

ONTARIO NORTHLAND

TRANSPORTATION COMMISSION

Request for Proposals No. RFP 2024 019

For

**Non-Union Salary Structure and
Compensation Review**

REPLY BY DATE: 2:00:00 p.m. Friday, November 29, 2024

Primary Contact:

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PART 1

REQUEST FOR PROPOSALS

SECTION 1 - INTRODUCTION

1.1 General

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

(2) In this RFP:

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

“Addendum” means the written supplementary information provided to potential Respondents prior to the Submission Deadline, which information becomes part of the RFP 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 Proposal including without limitation the information requested in the RFP Data Sheet, and is essential to allow ONTC to evaluate a Proposal and that if not included will result in the disqualification of the Proposal;

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

“Proposal” means the response to the RFP submitted by a Respondent to ONTC;

“Respondent(s)” means the entity submitting a Proposal and includes prospective respondents, whether or not that entity submits a Proposal. 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;

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

“RFP Documents” means the documents listed in RFP 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 RFP;

“Substantially Compliant” means Proposal does not meet the requirements of the RFP Documents; however, the Proposal includes all of the Material items, as identified in the RFP 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 “**RFP Process**”) will commence with the issuance of these RFP 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 RFP Process in accordance with the terms and conditions of this RFP.

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 RFP DOCUMENTS

2.1 Request for Proposals Documents

(1) The Request for Proposals documents consist of:

Part 1 – Request for Proposals

Part 2 – Requests for Proposals Summary of Requirements

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

Part 3 – RFP Specifications

- (a) Schedule 3-A – Scope of Work

Part 4 – Form of Proposal

- (a) Proposal Form 1 – Proposal Submission Form
- (b) Proposal Form 2 – Respondent's General Information
- (c) Proposal Form 3 – Experience and Qualifications
- (d) Proposal Form 4 – Understanding of the Mandate
- (e) Proposal Form 5 – References
- (f) Proposal Form 6 – Compliance with Contract Documents
- (g) Proposal Form 7 – Claims

Part 5 – Ontario Northland's Draft Agreement

- (2) The RFP Documents shall be read as a whole. The Schedules and Addenda, if any, constitute an integral part of this RFP and are incorporated by reference.
- (3) Each Respondent shall verify the RFP Documents for completeness upon receipt and shall inform the Contact Person (identified in RFP 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 RFP Documents are available at our company website at www.ontarionorthland.ca and MERX.
- (5) The RFP Documents are made available only for the purpose of Respondents submitting Proposals. Availability and/or use of the RFP 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 RFP Documents, the order of priority of RFP Documents, from highest to lowest, shall be:
 - (a) Any Addenda modifying the RFP Documents issued during the RFP Process;
 - (b) The RFP Data Sheet;
 - (c) Part 1 – Request for Proposals;
 - (d) Part 3 – Specifications; and,
 - (e) Any other RFP Documents.

2.3 Distribution of Documents – Electronic Distribution

- (1) ONTC will use an online electronic distribution system to distribute all RFP Documents.
- (2) Each Respondent is solely responsible for making appropriate arrangements to receive and access the RFP 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 Proposal, 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 RFP Documents is intended to relieve the Respondents from forming their own opinions and conclusions with respect to the matters addressed in this RFP.
- (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 RFP Documents, if any, during the RFP Process or during the term of the Final Agreement. By submitting a Proposal, 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 RFP Documents or otherwise provided by ONTC or its representatives during the RFP Process or during the term of the Final Agreement.

SECTION 3 – THE RFP PROCESS

3.1 RFP Process

- (1) The deadline for the submission of Proposals (the “**Submission Deadline**”) is set out in the RFP Data Sheet.
- (2) ONTC may amend, extend or shorten any of the dates and/or times prescribed in this RFP, 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 RFP Documents

- (1) Respondents shall submit all questions, requests for clarifications, and other communications regarding the RFP Documents and the RFP 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 RFP 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 RFP 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 RFP Process, the RFP Documents, or the Goods and/or Services.
- (5) If Respondents find discrepancies, omissions, errors, departures from laws, 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 RFP 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 RFP Documents, the RFP 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 RFP 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 RFP. A Respondent may be disqualified where contact is made with any person other than the Contact Person.
- (8) 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 RFP Documents, may only be made by addendum.

3.3 Addenda/Changes to the RFP Documents

- (1) ONTC may, in its sole discretion, amend, supplement, or change the RFP Documents prior to the Submission Deadline. ONTC shall issue amendments, supplements, or changes to the RFP 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 RFP Documents. Addenda will be distributed in the same manner as the RFP and shall become part of the RFP 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 RFP.

3.4 Respondents’ Meeting

- (1) To assist Respondents in understanding the RFP Documents, and the RFP 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 RFP 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 RFP 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 RFP 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 RFP Data Sheet and details regarding the registration process will be set out in the RFP 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 RFP 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 RFP Process, any of the following persons or organizations on matters related to the RFP Process, the RFP Documents, or their Proposals:
 - (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 RFP 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 RFP 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 RFP Section 7.2; or
 - (b) impose conditions on the Respondent’s continued participation in the RFP 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 RFP Process, the RFP 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 Proposal or to publicly promote or advertise their own qualifications, interest in or participation in the RFP 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 RFP 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 RFP 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 RFP Documents, any other documentation related to the RFP Process and a part or parts of any Proposal 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 Proposals. 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 Proposals, and all information submitted in or related to the Proposals, to the Government of Ontario.

- (3) ONTC may provide the Proposals to any person involved in the review and/or evaluation of the Proposals on behalf of ONTC and ONTC may:
 - (a) make copies of the Proposal; and/or,
 - (b) retain the Proposal.
- (4) ONTC may disclose any information with respect to the Respondents, the Proposals and the RFP 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 RFP Process, provided that if the nature of the subject matter of the RFP 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 RFP, “**RFP 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 RFP Process, from ONTC or any Ministry or Agency of the Government of Ontario, in connection with the RFP 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 RFP 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) RFP 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 Proposal 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 Proposal 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 ten (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 RFP Section 3.8 by any person to whom it discloses the RFP Information.
 - (4) Each Respondent or Short-listed Respondent acknowledges and agrees that a breach of the provisions of this RFP 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 RFP 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 RFP Section 9.3, the provisions of this RFP Section 3.8 shall be binding and shall survive any cancellation or termination of this RFP and the conclusion of the RFP 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 RFP Information.

3.9 Governing Laws and Attornment

- (1) This RFP Process and the Final Agreement entered into pursuant to this RFP 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 RFP, 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 RFP 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 Proposal, neither acceptance of the Proposal 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 RFP Process, including, without limitation, all costs and expenses related to the Respondent's involvement in:
 - (a) the preparation, presentation and submission of its Proposal;
 - (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 RFP, 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 RFP Process.

3.12 Delay and Costs of Delay

- (1) By submitting a Proposal, 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 RFP Documents or RFP Information or any delay, or costs associated with delays, in the RFP Process.

3.13 Clarification and Verification of Respondent's Proposal

- (1) Following submission of a Proposal, ONTC may:
 - (a) request a Respondent to clarify or verify the contents of its Proposal, including by submitting supplementary documents; and/or,

- (b) request a Respondent to confirm an ONTC interpretation of the Respondent's Proposal.
- (2) Any information received by ONTC from a Respondent pursuant to a request for clarification or verification from ONTC as part of the RFP Process may, in ONTC's discretion, be considered as an integral part of the Proposal even if such information should have been submitted as part of the Respondent's Proposal and may, in ONTC's discretion, be considered in the evaluation of the Respondent's Proposal.
- (3) ONTC may, in its sole discretion, verify or clarify any statement or claim contained in any Proposal 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 Proposal, 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 Proposal, or any statement or claim made by a Respondent.
- (6) Requests for clarifications shall not be construed as acceptance by ONTC of a Proposal.

3.14 Two-Envelope Process

- (1) ONTC may elect to complete a Two-Envelope Process. Whether Respondents will be required to submit their Proposals using a Two-Envelope Process will be identified on the RFP Data Sheet.
- (2) If ONTC elects to complete a Two-Envelope Process, the Proposal shall be broken down into two components; a technical submission and a financial submission.
- (3) If ONTC elects to complete a Two-Envelope Process, ONTC will identify a minimum score that must be attained on the technical submission on the RFP Data Sheet. Proposals that do not meet the minimum score for the technical submission following evaluation of the technical submission, will not proceed further in the evaluation process, provided that ONTC may, in its sole discretion, based on the overall scores of all the technical submissions, revise the minimum score required to proceed further in the evaluation process. Financial submissions will only be opened and evaluated for the Proposals that meet the minimum score for the technical submission.

SECTION 4 - PROPOSAL CONTENT AND FORMAT

4.1 Format and Content of Proposal

- (1) Respondents shall submit their Proposal in one envelope or, if submitting electronically, one electronic folder. Where required by the RFP Data Sheet to follow the two-envelope process, Respondents shall submit the technical submission and the financial submission in two separate envelopes or, if submitting electronically, two separate electronic folders.
- (2) Unless otherwise specified in the RFP Data Sheet, Respondents shall not submit pre-printed literature with their Proposals. Any unsolicited pre-printed literature submitted as part of a Proposal 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 RFP;
 - (b) for a hard copy submission, complete any handwritten portions of the proposal 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 proposal forms and failure to fill in all blank spaces may result in a Proposal being determined to be non-compliant; and,
 - (d) use only the proposal forms issued as part of the RFP documents unless otherwise indicated.
- (4) Information provided by Respondents on hard copy proposal forms may be amended prior to the Proposal submission, provided the amendments are initialed by an authorized representative of the Respondent. Un-initialed pre-submission amendments may result in the Proposal being declared non-compliant.
- (5) Proposals 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 RFP 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 RFP Documents; and,

- (b) Where the RFP requires the Respondent to provide a breakdown of the price in Proposal Form 1-A, the price as stated in Proposal 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 Proposal 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 RFP Documents. Failure of the Respondent to list Subcontractors where required, may result in the Proposal being declared non-compliant.

4.2 Proposal Submission Form

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

4.3 References and Past Performance Issues

- (1) If specified in the RFP Data Sheet, Respondents shall provide reference information. Unless otherwise set out in the RFP 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 RFP 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 references, if contacted, will be taken into account in the evaluation process as identified in the RFP 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 RFP Process, the subject matter of the RFP 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 RFP Process if, in the sole and absolute opinion of ONTC, the Conflict of Interest cannot be managed, mitigated or minimized.

SECTION 5 - PROPOSAL SUBMISSION, WITHDRAWAL, MODIFICATION

5.1 Submission of Proposals and Late Proposals

- (1) Each Respondent shall submit their proposal in the format prescribed in the RFP Data Sheet. ONTC will not accept any proposal submission that is not submitted in the format prescribed in the RFP 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 Proposals in the manner and time prescribed in the RFP Data Sheet.

Questions concerning submitting through MERX should be addressed to:

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

Any Proposal 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 Proposal 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.

Where required by the RFP Data Sheet to use a two-envelope process, Respondents shall include two separate and clearly identifiable attachments: 1) Technical and, 2) Financial. The file names for the technical and financial attachments should be sufficiently distinguishable such that ONTC does not need to open the attachments to differentiate between them.

- (b) If ONTC elects to use Physical Bid Submissions, Respondents shall submit one original and the number of copies of its Proposal (in hard copy) specified in the RFP Data Sheet and the number of electronic copies of its Proposal (on a properly labelled CD or USB key in PDF format) specified in the RFP 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 Proposal and the original hard copy, the original hard copy of the Proposal, as submitted, will govern. The electronic copy of the Proposal is solely for the convenience of ONTC.

Respondents shall submit their Proposals 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 Proposal Submission in a sealed envelope or package with the Respondent's full legal name and return address, the RFP Number, the Submission Deadline and the label "Proposal Submission" clearly displayed on the outside of the envelope.

Where required by the RFP Data Sheet to use a two-envelope process, Respondents shall have one sealed envelope as prescribed above that contains two individual sealed envelopes inside that are clearly marked "Technical Submission" and "Financial Submission".

- (c) For the convenience of the Respondents, and only when identified in the RFP 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) Proposals must be received before the time noted in the RFP Data Sheet.
- (3) Proposals will be date and time stamped at the place receiving the Proposals. Late Proposals will be returned unopened.
- (4) Proposals which are submitted by facsimile transmission, email, or by electronic means other than MERX will NOT be considered.
- (5) Respondents are solely responsible for the method and timing of delivery of their Proposals.
- (6) ONTC reserves the right to make copies of the Respondent's Proposals as it may be required for the purpose of conducting a full evaluation of the Proposal submitted.
- (7) The Respondent should identify and mark any trade secret or proprietary intellectual property in its Proposal.

5.2 Late Proposals

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

5.3 Withdrawal of Proposals

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

5.4 Amendment of Proposals

- (1) When submitting a Physical Bid Submission, Respondents may amend their Proposals after submission but only if the original Proposal is withdrawn and the amended Proposal 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 Proposal is received from the same Respondent before the Submission Deadline, only the last Proposal received before the Submission Deadline will be considered.

5.5 Proposal Irrevocability

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

5.6 One Proposal per Person or Entity

- (1) Except as set out in the RFP Data Sheet or with ONTC's approval:
 - (a) a person or entity shall submit or participate in only one Proposal 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 Proposal individually or as a Respondent team member in the same RFP Process.
- (2) If a person or entity submits or participates in more than one Proposal in contravention of RFP Section 5.6(1), ONTC may, in its sole discretion, disqualify any or all of the Proposals submitted by that person or entity or in which that person or entity is a participant.

SECTION 6 - PROPOSAL EVALUATION

6.1 Evaluation Team

- (1) ONTC will establish an evaluation team for the purpose of evaluating Proposals (the "**Evaluation Team**").
- (2) The Evaluation Team may, in its sole discretion, delegate certain administrative functions related to the evaluation of Proposals 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 RFP documents may have been prepared with the assistance of a third-party consultant and that the consultant may participate in the evaluation of the Proposals.

6.2 Evaluation of Proposals

- (1) The Respondents' Proposals will be reviewed and evaluated by the Evaluation Team on the basis of the evaluation criteria set out in the RFP 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 Proposal 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 RFP Process per RFP Section 7.2 (1)(i);
 - (d) ONTC cannot, to ONTC's satisfaction, prior to the conclusion of the RFP Process, verify independently or through a third party or parties any and/or all information, statements, representations and/or warranties contained in the Proposal;
 - (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;
 - (g) the Respondent failed to meet the mandatory requirements specified in the RFP Data Sheet; or,
 - (h) the Respondent failed to attain the minimum score required for the Technical Submission, where the RFP Data Sheet called for a two-envelope process.

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 RFP 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 RFP 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 Proposal is compliant with the RFP Documents;
 - (c) if a failure to comply is material;
 - (d) if a Proposal 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 Proposal 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 Proposal;
 - (b) The Respondent contravenes RFP Section 3.5, RFP Section 3.6 or RFP Section 5.6(2);
 - (c) The Respondent fails to comply with the Applicable Laws;

- (d) The Proposal contains false or misleading information, or the Respondent provides false or misleading information in any part of the RFP Process;
 - (e) The Proposal, 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 Proposals;
 - (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 RFP or any time during the RFP 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 Proposal 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; or,
 - (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 RFP 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 Proposal(s).

7.3 General Rights of ONTC

- (1) ONTC may, in its sole discretion and at any time during the RFP process:
- (a) reject any or all of the Proposals;
 - (b) accept any Proposal or any portions of any Proposals for any reason whatsoever;

- (c) reject any Proposals or any portions of Proposals for any reason whatsoever;
 - (d) if only one Proposal 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 RFP;
 - (f) alter the Submission Deadline or any other deadlines associated with the RFP Process;
 - (g) change the RFP Process or any other aspect of the RFP Documents; or,
 - (h) cancel this RFP Process and subsequently conduct another competitive process for the same Goods and/or Services that are the subject matter of this RFP 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 RFP.
- (2) If ONTC, in its sole discretion, is of the opinion that all of Proposals 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 Proposals 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 Proposal.

SECTION 8 – 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 RFP 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 for of draft agreement in Part 5. Proposal Form 6 – 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 proposal; 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 (7) 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 Proposal Form 5, it will be deemed to have accepted and will be required to execute the Final Agreement in the form attached to this RFP. 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 ten (10) 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;
 - (b) Executed Contractors Health and Safety Responsibility Agreement;

- (c) A current Clearance Certificate issued by the Workplace Safety and Insurance Board, if applicable.

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 RFP Process.

8.3 Debriefing

- (1) Respondents may request a debriefing after receipt of a notification pursuant to RFP 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 deliver the evidence of insurance or other documents required under Section 8.1(7) within the time period specified in Section 8.1(6) or fails to execute the Final Agreement shall be limited to ten (10) percent of the value of the Proposal provided by the Respondent. The liability of the Respondents for any other loss or damage suffered by ONTC as part of this RFP Process shall be without limit.
- (2) By submitting a Proposal,
 - (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 Proposal 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 employees, officers, 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 RFP Process, a Respondent's Proposal in response to this RFP Process, or due to the acceptance or non-acceptance of any Proposal, or as a result of any act or omission by ONTC and/or its employees, officers, representatives, agents or advisors, including any information or advice or any errors or omissions that may be contained in the RFP 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 Proposals, 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 employees, officers, 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 RFP Process.

9.2 Power of Legislative Assembly

- (1) No provision of the RFP 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 RFP Not a “Bidding Contract” or a Tender

- (1) Notwithstanding any other provision of this RFP, this RFP 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 RFP, and this RFP is not an offer to enter into a contract (often referred to as “Contract A”). Except as provided in RFP Section 3.8 and 9.1, neither this RFP nor the submission of a Proposal 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 Proposal 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 RFP 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 Proposal submission to be considered.

SECTION 12 – INTERPRETATION

12.1 General

- (1) In this RFP, the singular shall include the plural and the plural shall include the singular, except where the context otherwise requires.
- (2) All references in this RFP 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 RFP, it includes all Ministries and Agencies of the Government of Ontario.



PART 2

**REQUEST FOR PROPOSALS
SUMMARY OF REQUIREMENTS**

**PART 2 – REQUEST FOR PROPOSALS
 SUMMARY OF REQUIREMENTS
 SCHEDULE 2-A
 RFP DATA SHEET**

RFP 2024 019 Non-Union Salary Structure and Compensation Review	
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
Proposal 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 Proposals	90 days following the Submission Deadline
Format of Submission	Respondents shall submit their Proposal through MERX Electronic Bid Submissions (EBS). Refer to Part 1, Request for Proposals, Section 5.1 (1) (a). MERX EBS does not allow Proposals to be uploaded after the Submission Deadline; therefore, Respondents shall ensure they allow sufficient time to upload the documents. Proposals 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 not be a two-envelope process.
Distribution Method	The RFP Documents will be posted on the ONTC website and MERX. Any addenda to the RFP will be posted in these locations.

**PART 2 – REQUEST FOR PROPOSALS
 SUMMARY OF REQUIREMENTS
 SCHEDULE 2-A
 RFP DATA SHEET *continued***

RFP 2024 019 Non-Union Salary Structure and Compensation Review			
Proposal Detail <i>continued</i> – <u>Note the requirements below are new to ONTC</u>			
Submission Requirements	<p>Respondents are required to submit all of the documents listed below as part of their Proposal. Respondents shall confirm they have included the documents listed below with their Proposal by placing a checkmark in the column “Included in Proposal”. 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 RFP.</p>		
	Item	Included in Proposal (indicate with ✓)	Item is classified as Material
	This checklist		
	Proposal Form 1 - Proposal Submission Form		Material
	Proposal Form 2 - Respondent’s General Information		Material
	Proposal Form 3 – Experience and Qualifications		Material
	Proposal Form 4 – Understanding of the Mandate		Material
	Proposal Form 5 - References		Material
	Proposal Form 6 – Compliance with Contract Documents		Material
Proposal Form 7 - Claims			

**PART 2 – REQUEST FOR PROPOSALS
 SUMMARY OF REQUIREMENTS
 SCHEDULE 2-A *continued*
 RFP DATA SHEET**

RFP 2024 019 Non-Union Salary Structure and Compensation Review			
Important Dates			
Publication Date	Friday, November 08, 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	Friday, November 29, 2024 at 2:00:00 p.m. (EDT)		
Target Completion Date	March 31, 2025		
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 RFP Process.		
	Mandatory Requirement	Pass	Fail
	Respondent has submitted all of the documents as specified in the Submission Requirements listed in Part 2, Request for Proposals, Summary of Requirements, RFP Data Sheet		
	Respondent must be a Canadian Business.		

**PART 2 – REQUEST FOR PROPOSALS
 SUMMARY OF REQUIREMENTS
 SCHEDULE 2-A *continued*
 RFP DATA SHEET**

RFP 2024 019 Non-Union Salary Structure and Compensation Review		
Procedure of Selection <i>continued</i>		
Evaluation General Procedure	Respondents must score a <u>minimum of 60%</u> for both Experience and Qualifications and Understanding of the Mandate to qualify for shortlist consideration. Respondents who fail to score a minimum of 60% in these categories will be disqualified from the RFP Process.	
Evaluation Criteria	Description	Weight
	<p>Price ONTC will use the following to calculate the initial score for price:</p> <p style="text-align: center;">Lowest price of all Proposals / price of Respondent x 25 = Score</p> <p><u>The following information should be provided under Proposal Form 01 – Proposal Submission Form</u></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 “Lowest price of all Proposals”.</i></p>	25

**PART 2 – REQUEST FOR PROPOSALS
 SUMMARY OF REQUIREMENTS
 SCHEDULE 2-A *continued*
 RFP DATA SHEET**

RFP 2024 019 Non-Union Salary Structure and Compensation Review		
Procedure of Selection <i>continued</i>		
Evaluation Criteria	<p>Demonstrated Understanding of the Mandate</p> <ul style="list-style-type: none"> • Respondent has demonstrated a clear understanding of the Mandate and the associated deliverables – 10 points • Schedule is submitted in Gantt Chart format indicating all of the activities of the work and sequence and durations are logical – 10 points • Approach and methodology is provided in a written narrative format and demonstrates Respondent’s clear understanding of how to successfully complete the project on schedule– 10 points <p><u>The following information should be provided under Proposal Form 04 – Understanding of the Mandate</u></p>	30
	<p>Experience and Qualifications</p> <p>ONTC will assess the Respondent’s Experience and Qualifications based on the following:</p> <ul style="list-style-type: none"> • Successful completion of comparable projects of a similar scope or magnitude, as supported by provided examples and satisfactory client references – 10 points • Ability to fulfill the requirements of the proposal – 10 points • Availability and commitment of sufficiently qualified staff to support this project, in all aspects – 5 points • Credentials of key staff, including resumes, past experience and knowledge relevant to the project – 5 points <p><u>The following information should be provided under Proposal Form 03 – Experience and Qualifications</u></p>	30

**PART 2 – REQUEST FOR PROPOSALS
 SUMMARY OF REQUIREMENTS
 SCHEDULE 2-A *continued*
 RFP DATA SHEET**

RFP 2024 019 Non-Union Salary Structure and Compensation Review		
Procedure of Selection <i>continued</i>		
	Description	Weight
Evaluation Criteria	<p>References Full points will be awarded for three (3) different relevant project references with similar scope and size.</p> <p><u>The following information should be provided under Proposal Form 04 – References.</u></p> <p><i>(ONTC may or may not contact references as a part of the evaluation and may use this information as part of this score)</i></p>	05
	Sub-Total	90
Short-listed Respondents Procedure	Short-listed Respondent(s) will proceed to the next level of the evaluation process, which will include the criteria below. (If the subtotal of Respondents' scores are spread too far to impact the final outcome of the procurement, then ONTC reserves the right to elect not to proceed with this category.)	
Short-listed Respondents Evaluation Criteria	Description	Weight
	<p>Presentation (Short-listed Respondent(s) by invite only)</p>	10
	Sub-Total	10
	Total	100

**PART 2 – REQUEST FOR PROPOSALS
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: RFP 2024 019
Description of Requirement: Non-Union Salary Structure and Compensation Review

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 PROPOSALS
SPECIFICATIONS

PART 3 – RFP SPECIFICATIONS

SCHEDULE 3-A

SCOPE OF WORK

Introduction

Ontario Northland Transportation Commission (herein referred to as "ONTC") is seeking proposals from service providers for Non-Union Salary Structure and Compensation Review.

Scope of Services

1. Receiving and Reviewing Available Job Documents

- Collect and analyze all available job descriptions, job evaluations, and organizational charts for:
 - 8 Executive Positions
 - 14 Director Positions
 - 114 Management Positions
 - 140 Individual Contributor Positions.
- Review and categorize job documents by position level
- Identify any missing or outdated job descriptions and request updates as needed.
- Assess current job description questionnaire template and ensure it meets current state needs

2. Facilitating Remote Conference Calls with Executives & Senior Leaders

- Engage with Ontario Northland Executive and Senior Leadership team to gather insights and ensure alignment on and understanding of the evaluation process.
- Schedule and facilitate conference calls with executives.
- Present and discuss preliminary evaluation results and gather feedback.
- Document executive insights and recommendations.

3. Executive Compensation Assessment

- Provide an analysis of the impact of changes or planned changes to the executive structure, including the addition of new roles from existing Executive Compensation plan.

- Conduct a comprehensive benchmarking analysis of the existing executive compensation plan, using relevant industry, sector and geographic data. Ensure the comparison includes both base salary and total compensation packages
- Analyze any salary compression issues resulting from the overall compensation and salary structure review particularly focusing on executive roles in relation to non-executive roles. Provide specific recommendations to address and resolve identified compression issues, ensuring equitable pay structures across all levels of the company.
- Incorporate flexibility in the evaluation process to ensure the compensation structure can accommodate future growth and changes to the executive team. This will include providing recommendations on how future roles can be structured and compensated within the existing framework, ensuring bandwidth for scaling executive leadership in alignment with organizational strategy.
- Ensure the compensation framework can support future roles, such as the potential addition of a Chief Operating Officer, and provide analysis on the impact of such changes on the overall executive compensation structure.

4. Revising Evaluations and Determining Grade Designations

- Refine initial evaluations based on feedback and determine appropriate grade designations.
- Revise job evaluations as applicable.
- Assign grade designations to each position based on revised evaluations.
- Ensure consistency and internal equity in grade designations.

5. Market Analysis

- Conduct a market analysis to benchmark Ontario Northland's compensation structure against relevant industry standards.
- Collect compensation data from comparable organizations
- Analyze market trends and salary ranges for similar positions.
- Provide a detailed report on market competitiveness.

6. Compression Analysis

- Identify any salary compression issues within the organization.
- Analyze internal salary data to identify compression risks
- Provide recommendations to address any identified compression issues, including any areas where org structure is impacting compression

7. Providing an Excel File of Evaluations and Grade Designation

- Compile and deliver the evaluation results and grade designations in an organized Excel file.
- Create an Excel file with detailed evaluations and grade designations.
- Assess and provide recommendations for advanced solutions that facilitate the ongoing maintenance of job evaluations, the addition of new roles, and overall salary structure management.

8. Reviewing the Excel File via Remote Call

- Review the compiled Excel file with the Ontario Northland project team to ensure accuracy and completeness
- Schedule remote call with the project team.
- Walk through the Excel file and address any questions or concerns.
- Make necessary adjustments based on feedback.

9. Finalizing Evaluations and Grades

- Finalize the job evaluations and grade designations.
- Incorporate any final adjustments.
- Ensure all data is accurate and complete
- Prepare the final version of the Excel file.

10. Providing the Final Excel File

- Deliver the finalized Excel file to the Ontario Northland project team.
- Send the final Excel file via secure means.
- Provide any necessary documentation or instructions for future reference.

11. Specialized Roles and Geographic Considerations

- Provide tailored recommendations for specialized roles and consider geographic factors in compensation planning.
- Identify positions that are difficult to fill due to specialization or geographic location (e.g., IT, engineering, remote locations).
- Recommend appropriate compensation percentiles to attract and retain talent, considering northern location challenges.
- Evaluate the competitiveness of current compensation structures for these roles and suggest adjustments
- Propose, if recommended, a separate schedule for regular market analysis reviews for these specialized groups to ensure ongoing competitiveness.

12. Review of Salary Administration Policy for Non-Union Employees

- Review and make recommendations to the Salary Administration Policy for non-union and management employees,

13. Recommendations for Future Consideration

- Offer guidance on maintaining competitive compensation practices for specialized and high-demand roles.
- Provide recommendations on the frequency of compensation reviews for specialized roles (e.g., annual reviews for IT positions)
- Suggest strategies for aggressive talent competition management.
- Develop guidelines for establishing a differentiated pay schedule for unique roles.
- Recommend ongoing monitoring and adjustments based on market trends and organizational needs.

14. Support and Follow-Up

- Provision for post-project support and follow-up consultations if required.

Additional Information

Project Timeline: Provide detailed timeline with key milestones and deadline. The project shall be completed by March 31, 2025.

Tasks	Date
Project Start Date	December 2024
Project Kick Off	Week 1 – 2
Data Collection and Analysis	Week 3 – 4
Preliminary Findings	Week 5 – 6
Stakeholder Review	Week 7 – 8
Final Review of Salary Structure and Impact	Week 9 - 10
Final Report and Presentation	Week 11 – 12
Project Completion Date	March 31, 2025

Communication Plan: Regular updates and communication protocols.

Confidentiality Agreement: Ensure all data and findings are kept confidential.



PART 4
REQUEST FOR PROPOSALS
FORM OF PROPOSAL

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

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

RFP Number: RFP 2024 019

Description: Non-Union Salary Structure and Compensation Review

Submitted To: ONTARIO NORTHLAND TRANSPORTATION COMMISSION

We, _____
(Name of Respondent)

having carefully examined, understood, and completed the Request For Proposals Documents as described in Section 2 – The RFP Documents, and Addenda No. ___ to No. __, inclusive, and having familiarized ourselves thoroughly with local conditions, hereby agree to supply the services associated with the Non-Union Salary Structure and Compensation Review as outlined below for a total price of –

\$ _____ (\$ _____) excluding HST

Optional - Fixed Yearly Price for Post-Project Support Services

\$ _____ (\$ _____) excluding HST

All bidders are requested to supply an all-inclusive services fee. All contract deliverables should be completed under this fee, and this fee should include the cost of all disbursements necessary to complete the project. Disbursements include items such as travel expenses, accommodation, meals, hospitality, printing, copying and all other overhead. Additional disbursements costs are not permitted.

Respondent shall also attach the following to this Proposal Form 1

- A rate schedule containing all of the hourly rates of the firm's various disciplines

Purchase is subject to budgetary approval of expenditures.

Proposal Forms:

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

Declarations:

We hereby declare that:

- (a) We will execute the Agreement within ten (10) Working Days of receipt of the Final Agreement;
- (b) We agree to perform and fully complete the Work on or before the agreed upon schedule;
- (c) The Work is to start no later than the agreed upon start date in the schedule;

**PART 4 – FORM OF PROPOSAL
PROPOSAL FORM 1 *cont'd*
PROPOSAL SUBMISSION FORM**

- (d) We will provide the required evidence of insurance, as specified in the Ontario Northland –Draft Agreement included in Part 5 of the RFP Documents, with our execution of the Agreement;
- (e) Coverages and limits of insurances will be provided and maintained by all Sub consultants in accordance with subsection (d) above;
- (f) No person, corporation or other legal entity other than the undersigned has any interest in this Proposal or in the proposed Contract for which this Proposal is made;
- (g) This Proposal is irrevocable for a period of ninety (90) days from the Submission Deadline;
- (h) It is understood and agreed that if this Proposal is accepted, we will not commence the Work until we have executed the Final Agreement and delivered it to ONTC and/or we are advised in writing by ONTC to proceed with the Work;
- (i) All copies of plans and specifications and other said RFP Documents furnished to us for the purpose of this Proposal are the property of ONTC and shall be kept confidential and not divulged in any manner by us. They will not be used on other work by us and will be returned to the issuing office when requested or promptly when not bidding; and
- (j) We have no right to reimbursement by ONTC for expenses, both direct and indirect, which may have been incurred by us in preparing this Proposal or otherwise participating in the RFP 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 PROPOSAL
PROPOSAL FORM 2
RESPONDENT’S GENERAL INFORMATION**

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

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 RFP.

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.

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

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

Name	
Title	
Telephone #	
E-mail address	

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 PROPOSAL
PROPOSAL FORM 3
EXPERIENCE AND QUALIFICATIONS**

Please respond to the following questions. Please maintain the same structure and numbering sequence as set out below and also include all necessary attachments.

1. Please provide your company profile and indicate the length of time (number of years) your company has been providing similar services?

In the event the Respondent is using a sub consultant(s) for a portion(s) of the scope of work associated with this RFP, they shall also include with this Proposal Form 3, a company profile for each sub consultant.

2. What sets your company apart from others on the market?
3. Please provide resumes and direct experience of the proposed team and an organization chart. Indicate the responsibilities each will have in this project and how long each has been with your company. Identify sub consultants you intend to use and the services they will perform.
4. Supply a minimum of three (3) project descriptions for mandates of a similar nature and scope. The project descriptions shall include:
 - a) Company/Client
 - b) Name of contact and contact details
 - c) The scheduled project start and end date
 - d) The actual start and end date
 - e) The project value of the Vendor's scope of work for the project at the beginning of the project
 - f) The project value of the Vendor's scope of work for the project at the end of the project
 - g) Detailed description of the Vendor's scope of work for the project. The description should detail if sub consultants were used to complete part of the scope.
 - h) Outcomes of the project.

ONTC may, in its sole discretion, confirm the Respondent's experience in the projects identified by contacting the Respondent's contacts.

5. Respondents shall review the attached Health and Safety Policy Statement and include the following with their Proposal:
 - (a) Submit a copy of the most recent version of your Health, Safety, and Environmental Protection Policy.
 - (b) Submit the attached Contractor Health and Safety Responsibility Agreement.

ONTC will consider all information submitted in the Respondent's Proposal when evaluating the Respondent's experience

CONTRACTOR HEALTH AND SAFETY RESPONSIBILITY AGREEMENT

In submitting this Proposal, I/We, on behalf of, _____

(legal name of company)

certify the following:

- (a) I/We have a health and safety policy and will maintain a program to implement such policy as required by clause 25(2) (j) of the *Occupational Health and Safety Act*, R.S.O. 1990, c.O.1, as amended, (the "OHSA").

The requirements in (a) do not apply to employers with five (5) or less employees.

- (b) With respect to the Services being offered in this Proposal, I/We and on behalf of our proposed sub-consultants, acknowledge the responsibility to, and shall:

(i) fulfill all of the obligations under the OHSA and ensure that all work is carried out in accordance with the OHSA and its regulations;

(ii) ensure that adequate and competent supervision is provided as required under the OHSA to protect the health and safety of workers; and

(iii) provide information and instruction to all employees to ensure they are informed of the hazards inherent in the work and understand the procedures for minimizing the risk of injury or illness.

- (c) I/We agree to take precautions reasonable in the circumstances for the protection of worker health and safety, as required under the OHSA.

Dated at _____ this _____ day of _____, 202__

An Authorized Signing Officer

(Key Contact)

(Title)

(Telephone Number)

(Firm's Name)

(Firm's Address)

**PART 4 – FORM OF PROPOSAL
PROPOSAL FORM 4
UNDERSTANDING OF THE MANDATE**

Please respond to the following questions. Please maintain the same structure and numbering sequence as set out below and include all necessary attachments.

1. Provide a detailed description of your understanding of the Scope of Work.
2. Indicate any assumptions and exclusions associated with your Proposal. ONTC will only consider assumptions and exclusions submitted as part of this Proposal. Vendors shall not indicate assumptions or exclusions anywhere else in their Proposal.
3. Include a detailed schedule with your Proposal outlining all of the activities of the work. The schedule shall be in Gantt chart format.
4. Provide a detailed written narrative approach and methodology of how you will execute the project. Include a description of any proprietary software that will be used to complete project.
5. Provide a detailed plan describing how you will keep ONTC informed of the Project status, including progress reports and any other types of reports or reporting requirements, and the frequency of reporting.
6. Identify potential areas where problems may arise, and the plan for minimizing risk to ONTC.

Evidence of a thorough review of the RFP Documents and experience with similar mandates should be apparent in the Respondent's response to each question above.

**PART 4 – FORM OF PROPOSAL
PROPOSAL FORM 5
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 PROPOSAL
PROPOSAL FORM 6
COMPLIANCE WITH CONTRACT DOCUMENTS**

The Respondent may suggest changes to the Draft Agreement included in Part 5 of this RFP 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 proposal. 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				
6				
7				
8				
9				
10				
11				
12				
13				
14				
15				
16				
17				
18				

**PART 4 – FORM OF PROPOSAL
PROPOSAL FORM 7
CLAIMS**

Submit an up to date list of outstanding, pending or anticipated claims, proceedings, liens or other legal claims, actions or proceedings.



PART 5
REQUEST FOR PROPOSALS
DRAFT AGREEMENT

CONSULTING SERVICES AGREEMENT

THIS CONSULTING SERVICES AGREEMENT is made [November 25, 2024] (the “Effective Date”)

BETWEEN:

ONTARIO NORTHLAND TRANSPORTATION COMMISSION

(“**ONTC**”)

AND

XXX

(the “**Consultant**”)

THE PARTIES AGREE AS FOLLOWS:

INTERPRETATION

1. **Definitions.** In this Agreement, the following terms have the corresponding meanings:

“**Agreement**” means this Agreement and all attached Schedules;

“**Background Intellectual Property**” means any work of the Consultant, for which the Consultant can establish through written records, the burden of which shall be upon the Consultant, that:

- (a) existed before the Consultant commenced providing any services to ONTC;
- (b) was developed independent of the Services; or
- (c) constitutes processes, methodologies, experience and know-how of the Consultant, including incremental improvements thereto, learned or developed by the Consultant during the performance of the Services,

except to the extent such Background Intellectual Property incorporates ONTC provided Intellectual Property or ONTC Confidential Information or is part of the Work Product;

“**Change Order Process**” means the process described in sections 24 and 25;

“**Confidential Information**” includes information, whether oral, written, visual, electronic, or in any other form, relating in any way to this Agreement, which is identified as confidential or that would reasonably be considered as being confidential that was prepared by or received from ONTC, its subsidiaries, representatives or agents and all other information related to the Agreement or acquired in connection with the Agreement, and includes Personal Information. “Confidential Information” does not include any portions of the Confidential

Information that (a) at the time of disclosure was in the public domain; (b) after disclosure hereunder, is published or otherwise becomes part of the public domain through no fault of the Consultant; or (c) is received from an independent third party who had obtained the Confidential Information lawfully and was under no obligation of secrecy or duty of confidentiality owed to ONTC, but the foregoing exclusions 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 Consultant 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 Consultant to anyone employed by or otherwise connected with ONTC.

“Consultant Parties” means the Consultant and its directors, officers, principals, partners, employees, contractors and agents and those for whom it is in law responsible and **“Consultant Party”** means any one of them;

“Deliverables” means the items in Schedule A and Schedule B that are to be provided by the Consultant;

“Disclosing Party” means the Party disclosing Confidential Information;

“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 Event” 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, adverse weather conditions which are materially more adverse than could reasonably be expected, earthquake, flood, act of God, accident, fire, nuclear or other explosion, disease, epidemic, quarantine restriction, strike, lockout or other labour disturbance, major equipment malfunction, governmental embargo, government priorities, or changes in the laws; 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;

“Hourly Rate” means the amounts set out in Schedule B;

“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”** includes any loss, liability, damage, cost, expense, fine, legal cost and disbursement whatsoever arising out of or related to the Services, the Project, or this Agreement, whether in contract, tort or otherwise;

“Moral Rights” includes all moral rights arising under the *Copyright Act*, R.S.C. 1985, c. C-42 and any foreign copyright or related act or law;

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

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

“ONTC’s Requirements” consists of written requirements and information provided by ONTC to the Consultant for the Project;

“Personal Information” means information that relates to an identifiable individual or that identifies or may identify an individual as defined in section 2 of FIPPA and specifically includes Personal Information about ONTC Parties and ONTC’s customers or third parties who interact with ONTC;

“Personnel” includes all principals, partners, employees, contractors and subcontractors of the Consultant;

“Price” means the fixed price and hourly rates described in Schedule B;

“Project” means ONTC’s Non-Union Salary Structure and Compensation Review;

“Receiving Party” means the Party receiving Confidential Information, and includes all Consultant Parties or ONTC Parties, as the case may be;

“Services” means those services described in Schedule A – Scope of Work; and,

“Work Product” includes all Deliverables and Intellectual Property produced by or resulting from (a) the Services rendered by the Consultant, or which are otherwise developed or first reduced to practice by the Consultant in the performance of the Services, and (b) the Background Intellectual Property which is used or incorporated in the Deliverables or the Services, or required for use of the Deliverables or the Services, it being understood that all such rights in the Background Intellectual Property are being licensed to ONTC as provided for herein.

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. **Contract Documents.** The following Schedules attached hereto form part of this Agreement:
 - (a) Schedule A – Scope of Work
 - (b) Schedule B – Consultant’s Submission
4. **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 (Scope of Work);
- (c) Schedule B (Consultant's Submission); and,
- (d) any other documents incorporated by reference in any of the foregoing.

If the Consultant's terms and conditions are supplied to ONTC in respect of the Services (including without limitation in any submission in response to a request for proposal or quote) those terms and conditions will be of no legal effect and will not constitute part of this Agreement (even if any representative of ONTC signs those terms and conditions or annexes them to the Agreement) unless ONTC expressly agrees in writing to be bound by all or any of the terms and conditions.

PARTICULARS OF THIS AGREEMENT

- 5. **Retainer.** ONTC hereby retains the Consultant to provide the Services with respect to the Project, and the Consultant shall provide those Services to ONTC under the general direction and control of ONTC and subject to the provisions of this Agreement.
- 6. **Services.** The Services which are the subject of this Agreement are consulting services, more particularly described in Schedule A (the "Services"). The parties may amend the Services by agreement in writing or pursuant to the change order process in this Agreement. The Services shall be provided as required by ONTC. ONTC is not guaranteeing any minimum level of use of the Services.
- 7. **Term.** This Agreement will commence on the Effective Date and will remain in full force and effect until March 31, 2025 unless earlier terminated pursuant to the provisions of this Agreement (the "Term"). ONTC shall have the option to extend the Agreement for a further period of one year in the event it requires the support services listed in Schedule A, item 14, in which case it shall provide written notice to the Consultant not less than 30 days prior to end of the Term.
- 8. **Representations by the Consultant.** The Consultant represents and warrants:
 - (a) the Consultant has received, read and understands ONTC's Requirements and will comply with ONTC's Requirements;
 - (b) the Consultant and its Personnel have the professional expertise, skills, know-how and resources necessary to perform the Services;
 - (c) the Consultant has the financial means to meet its obligations to its employees and subcontractors and to perform the Services;
 - (d) the Consultant has at its disposal and will continue to have throughout the term of this Agreement sufficient competent Personnel and equipment in good working order to

perform the Services as required by the terms of this Agreement and the Personnel it assigns to perform the Services, whether directly or through subcontractors, have substantial knowledge and experience with the work required;

- (e) the Consultant possesses all licenses, approvals, permits, registrations, professional designations and memberships necessary to perform the Services; and,
 - (f) there are no pending, threatened, or anticipated claims or litigation against the Consultant or other circumstances that would have a material effect on the financial ability of the Consultant to perform the Services.
9. **Standard of Care.** The Consultant shall carry out the Services in conformity with the standard of care, skill and diligence normally provided by a well-qualified and experienced professional person in the performance of similar services for a similar project at the time and place the Services are being provided. The Consultant shall give ONTC the full benefit of its skills, qualification, experience, knowledge and professional expertise. Any Services provided by subcontractors shall meet or exceed the above standard of care and the Consultant shall be fully responsible therefor.
10. **Vendor Performance.** ONTC has a Vendor Performance Policy which requires ONTC to complete an evaluation of the Consultant's performance of its obligations under this Agreement. The performance evaluation of the Consultant for the supply of these Services will be used in the assessment of the Consultant's proposals in response to future procurements. The performance evaluation may also result in the Consultant 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>.

SERVICES

11. **Development of a Workplan.** Within fourteen days after the Effective Date of this agreement, the Consultant shall, in consultation with ONTC, prepare and present to ONTC a workplan for the provision of the Services including a detailed timeline with key milestones and deadlines, and a communication plan/protocol that provides for regular updates.
12. **Adequacy of Services.** The Services will be cost effective and functional such that they meet, but do not exceed, ONTC's Requirements unless ONTC provides written direction in accordance with this Agreement. ONTC shall be the sole judge of the adequacy of the Services received and their value.
13. **Reports.** The Consultant shall upon request of ONTC, provide reports to ONTC, in a form and substance satisfactory to ONTC, about the Services and the Project, which reports shall include:
- (a) opinions regarding the progress and resolution of the Services;
 - (b) anticipated variances in the Price;
 - (c) anticipated or current variances in the workplan; and,
 - (d) mitigation plans for eliminating any negative variances in either (b) or (c).

14. **Possession.** ONTC may take possession of and use any completed or partially completed Deliverables.
15. **Schedule.** Subject to any changes made pursuant to the Change Order Process or Force Majeure event, the Consultant shall provide the Services within the time specified in the workplan and shall be responsible for all costs of meeting such timing, unless otherwise agreed by ONTC. If costs higher than set out in this Agreement become necessary to ensure delivery of the Services by the timelines in the workplan, then the Consultant shall be fully responsible for such higher costs. If the Consultant fails to meet the timelines set out in the workplan, ONTC may, at the sole cost of the Consultant and without limiting any other remedy ONTC may have at law or under this agreement:
 - (a) retain other persons to complete the Services, and deduct the cost of such retention from any money payable by ONTC to the Consultant or, if no money is payable, invoice the Consultant for the cost; and
 - (b) the Consultant shall be responsible for all Losses, including incidental, indirect and special Losses, suffered by ONTC due to a schedule delay.
16. **Inadequate Services.** The Consultant shall immediately correct at its own cost and expense, upon written request of ONTC, any Services not in conformity with the terms and conditions of this Agreement, including with the standard of care in section 9, except to the extent such non-conforming Services were caused by a person who is not an Consultant Party. Even if the Consultant disputes such request, it shall forthwith proceed with the remedial actions and such dispute shall be determined in accordance with the dispute resolution provisions of the agreement following the correction of the work in question.
17. **Personnel.** The Consultant shall provide the Services through Personnel approved in writing by ONTC. The preliminary list of Personnel is set out in Schedule B. The Consultant shall not change the Personnel providing the Services without ONTC's prior written approval. The Consultant shall coordinate the activities of their Personnel and be solely responsible for payment of all costs associated with the Personnel. The Consultant shall be responsible for every act or omission of the Personnel providing the Services to ONTC.
18. **Replacement of Personnel.** If ONTC determines, in its sole discretion, that the performance of one of the Personnel providing the Services is unsatisfactory, ONTC shall provide notice of the unsatisfactory performance to the Consultant and may require the Consultant to replace that Personnel with another person. The Consultant shall be solely responsible for any costs associated with the replacement of the Personnel and indemnify ONTC against any claims made by the Personnel or any third party against ONTC relating to the replacement.
19. **Use of ONTC Equipment.** The Consultant may, during the provision of Services, use ONTC equipment at its own risk and with the prior approval of ONTC. The Consultant shall be responsible for any damage to ONTC property or any third party's property or any bodily injury to or death of any person relating to the Consultant's use of ONTC equipment. ONTC makes no representations that its equipment is in good working or is suitable for any particular purpose and ONTC shall not be responsible for any injuries to or death of Personnel of the Consultant or damage to any property of the Consultant which results from the use by the Consultant of ONTC equipment. The Consultant shall indemnify and hold harmless ONTC for any claims for Losses made against ONTC relating to the use by the Consultant of ONTC

equipment.

20. **Software.** The Consultant shall consult with ONTC and obtain prior written approval for the use and type of software in its generation of the Deliverables. The Consultant will be required to provide the Deliverables using the approved versions of the software which are in use in the industry and by ONTC.
21. **Deliverables.** The provision of all information, documents and Deliverables by the Consultant to ONTC shall be in the native file format (e.g., CAD format) as approved by ONTC along with a PDF and/or hard copy. The Consultant shall not charge ONTC any additional fee for the provision of the Deliverables in their native file format. The Consultant shall not be held liable for native file format files to the extent they are subsequently amended or changed by ONTC without the consent of the Consultant.
22. **ONTC Responsibilities.** ONTC shall use reasonable efforts to make available any relevant reports, background information, data, drawings, plans, surveys and any other materials relevant to the Services, which are in its possession, for use by the Consultant, and shall make available, at reasonable times, ONTC employees for the purpose of any necessary consultation.
23. **Regulatory Approval.** Unless otherwise provided in this Agreement, where the work of the Consultant is subject to the approval or review of an authority, government or agency other than ONTC, applications for such approval or review shall be the responsibility of the Consultant. The Consultant shall submit such applications through the offices of ONTC, and, unless authorized by ONTC, the Consultant shall not seek or obtain any such approval or review by direct contact with such authority, government or agency.

CHANGES AND DEFECTS

24. **Changes.** Changes of any kind to the Services shall only be made by the Consultant upon receipt of a written change order signed by an authorized member of each Party (each, a "Change Order") or a Change Directive (as defined below). ONTC may at any time by issuing a Change Order or Change Directive make a change in the Services to be provided for the Project. The Change Order shall specify any agreed adjustment to the Price in respect of the change in Services and any agreed adjustment to the time for performance of the Services, whether an increase or reduction. Any changes to the Price shall be determined by using the Hourly Rates in Schedule B and proven reasonable expenses charged at cost. A Change Order shall represent full payment for all costs and any adjustment to the schedule associated with the change or changes for which it was issued.
25. **Change Directive.** Prior to finalization of a Change Order, ONTC may instruct the Consultant to proceed with additional or changed work by issuing a directive signed by an authorised member of ONTC (each, a "Change Directive"). Upon receipt of a Change Directive, the Consultant shall immediately proceed with the changes to the Services as identified therein. The Parties shall then seek to finalize a Change Order as soon as commercially reasonable. If the Parties are unable to agree on the Change Order, the dispute resolution provisions shall be used.
26. **Unauthorized Work.** ONTC shall have no liability whatsoever for any claim for payment for additional services provided or costs incurred by the Consultant which have not been authorised in advance by ONTC by way of a Change Order.

INTELLECTUAL PROPERTY

27. **Intellectual Property Rights.** All rights to the Intellectual Property which forms part of the Work Product, unless approved by ONTC in writing to the contrary, shall vest in ONTC and is the sole and absolute property of ONTC as and when created. The Consultant hereby irrevocably assigns and conveys, and agrees to assign and convey, without further consideration, all right, title and interest in and to the Intellectual Property in the Work Product, in perpetuity and throughout the world, to ONTC and its successors and assigns.
28. **Use of Intellectual Property.** The Consultant shall promptly sign all documents and take all actions that may be necessary to ensure that ONTC owns all the rights in and to the Work Product Intellectual Property. Except for retaining a copy as required by any applicable law, the Consultant shall return to ONTC or destroy, at the option of ONTC, all Intellectual Property in the Work Product at the expiry or termination of this Agreement. The Consultant shall not under any circumstances use the Work Product for the benefit of any other client of the Consultant.
29. **Licence.** The Consultant shall provide ONTC, at the Consultant's cost, with a perpetual, irrevocable, royalty-free, non-exclusive, fully transferable, fully paid-up licence to:
- (a) use such of the Background Intellectual Property as is required for the use of the Intellectual Property in the Work Product, in whole or in part;
 - (b) disclose any Background Intellectual Property to any person who requires such Background Intellectual Property in respect of any of the actions referred to in (a);
 - (c) use, reproduce, copy, transmit, modify and create derivative works from any Background Intellectual Property in respect of any of the actions referred to in (a); and,
 - (d) sublicense any or all rights granted to ONTC under this section to any person who provides goods or services to ONTC in respect of any of the actions referred to in (a).
30. **Moral Rights.** The Consultant waives all Moral Rights in the Work Product as against ONTC, and its successors, assigns and licensees. The Consultant shall ensure that anyone other than the Consultant who has any Moral Rights in the Work Product, waives all such Moral Rights as against the Consultant and ONTC.
31. **Representations.** The Consultant represents and warrants to ONTC as follows:
- (a) there is not a claim, demand or suit respecting any part of the Work Product, the Intellectual Property or the Background Intellectual Property.
 - (b) there is no potential claim, demand or suit that the Consultant is aware of respecting the Work Product, the Intellectual Property or the Background Intellectual Property, in whole or in part, that could affect the performance, function or use of the Work Product, Intellectual Property or Background Intellectual Property, in whole or in part, as intended by this Agreement.
 - (c) before transferring ownership in the Work Product to ONTC, the Consultant is the exclusive owner of, and has good and marketable title to, all the Work Product. Except in regard to the Background Intellectual Property, there is no ownership interest,

agreement option or other right, title, benefit, interest or privilege outstanding in favour of any person for the purchase or licence from the Consultant of, or any lien in favour of any other person in, any of the Work Product.

(d) the Consultant has the right to grant the licence rights in the Background Intellectual Property and will obtain such rights from subcontractors as required to comply with section 29.

32. **Third Party Intellectual Property Rights.** The Consultant shall be liable for and indemnify and hold harmless ONTC against any liability, whether direct or indirect, or Losses arising out of a claim by any third party against ONTC alleging that the Intellectual Property in the Work Product and its use by ONTC, infringes any third party Intellectual Property rights. This section shall survive the termination of this Agreement.
33. **Infringement Defence.** ONTC shall have the first right to conduct and exercise sole control of any defense of an alleged violation or infringement by a third party of the Intellectual Property in the Work Product. ONTC shall have the sole right to instruct counsel with respect to all steps in such litigation, including the settlement thereof, after consulting in good faith with the Consultant. The Consultant shall co-operate in any such proceeding by providing relevant documents, testimony, and such other assistance as may reasonably be requested by ONTC from time to time.

CONFIDENTIAL INFORMATION.

34. **Use of Confidential Information.** The Receiving Party shall use Confidential Information only for the purposes of this Agreement. Except as provided in this Agreement or in writing by the Disclosing Party, the Receiving Party shall keep confidential all Confidential Information disclosed to it by the Disclosing Party. The Receiving Party shall not copy or transcribe into another form, any Confidential Information received from the Disclosing Party except as reasonably necessary. The Receiving Party shall protect the Confidential Information disclosed to it by the Disclosing Party in the same manner and to the same extent that it protects its own Confidential Information.
35. **Destruction of Confidential Information.** Upon the termination of this Agreement, or earlier upon the request of the Disclosing Party, the Receiving Party shall promptly destroy or return (as directed by the Disclosing Party) all copies of the Confidential Information disclosed to the Receiving Party. Notwithstanding the aforementioned, the Parties shall be entitled to retain one (1) copy of the Confidential Information for legal purposes. The Parties agree that the obligations under this section will continue to bind the Parties and shall survive the termination of this Agreement, as it relates solely to the retained copy of the Confidential Information.
36. **Disclosure of Confidential Information.** The Receiving Party may disclose Confidential Information if:
- (a) the Disclosing Party consents;
 - (b) the Receiving Party is required by law to disclose it; or
 - (c) the Confidential Information is generally and publicly available.

If the Receiving Party is required by law to disclose Confidential Information, it shall promptly notify the Disclosing Party so that the Disclosing Party may intervene to prevent the disclosure.

37. **Receiving Party Parties.** The Receiving Party shall ensure that all Receiving Party Parties comply with all the provisions of this Agreement relating to Confidential Information and the Receiving Party shall be responsible for any failure by any Receiving Party Parties to do so.
38. **FIPPA.** The Consultant specifically acknowledges that ONTC is subject to FIPPA and that ONTC may be compelled to disclose certain Confidential Information in accordance with it.
39. **Breach.** If either Party breaches any provision of this Agreement relating to Confidential Information, it shall immediately give Notice of such breach to the other Party and take all necessary steps to limit the extent and impact of the breach.
40. **Injunction.** The harm that would be suffered by a Party in the event of a breach of the provisions of this Agreement relating to Confidential Information by the other Party, including without limitation an unauthorized release of Personal Information, would not be compensable by monetary damages alone. Therefore, a Party shall be entitled, in addition to any other remedies, to seek an injunction against any breach or threatened breach of any such provision.
41. **Survival.** The provisions of this Agreement relating to Confidential Information will remain in effect after the expiry or other termination of this Agreement.

CHARGEABLE AMOUNTS

42. **Amounts.** The Consultant may charge ONTC, for the provision of the Services, the amounts set out in Schedule B plus any applicable taxes.
43. **Upset Limit.** Notwithstanding anything to the contrary contained in this Agreement, ONTC is not required to pay, for the total of all fees charged pursuant to this Agreement, any amount greater than XXX plus applicable taxes, unless such amount is agreed to by the parties through the Change Order Process or by an amendment to this Agreement.
44. **Disbursements and Expenses.** The Consultant shall, at its sole cost, and at no cost to ONTC, except as specifically provided in this Agreement or agreed to by ONTC in writing, obtain and supply all work, labour, Personnel, travel, plant, accommodations, equipment, materials, supplies and administrative, technical or other support necessary to provide the Services, including insurance, local or long distance telephone, facsimile, postage, or other communication costs, and photocopying, printing or other reproduction costs. For greater certainty, the Consultant shall not, unless specifically agreed to by ONTC in writing, charge any such expenses to ONTC and such expenses are deemed to be included in the Price.
45. **Travel Costs.** ONTC will pay travel costs for the Consultant's Personnel which are preapproved in writing by ONTC in the amounts and subject to the provisions of the Management Board of Cabinet Travel, Hospitality and Meal Directive effective January 2020.
46. **Discontinuance of Services.** Notwithstanding anything to the contrary contained in this Agreement, if ONTC decides at any time, for any reason, to discontinue part or all of the Services, the Consultant shall not charge ONTC for any amount over and above the chargeable fees and disbursements incurred in respect of such discontinued portion of the Services up to the date that ONTC gives the Consultant Notice of the decision to discontinue that portion of the

Services, or a later date if work, already commenced by the Consultant, cannot reasonably be discontinued until such later date.

INVOICES

47. **Submission of Invoices.** The Consultant shall submit its invoice for the performance of the Services to ONTC in accordance with the milestones and payments agreed to by the Parties in Schedule B. Invoices shall be submitted to the ONTC Representative and to pay.inv@ontarionorthland.ca. ONTC will review the invoices and, if approved, process the same for payment subject to any dispute or right of set off by ONTC. Any disputed items will promptly be brought to the attention of the Consultant.
48. **Content of Invoices.** All invoices shall be fully detailed in its makeup, accompanied by all substantiating details requested by ONTC and must show the applicable taxes as a separate line item and in sufficient detail, a cumulative invoiced to date figure and a monthly updated anticipated forecast final account figure.
49. **No Acceptance.** No payments made by ONTC under this Agreement shall constitute an acceptance of any portion of the Services which is not in accordance with the requirements of this Agreement.
50. **Records and Audit.** The Consultant shall maintain up-to-date and accurate records, which clearly identify the Consultant's time and expenses in respect of Services to be paid in accordance with this Agreement. If requested by ONTC, the Consultant shall make available to ONTC full accounts, records, receipts, vouchers and documents for the purpose of substantiating its charges related to the Services.
51. **Payment.** Except as otherwise provided for in this Agreement, ONTC shall, within thirty (30) days after receipt of an invoice, pay the Consultant the properly charged amounts shown on the invoice.
52. **Invoice Review.** Despite any other provision in this Agreement, ONTC may obtain a review of any invoice rendered by the Consultant and is not required to pay such invoice until the review has been completed. ONTC is not required to pay any interest on any invoice in respect of any time during which such invoice is under review.

INDEMNITY AND LIMITATION OF LIABILITY

53. **General Indemnity.** The Consultant 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 Consultant or as a result of any breach of the terms of this Agreement by the Consultant or by any act or omission of the Consultant or Consultant Parties or those for whom the Consultant is at law responsible, 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, ONTC Parties or those for whom it is in law responsible. The Consultant 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.

54. **Specific Indemnities.** The Consultant shall indemnify ONTC and ONTC Parties and save them harmless 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 Consultant Parties is an employee of ONTC; or (ii) ONTC is liable to pay statutory contributions or deductions in respect of any of the Consultant 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 Consultant or Consultant Parties may have during or after the term of this Agreement;
 - (c) any claim by any third party against ONTC alleging that the Work Product and its use by ONTC infringes any Intellectual Property Rights;
 - (d) any claim against ONTC arising from the failure of the Consultant to protect the confidentiality of Confidential Information; and
 - (e) safety infractions committed by the Consultant under health and safety legislation, regulations, guidelines or orders, including the *Occupational Health and Safety Act*.
55. **Bodily Injury and Property Damage.** The Consultant shall make full and complete compensation for any bodily injury or death to any person and for any damage caused to ONTC's physical property by an act or omission of the Consultant or a Consultant Party during the provision of the Services.
56. **Consultant Losses.** The Consultant shall be liable for any claims arising from any personal injuries to or death of any of the Consultant Parties or from any loss of or damage to any property belonging to the Consultant or Consultant Parties during the provision of the Services unless caused by the negligent act or omission of ONTC or ONTC Parties.
57. **Waiver.** The Consultant 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 Consultant or Consultant Parties and for any loss or damage of the Consultant unless caused by the negligent act or omission of ONTC or ONTC Parties.
58. **Limitation of Liability.** Notwithstanding any other provision of this Agreement,
- (a) neither Party shall be responsible for indirect, consequential, special, incidental or contingent damages of any nature whatsoever, including loss or revenue or profit. This limitation shall apply regardless of the form of action, damage, claim, liability, cost, expense or loss, whether in contract (including fundamental breach), statute, tort (including negligence), or otherwise, and regardless of whether a Party 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 or Renewal 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.

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

INSURANCE

60. **Insurance Coverage.** Without restricting the generality of the provisions in this Agreement related to indemnification, the Consultant 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 and satisfactory to ONTC:

- (a) Commercial General Liability Insurance with a limit of not less than five million dollars (\$5,000,000) inclusive per occurrence, with no limitations on or exclusions from coverage arising from working on or around railway property, including environmental and pollution liability, bodily injury, personal injury, death and damage to property, including loss of use thereof, in a form satisfactory to ONTC and endorsed to provide “Ontario Northland Transportation Commission” with not less than thirty (30) days’ notice, in advance, of any cancellation, change or amendment restricting coverage and including “Ontario Northland Transportation Commission” as an additional insured; and,
- (b) Automobile Liability Insurance with a limit of not less than two million dollars (\$2,000,000) inclusive per occurrence, including bodily injury, death and damage to property, endorsed to provide “Ontario Northland Transportation Commission” with not less than thirty (30) days’ notice, in advance, of any cancellation, change or amendment restricting coverage and in the following forms: standard owner’s form automobile policy providing third party liability and accident benefits insurance and covering licensed vehicles owned or operated by or on behalf of the Consultant, and standard non-owned automobile form policy including standard contractual liability endorsement.
- (c) Professional Liability Insurance with a limit of not less than two million dollars (\$2,000,000) inclusive per occurrence; and subject to an annual aggregate of not less than two million dollars (\$2,000,000).

61. **WSIB.** If the Consultant is subject to the *Workplace Safety and Insurance Act*, it shall submit a valid Workplace Safety and Insurance Board clearance certificate of Workplace Safety and Insurance Act coverage to ONTC upon request.

62. **No Waiver.** If ONTC fails to demand any certificate for insurance, or otherwise fails to demand other evidence of full compliance with this part or fails to identify a defect from evidence provided, ONTC has not waived, and ONTC will not be deemed to have waived, any of the Consultant’s obligations regarding insurance. The Consultant will ensure that each insurer which provides insurance will, as applicable, provide a waiver of subrogation to ONTC.

COMPLIANCE WITH LAW AND POLICIES

63. **Compliance with Laws.** The Consultant shall comply with all applicable federal, provincial and

local laws, regulations and rules and all public health directions, guidelines and orders.

64. **ONTC Policies.** While on ONTC property, the Consultant shall comply with all applicable laws and with applicable ONTC policies, including its Fit for Duty Policy.

CONFLICT OF INTEREST

65. **Conflict of Interest.** The Consultant shall:
- (a) avoid any Conflict of Interest in the performance of the Services and execution of this Agreement; and
 - (b) immediately disclose to ONTC any actual or potential Conflict of Interest that arises during the performance of the Services and execution of the Agreement.
66. **Resolution of Conflict of Interest.** If a potential or actual Conflict of Interest of the Consultant arises during the Consultant's provision of the Services,
- (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 Consultant should resolve the Conflict of Interest; and
 - (c) ONTC may terminate the Agreement immediately upon Notice to the Consultant if the Consultant fails to disclose any actual or potential Conflict of Interest, if the Consultant fails to resolve its Conflict of Interest as directed by ONTC or if ONTC determines that the Conflict of Interest cannot be resolved.

FORCE MAJEURE, SUSPENSION AND TERMINATION

67. **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 (5) 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

68. **Early Termination.** This Agreement may be terminated early as follows:
- (a) by the mutual written agreement of the parties;

- (b) by ONTC immediately if the Consultant 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 Consultant 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 Consultant within thirty (30) days of providing written Notice to ONTC detailing the nature of such failure and requiring that such failure be remedied.

69. **Immediate Termination.** This Agreement will terminate immediately upon:

- (a) the winding up or dissolution of the Consultant; or
- (b) subject to the provisions of the *Bankruptcy and Insolvency Act*, RSC 1985, c. B-3, the Consultant 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.

70. **ONTC Remedies.** Without limiting the right of ONTC to pursue any remedy available to it in law, if this Agreement is terminated early for any reason other than those described in section 68(a) or (d), then:

- (a) ONTC is excused from further performance under this Agreement;
- (b) any money payable by the Consultant 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 Consultant, cannot reasonably be discontinued until such later date;
- (d) ONTC shall retain any rights, powers and remedies it has or may have against the Consultant; and
- (e) ONTC may enter an agreement with another person to provide the balance of the Services. The Consultant shall be liable for all costs incurred by ONTC in having the Services completed by another person(s).

DISPUTE RESOLUTION

71. **Dispute Resolution Process.** All unresolved claims, disputes or controversies of any kind arising out of or in connection with this Agreement or the provision of the Services (hereafter referred to as the "**Dispute**") shall be resolved in a tiered approach as follows:

- (a) A Dispute shall be referred to ONTC's project manager for the Project and an employee of the Consultant of the equivalent seniority or position for resolution within a period not to exceed thirty (30) days;
- (b) If unresolved, after following the process described in (a), the Dispute shall be referred

to the ONTC Vice President who is responsible for the Project and an employee of the Consultant of the equivalent seniority or position for resolution within a period not to exceed thirty (30) days;

- (c) If unresolved after following the process described in (b), and only at the election of ONTC, the Dispute shall be referred to the CEO of ONTC and the most senior executive employee of the Consultant for resolution within a period not to exceed thirty (30) days. If ONTC does not elect, at its sole option, to proceed under this paragraph, the Dispute shall proceed to the next step as described in section 72.

- 72. **Mediation.** If the Dispute remains unresolved despite the Parties attempting to resolve it following the process in section 71 (a) to (c), a Party may elect to proceed with the Dispute under a mediation model to be agreed upon by the Parties. A Party shall elect to proceed to mediation no later than ten (10) days following the expiry of the timeline set out in section 71 (b) or (c), whichever is the later. If a Party elects to proceed with mediation, the other Party shall be bound to proceed to mediation. No later than ten (10) days, or as may be amended by mutual agreement of the Parties, after a Party makes an election to proceed to mediation, the Parties shall enter into a mediation agreement which shall set out the mediation process and designate the mediator.
- 73. **Arbitration.** If neither Party elects to proceed to mediation within the timelines outlined in section 72 or the Parties are unable to enter into a mediation agreement within the time limits, the matter shall proceed and be finally resolved by binding arbitration in accordance with the *Arbitration Act*, 1991, S.O. 1991, c. 17 (hereafter referred to as the “**Act**”) by a single arbitrator as amended by an arbitration agreement to be executed by the Parties and the arbitrator. The Parties shall mutually agree on the selection of the arbitrator, failing which the arbitrator shall be appointed in accordance with the Act. The arbitration proceedings shall take place in North Bay, Ontario, Canada. The language of the arbitration shall be English. The Parties agree that any arbitration award, including with respect to costs, shall be binding on the Parties, may be enforced in any court of competent jurisdiction and shall be final and no appeals or judicial reviews shall be permitted as of right or by application to any court of competent jurisdiction, except on errors of law. The Parties shall each bear their own costs and their proportionate share of any joint costs of arbitration, subject to any award of an arbitrator.
- 74. **Time.** The timelines in sections 71 and 72 may be amended by mutual agreement of the Parties.

CORRUPTION, FORCED LABOUR, SANCTIONS

- 75. The Consultant 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 Agreement with the Consultant.
 - (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 Consultant

becomes aware of an actual or attempted bribe, extortion, delay or obstruction relating to this Agreement, the Consultant 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 Consultant.
- (d) 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 Consultant shall comply with the reporting requirements under the Fighting Against Forced Labour and Child Labour in Supply Chains Act, S.C. 2023 c.9.

76. 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 Consultant 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 Consultant 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 Consultant, including excess re-procurement costs.

COMMUNICATIONS

77. ONTC or the Government of Ontario will lead and make any announcements relating to this Agreement and the Services. The Consultant shall not make any announcement of any kind, including press releases, social media posts, public declarations, or any form of publication or announcement, in relation to this Agreement or the Services unless prior written consent is given by ONTC. Should the Consultant be contacted by any media outlet or other person or entity wishing to make any form of publication or announcement, or seeking any information, in relation to this Agreement or the Services, the Consultant shall provide no comment and shall immediately notify ONTC. The Consultant shall immediately notify ONTC if it becomes aware of any publication or announcement relating to the Agreement or the Services

GENERAL

78. **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.

79. **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: XXX

T:
E:

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

To the Consultant at:

XXX

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

80. **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.
81. **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.
82. **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.
83. **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 Consultant as though such section or part or parts thereof had never been included in this Agreement.
84. **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.
85. **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.

86. **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 duly executed this agreement.

ONTARIO NORTHLAND
TRANSPORTATION COMMISSION

Per: _____
Name: **XXX**
Title: **XXX**

Date: _____

I have authority to bind the corporation.

XXX

Per: _____
Name:
Title:

Date: _____

I have authority to bind the corporation.

Schedule A

Scope of Work - Non-Union Salary Structure and Compensation Review

1. Receiving and Reviewing Available Job Documents

- Collect and analyze all available job descriptions, job evaluations, and organizational charts for:
 - ~8 Executive Positions
 - ~14 Director Positions
 - ~114 Management Positions
 - ~140 Individual Contributor Positions.
- Review and categorize job documents by position level
- Identify any missing or outdated job descriptions and request updates as needed.
- Assess current job description questionnaire template and ensure it meets current state needs

2. Facilitating Remote Conference Calls with Executives & Senior Leaders

- Engage with Ontario Northland Executive and Senior Leadership team to gather insights and ensure alignment on and understanding of the evaluation process.
- Schedule and facilitate conference calls with executives.
- Present and discuss preliminary evaluation results and gather feedback.
- Document executive insights and recommendations.

3. Executive Compensation Assessment

- Provide an analysis of the impact of changes or planned changes to the executive structure, including the addition of new roles from existing Executive Compensation plan.
- Conduct a comprehensive benchmarking analysis of the existing executive compensation plan, using relevant industry, sector and geographic data. Ensure the comparison includes both base salary and total compensation packages
- Analyze any salary compression issues resulting from the overall compensation and salary structure review particularly focusing on executive roles in relation to non-executive roles. Provide specific recommendations to address and resolve identified compression issues, ensuring equitable pay structures across all levels of the company.
- Incorporate flexibility in the evaluation process to ensure the compensation structure can accommodate future growth and changes to the executive team. This will include providing recommendations on how future roles can be structured and compensated within the existing framework, ensuring bandwidth for scaling executive leadership in alignment with organizational strategy.
- Ensure the compensation framework can support future roles, such as the potential addition of a Chief Operating Officer, and provide analysis on the impact of such changes on the overall executive compensation structure.

4. Revising Evaluations and Determining Grade Designations

- Refine initial evaluations based on feedback and determine appropriate grade designations.
- Revise job evaluations as applicable.
- Assign grade designations to each position based on revised evaluations.
- Ensure consistency and internal equity in grade designations.

5. Market Analysis

- Conduct a market analysis to benchmark Ontario Northland's compensation structure against relevant industry standards.
- Collect compensation data from comparable organizations
- Analyze market trends and salary ranges for similar positions.
- Provide a detailed report on market competitiveness.

6. Compression Analysis

- Identify any salary compression issues within the organization.
- Analyze internal salary data to identify compression risks
- Provide recommendations to address any identified compression issues, including any areas where org structure is impacting compression

7. Providing an Excel File of Evaluations and Grade Designation

- Compile and deliver the evaluation results and grade designations in an organized Excel file.
- Create an Excel file with detailed evaluations and grade designations.
- Assess and provide recommendations for advanced solutions that facilitate the ongoing maintenance of job evaluations, the addition of new roles, and overall salary structure management.

8. Reviewing the Excel File via Remote Call

- Review the compiled Excel file with the Ontario Northland project team to ensure accuracy and completeness
- Schedule remote call with the project team.
- Walk through the Excel file and address any questions or concerns.
- Make necessary adjustments based on feedback.

9. Finalizing Evaluations and Grades

- Finalize the job evaluations and grade designations.
- Incorporate any final adjustments.
- Ensure all data is accurate and complete
- Prepare the final version of the Excel file.

10. Providing the Final Excel File

- Deliver the finalized Excel file to the Ontario Northland project team.
- Send the final Excel file via secure means.

- Provide any necessary documentation or instructions for future reference.

11. Specialized Roles and Geographic Considerations

- Provide tailored recommendations for specialized roles and consider geographic factors in compensation planning.
- Identify positions that are difficult to fill due to specialization or geographic location (e.g., IT, engineering, remote locations).
- Recommend appropriate compensation percentiles to attract and retain talent, considering northern location challenges.
- Evaluate the competitiveness of current compensation structures for these roles and suggest adjustments
- Propose, if recommended, a separate schedule for regular market analysis reviews for these specialized groups to ensure ongoing competitiveness.

12. Review of Salary Administration Policy for Non-Union Employees

- Review and make recommendations to the Salary Administration Policy for non-union and management employees,

13. Recommendations for Future Consideration

- Offer guidance on maintaining competitive compensation practices for specialized and high-demand roles.
- Provide recommendations on the frequency of compensation reviews for specialized roles (e.g., annual reviews for IT positions)
- Suggest strategies for aggressive talent competition management.
- Develop guidelines for establishing a differentiated pay schedule for unique roles.
- Recommend ongoing monitoring and adjustments based on market trends and organizational needs.

14. Support and Follow-Up

- Provision for post-project support and follow-up consultations if required.

Schedule B

Consultant's Submission