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January 12, 2026

Addendum No. 01

File Reference Number: RFQ 2025 118

Title: Commercial Cleaning Services - Various North Bay Locations

RE: Clarifications/Questions

Please refer to the following information/clarification:

Item 1: Can we use the form for the Site Visit Registration as is? The current form references the year 2025 instead of 2026.

Answer: ONTC would ask that anyone wishing to attend the site visit please complete the forms as they are. ONTC confirms that the applicable dates are as follows:

Mandatory Site Visit / Pre-Bid Meeting Registration and Release of Liability Forms to be submitted	Tuesday, January 13, 2026 by 4:00:00 PM EST
Mandatory Site Visit / Pre-Bid Meeting	Wednesday, January 14, 2026 at 10:00 AM EST

Item 2: Please provide Bill 7 for the current janitorial staff.

Answer: Please see Bill 7 details attached at Appendix A to this Addendum.

Item 3: With respect to the form of Agreement, will ONTC please confirm whether the following sections are necessary:

a) Environmental Obligations

Page 8 – 22. Unknown Impacts; fish, water, vegetation
Page 10 – 29. DFO Notification

b) Insurance

Automobile insurance is intended to cover owned, leased, or operated vehicles used in the performance of a contract.

For this janitorial cleaning contract:

- All work is performed inside fixed premises
- No transportation of goods, people, or materials is required as part of the contracted services
- No driving activity is integral to service delivery
- Employees commute to work independently (not a contract function)

c) Environmental Pollution Insurance

Environmental or pollution liability insurance is designed to cover:

- Release of hazardous substances
- Environmental contamination
- Soil, groundwater, or air pollution
- Remediation and regulatory cleanup costs

For janitorial cleaning:

- Only commercially available, WHMIS-approved cleaning products are allowed to be used and the ONR provides these supplies.
- Products are applied in small, diluted quantities as they are purchased and supplied by the ONR to us in a ready to use state.
- No hazardous materials handling, storage, disposal, or transport
- No environmental discharge beyond routine sanitary drainage systems
- No potential for environmental impairment or contamination

Answer: Please see attached revised Draft Agreement attached at Appendix B to this Addendum.

Item 4: Would ONTC please confirm if current staff are unionized and if yes, please provide the CBA.

Answer: ONTC confirms that the current staff are non-unionized.

This Addendum hereby forms part of the RFQ.

Regards,

Brinda Ranpura
Procurement Contracts Specialist
brinda.ranpura@ontarionorthland.ca

“Appendix A”

Job Title	Work Location	Hours of Work	Number of weeks worked in the last 26.	Rate of Pay	Hire Date	Benefits	Employee did not preform their job PRIMARILY at the premises during the 13 weeks prior to request.	Status
Cleaner	Head Office	35	26	\$17.60	08/28/2025			Active
Cleaner	Head Office	35	26	\$17.60	09/04/2025			Active
Lead	Head Office	10	26	\$19.20	01/11/2021	X	X	Active
Cleaner	Bus Station	20	26	\$17.95	04/28/2025			Active
Cleaner	Bus Station	20	26	\$17.95	05/05/2025			Active
Cleaner	Bus Station	8	26	\$17.85	06/24/2020	X	X	Active
Cleaner	Motor Coach	15	26	\$17.95	04/28/2025			Active
Cleaner	Motor Coach	15	26	\$17.95	05/05/2025			Active
Cleaner	Shops	15	26	\$17.60	11/15/2023			Active
Lead	Shops	5	26	\$19.20	01/11/2021	X	X	Active
Supervisor	All Sites	10	9	\$21.00	11/10/2025	X	X	Active

“Appendix B”

THIS AGREEMENT FOR SERVICES MADE EFFECTIVE XXX (the “Effective Date”)

BETWEEN:

ONTARIO NORTHLAND TRANSPORTATION COMMISSION
(“ONTC”)

and

XXX

(“Service Provider”)

THE PARTIES AGREE AS FOLLOWS:

INTERPRETATION

1. Definitions. In this Agreement,

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

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

“**Change Order**” has the meaning set out in Section 19;

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

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

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

- (a) situations or circumstances that could compromise the ability of the Service Provider 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 Service Provider to anyone employed by or otherwise connected with ONTC.

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

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

“Equipment” means all machinery and equipment, either operated or not operated, that is required for performing the Services but is not incorporated into the Work Product;

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

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

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

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

“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;

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

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

“Services” has the meaning set out in Section 5;

“Standard of Care” has the meaning set out in Section 12;

“Term” means the Original Term and any Extended Term as those are defined in Section 9;

“Work Product” includes the deliverables and all information in any form prepared by or for the Service Provider as part of the Services;

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

If the Service Provider'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

4. **Retainer.** ONTC hereby retains the Service Provider to provide the Services, and the Service Provider shall provide those Services to ONTC under the general direction and control of ONTC and subject to the provisions of this Agreement. This retainer is non-exclusive and ONTC may retain other service providers to provide similar services.

Services. The Services which are the subject of this Agreement are janitorial services for [insert address] as more particularly described in Schedule A (the “**Services**”). The parties may amend the Services by agreement in writing. The Services shall be provided as required by ONTC. ONTC is not guaranteeing any minimum level of use of the Services.

5. **Fees.** The fees which are the subject of this Agreement are XXX [as described in Schedule B]. The parties may amend the fees by agreement in writing.

6. **Disbursements.** The fees in Schedule C include all costs, expenses and disbursements required to perform the Services. ONTC will not pay any additional amount for disbursements unless the disbursements are approved in writing in advance by ONTC. The Service Provider acknowledges that 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>).
7. **Maximum.** The maximum amount payable by ONTC to the Service Provider under this Agreement, excluding Harmonized Sales Tax, is: **\$XXX CAN.**
8. **Term.** This Agreement shall commence on the Effective Date and shall continue for a period of [xxx] years unless terminated early in accordance with this Agreement (the “**Original Term**”). ONTC shall have [xxx] options to extend the Agreement for periods of [xxx] years each (an “**Extended Term**”) by providing notice in writing at least 30 days before the end of the Original Term or Extended Term, as the case may be.

PROVISION OF THE SERVICES

9. **Equipment.** The Service Provider will supply Equipment that is in good repair and meets all safety standards and regulations. The Service Provider shall be responsible for all costs and expenses for the Equipment including, but not limited to, repair, maintenance, replacement, insurance and fuel. In the event the Equipment fails to operate correctly during provision of the Services, the Service Provider shall be responsible for all costs relating to any delay in the work of the Personnel, including compensation for the Personnel. In no event will ONTC be charged for any costs relating to the Personnel or the Equipment if the Personnel are unable to work due to Equipment failure or breakdown.
10. **Personnel.** The Service Provider shall provide the Services using the Service Provider Parties proposed in their submission attached as Schedule B. The Service Provider shall not change the personnel providing the Services without ONTC’s prior written approval. The Service Provider shall coordinate the activities of their personnel and be solely responsible for payment of all costs associated with the personnel. The Service Provider shall be responsible for every act or omission of the personnel providing Services to ONTC.
11. **Standard of Care.** The Service Provider shall carry out the Services in conformity with the standard of care, skill and diligence normally provided by a well-qualified and experienced professional person in the performance of similar services for a similar project at the time and place the Services are being provided. The Service Provider shall give ONTC the full benefit of its skills, qualification, experience, knowledge and

professional expertise (the “**Standard of Care**”). Any Services provided by Service Provider Parties shall meet or exceed the Standard of Care and the Service Provider shall be fully responsible therefor.

12. **Vendor Performance Policy.** ONTC has a Vendor Performance Policy which requires ONTC to complete an evaluation of the Service Provider’s performance of its obligations under this Agreement. The performance evaluation of the Service Provider for the supply of these Services will be used in the assessment of the Service Provider’s proposals in response to future procurements. The performance evaluation may also result in the Service Provider 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>.
13. **Inadequate Services.** ONTC shall be the sole judge of the adequacy of the Services received and their value. If ONTC determines that any Services are not in conformity with the terms and conditions of this Agreement, including the Standard of Care and Environmental Laws, ONTC shall advise the Service Provider who shall, except as otherwise provided in this Agreement, immediately correct at its own cost and expense the inadequate Services, except to the extent such non-conforming Services were caused by a person who is not a Service Provider Party. Provided that if the quality of the Services is such that ONTC determines that the Service Provider is not able to provide the Services in accordance with the Standard of Care or within the terms of this Agreement, ONTC may terminate this Agreement in accordance with the early termination provisions of this Agreement.
14. **Progress Reports.** The Service Provider shall, upon request by ONTC, provide reports to ONTC on the Services, including opinions regarding the progress and resolution of the Services.
15. **Discontinuance of Services.** Despite anything to the contrary contained in this Agreement, ONTC may at any time, for any reason, discontinue part of the Services. ONTC shall pay the Service Provider for the chargeable amounts for the discontinued part of the Services up to the date that ONTC gives the Service Provider notice of its decision to discontinue the Services, or a later date if work, already commenced by the Service Provider, cannot reasonably be discontinued until such later date. This shall be the only remedy of the Service Provider for discontinuance of part of the Services. The Service Provider shall not be entitled to make any claim for loss of profit on the discontinued Services.
16. **Obligations of the Service Provider.** The Service Provider shall:

- (a) provide the Services in compliance with all Applicable Laws, as amended from time to time;
- (b) obtain all permits required to provide the Services and provide them to ONTC upon request;
- (c) ensure that it and its personnel have all certifications required to provide the Services, keep such certifications in good standing, and provide evidence of the requisite certifications to ONTC upon request.
- (d) while being on ONTC's property, comply with ONTC's policies, including its Drug and Alcohol Policy;
- (e) perform and cause the Service Provider Parties to perform the Services with diligence and in a courteous and business-like manner;
- (f) not subcontract the provision of any of the Services without the written consent of ONTC;
- (g) avoid any Conflict of Interest during the performance of the Services; and
- (h) disclose to ONTC any Conflict of Interest the Service Provider has or potentially has that arises during the performance of the Services.

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

CHANGES

18. **Changes.** Changes of any kind to the scope of the Services shall only be made by the Service Provider upon receipt of a written change order signed by an authorized member

of each Party (each, a “Change Order”) or a Change Directive (as defined below). ONTC may at any time by issuing a Change Order or Change Directive make any change in the Services to be provided by the Service Provider. The Change Order shall specify the details of the change in scope of the Services, any agreed adjustment to the Price in respect of the change in scope of the Services and any agreed adjustment to the time for performance of the Services, whether an increase or reduction. Any changes to the fees shall be determined by using the hourly rates in Schedule B, if any. A Change Order shall represent full payment for all costs and any adjustment to the workplan associated with the change or changes for which it was issued.

19. **Change Directive.** Prior to finalization of a Change Order, ONTC may instruct the Service Provider to proceed with additional or changed work by issuing a directive signed by an authorized member of ONTC (each, a “Change Directive”). Upon receipt of a Change Directive, the Service Provider shall immediately proceed with the changes to the Services as identified therein. The Parties shall then seek to finalize a Change Order as soon as commercially reasonable. Prior to the finalization of the relevant Change Order, the Service Provider shall be entitled to payment for pre-approved, reasonable documented costs incurred in respect of a Change Directive, determined by using the hourly rates in Schedule C with any additional pre-approved proven reasonable expenses incurred pursuant to a Change Directive charged at cost.
20. **Unauthorized Changes.** ONTC shall have no liability whatsoever for any claim for payment for additional services provided or costs incurred by the Service Provider which have not been authorized in advance by ONTC by way of a Change Order or a Change Directive.

ENVIRONMENTAL OBLIGATIONS

21. **Environmental.** The Service Provider shall comply with all Environmental Laws in the provision of the Services. If the Service Provider fails to comply with Environmental Laws relating to the provision of the Services, the Service Provider shall be solely responsible for all costs, claims, fines, fees or other expenses arising from the failure by the Service Provider to comply with the Environmental Laws in the provision of the Services.

22. Intentionally Deleted.

23. If the Service Provider fails to comply with the requirements in section 22, the Service Provider shall:

- (a) be responsible for all costs incurred by ONTC and the Service Provider to mitigate the damage caused due to the failure; and

(b) not be entitled to request a Change Order relating to the failure to comply.

24. Environmental Contaminants. The Service Provider shall not cause or permit any Environmental Contaminants to be located, stored, disposed of, produced, processed, deposited, released, discharged or incorporated in, on or under any part of ONTC's land except as required to provide the Services. The Service Provider shall remove from ONTC's land, immediately upon demand, at its cost, any Environmental Contaminants introduced thereto by the Service Provider that are not required to provide the Services. If there is remediation work required on ONTC's land or adjacent land or watercourse due to environmental contamination that occurred as a result of the Service Provider's entry onto ONTC's land to provide the Services, the Service Provider shall be responsible for all costs incurred to complete remediation work on ONTC's land and adjacent land or watercourse and shall reimburse ONTC or any public authority or any third party for any reasonable costs incurred as a result of the requirement to complete the remediation work.

25. Ownership of Environmental Contaminants. Notwithstanding any provision of law to the contrary, any Environmental Contaminants placed or permitted on or under ONTC's land by the Service Provider shall remain the property of the Service Provider.

26. Spills and Releases. All spills and releases of Environmental Contaminants in the course of the work must be immediately reported by the Service Provider to ONTC and the Ministry of the Environment, Conservation & Parks ("MOECP") Spills Action Centre ("SAC"). If the ONTC Representative is not available, the Service Provider shall report the incident to the MOECP SAC and the ONTC RTC at 800-558-4129 X 141.

27. Mitigation of Spills. The Service Provider shall take immediate steps to mitigate the damage to the environment and contain the spill or release. If the Service Provider does not take timely action or, if the Service Provider is not available, ONTC may direct others to remedy the situation.

28. Expenses for Spills. If the spill or release was the fault of the Service Provider, the remedial work shall be completed at the cost of the Service Provider and with no additional cost to ONTC and ONTC shall be entitled to seek reimbursements for all costs associated with the remedial work including the cost of work done by third parties. If the spill or release was not the fault of the Service provider, ONTC shall pay for the remedial work.

29. Intentionally Deleted.

PAYMENT FOR THE SERVICES

30. Invoices. The Service Provider shall provide invoices to ONTC [monthly/annually]. Invoices shall be sent to the ONTC contact person for the Services and to pay.inv@ontarionorthland.ca. ONTC shall pay the Service Provider the properly charged amounts incurred by the Service Provider in providing the Services within 30 days of receipt of the invoice, subject to any dispute or right of set off by ONTC.

CONFIDENTIAL INFORMATION

31. General Confidentiality Requirements. The Service Provider shall:

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

32. Keeping Confidential Information Confidential. Except as provided in this Agreement, the Service Provider shall keep confidential all Confidential Information collected on behalf of ONTC or disclosed to it by ONTC and shall protect the Confidential Information disclosed to it by ONTC, in the same manner and to the same extent that it protects its own Confidential Information. This obligation shall survive the termination of this Agreement.

33. Disclosing Confidential Information. The Service Provider may disclose Confidential Information if:

- (a) ONTC approves the disclosure in writing;
- (b) the Service Provider is required by law to disclose it, in which case it shall promptly notify ONTC to allow ONTC the opportunity to intervene to prevent the disclosure;
- (c) the Confidential Information is generally and publicly available; or

- (d) the Confidential Information was disclosed to the Service Provider on a non-confidential basis from a source other than ONTC which the Service Provider believes is not prohibited from disclosing such information as a result of an obligation in favour of ONTC;
- (e) is developed by the Service Provider independently of, or was known by the Service Provider prior to, any disclosure of such information made by ONTC; or
- (f) to the extent required by an order of a court of competent jurisdiction, administrative agency or governmental body, or by any law, rule or regulation, or by subpoena, summons or other administrative or legal process, or by applicable regulatory or professional standards or in connection with any judicial or other proceeding relating to Service Provider's Services to ONTC or this Agreement.

34. **FIPPA.** The Service Provider specifically acknowledges that ONTC is subject to FIPPA, and that ONTC may be compelled by law to disclose certain information provided by the Service Provider. Where the Service Provider is collecting Personal Information on behalf of ONTC, the Service Provider must comply with the provisions in FIPPA regarding the collection, retention, use, disclosure and disposal of Personal Information.
35. **Breach of Confidentiality.** The Service Provider acknowledges and expressly agrees that any breach by it of this Agreement which does or may result in loss of confidentiality of the Confidential Information or an unauthorized release of Personal Information would cause ONTC irreparable harm for which damages would not be an adequate remedy. If the Service Provider breaches the confidentiality provisions of this Agreement, ONTC shall have the right to seek injunctive relief against the continuing or further breach by the Service Provider, without the necessity of proof of actual damages. The right to seek injunctive relief without the necessity of proof of damages shall be in addition to any other right which ONTC may have under this Agreement or otherwise in law or in equity. This section shall continue to bind the Service Provider after the expiry or termination of this Agreement.

PERSONAL INFORMATION

36. **FIPPA.** The Service Provider specifically acknowledges that ONTC is subject to FIPPA, and that ONTC may be compelled by law to disclose certain information provided by the Service Provider. All information, data, records and materials, however recorded, which has been provided by ONTC to the Service Provider 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 Service Provider in connection

with this Agreement are considered to be in the control of ONTC. The Service Provider shall provide to ONTC any and all FIPPA records within seven (7) business days from the date of ONTC's notice to the Service Provider 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 Service Provider is collecting Personal Information on behalf of ONTC, the Service Provider must comply with the provisions in FIPPA regarding the collection, retention, use, disclosure and disposal of Personal Information.

37. Purpose. Personal Information may be received by, created, collected, processed, used, maintained, disclosed, or disposed of by the Service Provider 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.

38. Security. The Service Provider 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 Service Provider shall advise ONTC promptly of any anticipated or actual loss of Personal Information.

39. Third Party. The Service Provider shall not disclose or transfer any records containing Personal Information to a third party except with the informed prior written consent of ONTC.

40. Return. The Service Provider shall return all of ONTC's Personal Information when this Agreement ends or earlier if requested by ONTC.

INDEMNITY AND LIMITATION OF LIABILITY

41. General Indemnity. The Service Provider 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 Service Provider or as a result of any breach of the terms of this Agreement by the Service Provider or by any act or omission of the Service Provider or Service Provider Parties, including all legal costs and expenses reasonably incurred by ONTC in connection with the defence or settlement of any such Loss, unless such Loss is caused by the negligent act or omission of ONTC or ONTC Parties. The Service Provider 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. **Specific Indemnities.** The Service Provider shall indemnify and hold harmless ONTC and ONTC Parties from and against all Losses incurred by ONTC arising from:

- (a) any decision or interpretation by any court or governmental authority that: (i) any of the Service Provider Parties is an employee of ONTC; or (ii) ONTC is liable to pay statutory contributions or deductions in respect of any of the Service Provider 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 Service Provider or Service Provider Parties may have during or after the Term of this Agreement;
- (c) any claim against ONTC arising from the failure of the Service Provider to protect the confidentiality of Confidential Information;
- (d) any claim against ONTC arising from the failure of the Service Provider to protect Personal Information or to comply with any of its obligations with respect thereto; and
- (e) safety infractions committed by the Service Provider under health and safety legislation, regulations, guidelines or orders, including the *Occupational Health and Safety Act*.

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

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

44. Waiver. The Service Provider 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 Service Provider or Service Provider Parties and for any loss or damage of the Service Provider unless caused by the negligent act or omission of ONTC or ONTC Parties.

45. Limitation of Liability. Notwithstanding any other provision of this Agreement,

- (a) ONTC shall not be responsible for indirect, consequential, special, incidental or contingent damages of any nature whatsoever, including loss or revenue or profit or damages resulting from interruption of service or transmission. This limitation shall apply regardless of the form of action, damage, claim, liability, cost, expense or loss, whether in Agreement (including fundamental breach), statute, tort (including negligence), or otherwise, and regardless of whether ONTC has been advised of the possibility of such damages; and,
- (b) any express or implied reference to ONTC providing an indemnity or any other form of indebtedness or contingent liability that would directly or indirectly increase the indebtedness or contingent liabilities of ONTC, whether at the time of execution of this Agreement or at any time during the Term, shall be void and of no legal effect in accordance with s.28 of the *Financial Administration Act*, R.S.O. 1990, c. F.12.

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

INSURANCE

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

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

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

FORCE MAJEURE

49. **Force Majeure.** Whenever and to the extent either party is unable to fulfil, or is delayed or restricted in fulfilling, any of its obligations under this Agreement by reason of a Force Majeure event, the time for fulfilling such obligation is extended for such reasonable time as may be required by that party to fulfil such obligation, provided that any such inability, delay or restriction does not relate to any extent to any act or omission by that party. No extension of time will be given unless the party seeking the extension submits to the other party within five business days after the date on which the party ought reasonably to have been aware of the Force Majeure event a notice requesting the extension of time, the cause of the Force Majeure event, the expected duration of the extension and mitigation efforts being undertaken by the party.

TERMINATION

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

- (a) by the mutual written agreement of the parties;
- (b) by ONTC immediately upon written notice to the Service Provider if the Service Provider 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 Service Provider 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 Service Provider within thirty (30) days of providing written notice to ONTC detailing the nature of such failure and requiring that such failure be remedied.

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

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

52. If this Agreement is terminated early for any reason other than those described in section 51 (a) or (d), then:

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

GENERAL

53. **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.

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

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

T:

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E:

And to:

Legal Services & Corporate Governance
Legal@ontarionorthland.ca

To the Service Provider at:

Attention:

T:

E:

or at such other address or addresses as ONTC and the Service Provider 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.

55. **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.
56. **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.
57. **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.
58. **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 Service Provider as though such section or part or parts thereof had never been included in this Agreement.

59. **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.
60. **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.
61. **Counterparts and Electronic Delivery.** This Agreement may be executed and delivered by electronic transmission of a .pdf of the executed Agreement and the parties may rely upon the .pdf document as though the .pdf document was an original hard copy of the Agreement. This Agreement may be executed in any number of counterparts 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:

Title:

Date _____

I have authority to bind the corporation.

XXXX

Per _____

Name:

Title:

Date _____

I have authority to bind the corporation.

Schedule “A”

Scope of the Work / Services to be Provided

Schedule B
Service Provider's Submission