EXECUTION VERSION

MULTI-YEAR GOVERNANCE AGREEMENT

FOR JOINT TRANSIT PROCUREMENTS FACILITATED BY METROLINX, 2019-2024

April 1, 2019

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MULTI-YEAR GOVERNANCE AGREEMENT FOR JOINT TRANSIT PROCUREMENTS FACILITATED BY METROLINX

THIS AGREEMENT is made as of April 1, 2019 (the "**Effective Date**"),

BETWEEN: **METROLINX**;

AND: such **PURCHASERS** as may be added from time to time in accordance with the Agreement.

WHEREAS Metrolinx has a mandate to act as the central procurement agency for local transit systems across Ontario;

AND WHEREAS Metrolinx has worked with the transit service providers of various Ontario municipalities to facilitate joint procurements of transit system vehicles, equipment, technology, facilities and related supplies and services;

AND WHEREAS Metrolinx and the parties that are added to this Agreement from time to time (each, a "**Party**" and collectively, the "**Parties**") recognize the value of the joint procurement process in consolidating transit needs to achieve economies of scale, collaboration, and reducing time and costs associated with the public procurement process by standardizing the Procurement Documents, thereby allowing transit systems to focus on core competencies; making it more convenient for Ontarians to access transit services in their communities, connect with other transit systems, and travel across the province of Ontario;

AND WHEREAS the previous multi-year governance agreement governing the joint procurement process expired on December 1, 2018 (the "**Former Governance Agreement**");

AND WHEREAS the Parties now wish to enter into a Multi-Year Governance Agreement to govern the various joint procurements to be facilitated by Metrolinx during the five year period beginning April 1, 2019 and ending March 31, 2024, with an option to renew until March 31, 2029.

NOW THEREFORE in consideration of the mutual covenants herein contained and for other good and valuable consideration, the receipt and sufficiency of which are acknowledged by both Parties, the Parties hereby covenant and agree with each other as follows:

SECTION 1
INTERPRETATION

1.1 Definitions

In this Agreement, unless the context otherwise requires, each capitalized term shall have the meaning attributed thereto in Schedule A.

1.2 Schedules and Order of Priority

The following are the schedules attached to and forming part of this Agreement:

Schedule	Descriptions of Schedules
A	Definitions
B	Communications Policy
C	Sample Terms of Reference
D	Purchaser Information
E	Sample Council/Board/Commission By-Law/Resolution
F	Confirmation Agreement

In the event of any conflict between the provisions of this Agreement and its Schedules, the provisions of this Agreement shall take precedence over the Schedules.

1.3 Entire Agreement

This Agreement shall constitute the entire Agreement and understanding between the Parties relating to the matters dealt with and supersedes all prior understandings, discussions, negotiations, commitments, representations, warranties and agreements, written or oral, express or implied, existing between the Parties at the Effective Date with respect to the subject of this Agreement. None of the Parties shall be bound by any definition, condition, warranty or representation other than as expressly stated in this Agreement or as mandated by federal or provincial law.

1.4 Governing Laws and Agreement

This Agreement shall be governed by, and be construed and interpreted in accordance with, the laws of the Province of Ontario and the laws of Canada applicable in the Province of Ontario.

1.5 Severability

If any provision of this Agreement is determined by a court of competent jurisdiction to be invalid or unenforceable, in whole or in part, such invalidity or unenforceability shall attach only to such provision, which shall be severed from this Agreement, and the remaining provisions of this Agreement shall continue in full force and effect. Provided that the context allows, the remaining provisions shall be interpreted in the same way as they would have been had the severance not taken place.

1.6 No Partnership, Joint Venture or Corporation

The execution of this Agreement and the other arrangements with respect to the joint Procurements are not intended to create, and shall not be treated as having created, a general or limited partnership, joint venture, or corporation. No Party shall be liable for the acts, either of omission or commission, of any other Party to this Agreement.

1.7 Members of Council, Officers, Agents, etc.

Each Purchaser and its members of commissions, council, directors, officers, agents, contractors and employees are not, nor are they deemed to be, officers, agents, employees or officials of Metrolinx.

1.8 No Fiduciary Duties

Metrolinx shall not by reason of this Agreement or any of the discussions leading to or in connection with this Agreement have a fiduciary or trust relationship with the Purchasers or any other person, or any other obligation other than as specifically stated in this Agreement.

1.9 Number and Gender

In this Agreement words in the singular include the plural and vice-versa and words in one gender include all genders.

SECTION 2
PRINCIPLES OF JOINT PROCUREMENTS

2.1 Key Principles

This Agreement shall be guided by the following key principles:

(a) Metrolinx shall comply with any Procurement Policies which it is required to follow when issuing any joint Procurement whereby proposals will be evaluated.

(b) Metrolinx will facilitate the joint Procurement of certain transit system vehicles, equipment, technology, facilities and related supplies and services on behalf of the Purchasers.

(c) Metrolinx shall work with a Steering Committee in undertaking each joint Procurement and shall prepare, in consultation with such Steering Committee, Terms of Reference setting out the specific terms applicable to the Procurement, substantially in the form attached hereto as Schedule C (Sample Terms of Reference);

(d) The Terms of Reference shall be acknowledged in writing by the Steering Committee members representing those Purchasers that intend to participate in the particular Procurement, and shall form the basis for the draft Master Agreement to be included in the Procurement Documents for that Procurement;

(e) Participation by Purchasers in any joint Procurement is voluntary up to the end of the Cooling Period following the Steering Committee's recommendations that Metrolinx enter into a Master Agreement with the successful Proponent, pursuant to Section 4.8 (*Award of a Master Agreement*).

(f) Ownership of any Goods and/or Services to be procured and legal obligations related to any joint Procurement shall reside exclusively with the respective Purchasers, each of whom shall enter into a separate Purchase Agreement with the successful Proponent.

(g) The term of any Master Agreement, including any additional option years exercisable at the discretion of the Purchasers (**"Option Years"**), if applicable, shall be determined by the Parties and set out in the Terms of Reference, the Master Agreement and the Purchase Agreements for the particular Procurement.

(h) Subject to Section 4.2 *(Procurement Process*), the decision on whether or not to exercise the right to extend a Master Agreement for any Option Years, and to the extent any Option Year is exercised, the quantity of Goods and/or Services to be purchased, rests exclusively with each of the respective Purchasers.

(i) Purchasers may be required to pay a participation fee in order to participate as a Purchaser in certain joint Procurements (the **"Participation Fee"**). The details of any applicable Participation Fee, including the payment process, shall be set out in advance in the Terms of Reference, the Master Agreement and the Purchase Agreement, as applicable, for the particular Procurement. Metrolinx's policy with respect to Participation Fees is subject to change at Metrolinx's sole discretion.

(j) Metrolinx and the Purchasers will cooperate fully on all aspects of the joint Procurements including timely sharing of information and on-going two-way communication to promote informed decision making and budgeting.

SECTION 3
STEERING COMMITTEES

3.1 Steering Committee Membership

For each Procurement intended to be issued by Metrolinx pursuant to Section 3.5 (*Decisions of a Steering Committee*), there shall be a committee (the **"Steering Committee"**) comprised of one representative from Metrolinx (the **"Metrolinx Member"**) and one representative from each other Purchaser that intends to participate in that Procurement and has acknowledged the Terms of Reference as described in Section *2.1(d)*. For greater certainty, each Participating Metrolinx Division shall be considered a separate Purchaser and entitled to appoint its own representative. For each Steering Committee, Metrolinx and each Purchaser may also appoint one Alternate Member, who can act on the Member's behalf in the Member's absence at Steering Committee meetings.

3.2 Council By-Law, Resolution

The appointment of the Member and the Alternate Member by a Purchaser shall be confirmed by a by-law or resolution of the municipal council, commission, board of directors, or other governing body (as applicable) in a form consistent with Schedule E (Sample Council/Board/Commission By-Law/Resolution). The appointments shall refer to positions rather than specific individuals.

3.3 Votes

Each Purchaser participating in a Procurement shall, through their Member, have one vote on the Steering Committee for that particular Procurement. Consistent with its role as facilitator, the Metrolinx Member shall have no vote on any Steering Committee. For greater certainty, each Participating Metrolinx Division Member shall have its own vote.

3.4 **Quorum**

Unless otherwise provided in this Agreement, a quorum for the transaction of business at any meeting of a Steering Committee shall consist of at least two-thirds (2/3) of the total number of the Steering Committee Members eligible to vote. Members may be present either in person or by other means that permit all Members participating in the meeting to communicate with each other simultaneously and instantaneously. Wherever possible, the Steering Committee shall convene a meeting to conduct its business; however, in the absence of a meeting, the Steering Committee shall be authorized to make decisions and transact business with the unanimous written consent of all Steering Committee Members eligible to vote, which consent may be provided in the form of e-mail confirmation ("**Unanimous Written Consent**").

3.5 **Decisions of a Steering Committee**

(a) The following decisions of a Steering Committee require the concurrence of at least three-quarters (3/4) of the Steering Committee Members participating in a meeting and eligible to vote:

(i) recommending to Metrolinx the issuance of any Procurement (for greater certainty, this recommendation may be subject to the incorporation of feedback);

(ii) recommending to Metrolinx the selection of a successful Proponent under any Procurement issued pursuant to this Section 3.5 (*Decisions of a Steering Committee*) or recommending the selection of no Proponent;

(iii) recommending that the Procurement be terminated as outlined in Section *4.8*;

(iv) recommending to Metrolinx any amendments to a Master Agreement; and

(v) determining whether any Party is in default for the purposes of Section 9.2 (*Metrolinx Remedies for Event of Default by Purchaser*) or Section 9.3 (*Purchaser Remedies for Event of Default by Metrolinx*).

(b) Where a Steering Committee exercises its authority under Section 9.2 (*Metrolinx Remedies for Event of Default by Purchaser*), the Party whose default status is being determined may participate in the discussion but may not vote in the decision.

(c) All other decisions of a Steering Committee require the concurrence of a simple majority (greater than fifty (50)%) of the Steering Committee Members present at a meeting and eligible to vote. All decisions of a Steering Committee made in the absence of a meeting require the Unanimous Written Consent of the Steering Committee Members.

(d) Subject to its rights or other obligations as set out in this Agreement and any other agreement, law, policy, rule, directive or other requirement or provincial direction to which it may be bound or subject, Metrolinx shall, with respect to a Procurement, either act in accordance with the decisions of the appropriate Steering Committee or not at all.

3.6 **Sub-committees**

Each Steering Committee will establish sub-committees, as needed, which will include one representative from each Purchaser wishing to participate on such sub-committees and one representative from Metrolinx. When establishing sub-committees, a Steering Committee will establish the procedures, including quorum requirements and voting rights for the sub-committee.

3.7 **Binding Decisions**

All Steering Committee decisions must comply with the terms of this Agreement, the Procurement Documents and the Master Agreement related to the particular Procurement. Steering Committee decisions are final and binding on all Purchasers.

3.8 **Regular Meetings**

Each Steering Committee shall meet at least annually and may meet more often where the Chair of such Steering Committee notifies the Parties in writing of any special meeting required in accordance with Section 3.9 (*Special Meetings*).

3.9 Special Meetings

Metrolinx alone or any two (2) Steering Committee Members can, with at least five (5) Business Days prior written notice to the Chair and to the other Steering Committee Members, require a special meeting of the Steering Committee. Notwithstanding the previous sentence, Metrolinx may provide less than five (5) Business Days notice where it reasonably determines that such shorter timeframe is necessary. The written notice shall specify the issue to be considered at the special meeting and shall include an agenda.

3.10 Location of meetings

Unless a Steering Committee decides otherwise, all meetings of a Steering Committee shall be held either at a location determined by Metrolinx or via teleconference.

3.11 Responsibilities of Steering Committee

In addition to the other responsibilities provided for in this Agreement, each Steering Committee shall:

(a) acknowledge the Terms of Reference of the relevant Procurement;

(b) approve the appointment of a Chair;

(c) approve the Technical Specifications and/or Scope of Work applicable to the Procurement;

(d) recommend the terms and conditions of the relevant Procurement, including the proposed Supplier agreements forming a part of the Procurement;

(e) recommend the issuance of a Procurement pursuant to Section 3.5 (*Decisions of a Steering Committee*);

(f) subject to Section 4.8 (*Award of a Master Agreement*), recommend that Metrolinx enter into a Master Agreement that sets out the terms and conditions of the Procurement with the successful Proponent, as well as any amendments to such Master Agreement;

(g) subject to the terms of this Agreement, establish rules and procedures regarding its meetings;

(h) approve the implementation schedule for each Procurement; and

(i) be responsible for any other matter required to be approved by the Steering Committee in order to carry out the intent and purpose of this Agreement.

3.12 Responsibilities of Steering Committee Chair

The responsibilities of a Steering Committee Chair include:

(a) supporting the Manager with any issues with the facilitation and administration of the Procurement;

(b) calling for motions and votes during meetings of the Steering Committee;

(c) participating in meetings where Metrolinx is addressing any contractual matter on behalf of the Purchasers with the Supplier.

SECTION 4
PROCUREMENT APPROACH AND TERM

4.1 Technical Specification and/or Scope of Work

Metrolinx shall, in consultation with the Steering Committee develop the Technical Specifications and/or the Scope of Work for each Procurement. An overview of the Technical Specifications and/or the Scope of Work, shall be set out in the Terms of Reference, with more specific detail to be provided in the Procurement Documents.

4.2 Procurement Process

(a) Subject to this Agreement, the specific terms of the Procurement and the Master Agreement, each Procurement is intended to identify one or more Suppliers as the exclusive Supplier(s) of Goods and/or Services for the term of the relevant Master Agreement for Purchasers who do not elect to terminate their participation in the Procurement pursuant to Section 9.6 (*Termination Without Cause*

by a Purchaser). For greater certainty, references to Supplier in this Agreement shall include all Suppliers if more than one Supplier is selected as part of the Procurement.

(b) The option to extend for any of the Option Years, if applicable, will be at the sole discretion of the Purchasers, each of whom shall have the right to exercise the Option Years or not in accordance with the relevant Master Agreement and their Purchase Agreement with the Supplier ("**Purchase Agreement**"). Upon exercise of an Option Year by any Purchaser under Section 4.11 (*Option Years*), the Supplier will be the exclusive Supplier of the Goods and/or Services to such Purchaser during the relevant Option Years in accordance with the terms of the relevant Master Agreement and Purchase Agreement. For the avoidance of doubt, if a Purchaser does not elect to exercise an Option Year in accordance with Section 4.11 (*Option Years*), the Purchaser shall no longer be considered a Purchaser, or qualify for addition as an Eligible Purchaser, for that particular Procurement.

4.3 Supplier

A Supplier procured pursuant to a Procurement shall:

(a) be given an exclusive contract for the term of the particular Procurement; therefore, Purchasers that plan to procure Goods and/or Services during the term of the Procurement and that have not withdrawn from the Procurement or this Agreement in accordance with Section 9.6 (*Termination Without Cause by a Purchaser*) must purchase Goods and/or Services from the successful Supplier on an exclusive basis;

(b) not be contractually guaranteed the purchase of any particular quantity of Goods and/or Services under the relevant Master Agreement; and

(c) be advised by the Purchasers of their respective orders for Goods and/or Services upon approval of funding from their respective municipal council, commission, board of directors, or other governing body (as applicable), on or around the final day of each contract year of the term of the Procurement and, where applicable, the Option Years, to facilitate delivery of the Goods and/or Services in the relevant year.

4.4 Master Agreement

On the recommendation of the Steering Committee in accordance with Section 4.8 (*Award of a Master Agreement*) and in compliance with Section 1.4 (*Governing Laws and Agreement*) and any Procurement Policies required to be followed by it, Metrolinx may sign a Master Agreement with the successful Proponent for each completed Procurement that will establish the Supplier for each Master Agreement. Notwithstanding the foregoing, as the issuer of the Procurements and signatory to the Master Agreements, Metrolinx retains final discretion on whether or not to execute any Master Agreement.

Each Master Agreement will specify the terms and conditions of the relevant Procurement and pricing for the Goods and/or Services (including any additional Options that may be selected by Purchasers) to be procured. General terms and conditions that apply to all Purchasers participating in the Procurement will be contained in each Master Agreement. If a Participation Fee applies to the particular Procurement and (i) it is determined that the Supplier will be required to collect from the Purchaser and remit to Metrolinx, the Master Agreement will include a description of the Participation Fee; or (ii) otherwise, it shall be set out in the Terms of Reference.

4.5 Purchase Agreement with Supplier

(a) Subject to the Master Agreement, each Purchaser will enter into a Purchase Agreement directly with the Supplier that will provide details related to their purchase of Goods and/or Services, including any Options selected by that particular Purchaser, pricing details, and any other appropriate terms and conditions consistent with the terms of the relevant Master Agreement. If a Participation Fee applies to the particular Procurement, the Purchase Agreement may include terms authorizing the Supplier to include the applicable Participation Fee in the invoice issued to the Purchaser for the purchase of certain goods or services, and the Supplier shall remit the Participation Fee to Metrolinx in accordance with the terms of the Master Agreement. In the event that the Supplier fails or refuses to pay this amount to Metrolinx, the Purchaser(s) will be authorized to set off this amount from any payments otherwise due to the Supplier under the Purchase Agreement, and required to remit this amount to Metrolinx directly.

(b) Pursuant to the terms of the Master Agreement with the Supplier, the Supplier shall be responsible for providing a copy of the executed Purchase Agreement to the Metrolinx representative assigned to that Procurement for review. The Metrolinx representative will review each Purchase Agreement to ensure it is consistent with the relevant Master Agreement. Should it be found to be inconsistent, the Metrolinx representative will report the inconsistency to Metrolinx and the Steering Committee for that Procurement.

(c) If the Master Agreement for the particular Procurement provides for any Option Years, prior to exercising any such Option Year, the Purchaser must (a) provide notice to Metrolinx of the intention to exercise an Option Year in accordance with the terms set out in the Master Agreement, and (b) the Purchaser and the Supplier must extend the existing Purchase Agreement or enter into a new Purchase Agreement for the duration of the Option Year(s). For the avoidance of doubt, any new Purchase Agreement in respect of an Option Year is subject to review by the Metrolinx representative as set out above in this Section 4.5 (*Purchase Agreement with Supplier*).

4.6 **Timing**

The estimated timelines for each Procurement shall be set out in the Terms of Reference and the Master Agreement. All timelines shall be considered estimates only and are subject to change by Metrolinx, in its sole discretion, acting reasonably.

4.7 **Issuance of Procurements**

(a) Metrolinx shall conduct the Procurements in accordance with this Agreement, any Procurement Policies that Metrolinx is required to follow, and the Requirements of Law. The Procurements may take different forms, including but not limited to requests for quotations, public tenders and requests for proposals. The Procurement shall include:

(i) an open advertisement through a public, industry-accepted electronic tendering system used to connect suppliers of goods and services to people who purchase on behalf of governments and public sector organizations, such as MERX™ (the "**Public Procurement Portal**");

(ii) a posting of Proponent questions and answers through addenda on the Public Procurement Portal; and

(iii) an evaluation process, as described in the Terms of Reference.

(b) If applicable, Metrolinx shall alone and in its sole and absolute discretion, procure and retain the services of an independent fairness commissioner and any incurred costs will be incorporated into the Participation Fee. The fairness commissioner will be a third party observer who provides independent confirmation that the Procurement is open, fair and transparent and complies with the terms and conditions of this Agreement, any Procurement Policies that Metrolinx is required to follow, and the Requirements of Law.

(c) The cost of the joint Procurement process shall be borne by Metrolinx; provided however, that Metrolinx shall not be responsible for any costs incurred by any Purchaser relating to such process including without limitation those of a Purchaser who elects not to participate under Section 9.6 (*Termination Without Cause by a Purchaser*).

4.8 **Award of a Master Agreement**

(a) Each Steering Committee may recommend that Metrolinx award a Master Agreement to the qualified Proponent that achieves the highest total score in the tender evaluation process, in accordance with Section 3.5 (*Decisions of a Steering Committee*).

(b) Notwithstanding this Section 4.8 (*Award of a Master Agreement*), each Steering Committee reserves the right not to recommend awarding a Master Agreement to any Proponent if, in the view of three-quarters (3/4) or more of Steering Committee Members eligible to vote, no proposal is acceptable based on the terms and conditions of the particular Procurement. If at least three-quarters (3/4) of the Steering Committee Members eligible to vote agree that no proposal is acceptable, they may agree to recommend to Metrolinx that the Procurement be cancelled and each Purchaser shall thereafter be free to independently obtain the Goods and/or Services which were the subject of the Procurement, subject to the survival of and the Purchasers' continued compliance with the specific terms of this Agreement,

including without limitation the provisions related to confidentiality in Section 7 (*Confidentiality*) and conflict of interest in Section 8 (*Conflict of Interest*).

(c) Following a Steering Committee's recommendation to Metrolinx to award a Master Agreement and in accordance with Section 9.6 (*Termination Without Cause by a Purchaser*), Purchasers shall have up to five (5) Business Days (the "**Cooling Period**") following the Steering Committee's recommendation to decide whether they will participate in the particular Procurement. If a Purchaser decides not to participate in a particular Procurement and gives written notice to Metrolinx within the Cooling Period to that effect in accordance with Section 9.6 *(Termination Without Cause by a Purchaser*), it shall (i) no longer have any rights with respect to participation on the Steering Committee in relation to the relevant Procurement, (ii) shall not thereafter be permitted to become an Eligible Purchaser for that particular Procurement, and (iii) in accordance with Section 8.2 (*Conflict of Interest and the Receipt of Confidential Information*), shall not be entitled to contract with the Supplier for the purchase of Goods and/or Services which were the subject matter of the particular Procurement, during the initial term of the relevant Master Agreement.

(d) Metrolinx's execution of a Master Agreement is subject to Metrolinx's rights under Section 4.4 (*Master Agreement*).

4.9 Participation Fees

If a Participation Fee applies to a particular Procurement, the details of the Participation Fee shall be set out in the Terms of Reference and/or incorporated into the relevant Master Agreement and Purchase Agreements.

4.10 Term of this Agreement

(a) This Agreement shall be effective as of the Effective Date and shall expire on March 31, 2024 unless it is renewed in accordance with Section 4.10(b) or otherwise terminated in accordance with its terms (such period that this Agreement is in force, the "**Term**").

(b) Metrolinx may, on written notice to the Parties prior to the date specified in Section 4.10(a), extend the Term for five (5) years such that the Term will expire on March 31, 2029.

(c) Notwithstanding any other expiry or termination of this Agreement, if Metrolinx enters into any Master Agreement during the Term that extends beyond the Term (including, for example, as a result of the exercise of an Option Year), this Agreement shall automatically extend only with respect to such Master Agreement until the expiration of such Master Agreement.

4.11 Option Years

In the event a Master Agreement and Purchase Agreement for a particular Procurement allow for the exercise of Option Years by the Purchaser, the details of such Option Years, including the process by which Purchasers must provide notice in writing to Metrolinx of its intention to exercise any Option Year, shall be described in the Terms of Reference and incorporated into the Master Agreement of the applicable Procurement. As described in Section 4.5 (*Purchase Agreement with Supplier*), Purchasers are required to (a) provide notice to Metrolinx of the intention to exercise an Option Year in accordance with the terms set out in the Master Agreement, and (b) extend the existing Purchase Agreement or enter into a new Purchase Agreement for the duration of the Option Year. Notwithstanding anything in this Agreement to the contrary, in the event that no Purchaser notifies Metrolinx of its intention to exercise the Option Years under a Master Agreement, that Master Agreement shall be deemed to be at an end and shall expire at the completion of its stated term, unless the Steering Committee advises Metrolinx otherwise.

SECTION 5
ROLES AND RESPONSIBILITIES OF METROLINX

5.1 Roles and Responsibilities of Metrolinx

Metrolinx shall have the following roles and responsibilities in addition to those referred to elsewhere in this Agreement:

(a) Metrolinx shall facilitate all aspects of each Procurement including without limitation, issuance, proposal evaluation and award and shall, through the Metrolinx representative, administer the provisions contained in a Master Agreement on behalf of the Parties.

(b) The Manager may attend and participate in any of the activities carried out in relation to the joint Procurement, including any meetings of a Steering Committee and/or sub-committee(s) established by a Steering Committee.

(c) Metrolinx shall:

(i) work with each Steering Committee to coordinate the:

(A) development of the Terms of Reference for each Procurement;

(B) development of common Technical Specifications and/or Scope of Work; and

(C) development of each Master Agreement and Purchase Agreement;

(ii) determine a Proponent's compliance with the mandatory requirements set out in the Procurement Documents;

(iii) if approved by the Steering Committee or set out in the Terms of Reference, participate in the evaluation of technical proposals;

(iv) assist in the consolidation of orders for Goods and/or Services on behalf of the Purchasers;

(v) assist with contract management of issues that may arise under the Master Agreement and Purchase Agreement(s); and

(vi) be responsible for notifying the respective Steering Committee and the Supplier if other transit service providers wish to participate in the Procurement by becoming Purchasers. At such time, Metrolinx shall contact the Supplier to determine if there is sufficient capacity to accommodate additional orders for Goods and/or Services on the basis of the existing terms and conditions of the Master Agreement.

(d) Metrolinx shall review any proposed public communications prepared by a Purchaser and submitted to the Parties in accordance with Schedule B (Communications Policy) to ensure consistency with the Communications Policy set out in Schedule B (Communications Policy).

(e) Except in its role as a Purchaser(s), Metrolinx shall not:

(i) mediate disputes between the Purchaser and the Supplier following the execution by a Purchaser of a Purchase Agreement; or

(ii) pay or otherwise be responsible for any amounts for any Goods and/or Services as may be set out in any Purchaser's Purchase Agreement from time to time with the Supplier.

(f) Notwithstanding anything in this Agreement to the contrary, any payment or funding obligation made by Metrolinx under this Agreement in respect of any activity whatsoever is subject to there being an appropriation of moneys by the Legislature of Ontario (the "**Legislature**") sufficient to satisfy such commitments under this Agreement. Activity, payment or funding obligations may be reduced or terminated, in response to the Legislature's annual budget, a change in departmental funding levels by the Legislature, or any other parliamentary decision that has an impact on the program under which this Agreement is made.

(g) Notwithstanding (i) any other clause of this Agreement; (ii) whether Metrolinx has retained or not any Manager, Project Officer or Project Inspector; or (iii) the acts or omissions of any such persons; Metrolinx does not guarantee, warrant or otherwise provide any assurance as to suitability of any of the Goods and/or Services to the Purchasers or anyone.

5.2 **Representations and Warranties of Metrolinx**

Metrolinx covenants, represents and warrants to the Purchasers that:

(a) it is a validly existing legal entity under the laws of Ontario;

(b) it has the requisite legislative and other authority and any necessary approval to enter into this Agreement and to carry out its terms;

(c) its entry into this Agreement and performance of the terms hereof will not result in a breach of its constituting documents or by-laws.

5.3 **No Metrolinx Liability**

Where Metrolinx has entered into a Master Agreement, each Purchaser acknowledges and agrees that Metrolinx shall not be liable or responsible to any other Party to this Agreement, any Purchaser, the Supplier and/or any third party for any matter arising under such Master Agreement, the Procurement process or the provision of the Goods and/or Services, except to the extent to which such matter relates to the negligence or wilful misconduct of Metrolinx in the performance of its duties, and without limiting the generality of the foregoing, each Purchaser acknowledges and agrees that:

(a) Metrolinx will not be liable or responsible for any act or omission of the Purchaser or the Supplier in relation to Goods and/or Services under any Master Agreement and/or any Purchase Agreement. In no case whatsoever will Metrolinx be responsible or liable for the cost of any Goods and/or Services under a Purchase Agreement.

(b) Metrolinx shall not be liable or responsible in any way whatsoever and the Purchasers agree that they shall satisfy themselves as to the suitability of the Goods and/or Services for their purposes, including without limitation the Goods and/or Services' compliance with applicable laws, policies, safety, licensing, funding and insurance requirements as such may apply to the Purchaser's provision of transit services in its jurisdiction and/or its acquisition of Goods and/or Services hereunder.

(c) Except for determining a Proponent's compliance with the mandatory requirements set out in the Procurement Documents, Metrolinx has not endorsed, recommended or approved the suitability of a Supplier or its Goods and/or Services for a Purchaser.

(d) Each Purchaser shall be responsible for obtaining its own professional advice, including its own independent legal advice in respect of its execution of this Agreement, its participation hereunder, and its completion of a Purchase Agreement, if any. Each Purchaser may include such additional business and legal terms and conditions to the Purchase Agreement as it sees fit in the circumstances provided that the required terms of the Purchase Agreement approved by the Steering Committee (the "**Required Terms**") are wholly retained and provided further that any such additional terms and conditions are not inconsistent with the terms and conditions of the relevant Master Agreement and the Required Terms.

(e) Unless otherwise provided in this Agreement, each Purchaser shall be responsible for its own costs of any nature whatsoever arising as a result of, through or in any way related to its execution of this Agreement and its participation hereunder.

(f) Unless otherwise provided in this Agreement, each Purchaser shall be responsible for the oversight and administration of its own Purchase Agreement with the Supplier and shall not direct any Supplier service issues that may arise to Metrolinx but shall inform Metrolinx's representative of such issues.

(g) Metrolinx shall not be liable for any loss or damages suffered by any of the other Parties or Purchasers, or any other person as a result of any act or inaction of Metrolinx.

(h) Metrolinx shall not be liable for any losses, costs or damages sustained or incurred by any other Party or Purchaser, including losses, costs or damages relating to third party lawsuits arising out of any Procurement process or the Master Agreement.

SECTION 6
PURCHASERS

6.1 Steps Required to Become a Purchaser

A proposed Purchaser (other than a Participating Metrolinx Division) becomes a Purchaser when:

(a) the person or persons authorized to execute this Agreement on behalf of such municipality or entity has or have duly executed a confirmation agreement in the form attached as Schedule F (Confirmation Agreement); and

(b) the municipality or other entity has provided to the Manager the following documents:

(i) a Purchaser Information Sheet attached as Schedule D (Purchaser Information Sheet); and

(ii) a certified copy from a Purchaser's clerk or other authorized officer, confirming passage and enforceability of a by-law, resolution or other authority, as applicable, which includes, at a minimum, the information in the sample by-law/resolution attached as Schedule E (Sample Council/Board/Commission By-Law/Resolution), including the designation of persons authorized to provide instructions and any necessary approval for the Procurements as Steering Committee Member or Alternate Member, and confirming that all necessary actions have been taken by the Purchaser to authorize such persons to give instructions and any necessary approvals for the Procurements. The designations shall refer to positions rather than to specific individuals.

6.2 Representations and Warranties of Purchaser

(a) Each Purchaser covenants, represents and warrants to Metrolinx that:

(i) it is a validly existing legal entity under the laws of its relevant jurisdiction;

(ii) it has the requisite legislative and other authority and any necessary approval to enter into this Agreement and to carry out its terms, including the entering into joint Procurement arrangements and has passed any necessary by-law or resolution and has complied with its own procurement requirements;

(iii) it will take all necessary steps to ensure that it has all approvals (including budget approvals) which are required in order to carry out any Procurement;

(iv) its entry into this Agreement and performance of the terms hereof will not result in a breach of its constituting documents, by-laws, or any other agreements, ordinances or laws to which it is a party;

(v) it has not entered into any agreement or arrangement that would restrict the ability of Metrolinx to perform its obligations under this Agreement;

(vi) if it is participating as a Purchaser in a particular Procurement and has not withdrawn from this Agreement under Section 9.6 *(Termination Without Cause by a Purchaser)*, the Purchaser will not enter into any new contract or contract extension with any supplier other than the Supplier for the Goods and/or Services specified in the Master Agreement during the term of the particular Procurement without the prior written approval of Metrolinx (such approval to be granted only in accordance with the Agreement and not to be unreasonably withheld or delayed), unless the Supplier cannot provide the Goods and/or Services on a timely basis or has not met the requirements under the Master Agreement or Purchase Agreement as determined by the Steering Committee, acting reasonably; and

(vii) it will collect and submit to Metrolinx without unreasonable delay any data that Metrolinx may reasonably request from time to time in order to monitor and evaluate the effectiveness of the Goods and/or Services procured under this Agreement.

(b) The Purchaser shall be deemed to have repeated the foregoing representations and warranties each time it provides instructions for a Procurement. Metrolinx shall have no obligation to make any

further inquiry to confirm the truth or accuracy of any representation or warranty, or the validity of any action taken by a Purchaser hereunder.

6.3 **Addition of Purchasers to this Agreement**

Metrolinx may from time to time after the Effective Date add proposed Purchasers as Parties to this Agreement. Each proposed additional Purchaser (other than Participating Metrolinx Divisions) must first complete Section 6.1 (*Steps Required to Become a Purchaser*) in full. Upon its completion of the foregoing, a proposed Purchaser shall become a Purchaser and shall enjoy all of the rights and obligations in this Agreement excepting only any services paid for directly by Metrolinx where Metrolinx's available funds for such services have been spent. Each Purchaser agrees that this Agreement is binding on it regardless of the addition of Purchasers by Metrolinx hereunder.

6.4 **Participation in existing Procurements**

(a) A Purchaser is not an Eligible Purchaser with respect to a Procurement if such Purchaser had indicated that it did not wish to proceed during the Cooling Period, or such Purchaser had participated in such Procurement but then did not exercise its Option Year(s).

(b) An Eligible Purchaser may participate in an existing Procurement (including those Procurements that still exist from the Former Governance Agreement) if it has provided notice to Metrolinx that it intends to participate in such Procurement and:

(i) it has received confirmation from the Metrolinx procurement facilitator for that Procurement that the Supplier has sufficient capacity to accept additional Purchasers without impacting on the delivery of Goods and/or Services already on order by existing Purchasers;

(ii) it has confirmed in writing to Metrolinx that it has not issued a public procurement process or subsequently cancelled an order for Goods and/or Services in order to participate in the Procurement;

(iii) the Master Agreement for such Procurement allows for such Eligible Purchaser to participate at this time; and

(iv) if such Procurement was created under the Former Governance Agreement and such Eligible Purchaser was not a party to the Former Governance Agreement, the approval of the Steering Committee for such Procurement.

(c) If the above conditions are met, such Eligible Purchaser may then enter into a Purchase Agreement in accordance with the approved specifications and options available for the respective Procurement.

(d) If all purchasers under an existing Procurement created under the Former Governance Agreement have become Purchasers under this Agreement, the terms of this Agreement shall apply to such Procurement to the extent of any inconsistency. Otherwise, the terms from the Former Governance Agreement shall apply to such Procurement.

SECTION 7
CONFIDENTIALITY

7.1 **Confidential Information**

(a) "Confidential Information" means:

(i) the Procurement process and solicitation documents and any information relating to or arising from the process and solicitation documents, including, without limitation, any Procurement Documents issued, or proposed to be issued, by Metrolinx relating to the Procurement, any proposals received, evaluation(s) completed, and pricing;

(ii) any proprietary information of a Party;

(iii) any personal information as contemplated in FIPPA or MFIPPA, as such instruments shall be amended, from time to time;

(iv) all information that a Party is obliged, or has the discretion, not to disclose under provincial or federal legislation; or

(v) any other information specifically designated in writing by a Party as being of a confidential or proprietary nature.

(b) Confidential Information does not include information that:

(i) is or becomes generally available to the public through no fault of the Receiving Party, including, by way of example only, information related to the Procurement process and disclosed by Metrolinx after a successful bidder has been identified, including the names of the bidders that submitted proposals and the total contract price of the successful bidder;

(ii) prior to receipt from the Disclosing Party, was known to the Receiving Party on a non-confidential basis and is not subject to another obligation of secrecy and non-use, as documented by written records possessed by the Receiving Party;

(iii) was independently developed by the Receiving Party prior to receipt from the Disclosing Party, as documented by written records possessed by the Receiving Party; or

(iv) becomes available to the Receiving Party on a non-confidential basis from a source other than the Disclosing Party that is not under other obligations of confidence.

7.2 **Use of Confidential Information**

(a) Each Party shall keep, and shall ensure that its advisors, agents, directors, commissioners, officers, partners, Personnel, representatives and contractors keep, all Confidential Information confidential in accordance with the terms and conditions of this Section 7 (*Confidentiality*). In addition to any other liabilities of a Party pursuant to this Section 7 (*Confidentiality*) or otherwise at law or in equity, each Party shall be liable for any and all liability, losses, costs, damages, expenses (including all reasonable legal, expert and consultant fees), causes of action, and proceedings arising from any non-compliance with this Confidentiality Agreement by a Party or any of its advisors, agents, directors, commissioners, officers, Personnel representatives or contractors.

(b) Confidential Information disclosed directly or indirectly by a Disclosing Party to a Receiving Party shall be held by the Receiving Party in confidence, and the Receiving Party:

(i) shall not disclose, reveal, publish, or disseminate any of the Disclosing Party's Confidential Information, provided that the Receiving Party may disclose Confidential Information to those of its advisors, agents, directors, commissioners, officers, partners, Personnel, representatives and contractors with a need to know such Confidential Information in connection with assisting, advising and/or providing feedback to the Procurement process, provided that such person is subject to obligations of confidentiality substantially similar to those contained in this Section 7 (*Confidentiality*);

(ii) shall take all reasonable steps required to prevent any unauthorized reproduction, use, disclosure, publication, or dissemination of the Disclosing Party's Confidential Information;

(iii) shall not copy, reproduce in any form or store the Disclosing Party's Confidential Information in a retrieval system or database, without the prior written approval of the Disclosing Party;

(iv) shall immediately notify the Disclosing Party in the event that it becomes aware of any unauthorized disclosure of Confidential Information; and

(v) shall satisfy and comply with all applicable privacy legislation and any other statute or regulation applicable to the Confidential Information, including without limitation FIPPA and MFIPPA.

(c) At any time at the request of the Disclosing Party, the Receiving Party shall make all commercially reasonable efforts to effect the following as soon as possible:

(i) return all Confidential Information to the Disclosing Party; or

(ii) destroy the Confidential Information and all copies thereof in any form whatsoever under its power or control and provide the Disclosing Party with a certificate signed by the Receiving Party, or an appropriate officer of the Receiving Party, certifying such destruction.

(d) Notwithstanding paragraphs (a) and (b) of this Section 7.2 (*Use of Confidential Information*), the Receiving Party shall be permitted:

(i) to retain and use one copy of the Confidential Information of the Disclosing Party for the sole purpose of compliance with and to the extent and for so long as required by: (1) any Requirements of Law; or (2) any court, regulatory agency or Authority to which it is subject; and

(ii) to retain any electronic records and files containing Confidential Information of the Disclosing Party which have been created pursuant to the automatic or normal course archiving and back-up procedures of the Receiving Party; provided that the Receiving Party treats such Confidential Information in the same manner as it treats its own Confidential Information, such manner not be less than a reasonable standard of care.

(e) Any Confidential Information of a Disclosing Party that is not returned or destroyed pursuant to Section *7.2(d)* shall continue to be subject to the confidentiality and non-disclosure provisions of this Agreement notwithstanding any expiration or termination of this Agreement.

7.3 **Exceptions**

The obligations of confidentiality set out in Section *7.2* shall not apply to Confidential Information that:

(a) is or becomes generally available to the public through no fault of the Receiving Party, including, by way of example only, information related to the Procurement process and disclosed by Metrolinx after a successful bidder has been identified, including the names of the bidders that submitted proposals and the award price of the successful bidder;

(b) prior to receipt from the Disclosing Party, was known to the Receiving Party on a non-confidential basis and is not subject to another obligation of secrecy and non-use, as documented by written records possessed by the Receiving Party;

(c) was independently developed by the Receiving Party prior to receipt from the Disclosing Party, as documented by written records possessed by the Receiving Party; or

(d) becomes available to the Receiving Party on a non-confidential basis from a source other than the Disclosing Party that is not under other obligations of confidence.

7.4 **Authorized Purpose**

The Receiving Party acknowledges that all Parties have disclosed Confidential Information to the Receiving Party solely in connection with assisting, advising and/or providing feedback to the Procurement (the "**Authorized Purpose**"). The Receiving Party may use the Confidential Information solely in connection with the Authorized Purpose and for no other purpose. The Receiving Party acknowledges and agrees that unauthorized dealings with the Confidential Information would be detrimental to the interests, business and affairs of any of the Parties (or third parties with respect to third party information), including the integrity of the Procurement.

7.5 **Legally Required Disclosure**

If the Receiving Party becomes compelled to disclose any Confidential Information pursuant to applicable law, the Receiving Party shall provide the Disclosing Party with prompt written notice of any such requirement and shall cooperate with the Disclosing Party in seeking to obtain any protective order or other arrangement pursuant to which the confidentiality of the relevant Confidential Information is preserved. If such an order or arrangement is not obtained, the Receiving Party shall disclose only that portion of the Confidential Information as is required pursuant to applicable law. Any such required disclosure shall not, in and of itself, change the status of the disclosed information as Confidential Information under the terms of this Confidentiality Agreement.

7.6 Ownership of Confidential Information

The Disclosing Party shall retain all right, title and interest, including all intellectual property rights, in and to its Confidential Information. Neither the execution of this Confidentiality Agreement, nor the furnishing of any Confidential Information by a Disclosing Party shall be construed as granting to the Receiving Party, either by implication or otherwise, any interest, license or right respecting the Disclosing Party's Confidential Information, including any intellectual property rights.

7.7 No Warranties, Representations or Liability

ALL INFORMATION IS PROVIDED "AS IS", WITHOUT WARRANTY OR GUARANTEE OF ANY KIND AS TO ITS ACCURACY, COMPLETENESS, OPERABILITY, FITNESS FOR PARTICULAR PURPOSE, NON-INFRINGEMENT OF THIRD PARTY INTELLECTUAL PROPERTY RIGHTS OR ANY OTHER WARRANTY, EXPRESS OR IMPLIED. THE DISCLOSING PARTY SHALL NOT BE LIABLE FOR ANY DAMAGES, LOSS, EXPENSE OR CLAIM OF LOSS ARISING FROM THE USE OF, OR RELIANCE ON, THE INFORMATION BY THE RECEIVING PARTY.

7.8 Damages for Breach of Confidentiality Obligations

Each Party acknowledges and agrees that:

(a) any breach of the terms of this Section 7 (*Confidentiality*) and the obligations set out herein shall cause immediate and irreparable harm for which damages alone are not an adequate remedy; and

(b) Disclosing Party shall be entitled to seek, in addition to any other legal remedies which may be available to it, such equitable relief as may be necessary and available to protect such Party against such breach.

7.9 Survival of Confidentiality Obligations

The Parties acknowledge and agree that the terms of this Section 7 (*Confidentiality*) shall survive (a) the term of any agreement with the successful supplier resulting from a Procurement, including any renewal periods exercised by any of the Parties, or (b) the final abandonment or cancellation of the Agreement by Metrolinx, as applicable.

SECTION 8
CONFLICT OF INTEREST

8.1 No Conflict of Interest

No Purchaser nor any of its advisors, partners, directors, commissioners, officers, Personnel, agents, or contractors shall engage in any activity or provide any services where such activity or the provision of such services creates a Conflict of Interest (actual or potential) with the terms and conditions set out in this Agreement or any of the Procurement Documents, Master Agreements or Purchase Agreements contemplated or completed under this Agreement.

8.2 Conflict of Interest and the Receipt of Confidential Information

(a) Each Party declares that there is no actual or potential Conflict of Interest arising out of the receipt of the Confidential Information or the Party's role in the Procurement. Each Purchaser acknowledges and agrees that it shall be a Conflict of Interest for it to use Confidential Information relevant to the Procurement, including without limitation proposals and pricing information, where Metrolinx has not specifically authorized such use unless the Confidential Information relates solely to that Purchaser and has been provided by that Purchaser.

(b) In the event that either (i) a Purchaser exercises its right to terminate its participation in the Procurements in accordance with Section 9.6 (*Termination Without Cause by a Purchaser*), (ii) a Purchaser decides not to exercise an Option Year for a particular Procurement in which it has participated, or (iii) Metrolinx terminates a defaulting Purchaser's right to participate in the Procurement in accordance with paragraph (a) of Section 9.2 (*Metrolinx Remedies for Event of Default by Purchaser*), then in each case, the Purchaser shall not be entitled to contract with the Supplier for the purchase of Goods and/or Services which were the subject matter of the particular Procurement, during the initial term of the relevant Master Agreement.

8.3 Reporting a Conflict of Interest

Each Party declares that, if at any time during the course of participating in the Procurement, a Party or any of its advisors, partners, directors, commissioners, officers, Personnel, agents, or contractors has an actual or potential Conflict of Interest (each, a "**Conflicted Party**"), the Conflicted Party will immediately disclose such Conflict of Interest to Metrolinx and the Manager. Metrolinx shall have the authority to determine whether the Conflicted Party may continue to participate in the activity or provide the services in question, and shall also have the authority to attach limitations or conditions on the Conflicted Party's participation in the Procurement. Each Party shall be responsible for ensuring compliance by its advisors, partners, directors, commissioners, officers, Personnel, agents, or contractors with the Conflict of Interest requirements set out under this Agreement.

SECTION 9
DEFAULT, ENFORCEMENT, AND TERMINATION

9.1 Event of Default

Each of the following events is an Event of Default in respect of either a Purchaser or Metrolinx ("**Event of Default**"), as applicable:

(a) if any representation or warranty made by a Purchaser in this Agreement or any documentation delivered to Metrolinx by such Purchaser pursuant hereto shall be false or misleading in any material respect;

(b) if any representation or warranty made by Metrolinx in this Agreement shall be false or misleading in any material respect;

(c) if a Purchaser is in default in carrying out any of the material terms, covenants or obligations of this Agreement to be carried out by such Purchaser;

(d) if Metrolinx is in default in carrying out any of the material terms, covenants or obligations of this Agreement to be carried by Metrolinx; or

(e) if Metrolinx, a Purchaser or any of their respective advisors, partners, directors, commissioners, officers, Personnel, agents, representatives, or contractors has breached the requirements of Section 7 (*Confidentiality*) or Section 8 (*Conflict of Interest*).

9.2 Metrolinx Remedies for Event of Default by Purchaser

Notwithstanding any other rights which Metrolinx may have under this Agreement, if an Event of Default by a Purchaser has occurred, Metrolinx shall have the following remedies provided that, in the case of an Event of Default which is curable, as determined by Metrolinx, Metrolinx has first given written notice of the Event of Default to the defaulting Purchaser and the defaulting Purchaser has failed to correct the Event of Default within thirty (30) calendar days of receipt of such notice or such longer period of time as Metrolinx may consent in writing:

(a) Metrolinx may terminate the defaulting Purchaser's right to participate in a Procurement or in this Agreement by giving the defaulting Purchaser at least thirty (30) calendar days prior written notice thereof. Subject to Section 9.8 (*Obligations Survive*), as of the termination date, the defaulting Purchaser shall no longer participate as a Purchaser in the Procurement or this Agreement, as applicable; and

(b) subject to Section 10 (*Dispute Resolution*), Metrolinx may avail itself of any other legal remedies that may be available to it under law or in equity.

9.3 Purchaser Remedies for Event of Default by Metrolinx

If an Event of Default by Metrolinx has occurred, as determined by a Steering Committee, a Purchaser shall have the following remedies provided that, in the case of an Event of Default which is curable, as determined by a Steering Committee, the Steering Committee has first given written notice of the Event of Default to Metrolinx and Metrolinx has failed to correct the Event of Default within thirty (30) calendar days of receipt of such notice or such longer period of time as the Steering Committee may consent in writing:

(a) the Purchaser may, subject to Section 9.8 (*Obligations Survive*), terminate its participation in this Agreement or in a particular Procurement by giving Metrolinx at least thirty (30) calendar days prior written notice thereof; and

(b) subject to Section 10 (*Dispute Resolution*), each Purchaser may avail itself of any other legal remedies that may be available to it at law or in equity.

9.4 Termination Without Cause by Metrolinx

Metrolinx may terminate a particular Procurement in accordance with the terms of the Procurement Documents or this Agreement at any time, without cause, by delivering written notice, in accordance with Section 11.1 (*Address for Notices*), to that effect to each Purchaser (in the case of a termination of a particular Procurement) or to each Party (in the case of a termination of this Agreement), as applicable, which notice shall be effective sixty (60) calendar days following delivery of the notice by Metrolinx. Any outstanding payment obligations of the Purchasers remaining as of the date of termination shall remain in effect.

9.5 Effect of Termination Without Cause by Metrolinx

Where Metrolinx has provided notice pursuant to Section 9.4 (*Termination Without Cause by Metrolinx*), the remaining Purchasers or Parties may request that Metrolinx assign any or all of its rights and obligations under the Master Agreement to all of them or any of them. Such request shall be made before the expiry of the notice period referred to in Section 9.4 (*Termination Without Cause by Metrolinx*).

9.6 Termination Without Cause by a Purchaser

A Purchaser may terminate its participation in any Procurement without cause during the Cooling Period by delivering written notice to that effect to Metrolinx which notice shall be effective immediately. No notice by an individual Purchaser shall affect the rights and obligations of the other Parties. Where a Purchaser gives such notice, it shall (a) no longer have any rights with respect to participation on the Steering Committee in relation to the relevant Procurement, (b) shall not thereafter be permitted to become an Eligible Purchaser for that particular Procurement, and (c) in accordance with Section 8.2 (*Conflict of Interest and the Receipt of Confidential Information*), shall not be entitled to contract with the Supplier for the purchase of Goods and/or Services which were the subject matter of the particular Procurement, during the initial term of the relevant Master Agreement.

A Purchaser may terminate its participation in this Agreement without cause by delivering written notice to that effect to Metrolinx which notice shall be effective sixty (60) calendar days following delivery of the notice by Purchaser.

9.7 Purchaser Obligations after Award of Master Agreement

Subsequent to the award of a Master Agreement, a Purchaser is required to engage in the joint Procurement to the extent permitted by the amount of funding approved by that Purchaser's approving authority for the purchase of the relevant Goods and/or Services for the initial term of the Master Agreement and a Purchaser shall not purchase Goods and/or Services from any party other than the Supplier during this period. In addition to any other remedies which may be available to Metrolinx, failure to comply with this provision may result in the Province of Ontario withholding any applicable Provincial transit funding as may be applicable.

9.8 Obligations Survive

Despite any termination under this Section 9 (*Default, Enforcement, and Termination*) each Party agrees that certain rights and obligations (whether contingent or matured, absolute or not), as set out in Section 11.5 (*Survival*) of each Party existing immediately before the termination shall survive such termination.

Where Metrolinx terminates this Agreement pursuant to Section 9.4 (*Termination Without Cause by Metrolinx*), it shall remain responsible for all costs to which it is obligated under this Agreement up to the termination date.

Notwithstanding a Purchaser's termination of its participation in a Procurement or in this Agreement under this Section 9 (*Default, Enforcement, and Termination*), the Purchaser shall continue to be bound by the terms and conditions of any Purchase Agreement which may have been executed by it prior to such termination and any termination of a Purchase Agreement by the Purchaser shall be made only in accordance with the terms of the Purchase Agreement.

SECTION 10
DISPUTE RESOLUTION

10.1 Legal Remedies for Disputes

Any dispute, question, claim, or other matter arising out of or relating to this Agreement (each, a "**Dispute**") shall be resolved by the escalation procedure set out below in Section 10.3 (*Three-Tiered Dispute Resolution*). However, no Party shall be precluded from initiating a proceeding in a court of competent jurisdiction for the purposes of obtaining any emergency or provisional remedy to protect its rights that may be necessary and that are not otherwise available under this Agreement, including temporary and preliminary injunctive relief and restraining orders.

10.2 Dispute Notice

A Party may refer a Dispute to dispute resolution under this Section 10.2 (*Dispute Notice*) of this Section 10 (*Dispute Resolution*) by the delivery of a notice requesting dispute resolution to the other Parties, which notice shall set out the Dispute in reasonably sufficient detail (a "**Dispute Notice**").

10.3 Three-Tiered Dispute Resolution

The Parties agree that any Dispute shall be referred for dispute resolution by high-level negotiation, mediation or arbitration in the following manner:

(a) ***High-Level Negotiation***. In the event a Party issues a Dispute Notice, as described in Section 10.2 (*Dispute Notice*), to the other Parties, the Chief Administrative Officer or equivalent of each non-Metrolinx Party, and in the case of Metrolinx, the executive to which the Transit Procurement Initiative reports, shall meet and make a good faith effort to resolve the Dispute as set out in the Dispute Notice in a prompt manner and for the purpose of same, each Party shall provide its negotiator with full and timely disclosure of all relevant facts, information and documents to facilitate such negotiation. Negotiations shall be commenced within thirty (30) calendar days of the delivery of a Dispute Notice and shall, unless all Parties agree otherwise, be concluded within thirty (30) calendar days of their commencement. In the event that a resolution satisfactory to all Parties is achieved through such negotiations, the Parties shall detail, in writing, the manner in which the Dispute has been resolved.

(b) ***Mediation***. If the Dispute has not been resolved through high-level negotiation as contemplated in Section 10.3(a) above, the Dispute will be referred to structured negotiation with the assistance of a mediator appointed by mutual agreement of the Parties within thirty (30) calendar days of any Party issuing a supplementary Dispute Notice requesting mediation. If a mutual agreement is not reached within the timelines set out above, then Metrolinx, acting in good faith, may appoint a mediator and provide the other Parties with written notice of such appointment. The mediator shall be an independent person who by training and experience has the professional qualifications and the mediation skills to mediate any Dispute that may arise among the Parties. The Parties shall agree on the procedure to be used in mediation. If the Parties achieve a resolution of the Dispute, the mediator shall confirm the resolution in writing. If the Parties do not resolve the Dispute, the mediator shall provide a written confirmation that the Parties were unable to resolve the Dispute.

(c) ***Arbitration***. Any Party may, within thirty (30) calendar days of the delivery of the mediator's confirmation that the Parties were unable to resolve their Dispute, issue a supplementary Dispute Notice requesting arbitration. The Parties shall agree on the procedure to be used for arbitration unless the Parties are required by legislation to comply with a particular arbitration process. Any determination by arbitration shall be final and binding upon the Parties, and not subject to appeal or challenge. To the extent not specified in this Agreement, an arbitration shall be governed by the provisions of the *Arbitration Act, 1991*, as amended.

10.4 Performance to Continue

Notwithstanding that a matter has been referred to dispute resolution under the provisions of this Section 10 (*Dispute Resolution*), the Parties shall throughout the period of dispute resolution endeavour to perform their respective obligations under the terms of the Agreement to the best of their abilities.

10.5 **Dispute Cost**

The Parties shall bear and be responsible for their own costs in connection with or relating to any Dispute. Except for Metrolinx, the Parties in a Dispute shall share equally the costs related to any Disputes arising out of the Master Agreement.

10.6 **Disputes Between the Purchasers and the Supplier**

Each Purchaser shall be solely responsible for dealing with any Disputes that may arise between it and the Supplier.

SECTION 11
MISCELLANEOUS

11.1 **Address for Notices**

(a) Any notice or other communication required or permitted to be given under this Agreement shall be delivered in-person or sent by registered mail, postage prepaid, courier, facsimile, or e-mail in the case of Purchasers to the addresses, facsimile numbers, or e-mail set out in Schedule D (Purchaser Information Sheet), and in the case of Metrolinx, to:

Attn.: Manager, Transit Procurement Initiative
Metrolinx
277 Front Street West, 4th Floor
M5V 2X4

(b) Notices shall be deemed received: (i) in the case of registered mail, five (5) business days after sending; (ii) in the case of courier or in-person delivery, upon receipt; or (iii) in the case of e-mail, when receipt is acknowledged by the receiving Party. Any Party may change the address to which notices or other communications required or permitted to be given under this Agreement shall be sent, by sending notice in writing to every other Party, such address change shall become effective immediately upon receipt of such notice.

11.2 **No Waiver**

(a) The benefit of any provision of this Agreement may be waived in whole or in part by the Party for whose benefit the provision operates and any Party may waive any or all of its rights in the event of a breach of any provision of this Agreement by another Party. A waiver is binding on the waiving Party only if it is in writing. A waiver may be absolute or may be limited in any way as to duration or scope.

(b) The failure by one of the Parties to insist in one or more instances on the performance by another Party of any of the terms or conditions of this Agreement shall not be construed as a waiver by the Party of its right to require future performance of any such terms or conditions, and the obligations of such other Party with respect to such future performance shall continue to be in full force and effect.

11.3 **Force Majeure**

(a) A Party shall not be responsible for failures in performance due to Force Majeure.

(b) **"Force Majeure"** means any circumstance or act beyond the reasonable control of a Party claiming Force Majeure, including an intervening act of God or public enemy, war, blockade, civil commotions, labour stoppages, strikes or lockouts, fire, flood, earthquake, epidemic, quarantine restriction, a stop-work order or injunction issued by a court or public authority having jurisdiction, or governmental embargo, which delays the performance of any obligation created by this Agreement beyond its scheduled time, provided such circumstance or act is not expressly dealt with under this Agreement or does not arise by reason of:

(i) the negligence or wilful misconduct of the Party claiming Force Majeure or those for whom it is responsible at law;

(ii) any act or omission by the Party claiming Force Majeure (or those for whom it is responsible at law) in breach of the provisions of this Agreement; or

(iii) lack or insufficiency of funds or failure to make payment of monies.

(c) Provided further that, in the case of an event of Force Majeure, the Party affected thereby shall notify the other Parties and Metrolinx, if Metrolinx is not the other Party, as soon as possible and in any event within five (5) Business Days following the date upon which the affected Party first becomes aware (or should have been aware, using all reasonable due diligence) of such event of Force Majeure so that the other Parties may verify the same.

(d) If an event of Force Majeure continues for a period of more than forty-five (45) calendar days, a Party shall have the right to terminate its participation in this Agreement (or in the case of Metrolinx, to terminate this Agreement) upon five (5) Business Days written notice to the other Parties. This right shall not affect a Purchaser's obligation to a Supplier under a Purchase Agreement which shall be determined in accordance with the relevant Purchase Agreement terms.

11.4 Remedies Cumulative

All remedies, rights, undertakings, obligations and agreements of the Parties under this Agreement shall be cumulative, and none thereof shall be in limitation of any other remedy, right, undertaking, obligation or agreement of any Party. Each Party may follow any remedy to which it is entitled concurrently or successively, at its option.

11.5 Survival

Section 7 (*Confidentiality*), Section 8 (*Conflict of Interest*), Section 9 (*Default, Enforcement, and Termination*), Section 5.3 (*No Metrolinx Liability*), and Section 6.2 (*Representations and Warranties of Purchaser*), excluding Subsection 6.2(a)(iv), shall survive the expiration or termination of this Agreement.

11.6 Amendment

Except as expressly provided herein, this Agreement may be amended or modified only by an instrument in writing executed by each of the Parties, which will form part of the Agreement.

11.7 No Assignment

Except as otherwise provided in this Agreement, Metrolinx shall not assign the whole or any part of its rights or obligations under this Agreement without the express written consent of the Parties, which consent shall not be unreasonably withheld.

No Purchaser shall assign the whole or any part of its rights or obligations under this Agreement without the express written consent of Metrolinx, which consent shall not be unreasonably withheld.

11.8 Further Action

Each Party shall at all times promptly execute and deliver and cause to be executed and delivered such documents and take and cause to be taken such action as may be necessary or appropriate to give effect to the provisions of this Agreement.

11.9 Enurement

This Agreement shall enure to the benefit of and be binding upon each Party and their respective successors and permitted assigns.

11.10 Time of the Essence

In the performance and observance of the terms and conditions of this Agreement, time is of the essence and no extension or variation of this Agreement shall operate as a waiver of this provision.

11.11 Counterparts

This Agreement may be executed in any number of counterparts, each of which when so executed and delivered shall be deemed to be an original, and all such counterparts shall together constitute one and the same instrument. All signatures of the Parties to and pursuant to this Agreement may be transmitted by facsimile and such facsimile shall for all purposes be deemed to be the original signature of the person whose signature it produces and shall be binding upon that person and on the Party on whose behalf that person signed.

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SCHEDULE A: DEFINITIONS

In this Agreement,

(a) "**Agreement**" means this Multi-Year Governance Agreement for Joint Transit Procurements Facilitated By Metrolinx, including its Schedules, as each may be amended from time to time;

(b) "**Alternate Member**" means a person appointed by a Party to act in the absence of its Member and has all the rights, responsibilities and obligations of the Member;

(c) "**Arbitration Act, 1991**" means the *Arbitration Act, 1991*, S.O. 1991, c. 17, as amended from time to time;

(d) "**Authority**" means any government authority, agency, body or department, whether federal, provincial or municipal, having or claiming jurisdiction over this Agreement, the Master Agreement or the Goods and/or Services;

(e) "**Authorized Purpose**" means, in the context of Section 7 (*Confidentiality*), assisting, advising and/or providing feedback to a Procurement facilitated by Metrolinx pursuant to this Agreement;

(f) "**Business Day**" means any day which is not a Saturday or Sunday or a day observed as a holiday under the laws of the Province of Ontario or the federal laws applicable to the Province of Ontario, or a day observed as a holiday for the Government of Ontario;

(g) "**Chair**" means a Steering Committee chair appointed by the relevant Steering Committee in accordance with Section 3.11(*Responsibilities of Steering Committee*);

(h) "**Communication Policy**" means the communication policy for any major communication concerning the Procurement as set out in Schedule B (Communication Policy);

(i) "**Confidential Information**" has the meaning ascribed to it in Section *7.1*.

(j) "**Conflict of Interest**" means any situation or circumstance where, in relation to a Procurement, a Purchaser or any of its advisors, partners, directors, commissioners, officers, Personnel, agents, or contractors or Steering Committee Members (i) communicates with any person with a view to influencing preferred treatment inconsistent with the Procurement process, (ii) engages in conduct that compromises or could be seen to compromise the integrity of the open and competitive Procurement and render that process non-competitive or unfair, or (iii) has other commitments, relationships or financial interests that (A) could or could be seen to exercise an improper influence over the objective, impartial exercise of its independent judgment, or (B) could or could be seen to compromise, impair or be incompatible with the effective performance of its obligations under this Agreement;

(k) "**Contract**" means the aggregate of: (a) the Master Agreement; (b) the Purchaser-specific Purchase Agreement; (c) the Procurement Documents, including any addenda; (d) the successful proposal; and (e) any amendments executed in accordance with the terms of the Master Agreement;

(l) "**Cooling Period**" has the meaning ascribed thereto in Section 4.8(c) *(Award of a Master Agreement)*;

(m) "**Disclosing Party**" means a Party that discloses Confidential Information in connection with the Procurement;

(n) "**Dispute**" has the meaning ascribed thereto in Section 10.1 (*Legal Remedies for Disputes*) of this Agreement;

(o) "**Dispute Notice**" has the meaning ascribed thereto in Section 10.2 (*Dispute Notice*);

(p) "**Effective Date**" means the date this Agreement is effective as set out on the first page of this Agreement;

(q) "**Eligible Purchaser**" means, with respect to a Procurement, an entity that would be capable of being a Purchaser under such Procurement and does not include a Party who has previously terminated its participation under this Agreement, or a Purchaser who has terminated a Purchase Agreement or failed to exercise an Option Year.

(r) "**Event of Default**" has the meaning ascribed thereto in Section 9.1 (*Event of Default*) of this Agreement;

(s) "**FIPPA**" means the *Freedom of Information and Protection of Privacy Act*, R.S.O. 1990, c. F. 31, as amended from time to time;

(t) "**Force Majeure**" has the meaning ascribed thereto in Section 11.3 (*Force Majeure*) of this Agreement;

(u) "**Goods and/or Services**" means in relation to a Procurement, the particular transit: (i) vehicles, (ii) equipment, (iii) technology, (iv) facilities, and/or (v) related supplies and services to be procured by the Purchasers from the Suppliers in accordance with the Contract;

(v) "**Legislature**" has the meaning ascribed thereto in Section 5.1 (*Roles and Responsibilities of Metrolinx*) of this Agreement;

(w) "**Manager**" means the Metrolinx representative responsible for the overall facilitation and administration of the Procurement initiative under Section 5.1 (*Roles and Responsibilities of Metrolinx*);

(x) "**Master Agreement**" means the contract, including its schedules, to be entered into between Metrolinx and the Supplier to deliver the Goods and/or Services as they will be described in the relevant Procurement Documents and any other related supplies and services, or any part thereof;

(y) "**Member**" means a person appointed by a Party as set out in Section 3.1 (*Steering Committee Membership*) and who is deemed authorized by virtue of such appointment to perform any action, and provide any required recommendations, instructions and approvals to complete a Procurement within the scope of this Agreement;

(z) "**MERX™**" means the electronic tendering system used to connect suppliers of goods and services to people who purchase on behalf of governments and public sector organizations;

(aa) "**Metrolinx**" means the Corporation Metrolinx as established under the *Metrolinx Act*, 2006, as amended from time to time;

(bb) "**Metrolinx Member**" has the meaning ascribed thereto in Section 3.1 (*Steering Committee Membership*);

(cc) "**MFIPPA**" means the *Municipal Freedom of Information and Protection of Privacy Act*, R.S.O. 1990, c. M.56, as amended from time to time;

(dd) "**Municipal Act**," means the *Municipal Act*, 2001, S.O. 2001, c. 25, as amended from time to time;

(ee) "**Options**" means a component, feature, service or material that is proposed and priced by the Proponent as an alternative (or an addition or deletion) to the Proponent's standard component/feature/material/service for the Good and/or Services and as contained in the Technical Specifications and/or Scope of Work included in the Procurement Documents.

(ff) "**Option Year**" has the meaning ascribed thereto in Section 2.1(g) (*Key Principles*) of this Agreement;

(gg) "**Participation Fee**" has the meaning assigned in Section 2.1(i) (*Key Principles*) of this Agreement;

(hh) "**Party**" means any one of the legal entities which have executed this Agreement, and "Parties" means more than one Party;

(ii) "**Personnel**" means collectively, in the case of each Party, individuals who provide services to such Party or any of its contractors in connection with this Agreement, whether as employees or independent contractors, and includes the employees and independent contractors of the Party;

(jj) "**Procurement**" means the process by which Metrolinx will, on behalf of the participating Purchasers, facilitate the joint public procurement of Goods and/or Services described in the Procurement Documents, and any other related supplies and services in accordance with this Agreement;

(kk) "**Procurement Documents**" means the written tender document issued by Metrolinx for the joint procurement of Goods and/or Services and any supporting documentation posted on a Public Procurement Portal in connection with such tender;

(ll) "**Procurement Policies**" means the procurement policies and directives in effect from time to time respecting the procurement of equipment, services and supplies applicable to Metrolinx;

(mm) "**Project Inspector**" means the person or persons, if any, hired by Metrolinx, as described in the Terms of Reference for the particular Procurement, to perform inspection services at the Supplier's facility on behalf of the Purchasers of the Goods and/or Services;

(nn) "**Project Office**" means the office designated by Metrolinx as such from time to time by notice in writing to the other Parties;

(oo) "**Project Officer**" means the technical expert, if any, that is hired by Metrolinx, as described in the Terms of Reference for the particular Procurement, to assist each Steering Committee and the Purchasers on technical issues related to the the planning of the Procurement, including the development of the Technical Specification, up until the point the Goods and/or Services are accepted by the Purchasers;

(pp) "**Proponent**" means the legal entity that submits a proposal in response to a Procurement contemplated by this Agreement;

(qq) "**Public Procurement Portal**" means a public, industry-accepted electronic tendering system used to connect suppliers of goods and services to people who purchase on behalf of governments and public sector organizations, such as MERX™;

(rr) "**Purchase Agreement**" means the contract or contracts to be entered into between the Purchasers and the Supplier to deliver the Goods and/or Services as described in the Procurement Documents with any additional Options specified by each Purchaser;

(ss) "**Purchaser**" means:

(i) a municipality, as defined under the *Municipal Act* or a transit authority including a transit commission or board or other persons or classes of persons as may be authorized under the *Municipal Act* with which a municipality is permitted to enter into an agreement for the Procurement;

(ii) a legal entity that provides public transit services for persons with disabilities within a municipality and on behalf of that municipality;

(iii) a legal entity in receipt of Provincial or municipal funding for its provision of transit services within the Province of Ontario; or

(iv) a Participating Metrolinx Division;

provided that such municipality, or entity has complied with the requirements of Section 6.1 (*Steps Required to Become a Purchaser*)

(tt) "**Participating Metrolinx Division**" means any operating division of Metrolinx responsible for the provision of transit services (e.g. GO Transit, PRESTO, and UP Express), who, for the purposes of this Agreement, shall be considered a Purchaser and treated in accordance with the rights and obligations accruing to Purchasers hereunder, separate and distinct from Metrolinx and from each other Participating Metrolinx Division;

(uu) "**Receiving Party**" means a party in receipt of Confidential Information;

(vv) "**Required Terms**" has the meaning ascribed thereto in Section 5.3 (*No Metrolinx Liability*) of this Agreement;

(ww) "**Requirements of Law**" means all applicable requirements, laws, statutes, codes, acts, ordinances, decrees, injunctions, by-laws, rules, regulations, official plans, permits, licences, authorizations, Provincial policy directions, and agreements with Authorities that now or at any time hereafter may

be applicable to either the Supplier, the Purchasers, the Master Agreement or the Goods and/or Services or any part of them;

(xx) "**Schedules**" means the schedules listed in Section 1.2 (*Schedules and Order of Priority*) and forming a part of this Agreement, and any other schedules subsequently added in accordance with the terms of this Agreement, as each may be amended from time to time;

(yy) "**Scope of Work**" means the description of the Goods and/or Services to be included in the Procurement Documents and form a part of the Master Agreement with the Supplier;

(zz) "**Steering Committee**" has the meaning ascribed to it in Section 3.1 (*Steering Committee Membership*);

(aaa) "**Supplier**" means the successful Proponent(s) of a Procurement contemplated by this Agreement with whom Metrolinx enters into a Master Agreement;

(bbb) "**Technical Specifications**" means the specific technical requirements of the Goods and/or Services to be included in the Procurement Documents and form a part of the Master Agreement with the Supplier;

(ccc) "**Term**" has the meaning ascribed to it in Section 4.10 (*Term of this Agreement*);

(ddd) "**Terms of Reference**" means the document setting out the specific terms of a particular Procurement that Metrolinx shall prepare, in consultation with the Steering Committee, substantially in the form attached hereto as Schedule C (Sample Terms of Reference), and which shall be acknowledged by the Steering Committee members representing those Purchasers that intend to participate in the particular Procurement, and shall form the basis of the Master Agreement for that Procurement; and

(eee) "**Unanimous Written Consent**" means the written consent of all of the Members of the Steering Committee eligible to vote, which may be provided in the form of an e-mail confirmation, as described in Section 3.4 (*Quorum*).

SCHEDULE B
COMMUNICATION POLICY

1. The Parties agree that any communication with third parties in relation to a Procurement shall be carried out in accordance with the terms and conditions set out in this Agreement and in the communication policy described in this Schedule B (the "Communication Policy").

2. The purpose of the Communication Policy is for Metrolinx and the Purchasers to coordinate the initial announcement of a joint Procurement award.

3. Metrolinx acknowledges that Purchasers have public reporting obligations and that Purchasers may make public communications in relation to a project related to a joint Procurement, including review, performance assessment and expectations. With the exception of paragraph (d) below, the Communication Policy does not apply to such project related communications by the Purchaser.

4. Before the results of any public Procurement process (including award) are officially communicated by Metrolinx (including but not limited to the name of the successful Proponent and any pricing or evaluation result details), such results are considered Confidential Information as defined in this Agreement and shall not be disclosed without the express consent of Metrolinx.

SCHEDULE C
SAMPLE TERMS OF REFERENCE

1. Objective

Metrolinx has entered into a Multi-Year Governance Agreement, effective February 1, 2019, with the transit service providers of various municipalities signatory thereto and certain other entities (the "**Purchasers**") in order to facilitate the joint procurements of transit system vehicles, equipment, technology, facilities and related supplies and services (the "**Governance Agreement**"). Capitalized terms used but not otherwise defined herein shall have the meanings given to them in the Governance Agreement.

Pursuant to the terms and conditions set out in the Governance Agreement, Metrolinx now wishes to facilitate the joint procurement (the "**Procurement**") of [insert a brief description of the goods and/or services to be procured] (the "**Deliverables**"), as described more fully below under [Technical Specifications/Scope of Work]. The purpose of these Terms of Reference ("**TOR**") is to set out the terms upon which Metrolinx proposes to facilitate the Procurement and enter into a Master Agreement with the Supplier, under the terms and conditions set out in the Governance Agreement. Metrolinx reserves the right to amend these Terms of Reference at any time with notice to the Purchasers.

2. Prospective Purchasers

The following Purchasers have indicated an interest in participating in the Procurement:

[Insert the list of the Purchasers who have expressed an interest in participating in the Procurement.]

It is noted that, as set out in the Governance Agreement, participation by Purchasers in any joint Procurement is voluntary up to five (5) Business Days following the Steering Committee's recommendations that Metrolinx enter into a Master Agreement with the successful Supplier, pursuant to Section 4.8 of the Governance Agreement (Award of a Master Agreement). If a Purchaser decides not to participate in a particular Procurement within these five (5) Business Days, it shall (i) no longer have any rights with respect to participation on the Steering Committee in relation to the relevant Procurement, (ii) shall not thereafter be permitted to become an Eligible Purchaser for that particular Procurement, and (iii) in accordance with Section 8.2 (*Conflict of Interest and the Receipt of Confidential Information*), shall not be entitled to contract with the Supplier for the purchase of Goods and/or Services which were the subject matter of the particular Procurement, during the initial term of the relevant Master Agreement.

3. Term

The proposed Master Agreement shall have a term of [insert number of years] years. [Include a description of any Option Years, if applicable.]

4. Projected Timetable

The following timetable is tentative only, and may be changed by Metrolinx at any time in its sole discretion.

Event	Date

5. **Technical Specifications / Scope of Work**

[Insert summary of the Technical Specifications/Scope of Work of the Deliverables.]

6. **Procurement Process**

(a) Evaluation

As described more fully in the Procurement Documents, the proposals will be evaluated using the following criteria:

(i) [Insert evaluation criteria – i.e. total contract price, proponent qualifications, etc.]

7. **Services to be Provided by Metrolinx**[1]

(a) Joint Procurement Initiative

Metrolinx will fund the services of its internal Transit Procurement Initiative Project Team to assist the Steering Committee, Technical Committee and Purchasers on the planning of the Procurement, including the development of the RFP & Technical Specifications, support during pre-production meetings, up until the point the Goods and/or Services are accepted by the Purchasers, and Contract Management related issues during the contract period. The cost for such services are currently funded by the Metrolinx operating budget, a Participation Fee may apply if Metrolinx, in its sole discretion, deems that funding support is required.

(b) Fairness Commissioner

Metrolinx shall alone and in its sole and absolute discretion, procure, retain and provide funding for the services of an independent fairness commissioner. The fairness commissioner will be a third party observer who provides independent confirmation that the Procurement is open, fair and transparent and complies with the terms and conditions of the Procurement Documents and any Procurement Policies required to be followed by Metrolinx.

(c) Third Party Inspection Services

The Steering Committee may decide that inspection services are required for the Procurement. This third party supplier shall perform inspection services of the buses at the Supplier's facility, or dealer location, on behalf of the Purchasers. The cost for such services shall be identified and included in the Participation Fee unless Metrolinx decides, in its sole discretion, to pay for such cost.

(d) Configuration Checklist

If Metrolinx and the Steering Committee determine that third party inspection services are unnecessary at the Supplier's facility or dealer location. Metrolinx shall create a configuration checklist which is to be reviewed by the Steering Committee and the Supplier shall conduct pre-delivery inspections according to such checklist. Post-delivery inspections will be conducted by each Purchaser. Any participating Purchaser may retain and fund their own inspection services.

8. **[Participation Fee]**[2]

[Each Purchaser shall pay a participation fee equal to $[___] for each [insert name of Good/Service] purchased by the Purchaser during the Term of the Master Agreement and during any Option Year, inclusive of applicable taxes, to be remitted to Metrolinx.]

9. **Amendment**

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[1] Note to Draft: To include each of the below clauses if applicable.
[2] Note to Draft: To be included if applicable.

Metrolinx reserves the right to amend, change or supplement these TOR at any time in its sole discretion upon notice to the Steering Committee. Metrolinx will consult with the Steering Committee prior to amending, changing on supplementing the TOR.

[Remainder of page intentionally left blank]

ACKNOWLEDGEMENT OF TERMS OF REFERENCE:

Re: [Insert name of Procurement]

I, [insert name of Steering Committee Member], a member of the Steering Committee Member representing [insert name of Purchaser], having read and understood these Terms of Reference, hereby acknowledge that the Terms of Reference are the terms upon which Metrolinx proposes to facilitate the joint Procurement of [insert name of Deliverables] and enter into a Master Agreement with the successful Proponent, subject to the Governance Agreement, effective [insert effective date].

_____
Signature of Steering Committee Member

_____
Date

SCHEDULE D
PURCHASER INFORMATION SHEET

1. **Legal name of organization**

The Corporation of the City of Burlington

2. **Contact information**

Mailing address, e-mail and fax number for notices:

The Corporation of the City of Burlington

Transit Department

3332 Harvester Road

Burlington, ON L7N 3M8

E-mail:

Fax: 905-335-7878

3.	**Steering Committee Member**	**Alternate Member**
Title:	Neal McDonald, Transit Maintenance Manager	Sue Connor, Director of Transit
Address:	3332 Harvester Road Burlington, ON L7N 3M8	3332 Harvester Road Burlington, ON L7N 3M8
Telephone #:	905-335-7869 Ext. 7767	905-335-7869 Ext. 7845
E-mail:	neal.mcdonald@burlington.ca	sue.connor@burlington.ca
Fax #:	905-335-7878	905-335-7878

SCHEDULE E
COUNCIL/BOARD/COMMISSION BY-LAW/RESOLUTION

Authorize the Mayor and City Clerk to sign the Multi-Year Governance Agreement with Metrolinx, for the period ending March 31, 2024, with an option to extend until March 31, 2029; and

Authorize the Manager of Procurement Services to execute future purchases covered by the Multi-Year Governance Agreement in accordance with applicable city purchasing policies and by-laws; and

Authorize the Transit Maintenance Manager to be appointed to the Project Steering Committee and the Director of Transit to be appointed as an alternate, as outlined in the Multi-Year Governance Agreement. (TR-05-20)

SCHEDULE F
CONFIRMATION AGREEMENT

THIS INSTRUMENT of accession forms part of a Multi-Year Governance Agreement for Joint Transit Procurements Facilitated by Metrolinx, made as April 1, 2019, together with the Schedules attached thereto, as each may be amended, restated, supplemented or otherwise modified from time to time, by and among Metrolinx and certain other parties (the "**Governance Agreement**"). Capitalized terms used herein have the meanings ascribed to them in the Governance Agreement.

WHEREAS pursuant to Section 6.3 of the Governance Agreement, Metrolinx has the right to add Purchasers as Parties to the Governance Agreement, and, once added as a Party such proposed Purchaser shall become a Purchaser;

AND WHEREAS The Corporation of the City of Burlington was a party to the Former Governance Agreement and is a Purchaser, as that term is defined in the Governance Agreement, and wishes to be added as a Party to, and become a Purchaser under, the Governance Agreement;

NOW THEREFORE in consideration of the mutual covenants of the Parties set out in the Governance Agreement and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, The Corporation of the City of Burlington and Metrolinx hereby agree as follows:

(a) This Confirmation Agreement is a counterpart to the Governance Agreement and that, by execution and delivery hereof, The Corporation of the City of Burlington becomes and agrees to be a Party to the Governance Agreement.

(b) Subject to (i) The Corporation of the City of Burlington's compliance with the requirements set out in Section 6.1 of the Governance Agreement and (ii) the limitations set out in Section 6.3 of the Governance Agreement, The Corporation of the City of Burlington shall become a Purchaser for all purposes contemplated in the Governance Agreement.

(c) The Corporation of the City of Burlington hereby agrees:

  (i) to be bound by, and hereby confirms, all covenants, agreements, representations, warranties, consents, submissions, appointments and acknowledgements attributable to or made by a Purchaser in the Governance Agreement;

  (ii) to perform any and all obligations required of a Purchaser by the Governance Agreement; and

  (iii) that the representations and warranties set forth in the Governance Agreement and applicable to The Corporation of the City of Burlington are true and correct as at the effective date of this Confirmation Agreement.

(d) This Confirmation Agreement shall be governed by the laws of the Province of Ontario.

IN WITNESS WHEREOF the Parties have caused this Confirmation Agreement to be duly executed as of _____.

THE CORPORATION OF THE CITY OF BURLINGTON

Per: _____
Name:
Title:

Per: _____
Name:
Title:
I/We have authority to bind the company.

METROLINX

Per: _____
Name:
Title:
I have authority to bind the company.