [i.e. Media Relations and Issues Management] Experience
 - c) Technical Qualifications: Describe and explain experience and qualification in meeting expectations with fulfilling the roles and responsibilities as described in Section 2.2 to 2.4.
 - d) Relevant Corporate Experience by Project: Proponent to provide information within the last ten years and is strongly encouraged to describe up to a maximum of three projects of a similar size and nature as described in Section 2.2 to 2.4.
 - 6 Internal and Corporate Communications Specialist
 - a) Number of Years of Related Working Experience
 - b) Number of Years of Direct [i.e. Corporate Communications] Experience
 - c) Technical Qualifications: Describe and explain experience and qualification in meeting expectations with fulfilling the roles and responsibilities as described in Section 2.2 to 2.4.
 - d) Relevant Corporate Experience by Project: Proponent to provide information within the last ten years and is strongly encouraged to describe up to a maximum of three projects of a similar size and nature as described in Section 2.2 to 2.4.
- (d) Step 4 – Pricing Stage
 - (i) In accordance with sub-item 5.1.4 – Prequalification Submission and Acceptance of Section 00 21 00, only the completed Pricing Information with respect to the unit rates identified on Appendix E – Unit Rates by Position, of shortlisted Proponents will be considered following completion of the qualitative evaluation. All prices or rates shall be stated in Canadian funds. Proponents may submit pricing for Category 1 and/or Category 2.

- (e) Step 5 - Notification to Proponents
 - (i) The qualitative score and the pricing score are totalled and then ranked. The Proposal with the highest number of points out of 100.00 for each category will be included on the respective roster. Up to 5 Vendors (ranked top 5) may be included on the respective roster.
 - (ii) The Senior Procurement Specialist will contact all Proponents to inform them whether or not they have been determined to be Prequalified Proponents. The TTC will publish the results of the prequalification on MERX or Bonfire.
 - (iii) Proponents may be included in a roster for Category 1 or Category 2 or Category 1 and Category 2 depending on their ranking respective to each category.

.4 Prequalification Submission and Acceptance

- (a) The evaluation of Prequalification Submissions shall be based on any or all of the following:
 - (i) The information submitted by the Proponents as requested and completeness thereof.
 - (ii) The Proponent's performance rating with respect to previous TTC contracts
 - (iii) The Proponent's performance on current on-going work assignments with the TTC
 - (iv) Compliance with all mandatory submission requirements, if applicable, including the requirements identified as pass/fail. If the Proponent fails on any of the mandatory submission requirements, their Prequalification Submission shall be deemed to be not acceptable and will not be evaluated further.
 - (v) The TTC will review and evaluate the Prequalification Submissions of all Proponents who are considered acceptable after Step 1 – Mandatory Requirements. The evaluation will be based on the following criteria and associated weighting:
 - 1 Corporate Summary Form (20 Points)
 - 2 Proposed Key Staff Summary Form (50 Points)
 - (vi) Proponents who score a minimum of 49 points out of 70 points (70%) or greater shall be considered a qualified to move onto the pricing stage.
 - (vii) Upon completion of the evaluation of the Corporate Qualifications and Project Team Qualifications/Experience of the Proponents, only then will the "Pricing Information" be considered as a factor in the evaluation and selection process. The pricing will be opened only for those Proposals considered qualified achieving a total minimum of 49 points out of the maximum 70 (70%) points available for the qualitative evaluation. The pricing evaluation will be based on the following major criterial and associated weighting:

Appendix E – Unit Rates by Position (30.00 points)

- Composite AIHBR - 30.00 points.

The pricing component for each such Proposal will then be evaluated to determine a total Proposal score as follows:

- .1 For Appendix E – Unit Rate by Position, the AIHBR for each position will be added together and divided by three (3) for Category 1 and divided by four (4) for Category 2, to get the average AIHBR for the respective categories. The TTC reserves the right to correct mathematical errors for evaluation purposes. The average hourly rate for each Proposal shall be awarded pricing points as follows:

The Proposal with the lowest average AIHBR will receive the maximum 30.00 pricing points available and the balance of the Proposals will receive pricing points in accordance with the following formula:

The lowest average AIHBR rate divided by the average AIHBR multiplied by the total number of pricing points available.

For example:

lowest average AIHBR	\$100.00
2 nd lowest average AIHBR	\$125.00
maximum pricing points	30.00

Therefore, the lowest average AIHBR of \$100.00 automatically receives 30.00 points – the maximum amount of price points available.

The Proponent with an average AIHBR of \$125.00 receives price points as follows:

\$100.00 divided by \$125.00 multiplied by 30.00 which equals 24.00 points.

- (viii) A successful proponent can submit additional staff after they have been successfully pre-qualified within the Roster Scope Area and executed the Master Service Agreement. Future proposed staff will be evaluated against the minimum requirements and evaluation criteria identified in this document and must achieve a score of 35 out of 50 (70%) or greater in their respective scope areas to be included in the Consultant staff list, if applicable.
- (ix) The Proponent shall be deemed to have accepted all terms and conditions of the RFSQ Documents unless explicitly excepted or qualified in its Submission. Any exception as defined in the Commission's Procurement Policy, to the RFSQ Documents requirements, may render the Submission unacceptable. The Commission's Procurement Policy and list of common "Bid Irregularities" are located on the TTC Web site at: www.ttc.ca/TTC_Business/Materials_and_procurement/Bid_Irregularities.jsp. At

its discretion, the TTC reserves the sole right to clarify the submission of a Proponent in order to satisfy itself as to the intent of the Submission.

- (x) The TTC's right to accept or reject any Submission or to cancel this RFSQ at any time prior to the Notification to Proponents, is expressly reserved without liability to the TTC. The Proponent shall bear all costs and expenses incurred by itself relating to any aspect of its participation in this RFSQ, including but not limited to, the Proponent's involvement in:
 - 1 the preparation, presentation and submission of its Prequalification Submission;
 - 2 attendance at a Pre-Bid Meeting or any other meeting with the TTC, if applicable;
 - 3 due diligence on any information gathering processes.
- (xi) The TTC is under no obligation to the Proponents to accept any Submission from Proponents that have an unsatisfactory "Contractor Performance Review" rating or which had contracts with the TTC which were terminated for default or from Proponents that have previously been given a "Notification of Award" of contract by the Commission and defaulted in proceeding with the work of the contract; or any Proponent that has submitted false or misleading disclosure of Lobbying; or non-disclosure of Lobbying by the Proponent. The TTC also is under no obligation to accept any Submission with whom an officer or director of that Proponent has been an officer or director of a company/consultant that has previously received an unsatisfactory performance rating, or has had a TTC contract that was terminated for default or has been given a "Notification of Award" of contract by the TTC and defaulted in proceeding with the work of the Contract.
- (xii) The Proponent understands and agrees that the TTC may, if deemed necessary, verify any information provided in the Submission. In addition to the references provided by the Proponent, the TTC reserves the right to use its own experiences with the Proponent in previous contracts to evaluate the Proponents performance

5.2 Clarifications

- .1 During the evaluation of Prequalification Submissions the TTC may, in its sole discretion, request that any Proponent provide clarification of any part of its Prequalification Submission.
- .2 For such purposes, the Proponents shall be deemed to consent to and authorize the release of relevant information to the TTC.
- .3 The evaluation of a Prequalification Submission may include any clarifications provided in writing in response to questions posed by the TTC and information received as a result of any other investigations made by the TTC.
- .4 The TTC is under no obligation to request clarification of, or verify, any information in any Prequalification Submission, including the clarification or verification of an ambiguity in the Prequalification Submission, or to check references provided by Proponents. The TTC may, in its

sole discretion, request clarification of, or verify, matters, or check references of none, one or some of the Proponents.

Section 6 – RFSQ PROCESS MATTERS

6.1 Prohibited Communications and Lobbying Prohibition

- .1 A Proponent and all of its Representatives are prohibited from engaging in any form of political or other lobbying, of any kind whatsoever, to influence the outcome of the RFSQ process
- .2 Without limiting the generality of the RFSQ, Proponents, and their Representatives shall not contact or attempt to contact either directly or indirectly, at any time during the RFSQ Process, any of the following persons or organizations on matters related to the RFSQ Process, the RFSQ Documents or the Prequalification Submissions, with the exception of the Senior Procurement Specialist or their designate.
 - (a) any employee of the TTC; or
 - (b) any member of the TTC; or
 - (c) any member of the City of Toronto Council or any member of their staff.
- .3 Anyone who “lobbies” (as defined in the City of Toronto Municipal Code, Chapter 140) or is expected to lobby a Member of the TTC (i.e. Commissioner), their staff, or any TTC officer or employee must comply with the requirements as set out in the City of Toronto Municipal Code, Chapter 140 – Lobbying. For the purposes of Chapter 140 of the City of Toronto Municipal Code, the TTC is a “local board (restricted definition)”. For further information please see City of Toronto Web site at www.toronto.ca/lobbying.
- .4 Failure to comply with the requirements of Chapter 140 of the City of Toronto Municipal Code, may, at the TTC’s sole discretion, be considered in the evaluation of the Proponent’s current Prequalification Submission or future proposal submissions and award of the current or future contracts.
- .5 With the written approval from the Senior Procurement Specialist, the Proponent or any Representative of the Proponent, may have contact and may communicate with any individual as set out in Sections 6.1.2(a) to 6.1.2(c) to the extent permitted in the written approval.
- .6 A Proponent and their respective Representatives shall 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 the RFSQ Process, the RFSQ, the RFSQ Documents or any matters related thereto, without the prior written consent of the TTC.
- .7 A Proponent and its respective 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 Prequalification Submission or to publicly promote or advertise its own qualifications, interest in or participation in the RFSQ Process without the TTC’s prior written consent, which consent may be withheld in the Commission’s sole discretion. Notwithstanding this provision, the Proponent, and its respective Representatives are permitted to state publicly that it/they are participating in the RFSQ Process.

- .8 For the purposes of greater clarity, this item does not prohibit disclosures necessary to permit the Proponent to discuss the RFSQ with prospective Subconsultants' and/or subcontractors' participating in the RFSQ.
- .9 The TTC reserves the right, at its sole discretion, to not prequalify a Proponent, or to impose conditions on the further participation of, a Proponent who has failed to comply with the requirements of Chapter 140 of the City of Toronto Municipal Code or any other provision of this Section 6.1.

6.2 Proponent Due Diligence

- .1 This RFSQ may not contain all of the information that a Proponent may need in deciding whether to submit a Prequalification Submission.
- .2 The TTC and its Representatives make no representations or warranties, and there are no representations, warranties or conditions, either express or implied, statutory or otherwise, in fact or in law, with respect to the relevance, accuracy or completeness of this RFSQ or any information, data, materials or documents (electronic or otherwise) provided to the Proponents or their respective Representatives in this RFSQ or during this RFSQ Process with respect to the RFSQ or the Program, including any Background Information. The TTC and its Representatives shall not be liable for any claim, action, cost, loss, damage or liability of any kind whatsoever arising from any Proponent's reliance on or use of this RFSQ or any other information, data, materials or documents (electronic or otherwise) provided or made available to the Proponents by the TTC during this RFSQ Process or with respect to the RFSQ or the Program, including any Background Information.
- .3 Each Proponent, is responsible for obtaining its own independent financial, legal, accounting, engineering, environmental, architectural and other technical and professional advice with respect to the RFSQ, the RFSQ Process, and the Program and with respect to any information, data, materials or documents (electronic or otherwise) provided or made available to the Proponents by the TTC during this RFSQ Process or with respect to the RFSQ or the Program, including any Background Information.
- .4 Each Proponent is responsible for ensuring that it has all of the information necessary to prepare its Prequalification Submission in response to this RFSQ and for independently informing and satisfying itself with respect to the information contained in this RFSQ, or provided during this RFSQ Process with respect to the RFSQ or the Program and with respect to any conditions that may in any way affect its Prequalification Submission.

6.3 Costs and Expenses of Proponents

- .1 All costs and expenses incurred by a Proponent in the preparation and delivery of its Prequalification Submission or in providing any additional information necessary for the evaluation of its Prequalification Submission shall be borne solely by that Proponent.
- .2 The TTC shall not be liable to pay any costs or expenses of any Proponent or to reimburse or compensate a Proponent in any manner whatsoever under any circumstances, including in the event of the rejection of any or all Prequalification Submissions, the cancellation or deferral of the RFSQ Process, the cancellation or deferral of the Program or the removal of a Proponent from the list of Prequalified Proponents.

6.4 Rights of the TTC

- .1 Notwithstanding anything else in this RFSQ, the TTC may, at any time and in its sole discretion:
- (a) disqualify a Proponent or Prequalification Submission, if the TTC discovers any false information in a Prequalification Submission;
 - (b) take into consideration in the evaluation of a Proponent's Prequalification Submission:
 - (i) the Proponent's performance rating with respect to previous TTC contracts, or
 - (ii) the Proponent's performance on current on-going TTC contracts.
 - (c) accept or reject any Prequalification Submission or reject all Prequalification Submissions;
 - (d) disqualify a Proponent, if that Proponent has, or has failed to disclose, a perceived, potential or actual Conflict of Interest as set out in Section 6.7;
 - (e) disqualify a Proponent in accordance with any other express right of disqualification contained in this RFSQ;
 - (f) change the Program, including a change in scope;
 - (g) cancel this RFSQ and reissue the same RFSQ or a different request for qualifications document in relation to the Program;
 - (h) cancel or defer this RFSQ or the Program at any time;
 - (i) waive a minor defect, irregularity, non-conformity or non-compliance in or with respect to a Prequalification Submission or failure to comply with the requirements of this RFSQ and accept that Prequalification Submission even if such a defect, irregularity, non-conformity or non-compliance or failure to comply with the requirements of this RFSQ would otherwise render the Prequalification Submission null and void; or
 - (j) amend, from time to time, any date, any time period or deadline provided in this RFSQ, by use of Addendum,
- in each case, without incurring any liability for cost or damages incurred by any Proponent.
- .2 Without limitation to any other rights of the TTC hereunder, in order to ensure the integrity, openness and transparency of the procurement process, the TTC may, in its sole discretion,
- (a) impose at any time on all Proponents additional conditions, requirements or measures with respect to bidding or procurement practices or ethical behaviour of the Proponents; and
 - (b) require that a Proponent provide the TTC with copies of its internal policies, processes and controls establishing ethical standards for its procurement practices and evidence of compliance by the Proponent with such policies, processes and controls.
- .3 The TTC's purpose in this RFSQ Process is to obtain a Prequalification Submission that is in the best interest of the TTC and most suitable for meeting the TTC's objectives.
- .4 The TTC may, in its sole discretion, independently verify any information in none, one or some of the Prequalification Submissions. The TTC may, in its sole discretion, disqualify any Proponent whose Prequalification Submission contains any false or misleading information. The TTC may, in its sole discretion, disqualify any Proponent that, has failed to disclose any information that

would, if disclosed, materially adversely affect the TTC's evaluation of the relevant Proponent's Prequalification Submission. The TTC is under no obligation to independently verify any information in any Prequalification Submission.

6.5 Restriction on Communication between Proponents

- .1 A Proponent shall not discuss or communicate, directly or indirectly, with any other Proponent, any information whatsoever regarding the preparation of its own Prequalification Submission or the Prequalification Submission of another Proponent in a fashion that would contravene applicable law. Each Proponent shall prepare and submit its Prequalification Submission independently and without any connection, knowledge, comparison of information, or arrangement, direct or indirect, with any other Proponent. This obligation extends to all Proponents and all of the Proponent's respective advisors, employees and representatives.
- .2 For greater clarity, Section 6.5.1 applies to Proponents and their respective Representatives.
- .3 The TTC reserves the right in its sole discretion to disqualify any Proponent that breaches this Section 6.5.

6.6 Debriefing

- .1 The TTC will offer a debriefing upon request to any Proponent. The TTC is not obliged to debrief Prequalified Proponents with respect to their participation in the RFSQ Process. The information provided to a Proponent in the debriefing will relate solely to that Proponent and its Prequalification Submission and not to any other Proponent or Prequalification Submission. Any information provided by the TTC in good faith during a debriefing shall not be used against the TTC or any of its Representatives in any way whatsoever, including in any legal action.

6.7 Conflict of Interest

- .1 Each Proponent, must declare and continue to be under an obligation to declare all Conflicts of Interest that exist or that may exist in the future.
- .2 "Conflict of Interest" means any situation or circumstance where a Proponent:
 - (a) has other commitments, relationships, financial interests that,
 - (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 obligations under the Contract;
 - (b) has contractual or other obligations to the TTC that could or could be seen to have been compromised or impaired as a result of its participation in the RFSQ or the Program; or
 - (c) has knowledge of confidential information (other than Confidential Information disclosed by the TTC in the normal course of the RFSQ Process) of strategic and/or material relevance to the RFSQ Process or to the Program that is not available to other Proponents and that could or could be seen to give the Proponent an unfair competitive advantage.
- .3 In connection with its Prequalification Submission, each Proponent shall,

- (a) avoid any perceived, potential or actual Conflict of Interest in relation to the Program;
 - (b) upon discovering any perceived, potential or actual Conflicts of Interest at any time during the RFSQ Process, promptly disclose same to the TTC in a written statement to the Senior Procurement Specialist; and
 - (c) provide the TTC with the Proponent's proposed means to mitigate and minimize, to the greatest extent practicable, any perceived, potential or actual Conflict of Interest and shall submit any additional information to the TTC that the TTC considers necessary to properly assess the perceived, potential or actual Conflict of Interest.
- .4 Without limiting Section 6.7.3, the TTC may, in its sole discretion, waive any and all perceived, potential or actual Conflicts of Interest. The TTC's waiver may be upon such terms and conditions as the TTC, in its sole discretion, requires to satisfy itself that the Conflict of Interest has been appropriately managed, mitigated and minimized, including requiring the Proponent and/or Prequalified Proponents, as applicable, to put into place such policies, procedures, measures and other safeguards as may be required by and be acceptable to the TTC, in its sole discretion, to manage, mitigate and minimize the impact of such Conflict of Interest.
- .5 Without limiting Section 6.7.4 and in addition to all contractual or other rights or rights at law or in equity that may be available to the TTC, the TTC may, in its sole discretion,
- (a) disqualify a Proponent that fails to disclose a perceived, potential or actual Conflict of Interest of the Proponent;
 - (b) disqualify a Proponent, that fails to comply with any requirements prescribed by the TTC pursuant to Section 6.7.3 to mitigate, manage or minimize a Conflict of Interest; and
 - (c) disqualify a Proponent if that Proponent, has a perceived, potential or actual Conflict of Interest that, in the TTC's sole discretion, cannot be mitigated, managed, minimized or otherwise resolved.
- .6 The final determination of whether a perceived, potential or actual Conflict of Interest exists shall be made by the TTC, in its sole discretion.

6.8 Use of Confidential Information

- .1 Where the TTC has disclosed Confidential Information to Proponents, such Confidential Information:
- (a) shall remain the sole property of the TTC and the Proponent shall treat it as confidential;
 - (b) may not be used by the Proponent for any other purpose other than submitting a Prequalification Submission or the performance of any subsequent agreement relating to the Program;
 - (c) shall not be disclosed by the Proponent to any Person who is not involved in the Proponent's preparation of its Prequalification Submission or the performance of any subsequent agreement relating to the Program, without prior written consent of the TTC;
 - (d) if requested by the TTC, will be returned to the TTC no later than ten days after such request; and
 - (e) shall not be used in any way that is detrimental to the TTC.
- .2 Each Proponent shall be responsible for any breach of the provisions of this Section 6.8 or any other Person to whom it discloses the Confidential Information. Each Proponent acknowledges

and agrees that a breach of the provisions of this Section 6.8 would cause the TTC to suffer loss which could not be adequately compensated by damages, and that the TTC may, in addition to any other remedy or relief, enforce any of the provisions of this Section 6.8 upon submission to a court of competent jurisdiction for injunctive relief without proof of actual damage to the TTC.

- .3 The provisions in this Section 6.8 shall survive any cancellation of this RFSQ and shall survive the conclusion of the RFSQ Process and the Program.

6.9 The TTC's Discretion

- .1 Unless explicitly otherwise stated herein, any reference in this RFSQ to the TTC's "discretion" or "sole discretion" means the TTC's absolute sole unqualified subjective discretion.

6.10 Freedom of Information, Protection of Privacy & Other Disclosure Requirements

- .1 A submission to the TTC (and all other documents and records appended thereto) shall become the property of the TTC and is therefore subject to the provisions of the *Municipal Freedom of Information and Protection of Privacy Act*. Proponents are encouraged to familiarize themselves with the provisions of this Act.
- .2 Subject to the preceding paragraph, the TTC shall make every effort to safeguard the confidentiality of each submission to the extent permitted by law.
- .3 Where a Proponent requests that specific confidential information not be disclosed, the TTC does not represent or guarantee that information will not be disclosed. The TTC policy is to disclose only such information as it required by law.

6.11 Legal Matters

- .1 This RFSQ is not an offer to enter into any contract of any kind whatsoever. This RFSQ is not intended to create a bidding contract (often referred to as "Contract A").
- .2 Notwithstanding that in accordance with Section 6.11.1 this RFSQ is not intended to create "Contract A", the Proponent and all other entities participating in this RFSQ Process agree that if the TTC is found to be liable, in any way whatsoever, for any act or omission in respect of this RFSQ Process, the total liability of the TTC to any Proponent or any other Person participating in this RFSQ Process, and the aggregate amount of damages recoverable against the TTC for any matter relating to or arising from any act or omission, whether based upon an action or claim in contract, warranty, equity, negligence, intended conduct, judicial review or otherwise, including any action or claim arising from the acts or omissions, negligent or otherwise, of the TTC shall be no greater than the Proponent's cost of preparing its Prequalification Submission.
- .3 This Section 6.11 shall survive any cancellation of this RFSQ and shall survive the conclusion of the RFSQ Process.

6.12 Trade Agreements

- .1 The procurement process for the Program will be conducted in a fair, open, transparent and competitive manner. The TTC will comply with all relevant trade agreements, including as set out below.

- .2 This RFSQ Process falls within the scope of Chapter 5 of the Canadian Free Trade Agreement and is subject to Chapter 5, however, the rights and obligations of the parties are governed by the specific terms of this RFSQ. For further information on the Canadian Free Trade Agreement, please see the Internal Trade Secretariat website at: [www. Cfta-alec.ca](http://www.Cfta-alec.ca).

6.13 General

- .1 This RFSQ is governed by, and is to be construed in accordance with, the laws of Ontario and the federal laws of Canada applicable therein. It is agreed that the courts of Ontario, in the City of Toronto, shall have exclusive jurisdiction in respect of any dispute, suit, action, arbitration or proceedings ("Proceedings") which may arise out of or in connection with this RFSQ. Each Proponent and each Team Member waives any objection to such Proceedings in such courts on the grounds of venue or on the basis that such Proceedings have been brought in an inconvenient forum.
- .2 No consent, approval or waiver granted by the TTC under this RFSQ shall be binding unless the same has been given in writing by the TTC and delivered to the Proponent via the Senior Procurement Specialist.

Section 7 – DEFINITIONS AND INTERPRETATION

7.1 Definitions

Unless otherwise specified or the context otherwise requires, capitalized terms used in the RFSQ Documents shall have the meanings set out in this Section 7.1.

"Active Operating Environment" mean construction work that was performed where the Proponent was required to work in an existing operating environment without interruption to normal operations with complex constraints due to limited access and restrictive operating hours for deliveries, sequencing of work, coordination of work with maintenance forces and Authorities having Jurisdiction."

"Addendum" or "Addenda" means each amendment to the RFSQ issued in accordance with Section 4.6.

"Business Day" means any day other than a Saturday, Sunday or public holiday in Ontario.

"Bonfire Public Portal" means <https://ttc.bonfirehub.ca> a web based electronic tendering system.

"Confidential Information" means all material, data, information or any item in any form, whether oral or written, including in electronic or hard-copy format, supplied by, obtained from or otherwise procured in any way, whether prior to or after the Prequalification Submission, from the TTC in connection with the Program, but does not include any information which (i) is or becomes generally available to the public other than as a result of a breach of Section 6.8, (ii) becomes available to the Proponent on a non-confidential basis from a source other than the TTC so long as that source is not bound by a confidentiality agreement with respect to the information or otherwise prohibited from transmitting the information to the Proponent by a contractual, legal or fiduciary obligation, or (iii) the Proponent is able to demonstrate was known to it on a non-confidential basis before it was disclosed to the Proponent by the Government or the TTC.

"Conflict of Interest" is defined in Section 6.7.2.

“Senior Procurement Specialist” means the person named as the Senior Procurement Specialist in Section 4.4.1.

“Inquiry” is defined in Section 4.5.1.

“Mandatory Requirements” are the requirements set out in Section 5.1.

“Person” means any individual, partnership, limited partnership, joint venture, syndicate, sole proprietorship, company, corporation or body corporate with or without share capital, unincorporated association, trust, trustee, executor, administrator or other legal personal representative, regulatory body or agency, government or governmental agency authority or entity however designated or constituted.

“Prequalification Stage” is defined in Section 3.1(a).

“Prequalification Submission” is defined in Section **Error! Reference source not found..**

“Prequalified Proponents” is defined in Section 1.2.

“Proceedings” is defined in Section 6.13.1.

“R54AD22456 Program” is defined in **Error! Reference source not found..**

“Public Interface” mean any construction activities performed where the Proponent may be required to interact with members of the public on a daily basis or the construction Site is surrounded by local businesses, parks, stations shopping areas, etc.

“Rectification Period” means the period during which a Proponent is permitted to rectify its Prequalification Submission to satisfy the requirements in Section **Error! Reference source not found..**

“Representatives” means the directors, officers, ministers, officials, employees, agents, accountants, consultants, financial or legal advisors and all other representatives of the Person being referred to.

“Proponent” is defined in Section **Error! Reference source not found..**

“Proponent Designate” means the member of the Joint Venture nominated as being in charge authorized by the other members of the Joint Venture to incur liabilities, receive instructions for and on behalf of any and all members of the Joint Venture and shall have the power and authority to bind all of a Joint Venture’s members for the purposes of this RFSQ Process.

“RFSQ” is defined in Section 1.2.

“RFSQ Documents” is defined in Section 4.2.1.

“RFSQ Process” is defined in Section 1.2.

“RFSQ Submission Deadline” is defined in Section 4.3.1.

“Timetable” is defined in Section 3.2.1.

“TTC” is defined in Section 1.2.

“WSIB” is defined in Section **Error! Reference source not found.**

7.2 Interpretation

- .1 In this RFSQ, words in the singular include the plural and vice-versa and words in one gender include all genders, all references to dollar amounts are to the lawful currency of Canada, and the words “include”, “includes” or “including” means “include without limitation”, “includes without limitation” and “including without limitation”, respectively, and the words following “include”, “includes” or “including” will not be considered to set forth an exhaustive list.

APPENDICES

APPENDIX A – Declaration Form

Legal Corporate name of
Proponent (or the Name
of Proponent Designate,
if applicable):

Office Address:

City/Province/Postal
Code:

Proponent Designate
Contact Individual(s):

Title:

Telephone No.
Including Area Code:

Fax:

Alternate Telephone:

Signatory Email
Address:

The above named Proponent or Proponent Designate hereby declares on its own behalf and, for clarity, on behalf of all Joint Venture Participant that:

- (a) it has the power and authority to bind the Proponent for the purpose of the RFSQ;
- (b) this Appendix A - Declaration Form has been duly authorized and validly executed;
- (c) it acknowledges that all terms not otherwise defined herein shall have the meaning given to them in the RFSQ Documents;
- (d) the Proponent agrees to comply with and be bound by the requirements, terms and conditions contained in the RFSQ Documents;
- (e) the Proponent acknowledges its obligations regarding Confidential Information contained in Section 6.8 of the RFSQ and agrees to be, and to use reasonable efforts to cause its Representatives, potential and Joint Venture Participants (if applicable) to be, bound by such terms, irrespective of whether the Proponent, potential Joint Venture Participants (if applicable) submit a Prequalification Submission in the RFSQ Process or are invited to submit or submit a proposal in the subsequent Request for Services process for the Program;
- (f) the information submitted in the Prequalification Submission or otherwise related to the RFSQ Documents is accurate and is binding on the Proponent;
- (g) the information required by the RFSQ Documents has been provided in the Prequalification Submission;
- (h) the Proponent recognizes that the information submitted will be treated as confidential, subject to applicable law, and will be used only to establish a list of Prequalified Vendors based on the RFSQ;
- (i) the Proponent agrees that the information submitted may be clarified, verified and investigated

- by the TTC and that pertinent information may be obtained and hereby consents to such clarification, verification and investigation;
- (j) the Proponent agrees that the TTC is not obliged, in any way whatsoever, to carry out clarifications, verifications or investigations of any Prequalification Submission;
 - (k) the Proponent understands that any omission or failure to substantially complete the Prequalification Submission or failure to substantially comply with a requirement included in the RFSQ Documents may result in the Proponent being disqualified;
 - (l) the Proponent understands that it must submit a substantially complete Prequalification Submission and meet the Mandatory Requirements in accordance with the RFSQ Documents and a failure to do so may result in disqualification of the Proponent;
 - (m) the Proponent understands that the RFSQ does not constitute any offer of work by the TTC;
 - (n) the Proponent represents and warrants to the TTC that the Proponent,
 - (i) has the sole and unrestricted right, title and interest or good and sufficient power, authority and right to use any intellectual property that the Proponent requires for performance of its obligations pursuant to this RFSQ; and
 - (ii) will pay all applicable fees associated with the use of such intellectual property including any required license fees and royalties;
 - (o) this Appendix A – Declaration Form has not been modified in any manner, except to include the Proponent’s required information.

In witness whereof, the Proponent or Proponent Designate has executed this Appendix A – Declaration Form as of the date indicated below.

Date: _____

Proponent or Proponent Designate

Per:

Name:

Title:

Per:

Name:

Title:

I/We have authority to bind the Proponent Designate and to bind the Proponent and each Joint Venture Participant (if applicable).

APPENDIX B – Joint Ventures (If Applicable)

This Appendix B - Joint Ventures (if applicable) is delivered pursuant to the RFSQ. All terms not otherwise defined herein have the meaning given to them in the RFSQ. Each joint venture member shall demonstrate its authorization of the Proponent Designate by submitting a power of attorney, or similar document, signed by a legally authorized representative of the Proponent Designate and each joint venture member stating that the Proponent Designate is authorized by the joint venture member to incur liabilities and receive instructions for and on behalf of the joint venture member.

Names of Companies forming Joint Venture	
Name of Joint Venture (if applicable)	
Name of Proponent Designate	

SECTION 00 41 00 - APPENDIX C – CORPORATE SUMMARY FORM

Proponent Name: _____
Reference No. R54AD22456
Title: Category 1 – Community Relations Services

	WEIGHTING	PROPONENT'S RESPONSE
CORPORATE QUALIFICATIONS	20	

	WEIGHTING	PROPONENT'S RESPONSE
<p>a) Background and Capabilities:</p> <p>Describe the Proponent's experience related to Category 1 and explain Proponent's proficiency and capability in performing the required Work; include examples of past/current projects of similar nature to scope of work that demonstrate capabilities</p>	5	

	WEIGHTING	PROPONENT'S RESPONSE
b) Number of Years in Business	1	

	WEIGHTING	PROPONENT'S RESPONSE
<p>b) Depth of Available Relevant Resources at Proponent's office, [Category 1 related]</p> <p>e.g. List of people and/or positions years of experience at the Proponent's office who will make up the resource pool assigned to this contract to work on as required basis, in accordance with the Scope of Services.</p>	7	
<p>c) Relevant Corporate Experience by Project:</p>	7	

SECTION 00 41 00 - APPENDIX C – CORPORATE SUMMARY FORM

Proponent Name: _____
Reference No. R54AD22456
Title: Category 2 – Communications Services

	WEIGHTING	PROPONENT'S RESPONSE
CORPORATE QUALIFICATIONS	20	

	WEIGHTING	PROPONENT'S RESPONSE
<p>a) Background and Capabilities:</p> <p>Describe the Proponent's experience related to Category 2 and explain Proponent's proficiency and capability in performing the required Work; include examples of past/current projects of similar nature to scope of work that demonstrate capabilities</p>	5	

	WEIGHTING	PROPONENT'S RESPONSE
b) Number of Years in Business	1	

	WEIGHTING	PROPONENT'S RESPONSE
<p>b) Depth of Available Relevant Resources at Proponent's office, [Category 1 related]</p> <p>e.g. List of people and/or positions years of experience at the Proponent's office who will make up the resource pool assigned to this contract to work on as required basis, in accordance with the Scope of Services.</p>	7	
<p>c) Relevant Corporate Experience by Project:</p>	7	

SECTION 00 41 00 - APPENDIX D – PROPOSED KEY STAFF SUMMARY FORM

Proponent Name: _____

Reference No. R54AD22456

Title: Category 1 - Community Relations Services

	WEIGHTING	PROPONENT'S RESPONSE
PROJECT TEAM QUALIFICATIONS/ EXPERIENCE	50	
i)Project Manager		Name:
a) Number of Years of Related Working Experience	1	
b) Number of Years of Direct [i.e. project mgmt] Experience	2	
c) Technical Qualifications – Describe and explain experience and qualification in meeting expectations with fulfilling the roles and responsibilities as described in Division 1 – Scope of Services.	3	
d) Relevant Experience By Project:	10	
Project No. 1		
Project/Contract Name and Location		
Description of the Project/Contract		
Description of Individual's Role & Responsibilities on Project/Contract		
Project/Contract Duration		
Individual's person hours working on Project/Contract		# of hours: From: day/month/year To: day/month/year
Contractor Fees CDN\$		
Project No. 2		
Project/Contract Name and Location		
Description of the Project/Contract		
Description of Individual's Role & Responsibilities on Project/Contract		
Project/Contract Duration		
Individual's person hours working on Project/Contract		# of hours: From: day/month/year To: day/month/year
Contractor Fees CDN\$		

	WEIGHTING	PROPONENT'S RESPONSE
Project No. 3		
Project/Contract Name and Location		
Description of the Project/Contract		
Description of Individual's Role & Responsibilities on Project/Contract		
Project/Contract Duration		
Individual's person hours working on Project/Contract		# of Hours: From: day/month/year To: day/month/year
Contractor Fees CDN\$		
ii) Public and Stakeholder Consultation as well as Engagement Specialist		Name:
a) Number of Years of Related Working Experience	1	
b) Number of Years of Direct [i.e. Consultation and Engagement] Experience	2	
c) Technical Qualifications – Describe and explain experience and qualification in meeting expectations with fulfilling the roles and responsibilities as described in Division 1 – Scope of Services.	4	
d) Relevant Experience By Project:	10	
Project No. 1		
Project/Contract Name and Location		
Description of the Project/Contract		
Description of Individual's Role & Responsibilities on Project/Contract		
Project/Contract Duration		
Individual's person hours working on Project/Contract		# of hours: From: day/month/year To: day/month/year
Contractor Fees CDN\$		
Project No. 2		
Project/Contract Name and Location		
Description of the Project/Contract		
Description of Individual's Role & Responsibilities on Project/Contract		
Project/Contract Duration		
Individual's person hours working on Project/Contract		# of hours: From: day/month/year To: day/month/year

	WEIGHTING	PROPONENT'S RESPONSE
Contractor Fees CDN\$		
Project No. 3		
Project/Contract Name and Location		
Description of the Project/Contract		
Description of Individual's Role & Responsibilities on Project/Contract		
Project/Contract Duration		
Individual's person hours working on Project/Contract		# of Hours: From: day/month/year To: day/month/year
Contractor Fees CDN\$		
iii)Public Affairs Specialist		Name:
a) Number of Years of Related Working Experience	1	
b) Number of Years of Direct [i.e. Public Affairs] Experience	2	
c) Technical Qualifications – Describe and explain experience and qualification in meeting expectations with fulfilling the roles and responsibilities as described in Division 1 – Scope of Services.	4	
d) Relevant Experience By Project:	10	
Project No. 1		
Project/Contract Name and Location		
Description of the Project/Contract		
Description of Individual's Role & Responsibilities on Project/Contract		
Project/Contract Duration		
Individual's person hours working on Project/Contract		# of hours: From: day/month/year To: day/month/year
Contractor Fees CDN\$		
Project No. 2		
Project/Contract Name and Location		
Description of the Project/Contract		
Description of Individual's Role & Responsibilities on Project/Contract		
Project/Contract Duration		
Individual's person hours working on Project/Contract		# of hours: From: day/month/year To: day/month/year

	WEIGHTING	PROPONENT'S RESPONSE
Contractor Fees CDN\$		
Project No. 3		
Project/Contract Name and Location		
Description of the Project/Contract		
Description of Individual's Role & Responsibilities on Project/Contract		
Project/Contract Duration		
Individual's person hours working on Project/Contract		# of Hours: From: day/month/year To: day/month/year
Contractor Fees CDN\$		

END OF SECTION

SECTION 00 41 00 - APPENDIX D – PROPOSED KEY STAFF SUMMARY FORM

Proponent Name: _____

Reference No. R54AD22456

Title: Category 2 – Communications Services

	WEIGHTING	PROPONENT'S RESPONSE
PROJECT TEAM QUALIFICATIONS/ EXPERIENCE	50	
i)Project Manager		Name:
a) Number of Years of Related Working Experience	1	
b) Number of Years of Direct [i.e. project mgmt] Experience	1	
c) Technical Qualifications – Describe and explain experience and qualification in meeting expectations with fulfilling the roles and responsibilities as described in Division 1 – Scope of Services.	6	
d) Relevant Experience By Project:	10	
Project No. 1		
Project/Contract Name and Location		
Description of the Project/Contract		
Description of Individual's Role & Responsibilities on Project/Contract		
Project/Contract Duration		
Individual's person hours working on Project/Contract		# of hours: From: day/month/year To: day/month/year
Contractor Fees CDN\$		
Project No. 2		
Project/Contract Name and Location		
Description of the Project/Contract		
Description of Individual's Role & Responsibilities on Project/Contract		
Project/Contract Duration		
Individual's person hours working on Project/Contract		# of hours: From: day/month/year To: day/month/year

	WEIGHTING	PROPONENT'S RESPONSE
Contractor Fees CDN\$		
Project No. 3		
Project/Contract Name and Location		
Description of the Project/Contract		
Description of Individual's Role & Responsibilities on Project/Contract		
Project/Contract Duration		
Individual's person hours working on Project/Contract		# of Hours: From: day/month/year To: day/month/year
Contractor Fees CDN\$		
ii)Strategic Communication Specialist		Name:
a) Number of Years of Related Working Experience	1	
b) Number of Years of Direct [i.e. Strategic Communication] Experience	1	
c) Technical Qualifications – Describe and explain experience and qualification in meeting expectations with fulfilling the roles and responsibilities as described in Division 1 – Scope of Services.	4	
d) Relevant Experience By Project:	5	
Project No. 1		
Project/Contract Name and Location		
Description of the Project/Contract		
Description of Individual's Role & Responsibilities on Project/Contract		
Project/Contract Duration		
Individual's person hours working on Project/Contract		# of hours: From: day/month/year To: day/month/year
Contractor Fees CDN\$		
Project No. 2		
Project/Contract Name and Location		
Description of the Project/Contract		
Description of Individual's Role & Responsibilities on Project/Contract		
Project/Contract Duration		
Individual's person hours working on Project/Contract		# of hours: From: day/month/year To: day/month/year

	WEIGHTING	PROPONENT'S RESPONSE
Contractor Fees CDN\$		
Project No. 3		
Project/Contract Name and Location		
Description of the Project/Contract		
Description of Individual's Role & Responsibilities on Project/Contract		
Project/Contract Duration		
Individual's person hours working on Project/Contract		# of Hours: From: day/month/year To: day/month/year
Contractor Fees CDN\$		
iii)Media Relations and Issues Management Specialist		Name:
a) Number of Years of Related Working Experience	1	
b) Number of Years of Direct [i.e.Media Relations and Issues Management] Experience	1	
c) Technical Qualifications – Describe and explain experience and qualification in meeting expectations with fulfilling the roles and responsibilities as described in Division 1 – Scope of Services.	4	
d) Relevant Experience By Project:	5	
Project No. 1		
Project/Contract Name and Location		
Description of the Project/Contract		
Description of Individual's Role & Responsibilities on Project/Contract		
Project/Contract Duration		
Individual's person hours working on Project/Contract		# of hours: From: day/month/year To: day/month/year
Contractor Fees CDN\$		
Project No. 2		
Project/Contract Name and Location		
Description of the Project/Contract		
Description of Individual's Role & Responsibilities on Project/Contract		
Project/Contract Duration		

	WEIGHTING	PROPONENT'S RESPONSE
Individual's person hours working on Project/Contract		# of hours: From: day/month/year To: day/month/year
Contractor Fees CDN\$		
Project No. 3		
Project/Contract Name and Location		
Description of the Project/Contract		
Description of Individual's Role & Responsibilities on Project/Contract		
Project/Contract Duration		
Individual's person hours working on Project/Contract		# of Hours: From: day/month/year To: day/month/year
Contractor Fees CDN\$		
iv)Internal and Corporate Communications Specialist		Name:
a) Number of Years of Related Working Experience	1	
b) Number of Years of Direct [i.e. Corporate Communications] Experience	1	
c) Technical Qualifications – Describe and explain experience and qualification in meeting expectations with fulfilling the roles and responsibilities as described in Division 1 – Scope of Services.	4	
d) Relevant Experience By Project:	4	
Project No. 1		
Project/Contract Name and Location		
Description of the Project/Contract		
Description of Individual's Role & Responsibilities on Project/Contract		
Project/Contract Duration		
Individual's person hours working on Project/Contract		# of hours: From: day/month/year To: day/month/year
Contractor Fees CDN\$		
Project No. 2		
Project/Contract Name and Location		
Description of the Project/Contract		
Description of Individual's Role & Responsibilities on Project/Contract		

	WEIGHTING	PROPONENT'S RESPONSE
Project/Contract Duration		
Individual's person hours working on Project/Contract		# of hours: From: day/month/year To: day/month/year
Contractor Fees CDN\$		
Project No. 3		
Project/Contract Name and Location		
Description of the Project/Contract		
Description of Individual's Role & Responsibilities on Project/Contract		
Project/Contract Duration		
Individual's person hours working on Project/Contract		# of Hours: From: day/month/year To: day/month/year
Contractor Fees CDN\$		

END OF SECTION

Section 00 41 00 - Appendix E Unit Rates by Position
Category 1 - Community Relations Services
Proposal No.: R54AD22456

Proponent Name:	
Ref No.: R54AD22456	
Project Team position on this Contract	AIHBR
Project Manager	
Public and Stakeholder Consultation as well as Engagement Specialist	
Public Affairs Specialist	
	Average AIHBR: \$0.00

NOTES:

- i) All-Inclusive Hourly Billing Rate (AIHBR) = AS DEFINED IN SC4 CALCULATION OF FEES AND EXPENSES.
- ii) All applicable Canadian taxes shall be extra to the stated AIHBR.

Section 00 41 00 - Appendix E Unit Rates by Position
Category 2 - Communications Services
Proposal No.: R54AD22456

Proponent Name:	
Ref No.: R54AD22456	
Project Team position on this Contract	AIHBR
Project Manager	
Strategic Communication Specialist	
Media Relations and Issues Management Specialist	
Internal and Corporate Communications Specialist	
	Average AIHBR: \$0.00

NOTES:

- i) All-Inclusive Hourly Billing Rate (AIHBR) = AS DEFINED IN SC4 CALCULATION OF FEES AND EXPENSES.
- ii) All applicable Canadian taxes shall be extra to the stated AIHBR.

APPENDIX F - Reference Check Questionnaire

Note: Proponents are advised **not** to submit this Appendix F - Reference Check Questionnaire with their mandatory submission. This Appendix is being provided for informational purposes only as the TTC will conduct reference checks based on the questions below from the contact information provided under Appendix C – Corporate Summary Form and Appendix D – Proposed Project Key Staff Summary Form.

Contract:					
Consultant:					
REFERENCE NO.:					
Name of Company:					
Person Contacted:		Title:			
Contract Title/Work Performed:					
Date Completed:		Performance:	POOR	FAIR	GOOD
Total Fees/Project Costs:		Planning & Scheduling	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Consultant's Project Manager		Tech & Prof Knowledge	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
		Communication	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Would You Hire Again?	<input type="checkbox"/> Yes	<input type="checkbox"/> No	Control of Work (Time/Budget)	<input type="checkbox"/>	<input type="checkbox"/>
Comments:					

<u>ARTICLE NO.</u>	<u>TITLE</u>	<u>PAGE NO.</u>
1	DECLARATION	1
2	DEFINITIONS.....	2
3	NATURE OF THE MASTER SERVICES AGREEMENT AND THE PROGRAM	2
4	GENERAL CONDITIONS	3
5	INSURANCE REQUIREMENTS	3
6	INDEMNIFICATION, LIMITATION OF LIABILITY AND WAIVER OF CLAIMS	4
7	LANGUAGE OF THE MSA.....	6
8	INTENT OF THE MSA.....	6
9	TERM AND TERMINATION OF THE MSA	6
10	SIGNATURE.....	7

1 DECLARATION

This Master Service Agreement is made as of the ____ day of _____, 20__ (the “Effective Date”).

BETWEEN:

the “**Commission**” or “**TTC**”:

Toronto Transit Commission
1900 Yonge Street
Toronto, ON M4S 1Z2

and the “**Vendor**”:

(Legal Name of the Vendor)

(Office Address)

(Telephone No. including Area Code and Fax No.)

(Corporate Email Address and Signatory Email Address)

WHEREAS TTC issued Request for Supplier Qualification R54AD22456 for the Work and the Vendor responded to the RFSQ on_____.

AND WHEREAS TTC has qualified the Vendor to participate in the R54AD22456 Program.

NOW THEREFORE, for good and valuable consideration, the receipt and sufficiency of which is acknowledged by both Parties, TTC and the Vendor, agree as follows:

2 DEFINITIONS

- 2.1 The following definitions shall apply to all Contract Documents and references to the singular throughout the Contract Documents shall be considered to include the plural and vice versa as the context requires.
- 2.2 All capitalized terms unless otherwise defined in this Appendix G shall have the meaning as set out in the General Conditions and/or Supplementary Conditions of the Contract Documents.
- 2.2.1 “Day” shall mean calendar day unless otherwise specified.
- 2.2.2 “R54AD22456 Agreement” shall mean any contract awarded to the Contractor in which this MSA is incorporated into by reference.
- 2.2.3 “R54AD22456 RFS” shall mean any Request for Services documents issued under the Program.
- 2.2.4 “R54AD22456 Subconsultant” shall mean any person or entity having a direct contract with the Consultant to perform a part or parts of the Work of any R54AD22456 Agreement,
- 2.2.5 “General Conditions” or “Section 00 72 00 General Conditions” shall mean Section 00 72 00 General Conditions attached to the MSA as Schedule A.
- 2.2.6 “Program” means a variety of R54AD22456 RFS open only to Vendors prequalified under the R54AD22456 program, subject to the terms and conditions of those R54AD22456 RFS, which may consist of single or multi-staff members required to perform duties related to the Work and each R54AD22456 RFS may include:

3 NATURE OF THE MASTER SERVICES AGREEMENT AND THE PROGRAM

- 3.1 The Vendor acknowledges that it is not entitled to receive any compensation under this Master Services Agreement (“MSA”) and that its consideration for entering into this MSA is the opportunity to participate in future competitive R54AD22456 RFSs open only to the Vendors (and other parties which had prequalified or will be prequalified in the future) under the Program.
- 3.2 The Vendor agrees that it shall not perform any Work under this MSA, unless and until it is awarded a R54AD22456 Agreement.
- 3.3 Additional prequalified Vendors may be added to the Program, through a similar qualification process, on an annual basis or at any other time as determined by TTC in its sole discretion and be eligible to bid on R54AD22456 RFSs under the Program.
- 3.4 In addition to the requirements identified in Section 00 72 00 General Conditions, and Section 00 73 00 Supplementary Conditions, R54AD22456 RFS issued under the Program may include the provision of the following additional terms, conditions or requirements:
- 3.4.1 additional insurance requirements;
- 3.4.2 terms and conditions regarding project particular payment terms and retainage;
- 3.4.3 terms and conditions regarding key Consultant staff required to be assigned for the duration of specific Contracts;
- 3.4.4 other additional supplementary conditions.
- 3.5 Each R54AD22456 Agreement constitutes a separate, independent and distinct agreement from the MSA with respect to the work, rights and obligations described or referred to in the particular R54AD22456 Agreement from any other R54AD22456 Agreement.
- 3.6 Notwithstanding anything contained herein, TTC has no obligation to issue a R54AD22456 RFS under the Program or award a R54AD22456 Agreement.

3.7 The Vendor has no obligation to submit a bid on a R54AD22456 RFS under the Program. If the Vendor does not submit a bid on a R54AD22456 RFS, in the event TTC does not receive a response to the RFS within the timeframe allotted, it will be TTC's interpretation that the Vendor (or Vendors) have chosen not to bid for that specific requirement.

4 GENERAL CONDITIONS

4.1 Section 00 72 00 General Conditions attached to this MSA as Schedule A shall be applicable to each R54AD22456 RFS and R54AD22456 Agreement.

4.2 Section 00 73 00 Supplementary Conditions attached to this MSA as Schedule B shall be applicable to each R54AD22456 RFS and R54AD22456 Agreement.

5 INSURANCE REQUIREMENTS

5.1 Throughout the term of the MSA, the Vendor shall obtain and maintain at their own expense the following insurance in relation to the Work, any services required to be performed by the Consultant under the Contract Documents, or otherwise, each such policy to be issued by an insurance company licensed to carry on the business of issuing such policies in Ontario, and possessing a Best's Financial Strength Rating of at Least B+.

5.1.1 Professional Liability Insurance

The Vendor shall provide professional liability insurance for a limit not less than One Million Dollars \$1,000,000 covering all insured loss or damage, arising out of the professional services rendered by the Consultant or R54AD22456 Subconsultants of any tier, and/or any engineers/architects/surveyors and any of their servants or employees including personnel on loan to the Consultant or R54AD22456 Subconsultants of any tier and personnel who perform normal services of the Consultant on a R54AD22456 Agreement.

5.1.2 Automobile Liability Insurance:

Automobile liability insurance with a limit of not less than One Million Dollars (\$1,000,000) inclusive for any one accident or occurrence and shall insure against claims for bodily injury, including death, and for property damage arising out of the use of any vehicle owned, leased or operated by or on behalf of the in the performance of the work.

5.1.3 Comprehensive General Liability Insurance - which shall include, but not limited to:

5.1.3.1 Contractual liability coverage for liability assumed under GC8 – INDEMNIFICATION AND LIMITATION OF LIABILITY of Section 00 72 00;

5.1.3.2 Contingent employer's liability coverage, for any claims that might be brought against TTC by any employee of the Consultant;

5.1.3.3 Owner's and contractor's protective coverage for all subcontracted operations;

5.1.3.4 Non-owned automobile liability; and

5.1.3.5 Cross liability and severability of interests clause:

Such insurance shall provide a combined single limit of not less than One Million Dollars (\$1,000,000) for any one occurrence or accident for all claims arising out of bodily injury, including death, and damage to the property of others. Such liability insurance shall contain no exclusions in conflict with the character of the Work required to be performed under a R54AD22456 Agreement and shall include TTC as additional insured.

Any other valid or collectible insurance available to TTC shall not apply to any loss until the coverage and limits available under the insurance policies, maintained by the Vendor in accordance with this SC5.1.3, have been exhausted.

5.2 Subconsultant Evidence of Insurance:

- 5.2.1 Within ten (10) Days after the signing of this MSA and prior to the commencement of any Work required by a R54AD22456 Agreement, and upon the placement, renewal, amendment, or extension of all or any part of the insurance, the Vendor shall promptly provide TTC with certificates of insurance originally signed by the insurer or its authorized representative and, if requested by TTC, a complete copy of the policies certified by an authorized representative of the insurer together with copies of any amending endorsements. A second copy of such certificates or policies shall be sent electronically to: Risk Manager, TTCcoi@ttc.ca.
- 5.2.2 If any of the insurance requirements for any R54AD22456 Agreement differ from the insurance requirements as contained in this Article 4.1, then the Consultant will provide prior to the commencement of any Work a certificate of insurance originally signed by the insurer or its authorized representative and, if requested by TTC, a complete copy of the policies certified by an authorized representative of the insurer together with copies of any amending endorsements. A second copy of such certificates or policies shall be sent electronically to: Risk Manager, TTCcoi@ttc.ca
- 5.2.3 Each policy shall be endorsed with an undertaking from the insurance company that such insurance will not be cancelled, fail to be renewed or reduced in coverage without 30 Days prior written notice delivered by registered mail to TTC.
- 5.2.4 With the exception of automobile liability, each policy shall include an endorsement under which the insurer waives any right of subrogation it may have against TTC and its directors, officers, employees and agents.
- 5.2.5 Should TTC determine in its sole discretion that the insurance taken by the Consultant is unsatisfactory in any respect and for any reason whatsoever, it shall forthwith advise the Consultant of such determination and the reasons therefore and the Consultant shall forthwith take out insurance of a character satisfactory to TTC.
- 5.2.6 The taking out of the insurance as aforesaid shall not relieve the Consultant of any of its obligations under any R54AD22456 Agreement.
- 5.2.7 Failure of TTC to demand such certificate or other evidence of full compliance with these insurance requirements, or any additional requirements under any R54AD22456 Agreement or failure of TTC to identify a deficiency from evidence provided will not be construed as a waiver of the Consultant's obligation to maintain such insurance.
- 5.2.8 The acceptance of delivery by TTC of any certificate of insurance evidencing the required coverages and limits does not constitute approval or agreement by TTC that these insurance requirements or any additional requirements under any R54AD22456 Agreement have been met or that the insurance policies shown in the certificates of insurance are in compliance with the requirements.
- 5.2.9 If any of the coverages are required to remain in force after final payment, or for any applicable warranty period, an additional certificate evidencing continuation of such coverage will be submitted with the Consultant's final invoice.
- 5.2.9.1 The Vendor will ensure that no insurance required by this MSA or any R54AD22456 Agreement will be invalidated or vitiated by any action or failure to act by the Consultant or any of the Consultant's personnel or by any breach by the Consultant or any other person of any declarations, warranties or other terms in such policies.

6 INDEMNIFICATION, LIMITATION OF LIABILITY AND WAIVER OF CLAIMS

6.1 For the purpose of this Article 6, the following definitions shall apply:

6.1.1 "Claims" shall mean any and all actual, threatened or potential claims, demands, proceedings, complaints, grievances, actions, adjudications, litigation, applications, suits, causes of action,

orders, charges, arbitrations or other similar process, of whatsoever kind or nature (whether civil, administrative, regulatory, arbitral or otherwise), and Losses in respect of the foregoing matters.

6.1.2 "Losses" shall mean any and all losses, debts, expenses, liabilities, damages, obligations, payments, fines and costs.

6.2 The Consultant shall defend, fully indemnify and hold harmless TTC, TTC's officers, employees, members (Commissioner(s)), representative(s), consultants, and agents (collectively the "Indemnitees") in respect of Losses (including reasonable legal fees and expenses) suffered, sustained or incurred by the Indemnitees, or Claims brought or prosecuted against the Indemnities by whomsoever, in any manner based upon, occasioned by or attributable to any breach of this MSA or any R54AD22456 Agreement by the Consultant, or to any negligent act or omission, fault or willful misconduct of the Consultant or any person, agent, consultant, firm or corporation for whose acts the Consultant is liable at law (collectively referred to as "TTC Claims"). TTC Claims include the following:

6.2.1 all Losses that any of the Indemnitees may suffer, sustain or incur arising in respect of bodily injury, illness or death of any individual or physical loss of or damage to tangible property (including all or any part of the Site or any other tangible property related thereto); and

6.2.2 all Claims arising in respect of bodily injury, illness or death of any individual or physical loss of or damage to tangible property.

Further, the Consultant shall pay any amount of TTC Claims incurred by TTC on account of any injuries, including death or damages, received or sustained by any persons or property and if it fails to do so, TTC may pay such TTC Claims and deduct the amount thereof from any funds due, or to become due, to the Consultant, or otherwise recover such amounts or any balance thereof from the Consultant in accordance with any Article, General, or Supplementary Conditions of this MSA and/or the applicable R54AD22456 Agreement.

6.3 With the exception of any Supplementary Condition with respect to the payment of liquidated damages, if applicable, TTC shall not be liable to the Consultant for any loss of profit, loss of or damage to reputation, loss of opportunity, or any indirect, special, incidental, punitive, exemplary or consequential damages or any cumulative impact, inefficiency, or loss of productivity, for any reason whatsoever whether those are of the Consultant itself or any of its R54AD22456 Subconsultants.

6.4 TTC will not be liable for interest or financing costs or charges for any reason whatsoever.

6.5 Notwithstanding anything to the contrary contained in this MSA or any R54AD22456 Agreement, the Vendor's liability to TTC, excluding any proceeds of insurance, will not exceed the greater of ("Limitation on Indemnity"):

6.5.1 The aggregate cumulative Contract Price amounts of all R54AD22456 Agreements, or,

6.5.2 \$1,000,000.

6.6 However, this Limitation on Indemnity will not apply to:

6.6.1.1 any deductible referred to in this MSA;

6.6.2 any obligation of Vendor to indemnify TTC based on claims of third parties;

6.6.3 the amount of liquidated damages payable to TTC under any R54AD22456 Agreement;

6.6.4 any liability related to the Consultant's gross negligence or willful misconduct; and

6.6.5 any injury to TTC, its consultants, agents, employees or TTC's property to the extent caused by the gross negligence or willful misconduct of the Consultant, any of its R54AD22456 Subconsultants, or agents.

6.7 TTC shall have the right to satisfy any amount from time to time owing to it by the Consultant including, but not limited to, any amount owing to TTC pursuant to the Consultant's indemnification of TTC or TTC's right to collect liquidated damages, under a R54AD22456 Agreement by way of a set-off against any amount from time to time owing to the Consultant by TTC under the same R54AD22456 Agreement, or if the Consultant becomes insolvent, against any amount owing to it by the Consultant whether or not related to the same R54AD22456 Agreement, ..

6.8 Notwithstanding anything else to the contrary contained in this MSA or in any R54AD22456 Agreement, Article 6 shall govern. Article 6 shall survive termination of the MSA or termination of any R54AD22456 Agreement for any reason by either party, even in such cases where termination is improper, invalid or wrongful.

7 LANGUAGE OF THE MSA

7.1 Communications between the Vendor and TTC shall be in the English language and said communication shall include, but not be limited to, all documents, indicates on Drawings and submissions required under the MSA.

8 INTENT OF THE MSA

8.1 The intent of the MSA is to provide for the participation of the Vendor in R54AD22456 RFSs under the Program.

8.2 The Vendor shall not assign, transfer, convey, sell or otherwise dispose of the whole or any part of the MSA without the written consent of TTC.

8.3 Any technical term used in this MSA that is not defined in this MSA will have the generally accepted industry or technical meaning given to such term.

8.4 The division of this MSA into Conditions, Divisions, Sections, subsections, clauses, sub clauses, paragraphs, subparagraphs, parts and articles and the insertion of headings are for convenience of reference only and shall not affect the construction or interpretation of this MSA.

8.5 In this MSA, words in the singular include the plural and vice versa and words in one gender include all genders. "Including" means "including without limitation" and is not to be construed as limiting any general statement which it follows to the specific or similar items or matters immediately following it.

8.6 Any reference in the MSA to any statute or Act shall be deemed to including any Regulations made thereunder.

8.7 Severability:

8.7.1 Any condition, section, subsection or other subdivision of this MSA or any other provision of this MSA which is, or becomes, illegal, invalid or unenforceable, shall be severed from this MSA and be ineffective to the extent of such illegality, invalidity or unenforceability and shall not affect or impair the remaining provisions hereof.

8.7.2 Except as expressly provided herein, the MSA shall not be altered, changed, or amended in any way except in writing by TTC.

8.7.3 This MSA shall be governed by and interpreted in accordance with the laws of the Province of Ontario, any action or proceeding brought by the Vendor or TTC arising out or related to the MSA, shall be commenced in Ontario.

9 TERM AND TERMINATION OF THE MSA

9.1 Subject to Article 9.2 this MSA shall have a term commencing on the Effective Date and ending on the later of:

- 9.1.1 termination or completion of the last R54AD22456 Agreement, including any applicable warranty period; and
- 9.1.2 December 31, 2025
- 9.2 Notwithstanding any other right or remedy of TTC, TTC may, by written notice to the Vendor, terminate this MSA for its own convenience at any time if TTC deems such action necessary or in the best interests of TTC ("Notice of Termination for Convenience"). TTC's right to terminate the MSA for its convenience shall be absolute and unconditional and exercisable by TTC in its sole discretion. Such Notice of Termination for Convenience shall specify the date upon which such termination becomes effective.
- 9.2.1 The Vendor, upon receiving such Notice of Termination for Convenience from TTC, shall immediately carry out any instructions given in the Notice of Termination for Convenience.
- 9.2.2 In the event this MSA is terminated for the convenience of TTC pursuant to this Article, the Vendor shall not be entitled to any payment, costs, losses, damages or expenses of any nature whatsoever, including but not limited to, loss of anticipate profit, loss of opportunity or consequential damages.
- 9.2.3 Notwithstanding the termination of this MSA, all R54AD22456 Agreements shall remain in full force and effect until the completion of such R54AD22456 Agreement, including any applicable warranty period, or the termination of such R54AD22456 Agreement in accordance with GC11 – SUSPENSION OR TERMINATION.
- 9.3 The rights and obligations of this MSA as set out in the following Subparagraphs shall survive termination under this Article, even in such cases where termination is improper, invalid or wrongful:
- 9.3.1 Article 2 - DEFINITIONS;
- 9.3.2 Article 4.1 - Section 00 72 00 General Conditions attached to this MSA as Schedule A shall be applicable to each R54AD22456 RFS and R54AD22456 Agreement.
- 9.4 Section 00 73 00 Supplementary Conditions attached to this MSA as Schedule B shall be applicable to each R54AD22456 RFS and R54AD22456 Agreement.
- 9.4.1
- 9.4.2 Article 6 - INDEMNIFICATION, LIMITATION OF LIABILITY AND WAIVER OF CLAIMS
- 9.4.3 Article 8 - INTENT OF THE MSA
- 9.4.4 Article 5 - INSURANCE REQUIREMENTS
- 9.4.5 Throughout the term of the MSA, the Vendor shall obtain and maintain at their own expense the following insurance in relation to the Work, any services required to be performed by the Consultant under the Contract Documents, or otherwise, each such policy to be issued by an insurance company licensed to carry on the business of issuing such policies in Ontario, and possessing a Best's Financial Strength Rating of at Least B+.
- 9.4.6 Professional Liability Insurance
- The Vendor shall provide professional liability insurance for a limit not less than One Million Dollars \$1,000,000 covering all insured loss or damage, arising out of the professional services rendered by the Consultant or R54AD22456 Subconsultants of any tier, and/or any engineers/architects/surveyors and any of their servants or employees including personnel on loan to the Consultant or R54AD22456 Subconsultants of any tier and personnel who perform normal services of the Consultant on a R54AD22456 Agreement.
- 9.4.7 Automobile Liability Insurance:

Automobile liability insurance with a limit of not less than One Million Dollars (\$1,000,000) inclusive for any one accident or occurrence and shall insure against claims for bodily injury, including death, and for property damage arising out of the use of any vehicle owned, leased or operated by or on behalf of the in the performance of the work.

9.4.8 Comprehensive General Liability Insurance - which shall include, but not limited to:

9.4.8.1 Contractual liability coverage for liability assumed under GC8 – INDEMNIFICATION AND LIMITATION OF LIABILITY of Section 00 72 00;

9.4.8.2 Contingent employer's liability coverage, for any claims that might be brought against TTC by any employee of the Consultant;

9.4.8.3 Owner's and contractor's protective coverage for all subcontracted operations;

9.4.8.4 Non-owned automobile liability; and

9.4.8.5 Cross liability and severability of interests clause:

Such insurance shall provide a combined single limit of not less than One Million Dollars (\$1,000,000) for any one occurrence or accident for all claims arising out of bodily injury, including death, and damage to the property of others. Such liability insurance shall contain no exclusions in conflict with the character of the Work required to be performed under a R54AD22456 Agreement and shall include TTC as additional insured.

Any other valid or collectible insurance available to TTC shall not apply to any loss until the coverage and limits available under the insurance policies, maintained by the Vendor in accordance with this SC5.1.3, have been exhausted.

9.5 Subconsultant Evidence of Insurance:

9.5.1 Within ten (10) Days after the signing of this MSA and prior to the commencement of any Work required by a R54AD22456 Agreement, and upon the placement, renewal, amendment, or extension of all or any part of the insurance, the Vendor shall promptly provide TTC with certificates of insurance originally signed by the insurer or its authorized representative and, if requested by TTC, a complete copy of the policies certified by an authorized representative of the insurer together with copies of any amending endorsements. . A second copy of such certificates or policies shall be sent electronically to: Risk Manager, TTCcoi@ttc.ca.

9.5.2 If any of the insurance requirements for any R54AD22456 Agreement differ from the insurance requirements as contained in this Article 4.1, then the Consultant will provide prior to the commencement of any Work a certificate of insurance originally signed by the insurer or its authorized representative and, if requested by TTC, a complete copy of the policies certified by an authorized representative of the insurer together with copies of any amending endorsements. A second copy of such certificates or policies shall be sent electronically to: Risk Manager, TTCcoi@ttc.ca

9.5.3 Each policy shall be endorsed with an undertaking from the insurance company that such insurance will not be cancelled, fail to be renewed or reduced in coverage without 30 Days prior written notice delivered by registered mail to TTC.

9.5.4 With the exception of automobile liability, each policy shall include an endorsement under which the insurer waives any right of subrogation it may have against TTC and its directors, officers, employees and agents.

9.5.5 Should TTC determine in its sole discretion that the insurance taken by the Consultant is unsatisfactory in any respect and for any reason whatsoever, it shall forthwith advise the Consultant of such determination and the reasons therefore and the Consultant shall forthwith take out insurance of a character satisfactory to TTC.

- 9.5.6 The taking out of the insurance as aforesaid shall not relieve the Consultant of any of its obligations under any R54AD22456 Agreement.
- 9.5.7 Failure of TTC to demand such certificate or other evidence of full compliance with these insurance requirements, or any additional requirements under any R54AD22456 Agreement or failure of TTC to identify a deficiency from evidence provided will not be construed as a waiver of the Consultant's obligation to maintain such insurance.
- 9.5.8 The acceptance of delivery by TTC of any certificate of insurance evidencing the required coverages and limits does not constitute approval or agreement by TTC that these insurance requirements or any additional requirements under any R54AD22456 Agreement have been met or that the insurance policies shown in the certificates of insurance are in compliance with the requirements.
- 9.5.9 If any of the coverages are required to remain in force after final payment, or for any applicable warranty period, an additional certificate evidencing continuation of such coverage will be submitted with the Consultant's final invoice.
- 9.5.9.1 The Vendor will ensure that no insurance required by this MSA or any R54AD22456 Agreement will be invalidated or vitiated by any action or failure to act by the Consultant or any of the Consultant's personnel or by any breach by the Consultant or any other person of any declarations, warranties or other terms in such policies.

10 INDEMNIFICATION, LIMITATION OF LIABILITY AND WAIVER OF CLAIMS

- 10.1 For the purpose of this Article 6, the following definitions shall apply:
- 10.1.1 "Claims" shall mean any and all actual, threatened or potential claims, demands, proceedings, complaints, grievances, actions, adjudications, litigation, applications, suits, causes of action, orders, charges, arbitrations or other similar process, of whatsoever kind or nature (whether civil, administrative, regulatory, arbitral or otherwise), and Losses in respect of the foregoing matters.
- 10.1.2 "Losses" shall mean any and all losses, debts, expenses, liabilities, damages, obligations, payments, fines and costs.
- 10.2 The Consultant shall defend, fully indemnify and hold harmless TTC, TTC's officers, employees, members (Commissioner(s)), representative(s), consultants, and agents (collectively the "Indemnitees") in respect of Losses (including reasonable legal fees and expenses) suffered, sustained or incurred by the Indemnitees, or Claims brought or prosecuted against the Indemnities by whomsoever, in any manner based upon, occasioned by or attributable to any breach of this MSA or any R54AD22456 Agreement by the Consultant, or to any negligent act or omission, fault or willful misconduct of the Consultant or any person, agent, consultant, firm or corporation for whose acts the Consultant is liable at law (collectively referred to as "TTC Claims"). TTC Claims include the following:
- 10.2.1 all Losses that any of the Indemnitees may suffer, sustain or incur arising in respect of bodily injury, illness or death of any individual or physical loss of or damage to tangible property (including all or any part of the Site or any other tangible property related thereto); and
- 10.2.2 all Claims arising in respect of bodily injury, illness or death of any individual or physical loss of or damage to tangible property.

Further, the Consultant shall pay any amount of TTC Claims incurred by TTC on account of any injuries, including death or damages, received or sustained by any persons or property and if it fails to do so, TTC may pay such TTC Claims and deduct the amount thereof from any funds due, or to become due, to the Consultant, or otherwise recover such amounts or any balance thereof from the Consultant in accordance with any Article, General, or Supplementary Conditions of this MSA and/or the applicable R54AD22456 Agreement.

- 10.3 With the exception of any Supplementary Condition with respect to the payment of liquidated damages, if applicable, TTC shall not be liable to the Consultant for any loss of profit, loss of or damage to reputation, loss of opportunity, or any indirect, special, incidental, punitive, exemplary or consequential damages or any cumulative impact, inefficiency, or loss of productivity, for any reason whatsoever whether those are of the Consultant itself or any of its R54AD22456 Subconsultants.
- 10.4 TTC will not be liable for interest or financing costs or charges for any reason whatsoever.
- 10.5 Notwithstanding anything to the contrary contained in this MSA or any R54AD22456 Agreement, the Vendor's liability to TTC, excluding any proceeds of insurance, will not exceed the greater of ("Limitation on Indemnity"):
- 10.5.1 The aggregate cumulative Contract Price amounts of all R54AD22456 Agreements, or,
- 10.5.2 \$1,000,000.
- 10.6 However, this Limitation on Indemnity will not apply to:
- 10.6.1.1 any deductible referred to in this MSA;
- 10.6.2 any obligation of Vendor to indemnify TTC based on claims of third parties;
- 10.6.3 the amount of liquidated damages payable to TTC under any R54AD22456 Agreement;
- 10.6.4 any liability related to the Consultant's gross negligence or willful misconduct; and
- 10.6.5 any injury to TTC, its consultants, agents, employees or TTC's property to the extent caused by the gross negligence or willful misconduct of the Consultant, any of its R54AD22456 Subconsultants, or agents.
- 10.7 TTC shall have the right to satisfy any amount from time to time owing to it by the Consultant including, but not limited to, any amount owing to TTC pursuant to the Consultant's indemnification of TTC or TTC's right to collect liquidated damages, under a R54AD22456 Agreement by way of a set-off against any amount from time to time owing to the Consultant by TTC under the same R54AD22456 Agreement, or if the Consultant becomes insolvent, against any amount owing to it by the Consultant whether or not related to the same R54AD22456 Agreement, ..
- 10.8 Notwithstanding anything else to the contrary contained in this MSA or in any R54AD22456 Agreement, Article 6 shall govern. Article 6 shall survive termination of the MSA or termination of any R54AD22456 Agreement for any reason by either party, even in such cases where termination is improper, invalid or wrongful.
- 11 LANGUAGE OF THE MSA**
- 11.1 Communications between the Vendor and TTC shall be in the English language and said communication shall include, but not be limited to, all documents, indicates on Drawings and submissions required under the MSA.
- 12 INTENT OF THE MSA**
- 12.1 The intent of the MSA is to provide for the participation of the Vendor in R54AD22456 RFSs under the Program.
- 12.2 The Vendor shall not assign, transfer, convey, sell or otherwise dispose of the whole or any part of the MSA without the written consent of TTC.
- 12.3 Any technical term used in this MSA that is not defined in this MSA will have the generally accepted industry or technical meaning given to such term.

- 12.4 The division of this MSA into Conditions, Divisions, Sections, subsections, clauses, sub clauses, paragraphs, subparagraphs, parts and articles and the insertion of headings are for convenience of reference only and shall not affect the construction or interpretation of this MSA.
- 12.5 In this MSA, words in the singular include the plural and vice versa and words in one gender include all genders. "Including" means "including without limitation" and is not to be construed as limiting any general statement which it follows to the specific or similar items or matters immediately following it.
- 12.6 Any reference in the MSA to any statute or Act shall be deemed to including any Regulations made thereunder.
- 12.7 Severability:
 - 12.7.1 Any condition, section, subsection or other subdivision of this MSA or any other provision of this MSA which is, or becomes, illegal, invalid or unenforceable, shall be severed from this MSA and be ineffective to the extent of such illegality, invalidity or unenforceability and shall not affect or impair the remaining provisions hereof.
 - 12.7.2 Except as expressly provided herein, the MSA shall not be altered, changed, or amended in any way except in writing by TTC.
 - 12.7.3 This MSA shall be governed by and interpreted in accordance with the laws of the Province of Ontario, any action or proceeding brought by the Vendor or TTC arising out or related to the MSA, shall be commenced in Ontario.
 - 12.7.4 TERM AND TERMINATION OF THE MSA

13 SIGNATURE

ON BEHALF OF THE COMPANY:

Dated this _____ day of _____ 20____.

Per: _____
(Signature)

Name: _____

Title: _____

I/We have authority to bind the Company.

ON BEHALF OF THE TORONTO TRANSIT COMMISSION:

Dated this _____ day of _____ 20____.

Per: _____
(Signature)

Name: _____

Title: _____

I have authority to bind the Corporation.

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APPENDICES

APPENDIX 1 – CONSULTANT PERFORMANCE REVIEW FORM

APPENDIX 2 – NON-DISCLOSURE AGREEMENT

GC1 DEFINITIONS

- 1.1 The following definitions shall apply to all Contract Documents:
- 1.1.1 "Accessibility for Ontarians with Disabilities Act" means the *Accessibility for Ontarians with Disabilities Act, 2005*, S.O. 2005, c. 11, as amended from time to time.
 - 1.1.2 "Antisemitism" means the latent or overt hostility, hatred towards, or discrimination directed at individual Jews or Jewish persons for reason connected to their religion, ethnicity, and cultural, historical, intellectual, and religious heritage, which can take many forms ranging from individual acts of discrimination, physical violence, vandalism and hatred to more organized and systemic efforts including genocide and the destruction of entire communities.
 - 1.1.3 "Applicable Laws" shall mean the meaning as given in GC5.1.
 - 1.1.4 "Bid" shall mean the Proponent and/or Vendor's written offer to perform the Work, as amended by the terms and conditions of the Purchase Order.
 - 1.1.5 "Books and Records" shall have the meaning as set out in GC19.1.
 - 1.1.6 "Business Day" means any day other than a Saturday, Sunday or public holiday observed by the City of Toronto and/or the Province of Ontario.
 - 1.1.7 "Claims" shall mean any and all actual, threatened or potential claims, demands, proceedings, complaints, grievances, actions, adjudications, litigation, applications, suits, causes of action, orders, charges, arbitrations or other similar process, of whatsoever kind or nature (whether civil, administrative, regulatory, arbitral or otherwise), and Losses in respect of the foregoing matters.
 - 1.1.8 "Commission" or "TTC" shall mean the Toronto Transit Commission a body corporate pursuant to the City of Toronto Act, 2006, S.O. 2006, c. 11, Sched. A, as amended.
 - 1.1.9 "Commission's Representative" shall mean the duly authorized representative, designated from time to time by the Commission, to exercise such power, authority or discretion as is required under the Contract.
 - 1.1.10 "Consultant" shall mean the Proponent to whom the Commission has awarded the Work, its successors and/or assignees.
 - 1.1.11 "Consultant Staff" shall mean the person or persons used by the Consultant and Subconsultant(s) to complete the Work or any part thereof, whether directly employed by or under contract with the Consultant or provided by a Subconsultant or agency.
 - 1.1.12 "Contract" shall mean the undertaking by the Commission and the Consultant to perform their respective duties, responsibilities and obligations as prescribed in the Contract Documents.
 - 1.1.13 "Contract Amendment" shall mean a written order to the Consultant for additions, deletions or other revisions to the Work as specified in the Contract Documents.
 - 1.1.14 "Contract Completion" shall mean when the entire Work has been performed to the requirements of the Contract Documents and is so certified by the Commission's Representative.

- 1.1.15 "Contract Documents" shall mean the Contract Amendments, Purchase Order, Supplementary Conditions, General Conditions, Work Plan(s), Scope of Services, Addenda and the Consultant's Proposal.
- 1.1.16 "Contract Schedule" shall mean the schedule indicating the timing of major activities of the Work submitted by the Consultant and approved in writing by the Commission's Representative.
- 1.1.17 "COVID-19" means the novel coronavirus outbreak, classified as a pandemic by the World Health Organization on March 11, 2020.
- 1.1.18 "Day" shall mean calendar day unless otherwise specified.
- 1.1.19 "Equity Deserving" means persons, groups or communities that experience significant collective barriers in participating in society including, but limited to, attitudinal, historic, social and environmental barriers based on age, ethnicity, disability, economic status, gender, nationality, race, sexual orientation, and/or transgender status, etc. Examples of such persons, groups or communities include, but are not limited to, women, Racialized, IndigenousLGBTQ2S+, persons with disabilities, etc.
- 1.1.20 "Force Majeure Event" means acts of God, public enemies, acts of governments or foreign states, epidemics, quarantine restrictions, fires or floods that were not caused or contributed to by any act, fault or omissions of the Consultant, strikes, lockouts or organizations of workers, embargoes by transportation companies or public authorities, riots, insurrections, wars, pestilence, lightning, earthquakes, cyclones, issuance of a direction or stop work order related to all or a portion of the Work by a court of competent jurisdiction or other public authority provided that such order was not issued as a result of any act, fault, or omission of the Consultant, or by other causes which TTC determines in its sole discretion to be wholly beyond the control of the Consultant or TTC.
- 1.1.21 "GC14 Claim" shall mean a demand or assertion by the Consultant seeking, as a matter of right, amendment or interpretation of the Contract Documents, payment of money, or extension of the Contract Schedule or other relief with respect to the terms of the Contract, and made in accordance with the requirements of the Contract.
- 1.1.22 "GC14 Claim Notice" shall mean a notice in writing by the Consultant of its intention to make a GC14 Claim in the form attached as Appendix 2, made in accordance with **GCError! Reference source not found.**
- 1.1.23 "GC14 Claim Statement" shall mean a detailed statement of a GC14 Claim in accordance with GC14.3.
- 1.1.24 "Indemnitees" has the meaning as set out in GC8.1.
- 1.1.25 "Indigenous" means persons who identify as being descended from the original inhabitants of what is now known as Canada and includes First Nations, Métis, and Inuit.
- 1.1.26 "Integrated Accessibility Standards" means O. Reg. 191/11 Integrated Accessibility Standards under the Accessibility for Ontarians with Disabilities Act, as amended from time to time.

- 1.1.27 "Islamophobia" means racism, stereotypes, prejudice, fear, or acts of hostility directed at individual Muslims or followers of Islam in general, and includes individual acts of intolerance and racial profiling, and viewing and treating Muslims as a greater security threat on an institutional, systemic, and societal level which may result in Muslims being treated unequally, evaluated negatively, and excluded from position, rights, and opportunities in society and its institutions.
- 1.1.28 "LGBTQ2S+" is an acronym that stands for Lesbian, Gay, Bisexual, Transgender, Queer (or Questioning), Two-Spirit and the plus (+) sign represents the broad and evolving communities within the umbrella of the acronym LGBTQ2S+ including Intersex and the new ways people are self-identifying.
- 1.1.29 "Losses" shall mean any and all losses, debts, expenses, liabilities, damages, obligations, payments, fines and costs.
- 1.1.30 "MSA" or "Master Services Agreement" shall mean the Master Service Agreement entered into between TTC and the Vendor in respect of the Program.
- 1.1.31 "Notification of Award" shall mean the written notification by the Commission accepting the Proposal of a Proponent for the Work.
- 1.1.32 "Phase" shall mean a portion of the Work as detailed in the Scope of Services.
- 1.1.33 "Proposal" shall mean the written offer of a Proponent to perform the Work.
- 1.1.34 "Proponent" shall mean the party submitting a Proposal for the Work.
- 1.1.35 "Purchase Order" shall mean the document issued by the Commission, confirming the Notification of Award and documenting the purchase of the Work of the Contract within the stated upset limit price upon the terms and conditions as stated in the Contract Documents.
- 1.1.36 "Racialized" means, with respect to persons, groups, or communities, those that have had or have racial meanings attributed to them in ways that negatively impact their social, political, and economic life which includes, but is not limited to, persons other than Aboriginal, who are non-Caucasian in race or non-white in colour, and may include persons impacted by Antisemitism and Islamophobia.
- 1.1.37 "RFSQ" – shall mean Request for Supplier Qualification documents to which the Proponent submitted a Bid to qualify for the MSA.
- 1.1.38 "RFS" – shall mean the Request for Services documents to which the Vendor submitted a Bid to perform the Work. For greater certainty, the 'Closing or "Closing date" of the RFS shall be the date and time deadline indicated in the RFS, as amended, by which Bids must be Submitted.
- 1.1.39 "Standard of Care" shall have the meaning as set out in GC18.1.
- 1.1.40 "Subconsultant" shall mean the individual, firm, partnership or corporation having a direct contract with the Consultant to perform a part or parts of the Work.
- 1.1.41 "Task" shall mean a defined portion of the overall Work.

- 1.1.42 "Vendor" shall mean Proponents signed to an MSA after approval of the Proponents Bid under this RFSQ.
- 1.1.43 "Work" or "Works" shall mean the services or any part thereof, required by the Contract Documents.
- 1.1.44 "Work Plan" shall mean the detailed Work description of a specified part or Phase or Task, as applicable, of the Work, which shall include a detailed schedule, Consultant Staff list, itemized cost breakdown and such other information as specified by the Commission."

GC2 CONTRACT DOCUMENTS ORDER OF PRECEDENCE

- 2.1 The Contract Documents form the entire Contract between the parties and supersedes any undertaking or agreement, collateral, oral or otherwise existing between the parties as at the date of issuance of the Purchase Order. The documents constituting the Contract are complementary to each other and any matter or thing included in any such documents shall be considered to be included in all.
- 2.3 The meaning and intent of the Contract Documents shall be interpreted and shall govern in accordance with the following order of precedence:
 - 2.3.1 Contract Amendments;
 - 2.3.2 Purchase Order;
 - 2.3.3 Supplementary Conditions;
 - 2.3.4 Section 00 72 00 General Conditions of the MSA;
 - i. Division 01 Part B;
 - ii. Division 01 Part A;
 - 2.3.5 MSA, except for Section 00 72 00 General Conditions and Division 01 Part A;
 - 2.3.6 Release, as defined in Section 00 73 00 Supplementary Conditions, if applicable;
 - 2.3.7 Scope of Services; and
 - 2.3.8 Consultant's Proposal.
- 2.4 Documents of a later date shall govern over like documents.

GC3 LANGUAGE OF THE CONTRACT

- 3.1 Communication between the Consultant and the Commission shall be in the English language and said communication shall include, but not be limited to, all documents, notes on drawings and submissions required under the Contract.

GC4 INTENT OF THE CONTRACT

- 4.1 The intent of the Contract is to provide for the performance and completion, in every detail, of the Work described or implied by the Contract Documents.

- 4.2 No waiver of any provision or waiver of any failure to perform by the Consultant of any of the provisions of this Contract shall be effective unless consented to in writing by the Commission, nor shall any such waiver constitute a waiver of any other provision or any subsequent failure to perform.
- 4.3 The Consultant shall not assign, transfer, convey, sell or otherwise dispose of the whole or any part of the Contract without the prior written consent of the Commission's Representative. Notwithstanding the foregoing, the Consultant acknowledges and agrees that TTC may assign the Contract, or any portion thereof, without the consent of the Consultant.
- 4.4 The Consultant shall perform the Work stipulated in the Contract Documents, and shall furnish, unless otherwise provided in the Contract, everything necessary for the proper performance and completion of the Work.
- 4.5 Nothing contained in the Contract Documents shall imply or create any contractual relationship between any Subconsultant and TTC.
- 4.6 The Consultant shall exercise its rights and perform its obligations at its own cost and risk without recourse to TTC, except as otherwise provided in this Contract, in which case the Consultant's sole recourse with respect to the subject matter of this Contract shall be TTC.
- 4.7 Any technical term used in this Contract that is not defined in this Contract will have the generally accepted industry or technical meaning given to such term.
- 4.8 Save and except for as provided in **Error! Reference source not found.**, the division of this Contract into Conditions, Divisions, Sections, subsections, clauses, subclauses, paragraphs, subparagraphs, parts and articles and the insertion of headings are for convenience of reference only and shall not affect the construction or interpretation of this Contract.
- 4.9 In this Contract, words in the singular include the plural and vice versa and words in one gender include all genders. "Including" means "including without limitation" and is not to be construed as limiting any general statement which it follows to the specific or similar items or matters immediately following it.
- 4.10 The Contract, including all Contract Documents, constitutes the entire agreement between the Consultant and TTC pertaining to the Work.
- 4.11 Severability:
- a. Any condition, section, subsection or other subdivision of this Contract or any other provision of this Contract which is, or becomes, illegal, invalid or unenforceable, shall be severed from this Contract and be ineffective to the extent of such illegality, invalidity or unenforceability and shall not affect or impair the remaining provisions hereof.
 - b. Except as expressly provided herein, the Contract shall not be altered or changed in any way except in writing by TTC.
- 4.12 This Contract constitutes a separate, distinct and independent agreement from the MSA.

GC5 LAWS TO BE OBSERVED

- 5.1 In the performance of the Work, the Consultant shall observe and comply with the statutes, and regulations of the Government of Canada and the Province of Ontario and with the by-laws, including building codes and other requirements of the municipalities within which the Work is performed, so far as the said statutes, regulations, codes and by-laws affect the Work or control or limit the actions of persons engaged in the Work ("Applicable Laws").

- 5.2 Wherever a statute, regulation, by-law, standard, code or document or any part thereof is quoted in the Contract Documents, it shall be deemed to refer to the latest amendment or revision in effect on the date of the closing of the RFS and shall be a part of the Contract as if it had been written in full therein.
- 5.3 The Contract shall be governed by and interpreted in accordance with the laws of the Province of Ontario and subject to GC15 – SETTLEMENT OF DISUPUTES any action or proceeding brought by the Consultant to interpret or enforce the Contract shall be commenced in the courts of Ontario and not elsewhere.

GC6 TAXES AND DUTIES

- 6.1 The Contract Price is inclusive of all applicable Canadian taxes, value added taxes and custom duties, either in force or announced prior to the RFS Closing date, even if the effective date of such taxes or duties is subsequent to the RFS Closing date, including, but not limited to, the harmonized sales tax (HST).
- 6.2 If a change in the tax or duty payable is announced subsequent to the RFS Closing date, any change in tax or duty payable will be to the account of TTC. No additional costs for administration or overhead and profit will be allowed on such changes and the Consultant shall supply, at no cost to TTC, sufficient documentation to permit a determination of the resulting change.
- 6.3 Where an exemption or recovery of government sales tax, value added tax, custom duties or excise taxes is applicable to the Contract, the Consultant shall provide TTC within fourteen (14) Days, upon written request, with all necessary cost information including original invoices and assistance, at no cost to TTC, to facilitate such exemption or recovery of taxes and duties to the credit of TTC.
- 6.4 The Consultant shall co-operate fully with TTC in order that TTC may obtain any rebates to which it may be entitled under the Customs Act, R.S.C., 1985, c. 1 (2nd Supp.), as amended, the Excise Tax Act, R.S.C., 1985, c. E-15, as amended, and the Retail Sales Tax Act, R.S.O. 1990, c. R.31, as amended.

GC7 APPROVAL BY OTHER AUTHORITIES

- 7.1 Where any portion of the Work is subject to the approval of an authority, department of government, or agency other than the Commission, such approval shall be obtained by the Commission. The Commission will be responsible for obtaining all required permits and approvals for the construction of the Work unless otherwise advised in writing by the Commission's Representative.
- 7.2 In connection therewith, the Consultant shall investigate and plan all approval procedures required to complete the Work and shall prepare all applications and set up the necessary meetings as may be required by other authorities to permit the Commission to obtain such approvals.

GC8 INDEMNIFICATION AND LIMITATION OF LIABILITY

- 8.1 The Consultant shall hereby assume the defense of, fully indemnify and hold harmless TTC, TTC's officers, employees, members (Commissioners), representative(s), consultants, and agents (collectively the "Indemnitees") in respect any Losses (including reasonable legal expenses), suffered, sustained or incurred by the Indemnitees, or Claims brought or prosecuted against the Indemnitees by whomsoever, in any manner based upon, occasioned by or attributable to any breach of the Contract by the Consultant, or to any willful misconduct, fault, negligent act, error, act or omission of the Consultant or any person, agent, consultant, firm, partnership or

corporation for whose acts the Consultant is liable at law (collectively referred to as "TTC Claims"). Further, the Consultant shall pay any amount of TTC Claims incurred by TTC on account of any injuries, including death or damages, received or sustained by any persons or property and if it fails to do so, TTC may pay such TTC Claims and deduct the amount thereof from any monies due, or to become due, to the Consultant, or otherwise recover such amounts or any balance thereof from the Consultant.

- 8.2 TTC shall not be liable to the Consultant for any loss of profit, loss of or damage to reputation, loss of opportunity, or any indirect, special, incidental, punitive, exemplary or consequential damages or any cumulative impact, inefficiency, or loss of productivity, for any reason whatsoever whether those are of the Consultant itself, any of its Subconsultants or any individual, firm, partnership or corporation who claim to have supplied services or materials that the Consultant provided or was required to provide to TTC pursuant to the Contract.
- 8.3 TTC will not be liable for interest or financing costs or charges for any reason whatsoever.
- 8.4 TTC shall not be liable to the Consultant for any costs, losses, fees or expenses incurred to correct its own negligence or breaches of contract.
- 8.5 The Consultant shall not be liable to TTC for any consequential damages, including but not limited to claims for loss of profit or loss of or damage to reputation. Notwithstanding the foregoing, the Consultant expressly agrees that any amounts paid by TTC to a contractor or subcontractor or set-off by TTC against any amounts owing by TTC to a contractor or subcontractor are deemed to be direct damages of TTC and not indirect or consequential damages.
- 8.6 The Consultant acknowledges and agrees that it shall be fully and completely responsible for the Work except where such responsibility has been expressly waived in writing by TTC or as otherwise expressly set out in the Contract Documents. Any review, inspection, comment, rejection or approval of the Work, or silence or acquiescence by TTC regarding the Consultant's failure to comply with the Contract, including the Standard of Care, does not in any way relieve or waive the Consultant of its responsibility for the adequacy of the Work, the provision of the Work in accordance with the Contract and nor shall any liability be imposed, direct or implied on the part of TTC.
- 8.7 TTC shall have the right to satisfy any amount from time to time owing to it by the Consultant under this Contract or if the Consultant becomes insolvent, any amount owing to it by the Consultant whether or not related to the Contract, by way of a set-off against any amount from time to time owing to the Consultant by TTC, including, but not limited to, any amount owing to TTC pursuant to the Consultant's indemnification of TTC.
- 8.8 Notwithstanding anything else to the contrary contained in the Contract, GC 8 shall govern. GC 8 shall survive termination of the contract for any reason by either party, even in such cases where termination is improper, invalid or wrongful.

GC9 WORKERS' RIGHTS

- 9.1 In accordance with the Ontario Human Rights Code, the Consultant shall not discriminate against workers or applicants for employment as workers because of race, creed, colour, national origin, political or religious affiliation, gender, sexual orientation, age, marital status, record of offences, family relationship, or disability.

GC10 PROPRIETARY RIGHTS

- 10.1 If any design, device, process or material covered by the letters patent or trademark, copyright, industrial design, trade secret or other forms of intellectual property, is provided by the Consultant under the Contract, the Consultant shall indemnify, defend and save the Commission harmless from any action or claim arising out of the infringement or alleged infringement of any valid or allegedly valid patent, trademark, copyright, industrial design, trade secret or other forms of intellectual property and shall indemnify the Commission for any cost, expense and damages which it may suffer or be obliged to pay by reason of such action or claim.
- 10.2 The Consultant shall pay royalties and patent fees required for the performance of the Contract.
- 10.3 Any drawings, documents, technical data, methods, processes, tooling, and inventions, whether conceived or developed and produced during the course of the Contract specifically for the purposes of completing the Contract, excluding the Consultant's pre-existing intellectual property, shall be the property of the Commission, who shall have sole exclusive rights for the subsequent use of same, except as may be otherwise granted by the Commission. Neither the Consultant nor its Subconsultants shall apply for any patent in regard thereto; or divulge, use or sell any information or thing related thereto, without the prior written consent of the Commission.
- 10.4 TTC has the right, within the scope of the Contract and for the sole purpose of operating, maintaining and subsequently modifying the Work, to use, duplicate, or disclose internally within TTC, the technical data and the information conveyed therein, in whole or in part, and to have or permit others to do so, as set out below:
- a. manuals or instructional materials prepared for installation, operating, maintenance or training purposes;
 - b. technical data pertaining to items, components or processes which were prepared for the purpose of identifying sources, size, configuration, mating and attachment characteristics, functional characteristics and performance requirements;
 - c. other technical data which has been or is normally furnished without restriction by the Consultant or Subconsultant;
 - d. computer and microprocessor software documentation including program design language or pseudo-code listings, fully annotated source code and machine level listings;
 - e. in the event that the Consultant and/or its Subconsultant require an agreement prior to providing confidential technical data to TTC, then TTC will enter into a non-disclosure agreement acceptable to said parties to ensure delivery of confidential technical data pursuant to the Contract; and
 - f. other specifically described technical data, which the parties agree will be furnished without restriction.
- 10.5 No such copyrighted matter, shall be included in technical data furnished hereunder unless the written permission of the copyright owner has been obtained by the Consultant for use by TTC in the manner herein described.
- 10.6 The Consultant shall report to TTC promptly and in written detail each notice or Claim of copyright infringement or other infringement of intellectual property rights received by the Consultant with respect to any technical data delivered hereunder.

10.7 The Consultant hereby permanently waives in favour of TTC, any moral rights, as defined in the Copyright Act, R.S.C. 1985. c.C-42, which it may have in or to any copyrighted material and shall provide to TTC at Contract Completion, or at such other time as TTC may require, a written permanent waiver, in a form acceptable to TTC, of moral rights of every author who contributed to such copyrighted materials.

GC11 SUSPENSION OR TERMINATION

11.1 The Commission shall have the right at any time whether for cause or convenience to suspend or terminate further performance of all or any portion of the Work by notice in writing to the Consultant. On the date of such notice the Consultant shall immediately discontinue the Work as instructed whether being performed by itself or its Subconsultants and shall preserve and protect all Work in progress and all completed Work.

11.2 The Consultant shall be reimbursed at the Contract rates in accordance with the Supplementary Condition entitled "CALCULATION OF FEES AND EXPENSES" on either a time plus expenses or fixed price basis or some combination thereof as determined by the Commission's Representative, for that portion of the Work satisfactorily performed or completed to the date of the notice. The Commission shall not be liable for any other costs arising from such notice including but not limited to loss of anticipated profits or loss of opportunity or contribution.

GC12 SUBLETTING OF THE CONTRACT

12.1 Except as specifically indicated in its Proposal, the Consultant shall not subcontract any portion of the Work to any other Subconsultant without the prior approval of the Commission.

12.2 The Consultant agrees that it shall:

12.2.1 Incorporate the terms and conditions of the Contract Documents into all subcontract agreements it enters into with its Subconsultants;

12.2.2 Be as fully responsible to the Commission for the acts and omissions of its Subconsultants, even if specified by TTC, and agents and persons directly or indirectly employed by the Consultant as it is for its own acts and omissions.

12.3 Any work performed by a Subconsultant shall meet or exceed the Standard of Care.

12.4 Nothing contained in the Contract Documents shall imply or create any contractual relationship between any Subconsultant and the Commission.

GC13 CONFIDENTIAL DATA

13.1 Except as is specifically required for the performance of the Work the Consultant, its partners, directors, employees, officers, agents and Subconsultants, shall not divulge or use elsewhere, whether in whole or in part, any information regarding the Commission and its operation acquired or discovered during the performance of the Work without the prior written consent of the Commission.

13.2 If the Commission is required to provide the Consultant and Consultant Staff with certain "Confidential Information" and/or access to restricted portions of TTC property, the Commission's Representative may at his/her sole discretion, request execution by the Consultant or Consultant Staff and/or Subconsultant or Specialist Subconsultant, of a Non-Disclosure Agreement, attached

as Schedule "A" to Section 00 73 00. The Consultant shall execute/have executed and return such Non-Disclosure Agreement(s) to the Commission's Representative within seven calendar days for similar execution by the Commission. A copy of the fully executed Non-Disclosure Agreement(s) will be sent to the Consultant within seven calendar days of execution by the Commission.

- 13.3 The Consultant, including its agents, officers, directors, employees, Consultant Staff, and Subconsultants shall, if required for the purposes of performing the Work, enter into confidentiality agreements with third parties who are under separate contract to the Commission and are providing Confidential Information, as determined by such third parties, to the Consultant for the purposes of enabling the Consultant to perform the Work.

GC14 CLAIMS

- 14.1 If the Consultant intends to make a GC14 Claim of any nature whether in respect of the interpretation, application or administration of the Contract or the Work to be done thereunder or the failure to agree where agreement between the parties is called for, then the Consultant shall give to the Commission's a GC14 Claim Notice as soon as possible and in any event within fourteen (14) calendar days of when the Consultant has actual or constructive knowledge that a GC14 Claim may have or has occurred, to permit the TTC to have the opportunity to direct a change to avoid or minimize any increase in cost or schedule delay, otherwise any Claims by the Consultant in respect of such GC14 Claim (including the event giving rise to the GC14 Claim) shall be irrevocably barred, and waived and released by the Consultant.. Such notice shall set forth particulars of the GC14 Claim, probable extent of the work, and the estimated monetary value involved and the relevant provisions of the Contract Documents.
- 14.2 If the Consultant intends or is requested to perform work that is, in its opinion, additional to that covered by the Contract, it shall provide notice in writing prior to proceeding with such extra work and the Consultant and Commission's Representative shall agree as to the compensation, if any, for such work. In the event that agreement is not reached, the Commission's Representative shall identify the records to be kept by the Consultant. If the procedure is not followed and no notice is given, it will be deemed that payment is included in the Contract price for the Work and no additional payment or extension to the Contract Schedule shall be made.
- 14.3 Within thirty (30) calendar days of providing written notice of its intention to submit a Claim the Consultant shall submit a GC14 Claim Statement which shall identify the item or items in respect of which the Claim has risen, the grounds upon which the Claim is made and the Consultant's detailed records to support the Claim.
- 14.4 Within sixty (60) calendar days of receipt of the detailed GC14 Claim Statement, and all supporting documentation, the Commission's Representative will advise the Consultant, in writing, of the Commission's Representative's opinion with regard to the validity of the Claim.
- 14.5 The Consultant shall submit a detailed summary of all GC14 Claims including outstanding and unresolved GC14 Claims arising out of the Work, not later than thirty (30) calendar days following Contract Completion. Such summary of GC14 Claims shall identify the item or items in respect of which each GC14 Claim arose, the grounds upon which the GC14 Claim was made and the Consultant's detailed records to support the GC14 Claim. No GC14 Claim of any nature made after the thirty (30) calendar days following Contract Completion shall be allowed.
- 14.6 Should the Consultant disagree with the opinion given with respect to any part of the GC14 Claim, the Commission's Representative will enter into negotiations with the Consultant to resolve the

matters in dispute. Where a negotiated settlement cannot be reached the dispute may be resolved as described in GC15 - SETTLEMENT OF DISPUTES.

14.7 The Consultant shall complete the Work, in accordance with the written instructions of the Commission's Representative, notwithstanding any dispute, arbitration or any legal action initiated by either or both of the parties.

14.8 The Commission will not pay interest or financing costs on outstanding monies owed to the Consultant as a result of GC14 Claims submitted.

GC15 SETTLEMENT OF DISPUTES

15.1 If a claim or any other dispute arising between TTC and the Consultant cannot be resolved to the satisfaction of both parties, then the parties may between themselves agree to submit the particular claim and/or dispute for binding arbitration in accordance with the provisions of the Arbitration Act (Ontario), as amended, and upon such terms and conditions as mutually agreed upon by the parties. Such agreement does not waive or abrogate any claims or defences TTC may have in respect of the Consultant's compliance with GC 14 - CLAIMS.

15.2 For Claims by TTC as against the Consultant:

15.2.1 The basic limitations period in respect of any Claim related to or arising out of this Contract that was discovered or ought to have been discovered before Contract Completion shall be extended from the date it was discovered or ought to have been discovered to the second anniversary of Contract Completion.

15.2.2 Section 15.2.1 is intended to be an agreement to extend a basic limitation period as contemplated by section 22(3) under the Limitations Act, 2002, S.O. 2002, c.24, as amended.

15.3 No Claim may be commenced by the Consultant against TTC unless the Consultant has complied with the requirements of GC14 – CLAIMS prior to the commencement of such Claim.

15.4 The Consultant shall complete the Work, in accordance with the Contract, notwithstanding any Claim initiated by either or both of the parties.

GC16 FORCE MAJEURE

16.1 The Consultant's sole remedy is a non-compensable extension to the Contract Schedule and any affected milestone(s), if a Force Majeure Event causes or results in the Consultant incurring any of the following:

- a. an increase in costs;
- b. a delay, measured against the Contract Schedule in effect as of the date of the Force Majeure Event, which affects the milestone(s); or
- c. any other impact.

16.2 No extension of Contract time shall be granted unless the Consultant, within fourteen (14) calendar days after the delay is discovered, submits to the Commission's Representative in writing its notice for extension of Contract time.

- 16.3 The notice shall state the nature of delay, its causes, the portions of the Work affected thereby and the date when they became so affected.
- 16.4 The Parties agree that the following is not a Force Majeure Event:
- a. COVID-19, including any federal, provincial, or municipal state of emergency or any statute, law, order, or public health recommendation arising therefrom, whether foreseen or unforeseen, whether issued before or after the Closing Date, except for a government order under a state of emergency issued after the Notification of Award which requires the Consultant and/or Subconsultant to close its places of business.
 - b. Precipitation, cold and hot weather, or unseasonable or otherwise weather.
 - c. If, on a reasonable commercial basis, a person applying due diligence in the same or similar circumstances under the same or similar obligations as the provisions under the Contract would have put in place contingency plans, including business continuity plans, to either materially mitigate or negate the effects of the event

GC17 CHANGES TO THE WORK

- 17.1 The Commission may make changes to the Work, without invalidating the Contract, by altering, adding to or deducting from the Work. No change in the Work shall be undertaken without a written authorization in the form of a Contract Amendment and no change in the Contract price or change in Contract time shall be valid unless so ordered and at the same time valued or agreed to be valued as herein provided.
- 17.2 No change, departure, waiver, alteration or modification of any of the provisions hereof shall be made binding upon the Commission unless authority has been given by the Commission's Representative in writing and the Consultant shall then proceed with the Work.
- 17.3 Where the Commission's Representative has notified the Consultant of a proposed change, the Consultant shall provide to the Commission's Representative for approval, its change in the Contract price and in the Contract time along with substantiating documentation within seven (7) calendar days after the Contract Amendment has been initiated. The Consultant shall supply any additional information in support of the price submitted and change in Contract time that the Commission's Representative may request.
- 17.4 Upon approval by the Commission, a Contract Amendment will be issued to the Consultant, amending the Work, Contract price and Contract time, as appropriate. The value of Work performed in the Contract Amendment shall be included for payment with the regular monthly payment.
- 17.5 If the method of valuation or measurement of the change in Contract price and change in Contract time cannot be promptly agreed upon and/or proceeding with the change is necessary, then the Commission's Representative may estimate the above and issue an interim Contract Amendment to proceed with the changed Work, subject to final determination in the manner set out in GC14 - CLAIMS.
- 17.6 In the case of a dispute in the valuation of a change authorized in the Work and pending final determination of such value, the Commission's Representative will verify the value of Work performed in accordance with the Commission's Representative's estimate and allow inclusion the verified amount with the regular monthly payment.

- 17.7 The Commission will not pay interest or financing costs on outstanding monies claimed by the Consultant on Contract Amendments.

GC18 CONSULTANT STAFF

- 18.1 In performing the Work, the Consultant shall utilize only skilled and competent staff and shall carry out the Work with that degree of care, skill and diligence which is customary and usual for well-qualified, prudent, and experienced professional consultants appointed in a similar capacity in performing work on a basis which is reasonably comparable to the Work ("Standard of Care"). Without limiting the provisions of **Error! Reference source not found.** - INDEMNIFICATION AND LIMITATION OF LIABILITY, if the Commission deems that any work is substandard, defective, of inferior quality, or are otherwise not in conformity with the Contract, including that the Work does not meet the Standard of Care, then, upon request of the Commission, the Consultant shall:
- a. Correct the work at its own cost and expense; and
 - b. Proceed with the remedial actions immediately upon receipt of the Commission's request.
- 18.2 The Consultant acknowledges the importance of any schedule contained in this Contract, or Work Plan and further acknowledges the critical importance to the Commission that the work related to the Consultant's Work be completed in accordance with the work's schedule and not be delayed by the Consultant's failure to perform and comply with its obligations or the Consultant's failure to utilize resources in a manner which will permit its timely attainment.
- 18.3 Any Claim by the Consultant for compensation or any other relief arising out of this **Error! Reference source not found.** shall be made in accordance with **Error! Reference source not found.** – CLAIMS. However, in the event the remedial Work arising out of this GC18 is the result of the Consultant's breach of the Standard of Care, then (i) the Commission shall have no liability to the Consultant for Losses incurred by the Consultant as a result of any remedial Work; and (ii) the consultant shall be liable for any Losses of any Indemnitees associated with correcting the work.
- 18.4 Prior to commencing work on each Phase or Task, as applicable, or part of the Work if the Consultant requires additional Consultant Staff, it shall prepare and submit a revised Consultant Staff list detailing the additional individuals to be utilized on that Phase or Task, as applicable, or part of the Work and the reasons for the additions, for the approval of the Commission's Representative. The Consultant Staff list shall indicate the following for each person indicated on the list; the "All-Inclusive Hourly Billing Rates", the employee type (i.e. whether a 'Permanent Employee', 'Temporary Employee' or 'Contract Personnel' and whether that of a Subconsultant) and intended work office location, all as determined in accordance with SC4 - CALCULATION OF FEES AND EXPENSES of Section 00 73 00. The Consultant shall also advise the Commission as to the general nature of the work that such staff is to perform while employed on the Work. The Commission will not accept the addition of any administrative support staff and/or positions as these are to be deemed to be included in the standard disbursements in accordance with SC4 - CALCULATION OF FEES AND EXPENSES of Section 00 73 00.
- 18.5 If the Consultant, for reasons beyond its control, due to resignations or other unforeseen circumstances that will not allow the individual to continue to work for the Consultant, has to change/substitute any Consultant Staff previously accepted/approved by the Commission, the Consultant shall immediately notify the Commission's Representative in writing of this occurrence. The Consultant shall propose to the Commission Representative a change/substitution of any previously accepted/approved Consultant Staff being utilized pursuant to the Contract, at least fourteen (14) Days prior to such change/substitution commencing Work. The Consultant shall also provide to the Commission Representative; the date and nature of the proposed Consultant Staff

change/substitution, and the name(s), resume(s) and rates of proposed replacement personnel possessing equivalent or better qualifications and experience, for approval by the Commission's Representative. The Commission Representative reserves the right to withhold its approval, acting reasonably, if the proposed person is not equal to or better in qualifications and experience than the previously approved Consultant Staff member who he/she is attempting to replace. The AIHBR (All-Inclusive Hourly Billing Rate) shall not exceed the approved rate of the person being replaced.

- 18.6 The individuals employed on the Contract by the Consultant shall be as indicated on the Consultant Staff list as approved by the Commission's Representative. The Consultant Staff list shall be updated as required due to any change in the information indicated in the approved Consultant Staff list or as otherwise requested by the Commission's Representative. The Consultant shall not receive any payment of fees for any new staff personnel until approval is issued by the Commission's Representative for the updated Consultant Staff list. The Commission will not be responsible for any losses the Consultant may incur as a result of its failure to obtain the Commission's prior approval for the use of Consultant Staff on each Phase or Task, as applicable, or part of the Work; and further the Commission reserves the right to withhold payment for the Consultant's use of any personnel that were not approved in advance by the Commission's Representative.
- 18.7 The Commission reserves the right, at its sole discretion, during the term of the Contract to direct, either temporarily or permanently, the replacement of any Consultant Staff performing Work on this Contract. The Consultant shall within four (4) Days of the date of a written notification from the Commission's Representative, provide the name(s), resume(s) and rates of proposed replacement personnel possessing equivalent or better qualifications and experience, for approval by the Commission's Representative. The AIHBR shall not exceed the approved rate of the person being replaced.

GC19 RECORDS AND AUDIT

- 19.1 Prior to Contract completion and thereafter for a period of two (2) years, the Consultant shall permit, and shall cause the Subconsultants to permit, TTC and their auditors and consultants to inspect and audit the books, payrolls, accounts and any other records, whether in electronic format or hard copy, of the Consultant and Subconsultants relating to the Contract or the Work (collectively, the "Books and Records"), at any time as deemed necessary by TTC, and, in that regard, the Consultant shall provide certified copies of the Books and Records to TTC or access to the Books and Records as required by TTC. Without limiting the generality of the foregoing, such inspection and audit may relate to any information or documents underlying disputes, claims, payments of TTC made pursuant to the Contract, the build-up of the Consultant Staff's AIHBR (and the individual components thereof), any fees paid by the Consultant to a Subconsultant as a result of the Contract and the build-up of the Subconsultant staff's AIHBR (and the individual components thereof) utilized under the Contract.
- 19.2 For the period referred to in GC19.1 or such longer period of time otherwise required by the Contract or Applicable Law, Consultant shall keep, and shall cause the Subconsultants to keep, in accordance with generally accepted accounting practices, complete and accurate Books and Records.
- 19.3 If TTC has paid Consultant more than what it is owed under the Contract, then, at TTC's sole discretion, TTC may:
- 19.3.1 require Consultant to return such overpayment to TTC and, in such instance, Consultant shall return such overpayment to TTC within twenty-one (21) Days of such request from TTC; or

19.3.2 deduct such overpayment from monies owed to the Consultant.

19.4 Should an inspection or an audit in accordance with GC19.1 disclose that the Consultant and/or any of its Subconsultants has exceeded the maximum rates stated in the Contract under the SC4 – CALCULATION OF FEES AND EXPENSES of Section 00 73 00 for “Maximum Allowable Mark-Up” in the build-up of the Consultant Staff’s AIHBR, then, at TTC’s sole discretion, TTC may:

19.4.1 require Consultant to return to TTC such overpayment plus the lesser of (1) the direct costs of TTC associated with any audit and overpayment cost recovery, plus an administration fee of 15% of the such direct costs and (2) the amount of the overpayment, and, in such instance, Consultant shall return such total amount to TTC within twenty-one (21) Days of such request from TTC. TTC may deduct such total amount from monies owed to the Consultant; and

19.4.2 restrict the Consultant and/or its Subconsultants, as appropriate, from submitting a proposal on future requests for proposals of TTC, for a period of time deemed appropriate by TTC.

GC20 PARKING

20.1 No cars or trucks shall be parked on the Commission's property without the approval of the Commission's Representative. The Commission shall not be held responsible for damage that may occur to any vehicle operated upon or parked upon Commission property.

GC21 RESPONSIBILITY FOR PROVISION OF THE WORK

21.1 The responsibility for providing the Work required by this Contract is that of the Consultant. The Commission shall bear no responsibility for Consultant Staff, and in particular there shall be no responsibility to hire, train, direct, discipline, take source deductions, pay or terminate, etc., such Consultant Staff. Such functions are the sole responsibility of the Consultant.

21.2 In the event that the Commission is assessed as liable to pay any taxes, rates or contributions, or any amount on behalf of the Consultant or Subconsultants, as a result of or arising from any Consultant Staff being considered an employee of the Commission by any federal or provincial ministry, agency, board or entity, which shall include but is not limited to Canada Revenue Agency, the Consultant shall reimburse to the Commission an amount equal to any such taxes, rates, contributions, or other amount incurred by the Commission. In such event, the Consultant shall also reimburse the Commission for any sums paid by the Commission to the Consultant in respect of the Work as harmonized sales tax or similar, successor tax. The Commission is not responsible for nor required to contest any assessment or resulting liability that may arise from or be the result of any Consultant Staff being considered as an employee of the Commission by any federal or provincial ministry, agency, board, or entity, which shall include but is not limited to the Canada Revenue Agency.

21.3 If the Consultant is a joint venture arrangement, the joint venture arrangement shall not be changed, amended or altered in any way during the term of the Contract without the prior written approval of the Commission.

GC22 CONSULTANT WORK PERFORMANCE RATING

22.1 The Commission shall during the term of a Contract, maintain a record of the performance of the Consultant completing Work for the Commission. This information shall be used to complete a “Consultant Performance Review” report, a copy of which will be forwarded to the Consultant. See Appendix 1 – ‘Consultant Performance Review’ form attached to Section 00 72 00 for format

of the report. Interim “Consultant Performance Review” reports may be issued, as deemed appropriate by the Commission’s Representative, at any time during the term of the Contract.

- 22.2 The overall history of the Consultant in performing Work for the Commission will be considered in the evaluation of future proposals.
- 22.3 The Commission reserves the right in future proposals requests to reject any proposals submitted by a company with an unsatisfactory performance history with the Commission.
- 22.4 The information contained in the “Consultant Performance Review” may be provided to the City of Toronto.

GC23 SEVERABILITY

- 23.1 Any condition, section, subsection or other subdivision of this Contract which is, or becomes, illegal, invalid or unenforceable, shall be severed from this Contract and be ineffective to the extent of such illegality, invalidity or unenforceability and shall not affect or impair the remaining provisions thereof.

GC24 CONFLICT OF INTEREST

- 24.1 For the purposes of the Contract, a “Conflict of Interest” includes but is not limited to any situation or circumstance where:
 - a. In relation to the RFSQ and/or the RFS process, the Consultant has an unfair advantage or engages in conduct, directly or indirectly, that may give it an unfair advantage, including but not limited to: (i) having or having access to information in the preparation of its Proposal that is confidential to the City of Toronto, or the Toronto Transit Commission, and not available to other Proponents; (ii) communicating with any person with a view to influencing preferred treatment in the RFSQ and/or the RFS process; or (iii) engaging in conduct that compromises or could be seen to compromise the integrity of the open and competitive RFSQ and/or RFS process and render that process non-competitive and unfair; or
 - b. In relation to the performance of its contractual obligations in the Contract, the Consultant’s other commitments, relationships or financial interests could or could be seen to: (i) exercise an improper influence over the objective, unbiased and impartial exercise of its independent judgement; or (ii) compromise, impair or be incompatible with the effective performance of its contractual obligations.

24.2 The Consultant shall:

- 24.2.1 avoid any Conflict of Interest in its contractual obligations;
- 24.2.2 disclose to the Commission Representative without delay any actual or potential Conflict of Interest that arises during the performance of its contractual obligations; and
- 24.2.3 comply with any requirements prescribed by the Commission Representative to resolve any Conflict of Interest.

- 24.3 Subject to 24.4 neither the Consultant nor any person, firm or corporation associated or affiliated with or subsidiary to the Consultant or of any joint venture participant, if applicable, shall tender or be awarded a future contract, in whole or in part for any work/requirement issued by the Commission in which the Consultant or any joint venture participant, if applicable, has or may

have any involvement in developing, preparing, reviewing, managing, evaluating any aspect of the work/requirement for any of the individual projects, or have an interest either directly or indirectly in the design and/or construction of the projects covered under this Contract.

- 24.4 If a company under any consultant services joint venture arrangement has provided Consultant Staff who had any involvement in developing, preparing, reviewing, managing, evaluating any aspect of the work/requirement for this Contract, then the company shall be precluded from submitting a Proposal for this Contract.
- 24.5 Each Consultant should declare that the Consultant and if applicable, each joint venture participant, has no pecuniary interest in the business of any third party or any connection or relationship with any such third party or employers or directors of such third party that would cause a Conflict of Interest or appear to cause a Conflict of Interest in carrying out the Work. Should any such interest, connection or relationship materialize during the life of the Contract, the Consultant shall declare it immediately to the Commission's Representative.
- 24.6 Consultant personnel must disclose to the Commission's Representative any relevant arrangements, contracts, alliances, connections or relationships so that their eligibility for a contract is based on all available information.
- 24.7 The issue of whether a 'Conflict of Interest' exists involving the Consultant shall be determined at the Commission's sole discretion.

GC25 SCHEDULING AND REPORTING PROGRESS

- 25.1 With the submission of each Work Plan for each Phase or Task, as applicable, or part of the Work, the Consultant shall submit a schedule that incorporates the clearly defined Tasks, milestones, deliverables and resources (including names and person hours) assigned to each Phase or Task, as applicable, as detailed in the Work Plan for approval by the Commission's Representative.
- 25.2 If the Contract schedule is subsequently changed significantly, due to change in the Work Plan, the Consultant shall, if requested by the Commission's Representative, revise the schedule and re-submit it for approval.
- 25.3 At the beginning of each month the Consultant shall report progress in a form agreed with the Commission's Representative. This shall summarize the Work accomplished during the previous month, Work to be undertaken in the current month, areas of concern, actual costs incurred against the agreed set of Phase or Task, estimate to complete each Phase or Task, progress against the approved schedule and a cash flow of Consultant fees and any claimed proposed changes in scope, budget or schedule, each as applicable.
- 25.4 The Commission and the Consultant will hold regular meetings to review the written progress report focusing on scope, cost, schedule and contract administration.

GC26 INVOICING

- 26.1 Invoices shall be submitted in Canadian dollars and shall detail the following in a form acceptable to the Commission:

26.1.1 General:

- the purchase order number and contract reference number, if applicable;

- applicable Harmonized Sales Tax (HST) shall be shown separately for each Phase or Task, as applicable, on the invoice;
- the Consultant's HST registration number;
- the work period covered by the invoice.

26.1.2 Time and Expense Basis: for time and expense charges include the following:

- Consultant Staff names and billing rates (per approved Consultant Staff list);
- hours worked related to each Phase or Task, as applicable, (which can be supported by actual time sheets, if requested by the Commission's Representative).
- Specialist Subconsultant names and billing rates and associated other expenses, (which must have been pre-approved by the Commission's Representative).

26.1.3 Fixed Price Basis: for Work performed on a fixed price basis include the following:

- itemized list of the percentage of each Phase or Task, as applicable, completed and the value of each individual Phase or Task, as applicable,;
- evidence that progress against the Phase or Task, as applicable, have been achieved.

26.1.4 Summary Sheet: showing each Phase or Task, as applicable, invoiced and detailing:

- Phase or Task, as applicable, number;
- Time and Expense or fixed fee price for each Phase or Task, as applicable;
- previous totals to-date for each Phase or Task, as applicable, (including HST);
- current invoiced totals for each Phase or Task, as applicable, (including HST);
- totals to-date for each Phase or Task, as applicable, (including HST).

26.2 Invoices in duplicate shall be submitted to:

Toronto Transit Commission

(as indicated in the Purchase Order)

Attention: (as indicated in the Purchase Order)

GC27 COMMUNICATIONS/CORRESPONDENCE DURING CONTRACT

27.1 Except for invoices, all other communication, correspondence, notices and submissions for the Commission, which relates to this Contract shall be directed to:

Toronto Transit Commission

(as indicated in the Purchase Order)

Attention: (as indicated in the Purchase Order)

- 27.2 All enquiries, related to a subsequent bid for the contract work related to the Consultant's design, if applicable, from potential Proponents must be directed to the Contract Administrator assigned to co-ordinate the bid and identified in the bid documents. No discussions shall be held with and no directions shall be given directly to the potential Proponents by the Consultant.

GC28 COMMENCEMENT OF WORK

- 28.1 Subsequent to Notification of Award, the Consultant may commence the Work.

GC29 APPLICABLE POLICIES

- 29.1 The Consultant shall ensure that at all material times during the term of the Contract, Consultant Staff and its Subconsultants (and volunteers if mandated by law), receive proper training as required under the Accessibility for Ontarians with Disabilities Act and Integrated Accessibility Standards. The Consultant further agrees to comply with the requirements as set out in TTC's "ACCESSIBILITY FOR ONTARIANS WITH DISABILITIES ACT TRAINING REQUIREMENTS" located on TTC's website at http://www.ttc.ca/TTC_Business/Materials_and_procurement/About_Us/Contractor_Consultant_Reference_Materials/index.jsp, which requirements shall be incorporated into these General Conditions by reference and may be updated or changed from time to time at the sole discretion of TTC without notice and the Consultant agrees to comply with the updated or changed requirements.
- 29.2 With respect to the provision, or receipt, as applicable, of the Work and access to the premises, property and employees of TTC, the Consultant and Consultant Staff shall comply with such applicable policies, procedures and protocols of TTC as are provided to the Consultant in writing and in advance. TTC may, from time to time, amend its policies, protocols and procedures or add new policies, protocols and procedures and, upon providing notice to the Consultant of such requirement, the Consultant and Consultant Staff shall have an obligation to comply. The Consultant shall be responsible to ensure that Consultant Staff comply with such applicable policies, protocols and procedures. Without limiting the generality of the foregoing, the Consultant shall comply with the requirements of TTC's "RESPECT AND DIGNITY POLICY", "WORKPLACE VIOLENCE POLICY" and "FITNESS FOR DUTY POLICY – EXPECTATION FOR CONTRACTORS PROCEDURE", "WHISTLE BLOWER REPORTING AND PROTECTION POLICY", "CODE OF CONDUCT POLICY", "CRIMINAL MISCONDUCT POLICY", "COVID-19 VACCINATION POLICY" located on TTC's website at: http://www.ttc.ca/TTC_Business/Materials_and_procurement/About_Us/Contractor_Consultant_Reference_Materials/index.jsp, which requirements shall be incorporated into these General Conditions by reference and it may be updated or changed from time to time at the sole discretion of TTC without notice and the Consultant agrees to comply and/or ensure Consultant Staff comply, as applicable, with the updated or changed requirements.

GC30 PROHIBITION AGAINST GRATUITIES

- 30.1 No Consultant and no employee, agent or representative of the Consultant, may offer or give any gratuity in the form of entertainment, participation in social events, gifts or otherwise to any member of the City of Toronto Council or Commissioner of the Toronto Transit Commission, or any officer or employee of the Toronto Transit Commission in connection with or arising from this

Contract, whether for the purpose of securing a future contract or seeking favourable treatment in respect to this Contract.

- 30.2 If the Commission determines that sub-item 30.1 has been breached by or with respect to the Consultant, the Commission may preclude the Consultant from bidding future Commission work and may terminate this Contract without incurring any liability.

GC31 PROCUREMENT EQUITY

- 31.1 The Parties acknowledge and agree that a key element of the Contract is a commitment to promoting and supporting diversity, equity and inclusion in all corporate policies, processes, programs and services, to reflect and respond to the needs of employees, contractors and customers. The Consultant shall endeavour to work actively in promoting diversity, equity and inclusion within their workplace, to make a diligent effort in the recruitment, retention, and promotion of persons in Equity Deserving groups and/or communities, and to be intentional in providing opportunities for persons in Equity Deserving groups and/or communities, in performance of the Contract. The Consultant shall not discriminate against, create or perpetuate barriers against Equity Deserving groups and/or communities in the performance of the Contract.
- 31.2 In accordance with this commitment, TTC may request access to Consultant's employee and/or Subconsultant's demographics as well as the number of hours worked on the Contract by employees and/or Subconsultants who are persons in Equity Deserving groups and/or communities. Subject to privacy restrictions of Applicable Laws, such information shall be analyzed in an effort to ensure that persons in Equity Deserving groups and/or communities are provided opportunities to work on the Contract.
- 31.3 Non-compliance with this GC31 – PROCUREMENT EQUITY shall constitute a material default of the Contract and, notwithstanding any provision to the contrary, TTC may, in its sole discretion, upon written notice to the Consultant, immediately terminate the Contract with no liability to TTC, and such termination shall be deemed termination in accordance with GC11 – SUSPENSION OR TERMINATION.
- 31.4 Consultant shall defend, fully indemnify, and hold harmless TTC from all Claims incurred or Losses suffered which result from, arise out of, or are attributable to Consultant's failure to comply with this GC31 – PROCUREMENT EQUITY

GC32 CONTRACT DELIVERABLES, COMMUNICATIONS AND INFORMATION

- 32.1 All communications from and information, including documents, provided by the Consultant shall be gender neutral and free of racial slurs or other racist language.
- 32.2 All documents provided by the Consultant shall be,
- 32.2.1 provided "conversion ready" as defined under the Accessibility for Ontarians with Disabilities Act and Integrated Accessibility Standards, which requirements shall be incorporated into these General Conditions by reference; and
 - 32.2.2 in conformance with the specified World Wide Web Consortium Web Content Accessibility Guidelines under the Integrated Accessibility Standards required for the internet and web content of designated public sector organizations, which standards shall be incorporated into these General Conditions by reference.

END OF SECTION

CONSULTANT PERFORMANCE REVIEW

CONFIDENTIAL

Consultant:

Purchase Order No.:

Address:

Contract No.:

Project Manager/Representative:

Title:

Nature of Services Required:

Consulting Engineer (Specify Discipline):

Other (Specify Discipline):

Scope of Work:

Original Estimated Value:

Final Contract Cost:

Contract Completion Date:

Scheduled:

Actual:

RATINGS

- 1 - Unsatisfactory
- 2 - Satisfactory
- 3 - Good
- 4 - Very Good
- x - Not Applicable

CRITERIA -

1) WORKPLANS

- Reflected schedule requirements
- Reflected staffing requirements
- Addressed technical requirements
- Addressed project risks
- Addressed cost requirements

Rating

2) SCHEDULING

- Deployed & maintained staff to schedule
- Achieved project milestones
- Provided timely schedule updates
- Communicated & corresponded expeditiously

Rating

3) TECHNICAL EXPERTISE

- Assigned staff with required technical expertise
- Staff adapted to TTC work environment
- Recognized need for specialized expertise
- Defined concepts, solutions to meet project requirements
- Innovated or adapted new concepts
- Staff followed requisite safety requirements

Rating

4) STAFF RESOURCES

- Staff proposed in RFS available
- Replacement staffing minimized
- Requested replacement staff provided & deployed efficiently
- Tasks assigned to staff commensurate with qualifications
- Maintained high level of professional and ethical conduct

Rating

RATINGS

- 1 - Unsatisfactory
- 2 - Satisfactory
- 3 - Good
- 4 - Very Good
- x- Not Applicable

CRITERIA -

5) QUALITY OF WORK

- Produced quality specifications
- Produced quality drawings
- Produced quality design reports
- produced quality documentation (eg field/inspection logs, estimates)

Rating

6) COMMUNICATION & REPORTING

- Kept Commission staff informed
- Responded to requests for information, details, etc., in a timely, professional manner
- Carried out communication in an efficient manner
- Avoided needless administrative exercises
- Reported deviation in progress vs. cost

Rating

7) CO-OPERATION

- Maintained co-operative relationship with Commission staff
- Maintained professional relationship with third parties

Rating

8) MANAGEMENT

- Managed staff performance and work progress effectively
- Analysed problems, issues and causes and identified solutions
- Resolved issues promptly
- Accepted accountability for technical and other work produced
- Submitted updated staff lists, as applicable

Rating

9) INVOICING

- Submitted invoices in a timely manner
- Submitted invoices in an acceptable format
- Submitted invoices for a staff & cost previously accepted

Rating

TOTAL RATING _____

PERCENTAGE _____

Note: The percentage is calculated by taking the sum of the ratings for each of the categories, divided by; the total number of items of all categories, multiplied by 25.

General Comments:

The consultant is advised that the above will be retained by the Commission on file. It may be considered in future in the evaluation of proposal(s) submitted by this Consultant or this Consultant jointly with other companies/individuals.

SECTION 00 73 00 – Appendix 2

NON-DISCLOSURE AGREEMENT

This Non-Disclosure Agreement is entered into as of the _____ (“Effective Date”), between Toronto Transit Commission, having a place of business at 1900 Yonge Street, Toronto, Ontario, M4S 1Z2 (hereinafter referred to as “**TTC**”), and _____, having a place of business at _____ (hereinafter referred to as “**Consultant**”). The TTC and Consultant are collectively referred to as “**Parties**” and each one as a “**Party**”.

WHEREAS the Parties may exchange certain Confidential Information (as defined below) [**and the Consultant may be provided access to restricted portions of TTC Property**] in order for the Consultant to perform Work, as defined in Contract _____, entitled _____ (“**Purpose**”);

WHEREAS the TTC and the Consultant in furtherance of such Purpose wish to exchange certain Confidential Information, subject to the terms and conditions set forth below.

ARTICLE 1. DEFINITIONS

- 1.1 In this Agreement, “**Confidential Information**” means any and all material and/or information of a Party (collectively, the “**Disclosing Party**”) which has or will come into the possession or knowledge of the other Party (the “**Receiving Party**”) in connection with or as a result of entering into this Agreement, including information concerning the Disclosing Party’s past, present or future customers, suppliers, technology, or business. For the purposes of this definition, “**information**” and “**material**” includes tangible data, patents, copyrights, trade secrets, processes, business rules, tools, business processes, programs, designs, formulae, marketing, advertising, financial, commercial, sales or programming materials, equipment configurations, system access codes and passwords, written materials, compositions, drawings, diagrams, computer programs, studies, works in progress, visual demonstrations, ideas, concepts, and other data, in oral, written, graphic, electronic, or any other form or medium, both in its original form and as part of a compilation or derivative of any of the foregoing.
- 1.2 In this Agreement, reference to the “**TTC**” shall include commissioners, officers, employees, agents, contractors and consultants employed or retained by the TTC, as the case may be and reference to the “**Consultant**” shall include directors, officers, employees, agents, contractors and consultants employed or retained by the Consultant, as the case may be.

ARTICLE 2. USE AND DISCLOSURE OF CONFIDENTIAL INFORMATION

- 2.1 The Receiving Party shall:
 - 2.1.1 use the Confidential Information solely for the Purpose as set out above;
 - 2.1.2 hold the Confidential Information in confidence and shall not sell, assign, transfer or otherwise disclose the Confidential Information, or any information or materials derived therefrom, to any third party without the prior consent of the Disclosing Party, save and except as otherwise provided herein;

- 2.1.3 employ at least the same degree of care to protect the secrecy and confidentiality of the Confidential Information as it uses to protect its own confidential and proprietary information and materials, but in no event less than reasonable care; and
 - 2.1.4 maintain the Confidential Information in a secure place and restrict the release, access and use of the Confidential Information to those employees and officers who must have access to the Confidential Information consistent with the Purpose;
 - 2.1.5 ensure that each person to whom Confidential Information is disclosed to in accordance with Clause 2.1.4 is advised, prior to the disclosure, of the confidential nature of the Confidential Information.
- 2.2 The Receiving Party shall not:
- 2.2.1 remove any proprietary, copyright, trade secret or other proprietary rights legend from any form of Confidential Information; or
 - 2.2.2 make any public announcement of disclosure concerning the contents of this Agreement beyond the disclosures authorized hereunder without the prior written consent of the other party unless otherwise required by law.
- 2.3 Immediately upon written request by the Disclosing Party, the Receiving Party shall return all copies of the Confidential Information in its possession to the Disclosing Party or certify that all copies in its possession or control have been destroyed.
- 2.4 In the event of a breach of any of the foregoing provisions, the Parties agree that the harm suffered by the Disclosing Party would not be compensable by monetary damages alone and accordingly, that the Disclosing Party shall, in addition to other available legal or equitable remedies, be entitled to an injunction against such breach.

ARTICLE 3. EXCEPTIONS

- 3.1 Notwithstanding anything to the contrary herein, "Confidential Information" does not include information or material:
- 3.1.1 which is publicly available when it is received by or becomes known to the Receiving Party or which subsequently becomes publicly available through no fault of the Receiving Party (but only after it becomes publicly available);
 - 3.1.2 which is already known to the Receiving Party at the time of its disclosure to the Receiving Party and is not known by the Receiving Party to be the subject of an obligation of confidence of any kind;
 - 3.1.3 which is independently developed by the Receiving Party without any use of or reference to the Confidential Information of the Disclosing Party and which such independent development can be established by evidence that would be acceptable to a court of competent jurisdiction;

- 3.1.4 which is received by the Receiving Party in good faith without an obligation of confidence of any kind from a third party who the Receiving Party had no reason to believe was not lawfully in possession of such information free of any obligation of confidence of any kind, but only until the Receiving Party subsequently comes to have reason to believe that such information was subject to an obligation of confidence of any kind when originally received; or
- 3.1.5 which is intangible ideas, concepts, know-how or techniques that may be contained in the material or information that comprises Confidential Information. For greater certainty, Receiving Party is not restricted in any way from using the knowledge learned and experience gained as a result of having had access to Confidential Information of the Disclosing Party provided that such intangible ideas, concepts, know-how or techniques are not disclosed in a manner which would be readily identifiable as Confidential Information of the Disclosing Party.

ARTICLE 4. DISCLOSURE BY LAW

- 4.1 Should a Party be required by law or policy or be requested by legal process or regulatory authority to disclose any Confidential Information, ("**Required Party**"), the Required Party will provide the other Party with prompt written notice of such requirement or request so that the other Party may seek an appropriate protection order or pursue such other action, remedy or assurance necessary to preserve the confidentiality of the Confidential Information, or waive compliance with any of the provisions of this Agreement, or both; and the other parties will fully co-operate with and not oppose the Required Party in respect of such matters. If, in the absence of either a protective order or a waiver by the other Party, the Required Party, in the reasonable opinion of reputable legal counsel, is required by law to disclose any Confidential Information or stand liable for contempt or to suffer other censure or penalty on any failure to so disclose, the Required Party may, without liability hereunder, disclose that portion, and only that portion, of the Confidential Information that is required to be disclosed.

CLAUSE 5. GENERAL PROVISIONS

- 5.1 This Agreement may not be assigned by any Party in whole or in part, without the other Party's written consent, which consent may be unreasonably withheld.
- 5.2 If any provision, or portion thereof, of this Agreement is determined by a court of competent jurisdiction to be invalid, illegal or unenforceable, such determination shall not impair or affect the validity, legality or enforceability of the remaining provisions of this Agreement, and each provision, or portion thereof, is hereby declared to be separate, severable and distinct.
- 5.3 A term or condition of this Agreement can be waived or modified only by written consent of both Parties. No failure or delay in exercising any right, power or privilege hereunder shall operate as a waiver thereof, nor shall any single or partial exercise thereof preclude any other or further exercise thereof or the exercise of any right, power or privilege hereunder.

- 5.4 No single or partial exercise of any right or remedy under this Agreement shall preclude any other or further exercise of any other right or remedy in this Agreement or as provided at law or in equity. Rights and remedies provided in this Agreement are cumulative and not exclusive of any right or remedy provided at law or in equity.
- 5.5 This Agreement constitutes the complete and exclusive statement of the terms and conditions between the Parties with respect to the subject matter hereof and supersedes all prior and contemporaneous oral or written statements which are inconsistent herewith.
- 5.6 Title to the Confidential Information and any copies thereof shall not pass or transfer to the Receiving Party.
- 5.7 This Agreement shall be governed by and construed in accordance with the laws of the Province of Ontario, Canada. The Parties agree that any action, proceeding, application or claim commenced by one Party against the other Party relating to or arising out of this Non-Disclosure Agreement shall be commenced in the City of Toronto, Province of Ontario, Canada.
- 5.8 This Agreement may only be modified by written agreement of all Parties.
- 5.9 All Parties' obligations of confidentiality shall continue until otherwise mutually agreed to in writing, or for a period of _____ years, whichever occurs first, following the last disclosure of Confidential Information.

IN WITNESS WHEREOF, the Parties hereto have executed this Agreement.

TORONTO TRANSIT COMMISSION

Per: _____
Name:
Title:

I/We have authority to bind the Commission

[WITNESS: _____
Name:
Date:]

CONSULTANT

Per: _____
Name:
Title:

I/We have authority to bind the Corporation

<u>ITEM NO.</u>	<u>TITLE</u>	<u>PAGE NO.</u>
SC1	SCOPE OF SUPPLEMENTARY CONDITIONS	1
SC2	INSURANCE REQUIREMENTS	1
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APPENDICES

APPENDIX 1 – PAYROLL BURDEN GUIDELINES

SC1 SCOPE OF SUPPLEMENTARY CONDITIONS

- 1.1 The General Conditions shall apply to the Contract except as amended in these Supplementary Conditions.
- 1.2 The following additional definitions shall apply to this Contract:

SC2 INSURANCE REQUIREMENTS

- 2.1 Throughout the term of the Contract, the Consultant shall obtain and maintain at their own expense the following insurance in relation to the Work, any services required to be performed by the Consultant under the Contract Documents, or otherwise, each such policy to be issued by an insurance company licensed to carry on the business of issuing such policies in Ontario, and possessing a Best's Financial Strength Rating of at Least B+.

2.1.1 Professional Liability Insurance

The Consultant shall provide professional liability insurance for a limit not less than One Million Dollars \$1,000,000 covering all insured loss or damage, arising out of the professional services rendered by the Consultant or its Subconsultants of any tier, and/or any engineers/architects/surveyors and any of their servants or employees including personnel on loan to the Consultant or its Subconsultants of any tier and personnel who perform normal services of the Consultant under this Contract.

2.1.2 Automobile Liability Insurance

Automobile liability insurance with a limit of not less than One Million Dollars (\$1,000,000) inclusive for any one accident or occurrence and shall insure against claims for bodily injury, including death, and for property damage arising out of the use of any vehicle owned, leased or operated by or on behalf of the Consultant in the performance of the work.

2.1.3 Comprehensive General Liability Insurance - which shall include, but not limited to:

2.1.3.1 Contractual liability coverage for liability assumed under GC8 – INDEMNIFICATION AND LIMITATION OF LIABILITY of Section 00 72 00;

2.1.3.2 Contingent employer's liability coverage, for any claims that might be brought against the Commission by any employee of the Consultant;

2.1.3.3 Owner's and contractor's protective coverage for all subcontracted operations;

2.1.3.4 Non-owned automobile liability; and

2.1.3.5 Cross liability and severability of interests clause.

Such insurance shall provide a combined single limit of not less than One Million Dollars (\$1,000,000) for any one occurrence or accident for all claims arising out of bodily injury, including death, and damage to the property of others. Such liability insurance shall contain no exclusions in conflict with the character of the Work required to be performed under the Contract and shall include the Commission as additional insured.

Any other valid or collectible insurance available to the Commission shall not apply to any loss until the coverage and limits available under the insurance policies, maintained by the Consultant in accordance with this SC2.1.3, have been exhausted.

SC3 EVIDENCE OF INSURANCE

- 3.1 Within ten (10) Days of request by the Commission, the Consultant shall provide the Commission with certificates of insurance originally signed by the insurer or its authorized representative. A second copy of such certificates or policies shall be sent electronically to:
Risk Manager, TTCcoi@ttc.ca
- 3.2 At the expiry date of the policy, the Consultant shall provide to the Commission signed certificates of insurance evidencing renewals or replacements prior to the expiration date of the original policies, without notice or request by the Commission.
- 3.3 Each policy shall be endorsed with an undertaking from the insurance company that such insurance will not be cancelled or reduced in coverage without thirty (30) Days prior written notice by registered mail to the Commission.
- 3.4 With the exception of automobile liability, each policy shall include an endorsement under which the insurer waives any right of subrogation it may have against the Commission and its directors, officers, employees and agents.
- 3.5 Should the Commission be of the opinion that the insurance taken by the Consultant is inadequate in any respect for any reason whatsoever, it shall forthwith advise the Consultant of such opinion and the reasons therefore and the Consultant shall forthwith take out insurance of a character satisfactory to the Commission.
- 3.6 The taking out of the insurance as aforesaid shall not relieve the Consultant of any of its obligations under the Contract.

SC4 CALCULATION OF FEES AND EXPENSES

- 4.1 The Commission will calculate the payment for any Work performed on a time plus expense basis, up to the upset limit specified in the Work Assignment Release, in accordance with the conditions set out herein.
- 4.2 Consultant Staff: The Consultant shall prepare and submit a completed Consultant Staff list for approval in accordance with GC18 - Consultant Staff of Section 00 72 00 prior to the commencement of Work on each Task/Phase as part of its Work Plan for the next Task/Phase;
 - 4.2.1 The fee for Consultant Staff, except for the incidental time of principals and executive staff, shall be calculated as follows:

$$(AIHBR \times H) + T = \text{Fee}$$

where: AIHBR = All-Inclusive Hourly Billing Rate = BHR x (1 + MU%),

whereby BHR = Basic Hourly Rate;

MU = Markups for overhead, payroll burden, tax equalization and foreign exchange rate conversion, profit and all other costs (including standard disbursements)

H = Actual hours worked on the Task/Phase

T = Applicable taxes

4.2.1.1 Payroll Burden: Shall be calculated in accordance with the attached Schedule B – Payroll Burden Guidelines.

4.2.1.2 Basic Hourly Rate (BHR): Is the annual existing regular salary at the time of submission of the Proposal for Consultant Staff included in the Proposal or submission for approval of additional or replacement Consultant Staff, as applicable, excluding fringe benefits, payroll burden and any bonuses or profit sharing, divided by the total number of annual available working hours. For the purposes of this SC4, “annual available working hours” shall be calculated by multiplying the Consultant’s standard work week hours (as set out in the Consultant Staff List) by 52 weeks. For example, if a Consultant’s standard work week is 40 hours, then the Consultant’s “annual available working hours” will be calculated as 40 hours multiplied by 52 which equals 2080 “annual available working hours”.

4.2.2 Rate Increases: Unless otherwise approved in writing by the TTC the AIHBR for the Contract for each member of the Consultant Staff, shall be applicable for a period of one complete year from date of Notification of Award, after which the BHR component of the AIHBR for subsequent years may be adjusted annually, on the anniversary date of the Notification of Award in accordance with this paragraph. The annual adjustments shall not exceed the annual change in the monthly consumer price index (CPI) for Canada – All-item excluding food, rounded to two decimal places, calculated by utilizing Table 18-10-0006-01 Consumer Price Index, monthly, seasonally adjusted. The base CPI for the calculation will utilize the published monthly CPI at the time of the Proposal closing. The annual Rate Increases shall be calculated as follows:

The Rate Increases on the first anniversary of Notification of Award shall be calculated as follows:

IPC: Published CPI Index for the month of Proposal closing.

UPC: Published CPI Index on the anniversary of Proposal closing.

$$\text{Percent Increase} = \frac{(\text{UPC} - \text{IPC})}{\text{IPC}} * 100$$

The Rate Increases on subsequent years shall be calculated as follows:

APC: Published CPI Index for the month of anniversary of Proposal closing.

UPC: Published CPI Index on subsequent (year 2, year 3, etc. of contract) anniversary of Proposal closing.

$$\text{Percent Increase} = \frac{(\text{UPC} - \text{APC})}{\text{APC}} * 100$$

On each anniversary of the Notification of Award, the Consultant shall submit a revised Unit rate by Position – rate sheet for review and approval by the TTC showing for each position the previously approved AIHBR, the percent increase applicable for each AIHBR in accordance with the above formula and the resulting AIHBR including the Rate Increase. The rate for each position shall be increased by the same calculated percent

increase. Submissions showing varying percent increases for each position will not be accepted.

4.2.1 Consultant Mark-up on Subconsultant Work: The Consultant shall not be allowed any mark-ups on their Subconsultant(s)' AIHBR who have been approved on the Consultant Staff List. The Consultant shall not be allowed any mark-ups for specialized equipment, software or services as described in SC4.7 below for administration of the Contract.

4.2.2 Hours Worked/Overtime: In the event that TTC determines that overtime work may be required, for Work performed on a time and material basis, the Consultant shall provide in advance a monthly report of proposed overtime for the prior approval of the TTC. Premiums will be paid in accordance with the Employment Standards Act. The costs for any overtime, however, shall be deemed to be included in the upset limit price or fixed fee price established in the work plan for each Task/Phase as approved and authorized in a Release.

4.3 Principals and Executive Staff

4.3.1 If the Consultant or Subconsultant intends to use a principal or executive staff to perform Work under the Contract, and in the event the principal or executive staff is not paid a salary, then the Consultant or Subconsultant shall either estimate a salary for the purpose of calculating fees or calculate a billing rate applicable for the duration of the Contract and provide evidence of same for approval by the Commission.

4.3.2 Incidental Time: When it is necessary from time to time to have principal or executive staff in attendance at a meeting with the Commission or such other incidental participation on the Work if specifically requested by the TTC, and the AIHBR for such individual is not included in the approved Consultant Staff list, then the fee for such incidental use of a principal or executive staff shall be calculated based on \$173.00 Canadian per hour multiplied by the actual hours worked, subject to the TTCs approval prior to the hours actually being worked. The aforementioned hourly rate shall remain in effect for a period of one complete year from date of Notification of Award, after which the hourly rate for subsequent years may be adjusted in accordance with SC4.2.2 above. The TTC will not pay for incidental time of principals or executive staff unless participation is specifically requested by the TTC.

4.4 Standard Disbursements: All costs for all standard disbursements are deemed to be included in the AIHBR. The following list of such disbursements, but not limited to these, are deemed to be included in the AIHBR for Consultant Staff and included within the billing rate for a Specialist Subconsultant:

- long distance phone call charges, cell phone charges, long distance FAX call charges, and courier charges
- travel expenses (within a 200 km radius of the City of Toronto)
- parking fees
- photocopying and reproduction expenses
- CADD equipment/software/maintenance expenses
- standard equipment/software maintenance costs (e.g., surveying equipment, simulation software, etc.)
- work permit (for foreign nationals)
- contract drawing plotting expenses]

- 4.5 Taxes: All applicable Canadian taxes shall be extra to the rates for time and expenses indicated herein and shall be shown separately on Proper Invoices.
- 4.6 Travel and Relocation Costs: The Commission will not pay for travel costs for Consultant Staff to and from their residences and their workplace or any costs associated with travel, living expenses or relocation of Consultant Staff to the local office of the Consultant (or Subconsultant) or TTC, that the Consultant may require in order to perform the Work of the Contract.
- 4.7 Specialized Equipment, Software or Services: If in the opinion of the Consultant, the use of specialized equipment, and specialized software (such as for computerized fluid dynamics analysis, etc.) or services (such as lab testing, services of a specialized personnel, etc.) are deemed necessary for the execution of the Work, then the Consultant shall identify this and submit the rates to the TTC for review and written approval prior to use of such specialized computer equipment, specialized software and/or services. If prior approval by TTC is obtained, the Consultant shall be compensated for the actual costs for specialized computer equipment, specialized software and/or services with supporting documentation acceptable to TTC. If the Consultant proceeds with their use without the prior approval of the TTC, then the cost shall then be deemed to have been a standard disbursement included in the AIHBR.
- 4.8 Special Pre-approved Travel Expenses: Reasonable accommodation and travelling expenses incurred by Consultant Staff and Subconsultant(s), if applicable, employed directly in connection with the Work, for travelling at the request of the TTC to and from destinations outside a 200 km radius of the City of Toronto, where such travel has been approved in advance by the TTC, will be reimbursed to the Consultant in accordance with the following:
- 4.8.1 Air Transportation: The actual cost of air fare will be reimbursed, based on an economy class flight. Travel insurance is provided through payroll benefits and no additional insurance costs will be paid.
- 4.8.2 Public Transit: The actual costs for public transit use will be reimbursed.
- 4.8.3 Taxi Transportation: The actual costs of taxi fares will be reimbursed, if public transit is not readily available or is more expensive.
- 4.8.4 Car Rental: The actual costs of car rental including cost of fuel used will be reimbursed, when taxis or public transit are not available or are more expensive. Rental cars should be compact size or smaller, unless there are several persons directly involved with the Work sharing the car. Fuel cost reimbursement shall not exceed \$40 CDN per week, receipts must clearly identify the date of the fuel purchase. Rental receipts must clearly identify the date and duration of the rental.
- 4.8.5 Accommodation: The actual hotel accommodation costs will be reimbursed. Hotels offering competitive corporate rates, that are reasonably close to the destination or the local airport, are to be utilized.
- 4.8.6 Personal Vehicle Usage: Reimbursement for distance travelled from 1900 Yonge Street, Toronto, Ontario M4S 1Z2 office location and the destination at the current rate determined using Canada Revenue Agency's (CRA) prescribed rates found in section 7306 of the Income Tax Regulations. Personal vehicle usage only applies to the use of a personal vehicle for TTC purposes and does not apply to travel to or from the staff's home office or permanent place of residence.

4.8.7 Foreign Exchange Rate Conversion: Any expenses paid in a foreign currency will be reimbursed in Canadian funds utilizing the Daily Exchange Rate located at <http://www.bankofcanada.ca/rates/exchange/daily-exchange-rates-lookup/> quoted by the Bank of Canada on the date of the Consultant's Proper Invoice to the TTC of the Consultant's Proper Invoice to the TTC.

4.8.8 Meals: Expenses associated with meals or food items consumed by Consultant Staff shall not be reimbursed by the TTC.

4.9 Fixed fee prices for a Task/Phase, shall be calculated as follows:

$$CS(AIHBR \times H) + SD + T = \text{Fee}$$

where: CS = Consultant Staff
AIHBR = (See above)
H = Predicted hours to be worked on the Task/Phase
SD = Pre-approved special disbursements
T = Applicable taxes

TERMS OF PAYMENT

4.10 Progress Payments: The Consultant shall submit a monthly proper invoice for any payment due for services rendered during the preceding month as described below and as further described in GC26 - INVOICING and shall show separately the Harmonized Sales Tax (HST) as part of the total monthly invoiced amount.

4.10.1 For Work performed on a time and expense basis as set out for a Task/Phase in the Work Assignment Release, the invoice shall detail the value of such Work performed or expenses incurred as calculated in accordance with the Supplementary Condition entitled CALCULATION OF FEES AND EXPENSES.

4.10.2 For Work performed on a fixed price basis for a Task/Phase, the invoice shall contain an estimate of the Work completed based on the approved work plan, itemized cost breakdown and schedule as included with the Work Plan Release for that Task, all in accordance with the Supplementary Condition entitled WORK ASSIGNMENT RELEASE PROCESS and GC25 - SCHEDULING AND REPORTING PROGRESS.

4.10.3 The value of additional Work performed as a result of a Contract Amendment shall be calculated on a time and expense or fixed price basis and detailed as described above and shall be shown separately on the monthly progress billing in accordance with GC17 - CHANGES TO THE WORK, and GC14 - CLAIMS.

4.10.4 Payments for Work performed shall be made 30 calendar days following receipt by the Commission's Representative of an acceptable invoice submitted in accordance with GC26 - INVOICING. (In the event the 30th calendar day falls on a day that is not a Business Day, payment will be made the next Business Day thereafter.)

4.11 For Work performed on a fixed price basis at no time shall the cumulative value of payments exceed the estimated value of completed Work as determined by the Commission's Representative.

- 4.12 Payment under the terms of the Contract shall not constitute acceptance of the Work nor relieve the Consultant from any of the responsibilities or obligations under the Contract.

SC5 NON-RESIDENT WITHHOLDING TAXES

- 5.1 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 Canada Revenue Agency, for a waiver or reduction of the withholding tax requirement. Unless the Commission is provided with a copy of the written information of the result of the waiver application to the Tax Services Office of Canada Revenue Agency, taxes will be withheld as determined under the Income Tax Act.

- 5.2 If a Consultant wishes to apply for a waiver it should contact:

Canada Revenue Agency
Non-Resident Withholding Tax Department
1 Front Street West, Suite 100
Toronto, Ontario, Canada
M5J 2X6

Attention: Collections Officer (416) 954-0545, FAX No. (416) 954-8528

The Consultant should follow the instructions and documentation requirements for making an application for a waiver on the Regulation 105 withholding tax, including submission of the form "REGULATION 105 WAIVER APPLICATION" (R105-WA), latest version and required supporting documentation.

SC6 WORK ASSIGNMENT RELEASE PROCESS

- 6.1 Upon request of the Commission's Representative, the Consultant shall prepare a Work Assignment Plan, clearly defining the Work of a Task/Phase milestones, deliverables and resources to perform the Work of a Task/Phase, for approval by the Commission's Representative.
- 6.2 The Consultant shall not proceed with the Work unless authorized by the Commission's Representative in the form of a Work Assignment Release and only to the upset limit or fixed price as indicated therein notwithstanding the total upset limit price established for the Contract. The Commission reserves the right to withhold payment for any Work performed by the Consultant or its Subconsultants prior to the issuance of an authorized Work Assignment Release.
- 6.3 The Consultant shall proceed with the Work and the fee will be established for each Task/Phase as detailed in SC4 - CALCULATION OF FEES AND EXPENSES. If upon completion of a Task/Phase an agreement between the parties cannot be reached as to the cost for a subsequent part of the Work, then the Commission may terminate the Contract in accordance with GC11 - SUSPENSION OR TERMINATION of Section 00 72 00. In such event the Consultant shall not be entitled to any additional compensation and the Commission at its sole discretion may complete the Work itself or award a contract to another firm to complete the Work.
- 6.4 The upset limit or fixed fee for each Task/Phase shall be in Canadian funds, not subject to adjustment unless agreed otherwise in writing, and shall be inclusive of all applicable costs.
- 6.5 As part of the Work Assignment Plan for each Task/Phase, the Consultant shall prepare and submit for approval a Work Assignment Plan including a schedule and Consultant Staff list for the

Task/Phase. Prior to finalizing each Work Assignment Plan, the Commission and the Consultant will establish either an upset limit price if the Work is to be performed on a time and expenses basis or an all inclusive fixed price for the Work in that Work Assignment Plan as described below:

- 6.5.1 Time and Expenses Basis: The fee shall be calculated on the basis of the Work actually performed based on the rates approved by the Commission for Consultant Staff and pre-approved special disbursements in accordance with SC4 - CALCULATION OF FEES AND EXPENSES up to the all inclusive upset limit price established for Work.
- 6.5.2 Fixed Price Basis: The fixed price shall be established based on the rates for Consultant Staff and pre-approved special disbursements in accordance with SC4 - CALCULATION OF FEES AND EXPENSES. The Consultant shall submit an itemized cost breakdown of the various parts of the Work with its Work Assignment Plan, which together shall aggregate the total price for that Task/Phase.

SC7 SAFETY

7.1 EMPLOYER

- 7.1.1 For the purposes of the Contract, the Consultant, is an "Employer" as defined in the Occupational Health and Safety Act. This shall mean the Consultant shall be responsible for ensuring that the provisions of the statutes, regulations and by-laws pertaining to the duties, obligations and safe performance of the Work in accordance with the obligations of an "Employer" as set out in the Occupational Health and Safety Act are to be observed and that the methods of performing Work on TTC property do not endanger personnel employed thereon, Commission employees or the general public, and are in accordance with the latest edition of the Occupational Health and Safety Act and any regulations made thereunder.
- 7.1.2 The Consultant shall provide, in writing, the name of the Consultant's representative who needs to be on site whenever Work on TTC property is in progress. The Consultant's representative is to be a person who, is by virtue of experience and training, qualified to be considered the "competent person" as defined in the Occupational Health and Safety Act. Prior to the Consultant's representative being absent from the Site, the Consultant's representative will name another person, in writing to the Commission's Representative, who is competent to assume these responsibilities.
- 7.1.3 The Consultant shall advise the Commission's Representative in writing of any change in the individual identified as the Consultant's representative.

7.2 RESPONSIBILITIES WHILE WORKING ON TTC PROPERTY

- 7.2.1 The Consultant's representative shall ensure that:
- 7.2.1.1 All measures and procedures prescribed by the following acts and regulations are carried out when Consultant Staff (and Subconsultant staff) are working on TTC property:
- 7.2.1.1.1 The Occupational Health and Safety Act;
- 7.2.1.1.2 The Regulations for Construction Projects;

7.2.1.1.3 WHMIS Regulations;

7.2.1.1.4 The Environmental Protection Act and regulations;

7.2.1.1.5 All other legislation, regulations and standards as applicable.

7.3 TRAINING, AWARENESS AND ORIENTATION

7.3.1 Training means attendance in a formal training class and passing a test; this term applies to Subway/SRT RuleBook.

7.3.2 Awareness means attendance in an informal session to review a checklist of hazards and operating constraints when working in and around signalling equipment under the control of the Commission.

7.3.3 Orientation means information sessions that have been developed by TTC to inform the Consultant of the hazards and operating constraints in the area of Work.

7.3.4 Each operating facility entered requires that Consultant Staff (and Subconsultant staff, as applicable) be made aware of operating practices, conditions and hazards likely to be encountered while performing the Work. This entails attending:

7.3.4.1 Rulebook training for Subway/SRT,

7.3.4.2 Rulebook training for Surface Track,

7.3.4.3 Electrical Substation Awareness sessions when entering Commission electrical facilities,

7.3.4.4 Orientation for subway carhouses and yards,

7.3.4.5 Orientation for subway track,

7.3.4.6 Within seven (7) Days after a request by the Commission's Representative, the Consultant shall provide the Commission's Representative with the requirements for training, retraining, awareness, orientation or familiarization. The notification must include the name of the person and the name of their employer of persons.

7.3.4.7 In all cases, the appropriate Consultant Staff and Subconsultant staff must attend training and other sessions prior to being permitted to enter and work on Commission facilities.

7.3.4.8 While on Commission properties adhere to all rules and conditions that have been outlined or explained in training or other sessions. Failure to adhere to rules and conditions, in particular safety or security rules or conditions, may be cause for summary removal from or refusal of access to Commission property. Such removal or refusal of access will not be cause for a claim for additional costs due to any delay related to such removal or refusal of access.

7.3.4.9 While on Commission property, all Consultant Staff (and Subconsultant staff) shall restrict their movements to the area of the Work associated with the Contract.

- 7.3.5 The Consultant is responsible to ensure that training programs and orientation has been completed and the requirements met before work is commenced in the areas affected by the training program or orientation requirements.
- 7.3.6 Duration of Training Programs and Orientation:
- 7.3.6.1 Subway/SRT RuleBook training and re-training – one (1) Day
- 7.3.6.2 Orientation sessions and Substation Awareness Program are considerably shorter and are governed by the material being covered. Are usually delivered in - half (1/2) hour to two (2) hours at most.
- 7.3.7 Estimated costs for Consultant Staff (and Subconsultant staff) to attend training, retraining, awareness, orientation or familiarization sessions shall be detailed in submitted Work Plans, as applicable.

END OF SECTION

PAYROLL BURDEN GUIDELINES

Payroll burden will be at the rate as determined by the Consultant's (or Subconsultant's as applicable) normal audit process which will reflect actual costs incurred in the previous year. This rate shall be applicable for the term of the Contract.

If requested by the TTC, the Consultant shall provide TTC with a copy of the actual payroll burden calculation signed by an auditor (or appropriate chief financial officer, if financial reports are not required to be audited) and the Consultant will be notified in writing of any unacceptable rates or category amounts, with adjustments made subject to TTC audit.

Payroll burden covers the cost for: Vacation, Sick Leave, Statutory Holidays, Professional Development Time, Employment Insurance, Group Life Insurance, Group Medical Insurance, Workplace Safety Insurance Board premiums, Employee Accident Insurance, Employer Health Tax, Company Pension Plan and Canada Pension Plan, where such benefits are paid by the Consultant.

A. Net Salaries Paid

In Canada, the company's T4-T4A Summary will indicate employees' earnings before deductions. An "Ontario only", payroll burden rate should be calculated if the Consultant has significant business activities outside of Ontario. Taxable allowances and benefits, bonuses, severance, overtime, profit sharing, vehicle allowance, loans, gifts and/or room and board, if applicable, shall be deducted from the employees' total earnings to obtain the "Net Salaries Paid". Salaries and benefits of principals and temporary or contract staff that are not invoiced using the payroll burden calculation should be eliminated from the total company earnings and benefit amounts. In cases where the Consultant's year end differs from the calendar year, a reconciliation of the payroll expenses to the T4-T4A Summary may be required.

B. Time-Related Employee Benefits

The "Time-Related Employee Benefits" component is expressed as a percentage and is calculated by dividing the sum of "Vacation", "Sick Leave", "Statutory Holidays" and "Professional Development Time" by the "Net Salaries Paid" less the Time-Related Employee Benefits'.

Vacation: "Vacation" is the Consultant's paid "time off" for vacation earned in each year. Application of vacation pay accruals may be used providing there is no duplication with other allowances.

Sick Leave: "Sick Leave" is the Consultant's paid "time off" due to sickness, accident or injury, or specific personal and family issues such as bereavement leave, jury duty and similar leaves.

Statutory Holidays: "Statutory Holidays" are the Consultant's recognized paid "time off" in accordance with existing legislation or established custom. There are nine Ontario government statutory holidays. Some Consultants may offer Remembrance Day and Easter Monday as additional statutory holidays. Any desire to include for more than 11 "Statutory Holidays" must be justified by the Consultant to the TTC.

Professional Development Time: "Professional Development Time" is the Consultant's paid time expended for employees to maintain or increase their level of knowledge pertaining to their professional status, and/or improve their skills and abilities to perform better in their current

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positions, or to prepare themselves for a position in which they can realistically attain in the near future. A professional development program should be practical, results-orientated, and its individual components should have recognizable beginning and ending points in order to measure the employees' progress.

For example, professional development activities would include the time spent attending:

- annual training conferences conducted by professional associations,
- seminars and workshops (including both internal and external presentations) to learn new methods or theories;
- courses that professional associations mandate its members to attend in order to maintain their continued membership or license registration;
- executive management training courses at universities or colleges;
- other individual study and improvement programs which meet the criteria above.

Professional development time, therefore, does not include:

- informal on-the-job training time;
- time spent in developing for new business opportunities;
- research and development time leading to new product or service innovations;
- software and system development, whether it is for internal use or external sales purposes;
- informal self-study time, reading books and/or periodicals, networking, familiarization with new computer programs, and any other time spent on miscellaneous "fill in" activities performed while awaiting a work assignment.
- the cost of training courses, seminars, workshops or conferences (or associated costs such as travel or accommodations, meals etc.)

C. Non-Time Related Employee Benefits

The "Non-Time Related Employee Benefits" component is expressed as a percentage and is calculated by dividing the sum of these benefits costs (as identified below) by the Net Salaries Paid less "Time-Related Employment Benefits".

Employment Insurance: The Consultant's portion of "Employment Insurance" premiums incurred in accordance with the Employment Insurance Act.

Group Life Insurance: Premiums paid by the Consultant to employee group life insurance plans and short and long term disability insurance plans.

Employer Health Tax: "Employer Health Tax" incurred by the Consultant for the year in accordance with the Employer Health Tax Act of Ontario.

Group Medical Plan: Premiums paid by the Consultant for group health insurance plans providing coverage of health care costs not covered by basic government plans. Such plans include dental, drug, vision, and extended health care plans.

Workplace Safety Insurance Board Compensation: Contributions by the Consultant in accordance with Workplace Safety and Insurance Act.

Employee Accident Insurance: Premiums paid by the Consultant for comprehensive general public liability and property damage insurance, including any excess liability. Premiums paid for

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automobile insurance on company owned and non-owned vehicles and professional liability insurance are not eligible expenses for payroll burden purposes.

Pension Plan - Company: Eligible Consultant's pension plan costs are the amounts paid or accrued in the year by the Consultant on behalf of the employees who have earned benefits that year.

The use of surplus funds by the Consultant to pay its current year required (company) contributions is an allowable pension plan expense, provided that the Consultant's accounting methods report the pension expense in the financial statements in accordance with generally accepted accounting principles.

All third party costs including actuarial, administration, annual government filing, audit, custodian, field manager and legal fees are allowable in the Payroll Burden calculation.

Pension Plan - Canada: The Consultant's portion of Canada Pension Plan contributions incurred in accordance with the Canada Pension Plan Act.

Others (Specify): Certain other expenses may be allowable costs in the payroll burden calculation. Each item must be reviewed to determine its appropriateness in the calculation. An example of an allowable "Other" expense, would be costs incurred for an "Employee Assistance Program".

The following are examples of unallowable benefits:

- Safety Boots
- Business Car
- Professional Development Expenses
- Automobile Allowance
- Health Club Memberships
- Firm Discounts

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