

ONTARIO NORTHLAND TRANSPORTATION COMMISSION (ONTC)
PURCHASE ORDER TERMS AND CONDITIONS FOR SUPPLY OF GOODS AND/OR SERVICES

APPLICATION

1. **Application.** These Terms apply to the Contract for the procurement of Goods and/or Services by ONTC from the Supplier.
2. **Supplier's Terms Excluded.** If the Supplier's terms and conditions are supplied to ONTC in respect of the Goods or Services (including as printed on consignment notes or other documents), those terms and conditions will be of no legal effect and will not constitute part of the Contract Documents (even if any representative of ONTC signs those terms and conditions or annexes the terms and conditions to the Contract Documents) unless ONTC expressly agrees in writing to be bound by all or any of the terms and conditions.

DEFINITIONS

3. In these Terms (unless the context otherwise requires):

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

"Confidential Information" means all information of ONTC that is confidential by its nature or in the circumstances in which it is received, including without limitation Personal Information and all confidential information in the custody or control of the Supplier, regardless of whether it is identified as confidential or not, which comes into the knowledge, possession or control of the Supplier in connection with the Contract, but Confidential Information does not include information that:

- (a) is or becomes generally available to the public without fault or breach by the Supplier, but only after that information becomes generally available to the public;
- (b) the Supplier can demonstrate to have been rightfully obtained by the Supplier without any obligation of confidence from a third party who had the right to transfer or disclose it to the Supplier free of any obligation of confidence;
- (c) the Supplier can demonstrate to have been rightfully known to or in the possession of the Supplier, free of any obligation of confidence, when disclosed; or
- (d) is independently developed by the Supplier without the use of any of ONTC's Confidential Information;

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

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

"Contract" means the agreement created between the Supplier and ONTC upon the issuance of a Procurement Document and includes the Contract Documents;

"Contract Documents" means the following documents:

- (a) the Procurement Document;
- (b) these Terms;
- (c) the scope of work and specifications;
- (d) the Supplier's bid or quote; and
- (e) the Purchase Order.

"Defect" or "Defective" means non-conformity to the requirements set out in the Contract Documents, and in particular with section 12 of these Terms in the case of the supply of Goods and section 11 of these Terms in the case of the supply of Services;

"Delivery Date" means the delivery date for Goods specified in the Contract;

"Delivery Site" means the place for delivery of the Goods or performance of the Services as specified in the Contract;

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

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

“Goods” means the supplies, materials, equipment or other things specified in the Contract Documents (including any part of the goods specified) to be provided to ONTC by the Supplier, including any related documentation and warranties;

“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 Goods and/or Services;

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

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

“Party” means ONTC or the Supplier and “Parties” means both of them;

“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, and any other information that is subject to Privacy Laws ;

“Price” means the price or rates specified in the Contract Documents;

“Privacy Laws” means all Applicable Laws related to privacy or protection of Personal Information, including without limitation FIPPA;

“Procurement Document” means a Request for Quotations, Request for Tenders, Request for Proposals, Statement of Work, or any similar document issued by ONTC for the supply of the Goods and/or Services;

“Purchase Order” means the purchase order for Goods and/or Services issued by ONTC to the Supplier containing, amongst other things, a description of the Goods and/or Services and includes these Terms;

“Services” means the services specified in the Contract Documents (including any part of the specified services and any ancillary services) to be provided by the Supplier to ONTC.

“Supplier” means the party or parties to whom the Procurement Document is issued;

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

“Terms” means these Purchase Order Terms and Conditions for the supply of Goods and/or Services;

“Work Product” means all Goods, deliverables, reports, data, software, studies or other information, documents, or materials in any form which arises or is made, created or generated by or for the Supplier under the Contract, including any modifications, enhancements, or derivative works thereof;

“WSIA” means the *Workplace Safety and Insurance Act*, 1997, c.16, Sched. A.; and

“WSIB” means the Workplace Safety and Insurance Board.

PRECEDENCE

4. **Precedence of Contract Documents.** Subject to any contrary intention elsewhere in these Terms, in case of any inconsistency or conflict among the Contract Documents, the documents shall prevail in the following order, but only to the extent necessary to resolve the conflict or inconsistency:

- (a) the Procurement Document, if any;
- (b) the ONTC scope of work and specifications;
- (c) the Purchase Order;
- (d) these Terms;

- (e) the Supplier's submission, bid or quote.

SUPPLY OF GOODS AND/OR SERVICES

5. **Supply Requirements.** In consideration of payment of the Price by ONTC, the Supplier shall supply the Goods and/or provide the Services to ONTC in compliance with all Applicable Laws and the Contract Documents. The Supplier must, in supplying the Goods and/or performing the Services:
- (a) not interfere with ONTC's activities or the activities of any other person at the Delivery Site, and ensure that Supplier Parties entering the Delivery Site perform the Services or deliver the Goods in a safe manner and in a way that does not prejudice safe working practices, safety and care of property and continuity of work at the Delivery Site;
 - (b) be aware of and comply with:
 - (i) all ONTC policies, to the extent applicable to the supply of the Goods or the performance of the Services by the Supplier, including without limitation ONTC's Fit for Duty Policy; and
 - (ii) all lawful directions and orders given by ONTC's representative;
 - (c) exercise the standard of care, skill and diligence that would normally be provided by an experienced and prudent supplier providing Goods and/or Services of a similar nature to the Goods and/or Services; and,
 - (d) ensure that all Goods and Services provided are free from any liens, claims, or encumbrances.
6. **Personnel.** The Supplier shall provide the Services using the Supplier Parties proposed in their submission, bid or quote and shall not change them without ONTC's prior written approval. The Supplier shall, with respect to such Supplier Parties, be solely responsible for payment of all costs associated with them, and for their every act or omission in providing Services to ONTC.
7. **Vendor Performance.** ONTC has a Vendor Performance Policy pursuant to which ONTC may complete an evaluation of the Supplier's performance of its obligations under the Contract. Any such performance evaluation of the Supplier for the supply of the Goods and/or Services will be used in the assessment of the Supplier's proposals in response to future procurements. Any such performance evaluation may also result in the Supplier being disqualified from submitting proposals in response to future procurements in accordance with the terms of the policy. The policy can be found at <http://ontarionorthland.ca/en/requests-tenders>.

DELIVERY

8. **Delivery.** The Supplier shall supply the Goods to and/or perform the Services at the Delivery Site by the Delivery Date. If no Delivery Date is specified in the Contract Documents, the Supplier shall supply the Goods and/or complete the Services within a reasonable time after the Supplier receives the Procurement Document. Time is of the essence in the Supplier's performance of its obligations under the Contract Documents. The Supplier shall notify ONTC immediately if it anticipates any delay in delivery or performance, providing reasons for the delay and a revised delivery schedule. Notwithstanding the foregoing, no delay or change to the Delivery Date shall be effective unless agreed to in writing by ONTC.
9. **Costs.** The Supplier shall pay all costs incurred in connection with the shipping and delivery of Goods to the Delivery Site including all duties, excise taxes and brokerage fees. If the Contract Documents specify a delivery service, the Supplier shall use that service for the delivery of the Goods.
10. **Title and Risk.** Title to the Goods and all risk of loss of or damage thereto remains with the Supplier until the Goods are delivered to and accepted by ONTC at the Delivery Site.

QUALITY OF THE GOODS AND THE SERVICES

11. **Services.** With respect to the Services, the Supplier warrants that:
- (a) the Services will be performed in a skillful and workmanlike manner, which is consistent with the level of expertise, care, skill and diligence demonstrated by experienced and reputable suppliers performing services of a similar nature;
 - (b) the Supplier shall comply with all Applicable Laws and with all aspects of the Contract Documents;
 - (c) the Supplier will provide all skills, labour, supervision, equipment, materials, supplies, transport and storage required for the Services; and
 - (d) to the extent that the Services are design Services:
 - (i) the Work Product being designed will be fit for its intended purpose as described in the Contract Documents,
 - (ii) the Supplier Parties providing such Services shall be professionals retained or employed by the Supplier, licensed in the Province of Ontario, and otherwise have all approvals, permits, registrations, professional designations and memberships necessary to perform the Services;

- (iii) design documents shall be properly sealed or stamped, as applicable, by such licensed design professionals, and be in the native file format (e.g., CAD format) as approved by ONTC along with a PDF and/or hard copy, at not extra cost to ONTC; and
- (iv) the Supplier shall obtain ONTC's prior written approval for the use and type of software in Supplier's generation of its design documents, which software shall be approved versions in use in the industry and by ONTC.

12. **Goods.** With respect to the Goods, the Supplier warrants that:

- (a) the Goods will: (i) be of good quality and workmanship; (ii) conform to the specifications and/or standards in the Contract Documents; (iii) comply with all Applicable Laws; (iv) be free from Defects in design, materials and workmanship; and (v) be fit for their intended purpose;
- (b) if the Supplier gave ONTC a sample of the Goods before ONTC issued the Procurement Document, the Goods correspond with the sample;
- (c) the Supplier has good title to the Goods and the right to transfer title to the Goods free and clear of any encumbrances (including liens); and
- (d) ONTC has the full benefit of any manufacturer's warranties that may be applicable to the Goods (and the Supplier must make any claims under the manufacturer's warranty on ONTC's behalf if ONTC so requests).

13. **Intellectual Property Warranty.** The Supplier warrants that the Goods and/or Services and their use, manufacture, sale, lease, distribution, or other commercialization do not and will not infringe, misappropriate or violate the Intellectual Property rights of a third party. The Supplier shall be liable for and fully indemnify and hold harmless ONTC against any and all Losses arising out of a claim by any third party against ONTC alleging that the Goods and/or Services and their use by ONTC, infringes any Intellectual Property rights.

DEFECTIVE GOODS & SERVICES and WARRANTY

14. **Inspection and Approval.** All Goods and/or Services shall be received subject to ONTC's inspection and approval. If there is a specified inspection and approval process provided by ONTC, the Supplier shall comply with that process and complete such documents and other requirements as requested by ONTC.

15. **Options if Defective.** If ONTC determines that any Goods or Services provided by the Supplier, even if ONTC has already accepted them, do not comply with ONTC's specifications or are Defective, then ONTC may:

- (a) with respect to the Goods:
 - (i) keep the Goods and adjust the Price in accordance with their diminished value, as determined by ONTC; or
 - (ii) reject the Goods, return them (or require the Supplier to retrieve or undo them) at the Supplier's expense, and either require the Supplier to replace them at the Supplier's cost or terminate the Contract. If ONTC rejects the Goods, it shall not be responsible for any re-stocking charge;
- (b) with respect to the Services:
 - (i) accept the Services and adjust the Price in accordance with their diminished value, as determined by ONTC; or
 - (ii) reject the Services and either require the Supplier to re-perform, at the Supplier's expense, the Defective Services or terminate the Contract; and
- (c) If ONTC chooses to have the Goods replaced or the Services re-performed, all or part of any payment under an invoice or any holdback may be withheld by ONTC or set-off against the payments owing to the Supplier until the Supplier has remedied the Defects to ONTC's satisfaction. The Supplier shall bear all costs associated with the return, replacement, or re-performance of Defective Goods or Services.

16. **Warranty Period.** Unless a different period is stated in the Contract Documents, the Supplier's warranty for Goods and Services applies to all Defects arising within 12 months from the later of: (i) the Delivery Date, (ii) the date the Goods are accepted by ONTC, (iii) the date on which the Services are completed, and (iv) the termination of the Contract. The Supplier shall provide ONTC with written confirmation of the warranty period and any applicable terms and conditions.

PRICE

17. **Price.** The Supplier shall supply the Goods and/or Services for the Price specified in the Contract Documents.

18. **Inclusions.** Except as otherwise provided in the Contract Documents, the Price is inclusive of:

- (a) all charges for packaging, packing, insurance and delivery of the Goods and/or Services;
- (b) the cost of any miscellaneous services of a kind which are commonly provided with the Goods and any miscellaneous items of a kind which are commonly used or supplied in the performance of (and in conjunction with) the Services; and,

- (c) other than Goods and Services Tax (GST)/Harmonized Sales Tax (HST), Quebec Sales Tax (QST) or provincial sales tax imposed by the laws of a Canadian province, all taxes for which the Supplier is responsible under Applicable Laws.
19. **Disbursements.** ONTC will pay disbursements incurred by the Supplier which are approved in writing in advance by ONTC. The Supplier acknowledges that any travel expenses will only be approved in accordance with the Management Board of Cabinet Travel, Meal & Hospitality Expenses Directive, January 2020 (<https://www.ontario.ca/page/travel-meal-and-hospitality-expenses-directive-2020>).

INVOICING AND PAYMENT

20. **Invoicing and Payment Procedure.** The Supplier shall provide invoices to ONTC monthly. Invoices shall be sent to the ONTC contact person for the Goods and/or Services and to pay.inv@ontarionorthland.ca. Each invoice must include a detailed breakdown of the Goods and/or Services provided, the Procurement Document number, and any other information reasonably requested by ONTC. ONTC shall pay the Supplier the properly charged amounts incurred by the Supplier in providing the Goods and/or Services within 30 days of receipt of the invoice via direct deposit, subject to ONTC's right of set off, and less any holdbacks required under the Contract Documents or any Applicable Laws related to liens or tax.
21. Without limitation, ONTC shall be entitled to deduct from or, set off against, any payment of the Price and any other amounts payable by ONTC to the Supplier under the Contract Documents:
- (a) any amount expended by ONTC in exercising ONTC's rights under the Contract Documents to perform any of the Supplier's obligations that the Supplier has failed to perform;
 - (b) any Losses incurred by ONTC as a result of the failure of the Supplier to perform any of its obligations under the Contract Documents; and
 - (c) any other amount owing from the Supplier to ONTC under the Contract Documents.

ASSET INFORMATION REQUIREMENTS

22. **Mandatory AIR.** With respect to the Goods supplied under the Contract, the Supplier must, if requested, provide to ONTC:
- (a) upon Contract execution, an asset handover plan which outlines the details of the Supplier's asset handover activities throughout the term of the Contract, and which meets ONTC's asset handover requirements;
 - (b) within thirty (30) days of receiving it, a completed Asset Information Requirements Form ("AIR Form") in MS Excel format which sets out the digital asset information, electronic documents, and master data required by ONTC (which will vary by asset class);
 - (c) prior to issuing the Handover Certificate in subsection (d), the documentation, manuals and other information as set out in the Asset Handover Plan and/or AIR Form (which may include without limitation warranty, OEM maintenance requirements, as-built drawing files and manuals and maintenance guides); and
 - (d) prior to delivering the asset, a Handover Certificate which confirms that the asset is ready to be delivered, fit for service, and complies with the Contract requirements, and which lists all data, information and documents being provided by the Supplier.
23. **Optional AIR.** The Supplier may also provide to ONTC:
- (a) internet-based tool / repositories for warranty, training, servicing and parts including preparation and transmittal of the information required in the AIR Form;
 - (b) access to training, education and reference libraries that are robust, secure and value-added (any fees or licensing for such systems must be as agreed to in advance by the Parties); and
 - (c) access to internet resources for the purpose of administering warranty, parts, or equipment.

COMMUNICATIONS AND CONFIDENTIAL INFORMATION

24. **Communication Prohibition.** ONTC or the Government of Ontario will lead and make any announcements relating to the Contract and ONTC's purchase of the Goods and use of the Services. The Supplier 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 the Contract or ONTC's purchase of the Goods or use of the Services unless prior written consent is given by ONTC. Should the Supplier 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 the Contract or the ONTC's purchase of the Goods or use of the Services, the Supplier shall provide no comment and shall immediately notify ONTC. The Supplier shall immediately notify ONTC if it becomes aware of any publication or announcement relating to the Contract or ONTC's purchase of the Goods or use of the Services.
25. **Use of Confidential Information.** Neither Party will disclose any Confidential Information of the other Party to any third party without the other Party's written consent or if the Party is legally required to do so. Each Party shall protect the

Confidential Information disclosed to it by the other Party in the same manner and to the same extent that it protects its own Confidential Information. Upon the termination of this Agreement, or earlier upon the request of a Party, the other Party shall promptly destroy or return (as directed by the requesting Party) all copies of the Confidential Information disclosed to it, except that the Parties shall be entitled to retain one (1) copy of the Confidential Information for legal purposes. 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. The Supplier specifically acknowledges that ONTC is subject to FIPPA and that ONTC may be compelled to disclose certain Confidential Information under it.

26. **Survival.** This part COMMUNICATIONS AND CONFIDENTIAL INFORMATION shall survive the expiry or termination of the Contract.

FIPPA AND PERSONAL INFORMATION

27. **FIPPA.** All information, data, records and materials, however recorded, which has been provided by ONTC to the Supplier in relation to the Contract and which are in the custody or control of ONTC, including Confidential Information, are subject to FIPPA (collectively, "**FIPPA Records**"). For the purposes of this definition, ONTC documents held by the Supplier in connection with the Contract are considered to be in the control of ONTC. The Supplier shall provide to ONTC any and all FIPPA Records within seven (7) business days from the date of ONTC's notice to the Supplier 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 Supplier is collecting Personal Information on behalf of ONTC, the Supplier must comply with the provisions in FIPPA regarding the collection, retention, use, disclosure and disposal of Personal Information. The Supplier shall maintain the confidentiality and security of all FIPPA Records and shall not use, disclose, or retain them except as necessary to fulfill its obligations under the Contract and in compliance with Privacy Laws.
28. **Purpose.** Personal Information may be received by, created, collected, processed, used, maintained, disclosed, or disposed of by the Supplier only for the purpose of providing the Goods and/or Services under the Contract and in strict compliance with Privacy Laws and ONTC policies related to the protection of Personal Information.
29. **Disclosure, Security and Return.** The Supplier 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 Supplier shall advise ONTC promptly of any anticipated or actual loss of Personal Information. The Supplier shall not disclose or transfer any records containing Personal Information to a third party except with the informed prior written consent of ONTC. The Supplier shall return all of ONTC's Personal Information when the Contract ends or earlier if requested by ONTC. The Supplier shall provide ONTC with a written report detailing any incidents involving the loss, unauthorized access, or disclosure of Personal Information, including the measures taken to mitigate the impact and prevent future occurrences.
30. **Survival.** This part FIPPA AND PERSONAL INFORMATION shall survive the expiry or termination of the Contract.

INTELLECTUAL PROPERTY IN THE WORK PRODUCT

31. **Work Product.** All information in any form prepared by or for the Supplier as part of the Work Product is, unless approved by ONTC in writing to the contrary, the sole property of ONTC and ONTC shall own all Intellectual Property rights in it. If the Supplier or any Supplier Parties owns any Intellectual Property rights in any Work Product, it shall promptly transfer and assign such Intellectual Property rights to ONTC. The Supplier shall sign all documents and take all actions that may be necessary to ensure that ONTC owns the Work Product and the Intellectual Property rights in the Work Product. The Supplier shall also ensure that any third-party Intellectual Property rights incorporated into the Work Product are properly licensed to ONTC, and shall provide ONTC with documentation evidencing such licenses.

EARLY TERMINATION OF THE CONTRACT

32. **Early Termination.** This Agreement may be terminated early:
- (a) by ONTC, for any reason, upon not less than thirty (30) days' prior written notice;
 - (b) by ONTC immediately (i) upon the winding up or dissolution of the Supplier; or (ii) subject to the provisions of the *Bankruptcy and Insolvency Act*, RSC 1985, c. B-3, upon the Supplier making an assignment for the benefit of its creditors, becoming bankrupt or insolvent, undergoing reorganization, making a proposal to its creditors, or otherwise becoming financially unable to perform its obligations under this Agreement;
 - (c) by ONTC upon written notice to the Supplier, where the Supplier is in default or breach of the Contract and such default or breach has not been remedied to ONTC's reasonable satisfaction within fourteen (14) days of providing written notice to Supplier thereof; and

- (d) by the Supplier upon written notice to ONTC, where ONTC has failed to make payment to the Supplier of property charged amounts under s. 20 and such failure has not been remedied within thirty (30) days of providing written notice to ONTC thereof.

33. Obligations on Termination. Upon early termination of the Contract,

- (a) The Supplier shall promptly cease performance of the Services and manufacture and shipment of the Goods, and do everything possible to mitigate any costs incurred in relation to the Goods and/or Services;
- (b) The Supplier shall provide all Work Product (in progress or completed) to ONTC;
- (c) the Supplier shall cooperate with ONTC to ensure an orderly transition to any supplier replacing the Supplier for the completion of the Services or supply of the Goods;
- (d) ONTC shall pay the Supplier for the Goods delivered or Services performed in compliance with the Contract up to the time of termination;
- (e) if the Supplier has shipped any Goods before the termination but the Goods have not been delivered to the Delivery Site at the date of termination, ONTC may either:
 - (i) subject to sections 14 to 16, accept those Goods when delivered, and pay the Price for them; or
 - (ii) return the Goods to the Supplier at ONTC's expense;
- (f) with respect to Goods not yet shipped by the Supplier at the time of termination or returned to the Supplier under subsection 33(e)(ii):
 - (i) to the extent that the Goods were manufactured or fabricated in accordance with any specification prepared by the Supplier for ONTC, ONTC will reimburse the Supplier in respect of any expenditure reasonably incurred by the Supplier prior to the date of the termination which is directly attributable to the procurement of the Goods and/or Services and which the Supplier is not able to recover in some other way; and
 - (ii) the Supplier is not entitled to the Price of those Goods or Services, or to any compensation, including for lost profit, for that termination other than as specified in this section 33.

LIABILITY AND INDEMNIFICATION

- 34. General Indemnity.** The Supplier shall indemnify and hold harmless ONTC and ONTC Parties from and against all Losses which may arise by reason of the exercise of the responsibilities and obligations contained herein by the Supplier or as a result of any breach of the terms of the Contract by the Supplier or by any act or omission of the Supplier or Supplier Parties, including but not limited to all legal costs and expenses reasonably incurred by ONTC in connection with the defence or settlement of any such Loss, except to the extent that such Loss is caused by the negligence of ONTC or ONTC Parties. The Supplier shall, at ONTC's election, either assume the defence of every proceeding brought in respect of such Loss, or cooperate with ONTC in the defence, including providing ONTC with prompt Notice of any possible Loss and providing ONTC with all information and material relevant to the possible Loss. For the purpose of enforcement of this indemnity, ONTC is acting as agent and trustee for the ONTC Parties.
- 35. Consequential Losses Excluded.** With the exception of Losses caused by the disclosure of Confidential Information not in accordance with the Contract or liabilities related to Intellectual Property rights, neither Party shall be responsible for indirect, consequential, special, incidental or contingent damages of any nature whatsoever, including loss of revenue or profit, 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.
- 36. Financial Administration Act.** Notwithstanding anything else in the Contract, 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 issuance of the Purchase Order or at any time during the provision of the Goods and Services by the Supplier, 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.
- 37. Survival.** This part LIABILITY AND INDEMNIFICATION shall survive the expiry or termination of the Contract.

INSURANCE

- 38. Insurance Required.** Without limiting Supplier's obligations or liabilities hereunder, and subject to any requirements contained in the Procurement Document, Supplier shall, at its sole expense, purchase and maintain the following insurance:
- (a) commercial general liability insurance covering all liabilities for personal injury and property damage arising from the Services/Goods, with limits of liability of \$2,000,000 for each occurrence;
 - (b) with no limitations on or exclusions from coverage arising from working on or around railway property;
 - (c) if the Supplier will use or provide for use motor vehicles in providing the Goods and/or performing the Services, automobile (motor vehicle) insurance covering all liabilities for personal injury and property damage arising from

the use of such vehicles, with limits of liability of \$2,000,000 for each occurrence and in the aggregate; and

- (d) if the Supplier will provide professional advice or services, professional liability insurance, with limits of liability of \$2,000,000 for each claim and in the aggregate.

- 39. **Insurance Primary.** The Supplier shall ensure that all the foregoing insurance is primary and does not call into contribution any other insurance coverage available to ONTC.
- 40. **Certificates.** The Supplier shall on request provide to ONTC or its designee certificates of insurance and endorsements as evidence of the insurance required under the Contract.

WSIB

- 41. **WSIB Certificate.** If, at the time the Services commence, the Supplier is subject to the insurance requirements under the WSIA, the Supplier shall comply with its obligations under the WSIA and shall provide a certificate under the WSIA confirming compliance if requested by ONTC.

AUDIT

- 42. **Audit Requirement.** The Supplier shall at all times during the term of the Contract and for a period of 6 years after the expiration or termination of the Contract, keep and maintain all financial and other records related to the terms of the Contract, the Contract Documents and the Goods and/or Services, and ONTC may at any time audit such records to confirm compliance with the by Contract Documents by the Supplier.

CONFLICT OF INTEREST

- 43. **Conflict of Interest Remedies.** If a potential or actual Conflict of Interest of the Supplier arises during the Supplier's performance 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 Supplier should resolve the Conflict of Interest; and
 - (c) ONTC may terminate the Contract immediately upon notice to the Supplier if the Supplier fails to disclose any actual or potential Conflict of Interest, if the Supplier fails to resolve its Conflict of Interest as directed by ONTC or if ONTC determines that the Conflict of Interest cannot be resolved.

FORCE MAJEURE

- 44. **Force Majeure.** Whenever and to the extent either Party is unable to fulfil, or is delayed or restricted in fulfilling, any of its obligations under the Contract by reason of a Force Majeure event, the time for fulfilling such obligation is extended for such reasonable time as may be required 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.

OTHER WARRANTIES

- 45. **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 Contract with the Supplier.
- 46. **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 Contract, the Supplier shall report the incident to ONTC immediately.
- 47. **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.
- 48. **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 Contract and will require such compliance by its first-tier subcontractors.

49. **Reliance.** ONTC relies on the warranties from the Supplier in sections 45 to 48 in entering into the Contract, and any breach of such undertaking shall entitle ONTC to terminate the Contract for default and to recover damages from the Supplier, including excess re-procurement costs.

NOTICES

50. **Notices.** Any Notice to a Party shall be given in writing and delivered personally or by email or prepaid courier to the addresses noted for each Party in the Contract Documents, or at such other address or addresses as a Party may designate from time to time. The date of receipt of a notice if sent by email or personal delivery shall be the date of delivery and if sent by prepaid courier shall be the second day after pick-up by the courier.

GENERAL

51. **Assignment.** Neither Party may assign their respective rights and obligations under the Contract without first obtaining the written consent of other Party, provided, however, that either Party may assign the Contract to an affiliate or the successor of its business upon written notice to the other Party. The Contract shall enure to the benefit of, and be binding upon, the Parties and their respective successors (including any successor by reason of amalgamation, merger or statutory arrangement of any party) and permitted assigns.
52. **No Waiver.** No waiver by a Party of any breach by the other Party of any of its covenants, agreements or obligations in the Contract 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.
53. **Relationship.** Nothing contained in the Contract 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.
54. **Governing Law.** The Contract 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 the Contract or the performance of the obligations hereunder.
55. **Severability.** Should any section or part or parts of any section in the Contract be illegal or unenforceable, it or they shall be considered separate and severable from the Contract and the remaining provisions of the Contract shall remain in full force and effect and shall be binding upon ONTC and the Supplier as though such section or part or parts thereof had never been included in the Contract.
56. **Entire Agreement.** The Contract 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 the Contract. No amendment, variation or change to the Contract shall be binding unless the same shall be in writing and signed by the Parties.
57. **Survival.** In addition to those provisions which are expressly stated to survive the termination or expiration of the Contract, the provisions of the Contract that are by their nature intended to survive termination or expiration of the Contract shall continue in full force and effect subsequent to and notwithstanding termination or expiration until or unless they are satisfied.