

February 13, 2025**Addendum No. 02****File Reference Number: RFP 2025 001****Title: Business Case Development Support****RE: Clarifications/Questions**

Please refer to the following information/clarification:

Item 1: Would ONTC consider a revised pricing evaluation that focuses on the resource mix by level of seniority that the vendor would deploy to a typical business case assignment and the relative weighting of each level as a percentage contribution to the project (e.g., Director / \$X per hour / X% of the total resource mix by time)?

Answer: ONTC will proceed with the pricing evaluation and forms as identified in the RFP. ONTC expects that the team proposed will have the expected expertise and knowledge to successfully complete the Business Case mandates across all operational divisions.

Item 2: Term (Pricing Validity and Adjustments): Given that the Agreement will commence for a term of one year, with the possibility of extending for two additional one-year terms upon notice (as outlined in the RFP), could you please clarify whether the pricing proposed is for the initial term only? Additionally, if the Agreement is extended into the Renewal Terms, will there be an opportunity to negotiate reasonable adjustments to the pricing?

Answer: The hourly rates being submitted will be for the original one (1) year term of the contract. The hourly rates for any renewal term shall be as agreed upon by the parties, provided that any hourly rate increase shall not exceed the CPI for the previous term or renewal term.

Please note that ONTC has amended Section 45 of the draft form of Agreement located at Part 5 of the RFP. Please replace Part 5 of the RFP package with the Part 5 attached to this Addendum No .02.

Item 3: Personnel Management: The RFP states that the Consultant shall provide services through personnel approved in writing by ONTC, and that changes to personnel require prior written approval (Schedule B). Given that the Respondent has no control over the employee turnover, would it be permissible to replace personnel with individuals who possess similar skill sets, subject to ONTC's approval?

Answer: Yes, that would be permissible.

Item 4: Personnel Management: The RFP indicates that the Consultant is responsible for obtaining regulatory approvals as may be required and must submit applications through ONTC. Could you provide examples of the types of regulatory approvals that may be required under this agreement?

Answer: Please note that ONTC has intentionally deleted Section 22 from the draft form of Agreement located at Part 5 of the RFP. This amendment has been reflected in the updated Part 5 attached to this Addendum No. 02.

Item 5: Scope of Services: We understand that ONTC is requesting services related to business case development. Given that some of the scope of work is related to new business case development, while other requirements relate to updating existing business cases, could ONTC provide some details related to what components of the business case would be expected for updates?

Answer: Many of the business cases are in different stages, thus updates required would be further discussed with successful proponent.

Item 6: Scope of Services: We understand that scenarios of business cases have been provided for reference. Can you please provide some additional detail on the scope of business cases ONTC may require support with, so that we may reference our experience across a variety of areas?

Answer: The scope of business cases may encompass any strategic, operational or capital requests from any division within our organization, including, but not limited to, Rail Freight, Rail Passenger, Motor Coach Services, Repair and Remanufacturing Services, Hotel Services, and Corporate Services.

Item 7: Experience and Qualifications: The RFP requests that the Respondent provide a minimum of three (3) detailed case studies or examples of relevant business cases completed/pertinent experience. Does the project experience need to align with experience related to development of business cases for facility expansion and/or train crew scheduling software selection?

Answer: No, the business case examples can be from any prior experience.

This Addendum hereby forms part of the RFP.

Regards,

Ashley Commanda
Manager, Public Procurement
Ashley.commanda@ontarionorthland.ca



PART 5

REQUEST FOR PROPOSALS

DRAFT AGREEMENT

CONSULTING MASTER SERVICES AGREEMENT

THIS CONSULTING MASTER SERVICES AGREEMENT is made **XXX** (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**” has the meaning set out in section 23;

“**Confidential Information**” includes information, including Personal 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” mean items for each Mandate that are to be provided by the Consultant as described in the Statement of Work for each Mandate;

“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;

“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, a Mandate, or this Agreement, whether in contract, tort or otherwise;

“Mandate” means an individual project for which Services are required under this Agreement, and for which a Statement of Work is prepared;

“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 and **“ONTC Party”** means any one of them;

“ONTC’s Requirements” consists of written requirements and information provided by ONTC to the Consultant for the Services or a Mandate;

“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 amount to be paid by ONTC for the Services to be provided under a Mandate, as set out in the Statement of Work;

“Privacy Laws” means any applicable law related to privacy or protection of Personal Information, including without limitation FIPPA;

“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;

“Standard of Care” has the meaning set out in Section 9;

“Statement of Work” means the description of the Services, Workplan, Deliverables and Price under each Mandate as agreed by the Parties, and as developed pursuant to Section 11;

“Workplan” means the workplan and schedule contained in a Statement 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; and
 - (c) Schedule C – Fees/Hourly Rates.

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) Statement of Work for a Mandate;
 - (b) the body of this Agreement;
 - (c) Schedule A (Scope of Work);
 - (d) Schedule B (Consultant’s Submission);
 - (e) Schedule C (Fees/Hourly Rates); and,
 - (f) 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 a Mandate, 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. The Services shall be provided as required by ONTC. ONTC is not guaranteeing any minimum level of use of the Services. ONTC’s retainer of the Consultant to provide the Services is not exclusive. ONTC may engage other Consultants to provide all or part of the Services or similar services at its sole discretion. The Consultant shall provide all reasonable cooperation as may be required by such third parties.

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 an amendment to the Agreement a Change Order.

7. **Term.** This Agreement will commence on the Effective Date and will remain in full force and effect for one (1) year, unless earlier terminated pursuant to the provisions of this Agreement (the “Term”). ONTC may extend the Term for two (2) additional terms of one (1) year each (a “Renewal Term”) upon providing Notice to the Consultant not later than 30 days prior to the

expiry of the Term or Renewal Term as the case may be.

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, and shall give ONTC the full benefit of its skills, qualification, experience, knowledge and professional expertise (the "**Standard of Care**"). 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 Statement of Work.** For each Mandate, ONTC shall provide the Consultant with a description of the Services required for that Mandate. Within fourteen calendar days of receipt of the Mandate description, the Consultant shall, in consultation with ONTC, prepare and present to ONTC a proposal, in the form requested by ONTC, for the provision of the Services, which proposal shall include, unless agreed otherwise, the scope of work, Deliverables, assigned Personnel, Workplan and the Price. The parties shall confirm

in writing their agreement, once reached, which shall be the Statement of Work. Any changes to the Statement of Work shall be made pursuant to a Change Order.

12. **Defective Services.** ONTC shall be the sole judge of the adequacy of the Services received and their value. If ONTC determines that any Services or Deliverables are not in conformity with the terms and conditions of this Agreement or a Mandate including the Standard of Care, ONTC shall advise the Consultant who shall, except as otherwise provided in this Agreement, immediately correct at its own cost and expense the defective Services or Deliverables, except to the extent such non-conforming Services or Deliverables were caused by a person who is not a Consultant Party. Provided that if the quality of the Services or Deliverables is such that ONTC determines that the Consultant is not able to provide the Services in accordance with the Standard of Care or within the terms of this Agreement or a Mandate, ONTC may terminate this Agreement in accordance with the early termination provisions of this Agreement. Even if the Consultant disputes that the Services or Deliverables are defective, 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.
13. **Reports.** The Consultant shall, at the times specified by ONTC in the Statement of Work for a Mandate, and at other times as specified by ONTC, provide reports to ONTC, in a form and substance satisfactory to ONTC, about the Services and the Mandates, which reports shall include but not be limited to:
 - (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. **Workplan and Schedule.** Subject to any changes made pursuant to a Change Order or Force Majeure event, the Consultant shall provide the Services within the time specified in the relevant Statement of Work 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. **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.
17. **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.
18. **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.
19. **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.
20. **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.
21. **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.
22. **Regulatory Approval.** [Intentionally Deleted]

CHANGES AND DEFECTS

23. **Changes.** Changes of any kind to the Services under a Mandate 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"). ONTC may at any time by issuing a Change Order make a

change in the Services to be provided under a Mandate. 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/Fees in Schedule C 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.

24. **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

25. **Intellectual Property Rights.** All rights to the Intellectual Property which forms part of the Work Product, excluding the Background Intellectual Property, 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, excluding the Background Intellectual Property, in perpetuity and throughout the world, to ONTC and its successors and assigns.
26. **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 excluding the Background 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.
27. **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).
28. **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.

29. **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.
30. **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.
31. **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.

32. **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.
33. **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.

34. **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.

35. **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.
36. **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.
37. **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.
38. **Survival.** The provisions of this Agreement relating to Confidential Information will remain in effect after the expiry or other termination of this Agreement.

PERSONAL INFORMATION

39. **FIPPA.** The Consultant specifically acknowledges that ONTC is subject to FIPPA, and that ONTC may be compelled by law to disclose certain information provided by the Consultant. All information, data, records and materials, however recorded, which has been provided by ONTC to the Consultant in relation to this agreement and which are in the custody or control of ONTC, including Confidential Information and Personal Information are subject to FIPPA (collectively, "FIPPA Records"). For the purposes of this definition, ONTC documents held by the Consultant in connection with this Agreement are considered to be in the control of ONTC. The Consultant shall provide to ONTC any and all FIPPA records within seven (7) business days from the date of ONTC's notice to the Consultant to provide them for the purposes of responding to an access request under FIPPA. ONTC shall in its sole discretion determine what FIPPA records will be disclosed in connection with an access request, in accordance with the requirements of FIPPA. Where the Consultant is collecting Personal Information on behalf of ONTC, the Consultant must comply with the provisions in FIPPA regarding the collection, retention, use, disclosure and disposal of Personal Information.
40. **Purpose.** Personal Information may be received by, created, collected, processed, used,

maintained, disclosed, or disposed of by the Consultant only for the purpose of providing the Services under the Agreement, and in strict compliance with Privacy Laws and ONTC policies related to the protection of Personal Information.

41. **Security.** The Consultant will implement appropriate technical and organizational measures designed to keep Personal Information secure and to prevent any accidental or unlawful destruction, loss, alteration, unauthorized disclosure of, or access to Personal Information. The Consultant shall advise ONTC promptly of any anticipated or actual loss of Personal Information.
42. **Third Party.** The Consultant shall not disclose or transfer any records containing Personal Information to a third party except with the informed prior written consent of ONTC.
43. **Return.** The Consultant shall return all of ONTC's Personal Information when this Agreement ends or earlier if requested by ONTC.
44. **Survival.** The provisions of this Agreement relating Personal Information will remain in effect after the expiry or other termination of this Agreement.

CHARGEABLE AMOUNTS

45. **Amounts.** The Consultant may charge ONTC, for the provision of the Services, the Price for each Mandate as set out in the Statement of Work, plus any applicable taxes which shall be based on the hourly rates set out in Schedule B. The hourly rates for any Renewal Term shall be as agreed upon by the parties, provided that any hourly rate increase shall not exceed the CPI for the previous Term or Renewal Term, as the case may be.
46. **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 One Million Dollars (\$1,000,000) CDN (including HST) over the Term, or over any Renewal Term, unless such amount is agreed to by the parties through a Change Order or by an amendment to this Agreement.
47. **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.
48. **Travel Costs.** ONTC will only 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.
49. **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

50. **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 a Statement of Work. 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.
51. **Content of Invoices.** All invoices shall be fully detailed in their 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.
52. **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 the relevant Mandate.
53. **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.
54. **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 for the Services, as shown on the invoice.
55. **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

56. **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.

57. **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*.
58. **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.
59. **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.
60. **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.
61. **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.

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

INSURANCE

63. **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;
 - (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; and
 - (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).
64. **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.
65. **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

66. **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.

67. **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

68. **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.

69. **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

70. **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

71. **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.

72. **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.

73. **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 71 (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).

ADDITIONAL WARRANTIES

74. **Anti-Corruption.** The Supplier warrants that 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 the Agreement with the Supplier.

75. **Bribery.** The Supplier warrants that it will take reasonable steps to ensure that its officials and employees do not extort, accept or pay bribes or illicit payments, charge or accept fees that are not legally due or are in excess of those legally due, or unreasonably delay or obstruct the granting of permits, licences, or other such approvals in relation to the project. If the Supplier becomes aware of an actual or attempted bribe, extortion, delay or obstruction relating to the Agreement, the Supplier shall report the incident to ONTC immediately.

76. **Forced Labour.** The Supplier warrants that it is unaware of any forced labour or child labour being used at any step of the production of goods produced or services purchased or

distributed by it in Canada or elsewhere or for the production of goods or services imported by the Supplier. The Supplier warrants that it has undertaken the appropriate due diligence to ensure its business and its supply chains do not use forced labour or child labour, including an assessment of its business and supply chains that may carry a risk of forced labour or child labour being used and the management of the risk. If applicable, the Supplier shall comply with the reporting requirements under the *Fighting Against Forced Labour and Child Labour in Supply Chains Act, S.C. 2023 c.9*.

77. **Sanctions.** In compliance with its international obligations or with United Nations obligations, Canada imposes restrictions on trade, financial transactions or other dealings with a foreign country or its nationals. These sanctions may be implemented by regulation under such acts as the *United Nations Act*, the *Special Economic Measures Act (SEMA)*, or the *Export and Import Permits Act*. The text of any such regulations is published in the Canada Gazette, Part II. It is the only text which is authoritative. The Supplier shall comply with any such regulations that are in force on the effective date of the Agreement and will require such compliance by its first-tier subcontractors.
78. **Reliance.** ONTC relies on the warranties from the Supplier in sections 52 to 55 in entering into the Agreement, and any breach of such undertaking shall entitle ONTC to terminate the Agreement for default and to recover damages from the Supplier, including excess re-procurement costs.

COMMUNICATIONS

79. 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

80. **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.
81. **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.

82. **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.
83. **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.
84. **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.
85. **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.
86. **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.
87. **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.

88. **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

1. Objectives

The primary objectives of this engagement are:

- To provide as-needed support for developing high-quality, evidence-based business cases aligned with organizational goals.
- To assist in completing partially developed business cases, ensuring alignment with strategic priorities.
- To provide expert input, analysis, and recommendations for specific business case projects or sections as required.

2. Scope of Work (SOW)

The consultant will be responsible for the following:

1. Business Case Development

- Initial Business Cases: Collaborate with relevant stakeholders to create well-structured and evidence-based business cases from scratch.
- Detailed Business Cases: Develop comprehensive business cases that include strategic, economic and financial case, which includes items such as risk assessments, implementation plans, cost-benefit analysis, and key performance indicators.
- Completion of Existing Business Cases: Review and finalize business cases that are currently in progress, ensuring alignment with organizational objectives and standards.

2. Stakeholder Engagement

- Conduct interviews, workshops, or focus groups with key stakeholders to gather input and ensure alignment with organizational needs.
- Present draft and final deliverables to project sponsors and relevant teams for feedback and approval.

3. Deliverables

The consultant is expected to deliver the following:

1. Business Cases:

- Completed versions of requested business cases (initial or detailed).
- Finalized versions of partially developed business cases.

2. Ad-Hoc Reports:

- Specific sections, analyses, or recommendations for business cases as needed.

3. Status Updates:

- Regular updates on progress for ongoing assignments.

4. **Consultant Qualifications**

The consultant will have:

- Proven experience in developing business cases for organizations of similar size and complexity.
- Experience in the following industries: Rail Freight Transportation, Passenger Services and Remanufacturing.
- Expertise in financial analysis, risk assessment, and strategic planning.
- Strong communication and facilitation skills to engage with diverse stakeholders effectively.

5. **Mandate Timeline**

This will be a flexible, on-demand engagement over a period of up to three years, with tasks and timelines determined based on organizational needs. Specific deadlines for deliverables will be agreed upon for each task or project.

Schedule B

Consultant's Submission