

ONTARIO NORTHLAND

TRANSPORTATION COMMISSION

Request for Quotations No. RFQ 2024 027

For

**Purchase of Three (3) HC 40' Seacans and
Two (2) 20' Seacans**

REPLY BY DATE: 2:00:00 p.m. Thursday, July 11, 2024

Primary Contact:

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Table of Contents

PART 1 REQUEST FOR QUOTATIONS	1
SECTION 1 - INTRODUCTION.....	2
1.1 General	2
1.2 Ontario Northland Transportation Commission	3
SECTION 2 - THE RFQ DOCUMENTS.....	4
2.1 Request for Quotations Documents	4
2.2 Priority of Documents	4
2.3 Distribution of Documents – Electronic Distribution.....	5
2.4 Information Provided by ONTC.....	5
SECTION 3 – THE RFQ PROCESS	5
3.1 RFQ Process.....	5
3.2 Questions and Communications Related to the RFQ Documents.....	5
3.3 Addenda/Changes to the RFQ Documents.....	7
3.4 Respondents’ Meeting	7
3.5 Prohibited Contacts	7
3.6 Media Releases, Public Disclosures, Public Announcements and Copyright	8
3.7 Confidentiality and Disclosure Issues – Respondent Information.....	9
3.8 Confidential Information.....	10
3.9 Governing Laws and Attornment	11
3.10 Licenses and Permits	11
3.11 Respondents’ Costs	11
3.12 Delay and Costs of Delay	12
3.13 Clarification and Verification of Respondent’s Quotation.....	12
SECTION 4 - QUOTATION CONTENT AND FORMAT	13
4.1 Format and Content of Quotation	13
4.2 Quotation Submission Form	14
4.3 References and Past Performance Issues.....	14
4.4 Conflict of Interest.....	15
SECTION 5 - QUOTATION SUBMISSION, WITHDRAWAL, MODIFICATION	16
5.1 Submission of Quotations and Late Quotations	16
5.2 Late Quotations	17
5.3 Withdrawal of Quotations.....	18
5.4 Amendment of Quotations	18
5.5 Quotation Irrevocability	18
5.6 One Quotation per Person or Entity	18

SECTION 6 - QUOTATION EVALUATION	19
6.1 Evaluation Team	19
6.2 Evaluation of Quotations.....	19
6.3 Short-Listing	20
6.4 Interviews, Site Visits, Demonstrations and Presentations.....	20
SECTION 7 - GENERAL EVALUATION AND DISQUALIFICATION PROVISIONS	20
7.1 ONTC's Discretion.....	20
7.2 Disqualification	20
7.3 General Rights of ONTC	22
SECTION 8 – DRAFT AGREEMENT FINALIZATION AND DEBRIEFING AND SUCCESSFUL RESPONDENT	22
8.1 Finalization of the Agreement.....	22
8.2 Notification If Successful or Not.....	24
8.3 Debriefing.....	24
SECTION 9 - LEGAL MATTERS AND RIGHTS OF ONTC	24
9.1 Limit on Liability.....	24
9.2 Power of Legislative Assembly	24
9.3 RFQ Not a “Bidding Contract” or a Tender.....	25
SECTION 10 – VENDOR PERFORMANCE	25
10.1 General	25
10.2 Vendor Performance Evaluation	25
10.3 Vendor Ratings for Quotation Evaluation Purposes	25
SECTION 11 – TRANSPARENCY AND FAIRNESS	25
11.1 General	25
SECTION 12 – INTERPRETATION	26
12.1 General	26
PART 2 REQUEST FOR QUOTATIONS SUMMARY OF REQUIREMENTS	1
SCHEDULE 2-A RFQ DATA SHEET	2
SCHEDULE 2-B PARTICIPATION REGISTRATION FORM	5
PART 3 REQUEST FOR QUOTATIONS SPECIFICATIONS	1
SCHEDULE 3-A SPECIFICATIONS	2
PART 4 REQUEST FOR QUOTATIONS FORM OF QUOTATION.....	1
PART 5 REQUEST FOR QUOTATIONS DRAFT AGREEMENT.....	1



PART 1

REQUEST FOR QUOTATIONS

SECTION 1 - INTRODUCTION

1.1 General

(1) Ontario Northland Transportation Commission (“ONTC”) is issuing this Request for Quotations (“**RFQ**”) to obtain Quotations from a vendor/service provider(s) for the provision of the goods and/or services described in the RFQ Specifications (the “**Goods and/or Services**”).

(2) In this RFQ:

“Applicable Laws” means the statutes, regulations, orders, by-laws and other laws of Ontario, Quebec, Manitoba, Canada and any municipal government relevant to the RFQ and the subject matter of the RFQ;

“Addendum” means the written supplementary information provided to potential Respondents prior to the Submission Deadline, which information becomes part of the RFQ Documents;

“Business Day” means any day except Saturday, Sunday or a statutory holiday;

“Final Agreement” means the agreement for the supply of the Goods and/or Services entered into by ONTC and the Successful Respondent;

“Material” means a document or information that must be included in the Quotation including without limitation the information requested in the RFQ Data Sheet, and is essential to allow ONTC to evaluate a Quotations and that if not included will result in the disqualification of the Quotation;

“Non-compliant” means the Quotation or the Respondent does not meet a requirement of the RFQ Documents;

“Quotation” means the response to the RFQ submitted by a Respondent to ONTC;

“Respondent(s)” means the entity submitting a Quotation and includes prospective respondents, whether or not that entity submits a Quotation. If the context requires it, “Respondent” includes any of the Respondent’s respective shareholders, owners, officers, agents, consultants, partners, contractors, subcontractors, advisors, employees, or representatives;

“RFQ Data Sheet” means the information and requirements contained in Schedule 2-A of Part 2;

“RFQ Documents” means the documents listed in RFQ Section 2.1 (1) and any additional documents issued through Addenda;

“Short-listed Respondent” means a Respondent selected to proceed to the next step in the evaluation process pursuant to section 6.2 (2) of the RFQ;

“Substantially Compliant” means Quotation does not meet the requirements of the RFQ Documents; however, the Quotation includes all of the Material items, as identified in the RFQ Data Sheet;

“Successful Respondent” means the Respondent selected by ONTC to enter into the Final Agreement.

- (3) The process to select the Short-listed Respondents for the supply of the Goods and/or Services (the “**RFQ Process**”) will commence with the issuance of these RFQ Documents and will terminate at the earlier of:
- (a) when ONTC and the Successful Respondent execute the Final Agreement; or,
 - (b) upon the termination of the RFQ Process in accordance with the terms and conditions of this RFQ.

1.2 Ontario Northland Transportation Commission

The Ontario Northland Transportation Commission (ONTC) is an agency of the Province of Ontario that provides reliable and efficient transportation services to northern and rural communities. For over 120 years, the company has provided integrated and impactful transportation services including rail freight, passenger rail, motor coach transportation, rail repair, and remanufacturing services.

ONTC’s rail services are vital in maintaining a reliable supply chain in Northern Ontario by connecting freight customers to global economies. The forestry industry, mining operations, farming communities, and manufacturers count on ONTC’s services to deliver large volumes across vast distances. The company’s 675 miles of mainline track span throughout northeastern Ontario and northwestern Quebec.

ONTC motor coaches connect rural Ontario to major centres providing access to education, medical appointments, shopping, and seamless connections to other transportation providers. The Polar Bear Express passenger train connects Moosonee and Cochrane, Ontario, providing an all-season land link for Indigenous communities on the James Bay Coast.

Improving and repairing transportation equipment is also a large part of ONTC’s service offering. We remanufacture and repair locomotives, passenger rail cars, freight cars, and more. ONTC’s unique mechanical skillset attracts new business and secures skilled trades jobs in Northern Ontario.

ONTC makes provincial dollars reach further by creating innovative solutions that help drive economic growth sustainably, responsibly, and with future generations top of mind. Throughout the agency, modernization is underway with many exciting projects that will improve how we operate. ONTC employs over 900 people including Locomotive Engineers, Motor Coach Operators, skilled tradespeople, and business professionals. Employees work together to improve and deliver services that provide value to the regions served.

SECTION 2 - THE RFQ DOCUMENTS

2.1 Request for Quotations Documents

- (1) The Request for Quotations documents consist of:

Part 1 – Request for Quotations

Part 2 – Requests for Quotations Summary of Requirements

- (a) Schedule 2-A – RFQ Data Sheet
- (b) Schedule 2-B – Participation Registration Form

Part 3 – RFQ Specifications

- (a) Schedule 3-A – Specifications

Part 4 – Form of Quotation

- (a) Quotation Form 1 – Quotation Submission Form
- (b) Quotation Form 2 – Respondent's General Information
- (c) Quotation Form 3 – Acknowledgment to Comply with Part 3 – Request for Quotations Specifications
- (d) Quotation Form 4 – References
- (e) Quotation Form 5 – Compliance with Contract Documents
- (f) Quotation Form 6 – Delivery

Part 5 – Draft Agreement

- (2) The RFQ Documents shall be read as a whole. The Schedules and Addenda, if any, constitute an integral part of this RFQ and are incorporated by reference.
- (3) Each Respondent shall verify the RFQ Documents for completeness upon receipt and shall inform the Contact Person (identified in RFQ Section 3.2(7)), immediately:
- (a) should any documents be missing or incomplete; or,
 - (b) upon finding any discrepancies or omissions.
- (4) Complete sets of the RFQ Documents are available at our company website at www.ontarionorthland.ca and MERX.
- (5) The RFQ Documents are made available only for the purpose of Respondents submitting Quotations. Availability and/or use of the RFQ Documents do not confer a license or grant for any other purpose.

2.2 Priority of Documents

- (1) If there are any inconsistencies between the terms, conditions or other provisions of the RFQ Documents, the order of priority of RFQ Documents, from highest to lowest, shall be:
- (a) Any Addenda modifying the RFQ Documents issued during the RFQ Process;
 - (b) The RFQ Data Sheet;

- (c) Part 1 – Request for Quotations;
- (d) Part 3 – Specifications; and,
- (e) Any other RFQ Documents

2.3 Distribution of Documents – Electronic Distribution

- (1) ONTC will use MERX and the ONTC website to distribute all RFQ Documents.
- (2) Each Respondent is solely responsible for making appropriate arrangements to receive and access the RFQ Documents through that electronic distribution system.

2.4 Information Provided by ONTC

- (1) Each Respondent is solely responsible for conducting its own independent research, due diligence, and any other work or investigations and seeking any other independent advice necessary for the preparation of its Quotation, negotiation or finalization of the Final Agreement and the subsequent delivery of all the Goods and/or Services to be provided by the Successful Respondent. Nothing in the RFQ Documents is intended to relieve the Respondents from forming their own opinions and conclusions with respect to the matters addressed in this RFQ.
- (2) No guarantee, representation or warranty, express or implied, is made and no responsibility of any kind is accepted by ONTC or its representatives for the completeness or accuracy of any information presented in the RFQ Documents, if any, during the RFQ Process or during the term of the Final Agreement. By submitting a Quotation, each Respondent agrees that ONTC and its representatives shall not be liable to any person or entity as a result of the use of any information contained in the RFQ Documents or otherwise provided by ONTC or its representatives during the RFQ Process or during the term of the Final Agreement.

SECTION 3 – THE RFQ PROCESS

3.1 RFQ Process

- (1) The deadline for the submission of Quotations (the “**Submission Deadline**”) is set out in the RFQ Data Sheet.
- (2) ONTC may amend, extend or shorten any of the dates and/or times prescribed in this RFQ, at any time, at its sole discretion, including without limitation the Submission Deadline. If ONTC extends the Submission Deadline, all requirements applicable to Respondents will thereafter be subject to the new, extended Submission Deadline.

3.2 Questions and Communications Related to the RFQ Documents

- (1) Respondents shall submit all questions, requests for clarifications, and other communications regarding the RFQ Documents and the RFQ Process by email to the Contact Person set out in section 3.2(7) no later than four (4) full Business Days before the Submission Deadline.
- (2) ONTC will endeavor to provide the Respondents with written responses to questions that

- are submitted in accordance with this RFQ Section 3.2, by no later than two (2) full Business Days before the Submission Deadline. Responses to any questions or requests for clarifications, will be collected and distributed with answers to be delivered to all Respondents who have submitted the Participation Registration Form by way of emailed addenda from ONTC in accordance with the timeline set out in this Section 3.2(2).
- (3) The responses to questions form part of the RFQ Documents.
 - (4) ONTC may, in its sole discretion:
 - (a) answer questions that ONTC deems to be similar from various Respondents only once;
 - (b) edit any question(s) for the purpose of clarity;
 - (c) respond to questions submitted after the deadline for submission of questions if ONTC believes that such responses would be of assistance to the Respondents generally; and,
 - (d) exclude any questions that, in the sole opinion of ONTC, are ambiguous, incomprehensible, or are deemed by ONTC to be immaterial to the RFQ Process, the RFQ Documents, or the Goods and/or Services.
 - (5) If Respondents find discrepancies, omissions, errors, departures from by-laws, codes or good practice, or information considered to be ambiguous or conflicting, they shall bring them to the attention of the Contact Person in writing, and not less than four (4) full Business Days before the Submission Deadline, so that ONTC may, if ONTC deems it necessary, issue instructions, clarifications or amendments by addendum to all Respondents prior to the Submission Deadline. ONTC will endeavor to, but is not required to, issue such Addenda at least two (2) full Business Days prior to the Submission Deadline. It is each Respondent's responsibility to seek clarification from ONTC of any matter it considers to be unclear in the RFQ Documents or the description of the Goods and/or Services and the Respondent may seek clarification in accordance with this Section 3.2. Neither ONTC nor the Government of Ontario shall be responsible for any misunderstanding by a Respondent of the RFQ Documents, the RFQ Process or the Goods and/or Services.
 - (6) If ONTC gives oral answers to questions at any meeting (Section 3.4), these answers will not be considered final, and may not be relied upon by any of the Respondents, unless and until such answers are provided by way of an addendum in accordance with this Section 3.2.
 - (7) The Contact Person designated by ONTC for this RFQ is **Brinda Ranpura, Procurement Contracts Specialist, 555 Oak Street East, North Bay, Ontario P1B 8L3 (705) 472-4500 ext. 548, brinda.ranpura@ontarionorthland.ca** (the "Contact Person"). The above Contact Person is the sole contact for this RFQ. A Respondent may be disqualified where contact is made with any person other than the Contact Person.

ONTC will not be responsible for statements, instructions, clarifications, notices or amendments communicated orally by ONTC to one or more of the Respondents. Statements, instructions, clarifications, notices or amendments by ONTC, which affect the RFQ Documents, may only be made by addendum.

3.3 Addenda/Changes to the RFQ Documents

- (1) ONTC may, in its sole discretion, amend, supplement, or change the RFQ Documents prior to the Submission Deadline. ONTC shall issue amendments, supplements, or changes to the RFQ Documents by Addendum only. No other statement or response(s) to questions, whether oral or written, made by ONTC or any ONTC advisors, employees or representatives, including, for clarity, the Contact Person, or any other person, shall amend, supplement or change the RFQ Documents. Addenda will be distributed in the same manner as the RFQ and shall become part of the RFQ Documents.
- (2) Each Respondent is solely responsible for ensuring that it has received all Addenda issued by ONTC. Respondents may, in writing by email to the Contact Person, seek confirmation of the number of Addenda, issued under this RFQ.

3.4 Respondents' Meeting

- (1) To assist Respondents in understanding the RFQ Documents, and the RFQ Process, ONTC may conduct an information meeting (the “**Respondents' Meeting**”) for all Respondents. Whether or not ONTC will conduct a Respondents' Meeting is set out in the RFQ Data Sheet. If ONTC is conducting a Respondents' Meeting, the meeting will be held on the date and at the time and location set out in the RFQ Data Sheet.
- (2) Attendance by Respondents at a Respondents' Meeting may not be mandatory but, if one is held, Respondents are strongly encouraged to attend. Whether or not the Respondents' Meeting is mandatory will be identified on the RFQ Data Sheet. When a Respondents' meeting is mandatory, all attending persons or entities will be required to sign the “Site Meeting Log” to confirm their attendance and provide a valid email address for purpose of receiving information.
- (3) If ONTC gives oral answers to questions at the Respondents' Meeting, these answers will not be considered final, and may not be relied upon by any of the Respondents, unless and until such answers are provided by way of an Addendum in accordance with Section 3.2.
- (4) If pre-registration for the Respondents' Meeting is necessary, the deadline for registration will be set out in the RFQ Data Sheet and details regarding the registration process will be set out in the RFQ Data Sheet.

3.5 Prohibited Contacts

- (1) Respondents and their respective advisors, employees and representatives are prohibited from engaging in any form of political or other lobbying, of any kind whatsoever, to influence the outcome of the RFQ Process.

- (2) Without limiting the generality of Section 3.5(1) above, neither Respondents nor any of their respective advisors, employees or representatives shall contact or attempt to contact, either directly or indirectly, at any time during the RFQ Process, any of the following persons or organizations on matters related to the RFQ Process, the RFQ Documents, or their Quotations:
- (a) any member of the Evaluation Team (as defined in Section 6.1), except the Contact Person;
 - (b) any advisor to ONTC or the Evaluation Team, except the Contact Person; or,
 - (c) any directors, officers, employees, agents, representatives or consultants of:
 - (i) ONTC, except the Contact Person;
 - (ii) Ontario Ministry of Transportation;
 - (iii) The Premier of Ontario's office or the Ontario Cabinet office;
 - (iv) A Member of Provincial Parliament (including the Premier); or,
 - (v) Any other person or entity listed in the RFQ Data Sheet.
- (3) If a Respondent or any of their respective shareholders, owners, officers, agents, consultants, partners, contractors, subcontractors, advisors, employees, representatives, or other third parties acting on behalf or with the knowledge of the Respondent; in the opinion of ONTC, contravenes RFQ Section 3.5(1) or 3.5(2), ONTC may, but is not obliged to, in its sole discretion:
- (a) take any action in accordance with RFQ Section 7.2; or,
 - (b) impose conditions on the Respondent's continued participation in the RFQ Process that ONTC considers, in its sole discretion, to be appropriate.

3.6 Media Releases, Public Disclosures, Public Announcements and Copyright

- (1) A Respondent shall not, and shall ensure that its shareholders, owners, officers, agents, consultants, partners, contractors, subcontractors, advisors, employees, representatives, or other third parties acting on behalf or with the knowledge of the Respondent do not, issue or disseminate any media release, social media or Internet post, public announcement or public disclosure (whether for publication in the press, on the radio, television, internet or any other medium) that relates to the RFQ Process, the RFQ Documents or the Goods and/or Services or any matters related thereto, without the prior written consent of ONTC.
- (2) Neither the Respondents or any of their respective shareholders, owners, officers, agents, consultants, partners, contractors, subcontractors, advisors, employees, representatives, or other third parties acting on behalf or with the knowledge of the Respondent shall make any public comment, respond to questions in a public forum, or carry out any activities to either criticize another Respondent or Quotation or to publicly promote or advertise their own qualifications, interest in or participation in the RFQ Process without ONTC's prior written consent, which consent may be withheld, conditioned or delayed in ONTC's sole discretion. Respondents, and their respective advisors, employees and representatives are permitted to state publicly that they are participating in the RFQ Process but shall not publicly identify other Respondents without the prior written consent of ONTC.

- (3) Respondents shall not use the name of ONTC or any of ONTC's logos, designs, colours or registered trademarks and names used, owned or registered by ONTC, during the RFQ Process, if selected as the Successful Respondent, or at any time prior to, during, or following the supply of the Goods and/or Services, except with the prior written consent of ONTC.

3.7 Confidentiality and Disclosure Issues – Respondent Information

- (1) Respondents are advised that ONTC may be required to disclose the RFQ Documents, any other documentation related to the RFQ Process and a part or parts of any Quotation pursuant to the *Freedom of Information and Protection of Privacy Act* (Ontario) ("FIPPA"). Respondents are also advised that FIPPA does provide protection for confidential and proprietary business information. Respondents are strongly advised to consult their own legal advisors as to the appropriate way in which confidential or proprietary business information should be marked as such in their Quotations. Subject to the provisions of FIPPA, ONTC will use reasonable commercial efforts to safeguard the confidentiality of any information identified by the Respondent as confidential but shall not be liable in any way whatsoever to any Respondent if such information is disclosed based on an order or decision of the Information and Privacy Commissioner or otherwise as required under the Applicable Laws.
- (2) The Respondent agrees that ONTC may disclose Quotations, and all information submitted in or related to the Quotations, to the Government of Ontario.
- (3) ONTC may provide the Quotations to any person involved in the review and/or evaluation of the Quotations on behalf of ONTC and ONTC may:
 - (a) make copies of the Quotation; and/or,
 - (b) retain the Quotation.
- (4) ONTC may disclose any information with respect to the Respondents, the Quotations and the RFQ Process as required by the Applicable Laws.
- (5) The Respondent shall not require ONTC or any of its representatives to sign a non-disclosure agreement in respect of any step taken or information provided as part of this RFQ Process, provided that if the nature of the subject matter of the RFQ is such that, in the opinion of ONTC, it would be appropriate to enter into a non-disclosure agreement with a Respondent or Respondents, ONTC and/or the Respondent shall enter into such agreement in a form and with the content satisfactory to ONTC.

3.8 Confidential Information

- (1) In this RFQ, "**RFQ Information**" shall mean 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 before or after the RFQ Process, from ONTC or any Ministry or Agency of the Government of Ontario, in connection with the RFQ Documents or the Goods and/or Services excluding any item which:

- (a) is or becomes generally available to the public other than as a result of a disclosure resulting from a breach of this RFQ Section 3.8;
 - (b) becomes available to the Respondent on a non-confidential basis from a source other than ONTC, so long as that source is not bound by a non-disclosure agreement with respect to the information or otherwise prohibited from transmitting the information to the Respondent by a contractual, legal or fiduciary obligation; or,
 - (c) The Respondent is able to demonstrate was known to it on a non-confidential basis before it was disclosed to the Respondent by ONTC.
- (2) RFQ Information:
- (a) shall remain the sole property of ONTC or the Government of Ontario, as applicable, and the Respondent shall maintain the confidentiality of such information except as required by law;
 - (b) shall not be used by the Respondent for any other purpose other than submitting a Quotation or performing obligations under any subsequent agreement with ONTC relating to the Goods and/or Services;
 - (c) shall not be disclosed by the Respondent to any person who is not involved in the Respondent's preparation of its Quotation or in the performance of any subsequent agreement relating to ONTC, or the Government of Ontario, as applicable, without prior written authorization from ONTC;
 - (d) shall not be used in any way detrimental to ONTC or the Government of Ontario; and,
 - (e) if requested by ONTC, shall be returned to the Contact Person or destroyed by the Respondent no later than 10 calendar days after such request is received in writing by the Respondent.
- (3) Each Respondent shall be responsible for any breach of the provisions of this RFQ Section 3.8 by any person to whom it discloses the RFQ Information.
- (4) Each Respondent or Short-listed Respondent acknowledges and agrees that a breach of the provisions of this RFQ Section 3.8 would cause ONTC, the Government of Ontario and/or their related entities to suffer loss which could not be adequately compensated by damages, and that ONTC, the Government of Ontario and/or any related entity may, in addition to any other remedy or relief, enforce any of the provisions of this RFQ Section 3.8 upon application to a court of competent jurisdiction without proof of actual damage to ONTC, the Government of Ontario or any related entity.
- (5) Notwithstanding RFQ Section 9.3, the provisions of this RFQ Section 3.8 shall be binding and shall survive any cancellation or termination of this RFQ and the conclusion of the RFQ Process.

- (6) ONTC may, in its sole discretion, require that Respondents execute a legally binding non-disclosure agreement in a form and substance satisfactory to ONTC prior to receiving the RFQ Information.

3.9 Governing Laws and Attornment

- (1) This RFQ Process and the Final Agreement entered into pursuant to this RFQ Process shall be governed and construed in accordance with the laws of Ontario, the laws of Quebec, the laws of Manitoba, if relevant to the subject matter of this RFQ, and the applicable laws of Canada, excluding any conflict of laws principles.
- (2) Each Respondent agrees that the courts of the Province of Ontario shall have exclusive jurisdiction to entertain any action or proceeding based on, relating to or arising from this RFQ process.

3.10 Licenses and Permits

- (1) If a Respondent is required by the Applicable Laws to hold or obtain a license, permit, consent or authorization to carry on an activity contemplated in its Quotation, neither acceptance of the Quotation nor execution of the Final Agreement shall be considered to be approval by ONTC of carrying on such activity without the requisite license, permit, consent or authorization.

3.11 Respondents' Costs

- (1) The Respondent shall bear all costs and expenses incurred by the Respondent relating to any aspect of its participation in this RFQ Process, including, without limitation, all costs and expenses related to the Respondent's involvement in:
 - (a) the preparation, presentation and submission of its Quotation;
 - (b) due diligence and information gathering processes;
 - (c) attendance at any Respondents' Meeting(s) or presentations;
 - (d) preparation of responses to questions or requests for clarification from ONTC;
 - (e) preparation of the Respondent's own questions during the clarification process;
 - (f) preparation of prototypes, proof of concept and/or demonstrations; and,
 - (g) any discussions or negotiations with ONTC regarding the Final Agreement.
- (2) Without limiting the generality of Section 9.1(2) of this RFQ, in no event shall ONTC or the Government of Ontario be liable to pay any costs or expenses or to reimburse or compensate a Respondent under any circumstances for the costs or expenses set out in Section 3.11(1), regardless of the conduct or outcome of the RFQ Process.

3.12 Delay and Costs of Delay

- (1) By submitting a Quotation, the Respondent waives all claims against ONTC and the Government of Ontario including any claims arising from any error or omission in any part of the RFQ Documents or RFQ Information or any delay, or costs associated with delays, in the RFQ Process.

3.13 Clarification and Verification of Respondent's Quotation

- (1) Following submission of a Quotation, ONTC may:
 - (a) request a Respondent to clarify or verify the contents of its Quotation, including by submitting supplementary documents; and/or
 - (b) request a Respondent to confirm an ONTC interpretation of the Respondent's Quotation.
- (2) Any information received by ONTC from a Respondent pursuant to a request for clarification or verification from ONTC as part of the RFQ Process may, in ONTC's discretion, be considered as an integral part of the Quotation even if such information should have been submitted as part of the Respondent's Quotation and may, in ONTC's discretion, be considered in the evaluation of the Respondent's Quotation.
- (3) ONTC may, in its sole discretion, verify or clarify any statement or claim contained in any Quotation or made subsequently in any interview, presentation, or discussion. That verification or clarification may be made by whatever means that ONTC deems appropriate which may include contacting the persons identified in the contact information provided by the Respondent and contacting persons or entities other than those identified by any Respondent.
- (4) By submitting a Quotation, the Respondent is deemed to consent to ONTC verifying or clarifying any information and requesting additional information from third parties regarding the Respondent) and its directors, officers, shareholders or owners and any other person associated with the Respondent as ONTC may determine is appropriate.
- (5) ONTC is not obliged to seek clarification or verification of any aspect of a Quotation, or any statement or claim made by a Respondent.
- (6) Requests for clarifications shall not be construed as acceptance by ONTC of a Quotation.

SECTION 4 - QUOTATION CONTENT AND FORMAT

4.1 Format and Content of Quotation

- (1) Respondents shall submit their Quotation in one envelope or, if submitting electronically, one electronic folder.

- (2) Unless otherwise specified in the RFQ Data Sheet, Respondents shall not submit pre-printed literature with their Quotations. Any unsolicited pre-printed literature submitted as part of a Quotation will not be reviewed by the Evaluation Team.
- (3) Each Respondent will:
 - (a) in a clear, concise and legible manner, complete and submit all documentation and information required by Part 2, Part 3, and Part 4 to the RFQ;
 - (b) for a hard copy submission, complete any handwritten portions of the Quotation forms in ink;
 - (c) provide all information requested and ensure that an authorized person or persons sign all forms where indicated. Failure to provide all requested information on the Quotation forms and failure to fill in all blank spaces may result in a Quotation being determined to be non-compliant; and,
 - (d) use only the Quotation forms issued as part of the RFQ documents unless otherwise indicated.
- (4) Information provided by Respondents on hard copy Quotation forms may be amended prior to the Quotation submission, provided the amendments are initialed by an authorized representative of the Respondent. Un-initialed pre-submission amendments may result in the Quotation being declared non-compliant.
- (5) Quotations that are not originals (if hard copy), are unsigned, improperly signed, incomplete, conditional or illegible, may be declared non-compliant.
- (6) The Harmonized Sales Tax (HST) shall not be included in the price. Any taxes or increases to taxes announced prior to the date of the issuance of the RFQ Documents and scheduled to come into effect subsequent to it shall be taken into consideration at time of invoicing.
- (7) Price:
 - (a) Price shall be an all-inclusive lump sum price (excluding HST), unless otherwise indicated in the RFQ Documents; and,
 - (b) Where the RFQ requires the Respondent to provide a breakdown of the price, the price as stated in Quotation Form 1 shall govern in the case of conflict or ambiguity between the price and the sum of the breakdown of the price.
- (8) Listing of Subcontractors

Each Respondent shall complete the "Subcontractors" section of Quotation Form 2 – Respondent's General Information, naming the Subcontractors which the Respondent will

employ to perform an item of the work called for by the RFQ Documents. Failure of the Respondent to list Subcontractors where required, may result in the Quotation being declared non-compliant.

4.2 Quotation Submission Form

- (1) Each Respondent will complete and submit the forms included in Part 4 – Form of Quotation. Failure of the Respondent to complete and submit one or more of the forms included in Part 4 – Form of Quotation, may result in the Quotation being declared non-compliant.
- (2) Respondents shall execute the Quotation Submission Form as follows:
 - (a) in the case of a sole proprietorship, the sole proprietor will sign the Quotation Submission Form and have the signature witnessed;
 - (b) in the case of a limited company, an authorized signing officer will sign the Quotation Submission Form; or,
 - (c) in the case of a partnership, a partner or partners authorized to bind the partnership will sign the Quotation Submission Form and have their signatures witnessed.

4.3 References and Past Performance Issues

- (1) If specified in the RFQ Data Sheet, Respondents shall provide reference information. Unless otherwise set out in the RFQ Data Sheet, all references shall be, where possible, with respect to similar goods and/or services, as applicable, during the five (5) years immediately prior to the Submission Deadline. Unless otherwise set out in the RFQ Data Sheet, the Respondent shall provide a minimum of three (3) references.
- (2) ONTC may, in its sole discretion, confirm the Respondent's experience and ability to provide the Goods and/or Services by contacting the Respondent's references. However, ONTC is under no obligation to contact references submitted by any Respondent. References and information received from referees, if contacted, will be taken into account in the evaluation process as identified in the RFQ Data Sheet.
- (3) ONTC may take into account in the evaluation process reliable information received from the Government of Ontario or its Agencies regarding past performance of a Respondent, provided information evidencing past poor performance by a Respondent is provided to the Respondent (subject to any restrictions on disclosure imposed by applicable law) and the Respondent is afforded an opportunity to respond to the information.
- (4) If ONTC receives information from referees of a Respondent's past poor performance, ONTC shall advise the Respondent (subject to any restrictions on disclosure imposed by applicable law) and afford the Respondent an opportunity to respond to the information prior to considering this information as part of the evaluation process.

4.4 Conflict of Interest

- (1) For the purposes of this Section 4.5, the term “**Conflict of Interest**” includes, but is not limited to, any situation or circumstance where the interests, conduct, other commitments or relationships of a Respondent, a Respondent’s family member or an officer, director or employee of the Respondent could or could be perceived to, directly or indirectly, compromise, impair or be in conflict with the integrity of the RFQ Process, the subject matter of the RFQ or ONTC.
- (2) Each Respondent shall promptly disclose any potential, perceived or actual Conflict of Interest of the Respondent to the Contact Person in writing. If ONTC discovers a Respondent’s failure to disclose a Conflict of Interest, ONTC may, in its sole and absolute discretion disqualify the Respondent or terminate the Final Agreement if such Respondent is the Successful Respondent.
- (3) ONTC may, in its sole discretion, and in addition to any other remedy available at law or in equity:
 - (a) waive any Conflict of Interest;
 - (b) impose conditions on a Respondent that require the management, mitigation and/or minimization of the Conflict of Interest; or,
 - (c) disqualify the Respondent from the RFQ Process if, in the sole and absolute opinion of ONTC, the Conflict of Interest cannot be managed, mitigated or minimized.

SECTION 5 - QUOTATION SUBMISSION, WITHDRAWAL, MODIFICATION

5.1 Submission of Quotations and Late Quotations

- (1) Each Respondent shall submit their quotation in the format prescribed in the RFQ Data Sheet. ONTC will not accept any quotation that is not submitted in the format prescribed in the RFQ Data Sheet.

ONTC may elect to accept Electronic Bid Submissions, Physical Bid Submissions or a combination of both.

- (a) If ONTC elects to use Electronic Bid Submissions, submissions shall be submitted on, and in accordance with, forms supplied by ONTC. **All responses are to be submitted to ONTC through the use of MERX Electronic Bid Submission (EBS).** Respondents shall be solely responsible for the delivery of their Quotations in the manner and time prescribed in the RFQ Data Sheet.

Questions concerning submitting through MERX should be addressed to:

- MERX Customer Support
- ☐ Phone 1-800-964-6379
- Email merx@merx.com

Any Quotation from a Respondent whose name does not appear on the official MERX document request list (i.e., who has not downloaded the documents themselves) will be declared invalid, and the Quotation will not be considered.

MERX EBS does not allow submissions to be uploaded after the bid submission deadline; therefore, the Respondent should ensure they allow plenty of time to upload the documents.

- (b) If ONTC elects use Physical Bid Submissions, Respondents shall submit one original and the number of copies of its Quotation (in hard copy) specified in the RFQ Data Sheet and the number of electronic copies of its Quotation (on a properly labelled CD or USB key in PDF format) specified in the RFQ Data Sheet, at the correct location for submission and on or before the Submission Deadline. If there is any difference whatsoever between the electronic copy of the Quotation and the original hard copy, the original hard copy of the Quotation, as submitted, will govern. The electronic copy of the Quotation is solely for the convenience of ONTC.

Respondents shall submit their Quotations to the attention of the Senior Manager of Strategic Procurement by prepaid courier or personal delivery at the following address:

Jason Baker
Senior Manager, Strategic Procurement
Ontario Northland Transportation Commission
555 Oak Street East
North Bay, Ontario P1B 8E3

The Respondent shall place their Quotation Submission in a sealed envelope or package with the Respondent's full legal name and return address, the RFQ Number, the Submission Deadline and the label "Quotation Submission" clearly displayed on the outside of the envelope.

- (c) For the convenience of the Respondents, and only when identified in the RFQ Data Sheet, ONTC may allow either an Electronic Bid Submission through MERX or a Physical Bid Submission. The Respondent shall only use one method and follow the same procedure prescribed above.
- (2) Quotations must be received before the time noted in the RFQ Data Sheet.
- (3) Quotations will be date and time stamped at the place receiving the Quotations. Late Quotations will be returned unopened.
- (4) Quotations which are submitted by facsimile transmission or by electronic means other than MERX including emails will NOT be considered.
- (5) Respondents are solely responsible for the method and timing of delivery of their Quotations.

- (6) ONTC reserves the right to make copies of the Respondent's Quotations as it may be required for the purpose of conducting a full evaluation of the Quotation submitted.
- (7) The Respondent should identify and mark any trade secret or proprietary intellectual property in its Quotation.

5.2 Late Quotations

- (1) ONTC will reject Quotations that are received after the Submission Deadline.

5.3 Withdrawal of Quotations

- (1) When submitting a Physical Bid Submission, a Respondent may withdraw its Quotation at any time before the Submission Deadline by notifying the Contact Person in writing. ONTC shall return, unopened, a Quotation that has been withdrawn.
- (2) When submitting an Electronic Bid Submission, MERX will allow withdrawal of Quotations up to the Submission Deadline.

5.4 Amendment of Quotations

- (1) When submitting a Physical Bid Submission, Respondents may amend their Quotations after submission but only if the original Quotation is withdrawn and the amended Quotation is submitted before the Submission Deadline.
- (2) Electronic Bid Submissions through MERX will allow amendments up to the closing date and time; however, **Respondents are responsible for ensuring they allow sufficient time to upload the amended documents.**
- (3) If more than one Quotation is received from the same Respondent before the Submission Deadline, only the last Quotation received before the Submission Deadline will be considered.

5.5 Quotation Irrevocability

- (1) Subject to the Respondent's right to withdraw or amend the Quotation before the Submission Deadline, the Respondent's Quotation is irrevocable and shall remain in effect and open for acceptance for ninety (90) days after the Submission Deadline.

5.6 One Quotation per Person or Entity

- (1) Except as set out in the RFQ Data Sheet or with ONTC's approval:
 - (a) a person or entity shall submit or participate in only one Quotation either individually or as a Respondent team member; and,
 - (b) a person or entity shall not be a subcontractor of a Respondent and also submit a Quotation individually or as a Respondent team member in the same RFQ Process.

- (2) If a person or entity submits or participates in more than one Quotation in contravention of RFQ Section 5.6(1), ONTC may, in its sole discretion, disqualify any or all of the Quotations submitted by that person or entity or in which that person or entity is a participant.

SECTION 6 - QUOTATION EVALUATION

6.1 Evaluation Team

- (1) ONTC will establish an evaluation team for the purpose of evaluating Quotations (the **"Evaluation Team"**).
- (2) The Evaluation Team may, in its sole discretion, delegate certain administrative functions related to the evaluation of Quotations to a separate team of individuals who are not members of the Evaluation Team, who will be supervised by the Evaluation Team. Without limiting the generality of the foregoing, but for greater particularity, the Evaluation Team may seek the advice and assistance of third-party consultants and the Government of Ontario. Each Respondent acknowledges that the RFQ documents may have been prepared with the assistance of a third-party consultant and that the consultant may participate in the evaluation of the Quotations.

6.2 Evaluation of Quotations

- (1) The Respondents' Quotations will be reviewed and evaluated by the Evaluation Team on the basis of the evaluation criteria set out in the RFQ Data Sheet (the **"Evaluation Criteria"**).
- (2) After selection of the Short-listed Respondent(s), ONTC may, in its sole discretion, negotiate changes, amendments or modifications to the Short-listed Respondent's Quotation or the Final Agreement.
- (3) If ONTC is of the opinion that any of the following apply, then ONTC may, in ONTC's sole discretion, decline to select that Respondent to be a Short-listed Respondent:
 - (a) a Respondent has submitted a price that is clearly insufficient to perform the supply of Goods and/or Services;
 - (b) a Respondent has previously provided poor performance to ONTC or a subsidiary of ONTC;
 - (c) a Respondent is disqualified from participating in the RFQ Process per RFQ Section 7.2 (1)(i);
 - (d) ONTC cannot, to ONTC's satisfaction, prior to the conclusion of the RFQ Process, verify independently or through a third party or parties any and/or all information, statements, representations and/or warranties contained in the Quotation;

- (e) a Respondent or any subcontractor of the Respondent is not financially sound, or ONTC is unable to obtain from the Respondent or third-party sources reasonable assurances of the financial position of the Respondent or any of its subcontractors;
- (f) the overall cost to ONTC would be significantly increased with that Respondent; or,
- (g) the Respondent failed to meet the mandatory requirements specified in the RFQ Data Sheet.

6.3 Short-Listing

- (1) The Evaluation Team will establish the list of Short-listed Respondents based on the Evaluation Criteria.
- (2) The number of Respondents short-listed is in the sole discretion of ONTC.

6.4 Interviews, Site Visits, Demonstrations and Presentations

- (1) ONTC may, in its sole discretion, conduct interviews, demonstrations, site visits or presentations as part of the evaluation process if set out in the RFQ Data Sheet.
- (2) The evaluation of any interviews, demonstrations, site visits or presentations will be conducted in accordance with the process set out in the RFQ Data Sheet.
- (3) ONTC may conduct interviews, demonstrations, site visits or presentations with some or all Respondents, or may restrict participation to only the Short-listed Respondent(s).

SECTION 7 - GENERAL EVALUATION AND DISQUALIFICATION PROVISIONS

7.1 ONTC's Discretion

- (1) ONTC may determine, in its sole discretion:
 - (a) the membership of the Evaluation Team;
 - (b) if a Quotation is compliant with the RFQ Documents;
 - (c) if a failure to comply is material;
 - (d) if a Quotation or a Respondent is disqualified;
 - (e) the evaluation results and ranking for each Respondent; and,
 - (f) which Respondent, if any, and how many Respondents, based on the evaluation process, will be Short-listed Respondents.

7.2 Disqualification

- (1) ONTC may, in its sole discretion, disqualify a Respondent or a Respondent's Quotation or cancel its decision to identify a Respondent as a Short-listed Respondent or a Successful Respondent, at any time prior to the execution of the Final Agreement by ONTC, if:
- (a) The Respondent fails to cooperate in any attempt by ONTC to clarify or verify any information provided by the Respondent in its Quotation;
 - (b) The Respondent contravenes RFQ Section 3.5, RFQ Section 3.6 or RFQ Section 5.6(2);
 - (c) The Respondent fails to comply with the Applicable Laws;
 - (d) The Quotation contains false or misleading information, or the Respondent provides false or misleading information in any part of the RFQ Process;
 - (e) The Quotation, in the sole discretion of ONTC, reveals a Conflict of Interest that cannot be managed, mitigated or minimized;
 - (f) There is evidence that the Respondent colluded with one or more other Respondents in the preparation or submission of Quotations;
 - (g) The Respondent has previously breached or been in default of compliance with any term of any agreement with ONTC and such breach or default has not been waived by ONTC or the Respondent has not cured the default;
 - (h) The Respondent has been convicted of an offence in connection with any services rendered by the Respondent to ONTC, or to any Ministry, Agency, Board or Commission of the Government of Ontario or the Government of Canada;
 - (i) The Respondent, at the time of issuance of this RFQ or any time during the RFQ Process, has an outstanding claim or is engaged in an ongoing legal dispute with ONTC, other than an adjudication under the Construction Act;
 - (j) The Quotation is not Substantially Compliant;
 - (k) The Respondent has failed to notify ONTC of, or ONTC has not approved, a post-submission change in the control of the Respondent or in the circumstances of the Respondent that may materially negatively impact the Respondent's ability to perform its obligations if selected as the Successful Respondent; and,
 - (l) The Respondent has received a Vendor Performance Evaluation as part of ONTC's Vendor Performance Policy, and received a total rating on the Final Performance Form that disqualifies the Respondent from participating in the RFQ Process.

- (2) Notwithstanding Section 7.2(1), ONTC shall retain the right to select as the Successful Respondent, any Respondent(s) which, in ONTC's sole and absolute discretion, has submitted a substantially compliant Quotation(s).

7.3 General Rights of ONTC

- (1) ONTC may, in its sole discretion and at any time during the RFQ process:
 - (a) reject any or all of the Quotations;
 - (b) accept any Quotation or any portions of any Quotations for any reason whatsoever;
 - (c) reject any Quotations or any portions of Quotations for any reason whatsoever,
 - (d) if only one Quotation is received, elect to either accept it, reject it, or enter into negotiations with the applicable Respondent;
 - (e) elect not to proceed with, cancel, or terminate the RFQ;
 - (f) alter the Submission Deadline or any other deadlines associated with the RFQ Process;
 - (g) change the RFQ Process or any other aspect of the RFQ Documents; or,
 - (h) cancel this RFQ Process and subsequently conduct another competitive process for the same Goods and/or Services that are the subject matter of this RFQ or subsequently enter into negotiations with any person or persons with respect to the Goods and/or Services that are the subject matter of this RFQ.
- (2) If ONTC, in its sole discretion, is of the opinion that all of Quotations submitted are not substantially compliant, ONTC may:
 - (a) take any action in accordance with Section 7.3. (1);
 - (b) carry out a process whereby all Respondents are directed to correct the deficiencies in their Quotations for re-submission; or,
 - (c) negotiate an agreement for the whole or any part of the Goods and/or Services with a Respondent which has submitted a Non-compliant Quotation.

SECTION 8 – DRAFT AGREEMENT FINALIZATION AND DEBRIEFING AND SUCCESSFUL RESPONDENT

8.1 Finalization of the Agreement

- (1) ONTC may, in its sole discretion, retain more than one Respondent to provide the Goods and/or Services.

- (2) ONTC reserves the right in its sole discretion to sub-divide and/or bundle the Goods and/or Services which are the subject of this RFQ and award one or any number of separate contracts for the Goods and/or Services.
- (3) ONTC may, in its sole discretion, enter into negotiations with one or more Respondent(s) for the purpose of selecting a Successful Respondent(s) and finalizing an agreement.
- (4) Either ONTC or a Respondent may withdraw from negotiations at any time prior to the Successful Respondent(s) being identified.
- (5) The Successful Respondent is expected to enter into the relevant draft form of Agreement in Part 5. Quotation Form 5 – Compliance with Contract Documents allows a Respondent to submit suggested changes to the draft Agreement. ONTC does not have any obligation to accept any proposed changes to the draft Agreement and will do so in its sole discretion. ONTC may, in ONTC's sole discretion; (i) consider only a minimal number of changes to the draft Agreement; (ii) consider significant material proposed changes to negatively impact the evaluation of the Respondent's Quotation; or (ii) disqualify any Respondent where the changes or the number of changes made by the Respondent to the draft Agreement would be, in ONTC's sole discretion, too onerous to successfully negotiate within the timeframe set out in Section 8.1 (6) below or are unacceptable to ONTC.

In any event, ONTC will not accept any material changes to the clauses in the draft Agreement relating to the Confidentiality, Personal Information, Intellectual Property ownership and infringement, Indemnification, Limitation of Liability or rights of ONTC on termination. ONTC, as an Ontario Crown corporation, is unable to provide indemnities pursuant to s.28 of the *Financial Administration Act* (Ontario).

If a Respondent does not submit any proposed amendments in Quotation Form 5, it will be deemed to have accepted and will be required to execute the Final Agreement in the form attached to this RFQ. If a Respondent has submitted proposed amendments to the Final Agreement, negotiations respecting those amendments shall be conducted within the timeframe set out in Section 8.1(6).

- (6) If a Successful Respondent fails or refuses to enter into and execute the Final Agreement within five (5) Business Days of being notified they are the Successful Respondent (ONTC may extend such period of time in ONTC's sole discretion), or a Successful Respondent fails or refuses to provide the documentation in accordance with Section 8.1(7), ONTC may, in its sole discretion, take any one of the following actions:
 - (a) terminate all negotiations and cancel its identification of that Respondent as a Successful Respondent;
 - (b) select another Respondent or Short-Listed Respondent as the Successful Respondent;
 - (c) take any other action in accordance with Section 7.3; or,
 - (d) pursue any other remedy available to ONTC at law.

- (7) Prior to supplying any Goods and/or Services pursuant to the Contract, the Successful Respondent shall deliver to ONTC:
- (a) Certificates of insurance as specified in the draft Agreement.

8.2 Notification If Successful or Not

- (1) The Successful Respondent and unsuccessful Respondents will be notified by ONTC in writing regarding their success or failure in the RFQ Process.

8.3 Debriefing

- (1) Respondents may request a debriefing after receipt of a notification pursuant to RFQ Section 8.2. All Respondent requests should be in writing to the Contact Person no later than 60 calendar days after receipt of the notification. ONTC will conduct debriefings in the format prescribed by the OPS Procurement Directive.

SECTION 9 - LEGAL MATTERS AND RIGHTS OF ONTC

9.1 Limit on Liability

- (1) The total liability of the Respondent to ONTC for loss and damage arising from the Respondent who is selected as the Successful Respondent but then fails to execute the Final Agreement shall be limited to ten (10) percent of the value of the Quotation provided by the Respondent.
- (2) By submitting a Quotation,
- (a) each Respondent acknowledges ONTC's rights as stated herein and absolutely waives any right of action against ONTC for ONTC's failure to accept the Respondent's Quotation whether such right of action arises in contract, negligence, bad faith, or any other cause of action;
- (b) each Respondent covenants and agrees that, under no circumstances, shall ONTC, or any of its representatives, agents or advisors, be liable to any Respondent, whether in contract, tort, restitution, or pursuant to any other legal theory, for any claim, action, loss, damage, cost, expense or liability whatsoever and howsoever arising from this RFQ Process, a Respondent's Quotation in response to this RFQ Process, or due to the acceptance or non-acceptance of any Quotation, or as a result of any act or omission by ONTC and/or its representatives, agents or advisors, including any information or advice or any errors or omissions that may be contained in the RFQ Documents, or any other documents or information provided to a Respondent, or arising with respect to the rejection or evaluation of any or all of the Quotations, any negotiations with any of the Respondents, or the selection of any Respondent as a Short-listed Respondent or the Successful Respondent; and,

- (c) each Respondent shall indemnify and hold harmless ONTC, its representatives, agents and advisors, from and against any and all claims, demands, actions or proceedings brought by third parties, including but not limited to the Respondent's subcontractors or suppliers, in relation to this RFQ Process.

9.2 Power of Legislative Assembly

- (1) No provision of the RFQ Documents (including a provision stating the intention of ONTC) is intended to operate, nor shall any such provision have the effect of operating, in any way, that would interfere with or otherwise fetter the discretion of the Legislative Assembly of Ontario in the exercise of its legislative powers.

9.3 RFQ Not a “Bidding Contract” or a Tender

- (1) Notwithstanding any other provision of this RFQ, this RFQ is not a tender call, ONTC does not intend to create any contractual relations or obligations with any of the Respondents by virtue of issuing this RFQ, and this RFQ is not an offer to enter into a contract (often referred to as “Contract A”). Except as provided in RFQ Section 3.8 and 9.1, neither this RFQ nor the submission of a Quotation by a Respondent shall create any legal or contractual rights or obligations whatsoever on any of the Respondent, ONTC, the Government of Ontario or any Ministry of the Government of Ontario.

SECTION 10 – VENDOR PERFORMANCE

10.1 General

- (1) ONTC has established a Vendor Performance Policy, which provides a framework for ONTC to maximize the value for money of its Vendors by:
 - (a) proactively managing the performance of Vendors in accordance with ONTC's Purchasing Policy; and,
 - (b) creating a record of past performance for use by ONTC when selecting Vendors for the supply of goods and services.

10.2 Vendor Performance Evaluation

- (1) Successful Respondents who enter into a Final Agreement with ONTC may be required to participate in the Vendor Performance Evaluation process.

10.3 Vendor Ratings for Quotation Evaluation Purposes

- (1) ONTC may access a Respondent's Vendor Performance Evaluations for previous contracts as part of the Evaluation Process. The manner in which the Respondent's ratings will be used will be identified in the Evaluation Criteria of the RFQ Data Sheet.

SECTION 11 – TRANSPARENCY AND FAIRNESS

11.1 General

- (1) ONTC is committed to procuring goods and services through a process that is conducted in a fair and transparent manner, providing equal opportunity to vendors.
- (2) ONTC endeavors to provide specifications that meet the requirements of the procurement without naming specific brands. However, there may be instances where a third-party consultant prepares a specification on behalf of ONTC, and a specific brand is named. In these instances, alternate materials or products may be used if ONTC determines the proposed materials or products are equivalent to the materials or products in the specifications. Respondents shall submit proposed alternate materials or products with their Quotation submission to be considered.

SECTION 12 – INTERPRETATION

12.1 General

- (1) In this RFQ, the singular shall include the plural and the plural shall include the singular, except where the context otherwise requires.
- (2) All references in this RFQ to “discretion” or “sole discretion” means in the sole and absolute discretion of the party exercising the discretion.
- (3) For clarity, where the expression “Government of Ontario” is used in this RFQ, it includes all Ministries and Agencies of the Government of Ontario.



PART 2

REQUEST FOR QUOTATIONS

SUMMARY OF REQUIREMENTS

**PART 2 – REQUEST FOR QUOTATIONS
SUMMARY OF REQUIREMENTS
SCHEDULE 2-A
RFQ DATA SHEET**

RFQ 2024 027 Purchase of Three (3) 40' Seacans and Two (2) 20' Seacans	
Contact Details	
Contact Person	Brinda Ranpura, Procurement Contracts Specialist
Contact Information	555 Oak Street East North Bay, Ontario, P1B 8L3 brinda.ranpura@ontarionorthland.ca (705) 472-4500 ext. 548
Quotation Detail	
Respondents' Meeting	There will not be a Respondents' Meeting. Respondents shall seek any clarifications up to four (4) Business Days prior to the Submission Deadline Date and Time.
Validity of Quotations	90 days following the Submission Deadline
Format of Submission	Respondents shall submit their Quotation through MERX Electronic Bid Submissions (EBS). Refer to Part 1, Request for Quotations, Section 5.1 (1) (a). MERX EBS does not allow Quotation to be uploaded after the Submission Deadline; therefore, Respondents shall ensure they allow sufficient time to upload the documents. Quotations which are submitted by facsimile transmission, by email or by electronic means other than MERX <u>will NOT</u> be considered.
Two-Envelope Process	This procurement will <u>not</u> be a two-envelope process.
Distribution Method	The RFQ Documents will be posted on the ONTC website and MERX. Any addenda to the RFQ will be posted in these locations.

**PART 2 – REQUEST FOR QUOTATIONS
SUMMARY OF REQUIREMENTS
SCHEDULE 2-A
RFQ DATA SHEET *continued***

**RFQ 2024 027
Purchase of Three (3) 40' Seacans and Two (2) 20' Seacans**

Quotation Detail *continued* – Note the requirements below are new to ONTC

Submission Requirements	Respondents are required to submit all of the documents listed below as part of their Quotation. Respondents shall confirm they have included the documents listed below with their Quotation by placing a checkmark in the column “Included in Quotation”. If the Respondent fails to include a document listed below as being “Material”, the respondent may be disqualified in accordance with section 6.2 (3) of the RFQ.		
	Item	Included in Quotation (indicate with <input type="checkbox"/>)	Item is classified as Material
	This checklist		
	Quotation Form 1 - Quotation Submission Form		Material
	Quotation Form 2 - Respondent’s General Information		Material
	Quotation Form 3 - Acknowledgment to Comply with Part 3 – Request for Quotation Specifications		Material
	Quotation Form 4 - References		Material
	Quotation Form 5 - Compliance with Contract Documents		
Quotation Form 6 – Delivery		Material	

**PART 2 – REQUEST FOR QUOTATIONS
SUMMARY OF REQUIREMENTS
SCHEDULE 2-A
RFQ DATA SHEET *continued***

RFQ 2024 027 Purchase of Three (3) 40' Seacans and Two (2) 20' Seacans			
Important Dates			
Publication Date	Tuesday, June 11, 2024		
Participation Registration Form	Complete and submit to the Contact Person as soon as possible		
Deadline for Additional Information Request	Four (4) full Business Days prior to the Submission Deadline		
Submission Deadline Date and Time	Thursday, July 11, 2024, at 2:00:00 p.m. (EST)		
Target Completion Date	October, 2024		
Procedure of Selection			
Mandatory Requirements	Respondents must first satisfy that all of the Mandatory Requirements listed below have been met. Respondents will receive a pass/fail for each Mandatory Requirement. Respondents who fail any of the Mandatory Requirements will be disqualified from the RFQ Process.		
	Mandatory Submission Requirement	Pass	Fail
	Respondent has submitted all of the documents as specified in the Submission Requirements listed in Part 2, Request for Quotation, Summary of Requirements, RFQ Data Sheet		

**PART 2 – REQUEST FOR QUOTATIONS
SUMMARY OF REQUIREMENTS
SCHEDULE 2-A *continued*
RFQ DATA SHEET**

RFQ 2024 027 Purchase of Three (3) 40' Seacans and Two (2) 20' Seacans		
Procedure of Selection <i>continued</i>		
Evaluation General Procedure	All parts of the scope of work will be evaluated together. ONTC will proceed with an evaluation of the Quotation based on the following criteria.	
Evaluation Criteria	Description	Weight
	<p>Price ONTC will use the following to calculate the initial score for price:</p> <p>Lowest price of all Quotation / price of Respondent x 70 = Score</p> <p><i>ONTC reserves the right in its sole discretion to consider the best overall value when evaluating price and adjust the score accordingly. If ONTC, in its sole discretion, is of the opinion that the Respondent has submitted a price that is too low to adequately complete the scope of work, then ONTC reserves the right not to use that price as the "Lowers price of all Quotation".</i></p>	70
	<p>Specifications ONTC will assign 25 points to Respondents who meet the requirements of ONTC. 15 points will be deducted for Respondents whose specifications are not precisely what ONTC requested but still meet general requirements. Respondents who cannot meet ONTC's general requirements will receive zero.</p>	25
	<p>Delivery – Desired Delivery – 31st October 2024 Submissions will be scored as follows:</p> <ol style="list-style-type: none"> 1. Delivery by October 31, 2024 or earlier – 5 points 2. Delivery by November 31, 2024 – 2.5 points 3. Delivery dates beyond November 31, 2024 – 0 points or maybe disqualified 	05
	Total	100

**PART 2 – REQUEST FOR QUOTATIONS
SUMMARY OF REQUIREMENTS
SCHEDULE 2-A *continued*
RFQ DATA SHEET**

RFQ 2024 027		
Purchase of Three (3) HC 40' Seacans and Two (2) 20' Seacans		
Procedure of Selection <i>continued</i>		
Point Advantage	Building Ontario Business Initiative (BOBI) Where the value of a procurement is below international trade agreement thresholds and above domestic trade agreement thresholds, Ontario Northland will give preference to Canadian Businesses. There will be a point advantage to all Respondents who identify as a Canadian Business in Quotation Form 2	10

**PART 2 – REQUEST FOR QUOTATIONS
SUMMARY OF REQUIREMENTS
SCHEDULE 2-B
PARTICIPATION REGISTRATION FORM**

Required in order to register and receive any communications in relation to the requirement referenced below.

Date: _____
Reference Number: RFQ 2024 027
Description of Requirement: Purchase of Three (3) HC 40' Seacans and Two (2) 20' Seacans

I, the undersigned, am registering to participate in the above referenced requirement and will be the primary contact for any communications in relation to this process and project until further advised.

Company Name: _____
Address: _____

Name of person registering to represent
company referenced above (please print): _____
Email Address: _____
Phone Number: (Main Office Number) _____
Cell Number: _____

Signature of Primary Contact: _____

Return form to the Contact Person as referenced below via email as an attachment:

Thank you.

Brinda Ranpura
Procurement Contracts Specialist
Ontario Northland Transportation Commission
Phone: 705-472-4500 Ext. 548
Email: brinda.ranpura@ontarionorthland.ca
Website: www.ontarionorthland.ca



PART 3
REQUEST FOR QUOTATIONS
SPECIFICATIONS

**PART 3 – RFQ SPECIFICATIONS
SCHEDULE 3-A
SCOPE OF WORK**

Introduction

Ontario Northland Transportation Commission (ONTC) is seeking bid submissions from qualified and licensed dealers for procuring three (3) HC 40' Seacans and two (2) 20' Seacans to replace existing buildings that have and will be demolished.

Scope

ONTC is requesting bid submissions, as per the specifications included in this document. The Respondent is fully responsible for the delivery of the unit(s).

This includes coordination, management, and completion of all aspects of the bid. The Respondent will be the principal point of contact until the unit has been delivered and accepted by ONTC.

ONTC is procuring the following Seacans –

- Item No. 01 – 40' HC (9'6") Used
- Item No. 02 - 40' HC (9'6") Used
- Item No. 03 - 40' HC (9'6") Used
- Item No. 04 – 20' Std (8'6") Used
- Item No. 05 – 20' Std (8'6") Used

Pricing, Fees, Discounts and Rebates

All prices quoted should include any and all discounts and rebates.

Prices shall be quoted in Canadian Dollars.

The Bid Price is to include all fees, costs and delivery expenses. License Plates, License Fee and the Environmental Tire Tax shall be included in the lump sum price.

Delivery

ONTC would like the vehicles delivered **no later than October 31, 2024.**

Respondents who cannot deliver the vehicles by November 31, 2024, may be disqualified.

Please note the following delivery locations –

- Item No. 01 – 40' HC (9'6") Used
- To be delivered to Otter Rapids

- Item No. 02 - 40' HC (9'6") Used
- To be delivered to Rouyn Noranda

- Item No. 03 - 40' HC (9'6") Used
- To be delivered to Tomiko

- Item No. 04 – 20' Std (8'6") Used
- To be delivered to Larder Lake

- Item No. 05 – 20' Std (8'6") Used
- To be delivered to Cochrane

Specifications

All capacity dimensions and size requirements called for in this specification are approximate unless otherwise indicated.

If the Respondent finds any discrepancy, errors or omissions in the specifications, it shall be their duty to inform ONTC and ONTC shall promptly verify it. ONTC endeavors to provide specifications that meet the requirements of the procurement without naming specific brands. A respondent may submit alternative equivalents for materials specified by brand name in the specifications. Requests for alternative equivalents must be submitted with the Respondent's proposal documents for review and approval by ONTC.

Please see specifications for each part below:

Item No. 01 – 40' HC (9'6") Used for Otter Rapids Location

Specifications
x2 – Insulated Garage Door 8'
x1 – 40' Spray Foamed – Complete 2"
x1 – Mandoor
x1 – 12"x12" Vents
x1 – Lock Box
x1 – 40' Painted Exterior (Slate Blue ID 8260)
x1 – 100 AMP Breaker Panel (12 Breakers)
xx – LED Lighting inside
x4 – Receptacles inside
x2 – Exterior Receptacles
x1 – LED light outside above man door
x1 – LED spot/yard light

Item No. 02 – 40' HC (9'6") Used for Rouyn Noranda

Specification
x2 – Insulated Garage Door 8'
x1 - 40' Spray foamed - Complete 2"
x1 - Man door
x1 - 12"x12" Vents
x1 - Lock Box
x1 - 40' Painted exterior (Slate Blue ID 8260)

Item No. 03 – 40' HC (9'6") Used for Tomiko

Specification
x2 - Insulated Garage Door 8'
x1 - 40' Spray foamed - Complete 2"
x1 - Man door
x1 - 12"x12" Vents
x1 - Lock Box
x1 - 40' Painted exterior (Slate Blue ID 8260)

Item No. 04 – 20' Std (8'6") Used for Larder Lake

Specification
x1 - Insulated Garage Door 8'
x1 - 20' Spray foamed - Complete 2"
x1 - 12"x12" Vents
x1 - Lock Box
x1 - 40' Painted exterior (Slate Blue ID 8260)

Item No. 05 – 20' Std (8'6") Used for Cochrane

Specification
x1 - Insulated Garage Door 8'
x1 - 20' Spray foamed - Complete 2"
x1 - 12"x12" Vents
x1 - Lock Box
x1 - 40' Painted exterior (Slate Blue ID 8260)



PART 4
REQUEST FOR QUOTATION
FORM OF QUOTATION

Note: Respondent is required to complete Part 4 in its entirety in order to be considered as having submitted a complete Quotation. Part 4 will be provided in Word format to Respondents who return Schedule 2-B – Participation Registration Form.

**PART 4 – FORM OF QUOTATION
 QUOTATION FORM 1
 QUOTATION SUBMISSION FORM**

RFQ Number: RFQ 2024 027

Description: Purchase of Three (3) HC 40' Seacans and Two (2) 20' Seacans

Submitted To: ONTARIO NORTHLAND TRANSPORTATION COMMISSION

We, _____
 (Name of Respondent)

having carefully examined, understood, and completed the Request For Quotation Documents as described in Section 2 – The RFQ Documents, and Addendum No. _____ to No. _____ inclusive, hereby agree to supply and deliver the three (3) HC 40' Seacans and two (2) 20' Seacans as outlined below for a total price of:

\$ _____ (\$ _____) *excluding HST*

The breakdown of the total price per Item is as follows:

Item No. 01 – 40' HC (9'6") Used for Otter Rapids Location

Quantity	Unit	Model	Unit Price	Bid Price
	Each			
			Subtotal:	

Item No. 02 – 40' HC (9'6") Used for Rouyn Noranda

Quantity	Unit	Model	Unit Price	Bid Price
	Each			
			Subtotal:	

Item No. 03 – 40' HC (9'6") Used for Tomiko

Quantity	Unit	Model	Unit Price	Bid Price
	Each			
			Subtotal:	

Item No. 04 – 20' Std (8'6") Used for Larder Lake

Quantity	Unit	Model	Unit Price	Bid Price
	Each			
			Subtotal:	

Purchase is subject to budgetary approval of expenditures.

ONTC reserves the right in its sole discretion to sub-divide and/or bundle the Goods and/or Services which are the subject of this RFQ and award one or any number of separate contracts for the Goods and/or Services.

Quotation Forms:

The information contained in the Quotation Forms, as listed in the Request for Quotations and attached hereto, forms an integral part of this RFQ.

Declarations:

We hereby declare that:

- (a) We will execute the Agreement within ten (10) Working Days of receipt of the Final Agreement;
- (d) We will provide the required evidence of insurance, as specified in the Ontario Northland – Draft Agreement included in Part 5 of the RFQ Documents, with our execution of the Agreement;
- (c) No person, corporation or other legal entity other than the undersigned has any interest in this RFQ or in the proposed Contract for which this Quotation is made.

Quotation or otherwise participating in the RFQ Process.

Signed and submitted for and on behalf of:

Contractor:

(Company Name)

(Street Address or Postal Box Number)

(City, Province and Postal Code)

Signature:

I have authority to bind the corporation.

Name and Title:

Email:

Date at _____ this _____ day of _____, 2024

**PART 4 – FORM OF QUOTATION
 QUOTATION FORM 2
 RESPONDENT’S GENERAL INFORMATION**

The Respondent must complete this document and submit it as part of this quotation.

Name <i>Please indicate the complete legal name of the firm</i>	
Tax Registration # (HST)	
Tax Registration # (GST)	
Tax Registration # (QST)	
Address	
Telephone Number	
Web Address	
Please indicate any other name(s) under which the firm operates <i>(if applicable)</i>	

Owner Partnership Corporation

Relationship *(if applicable)*

Parent Company	
Subsidiaries	
Affiliates	

Ontario Business Yes No

“Ontario Business”: A supplier, manufacturer or distributor of any business structure that conducts its activities on a permanent basis in Ontario. The business either has a headquarters or a main office in Ontario or has at least 250 full-time employees in Ontario at the time of this RFQ.

Canadian Business Yes No

“Canadian Business”: A corporation or limited partnership existing pursuant to the Laws of Canada or any of the provinces or territories thereof, and which has ongoing commercial activities in Canada; or an individual (including sole proprietors) or a general partnership which has a business in Canada, and which has ongoing commercial activities in Canada.

Main Contact Person *(for the purposes of this Quotation)*

Name	
Title	
Telephone #	
E-mail address	

PART 4 – FORM OF QUOTATION
QUOTATION FORM 2 *cont'd*
RESPONDENT'S GENERAL INFORMATION

Indicate below your company/business' invoice terms:

Does your company/business have the capability to handle Electronic Funds Transfers?

YES _____ NO _____

If yes, please provide the necessary banking information as part of your submission.

If available, please provide your Dunn & Bradstreet Reference Number:

How many years of experience does your company have in the provision of goods or services proposed herein?

Subcontractors

The Respondent must indicate where they will use subcontractors for specific services.

Description of Services	Subcontractor's Name	% Contract Value	Telephone Number

**PART 4 – FORM OF QUOTATION
QUOTATION FORM 3
ACKNOWLEDGMENT TO COMPLY WITH PART 3 - REQUEST FOR QUOTATION
SPECIFICATIONS**

Respondent acknowledges that they can comply with Part 3 – Request for Quotations Specifications.

(Check one) YES _____; NO _____

Respondent must complete the Chart below and shall include as an attachment to this Quotation Form 3 supporting documentation and information to support the specifications required. Please also include any and all Warranty information available.

The Respondent must meet all of the minimum specifications/requirements identified in Part 3 – Requests for Quotations – Specifications. ONTC is committed to procuring goods and services through a process that is conducted in a fair and transparent manner, providing equal opportunity to vendors.

ONTC reserves the right, in its sole discretion, to disqualify a quotation that does not meet the specified requirements.

If the Respondent finds any discrepancy, errors or omissions in the specifications, it shall be their duty to inform ONTC and ONTC shall promptly verify same. ONTC endeavors to provide specifications that meet the requirements of the procurement without naming specific brands. A respondent may submit alternative equivalents for materials specified by brand name in the specifications. Requests for alternative equivalents must be submitted with the Respondent's Quotation documents for review and approval by ONTC.

Respondents shall indicate with a checkmark whether the equipment being proposed complies with the specification. If the equipment being proposed contains specifications that fall within the “Other” category, Respondents shall indicate this with a checkmark in that column.

Respondents shall use the “Details” column to provide additional information that will assist the evaluation team in assessing the suitability of the equipment. In particular, if the Respondent selects “Other” for any item, they shall provide specific details. Respondents may include attachments when insufficient space is available.

Item No. 01 – 40' HC (9'6") Used for Otter Rapids

Specifications	Comply	Other	Details
x2 – Insulated Garage Door 8'			
x1 – 40' Spray Foamed – Complete 2"			
x1 – Mandoor			
x1 – 12"x12" Vents			
x1 – Lock Box			
x1 – 40' Painted Exterior (Slate Blue ID 8260)			
x1 – 100 AMP Breaker Panel (12 Breakers)			
xx – LED Lighting inside			
x4 – Receptacles inside			
x2 – Exterior Receptacles			
x1 – LED light outside above man door			
x1 – LED spot/yard light			

Item No. 02 – 40' HC (9'6") Used for Rouyn Noranda

Specification	Comply	Other	Details
x2 – Insulated Garage Door 8'			
x1 - 40' Spray foamed - Complete 2"			
x1 - Man door			
x1 - 12"x12" Vents			
x1 - Lock Box			
x1 - 40' Painted exterior (Slate Blue ID 8260)			

Item No. 03 – 40' HC (9'6") Used for Tomiko

Specification	Comply	Other	Details
x2 - Insulated Garage Door 8'			
x1 - 40' Spray foamed - Complete 2"			
x1 - Man door			
x1 - 12"x12" Vents			
x1 - Lock Box			
x1 - 40' Painted exterior (Slate Blue ID 8260)			

Item No. 04 – 20' Std (8'6") Used for Larder Lake

Specification	Comply	Other	Details
x1 - Insulated Garage Door 8'			
x1 - 20' Spray foamed - Complete 2"			
x1 - 12"x12" Vents			
x1 - Lock Box			
x1 - 40' Painted exterior (Slate Blue ID 8260)			

Item No. 05 – 20' Std (8'6") Used for Cochrane

Specification	Comply	Other	Details
x1 - Insulated Garage Door 8'			
x1 - 20' Spray foamed - Complete 2"			
x1 - 12"x12" Vents			
x1 - Lock Box			
x1 - 40' Painted exterior (Slate Blue ID 8260)			

**PART 4 – FORM OF QUOTATIONS
 QUOTATION FORM 4
 REFERENCES**

The Respondent must supply here the reference information of three (3) customers for which they have provided similar services within the last five (5) years. ONTC is **NOT** to be listed as a Reference.

Reference #1

Company name	
Location	
Description of services provided	
Start and end dates	
Value of the contract	
Contact person name and title	
Phone	E-mail

Reference #2

Company name	
Location	
Description of services provided	
Start and end dates	
Value of the contract	
Contact person name and title	
Phone	E-mail

Reference #3

Company name	
Location	
Description of services provided	
Start and end dates	
Value of the contract	
Contact person name and title	
Phone	E-mail

**PART 4 – FORM OF QUOTATION
 QUOTATION FORM 5
 COMPLIANCE WITH CONTRACT DOCUMENTS**

The Respondent may suggest changes to the Draft Agreement included in Part 5 of this RFQ using the table below. ONTC does not have any obligation to accept any proposed changes to the Draft Agreement and will do so in its sole discretion. Significant material proposed changes to the Draft Agreement may impact the evaluation of the Respondent’s Quotation. ONTC will not accept any material changes to the clauses in the Draft Agreement relating to Confidentiality, Personal Information, Intellectual Property ownership and infringement, Indemnification, Limitation of Liability or rights of ONTC on termination. ONTC, as an Ontario Crown corporation, is unable to provide indemnities pursuant to s.28 of the *Financial Administration Act* (Ontario).

Exception	Contract, Schedule, Article, or Sub-Clause	Existing Wording	Respondent’s Proposed Wording	Reason for Proposed Change
1				
2				
3				
4				
5				
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7				
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10				
11				
12				
13				
14				
15				
16				
17				
18				

**PART 4 – FORM OF QUOTATION
QUOTATION FORM 6
DELIVERY**

Respondents shall include as an attachment to this Quotation Form 6, details regarding the delivery schedule for the seacans.

Respondents shall provide the firm date and not a range or estimate of weeks. If a range or estimate is provided, ONTC will base the evaluation on the last date provided.

Item No. 01 – 40' HC (9'6") Used

Delivery Date to Otter Rapids, ON: _____

Item No. 02 - 40' HC (9'6") Used

Delivery Date to Rouyn Noranda, QC: _____

Item No. 03 - 40' HC (9'6") Used

Delivery Date to Tomiko, ON: _____

Item No. 04 – 20' Std (8'6") Used

Delivery Date to Larder Lake, ON: _____

Item No. 05 – 20' Std (8'6") Used

Delivery Date to Cochrane, ON: _____



PART 5
REQUEST FOR QUOTATIONS
DRAFT AGREEMENT

THIS EQUIPMENT PURCHASE AGREEMENT MADE EFFECTIVE XXX (the “Effective Date”)

BETWEEN:

ONTARIO NORTHLAND TRANSPORTATION COMMISSION

(“ONTC”)

and

XXX

(“Supplier”)

THE PARTIES AGREE AS FOLLOWS:

INTERPRETATION

1. **Definitions.** In this Agreement,

“**Acceptance Date**” means the date following inspection and testing of the Equipment by ONTC that ONTC advises the Supplier there are no observable Defects in the Equipment;

“**Agreement**” means this agreement and all attached schedules;

“**Applicable Laws**” means means all requirements under or prescribed by the common law, and all applicable federal, provincial, regional, local or municipal laws, statutes, codes, acts, permits, licenses, ordinances, orders, by-laws, rules and regulations, which may now, or at any time hereafter be applicable to and enforceable in relation to the matters to which this Agreement relates;

“**Change Order**” has the meaning set out in Section 12;

“Confidential Information” means all information of ONTC that is of a confidential nature, including all confidential information in the custody or control of ONTC, regardless of whether it is identified as confidential or not, and whether recorded or not, and however fixed, stored, expressed or embodied, which comes into the knowledge, possession or control of the Supplier in connection with the Agreement. For greater certainty, Confidential Information shall:

- (a) include: (i) all new information derived at any time from any such information whether created by ONTC, the Supplier or any third-party; (ii) all information (including Personal Information) that ONTC is obliged, or has the discretion, not to disclose under provincial or federal legislation or otherwise at law; but
- (b) not include information that: (i) is or becomes generally available to the public without fault or breach on the part of the Supplier of any duty of confidentiality owed by the Supplier to ONTC or to any third-party; (ii) the Supplier can demonstrate to have been rightfully obtained by the Supplier, without any obligation of confidence, from a third-party who had the right to transfer or disclose it to the Supplier free of any obligation of confidence; (iii) the Supplier can demonstrate to have been rightfully known to or in the possession of the Supplier at the time of disclosure, free of any obligation of confidence when disclosed; or (iv) is independently developed by the Supplier; but the exclusions in this subparagraph shall in no way limit the meaning of Personal Information or the obligations attaching thereto under the Agreement or at law;

“Conflict of Interest” means any actual or potential conflict of interest including, but not limited to:

- (a) Situations or circumstances that could compromise the ability of the Supplier to perform its obligations under the Agreement; and,
- (b) The offer or giving of a benefit of any kind by or on behalf of the Supplier to anyone employed by or otherwise connected with ONTC;

“Contract Documents” has the meaning set out in Section 7;

“Contract Price” has the meaning set out in Section 5;

“Environmental Laws” means all applicable federal, provincial, territorial, municipal and local laws, statutes, ordinances, by-laws and regulations, judgments, decrees, common laws and principles thereof, and orders, directives and decisions rendered or issued by any governmental authority relating to Environmental Contaminants or the protection of human health, natural resources or the environment;

“Environmental Contaminants” means any substance, material or waste defined, regulated, listed or prohibited by Environmental Laws.

“Equipment” means all supplies, materials, equipment or other things required to be furnished or delivered as specified in Schedule A (Specifications) and Schedule B (Supplier’s Proposal);

“FIPPA” means the *Freedom of Information and Protection of Privacy Act*, R.S.O. 1990, c.F.31, as amended, or any successor or replacement thereof;

“Force Majeure” means an event or a cause beyond the control of a party, which may include war, interference by civil or military authorities, civil insurrection, local or national emergency, blockade, seizure, riot, sabotage, vandalism, terrorism, earthquake, flood, act of God, accident, fire, nuclear or other explosion, disease, epidemic, pandemic, quarantine restriction, strike, lockout or other labour disturbance, governmental embargo, or changes to any acts, orders, legislation, regulations, directives, or priorities of any government or other public authority; provided such event is not caused by the affected party’s negligence or failure to exercise reasonable diligence. A Force Majeure event or cause does not include an inability to pay or a lack of financial resources unless it is due to a failure of the province to approve the appropriation from the Consolidated Revenue Fund for the Services.

“Intellectual Property” means any improvement, invention or discovery, whether or not patented or patentable, any technical data, know-how or trade secret, any design, any computer software or any work subject to copyright, whether or not such design or copyright is registered or registrable and all Intellectual Property rights contained, embedded or disclosed in the Services;

“Loss” or “Losses” means loss, liability, damage, cost, legal cost and disbursement whatsoever arising out of or related to the Services or this Agreement, whether in contract, tort or otherwise;

“Notice” includes notification or communication required or permitted to be given by one party to the other party under this Agreement;

“**ONTC Parties**” includes ONTC and its officers, directors, employees, contractors and agents and those for whom ONTC is in law responsible;

“**Supplier Parties**” includes the Supplier and its officers, directors, employees, contractors and agents for whom it is at law responsible; and

“**Standard of Care**” has the meaning set out in Section 8.

2. **Construing this Agreement.** This Agreement is to be construed and interpreted with all changes in number and gender as may be required by the context. The obligations of the parties contained in this Agreement have, where applicable, the status of representations, warranties and covenants by the respective obligated party. Time is of the essence of this Agreement, including if any extension of time is permitted.
3. **Precedence.** Subject to any contrary intention elsewhere in this Agreement, in case of any inconsistency or conflict among the Schedules and the body of this Agreement, the documents shall prevail in the following order, but only to the extent necessary to resolve the conflict or inconsistency:
 - (a) The body of this Agreement;
 - (b) Schedule A (Specifications for Equipment);
 - (c) Schedule B (Supplier’s Submission); and
 - (e) Any other documents incorporated by reference in any of the foregoing.

PARTICULARS OF THIS AGREEMENT

4. **Description of the Equipment.** The Supplier shall provide the Equipment described in Schedule A (Specifications for Equipment) as modified by Schedule B (Supplier’s Proposal).
5. **Contract Price.** ONTC shall pay the Supplier for the Equipment to be supplied under this agreement, the following amount: **XXX** (the “Contract Price”).
6. **Duration of this Agreement.** This Agreement becomes effective on the Effective Date, and, unless terminated earlier in accordance with this agreement, lasts until final completion or expiry of the Supplier’s obligations under this agreement.

7. **Contract Documents.** The contract documents consist of the following:

- (a) This Agreement;
- (b) Specifications for Equipment (Schedule A);
- (c) Supplier's Proposal (Schedule B); and,
- (d) Any other documents incorporated by reference in any of the foregoing,
(the "Contract Documents").

SUPPLY OF THE EQUIPMENT

8. **Standard of Care.** The Supplier shall:

- (a) provide the Equipment in accordance with all applicable laws and the Contract Documents;
- (b) in performing its obligations under the Contract Documents, exercise the standard of care, skill and diligence that would normally be provided by an experienced and prudent Supplier providing Equipment of a similar nature to the Equipment; and,
- (c) ensure any equipment used by the Supplier or by Supplier Parties at ONTC's premises will be in safe working condition, will comply with all laws applicable to such equipment and will be operated by suitably qualified and competent Supplier Parties,

(collectively, the "**Standard of Care**").

The Supplier acknowledges and agrees that throughout the performance of its obligations under the Contract Documents, the performance of the Supplier's obligations, duties and responsibilities shall be judged against the Standard of Care. The Supplier shall exercise such Standard of Care in respect of any products, personnel or procedures which it may provide to ONTC.

9. **Vendor Performance Policy.** ONTC has a Vendor Performance Policy which requires ONTC to complete an evaluation of the Supplier's performance of its obligations under this Agreement. The performance evaluation of the Supplier for the supply of this Equipment will be used in the assessment of the Supplier's proposals in response to future procurements. The performance evaluation may also result in the Supplier being disqualified from submitting proposals in response to future procurements in accordance with the terms of the policy. The policy can be found at <http://ontarionorthland.ca/en/requests-tenders>.

10. **Obligations of the Supplier.** The Supplier shall:

- (a) provide the Equipment in compliance with all applicable laws, as amended from time to time;
- (b) obtain all permits required for the Equipment and provide them to ONTC upon request;
- (c) ensure that it and its personnel have all certifications required to provide the provide the Equipment, keep such certifications in good standing, and provide evidence of the requisite certifications to ONTC upon request.
- (d) while being on ONTC's property, comply with ONTC's policies, including its Fit for Duty Policy;
- (e) avoid any Conflict of Interest during the performance of the contract; and
- (f) disclose to ONTC any Conflict of Interest the Supplier has or potentially has that arises during the performance of the contract.

11. **Conflict of Interest.** If a potential or actual Conflict of Interest of the Supplier arises during the Supplier's provision of the Equipment,

- (a) ONTC has the sole right to determine whether any situation or circumstance constitutes a Conflict of Interest;
- (b) ONTC has the right to prescribe the manner in which the Supplier should resolve the Conflict of Interest; and
- (c) ONTC may terminate the Agreement immediately upon Notice to the Supplier if the Supplier fails to disclose any actual or potential Conflict of Interest, if the Supplier fails to resolve its Conflict of Interest as directed by ONTC or if ONTC determines that the Conflict of Interest cannot be resolved.

12. **Changes.** Changes of any kind to the design or specifications for the Equipment shall only be made by the Supplier, upon receipt of a written change order signed by an authorised member of each Party (each, a "Change Order"). The Change Order shall provide details of the change in design or specifications and specify any agreed adjustment to the Contract Price in respect of the change and any agreed adjustment to the production schedule, whether an increase or reduction. A Change Order shall represent the full amount payable for all costs and any adjustment to the schedule associated with the change or changes for which it was issued. ONTC shall have no liability whatsoever for any claim for payment for additional costs

incurred by the Supplier which have not been authorized in advance by ONTC by way of a Change Order

13. **Environmental Obligations.** The Supplier shall comply with all Environmental Laws in the provision of the Equipment. If the Supplier fails to comply with Environmental Laws relating to the provision of the Equipment, the Supplier shall be solely responsible for all costs, claims, fines, fees or other expenses arising from the failure by the Supplier to comply with the Environmental Laws in the provision of the Services.
14. **Delivery.** The Delivery Date for the Equipment shall be: **XX**. The Supplier shall be responsible for delivery of the Equipment to the location specified by ONTC on or before the Delivery Date. The Supplier shall pay all costs incurred in connection with the shipping and delivery of the Equipment including all duties, excise taxes and brokerage fees.
15. **Inspection and Testing.** ONTC shall inspect and test the Equipment within 30 days of delivery. Within one business day following the inspection and testing, ONTC shall either accept the Equipment or advise the Supplier of any Defects discovered in the Equipment and may:
 - (a) Require the Supplier to remedy the Defect at ONTC's location within a specified number of days; or
 - (b) If the Defect is unable to be remedied at ONTC's location, require the Supplier to retrieve the Equipment and remedy the Defect at the Supplier's location within a specified number of days.
16. **Remediation of Defects.** Following the remediation of a Defect pursuant to section 15, ONTC shall re-inspect and test the Equipment to determine if the Defect has been remediated. If the Defect has not been remediated, the procedures in section 15 shall be repeated. When all the Defects have been remediated, ONTC shall accept the Equipment and advise the Supplier of such acceptance.
17. **Rejection of Equipment.** Notwithstanding sections 15 and 16, if, following inspection and testing, ONTC determines, in its sole discretion, that the Defects are unable to be remediated, ONTC may reject the Equipment and the Supplier shall retrieve the Equipment from ONTC's location at its sole expense and ONTC shall pursue its remedies under this Agreement and applicable law.
18. **Title and Risk.** Subject to any contrary intention in the Contract Documents, title to all Equipment and all risk of damage or loss thereof shall pass to ONTC on the Acceptance Date.

19. **Time of the Essence.** The parties agree that time is of the essence in this agreement and the Equipment must be delivered to ONTC on the Delivery Date.
20. **Damages for Delay.** The Supplier acknowledges that ONTC will suffer damages if the Equipment is not delivered to ONTC on the Delivery Date for reasons other than Force Majeure or if the Equipment has Defects that delay the Acceptance Date. The Supplier shall be responsible for all damages suffered by ONTC as a result of failure to delivery on the Delivery Date or a delay in the Acceptance Date due to Defects. Notwithstanding any other provision of the Contract Documents, these damages shall include, but not be limited to, the cost to ONTC, including the cost of internal resources, to obtain alternate equipment, any losses to ONTC due to a delay in obtaining alternate equipment, and any other incidental, consequential or other indirect damages.

INTELLECTUAL PROPERTY

21. **Intellectual Property Approvals.** The Supplier is responsible for obtaining all approvals and licenses with regarding to any Intellectual Property rights associated with the Equipment.
22. **IP Indemnity.** The Supplier shall be liable for and fully indemnify and hold harmless ONTC against any liability, whether direct or indirect, arising out of a claim by any third party against ONTC alleging that the Equipment and its use by ONTC, infringes any Intellectual Property rights. In the event that an injunction is obtained against ONTC's use of the Equipment because of patent or copyright infringement, in addition to any other remedy available to ONTC, the Supplier shall replace the Equipment to the satisfaction of ONTC so that it becomes non-infringing.

WARRANTY

23. **Warranty.** The warranty for the Equipment provided by the Supplier is described in Schedule A (Specifications) and Schedule B (Supplier's Submission).
24. **Right to Sell.** At the Delivery Date and for the duration of the warranty period, the Supplier warrants that it has the full right and legal authority to sell the Equipment to ONTC.
25. **OEM Warranties.** ONTC shall benefit from all legal and manufacturer's warranties available in connection with the Equipment, equipment, machinery, tools and consumables incorporated in the Equipment and the Supplier shall

assign all such warranties to ONTC on the same terms in which these warranties have been provided to the Supplier, to the extent such warranties permit assignment. The Supplier shall cooperate with ONTC in the enforcement of the assignment and the warranties against the manufacturers.

PAYMENT FOR THE SERVICES

26. **Amounts Chargeable.** The Supplier may charge ONTC, for the provision of the Equipment amounts not greater than the Contract Price and any Change Orders.
27. **Payment.** ONTC shall pay the Supplier the Contract Price for the Equipment, less a ten percent holdback, on the Delivery Date. The holdback shall be released on the Acceptance Date, less any amounts owing to ONTC by the Supplier.
28. **Set-Off.** Whenever any amount is recoverable from or payable by the Supplier to ONTC pursuant to the Contract Documents, ONTC may deduct this amount from any amount due to the Supplier.
29. **Final Invoice.** As of the date of submission of the final invoice, the Supplier expressly waives and releases ONTC from any further claims against ONTC, related to the Contract Documents, except those claims stated in the final invoice and those claims made in writing prior to the date of submission of the Supplier's final invoice and still unsettled.

CONFIDENTIAL INFORMATION

30. **General Confidentiality Requirements.** The Supplier shall:
- (a) ensure that all Supplier Parties comply with all the provisions of this Agreement relating to Confidential Information and the Supplier shall be responsible for any failure by any Supplier Party to do so;
 - (b) use Confidential Information only for the purposes of providing the Services;
 - (c) not copy or transcribe into another form, any Confidential Information received from ONTC except as reasonably necessary; and,
 - (d) upon the termination of this Agreement, or earlier upon the request of ONTC, promptly destroy or return (as directed by ONTC) all Confidential Information disclosed to the Supplier.

31. **Keeping Confidential Information Confidential.** Except as provided in this Agreement, the Supplier shall keep confidential all Confidential Information collected on behalf of ONTC or disclosed to it by ONTC and shall protect the Confidential Information disclosed to it by ONTC, in the same manner and to the same extent that it protects its own Confidential Information. This obligation shall survive the termination of this Agreement.
32. **Disclosing Confidential Information.** The Supplier may disclose Confidential Information if:
- (a) ONTC approves the disclosure in writing;
 - (b) the Supplier is required by law to disclose it, in which case it shall promptly notify ONTC to allow ONTC the opportunity to intervene to prevent the disclosure;
 - (c) the Confidential Information is generally and publicly available; or
 - (d) the Confidential Information was disclosed to the Supplier on a non-confidential basis from a source other than ONTC which the Supplier believes is not prohibited from disclosing such information as a result of an obligation in favour of ONTC;
 - (e) is developed by the Supplier independently of, or was known by the Supplier prior to, any disclosure of such information made by ONTC; or
 - (f) to the extent required by an order of a court of competent jurisdiction, administrative agency or governmental body, or by any law, rule or regulation, or by subpoena, summons or other administrative or legal process, or by applicable regulatory or professional standards or in connection with any judicial or other proceeding relating to Supplier's Services to ONTC or this Agreement.
33. **FIPPA.** The Supplier specifically acknowledges that ONTC is subject to FIPPA, and that ONTC may be compelled by law to disclose certain information provided by the Supplier. Where the Supplier is collecting Personal Information on behalf of ONTC, the Supplier must comply with the provisions in FIPPA regarding the collection, retention, use, disclosure and disposal of Personal Information.
34. **Breach of Confidentiality.** The Supplier acknowledges and expressly agrees that any breach by it of this Agreement which does or may result in loss of

confidentiality of the Confidential Information or an unauthorized release of Personal Information would cause ONTC irreparable harm for which damages would not be an adequate remedy. If the Supplier breaches the confidentiality provisions of this Agreement, ONTC shall have the right to seek injunctive relief against the continuing or further breach by the Supplier, without the necessity of proof of actual damages. The right to seek injunctive relief without the necessity of proof of damages shall be in addition to any other right which ONTC may have under this Agreement or otherwise in law or in equity. This section shall continue to bind the Supplier after the expiry or termination of this Agreement.

INDEMNITY AND LIMITATION OF LIABILITY

35. General Indemnity. The Supplier shall indemnify and hold harmless ONTC and ONTC Parties from and against all Losses which may arise by reason of the exercise of the responsibilities and obligations contained herein by the Supplier or as a result of any breach of the terms of this Agreement by the Supplier or by any act or omission of the Supplier or Supplier Parties, including all legal costs and expenses reasonably incurred by ONTC in connection with the defence or settlement of any such Loss, unless such Loss is caused by the negligent act or omission of ONTC or ONTC Parties. The Supplier shall, at ONTC's election, either assume the defence of every proceeding brought in respect of such Loss, or cooperate with ONTC in the defence, including providing ONTC with prompt Notice of any possible Loss and providing ONTC with all information and material relevant to the possible Loss. For the purpose of enforcement of this indemnity, ONTC is acting as agent and trustee for the ONTC Parties.

36. Specific Indemnities. The Supplier shall indemnify and hold harmless ONTC and ONTC Parties from and against all Losses incurred by ONTC arising from:

- (a) any decision or interpretation by any court or governmental authority that:
 - (i) any of the Supplier Parties is an employee of ONTC; or (ii) ONTC is liable to pay statutory contributions or deductions in respect of any of the Supplier Parties under any Laws, including employment insurance, provincial health insurance, income tax or other employment matters;
- (b) any health, medical disability or similar claims which the Supplier or Supplier Parties may have during or after the Term of this Agreement;

- (c) any claim by any third party against ONTC alleging that the Equipment and its use by ONTC infringes any Intellectual Property rights;
- (d) any claim against ONTC arising from the failure of the Supplier to protect the confidentiality of Confidential Information; and
- (e) safety infractions committed by the Supplier under health and safety legislation, regulations, guidelines or orders, including the *Occupational Health and Safety Act*.

37. **Bodily Injury and Property Damage.** The Supplier shall make full and complete compensation for any bodily injury or death to any person while providing the Services and for any damage caused to ONTC's physical property by an act or omission of the Supplier or a Supplier Party.

38. **Supplier Losses.** The Supplier shall be liable for any claims arising from any personal injuries to or death of any of the Supplier Parties or from any loss of or damage to any property belonging to the Supplier or Supplier Parties during the provision of the Services unless caused by the negligent act or omission of ONTC or ONTC Parties.

39. **Waiver.** The Supplier waives against ONTC and ONTC Parties any claims of any kind whether directly or indirectly arising out of or connected with the existence of this Agreement or for any injury to or death of any person or for any loss of or damage to any property belonging to the Supplier or Supplier Parties and for any loss or damage of the Supplier unless caused by the negligent act or omission of ONTC or ONTC Parties.

40. **Limitation of Liability.** Notwithstanding any other provision of this Agreement,

- (a) ONTC shall not be responsible for indirect, consequential, special, incidental or contingent damages of any nature whatsoever, including loss or revenue or profit or damages resulting from interruption of service or transmission. This limitation shall apply regardless of the form of action, damage, claim, liability, cost, expense or loss, whether in Agreement (including fundamental breach), statute, tort (including negligence), or otherwise, and regardless of whether ONTC has been advised of the possibility of such damages; and,

(b) Any express or implied reference to ONTC providing an indemnity or any other form of indebtedness or contingent liability that would directly or indirectly increase the indebtedness or contingent liabilities of ONTC, whether at the time of execution of this Agreement or at any time during the Term, shall be void and of no legal effect in accordance with s.28 of the *Financial Administration Act*, R.S.O. 1990, c. F.12.

41. **Survival.** The sections in this part “Indemnity and Limitation of Liability” shall survive the expiry or termination of this Agreement.

INSURANCE

42. **Insurance.** The Supplier shall obtain, and for as long as this Agreement is in effect, maintain, pay for and, upon request by ONTC from time to time, provide evidence, satisfactory to ONTC, of the following insurance coverages, all taken out with insurers licensed to transact insurance business in Ontario, bearing original signatures of authorized insurance representatives and satisfactory to ONTC:

(a) Commercial General Liability Insurance to a limit of not less than five million dollars (\$5,000,000) inclusive per occurrence, including “Ontario Northland Transportation Commission” as an additional insured, with no limitations on or exclusions from coverage arising from working on or around railway property, covering bodily injury, personal injury, death and damage to property, including loss of use of such property, containing cross liability coverage and preclude subrogation claims by the insurer against ONTC and endorsed to provide ONTC with not less than thirty (30) days’ notice, in advance, of any cancellation, change or amendment restricting coverage.

43. The Supplier shall ensure that all the insurance is primary and does not call into contribution any other insurance coverage available to ONTC. The Supplier shall not do or omit to do anything which would impair or invalidate the insurance policies.

FORCE MAJEURE

44. **Force Majeure.** Whenever and to the extent either party is unable to fulfil, or is delayed or restricted in fulfilling, any of its obligations under this Agreement by reason of a Force Majeure event, the time for fulfilling such obligation is extended for such reasonable time as may be required by that party to fulfil such obligation, provided that any such inability, delay or restriction does not

relate to any extent to any act or omission by that party. No extension of time will be given unless the party seeking the extension submits to the other party within five business days after the date on which the party ought reasonably to have been aware of the Force Majeure event a Notice requesting the extension of time, the cause of the Force Majeure event, the expected duration of the extension and mitigation efforts being undertaken by the party.

TERMINATION

45. Early Termination. This Agreement may be terminated early as follows:

- (a) by the mutual written agreement of the parties;
- (b) by ONTC immediately upon written notice to the Supplier if the Supplier is in default or breach in respect of any condition or provision of this Agreement;
- (c) by ONTC, for any reason, upon not less than ten (10) days' prior written Notice; or,
- (d) by the Supplier upon written Notice to ONTC, where ONTC has failed to observe or perform any of its obligations under this Agreement, and such failure has not been remedied to the reasonable satisfaction of the Supplier within thirty (30) days of providing written Notice to ONTC detailing the nature of such failure and requiring that such failure be remedied.

46. Immediate Termination. This Agreement will terminate immediately upon:

- (a) the winding up or dissolution of the Supplier; or
- (b) subject to the provisions of the *Bankruptcy and Insolvency Act*, RSC 1985, c. B-3, the Supplier making an assignment for the benefit of its creditors, becoming bankrupt or insolvent, undergoing reorganization, making a proposal to its creditors, or otherwise becoming financially unable to perform its obligations under this Agreement.

47. If this Agreement is terminated early for any reason other than those described in section 45 (a) or (d), then:

- (a) ONTC is excused from further performance under this Agreement;

- (b) any money payable by the Supplier to ONTC is immediately due and payable;
- (c) ONTC shall not be responsible for paying any amount over and above the chargeable amounts, including payment on a pro-rated basis if applicable, incurred up to the effective date of such termination, or a later date if work, already commenced by the Supplier, cannot reasonably be discontinued until such later date;
- (d) ONTC shall retain any rights, powers and remedies it has or may have against the Supplier; and
- (e) ONTC may enter an agreement with another person to provide the Equipment. The Supplier shall be liable for all costs incurred by ONTC in procuring the Equipment from another person(s).

ASSET INFORMATION REQUIREMENTS

48. Asset Information Requirements. With respect to the Equipment supplied by the Supplier under this Agreement, the Supplier must, if requested, provide to ONTC:

- (a) upon agreement execution, an asset handover plan which outlines the details of the Supplier's asset handover activities throughout the Term of the Agreement, and which meets ONTC's asset handover requirements;
- (b) within thirty (30) days of receiving it, a completed Asset Information Requirements form ("AIR Form") in MS Excel format which sets out the digital asset information, electronic documents, and master data required by ONTC (which will vary by asset class);
- (c) prior to issuing the Handover Certificate in subsection (d), the documentation, manuals and other information as set out in the Asset Handover Plan and/or AIR Form (which may include without limitation Warranty, OEM maintenance requirements, as-built drawing files and manuals and maintenance guides); and
- (d) prior to delivering the asset, a Handover Certificate which confirms that the Equipment is ready to be delivered, fit for service, and complies with the Agreement requirements, and which lists all data, information and documents being provided by the Supplier.

The Supplier may also provide to ONTC:

- (a) internet-based tool / repositories for warranty, training, servicing and parts including preparation and transmittal of the information required in the AIR Form;
- (b) access to training, education and reference libraries that are robust, secure and value-added (any fees or licensing for such systems must be as agreed to in advance by the Parties); and
- (c) access to internet resources for the purpose of administrating warranty, parts, or equipment documents / data.

CORRUPTION, FORCED LABOUR, SANCTIONS

49. The Supplier warrants that:

- (a) no bribe, gift or other inducement has been paid, promised or offered to any official or employee of ONTC, the Ministry of Transportation, the Government of Ontario or any other government official relating to ONTC entering into this Contract with the Supplier;
- (b) it will take reasonable steps to ensure that its officials and employees do not extort, accept or pay bribes or illicit payments, charge or accept fees that are not legally due or are in excess of those legally due, or unreasonably delay or obstruct the granting of permits, licences, or other such approvals in relation to the project. If the Supplier becomes aware of an actual or attempted bribe, extortion, delay or obstruction relating to this Contract, the Supplier shall report the incident to ONTC immediately
- (c) it is unaware of any forced labour or child labour being used at any step of the production of goods produced, purchased or distributed by it in Canada or elsewhere or for the production of goods imported by the Supplier
- (c) it has undertaken the appropriate due diligence to ensure its business and its supply chains do not use forced labour or child labour, including an assessment of its business and supply chains that may carry a risk of forced labour or child labour being used and the management of the risk. If applicable, the Supplier shall comply with the reporting requirements under the Fighting Against Forced Labour and Child Labour in Supply Chains Act, S.C. 2023 c.9.

50. In compliance with its international obligations or with United Nations obligations, Canada imposes restrictions on trade, financial transactions or other dealings with a foreign country or its nationals. These sanctions may be implemented by regulation under such acts as the United Nations Act, the Special Economic Measures Act (SEMA), or the Export and Import Permits Act. The text of any such regulations is published in the Canada Gazette, Part II. It is the only text which is authoritative. The Supplier shall comply with any such regulations that are in force on the effective date of the Agreement and will require such compliance by its first-tier Subcontractors. ONTC relies on such undertaking from the Supplier to enter into this Agreement, and any breach of such undertaking shall entitle ONTC to terminate this Agreement for default and to recover damages from the Supplier, including excess re-procurement costs.

GENERAL

51. **Assignment.** Neither party may assign their respective rights and obligations under this Agreement without first obtaining the written consent of other party, provided, however, that either party may assign this Agreement to an affiliate or the successor of its business upon written notice to the other party. This Agreement shall enure to the benefit of, and be binding upon, the parties and their respective successors (including any successor by reason of amalgamation, merger or statutory arrangement of any party) and permitted assigns.

52. **Notice.** Any Notice under this Agreement shall be given in writing and delivered personally or by email or prepaid courier addressed as follows:

To ONTC at:
Ontario Northland Transportation Commission
555 Oak Street
North Bay ON P1B 8L3

Attention:

T:

E:

And to:
Legal Services & Corporate Governance
Legal@ontarionorthland.ca

To the Supplier at:

Attention:

T:

E:

or at such other address or addresses as ONTC and the Supplier may designate from time to time. The date of receipt of a Notice if sent by email or personal delivery shall be the date of delivery and if sent by prepaid courier shall be the second day after pick-up by the courier.

53. **No Waiver.** No waiver by a party of any breach by the other party of any of its covenants, agreements or obligations in this Agreement shall be a waiver of any subsequent breach or the breach of any other covenants, agreements or obligations, nor shall any forbearance by a party to seek a remedy for any breach by the other party be a waiver by the party of its rights and remedies with respect to such breach or any subsequent breach.
54. **Relationship.** Nothing contained in this Agreement shall be deemed or construed by the parties nor by any third party as creating the relationship of principal and agent, landlord and tenant, or of partnership or of joint venture between the parties.
55. **Governing Law.** This Agreement shall be governed by and constituted in accordance with the laws in force in the Province of Ontario, excluding any conflict of laws principles. The Parties hereby irrevocably attorn to the exclusive jurisdiction of the courts of the Province of Ontario for any legal proceedings arising out of this Agreement or the performance of the obligations hereunder.
56. **Severability.** Should any section or part or parts of any section in this Agreement be illegal or unenforceable, it or they shall be considered separate and severable from the Agreement and the remaining provisions of this Agreement shall remain in full force and effect and shall be binding upon ONTC and the Supplier as though such section or part or parts thereof had never been included in this Agreement.
57. **Entire Agreement.** This Agreement constitutes the entire agreement and understanding of the parties and supersedes all prior understandings, discussions, negotiations, commitments, representations, warranties, and agreements, written or oral, express or implied between them with respect to

the subject of this Agreement. No amendment, variation or change to this Agreement shall be binding unless the same shall be in writing and signed by the parties.

58. **Survival.** In addition to those provisions which are expressly stated to survive the termination or expiration of this Agreement, the provisions of this Agreement that are by their nature intended to survive termination or expiration of this Agreement shall continue in full force and effect subsequent to and notwithstanding termination or expiration until or unless they are satisfied.

59. **Electronic Signatures, Electronic Delivery, and Counterparts.** This Agreement may be executed with electronic signatures and delivered by electronic transmission and the Parties may rely upon all such signatures as though they were original signatures. This Agreement may be executed in counterpart and all such counterparts shall, for all purposes, constitute one agreement binding on the parties.

[SIGNATURE PAGE FOLLOWS]

IN WITNESS WHEREOF, THE PARTIES HAVE EXECUTED THIS AGREEMENT.

ONTARIO NORTHLAND TRANSPORTATION COMMISSION

Per _____

Date _____

I have authority to bind the corporation

XXXX

Per _____

Date _____

I have authority to bind the corporation.

Schedule "A"
Specifications for Equipment

Schedule B
Suppliers Submission